

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 1. DEPARTMENT OF AGRICULTURE – ADMINISTRATION

PREAMBLE

1. Sections Affected

R3-1-101
R3-1-102
R3-1-103
R3-1-301
R3-1-302
R3-1-303
R3-1-304
R3-1-305
R3-1-306
R3-1-307

Rulemaking Action

Amend
Amend
New Section
Amend
Amend
Amend
Amend
Repeal
Amend
New Section

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

Authorizing statute: A.R.S. §§ 3-107(A)(1) and 41-1003.

Implementing statute: A.R.S. §§ 3-107(A)(1), 41-1023(F), and 41-1033.

3. The effective date of the rules:

August 7, 2004

4. A list of all previous notices appearing in the Register addressing the proposed rules:

Notice of Rulemaking Docket Opening: 10 A.A.R. 728, February 27, 2004

Notice of Proposed Rulemaking: 10 A.A.R. 609, February 27, 2004

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Steven G. Zraick, General Counsel
Address: Arizona Department of Agriculture
1688 West Adams, Room 236
Phoenix, Arizona 85007
Telephone: (602) 542-1158
Fax: (602) 542-5420
E-mail: steven.zraick@agric.state.az.us

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

This rulemaking updates the Department's rules governing rulemaking practices to be consistent with those currently prescribed in statute. Procedures that are duplicative of language in statute are removed and additional guidelines are prescribed to enhance clarity.

A new Section is added to advise an applicant for a license that requires a written examination of the applicant's right to request an accommodation to the manner in which the examination is provided. The Department's response to a request for accommodation is provided.

A new Section is added to provide the elements required in a petition to seek Department review of a practice or substantive policy statement that the person is alleging constitutes a rule.

Language usage is conformed to the current rulewriting standards of the Office of the Secretary of State.

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

None

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

Not applicable

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

A. *The Arizona Department of Agriculture.*

The Department will incur modest expenses related to educating staff and the regulated community on the amendments.

B. *Political Subdivision.*

Other than the Department, no political subdivision is affected by this rulemaking.

C. *Businesses Directly Affected By the Rulemaking.*

A person seeking a license from the Department that requires a written examination is advised that the Department may set a limit on the time allowed to complete the examination. An applicant is advised of the procedure to request an accommodation regarding the manner in which an examination is provided. The Department's review process for response to the request for accommodation is detailed.

A person participating in an oral proceeding regarding a proposed rule is advised in greater detail of the manner in which the presiding officer shall hold the meeting and an additional limitation that may preclude a speaker from reading extensive written material into the record.

A person seeking a review of a practice or substantive policy statement that the person is alleging constitutes a rule is advised of the elements of a petition that may be submitted to the Director in support of the allegation.

Clarification of language in the amended rules should enhance a person's ability to comply with regulations.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

Minor technical and grammatical changes have been made to the rule based on suggestions from Department and G.R.R.C. staff.

11. A summary of the comments made regarding the rules and the agency response to them:

The Arizona Department of Agriculture's Advisory Council supported the rulemaking by motion during a meeting held on April 15, 2004. The Department thanks the Council for its support of this rulemaking.

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

None

13. Incorporations by reference and their location in the rules:

None

14. Was this rule previously made as an emergency rule?

No

15. The full text of the rules follows:

TITLE 3. AGRICULTURE

CHAPTER 1. DEPARTMENT OF AGRICULTURE – ADMINISTRATION

ARTICLE 1. GENERAL PROVISIONS

Section

R3-1-101. Definitions

R3-1-102. Computation of Time

R3-1-103. Licensing; Testing

ARTICLE 3. PUBLIC PARTICIPATION IN RULEMAKING

Section

R3-1-301. Agency Rulemaking Record

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- R3-1-302. Petition for Adoption, Amendment, or Repeal of a Rule
- R3-1-303. Written Public Comment; Proposed Rulemaking
- R3-1-304. Oral Proceedings Proceeding; Proposed Rulemaking
- R3-1-305. Petition for Delayed Effective Date Repealed
- R3-1-306. Written Criticism of a Current Rule
- R3-1-307. Petition for Review of a Practice or Policy

ARTICLE 1. GENERAL PROVISIONS

R3-1-101. Definitions

In addition to the definitions provided in A.R.S. § 41-1001, the following terms apply to this Chapter, unless the context otherwise requires:

- “Administrative Law Judge” means an individual, or the Director of the Department, who sits as an administrative law judge, conducts an administrative hearing in a contested case or an appealable agency action, and makes decisions regarding the contested case or appealable agency action.
- “Department” means the Arizona Department of Agriculture.
- “Director” means the Director of the Arizona Department of Agriculture.
- “License” includes the whole or part of any agency permit, certificate, approval, registration, charter or similar form of permission required by law, but does not include a license required solely for revenue purposes. A.R.S. § 41-1001.
- “Licensing” includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license. A.R.S. § 41-1001.
- “Oral proceeding” means a proceeding held during the rulemaking process, as described by A.R.S. § 41-1023.
- “Person” means an individual, partnership, corporation, association, governmental subdivision or unit of a governmental subdivision, a public or private organization of any character or another agency. A.R.S. § 41-1001.

R3-1-102. Computation of Time

In computing any period of time allowed by these rules or by an order of the Director, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is Saturday, Sunday, or a legal holiday in which event the period runs until the end of the next day which is not a Saturday, Sunday, or a legal holiday. When the period of time allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation. The Department shall compute a period of time for action required in a Department rule or order, as follows:

1. The day of the act, event, or default from which the designated period of time begins to run shall not be included;
2. The last day of the period shall be included unless it is a Saturday, Sunday, or Arizona legal holiday in which event the period runs until the end of the next day that is not a Saturday, Sunday, or Arizona legal holiday; and
3. If the period of time allowed is 10 days or less, intermediate Saturdays, Sundays, and Arizona legal holidays are not included.

R3-1-103. Licensing; Testing

A. For a license for which an applicant is required to pass an examination, the Department may limit the amount of time the applicant is allowed to complete the licensing examination. In determining whether and to what extent the time-frame for an examination will be limited, the Department shall consider the following:

1. the number of questions on the examination;
2. the difficulty and content of the questions;
3. and if available, historical data on the average amount of time taken to complete the examination.

B. An applicant seeking an accommodation under the American’s with Disabilities Act to the manner in which an examination is administered shall make a written request to the Department at the time the applicant schedules the examination. The Department may require the applicant to provide medical documentation to confirm the need for the requested accommodation.

C. The Department shall review the request for accommodation and decide this request on a case by case basis.

ARTICLE 3. PUBLIC PARTICIPATION IN RULEMAKING

R3-1-301. Agency Rulemaking Record

The official rulemaking record is located in the Arizona Department of Agriculture’s Phoenix Office and may be reviewed at any time during regular Department office hours. A person may review an official rulemaking record at the Department’s main office, Monday through Friday, except an Arizona legal holiday, during the hours of 8:00 a.m. to 5:00 p.m. The Department shall provide a copy of a record according to the provisions of A.R.S. § 39-121 et seq.

R3-1-302. Petition for Adoption to Make, Amend, or Repeal of a Rule

A. Any A person requesting the Department to adopt, amend, or repeal a rule, pursuant to as prescribed in A.R.S. § 41-1033, shall file a petition with the Director as prescribed in this Section. Each A petition shall contain:

1. The name, address, and signature of the person submitting the petition;

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2. For the adoption making of a new rule, the specific language of the proposed rule;
3. For the amendment of a current rule, the A.A.C. Section number, the title, and the specific language of the current rule together with changes identified by drawing a line through any language to be deleted and an underline for any new underlining proposed language to be added;
4. For the repeal of a current rule, the A.A.C. Section number and title of the current rule;
5. The reason A statement describing why the rule should be adopted made, amended, or repealed; and
6. The date the petition is signed.

B.6 ~~Additional supporting~~ A person may submit additional information for the in support of a petition may be provided, including:

- a.1. Any statistical Statistical data or other justification study, with clear references to attached exhibits clearly referenc- ing any attached exhibit;
- b.2. An identification Identification of what persons or segment of the public a person that would be affected and how they the person would be affected; and
- e.3. If the petitioner is a public agency, a summary of relevant issues raised in any public hearing, or any written com- ments offered by received from the public.

R3-1-303. Written Public Comment; Proposed Rulemaking

A. ~~Any person may comment upon a rule proposed by the Department by submitting written comments on the proposed rule to the Director.~~

B. ~~Any document delivered to the Department is considered to have been submitted on the date it is received by the Depart- ment. Any document mailed to the Department is considered to have been submitted on the postmarked date.~~

C. ~~All written comments received by the Department shall be considered pursuant to A.R.S. § 41-1023.~~

A person shall direct written comment on a proposed rule to the person identified by the Department in a rulemaking notice published in the Arizona Administrative Register as responsible for accepting written comment.

R3-1-304. Oral Proceedings Proceeding; Proposed Rulemaking

A. ~~Requests for oral proceedings, as prescribed in A.R.S. § 41-1023(B), shall:~~

1. ~~Be filed with the Director;~~
2. ~~Include the name and address of the person making the request; and~~
3. ~~Refer to the proposed rule and include, if known, the date and issue of the Register in which the notice was published.~~

B. ~~The oral proceeding shall be recorded either by an electronic device or stenographer, and the official record shall include any resulting cassette tapes or transcripts, registers, and written comments received.~~

C. ~~The A presiding officer shall perform the following acts on behalf of the Department when conducting an oral proceed- ings proceeding as prescribed under A.R.S. § 41-1023:~~

1. ~~Request that attendees each attendee register their names by name and representative capacity, if applicable, with the presiding officer on a form provided by the Department;~~
2. ~~Request Require that attendees an attendee intending to speak register with the presiding officer by providing their provide the following information of a form obtained from the Department:~~
 - a. ~~name; Name and representative capacity, if applicable;~~
 - b. ~~a notation of their position Position with regard to the proposed rule;~~ and
 - c. ~~the approximate Approximate length of time they wish to speak. needed to present comment;~~
3. ~~Open the record oral proceeding by identifying the rules rule to be considered, the location, date, time, and purpose of the proceeding, and the agenda for the proceeding;~~
4. ~~Allow a statement by the a Department representatives representative to explain the background and general content of the proposed rules. rule;~~
5. ~~Allow a public oral comment period, pursuant to A.R.S. § 41-1023, limited to a reasonable amount of time for each speaker, as determined by the presiding officer to prevent without permitting undue repetition, or extensive reading of written comments or exhibits into the record;~~
6. Allow the Department to present additional information after public comments are received;
7. Allow a person to respond to the Department's supplemental presentation;
8. Accept written comments and exhibits on behalf of the Department; and
- 6-9. Make closing remarks which that include the location where the written public comments are to be received as pre- scribed in R3-1-303(A), received by the Department and the date and time of the close of official rulemaking record will close.

R3-1-305. Petition for Delayed Effective Date Repealed

A. ~~A person seeking to delay the effective date of the rule pursuant to A.R.S. § 41-1032 shall file a petition with the Director containing:~~

1. ~~The name, address, and signature of the petitioner;~~
2. ~~Identification of the proposed rule by A.A.C. number and title; and~~
3. ~~The petitioner's reasons for the proposed delay, specifying the undue hardship or other adverse impact that may result~~

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if the request for a delayed effective date is not granted, and the reasons why the public interest will not be harmed by the later date.

B. Within 20 days of receipt of the petition, the Department shall render a decision and notify the petitioner.

R3-1-306. Written Criticism of a Current Rule

A. At any time, any A person may file a written criticism of a current rule with the Director Department at any time.

B. The A criticism shall clearly identify the rule addressed and specify describe with specificity the problem with person's concern regarding the current rule.

C. Within 20 days the Director The Department shall acknowledge receipt of the a criticism within 20 days and shall retain the criticism in the Department's files for review pursuant to under A.R.S. § 41-1054 41-1056.

D. A criticism is not a petition as prescribed in R3-1-302.

R3-1-307. Petition for Review of a Practice or Policy

A person may petition the Director to review a practice or substantive policy statement, as prescribed in A.R.S. § 41-1033, that the petitioner alleges to constitute a rule. The petition shall contain:

1. The name, address, and signature of the petitioner;
2. The representative capacity of the petitioner, if applicable;
3. The practice or substantive policy statement at issue, identified by Department division, number, title, date, or concise description;
4. A statement describing with specificity why the petitioner alleges the practice or substantive policy statement constitutes a rule; and
5. The date the petition is signed.

NOTICE OF FINAL RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 2. DEPARTMENT OF AGRICULTURE – ANIMAL SERVICES DIVISION

PREAMBLE

- | | |
|-----------------------------|--------------------------|
| 1. Sections Affected | Rulemaking Action |
| R3-2-201 | Amend |
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rule is implementing (specific):**
Authorizing statute: A.R.S. § 3-107 (A)(1).
Implementing statute: A.R.S. §§ 3-2046, 3-2058, 3-2088, 3-2154, and 3-2161.
- 3. The effective date of the rule:**
August 7, 2004
- 4. A list of all previous notices appearing in the Register addressing the final rule:**
Notice of Rulemaking Docket Opening: 10 A.A.R. 729, February 27, 2004
Notice of Proposed Rulemaking: 10 A.A.R. 614, February 27, 2004
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
- | | |
|------------|--|
| Name: | Steven G. Zraick, General Counsel |
| Address: | Arizona Department of Agriculture
1688 West Adams, Room 236
Phoenix, Arizona 85007 |
| Telephone: | (602) 542-1158 |
| Fax: | (602) 542-5420 |
| E-mail: | steven.zraick@agric.state.az.us |
- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**
This rulemaking updates the Department's definitions of terms used in meat and poultry slaughter and inspection. Language use is conformed to the rulewriting standards of the Office of the Secretary of State.
- 7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may**

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obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

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

Not applicable

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

A. *The Arizona Department of Agriculture.*

The Department will incur modest expenses related to educating staff and the regulated community on the amendments.

B. *Political Subdivision.*

Other than the Department, no political subdivision is affected by this rulemaking.

C. *Businesses Directly Affected By the Rulemaking.*

The adoption will not affect the costs of regulated establishments. Providing the public with the current definitions of terms used by the Department should increase the Department's efficiency and improve the delivery of inspection services to the regulated industries.

10. A description of the changes between the proposed rule, including supplemental notices, and final rule (if applicable):

Minor technical and grammatical changes have been made to the rule based on suggestions from Department and G.R.R.C. staff.

11. A summary of the comments made regarding the rule and the agency response to them:

The Arizona Department of Agriculture's Advisory Council supported the rulemaking by motion during a meeting held on April 15, 2004. The Department thanks the Council for its support of this rulemaking.

