

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

DEPARTMENT Energy & Environment Division of Environmental Quality  
BOARD/COMMISSION \_\_\_\_\_  
BOARD/COMMISSION DIRECTOR \_\_\_\_\_  
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NAME OF PRESENTER(S) AT SUBCOMMITTEE MEETING \_\_\_\_\_  
Lauren Ballard, Michael McAlister, Stacie Wassell  
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**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?  
Regulations for State Administration of the National Pollutant Discharge Elimination System (NPDES)
2. What is the subject of the proposed rule? NPDES permit program
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.

[40 C.F.R. §§ 122.21\(e\)\(3\), 122.44\(i\)\(l\)\(iv\), 125 Subparts I and J, 127, and 136.1 \(c\)](#)

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.

[Arkansas Code § 8-4-202](#)  
[APC&EC Rule 6.104\(B\)](#)

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.

[See attachment.](#)

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).

[Arkansas Code §§ 8-1-203\(b\)\(1\)\(A\) and 8-4-202\(a\)](#)

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).

[Acts 94 and 575 of 2015](#)

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

[See attachment.](#)

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).

[https://www.adeg.state.ar.us/regs/draft\\_regs.aspx](https://www.adeg.state.ar.us/regs/draft_regs.aspx)

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

If yes, please complete the following:

Date: 08/26/2024

Time: 2:00 pm

Place: Commission Room, E&E Headquarters, 5301 Northshore Drive, North Little Rock, AR 72118

*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. 09/05/2024

15. What is the proposed effective date for this rule? On or about December, 2024

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.

[See attachment.](#)

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

If yes, please explain.

## **Answers to BLR Questionnaire**

### **Question 7:**

Arkansas Pollution Control and Ecology Commission is given the power to adopt, modify, or repeal rules implementing substantive statutes charged to the Division of Environmental Quality for administration. See Ark. Code Ann. §§ 8-1-203 and 8-4-202. Arkansas Pollution Control and Ecology Commission rules are necessary for the Division of Environmental Quality to implement Arkansas's 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's environmental laws.

Arkansas Pollution Control and Ecology Commission Regulation 6, "Regulations for State Administration of the National Pollutant Discharge Elimination System (NPDES)," is one of Arkansas's environmental rules required to maintain Arkansas's delegated federal authority to administer the National Pollutant Discharge Elimination System program.

This rulemaking to amend Regulation 6 fulfills Arkansas's responsibilities under the federal Clean Water Act to maintain appropriate legal authority to implement and administer the National Pollutant Discharge Elimination System program. The Clean Water Act requires states with delegated authority to administer the National Pollutant Discharge Elimination System, to review the applicable rules, and to determine whether any modifications are appropriate. This rulemaking is required to update Regulation 6 to incorporate changes to federal rules that have occurred since the last revision. For example, this update will incorporate the rule concerning the e-reporting requirements.

Under the Clean Water Act, Arkansas's failure to maintain its appropriate legal authority to implement and administer the National Pollutant Discharge Elimination System program could ultimately result in Arkansas losing its delegated authority and EPA becoming the permitting authority in Arkansas. The proposed revisions are necessary to ensure that Arkansas will maintain its delegated authority to administer the National Pollutant Discharge Elimination System program.

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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.

**Question 11:**

The proposed revisions to Regulation 6 are necessary updates to ensure that Arkansas maintains its delegated authority under the Clean Water Act to administer the National Pollutant Discharge Elimination System program.

These revisions fall into the following categories:

- 1) to update to the incorporation date in Regulation 6.104 to incorporate revisions to the applicable federal rules, specifically required updates to 40 C.F.R. §§ 122.21 (e)(3), 122.44(i)(1)(iv), 125 Subparts f and J, 127 (e-reporting) and 136.l(c).
- 2) to make revisions to Regulation 6.205 required by Acts of the Arkansas General Assembly.
- 3) To make changes to:
  - a. Regulation 6.103 concerning definitions;
  - b. Regulation 6.105 changing him to him or her;
  - c. Regulation 6.204 concerning industrial user pretreatment requirements; and
  - d. Chapter Six's title has been revised to more accurately describe the chapter's content due to inclusion of Buffalo National River Watershed;
- 4) To make Regulation 6 consistent with the rule proposed by the Department of Agriculture for Liquid Animal Waste Management Systems.

**Question 18:**

The Division expects to receive comments from NPDES permittees. The position of these permittees in regard to the rule amendments is unknown.

The Division expects to receive comments from residents of the Buffalo National River Watershed, recreational users of the river, and those who own and operate businesses in the watershed.

The Division expects broad support for the rule change. The Division has not identified a group or individual who intends to oppose this rule change but acknowledges that such opposition is possible.