



ADMINISTRATIVE PROCEDURES ACT

NOTE ON LAW CHANGES

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Arkansas State Board of Architects, Landscape Architects, and Interior Designers

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Arkansas Administrative Procedures Act

The Arkansas Administrative Procedures Act is being provided as a reference to licensees, candidates, and members of the public in this up-to-date format. All licensees and candidates for licensure should understand the board's statutes and regulations and should be familiar with their provisions. While every effort has been made to ensure the accuracy of this document, it does not have legal effect. Should any difference or error occur, the law will take precedence.

If you have a question regarding the interpretation of these statutes and regulations, please contact the Arkansas State Board of Architects, Landscape Architects, and Interior Designers at 101 East Capitol Avenue, Suite 110, Little Rock, AR, 72201-2822. The board can be reached by telephone at (501) 682-3171, by fax (501) 682-3172, or by email at asbalaid@arkansas.gov.

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ARKANSAS ADMINISTRATIVE PROCEDURES ACT

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ARKANSAS
ADMINISTRATIVE PROCEDURES
ACT

SUBCHAPTER 1 – GENERAL PROVISIONS

25-15-101. Interpreters generally.

(a) As used in this section, "interpreter" means an interpreter as defined in § 25-15-102.

(b) A person who cannot speak or understand the English language or who because of hearing, speaking, or other impairment has difficulty in communicating with other persons and who is a party to a civil proceeding or a witness in a civil proceeding is entitled to an interpreter to assist that person throughout the proceeding.

(c) (1) An interpreter may be retained by the party or witness himself or herself or, if the person is unable to pay for an interpreter, may be appointed by the administrative board or agency before which the proceeding is pending.

(2) If an interpreter is appointed by the board or agency, the fee for the services of the interpreter shall be set by the board or agency and be paid from funds available to the board or agency or be paid in any other manner ordered by the board or agency.

(d) An administrative agency may inquire into the qualifications and integrity of an interpreter and may disqualify any person for cause from serving as an interpreter.

(e) An interpreter for another person who is either a party or a witness in an administrative proceeding under this section shall take the following oath:

"Do you solemnly swear (or affirm) that you will justly, truly, and impartially interpret tothe oath about to be administered to him (her), and the questions which may be asked him (her), and the answers that he (she) shall give to such questions, relative to the cause now under consideration before this board (agency), so help you God (or under the pains and penalties of perjury)?"

25-15-102. Interpreters between a hearing individual and an individual who is deaf, deafblind, hard of hearing, or oral deaf.

(a) For the purpose of appointing an interpreter between a hearing individual and an individual who is deaf, deafblind, hard of hearing, or oral deaf under § 25-15-101:

(1) "Administrative proceeding" means a proceeding of a department, board, commission, agency, committee, or licensing authority of the state or of a political subdivision or municipality;

(2) "Deaf individual" means an individual who has a documented hearing loss so severe that the individual is unable to process speech and language through hearing, with or without amplification;

(3) "Deafblind individual" means an individual who has a combined loss of vision and hearing that prevents the individual's vision or hearing from being used as a primary source for accessing information;

(4) "Hard of hearing individual" means an individual who has a hearing loss, may primarily use visual communication, and may use assistive devices;

(5) "Interpreter" means a licensed qualified interpreter or a licensed provisional interpreter licensed by the Department of Health under § 20-14-801 et seq.;

(6) "Oral deaf individual" means an individual whose sense of hearing is nonfunctional for the purpose of communication and whose primary communication is by speech reading and spoken English; and

(7) "Oral interpreter" means a licensed qualified interpreter or a licensed provisional interpreter who interprets language through facial and lip movements only and who does not use manual communication.

(b) (1) An interpreter shall not be appointed unless the appointing authority and the individual who is deaf, deafblind, hard of hearing, or oral deaf makes a preliminary determination that the interpreter is able to readily communicate with the individual who is deaf, deafblind, hard of hearing, or oral deaf and is able to accurately interpret the statements of the individual who is deaf, deafblind, hard of hearing, or oral deaf and interpret the proceedings in which an individual who is deaf, deafblind, hard of hearing, or oral deaf may be involved.

