

Arizona Rulemaking Manual Archive

Flowcharts

Administrative Rules Division

Flowcharts originally published in the
Arizona Rulemaking Manual.

State of Arizona

Arizona Department of State

Office of the Secretary of State

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Department of State
Office of the Secretary of State
Administrative Rules Division

The Arizona Rulemaking Manual

Flowcharts Archive

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Flow Chart

The Regular Rulemaking Process

1. Permission to Proceed Request

The agency puts its request in writing to the governor's office to proceed with a rulemaking. Upon receiving written permission, it can start the rulemaking process.



2. Stakeholder and Public Notification

The agency opens a docket. It is filed as a **Notice of Rulemaking Docket Opening** for publication in the *Register*. The notice includes agency contact information along with its intentions to make, amend, repeal, renumber, or recodify a rule and its justification to perform the action.



The agency closes its docket; or allows the docket to expire by not filing a proposed rule within one year.



3. The Proposed Stage

The agency drafts a rule, prepares a **Notice of Proposed Rulemaking** package and files it for publication in the *Register*. This notice may or may not be filed at the same time as the docket. If both are filed together, they are published in the same issue of the *Register*.

The agency lists proposed rulemaking actions and rule Sections affected. The notice includes a Preamble and the full text of the rule, or changes being made to a rule. Other information may include details on one or multiple public meetings scheduled by an agency (known as oral proceedings).



The agency decides not to proceed with the proposed rule after it is published; does not file the final rule with G.R.R.C. or A.G. within one year after the proposed rule is published. The notice expires.



The agency decides not to proceed with the proposed rule after it is published; prepares and files a **Notice of Termination of Rulemaking** for publication in the *Register*.



4. Public is Given the Opportunity to Comment

The agency informally accepts comments and chooses how comments will be accepted. For example: via paper, email, or website submission. The public comment period shall last AT LEAST 30 days AFTER publication of the proposed notice in the *Register*.

If the proposed notice did not provide an opportunity for a person to speak in person, he or she may request to speak at an oral proceeding under the law.



Oral Proceeding Requested

An interested person may request the agency to conduct an oral proceeding.

Comments are still accepted informally.



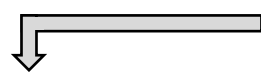
All comments are accepted informally.

No one requests an oral proceeding.



Some comments are accepted informally.

Other comments are accepted formally at a scheduled oral proceeding as published in the proposed notice.



Comments are accepted formally at the scheduled oral proceeding as published in the notice.

The agency prepares a **Notice of Oral Proceeding on Proposed Rulemaking**, schedules one or more proceeding, and files the notice for publication in the *Register*.

An agency may extend the comment period.



5. Close of Record

The comment period ends.



6. Review of Rule and Responses

After evaluating public comments or conducting an internal review of the proposed rule, an agency shall determine whether the rule requires a substantial change; or the notice be terminated or be made final.

The agency decides to proceed and make substantial changes to the rule. The agency prepares a **Notice of Supplemental Proposed Rulemaking**, files it for publication in the *Register*. Before doing so, an agency obtains permission to proceed (#1), then the process starts again from #3. A Notice of Supplemental Proposed Rulemaking template is used.

← **Substantial Change** →

The agency decides not to proceed; prepares and files a **Notice of Termination of Rulemaking** for publication in the *Register*.

The agency may start the process over by obtaining permission to proceed (#1) and open a new docket (#2).

No Change



7. Final Rulemaking Package is Prepared by the Agency for Filing

Before submitting a final notice under #8 an agency shall obtain permission to proceed with the final notice from the governor's office.



8. The Package is Submitted by the Agency for Review to G.R.R.C. or A.G.

Governor's Regulatory Review Council

A.R.S. § 41-1052(A): If subject to G.R.R.C. review the agency shall transmit to the Council the Notice of Final Rulemaking package for review.

Right to Petition Council (G.R.R.C.)

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 A.R.S. § 41-1030.

