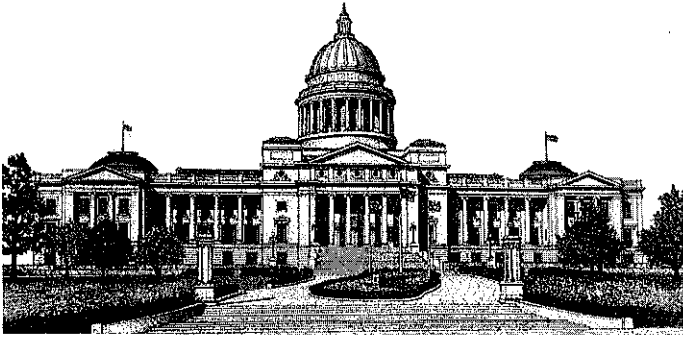


# ARKANSAS REGISTER

## Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



Secretary of State

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[www.sos.arkansas.gov](http://www.sos.arkansas.gov)



For Office

Use Only:

Effective Date \_\_\_\_\_ Code Number \_\_\_\_\_

Name of Agency Arkansas Department of Labor

Department Boiler Inspection Division

Contact Denise P. Oxley E-mail denise.oxley@arkansas.gov Phone (501)682-4502

Statutory Authority for Promulgating Rules ACA 17-1-106(g); 17-1-107(b); ACA 20-23-301(a) and 20-23-201(b)(1)

**Rule Title:** Rule 010.01 Rules of the Boiler Inspection Division of the Arkansas Department of Labor and the Boiler Advisory Board

**Intended Effective Date**  
(Check One)

**Date**

☐ Emergency (ACA 25-15-204)

Legal Notice Published .....

8/31/16-9/2/16

☒ 10 Days After Filing (ACA 25-15-204)

Final Date for Public Comment .....

10/11/2016

☐ Other \_\_\_\_\_  
(Must be more than 10 days after filing date.)

Reviewed by Legislative Council .....

12/13/2016

Adopted by State Agency .....

10/11/2016

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Denise P. Oxley

denise.oxley@arkansas.gov

12/22/2016

Contact Person

E-mail Address

Date

### CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted  
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Signature

(501) 682-4541

leon.jones@arkansas.gov

Phone Number

E-mail Address

Director of Labor

Title

December 22, 2016

Date

**ADMINISTRATIVE RULES OF  
THE BOILER INSPECTION DIVISION OF THE ARKANSAS DEPARTMENT OF  
LABOR AND THE BOILER ADVISORY BOARD,  
STATE OF ARKANSAS**

**010.01 Administrative Regulations of the Boiler Inspection Division of the Arkansas Department of Labor and the Boiler Advisory Board, State of Arkansas.**

**Amendment 1.** Rule 010.01-002 is amended to read as follows:

**010.01-002 Information for Public Guidance**

The mailing address and telephone number for the Boiler Inspection Division is:

Boiler Inspection Division  
Arkansas Department of Labor  
10421 West Markham Street  
Little Rock, AR 72205  
(501) 682-4513

The Department of Labor makes available a list of persons holding certain responsibilities for handling FOIA requests, licensing questions, complaints against licensees, and compliance requests or assistance so that the public may obtain information about the agency or make submissions or requests. The names, mailing addresses, telephone numbers and electronic addresses can be obtained from the agency's office or website. The Department of Labor's website is: <http://www.labor.ar.gov/Pages/default.aspx>. The Boiler Inspection Division's website is: <http://www.labor.ar.gov/divisions/Pages/boilerInspectionDivision.aspx>.

The division has a list of official forms used by the division and a list of all formal, written statements of policy and written interpretative memoranda, and orders, decisions and opinions resulting from adjudications, which may be obtained from the division's office or website. Copies of all forms used by the division, written statements of policy and written interpretive memoranda, and all orders issued by the division may be obtained from the division's office.

**Amendment 2.** Rule 010.01-004(D), dealing with rule-making, is amended to read as follows:

**D. Filing with Legislative Council**

Thirty (30) days before the public-comment period ends, the division will file with the Legislative Council the text of the proposed rule or amendment as well as a financial impact statement and any additional information as may be required by the Legislative Council as provided by Ark. Code Ann. § 10-3-309.

