

## NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by 1st submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Due to time restraints, the Secretary of State's Office will no longer edit the text of proposed rules. We will continue to make numbering and labeling changes as necessary.

Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

### NOTICE OF PROPOSED RULEMAKING

#### TITLE 4. PROFESSIONS AND OCCUPATIONS

#### CHAPTER 39. STATE BOARD FOR PRIVATE POSTSECONDARY EDUCATION

#### PREAMBLE

- | <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
|-----------------------------|--------------------------|
| R4-39-302                   | Amend                    |
| R4-39-303                   | Amend                    |
| R4-39-304                   | Repeal                   |
| R4-39-304                   | Re-number                |
| R4-39-304                   | Amend                    |
| R4-39-305                   | Re-number                |
| R4-39-305                   | Amend                    |
| R4-39-306                   | Re-number                |
| R4-39-307                   | Re-number                |
| R4-39-308                   | Re-number                |
| R4-39-309                   | Re-number                |
| R4-39-310                   | Repeal                   |
| R4-39-310                   | Re-number                |
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. § 32-3003(A)(3), (5)  
Implementing Statute: A.R.S. §§ 32-3021 and 32-3022(C)(2)
3. A list of all previous notices appearing in the Register addressing the proposed rule:  
Notice of Rulemaking Docket Opening: 4 A.A.R. 1510, June 26, 1998.
4. The name and address of agency personnel with whom person may communicate regarding the rulemaking:  
Name: Teri Candelaria, Executive Director  
Address: Arizona State Board for Private Postsecondary Education  
1400 West Washington, Room 260  
Phoenix, Arizona 85007  
Telephone: (602) 542-5709  
Fax: (602) 542-1253
5. An explanation of the rule, including the agency's reasons for initiating the rule:  
The Board proposes to amend R4-39-302 to (1) clarify the safety and health standards the facilities and equipment must meet, (2) clarify the differences in local and state laws, (3) clarify the limits of insurance coverage and conform with rule drafting style. The Board proposes to amend R4-39-303 to (1) clarify requirements under Section A, (2) ensure that the reference to felony convictions is consistent with Title 13 and to conform to rule drafting style. The Board proposes to repeal R4-39-304 because the Board has determined that licensure of Agents is no longer required. The Board proposes to renumber and amend R4-39-304 to clarify who is subject to disciplinary proceedings for engaging in false or misleading advertising. The Board pro-

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poses to renumber R4-39-305 and make a technical amendment to "will" to "may". The Board proposes to renumber rules R4-39-306, R4-39-307 and R4-39-308 and amend to conform to rule drafting style. The Board proposes to repeal R4-39-310 and to move to Article 4, R4-39-401.

6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:  
None.
7. 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.
8. The preliminary summary of the economic, small business, and consumer impact statement:  
The proposed rulemaking is primarily technical in nature to clarify licensure requirements and to conform to rule drafting style. The proposed rulemaking will make the rules more clear, concise and understandable. The board and the institutions subject to licensure by the board will benefit from this change.  
  
The board does not anticipate additional costs to the board or the institutions subject to licensure by the board.
9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business and consumer impact statement:  
Name: Teri Candelaria, Executive Director  
Address: Arizona State Board for Private Postsecondary Education  
1400 W. Washington Street, Room 260  
Phoenix, Arizona 85007  
Telephone: (602) 542-5709  
Fax: (602) 542-1253
10. The time, place and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:  
Date: February 25, 1999  
Time: 10 a.m. to 10:30 a.m.  
Location: State Board for Private Postsecondary Education  
1400 West Washington Street, 2<sup>nd</sup> Floor Conference Room  
Phoenix, Arizona 85007  
Nature: Oral Proceedings before the Arizona State Board for Private Postsecondary Education
11. Any other matter prescribed by statute that are applicable to the specific agency or to any specific agency or to any specific rule or class of rules:  
Not applicable.
12. Incorporations by reference and their location in the rules:  
Not applicable.
13. The text of the rules follows:

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 39. STATE BOARD FOR PRIVATE POSTSECONDARY EDUCATION**

**ARTICLE 3. OPERATION OF NON-ACCREDITED INSTITUTIONS**

**ARTICLE 3. OPERATION OF NON-ACCREDITED INSTITUTIONS**

Section  
R4-39-302. Facilities and Equipment  
R4-39-303. Control and Personnel  
R4-39-304. Agents  
R4-39-305R4-39-304. Advertising  
R4-39-306R4-39-305. Recruitment  
R4-39-307R4-39-306. Admission Requirements  
R4-39-308R4-39-307. Placement  
R4-39-309R4-39-308. Pricing and Refund Policy  
R4-39-310R4-39-401. Student Records at the Institution

**R4-39-302. Facilities and Equipment**

- A. The building, classrooms, equipment, furniture, grounds, instructional devices, instructional facilities and other physical requirements of the educational program shall be appropriate to insure that the educational objectives of the institution are achieved.
- B. The physical plant, facilities and equipment shall meet all safety requirements and health standards as specified by the city, county, state or authority in which the facility is located.
- C. The plant, facilities and equipment shall be in compliance with applicable local and State laws relating to planning, building, zoning, and fire codes.

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- D. Insurance, necessary to protect the assets of the institution in the event of damage or a finding of liability, shall be maintained in force at all times.
- E. The board must be notified of a change of location prior to the change as specified in R4-39-110 R4-39-109.

**R4-39-303. Control and Personnel**

- A. In order to be licensed by the board the institution's administrators, directors, owners and beneficial owners, agents and faculty shall be of good moral character and shall obey the statutes and regulations of the board.
- B. ~~No program or institution shall be licensed by the board if an owner, beneficial owner or other person having direct or indirect control over the program or institution has been convicted of a felony within two (2) years of application.~~
- ~~C.B.~~ The board may will not issue a license if an owner, beneficial owner or other person having direct or indirect control over the program or institution has been convicted of a felony or misdemeanor or has been enjoined for violations of any state or federal laws relating to education.
- C. The board may not issue a license if an owner, beneficial owner or other person having direct or indirect control over the program or institution has been found to have committed any act, which if committed or done by any person licensed by the board, would be grounds for disciplinary action.
- D. The director or manager of the institution shall be responsible for the following:
  - 1. The development of a curriculum capable of preparing students for educational or specific job entry levels.
  - 2. Selection of faculty competent in the subject matters to be taught and possessing teaching techniques necessary to implement the applicable curriculum.
- E. Faculty shall be qualified by education and experience and shall meet the following minimum requirements:
  - 1. Faculty of an institution offering an associates, baccalaureate, master's or doctoral degree shall possess no less than the degree awarded to a graduate of the program in which they are teaching. Faculty degrees must have been obtained from an institution accredited by an accrediting agency recognized by the United States Department of Education or Council on Postsecondary Education.
  - 2. For vocational programs, the institution shall demonstrate that each faculty member has the competency through education or experience, to teach the assigned subject area. Such competency shall be evidenced on resume forms provided by the board. The accuracy of information provided in the resume shall be verified by the person responsible for the operation of the institution.
  - 3. The faculty shall be sufficient in number to assure the effectiveness of the educational program.
- F. The board shall be notified in writing of any termination or change of directors, managers or faculty within ~~thirty (30)~~ 30 days of the last day of employment. The board shall also be notified in writing of any new director, manager or faculty member within ~~thirty (30)~~ 30 days of hiring.

