



ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION RULES

Formatting and Drafting Guidelines for DEQ and Third-Party Rule Drafters

Division of Environmental Quality and
Arkansas Pollution Control and Ecology Commission

February 2023

TABLE OF CONTENTS

I.	Introduction.....	1
II.	Formatting Requirements.....	1
III.	Stylistic Requirements	2
IV.	Preparation for Intiation of Rulemaking	2
V.	Initiation Of Rulemaking	3
VI.	Actions to Take Following Initiation of Rulemaking	5
VII.	Petition For Final Approval.....	6
VIII.	Legislative Approval	7
IX.	Post-Legislative Approval – For DEQ Only.....	7

FORMATTING AND DRAFTING GUIDELINES FOR DEQ AND THIRD-PARTY RULE DRAFTERS

I. INTRODUCTION

- A. Any person may petition the Department of Energy and Environment (E&E) Arkansas Pollution Control and Ecology Commission (Commission) for the issuance, amendment, or repeal of a rule. The guidelines and samples of forms are set out below. Unless stated otherwise, these guidelines are applicable to both the E&E Division of Environmental Quality (DEQ) and Third Parties.
- B. Third Parties: Any third party having a question concerning the guidelines or forms should contact Charles Moulton, Administrative Law Judge. See Appendix 1 for contact information.
- C. DEQ Staff: Any DEQ staff member having questions concerning the guidelines or forms should contact E&E Deputy Chief Counsel. See Appendix 1 for contact information.

II. FORMATTING REQUIREMENTS

- A. The only acceptable word processing software to use is Microsoft Word.
- B. Use these fonts: Times New Roman, Arial, or Courier New. Use of any other fonts, especially printer fonts, may cause the printed and electronic versions of the rule to differ in line breaks or pagination.
- C. Use tabs to set columns and indents, not spaces. Use 'Page Break' to force a page break, not multiple paragraphs.
- D. Formatting
 1. Deleting Language: Strike though language to be deleted. For example: The purpose of the rule is to promote proper use of ~~natural~~ resources.
 2. Adding Language: Underline any new language. For example: The purpose of the rule is to promote proper use of the state's natural resources.
 3. Justify all paragraphs.
 4. Boldface all headings.
 5. Page Numbering: The table of contents should be numbered with small Roman numerals. For example, i, ii, iii, iv, etc. The following page numbers are to be hyphenated relating to the chapters of the rule. The first number corresponds to the section or chapter number and the second number is the page number within a section. For example, Chapter 1 would be numbered 1-1, 1-2, 1-3, etc. For appendices, the system would be A-1, A-2, A-3, etc.
 6. Table of Contents: Page numbers, paragraph numbers, and paragraph headings should be reflected in a Table of Contents. (See Appendix 2).

7. Definitions: Definitions do not need to be numbered. Boldface the defined words.
8. Chapter and Section Numbering: Each section of the rule must be numbered to reflect the rule, chapter, and section numbers. For example, Rule 27, Chapter 6, Section 5 would be numbered “Rule 27.605.” The headings must reflect the intent of the paragraph. Boldface the rule number and the section title. For example: “**Rule 27.605 Reciprocity and Provisional Certificate.**” **DO NOT** place periods at the end of each heading, title, or subsection number.

III. STYLISTIC REQUIREMENTS

- A. Limit each paragraph to a single topic or subtopic.
- B. Do not use any acronyms in the rule. Spell out all references. For example: “Division of Environmental Quality,” not “DEQ.” The Commission must be referred to as the “Arkansas Pollution Control and Ecology Commission.”
- C. Statutory Authority: The act or statute authorizing the rule must be cited in the rule.
- D. Natural Disasters: The phrase “Act of God” must be replaced, if present, with the term “natural disaster.”
- E. The following definition must be included in all rules: “Division means the Division of Environmental Quality, or its successor.”
- F. The following language must be included in the body of all rules: “This rule is effective ten (10) days after filing with the Secretary of State, the State Library, and the Bureau of Legislative Research.”

IV. PREPARATION FOR INTIATION OF RULEMAKING

- A. Preparation Deadlines: Failure to meet any deadline may result in delaying initiation of proposed rule. The Commission’s filing deadline is two (2) weeks before the regularly scheduled Commission meeting. Check with the Commission Administrative Assistant for exact deadline date.
- B. Economic Impact Statement: Act 759 of 2013 repealed the requirement to assess the economic impact a rule may have on small businesses and the need to prepare an economic impact statement. However, APC&EC Rule No. 8 has not been modified to reflect Act 759 of 2013 and the Governor has issued Executive Order No. 23-02. A stated purpose of Executive Order No. 23-02 is to prohibit unnecessary rules and regulations that burden Arkansans and their businesses. Executive Order No. 23-02 also requires all new rules to be submitted to the Governor’s Office in order for the Governor to determine whether a proposed rule will unnecessarily burden Arkansans and their businesses. In light of Executive Order No. 23-02, the Commission recommends that DEQ and Third Parties continue to perform the current economic impact/environmental benefit analysis.
- C. Public Hearing: Applicable to DEQ and Third Parties. A public hearing is required to receive public comment regarding the rule revisions. Contact E&E Office of

