

## DEPARTMENT OF HEALTH, CENTER FOR HEALTH PROTECTION

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**SUBJECT:** Rules for Control of Sources of Ionizing Radiation

**DESCRIPTION:** The Radiation Control Section is initiating the process for the revision of the Arkansas State Board of Health Rules for Control of Sources of Ionizing Radiation. The Section regulates the possession and use of X-ray machines, accelerators, and radioactive material in the state of Arkansas. Revisions to radioactive material rules are driven by our agreement with the U.S. Nuclear Regulatory Commission (NRC). The state of Arkansas, as an Agreement State, must have rules that are compatible with NRC regulations. The following revisions are being proposed.

Revisions concerning NRC regulation amendments:

**Miscellaneous Corrections Amendments (3) – 10 CFR Parts 1, 2, 21, 34, 37, 40, 50, 52, 70, 71, 73, 110, and 140:**

The objective of these three rules is to make miscellaneous corrections concerning office, division, and agency references and functions; remove a follow-up reporting instruction; correct cross reference, typographical, and grammatical errors; add a certification recipient and clarifying language; remove obsolete language; and correct mailing, email, and web page addresses. (Sections 2, 3, 4, and 12)

Revisions due to Act 268 of 2021:

Changes include those provisions presented in Section 1 (Registration of Sources of Radiation), definitions of “person” and “physician,” and provisions presented in Section 5 (Rules of Practice).

Revisions not in conjunction with a particular NRC regulation amendment (general clean up):

Changes include deletion or revision of two radioactive material healing arts definitions, correction of references found in RH-7083.b, and addition of for numbers to RH-23.

**PUBLIC COMMENT:** No public hearing was held on this proposed rule. The public comment period expired on September 30, 2021. The agency provided the following summary of the single public comment it received and its response to that comment.

Commenter’s Name: Dr. James Raker

**COMMENT:** The term “physician” in AR legally means MD, DO, and DC. Make sure that legal definition is used in your Rule definition of a “physician.”

**RESPONSE:** The definition of “physician” in the Rules for Control of Sources of Ionizing Radiation is taken verbatim from the Arkansas Code at A.C.A. § 20-21-203 (26) which is the area of AR Code setting forth State policy and requirements for Rules concerning Ionizing Radiation Sources, such as Nuclear Materials. This portion of AR law also reflects the requirements of the US Nuclear Regulatory Commission. These Rules govern the requirements for radioactive material for diagnostic or therapeutic purposes - for example, radiation therapy for a cancer patient. These Rules are not applicable to, or affect, Chiropractors and their use of x-ray machines in their practice. Chiropractors are governed by and listed with other Practitioners in a separate area of the AR Code known as the “Consumer-Patient Radiation Health and Safety Act” at A.C.A. § 17-106-103(5). The definition in our Rules and the AR Code for Ionizing Radiation Sources does not modify or change the broader definition of Physician found in the AR Chiropractic Practices Act at A.C.A. § 17-81-101 et seq.

The proposed effective date is December 1, 2021.

**FINANCIAL IMPACT:** The agency indicated that this proposed rule does not have a financial impact.

**LEGAL AUTHORIZATION:** “The State Board of Health is designated as the State Radiation Control Agency.” Ark. Code Ann. § 20-21-206(a). As such, the Board “shall provide by rule for licensing of radioactive material, or devices or equipment utilizing such material, and for licensing or registration of radiation equipment.” Ark. Code Ann. § 20-21-213(a). Portions of this rule implement Act 268 of 2021, sponsored by Representative Jack Ladyman. The Act amended and updated the Arkansas Code regarding regulation of ionizing radiation to comply with federal laws and regulations.



# Arkansas Department of Health

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4815 West Markham Street • Little Rock, Arkansas 72205-3867 • Telephone (501) 661-2000  
Governor Asa Hutchinson  
José R. Romero, MD, Secretary of Health

## **PROPOSED REVISIONS TO THE RULES FOR CONTROL OF SOURCES OF IONIZING RADIATION**

**August 9, 2021**

### **PURPOSE**

The Arkansas Department of Health (Department) is seeking Governor Hutchinson's review of proposed amendments to the Rules for Control of Sources of Ionizing Radiation.

### **BACKGROUND**

Pursuant to A.C.A. §§ 20-21-203—217 the Department has authority to promulgate rules for the Control of Sources of Ionizing Radiation. These rules are reviewed and updated in conjunction with the United States Nuclear Regulatory Commission to ensure it agrees with Federal Regulations.

### **KEY POINTS**

The proposed rule:

- Makes miscellaneous corrections to references and descriptions
- Removes obsolete language
- Makes revisions due to Act 268 of 2021

### **DISCUSSION**

The Radiation Control Section of the Department is initiating the process for the revision of the Arkansas State Board of Health Rules for Control of Sources of Ionizing Radiation. The Section regulates the possession and use of x-ray machines, accelerators, and radioactive material in the State of Arkansas. Revisions to radioactive material regulations are driven by our agreement with the U.S. Nuclear Regulatory Commission (NRC). The State of Arkansas, as an Agreement State, is expected to have rules that are compatible with NRC regulations. The following revisions are being proposed.

