

-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 14 – Food Stamps Program
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(1), and 46-134(10)

Specific Statutory Authority: A.R.S. §§ 41-1954(A)(1)(c), 46-136(B) and (C); 7 U.S.C. § 2013

2. The objective of each rule:

Rule	Objective
R6-14-111	The objective of R6-14-111 is to define terms used in the Food Stamp Program, now the Nutrition Assistance Program. The Program uses terms that lack clarity if undefined.

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
R6-14-111	This rule is partially effective in meeting its objective. It contains some definitions that are currently applicable to the Department's administration of the federal Supplemental Nutrition Assistance Program. The Department plans to revise several of the existing definitions as specified in item 6 of this report and add some new definitions to increase the effectiveness of this rule.

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
R6-14-111	This rule is inconsistent with the federal regulations governing the federal Supplemental Nutrition Assistance Program because it contains some outdated definitions, such as: 3. Alien lawfully admitted to the United States, 5. Allotment,

	8. Appeal, 10. Assets, 11. A.T.P., 16. Citizen, 18. Color of Law, 19. Coupon, 32. Identification card, 37. Non-eligible food, 40. Project area, 42. Restoration of lost benefits, 43. Retroactive benefits, 44. Roomer, and 45. Spouse
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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
R6-14-111	The Department enforces the rule to the extent that it does not conflict with federal regulations.

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
R6-14-111	In addition to definitions that are inconsistent with federal regulations, as identified in item 4, the rule is not clear, concise, or understandable because it contains some outdated definitions and is not written in the proper format.

The following definitions are not clear, concise, or understandable and the Department plans on clarifying each definition:

1. Adjusted net income,
2. Adverse action,
5. Allotment,
6. Annualization of income,
7. Anticipated income,
8. Appeal,
9. Applicant,
12. Authorized representative,
13. Basis of issuance or benefit level,
14. Boarding house,
17. Collateral contact,
21. Department,
22. Drug and/or alcoholic treatment and rehabilitation center,
24. Eligible food,
26. Equity value,
27. F.N.S.,
28. Fraud,
29. Hearing,
33. In-kind,
34. Institution of higher education,
35. Liquid resources,
38. Overissuance,
39. Parental control,
41. Recertification,
42. Restoration of lost benefits,
46. Student,
47. United States citizen, and
49. Vendor payments.

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
R6-14-111	The Department has not received any criticisms of R6-14-111 in the last five years.	N/A

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

R6-14-111 has minimal impact to small business and consumers, because it only explains terminology used in the Nutrition Assistance program. There was no economic impact statement completed at the time this rule was adopted. The following information is provided relative to economic activity associated with the Nutrition Assistance program that will be addressed through anticipated rulemaking:

For the 12-month period of July 1, 2018, through June 30, 2019, the Department of Economic Security issued \$ 1,164,987,124 in Nutrition Assistance benefits. The monthly average benefit paid was \$ 97,082,260. The monthly average caseload was 383,491 cases comprised of 824,197 eligible Nutrition Assistance recipients. Each case received a monthly average of \$253.15 in Nutrition Assistance benefits.

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.

In the previous Five-Year Review Report, the Department stated that it anticipated filing a Notice of Proposed Rulemaking within six months of receiving Governor's Office approval or the expiration of the regulatory moratorium.

The Department requested an exception from the Governors' Office to conduct rulemaking to revise 6 A.A.C. 14 that was approved on May 6, 2017. The Department conducted emergency rulemaking to address the three priority topics of Claims Against Households, Hearings and Appeals, and Intentional Program Violations. The emergency rules were effective on filing by the Office of Attorney General on July 6, 2018 and were renewed to extend through July 1, 2019.

The Department initiated regular rulemaking to address the three priority topics and filed a Notice of Proposed Rulemaking on September 26, 2018. As a result of the substance and volume of public comment received on the proposed rules, the Department terminated the rulemaking in February 2019 in order to start a new regular rulemaking. The Department filed a new Notice of Proposed Rulemaking on June 10, 2019. The Department is currently proceeding with the regular rulemaking process for these three topics.

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 by the Department's program subject matter experts and Financial Services Administration, the Department believes that the rules have minimal impact on regulated parties, because the rules only explain terminology used in the Nutrition Assistance Program. 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 discussed in this report seek to address three priority topics that impact the regulated community and to make the rules more comprehensive, as well as more clear, concise, and understandable to the public. Program subject matter experts indicate that amendments to the rules, as proposed in this report, will inform the public of program requirements and opportunities with the least cost and burden on the public.

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 federal law(s)?

7 U.S.C. 2012 and 7 CFR 271.1 are corresponding federal statute and regulation. The Department has determined that R6-14-111 is not more stringent than the corresponding federal statute and regulation.

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. Additionally, the rules do not relate to licensing, but to the provision of nutrition assistance.

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 file a Notice of Final Rulemaking with Council in November 2019 to address the three priority topics discussed in Item 10. This rulemaking will include definitions as needed to clarify terms associated with these topics. The Department further proposes to complete an additional rulemaking to address other topics that would incorporate options chosen by the state and waivers granted by the federal government relative to the administration of the Food Stamp Program. The additional rulemaking will include appropriate updates to the definitions in R6-14-111 to align with the new rules. The Department will prioritize revising Cash Assistance Program rules found in 6AAC12 to inform the additional Food Stamps Program rulemaking. The program operations addressed in the Food Stamps Program rules will largely mirror the program operations addressed in the Cash Assistance Program rules. The Department anticipates submitting a Notice of Final Rulemaking for the additional Food Stamps Program rules to Council by March 2022.