

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

**Thursday, October 20, 2022**

**1:30 p.m.**

**Room A, MAC**

**Little Rock, Arkansas**

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- A. Call to Order**
- B. Reports from the Executive Subcommittee Concerning Emergency Rules**
- C. Reports from ALC Subcommittees Concerning the Review of Rules**
- D. Rules Filed Pursuant to Ark. Code Ann. § 10-3-309**

**1. ARKANSAS DEPARTMENT OF TRANSPORTATION, STATE  
HIGHWAY COMMISSION (Gill Rogers)**

- a. SUBJECT: Permits for Overweight Vehicles Carrying Forestry  
Equipment**

**DESCRIPTION:** In 2021, the 93rd General Assembly of the State of Arkansas enacted Act 451 during the Regular Session, which amended the law concerning issuance of permits for certain overweight vehicles. Act 451 authorized the issuance of a new permit valid for one year authorizing the movement of a truck tractor and single semi-trailer combination with five axles hauling forestry equipment that exceeds the maximum gross weight as provided in Ark. Code Ann. § 27-35-203, but, do not exceed 20,000 pounds for a single axle, or 46,000 pounds for a tandem axle, and a total gross weight of 104,000 pounds.

Due to the enactment of Act 451, an amendment to the existing *Permit Rules for the Movement of Oversize and Overweight Vehicles on the State Highway System* is needed. The proposed Rule 21 is a new rule which sets forth the requirements for issuance of an annual permit for the movement of overweight forestry equipment.

This change in the law is to provide an alternative to single trip permits or six-day permits for owners and operators of forestry equipment when gross vehicle weight exceeds the allowable limits. The timber industry requested an annual permit be developed, allowing them to move their equipment from one jobsite to the next as conditions and scheduling

warranted, as opposed to obtaining a permit for each move. Since single trip and six-day permits are typically requested in advance, the forestry industry found it difficult to obtain permits in a timely manner when deep in the woods where they had limited to no cellular service. In addition, there were times when a permit had been issued, and the equipment would make it to the new location, and it was determined that conditions were such that forestry operations could not be performed. At that point, it would be incumbent on them to obtain yet another permit, creating delays and increasing expense.

To establish the annual permits required by Act 451, Department staff met with the bill sponsors as well as representatives of the timber industry on multiple occasions and developed the proposed rules. The parties involved in these meetings have identified five “Timber Zones” for the purpose of maximizing movement of the permitted vehicles while minimizing their impact. Under these rules, the permit holder is required to familiarize themselves with weight restricted highways and bridges. Additionally, the permits can be revoked for failing to comply with the terms of the permit.

**PUBLIC COMMENT:** A public hearing was held on September 2, 2022. The public comment expired on September 2, 2022. The agency received no comments.

Suba Desikan, an attorney for the Bureau of Legislative Research, asked the following questions and received the following responses thereto:

1. Act 451 states that the fee for the special permit shall not exceed \$250. The rule appears to have a five-zone map, and appears to propose an annual fee of \$250 for each single zone and an additional \$125 for an additional contiguous zone, when it is requested in the initial permit application. Could you please explain or provide authority for additional fee for the contiguous zone? **RESPONSE:** One of the primary concerns in allowing overweight loads onto state highways is the impact of the loads to the highway system. In discussing this concern with Representative Wardlaw and stakeholders it was understood that, although the permit would now be for a twelve-month period, unlimited travel throughout the state could be of concern. Throughout Arkansas there are highways and bridges that are posted for reduced loads, and most of the logging companies are familiar with highways and bridges in their area and any corresponding weight limits. So, geographic boundaries were set to limit the applicability of the permits to what would be considered areas known to the permit applicants. Most of those receiving permits will be operating primarily within one zone, relative to the mill or mills they deliver to, and as a result statewide access is not necessary.

In addition, when the permits are issued, they will be issued with a list of relevant weight restricted roads and bridges attached. It was proposed that having zones would make that information more useful, as it would relate only to areas in which the permittees would be operating, as opposed to listing all restricted routes statewide. Having an easier to read, shorter, list makes it more likely that it will be utilized, and easier to plan routes for the movement of equipment.

