

**REPORT OF THE  
ADMINISTRATIVE RULES SUBCOMMITTEE  
OF THE  
ARKANSAS LEGISLATIVE COUNCIL**

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**May 17, 2019**

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**Co-Chairs:**

**The Administrative Rules Subcommittee met on Wednesday, May 15, 2019, at 9:00 a.m., in Room A, MAC.**

- 1. The Subcommittee adopted the attached Rules of the Administrative Rules Subcommittee.**
- 2. The Subcommittee adopted the attached Executive Subcommittee Reports concerning emergency rules.**
- 3. The Subcommittee reviewed and filed the following Quarterly Reports on Administrative Directives pursuant to Act 1258 of 2015:**
  - a. Department of Community Correction (Ms. Dina Tyler)**
    - i. For the quarter ending December 31, 2018**
    - ii. For the quarter ending March 31, 2019**
  - b. Department of Correction (Mr. Solomon Graves)**
    - i. For the quarter ending December 31, 2018**
    - ii. For the quarter ending March 31, 2019**
  - c. Arkansas Parole Board (Ms. Brooke Cummings)**
    - i. For the quarter ending December 31, 2018**
    - ii. For the quarter ending March 31, 2019**

4. **The Subcommittee reviewed and approved the following rules filed pursuant to Ark. Code Ann. § 10-3-309:**

**STATE BOARD OF DENTAL EXAMINERS (Mr. Kevin O'Dwyer)**

- a. **Amendment to Article IX – Credentials Required in Issuing Dental or Dental Hygiene Licenses**
- b. **Amendment to Article XI – Dental Hygienists Functions**

**DEPARTMENT OF EDUCATION (Ms. Mary Claire Hyatt, item a; and Ms. Jennifer Dedman, item b)**

- a. **Special Education and Related Services, Section 2.00 Definitions and Section 5.00 Free and Appropriate Public Education (FAPE)**
- b. **Federal Program Complaint Resolution**

**DEPARTMENT OF FINANCE AND ADMINISTRATION, REVENUE DIVISION (Mr. Mike Wehrle, Mr. Dale Breshears)**

- a. **Apprenticeship Program Income Tax Credit under Act 1042 of 2017**

**DEPARTMENT OF ARKANSAS HERITAGE (Ms. Stacy Hurst, Ms. Debra Fithen)**

- a. **Arkansas Heritage Grant Program**
- b. **Public Art Grants**

**LIVESTOCK AND POULTRY COMMISSION (Mr. Wade Hodge)**

- a. **Licensing, Certification and Permitting of Active Duty Service Members, Returning Military Veterans and Spouses**

**STATE MEDICAL BOARD (Mr. Kevin O'Dwyer)**

- a. **Regulation 42 – Licensure for Active Military Members**
- b. **Proposed Amendment to Regulation 38 – Telemedicine**
- c. **Proposed Amendment to Regulation 2.8 – Patient/Provider Relationships**

**OIL AND GAS COMMISSION (Mr. Lawrence Bengal)**

- a. **General Rule B-26 – General Lease Operating Requirements**
- b. **General Rule H-1 – Class II Disposal, Class II Commercial Disposal, Enhanced Oil Recovery Injections (EOR), and Class V Brine Disposal Well Permit Application Procedures**
- c. **General Rule H-2 – Well Construction, Operating, and Reporting Requirements for Class II Disposal and Enhanced Oil Recovery (EOR) Injection Wells**

**STATE BOARD OF OPTOMETRY (Mr. Kevin O’Dwyer)**

- a. **Chapter 1, Article IV – Reciprocity, Licensure by Endorsement, Military Personnel**
- b. **Chapter 5, Article IX – Prescribing Controlled Substances**

**STATE PLANT BOARD (Mr. Wade Hodge)**

- a. **Licensing, Certification and Permitting of Active Duty Service Members, Returning Military Veterans, and Spouses**

