

EIS 101

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WHY DOES THIS MATTER?

- ▶ Analysis of the economic impacts of rules and regulations is a priority for the Governor and for the Council.
- ▶ The requirement arises from the legislature's concern that:
 - ▶ The benefits from a particular rule be greater than its costs, and
 - ▶ That a particular rule imposes the least burden and costs on the public.

WHY DOES THIS MATTER?

- ▶ A.R.S. § 41-1055 requires that:
 - ▶ An EIS be prepared for most rule packages, and
 - ▶ Council approve the EIS subject to A.R.S. § 41-1052(D)(1)-(3).
- ▶ The process and timing of writing an EIS:
 - ▶ The proposed rulemaking requires only that a summary of the EIS be published in the preamble.
 - ▶ It is often easier to write the EIS at the same time as the rules are being amended or created.

A.R.S. § 41-1055(A)

- ▶ A.R.S. § 41-1055(A) - The economic, small business and consumer impact summary in the preamble shall include:
- ▶ **1. An identification of the proposed rulemaking, including all of the following:**
 - ▶ **(a) The conduct and its frequency of occurrence that the rule is designed to change.** (How often does it happen, and what is bad?)
 - ▶ **(b) The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed.** (What is the harm prevented, and how likely is it that the harm will continue if the rule is not changed?)
 - ▶ **(c) The estimated change in frequency of the targeted conduct expected from the rule change.** (Estimate how much the harmful conduct will be reduced as a result of the rulemaking.)

A.R.S. § 41-1055(A)

- ▶ **2. A brief summary of the information included in the economic, small business and consumer impact statement.**
 - ▶ In this subsection, include an aggregate total of the costs or savings to all affected agencies and businesses. This may include high and low ranges or best and worst case scenarios.
 - ▶ This subsection provides concise information that the agency wants GRRC and the public to comprehend.
- ▶ **3. If the economic, small business and consumer impact summary accompanies a proposed rule or a proposed expedited rule, the name and address of agency employees who may be contacted to submit or request additional data on the information included in the economic, small business and consumer impact statement.**
 - ▶ In short, the summary provides a quick view of what you are trying to accomplish in your full EIS.

A.R.S. § 41-1055(B)

- ▶ A.R.S. § 41-1055(B) - The economic, small business and consumer impact statement shall include:
 - ▶ **1. An identification of the proposed rulemaking.**
 - ▶ This subsection may be a restatement of (A)(1), or may include additional information.
 - ▶ **2. An identification of the persons who will be directly affected by, bear the costs of or directly benefit from the proposed rule making.**
 - ▶ This subsection identifies persons that generally have interest in the adoption of the rule (directly benefit) and persons that generally do not want the rule to be adopted (directly bear costs).
 - ▶ If the rule change is an additional fee for a trade or business, estimate how many businesses will be affected by the additional cost and who ultimately will pay this fee. (e.g., the business owner or the customer)

A.R.S. § 41-1055(B)

- ▶ 3. A cost benefit analysis of the following:
 - ▶ a. The probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rule making. The probable costs to the implementing agency shall include the number of new full-time employees necessary to implement and enforce the proposed rule. The preparer of the EIS shall notify the joint legislative budget committee of the number of new full-time employees necessary to implement and enforce the rule before the rule is approved by the Council.
 - ▶ b. The probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking.
 - ▶ c. The probable costs and benefits to businesses directly affected by the proposed rule making, including any anticipated effect on the revenues or payroll expenditure of employers who are subject to the proposed rulemaking.

A.R.S. § 41-1055(B)

- ▶ **Part I: “A cost benefit analysis of the following:”**
 - ▶ To comply with this subsection use a matrix or spreadsheet of costs and revenues that will result from the proposed rules.
 - ▶ The classifications "minimal," "moderate" and "substantial" increases or decreases in costs and revenues are used by some agencies.
 - ▶ A legend for the minimal, moderate and substantial classifications should be included.
 - ▶ If the analysis does not contain the calculations used to generate the results, attach a statistical summary to the end of the EIS.
 - ▶ The end of the cost/benefit analysis should include:
 - ▶ A summary of costs and benefits to all sectors, and
 - ▶ An explanation of how the monetary and/or non-monetary benefits are greater than the costs.

A.R.S. § 41-1055(B)

- ▶ **Part II: “The probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement...”**
 - ▶ Attempt to quantify an estimate of the costs and benefits to state agencies directly affected by the rule making.
 - ▶ Otherwise, use high and low ranges for the estimate.
 - ▶ Recent changes to the APA include the number of new full-time employees (FTEs) necessary to implement and enforce the proposed rule.
 - ▶ The preparer of the EIS (likely the rulewriter) is required to notify JLBC of the number of FTEs before approval by Council.
- ▶ **Part III: “The probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement...”**
 - ▶ Attempt to quantify an estimate of the costs and benefits to political subdivisions directly affected by the rulemaking.
 - ▶ Otherwise, use high and low ranges for the estimate.