**R4-39-304. Agents**

- A. ~~No agent shall be licensed by the board if he has been convicted of a felony within two (2) years of application.~~
- B. ~~The board may not issue a license to an agent who has been convicted of a felony or misdemeanor or has been enjoined for violations of any state or federal laws relating to education.~~

- ~~C. Agents shall have a clear understanding and knowledge of the courses and programs, services, tuition, student contract terms, and operating procedures of the institution. They shall also provide truthful and adequate information to persons regarding each educational institution they represent.~~
- D. ~~Agents shall be of good moral character and shall obey the statutes and regulations of the board.~~
- E. ~~No person acting as an agent for, or representing a non-accredited private institution operating in Arizona and not operating from the office or place of business of the institution, shall solicit or sell any course for consideration or remuneration unless that person holds an agent's license. An agent shall annually submit to the board a copy of the institution's current student application and sample copies of each brochure, bulletin, catalog, and any other document presented to potential students regarding each educational institution the agent is employed by.~~
- F. ~~The board shall verify the accuracy of the documents produced by each agent.~~
- G. ~~Each non-accredited educational institution not having physical facilities in Arizona shall submit to the board a surety bond in the amount of \$5,000.00 or in lieu of the surety bond, evidence of a cash deposit of \$5,000.00 with the State Treasurer for each agent it employs. A receipt for the cash deposit with the State Treasurer for each agent it employs shall suffice as evidence of the cash deposit.~~
- H. ~~Misrepresentation in any materials or testimony submitted to the board may result in disciplinary action.~~

**R4-39-305 R4-39-304. Advertising**

- A. Advertising must be truthful and shall not include any false or misleading statements with respect to the institution, its personnel, its courses and services, or the occupational opportunities for its graduates.
- B. The board may institute disciplinary proceedings against a ~~licensed agent, program, or institution, or institutional representative~~ which engages in false or misleading advertising.
- C. Advertising to solicit students in "help wanted" columns of newspapers, magazines or other similar publications is prohibited.
- D. The use of the words "guarantee" and "free" shall not be used in connection with solicitations or advertising in any brochure, catalog, bulletin, leaflet or other publication of the institution, nor in newspapers, magazines or any other media.
- E. All printed advertising shall include the full legal name, phone number and address of the institution.
- F. The board may require an institution to submit all advertising for approval prior to use.

**R4-39-306 R4-39-305. Recruitment**

- A. Recruitment efforts shall be conducted in a professional and ethical manner.
- B. The institution shall be responsible for providing training for all admissions personnel. Sales agents are prohibited from portraying themselves directly or indirectly as guidance counselors, advisors or any other position to disguise the sales functions of their jobs.
- C. Loans, grants, scholarships, discounts and other such items shall not be used as an inducement to enroll, where such use ~~will~~ may result in unfair or unethical trade practices. "Scholarship" as used in this regulation means any form of assistance extended to a prospective student which, in effect, amounts to a reduction in tuition. Tuition scholarships may be granted if rules relating to them are published by the institution and available to all students and prospective students.

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**R4-39-307R4-39-306. Admission Requirements**

- A. The requirements for admission to an institution must be published and must be administered as stated.
- B. The institution may admit only those students who have demonstrated through pre-enrollment tests, if applicable, or through the initial interview, their capability of satisfactorily completing the prescribed training from beginning to completion of a course during the time specified.
- C. If an entrance exam is used, the institution shall set a minimum passing score for entrance to the institution and shall maintain a copy of the exam in the student's records.

**R4-39-308R4-39-307. Placement**

The offer of placement services to students is optional but, if made the following requirements shall apply:

- A. Documented evidence of student referrals for job placement must be maintained and shall include the following:
  - 1. The name of student referred and the corresponding name of the prospective employer.
  - 2. Result of referral.
  - 3. Final placement or other disposition.
- B. Students shall be prepared for placement though instruction in preparation of resumes, preparation for interviews, interview procedures, appropriate dress, personal grooming and conduct of the job.
- C. Lists of potential employers given to students or graduates shall not be considered a referral or offer of placement.
- D. Each student application shall contain a disclaimer by the institution to the effect that job placement is not guaranteed to graduates or student.

**R4-39-309R4-39-308. Pricing and Refund Policy**

- A. Accurate prices of specific courses and subjects of study must be disclosed in any contract to be signed by the prospective student. Prices for the same course or subject shall not vary between students in the same course or subject, except for group arrangements or following the published notice of a price change.
- B. The prospective student shall not be required to make a non-refundable payment until it has been determined that the prospective student has been accepted for enrollment.
- C. The refund policy of the institution must be disclosed in any contract to be signed by the prospective student.
- D. The institution must fully disclose all charges and fees to a prospective student or his parent or guardian in writing and no claims shall be made as to scholarships or fee reductions, unless they are, in fact, scholarships or fee reductions and are clearly stated and described in the written material.

**R4-39-310R4-39-401. Student Records at the Institution**

- A. The institution shall maintain complete and accurate records for each student currently enrolled, including:
  - 1. An enrollment agreement containing, but not limited to the following information:
    - a. Name and address of student.
    - b. Signature of the student and an official of the institution.
    - c. Commencement date of program.
    - d. Title of the course or courses within the program.
    - e. Total classroom and shop hours—quarter, trimester or semester hours.
    - f. Payment schedule and total cost to the student.
    - g. Refund policy of the institution.
    - h. A statement indicating that the individual signing the agreement has read and understands all aspects of the agreement.
    - i. The holder in due course rule as defined in A.R.S. § 47-3302.
    - j. A disclaimer by the institution that "job placement" is not guaranteed to graduates upon completion of this training or upon graduation.
    - k. Student grievance procedures, if not printed in catalog, bulletin or other document provided each potential student.
    - l. A cancellation notice in accordance with Federal Trade Commission (FTC) regulations.
  - 2. Grades received, where applicable.
  - 3. All obligations incurred and all funds paid by the student to the institution.
  - 4. Student attendance information.
  - 5. Counseling records.
  - 6. A transcript.
  - 7. Financial aid records.
  - 8. Copy of the entrance exam, if applicable.
- B. Student records shall be available and readily accessible for use and review by authorized officials of the institution and authorized representatives of the board.
- C. An institution which gives credit toward a course based upon prior job experience, training, or life experience shall record each such credit in the institution's records relating to that student and in the student's official transcript and list the portion of the course for which the student is given credit. A copy of the transcript reflecting courses for which a student is given credit for prior job experience, training, or life experience shall be attached to the institution's official transcript and shall be retained as part of the student's permanent records.

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**TITLE 6. ECONOMIC SECURITY**

**CHAPTER 2. DEPARTMENT OF ECONOMIC SECURITY EMPLOYMENT AND TRAINING**

**PREAMBLE**

**1. Sections Affected**

R6-2-101  
R6-2-102  
R6-2-103  
R6-2-104  
R6-2-201  
R6-2-201

**Rulemaking Action**

Amend  
Amend  
Amend  
New Section  
Repeal  
New Section

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R6-2-202	Repeal
R6-2-202	New Section
R6-2-203	Repeal
R6-2-203	New Section
R6-2-204	Repeal
R6-2-204	New Section
R6-2-205	Repeal
R6-2-206	Repeal
R6-2-207	Repeal
R6-2-208	Repeal
R6-2-209	Repeal
R6-2-210	Repeal
R6-2-301	Repeal
R6-2-302	Repeal
R6-2-303	Repeal
R6-2-304	Repeal
R6-2-401	Repeal
R6-2-402	Amend

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

Authorizing statutes: A.R.S. §§ 41-1954(A)(3) and 46-134(12).

Implementing statutes: A.R.S. §§ 23-645 and 23-648.

**3. A list of all previous notices appearing in the Register addressing the proposed rule:**

Notice of Rulemaking Docket Opening: 4 A.A.R. 4043, December 4, 1998.

