

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

**Thursday, May 14, 2020
9:00 a.m.
Room A, MAC
Little Rock, Arkansas**

- A. Call to Order.**
- B. Reports of the Executive Subcommittee.**
- C. Rules Filed Pursuant to Ark. Code Ann. § 10-3-309.**
 - 1. DEPARTMENT OF AGRICULTURE, ARKANSAS STATE PLANT BOARD (Mr. Scott Bray, Mr. Caleb Allen)**
 - a. SUBJECT: Arkansas Industrial Hemp Research Program Rules**

DESCRIPTION: The Arkansas State Plant Board proposes changes to its Arkansas Industrial Hemp Research Program Rules. The proposed amendments clarify certain definitions and establish a fees schedule for operational costs to implement the program.

The 2014 Farm Bill authorized states to establish research programs to study the feasibility of introducing hemp as an agricultural crop. In response, in 2017, the Arkansas General Assembly passed Act 981 creating the Arkansas Industrial Hemp Act (“The Hemp Act”). The Hemp Act authorized the State Plant Board to promulgate rules to administer the Industrial Hemp Research Program, and in June 2018, the Board promulgated its first hemp rules.

While the 2017 Hemp Act gave the Board authority to collect application and permit fees, there was no authority given to establish any other fees to cover the cost of administering the program. However, in 2019, the General Assembly passed Act 140, which did give the Board authority to establish other fees.

The proposed amendments establish those fees. Department of Agriculture staff met over the course of several weeks and assembled a draft of proposed rule changes. This draft was submitted to and approved

by the Plant Board Industrial Hemp committee May 23, 2019, and approved by the full Board June 11, 2019.

Notable amendments to the existing hemp rules include:

- Establishment of administrative fees to support the program
- Clarification of the roles of the Plant Board and the Department of Agriculture staff
- Clarification and amendment of certain definitions

The establishment of fees in accordance with Act 140 is the primary reason that amendments to the rules were considered. The fees established by the rule amendments are found on page 22 of the rules.

The Plant Board also took the opportunity to clarify the roles of the Board and the Department of Agriculture staff. For example, if the original rules stated things like “the Plant Board has the authority to inspect . . .,” the amendments clarify that staff will be making the inspection, not the actual members of the Plant Board. This should help defend any legal challenges to Board or Department procedures that an applicant or licensee might raise.

Additionally, some definitions were clarified or amended to match the current Farm Bill and the Controlled Substances Act. Those definitions can be found on pages 2-5 of the rules.

PUBLIC COMMENT: Upon request, a public hearing was held on March 10, 2020. The public comment period expired on October 5, 2019. The Board provided the following summary of the comments that it received and its response thereto:

14 comments in total were received. Of these, 8 comments were for the rule in part, 4 comments were against the proposed rule, and 2 comments were undecided. Majority of the comments received touch on several different program rules. Majority of the comments were for the proposed fees to implement the research program, but are also against other program rules. 8 comments were against the definition of a publicly marketable hemp product and would like to see the raw floral or smokable hemp market open to Arkansas hemp growers. 4 comments were received regarding the 15-day harvest limit rule being too short and laborious and would like to see a 28 to 30-day harvest period instead. 5 comments received were regarding laboratory compliance testing, touching on one or more of the following: compliance testing taking too long, the desire to implement delta-9-THC compliance testing over Total THC testing, requesting to raise the 0.3% Total THC limit to 1% Total THC, and to

allow independent third-party laboratories to conduct the final compliance testing for growers. 1 comment was received disputing the compliance sampling policy of taking the top 8in/20cm cuttings from the plant's main or apical stem. 1 comment disputes the various fees to implement the research program, and another comment says the GPS Verification fee for each Location ID is too expensive.

Agency Response: As previously noted, majority of the comments received were for the proposed additional fees to implement the research program and welcome the additional fees, but take issue with various other program rules not directly addressed in the proposed rule change. It should also be noted that the following issues have already been addressed and federally mandated by USDA's Interim Final Rule on the US Domestic Hemp Production Program: the use of Total THC compliance testing, the 15-day harvest limit, and the 0.3% Total THC limit as directed by state and federal laws.

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

(1) Section 1(A)(14) – I see that the definition of “industrial hemp” is being amended. Is there a reason that the definition is being changed somewhat from that in Ark. Code Ann. § 2-15-403(5)? **RESPONSE:** The definition of Hemp was changed to reflect the new definition of hemp in the 2018 Farm Bill definition for hemp sec.297A(1): Definitions.

(2) Section 2(A)(4) – The revision to this section states that “additional requirements for submitting applications may be set as policy and published on the department’s industrial hemp webpage.” What sort of additional requirements are contemplated? Will these be promulgated as rules? **RESPONSE:** There are no specific additional requirements in mind. We are planning for future occurrences.

(3) Section 2(A)(9) – What is the rationale behind removing the prohibition against granting a permit to an applicant with “[a]ny drug related or controlled substance felony conviction at any time”? **RESPONSE:** The prohibition against an applicant with a drug related felony at any time was changed to match guidance in the 2018 Farm Bill. “The farm bill—Public Law 115-334: Agriculture Improvement Act of 2018—enacts a variety of hemp provisions, including adding legalized hemp production-related provisions to the Agricultural Marketing Act of 1946 (7 U.S.C. § 1621 et seq.). The newly added Sec. 297B(e)(3)(B)(i) of the Agricultural Marketing Act of 1946, contains the new collateral consequence:

Except as provided in clause (ii) [a grandfather clause for people participating in the industrial hemp pilot program authorized by the 2014 farm bill], any person convicted of a felony relating to a controlled

substance under State or Federal law before, on, or after the date of enactment of this subtitle shall be ineligible, during the 10-year period following the date of the conviction—

(I) to participate in the program established under this section [plans under which a state or tribe regulates hemp production] or section 297C [when a state or tribal plan is not approved, the production of hemp is subject to a plan established by the Secretary of Agriculture]; and
(II) to produce hemp under any regulations or guidelines issued under section 297D(a) [the Secretary of Agriculture’s implementing regulations and guidelines].”

FOLLOW-UP QUESTION: On the prior convictions, the rule precludes anyone with a felony conviction in the prior 10 years, but the language in the 2018 Farm Bill that you cited to seems to preclude “any person convicted of a felony *relating to a controlled substance . . .* during the 10-year period following the date of the conviction.” Was it the Board’s intent to broaden that to any felony? **RESPONSE:** I believe the citation to the 2018 Farm bill you mention is just a definition. The 2018 Farm Bill makes it clear that states may adopt programs that are more restrictive than that outlined in the 2018 bill. Since our state law specifically only allows us to operate as a research program, we are automatically more restrictive than the 2018 bill. Therefore, the answer to your question is “yes,” it is intended to broaden that to any felony. However, the agency understands that will be subject to the 2019 law on criminal background checks and waivers, for which the Plant Board has proposed rules to follow as well.

(4) Section 4(D) – What is the rationale behind removing the standards to be applied by members of the administrative panel? What will the standard be? **RESPONSE:** This clause was deemed to be redundant by the definition of an administrative appeal.

(5) Section 13(B) – It appeared that references to the pilot program were removed in other portions of the rules, but I noticed the term “pilot” was still included in this section. **RESPONSE:** This was an oversight. The word pilot should have been struck.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency states that the amended rules have a financial impact; however, the total estimated cost by fiscal year to licensed industrial hemp growers and processors is unknown. The agency explains:

As far as financial impact, the rules provide for some new fees which can be assessed to licensees. However, we have no idea of how many

licensees [there] will be that will be impacted by the fees because of the way the program is growing. There is no additional cost to the agency.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 2-15-404(a)(1), the State Plant Board may adopt rules to administer the industrial hemp research program and to license persons to grow industrial hemp under the Arkansas Industrial Hemp Act, codified at Ark. Code Ann. §§ 2-15-401 through 2-15-412. The Board may include as part of its rules the establishment of industrial hemp testing criteria and protocols. *See* Ark. Code Ann. § 2-15-404(a)(2). The Board may further establish and collect fees to administer the industrial hemp research program. *See* Ark. Code Ann. § 2-15-404(b)(11), as amended by Act 140 of 2019. The proposed changes to the rules include those made in light of Act 140 of 2019, sponsored by Representative David Hillman, which amended the law regarding the State Plant Board Industrial Hemp Research Program and allowed the State Plant Board to establish and collect fees to administer the Program.

2. **BENTON COUNTY REGIONAL SOLID WASTE MANAGEMENT DISTRICT** (Ms. Wendy Bland, Mr. Curtis Hogue)

a. **SUBJECT:** Rules of the Benton County Regional Solid Waste Management District 5.01

DESCRIPTION: Non-substantive changes, including formatting and corrections, were made throughout the document. The District also corrected “ADEQ” throughout the document. The following additions or amendments were made to Chapter F of the rules:

- Amended title of Chapter F to “Chapter F: Solid Waste Fees.”
- Amended title of Chapter F, Subchapter 26 to “Subchapter 26: Fees.”
- Added section under Authority 26.01 Waste Assessment that outlines the services provided which allow the District to charge the waste assessment fee.
- Added “Service Fee” under Authority 26.01 and reference to law which authorizes the District Board to levy a service fee on each residence or business for which solid waste collection or disposal services are made available, as well as outlines the services provided which allow the District to levy the service fee.
- Amended Subchapter 26:
 - Changed title to “Solid Waste Fee Amounts.”
 - Reduced the “Waste Assessment Fee” from \$1.50 per ton to \$0.01 per ton.

- Added the “Service Fee” at \$1.49 per ton.
- Removed references to fees based upon cubic yardage rather than weights as all facilities in our area operate on a weight basis.
- Amended Subchapter 27:
 - Changed title of § 27.02 to “Payment of Fees.”
 - Established and/or amended the procedures for payment of the fees.
 - Moved several sections to consolidate by topic.
 - Added reference to estimated fees and payment of those fees.
 - Added penalty for failure to file required reports or any violation of Chapter F.

PUBLIC COMMENT: A public hearing was held on this rule in Bentonville on March 5, 2020. The public comment period expired on March 15, 2020. The agency indicated that it did not receive any public comments.

Lacey Johnson, an attorney with the Bureau of Legislative Research, asked the following questions and received the following answers:

QUESTION #1: Why does the financial impact statement indicate that these rules will have a financial impact if the impact is \$0? Will there be any additional cost to the residents of the District as a result of this rule? **RESPONSE:** There is no additional cost to residents or businesses of our District. We are simply moving from one of the allowed mechanisms to the other and the total cost to our citizens will remain at \$1.50 per ton. (The Boston Mountain District might attempt to argue that it would impact them to no longer be able to split waste assessment fees. However, they have never received any of our fees and therefore it does not affect them. They collect their own \$1.50 per ton from their citizens.)

QUESTION #2: It appears that the District has retained the term “regulations” within the proposed changes. I just wanted to mention Act 315 of 2019, § 3204(b)(3), which concerns the uniform use of the term “rule” and requires governmental entities to ensure the use of the term “rule” upon promulgation of any rule after the effective date of the Act. Act 315 took effect on July 24, 2019. Is there a reason that the District has retained the term “regulations” for the time being? **RESPONSE:** I did wonder if we should convert all of those references! We are happy to make those changes in the final version after incorporating any revisions, from public comment period, as approved by our board. It was just our own lack of understanding at how far that new law went.

QUESTION #3: Section 27.01(2)(a)(iii) mentions that excess fees collected by waste haulers should be submitted to the District. What happens to this money after the District receives it? **RESPONSE:** Our concern was that waste haulers would charge our citizens fees based on averages which might exceed citizen's actual production of tonnages. We felt that it was prudent to have those fees, if any, distributed to the District to be used for provision of services back to those citizens. We are not aware of this ever having happened before but felt we need to include it.

QUESTION #4: Ark. Code Ann. § 8-6-714(a)(4)(c) indicates that each ton of waste produced in one district and delivered to another district for disposal may be assessed only one fee. Could you explain how the districts decide which fee to assess?

RESPONSE: I'm not sure how to address your question because I'm not clear what you are asking. Please let me know if none of the following gets to the information you need:

Are you asking which District has the legal right to set and charge the Waste Assessment fee as allowed in subsection (a) [thereby being the "one fee"]? My understanding is that legal precedent has shown that a government entity responsible for provision of services is the entity that can and would charge the fee. It makes sense that a neighboring Board cannot impose a second fee onto citizens of another District when that "home District" has its own existing fee.

Or are you asking if we are non-compliant because we are collecting both the Waste Assessment fee and the Service Assessment as allowed in subsection (d)? 8-6-714(a)(4)(c) limitation of one fee refers **only** to the Waste Assessment fee as described in subsection (a) and does not apply to the Service Assessment in subsection (d). Subsection (c), which further develops instructions regarding the waste transported between districts initially referenced in [Ark. Code Ann. § 8-6-714(a)(4)], specifically refers back only to subsection (a) regarding the Waste Assessment fees.

If you are asking how a board would determine what fee to charge: Each District board must choose which blend of fee(s) **could** adequately and responsibly fund the services they are mandated to provide to the citizens within their own district. Our board had historically used the Waste Assessment fee as our primary funding mechanism until the Boston Mountain District chose to try to take half of the fees paid by our citizens. You probably know that we have been battling in court since 2016 on this matter. As a result, our board re-evaluated our funding structure and chose to move primarily to the Service Assessment option as outlined in subsection (d). So, our District is charging **ONLY** one waste assessment fee of \$0.01 per ton which will be split with Boston Mountain District to

assist in covering their nominal oversight expenses of Waste Management's privately owned landfill. In addition, we are initiating collection of the Service Assessment based on the services we make available to every household and business.

QUESTION #5: Is there statutory authority for requiring disposal facilities in other districts to submit quarterly reports to the District?

RESPONSE: [Ark. Code Ann. §] 8-6-714(a)(4)(B), specifies that the Waste Assessment fees can be assessed against the generator, transporter/hauler, or disposal facility. So every facility will be required to submit the report on the Waste Assessment fees. The Service fee section does not clearly define that requirement so we included the option of the facility agreeing in writing to collect those particular fees from haulers on our behalf. However, we talked with all of the facilities prior to developing this draft and they were all agreeable to voluntarily collect the Service Assessment since they were going to be required to collect the Waste Assessment anyway. If for any reason a facility refused, the facility would be banned from collecting the fee from the hauler and the hauler would have to submit the fees themselves to the District.

QUESTION #6: What is the specific statutory authority for fining entities who fail to submit reports, as addressed in § 28.02?

RESPONSE: [Ark. Code Ann. §] 8-6-714(a)(3) states *The board may fix, charge, and collect penalties from entities that fail to timely remit rents, fees, and charges under this section.* The forms will be filed as proof of the fees owed and will have both the Waste Assessment fee and the Service Fee on the same form. If we have misstated this authority in our rule, we will clarify that the penalty is for failing to timely remit the fees and will remove the penalty for failing to file a form if needed. [Ark. Code Ann. §] 8-6-722 offers the option of criminal charges for violation of a District Board's rules so we could incorporate that if needed.

These rules were filed on an emergency basis and were reviewed and approved by the Executive Subcommittee on January 16, 2020. On January 17, 2020, ALC voted for the Executive Subcommittee to reconsider. The Executive Subcommittee reconsidered the emergency rules and subsequently reviewed and approved them a second time on January 17, 2020.

The proposed effective date for permanent promulgation is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that these rules will have a financial impact. The agency stated that there will be no additional cost to any private individual, entity, or business subject to the proposed rule.

The agency also stated that there will be no additional cost to state, county, or municipal government to implement this rule.

LEGAL AUTHORIZATION: Ark. Code Ann. § 8-6-714(a)(1)(A) gives regional solid waste management boards authority to “fix, charge, and collect rents, fees, and charges” that are “related to the movement or disposal of solid waste within the regional solid waste management district, including without limitation fees and charges: (i) [r]elated to the district’s direct involvement with the district’s disposal or treatment; or (ii) [t]hat support the district’s management of the solid waste needs of the district.” However, a board may only assess these fees and charges under Ark. Code Ann. § 8-6-714 (a)(1)(A)(ii) if it (1) employs an enforcement officer to enforce relevant local law and eliminate illegal dump sites; (2) “has a program for household hazardous waste collection and disposal;” and (3) has a recycling program that meets specified parameters. Ark. Code Ann. § 8-6-714(a)(1)(B). Fees may relate to solid waste that is either produced “[w]ithin or without the district delivered to a landfill or transfer station within the district” or is produced within a district but delivered outside of the district, and they may not exceed \$2.00 per ton of solid waste. Ark. Code Ann. § 8-6-714(a)(2), (c)(1). Districts may assess, administer, and divide fees through interlocal agreements, but in the absence of an interlocal agreement “the fees shall be divided equally between the districts.” Ark Code Ann. § 8-6-714(c)(3).

Additionally, Ark. Code Ann. § 8-6-714(d) gives the boards authority to “levy a service fee on each residence or business” to which they provide solid waste services.

The regional solid waste management boards may adopt rules “as are reasonably necessary” to administer their duties. Ark. Code Ann. § 8-6-704(a)(6).

3. **DEPARTMENT OF COMMERCE, ARKANSAS ECONOMIC DEVELOPMENT COMMISSION** (Ms. Renee Doty, Ms. Becca Caldwell)

a. **SUBJECT: Spay and Neuter Pet Grant Program**

DESCRIPTION: This promulgation establishes proposed rules for administering the Spay and Neuter Pet Grant Program (“SNP Grant Program”) by the Rural Services Division of the Arkansas Economic Development Commission. This rule implements requirements of Act 494 of 2019 by:

1. Establishing application eligibility criteria for grant funding provided by the SNP Grant Program;

2. Establishing application submittal, review and approval processes for applicants seeking grant funding provided by the SNP Grant Program;
3. Establishing the amount of funds that will be awarded through the SNP Grant Program and the required matching funds;
4. Identifying the reporting requirements and responsibilities of grantees receiving funds under the program; and
5. Establishing the date that all project expenditures shall be completed after the date of the grant award.

PUBLIC COMMENT: A public hearing was held in this matter on April 6, 2020. The public comment period expired on April 6, 2020. The Arkansas Economic Development Commission did not receive any public comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that this rule had a financial impact. Specifically, the agency listed a current fiscal year cost of \$320 for legal advertising and copies made during the promulgation process.

LEGAL AUTHORIZATION: Act 494 of 2019 appropriated funds to the Arkansas Economic Development Commission’s Rural Services Division, providing for statewide grants to organizations that provide spay and neuter services. *See* Act 494 of 2019, § 1.

The Arkansas Economic Development Commission has authority to administer grants to assist with economic development in the state. *See* Ark. Code Ann. § 15-4-209(a)(1). The Commission may promulgate rules necessary to implement the programs and services offered by the commission. *See* Ark. Code Ann. § 15-4-209(b)(5).

4. **DEPARTMENT OF COMMERCE, STATE INSURANCE DEPARTMENT**
(Ms. Amanda Gibson)

a. **SUBJECT: Verification of Life Insurance Benefits**

DESCRIPTION: The proposed rule implements Ark. Code Ann. § 23-40-112(h) which requires the Insurance Commissioner (“Commissioner”) to issue a rule to implement a three business day timeframe within which life insurers must verify benefits. This rule applies to life insurers who have issued whole life insurance policies and annuities which fund prepaid funeral benefits contracts. There currently exists no rule by the Arkansas Insurance Department (“AID”) that provides a timeframe within which

life insurers must verify benefits in the context of funding a prepaid funeral benefits contract.

Background and Purpose of Rule

Act 500 of 2019 amended Ark. Code Ann. § 23-40-112 by adding additional provisions. The provisions create a three day timeframe within which life insurers must verify whether there is an active policy that provides death benefits. This timeframe is necessary to relieve the burden on funeral homes which frequently encounter situations where the decedent's family may be unable to pay for the desired services without financial assistance in the form of life insurance benefit. If the insurer verifies that there are no benefits, then the family is able to move forward with arrangements that are within its financial means. This rule applies to situations where the deceased has purchased a prepaid funeral benefits contract that is funded either by a whole life insurance policy or annuity.

In those cases, the life insurer must verify life insurance benefits within three business days of receiving notification of the death of a contract beneficiary and a request for verification of benefits. That request can be submitted by an owner, beneficiary, or assignee, or by the authorized representative of the owner, beneficiary, or assignee.

Key Provisions in the Rule

The rule provides for the verification to be three-pronged: (1) whether the deceased is a beneficiary; (2) the death benefit amount under the policy or annuity; and (3) whether the policy is in a contestability period.

The rule also provides for monetary penalties for insurers who fail to make the required verification within three business days (\$500 for each failure; no more than \$5,000 in the aggregate).

PUBLIC COMMENT: A public hearing was held in this matter on March 30, 2020. The public comment period expired on March 11, 2020. The State Insurance Department stated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: Act 500 of 2019, which was sponsored by Representative Sarah Capp, provided for verification of benefits for a contract beneficiary under a whole life insurance policy or annuity, within three (3) business days from the receipt of a notification of death of a contract beneficiary and a request for verification of benefits by an owner,

beneficiary, or assignee, or the authorized representative of the owner, beneficiary, or assignee. *See* Act 500 of 2019 § 2, codified as Ark. Code Ann. § 23-40-112(h)(2)(A). The verification of benefits shall include without limitation: (i) whether the deceased is a covered person under the policy or annuity; (ii) the death benefit amount under the policy or annuity; and (iii) whether the policy or annuity is in the contestability period. *See* Act 500 of 2019 § 2, codified as Ark. Code Ann. § 23-40-112(h)(2)(B). Additionally, the Commissioner may impose a fine not to exceed five hundred dollars (\$500) for each failure to provide the verification required, but not more than five thousand dollars (\$5,000) in the aggregate. *See* Act 500 of 2019 § 2, codified as Ark. Code Ann. § 23-40-112(h)(2)(D).

The Insurance Commissioner has authority to make reasonable rules necessary for or as an aid to the effectuation of any provision of the Arkansas Insurance Code. *See* Ark. Code Ann. § 23-61-108(a)(1). The commissioner, in consultation with the Secretary of the Department of Commerce, shall have authority to promulgate rules necessary for the effective regulation of the business of insurance or as required for this state to be in compliance with federal laws. *See* Ark. Code Ann. § 23-61-108(b)(1). Act 500 of 2019 provides that the Commissioner shall promulgate rules regarding verification of benefits under Ark. Code Ann. § 23-40-112(h)(2)(A). *See* Act 500 of 2019 § 2, codified as Ark. Code Ann. § 23-40-112(h)(2)(C).

5. **DEPARTMENT OF CORRECTIONS, ARKANSAS CORRECTIONAL SCHOOL DISTRICT (Mr. Solomon Graves, Dr. Bill Glover)**

a. **SUBJECT: Arkansas Correctional School District Dyslexia Screening and Intervention**

DESCRIPTION: The Arkansas Correctional School District recognizes that research indicates the educational and reading level of prison inmates is significantly lower than that of the non-prison population. The intention of these rules and forthcoming implementation plan is to assess current and future inmates so that identified reading deficiencies can be addressed through appropriate intervention services, which will have a positive effect on future educational attainment and the recidivism rate of current inmates. These goals align with the Division of Correction’s mission and vision of providing correctional services that return inmates to the community as productive people. The Arkansas Correctional School District has developed a plan with the Division of Correction that allows inmates to voluntarily receive reading proficiency level assessments, dyslexia screening administered with fidelity and reading instruction that

is consistent with the Science of Reading as provided under the Right to Read Act, Ark. Code, Ann. § 6-17-420.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on February 18, 2020. The Arkansas Department of Corrections indicated that no comments were received.

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

QUESTION: Is the Dyslexia Screening and Intervention Plan a part of the “rules” submitted for promulgation? Is this the plan submitted with the rules, the “plan” contemplated by Section 2 of Act 1088 of 2019?

