

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

May 19, 2017

Co-Chairs:

The Administrative Rules and Regulations Subcommittee met on Tuesday, May 16, 2017 at 1:00 p.m. in Room A, MAC.

- 1. The Subcommittee adopted the attached rules for the upcoming 2017-2018 biennial period.**
- 2. The Subcommittee adopted the attached reports of the Executive Subcommittee concerning emergency rules.**
- 3. The Subcommittee reviewed and filed the following quarterly reports issued pursuant to Sections 14 and 15 of Act 1258 of 2015 concerning Administrative Directives and Administrative Memoranda and submitted by the following agencies:**
 - a. Department of Community Correction (for the quarters ending December 31, 2016 and March 31, 2017) (Dina Tyler)**
 - b. Arkansas Parole Board (for the quarters ending December 31, 2016 and March 31, 2017) (Brooke Cummings)**
 - c. Department of Correction (for the quarter ending December 31, 2016) (Solomon Graves)**
- 4. The Subcommittee reviewed and approved the following rule that was deferred from the December 13, 2016 Subcommittee meeting:**

CAPITOL ZONING DISTRICT COMMISSION (Boyd Maher and Julie Chavez)

- a. Updates to the Capitol Zoning District Commission**

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

APPRAISER LICENSING AND CERTIFICATION BOARD (Diana Piechocki)

- a. **Section IX – Reinstatement Rules**

STATE BANK DEPARTMENT (Susannah Marshall and John Ahlen)

- a. **Messenger Service**
- b. **Corporate File**
- c. **Publication Requirements for Applications Before the State Banking Board**

STATE BOARD OF DENTAL EXAMINERS (Kevin Odwyer)

- a. **Amendment to Article XIV to strengthen the scope of education requirements for Dentists and Dental Hygienists**

ARKANSAS ECONOMIC DEVELOPMENT COMMISSION, RURAL SERVICES (Amy Fecher)

- a. **Fish and Wildlife Conservation Education Grant Program**

DEPARTMENT OF HEALTH, CENTER FOR HEALTH PROTECTION (Robert Brech)

- a. **Prescription Drug Monitoring Program**

HEALTH SERVICES PERMIT AGENCY (Tracy Steele)

- a. **Regulation 100M Nursing Facility Bed Methodology**

STATE HIGHWAY AND TRANSPORTATION DEPARTMENT (Gill Rogers and Joe Sartini)

- a. **Rules for Access Driveways to State Highways**

STATE PLANT BOARD, SEED DIVISION (Mary Smith and Terry Walker)

- a. **Official Standards for Seed Certification in Arkansas**

PUBLIC SERVICE COMMISSION (John Bethel)

- a. **Arkansas Gas Pipeline Code**
- b. **Pole Attachment Rules**

ARKANSAS WATERWAYS COMMISSION (Gene Higginbothom)

- a. **Arkansas Port, Intermodal, and Waterway Improvement Development Grant**

6. **The Subcommittee held the following rule until the June 13, 2017 meeting:**

APPRAISER LICENSING AND CERTIFICATION BOARD (Diana Piechocki)

- a. **Section XII – Fees and Payment of Fees**

Respectfully submitted,

Senator David Sanders, Co-Chair

Representative Kim Hammer, Co-Chair

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

CONCERNING REVIEW AND APPROVAL OF STATE AGENCY RULES

Review and Approval of State Agency Rules. ~~[Effective July 22, 2015]~~ In accordance with Arkansas Code § 10-3-309 (as amended by Act 1258 of 2015), the following procedures shall apply with regard to review and approval of state agency rules:

(a) 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) 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.

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

(d) **Review and Approval of Rules by the Administrative Rules and Regulations Subcommittee.** The Administrative Rules and Regulations Subcommittee (the “Subcommittee”) shall conduct its review of state agency rules as follows:

(1) **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:

(A) The public comment period of the state agency’s proposed rule

shall have expired by the 15th 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

(B) 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)(2) of this Rule:

(i) 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;

(ii) 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

(iii) 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.

(2) **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:

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

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

(C) A summary of the proposed rule; and

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

(3) **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.

(4)(A) **Review and Approval.** Except as set forth in subsection (d)(4)(F) of this Rule, Upon 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."

(B) 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.

(C)(i) 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.

(ii) 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.

(D) 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.

(E)(i) 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.

(ii) 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.

(F)(i) [Effective July 31, 2017] 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.

(ii) When considering a rule submitted under this subsection (d)(4)(F), the requirement to state the grounds for not approving a rule under subsection (d)(4)(C) shall not apply.

(5)(A)(i) Referral of Proposed Rules. 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.

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

(B) 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.

(C) 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.

(6)(A) Statutory Requirement for Review by a Specific Subject Matter Committee. 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.

(B)(i) Either chair of the Subcommittee may waive the requirement of subsection (d)(6)(A) 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.

(ii) A waiver shall not be granted if the state agency has not provided the required information under subsection (d)(1)(B) of this Rule.

(iii) 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.

(e) Review and Approval of Rules by the Legislative Council.

(1) The Legislative Council shall conduct its approval of rules reviewed and approved by the Administrative Rules and Regulations Subcommittee in the following manner:

(1)(A) A proposed rule approved by the Administrative Rules and Regulations Subcommittee shall be considered approved by the Legislative Council

upon adoption by the Legislative Council of the Subcommittee's report in which the rule is contained.

