



# Arizona's Administrative Procedure Act: The Role of GRRC

Part 2 (November 27, 2018)



# The Arizona Administrative Procedure Act A.R.S. Title 41, Chapter 6

## **Today's Subject: *Appeals and Petitions***

- A.R.S. § 41-1008(G) Petition for an alternative expiration date for fees established or increased by exempt rulemaking;
- A.R.S. § 41-1033(E) Appeal of an agency's decision on a petition requesting the making of a final rule or a review of an existing agency practice or substantive policy statement that the petitioner alleges to constitute a rule;
- A.R.S. § 41-1033(F) Petition to request a review of a final rule based on a person's belief that a final rule does not meet the requirements prescribed in A.R.S. § 41-1030;



# The Arizona Administrative Procedure Act A.R.S. Title 41, Chapter 6

## **Today's Subject: *Appeals and Petitions***

- A.R.S. § 41-1033(G) Petition to request a review of an existing agency practice, substantive policy statement, final rule, or regulatory licensing requirement that is not specifically authorized by statute pursuant to Title 32 based on the person's belief that the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern;
- Pursuant to A.R.S. § 41-1033(H), the Council's receipt of information indicating that an existing agency practice or substantive policy statement may constitute a rule or that a final rule does not meet the requirements prescribed in A.R.S. § 41-1030 or that an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement does not meet the guidelines prescribed under A.R.S. § 41-1033(G);



# The Arizona Administrative Procedure Act A.R.S. Title 41, Chapter 6

## **Today's Subject: *Appeals and Petitions***

- A.R.S. § 41-1052(B) Early Review Petition;
- A.R.S. § 41-1055(E) Petition for a determination that an agency is not required to file an economic, small business, and consumer impact statement;
- A.R.S. § 41-1056(M) Petition to require an agency that has an obsolete rule to consider including the rule in a five-year review report with a recommendation for repeal of the rule;
- A.R.S. § 41-1056(N) Petition to require an agency to consider including a recommendation for reducing a licensing time frame in a five-year review report;
- A.R.S. § 41-1056.01(D) Appeal related to the economic, small business, and consumer impact of a rule;
- A.R.S. § 41-1081(F) Appeal of a delegation agreement.

**From this point forward, all of the text in this presentation comes directly from these statutes.**



# Title 41, Chapter 6, Article 5

## A.R.S. § 41-1008

**E.** A fee that is established or increased by exempt rule making from and after September 30, 2012 is effective for two years unless an extension is granted by the council.

**F.** After the expiration of the applicable period under subsection E of this section, the agency shall not charge or receive the fee unless the agency has complied with the rulemaking requirements of this chapter to establish or increase the fee.

**G.** A person regulated by the rule may petition the council to establish a date that is different than the date under subsection E of this section but no earlier than two years after the exempt rule is made. The agency shall respond to the petition within two weeks after the council notifies the agency that the petition has been filed. Within sixty days the council shall grant or deny the petition after considering whether the public interest requires a different date.



# Title 41, Chapter 6, Article 5

## A.R.S. § 41-1033

**A.** Any person may petition an agency to do either of the following:

1. Make, amend or repeal a final rule.
2. Review an existing agency practice or substantive policy statement that the petitioner alleges to constitute a rule.

**B.** An agency shall prescribe the form of the petition and the procedures for the petition's submission, consideration and disposition. The person shall state on the petition the rulemaking to review or the agency practice or substantive policy statement to consider making into a rule.

**C.** Not later than sixty days after submission of the petition, the agency shall either:

1. Reject the petition and state its reasons in writing for denial to the petitioner.
2. Initiate rulemaking proceedings in accordance with this chapter.
3. If otherwise lawful, make a rule.



# Title 41, Chapter 6, Article 5

## A.R.S. § 41-1033

D. The agency's response to the petition is open to public inspection.

E. If an agency rejects a petition pursuant to subsection C of this section, the petitioner has thirty days to appeal to the council to review whether the existing agency practice or substantive policy statement constitutes a rule. The council chairperson shall place this appeal on the agenda of the council's next meeting if at least three council members make such a request of the council chairperson within two weeks after the filing of the appeal.

F. A person may petition the council to request a review of a final rule based on the person's belief that the final rule does not meet the requirements prescribed in section 41-1030.



