

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

Friday, July 19, 2019

9:00 a.m.

Room A, MAC

Little Rock, Arkansas

- A. **Call to Order.**
- B. **Reports of the Executive Subcommittee. [Exhibit B]**
- C. **Rules Deferred from the June 19, 2019 meeting of the Administrative Rules Subcommittee. (This rule is subject to final review and approval by Legislative Council at its August 23, 2019 meeting.)**

1. **DEPARTMENT OF HEALTH, CENTER FOR LOCAL PUBLIC HEALTH/ENVIRONMENTAL HEALTH PROTECTION (Ms. Laura Shue, Mr. Terry Paul)**

a. **SUBJECT: Rules and Regulations Pertaining to Food Service Establishments**

DESCRIPTION: The purpose of this rule is to safeguard public health and provide to consumers food that is safe, unadulterated, and honestly presented. The goal is to provide safe food, prevent illness, and ensure honest presentation of food to the public.

This rule establishes definitions; sets standards for management and personnel, food operations, and equipment and facilities; and provides for food establishment plan review, permit issuance, inspection, and employee restriction.

PUBLIC COMMENT: A public hearing was held on November 16, 2018. The public comment period expired on November 16, 2018. The Department did not receive any public comments. The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The proposed rule requires a certified manager to be employed by the establishment. The agency

reported that the food-certified-manager requirement adds minimal cost to the operation of a food service establishment. Several nationally recognized online and in-person trainings are available for less than \$200 for each certification. These certifications are renewable on a three-to-five year cycle.

LEGAL AUTHORIZATION: The State Board of Health is authorized to make all necessary and reasonable rules and regulations of a general nature for the protection of public health and safety and the general amelioration of the sanitary and hygienic conditions within the state. *See* Ark. Code Ann. § 20-7-109(a)(1). The Board is authorized to promulgate rules for the efficient enforcement of the Food, Drug, and Cosmetic Act. *See* Ark. Code Ann. § 20-56-219. Additionally, the Director of the Department of Health has the power and authority to prevent the proliferation of infections and contagious and communicable diseases resulting from unsanitary food-service operations. *See* Ark. Code Ann. § 20-57-203.

D. Rules Filed Pursuant to Ark. Code Ann. § 10-3-309.

1. ARKANSAS PROFESSIONAL BAIL BONDSMAN LICENSING BOARD (Mr. Larry Peters)

a. SUBJECT: Recovery Fund

DESCRIPTION: The agency's stated purpose of this proposed rule is to guide the disbursement of payments from the Bail Bond Recovery Fund to Arkansas Courts when a Professional Bail Bondsman Company defaults on a court order. The recovery fund was started under Ark. Code Ann. § 17-19-301 in 2013.

If such a default happens, the security deposit of the licensee must first be expended, and at that time only, will this fund be affected and then under guideline approved by the Bail Bondsman Board each calendar year, with the formula based upon the fund balance. In no year may the disbursement from the fund exceed one half of the fund balance as of the beginning year.

PUBLIC COMMENT: A public hearing was held on June 14, 2019. The public comment period expired on June 14, 2019.

The Arkansas Professional Bail Bond Company and Professional Bail Bondsman Licensing Board (APBBLB) provided the

following summary of the comments that it received and its responses thereto:

Brian Clary, Deputy Prosecuting Attorney, 22nd Judicial District of Arkansas

The Arkansas Professional Bail Bondsman Licensing Board (the “Board”) received one public comment. The commenter suggested that the Bail Bond Recovery Fund should be used to pay on any bail bond issued after the effective date of Ark. Code Ann. § 17-19-301(g). Second, the commenter suggested that the rule should establish a “priority of claims” to be paid given the individual and combine limitations imposed on recovery by the rules. Third, the commenter, while acknowledging limits on the amount to be paid out of the fund are prudent, he suggests the ability to exceed the limits should be put in the rules in the event less than 50% of the fund’s balance is paid each year.

RESPONSE: The Board appreciates the comments that were received and has taken them into consideration. The Board will only allow payment of forfeitures of bail bonds incurred after the effective date of this rule. It is not believed that retroactively applying the rule to forfeitures dating back to 2013, the effective date of the Act, would be prudent use of the fund and could potentially prematurely deplete the fund. Secondly, while the rule does not explicitly lay out a priority for payment of claims, claims will be paid out of the recovery fund in the order that notice of the forfeiture is received by the Board. Finally, the Board, after stakeholder input, has decided to limit the amount of money paid out per forfeited bond to \$10,000 per bond. This limit will enable the Board to monitor the use of the fund. Should it appear that more should be paid out in successive years, the Board will amend this rule to increase the payout maximum.