(2)(A)(B)(i) A majority of a quorum present of the Legislative Council may request a vote regarding approval of a specific proposed rule contained in the report of the Subcommittee. If the Legislative Council votes on the issue of approving the proposed rule, the proposed rule shall be approved unless a majority of a quorum present vote for the proposed rule to not be approved.

(B)(i)(ii)(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.

(ii)(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.

(2)(A) [Effective July 31, 2017] 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 Legislative Council upon an affirmative vote of three-fourths (3/4) of the members present when a quorum is present, and shall be considered separately from other rules reported to the Legislative Council by the Administrative Rules and Regulations Subcommittee.

(B) When considering review and approval of a proposed rule under subsection (e)(2) of this Rule, grounds for not approving the rule are not required to be stated.

(f) 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.

ARKANSAS LEGISLATIVE COUNCIL

Officers

Senator Bill Sample

Senate Co-Chair

Representative David L. Branscum

House Co-Chair

Senator Terry Rice

Senate Co-Vice Chair

Representative Jim Dotson

House Co-Vice Chair



Marty Garrity
Executive Secretary

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

Room 315, State Capitol Building
Little Rock, AR 72201

February 22, 2017

Ms. Jessica Sutton, Administrator
Administrative Rules Review Section
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

Dear Ms. Sutton:

This letter is to notify the Administrative Rules and Regulations Subcommittee that pursuant to Act 1258 of 2015, the Executive Subcommittee met on February 22, 2017 to consider the request by the Arkansas Racing Commission to immediately implement Rule 1231, concerning total dissolved carbon dioxide testing. A copy of Rule 1231 is attached for your information.

The proposed emergency rule was reviewed and approved, and the review and approval will become effective at 12:01 a.m., February 24, 2017.

A handwritten signature of Senator Bill Sample.

Senator Bill Sample
Senate Co-Chair
Executive Subcommittee

A handwritten signature of Representative David L. Branscum.

Representative David L. Branscum
House Co-Chair
Executive Subcommittee

BS/DLB:vjf

cc: Ms. Donna K. Davis, Committee Staff, Administrative Rules and Regulations Subcommittee

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House Co-Vice Chair



Marty Garrity
Executive Secretary

Room 315, State Capitol Building
Little Rock, AR 72201

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

March 31, 2017

Ms. Jessica Sutton, Administrator
Administrative Rules Review Section
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

Dear Ms. Sutton:

This letter is to notify the Administrative Rules and Regulations Subcommittee that pursuant to Act 1258 of 2015, the Executive Subcommittee met on March 31, 2017 to consider the request by the Arkansas Department of Human Services, Division of Medical Services to immediately implement Pharmacy Manual Rule #1-17 and Section 1 1-17, concerning an update to the Pharmacy Manual. A copy of Pharmacy Manual Rule #1-17 and Section 1 1-17 is attached for your information.

The proposed emergency rule was reviewed and approved and became effective at 12:01 a.m., April 1, 2017.

A handwritten signature of Senator Bill Sample.

Senator Bill Sample
Senate Co-Chair
Executive Subcommittee

A handwritten signature of Representative David L. Branscum.

Representative David L. Branscum
House Co-Chair
Executive Subcommittee

BS/DLB:vjf

cc: Ms. Donna K. Davis, Committee Staff, Administrative Rules and Regulations Subcommittee

ARKANSAS LEGISLATIVE COUNCIL

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House Co-Vice Chair

Marty Garrity
Executive Secretary

Room 315, State Capitol Building
Little Rock, AR 72201

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

May 3, 2017

Ms. Jessica Sutton, Administrator
Administrative Rules Review Section
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

Dear Ms. Sutton:

This letter is to notify the Administrative Rules and Regulations Subcommittee that pursuant to Act 1258 of 2015, the Executive Subcommittee met on May 3, 2017 to consider the requests by the following agencies to immediately implement medical marijuana rules. A copy of these rules are attached for your information.

- Consideration of a request by the Alcoholic Beverage Control Division, Department of Finance and Administration, to immediately implement Emergency Rules and Regulations Governing the Oversight of Medical Marijuana Cultivation Facilities and Dispensaries.
- Consideration of a request by the Medical Marijuana Commission to immediately implement Emergency Rules and Regulations Governing the Application For, Issuance, and Renewal of Licenses for Medical Marijuana Cultivation Facilities and Dispensaries in Arkansas.
- Consideration of a request by the Arkansas Department of Health to immediately implement Emergency Rules and Regulations Governing Medical Marijuana Registration, Testing, and Labeling in Arkansas.

These proposed emergency rules were reviewed and approved and will become effective at 12:01 a.m., May 5, 2017.

A handwritten signature of Senator Bill Sample.

Senator Bill Sample
Senate Co-Chair
Executive Subcommittee

A handwritten signature of Representative David L. Branscum.

Representative David L. Branscum
House Co-Chair
Executive Subcommittee

BS/DLB:vjf
Attachments
cc: Ms. Donna K. Davis, Committee Staff, Administrative Rules and Regulations Subcommittee