

**QUESTIONNAIRE FOR FILING PROPOSED RULES WITH  
THE ARKANSAS LEGISLATIVE COUNCIL**

DEPARTMENT \_\_\_\_\_  
BOARD/COMMISSION \_\_\_\_\_  
BOARD/COMMISSION DIRECTOR \_\_\_\_\_  
CONTACT PERSON \_\_\_\_\_  
ADDRESS \_\_\_\_\_  
PHONE NO. \_\_\_\_\_ EMAIL \_\_\_\_\_  
NAME OF PRESENTER(S) AT SUBCOMMITTEE MEETING \_\_\_\_\_  
PRESENTER EMAIL(S) \_\_\_\_\_

**INSTRUCTIONS**

In order to file a proposed rule for legislative review and approval, please submit this Legislative Questionnaire and Financial Impact Statement, and attach (1) a summary of the rule, describing what the rule does, the rule changes being proposed, and the reason for those changes; (2) both a markup and clean copy of the rule; and (3) all documents required by the Questionnaire.

If the rule is being filed for permanent promulgation, please email these items to the attention of Rebecca Miller-Rice, [miller-ricer@blr.arkansas.gov](mailto:miller-ricer@blr.arkansas.gov), for submission to the Administrative Rules Subcommittee.

If the rule is being filed for emergency promulgation, please email these items to the attention of Director Marty Garrity, [garritym@blr.arkansas.gov](mailto:garritym@blr.arkansas.gov), for submission to the Executive Subcommittee.

Please answer each question completely using layman terms.

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1. What is the official title of this rule?  
\_\_\_\_\_
2. What is the subject of the proposed rule? \_\_\_\_\_
3. Is this rule being filed under the emergency provisions of the Arkansas Administrative Procedure Act? Yes      No

*If yes, please attach the statement required by Ark. Code Ann. § 25-15-204(c)(1).*

If yes, will this emergency rule be promulgated under the permanent provisions of the Arkansas Administrative Procedure Act? Yes      No

4. Is this rule being filed for permanent promulgation? Yes No

If yes, was this rule previously reviewed and approved under the emergency provisions of the Arkansas Administrative Procedure Act? Yes No

If yes, what was the effective date of the emergency rule? \_\_\_\_\_

On what date does the emergency rule expire? \_\_\_\_\_

5. Is this rule required to comply with a *federal* statute, rule, or regulation? Yes No

If yes, please provide the federal statute, rule, and/or regulation citation.

6. Is this rule required to comply with a *state* statute or rule? Yes No

If yes, please provide the state statute and/or rule citation.

7. Are two (2) rules being repealed in accord with Executive Order 23-02? Yes No

If yes, please list the rules being repealed.

If no, please explain.

8. Is this a new rule? Yes No

Does this repeal an existing rule? Yes No

If yes, the proposed repeal should be designated by strikethrough. If it is being replaced with a new rule, please attach both the proposed rule to be repealed and the replacement rule.

Is this an amendment to an existing rule? Yes No

If yes, all changes should be indicated by strikethrough and underline. In addition, please be sure to label the markup copy clearly as the markup.

9. What is the state law that grants the agency its rulemaking authority for the proposed rule, outside of the Arkansas Administrative Procedure Act? Please provide the specific Arkansas Code citation(s), including subsection(s).

10. Is the proposed rule the result of any recent legislation by the Arkansas General Assembly?  
Yes      No

If yes, please provide the year of the act(s) and act number(s).

11. What is the reason for this proposed rule? Why is it necessary?

12. Please provide the web address by which the proposed rule can be accessed by the public as provided in Ark. Code Ann. § 25-19-108(b)(1).

13. Will a public hearing be held on this proposed rule? Yes      No

If yes, please complete the following:

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Place: \_\_\_\_\_

*Please be sure to advise Bureau Staff if this information changes for any reason.*

14. On what date does the public comment period expire for the permanent promulgation of the rule? Please provide the specific date. \_\_\_\_\_

15. What is the proposed effective date for this rule? \_\_\_\_\_

16. Please attach (1) a copy of the notice required under Ark. Code Ann. § 25-15-204(a)(1) and (2) proof of the publication of that notice.

17. Please attach proof of filing the rule with the Secretary of State, as required by Ark. Code Ann. § 25-15-204(e)(1)(A).

18. Please give the names of persons, groups, or organizations that you anticipate will comment on these rules. Please also provide their position (for or against), if known.

19. Is the rule expected to be controversial? Yes      No

If yes, please explain.