**COMMISSION FOR ARKANSAS PUBLIC SCHOOL ACADEMIC FACILITIES AND TRANSPORTATION (Mr. Taylor Dugan, Mr. Darrell Tessman)**

- a. **Self-Construction Projects by Public Education Entities**

**SALINE COUNTY REGIONAL SOLID WASTE MANAGEMENT DISTRICT (Ms. Tiffany Dunn, Mr. Sam Gibson)**

- a. **SCRSWMD Recycling Fund Distribution and District Administered Grants Program**

**Respectfully submitted,**

**Senator Lance Eads, Co-Chair**

**Representative Dan Sullivan, Co-Chair**

**RULES OF THE ADMINISTRATIVE RULES AND REGULATIONS  
SUBCOMMITTEE OF THE LEGISLATIVE COUNCIL**

**Section 1. Review and Approval of State Agency Rules.** In accordance with Arkansas Code § 10-3-309, the following procedures shall apply with regard to review and approval of state agency rules:

**(a) Definitions.** As used in these rules:

(1)(A) "Rule" means a state agency statement of general applicability and future effect that implements, interprets, or prescribes law or policy or describes the organization, procedure, or practice of a state agency and includes without limitation the amendment or repeal of a prior rule.

(B) "Rule" does not mean:

(i) A statement that concerns the internal management of a state agency and that does not affect the private rights or procedures available to the public;

(ii) A declaratory order or ruling issued under § 25-15-206 or other provision of law applicable to the state agency issuing the declaratory order or ruling; or

(iii) Intraagency memoranda; and

(2)(A) "State agency" means an office, board, commission, department, council, bureau, or other agency of state government having authority to promulgate or enforce rules.

(B) "State agency" does not include the following:

(i) The Arkansas State Game and Fish Commission, if the rule is not promulgated under the authority of a statute enacted by the General Assembly;

(ii) The State Highway Commission and the Arkansas State Highway and Transportation Department, if the rule is not promulgated under authority of a statute enacted by the General Assembly; and

(iii) An institution of higher education.

**(b) Filing of Rules with the Legislative Council.**

(1) A state agency shall file a proposed rule with the Legislative Council at least thirty (30) days before the expiration of the period for public comment on the rule under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., or other laws or policies pertaining to the rulemaking authority of that state agency.

(2) The Legislative Council shall refer all proposed rules filed by a state agency with the Administrative Rules and Regulations Subcommittee.

(3)(A) If an agency determines that a newly enacted law requires the repeal or amendment of an existing rule or the adoption of a new rule and the newly enacted law does not provide a specific date for the repeal, amendment, or adoption of the rule, the proposed version of the new, amended, or repealed rule shall be filed with the Legislative Council sufficiently in advance of the dates set forth in Arkansas Code § 25-15-216(b)(1) so that the Subcommittee and the Legislative Council may consider the rule for review and approval before the appropriate date.

(B)(i) If an agency fails to file the final version of the new, amended,

or repealed rule for adoption as required by law, the executive head of the agency at issue or his or her designee shall appear before the Subcommittee on a monthly basis until the final version of the new, amended, or repealed rule is filed for adoption with the Secretary of State.

(ii) When appearing before the Subcommittee, the executive head of the agency at issue or his or her designee shall:

(a) Describe why the agency has been unable to comply with Arkansas Code § 25-15-216(b)(1);

(b) Provide an update on the current status of the necessary rule changes;

(c) Describe the steps the agency is taking to address the failure to comply; and

(d) Provide an anticipated date for when the final version of the new, amended, or repealed rule will be filed for adoption with the Secretary of State.