(2) An individual who is deaf, deafblind, hard of hearing, or oral deaf entitled to an interpreter under § 25-15-101 is entitled to an interpreter as defined by this subsection.

(c) (1) An oral interpreter shall be provided upon the request of an individual who is deaf, deafblind, hard of hearing, or oral deaf who does not communicate in sign language.

(2) (A) The right of an individual who is oral deaf to an interpreter may not be waived except by an individual who is oral deaf who does not use sign language and who initiates the request for a waiver in writing.

(B) The waiver is subject to approval of counsel to the individual who is oral deaf, if existent, and is subject to approval of the appointing authority.

(d) A department, board, commission, agency, committee, or licensing authority of the state or of a political subdivision or municipality shall appoint an interpreter to interpret an administrative proceeding to an individual who is deaf, deafblind, hard of hearing, or oral deaf and to interpret the testimony or statements of the individual who is deaf, deafblind, hard of hearing, or oral deaf.

(e) (1) An individual who is deaf, deafblind, hard of hearing, or oral deaf whose appearance before a proceeding entitles him or her to an interpreter shall notify the appointing authority of the need of the individual who is deaf, deafblind, hard of hearing, or oral deaf before an appearance and shall request at that time the services of an interpreter.

(2) (A) If an individual who is deaf, deafblind, hard of hearing, or oral deaf reasonably expects the need for an interpreter to be for a period greater than a single day, the individual who is deaf, deafblind, hard of hearing, or oral deaf shall notify the appointing authority.

(B) This notification shall be sufficient for the duration of the participation of the individual who is deaf, deafblind, hard of hearing, or oral deaf in the proceedings.

(f) An appointing authority may require a person requesting the appointment of an interpreter to furnish reasonable proof of the deafness of the individual who is deaf, deafblind, hard of hearing, or oral deaf when the appointing authority has reason to believe that the deaf person, deafblind person, hard of hearing person, or oral deaf person is not deaf, deafblind, hard of hearing, or oral deaf.

(g) The appointing authority shall channel requests for qualified interpreters through the Department of Health.

(h) Before an interpreter participates in any proceedings subsequent to an

appointment under this section, the interpreter shall make an oath or affirmation that the interpreter will:

(1) Make a true interpretation in an understandable manner to the individual who is deaf, deafblind, hard of hearing, or oral deaf for whom the interpreter is appointed; and

(2) Interpret the statements of the individual who is deaf, deafblind, hard of hearing, or oral deaf desiring that statements be made in the language best suited to the needs of the individual who is deaf, deafblind, hard of hearing, or oral deaf.

(i) The appointing authority shall provide recess periods as necessary for the interpreter when the interpreter requests a recess period.

(j) Information that the interpreter gathers, learns from, or relays to the individual who is deaf, deafblind, hard of hearing, or oral deaf pertaining to an administrative, civil, or criminal proceeding shall at all times remain confidential and privileged, on an equal basis with the attorney-client privilege, unless the individual who is deaf, deafblind, hard of hearing, or oral deaf desires that the information be communicated to other persons.

(k) (1) An interpreter appointed under this section is entitled to a reasonable fee for his or her services.

(2) The fee shall be in accordance with standards established by the Department of Health and in addition to actual expenses for travel and transportation.

(3) (A) If the interpreter is appointed by a court, the fee shall be paid out of general county funds.

(B) If the interpreter is otherwise appointed, the fee shall be paid out of funds available to the appointing authority.

25-15-103. Stay of proceedings in which party or attorney is a member or either branch of the General Assembly.

(a) (1) Any and all administrative hearings before an agency of this state in which any attorney for either party to any suit is the Lieutenant Governor, or a member of the Senate or the House of Representatives, or is a clerk or sergeant at arms or a doorkeeper of either branch of the General Assembly, and any and all administrative hearings before an agency of this state in which the Lieutenant Governor, or any member of the General Assembly, or clerk or sergeant at arms or doorkeeper of either branch of the General Assembly is a party, shall be stayed for not fewer than fifteen

(15) days preceding the convening of the General Assembly and for thirty (30) days after its adjournment sine die, unless otherwise requested by any interested member of the General Assembly or interested officer or employee of the General Assembly.