In addition, Suba Desikan, an attorney with the Bureau of Legislative Research, asked the following questions:

(1) On the financial impact statement, the Board indicated that this rule will have a financial impact, but listed zero cost of implementation and listed “unknown” for both the fund source and the total for additional costs. Could you please explain and clarify why both of these are unknown?

RESPONSE: I believe the answer on the Financial Impact Statement should not have reflected that there will be a financial impact. The Act that enables the present rulemaking was passed in 2013 and mandated that a fee of \$4.00 be assessed for any bond

that is written to go toward the bail bond recovery fund. The fee has been collected since that time and will not require any “new” money. The fee is passed on to the consumer (i.e. the individual posting bond) and will not be borne by any governmental entity or municipality.

[A revised financial impact statement indicating no financial impact and “0” additional cost of the rule was submitted. The total estimated cost for the current fiscal year to any private individual, entity and business subject to the rule was revised to reflect \$231,744, with the explanation that the Bail Bond Recovery Fund is made up of \$4 taken from each bail bond written in the State to cover forfeited bail bonds.]

(2) On the financial impact statement, the Board indicated “unknown” for the total estimated cost by fiscal year to state, county, and municipal government to implement this rule and offered no explanation as to how government is affected. Could you please explain and clarify this.

RESPONSE: This rule will not create a negative financial impact to any state, county or municipal government; rather, this rule creates a means to disburse monies collected pursuant to Ark. Code Ann. § 19-6-826 to make courts “whole” in instances when a bail bond company fails to surrender a defendant to the Court in a timely fashion.

[A revised financial impact statement was submitted reflecting “0” cost by fiscal year to state, county, and municipal government to implement this rule.]

(3) On the markup version of the rule, in Section (A)(2), could you point me to the section of Ark. Code Ann. § 17-19-112 that authorizes seizure of the security deposit? §17-19-208(b)(1) seems to address this, but there is no reference to “seizure” there either, so I wanted some clarification.

RESPONSE: Ark. Code Ann. § 17-19-112(b) read in conjunction with Ark. Code Ann. § 17-19-208 covers this process. When a bail bond company receives its initial license from the bail bond licensing board, they are required to provide an irrevocable letter of credit from an Arkansas chartered bank or a federally chartered bank in Arkansas or a certificate of deposit (covered in Ark. Code Ann. § 17-19-205). For new companies, the minimum requirement is a CD/credit in the amount of \$250,000. If a bail bond company/agent fails to deliver a defendant to a hearing, the court will send notice to the bail bond licensing board of that occurrence. The board then sends a letter to the bail bond company giving them

ninety-days per statute to pay the forfeited bond amount. If the company does not within the 90-days, and after notice and a hearing, the bail bond board can order the amount of the forfeited bond to be “seized” from the account or CD pledged to the Board. If there is enough money in the account/CD to cover the amount owed to the Court, the bail bond recovery fund is not touched; however, there still some “legacy” companies that exist in Arkansas that were licensed prior to 1989 and were only required to have account/CD on file to cover \$25,000 in bail bonds (some even further back were only required to have \$5,000 on account) and from 1989 to 2009 were only required to have \$100,000. These “legacy” companies or companies suffering financial difficulties are the ones we envision needing to access the recovery fund. While the term “seized” is not technically in statute, that is the reality of the process of the Board recovering money from the CD/account of the company.

(4) On the markup version of the rule, in Section (A)(3), you used the word “disperse,” but then refer to it as “disbursement” in (B). The code uses “transmit” in Ark. Code Ann. § 17-19-208(b)(1). Is the Board comfortable with using “disperse?”

RESPONSE: I am happy to discuss this one further, but per the response to question #3 I think we are comfortable saying “disperse” because this is a slightly different process than what is contemplated under Ark. Code Ann. § 17-19-208(b)(1).

(5) I noticed that the rule being amended is entitled, “Rule and **Regulation I – Regulation** of Bail Bond Business” (emphasis added). Act 315 of 2019 was passed “to eliminate unnecessary references to regulations and to provide for consistent references to rules throughout the Arkansas Code.” Is the Board comfortable with calling it a “regulation?”

RESPONSE: This rule has been pending review since well before the 92nd General Assembly and the enactment of Act 315. If we can avail ourselves of Act 315 and provide a markup that strikes through Regulation throughout we will be happy to do that. If not, we would like to see the rule reviewed as is with the understanding that we will notify SOS pursuant to Act 315 that we want “regulation” struck throughout the board’s rules.

