

ARKANSAS REGISTER

Transmittal Sheet

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



Secretary of State

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For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency _____

Department _____

Contact _____ E-mail _____ Phone _____

Statutory Authority for Promulgating Rules _____

Rule Title: _____

Intended Effective Date

(Check One)

Date

☐

Emergency (ACA 25-15-204)

Legal Notice Published _____

☐

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

Final Date for Public Comment _____

☐

Other _____

(Must be more than 10 days after filing date.)

Reviewed by Legislative Council _____

Adopted by State Agency _____

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

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

Phone Number

E-mail Address

Title

Date

RULES OF THE ARKANSAS STATE POLICE COMMISSION

I.

STATEMENT OF ORGANIZATION AND OPERATIONS

The Division of Arkansas State Police (ASP) is an agency of state government created by Ark. Code Ann. § 12-8-101 through § 12-8-506. The Division is created for the purpose of enforcing the motor vehicle laws, traffic laws, and other state laws relating to protecting and properly maintaining the state highway system of the State of Arkansas and to render more effective the apprehension of criminals and the enforcement of criminal law.

II.

GENERAL ORGANIZATION

A. The Commission is composed of seven members appointed by the Governor for a term of seven (7) years. The officers of the Commission will be chairman, vice-chairman and secretary. Election of officers will be held annually at the January commission meeting. These officers shall perform the duties prescribed by applicable law, this rule, and the parliamentary authority adopted by the agency.

Each member of the Commission may serve as Chairman of the Commission during the last year of that Commissioner's seven-year term. The member second in seniority on the Commission may serve as Vice-Chairman during the sixth year of that Commissioner's seven-year term. In the event a Commissioner is reappointed by the Governor to serve a subsequent term, that Commissioner shall drop to the bottom of the seniority list upon his reappointment.

B. The business of the Commission will be conducted in public meetings pursuant to Robert's Rules of Order. All meetings will be conducted in conformity with the Arkansas Freedom of Information Act. Regular meetings will be held monthly. Special meetings will be held on the call of the Chairman or three Board members.

C. A quorum for the transaction of business is four (4) Commissioners. A majority of Commissioners present is required to transact business.

D. The Commission may create standing and ad hoc committees. The Commission Chairman will appoint members of committees. A quorum for the transaction of committee business is a majority of the number of voting members of the committee.

E. The Commission Executive Secretary will prepare the agenda for regular and special meetings. The agenda will be distributed to agency members and Commissioners and made available to the public in advance of the meeting. The agenda will state with specificity the items that will be considered at a meeting, hearing, or workshop. The agenda will include the following topics as applicable:

1. The call to order;
2. Approval of minutes;
3. Old business;
4. New business;
5. Other business; and
6. Appeal hearings.

The order of the agenda items is intended to be flexible and may be adjusted to meet the needs of the Commission. Additionally, the agenda may be amended by appropriate motion.

III. RULE-MAKING

A. AUTHORITY

The Commission has been authorized by the Legislature to promulgate rules. Ark. Code Ann. §§ 12-8-103, 12-8-210, 12-8-214 and 12-8-305. The Commission follows the procedural requirements of the Arkansas Administrative Procedure Act, in particular Ark. Code Ann. §25-15-203 and §25-15-204. Additionally, the Commission is required to abide by the provisions of Ark. Code Ann. §10-3-309.

B. INITIATION OF RULE-MAKING

The process of adopting a new rule or amending or repealing an existing rule (hereinafter referred to “rule-making”) may be initiated by request of the Commission that the staff submit proposed drafts. Additionally, staff of the ASP may request permission of the Commission to initiate rule-making. Third persons outside the ASP may petition for the issuance, amendment, or repeal of any rule.

C. PETITION TO INITIATE RULE-MAKING

Third parties may initiate rule-making to adopt, amend, or repeal a rule by filing a petition with the Commission to initiate rule-making. The petition must contain the name, address, and telephone number of the petitioner, the specific rule or action requested, the reasons for the rule or action requested, and facts showing that the petitioner is regulated by the ASP or has a substantial interest in the rule or action requested.

The petition to initiate rule-making shall be filed with the ASP Executive Secretary.

Within sixty (60) days after submission of the petition, the ASP will either deny the petition, stating its reasons in writing, or will initiate rule-making. A special meeting will be called if necessary to meet this time frame.