## Answers to BLR Questionnaire

### Question 7:

The Arkansas Pollution Control and Ecology Commission's authority for amending Rule 2 is found in Arkansas Code Annotated §§ 8-1-203(b)(1)(A), 8-1-201(b), 8-4-202(a), and 8-4-202(b)(3). DEQ's authority to propose these amendments to Rule 2 is found in Ark. Code Ann. §§ 8-1-202 and 8-4-206. Commission rules are necessary for the Division of Environmental Quality to implement Arkansas' environmental laws and the environmental programs delegated to the State of Arkansas by the responsible federal agencies.<sup>1</sup>

The repeal of two rules would jeopardize Arkansas's ability to maintain environmental programs delegated to the State of Arkansas and to implement Arkansas's environmental laws. The loss of a federally delegated environmental program would require that the EPA become the regulatory authority administering that program in Arkansas. Also, the loss of an Arkansas environmental program would eliminate protections provided to the citizens of Arkansas by Arkansas' environmental laws.

Arkansas Pollution Control and Ecology Commission Rule 2, "Rule Establishing Water Quality Standards for Surface Waters of the State of Arkansas," is one of Arkansas' environmental rules required to maintain a delegated federal environmental program.

This rulemaking to amend Rule 2 fulfills Arkansas' responsibilities under the federal Clean Water Act for reviewing and implementing Arkansas' water quality standards. The Clean Water Act requires states to review the applicable water quality standards at least once every three years to determine whether any modifications are appropriate.<sup>2</sup> This review process is called the Triennial Review.

Under the Clean Water Act, Arkansas' failure to maintain its water quality standards could ultimately result in Arkansas losing its delegated authority or EPA promulgating water quality standards that take the place of Arkansas' standards. The proposed revisions to Arkansas' water quality standards are necessary updates that will help ensure that Arkansas maintains its delegated authority and that the waters of the state are maintained and protected.

Rule 2 specifies appropriate water uses to be achieved and protected, taking into consideration the use and value of water for public water supplies, protection and propagation of fish, shellfish and wildlife, recreational water activities, agricultural, industrial, and other purposes including navigation. Rule 2 contains water quality criteria that protect all of these designated uses. The

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<sup>1</sup> Arkansas's environmental laws authorize DEQ to maintain and implement those environmental programs that have been delegated to the State of Arkansas by the responsible federal agencies.

<sup>2</sup> Section 303(c) of the Clean Water Act.

water quality criteria must be based on sound scientific principles and must contain sufficient parameters or constituents to protect each designated use.

The triennial review process requires a public hearing for the purpose of reviewing water quality standards and rule amendments. Based on the public hearing and comments on the proposed rule amendments, DEQ can, as appropriate, modify and adopt the proposed rule through the rulemaking process.

DEQ's proposed revisions to Arkansas' water quality standards also allow the state to choose what revisions are appropriate. DEQ utilizes the review process to streamline the rule requirements and make the rule more efficient. For example, DEQ is proposing to remove parts of Rule 2 that are no longer necessary where other parts of the rule adequately protect designated uses for those waters of the State:

- Part of Rule 2.507 Bacteria, specifically Fecal Coliform criteria.
- Part of Appendix A: Removal of trout water uses from three lakes.
- Part of Appendix A: Removal of site-specific temperature criteria on an Unnamed tributary of Lake June.

These amendments and the other changes are explained in more detail in DEQ's proposed Triennial Review rulemaking.

#### **Question 11:**

Rule 2 establishes the Water Quality Standards for Surface Waters of the State of Arkansas. Arkansas has been delegated the authority to establish and administer water quality standards for the State of Arkansas pursuant to the Clean Water Act, 33 U.S.C. § 1251 et seq. The Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-4-101 et seq., provides the authority for Arkansas to utilize this delegated authority to establish and administer water quality standards.

The Clean Water Act requires delegated states to review their water quality standards every three years and to amend those standards as necessary. This review process is called the triennial review. In accordance with the Clean Water Act and the Arkansas Water and Air Pollution Control Act, this proposed rule is the result of that triennial review. The proposed revisions to Arkansas' water quality standards are necessary updates to ensure that Arkansas maintains its delegated authority under the Clean Water Act. These revisions will help ensure that waters of the State are maintained and protected.

These revisions fall into the following categories:

- a. Amendments to provide clarification to section of the rule that were otherwise unclear and minor corrections to make the rule more illustrative of the regulatory intent;
- b. Amendments to be consistent with the Code of Arkansas Rules, in which Rule 2 will become 8 CAR Part 21;
- c. Amendments to incorporate revised criteria;

- d. Amendments to incorporate new criteria; and
- e. Amendments to remove certain criteria

**Question 19:**

Rule amendments impacting Arkansas' water quality standards can also impact permit limits for permits issued by the Division of Environmental Quality to discharge into waters of the state. These changes in permit limits can make such amendments to Arkansas' water quality standards controversial. DEQ does engage in an extensive stakeholder process . The list of interested parties provided in response to question 18 includes parties invited to participate in the stakeholder process. DEQ's efforts to present these proposed changes to stakeholders does not always result in consensus and agreement. Those parties who disagree with the proposed rule will have an opportunity to comment on any amendment thereto. Before DEQ can finalize a rulemaking, DEQ is required to provide a response to the comments it received.