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

None

13. Incorporations by reference and their location in the rule:

None

14. Was this rule previously made as an emergency rule?

No

15. The full text of the rule follows:

TITLE 3. AGRICULTURE

CHAPTER 2. DEPARTMENT OF AGRICULTURE – ANIMAL SERVICES DIVISION

ARTICLE 2. MEAT AND POULTRY INSPECTION

Section

R3-2-201. Definitions

ARTICLE 2. MEAT AND POULTRY INSPECTION

R3-2-201. Definitions

In addition to the definitions provided in A.R.S. §§ 3-101, ~~and 3-2001~~, and 9 CFR 301.2 ~~and 9 CFR 381.1~~, which ~~is~~ are incorporated by reference in ~~R3-2-202(A)~~ R3-2-202, the following ~~shall~~ terms apply to this Article:

1. "Animal" means any steer, heifer, calf, cow, bull, sheep, goat, swine, horse, ass, mule, burro, ~~and ratite~~, or poultry.
2. "Dead animal" means an animal ~~which has that~~ died other than by slaughter in a place where inspection is performed by the Department or by the United States Department of Agriculture.
3. "Inedible meat" means:
 - a. Meat ~~and or~~ meat food ~~products~~ product from ~~animals which have an animal that~~ died by slaughter; or ~~have been~~ was processed in an inspected slaughter ~~houses~~ house, but ~~have not been passed by the~~ which an inspector did not pass as fit for human consumption; or
 - b. Meat condemned by a federal or state ~~inspectors~~ inspector.
4. "Rendering" means the conversion of packinghouse waste; or dead animal carcasses; and parts into industrial ~~fats~~ fat.

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~~oils, oil, and or other products~~ ~~inedible~~ ~~product~~ ~~unfit~~ for human consumption.

NOTICE OF FINAL RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 3. DEPARTMENT OF AGRICULTURE – ENVIRONMENTAL SERVICES DIVISION

PREAMBLE

- 1. Sections Affected**

Table 1	<u>Rulemaking Action</u> Amend
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- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rule is implementing (specific):**

Authorizing statutes: A.R.S. §§ 3-107(A)(1) and 41-1073
Implementing statute: A.R.S. § 3-906(D)
- 3. The effective date of the rule:**

June 8, 2004

Under the provisions of A.R.S. § 41-1032(A)(4), this rule provides a benefit to the public by relocating the time-frame table for Native Plant regulation from the Plant Services Division to the Environmental Services Division. The rules governing Native Plant regulation, now R3-3-1101 through R3-3-1111 and Appendix A, were recodified from the Plant Services Division to the Environmental Services Division effective February 6, 2004. The Office of the Secretary of State does not allow recodification of part of a licensing time-frame table. It is a public benefit to have both the rules and time-frame table information relocated to Title 3, Chapter 3. No penalties for violations are associated with the changes in this rulemaking nor is there an impact on public health, safety, welfare, or the environment.
- 4. A list of all previous notices appearing in the Register addressing the proposed rule:**

Notice of Rulemaking Docket Opening: 10 A.A.R. 976, March 12, 2004
Notice of Proposed Rulemaking: 10 A.A.R. 946, March 12, 2004
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name:	Steven G. Zraick, General Counsel
Address:	Arizona Department of Agriculture 1688 West Adams, Room 236 Phoenix, Arizona 85007
Telephone:	(602) 542-1158
Fax:	(602) 542-5420
E-mail:	steven.zraick@agric.state.az.us
- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**

This rulemaking adds the Native Plant licensing time-frames to the Environmental Services Division Time-frames Table. The rules covering Native Plants were recodified from Chapter 4, Article 6 to Chapter 3, Article 11 effective February 6, 2004. The Office of the Secretary of State did not allow recodification of part of a licensing time-frame table.
- 7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None
- 8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable
- 9. The summary of the economic, small business, and consumer impact:**
 - A. *The Arizona Department of Agriculture.*

The Department will incur modest expenses related to training staff and educating the regulated community on the amendment.
 - B. *Political Subdivision.*

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Other than the Department, no political subdivision is affected by this rulemaking.

C. Businesses Directly Affected By the Rulemaking.

Native plant licensees will need to become aware of the recodification of the rules and subsequent movement of related licensing time-frames from the Plant Services Division to the Environmental Services Division.

10. A description of the changes between the proposed rule, including supplemental notices, and final rule (if applicable):

Minor technical and grammatical changes have been made to the rules based on suggestions from Department and G.R.R.C. staff.

11. A summary of the comments made regarding the rule and the agency response to them:

No written comments were received. The Arizona Department of Agriculture’s Advisory Council supported the amendment by motion during a meeting held on April 15, 2004. The Department thanks the Council for its support of this rulemaking.

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

None

13. Incorporations by reference and their location in the rule:

None

14. Was this rule previously made as an emergency rule?

No

15. The full text of the rule follows:

TITLE 3. AGRICULTURE

CHAPTER 3. DEPARTMENT OF AGRICULTURE – ENVIRONMENTAL SERVICES DIVISION

ARTICLE 1. GENERAL PROVISIONS

Section

Table 1. Time-frames (Calendar Days)

ARTICLE 1. GENERAL PROVISIONS

Table 1. Time-frames (Calendar Days)

License	Authority	Administrative Completeness Review	Response to Completion Request	Substantive Completeness Review	Response to Additional Information	Overall Time-frame
Regulated Grower Permit	A.R.S. § 3-363	14	14	56	14	70
Seller Permit	A.R.S. § 3-363	14	14	56	14	70
Agricultural Aircraft Pilot License	A.R.S. § 3-363	14	14	56	14	70
Custom Applicator License	A.R.S. § 3-363	14	14	63	14	77
Application Equipment Tag	A.R.S. § 3-363	14	14	56	14	70
Agricultural Pest Control Advisor (PCA) License	A.R.S. § 3-363	14	14	63	14	77
Commercial Applicator Certification	A.R.S. § 3-363	14	14	63	14	77
Private Applicator Certification	A.R.S. § 3-363	14	14	63	14	77
Private Fumigation Certification	A.R.S. § 3-363	14	14	63	14	77
Experimental Use Permit	A.R.S. § 3-350.01	14	14	28	14	42
Pesticide Registration	A.R.S. § 3-351	14	14	91	14	105
License to Manufacture or Distribute Commercial Feed	A.R.S. § 3-2609	14	14	42	14	56
Commercial Fertilizer License	A.R.S. § 3-272	14	14	42	14	56
Specialty Fertilizer Registration		14	14	56	14	70

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Agricultural Safety Trainer Certification	A.R.S. § 3-3125	28	14	28	14	56
<u>ARIZONA NATIVE PLANTS</u>						
Notice of Intent	<u>A.R.S. § 3-904</u>	<u>7</u>	<u>14</u>	<u>7</u>	<u>14</u>	<u>14</u>
Confirmation Notice of Intent						
• Salvage Assessed Native Plant Permits	<u>A.R.S. § 3-906</u>	<u>5</u>	<u>14</u>	<u>5</u>	<u>14</u>	<u>10</u>
• Salvage Restricted Native Plant Permits		<u>5</u>	<u>14</u>	<u>5</u>	<u>14</u>	<u>10</u>
• Scientific Permits		<u>14</u>	<u>14</u>	<u>14</u>	<u>14</u>	<u>28</u>
Movement Permits	<u>A.R.S. § 3-906</u>	<u>5</u>	<u>14</u>	<u>5</u>	<u>14</u>	<u>10</u>
Annual Permits for Harvest-Restricted Native Plants	<u>A.R.S. § 3-907</u>	<u>5</u>	<u>14</u>	<u>5</u>	<u>14</u>	<u>10</u>

NOTICE OF FINAL RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE – PLANT SERVICES DIVISION

PREAMBLE

1. **Sections Affected** **Rulemaking Action**
 Table 1 Amend

2. **The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rule is implementing (specific):**
 Authorizing statute: A.R.S. §§ 3-107(A)(1) and 41-1073
 Implementing statute: A.R.S. § 3-906(D)

3. **The effective date of the rule:**
 June 8, 2004

 When approved by the Council and filed with the Office of the Secretary of State. Under the provisions of A.R.S. § 41-1032(A)(4), this rule provides a benefit to the public by relocating the time-frame table for Native Plant regulation from the Plant Services Division to the Environmental Services Division. The rules governing Native Plant regulation, now R3-3-1101 through R3-3-1111 and Appendix A, were recodified from the Plant Services Division to the Environmental Services Division effective February 6, 2004. The Office of the Secretary of State does not allow recodification of part of a licensing time-frame table. It is a public benefit to have both the rules and time-frame table information relocated to Title 3, Chapter 3. No penalties for violations are associated with the changes in this rule-making nor is there an impact on public health, safety, welfare, or the environment.

4. **A list of all previous notices appearing in the Register addressing the proposed rule:**
 Notice of Rulemaking Docket Opening: 10 A.A.R. 976, March 12, 2004
 Notice of Proposed Rulemaking: 10 A.A.R. 949, March 12, 2004

5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
 Name: Steven G. Zraick, General Counsel
 Address: Arizona Department of Agriculture
 1688 West Adams, Room 236
 Phoenix, Arizona 85007

 Telephone: (602) 542-1158
 Fax: (602) 542-5420
 E-mail: steven.zraick@agric.state.az.us

6. **An explanation of the rule, including the agency’s reasons for initiating the rule:**
 This rulemaking deletes the Native Plant licensing time-frames from the Plant Services Division Time-frames Table. The rules covering Native Plants were recodified from Chapter 4, Article 6 to Chapter 3, Article 11 effective February 6, 2004. The Office of the Secretary of State did not allow recodification of part of a licensing time-frame table. In a

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separate rulemaking, the time-frame information is added to the Table located in Chapter 3, Environmental Service Division.

7. **A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of and justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**
None
8. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable
9. **The summary of the economic, small business, and consumer impact:**
Under A.R.S. § 41-1055(D)(3), the Department is not required to prepare an economic, small business, and consumer impact statement for this rulemaking. This rulemaking removes monitoring, recordkeeping, and reporting responsibilities regarding Native Plant licensing time-frames from the Plant Services Division of the Department. In a separate rulemaking, the same responsibilities are added to the Environmental Services Division.
10. **A description of the changes between the proposed rule, including supplemental notices, and final rule (if applicable):**
Minor technical and grammatical changes have been made to the rule based on suggestions from Department and G.R.R.C. staff.
11. **A summary of the comments made regarding the rule and the agency response to them:**
No written comments were received. The Arizona Department of Agriculture's Advisory Council supported the amendment by motion during a meeting held on April 15, 2004. The Department thanks the Council for its support of this rulemaking.
12. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**
None
13. **Incorporations by reference and their location in the rule:**
None
14. **Was this rule previously made as an emergency rule?**
No
15. **The full text of the rule follows:**

TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE – PLANT SERVICES DIVISION

ARTICLE 1. GENERAL PROVISIONS

Section

Table 1. Time-frames (Calendar Days)

ARTICLE 1. GENERAL PROVISIONS

Table 1. Time-frames (Calendar Days)

License	Authority	Administrative Completeness Review	Response to Completion Request	Substantive Completeness Review	Response to Additional Information	Overall Time-frame
QUARANTINE						
Cotton Boll Weevil Pest	A.R.S. § 3-201.01 R3-4-218	14	14	30	30	44
Citrus Fruit Surface Pest	A.R.S. § 3-201.01 R3-4-219	14	14	60	30	74
Citrus Nursery Stock Pests	A.R.S. § 3-201.01 R3-4-220	14	14	30	30	44

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License	Authority	Administrative Completeness Review	Response to Completion Request	Substantive Completeness Review	Response to Additional Information	Overall Time-frame
Lettuce Mosaic Pest	A.R.S. § 3-201.01 R3-4-233	14	14	30	30	44
Noxious Weeds Regulated and Restricted Prohibited	A.R.S. § 3-201.01 R3-4-244 R3-4-245	14	14	30	30	44
Scale Insects Pests	A.R.S. § 3-201.01 R3-4-226	14	14	30	30	44
Plum Curculio Apple Maggot	A.R.S. § 3-201.01 R3-4-240	14	14	60	30	74
Colored Cotton	A.R.S. § 3-205.02 R3-4-501	14	0	0	0	14
NURSERY						
Ozonium Root Rot Inspection	A.R.S. § 3-201.01 A.R.S. § 3-217 R3-4-303	7	14	30	14	37
• Method of Growing		7	14	4 yrs	14	4 yrs, 7 days
• Indicator Crop Planted on Applicant's Property		7	14	5 yrs	14	5 yrs, 7 days
• Indicator Crop Planted in Surrounding Area						
Other Certification Inspections	A.R.S. § 3-201.01 A.R.S. § 3-217	30	14	1 yr	14	1 yr, 30 days
• Nursery Inspection						
Phytosanitary Field Inspection	A.R.S. § 3-233(A)(7) R3-4-407	30	7	210	7	240
STANDARDIZATION						
Experimental Pack and Product for Fruit and Vegetables	A.R.S. § 3-487 R3-4-740	7	7	7	7	14
Experimental Pack and Product for Citrus Fruit	A.R.S. § 3-445 R3-4-814	7	7	7	7	14
Citrus Fruit Dealer, Packer, or Shipper License	A.R.S. § 3-449	14	14	14	14	28
Fruit and Vegetable Dealer, Packer, or Shipper License	A.R.S. § 3-492	14	14	14	14	28
ARIZONA NATIVE PLANTS						
Notice of Intent Confirmation Notice of Intent	A.R.S. § 3-904 R3-4-602	7	14	7	14	14
• Qualifications for Salvage-Assessed Native Plant Permits	A.R.S. § 3-906	5	14	5	14	10
• Salvage Restricted Native Plant Permits	R3-4-608	5	14	5	14	10
• Scientific Permits	R3-4-605	14	14	14	14	28
Movement Permits	A.R.S. § 3-906 R3-4-607	5	14	5	14	10

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License	Authority	Administrative Completeness Review	Response to Completion Request	Substantive Completeness Review	Response to Additional Information	Overall Time-frame
Qualifications for Annual Permits for Harvest-Restricted Native Plants	A.R.S. § 3-907 R3-4-608	5	14	5	14	10
SEED DEALERS AND LABELERS						
Seed Dealer	A.R.S. § 3-235 R3-4-408	14	14	14	14	28
Seed Labeler	A.R.S. § 3-235 R3-4-408	14	14	14	14	28

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 15. BOARD OF MASSAGE THERAPY

1. Sections Affected

Article 1
R4-15-101
R4-15-102
Article 2
R4-15-201
R4-15-202
R4-15-203
R4-15-204
R4-15-207

Rulemaking Action

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

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

Authorizing statute: A.R.S. § 32-4203

Implementing statutes: A.R.S. §§ 32-4221(A), 32-4222, 32-4223, 32-4224, 32-4227, 32-4228, 41-1072 through 41-1079

3. The effective date of the rules:

June 8, 2004

The Board is requesting an immediate effective date under A.R.S. § 41-1032(A)(2) to avoid a violation of state law and A.R.S. § 41-1032(A)(3) to comply with deadlines in the agency's governing statute. A.R.S. § 32-4221 originally required all persons who wish to engage in the practice of massage therapy be licensed by July 1, 2004. The statute was amended this legislative session in SB 1087 to require that persons who wish to engage in the practice of massage therapy be licensed by January 1, 2005. Although the legislation does not become effective until 90 days after the legislature ends, it is retroactive to July 1, 2004. The Board expects to receive approximately 3,000 license applications. In order for the Board to process the applications and have all qualified applicants licensed by January 1, 2005, it must have the rules in place as quickly as possible. If the rules become effective 60 days after they are filed with the Secretary of State's Office, the Board may be unable to meet the statutory deadline. The need for this immediate effective date was not created due to agency delay or inaction. The Board immediately began drafting rules when the Board's authorizing statutes became effective on May 13, 2003. In order to draft the rules, the Board met with many stakeholders and submitted proposed rules in January. The time between publishing the Notice of Proposed Rulemaking and submitting the Notice of Final Rulemaking was necessary to address public comments on the proposed rules. The Board believes it accomplished this rulemaking as quickly as it was capable of doing so.

