

REGULATION FORMATTING AND DRAFTING GUIDELINES



By the Arkansas Department of Environmental Quality and
Arkansas Pollution Control and Ecology Commission

Updated April 2016

TABLE OF CONTENTS

Introduction	4
Formatting Requirements	4
Software.....	4
Fonts	4
Tabs	4
Deleting language	4
Adding language	4
Use of Justify	4
Use of Bold	4
Page Numbering	4
Table of Contents	5
Definitions	5
Chapter and Section Numbering	5
Stylistic Requirements	5
Topics	5
Acronyms	5
Statutory Authority	5
Natural Disasters	5
Department definition	5
Effective date language	5
Preparation for Initiation of Rulemaking	5
Preparation Deadlines	5
Economic Impact Statement	6
Public Notice & Hearing Dates	6
ADEQ Review	6
Agenda Deadline	6
Packet Contents for Initiation of Rulemaking	6
Petition to Initiate Rulemaking	6
Regulation Cover Page	6
Secretary of State Numbering	6
Title	7
Seal	7
Cover Dates	7
Legislative Questionnaire	7
Financial Impact Statement	7
ADED Approval Letter	7
Economic Impact/Env. Benefit Analysis	7
Proposed Minute Order	8

Copies	8
Post-Commission Approval to Initiate	8
Copies	8
Legislative Council	8
Public Hearing	9
Response to Comments	9
Petition for Final Approval	9
Packet Contents	9
Email Submission	10
Post-Commission Approval	10
Appendix Index	11

GUIDELINES FOR ADEQ AND THIRD PARTY REGULATION DRAFTERS

I. INTRODUCTION

Any person may petition the Arkansas Pollution Control and Ecology Commission for the issuance, amendment, or repeal of a rule or regulation. The guidelines and links to samples of forms are set out below. Unless stated otherwise, these guidelines are applicable to both the Arkansas Department of Environmental Quality (ADEQ) and Third Parties.

Third Parties: Any third party having a question concerning the guidelines or forms should contact Charles Moulton, Administrative Law Judge. *See Appendix 1* for contact information.

ADEQ Staff: Any ADEQ staff member having questions concerning the guidelines or forms should contact ADEQ's Legal Division. See Appendix 1 for contact information.

II. FORMATTING REQUIREMENTS

A. The only acceptable word processing software to use is Microsoft Word.

B. Use the fonts: Times New Roman, Arial or Courier New. Use of any other fonts, especially printer fonts, may cause the printed and electronic versions of the regulation to differ in line breaks and/or pagination.

C. Use tabs to set columns and indents, not spaces. Use Break to force a page break, not multiple paragraphs.

D. Formatting

1. Deleting language. Strike though language to be deleted. For example: The purpose of the regulation is to promote proper use of ~~natural~~ resources.

2. Adding language. Underline any new language. For example: The purpose of the regulation is to promote proper use of the state's natural resources.

3. Justify all paragraphs.

4. Bold all headings.

5. Page numbering. Use Microsoft Word's automatically generated page numbers. Page numbers should be placed at the bottom center of the page. The table of contents should be numbered with small Roman numerals. For example, i, ii, iii, iv, etc. The following page numbers are to be hyphenated relating to the chapters of the regulation. The first number corresponds to the section or chapter number and the second number is the page number within a section. For

example, Chapter 1 would be numbered 1-1, 1-2, 1-3, etc. For Appendices, the system would be A-1, A-2, A-3, etc.

6. Table of Contents. Page numbers, paragraph numbers, and paragraph headings should be reflected in a Table of Contents. (See Appendix 2).

7. Definitions. Definitions do not need to be numbered. Boldface the defined words.

8. Chapter and Section Numbering. Each section of the regulation must be numbered to reflect the regulation, chapter and section numbers. For example, Regulation 12, Chapter 3, Section 7 would be numbered, Reg.12.307. The headings must reflect the intent of the paragraph. Underline the section title. Do not underline the section number. For example: “Reg.12.307 Deductible”. **DO NOT** place periods at the end of each heading title or subsection number.