**(c) Placement of Rules on the Subcommittee Agenda.** In order to have a rule placed on an upcoming Subcommittee agenda, the following requirements must be met:

(1) The public comment period of the state agency's proposed rule shall have expired by the 15<sup>th</sup> of the month prior to the Subcommittee meeting date at which the state agency would like the proposed rule to appear on the agenda; and

(2) The state agency shall provide the Subcommittee staff with the following information, which is in addition to the information previously required to have been submitted under subsection (d) of this Rule:

(A) A public comment summary that includes for each comment received: the name of the commenter, if known; a summary of the comment; and a response by the agency to the comment;

(B) A revised markup of the proposed rule that shows changes, if any, that were made subsequent to the initial rule filing with the Subcommittee; and

(C) Any additional information requested by the Legislative Council, including without limitation the state agency's responses to any questions and comments submitted to the state agency by Subcommittee staff concerning the proposed rule.

**(d) Materials to be Provided by a State Agency When Filing a Rule.** Upon filing of a proposed rule with the Subcommittee, the state agency shall submit the following documentation:

(1) A completed questionnaire on a form approved by the Legislative Council;

(2) A financial impact statement, as required by Arkansas Code § 25-15-204, on a form approved by the Legislative Council;

(3) A summary of the proposed rule; and

(4) The proposed rule and any markup to the proposed rule.

**(e) Public Comment.** When conducting its review of a state agency rule, the Subcommittee shall allow members of the public a reasonable opportunity to comment on the proposed rule.

**(f) Review and Approval.**

(1) Except as set forth in subsection (f)(6) of this Rule, upon conclusion of its review of the proposed rule, the Chair of the Subcommittee shall state, "Without objection, the rule is considered reviewed and approved."

(2) At this point, the rule is considered reviewed and approved, pending Legislative Council final action, unless a majority of a quorum present at the Subcommittee meeting request that the Subcommittee vote on the issue of approving the rule.

(3)(A) At the time that the motion is made to vote regarding approval, the member making the motion shall state the grounds upon which approval should be denied.

(B) The only viable grounds for not approving a rule shall be if the rule is found to be inconsistent with state or federal law or with legislative intent.

(4) If the Subcommittee votes on the issue of approving the proposed rule, the proposed rule shall be considered approved unless a majority of a quorum present vote for the rule to not be approved.

(5)(A) The Subcommittee shall not exercise line-item review and approval of a proposed rule. Review and approval of the proposed rule shall apply to the entire proposed rule as submitted by the state agency.

(B) If a state agency presenting a proposed rule to the Subcommittee indicates its intent or agreement to revise a proposed rule in response to discussions by the Subcommittee, and revision of the rule in such a manner would not violate any of the requirements of the Administrative Procedure Act, the Subcommittee may review and approve the proposed rule with the revisions agreed to by the state agency.

(6)(A) A proposed rule submitted by the State Board of Health under Arkansas Code § 20-7-604(d)(2)(D), concerning exemptions from the requirements of the Prescription Drug Monitoring Program, shall be considered reviewed and approved by the Subcommittee upon an affirmative vote of three-fourths (3/4) of the members present when a quorum is present.

(B) When considering a rule submitted under this subsection (f)(6)(A), the requirement to state the grounds for not approving a rule under subsection (f)(3)(B) shall not apply.

(7)(A) [Effective July 24, 2019] If enacted legislation requires or results in more than one (1) state agency adopting, amending, or repealing rules on a similar subject matter:

(i) A state agency or a member of the General Assembly may request that all proposed rules filed with the Legislative Council regarding the enacted legislation be grouped together and considered as a single group;

(ii) A request to group the proposed rules shall be submitted in writing to one of the co-chairs of the Subcommittee at least one (1) business day prior to the meeting of the Subcommittee at which the rules will be considered; and

(iii) Approval of a request to group proposed rules shall be by affirmative vote of a majority of the members present when a quorum is present.

(B) If the proposed rules are grouped together under subdivision (f)(7)(A) of this section for review, the Subcommittee may:

(i) Separate the proposed rules at the request of a member of

the General Assembly or one (1) of the state agencies that promulgated the proposed rules; and

(ii) Elect to consider one (1) or more of the proposed rules separated from the group.

**(g) Referral of Proposed Rules.**

(1)(A) The Subcommittee may refer a rule to a committee of the General Assembly or another subcommittee of the Legislative Council for the committee's or subcommittee's consideration.