4. A list of all previous notices appearing in the Register addressing the proposed rules:

Notice of Rulemaking Docket Opening: 10 A.A.R. 215; January 9, 2004

Notice of Proposed Rulemaking: 10 A.A.R. 340; January 30, 2004

5. The name and address of agency personnel with whom persons may communicate regarding the rules:

Name: Dr. Craig Runbeck, Executive Director

Address: 1400 W. Washington, Suite 230
Phoenix, AZ 85007

Notices of Final Rulemaking

Telephone: (602) 542-8242
Fax: (602) 542-3093
E-mail: craig.runbeck@npbomex.az.gov

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

The Board of Massage Therapy (Board) was established by the legislature in 2003 within the Naturopathic Board of Medical Examiners to license and regulate the practice of massage therapy in Arizona. A.R.S. § 32-4221 (A) requires that, beginning on July 1, 2004, an individual who wishes to practice massage therapy in Arizona be licensed. A.R.S. §§ 32-4221 (regular and provisional licenses), 32-4223 (license by reciprocity), and 32-4224 (temporary license) require that an individual wishing to be licensed submit to the Board an application containing the information required by the Board. A.R.S. § 32-4228 requires Board approval of massage and bodywork therapy schools. These rules set forth what is required on an application for a regular and provisional license, license by reciprocity, and massage and bodywork therapy school approval. The rules also set forth the licensing time-frames for Board action on the applications.

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

The Board did not review any study relevant to these rules.

8. A showing of good cause why the rules are necessary to promote a statewide interest if the rule will diminish a previous grant of authority to a political subdivision of the state:

Not applicable

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

The Board believes that it will receive approximately 3000 massage therapist applications for licensure in 2004. While some municipal jurisdictions currently license massage therapists, most do not. This is especially true in rural areas. Many massage therapists in the Phoenix and Tucson areas are licensed in more than one city and thus are required to pay a license fee by each city. The Board estimates it will receive approximately 30 applications for school approvals in 2004. The Board believes that approximately 80% of the schools that are anticipated to seek Board approval are small businesses as defined in A.R.S. § 41-1001.

The costs of the rules will be borne by the Board, applicants for licensure, and applicants for school approvals. The benefits of the rules will be realized by applicants for licensure, applicants for school approvals, and consumers of massage therapy services. As used in this summary, minimal means less than \$100, moderate means \$100 to \$999, and substantial means \$1000 or more.

Because this is a new licensing Board, during the first year of licensure the Board will receive substantial revenue from persons who will be submitting fees with their applications for a license. This revenue will be used to pay the salaries of Board staff and set up the Board's licensing and oversight functions, including reviewing qualifications of applicants, processing applications, providing for enforcement of its statutes and rules, holding Board meetings, and other meeting other requirements set forth in A.R.S. § 32-4201 *et seq.*

The Board bears moderate costs for writing rules to implement its statutes and related economic, small business, and consumer impact statement and mailing the new rules to interested persons. The Board also will bear substantial costs to process approximately 3,000 applications during the first year of licensure, including meeting the time-frames in the rules for approving or denying licenses. If the Board fails to meet the time-frames in the rules, it will be required to send the application fee back to the applicant resulting in a small cost-savings for the applicant. The Board will also be required to pay a penalty into the general fund resulting in a small increase in revenue for the state. The Board does not anticipate non-compliance with the time-frames

An applicant for a massage therapy license bears minimal costs to apply for a license and pay the \$250 application fee. Because a license remains in effect for two years the annual cost is \$125.

The Board is also charging a minimal fee for reinstatement of a license and a duplicate license.

An applicant for school approval is not required to pay an application fee but will bear minimal costs for completing and submitting an application to the Board.

Applicants and the Board benefit from clear and concise standards for applications.

Businesses that hire licensed massage therapists may benefit by the rules because they will have only qualified massage therapists working for them.

Consumers of massage therapy services benefit from the rules because only massage therapists that meet the requirements contained in the rules and statutes will be allowed to practice in Arizona.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules if applicable:

Notices of Final Rulemaking

In R4-15-102, the Board deleted the renewal fee and delinquent renewal fee to allow the Board to more fully evaluate the revenue that will be needed to operate the Board. The Board determined that the amount set forth in the Notice of Proposed Rulemaking is speculative and needs to be assessed more fully. Because the renewal fee and delinquent renewal fee will not be collected for two years, this change is not a substantial change under A.R.S. § 41-1025. After approval of this rulemaking, the Board intends to begin drafting a subsequent rulemaking that deals with requirements for renewals, including fees.

The Board made the following changes as a result of public comment:

In R4-15-101(1)(g) the Board changed “Council” to “Commission”.

The Board made the following changes for clarification purposes:

In R4-15-102(5) the Board added the term “classroom hour” in addition to “hour” as a defined term to be consistent with A.R.S. §§ 32-4222(B) and 32-4222(C).

In R4-15-102(8) the Board combined subsections (c) and (d) of the proposed rulemaking to reflect the requirement that an applicant has not, within five years before the date of the application, been convicted of an act involving dishonesty, fraud, misrepresentation, gross negligence, or incompetence or is not currently incarcerated or on community supervision after a period of incarceration in a local, state, or federal penal institution for such an act.

In R4-15-102(8) the Board deleted subsection (g) because it is already included in R4-15-201(A)(1)(k).

In R4-15-202 the Board added subsection (C) to clarify the documents that are needed to show proof of a current license or to show proof of being self-supportive as a massage therapist.

The Board made other technical and grammatical changes at the suggestion of GRRC staff.

11. A summary of the principal comments and the agency response to them:

The Board received only oral comments about the rules. Each paraphrased comment and the Board’s response is listed below:

Rule Number	Comment	Agency Response
None	What are the requirements to be grandfathered in? Will national certification be required to be licensed? The commenter did not request changes to the rules.	A.R.S. § 32-4222 (C) states the requirements for grandfathering (requirements for a provisional license). National certification is not mentioned as one of the requirements. The Board made no changes to the rules as a result of this comment.
None	Is colon hydrotherapy within the scope of practice of massage therapy?	The subject of this rulemaking is not scope of practice. This rulemaking will be followed by subsequent rulemakings that may address scope of practice, including colon hydrotherapy. The Board made no changes to the rules as a result of this comment.

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R4-15-201(A)(1)(h) and (B)(2)	Can the examination provided by the National Certification Commission for Acupuncture and Oriental Medicine be added to the rule in addition to the NCBTMB examination to qualify a person for a massage therapy license?	The Board has determined that the scope of the National Certification Commission for Acupuncture and Oriental Medicine examination is limited to Asian Bodyworks Therapy and does not cover all of the areas that are covered in a NCBTMB examination. The NCBTMB examination covers all of the areas listed in the definition of massage therapy contained in A.R.S. § 32-4201. A person passing the National Certification Commission for Acupuncture and Oriental Medicine examination is limited to performing Asian Bodyworks Therapy only. Because the Board's enabling statutes do not allow the Board to issue a limited license (in this case limited to Asian Bodyworks Therapy), the Board cannot approve the National Certification Commission for Acupuncture and Oriental Medicine examination. The Board made no changes to the rule as a result of this comment.
R4-15-101(1)(g)	The word "Council" should be changed to "Commission".	The Board made this change.
None	What is included in the exemption in A.R.S. § 32-4221 for human energy field?	The subject of this rulemaking is not scope of practice. This rulemaking will be followed by subsequent rulemakings that may address scope of practice, including human energy field. The Board made no changes to the rules as a result of this comment.
R4-15-101(7)	Can ability to benefit testing qualify an applicant for a license?	A.R.S. § 32-4222 requires a person to possess a high school diploma, general equivalency diploma, or similar document or certificate. If the Board determines that a similar document or certificate is the equivalent of a high school diploma or general equivalency diploma, the Board will accept the document or certificate. The Board will look at each request on an individual basis to make this determination. The Board made no changes to the rules as a result of this comment.

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R4-15-207 and Table 1	The licensing time-frames are too long. An applicant will not be able to work for approximately 4 months after graduating from school.	A.R.S. § 32-4222 states the qualifications for licensure which must be reviewed by the Board before a license can be issued. The Board approximates that it will be reviewing and processing 3000 applications before July 1, 2004. The Board expects to process most applications more quickly than 180 days. However, the Board only meets once a month. An applicant may be issued a temporary license within 60 days of application, which will allow the applicant to begin practicing.
R4-15-201(A)	An applicant should be required to submit a physical description, such as height and weight for identification purposes. An applicant should have to provide a government issued photo identification. Many massage therapists have the same name and date of birth. Requiring a physical description would allow the Board to ensure identification of the applicant.	The rules require an applicant to submit a social security number and fingerprints that allow the applicant's background to be checked. The Board believes this is sufficient information to identify the applicant as the person the applicant purports to be. The Board made no changes to the rules as a result of this comment.
None	Would like clarification in the rules about the exemptions in A.R.S. § 32-4221 (B)(6), regarding human energy fields. The commenter also requested specific techniques be listed in the rules such as Ortho-Bionomic Practitioner, Feldenkrais, Alexander Techniques, Jin Shin Jyutsu, Reiki, Chi Gung Healing, Chi Nei Tsang, Zen Shiatsu, which are done with the client fully clothed.	This is the first rulemaking completed by the Board for the purposes of licensing massage therapists by July 1, 2004 as required by A.R.S. § 32-4221(A). This rulemaking will be followed by subsequent rulemakings that may address scope of practice and clarify the exemptions in A.R.S. § 32-4221. The Board made no changes to the rules as a result of this comment.
None	Is a person required to obtain a state license if he just renewed his city license? The commenter did not request changes to the rules.	By July 1, 2004 (or when SB 1087 becomes effective, by January 1, 2005) all massage therapists must be licensed by the Board. Cities will no longer be licensing massage therapists. The Board made no changes to the rules as a result of this comment.

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

None

13. Incorporations by reference and their location in the rules:

None

14. Were these rules previously adopted as emergency rules?

No

15. The full text of the rules follows:

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TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 15. BOARD OF MASSAGE THERAPY

ARTICLE 1. GENERAL PROVISIONS

Section

R4-15-101. Definitions

R4-15-102. Fees

ARTICLE 2. LICENSING

Section

R4-15-201. Application for a Regular License

R4-15-202. Application for a Provisional License

R4-15-203. Application for a License by Reciprocity

R4-15-204. Board-approved School

R4-15-207. Licensing Time-frames

ARTICLE 1. GENERAL PROVISIONS

R4-15-101. Definitions

In addition to the definitions in A.R.S. § 32-4201, in this Chapter:

1. “Accredited” means approved by the:
 - a. New England Association of Schools and Colleges.
 - b. Middle States Association of Colleges and Secondary Schools.
 - c. North Central Association of Colleges and Schools.
 - d. Northwest Association of Schools and Colleges.
 - e. Southern Association of Colleges and Schools.
 - f. Western Association of Schools and Colleges, or
 - g. Commission on Massage Therapy Accreditation.
2. “Applicant” means an individual requesting a regular, provisional, temporary, or reciprocity license from the Board.
3. “Application packet” means the documents, forms, fees, and additional information required by the Board of an applicant.
4. “Board-approved school” means the same as in A.R.S. § 32-4201.
5. “Hour” or “classroom hour” means a minimum of 50 minutes.
6. “Day” means calendar day.
7. “General equivalency diploma” means:
 - a. A document issued by the Arizona Department of Education under A.R.S. § 15-702 to an individual who passes a general educational development test or meets the requirements of A.R.S. § 15-702(B);
 - b. A document issued by a state other than this state to an individual who passes a general educational development test or meets the requirements of a state statute equivalent to A.R.S. § 15-702(B); or
 - c. A document issued by a country other than the United States to an individual who has completed that country’s equivalent of a 12th grade education as determined by the Board based upon information obtained from American or foreign consulates or embassies or other governmental entities.
8. “Good moral character” means an applicant:
 - a. Has not, within the five years before the date of the application, been convicted of a felony or an offense involving moral turpitude or prostitution, solicitation, or other similar offense;
 - b. Has not, within five years before the date of the application, been convicted of an act involving dishonesty, fraud, misrepresentation, gross negligence, or incompetence or is not currently incarcerated or on community supervision after a period of incarceration in a local, state, or federal penal institution for such an act;
 - c. Has not, within five years before the date of the application, had a professional license revoked or suspended by this state, a political subdivision of this state, or a regulatory board in another jurisdiction in the United States, or voluntarily surrendered a professional license in-lieu of disciplinary action;
 - d. Has not, within five years before the date of the application, had a massage therapy certification revoked or suspended by a national massage therapy certifying agency; and
 - e. Has not practiced massage therapy without the required license in this state or in another jurisdiction within the United States within the five years before the date of the application.
9. “License” means written authorization issued by the Board to engage in the practice of massage therapy in Arizona.
10. “Massage therapy student” means an individual receiving instruction in massage therapy or bodywork therapy at a Board-approved school.

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11. “NCBTMB” means National Certification Board for Therapeutic Massage and Bodywork, the body that is accredited by the National Commission for Certifying Agencies and provides examinations of and certifies individuals in massage therapy and bodywork.
12. “National massage therapy certificate number” means a unique identification number issued by the NCBTMB.
13. “Provisional license” means an approval issued by the Board to an applicant who meets the requirements in A.R.S. §§ 32-4222 (A), 32-4222(C), and this Chapter.
14. “Regular license” means an approval issued by the Board to an applicant who meets the requirements in A.R.S. §§ 32-4222(A), 32-4222(B), and this Chapter.
15. “Practice of massage therapy” means the same as in A.R.S. § 32-4201.
16. “Self-supportive as a massage therapist” means that an individual has reported income to the Arizona Department of Revenue that was derived from the performance of services that would fall within the scope of the practice of massage therapy under A.R.S. § 32-4201 each year from December 31, 1992 until December 31, 2004.
17. “Supervised instruction” means the massage therapist responsible for a massage therapy student at a Board-approved school:
 - a. Is present at the location where the massage therapy student is performing massage therapy as part of the massage therapy student’s education;
 - b. Is immediately available for consultation; and
 - c. Evaluates the performance of the massage therapy student.

R4-15-102. Fees

- A.** The Board shall charge the following fees that are nonrefundable unless A.R.S. § 41-1077 applies:
 1. Application for a license, \$250
 2. Reinstatement of a license, \$125
 3. Duplicate license, \$25
- B.** The Board shall charge 25 cents per page for copying records, documents, letters, minutes, applications, and files.
- C.** An applicant shall pay an original license application fee or a fee for which a previous check was returned for insufficient funds in cash, cashier’s check, or money order.
- D.** An applicant shall pay a reinstatement or duplicate license fee in cash, cashier’s check, money order, or personal check.

