

# ARIZONA

GOVERNOR'S REGULATORY  
REVIEW COUNCIL

New Council Member Training

Tuesday, June 14, 2022  
10:00 a.m.

[grrc.az.gov](http://grrc.az.gov)  
[grrc@azdoa.gov](mailto:grrc@azdoa.gov)  
(602) 542-2058

# Overview

- What is GRRC?
- Rulemakings
- Five-Year Review Reports

# What is GRRC?

- Governor Babbitt established GRRC by executive order in 1981 “to assure that administrative rules and regulations avoid unnecessary duplication and adverse impact upon the public.”
- GRRC is now established by statute under A.R.S. § 41-1051.
- Council is composed of seven members, 6 of which are appointed by the Governor with confirmation by the Senate, the 7th member is assistant director for ADOA.
- Council meets twice a month at open public meetings: a **Study Session** and a **Council Meeting**.

# What is GRRC?

- GRRC has **3** core business processes:
  - **(1)** review of rulemakings;
  - **(2)** review of Five-Year Review Reports, and
  - **(3)** hearing petitions and appeals.
- For rulemakings, GRRC is the last step in the rulemaking process before an agency's rules become effective and enforceable. Agencies submit Notices of Final Rulemaking (NFRs) to GRRC for approval. GRRC reviews NFRs at monthly Study Sessions and votes on them at monthly Council Meetings.

# Rulemaking

# The Laws of Rulemaking

## **An agency's statutes**

- ▶ Create authority, responsibilities, and program direction

## **Administrative Procedure Act (A.P.A.): A.R.S. Title 41, Chapter 6**

- ▶ Procedures to make a rule - Article 3
- ▶ GRRC authority - Article 5

## **Secretary of State rules: A.A.C. Title 1, Chapter 1**

- ▶ Standards for publication

## **GRRC Rules: A.A.C. Title 1, Chapter 6**

- ▶ Rule review procedures

## **Also: Federal and AZ Constitutions, Applicable Federal Laws**

# Types of Rulemaking

**Regular** – See generally A.R.S. §§ 41-1021 through 41-1024, and 41-1052

**Expedited** – See generally A.R.S. §§ 41-1027 and 41-1053

## Exempt

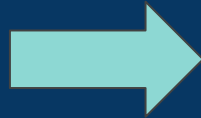
- ▶ Under A.R.S. § 41-1057 - See generally A.R.S. §§ 41-1021 through 41-1024, and 41-1044
- ▶ Under the agency's statutes or session law or A.R.S. § 41-1005

**Emergency** – See generally A.R.S. §§ 41-1026 and 41-1044

# Rulemaking Overview

## Step 1:

An agency requests exception from rulemaking moratorium from the Governor's Office.



## Step 2:

If granted, the Agency will initiate the rulemaking process, following the requirements of the APA, GRRC, and SOS rules.

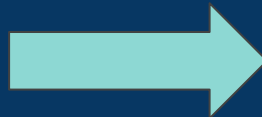


## Step 3:

Prior to submitting the rulemaking to GRRC, the agency requests a second, final approval from the agency's policy advisor in the Governor's office. The Agency files their rulemaking documents with GRRC. GRRC staff will schedule the rulemaking to be heard at an upcoming Study Session and Council Meeting

## Step 4:

GRRC considers the rulemaking at the Study Session and Council Meeting. GRRC asks questions of the agency and Council staff about the rulemaking. GRRC takes action on the rulemaking at the Council Meeting.



## Step 5:

If approved, GRRC will issue a certificate of approval to the Agency. The Agency then files the certificate with the SOS. The SOS will publish the rules in the next A.A.C. supplement.



# Executive Order 2022-01

## “Rulemaking Moratorium”

- ▶ The Rulemaking Moratorium is meant to prevent any rulemaking without the prior written approval of the Office of the Governor.
- ▶ Prior to conducting a rulemaking, an agency must obtain written permission from the Governor’s Office (known as an exception).
- ▶ After the agency goes through the rulemaking process, but before submitting a rulemaking to GRRC, the agency must seek and obtain a second, final approval from the Governor’s office.
- ▶ Agencies must submit the email or letter granting them an exemption from the Rulemaking Moratorium with their rulemaking materials.