# Title 41, Chapter 6, Article 5

## A.R.S. § 41-1033

**G.** A person may petition the council to request a review of an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement that is not specifically authorized by statute pursuant to title 32 based on the person's belief that the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern. If the council determines that the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement applies to a profession for which the average wage in that profession in this state does not exceed two hundred percent of the federal poverty guidelines for a family of four, the council shall review the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement as prescribed by this section. This subsection does not apply to an individual or institution that is subject to title 36, chapter 4, article 10 or chapter 20.



# Title 41, Chapter 6, Article 5

## A.R.S. § 41-1033

**H.** If the council receives information that indicates an existing agency practice or substantive policy statement may constitute a rule, that a final rule does not meet the requirements prescribed in section 41-1030 or that an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement does not meet the guidelines prescribed in subsection G of this section and at least four council members request of the chairperson that the matter be heard in a public meeting:

1. Within ninety days after receipt of the fourth council member's request, the council shall determine whether the agency practice or substantive policy statement constitutes a rule, whether the final rule meets the requirements prescribed in section 41-1030 or whether an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement meets the guidelines prescribed in subsection G of this section.
2. Within ten days after receipt of the fourth council member's request, the council shall notify the agency that the matter has been or will be placed on an agenda.
3. Not later than thirty days after receiving notice from the council, the agency shall submit a statement to the council that addresses whether the existing agency practice, substantive policy statement constitutes a rule or whether the final rule meets the requirements prescribed in section 41-1030 or whether an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement meets the guidelines prescribed in subsection G of this section.



# Title 41, Chapter 6, Article 5

## A.R.S. § 41-1033

I. For the purposes of subsection H of this section, the council meeting shall not be scheduled until the expiration of the agency response period prescribed in subsection H, paragraph 3 of this section.

J. An agency practice, substantive policy statement, final rule or regulatory licensing requirement considered by the council pursuant to this section shall remain in effect while under consideration of the council. If the council ultimately decides the agency practice or substantive policy statement constitutes a rule or that the final rule does not meet the requirements prescribed in section 41-1030, the practice, policy statement or rule shall be considered void. If the council determines that the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern and meets the requirements of subsection G of this section, the council may modify, revise or declare void any such existing agency practice, substantive policy statement, final rule or regulatory licensing requirement.



# Title 41, Chapter 6, Article 5

## A.R.S. § 41-1033

**K.** A council decision pursuant to this section shall include findings of fact and conclusions of law, separately stated. Conclusions of law shall specifically address the agency's authority to act consistent with section 41-1030.

**L.** A decision by the agency pursuant to this section is not subject to judicial review, except that, in addition to the procedure prescribed in this section or in lieu of the procedure prescribed in this section, a person may seek declaratory relief pursuant to section 41-1034.

**M.** Each agency and the secretary of state shall post prominently on their websites notice of an individual's right to petition the council for review pursuant to this section.



Title 41, Chapter 6, Article 5  
A.R.S. § 41-1052(B)

**B.** The council shall accept an early review petition of a proposed rule, in whole or in part, if the proposed rule is alleged to violate any of the criteria prescribed in subsection D of this section and if the early petition is filed by a person who would be adversely impacted by the proposed rule. The council may determine whether the proposed rule, in whole or in part, violates any of the criteria prescribed in subsection D of this section.



## Title 41, Chapter 6, Article 5 A.R.S. § 41-1055(E)

E. Before filing a proposed rule with the secretary of state, an agency may petition the council for a determination that the agency is not required to file an economic, small business and consumer impact statement. The petition shall demonstrate both of the following:

1. The rule making decreases monitoring, record keeping, costs or reporting burdens on agencies, political subdivisions, businesses or persons.
2. The rule making does not increase monitoring, record keeping, costs or reporting burdens on persons subject to the proposed rulemaking.



## Title 41, Chapter 6, Article 5

### A.R.S. § 41-1056

**M.** A person who is regulated or could be regulated by an obsolete rule may petition the council to require an agency that has the obsolete rule to consider including the rule in the five-year report with a recommendation for repeal of the rule.

**N.** A person who is required to obtain or could be required to obtain a license may petition the council to require an agency to consider including a recommendation for reducing a licensing time frame in the five-year report.



