

ARKANSAS REGISTER

Proposed Rule Cover Sheet



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Name of Department _____

Agency or Division Name _____

Other Subdivision or Department, If Applicable _____

Previous Agency Name, If Applicable _____

Contact Person _____

Contact E-mail _____

Contact Phone _____

Name of Rule _____

Newspaper Name _____

Date of Publishing _____

Final Date for Public Comment _____

Location and Time of Public Meeting _____

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

DEPARTMENT _____
BOARD/COMMISSION _____
BOARD/COMMISSION DIRECTOR _____
CONTACT PERSON _____
ADDRESS _____
PHONE NO. _____ EMAIL _____
NAME OF PRESENTER(S) AT SUBCOMMITTEE MEETING _____
PRESENTER EMAIL(S) _____

INSTRUCTIONS

In order to file a proposed rule for legislative review and approval, please submit this Legislative Questionnaire and Financial Impact Statement, and attach (1) a summary of the rule, describing what the rule does, the rule changes being proposed, and the reason for those changes; (2) both a markup and clean copy of the rule; and (3) all documents required by the Questionnaire.

If the rule is being filed for permanent promulgation, please email these items to the attention of Rebecca Miller-Rice, miller-ricer@blr.arkansas.gov, for submission to the Administrative Rules Subcommittee.

If the rule is being filed for emergency promulgation, please email these items to the attention of Director Marty Garrity, garritym@blr.arkansas.gov, for submission to the Executive Subcommittee.

Please answer each question completely using layman terms.

1. What is the official title of this rule?

2. What is the subject of the proposed rule? _____
3. Is this rule being filed under the emergency provisions of the Arkansas Administrative Procedure Act? Yes No

If yes, please attach the statement required by Ark. Code Ann. § 25-15-204(c)(1).

If yes, will this emergency rule be promulgated under the permanent provisions of the Arkansas Administrative Procedure Act? Yes No

4. Is this rule being filed for permanent promulgation? Yes No

If yes, was this rule previously reviewed and approved under the emergency provisions of the Arkansas Administrative Procedure Act? Yes No

If yes, what was the effective date of the emergency rule? _____

On what date does the emergency rule expire? _____

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

If yes, please provide the federal statute, rule, and/or regulation citation.

6. Is this rule required to comply with a *state* statute or rule? Yes No

If yes, please provide the state statute and/or rule citation.

7. Are two (2) rules being repealed in accord with Executive Order 23-02? Yes No

If yes, please list the rules being repealed.

If no, please explain.

8. Is this a new rule? Yes No

Does this repeal an existing rule? Yes No

If yes, the proposed repeal should be designated by strikethrough. If it is being replaced with a new rule, please attach both the proposed rule to be repealed and the replacement rule.

Is this an amendment to an existing rule? Yes No

If yes, all changes should be indicated by strikethrough and underline. In addition, please be sure to label the markup copy clearly as the markup.

9. What is the state law that grants the agency its rulemaking authority for the proposed rule, outside of the Arkansas Administrative Procedure Act? Please provide the specific Arkansas Code citation(s), including subsection(s).

10. Is the proposed rule the result of any recent legislation by the Arkansas General Assembly?
Yes No

If yes, please provide the year of the act(s) and act number(s).

11. What is the reason for this proposed rule? Why is it necessary?

12. Please provide the web address by which the proposed rule can be accessed by the public as provided in Ark. Code Ann. § 25-19-108(b)(1).

13. Will a public hearing be held on this proposed rule? Yes No

If yes, please complete the following:

Date: _____

Time: _____

Place: _____

Please be sure to advise Bureau Staff if this information changes for any reason.

14. On what date does the public comment period expire for the permanent promulgation of the rule? Please provide the specific date. _____

15. What is the proposed effective date for this rule? _____

16. Please attach (1) a copy of the notice required under Ark. Code Ann. § 25-15-204(a)(1) and (2) proof of the publication of that notice.

17. Please attach proof of filing the rule with the Secretary of State, as required by Ark. Code Ann. § 25-15-204(e)(1)(A).

