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# **Department of Economic Security**

## **Five – Year Review Reports**

A.R.S. § 41-1056 requires that at least once every five years, each agency shall review its administrative rules and produce reports that assess the rules with respect to considerations including the rule’s effectiveness, clarity, conciseness and understandability. The reports also describe the agency’s proposed action to respond to any concerns identified during the review. The reports are submitted in compliance with the schedule provided by the Governor’s Regulatory Review Council. A.R.S. § 18-305, enacted in 2016, requires that statutorily required reports be posted on agency’s website.

**Department of Economic Security**  
**Title 6, Chapter 4**  
**Five-Year Review Report**

**1. Authorization of the rule by existing statutes:**

General Statutory Authority: A.R.S. §§ 41-1954 (A)(3) and 46-134 (10)

Specific Statutory Authority: A.R.S. §§ 23-501 et seq., 41-1953 (E)(3), and 1954 (A)(1)(d)

**2. The objective of each rule:**

<b>Rule</b>	<b>Objective</b>
R6-4-104	The objective of this rule is to define the terms in this chapter and promote a uniform understanding of terms used by the Vocational Rehabilitation (VR) program.
R6-4-201	The objective of this rule is to inform the public about the types of VR services available to applicants or participants in the VR program.
R6-4-202	The objective of this rule is to describe the eligibility requirements applicants shall meet to qualify for the VR program.
R6-4-203	The objective of this rule is to provide information about preliminary and thorough diagnostic studies the Department uses to determine eligibility for VR services and to plan an individualized program of services after Department staff determine an applicant is eligible for the VR program.
R6-4-204	The objective of this rule is to describe extended evaluation, which Department staff may use to determine whether an applicant with a severe disability may benefit from receiving VR services in terms of achieving an employment outcome.
R6-4-205	The objective of this rule is to describe the requirement for Department staff and a participant in the VR program to jointly develop an Individualized Written Rehabilitation Program (IWRP).
R6-4-206	The objective of this rule is to describe the service categories Department staff provide to applicants or participants in the VR program and the conditions under which each service is provided.
R6-4-301	The objective of this rule is to define the terms used in Article 3 of this chapter and promote a uniform understanding of terms used by the Business Enterprise Program (BEP).
R6-4-302	The objective of this rule is to describe the BEP's responsibility to conduct surveys of public and other properties and determine potential sites for merchandising opportunities for licensees, the process to establish a written agreement with the grantor of the site, and requirements to equip and maintain facility equipment.
R6-4-303	The objective of this rule is to describe how Department staff refer a legally blind recipient of VR services to the BEP and the application process a client must complete to qualify for the BEP.
R6-4-304	The objective of this rule is to describe the procedures, methodology, and criteria Department staff use to evaluate a candidate for initial training as a BEP operator.

<b>Rule</b>	<b>Objective</b>
R6-4-305	The objective of this rule is to describe the three levels of training a candidate shall complete to operate a vending facility, requirements a candidate shall complete to successfully complete training, consequences of unsuccessful completion, conditions and terms of certification, and requirements for maintenance of certification.
R6-4-306	The objective of this rule is to describe the requirement to provide remedial training to a BEP operator when Department staff determines a deficiency or problem exists.
R6-4-307	The objective of this rule is to describe the requirement to provide educational and training options to improve a BEP operator's work performance and provide promotional opportunities.
R6-4-308	The objective of this rule is to describe the qualifications for placement of a BEP operator in a business facility.
R6-4-309	The objective of this rule is to describe the selection process through which a selection committee considers placing a BEP operator into a business facility and appeal rights for a BEP operator that is not selected for placement in a business facility.
R6-4-310	The objective of this rule is to describe what constitutes good cause regarding a BEP operator who refuses placement in a business facility and the consequences to a BEP operator for refusal of placement when good cause does not exist.
R6-4-311	The objective of this rule is to describe the BEP's requirement to issue a license to a BEP operator once selected and placed in a business facility.
R6-4-312	The objective of this rule is to describe the BEP's requirement to execute a standard operator agreement with a BEP operator and the requirement of active participation by the Arizona Participating Operators Committee (APOC), the state committee of blind vendors.
R6-4-313	The objective of this rule is to describe the terms and conditions under which a temporary BEP operator may be placed in a business facility.
R6-4-314	The objective of this rule is to describe the length, purpose, method of performance evaluation, and possible outcomes of initial probation when a BEP operator is placed in his or her first business facility or in a higher-level business facility.
R6-4-315	The objective of this rule is to describe the grounds for placing a BEP operator on performance probation; the methods of identifying performance deficiencies; the requirement for written notice of identified performance and corrective action, length of probation, and appeal rights; and the possible outcomes of performance probation.
R6-4-316	The objective of this rule is to describe the Department's statutory responsibility to conduct continuing inspections of a BEP business facility and to take appropriate action to ensure compliance with a BEP operator's agreement.
R6-4-317	The objective of this rule is to describe the prohibition against the exchange of facilities between BEP operators.
R6-4-318	The objective of this rule is to describe the terms and conditions under which the BEP may terminate a BEP operator's agreement and the process the BEP shall follow to terminate a BEP operator's agreement.