ARTICLE 2. LICENSING

R4-15-201. Application for a Regular License

- A.** An applicant for a regular license shall meet the requirements in A.R.S. § 32-4222(A) and (B) and submit an application packet that contains:
 1. An application form that includes:
 - a. The applicant’s name, date of birth, place of birth, social security number, residence and business addresses, and residence and business telephone numbers;
 - b. Each name or alias previously or currently being used by the applicant;
 - c. The applicant’s name as it will appear on the license;
 - d. To satisfy the requirements in A.R.S. § 32-4222(A)(5):
 - i. If the applicant graduated from a high school, the date of graduation and name of the high school; or
 - ii. If the applicant received a general equivalency diploma, the date the general equivalency diploma was awarded;
 - e. The name and address of each Board-approved school attended by the applicant and dates of attendance;
 - f. If applicable, the applicant’s national massage therapy certificate number and date of certification;
 - g. Whether the applicant has successfully completed 500 classroom hours of supervised instruction at a Board-approved school;
 - h. Whether the applicant has passed the examination administered by the NCBTMB;
 - i. Whether the applicant, within the five years before the date of the application, has been convicted of a felony or an offense involving moral turpitude or prostitution, solicitation, or a similar offense or entered into a plea of no contest and, if so:
 - i. Charged felony or offense;
 - ii. Date of conviction;
 - iii. Court having jurisdiction over the felony or offense;
 - iv. Probation officer’s name, address, and telephone number, if applicable;
 - v. A copy of the notice of expungement, if applicable; and
 - vi. A copy of the notice of restoration of civil rights, if applicable;
 - j. Whether the applicant has within five years before the date of the application voluntarily surrendered a license under A.R.S. § 32-4254 or had a license to practice massage therapy or another similar license revoked by a political subdivision of this state or a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that would be subject to discipline pursuant to this Chapter.

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- k. Whether the applicant is currently under investigation, suspension, or restriction by a political subdivision of this state or a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that would be subject to discipline pursuant to this Chapter;
 - l. Whether the applicant has committed any of the actions or been subject to any of the actions listed in the definition of good moral character in R4-15-101;
 - m. Whether the applicant is requesting a temporary license; and
 - n. A notarized statement, signed by the applicant, stating: the information on the application form is true and correct;
 - 2. A completed and legible fingerprint card; and
 - 3. The fee required in R4-15-102.
- B.** In addition to the requirements in subsection (A), an applicant shall arrange to have directly submitted to the Board from the issuing entity:
- 1. A copy of the applicant's high school diploma or general equivalency diploma;
 - 2. Written verification of a passing score on the NCBTMB examination; and
 - 3. To show proof of completion of 500 hours of supervised instruction at a Board-approved school, academic transcripts from the Board-approved school from which the applicant graduated.

R4-15-202. Application for a Provisional License

- A.** An applicant for a provisional license shall meet the requirements in A.R.S. § 32-4222(A) and (C) and submit an application packet on or before December 31, 2004 that contains:
- 1. An application form that includes all of the information required in R4-15-201(A)(1), except R4-15-201(A)(1)(g) and:
 - a. To satisfy the requirements in A.R.S. § 32-4222(C)(1), whether the applicant has continuously practiced massage therapy in this state for at least three years before May 12, 2003 and completed a minimum of 200 hours of education and training in the study of massage therapy or bodywork therapy at a training program that meets the requirements of A.R.S. § 32-4222(C)(1) and includes:
 - i. Forty five hours in human anatomy and physiology;
 - ii. One hundred fifty hours in massage theory and practice; and
 - iii. Five hours in ethics, including confidentiality and privacy; sexual misconduct, financial misconduct; boundary issues, conflicts of interest; and appropriate referrals;
 - b. To satisfy the requirements in A.R.S. § 32-4222(C)(2), whether the applicant has been self-supportive as a massage therapist in this state and an explanation of the applicant's response; or
 - c. To satisfy the requirements in A.R.S. § 32-4222(C)(3), whether the applicant holds a current professional license from a municipality or political subdivision of this state that regulated the practice of massage therapy before May 12, 2003;
 - 2. A completed and legible fingerprint card; and
 - 3. The fee required in R4-15-102.
- B.** In addition to the requirements in subsection (A), an applicant shall arrange to have directly submitted to the Board from the issuing entity:
- 1. A copy of the applicant's high school diploma or general equivalency diploma, and
 - 2. Academic transcripts from the Board-approved school from which the applicant graduated.
- C.** In addition to the requirements in subsection (A), an applicant shall submit:
- 1. If seeking to qualify under subsection (A)(1)(a), a copy of a current license issued by a municipality or political subdivision of this state.
 - 2. If seeking to qualify under subsection (A)(1)(b), a copy of each year's income tax return from December 31, 1992 until December 31, 2004.

R4-15-203. Application for a License by Reciprocity

- A.** An applicant for a license by reciprocity shall meet the requirements in A.R.S. § 32-4223 and:
- 1. Submit an application form that contains the information in R4-15-201(A)(1)(a), R4-15-201(A)(1)(b), R4-15-201(A)(1)(c) and:
 - a. If the applicant wishes to demonstrate that the applicant meets the requirements in A.R.S. § 32-4223 (A)(1), the name of each state where the applicant was licensed continuously for five years immediately before the date of the application;
 - b. If the applicant wishes to demonstrate that the applicant meets the requirements in A.R.S. § 32-4223(A)(2), whether the applicant holds a current certification from the National Certification Board for Therapeutic Massage and Bodywork or another agency that meets the standards of the National Commission for Competency Assurance;
 - c. Whether the applicant has within five years before the date of the application voluntarily surrendered a massage therapy license or had a massage therapy license or another similar license revoked by a political subdivision of

Notices of Final Rulemaking

this state or a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that would be subject to discipline in this state under this Chapter; and

- d. A notarized statement, signed by the applicant, stating that the information on the application form is true and correct;
 2. If the applicant wishes to demonstrate that the applicant meets the requirements in A.R.S. § 32-4223 (A)(1), submit a copy of the state's massage therapy statutes and rules and arrange to have verification of the license or certificate in the jurisdiction in the other state sent directly to the Board from the jurisdiction including:
 - a. The license or certificate number issued to the applicant by the jurisdiction.
 - b. Whether the jurisdiction has instituted disciplinary proceedings against the applicant or has unresolved complaints pending against the applicant, and
 - c. Whether the license or certificate is in good standing.
 3. If the applicant wishes to demonstrate that the applicant meets the requirements in A.R.S. § 32-4223(A)(2), arrange to have a verification of certification as a massage therapist sent directly to the Board from the National Certification Board for Therapeutic Massage and Bodywork or other agency that meets the standards of the National Commission for Competency Assurance;
 4. Submit a completed and legible fingerprint card; and
 5. Submit the fee required in R4-15-102.
- B.** In addition to the requirements in subsection (A), an applicant shall arrange to have directly submitted to the Board from the issuing entity:
1. A copy of the applicant's high school diploma or general equivalency diploma, and
 2. Academic transcripts from the Board- approved school from which the applicant graduated.

R4-15-204. Board-approved School

- A.** A massage therapy school or bodywork therapy school in this state that is offered by a community college or approved by the Arizona State Board for Private Postsecondary Education is a Board-approved school.
- B.** A massage therapy school or bodywork therapy school in another state that is approved by an agency similar to the Board for Private Postsecondary Education and that wishes to be a Board-approved school shall:
1. Have a program that meets requirements that are substantially equivalent to those imposed by the Board for Private Postsecondary Education in A.R.S. Title 32, Chapter 30 and A.A.C. Title 4, Chapter 39; and
 2. Submit an application packet to the Board that includes:
 - a. The name, address, and telephone number of the massage therapy school or bodywork therapy school;
 - b. The same information required by the Board for Private Postsecondary Education in R4-39-103 (B); and
 - c. Documentation from the agency similar to the Board for Private Postsecondary Education that states the applicant meets the requirements of the agency.

R4-15-207. Licensing Time-frames

- A.** The overall time-frame described in A.R.S. § 41-1072(1) for each type of approval granted by the Board is listed in Table 1. The applicant and the Executive Director of the Board may agree in writing to extend the overall time-frame. The substantive review time-frame shall not be extended by more than 25 percent of the overall time-frame.
- B.** The administrative completeness review time-frame described in A.R.S. § 41-1072(1) for each type of approval granted by the Board is set forth in Table 1 and begins when the Board receives an application.
1. If the application packet is not complete, the Board shall send to the applicant a written notice specifying the missing document or incomplete information. The administrative completeness review time-frame and the overall time-frame are suspended from the postmark date of the notice until the date the Board receives a complete application packet from the applicant.
 2. If an application is complete, the Board shall send a written notice of administrative completeness to the applicant.
 3. If the Board grants the license during the time provided to assess administrative completeness, the Board shall not issue a separate written notice of administrative completeness.
- C.** The substantive review time-frame described in A.R.S. § 41-1072(3) is set forth in Table 1 and begins on the postmark date of the notice of administrative completeness.
1. During the substantive review time-frame, the Board may make one comprehensive written request for additional information or documentation. The time-frame for the Board to complete the substantive review is suspended from the postmark date of the comprehensive written request for additional information or documentation until the Board receives the additional information or documentation.
 2. The Board shall send a written notice of approval to an applicant who meets the qualifications and requirements in A.R.S. Title 4, Chapter 15 and this Chapter.
 3. The Board shall send a written notice of denial to an applicant who fails to meet the qualifications and requirements in A.R.S. Title 4, Chapter 15 and this Chapter.
- D.** The Board shall consider an application withdrawn if within 360 days from the application submission date the applicant fails to supply the missing information under subsection (B)(1) or (C)(1).

Notices of Final Rulemaking

- E.** An applicant who does not wish an application withdrawn may request a denial in writing within 360 days from the application submission date.
- F.** If a time-frame's last day falls on a Saturday, Sunday, or an official state holiday, the Board considers the next business day the time-frame's last day.

Table 1. Time-frames (in Days)

<u>Type of Approval</u>	<u>Statutory Authority</u>	<u>Overall Time-frame</u>	<u>Administrative Completeness Time-frame</u>	<u>Substantive Review Time-frame</u>
<u>Regular license</u> <u>R4-15-201</u>	<u>A.R.S. § 32-4222</u>	<u>180</u>	<u>90</u>	<u>90</u>
<u>Temporary License</u> <u>R4-15-201</u>	<u>A.R.S. § 32-4224</u>	<u>60</u>	<u>30</u>	<u>30</u>
<u>Provisional License</u> <u>R4-15-202</u>	<u>A.R.S. § 32-4222</u>	<u>180</u>	<u>90</u>	<u>90</u>
<u>License by Reciprocity</u> <u>R4-15-203</u>	<u>A.R.S. § 32-4223</u>	<u>120</u>	<u>60</u>	<u>60</u>
<u>Out-of-state School Approval</u> <u>R4-15-204</u>	<u>A.R.S. § 32-4228</u>	<u>120</u>	<u>60</u>	<u>60</u>

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 46. BOARD OF APPRAISAL

PREAMBLE

- 1. Sections Affected**
R4-46-401
- Rulemaking Action**
Amend
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rule is implementing (specific):**
Authorizing statute: A.R.S. § 32-3605(A)
Implementing statutes: A.R.S. §§ 32-3605(B)(1) and 32-3635(A)
- 3. The effective date of the rule:**
June 8, 2004

The Board is requesting an immediate effective date for this rule to avoid violation of federal law (Title XI of the Congressional Financial Institution Reform, Recovery, and Enforcement Act of 1989), pursuant to A.R.S. § 41-1032(A)(2).
- 4. A list of all previous notices appearing in the Register addressing the final rule:**
Notice of Rulemaking Docket Opening: 10 A.A.R. 979, March 12, 2004
Notice of Proposed Rulemaking: 10 A.A.R. 952, March 12, 2004
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Deborah G. Pearson, Executive Director
Address: 1400 West Washington, Suite 360
Phoenix, AZ 85007
Telephone: (602) 542-1539
Fax: (602) 542-1598
E-mail: deborah.pearson@appraisal.state.az.us
- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**

Notices of Final Rulemaking

The rule is written to comply with the provisions of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and state statutes applicable to real estate appraisers. The change in the existing rule is to comply with Title XI, which requires state licensing boards to recognize and enforce the *Uniform Standards of Professional Appraisal Practice* (USPAP) for federally related transactions; and A.R.S. § 32-3605(B)(1), which requires the Board to adopt standards for professional appraisal practice that are at least equal to the USPAP. The amended rule incorporates by reference the 2004 edition of USPAP.

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

None

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

Not applicable

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

The rule is being changed to adopt the latest standards of practice in the profession, as required by federal and state law. The primary groups that will be affected are the Board, the licensed or certified appraisers, and the public. The Board annually adopts the latest standards for professional appraisal practice and there should be no appreciable changes in the economic impact. The key changes in the 2004 USPAP are in Definitions, Preamble, Ethics Rule-Management, Ethics Rule-Record Keeping, Standards Rule 2-2(c)(ix), Standards Rule 8-2(c)(ix), Standards Rule 10-2(b), Standards Rule 10-3, Advisory Opinion 10, Advisory Opinion 24, Advisory Opinion 25, Advisory Opinion 26, Advisory Opinion 27, Glossary, USPAP Structure and Usability Enhancements, and Appraisal Standards Board Work in Progress. The cost for the new edition is \$30. The cost is a deductible business expense.

- 10. A description of the changes between the proposed rules, including supplemental notices, and the final rules (if applicable):**

None, except the key changes to the 2004 USPAP are set out in more detail in the preamble of the proposed rule and are summarized in the final rule.

- 11. A summary of the comments made regarding the rule and the agency response to them:**

An e-mail in support of the rule amendment was received on March 26, 2004, from the Phoenix Chapter of the Appraisal Institute. The Board read the comment into record at its public hearing on the rule amendment held on April 15, 2004, and at that time voted to close the record, adopt the proposed rule change and proceed with the Notice of Final Rulemaking.

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

Not applicable

- 13. Any material incorporated by reference and its location in the text:**

The *Uniform Standards of Professional Appraisal Practice* (USPAP), 2004 Edition, published by The Appraisal Foundation, 1029 Vermont Avenue, NW, Suite 900, Washington, DC 20005, toll free phone (800) 805-7856, phone (202) 347-7722, fax (202) 347-7727, or web site www.appraisalfoundation.org. The location in the rules is R4-46-401.

- 14. Was this rule previously made as an emergency rule?**

No

- 15. The full text of the rule follows:**

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 46. BOARD OF APPRAISAL

ARTICLE 4. STANDARDS OF PRACTICE

Section

R4-46-401. Standards of Appraisal Practice

ARTICLE 4. STANDARDS OF PRACTICE

R4-46-401. Standards of Appraisal Practice

Every appraiser, in performing the acts and services of an appraiser, shall comply with the Uniform Standards of Professional Appraisal Practice (USPAP), ~~2003~~ 2004 edition, published by ~~the~~ The Appraisal Foundation, which is incorporated by refer-

Notices of Final Rulemaking

ence and on file with the Board and the Office of the Secretary of State. This incorporation by reference contains no future additions or amendments. A copy of the USPAP 2003 2004 edition may be obtained from the Appraisal Foundation, 1029 Vermont Avenue, N.W., Suite 900, Washington, D.C. 20005; toll free 1-800-805-7857; (202) 347-7722; fax (202) 347-7727; or web site www.appraisalfoundation.org.

NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 5. DEPARTMENT OF TRANSPORTATION – COMMERCIAL PROGRAMS

ARTICLE 2. MOTOR CARRIERS

PREAMBLE

1. **Sections Affected:** R17-5-202
Rulemaking Action: Amend
2. **The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute:A.R.S. § 28-366
Implementing statute:A.R.S. §§ 28-5204 and 28-5235
3. **The effective date of the rules:**
June 8, 2004

The Department is requesting an immediate effective date upon filing with the Secretary of State as allowed under A.R.S. § 41-1032(A). An immediate effective date is needed so the agency rules are up to date with the current Code of Federal Regulations. This will protect the public by allowing the Department to enforce the federal law applicable to safety of motor carriers that operate on Arizona roads. It also will allow the Department to continue to collect the federal Motor Carrier Safety Assistance Program (MCASP) grant funds of approximately \$2 million to state law enforcement of motor carrier safety and Hazmat programs.
4. **A list of all previous notices appearing in the Register addressing the final rule:**
Notice of Rulemaking Docket Opening: 10 A.A.R. 981, March 12, 2004
Notice of Proposed Rulemaking: 10 A.A.R 974, March 12, 2004
5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Brent P. Heiss, Department Rules Analyst
Address: Administrative Rules Unit
Department of Transportation, Mail Drop 507M
3737 N. 7th St., Suite 160
Phoenix, AZ 85014-5079
Telephone: (602) 712-7941
Fax: (602) 241-1624
E-mail: bheiss@dot.state.az.us

Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at www.dot.state.az.us/about/rules/index.htm.
6. **An explanation of the rule, including the agency’s reasons for initiating the rulemaking:**

Arizona Department of Transportation (ADOT) Motor Vehicle Division (MVD) engages in this rulemaking to incorporate sections of the 2003 edition of the Code of Federal Regulations (CFR), Title 49 by reference into Arizona Motor Carrier Safety and Hazardous Materials Transportation administrative rules. R17-5-202, Motor Carrier Safety: Incorporation of Federal Regulations; Application rule is used by the agency to accomplish this incorporation.

The ADOT/MVD, Motor Carrier & Tax Services program, oversees various motor carrier issues including, with enforcement by the Department of Public Safety (DPS), motor carrier vehicle and commercial driver license safety issues. Annually, the Division adopts Federal changes or updates to the CFR to follow Federal Motor Carrier Safety Administration (FMCSA) requirements for safety.
7. **A reference to any study relevant to the rule that the agency reviewed and either relied on in its justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

Notices of Final Rulemaking

The agency did not review any study for this rulemaking.

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

Not applicable

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

The economic impact of this rulemaking is negligible for R17-5-202, Motor Carrier Safety: Incorporation of Federal Regulations; Application. No substantial changes are introduced since the last rulemaking, effective June 3, 2003. The amendments in this rulemaking provide benefit to the agency and regulated persons by conforming required Federal safety regulation changes in Arizona and thereby reducing confusion and employee time required to clarify regulatory provisions.

There will be some costs to DPS in the administration of this provision; however, these costs are ongoing. This rulemaking creates no additional burden. These costs are de minimus. Oversight of these issues is part of the enforcement of motor carrier issues already performed by DPS.

The only economic impact to small business or the consumer is an adverse one if this rule is not adopted. This rulemaking contains new hours of service provisions for interstate carriers, which is tied to \$2 million a year in federal funding for safety. There is also the potential loss of a portion of federal construction funding if the hours of operation provision is not adopted.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

Only minor, technical changes were made between the proposed and final rule.

11. A summary of the comments made regarding the rule and the agency response to them:

The agency received no comments on this rulemaking.

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

None

13. Incorporations by reference and their location in the rules:

In R17-5-202, subsection (A):

49 CFR Parts 40, 382, 390, 391, 392, 393, 395, 396, 397, and 399, published October 1, 2003

14. Was this rule previously adopted as an emergency rule?

No

15. The full text of the rules follows:

TITLE 17. TRANSPORTATION

CHAPTER 5. DEPARTMENT OF TRANSPORTATION – COMMERCIAL PROGRAMS

ARTICLE 2. MOTOR CARRIERS

Section

R17-5-202. Motor Carrier Safety: Incorporation of Federal Regulations; Application

ARTICLE 2. MOTOR CARRIERS

R17-5-202. Motor Carrier Safety: Incorporation of Federal Regulations; Application

- A. The Division incorporates by reference 49 CFR 40, 382, 390, 391, 392, 393, 395, 396, 397, and 399, published October 1, 2001, 2003, and no later amendments or editions, and on file with the Federal Motor Carrier Safety Administration, the Division, and the Office of the Secretary of State, as amended by R17-5-202 through R17-5-208. The incorporated material is available from the U. S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-0001, and is on file with the Division.
- B. The regulations of 49 CFR, incorporated by subsection (A), apply as amended by R17-5-203 through R17-5-208 to:
1. A motor carrier as defined in A.R.S. § 28-5201 except a motor carrier transporting passengers for hire in a vehicle with a design capacity of ~~6~~ six or fewer persons.
 2. A vehicle owned or operated by the state, a political subdivision, or a public authority of the state that is used to transport hazardous materials in an amount requiring the vehicle to be marked or placarded as prescribed in R17-5-209.

Notices of Final Rulemaking

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 1. DEPARTMENT OF COMMERCE

PREAMBLE

1. Sections Affected:

Article 1
R20-1-101
R20-1-102
R20-1-103
R20-1-104
R20-1-105
R20-1-106
R20-1-107
R20-1-108
R20-1-109
R20-1-110
R20-1-111
Article 2
R20-1-201
R20-1-201
R20-1-202
R20-1-202
R20-1-203
R20-1-204
R20-1-204
R20-1-205
R20-1-206
R20-1-206
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Rulemaking Action:

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

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

Implementing statutes: A.R.S. §§ 41-1541 through 41-1544

3. The effective date of the rules:

June 8, 2004

Upon filing with the Secretary of State. Under A.R.S. § 41-1032(A)(4), the Department respectfully requests an immediate effective date. Formally implementing the less burdensome application, compliance and reporting requirements will provide a benefit to the public and no penalty is associated with violation of the rules. The benefit to the public results from the time and other resources that small, large and rural employers save as a result of the Department's new reporting procedures. Small and rural employers will also benefit from other changes to the application procedures that will increase the award amounts and enable consortiums of employers that have similar training needs to apply for a single grant, decreasing the amount of resources needed by a single employer to manage a grant. The benefit to the public also results from time and resources that the Department saves in separating the net new and incumbent grant processes and by clarifying for employers the costs that can be reimbursed, the costs that can be used

Notices of Final Rulemaking

toward the employer's statutory contribution, and the costs not eligible for either. These resources become available to provide other services to the public.

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening: 10 A.A.R. 911, March 5, 2004

Notice of Proposed Rulemaking: 10 A.A.R. 775, March 5, 2004

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Paula Burnam, Apprenticeship and Job Training Director

Address: Department of Commerce
1700 W. Washington, Suite 220
Phoenix, AZ 85007

Telephone: (602) 771-1181

Fax: (602) 771-1205

E-mail: paulab@azcommerce.com

Please visit the Department of Commerce web site to track progress of this rule and any other agency rulemaking matters at www.azcommerce.com.

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

The Department is amending this Article to reflect legislative changes to implementing statutes affecting the qualify wage rate and new small employer size requirements. The Arizona Job Training Program will also provide for separate new employee and incumbent employee training programs. The Department intends to make the Arizona Job Training Program easier for small and rural businesses to access and manage as well as make it easier to administer for all participants. The overall goal of the Arizona Job Training Program is to help create and retain higher paying jobs that support emerging and base industries in every region of the state. The Department will also bring the Article into conformance with the current stylistic and publishing format of the Governor's Regulatory Review Council and Secretary of State.

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

The agency did not review any study for this rulemaking.

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

Not applicable

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

Changes to the Arizona Job Training Program in 2002 are reflected in this rulemaking as follows:

- A. The threshold wage rates an employer must meet in order to qualify for the Arizona Job Training Program have been adjusted to reflect legislative changes made pursuant to Laws 2002, Ch. 264, § 1, including a change to the definition of "small business" from under 300 employees to under 100 employees, and requiring approval by the Governor's Council on Workforce Policy. The economic impact of these changes is positive in that more small, rural and medium size employers will be able to qualify for the Arizona Job Training Program.
- B. Application and award evaluation changes will make the Arizona Job Training Program easier for small and rural businesses to access and manage by increasing the allowable per employee maximum award amount and by allowing consortiums of employers to apply for similar job training needs through individual businesses, business-related member organizations, including trade unions, and Small Business Development Centers at community colleges. The economic impact of these changes is positive by increasing the amount a small or rural business can qualify for job training needs and by reducing the cost of applying for a grant and allowing consortiums of employers to apply. The Department intends for business membership and service entities to apply on behalf of employers as a value added service.
- C. Procedural changes will make the Arizona Job Training Program easier to administer for all recipients by reducing the amount of paperwork associated with reimbursement requests and applications and by clarifying those expenses that can be paid for with Job Training funds, those costs that can be used to meet the employer's statutory contribution amount, and those costs not eligible for either reimbursement or match contribution. The economic impact of these changes is positive for employers that submit an application for funding under the Arizona Job Training Program and the Department.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

Notices of Final Rulemaking

Minor technical and grammatical changes were made in response to suggestions from Council staff. In addition other language was changed to make the rule more clear, concise and understandable.

11. A summary of the comments made regarding the rule and the agency response to them:

The agency delivers the following response to comments received on the Notice of Proposed Rulemaking:

SECTION	COMMENT SUMMARY	AGENCY RESPONSE
R20-1-209(C)	The agency received comments from two sources (non-profit organization/governmental agency) raising the following point: <ul style="list-style-type: none"> • Companies who are staffed through a professional employment organization (PEO) should be allowed to utilize job training funds. • Leased employees should not be viewed as outsourced and contracted employees. 	A.R.S. § 41-1541 charges the Department with administering the Program whereby employers are granted funds to supplement job specific training for employees. To be eligible for the Program, the employer to which funds are being provided must pay into the job training fund. Further, any employer receiving a Program grant must submit a quarterly Unemployment Tax and Wage Report (UC-018) relating to the employees that are being trained with Program funds. If the employer applying for a Program grant can meet these requirements, as well as the other requirements set forth in the Program administrative rules, it may be eligible for a Program grant.
R20-1-205(b)	The agency received a comment from one source (consultant) raising the following point: <ul style="list-style-type: none"> • Proposed rule unfairly prohibits a parent company and its subsidiary from both filing for a grant even if the combined grant is less than the limited ten percent of the fund. 	A.R.S. § 41-1544(H) limits a “single grant” to ten percent of the estimated total annual amount collected for the Job Training Fund. The Department, however, believes the intent of this provision was to limit the amount a single company receives at any one time to avoid any one company from monopolizing the available funds. This would include subsidiaries of parent companies that have existing and open grants. This provision appropriately places the burden on a parent company to apply for one grant, including on behalf of its subsidiaries.
R20-1-201	The agency receive a comment from one source (governmental agency) raising the following question: <ul style="list-style-type: none"> • Further explanation of the term “area” used in the definition of “base-industry or export-oriented industry” 	In response to this comment, the agency has included a definition of “area” and replaced the definition of “base-industry or export-oriented industry” with “export-oriented industry” in R20-1-201.
R20-1-205	The agency received comments from one source (governmental agency) raising the following question: <ul style="list-style-type: none"> • Can a qualified employer have an active net new grant and an active incumbent grant at the same time? • If so, can they apply for these grants at different times? • Can a company with an active incumbent grant then apply for a net new grant, not to exceed ten percent of the total monies deposited? 	Yes, a company can have both a net new and an incumbent grant at the same time. They can apply for them separately or at the same time. Two contracts would be executed. The combined grants cannot exceed ten percent of the total monies deposited in the job training fund, currently \$620,000.

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R20-1-209	The agency received a comment from one source (governmental agency) raising the following question: <ul style="list-style-type: none"> • An employer awarded a grant under this article shall restrict use of program funds to employee job-specific training. Doesn't this contradict the definition of "Training" in R20-1-201? 	No, the key word in "program funds." In other words, a company cannot be reimbursed for such costs that are specifically match credit costs. All such costs must be included in the training plan/budget if they will be used as match. In response to this comment, the agency has included a definition of "program funds" and "match credit costs" in R20-1-201.
R20-1-201 and R20-1-209	The agency received comments from one source (governmental agency) raising the following questions? <ul style="list-style-type: none"> • Can in-kind costs be match? There is no definition provided for match. • Do both in-kind and match expenditures need to be established in the customized training project proposed for program grant? 	In-kind costs as identified under R20-1-209(E)(2) can be used as match. The training plan/budget must include these costs. See R20-1-204(5)(a). The proposed revision to the rules includes only one additional match credit only cost – trainee wages, excluding employee fringe benefits, paid by a small business or a business in a rural area during training. In response to this comment, the agency has included a definition of "match credit costs" in R20-1-201.
Entire Article	The agency received a comment from one source (individual): <ul style="list-style-type: none"> • After review of the current proposed rules I have no further comment; I think they are well done. 	Thank you.

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

Not applicable

13. Incorporations by reference and their location in the rules:

None

14. Was this rule previously adopted as an emergency rule?

No

15. The full text of the rules follows:

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 1. DEPARTMENT OF COMMERCE

ARTICLE 1. ~~ARIZONA JOB TRAINING PROGRAM ADMINISTRATION~~

Section

- R20-1-101. Renumbered
- R20-1-102. Renumbered
- R20-1-103. Renumbered
- R20-1-104. Renumbered
- R20-1-105. Renumbered
- R20-1-106. Renumbered
- R20-1-107. Renumbered
- R20-1-108. Renumbered
- R20-1-109. Renumbered
- R20-1-110. Renumbered
- R20-1-111. Renumbered

ARTICLE 2. ~~REPEALED~~ ARIZONA JOB TRAINING PROGRAM

Section

- ~~R20-1-101~~-R20-1-201. Repealed Definitions
- ~~R20-1-103~~-R20-1-202. Repealed Employer Eligibility for a Program Grant
- R20-1-203. Repealed Determination of Qualifying Wage Rate

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~~R20-1-102. R20-1-204. Repealed Grant Program Application: Net New Employee: Incumbent Employee~~
~~R20-1-205. Repealed Grant Award Funding General Provisions~~
~~R20-1-104. R20-1-206. Repealed Net New Employee Program Grant Award Process~~
~~R20-1-207. Incumbent Employee Program Grant Award Process~~
~~R20-1-105. R20-1-208. Matching Fund Requirement~~
~~R20-1-106. R20-1-209. Use of Funds for Project Costs~~
~~R20-1-108. R20-1-210. Program Contract~~
~~R20-1-109. R20-1-211. Program Monitoring: Reimbursement Process: Site Visits~~
~~R20-1-110. R20-1-212. Final Grant Disbursement: Repayment Provision~~
~~R20-1-111. R20-1-213. Final Evaluation Form~~
~~R20-1-107. R20-1-214. Legal and Contractual Remedies~~

ARTICLE 1. ~~ARIZONA JOB TRAINING PROGRAM ADMINISTRATION~~

R20-1-101. Renumbered
R20-1-102. Renumbered
R20-1-103. Renumbered
R20-1-104. Renumbered
R20-1-105. Renumbered
R20-1-106. Renumbered
R20-1-107. Renumbered
R20-1-108. Renumbered
R20-1-109. Renumbered
R20-1-110. Renumbered
R20-1-111. Renumbered

ARTICLE 2. ~~REPEALED ARIZONA JOB TRAINING PROGRAM~~

~~R20-1-101. R20-1-201. Repealed Definitions~~

~~In this Article, The following definitions apply to this Article unless the context otherwise requires:~~