[A revised markup was submitted striking the word “Regulation,” with the new title “Rule 1 – Rules of the Bail Bond Business.”]

The proposed effective date of this rule is August 1, 2019.

FINANCIAL IMPACT: The agency initially stated that there is a financial impact and quantified that impact as “unknown.” However, a revised statement was submitted indicating no financial impact.

LEGAL AUTHORIZATION: APBBLB was created pursuant to the Arkansas Professional Bail Bond Company and Professional Bail Bondsman Licensing Act, which was subsequently codified as Ark. Code Ann. § 17-19-106. General rulemaking authority to “enable [the Board] to effectively and efficiently carry out its official duty of licensing and regulating professional bail bond companies and professional bail bondsmen” is found in Ark. Code Ann. § 17-19-106(b)(5).

This rule adds section 42, entitled “Bail Bond Recovery Fund,” to Rule 1 of the APBBLB Rules. The Bail Bond Recovery Fund (“the fund”) was established pursuant to Ark. Code Ann. § 19-6-826. Per statute, the fund consists of all moneys collected under Ark. Code Ann. § 17-19-301(g) and any other revenues authorized by law. Monies in the fund are designated to be “used exclusively for the recovery of forfeited professional bonds.” Specific rulemaking authority to promulgate rules concerning “the disbursements of the fund” and to promulgate rules “to suspend, revoke, or take disciplinary action for noncompliance in failure to remit or pay fees [] or for failure to report under this section” is granted to APBBLB, pursuant to Ark. Code Ann. § 19-6-826(d).

2. **DEPARTMENT OF ENVIRONMENTAL QUALITY, OFFICE OF AIR QUALITY (Mr. Micheal Grappe, Mr. Stuart Spencer)**

a. **SUBJECT: Regulation No. 19: Regulations of the Arkansas Plan of Implementation for Air Pollution Control**

DESCRIPTION: The purpose of this rule is to adopt the 2015 ozone national ambient air quality standard (“NAAQS”) promulgated by the United States Environmental Protection Agency (“EPA”) on October 26, 2015, 80 FR 65292. Adoption of the 2015 ozone NAAQS by the Arkansas Pollution Control and Ecology Commission (“APC&EC”) is required under Ark. Code Ann. § 8-4-318(b)(1) for submission by the Arkansas Department of Environmental Quality (“ADEQ”) of revisions to the state

implementation plan demonstrating compliance with Clean Air Act § 110 requirements for the standard to the EPA.

PUBLIC COMMENT: A public hearing was held on November 16, 2018. The public comment period expired on November 30, 2018. No comments were received.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency states that the amended rule has no financial impact.

LEGAL AUTHORIZATION: Arkansas Code Annotated § 8-4-311(b)(1)(A) provides that the Arkansas Pollution Control and Ecology Commission (“Commission”) shall have the power to promulgate rules for implementing the substantive statutes charged to the Arkansas Department of Environmental Quality (“Department”) for administration. Pursuant to Ark. Code Ann. § 8-4-318, the Department shall develop National Ambient Air Quality Standards (“NAAQS”) state implementation plans; except with regard to permitting decisions for major source construction, NAAQS are not effective until adopted by the Commission under Ark. Code Ann. § 8-4-311(b). *See* Ark. Code Ann. § 8-4-318(a)(1), (b)(1). The agency states that the rulemaking is further required to comply with federal law, specifically, 80 FR 65292.

3. **DEPARTMENT OF HUMAN SERVICES, PROVIDER SERVICES & QUALITY ASSURANCE (Mr. Craig Cloud)**

a. **SUBJECT: Rules for the Arkansas Long Term Care Facility Nursing Assistant Training Program**

DESCRIPTION: When the rule was initially submitted for legislative review and approval, DHS provided the following description:

1. Section VI of the Rules for the Arkansas Long Term Care Facility Nursing Assistant Training Program is being amended to allow Long-Term Care Nursing Assistant Programs to hire classroom instructors that may not meet the minimum requirement of at least one (1) year of long-term care nursing services experience within the last five (5) years, provided that the

classroom instructor completes the long-term care education course approved by DPSQA. This provides training programs, especially rural training programs, the ability to recruit instructors that may not meet the minimum requirement of having at least one (1) year of long-term care experience in recent years, since this long-term care education course will be offered as a substitute for this requirement.

