

-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 11
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. § 41-1954 (A)(1)(a)

2. The objective of each rule:

Rule	Objective
R6-11-101	This rule identifies the Department as the state agency responsible for administration of the Job Training Partnership Act (JTPA) program.
R6-11-102	This rule defines terms used in the 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.
R6-11-103	This rule sets forth the general and specific eligibility criteria for enrollment in the JTPA program.
R6-11-104	This rule requires subrecipients to establish criteria for selection of eligible recipients and establishes general requirements that the subrecipients must include in the selection criteria.
R6-11-107	This rule requires subrecipients of the JTPA funds to comply with controlling law regarding confidentiality of information.
R6-11-111	This rule describes the requirements and procedures that direct subrecipients of the JTPA funds must follow for receiving and responding to complaints.
R6-11-201	This rule establishes and defines the right of any interested party to appeal a determination, decision, order, or other action or inaction of either the Department or a JTPA subrecipient.
R6-11-202	This rule describes the process for requesting a hearing to appeal an adverse action by the Department or a JTPA subrecipient.
R6-11-203	This rule describes the content and establishes the procedural issuance of a written Notice of Hearing regarding an appeal.
R6-11-204	This rule explains the procedures of how a hearing will be conducted and defines the duties and responsibilities of individuals involved in the hearing proceedings.

Rule	Objective
R6-11-205	This rule describes the process through which hearing decisions are made and establishes procedures on filing for a rehearing.
R6-11-206	This rule defines the consequential outcomes of a scheduled hearing when there is no appearance on behalf of an interested party.
R6-11-207	This rule describes the instances and procedures in which a hearing officer may be disqualified or relieved.
R6-11-208	This rule describes the process and circumstances in which a scheduled hearing may be postponed.

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
R6-11-101	This rule is not effective because, while the Department is still the state agency responsible for administration, the JTPA was repealed and replaced by the Workforce Investment Act (WIA) in 1998 and, again, by the Workforce Innovation and Opportunity Act (WIOA) in 2014.
R6-11-102	This rule is not effective because the terms used refer to the JTPA and need to be replaced by new terms used in the WIOA.
R6-11-103	This rule is not effective because general and specific eligibility criteria for enrollment in the JTPA no longer apply, having been replaced by the WIOA general and specific eligibility requirements.
R6-11-104	This rule is not effective because the rule currently states the need to establish criteria for selection of eligible applicants to participate in the JTPA rather than the WIOA and must be revised to align with the WIOA requirements.
R6-11-107	This rule is not effective because the rule refers to subrecipients of JTPA funds, which are now subrecipients of the WIOA Title I funds, and must be revised to align with the WIOA requirements.
R6-11-111	This rule is not effective because the requirements and procedures for receiving and responding to complaints refer to the JTPA and must be revised to align with the WIOA requirements.

Rule	Explanation
R6-11-201	This rule is not effective because the right of any interested party to appeal a determination, decision, order, or other action or inaction of either the Department or a JTPA subrecipient pertains to the JTPA and must be revised to align with the WIOA requirements.
R6-11-202	This rule is not effective because the process for requesting a hearing to appeal an adverse action by the Department or a JTPA subrecipient pertains to the JTPA and must be revised to align with the WIOA requirements.
R6-11-203	This rule is not effective because the established procedural issuance of a written Notice of Hearing regarding an appeal pertains to the JTPA and must be revised to align with the WIOA requirements.
R6-11-204	This rule is not effective because the procedures of how a hearing will be conducted and defined duties and responsibilities of individuals involved in the hearing proceedings pertain to the JTPA and must be revised to align with the WIOA requirements.
R6-11-205	This rule is not effective because the process through which hearing decisions are made and established procedures on filing for a rehearing pertain to the JTPA and must be revised to align with the WIOA requirements.
R6-11-206	This rule is not effective because the consequential outcomes of a scheduled hearing when there is no appearance on behalf of an interested party pertain to the JTPA and must be revised to align with the WIOA requirements.
R6-11-207	This rule is not effective because the instances and procedures in which a hearing officer may be disqualified or relieved pertain to the JTPA and must be revised to align with the WIOA requirements.
R6-11-208	This rule is not effective because the process and circumstances in which a scheduled hearing may be postponed pertain to the JTPA and must be revised to align with the WIOA requirements.