# Title 41, Chapter 6, Article 5

## A.R.S. § 41-1056.01

**A.** Within two years after a rule is finalized, a person who is or may be affected by the rule may file a written petition with an agency objecting to all or part of a rule on any of the following grounds:

1. The actual economic, small business or consumer impact significantly exceeded the impact estimated in the economic, small business and consumer impact statement submitted during the making of the rule.
2. The actual economic, small business or consumer impact was not estimated in the economic, small business and consumer impact statement submitted during the making of the rule and that actual impact imposes a significant burden on persons subject to the rule.
3. The agency did not select 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.

**B.** The burden of proof is on the petitioner to show that any of the provisions set forth in subsection A of this section are met.



# Title 41, Chapter 6, Article 5

## A.R.S. § 41-1056.01

**C.** Within thirty days after receiving the copy of the petition, the agency shall reevaluate the rule and its economic impacts and publish notice of the petition in the register. For at least thirty days after publication of the notice the agency shall afford persons the opportunity to submit in writing statements, arguments, data and views on the rule and its impacts. Within thirty days after the close of comment, the agency shall publish a written summary of comments received, the agency's response to those comments, and the final decision of the agency on whether to initiate a rulemaking or to amend or repeal the rule. The agency shall initiate any such rule making within forty-five days after publication of its final decision.

**D.** Any person who is or may be affected by the agency's final decision on whether to initiate a rulemaking pursuant to subsection C of this section may appeal that decision to the council within thirty days after publication of the agency's final decision.

**E.** The council shall place on its agenda the appeal if at least three council members make such a request of the council chairman within two weeks after the filing of the appeal with the council.



# Title 41, Chapter 6, Article 5

## A.R.S. § 41-1056.01

**F.** If the appeal is placed on the council's agenda, the council chairman shall provide a copy of the appeal and written notice to the agency that the council will consider the appeal. The agency shall provide the council with a copy of the written summary described in subsection C of this section.

**G.** The council shall require an agency to promptly initiate a rulemaking or to amend or repeal the rule or the rule package, as prescribed by section 41-1024, subsection E, objected to in the petition if the council finds that any of the provisions set forth in subsection A of this section are met.

**H.** This section shall not apply to a rule for which there is a final judgment of a court of competent jurisdiction based on the grounds of whether the contents of the economic, small business and consumer impact statement were insufficient or inaccurate.



# Title 41, Chapter 6, Article 5

## A.R.S. § 41-1081

C. For at least thirty days after publication of the notice of the proposed delegation agreement in the register, the agency shall provide persons the opportunity to submit in writing statements, arguments, data and views on the proposed delegation agreement and shall provide an opportunity for a public hearing if there is sufficient public interest.

D. A public hearing on the delegation agreement shall not be held earlier than thirty days after the notice of its location and time is published in the register. The agency shall determine a location and time for the public hearing that affords a reasonable opportunity for persons to participate. At that public hearing persons may present oral argument, data and views on the proposed delegation agreement.



# Title 41, Chapter 6, Article 5

## A.R.S. § 41-1081

**E.** After the conclusion of the public comment period and hearing, if any, the agency shall prepare a written summary, responding to the comments received, whether oral or written. The agency shall consider the comments received from the public in determining whether to enter into the proposed delegation agreement. The agency shall give written notice to those persons who submitted comments of the agency's decision on whether to enter into the proposed delegation agreement. The delegation agreement is effective thirty days after written notice of the agency's final decision is given unless an appeal is filed and pending before the council pursuant to subsection F.

**F.** A person who filed written comments with the delegating agency objecting to all or part of the proposed delegation agreement may appeal to the council the delegating agency's decision to enter into the delegation agreement within thirty days after the agency gives written notice to enter into the delegation agreement pursuant to subsection E. The council shall place the appeal of the delegation agreement on its next meeting agenda if at least three council members make such a request of the council chairman within two weeks of the filing of the appeal.



# Title 41, Chapter 6, Article 5

## A.R.S. § 41-1081

**G.** Delegation agreements that are appealed to and considered by the council shall become effective upon council approval of the delegation agreement. Delegation agreements that are appealed to the council and not considered by the council are effective either thirty days after written notice of the agency's final decision is given pursuant to subsection E, or two weeks after an appeal is filed if at least three council members do not request council consideration of the delegation agreement pursuant to subsection F, whichever date is later.

**H.** The council shall not approve the delegation agreement if it does not meet the provisions set forth in subsection A or if the agency has not provided adequate notice and an opportunity for comment to the public.