

## NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first 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. 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 making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

### NOTICE OF PROPOSED RULEMAKING

#### TITLE 7. EDUCATION

#### CHAPTER 2. STATE BOARD OF EDUCATION

#### PREAMBLE

- 1. Sections Affected**  
R7-2-1116  
R7-2-1116.01
- Rulemaking Action**  
New Section  
New Section
- 2. The specific authority for rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**  
Authorizing statute: A.R.S. § 15-213  
Implementing statute: A.R.S. § 15-213(J)
- 3. A list of all previous notices appearing in the Register addressing the proposed rules:**  
Notice of Rulemaking Docket Opening: 9 A.A.R. 5604, December 26, 2003  
Notice of Rulemaking Docket Opening: 10 A.A.R. 909, March 5, 2004
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**  
Name: Christy Farley  
Executive Director, State Board of Education  
Address: 1535 W. Jefferson, Room 418  
Phoenix, AZ 85007  
Telephone: (602) 542-5057  
Fax: (602) 542-3046  
E-mail: cfarley@ade.az.gov
- 5. An explanation of the rules, including the agency's reasons for initiating the rules:**  
The State Board of Education is seeking to add new Sections to the Board rules, R7-2-1116 and R7-2-1116.01, governing school district procurement to meet the requirements of A.R.S. § 15-213(J). These optional alternative methods include: construction-manager-at-risk, design-build, job-order-contracting, and qualified select bidders list.
- 6. A reference to any study relevant to the rules that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rules or proposes not to 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:**  
Not applicable
- 7. 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:**  
The proposed rules will not diminish any previous grant of authority of a political subdivision of this state.
- 8. The preliminary summary of the economic, small business, and consumer impact:**  
Neither the State Board of Education, the Department of Education, nor any school districts or other political subdivisions will be subject to additional costs by these rules. There will be no effect on small business or on state revenues, and there is not a less-intrusive method for accomplishing the goals achieved by these rules.

Notices of Proposed Rulemaking

The economic and consumer impact is expected to be positive for school districts by allowing districts to procure construction services in a manner that best meets their needs while providing adequate safeguards in the procurement process and insuring cost effectiveness.

**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: Christy Farley  
Executive Director, State Board of Education

Address: 1535 W. Jefferson, Room 418  
Phoenix, AZ 85007

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**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:**

An oral proceeding on the proposed rulemaking is scheduled as follows:

Date: April 15, 2004

Time: 9:00 a.m.

Location: State Board of Education  
1535 W. Jefferson, Room 417  
Phoenix, AZ 85007

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

Not applicable

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

None

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

TITLE 7. EDUCATION

CHAPTER 2. STATE BOARD OF EDUCATION

ARTICLE 11. SCHOOL DISTRICT PROCUREMENT CONTINUED  
PROCUREMENT OF CONSTRUCTION

Section

R7-2-1116. Procurement of Construction Using Alternative Project Delivery Methods

R7-2-1116.01. Qualified Select Bidders List

ARTICLE 11. SCHOOL DISTRICT PROCUREMENT CONTINUED  
PROCUREMENT OF CONSTRUCTION

**R7-2-1116. Procurement of Construction Using Alternative Project Delivery Methods**

**A. Definitions.**

1. “Alternative project delivery methods for construction” means any one of the following: construction-manager-at-risk, design-build, qualified select bidders list, and job-order-contracting construction services.
2. “Common purpose” means either: (1) project(s) of similar scope constructed on single or multiple sites that are performed concurrently or (2) project(s) of different scopes on single or multiple sites that are interdependent upon each other.
3. “Construction-Manager-At-Risk” shall be used in this Section consistent with the definition in A.R.S. § 34-101(4).
4. “Design-Bid-Build” shall be used in this Section consistent with the definition in A.R.S. § 34-101(8).
5. “Design-Build” shall be used in this Section consistent with the definition in A.R.S. § 34-101(9).
6. “Findings” mean the justification provided by a school district governing board regarding their decision to use an alternative project delivery method for construction that outlines the positive public benefits of the selected method. Findings shall address such things as industry practices, surveys, trends, past experiences, evaluations of completed projects, and related information regarding the expected benefits and drawbacks of particular Alternative Project Delivery Methods. To the extent practicable, such findings should relate back to the specific characteristics of the

project or projects at issue. Required areas shall be addressed as specified in R7-2-1116(B)(3).

7. "Job-Order-Contracting" shall be used in this Section consistent with the definition in A.R.S. § 34-101(16).
8. "Prospective Proposer" means a prime contractor or construction materials supplier who submits a proposal in response to a Request for Qualifications under a Qualified Select Bidders List process.
9. "Qualified Select Bidders List" means a selection process for establishing a list of best-qualified prime contractors and/or construction material suppliers for a specific single project. The selection process is based upon listed evaluation criteria and conducted through a Request for Qualifications. Once the selection process is complete, the qualified bidders are invited to submit a sealed competitive bid based upon architectural/engineering plans and specifications or material specifications.
10. "Specific, single project" means a project that is constructed at a single location, at a common location or for a common purpose.

**B.** Use of Alternative Project Delivery Methods.

1. Alternative project delivery methods for construction shall be procured as provided in this Section, except as authorized by R7-2-1024, R7-2-1033, R7-2-1053, R7-2-1056, and R7-2-1111 through R7-2-1115.
2. Use of Alternative Project Delivery Methods (APDM) shall be directed by a school district's governing board as alternatives to the prescribed public contracting practices in Arizona, and their use must be justified in accordance with the public contracting law and these rules, including providing findings.
3. An approved copy of the findings shall be sent to the agency overseeing funding. These findings shall be a positive measure of public benefit and shall include information pertaining to a minimum of nine identified areas. The nine areas to be addressed and their definitions are:
  - a. Cost Control – Lack of definition and many options on a project require a project delivery process where the designer, contractor and school district work together to produce a best value design solution for a given budget. This is accomplished through contractor and designer value engineering efforts making trade-offs of different design solutions with the school district. A statement shall be included identifying whether the cost of using an alternative project delivery method is less than, equal to, or greater than the same project delivered by a traditional design-bid-build procurement method.
  - b. Value Engineering – The advantages provided by early involvement of the contractor in the design phase of the project. Value engineering includes constructability reviews, materials reviews, and design consultation. These services should result in increased project quality and lower lifetime costs associated with the project.
  - c. Market Conditions – Local and national economic conditions and the availability of various materials and services in the local construction market.
  - d. Schedule – Critical timing of construction that may have to be phased or may need to be tailored to educational schedules.
  - e. Specialized Expertise – Unique features or functional requirements of the project that make past experience with similar situations or detailed knowledge critical to project success.
  - f. Technical Complexity – Any unusual or particularly technically- sensitive aspects of the project that require specific skills or experience. This may also include the district's need to have the CMAR or design-build firm provide financing for the project as well as operations and maintenance services.
  - g. Project Management – An evaluation of the district's ability to manage the project, in terms of experience, manpower, and the understanding and implementation of partnering and teambuilding concepts. These factors may indicate that an alternate or additional source of project management is warranted.
  - h. Job-Order-Contracting – A determination that the job-order-contracting method of project delivery will provide the school district with efficiency and economy in establishing a requirements contract for indefinite quantities of construction where construction services are to be performed as specified in job orders issued during the contract. Efficiency and economy may include, but are not limited to increased competition for multiple projects, reduced bidding effort for the school district and vendors, and/or management of a single contract.
  - i. Quality Control – A determination that pre-qualifying select bidders will improve quality without restricting competition.
4. Each project shall be a specific, single project. No project may be added to the scope of work that was not defined in the Request for Qualifications or Request for Proposal.

**C.** Selection Committee. A selection committee shall be established and utilized when a school district governing board approves using one of the following alternative project delivery methods of construction: construction-manager-at-risk, design-build, or job-order-contracting.

1. The school district shall establish a qualified selection committee for each construction-manager-at-risk, design-build, and job-order-contracting procurement. The selection committee shall consist of not less than five and no more than seven members and shall include at least one person who is a senior management employee of a licensed contractor and one person who is an architect or an engineer who is registered pursuant to A.R.S. § 32-121. Members of the selection committee may be employees of the school district or outside consultants.

Notices of Proposed Rulemaking

- a. Outside contractors, architects and engineers serving on a selection committee shall not receive compensation from the school district for performing this service, but the school district may reimburse them for travel, lodging and other expenses incurred in connection with service on a selection committee.
  - b. A person who is a member of a selection committee shall not be a contractor under the construction manager-at-risk, design-build, or job-order-contracting contract or provide construction, construction services, materials or services under the contract.
2. The selection committee shall be responsible for performing the following:
- a. Evaluation of the statements of qualifications and performance data that are submitted in response to the school district's request for qualifications for the proposed contract.
  - b. If determined by the school district and included in the request for qualifications, conducting discussions with at least three but not more than five persons or firms as specified in the request for qualifications regarding the contract and the relative methods of approach for furnishing the required construction services.
  - c. Selecting a short list of three persons or firms, in order of preference and based on criteria published in the request for qualifications, the selection committee deems to be the most qualified to provide the construction services.
    - i. The selection of the short list and order of preference shall be based solely on demonstrated competence, including the management of subcontractors, and qualifications. Selection shall not include consideration of fees, price, staff hours or any other cost information.
    - ii. Selection criteria shall include a subcontractor management plan. This plan shall be submitted by each proposing firm and contain information as to how the firm proposes to manage the subcontracting of the project or job orders. The selection panel shall use this information as part of the basis of selection and the school district shall incorporate this plan, in part or in whole, into the contract as the school district so decides.
    - iii. If only two responsible and responsive persons or firms respond to the solicitation, the selection committee may proceed with the selection process with those persons or firms, or re-advertise pursuant to this subsection as the selection committee deems necessary or appropriate.

