

A.C.A. § 25-15-204

Arkansas Code of 1987 Annotated
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Title 25 State Government
Chapter 15 Administrative Procedures
Subchapter 2 Administrative Procedure Act

A.C.A. § 25-15-204 (2015)

25-15-204. Rules -- Procedure for adoption.

(a) Prior to the adoption, amendment, or repeal of a rule, the agency shall:

(1) (A) (i) Give at least thirty (30) days' notice of its intended action.

(ii) The thirty-day period shall begin on the first day of the publication of notice.

(B) The notice shall include:

(i) A statement of the terms or substance of the intended action or a description of the subjects and issues involved; and

(ii) The time, location, and manner in which an interested person may present his or her position on the intended action of the agency or on the issues related to the intended action of the agency.

(C) The notice shall be mailed to:

(i) A person specified by law; and

(ii) A person who has requested advance notice of rule-making proceedings.

(D) Unless otherwise provided by law, the notice shall be published:

(i) In a newspaper of general daily circulation for three (3) consecutive days and, when appropriate, in those trade, industry, or professional publications that the agency may select; and

(ii) By the Secretary of State on the Internet for thirty (30) days under § 25-15-218;

(2) (A) Afford all interested persons reasonable opportunity to submit written data, views, or arguments, orally or in writing.

(B) The agency shall grant an opportunity for an oral hearing if requested by twenty-five (25) persons, by a governmental subdivision or agency, or by an association having at least twenty-five (25) members.

(C) The agency shall fully consider all written and oral submissions respecting the proposed rule before finalizing the language of the proposed rule and filing the proposed rule as required by subsection (e) of this section.

(D) If an interested person requests a statement of the reasons for and against the adoption of a rule before adoption or within thirty (30) days after adoption, the agency shall issue a concise statement of the principal reasons for and against its adoption, incorporating its reasons for overruling the considerations urged against its adoption.

(E) When rules are required by law to be made on the record after opportunity for an agency hearing, the provisions of that law shall apply in place of this subdivision (a)(2); and

(3) Consider the following factors:

(A) Whether the agency is required by statute to adopt the proposed rule, whether by a specific date, and whether the agency has discretion to promulgate rules;

(B) Other statutes relevant to the proposed rule and its alternatives;

(C) The specific nature and significance of the problem the agency addresses with the proposed rule including without limitation:

(i) The nature and degree of the risks the problem poses;

(ii) The priority of addressing those risks as opposed to other matters or activities within the agency's jurisdiction;

(iii) Whether the problem warrants new agency action; and

(iv) The countervailing risks that may be posed by alternative rules for the agency;

(D) Whether existing rules have created or contributed to the problem the agency is addressing with the proposed rule, and whether those rules could be amended or repealed to address the problem in whole or in part;

(E) Reasonable alternatives to the proposed rule including without limitation:

(i) Adopting no rule;

(ii) Amending or repealing existing rules; and

(iii) Other potential responses that could be taken instead of agency action;

(F) The financial impact of the proposed rule; and

(G) Any other factor relevant to the need for and alternatives to the proposed rule.

(b) (1) An agency shall not adopt, amend, or repeal a rule unless the rule is based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule.

(2) An agency shall adopt the least costly rule considered under this section, unless:

(A) The additional benefits of the more costly rule justify its additional cost;

(B) The agency explains its reason for adoption of the more costly rule in writing;

(C) The reason is based on the interests of public health, safety, or welfare; and

(D) The reason is within the scope of the agency's statutory authority.

(c) (1) If an agency finds that imminent peril to the public health, safety, or welfare or compliance with a federal law or regulation requires adoption of a rule upon less than thirty (30) days' notice and states in writing its reasons for that finding, it may proceed without prior notice or hearing, or upon any abbreviated notice and hearing that it may choose, to adopt an emergency rule.

(2) Except as provided in § 5-64-204, the rule may be effective for no longer than one hundred twenty (120) days.

(3) If, after the expiration of the effective period of an emergency rule, an agency wishes to adopt a successive emergency rule that is identical or substantially similar to the expired emergency rule, the agency shall not adopt the successive emergency rule earlier than thirty (30) days after the expiration of the emergency rule.