III. STYLISTIC REQUIREMENTS

A. Limit each paragraph to a single topic or subtopic.

B. Do not use any acronyms in the regulation. Spell out all references. For example: “Arkansas Department of Environmental Quality,” not “ADEQ.” The Commission must be referred to as the “Arkansas Pollution Control and Ecology Commission.”

C. Statutory Authority: The Act or statute authorizing the rule or regulation must be cited in the regulation.

D. Natural Disasters: The phrase “Act of God” must be replaced, if present, with the term “natural disasters.”

E. The following definition must be included in all regulations: “Department means the Arkansas Department of Environmental Quality, or its successor.”

F. The following language must be included in the body of all regulations: “This regulation is effective ten (10) days after filing with the Secretary of State, the State Library and the Bureau of Legislative Research.”

IV. PREPARATION FOR INTIATION OF RULEMAKING

A. PREPARATION DEADLINES - Failure to meet any deadline may result in delaying initiation of proposed regulation.

1. Act 759 of 2013 repealed the need to assess the economic impact a rule may have on small businesses and the need to prepare an economic impact statement. However Governor Hutchinson has issued EO 02-15 which has, as its stated purpose, the prohibition of rules and regulations that unduly burden business. Executive Order 15-02 also requires all new rules to be submitted to the Governor’s office in order for the Governor to determine whether a proposed

rule or regulation will unnecessarily burden business. In light of EO 15-02 the Commission recommends that an economic impact/environmental benefit analysis continue to be performed by ADEQ and Third-Parties.

2. **Applicable to ADEQ and Third Parties** Provide Governor's office a copy of rulemaking packet consistent with Executive Order 15-02 prior to filing with the Commission for initiation.

3. **Applicable to ADEQ and Third Parties** Contact ADEQ Public Outreach and Assistance Division to schedule public notice dates and hearing dates. Include scheduled dates in draft minute order.

4. **Applicable to ADEQ:** At least thirty (30) days before the date on which regulation packet is to be filed with the Commission:

i. The packet must be submitted to the Legal Division for formatting review.

ii. Revised regulation packet must then be routed through the Fiscal Division, the Legal Division and the Director's Office for review and approval.

5. **Applicable to ADEQ and Third Parties** The Commission's filing deadline is approximately two (2) weeks before the scheduled Commission meeting. Check with the Commission secretary for exact deadline date. The proposed regulation packet must be submitted by the filing deadline or it will not be placed on that month's agenda.

B. PACKET CONTENTS FOR INITIATION OF RULEMAKING

A Petition to Initiate Rulemaking (hereinafter "rulemaking packet" or "packet") must be filed with the Commission stating the reasons for revising the regulation and requesting that the Commission initiate the rulemaking process. The petition must cite to the specific statute that gives the Commission the authority to adopt the proposed rule.

The Petition shall include the following exhibits:

1. **Exhibit A:** Proposed Regulation¹ which includes the following:

i. **Cover Page**

Every rule revision, even if it is changing one line in the rule, must include a proposed cover page. The cover page must include the following:

a. **Secretary of State Numbering.** The Secretary of State requires that its system for identifying a regulation is to be inserted at the top, right hand corner of the cover page.

For example: Pollution Control and Ecology Commission 014.00-0??; where the last two digits

¹ In the majority of cases, any change to a regulation requires submittal of the entire regulation to the Commission. However, if the proposed changes to regulation are limited, contact the Administrative Law Judge for instructions.

are the regulation's number. The number that identifies Regulation No. 23 would be 014.00-023 or Regulation No. 2 would be 014.00-002.

b. The cover page should be titled: **Arkansas Pollution Control and Ecology Commission** with the number of the regulation and the regulation title below.

c. The seal used on the cover page must be the seal of the State of Arkansas.

d. Cover Dates

2. Initial Draft

a. The initial draft should state the month and year in which the draft regulation will first be submitted to the Commission. For example: "Submitted to the Commission in September 2015."

b. The cover must include the words "Mark-Up Draft" at the bottom of the cover page above the submitted date. Do not use the watermark feature of Microsoft Word.