Attorney General's Office

A.R.S. § 41-1052(D): If subject to A.G. review the agency shall file the Notice of Final Rulemaking package with the A.G.'s Office.



9. G.R.R.C. or A.G. Reviews Rulemaking

Governor's Regulatory Review Council

G.R.R.C. has 180 days to review the notice.

Attorney General's Office

The A.G. has 60 days to review the notice.



10. Rule Approved ~ Published in *Register* and Codified in the *Code*

When approved by G.R.R.C. the agency shall file the final rulemaking package with the Division. It is published in the *Administrative Register* and codified as filed in the calendar quarter in the *Administrative Code*.

When approved by the A.G., the A.G. shall file the final rulemaking package with the Division. It is published in the *Administrative Register* and codified as filed in the calendar quarter in the *Administrative Code*.

Flow Chart

The Exempt Rulemaking Process

The APA provides specific exemptions from the Act ([A.R.S. § 41-1005](#)).

A statute or session law may give an exemption or one-time exemption to the requirements in the APA.

Ballot proposition which becomes law.

Court Order provides an exemption.

Exempt Rule, completely exempt, no requirements except #1. Go to page 27.

1. Proceed with a Rulemaking

- a. Permission to Proceed: If required, an agency puts its request in writing to the governor’s office to proceed with an exempt rulemaking. Upon receiving written permission, it can start the exempt rulemaking process; or
- b. Exempt from Permission: An agency is exempt under the law to request permission to proceed.



Docket Opening

Most exemptions do not require an agency to open a docket. An agency shall refer to its implementing statute to determine if this notice is required.

An agency may determine it is in its best interest to open a docket, even if it is exempt from doing so.



2. Agency Drafts a Rule

An agency shall prepare rules and follow the *Code* codification scheme and Division publishing outline using the **Notice of Proposed Exempt Rulemaking** template. Receipts and certificates are required when filed.

An agency shall review its exemption as it may require an Economic Impact Statement (EIS).

The agency decides not to act and closes the docket if the exemption provides an opportunity to terminate the rulemaking.

The agency allows the docket to expire under a timeframe allotted under its exemption.



3. Agency Provides the Notice to Stakeholders, Accept Comments

The agency follows its exemption requirements to “publish” the notice. An agency may be required to publish it on the agency’s website; or it may be required to publish the notice in the *Register*. The exemption may require an agency file a notice to be published in the *Register* AND published on its website.*

Example: Board of Education’s proposed exempt rulemaking is posted on its website and the board provides two opportunities for public comment.

Example: The Department of Insurance files the proposed exempt rulemaking with the Division and has a 60-day comment period upon publication of the notice.

Example: Clean Elections’ proposed exempt rulemaking is posted to its website and accepts public comment and has a 60-day comment period.

* An agency may determine even though not required, to file its notice to be published in the *Register* as a public courtesy.



The agency decides not to proceed and does not prepare a final exempt rule if its law provides for this exemption.



The agency decides not to proceed, prepares and files a **Notice of Termination of Rulemaking** if its exemption provides for termination of the proposed rule.



3a. Schedule an Oral Proceeding

The agency may be required to schedule one or more oral proceeding under its exemption. It may need to provide this information in the actual exempt notice (#3) or in a Notice of Oral Proceeding on a Proposed Exempt Rulemaking. Some exemptions may call an oral proceeding a public meeting. If this is the case, a Notice of Public Meeting on Proposed Exempt Rulemaking is prepared. An agency shall refer to the *Register* publishing schedule to ensure the proceeding or meeting is not scheduled before the notice is published.



4. Close of Record

The agency shall determine the timeframe for the comment period and close of record by reviewing its exemption provided in law (see examples in #3).

There may be a timeframe to submit a Notice of Final Exempt Rulemaking for review to its board or commission.