2. Why did the agency choose to make a distinction between contiguous and non-contiguous zones in terms of fees? **RESPONSE:** As noted above, we were advised that most of the logging companies that would be seeking this type of permit operate in a limited geographic area, and that some have operations that will, from time to time, require travel into a different but adjacent area. We had initially planned to charge a fee of \$250 for each zone for which a permit was issued, and at the request of the bill sponsor and stakeholders created the reduced fee permit for additional zones. Each zone will have its own permit, and its own, more condensed, listing of restricted roads and bridges.

3. The rule states that “An additional contiguous zone may be permitted for an additional [\$125] when requested in the initial permit application.”

(a) Can a business request more than one additional contiguous zone in the initial application to take advantage of the reduced cost?

**RESPONSE:** We were advised that the companies that would be seeking permits would be operating primarily regionally, and most would need a permit for only a single zone. We were also asked to provide a reduced fee for an attached zone, as some may need to work in more than one. By working with the stakeholders and the bill’s sponsor it was provided in order to allow a reduced fee for those that may need it, as opposed to an effort to attempt to restrict access.

(b) If a business needed all 5 zones, what would be the total cost of the annual permit?

**RESPONSE:** The cost to a business to obtain permits for each zone would be \$1,000.00. This would be a permit for two primary zones each with a contiguous zone permit for  $(\$250 + \$125) + (\$250 + \$125) = \$750$ , and one more primary zone permit.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The agency indicated that the proposed rules have a financial impact. The agency estimated a varied impact for the current fiscal year and a \$250 cost for the next fiscal year to individuals, entities and businesses subject to the proposed rule. The agency explained that currently, a permit is needed for each piece of equipment when moved, potentially costing the transporter in excess of the annual permit fee of \$250. The agency stated that the new permit would likely result in

overall reduction in permit expense, while saving time and creating other efficiencies.

**LEGAL AUTHORIZATION:** This rule implements Act 451 of 2021, sponsored by Representative Jeff Wardlaw, which authorized the issuance of a special permit by the State Highway Commission to transport forestry equipment. Pursuant to the Act, upon application, the commission may issue a special permit valid for one (1) year for the movement of a truck tractor and single semitrailer combination with five (5) axles for the hauling of forestry equipment in excess of the maximum gross weight as provided in Ark. Code Ann. § 27-35-203 but not more than: (A) Twenty thousand pounds (20,000 lbs.) for a single axle, or forty-six thousand pounds (46,000 lbs.) for a tandem axle; and (B) One hundred four thousand pounds (104,000 lbs.) of total gross weight. *See* Ark. Code Ann. § 27-35-210(r)(1). The fee for the special permit shall not exceed two hundred fifty dollars (\$250). *See* Ark. Code Ann. § 27-35-210(r)(2). The Arkansas Department of Transportation shall adopt rules necessary for implementation, including without limitation the criteria required to qualify for the issuance of a special permit. *See* Ark. Code Ann. § 27-35-210(r)(3).

2. **DEPARTMENT OF EDUCATION, DIVISION OF ELEMENTARY AND SECONDARY EDUCATION (Cristy Park)**

a. **SUBJECT: Rules Governing Nutrition and Physical Activity Standards and Body Mass Index for Age Assessment Protocols in Arkansas Public Schools**

**DESCRIPTION:** The Department of Education, Division of Elementary and Secondary Education (“DESE”), proposes amendments to its Rules Governing Nutrition and Physical Activity Standards and Body Mass Index for Age Assessment Protocols in Arkansas Public Schools, pursuant to the following Acts:

Act 1070 requires schools offering vending machines to grades 7-12 to have in-school access to vending machines offering food and beverages that meet the nutrition standard of the Smart Snacks in School program and ensure that there are not restrictions regarding the times such vending machines are powered on or off.

Act 1074 is the Healthy Active Arkansas School Act, which requires public schools to address opportunities for physical activity, promoting public school gardens, nutritional standards, access to healthy foods, physical education, and breastfeeding in its health and wellness priorities.