# Executive Order 2022-01

## “Rulemaking Moratorium”

Paragraph 1 of the Executive Order lists 10 justifications for an exemption from the rulemaking moratorium.

- 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 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 new 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.**

# Executive Order 2022-01

## “Rulemaking Moratorium”

- ▶ Executive Order 2022-01 continues a requirement that was introduced in Executive Order 2020-02:
  - ▶ Paragraph 3 states: “[a] state agency that submits a rulemaking request pursuant to this Order shall recommend for consideration by the Governor’s Office at least **three** existing rules to eliminate for every **one** additional rule requested by the agency.”

The Rulemaking Moratorium can be found on GRRC’s website:

<https://grrc.az.gov/rulemaking>

# A.R.S. 41-1032

- ▶ A. A rule may only be effective immediately for any of the following reasons:
  - ▶ 1. To preserve the public peace, health or safety.
  - ▶ 2. To avoid a violation of federal law or regulation or state law, if the need for an immediate effective date is not created due to the agency's delay or inaction.
  - ▶ 3. To comply with deadlines in amendments to an agency's governing statute or federal programs, if the need for an immediate effective date is not created due to the agency's delay or inaction.
  - ▶ 4. To provide a benefit to the public and a penalty is not associated with a violation of the rule.
  - ▶ 5. To adopt a rule that is less stringent than the rule that is currently in effect and that does not have an impact on the public health, safety, welfare or environment, or that does not affect the public involvement and public participation process.
- ▶ B. An agency may specify an effective date more than sixty days after filing of the rule if:
  - ▶ The agency determines that good cause exists, and
  - ▶ The public interest will not be harmed.

**Note: If requesting an immediate effective date in a regular rulemaking, it must cite to the specific basis under 41-1032 that allows for an immediate effective date.**

# Expedited Rulemaking

- ▶ See **A.R.S. 41-1027** and **41-1053; R1-6-203, R1-6-204, and R1-6-205.**
- ▶ **A.R.S. 41-1027(A)** - Lays out the requirements to do an expedited rulemaking. This is a good way for agencies to correct typographical errors and stylistic issues in their rules.
- ▶ Three main benefits for agencies and rule writers:
  - ▶ No EIS required.
  - ▶ 30-day public comment period begins on date that Notice of Proposed Expedited Rulemaking is posted to agency website.
  - ▶ Automatic immediate effective date.

# Rule Expiration

- ▶ In 2021, the Legislature amended A.R.S. 41-1052 to add a new section, (M), regarding rule expiration, based on a legislative proposal drafted by GRRC staff.
- ▶ This new section created a simpler, faster way for agencies to expire outdated and unnecessary rules.
- ▶ Under the new process, an agency has to:
  - ▶ Prepare a Notice of Intent to Expire Rules and file it with the Council;
  - ▶ The Council will consider the Notice of Intent to Expire Rules at a Study Session and vote on it at the Council Meeting; and
  - ▶ If the Council votes to approve it, the agency files the approved Notice with the Secretary of State and the rules expire.

# GRRC Review of Rulemakings

## A.R.S. 41-1052

*A.R.S. § 41-1052(D) - GRRC shall not approve a rulemaking unless:*

1. The economic, small business and consumer impact statement contains information from the state, data and analysis prescribed by this article.
2. The economic, small business and consumer impact statement is generally accurate.
3. The probable benefits of the rule outweigh within this state the probable costs of the rule and the agency has demonstrated that it has selected the alternative that imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.
4. The rule is written in a manner that is clear, concise and understandable to the general public.
5. The rule is not illegal, inconsistent with legislative intent or beyond the agency's statutory authority.
6. The agency adequately addressed, in writing, the comments on the proposed rule and any supplemental proposals.
7. The rule is not substantial change, considered as a whole, from the proposed rule and any supplemental notices.
8. The preamble discloses a reference to any study relevant that the agency reviewed and either did or did not rely on in the agency's evaluation of or justification for the rule.
9. The rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.
10. If a rule requires a permit the permitting requirement complies with section 41-1037.

