



Arizona Administrative REGISTER

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From the Publisher

ABOUT THIS PUBLICATION

The authenticated pdf of the *Administrative Register* (A.A.R.) posted on the Arizona Secretary of State's website is the official published version for rulemaking activity in the state of Arizona.

Rulemaking is defined in Arizona Revised Statutes known as the Arizona Administrative Procedure Act (APA), A.R.S. Title 41, Chapter 6, Articles 1 through 10.

The *Register* is cited by volume and page number. Volumes are published by calendar year with issues published weekly. Page numbering continues in each weekly issue.

In addition, the *Register* contains notices of rules terminated by the agency and rules that have expired.

ABOUT RULES

Rules can be: made (all new text); amended (rules on file, changing text); repealed (removing text); or renumbered (moving rules to a different Section number). Rulemaking activity published in the *Register* includes: proposed, final, emergency, expedited, and exempt rules as defined in the APA, and other state statutes.

New rules in this publication (whether proposed or made) are denoted with underlining; repealed text is stricken.

WHERE IS A "CLEAN" COPY OF THE FINAL OR EXEMPT RULE PUBLISHED IN THE REGISTER?

The *Arizona Administrative Code* (A.A.C.) contains the codified text of rules. The A.A.C. contains rules promulgated and filed by state agencies that have been approved by the Attorney General or the Governor's Regulatory Review Council. The *Code* also contains rules exempt from the rulemaking process.

The authenticated pdf of *Code* chapters posted on the Arizona Secretary of State's website are the official published version of rules in the A.A.C. The *Code* is posted online for free.

LEGAL CITATIONS AND FILING NUMBERS

On the cover: Each agency is assigned a Chapter in the *Arizona Administrative Code* under a specific Title. Titles represent broad subject areas. The Title number is listed first; with the acronym A.A.C., which stands for the *Arizona Administrative Code*; following the Chapter number and Agency name, then program name. For example, the Secretary of State has rules on rulemaking in Title 1, Chapter 1 of the *Arizona Administrative Code*. The citation for this chapter is 1 A.A.C. 1, Secretary of State, Rules and Rulemaking

Every document filed in the office is assigned a file number. This number, enclosed in brackets, is located at the top right of the published documents in the *Register*. The original filed document is available for 10 cents a page.

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ADMINISTRATIVE REGISTER
This publication is available online for free at www.azsos.gov.

ADMINISTRATIVE CODE
A price list for the *Arizona Administrative Code* is available online. You may also request a paper price list by mail. To purchase a paper Chapter, contact us at (602) 364-3223.

PUBLICATION DEADLINES
Publication dates are published in the back of the *Register*. These dates include file submittal dates with a three-week turnaround from filing to published document.

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Participate in the Process

Look for the Agency Notice

Review (inspect) notices published in the *Arizona Administrative Register*. Many agencies maintain stakeholder lists and would be glad to inform you when they proposed changes to rules. Check an agency's website and its newsletters for news about notices and meetings.

Feel like a change should be made to a rule and an agency has not proposed changes? You can petition an agency to make, amend, or repeal a rule. The agency must respond to the petition. (See A.R.S. § 41-1033)

Attend a public hearing/meeting

Attend a public meeting that is being conducted by the agency on a Notice of Proposed Rulemaking. Public meetings may be listed in the Preamble of a Notice of Proposed Rulemaking or they may be published separately in the *Register*. Be prepared to speak, attend the meeting, and make an oral comment.

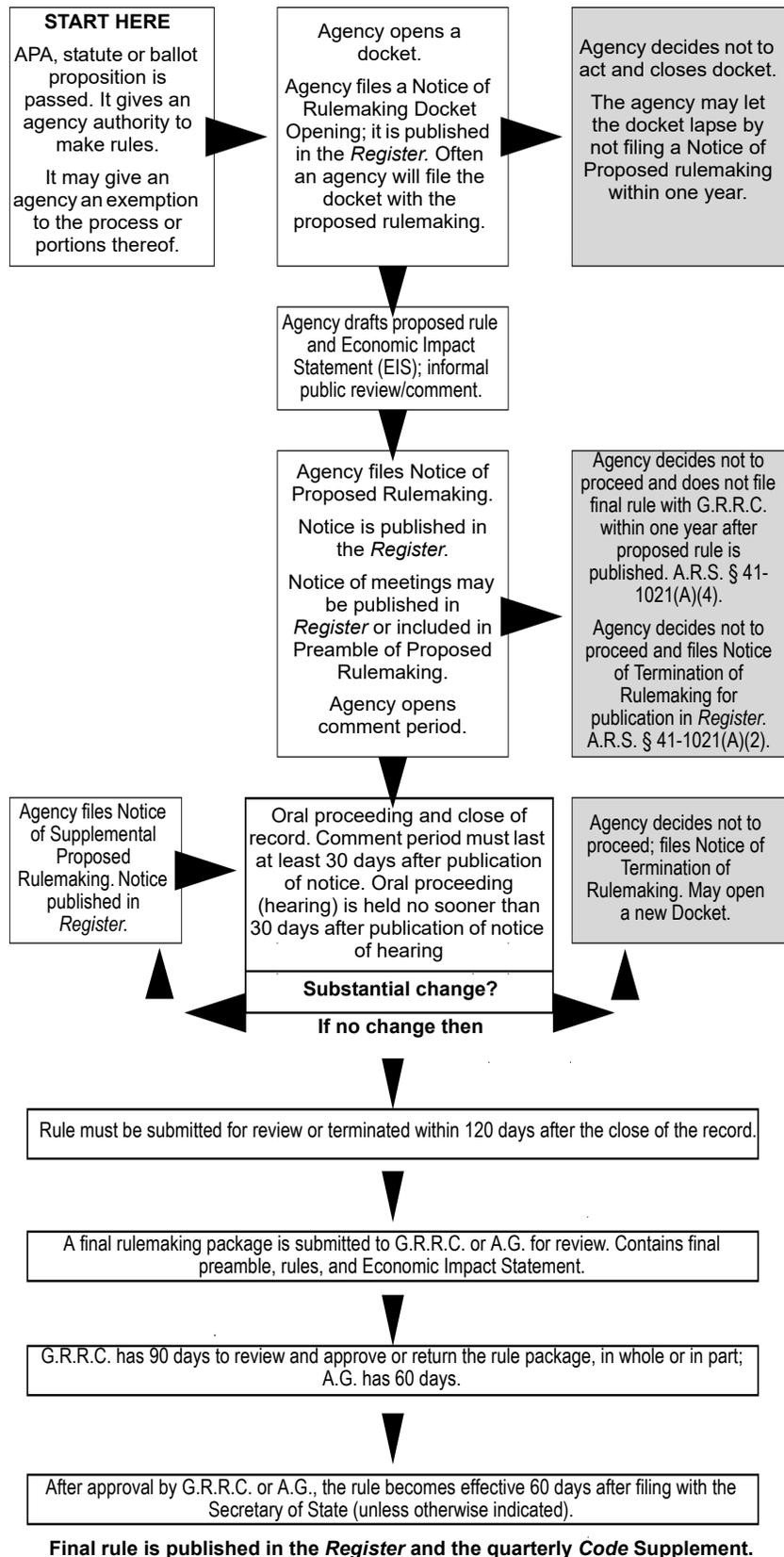
An agency may not have a public meeting scheduled on the Notice of Proposed Rulemaking. If not, you may request that the agency schedule a proceeding. This request must be put in writing within 30 days after the published Notice of Proposed Rulemaking.

Write the agency

Put your comments in writing to the agency. In order for the agency to consider your comments, the agency must receive them by the close of record. The comment must be received within the 30-day comment timeframe following the *Register* publication of the Notice of Proposed Rulemaking.

You can also submit to the Governor's Regulatory Review Council written comments that are relevant to the Council's power to review a given rule (A.R.S. § 41-1052). The Council reviews the rule at the end of the rulemaking process and before the rules are filed with the Secretary of State.

Arizona Regular Rulemaking Process



Definitions

Arizona Administrative Code (A.A.C.): Official rules codified and published by the Secretary of State's Office. Available online at www.azsos.gov.

Arizona Administrative Register (A.A.R.): The official publication that includes filed documents pertaining to Arizona rulemaking. Available online at www.azsos.gov.

Administrative Procedure Act (APA): A.R.S. Title 41, Chapter 6, Articles 1 through 10. Available online at www.azleg.gov.

Arizona Revised Statutes (A.R.S.): The statutes are made by the Arizona State Legislature during a legislative session. They are compiled by Legislative Council, with the official publication codified by Thomson West. Citations to statutes include Titles which represent broad subject areas. The Title number is followed by the Section number. For example, A.R.S. § 41-1001 is the definitions Section of Title 41 of the Arizona Administrative Procedures Act. The "§" symbol simply means "section." Available online at www.azleg.gov.

Chapter: A division in the codification of the *Code* designating a state agency or, for a large agency, a major program.

Close of Record: The close of the public record for a proposed rulemaking is the date an agency chooses as the last date it will accept public comments, either written or oral.

Code of Federal Regulations (CFR): The *Code of Federal Regulations* is a codification of the general and permanent rules published in the *Federal Register* by the executive departments and agencies of the federal government.

Docket: A public file for each rulemaking containing materials related to the proceedings of that rulemaking. The docket file is established and maintained by an agency from the time it begins to consider making a rule until the rulemaking is finished. The agency provides public notice of the docket by filing a Notice of Rulemaking Docket Opening with the Office for publication in the *Register*.

Economic, Small Business, and Consumer Impact Statement (EIS): The EIS identifies the impact of the rule on private and public employment, on small businesses, and on consumers. It includes an analysis of the probable costs and benefits of the rule. An agency includes a brief summary of the EIS in its preamble. The EIS is not published in the *Register* but is available from the agency promulgating the rule. The EIS is also filed with the rulemaking package.

Governor's Regulatory Review (G.R.R.C.): Reviews and approves rules to ensure that they are necessary and to avoid unnecessary duplication and adverse impact on the public. G.R.R.C. also assesses whether the rules are clear, concise, understandable, legal, consistent with legislative intent, and whether the benefits of a rule outweigh the cost.

Incorporated by Reference: An agency may incorporate by reference standards or other publications. These standards are available from the state agency with references on where to order the standard or review it online.

Federal Register (FR): The *Federal Register* is a legal newspaper published every business day by the National Archives and Records Administration (NARA). It contains federal agency regulations; proposed rules and notices; and executive orders, proclamations, and other presidential documents.

Session Laws or "Laws": When an agency references a law that has not yet been codified into the Arizona Revised Statutes, use the word "Laws" is followed by the year the law was passed by the Legislature, followed by the Chapter number using the abbreviation "Ch.," and the specific Section number using the Section symbol (§). For example, Laws 1995, Ch. 6, § 2. Session laws are available at www.azleg.gov.

United States Code (U.S.C.): The Code is a consolidation and codification by subject matter of the general and permanent laws of the United States. The Code does not include regulations issued by executive branch agencies, decisions of the federal courts, treaties, or laws enacted by state or local governments.

Acronyms

A.A.C. – *Arizona Administrative Code*

A.A.R. – *Arizona Administrative Register*

APA – *Administrative Procedure Act*

A.R.S. – *Arizona Revised Statutes*

CFR – *Code of Federal Regulations*

EIS – *Economic, Small Business, and Consumer Impact Statement*

FR – *Federal Register*

G.R.R.C. – *Governor's Regulatory Review Council*

U.S.C. – *United States Code*

About Preambles

The Preamble is the part of a rulemaking package that contains information about the rulemaking and provides agency justification and regulatory intent.

It includes reference to the specific statutes authorizing the agency to make the rule, an explanation of the rule, reasons for proposing the rule, and the preliminary Economic Impact Statement.

The information in the Preamble differs between rulemaking notices used and the stage of the rulemaking.



NOTICES OF FINAL RULEMAKING

This section of the *Arizona Administrative Register* contains Notices of Final Rulemaking. Final rules have been through the regular rulemaking process as defined in the Administrative Procedures Act. These rules were either approved by the Governor’s Regulatory Review Council or the Attorney General’s Office. Certificates of Approval are on file with the Office.

The final published notice includes a preamble and

text of the rules as filed by the agency. Economic Impact Statements are not published.

The Office of the Secretary of State is the filing office and publisher of these rules. Questions about the interpretation of the final rules should be addressed to the agency that promulgated them. Refer to Item #5 to contact the person charged with the rulemaking. The codified version of these rules will be published in the Arizona Administrative Code.

**NOTICE OF FINAL RULEMAKING
TITLE 6. ECONOMIC SECURITY
CHAPTER 14. DEPARTMENT OF ECONOMIC SECURITY
FOOD STAMPS PROGRAM**

[R20-11]

PREAMBLE

<u>1. Article, Part, or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
Article 3	New Article
R6-14-301	New Section
R6-14-302	New Section
R6-14-303	New Section
R6-14-304	New Section
R6-14-305	New Section
R6-14-306	New Section
R6-14-307	New Section
R6-14-308	New Section
R6-14-309	New Section
R6-14-310	New Section
R6-14-311	New Section
Article 4	New Article
R6-14-401	New Section
R6-14-402	New Section
R6-14-403	New Section
R6-14-404	New Section
R6-14-405	New Section
R6-14-406	New Section
R6-14-407	New Section
R6-14-408	New Section
R6-14-409	New Section
R6-14-410	New Section
R6-14-411	New Section
R6-14-412	New Section
R6-14-413	New Section
R6-14-414	New Section
R6-14-415	New Section
R6-14-416	New Section
R6-14-417	New Section
Article 5	New Article
R6-14-501	New Section
R6-14-502	New Section
R6-14-503	New Section
R6-14-504	New Section
R6-14-505	New Section
R6-14-506	New Section
R6-14-507	New Section

2. Citations to the agency’s statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):

Authorizing statute: A.R.S. §§ 41-1954(A)(3) and 46-134(1) and (10)

Implementing statute: A.R.S. §§ 41-1954(A)(1)(c) and (A)(8) and 46-136(B) and (C); 7 U.S.C. 2013



3. The effective date of the rules:

January 21, 2020

- a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**

The rules shall become effective immediately upon filing with the Secretary of State under A.R.S. § 41-1032(A)(2). The Code of Federal Regulations (CFR) requires the Arizona Department of Economic Security (Department) to implement procedures for claims against households (7 CFR 273.18), provide fair hearings to any household aggrieved by a Department action (7 CFR 273.15), and establish a system for conducting Intentional Program Violation disqualifications (7 CFR 273.16). The effective immediate date of the rule will permit the Department to comply with federal law and regulation.

- b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):**

Not applicable

4. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:

- Notice of Emergency Rulemaking: 24 A.A.R. 2081, July 27, 2018
- Notice of Rulemaking Docket Opening: 24 A.A.R. 2971, October 19, 2018
- Notice of Proposed Rulemaking: 24 A.A.R. 2893, October 19, 2018
- Notice of Emergency Rulemaking: 24 A.A.R. 3591, December 28, 2018
- Notice of Termination of Rulemaking: 25 A.A.R. 413, February 22, 2019
- Notice of Rulemaking Docket Opening: 25 A.A.R. 1739, July 5, 2019
- Notice of Proposed Rulemaking: 25 A.A.R. 1721, July 5, 2019

5. The agency’s contact person who can answer questions about the rulemaking:

Name: Rodney K. Huenemann
 Address: Department of Economic Security
 P.O. Box 6123, Mail Drop 1292
 Phoenix, AZ 85005
 or
 Department of Economic Security
 1789 W. Jefferson St., Mail Drop 1292
 Phoenix, AZ 85007
 Telephone: (602) 542-6159
 Fax: (602) 542-6000
 E-mail: rhuenemann@azdes.gov

6. An agency’s justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

The Department administers the Nutrition Assistance Program (Program), formerly called Food Stamps. The Program is authorized by the federal Supplemental Nutrition Assistance Program (SNAP) under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.) and the Code of Federal Regulations (7 CFR 271 through 7 CFR 283). The rulemaking will amend Chapter 14, Food Stamps Program, of the Arizona Administrative Code and provide rules that are consistent with federal law and regulation.

Article 3 establishes procedures for the Department to identify and collect overpayments from households. The rules establish categories of claims and criteria for identifying a claim’s date of discovery. The Department may determine the cost effectiveness of pursuing or terminating the collection of an overpayment and provide the household a compromise agreement to settle a claim. The rules provide for acceptable payment and collection methods.

Article 4 provides for an appeal and fair hearing to any household wishing to contest an adverse Department action. The household must file an appeal request within 90 days of receiving a notice of the adverse action. The Department shall stay any adverse action pending an appeal decision. The fair hearing procedure outlines the hearing schedule, duties of the hearing officer, and parties’ rights. The hearing officer must issue a decision within 60 days after the appeal request is filed. The household can appeal the hearing officer’s decision.

Article 5 defines an Intentional Program Violation and establishes a procedure for disqualifying a household from further Program benefits. A household may waive the right to an administrative disqualification hearing. The administrative disqualification procedures outline the hearing schedule, hearing officer’s responsibilities, and the parties’ rights. Various sanctions may be imposed for any program violation found. A household may appeal the determination of a program violation. The Department will honor out-of-state sanctions and impose Program penalties in this state.

7. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The Department did not review or rely on any study relevant to the rules.



8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. A summary of the economic, small business, and consumer impact:

The Department anticipates that this rulemaking will have a minimal economic impact on the implementing agency, small businesses, and consumers. There is no additional cost to the Department or other state agencies anticipated by this rulemaking.

The persons directly impacted by this rulemaking are individuals or households who are applicants for, recipients of, or former recipients of the Nutrition Assistance program. These individuals and households will benefit from clear, concise, and understandable information regarding the overpayment and claims processes, and the rights and responsibilities afforded to individuals and households in the Fair Hearings, Appeals, and Intentional Program Violation processes.

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

In response to public comments received, the following changes have been made. These changes increase consistency across the rules and increase clarity for the public. None of the changes between the proposed rulemaking and the final rulemaking are substantial under the standard set forth A.R.S. § 41-1025.

