

Title 8. Environmental Law

Chapter XVI. Southwest Central Regional Solid Waste Management District

Subchapter A. Generally

Part 331. Administrative Policies and Procedures

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

"Sec. 1.01 Background

The Southwest Central Regional Solid Waste Management District ("SWCRSWMD" or "District") was created by authority of Act 870 of 1989. The District includes Clark, Garland and Hot Spring counties.

Sec. 1.02 Authority

The District has authority over regional solid waste management and planning within the District. The powers and duties of SWCRSWMD are codified at Ark. Code Ann. § 8-6-704. Additionally, Ark. Code Ann. § 8-6-704(a)(6) authorizes regional solid waste management boards to adopt such rules or regulations pursuant to the Arkansas Administrative Procedures Act, Ark. Code Ann. § 25-15-201 et seq., as are reasonably necessary to assure public notice and participation in any findings or rulings of the board and to otherwise administer the duties of the board."

"Sec. 2.14 Severability

If any provisions of any District Rule or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of District Rules which can be given effect without the invalid provision or application, and to this end the provisions of all District Rules shall be considered severable."

Subpart 1. Generally

8 CAR § 331-101. Definitions.

For purposes of this part, the following definitions shall apply:

- (1) "ADEQ" or "Division" means the Division of Environmental Quality;
- (2) "APA" means the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq., as may be otherwise amended or modified from time to time;
- (3) "Board" means the Southwest Central Regional Solid Waste Management District Board;
- (4) "Chair" means the Chair of the Southwest Central Regional Solid Waste Management District Board;
- (5) "Commission" means the Arkansas Pollution Control and Ecology Commission;
- (6)(A) "Director" means the duly authorized chief administrative officer of the Southwest Central Regional Solid Waste Management District, regardless of the actual position title.

(B) The present administrator for the Southwest Central Regional Solid Waste Management District is West Central Arkansas Planning and Development District;
- (7) "District" or "SWCRSWMD" means the Southwest Central Regional Solid Waste Management District;
- (8) "Person" means any:
 - (A) Individual;
 - (B) Partnership;
 - (C) Corporation;
 - (D) Association; or
 - (E) Public or private organization of any character;
- (9)(A) "Rule" means any Southwest Central Regional Solid Waste Management District regulation, resolution, or statement of general applicability and future effect that implements, interprets, or prescribes law or mandatory policy, or describes the

organization, procedure, or practice of the Southwest Central Regional Solid Waste Management District.

(B) "Rule" does not include statements concerning internal management or intra-agency memoranda; and

(10) "Rulemaking action" includes any action by the Southwest Central Regional Solid Waste Management District to adopt, amend, or repeal any Southwest Central Regional Solid Waste Management District rule.

Authority. Arkansas Code § 8-6-704.

8 CAR § 331-102. Information and access.

(a)(1) Copies of information, minutes of prior meetings, resolutions, and other rules or information of the Southwest Central Regional Solid Waste Management District are available for public inspection.

(2) Pursuant to Arkansas Code § 25-15-203, such information may be obtain or review information, or make any submissions or requests pertaining to the Southwest Central Regional Solid Waste Management District by contacting the administrator for the Southwest Central Regional Solid Waste Management District – West Central Arkansas Planning and Development District.

(b)(1) Requests to review or submit information should be directed to:

Dwayne Pratt
Executive Director
WCAPPD, Inc.
P.O. Box 6409
Hot Springs, AR 71902
Phone: (501) 525-7577
Fax: (501) 525-7677

(2) The West Central Arkansas Planning and Development District may also be found on the web at wcapdd.dina.org.

(c) The Southwest Central Regional Solid Waste Management District may charge such expenses as may be authorized by law in connection with the preparation of copies.

Authority. Arkansas Code § 8-6-704.

Subpart 2. Practices and Procedures

8 CAR § 331-201. Proposed rulemaking action.

At any Southwest Central Regional Solid Waste Management District Board meeting, the board may adopt, amend, or repeal any rule consistent with the requirements of this subpart.