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

Name: Sarah Youngblood, Legal and Administrative Rules Analyst

Address: Department of Economic Security  
1789 West Jefferson, Site Code 837A  
Phoenix, Arizona 85007

or

P. O. Box 6123, Site Code 837A  
Phoenix, Arizona 85005

Telephone: (602) 542-6555

Fax: (602) 542-6000

E-mail: vosy5619@de.state.az.us

or

Name: Rudy Campas, Manager

Employment Security Administration Policy and Support

Address: Department of Economic Security  
1789 West Jefferson, Site Code 701B4  
Phoenix, Arizona 85007

or

P. O. Box 6123, Site Code 701B4  
Phoenix, Arizona 85005

Telephone: (602) 542-6560

Fax: (602) 542-3690

**5. An explanation of the rule, including the agency's reasons for initiating the rule:**

R6-2-101 defines terms used in Title 6, Chapter 2, Articles 2 through 4 of the Arizona Administrative Code. R6-2-102 and R6-2-103 incorporate by reference the federal rules containing detailed provisions concerning the complaint process and the procedures the Department must follow to exclude an employer who submits standard work orders from further participation in the employment service program. The Department will amend R6-2-101 through 103 to make minor grammatical changes, update the revision dates of the rules incorporated by reference, and conform incorporation language to current style and form requirements. Although R6-2-201 through 210 and R6-2-301 through 304 are consistent with the statutes and other rules promulgated by the Department, the Department is not satisfied with the rules. When last amended in 1994, clarity and conciseness

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were improved, and the language was brought into conformity with GRRC stylistic requirements. However, the information in the rules is poorly organized, and there is a great deal of information contained in the rules that is only Department internal procedure. The Department intends to repeal the ten rules in Article 2 and to propose four new rules. The new rules will separately organize employer and worker services, and delete internal procedure. The Department intends to repeal the four rules in Article 3 and to incorporate the material not deemed internal procedure with the four new rules that will be set up in Article 2. The Department believes the processes and procedures by which workers and employers may obtain services should not be separated from a listing of the types of services provided. The Department plans to make minor changes in the language of R6-2-402 dealing with incorporation by reference to bring language up to current standards.

6. **A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, and analysis of the study and other supporting material:**

Not Applicable

7. **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

8. **The preliminary summary of the economic, small business, and consumer impact:**

The rules will have a positive but intangible economic impact on small business and consumers. The rules are being updated and amended to improve clarity and the underlying substantive requirements are unchanged.

9. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business and consumer impact statement:**

Name: Sarah Youngblood, Legal and Administrative Rules Analyst

Address: Department of Economic Security  
1789 West Jefferson, Site Code 837A  
Phoenix, Arizona 85007

or

P. O. Box 6123, Site Code 837A  
Phoenix, Arizona 85005

Telephone: (602) 542-6555

Fax: (602) 542-6000

E-mail: vosy5619@de.state.az.us

10. **The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when and how persons may request an oral proceeding on the proposed rule:**

The Department does not plan to conduct hearings on the proposed amendments unless a written request for an oral proceeding is submitted within 30 days after the date of this publication to the person named in paragraph 4. The Department will accept written comments for at least 30 days after the publication of the proposed rules, to the person named in paragraph 4.

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

Not applicable

12. **Incorporations by reference and their location in the rules:**

<u>Incorporation</u>	<u>Location</u>
29 CFR § 29.5	R6-2-101(3)
26 U.S.C. § 51	R6-2-101(34)
20 CFR §§ 658.400 through 658.416	R6-2-102
20 CFR §§ 658.417 and 658.418	R6-2-103
29 CFR § 29.2(o)	R6-2-402
29 CFR § 29	R6-2-402

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

**TITLE 6. ECONOMIC SECURITY**

**CHAPTER 2. DEPARTMENT OF ECONOMIC SECURITY EMPLOYMENT AND TRAINING**

**ARTICLE 1. GENERAL PROVISIONS**

Section  
R6-2-101. Definitions

R6-2-102. Complaints  
R6-2-103. Hearings and Appeals  
R6-2-104. Policy of Nondiscrimination; Schedule of Services

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**ARTICLE 2. EMPLOYMENT SERVICES PROVIDED BY  
THE DEPARTMENT**

- R6-2-201. ~~Employment Testing Worker Services~~
- R6-2-202. ~~Employment Counseling Employer Services~~
- R6-2-203. ~~Employer Job Referral Services America's Job Bank~~
- R6-2-204. ~~Worker Job Referral Services Use of Employment Testing Materials by Other nonprofit Agencies~~
- R6-2-205. ~~Impartiality~~
- R6-2-206. ~~Provision of Employment Testing Materials~~
- R6-2-207. ~~Industrial Analysis Services~~
- R6-2-208. ~~Geographic Labor Clearance~~
- R6-2-209. ~~Disadvantaged Worker Groups~~
- R6-2-210. ~~Cooperative Efforts~~

**ARTICLE 3. OBTAINING EMPLOYMENT SERVICES**

- R6-2-301. ~~Worker Services: Eligibility and Application~~
- R6-2-302. ~~Worker Classification~~
- R6-2-303. ~~Employer Job Orders~~
- R6-2-304. ~~Job Referral and Placement~~

**ARTICLE 4. OTHER EMPLOYMENT SERVICES AND  
PROGRAMS**

- R6-2-401. ~~Targeted Jobs Tax Credit~~
- R6-2-402. ~~Apprentice Program Services~~

**ARTICLE 1. GENERAL PROVISIONS**

**R6-2-101. Definitions**

The following definitions apply to this chapter:

1. "America's Job Bank" is a computerized national job bank linking more than 1800 local Employment Service offices. The services of America's Job Bank are available to job seekers and employers via the Internet.
2. "Applicant" means a person who has applied to the Department for worker services and who meets the criteria for receipt of services described in R6-2-301(A).
3. "Apprentice" means a worker who is at least age 16, or older if at least 16 years of age, except where a higher minimum age standard is otherwise fixed by law, who is employed to learn a skilled trade under standards of apprenticeship which meet the requirements of 29 CFR § 29.5 (Office of the Federal Register, National Archives and Records Administration, January 1, 1998) 29 CFR 29.5 July 1, 1994, which is incorporated herein by reference in this rule. This incorporation by reference does not include any later amendments or editions. Copies of the incorporated material are available for inspection at the Department's Authority Library, 1789 West Jefferson, Phoenix, Arizona, and in the Office of the Secretary of State, Public Service Department, 1700 West Washington, Phoenix, Arizona, and on file with the Secretary of State's Office.
4. "Apprenticeship agreement" means a written agreement between an apprentice and an employer of a committee acting on behalf of an employer and containing the terms and conditions for employment of an apprentice.
5. "Apprenticeship program" means a plan containing all terms and conditions for the qualification, recruitment, selection, employment, and training of apprentices, including such matters as the requirement for a written apprenticeship agreement.
6. "Apprenticeship program registration" means the acceptance and centralized recording of an apprenticeship program which meets the basic standards and require-

ments established for such apprenticeship programs as established under federal law.

7. "Apprenticeship program sponsor" means a any person, association, committee, or organization operating an apprenticeship program and in whose name the program is or will be registered and approved.
8. "BFOQ" or "bona fide occupational qualification" means that an employment decision or request based on age, sex, national origin, or religion is based on a finding that the such characteristic is necessary to the individual's ability to perform the job.
9. "Department" means the Arizona Department of Economic Security.
10. "DOT" or "Dictionary of Occupational Titles" means the reference work published by the United States Employment Service, which contains brief, non-technical definitions of job titles, distinguishing numeric codes, and worker trait data.
11. "Disabled veteran" means:
  - a. A veteran who is entitled to compensation under laws administered by the United States Secretary of Veterans Affairs; or
  - b. A person who was discharged or released from active military duty because of a service-connected disability.
12. "Employer job referral services" means Department activities that which help an employer obtain workers with the occupational qualifications needed by the employer.
13. "Employment counseling" means formulation of a vocational plan that which is consistent with the person's vocational skills and interests, and advice on appropriate measures for implementation of that plan.
14. "Employment test" means a standardized method or device for measuring a person's possession of, interest in, or ability to acquire job skills and knowledge.
15. "ESA" or "Employment Security Administration" means the administrative unit program within the Department's Division of Employment and Rehabilitation Services with responsibility for all worker and employer services.
16. "Essential functions of a job" means the fundamental job duties of a particular employment position.
17. "Geographic labor clearance" means Department efforts to facilitate labor mobility by encouraging and guiding migration of workers between geographical areas.
18. "Industrial analysis services" means Department activities to which assist employers and labor organizations in determining the cause of worker resource problems in a particular business, and provision of information developed by the USES for resolving such problems.
19. "Job bank" means a computerized list of all currently available jobs and employment opportunities listed with the Department.
20. "Job development" means the process by which the Department obtains a job or interview with an employer for a specific applicant for whom the local ESA office has no suitable job opening on file.
21. "Job order" means a request by an employer for the referral of job seekers made available to job seekers via the Department's Job Bank.
22. "JTPA" means the federal Job Training Partnership Act found at 29 U.S.C. 1504 29 U.S.C. §§ 1501 et seq.