2. Long-Term Care Nursing Assistant Training Program curriculum has been updated to reflect current best practices to include lesson plans on resident rights, protecting the profession (specifically the content on reporting abuse, neglect, and misappropriation), and the lesson plan related to Cognitive Impairment/Alzheimer's/Dementia (specifically the content on the person-centered approach to caring for residents with Alzheimer's and Dementia). The curriculum has also been updated to remove content related to three skills that are no longer part of the Certified Nursing Assistant (CNA) scope of practice, including feeding using a syringe, checking for impaction, and performing an enema. The Works Cited page on the "proposed" version of the curriculum lists the sources used to update the curriculum to reflect current best practices.

At the July 8, 2019 meeting of the Senate and House Committees on Public Health, Welfare, and Labor, DHS announced its intent to remove the revisions to Section VI of the Rules for the Arkansas Long Term Care Facility Nursing Assistant Training Program from the promulgation packet and request that the Committees review only the portion of the promulgation packet concerning the Long-Term Care Facility Nursing Assistant Training Curriculum.

DHS further stated that, at the Administrative Rules Subcommittee meeting, it will request the Subcommittee, pursuant to Section 1(f)(5)(B) of the Rules of the Administrative Rules Subcommittee of the Legislative Council, to review and approve only the portion of the promulgation packet concerning the Long-Term Care Facility Nursing Assistant Training Curriculum.

PUBLIC COMMENT: The public comment period expired on May 18, 2019. There was not a public hearing.

Per the agency, CMS approval is not required for these rule changes.

The agency provided the following summary of the comments that it received and its responses thereto:

Holly Johnson, Assistant Attorney General

Comment: As to the education course that the rule proposes to substitute for the one year (at least) of long-term care nursing services within the last five (5) years, there is no information as to what the course would actually entail. The rule does not indicate how long the course would be, who would teach the course, when the course would be taught, or who would ultimately determine that the course is sufficient to serve as a replacement for the one year of long-term care nursing services that would be replaced.

Response: DHS will partner with subject matter experts to develop the long-term care education course content, market the course to current Nurse Aide Training Programs across the state, deliver the course, and evaluate the course materials and course delivery. DHS expects this course to cover any recent regulatory changes occurring during the previous two years that impact CNA scope of practice, incident and accident reporting processes, resident rights, etc. This course will provide a mechanism for potential classroom instructors that do not meet the minimum requirement of (at least) one year of long-term care nursing services within the last five (5) years to meet that requirement, providing Nurse Aide Training Programs more flexibility with recruiting classroom instructors. We expect this long-term care education course to be modeled after structured continuing education courses for medical professionals.

Comment: The Notice of Rule Making references the “primary” instructor in the fourth line of the first numbered paragraph. It is my understanding that the rule should say “classroom instructor;” not primary instructor.

Response: DHS published a new Notice of Rule Making that contained this correction. The new Notice of Rule Making was published pursuant to Arkansas Administrative Procedure Act requirements beginning April 19, 2019 and extended the public comment period to May 18, 2019.

Additionally, Kathryn Henry, an attorney with the Bureau of Legislative Research, asked the following question: Is the number of training hours required by DHS increasing in the new Long-Term Care Nursing Assistant Training Program curriculum?

RESPONSE: The number of hours has not changed with the new

curriculum, we have simply included newer information and removed content/skills that are no longer part of a CNA's scope of practice.

The proposed effective date is August 1, 2019.

FINANCIAL IMPACT: The agency reports that the cost to implement this rule is \$20,000.00 for the current fiscal year (\$10,000.00 in general revenue and \$10,000.00 in federal funds) and \$20,000.00 for the next fiscal year (\$10,000.00 in general revenue and \$10,000.00 in federal funds). The agency further reports that the state will contract with a qualified vendor to develop the continuing education course and implement the course for nursing assistant training program instructors. During the current fiscal year, the vendor will be responsible for course development, delivery, and tracking nursing assistant training program instructor participation and completion. In subsequent fiscal years, the contractor will be responsible for updating the content of the continuing education course (based on new federal or state regulation, guidelines, or best practices), delivering the content to new nursing assistant training program instructors, and tracking participation and completion.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 20-76-201, DHS shall administer assigned forms of public assistance, supervise agencies and institutions caring for dependent or aged adults or adults with mental or physical disabilities, and administer other welfare activities or services that may be vested in it. *See* Ark. Code Ann. § 20-76-201(1). DHS shall also make rules and take actions as are necessary or desirable to carry out the provisions of Title 20, Chapter 76, Public Assistance Generally, of the Arkansas Code. *See* Ark. Code Ann. § 20-76-201(12). DHS may promulgate rules as necessary to conform to federal rules that affect its programs as necessary to receive any federal funds. *See* Ark. Code Ann. § 25-10-129(b). Arkansas Code Annotated § 20-77-107(a)(1) specifically authorizes DHS to “establish and maintain an indigent medical care program.” Additionally, pursuant to Arkansas Code Annotated § 20-10-705, the Office of Long-Term Care shall promulgate rules necessary to implement an aide training program for all long-term care facilities in this state, to prescribe in-service training programs, and to enforce compliance with those programs. *See* Ark. Code Ann. § 20-10-705(a).