D. PRE-FILING WITH THE BUREAU OF LEGISLATIVE RESEARCH

Thirty (30) days before the public-comment period ends, the ASP will file with the Bureau of Legislative Research the text of the proposed rule or amendment as well as a financial impact statement and a Bureau of Legislative Research questionnaire as provided by Ark. Code Ann. §10-3-309.

E. PUBLIC INPUT

1. Before finalizing language of a proposed new rule or an amendment to, or repeal of, an existing rule, the Commission will receive public input through written comments and/or oral submissions. The Commission will designate in its public notice the format and timing of public comment.

2. Any public hearing will provide affected persons and other members of the public a reasonable opportunity for presentation of evidence, arguments, and oral statements within reasonable conditions and limitations imposed by the ASP to avoid duplication, irrelevant comments, unnecessary delay, or disruption of the proceedings.

3. The Commission chair or any person designated by the Commission may preside at the public hearing. The Commission will ensure that the ASP personnel responsible for preparing the proposed rule or amendment are available, and will notify third parties initiating rule changes to be available to explain the proposal and to respond to questions or comments regarding the proposed rule.

4. The Executive Secretary will preserve the comments made at the public hearing by a certified court reporter or by recording instruments.

5. Any person may submit written statements within the specified period of time. All timely, written statements will be considered by the Commission and be made a part of the rule-making record.

F. NOTICE OF RULE-MAKING

The Commission will give notice of proposed rule-making to be published pursuant to Ark. Code Ann. §25-15-204. The notice will set any written comment period and will specify the time, date, and place of any public hearing.

G. THE DECISION TO ADOPT A RULE

1. The Commission will not finalize language of the rule or decide whether to adopt a rule until the period for public comment has expired.

2. Before acting on a proposed rule, the Commission will consider all of the written submissions and/or oral submissions received in the rule-making proceeding or any memorandum summarizing such oral submissions, and any regulatory analysis or fiscal impact statement issued in the rule-making proceedings.

3. The Commission may use its own experience, specialized knowledge, and judgment or that of the ASP staff in the adoption of a rule.

H. VARIANCE BETWEEN ADOPTED RULE AND PUBLISHED NOTICE OF PROPOSED RULE

1. The Commission may not adopt a rule that differs from the rule proposed in the published notice of the intended rule-making on which the rule is based unless:

- a. The final rule is in character with the original scheme and was a logical outgrowth of the notice and comments stemming from the proposed rule, or
- b. The notice fairly apprised interested persons of the subject and the issues that would be considered so that those persons had an opportunity to comment.

2. In determining whether the final rule is in character with the original scheme and was a logical outgrowth of the notice and comments, and that the notice of intended rule-making provided fair warning that the outcome of that rule-making proceeding could be the rule in question, the Commission must consider the following factors:

- a. The extent to which persons who will be affected by the rule should have understood that the rule-making proceeding on which it is based could affect their interests; and
- b. The extent to which the subject matter of the rule or issues determined by the rule are different from the subject matter or issues contained in the notice of intended rule-making; and
- c. The extent to which the effects of the rule differ from the effects of the proposed rule contained in the notice of intended rule-making.

I. CONCISE STATEMENT OF REASONS

1. When requested by an interested person, either prior to the adoption of a rule or within thirty (30) days after its adoption, the Commission shall issue a concise statement of the principal reasons for and against its adoption of the rule. Requests for such a statement must be in writing and be delivered to Executive Secretary. The request should indicate whether the statement is sought for all or only a specified part of a rule. A request will be considered to have been submitted on the date on which it is received by the Executive Secretary.

2. The concise statement of reasons will contain:

- a. The Commission's reasons for adopting the rule;
- b. An indication of any change between the text of the proposed rule and the text of the rule as finally adopted, with explanations for any such change; and
- c. The principal reasons urged in the rule-making procedure for and against the rule, and the Commission's reasons for overruling the arguments made against the rule.

J. CONTENTS

The Commission shall cause its rules to be published and made available to interested persons. The publication must include:

1. The text of the rule; and
2. A note containing the following:
 - (a) The date(s) the Commission adopted or amended the rule;
 - (b) The effective date(s) of the rule;
 - (c) Any findings required by any provisions of law as a prerequisite to adoption for effectiveness of the rule; and
 - (d) Citation to the entire specific statutory or other authority authorizing the adoption of the rule;
3. The publication of the rule(s) will state the date of publication.