- R6-14-303(A)(2) has been revised to provide more clarity regarding what “an error” means, both on the part of the Department and on the part of the applicant/recipient household, as pertains to the circumstances specific to this rule.
- R6-14-303(A)(2) has been revised by adding a new subsection (c) that specifies that the Department shall issue a supplement(s) when it is discovered that the household received less than the full amount of benefits due to Department error when rendering an eligibility determination and authorizing benefits.
- R6-14-308(D) has been revised to clarify that the Department shall not send the household a Financial Statement form when a compromise request is received for a claim for which an Appeal has been received and is pending.
- R6-8-311(C) has been revised to correct a typographical error by removing the word “the” prior to the word “Arizona”.
- R6-14-308(E) has been revised to clarify that the financial statement associated with resolving a claim under the rule is required to be provided by the thirtieth calendar day following the date that the Department mailed or otherwise transmitted the Financial Statement to the household or the agreed upon extension date by the household, unless the delay was for good cause.
- R6-14-409(C) has been revised to change the word “work” to “working” to be consistent with the wording in R6-14-402(A)(2).
- R6-14-410 has been reformatted. The numerical listing of the Parties’ Rights has been changed to an alphabetical listing. There is no change to the verbiage in any of the Parties’ Rights specified in this rule.
- R6-14-417(B) and (C) have been revised to clarify that only the household appellant adversely affected by an Appeals Board decision may seek further judicial review.
- R6-14-502(C)(2) has been revised to be consistent with the language in R6-14-410(B) regarding the receipt of a free copy of any document in the individual’s case file, with certain restrictions.
- R6-14-502(C)(11) has been revised by adding a subsection (c) to include a third option in the waiver notice of the Administrative Disqualification Hearing that the person may check stating: “I do not admit that the facts as presented are correct in my Nutrition Assistance case. I do not waive my right to require an Administrative Disqualification Hearing where the Department must prove by clear and convincing evidence that I committed and intended to commit an Intentional Program Violation.”
- R6-14-503(D)(3) has been revised to be consistent with the language in R6-14-410 (B) and R6-14-502(C)(2) regarding the receipt of a free copy of any document in the individual’s case file, with certain restrictions.
- R6-14-503(G) has been revised to remove the language “and the consequences of exercising that right” pertaining to the person’s right to remain silent.
- R6-14-503(I) has been revised to include the language “and intended to commit” to add clarity to the rule.
- R6-14-503(J) has been revised to add “and appeal rights” to the items that are contained in the written decision notice that is sent by the Hearing Officer to an individual suspected of an Intentional Program Violation.
- R6-14-505(H) has been revised to add the relevant federal regulation citation to add clarity.



11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to those comments:

	SECTION REFERENCE	COMMENT FROM COMMENTOR	DEPARTMENT RESPONSE
<i>Article 3. Claims Against Households</i>			
1	R6-14-301. Purpose and Definitions (B)(1) and (B)(4)	DES' definitions for "agency error" in subsection (B)(1) and "inadvertent household error" in subsection (B)(4) continue to be incomplete. Both definitions fail to link errors to action or inaction required by federal regulation.	The additional language "required by federal regulation" is not needed as the Department administers the Nutrition Assistance program in accordance with the Food Stamp Act of 1977 as amended (7 U.S.C. 2011 et seq), the Code of Federal Regulations 7 CFR 271 through 7 CFR 283 including the state options allowed in the federal regulations, and any alternative policies and procedures that are approved under the waiver authority of the federal Food and Nutrition Service. The two definitions are taken from 7 CFR 273.18(a)(4)(b)
2	R6-14-301. Purpose and Definitions (B)(2)	The definition of "claim" in subsection (B)(2) also must be linked to the agency or claimant taking an action or failing to take an action required by federal regulation. As drafted, the definition of "claim" occurs whenever food stamps were "overpaid." That is not the definition of when an overpayment occurs.	The definition of "claim" is based on the federal regulation at 7 CFR 273.18(a)(1) and (2). The federal regulation states, in part, that "A recipient claim is an amount owed because of benefits that are overpaid or benefits that are trafficked." Not every overpayment of benefits results in a claim being established. Those overpayments that are not considered to be Cost Effective as allowed under 7 CFR 273.18(e)(2)(i) are not established as claims and collection activities are not initiated.
3	R6-14-302. Claim Calculation; Date of Discovery; Overpayment Period (B)	DES' initial draft rules in 2017 had a look back period of 12 months for the collection of overpayments in agency error cases. In subsection (B), the proposed rule increases the collection period to 36 months for both agency error and inadvertent household error. From information DES provided to the Institute a few years ago, most overpayments in Arizona are caused by agency error. In those situations, the error was out of the control of the claimant. The longer collection period for agency error cases should be changed back to the initial draft proposal of 12 months. The further back DES goes for collection, the less likely the claimant will have the documents needed to challenge the overpayment. Several states, including Washington, limit the collection of agency errors to 12 months. Such a limitation on collection policy or practice is reasonable because the error is the fault of the agency and the agency may not keep any of the recovered overpayment. We continue to recommend that for agency errors DES only go back 12 months. We also continue to recommend that the 12-month time period is appropriate for inadvertent household errors as well. While collections may go back three years, in cases with no intent to obtain benefits the person was not eligible for, administrative time and effort would be better served ensuring the operation of the food stamp program complied with federal law.	7 CFR 273.18(c)(1)(i) requires the Department to calculate an Agency Error or Inadvertent Household Error claim back to at least twelve months but no more than 6 years prior to when the Department became aware of the overpayment. The Department has chosen to calculate such claims back to 36 months from the Date of Discovery, as allowed in this regulation.



4	R6-14-302. Claim Calculation; Date of Discovery; Overpayment Period (B)	The federal regulation 7 C.F.R. § 273.18(d)(1) requires the agency to “establish a claim before the last day of the quarter following the quarter in which the overpayment or trafficking incident was discovered.” DES failed to include this requirement in the proposed rules. It must be included.	The Department complies with 7 CFR 273.18(d)(1) and does not use the option to develop and use a different standard, as allowed in this rule. Had we selected to deviate from the timeframe requirement in this regulation, a rule would have been included to specify the alternative timeframe. As required under 7 CFR 273.18(d)(3) the Department establishes all claims even if they cannot be established within the timeframes in 7 CFR 273.18(d)(1).
5a	R6-14-303. Determining a Claim Amount	In general, the Institute is concerned about what this section purports to cover and what it should cover: This section is entitled “determining a claim amount,” by which DES appears to mean determining an “overpayment” amount. This section should be broader and address change reporting in general and the consequences of a report or a failure to report a change, which may result in an increase in benefits or a decrease in benefits and a potential overpayment. Or DES should have a separate change reporting section. By combining the two concepts, this section is very confusing and the wording is not clear. The Institute has tried to understand what DES intends and the legal basis for its proposed rule.	In a new rulemaking that will address other aspects of the Nutrition Assistance program that are not included in, or relevant to, this rulemaking, the Department will include an Article specific to Change Reporting and Change Processing. The rules developed in this rulemaking address the change related issues specific to identifying and establishing Claims Against Households.
5b	R6-14-303. Determining a Claim Amount (A)(2)	The rule provides that when DES determines an “error occurred at the application, [DES] shall re-determine eligibility and the benefit amount ...using the application approval and denial policies and procedures that were in effect at the time eligibility was determined.” The rule does not define an “error,” and unless DES defines the word, it should be deleted. This issue goes back to the Institute’s concerns discussed in R6-14-301, where agency error and inadvertent household error are not linked to any action or inaction. These definitions must be linked to the agency or claimant taking or failing to take an action required by the federal regulation.	As suggested, the Department has revised R6-14-303(A)(2) to provide more clarity regarding what “an error” means, both on the part of the Department and on the part of the applicant/recipient household, as pertains to the circumstances specific to this rule.
6	R6-14-303. Determining a Claim Amount (A)(2)	Although subsection (A)(2) pertains to the calculation of benefits, the last sentence of the subsection specifically provides that DES “will not consider information that was not previously reported by the household that would have resulted in an increase in benefit allotment at the time of initial approval of benefits.” At the public hearing on August 6, 2019, we asked the approximately 14 DES representatives present to give us the federal authority for this differential treatment and there was no response. We request that DES provide the specific federal regulation that allows DES to not consider information that would result in an increase in benefits. If there is no federal authority, then that sentence must be deleted.	The subsection cited in the comment addresses “information that was <u>not previously reported by the household</u> that would have resulted in an increase in the benefit allotment at the time of initial approval of benefits”. For changes that are reported by the household after the eligibility determination has been rendered and benefits have been issued, 7 CFR 273.12(c)(1), <i>Increase in benefits</i> , subsection (i) addresses the effective date of a reported change that results in an increase in a household’s benefits: “the State agency shall make the change effective no later than the first allotment issued 10 days after the date the change was reported to the State agency.” The Department has revised R6-14-303(A)(2) by adding a new subsection (c) that specifies that the Department shall issue a supplement(s) when it is discovered that the household received less than the full amount of benefits <u>due to Department error</u> when rendering an eligibility determination and authorizing benefits.



7	R6-14-303. Determining a Claim Amount (A)(2)	Moreover, the subsection only pertains to when the household is either “ineligible,” (A)(2)(a), or the household was eligible but received an overpayment. (A)(2)(b). Thus, this subsection only looks at situations when the household benefits are expected to decrease and fails to look at situations when the benefits will <i>increase</i> because of the change reporting. Further, we could not find any authority for this analysis in the federal regulation.	As noted in the Department response #6, R6-14-303(A)(2) has been revised to address this issue. When the department discovers that the household received less than the full amount of benefits <u>due to Department error</u> at the time an eligibility determination was rendered and when benefits were authorized, the department will issue a benefit supplement(s) and increase the benefit allotment for the remaining months in the certification for which benefits have not yet been paid. See response #6 regarding the effective date of changes that are reported by the household after the eligibility determination has been rendered and benefits have been issued.
8	R6-14-303. Determining a Claim Amount (A)(2)	The federal regulation requires the agency to offset or reduce the overpayment by both any underissuance and expunged benefits. <i>See</i> 7 C.F.R. § 273.12 (c)(1)(ii)(D). In subsections (A)(2)(a) and (b), DES included expunged benefits but failed to include underissuances. Underissuances must be included. Otherwise, how does DES get to the correct amount of benefits that should have been paid during the relevant time period? This issue has come up in legal services cases, where in some months there was an overpayment but in other months there was an underissuance. In the overpayment calculation, DES staff ignored the underissuance months. If the underissuance months were taken into account, the amount of the overpayment would have been reduced. Of course, there may be situations where the amount of the underissuance may result in no overall overpayment and increased benefits being owed to the household.	The redetermination required in the rule includes consideration of appropriate overissuances and underissuances of benefits. As noted in Department response #6, the Department has revised R6-14-303(A)(2) by adding a new subsection (c) that specifies that the Department shall issue a supplement(s) when it is discovered that the household received less than the full amount of benefits <u>due to Department error</u> when rendering an eligibility determination and authorizing benefits.
9	R6-14-303. Determining a Claim Amount (A)(3)	Subsection (A)(3) pertains to changes that occur during the certification period. Subsection (A)(3)(a) pertains to a change that was required to be reported by the household and was reported. In those cases, under the rule, DES is required to recalculate benefits and determine whether an overpayment (i) or an underissuance (ii) (supplement is needed) occurred. We think the way this subsection is drafted is very unclear. We request that DES insert the following words at the beginning of subsection (a)(ii): “THE RESULT MAY BE THAT THERE IS NO OVERPAYMENT.”	The rule clearly specifies that the result of processing the reported change(s) may result in either a claim being established for an overpayment of benefits or the issuance of supplemental benefits for each month the household was paid less than the new benefit amount.
10	R6-14-303. Determining a Claim Amount (A)(3)	Subsection (A)(3)(b) pertains to changes that were not reported by the household during certification. If the change was not required to be reported, DES will not recalculate benefits. (A)(3)(b)(i). Federal regulation 7 C.F.R. § 273.12(d) provides that if the household fails to report a change that it was not required to report, then there shall not be an overpayment. But the proposed rule fails to address what should happen if the failure to report would have increased benefits. DES must change subsection (A)(3)(B)(i) to read: “When the change was not required to be reported, the Department will not process the change for benefits that would result in an overpayment.” A new (B)(ii) must be added that provides: “When the change was not required to be reported, the Department will process the change for benefits that would result in an underissuance.”	Please refer to the responses for numbers 6 through 9. This rule is consistent with the federal regulation requirements at 7 CFR 273.12(c) and (d).



<p>11</p>	<p>R6-14-303. Determining a Claim Amount (A)(3)</p>	<p>If the change was required to be reported, then DES will recalculate benefits and establish the overpayment. (A)(3)(b)(ii). There is no provision to recalculate benefits when an increase occurs. We do not understand how DES can hold the failure to report against the household to create an overpayment but will not recalculate benefits when the result is an underissuance. Here as well, at the August 6, 2019 public hearing we asked the approximately 14 DES employees present for the federal citation that allows this differential treatment and there was no response. The last sentence in subsection (A)(3)(b)(ii) must be revised to read with the new wording capitalized: "The Department shall establish a claim based on the amount of benefits that were paid in excess of the correct benefit amount in each month of the certification period minus the amount of benefits that the Department has expunged from the household's EBT benefit account AND ANY UNDERISSUANCES. THE RESULT MAY BE THAT THERE IS NO OVERPAYMENT. DEPARTMENT SHALL ISSUE A SUPPLEMENT FOR EACH MONTH THE HOUSEHOLD WAS PAID LESS THAN THE NEW BENEFIT AMOUNT." We have taken the last sentence from DES' subsection (A)(3)(a)(ii) to be consistent.</p>	<p>Please refer to the responses for numbers 6 through 10.</p> <p>This rule is consistent with the federal regulation requirements at 7 CFR 273.12(c) and (d).</p>
<p>12</p>	<p>R6-14-303. Determining a Claim Amount (A)(3)</p>	<p>DES failed to articulate the steps to calculate a food stamp overpayment as required by 7 C.F.R § 273.18(c)(1)(ii). DES should have a comprehensive rule on how to calculate an overpayment and should add the following: <i>New subsection:</i> The Department shall only count income that was reasonably certain under 7 C.F.R. § 273.10(c)(1) at the time that the initial calculation of benefits was made.</p>	<p>The process described in this rule complies with 7 CFR 273.18(c).</p> <p>The details regarding an overpayment calculation are published in the Department's Cash and Nutrition Assistance Policy (CNAP) Manual which is available to the public via the Department's website at https://des.az.gov/.</p> <p>The CNAP policy reference is FAA6.E03C.</p>
<p>13</p>	<p>R6-14-303. Determining a Claim Amount (A)(3)</p>	<p>Since most households are on simplified reporting, we will discuss the rule in that context. The only thing a household on simplified reporting must report during the certification period is if the household income goes above 130% of the FPL. 7 C.F.R. §273.12(a)(5)(v). Other changes such as household composition that must be reported at the recertification stage are not required to be reported during the certification period. Thus, we would add the following to the proposed rule.</p> <p><i>New subsection:</i> The Department uses simplified reporting in most cases and unless the household's income exceeds 130% of the federal poverty guidelines, a report of change is not required until the six-month point in certification period and does not constitute an overpayment.</p>	<p>The Department processes all changes that are reported by a household, as allowed under 7 CFR 273.12(c).</p> <p>When the Department discovers a change that was not reported by the household, the rule specifies that only changes that are required to be reported will be evaluated when determining whether an overpayment occurred.</p>
<p>14</p>	<p>R6-14-303. Determining a Claim Amount (A)(3)</p>	<p>During the certification period, the agency must act when the household's gross income exceeds the monthly gross income limits for the household size. 7 C.F.R. §273.12(a)(5)(v).* We could not find other times when the agency must act to decrease benefits under simplified reporting in the federal regulation. If DES has found such a provision, we request that DES provide the citation to us.</p> <p>* <i>The federal regulation was amended on April 15, 2019.</i></p>	<p>As stated in the Department response #13, the Department processes all changes that are reported by a household, regardless if the change was required to be reported, as allowed under 7 CFR 273.12(c).</p>



15	R6-14-303. Determining a Claim Amount (A)(3)	DES uses the term “correct benefit amount” but the term is not defined. If this term is going to be used, DES should define it.	The phrase “correct benefit amount” as used in this rule is consistent with the language in 7 CFR 273.18(c)(1)(ii) – “correct amount of benefits”.
16	R6-14-307. Collection Methods (C)	DES includes the option that it “may” collect overpayments from unemployment insurance (“UI”) benefits through an intercept or a repayment agreement. DES previously stated it would not collect from UI benefits. In meetings, DES staff reiterated that DES does not currently collect overpayments from UI benefits. Collection from UI benefits is not required, <i>see</i> 7 C.F.R. § 273.18 (g)(6)(i) and (ii), and we request that DES not collect from UI payments. Recipients of UI benefits are persons and families who have had a life altering event, the loss of a job through no fault of their own and are in financial crisis. Add to this situation the fact that Arizona has the second lowest UI weekly amount in the country, and the further loss of benefits will lead many households into being homeless. DES should not intentionally add to the financial stress these vulnerable families are facing.	While the Department does not currently utilize this collection method, nor is it required to, it is an allowable option under 7 CFR 273.18 (g)(6), and is included in this rule in order for this option to be retained.
17	R6-14-308. Claim Compromise (C)	DES limits a household's ability to obtain a claim compromise to one time. There is no such limitation in the federal regulation, and this is an example where DES' proposed rule <i>is</i> more restrictive than the federal regulation. Under the federal regulation, 7 C.F.R. § 273.18 (e)(7), a household is entitled “compromising claims.” There is no limitation to only compromising a claim one time.	7 CFR 273.18(e)(7) allows states the <u>option</u> to compromise a claim. Compromising a claim is not a requirement under federal regulation and thus a household is not entitled to a Compromise. Also, 7 CFR 273.18(e)(7)(iii) allows states to reinstate any compromised portion of a claim if a claim becomes delinquent. Since the Department has opted to allow a Compromise, any rules and subsequent procedures the Department adopts for a Claim Compromise are not more restrictive than the federal regulation.
18	R6-14-308. Claim Compromise (E)	In subsection (E), the rule should be clarified that an untimely submission of the documents excludes the situations where the person asked for more time or asked for help from DES. We request that DES insert after the sentence “A household may request additional time or help from the Department” the following sentence “A household that requests additional time or help from the Department shall not be required to submit the Financial Statement with requested information and verification within the thirty calendar days following the mailing or transmittal of the Financial Statement to the household.”	As suggested, the Department has revised R6-14-308(E) to clarify that the Financial Statement is required to be provided by the thirtieth calendar day or the agreed upon extension date by the household, unless the delay was for good cause. The revised rule also adds a provision that when the household requests additional time or assistance from the Department, the Department shall allow an additional 30 calendar days.