**D. Contract awards.**

1. The school district shall award a contract for construction manager-at-risk, design-build, and job-order-contracting alternative project delivery methods of construction services to one of the persons or firms on the short list prepared by the selection committee. An exception may be made if only two persons or firms that the selection committee determines are qualified respond to the request for proposals or if one of the three persons or firms drops out of the selection process so that only two persons or firms remain on the shortlist. In the case of an exception, the school district may elect to proceed with the selection process with the two persons or firms or elect to re-advertise. The decision to proceed or re-advertise shall be made by the school district, as determined in its best interests.
2. Contract awards shall be made through a one-step or two-step process as follows:
  - a. A one-step selection process may be used for any of the alternative project delivery methods for construction. This process shall include:
    - i. The school district issuing a request for qualifications to all vendors registered for construction or construction services on the school district's bidders list. The request for qualifications shall also be distributed to persons or firms who have submitted annual statements of qualifications for the specified construction services.
    - ii. A request for statements of qualifications that includes the requirements outlined in R7-2-1117(C).
    - iii. Evaluation of the statements of qualifications and performance data as outlined in R7-2-1116(C)(2) by the school district.
    - iv. Pending completion of subsections (D)(2)(a)(i) through (D)(2)(a)(iii), the school district shall enter into negotiations for a contract with the highest qualified person or firm for the construction services. The negotiations shall include consideration of compensation and other contract terms that the school district determines to be fair and reasonable. In making this decision, the school district shall take into account the estimated value, scope, complexity and nature of the construction services to be rendered.
    - v. If the school district is unable to negotiate a satisfactory contract, including compensation and other contract terms determined to be fair and reasonable to the school district, with the person or firm considered to be the most qualified under subsection (D)(2)(a)(iv), the school district shall formally terminate negotiations with that person or firm. The school district may undertake negotiations with the next most qualified person or firm in sequence until an agreement is reached or a determination is made to reject all persons or firms on the short list.
    - vi. If a contract for construction services is entered into pursuant to this subsection, construction shall not commence until the school district and contractor agree in writing on a fixed price or a guaranteed maximum price for the construction to be commenced.

- b. A two-step selection process may be used for either a design-build or job-order-contracting alternative project delivery method construction service. This process shall include:
- i. The school district issuing a request for qualifications to all vendors registered for construction or construction services on the school district's bidders list. The request for qualifications shall also be distributed to persons or firms who have submitted annual statements of qualifications for the specified construction services.
  - ii. A request for statements of qualifications that includes the requirements outlined in R7-2-1117(C).
  - iii. Evaluation of the statements of qualifications and performance data as outlined in R7-2-1116(C)(2) by the school district.
  - iv. Pending completion of subsections (D)(2)(b)(i) through (D)(2)(b)(iii), the school district shall issue a request for proposal to the persons or firms on the short list. The request for proposal shall include the following:
    - (1) The school district's project schedule and project final design and construction budget or life cycle budget for a procurement that includes maintenance services or operations services.
    - (2) A statement that the contract will be awarded to the person or firm whose proposal receives the highest number of points under the scoring method specified in the solicitation.
    - (3) A description of the scoring method, including a list of the factors and the number of points allocated to each factor. The factors in the scoring method shall include:
      - (a) Offeror qualifications.
      - (b) Offeror financial capacity.
      - (c) Compliance with the school district's project schedule.
      - (d) An offeror quality management plan.
      - (e) A subcontractor management plan that contains information as to how the firm proposes to manage the subcontracting of the project or job orders.
      - (f) For design-build construction services, if the request for proposals does not contain the specifications prescribed in subsection (D)(h)(iii) and for job-order-contracting construction services, the price or life cycle price for procurements that include maintenance services, operations services or finance services.
      - (g) Other evaluation factors as determined by the school district.
      - (h) For design-build construction services only:
        - (i) Demonstrated compliance with the design requirements.
        - (ii) The design requirements.
        - (iii) Compliance of the offeror's price or life cycle price for procurements that include maintenance services, operations services or finance services with the school district's budget as prescribed in the request for proposals, if the request for proposals specifies that the school district will spend its project budget and not more than its project budget and is seeking the best proposal for the project budget.
    - (4) A requirement that each offeror submit separately a technical proposal and a price proposal and that the offeror's entire proposal is responsive to the requirements in the request for proposals. For design-build construction services, the price in the price proposal shall be a fixed price or a guaranteed maximum price.
    - (5) A statement that in applying the scoring method, the selection committee will separately evaluate the technical proposal and the price proposal and will evaluate and score the technical proposal before opening the price proposal.
    - (6) If the school district desires to conduct discussions with offerors, a statement that discussions may be held and a requirement that each offeror submit a preliminary technical proposal before the discussions are held.
    - (7) The factors listed in R7-2-1042(A) that are applicable to procurement.
  - v. If included by the school district in the request for proposals, the selection committee shall conduct discussions with all persons or firms that submit preliminary technical proposals. Discussions shall be for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair treatment with respect to any opportunity for discussion and for clarification by the owner.
  - vi. Revision of preliminary technical proposals shall be permitted after submission of preliminary technical proposals and before award for the purpose of obtaining best and final proposals. Best and final proposals shall be obtained in accordance with R7-2-1048. In conducting any discussions, information derived from proposals submitted by competing offerors shall not be disclosed to other competing offerors.
  - vii. After completion of any discussions pursuant to subsection (D)(2)(b)(v) or if no discussions are held, each offeror shall submit separately its final technical proposal and its price proposal.

Notices of Proposed Rulemaking

- viii. Before opening any price proposal, the selection committee shall open and evaluate the final technical proposals and score the final technical proposals using the scoring method in the request for proposals. No other factors or criteria may be used in evaluation and scoring.
  - ix. After completion of the evaluation and scoring of all final technical proposals, the selection committee shall open, evaluate and score the price proposals, and complete the scoring of the entire proposals using the scoring method in the request for proposals. No other factors or criteria may be used in evaluation and scoring.
  - x. The school district shall award the contract to the responsive and responsible offeror whose proposal receives the highest score under the method of scoring in the request for proposals. No other factors or criteria may be used in evaluation and award.
  - xi. The procurement file shall contain the combined tabulations signed by all members of the selection committee and the written basis on which the selection is made in the first step, and the award is made in the second step, including price competition evaluation in step two.
  - xii. The proposals shall be open to public inspection after the contract is awarded and the school district has executed the contract. To the extent that the offeror designates and the school district concurs, trade secrets and other proprietary data contained in a proposal shall remain confidential.
  - xiii. For design-build construction services only, the school district shall specify in the request for proposals and award a stipulated fee equal to a percentage of the school district's project final design and construction budget as prescribed in the request for proposals, but not less than two-tenths of one percent of the project final design and construction budget, to each short list offeror who provides a responsive, but unsuccessful, proposal. If the procurement officer does not award a contract, all responsive short list offerors shall receive the stipulated fee based on the school district's estimate of the project final design and construction budget as included in the request for proposals.
  - xiv. The procurement officer shall pay the stipulated fee to each offeror within ninety days after the award of the initial contract or the decision not to award a contract. In consideration for paying the stipulated fee, the procurement officer may use any ideas or information contained in the proposals in connection with any contract awarded for the project, or in connection with a subsequent procurement, without any obligation to pay any additional compensation to the unsuccessful offerors.
  - xv. Notwithstanding the other provisions of this subsection, an unsuccessful short list offeror may elect to waive the stipulated fee. If an unsuccessful short list offeror elects to waive the stipulated fee, the school district may not use ideas and information contained in the offeror's proposal, except that this restriction does not prevent the school district from using any idea or information if the idea or information is also included in a proposal of an offeror that accepts the stipulated fee.
3. When using the two-step selection process, and if so stated in the request for proposals, the school district may award multiple contracts for job-order-contracting, if such awards are determined to be in the best interests of the school district.
  4. The contract requirements for construction-manager-at-risk and design-build shall be written in multiple parts, or individual contracts prepared that separate any pre-construction services, design services, maintenance services, operations services and finance services from construction services.
  5. The school district shall award the construction-manager-at-risk contract at the conceptual stage of the project prior to schematic design being completed. This helps assure the appropriate use of the delivery method by engaging the construction-manager-at-risk during design.
  6. For a one-step alternative project delivery methods for construction selection, the school district shall retain in the contract file the combined tabulation signed by all selection panel members and written documentation detailing the basis of the decision to make the award. In the case of a two-step process for design-build and job-order-contracting, the same basis of selection for the first step shall be retained and the same information for the second step shall also be retained, including the price competition evaluation.
  7. The school district shall perform a detailed review of the estimate that backs up the guaranteed maximum price. The school district should consider using the architect, engineer or professional consultant to assist the school district should the review be outside the school district's expertise. In no case shall the school district award the construction phase of a construction-manager-at-risk or design-build project if the presented guaranteed maximum price is greater than the school district's budget for the project. The budget is the sum of the authorizing state agency funds plus school district funds.
  8. During negotiations for the construction-manager-at-risk contract, the school district shall determine that the pre-construction services, general conditions, schedule, construction contingency and construction fees are reasonable and justified and these shall be approved by the school district's governing board.
- E. Receipt and opening of statements of qualifications and proposals.**
1. Statements of qualifications and proposals shall be received and opened in accordance with R7-2-1045(A) and (B). Late proposals, modifications, or withdrawals shall be considered in accordance with R7-2-1044 and R7-2-1049.

2. A school district may cancel a request for qualifications or a request for proposals or reject in whole or in part any or all submissions of qualifications or proposals as specified in the solicitation if it is in the best interest of the school district. The school district shall make the reasons for cancellation or rejection part of the procurement file.