(2) The motion for a continuance need not be reduced to writing.

(3) It is not necessary that notice be afforded to opposing counsel that a continuance is sought.

(b) Any and all administrative hearings before an agency of this state in which any attorney for either party to any suit is a member of the Legislative Council, the Legislative Joint Auditing Committee, or any interim committee of the General Assembly shall be stayed, or reset if scheduled, if the proceeding or hearing has been scheduled on the day immediately prior to, the day immediately after, or the day upon which the Legislative Council, Legislative Joint Auditing Committee, or any interim committee is meeting and if the attorney is a member of the committee which is meeting, or an alternate member attending in the place of a regular member, and the attorney requests the continuance of the court no fewer than three (3) days before the proceeding is to commence.

(c) The term "adjournment sine die" as used in this section means adjournment without the establishment of a day certain for reconvening.

(d) The provisions of this section shall be applicable in the case of special or extraordinary sessions of the General Assembly as well as regular sessions.

25-15-104. Subpoena powers.

(a) (1) The following boards and commissions shall have the power to issue subpoenas and bring before the board or commission as a witness any person in this state:

(A) Auctioneer's Licensing Board, § 17-17-201 et seq.;

(B) State Athletic Commission, § 17-22-201 et seq.;

(C) Cosmetology Technical Advisory Committee, § 17-26-201 et seq.;

(D) Arkansas Board of Examiners in Counseling, § 17-27-201 et seq.;

(E) State Board of Embalmers and Funeral Directors, § 17-29-201 et seq.;

(F) Committee of Plumbing Examiners of the State Board of Health, § 17-38-202;

(G) Arkansas Social Work Licensing Board, § 17-103-201 et seq.;

(H) HVACR Licensing Board, § 17-33-201 et seq.;

(I) Liquefied Petroleum Gas Board, § 15-75-201 et seq.;

(J) Judicial Discipline and Disability Commission, Arkansas Constitution, Amendment 66, and § 16-10-401 et seq.;

(K) Veterinary Medical Examining Board, § 17-101-201 et seq.;

(L) Arkansas Board of Dispensing Opticians, § 17-89-201 et seq.;

(M) State Board of Election Commissioners, § 7-4-101 et seq.; and

(N) State Board of Health, § 20-7-101 et seq.

(2) These boards and commissions shall provide by regulation for the issuance of a subpoena upon the request of any party to a proceeding pending before the board or commission or at the request of the board or commission.

(3) The subpoena shall:

(A) Be in the name of the board or commission;

(B) State the name of the board or commission and the name of the proceeding; and

(C) (i) Command each person to whom it is directed to give testimony at the time and place specified in the subpoena in one (1) of the following ways:

(a) In person;

(b) Before a certified court reporter under oath at the place of the witness's residence or employment;

(c) By video-taped deposition at the place of the witness's residence or employment; or

(d) By live video communications from the witness' residence, place of

employment, or a nearby facility capable of providing video transmission to the state agency that has subpoenaed the witness.

(ii) The manner of providing testimony under the subpoena shall be conducted by in person testimony unless another manner is agreed upon by the board or commission and the person who is the subject of the subpoena.

(4) The subpoena may require the witness to bring with him or her any book, writing, or other thing under his or her control that he or she is bound by law to produce in evidence.

(5) Service of the subpoena shall be in the manner as now provided by statute or rule for the service of subpoenas in civil cases.

(b) (1) A witness who has been served by subpoena in the manner provided by law and who appears in person to testify at the trial or cause pending before the board or commission shall be paid or tendered the legal fees for travel and attendance as provided by law.

(2) In the event a witness has been served with subpoenas under this section and fails to provide testimony in obedience to the subpoena, the board or commission may apply to the circuit court of the county wherein the board or commission is having its meeting for an order causing the arrest of the witness and directing that the witness be brought before the court.

(3) The court shall have the power to punish the disobedient witness for contempt as provided by the Arkansas Rules of Civil Procedure.

