

-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 9 - Appellate Service Administration
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. §§ 41-1092.01

2. Analysis of rules:

Rule Analysis

R6-9-301 Title: Definitions

Objective: The objective of this rule is to define the terms in this Chapter and promote a uniform understanding of terms used by the Appellate Services Administration (ASA).

- 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: This rule is ineffective in meeting its objective and is not clear or concise because the rules regarding DES decisions, hearings, and orders don't provide clear expectations to the public about hearing procedures. The Department proposes to amend this rule to

include more terms associated with decisions, hearings, and orders from ASA.

Rule **Analysis**

R6-9-302 Title: Electronic Service of Documents by the Appellate Services Administration

Objective: The objective of this rule is to describe under what conditions ASA provides electronic copies of documents to a party.

- 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: This rule is ineffective in meeting the objective and is not clear, concise, and understandable because it's not clear what is meant when referencing electronic service and because the rules regarding DES decisions, hearings, and orders don't provide clear expectations to the public about hearing procedures. The Department proposes to amend this rule to specify what electronic service entails and when the Department may provide documentation to a party via

electronic service, and provide more detailed information about the Department's hearing procedures.

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:

There was no economic, small business, and consumer impact statement provided with the last rulemaking for Chapter 9, which became effective June 1, 2013. In SFY 2023, the Department resolved 56,652 appeals at an average cost of \$3.42. These rules do not directly impact public and private employment or small businesses and have no negative financial impact on private persons or consumers.

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 for Chapter 9, the Department

stated a plan to submit a Notice of Final Rulemaking to the Governor's Regulatory Review Council by May 2020 that would consolidate the appeals process rules contained in multiple Chapters of Title 6 in the Arizona Administrative Code. The Department filed a Notice of Proposed Rulemaking and Notice of Docket Opening with the Secretary of State's Office in April 2021; however, the Notice of Final Rulemaking was not submitted within 120 days of filing the NPR due to substantial changes. The Department filed a Notice of Supplemental Proposed Rulemaking to address the changes and published the draft rules on the Department's website to collect informal stakeholder input in September 2021. The Department received 39 comments, identifying additional concerns to be addressed. Given the complexity of the comments received, the Notice of Supplemental Proposed Rulemaking was not filed by April 2022 and the docket for this rulemaking closed. The Department requested and received permission to proceed with the rulemaking for Chapter 9 from the Governor's Office on March 4, 2024. The Department is currently in the process of addressing and implementing informal external stakeholder input received in June 2024.

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:**

The Department believes the benefits of these rules outweigh any costs associated with the rules and impose the least burden on individuals

regulated by these rules. These rules provide DES clients with information on how to exercise their due process rights when appealing adverse actions. The rules are necessary to ensure clarity, consistency, and transparency in the appeals and hearings process administered by the Department.

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 the rules do not require the issuance of a permit, license, or agency authorization.

10. **Proposed course of action:**

The Governor's Office approved the Department's request to conduct rulemaking for Chapter 9 on March 4, 2024. The Department's intent is to consolidate the appeals process rules contained in multiple Chapters of Title 6 in the Arizona Administrative Code into Chapter 9. The elements of due process are consistent across multiple programs for which the Appellate Services Administration provides hearings and creating a single source of hearing procedure rules will provide significantly better service and understanding to customers and stakeholders. The Department

completed informal internal stakeholder input in May 2024, ensuring all Department programs had an opportunity to work collaboratively to address the needs of the clients they serve. The Department then proceeded with obtaining informal external stakeholder input in June 2024. The Department is currently in the process of addressing and implementing informal stakeholder input received. The Department anticipates submitting the NFR to GRRC by March 2025.