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
R6-11-101, R6-11-102, R6-11-103, R6-11-104, R6-11-107, R6-11-111, R6-11-201, R6-11-202, R6-11-203, R6-11-204, R6-11-205, R6-11-206, R6-11-207, R6-11-208	All rules in Chapter 11, JTPA, are inconsistent with the federal law and regulations that govern the current WIOA Title I programs. The JTPA has been replaced twice by federal legislation since the development of these rules; once in 1998 with the WIA and again in 2014 with the WIOA.

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
R6-11-101, R6-11-102, R6-11-103, R6-11-104, R6-11-107, R6-11-111, R6-11-201,	The rules in Chapter 11, JTPA, are not enforced as written because they do not align with current WIOA Title I programs. The JTPA has been replaced twice by federal legislation since the development of these rules; once in 1998 with the WIA and again in 2014 with the WIOA. The Department plans to revise the current rules and add new rules consistent with the WIOA.

Rule	Explanation
R6-11-202, R6-11-203, R6-11-204, R6-11-205, R6-11-206, R6-11-207, R6-11-208	

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
R6-11-101, R6-11-102, R6-11-103, R6-11-104, R6-11-107, R6-11-111, R6-11-201, R6-11-202, R6-11-203, R6-11-204, R6-11-205, R6-11-206, R6-11-207, R6-11-208	The rules in Chapter 11, JTPA, are not clear, concise, or understandable because they do not align with current WIOA Title I programs. The JTPA has been replaced twice by federal legislation since the development of these rules; once in 1998 with the WIA and again in 2014 with the WIOA. The Department plans to revise the current rules and add new rules consistent with the WIOA.

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:

Since no economic, small business, and consumer impact statement is available from the last promulgation of the rules, the Department is providing an assessment of the actual economic, small business, and consumer impact of the rules pursuant to R1-6-301.

a. Persons who are directly affected by, bear the costs of, or directly benefit from the rules:

Article 1:

The current economic impact of the rules in Article 1 is minimal, as they are outdated and inconsistent with controlling federal law. The impact of the rules is largely limited to the inconvenience to the public caused by having outdated rules, which creates confusion. There is a potential economic impact if policies were successfully challenged to be considered instead as rules. The Department is working to update the rules to address these economic impacts.

The Department uses federal law, the Arizona Unified State Workforce Development Plan and Department policy to operate the WIOA Title I programs and undertakes multiple efforts to keep the public informed about the operation of the program. These efforts include extensive information the Department provides on its website

<https://des.az.gov/services/employment/workforce-innovation-and-opportunity-act>), as well as the ARIZONA@WORK website at <https://arizonaatwork.com/>. Local Workforce Development Areas (LWDAs) conduct community outreach programs and provide outreach materials to the public about the operation of the programs and available services.

Program customers benefit from the delivery of the WIOA Title I funded services. In Program Year 2016 (July 1, 2016 through June 30, 2017). A total of 16,679 program customers (10,904 customers in the WIOA Title I Adult Program; 1,602 customers in the WIOA Title I Dislocated Worker Program; and 4,173 customers in the WIOA Title I Youth Program) benefited from the WIOA Title I funded services provided through LWDA's in Arizona, including staff-assisted career, training, and program services. Current reports in the Arizona Job Connection (AJC) indicate that, between July 1, 2016 and June 30, 2017, 46.96 percent of the WIOA Title I Adult Program exiters, 49.19 percent of the WIOA Title I Dislocated Worker exiters, and 31.85 percent of the WIOA Title I Youth Program exiters were employed or in education in the second quarter after exit.

Small businesses are not directly impacted by the rules in Article 1 but may benefit from the expanded pool of trained workers resulting from the WIOA Title I programs.

Article 2:

The current economic impact of the rules in Article 2 is minimal. The Department uses the current JTPA rules for the WIOA Title I appeals. The Department has received no appeals related to WIA or WIOA Title I in the last five years. The Department will use the practices described in the amended rules, which align with current Departmental procedures, as soon as they are effective. The impact is largely limited to the inconvenience to the public caused by having outdated rules, which creates confusion.