**F. Contractor licenses.**

1. The contractor for construction-manager-at-risk, design-build or job-order-contracting construction services is not required to be registered to perform design services pursuant to Arizona Revised Statutes, Title 32, Chapter 1 if the person or firm actually performing the design services on behalf of the contractor is appropriately registered.
2. The contractor for construction-manager-at-risk, design-build or job-order-contracting construction services is not required to be licensed to perform construction pursuant to Arizona Revised Statutes, Title 32, Chapter 10 if the person or firm actually performing the construction on behalf of the contractor is appropriately licensed.

**G. Contract and performance requirements.**

1. The school district shall procure design, engineering and other specified professional services relating to a construction-manager-at-risk construction services project pursuant to R7-2-1117 through R7-2-1123.
  2. The school district shall negotiate pre-construction services, general conditions and construction fees for construction-manager-at-risk and design-build projects that are reasonable and justified. Such fees shall be part of the construction-manager-at-risk or design-build contract.
  3. For job-order-contracting construction services projects, if the school district does not include design, engineering and other specified professional services in the job-order-contracting construction services contract, the school district shall procure such services pursuant to R7-2-1117 through R7-2-1123.
  4. The school district shall ensure that no job order exceeds the dollar amount determined pursuant to A.R.S. § 41-2578(J)(1). This maximum amount shall not be more than \$750,000. Requirements shall not be artificially divided or fragmented in order to constitute a job order that satisfies this requirement.
  5. The school district shall review all job orders for accuracy of the estimate and document the basis for acceptance of the estimate.
  6. If the contractor subcontracts or intends to subcontract part or all of the work under a job order, and if the job-order-contracting construction services contract includes descriptions of standard individual tasks, standard unit prices for standard individual tasks and pricing of job orders based on the number of units of standard individual tasks in the job order:
    - a. The contractor has a duty to deliver promptly the following to each subcontractor invited to bid a coefficient to the contractor to do all or part of the work under one or more job orders:
      - i. A copy of the descriptions of all standard individual tasks on which the subcontractor is invited to bid.
      - ii. A copy of the standard unit prices for the individual tasks on which the subcontractor is invited to bid.
    - b. If not previously delivered to the subcontractor, the contractor has a duty to deliver promptly the following to each subcontractor invited to work, or that has agreed to do any of the work, included in any job order:
      - i. A copy of the description of each standard individual task that is included in the job order and that the subcontractor is invited to perform.
      - ii. The number of units of each standard individual task that is included in the job order and that the subcontractor is invited to perform.
      - iii. The standard unit price for each standard individual task that is included in the job order and that the subcontractor is invited to perform.
  7. The school district or the school district's representative shall verify all supporting pay application documents for accuracy as they are submitted by the construction-manager-at-risk, design-build and job-order-contracting firm for payment. After substantial completion, but before final closeout, the school district shall retain the services of a qualified third party to perform a financial audit of the construction portion of the project. Final cost reimbursements shall be made subject to the final audit adjustment, and the contract shall establish an audit process to ensure the contract costs are allowable, properly allocated and reasonable.
  8. For job-order-contracting job orders, the school district shall set administrative limits to assure the \$750,000 limit for each job order is not violated. The school district shall review all job orders for accuracy of the estimate and document the basis for acceptance of the estimate. When a job order is \$100,000 or larger and is being estimated without a pre-agreed upon unit price book, the school district shall have an independent analysis of the job order costs. This analysis shall be documented. When job-order-contracting job orders are accomplished under a guaranteed maximum price type construction without a unit price book, the process shall be open book. Job-order-contracting contracts shall have a requirement for a good faith effort to obtain a ten percent small and disadvantaged business goal.
- H. Prohibitions.** Notwithstanding anything to the contrary in this Section or this Article, a school district shall not:
1. Enter into a contract as contractor to provide construction manager-at-risk construction services, design-build construction services or job-order-contracting construction services.
  2. Contract with itself, with another purchasing agency, with this state or with any other governmental unit of this state or the federal government for the school district to provide construction manager-at-risk construction services, design-build construction services or job-order-contracting construction services.

3. The prohibitions prescribed in subsections (H)(1) and (2) do not prohibit a school district from providing construction for itself as provided by law.
- I.** Annual report. On or before January 15 of each year, any school district that uses construction manager-at-risk, design-build or job-order-contracting to procure construction services in a calendar year shall transmit to the Secretary of State a report on the benefits associated with the use of construction manager-at-risk, design-build or job-order-contracting to procure construction services. The report shall include the number of projects completed in the preceding calendar year using the procurement methods, the cost and description of each project and an estimate of any cost savings or other benefits realized through the use of the procurement method.
- J.** Bid security.
1. Bid security executed in accordance with R7-2-1111(C), shall be provided for construction manager-at-risk, design-build and job-order-contracting procurements, if the school district estimates that the budget for construction, excluding the cost of any finance services, maintenance services, operations services, design services, pre-construction services or other related services included in the contract, will be more than the amount established by A.R.S. § 15-213(I):
    - a. Design-build construction services: 10 percent of the school district's construction budget for the project as described in the request for proposals, excluding finance services, maintenance services, operations services, design services, pre-construction services or any other related services included in the contract.
    - b. Job-order-contracting construction services: The amount prescribed by the school district in the request for proposals, but not more than 10 percent of the school district's estimated budget for construction during the first year under the contract, excluding any finance services, maintenance services, operations services, design services, pre-construction services or other related services included in the contract.
  2. Nothing in this Section prevents the school district from requiring such bid security in relation to any construction services contract.
- K.** Contract performance and payment bonds. Contract performance and payment bonds executed in accordance with R7-2-1112, shall be provided for construction manager-at-risk, design-build and job-order-contracting contracts, if the school district estimates that the budget for construction, excluding the cost of any finance services, maintenance services, operations services, design services, pre-construction services or other related services included in the contract, will be more than the amount established by A.R.S. § 15-213(I):
1. Performance and payment bonds for construction manager-at-risk or design-build contracts shall be in an amount equal to 100 percent of the amount of construction services in the contract. The amount of the bonds shall not include the cost of any design services, pre-construction services, finance services, maintenance services, operations services and other related services included in the contract. The bonds shall cover performance of construction included in the contract and shall not cover performance of any design services, pre-construction services, finance services, maintenance services, operations services or other related services included in the contract.
  2. Performance and payment bonds for job-order-contracting contracts shall be in an amount equal to 100 percent of the amount of construction services in the contract. The amount of the bonds shall not include any design services, pre-construction services, finance services, maintenance services, operations services or other related services included in the contract, shall initially be based on the school district's estimate of the amount of construction that will be done under the contract and, for multiyear contracts, may be a single bond for the full term of the contract or a separate bond for each year of the contract, as determined by the school district.
- L.** Payment and retention.
1. The school district shall verify the accuracy of all construction manager-at-risk, design-build and job-order-contracting pay applications prior to paying the contractor.
  2. Payment retention for construction manager-at-risk and design-build contracts shall be in accordance with R7-2-1114.
  3. Payment retention is not required for job-order-contracting construction services contracts. However, the school district may elect to require retention for a job-order-contracting construction services contract. A school district requiring payment retention for a job-order-contracting contract shall comply with the following:
    - a. Retention shall be 5 percent of each payment.
    - b. Retention applicable to each job order shall be released within 60 days after final completion of the job order and acceptance of the work under the job order.
    - c. No retention on the job order may be released until that time.
    - d. The retention percentage shall not be increased.
  4. Retention applies only to amounts payable for construction and does not apply to amounts payable for design services, pre-construction services, finance services, maintenance services, operations services or any other related services included in the contract.

**R7-2-1116.01. Qualified Select Bidders List**

- A.** Sealed prime contractor or construction materials supplier qualifications proposals shall be solicited through "Request for Qualifications."
1. Request for qualifications shall be issued at least 21 days before the time and date set for submission.
  2. Use of the qualified select bidders list shall be restricted to the specific project(s) identified in the request for qualifications.
  3. The qualified select bidders list must consist of at least three prime contractors when a contractor is solicited or three construction material suppliers when material suppliers are solicited.
  4. The qualified select bidders list for any specific project(s) expires one year after its establishment and is not renewable.
- B.** The Request for Qualifications. The Request for Qualifications shall include the following:
1. Notice that all information and qualifications submittals by the prospective proposers will be made available for public inspection following the establishment of a qualified select bidders list.
  2. Instructions and information to prospective proposers concerning the qualifications submittal requirements, including the time and date set for submittal deadline, the address of the office at which the submittals are to be received, the period during which the submittals shall be accepted, and any other special information.
  3. The criteria to be used in the qualifications evaluation, which shall include at a minimum:
    - a. Firm's capabilities and qualifications for performing the scope of work;
    - b. Contractors' or materials suppliers' project team, key member's education and training;
    - c. Method of Approach, including subcontractor plan, safety plan;
    - d. Projected construction schedule;
    - e. Current workload;
    - f. Five most recent representative examples of similar work along with references for each example;
    - g. Current bonding availability and capacity;
    - h. Any judgment or liens against the prospective proposer within the last three years;
    - i. Any current unresolved bond claims against the prospective proposer;
    - j. Any deficiency orders issued against the prime contractor by the Arizona Registrar of Contractors within the last three years; and
    - k. Any filing under the United States Bankruptcy Code, assignments for the benefit of creditors, or other measures taken for the protection against creditors during the last three years.
  4. The scope of work, including a list of specific projects, for which qualifications are being requested.
  5. The anticipated evaluation period and selection of a qualified select bidders list.
  6. The type of contract to be used.
  7. The name of the district representative or district representatives.
  8. The expiration date of the qualified select bidders list if less than one year.
  9. The district reserves the right to conduct interviews as part of the evaluation process.
- C.** Pre-Proposal Conferences. The school district may conduct a pre-proposal conference not less than 14 days prior to the qualifications submittal date for the purposes of explaining the requirements of the request for qualifications.
- D.** Amendments to Request For Qualifications.
1. An amendment to a request for qualifications shall be issued if necessary to do any of the following:
    - a. Make changes in the Request for Proposal;
    - b. Correct defects or ambiguities; or
    - c. Furnish to other prospective proposers information given to any other prospective proposer, if the information will assist the other prospective proposers in submitting their qualifications proposal or if the lack of the information will prejudice the other prospective proposers.
  2. Amendments to request for qualifications shall be so identified and shall be distributed to all persons to whom the original request for qualifications was distributed by the school district.
  3. Amendments to request for qualifications shall be issued within a reasonable time before the submittal date to allow prospective proposers to consider them in preparing their qualification proposals. If the school district determines that the time and date set forth in the request for qualifications does not permit sufficient time for proposal preparation, the time and date for the submittal shall be extended in the amendment or, if necessary, by telegram, or telephone or electronic communication and confirmed in the amendment.
- E.** Pre-submittal modification or withdrawal of Qualifications Proposals.
1. A prospective proposer may modify or withdraw their proposal at any time before the prescribed submittal deadline if the modification or withdrawal is received before the time and date set for the submittal at the location designated in the request for qualifications.
  2. All documents concerning a modification or withdrawal of a proposal shall be retained in the official records of the school district.