<p>19</p>	<p>R6-14-309. Reinstatement of a Compromise Claim</p>	<p>The Institute does not object to subsections (1) and (2), except that the proposed rule fails to address what happens when the default or delinquency of the compromised claim is the result of changed circumstances and renegotiation of the repayment plan is needed because of a hardship. The federal regulation, 7 C.F.R. § 73.18(e)(5)(iii), provides for the renegotiation of the repayment agreement and DES' current policies contain a renegotiation provision as well. DES policy "FAA 6. E Overpayments, .06 Methods of NA Overpayment Collection - Recoupment Collection Notices" provides that when the household fails to make a payment pursuant to the payment schedule, DES sends a notice that the household "may negotiate the payment schedule," and DES may "renegotiate the repayment schedule." We are dismayed that while DES currently renegotiates repayment plans it continues to fail to include the policy and practice in the proposed rules. Therefore, we request the following be added as a new section:</p> <p><i>New Section: Delinquency and Renegotiation of a Repayment Plan</i></p> <p>A. If the household is in default or delinquency of the repayment plan, the department shall send a notice to the household advising the household of the delinquency. The notice shall inform the household how to apply for a renegotiated payment plan, and specify the documentation they will need to submit.</p> <p>B. If the household's circumstances have changed, and it can no longer make the agreed upon payments, they may apply for a renegotiated payment plan based on the hardship.</p> <p>C. The household has the right to appeal the agency's failure to renegotiate a new repayment plan and the terms of any renegotiated repayment plan.</p>	<p>This rule is consistent with 7 CFR 273.18(e)(7)(iii) which allows states to reinstate any compromised portion of a claim if a claim becomes delinquent.</p>
<p>Article 4. Appeals and Fair Hearings</p>			
<p>20</p>	<p>R6-14-403. Request for Hearing; Form; Time Limits; Presumption (E)</p>	<p>In subsection (E), the reasons DES will consider when an untimely submission of an appeal will be considered timely continue to be too limited. In every other section of the rules there is a general "good cause" exception. There should be a general good cause exception in this rule as well. The Institute requests the addition of a new subsection (F)(4) that provides: "For other good cause as defined in subsection R6-14-412(B)."</p>	<p>This rule is consistent with 7 CFR 273.15(g) and due process requirements.</p> <p>We think it is important to note that a person has 90 days to file for a Fair Hearing and there are additional protections including that a recipient can appeal the current level of benefits at any time within a certification period.</p>



<p>21</p>	<p>R6-14-403. Request for Hearing; Form; Time Limits; Presumption Proposed (J)</p>	<p>The following sentence should be added to subsection (J): “The notice of hearing shall include information on the person’s rights to reasonable accommodations under the Americans with Disabilities Act (“ADA”) and how an accommodation may be requested.”* DES recognizes this obligation in proposed rule R6-14-503(F) for Administrative Disqualification Hearings where the rule provides that “The time and place for the hearing shall be arranged so the hearing is accessible ... including making reasonable accommodations for a person with a disability.” While, as explained in R6-14-503(F), we do not think this provision is adequate, it highlights that DES understands its obligation to provide this information to persons.</p> <p><i>* Although beyond the rules, we also want to state that DES must immediately stop burying information concerning the household’s rights under the ADA in tiny font at the end of all of its notices. In addition to tiny font which is not readable for persons with visual impairments, the text starts off referring to other federal laws. Several years ago, the Institute and legal services worked on the notices with the Appellate Services Administration and the notices had a separate section in at least 12 font with a heading on Americans with Disabilities Act rights. We request that DES immediately go back to that format.</i></p>	<p>The Department does not agree with this comment. The Department complies with all federal Americans with Disabilities Act requirements in the administration of Department programs and services. The rule need not set forth in detail the ADA related duties of the Department.</p>
<p>22</p>	<p>R6-14-405. Hearings; Location; Notice; Time (A)</p>	<p>In subsection (A) the rule should affirmatively state that: “The notice of hearing shall inform the appellant that he or she may request to appear in person before an administrative law judge and specify the steps to take to make this request.” DES’ Appellate Services Administration has been very reluctant to have in-person hearings even though claimants have a right to one. See discussion below in parties’ rights, R6-14-410, concerning the parties’ rights to appear in person.</p>	<p>The rule states that the Notice of Hearing shall include information on how to request an in-person hearing. The Department believes that this requirement adequately addresses this comment.</p>
<p>23</p>	<p>R6-14-405. Hearings; Location; Notice; Time (D)</p>	<p>In the proposed rule, DES has conflated two rights: (1) the right to look at the person’s whole file and get copies of the file and (2) the right to examine and get copies of the documents to be used at the hearing. The wording in subsection D(5)(a) provides that the notice shall inform the person of the right to “Examine the case file prior to the hearing ... If requested ... the Department shall provide a free copy of the portions of the case file that are relevant to the hearing.” As explained below, DES must segregate the two rights and not conflate them.</p> <p>Federal regulation 7 C.F.R. § 273.15(1) lists the information that must be in a notice of a hearing as part of the person’s pre-hearing rights. The fourth item is: “Explain that the household or representative may examine the case file prior to the hearing.” 7 C.F.R. § 273.15(1)(4). This is a right to review the whole case file and get a copy of the whole file. The right is not limited to “portions” of the case file. We request DES list this right separately as subsection (5)(a). “Explain that the household or representative may examine the case file prior to the hearing and obtain a copy of the whole case file.”</p>	<p>The provisions in R6-14-405 (D)(5)(a) conform in full to the following federal regulations:</p> <p>7 CFR 273.15(i)(1): “Upon request, the State agency shall make available without charge the specific materials necessary for a household or its representative to determine whether a hearing should be requested or to prepare for a hearing.”</p> <p>7 CFR 273.15(l)(4): “Explain that the household or representative may examine the case file prior to the hearing.”</p> <p>7 CFR 273.15(p)(1): “If requested by the household or its representative, the State agency shall provide a free copy of the portions of the case file that are relevant to the hearing.”</p>



24	R6-14-405. Hearings; Location; Notice; Time (D)	Under 7 C.F.R. § 273.15(p)(l), the household must be given an opportunity to “[e]xamine all documents and records to be used at the hearing at a reasonable time before the hearing.” (emphasis added). Any documents that will be used at the hearing and documents that are “relevant” to the hearing, must be provided to the household without charge. We propose listing this right separately as 5(b) and then renumbering the rest of rights listed in the subsection. That subsection would read: “Examine all documents and records to be used at the hearing and all relevant documents to the hearing and get copies of those documents without charge both prior to the hearing and during the hearing.”	R6-14-405(D)(5)(a) conforms with the federal regulation requirement at 7 CFR 273.15(l)(4). Additionally, R6-14-410 addresses this issue per 7 CFR 273(p)(1).
25	R6-14-405. Hearings; Location; Notice; Time	The federal regulation provides for agency conferences in situations beyond the denial of expedited services. 7 C.F.R. § 273.15 (d). DES offers the conferences and DES should affirmatively explain this in the notice. Legal services utilizes these conferences to settle cases without going to a hearing. The conferences present legal services the opportunity to explain the problems with DES' factual and legal analysis of the case. The same applies to unrepresented claimants. Ultimately, agency conferences can save DES' resources as well by increasing the opportunities for settlement. Moreover, this information falls squarely under DES' obligation to include in the notice “any other information that would provide the household with an understanding of the proceedings and that would contribute to the effective presentation of the household's case.” 7 C.F.R. § 273.15 (1)(3).	The Department does not agree with this comment. The federal regulations do not require this information to be included. The Department provides the information and it is not necessary to repeat the information in the Notice of Hearing. No change is needed.
26	R6-14-409. Subpoenas (C)	In subsection (C), the word “work” should be changed to “working,” as that is the wording in R-6-14-402(A)(2).	As suggested, the Department has revised R6-14-409(C) by changing “work” to “working”.
27	R6-14-410. Parties' Rights	The Institute requests that DES add the right to appear in person at the hearing before an administrative law judge; the right to bring family and friends to the hearing; and the right to review the whole case file to the list of a party's rights. Federal regulation 7 C.F.R. § 273.15 (o) specially provides for “attendance” at the hearing of the household, as well as friends and relatives of the household, “if the household so chooses” unless there are space limitations. The friends and relatives of the household do not need to be witnesses to attend the hearing.	The Department is unaware of any legal authority that provides that there is a right to an in-person hearing. The section of the federal regulations cited by the commenter only provides that the household has a right to attend the hearing. Attendance by telephone is no less an exercise of the right to attend the hearing than attendance in-person. No change is needed. R6-14-405(D)(1) stipulates that the Notice of hearing shall include information on how to request an in-person hearing. The right to bring friends and relative to the hearing is specified in the federal regulations. It is not necessary to reiterate this right in these state rules. No change is needed.
28	R6-14-413. Hearing Proceedings	DES added at our request that 7 C.F.R. § 273.15(p)(4) requires the state agency to honor a party's right to “advance” arguments without undue interference. The Institute also requests that DES put back in the proposed rule, the right to make an oral opening and closing argument with the consent of the hearing officer. We think both rights are important.	This rule conforms with the federal regulation requirements at 7 CFR 273.15(p) and does not need to be revised.
29	R6-14-416 Further Administrative Appeal or R6-14-417. Appeals Board	This section needs to be clarified pursuant to 7 CFR 273.15(q)(2) that the Appeals Board Decision is binding on the Agency and that is our understanding that DES agrees with that, but the way it is worded we think it talks about both parties.	R6-14-417(B) and (C) have been revised to clarify that only the household appellant adversely affected by an Appeals Board decision may seek further judicial review.



Article 5. Intentional Program Violation			
		We propose adding the following new subsections to the Intentional Program Violation sections:	
30	R6-14-501. Intentional Program Violations (IPV); Defined	<i>New subsection (C) in R6-14-501</i> The Department shall inform the household in writing of the disqualification penalties for Intentional Program Violation each time the household applies for Nutrition Assistance. The penalties shall be in clear, prominent, and boldface lettering on the application form as required by 7 C.F.R. § 273.16 (d).	The Department agrees that it must provide this information as a part of the application process. However, this requirement is adequately set forth in the federal regulations at 7 CFR 273.16(d). It is not necessary to reiterate it in these rules. No change is needed.
31	R6-14-502. IPV Administrative Disqualification Hearings; Hearing Waiver	<i>New subsection (A) in R6-14-502</i> The Department may only require reporting and the clarification of unclear information as provided for in 7 C.F.R. §273.12.	Reporting and clarification of information is adequately set forth in federal regulations at 7 CFR 273.12. It is not necessary to reiterate that information in these rules. No change is needed.
32	R6-14-502. IPV Administrative Disqualification Hearings; Hearing Waiver	<i>New subsection (B) in R6-14-502</i> A person is not required to cooperate with a fraud investigation for continued eligibility.	The Department does not agree with this comment. Any provision dealing with the requirement for an individual to cooperate with a fraud investigation should be included in rules concerning eligibility requirements, not in the rules concerning Administrative Disqualification Hearings. No change is needed.
33	R6-14-502. IPV Administrative Disqualification Hearings; Hearing Waiver	<i>New subsection (C) in R6-14-502</i> In determining whether an IPV occurred, the Department must investigate whether: 1. The person knew about the Department program rule in question and intended to act dishonestly. 2. The person has a mental or cognitive disability that prevents him or her from forming an intent to violate program rules or act dishonestly. 3. The person did not understand the Department rule because of literacy problems, limited English proficiency or a disability. 4. The person reported information but the Department failed to act on the information or the Department recorded the information incorrectly. 7 C.F.R. §273.2(b)(1)(v). 5. The Department told the person their actions were legal or failed to explain the reporting requirements. See 7 C.F.R. § 273.2(e)(1). 6. The Department failed to provide reasonable accommodations to a person with a disability that led to an unintentional violation of a program rule.	The Department is unaware of any existing legal authority that specifies the items that must be investigated in an Intentional Program Violation investigation. It is not appropriate to specify such items in these rules because it is important to allow the investigator to focus the investigation on the relevant factual matters, given the unique circumstances of the individual case. The list of items proposed by the commenter would cause the Department to use resources inefficiently to investigate matters for which there is no evidentiary basis. While it may be useful to include such a list in internal policy or training material as areas of potential inquiry, the list is not appropriate for inclusion in these rules. No change is needed.
34	R6-14-502. IPV Administrative Disqualification Hearings; Hearing Waiver (C)(2)	In subsection (C)(2), the conflation of rights noted in R6-14-405 also occurs in this proposed rule. The rule provides “notification that the individual ... has the right to examine the case file prior to the hearing and, when requested ... be provided a free copy of the portions of the requested portions of the case file.” The person must be allowed to obtain a copy of their whole file, not just portions of the file. DES’ continued efforts to make it difficult for the person to see their complete file is unlawful. We request that DES segregate out the two rights as we set forth in our comments to section R6-14-405 above.	As suggested, the language in R6-14-502(C)(2) has been revised to be consistent with the language in R6-14-410(B) regarding the receipt of a free copy of any document in the individual’s case file, with certain restrictions.



35	R6-14-502. IPV Administrative Disqualification Hearings; Hearing Waiver (C)(11)	In subsection (C)(II)(c), we request that DES include a third option in the notice that the persons may check. "I do not admit that the facts as presented are correct in my Nutrition Assistance case. I do not waive my right to require an Administrative Disqualification Hearing where the Department must prove by clear and convincing that I committed and intended to commit an Intentional Program Violation." The correct criteria should be disclosed to the person receiving the notice. 7 C.F.R. § 273.16(v)(6).	As requested, the Department has revised R6-14-502(C)(11) by adding a subsection (c) to include a third option in the notice that the persons may check: "I do not admit that the facts as presented are correct in my Nutrition Assistance case. I do not waive my right to require an Administrative Disqualification Hearing where the Department must prove by clear and convincing evidence that I committed and intended to commit an Intentional Program Violation."
36	R6-14-503. Administrative Disqualification Hearings (D)(3)	The notice of the disqualification hearing must contain the rights listed in 7 C.F.R. § 273.1S(p) which under subsection (1) includes the right to look at the person's complete case file. DES must include this right in its notice. The person also has a right to a copy of the person's complete file. Subsection (D)(3) is not adequate and incorrectly conflates these rights. That subsection provides the person "has a right to examine the case file prior to the hearing. When requested the Department shall provide a free copy of the requested portions of the case file." The rule improperly limits the documents to "requested portions of the case file." We request that DES use our proposed wording in R6-14-405 above.	As suggested, the Department has revised R6-14-503(D)(3) to be consistent with the language in R6-14-410(B) and R6-14-502 (C)(2) regarding the receipt of a free copy of any document in the individual's case file, with certain restrictions.
37	R6-14-503. Administrative Disqualification Hearings (D)	In subsection (D), the hearing notice should also include: (1) the person has the right to not attend the hearing or attend the hearing and remain silent	The Department does not agree with this comment. Although it is true that an individual is permitted to remain silent and that anything said can be used against him, the federal regulations do not require that this statement be included in the Notice of Hearing. Adding the statement would make the Notice of Hearing longer and more difficult to read and understand. No change is needed.
38	R6-14-503. Administrative Disqualification Hearings (D)	In subsection (D), the hearing notice should also include: (2) the person's right to remain silent and that anything said or signed by the person can be used against them.	The Department does not agree with this comment. Although it is true that the standard of proof is clear and convincing evidence, the federal regulations do not require that this statement be included in the Notice of Hearing. Adding the statement would make the Notice of Hearing longer and more difficult to read and understand. No change is needed.
39	R6-14-503. Administrative Disqualification Hearings (D)	In subsection (D), the hearing notice should also include: (3) if the person does not attend the hearing, the ALJ will make findings based on the record produced by DES.	The Department does not agree with this comment. The suggested language is already covered adequately under R6-14-503(D)(4). No change is needed.
40	R6-14-503. Administrative Disqualification Hearings (D)	In subsection (D), the hearing notice should also include: (4) that the standard of proof to find a violation is clear and convincing evidence that the person "committed and intended to commit an IPV." 7 C.F.R. § 273.16(v)(6). It is important that persons understand the heightened proof that DES must satisfy in these cases.	The Department does not agree with this comment. Although it is true that the standard of proof is clear and convincing evidence, the federal regulations do not require that this statement be included in the Notice of Hearing. Adding the statement would make the Notice of Hearing longer and more difficult to read and understand. No change is needed.
41	R6-14-503. Administrative Disqualification Hearings (F)	Subsection (F) is an Americans with Disabilities Act provision but it should be revised to be clearer. We request that DES use our proposal in R6-14-403(J).	The Department does not agree with this comment. The rule as drafted is clear and unambiguous. The rule need not set forth in detail the ADA related duties of the Department.