RESPONSE: The Plan and Rule were drafted as separate requirements under Act 1088. The Plan is not part of the Rule submitted for promulgation. The requirement to promulgate a rule is separately set out in subsection (1), from the requirement to provide an implementation plan to the Division of Correction, which is in subsection (2).

The proposed effective date of these rules is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicates that these rules have a financial impact. Specifically, the agency estimates that the total cost by fiscal year to state, county, and municipal government to implement this rule is \$8,131. This amount represents the cost to automate the screener tool.

LEGAL AUTHORIZATION: Act 1088 of 2019, sponsored by Senator Joyce Elliott, required that new inmates receive reading assessments and dyslexia screenings. The Superintendent of the Arkansas Correctional School was granted authority to promulgate rules that require that: (1) teachers within the Arkansas Correctional School have and demonstrate awareness of the best practices of scientific reading instruction as required under the Right to Read Act; (2) each inmate who does not have a high school diploma or equivalent, receive reading proficiency-level assessment and dyslexia screening administered with fidelity; (3) if the Arkansas Correctional School provides dyslexia intervention to an inmate who is reading below the proficiency level required to be a high - proficiency reader, the intervention shall be evidence-based and consistent with science-based research specifically tailored to addressing dyslexia, as defined by Ark. Code Ann. § 6-41-602; and (4) a process be established by which new inmates are assessed and administered a dyslexia screening with fidelity, and provided dyslexia intervention with fidelity, as defined by Ark. Code Ann. § 6-41-602. *See* Ark. Code Ann. § 12-29-311(1).

6. **DEPARTMENT OF EDUCATION, DIVISION OF ELEMENTARY AND SECONDARY EDUCATION** (Ms. Lori Freno, items a-g; Ms. Deborah Coffman, item a; Ms. Stacy Smith, items c-g)

a. **SUBJECT: DESE Rules Governing Standards for Accreditation of Arkansas Public Schools and School Districts**

DESCRIPTION: Amendments to the Rules Governing Standards for Accreditation of Arkansas Public Schools and School Districts include stylistic changes, as well as the following:

- Title changed to reflect the change in name of the Division of Elementary and Secondary Education from the Arkansas Department of Education. Throughout, changes were made to reflect the name change.
- Sections 4.04 through 4.07 were changed to more accurately depict the rules promulgation process.
- Sections 7.04.4 and 8.01 were changed to clarify that the Division can make a change to the accreditation status at any time if a school or school district is in violation of the Standards.
- Section 8.02 was changed to remove the 90-day period and allow the Division to determine the timeline necessary to cure the deficiency.
- Section 10.01 was changed to reflect the changes made in Sections 7.04.4 and 8.01.
- Section 11.01.1 was changed to allow the Commissioner to waive the thirty-day timeline based on emergency circumstances.
- Section 1-A.4 was changed to require that the school calendar be posted on the district website.
- Section 1-B.3.1 was added to include the requirement that each public school and school district develop and implement a written health and wellness plan that must be submitted to the Division by October 1. This is already a requirement for public schools and school districts, but has not been included in the Standards.
- Sections 1-C.2.4 through 1-C.2.6 were added to ensure all graduation requirements are included in the Standards.
- Section 2-B.3 was changed to reflect changes to the law made in Act 676 of 2019.
- Section 3-A.8 was changed to reflect changes to the law made in Act 1083 of 2019.
- Sections 4-C.3, 4-C.4, 4-D.4, and 4-D.5 were added to require that first year administrators and teachers receive mentoring support and be evaluated once every four years. This is already a requirement of the Educator Licensure Division of the Division of Elementary and Secondary Education, but is new to the Standards.

- Section 4-E was changed to reflect changes to the law made by Act 190 of 2019.

Changes following the public comment period include:

- Section 1.02 was updated to reflect additional statutory authority for promulgation of the Standards.
- 1-A.4.3 was added to incorporate provisions of Act 641 of 2019. This Standard was monitored through Standard 1-B.3, but has been made its own Standard for clarity.
- 1-C.2.4 was changed back to the original language for clarity.
- 2-J.1 was changed so that the language of the Standard and the citation are consistent between 2-J.1 and 2-J.2.
- 3-A.2 was changed from “teacher salary schedule” to “salary schedules for the licensed and classified staff” so that the language matches the language used in Ark. Code Ann. § 6-17-2301 and § 6-17-201.
- Grammatical changes made throughout.

PUBLIC COMMENT: A public hearing was held on September 26, 2019. The public comment period expired on October 19, 2019. The Division provided the following summary of the comments received and its responses thereto:

Comments from Stakeholder Meeting, Group led by Phoebe Bailey (Southwest Arkansas Education Cooperative)

Comment (1): Do we need to clarify % of time in 4-E.3?

Division Response: The percent of time is detailed in the law cited in the Standard. No change made.

Comment (2): In 4-D.4, clarify ‘first year of employment’ for mentoring as this could be an experienced teacher in a new district.

Division Response: 4-D.4 is changed to clarify that “first year of employment” does not mean first year of employment in a district, but rather first year of employment as a teacher. Non-substantive change made.

Comment from Stakeholder Meeting, Group led by Darin Beckwith (Dawson Education Service Cooperative)

Comment (1): 4-D.4: Should it say any teacher in his “first teaching assignment” vs first year of employment?

Division Response: 4-D.4 is changed to clarify that “first year of employment” does not mean first year of employment in a district, but rather first year of employment as a teacher. Non-substantive change made.

Comments from Stakeholder Meeting, Group led by Molly Humphries (Arkansas Dyslexia Support Group) and David Woolly (Alma School District)

Comment (1): Section 4.02, in the last sentence, particularly those found to have the most violations or in conflict with state law or rules.

Division Response: Section 4.02 is changed to clarify that it is the Standards found to have the most violations. Non-substantive change made.

Comment (2): Section 9.03.7: Reconstitute is not defined.

Division Response: Comment considered. The language in Section 9.03.7 matches the language used in Ark. Code Ann. § 6-15-207(c)(7). No change made.

Comment (3): Section 11.01.1: Change Commissioner to Secretary of Education in Lines 2 and 3.

Division Response: Comment considered. No change made.

Comment (4): 4-C.3 and 4-D.4: Provide clarification on what is meant by 3 years. Example, is it three years in the present position, three years as an administrator, or three years in the district?

Division Response: 4-D.4 is changed to clarify that “first year of employment” does not mean first year of employment in a district, but rather first year of employment as a teacher. Non-substantive change made.

Comment (5): 4-C.4 and 4-D.5: Define and give parameters of what is a summative rating.

Division Response: Comment considered. No change made.

Comment (6): 4-E.2: Clarifying wording that the calculation is by district and not by school.

Division Response: 4-E.2 reads “Each public school district shall have a student/school counselor ratio of no more than one to 450 students.” Comment considered. No change made.

Comment (7): 2-B.3: Clarify what this report should look like.

Division Response: The Standard matches the language used in Ark. Code Ann. § 6-18-702. That code section is cited in the Standard and gives additional guidance on the requirements of the report. Comment considered. No change made.

Comment (8): 1-C.2.4: How will compliance be documented?

Division Response: Compliance is monitored by the Public School Accountability division of the Division of Elementary and Secondary Education. This Standard is monitored through the Statement of

Assurance or by a review of Triand for student transcripts. Comment considered. No change made.

Comment (9): 1-C.2.5: How will compliance be documented? What is meant by digital for the purposes of this requirement?

Division Response: Compliance is monitored by the Public School Accountability division of the Division of Elementary and Secondary Education. This Standard is monitored through the Statement of Assurance or by a review of Triand for student transcripts. Comment considered. No change made. This digital course requirement can be found in Ark. Code Ann. § 6-16-1406.

Comment (10): 1-C.2.6: How will compliance be documented?

Division Response: Compliance is monitored by the Public School Accountability division of the Division of Elementary and Secondary Education. This Standard is monitored through the Statement of Assurance or by a review of Triand for student transcripts. Comment considered. No change made.

Comments from Stakeholder Meeting, Group led by Paula Vasquez (Arkansas Department of Education)

Comment (1): 2-J: Update the title/heading to read “English Language Services” to read “English Learner Services.” This better describes the services and specifies that it is for a specific population and aligns to federal wording.

Division Response: Comment considered. Non-substantive change made.

Comment (2): 2-J.1 and 2-J.2: Change from “each school” to “each public school district” and change the cite code from “S/C” to “D/C” to correspond.

Division Response: Comment considered. Non-substantive change made.

Comments from Stakeholder Meeting, Group led by Lisa S. Johnson (Arkansas Department of Education)

Comment (1): Section 7.04.2.1: “Suspected deficiencies”: Should there be any explanation as to from where the suspected deficiencies would come?

Division Response: Comment considered. No change made.

Comment (2): Section 9.03.8: This is the first mention of “Accredited–Corrective Action.” The other Accredited (Cited and Probation) definitions were detailed earlier in the document. This seems to need more explanation.

Division Response: Comment considered. Section is changed to clarify that the status applies when the Board accepts a corrective action plan to address the violations of the Standards and designates the public school or public school district as being Accredited–Corrective Action. Non-substantive change made.

Comment (3): Section 2-A.2: Why is disability not listed along with race, national origin, or ethnic background?

Division Response: Comment considered. Disability and sex have been added to race, national origin, and ethnic background. Non-substantive change made.

Comment from Stakeholder Meeting, Group led by Brian Fields (AETN)

Comment (1): 1-C.2.6: There are currently four levels of CPR certification. The lowest level is for laymen and the average cost is about \$75. If I am to assume the correct definition of “psychomotor,” then a short video with a demonstration should accommodate this task. If this is the case, I do feel this is a good change.

Division Response: Comment considered. This Standard incorporates the requirements of Ark. Code Ann. § 6-16-143. No change made.

Comments from Stakeholder Meeting, Group led by Cheryl Weidmaier (Division of Career and Technical Education)

Comment (1): Regarding “licensure exception” in Standard 4, does the word “exception” have a different meaning to school personnel?

Division Response: Yes. A licensure exception is granted through the Division of Elementary and Secondary Education, Educator Licensure Division, and is done on an individual educator basis. “Waiver” refers to a waiver granted by the State Board of Education to a school district through one of the waiver paths (1240, charter contract, or SFA waivers). No change made.

Comment (2): Standard 1: Are “Stop the Bleed” and “Violence Awareness” required by schools? If so, they are not noted in the Standards document.

Division Response: Yes. Arkansas law requires schools to include stop the bleed (Act 245 of 2019) and violence awareness (Ark. Code Ann. § 6-16-1004) as part of a health course. Although they are not separated out, the health course is required in Section 1-A of the Standards.

Comments from Stakeholder Meeting, Group led by Barbra Means (Arkansas Department of Education), Allison Greenwood (Arkansas State Teachers Association), and Kim Wright (Arkansas Department of Education)

Comment (1): Check spacing throughout the document. In Section 7.03.3 and 7.03.4, bold “at any time” and in Section 8.01.

Division Response: Comment considered. No change made.

Comment (2): Section 8.01 “is not” replaced by “should be.”

Division Response: Comment considered. No change made.

Comment (3): The timeline needs clarification in Section 8.0. Timeline specifics are needed.

Division Response: Comment considered. No change made.

Comment (4): Section 10.1: Clarify what constitutes written notification (e-mail, certified letter, etc.).

Division Response: Comment considered. No change made.

Comment (5): Section 11.01.1: Clarify the 30 calendar days such as days the district is in session.

Division Response: Comment considered. The timeline is thirty (30) calendar days, regardless of whether school is in session. No change made.

Comment (6): Section 11.01.2: Would the May 20 date need to be there? All other timelines say at any time or within a number of calendar days.

Division Response: Concerning waivers of the Standards, the hearing must be conducted at a regular or special meeting, no later than May 20. No change made.

Comment (7): In 4-E.3, clarify that 90% of their school time is spent on counseling services and with students.

Division Response: The percent of time is detailed in the law cited in the Standard. No change made.

Comment (8): In 4-F, since high schools don’t check out books or have classes and often do not have kids, can there be something added for duties assigned?

Division Response: Ark. Code Ann. § 6-25-101 et seq. outlines the responsibilities and duties of library media specialists. No change made.

Comment (9): In 4-F.2, raise the number for the whole v. half rule to 450 as it is for principals and counselors or revise the standards to reflect 2019 rather than 1989. This is not the pre-internet era.

Division Response: Comment considered. No change made.

Comment (10): 3-B.2: What was the purpose of the change of date? Our group feels like a fall date is most effective.

Division Response: Comment considered. The date has been changed to allow districts to hold the annual report to the public at a time that best meets the needs of their individual districts. No change made.

Comment (11): 2-A.1.1: Be specific with the date of the cycle 2 submission.

Division Response: Section 2-A.1.1 states that each public school district shall file an accurate and timely Equity Compliance Report by October 15 as part of the cycle 2 submission. No change made.

Comment (12): 2-H.1: Cite the law here or be consistent with both 1 and 2. It is included in 2.

Division Response: Comment considered. No change made.

Comments from Stakeholder Meeting, Group led by Melinda Kinnison

Comment (1): In Rule 8.01, cutting the response time from 30 to 15 days may serve to rush the process and inhibit inclusion of the community in developing a plan. Yet in 8.02, there is not a provision for how long the Division has to review that plan so that it may be implemented.

Division Response: Comment considered. No change made.

Comment (2): In rule 12.02.2, what if there is no regularly circulated newspaper?

Division Response: This Standard reflects the language used in Ark. Code Ann. § 6-15-208. No change made.

Comment (3): Moving the posting of the Comprehensive Plan for Communication and Engagement to August may again inhibit inclusion of the community in that plan. The plan should also be posted in an understandable format, which may require translations.

Division Response: Comment considered. No change made.

Comment from Stakeholder Meeting, Group led by Pamela Castor

Comment (1): In Rule 8.01, I believe that the time frame for submitting a plan or correcting a deficiency related to a Cite or Probationary status should remain at 30 days. Because deficiency removal and deficiency removal plans may require board action, I believe the response time of 30 days to be more appropriate. In addition, because the penalties in some cases may include or lead to reorganization, I believe the extended time is warranted.

Division Response: Comment considered. No change made.

Commenter Name: Breta Dean (Greene County Tech School District)

Comment (1): Shouldn't 1-C.2.4 be a one half credit?

Division Response: Yes, the Standard has been changed back to the original wording for clarity. Non-substantive change made.

Commenter Name: Eric Saunders (Benton School District)

Comment (1): Rule 8.01: Decreasing the amount of time a school or district has to correct a deficiency from 30 days to 15 days will create numerous unwarranted citations and/or assignment of probationary status. There are numerous false positives occurring within the Standards for Accreditation system and districts are required to submit DESE approved documents back to DESE to resolve some of these issues. In some instances, schools and districts are required to copy information from one DESE website and enter it into another system to avoid Standards citations. Additionally, to resolve many of these issues, requires responses from the Division with some responses not occurring for weeks. Regarding licensing of personnel, districts are at the mercy of college and universities across the state. As such, lessening the time would create the issuance of a citation or probationary status due to the timeliness of responses from DESE and/or Higher Education institutions.

Division Response: Standard 8.01 does not require public schools or districts to resolve an issue within fifteen days. The standard requires the violation to be corrected *or the appropriate documentation detailing the public school or public school district's plan, including necessary timelines, to correct the deficiency* to be submitted within fifteen days. No change made.

Comment (2): Item 1-C.2.4: The requirement for the freshman class of 2017-2018 to now receive one credit in personal and family finance standards to graduate as opposed to a 1/2 credit would have many consequences. Some of those consequences include: students not being able to follow their personalized plans for graduation, hiring of additional staff, and jeopardizing a student's ability to graduate.

Division Response: Students only need 1/2 credit in personal and family finance. The language in 1-C.2.4 has been changed to clarify. Non-substantive change made.

Comment (3): Item 4-C.4: The required reporting of administrator's ratings is concerning as there is not any assurance regarding the protection of this data. If this data is reported out, using the cell size repression level of 10 (DESE current practice) would not provide any meaningful reports as most of the data would not be able to be reported and any disclosure of this data would be a violation of worker's protection of private personnel records.

Division Response: 4-C.4 does not require Districts to report the administrator's rating. The Standard requires that a rating be given at least once every four years. No change made.

Commenter Name: Scarlett Golleher (Lonoke School District)

Comment (1): 1-A.1.3.11 is being changed to 1-C.2.4. If I understand correctly, the previous personal and family finance requirement could be met with the embedded standards through Economics with a half credit. Now, students will be required to earn a full credit of personal and family finance. Is this correct?

Division Response: Students only need 1/2 credit in personal and family finance. The language in 1-C.2.4 has been changed to clarify. Non-substantive change made.

Commenter Name: Harvie Nichols

Comment (1): 1-A.1.3: This section of the rule does not indicate what advance notice districts will receive about the required courses to be taught. Hopefully the list for the following school year will be posted by November of the current year to allow districts to do adequate planning.

Division Response: The list is approved annually by the State Board of Education in a public meeting. Comment considered. No change made.

Commenter Name: Mike Mertens (Arkansas Association of Educational Administrators)

Comment (1): Regarding the changes in 8.01 and 10.01 from 30 calendar days to 15 calendar days, I would suggest 15 “business” days if we make a change. For violation notifications coming to districts right before Christmas or spring breaks, corrections may be difficult to implement if necessary personnel involved in the process are out of pocket.

Division Response: Standard 8.01 does not require public schools or districts to resolve an issue within fifteen days. The standard requires the violation to be corrected *or the appropriate documentation detailing the public school or public school district’s plan, including necessary timelines, to correct the deficiency* to be submitted within fifteen days. No change made.

Comment (2): In Sections 4-C.3 and 4-D.4, the “first year of employment” phrase needs to be clarified to exclude experienced teachers and administrators moving from district to district. Not sure what clarification would look like, maybe adding the word “initial” before employment.

Division Response: 4-D.4 is changed to clarify that “first year of employment” does not mean first year of employment in a district, but rather first year of employment as a teacher. Non-substantive change made.

Commenter Name: Richard Abernathy (Arkansas Association of Educational Administrators)

Comment (1): 8.01: We are shortening the amount of time a district has to respond to the Division’s reported status for a district/school from 30

days to 15 days. My question would be would a district ever need additional time to correct a problem? What is the reason to shorten the time frame that ADE is trying to address?

Division Response: Standard 8.01 does not require public schools or districts to resolve an issue within fifteen days. The standard requires the violation to be corrected *or the appropriate documentation detailing the public school or public school district's plan, including necessary timelines, to correct the deficiency* to be submitted within fifteen days. No change made.

Comment (2): 10.01: A district is given 15 days to file an appeal after the Division issues a status of a school/district. However, the SBE no longer has a timeframe to conduct a hearing? It would seem the SBE would conduct a hearing on the subject within 15 days after the appeal, or at least 30 days after the appeal.

Division Response: Comment considered. No change made.

Comment (3): 1-A.1.3.1 0: Strike through Department.

Division Response: Comment considered. Non-substantive change made.

Comment (4): 1-B.3.1: Is this a new requirement and we are just adding it to the Standards for Accreditation?

Division Response: This is not a new requirement. It has been in the DESE Rules Governing Nutrition and Physical Activity since it became law in 2003. It is being added as a separate Standard for monitoring purposes. No change made.

Comment (5): 1-C.2.6: Is this a current requirement and we are just adding it to the Standards for Accreditation?

Division Response: This is not a new requirement. This Standard reflects the requirements of Ark. Code Ann. § 6-16-143. No change.

Comment (6): Section 2-E.2: I noticed that the status goes to the district only as school has been struck through. Does “each public school and” need to be struck through?

Division Response: No. Each public school and each public school district shall maintain appropriate materials and expertise to reasonably ensure the safety of students, employees, and visitors. Although the cite is district, each school must maintain the appropriate materials. No change made.

Comment (7): Section 2-F: The cite have all been struck through so now any violation will be probationary. Would it ever be appropriate to cite a district vs automatically assign the probationary status?

Division Response: If there is a deficiency of a Standard in 2-F, the district will have the opportunity to cure it before probationary status is assigned, following the procedures in Section 8-10 of these Rules. No change made.

Comment (8): 3-B.2: Removing the October 15 date, my thought, if you remove the date entirely then it will be harder to track and keep up with across the state. If the 15 is the problem, then you could just say in October.

Division Response: Comment considered. The date has been changed to allow districts to hold the annual report to the public at a time that best meets the needs of their individual districts. No change made.

Commenter Name: Lucas Harder (Arkansas School Boards Association)

Comment (1): Section 1.02: A.C.A. § 6-15-208 should be included in the list of references as it is the citation for most of the requirements under Section 12.

Division Response: Comment considered. Non-substantive change made.

Comment (2): Section 2.01: I would recommend removing “to all” so that this reads “These rules are to set forth the Standards for Accreditation of Arkansas public schools and public school districts.”

Division Response: Comment considered. No change made.

Comment (3): 3.02: I would recommend moving this down to 3.04 and move up the current 3.03 and new 3.04 so that the definitions are in alphabetical order.

Division Response: Comment considered. Non-substantive change made.

Comment (4): 3.08: I would recommend creating a new 3.08 as a definition for the State Board so that there can be easy consistency in the Rules as some places have “State Board of Education,” others have “State Board,” and sometimes just “Board.”

Division Response: Comment considered. No change made.

Comment (5): 4.00: There are two unnumbered paragraphs under this heading that should probably be 4.01 and 4.02 to provide consistency in the document when looking at other sectional headings. In the first paragraph, I would recommend changing this to read “shall review these Standards at least every two years” as the “at least” would allow for greater flexibility should there be a special session, court decision, or change in Federal law that requires amendment to the Standards.

Division Response: Comment considered. No change made.

Comment (6): 4.02: I would recommend changing “those” to “the Standards” so as to remove any ambiguity or misreading as to the object “those” is referring back to.

Division Response: Section 4.02 is changed to clarify that it is the Standards found to have the most violations. Non-substantive change made.

Comment (7): 4.07: I would recommend changing this to read “Submit the revised Standards for Accreditation to the State Board for final approval.”

Division Response: Comment considered. No change made.

Comment (8): 7.04.2.2: I would recommend changing “charging” to “alleging.”

Division Response: Comment considered. Non-substantive change made.

Comment (9): 8.04: Does the State Board not have to sign off on the accreditation status of all schools, even those that are not cited/probation? If so, it would make more sense for this to read: After approval by the State Board of Education, the public school or public school district will be identified as Accredited, Accredited–Cited, or Accredited–Probation. An identification as Accredited–Cited or Accredited–Probation shall be considered the first year of identification.

Division Response: Comment considered. Non-substantive change made.

Comment (10): 9.02: To more expressly clarify that this is for those schools and districts on probation and to more closely match the language in Section 9.03, I would recommend amending this as follows: . . . public school district ~~that has failed~~ on Accredited–Probation status for failing to meet. . . .

Division Response: Comment considered. Non-substantive change made.

Comment (11): 9.03.6: While I recognize that this mirrors the language in A.C.A. § 6-15-207(c)(6), if you consolidate into more than one district, you don’t have a resulting district but rather have resulting districts. As such I would recommend changing this to read “to form a resulting district or districts.”

Division Response: Comment considered. The language in the Standard mirrors the language in Ark. Code Ann. § 6-15-207(c)(6). No change made.

Comment (12): 9.03.9: I would recommend changing this to read “to assist in addressing the failure of a public school or public school district to meet” as “assist and address” seems duplicative.

Division Response: Comment considered. No change made.

Comment (13): 10.00: There is an unnumbered paragraph here that should probably be 10.01 for consistency with other sections.

Division Response: Comment considered. No change made.

Comment (14): 11.01.1: I would recommend moving the language authorizing the Commissioner to waive the submission timeline requirement to the beginning of the paragraph to ease the reading by not interrupting the Standard requirement.

Division Response: Comment considered. Non-substantive change made.