18. Please give the names of persons, groups, or organizations that you anticipate will comment on these rules. Please also provide their position (for or against), if known.

19. Is the rule expected to be controversial? Yes No

If yes, please explain.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY.

DEPARTMENT _____
BOARD/COMMISSION _____
PERSON COMPLETING THIS STATEMENT _____
TELEPHONE NO. _____ **EMAIL** _____

To comply with Ark. Code Ann. § 25-15-204(e), please complete the Financial Impact Statement and email it with the questionnaire, summary, markup and clean copy of the rule, and other documents. Please attach additional pages, if necessary.

TITLE OF THIS RULE _____

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 no, please explain:

(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 reason for adoption of the more costly rule is based on the interests of public health, safety, or welfare, and if so, how; and

(d) whether the reason for adoption of the more costly rule is within the scope of the agency's statutory authority, and if so, how.

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

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total _____

Next Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total _____

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

Current Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total _____

Next Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total _____

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

Current Fiscal Year

\$ _____

Next Fiscal Year

\$ _____

6. What is the total estimated cost by fiscal year to a state, county, or 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.

Title 26. Taxation

Chapter I. Generally, Department of Finance and Administration

Subchapter F. Miscellaneous Taxes

Part 170. Enterprise Zone Act of 1993

Codification Notes. This part as promulgated prior to codification into the Code of Arkansas Rules of 2024 provided as follows:

"Pursuant to Ark. Code Ann. §26-18-301, the Commissioner of Revenues for the State of Arkansas promulgates the following rule for the enforcement and administration of Act 947 of 1993."

26 CAR § 170-101. Definitions.

As used in this part:

(1) "Act" means the Arkansas Enterprise Zone Act of 1993, Arkansas Code § 15-4-1701 et seq.;

(2) "Approved enterprise zone business" means a business that has been approved by the Arkansas Economic Development Commission to receive benefits under the Arkansas Enterprise Zone Act of 1993, Arkansas Code § 15-4-1701 et seq.;

(3)(A) "Average hourly wage" means the average wage of the net new permanent employees based on payroll for the most recent quarter reported to the Division of Workforce Services and is computed by using the total of the net new permanent employees' reported taxable earnings, including overtime pay, divided by the number of weeks worked, divided by the average hours worked per week per net new permanent employee.

(B) Salaried employees are deemed to have worked forty (40) hours per week for the purpose of calculating average hourly wage and most recent quarter reported in the tax year during which the income tax credits were earned;

(4) "Chief Fiscal Officer of the State" means the Secretary of the Department of Finance and Administration;

(5) "Commission" means the Arkansas Economic Development Commission;

(6) "Corporate headquarters" means the home or center of operations, including research and development, of a national or multi-national corporation;

(7) "Department" means the Arkansas Economic Development Commission;

(8) "Director" is the director of the Arkansas Economic Development Commission;

(9) "Governing authority" means the quorum court of a county or the governing body of a municipality;

(10)(A) "Net new permanent employee" means a new permanent employee who was not employed by the taxpayer during the preceding tax year.

(B) However, if during the tax year in which a new permanent employee was hired the employee did not work the requisite number of weeks to qualify as a new permanent employee for that tax year, then that employee may be counted as a net new permanent employee for the tax year in which he or she meets the requirement.

Example: An employee hired August 1, 1993, could not qualify as a new permanent employee for 1993 because he could not have worked twenty-six (26) consecutive weeks in 1993. However, if in 1994 that employee completes his twenty-sixth consecutive week of work with an average of thirty (30) hours of work per week since the date he was hired, that employee will qualify as a net new permanent employee for the 1994 tax year.

(C) The number of net new permanent employees shall be equal to the total number of new permanent employees for the current tax year minus the total number of new permanent employees for the previous tax year;

(11)(A) "New permanent employee" means an employee who:

(i) Is an Arkansas resident when hired;

(ii) Was hired as a result of the project; and

(iii) Has worked an average of at least thirty (30) hours per week for at least twenty-six (26) consecutive weeks.