(d) (1) A person may petition an agency for the issuance, amendment, or repeal of a rule.

(2) Within thirty (30) days after submission of a petition, the agency shall:

(A) Deny the petition, stating in writing its reasons for the denial; or

(B) Initiate rule-making proceedings.

(e) (1) (A) An agency shall file with the Secretary of State, the Arkansas State Library, and the

Bureau of Legislative Research a copy of each rule proposed by it and a financial impact statement for the proposed rule.

(B) A rule shall be filed in compliance with this section and with §§ 10-3-309 and 25-15-218.

(2) The Secretary of State shall keep a register of the rules open to public inspection, and it shall be a permanent register.

(3) If the purpose of a state agency rule is to implement a federal rule or regulation, the financial impact statement shall include:

(A) The cost to implement the federal rule or regulation; and

(B) The additional cost of the state rule.

(4) (A) If a financial impact statement reveals a new or increased cost or obligation of at least one hundred thousand dollars (\$ 100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined, the agency shall file written findings at the time of filing the financial impact statement.

(B) The written findings shall be filed simultaneously with the financial impact statement and shall include without limitation:

(i) A statement of the rule's basis and purpose;

(ii) The problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;

(iii) A description of the factual evidence that:

(a) Justifies the agency's need for the proposed rule; and

(b) Describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;

(iv) A list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

(v) A list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

(vi) (a) A statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule.

(b) If existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and

(vii) An agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including without limitation whether:

(a) The rule is achieving the statutory objectives;

(b) The benefits of the rule continue to justify its costs; and

(c) The rule can be amended or repealed to reduce costs while continuing to achieve the statutory objections.

(f) (1) (A) Each rule adopted by an agency is effective thirty (30) days after filing of the final rule with the Secretary of State unless a later date is specified by law or in the rule itself.

(B) A final rule shall not be filed until the thirty-day public comment period required under subdivision (a)(1)(A) of this section has expired.

(C) (i) After the expiration of the thirty-day public comment period and before the effective date of the rule, the agency promulgating the rule shall take appropriate measures to make the final rule known to the persons who may be affected by the rule.

(ii) Appropriate measures shall include without limitation posting the following information on the agency's website:

(a) The final rule;

(b) Copies of all written comments submitted to the agency regarding the rule;

(c) A summary of all written and oral comments submitted to the agency regarding the rule and the agency's response to those comments;

(d) A summary of the financial impact of the rule; and

(e) The proposed effective date of the final rule.

(2) (A) (i) However, an emergency rule may become effective immediately upon filing or at a stated time less than thirty (30) days after filing if the agency finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare.

(ii) The agency's finding, a brief statement of the reasons for the finding, and the financial impact statement shall be filed with the rule.

(B) The agency shall take appropriate measures to make emergency rules known to the persons who may be affected by the emergency rules.

(g) A rule adopted after June 30, 1967, is not valid unless adopted and filed in substantial compliance with this section.

(h) (1) In a proceeding that questions the existence of imminent peril to the public health, safety, or welfare, a written finding by an agency that adopting an emergency rule was necessary to avoid the loss of federal funding or certification establishes a prima facie case of the existence of imminent peril to the public health, safety, or welfare.

(2) The burden of proof shifts to the challenger to rebut the existence of the condition by a preponderance of the evidence.

HISTORY: Acts 1967, No. 434, § 3; 1979, No. 62, § 1; 1985, No. 139, § 1; A.S.A. 1947, § 5-703; Acts 1989, No. 932, §§ 1, 2; 1993, No. 1106, § 1; 1995, No. 459, § 3; 1995, No. 884, §§ 1-3; 1995, No. 1104, § 1; 1997, No. 406, § 1; 1997, No. 533, § 4; 2001, No. 1648, § 3; 2003, No. 1478, § 1; 2005, No. 1259, § 1; 2006 (1st Ex. Sess.), No. 38, § 3; 2007, No. 143, § 2; 2011, No. 587, § 2; 2011, No. 1015, § 1; 2011, No. 1016, § 1; 2013, No. 759, § 4; 2013, No. 1057, § 1.

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