Comment (15): 1-C.2.3: “Beginning with the 2018-2019 school year,” should be removed as we have completed this school year.

Division Response: Comment considered. Non-substantive change made.

Comment (16): 3-A.2: Because districts are required to post a set of salary schedules for both licensed and classified staff, I would recommend amending this to read “including the salary schedules for the licensed and classified staff.”

Division Response: Comment considered. Non-substantive change made.

Comment (17): 3-A.4: As APSCN has not been previously written longhand, I would recommend writing it out here instead of using the abbreviation.

Division Response: Comment considered. Non-substantive change made.

Comment (18): 3-B.2: I understand that districts feel that the October 15 deadline is too close to when a lot of district data is released by the Division; however, I would recommend pushing the deadline back to the old date of November 15 instead of removing it entirely. Most superintendents should feel comfortable with the November 15 date and it would allow the community members a certain deadline by when they have to be informed.

Division Response: Comment considered. The date has been changed to allow districts to hold the annual report to the public at a time that best meets the needs of their individual districts. No change made.

Comment (19): 4-A.1: While I recognize that this is intended to refer to licensed individuals as those who are required to hold a license from the State Board of Education, 2-E.1 includes “licensed registered nurses” and so I would recommend changing this to be “licensed or classified.”

Division Response: Comment considered. The language in the Standard matches the DESE Rules Governing Background Checks and Ark. Code Ann. § 6-17-414. No change made.

Comment (20): 4-C.3 and 4-D.4: I would recommend changing this to read “first year of employment as an administrator” and “first year of employment as a teacher” so that it clarifies that the mentoring starts due to the individual’s start as a teacher or administrator, rather than general employment with the district.

Division Response: Comment considered. Non-substantive change made.

Comment (21): 4-C.4 and 4-D.5: I recommend changing this to read “at least once every four years” as a district may complete additional summative evaluations but has to do one at least every four years.

Division Response: Comment considered. Non-substantive change made.

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

(1) Sections 7.04.4 and 8.01 – What has prompted the Division to make this change “at any time,” as it appears that the statutory scheme contemplates notification of a failure to meet the standards to occur “not later than May 1 of each year” or at any time when the failure to meet standards is discovered by the Division under the limited circumstances set forth in Ark. Code Ann. § 6-15-202(i)? *See* Ark. Code Ann. § 6-15-203(a)(1), (a)(2)(A). **RESPONSE:** Ark. Code Ann. § 6-15-203 states that the Division shall notify all schools or school districts failing to meet standards not later than May 1, but does not restrict the Division from notifying the schools or school districts prior to May 1. Section 7.04.4 is changed to read “at any time, but no later than May 1,” which is consistent with the statute. Section 8.01 is changed to allow a district to be placed in Accredited–Cited or Accredited–Probation status at any time if any violation of the Standards has not been corrected pursuant to Section 8.01. These changes are being made to reflect current practice of notifying districts immediately upon discovery of a Standards deficiency. The Standards for Accreditation monitoring tool allows real-time access to Standards compliance information. The change allows the Division and the district to begin working to cure deficiencies immediately, rather than wait until May 1.

(2) Section 10.01 – Along the same lines, the dates for appeal appear to be set forth in Ark. Code Ann. § 6-15-203(b)(3), and seem to be premised on a May 1 notification/determination of status, unless the notification is immediate due to a failure to meet standards under Ark. Code Ann. § 6-15-202(i), which is permitted the same time period for appeal as that provided in § 6-15-203(b)(3). What is the reasoning behind the Division’s removal of the dates set forth in the statute? **RESPONSE:** Ark. Code Ann. § 6-15-203 states that the Division shall notify all schools or school districts failing to meet standards not later than May 1, but does not restrict the Division from notifying the schools or school districts prior to May 1. Section 7.04.4 is changed to read “at any time, but no later than May 1,” which is consistent with the statute. Since the change is made in Section 7.04.4, it was necessary to make the change in 10.01 to allow the same appeal timeline if notification is given prior to May 1.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 6-15-202(a)(1), the State Board of Education is authorized and directed to develop comprehensive rules, criteria, and standards to be used by the State Board and the Division of Elementary and Secondary Education in the accreditation of school programs in elementary and secondary public schools in this state. The State Board shall further promulgate rules setting forth the process for identifying schools and school districts that fail to meet the standards; enforcement measures the State Board may apply to bring a school or school district into compliance with the standards, including, but not limited to, annexation, consolidation, or reconstitution of the school district in accordance with Ark. Code Ann. § 6-13-1401 et seq. and the Quality Education Act of 2003 (“Act”), Ark. Code Ann. §§ 6-15-201 through 6-15-216; and the appeal process available to a school district under the Act. *See* Ark. Code Ann. § 6-15-202(c). *See also* Ark. Code Ann. § 6-15-209 (providing that the State Board shall promulgate rules as necessary to set forth the process for identifying and addressing a school or school district that is failing to meet the Standards for Accreditation of Arkansas Public Schools and School Districts; process and measures to be applied to require a school or school district to comply with the standards, including, but not limited to, possible annexation, consolidation or reconstitution of a school district under Ark. Code Ann. § 6-13-1401 et seq. and the Act; appeals process and procedures available to a school district pursuant to the Act and

current law; and definitions and meaning of relevant terms governing the establishment and governance of the standards).

The proposed changes include those made in light of Act 190 of 2019, sponsored by Senator Breanne Davis, which repealed the Public School Student Services Act and created the School Counseling Improvement Act of 2019; Act 641 of 2019, sponsored by Representative Jana Della Rosa, which allowed for extended learning opportunities through unstructured social time, required a certain amount of time for recess, and considered supervision during unstructured social time as instructional; Act 676 of 2019, sponsored by Representative Justin Boyd, which required public and private schools to report certain information regarding the number and percentage of students who have exemptions from or have not provided proof of required vaccinations; and Act 1083 of 2019, sponsored by Senator Alan Clark, which amended the name of national school lunch state categorical funding.

b. SUBJECT: DESE Rules Governing Creation of School Districts by Detachment

DESCRIPTION: The Division of Elementary and Secondary Education proposes changes to its Rules Governing the Creation of School Districts by Detachment. The rules set minimum area and attendance requirements for the creation of a school district by detachment from a larger original school district. They set forth the process for initiation of detachment, petition and election, creation of the new school district, and disbursement of the first year of state funding to the new school district.

Changes to the rules were necessary to implement the provisions of Act 528 of 2019. Formerly, these rules applied only to school districts that had an average daily membership (ADM) of at least 5,000 students, but not more than 20,000 students in the school year immediately preceding the detachment. Act 528 eliminated the cap of 20,000 students, allowing the rules to apply to districts with an ADM of at least 5,000 students.

Language concerning the Department of Education was converted to Division of Elementary and Secondary Education. Non-substantive stylistic changes were also made.

Following the public comment period, non-substantive changes were made to the rules, including changing “national school lunch” to “enhanced student achievement” and replacing an omitted section originally in the rule at Section 5.03.

PUBLIC COMMENT: A public hearing was held on November 18, 2019. The public comment period expired on December 3, 2019. The

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

Name: Lucas Harder, Arkansas School Boards Association

Comment: Title: “Rules Governing” currently appears between the Stricken ADE and the new DESE and appears to be intended to be stricken as well.

Agency Response: The change was made.

Comment: 8.04-8.04.4: “National school lunch” should be changed to “enhanced student achievement” in accordance with Act 1083.

Agency Response: The change was made.

Comment: 8.04.4: I would recommend changing this to read “under the results of an analysis.”

Agency Response: The word “under” was removed to resolve the issue instead of adding the word “the,” resulting in the recommended outcome.

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

(1) Title – It appears “Rules Governing” has been stricken? **RESPONSE:** The change was made.

(2) Section 5.03 – It appears that this section is premised on Ark. Code Ann. § 6-13-1504(b)(1); is there a reason that the language “after complying with Ark. Code Ann. § 6-13-1504(b)(2)” is being stricken when that language still appears in the statute? **RESPONSE:** After reviewing the statute once more, the portion containing the statute has been added back to the rule for clarity and to mirror the statute’s language. The change was made.

(3) I noticed a few references to “national school lunch state categorical funding.” That term has been changed recently in other ADE DESE rules pursuant to Act 1083 of 2019, which amended the name of national school lunch state categorical funding. Will these references also be amended at some point? **RESPONSE:** The change was made.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency states that the amended rules have no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 6-13-1505(f)(3), the State Board of Education shall have the right and

duty to enact rules regarding the creation of school districts by detachment under Title 6, Chapter 13, Subchapter 15, of the Arkansas Code, concerning the creation of school district by detaching territory from existing school district. Revisions to the rules include those made in light of Act 528 of 2019, sponsored by Representative Jim Sorvillo, which amended the maximum average daily membership requirements for school districts that are subject to minimum area and attendance requirements, as well as Act 1083 of 2019, sponsored by Senator Alan Clark, which amended the name of national school lunch state categorical funding.

c. **SUBJECT: DESE Rules Governing Distance and Digital Learning**

DESCRIPTION: The Division of Elementary and Secondary Education proposes changes to its Rules Governing Distance and Digital Learning to implement Act 709 of 2019. This addition may be found at Section 10.06 of the rules. Other changes have been made to remove or replace outdated language. A short summary of the remaining changes is as follows:

Section 4, concerning the Distance Learning Coordinating Council has been removed. That council is defunct. The Quality Digital Learning Provider Task Force now fills this role. Language has been added to clarify that distance and digital courses must follow the requirements of the Arkansas Academic Standards. The amended rules also clarify the role of the teacher of record. Section 7.05.1 has been removed because the requirement is redundant to student records retention requirements and is not required by the distance and digital learning statutes. The application has been removed from the rule and not submitted for promulgation to allow the application to be placed on the DESE website instead and to give DESE flexibility to alter the application as needed.

Following the public comment period, a non-substantive change was made to Section 9.03 to remove the words “to these Rules.”

PUBLIC COMMENT: A public hearing was held on November 18, 2019. The public comment period expired on December 3, 2019. The Division provided the following summary of the comments that it received and its responses thereto:

Name: Lucas Harder, Arkansas School Boards Association

Comment: 409.03: Due to the posting of the application to the website, “to these Rules” between “website” and “and” is unnecessary. In addition, the paragraph about an electronic version of the application also being available that follows the submission address is unnecessary.

Agency Response: The changes were made.

Name: Shannon Warren, Scranton Opportunity School

Comment: In the “Distance & Digital Learning Rules,” remove the word alternative in Section 10.06.

I have been teaching in our ALE program for 10 years. Students who can do all their learning in a digital fashion, ARE NOT ALE KIDS! ALE kids need more one and one and personal interaction on a daily basis in order to gain the social, emotional, behavioral, and academic skills necessary for success after high school.

Students who have the motivation and skills to complete all their assignments online or in a digital format are more flexible and already have the skills for success that the true ALE student does not possess. It may be more flexible, but it is not beneficial for students who desperately need teachers who are there for them every day, teachers who model the skills they may not see at home, and teachers who encourage at-risk students to be their best every day.

Agency Response: Comment considered. No change was made. The language in Section 10.06 is the language provided in law at Ark. Code Ann. § 6-16-1406(g), as amended by Act 709 of 2019. The statute requires districts and charter schools that expel a student to offer the expelled student digital learning courses or other alternative educational courses.

Name: Col. Don Berry, Arkansas Veterans Coalition

Comment: Please find a proposed amendment to Rules Governing Distance and Digital Learning incorporating authority for districts to offer and teach distance learning courses to military dependent students transferring to the district.

7.00 Participation in Distance Learning Courses

7.01 A public school district or open-enrollment public charter school may offer and teach distance learning courses to a student enrolled in a private school, ~~or~~ a home school, or a military dependent student transferring to the district if:

7.01.1 The student resides in the public school district where the public school or open-enrollment public charter school is located;

7.01.2 The parents/guardian of the military dependent student have contacted the receiving public school district notifying them of their intention to reside in the district due to military assignment notice. The student’s parents/ guardian comply with DESE rules for enrollment of transitioning military dependent students.

7.01.23 The student agrees to physically attend the public school or open-enrollment public charter school for the purposes of taking state tests and assessments required for the particular course or courses taken by the student; and

7.01.23.1 Section 7.01.23 shall not be construed to require a home-schooled student, ~~or~~ private school student, or inbound military dependent student to take any test or assessment not specifically required for completion of the course for which the student is enrolled.

7.01.34 The distance learning course is approved by the Department Division of Elementary and Secondary Education, or is aligned with the appropriate content standards and curriculum frameworks developed and approved by the State Board of Education or Department Division of Career and Technical Education.

7.01.45 The Commissioner of Elementary and Secondary Education may waive the requirements of Section 7.01 on an individual basis for a student who is unable to attend due to conditions that prevent the child from physically attending a public school or open-enrollment public charter school, upon written request from the parent mailed to:

*Office of the Commissioner
ATTN: Distance and Digital Learning Waiver
Division of Elementary and Secondary Education
Four Capitol Mall
Little Rock, Arkansas 72201*

7.02 A public school district or open-enrollment public charter school that teaches or offers a distance learning course that complies with section 6.00 of these rules to one (1) or more home-schooled or private school students who meet the conditions of 7.01 shall be entitled to an amount equal to one-sixth (1/6) of the state foundation funding amount for each course taught to a private school student or home-schooled student.

7.03 A public school district or open-enrollment public charter school shall not be entitled to more than the equivalent of state foundation funding for one (1) average daily membership per student regardless of the number of distance learning courses received by a particular home-schooled or private school student.

7.04 A student may take all courses virtually through a public school district or open-enrollment public charter school.

7.04.1 Once a student who formerly was home-schooled or attended a private school accesses all courses virtually through a public school

district or open-enrollment public charter school, the student is a public school student accessing courses at a distance.

7.04.1.1 All laws pertaining to public school students shall pertain to a public school student accessing courses at a distance.

Agency Response: Comment considered. No change was made. Ark. Code Ann. § 6-18-232 specifically provides for homeschool and private school students to enroll part time in public schools and provides for foundation funding to be applied. Because the statute does not provide for military dependent students, the Division believes the proposed change would require a change in the law.

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

(1) Section 4.00 – Is this section being deleted based on the repeal of Ark. Code Ann. § 6-47-305 by Act 540 of 2017, § 4? **RESPONSE:** Comment considered. No change was necessary. Yes, this section was deleted due to the repeal of Ark. Code Ann. § 6-47-305.

(2) Section 9.01.4 – Is this section being added in light of Act 745 of 2017, § 20, which amended Ark. Code Ann. § 6-16-1405(a)(4)? **RESPONSE:** Comment considered. No change was necessary. Yes, this section has been added in light of Act 745, which added this language to Ark. Code Ann. § 6-16-1405(a)(4).

(3) Section 9.03 – I see in this section, and in your summary, that the application for digital learning providers is being removed from the rules and will be placed on the DESE website. Is the Division comfortable that the application does not meet the definition of rule found in Ark. Code Ann. § 10-3-309, since it had previously made it a part of the rules? **RESPONSE:** Comment considered. No change was made. The application does not implement, interpret, or describe the organization, procedure, or practice of the agency and does not affect the private rights or procedures available to the public. The application merely gathers the information necessary for the agency to determine whether the applicant meets the requirements set forth in law to become a digital provider.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency states that the amended rules have no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 6-16-1406(f), the State Board of Education may promulgate rules to

implement Ark. Code Ann. § 6-16-1406, concerning digital learning courses. Pursuant to Ark. Code Ann. § 6-47-405, the State Board shall promulgate rules necessary for the implementation of the Arkansas Distance Learning Development Project Act of 2003, Ark. Code Ann. §§ 6-47-401 through 6-47-406. Revisions to the rules include those made in light of Act 709 of 2019, sponsored by Representative Don Glover, which required a public school district that expels a student to offer to the expelled student digital learning courses or alternative educational services for which the student may receive credit; Act 540 of 2017, sponsored by Senator Lance Eads, which amended the law concerning appointments to certain boards, commissions, committees, and other administrative bodies; and Act 745 of 2017, sponsored by Representative Bruce Cozart, which amended various provisions of the Arkansas Code concerning public education.

d. **SUBJECT: DESE Rules Governing Grading and Course Credit and Repeals**

DESCRIPTION: The Division of Elementary and Secondary Education proposes its new rules, the Rules Governing Grading and Course Credit. The proposed amendments to the rules are necessary to incorporate the changes of Acts 745 and 1118 of 2017 and Acts 429, 456, and 632 of 2019. These rules combine the Uniform Grading Scales, Advanced Placement/International Baccalaureate Degree Incentive Program, and Concurrent Credit Rules into a single rule governing grading and credit. There are also new sections covering weighted credit and credit by demonstrated mastery in the proposed new rules. The Rules seek to create a single set of rules for all of DESE's rules that govern the award of course credits.

The rules progress from 1) Uniform Grading Scales, which sets out the default method of awarding credit, to 2) Flexibility in Awarding High School Credit, which sets out how schools can use demonstrated mastery to award credits, to 3) Courses for Weighted Credit, which allows students in secondary grades to receive greater than the uniform credit for AP/IB or Career and Technical Courses, to 4) Concurrent Credit, which sets out how students can gain college credits during high school, to 5) AP and IB, which sets out how students can gain weighted credit for taking advanced placement or international baccalaureate incentive program courses and the associated exams.

Following the public comment period, non-substantive changes were made, including the addition of two new definitions taken from language elsewhere in the rules. The definition for "standards-based grading" was pulled from Section 2-2.02 of the rules to further clarify Section 2-2.03, but is not substantially different than the explanation in 2-2.02. The

definition for “Weighted Credit and AP Training Approval Committee” was pulled verbatim from Section 6-2.01.1.3 of the rules.

PUBLIC COMMENT: A public hearing was held on November 18, 2019. The public comment period expired on December 3, 2019. The Division provided the following summary of the comments that it received and its responses thereto:

Name: Lucas Harder, Arkansas School Boards Association

Comment: While the table of contents includes the chapter number followed by a hyphen followed by the subchapter number (1-1.01, 2-1.01, 3-1.01, etc.), the actual section numbers in the Rules are missing the chapter number and the hyphen, which would make it much easier to cite to a specific section in the Rules.

Agency Response: The changes were made.

Comment: 1-2.00: As there is not currently an explanation or definition of “Standards-based grading” for 2-2.03 and 2-2.04, I would recommend including a definition here.

Agency Response: The change was made. A definition was added at 1-2.19 as follows: “Standards-based grading” means demonstration of competencies before or during a course.

Comment: 6-2.01: The references to 2.01.1 and 2.01.2 here are missing chapter indicators.

Agency Response: The changes were made.

Comment: 6-2.03: The section references “Section 2.03.1 or 2.03.2,” but does not indicate which chapter those sections are under for specific citation.

Agency Response: The changes were made.

Comment: 6-3.01: “Outlined in 2.01, 2.02, 2.03, and 2.04 of these Rules” makes no reference to the specific chapter of the rules for those sections.

Agency Response: The changes were made.

Comment: 6-4.01: I would recommend including “a” between “for” and “one-time.”

Agency Response: The change was made.

Name: Jennifer Lee, Smackover-Norphlet School District

Comment: Arkansas has instituted the Arkansas Course Transfer System for college courses. Any course with an ACTS code is transferable to any other public post-secondary education institution in the state.

I would like to recommend that 2.00 SCHOOL DISTRICT WEIGHTED CREDIT POLICIES FOR COLLEGE COURSES in the Draft Rules Governing Grading and Course Credit be changed to minimally allow any core (English, Math, Science, Social Studies) college course with an ACTS number offered as concurrent credit to high school students automatically be granted weighted credit without the school district having to submit an application to the Division of Elementary and Secondary Education.

This would include (but not limited to) common sense courses such as:

- Biology
- Composition I and II
- World Literature I and II
- Western Civilization I and II
- US History I and II
- College Math
- College Algebra

Why is this important?

- Our high school students have the opportunity to obtain a Certificate of General Studies from SouthARK Community College. Some of our students opt not to participate in the courses because of the potential effect on their GPA because the course is not weighted.
- Many schools across the state currently have partnerships with their local community college or four-year university.

Guiding question – Why should all school districts have to submit a request to the Division of Elementary and Secondary Education when the state has already determined that there should be transferability in these courses among all state public colleges and universities? This is an opportunity to reduce paperwork for school districts and DESE while doing something that encourages high school students to take actual college coursework while enrolled in high school.

Agency Response: Comment considered. No change was made. DESE requires all schools to apply for weighted credit and is unwilling to grant a blanket approval without review of the particular course to ensure that it meets the requirement that the course meet or exceed curriculum frameworks approved by the State Board or comparable AP course. This review ensures students are not receiving weighted credit without standardization of accountability.

Name: Aaron Randolph, Cabot School District

Comment: With regards to weighted credit, the draft rules currently read:

2.01 A local school district board of directors may adopt a policy to allow high school students in the public school district to take college courses for weighted credit equal to the numeric grade awarded in Advanced Placement courses, courses offered under the International Baccalaureate program, and approved weighted classes.

2.02 If a local school board adopts such a policy, the district must apply to the Division of Elementary and Secondary Education for approval of concurrent enrollment college courses to be designated as a weighted course, under Chapter 5 of these rules.

2.03 An application shall be reviewed for approval to assign a numeric grade value, which may include weighted credit, based on the following:

2.03.1 A letter from the superintendent of the public school district or principal of the public school describing how the course exceeds expectations for coursework required under the Standards for Accreditation of Arkansas Public Schools and School Districts;

2.03.2 The grade level or levels of public school students who will be enrolled in the course; and

2.03.3 Clear evidence that the concurrent credit course is substantially the same as an Advanced Placement Course.

I would request that the Office for the Gifted and Talented and Advanced Placement at the Division of Elementary and Secondary Education be formally included in this process. This inclusion should be reflected in the rules and regulations under this subsection. As it currently stands, there is no particular body at DESE who would review this application for weighted credit.

Agency Response: Comment considered. A change was made to add the definition of the DESE Weighted Credit and AP Training Approval Committee at Section 1-2.21. This committee is not reviewing AP courses, but rather comparing submissions for weighted credit to the content of comparable AP courses. The Office of Gifted and Talented is included in this process, but is not the only office included.

Comment: In addition to this concern, I'd also like to make a request of Chapter 6 of these rules. Specifically, Section 2 of the Advanced Placement and The International Baccalaureate Diploma Incentive Program.

Section 2.00 currently reads, in regards to Teacher Training:

2.01 A teacher of an AP course must meet Arkansas Teacher Licensure requirements and meet the requirements of either Section 2.01.1 or 2.01.2:

2.01.1 Attend at least one (1) of the following trainings no less than one (1) time every five (5) years:

2.01.1.1 College Board Advanced Placement Summer Institute;

2.01.1.2 College Board-endorsed training; or

2.01.1.3 Other similarly rigorous training approved by a committee comprised of Division program directors and advisors with AP and content expertise.

I would request that 2.01.1.3 be amended as follows:

2.01.1.3 Other similarly rigorous training approved by a committee comprised of The Office for the Gifted and Talented and Advanced Placement or their designees, Division program directors and advisors with AP and content expertise.

Agency Response: Comment considered. A definition was added at Section 1-2.21 for the Weighted Credit and AP Training Approval Committee.

Name: Dustin Seaton, Northwest Arkansas Education Service Cooperative

Comment: Ch. 1, 2.03 – Definitions – Advanced Placement “exam” (rather than “test”) is the appropriate terminology.

Agency Response: The change was made.

Comment: Ch. 1, 2.03 – Definitions – The official name of The College Board should always have the “The” capitalized.

Agency Response: The change was made.

Comment: Ch. 1, 2.03 – The more appropriate phrasing should read “. . . a College Board Advanced Placement exam that incorporates all topics

specified by The College Board and the Educational Testing Service on (omit “its standard” and add “the”) syllabus for a given subject area and is approved “through” (rather than “by”) The College Board (add “audit process”) and Educational Testing Service.”