The Department uses federal law, the Arizona Unified State Workforce Development Plan and Department policy to operate the WIOA Title I programs and undertakes multiple efforts to keep the public informed about the operation of the programs. These efforts include the extensive information the Department provides on its website (<https://des.az.gov/services/employment/workforce-innovation-and-opportunity-act>), as well as the ARIZONA@WORK website at <https://arizonaatwork.com/>. LWDA's conduct community outreach programs and provide outreach materials to the public about the operation of the programs and available services.

b. Cost-benefit analysis:

i. Costs and benefits to state agencies directly affected by the rules:

The state, in particular the Department of Economic Security, benefits from federal assistance provided by the U. S. Department of Labor (DOL) via the WIOA Title I. The total DOL Program Year 17/Fiscal Year 2018 (July 1, 2017 through June 30, 2018) allocation to all states was \$2,660,745,269. The amount of the WIOA Title I grant allocations are provided in three funding streams; Adult, Dislocated Worker, and Youth. Arizona's share of the total allocation to the states was \$65,664,489 and of that amount, \$20,549,537 was under the Adult allocation, \$25,074,121 was under the Dislocated Worker allocation, and \$20,040,831 was under the Youth allocation. In Arizona, the Department of Economic Security contracts with 12 LWDA's, one of which consists of 13 Tribal Area entities. The WIOA Title I LWDA's receive 85 percent of the grant money and the Department retains five percent of the total allocation for statewide administration of the WIOA Title I programs. While the Department does not provide services directly to program customers, an average full-time employee equivalent of 15 staff were supported with the WIOA Title I grant funds during Program Year 2016 for administrative purposes. The remaining 10 percent of the grant funds are used for statewide projects.

ii. Costs and benefits to political subdivisions directly affected by the rules:

Political subdivisions receive the WIOA Title I grant money as described in 8.b.i. of this report. These funds are devoted to paying for costs incurred in the delivery of workforce investment services.

iii. Costs and benefits to businesses directly affected by the rules:

No quantifiable financial impact on business has been determined. Businesses may benefit from the expanded pool of trained workers resulting from services provided by LWDA's through the WIOA Title I funds.

c. Impact on private and public employment:

These rules do not directly impact public and private employment. However, the WIOA Title I services improve the readiness of individuals for public and private employment opportunities.

d. Impact on small businesses:

These rules do not impact small businesses. There are no administrative or other costs required to comply with these rules.

e. The probable cost and benefit to private persons and consumers who are directly affected by the rules:

Program customers benefit from the delivery of the WIOA Title I funded services. Services are delivered at no cost to qualifying individuals.

f. Probable effects on state revenues:

There is no effect on state revenues from these rules. The WIOA Title I services are supported by federal grant funds.

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 Council in February 2014, anticipated that the Department would submit two rulemaking packages to update Chapter 11 rules – the first package amending Articles 1, 2 and adding a new Article 3, and the second package containing new Articles 4 through 9. The Department anticipated it would file a Notice of Proposed Rulemaking for the first rulemaking package within six months of approval by the Governor's Office. The first rulemaking package was submitted to the Governor's Office on December 17, 2013. The Department received approval on August 12, 2014 to proceed with

the rulemaking process through the Governor's Regulatory Review Council under an exception to Executive Order 2012-13.

As a result of the rulemaking moratorium imposed by Executive Order 2015-01, the rulemaking was put on hold on January 5, 2015. On April 2, 2015, the Department sent a request to the Governor's Office for an exception to proceed with the first rulemaking package. Based on guidance from the Governor's Office on September 2, 2015, the Department submitted a reduced list of requested exceptions, which did not include the request to proceed with the first rulemaking package, largely due to new federal regulations governing the workforce investment programs.

After publication of final regulations for the WIOA in August 2016, the Department transmitted a request to the Governor's Office in October 2016 for an exception to the regulatory moratorium imposed by Executive Order 2016-03 to proceed with rulemaking for Chapter 11. The Department received approval on July 20, 2017 from the Governor's Office to proceed with rulemaking for Chapter 11 and anticipates completing a Noticed of Proposed Rulemaking by December 2018.

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:

With the amendments proposed in this report, the Department believes that the rules 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 the WIOA, P.L. 113-128 and federal regulations, 20 CFR Parts 602, 651, 652, et seq., and 20 CFR 676, 677, and 678. The current rules were promulgated to comply with the JTPA, which has been replaced by the WIOA.

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 all the rules were last adopted on April 5, 1984.

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 proposes to submit two rulemaking packages to update the rules in Chapter 11 as detailed in Item 10 of this report. The Department received approval on July 20, 2017 from the Governor's Office to proceed with rulemaking for Chapter 11. The Department anticipates completing a Notice of Proposed Rulemaking by December 2018 and filing a Notice of Final Rulemaking with the Council by March 2019.