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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.

**Arizona Department of Economic Security**  
**Five-year Review Report**  
**Title 6. Economic Security**  
**Chapter 5. Department of Economic Security - Social Services**

**Article 65.**

Department Adoption Functions and Procedures for Providing Adoption Services

**Article 66.**

Adoption Services

**Article 67.**

Adoption Subsidy

**Article 69.**

Child Placing Agency Licensing Standards

**Article 70.**

Adoption Agency Licensing

**Article 74.**

Licensing Process and Licensing Requirements for Child Welfare Agencies Operating  
Residential Group Care Facilities and Outdoor Experience Programs

**Article 75.**

Appeal and Hearing Procedures for Adverse Action Against Family Foster Homes,  
Adoption Agencies, Family Child Care Home Providers, and Persons Listed on the  
Child Care Resource and Referral System

**Article 80.**

Interstate Compact on the Placement of Children

**March 31, 2016**

# INTRODUCTION

## A. GENERAL

A.R.S. § 8-451, effective May 29, 2014, created the Department of Child Safety (DCS) to which the responsibilities and authority for the functions governed by Articles 65, 66, 67, 69, 70, 74, and 80 were transferred. Therefore, the rules reviewed in this report are limited to the rules which govern actions of and parties regulated by the Department of Economic Security (Department) as contained in A.A.C., Title 6, Article 75.

The Rules in Article 75 are currently used by the Department to govern certain hearing and appeals procedures. There are no fees or other out-of-pocket costs associated with the filing of an appeal or participation in the hearing process. Therefore, the cost to appellants from participation is limited to the time and effort needed to appeal the adverse determination and attend the hearing. Article 75 remains unchanged since the last 5-year review report.

## **B. RULES NOT REVIEWED IN THIS REPORT**

The Department did not review the rules in the following Articles, and intends that they expire because they concern functions of the Department of Child Safety and have been replaced by rules that have been promulgated by the Department of Child Safety:

- Article 65. Department Adoption Functions and Procedures for  
Providing Adoption Services
- Article 66. Adoption Services
- Article 67. Adoption Subsidy
- Article 70. Adoption Agency Licensing
- Article 80. Interstate Compact on the Placement of Children

## **ANALYSIS OF RULES**

### **A. STATUTORY AUTHORITY**

General: A.R.S. § 41-1954(A)(3)

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

### **B. OBJECTIVE**

#### **ARTICLE 75. APPEAL AND HEARING PROCEDURES FOR ADVERSE ACTION AGAINST FAMILY FOSTER HOMES, ADOPTION AGENCIES, FAMILY CHILD CARE HOME PROVIDERS, AND PERSONS LISTED ON THE CHILD CARE RESOURCE AND REFERRAL SYSTEM**

##### **R6-5-7501. Definitions**

The objective of this rule is to promote and ensure uniform understanding of the terminology used by the Department. The purpose of this rule is to clearly define the terms contained in the Article.

##### **R6-5-7502. Entitlement to a Hearing; Appealable Action**

The objective of this rule is to indicate the opportunity for licensees to obtain a hearing to challenge adverse actions and to specify actions that are not appealable. The purpose of this rule is to convey appeal rights and clarify which Department actions have no associated appeal rights.

**R6-5-7503. Computation of Time**

The objective of this rule is to specify the method of computing time for purposes of determining the timeliness of submissions from licensees and providers to the Department and mailings from the Department to licensees and providers. The purpose of this rule is to clarify how days are counted in determining whether an appeal of an adverse action is considered timely.

**R6-5-7504. Request for Hearing: Form; Time Limits; Presumptions**

The objective of this rule is to specify the time period and the formal and procedural requirements for filing an appeal, and the circumstances that will excuse the late filing of an appeal. The purpose of this rule is to clearly convey what constitutes a timely and proper appeal and to set forth requirements for an appellant to establish good cause for an otherwise late-filed appeal to be considered timely.

**R6-5-7505. Administration: Transmittal of Appeal**

The objective of this rule is to establish a time lapse requirement for Department administrations to forward notification of appeals to the Office of Appeals so appeals can be disposed of expeditiously in accordance with A.A.C. R6-5-7516. The purpose of this rule is to assure that appeals are received and processed efficiently so they may be scheduled for hearing without undue delay.

**R6-5-7506. Stay of Adverse Action Pending Appeal**

The objective of this rule is to convey the general requirement that the Department will not carry out the adverse action until certain requirements are met and to specify under

what circumstances an adverse action may be carried out before finality attaches to the adverse action notice. The purpose of this rule is to clarify whether, and under what circumstances, the Department may take action prior to the expiration of a party's appeal period.

**R6-5-7507. Hearings: Location; Notice; Time**

The objective of this rule is to specify when hearings are to be scheduled, the contents of the hearing notice and when the notice of hearing is to be sent to the parties. The purpose of this rule is to establish guidelines and time frames for the scheduling of hearings and to assure the parties have sufficient and proper notice of the hearing issue(s) and the circumstances under which the hearing will be held.