(B) To be counted as a new permanent employee for the purpose of qualifying for the tax credits and incentives, the employee must have been an Arkansas resident during the tax year in which the tax credits or incentives were earned;

(12)(A) "Office sector business" means control centers that influence the environment in which data processing, customer service, credit accounting, telemarketing, claims processing, and other administrative functions that act as production centers.

(B) Also referred to as "back office industry";

(13) "Program" means the Arkansas Enterprise Zone Act of 1993, Arkansas Code § 15-4-1701 et seq.;

(14) "Project" means:

(A) All activities and costs associated with the construction of a new plant or facility;

(B) The expansion of an established plant or facility by adding to the building or production equipment, support infrastructure, or both; or

(C) The replacement of production or processing equipment, support infrastructure, or both;

(15) "Standard Industrial Classification numbers" means the numbers used to classify businesses in the Standard Industrial Classification Manual published by the Office of Management and Budget, Executive Office of the President;

(16)(A) "Tax year" means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which taxable income is computed.

(B) In the case of a return made for a fractional part of a year, "tax year" means the period for which such return is made; and

(17) "Trucking sector business" means a business that comes within the Standard Industrial Classification (SIC) number 4231.

Authority. Arkansas Code § 26-18-301.

26 CAR § 170-102. Refund of sales and use tax.

(a) The Revenue Division of the Department of Finance and Administration shall authorize a refund of sales and use tax imposed by the state and municipality or county, if the municipality or county authorized the refund of its local tax, on the purchases of the material used in the construction of a building or buildings, or any addition or improvement thereon, for housing any legitimate business enterprise, and machinery and equipment to be located in or in connection with such building.

(b)(1) A sales and use tax refund as provided for in subsection (a) of this section shall be authorized provided that the:

(A) Qualified business is an industry that fits into Standard Industrial Classification (SIC) numbers 20 through 39, 7375, or 7376, is a distribution center, corporate headquarters, office sector business, or trucking sector business located within Arkansas;

(B) Firm and its contractors give preference and priority to Arkansas manufacturers, suppliers, contractors, and labor, except where it is not reasonably possible to do so without:

- (i) Added expense;
- (ii) Substantial inconvenience; or
- (iii) Sacrifice in operational efficiency; and

(C)(i) Firm files an endorsement resolution with the Arkansas Economic Development Commission and the Department of Finance and Administration:

(ii) The endorsement resolution must:

- (a) Be approved by the governing body of a municipality or county in whose jurisdiction the facility is located;
- (b) Approve the specific entity's participation in the program;

and

(c) Specifically state whether the municipality or county authorizes the Department of Finance and Administration to refund local sales and use taxes to the entity under the program.

(iii) A municipality or county can authorize the refund of all or part of a tax levied by it but cannot authorize the refund of any tax not levied by it.

(D) In the event it is found that any business receiving the benefits contained in subsection (a) of this section has failed to comply with the conditions contained in this subsection, that business will be liable for the payment of all sales and use taxes which were refunded under subsection (a) of this section plus penalty and interest.

(2)(A) The term "distribution center" shall mean a facility for the reception, storage, or shipping of a business' own products or products which the business wholesales to retail businesses or ships to its own retail outlets.

(B) For a distribution center to qualify for the benefits provided in this section, it must meet the following requirements:

(i) The distribution center must not make retail sales to the general public; and

(ii) The distribution center must employ twenty-five (25) or more new permanent employees.

(3) If a distribution center, office sector business, corporate headquarters, or trucking sector business does not meet the requirements of this subsection, then that business will:

(A) Automatically be disqualified from receiving any benefits under this section; and

(B) Be required to repay any tax benefits already received under the Arkansas Enterprise Zone Act of 1993, Arkansas Code § 15-4-1701 et seq., plus penalty and interest.

(4) For an office sector business to qualify for the benefits of this section it must:

- (A) Employ one hundred (100) or more new permanent employees; and
- (B) Not make retail sales to the general public.