5. Substantial Change

If specified in its exemption, an agency may have the option to provide additional changes after evaluating public comments or conducting an internal review of the proposed exempt rule. An agency shall determine whether the rule requires a substantial change; or the notice be terminated or be made final. If it requires a substantial change, an agency shall prepare a **Notice of Supplemental Proposed Exempt Rulemaking** for public review. An agency shall “publish” the notice as specified in #3.

- a. Permission to Proceed: Before “publishing” a **Notice of Supplemental Proposed Exempt Rulemaking** (see #3), an agency, if applicable, shall obtain permission to proceed with the notice from the governor’s office (see #1). Or,
- b. Exempt from Permission: If exempt from receiving permission, an agency shall prepare a **Notice of Supplemental Proposed Exempt Rulemaking** for public review if specified in its exemption.



6. Permission to Proceed with a Notice of Final Exempt Rulemaking

- a. Before “publishing” a **Notice of Final Exempt Rulemaking** (see #3) and filing it with the Division, an agency shall obtain permission to proceed with the final exempt notice from the governor’s office (see #1); or
- b. If exempt from receiving permission, continue to #7.



7. Notice of Final Exempt Rulemaking

The agency shall prepare a Preamble, and if applicable under its exemption, provide public comments and the agency’s response to the comments. The agency prepares the **Notice of Final Exempt Rulemaking** with Preamble, table of contents, and rules. Before transmitting the notice to G.R.R.C. the agency shall receive permission to proceed.

The agency shall determine who reviews its Notice of Final Exempt Rulemaking under its exemption. Its exemption might require the notice be “adopted” by its board or commission. When applicable the agency shall provide the Notice of Final Exempt Rulemaking to its board or commission to be voted on and approved.



Exempt from all Provisions in the APA

1. Request Permission to Proceed

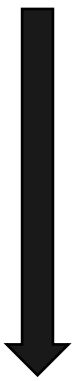
- a. Permission to Proceed: The agency puts its request in writing to the governor’s office to proceed with a rulemaking. Upon receiving written permission, it can start the **exempt** rulemaking process; or
- b. Exempt from Permission: An agency is exempt under the law to request permission to proceed.

8. Review and Approval

- a. After review and approval from G.R.R.C., the agency files the notice and G.R.R.C. certificate of approval with the Division;
- b. After review and approval from the A.G., the A.G. files the notice and A.G. certificate of approval with the Division; or
- c. After review and approval by its board or commission, the agency files the notice with the Division.

2. Prepare and File the Notice

The agency prepares a **Notice of Exempt Rulemaking** following the *Code* codification scheme and publishing outline using the Division notice template. The agency shall file the notice with the Division to be published in the *Register*.



Exempt or Final Exempt Rules are Published by the Division
The notice is published in the *Register*. The rules are codified in the *Code*.

Flow Chart

The Expedited Rulemaking Process

1. Do you Qualify?

Meet with the agency's policy advisor, director, or counsel to determine whether the rule qualifies to be made, amended, renumbered, or repealed under the standards in A.R.S. § 41-1027.

2. Permission to Proceed

The agency puts its request in writing to the governor's office to proceed with a rulemaking. Upon receiving written permission, it can start the rulemaking process.

Public Notification by Opening a Docket

The APA does not specifically regulate the legality of preparing and filing a **Notice of Docket Opening for a Proposed Expedited Rulemaking**. Under consultation and approval from the policy advisor, counsel or agency head, an agency may choose to announce its expedited rulemaking intentions by opening a docket, making it part of the permanent record.

- As the Division is merely the publisher of notices as specified in the APA or other statutes, it does not have the legal authority to provide a template for such notices for filing and publishing them in the *Register*.
- If an agency chooses to open a docket and publicize it in the *Register*, the Division strongly encourages an agency to prepare its notice like a regular Notice of Rulemaking Docket Opening and change the heading to "**Notice of Docket Opening for a Proposed Expedited Rulemaking**." An agency should be consistent if it chooses to file a Notice of Docket Opening for an expedited rulemaking.

