

-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.

**Arizona Department of Economic Security
Title 6, Chapter 5, Article 75
Five-Year Review Report**

1. Authorization of the rule by existing statutes

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

Specific Statutory Authority: A.R.S. §§ 8-126; 8-503(A)(4)(b); 8-506; 41-1967; 46-134(10); 46-807(C)

2. The objective of each rule

Rule	Objective
R6-5-7501	The objective of this rule is to define terms used in Article 75, which regulates family child care home providers and persons listed on the Child Care Resource and Referral system.
R6-5-7502	The objective of this rule is to identify the opportunities for a family child care home provider licensee (licensee) to obtain a hearing in order to challenge adverse actions initiated by the Department and to specify actions that are not appealable.
R6-5-7503	The objective of this rule is to describe the method the Department uses to compute time when determining the timeliness of submissions from licensees and providers to the Department and mailings from the Department to licensees and providers.
R6-5-7504	The objective of this rule is to describe the formal and procedural requirements for filing an appeal, the amount of time allotted to file an appeal, and the circumstances that will excuse the late filing of an appeal.
R6-5-7505	The objective of this rule is to establish that a Department administration that receives a request for an appeal shall send a copy of the request and the adverse action notice to the Office of Appeals within two workdays of receipt of a request for an appeal.
R6-5-7506	The objective of this rule is to explain that the Department will not carry out an adverse action until certain requirements are met and to specify under what circumstances an adverse action may be carried out before a hearing officer issues a decision on the adverse action.
R6-5-7507	The objective of this rule is to explain when the Office of Appeals shall schedule a hearing, the contents of the hearing notice, and when the Office of Appeals shall mail a notice of hearing to all interested parties.
R6-5-7508	The objective of this rule is to explain how an appellant may request a postponement of a hearing, the grounds for which the Office of Appeals may grant a postponement, and the procedures and time frames that apply to rescheduled hearings.
R6-5-7509	The objective of this rule is to outline the qualifications and the duties of a

	hearing officer in the Office of Appeals.
R6-5-7510	The objective of this rule is to describe the procedures and grounds that a party shall follow to request a change of hearing officer and for a challenge for cause of a hearing officer.
R6-5-7511	The objective of this rule is to describe the procedures a party shall follow to request a subpoena; what criteria a hearing officer will use to grant or deny such a request; and how a subpoena is to be served.
R6-5-7512	The objective of this rule is to outline a party's rights in the hearing process.
R6-5-7513	The objective of this rule is to inform parties of their right to withdraw any appeal, the procedures for withdrawing an appeal, and that the Office of Appeals shall dismiss an appeal upon receipt of a signed withdrawal request by an appellant or appellant's representative or upon a statement of withdrawal made on the record.
R6-5-7514	The objective of this rule is to establish the circumstances under which a hearing officer shall enter a default and dismiss an appeal if the appellant does not appear; a process and time frame for the non-appearing party to request the matter be reopened; and the grounds upon which a request to reopen a matter may be granted.
R6-5-7515	The objective of this rule is to describe the procedures that apply to a variety of hearing related matters including burden of proof, admissibility of evidence, the hearing record, and the closing and opening statements by the parties.
R6-5-7516	The objective of this rule is to explain the time frames in which a hearing officer shall issue a decision, the required contents of the decision, and the procedures for delivering the decision to the parties.
R6-5-7517	The objective of this rule is to explain the effects of a hearing officer's decision regarding an adverse action.
R6-5-7518	The objective of this rule is to describe the procedures to appeal a hearing officer's decision to the DES Appeals Board.
R6-5-7519	The objective of this rule is to describe the Appeals Board procedures for reviewing a hearing officer's decision in accordance with A.R.S. § 23-672 and A.R.S. § 41-1992(D).
R6-5-7520	The objective of this rule is to describe the right of a party adversely affected by an Appeals Board decision to seek a judicial review as prescribed in A.R.S. § 41-1993.

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
Title	This rule is not effective because the title does not reflect that the functions and responsibilities pertaining to family foster homes and adoption agencies have been assumed by the Department of Child Safety (DCS).

	The program recommends revising the rule title to “Appeal and Hearing Procedures for Adverse Action Against Family Child Care Home Providers, and Persons Listed on the Child Care Resource and Referral System”. The appeals and hearing procedures for these DCS functions are now regulated by 21 A.A.C. 1, Article 3.
R6-5-7501	This rule is not effective because a number of definitions are unclear, no longer accurate, or should be removed due to certain functions and responsibilities having been assumed by DCS.
R6-5-7502	This rule is not effective because it does not reflect that certain functions and responsibilities have been assumed by DCS.
R6-5-7506	The rule is not effective because it does not currently provide for emergency action by the Department when warranted to protect the health, safety, or welfare of DES clients, even when an appeal is pending.
R6-5-7507	This rule is not effective because the language does align with the current practice with respect to time limits and does not reflect that adverse actions relative to foster parent licensure have been assumed by DCS.
R6-5-7515	This rule is not effective because it does not reflect current practice regarding the record of proceedings, or that the Office of Appeals may charge a fee for providing a copy of the hearing recording, as is current practice.
R6-5-7516	This rule is not effective because it does not reflect the Office of Appeals’ ability to electronically transmit a copy of a hearing decision upon written request or recorded consent.
R6-5-7518	This rule is not effective because it does not include that a petition for review may be filed by mail, fax, or internet, and does not align with current practice regarding various methods for maintaining a record of a hearing and for receiving a petition for review.