- ~~1. "Applicant" means an employer submitting or a consortium that submits an application to the Department for a program grant under the Program.~~
- ~~"Area" means a regional economy that, depending on a particular industry and company operations, could encompass more than one county or include a country other than the United States.~~
- ~~2. "Cluster industries industry" means the same as in has the meaning prescribed under A.R.S. § 41-1543(8).~~
- ~~3. "Concentrations of firms across several industries" as used in A.R.S. § 41-1543(8) means a group of interdependent business entities that do business with each other and the firms that supply raw materials, components, and services to them.~~
~~"Consortium" means:~~
 - ~~A group of at least two employers excluding any contracted training provider that combines effort to meet common training needs according to:~~
 - ~~A specific occupational category, or~~
 - ~~Current industrial trend;~~
 - ~~A professional or trade association or a joint apprenticeship training committee that is composed of a majority of businesses eligible to participate under this Article; or~~
 - ~~A small business development center.~~
- ~~4. "Council" means the Arizona Job Training Council Governor's Council on Workforce Policy.~~
- ~~5. "Corporate headquarters" means the administrative center for a business; the location of an entity's principal administrative office if the entity is authorized to do business in any other state in addition to this state.~~
- ~~6. "Department" means the Arizona Department of Commerce has the meaning prescribed under A.R.S. § 41-1501(1).~~
- ~~7. "Director" means the Director of the Arizona Department of Commerce has the meaning prescribed under A.R.S. § 41-1501(2) and may also include the Director's designee.~~
- ~~8. "Economic conversion" or "EC" means the process through which a business changes its income base from depen-~~

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- dence on defense contracts to other sources of revenue.
9. ~~“Economic foundation needs” as used in A.R.S. § 41-1543(8) means the environmental factors that allow an industry to prosper and include capital resources, human resources, information and communication infrastructure, physical infrastructure, quality of life in the state, tax and regulation, and technology.~~
10. ~~“Economically depressed area” means an “Enterprise Zone.”~~
“Employee” means a full-time or part-time hourly or salaried employee of an employer that resides in this state.
11. ~~“Employer” means an Arizona entity with a unique Federal Employer Identification Number (FEIN): an entity that:~~
Has at least one business location in this state;
Has a unique FEIN;
Is not a subsidiary of a business with an active grant under this Article; and
Is not a public agency as defined under A.R.S. § 11-951.
12. ~~“Enterprise Zone” means an area established under A.R.S. § 41-1552 to provide incentives for an employer to locate within the zone’s boundaries. means a business zone established according to the provisions of A.R.S. Title 41, Chapter 10, Article 2 of this Chapter.~~
13. ~~“Equipment” includes computer hardware and software. means the value of the following items prorated during the time used for training under a grant:~~
Machinery that has verifiable annual depreciation; or
Computer hardware or software purchased after a project start date.
“FEIN” means federal employer identification number.
“Export-oriented industry” means an industry that imports money into an area through the sale of goods and services to customers who do not live in the area.
14. ~~“Grant” means funds set aside by the Department for an employer as reimbursable Project project costs and the employer’s match credit costs as required under R20-1-208.~~
15. ~~“Health care plan” means group medical coverage provided for an employee by the employer.~~
16. ~~“Hourly employee” means an employee compensated based on number of hours worked paid by work hour.~~
17. ~~“Incumbent employee” means a full-time or part-time employee who works for an employer before the submission date of the job training application and for whom training funds are requested an employer’s full-time or part-time employee or vacant position existing on the date of application.~~
18. ~~“In-kind expenditure” means a non-cash expense incurred in after a grant’s start date for training provided under the Program, program including expenses for:~~
Program, program including expenses for:
a. Goods,
b. Services,
c. Technical assistance,
d. Machinery,
e. Tools,
f. Equipment, and
g. Training space; or
Trainee wages paid by a small business or a business in a rural area.
19. ~~“Management fee” means an employer’s cost for grant administration cost.~~
“Match credit costs” means costs that are not eligible to be paid by program funds under this Article but are used in determining the total grant amount and in meeting the employer’s contribution requirement as prescribed by A.R.S. § 41-1541(D).
20. ~~“Micro-business” means an employer with fewer than 26 employees including employees projected to be hired under the Program. 25 or fewer employees.~~
21. ~~“Net new jobs” means: total number of filled employment positions at the end of the Project in excess of the positions listed on the employer’s payroll at the time the Statement of Understanding is signed by the Director.~~
The total number of employees at the end of a project that is in excess of the number of employees listed on an employer’s payroll before the application date under R20-1-204; or
The number of employees at the end of a project that is in excess of the number of employees listed on an employer’s payroll before any layoffs or force reductions occurring during the 18-month period before the application date under R20-1-204.
22. ~~“New job” means an employment position created after the Statement of Understanding is executed that qualifies for the Program.~~
“Officer” means a member of an employer’s corporate board of directors.
23. ~~“On-the-job training” means training of a trainee by the employer’s employee while the employee performs regular job activities and if the trainee:~~
a. Observes,
b. Assists the employee,
c. Receives instruction from the employee, or

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- ⊕ Performs job activities under the employee's supervision.
- “Owner” means a person that holds greater than five percent equity in a business.
- 24. “Part-time job” means a position that ~~is~~ requires an employee to work fewer than 30 hours ~~or less~~ per week.
- 25. “Plan” or “training plan” means an employer's written training plan submitted to the Department.
- 26. “Program” means the Arizona job training program.
“Program funds” means funds that come directly from the Arizona Job Training Fund and are awarded to an employer for reimbursement of training costs.
- 27. “Project” means a specific, customized training effort established under this Article for an employer to provide training authorized by the program and proposed for a grant.
- 28. “Project start date” means the date the Director signs ~~the Statement of Understanding~~ a contract as prescribed under R20-1-210.
- 29. “Qualified training provider” means an educational institution listed in A.R.S. § 41-1541(F) ~~and or~~ an individual or entity, including the employer, who has a written statement from the employer attesting to the trainer's competence to provide training for job-specific skills.
“Qualifying wage rate” means the wage rate set by the Council pursuant to R20-1-203.
“Reimbursable costs” are costs that are eligible to be paid for by program funds under this Article.
- 30. “Rural area” ~~means the same as in~~ has the meaning prescribed under A.R.S. § 41-1544(I).
- 31. “Salaried employee” means a person compensated at a fixed weekly, monthly, or annual amount not calculated from number of hours worked.
- 32. “Site visit” means a Department inspection of ~~the a~~ location where ~~the a~~ qualified training provider conducts job training ~~or inspection of financial records related to the job training~~.
“Small business” has the meaning prescribed under A.R.S. § 41-1544(I)(2).
“Small business development center” means a partnership between the state's ten community college districts and the U.S. Small Business Administration.
- 33. “Training” means job skill instruction ~~including on-the-job training or classroom training intended to provide the employee with specific skills to perform a specified job intended to upgrade specific employee skills:~~
For an employee's current specific job performance, or
For a promotional job opportunity.
“Training plan” means information submitted to the Department under R20-1-204(A)(6).
- 34. “Urban” means any area not defined as rural.

R20-1-103. R20-1-202. Repealed Employer Eligibility for a Program Grant

The Department shall determine if a Project is eligible for a grant using the following criteria. The employer:

- 1. Pays its employees as required under A.R.S. § 41-1543;
 - 2. Is paying into the Arizona Job Training Fund at time of application;
 - 3. Documents that at the time of the application it obtained or attempted to obtain other training assistance; and
 - 4. Is adding net new jobs in Arizona; or
 - 5. Is providing training under the Program for incumbent workers; or
 - 6. Is undergoing economic conversion.
- A.** An employer is eligible for a program grant under this Article if the employer:
- 1. Pays employees as prescribed under A.R.S. § 41-1543(3) and R20-1-203;
 - 2. Is paying into the Arizona job training fund at the time of reimbursement or is exempt under A.R.S. § 23-769(C); or
 - 3. Is a rural non-profit organization exempt from federal unemployment tax under Section 501(c)(3) of the Internal Revenue Code that:
 - a. Opts for unemployment tax reimbursement; and
 - b. Provides documentation to the Department that:
 - i. Indicates that the geographical area where the organization is located has a shortage of skilled workers; and
 - ii. Proposed training will increase the number of skilled workers in the geographical area.
- B.** In addition to the requirements of subsection (A), an employer or a member of a consortium as defined under R20-1-201 is eligible for:
- 1. A net new employee program grant if it can demonstrate that it is adding net new jobs within the state; or
 - 2. An incumbent employee program grant if it is intending to provide training under the program for incumbent employees.

R20-1-203. Determination of Qualifying Wage Rate

- A.** For purposes of A.R.S. §§ 41-1542(B)(6) and 41-1543(3), the Governor's Council on Workforce Policy in collaboration with the Department shall determine the qualifying employee wage rate for an applicant employer under R20-1-204. The Council and Department shall determine and apply the qualifying wage rate based on the following criteria:
- 1. Location by county;
 - 2. Number of employees; and

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Other relevant economic factors.

- B.** The Council and the Department shall not determine a qualifying wage rate that is:
1. Less than 30 percent above minimum wage.
 2. More than 50 percent above unemployment wage rates excluding the mining industry and government, and
 3. Ten percent more than the previous year's qualifying wage rate.
- C.** A qualifying wage rate set under this Section is effective on:
1. July 1 of each fiscal year, or
 2. An alternate date approved by the Council.

~~R20-1-102. R20-1-204. Repealed Grant Program Application: Net New Employee; Incumbent Employee~~

- A.** ~~Application. The employer shall submit a completed application obtained from the Department containing the following information, as applicable:~~
1. ~~Employer name, address, telephone number, facsimile number, and electronic mail address;~~
 2. ~~Name of each person with authority to execute documents that bind the employer;~~
 3. ~~Local contact person's name and title;~~
 4. ~~FEIN;~~
 5. ~~North American Industry Classification System (NAICS) or Standard Industrial Classification (SIC)~~
 6. ~~Description of the business or service provided;~~
 7. ~~Parent company name and address;~~
 8. ~~Parent company contact person, telephone number, and facsimile number;~~
 9. ~~Parent company's FEIN, if different from the employer's FEIN;~~
 10. ~~Whether employer is:~~
 - a. ~~An existing business;~~
 - b. ~~The corporate headquarters of the business;~~
 - c. ~~Located in an Enterprise Zone, and~~
 - d. ~~Located in a rural or urban area;~~
 11. ~~Number of current employees including parent business if FEIN is the same;~~
 12. ~~Whether company has undergone lay offs or reductions in force in Arizona within the 24 months preceding the application date, and if applicable:~~
 - a. ~~Date, and~~
 - b. ~~Number and type of positions reduced;~~
 13. ~~Numbers of individuals from the local Arizona labor force the employer plans to hire and train;~~
 14. ~~Estimated number of full-time and part-time:~~
 - a. ~~Net new job positions to be filled and trained, and~~
 - b. ~~Incumbent worker or economic conversion employees to be trained;~~
 15. ~~If the employer provides health insurance benefits to employees, the following information:~~
 - a. ~~Percentage of premium paid by employer, and~~
 - b. ~~A copy of the health insurance plan;~~
 16. ~~Benefits, other than health insurance, provided to employees and percentage paid by employer;~~
 17. ~~Cluster industry in which the employer participates;~~
 18. ~~Total estimated training cost;~~
 19. ~~The name, contact person, address, and telephone number of the qualified training provider;~~
 20. ~~Description of employer's need for employee training;~~
 21. ~~Description of:~~
 - a. ~~Other training assistance in effect at time of application, or~~
 - b. ~~Effort to obtain other training assistance during the 3 months before submission of application;~~
 22. ~~A statement signed and dated by the employer's chief executive officer, attesting that the employer:~~
 - a. ~~Agrees to maintain or increase its current level of expenditures for training, excluding the Program funds~~
 - b. ~~Is paying into the Arizona Job Training Fund under A.R.S. § 41-1544;~~
 - c. ~~Has read the:~~
 - i. ~~Application;~~
 - ii. ~~Program Introduction;~~
 - iii. ~~Guidelines, and~~
 - iv. ~~Criteria;~~
 - d. ~~Verifies that statements and representations in the application and supporting documents are accurate and complete;~~
 - e. ~~Acknowledges that the Department reserves the right to request:~~
 - i. ~~Financial information from the employer, and~~
 - ii. ~~Additional information regarding the employer's lay offs or reductions in force;~~
- B.** ~~In addition to an application form, a completed application package shall include:~~

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1. ~~A written training plan that specifies how the qualified training provider will train the employees to perform job-specific duties or skills;~~
 2. ~~For net new employees to be hired and trained, and incumbent workers or economic conversion employees to be trained, a list of positions including:-~~
 - a. ~~Name of each employee, if known;-~~
 - b. ~~Wage before training; and~~
 - e. ~~Wage after training; and~~
 3. ~~A training budget that includes the employer's:~~
 - a. ~~Training costs for all employees to be included in the Project,~~
 - b. ~~Additional allowable costs under R20-1-106, and~~
 - e. ~~Other resources that the employer proposes to use for training and cash or in-kind expenditures to meet requirements of A.R.S. § 41-1541.~~
- ~~C. Time frames. The Department shall-~~
1. ~~Approve or deny a complete application package within 30 days of receipt; and~~
 2. ~~Notify the employer in writing whether the application is approved or denied, including:~~
 - a. ~~If approved, amount of grant; and~~
 - b. ~~If denied, the reason for denial.~~
- A. On a form provided by the Department, a program applicant shall provide the following information:**
1. Applicant company information:
 - a. Company name;
 - b. Any applicable doing business as (DBA) name;
 - c. Full address;
 - d. Names of principal owners;
 - e. Grant administrator name and title;
 - f. Telephone number;
 - g. Fax number;
 - h. E-mail address; and
 - i. FEIN;
 2. Applicable parent company information:
 - a. Parent company name;
 - b. Full address;
 - c. Fax number;
 - d. Official contact; and
 - e. FEIN;
 3. Whether the applicant listed under subsection (A)(1) is:
 - a. A corporate headquarters;
 - b. A research and development facility;
 - c. An export-oriented industry, or
 - d. A micro-business;
 4. The nature of the business or services the applicant provides;
 5. The following information for positions to be trained:
 - a. Job title;
 - b. Number of positions;
 - c. Average annual wage before proposed training; and
 - d. Projected annual average wage after proposed training;
 6. Proposed program specifications and supporting documentation:
 - a. Total estimated training costs including the company's matching funds required under R20-1-208;
 - b. The applicant's training budget that meets the requirements of R20-1-209(E);
 - c. Proposed training course description;
 - d. Name, address, and telephone number of any person or entity that will design or provide customized training; and
 - e. A description of the applicant's need for customized employee training;
 7. The number of current employees:
 - a. In this state; and
 - b. Company-wide if a parent company and Arizona subsidiary possess only one FEIN;
 8. Whether the applicant attempted to acquire training funds from any source in the 180-day period before program application;
 9. Any other information required by the Department; and
 10. The signature of the applicant company's designated official that verifies:

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- a. The applicant will maintain or increase current training expenditures apart from any granted program funds;
 - b. Any training provider under subsection (A)(5)(d) is competent to provide job-specific training skills as proposed;
 - c. Consent to provide any additional financial information required by the Department; and
 - d. All application information and supporting documentation is true, correct, and complete on the date of submission.
- B.** In addition to the requirements of subsection (A), an applicant for a net new employee program grant shall provide the following to the Department:
- 1. The number of net new full-time and part-time employees the employer agrees to hire and train throughout the grant period after program grant award;
 - 2. Whether there were layoffs or force reductions in the 18-month period before application and if so:
 - a. The number of positions eliminated;
 - b. The date of elimination; and
 - c. A description of the type of positions eliminated.
- C.** In addition to the requirements of subsection (A), an applicant for an incumbent employee program grant shall provide to the Department the total number of full-time and part-time incumbents the employer agrees will receive training throughout the grant period after program grant award.