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- 23.21: "Labor market area" means a geographic area consisting of a central city or group of cities, and the surrounding territory within a reasonable commuting distance.
- 24.22: "Major life activities" means functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.
- 25.23: "Occupational labor clearance" means Department efforts to facilitate labor mobility by encouraging and guiding migration of workers between occupations occupational and industry industrial types lines.
- 26.24: "Older worker" means a person age 40 or older above who is working or who is unemployed and wishes to work.
- 27.25: "Person with a disability" or "disabled worker" means a person who:
- a. Has a physical or mental impairment, which substantially limits one or more of that person's major life activities;
  - b. Has a record of such impairment; or
  - c. Is regarded as having such an impairment.
- 28.26: "Physical or mental impairment" means:
- a. Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or
  - b. Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
- 29.27: "Placement" means ~~that the hiring by a public or private employer has hired~~ of an applicant ~~that the Department has referred to the employer for a job or interview.~~
- 30: "Qualified worker" means a worker who possesses the skills, knowledge, and abilities to perform the essential functions of a job.
- 31.28: "Reasonable accommodation" means a modification of, or an adjustment to a process, position, or term of employment, which will permit a disabled worker to enjoy the same benefits and privileges of employment as those enjoyed by persons without disabilities.
- 32.29: "Substandard work order" means a work order:
- a. Containing employment terms ~~that which~~ violate employment related laws; or
  - b. Offering work at wages or conditions ~~that which~~ are substantially inferior to those generally prevailing in the labor market area for the same or similar work.
- 33.30: "Substantially limits" when used in reference to a disability, means:
- a. Unable to perform a major life activity that the average person in the general population can perform; or
  - b. Significantly restricted as to the condition, manner, or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity.
- 34.31: "Targeted Jobs Tax Credit" means an income tax credit available to businesses ~~that which~~ hire persons whom ESA has certified as meeting certain criteria described in 26 U.S.C. § 46 and 26 U.S.C. § 51 (Office of the Federal Register, National Archives and Records Administration, as amended August 10, 1993), which is incorporated herein by reference in this rule. This incorporation by reference does not include any later amendments or editions. Copies of the incorporated material are available for inspection at the Department's Authority Library, 1789 West Jefferson, Phoenix, Arizona, and in the Office of the Secretary of State, Public Service Department, 1700 West Washington, Phoenix, Arizona, and on file with the Secretary of State's Office.
- 35.32: "USES" means the United States Employment Service, which is the unit in the United States Department of Labor's Employment and Training Administration designed to promote a national system of public job service offices.
- 36.33: "Veteran" means a person who served in the active military, naval, or air service, and who was discharged or released therefrom service under conditions other than dishonorable.
- 37.34: "Vocational plan" means a plan developed jointly by an ESA counselor or counselor-trainee and an applicant and which describes:
- a. The applicant's short-range and long-range occupational goals; and
  - b. The actions to be taken to implement the plan.
- 38.35: "Worker" means a U.S. citizen or person who is authorized to work in the United States and person who is employed or unemployed and wishes to work.
- 39.36: "Worker services" means the functions the Department performs for the benefit of applicants and workers, including, ~~without limitation:~~ employment counseling, employment testing, preparation of a vocational plan, and referral for employment opportunity.
- 40.37: "Worker job referral services" means Department activities to which help a worker workers promptly obtain a job jobs for which the worker is workers are occupationally qualified.
- 41.38: "Youth worker" means a person younger than under the age of 22, who is working or is unemployed and wishes to work.

**R6-2-102. Complaints**

The Department shall process all complaints related to the provision of employment services under pursuant to 20 CFR 658, Subpart E, 20 CFR §§ 658.400 through 658.416 (Office of the Federal Register, National Archives and Records Administration, April 1, 1994 January 1, 1998), which are incorporated herein by reference in this rule. This incorporation by reference does not include any later amendments or editions. Copies of the incorporated material are available for inspection at the Department's Authority Library, 1789 West Jefferson, Phoenix, Arizona, and in the Office of the Secretary of State, Public Service Department, 1700 West Washington, Phoenix, Arizona, and on file with the Secretary of State's Office.

**R6-2-103. Hearings and Appeals**

The Department shall conduct any hearing or appeal to which an employer, applicant, or worker may be entitled under applicable state or federal employment service laws, and 20 CFR §§ 658.417 and 658.418 (Office of the Federal Register, National Archives and Records Administration January 1, 1998) pursuant to 20 CFR 658(E) 658.417 through 658.418, April 1, 1994 which are incorporated herein by reference in this rule. This incorporation by reference does not include any later amendments or editions. Copies of the incorporated material are available for inspection at the Department's Authority Library, 1789 West Jefferson, Phoenix,

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Arizona and in the Office of the Secretary of State, Public Service Department, 1700 West Washington, Phoenix, Arizona.

**R6-2-104. Policy of Nondiscrimination; Schedule of Services**

In the administration of the state employment office, the Department shall:

- A. Not discriminate against any applicant or employer because of age, race, sex, color, religious creed, national origin, disability or political affiliation or belief unless a BFOQ exists;
- B. Actively promote employment opportunities for disadvantaged workers and encourage employers to hire workers on the basis of objective qualifications; and
- C. Use the following priority schedule to select and refer qualified applicants for work:
  - 1. Disabled veteran applicants;
  - 2. Other veteran applicants;
  - 3. Other applicants.

**ARTICLE 2. EMPLOYMENT SERVICES PROVIDED BY THE DEPARTMENT**

**R6-2-201. Employment Testing**

- A. The Department shall conduct employment tests on an applicant when the following two conditions are met:
  - 1. The applicant requests such tests, and
  - 2. The Department deems such tests necessary to provide the applicant with employment services.
- B. The Department shall use only employment tests and related techniques approved by the USES, in accordance with the standards designated for such tests.
- C. The Department shall conduct testing activities, as needed, in ESA local offices. If a particular local office lacks the resources or personnel to administer or interpret an employment test, the Department may refer the applicant to another local office for testing services.
- D. The Department shall not release the results of any employment testing without the consent of the person tested.

**R6-2-201. Worker Services**

- A. As permitted by available resources, the Department shall provide services to a worker who is a United States citizen or a non-citizen authorized to work in the United States. The services include but are not limited to the following:
  - 1. Employment counseling;
  - 2. Aptitude testing;
  - 3. Apprenticeship training; and
  - 4. Job referral services.
- B. A worker applying for services shall file an application with the Department. The application shall include the worker's:
  - 1. Name, address, telephone number, social security number and date of birth;
  - 2. Prior work experience including information on salary, job duties, and any past military service;
  - 3. Educational background, including technical or other vocational training the worker has completed;
  - 4. Career goals, hobbies, and volunteer work;
  - 5. Availability for work, including willingness to travel or relocate, desire for full or part-time employment, and desired working hours; and
  - 6. Special skills or proficiencies including a language other than English or the use of equipment.
- C. The Department shall obtain information about a worker's disability as is necessary to provide the worker with appropriate services. This information may include asking the worker whether the worker can perform the essential functions of a particular job, with or without reasonable accommodation.