**R6-5-7508. Rescheduling the Hearing**

The objective of this rule is to specify the manner of requesting postponements, the grounds for granting postponements, and the procedures and time frames that apply to rescheduled hearings. The purpose of this rule is to provide guidance to the parties on the process for requesting a hearing postponement, the grounds under which such a request would be granted, and to specify how and when the hearing would be rescheduled.

**R6-5-7509. Hearing Officer: Duties and Qualifications**

The objective of this rule is to specify the qualifications and the duties of the hearing officer. The purpose of this rule is to assure that all hearing officers are duly qualified for that role and that each performs consistent functions in the course of any proceeding before him or her.

**R6-5-7510. Change of Hearing Officer; Challenges for Cause**

The objective of this rule is to specify the procedures and grounds that apply to peremptory challenges and challenges for cause of the hearing officer. The purpose of this rule is to establish the procedure for a party to object to any particular hearing officer, and set forth the reasons for which they legally may challenge the participation of a particular hearing officer.

**R6-5-7511. Subpoenas**

The objective of this rule is to specify the procedures that apply to requesting, ruling on, and serving subpoenas. The purpose of this rule is to explain to a party how and when 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. Parties' Rights**

The objective of this rule is to specify the rights of the parties in the hearing process. The purpose of this rule is to fully inform the hearing parties of their rights in the course of an appeal proceeding.



**R6-5-7513. Withdrawal of an Appeal**

The objective of this rule is to specify the procedure for requesting and processing the withdrawal of an appeal. The purpose of this rule is to inform parties of their right to withdraw any appeal, how to do so, and that the matter will be dismissed.

**R6-5-7514. Failure to Appear; Default; Reopening**

The objective of this rule is to specify the procedures for entering a default when the appellant fails to appear at the scheduled hearing. The rule also sets forth the procedures, time frames, and grounds for reopening a case once a default has been entered. The purpose of this rule is to establish that an appeal will be dismissed if the appellant does not appear, and to set forth a process, and time frames for the non-appearing party to request the matter be reopened. It also includes the grounds upon which a request to reopen a matter may be granted.

The objective of this rule is to specify procedures applying to a variety of hearing related matters including burden of proof, admissibility of evidence, the hearing record, and closing and opening statements by the parties. The purpose of this rule is to clarify the procedures used in appeal hearings to assist parties to properly prepare for and to fully participate in the process.

**R6-5-7516. Hearing Decision**

The objective of this rule is to specify time frames for the issuance of the hearing officer's decision, the required contents of the decision, and the procedures for delivering the decision to the parties. The purpose of this rule is to inform the parties of the time and method for receiving a decision, and the necessary information which must be included in that decision.

**R6-5-7517. Effect of the Decision**

The objective of this rule is to specify when a decision adverse to the appellant shall be effective. The purpose of this rule is to clarify when the Department may act upon the decision of the hearing officer if the adverse action is affirmed and what the Department must do if the adverse action is reversed.

**R6-5-7518. Further Administrative Appeal**

The objective of this rule is to specify procedures for appeal of a hearing officer decision to the DES Appeals Board. The purpose of this rule is to set forth the procedures and time frames which a party must follow to have the hearing officer's decision reviewed by the Appeals Board.

**R6-5-7519. Appeals Board**

The objective of this rule is to specify procedures for review of hearing officer decisions before the Appeals Board. The purpose of this rule is to clarify the responsibilities and processes of the Appeals Board with respect to any further appeals filed from a hearing officer's decision.

**R6-5-7520. Judicial Review**

The objective of this rule is to specify procedures for seeking judicial review of a decision by the Appeals Board. The purpose of this rule is to explain to the parties their rights to judicial review of an adverse Appeals Board decision and to clarify the procedures which must be followed.

**C. EFFECTIVENESS**

With the exception of the issues raised below, the rules in Article 75 are effective in meeting their objectives.

**ARTICLE 75. APPEAL AND HEARING PROCEDURES FOR ADVERSE ACTION AGAINST FAMILY FOSTER HOMES, ADOPTION AGENCIES, FAMILY CHILD CARE HOME PROVIDERS, AND PERSONS LISTED ON THE CHILD CARE RESOURCE AND REFERRAL SYSTEM**

The Title of the Article would be more effective if it was revised to reflect that the functions and responsibilities pertaining to family foster homes and adoption agencies have been assumed by DCS. The appeals and hearing procedures for these DCS functions are now regulated by 21AAC1, Article 3.

**R6-5-7501. Definitions**

Subsections 1. "Adverse action", 2."Adminstration", 9."Division of Children, Youth, and Families", 11. "Foster parent", and 13." Licensee" are no longer accurate and should be revised due to the assumption of certain functions and responsibilities by DCS.

**R6-5-7502. Entitlement to a Hearing; Appealable Action**

Subsections (B) and (C) would be more effective if updated to reflect the assumption of certain functions and responsibilities by DCS.

**R6 -5-7507. Hearings: Location; Notice; Time**

There are several elements of this rule that would be more effective with revision.