R20-1-205. ~~Repealed Grant Award Funding General Provisions~~

- A.** The Department shall not award a grant to an employer meeting eligibility criteria as prescribed under R20-1-202 unless sufficient funds are available in the Arizona job training fund.
- B.** The Department may award a qualified employer under this Article both an active net new employee grant and an incumbent employee grant at the same time, but the total amount of any combined grant funding shall not exceed ten percent of the estimated annual total of monies deposited in the Arizona job training fund.
- C.** Except for any funding limitation prescribed under A.R.S. § 41-1544, the Department shall award program grants under this Article in the order that the Department receives an applicant's complete application package as prescribed under R20-1-204.
- D.** The Department shall base the maximum allowable grant amount awarded under this Article on the applicant employer's sliding scale score calculated under R20-1-206(B) for a net new employee program or R20-1-207(B) for an incumbent employee program.
- E.** The Department shall award a maximum allowable grant amount as follows:
- 1. For an employer with 100 or more employees:
 - a. Located in an urban area: from \$2,000 to \$5,000 per employee; or
 - b. Located in a rural area: from \$5,000 to \$8,000 per employee; or
 - 2. For an employer with fewer than 100 employees or that is located in an enterprise zone: from \$5,000 to \$8,000 per employee.
- F.** The Department shall not award a program grant for an amount greater than stated on an applicant employer's training plan.
- G.** The Department shall approve or deny an employer's training plan within 60 days of Department receipt of the plan.

~~R201-104. R20-1-206. Repealed Net New Employee Program Grant Award Process~~

- A. ~~Funding~~**
- 1. ~~Except as specified in A.R.S. § 41-1544, funding of a grant for an eligible employer shall be on a first-come, first-serve basis, based on the date the Department receives the employer's completed application package specified in R20-1-102 and if uncommitted funds remain in the Arizona Job Training Fund.~~
 - 2. ~~Submission of an application that meets eligibility criteria does not guarantee grant funding.~~
 - 3. ~~The maximum amount of any Program grant is specified in A.R.S. § 41-1544(H).~~
 - 4. ~~The Department shall not award any Program grant in an amount greater than that stated on the employer's training budget.~~
 - 5. ~~The Department shall base the amount of the grant on the employer's sliding scale score and calculate it based on the number of employees to be trained.~~
- B. ~~Per-employee grant amount range:~~**
- 1. ~~New worker training:~~
 - a. ~~For an employer with 300 or more employees:~~
 - i. ~~Located in an urban area: \$2,000 to \$5,000; or~~
 - ii. ~~Located in a rural area or an Enterprise Zone: \$3,000 to \$6,000;~~
 - b. ~~For an employer with fewer than 300 employees: \$3,000 to \$6,000; or~~
 - c. ~~For a micro-business employer: \$4,000 to \$7,000.~~
 - 2. ~~Incumbent worker training:~~
 - a. ~~For an employer with 300 or more employees:~~
 - i. ~~Located in an urban area: \$1,500 to \$3,750; or~~

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- ii. Located in a rural area or an Enterprise Zone: \$2,250 to \$4,500;
 - b. For an employer with fewer than 300 employees: \$2,250 to \$4,500; or
 - e. For a micro-business employer: \$3,000 to \$5,250.
 - 3. Economic conversion training: \$2,000 to \$5,000.
- C. Sliding scale for grant amount calculation. The Department shall assign points based on the following factors (percentage calculations and fractional numbers are rounded to the nearest whole number).
 - 1. Industry or facility type: An employer may receive 20 points under only 1 of the following:
 - a. Cluster industry including:
 - i. Bioindustry;
 - ii. Environmental technology;
 - iii. Food, fiber, and natural products;
 - iv. Minerals and mining;
 - v. High technology;
 - vi. Optics, plastics, and advanced composite materials;
 - vii. Senior industries;
 - viii. Software and information industry;
 - ix. Tourism;
 - x. Transportation and distribution; or
 - xi. Another cluster as defined by A.R.S. § 41-1543(8) and this Article; or
 - b. Corporate headquarters; or
 - e. Research and development facility;
 - 2. Wage level: Average wage level of new jobs relative to qualifying wage threshold as specified in A.R.S. § 41-1543(3) (an employer receiving points under this subsection is not eligible for points under subsection (C)(3)):
 - a. 10 points if 100% to 105%;
 - b. 30 points if 106% to 110%;
 - e. 40 points if 111% to 120%;
 - d. 50 points if 121% to 130%, and
 - e. 60 points if 131% or greater;
 - 3. Incumbent worker or EC positions: For an employer providing incumbent worker or EC training, percentage of average pay increase for incumbent workers to be trained. (an employer receiving points under this subsection is not eligible for points under subsection (C)(2)):
 - a. 10 points if 5% or less;
 - b. 30 points if 6% to 10%;
 - e. 40 points if 11% to 15%;
 - d. 50 points if 16% to 20%, and
 - e. 60 points if 21% or greater;
 - 4. Economic conversion positions: For an employer undergoing economic conversion (EC), number of positions to be trained under a grant, based on the formula: number of EC jobs created divided by number of employees on application date equals X% (an employer receiving points under this subsection is not eligible for points under subsections (C)(5) or (C)(6)):
 - a. 10 points if 10% or less;
 - b. 20 points if 11% to 20%;
 - e. 30 points if 21% to 30%;
 - d. 40 points if 31% to 40%, and
 - e. 50 points if 41% or greater;
 - 5. Large employer positions: For an employer with 300 or more employees, the number of new jobs to be created. (an employer receiving points under this subsection is not eligible for points under subsections (C)(4) or (C)(6)):
 - a. 10 points if 100 or fewer jobs;
 - b. 20 points if 101 to 200 jobs;
 - e. 30 points if 201 to 300 jobs;
 - d. 40 points if 301 to 400 jobs, and
 - e. 50 points if 401 or more jobs;
 - 6. Small employer positions: For an employer with fewer than 300 employees, the number of new jobs to be created (an employer receiving points under this subsection is not eligible for points under subsections (C)(4) or (C)(5)):
 - a. 10 points if 10 or fewer jobs;
 - b. 20 points if 11 to 20 jobs;
 - e. 30 points if 21 to 30 jobs;
 - d. 40 points if 31 to 40 jobs, and
 - e. 50 points if 41 or more jobs;

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7. ~~Benefits: 20 points if the employer:~~
 - a. ~~Provides a health care plan, and~~
 - b. ~~Pays at least 50% of the plan cost; and~~
 8. ~~Lay-offs or reductions in force: For an employer who has undergone lay-offs or reductions in force during the 24 months preceding the application date, the percentage of positions reduced:~~
 - a. ~~10 points for less than 10%,~~
 - b. ~~20 points for 11% to 20%,~~
 - c. ~~30 points for 21% to 30%,~~
 - d. ~~40 points for 31% to 40%, and~~
 - e. ~~50 points for 41% or more.~~
- D. Minimum points and grant amount.**
1. ~~New worker training:~~
 - a. ~~The Department shall award the minimum per employee grant amount of the range specified in this Section to an employer with at least a 10-point score.~~
 - b. ~~The Department shall increase the per employee grant amount by \$21.43 for every point greater than 10 points.~~
 2. ~~Incumbent worker training:~~
 - a. ~~The Department shall award the minimum per employee grant amount of the range specified in this Section to an employer with at least a 10-point score.~~
 - b. ~~The Department shall increase the per employee grant amount by \$16.07 for every point greater than 10 points.~~
 3. ~~Economic conversion:~~
 - a. ~~The Department shall award the minimum per employee grant amount of the range specified in this Section to an employer with at least a 10-point score.~~
 - b. ~~The Department shall increase the per employee grant amount by \$21.43 for every point greater than 10 points.~~
- A. Sliding scale for maximum allowable grant amount calculation. The Department shall assign points based on an employer's application rounded to the nearest whole number based on the following factors:**
1. Industry or facility type. An employer shall receive 20 points if the employer is one or more of the following:
 - a. An export-oriented industry,
 - b. A corporate headquarters,
 - c. A research and development facility,
 - d. A cluster industry, or
 - e. A micro-business.
 2. Wage level. The average wage level of an employer's net new jobs shall be at least as high as the qualifying wage rate prescribed under R20-1-203. The Department shall award points as follows:
 - a. 20 points if the average annual wage of all net new employees is 100 to 105 percent of the qualifying wage rate;
 - b. 30 points if the average annual wage of all net new employees is 106 to 110 percent of the qualifying wage rate;
 - c. 40 points if the average annual wage of all net new employees is 111 to 120 percent of the qualifying wage rate;
 - d. 50 points if the average annual wage of all net new employees is 121 to 130 percent of the qualifying wage rate;
or
 - e. 60 points if the average annual wage of all net new employees is 131 percent or greater than the qualifying wage rate;
 3. Large employer positions. The Department shall award points under this subsection for an employer with 100 or more employees according to the number of net new jobs created. If the Department awards points under this subsection, the Department shall not award points under subsection (A)(4).
 - a. 10 points if the employer creates 25 or fewer jobs;
 - b. 20 points if the employer creates 26 to 50 jobs;
 - c. 30 points if the employer creates 51 to 75 jobs;
 - d. 40 points if the employer creates 76 to 100 jobs; or
 - e. 50 points if the employer creates 101 or more jobs.
 4. Small employer positions. The Department shall award points under this subsection for an employer with fewer than 100 employees according to the number of net new jobs created. If the Department awards points under this subsection, the Department shall not award points under subsection (A)(3).
 - a. 10 points if the employer creates 5 or fewer jobs;
 - b. 20 points if the employer creates 6 to 10 jobs;
 - c. 30 points if the employer creates 11 to 15 jobs;
 - d. 40 points if the employer creates 16 to 20 jobs; or
 - e. 50 points if the employer creates 21 or more jobs.
- B. Minimum points and grant amount. The Department shall:**
1. Award the minimum per employee amount as specified in R20-1-205(E) to an employer with a score of at least 20 points; and

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2. Increase the per employee grant amount by \$27.27 for each point exceeding 20 points.

R20-1-207. Incumbent Employee Program Grant Award Process

A. Sliding scale for maximum allowable grant amount calculation. The Department shall assign points based on an employers' application rounded to the nearest whole number based on the following factors:

1. Industry or facility type. An employer shall receive 20 points if the employer is one or more of the following:
 - a. An export-oriented industry.
 - b. A corporate headquarters.
 - c. A research and development facility.
 - d. A cluster industry, or
 - e. A micro-business.
2. Average trainee incumbent-worker pay increase. An employer may receive a maximum of 80 points based on the average wage increase at the end of training to incumbent employees trained as follows:
 - a. 20 points if the average wage increase is five percent or less;
 - b. 40 points if the average wage increase is six to ten percent;
 - c. 60 points if the average wage increase is 11 to 15 percent; and
 - d. 80 points if the average wage increase is 16 percent or greater.

B. Minimum points and grant amount. The Department shall:

1. Award the minimum per employee amount as specified in R20-1-205(F) to an employer with a score of at least 20 points; and
2. Increase the per employee grant amount by \$37.50 for each point exceeding 20 points.

R20-1-105 R20-1-208. Matching Fund Requirement

A. Except as specified in subsection (B), an An employer receiving funding for net new training shall provide at least 25% percent of the cost of Project project training with cash or in-kind expenditures.

B. An employer receiving funding for incumbent worker training shall provide at least 50% percent of the cost of Project project training with cash or in-kind expenditures.

C. An employer shall not use the following as matching funds:

1. Grant management fees;
2. Costs associated with recruitment or hiring of employees;
3. Employee wages or fringe benefits; and
4. Grant funds.

R20-1-106 R20-1-209. Use of Funds for Project Costs

A. A grant shall only be used for job-specific training.

B. An employer shall use grant funds:

1. To train new employees at a level that maintains or exceeds the level of the employer's training expenditures for the year preceding the application date, excluding grant funds; and
2. To supplement, not replace, the employer's existing training expenditures.

C. An employer shall not simultaneously have more than 1 active Program grant.

D. An employer shall not use Program funds to train a full-time or part-time employees who are:

1. Temporary;
2. Contract, or
3. Out-sourced.

E. Costs eligible for the Program grant shall be listed in the employer's written training plan and include the following:

1. Training program design and development;
2. Training material purchase and production;
3. Qualified training provider fees;
4. Travel cost not to exceed 10% of the grant, excluding food and beverage, as specified in the training plan and budget:
 - a. For a qualified training provider brought onsite to train employees; and
 - b. For employees, not to exceed 50% of the actual cost; and
5. On-the-job training costs, including:
 - a. The portion of the base salary or wage, not to exceed 25%, paid to an employee who provides on-the-job training to the trainee; or
 - b. If the employer documents that the productivity of an employee who provides on-the-job training is decreased by more than 25% as the direct result of providing training, the documented greater amount of the base salary or wage.

F. The following costs are not eligible for Program grant funds:

1. Trainee wages or fringe benefits;
2. Employer's cost to complete a Program application;
3. Time, stress, or life management training classes;

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4. ~~Employee recruitment expense;~~
 5. ~~Employee hiring expense;~~
 6. ~~Grant management fees;~~
 7. ~~Training for an employer officer or partner;~~
 8. ~~Signing bonus;~~
 9. ~~Food and beverage;~~
 10. ~~Equipment or machinery;~~
 11. ~~Employee search expense;~~
 12. ~~Relocation expense;~~
 13. ~~Drug or other testing associated with screening and prescreening of an employee; and~~
 14. ~~Travel expense other than training expense eligible under subsection (E);~~
- G.** ~~An employer shall not contract for or incur a cost to be covered by a Program grant before the Program start date.~~
- A.** An employer awarded a grant under this Article shall restrict use of program funds to employee job-specific training.
- B.** An employer shall use a grant:
1. To train employees at a level that maintains or exceeds the level of employer training expenditures excluding grant funds for the 12-month period of operation in this state before the application date; and
 2. To supplement, not replace, the employer's existing training expenditures.
- C.** An employer shall not use program funds to train a full-time or part-time employee that is:
1. Temporary;
 2. Employed under a contract;
 3. Employed by a professional employment organization unless the employer applying for a grant can meet the reporting requirements as prescribed under R20-1-211.
- D.** The Department shall not approve grant funds for reimbursement of the following employer costs:
1. Trainee wages or fringe benefits;
 2. Trainer fringe benefits;
 3. Employer cost to complete a program application;
 4. Expense for recruiting an employee;
 5. Training expense for an employer officer or partner;
 6. A signing bonus;
 7. Food and beverage;
 8. Expense for relocating an employee;
 9. Course development or training development that is not part of the training to be provided under the employer's approved training plan;
 10. Expense for assessing the training needs of an employer's employee;
 11. Drug or other testing for employee screening or prescreening purposes;
 12. Conference or seminar not resulting in a skill certificate; or
 13. Trade show expense.
- E.** Eligible costs. To receive grant funding under either the net new or incumbent employee program, an employer shall include the following costs, as applicable, in a training plan as defined under R20-1-201:
1. Reimbursable costs:
 - a. Training program design and development;
 - b. Training material purchase and production;
 - c. Charges assessed by a qualified training provider;
 - d. Training facility rental expense;
 - e. On-the-job training costs that include:
 - i. Up to 25 percent of the base wage for an employer's employee who provides on-the-job training to a trainee under a grant program; or
 - ii. If greater than 25 percent, the documented portion of the time an employer's employee provides on-the-job training to a trainee under a grant program; and
 - f. Travel costs excluding food and beverage that do not exceed ten percent of the grant amount:
 - i. For a qualified training provider who travels to perform onsite employee training; or
 - ii. For employee offsite travel for training not to exceed 50 percent of the actual travel cost.
 2. Match credit costs:
 - a. Equipment and machinery;
 - b. Training space at an employer's place of business used during training;
 - c. Trainee wages, excluding employee benefits, paid by a small business or a business located in a rural area during training; or
 - d. Related training that is not job specific, including time, stress, or life management training classes.
- F.** An employer shall not incur or contract for any cost eligible under subsection (E) before the applicable program's start

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date.