D. When the Department conducts employment testing, the Department shall:

- 1. Use only standardized tests and techniques approved by the United States Employment Service; and
- 2. Not release the results of the tests without the written consent of the tested worker.

**R6-2-202. Employment Counseling**

- A. The Department shall provide employment counseling services to any applicant who requests such services or when counseling is necessary to provide the applicant with job referral services. If an employment counselor is not available in the applicant's local ESA office, ESA may refer the applicant to an office where such services are available.
- B. The Department shall:
  - 1. Advise persons who may benefit from employment counseling of the availability of such counseling;
  - 2. Provide counseling services which take into account the interrelationship of vocational problems and psychosocial problems;
  - 3. Provide applicants with information about, and referrals to, training or services offered by other agencies and community resources;
  - 4. Permit applicants to make their own decisions about employment and career plans and goals; and
  - 5. Provide veterans and disabled veterans with employment counseling services in accordance with applicable requirements of state and federal law.

**R6-2-202. Employer Services**

- A. The Department shall require the following information from an employer who places a job order:
  - 1. A description of the essential functions of the job in sufficient detail to permit the Department to ascertain the qualifications a worker needs to satisfactorily perform the work, with or without reasonable accommodation;
  - 2. An employer's hiring requirements including the type of license or certification needed, or the type of equipment or tools the worker must supply;
  - 3. The terms and conditions of work including hours, salary, benefits, promotional opportunities, and travel requirements; and
  - 4. The job location and instructions for arranging a job interview.
- B. The Department shall refer workers to the employer who most closely match the requirements in the job order. If qualified workers are not available from the Department's files and, if resources are available, the Department shall recruit qualified workers to fill the employer's order.
- C. The Department shall not accept a job order from an employer for processing when:
  - 1. The employer's requirements are discriminatory based on age, sex, national origin, or religion, unless the discriminatory characteristic is a bona fide occupational qualification necessary to perform the job. An example of a bona fide occupational qualification that is not discriminatory is the requirement for a female worker in a female intimate apparel retail outlet.
  - 2. The terms and conditions of work are substandard under A.R.S. 23-776(C)(2).
  - 3. The position is vacant due directly to a strike, lockout, or other labor dispute or conflict between employers and workers, including wage disputes and collective bargaining efforts.
  - 4. A worker is required to pay a fee for the job.

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**D.** When an employer refuses to modify a job order deemed unacceptable by subsection (C), the Department shall notify the employer in writing of discontinuance of services. The notification shall include the employer's right of appeal.

**R6-2-203. Employer Job Referral Services**

- A.** The Department shall market the availability of its job referral services to employers.
- B.** The Department shall accept job orders from employers in accordance with the provisions of applicable federal and state law.
- C.** The Department shall make the following services, facilities, and information available to employers on a first come, first serve basis:
1. Office space in local ESA offices, for the purposes of conducting job interviews;
  2. Objective information concerning labor market conditions, needs, and trends, and legislation affecting employment.
- D.** Notwithstanding subsection (B), the Department shall not accept for processing:
1. Discriminatory job orders unless the stated discriminatory requirement is a BFOQ, or
  2. Substandard work orders.
- E.** Upon receipt of a discriminatory or substandard work order, the Department shall:
1. Orally advise the employer that the Department cannot accept the work order with its present terms;
  2. Advise the employer of the defects in the work order and how those defects can be cured; and
  3. Upon the employer's consent to modify the work order in accordance with the Department's suggestions, the Department shall make the necessary modifications and process the work order.
- F.** If the employer refuses to modify the work order, the Department shall retain the work order.
- G.** When the Department cannot process the work order as provided in subsection (E), the Department shall send the employer written notice of the intent to discontinue services and the appeal processes available to the employer as provided in R6-2-102.

**R6-2-203. America's Job Bank**

- A.** The Department shall recommend that an employer doing business in Arizona be denied access to America's Job Bank when:
1. The employer is delinquent in the payment of unemployment insurance taxes; or
  2. The position the employer is attempting to fill is vacant due directly to a strike, lockout, or other labor dispute or conflict between employers and workers, including wage disputes and collective bargaining efforts.
- B.** An employer that is denied access to America's Job Bank may appeal the denial under R6-2-103.

**R6-2-204. Worker Job Referral Services**

- The Department shall:
1. Register applicants for work;
  2. Select and refer qualified applicants for work, based on the following priority schedule:
    - a. Disabled veterans—highest priority;
    - b. All other veterans—second priority;
    - c. All other applicants—third priority;
  3. Use best efforts to refer and place applicants in jobs which utilize the applicants' highest skills.
  4. Make no referrals to interviews or jobs which will result in costs or charges to the applicant referred.

**R6-2-204. Use of Employment Testing Materials By Other Nonprofit Agencies**

Upon written request, the Department shall make employment testing materials approved by the United States Employment Service available to nonprofit vocational guidance and placement agencies and organizations, provided the agency or organization:

- A.** Has personnel trained in the administration and interpretation of the tests;
- B.** Provides the Department with written verification of the agency's or organization's nonprofit status; and
- C.** Signs a release agreeing to the proper use of the testing materials and test results.

**R6-2-205. Impartiality**

The Department shall not participate or take sides in any labor dispute or conflict between employers and employees or workers, including, without limitation, wage disputes and collective bargaining efforts.

**R6-2-206. Provision of Employment Testing Materials**

- A.** When so permitted by USES, the Department shall make USES-approved testing materials available to nonprofit vocational guidance and placement agencies and organizations, including, without limitation, the Department's Job Opportunity and Basic Skills (JOBS) and JTPA programs, the Department's Rehabilitation Services Administration (RSA), the Bureau of Indian Affairs (BIA), public and private high schools, and other similar nonprofit educational institutions.
- B.** Notwithstanding subsection (A), the Department shall not authorize the release of test materials unless the person or organization has been trained in administration and interpretation of such tests.
- C.** Any person or agency that wishes to obtain testing materials shall submit a request to the Department.
- D.** Upon receipt of a request, the Department shall determine that the person or agency requesting the testing material is a person or organization qualified under subsection (A) and has the skills described in subsection (B). The Department may require the person or agency to provide the Department with written verification of nonprofit status.
- E.** Prior to authorizing the release of testing materials, the Department shall obtain a signed release agreement which details the proper use of USES testing materials and test results.

**R6-2-207. Industrial Analysis Services**

- A.** Upon request by an employer or a labor organization, and to the extent that Department resources are available, the Department shall assist employers and labor organizations in analyzing the causes of labor force problems in a particular business establishment.
- B.** The Department shall provide employers and labor organizations with information and technical advice on methods for resolving and avoiding the circumstances which result in labor force problems. All such information and advice shall be based on information approved by the USES.

**R6-2-208. Geographic Labor Clearance**

- A.** The Department shall not implement geographic labor clearance procedures until the Department has exhausted all reasonable means of recruiting qualified workers from local sources.
- B.** The Department shall not extend, for interstate labor clearance, an employer job order unless such order:
1. Specifies that the employer will pay workers the minimum wage or above, and
  2. Specifies the date and location of employment.

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**R6-2-209. Disadvantaged Worker Groups**

- A. The Department shall provide information and conduct training for the purpose of educating employers, labor organizations, and the community about the employability of groups which have historically been at a disadvantage for employment opportunities, including, without limitation:
1. Workers with a disability;
  2. Youth workers;
  3. Female workers;
  4. Minority workers, and
  5. Older workers.
- B. The Department shall actively promote employment opportunities for disadvantaged workers and encourage employers to hire workers on the basis of objective qualifications.

**R6-2-210. Cooperative Efforts**

In the performance of all its services and duties, the Department shall cooperate with federal, state, and local entities and organizations to:

1. Maximize employment opportunities for all workers;
2. Foster exchange of information on employment services, on the job training programs, labor market conditions and trends, personnel management methods, and current legislation involving labor issues;
3. Avoid duplication of services; and
4. Develop and standardize improved employment tests.