Agency Response: A change was made. See the language provided by The College Board in the comments at the end of this document. The section now reads as follows: ““Advanced Placement Exam’ means a standardized exam designed to measure how well a student has mastered the content and skills of a specific AP course. An Advanced Placement Exam is administered by Educational Testing Service on behalf of The College Board.”

Comment: Ch. 1, 2.05 – Capitalize “The” before College Board.

Agency Response: The change was made.

Comment: Ch. 1, 2.06 – Replace “test” with “exam” and capitalize “The” before College Board.

Agency Response: The change was made.

Comment: Ch. 1, 2.10.2 – Where is Chapter 5, Section 8.01 in the rules? I couldn’t find that section.

Agency Response: A change was made to indicate Chapter 5, Section 5-4.00.

Comment: Ch. 1, 2.15 – Omit “level” after “high school” and before “course.”

Agency Response: The change was made.

Comment: Ch. 1, 2.19 – How is the Division determining if weighted credit meets or exceeds the standards?

Agency Response: No change was made. DESE compares the district submission with state-approved frameworks and College Board course and exam descriptions. If the submission meets or exceeds comparable standards, approval for weighted credit may be awarded.

Comment: Ch. 3, 1.04 – “The CDM process is designed to allow students to demonstrate competency of a required graduation credit. . . .” How many and will it contain certified teachers in the areas of the credit sought?

Agency Response: No change was made. No limit is set by law or rule on the number of credits. The district will have a committee that evaluates student demonstration of mastery through two phases: a written exam and a demonstration of learning. Whether a certified teacher is involved will depend on whether the student is receiving classroom instruction as part of the process and other factors, including but not limited to whether the district has received a waiver of teacher licensure.

Comment: Ch. 4, 1.03 – “The Division in collaboration with the Division of Career and Technical Education may approve a career and technical course” Who determines and are they certified in the field of credit sought?

Agency Response: A definition was added at 1-2.21 for the Weighted Credit and AP Training Approval Committee. This committee will review and provide approval in collaboration with the Division of Career and Technical Education.

Comment: Ch. 4, 2.01 – Are local school district board of directors getting any training on weighted credit policies or how will this be equitably distributed to ensure continuity and fairness? Oftentimes school board directors are not curriculum specialists.

Agency Response: No change was made. The requirements for training for school board members are set by law and are contained in the DESE Rules Governing Required Training for School Board Members. Changes to the required training would require a legislative change. DESE provides support to districts in this area and districts are encouraged to contact DESE for resources. School districts are encouraged to provide their boards with beneficial training and information.

Comment: Ch. 4, 2.03 – Who is reviewing the application for approval?

Agency Response: Please see the added definition at Section 1-2.21 for the Weighted Credit and AP Training Approval Committee.

Comment: Ch. 4, 2.03.3 – “Clear evidence that the concurrent credit course is substantially the same as an Advanced Placement Course.” What evidence will be used? A national exam? Evidence of college faculty or some standard beyond one person? This language is vague and leaves open too much ambiguity.

Agency Response: DESE’s Weighted Credit and AP Training Approval Committee reviews and compares the district submission to comparable AP courses. Evidence submitted by a district includes a course outline and sample assessment. Visit the DESE course approvals page for more information at: <http://dese.ade.arkansas.gov/divisions/learning-services/curriculum-support/course-approvals>.

Comment: Ch. 5, 1.01 – Add “college” between “private” and “institution” otherwise any “private institution” could be considered here.

Agency Response: A change was made to clarify a private institution of higher education.

Comment: Ch. 5, 1.01.1 – Same as above.

Agency Response: See above response.

Comment: Ch. 5, 1.01.2 – Is this section requiring all three or is it and/or or either/or? It is confusing.

Agency Response: A change was made to indicate the course corresponding to the subscore. A subscore of 17 is required in the subject in which the student wishes to enroll. For example, a student with at least a subscore of 17 in math may enroll in a math course.

Comment: Ch. 5, 1.01.2 – Add “college” between “private” and “institution” otherwise any “private institution” could be considered here.

Agency Response: A change was made to clarify a private institution of higher education.

Comment: Ch. 5, 1.02 – Same as above.

Agency Response: See above response.

Comment: Ch. 5, 1.02.1-3 – Who is this information submitted to and who will maintain it?

Agency Response: See above response.

Comment: Ch. 5, 1.04 – Add “college” between “private” and “institution” otherwise any “private institution” could be considered here.

Agency Response: See above response.

Comment: Ch. 5, 1.05 – Same as above.

Agency Response: See above response.

Comment: Ch. 5, 1.07 – Same as above.

Agency Response: See above response.

Comment: Ch. 5, 1.08 – Same as above.

Agency Response: See above response.

Comment: Ch. 5, 1.02.1.3 – Who is this information submitted to and who will maintain it?

Agency Response: No change was made. The Arkansas Division of Higher Education (ADHE) requires these agreements to be submitted to ADHE.

Comment: Ch. 5, 3.05 – Insert “in which the student resides” after “public school district.”

Agency Response: Comment considered. No change was made.

Comment: Ch. 5, 4.02.2 – What is “substantially” used? Why not the same? How will this be determined?

Agency Response: No change was made. Pursuant to Ark. Code Ann. § 6-18-223, this is determined by each institution in consultation with the Arkansas Higher Education Coordinating Board.

Comment: Ch. 6, 2.01.1.3 – In what manner and depth is the content expertise determined?

Agency Response: No change was made. Ark. Code Ann. § 6-15-902 requires one of three options. The section indicated requires only “other similarly rigorous training approved by the Department.” The Division has provided more specific information in these rules that this “other training” will be approved by the Weighted Credit and AP Training Approval Committee. See the new definition added at Section 1-2.21.

Comment: Ch. 6, 2.01.2 – ATPs should really only be allowable for 2 years rather than 3 to ensure students are best served by qualified teacher.

Agency Response: Comment considered. No change was made. Three years is required by Ark. Code Ann. § 6-15-902(c)(2)(C)(i)(b).

Comment: Ch. 6, 2.03.2 – Same as above.

Agency Response: Please see previous response.

Comment: Ch. 6, 3.02 – Omit last phrase “. . . if training is required as a part of the teacher’s job requirements.”

Agency Response: Comment considered. No change was made. It is at each district’s discretion to approve funding training not required as part of the teacher’s job requirements. Districts may, but are not required to, fund teacher training above and beyond required professional development and training.

Comment: Ch. 6, 4.01 – Change “may” to “will” twice.

Agency Response: Comment considered. No change was made. This language was taken from Ark. Code Ann. § 6-16-804, which says “may.”

Comment: Ch. 6, 4.02 – Change “Division of Elementary and Secondary Education” to “Office of Gifted and Talented Education at the Division of Elementary and Secondary Education.”

Agency Response: Comment considered. No change was made. DESE administers the grants. The Office of Gifted and Talented is part of DESE.

Comment: Ch. 6, 5.01 – Change “may” to “will.”

Agency Response: Comment considered. No change was made. This language was taken from Ark. Code Ann. § 6-16-804, which says “may.”

Comment: Ch. 6, 6.01 – Change “may” to “will.”

Agency Response: See previous response.

Comment: Ch. 6, 6.02 – Replace “test” with “exam” and replace “in” with “for.”

Agency Response: The change was made.

Comment: Ch. 6, 6.03 – Replace “tests” with “exams.”

Agency Response: The change was made.

Comment: Ch. 7, 7.01 – Are districts required to offer a minimum of one course per year for all grade levels? This is very vague language.

Agency Response: Comment considered. No change was made. This language is the language of the statute, which may be found at Ark. Code Ann. § 6-16-1204. The requirement clearly states, “for a total of four (4) courses.” [Note from Agency: The chapter intended by the commenter is Chapter 6. There is no Chapter 7.]

Comment: Ch. 7, 7.02 – Spell out the acronym “AP” to “Advanced Placement” as well as “CTE” to “Career Technical Education.”

Agency Response: Comment considered. No change was made. The shortened “AP” is included in the definition for Advanced Placement at 1-2.02. The shortened “CTE” is spelled out and the abbreviation included in the definitions at 1-2.19. [Note from Agency: The chapter intended by the commenter is Chapter 6. There is no Chapter 7.]

Comment: Additional questions: How will this effect virtual learning guidelines since not all districts use the Arkansas Virtual Learning for AP courses? This doesn’t show-up in this document. NW Arkansas has lots of questions about the instructors and their AP certification, course audits approved, etc. especially if they are using instructors from out-of-state.

Agency Response: No change was made. It is the responsibility of the district to verify that all of these requirements are met for providers chosen by the district. These courses must meet the same requirements as any other AP course.

Name: Pete Joenks, Prairie Grove School District

Comment: 1. In my experience, a student has to have been enrolled in APSCN for a course (with proper coding) in order for that course to show on the student’s transcript. In Chapter 4, Proposed Rule 1.01 (page 359-9) states that a student can earn course credit for a high school course . . . without being enrolled or the minimum 120 clock hours. How would counselors get the course credit on a transcript for viewing by post-secondary schools? I assume proper course coding would need to be added and will that coding be specific enough to show reviewers of transcripts from colleges what course the student showed CDM in?

Agency Response: No change was made. Students are often coded in this manner and it is entered in APSCN using the course code. It is coded

similarly for community service learning and transfer students. Please contact our APCSN office if you require technical assistance.

Comment: 2. Will CDMs pass review by NCAA Clearinghouse?

Agency Response: No change made. This is a decision made by NCAA Clearinghouse. It is the responsibility of the district to seek approval.

Comment: 3. Is the language in Chapter 5, Proposed Rule 1.01 (page 359-11) stating that all students, that meet the requirement listed in Proposed Rule 1.01.1, be allowed to take courses for concurrent credit? This is confusing to me because in Proposed Rule 1.01.1 states that districts are “encouraged to consider the ACT benchmark readiness scores in addition to the minimum requirement for proper identification and placement of students in college coursework.” In my opinion, these two statements cause confusion. In other words, do school districts get to set their own guidelines on enrollment into concurrent classes that include a 19 on the ACT, or equivalent measure, AND other criteria? Or do school districts have to enroll students into concurrent classes based upon the 19 on the ACT or equivalent measure only.

Agency Response: No change was made. Please see the language in Section 5-1.01 which states, “in accordance with the rules and regulations adopted by the college or university.” The student shall be eligible, but the student must also meet the admissions guidelines of the institution of higher education. Schools are encouraged to consider multiple measures beyond meeting a minimum score for placement in a concurrent credit course. It is at the district’s discretion to set criteria for enrollment for concurrent credit courses with the institution of higher education.

Comment: 4. In Chapter 5, Proposed Rule 1.01.1 (page 359-11) states . . . college course placement score greater than a score of 19 on the ACT or an equivalent measure. It would help if this rule has some clarification on what would be considered “an equivalent measure.” Does this mean just PSAT or perhaps ACT Aspire?

Agency Response: No change was made. Districts should work with their concurrent institution of higher education to determine entry requirements and measurement tools.

Comment: 5. In Chapter 5, Proposed Rule 1.04 (page 359-12), I am confused about the last sentence. *A remedial/developmental education course cannot be used to meet the core subject area/unit requirements in English and mathematics.* Does this imply that students CAN take a remedial/developmental education course in science or social studies to meet the core subject area/unit requirements? Furthermore, I think it might be helpful to have a definition of what constitutes a remedial/developmental education course in the “definitions” portion of these proposed rules.

Agency Response: A change was made to remove “in English and mathematics.”

Name: Davis Hendrix, Arkansans for Gifted and Talented Education

Comment: Our concerns about these important guidelines remain focused in the language used to communicate the process by which weighted credit will be awarded and alternatives to College Board Advanced Placement Summer Institutes as professional development requirements for Advanced Placement teachers in Arkansas.

Agency Response: Comment considered. See the added definition at Section 1-2.21. Weighted credit will be awarded by the DESE Weighted Credit and AP Training Approval Committee. Ark. Code Ann. § 6-15-902 requires one of three options. The section indicated requires only “other similarly rigorous training approved by the Department.” The Division has provided more specific information in these rules that this “other training” will be approved by the Weighted Credit and AP Training Approval Committee.

Comment: During the legislative session in which Act 632 was passed into law, we requested that the original law be amended to include the Office for the GT and AP as a member of both bodies that would be making decisions regarding the awarding of weighted credit as well as which trainings would qualify as professional development for Advanced Placement teachers in Arkansas.

Agency Response: See the previous response.

Comment: Since there is no description of how weighted credit will be awarded and who will be involved in that process, we respectfully submit that there should be a description similar to the one provided in the new AP and IB rules regarding who will be involved in making that decision.

Agency Response: See the previous response.

Comment: We once again request that the phrase “in consultation with the Office for the Gifted and Talented and Advanced Placement” be added to whatever description of the subcommittee within the DESE is added to clarify who will actually collaborate to make the decision. Without that specificity, a very important decision to award weighted credit to additional coursework can be made without any consultation with the Office for the Gifted and Talented and Advanced Placement in the future.

Agency Response: A change was made to add the Weighted Credit and AP Training Committee to the definitions at Section 1-2.21 and at 4-2.02 and 6-2.00.

Comment: In addition to this concern, AGATE also has expressed concerns within Section 2 of the Advanced Placement and The International Baccalaureate Diploma Incentive Program.

In section 2.00, Teacher Training:

2.01 A teacher of an AP course must meet Arkansas Teacher Licensure requirements and meet the requirements of either Section 2.01.1 or 2.01.2:

2.01.1 Attend at least one (1) of the following trainings no less than one (1) time every five (5) years:

2.01.1.1 College Board Advanced Placement Summer institute;

2.01.1.2 College Board-endorsed training; or

2.01.1.3 Other similarly rigorous training approved by a committee comprised of Division program directors and advisors with AP and content expertise.

AGATE continues to maintain that the flexibility of the language in this section requires that the decisions about what trainings will substitute for the College Board Advanced Placement Summer Institute should include the Office for the GT and AP. Once again, our rationale is the same as when we requested that the phrase be added to the law. AGATE accepted the word of the DESE that this phrase would be added in the language of the rules and regulations, and unfortunately, this mark-up still does not include that phrase. We respectfully request that the final version of the rules and regulations include the following amendment:

2.01.1.3 Other similarly rigorous training approved by a committee comprised of The Office for the Gifted and Talented and Advanced Placement or their designees, Division program directors and advisors with AP and content expertise.

If this phrase is added, the phrase “advisors with AP and content expertise” can be dropped. This would allow the Office of GT and AP, who are being held responsible for monitoring and supporting AP programs to have explicit, direct involvement in decisions that will ultimately affect their success.

Agency Response: Please see the previous responses.

Name: Lana Sveda, The College Board

Comment: Chapter 1, Section 2.03: Remove the reference to ETS and provide clarity that an AP course is a college-level course taken in high school. College Board proposes the following language: “Advanced

Placement Course’ means a college-level course taken in high school that prepares students for the associated Advanced Placement Exam and has been approved by The College Board as part of the course audit process.”

Agency Response: The change was made.

Comment: Chapter 1, Section 2.05: Remove ETS from the definition for “College Board.” The new definition would read as: ““College Board’ means The College Board, a mission-driven not-for-profit organization.”

Agency Response: The change was made.

Comment: Chapter 1, Section 2.06: Update the “College Board Advanced Placement Test” definition. The new definition would read as: ““Advanced Placement Exam’ means a standardized exam designed to measure how well a student has mastered the content and skills of a specific AP course. An Advanced Placement test is administered by Educational Testing Service on behalf of the College Board.”

Agency Response: The change was made. The word “test” in the comment was changed to “exam” for consistency.

Comment: Chapter 4, Section 1.02: Provide additional information on what constitutes “must meet or exceed the standards of a comparable Advanced Placement class” found in section 1.02 of General Provisions.

Agency Response: Comment considered. No change was made. The Weighted Credit and AP Training Approval Committee compares submissions for weighted credit to the content of comparable AP courses.

Comment: Chapter 4, Section 2.03: Add the language below for clarity, which was taken from the current Uniform Grading Scales rule language that is scheduled to be repealed upon passage of these proposed rules. “Statement of learner outcomes, objectives and/or learning expectations based on revised curriculum frameworks where appropriate. Description of instructional strategies demonstrating problem solving, critical thinking, and higher order learning processes. This description should include at least one exemplary lesson.”

Agency Response: A change was made to add these two sections (previously promulgated as part of the ADE Rules Governing Uniform Grading Scales) at Sections 4-2.03.4 and 4-2.03.5 of the Rules.

Comment: Chapter 5: Add “comparable score on the SAT” alongside ACT to the eligibility language for concurrent credit found in the proposed rules.

Agency Response: The change was made to Sections 5-1.01.1 and 5-1.01.2.

Comment: Chapter 6, Section 7.00: Maintain a focus on Pre-AP courses, in particular the College Board’s Pre-AP course offerings, and the

preparation these courses offer for more rigorous courses like AP by retaining a segment of the Pre-AP language that is scheduled to be repealed upon passage of these proposed rules: “In order to prepare students for the rigor inherent in AP courses, districts and schools are encouraged to offer Pre-AP courses that align with the four (4) core courses of English, math, science, and social studies enrollment opportunity for students found in section 1.02 of this chapter.”

Agency Response: Comment considered. No change was made. The Division’s rules contain regulatory directives and guidance. Encouragements are not regulatory in nature and are excluded from the Rules to prevent the appearance of regulatory force.

Comment: Chapter 6, Section 7.01: Add “AP” to section 7.01 so that it matches the clear and specific language found in section 1.02 of the same chapter. The updated language would read as: “Districts are required to offer a minimum of one AP course per year in each of the four (4) core courses of English, math, science, and social studies.”

Agency Response: The change was made.

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

(1) Section 1-2.07 – I see a reference to “regulations.” I just wanted to make mention of Act 315 of 2019, § 3204(b)(3), which concerns the uniform use of the term “rule” and requires governmental entities to ensure the use of the term “rule” upon promulgation of any rule after the effective date of the Act, which was July 24, 2019. Is there a reason that the term has been retained in the rule for the time being? **RESPONSE:** The change was made.

(2) Section 2-2.04 – It appears that Ark. Code Ann. § 6-15-902(a) requires the use of the A-F grading scale for all public secondary schools. On what authority does the Division rely for permitting the use of standards-based grading in secondary schools? **RESPONSE:** Ark. Code Ann. § 6-15-216 provides the authority for demonstrated subject matter competency, which is covered in Chapter 3 of these Rules.

(3) Chapter 3 – Is this chapter, concerning credit by demonstrated mastery, the result of Act 872 of 2017? **RESPONSE:** Yes. Act 872 of 2017 amended Ark. Code Ann. § 6-15-216, which provides the authority for credit by demonstrated mastery.

(4) Section 4-1.02 – This section appears premised on Ark. Code Ann. § 6-15-902(c)(3)(B), as amended by Act 632 of 2019, § 1. Is there a reason the Division did not include the alternate basis for approving a

course for weighted credit that “[e]xceeds the curriculum standards for a nonweighted credit class,” as provided in the statute? **RESPONSE:** The change was made.

(5) Section 4-2.02 – Should the term “must” be “shall” per the change in Ark. Code Ann. § 6-15-902(c)(5)(B)(i), as amended by Act 632 of 2019, § 1? **RESPONSE:** The change was made.

(6) Section 4-2.03.3 – While included in the current rules for Uniform Grading, it does not appear that this provision is included in Ark. Code Ann. § 6-15-902(c)(5)(B)(ii). What is the basis for its inclusion in the rule? **RESPONSE:** The basis for inclusion is found at Ark. Code Ann. § 6-15-902(c)(3), which allows the Division to approve a course for weighted credit if it meets or exceeds the curriculum standards for a nonweighted credit class or meets or exceeds standards of a comparable Advanced Placement class.

(7) Section 5-1.01 – Term “regulations.” **RESPONSE:** The change was made.

(8) Section 5-1.02 – Term “regulations.” **RESPONSE:** The change was made.

(9) Section 5-2.01.3 – Should this be a separate section due to it not being required of the student as provided in Section 5-2.01? **RESPONSE:** The change was made. This section has been removed and is found at 5-4.06. Please see the next comment below.

(10) Sections 5-4.05 through 5-4.06 – Are these sections duplicative of Sections 5-2.01 through 5-2.01.3? **RESPONSE:** Yes. The duplicative language has been removed from 5-4.06 and is now found at 5-2.01. Section 5-4.06 will remain and Section 5-2.01.3 has been removed as duplicative of Section 5-4.06.

(11) Section 5-4.08 – Is this section somewhat duplicative of Section 5-2.02? **RESPONSE:** Yes. Section 5-4.08 has been removed as duplicative of 5-2.02.

(12) Section 6-2.03.2 – In the current AP/IB rules, the similar provision at Section 4.04 requires that a teacher of pre-AP who has not obtained the College-Board endorsed training will complete an “Additional Training Plan (ATP) for *Pre-Advanced Placement*.” The proposed rule in Section 6-2.03.2 provides for an ATP for “Advanced Placement.” Which is the correct ATP for a pre-AP teacher? **RESPONSE:** The change has been

made to indicate Pre-Advanced Placement in section 6-2.03.2. The ATP is a single form that requires teachers to indicate which courses are selected. The selection may include AP or Pre-AP or both.

(13) Section 6-2.05 – Should the initial references to AP teacher training be to “2.01.1 and 2.01.2” or simply “2.01” rather than “2.01 and 2.02,” as Section 6-2.02 pertains to how students in classes of teachers on an ATP earn weighted credit? **RESPONSE:** A change was made to remove 6-2.02 as redundant to 6-2.05 and the reference in 6-2.05 is now only to 6-2.01.

(14) Section 6-3.01 – Along the same lines, is Section 2.02 relevant to the training programs in which the noted teachers must participate? **RESPONSE:** See previous response.

(15) Section 6-3.02 – Is the grant referenced in this section administered by the host of the Advanced Placement Summer Institute or the Division, as the section also references it being contingent on appropriated funding? **RESPONSE:** The grant is given to the Advanced Placement Summer Institute host universities by DESE, along with guidelines to prioritize which teachers receive funding.

(16) Section 6-5.01 – Since the section addresses coverage of fees for AP exams and IB exams, should the course referenced in the last line also reference an IB course? **RESPONSE:** The change was made.

(17) What changes are being made to these rules in relation to Act 456 of 2019, which created the Arkansas Concurrent Challenge Scholarship? **RESPONSE:** Rulemaking authority for the Arkansas Concurrent Challenge Scholarship was reserved for the Division of Higher Education (see Ark. Code Ann. § 6-85-406), but these rules do require a student success plan to ensure students in concurrent courses are eligible for the scholarship. See Sections 5-2.02 and 6-7.02 of these Rules.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 6-16-804(e), the State Board of Education is authorized to promulgate rules necessary to implement the Arkansas Advanced Placement and International Baccalaureate Diploma Incentive Program Act of 1995, Ark. Code Ann. §§ 6-16-801 through 6-16-806. The State Board is further

authorized to adopt rules as may be necessary for implementation of the requirement in Ark. Code Ann. § 6-18-223, which provides that a student who enrolls in and successfully completes a course by an institution of higher education shall be entitled to receive appropriate academic credit in both the institution of higher education and the public school in which the student is enrolled, which credit shall be applicable to graduation requirements. *See* Ark. Code Ann. § 6-18-223(b). The Division of Elementary and Secondary Education may promulgate rules to implement Ark. Code Ann. § 6-15-216, concerning flexibility in awarding course credit, including without limitation guidelines to assist public school districts in transitioning to awarding credits based on a demonstration of subject matter competency instead of, or in combination with, completing hours of classroom instruction.

