

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

**DEPARTMENT/AGENCY** Arkansas Department of Health  
**DIVISION** Public Health Laboratory  
**DIVISION DIRECTOR** \_\_\_\_\_  
**CONTACT PERSON** Laura Shue, General Counsel  
**ADDRESS** 4815 West Markham, Slot 35, Little Rock, AR 72205  
**PHONE NO.** (501) 661-2297      **FAX NO.** \_\_\_\_\_      **E-MAIL** Laura.Shue@arkansas.gov  
**NAME OF PRESENTER AT COMMITTEE MEETING** Laura Shue, General Counsel  
**PRESENTER E-MAIL** Laura.Shue@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
- D. 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? Arkansas Rules for Alcohol Testing

2. What is the subject of the proposed rule? Sets the standards for alcohol testing equipment in 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.

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 Yes  No  If yes, a copy of the repealed rule is to be included with your completed questionnaire.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."

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

A.C.A. § 5-65-201

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

Updates the list of approved instrumentation and methods for alcohol testing

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).

<https://www.healthy.arkansas.gov/proposed-amendment-to-existing-rules>

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.)

12/21/2021

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

12/31/2021

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.

None

**FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT** Arkansas Department of Health

**DIVISION** Public Health Laboratory

**PERSON COMPLETING THIS STATEMENT** Laura Shue, General Counsel

**TELEPHONE NO.** (501) 661-2297 **FAX NO.** \_\_\_\_\_ **EMAIL:** Laura.Shue@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** Arkansas Rules for Alcohol Testing

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;

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 \_\_\_\_\_

General Revenue \_\_\_\_\_

Federal Funds \_\_\_\_\_

Federal Funds \_\_\_\_\_

Cash Funds \_\_\_\_\_

Cash Funds \_\_\_\_\_

Special Revenue \_\_\_\_\_

Special Revenue \_\_\_\_\_

Other (Identify) \_\_\_\_\_

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 \_\_\_\_\_

General Revenue \_\_\_\_\_

Federal Funds \_\_\_\_\_

Federal Funds \_\_\_\_\_

Cash Funds \_\_\_\_\_

Cash Funds \_\_\_\_\_

Special Revenue \_\_\_\_\_

Special Revenue \_\_\_\_\_

Other (Identify) \_\_\_\_\_

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

\$ \_\_\_\_\_

\$ \_\_\_\_\_

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

\$ \_\_\_\_\_

\$ \_\_\_\_\_

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.



# Arkansas Department of Health

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 ARKANSAS RULES FOR ALCOHOL TESTING

November 19, 2021

### BACKGROUND

Pursuant to A.C.A. § 5-65-201 the Department has authority to promulgate the Arkansas Rules for Alcohol Testing. These rules set specifications and procedures for alcohol testing equipment and personnel.

### KEY POINTS

The proposed rule:

- Updated the list of approved instrumentation and methods for alcohol testing
- Redundant information was removed
- Certification information for senior operator and operator were updated.

### DISCUSSION

This proposal removes the word regulation and replaces with rules and makes the following changes:

- Updated the list of approved instrumentation and methods for alcohol testing: a new instrument was approved for use in evidential breath testing in mobile setting and a new calibration device was approved.
- Definitions not referenced in the document were removed.
- Redundant information was removed.
  
- Certification information for senior operator and operator were updated.
  - Changes suggested by the BLR Code of Rules project as part of its ongoing verification process were adopted: o references to “regulations” were removed pursuant to Act 315 of 2019- therefore regulations were changed to rules
  - the Office of Alcohol Testing is referred to as the Office and not Department

**RECOMMENDATION**

We recommend that the proposed amendments to the Arkansas Rules for Alcohol Testing be approved as proposed by the Department.