In amending the rules to incorporate these Acts, DESE also cleaned up the rules by removing outdated language, adding clarification where necessary, reorganizing sections, ensuring consistent language/acronyms, and removing unnecessary federal citations and language. The definitions section was updated to add new terms from the above-mentioned Acts, as well as Ark. Code Ann. § 6-16-102, make the definition of “school day” (regarding start time) match the federal definition, replace terms that are no longer used with the current terms, and add clarification and consistency in the language.

Following public comment, only non-substantive clarifying and technical changes were made.

**PUBLIC COMMENT:** A public hearing was held on June 30, 2022. The public comment period expired on July 19, 2022. The Division provided the following summary of the comments that it received and its responses thereto:

**Commenter Name:** April Babberl, Arkansas School for the Blind and Visually Impaired

**Comment:** Good morning, I was a substitute teacher for many years and in the upper grades in PE the students were sitting around on their phones the whole class time. The coaches are not making them exercise. There are several reasons. First it is a losing battle to get students to dress out during a school day. Forget showers! Second, unless they are in band or a sport they don't sweat. I would suggest that any student not in a sport take a gym class at the end of the school day so they can go home sweaty. It would be worth hiring an aerobics instructor or karate sensei to come in and teach one class with a school employ perhaps or something like that.  
**Response:** Hiring an aerobics instructor, karate sensei, or something similar is allowable and within Arkansas law and ADE rules but are at the autonomy of the school district to implement. Comments considered. No changes made.

**Commenter Name:** Becky Dean, Mountainburg Public Schools

**Comment:** 6.06.3 Compile the results of the School Health Index and develop goals and objectives that are included in the Health & Wellness School Improvement Plan for the 2022-2023 school year, the following priority areas shall be included in the public school and open-enrollment public charter school's health and wellness plan: 6.06.3.1 Physical and Built Environment; 6.06.3.2 Nutrition Standards; 6.06.3.3 Physical Education and Activity Standards; 6.06.3.4 Breastfeeding Education and Practices. May I ask WHY Breastfeeding Education and Practices are to be taught? When and if a student has a baby, a nurse and lactation

consultant will be at the hospital to teach the young mother the importance of and how to breastfeed. If this is instituted, I believe there should be very concise and specific rules as to who, when, and how this should be taught. I really do not understand why this falls under a school's umbrella of education. **Response:** Act 1074 of 2021 requires the Division of Elementary and Secondary Education, in consultation with Arkansas Department of Health, to develop guidance for public schools and open-enrollment public charter schools to address and require certain priorities, including breastfeeding practices, to be included in the public school's health and wellness priorities. Comments considered. No changes made.

Commenter Name: Lucas Harder, Arkansas School Boards Association

**Comment:** 6.06.2: "Division of Elementary and Secondary Education" could be abbreviated to "DESE" here. **Response:** Comments considered. Non-substantive change made.

Jason Kearney, an attorney with the Bureau of Legislative Research, asked the following questions:

(1) Section 5.01 – Is there a reason that this section references "regulations," in light of Act 315 of 2019, § 3204? **RESPONSE:** Thank you for bringing this to my attention. We will remove "and regulations."

(2) Section 3.33 – Is there a reason why the definition for "School Day" in the proposed rules is different from the definition of "school day" as it appears in Arkansas Code Annotated § 6-16-102(a)(1)(A)? **RESPONSE:** Yes. Here, we needed to define the school days in terms of when it begins and ends which is surprisingly not addressed in 6-16-102.

(3) Section 6.06.2 – Should "Division of Elementary and Secondary Education" in this subsection instead say "DESE"? **RESPONSE:** Yes. We will make that change.

(4) Sections 3.24 and 6.07 – Is the "Local Wellness Policy" defined in Section 3.24 the same as "The Wellness Policy" contemplated in subsection 6.07? **RESPONSE:** Yes; they are the same, but they should both actually be "Local School Wellness Policy." We will change it so that both 3.24 and 6.07 say "Local School Wellness Policy."