A.R.S. § 41-1055(B)

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- ▶ **Part IV: “The probable costs and benefits to businesses directly affected by the proposed rule making, including any anticipated effect on the revenues or payroll expenditure of employers who are subject to the proposed rulemaking.”**
 - ▶ Consider potential impacts of rules on:
 - ▶ Staffing levels (i.e. Will people need to be hired? Will people need to be laid off?)
 - ▶ Cash flow (i.e. Will the rule delay receipts? Increase expenses?)
 - ▶ Barriers to industry entry (i.e. Increasing business start-up costs)
 - ▶ Large businesses v. small businesses
 - ▶ Depending on the rule, many of the above questions may not need to be asked. Conversely, with certain proposed rules, other questions will need to be asked.
 - ▶ Many of these questions can be answered by an industry participant or the persons in your agency that actively regulate the participants.

A.R.S. § 41-1055(B)

- ▶ **4. A general description of the probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the proposed rule making.**
 - ▶ “Employment” includes direct employment impact and secondary employment impact on businesses that will be marginally affected by the new rule.

A.R.S. § 41-1055(B)

- ▶ **5. A statement of the probable impact of the rulemaking on small businesses. The statement shall include:**
 - ▶ **a. An identification of the small business subject to the rulemaking.**
 - ▶ Include a listing of or a description of directly affected small business and secondary or marginally affected small business.
 - ▶ **b. Administrative/other costs required for compliance with the rulemaking.**
 - ▶ Include an estimate for additional personnel and outside expenses, such as legal/consulting fees and the like, that would result from the proposed rule.

A.R.S. § 41-1055(B)

- ▶ **c. A description of the methods prescribed in section 41-1035 that the agency may use to reduce the impact on small businesses with reasons for the agency's decision to use or not to use each method.**
 - ▶ Recommendation: Use the definition of “small business” in A.R.S. § 41-1001.
 - ▶ Identify other methods that the agency may use to reduce the impact on small businesses, including alternative methods that may reduce the impact.
 - ▶ When describing these methods, also include why any alternative methods were not incorporated into the rule.
 - ▶ If the method with the least impact on small business is not used, explain why.
 - ▶ Ideally, the proposed rule should have the least burden/impact on business while accomplishing the regulatory objective.
- ▶ **d. The probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking.**
 - ▶ If a *quantitative* estimate is not possible (as is often the case), substitute a *qualitative* explanation.

A.R.S. § 41-1035

- ▶ This statute requires the EIS writer to consider the methods under A.R.S. § 41-1035(1) through (5) for reducing the impact of the rule making on small businesses.
- ▶ You can either do this as a separate part of the regular EIS, or work the requirements into the classic A.R.S. § 41-1055(B)(5)(c)(i)-(iii) analysis by adding numbers 3 and 4 from A.R.S. § 41-1035 into this analysis.

A.R.S. § 41-1035

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- ▶ If an agency proposes a new rule or an amendment to an existing rule which may have an impact on small businesses, the agency shall consider each of the methods described in this section for reducing the impact of the rule making on small businesses. The agency shall reduce the impact by using one or more of the following methods, if it finds that the methods are legal and feasible in meeting the statutory objective which are the basis of the proposed rulemaking:
 - ▶ 1. Establish less stringent compliance or reporting requirements in the rule for small businesses.
 - ▶ 2. Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses.
 - ▶ 3. Consolidate or simplify the rule's compliance or reporting requirements for small businesses.
 - ▶ 4. Establish performance standards for small businesses to replace design or operational standards in the rule.
 - ▶ 5. Exempt small businesses from any or all requirements of the law.

A.R.S. § 41-1055(B)

- ▶ **6. A statement of the probable effect on state revenues.**
 - ▶ Identify additional or reduced costs to state agencies or an increase or decrease in state tax revenues resulting from the rule changes.
 - ▶ Increases in business costs or decreases in business revenues may result in decreased business activity, which may lower state tax revenues.
 - ▶ An increase in state tax revenues may result from additional business activity as a result of the proposed rule.
 - ▶ If the rulemaking will have a minimal effect, state the effect and move on.
- ▶ **7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule making, including the monetizing of the costs and benefits for each option and providing the rationale for not using nonselected alternatives.**
 - ▶ Expect significant examination into the availability of less intrusive and/or less costly alternative.

A.R.S. § 41-1055(B)

- ▶ **8. A description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data. An agency advocating that any data is acceptable data has the burden of proving that the data is acceptable. For the purposes of this paragraph, "acceptable data" means empirical, replicable and testable data as evidenced in supporting documentation, statistics, reports, studies or research.**
 - ▶ Required as of 2012.
 - ▶ This subsection puts the burden on agencies to provide all the data on which a rule is based to anyone who wants to object to a rulemaking, and make the agency defend the use of the data in the rulemaking.

A.R.S. § 41-1056.01

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**No time to fully discuss, but
important to keep in mind:**

EIS Appeals