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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 1**  
**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. §§ 41-1003, 5-575, 42-1122, and 46-141

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

| <b>Rule</b> | <b>Objective</b>   |
|-------------|--|
| R6-1-101    | This rule describes the physical location in which the Department maintains an official rulemaking docket and rulemaking record, and the procedures a person shall follow to review a docket or record.      |
| R6-1-102    | This rule describes the Department's obligation to accept different types of feedback related to the rulemaking process and the format in which feedback shall be submitted in paper form.                   |
| R6-1-103    | This rule describes the procedures a person shall follow to petition the Department to take rulemaking action and the required information that shall be included in a petition.                             |
| R6-1-104    | This rule describes the procedures a person shall follow to be placed on a distribution list for a docket or proposed rulemaking and the Department's obligation in response to such requests.               |
| R6-1-105    | This rule describes the procedures a person shall follow to petition the Department to schedule an oral proceeding for a rulemaking and the manner in which the Department shall conduct an oral proceeding. |
| R6-1-106    | This rule describes the procedures a person shall follow to petition the Department for a delayed effective date on a rule and the obligation of the Department in response to a petition.                   |
| R6-1-107    | This rule describes the Department's requirement to retain written criticism of existing rules for consideration during the five-year-review process.  |
| R6-1-201    | This rule defines the terms used in the Article.   |

| <b>Rule</b> | <b>Objective</b>  |
|-------------|---|
| R6-1-202    | This rule describes the procedures and requirements a person shall follow to request the Department review the propriety of a debt setoff.  |
| R6-1-203    | This rule describes the procedures the Department shall follow when a request for review of a debt setoff action is received and the limitations on reviewing a debt established by an administrative hearing or judicial proceeding.   |
| R6-1-401    | This rule defines the terms used in the Article.  |
| R6-1-402    | This rule describes a provider's responsibility to submit an employees' fingerprints and other background information to the Department before allowing an employee to provide services to juveniles, the ability of the Department to accept personnel certification performed by Department of Health Services (DHS), Administrative Office of the Courts (AOC), and Department of Youth Treatment and Rehabilitation [DYTR, now Department of Juvenile Corrections (DJC)], and the provider's responsibility to maintain a list of volunteers. |
| R6-1-403    | This rule describes the exemption of federally recognized Indian tribes and military base providers from the fingerprinting requirements when certain conditions are met.   |
| R6-1-404    | This rule describes the degree of supervision needed for a person to provide services to juveniles based on the verification of a person's criminal history.  |
| R6-1-405    | This rule prohibits a provider from charging employees for fingerprinting costs if fingerprinting costs are an allowable charge in the provider's contract.   |
| R6-1-406    | This rule describes the certification levels an employee shall obtain based on the employee's criminal history and fingerprint checks and the imposition of sanctions on a provider who allows personnel or volunteers to work with juveniles without supervision.  |
| R6-1-407    | This rule describes a provider's responsibility to limit contact between juveniles and an employee with denied or restricted certification.   |
| R6-1-408    | This rule describes the duration of criminal background certification and instances when the Department may revoke a person's certification.  |
| R6-1-409    | This rule describes the procedures a provider shall follow to notify the Department when an employee who previously received certification is later charged with or convicted of any criminal offense and the prevention of such a person from further work with juveniles.   |
| R6-1-501    | This rule describes the Department's compliance with the federal Civil Rights Act of 1964 and the Department's policies and procedures for avoiding discrimination.   |

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  |
|----------|--|
| R6-1-501 | The Department believes that the rule in Article 5 is effective in meeting its objectives, but needs to be revised to include age, disability, and genetic information in the list of biases that prohibit discrimination. |

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  |
|----------|--|
| R6-1-501 | This rule does not specify age, disability, and genetic information in the list of biases that prohibit discrimination. Thus, the rule does not conform to the standards of federal Age Discrimination in Employment Act of 1967, as amended; Age Discrimination Act of 1975; Titles I, II, and V of the Americans with Disabilities Act (ADA) of 1990; sections 501, 503, and 504 of the Rehabilitation Act of 1973, as amended; and Genetic Information Nondiscrimination Act of 2008. |

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 |
|------|-------------|
| NA   | NA          |

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   |
|----------|---|
| R6-1-501 | The Department intends to amend Article 5 to include age, disability, and genetic information in the list of biases that prohibit discrimination. |

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:**

Each of the rules in Article 1 were amended effective November 18, 2017. Each of the rules in Article 2 were amended effective June 19, 2018. Since no economic, small business, and consumer impact statement is available from the last making of Articles 4 and 5 rules, the Department is providing an assessment of the actual economic, small business, and consumer impact of the rules pursuant to A. R. S. § 41-1055(C).

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

**Article 1:**

This rulemaking provides a small postage cost savings to the public without imposing any additional costs upon the Department. Reducing the required number of locations for oral proceedings from six to one and providing internet and teleconference access to the public reduces the Department's expense for employee travel and set-up time while providing the public a more affordable and convenient way to participate. Since this rulemaking has been in effect, the Department has received no petitions for rulemaking and 35 comments on proposed rulemakings. The Department continues to estimate the economic impact of the rules in Article 1 as described in the Economic Impact Statement filed with the rulemaking.