(5) Did the Division consult the Child Health Advisory Committee and the State Board of Health in amending these rules? **RESPONSE:** Yes. We presented the changes to the CHAC at their monthly meeting on 5/19/2022. There are several representatives from the Dept. of Health who are on the CHAC and were present on 5/19/2022. We went through

the Rules together line by line and incorporated additional changes at their request.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The Division states that the proposed rules have no financial impact.

**LEGAL AUTHORIZATION:** Pursuant to Arkansas Code Annotated § 20-7-135(a), the State Board of Education, after having consulted the Child Health Advisory Committee and the State Board of Health, shall promulgate appropriate rules to ensure that nutrition and physical activity standards and body mass index for age assessment protocols are implemented to provide students with the skills, opportunities, and encouragement to adopt healthy lifestyles. The proposed changes include those made in light of Act 1070 of 2021, sponsored by Representatives David Tollett and Keith Brooks, which allowed students in certain grades in-school access to vending machines offering food and beverages that meet nutritional standards of the Federal Smart Snacks in School Program; and Act 1074 of 2021, sponsored by Representative Mary Bentley, which created the Healthy Active Arkansas Schools Act.

3. **DEPARTMENT OF FINANCE AND ADMINISTRATION, ARKANSAS TOBACCO CONTROL BOARD (Greg Sled)**

a. **SUBJECT: Online Cigar Sales and Delivery, Section 4**

**DESCRIPTION:** The purpose of these proposed rule amendments is to add rule language regarding online sales of cigars and related safe measures to prevent online sales and shipping to minors in light of both Act 940 of 2021 and Ark. Code Ann. § 5-27-227 (Sales to Minors).

**Background**

After filing the proposed rules pursuant to Arkansas law, Public Notice was published on Sunday, March 13, 2022 through Tuesday, March 15, 2022 in the Arkansas Democrat-Gazette. Publication of that notice began the public comment period. ATC also posted the Public Notice with the Arkansas Secretary of State and on the ATC website. A public comment period hearing was held on April 14, 2022. The public comment period closed April 14, 2022.

Just prior to the April 14, 2022 public comment period hearing, ATC staff received two (2) verbal objections/comments to the proposed rule amendments pertaining to online cigar rules (Sections 4.3 through 4.9) via

telephone. In response to these comments, the ATC Board approved the pulling of the sections of the proposed rules pertaining to online cigar sales, Sections 4.3 through 4.9, for further review and later promulgation. Since the April 14, 2022 ATC Board meeting, ATC staff has met with, discussed with, or sent the amended rules (Sections 4.3 through 4.9) for review to interested parties, including the two (2) verbal objectors/commenters.

### Rule Summary

The changes to Section 4 update the retail permit language regarding online sales of cigars and related safe measures to prevent online sales and shipping to minors. Sections 4.3 through 4.9 were added in light of Act 940 of 2021 and A.C.A. § 5-27-227 (Sales to Minors).

Act 940 of 2021 amends the definition of “Retailer” under A.C.A. § 26-57-203(27), concerning the definitions used under the Arkansas Tobacco Products Act of 1977, to include and authorize permitted Arkansas-based cigar retailers to sell cigars online to customers inside and outside the State of Arkansas.

A.C.A. § 5-27-227 prohibits anyone from giving, bartering, or selling to a minor (a person under the age of 21) tobacco in any form, cigarette paper, vapor products, alternative nicotine products, e-liquid products, and any component of a vapor product, alternative nicotine product, or e-liquid product.

**PUBLIC COMMENT:** An initial public hearing was held on this rule on April 14, 2022. The first public comment period expired on April 14, 2022. The agency provided the following summary of the public comments it received during the first public comment period:

Commenter’s Name: Mr. Brian Waters, Open Door Cigars, LLC.

**COMMENT:** Mr. Waters expressed concern with the online cigar sales portion of the proposed rule amendments, as drafted. In particular, Mr. Waters was concerned that Section 4.5, “Requirements for accepting order for delivery sale,” and Section 4.6, “Requirements for shipping a delivery sale,” placed a burden on Arkansas retailers that may not be equally placed upon non-Arkansas businesses or even other industries. Mr. Waters requested additional time to work with Arkansas Tobacco Control in addressing his concerns.

