ARIZONA ADMINISTRATIVE PROCEDURE ACT:
Agency Rulemaking

INTRODUCTION

The primary purpose of rulemaking is to give notice to the public of the substantive or procedural requirements that an agency has established for activities falling within its statutory authority. The Arizona Administrative Procedure Act (APA) provides procedures for agency rulemaking and for appealing agency decisions. For purposes of this brief, the term “agency” is used to refer to a state agency, board or commission.

An agency may make rules only if the Legislature has given it authority to do so. Unless exempt from the rulemaking procedures, a rule is valid only if it is made in substantial compliance with the APA or other statutory procedures applicable to the agency. These requirements are designed to ensure adequate public participation in the rulemaking process.

RULEMAKING PROCESS

The APA requires most agencies to prepare and make publically available by December 1 of each year the regulatory agenda the agency expects to follow during the next calendar year. Any agency that intends to work on a particular rule must inform the public by publishing a Notice of Rulemaking Docket Opening in the Arizona Administrative Register (Register), published monthly by the Secretary of State (SOS).

The rulemaking docket must remain open while the rulemaking proceeding is pending. A proceeding is pending from the time the agency begins to consider proposing the rule until the agency decides to no longer pursue the rule, until one year after the Notice of Rulemaking Docket Opening is published and no action has been taken, or until the rule becomes effective. The rulemaking docket includes information such as the subject of the proposed rule, agency contact information, where copies of pertinent information may be inspected, the current status of the proposed rule, any known timetable for agency decisions or actions on the rule, and pertinent dates regarding the rule.
After providing notice of a docket opening the agency may meet informally with any interested party to discuss the proposed rulemaking action and may post public notice of these meetings in the Register. Once the rule is drafted and the agency is ready to begin the process of making the rule into law, a Notice of Proposed Rulemaking is filed with the SOS. This notice includes the preamble, an economic impact statement, why the rule is necessary and the exact wording of the rule. The agency is required to provide notice at the time the Notice of Proposed Rulemaking is filed with the SOS to any person who has asked to be notified of the proposed rulemaking. Before beginning any further proceedings, the agency must allow at least 30 days after the publication of the proposed rule for public comment. If the agency receives a written request to conduct a public hearing on the proposed rule during this time the agency must comply and allow 30 days’ notice of the scheduled proceeding.

If, as a result of public comment or holding a public hearing, the agency determines that a proposed rule requires substantial change, the agency issues a Notice of Supplemental Proposed Rulemaking for publication in the Register.

Once the comment period is over, the rulemaking record is closed. The agency has 120 days from the close of the record to either terminate the proceeding or to submit the rule to the Governor’s Regulatory Review Council (GRRC) for approval.

**Governor’s Regulatory Review Council**

GRRC was established by Executive Order in May 1981, and for most agencies is the final step in the rulemaking process. GRRC consists of six Governor-appointed members who serve staggered, three-year terms. The Director (or Assistant Director) of the Arizona Department of Administration (ADOA) is responsible for administering GRRC and serves as an ex officio member and chairman. GRRC is required to meet at least once a month. Members are eligible to receive $200 for each day in which GRRC meets and reimbursement for expenses.

GRRC is responsible for reviewing each agency’s rules to ensure that they are necessary and to avoid duplication and adverse impact on the public. GRRC assesses whether a rule is clear, concise, understandable, legal, consistent with legislative intent, within the agency’s statutory authority, and whether the benefits of a rule outweigh the cost. If a rule does not meet these criteria, GRRC returns it to the agency for further consideration. GRRC is required to review the rule package and approve or return it, in whole or in part, within 90 days of its receipt.

**Attorney General**

Statute exempts some agencies from the GRRC approval process and instead requires submittal of the rule package to the Attorney General (AG). These agencies include the Arizona Corporation Commission and any agency headed by a single elected official. However, statute permits exempt agencies to follow GRRC’s rule making requirements instead of submitting the rule package to the AG for review. The AG is required to approve or disapprove the rule within 60 days of its receipt. For its approval, the rule must be clear, in proper form, within the power of the agency and in compliance with any appropriate procedures.

**Secretary of State**

Once a rule is approved, either by GRRC or the Attorney General, the rule package is filed with the SOS who affixes to each document the time and date of filing, indicating the rule is final. The rule becomes effective 60 days after filing with the SOS. All final rules are published in the Register and the Arizona Administrative Code, which contain the full text of each final rule, including rules made by statutory exemption.

**Five-year-review Report**

Agencies are required to review their rules at least once every five years to determine whether their rules need to be amended or repealed. Statute requires an agency to consider specific factors for each rule which includes evaluating its effectiveness and whether the rule is authorized by existing statute. The report must
also include any written criticisms received by the agency among other considerations. Any person regulated or who may be required to obtain a license may petition GRRC to require an agency to consider additional recommendations in the five-year report.

GRRC maintains a five-year calendar of when each agency must review its rules and submit its five-year-review report summarizing its findings. GRRC may review rules outside of the five-year review process if requested by at least four GRRC members. GRRC approves or returns, in whole or in part, the agency’s report upon its review. If an agency fails to submit its report, the rules scheduled for review expire and are no longer enforceable. In order to reestablish the rules, the agency must go through the rulemaking process.

**Substantive Policy Statements**

Agencies are required to file substantive policy statements with the SOS to be published in the Register. A substantive policy statement is a written expression that informs the general public of an agency’s current approach to, or opinion of, the requirements of laws and court orders, including the agency’s current practice, procedure or method of action based upon that approach or opinion. The statement is advisory only and does not include internal procedures.

Agencies are required to maintain and update annually a directory summarizing the subject matter of all currently applicable rules and substantive policy statements that is open to the public. Additionally, agencies are required to post on its website the full text of each rule or substantive policy statement currently in use, or the web address to access it.
• **ADDITIONAL RESOURCES** •

- Secretary of State  
  1700 W. Washington, 7th Floor  
  Phoenix, AZ 85007-2888  
  602-542-4285  
  www.azsos.gov

- Arizona Administrative Code and Administrative Register  

- Arizona Administrative Procedure Act Statutes: Arizona Revised Statutes, Title 41, Chapter 6

- Governor’s Regulatory Review Council [www.grrc.state.az.us](http://www.grrc.state.az.us)