Notices of Proposed Rulemaking

- F.** Late submittals, late withdrawals and late modifications.
1. A submittal, modification or withdrawal is late if it is received at the location designated in the request for qualifications for receipt of qualification proposals after the time and date set for the submittal.
  2. A late qualification proposal, late modification, or late withdrawal shall be rejected, unless the qualifications proposal, modification or withdrawal would have been timely received but for the action or inaction of school district personnel and is received before the qualified select bidders list is established.
  3. Prospective proposers submitting qualifications proposals, modifications, or withdrawals that are rejected as late shall be so notified as soon as practicable.
  4. All documents concerning acceptance of a late qualifications proposal, late modification, or late withdrawal shall be retained in the official records of the school district.
- G.** Receipt, opening and recording qualifications proposals.
1. Each qualifications proposal and modification shall be time and date stamped upon receipt and stored unopened in a secure place until the date and time set forth in the request for qualifications.
  2. Qualifications proposals and modifications shall be opened publicly at the date and time designated in the request for qualifications and in the presence of one or more witnesses. The name of each proposer and any other relevant information deemed appropriate by the school district shall be recorded. The record shall be available for public inspection.
  3. After the qualified select bidders list is established, the qualification proposals shall be available for public inspection, except that portion of a qualifications proposal that was designated as confidential pursuant to R7-2-1005 shall remain confidential from and after the time of the submittal deadline.
- H.** Establishing the Qualified Select Bidders List.
1. The qualified select bidders list shall be established by determining the highest rated proposers from the qualification proposals received. This will be a minimum of three and a maximum of five.
  2. The determinations of the highest rated proposers shall be accomplished by having each member of the evaluation committee rate each proposal as to the established criteria for evaluation.
  3. For each qualified select bidders list process there will be established by the school district an evaluation committee composed of five members. These members shall include the project designer(s) or construction material specifier(s), one member from the prime contracting/construction material supplier community that performs commensurate level work and is disinterested in this project, a school district facilities representative and two other members as designated by the school district.
  4. The evaluation committee shall review and rate each proposal received according to the established evaluation criteria. The committee members shall make written notes as appropriate and submit those notes and their evaluation scores to the school district procurement agent. The school district procurement agent shall add the evaluation committee's scores for each qualification proposal and shall sign, date and submit those results to the evaluation committee for final determination of the three to five highest rated proposers, which will then constitute the qualified select bidders list. The one-year eligibility period for the qualified select bidders list shall begin on the date the school district procurement agent signs the evaluation results.
  5. After the initial evaluation, the committee may conduct interviews with the proposers that have been identified to be the most highly qualified before making the final determination of the qualified select bidders list. The committee members shall make written notes as appropriate and submit those notes and their evaluation scores to the school district procurement agent. The school district procurement agent shall add the evaluation committee's scores for each qualification proposal and shall sign, date and submit those results to the evaluation committee for final determination of the three to five highest rated proposers, which will then constitute the qualified select bidders list. The one-year eligibility period for the qualified select bidders list shall begin on the date the school district procurement agent signs the evaluation results.
  6. Once the qualified select bidders list is established a written notice of the selected proposers will be sent to all the proposers.
  7. The qualified select bidders shall then be provided an invitation for bid, which shall then follow the established School District Procurement Rules, R7-2-1024 through R7-2-1032.
  8. After the establishment of the qualified select bidders list, a written record showing the basis for determining the qualified select bidders list shall be prepared by the school district procurement agent, retained in the official records of the school and made available to the public for review.
- I.** Less than three proposals are received.
1. In the event that less than three qualifications proposals are received, this procurement process will cease and the school district may elect to reissue the request for qualifications or pursue other procurement methods.
  2. In the event that less than three proposers are identified by the selection committee as being the most highly qualified, this procurement process will cease and the school district may elect to reissue the request for qualifications or pursue other procurement methods.

NOTICE OF PROPOSED RULEMAKING

TITLE 15. REVENUE

CHAPTER 5. DEPARTMENT OF REVENUE  
TRANSACTION PRIVILEGE AND USE TAX SECTION

PREAMBLE

- 1. Sections Affected**

	<u>Rulemaking Action</u>
R15-5-150	Amend
Article 11	Amend
R15-5-1101	New Section
R15-5-1102	New Section
R15-5-1103	Repeal
R15-5-1104	Repeal
R15-5-1105	Repeal
R15-5-1106	Amend
R15-5-1107	Repeal
R15-5-1109	Repeal
R15-5-1111	Amend
R15-5-1112	Amend
- 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. § 42-1005  
Implementing statute: A.R.S. § 42-5066
- 3. A list of all previous notices appearing in the Register addressing the proposed rules:**

Notice of Rulemaking Docket Opening: 9 A.A.R. 3892, September 5, 2003  
Notice of Rulemaking Docket Opening: 9 A.A.R. 5154, November 28, 2003
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Hsin Pai, Tax Analyst  
Address: Tax Policy and Research Division  
Arizona Department of Revenue  
1600 W. Monroe, Room 810  
Phoenix, AZ 85007  
Telephone: (602) 716-6851  
Fax: (602) 716-7995  
E-mail: paih@revenue.state.az.us  
Please visit the ADOR web site to track the progress of these rules and other agency rulemaking matters at [www.revenue.state.az.us/tra/draftdoc.htm](http://www.revenue.state.az.us/tra/draftdoc.htm).
- 5. An explanation of the rules, including the agency's reasons for initiating the rules:**

The agency is amending the rules to more clearly explain the imposition of transaction privilege tax on businesses subject to tax under the retail and job printing classifications that engage in various sales of printing and photography. The amendments provide clarification to taxpayers on the scope of these business activities, including definitions for the terms "image developing," "job printing," and "photography," and explain the application of related exemptions found in Arizona Revised Statutes (A.R.S.) §§ 42-5061 and 42-5066.
- 6. A reference to any study relevant to the rules that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rules or proposes not to 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
- 7. 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

Notices of Proposed Rulemaking

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

There should not be any significant economic impact as a result of adopting the amended rules. Because the amendments clarify and more accurately explain the scope and nature of the imposition of or exemptions from transaction privilege tax for the aforementioned types of photography and printing sales, a minimal impact may occur for certain vendors due to increased compliance measures. The agency expects that the benefits of the amended rules to the public and the agency from achieving a better understanding of the exemptions will be greater than the costs.

**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: Hsin Pai, Tax Analyst  
Address: Tax Policy and Research Division  
Arizona Department of Revenue  
1600 W. Monroe, Room 810  
Phoenix, AZ 85007  
Telephone: (602) 716-6851  
Fax: (602) 716-7995  
E-mail: paih@revenue.state.az.us

**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:**

An oral proceeding on the proposed rulemaking is scheduled as follows:

Date: Monday, April 5, 2004  
Time: 9:00 a.m.  
Location: Arizona Department of Revenue—North Valley Office  
Conference Room One  
2902 W. Agua Fria Freeway  
Phoenix, AZ 85027

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

None

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

None

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

TITLE 15. REVENUE

CHAPTER 5. DEPARTMENT OF REVENUE  
TRANSACTION PRIVILEGE AND USE TAX SECTION

ARTICLE 1. RETAIL CLASSIFICATION

Section

R15-5-150. Sale of Photography

**ARTICLE 11. SALES TRANSACTION PRIVILEGE TAX – JOB PRINTING CLASSIFICATION**

Section

R15-5-1101. Repealed Definitions

R15-5-1102. Repealed Printer's Sale of Printing

R15-5-1103. Examples of printed articles Repealed

R15-5-1104. Definitions Repealed

R15-5-1105. Printing facilities located out of state Repealed

R15-5-1106. Sale of materials Materials by or to a Printer

R15-5-1107. Typesetting services Repealed

R15-5-1109. Interstate and Foreign Transactions Repealed

R15-5-1111. Cost of printing Miscellaneous Costs of a Printer Are Not Deductions

R15-5-1112. Photography and Image Developing

ARTICLE 1. RETAIL CLASSIFICATION

**R15-5-150. Sale of Photography**

- A. The following definitions apply for purposes of this rule In this Section:
1. “Photographer” means a person who engages in the business of photography. “Image developing” means processing or transferring a pictorial image in connection with a sale of photography from film, paper, video, or another digital or analog storage medium to photographic print paper or another medium that can be used to visually display the pictorial image, other than processing or transferring that is “job printing” as defined in R15-5-1101(B).
  2. “Photography” means the operation process of taking, developing, processing, or printing pictures, prints, or and supplying images on or from for customers, using film, video, or other similar media another digital or analog storage medium.
- B. Gross receipts derived from sales Gross income or gross proceeds of a sale of photography by a photographer are taxable subject to tax under the retail classification this Article when production activity associated with the photography does not indicate a level of service that qualifies the sale as an inconsequential element of a professional or personal service occupation or business under R15-5-104(C). Indications of the level of services that qualify the sale of photography as an inconsequential element include research, script consulting, location changes, director, crew and equipment charges, post- or preproduction charges, and music charges.
- C. Developing of films and making of prints of pictures taken by others are taxable. Developing and printing for drugstores and other retailers are sales for resale. Gross income or gross proceeds of a sale of image developing, without taking of a pictorial image in connection with the sale of photography, are subject to tax under the job printing classification (see Article 11).
- D. Gross income or gross proceeds of a sale of photography to a business that resells the supplied image as a retail sale of tangible personal property are not taxable under this Article.