Commenter's Name: Arkansas State Representative Les Eaves.

**COMMENT:** An Arkansas State Representative expressed concern with the online cigar sales portion of the proposed rule amendments, as drafted. In particular, the Arkansas State Representative was concerned that Section 4.5, "Requirements for accepting order for delivery sale," and Section 4.6, "Requirements for shipping a delivery sale," placed a burden on Arkansas retailers that may not be equally placed upon non-Arkansas businesses or even other industries and wanted to ensure the privacy of Arkansas consumers was adequately protected during the age verification process. The Arkansas State Representative requested additional time to work with Arkansas Tobacco Control in addressing their concerns, including the concerns of any constituent.

In response to these comments, the agency pulled the sections of the proposed rules pertaining to online cigar sales, Sections 4.3 through 4.9, for further review and later promulgation. On April 14, 2022, the ATC Board reviewed and approved the proposed rules without Sections 4.3 through 4.9, and the Administrative Rules Subcommittee did the same on May 18, 2022.

After additional changes prompted by public comment, a second public hearing was held on Sections 4.3 through 4.9 of the rules on September 8, 2022. The second public comment period expired on September 8, 2022. The agency indicated that it did not receive any public comments during the second public comment period.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The agency indicated that this rule has a financial impact and provided the following explanation:

The proposed rules require age verification upon delivery of cigars. ATC acknowledges that some common carriers may charge for age verification delivery; however, ATC is unable to determine a total estimated cost by fiscal year to any private individual, entity or business because of unknown variables such as number of participants, common carrier pricing, and what participants actually pay, if anything. Implementing the proposed rules is not expected to increase costs to state, county, and municipal government.

**LEGAL AUTHORIZATION:** The Tobacco Control Board is tasked with promulgation of "rules for the proper enforcement and implementation of" the Arkansas Tobacco Products Tax Act of 1977 and the Unfair Cigarette Sales Act. Ark. Code Ann. § 26-57-256(a)(1). "The

board may levy a civil penalty in an amount not to exceed five thousand dollars for each violation against a person found to be in violation of . . . the rules promulgated by Arkansas Tobacco Control.” Ark. Code Ann. § 26-57-255(g)(3)(C). These rules implement Act 940 of 2021, sponsored by Senator Bart Hester, which permitted Arkansas-based cigar shops to sell cigars at retail online.

4. **DEPARTMENT OF HEALTH, ARKANSAS STATE BOARD OF DENTAL EXAMINERS (Matt Gilmore, Meredith Rogers)**

a. **SUBJECT: Pre-Licensure Criminal Background Check**

**DESCRIPTION:** The Arkansas State Board of Dental Examiners seeks legislative review and approval of proposed amendments to its rule concerning pre-licensure criminal background checks. The proposed amendment:

- Removes the reference to “permanently disqualifying offenses” as required by Act 748.
- Removes from the rule the form entitled “Pre-Licensure Criminal Background Check Petition.” This document is merely a form, and the Board would like to be able to make changes as necessary without going through the rule promulgation process.

**PUBLIC COMMENT:** A public hearing was not held in this matter. The public comment period expired on July 26, 2022. The agency indicated that it received no comments.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The agency indicated that the amended rules do not have a financial impact.

**LEGAL AUTHORIZATION:** The Arkansas State Board of Dental Examiners has authority to promulgate rules in order to carry out the intent and purposes of Title 17, Chapter 82 of the Arkansas Code concerning dentists, dental hygienists, and dental assistants. *See* Ark Code Ann. § 17-82-208(a). The amended rule implements Act 748 of 2021, sponsored by Representative Bruce Cozart, which amended occupational criminal background checks.

b. **SUBJECT: Adverse Events Reporting**

**DESCRIPTION:** The Arkansas State Board of Dental Examiners seeks legislative review and approval of proposed rules concerning adverse events reporting. Because a function of the board is to protect Arkansas

citizens, it deemed it important to be made known if a morbidity or mortality incident occurs as a result of a dental procedure. The proposed rule:

- Requires a dentist to file a morbidity report within 30 days of the incident or event; and
- Requires a dentist to file a mortality report within 5 days after the occurrence of the death, or such time as the dentist becomes aware of the death.