Finally, the agency reports that this rule is required to comply with the following federal statutes and regulations: 42 U.S.C. § 1395i-3(b)(5), (e)(1)(A), and (f)(2), 42 U.S.C. § 1396r(b)(5), (e)(1)(A), and (f)(2), and 42 CFR §§ 483.151–154.

4. **STATE PLANT BOARD (Mr. Scott Bray)**

a. **SUBJECT: Arkansas Pest Control Law Rules and Regulations**

DESCRIPTION: This rule change by the Arkansas State Plant Board has been requested by industry. It will increase the percentage of exclusions of certain minimum treating standards contracts each business can issue annually. The exclusions permit businesses to waive certain treating methods at the request of the property owner or in cases of impracticality. This rule change will increase the number of registered agents that may be supervised by each commercial applicator. Currently each commercial applicator can supervise a maximum of twenty (20) technicians; this change will increase that to thirty (30) technicians. The rule change will also update minimum requirements for structural pest work on existing structures. Some of these treating standards have been in place since the 1970s and are being removed or changed due to updates in modern products, technology, and treating methods. Additionally, the rule change will remove the industry from being liable for certain disclosures such as moisture conditions in crawl spaces unless they have entered into a contract that addresses moisture or water conditions to the structure and/or disclosing hidden damage in crawl spaces that may be hidden by insulation, etc.

The changes could allow businesses to employ more technicians without the additional cost of employing commercial applicators to supervise them. The changes could also allow businesses to offer services at less expense to the consumer by updating and modernizing treating standards and disclosure requirements.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on May 5, 2019. The Board received no comments.

Rebecca Miller-Rice, an attorney with the Bureau of Legislative Research, asked the following question and made mention of recent legislation:

(1) I just want to be sure that I am not missing anything. Am I correct that there are no changes being made to the penalty matrix included in the rules? **RESPONSE:** You are correct that this rule change does not affect the penalty matrix.

(2) I noticed the use of the term “regulation” throughout these rules. I just wanted to make mention of Acts 315, § 3204, and 893, § 1, of 2019. While neither is yet in effect, these Acts concern the use of that term and the amendment of rules to use the term “rule.” **RESPONSE:** It’s my understanding that we as a Department will start addressing our rules and making those changes throughout soon.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency states that the amended rule has no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 17-35-105(a)(2)(A), the State Plant Board (“Board”) shall have the authority to adopt rules that shall have the full force and effect of law for the purpose of carrying into effect the provisions of the Arkansas Pest Control Law (“Law”), codified at Title 17, Chapter 37 of the Arkansas Code, concerning pest control services. The rules may include the authorization to require licensed operators to submit written monthly reports setting out the description and location of properties on which pest control service has been rendered and such other information relative thereto as the Board shall deem necessary. *See* Ark. Code Ann. § 17-37-105(a)(2)(B). The rules may further include minimum standards for pest control service work and shall include fees sufficient to pay the cost of carrying out the provisions of the Law. *See* Ark. Code Ann. § 17-37-105(a)(2)(C).

5. **ARKANSAS PUBLIC EMPLOYEES RETIREMENT SYSTEM (Mr. Jay Wills, Ms. Jessica Middleton)**

a. **SUBJECT: R 203 Disability Retirement**

DESCRIPTION: The proposed amendment to the rule by the Arkansas Public Employees Retirement System (“APERS”)

permits a disabled APERS member to receive benefits the first day of the calendar month following APERS's approval of the disability.

PUBLIC COMMENT: A public hearing was held on May 17, 2019. The public comment period expired that same day. The System received no comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency states that the amended rule has no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 24-4-105(b)(1), the Board of Trustees of the Arkansas Public Employees Retirement System ("System") shall make all rules as it shall deem necessary from time to time in the transaction of its business and in administering the System. The proposed amendment to the rule is premised on Ark. Code Ann. § 24-4-511(a)(2), as amended by Act 332 of 2013, § 9.

6. **COMMISSION FOR ARKANSAS PUBLIC SCHOOL ACADEMIC FACILITIES AND TRANSPORTATION (Ms. Jennifer Dedman)**

a. **SUBJECT: Specifications Governing School Bus Design**

DESCRIPTION: The Commission for Arkansas Public School Academic Facilities and Transportation Rules for the Specifications Governing School Bus Design were last updated in 2012. Since that time, there have been changes to the Federal Motor Vehicle Safety Standards, 49 C.F.R. Part 571, and the specifications of the National Congress on School Transportation. These rules have been amended to reflect changes in bus safety standards and specifications.