Authority. Arkansas Code § 8-6-704.

8 CAR § 331-202. Notice of proposed rulemaking action.

(a) Notice of the proposed new rule, or amendment or repeal of any existing rule, shall be given to the public at least thirty (30) days prior to any proposed rulemaking action.

(b) The notice shall:

(1) State the substance of the proposed new rule, amendment, or repeal of any existing rule;

(2) Provide information on obtaining a copy of the proposed rule from the Southwest Central Regional Solid Waste Management District; and

(3) Inform the public of the time, place, and manner in which comments may be presented.

(c) Notice shall also be mailed, via first-class mail, to all persons who request advance notice, in writing, of any rulemaking action by the district.

(d) Unless otherwise required by law, the notice shall:

(1) Be published in a newspaper or newspapers of general daily circulation within the district as selected by the Southwest Central Regional Solid Waste Management Board in its discretion; and

(2) Run for three (3) consecutive days.

(e) Together with any other required documentation, the notice and the proposed rule shall also be provided to or filed with:

(1) The Secretary of State;

(2) The Bureau of Legislative Research; and

(3) Such other agencies as may be required by the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq.

Authority. Arkansas Code § 8-6-704.

8 CAR § 331-203. Public comment.

The Southwest Central Regional Solid Waste Management District shall afford any interested persons reasonable opportunity to submit written data, views, or arguments, orally or in writing.

Authority. Arkansas Code § 8-6-704.

8 CAR § 331-204. Public hearing.

(a) The Southwest Central Regional Solid Waste Management District may hold a public hearing to take oral comments from the public concerning any proposed rulemaking action.

(b) The district must hold a hearing to accept oral comments from the public concerning any proposed rulemaking action if requested by:

(1) Twenty-five (25) persons;

(2) A governmental subdivision or agency; or

(3) An association having not less than twenty-five (25) members.

(c) Should a public hearing be scheduled, notice of the hearing shall be made in the manner provided in 8 CAR § 331-202.

(d) Where rules are required by law to be made on the record after opportunity for a hearing, the provisions of that law shall, as applicable, apply in place of these requirements.

Authority. Arkansas Code § 8-6-704.

8 CAR § 331-205. Final action.

(a) At any Southwest Central Regional Solid Waste Management Board meeting following the close of the public comment period and following a public hearing, if any is held, the board may act on the proposed rule by:

- (1) Adopting it as originally written;
- (2) Adopting a modified or amended version; or
- (3) Rejecting the rule.

(b) The Southwest Central Regional Solid Waste Management District shall fully consider all written and oral submissions pertaining to the rulemaking action before finalizing the language of the proposed rule.

(c) The board reserves the right to reissue any proposal for public comment following significant modifications.

(d) Upon adoption of the rule, the board, if requested to do so by an interested person within thirty (30) days of adoption, shall issue a concise statement of the principal reasons for or against its adoption and demonstrating that public comments were duly considered.

Authority. Arkansas Code § 8-6-704.

8 CAR § 331-206. Emergency proceedings.

(a) Should the Southwest Central Regional Solid Waste Management Board find that imminent peril to the public health, safety, or welfare or compliance with state or

federal laws requires adoption of a rule upon fewer than thirty (30) days' notice, and states in writing its reasons for that finding, it may proceed without prior notice or hearing, or upon any abbreviated notice and hearing that it may choose, to adopt an emergency rule.

(b) Any emergency rule so adopted may be effective for no longer than one hundred twenty (120) days.

Authority. Arkansas Code § 8-6-704.

8 CAR § 331-207. Petition for rulemaking.

(a) Any person residing or doing business within the Southwest Central Regional Solid Waste Management District may petition the Southwest Central Regional Solid Waste Management Board for a rulemaking action.

(b) Within sixty (60) days after submission of a petition, the board shall either:

- (1) Deny the petition, stating in writing its reasons for denial; or
- (2) Initiate rulemaking proceedings.