**PUBLIC COMMENT:** A public hearing was not held in this matter. The public comment period expired on July 26, 2022. The agency indicated that it received no comments.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The agency indicated that the proposed rule does not have a financial impact.

**LEGAL AUTHORIZATION:** The Arkansas State Board of Dental Examiners has authority to promulgate rules in order to carry out the intent and purposes of Title 17, Chapter 82 of the Arkansas Code concerning dentists, dental hygienists, and dental assistants. *See Ark Code Ann. § 17-82-208(a).*

5. **DEPARTMENT OF HUMAN SERVICES, DIVISION OF CHILDREN AND FAMILY SERVICES (Christin Harper)**

a. **SUBJECT: Support Payments to Provisional Resource Parents**

**DESCRIPTION:**

Statement of Necessity

This rule revision is necessary to allow the Division of Children and Family Services to provide needed support payments to relative and fictive kin resource homes that are opened on a provisional basis and, therefore, are not yet eligible for a full board maintenance payment.

Rule Summary

These amendments establish a rule to allow relative and fictive kin resource parents that are approved on a provisional basis to receive a support payment to help defray the cost of caring for the children placed in their homes. Relative and fictive kin resource homes allow the Division to safely expedite the placement of children in foster care with a relative or

fictive kin they already know in an effort to reduce the amount of trauma a child experiences when entering foster care. Since these homes have not yet met all resource home requirements, they are not yet eligible for a full board payment. The support payment of \$240 per child placed in the home is less than that of a board payment but will still provide needed financial support to provisional resource parents who have stepped up to care for their relative and fictive kin children who have entered foster care.

**PUBLIC COMMENT:** No public hearing was held on this proposed rule. The public comment period expired on August 29, 2022. The agency indicated that it received no public comments.

This rule was filed on an emergency basis and was reviewed and approved by the Executive Subcommittee on July 20, 2022. The proposed effective date for permanent promulgation is November 29, 2022.

**FINANCIAL IMPACT:** The agency indicated that this rule has a financial impact.

Per the agency, the total estimated cost to implement this rule is \$1,668,000 for the current fiscal year (all in general revenue) and \$3,794,700 for the next fiscal year (all in general revenue). The total estimated cost by fiscal year to state, county, and municipal government to implement this rule is \$1,668,000 for the current fiscal year and \$3,794,700 for the next fiscal year.

The agency indicated that there is a new or increased cost or obligation of at least \$100,000 per year to a private individual, private entity, private business, state government, county government, municipal government, or to two or more of those entities combined. Accordingly, the agency provided the following written findings:

*(1) a statement of the rule's basis and purpose;*

This rule revision is necessary to allow the Division of Children and Family Services to provide needed support payments to relative and fictive kin resource homes that are opened on a provisional basis and, therefore, are not currently eligible for a full maintenance payment.

*(2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;*

This rule is not required by statute. With rising costs of food, gasoline, and other necessities, this support payment will be critical to ensuring relatives and fictive kin can continue adequately providing for the health and well-being of the children placed in their homes. This support

payment will also prevent provisional resource parents from requesting DCFS to move the children to another placement – which would further jeopardize the children’s well-being – due to the financial strain of having additional household members.

*(3) a description of the factual evidence that:*

*(a) justifies the agency’s need for the proposed rule; and*

*(b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule’s costs;*

There are currently over 4,500 children in foster care and only slightly over 1,700 resource homes in the state. Relative and fictive kin resource homes that open for specific children when they enter foster care are critical to ensuring safe and stable placements for children in foster care considering the relative dearth of existing resource homes statewide. Further, the Division wants to ensure ample support for relatives and fictive kin who step up to care for their kin in foster care as research shows that children who are placed with relatives and fictive kin have increased placement stability, better permanency outcomes, and experience less maltreatment while in foster care. With rising inflation costs, the Division has received additional requests from provisional resource parents to assist with the cost of helping to care for the children placed in their homes.

