

**REPORT OF THE
ADMINISTRATIVE RULE REVIEW SUBCOMMITTEE
OF THE
JOINT BUDGET COMMITTEE**

February 17, 2022

Co-Chairs:

The Administrative Rule Review Subcommittee met on Wednesday, February 16, 2022, at 7:30 a.m., in Room A, MAC.

- 1. The Subcommittee adopted the attached Rules of the Administrative Rule Review Subcommittee.**
- 2. The Subcommittee reviewed and approved the following rules filed pursuant to Ark. Code Ann. § 10-3-309:**

DEPARTMENT OF FINANCE AND ADMINISTRATION, ARKANSAS RACING COMMISSION (Byron Freeland, John “Smokey” Campbell)

- a. CGR Rule 4 Operation of Gaming Establishments**
 - b. CGR Rule 6 Accounting Regulations**
 - c. CGR Rule 22 Off-Track Pari-Mutuel Wagering**
 - d. CGR Rule 24 Off-Track Pari-Mutuel Horse Race Account Wagers**
- 3. The Subcommittee recessed until Thursday, February 17, 2022, 8:00 a.m., in Room A, MAC, to continue discussion on the following rule filed pursuant to Ark. Code Ann. § 10-3-309:**

DEPARTMENT OF FINANCE AND ADMINISTRATION, ARKANSAS RACING COMMISSION (Byron Freeland, John “Smokey” Campbell)

- a. CGR Rule 20 Race Books and Sports Pools**

Respectfully submitted,

**Senator Scott Flippo, Co-Chair
Representative Lee Johnson, Co-Chair**

**RULES OF THE ADMINISTRATIVE RULE REVIEW SUBCOMMITTEE
OF THE JOINT BUDGET COMMITTEE**

Section 1. Review and Approval of State Agency Rules. In accordance with Arkansas Code § 10-3-309, the following procedures shall apply with regard to review and approval of state agency rules:

(a) Definitions. As used in these rules:

(1)(A) “Rule” means a state agency statement of general applicability and future effect that implements, interprets, or prescribes law or policy or describes the organization, procedure, or practice of a state agency and includes without limitation the amendment or repeal of a prior rule.

(B) “Rule” does not mean:

(i) A statement that concerns the internal management of a state agency and that does not affect the private rights or procedures available to the public;

(ii) A declaratory order or ruling issued under § 25-15-206 or other provision of law applicable to the state agency issuing the declaratory order or ruling; or

(iii) Intraagency memoranda; and

(2)(A) “State agency” means an office, board, commission, department, council, bureau, or other agency of state government having authority to promulgate or enforce rules.

(B) “State agency” does not include the following:

(i) The Arkansas State Game and Fish Commission, if the rule is not promulgated under the authority of a statute enacted by the General Assembly;

(ii) The State Highway Commission and the Arkansas State Highway and Transportation Department, if the rule is not promulgated under authority of a statute enacted by the General Assembly; and

(iii) An institution of higher education.

(b) Placement of Rules on the Subcommittee Agenda. The Subcommittee co-chairs shall make the final determination regarding which rules will appear on the Subcommittee agenda for each meeting. In order to have a rule placed on an upcoming Subcommittee agenda, the following requirements must be met:

(1) The public comment period of the state agency’s proposed rule shall have expired no later than five (5) business days prior to the Subcommittee meeting date; and

(2) No later than five (5) business days prior to the Subcommittee meeting date, the state agency shall provide the Subcommittee staff with the following information, which is in addition to the information previously required to have been submitted under subsection (c) of this Rule:

(A) A public comment summary that includes for each comment received: the name of the commenter, if known; a summary of the comment; and a response by the agency to the comment;

(B) A revised markup of the proposed rule that shows changes, if

any, that were made subsequent to the initial rule filing with the Subcommittee; and

(C) Any additional information requested by the Joint Budget Committee, including without limitation the state agency's responses to any questions and comments submitted to the state agency by Subcommittee staff concerning the proposed rule.

(c) Materials to be Provided by a State Agency When Filing a Rule.

Upon filing of a proposed rule with the Subcommittee, the state agency shall submit the following documentation:

(1) A completed questionnaire on a form approved by the Joint Budget Committee;

(2) A financial impact statement, as required by Arkansas Code § 25-15-204, on a form approved by the Joint Budget Committee;

(3) A summary of the proposed rule; and

(4) The proposed rule and any markup to the proposed rule.

(d) Public Comment. When conducting its review of a state agency rule, the Subcommittee shall allow members of the public a reasonable opportunity to comment on the proposed rule.

(e) Review and Approval.

(1) Except as set forth in subsection (e)(6) of this Rule, upon conclusion of its review of the proposed rule, the Chair of the Subcommittee shall state, "Without objection, the rule is considered reviewed and approved."

(2) At this point, the rule is considered reviewed and approved, pending Joint Budget Committee final action, unless a majority of a quorum present at the Subcommittee meeting request that the Subcommittee vote on the issue of approving the rule.

(3)(A) At the time that the motion is made to vote regarding approval, the member making the motion shall state the grounds upon which approval should be denied.

(B) The only viable grounds for not approving a rule shall be if the rule is found to be inconsistent with state or federal law or with legislative intent.

(C) If a rule contains a fee or penalty promulgated in accordance with Arkansas Code § 25-15-105, the Subcommittee may choose not to approve the rule for any reason, and is not required to state the grounds for not approving.

(4) If the Subcommittee votes on the issue of approving the proposed rule, the proposed rule shall be considered approved unless a majority of a quorum present vote for the rule to not be approved.