(c) If no action is taken by the board within sixty (60) days, the petitions shall be deemed to be denied, and the board shall not be required to take any further action except to state its reasons for denial in writing within ten (10) days after such denial is deemed to have occurred.

Authority. Arkansas Code § 8-6-704.

8 CAR § 331-208. Filing of adopted rule.

The Southwest Central Regional Solid Waste Management Board shall file with the Secretary of State, the Arkansas State Library, the Bureau of Legislative Research, and any other agency or legislative body as may be required by law:

- (1) The adopted rule;
- (2) A statement of financial impact for the rule; and
- (3) Any other information or documents required by law.

Authority. Arkansas Code § 8-6-704.

8 CAR § 331-209. Effective date.

(a) Each rule adopted by the Southwest Central Regional Solid Waste Management Board shall be effective thirty (30) days after filing unless a later date is specified by law or in the rule itself.

(b)(1) However, an emergency rule may become effective immediately upon filing or at a stated time less than thirty (30) days thereafter if the board finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare.

(2) The board's finding and a brief statement of the reasons therefore shall be filed with the rule.

(3) The board shall take appropriate measures to make emergency rules known to the persons who may be affected by them.

Authority. Arkansas Code § 8-6-704.

8 CAR § 331-210. Certification of rules.

A copy of any rule adopted by the Southwest Central Regional Solid Waste Management Board may be certified by:

- (1) Signatures of the chair of the board and secretary; or
- (2) Other such method as determined by the board.

Authority. Arkansas Code § 8-6-704.

8 CAR § 331-211. Official records.

(a)(1) The Southwest Central Regional Solid Waste Management District will maintain:

(A) Certified copies of every rule adopted by the Southwest Central Regional Solid Waste Management Board;

(B) A copy of all other documents required to be filed by this subpart; and

(C) Proof of all required filings.

(2) These copies shall be kept and maintained by the director or offices of the administrator for the district.

(b) A copy of each notice of rulemaking shall also be kept on file by the director or at the offices of the administrator for the district.

Authority. Arkansas Code § 8-6-704.

8 CAR § 331-212. Substantial compliance.

(a) Every rulemaking action by the Southwest Central Regional Solid Waste Management Board after the effective date of this subpart shall be effective if the rulemaking action substantially complies with this subpart.

(b) With the exception of maintenance and availability of records, this subpart shall not apply to rules previously adopted by the Southwest Central Regional Solid Waste Management District prior to the effective date of this subpart.

Authority. Arkansas Code § 8-6-704.

8 CAR § 331-213. Preemption by state or federal law.

(a) If any law of the State of Arkansas or the United States shall require a different method for rulemaking action in a particular situation, the provisions of this subpart shall be preempted to the extent necessary to comply with state or federal law.

(b) Whenever possible, the provisions of this subpart shall be interpreted to be consistent with requirements of state and federal law.

Authority. Arkansas Code § 8-6-704.

Subpart 3. Adjudications

8 CAR § 331-301. General procedures.

Unless specifically set forth herein, the Southwest Central Regional Solid Waste Management District shall follow the general procedures for administrative adjudications as set forth in Arkansas Code § 25-15-208.

Authority. Arkansas Code § 8-6-704.

8 CAR § 331-302. Assessment of penalty.

(a) The director, who shall keep a log of all complaints or violations as determined by the Southwest Central Regional Solid Waste Management District, is granted the discretion and authority, to the extent permitted by Arkansas Code § 8-6-701 et seq., to assess monetary penalties for violations of district rules as well as to revoke, suspend, or deny a license or permit to any person for cause.

(b) No formal action regarding a complaint or violation, outlined below, may be taken until efforts have been made to resolve the violation or complaint informally and after the expiration of a twenty-four-hour period granted by the director to correct or remediate the complaint or violation.

Authority. Arkansas Code §§ 8-6-704, 8-6-714.

8 CAR § 331-303. Form.

(a) Penalties shall be assessed by a written administrative order, signed by the director or his or her authorized designee, and delivered to the person against whom the penalty is assessed, with the right to appeal and have a hearing as set out below.

