

NOTICE OF PROPOSED RULEMAKING
TITLE 1. RULES AND THE RULEMAKING PROCESS
CHAPTER 6. GOVERNOR'S REGULATORY REVIEW COUNCIL

PREAMBLE

<u>1. Article, Part, or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
R1-6-101	Amend
R1-6-105	New Section
R1-6-201	Amend
R1-6-202	Amend
R1-6-301	Amend
R1-6-302	Amend
R1-6-303	Amend
R1-6-401	Amend

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. § 41-1051(E)
Implementing statutes: A.R.S. §§ 41-1001.01(A)(6), 41-1023, 41-1027, 41-1033,
41-1052, 41-1053, 41-1055, 41-1056

3. 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 Rulemaking Docket Opening: _ A.A.R. _, July 20, 2018

4. The agency's contact person who can answer questions about the rulemaking:

Name: Chris Klemminich
Address: 100 North 15th Avenue, Suite 305
Phoenix, AZ 85007
Telephone: (602) 542-2024
E-mail: christopher.klemminich@azdoa.gov
Web site: <http://grrc.az.gov>

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 An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

The Governor's Regulatory Review Council (Council) is amending the rules in 1 A.A.C. 6 to implement SB 1273, signed by the Governor in May 2018, which modifies A.R.S. § 41-1033. In addition, provisions that are unnecessary and duplicative of statute are removed from Sections 201, 202, and 301. Furthermore, R1-6-105, requiring state agencies to provide the Council office with one electronic copy of any public comment received by the agency within 10 business days of receipt, is being added. This new rule is intended to protect, in accordance with A.R.S. § 41-1001.01(A)(6), the public's right to participate in the rulemaking process. Other amendments make the rules more clear and effective with respect to agency handling of public comments.

An exception from Executive Order 2018-02 was provided by the Governor's Office on June 18, 2018.

6. 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:

None.

7. 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.

8. The preliminary summary of the economic, small business, and consumer impact:

The Council anticipates that the economic impact of the rulemaking is expected to be minimal (less than \$1,000) for all stakeholders. 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. The removal of unnecessary provisions from Sections 201, 202, and 301 may provide a minimal beneficial economic impact to state agencies. The rulemaking will apply to all state agencies subject to Council review, currently estimated at 100 agencies.

9. The agency's contact person who can answer questions about the economic, small business and consumer impact statement:

Name: Chris Kleminich
Address: 100 North 15th Avenue, Suite 305
Phoenix, AZ 85007
Telephone: (602) 542-2024
E-mail: christopher.kleminich@azdoa.gov
Web site: <http://grrc.az.gov>

10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

The close of record date for this rulemaking is August 20, 2018. An oral proceeding on the proposed rules will be held as follows:

Date: August 20, 2018
Time: 9:00 a.m.
Location: 100 N. 15th Ave., Room 301B
Phoenix, AZ 85007

11. 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:

None.

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 issuance of a regulatory permit, license or agency authorization.

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:

No corresponding federal laws apply. The rules are being promulgated under state law.

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:

None.

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

None.

13. The full text of the rules follows:

**TITLE 1. RULES AND THE RULEMAKING PROCESS
CHAPTER 6. GOVERNOR'S REGULATORY REVIEW COUNCIL**

ARTICLE 1. GENERAL RULES OF PROCEDURE

- R1-6-101. Definitions**
R1-6-105. Repealed Public Comments

ARTICLE 2. RULEMAKING PROCEDURES

- R1-6-201. Submitting a Regular Rule**
R1-6-202. Submitting an Expedited Rule

ARTICLE 3. FIVE-YEAR REVIEW REPORTS

- R1-6-301. Submitting a Five-year Review Report**
R1-6-302. Rescheduling a Five-year Review Report
R1-6-303. Extension of the Due Date for a Five-year Review Report