*(4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;*

The less costly alternative would be not to provide a support payment, or a support payment at a lesser amount, which would not adequately address the issue at hand in terms of securing financial support for relative and fictive kin resource parents to help them defray the costs of caring for additional household members.

*(5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;*

N/A.

*(6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and*

Existing rule and law do not allow a full board payment to relative and fictive kin resource homes opened on a provisional basis. The purpose of this proposed rule is, in fact, to amend the rule contributing to the problem by establishing a smaller support payment in lieu of a full board payment.

*(7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:*

*(a) the rule is achieving the statutory objectives;*

*(b) the benefits of the rule continue to justify its costs; and*

*(c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.*

The agency has an existing rule requiring review of its board payment amounts every five (5) years to assure continued appropriateness (see DCFS Policy VII-M: Financial Support to Foster Parents). This support payment, as it is also financial assistance to resource parents, will also be reviewed every five (5) years to determine whether, based upon the evidence, there remains a need for the rules including whether the rule is achieving statutory objectives and whether the benefits of the rule continue to justify the cost.

**LEGAL AUTHORIZATION:** The Department of Human Services, Division of Children and Family Services has the responsibility to “provide services to dependent-neglected children and their families;” “ensure child placements support the goal of permanency for children when the division is responsible for the placement and care of a child; and ensure the health, safety, and well-being of children when the division is responsible for the placement and care of a child.” Ark. Code Ann. § 9-28-103(a)(2), (6)-(7). The Division may promulgate rules as necessary to administer Title 9, Chapter 28, Subchapter 1 of the Arkansas Code, regarding children and family services.

Per the agency, “this rule will allow DCFS to provide needed support payments to relative and fictive kin resource homes that are opened on a provisional basis and, therefore, are not eligible for a full board payment.” Under Arkansas law, a relative or fictive kin who opens a home as a provisional foster home shall not be paid a board payment until the home “meets all of the foster home requirements” and “is opened as a regular foster home.” Ark. Code Ann. § 9-28-108(c)(4)(B)(ii). The agency stated that this rule establishes “a smaller support payment in lieu of a full board payment.” The agency provided the following explanation:

With rising costs of food, gasoline, and other necessities, this support payment will be critical to ensuring relatives and fictive kin can continue adequately providing for the health and well-

being of the children placed in their homes. This support payment will also prevent provisional resource parents from requesting DCFS to move the children to another placement—which would further jeopardize the children’s well-being—due to the financial strain of having additional household members.

6. **DEPARTMENT OF PARKS, HERITAGE, AND TOURISM, STATE PARKS DIVISION (Leslie Fiskens, Jeff King)**

a. **SUBJECT: Smoking, Tobacco, Electronic Cigarette Policy at Arkansas State Parks**

**DESCRIPTION:** The purpose of the proposed amendment to the rule is to provide for the public health and safety, preservation of State Parks, and the prevention of triggering of smoke/fire alarm/vapor sensitive systems. The proposed amendments to the rule:

1. provide that smoking inside any Arkansas State Park building is prohibited;
2. eliminate the exceptions to the prohibition in open picnic pavilions and on patios and screened-in porches of rental cabins;
3. extend the prohibition of smoking, tobacco, and electronic cigarette use to include the boundaries of public beaches and on the Crater of Diamonds minefield; and
4. provide that State Park superintendents may establish smoking areas for employees and guests away from building entrances and primary use areas.

**PUBLIC COMMENT:** A public hearing was not held in this matter. The public comment period expired on August 25, 2022. The agency received no comments.

The proposed effective date is October 31, 2022.