K. INCORPORATION BY REFERENCE

By reference in a rule, the Commission may incorporate all or any part of a statute, standard, rule, or other matter if the Commission finds that copying the matter in the Commission's rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the Commission rule must fully and precisely identify the incorporated matter by title, citation, date, and edition, if any; briefly indicate the precise subject and general contents of the incorporated matter; and state that the rule does not include any later amendments or editions of the incorporated matter. The Commission may incorporate such a matter by reference in a proposed or adopted rule and will make copies of the incorporated matter readily available to the public. The rules will state how and where copies of the incorporated matter may be obtained at cost from the ASP, and how and where copies may be obtained from an agency of the United States, this state, another state, or the organization, association, or persons originally issuing that matter. The Commission will retain permanently a copy of any materials incorporated by reference in a rule of the Commission.

L. FILING

1. After the Commission formally adopts a new rule or amends a current rule or repeals an existing rule, and after the rule change has been reviewed by the Legislative Counsel, the staff will file final copies of the rule with the Secretary of State, the Arkansas State Library, and the Bureau of Legislative Research, or as otherwise provided by Ark. Code Ann. §25-15-204(d).

2. Proof of filing a copy of the rule, amendment, or repeal with the Secretary of State, the Arkansas State Library, and the Bureau of Legislative Research or otherwise as provided by Ark. Code Ann. § 25-15-204(d) will be kept in a file maintained by the Executive Secretary.

IV. EMERGENCY RULE-MAKING

A. REQUEST FOR EMERGENCY RULE-MAKING

The proponent of a rule may request the Commission to adopt an emergency rule. In addition to the text of the proposed rule or amendment to an existing rule and any other information required by Rule III (C), the proponent will provide a written statement setting out the facts or circumstances that would support a finding of imminent peril to the public health, safety, or welfare.

B. FINDING OF AN EMERGENCY

Upon receipt of the written statement requesting an emergency rule-making and documents or other evidence submitted in support of the assertion that an emergency exists, the Commission will make an independent judgment as to whether the circumstances and facts constitute an imminent peril to the public health, safety, or welfare requiring adoption of the rule upon fewer than 30 days notice. If the Commission determines that the circumstances warrant emergency rule-making, it will make a written determination that sets out the reasons for the Commission's finding that an emergency exists. Upon making this finding, the Commission may proceed to adopt the rule without any prior notice or hearing, or it may determine to provide an abbreviated notice and hearing.

C. EFFECTIVE DATE OF EMERGENCY RULE

The emergency rule will be effective immediately upon filing, or at a stated time less than ten (10) days thereafter, if the Commission finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare. The Commission will file with the rule 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 days after the filing of the rule pursuant to Ark. Code Ann. §25-15-204(e). The Commission will take appropriate measures to make emergency rules known to persons who may be affected by them.

V. HIRING, EMPLOYMENT QUALIFICATIONS AND PROMOTION

A. EMPLOYMENT QUALIFICATIONS

All applicants for employment as Arkansas State Police officers shall meet the qualifications and age requirements for law enforcement officers set by the Arkansas Commission on Law Enforcement Standards and Training.

B. HIRING

The Director shall receive all applications for employment as officers and shall submit such list to the Commission for examination as to physical fitness and mental qualifications and for written examination. The Commission shall certify to the Director within a reasonable time the names of all applicants who possess the necessary qualifications as determined by the Commission. The Commission shall reduce to writing the reasons for finding any applicant who does not meet the necessary qualification for employment as an officer.

C. PROMOTION

The Director shall recommend to the Commission all officers eligible for promotion. The Commission shall approve or disapprove all such promotions and shall indicate in writing the reasons for disapproval of any promotion. Any information used in the Commission's decision shall be reduced to writing and all such written information shall be placed in the promotion packet.

VI. APPEAL HEARINGS

A. SCOPE OF THIS CHAPTER

This chapter applies in all appeal hearings conducted by the Commission. This procedure is developed to provide a process by which the Commission hears appeals of removal, demotion, suspension, discharge and disciplinary transfer of ASP officers pursuant to Ark. Code. Ann. §§ 12-8-103, 12-8-104.