**Miscellaneous Corrections – 10 CFR Parts 37, 40, 70, and 71:** The objective of this rule is to make miscellaneous corrections concerning office references and a phone number, remove and correct division titles, and remove a follow up reporting instruction. *(Sections 2, 4, and 12)*

**Miscellaneous Corrections – 10 CFR Parts 1, 2, 34, 37, 50, 71, 73, and 140:** The objective of this rule is to update descriptions of agency organizations and functions; correct cross reference, typographical, and grammatical errors; and add a certification recipient and clarifying language. *(Sections 3, 4, and 12)*

**Miscellaneous Corrections – 10 CFR Parts 2, 21, 37, 50, 52, 73, and 110:** The objective of this rule is to remove obsolete language and correct references, a typographical error, mailing, email, and web page addresses, grammatical errors, a division title, and a division address and title. *(Section 12)*

**Revisions due to Act 268 of 2021 --** Changes include those provisions presented in Section 1 (Registration of Sources of Radiation), definitions of “person” and “physician,” and provisions presented in Section 5 (Rules of Practice).

**Revisions for General Clean Up --** Changes include deletion and revision of a small number of radioactive material healing arts definitions, correction of references found in RH-7083.b., and addition of form numbers to RH-23.

### **RECOMMENDATION**

We recommend that the proposed amendments to the Rule for the Control of Sources of Ionizing Radiation be approved as proposed by the Department.

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

**DEPARTMENT/AGENCY** Arkansas Department of Health  
**DIVISION** Center for Health Protection  
**DIVISION DIRECTOR** Connie Melton  
**CONTACT PERSON** Bernard Bevill  
**ADDRESS** 4815 W. Markham, Slot 30, Little Rock, AR 72205-3867  
**PHONE NO.** (501) 661-2301 **FAX NO.** (501) 280-4993 **E-MAIL** bernard.bevill@arkansas.gov  
**NAME OF PRESENTER AT COMMITTEE MEETING** Charles Thompson  
**PRESENTER E-MAIL** Charles.Thompson@arkansas.gov

**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.
- E. Submit two (2) copies of the Questionnaire and Financial Impact Statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Jessica C. Sutton  
 Administrative Rules Review Section  
 Arkansas Legislative Council  
 Bureau of Legislative Research  
 One Capitol Mall, 5th Floor  
 Little Rock, AR 72201

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1. What is the short title of this rule? Rules for Control of Sources of Ionizing Radiation

2. What is the subject of the proposed rule? The proposed rule pertains to possession and use of x-ray machines, accelerators, and radioactive material in the state of Arkansas.

3. Is this rule required to comply with a federal statute, rule, or regulation? Yes  No

If yes, please provide the federal rule, regulation, and/or statute citation.  
Section 274 of the Atomic Energy Act, 1954, As Amended

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

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  If yes, please provide a brief summary explaining the rule.

Does this repeal an existing rule? Yes  No  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  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."

Mark-up and summary are attached.

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

A.C.A. 20-21-203--217

7. What is the purpose of this proposed rule? Why is it necessary?

Rules regarding radioactive material are undergoing revision due to U.S. Nuclear Regulatory Commission (NRC) regulation amendments.

Rules regarding radioactive material and x-ray machines are undergoing revision due to Act 268 of 2021 that addresses outdated language and general clarifications needed due to technological advances.

Revisions to radioactive material rules are guided by our agreement with the NRC. The State of Arkansas, as an Agreement State, must have rules that are compatible with NRC regulations.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b).

www.healthy.arkansas.gov

9. Will a public hearing be held on this proposed rule? Yes  No  If yes, please complete the following:

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Place: \_\_\_\_\_

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

09/30/2021

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

12/01/2021

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice. \_\_\_\_\_

13. Please provide proof of filing the rule with the Secretary of State as required pursuant to Ark. Code Ann. § 25-15-204(e). \_\_\_\_\_

14. 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.

X-ray registrants or vendor service registrants may comment.

**FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT** Arkansas Department of Health

**DIVISION** Center for Health Protection

**PERSON COMPLETING THIS STATEMENT** Angela Minden

**TELEPHONE NO.** (501) 661-2301 **FAX NO.** (501) 280-4993 **EMAIL:** angela.minden@arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two (2) copies with the Questionnaire and proposed rules.

**SHORT TITLE OF THIS RULE** Rules for Control of Sources of Ionizing Radiation

1. Does this proposed, amended, or repealed rule have a financial impact? Yes  No

2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?

Yes  No

3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes  No

If an agency is proposing a more costly rule, please state the following:

a) How the additional benefits of the more costly rule justify its additional cost;

NA

b) The reason for adoption of the more costly rule;

c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and

d) Whether the reason is within the scope of the agency's statutory authority, and if so, please explain.



4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

Next Fiscal Year

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

Total \$ 0.00 \_\_\_\_\_

Total \$ 0.00 \_\_\_\_\_

b) What is the additional cost of the state rule?

Current Fiscal Year

Next Fiscal Year

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

Total \$ 0.00 \_\_\_\_\_

Total \$ 0.00 \_\_\_\_\_

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

Next Fiscal Year

\$ NA \_\_\_\_\_

\$ NA \_\_\_\_\_

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

Next Fiscal Year

\$ NA \_\_\_\_\_

\$ NA \_\_\_\_\_

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?  
Yes  No

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
  - (a) justifies the agency's need for the proposed rule; and
  - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
  - (a) the rule is achieving the statutory objectives;
  - (b) the benefits of the rule continue to justify its costs; and
  - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.