Subsection (B) should be revised to omit references to adverse actions relative to foster parent licensure as that function and responsibility has been assumed by DCS.

Subsections (C) and (D) would be more effective if language was revised to reflect the current practice with respect to time limits. Subsection (D) would be more effective if it were revised to reflect current practice which allows the Department to use a variety of effective methods to record proceedings.

#### **R6-5-7515. Hearing Proceedings**

Two subsections of this rule should be updated to improve their effectiveness.

Subsection (D) would be more effective if it were revised to reflect current practice which allows the Department to use a variety of effective methods to record proceedings. Subsection (E) would be more effective if the language was changed to reflect current practice. Current practice is that the Office of Appeals may charge a fee for providing a copy of the hearing recording. In cases where the Office of Appeals has prepared a transcript, the Office of Appeals may charge a fee of \$0.15 per page for providing a copy of the transcript.

#### **R6-5-7516. Hearing Decision**

Subsection (C) would be more effective if the language was changed to reflect the ability of the Office of Appeals to, upon written request or recorded consent, electronically transmit a copy of a hearing decision.

#### **R6-5-7518. Further Administrative Appeal**

Subsection (B) would be more effective with the inclusion of a bullet point #4 stating that a petition for review may be filed by mail, by fax, or by Internet. The rule would be more effective with the elimination of subsections (C) and (D) to align with current practice that includes various methods for maintaining a record of a hearing and for receiving a petition for review.

## D. CONSISTENCY

The rules in Article 75 are consistent with state and federal law and Department policy, with the following exceptions:

- R6-5-7501, Definitions, item 10 contains an incorrect reference to R6-5-5201(29) that should be rectified.
- R6-5-7506, Stay of Adverse Action Pending Appeal, is inconsistent with R6-5-5227, Adverse Action; Notice Effective Date. R6-5-5227 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. R6-5-7506 provides that the Department may *not* take action, except under certain other circumstances, once an appeal has been filed, until the appeal is resolved. The two rules should be reconciled with consideration of a provision for emergency action by the Department when warranted even if an appeal is pending.
- R6-5-7514, Failure to Appear; Default; Reopening, subsection (C) is inconsistent with policy and procedure, because the Office of Appeals currently gives a non-appearing party 15 days to file a request to reopen in these types of cases.

## **E. ENFORCEMENT POLICY**

The Department enforces these rules as they do not conflict with corresponding federal statute or regulations.

## **F. CLEAR, CONCISE, AND UNDERSTANDABLE**

R6-5-7514, R6-5-7515, R6-5-7516 and R6-5-7518 are not clear, concise, and understandable, because they are outdated.

## **G. WRITTEN CRITICISMS**

No written criticisms or filed grievances, appeals, letters or complaints have been received.

## **H. ECONOMIC IMPACT COMPARISON**

The economic impact of the rules in Article 75 is consistent with the impact anticipated at the time of rulemaking. The impact statement from the time of the rulemaking is included in this packet.

The Office of Appeals is authorized by Arizona Revised Statutes 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 SFY 15 in conjunction with the Article 75 hearings at the Office of Appeals and Appeals Board:

0.03 FTE (57 Staff Hours)

\$2,563.42 in Personnel Costs (65% Federal funds; 35% State funds)

Staff hours and other expenses are inconsequential for this caseload as it consists of less than 0.3% of the total public assistance staffing and costs.

## **I. BUSINESS COMPETITIVENESS ANALYSIS**

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

## **J. COURSE OF ACTION FROM PREVIOUS FIVE-YEAR REVIEW REPORT**

In the previous Five-year Review Report approved by Council in October 2011, the Department indicated its plan to make minor amendments to several rules identified in Article 75. At the time of the 2011 report, a regulatory moratorium was in place and the



Department anticipated submitting a rule package to Council within 18 months of the expiration of the moratorium, or of being granted an exception from the moratorium.

The moratorium that was in place expired and was replaced by a series of subsequent regulatory moratoriums. The Department has worked closely with the Office of the Governor to identify regulatory priorities and obtain moratorium exceptions as needed and allowed. No changes have been made to Article 75 since the previous Five-year Review Report. The Department did complete multiple rulemakings for other high priority Articles in Chapter 5.

## **K. DETERMINATION OF BURDEN AND COSTS**

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.

## **L. CORRESPONDING FEDERAL LAW**

The rules in Article 75 are neither more burdensome than, nor in conflict with, corresponding federal statutes and regulations.

## **M. COMPLIANCE WITH A.R.S. § 41-1037**

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 agency authorization.

## **N. PROPOSED ACTION**

All Department rulemaking was placed on hold as a result of Executive Order 2016-03 that became effective on February 10, 2016. In response, the Department requested permission to proceed with 16 high priority rulemakings that align with the justifications detailed in the Executive Order. As of March 24, 2016 six of the rulemakings have been formally approved and verbal approval has been received for six more (with written approval to follow). The amendments to Article 75 were not included in the Department's initial request. The Department will keep the amendments to Article 75 on its list of rulemakings to consider within the constraints of the Executive Order and the context of its rulemaking priorities.

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