B. HEARING OFFICER

The Commission Chairman shall preside at the hearing and may designate one or more hearing officers to conduct the hearing.

C. APPEARANCES

1. Any party appearing in any Commission hearing proceeding has the right, at his or her own expense, to be represented by counsel.
2. The petitioner may appear on his or her own behalf.
3. Any attorney representing a petitioner in an appeal hearing must file notice of appearance as soon as possible.
4. Service on counsel of record is the equivalent of service on the party represented.
5. On written motion served on the party represented and all other parties of record, the hearing officer may grant counsel of record leave to withdraw for good cause shown.

D. CONSOLIDATION

If there are separate matters that involve similar issues of law or fact, or identical parties, the matters may be consolidated if it appears that consolidation would promote

the just, speedy, and inexpensive resolution of the proceedings, and would not unduly prejudice the rights of a party.

E. NOTICE TO INTERESTED PARTIES

If it appears that the determination of the rights of parties in a proceeding will necessarily involve a determination of the substantial interests of persons who are not parties, the hearing officer may enter an order requiring that an absent person be notified of the proceeding and be given an opportunity to be joined as a party of record.

F. SERVICE OF PAPERS

Unless the hearing officer otherwise orders, every pleading and every other paper filed for the proceeding, except applications for witness subpoenas and the subpoenas, shall be served on each party or the party's representative at the last address of record.

G. INITIATION & NOTICE OF HEARING

1. An appeal hearing is initiated by the filing of a notice of appeal pursuant to Ark. Code Ann. § 12-8-204(c). Filing with the Director shall be considered service of the notice on the Commission. The Commission shall set a hearing date to be held within a reasonable time.

2. The notice of time and place of the hearing will be sent by U.S. mail to the petitioner's latest address on file with the ASP or by personal delivery.

3. Notice will be mailed at least twenty (20) days before the scheduled hearing.

H. MOTIONS

All requests for relief will be by motion. Motions must be in writing or made on the record during a hearing. A motion must fully state the action requested and the grounds relied upon. The original written motion will be filed with the Commission by service on the Executive Secretary. When time allows, the other parties may, within seven (7) days of the service of the written motion, file a response in opposition. The hearing officer may conduct such proceedings and enter such orders as are deemed necessary to address issues raised by the motion. However, a hearing officer, other than the Commission, will not enter a dispositive order unless expressly authorized to do so by the Commission.

I. EX PARTE COMMUNICATIONS

Prior to the hearing, Commissioners will not communicate, directly or indirectly, in connection with any issue of fact with any person or party nor, in connection with any issue of law with any party or his representative.

J. DISCOVERY

1. Upon written request, the Director will provide the information designated in A.C.A §25-15-208(a)(3) or any evidence which was the basis for the Director's decision. The Arkansas Rules of Civil Procedure and its discovery procedures do not apply to appeal hearings.

2. Such requests should be received by the Director at least 10 days before the scheduled hearing.

K. CONTINUANCES

1. The Commission or hearing officer may grant a continuance of hearing for good cause shown. Requests for continuances will be made in writing. The request must state the grounds to be considered and be made as soon as practicable and, except in cases of emergencies, no later than five (5) days prior to the date noticed for the hearing. In determining whether to grant a continuance, the Commission may consider:

- (a) prior continuances;
- (b) the interests of all parties;
- (c) the likelihood of informal settlement;
- (d) the existence of an emergency;
- (e) any objection;
- (f) any applicable time requirement;
- (g) the existence of a conflict of the schedules of counsel, parties, or witnesses;
- (h) the time limits of the request; and,
- (i) other relevant factors.

2. The Commission or hearing officer may require documentation of any grounds for continuance.

L. HEARING PROCEDURES

1. The hearing officer presides at the hearing and may rule on motions, require briefs, and issue such orders as will ensure the orderly conduct of the proceedings; provided, however, any hearing officer other than the Commission shall not enter a dispositive order or proposed decision unless expressly authorized in writing to do so.

2. All objections must be made in a timely manner and stated on the record.

3. Parties have the right to participate or to be represented by counsel in all hearings or pre-hearing conferences related to their case.

4. Subject to terms and conditions prescribed by the Administrative Procedure Act, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and, upon request by the Commission, may submit briefs and engage in oral argument.

5. The hearing officer is charged with maintaining the decorum of the hearing and may refuse to admit, or may expel, anyone whose conduct is disorderly.