Communications, ALJ Moulton, and media representatives to schedule a hearing date for the public notice. Include the date of the hearing in draft minute order and legislative questionnaire. The hearing must comply with Rule 8.805 of the Arkansas Pollution Control & Ecology Commission. Because of uncertainty regarding the length of time necessary for the review process, parties may defer scheduling the public hearing until after receiving the Governor’s approval for the rule amendments.

- D. Review of Rulemaking Packet: Applicable to DEQ Only. At least thirty (30) days before the date on which rulemaking packet is to be submitted to the Governor’s Office:
 - 1. The packet must be submitted to the E&E Deputy Chief Counsel for review.
 - 2. Following the E&E Deputy Chief Counsel’s review, the revised rulemaking packet must then be routed through the E&E Fiscal Division, the DEQ Director’s Office or the Energy Director’s Office, and Secretary of Energy and Environment for review and approval.
- E. Governor’s Approval: Applicable to DEQ and Third Parties. Provide Governor’s Office with a copy of only those documents from the rulemaking packet requested by the Governor and consistent with Executive Order No. 23-02. The documents must be submitted with the request for approval form provided by the Governor’s office. The Governor must approve of the rule amendments before the rulemaking is initiated.

V. INITIATION OF RULEMAKING

- A. A Petition to Initiate Rulemaking (hereinafter “rulemaking packet” or “packet”) must be filed with the Commission stating the reasons for revising the rule and requesting that the Commission initiate the rulemaking process. The petition must cite to the specific statute that gives the Commission the authority to adopt the proposed rule. See Appendix 2.
- B. The Petition shall include the following exhibits:
 - 1. Exhibit A: Proposed rule¹ that includes the following:
 - i. Cover Page

Every rule revision, even if it is changing one line in the rule, must include a proposed cover page. See Appendix 2. The cover page must include the following:

 - a. Secretary of State Numbering: The Secretary of State requires that its system for identifying a rule be inserted at the top right-hand corner of the cover page.

For example: Arkansas Pollution Control and Ecology Commission 014.00-0??, where the last two digits are the rule’s number. The number that identifies Rule No. 23 would be 014.00-023, or Rule No. 2 would be 014.00-002.

¹ In the majority of cases, any change to a rule requires submittal of the entire rule to the Commission. However, if the proposed changes to the rule are limited, contact Administrative Law Judge for special instructions.

- b. The cover page should be titled: **Arkansas Pollution Control and Ecology Commission**, with the number of the rule and the rule title below.
- c. The seal used on the cover page must be the seal of the State of Arkansas.
- d. Cover Dates
 - 1. Initial Draft
 - a. The initial draft should state the month and year in which the draft rule will first be submitted to the Commission. For example: “Submitted to the Arkansas Pollution Control and Ecology Commission in August 2022.”
 - b. The cover must include the words “Initial Draft’ at the bottom of the cover page above the submitted date. Do not use the watermark feature of Microsoft Word.
 - 2. Final Draft: The date on the cover page of the final draft will be the date of the Commission meeting during which it will consider adoption of the final proposed rule. For example: “Approved by the Arkansas Pollution Control & Ecology Commission on December 4, 2022.” See Appendix 2.
- ii. Table of Contents
- iii. Title of Rule
- iv. Purpose, Scope, and Applicability
- v. Definitions
- vi. Main Body of the Text
- vii. Appendices
- 2. Exhibit B: Governor’s approval letter, email, or similar correspondence consistent with Executive Order No. 23-02;
- 3. Exhibit C: The legislative questionnaire (See Appendix 2.);
- 4. Exhibit D: The financial impact statement (See Appendix 2.);
- 5. Exhibit E: Economic impact/environmental benefit analysis;
- 6. Exhibits F: Other exhibits, which may include a study, a report, or any other information the petitioner deems relevant;
- 7. Exhibit [last letter of total exhibits]: The proposed minute order, which is always the last exhibit in the rulemaking package. See Appendix 2. Although not an exhibit to the petition, also file the executive summary with the petition to include in the rulemaking record.

C. Filing the Petition and Exhibits

The Petition to Initiate Rulemaking is filed electronically by e-mail transmission to the Commission Administrative Assistant. The e-mail should include PDF attachments of the petition and all exhibits, as well as the executive summary. The e-mail should also include a Microsoft Word version of the minute order as an attachment. The petition is regarded as “filed” on the date that this e-mail is sent. After filing the petition and exhibits electronically, then deliver the original and three (3) copies of the proposed rulemaking packet to the Commission Administrative Assistant.