PUBLIC COMMENT: A public hearing was held on December 27, 2018. The public comment period expired on January 18, 2019. The agency provided the following summary of the comments that it received and its responses thereto:

Name: Mike Wingerter, Central States Bus Sales (Bluebird)

Comment: I was wanting to address the mandatory of air brakes on all school buses with 65 passenger and greater for capacity. I'm not opposed to that at all. What I would like to see put in place—we were prior to the last spec meeting a hydraulic brake state.

Missouri is a hydraulic state right now. It's a safe brake. There's nothing wrong with it. School districts in Arkansas, especially in the rural areas—their money is based on enrollment totally. There's no dedicated transportation funding for the State of Arkansas. So what happens is drivers now have to be required to go get their air brake endorsement, which is not just go take an air brake test anymore. You have to take the whole test. When they do, instead of—I use this as an example—making \$15 an hour driving a school bus, they can go right down the street and drive a dump truck and make twice the money per hour because of their air brake endorsement. With that being said, the districts in the rural areas that have less money can afford hydraulic brake buses. They're cheaper than the air brake buses. They're also easier to obtain drivers and maintain drivers. Just like to see that as an option. Maybe not in the big buses—the type D buses—but at least in the type C buses. Seventy-seven passengers is the most capacity you can do in a type C bus. Why not make it an option?

Agency Response: Comment considered. No change made. Districts will not be required to retire their current buses, including those which may have hydraulic brakes, but all buses purchased after the effective date of these rules should have air brakes, due to safety concerns with hydraulic brakes.

Name: Lucas Harder, Arkansas School Boards Association

Comment (1): 1.01: There is a “the” missing from between “as” and “Commission.”

Agency Response: Comment considered. The change was made.

Comment (2): 9.01-9.04: While this is simply moving the existing language from Section 37.00, I would recommend adding “Rear” in front of “Bumper” to more closely match the language in 8.01 through 8.03 and to more easily distinguish between the two sets of bumpers without needing to reference the Rules section.

Agency Response: Comment considered. The change was made.

Comment (3): ~~49.05~~48.05: There is an unnecessary “r” here so that “no” has become “nor.”

Agency Response: Comment considered. The change was made.

Comment (4): ~~52.04~~51.04: This is duplicative language with that in ~~40.01~~39.01.

Agency Response: Comment considered. No change made.

Comment (5): 70.00: This appears to be duplicative of 14.00.

Agency Response: Comment considered. No change made. Section 14.00 covers the entire exhaust system.

Comment (6): 78.08: This should be 12.03 instead of 11.03.

Agency Response: Comment considered. The change was made.

Comment (7): 83.01: “or transit bus” is included twice.

Agency Response: Comment considered. The change was made.

Comment (8): 84.13: The “shall be” in “CNG buses shall have a positive, quick-acting (1/4 turn) shut-off control valve shall be installed in” is unnecessary.

Agency Response: Comment considered. The change was made.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency states that the amended rule has no financial impact.

LEGAL AUTHORIZATION: The Commission for Arkansas Public School Academic Facilities and Transportation shall have responsibility for drawing up the minimum specifications for all school buses. *See* Ark. Code Ann. § 6-21-304(b)(2).

7. **ARKANSAS TEACHER RETIREMENT SYSTEM** (Ms. Laura Gilson, Mr. Clint Rhoden)

a. **SUBJECT:** ATRS Rule 4 – Election Board of Trustees

DESCRIPTION: Rule 4 by the Arkansas Teacher Retirement System concerns the election of the System’s Board of Trustees. The System proposes the following revisions to its Rule 4:

Substantive Changes: None

- Although this is technically a “new” rule because the rule has been renumbered and renamed, the language of the new rule is

almost entirely imported from existing language in ATRS Rules 4-1 and 4-2.

- ATRS reformatted and reorganized the existing two (2) rules into one rule for consistency and professionalism.
- The existing rules 4-1 and 4-2 are therefore proposed to be stricken and repealed and replaced with new ATRS Rule 4 – Board of Trustees Composition and Elections.