(B) However, in doing so, the Subcommittee shall not delegate its authority to review and approve a rule to that committee or subcommittee.

(2) After the referred rule is presented to a committee of the General Assembly or subcommittee of the Legislative Council and considered, the committee or subcommittee to whom the rule was referred may provide its views and opinions on the rule to the Subcommittee.

(3) Either chair of the Subcommittee may determine that there is an undue delay in the review of the proposed rule by the committee or subcommittee to which it was referred and recall the proposed rule in order to begin the review and approval process by the Subcommittee.

**(h) Statutory Requirement for Review by a Specific Subject Matter Committee.**

(1) If a statute requires a proposed rule to be reviewed or considered by a specific subject matter committee or subcommittee, the subject matter committee or subcommittee shall consider the proposed rule before the Subcommittee undertakes review and approval of the proposed rule.

(2)(A) Either chair of the Subcommittee may waive the requirement of subsection (h)(1) if he or she determines that prior review by the subject matter committee or subcommittee will or has already resulted in an undue delay in the review and approval process.

(B) A waiver shall not be granted if the state agency has not provided the required information under subsections (c)(2) and (d) of this Rule.

(C) Issuance of a waiver by either chair of the Subcommittee does not remove the statutory requirement of review or consideration by the subject matter committee or subcommittee, and the state agency shall still comply with all statutory requirements regarding review by legislative committees.

**(i) Review and Approval of Emergency Rules.** The following procedures apply with regard to the review and approval of proposed emergency rules:

(1) A state agency shall file a proposed emergency rule with the Executive Subcommittee of the Legislative Council.

(2) A proposed emergency rule may be considered reviewed and approved by the Executive Subcommittee in one of two ways:

(A)(i) The proposed emergency rule is reviewed and approved at a meeting of the Executive Subcommittee.

(ii) Upon conclusion of the Executive Subcommittee's review of the proposed emergency rule, the rule shall be considered approved unless a majority

of a quorum present request a vote regarding approval of the proposed emergency rule. If the Executive Subcommittee votes on the issue of approval, the proposed emergency rule shall be approved unless a majority of a quorum present vote for the proposed emergency rule not to be approved.

(iii)(a) At the time that the motion is made to vote regarding approval, the member making the motion shall state the grounds upon which approval should be denied.

(b) The only viable grounds for not approving a rule shall be if the rule is found to be inconsistent with state or federal law or legislative intent.

(B) A majority or more of the members of the Executive Subcommittee approve the proposed emergency rule in writing.

(3)(A) If possible, the proposed emergency rule shall be sent electronically to the members of the Legislative Council at least one (1) day before the Executive Subcommittee considers the emergency rule for review and approval.

(B) Either chair of the Legislative Council or a majority of the members of Legislative Council may call a meeting to be held within one (1) day after review and approval by the Executive Subcommittee of the emergency rule to request reconsideration of the emergency rule by the Executive Subcommittee.

(4) A proposed emergency rule approved by the Executive Subcommittee shall be reported to the Administrative Rules and Regulations Subcommittee and to the Legislative Council.

**(j) Review and Approval of Rules Concerning Occupational Licensure of Active Duty Service Members, Returning Military Veterans, and Their Spouses. [Effective July 24, 2019]**

(1) An occupational licensing entity requesting review and approval of proposed rules recommending an expedited process and procedure for occupational licensure of active duty service members, returning military veterans, and their spouses shall file the proposed rules with the Subcommittee before the proposed rules are promulgated under the Administrative Procedure Act, Arkansas Code § 25-15-201, et seq.