3. The Proposed Stage
A.R.S. § 41-1027

An shall notify its stakeholders to receive input by preparing a **Notice of Proposed Expedited Rulemaking** with a Preamble, table of contents, and text of proposed rules. An EIS is not required under this type of rulemaking.

The agency shall:

- Deliver a notice of proposed expedited rulemaking to the governor, the president of the senate, the speaker of the house of representatives, the committee, and the council. A.R.S. § 41-1027(B)
- File the notice with the Division. A.R.S. § 41-1027(C)

The *agency and Council shall post the notice of proposed expedited rulemaking on their respective websites...* A.R.S. § 41-1027(C)

Oral Proceedings

The APA does regulate public comments in a Notice of Proposed Expedited Rulemaking; therefore, the standard is to provide for an oral proceeding in the proposed expedited rulemaking. The APA does not specifically regulate the legality of preparing and filing of a Notice of Oral Proceeding on Proposed Expedited Rulemaking.

- Under consultation and approval from the policy advisor, counsel or agency head, an agency may choose to announce it will conduct an oral proceeding on a Notice of Proposed Expedited Rulemaking and make it part of the permanent record.
- As the Division is merely the publisher of notices as specified in the APA or other statutes, it does not have the legal authority to provide a template for such notices for filing and publishing them in the *Register*.
- If an agency chooses to file this notice and publicize it in the *Register*, the Division strongly encourages the agency prepare its notice like a regular Notice of Oral Proceeding on a Proposed Rulemaking and change the heading to "**Notice of Oral Proceeding on Proposed Expedited Rulemaking**."

5. Objection Notice

If the agency receives an objection to its proposed expedited rulemaking, it shall prepare and file a **Notice of Objection to a Proposed Expedited Rulemaking** with the Division.

No changes go to #9

Technical corrections
Manifest typographical errors

After evaluating public comments or an conducting an internal review of the proposed expedited rule, an agency shall determine whether the rule requires a substantial change; or whether the notice should be terminated or be made final.

6. Notice of a Supplemental Proposed Expedited Rulemaking

The agency puts its request in writing to the governor's office to proceed with a Notice of Supplemental Proposed Expedited Rulemaking. Once it receives written permission, it can proceed with the supplemental notice.

A.R.S. § 41-1027(F)(4) and (6) reference supplemental proposed expedited rulemakings. An agency shall prepare and deliver the notice to the offices specified under #3.

7. Notice of Objection to a Supplemental Proposed Expedited Rulemaking

The agency shall, in writing, adequately address the comments on the proposed expedited rule and any supplementary proposal expedited notice. A.R.S. § 41-1027(F)(4). Objection notices are listed under A.R.S. § 41-1013(8).

8. Termination of the Proposal

A.R.S. § 41-1027(D)

The agency may not submit a final expedited rule to the Council that is substantially different from the proposed rule contained in the notice of proposed expedited rulemaking.

The agency may choose to terminate an expedited rulemaking proceeding and commence a new rulemaking proceeding for the purpose of making a substantially different rule.

If the agency chooses to terminate a Notice of Proposed Expedited Rulemaking, it shall prepare and file a **Notice of Termination on a Proposed Expedited Rulemaking** with the Division.

9. Final Expedited Rulemaking Notice is Prepared for Filing

A.R.S. § 41-1013(9)

Permission to Proceed

The agency puts its request in writing to the governor's office to proceed with a Notice of Final Expedited Rulemaking. Once it receives written permission, it can proceed with the final notice.

The Agency Submits the Notice for Review to G.R.R.C

The agency shall file a request for approval with the Council. The request shall contain the **Notice of Final Expedited Rulemaking** and the agency's responses to any written comments.

10. G.R.R.C. Reviews the Notice

Approves or disapproves the rulemaking



11. Approved

The agency files the notice with the Division.

The Division publishes the notice in the *Register*; codifies the expedited rules in the *Code*.

Flow Chart

The Emergency Rulemaking Process