**FINANCIAL IMPACT:** The agency indicated that the amended rules do not have a financial impact.

**LEGAL AUTHORIZATION:** All parks and recreational areas acquired by the state shall constitute the state parks system and shall be under the immediate control and management of the State Parks, Recreation, and Travel Commission. *See* Ark. Code Ann. § 22-4-102. The State Parks, Recreation, and Travel Commission may establish and alter rules governing the use and protection of the state parks system and the property thereon and to preserve the peace therein. *See* Ark. Code Ann. § 22-4-104. The State Parks, Recreation, and Travel Commission shall, for the purpose of regulating its own procedure and carrying out its functions,

have the authority from time to time to make, amend, and enforce all reasonable rules not inconsistent with law which will aid in the performance of any of the functions, powers, or duties conferred or imposed upon it by law. *See* Ark. Code Ann. § 15-11-206(a)(2). The administrative functions of the State Parks, Recreation, and Travel Commission were transferred to the Department of Parks, Heritage, and Tourism. *See* Ark. Code Ann. § 25-43-1302(a)(21).

b. **SUBJECT: Rappelling and Rock Climbing in Arkansas State Parks**

**DESCRIPTION:** The purpose of the proposed amendment to the rule is to provide for responsible management of rock climbing in State Parks, while preserving the natural resources in which climbing occurs. The proposed amendment establishes that rock climbing and rappelling on state park property will only be permitted at approved sites. The amendment also allows for bouldering and installation of fixed hardware, which were previously prohibited in State Parks.

**PUBLIC COMMENT:** A public hearing was not held in this matter. The public comment period expired on August 25, 2022. The agency received no comments.

Suba Desikan, an attorney with the Bureau of Legislative Research, asked the following questions and received the following responses thereto:

1. Are climbers going to place the fixed hardware or is the Department going to do so? **RESPONSE:** Climbers in conjunction with volunteer organizations (e.g. Arkansas Climbers Coalition).

2. If climbers are placing the fixed hardware, are they required to obtain the Department's permission to do so? **RESPONSE:** Yes.

3. Who will bear the cost for placement of the fixed hardware? **RESPONSE:** Climbers in conjunction with volunteer organizations (e.g. Arkansas Climbers Coalition).

4. Are climbers who install fixed hardware also responsible for removal of the fixed hardware after use? **RESPONSE:** The installations will be semi-permanent, with inspections performed by volunteer organizations (e.g. Arkansas Climbers Coalition).

5. If fixed hardware is left behind, who is responsible for removal or maintenance, and costs associated with both options? **RESPONSE:** The installations will be semi-permanent, with inspections performed by volunteer organizations (e.g. Arkansas Climbers Coalition).

6. Is the agency promulgating the checklist and release in addition to the park directive? **RESPONSE:** Yes.

The proposed effective date is October 31, 2022.

**FINANCIAL IMPACT:** The agency indicated that the amended rules do not have a financial impact.

**LEGAL AUTHORIZATION:** All parks and recreational areas acquired by the state shall constitute the state parks system and shall be under the immediate control and management of the State Parks, Recreation, and Travel Commission. *See* Ark. Code Ann. § 22-4-102. The State Parks, Recreation, and Travel Commission may establish and alter rules governing the use and protection of the state parks system and the property thereon and to preserve the peace therein. *See* Ark. Code Ann. § 22-4-104. The State Parks, Recreation, and Travel Commission shall, for the purpose of regulating its own procedure and carrying out its functions, have the authority from time to time to make, amend, and enforce all reasonable rules not inconsistent with law which will aid in the performance of any of the functions, powers, or duties conferred or imposed upon it by law. *See* Ark. Code Ann. § 15-11-206(a)(2). The administrative functions of the State Parks, Recreation, and Travel Commission were transferred to the Department of Parks, Heritage, and Tourism. *See* Ark. Code Ann. § 25-43-1302(a)(21).

**E. Agency Updates on the Status of Outstanding Rulemaking Pursuant to Act 595 of 2021<sup>1</sup>**

1. **Arkansas Department of Transportation, Arkansas Highway Commission\***
2. **Department of Agriculture**
3. **Department of Education**
4. **Department of Health, Division of Health-Related Boards**
5. **Department of Health, State Board of Health**
6. **Office of Arkansas Lottery**

**F. Monthly Written Agency Updates Pursuant to Act 595 of 2021**

**G. Agency Update on Rulemaking Delayed by Litigation That Has Now Been Resolved**

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<sup>1</sup> For those items designated by an asterisk (“\*”), no update may be required depending on the action taken by the Subcommittee with respect to that agency’s rules under Item D.

## **H. Adjournment**