

-Preface-

Arizona 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 (GRRC). A.R.S. § 18-305, enacted in 2016, requires that statutorily required reports be posted on the agency's website.

Department of Economic Security
Title 6, Chapter 2
Employment and Training
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. Analysis of rules:

<u>Rule</u>	<u>Analysis</u>
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R6-2-101	<u>Title:</u> Definitions
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<u>Objective:</u>	The objective of this rule is to define the terms in this Chapter and promote a uniform understanding of terms used by the Employment and Training Program.
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- Is this rule effective in meeting the objective? Yes No
- Is this rule consistent with other rules and statutes? Yes No
- Is this rule enforced as written? Yes No
- Is this rule clear, concise, and understandable? Yes No

Explanation: *The terms defined in this rule are outdated or no longer used and do not align with the Workforce Innovation and Opportunity Act (WIOA), which amended the Wagner-Peyser Act.*

<u>Rule</u>	<u>Analysis</u>
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R6-2-102	<u>Title:</u> Complaints
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<u>Objective:</u>	The objective of this rule is to describe the Employment and Training Program's complaint process under 20 CFR 658.400 through 658.416 and is incorporated by reference.
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- Is this rule effective in meeting the objective? Yes No
- Is this rule consistent with other rules and statutes? Yes No
- Is this rule enforced as written? Yes No
- Is this rule clear, concise, and understandable? Yes No

Explanation: *The federal regulations that were incorporated by reference when this rule was codified have since been amended and no longer adequately describe the Employment and Training Program's complaint process.*

Rule **Analysis**

R6-2-103 Title: Hearings and Appeals

Objective: The objective of this rule is to describe the Employment and Training Program's appeals and hearing processes to which an employer, applicant, or worker may be entitled under applicable state or federal employment services laws.

- Is this rule effective in meeting the objective? Yes No
- Is this rule consistent with other rules and statutes? Yes No
- Is this rule enforced as written? Yes No
- Is this rule clear, concise, and understandable? Yes No

Explanation: *The federal regulations that were incorporated by reference when this rule was codified have since been amended and no longer adequately describe the Employment and Training Program's appeals and hearings processes.*

Rule **Analysis**

R6-2-104 Title: Policy of Nondiscrimination; Schedule of Services

Objective: The objective of this rule is to describe the Department's nondiscrimination policy in the administration of the state employment offices and describes the priority of service to qualified applicants for work.

- Is this rule effective in meeting the objective? Yes No
- Is this rule consistent with other rules and statutes? Yes No
- Is this rule enforced as written? Yes No
- Is this rule clear, concise, and understandable? Yes No

Explanation: *The priority of service schedule outlined in this rule does not align with the Wagner-Peyser Act.*

Rule **Analysis**

R6-2-201 Title: Worker Services

Objective: The objective of this rule is to describe services available to a worker, the application process, and procedures for when the Department conducts employment testing.

- Is this rule effective in meeting the objective? Yes No
- Is this rule consistent with other rules and statutes? Yes No
- Is this rule enforced as written? Yes No
- Is this rule clear, concise, and understandable? Yes No

Explanation: *The rule lists aptitude testing as a service that is no longer available through the Employment and Training Program, which is in alignment with the Department of Labor's current practice. Aptitude testing is not required under federal regulations or statutes for Employment and Training.*

Rule **Analysis**

R6-2-202 Title: Employer Services

Objective: The objective of this rule is to describe the Department's requirements for employers placing a job order, including bona fide occupational qualifications, and how the Department refers workers to a job order.

- Is this rule effective in meeting the objective? Yes No
- Is this rule consistent with other rules and statutes? Yes No
- Is this rule enforced as written? Yes No
- Is this rule clear, concise, and understandable? Yes No

Explanation: *The rule does not align with the WIOA, which amended the Wagner-Peyser Act by requiring state agencies to develop a labor exchange system to assist job seekers in finding employment.*

3. **Has the Department received written criticisms of the rules within the last five years?**

Yes No

4. **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, there are no negative economic impacts on consumers or small businesses and the rules continue to be necessary and useful to the public.

The impact statement from 1999 provided information on job seekers and employers served. While the Department continues to report information on job seekers and employers to the U.S. Department of Labor, the definitions and data elements have changed, and thus the numbers cannot be compared. In SFY 2023, the Department provided services to 43,177 job seekers. Employers placed over 16,000 job orders with the Department. The Department also served more than 5,900 apprentices in SFY 2023.

In SFY 2023, operation costs, including administrative costs and services, were approximately \$13.6 million. The average program staffing level in SFY 2023 was a full-time employee equivalent of 95 staff.

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

Yes No

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

Yes No

In the previous Five-Year Review Report, approved by the Council on August 6, 2019, the Department anticipated filing a Notice of Proposed Rulemaking by July 2020. However, the previous Governor's Administration did not approve the moratorium exception request originally submitted on September 9, 2019 until October 29, 2020. Upon approval, the Department's resources were heavily diverted to provide COVID-19 Pandemic response services. The Department was responsible for providing essential services to families, which caused a significant delay in the progress of rulemaking. The Department also overhauled its internal drafting and review process, resulting in secondary reviews, by both the general public and internal and external stakeholders in order to mitigate the number of comments received during the formal comment period, which have the potential to cause additional delays in submitting the Notice of Final Rulemaking to the Council. Additionally, the Department determined that additional rules regarding the statewide apprenticeship program that is overseen by the Department's Arizona Office of Apprenticeship, needed to be added to formally identify the Department as the designated registration agency for the federally prescribed Apprenticeship Program in Arizona in accordance with 29 CFR § 29.13(a)(1). As a result of adding these additional rules, the Department recently completed the informal stakeholder input to ensure these proposed revisions were properly vetted.

7. **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:**

These rules govern all aspects of the Employment Service Program. The benefits of these rules outweigh any costs associated with the rules and impose the least burden on individuals regulated by these rules. The Department does not anticipate any negative impacts on small businesses or individuals regulated by these rules.

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

Yes No

9. **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, and does not require the issuance of a permit, license, or agency authorization.

10. Proposed course of action:

The Department proposes to update the rules in 6 A.A.C. 2 to align the rules with the Department's current practices and to address the issues in section 2 of this report. These amendments will bring the Department into compliance with the Wagner-Peyser Act, the Workforce Innovation and Opportunity Act, corresponding federal regulations, and remove language that is not clear, concise, or understandable. The Department anticipates filing the Notice of Final Rulemaking with the Council by March 2025.