(2) If an occupational licensing entity files proposed rules recommending an expedited process and procedure for occupational licensure of active duty service members, returning military veterans, and their spouses, pursuant to Arkansas Code § 17-1-106(c), with the Legislative Council, the Subcommittee shall:

(A) Review the proposed rules of the occupational licensing entity as submitted for public comment at least thirty (30) days before the public comment period ends; and

(B) Conduct a review and approval process regarding the proposed rules based on:

(i) A determination of whether the expedited process and procedure provide the least restrictive means of accomplishing occupational licensure; and

(ii) Any other criteria the Subcommittee determines necessary to achieve the objectives of Arkansas Code § 17-1-106(c).

(3) The review and procedure process for proposed rules under this subsection (j) shall be completed within one (1) year of the effective date of Act 820 of 2019.



**Section 2. Appeals of Rule Codification Decisions.** Under Act 662 of 2019, the Bureau of Legislative Research was tasked with compiling, formatting, and indexing a codification of the general and permanent rules of agencies to be known as the “Code of Arkansas Rules”. An agency that objects to the form of the codification of a rule by the Bureau of Legislative Research may appeal the codification of the rule to the Subcommittee.

ARKANSAS LEGISLATIVE COUNCIL

Officers

Senator Bill Sample  
Senate Chair  
Representative Jim Dotson  
House Chair  
Senator Terry Rice  
Senate Vice Chair  
Representative Jon S. Eubanks  
House Vice Chair



Room 315, State Capitol Building  
Little Rock, AR 72201

Marty Garrity  
Executive Secretary

Tel: 501-682-1937  
Fax: 501-682-1936

April 1, 2019

Senate Co-Chair  
Administrative Rules Review Section

House Co-Chair  
Administrative Rules Review Section

Dear Co-Chairs:

This letter is to notify you that, pursuant to Act 1258 of 2015, the Executive Subcommittee met on April 1, 2019 to consider the request from the Arkansas Plant Board to review and approve an emergency rule concerning the use and application of Dicamba. A copy of the emergency rule is attached for your information.

This emergency rule was reviewed and approved, and the review and approval is effective at 12:01 a.m. on Wednesday, April 3, 2019.

Respectfully,

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Senator Cecile Bledsoe  
Senate Co-Chair  
Executive Subcommittee

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Representative Jeff Wardlaw  
House Co-Chair  
Executive Subcommittee

CB/JW:vjf

Attachment

cc: Ms. Jessica Sutton, Administrator, Administrative Rules and Regulations Review  
Section  
Mr. Butch Calhoun, Director, Arkansas State Plant Board

# ARKANSAS LEGISLATIVE COUNCIL

Officers

**Senator Bill Sample**  
Senate Chair  
**Representative Jim Dotson**  
House Chair  
**Senator Terry Rice**  
Senate Vice Chair  
**Representative Jon S. Eubanks**  
House Vice Chair



Room 315, State Capitol Building  
Little Rock, AR 72201

**Marty Garrity**  
Executive Secretary

Tel: 501-682-1937  
Fax: 501-682-1936

April 10, 2019

Senate Co-Chair  
Administrative Rules Review Subcommittee

House Co-Chair  
Administrative Rules Review Subcommittee

Dear Co-Chairs:

This letter is to notify you that, pursuant to Act 1258 of 2015, the Executive Subcommittee met on April 8, 2019 to consider the request from the Arkansas Department of Health to review and approve an emergency rule concerning the List of Controlled Substances. A copy of the emergency rule is attached for your information.

This emergency rule was reviewed and approved, and the review and approval is effective at 12:01 a.m. on Wednesday, April 10, 2019.

Respectfully,

Handwritten signature of Cecile Bledsoe in cursive.

Senator Cecile Bledsoe  
Senate Co-Chair  
Executive Subcommittee

Handwritten signature of Representative Jeff Wardlaw in cursive.

Representative Jeff Wardlaw  
House Co-Chair  
Executive Subcommittee

CB/JW:vjf

Attachment

cc: Ms. Jessica Sutton, Administrator, Administrative Rules and Regulations Review Section  
Dr. Nathaniel Smith, Director, Arkansas Department of Health  
Ms. Laura Shue, General Counsel, Arkansas Department of Health