3. Exhibit B: Governor's approval letter, other correspondence, or other documentation consistent with Executive Order 15-02.

4. Exhibit C: The Legislative Questionnaire;

5. Exhibit D: The Financial Impact Statement;

6. Exhibit E: Economic Impact/Environmental Benefit Analysis;

7. Exhibits F: Other exhibits which may include a study, a report, or any other information the petitioner deems relevant.

8. Exhibit [last letter of total exhibits]: The proposed Minute Order to initiate rulemaking which is always the last exhibit in the rulemaking package. *See Appendix 3.*

C. COPIES

1. File the original and three (3) copies of the proposed rulemaking packet with the Commission.

2. **ADEQ**: After filing the proposed packet with the Commission, email copy of the packet to the Commission Secretary for publication to the website.

3. **Third Parties**: At the time of filing the petition to initiate rulemaking contact the Commission Secretary to determine whether an email or CD (disk) of the filed materials will be necessary for publication to the website. If a CD disc is necessary, submit one disk to the Commission Secretary containing each pleading, document and/or exhibit as a separate, clearly labeled PDF file.

V. ACTIONS TO TAKE FOLLOWING INITIATION OF RULEMAKING

A. COPIES

1. On the Monday following the Commission Meeting during which the petition to initiate rulemaking was approved, file with the Public Outreach and Assistance Division of ADEQ:

i. For ADEQ and Third Parties:

- a. Fifty (50) copies of a one-page executive summary; and
- b. The marked up revisions of the regulation changes.

B. LEGISLATIVE COUNCIL

Approval must be obtained from the Administrative Rules and Regulations Committee consistent with Act 1258 of 2015 and the Public Health and Welfare Committee of the Arkansas Legislature before the proposed regulation may be submitted to the Commission for final adoption.² Please note that the following items will be scheduled by the Public Outreach and Assistance Division of ADEQ to take place after the Responsive Summary is completed. (See Section D, below.)

1. After final response to comments is filed, contact the Public Outreach and Assistance Division of ADEQ to coordinate completion of document for submission to the Legislative Council of the Arkansas General Assembly and scheduling a public hearing.
2. After coordinating document completion with Public Outreach and Assistance, call Public Health and Welfare Committee to confirm being placed on Committee's agenda. Attend on scheduled date prepared to answer any questions.
3. After coordinating document completion with Public Outreach and Assistance, call Subcommittee on Administrative Rules and Regulations, Arkansas Legislative Council, 501-682-1937, to confirm that the proposed regulation has been placed on the Committee's agenda. Attend on scheduled date prepared to answer any questions.

C. PUBLIC HEARING

Two (2) weeks before the scheduled public hearing contact Public Outreach and Assistance Division of ADEQ regarding preparations for the public hearing.

² If a regulation involves a mining matter, then approval must be sought from the Administrative Rules and Regulations Subcommittee and the House & Senate Interim Committees on Agriculture and Economic Development Committee.

D. RESPONSE TO COMMENTS

1. **For ADEQ and Third-Parties:** At the end of the public comment period, prepare a Responsive Summary whether or not any comments are received.

2. Make any necessary revisions to the regulation based on the public comments. Note: If changes are made that are not a logical outgrowth of the proposed regulation, it may require a second public notice and public comment period.

VI. PETITION FOR FINAL APPROVAL

A. PACKET CONTENTS– At least fourteen (14) days before the Commission meeting during which adoption will be sought, ADEQ or the Third Party must submit to the Commission an original and three (3) copies of a Motion to Adopt Changes.