**ARTICLE 3. OBTAINING EMPLOYMENT SERVICES**

**R6-2-301. Worker Services; Eligibility and Application**

- A. Worker services are available to any United States citizen and any alien who is legally authorized to work in the United States.
- B. A person who wishes to obtain worker services from the Department shall first apply to the Department through a local ESA office, on a form provided by the Department.
- C. The application form shall request the following information:
1. Identifying information on the applicant, including: name, address, phone number, social security number, and date of birth;
  2. The applicant's prior work history, including any past military service;
  3. The applicant's prior salary history;
  4. The applicant's educational background, including any technical or other vocational training the applicant has completed;
  5. The applicant's personal interests;
  6. The applicant's availability for work, including willingness to travel or relocate, desire for full or part time employment, and desired working hours;
  7. Any special skills or limiting traits the applicant may possess, including, without limitation, inability to speak, read, or write English, proficiency in a language other than English, or proficiency in using particular types of equipment;
  8. Whether the applicant has been referred to ESA by another Department program or administration; and
  9. Any other information the Department reasonably deems necessary to provide the applicant with services, including formulation of a vocational plan that will result in appropriate employment.
- D. When an applicant is disabled, the Department shall obtain only such information about the applicant's disability as is reasonably necessary to provide the applicant with appropriate worker services, which may include asking the applicant whether the applicant can perform the essential functions of a particular job, with or without reasonable accommodation.

- E. Applicants shall notify the Department of any changes in the information submitted on the application form.
- F. The Department shall not provide worker services to a person until the Department has received a completed application form from such person.

**R6-2-302. Worker Classification**

- A. Upon receipt of a completed application, the Department shall evaluate the applicant's occupational qualifications based on the applicant's work experience, training, and personal characteristics, skills, preferences, and goals.
- B. Following the evaluation described in subsection (A), the Department shall assign an occupational title in accordance with DOT.

**R6-2-303. Employer Job Orders**

An employer who wishes to place a job order with the Department shall provide the Department with the following information about the available work or position:

1. A description of the essential functions of the job in sufficient detail to permit the Department to ascertain the qualifications an applicant needs to satisfactorily perform the work, with or without reasonable accommodation;
2. Any hiring requirements the employer has established, including, without limitation, the following:
  - a. The requirement that candidates must supply their own equipment; or
  - b. The requirement that candidates must possess a particular form of license or certification;
3. Information about the terms and conditions of work, including, without limitation, travel requirements, salary, promotional opportunities, and benefits; and
4. Instructions on how the applicant should arrange for an employment interview.

**R6-2-304. Job Referral and Placement**

- A. Upon receipt of a job order, the Department shall review its applicant files and shall refer applicants to the employer according to the priority schedule contained in R6-2-204.
- B. The Department shall refer applicants who most clearly match the requirements specified by the employer. If the Department has more applicants available for referral than are needed or requested by the employer, the Department shall give preference to applicants who:
1. Have registered with ESA for the longest period of time;
  2. Have maintained regular contact with ESA to request job referral;
  3. Have provided ESA with a current address and phone number to permit ESA to promptly contact such applicants upon request of a job order; and
  4. Are most readily available to respond to the interview or placement schedule specified in the job order.
- C. If the Department receives a job order for which it does not already have registered, qualified applicants, the Department shall recruit applicants to fill the order.

**ARTICLE 4. OTHER EMPLOYMENT SERVICES AND PROGRAMS**

**R6-2-401. Targeted Jobs Tax Credit Program (TJTC)**

- A. ESA shall serve as the designated local agency responsible for certification of persons who are eligible to participate in the targeted jobs tax credit program.
- B. A person who wishes to participate in the TJTC program shall apply at any local ESA office on an application form provided by the Department.

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- C. An employer may request that the Department certify a person the employer wishes to hire. The employer shall specify the reason why the employer believes the potential employee will be eligible for the JTTC.
- D. ESA shall not certify any potential employee as eligible:
  - 1. Until the employee submits a completed application; and
  - 2. Unless the employee is a member of one of the target groups described in 26 U.S.C. 51(d) (as amended August 10, 1993), which is incorporated herein by reference and on file with the Secretary of State's office.

**R6-2-402. Apprentice Program Services**

- A. ESA shall serve as the recognized state apprenticeship agency as described in ~~29 CFR 29.2(e)~~ 29 CFR § 29.2(o) (Office of the Federal Register, National Archives and Records Administration, July 1, 1994 January 1, 1998), which is incorporated herein by reference in this rule. This incorporation by reference does not include any later amendments or editions. Copies of the incorporated material are available for inspection at the Department's Authority Library, 1789 West Jefferson, Phoenix, Arizona, and in the Office of the Secretary of State, Public Service Department, 1700 West Washington, Phoenix, Arizona, and shall admin-

ister the state's apprenticeship program in accordance with 29 CFR 29 CFR § 29 (Office of the Federal Register, National Archives and Records Administration, July 1, 1994 January 1, 1998), which is incorporated herein by reference in this rule. This incorporation by reference does not include any later amendments or editions. Copies of the incorporated material are available for inspection at the Department's Authority Library, 1789 West Jefferson, Phoenix, Arizona, and in the Office of the Secretary of State, Public Service Department, 1700 West Washington, Phoenix, Arizona.

- B. In its capacity as the recognized agency, ESA shall:
  - 1. Approve apprenticeship program standards;
  - 2. Review apprenticeship agreements to determine whether if the agreements should be approved;
  - 3. Assist in developing apprenticeship program standards;
  - 4. Review apprenticeship program standards to determine if they should be approved;
  - 5. Review the wages paid to participants in an apprenticeship program; and
  - 6. Maintain a statewide registration system for apprenticeship programs.

**NOTICE OF PROPOSED RULEMAKING**

**TITLE 7. EDUCATION**

**CHAPTER 1. STATE BOARD OF DIRECTORS FOR COMMUNITY COLLEGES OF ARIZONA**

**PREAMBLE**

- 1. **Sections Affected:** **Rulemaking Action**  
R7-1-801 New Section
- 2. **The specific authority for the rulemaking, including both the authorizing statute and the statutes the rules are implementing:**  
Authorizing statute: A.R.S. 15-1424  
Implementing statute: A.R.S. 15-1424
- 3. **A list of all previous notices appearing in the Register addressing the proposed rule:**  
Notice of Rulemaking Docket Opening: 4 A.A.R. 4184, December 18, 1998.
- 4. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**  
Name: Thomas J. Saad  
Address: State Board of Directors for Community Colleges of Arizona  
3225 North Central Avenue, Suite 1220  
Phoenix, Arizona 85012  
Telephone: (602) 255-4037  
Fax Number: (602) 279-3464
- 5. **An explanation of the rule, including the agency's reasons for initiating the rule:**  
The rule is necessary to define the nature of student activity funds and how they may be expended. It also proscribes that the first priority and claim on student activity funds is for the retirement of revenue bonds.
- 6. **A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**  
None.
- 7. **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.

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8. **The preliminary summary of the economic, small business, and consumer impact:**  
The proposed rule will not adversely impact small business or consumers.
9. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**  
Name: Thomas J. Saad  
Address: State Board of Directors for Community Colleges of Arizona  
3225 North Central Avenue, Suite 1220  
Phoenix, Arizona
10. **The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when and how persons may request an oral proceeding on the proposed rule:**  
Oral Proceedings are scheduled as follows:  
Date: February 19, 1999  
Time: 1 p.m.  
Location: Scottsdale Community College  
9000 E. Chaparral Road  
Scottsdale, Arizona
11. **Any other matters prescribed by statute that are applicable to the specific agency:**  
None.
12. **Incorporations by reference and their location in the rules:**  
None.
13. **Full text of the rules follows:**

**TITLE 7. EDUCATION**

**CHAPTER 1. STATE BOARD OF DIRECTORS FOR COMMUNITY COLLEGES OF ARIZONA**

**ARTICLE 8. ACCOUNTING, REPORTING, BUDGETING,  
INVESTMENTS, BONDS INSURANCE**

Section  
R7-1-801. Student Activity Funds

**ARTICLE 8. ACCOUNTING, REPORTING, BUDGETING,  
INVESTMENTS, BONDS INSURANCE**

**R7-1-801. Student Activity Funds**

**A.** Student Activity Funds arise principally from the collection of "student fees". Such fees may be variously identified as students activities fees, associated student fees, student services fees, student participation fees, athletic fees, etc. Other items of income may include athletic event receipts and guarantees, entertainment receipts and guarantees, receipts from advertising in student publications, etc. In general, revenues arising from any activity for which expenditures from this

fund are made should be recorded as income to the student activity fund.