~~R20-1-108~~ **R20-1-210. Program Contract**

- A. For an approved ~~application~~ training plan, the Department shall prepare and provide to the applicant a ~~Statement of Understanding (SOU) specifying~~ contract that specifies:
1. ~~Terms and conditions of the grant award;~~ Grant award terms and conditions that include:
 - a. Scope of work. Sets forth the number and the average annual salary of the full-time and part-time net new employees to be trained or the number and the average annual salary of the full-time or part-time incumbent employees to be trained;
 - b. Reimbursement of contractor. Sets forth the process by which the employer will be reimbursed for training services provided and for other incurred eligible expenses;
 - c. Right to assurance. Sets forth procedure by which a party may seek adequate assurance of the other party's intent to perform under the contract.
 - d. Termination. Sets forth terms and conditions under which the Department may terminate a contract;
 - e. Cancellation. Sets forth the procedure by which the Department may cancel a contract pursuant to A.R.S. § 38-511;
 - f. Arbitration. Provides that the contract is subject to arbitration only to the extent required by A.R.S. § 12-1518;
 - g. Applicable law. Provides that disputes arising out of the contract or concerning the contract shall be governed by Arizona law;
 - h. Relationship of parties. Provides that each party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other;
 - i. Assignment-delegation. Provides that no right or interest in the contract shall be assigned without prior written permission of the Department and that no delegation of any duty under the contract shall be made without prior written permission of the Department;
 - j. Subcontractors. Requires advance written approval of the Department prior to entering into a subcontract with any other party to furnish any of the training services specified in the contract;
 - k. Rights and remedies. Provides that no provision in the contract shall be construed, expressly or by implication, as a waiver by the Department of any existing or future right or remedy available by law in the event of any claim of default or breach of contract;
 - l. Indemnification. Provides that the contracting party agrees to indemnify, defend, save and hold harmless the State of Arizona and any jurisdiction or agency issuing permits for any work included under the contract;
 - m. Overcharges by antitrust violations. Provides that the contracting party shall assign to the State of Arizona any and all claims for overcharges resulting from antitrust violations as to the goods or services used to fulfill the contract to the extent permitted by law;
 - n. Records. Sets forth length of time that the contractor shall retain and shall require subcontractors to retain, all books, accounts, reports, files, and other records relating to the acquisition of and the performance and completion of the contract;
 - o. Accounting principles. Provides that the contractor agrees to maintain, in accordance with standard accounting principles and practices, books, records, documents and other evidence that sufficiently and properly reflect performance of the contract;
 - p. Audit. Sets forth rights and obligations if State audit exceptions are made relating to the contract;
 - q. Adjustment to payments. Sets forth procedure for making adjustments to payments due to material default in the performance of any obligation under the contract;
 - r. Non-availability of funds. Provides that every payment obligation of the state under the contract is conditioned upon the availability of funds;
 - s. Program monitoring. Provides that the contracting party agrees to meet with the Department at reasonable intervals and provide the Department with all required forms necessary to review the work and progress of the activities of the contractor;
 - t. Non-discrimination. Mandates that the contracting party shall not discriminate against employees or prospective employees due to age, sex, handicap, race, religion or national origin; and
 - u. Modification. Sets forth the procedure for modifying approved training plans;
 2. ~~That the Project project shall not exceed 24 months from Project project start date;~~
 3. ~~Responsibilities of each party;~~ and
 4. ~~Amount of grant and amount of contractor's match requirement.~~
- B. ~~The employer applicant shall within 30 days after receipt of the SOU~~ contract:
1. ~~Sign the SOU~~ contract, and
 2. ~~Return the original SOU~~ contract and a completed ~~W-9 federal tax form~~ State of Arizona Substitute W-9 Form to the Department.
- C. ~~The Department may shall extend the time under subsection (B); for an additional 15 days if the Department receives a written request for an extension during the 30 day~~ 30-day period under subsection (B).

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- D. If an ~~employer applicant~~ fails to comply with the ~~time-frame~~ time-frame required under subsection (B) or as extended under subsection (C), ~~the employer shall reapply for a Program grant under this Article~~ the Department shall require the applicant to submit another original application as prescribed under R20-1-204.
- E. An employer may request a modification of the SOU, and the Department may approve the request, if the request:
- 1- ~~Is submitted to the Department in writing at least 30 days before the modification implementation date;~~
 - 2- ~~Specifies good cause, and~~
 - 3- ~~Is consistent with the training plan as originally approved.~~
- ~~F.E.~~ The Department shall not reimburse ~~an~~ a contracted employer for costs or obligations incurred before the ~~Project~~ project start date or before the date a modification is approved.

~~R20-1-109~~ R20-1-211. Program Monitoring; Reimbursement Process; Site Visits

- A. Filing requirements.
- 1- ~~An employer shall file progress reports and Unemployment Tax and Wage Reports (UC-018) with the Department on a quarterly basis.~~
 - 2- ~~An employer shall submit the initial progress report and any related paid invoices for reimbursement to the Department within 120 days after the Project start date. The Department shall extend the initial reporting period for 30 days for good cause if the Department receives a written request for an extension within the 120 days after the Project start date.~~
 - 3- ~~An employer shall submit subsequent progress reports and paid invoices for reimbursement at least every 3 months, even if no training activity has occurred.~~
 - 4- ~~An employer shall submit all invoices and requests for reimbursement within 3 months of the:~~
 - a- ~~Date the expense is invoiced, or~~
 - b- ~~Completion of the Project.~~
 - 5- ~~An employer is subject to a scheduled site visit at least once during or after the Project.~~
 1. An employer under contract with the Department shall file a quarterly reimbursement request with the Department even if no training has occurred;
 2. Notwithstanding R20-1-211(A)(11), an employer may submit an invoice at any time but no later than 180 days from:
 - a. The date of the invoiced expense; or
 - b. Completion of the project, whichever is earlier.
- B. Progress reports and invoices
- 1- ~~An employer shall submit the progress report on a spreadsheet, other electronic media, or a form provided by, or approved by, the Department. The report shall list:~~
 - a- ~~Specific training completed during time covered by the report;~~
 - b- ~~Net new jobs created;~~
 - c- ~~Number of new employees trained;~~
 - d- ~~Number of incumbent workers trained;~~
 - e- ~~Number of EC employees trained;~~
 - f- ~~For each employee trained under the grant:~~
 - i- ~~Name;~~
 - ii- ~~Social Security number;~~
 - iii- ~~Position title;~~
 - iv- ~~Actual hourly wage with and without health or fringe benefits;~~
 - v- ~~Hire date; and~~
 - vi- ~~Termination date, if any; and~~
 - g- ~~Racial and ethnic background.~~
 - 2- ~~An employer requesting grant reimbursement for an outside vendor shall submit to the Department a copy of the outside vendor's invoice detailing the training service provided or product purchased.~~
 - 3- ~~An employer requesting grant reimbursement for training or products not provided by an outside vendor shall submit:~~
 - a- ~~A detailed description of the expense, and~~
 - b- ~~An explanation of how cost was determined and calculated.~~
 - 4- ~~A request for grant reimbursement shall:~~
 - a- ~~Be in the approved training budget;~~
 - b- ~~Be acknowledged by the employer, in writing, as representing an accurate accounting of incurred expenses; and~~
 - e- ~~Be accompanied by evidence that the required match has been contributed by or for the employer.~~
 - 5- ~~An employer shall submit with each invoice and request for reimbursement its most recent Unemployment Tax and Wage Report (UC-018).~~
- C. Disbursements. A quarterly grant disbursement to an employer shall be directly proportionate to the number of net new jobs the employer filed and trained under the grant and the number of incumbent workers or EC employees trained under the grant. The Department may, upon the employer's written request filed with the invoices and progress reports required

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~~under subsection (B), disburse an additional amount for training start-up costs, not to exceed 10% of the total grant.~~

- B.** Reimbursement request format. A grant recipient shall submit each reimbursement request required under subsection (A) on a form provided by the Department that shall include:
1. The following information for net new and incumbent employee programs:
 - a. Specific training completed during the reporting period;
 - b. For each employee trained under the program grant:
 - i. Name;
 - ii. Racial or ethnic background;
 - iii. Position title;
 - iv. Actual annual wage;
 - v. Hire date; and
 - vi. Any applicable termination date;
 - c. Reimbursement request information:
 - i. A copy of each applicable outside vendor invoice that details training provided or products purchased;
 - ii. An Arizona Unemployment Tax and Wage Report (UC-018) cover sheet; and
 - iii. Evidence documenting that the employer contributed the required match prescribed under R20-1-208; and
 - d. A certification under the employer's signature that all information submitted to the Department is true, correct, and complete.
 2. The following program-specific information:
 - a. Net new employee:
 - i. Number of net new jobs created during the reporting period; and
 - ii. Number of new employees trained; or
 - b. The number of incumbent employees trained.
- C.** Required site visit. The Department shall conduct at least one site visit of the employer's place of business during the grant period and before the Department makes the final disbursement of funds to the employer.

~~R20-1-110~~ **R20-1-212. Final Grant Disbursement; Repayment Provision**

- A.** Final grant distribution shall be based on the employer's performance of the terms and conditions of the SOU. If these are not met, the final distribution shall be reduced based on the employer's actual performance.
- B.** Any difference between the SOU amount and final grant amount calculated under subsection (A) shall:
1. Not be disbursed, or
 2. Be repaid by the employer.
- C.** An employer shall make repayment within 30 days after receipt of the Department's written request. The Department shall determine the amount of a final grant disbursement to an employer contracted under this Article based on whether the contracted employer has met all contract terms and conditions during the contract period.
1. If the Department determines a contracted employer has met all contract terms and conditions, the Department shall make the final grant disbursement.
 2. If the Department determines a contracted employer has not met all contract terms and conditions, the Department shall:
 - a. Make a reduced final grant disbursement for an amount based on the contracted employer's actual performance.
 - b. Not make a final grant disbursement; or
 - c. Send written notification to the contracted employer requiring full or partial repayment of any amount owed under the contract.

~~R20-1-111~~ **R20-1-213. Final Evaluation Form**

- A.** Unless an earlier submission is required under subsection (E), an employer shall complete a Final Evaluation Form within 3 months after training or SOU completion date and before final grant disbursement. The form shall include:
1. Date;
 2. Employer name, address, telephone number, facsimile number, and electronic mail address;
 3. Contact person;
 4. Number of Arizona employees at Project start date;
 5. Number of net new full-time and part-time positions the employer agreed to hire and train and average hourly wage for the positions;
 6. Number of incumbent workers the employer agreed to train and average hourly wage for the positions;
 7. Number of EC workers the employer agreed to train and average hourly wage for the positions;
 8. Actual number of full-time and part-time positions filled and trained under the grant;
 9. Actual number of incumbent workers trained under the grant;
 10. Actual number of EC employees trained under the grant; and
 11. Actual start and completion dates for training.
- B.** An employer shall attach a list of new employees hired and trained and of incumbent workers and EC workers trained

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under the Project from Project start date through Project end date, indicating for each employee, if applicable:-

1. Hire date;
2. Termination date;
3. Name;
4. Social Security number;
5. Job title;
6. Actual hourly wage or salary, calculated with and without health and fringe benefits; and
7. Racial and ethnic background.

- C.** An employer shall attach documentation of efforts to obtain other training resources if the efforts are not as described in the application.
- D.** An employer's chief executive officer or highest-ranking site official shall verify that the statements and representations in the Final Evaluation Form and supporting documentation are accurate and complete.
- E.** If the Department determines that an employer fails to meet any term or condition of the SOU, the Department may terminate the grant and the employer shall submit to the Department the items required under subsections (A) through (D) within 10 days following termination of the grant or expiration of the grant deadline.
- A.** Unless an earlier submission time-frame is required as prescribed under subsection (C), an employer contracted under this Article shall submit a final evaluation form provided by the Department within 90 days after contract completion date and before the Department makes a final grant disbursement. The form shall include:
1. Information for both net new and incumbent employee programs:
 - a. Date;
 - b. Employer information:
 - i. Name;
 - ii. Address;
 - iii. Telephone number;
 - iv. Fax number; and
 - v. E-mail address;
 - c. Name of a principal contact person;
 - d. Actual training start and completion dates;
 - e. Number of Arizona employees at the project start date; and
 - f. The signature of the contracted employer's chief executive officer or highest-ranking official to verify that all information is true, correct, and complete at the time of submission to the Department.
 2. Additional information specific to the net new employee program:
 - a. The number of net new full-time and part-time positions the employer agreed to hire and train;
 - b. Average hourly wage for all positions subject to training; and
 - c. The actual number of net new full-time and part-time positions hired and trained under the grant; and
 3. Additional information specific to the incumbent employee program:
 - a. The number of incumbent workers the employer agreed to train;
 - b. Average hourly wage for all positions subject to training; and
 - c. The actual number of incumbent workers trained under the grant.
- B.** Required attachments to the final evaluation form.
1. A contracted employer shall attach a list of new employees hired and trained or incumbent workers trained under the project from the start date through the end date. The employer shall include the following for each employee, if applicable:
 - a. Hire date;
 - b. Termination date;
 - c. Name;
 - d. Job title;
 - e. Actual annual wage; and
 - f. Racial or ethnic background; and
 2. An Arizona Unemployment Tax and Wage Report (UC-018) cover sheet.
- C.** The Department shall require submission of all information under subsection (A) and (B) within ten days after the Department's action if the Department terminates an employer's grant because of the employer's failure to meet any term or condition prescribed under R20-1-210.

~~R20-1-107~~ R20-1-214. ~~Protest~~ Legal and Contractual Remedies

- A.** An interested party may, under A.R.S. § 41-2704, file a protest of a determination of:
1. Award of a grant;
 2. The amount of the grant;
 3. Termination of a grant; or
 4. Repayment.

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- ~~**B.** The Director shall resolve protests under subsection (A).~~
- ~~**C.** An interested party may appeal the Director's resolution of a protest to the Director of the Department of Administration.~~
- ~~**D.** A protest under this Section shall be filed, processed, and resolved according to the rules of procedure contained in 2 A.A.C. 7, Article 9.~~

Protests and appeals concerning the award or proposed award of a grant shall be initiated and resolved under A.A.C. Title 2, Chapter 7, Article 9.