42	R6-14-503. Administrative Disqualification Hearings (G)	Subsection (G) provides that in addition to informing the person at the beginning of the disqualification hearing that she can remain silent, the proposed rule also requires the ALJ to state “the consequences of exercising that right.” The right to remain silent is absolute and there is no “consequence” to exercising that right and the ALJ cannot make any inference about the person asserting their constitutional and statutory right to remain silent. See 7 C.F.R. § 273.16(e)(2)(iii) and (f)(1)(ii)(B). ¹ The words “the consequences of exercising that right” must be deleted. ¹ Arizona courts have recognized that the protection against self-incrimination includes the freedom from adverse consequences flowing from defendant's exercise of his Fifth amendment rights. <i>State v. Bravo</i> , 158 Ariz. 364, 378, 762 P.2d 1318, 1332 (1988); <i>State v. Carrillo</i> , 156 Ariz. 125, 750 P.2d 883 (1988). Normally, any reference by a judge or a prosecutor about a defendant's protected silence will constitute fundamental error. <i>State v. Anderson</i> , 110 Ariz. 238, 517P.2d 508 (1973). <i>Miranda</i> warnings carry an implicit assurance that a defendant's choice to remain silent will carry no penalties. <i>Carrillo</i> , 156 Ariz. at 134, 750 P.2d at 892 (citing <i>Doyle v. Ohio</i> , 426 U.S. 610, 618–19, 96 S.Ct. 2240, 2245, 49 L.Ed.2d 91, 96 (1976)).	As suggested, the Department has revised R6-14-503(G) to remove the language “and the consequences of exercising that right”.
43	R6-14-503. Administrative Disqualification Hearings (I)	In subsection (I), the wording should include the capitalized words to read: “The Department shall prove by clear and convincing evidence that the household “INTENDED TO COMMIT and committed an IPV.”	As suggested, the Department has revised R6-14-503(I) to include the language “and intended to commit”.
44	R6-14-503. Administrative Disqualification Hearings	The Institute suggests the following subsections be added for when an ALJ finds the person committed and intended to commit an IPV. <i>New (L):</i> If the hearing officer finds that the person did commit and intend to commit an IPV, the hearing officer shall provide a written notice that informs the person of the decision pursuant to 7 C.F.R. §273.16(e)(9)(ii) and explains the right to appeal to state court and the appeal process.	To address this comment, rather than adding a new subsection to the rule, the Department has revised subsection (J) of the rule to add “and include appeal rights” to the items that are contained in the written decision notice that is sent by the Hearing Officer to the individual suspected of the IPV.
45	R6-14-505. Disqualification Sanctions; Notice	The Institute requests that subsection (G) include the following words at the beginning of the subsection: The department shall provide a separate written notice to the remaining household members, if any, of the disqualification period, including any explanation of any deferment of disqualification; the allotment they will receive during the disqualification period or that they must reapply because the certification period has expired. See 7 C.F.R. §273.16(e)(9)(ii) and (f)(3).	The Department disagrees that subsection (G) needs to be revised, as it conforms to the federal regulations requirements as cited in the subsection. However, for additional clarity, the department has added the federal regulation citation provided in the comment to subsection (H).
46	R6-14-506. Administrative Disqualification Hearings or Waiver of the Right to a Hearing: Appeal	We would add that pursuant to 7 CFR 273.15(q)(2) that the Appeals Board Administrative Decision is binding on the Agency.	The Department does not agree with the comment. The rule limits further review to “an individual adversely affected.” The Department is not an individual.

12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

No other matters are prescribed.

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

The rules do not require a permit.



b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

Article 3 - Claims Against Households. Federal law at 7 U.S.C. 2022 is applicable to this rule. This federal law is implemented in the SNAP program at 7 CFR 273.18. This rule is not more stringent than federal law or regulation.

Article 4 – Appeals and Fair Hearings. Federal law at 7 U.S.C. 2020 is applicable to this rule. This federal law is implemented in the SNAP program at 7 CFR 273.15. This rule is not more stringent than federal law or regulation.

Article 5 – Intentional Program Violation. Federal law at 7 U.S.C. 2015 is applicable to this rule. This federal law is implemented in the SNAP at 7 CFR 273.16. This rule is not more stringent than federal law or regulation.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No analysis was submitted.

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

None

14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

This rule was previously published as an emergency rule as cited below. The emergency rules in both publications contained identical text.

Notice of Emergency Rulemaking: 24 A.A.R. 2081, July 27, 2018

Notice of Emergency Rulemaking: 24 A.A.R. 3591, December 28, 2018

The following rules in the Notice of Emergency Rulemaking have been revised, renumbered, or both, in the Notice of Final Rulemaking:

R6-14-302. Calculating a Claim Amount

In the final rulemaking, this rule has been revised by separating the rule out into two rules:

- R6-14-302. Claim Calculation; Date of Discovery; Overpayment Period addresses the 'date of discovery' for each of the 4 types of claims that may be established and the specific period of time that will be used for each of the claim types when calculating a claim amount.
- R6-14-303. Determining A Claim Amount addresses the policies and procedures the Department uses to determine the amount of a claim.

R6-14-303. Pre-establishment Cost Effectiveness Determination

In the final rulemaking, this rule has been renumbered to R6-14-304. Pre-establishment Cost Effectiveness Determination.

R6-14-304. Claim Compromise

In the final rulemaking, this rule has been renumbered to R6-14-308. Claim Compromise and has been extensively revised to provide detailed policies and procedures that the Department uses when determining whether an entire claim or any portion of a claim may be compromised.

R6-14-305. Terminating and Writing Off a Claim

In the final rulemaking, this rule has been renumbered to R6-14-310. Terminating and Writing Off a Claim.

R6-14-307. Collection Methods

In the final rulemaking, this rule has been revised to provide more detailed information about the various methods the Department is allowed to use when collecting an established claim. The revised rule provides more clarity that will enable the household to better understand their responsibilities when requesting and utilizing a negotiated repayment agreement.

R6-14-308. Notice of Claim

In the final rulemaking, this rule has been renumbered to R6-14-305. Notice of Claim.

R6-14-401. Entitlement to a Fair Hearing; Appealable Action

In the final rulemaking, this rule has been slightly revised by clarifying that any action or inaction taken by the Department, that "affects the participation of the household in the program", may result in a request for hearing. This provides a reasonable limitation on the matters that are subject to appeal.

R6-14-403. Request for Hearing; Form; Time Limits; Presumptions

In the final rulemaking, this rule has been revised to further clarify the Department's responsibilities as required by federal regulations and to more closely align with the language used in the pertinent federal regulations.

R6-14-405. Hearings: Location; Notice; Time

In the final rulemaking, this rule has been revised to further clarify the Department's responsibilities as required by federal regulations and to more closely align with the language used in the pertinent federal regulations.



R6-14-407. Hearing Officer: Duties and Qualifications

In the final rulemaking, this rule has been revised to further clarify the duties of a Hearing Officer as required by federal regulations and to more closely align with the language used in the pertinent federal regulations.

R6-14-409. Subpoenas

In the final rulemaking, this rule has been revised to remove the requirement for a party to first attempt to obtain a desired witness or evidence by voluntary means prior to asking the assigned Hearing Officer to issue a subpoena. The rule also was revised further to specify that a party may request a postponement of the hearing when the party is unable to request a subpoena at least five days before the hearing date.

R6-14-412. Failure to Appear; Default; Reopening

In the final rulemaking, this rule has been revised to change the “good cause” definition in section (B) to align with the expanded “good cause” circumstances in section (E). The methods available to an appellant to request that a hearing be reopened were also expanded.

R6-14-413. Hearing Proceedings

In the final rulemaking, this rule has been revised to stipulate that a party may advance arguments without undue interference.

R6-14-415. Effect of the Decision

In the final rulemaking, this rule has been revised by adding a new section (C) that specifies the time frames for Department implementation of hearing decisions as set forth in federal regulations.

R6-14-417. Appeals Board

In the final rulemaking, this rule has been revised by stipulating that the complete record that the Appeals Board decision is based on includes the audio recording or the transcript of the hearing. For clarity, the rule was further revised to specify that only the household appellant, and not the Department, may seek further judicial review when adversely affected by an Appeals Board decision.

R6-14-502. IPV Administrative Disqualification Hearings; Hearing Waiver

In the final rulemaking, this rule has been revised to require that the waiver notice of the Administrative Disqualification Hearing informs the individual that they both committed and intended to commit an Intentional Program Violation (IPV). The revised rule now specifies that, when requested, a free copy of any document in the household’s case record may be provided, with certain restrictions. Additionally, the rule was further revised to clarify that the individual be informed that the standard of proof for having committed an IPV is “clear and convincing evidence”.

R6-14-503. Administrative Disqualification Hearings

In the final rulemaking, several revisions were made to this rule, including:

- Regarding the Hearing Notice, the revised rule now specifies that, when requested, a free copy of any document in the household’s case record may be provided, with certain restrictions in section (D)(3).
- The opening sentence in section (G) was revised by removing the language “and the consequences of removing that right”.
- In section (I), the language “and intended to commit” was added to clarify that an IPV consists of two parts: Committing an IPV and Intending to commit the IPV.
- In section (J), the language “and appeal rights” was added as an item that will be included in the written decision notice that is sent to the person suspected of the IPV.

R6-14-504. Failure to Appear; Default; Reopening

In the final rulemaking, the definition of “Good Cause” in section (B) has been revised.

R6-14-505. Disqualification Sanctions; Notice

In the final rulemaking:

- Section (F) now contains the requirements for written disqualification notice that is sent to the individual found to have committed the IPV. This information had been contained in section (G) in the NER.
- Section (G) now contains the information regarding the Department's treatment of the income and resources of the disqualified person when the Department determines the eligibility and benefit amount for the remaining eligible members of the household. This information had been found in section (F) in the NER.
- A new section (H) has been added to state the Department's requirements to notify the remaining members of the household of their eligibility and benefit level at the same time that the excluded member is notified of his or her disqualification.

R6-14-506. Administrative Disqualification Hearings or Waiver of the Right to a Hearing; Appeal

In the final rulemaking, section (B) has been revised to clarify that a party may appeal a Hearing Officer's Disqualification Hearing decision to the Appeals Board and provides the appropriate cross-references to the Appeals rules in Article 4.

In the final rulemaking, a new section (C) has been added to stipulate that an individual adversely affected by an Appeals Board decision may seek further review and provides the authorizing state law citation.

In the final rulemaking, the Department has added the following two rules which were not included in the Notice of Emergency Rulemaking:



R6-14-309. Reinstatement of a Compromised Claim. This rule establishes when the Department may reinstate any compromised portion of a claim.

R6-14-311. Claims Established in Another State. This rule establishes under what circumstances the Department may accept a claim from another state if the household subject to the claim receives Nutrition Assistance benefits in Arizona.

15. The full text of the rules follows:

TITLE 6. ECONOMIC SECURITY

**CHAPTER 14. DEPARTMENT OF ECONOMIC SECURITY
FOOD STAMPS PROGRAM NUTRITION ASSISTANCE PROGRAM**

ARTICLE 3. ~~EXPIRED~~ CLAIMS AGAINST HOUSEHOLDS

Section

R6-14-301.	Expired Purpose and Definitions
R6-14-302.	Expired Claim Calculation; Date of Discovery; Overpayment Period
R6-14-303.	Expired Determining a Claim Amount
R6-14-304.	Expired Pre-establishment Cost Effectiveness Determination
R6-14-305.	Expired Notice of Claim
R6-14-306.	Expired Acceptable Forms of Payment
R6-14-307.	Expired Collection Methods
R6-14-308.	Expired Claim Compromise
R6-14-309.	Expired Reinstatement of a Compromised Claim
R6-14-310.	Expired Terminating and Writing Off a Claim
R6-14-311.	Expired Claims Established in Another State

ARTICLE 4. ~~EXPIRED~~ APPEALS AND FAIR HEARINGS

Section

R6-14-401.	Expired Entitlement to a Fair Hearing; Appealable Action
R6-14-402.	Expired Computation of Time
R6-14-403.	Expired Request for Hearing; Form; Time Limits; Presumptions
R6-14-404.	Expired Stay of Action Pending Appeal
R6-14-405.	Expired Hearings; Location; Notice; Time
R6-14-406.	Expired Postponing the Hearing
R6-14-407.	Expired Hearing Officer: Duties and Qualifications
R6-14-408.	Expired Change of Hearing Officer; Challenges for Cause
R6-14-409.	Expired Subpoenas
R6-14-410.	Expired Parties' Rights
R6-14-411.	Expired Withdrawal of an Appeal
R6-14-412.	Expired Failure to Appear; Default; Reopening
R6-14-413.	Expired Hearing Proceedings
R6-14-414.	Expired Hearing Decision
R6-14-415.	Expired Effect of the Decision
R6-14-416.	Expired Further Administrative Appeal
R6-14-417.	Expired Appeals Board

ARTICLE 5. ~~EXPIRED~~ INTENTIONAL PROGRAM VIOLATION

Section

R6-14-501.	Expired Intentional Program Violations (IPV); Defined
R6-14-502.	Expired IPV Administrative Disqualification Hearings; Hearing Waiver
R6-14-503.	Expired Administrative Disqualification Hearings
R6-14-504.	Expired Failure to Appear; Default; Reopening
R6-14-505.	Expired Disqualification Sanctions; Notice
R6-14-506.	Expired Administrative Disqualification Hearings or Waiver of the Right to a Hearing; Appeal
R6-14-507.	Expired Honoring Out-of-State IPV Determinations and Sanctions

ARTICLE 3. CLAIMS AGAINST HOUSEHOLDS

R6-14-301. Purpose and Definitions

A. The Department establishes and collects claims under 7 CFR 273.18, Claims against households. This Article clarifies the Department's policies and procedures as permitted in federal regulation.

B. The definitions in section R6-14-111 and the following definitions apply to this Article:

1. "Agency error" or "AE claim" means any claim for an overpayment caused by an action or failure to take action by the Department.
2. "Claim" means the amount of a federal debt owed because Nutrition Assistance benefits were overpaid or benefits were trafficked.



- 3. “Household” means one of the following individuals or groups of individuals, unless otherwise specified under 7 CFR 273.1(b):
 - a. Except as contained in (b):
 - i. An individual living alone;
 - ii. An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from others; or
 - iii. A group of individuals who live together and customarily purchase food and prepare meals together for home consumption.
 - b. Specific to the Claim Compromise process in R6-14-308, the following persons who are residing together:
 - i. Adults who were members of the Nutrition Assistance household for which the claim was established, and who were adults at the time the claim was established, and
 - ii. Minor children for whom adult household members are responsible.
- 4. “Inadvertent household error” or “IHE claim” means any claim for an overpayment resulting from a misunderstanding or unintended error on the part of the Nutrition Assistance household. This includes instances when the household received more benefits than it was entitled to receive because the household requested a continuation of benefits, pending a fair hearing decision.
- 5. “Intentional Program Violation” or “IPV claim” means any claim for an overpayment resulting from an individual committing and intending to commit, an IPV under 7 CFR 273.16.
- 6. “Trafficking claim” means any claim for the value of benefits that are trafficked, under 7 CFR 273.18. Trafficking is defined under 7 CFR 271.2.

R6-14-302. Claim Calculation; Date of Discovery; Overpayment Period

Under 7 CFR 273.18, the Department shall calculate an overpayment of benefits claim by:

- A. Date of discovery. The date of discovery is determined when the Department becomes aware of the overpayment.
 - 1. For AE claims, the date of discovery is the date the overpayment has been verified or the date the household ultimately fails to respond to or satisfy an overpayment inquiry.
 - 2. For IHE and IPV claims, the date that the Department obtains verification used to calculate the over-issuance.
 - 3. For claims resulting from trafficking, the date of the court decision, or the date the household signed a waiver of administrative disqualification hearing form or a disqualification consent agreement.
- B. For AE and IHE claims, calculate a claim for the month of the date of discovery and for each prior month, not to exceed 36 months prior to the date of discovery.
- C. For an IPV claim not related to trafficking, calculate a claim back to the month that the IPV first occurred, not to exceed 72 months prior to the date of discovery.
- D. For a claim resulting from trafficking, calculate a claim for the value of the trafficked benefits, as determined under 7 CFR 273.18(c)(2).

R6-14-303. Determining a Claim Amount

- A. For all claims other than a claim resulting from trafficking:
 - 1. The Department shall determine whether the overpayment of benefits occurred at the time an eligibility determination was rendered for a new or recertification application or whether the overpayment occurred during an eligible certification period.
 - 2. When it is discovered that the Department rendered an incorrect eligibility determination or issued an incorrect benefit amount because the Department failed to correctly act on information provided on the application or reported by the applicant, or because the applicant failed to provide correct information on the application or prior to application approval, the Department shall re-determine eligibility and a benefit amount for that application and for the months in the certification period, using the application approval or denial policies and procedures that were in effect at the time the eligibility determination for the application was rendered. The Department will not consider information that was not previously reported by the household that would have resulted in an increase in the benefit allotment at the time of initial approval of benefits.
 - a. When it is determined that the household was ineligible, the Department shall establish a claim based on the amount of benefits issued for each month during the certification period that was established when the application was originally approved, minus the amount of benefits that the Department has expunged from the household’s EBT benefit account, for each of the corresponding overpaid months.
 - b. When it is determined that the household was eligible, the Department shall establish a claim based on the amount of benefits that were paid in excess of the correct benefit amount in each month of the certification period, minus the amount of benefits that the Department has expunged from the household’s EBT benefit account, for each of the corresponding overpaid months.
 - c. When it is determined that the household was eligible and received a smaller benefit amount than it was eligible to receive because the Department failed to correctly act on information provided on the application or reported by the applicant prior to application approval, the Department shall issue a supplement for each month in the certification period that the household was paid less than the correct benefit amount as provided in 7 CFR 273.17.
 - 3. When a change occurred during an eligible certification period:
 - a. The Department shall process any change that was reported and re-determine a new benefit allotment amount for each affected month in the certification period using the change processing policies and procedures that were in effect for those months under 7 CFR 273.12(c).
 - i. The Department shall establish a claim based on the amount of benefits that were paid in excess of the new benefit amount in each affected month of the certification period, minus the amount of benefits that the Department has expunged from the household’s EBT benefit account.
 - ii. The Department shall issue a supplement for each month the household was paid less than the new benefit amount.



- b. When the Department discovers a change which was not reported by the household, the Department shall determine whether the change was required to be reported based on the change reporting requirement assigned to the household for the certification period.
 - i. When the change was not required to be reported the Department shall not process the change for the months in the certification period.
 - ii. When the change was required to be reported the Department shall re-determine eligibility and a new benefit allotment amount for each affected month in the certification period using the change processing policies and procedures that were in effect for those months under 7 CFR 273.12(c). The Department shall establish a claim based on the amount of benefits that were paid in excess of the correct benefit amount in each month of the certification period, minus the amount of benefits that the Department has expunged from the household's EBT benefit account.
- B. For a claim resulting from trafficking, the Department shall calculate a claim amount based on the entire value of the trafficked benefits.

R6-14-304. Pre-establishment Cost Effectiveness Determination

The Department shall not establish an overpayment that is not cost effective using the threshold at 7 CFR 273.18(e)(2)(ii), unless the Department establishes and collects claims under a cost-effectiveness plan approved by the Food and Nutrition Service of the U.S. Department of Agriculture under 7 CFR 273.18(e)(2)(i) that establishes a different threshold.

R6-14-305. Notice of Claim

To begin collection on a claim, the Department shall send the household a Notice of Claim. At a minimum, the notice shall include all elements required under 7 CFR 273.18(e)(3)(iv).

R6-14-306. Acceptable Forms of Payment

The Department may accept all forms of payment, including the methods listed in 7 CFR 273.18(f) to collect a claim.