The proposed rules include revisions made in light of the following acts: Act 745 of 2017, sponsored by Representative Bruce Cozart, which amended various provisions of the Arkansas Code concerning public education; Act 872 of 2017, sponsored by then-Representative Charlotte Douglas, which provided flexibility in the awarding of course credits and allowed a public school district to develop and implement a plan that enables a student to earn course credits by demonstrating subject matter competency; Act 1118 of 2017, sponsored by Senator Missy Irvin, which amended provisions of the Arkansas Code concerning concurrent credit; Acts 429 and 430 of 2019, sponsored by Representative Mark Lowery, which prohibited a public school district or an open-enrollment public charter school from charging a private school or a home school student for the cost of an endorsed concurrent enrollment course and which amended the law concerning the enrollment in an academic course at a public school or an open-enrollment public charter school of a private school or home-schooled student; Act 456 of 2019, sponsored by Senator James Sturch, which created the Arkansas Concurrent Challenge Scholarship; and Act 632 of 2019, sponsored by Senator Jane English, which amended provisions of the Arkansas Code concerning weighted credit.

e. **SUBJECT: DESE Rules Governing Instructional Materials**

DESCRIPTION: The Division of Elementary and Secondary Education proposes changes to its Rules Governing Instructional Materials, which set forth the requirements for the selection of instructional materials, requirements for publishers, assessment of damages for publishers failing to comply, and hearing procedures for appeal to the State Board of Education. They also list criminal sanctions for illegal acts involving school officials in the selection of instructional materials. Changes to these rules were necessary to implement the provisions of Act 757 of 2019, §§ 52 and 53. The Act eliminated the requirement that the State Board report annually to the House and Senate Committees on Education

any school districts out of compliance with Section 5.00 of the rules, concerning instructional materials selection. The language in Section 5.04 of the rules concerning the course content standards and curriculum frameworks has been updated to the Arkansas Academic Content Standards. Language concerning the Department of Education has been updated to Division of Elementary and Secondary Education.

Following the public comment period, non-substantive changes were made to the rules concerning general language changes, including changing “regulation” to “rule” and indicating that the chair, rather than the court reporter, swears in those testifying.

PUBLIC COMMENT: A public hearing was held on December 9, 2019. The public comment period expired on December 17, 2019. The Division provided the following summary of the comments that it received and its responses thereto:

Name: Lucas Harder, Arkansas School Boards Association

Comment: 3.01: Act 910 changed this to “Commissioner of Elementary and Secondary Education.”

Agency Response: The change was made.

Comment: 7.03: I would recommend changing “published regulation” to “published rule.”

Agency Response: The change was made.

Comment: 7.03.1: “Commissioner of Education” can be shortened to “Commissioner” in accordance with 3.01.

Agency Response: The change was made.

Comment: 7.03.2: “Commissioner of Education” can be shortened to “Commissioner” in accordance with 3.01.

Agency Response: The change was made.

Comment: 7.04.3: All other rules now have the chairperson of the board doing the swearing rather than the court reporter.

Agency Response: The change was made.

Comment: 7.04.7: For ease of reading, I would recommend changing 7.04.7.1 and 7.04.7.2 to read as follows: “7.04.7.1: Adopt the Commissioner’s specific allegations and recommended assessment of damages; 7.04.7.2: Adopt the Commissioner’s specific allegations but modify the Commissioner’s recommended assessment of damages.”

Agency Response: Comment considered. No change was made. The hearing procedures are aligned to the language of the rule as written.

Comment: 8.01: “Commissioner of Education” can be shortened to “Commissioner” under 3.01.

Agency Response: The change was made.

Comment: 8.02.2: “Ark. Code Ann.” is repeated twice.

Agency Response: The change was made.

Comment: 8.03: “Commissioner of Education” can be shortened to “Commissioner” under 3.01.

Agency Response: The change was made.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency states that the amended rules have no financial impact.

LEGAL AUTHORIZATION: Revisions to the rules include those made in light of Act 757 of 2019, sponsored by Representative Bruce Cozart, which amended and updated various provisions of the Arkansas Code concerning public education. Pursuant to Arkansas Code Annotated § 6-21-404(a)(1), the State Board of Education may make rules to implement the Free Textbook Act of 1975, Ark. Code Ann. §§ 6-21-401 through 6-21-413. *See also* Ark. Code Ann. § 6-21-403(d)(2), as amended by Act 757, § 53 (similarly providing that the State Board, through the Division of Elementary and Secondary Education, may promulgate rules as may be necessary to carry out the Free Textbook Act of 1975).

f. **SUBJECT: DESE Rules Governing Required Training for School Board Members**

DESCRIPTION: The Division of Elementary and Secondary Education proposes changes to its Rules Governing Required Training for School Board Members, which set forth the annual training requirements for school board members and the separate training requirements for new school board members and establish penalties for noncompliance. Changes to the rules are necessary to implement the provisions of Acts 168 and 1029 of 2019. Other changes include updating language concerning the Department of Education to the Division of Elementary and Secondary Education and updating outdated regulatory citations.

Formerly, the nine (9) hours of training required for a new school district board member was required to be completed within the first fifteen (15) months of service on the board. The first fifteen-month provision was eliminated and replaced with a requirement that the training include instruction on how to read and interpret an audit report. Board members must now receive as part of their training information on school safety and

student discipline, but this training is only required once for each board member.

Following the public comment period, non-substantive changes were made to change “this Rule” to “these Rules,” to pluralize a word, and to correct a typo.

PUBLIC COMMENT: A public hearing was held on December 9, 2019. The public comment period expired on December 17, 2019. The Division provided the following summary of the comments that it received and its responses thereto:

Name: Lucas Harder, Arkansas School Boards Association

Comment: 1.01: For consistency with other rules, I would recommend changing “promulgates this Rule” to read “promulgates these Rules.”

Agency Response: The change was made.

Comment: 2.01: For consistency with other rules, I would recommend changing “of this Rule” to “of these Rules.”

Agency Response: The change was made.

Comment: 5.01.1.3.1: I would recommend changing this to read either “conducting a school district financial audit” or “conducting school district financial audits.”

Agency Response: The change was made.

Comment: 5.01.1.3.2: “Division of Legislative Audit” should be changed to “Arkansas Legislative Audit.”

Agency Response: The change was made.

Comment: 6.02: For consistency with other rules, I would recommend changing “this Rule” to “these Rules.”

Agency Response: The change was made.

Comment: 6.03: For consistency with other rules, I would recommend changing “this Rule” to “these Rules.”

Agency Response: The change was made.

Comment: 8.01: For consistency with other rules, I would recommend changing “this Rule” to “these Rules.”

Agency Response: The change was made.

Comment: 9.01: For consistency with other rules, I would recommend changing “this Rule” to “these Rules.”

Agency Response: The change was made.

Comment: 9.02: For consistency with other rules, I would recommend changing “this Rule” to “these Rules.”

Agency Response: The change was made.

Comment: Exhibit A, #8: “Statutes” appears to be missing the final “t.”

Agency Response: The change was made.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency states that the amended rules have no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 6-13-629(c)(2), the State Board of Education shall promulgate rules as necessary to carry out the provisions and intent of the statute, concerning training, instruction, and reimbursement for members of school district boards of directors. Revisions to the rules include those made in light of Act 168 of 2019, sponsored by Representative Jim Dotson, which amended the requirements regarding training and instruction required of a newly elected school board member, and Act 1029 of 2019, sponsored by Representative Jimmy Gazaway, which, among other things, required a school board member to receive information regarding school safety and student discipline.

g. SUBJECT: DESE Rules Governing Special Education and Related Services, Section 11.00 Discipline Procedures

DESCRIPTION: The Division of Elementary and Secondary Education proposes changes to Section 11.00 of its Rules Governing Special Education and Related Services. The proposed amendments incorporate provisions of Act 557 of 2019, prohibiting the use of corporal punishment on students who are intellectually disabled, non-ambulatory, non-verbal, or autistic.

PUBLIC COMMENT: A public hearing was held on February 12, 2020. The public comment period expired on March 7, 2020. The Division provided the following summary of the sole public comment received and its response thereto:

Lucas Harder, Arkansas School Boards Association

Comment:

11.03.7.4: While I recognize this language matches the language from 34 C.F.R. § 300.530(g)(4), the language referencing “the first” seems unnecessary as there is only one subsection (g) in 18 U.S.C. § 930.

11.04.3.2b: There is an extra “s” at the end of “school” in “45 school days.”

Agency Response: Corrections made.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency states that the amended rules have no financial impact.

LEGAL AUTHORIZATION: The proposed changes include those made in light of Act 557 of 2019, sponsored by Senator Joyce Elliott, which prohibited the use of corporal punishment on a child with a disability. Pursuant to Arkansas Code Annotated § 6-41-207, the State Board of Education is empowered to initiate, inspect, approve, and supervise a program of education for children with disabilities as defined in the Children with Disabilities Act of 1973 (“Act”), Ark. Code Ann. §§ 6-41-201 through 6-41-223, and it shall make the necessary rules in keeping with the provisions of the Act. *See* Ark. Code Ann. § 6-41-207(a), (c).

7. **DEPARTMENT OF ENERGY AND ENVIRONMENT, DIVISION OF ENVIRONMENTAL QUALITY**

a. ~~Rule 5: Liquid Animal Waste Management Systems~~

b. ~~Rule 6: State Administration of the National Pollutant Discharge Elimination System (NPDES)~~

8. **DEPARTMENT OF FINANCE AND ADMINISTRATION, ALCOHOLIC BEVERAGE CONTROL DIVISION (Ms. Doralee Chandler)**

a. **SUBJECT: Hard Cider Manufacturing Permit**

DESCRIPTION: Act 691 of 2019 established the Hard Cider Manufacturing Permit. Rule 1.19(47) has been added to incorporate this new type of permit.

PUBLIC COMMENT: The public comment period for this rule expired on January 22, 2020. A public hearing was also held on January 22, 2020. The agency indicated that it received no public comments on this rule.

Lacey Johnson, an attorney with the Bureau of Legislative Research, asked the following questions and received the following responses:

QUESTION #1: Where do the agent requirements in § 2.81 come from?

RESPONSE: Proposed ABC Rule 2.81 provides, “Hard cider manufacturer permittees shall designate a managing agent for the tap room and permittees shall notify the Alcoholic Beverage Control of any change in the managing agent. The managing agent shall either live in the same county as the location of the tap room or within thirty five (35) miles of the tap room.” The agent requirements are set out in Ark. Code Ann. 3-9-603(a), which applies to all licenses issued to a person authorizing the sale of wine or hard cider, or both, at retail for consumption on the premises.

QUESTION #2: What, if anything, is the statutory authority for the endorsement and appeal provisions in § 2.81?

RESPONSE: Proposed ABC Rule 2.81 provides, “Upon submission to the ABC of the required application and completion of the posting, publication, and notice requirements, the Director of the ABC may issue an endorsement to the Hard Cider Manufacturer Permittee for the operation of a Hard Cider Manufacturer Tap Room. The endorsement shall be posted on the premises of the tap room in compliance with the specifications set forth in Section 1.37. If the Director refuses to issue the Tap Room endorsement to the hard cider manufacturer permittee, the Director’s decision may be appealed to the Alcoholic Beverage Control Board pursuant to Section 1.51.”

Taprooms operate “under the license of the [small brewery or hard cider manufacturer.]” Ark. Code Ann. §§ 3-5-1405(a)(4)(B)(i), 3-4-611(e)(6)(B)(i). Because ABC permits are issued to specific, contiguous physical premises, however, ABC Division issues a separate, distinct permit to a remote taproom operated by a small brewery or a hard cider manufacturer.

QUESTION #3: Section 1(e)(10) of Act 691 provides for sale of hard cider at fairs and festivals if “the hard cider is sold for consumption by persons of legal age.” Why does § 2.83(5) of the proposed rules omit this language?

RESPONSE: The language in the statute is superfluous, and it would be superfluous in the rule as well, because all sales of controlled beverages are restricted to persons of legal age, 21 or older. Ark. Code Ann. § 3-3-202(b)(1).

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that this rule does not have a financial impact.

LEGAL AUTHORIZATION: The director of the Alcoholic Beverage Control Division “shall adopt rules to implement and administer” the law

surrounding the hard cider manufacturing permit. *See* Act 691, § 1(m). This rule implements Act 691 of 2019, sponsored by Senator Lance Eads. Act 691 established a hard cider manufacturing permit, amended existing alcoholic beverage permits to authorize the sale of hard cider, and amended portions of the law resulting from initiated Act 1 of 1942.

b. SUBJECT: Posting of Pregnancy Warning

DESCRIPTION: This is a new rule. Act 860 of 2019 requires all alcohol permittees to post an 8.5 x 11 inch pregnancy warning.

PUBLIC COMMENT: The public comment period for this rule expired on January 22, 2020. A public hearing was also held on January 22, 2020. The agency indicated that it received no public comments on this rule.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that this rule does not have a financial impact.

LEGAL AUTHORIZATION: The Director of the Alcoholic Beverage Control Division has the responsibility to promulgate rules as needed to carry out all “alcoholic control acts enforced in this state.” Ark. Code Ann. § 3-2-206(a). This rule implements Act 860 of 2019, sponsored by Representative Deborah Ferguson. The Act required the posting of a warning sign relating to drinking alcoholic beverages during pregnancy in an establishment that sells or dispenses alcoholic beverages.

c. SUBJECT: Hard Cider Manufacturer Operations (Title J, Rules 2.77 – 2.84)

DESCRIPTION: Subtitle J is a new addition resulting from Act 691 of 2019. The Act establishes the hard cider manufacturing permit and operations, and this subtitle reflects those legislative changes.

PUBLIC COMMENT: The public comment period for this rule expired on January 22, 2020. A public hearing was also held on January 22, 2020. The agency indicated that it received no public comments on this rule.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that this rule does not have a financial impact.

LEGAL AUTHORIZATION: This rule implements Act 691 of 2019, sponsored by Senator Lance Eads. Act 691 established a hard cider

manufacturing permit, amended existing alcoholic beverage permits to authorize the sale of hard cider, and amended portions of the law resulting from initiated Act 1 of 1942. The director of the Alcoholic Beverage Control Division “shall adopt rules to implement and administer” the law surrounding the hard cider manufacturing permit. *See* Act 691, § 1(m).

d. **SUBJECT: Unauthorized Manufacture, Sale, Offer, Dispensing, Gift, or Possession of Controlled Beverage**

DESCRIPTION: Act 861 of 2019 amended Ark. Code Ann. §§ 3-5-202(5)(A) and 3-5-205(f)(1) to allow “home-brewed beer” to be removed from the manufacturer’s premises and taken to organized affairs, exhibitions, competitions, and tastings. Rule 1.79(20) is amended to allow this legislative change.

PUBLIC COMMENT: The public comment period for this rule expired on January 22, 2020. A public hearing was also held on January 22, 2020. The agency indicated that it received no public comments on this rule.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that this rule does not have a financial impact.

LEGAL AUTHORIZATION: The Director of the Alcoholic Beverage Control Division has the responsibility to promulgate rules as needed to carry out all “alcoholic control acts enforced in this state.” Ark. Code Ann. § 3-2-206(a). These changes implement Act 861 of 2019, sponsored by Representative Deborah Ferguson. Act 861 amended the definition of “home-brewed beer” and authorized a manufacturer of home-brewed beer to remove home-brewed beer from the manufacturer’s premises for personal or family use.

e. **SUBJECT: Suspension of Permit When No Business Conducted for a Period of Thirty Days; Inactive Status of Permits**

DESCRIPTION: Act 571 of 2019 shortens the time for inactive status. The initial inactive status is now three months, rather than six. The Act shortens the total time for inactive status from 18 months, with extensions, to 12 months, with extensions. These changes to Rule 1.81 implement the Act.

PUBLIC COMMENT: The public comment period for this rule expired on January 22, 2020. A public hearing was also held on January 22, 2020. The agency indicated that it received no public comments on this rule.

Lacey Johnson, an attorney with the Bureau of Legislative Research, asked the following questions and received the following responses:

QUESTION #1: What is the statutory authority for the additions in paragraph 2 of the proposed rule? **RESPONSE:** The modifications are the result of Act 571 of 2019, which modified the terms for permit inactive status found in Ark. Code Ann. § 3-4-201.

QUESTION #2: What is the statutory authority for the date of resumption provision in the last paragraph of the proposed rule? **RESPONSE:** Ark. Code Ann. § 3-4-201.

QUESTION #3: Why do the proposed rules still indicate that they were last amended on 8-20-03? **RESPONSE:** Scrivener's error. It was corrected and attached hereto as amended by the Board.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that this rule does not have a financial impact.

LEGAL AUTHORIZATION: The Director of the Alcoholic Beverage Control Division has the responsibility to promulgate rules as needed to carry out all "alcoholic control acts enforced in this state." Ark. Code Ann. § 3-2-206(a). Some of these changes implement Act 571 of 2019, sponsored by Representative Douglas House, which amended Title 3 of the Arkansas Code regarding permits for alcoholic beverage businesses, amended the population ratio for permits to sell alcoholic beverages off-premises, and shortened the time period a permit is on inactive status.

f. **SUBJECT: Operation of Microbrewery-Restaurant Private Club**

DESCRIPTION: Act 681 of 2019 establishes the Microbrewery-Restaurant Private Club Permit. Subtitle H has been added to Title 5 of the ABC rules to incorporate this Act.

PUBLIC COMMENT: The public comment period for this rule expired on January 22, 2020. A public hearing was also held on January 22, 2020. The agency indicated that it received no public comments on this rule.

Lacey Johnson, an attorney with the Bureau of Legislative Research, made the following comment and received the following response:

COMMENT: The word "permit" is missing from the end of the first sentence of § 5.84. **RESPONSE:** Scrivener's error. It was corrected and attached hereto as Amended by the Board.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that this rule has a financial impact. Per the agency, the total estimated cost by fiscal year to any private individual, entity, and business subject to the proposed rule is unknown. Per the agency, there is no estimated cost to state, county, and municipal government to implement this rule.

LEGAL AUTHORIZATION: The Director of the Alcoholic Beverage Control Division has the responsibility to promulgate rules as needed to carry out all “alcoholic control acts enforced in this state.” Ark. Code Ann. § 3-2-206(a). These proposed rules implement Act 681 of 2019. The Act, sponsored by Representative Spencer Hawks, amended the law regarding alcoholic beverages and established a microbrewery-restaurant private club permit.

g. **SUBJECT: Information, Statements, and Documents to be Furnished by Applicant**

DESCRIPTION: Arkansas State Police can now process fingerprints for background checks remotely. This change to Rule 1.20(20) was requested by them to expedite processing for permittees and improve efficiency within the State Police.

PUBLIC COMMENT: The public comment period for this rule expired on January 22, 2020. A public hearing was also held on January 22, 2020. The agency indicated that it received no public comments on this rule.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that this rule does not have a financial impact.

LEGAL AUTHORIZATION: The Director of the Alcoholic Beverage Control Division has the responsibility to promulgate rules as needed to carry out all “alcoholic control acts enforced in this state.” Ark. Code Ann. § 3-2-206(a). Ark. Code Ann. § 3-2-103 requires alcoholic beverage permit applicants to be fingerprinted.

h. **SUBJECT: Allowing Alcoholic Beverages to be Carried from Any On-Premises Alcoholic Beverage Outlet or Private Club**

DESCRIPTION: Act 812 of 2019 created Entertainment Districts. Rule 1.79(27) is amended to allow on-premises retailers to allow patrons to leave their permitted premises with alcohol and establishes the guidelines

for cities that notify ABC of creation and removal of Entertainment Districts.

PUBLIC COMMENT: The public comment period for this rule expired on January 22, 2020. A public hearing was also held on January 22, 2020. The agency indicated that it received no public comments on this rule.

Lacey Johnson, an attorney with the Bureau of Legislative Research, asked the following questions and received the following responses:

QUESTION #1: Where do the listed notification requirements come from? **RESPONSE:** Ark. Code Ann. § 14-54-1412(b)(4).

QUESTION #2: What is the authority for the opt-out provision?
RESPONSE: The Director is clothed with broad discretionary power to govern the traffic in alcoholic liquor. Ark. Code Ann. § 3-2-206(d). Cities are allowing for locations to opt out of participating in the designated entertainment district. When this occurs ABC needs to know those locations so that we can continue to inspect them as required by the rules.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that this rule does not have a financial impact.

LEGAL AUTHORIZATION: The Director of the Alcoholic Beverage Control Division has the responsibility to promulgate rules as needed to carry out all “alcoholic control acts enforced in this state.” Ark. Code Ann. § 3-2-206(a). This proposed rule implements Act 812 of 2019. The Act, sponsored by Senator Trent Garner, establishes areas of a city or town that highlight restaurant, entertainment, and hospitality options and establishes temporary or permanent designated entertainment districts.

i. **SUBJECT: 3.19(10) B: Persons Under Twenty-One (21); Exceptions**

DESCRIPTION: Ark. Code Ann. § 3-3-204(b) states: “With written consent of a parent or guardian, a person eighteen (18) years of age and older may: (1) Sell or otherwise handle beer and wine at retail grocery establishments.” ABC Rule 3.19(10)B currently states “beer and small farm wine.” This change adds “wine” in accordance with Ark. Code Ann. § 3-3-204(b).

PUBLIC COMMENT: The public comment period for this rule expired on January 22, 2020. A public hearing was also held on January 22, 2020. The agency indicated that it received no public comments on this rule.

Lacey Johnson, an attorney with the Bureau of Legislative Research, asked the following question and received the following response:

QUESTION: Why do the proposed rules still indicate that they were last amended in 2013? **RESPONSE:** Scrivener’s error. It was corrected and attached hereto as amended by the Board.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that this rule does not have a financial impact.

LEGAL AUTHORIZATION: The Director of the Alcoholic Beverage Control Division has the responsibility to promulgate rules as needed to carry out all “alcoholic control acts enforced in this state.” Ark. Code Ann. § 3-2-206(a). Ark. Code Ann. § 3-3-204(b) allows a person over age eighteen to “[s]ell or handle beer and wine at retail grocery establishments.”

j. SUBJECT: Temporary Hard Cider Permit

DESCRIPTION: Act 691 of 2019 amends Ark. Code Ann. § 3-4-105 to include hard cider among available temporary permits. This Rule sets forth application and issuance requirements for a temporary hard cider permit.

PUBLIC COMMENT: The public comment period for this rule expired on January 22, 2020. A public hearing was also held on January 22, 2020. The agency indicated that it received no public comments on this rule.

Lacey Johnson, an attorney with the Bureau of Legislative Research, asked the following questions and received the following responses:

QUESTION #1: What is the authority for the provision giving the Director authority to determine whether the function for which a permit is applied is non-profit or charitable in nature and purpose? **RESPONSE:** ABC Division may issue a temporary permit for the sale of alcoholic beverages “at a function sponsored by or for the benefit of a nonprofit organization or charitable organization.” Ark. Code Ann. § 3-4-105(a)(1). An application for a temporary permit issued under subsection (a)(1) “shall meet the requirements as established by the Director of the Alcoholic Beverage Control Division and set out in the application.” Ark. Code Ann. § 3-4-105(a)(3).

QUESTION #2: Where do the two listed application requirements come from? **RESPONSE: (1) The location of the event must be in an area which has voted for the sale of intoxicating liquors;** Sale of alcoholic beverages is prohibited in dry territories. Ark Code Ann. §§ 3-8-209; 3-8-312. It is unlawful for the Director to issue a license to a facility to sell hard cider for on-premises consumption in a dry territory. Ark. Code Ann. 3-9-602(b). **(2) The application must be received by the Alcoholic Beverage Control Division at least three (3) weeks prior to the event.** Ark. Code Ann. § 3-4-105(a)(3). This requirement is a practical matter arising from the time required to obtain the results of a criminal background check to confirm that the applicant is eligible to receive a temporary permit. *See* Ark. Code Ann. § 3-4-207.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that this rule does not have a financial impact.