ARTICLE 4. APPEALS AND PETITIONS

- R1-6-401. Applicability**

ARTICLE 1. GENERAL RULES OF PROCEDURE

R1-6-101. Definitions

A. The definitions in A.R.S. § 41-1001 apply to this Chapter.

B. In this Chapter:

1. “Agency head” means the chief officer of an agency or another person directly or indirectly purporting to act on behalf or under the authority of the agency head.
2. “Chair” means the chairperson of the Council or the chairperson’s designee.
3. “Electronic copy” means a document submitted or filed by e-mail or ~~CD~~ other electronic means.
4. “Expedited rule” means a rule made according to the procedures in A.R.S. §§ 41-1027 and 41-1053.
5. “Five-year Review Report” means a report submitted to the Council according to the procedures in A.R.S. § 41-1056 or 41-1095.
6. “Open Meeting Law” means A.R.S. Title 38, Chapter 3, Article 3.1.
7. “Public Comment” means a written comment or criticism submitted to an agency that relates in whole or in part to a proposed rule or an existing rule, or a comment made at an oral proceeding held in accordance with A.R.S. § 41-1023.
7. ~~8.~~ “Regular rule” means a rule made according to the procedures in A.R.S. §§ 41-1021 through 41-1024 and 41-1052.

R1-6-105. Repealed Public Comments

Within 10 business days of receipt, an agency shall submit to the Council office one electronic copy of any public comment received by the agency.

ARTICLE 2. RULEMAKING PROCEDURES

R1-6-201. Submitting a Regular Rule

A. To submit a regular rule for consideration by the Council, an agency shall submit to the Council office one electronic copy of each rulemaking document that follows, prepared in the manner required by this subsection, subsection (B), and the rules of the Office of the Secretary of State:

1. A request for approval, in the form of a cover letter signed by the agency head. The cover letter shall specify:
 - a. The close of record date;
 - b. Whether the rulemaking activity relates to a five-year review report and, if applicable, the date the report was approved by the Council;
 - c. Whether the rule establishes a new fee and, if it does, citation of the statute expressly authorizing the new fee;
 - d. Whether the rule contains a fee increase;
 - e. Whether an immediate effective date is requested for the rule under A.R.S. § 41-1032;
 - f. A certification that the preamble discloses a reference to any study relevant to the rule that the agency reviewed and either did or did not rely on in the agency’s evaluation of or justification for the rule;
 - g. If one or more full-time employees are necessary to implement and enforce the rule, a certification that the preparer of the economic, small business, and consumer impact

statement has notified the Joint Legislative Budget Committee of the number of new full-time employees necessary to implement and enforce the rule; and

- h. A list of all documents enclosed.
 2. A Notice of Final Rulemaking, including the preamble, table of contents for the rulemaking, and text of each rule;
 3. An economic, small business, and consumer impact statement that contains the information required by A.R.S. § 41-1055;
 4. The written comments received by the agency concerning the proposed rule and a written record, transcript, or minutes of any testimony received if the agency maintains a written record, transcript, or minutes; ~~and~~
 5. Any analysis submitted to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states;
- ~~B. In addition to the documents required in subsection (A), an agency shall submit one electronic copy of each reference document that follows:~~
- ~~6. †~~ Material incorporated by reference, if any;
 - ~~7. ‡~~ The general and specific statutes authorizing the rule, including relevant statutory definitions; ~~and~~
 - ~~8. †~~ If a term is defined in the rule by referring to another rule or a statute other than the general and specific statutes authorizing the rule, the statute or other rule referred to in the definition; ~~and~~
 4. ~~The existing rule if any subsections within the existing rule are designated as "no change" in the revised text of a rule the agency is amending.~~
- ~~C. B.~~ After a rule is placed on a Council agenda, Council staff shall review the rule for compliance with the requirements of A.R.S. §§ 41-1021 through 41-1024 and 41-1052 and this Chapter and may ask questions or suggest changes to the agency. If the agency revises any rulemaking document in response to a question or suggested change, the agency shall submit one electronic copy of the revised rulemaking document to the Council for review.
- ~~D. C.~~ After a rule is placed on a Council agenda, an agency may have the rule moved to the agenda of a later meeting by having the agency head send a written notice to the Chair that includes the date of the later meeting. If the agency makes a subsequent request that the rule be moved, the Chair may grant or deny the request at the Chair's discretion.
- ~~E. D.~~ Council staff shall notify the agency of any written comments received by the Council related to an agency's rulemaking.
- ~~F. E.~~ If it is necessary for a rule to be heard at more than one Council meeting, the agency shall submit any revised documents for the later meeting, consistent with this Section.
- F. An agency shall respond to any public comment received in accordance with A.R.S. § 41-1023. An agency shall provide a copy of its response to the commenter and the Council office.