R6-14-307. Collection Methods

- A. Allotment reduction. When a household is receiving Nutrition Assistance benefits, the Department may use the allotment reduction in 7 CFR 273.18(g)(1).
- B. As provided under 7 CFR 273.18(g)(5), the Department may allow a household that is not participating in the Nutrition Assistance program to pay a claim in equal monthly payments in a negotiated repayment agreement. The household shall be responsible to pay a monthly payment in one of the following amounts until the claim is paid in full:
 - 1. An amount equal to the balance of the claim at the time the negotiated repayment agreement is made, divided by 36.
 - 2. When the amount in (1) is equal to or less than \$10.00, the monthly repayment amount shall be \$10.00.
- C. Under 7 CFR 273.18(g)(6), the Department may arrange with a liable individual to intercept his or her unemployment compensation benefits. This collection option may be included as part of a repayment agreement. The Department may also intercept an individual's unemployment compensation benefits by obtaining a court order.
- D. Under 7 CFR 273.18(g)(8), the Department may use other collection methods that include:
 - 1. Submitting the claim to the Arizona Department of Revenue for payment through a state tax refund.
 - 2. Submitting the claim to the Arizona Lottery Commission for payment through a lottery winnings offset.
 - 3. Submitting the claim to the federal Treasury Offset Program under 7 CFR 273.18(n).
 - 4. A wage garnishment established through a civil judgment or criminal restitution order. When the Department has obtained a judgment or order, the Department shall:
 - a. Send the household a Pre-Garnishment Notice to allow the household to agree to pay the claim in a manner other than wage garnishment; and
 - b. If the household fails to arrange for payment in response to the Pre-Garnishment Notice, the Department may request the Arizona Attorney General's Office to initiate a wage garnishment under A.R.S. Title 12, Chapter 9, Article 4.1, and that garnishment may continue until the claim is paid in full.
 - 5. Garnishment or levy of monies or property per A.R.S. Title 12, Chapter 9, Article 4.
 - 6. Imposition or enforcement of all liens, including judgment liens imposed under A.R.S. § 33-961.
 - 7. Any other legal or equitable remedy for the collection of debts and judgments.
- E. Under 7 CFR 273.18(j) and at the Arizona Attorney General's direction, the Department shall act on behalf of the Food and Nutrition Service of the U.S. Department of Agriculture in any bankruptcy proceeding against a household subject to a claim.

R6-14-308. Claim Compromise

- A. In accordance with the Department's Claim Compromise policy and procedures as contained in the Arizona Cash and Nutrition Assistance Policy manual, the Department may compromise an entire claim or any portion of a claim if it can be reasonably determined that a household's economic circumstances dictate that the claim will not be paid in three years.
- B. For purposes of a claim compromise "household" means the following persons who are residing together:
 - 1. Adults who were members of the Nutrition Assistance household for which the claim was established, and who were adults at the time the claim was established, and
 - 2. Minor children for whom adult household members are responsible.
- C. When a household reports that it is unable to pay the claim in the equal monthly increments specified in R6-14-307(A) or (B), the Department shall inform the household that it may request a one-time compromise of the claim and shall provide the household with instructions for requesting a compromise. The Department may compromise the claim by reducing the claim amount and the resulting monthly payment amount when:
 - 1. The household contacts the Department, orally or in writing, and requests a compromise of the claim.
 - 2. The claim was established as an Agency Error claim or an Inadvertent Household Error claim.
 - 3. There is no pending Appeal of the claim.



- 4. The Department has not previously approved a compromise of the claim, and
- 5. The Department approves the compromise request as provided in this rule.
- D.** When the Department receives a compromise request, and there is no pending appeal of the claim for which the compromise is requested, the Department shall send the household a Financial Statement form requesting necessary information and verification required for the Department to determine eligibility for a claim compromise.
- E.** The household must return the completed Financial Statement with requested information and verification to the Department no later than the thirtieth calendar day following the date that the Department mailed or otherwise transmitted the Financial Statement to the household. When the household requests assistance or additional time, the Department shall allow an additional thirty calendar days for the household to provide a completed Financial Statement. The Department shall deny the compromise claim request when the Financial Statement is not provided by the household by the thirtieth calendar day or the agreed upon extension date, unless the delay was for good cause. Good cause includes circumstances beyond the household's reasonable control such as illness, illness of another household member requiring the presence of the adult member, or a household emergency.
- F.** When the Financial Statement is timely provided to the Department, and all information and verification is complete, the Department shall complete the determination of eligibility for a compromise and send a notice no later than the twentieth working day, as defined in R6-14-402, following the date that the Department received the Financial Statement and all required information and verification.
- G.** When the compromise request is approved the Department shall notify the household of the compromised claim amount, the repayment plan for the new claim amount, and the household's right to file an appeal of the Department's action. The compromised claim amount shall be final unless modified by an appeal hearing decision.
 - 1. The household shall pay a monthly payment in one of the following amounts until the compromised claim balance is paid in full:
 - a. An amount equal to the balance of the compromised claim amount, divided by 36.
 - b. When the amount in (1)(a) is equal to or less than \$10.00, the monthly payment shall be \$10.00.
 - c. When the household is currently participating in the Nutrition Assistance program, the Department shall reduce the household's monthly Nutrition Assistance benefit allotment by the greater of \$10 or 10 percent.
 - d. When the household is no longer participating in the Nutrition Assistance program, the household shall be responsible to pay the original claim compromise monthly payment amount calculated in accordance with R6-14-308(G)(1)(a) and (b). The Department shall notify the household of the claim compromise monthly payment obligation.
 - 2. The approval of a compromise request shall apply only to the household that requested the compromise and does not affect the responsibility of any person:
 - a. Who is not a member of the household that requested the compromise, and
 - b. Who is responsible for paying the claim under 7 CFR 273.18(a)(4).
- H.** When the compromise request is denied the Department shall notify the household of the denial and the household's right to file an appeal of the Department's action.
- I.** The household may appeal the following actions or inaction related to a request for a compromise:
 - 1. The Department's inaction or untimely action on processing the compromise request;
 - 2. The amount of the approved compromise balance; or
 - 3. A denial of the compromise request.

R6-14-309. Reinstatement of a Compromised Claim

The Department shall reinstate any compromised portion of a claim when either of the following occurs:

- 1. A claim becomes delinquent under 7 CFR 273.18(e)(5).
- 2. The Department approved a compromise for a claim that was originally established as an Inadvertent Household Error claim and the original claim is later determined to have resulted from an Intentional Program Violation, as evidenced by a signed waiver of an Administrative Disqualification Hearing, an Administrative Disqualification Hearing decision, or a decision rendered by a State or Federal court in a civil or criminal action.

R6-14-310. Terminating and Writing Off a Claim

The Department shall terminate and write off a claim as required under 7 CFR 273.18(e)(8)(ii)(A through E), and may terminate and write off a claim as allowed under 7 CFR 273.18(e)(8)(ii)(F) and (G).

R6-14-311. Claims Established in Another State

Under 7 CFR 273.18(i)(2), the Department may accept a claim from another state if the household subject to the claim receives Nutrition Assistance benefits in Arizona, when:

- A.** The Department confirms that the household was notified by the other state of the overpayment; and
- B.** There is no pending or unresolved Fair Hearing or Appeal of the overpayment in the other state, and
- C.** The Department determines with reasonable certainty that the household is able to repay the outstanding claim balance in full within the Nutrition Assistance certification period assigned to the household in Arizona.

ARTICLE 4. APPEALS AND FAIR HEARINGS

R6-14-401. Entitlement to a Fair Hearing: Appealable Action

Any applicant or recipient who disagrees with any action or inaction by the Department which affects the participation of the household in the program has the right to challenge the action or inaction by requesting an administrative or fair hearing. Administrative hearings are conducted by the Department's Office of Appeals. In this Article, "hearing" refers to a Fair Hearing as required in 7 CFR 273.15.

R6-14-402. Computation of Time

- A.** In computing any time period:
 - 1. "Day" means a calendar day;
 - 2. "Working day" means Monday through Friday, excluding federal or Arizona state holidays;



3. The Department does not count the date of the act, event, notice, or default from which a designated time period begins to run as part of the time period; and
 4. The Department counts the last day of the designated time period. When the day is a Saturday, Sunday, federal holiday or Arizona state holiday, the last day is the first working day following that day.
- B.** Documents sent by the Department are received by an applicant or recipient on the date sent to the applicant or recipient's last known street or e-mail address, plus an additional five calendar days only when sent by U.S. mail. The send date is the date shown on the document unless the facts show otherwise.

R6-14-403. Request for Hearing: Form: Time Limits: Presumptions

- A.** As contained in 7 CFR 273.15(h) a request for a hearing is defined as a clear expression, oral or written, by the household or its representative to the effect that it wishes to appeal a decision or that an opportunity to present its case to a higher authority is desired.
- B.** An applicant or recipient who wishes to appeal an action or inaction shall make an oral or written request for a hearing to the Department within 90 days of the notice date advising the applicant or recipient of the action, except that a recipient may appeal the current level of benefits at any time within a certification period. Action by the Department shall include a denial of a request for restoration of any benefits lost more than 90 days but less than one year prior to the request for a hearing. An applicant or recipient may file a request for hearing in-person or by mail, fax, phone, or Internet. The Department shall provide a form for this purpose. Upon request, the Department shall help an applicant or recipient to file an appeal. If the applicant or recipient makes an oral request for a hearing, the Department shall accept the oral request, record in writing the date of the request and the stated reasons for the hearing, and forward the request to the Office of Appeals. The freedom to make a request for a hearing shall not be limited or interfered with in any way.
- C.** An appellant is an applicant or recipient who files an appeal.
- D.** The Department shall process any oral or written request for a hearing that contains sufficient information for the Department to determine the appellant's identity.
- E.** The Department deems a request for hearing filed:
1. If the appellant sends the request for hearing by first-class mail through the United States Postal Service to the Department:
 - a. On the mailing date as shown by the postmark;
 - b. In the absence of a postmark, on the postage meter mark on the envelope in which it is received; or
 - c. If not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.
 2. The date the Department actually receives the request, if not mailed.
- F.** A document is timely filed if the appellant can demonstrate that any delay in submission was due to any of the following reasons:
1. Department error or misinformation;
 2. Delay or other action by the United States Postal Service; or
 3. Delay due to the appellant's changing mailing addresses at a time when the appellant had no duty to notify the Department of the change.
- G.** When the Office of Appeals receives an untimely request for a hearing, the Office of Appeals shall determine whether the delay in submission is excusable, as provided in subsection (F). The Department shall consider an untimely request for a hearing as a request for restoration of lost benefits in accordance with 7 CFR §273.17.
- H.** An appellant whose appeal the Office of Appeals denies as untimely may petition for review of this issue as provided in R6-14-416.
- I.** The Department shall expedite a hearing request for any person covered by 7 CFR 273.15(i)(2).
- J.** The Department shall provide interpreters or other language services at no cost to persons whose primary language is other than English. This shall include explaining the hearing procedures orally in the person's language if the materials are not translated into the person's language.
- K.** The Department shall offer an agency conference as provided by 7 CFR 273.15(d) to those persons denied expedited service and to any person who requests a conference.

R6-14-404. Stay of Action Pending Appeal

As provided by 7 CFR 273.15(k), if the appellant timely requests a fair hearing, the Department shall stay the implementation of an action until the hearing officer renders a final decision on the appeal and the person receives the decision, unless the appellant signs a waiver of continuation of benefits.

R6-14-405. Hearings: Location: Notice: Time

- A.** The Office of Appeals shall schedule the hearing. The Office of Appeals may schedule a telephonic hearing instead of an in-person hearing or permit a witness or party, upon request, to appear telephonically.
- B.** Unless the appellant requests an earlier hearing date, the Office of Appeals shall schedule the hearing no earlier than 20 days from the date the Department receives the appellant's request for hearing.
- C.** The Office of Appeals shall send a notice of hearing to all parties at least 20 days before the hearing date, unless a request for an earlier hearing date is granted under subsection (B).
- D.** The notice of hearing shall be in writing and shall:
1. Include information on how to request an in-person hearing;
 2. Advise the appellant or the appellant's representative of the name, address, and phone number to notify the Office of Appeals in the event it is not possible for the appellant to attend the hearing;
 3. Specify that the Office of Appeals will dismiss the hearing request if the appellant or the appellant's representative fails to appear for the hearing without good cause;
 4. Include the Office of Appeals hearing procedures and any other information that would provide the appellant with an understanding of the proceedings and that would contribute to the effective presentation of the appellant's case; which shall include a pre-hearing summary prepared by the Department, and



- 5. Explain that the appellant or the appellant’s representative shall be given adequate opportunity to:
 - a. Examine the case file prior to the hearing. The contents of the case file including the application form and documents of verification used by the Department to establish the household's ineligibility or eligibility and allotment shall be made available, provided that confidential information, such as the names of individuals who have disclosed information about the household without its knowledge or the nature or status of pending criminal prosecutions, is protected from release. If requested by the household or its representative, the Department shall provide a free copy of the portions of the case file that are relevant to the hearing. Confidential information that is protected from release and other documents or records which the household will not otherwise have an opportunity to contest or challenge shall not be introduced at the hearing or affect the hearing official's decision.
 - b. Present the case or have it presented by legal counsel or another person.
 - c. Bring witnesses.
 - d. Advance arguments without undue interference.
 - e. Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses.
 - f. Submit evidence to establish all pertinent facts and circumstances in the case.
- 6. The notice shall include information about the availability of free legal services.

R6-14-406. Postponing the Hearing

- A. The appellant may request and is entitled to receive one postponement of the first scheduled hearing. The postponement shall not exceed 30 days and the time limit for action on the decision may be extended for as many days as the hearing is postponed. The Office of Appeals may grant subsequent postponements upon a showing of good cause.
- B. When the Office of Appeals reschedules a hearing under this Section, the Office of Appeals shall send the notice of rescheduled hearing at least 11 days prior to the date of the rescheduled hearing, unless the appellant agrees to shorter notice.

R6-14-407. Hearing Officer: Duties and Qualifications

- A. An impartial hearing officer in the Office of Appeals shall conduct all hearings.
- B. The hearing officer shall:
 - 1. Administer oaths and affirmations;
 - 2. Regulate the conduct and course of the hearing consistent with due process to insure an orderly hearing;
 - 3. Consider all relevant issues;
 - 4. Request, receive, and admit into the record all evidence determined necessary to decide the issues being raised;
 - 5. Order, where relevant and useful, an independent medical assessment or professional evaluation from a source mutually satisfactory to the household and the Department. The hearing officer shall decide on the source of the medical assessment or professional evaluation when the household and the Department are unable to agree on a mutually satisfactory source. The Department shall pay for the medical assessment or professional evaluation when such services are not available to the household as part of the household’s current health insurance coverage;
 - 6. As provided under 7 CFR 273.15(m)(2)(vi), render a hearing decision and issue a written decision reversing, affirming, modifying or remanding the agency’s decision; and
 - 7. Issue subpoenas under R6-14-409.

R6-14-408. Change of Hearing Officer: Challenges for Cause

- A. A party may request a change of hearing officer as prescribed in A.R.S. § 41-1992(B) by filing an affidavit that includes:
 - 1. The case name and number;
 - 2. The hearing officer assigned to the case; and
 - 3. The name and signature of the party requesting the change.
- B. The party requesting the change shall file the affidavit with the Office of Appeals and send a copy to all other parties at least five days before the hearing date.
- C. A party shall request only one change of hearing officer unless that party is challenging a hearing officer for cause under subsection (E).
- D. A party may not request a change of hearing officer once the hearing officer has heard and decided a motion except as provided in subsection (E).
- E. At any time before a hearing officer renders a final decision under R6-14-414, a party may challenge a hearing officer on the grounds that the hearing officer is not impartial or disinterested in the case.
- F. A party who brings a challenge for cause shall file an affidavit as provided in subsection (A) and send a copy of the affidavit to all other parties. The affidavit shall explain the reason why the assigned hearing officer is not impartial or disinterested.
- G. When a party files an affidavit for a change in hearing officer as provided in subsection (F), the Office of Appeals shall assign another hearing officer to determine whether the hearing officer being challenged shall be removed, unless the hearing officer recuses himself or herself.
- H. The Office of Appeals shall transfer the case to another hearing officer when:
 - 1. A party requests a change as provided in subsections (A) through (D); or
 - 2. The hearing officer is removed for cause, as provided in subsections (E) through (G).
- I. The Office of Appeals shall send the parties written notice of the new hearing officer assignment.

R6-14-409. Subpoenas

- A. A party may ask the assigned hearing officer to issue a subpoena for a witness, document, or other physical evidence or to otherwise obtain the requested evidence. Subpoena forms are available to the appellant under R6-14-410(D).
- B. The party seeking the subpoena shall send the hearing officer a written request for a subpoena. The request shall include:
 - 1. The case name and number;
 - 2. The name of the party requesting the subpoena;



3. The name and address of any person to be subpoenaed;
 4. A description of any documents or physical evidence the appellant desires the hearing officer to subpoena, including the title, appearance, and location of the item if the appellant knows its location, and the name and address of the person in possession of the item; and
 5. A statement about the expected substance of the testimony or other evidence as well as the relevance and importance of the requested testimony or other evidence.
- C.** A party shall request a subpoena at least five working days before the hearing date. A party who is unable to request a subpoena at least five days before the hearing date may request a postponement of the hearing. A party may raise the denial of a subpoena request in a petition for review to the Appeals Board, pursuant to R6-14-416.
- D.** The hearing officer shall deny the request if the witness's testimony or the physical evidence is not relevant to an issue in the case or is duplicative.
- E.** The Office of Appeals shall prepare all subpoenas and serve them by mail, except that the Office of Appeals may serve subpoenas on state employees who are appearing in the course of their jobs, by regular mail, hand-delivered mail, e-mail, or interoffice mail.

R6-14-410. Parties' Rights

The appellant and the Department have the following rights:

- A.** The right to request a postponement of the hearing;
- B.** The right to receive before and during the hearing documents the Department may use at the hearing and a free copy of any documents in the Department's file on the appellant, except documents protected by the attorney-client or work-product privilege or as otherwise protected by federal or state confidentiality laws;
- C.** The right to request a change of hearing officer;
- D.** The right to request subpoenas for witnesses and evidence;
- E.** The right to be represented by an authorized representative, subject to any limitations on the unauthorized practice of law in the Rules of the Supreme Court of Arizona, Rule 31;
- F.** The right to bring witnesses, present evidence and to confront and cross-examine adverse witnesses;
- G.** The right to advance arguments without undue interference, to question or refute any testimony or evidence; and
- H.** The right to further appeal, as provided in R6-14-416 and R6-14-417, if dissatisfied with the Office of Appeals decision.