(5) For a corporate headquarters to qualify for the benefits of this section it must:

- (A) Employ fifty (50) or more new permanent employees; and
- (B) Not make retail sales to the general public.

(6) For a trucking sector business to qualify for the benefits of this section it must:

- (A) Employ one hundred (100) or more new permanent employees; and
- (B) Not make retail sales to the general public.

(7)(A) The requisite number of new permanent employees must be employed by the industry, distribution center, corporate headquarters, office sector business, or trucking sector business

within twenty-four (24) months of the date the endorsement resolution was adopted or passed by the governing body approving the business' participation in the program.

(B)(i) In the event that the requisite number of new permanent employees cannot be employed within the twenty-four month period, the business can file a written application with the commission explaining why additional time is necessary.

(ii) The business can be afforded up to twenty-four (24) more months to hire the requisite number of employees if the Director of the Arkansas Economic Development Commission and the Chief Fiscal Officer of the State determine that the need for additional time is due to:

(a) Unanticipated and unavoidable delay in the construction of a facility that must be completed before the employees can be hired;

(b) The project as originally planned will require more than twenty-four (24) months to complete; or

(c) A change in the business ownership or business structure due to a merger or acquisition.

Authority. Arkansas Code § 26-18-301.

26-CAR § 170-103. Income tax credit.

(a)(1) The Revenue Division of the Department of Finance and Administration shall authorize an income tax credit equal to one hundred (100) times the average hourly wage paid with a maximum of two thousand dollars (\$2,000) per net new permanent employee of a business qualifying under 26-CAR § 170-102(b).

(2)(A) This tax credit shall be used for the tax year in which the new permanent employee qualified as a net new permanent employee.

(B) However, if the entire credit cannot be used in the tax year earned, the remainder may be applied against the income tax for the succeeding four (4) tax years, or until the credit is entirely used, whichever occurs first.

(3)(A) The credit allowed under this section shall increase by a factor of two (2) with a maximum credit of two thousand dollars (\$2,000) if the business is located in a county that had an unemployment rate in excess of:

(i) Ten percent (10%); or

(ii) Three percent (3%) above the state's average unemployment rate for the preceding calendar year.

(B) The unemployment rates used will be those published by the Division of Workforce Services.

(b)(1) An income tax credit as provided for in subsection (a) of this section shall be authorized provided that:

(A) The request for such credit is accompanied by an endorsement resolution approved by the governing body of the appropriate municipality or county in whose jurisdiction the establishment is to be located; and

(B) All of the net new permanent employees are employed at the facility.

(2)(A) In the event that any business receiving the benefits contained in subsection (a) of this section has failed to comply with the conditions contained in this subsection, that business shall be liable for the payment of such additional income taxes as may be due after the income tax credits provided for in subsection (a) of this section are disallowed, plus penalty and interest.

(B) For example, if the business has not hired the minimum number of employees required by the Arkansas Enterprise Zone Act of 1993, Arkansas Code § 15-4-1701 et seq.,

within the time required, then the business shall be liable for the payment of the additional income taxes attributable to the credits taken, plus penalty and interest.

Authority. Arkansas Code § 26-18-301.

26 CAR § 170-104. Refund of local sales and use tax.

(a) A municipality or county can authorize the refund of all or part of the sales or use tax levied by it, but cannot authorize the refund of any tax not levied by it.

(b) Therefore, all requests for refunds for local sales and use tax must be supported by the original sales receipt which must reflect that the tax to be refunded is the tax of a municipality or county that authorized the refund of its sales or use tax to the applicant.

(c)(1) All requests for the refund of a local tax must be filed with and received by the Department of Finance and Administration, Tax Credits/Special Refunds Section, P. O. Box 1272, Little Rock, Arkansas 72203, within sixty (60) days of the invoice date which indicates that the local tax was paid.

(2) If the request for refund is not received by the Department of Finance and Administration, Tax Credits/Special Refunds Section, within this time period, the request for refund will be denied.

(3) However, in the event the request for refund is not timely filed with the Department of Finance and Administration, the request for refund of local tax can be filed with the local government that authorized the Department of Finance and Administration to refund the tax.