The Motion must have the following exhibits attached:

1. Exhibit A: Statement of Basis and Purpose signed by the preparer;
2. Exhibit B: Responsive Summary signed by the preparer;
3. Exhibit C: The final revised regulation without strikethroughs or markups. The cover sheet must indicate at the bottom, “Approved by Arkansas Pollution Control and Ecology Commission: [insert anticipated date of Commission approving adoption],”;
4. Exhibit D: Regulation Tracking Sheet;
5. Exhibit E: Documented approval from Governor’s office and Legislative Council Committees;
6. Exhibit F: Proposed Minute Order adopting the proposed revisions. *See Appendix 4*. Check Commission website for names of current Commissioners to include on the Minute Order.

B. EMAIL SUBMISSION

1. **For ADEQ and Third Parties** When filing final packet with the Commission, provide a CD (disk) in PDF format of the final packet to the Commission Secretary for placement on the web. After filing final packet with the Commission Secretary include a copy of the final minute order for rulemaking adoption in Microsoft Word. *See Appendix 4*.

2. **For Third Parties Only:** One disk must be submitted to the Commission Secretary containing each pleading, document and/or exhibit as a separate, clearly labeled PDF file. Email or provide a separate CD (disk) in Microsoft Word format of the final packet to ADEQ.

VII. POST COMMISSION APPROVAL

A. Prepare nineteen (19) copies and one (1) CD (disk) of the approved regulation which was contained in the final packet and submit the copies and the disk to the Commission Secretary.

B. The Commission Secretary will file the regulation with the Secretary of State, Arkansas State Library, and Bureau of Legislative Research. The Secretary will notify ADEQ of the filing date of the regulation by sending ADEQ a copy of the Secretary of State's Transmittal Sheet. The effective date of the regulation will be ten (10) days after the date contained in the file-mark on the Transmittal Sheet.

C. After receiving the Transmittal Sheet from the Commission Secretary, email the final PDF version of the regulation to the Commission Secretary.

REGULATION FORMATTING AND DRAFTING GUIDELINES

APPENDICES

APPENDIX 1: Contacts List
APPENDIX 2: Links To Recent And Archived Rulemaking Dockets.....
APPENDIX 3: Sample Initiate Rulemaking Minute Order
APPENDIX 4: Sample Adopt Rulemaking Minute Order.....

Appendix 1

Contacts List

Name	Title	Agency	Phone	Email
Charles Moulton	Adm. Law Judge	APC&EC	(501) 682-7892	<u>moulton@adeq.state.ar.us</u>
Goff, Pat	Commission Secretary	APC&EC	(501) 682-7893	<u>goffpatti@adeq.state.ar.us</u>
Szenher, Doug	Public Information Coordinator	ADEQ Public Outreach & Assist. Div.	(501) 682-9015	<u>doug@adeq.state.ar.us</u>
Ellen Carpenter	Attorney	ADEQ Legal	(501) 682-0889	<u>carpenter@adeq.state.ar.us</u>
Davis, Donna	Sub-Committee on Adm. Rules and Regs	Legislative Council	(501) 682-1937	donna@blr.arkansas.gov
Phil Price	Public Health and Welfare Committee	Legislative Council	(501) 537-9196	philp@blr.arkansas.gov
	Small Business Development Unit	Arkansas Economic Development Commission	(501) 682-6105	

Appendix 2

Prior to filing a rulemaking request with the Commission parties should examine the Commission website at <https://www.adeg.state.ar.us/commission/> for recent rulemaking filings. Forms from the Legislative Council are periodically updated so parties are advised to contact the Legislative Council and the Arkansas Economic Development Commission for current forms. The composition of the Commission also changes and parties should check the Commission website for a list of current Commissioners.

Two recent rulemaking dockets - <https://www.adeg.state.ar.us/regs/drafts/3rdParty/reg05/14-002-R/> and <https://www.adeg.state.ar.us/regs/drafts/reg21/13-009-R/> serve as an example of the rulemaking process from initiation, through public notice and comment, to final adoption.