VI. ACTIONS TO TAKE FOLLOWING INITIATION OF RULEMAKING

A. Copies

On the Monday following the Commission meeting during which the petition to initiate rulemaking was approved, file with the E&E Office of Communications:

1. For DEQ Only

The petition and all exhibits plus the executive summary, the number of which is to be determined by the E&E Office of Communications.

2. For Third Parties Only:

i. One (1) draft public notice.

ii. The petition and all attachments, and the executive summary, the number of which is to be determined by the E&E Office of Communications.

iii. A check to cover the cost of publication of public notice (Contact the E&E Office of Communications for the exact amount.)

B. Notice and Publication

Public notice should be drafted according to Rule 8.803 of the Arkansas Pollution Control & Ecology Commission. The notice must be published at least twenty (20) days before the public hearing in a newspaper with statewide circulation. Once published, a copy of the notice should be sent to the Commission Administrative Assistant to include in the rulemaking docket.

C. Secretary of State

Prior to publication of the notice, file a cover sheet (using the form provided by the Secretary of State), a copy of the public notice, legislative questionnaire, financial impact statement, executive summary, and a mark-up copy of the rule with the Secretary of State. Provide the Bureau of Legislative Research with a copy of the e-mail of transmittal to the Secretary of State.

D. Arkansas State Library and State Library Depositories

Prior to publication of the notice, file a cover sheet (using the form cover sheet the Arkansas State Library provides), a copy of the mark-up of the rule, and the financial impact statement with the Arkansas State Library. Also, send to local library document depositories electronic copies of the executive summary and a mark-up of the rule amendments. A current list of the local library document depositories, and the contact

information, is kept by the Office of Chief Counsel and will be provided to assist rulemaking on request.

E. Legislative Council

Approval of the rulemaking must be obtained from the Administrative Rules Subcommittee of the Legislative Council and the House and Senate Public Health, Welfare and Labor Committees of the Arkansas Legislature.² Before the notice is published, send a copy of the executive summary, mark-up copy of the rule, legislative questionnaire, and financial impact statement to the Bureau of Legislative Research representative assigned to each committee. See Appendix 1 for contact information. Notify the representatives of the date of the public hearing, and advise them further if the date or time of the hearing is changed.

F. Public Hearing

Two weeks before the date of the public hearing, contact the E&E Office of Communications regarding preparations and confirm the arrangements. Also, confirm the date and time with ALJ Moulton and the media representatives. The public hearing must comply with the requirements of Rule 8.805.

G. Response to Comments

At the end of the public comment period, prepare a responsive summary whether or not any comments are received. Make any necessary revisions to the rule based on the public comments. Note: If changes are made that are not a logical outgrowth of the proposed rule, it may require a second public notice and public comment period.

VII. PETITION FOR FINAL APPROVAL

- A. Packet Contents. At least fourteen (14) days before the Commission meeting in which adoption will be sought, DEQ or the Third Party must submit to the Commission Administrative Assistant an e-mail with PDF attachments of the Motion to Adopt Changes and all exhibits. After filing the motion, DEQ or a Third Party must deliver an original and three (3) copies of the motion and exhibits to the Commission Administrative Assistant.
- B. Exhibits to the Motion. See Appendix 2. The Motion must have the following exhibits attached:
1. Exhibit A: Statement of basis and purpose signed by the preparer (See Appendix 2);
 2. Exhibit B: Responsive summary signed by the preparer (See Appendix 2);
 3. Exhibit C: The final revised rule without strikethroughs or markups. The cover sheet must indicate at the bottom, "Approved by Arkansas Pollution Control and Ecology Commission: [insert anticipated date of Arkansas Pollution Control & Ecology Commission approving adoption]." (See Appendix 2). Also, if there have been revisions to the rule since the filing of the mark-up draft, file a revised mark-up showing all amendments to the rule;

² If a rule involves a mining matter, then approval must be sought from the Administrative Rules Subcommittee and the House and Senate Interim Committee on Agriculture and Economic Development Committee.

4. Exhibit D: Rule tracking sheet signed by the preparer. (See Appendix 2);
5. Exhibit E: Approval from Governor's Office;
6. Exhibit F: Proposed minute order adopting the proposed revisions (See Appendix 2). Check Commission website for names of current Commissioners to include on the minute order. Include as an attachment to the e-mail a copy of the minute order in Microsoft Word.