LEGAL AUTHORIZATION: The Director of the Alcoholic Beverage Control Division has the responsibility to promulgate rules as needed to carry out all “alcoholic control acts enforced in this state.” Ark. Code Ann. § 3-2-206(a). This proposed rule implements Act 691 of 2019, sponsored by Senator Lance Eads, which established a hard cider manufacturing permit and amended Ark. Code Ann. § 3-4-105 to provide for a temporary hard cider permit.

k. **SUBJECT: Definitions**

DESCRIPTION: Act 681 of 2019 establishes the microbrewery-restaurant private club permit. This proposed rule incorporates the following definitions from the Act:

- “Barrel,” which is consistent throughout Title 3 of the Arkansas Code, but has not yet been included in the ABC Rules;
- “Malt beverage,” which appears in the small brewery act as well as Act 681 and did not previously appear in the ABC Rules;
- “Microbrewery” and “microbrewery-restaurant private club,” which are included in the Rules to clarify the distinction between a microbrewery and a microbrewery-restaurant private club;
- “Restaurant,” which was already described in the ABC Rules, but which has been updated with an additional requirement found in Act 681 that was not already part of the ABC Rules definition.

PUBLIC COMMENT: The public comment period for this rule expired on January 22, 2020. A public hearing was also held on January 22, 2020. The agency indicated that it received no public comments on this rule.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that this rule does not have a financial impact.

LEGAL AUTHORIZATION: The Director of the Alcoholic Beverage Control Division has the responsibility to promulgate rules as needed to carry out all “alcoholic control acts enforced in this state.” Ark. Code Ann. § 3-2-206(a). Act 681 of 2019, sponsored by Representative Spencer Hawks, established a microbrewery-restaurant private club permit and defined multiple terms.

l. SUBJECT: Grocery Store Off-Premises Wine Permit

DESCRIPTION: Act 508 of 2017 established and defined the grocery store wine permit. Act 691 of 2019 added hard cider as a product that may be sold under the grocery store wine permit. Rule 1.19(46) has been added to incorporate this new type of permit.

PUBLIC COMMENT: The public comment period for this rule expired on January 22, 2020. A public hearing was also held on January 22, 2020. The agency indicated that it received no public comments on this rule.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that this rule does not have a financial impact.

LEGAL AUTHORIZATION: The Director of the Alcoholic Beverage Control Division has the responsibility to promulgate rules as needed to carry out all “alcoholic control acts enforced in this state.” Ark. Code Ann. § 3-2-206(a). Act 691 of 2019, sponsored by Senator Lance Eads, amended existing alcoholic beverage permits to authorize the sale of hard cider.

m. SUBJECT: Beer Festival Permit

DESCRIPTION: The following changes have been made to Rule 1.19(31):

- Added small breweries, hard cider manufacturers, and small brewery tap rooms to the list of authorized participants in beer festival events, in accordance with Act 950 of 2017 and Act 691 of 2019;
- Added sentence allowing beers from out-of-state breweries, in accordance with Act 950 of 2017;
- Added hard cider to the list of beverages permitted to be sold on festival grounds, in accordance with Act 691 of 2019.

PUBLIC COMMENT: The public comment period for this rule expired on January 22, 2020. A public hearing was also held on January 22, 2020. The agency indicated that it received no public comments on this rule.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that this rule does not have a financial impact.

LEGAL AUTHORIZATION: The Director of the Alcoholic Beverage Control Division has the responsibility to promulgate rules as needed to carry out all “alcoholic control acts enforced in this state.” Ark. Code Ann. § 3-2-206(a). This proposed rule implements Act 950 of 2017, sponsored by Senator Will Bond, which clarified the law regarding the scope of small brewery operations, allowed transportation of in-house products between commonly owned small breweries and breweries that own small breweries, and created small brewery tap rooms. This proposed rule also implements Act 691 of 2019, sponsored by Senator Lance Eads, which amended existing alcoholic beverage permits to authorize the sale of hard cider.

n. **SUBJECT: Section 25. Abandonment of License**

DESCRIPTION: These rules govern the oversight of medical marijuana cultivation, processing, and dispensing in Arkansas. This amendment to the existing rules would create a manner in which to consider permits that are not operational within one year of licensure to be deemed abandoned or revoked.

PUBLIC COMMENT: A public hearing was held on March 18, 2020. The public comment period expired on March 16, 2020. The agency indicated that it did not receive any public comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that this rule has a financial impact. Per the agency, licensed transporters and distributors will incur costs to comply with the requirements, but the amount of those costs

is unknown. The agency indicated that there will be no estimated cost to state, county, or municipal government as a result of these rule changes.

LEGAL AUTHORIZATION: The Alcoholic Beverage Control Division administers and enforces the provisions of the Arkansas Medical Marijuana Amendment of 2016 regarding dispensaries, cultivation facilities, transporters, distributors, and processors. Ark. Const. amend. 98, §§ 8(a)(3), 24(a)(2). The Division has the authority to promulgate rules necessary to “carry out the purposes of” the amendment and perform its duties under the amendment. *See* Ark. Const. amend. 98, §§ 8, 9.

SUBJECT: Combined Restaurant Beer and Wine Permit

DESCRIPTION: Act 691 of 2019 amended Ark. Code Ann. § 3-4-1001 and added hard cider to be authorized for sale under the combined restaurant wine and beer permit. Section 1.19(42) of the Rules has been amended to comply with the Act.

PUBLIC COMMENT: A public hearing was held on this rule on March 18, 2020. The public comment period expired on March 16, 2020. The agency indicated that it did not receive any public comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that this rule will not have a financial impact.

LEGAL AUTHORIZATION: The Director of the Alcoholic Beverage Control Division has the responsibility to promulgate rules as needed to carry out all “alcoholic control acts enforced in this state.” Ark. Code Ann. § 3-2-206(a). These changes implement Act 691 of 2019, sponsored by Senator Lance Eads, which amended existing alcoholic beverage permits to authorize the sale of hard cider.

SUBJECT: Wine Restaurant On Premises Permit

DESCRIPTION: Act 691 amended Ark. Code Ann. § 3-9-303 and added hard cider to be authorized for sale under the wine restaurant on-premises permit. Section 1.19(5) of the Rules has been amended to comply with the Act.

PUBLIC COMMENT: A public hearing was held on this rule on March 18, 2020. The public comment period expired on March 16, 2020. The agency indicated that it did not receive any public comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that this rule will not have a financial impact.

LEGAL AUTHORIZATION: The Director of the Alcoholic Beverage Control Division has the responsibility to promulgate rules as needed to carry out all “alcoholic control acts enforced in this state.” Ark. Code Ann. § 3-2-206(a). These changes implement Act 691 of 2019, sponsored by Senator Lance Eads, which amended existing alcoholic beverage permits to authorize the sale of hard cider.

q. **SUBJECT: Microbrewery-Restaurant Distribution Permit**

DESCRIPTION: Act 308 of 2017 increased the barrel production from 20,000 to 45,000 barrels. This change reflects that current limitation.

PUBLIC COMMENT: A public hearing was held on this rule on March 18, 2020. The public comment period expired on March 16, 2020. The agency indicated that it did not receive any public comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that this rule does not have a financial impact.

LEGAL AUTHORIZATION: The Director of the Alcoholic Beverage Control Division has the responsibility to promulgate rules as needed to carry out all “alcoholic control acts enforced in this state.” Ark. Code Ann. § 3-2-206(a). These changes implement Act 308 of 2017, sponsored by Representative Grant Hodges, which clarified the law regarding production capacities of microbrewery-restaurants.

r. **SUBJECT: Permits Not to be Issued to Premises Within the Following Stated Distances from Church or Schoolhouse**

DESCRIPTION: Act 983 of 2019 replaces the term “school building” and defines the term “schoolhouse.” These changes have been implemented to comply with the Act.

PUBLIC COMMENT: A public hearing was held on this rule on March 18, 2020. The public comment period expired on March 16, 2020. The agency indicated that it did not receive any public comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that this rule does not have a financial impact.

LEGAL AUTHORIZATION: The Director of the Alcoholic Beverage Control Division has the responsibility to promulgate rules as needed to carry out all “alcoholic control acts enforced in this state.” Ark. Code Ann. § 3-2-206(a). These changes implement Act 983 of 2019, sponsored by Representative Julie Mayberry, which amended the law to create a definition of “schoolhouse” with regard to businesses regulated by the Alcoholic Beverage Control Board.

s. **SUBJECT: Limitation on Production (Rule 2.54)**

DESCRIPTION: Act 308 of 2017 increased the barrel production limit to 45,000 barrels. This change reflects that current limitation. Hard cider is also included to comply with Ark. Code Ann. § 3-5-1204.

PUBLIC COMMENT: A public hearing was held on this rule on March 18, 2020. The public comment period expired on March 16, 2020. The agency indicated that it did not receive any public comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that this rule will not have a financial impact.

LEGAL AUTHORIZATION: The Director of the Alcoholic Beverage Control Division is authorized to promulgate rules as necessary for the implementation of Arkansas law surrounding microbrewery-restaurants. *See* Ark. Code Ann. § 3-5-1208.

Some of these changes implement Act 308 of 2017, sponsored by Representative Grant Hodges, which raised the maximum production limit for microbrewery-restaurants from 20,000 barrels per year to 45,000 barrels per year.

t. **SUBJECT: Labels and Size of Containers to be Approved by Director (Rule 2.19)**

DESCRIPTION: This update will permit brand label registration, and in turn distribution into Arkansas, of products that do not qualify for a Alcohol and Tobacco Tax and Trade Bureau (TTB) Certificate of Label Approval (COLA), such as the ones described. This update also relaxes the rule for registering beer and malt beverage products. The TTB has relaxed its rules for COLA issuance and in numerous circumstances does not require a new COLA for modifications to an existing label. In addition, the TTB will not issue a certificate of exemption for any

products that will be shipped interstate. This has resulted in confusion and additional red tape for manufacturers who are trying to import products. Ark. Code Ann. § 3-2-409 never required TTB COLA for beer, malt beverage, or light wine. This rule keeps the requirement of COLA for these beer and malt beverages, but it will allow new labels that have been modified from their original TTB COLA.

PUBLIC COMMENT: A public hearing was held on this rule on March 18, 2020. The public comment period expired on March 16, 2020. The agency indicated that it did not receive any public comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that this rule will not have a financial impact.

LEGAL AUTHORIZATION: The Director of the Alcoholic Beverage Control Division has the responsibility to promulgate rules as needed to carry out all “alcoholic control acts enforced in this state.” Ark. Code Ann. § 3-2-206(a). The Director also has “broad discretionary power to govern the traffic in alcoholic liquor and to enforce strictly all the provisions of the alcohol control laws of this state.” Ark. Code Ann. § 3-2-206(d).

Manufacturers of beer, other malt products, and light wine who do business in Arkansas are required to submit a label for each brand of product to the Alcoholic Beverage Control Division. Ark. Code Ann. § 3-2-409(a). If a brand label qualifies for an Alcohol and Tobacco Tax and Trade Bureau (TTB) Certificate of Label Approval (COLA), *see* 27 C.F.R. §§ 1.10, 4.40, 7.31, the manufacturer must submit a copy of the COLA with each application for registration. Ark. Code Ann. § 3-2-403(c).

u. **SUBJECT: Advertising and Promotion Materials; Exception for Racing Facilities and Nonprofit Entities Holding a Large Attendance Facility Permit (Rule 2.28(13))**

DESCRIPTION: Act 744 of 2019 amended Ark. Code Ann. § 3-3-212 to allow a manufacturer to sponsor and provide advertising material to nonprofit entities holding a Large Attendance Facility Permit. Rule 2.28(13) is amended to reflect those changes.

PUBLIC COMMENT: A public hearing was held on this rule on March 18, 2020. The public comment period expired on March 16, 2020. The agency indicated that it did not receive any public comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that this rule will not have a financial impact.

LEGAL AUTHORIZATION: These changes implement Act 744 of 2019, sponsored by Senator Greg Leding, which amended the alcoholic beverage laws to allow a manufacturer to sponsor and provide advertising materials to a nonprofit entity holding a large attendance facility permit. The Director of the Alcoholic Beverage Control Division has the responsibility to promulgate rules as needed to carry out all “alcoholic control acts enforced in this state.” Ark. Code Ann. § 3-2-206(a).

9. **DEPARTMENT OF FINANCE AND ADMINISTRATION, OFFICE OF CHILD SUPPORT ENFORCEMENT (Ms. Barbara Morris-Williams, Ms. Kimberly Bosshart)**

a. **SUBJECT: Office of Child Support Enforcement Policy Manual**

DESCRIPTION: The Office of Child Support Enforcement (OCSE) Policy Manual is the agency’s statement of policy to be used by staff in implementing the child support enforcement program in Arkansas. The child support program provides services to individuals who have applied for those services or whose case has been referred to OCSE in relation to certain public assistance programs. The program is governed by state and federal laws and regulations.

The Policy Manual provides guidance regarding the application of those laws and regulations in day-to-day casework activities. The Policy Manual also provides information to recipients of services and to the public regarding the actions that can be expected from the agency and timeframes and parameters for those actions.

This proposed amendment includes substantive changes to existing policy that are needed to provide greater clarity to staff regarding expected actions in certain circumstances. The proposed amendment also makes substantive changes as permitted or required by state law and recent amendments to federal regulations intended to give states greater flexibility in the management of caseloads. These changes are found at:

- Chapter 2.1.4 in which circumstances in which it is appropriate to temporarily suspend case work activities are restricted to specific court order.
- Chapter 3.3.2 in which recipients of Supplemental Nutrition Assistance Program (SNAP) benefits must cooperate with OCSE as a

condition of receiving those benefits. Other references to SNAP have been added throughout the manual where appropriate.

– Chapter 5.1.1 in which clarification is provided to staff to state that administrative remedies for enforcement of support obligation should be exhausted before judicial remedies are utilized.

– Chapter 6.1.1 in which guidance is provided to staff regarding the circumstances in which a modification of a child support obligation may be appropriate.

– Chapter 7.2 in which new criteria are provided defining the circumstances in which closure of an existing case may be appropriate due to a low likelihood of collectability as permitted by federal law.

In addition, non-substantive changes were made throughout the manual that do not affect the content but merely update terminology and restructure existing policy to improve the organization and flow of information.

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired on March 10, 2020. The agency indicated that it received no public comments.

Lacey Johnson, an attorney with the Bureau of Legislative Research, asked the following questions and received the following responses:

QUESTION #1: Are the case categories listed in § 2.1 taken from somewhere, or are they indicative of an internal system? **RESPONSE:** Section 2.1 provides guidance to our staff and the public regarding the services OCSE provides and the terminology used to describe the differing levels of services available.

QUESTION #2: Section 2.1.3 lists services that cannot be provided in payment processing cases. Where does this list come from?

RESPONSE: Paragraph 2.1.3 provides examples of services commonly provided in enforcement cases that OCSE cannot provide in payment processing cases.

QUESTION #3: What is the statutory authority for § 2.1.4?

RESPONSE: This section provides policy direction to our staff and relates to functions of the OCSE data system. See additional response at question 15.

QUESTION #4: What is the statutory authority for requiring maintenance of a written narrative in the data system, as indicated in § 2.4.1? **RESPONSE:** See generally 45 C.F.R. § 303.2.

QUESTION #5: Section 2.11.2 sets forth procedures for an acknowledged father to challenge an AOP beyond the 60-day deadline. However, Ark. Code Ann. § 9-10-115(d)(1) states that “a person” may utilize this procedure. Is the procedure available to persons other than the acknowledged father? **RESPONSE:** Yes. The opening sentence to that paragraph references the more general language in § 9-10-115(d)(1). However, § 9-10-115(e) appears to limit the availability of paternity testing following an acknowledgement of paternity to the acknowledged father.

QUESTION #6: Section 2.12.1 authorizes penalties against any individual or organization believed to have information on a noncustodial parent’s financial resources if that individual fails to comply with an administrative subpoena for that financial information. Ark. Code Ann. § 9-14-208(c) provides 30 days to comply with a subpoena before imposition of penalties, but the proposed rule provides 60 days. Is there a reason for this discrepancy? **RESPONSE:** This paragraph was not changed from prior versions of the policy.

QUESTION #7: Section 2.12.4 requires OCSE to notify a noncustodial parent in writing, by certified mail, 10 calendar days prior to requesting a Consumer Report. Where does this requirement come from?

RESPONSE: The Fair Credit Reporting Act at 15 U.S.C. § 1681b formerly required notice. This practice is being continued.

QUESTION #8: 45 C.F.R. § 303.71 allows a IV-D agency to request certification to the Secretary of the Treasury if: there is a court or administrative order for support; the amount to be collected is at least \$750 in arrears; at least 6 months have elapsed since the last request for referral; and reasonable efforts have been made to collect the support through the state’s own collection mechanisms. Why does § 2.12.6 only include the first two requirements? **RESPONSE:** The review and approval conducted by the administrator is to ensure the case is appropriate for referral and that reasonable collection remedies have been exhausted. This language is essentially unchanged from prior versions but has been moved within manual.

QUESTION #9: Is there outside authority for the “two business days” provision in the third bullet point of § 2.13.2(b), or is that timeframe just a policy decision? **RESPONSE:** This is a policy decision and is unchanged from prior versions of the policy manual.

QUESTION #10: The note under § 2.14 indicates that the Uniform Interstate Family Support Act recognizes that an intrastate case is preferable to an intergovernmental case. Could you provide that citation?

RESPONSE: The commentary to Section 201 of the Uniform Interstate

Family Support Act (codified at Ark. Code Ann. § 9-17-201) references the intent that long arm jurisdiction under the act be as broad as constitutionally permissible and that the introduction of UIFSA was instrumental in reducing the incidence of two state case processing as occurs in intergovernmental cases. This section is unchanged from prior versions of the policy manual.

QUESTION #11: What is the statutory authority for refusing to accept requests for services from minors, as indicated in § 3.1.1(b)?

RESPONSE: See Ark. Code Ann. § 9-14-105(b)(4) referencing the parent or person with custody or who has contracted for child support services. This section is essentially unchanged from prior versions of the manual.

QUESTION #12: Within 10 days of receipt of an intergovernmental IV-D case, 45 C.F.R. § 303.7(b)(2)(iv) requires the responding IV-D agency to inform the initiating agency where a case was sent for action. Why does § 3.2.1 of the proposed rules omit this requirement? **RESPONSE:** The acknowledgement of receipt returned to the initiating agency is a standardized form used by all states and includes the contact information of the local office assigned to the case.

QUESTION #13: Where does the definition of “incarceration” in § 4.2.1(c) come from? **RESPONSE:** See Ark. Code Ann. § 9-14-106(a)(1)(D).

QUESTION #14: Section 4.3.1 indicates that, if a new case is opened for enforcement with an existing court order that does not address medical support, child support will be enforced as ordered and medical support will be addressed the next time the order is modified. Does OCSE take steps to initiate such modification? **RESPONSE:** Yes.

QUESTION #15: Section 5.1.1(b) gives a single reason that cases may be suspended for a specific date in the future. Why were the other two reasons, formerly located in § 3.9.4, removed from the rules?

RESPONSE: “Suspense” is a function of the OCSE data system and affects how the system tracks support payments as they become due and other automated enforcement activities. This policy directive to staff was amended to restrict application of this function to appropriate cases in which there was a court directive limiting collection actions.

QUESTION #16: Where does the 15-calendar-day timeline in § 5.2.1, ¶ 4 come from? **RESPONSE:** See 45 C.F.R. § 303.100 (e)(2) & (3).

QUESTION #17: 42 U.S.C. § 666(c)(1)(G)(i) indicates that states may seize lump sums from state or local agencies, judgments, settlements, and lotteries. What is the authority for intercepting lump sum disability

payments, as indicated in § 5.2.4 of the proposed rules? **RESPONSE:** See 42 U.S.C. § 659 and Ark. Code Ann. § 9-14-218(a).

QUESTION #18: Section 5.3.1(a) indicates that past-due support may not include fees or court costs or any other non-child support debts owed to the state or the family. What is the statutory basis for this?

RESPONSE: See 42 U.S.C. § 664(c).

QUESTION #19: What is the statutory authority for § 5.3.1(d), dealing with bankruptcies? **RESPONSE:** See 11 U.S.C. § 362(b) and generally <https://www.acf.hhs.gov/css/resource/child-support-provisions-of-the-new-federal-bankruptcy-law-pl109-8>.

QUESTION #20: Section 5.3.2 indicates that child support payments received by federal tax offset can only apply to child or spousal support arrears. Where does this requirement come from? **RESPONSE:** See response above at question 18.

QUESTION #21: Is the Debt Check Program covered in § 5.3.4 the same thing as the Treasury Offset Program Master Debtor File, or is it something else? **RESPONSE:** They are not the same thing. It's our understanding the Debt Check Program allows certain lenders to match applicants against the Master Debtor File in the loan approval process.

QUESTION #22: What is the authority for the provision of § 5.3.5(a) dealing with instant debt? **RESPONSE:** This is a long-standing policy decision to reduce hardship on individuals against whom judgments for retroactive child support was awarded such as when paternity is initially established.

QUESTION #23: Where does the 15-day timeframe in § 6.1.2(a) come from? **RESPONSE:** 45 C.F.R. § 303.8(b)(7)(ii)

QUESTION #24: What is the source for the case closure procedures detailed in § 7.5? **RESPONSE:** See generally 45 C.F.R. § 303.11.

QUESTION #25: Section 8.1.2 indicates that certain fees and costs recovered from the noncustodial parent will offset fees assessed to the custodial party. What is the authority for this provision? **RESPONSE:** See generally Ark. Code Ann. § 9-14-212(d). This is long standing policy to reimburse custodial parties for costs and fees if the same have been awarded against the noncustodial party.

QUESTION #26: What is the authority for § 8.1.3(b), dealing with fees in international cases? **RESPONSE:** See 45 C.F.R. § 303.7(e)(2).

QUESTION #27: Do federal regulations or federal or state statutes provide a list giving order of priority for distribution, as discussed in § 8.2.1, or has that section been synthesized from multiple sources?

RESPONSE: As you surmised this is somewhat a synthesis. See generally 45 C.F.R. § 302.51 and 45 C.F.R. § 302.52(b).

QUESTION #28: Where does § 9.4 come from? **RESPONSE:** See Ark. Code Ann. § 25-15-101 & § 25-15-102

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that this rule will have a financial impact.

According to the agency, this rule involves a cost to implement a federal rule or regulation. The total cost to implement that federal rule or regulation is \$155,600 for the current fiscal year (\$51,867 in general revenue and \$103,733 in federal funds) and \$0 for the next fiscal year.

The total additional cost of this proposed rule is \$550,000 for the current fiscal year (\$183,333 in general revenue and \$366,667 in federal funds) and \$0 for the next fiscal year.

The agency indicated that there will be no additional cost to any private individual, entity, or business as a result of the proposed rule.

LEGAL AUTHORIZATION: The Office of Child Support Enforcement (OCSE) administers the state plan for child support enforcement that is required under Title IV-D of the Social Security Act. *See* 42 U.S.C. § 654b; Ark. Code Ann. § 9-14-206(a). OCSE has authority to promulgate rules regarding child support enforcement, including income withholding, intercepts, and seizures to satisfy child support obligations, *see* Ark. Code Ann. § 9-14-208(h)(1)-(2), and driver's license suspension for failure to pay child support, *see* Ark. Code Ann. § 9-14-239(f).

Some of these changes implement Act 904 of 2019, sponsored by Representative John Maddox, which amended the law concerning child support and the centralized clearinghouse. Other changes implement Act 1043 of 2019, sponsored by Representative Grant Hodges, which required cooperation between certain state agencies regarding Supplemental Nutrition Assistance Program (SNAP) eligibility. Changes have also been made to comply with federal regulations surrounding state plan requirements to receive Title IV-D funding. *See* 45 C.F.R. pts. 301-303.

