

1052.0.0 ADMINISTRATIVE PROCEDURE, RULES PROMULGATION

1052.0.1 This policy establishes a uniform method and system for promulgation of rules by the Department of Health and Human Services (DHHS) in accordance with the Arkansas Administrative Procedure Act (Act), Ark. Code Ann. §§ 25-15-201 et seq. The Act requires that agencies promulgate “rules of practice describing the nature and requirements of all formal and informal procedures including forms and instructions used by the agency.” All rules promulgated must comply with federal and state laws.

1052.0.2 This policy is applicable to all divisions and offices within DHHS and to all managers and staff responsible for rules within their particular division or office.

1052.1.0 Definitions

1052.1.1 Emergency Rule - A policy or procedure that requires immediate implementation due to imminent peril to the public health, safety, or welfare, or loss of federal funds.

1052.1.2 Mark-up - If an already existing rule is being amended, a copy of the proposed amendment indicating (significant) changes. A rule is to be marked up by striking the old language and inserting and underlining the new language. This is to be submitted in typewritten format.

1052.1.3 Notice Of Rule Making - A general clear statement of the subjects and issues involved, and the time, place, and manner in which interested persons may present their views thereon.

1052.1.4 Rule - Any Agency statement of general applicability and future effect that implements, interprets, or prescribes law or policy; or describes the organization procedure or practice of any agency. "Rule" does not mean any statement concerning the internal management of DHHS or any intra-office memoranda. Policies or procedures that do not affect the private rights or procedures available to the public are not considered rules that require promulgation.

1052.1.5 Summary of Changes – A summary of the changes made in any revision of a rule.

1052.1.6 Summary of Rule – A summary of the provisions of any new rule in one or more paragraphs.

1052.1.7 Small Business – A for-profit enterprise consisting of no more than one hundred (100) full or part-time employees.

1052.2.0 Promulgation

1052.2.1 The DHHS Office of Finance and Administration (OFA) will promulgate rules that apply to more than one DHHS division.

1052.2.2 If the rule applies only to a particular division, the division will promulgate the rule.

- 1052.2.3 A. Before submitting any rule for adoption, amendment, or repeal, DHHS shall first determine if the rule affects small businesses, particularly as whether the rule increases costs for small businesses.
- B. If it is determined that the proposed rules affect small businesses, DHHS must complete the steps outlined in Section 1052.2.4.
- C. If, however, such rules are adopted on an emergency basis, are federally mandated, or substantially implement existing state or federal law, Section 1052.2.4 does not apply.

1052.2.4 For rules that affect small businesses, DHHS shall:

- A. Prepare an economic impact statement
- B. Submit the economic impact statement and the proposed rule to the director of the Arkansas Department of Economic Development (ADED)
- C. Upon receipt of ADED feedback regarding whether DHHS has sufficiently balanced the proposed rule with the interests of affected small businesses, DHHS shall consider the feedback provided.
- D. If DHHS determines that no action needs be taken on the ADED feedback, DHHS shall respond in writing to ADED explaining its reasons for the determination.
- E. If DHHS determines that, based on the feedback, amendment of the rule is warranted, DHHS shall indicate this in its response to ADED.

1052.3.0 Executive Staff Review

1052.3.1 The initiating division will prepare the rule in draft form to be reviewed by the DHHS Executive Staff.

1052.3.2 For rules affecting more than one division, the initiating division will send that draft rule as an email attachment to OFA, Policy & Administrative Program Management (PAPM) which will, in turn, e-mail the draft to all members of the Executive Staff.

1052.3.3 The draft is to be accompanied by an Executive Summary consisting of the Summary of Rule or Summary of Changes.

1052.3.4 The Executive Staff will have approximately two weeks to reply with concurrence or with non-concurring comment.

1052.4.0 OCC Approval

After Executive Staff approval of the draft rule a Notice of Rule Making, Arkansas Register Transmittal Sheet, Arkansas State Library Agency Certification Form, Legislative Questionnaire, Bureau of Legislative Research page, and a Financial Impact Statement shall be prepared and submitted to the DHHS Office of Chief Counsel (OCC). OCC shall review the submission within five (5) working days for

compliance with the Act and will inform the initiating division of its findings. Upon approval by OCC, the Notice of Rule Making may be published.

1052.5.0 Notice of Rule Making

1052.5.1 The Notice of Rule Making shall be published in a newspaper of general daily circulation for three (3) consecutive days to afford all interested members of the public up to thirty (30) days opportunity to submit comments, orally or in writing. The initiating division must obtain confirmation of the actual publication of the Notice of Rule Making in the newspaper to be retained in its files.

1052.5.2 The Notice shall be e-mailed to the Secretary of State at register@sosmail.state.ar.us with a date listing when the agency wishes the Notice to be published. The Notice will be posted on the Secretary of State's website for 30 days.

1052.5.3 The Notice shall be mailed to any person who requested advance notice of rule making proceedings.

1052.6.0 Initial Filing

1052.6.1 Every initiating division must submit any proposed, revised, amended, changed, or repealed rule to the Secretary of State's Office and the Bureau of Legislative Research thirty (30) days before the expiration of the period for public comment.