Current draft rulemaking dockets can be located at:
https://www.adeg.state.ar.us/regs/draft_regs.aspx

Archived rulemaking dockets can be located at:
https://www.adeg.state.ar.us/regs/archives/closed_dockets.aspx.

Appendix 3

**ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION**

**SUBJECT Regulation No. - _____
Regulations for State Administration
of the National Pollutant Discharge
Elimination System Third-Party
Rulemaking The Ozark Society and
the Arkansas Public Policy Panel**

DOCKET NO. 14-003-R

MINUTE ORDER NO. 15-_____

PAGE 1 OF 3

On April 10, 2014, the Ozark Society and the Arkansas Public Policy Panel, “petitioners,” filed a Petition to Initiate Third-Party Rulemaking to Amend Regulation No. 6, Regulations for State Administration of the National Pollutant Discharge Elimination System. Pursuant to Ark. Code Ann. 8-4-202(c), the Arkansas Pollution Control and Ecology Commission (Commission) has sixty (60) days in which to either institute rulemaking proceedings or to give written notice denying the petition for rulemaking. The Petition has been designated as Docket No. 14-003-R.

The Commission’s Regulations Committee met on April 25, 2014, to review the Petition and it recommends that the Commission institute a rulemaking proceeding to consider adopting the proposed amendments to Regulation No. 6. The Regulations Committee also recommends adoption of the following procedures and schedule.

1. Petitioners and the Arkansas Department of Environmental Quality (ADEQ) shall file an original and one (1) copy and a computer disk in Word of all materials required under this Minute Order. This requirement does not apply to transcripts.
2. Persons submitting written public comments shall submit them to ADEQ, and ADEQ will deliver the originals of all comments to the Commission Secretary at the conclusion of the proceeding.
3. Petitioners will submit to the ADEQ’s Public Outreach and Assistance Division (POA), the following:
 - a. A proposed public notice to be used in mailing notice to interested persons. The proposed public notice will, after review by ADEQ POA, be approved for use. The public notice shall conform to the requirements of Regulation No. 8.803. The public notice shall be published not later than 45 days prior to the first public hearing. By agreement, petitioners shall pay the costs of the newspaper publications and the costs of the appropriate industry, trade or professional publications chosen by the Commission, and shall file only the original proof of publication with the Commission. ADEQ shall be responsible for mailing the public notice to all persons who have requested advance notice of rulemaking proceedings, and the costs of the mailing.
 - b. Fifty (50) copies of the executive summary of the proposed rulemaking.

**ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION**

**SUBJECT Regulation No. 6
Regulations for State Administration
of the National Pollutant Discharge
Elimination System
Third-Party Rulemaking
The Ozark Society and the
Arkansas Public Policy Panel**

DOCKET NO. 14-003-R

MINUTE ORDER NO. 15-

PAGE 2 OF 3

-
- c. Bound copies of the Petition and all supporting documentation, the number of which is to be determined by POA.
 4. A public hearing shall be conducted on June 17, 2014, at 6:00 p.m. in the Durand Conference Center, Room A, at North Arkansas College, 303 N. Main St., Harrison, AR 72601.
 5. The period for receiving all written comments from petitioners, the public, and ADEQ shall conclude ten (10) business days after the date of the public hearing, unless an extension of time is granted.
 6. Petitioners and ADEQ shall each file, not later than fourteen (14) days before the Commission meets to consider adoption of the proposed regulation, a Statement of Basis and Purpose and Responsive Summary as required by Regulation No. 8.815. In addition, petitioners and ADEQ shall file a proposed Minute Order deciding this matter.
 7. ADEQ shall seek review of the proposed rule from the from the Joint Interim Committee on Administrative Rules and Regulations.
 8. The Regulations Committee and the Commission may consider this matter at their August 22, 2014, meeting. In the event the appropriate legislative committees do not complete review of the proposed rule by the above date, the Regulations Committee and the Commission will consider the proposed amendments to the regulation after review by the appropriate legislative committees. Members of the Regulations Committee may ask questions of any persons that made oral or written comments and it will make a recommendation to the Commission.
 9. At the Commission meeting, the presentation of oral statements and legal arguments will be regulated as follows:
 - a. The Chair of the Commission will permit members of the public to make a statement to the Commission. No more than three (3) minutes will be allowed for each statement. The period for statements will close at the end of one (1) hour, or sooner if all interested persons have completed their statements. At the discretion of the Chair, the three (3) minute time may be extended. At the discretion of the Chair, the one (1) hour oral statement period may also be extended.

**ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION**

**SUBJECT Regulation No. 6
Regulations for State Administration
of the National Pollutant Discharge
Elimination System
Third-Party Rulemaking
The Ozark Society and the
Arkansas Public Policy Panel**

DOCKET NO. 14-003-R

MINUTE ORDER NO. 15-

PAGE 3 OF 3

-
- b. At the discretion of the Chair, an attorney representing one or more individuals, a corporation or other legal entity may be permitted to address the Commission.
 - c. Legal counsel or other designated persons representing petitioners and ADEQ shall be permitted ten (10) minutes in which to address the Commission. The Chair may, at his or her discretion extended the ten (10) minute time limit.
 - d. At the conclusion of all statements, the Chair will call on each Commissioner for the purpose of asking the attorneys or persons sponsoring statements who are present, any questions they may have. Attorneys will not be permitted to respond or ask follow-up questions of any person questioned by a Commissioner.

After each Commissioner has had an opportunity to ask questions, the Chair will entertain a motion on the matter, allow discussion, and call for a vote of the Commission members.

- 10. If petitioners desire a transcript of the public hearing, Regulations Committee meeting, and Commission meetings, or if required by the Commission, petitioners agree to pay all costs for the preparation of a transcript of the public hearings, Regulations Committee meetings and Commission meetings that concern this docket and occur after the adoption of the Minute Order. If a transcript is required, petitioners will employ the court reporter and the court reporter shall deliver the original transcript to the Commission Secretary.

COMMISSIONERS:

_____ Joseph Bates
_____ Lawrence Bengal
_____ Ricky Chastain
_____ Chris Gardner
_____ Miles Goggans
_____ Joe Fox

_____ Ann Henry
_____ Swan "Rusty" Moss, Jr
_____ Robert Reynolds
_____ Dr. Wesley Stites
_____ Bekki White
_____ Randy Young

Submitted by: Ross Noland

DATE P

Appendix 4

**ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION**

**SUBJECT Regulation No. 6
Regulations for State Administration of the
National Pollutant Discharge Elimination
System
Third-Party Rulemaking
The Ozark Society and the
Arkansas Public Policy Panel**

DOCKET NO. 14-003-R

MINUTE ORDER NO. 15-

PAGE 1 OF 1

Petitioners the Ozark Society and the Arkansas Public Policy Panel's Motion to Adopt Changes to Regulation No. 6 is before the Arkansas Pollution Control and Ecology Commission. Pursuant to public notice and hearing, and in consideration of the Petition to Initiate Rulemaking, comments received during the public comment period, the Statement of Basis and Purpose, and other pleadings, exhibits and evidence constituting the record in this docket, the Commission hereby grants the Motion to Adopt Changes to Regulation No. 6. The amendments to Regulation No. 6 found in the Final Revised Regulation, and attached to the Motion to Adopt Changes as Exhibit C, are hereby adopted.

PROMULGATED THIS 28TH DAY OF AUGUST, 2015, BY ORDER OF THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION.

By: Ann Henry, Chair

COMMISSIONERS:

_____ Joseph Bates
_____ Lawrence Bengal
_____ Ricky Chastain
_____ Chris Gardner
_____ Miles Goggans
_____ Bekki White
_____ Randy Young

_____ Ann Henry
_____ Swan "Rusty" Moss, Jr
_____ Robert Reynolds
_____ Dr. Wesley Stites
_____ Joe Fox

Submitted by: Ross Noland