10. DEPARTMENT OF HEALTH, CENTER FOR LOCAL PUBLIC HEALTH
(Ms. Laura Shue)

a. SUBJECT: Rules Pertaining to General Sanitation

DESCRIPTION: The following changes have been made to the Rules Pertaining to General Sanitation:

- Updated entire rule to reflect requirements of Act 315 of the 2019 General Assembly and replace “regulation” with “rule”;
- Added Section XII. Sanitary Infrastructure With Municipal Jurisdictions to the Table of Contents;
- Updated Section C. Connection to Public Sewer Required to match wording of Ark. Code Ann. § 14-235-304;
- Added Section XII with consensus wording pursuant to Act 708 of the 2019 General Assembly. This wording redefines certain improvement districts including debt and minimum water and sewer standards;
- Updated Section XIII. Penalty to match current law (Ark. Code Ann. § 20-7-101).

PUBLIC COMMENT: A public hearing was held on this rule on October 4, 2019. The public comment period expired on October 4, 2019. The agency provided the following summary of the single public comment it received and its response to that comment:

Commenter’s Name: David E. Johnson, General Counsel, Central Arkansas Water

COMMENT: ADH should provide guidance on the meaning of “designated utility service area.” **RESPONSE:** Mr. Charles Thompson, Arkansas Department of Health Deputy Chief Counsel, contacted the writers of the legislation pertaining to the wording of “designated utility service area” that was incorporated into the General Sanitation Rule revision. The sponsors indicated the wording was considered self-explanatory. If you have additional questions we will attempt to seek clarification.

Lacey Johnson, an attorney for the Bureau of Legislative Research, asked the following questions and received the following answers:

QUESTION #1: Where does the notice provision in the new Section XII come from? **RESPONSE:** This was suggested language from stakeholders and legislative sponsors to effectuate the intent of Act 708. Right after session we had a meeting with stakeholders and the legislative sponsors to better understand the intent of Act 708, because the Act was

broad and did not address specifics regarding improvement district water and sewer minimum standards. The language in the Rules are a result of that input and ADH understanding of legislative intent.

QUESTION #2: What is the statutory authority for the provision requiring a municipality’s express consent before infrastructure can be connected to or serviced by a municipal utility? **RESPONSE:** [See answer to Question #1.] This was suggested language from stakeholders and legislative sponsors to effectuate the intent of Act 708.

QUESTION #3: What is the statutory authority for the provision requiring infrastructure improvements to conform to a municipality’s standard utility construction specifications and piping size requirements? **RESPONSE:** [See answer to Question #1.] This was suggested language from stakeholders and legislative sponsors to effectuate the intent of Act 708.

QUESTION #4: Where does the provision allowing municipal utilities access to improvements during all phases of construction come from? **RESPONSE:** [See answer to Question #1.] This was suggested language from stakeholders and legislative sponsors to effectuate the intent of Act 708.

QUESTION #5: Where does the 30-day timeliness definition come from? **RESPONSE:** [See answer to Question #1.] This was suggested language from stakeholders and legislative sponsors to effectuate the intent of Act 708 but not provide unreasonable delay to construction within improvement districts.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that this rule will not have a financial impact.

LEGAL AUTHORIZATION: The State Board of Health has the power to “make all necessary and reasonable rules of a general nature for . . . [t]he general amelioration of the sanitary and hygienic conditions within the state[.]” Ark. Code Ann. § 20-7-109(a)(1). Some of these changes implement Act 708 of 2019, sponsored by Representative Jasen Kelly, which concerned certain procedures of improvement districts. Act 708 instructed the Department of Health to “promulgate rules that establish minimum standards for water and sewer improvements made by districts under” the Act. See Ark. Code Ann. § 14-86-2205(a), *as created by* Act 708. The Act also instructed the Department to “promulgate rules necessary to implement” the Act. See Ark. Code Ann. § 14-86-2205(b)(1), *as created by* Act 708.

11. **DEPARTMENT OF HEALTH, HEALTH FACILITY SERVICES (Ms. Becky Bennett)**

a. **SUBJECT: Rules for Home Health in Arkansas**

DESCRIPTION: The following changes have been made to the Rules for Home Health in Arkansas:

- Updated Table of Contents.
- Updated Section 4: Definitions to defer to ASBN, specify only Class A agencies, specify service area, expand flexibility, define terms, update language, remove unnecessary language, and align with CoP, CMS regulation, and Act 811 of 2019.
- In Section 5: Agency Location, added language in compliance with Act 811 of 2019, removed duplicate language, clarified and simplified, and amended language to align with CoP requirements.
- Updated Section 6: Exemptions to clarify language and comply with HFS requirements.
- Updated Section 7: Application for License to clarify, clean up, and consolidate language, maintain continuity, and add requirements for agency closing.
- Updated Section 8: Inspections to clarify and simplify, allow for technology used to expedite initial inspections, delete duplicate language, and match CoP requirements.
- Updated Section 9: Denial, Suspension, Revocation of License by deleting unnecessary language and simplifying other language to provide focus and clarity for agencies and surveyors.
- Renamed Section 10 from “Branch Offices” to “Training.” Specified intra-agency training requirements, moved content regarding branch offices, added home health aide and personal care aide training requirements, and added Department approval requirement.
- Amended language in Section 11: General Requirements to clarify, eliminate duplication, assure safe care, reorganize licensure and record requirements, assist in fraud reduction, and increase accuracy.
- Updated Section 12: Standards for Skilled Care Services to consolidate and clarify.
- Reorganized and removed duplicate language in Section 13: Standards for Extended Care Services.
- Updated Section 14: Standards for Personal Care Services to consolidate and simply in accordance with Act 811 of 2019.

- Amended language in Section 15: Conditional Emergency Service per Health Services Permit Agency request for specific populations, i.e. pediatric.
- Added Section 16: Severability.
- Updated Tables 1 and 2 to add required topics for training.

PUBLIC COMMENT: A public hearing was held on this rule on March 31, 2020. The public comment period expired March 31, 2020. The agency provided the following summary of the public comments it received and its responses to those comments:

Commenter's Name: Karen Henry, ACH

COMMENT: Thrive Pediatric Nursing & Home Health should have a state-wide license to serve pediatric patients due to complexity and specialization. See attached. **RESPONSE:** Geographic area is defined by the Health Services Permit Agency (HSPA). See §7(C), "Application for License." Licenses are statutorily limited by the Permit of Approval (POA), granted by HSPA (ACA §§ 20-8-103, 106). If Thrive is providing a service not otherwise available, proposed change in "Conditional Emergency Permit" language to "Skilled Services," Section 15(A), will allow Thrive to provide such care.

Commenter's Name: Advisory Private Care Agency and Home Healthcare Services Agency Rule Working Group

COMMENT SUMMARY: Written report details work group process, conclusions. Supports proposed changes. **RESPONSE:** N/A

Commenter's Name: Kathy Frames, RN, EAAAA

COMMENT: Section 15 regarding Conditional Emergency Service, since this is an entirely new section added in the draft, should this entire section have been in red? Also, this appears to be only to refer to Skilled Care. Is this correct? On pg 11-11 at the top letter (d)- not sure why this wasn't put on page 11-10 but regardless, it references the "patient's medical record." Should this be client's and also we don't have Medical records. Just a little confused on this.

In Section 14 Standards for Personal Care Services several changes appear. Can you verify that I understand this correctly? The 5 day limit is removed for a referral to be done. Is this correct? The missed visit has been removed. Is this correct? Documentation as to why a task was not performed if on the aide assignment sheet appears to be removed also. Is this correct? The Supervisory Visit no longer has to be < every 62 days. Is this correct?

RESPONSE: In review of the formatting of Section 15 – Conditional Emerg Permits (CEP) is originally in Section 13.G, which is appropriately marked grey and strike. I think Section 15 should be grey to show receipt of Section 13G and the change in red is the “skilled services.”

We moved 13G CEP and made the new section because it was limited to Extended Care services only. By adding “skilled services” we cover extended care (because it must have skilled services) and allow an efficient and effective consideration of requests for skilled services for specialized populations and/or services, e.g. pediatrics worker comp. POA is notified of CEP so they can also monitor requests. The process would allow tracking and notification of affected HHA to specific demands.

The 5 day referral was removed because it doesn’t work with DHS timeframe, which is sometimes much longer.

The missed visit documentation of trying to find replacements etc. is removed because it does not apply to personal care. The independent choices doesn’t allow for the agencies finding and sending replacement aides. This requirement is important for aides who are providing care for skilled care (Home Health Aides) but not personal care aides.

Commenter’s Name: Luke Mattingly, Arkansas Association of Area Agencies on Aging

COMMENT #1 SUMMARY: Supports the rules as presented and believes the revisions meet the intent of Act 811. **RESPONSE:** N/A

COMMENT #2 SUMMARY: Agrees with changes to Table 1. **RESPONSE:** N/A

Commenter’s Name: Kelly Gadison, Amedisys Home Health

COMMENT SUMMARY: Supports the rules and appreciates ADH work. Requests assurance that proposed changes will extend beyond the present Covid-19 emergency measures. **RESPONSE:** Rule promulgation began in 2019 – not in response to emergency measures. Advised the commenter.

Commenter’s Name: Kimmela Steed, Kindred at Home

COMMENT #1 SUMMARY: Supports the rules as presented and believes the revisions meet the intent of Act 811. **RESPONSE:** N/A

COMMENT #2 SUMMARY: Agrees with changes to Table 1.
RESPONSE: N/A

Commenter's Name: Misty Chansley, AmCare Senior Life Partners, Inc.

COMMENT SUMMARY: Supports the rules as presented and believes the revisions meet the intent of Act 811. **RESPONSE:** N/A

Commenter's Name: Matt McClure, Home Instead

COMMENT SUMMARY: Agrees with changes to Table 1.
RESPONSE: N/A

Commenter's Name: Shannon McGuffee

COMMENT SUMMARY: Agrees with changes to Table 1.
RESPONSE: N/A

Lacey Johnson, an attorney with the Bureau of Legislative Research, asked the following questions and received the following responses:

QUESTION #1: What is the statutory basis for the new language regarding branch offices (Section 5(B)-(F))? **RESPONSE:** Reorganized Rules – relocated “Branch Offices” to “Agency Location”. Medicare branch requirements are found at SOM 2182.2. Class A HHA must be Medicare certified.

QUESTION #2: Why was the provision in Section 6(D) requiring Health Facility Services to notify a person in writing upon the completion of an evaluation removed? **RESPONSE:** CMS requires such notification to certified HHAs, but not all HHAs are certified. Therefore, language was removed. Also, ADH responses are properly determined by ADH (not by rules for licensed HH agencies).

QUESTION #3: What is the statutory authority for requiring an agency to notify Health Facility Services of a change in name, location, contact information, or ownership (Section 7(E))? **RESPONSE:** Authority to administer licensing standards 20-10-806(b)(1) necessarily includes such information as necessary. Also Medicare SOM 2003.

QUESTION #4: Where do the closure procedures in Section 7(F) come from? **RESPONSE:** Added to assure continued access to care through for advance notice of closings. Previously, a “policy” was required (§ 10.1(f)), but lacked specificity for ADH to follow-up when it received word of a HHA agency closing. Information necessary to administer accurate licensee files.

QUESTION #5: Ark. Code Ann. § 20-10-810(2) allows Health Facility Services to deny, suspend, or revoke a license for commission of any unlawful act in connection with the operation of a home health agency. By listing specific grounds for denial/suspension/revocation in Section 9(A), has HFS chosen to limit the instances in which denial/suspension/revocation may occur? **RESPONSE:** No.

QUESTION #6: Why is tuberculosis singled out in the section on prevention of communicable diseases? **RESPONSE:** Rule was added to mirror ADH Tuberculosis Rule update.

QUESTION #7: Is there specific statutory authority for the "Quality Assurance and Improvement Program" and "Complaints and Incidents" subsections of Section 11? **RESPONSE:** No specific statutory language – measures reduce medical errors and improve quality of care in verifiable way. Authority for licensing standards 20-10-806

QUESTION #8: What is the statutory authority for holding the members of an agency's governing board legally responsible for that agency (Section 11(B))? Authority for licensing standards; also Medicare 484.105(a).

QUESTION #9: Why was the language requiring written contracts between agencies and contractors removed (Sections 11(D)(2) and 13(F))? **RESPONSE:** HFS looks exclusively to licensee for compliance.

QUESTION #10: Is there specific statutory authority for including "Control access to the patient's home" in the list of patients' rights in Section 11(E), or was this a policy decision? **RESPONSE:** Policy decision based on complaints.

QUESTION #11: Where do the timeframes for assessments in Section 12(B)(2)(a) and (b) come from? **RESPONSE:** These requirements are for Skilled Services and found in Medicare 484.55(a)(1) and 454.55(d)(1)

QUESTION #12: Is there statutory authority for the 60-day timeframe in Section 12(B)(3)(d)? **RESPONSE:** This requirement is for Skilled Services and found in Medicare 484.60(c)(1).

QUESTION #13: Section 12(E)(1) requires home health aides to complete 75 hours of training. Ark. Code Ann. § 20-77-2303 requires in-home assistants to receive "not less than 40 hours" of training and states that "the number of hours of training shall not be modified." What is the difference between a home health aide and an in-home assistant? If they are the same, is the Department comfortable that the proposed training

requirement comports with § 20-77-2303? **RESPONSE:** Home health aides provide care to patients receiving “skilled services” and therefore medically compromised and under close supervision of every 14 days. Medicare 484.80. Caregiver or personal care aides provide assistance in activities of daily living (ADLs). [As to the second question,] yes, with revised training table.

QUESTION #14: Do the requirements in Section 12(E)(3)-(7) have a statutory basis, or did these requirements originate somewhere else?

RESPONSE: Moved from §11(G)

QUESTION #15: Are the visits referenced in Section 12(E)(8) “supervisory visits”? If so, is the Department comfortable that the proposed language comports with Act 811's requirement that the frequency of supervisory visits be established by a qualified supervisor?

RESPONSE: 484.80(h)(2) (required for Medicaid reimbursement) requires aide services for individuals who are NOT receiving skilled care to be supervised every 60 days

QUESTION #16: Section 10 indicates that the Personal Care Aide must complete a minimum of 40 hours of training. Ark. Code Ann. § 20-77-2303 lists topics in which in-home caregivers must be trained. These topics are reflected in Table 1. However, Ark. Code Ann. § 20-77-2303(b)(3)(J) indicates that at least 16 of the required 40 hours must "cover physical skills and competent demonstration of such skills for" several of those topics. Does the Department believe that the proposed rules reflect the 16-hour skills training requirement? **RESPONSE:** Upon consideration, Department reconfigured the training requirements in Table 1 and specified those items which must comprise 16 hours of the 40-hour training as required in ACA 20-77-2303(b)(3)(J).

The proposed effective date is June 1, 2020.

FINANCIAL IMPACT: The agency indicated that this rule will not have a financial impact.

LEGAL AUTHORIZATION: The Department of Health, Division of Health Facilities Services has authority to administer the law governing home healthcare services. Ark. Code Ann. § 20-10-806(a). The State Board of Health has authority to “adopt, promulgate, and enforce such rules and standards as may be necessary for the accomplishment of the purposes of” Ark. Code Ann. § 20-10-801 to -813. *See* Ark. Code Ann. § 20-10-806(b)(1), *as amended* by Act 811 of 2019. Some of these proposed changes implement Act 811 of 2019, sponsored by Senator Bill Sample, which amended the requirements for a personal care service provider, private care agency, and home healthcare services agency

regarding visits to a patient's home and the distance of a private care agency office from a patient's home.

b. SUBJECT: Rules for Private Care in Arkansas

DESCRIPTION: The Rules for Private Care in Arkansas have been amended as follows:

- Eliminated the term "regulation" throughout in accordance with Act 910 of 2019.
- Updated Table of Contents.
- Removed citations to acts throughout. The Arkansas Code incorporates citations to authorized acts and is more user-friendly.
- Amended Section 1: Preface to comport with standard industry language.
- Amended Section 4: Definitions to remove definitions of terms not used in the rules, define additional terms, clarify language, accord with CMS and Act 811 of 2019, and for consistency.
- Amended Section 5: Agency Location to specify that PCAs have a physical location within the state.
- Amended Section 6: Application for License to add closing requirements, delete unnecessary language, clarify, simplify, maintain continuity, and reduce fraud.
- Amended Section 7: Inspections to allow for technology use to expedite initial inspections. Clarified, simplified, and deleted language.
- Amended Section 8: Denial, Suspension, Revocation to simplify language and for consistency.
- Renamed Section 9 from "Branch Offices" to "Training." Deleted content regarding branch offices and added requirements for intra-agency training including subjects, supervision, amount, and form.
- Amended Section 10: General Requirements to improve clarity, eliminate duplication, reorganize, assure safe assistance, indicate that PCAs deliver non-medical care, and comply with ASBN and Act 811 of 2019.
- Amended Section 11: Services to delete unnecessary information per Act 811 of 2019.
- Added Section 12: Severability.
- Added a table of required topics for training.

PUBLIC COMMENT: A public hearing was held on this rule on March 31, 2020. The public comment period expired March 31, 2020. The agency provided the following summary of the public comments it received and its responses to those comments:

Commenter's Name: Advisory Private Care Agency and Home Healthcare Services Agency Rule Working Group.

COMMENT SUMMARY: Written report details work group process, conclusions. Supports proposed changes. **RESPONSE:** N/A

Commenter's Name: Luke Mattingly, Arkansas Association of Area Agencies on Aging

COMMENT #1 SUMMARY: Supports the rules as presented and believes the revisions meet the intent of Act 811. **RESPONSE:** N/A

COMMENT #2 SUMMARY: Agree with changes to table. **RESPONSE:** N/A

Commenter's Name: Kimmela Steed, Kindred at Home

COMMENT #1 SUMMARY: Supports the rules as presented and believes the revisions meet the intent of Act 811. **RESPONSE:** N/A

COMMENT #2 SUMMARY: Agree with changes to table. **RESPONSE:** N/A

Commenter's Name: Misty Chansley, AmCare Senior Life Partners, Inc.

COMMENT SUMMARY: Supports the rules as presented and believes the revisions meet the intent of Act 811. **RESPONSE:** N/A

Commenter's Name: Matt McClure, Home Instead

COMMENT SUMMARY: Agree with changes to table. **RESPONSE:** N/A

Commenter's Name: Shannon McGuffee

COMMENT SUMMARY: Agree with changes to table. **RESPONSE:** N/A

Lacey Johnson, an attorney with the Bureau of Legislative Research, asked the following questions and received the following responses:

QUESTION #1: Where do the new definitions of “aide service plan,” “quality of services,” and “visit” come from? **RESPONSE:** Aide service plan: Updated language to more closely align with Medicaid. Requested by work group. Quality of service is updated to reflect language consistent with Personal Care Services for Medicaid. Visit added for

clarification and update for use of telehealth. Provider request addition of telehealth.

QUESTION #2: What is the statutory authority for requiring an agency to notify Health Facility Services of a change in name, location, contact information, or ownership or agency closing (Section 6(C))?

RESPONSE: Granted Authority in Statute 20-10-2304.

QUESTION #3: Where do the closure procedures in Section 6(D) come from? **RESPONSE:** See answer, Question 2.

QUESTION #4: Section 7(B) requires periodic inspections no less than every three years. Where does this timeframe come from? **RESPONSE:** This requirement aligns with CMS (Federal) survey frequency of every 3 years. Personal care is now covered by CMS.

QUESTION #5: Ark. Code Ann. § 20-10-810(2) allows Health Facility Services to deny, suspend, or revoke a license for commission of any unlawful act in connection with the operation of a home health agency. Are private care agencies considered home health agencies?

RESPONSE: No.

QUESTION #6: By listing specific grounds for denial/suspension/revocation in Section 8(A)(2)-(4), has HFS chosen to limit the instances in which denial/suspension/revocation may occur?

RESPONSE: No.

QUESTION #7: Why is tuberculosis singled out in the section on prevention of communicable diseases (Section 10(A)(4)(c))?

RESPONSE: Rule was added to mirror ADH Tuberculosis Rule update.

QUESTION #8: Are the recordkeeping requirements in Section 10(A)(5) statutory, or do they come from somewhere else? **RESPONSE:** See answer, Question 2.

QUESTION #9: Is there specific statutory authority for the "Quality Assurance and Improvement Program" and "Complaints and Incidents" subsections of Section 10? **RESPONSE:** See answer, Question 2.

QUESTION #10: What is the statutory authority for holding the members of an agency's governing board legally responsible for that agency (Section 10(B))? **RESPONSE:** See answer, Question 2.

QUESTION #11: Why was the language requiring written contracts between agencies and contractors removed (Section 10(C))?

RESPONSE: Rule is specific enough. Will look to the licensed agency, not the contracted entity.

QUESTION #12: Is there specific statutory authority for including "Control access to the client's home" in the list of clients' rights in Section 10(D), or was this a policy decision? **RESPONSE:** See answer, Question 2. Added based on complaints received from clients.

QUESTION #13: Where does the 12-hour inservice training requirement in Section 11(B)(5) come from? **RESPONSE:** Historical. Keeping PCA (unskilled) rules in line with HHA rules so Class B (unskilled) agencies are not treated differently/penalized.

QUESTION #14: Section 9 indicates that agency employees must complete a minimum of 40 hours of training. Ark. Code Ann. § 20-77-2303 lists topics in which in-home caregivers must be trained. These topics are reflected in Table 1. However, Ark. Code Ann. § 20-77-2303(b)(3)(J) indicates that at least 16 of the required 40 hours must "cover physical skills and competent demonstration of such skills for" several of those topics (listed as (J) through (R)). Does the Department believe that the proposed rules reflect the 16-hour skills training requirement? **RESPONSE:** Upon consideration, Department reconfigured the training requirements in Table 1 and specified those items which must comprise 16 hours of the 40-hour training as required in ACA 20-77-2303(b)(3)(J).

The proposed effective date is June 1, 2020.

FINANCIAL IMPACT: The agency indicated that this rule will not have a financial impact.

LEGAL AUTHORIZATION: The State Board of Health has authority to promulgate rules necessary to implement Arkansas law on personal care service providers. Ark. Code Ann. § 20-10-2304(a), (c)(2)(A) *as amended by* Act 811 of 2019. The Board also has authority to implement its rules and "supervise the conduct of the private care agencies as defined" in Ark. Code Ann. § 20-10-2301 to -2304. *See* Ark. Code Ann. § 20-10-2304(d). Some of these proposed changes implement Act 811 of 2019, sponsored by Senator Bill Sample, which amended the requirements for a personal care service provider, private care agency, and home healthcare services agency regarding visits to a patient's home and the distance of a private care agency office from a patient's home.

12. **DEPARTMENT OF HEALTH, DIVISION OF HEALTH RELATED BOARDS AND COMMISSIONS, ARKANSAS STATE BOARD OF CHIROPRACTIC EXAMINERS** (Ms. Laurie Mayhan, Dr. Sarah Hays)

a. **SUBJECT:** Animal Chiropractic

DESCRIPTION: The Arkansas State Board of Chiropractic Examiners is proposing a new rule on Animal Chiropractic. This rule defines the requirements for licensed chiropractic physicians in Arkansas, who want to practice chiropractic on animals. The purpose of this rule is to make Arkansas licensed chiropractors aware of the certifications requirements needed in order to practice chiropractic on animals per Ark. Code Ann. § 17-101-307(a)(9).

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on March 9, 2020. The Arkansas State Board of Chiropractic Examiners received no comments.

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

QUESTION 1: Ark. Code Ann. § 17-101-307(a)(9) is cited as rulemaking authority in the questionnaire. This section does not appear in the code. Could you please cite authority that allows the Board to make rules governing animal chiropractic? **RESPONSE:** Our board's general rulemaking authority is Ark. Code Ann. § 17-81-108.