(5)(A) The Subcommittee shall not exercise line-item review and approval of a proposed rule. Review and approval of the proposed rule shall apply to the entire proposed rule as submitted by the state agency.

(B) If a state agency presenting a proposed rule to the Subcommittee indicates its intent or agreement to revise a proposed rule in response to discussions by the Subcommittee, and revision of the rule in such a manner would not violate any of the requirements of the Administrative Procedure Act, the Subcommittee may review and approve the proposed rule with the revisions agreed to by the state agency.

(6)(A) A proposed rule submitted by the State Board of Health under Arkansas Code § 20-7-604(d)(2)(D), concerning exemptions from the requirements of the Prescription Drug Monitoring Program, shall be considered reviewed and approved by the Subcommittee upon an affirmative vote of three-fourths (3/4) of the members present when a quorum is present.

(B) When considering a rule submitted under this subsection (e)(6)(A), the requirement to state the grounds for not approving a rule under subsection (e)(3)(B) shall not apply.

(7)(A) If enacted legislation requires or results in more than one (1) state agency adopting, amending, or repealing rules on a similar subject matter:

(i) A state agency or a member of the General Assembly may request that all proposed rules filed with the Joint Budget Committee regarding the enacted legislation be grouped together and considered as a single group;

(ii) A request to group the proposed rules shall be submitted in writing to one of the co-chairs of the Subcommittee at least one (1) business day prior to the meeting of the Subcommittee at which the rules will be considered; and

(iii) Approval of a request to group proposed rules shall be by affirmative vote of a majority of the members present when a quorum is present.

(B) If the proposed rules are grouped together under subdivision (e)(7)(A) of this section for review, the Subcommittee may:

(i) Separate the proposed rules at the request of a member of the General Assembly or one (1) of the state agencies that promulgated the proposed rules; and

(ii) Elect to consider one (1) or more of the proposed rules separated from the group.

(f) Referral of Proposed Rules.

(1)(A) The Subcommittee may refer a rule to a committee of the General Assembly or another subcommittee of the Joint Budget Committee for the committee's or subcommittee's consideration.

(B) However, in doing so, the Subcommittee shall not delegate its authority to review and approve a rule to that committee or subcommittee.

(2) After the referred rule is presented to a committee of the General Assembly or subcommittee of the Joint Budget Committee and considered, the committee or subcommittee to whom the rule was referred may provide its views and opinions on the rule to the Subcommittee.

(3) Either chair of the Subcommittee may determine that there is an undue delay in the review of the proposed rule by the committee or subcommittee to which it was referred and recall the proposed rule in order to begin the review and approval process by the Subcommittee.

(g) Statutory Requirement for Review by a Specific Subject Matter Committee.

(1) If a statute requires a proposed rule to be reviewed or considered by a specific subject matter committee or subcommittee, the subject matter committee or subcommittee shall consider the proposed rule before the Subcommittee undertakes review and approval of the proposed rule.

(2)(A) Either chair of the Subcommittee may waive the requirement of subsection (g)(1) if he or she determines that prior review by the subject matter committee or subcommittee will or has already resulted in an undue delay in the review and approval process.

(B) A waiver shall not be granted if the state agency has not provided the required information under subsections (b)(2) and (c) of this Rule.

(C) Issuance of a waiver by either chair of the Subcommittee does not remove the statutory requirement of review or consideration by the subject matter committee or subcommittee, and the state agency shall still comply with all statutory requirements regarding review by legislative committees.

Section 2. Appeals of Rule Codification Decisions. Under Act 662 of 2019, the Bureau of Legislative Research was tasked with compiling, formatting, and indexing a codification of the general and permanent rules of agencies to be known as the “Code of Arkansas Rules”. An agency that objects to the form of the codification of a rule or a technical correction made by the Bureau of Legislative Research may appeal the codification of the rule to the Subcommittee, as follows:

(a) Notification of Appeal.

(1) An agency may file an appeal of a codification decision or a technical correction made by the Bureau of Legislative Research to the Subcommittee.

(2) The appeal shall be filed in writing with the Subcommittee on the appeal form approved by the Subcommittee.

(3)(A) In order to have the appeal placed on the next regularly scheduled Subcommittee meeting agenda, the appeal form and all supporting documentation shall have been submitted to the Subcommittee staff no later than ten (10) calendar days prior to the scheduled Subcommittee meeting.

(B) An appeal submitted after the submission date shall only be considered by the Subcommittee at its next regularly scheduled meeting upon a suspension of the rules, which requires an affirmative vote of two-thirds (2/3) of a quorum.

(C) This option shall only be exercised upon a written showing that there is imminent need for the appeal to be considered that cannot wait until the next regularly scheduled meeting of the Subcommittee.

(D) Otherwise the appeal shall appear on the following Subcommittee meeting agenda.

(4) Upon submission of an appeal of a codification decision or technical correction to the Subcommittee, the Bureau of Legislative Research shall cease all codification work related to the rule that is the subject of the appeal until such time that the appeal has been resolved and final approval given by the Joint Budget Committee.

(b) Subcommittee Consideration and Recommendation.

(1) The agency who has filed the appeal shall appear before the Subcommittee to present its appeal.

(2) The Subcommittee, by a majority vote of the members present when a quorum is present, shall adopt a recommendation to the Joint Budget Committee regarding the resolution of the appeal, and shall submit its recommendation to the Joint

Adopted: February 16, 2022

Budget Committee in a written report.

(c) Final Determination by Joint Budget Committee. The Joint Budget Committee shall make the final determination regarding an agency's appeal of a codification decision or technical correction by the Bureau of Legislative Research based on the recommendation and documentation provided to it by the Subcommittee. The determination of the Joint Budget Committee is final.