- B.** Student activity fees shall be established by the State Board upon the recommendation of the district governing boards.
- C.** The district governing boards shall consider any prior claims on student activity revenues, such as pledges toward payment of revenue bonds, before approving the Student Activity budget.
- D.** Student activity funds shall be under district administrative surveillance and accounted for in the manner prescribed by the State Board "Uniform Financial System and Reporting Standards."
- E.** All Student funds derived from legislative appropriations, student fees, or other public sources shall be budgeted and expended at the discretion of the college president with the approval of the district governing board.

**NOTICE OF PROPOSED RULEMAKING**

**TITLE 20. COMMERCE, BANKING, AND INSURANCE**

**CHAPTER 8. GREATER ARIZONA DEVELOPMENT AUTHORITY**

**PREAMBLE**

1. **Sections Affected**  
R20-8-101  
R20-8-102  
R20-8-103  
R20-8-104  
Table A

**Rulemaking Action**  
Amend  
Amend  
Amend  
Amend  
New Table

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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. § 41-1554.04

Implementing statute: A.R.S. §§ 41-1554.04 and 41-1554.05

3. **A list of all previous notices appearing in the register addressing the proposed rule:**

Notice of Rulemaking Docket Opening: 4 A.A.R. 4044, December 4, 1998.

Notice of Rulemaking Docket Opening: 4 A.A.R. 4124, December 11, 1998.

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

Name: Shawn Dralle, Executive Director

Address: Greater Arizona Development Authority  
3800 North Central Avenue, Suite 1650  
Phoenix, Arizona 85012

Telephone: (602) 280-8121

Fax: (602) 280-8145

5. **An explanation of the rule, including the agency's reasons for amending the rule:**

During its 1997 session, the Arizona State Legislature established the Greater Arizona Development Authority for the purpose of making funds available to provide technical assistance to infrastructure projects of political subdivisions, Indian tribes, and special districts, and financial assistance for infrastructure projects of political subdivisions and Indian tribes. These proposed amendments would establish a point system for the prioritization of technical assistance applications received by the Greater Arizona Development Authority (Authority.)

A.R.S. § 41-1554.04 provides that the Authority shall establish application forms for technical assistance, a procedure to review and approve or disapprove applications for technical assistance, criteria by which technical assistance will be awarded, and a means to prioritize applications for technical assistance. A.R.S. § 41-1554.05(C) provides that the Authority shall establish an application process and method of determining the allocation of technical assistance in accordance with A.R.S. § 41-1554.04. These proposed amendments will strengthen the process for awarding technical assistance by providing a more uniform and consistent method for prioritizing technical assistance applications.

Table A contains the proposed point system for prioritization of technical assistance applications made to the Authority. The point system will provide the Authority a mechanism for awarding technical assistance awards as well as the ability to transfer award monies to the next highest ranking applications if, for any reason, an applicant who receives a technical assistance award is not able to use that award. The point system also provides a mechanism for prioritizing two applications that receive the same point score. It should be noted that, in certain instances, the point system uses a range of points for scoring a particular priority criterion, as opposed to using a set point value for scoring the criterion. These point ranges are necessary for the following reasons:

The types of infrastructure projects that the Authority was designed to foster are highly diverse. Creating set point scores requires very specific prioritization criteria. Determining the specific criteria necessary to prioritize the variety of projects that are reviewed by the Authority would create an unnecessarily complicated point system.

The Authority has only finished one round of technical assistance. These proposed rules are a product of several meetings with stakeholders concerning the outcome of this first round of technical assistance. The proposed rules target the shortcomings of the initial rulemaking and it is the intent of the Authority to continue revising the application prioritization process so that the process is as objective as possible.

6. **A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**

None.

7. **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:**

The rule does not diminish a previous grant of authority to a political subdivision of this state.

8. **The preliminary summary of the economic, small business, and consumer impact:**

The impact is expected to be positive. While small business and consumers may have user rates and fees increased to pay for the new infrastructure financed by the Greater Arizona Development Authority, the net effect is expected to be positive for two reasons:

The projects will be developed more quickly with GADA participation, thereby accelerating the benefits to the local community.

The Authority will provide financial support and technical assistance to local communities for infrastructure development.

Because of the wide range of possible projects with varying local impacts, it is difficult to estimate or generalize about the

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potential economic impact of the Authority. It can be said that the Authority's beneficial contribution will be in the acceleration of the development of necessary projects. In some cases, the acceleration may be two years, in other cases, longer. This allows the community to begin utilizing this benefit at an earlier date to improve the economic well being of its residents and improve the overall quality of life.

**9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Shawn Dralle, Executive Director  
Address: Greater Arizona Development Authority  
3800 North Central Avenue, Suite 1650  
Phoenix, Arizona 85012  
Telephone: (602) 280-8121  
Fax: (602) 280-8145

**10. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rules or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:**

A person may submit written comments on the proposed rules or preliminary economic, small business, and consumer impact statement to the person listed above no later than 5 p.m., January 11, 1999. Oral proceedings are scheduled as follows:

Date: January 29, 1999  
Time: 1:30 p.m.  
Location: Greater Arizona Development Authority Conference Room  
3800 N. Central Avenue, Suite 1650  
Phoenix, Arizona 85012  
Nature: Public hearing to receive oral comments.

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

Not applicable.

**12. Incorporations by reference and their location in the rules:**

None

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

**TITLE 20. COMMERCE, BANKING, AND INSURANCE**

**CHAPTER 8. GREATER ARIZONA DEVELOPMENT AUTHORITY**

**ARTICLE 1. TECHNICAL ASSISTANCE**

**Section**

R20-8-101. Definitions  
R20-8-102. Application Process  
R20-8-103. Eligibility Criteria  
R20-8-104. Priority; Approval and Disapproval; Protest  
Table A. Priority Criteria

**ARTICLE 1. TECHNICAL ASSISTANCE**

**R20-8-101. Definitions**

In addition to the definitions prescribed in A.R.S. § 41-1554, the following definitions apply in this Article:

1. "Administratively complete" means that an applicant has completed the application for technical assistance and provided all of the required information.
2. "Applicant" means a political subdivision, special district, or Indian tribe that applies to the Authority for technical assistance.
3. "Authority" means the Greater Arizona Development Authority.
4. "Board" means the board of directors of the Authority.
5. "Economic impact summary" means an economic analysis that establishes the economic context for a project based on information provided by the applicant.

56. "Economic overview" means an economic analysis that establishes the economic context for a project based on public data.

67. "Infrastructure" means any facility located in this state for public use owned by a political subdivision, special district or Indian tribe that retains responsibility for its operation and maintenance.

78. "Project" means the whole, or any distinguishable segment or segments, of publicly owned infrastructure for which technical assistance is being requested or provided.

89. "Staff" means the Executive Director and the Finance Director of the Authority.

910. "Technical assistance round" means a period of time established by the Board during which applications for technical assistance are sent to potential applicants, returned to the Authority, analyzed by Staff, and submitted to the Board for approval or disapproval.