R1-6-202. Submitting an Expedited Rule

- A. To submit an expedited rule for consideration by the Council, an agency shall submit to the Council office one electronic copy of each rulemaking document that follows, prepared in the manner required by this subsection, subsection (B), and the rules of the Office of the Secretary of State:
 1. A request for approval, in the form of a cover letter signed by the agency head. The cover letter shall specify:
 - a. The close of record date;
 - b. An explanation of how the expedited rule meets the criteria in A.R.S. § 41-1027(A);
 - c. Whether the rulemaking activity relates to a five-year review report and, if applicable, the date the report was approved by the Council;

- d. A certification that the preamble discloses a reference to any study relevant to the rule that the agency reviewed and either did or did not rely on in the agency's evaluation of or justification for the rule; and
- e. A list of all documents enclosed.
- 2. A Notice of Final Expedited Rulemaking, including the preamble; and table of contents for the rulemaking; ~~and text of each rule;~~
- 3. The written comments, including objections that the rulemaking does not meet the criteria in A.R.S. § 41-1027(A), received by the agency or contained in a notice concerning the proposed rule; ~~and~~
- 4. Any analysis submitted to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states;.
- ~~B. In addition to the documents required in subsection (A), an agency shall submit one electronic copy of each reference document that follows:~~
 - ~~5.1. Material incorporated by reference, if any;~~
 - ~~6.2. For a statute declared unconstitutional, the court's decision;~~
 - ~~7.3. The general and specific statutes authorizing the rule, including relevant statutory definitions;~~
 - ~~8.4. If a term is defined in the rule by referring to another rule or a statute other than the general and specific statutes authorizing the rule, the statute or other rule referred to in the definition; ~~and~~~~
 - ~~5. The text of the existing rule.~~
- ~~C. B.~~ After a rule is placed on a Council agenda, Council staff shall review the rule for compliance with the requirements of A.R.S. §§ 41-1027, 41-1053, and this Chapter and may ask questions or suggest changes to the agency. If the agency revises any rulemaking document in response to a question or suggested change, the agency shall submit one electronic copy of the revised rulemaking document to the Council for review.
- ~~D. C.~~ After a rule is placed on a Council agenda, an agency may have the rule moved to the agenda of a later meeting by having the agency head send a written notice to the Chair that includes the date of the later meeting. If the agency makes a subsequent request that the rule be moved, the Chair may grant or deny the request at the Chair's discretion.
- D. An agency shall respond to any public comment received in accordance with A.R.S. § 41-1023. An agency shall provide a copy of the response to the commenter and an electronic copy to the Council office.

ARTICLE 3. FIVE-YEAR REVIEW REPORTS

R1-6-301. Submitting a Five-year Review Report

- A. To submit a five-year review report for consideration by the Council, an agency shall submit to the Council office one electronic copy of the cover letter signed by the agency head and the five-year review report required by A.R.S. § 41-1056. Consistent with subsection (B), the agency shall concisely analyze and provide the following information in the five-year review report in the following order for each rule:
 - 1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules;
 - 2. Objective of the rule, including the purpose for the existence of the rule;
 - 3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached;

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency;
 5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement;
 6. Clarity, conciseness, and understandability of the rule;
 7. Summary of the any written criticisms criticism of the rule received by the agency within the five years immediately preceding the five-year review report. An agency shall respond to any written criticism and shall provide a copy of its response to the commenter, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods, and written allegations made in litigation or administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the result of the litigation or administrative proceedings;
 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule;
 9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states;
 10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report;
 11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule, and the rule 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;
 12. A determination after analysis that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law;
 13. For a rule adopted after July 29, 2010, that requires issuance of a regulatory permit, license or agency authorization, whether the rule complies with A.R.S. § 41-1037; and
 14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.
- B.** ~~To avoid repetition, an agency shall use a narrative format rather than a tabular format to present the information in the report. The narrative shall be organized according to the categories in subsection (A). For subsection (A)(2), the agency shall provide a specific objective, including the purpose for the existence of each individual rule. Within the remaining categories, an agency shall analyze each rule individually or, if the analysis for each rule is the same, consolidate the analysis, either by article or for all rules in the report. If the analysis for a category is identical for all of the rules in a report, the agency shall specify that the analysis within that category applies to all of the rules in the report. If the analysis for a category is identical for all of the rules in an article, the agency shall specify that the analysis within that category applies to all of the rules in the article.~~
- C.** **B.** In addition to the documents required in subsection (A), an agency shall submit one electronic copy of the cover letter. The cover letter shall provide the following information:
1. A person to contact for information regarding the report,
 2. Any rule that is not reviewed with the intention that the rule will expire under A.R.S. § 41-1056(J),

