

Governor’s Regulatory Review Council (GRRC)
Five-Year Review Report for Governor’s Regulatory Review Council
Due: December 29, 2023
Submitted: December 26, 2023

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. 41-1051(E)

Specific Statutory Authority: A.R.S. 41-1001.01(A)(6), 41-1008(G), 41-1027, 41-1033, 41-1052, 41-1053, 41-1055, 41-1056, 41-1056.01(D), 41-1081(F); 41-1095

2. The objective of each rule:

Rule	Objective
R1-6-101	This rule defines terms related to the rulemaking process and the Governor’s Regulatory Review Council (GRRC).
R1-6-102	This rule describes the requirements and procedures for Council Meetings.
R1-6-103	This rule describes the procedures for submitting a petition to the Council under A.R.S. 41-1033(A) to challenge a Council rule or to request a review of an existing Council practice or substantive policy statement alleged to constitute a rule.
R1-6-104	This rule addresses requests under A.R.S. 41-1008(E) to extend the two year period during which a fee established or increased by an exempt rulemaking is effective.
R1-6-105	This rule was added in via regular rulemaking in 2018. It addresses public comments submitted to GRRC and requires agencies to submit electronic copies of any written public comment to GRRC within 10 business days of receipt.
R1-6-201	This rule describes the procedures and requirements for submitting a regular rulemaking to GRRC.
R1-6-202	This rule describes the procedures and requirements for submitting an expedited rulemaking to GRRC.
R1-6-203	This rule describes the requirements for delivering a Notice of Proposed Expedited Rulemaking and posting requirements for GRRC and the agency submitting the rulemaking.
R1-6-204	This rule describes the process for submitting an approved regular or expedited rule to the Council office that the Council approved with changes.
R1-6-205	This rule states the requirements for an agency to file an approved regular or expedited rule with the Office of the Secretary of State. It also states the requirements for filing an approved regular or expedited rule subject to the agency making changes as directed by the Council.
R1-6-206	This rule describes the process by which the Council may vote to return a preamble; table of contents; rule; or economic, small business, and consumer impact statement if any does not meet the standards proscribed by A.R.S. § 41-1052(D) through (G) and resubmission of a revised preamble; table of contents; rule; or economic, small business, and consumer impact statement by the agency to the Council.
R1-6-301	This rule describes the process and requirements for submitting a Five-Year Review Report (5YRR) for consideration by the Council.
R1-6-302	This rule describes the process for an agency to request a 5YRR be rescheduled by the Council under A.R.S. § 41-1056(H).
R1-6-303	This rule describes the process for an agency to obtain an extension to submit a 5YRR from the Council.
R1-6-305	This rule describes the process by which the Council may vote to return a 5YRR if the report does not meet the standards in A.R.S. § 41-1056(A) and submission of a revised 5YRR by the agency to the Council.

R1-6-401	This rule defines which statutory petitions or appeals fall under Article 4.
R1-6-402	This rule describes the process and requirements for filing an Article 4 petition or appeal with the Council and deadlines for the affected agency's response to the petition, the Council's choice to consider the petition or appeal, and written notice of the Council's decision.
R1-6-403	This rule describes additional requirements for appeals of delegation agreements filed with the Council pursuant to A.R.S. § 41-1081(F).
R1-6-404	This rule describes additional requirements for appeals of final decisions by agencies on petitions regarding the economic, small business, and consumer impact of a rule filed with the Council pursuant to A.R.S. § 41-1056.01.

3. **Are the rules effective in achieving their objectives?** Yes ___ No X

If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.

Rule	Explanation
R1-6-105	R1-6-105 requires an agency to submit one electronic copy of any written public comment received by the agency to the Council within 10 business days of receipt. Written public comments received by an agency related to its rules must already be maintained and provided to the Council pursuant to A.R.S. § 41-1056(A)(2) and Council rule R1-6-301(A)(7). Additionally, all written public comments received by an agency during the rulemaking process must be submitted to the Council pursuant to A.R.S. § 41-1052(D)(6) and Council rule R1-6-201(A)(4). As such, the requirements in R1-6-105 may be redundant, ineffective, and create an unnecessary burden on agencies.

