

QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE

DEPARTMENT/AGENCY Arkansas Department of Environmental Quality
DIVISION Legal Division
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INSTRUCTIONS

- A. Please make copies of this form for future use.
B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.
C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Donna K. Davis
Subcommittee on Administrative Rules and Regulations
Arkansas Legislative Council
Bureau of Legislative Research
Room 315, State Capitol
Little Rock, AR 72201

1. What is the short title of this rule? Regulation No. 8, Administrative Procedures
2. What is the subject of the proposed rule? Administrative Procedures
3. Is this rule required to comply with federal statute or regulations? Yes _____ No X

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

4. Was this rule filed under the emergency provisions of the Administrative Procedure Act?
Yes _____ No X

If yes, what is the effective date of the emergency rule? _____

When does the emergency rule expire? _____

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes _____ No _____



5. Is this a new rule? Yes _____ No X If yes, please provide a brief summary explaining the regulation.

Does this repeal an existing rule? Yes _____ No X If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule? Yes X No _____ If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."

6. Cite the state law that grants the authority for this proposed rule? If codified, please give Arkansas Code citation.

Ark. Code Ann. §8-4-201(b); Powers and duties of department and commission generally

7. What is the purpose of this proposed rule? Why is it necessary?
The Arkansas Pollution Control and Ecology Commission (APCEC) Regulation No. 8 sets forth the administrative procedures for public participation in decisions of the Arkansas Department of Environmental Quality, Commission review of the Director's decisions, and rulemaking. The regulation has not been updated since 2000 and is used every day by environmental practitioners appearing before the Commission and members of the public that are interested in participating in environmental decision-making. The regulation needs to be updated to include legislation that has been passed since 2000. The regulation also needs to be revised to improve the overall organization in order to make the administrative procedures easier to follow and more accessible to practitioners and the public.

8. Will a public hearing be held on this proposed rule? Yes X No _____

If yes, please complete the following:

Date: September 9, 2008

Time: 2:00 P.M.

Place: Commission Room, ADEQ Headquarters, North Little Rock

9. When does the public comment period expire for permanent promulgation? (Must provide a date.)

10 business days after the date of the public hearing: on or about September 24, 2008

10. What is the proposed effective date of this proposed rule? (Must provide a date.)

On or about January 7, 2009

11. Do you expect this rule to be controversial? Yes _____ No X If yes, please explain.

This rule may not necessarily be controversial but it will probably generate significant comment from the legal and industry community that practice before the Commission. Those groups have been included in a stakeholder group convened by the Department prior to initiation of this rulemaking and many issues have been resolved prior to initiation.

12. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known.

Arkansas Bar Association Environmental Law Section; Arkansas Environmental Federation;
interested members of the public that are concerned with the Commission's rulemaking
procedures

Summary of Proposed Rule

1. The proposed changes to Regulation No. 8 include formatting and numbering changes to provide consistency and ease of use; for example, sections regarding filing deadlines have been rearranged into one section instead of spread through out the regulation.
2. The definitions contained in Regulation 8.103, Definitions, were clarified and the following definitions were added:
 - i. Administrative Penalty;
 - ii. Applicant;
 - iii. Administrative Permit Amendment;
 - iv. Commission Secretary;
 - v. Declaratory Order;
 - vi. Implementing Agreement;
 - vii. Major Modification;
 - viii. Notice of Bond Forfeiture;
 - ix. Permit; and
 - x. Subpoena
3. A new provision regarding disclosure statements has been added in Regulation 8.204, Non-compliance Determination, to conform with Ark. Code Ann. § 8-1-106, as well as Acts 1005 and 1019 of 2007.
4. Regulations 8.206, Request for Public Hearing on Application for Permit and 8.606, Filing of Pleadings or Other Documents, have been amended to reflect procedures for filing pleadings and written comments by facsimile or electronic mail.
5. Regulation 8.208, Public Comment on Draft Permitting Decision, has been added to allow the extension of a comment period by the Director, if exceptional circumstances warrant.
6. Regulation 8.216, Interim Authority and Temporary Variances, has been added to comply with Ark. Code Ann. § 8-4-230 and to provide a procedure for requests and appeals of interim authorities and temporary variances.

7. Regulation 8.405, Public Notice of Notices of Violations and Consent Administrative Orders, provides for a second public notice date on the 25th day of each month to address comment periods for no penalty Consent Administrative Orders (CAOs), which are effective upon the Director's signature. A thirty day public comment period may expire before a no penalty CAO is noticed, in the absence of a second public notice.
8. Regulation 8.619, Oral Argument Before the Commission, has been amended to clarify the requirements for requesting oral argument before the Commission.
9. Regulation 8.703, Filing of Commission Response and Record, has been added to address the filing of the Commission response and record upon appeal.
10. Regulation 8.808, Contents of Rulemaking Docket, has been amended to promote consistency between the regulation, statute and the Commission's Regulation Formatting and Drafting Guidelines.
11. Regulation 8.812, Economic Impact and Environmental Benefit Analysis Requirements, has been added as a result of the recommendations developed by the Commission's subcommittee will be required during rulemaking, with limited exceptions. An appendix including forms for the analysis has also been added.
12. Regulations 8.905, Request to Appeal Before the Commission, and 8.906, Public Comments, have been amended to address the procedures for requesting to appear before the Commission and the procedures for submitting public comments at a Commission meeting, respectively. Currently, these procedures are in the Guide to Commission Operations.