

PROMULGATION AND LEGISLATIVE REVIEW OF ADMINISTRATIVE REGULATIONS

An administrative regulation is necessary before an administrative agency may:

- Implement, interpret or prescribe law or policy.
- Describe the organization, procedure or practice requirements of the agency.
- Affect private rights or procedures available to the public.

An administrative agency has the authority to promulgate regulations on those subjects for which regulation-making authority is granted by statute; and has *inherent* authority to formulate regulations if a statutory program is not self-executing (*LRC v. Brown*).

Filing of Administrative Regulation

An administrative regulation which is filed with the LRC Regulations Compiler before 12:00 noon on the 15th day of a month will be **published** in the Administrative Register on the 1st day of the succeeding month.

Public hearing for a filed administrative regulation.

- Shall be scheduled by the agency no sooner than the 21st day and no later than the last workday of the month following publication of the administrative regulation in the Administrative Register.
- The public hearing is required if one or more persons notify the agency in writing that the person or persons wish to appear and testify.
- The administrative agency may cancel the public hearing if it does not receive written notice of intention to appear and testify at least five workdays prior to the scheduled hearing date.
- Any written comments received within two calendar months after the administrative regulation is published must be considered.

Statement of Consideration when comments are received.

- Shall be filed by the agency with the Regulations Compiler on or before 12:00 noon on the 15th day of the month following the scheduled date of the public hearing.
 - Shall include identification of persons who attended the public hearing and who submitted written comments.
 - Shall include a summary of comments received or made at the public hearing, and the response of the KBE to these comments.
 - Shall indicate whether the regulation was “not amended” or “amended” after comments; if amended, amendment language shall be filed with the Statement of Consideration.
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Review by the Administrative Regulations Review Subcommittee (ARRS)

ARRS is a statutory, permanent subcommittee of the Legislative Research Commission (LRC). It is **comprised of eight members** (legislators), appointed by the General Assembly for two-year terms.

ARRS shall meet to review a proposed administrative regulation, or proposed amendment to an existing regulation, within 45 days of the filing of the regulation with the Regulations Compiler or of the filing of the Statement of Consideration (when a public hearing has been requested and taken place, or public comments have been received). An exception is provided for KBE regulations relating to assessment and accountability, which are reviewed by the LRC Education Assessment and Accountability Review Subcommittee (EARRS), instead of ARRS.

Standard of ARRS review. The ARRS is empowered to make “non-binding” determinations which include:

- Whether a regulation is wrongfully promulgated;
- Whether a regulation is in conflict with existing statute;
- Whether there is a **lack of statutory authority** for the promulgation of a regulation; and
- Whether the administrative agency has exceeded its statutory authority.

Possible actions of ARRS in regard to an administrative regulation (pursuant to motion, and affirmative vote by a majority of those members voting);

- Defer the regulation (with the consent of the promulgating agency);
- Amend the regulation (with the consent of the promulgating agency);
- Find the regulation **deficient**.

Review of the Subsequent Jurisdictional (Legislative) Committee

After review by the ARRS, the Legislative Research Commission assigns the administrative regulation to one of 13 jurisdictional Interim Joint Committees (subcommittees of LRC) for **subsequent jurisdictional committee review**. The jurisdictional committee has the opportunity to review the administrative regulation for 90 days after referral by LRC.

The **standard of review for the subsequent jurisdictional committee** is the same as that of the ARRS. The subsequent jurisdictional committee is not bound by the findings of ARRS.

Possible actions of the subsequent jurisdictional committee are the same as that of ARRS. The subsequent jurisdictional committee may, by amendment, attempt to “cure” a deficiency applied by ARRS. The deficiency is only a cure; however, if ARRS reviews the content of the amendment applied by the subsequent jurisdictional committee and agrees to remove its finding of deficiency.

Effective Dates and Effect of Finding of Deficiency

Effective date for an administrative regulation *not found deficient* by either ARRS or subsequent jurisdictional committee is the first occurring of the following:

- Adjournment of the subsequent jurisdictional committee meeting during which the regulation was available for review.
- Ninety days after referral to the subsequent jurisdictional committee, if the committee does not meet during that period.

Effective date for an administrative regulation found *deficient*. An administrative regulation is considered to have been found deficient if such a finding has been attached by *either* ARRS, the subsequent jurisdictional committee or both committees. Such a regulation may become effective:

- After the conclusion of the subsequent jurisdictional committee review stage; **and**
- Upon receipt by the Regulations Compiler of **determination by the Governor** that the regulation shall become effective, the finding of deficiency notwithstanding.

“Emergency” Administrative Regulations

An emergency administrative regulation **takes effect immediately upon filing** with the Regulations Compiler.

An emergency administrative regulation is **authorized if** it is necessary to:

- Meet an imminent threat to the public health, safety, or welfare;
- Prevent a loss of federal funds;
- Meet a deadline for regulation promulgation established by state or federal law, or federal regulation; or
- Protect human health or the environment.

The filing of an emergency regulation must be **accompanied by a State of Emergency, signed by the Governor.**

If an emergency administrative regulation is to be replaced by an “ordinary” regulation, the ordinary regulation shall be filed at the same time as the emergency regulation.

A **public hearing** on an emergency regulation is only required if it is not to be replaced by an ordinary regulation.

An emergency regulation is normally **effective for 270 days.**

PROCESS FOR PROMULGATING OR AMENDING ADMINISTRATIVE REGULATIONS

Administrative Regulation Filed

Filed by the 15th day of the month
Published in the Administrative Register the 1st day of the following month



Public Hearing

If requested, held between the 21st and last day of the month following the month in which it was published



Statement of Consideration

If comments are received, the Statement of Consideration is filed indicating whether or not the regulation will be amended.
Filed within 15 days following the hearing



Subcommittee Review

Occurs within 45 days of the filing of the regulation or of the filing of the Statement of



Review by the Education Committee

Within 90 days of LRC referral



Administrative Regulation Becomes Effective

(If not found deficient upon adjournment of the Education Committee when regulation is available for review or 90 days following referral if the Committee does not meet)