4. **Are the rules consistent with other rules and statutes?** Yes ___ No X

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

Rule	Explanation
R1-6-302	R1-6-302(B) and (C) grant the Council Chair discretion to grant 5YRR rescheduling requests from agencies or reschedule 5YRRs on the Chair's own initiative pursuant to A.R.S. § 41-1056(H). However, the statute states, "[t]he [C]ouncil may reschedule a report or portion of a report for any rule that is scheduled for review and that was initially made or substantially revised within two years before the due date of the report as scheduled by the [C]ouncil." See A.R.S. § 41-1056(H) (emphasis added). As such, the statute indicates the Council as a whole must decide whether to reschedule a 5YRR, rather than the Chair. This rule must be revised to change references to the Council Chair to the Council to be consistent with A.R.S. § 41-1056(H).

R1-6-401	R1-6-401 lists the various statutory bases for a petition or appeal heard by the Council. Recent changes in 2022 to the language in petition/appeal statute A.R.S. § 41-1033 means subsections R1-6-401(2) through (5) must be updated to be consistent.
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5. **Are the rules enforced as written?** Yes ___ No X

If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issue.

Rule	Explanation
R1-6-203 (A) & (B)	Pursuant to A.R.S. § 41-1027(B), an agency shall deliver a Notice of Proposed Expedited Rulemaking (NPER) to the Council containing the name, address and telephone number of the agency contact person and the exact wording of the proposed expedited rulemaking and indicating how the proposed expedited rulemaking achieves the purpose prescribed in A.R.S. § 41-1027(A). The statute also states, “[o]n delivery of the notice required in subsection B of this section, the agency shall file the [NPER] with the secretary of state for publication in the next state administrative register. The agency and the council shall post the [NPER] on their respective websites and shall allow any person to provide written comment for at least thirty days after posting the notice.” See A.R.S. § 41-1027(C). While R1-6-203(A) and (B) requires agencies to submit a copy of the NPER to the Council prior to filing with the Secretary of State and a separate notification when the NPER is filed, Council staff currently only receives one notice from agencies that includes a copy of the NPER and that the NPER has been filed with the Secretary of State, not two separate notices as currently outlined in rule.

6. **Are the rules clear, concise, and understandable?** Yes ___ No X

If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

Rule	Explanation
R1-6-102 (B) & (C)	The rule refers to the term “special meeting” but the word “special meeting” is not defined in the rule and appears to have different meanings at different administrative agencies. The term “special” should be removed to increase clarity.
R1-6-203	R1-6-203(C) seeks to clarify that if an agency and the Council post a Notice of Proposed Expedited Rulemaking on their respective websites on different dates, that the Council shall consider the 30-day public comment window to have opened on the date of the agency’s posting. This rule may be revised to improve clarity and conciseness by

	eliminating the if/then language and simply identifying that the 30-day window opens on the date of the agency’s posting.
R1-6-101	R1-6-101(B)(5) defines “Five-year Review Report” to mean “a report submitted to the Council according to the procedures in A.R.S. § 41-1056 or 41-1095.” The definition in rule therefore includes both Five-Year Review Reports (A.R.S. § 41-1056) and One-Year Review Reports (A.R.S. § 41-1095). This rule may be revised to improve clarity and understandability by separately identifying One-Year Review Reports in this section and/or in Article 3 (Five-Year Review Reports) and indicating that the rules under Article 3 apply to both.
R1-6-201(C) , R1-6-202 (C) , and R1-6-301(D)	The rules do not identify at what point “placed on the agenda” means, to incur the need of the Agency to provide written notice to the Chair to be placed on a later agenda . Current practice is that a rule is tentatively placed on the agenda up to four weeks prior to the Study Session and Council Meeting. The finalized agenda is then posted to the designated websites to comply with open meeting law 1 week prior to those meetings. Open meeting law allows changes to the posted agenda up to 24 hours prior to these meetings without Council or Chair approval and Council staff makes these changes as needed without consulting the Chair or Council. Either the rule or Council practice need to be updated for clarification.
R1-6-202(D)	The rule requires an agency to respond to any public comments as required under A.R.S. § 41-1023, however A.R.S. § 41-1023 is the public comment period that occurs for at least 30 days after the Notice of Proposed Expedited Rulemaking has been posted, not once the record has closed and the Notice of Final Expedited Rulemaking has been submitted to Council. This subsection may need to be removed altogether or clarified.
R1-6-302	There is no requirement in rule regarding the deadline for a Five-Year Review Report (5YRR) when it has been rescheduled pursuant to A.R.S. § 41-1056(H). It has been the Council’s practice to move that deadline by five years. For clarification, the Council may want to provide a range of time for which the Council can vote to reschedule a 5YRR deadline (e.g., from 1 year and 1 day up to 5 years).