**Article 2:**

The Department benefits by the dollars collected from the debtors. During the past five years the Department sent out 98,310 debt setoff letters. During the same period, total dollars collected by the Department from debt setoff are approximately: FY 2017 - \$3.3 million; FY 2016 - \$4 million; FY 2015 - \$4.6 million; FY 2014 - \$4.2 million; and FY 2013 - \$4.5 million. The Department collects monies for over 33 different programs. Approximately 87 percent of the debt setoff collection caseload consists of Unemployment Insurance Benefit Overpayments, so the majority of the monies collected benefit that program.

The debtors benefit from the rules, because the rules explain the procedures to set off debts owed the Department from a debtor's lottery winnings and state tax refund as directed by the statute. Small businesses are not impacted by the rules. During the last five years, the Department received a total of approximately 145 requests for review regarding the debt setoff. Since the rulemaking for Article 2 became effective, the Department has not yet compiled the dollar amount that has been collected or the number of requests for review received. However, the Department continues to estimate the economic impact of the rules in Article 2 as described in the Economic Impact Statement filed with the rulemaking.

**Article 4:**

The cost related requirements in the rules in Article 4 are directed by A.R.S. § 46-141 and have no additional economic impact on the Department, consumers, or small businesses. Previously, fingerprint clearance card applications were processed manually and forwarded to the Department of Public Safety (DPS) by the Department of Child Safety (DCS). Since November 2016, the DES Office of the Inspector General (OIG) has become responsible for the processing of the applications through the approved vendor, Fieldprint. When the applications are "completed" Fieldprint forwards them to DPS for conducting a background check to determine if a fingerprint clearance card can be issued or denied by DPS. A "completed" application means the applicant has successfully had their fingerprints taken. Beginning November 1, 2016 through June 30, 2017, the Department processed approximately 723 completed fingerprint clearance card applications. For the 2018 fiscal year starting July 1, 2017 and up to May 18, 2018, the Department has processed 1,355 completed fingerprint clearance card applications. The Department believes that the rules in Article 4 do not cause any misdirection or confusion with the public and applicants regarding how to apply for and receive a fingerprint clearance card.

**Article 5:**

The cost related requirements in the rules in Article 5 are directed by federal law and have no additional economic impact on the Department, consumers, or small businesses.

**b. Cost-benefit analysis:**

The state incurs moderate costs (between \$1,000 and \$10,000) to administer various programs under Chapter 1 rules. However, it benefits from the revenue generated through the debt setoff program under these rules. The programs under Chapter 1 have no economic impact on political subdivisions and businesses; and therefore, there is no cost or benefit to political subdivisions and businesses by these rules. Also, these rules do not directly impact public and private employment and small businesses.

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

The rules do not have any negative financial impact upon private persons and consumers, except for the minimal costs that may be associated with their participation in the rulemaking process under Article 1, if they choose to participate. Debtors who repay the debts to the Departments under Article 2 rules are required to do so under A.R.S. § 5-575. The debtors benefit from the rules that explain the procedures to set off debts owed the Department from a debtor's lottery winnings and state tax refund.

**d. Probable effects on state revenues:**

State revenues are positively impacted by the collection of debts owed to the Department under Article 2 rules. During the past five years, total dollars collected by the Department from debt setoff are approximately: FY 2017 - \$3.3 million; FY 2016 - \$4 million; FY 2015 - \$4.6 million; FY 2014 - \$4.2 million; and FY 2013 - \$4.5 million.

**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 at the October 25, 2013 Council Meeting anticipated that the Department would submit Notices of Final Rulemaking for Articles 1 and 2 to the Council by December 2015 after the regulatory moratorium expired in December 2014.

The Department planned to develop the Notice of Proposed Rulemaking on Article 5 and submit it to the Governor's Office for approval by the end of May 2014. The Department planned to file the Notice of Final Rulemaking on Article 5 within 6 months after publication of the Notice of Proposed Rulemaking. The Department did not plan to amend Article 4 at that time. The regulatory moratorium was reinstated in February of 2015 and has been reinstated every year since.

The Department received approval from the Governor's Office to pursue rulemaking for Articles 1 & 2 on May 16, 2016. The Department filed a Notice of Final Rulemaking for Article 1 with the Secretary of State on September 19, 2017 and a Notice of Final Rulemaking for Article 2 on April 20, 2018. On April 17, 2018 the Department received comments from the Attorney General's office on a draft of the Notice of Proposed Rulemaking for Article 5 and is in the process of preparing a moratorium exception request for approval from the Governor's Office to proceed with a Notice of Proposed Rulemaking. The Department does not plan to amend Article 4.

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 has determined that the rules contained in this Chapter are not more stringent than corresponding federal law, the Age Discrimination in Employment Act of 1967, as amended; Age Discrimination Act of 1975; Titles I, II, and V of the Americans with Disabilities Act (ADA) of 1990; sections 501, 503, and 504 of the Rehabilitation Act of 1973, as amended; and Genetic Information Nondiscrimination Act of 2008.



**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 they do not require a regulatory permit, license, or agency authorization.

**14. Proposed course of action**

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

The Department plans to submit a moratorium exception request to the Governor's Office for proposed rulemaking on Article 5 by September 2018 and upon approval submit a Notice of Final Rulemaking to GRRC by December 2019.