

-Preface-

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 2
Five-Year Review Report**

1. Authorization of the rule by existing statutes:

General Statutory Authority: A.R.S. §§ 41-1003 and 41-1954(A)(3)

Specific Statutory Authority: A.R.S. §§ 23-645 and 23-648

2. The objective of each rule:

Rule	Objective
R6-2-101	This rule defines terms used in these rules so that anyone reading the rules will understand the meaning of special terms and any terms that are not used according to their ordinary meaning.
R6-2-102	This rule describes the complaint process related to the provision of employment services under 20 CFR 658.400 through 658.416, incorporated by reference in this rule.
R6-2-103	This rule describes the appeal and hearing process to which an employer, applicant, or worker may be entitled under applicable state or federal employment services laws under 20 CFR 658.417 and 658.418, incorporated by reference in this rule.
R6-2-104	This rule describes the Department's nondiscrimination policy in administration of the state employment office and describes the priority of service to qualified applicants for work.
R6-2-201	This rule describes services available to a worker, the application process, and procedures for when the Department conducts employment testing.
R6-2-202	This rule describes the Department's requirements for employers placing a job order, including bona fide occupational qualifications and how the Department shall refer workers to a job order.

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.

Rule	Explanation
R6-2-101, R6-2-102, R6-2-103, R6-2-201	This rule is ineffective in meeting its objective because it contains outdated terms and statutory references, such as the Department's Authority Library, Employment Security Administration (ESA), the Job Training Partnership Act (JTPA), United States Employment Service (USES), and America's Job Bank, which no longer exist. This rule is also ineffective because it incorporates, by reference, an outdated regulation: 29 CFR 29.5 (Office of the Federal Register, National Archives and Records Administration, July 1, 1998).

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.

Rule	Explanation
R6-2-101, R6-2-102, R6-2-103, R6-2-201	This rule is inconsistent with current law because it contains outdated terms, such as the Department's Authority Library, ESA, the JTPA, USES, and America's Job Bank, which no longer exist. This rule is also ineffective because it incorporates, by reference, an outdated regulation: 29 CFR 29.5 (Office of the Federal Register, National Archives and Records Administration, July 1, 1998).

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.

Rule	Explanation
R6-2-101, R6-2-102, R6-2-103, R6-2-104, R6-2-201, R6-2-202	The Department enforces these rules to the extent that it does not conflict with state or federal law.

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.

Rule	Explanation
R6-2-101, R6-2-102, R6-2-103, R6-2-201	This rule is not clear, concise and understandable because it contains outdated terms and statutory references, such as the Department's Authority Library, ESA, the JTPA, USES, and America's Job Bank, which no longer exist. This rule is also ineffective because it incorporates, by reference, an outdated regulation: 29 CFR 29.5 (Office of the Federal Register, National Archives and Records Administration, July 1, 1998). The Department may request an exception to the moratorium to amend Chapter 2 if WIOA is reauthorized in 2020 by removing the outdated references and regulations and updating such to reflect current references and regulations.

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:

Commenter	Comment	Agency's Response
NA	NA	NA

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

The Department previously completed an economic, small business, and consumer impact statement on these rules during a 1999 rulemaking. In that report, the Department estimated that the proposed rules would have an “intangible economic, small business, and consumer impact,” which has proven to be an accurate assessment of the impact of the 1999 rulemaking. While some of the rules in Chapter 2 are outdated and inconsistent with controlling statutes and regulations, the rules continue to be necessary and useful to the public.

The Division of Employment and Rehabilitation Services (DERS) is the division within the Department that is responsible for overseeing the Employment Service program in Arizona. Employment Service is a core program partner of the Workforce Innovation and Opportunity Act (WIOA) and provides placement services for job seekers and labor force recruitment services for employers. The Employment Service program focuses on providing a variety of employment-related labor exchange services including, job search assistance, job referral and placement assistance for job seekers, reemployment services to Unemployment Insurance claimants, and recruitment services for employers with job openings.

Although some of the rules in Chapter 2 are outdated, there is no negative economic impact on consumers or small businesses. Consumers directly impacted by these rules are job seekers either seeking or receiving services through the DERS or employers seeking workers to fill vacant positions. Job seekers either seeking or receiving services may continue to benefit from these rules by receiving higher quality referrals to job orders placed by employers. Small businesses may continue to benefit from these rules by obtaining an expanded pool of qualified applicants to job openings.

The U.S. Department of Labor allocates money to Arizona to support the Employment and Training program. These monies are primarily from the Unemployment Trust Fund, which is collected from employers' unemployment insurance payroll taxes.

In SFY 2018, operation costs, including administrative costs and services, was approximately \$13.9 million. The average program staffing level in SFY 2018 was a full-time employee equivalent (FTE) of 134 staff.

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, approved by the Governor's Regulatory Review Council in August 2014, anticipated that the Department would submit a rulemaking package to amend rules R6-2-101, R6-2-102, R6-2-103, and R6-2-201 to make them effective, clear, concise, understandable, and consistent with state and federal law. The Department received an exception to the moratorium on August 12, 2014 to proceed with the rulemaking process and anticipated filing a Notice of Final Rulemaking within six months of receiving the moratorium exception request.

The proposed course of action was not completed, however, due to a Department-wide reprioritization that identified high priority rules, and the rules in Chapter 2 were not included on that list. Therefore, activity on Chapter 2 amendments ceased.

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:

Through analysis provided by the Department's program subject matter experts and Financial Services Administration, the Department believes that the rules impose the least burden and cost to persons regulated by these rules, including paperwork and other compliance costs,

necessary to achieve the underlying regulatory objectives. Amendments seek to align the rules with federal statutes and regulations and to make the rules more clear, concise, and understandable to the public, which is expected to reduce the burden and the costs associated with staff assistance and rework. Program subject matter experts indicate that amendments to the rules, as proposed in this report, are the most cost-effective way to bring the Department into compliance with federal requirements and ensure that the rules reflect current program practice.

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 has determined that the rules contained in Chapter 2 are not more stringent than corresponding federal statutes and regulations, including the Wagner-Peyser Act, as amended by the WIOA of 2014, 20 CFR 651 through 654, and 20 CFR 658.400 through 658.424.

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.

The Department plans to amend the rules in this chapter under the exception to the moratorium received on August 12, 2014, except for R6-2-102, due to a recently issued Notice of Proposed Rulemaking issued by the U.S. Department of Labor that will amend 20 CFR 658.410 and 658.411. The amendments to these regulations would require additional revisions to this rule. The Department will seek an additional moratorium exception for R6-2-102 when the federal regulations are final. The Department anticipates filing a Notice of Proposed Rulemaking by July 2020.