Non-Substantive Changes:

- To replace obsolete OPM classifications with the current OPM classifications for candidacy and voting eligibility.
- To equate “educational cooperative director” with “superintendent” as service as an ATRS administrator trustee consistent with Ark Code. Ann. § 24-7-301.
- To reorganize Section D on page 4-6 to group all of the rules regarding trustee attendance and vacancies into the same section.
- To correct formatting issues, renumbering, grammar, and spelling, where appropriate.
- To recapture previously promulgated language inadvertently omitted in a 2015 filing so the language in this new rule accurately reflects the rule as promulgated.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on May 20, 2019. The System received no comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency states that the amended rule has no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 24-7-301(5), the member and retirant trustees of the Arkansas Teacher Retirement System (“System”) shall be elected in accordance with rules as have been adopted by the System’s Board of Trustees (“Board”) to govern the elections. The Board shall further adopt its own rules pertaining to attendance and vacancies as provided in Ark. Code Ann. § 24-7-302(b). *See* Ark. Code Ann. § 24-7-302(c). Further authority for the rulemaking can be found in Ark. Code Ann. § 24-7-305(b)(1), which provides that the Board shall promulgate rules as it deems necessary from time

to time in the transaction of its business and in administering the System.

b. SUBJECT: ATRS Rule 7 – Reporting and Eligibility

DESCRIPTION: Rule 7 by the Arkansas Teacher Retirement System provides members and employers with rules regarding reporting of salary and service credit and the rules for final average salary; it combines several rules into one. The System proposes the following revisions to its Rule 7:

Substantive Changes:

- Although this is technically a “new” rule because the rule has been renumbered and renamed, the language of the new rule is almost entirely imported from existing language in ATRS Rules 7-1, 7-2, 7-3, and 7-4.
- ATRS reformatted and reorganized the existing four (4) rules into one rule for consistency and professionalism.
- The existing rules 7-1, 7-2, 7-3, and 7-4 are therefore proposed to be stricken and repealed and replaced with new ATRS Rule 7 – Reporting and Eligibility.
- Page 7-3, paragraph 7, to reflect ATRS Board of Trustee resolution regarding benchmarks for computation of final average salary.
- Page 7-7, Section F, to reflect an interest penalty increase from six percent (6%) in existing Rule 7-4, to eight percent (8%), as adopted by ATRS Board of Trustee resolution.

Non-Substantive Changes:

- To correct formatting issues, renumbering, grammar, and spelling, where appropriate.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on May 20, 2019. The System received no comments.

Rebecca Miller-Rice, an attorney with the Bureau of Legislative Research, asked the following questions:

(1) Section 1.B.6. – Is July 1, 2018 the correct date? Is it the System’s intent to make this particular section retroactive? If it is the intent, on what authority does the System rely to do so?

RESPONSE: July 1, 2018 is the correct date. The date change in the rule reflects the Board Resolution adopted November 13, 2017.

[Resolution was attached to response.] The Board resolution allowed ATRS to use a 5-year final average salary beginning July 1, 2018. Arkansas Code 24-7-202(18), in conjunction with 24-7-736(f), allows the Board to adopt by resolution the FAS range from 3 to 5 years.

(2) Section 1.B.6. – Is the five (5) year final average a new change to the rules? It is not indicated in italicized black font as are other changes, but it appears from the prior rule that it was a three (3) year average? If it is a change, on what authority does the System rely for the change? **RESPONSE:** The mark-up version that I have shows the July 1, 2018 date italicized and in black font, and the following paragraph as well, which more thoroughly outlines the Board’s November 13, 2017 resolution. I see that the words “five (5)” in paragraph 1.B.6. should also have been in black and italicized. Thank you for catching that. Paragraph 1.B.6. should otherwise be identical to the current version of the rule.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency states that the amended rule has no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 24-7-301, the general administration and responsibility for the proper operation of the Arkansas Teacher Retirement System (“System”) is vested in a board of trustees. The Board of Trustees shall promulgate rules as it deems necessary from time to time in the transaction of its business and in administering the System. *See* Ark. Code Ann. § 24-7-305(b)(1).

c. **SUBJECT: ATRS Rule 8 – Purchases and Refunds**

DESCRIPTION: Rule 8 by the Arkansas Teacher Retirement System concerns the purchase of service credit and the repayment of refunds. The System proposes the following revisions to its Rule 8:

Substantive Changes:

- Although this is technically a “new” rule because the rule has been renumbered and renamed, the language of the new rule is almost entirely imported from existing language in ATRS Rules 8-1, 8-2, 8-4, 8-5, 8-6, 8-7, 8-19, and 8-20.