ARTICLE 11. SALES TRANSACTION PRIVILEGE TAX – JOB PRINTING CLASSIFICATION

**R15-5-1101. Repealed Definitions**

- A. “Image developing” means processing or transferring a pictorial image in connection with a sale of photography from film, paper, video, or another digital or analog storage medium to photographic print paper or another medium that can be used to visually display the pictorial image, other than processing or transferring that is “job printing” as defined in subsection (B).
- B. “Job printing” means the copying or reproducing by a printer of customer-provided document or data, whether textual or pictorial, and whether received by the printer in physical or electronic form, for the ultimate purpose of producing a physical or electronic copy of the document or data. Examples of job printing activities include digital printing, dye sublimation, electrostatic printing, flexography, gravure, inkjet printing, laser printing, lithography, offset printing, optical scanning, photocopying, photofinishing, reprographic printing, screen printing, thermography, xerography, and similar means of duplication.
- C. “Photography” means the process of taking and supplying images for customers, using film, video, or another digital or analog storage medium.
- D. “Printer” means any person who copies or reproduces customer-provided documents or data, whether textual or pictorial, and whether received in physical or electronic form, by any means, process, or method, including any form of job printing, engraving, embossing, or copying.
- E. “Printing” means the finished product produced by the job printing, engraving, embossing, or copying activity of a printer that is held for sale by the printer.
- F. “Qualifying health care organization” has the same meaning as prescribed in A.R.S. § 42-5001(10).
- G. “Qualifying hospital” has the same meaning as prescribed in A.R.S. § 42-5001(11).

**R15-5-1102. Repealed Printer’s Sale of Printing**

- A. Gross income or gross proceeds from all of a printer’s costs or expenses of filling a customer’s printing order are subject to tax under this Article. Examples of costs or expenses include charges for set-up, die cutting, embossing, folding, and binding operations.
- B. Gross income or gross proceeds from an Arizona printer’s sale of printing within Arizona are subject to tax even when the printer conducts the job printing, engraving, embossing, or copying activity outside the state, unless the printing is shipped or delivered outside the state to be used outside the state.
- C. If a shipment or delivery of printing is made by a printer to a common carrier for transportation to a location outside the state, the common carrier is deemed to be the agent of the printer for purposes of determining the printing’s shipment or delivery outside the state, regardless of who is responsible for payment of the freight charges.
- D. Each of the following is a suitable record for substantiating a foreign or other out-of-state shipment:
1. An internal delivery order, supported by receipts for expenses incurred in delivery of printing and signed on the delivery date by the person who delivers the printing;

Notices of Proposed Rulemaking

2. A common carrier's receipt or bill of lading;
3. A parcel post receipt;
4. An export declaration;
5. A receipt from a licensed broker; or
6. Proof of export or import, signed by a customs officer.

**R15-5-1103. ~~Examples of printed articles~~ Repealed**

The printing or other reproduction of books, periodicals, magazines, business or professional stationery, and of any other articles copied or reproduced by printers, engravers, embossers, or copiers, is included under this classification.

**R15-5-1104. ~~Definitions~~ Repealed**

A printer is defined as any person who copies or reproduces an article by any means, process, or method. A printer is subject to the tax, even though conducting the actual printing outside the state, unless the end product is sold outside the state to out-of-state purchasers. Examples include: multigraphing, lithographing, photostating, multilithing, and other similar means of duplicating.

**R15-5-1105. ~~Printing facilities located out of state~~ Repealed**

A printer in this state is subject to the tax on his income from sales within this state even though the printing or reproduction equipment is located in another state.

**R15-5-1106. ~~Sale of materials~~ Materials by or to a Printer**

- A. ~~The income from sales~~ Gross proceeds of a sale of materials made by a job printer of materials on which no printing or other reproduction ~~job printing, engraving, embossing, or copying is done is~~ are subject to tax under the retail classification (see Article 18 1). ~~Examples include stationery paper and greeting cards on which the printer has performed no job printing, engraving, embossing, or copying to the customer's specifications and order.~~
- B. ~~The sale~~ Gross proceeds of a sale to a printer of articles materials which that do not become a ~~an ingredient or component part of the printed or reproduced item~~ a printing is ~~are~~ subject to tax under the retail classification (see Article 18 1) ~~when sold to a user or consumer unless exempt under A.R.S. § 42-5061.~~ Examples of such ~~articles~~ materials include: ~~color process plates, electrotypes, color process plates, film processing chemicals, printing plates, and wood mounts.~~ In contrast, sales of materials such as printing plates that are job printed, engraved, embossed, or copied by the printer for the printer's customer are sales of printing subject to tax under this Article.

**R15-5-1107. ~~Typesetting services~~ Repealed**

Casting and setting monotype, linotype, and photoplates for others are deemed to be services and are not subject to tax. Income from reproduction proofs furnished to a printer in connection with these services is not taxable. However, sales of reproduction proofs to non-printers are taxable.

**R15-5-1109. ~~Interstate and Foreign Transactions~~ Repealed**

- ~~A.~~ Gross receipts from sales of job printing, engraving, embossing or copying made in interstate or foreign commerce by a vendor within this state are deductible from the tax base if the vendor ships or delivers the job printing to a location outside of Arizona for use outside of Arizona.
- ~~B.~~ In meeting the above requirement, if delivery is made by the vendor to a common carrier for transportation to a location outside Arizona, the common carrier is deemed to be the agent of the vendor for purposes of this rule regardless of who is responsible for payment of the freight charges.
- ~~C.~~ Suitable records for substantiating out-of-state shipments may include:
  1. Internal delivery orders supported by receipts of expenses incurred in delivering the property and signed on the delivery date by the person who delivers the property;
  2. Common carrier's receipt or bill of lading;
  3. Parcel post receipt;
  4. Export declaration;
  5. Receipt from a licensed broker; or
  6. Proof of export or import signed by a customs officer.

**R15-5-1111. ~~Cost of printing~~ Miscellaneous Costs of a Printer Are Not Deductions**

- A. A job printer who sublets the printing or other reproduction of an article may not deduct the cost thereof ~~shall not deduct the cost of subletting job printing, engraving, embossing, or copying activities.~~
- B. A job printer may ~~shall not take a deduction for~~ deduct the cost of labor or materials employed in the job printing, engraving, embossing, or copying activity of another person.

**R15-5-1112. ~~Photography and Image Developing~~**

- A. Photography does not fall within this ~~Gross income or gross proceeds of a sale of photography are subject to tax under the retail classification (see Article 1) but is included under the retail classification (see Article 18).~~

- B. Gross income or gross proceeds of a sale of image developing, without taking of an image, are subject to tax under this Article.
- C. Gross income or gross proceeds of a sale of image developing to a business engaged in photography that resells the image developing are nontaxable under this Article.
- D. Gross income or gross proceeds of a sale of image developing either to a qualifying health care organization that uses the image developing solely to provide health and medical-related educational and charitable services or to a qualifying hospital are nontaxable under this Article. An example is image developing of x-ray film or photographs.

## NOTICE OF PROPOSED RULEMAKING

### TITLE 18. ENVIRONMENTAL QUALITY

#### CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY AIR POLLUTION CONTROL

##### PREAMBLE

- 1. Sections Affected** **Rulemaking Action**  
R18-2-309 Amend
- 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. §§ 49-104(A)(1) and (A)(11), and 49-425  
Implementing statute: A.R.S. § 49-426
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**  
Notice of Rulemaking Docket Opening: 10 A.A.R. 508, February 13, 2004
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**  
Name: Kevin Force, Air Quality Division  
Address: ADEQ  
1110 W. Washington  
Phoenix, AZ 85007  
Telephone: (602) 771-4480 (Any ADEQ number may be reached in-state by dialing 1-800-234-5677 and asking for the seven digit extension.)  
Fax: (602) 771-2366  
E-mail: kfl@ev.state.az.us
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**

Summary. ADEQ is proposing revisions to compliance certification requirements under the state's operating permits program, as required by recent revisions to 40 CFR Part 70. EPA has specified a deadline of June 28, 2004 for submittal of program revisions.

Background. State Operating Programs under Part 70 require Responsible Officers (ROs) of major sources of air pollutants to certify compliance with the Clean Air Act. Specifically, ROs must identify in their certification whether the status of compliance with the Act was continuous or intermittent during the period covered by the ongoing certification. Sources may be certified as being in continuous compliance if they were in compliance with all terms and conditions of their permits with no evidence to the contrary (68 FR 38518, June 27, 2003).