Authority. Arkansas Code § 26-18-301.

26 CAR § 170-105. Developers and contractors.

(a)(1) Developers building a structure for lease to an approved enterprise zone business and contractors performing work for an approved enterprise zone business may be permitted to receive a sales and use tax refund on eligible purchases directly from the state only when the approved enterprise zone business:

(A) Requests to the Department of Finance and Administration, Tax Credit/Special Refunds Section, in writing, that this be permitted; and

(B) States the basis for this request.

(2) The Revenue Division of the Department of Finance and Administration will authorize this procedure only when it is satisfied that:

(A) This arrangement is crucial to the success of the business project;

(B) All requirements of the Arkansas Enterprise Zone Act of 1993, Arkansas Code § 15-4-1701 et seq., and this part will be adhered to;

(C) A notarized affidavit (Form E-ZP 1201) is presented to the division from the contractor or developer stating the enterprise zone business will receive the benefit of the sales and use tax refunds by having the cost of construction or lease payments reduced by the amount of the tax refund; and

(D)(i) A notarized affidavit (Form E-ZP 1301) is presented to the division from the approved enterprise zone business:

(a) Waiving the right to claim a refund of sales and use taxes;

and

(b) Passing on the right to claim refunds to the contractor or developer.

~~(ii) The affidavit must state that the enterprise zone business acknowledges that if the enterprise zone business fails to comply with the conditions contained in 26 CAR 5-170-102(b), that business will be liable for the payment of all sales and use taxes that were refunded to contractors and developers under this section, plus penalty and interest.~~

~~(b) An approved enterprise zone business may receive a sales and use tax refund on eligible purchases made by a contractor or developer performing work or building a structure for lease or sale to the approved enterprise zone business provided the enterprise zone business submits to the Department of Finance and Administration, Tax Credits/Special Refunds Section:~~

~~(1) A notarized Contractor's/Developer's Waiver of Refund Form (EZF form 1101) completed by the contractor or developer waiving any and all rights to claim a refund of sales and use taxes;~~

~~(2) An Enterprise Zone Business Sales and Use Tax Refund Request Form (EZF 1001) and a Schedule A listing the qualified enterprise zone purchases; and~~

~~(3) All other requirements of the Arkansas Enterprise Zone Act of 1993 and this part are adhered to.~~

Authority. ~~Arkansas Code 5-26-18-301.~~

Legal Notice

In compliance with Act 434 of 1967, the Arkansas Administrative Procedure Act, as amended, notice is hereby given that the Department of Finance and Administration intends to repeal Rule 1989-1, titled “Enterprise Zone Rule 1989-1” and Rule 1993-11, codified as 26 CAR § 170-101 et seq., and titled “Enterprise Zone Act Rule of 1993”. Rule 1989-1 provided for businesses which qualified under Act 813 of 1983 and qualified pursuant to Act 462 of 1989 for any project by such a business with an application filed with the Department of Finance and Administration with a required endorsement resolution dated after June 30, 1989. The provisions of Act 813 of 1983 applied to any project by such a business with an application to AIDC with a required endorsement resolution dated before June 30, 1989. The underlying legislation for Rule 1989-1 expired on June 30, 1995, and Rule 1989-1 was replaced by Rule 1993-11. Rule 1993-11 was promulgated to implement Act 947 of 1993. Rule 1993-11, codified as 26 CAR § 170-101 et seq., was replaced by the rule published following enactment of Act 807 of 2001. Rule 1989-1 and Rule 1993-11 are no longer valid.

The public hearing will be held September 8, 2025, at 2:00 p.m. in the media conference room 2450 of the Joel Y Ledbetter Building, 1816 West 7th Street, Little Rock, Arkansas. All interested parties may attend and present their views on the proposed rule repeals. Written comments may be mailed to the Department of Finance and Administration, P.O. Box 1272, Room 2380, Little Rock, Arkansas 72203. Additionally, comments may be submitted at public.comment@dfa.arkansas.gov.

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