R6-14-411. Withdrawal of an Appeal

- A.** An appellant may withdraw an appeal at any time prior to the time the hearing officer issues a decision.
1. An appellant may withdraw an appeal orally, either in person or by telephone. The Department may record the audio of the withdrawal. The Department is prohibited from coercion or actions that would influence the person or their representative to withdraw the fair hearing request. The Department must provide a written notice within 10 days of the oral request confirming the withdrawal request and providing the person an opportunity to request to reinstate the hearing within 10 days of the date the notice is received as provided in R6-14-402(B).
 2. An appellant may withdraw an appeal by signing a written statement expressing the intent to withdraw. The Department shall make a withdrawal form available for this purpose.
- B.** The Office of Appeals shall dismiss the appeal when the appellant or the appellant's representative provides a signed withdrawal request to the Department or to the hearing officer prior to the issuance of a hearing decision or when the appellant or the appellant's representative makes such a request on the record during a hearing, or orally as provided in (A)(1).

R6-14-412. Failure to Appear; Default; Reopening

- A.** If an appellant fails to appear at the hearing, the hearing officer shall:
1. Enter a default and issue a decision dismissing the appeal, except as provided in subsection (B);
 2. Rule summarily on the available record; or
 3. Adjourn the hearing to a later date and time.
- B.** The hearing officer shall not enter a default or rule summarily if the appellant notifies the Office of Appeals before the scheduled time of hearing that the appellant cannot attend the hearing because of good cause and still desires a hearing or wishes to have the matter considered on the available record. Good cause includes circumstances beyond the household's reasonable control such as, but not limited to, illness, illness of another household member requiring the presence of the adult member, or a household emergency.
- C.** A party who did not appear at the hearing may file a request to reopen the proceedings no later than 10 days after the hearing. The request shall be in writing, by mail or e-mail, or be made in person or by telephone and shall demonstrate good cause for the party's failure to appear.
- D.** If the hearing officer finds that the party had good cause for failure to appear, the hearing officer shall reopen the proceedings and schedule a new hearing with notice to all interested parties as prescribed in R6-14-405.
- E.** If the hearing officer cannot grant or deny the request to reopen the proceedings based on the information provided, the hearing officer shall set the matter for a hearing to determine whether the party had good cause for failure to appear.
- F.** Good cause, for the purpose of reopening a hearing, is established if the failure to appear at the hearing and the failure to timely notify the hearing officer were beyond the reasonable control of the nonappearing party. Good cause also exists when the nonappearing party demonstrates excusable neglect, as used in Arizona Rules of Civil Procedure, Rule 60(b)(1) for both the failure to appear and the failure to timely notify the hearing officer. "Excusable neglect" means an action involving an error such as might be made by a reasonably prudent person who attempts to handle a matter in a prompt and diligent fashion.

R6-14-413. Hearing Proceedings

- A.** The hearing is a de novo proceeding. The Department has the initial burden of presenting the evidence to support the adverse action being appealed.
- B.** The standard of proof is a preponderance of the evidence.



- C. The Arizona Rules of Evidence do not apply at the hearing. The hearing officer may admit and give probative effect to evidence as prescribed in A.R.S. § 41-1062(A).
- D. The Office of Appeals shall audio record all hearings. The Office of Appeals shall also transcribe the proceedings when a transcription is requested by the Appeals Board or when a transcription is required for judicial review under A.R.S. § 41-1993. If a transcript is prepared for any purpose, the appellant is entitled to a copy of the transcription at no cost.
- E. A party may, at the party's own expense, arrange to have a court reporter present to transcribe the hearing, provided that such transcription does not delay or interfere with the hearing. The Office of Appeal's recording of the hearing shall constitute the official record of the hearing.
- F. The hearing officer shall call the hearing to order and dispose of any prehearing motions or issues.
- G. With the consent of the hearing officer, the parties may stipulate to factual findings or legal conclusions.
- H. A party may advance arguments without undue interference.
- I. A party may testify, present evidence, call witnesses, cross-examine adverse witnesses, and object to evidence. The hearing officer may also take witness testimony or admit evidence on the hearing officer's own motion.
- J. The hearing officer shall keep a complete record of all proceedings in connection with an appeal.
- K. The hearing officer may request the parties to submit memoranda on issues in the case if the hearing officer finds that the memoranda would assist the hearing officer in deciding the case. The hearing officer shall establish a briefing schedule for any required memoranda.
- L. The recording of the hearing, all the evidence presented at the hearing and all papers and requests filed shall constitute the record and shall be available to the household or its representative at any reasonable time for copying and inspection.

R6-14-414. Hearing Decision

- A. No later than 60 days after the date the appellant files a request for hearing with the Department, the hearing officer shall render a decision based solely on the evidence and testimony produced at the hearing and the applicable law. The 60-day time limit is extended for any delay necessary to accommodate hearing continuances or extensions, or postponements requested by a party.
- B. The hearing decision shall include:
 - 1. Findings of fact concerning the issue on appeal;
 - 2. Citations to the law and authority applicable to the issue on appeal;
 - 3. A statement of the conclusions derived from the controlling facts and law and the reasons for the conclusions;
 - 4. The name of the hearing officer;
 - 5. The date of the decision;
 - 6. A statement of further appeal rights, a statement of the process required to initiate a further appeal, and the time period for exercising those rights; and
 - 7. That an appeal may result in a reversal of the decision.
- C. The Office of Appeals shall send a copy of the decision to each party or the party's representative.
- D. When requested by the appellant, the Department, or upon the hearing officer's own motion, the Office of Appeals may amend or vacate a decision to correct clerical errors, including typographical and computational errors.

R6-14-415. Effect of the Decision

- A. If the hearing officer affirms the adverse action against the appellant, the adverse action is effective as of the date of the initial determination of adverse action by the Department. The adverse action remains effective until the appellant appeals and obtains a higher administrative or judicial decision reversing or vacating the hearing officer's decision.
- B. If the hearing officer vacates or reverses the Department's decision to take adverse action, the Department shall not take the action or shall reverse any adverse action, unless the Department appeals and obtains a higher administrative or judicial decision reversing or vacating the hearing officer's decision.
- C. As specified in 7 CFR 273.15(c) the Department shall:
 - 1. For decisions that result in an increase in household benefits:
 - a. Authorize and deposit a benefit supplement in the household's EBT benefit account within 10 days of the receipt of the hearing decision; or
 - b. The Department may take longer than 10 days if it elects to make the decision effective in the household's normal issuance cycle, provided that the issuance will occur within 60 days from the household's request for the hearing.
 - 2. For decisions that result in a decrease in household benefits the Department shall authorize and deposit a decreased benefit amount in the household's EBT benefit account for the next scheduled issuance following receipt of the hearing decision.

R6-14-416. Further Administrative Appeal

- A. A party can appeal an adverse decision issued by a hearing officer to the Department's Appeals Board as prescribed in A.R.S. § 41-1992(C) and (D) by filing a written petition for review with the Office of Appeals within 15 days of the mailing or transmittal date of the hearing officer's decision.
- B. The petition for review shall:
 - 1. Be in writing and filed in person or by mail or fax;
 - 2. Describe why the party disagrees with the hearing officer's decision; and
 - 3. Be signed and dated by the party or the party's representative.

R6-14-417. Appeals Board

- A. The Appeals Board shall conduct proceedings in accordance with A.R.S. §§ 41-1992(D) and 23-672.
- B. The Appeals Board shall issue to all parties a final written decision affirming, reversing, setting aside, or modifying the hearing officer's decision based on the complete record, including the audio recording or the transcript of the hearing. The decision of the Appeals Board shall specify the right to further review and the time for filing an application for appeal.
- C. A household appellant adversely affected by an Appeals Board decision may seek judicial review under A.R.S. § 41-1993.

**ARTICLE 5. INTENTIONAL PROGRAM VIOLATION****R6-14-501. Intentional Program Violations (IPV): Defined**

- A.** An Intentional Program Violation (IPV) consists of having intentionally:
- Made a false or misleading statement, or misrepresented, concealed or withheld facts; or
 - Committed any act that constitutes a violation of the Food and Nutrition Act, the Supplemental Nutrition Assistance Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of Supplemental Nutrition Assistance Program benefits or Electronic Benefit Transfer (EBT) cards. In Arizona, the name of the Supplemental Nutrition Assistance Program is the Nutrition Assistance Program.
- B.** For the purpose of imposing sanctions as prescribed in R6-14-505, a person is considered to have committed an IPV if:
- A person signs a waiver of an Administrative Disqualification Hearing.
 - A person is found to have committed an IPV by an Administrative Disqualification Hearing, or
 - A person is convicted of a criminal offense the elements of which would constitute an IPV under subsection A above or enters into a disqualification consent agreement for deferred prosecution for fraud in a court of law.

R6-14-502. IPV Administrative Disqualification Hearings: Hearing Waiver

- A.** Upon receipt of sufficient documentary evidence substantiating that a person has committed an IPV, the Department shall initiate either an Administrative Disqualification Hearing, or a referral for prosecution.
- B.** When the Department initiates an Administrative Disqualification Hearing, the Department shall mail the person suspected of an IPV written notice of the right to waive the Administrative Disqualification Hearing. This notice shall be sent either by first class mail or certified mail – return receipt requested.
- C.** The waiver notice of the Administrative Disqualification Hearing shall include the following information as well as the information described in R6-14-503(D):
- A statement that the Department has determined that the individual suspected of the IPV committed, and intended to commit, one or more acts described in R6-14-501(A) and that the Department has initiated an Administrative Disqualification Hearing against the individual suspected of the IPV.
 - A summary of the allegations and evidence against the individual suspected of the IPV and notification that the individual suspected of the IPV has the right to examine the case file prior to the hearing and, when requested by the individual or representative, be provided a free copy of any documents in the case file, except documents protected by the attorney-client or work-product privilege or as otherwise protected by federal or state confidentiality laws.
 - A statement of the right of the individual suspected of the IPV to remain silent concerning the allegation of an IPV, and that anything said or signed by the individual concerning the allegations can be used against the individual suspected of the IPV in a court of law, including signing any part of the waiver.
 - A statement that signing a waiver of the Administrative Disqualification Hearing will result in disqualification periods as determined by section R6-14-505, a statement of the penalty the Department believes is applicable to the case scheduled for a hearing and a reduction in benefits for the period of disqualification, even if the individual suspected of the IPV does not admit to the facts as presented by the Department.
 - A statement that the individual suspected of the IPV does not have to sign a waiver of the Administrative Disqualification Hearing, return the waiver form to the Department or speak to anyone at the Department.
 - A statement of the fair hearing rights of the individual suspected of the IPV and notification that these rights are waived when the individual suspected of the IPV submits a signed waiver of the Administrative Disqualification Hearing form.
 - A statement that waiver of the Administrative Disqualification Hearing does not preclude the State or Federal Government from prosecuting the individual suspected of the IPV for the IPV in a civil or criminal court action, or from collecting any over issuance of Nutrition Assistance benefits.
 - A statement that the individual suspected of the IPV may wish to consult an attorney and a list of any individuals or organizations that provide free legal representation.
 - A statement that Nutrition Assistance benefits will continue and will only be terminated if the following occurs:
 - The individual suspected of the IPV signs a notice to waive their rights to an Administrative Disqualification Hearing.
 - There is an Administrative Disqualification Hearing decision that the individual suspected of the IPV is disqualified.
 - The individual is determined to no longer be eligible on other grounds, or
 - The individual requests that the Nutrition Assistance benefits not be continued in order to avoid a potential over issuance of benefits.
 - A statement that the remaining adult household members, if any, will be held responsible for repayment of the resulting over issuance claim.
 - An opportunity for the individual suspected of the IPV to specify whether or not the individual admits to the facts as presented by the Department. This opportunity shall consist of the following statements, and a method for the individual suspected of the IPV to designate the individual's waiver choice:
 - I admit to the facts as presented and understand that a disqualification penalty will be imposed if I sign this waiver. I understand that if I sign this waiver, there will not be an Administrative Disqualification Hearing; or
 - I do not admit that the facts as presented are correct in my Nutrition Assistance case. However, I have chosen to sign this waiver of the Administrative Disqualification Hearing. I also understand that a disqualification penalty will be imposed. I understand that if I mark this box, I will not be able to submit additional evidence, have an Administrative Disqualification Hearing, or have the right to administrative appeal; or
 - I do not admit that the facts as presented are correct in my Nutrition Assistance case. I do not waive my right to require an Administrative Disqualification Hearing where the Department must prove by clear and convincing evidence that I committed, and intended to commit, an Intentional Program Violation.



- 12. A statement that if the individual suspected of the IPV does not waive their right to an Administrative Disqualification Hearing, then the Department must prove by clear and convincing evidence that the person committed and intended to commit, an Intentional Program Violation. The statement shall also advise the person that they may attend the hearing but are not required to attend. If the person opts to attend the hearing, they may talk to the judge about what happened and present additional evidence to the judge if they want to. The person also has the right to remain silent. The judge will decide if the person will be disqualified from participating in the Nutrition Assistance program.
 - 13. The telephone number of the appropriate Department unit that the individual may contact to obtain additional information.
 - 14. A due date that the signed waiver of an Administrative Disqualification Hearing must be provided to the Department so that a hearing will not be held and a signature block for the individual suspected of the IPV, along with a statement that the head of household must also sign the waiver if the individual suspected of the IPV is not the head of household, with an appropriately designated signature block.
 - 15. If the signed waiver of the Administrative Disqualification Hearing is not returned by the due date, the Department shall schedule the Administrative Disqualification Hearing and shall send the individual suspected of the IPV a written hearing notice as contained in R6-14-503(C).
- D.** For the purpose of imposing sanctions as prescribed in R6-14-505, a timely signed waiver of an Administrative Disqualification Hearing shall have the same effect as an administrative adjudication that an IPV occurred.

R6-14-503. Administrative Disqualification Hearings

- A.** The rules on fair hearings contained in Article 4 of this Chapter apply to Intentional Program Violation (IPV) Administrative Disqualification Hearings, except as provided in this Article.
- B.** All IPV Administrative Disqualification Hearings are conducted by the Department's Office of Appeals.
- C.** If the individual suspected of an IPV does not sign and return the waiver of Administrative Disqualification Hearing by the return date set in the waiver notice, or returns the waiver notice stating they do not waive the Administrative Disqualification Hearing, the Office of Appeals shall send the individual a written hearing notice. The Office of Appeals shall send the notice by first class mail, certified mail - return receipt requested, or any other reliable method, no later than 30 days before the scheduled hearing date.
- D.** The hearing notice shall include the following information:
 - 1. The date, time, and place of the hearing;
 - 2. The allegations of an IPV against the individual;
 - 3. A summary of the evidence, how and where the evidence can be examined, and that the individual suspected of the IPV has the right to examine the case file prior to the hearing. When requested by the household or its representative, the Department shall provide a free copy of any documents in the case file, except documents protected by the attorney-client or work-product privilege or as otherwise protected by federal or state confidentiality laws.
 - 4. A notice that the decision will be based solely on information provided by the Department if the individual suspected of the IPV fails to appear at the hearing;
 - 5. A statement that the individual or representative will, upon receipt of the notice, have 10 days from the date of the scheduled hearing to present good cause for failure to appear in order to receive a new hearing;
 - 6. A warning that a determination of IPV will result in disqualification periods as defined by section R6-14-505, and a statement of which penalty the Department believes is applicable to the case scheduled for a hearing;
 - 7. A listing of the individual's rights as contained in R6-14-410;
 - 8. A statement that the Administrative Disqualification Hearing does not preclude the State or Federal Government from prosecuting the individual for the IPV in a civil or criminal court action, or from collecting any over issuance of Nutrition Assistance benefits; and
 - 9. A statement that the individual suspected of the IPV may consult with an attorney and a list of any individuals or organizations known to the Department that provide free legal representation.
 - 10. A notice that the individual suspected of the IPV has the right to obtain a copy of the Department's published hearing procedures together with an explanation of how the individual suspected of the IPV can obtain these procedures.
- E.** The hearing officer shall postpone a hearing for up to 30 days if the individual suspected of the IPV files a written or oral request for postponement with the hearing officer no later than 10 days before the hearing date. Any such postponement shall increase the time by which the hearing officer shall issue a decision, as provided in subsection (J) below.
- F.** The time and place for the hearing shall be arranged so that the hearing is accessible to the individual suspected of the IPV, including making reasonable accommodations for a person with a disability.
- G.** At the start of the Administrative Disqualification Hearing, the hearing officer shall advise the individual suspected of the IPV or representative of the right to remain silent during the hearing. The hearing officer shall also advise that if the individual suspected of the IPV or representative chooses not to exercise the right to remain silent, anything they say may be used against them.
- H.** A hearing officer, as prescribed in R6-14-407, shall conduct the Administrative Disqualification Hearing pursuant to the procedures set forth in R6-14-408, R6-14-409, R6-14-410 and R6-14-413, except as prescribed in this subsection.
- I.** The Department shall prove by clear and convincing evidence that the household member committed, and intended to commit, an IPV.
- J.** No later than 90 days from the date of the notice of hearing, as increased by any postponement days, the hearing officer shall send to the individual suspected of the IPV a written decision. The hearing officer shall find whether the evidence shows by clear and convincing evidence that the person committed, and intended to commit, an IPV. The decision shall specify the reasons for the decision, identify the supporting evidence, identify the pertinent regulation, respond to reasoned arguments made by the individual suspected of the IPV or representative, and include appeal rights.

R6-14-504. Failure to Appear: Default; Reopening

- A.** If the individual suspected of the IPV fails to appear at the Administrative Disqualification Hearing without good cause, the hearing officer shall conduct the hearing.