In 1997, EPA amended the compliance certification provisions for the State Operating Permits Program, 40 CFR Part 70 (62 FR 54900, October 22, 1997). The 1997 amendments replaced this certification requirement with a requirement to indicate whether the certification was based on *methods* that provide continuous or intermittent *data* and whether deviations, excursions, or exceedences occurred (emphasis added). In 2000, ADEQ amended R18-2-309, making the language of the rule mirror the 1997 changes made to Part 70 by EPA (6 A.A.R. 343, January 14, 2000).

In 1999, Natural Resources Defense Council, Inc. (NRDC) filed a petition with the U.S. Court of Appeals for the D.C. Circuit challenging this and other aspects of the 1997 amendments. NRDC claimed that the 1997 amendments were directly inconsistent with the explicit requirement of the Act that compliance certifications identify whether *compliance* is continuous or intermittent (emphasis added). The Court agreed with NRDC that the 1997 amendments were contrary to the statute, which requires that certification include whether compliance, not just data, is continuous

or intermittent, and remanded the regulations to EPA for revision in accordance with the Court's opinion (194 F.3d 130, October 29, 1999).

On June 27, 2003, EPA published final amendments to the compliance certification provisions for the State Operating Permits Programs (Part 70) (68 FR 38518). Specifically, the regulations now require, as ordered by the Court, that the compliance certification include whether the facility or source has been in continuous or intermittent compliance. EPA removed the language of the 1997 amendments that referred to continuous or intermittent data. State, local, and tribal governments that implement Part 70 operating permits programs were directed to revise their existing compliance certification requirements to make them consistent with the 2003 amendments. In light of the narrow scope of revisions necessary to bring state programs into compliance with the amendments, the Administrator specified a 12-month deadline for submittal of program revisions, or June 28, 2004. ADEQ is therefore requesting that this rule be effective immediately upon filing of the Notice of Final Rulemaking with the Secretary of State, under A.R.S. § 41-1032(A). The proposed revisions to R18-2-309 would put the rule back in compliance with 40 CFR Part 70, by again making the language of R18-2-309 mirror that of the revisions EPA made to the regulation in accordance with the Court's remand; Class I sources would be required to certify that compliance with their permit provisions was continuous. Additionally, R18-2-309 applies to both Class I and Class II sources; Class II sources will also be required to certify continuous compliance with the terms and conditions of their permits.

**6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rule or proposes 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, and any analysis of each 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:**

**Rule Identification**

*Arizona Administrative Code* Title 18, Chapter 2, Article 3; Section R18-2-309.

**Costs**

In the existing rule, sources are required to specify whether their compliance certifications are based on continuous or intermittent *data*. In the new rule, sources are required to certify continuous or intermittent *compliance*. In this way, the rule change will affect the compliance certification *statement* of the source. The rule change does not affect compliance time periods, which are usually based on emission standards. This rule change does not affect any emission standards, nor does it require increased monitoring or testing requirements. As there are no changes in emission standards, monitoring or testing requirements, it is expected that the rule change will not result in increased expenditure for permitted sources, whether Class I or Class II.

Costs to ADEQ are those that may accrue for implementation and enforcement of the new requirements. There were some small incremental costs for this rulemaking, ADEQ does not intend to hire any additional employees to implement or enforce these rules.

**Benefits**

This rulemaking will allow ADEQ to retain Title V permitting authority. If the rulemaking is not approved and submitted to EPA by June 28, 2004, ADEQ will lose that permitting authority.

Benefits accrue to the regulated community when a state agency incorporates a federal regulation in order to become the primary implementer of the regulation, because the state agency is closer to those being regulated and, therefore, is generally easier to contact and to work with to resolve differences, compared with the U.S. EPA, whose regional office for Arizona is in San Francisco. Local implementation also reduces travel and communication costs.

Health benefits accrue to the general public whenever enforcement of environmental laws takes place. Adverse health effects from air pollution result in a number of economic and social consequences, including:

1. Medical costs. These include personal out-of-pocket expenses of the affected individual (or family), plus costs paid by insurance or Medicare, for example.
2. Work loss. This includes lost personal income, plus lost productivity whether the individual is compensated for the time or not. For example, some individuals may perceive no income loss because they receive sick pay, but sick pay is a cost of business and reflects lost productivity.

3. Increased costs for chores and caregiving. These include special caregiving and services that are not reflected in medical costs. These costs may occur because some health effects reduce the affected individual's ability to undertake some or all normal chores, and he or she may require caregiving.
4. Other social and economic costs. These include restrictions on or reduced enjoyment of leisure activities, discomfort or inconvenience, pain and suffering, anxiety about the future, and concern and inconvenience to family members and others.

### Conclusion

In conclusion, the incremental costs associated with this rule are generally low, and apply solely to ADEQ, while the air quality benefits are generally high. In addition, there are benefits to industry from being regulated by a geographically nearer government entity. There are no adverse economic impacts on political subdivisions. There are no adverse economic impacts on private businesses, their revenues or expenditures. The fact that no new employment is expected to occur has been discussed above, in the context of the impact on state agencies. There are no adverse economic impacts on small businesses, although some regulatory benefits will accrue to them. There are no economic impacts for consumers; benefits to private persons as members of the general public are discussed above in terms of enforcement. There will be no direct impact on state revenues. There are no other, less costly alternatives for achieving the goals of this rulemaking.

**Rule impact reduction on small businesses.** A.R.S. § 41-1035 requires ADEQ to reduce the impact of a rule on small businesses by using certain methods when they are legal and feasible in meeting the statutory objectives (see below) for the rulemaking. The five listed methods are:

1. Establish less stringent compliance or reporting requirements in the rule for small businesses.
2. Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses.
3. Consolidate or simplify the rule's compliance or reporting requirements for small businesses.
4. Establish performance standards for small businesses to replace design or operational standards in the rule.
5. Exempt small businesses from any or all requirements of the rule.

**The statutory objectives which are the basis of the rulemaking.** The general statutory objectives that are the basis of this rulemaking are contained in the statutory authority cited in item #2 of this preamble. The specific objective is to implement compliance certification requirements for Class I and Class II sources.

ADEQ has determined that there is a beneficial impact on small businesses in transferring implementation of these rules to ADEQ. In addition, ADEQ is required by EPA to mirror the federal rules without reducing stringency. ADEQ, therefore, has found that it is not legal or feasible to adopt any of the five listed methods in ways that reduce the impact of these rules on small businesses. ADEQ is not aware of any Class I source in Arizona that is a small business. Even if such a source did exist, ADEQ has concluded that each of the listed methods would be illegal in such a case, as federal law now requires that this rule change apply to major sources. Further, as was discussed above, ADEQ has determined that the new rule imposes no changes in emission standards, monitoring or testing requirements. Therefore, ADEQ expects that the rule change will not result in increased costs for permitted sources, whether or not they are small businesses. Exempting small businesses from the rule, or creating a different regulatory scheme for small businesses, however, would result in some increased administrative costs to the agency. Finally, where federal rules impact small businesses, EPA is required by both the Regulatory Flexibility Act and the Small Business Regulatory Enforcement and Fairness Act to make certain adjustments in its own rulemakings.

**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: David Lillie  
Address: ADEQ  
Air Quality Planning Section  
1110 W. Washington  
Phoenix, AZ 85007  
Telephone: (602) 771-4461 (Any extension may be reached in-state by dialing 1-800-234-5677, and asking for a specific number.)  
Fax: (602) 771-2366  
E-mail: Lillie.David@ev.state.az.us

Notices of Proposed Rulemaking

**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:**

Date: April 5, 2004  
Time: 2:00 p.m.  
Location: ADEQ  
1110 W. Washington, Conference Room 250  
Phoenix, AZ  
Close of Comment: 5:00 p.m., April 8, 2004

**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 rule:**

Not applicable

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

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY  
AIR POLLUTION CONTROL

ARTICLE 3. PERMITS AND PERMIT REVISIONS

Section  
R18-2-309. Compliance Plan; Certification

ARTICLE 3. PERMITS AND PERMIT REVISIONS

**R18-2-309. Compliance Plan; Certification**

All permits shall contain the following elements with respect to compliance:

1. The elements required by R18-2-306(A)(3), (4), and (5).
2. Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:
  - a. The frequency for submissions of compliance certifications, which shall not be less than annually;
  - b. The means to monitor the compliance of the source with its emissions limitations, standards, and work practices;
  - c. A requirement that the compliance certification include all of the following (the identification of applicable information may cross-reference the permit or previous reports, as applicable):
    - i. The identification of each term or condition of the permit that is the basis of the certification;
    - ii. The identification of the methods or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period, ~~and whether the methods or other means provide continuous or intermittent data.~~ The methods and other means shall include, at a minimum, the methods and means required under R18-2-306(A)(3). If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the Act, which prohibits knowingly making a false certification or omitting material information;
    - iii. The status of compliance with the terms and conditions of the permit for the period covered by the certification, including whether compliance during the period was continuous or intermittent. The certification shall be based on the methods or means designated in subsection (2)(c)(ii). The certification shall identify each deviation and take it into account for consideration in the compliance certification. For emission units subject to 40 CFR 64, the certification shall also identify as possible exceptions to compliance any period during which compliance is required and in which an excursion or exceedance defined under 40 CFR 64 occurred; and
    - iv. Other facts the Director may require to determine the compliance status of the source.
  - d. A requirement that all compliance certifications be submitted to the Director. Class I permit compliance certifications shall also be submitted to the Administrator.
  - e. Additional requirements specified in sections 114(a)(3) and 504(b) of the Act or pursuant to R18-2-306.01.
3. A requirement for any document required to be submitted by a permit, including reports, to contain a certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this part shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