3. Any rule that is not reviewed because the Council rescheduled the review of an article under A.R.S. § 41-1056(H), and
 4. The certification that the agency is in compliance with A.R.S. § 41-1091.
- ~~D. In addition to the documents required in subsections (A) and (C), an agency shall submit one electronic copy of the following reference documents:~~
- ~~1. Rules being reviewed;~~
 - ~~2. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules; and~~
 - ~~3. If an economic, small business, and consumer impact statement was prepared on the last making of a rule being reviewed, the economic, small business, and consumer impact statement for the rule.~~
- ~~E. C.~~ After a five-year review report is placed on a Council agenda, Council staff shall review the report for compliance with the requirements of A.R.S. § 41-1056 and this Chapter and may ask questions or suggest changes to the agency. If the agency revises any document in response to a question or suggested change, the agency shall submit one electronic copy of the revised document to the Council for review.
- ~~F. D.~~ After a five-year review report is placed on a Council agenda, an agency may have the report moved to the agenda of a later meeting by having the agency head submit one electronic copy of a written notice to Council staff that includes the date of the later meeting. If the agency makes a subsequent request to have a five-year review report moved, the Chair may grant or deny the request at the Chair's discretion.
- ~~G. A person may submit written comments to the Council. The Council may also permit testimony at a Council meeting.~~

R1-6-302. Rescheduling a Five-year Review Report

- A. To request that a five-year review report be rescheduled under A.R.S. § 41-1056(H), an agency head shall submit one electronic copy of a letter to the Chair before the report is due that includes the following information:
1. The title, chapter, and article of the rules for which rescheduling is sought;
 2. Whether the rules were initially made or substantially revised with an effective date or date of Council approval that is within two years before the due date of the report; and
 - a. If substantially revised:
 - i. A description of the revisions,
 - ii. Why the revisions are believed to be substantial,
 - iii. The date of Council approval of the rules, if applicable, and
 - iv. The date on which the rules were published in the *Register* by the Office of the Secretary of State and the effective date of the rules; or
 - b. If initially made:
 - i. The date of Council approval of the rules, if applicable, and
 - ii. The date on which the rules were published in the *Register* by the Office of the Secretary of State and the effective date of the rules.
- B. The Chair, in the Chair's discretion, may grant the rescheduling of a five-year review report for the rules within an article that meet the requirements of this Section.
- C. The Chair may, on the Chair's own initiative, reschedule a five-year review report if all rules within an article meet the requirements of this Section.

R1-6-303. Extension of the Due Date for a Five-year Review Report

- A. An agency may obtain an extension of 120 days to submit a five-year review report by ~~filing~~ submitting one electronic copy of a written notice of extension ~~with~~ to the Council office before the due date of the report. The agency shall specify in the notice the reason for the extension.
- B. An agency may, as an alternative, request a longer extension that is more than 120 days but does not exceed one year by ~~sending~~ submitting one electronic copy of a written request to the Chair at least 40 days prior to the due date of the report. The agency shall specify the length of the requested extension and the reason for the requested extension.
 - 1. A request for an extension that is more than 120 days but does not exceed one year shall be placed on the agenda of a Council meeting scheduled to occur prior to the due date of the report.
 - 2. The Council shall consider the reason for the requested extension and may grant a request for an extension that is more than 120 days but does not exceed one year.

ARTICLE 4. APPEALS AND PETITIONS

R1-6-401. Applicability

For purposes of this article, the term “petition or appeal” refers to the following:

- 1. The A.R.S. § 41-1008(G) Petition for an alternative expiration date for fees established or increased by exempt rulemaking;
- 2. The A.R.S. § 41-1033(B) 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;
- 3. The A.R.S. § 41-1033(C) 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;
- 4. The A.R.S. § 41-1033(D) 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;
- ~~5.~~ Pursuant to A.R.S. § ~~41-1033(D)~~ 41-1033(E), 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;
- ~~5.~~ 6. The A.R.S. § 41-1052(B) Early Review Petition;
- ~~6.~~ 7. The 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;
- ~~7.~~ 8. The 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;
- ~~8.~~ 9. The 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;
- ~~9.~~ 10. The A.R.S. § 41-1056.01(D) Appeal related to the economic, small business, and consumer impact of a rule; and
- ~~10.~~ 11. The A.R.S. § 41-1081(F) Appeal of a delegation agreement.