- B.** The hearing officer shall not conduct the hearing if the individual suspected of the IPV notifies the Office of Appeals before the hearing that the individual cannot attend the hearing because of good cause and still desires a hearing. Good cause includes circumstances beyond the household's reasonable control such as illness, illness of another household member requiring the presence of the adult member, or a household emergency.
- C.** An individual suspected of the IPV who did not appear at the hearing may file a request to reopen the Administrative Disqualification Hearing. The request shall be in writing and shall demonstrate good cause for the party's failure to appear.
 - 1. The individual suspected of the IPV has 30 days after the date of the written notice of the hearing decision to file a request to reopen the Administrative Disqualification Hearing if the individual did not receive a hearing notice.
 - 2. In all other instances, the individual suspected of the IPV has 10 days from the hearing date to show good cause why the individual failed to appear.
- D.** The hearing officer shall review the good cause reason submitted by the individual suspected of the IPV and unless the hearing officer can grant or deny the request based on the information provided, shall set the matter for a hearing to determine whether the individual suspected of the IPV had good cause for failing to appear.
- E.** If the hearing officer finds that the individual suspected of the IPV had good cause for failure to appear, the previous decision shall be vacated and the hearing officer shall reopen the Administrative Disqualification Hearing and schedule a new hearing with notice to all parties. The hearing officer must enter the good cause decision on the record.
- F.** Good cause, for the purpose of reopening an Administrative Disqualification Hearing, is established if the failure to appear at the hearing and the failure to timely notify the hearing officer were beyond the reasonable control of the individual suspected of the IPV. Good cause also exists when the individual suspected of the IPV demonstrates excusable neglect for both the failure to appear and the failure to timely notify the hearing officer. "Excusable neglect" means an action involving an error such as might be made by a reasonably prudent person who attempts to handle a matter in a prompt and diligent fashion.

R6-14-505. Disqualification Sanctions: Notice

- A.** A person found to have committed an IPV is disqualified from program participation:
 - 1. For a period of 12 months for the first IPV, except as provided under subsections (B) through (E) of this section.
 - 2. For a period of 24 months for the second IPV, except as provided in subsections (B) through (E) of this section; and
 - 3. Permanently for the third IPV.
 - 4. The same act of IPV repeated over a period of time shall not be separated so that separate penalties can be imposed.
- B.** Individuals found by any court to have used or received benefits in a transaction involving the sale of a controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802), shall be ineligible to participate in the program:
 - 1. For a period of 24 months for the first violation; and
 - 2. Permanently upon the second violation.
- C.** Individuals found by any court to have used or received benefits in a transaction involving the sale of firearms, ammunition or explosives shall be permanently ineligible to participate in the program upon the first violation.
- D.** An individual convicted by any court of having trafficked benefits for an aggregate amount of \$500 or more shall be permanently ineligible to participate in the program upon the first violation.
- E.** Except as provided under subsection (A)(3) of this section, an individual found to have made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple Nutrition Assistance benefits simultaneously shall be ineligible to participate in the program for 10 years.
- F.** Upon a determination of IPV, the Department shall notify the disqualified person in writing of the pending disqualification. The written notice shall:
 - 1. Inform the disqualified person of the decision and the reasons for the decision; and
 - 2. Inform the disqualified person of the date the disqualification will take effect and the duration of the disqualification.
- G.** Under 7 CFR 273.11(c)(1), when determining the eligibility and benefit level for the remaining eligible members of the household, the Department shall count the income and resources of the disqualified person in their entirety and the entire household's allowable earned income, standard, medical, dependent care, child support, and excess shelter deductions shall continue to apply to the remaining household members. The Department shall not include the ineligible member when determining the household's size for the purposes of:
 - 1. Assigning a benefit level to the household;
 - 2. Assigning a standard deduction to the household;
 - 3. Comparing the household's monthly income with the income eligibility standards; or
 - 4. Comparing the household's resources with the resource eligibility limits.
- H.** Under 7 CFR 273.11 (c)(4) and 7 CFR §273.16(e)(9)(ii) and (f)(3), the Department shall notify the remaining members of their eligibility and benefit level at the same time the excluded member is notified of his or her disqualification.

R6-14-506. Administrative Disqualification Hearings or Waiver of the Right to a Hearing: Appeal

- A.** Upon a determination of IPV through a signed waiver of an Administrative Disqualification Hearing, the individual has no right to further administrative appeal. The individual may seek relief in a court having jurisdiction and may seek a stay or other injunctive relief of a period of disqualification.
- B.** A party may appeal a Hearing Officer's Administrative Disqualification Hearing decision as provided in R6-14-416(A) to the Appeals Board as provided in R6-14-417.
- C.** An individual adversely affected by an Appeals Board decision may seek judicial review under A.R.S. § 41-1993.

R6-14-507. Honoring Out-of-State IPV Determinations and Sanctions

The Department shall honor sanctions imposed against an applicant or recipient by the agency of another state that administers the Supplemental Nutrition Assistance Program and shall consider prior violations committed in another state when determining the appropriate sanction.



NOTICES OF EXPIRATION OF RULES UNDER A.R.S. § 41-1056(J)

This section of the Arizona Administrative Register contains Notices of Expiration of Rules. Under A.R.S. § 41-1056(J), if an agency does not file a five-year rule review report with the Governor's Regulatory Review Council (including a revised report); or if an agency does not file an extension before the due date of the report; or if an agency files an extension but does not submit a report

within the extension period; the rules scheduled for review expire.

The Council is required to notify the Secretary of State that the rules have expired and are no longer enforceable. The notice is published in the Register, and the rules are removed from the Code.

GOVERNOR'S REGULATORY REVIEW COUNCIL NOTICE OF EXPIRATION OF RULES UNDER A.R.S. § 41-1056(J)

STATE LAND DEPARTMENT

[R20-13]

- 1. Agency name: State Land Department
2. Title and its heading: 12, Natural Resources
3. Chapter and its heading: 5, State Land Department
4. Article and its heading: 21, Oil and Gas Leases

As required by A.R.S. § 41-1056(J), the Council provides notice that the following rules expired as of January 15, 2020:

- R12-5-2105. Simultaneous filings; Conflicts
R12-5-2106. Noncompetitive Lease; Conflict

Signature is of Nicole Sornsin

Date of Signing

/s/

January 23, 2020

Nicole Sornsin
Council Chair

GOVERNOR'S REGULATORY REVIEW COUNCIL NOTICE OF EXPIRATION OF RULES UNDER A.R.S. § 41-1056(J)

INDUSTRIAL COMMISSION OF ARIZONA

[R20-14]

- 1. Agency name: Industrial Commission of Arizona
2. Title and its heading: 20, Commerce, Financial Institutions, and Institutions
3. Chapter and its heading: 5, Industrial Commission of Arizona
4. Article and its heading: 6, Occupational Safety and Health Standards

As required by A.R.S. § 41-1056(J), the Council provides notice that the following rules expired as of January 15, 2020:

- R20-5-601.01. Fall Protection for Residential Construction

Signature is of Nicole Sornsin

Date of Signing

/s/

January 23, 2020

Nicole Sornsin
Council Chair



NOTICES OF RULEMAKING DOCKET OPENING

This section of the *Arizona Administrative Register* contains Notices of Rulemaking Docket Opening.

A docket opening is the first part of the administrative rulemaking process. It is an "announcement" that the agency intends to work on its rules.

When an agency opens a rulemaking docket to consider rulemaking, the Administrative Procedure Act (APA) requires the publication of the Notice of Rulemaking Docket Opening.

Under the APA effective January 1, 1995, agencies must submit a Notice of Rulemaking Docket Opening before beginning the formal rulemaking process. Many times an agency may file the Notice of Rulemaking Docket Opening with the Notice of Proposed Rulemaking.

The Office of the Secretary of State is the filing office and publisher of these notices. Questions about the interpretation of this information should be directed to the agency contact person listed in item #4 of this notice.

**NOTICE OF RULEMAKING DOCKET OPENING
DEPARTMENT OF HEALTH SERVICES
COMMUNICABLE DISEASES AND INFESTATIONS**

[R20-12]

- 1. Title and its heading:** 9, Health Services
- Chapter and its heading:** 6, Department of Health Services - Communicable Diseases and Infestations
- Article and its heading:** 8, Assaults on Public Safety Employees and Volunteers
- Section numbers:** R9-6-801 (*The Department may add, delete, or modify other Sections, as necessary.*)

2. The subject matter of the proposed rules:
 Arizona Revised Statutes (A.R.S.) § 36-136(H)(1) requires the Arizona Department of Health Services (Department) to make rules defining and prescribing "reasonably necessary measures for detecting, reporting, preventing, and controlling communicable and preventable diseases." A.R.S. § 13-1210 authorizes specific individuals and their employing entities to petition for court-ordered testing of the blood of the alleged perpetrator of an assault on the individual. The Department has adopted in Arizona Administrative Code (A.A.C.) Title 9, Chapter 6, Article 8, rules to implement these statutes. Laws 2019, Ch. 97 amends A.R.S. § 13-1210 by adding hospital employees to those who may "petition the court for an order authorizing testing of another person for the human immunodeficiency virus, common blood borne diseases or other diseases specified in the petition." After receiving an exception from the Governor's rulemaking moratorium established by Executive Order 2019-01, the Department is revising the rule by expedited rulemaking to make this change to comply with the requirements in A.R.S § 13-1210. The proposed amendments will conform to rulemaking format and style requirements of the Governor's Regulatory Review Council and the Office of the Secretary of State. The Department may add, delete, or modify other Sections, as necessary.

3. A citation to all published notices relating to the proceeding:
 None

4. The name and address of agency personnel with whom persons may communicate regarding the rules:

Name: Ken Komatsu, State Epidemiologist
 Address: Department of Health Services
 Public Health Preparedness
 150 N. 18th Ave., Suite 100
 Phoenix, AZ 85007-3248
 Telephone: (602) 364-3909
 Fax: (602) 364-3199
 E-mail: Ken.Komatsu@azdhs.gov
 or
 Name: Stephanie Elzenga, Acting Chief
 Address: Department of Health Services
 Office of Administrative Counsel and Rules
 150 N. 18th Ave., Suite 200
 Phoenix, AZ 85007
 Telephone: (602) 542-1020
 Fax: (602) 364-1150
 E-mail: Stephanie.Elzenga@azdhs.gov

5. The time during which the agency will accept written comments and the time and place where oral comments may be made:

Written comments will be accepted at the addresses listed in item #4 until the close of record, which has not yet been determined. No oral proceedings have been scheduled at this time.



- 6. A timetable for agency decisions or other action on the proceeding, if known:**
To be announced in the Notice of Proposed Expedited Rulemaking



GOVERNOR EXECUTIVE ORDER

Executive Order 2020-02 is being reproduced in each issue of the *Administrative Register* as a notice to the public regarding state agencies' rulemaking activities.

This order has been reproduced in its entirety as submitted.

EXECUTIVE ORDER 2020-02

Moratorium on Rulemaking to Promote Job Creation and Economic Development; Implementation of Licensing Reform Policies

[M20-01]

WHEREAS, government regulations should be as limited as possible; and

WHEREAS, burdensome regulations inhibit job growth and economic development; and

WHEREAS, protecting the public health, peace and safety of the residents of Arizona is a top priority of state government; and

WHEREAS, in 2015, the State of Arizona implemented a moratorium on all new regulatory rulemaking by State agencies through executive order, and renewed the moratorium in 2016, 2017, 2018 and 2019; and

WHEREAS, the State of Arizona eliminated or improved 637 burdensome regulations in 2019 and a total of 2,289 needless regulations have been eliminated or improved since 2015; and

WHEREAS, estimates show these eliminations saved job creators \$53.9 million in operating costs in 2019 and a total of over \$134.3 million in savings since 2015; and

WHEREAS, in 2019, for every one new necessary rule added to the Administrative Code, five have been repealed or improved; and

WHEREAS, approximately 354,000 private sector jobs have been added to Arizona since January 2015; and

WHEREAS, all government agencies of the State of Arizona should continue to promote customer-service-oriented principles for the people that it serves; and

WHEREAS, each State agency shall continue to conduct a critical and comprehensive review of its administrative rules and take action to reduce the regulatory burden, administrative delay and legal uncertainty associated with government regulation while protecting the health and safety of residents; and

WHEREAS, each State agency should continue to evaluate its administrative rules using any available and reliable data and performance metrics; and

WHEREAS, Article 5, Section 4 of the Arizona Constitution and Title 41, Chapter 1, Article 1 of the Arizona Revised Statutes vests the executive power of the State of Arizona in the Governor.

NOW, THEREFORE, I, Douglas A. Ducey, by virtue of the authority vested in me by the Constitution and laws of the State of Arizona hereby declare the following:

1. A State agency subject to this Order shall not conduct any rulemaking, whether informal or formal, without the prior written approval of the Office of the Governor. In seeking approval, a State agency shall address one or more of the following as justifications for the rulemaking:
 - a. To fulfill an objective related to job creation, economic development or economic expansion in this State.
 - b. To reduce or ameliorate a regulatory burden while achieving the same regulatory objective.
 - c. To prevent a significant threat to the public health, peace or safety.
 - d. To avoid violating a court order or federal law that would result in sanctions by a federal court for failure to conduct the rulemaking action.
 - e. To comply with a federal statutory or regulatory requirement if such compliance is related to a condition for the receipt of federal funds or participation in any federal program.
 - f. To comply with a state statutory requirement.
 - g. To fulfill an obligation related to fees or any other action necessary to implement the State budget that is certified by the Governor's Office of Strategic Planning and Budgeting.
 - h. To promulgate a rule or other item that is exempt from Title 41, Chapter 6, Arizona Revised Statutes, pursuant to section 41-1005, Arizona Revised Statutes.
 - i. To address matters pertaining to the control, mitigation or eradication of waste, fraud or abuse within an agency or wasteful, fraudulent or abusive activities perpetrated against an agency.
 - j. To eliminate rules which are antiquated, redundant or otherwise no longer necessary for the operation of state government.
2. A State agency that submits a rulemaking request pursuant to this Order shall recommend for consideration by the Office of the Governor at least **three** existing rules to eliminate for every **one** additional rule requested by the agency.



3. A State agency that submits a rulemaking exemption request pursuant to this Order shall include with their request an analysis of how small businesses may be impacted by any newly proposed rules or rule modifications.
4. A State agency subject to this Order shall not publicize any directives, policy statements, documents or forms on its website unless such are explicitly authorized by the Arizona Revised Statutes or Arizona Administrative Code. Any material that is not specifically authorized must be removed immediately.
5. A State agency that issues occupational or professional licenses shall prominently post on the agency’s website landing page all current state policies that ease licensing burdens and the exact steps applicants must complete to receive their license using these policies. State agencies should provide information that applies to all applicants, but have a designated area on such landing page that includes licensing information specifically for military spouses, active duty service members and veterans and all policies that make it easier for these applicant groups to receive their license. Examples of reduced licensing burdens include universal recognition of out-of-state licenses, availability of temporary licenses, fee waivers, exam exemptions and/or allowing an applicant to substitute military education or experience for licensing requirements. A landing page feature may link to an internal agency web page with more information, if necessary. All information must be easy to locate and written in clear and concise language.
6. All state agencies that are required to issue occupational or professional licenses by universal recognition (established by section 32-4302, Arizona Revised Statutes) must track all applications received for this license type. Before any agency denies a professional or occupational license applied for under section 32-4302, Arizona Revised Statutes, the agency shall submit the application and justification for denial to the Office of the Governor for review before any official action is taken by the agency. The Office of the Governor should be notified of any required timeframes, whether in statute or rule, for approval or denial of the license by the agency.
7. For the purposes of this Order, the term “State agencies” includes, without limitation, all executive departments, agencies, offices, and all state boards and commissions, except for: (a) any State agency that is headed by a single elected State official; (b) the Corporation Commission; and (c) any board or commission established by ballot measure during or after the November 1998 general election. Those state agencies, boards and commissions excluded from this Order are strongly encouraged to voluntarily comply with this Order in the context of their own rulemaking processes.
8. This Order does not confer any legal rights upon any persons and shall not be used as a basis for legal challenges to rules, approvals, permits, licenses or other actions or to any inaction of a State agency. For the purposes of this Order, “person,” “rule” and “rulemaking” have the same meanings prescribed in section 41-1001, Arizona Revised Statutes.

IN WITNESS THEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Arizona.

Douglas A. Ducey
GOVERNOR

DONE at the Capitol in Phoenix on this 13th day of January in the Year Two Thousand and Twenty and of the Independence of the United States of America the Year Two Hundred and Forty-Fourth.

ATTEST:
Katie Hobbs
SECRETARY OF STATE



REGISTER INDEXES

The *Register* is published by volume in a calendar year (See “General Information” in the front of each issue for more information).

Abbreviations for rulemaking activity in this Index include:

PROPOSED RULEMAKING

PN = Proposed new Section
 PM = Proposed amended Section
 PR = Proposed repealed Section
 P# = Proposed renumbered Section

SUPPLEMENTAL PROPOSED RULEMAKING

SPN = Supplemental proposed new Section
 SPM = Supplemental proposed amended Section
 SPR = Supplemental proposed repealed Section
 SP# = Supplemental proposed renumbered Section

FINAL RULEMAKING

FN = Final new Section
 FM = Final amended Section
 FR = Final repealed Section
 F# = Final renumbered Section

SUMMARY RULEMAKING

PROPOSED SUMMARY

PSMN = Proposed Summary new Section
 PSMM = Proposed Summary amended Section
 PSMR = Proposed Summary repealed Section
 PSM# = Proposed Summary renumbered Section

FINAL SUMMARY

FSMN = Final Summary new Section
 FSMM = Final Summary amended Section
 FSMR = Final Summary repealed Section
 FSM# = Final Summary renumbered Section

EXPEDITED RULEMAKING

PROPOSED EXPEDITED

PEN = Proposed Expedited new Section
 PEM = Proposed Expedited amended Section
 PER = Proposed Expedited repealed Section
 PE# = Proposed Expedited renumbered Section

SUPPLEMENTAL EXPEDITED

SPEN = Supplemental Proposed Expedited new Section
 SPEM = Supplemental Proposed Expedited amended Section
 SPER = Supplemental Proposed Expedited repealed Section
 SPE# = Supplemental Proposed Expedited renumbered Section

FINAL EXPEDITED

FEN = Final Expedited new Section
 FEM = Final Expedited amended Section
 FER = Final Expedited repealed Section
 FE# = Final Expedited renumbered Section

EXEMPT RULEMAKING

EXEMPT

XN = Exempt new Section
 XM = Exempt amended Section
 XR = Exempt repealed Section
 X# = Exempt renumbered Section

EXEMPT PROPOSED

PXN = Proposed Exempt new Section
 PXM = Proposed Exempt amended Section
 PXR = Proposed Exempt repealed Section
 PX# = Proposed Exempt renumbered Section

EXEMPT SUPPLEMENTAL PROPOSED

SPXN = Supplemental Proposed Exempt new Section
 SPXR = Supplemental Proposed Exempt repealed Section
 SPXM = Supplemental Proposed Exempt amended Section
 SPX# = Supplemental Proposed Exempt renumbered Section

FINAL EXEMPT RULEMAKING

FXN = Final Exempt new Section
 FXM = Final Exempt amended Section
 FXR = Final Exempt repealed Section
 FX# = Final Exempt renumbered Section

EMERGENCY RULEMAKING

EN = Emergency new Section
 EM = Emergency amended Section
 ER = Emergency repealed Section
 E# = Emergency renumbered Section
 EEXP = Emergency expired

RECODIFICATION OF RULES

RC = Recodified

REJECTION OF RULES

RJ = Rejected by the Attorney General

TERMINATION OF RULES

TN = Terminated proposed new Sections
 TM = Terminated proposed amended Section
 TR = Terminated proposed repealed Section
 T# = Terminated proposed renumbered Section

RULE EXPIRATIONS

EXP = Rules have expired

See also “emergency expired” under emergency rulemaking

CORRECTIONS

C = Corrections to Published Rules

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Other legal notices required to be published under the Administrative Procedure Act, such as Rulemaking Docket Openings, are included in this Index by volume page number. Notices of Agency Ombudsman, Substantive Policy Statements, Proposed Delegation Agreements, and other applicable public records as required by law are also listed in this Index by volume page number.