<b>Rule</b>	<b>Objective</b>
R6-4-319	The objective of this rule is to describe the terms and conditions under which the BEP may revoke a BEP operator's license, the process the BEP shall follow to notify a BEP operator of the revocation of his or her BEP operator license, and the continuing business obligations of a BEP operator.
R6-4-320	The objective of this rule is to describe the purposes, duties, and responsibilities of the APOC.
R6-4-321	The objective of this rule is to describe the BEP's requirement to set aside funds from the net proceeds of the operation of each BEP business facility in Arizona based on a monthly assessment schedule determined in consultation with the APOC and approved by the Secretary of the U.S. Department of Education; and to describe the current schedule and purposes for which such funds shall be used.
R6-4-322	The objective of this rule is to describe the condition under which the BEP grants a BEP operator a fair minimum of return for the operation of a BEP facility and the requirement of timely written notice of approval or denial of a request for a fair minimum return, including reasons and notice of the right to appeal.
R6-4-323	The objective of this rule is to describe the statutorily mandated distribution and use of the federal unassigned vending machine income by the BEP.
R6-4-324	The objective of this rule is to describe a BEP operator's responsibility to maintain records, submit reports required by the Department, and make information and records accessible to the Department.
R6-4-325	The objective of this rule is to describe the appeal rights of any BEP candidate, trainee, or operator who has been adversely affected by a decision of the BEP.
R6-4-401	The objective of this rule is to describe the order of selection Department staff follow when selecting eligible individuals to receive VR services if the Department has insufficient resources to provide the full range of VR services to all eligible individuals.
R6-4-402	The objective of this rule is to describe service provider standards, methodology for service authorization and equipment purchasing, and circumstances under which the Department provides Workers' Compensation coverage for an individual participating in a job training program in a community.
R6-4-403	The objective of this rule is to describe VR services contingent upon economic need, the methodology Department staff use to determine an eligible individual's economic need, and the circumstances under which Department staff determines the availability of comparable benefits.
R6-4-404	The objective of this rule is to describe the administrative procedure by which the Department conducts reviews of Department staff determinations concerning the provision or denial of services.
R6-4-405	The objective of this rule is to describe the Department's policies and procedures for safeguarding the confidentiality of all personal information obtained for the VR program administration.

**3. Are the rules effective in achieving their objectives?**

Yes

No

*If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.*

<b>Rule</b>	<b>Explanation</b>
R6-4-104	This rule is not effective because the definitions are outdated and do not reflect current terminology used by the VR program.
R6-4-202	This rule is not effective because the eligibility requirements an applicant shall meet to qualify for the VR program contains outdated terminology and does not reflect the Department's current practice.
R6-4-203	This rule is not effective because information about preliminary and thorough diagnostic studies the Department uses to determine eligibility for VR services and planning an individualized program of services contains outdated terminology and does not reflect the Department's current practice.
R6-4-205	This rule is not effective because the requirement for Department staff to jointly develop an IWRP with a participant in the VR program contains outdated terminology and does not reflect the Department's current practice.
R6-4-206	This rule is not effective because the service categories Department staff provide to a participant in the VR program contains outdated terminology and does not reflect the Department's current practice.