**Amendment 3.** Rule 010.01-004(G)(1), dealing with rule-making, is amended to read as follows:

**G. The Decision to Adopt a Rule**

1. The division will not finalize language of the rule or decide whether to adopt a rule until the period for public comment has expired and the proposed rule has been reviewed and approved by the Legislative Council or other legislative committee pursuant to Ark. Code Ann. § 10-3-309.

**Amendment 4.** Rule 010.01-004(M), dealing with rule-making, is amended to read as follows:

**M. Filing**

1. After the division formally adopts a new rule or amends a current rule or repeals an existing rule, and after the rule change has been reviewed and approved by the Legislative Council, the agency staff will file final copies of the rule with the Secretary of State, the Arkansas State Library, and the Legislative Council or as otherwise provided by Ark. Code Ann. § 25-14-204.

2. Proof of filing a copy of the rule, amendment, or repeal with the Secretary of State, the Arkansas State Library, and the Legislative Council will be kept in a file maintained by the Legal Division of the Arkansas Department of Labor.

3. Notice of the rule change will be posted on the department website.

**Amendment 5.** Rule 010.01-005(C), dealing with emergency rule-making, is amended to read as follows:

**C. Effective Date of Emergency Rule**

1. The division shall not finalize an emergency rule or file an emergency rule with the Secretary of State for adoption until the emergency rule has been approved under Ark. Code Ann. § 10-3-309.

2. The emergency rule will be effective immediately upon filing, or at a stated time less than ten (10) days thereafter, if the division finds that this effective date is necessary because of imminent peril to the public health, safety or welfare. The division will file with the rule the

its written findings justifying the determination that emergency rule-making is appropriate and, if applicable, the basis for the effective date of the emergency rule being less than ten (10) days after the filing of the rule pursuant to Ark. Code Ann. § 25-15-204. The agency will take appropriate measures to make emergency rules known to persons who may be affected by them.

**Amendment 6.** Rule 010.01-008(J), dealing with re-licensure for a revoked or surrendered license, is amended to read as follows:

**J. Re-Licensure for Revoked or Surrendered License and General Reinstatement**

1. No individual who has had his or her license revoked or who has surrendered his or her license for an act of bad faith or a violation of law, rule or ethics will be licensed, except on petition made to the division. The application for re-licensure is not allowed until at least two (2) years after the revocation or surrender of license took effect.

a. The applicant bears the burden of proof that he or she is rehabilitated following the revocation or surrender of his or her license, that he or she can engage in the conduct authorized by the license without undue risk to the public, health, safety, and welfare, and that he or she is otherwise qualified for the license pursuant to Ark. Code Ann. § 20-23-101 *et seq.*

b. The division may impose any appropriate conditions or limitations on a license to protect the public, health, safety, and welfare.

c. The division may require that the person seeking re-licensure take the licensing examination, if applicable.

2. Reinstatement

a. An individual may seek reinstatement under this subsection, Rule 010.01-008(J)(2), provided the applicant for reinstatement demonstrates that he or she:

- i was previously licensed by the division at any time;
- ii. was licensed in good standing at the time of licensing;
- iii did not have his or her license revoked for: an act of bad faith or a violation of law, rule or ethics; and
- iv. is not holding a suspended or probationary license in this state or a sister state.

b. The Department of Labor's Code Enforcement Manager shall ensure that any application for reinstatement is handled in an expedited manner.

**Amendment 7.** Rule 010.01-008, dealing with licensing, is amended to add a new subsection (O) to read as follows:

**O. Active duty service members, returning military veterans, and spouses**

1. As used in this rule, “returning military veteran” means a former member of the United States Armed Forces who was discharged from active duty under circumstances other than dishonorable.