(4) A witness who is served with a subpoena under this section may challenge the validity of the subpoena in the circuit court of the county where the board or commission is having its meeting or the Circuit Court of Pulaski County.

(c) This section is intended to be supplemental and add the power to issue subpoenas to the various chapters of the Code that do not now provide the power to do so. This section shall not repeal any law or part of laws now in existence.

25-15-105. Administrative fees and penalties.

(a) As used in this section, "agency" means the same as defined at § 25-15-202.

(b) (1) An agency shall not assess a fee or penalty without specific statutory authority to:

(A) Assess a certain type and amount of fee or penalty; or

(B) Impose a fee or penalty in general.

(2) A fee or penalty established in the rules of an agency before the effective date of this section that does not comply with subdivision (b)(1) of this section may remain in effect until July 1, 2013, but shall not be increased above the amount established by the agency for that fee or penalty as of the effective date of this section.

(c) Subsection (b) of this section does not affect an agency's authority to deny, suspend, and revoke licenses within its regulatory authority.

SUBCHAPTER 2 – ADMINISTRATIVE PROCEDURES ACT

25-15-201. Title.

This subchapter shall be known and cited as the "Arkansas Administrative Procedure Act".

25-15-202. Definitions.

As used in this subchapter:

(1) (A) "Adjudication" means an agency process for the formulation of an order.

(B) "Adjudication" does not include inmate disciplinary proceedings conducted by the Department of Correction and the Department of Community Correction;

(2) (A) "Agency" means a board, commission, department, officer, or other authority of the government of the State of Arkansas, whether within, or subject to review by, another agency, except the General Assembly, the courts, and Governor.

(B) The word "agency" shall include the Division of Child Care and Early Childhood Education of the Department of Human Services and the Child Care Appeal Review Panel for purposes of administrative appeal.

(C) The word "agency" shall not include the Arkansas Public Service Commission, the Arkansas Pollution Control and Ecology Commission, the Workers' Compensation Commission, and the Department of Workforce Services, as the existing laws governing those agencies provide adequate administrative procedures for those agencies.

(D) This subchapter does not repeal delegations of authority as provided by law;

(3) "Financial impact statement" means a realistic statement of a new or increased cost or obligation of complying with a proposed rule to a:

(A) Private individual, entity, and business; and

(B) State, county, and municipal government;

(4) "License" includes an agency permit, certificate, approval, registration, charter, or similar form of permission required by law;

(5) "Licensing" means an agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, or amendment of a license;

(6) "Order" means the final disposition of an agency in any matter other than rule making, including licensing and rate making, in which the agency is required by law to make its determination after notice and hearing;

(7) "Party" means a person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in an agency proceeding;

(8) "Person" means an individual, partnership, corporation, association, or public or private organization of any character;

(9) (A) "Rule" means an agency statement of general applicability and future effect that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice of an agency and includes, but is not limited to, the amendment or repeal of a prior rule.

(B) "Rule" does not mean:

(i) Statements concerning the internal management of an agency and that do not affect the private rights or procedures available to the public;

(ii) Declaratory rulings issued pursuant to § 25-15-206; or

(iii) Intra-agency memoranda; and

(10) "Rule making" means an agency process for the formulation, amendment, or repeal of a rule.

25-15-203. Rules - Required rules - Public inspection.

(a) In addition to other rule making requirements imposed by law, each agency shall:

(1) Adopt as a rule a description of its organization, stating the general course and method of its operations, including the methods whereby the public may obtain information or make submissions or requests;

(2) Adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency;

(3) Make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted, or used by the agency in the discharge of its functions;

(4) Make available for public inspection all orders, decisions, and opinions.

(b) No agency rule, order, or decision shall be valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been filed and made available for public inspection as required in this subchapter. This provision shall not apply in favor of any person or party with actual knowledge of an agency rule, order, or decision.

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 §§ 25-15-218 and 10-3-309.

(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.

25-15-205. Rules - "The Arkansas Register".

(a) (1) The Secretary of State shall compile, index, and publish on its website a document to be known as "The Arkansas Register".