1052.6.2 Secretary of State: One (1) copy of the rule (in Adobe PDF or Microsoft Word 6.0, or higher) must be submitted to the Secretary of State on disk or e-mailed to register@sosmail.state.ar.us. Submissions must include the agency number with each rule filing submitted to the office. The agency number is to be provided in the upper right-hand corner of the first page of the rule submission and on the disk submitted. The rule will also be submitted in "mark-up" form if the rule is an amendment to an existing rule. One (1) copy of a Summary of Rule must be submitted with a new rule. One (1) copy of a Summary of Changes must be submitted with a revised rule.

1052.6.3 Bureau of Legislature Research: Three (3) copies each of the proposed rule and the Legislative Questionnaire, and two (2) copies each of the Financial Impact Statement and the mark-up (see Section 1052.1.2 for mark-up format) shall be filed with the Bureau of Legislative Research. Two (2) copies of a Summary of Rule must be submitted when filing a new rule. Two (2) copies of a Summary of Changes must be submitted with a revised rule.

One copy each of the rule and the Legislative Questionnaire are to be file stamped and returned to the division or office. A cover letter must accompany the submission requesting that the rule be placed on the Legislative Council, Administrative Rules and Regulations Subcommittee agenda for review. Providing a copy of the cover memorandum accompanying the submitted materials for date stamping and return to the agency is optional.

1052.7.0 Final Filing

1052.7.1 After the thirty (30) day public review period expires the initiating division shall file its final rule with the Secretary of State, the Arkansas State Library, and the Bureau of Legislative Research. Every promulgated rule must be filed at least ten (10) days prior to its effective date. Each rule adopted by an agency shall be effective ten (10) days after filing unless a later date is specified in the rule itself.

1052.7.2 Secretary of State: Two (2) paper copies each of the proposed rule and the Arkansas Register Transmittal Sheet, and one (1) copy each of the Notice of Rule Making, and the Financial Impact Statement must be filed with the Secretary of State. One (1) copy of the rule (in Adobe PDF or Microsoft Word 6.0, or higher) must be submitted to the Secretary of State on diskette at the time of the filing or e-mailed to register@sosmail.state.ar.us. The agency numbering discussed in 1052.6.2. above also applies to the final filing. One (1) paper copy each of the rule and the transmittal stamped with the filing date will be returned to the division or office.

1052.7.3 State Library: One (1) copy of the proposed rule must be filed with the Arkansas State Library. Two (2) copies of the Arkansas State Library Agency Certification Form and one (1) copy of the Financial Impact Statement must accompany the proposed rule. One (1) copy of the Certification Form stamped with the filing date will be returned to the division or office. Fifteen (15) copies of the final rule shall be sent to the Coordinator of Document Services (682-2326) at the Arkansas State Library upon finalization of promulgation.

1052.7.4 Bureau of Legislative Research: Three (3) copies of the proposed rule, three (3) copies of the Bureau coversheet, two (2) copies of the mark-up, two (2) copies of the Financial Impact Statement, and two (2) copies of the summary must also be filed with the Bureau of Legislative Research. One (1) copy each of the rule and coversheet stamped with the filing date will be returned to the division or office.

1052.8.0 Arkansas Legislative Council, Administrative Rules and Regulations Subcommittee (Subcommittee)

The Subcommittee will review promulgated rules at its monthly session at the State Capitol. The Bureau of Legislative Research will place the rule on the Subcommittee's monthly agenda based on the information provided in the Legislative Questionnaire submitted to the Bureau by the promulgating agency during the initial filing. The promulgating agency must schedule promulgation such that the public review period has been completed before the Subcommittee review date.

1052.9.0 Emergency Filing

Under an emergency rule, the division or office may proceed without prior notice or hearing, or upon any abbreviated notice and hearing that it may choose, to issue an emergency rule. The initiating division shall file with the proposed rule a statement that includes a finding that imminent peril to the public health, safety, or welfare, loss of federal funds, or requirement for compliance with federal laws or

regulations requires issuance of the rule with less than thirty (30) days notice. The initiating division shall specifically state the factual reason for the finding of imminent peril to the public health, safety, or welfare. The emergency rule will be effective immediately upon filing with the Secretary of State, the Arkansas State Library, and the Bureau of Legislative Research, but for no longer than 120 days. Within the 120 days, the proposed rule must be promulgated according to Section 1052.2.0 above.

1052.10.0 Petition for Issuance, Amendment, or Repeal of Rule

Any person has the right to petition the initiating division or office within DHHS for the issuance, amendment, or repeal of any rule. The division or office must either initiate rule making proceedings or deny the petition in writing within thirty (30) days of the submission of such a petition.

1052.11.0 Failure To Promulgate

Failure to promulgate a rule can result in a rule being declared null and void. Failure for any reason to comply with these promulgation requirements may result in discipline to the DHHS employee who is responsible for the rule's promulgation.

1052.12.0 Declaratory Orders

The Department shall provide for the filing and prompt disposition of declaratory orders as to the applicability of any rule, statute, or order in force by it. These declaratory orders shall have the same status as agency orders in cases of adjudication. Petitions for declaratory orders shall be filed with the division or office issuing the rule that is the subject of the petition of the declaratory order. If this situation occurs, OCC should be contacted for technical assistance.

1052.13.0 Conflicting Policies

Other policies or parts thereof in conflict with the contents of this policy are hereby repealed or amended as necessary.

1052.14.0 Originating Section/Department Contact

Office of Administrative Services
Human Resources/Support Services Section
Policy and Administrative Program Management
P.O. Box 1437/Slot Number W403
Little Rock, AR 72203-1437
Telephone: 682-5835

Replacement Notation: This policy replaces DHS Policy 1052 dated June 17, 2002.