2. Temporary license

a. An individual who is the holder in good standing of a substantially equivalent license in another state, shall be issued a temporary license of the same class while completing the application process for full licensure, provided the individual is one of the following:

i. an active duty military service member stationed in the State of Arkansas;

ii. a returning military veteran applying within one (1) year of his or her discharge from active duty; or

iii. the spouse of a person under Rule 010.01-008(O)(2)(a)(i) or (ii) above.

b. A temporary license under this rule shall expire on its face in thirty (30) days, although it is subject to renewal until a final administrative decision on full licensure is made.

c. If a full license is granted and the license fee paid, the license shall expire on the same date or in the same manner as other licenses of that class or type, regardless of the date of issue or renewal.

d. The Department of Labor’s Code Enforcement Manager shall ensure that any application for temporary licensure under Rule 010.01-008(O) is handled in an expedited manner.

e. When considering an application for full licensure of an active duty military service member stationed in the State of Arkansas or a returning military veteran applying within one (1) year of his or her discharge from active duty, the division shall:

(i) consider whether or not the applicant’s military training and experience is substantially similar to the experience required by Rule 010.01-008(K) through (M) for the class of license being sought; and

(ii) accept the applicant's military training and experience in lieu of the experience required by Rule 010.01-008(K) through (M) if the Code Enforcement Manager or division, determines the military training and experience is a satisfactory substitute.

f. A license held by an active duty military service member deployed outside the State of Arkansas or his or her spouse shall not expire until one hundred eighty (180) days following the active duty military service member's or spouse's return from active deployment. The licensee must submit proof of deployment and deployment dates.

**Amendment 8.** Rule 010.01-010(C)(1), dealing with inspection requirements, is amended to read as follows:

**C. Inspection Requirements**

1. All boilers shall be inspected as follows:

a. High pressure steam boilers shall be inspected internally and externally once each year unless the chief inspector grants an extension for good cause. Such an extension:

(i) shall not exceed six (6) months; and

(ii) shall cause the time period for the next annual inspection to begin on the day following the date of the inspection.

b. All low pressure steam boilers shall be inspected externally annually and internally once each three (3) years to the extent permitted by the design and construction of the vessel.

c. All hot water heating boilers shall be inspected externally annually and internally if required by the inspector.

d. An inspector may require a more frequent inspection than those required in Rule 010.01-010(C)(1)(a) through (c) above if the inspector has reason to question the integrity of the boiler or boiler controls.

**Amendment 9.** Rule 010.01-027, dealing with history of the division's rule-making, is amended to read as follows:

**010.01-027 Repealer, Effective Date and History**

A. All previous rules and regulations of the Boiler Safety Advisory Board and the Boiler Safety Division of the Arkansas Department of Labor are hereby repealed.

B. The effective date of these rules and regulations is the 1<sup>st</sup> day of July, 2006.

C. Effective January 1, 2017, the following rules and regulations of the board were amended: Rule 010.01-002 (Information for public guidance); Rule 010.01-004 (Rule-making); Rule 010.01-005 (Emergency rule-making); Rule 010.01-008 (Licensing); Rule 010.01-010(C) (Inspection requirements); and Rule 010.01-027 (Repealer, Effective Date and History).

## FINANCIAL IMPACT STATEMENT

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT** Arkansas Department of Labor  
**DIVISION** Boiler Inspection Division and Boiler Advisory Board  
**PERSON COMPLETING THIS STATEMENT** Denise P. Oxley, General Counsel  
**TELEPHONE NO.** 501-682-4502 **FAX NO.** 501-682-4535 **EMAIL:** denise.oxley@arkansas.gov

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

**SHORT TITLE OF THIS RULE** Rule 010.01 Rules of the Boiler Inspection Division and Boiler Advisory Board

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**

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

**Next Fiscal Year**

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



Total \_\_\_\_\_

Total \_\_\_\_\_

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

**Current Fiscal Year**

General Revenue -0-  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

Total -0-

**Next Fiscal Year**

General Revenue -0-  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

Total -0-

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**

\$ 1.00

Any active duty service member, veteran or spouse wishing an extension of licensure will have to provide a copy of paperwork showing deployment dates or discharge date. This cost should be minimal and is the basis for the cost estimate above.

**Next Fiscal Year**

\$ 1.00

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**

\$ -0-

**Next Fiscal Year**

\$ -0-

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.