(2) "The Arkansas Register" shall contain all adopted rules of any agency.

(b) The Secretary of State shall update "The Arkansas Register" at least monthly, setting forth a synopsis of rules filed by agencies.

(c) (1) If requested, a printed copy of "The Arkansas Register" shall be furnished to all state agencies and other persons at prices fixed by the Secretary of State to cover publication and mailing costs.

(2) Proceeds from the sale of "The Arkansas Register" shall be deposited in the Constitutional Officers Fund and the State Central Services Fund in the State Treasury.

(d) A progress report on publication and distribution shall be provided to the Legislative Council annually.

25-15-206. Rules - Declaratory orders.

Each agency shall provide by rule for the filing and prompt disposition of petitions for declaratory orders as to the applicability of any rule, statute, or order enforced by it. These declaratory orders shall have the same status as agency orders in cases of adjudication.

25-15-207. Rules - Actions for declaratory judgments.

(a) The validity or applicability of a rule may be determined in an action for declaratory judgment if it is alleged that the rule, or its threatened application, injures or threatens to injure the plaintiff in his person, business, or property.

(b) The action may be brought in the circuit court of any county in which the plaintiff resides or does business or in Pulaski County Circuit Court.

(c) The agency shall be made defendant in that action.

(d) A declaratory judgment may be rendered whether or not the plaintiff has requested the agency to pass upon the validity or applicability of the rule in question.

25-15-208. Administrative adjudication - Procedures generally.

(a) In every case of adjudication:

(1) All parties shall be afforded an opportunity for hearing after reasonable notice.

(2) The notice shall include:

(A) A statement of the time, place, and nature of the hearing;

(B) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(C) A short and plain statement of the matters of fact and law asserted.

(3) In every case of adjudication wherein an agency seeks to revoke, suspend, or otherwise sanction a license or permit holder, the agency or its attorney, upon the request of the license or permit holder, must provide the following information prior to conducting a hearing of adjudication:

(A) The names and addresses of persons whom the agency intends to call as witnesses at any hearing;

(B) Any written or recorded statements and the substance of any oral statements made by the license or permit holder, or a copy of the same;

(C) Any reports or statements of experts, made in connection with the particular case, including results of physical or mental examinations, scientific tests, experiments, or comparisons, or copies of the same;

(D) Any books, papers, documents, photographs, or tangible objects which the agency intends to use in any hearing or which were obtained from or belong to the license or permit holder, or copies of the same;

(E) Disclosure shall not be required of research or records, correspondence, reports, or memoranda to the extent that they contain the opinions, theories, or conclusions of the attorney for the agency or members of his staff or other state agents.

(4) Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

(5) The record shall include:

(A) All pleadings, motions, and intermediate rulings;

(B) Evidence received or considered, including, on request of any party, a transcript of oral proceedings or any part thereof;

(C) A statement of matters officially noticed;

(D) Offers of proof, objections, and rulings thereon;

(E) Proposed findings and exceptions thereto; and

(F) All staff memoranda or data submitted to the hearing officer or members of an agency in connection with their consideration of the case.

(6) Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

(7) (A) If the agency is authorized by law to issue subpoenas for the attendance and testimony of witnesses and the production of documents or things, then any party shall to the same extent be so authorized, and the agency shall issue a subpoena forthwith on written application thereof.

(B) A subpoena may be served in the manner as now provided for by statute or rule for the service of subpoenas in civil cases or by any form of mail addressed to the person to be served with a return receipt requested and delivery restricted to the addressee or agent of the addressee.

(b) Nothing in this subchapter shall prohibit informal disposition by stipulation, settlement, consent order, or default.

25-15-209. Administrative adjudication - Communication by decision maker.

(a) Unless required for the disposition of ex parte matters authorized by law, members or employees of an agency assigned to render a decision or to make final or proposed findings of fact or conclusions of law in any case of adjudication shall not communicate, directly or indirectly, in connection with any issue of fact with any person or party nor, in connection with any issue of law, with any party or his representative, except upon notice and opportunity for all parties to participate.