4. Inspection and entry provisions which require that upon presentation of proper credentials, the permittee shall allow the Director to:
  - a. Enter upon the permittee's premises where a source is located or emissions-related activity is conducted, or where records are required to be kept under the conditions of the permit;
  - b. Have access to and copy, at reasonable times, any records that are required to be kept under the conditions of the permit;
  - c. Inspect, at reasonable times, any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit;
  - d. Sample or monitor, at reasonable times, substances or parameters for the purpose of assuring compliance with the permit or other applicable requirements; and
  - e. Record any inspection by use of written, electronic, magnetic, and photographic media.
5. A compliance plan that contains all the following:
  - a. A description of the compliance status of the source with respect to all applicable requirements.
  - b. A description as follows:
    - i. For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.
    - ii. For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.
    - iii. For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.
  - c. A compliance schedule as follows:
    - i. For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.
    - ii. For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.
    - iii. A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirement for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction non-compliance with, the applicable requirements on which it is based.
  - d. A schedule for submission of certified progress reports no less frequently than every six months for sources required to have a schedule of compliance to remedy a violation. Such schedule shall contain:
    - i. Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones, or compliance were achieved; and
    - ii. An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.
  - e. The compliance plan content requirements specified in this subsection shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under Title IV of the Act and incorporated pursuant to R18-2-333 with regard to the schedule and method(s) the source will use to achieve compliance with the acid rain emissions limitations.
6. If there is a Federal Implementation Plan (FIP) applicable to the source, a provision that compliance with the FIP is required.

**NOTICE OF PROPOSED RULEMAKING**

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

**CHAPTER 1. DEPARTMENT OF COMMERCE**

**PREAMBLE**

**1. Sections Affected**

**Rulemaking Action**

Article 1	Amend
R20-1-101	Renumber
R20-1-102	Renumber
R20-1-103	Renumber
R20-1-104	Renumber
R20-1-105	Renumber
R20-1-106	Renumber
R20-1-107	Renumber
R20-1-108	Renumber
R20-1-109	Renumber
R20-1-110	Renumber
R20-1-111	Renumber
Article 2	Amend
R20-1-201	Renumber
R20-1-201	Amend
R20-1-202	Renumber
R20-1-202	Amend
R20-1-203	New Section
R20-1-204	Renumber
R20-1-204	Amend
R20-1-205	New Section
R20-1-206	Renumber
R20-1-206	Amend
R20-1-207	New Section
R20-1-208	Renumber
R20-1-208	Amend
R20-1-209	Renumber
R20-1-209	Amend
R20-1-210	Renumber
R20-1-210	Amend
R20-1-211	Renumber
R20-1-211	Amend
R20-1-212	Renumber
R20-1-212	Amend
R20-1-213	Renumber
R20-1-213	Amend
R20-1-214	Renumber
R20-1-214	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. § 41-1504(B)(4)

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

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

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

**4. 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

Notices of Proposed Rulemaking

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](http://www.azcommerce.com).

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

The Department is amending this Article for the following reasons:

- a. To reflect legislative changes to implementing statutes affecting the threshold wage and new small employer size requirements.
- b. To provide for separate new employee and incumbent employee training programs.
- c. To bring the Article into conformance with the current stylistic and publishing format of the Governor's Regulatory Review Council and Secretary of State.

This entire Article is being moved to Article 2 to reserve Article 1 for agency general administrative provisions.

**6. A reference to any study relevant to the rules that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rules or proposes not to 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:**

The agency is not relying on any study for this rulemaking.

**7. 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

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

The economic impact of this Article is essentially unchanged from the previous rulemaking, published at 7 A.A.R. 3227, effective July 12, 2001. The Department will re-issue a streamlined economic impact statement for this rulemaking to make it more concise and reader friendly.

Parties affected by this Article are:

**a. Arizona Department of Commerce.**

The Department incurs substantial costs for program administration that includes rulemaking, form preparation, application review, award evaluation, and follow-up monitoring. The benefit to the Department is non-fiscal fulfillment of legislative mandate to implement and maintain the Job Training Program

**b. Employers that apply for a training grant under this Program.**

Applicable employers incur minimal to moderate costs for program application, maintenance, and close-out activities. Costs are offset by the substantial grant award benefit.

**c. Training providers that render service to Program grant-awarded employers.**

The training provider cost-benefit ratio is not readily quantifiable. Depending on the amount or nature of training, cost-benefit relationship may range from minimal to substantial. It is important to note that a training provider may be the employer itself that is the recipient of a grant award.

**d. Employees trained under the Program.**

Other than in time and effort, there appears to be no costs to employees trained under the program. The Department cannot quantify benefits to a trained employee under a Job Training Program grant. Benefits to trained employees are potentially substantial.

**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:**

An interested person may communicate with the agency official listed in item #4 concerning the economic impact statement.

**10. The time, place, and nature of the proceedings for the making, 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:**

Date: Tuesday, April 6, 2004  
Time: 2:00 p.m.  
Location: 1700 W. Washington, Suite 220 Conference Room  
Nature: Oral proceeding to receive public comment

*Arizona Administrative Register / Secretary of State*  
**Notices of Proposed Rulemaking**

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Closure: The public record for this rulemaking shall close at 5:00 p.m. on Friday, April 9, 2004.

**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 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. Definitions  
~~R20-1-103.~~ R20-1-202. Eligibility Criteria Employer Eligibility for a Program Grant  
R20-1-203. Determination of Qualifying Wage Rate  
~~R20-1-102.~~ R20-1-204. Application Process Grant Program Application: Net New Employee; Incumbent Employee  
R20-1-205. Grant Award Funding General Provisions  
~~R20-1-104.~~ R20-1-206. 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 and Reimbursable for Project Costs  
~~R20-1-108.~~ R20-1-210. Statement of Understanding Program Contract  
~~R20-1-109.~~ R20-1-211. Invoices and 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. Protest Contested Cases; Appeals

**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, 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 of employers that submits an application to the Department for a program grant under the Program.  
"Base industry" or "export-oriented industry" means a business that imports money into the area where the business is physically located through the sale of goods or services to customers that reside outside the area.
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 combine 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 comprised of a majority of businesses eligible to participate under this Article; or  
A small business development center established as a partnership between Arizona's community college districts and the U.S. Small Business Administration.
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 Arizona.
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 dependence 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- or part-time hourly or salaried employee that resides in Arizona.
11. "Employer" means an ~~Arizona entity with a unique Federal Employer Identification Number (FEIN);~~ an entity that:  
Has at least one business location in Arizona;  
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 and Article 3 of this Chapter.
13. "Equipment" ~~includes computer hardware and software;~~ means:  
Machinery that has verifiable annual depreciation; or  
Computer hardware or software purchased after a grant's start date prorated to usage time during training.  
"FEIN" means federal employer identification number.
14. "Grant" means funds set aside by the Department for ~~an~~ a qualified employer as reimbursement for allowable ~~Project~~ project costs and the company's matching funds as required under R20-1-108.

*Arizona Administrative Register / Secretary of State*  
**Notices of Proposed Rulemaking**

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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 pre-existing full- or part-time employee or vacant position.
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:
- a. Goods,
  - b. Services,
  - e. Technical assistance,
  - d. Machinery,
  - e. Tools,
  - f. Equipment, ~~and~~
  - g. Training space, ~~or~~  
Trainee wages paid by a small or rural business.
19. “Management fee” means an employer’s ~~cost for~~ grant administration cost.
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 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 in excess of the number of employees listed on an employer’s payroll before any layoffs occurred 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 any member of an employer’s corporate board of directors.
23. “On-the-job training” means training by the employer’s employee while the employee performs regular job activities and the trainee:
- a. ~~Observes,~~
  - b. Assists,
  - e. Receives instruction, or
  - d. 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 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.
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~~ an applicable contract.
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.
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~~ a location or financial records where ~~the a~~ a qualified training provider conducts job training.  
“Small business” has the meaning prescribed under A.R.S. § 41-1544(I)(2).

Notices of Proposed Rulemaking

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.

34. "Urban" means any area not defined as rural.

**~~R20-1-103. R20-1-202. Eligibility Criteria 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 and R20-1-203;
2. Is paying or will pay into the Arizona job training fund at the time of application 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 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 is eligible for:

1. A net new employee program grant if the employer can demonstrate that it is adding net new jobs within the state; or
2. An incumbent employee program grant if the employer is:
  - a. Intending to provide training under the program for incumbent workers; or
  - b. A consortium of employers as defined under R20-1-201.

**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 original applicant employer under R20-1-204. The Council and Department shall determine and apply the qualifying wage rate per county according to the applicant company's:

1. Location;
2. Number of employees; and
3. Determination criteria based on annual wage data used to set the qualifying wage rate at a level that:
  - a. Is at least 30 percent above minimum wage;
  - b. Is not less than 50 percent of unemployment wage rates excluding mining and government; and
  - c. Does not reflect an increase of greater than ten percent more than the previous year's qualifying wage rate.