(b) Administrative orders shall be delivered in person or by certified mail, return receipt requested, to the address of record at the Southwest Central Regional Solid Waste Management District.

(c) The director has the discretion to:

- (1) Attach a consent agreement to an administrative order; and
- (2) Enter into a consent agreement to settle any administrative order.

Authority. Arkansas Code §§ 8-6-704, 8-6-714.

8 CAR § 331-304. Request for appeal.

(a) Within thirty (30) days of the receipt of any administrative order, the person against whom the administrative order was issued can request an appeal before the Southwest Central Regional Solid Waste Management Board, who may waive any penalty for a first offense based on the person's prior record.

(b)(1) The request for appeal must be in writing and received by the office of the administrator for the Southwest Central Regional Solid Waste Management District no later than close of business thirty (30) days after the date of the administrative order.

(2) If the thirtieth day shall fall on a Saturday, Sunday, holiday, or other day that the office is closed, then the request shall be due by the close of business on the following business day.

(c) Requests for appeal may be delivered to the office of the administrator for the district in person or by certified mail, return receipt requested.

Authority. Arkansas Code § 8-6-704.

8 CAR § 331-305. Appeal to board.

(a)(1) Persons who timely file a request for appeal shall be entitled to be heard at the first regularly scheduled Southwest Central Regional Solid Waste Management Board meeting following their request for appeal, unless the request for hearing is received within fourteen (14) days prior to a scheduled board meeting.

(2) In such an event, the appeal will be heard at the following regularly scheduled board meeting.

(b)(1) Both sides may appear in person or by counsel.

(2) The Southwest Central Regional Solid Waste Management District shall present their case first, followed by the appellant.

(3) Both sides may offer testimony and present evidence to be considered by the board.

(4) Cross-examination shall be allowed as well as questioning by the board.

(c) The hearing shall be conducted by the presiding chair of the board.

(d)(1) Conduct of the hearing shall be informal.

(2) The chair shall be entitled to use his or her discretion to allow, disallow, or strike any evidence or testimony that they feel is:

(A) Irrelevant;

(B) Unreliable; or

(C) Duplicative.

(e)(1) The hearing shall be recorded and either party may request a court reporter to develop a transcript of the hearing.

(2) This transcript, along with all evidence presented to and accepted by the chair, shall make up the administrative record in that matter.

(f)(1) At the close of the hearing or as soon as practicable following same, the board shall enter a written order.

(2)(A) Each party shall be responsible for drafting proposed written orders to be submitted to the board for consideration.

(B) Alternatively, the board may draft its own order following the close of the hearing.

Authority. Arkansas Code § 8-6-704.

8 CAR § 331-306. Final agency action.

(a) The written order adopted by the Southwest Central Regional Solid Waste Management Board shall be the final agency action for the purpose of appeal to circuit court.

(b) The board shall deliver a copy of the written order to the appellant or appellant's counsel either:

- (1) In person; or
- (2) By regular mail.

Authority. Arkansas Code § 8-6-704.

8 CAR § 331-307. Appeals to circuit court.

The appellant may appeal the final agency action of the Southwest Central Regional Solid Waste Management Board to a circuit court in the appropriate county as required by the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq.

Authority. Arkansas Code § 8-6-704.

Subpart 4. District Bylaws

8 CAR § 331-401. Creation and amendment of bylaws.

(a) The Southwest Central Regional Solid Waste Management District's Bylaws, 8 CAR pt. 330, were created and became effective on April 19, 1995.

(b) These bylaws may be amended or repealed by new bylaws which may be adopted:

(1) By an affirmative vote of a majority or the entire Southwest Central Regional Solid Waste Management Board at any regular or special meeting of the board; and

(2) As further set forth in the district's present bylaws.

Authority. Arkansas Code § 8-6-704.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "A copy of these By-Laws is attached."

The bylaws may be found at Bylaws, 8 CAR pt. 330.