(b) An agency member may:

(1) Communicate with other members of the agency; and

(2) Have the aid and advice of one (1) or more personal assistants.

25-15-210. Administrative adjudication - Decisions.

(a) When, in a case of adjudication, a majority of the officials of the agency who are to render the decision have not heard the case or read the record, the decision, if adverse to a party other than the agency, shall not be made until a proposal for decision is served upon the parties and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the officials who are to render the decision. The proposal for decision shall contain a statement of the reasons therefor and of each issue of fact or law necessary thereto, prepared by the person who conducted the hearing.

(b) (1) In every case of adjudication, a final decision or order shall be in writing or stated in the record.

(2) A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding.

(c) Parties shall be served either personally or by mail with a copy of any decision or order.

25-15-211. Administrative adjudication - Licenses.

(a) When the grant, denial, or renewal of a license is required by law to be preceded by notice and an opportunity for hearing, the provisions of this subchapter concerning cases of adjudication apply.

(b) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license shall not expire until the application has been finally determined by the agency and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order, or a later date fixed by order of the reviewing court.

(c) No revocation, suspension, annulment, or withdrawal of any license is lawful unless the agency gives notice by mail to the licensee of facts or conduct warranting the intended action and unless the licensee is given an opportunity to show compliance with all lawful requirements for the retention of the license. If the agency finds that public health, safety, or welfare imperatively requires emergency action and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action, which proceedings shall be promptly instituted and determined.

(d) (1) A complaint filed by an offender with a state licensing board or state licensing agency against a licensee of the board or agency shall not be heard by the board or agency unless the complaint is accompanied by appropriately verified documentation showing that the offender has exhausted all administrative remedies under the Department of Correction grievance procedure.

(2) For purposes of this section, "offender" means any person sentenced to the Department of Correction or sentenced to the Department of Correction for judicial transfer to the Department of Community Punishment or any person confined in a community punishment center as a condition of probation, suspended imposition of sentence, or post prison transfer.

25-15-212. Administrative adjudication - Judicial review.

(a) In cases of adjudication, any person, except an inmate under sentence to the custody of the Department of Correction, who considers himself or herself injured in his or her person, business, or property by final agency action shall be entitled to judicial review of the action under this subchapter. Nothing in this section shall be construed to limit other means of review provided by law.

(b) (1) Proceedings for review shall be instituted by filing a petition within thirty (30)

days after service upon petitioner of the agency's final decision in:

(A) The circuit court of any county in which the petitioner resides or does business; or

(B) Pulaski County Circuit Court.

(2) Copies of the petition shall be served upon the agency and all other parties of record in accordance with the Arkansas Rules of Civil Procedure.

(3) In its discretion, the court may permit other interested persons to intervene.

(c) The filing of the petition does not automatically stay enforcement of the agency decision, but the agency or reviewing court may do so upon such terms as may be just. However, on review of disciplinary orders issued by professional licensing boards governing professions of the healing arts, the reviewing court, only after notice and hearing, may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of review proceedings.

(d) (1) Within thirty (30) days after service of the petition or within such further time as the court may allow but not exceeding an aggregate of ninety (90) days, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review.

(2) The cost of the preparation of the record shall be borne by the agency. However, the cost of the record shall be recovered from the appealing party if the agency is the prevailing party.

(3) By stipulation of all parties to the review proceeding, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs.

(4) The court may require or permit subsequent corrections or additions to the record.

(e) If review proceedings have been instituted in two (2) or more circuit courts with respect to the same order, the agency concerned shall file the record in the court in which a proceeding was first instituted. The other courts in which the proceedings are pending shall thereupon transfer them to the court in which the record has been filed.

(f) If before the date set for hearing, application is made to the court for leave to

present additional evidence and the court finds that the evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon any conditions which may be just. The agency may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

(g) The review shall be conducted by the court without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure before the agency not shown in the record, testimony may be taken before the court. The court shall, upon request, hear oral argument and receive written briefs.

