

3000 Promulgation of Agency Rules; Approval of Internal Policies and Procedures

I. Applicability

This policy supports the uniform system for promulgation of rules by the Department of Human Services (DHS) in accordance with the Arkansas Administrative Procedures Act and all other applicable state law (Ark. Code Ann. § 10-3-309 et seq., & Ark. Code Ann. §§ 25-15-201 et seq.). All agency rules and policies shall comply with federal and state laws. DHS has no “unwritten rules.” This policy is applicable to all divisions within DHS and to all managers and staff responsible for policy, procedures, and rules within their particular division.

II. Rule

- (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, without limitation, the amendment or repeal of a prior rule. “Rule” does not mean statements concerning the internal management of an agency and that do not affect the private rights or procedures available to the public (Ark. Code Ann. §25-15-202 (9)(A) and (B)).
 - (1) In this policy, the term “rule” includes any agency statement that is required to be promulgated, regardless of whether a division refers to that statement as a “rule,” “policy,” “manual,” or other term.
 - (2) In this policy, the term “internal policies and procedures” refers to internal processes that are not required to be promulgated.

III. Promulgation

- (a) DHS Divisions or Offices promulgating rules shall follow the procedure outlined in the DHS Administrative Procedures Manual, Chapter 906 (see DHS APM 906).
- (b) Prior to promulgation, all proposed agency rules shall first undergo an internal review and approval as follows:
 - (1) Approval of the Director from the originating division;
 - (2) Legal review by OCC;
 - (3) Fiscal impact review by the DHS CFO or designee;
 - (4) Review by the DHS Policy Review Committee;
 - (5) Approval of the DHS Director; and,
 - (6) Review of the Governor’s Office (required by Executive Order 15-02).
- (c) The agency shall grant an opportunity for a public 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 (Ark. Code Ann. § 25-15-204 (a)(2)(B)).
- (d) Prior to the adoption, amendment, or repeal of a rule, the agency shall afford all interested persons reasonable opportunity to submit written data, views, or arguments, verbally or in writing (Ark. Code Ann. § 25-15-204 (a)(2)(A)). The agency shall fully consider the

written and verbal submissions regarding the proposed rule before initiating the “Final filing process” (refer to DHS APM 906).

- (e) The agency shall file the final rule with the Secretary of State for adoption only after review and approval by the Administrative Rules and Regulations Subcommittee.
- (f) A rule becomes effective ten (10) days after final filing with the Secretary of State, unless the agency or division specifies a later date.

IV. Repeals

Repeals must be fully promulgated with a marked-up copy of the policy or procedure with all language marked through. If replacing the rule, a clean copy of the new version must also be submitted with the marked-through copy.

V. Tracking and Reviewing Legislation

- (a) After each regular, fiscal, or special session of the General Assembly, the DHS Office of Legislative and Intergovernmental Affairs shall track legislation that impacts the agency, adopt a written report of the tracked legislation and maintain a copy as a public record (Ark. Code Ann. § 25-15-216 (b-c)).
- (b) Each DHS Division or Office will then review and determine whether:
 - (1) Any existing agency rule should be repealed or amended;
 - (2) Any new agency rule should be adopted (Ark. Code Ann. § 25-15-216 (a)); or,
 - (3) Any agency policy or procedure needs revision or promulgation.

VI. Failure to Promulgate

Failure to properly promulgate a rule can result in a rule being declared null and void. Failure for any reason to comply with these promulgation requirements may result in disciplinary action to the employee(s) who is (are) responsible for the rule's promulgation.

VII. Emergency Filing

An emergency filing must first have the approval of the DHS Director’s Office, then must be submitted for approval to the Governor’s Office, and follow the procedures outlined in DHS APM 906.

VIII. Petitions

Any person has the right to petition the originating DHS division for the issuance, amendment, or repeal of any rule. The division must either initiate rule making proceedings or deny the petition in writing within thirty (30) days after the submission of such a petition.

IX. Review and Approval of Internal Policies and Procedures

- (a) The DHS Office of Chief Counsel (OCC) Policy Section is responsible for maintaining and publishing internal policies and procedures that apply to all DHS employees or

employees from more than one division or office. Any rules handled by the OCC Policy Section shall be promulgated.

- (b) Each division may develop and implement its own internal policies and procedures. DHS agency-wide policy will always supersede any division policy unless otherwise stipulated by the DHS Director. In situations where the agency policy is in conflict with the division policy, the agency policy takes precedence, unless specifically approved by the DHS Director.
- (c) If the agency-wide policy or procedure is for internal use only, it shall follow the internal approval procedures as outlined in DHS APM 906 which requires:
 - (1) Legal review by OCC;
 - (2) Review by designated DHS Executive Staff;
 - (3) Review by DHS Policy Review Committee; and,
 - (4) Approval by DHS Director.
- (d) The DHS Director or a designee may initiate a technical change or addition to internal agency-wide policies or procedures and may do so with or without a review by the DHS Policy Review Committee and/or the DHS Executive Discussion Board.
- (e) Agency-wide internal policies or procedures are effective upon the date approved by the DHS Director or at a later date if necessary, for example, if employee training is needed to implement the policy or procedure.
- (f) The OCC Policy Section shall ensure that all DHS employees with DHS email access are notified of and able to certify that they are aware of agency-wide policy additions or changes (via email from the DHS Communications Office).
- (g) DHS supervisors are responsible for notifying their employees who don't have access to DHS email of all agency-wide policy changes and shall obtain their certifications.

X. Questions

DHS employees may submit questions about current agency-wide policies and procedures to the OCC Policy Section at: DHS.OCC.Policy@dhs.arkansas.gov.