# Five-Year Review Reports (5YRRs)





# Main Topics

- Overview of Five-Year Review Reports (5YRRs)
- Why is a 5YRR beneficial?
- What does a 5YRR contain?
- Submitting a 5YRR
- Council Action on a 5YRR
- Reports Outside the 5YRR Process



## Overview

- Every five years, each agency is required to review “all of its rules, including rules made pursuant to an exemption from this chapter or any part of this chapter” within that five year period. *See A.R.S. § 41-1056(A).*
- Five-year review report is a concise, written analysis of an agency’s administrative rules.

# Why is a 5YRR Beneficial?

- 5YRRs, if properly prepared by the agency, can allow them to:
  - Regularly revisit their rules to identify potential issues;
  - Determine “whether any rule should be amended or repealed” – **A.R.S. § 41-1056(A)**;
  - Develop proposed course of action to address issues identified in the report and guide the agency’s future rulemaking activity;
  - Assemble and preserve institutional knowledge; and
  - Prevent its rules from expiring under **A.R.S. § 41-1056(J)**.

# What does a report contain?

Concise analysis of the following for each rule:

1. Are the rules effective in achieving their objectives?
2. Have any written criticisms of the rules been received during the past five years?
3. What is the statutory authority for the rules?
4. Are the rules consistent with statutes and other rules?
5. Are the rules being enforced as written?
6. Are the rules clear, concise, and understandable?
7. What is the current economic impact of the rules? Was an EIS prepared?
8. Was a business competitiveness analysis submitted?
9. Was the proposed course of action in the previous five year review report completed?
10. Do the rules impose the least burden and costs to persons regulated by the rules?
11. Are the rules more stringent than federal law?
12. Are the rules in compliance with **A.R.S. § 41-1037** (General Permits)?

- Under **A.R.S. § 41-1056(B)**, an agency may also include the text of a proposed expedited rule as part of the report.

# Submitting a 5YRR

- GRRC schedules review of rules by Article(s), not for individual rules.
- GRRC notifies the agency of the upcoming deadline, 90 days before a report is due. GRRC staff can also send this reminder letter to a secondary contact the agency recommends.
- If agency is unable to submit a report by the deadline, the agency has the options to request:
  - One-time automatic **extension of 120 days, (R1-6-303)** or
  - Longer **one-year extension (R1-6-303)**
- **Rescheduling** of a 5YRR **(R1-6-302)**

# Council Action on a 5YRR

- GRRC can vote to either: **(1) approve the report** or **(2) return the report**. The Council cannot approve a report unless it meets the requirements of A.R.S. § 41-1056(A). *See A.R.S. § 41-1056(C)*.
  - If a report is approved, no further action is required. GRRC does not issue a certificate or other document that says it approved a particular 5YRR.
  - If a report is returned it will be returned in whole or in part pursuant to R1-6-305:

“[GRRC] may vote to return, in whole or in part, a five-year review report after identifying the manner in which the five-year review report does not meet the standards in A.R.S. § 41-1056(A).”
- GRRC can require an agency to propose an amendment or repeal of a rule if GRRC determines the agency’s analysis demonstrates that the rule is materially flawed *See A.R.S. § 41-1056(E)*

# Reports Outside the 5YRR Process

**Under A.R.S. 41-1056(D), the Council may:**

- “[R]eview rules outside of the five-year review process if requested by at least four council members.”
- A common reason this happens is because an agency needs to expire its rules. For information about the process of rule expiration, please consult the expiration flowchart available on GRRC’s website: <https://grrc.az.gov> under the Rulemaking tab.
- Can also be a tool for GRRC to request and agency review rules that need to be revisited for whatever reason (e.g. overly burdensome).