(h) The court may affirm the decision of the agency or remand the case for further proceedings. It may reverse or modify the decision if the substantial rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the agency's statutory authority;
- (3) Made upon unlawful procedure;
- (4) Affected by other error or law;
- (5) Not supported by substantial evidence of record; or
- (6) Arbitrary, capricious, or characterized by abuse of discretion.

(i) Any agency order which is affirmed or affirmed in part by the court shall be a final judgment subject to writ of garnishment or execution to the extent it is affirmed.

25-15-213. Hearings generally.

In every case of adjudication, and in cases of rule making in which rules are required by law to be made on the record after opportunity for an agency hearing, and in cases of rule making in which, pursuant to § 25-15-204(a)(2), the agency shall direct that oral testimony be taken or a hearing held:

(1) Any person compelled to appear before any agency or representative thereof shall have the right to be accompanied and advised by counsel. Every party shall have the right to appear in person or by counsel;

(2) (A) There shall preside at the hearing:

(i) The agency;

(ii) One (1) or more members of the agency; or

(iii) One (1) or more examiners or referees designated by the agency.

(B) All presiding officers and all officers participating in decisions shall conduct themselves in an impartial manner and may at any time withdraw if they deem themselves disqualified.

(C) Any party may file an affidavit of personal bias or disqualification. The affidavit shall be ruled on by the agency and granted if timely, sufficient, and filed in good faith;

(3) (A) Presiding officers shall have power, pursuant to published procedural rules of the agency:

(i) To issue subpoenas if the agency is authorized by law to issue them;

(ii) To administer oaths and affirmations;

(iii) To maintain order;

(iv) To rule upon all questions arising during the course of a hearing or proceeding;

(v) To permit discovery by deposition or otherwise;

(vi) To hold conferences for the settlement or simplification of issues;

(vii) To make or recommend decisions; and

(viii) Generally to regulate and guide the course of the pending proceeding.

(B) In any proceeding before any agency, if any person refuses to respond to a subpoena, refuses to take the oath or affirmation as a witness or thereafter refuses to be examined, or refuses to obey any lawful order of an agency contained in its decision rendered after hearing, the agency or the presiding officer of the agency hearing may apply to the circuit court of the county where the proceedings were held or are being

held or to the circuit court of the county where a petition for judicial review was filed for an order directing that person to take the requisite action or to otherwise comply with the order of the agency. The court shall issue the order in its discretion. Should any person willfully fail to comply with an order so issued, the court shall punish him or her as for contempt;

(4) Except as otherwise provided by law, the proponent of a rule or order shall have the burden of proof. Irrelevant, immaterial, and unduly repetitious evidence shall be excluded. Any other oral or documentary evidence, not privileged, may be received if it is of a type commonly relied upon by reasonably prudent people in the conduct of their affairs. Objections to evidentiary offers may be made and shall be noted of record. When a hearing will be expedited and the interests of the parties will not be substantially prejudiced, any part of the evidence may be received in written form;

(5) Parties shall have the right to conduct such cross examination as may be required for a full and true disclosure of the facts; and

(6) Official notice may be taken of judicially cognizable facts and of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified of material so noticed, including any staff memoranda or data, and shall be afforded a reasonable opportunity to show the contrary.

25-15-214. Failure of agency to act - Action by injured party.

In any case of rule making or adjudication, if an agency shall unlawfully, unreasonably, or capriciously fail, refuse, or delay to act, any person who considers himself or herself injured in his or her person, business, or property by the failure, refusal, or delay may bring suit in the circuit court of any county in which he or she resides or does business, or in Pulaski County Circuit Court, for an order commanding the agency to act.

25-15-215. Model rules.

(a) (1) The Attorney General shall publish model rules of procedure for use by agencies.

(2) The model rules shall include general functions and duties commonly performed by agencies.

(b) (1) Each agency created after August 13, 2001, shall adopt, in accordance with the provisions of this subchapter, those model rules that are practicable.

(2) Any agency that adopts a rule of procedure that differs from the model rule,

in conjunction with adopting the rule of procedure, shall state the reason why the relevant portions of the model rules are impracticable.

25-15-216. Review of agency rules.