7. **Has the agency received written criticisms of the rules within the last five years?** Yes X No

If yes, please fill out the table below:

Commenter	Comment	Agency’s Response
Tiffany Anderson, Department of Environmental Quality	R1-6-205(A) states “[i]f the Council approves a final regular or expedited rule as submitted, <u>an agency</u> shall file the final or regular or expedited rule according to	Council staff believes the current procedure found in Council rule R1-6-205(A) is consistent with statute, specifically A.R.S. § 41-1024(H) and A.R.S. § 41-1027(G). With

	<p>the rules of the Office of the Secretary of State. (Emphasis added). Whereas, the SOS's rule R1-1-602(D)(1) states "<u>the Council</u> shall file the final rulemaking package, to include all documents listed under subsection (C), with the Office as specified in R1-1-601(A). (emphasis added). Furthermore, A.R.S. § 41-1031(A) states, "[f]ollowing the filing of a rule made pursuant to an exemption to this chapter or following approval and filing of the rule and preamble and economic, small business and consumer impact statement <u>by the council</u>. (Emphasis added). As such, R1-6-205(A) should be amended to reflect R1-1-602(D)(1) to resolve any inconsistency with A.R.S. § 41-1031(A).</p>	<p>regards to regular rulemakings, A.R.S. § 41-1024(H) states, "[a]n <u>agency</u> shall not file a final rule with the secretary of state without prior approval from the council, unless the final rule is exempted pursuant to section 41-1005 or 41-1057 or the rule is an emergency rule made pursuant to section 41-1026 or an expedited rule made pursuant to section 41-1027." (Emphasis added). For expedited rulemakings, A.R.S. § 41-1027(G) states, "[o]n receipt of council approval, <u>the agency</u> shall file a notice of final expedited rulemaking and the council's certificate of approval with the secretary of state." (Emphasis added).</p>
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8. Economic, small business, and consumer impact comparison:

There has been no change in the economic, small business, and consumer impact of these rules between now and the last time GRRC conducted a rulemaking for these rules in 2018 and which became effective in October 2018.

At the time of the 2018 rulemaking, GRRC noted that it estimated the economic impact of the rulemaking to be minimal (less than \$1000) for all stakeholders. It was estimated state agencies may face minimal costs from providing copies of public comments to the Council office and responses to public comments to the commenter and the Council. It was estimated the removal of unnecessary provisions from Sections 201, 202, and 301 may provide a minimal beneficial economic impact to state agencies. The rulemaking applied to all state agencies subject to Council review, currently estimated at 100 agencies.

9. Has the agency received any business competitiveness analyses of the rules? Yes ___ No X

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

In the prior 5YRR for these rules, which was approved in June 2019, the Council did not propose any changes to the rules.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:

Stakeholders of the Council's rules include state agencies who submit 1YRRs, 5YRRs and rulemaking packages as well as members of the public who submit petitions or appeals. For agencies, any costs associated with rules related to submitting 1YRRs, 5YRRs or rulemakings are minimal and limited to costs of preparing and transmitting the submissions to the Council in compliance with the Council's rules and attending meetings at which the submission is discussed and voted on. However, the Council's rules related to submission of 1YRRs, 5YRRs and rulemaking packages track closely with the statutory requirements for such submissions found in A.R.S. § 41-1095, 41-1056 and 41-1052, respectively. As such, the costs to agencies to comply with the Council's rules are no more costly than complying with their statutory obligations. However, any minor costs to agencies associated with the rule are far outweighed by the benefits. Specifically, if submissions are prepared and submitted in accordance with the Council's rules, they will be complete and detailed, meeting their statutory

obligations, and allow the Council to conduct a thorough review. Otherwise, the Council may require additional or follow-up information which can delay approval of agency submissions. Likewise, any costs of attending Council meetings are outweighed by the benefits of responding to Council member inquiries or clarifying aspects of the submission, if any, in order to facilitate approval.

Similarly, for members of the public, the costs associated with the Council's rules regarding submission of petitions or appeals are minimal and limited to costs of preparing and transmitting the petition or appeal to the Council. However, the benefit to members of the public in allowing a venue for their concerns to be heard and the oversight provided by the Council far outweighs the costs outlined.

The Council has determined that the rules generally impose the least burden and costs to regulated persons and agencies necessary to achieve their underlying regulatory objective, except as to those rules identified in Sections 3 through 6 that could be made more effective, consistent, enforced, clear, concise, and understandable. Improvements to these rules will likely reduce burdens on stakeholders.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No X

Not applicable. There is no corresponding federal law.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

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

14. **Proposed course of action**

The Council intends to engage in rulemaking to address the issues outlined in Sections 3-6 and anticipates submitting a rulemaking by September 2024.