**B.** 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. Application Process 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;

Notices of Proposed Rulemaking

- b. The corporate headquarters of the business;
  - e. 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;
    - e. 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:
- 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. An indication whether the applicant listed under subsection (A)(1) is:
  - a. A corporate headquarters;
  - b. A research and development facility;
  - c. A cluster industry;
  - d. A base industry; or
  - e. A micro-business;
4. An attached business description that includes:
  - a. The nature of the business or services the applicant provides; and
  - b. Average annual wage data for positions to be trained:
    - i. Job title;
    - ii. Number of positions;
    - iii. Average annual wage before proposed training; and
    - iv. Projected annual average wage after proposed training;
5. Proposed program specifications and supporting documentation:
  - a. Total estimated training costs including the company's matching funds required under R20-1-208 to be paid by the company;
  - b. The applicant's training budget not including expended training funds for the 12-month period before program application;
  - c. Proposed course description;
  - d. Name, address, and telephone number of any person or entity that will design and provide customized training; and
  - e. A description of the applicant's need for customized employee training.
6. The number of current employees:
  - a. In Arizona; and
  - b. Company-wide if a parent company and Arizona subsidiary possess only one FEIN;
7. Any other information required by the Department; and
8. The signature of the applicant company's designated official that verifies:
  - a. The applicant currently pays or will pay into the Arizona job training fund unless the applicant is exempt under A.R.S. § 23-769 or R20-1-202(A)(3);
  - b. The applicant will maintain or increase current training expenditures apart from any granted program funds;
  - c. Any training provider under subsection (A)(7)(c) is competent to provide job-specific training skills as proposed;
  - d. Consent to provide any additional financial information as required by the Department;
  - e. Whether the applicant attempted to acquire training funds in a 180-day period before program application; and
  - f. 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 total number of net new employees to receive training throughout the grant period after program grant award with an indication whether employees would be full- or part-time.
  2. An indication of any layoffs or force reductions in the 18-month period before application that specifies:
    - a. The number of positions eliminated;
    - b. The date of elimination during the 18-month period; 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 incumbents to receive training throughout the grant period after program grant award with an indication whether employees would be full- or part-time.

**R20-1-205. Grant Award Funding General Provisions**

- A.** The Department shall not guarantee grant funding under this Article based solely on an applicant meeting eligibility criteria as prescribed under R20-1-202.
- B.** A qualified employer under this Article may have an active net new employee 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 according to date order that the Department receives an applicant's complete application package as prescribed under R20-1-204.
- D.** The Department shall base a grant amount awarded under this Article on the applicant employer's sliding scale score prescribed as follows:
  - 1. Net new employee program under R20-1-206(B); or
  - 2. Incumbent employee program under R20-1-207(B).
- E.** The Department shall award a grant amount range per employee as follows:
  - 1. For an employer with 100 or more employees:
    - a. Located in an urban area: \$2,000 to \$5,000; or
    - b. Located in a rural area: \$5,000 to \$8,000.
  - 2. For an employer with fewer than 100 employees or that is located in an enterprise zone: \$5,000 to \$8,000.
- F.** The Department shall not award a program grant for an amount greater than stated on an applicant's proposed training budget.

**~~R201-104. R20-1-206. 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~~
    - e. ~~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~~
      - 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;
- 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%;
  - e. -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

Notices of Proposed Rulemaking

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 grant amount calculation. The Department shall assign points rounded to the nearest whole number based on the following factors:

1. Industry or facility type. An employer may receive a maximum of 20 points for only one of the following:

a. A base industry;

b. A corporate headquarters;

c. A research and development facility;

d. A cluster industry; or

e. A micro-business.

2. Wage level. An employer shall meet the wage threshold requirement prescribed under A.R.S. § 41-1543(3) for the average wage level of newly created jobs. 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 threshold;

b. 30 points if the average annual wage of all net new employees is 106 to 110 percent of threshold;

c. 40 points if the average annual wage of all net new employees is 111 to 120 percent of threshold;

d. 50 points if the average annual wage of all net new employees is 121 to 130 percent of threshold; or

e. 60 points if the average annual wage of all net new employees is 131 percent or greater than threshold;

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(F) to an employer with a score of at least 20 points; and

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

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

**A.** Sliding scale for grant amount calculation. The Department shall assign points rounded to the nearest whole number based on the following factors:

1. Industry or facility type. An employer may receive a maximum of 20 points for only one of the following:

a. A base 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 for percentage average wage increase at the end of training to incumbent workers trained as follows:

a. 20 points if five percent or less;

b. 40 points if six to ten percent;

c. 60 points if 11 to 15 percent; and

d. 80 points if 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 the 20-point minimum.

**~~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 and Reimbursable 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;~~
  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.~~

Notices of Proposed Rulemaking

- 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 grant funds:
  - 1. To train employees at a level that maintains or exceeds the level of employer training expenditures excluding grant funds for a 12-month period of operation in Arizona 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- or part-time employee that is:
  - 1. Temporary;
  - 2. Employed under a contract;
  - 3. Out-sourced; or
  - 4. Employed by a professional employment organization.
- 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. Employee recruitment expense;
  - 5. Employee hiring expense;
  - 6. Training expense for an employer officer or partner;
  - 7. Signing bonus;
  - 8. Food and beverage;
  - 9. Employee search expense;
  - 10. Relocation expense;
  - 11. Course development or training that does not include an instruction cost;
  - 12. Employee training needs assessment cost;
  - 13. Drug or other testing for employee screening or prescreening purposes;
  - 14. Conference or seminar not resulting in a skill certificate; or
  - 15. 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 applicable costs in a written training plan and budget:
  - 1. Reimbursable or match credit 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. A portion of base wage that does not exceed 25 percent for an existing employee that provides on-the-job training to a trainee under a grant program; or
      - ii. If greater than 25 percent, the documented portion of the base wage for an existing employee that provides on-the-job training to a trainee under a grant program.
    - f. Travel costs that do not exceed ten percent of the grant amount, excluding food and beverage:
      - i. For a qualified training provider that 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 only costs:
    - a. Equipment and machinery;
    - b. Training space;
    - c. Trainee wages excluding employee benefits paid by a small or rural business 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 any cost eligible under subsection (E) before an applicable program's start date.

**R20-1-108, R20-1-210, Statement of Understanding Program Contract**

- A. For an approved application, 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;
    - b. Applicant reimbursement;
    - c. Right to assurance;
    - d. Termination;
    - e. Cancellation;
    - f. Arbitration;
    - g. Applicable law;

- h. Relationship of parties;
  - i. Assignment-delegation;
  - j. Subcontractors;
  - k. Rights and remedies;
  - l. Indemnification;
  - m. Overcharges by antitrust violations;
  - n. Notification;
  - o. Records;
  - p. Accounting principles;
  - q. Audit;
  - r. Adjustment to payments;
  - s. Non-availability of funds;
  - t. Program monitoring;
  - u. Non-discrimination; and
  - v. Modification;
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 employer's cash or in-kind expenditure 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).~~
- D.** If an ~~employer applicant~~ fails to comply with the 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 an 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 a modification approval date.

**R20-1-109, R20-1-211, Invoices and Program Monitoring; Reimbursement Process; Site Visits**

- A.** Filing requirements. An employer under contract with the Department shall:
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. File a quarterly reimbursement request with the Department even if no training has occurred;
    2. Submit the initial progress report and any related paid invoices for reimbursement to the Department within:
      - a. 120 days after the project start date; or
      - b. 150 days if the employer sends a written request for a 30-day extension to the Department; and
    3. Submit all invoices and reimbursement requests within 180 days of:
      - a. The date of an invoiced expense; or
      - b. Completion of the project.
- 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;~~

Notices of Proposed Rulemaking

- b. Net new jobs created;
  - e. 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 filled 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 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. Information for net new and incumbent employee programs:
    - a. Specific training completed during the reporting period;
    - b. For each employee trained under a 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 only; and
      - iii. Evidence documenting that the employer contributed the required match and has included the amount in an approved training plan and budget; and
    - d. A certification under the employer's signature that all information submitted to the Department is true, correct, and complete.
  - 2. In addition to the information required under subsection (B)(1), a grant recipient shall submit to the Department the following program-specific information:
    - a. Net new employee:
      - i. Number of net new jobs created; 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 grant recipient's place of business:
- 1. During the grant period; and
  - 2. Before the Department makes the final funds disbursement 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 for the full scheduled amount.
  2. If the Department determines a contracted employer has not satisfactorily met all contract terms and conditions, the Department shall make a reduced final grant disbursement for an amount based on the contracted employer's actual performance.
  3. If a final grant disbursement calculated under subsection (2) is a negative amount, the Department shall:
    - a. Not make a final grant disbursement; and
    - b. Send written notification to the contracted employer requiring full repayment of the amount owed under this subsection within 30 days after date of the Department's notice.

~~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 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 a training or 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;

Notices of Proposed Rulemaking

- d. Actual training start and completion dates;
  - e. Number of Arizona employees at the project start date; and
  - f. The signature of the contracted entity'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- 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- and part-time positions filled and trained under the grant.
  - 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.**
- 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 only.
- 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 Contested Cases; Appeals**

- 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.
- 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.
- A. Denial of program certification.**
- 1. Initial protest filing procedure. Within 15 days after the date of the Department's notification, a denied party under this subsection may file a written protest with the Director that shall include:
    - a. The name of the petitioning entity;
    - b. The entity's designated representative:
      - i. Name;
      - ii. Title;
      - iii. Full correspondence address;
      - iv. Telephone number; and
      - v. Fax number;
    - c. An attached copy of the Department's denial notice; and
    - d. A statement giving specific reasons, data, or information supporting the entity's position that would warrant the Director's decision to overturn the denial.
  - 2. Initial protest decision. Within 20 days after receipt of complete protest documentation under subsection (A)(1), the Director shall send a written decision to the entity's designated representative under subsection (A)(1)(b).
  - 3. An entity may appeal the Director's decision under subsection (A)(2) according to provisions prescribed under A.R.S. Title 41, Chapter 6, Article 10 and 2 A.A.C. 19.
- B. Denial of a grant award.**
- 1. The provisions of subsections (A)(1) and (A)(2) also apply in a case of initial protest under this subsection.
  - 2. An appellant of the Director's decision under subsection (B)(1) shall follow provisions for legal and contractual remedies prescribed under 2 A.A.C. 7, Article 9.