- ATRS reformatted and reorganized the existing eight (8) rules into one rule for consistency and professionalism.
- The existing rules 8-1, 8-2, 8-4, 8-5, 8-6, 8-7, 8-19, and 8-20 are therefore proposed to be stricken and repealed and replaced with new ATRS Rule 8 – Purchases and Refunds.
- Table on page 8-2, IV.B., list the interest rate for refunded contributions.

Non-Substantive Changes:

- To correct formatting issues, renumbering, grammar, and spelling, where appropriate.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on May 20, 2019. The System received no comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency states that the amended rule has no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 24-7-301, the general administration and responsibility for the proper operation of the Arkansas Teacher Retirement System (“System”) is vested in a board of trustees. The Board of Trustees shall promulgate rules as it deems necessary from time to time in the transaction of its business and in administering the System. *See* Ark. Code Ann. § 24-7-305(b)(1).

d. **SUBJECT: ATRS Rule 10 – T-DROP and Return to Service**

DESCRIPTION: Rule 10 by the Arkansas Teacher Retirement System concerns the T-DROP, or deferred retirement option plan, and return to service. The System proposes the following revisions to its Rule 10:

Substantive Changes:

- Although this is technically a “new” rule because the rule has been renumbered and renamed, the language of the new rule is almost entirely imported from existing language in ATRS Rules 10-2 and 10-3.
- ATRS reformatted and reorganized the existing two (2) rules into one rule for consistency and professionalism.

- The existing rules 10-2 and 10-3 are therefore proposed to be stricken and repealed and replaced with new ATRS Rule 10 – T-DROP and Return to Service.
- Increase the number of withdrawals from the T-DROP Cash Balance Account from two (2) to six (6) times per quarter as adopted by the Board of Trustees.
- Allow member to withdraw set amounts from their T-DROP Cash Balance Account until the account is depleted.
- Reallocate the T-DROP Cash Balance Account Interest Schedule to increase interest earned on the account as adopted by the Board of Trustees.
- Specify that the T-DROP Cash Balance Account Interest Schedule will remain in effect unless the Board of Trustees lowers the earned interest rates.

Non-Substantive Changes:

- To correct formatting issues, renumbering, grammar, and spelling, where appropriate.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on May 20, 2019. The System received no comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency states that the amended rule has no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 24-7-301, the general administration and responsibility for the proper operation of the Arkansas Teacher Retirement System (“System”) is vested in a board of trustees. The Board of Trustees shall promulgate rules as it deems necessary from time to time in the transaction of its business and in administering the System. *See* Ark. Code Ann. § 24-7-305(b)(1).

e. **SUBJECT: ATRS Rule 16 – Cash and Savings Help (CASH) Program**

DESCRIPTION: Rule 16 by the Arkansas Teacher Retirement System concerns the Cash and Savings Help (CASH) Program. The System proposes the following revisions to its Rule 16:

Substantive Changes:

- Although this is technically a “new” rule because the rule has been renumbered and renamed, the language of the new rule is almost entirely imported from existing language in ATRS Rule 16-1.
- The existing rule 16-1 is therefore proposed to be stricken and repealed and replaced with new ATRS Rule 16 – Cash and Savings Help (CASH) Program.

Non-Substantive Changes:

- To add a section to notify members that a CASH program offering is established and adopted by the Board of Trustees by resolution, as authorized under § 24-7-505.
- To correct formatting issues, renumbering, grammar, and spelling, where appropriate.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on May 20, 2019. The System received no comments.

Rebecca Miller-Rice, an attorney with the Bureau of Legislative Research, asked the following question:

Per Section III, the applicable members, offering period, and CASH Program formula for a particular offering will be established and approved by the Board through a properly adopted resolution. Following their adoption, will they be promulgated by rule as well? **RESPONSE:** The above-referenced Rule 16 is unique in that it allows offers, made by Board Resolution, for a specific set of members for a specific time period, which is outlined in the resolution. So, to answer your question, we do not adopt rules regarding the offering, because once that offer expires, it is no longer valid. ATRS does, however, need Rule 16, in the event the Board intends to make another offer by resolution to a specific set of members.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency states that the amended rule has no financial impact.

LEGAL AUTHORIZATION: Arkansas Code Annotated § 24-7-505 authorizes the Board of Trustees (“Board”) of the Arkansas

Teacher Retirement System (“System”) to establish a voluntary program to make a one-time lump-sum payment to a member, surviving spouse, or alternate payee in exchange for a member’s, surviving spouse’s, or alternate payee’s cancellation of membership and retirement benefit rights in the System. The Board may adopt rules as necessary to implement Ark. Code Ann. § 24-7-505, concerning a buyout plan for inactive members. *See* Ark. Code Ann. § 24-7-505(b)(1).

E. Adjournment.