VIII. LEGISLATIVE APPROVAL

Transmit an e-mail to the BLR representatives for the Administrative Rules Subcommittee and the House and Senate Public Health, Welfare, and Labor Committees requesting that the review and approval of the rule or amendments be placed on their agendas for the next meeting. The request must be made by the 15th of the month before the scheduled meetings in which the rule will be reviewed. Include as attachments the responsive summary and final revised mark-up draft of the rule amendments. Also include amended copies of the legislative questionnaire and financial impact statement if there are any changes since the initial submission. The House and Senate Public Health, Welfare, and Labor Committees must review the rule before it is reviewed and approved by the Administrative Rules Subcommittee.

IX. POST-LEGISLATIVE APPROVAL – FOR DEQ ONLY

- A. The final and approved rule, which was contained in the final packet approved by the Commission and approved by the Legislative Council, must be filed with the Bureau of Legislative Research, Arkansas State Library, and the Secretary of State. The effective date of the new rule or amendment is ten (10) days after the rule is filed.
- B. Bureau of Legislative Research. The Bureau of Legislative Research (BLR) requires that the final filing be made electronically. In the e-mail to BLR, state that the rule is final and has been approved by the Commission and the Legislative Council. BLR will send a confirmation that the rule has been received. BLR requires:
 1. PDF of the final rule; and
 2. PDF copy of the minute order approving the rule.
- C. Arkansas State Library. The Arkansas State Library allows for electronic filing of the final rule. The Arkansas State Library requires the following:
 1. PDF of the final rule;
 2. Library certification form signed by ALJ Moulton. (If requested in the e-mail of transmittal, the Arkansas State Library will send back a file-marked pdf copy of the Library Certification form.);
 3. PDF of the final financial impact statement if amended since the initial filing; and
 4. PDF of the final minute order where the rule was approved by the Commission.

- D. Secretary of State. The Secretary of State requires an e-mail for electronic filing. The date of the e-mail is transmitted and received is the date of the filing of the rule. The Secretary of State will respond to the e-mail of transmittal by stating that the rule has been filed or the rule has been uploaded into the Arkansas Register. The Secretary of State requires electronic copies of the following documents:
1. PDF of the final rule;
 2. A completed transmittal sheet form provided by the Secretary of State and signed by ALJ Moulton;
 3. PDF of the legislative questionnaire and financial impact statement if these documents have been amended since the initial filing; and
 4. PDF copy of the minute order by which the rule was approved by the Commission.
- E. Once filed, DEQ will convert the final rule into PDF format. DEQ will attach the file-marked Secretary of State transmittal sheet, e-mail of transmittal of the final rule to BLR, file-marked State Library certification, and Arkansas Pollution Control & Ecology Commission minute order adapting the rule. This final version of the rule will be submitted to the Information Technology Services Department for posting on the website.
- F. DEQ will email the final PDF version of the rule to the Commission Administrative Assistant for posting on the website.

APPENDICES

APPENDIX 1: Contacts List A-2
APPENDIX 2: Links to Recent and Archived Rulemaking Dockets A-3

APPENDIX 1: CONTACTS LIST

NAME/TITLE/ENTITY	PHONE/EMAIL
Charles Moulton Administrative Law Judge Arkansas Pollution Control & Ecology Commission	501-682-7892 moulton@adeq.state.ar.us
Pat Goff Commission Administrative Assistant Arkansas Pollution Control and Ecology Commission	501-682-7890 goffpatti@adeq.state.ar.us
Beth Thompson Public Relations Coordinator Office of Operations, Communications	501-682-0907 thompsonb@adeq.state.ar.us
Michael McAlister E&E Deputy Chief Counsel Office of Chief Counsel	501-682-0918 mcalister@adeq.state.ar.us
Rebecca Miller-Rice Administrative Rules Subcommittee of the Legislative Council	501-537-9192 miller-ricer@blr.arkansas.gov
Cait Steele House and Senate Public Health, Welfare and Labor Committees	501- 534-4652 steelec@blr.arkansas.gov

APPENDIX 2: LINKS TO RECENT AND ARCHIVED RULEMAKING DOCKETS

Prior to filing a Petition to Initiate Rulemaking with the Arkansas Pollution Control & Ecology Commission, parties should examine recent rulemaking filings on the Commission website. Also, parties are advised to contact the Bureau of Legislative Research, the Legislative Council, the Arkansas State Library, and the Arkansas Secretary of State for current forms. Finally, the composition of the Commission changes and parties should check the Commission website for a list of current Commissioners and the current Commission Chair.

Two recent rulemaking dockets:

- <https://www.adeg.state.ar.us/regs/drafts/reg19/21-001-R/>
- <https://www.adeg.state.ar.us/regs/drafts/reg27/22-001-R/>

These two dockets serve as an example of the rulemaking process from initiation, through public notice and comment, to final adoption.

Current draft rulemaking dockets on the Commission website can be located at:
https://www.adeg.state.ar.us/regs/draft_regs.aspx.

Archived rulemaking dockets on the Commission website can be located at:
https://www.adeg.state.ar.us/regs/archives/closed_dockets.aspx.