6. The standard of review before the Commission shall be de novo. The Director shall prove the basis for disciplinary action by a preponderance of the evidence.

M. ORDER OF PROCEEDINGS

The hearing officer will conduct the hearing in the following manner:

1. Counsel for the Director and counsel for Petitioner will give opening statements, briefly describing the nature of the proceedings.

2. The case for the Director's disciplinary action will be presented first, followed by the case for Petitioner.

3. The parties will otherwise be allowed to present their cases in the sequence determined by the hearing officer.

4. Each witness must be sworn or affirmed by the hearing officer, or the court reporter, and be subject to examination and cross-examination as well as questioning by the Commission. The hearing officer may limit questioning in a manner consistent with the law.

5. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

N. EVIDENCE

1. The hearing officer shall rule on the admissibility of evidence and may, when appropriate, take official notice of facts in accordance with all applicable requirements of law.

2. Stipulation of facts is encouraged. The Commission may make a decision based on stipulated facts.

3. Evidence in the proceeding will be confined to the issues regarding the decision appealed from, unless the parties waive their right to such notice or the hearing officer determines that good cause justifies expansion of the issues. If the hearing officer decides to admit evidence outside the scope of the notice, over the objection of a party who did not have actual notice of those issues, that party, upon timely request, will receive a continuance sufficient to prepare for the additional issue and to permit amendment of pleadings.

4. A party seeking admission of an exhibit shall provide ten (10) copies of each exhibit at the hearing. The hearing officer will provide the opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. All exhibits admitted into evidence must be appropriately marked and be made part of the record.

5. Any party may object to specific evidence or may request limits on the scope of the examination or cross-examination. A brief statement of the grounds upon which it is based shall accompany such an objection. The objection, the ruling on the objection, and the reasons for the ruling will be noted in the record. The hearing officer may rule on the objection at the time it is made or may reserve the ruling until the written decision.

6. Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony will briefly summarize the testimony or, with permission of the hearing officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

7. Irrelevant, immaterial, and unduly repetitive evidence will be excluded. Any other oral or documentary evidence, not privileged, may be received if it is of a type commonly relied upon by reasonably prudent men and women in the conduct of their affairs.

8. Reasonable inferences. The Commission may base its findings of fact upon reasonable inferences derived from other evidence received.

O. DEFAULT

If the Petitioner fails to appear or participate in an appeal hearing after proper service of notice, the Director's decision shall stand.

P. SUBPOENAS

1. At the written request of any party, the Chairman or member authorized by the Commission may issue subpoenas for the attendance of witnesses at the hearing. The requesting party shall specify whether the witness is also requested to bring documents and reasonably identify said documents. The Executive Secretary may prepare the subpoena.

2. A subpoena may be served by any person specified by law to serve process or by any person who is not a party and who is eighteen (18) years of age or older. Delivering a copy to the person named in the subpoena shall make service. Proof of service may be made by affidavit of the person making service. The party seeking the subpoena shall have the burden of obtaining service of the process and shall be charged with the responsibility of tendering a witness fee of \$30.00 per witness and mileage fees at the current state mileage rate. The witness must be served at least two days prior to the hearing. For good cause, the Commission may authorize the subpoena to be served fewer than two days before the hearing.

3. Any motion to quash or limit the subpoena shall be filed with the Commission and shall state the grounds relied upon.

Q. RECORDING THE PROCEEDINGS

The responsibility to provide a certified court reporter to record the testimony heard at a hearing is borne by the Commission. Upon the filing of a petition for judicial review, the Commission will file a transcript of testimony taken before the agency.

R. DELIBERATIONS

The Commission's deliberations will be held in executive session. The Commission's vote will be taken in public and on the record.

S. FINAL ORDER

1. The Commission will serve on the Petitioner a written order that reflects the action taken by the Commission. The order will include a recitation of facts found based on testimony and other evidence presented and reasonable inferences derived from the evidence pertinent to the issues of the case. It will also state conclusions of law and directives or other disposition entered against or in favor of the Petitioner. The order will be served personally or by mail on the Petitioner. If counsel represents Petitioner, service of the order on Petitioner's counsel shall be deemed service on the Petitioner.

2. The Commission may approve the disciplinary action taken by the Director or may enhance or diminish the action taken by the Director.