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RULES EFFECTIVE DATES CALENDAR

A.R.S. § 41-1032(A), as amended by Laws 2002, Ch. 334, § 8 (effective August 22, 2002), states that a rule generally becomes effective 60 days after the day it is filed with the Secretary of State's Office. The following table lists filing dates and effective dates for rules that follow this provision. Please also check the rulemaking Preamble for effective dates.

January		February		March		April		May		June	
Date Filed	Effective Date										
1/1	3/1	2/1	4/1	3/1	4/30	4/1	5/31	5/1	6/30	6/1	7/31
1/2	3/2	2/2	4/2	3/2	5/1	4/2	6/1	5/2	7/1	6/2	8/1
1/3	3/3	2/3	4/3	3/3	5/2	4/3	6/2	5/3	7/2	6/3	8/2
1/4	3/4	2/4	4/4	3/4	5/3	4/4	6/3	5/4	7/3	6/4	8/3
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1/8	3/8	2/8	4/8	3/8	5/7	4/8	6/7	5/8	7/7	6/8	8/7
1/9	3/9	2/9	4/9	3/9	5/8	4/9	6/8	5/9	7/8	6/9	8/8
1/10	3/10	2/10	4/10	3/10	5/9	4/10	6/9	5/10	7/9	6/10	8/9
1/11	3/11	2/11	4/11	3/11	5/10	4/11	6/10	5/11	7/10	6/11	8/10
1/12	3/12	2/12	4/12	3/12	5/11	4/12	6/11	5/12	7/11	6/12	8/11
1/13	3/13	2/13	4/13	3/13	5/12	4/13	6/12	5/13	7/12	6/13	8/12
1/14	3/14	2/14	4/14	3/14	5/13	4/14	6/13	5/14	7/13	6/14	8/13
1/15	3/15	2/15	4/15	3/15	5/14	4/15	6/14	5/15	7/14	6/15	8/14
1/16	3/16	2/16	4/16	3/16	5/15	4/16	6/15	5/16	7/15	6/16	8/15
1/17	3/17	2/17	4/17	3/17	5/16	4/17	6/16	5/17	7/16	6/17	8/16
1/18	3/18	2/18	4/18	3/18	5/17	4/18	6/17	5/18	7/17	6/18	8/17
1/19	3/19	2/19	4/19	3/19	5/18	4/19	6/18	5/19	7/18	6/19	8/18
1/20	3/20	2/20	4/20	3/20	5/19	4/20	6/19	5/20	7/19	6/20	8/19
1/21	3/21	2/21	4/21	3/21	5/20	4/21	6/20	5/21	7/20	6/21	8/20
1/22	3/22	2/22	4/22	3/22	5/21	4/22	6/21	5/22	7/21	6/22	8/21
1/23	3/23	2/23	4/23	3/23	5/22	4/23	6/22	5/23	7/22	6/23	8/22
1/24	3/24	2/24	4/24	3/24	5/23	4/24	6/23	5/24	7/23	6/24	8/23
1/25	3/25	2/25	4/25	3/25	5/24	4/25	6/24	5/25	7/24	6/25	8/24
1/26	3/26	2/26	4/26	3/26	5/25	4/26	6/25	5/26	7/25	6/26	8/25
1/27	3/27	2/27	4/27	3/27	5/26	4/27	6/26	5/27	7/26	6/27	8/26
1/28	3/28	2/28	4/28	3/28	5/27	4/28	6/27	5/28	7/27	6/28	8/27
1/29	3/29	2/29	4/29	3/29	5/28	4/29	6/28	5/29	7/28	6/29	8/28
1/30	3/30			3/30	5/29	4/30	6/29	5/30	7/29	6/30	8/29
1/31	3/31			3/31	5/30			5/31	7/30		



July		August		September		October		November		December	
Date Filed	Effective Date										
7/1	8/30	8/1	9/30	9/1	10/31	10/1	11/30	11/1	12/31	12/1	1/30/21
7/2	8/31	8/2	10/1	9/2	11/1	10/2	12/1	11/2	1/1/21	12/2	1/31/21
7/3	9/1	8/3	10/2	9/3	11/2	10/3	12/2	11/3	1/2/21	12/3	2/1/21
7/4	9/2	8/4	10/3	9/4	11/3	10/4	12/3	11/4	1/3/21	12/4	2/2/21
7/5	9/3	8/5	10/4	9/5	11/4	10/5	12/4	11/5	1/4/21	12/5	2/3/21
7/6	9/4	8/6	10/5	9/6	11/5	10/6	12/5	11/6	1/5/21	12/6	2/4/21
7/7	9/5	8/7	10/6	9/7	11/6	10/7	12/6	11/7	1/6/21	12/7	2/5/21
7/8	9/6	8/8	10/7	9/8	11/7	10/8	12/7	11/8	1/7/21	12/8	2/6/21
7/9	9/7	8/9	10/8	9/9	11/8	10/9	12/8	11/9	1/8/21	12/9	2/7/21
7/10	9/8	8/10	10/9	9/10	11/9	10/10	12/9	11/10	1/9/21	12/10	2/8/21
7/11	9/9	8/11	10/10	9/11	11/10	10/11	12/10	11/11	1/10/21	12/11	2/9/21
7/12	9/10	8/12	10/11	9/12	11/11	10/12	12/11	11/12	1/11/21	12/12	2/10/21
7/13	9/11	8/13	10/12	9/13	11/12	10/13	12/12	11/13	1/12/21	12/13	2/11/21
7/14	9/12	8/14	10/13	9/14	11/13	10/14	12/13	11/14	1/13/21	12/14	2/12/21
7/15	9/13	8/15	10/14	9/15	11/14	10/15	12/14	11/15	1/14/21	12/15	2/13/21
7/16	9/14	8/16	10/15	9/16	11/15	10/16	12/15	11/16	1/15/21	12/16	2/14/21
7/17	9/15	8/17	10/16	9/17	11/16	10/17	12/16	11/17	1/16/21	12/17	2/15/21
7/18	9/16	8/18	10/17	9/18	11/17	10/18	12/17	11/18	1/17/21	12/18	2/16/21
7/19	9/17	8/19	10/18	9/19	11/18	10/19	12/18	11/19	1/18/21	12/19	2/17/21
7/20	9/18	8/20	10/19	9/20	11/19	10/20	12/19	11/20	1/19/21	12/20	2/18/21
7/21	9/19	8/21	10/20	9/21	11/20	10/21	12/20	11/21	1/20/21	12/21	2/19/21
7/22	9/20	8/22	10/21	9/22	11/21	10/22	12/21	11/22	1/21/21	12/22	2/20/21
7/23	9/21	8/23	10/22	9/23	11/22	10/23	12/22	11/23	1/22/21	12/23	2/21/21
7/24	9/22	8/24	10/23	9/24	11/23	10/24	12/23	11/24	1/23/21	12/24	2/22/21
7/25	9/23	8/25	10/24	9/25	11/24	10/25	12/24	11/25	1/24/21	12/25	2/23/21
7/26	9/24	8/26	10/25	9/26	11/25	10/26	12/25	11/26	1/25/21	12/26	2/24/21
7/27	9/25	8/27	10/26	9/27	11/26	10/27	12/26	11/27	1/26/21	12/27	2/25/21
7/28	9/26	8/28	10/27	9/28	11/27	10/28	12/27	11/28	1/27/21	12/28	2/26/21
7/29	9/27	8/29	10/28	9/29	11/28	10/29	12/28	11/29	1/28/21	12/29	2/27/21
7/30	9/28	8/30	10/29	9/30	11/29	10/30	12/29	11/30	1/29/21	12/30	2/28/21
7/31	9/29	8/31	10/30			10/31	12/30			12/31	3/1/21



REGISTER PUBLISHING DEADLINES

The Secretary of State's Office publishes the Register weekly. There is a three-week turnaround period between a deadline date and the publication date of the Register. The weekly deadline dates and issue dates are shown below. Council meetings and Register deadlines do not correlate. Also listed are the earliest dates on which an oral proceeding can be held on proposed rulemakings or proposed delegation agreements following publication of the notice in the Register.

Deadline Date (paper only) Friday, 5:00 p.m.	Register Publication Date	Oral Proceeding may be scheduled on or after
November 15, 2019	December 6, 2019	January 6, 2020
November 22, 2019	December 13, 2019	January 13, 2020
November 29, 2019	December 20, 2019	January 21, 2020
December 6, 2019	December 27, 2019	January 27, 2020
December 13, 2019	January 3, 2020	February 3, 2020
December 20, 2019	January 10, 2020	February 10, 2020
December 27, 2019	January 17, 2020	February 17, 2020
January 3, 2020	January 24, 2020	February 24, 2020
January 10, 2020	January 31, 2020	March 2, 2020
January 17, 2020	February 7, 2020	March 9, 2020
January 24, 2020	February 14, 2020	March 16, 2020
January 31, 2020	February 21, 2020	March 23, 2020
February 7, 2020	February 28, 2020	March 30, 2020
February 14, 2020	March 6, 2020	April 6, 2020
February 21, 2020	March 13, 2020	April 13, 2020
February 28, 2020	March 20, 2020	April 20, 2020
March 6, 2020	March 27, 2020	April 27, 2020
March 13, 2020	April 3, 2020	May 4, 2020
March 20, 2020	April 10, 2020	May 11, 2020
March 27, 2020	April 17, 2020	May 18, 2020
April 3, 2020	April 24, 2020	May 26, 2020



GOVERNOR’S REGULATORY REVIEW COUNCIL DEADLINES

The following deadlines apply to all Five-Year Review Reports and any adopted rule submitted to the Governor’s Regulatory Review Council. Council meetings and *Register* deadlines do not correlate. We publish these deadlines under A.R.S. § 41-1013(B)(15).

All rules and Five-Year Review Reports are due in the Council office by 5 p.m. of the deadline date. The Council’s office is located at 100 N. 15th Ave., Suite 305, Phoenix, AZ 85007. For more information, call (602) 542-2058 or visit <http://grrc.az.gov>.

GOVERNOR’S REGULATORY REVIEW COUNCIL DEADLINES FOR 2019/2020 (MEETING DATES ARE SUBJECT TO CHANGE)

[M19-118]

DEADLINE FOR PLACEMENT ON AGENDA*	FINAL MATERIALS SUBMITTED TO COUNCIL	DATE OF COUNCIL STUDY SESSION	DATE OF COUNCIL MEETING
<i>Tuesday</i> November 19, 2019	<i>Tuesday</i> December 24, 2019	<i>Tuesday</i> January 7, 2020	<i>Tuesday</i> January 14, 2020
<i>Tuesday</i> December 24, 2019	<i>Tuesday</i> January 21, 2020	<i>Tuesday</i> January 28, 2020	<i>Tuesday</i> February 4, 2020
<i>Tuesday</i> January 21, 2020	<i>Tuesday</i> February 18, 2020	<i>Tuesday</i> February 25, 2020	<i>Tuesday</i> March 3, 2020
<i>Tuesday</i> February 18, 2020	<i>Tuesday</i> March 24, 2020	<i>Tuesday</i> March 31, 2020	<i>Tuesday</i> April 7, 2020
<i>Tuesday</i> March 24, 2020	<i>Tuesday</i> April 21, 2020	<i>Tuesday</i> April 28, 2020	<i>Tuesday</i> May 5, 2020
<i>Tuesday</i> April 21, 2020	<i>Tuesday</i> May 19, 2020	Wednesday May 27, 2020	<i>Tuesday</i> June 2, 2020
<i>Tuesday</i> May 19, 2020	<i>Tuesday</i> June 23, 2020	<i>Tuesday</i> June 30, 2020	<i>Tuesday</i> July 7, 2020
<i>Tuesday</i> June 23, 2020	<i>Tuesday</i> July 21, 2020	<i>Tuesday</i> July 28, 2020	<i>Tuesday</i> August 4, 2020
<i>Tuesday</i> July 21, 2020	<i>Tuesday</i> August 18, 2020	<i>Tuesday</i> August 25, 2020	<i>Tuesday</i> September 1, 2020
<i>Tuesday</i> August 18, 2020	<i>Tuesday</i> September 22, 2020	<i>Tuesday</i> September 29, 2020	<i>Tuesday</i> October 6, 2020
<i>Tuesday</i> September 22, 2020	<i>Tuesday</i> October 20, 2020	<i>Tuesday</i> October 27, 2020	<i>Tuesday</i> November 3, 2020
<i>Tuesday</i> October 20, 2020	<i>Tuesday</i> November 17, 2020	<i>Tuesday</i> November 24, 2020	<i>Tuesday</i> December 1, 2020
<i>Tuesday</i> November 17, 2020	<i>Tuesday</i> December 22, 2020	<i>Tuesday</i> December 29, 2020	<i>Tuesday</i> January 5, 2021
<i>Tuesday</i> December 29, 2020	<i>Tuesday</i> January 19, 2021	<i>Tuesday</i> January 26, 2021	<i>Tuesday</i> February 2, 2021

* Materials must be submitted by **5 PM** on dates listed as a deadline for placement on a particular agenda. Placement on a particular agenda is not guaranteed.



**GOVERNOR'S REGULATORY REVIEW COUNCIL
NOTICE OF ACTION TAKEN AT THE FEBRUARY 4, 2020 MEETING**

[M20-07]

A. CONSENT AGENDA ITEMS:

Rulemakings:

- 1. ARIZONA STATE RETIREMENT SYSTEM (R20-0201)**
Title 2, Chapter 8, Article 1, Retirement System

Amend: R2-8-122

- 2. INDUSTRIAL COMMISSION OF ARIZONA (R20-0202)**
Title 20, Chapter 5, Article 5, Elevator Safety

Amend: R20-5-507

Five Year Review Reports:

- 3. DEPARTMENT OF TRANSPORTATION (F20-0101)**
Title 17, Chapter 3, Articles 2, 3, 5, 7, and 9, Department of Transportation Highways
- 4. DEPARTMENT OF HEALTH SERVICES (F20-0203)**
Title 9, Chapter 6, Article 5, Rabies Control
- 5. DEPARTMENT OF HEALTH SERVICES (F20-0205)**
Title 9, Chapter 10, Article 19, Counseling Facilities
- 6. STATE PARKS BOARD (F20-0201)**
Title 12, Chapter 8, Articles 1-3, Arizona State Parks Board

Five Year Review Report Extension Request:

- 7. REQUEST FROM INDUSTRIAL COMMISSION OF ARIZONA FOR 1 YEAR EXTENSION TO SUBMIT THE FIVE YEAR REVIEW REPORT FOR 20 A.A.C. CHAPTER 5, ARTICLE 11**

COUNCIL ACTION: CONSENT AGENDA APPROVED

B. CONSIDERATION AND DISCUSSION OF RULES:

- 1. DEPARTMENT OF HEALTH SERVICES (R20-0203)**
Title 9, Chapter 16, Article 6, Radiation Technologists

Amend: R9-16-614, R9-16-623

COUNCIL ACTION: APPROVED

- 2. ARIZONA STATE BOARD OF ACCOUNTANCY (R20-0204)**
Title 4, Chapter 1, Articles 1-4, Board of Accountancy

Amend: R4-1-101, R4-1-104, R4-1-115.03, R4-1-226.01, R4-1-229, R4-1-341, R4-1-344, R4-1-345, R4-1-346, R4-1-453, R4-1-454, R4-1-455, R4-1-455.01, R4-1-456

Repeal: R4-1-228

New Section: R4-1-228

COUNCIL ACTION: APPROVED WITH CHANGES TO R4-1-341(B)(2)(a) and R4-1-341(B)(3)(a) PURSUANT TO R1-6-204



C. CONSIDERATION AND DISCUSSION OF FIVE YEAR REVIEW REPORTS:

1. DEPARTMENT OF TRANSPORTATION (F20-0207)

Title 17, Chapter 4, Article 5, Safety

COUNCIL ACTION: APPROVED

2. DEPARTMENT OF ECONOMIC SECURITY (F20-0102)

Title 6, Chapter 14, Food Stamps Program

COUNCIL ACTION: APPROVED

3. DEPARTMENT OF FINANCIAL INSTITUTIONS (F20-0104)

Title 20, Chapter 4, Articles 6, 7, 8, 10, and 11, Department of Financial Institutions

COUNCIL ACTION: APPROVED

4. DEPARTMENT OF REVENUE (F20-0301)

Title 15, Chapter 12, Articles 1-3, Property Tax Oversight Commission

COUNCIL ACTION: APPROVED

5. DEPARTMENT OF REVENUE (F20-0303)

Title 15, Chapter 10, Articles 1-5, General Administration

COUNCIL ACTION: APPROVED

D. CONSIDERATION AND DISCUSSION OF A.R.S. § 41-1033(G) PETITION OF ARIZONA STATE BOARD OF COSMETOLOGY RULE R4-10-111

COUNCIL ACTION: DIRECTED AGENCY TO MODIFY R4-10-111(D)