(a) As soon as is practicable after each regular session and fiscal session of the General Assembly, each agency shall review any newly enacted laws to determine whether:

(1) Any existing rule should be repealed or amended; or

(2) Any new rule should be adopted.

(b) At the conclusion of each review, the agency shall adopt a written report of the result of the review.

(c) A copy of each report shall be maintained as a public record by the agency.

25-15-217. Alternative sanctions.

(a) (1) Each agency which may suspend, revoke, or deny a license for acts or omissions or other conduct as provided by law may impose alternative sanctions set forth in subsection (b) of this section.

(2) The penalties set forth in subsection (b) of this section shall be supplemental to any agency's authority to impose penalties upon any person or entity under the agency's jurisdiction.

(b) Each agency may impose on any person or entity under the agency's jurisdiction:

(1) A monetary penalty not to exceed five hundred dollars (\$500) for each violation;

(2) A requirement that the person complete appropriate education programs or courses, or both;

(3) A requirement that the person or entity successfully complete:

(A) A licensing examination;

(B) A credentialing examination; or

(C) Any other examination required in order to obtain a permit, license,

registration, or credential;

(4) Conditions or restrictions upon regulated activities of the holder of a license, permit, certificate, credential, registration, or other authority; and

(5) Other requirements or penalties as may be appropriate under the circumstances of the case and which would achieve the agency's desired disciplinary purposes, but which would not impair the public health and welfare.

(c) The agency may file suit to collect any monetary penalty assessed pursuant to this subchapter, if the penalty is not paid within the time prescribed by the agency, in either Pulaski County Circuit Court or the circuit court of any county in which the person or entity under the agency's jurisdiction:

(1) Resides; or

(2) Does business.

(d) Upon imposition of a sanction against a person or entity under the agency's jurisdiction, the agency may order that the license, permit, certification, credential, or registration be suspended until the person or entity has complied in full with all applicable sanctions imposed pursuant to this section.

(e) (1) Each violation shall constitute a separate violation.

(2) The power and authority of the agency to impose a sanction authorized in this section shall not be affected by any other civil or criminal proceeding concerning the same violation.

25-15-218. Publication on the Internet - Uniform numbering system.

(a) (1) The Secretary of State shall publish on the Internet:

(A) All adopted rules of each state agency;

(B) A copy of each rule proposed by a state agency and the financial impact statement for each rule; and

(C) The notice for the adoption, amendment, or repeal of any rule required to be published on the Internet under § 25-15-204.

(2) The Secretary of State may publish the rules on the Secretary of State's Internet

website or may contract with a provider of Internet services to publish the rules on another Internet website.

(3) No fee shall be charged for public access to the rules on the Internet website.

(b) The Secretary of State may omit from publication on its Internet website any rules in which publication would be unduly cumbersome, expensive, or otherwise, so long as its Internet website indicates where and how a copy of the omitted materials may be obtained.

(c) Each state agency shall file its adopted rules, proposed rules, and notices with the Secretary of State in an electronic format acceptable to the Secretary of State.

(d) (1) The Secretary of State shall establish a uniform numbering system for rules of state agencies.

(2) Beginning July 1, 2005, all rules filed with the Secretary of State shall conform with the numbering system.

(3) By July 1, 2005, each state agency shall:

(A) Revise its rules to comply with the numbering system adopted by the Secretary of State; and

(B) Provide the Secretary of State with a complete set of the rules in an electronic format acceptable to the Secretary of State.

(e) The Secretary of State shall adopt rules implementing this section.

25-15-219. Publication on the Internet - Meeting dates.

(a) (1) Each agency shall publish on the Internet the date, time, and location of all of the agency's meetings and hearings that are open to the public.

(2) The publication shall be made at www.arkansas.gov.

(b) The agency shall publish the notice not less than three (3) days before the meeting or hearing is scheduled.

(c) This section does not apply to emergency or special meetings that meet the requirements of § 25-19-106(b)(2).

**SUBCHAPTER 3 – ADMINISTRATIVE RULES THAT IMPACT SMALL
BUSINESSES**

25-15-301 – 25-15-304. [Repealed.]