**4. Are the rules consistent with other rules and statutes?**

Yes

No

*If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.*

<b>Rule</b>	<b>Explanation</b>
R6-4-104	The definitions in this rule are not consistent with the Definitions described in current federal regulation at 34 CFR 361.5.
R6-4-203	This rule is not consistent with other rules and statutes because the requirement for Department staff to develop an Individualized Plan for Employment (IPE) does not currently include the timeframe of completing the IPE within 90 calendar days from an eligibility determination described at 34 CFR 361.45 (e).
R6-4-204	This rule is not consistent with current federal regulations because Department staff no longer provide an extended evaluation to determine whether an applicant with a severe disability may benefit from receiving VR services in terms of achieving an employment outcome described at 34 CFR 361 et seq.
R6-4-206	This rule is not consistent with current federal regulations because the scope of vocational rehabilitation services does not comply with current federal regulations described at 34 CFR 361.48.
R6-4-401	This rule is not consistent with other rules and statutes because the order of selection does not comply with current federal regulations described at 34 CFR 361.36.

**5. Are the rules enforced as written?**

Yes

No

*If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency(s) proposal for resolving the issue.*

<b>Rule</b>	<b>Explanation</b>
R6-4-401	This rule is not enforced as written because the order of selection does not comply with current federal regulations described at 34 CFR 361.36. The Department proposes to revise the existing rule and follow the requirement specified at 34 CFR 361.36 that pertains to order of selection until the revised Department rule is effective.

**6. Are the rules clear, concise, and understandable?**

Yes

No

*If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.*

<b>Rule</b>	<b>Explanation</b>
R6-4-307	This rule is not clear, concise, and understandable because the current rule indicates that educational and training options provided through the BEP guarantees promotional opportunities. The Department plans to amend the rule to improve clarity to state that the BEP shall offer training to a BEP operator to increase his or her opportunity for promotion.

**7. Has the agency received written criticisms of the rules within the last five years?**

Yes

No

*If yes, please fill out the table below:*

<b>Commenter</b>	<b>Comment</b>	<b>Agency's Response</b>
NA	NA	NA

**8. Economic, small business, and consumer impact comparison:**

The rules in Chapter 4 have a negative economic impact because many of the rules are outdated and inconsistent with controlling statutes and regulations. However, the rules continue to be necessary and useful in allowing the program to operate until new rules are adopted.

The VR program expended a total of \$84,599,678 and employed 395 full-time employees (FTEs) throughout Federal Fiscal Year 2017 (FFY17). These expenditures and FTEs enabled 20,154 clients to receive services through the VR program in FFY17. Stakeholders who provide support to the VR program include a large provider community, the State Rehabilitation Council, 29 public school districts, and other government agencies that are interested in employment of individuals with disabilities.

The BEP expended a total of \$3,310,910 throughout FFY17, and 14 FTEs were employed to support 32 active operators in FFY17. The BEP has a variety of stakeholders, including the operators involved in the program, the APOC, and the Governor's Council for the Blind.

**9. Has the agency received any business competitiveness analyses of the rules?**

Yes

No

**10. Has the agency completed the course of action indicated in the agency's previous five-year review report?**

*Please state what the previous course of action was and if the agency did not complete the action, please explain why not.*

The previous Five-Year-Review report indicated that the Department planned to file a Notice of Proposed Rulemaking when approved by the Governor's Office, or upon the expiration of the rulemaking moratorium, and planned to file a Notice of Final Rulemaking by September 30, 2015. Subsequent rulemaking moratoriums delayed progress of this chapter's rulemaking. The Department received an exception from the Governor's Office to proceed with rulemaking on July 19, 2017.

**11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Department believes that the amendments to the rules proposed in this report would impose the least burden and costs to persons regulated by these rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objectives.

**12. Are the rules more stringent than corresponding federal laws?**

Yes

No

*Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of the federal law(s)?*

The Department is developing rules that will align with 34 CFR 361 et seq.

**13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

The Department has determined that A.R.S. § 41-1037 does not apply to these rules because none of the rules were adopted after July 29, 2010.

**14. Proposed course of action:**

*If possible, please identify a month and year by which the agency plans to complete the course of action.*

Since the moratorium exception request was granted by the Governor's Office on July 19, 2017, the Department has been following a work plan to complete a rulemaking to address the issues identified in this report. The Department has completed an updated draft of the entire rule package and transmitted it to the Office of the Attorney General for review. Rulemaking for this chapter is unique because an additional layer of review by the federal oversight agency, the U.S. Department of Education, must occur prior to submitting a Notice of Proposed Rulemaking. With the additional federal review process, the Department anticipates filing a Notice of Final Rulemaking with the Council by December 2019.