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
R6-5-7501	This rule is not consistent because specific references to R6-5-5201 definitions are incorrect.
R6-5-7506	This rule is not consistent with R6-5-5227. The rule provides that the Department may <i>not</i> take action, except under certain other circumstances, once an appeal has been filed, until the appeal is resolved, whereas R6-5-7506 provides that the Department may take immediate action in some circumstances when an adverse action notice is sent, or in other circumstances, the adverse action becomes effective 20 days later.
R6-5-7514	This rule is not consistent with Arizona Rules of Civil Procedure, Rule

	60(b)(1) as it does not state that excusable neglect can be a reason for reopening under Rule 60(c)(1), which limits the date of judgement to six months.
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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
N/A	N/A

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
R6-5-7514	This rule is not clear, concise, or understandable, as it contains outdated language concerning good cause. The Department recommends removing the reference to excusable neglect, allowing the hearing officer more flexibility regarding the establishment of good cause.
R6-5-7515	This rule is not clear, concise, or understandable, as it includes procedures that are no longer in effect, including tape recording, and instructions to the appellant to prove by a preponderance of evidence that the action was unauthorized, unlawful, or an abuse of discretion. This rule also does not align with current practice of an appellant having evidentiary burden regarding the decision being appealed. The Department recommends removing or revising such procedures for clarity.
R6-5-7516	This rule is not clear, concise, or understandable, as it states that a decision shall be based solely on the evidence and testimony provided at the hearing. The Department recommends revising the language to clarify that evidence may be submitted as an exhibit prior to the hearing and to provide the ALJ the ability to allow additional time to provide additional evidence even when agreed upon by both parties during the hearing. The Department also recommends revising language to allow the Department to provide a decision electronically.
R6-5-7518	This rule is not clear, concise, or understandable, as it limits the appeals petition timeline to 15 days from the date of the mailing of the hearing officer's decision, and also does not allow for electronic distribution. The Department recommends revising the language to allow the request for review to be in person, by mail, or by fax, and to specify that a requestor is no longer required to provide a copy to all parties.

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
N/A	N/A	N/A

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

The economic impact of the rules in Article 75 is consistent with the impact anticipated at the time of rulemaking, which stated that these rules would not impose any significant costs on any person or group, other than the minor costs associated with promulgation and publication of the rulemaking package; the benefits of having a clear, concise, and understandable set of rules outweighed the minor costs associated with the rulemaking; and the public, regulated social service entities, and the Department would benefit from these rules.

The Office of Appeals is authorized by A.R.S. § 41-1092.01 to establish appeal tribunals to hear and decide appeals for adverse actions described in Article 75. The Office of Appeals is funded through both federal and state appropriations. Listed below are the estimated costs incurred by the Office of Appeals in State Fiscal Year (SFY) 2020 in conjunction with the Article 75 hearings at the Office of Appeals and Appeals Board:

- 0.14 FTE (30 Staff Hours)
- \$1,345.68 in Personnel Costs (65% Federal funds; 35% State funds)
- Staff hours and other expenses are inconsequential for this case load as it consists of less than 0.3% of the total public assistance staffing and costs.

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

Yes No

The Department did not receive a business competitive analysis from a member of the public during the process of preparing this report.

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

Yes No

Please state what the previous course of action was and if the agency did not complete the action, please explain why not.

No course of action was indicated in the Department's previous Five-Year Review Report.

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.

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)?

45 CFR 213

DES determined that the rules in Chapter 5, Article 75 are not more stringent than the corresponding federal authorities cited.

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 the Department is not proposing a new rule or an amendment to an existing rule that requires the issuance of a regulatory permit, license, or Department authorization.

14. **Proposed course of action:**

The Department will request an exception to the current moratorium on rulemaking imposed by the Governor's Executive Order (E.O.) 2021-02, in order to revise Article 75 by removing references to family foster homes and adoption agencies, which were incorporated into Title 21, Chapter 1, Article 3 (21 A.A.C. 1, Article 3) by the Department of Child Safety in 2015, amending definitions under R6-5-7501, providing for emergency action the Department may take while an appeal is pending under R6-5-7506, and allowing the hearing officer more flexibility regarding the establishment of good cause under R6-5-7514. The revisions will also seek to address inconsistencies overall and make the Article more clear, concise, and understandable to the public. Due to the substantive nature of some of these revisions, the Department will request to revise rules through the regular rulemaking process. This will enable the Department to address technical revisions as well as material edits while also seeking stakeholder input as the revisions to the rule are drafted. The Department anticipates filing a Notice of Final Rulemaking with the Council in October 2022.