**R20-8-102. Application Process**

- A. The Board shall annually establish a due date by which applications for technical assistance shall be submitted for each technical assistance round, and the number of technical assistance rounds to be held in a given state fiscal year.
- B. The Authority shall send solicitation letters to potential applicants at least 60 days before applications are due. Other inter-

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ested persons may submit requests to the Authority to be placed on a mailing list to be utilized by the Authority in sending out solicitation letters.

- C. An applicant shall provide the following information to the Authority by the established due date for such applications on a form provided by the Authority:
1. Contact information for the applicant, including name, address, and telephone number;
  2. A description of the kind type of technical assistance being requested and an estimate of the cost of the technical assistance;
  3. A detailed description of the project;
  4. A summary of the anticipated economic impact the project will have on the community as estimated by the applicant;
  45. The estimated starting date, completion date, and projected cost of the infrastructure project for which the technical assistance is being requested;
  56. The projected sources and uses of funds for the infrastructure project, including public and private in-kind contributions; and
  67. A list of professional and outside service providers; ~~including their professional qualifications;~~ who have worked with the applicant on any part of the project.
- D. In addition to the application required in subsection (C), an applicant shall provide the following information to the Authority by the established due date for such applications:
1. A planning document specific to the locality of the project for which the technical assistance is being requested that includes the project, such as a capital improvement plan, local strategic plan, or similar planning document; ~~or evidence that the project has been discussed in meetings or in study sessions of the governing body of the applicant;~~
  2. If the project is listed on the project priority list of the Water Infrastructure Finance Authority or on the Department of Transportation's Five-Year State Plan, a document evidencing this fact;
  3. A resolution from the governing body of the applicant stating the following:
    - a. The project is in the best interests of the residents;
    - b. The estimated economic impact on the community; and
    - c. The commitment of local funds, if applicable; and
  4. The applicant's most recent financial statements.
- E. Staff shall analyze each application received on or prior to the due date for applications for technical assistance to determine whether the application is administratively complete and whether an applicant meets the eligibility criteria prescribed in R20-8-103. Applications for technical assistance which are determined to be both administratively complete and eligible for technical assistance under R20-8-103 shall be submitted to the Board for prioritization and possible funding. Applications which are either not administratively complete or do not meet the criteria in R20-8-103 shall not be submitted to the Board. ~~with a recommendation that they be disapproved.~~

**R20-8-103. Eligibility Criteria**

To be eligible to receive technical assistance, an applicant shall satisfy the following criteria:

1. The applicant is a political subdivision, Indian tribe, or special district;
2. The technical assistance requested is for the development or financing of an infrastructure project;
3. The application is administratively complete;

4. The applicant provides evidence that the project has public support;
5. The applicant provides evidence that the project is part of an adopted comprehensive plan, for example, a capital improvement plan, a local strategic plan, or similar planning document; or evidence that the project has been discussed in meetings or in study sessions of the governing body of the applicant;
6. The applicant has the capacity to provide managerial support to the project; and
7. The cost of the technical assistance does not exceed 10% of the total cost of the final project.

**R20-8-104. Priority; Approval and Disapproval; Protest**

- ~~A. The Board shall disapprove an application for technical assistance which does not meet the eligibility criteria in R20-8-103.~~
- ~~BA.~~ The Authority shall request the Department of Commerce prepare an economic overview for each of the projects eligible for technical assistance that establishes the economic context for the project.
- ~~CB.~~ During each technical assistance round, the Board shall determine the order and priority of infrastructure projects for which an eligible application for technical assistance has been received ~~based on the following factors listed below in order of importance. A project shall be given a higher priority to receive technical assistance for each of the following: The Board shall use 95 points maximum for tribal applications and 100 points maximum for all others based on Table A. Application scores shall then be prioritized based on a percentage of the points received to total points possible.~~
- ~~1. The project has been determined to be a likely candidate for future financial assistance from the Authority, based upon an assessment made at the time of the application by Staff of the applicant's inability to access lower cost funding from other sources~~
  - ~~2. The project is close to construction and permanent financing; or~~
  - ~~3. There is evidence of a high degree of certainty of the project's economic benefits based on one or more of the following:
    - ~~a. The economic overview prepared by the Department of Commerce;~~
    - ~~b. Partnerships, to the extent that they exist, both public and private, providing financial and in-kind services, in support of the project; or~~
    - ~~c. The public support.~~~~
- ~~C. Applications with tied scores shall be prioritized by the comparing the scores that each application received in Table A under the following categories in order of importance:
  - ~~1. Evidence of local support for the project;~~
  - ~~2. Evidence of a permanent funding source for the project;~~
  - ~~3. Evidence of the project's impact on the community; and~~
  - ~~4. Evidence of sufficient financial and managerial capacity to operate and maintain the project.~~~~
- ~~D. If one application receives a higher score in the first category listed in subsection C than the other application, the application with the higher score shall receive a higher prioritization. If the applications have the same score for the first category listed in subsection C, the scores that the applications received for each of the categories listed in subsection C, shall be considered in order, until it is determined that one application received a higher score in one of those categories. In the event that the scores for two applications are tied for all of the categories listed in subsection C, the Board shall determine which application will receive a higher prioritization.~~

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- DE.** The Board shall approve or disapprove each eligible application for technical assistance based upon the priority list and available funding for technical assistance. The Board may fund all or a portion of a technical assistance request.
- EF.** The Authority shall mail the Board's written determination to each applicant within 90 days after the date that all applications for technical assistance were due.
- FG.** For each approved project, the Authority shall establish a date by which the commitment of the Authority to provide technical assistance expires. The Authority shall not provide technical assistance for an approved project if the applicant does not complete all agreements with the Authority on or before that date.
- H.** The Authority shall bypass a project within a technical assistance round and offer funding to the next highest ranking project if the project is not ready to proceed within the next 6-month period after the award date.
- GI.** An applicant whose project for technical assistance is disapproved may file a protest with the Board as follows:

1. The applicant shall submit its reasons for protesting the decision of the Board, in writing, within 20 days of the date of the Board's written determination, in a letter addressed to the Chairperson of the Board, with a copy to the Executive Director of the Authority.
2. The Authority shall review the substance of the protest and respond, in writing, by mail, to the applicant, within 30 days. Staff shall distribute a copy of the response to the Board.
3. Upon receipt of the Authority's written response, the applicant may request an opportunity to make a direct presentation to the Board. Staff shall schedule the presentation for the next regular Board meeting.
4. Following the applicant's presentation, the Board shall decide whether to review the applicant's request for technical assistance. Within 30 days after the presentation, the Board shall, in writing, notify the applicant of its final decision regarding the applicant's request for technical assistance.

TABLE A

Priority Criteria		Point Total
<b>1. Evidence of local support for the project based on the following:</b>		<b>35 points</b>
The project is included in the General Plan, Capital Improvement Plan or other similar planning document of the applicant or has been discussed in meetings or study sessions of the applicant's governing board.	Up to 15 points	
The project has public/private partnerships that provide financial or in-kind services.	Up to 10 points	
The project has received a resolution of support from the governing board of the applicant.	5 points	
The project has received voter authorization.*	5 points	
<b>2. Evidence of the project's impact on the community based on the following:</b>		<b>30 points</b>
An economic overview prepared by the Department of Commerce.	Up to 10 points	
The economic impact summary as prepared and submitted by the applicant.	Up to 10 points	
The project addresses health, safety and welfare issues.	Up to 10 points	
<b>3. Evidence of a permanent funding source for the project:</b>		<b>20 points</b>
The project is a likely candidate for a GADA Financial Assistance loan.	Up to 10 points	
A revenue stream has been identified to pay for the project.	5 points	
A funding source has been identified for the project.	5 points	
<b>4. Evidence of sufficient financial and managerial capacity to operate and maintain the project.</b>		<b>15 points</b>
<b>Maximum Point Total</b>		<b>95/100 points</b>

\* State law does not require tribal governments to obtain voter authorization for infrastructure projects, therefore, technical applications received from tribal governments will be based on a 95-point scale.