QUESTION 2: Ark. Code Ann. § 17-101-307(a)(9) is also cited in the proposed rule. However, the statutory authority that was attached (Act 139 of 2019), appears to have been codified in Ark. Code Ann. § 17-101-307(b)(10). Could you please explain/clarify? **RESPONSE:** I was advised by our assistant AG that we may want to fix the statutory reference following our comment period to read Ark. Code Ann. § 17-101-307 without a reference to the specific paragraph in case that section gets changed and/or renumbered in the future.

The board submitted a revised markup with the changes indicated above.

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 Chiropractic Practices Act authorizes the Arkansas State Board of Chiropractic Examiners to establish rules to enforce the requirements of Chapter 81 concerning

chiropractors. *See* Ark. Code Ann. § 17-81-108. Additionally, the duties and powers of the Arkansas State Board of Chiropractic Examiners are contained in Ark. Code Ann. § 17-81-206. Under this section, the board is authorized to promulgate suitable rules for carrying out its duties under the provisions of this chapter. *See* Ark. Code Ann. § 17-81-206(b)(1).

Act 139 of 2019, sponsored by Representative John Payton, amended Ark. Code Ann. § 17-101-307(b)(10) concerning licensure by the Veterinary Medical Examining Board. Specifically, Act 139 provided that this chapter should not be construed to prohibit a chiropractor licensed in this state and certified by the American Veterinary Chiropractic Association from performing chiropractic upon animals. *See* Ark. Code Ann. 17-101-307(b)(10).

b. SUBJECT: Preceptorship Program

DESCRIPTION: The Arkansas State Board of Chiropractic Examiners is proposing guidelines for the chiropractic student preceptorship program. The purpose of this rule is to define the requirements for the chiropractic student preceptorship program. The new rule will allow a student in the final clinical phase of chiropractic education and training to practice under the direct, on-site supervision of a chiropractor licensed in this state. This program will also help the VA establish a chiropractic student preceptorship program within their hospitals in Arkansas. The Arkansas State Board of Chiropractic Examiners believes that adding this program will bring more Chiropractic Physicians to Arkansas and our VA system, by enabling students to precept in Arkansas prior to graduation.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on March 9, 2020. The Arkansas State Board of Chiropractic received no public comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Arkansas Chiropractic Practices Act authorizes the Arkansas State Board of Chiropractic Examiners to establish rules to enforce the requirements of Chapter 81 concerning chiropractors. *See* Ark. Code Ann. § 17-81-108. Additionally, the duties and powers of the Arkansas State Board of Chiropractic Examiners are contained in Ark. Code Ann. § 17-81-206. Under this section, the board is authorized to promulgate suitable rules for carrying out its duties under the provisions of this chapter. *See* Ark. Code Ann. § 17-81-206(b)(1).

Act 645 of 2019, sponsored by Representative Justin Boyd, provided that the Arkansas State Board of Chiropractic Examiners may authorize a chiropractic student preceptorship program established by an approved chiropractic college to allow a student in the final clinical phase of chiropractic training to practice under the direct, on-site supervision of a chiropractor licensed in this state. *See* Ark. Code Ann. § 17- 81-209(a). The board was authorized to establish by rule the standards for the: (1) Approval of a chiropractic student preceptorship program established by an approved chiropractic college; (2) Eligibility of a chiropractic student to be admitted to a chiropractic student preceptorship program; (3) Application process for a chiropractic student to be enrolled into a chiropractic student preceptorship program, which may include an application fee as determined by the board; (4) Activities, duties, and scope of practice restrictions of a chiropractic student in a chiropractic student preceptorship program; and, (5) Identification of a chiropractic student in a chiropractic student preceptorship program. *See* Ark. Code Ann. § 17- 81-209(b).

c. **SUBJECT: Pre-Licensure Criminal Background Check Waiver Request**

DESCRIPTION: The Arkansas State Board of Chiropractic Examiners is proposing rules concerning pre-licensure criminal background check waiver requests. This rule is required by Act 990 of 2019, wherein an individual may petition for a pre-licensure determination of whether the individual’s criminal record will disqualify the individual from licensure and whether a waiver may be obtained.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on March 9, 2020. The Arkansas State Board of Chiropractic Examiners received no public comments.

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

QUESTION 1: Section 7(A) refers to the permanently disqualifying offenses in Ark. Code Ann. § 17-3-102(e), but does not mention the five-year disqualification provisions in Ark. Code Ann. § 17-3-102(c).

(a) Could you please explain why these are not contained in the proposed rules? **RESPONSE:** Our office did not mention the specific 5-year disqualification period in the rule because it is spelled out by statute.

(b) How would the board handle an applicant who had a conviction for a sexual offense such as sexual indecency with a child, which does not result in permanent disqualification under Ark. Code Ann. § 17-3-102(e), if the application is received 5 years after the date of conviction, incarceration, or on which probation ends, whichever date is latest?

RESPONSE: As to your second question regarding a violent crime or sexual offense listed in section (c), those offenses are able to be waived (unless listed in (e)), using the criteria listed in the rule, but Boards can look back beyond the 5-year look back period and consider those offenses when making a license decision. Non-sexual or non-violent offenses listed in (a) cannot be considered beyond the 5-year period.

QUESTION 2: The rules reference a fee for a request for waiver in 7(C). Could you please provide the amount of the fee and cite fee authority?

RESPONSE: The fee is referencing the license application fee. The waiver request must accompany the license application along with the license application fees.

QUESTION 3: The rules contemplate an appeal of a determination under this section. Does the board have rules concerning administrative hearings that would apply in addition to the Administrative Procedure Act?

RESPONSE: Yes.

QUESTION 4: If the board has rules concerning administrative hearings, could you please explain why those are not referenced in this rule?

RESPONSE: Board rule 3b, method for hearings, hearings to be conducted according to APA “with some additions” the rules were not included because they track the APA requirements.

QUESTION 5: The State Board of Chiropractic Examiners was transferred to the Department of Health during transformation. The proposed rules contemplate an appeal of a determination. Who would hear the appeal and issue a final appealable decision under Ark. Code Ann. § 25-15-210? – State Board of Chiropractic Examiners or the Department of Health? **RESPONSE:** The State Board of Chiropractic Examiners.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: Act 990 of 2019, sponsored by Senator John Cooper, amended the law concerning criminal background checks for professions and occupations to obtain consistency regarding criminal background checks and disqualifying offenses for licensure. *See* Act 990 of 2019. An individual with a criminal record may petition a licensing entity at any time for a determination of whether his or her criminal record will disqualify him or her from licensure, and whether or not he or she could obtain a waiver. *See* Act 990 of 2019, codified as Ark. Code Ann. §

17-3-103. Licensing entities were required to adopt or amend rules necessary to implement this chapter. *See* Ark. Code Ann. § 17-3-104.

d. SUBJECT: Rules 1, 2, and 3

DESCRIPTION: The Arkansas State Board of Chiropractic Examiners is amending its rules in accordance with Acts 315 and 990 of 2019 – providing that the term “regulation” be changed to the term “rule” and the terms moral character or moral turpitude be removed throughout the rules.

In addition, the following amendments bring certain rule sections up to date:

- Rule II A.2.(e): adding in national board exam part IV per Act 200 of 2016 fiscal session.
- Rule II A.3.(b): adding in electronic receipt of transcripts as most colleges are transitioning to that format.
- Rule II B.1.: updating exam language as the board no longer gives a practical exam however they will still require a jurisprudence exam.
- Rule II D.9: per past and present counsel the board should include the terms procurer, contractor, or employee in this section in order to clarify that these persons fall within this rule. This section is also adding annual registration for procurers instead of a one-time registration as licensees tend to forget who they have registered. The annual registration is to help keep files updated more frequently. No fees are associated with registrations.
- Rule II E.: adding section (c). This gives the available terms a chiropractor can use for being certified, and not licensed, in acupuncture under their chiropractic license. The acupuncture board has brought this concern to our attention and feel that this is the necessary action.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on March 9, 2020. The Arkansas State Board of Chiropractic Examiners received no comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Arkansas State Board of Chiropractic Examiners is authorized to examine, license and renew the licenses of duly qualified applicants, and has exclusive jurisdiction to determine who shall be permitted to practice chiropractic in the State of Arkansas. *See* Ark. Code Ann. § 17-81-206(b)(9). The board is

authorized to promulgate suitable rules for carrying out its duties under the provisions of the chapter. *See Ark. Code Ann. § 17-81-206(b)(1).*

Act 315 of 2019, sponsored by Representative Jim Dotson, provides for the uniform use of the term “rule” for an agency statement of general applicability and future effect that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice of an agency and includes, but is not limited to, the amendment or repeal of a prior rule throughout the Arkansas Code as envisioned by defining the term in the Arkansas Administrative Procedure Act. *See Act 315 of 2019, § 1(a)(4).*

Act 990 of 2019, sponsored by Senator John Cooper, amended the law concerning criminal background checks for professions and occupations to obtain consistency regarding criminal background checks and disqualifying offenses for licensure. *See Act 990 of 2019.* In addition, references to good moral character and moral reputation were removed from Ark. Code Ann. §§ 17-81-304(a)(2), 17-81-305(a)(6) and 17-81-318(e) concerning licensure of chiropractors. *See Act 990 of 2019, §§59, 60, and 61.*

e. **SUBJECT: Reciprocity**

DESCRIPTION: The Arkansas State Board of Chiropractic Examiners is proposing a new rule concerning license reciprocity. Per the agency, this rule is required by Acts 426 and 1011 of 2019, wherein an individual may be credentialed to work in Arkansas if he or she generally demonstrates the skills and ethics required by state law based on the individual’s experience and credentials in another state.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on March 9, 2020. The Arkansas State Board of Chiropractic Examiners received no public comments.

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

QUESTION 1: The educational requirements in Section 8(A)(1)(a)(i) are very specific.

(a) Are these educational requirements prescribed elsewhere in federal or state law/rules or otherwise required for accreditation? **RESPONSE:**

They are similar to if not the same as 17-81-305. Most states require similar if not the same qualifications.

(b) How would the board consider and treat license applicants whose education is not “substantially similar,” as defined in the proposed rule?

RESPONSE: It would depend on the applicant and when and where they

obtained their education. We have a rule providing for certain education requirements prior to and after 1971.

QUESTION 2: Could you please identify the provisions of this rule which concern Act 1011 of 2019? **RESPONSE:** In the Temporary and Provisional license section under A and B, it allows the board to issue a license immediately so long as the applicant meets the requirements set forth in the rule. No vote of the board is needed for the provisional license. This would allow the agency staff/director to issue the provisional license once the requirements are met instead of having to wait until the next meeting of the Board.

Under our current rules the agency staff does not have the authority to issue a temporary/provisional license without the vote of the board. This rule would remove that hurdle for a provisional license.

QUESTION 3: As to Section 8(B)(3)(a),

(a) Do any states grant licensure to applicants who do not pass NBCE examinations? **RESPONSE:** To my knowledge, most states require the National Board, Parts I, II, III, IV and physiological therapeutics and to have a passing score of 375 or higher.

(b) As to the Arkansas State jurisprudence exam, does this requirement also apply to new or existing Arkansas applicants? **RESPONSE:** It is given to all new applicants, regardless of license application type. It is an open book test over our agency's laws and rules. Current licensees who renew their license do not have to retake the test each year.

QUESTION 4: Section (8)(B) appears to contemplate a "required fee" for reciprocity licensure? It will be the same as submitting an initial application.

(a) How much is that fee? **RESPONSE:** \$150 application fee

(b) How does the reciprocity fee compare to the fees for licensure of a new or renewal of an existing Arkansas applicant? **RESPONSE:** All application fees will be the same as a new applicant would have to pay. \$150 application fee, \$50 orientation fee, \$36.25 for State and FBI background check.

(5) Is there any fee for submitting an application for temporary or provisional licensure? **RESPONSE:** Yes, for a temporary license.

(a) How much is the fee? **RESPONSE:** \$30. (this is in addition to the original license application, which will not be necessary for this proposed rule)

(6) Does the Board require a background check for any licensees?

RESPONSE: All applicants applying for licensure have to go through a background check.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Arkansas State Board of Chiropractic Examiners is authorized to examine, license and renew the licenses of duly qualified applicants, and has exclusive jurisdiction to determine who shall be permitted to practice chiropractic in the State of Arkansas. *See* Ark. Code Ann. § 17-81-206(b)(9). The board is authorized to promulgate suitable rules for carrying out its duties under the provisions of the chapter. *See* Ark. Code Ann. § 17-81-206(b)(1).

Act 426 of 2019, sponsored by Representative Bruce Cozart, provided for expedited temporary and provisional licensure for certain individuals. *See* Act 426 of 2019. Occupational licensing entities were required to adopt the least restrictive rules that allow for reciprocity or licensure by endorsement. *See* Act 426 of 2019, codified as Ark. Code Ann. § 17-1-108(d)(1)(A).

Act 1011 of 2019, sponsored by Representative Jim Dotson, required licensing entities to adopt reduced requirements for reinstatement of a license for a person who pays the reinstatement fee, and also demonstrates that he or she: (1) was previously licensed, registered, permitted, or certified to practice in the field of his or her profession at any time in this state, (2) held his or her license, registration, permit, or certification in good standing at the time of licensing, registration, permitting, or certification, (3) did not have his or her license, registration, permit, or certification revoked for an act of bad faith or a violation of law, rule, or ethics, (4) is not holding a suspended or probationary license, registration, permit, or certification in any state, and (5) is sufficiently competent in his or her field. *See* Ark. Code. Ann. § 17-1-107(a).

13. **DEPARTMENT OF HEALTH, DIVISION OF HEALTH RELATED BOARDS AND COMMISSIONS, BOARD OF PODIATRIC MEDICINE (Dr. John Robinette, Dr. Laurie Tait)**

a. **SUBJECT: Arkansas Board of Podiatric Medicine Rules**

DESCRIPTION: The Arkansas Board of Podiatric Medicine is promulgating rules to comply with Acts 112, 315, 820, 990, and 1011 of 2019. The substantive proposed include:

- In compliance with Act 112, adds provisions regarding prescribing and dispensing of Schedule II narcotics. Prohibits the dispensing of Schedule II narcotics. Adds language from the Medical board rules

regarding prescriptions. Also requires licensees to check the Prescription Drug monitoring Program when prescribing or face disciplinary action.

- Amends the Board’s current license reinstatement provision to comply with Ark. Code Ann. § 17-1-107.
- In compliance with Act 1011, amends reciprocity requirements for applicants who hold substantially similar licenses in other states and are sufficiently competent. Provides that an applicant’s podiatric medicine license in another state is substantially similar to an Arkansas, if the applicant graduated from an accredited podiatric medicine school and completed a residency as specified in statute. Such applicant is considered “sufficiently competent” if the applicant has passed specified examinations. The Board based these provisions on the model rule by the Attorney General’s Office.
- Amends the Board’s existing provisional license requirements to comply with Act 1011. The Board based this provision on the model rule by the Attorney General’s Office.
- In compliance with Act 900, amends the crimes for which the Board can take action by referencing the crimes listed in Ark. Code Ann. § 17-3-102. Using the Attorney General’s model language, adds provisions for a pre-criminal background check and waiver request.
- Pursuant to Act 820, and using the Attorney General’s model language, provides automatic licensure for certain members of the military and their spouses.
- Adds provisions regarding the filing and handling of complaints.
- Allows the enumerated duties of the Board’s Secretary-Treasurer to be delegated to Board staff.
- Adds the Board’s fees, which the Board has been charging based on statutory authority. Initial license fee is \$200 and renewal fee is \$75.
- The proposed changes also include “housekeeping” matters, such as replacing “regulation” with “rule,” pursuant to Act 315 of 2019; deleting obsolete application requirements; updating and clarifying terminology.

PUBLIC COMMENT: No public hearing was held on this matter. The public comment period expired on March 10, 2020. The Arkansas Board of Podiatric Medicine received no public comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The Arkansas Board of Podiatric Medicine indicated that the amended rules do not have a financial impact.

LEGAL AUTHORIZATION: The Arkansas Board of Podiatric Medicine has authority to make and adopt all necessary rules necessary and convenient to perform its duties and to transact business as required by law. *See* Ark. Code Ann. § 17-96-202(3)(A). The board is making changes to its rules based upon the following Acts from the 2019 Regular Session:

Act 112 of 2019, sponsored by Representative Justin Boyd, provides that the Arkansas Board of Podiatric Medicine shall adopt rules: (1) limiting the amount of Schedule II narcotics that may be prescribed and dispensed by licensees of the board; and (2) Requiring licensees of the board to check the information in the Prescription Drug Monitoring Program as required under Ark. Code Ann. § 20-7-604(d)(2). *See* Act 112 of 2019, codified as Ark. Code Ann. 17-96-205.

Act 315 of 2019, sponsored by Representative Jim Dotson, provides for the uniform use of the term “rule” for an agency statement of general applicability and future effect that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice of an agency and includes, but is not limited to, the amendment or repeal of a prior rule throughout the Arkansas Code as envisioned by defining the term in the Arkansas Administrative Procedure Act. *See* Act 315 Of 2019, § 1(a)(4).

Act 820, sponsored by Senator Missy Irvin, provides that an occupational licensing entity shall grant automatic licensure to engage in an occupation or profession to an individual who is the holder in good standing of a substantially equivalent occupational license issued by another state, territory, or district of the United States, and is: (1) An active duty military service member stationed in Arkansas or his/her spouse; or (2) A returning military veteran plying for licensure within one (1) year of his or her discharge or his/her spouse. *See* Ark. Code Ann.

Act 990 of 2019, sponsored by Senator John Cooper, amended the law concerning criminal background checks for professions and occupations to obtain consistency regarding criminal background checks and disqualifying offenses for licensure. *See* Act 990 of 2019. An individual with a criminal record may petition a licensing entity at any time for a determination of whether his or her criminal record will disqualify him or her from licensure, and whether or not he or she could obtain a waiver. *See* Act 990 of 2019, codified as Ark. Code Ann. § 17-3-103. Licensing entities were required to adopt or amend rules necessary to implement this chapter. *See* Ark. Code Ann. § 17-3-104.

Act 1011 of 2019, sponsored by Representative Jim Dotson, required licensing entities to adopt reduced requirements for reinstatement of a

license for a person who pays the reinstatement fee, and also demonstrates that he or she: (1) was previously licensed, registered, permitted, or certified to practice in the field of his or her profession at any time in this state, (2) held his or her license, registration, permit, or certification in good standing at the time of licensing, registration, permitting, or certification, (3) did not have his or her license, registration, permit, or certification revoked for an act of bad faith or a violation of law, rule, or ethics, (4) is not holding a suspended or probationary license, registration, permit, or certification in any state, and (5) is sufficiently competent in his or her field. *See* Ark. Code. Ann. § 17-1-107(a).

14. **DEPARTMENT OF HEALTH, PHARMACY SERVICES AND DRUG CONTROL** (Ms. Laura Shue)

a. **SUBJECT: List of Controlled Substances**

DESCRIPTION: The proposed amendments update the List of Controlled Substances as follows:

- Updated prefatory language for Schedule I Opiates. To follow DEA, ¶ (b)(34) is removed and replaced with 3-methylthiofentanyl. Page 1, (b).
- Furanyl fentanyl is a Schedule I controlled substance. To follow DEA, a DEA Controlled Substance Code Number has been set forth opposite of this substance. Page 2, (61).
- Ocfentanil is a Schedule I controlled substance. To follow DEA, a DEA Controlled Substance Code Number has been set forth opposing of this substance. In addition, this item has been marked for cleanup. Page 2, (63).
- The DEA has placed the following opioid analgesics into Schedule I because they have no recognized medical use. To follow DEA scheduling, these drugs would be included as Schedule I:
 - Acryl fentanyl. Page 3, (72).
 - 4-fluoroisobutyryl fentanyl. Page 3, (73).
 - Tetrahydrofuranlyl fentanyl. Page 3, (74).
- 5-Methoxy-DALT. Felisia Lackey, Chief Forensic Chemist – Drug Section, Arkansas State Crime Laboratory, requested the listing of an additional trade or other name for N,N-Diallyl-5-Methoxytryptamine. Page 5, (34).
- 4-anilino-N-phenethylpiperidine (ANPP). The DEA has corrected the name of this immediate precursor to fentanyl. To follow DEA, this Schedule II substance name has been corrected. In addition, language identifying this substance has been marked for cleanup. Page 9, (g)(3).

- Methandrostenolone is relocated from page 12, (f)(16) and placed on the same line as methandienone located on page 12, (f)(13). Felisia Lackey, Chief Forensic Chemist – Drug Section, Arkansas State Crime Laboratory, requested listing methandienone and methandrostenolone together as they are different names for the same Schedule III anabolic steroid. Both names are listed on the same line with subsequent numbering corrections. Page 12, (f)(13).
- Pursuant to Act 504, Ark. Code Ann. § 5-64-215(a)(2), concerning substances in Schedule VI, is amended. The section additions for Tetrahydrocannabinol are as follows:
 - Tetrahydrocannabinols, unless the tetrahydrocannabinol is:
 - A. Contained in hemp-derived cannabidiol;
 - B. Not more than three-tenths of one percent (0.3%) of the hemp-derived cannabidiol on a dry weight basis as verified by a nationally accredited laboratory for quality, purity and accuracy standards; and
 - C. Not approved by the United States Food and Drug Administration for marketing as a medication.
- 2NE1 is removed from page 20, (I)(iii) and placed with JWH-018 adamantyl carboxamide on page 20, (I)(iv). Felisia Lackey, Chief Forensic Chemist – Drug Section, Arkansas State Crime Laboratory, requested listing JWH-018 adamantyl carboxamide and 2NE1 together as they are both names for the same synthetic cannabinoid substance. Both names will be listed on the same line with subsequent numbering corrections. Page 20, (I)(iii).
- AKB-48 is a Schedule VI substance listed in two classification sections for synthetic cannabinoids. Felisia Lackey, Chief Forensic Chemist – Drug Section, Arkansas State Crime Laboratory, requested the removal of AKB-48 from Section K for synthetic cannabinoids. Subsequent numbering corrections will follow the removal of AKB-48 from Section K. This substance will remain in Section I for Schedule VI synthetic cannabinoids. Page 20, (I)(iv).
- Two items have been marked for cleanup on page 21: item (K)(xxii) and item (K)(xxiii).
- MAB-CHMINACA, AB-FUBINACA, and ADB-PINACA are Schedule VI synthetic cannabinoids currently on the controlled substances list. Felisia Lackey, Chief Forensic Chemist – Drug Section, Arkansas State Crime Laboratory, requested that these substances be removed from Section I and placed in Section K for synthetic cannabinoids. These substances are listed as:
 - MAB-CHMINACA. Page 21, (K)(xxiv).
 - AB-FUBINACA. Page 22, (K)(xxv). This item is also marked for cleanup.
 - ADB-PINACA. Page 22, (K)(xxvi).

- 5F-CUMYL-PINACA. Felisia Lackey, Chief Forensic Chemist – Drug Section, Arkansas State Crime Laboratory, requested that this synthetic cannabinoid substance with no recognized medical use be included in Schedule VI. Page 22, (K)(xxvii).

PUBLIC COMMENT: A public hearing was held on this rule on September 26, 2019. The public comment period expired September 26, 2019. The agency indicated that it did not receive any public comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that this amended rule does not have a financial impact.

LEGAL AUTHORIZATION: The Department of Health administers the Uniform Controlled Substances Act and has authority to add substances to the Controlled Substances List and to delete or reschedule “any substance enumerated in a schedule[.]” Ark. Code Ann. § 5-64-201(a)(1)(A)(i). If a substance is controlled under federal law, the Department “shall similarly control the substance” unless the Secretary of the Department objects to inclusion within thirty days of publication in the Federal Register of a final order designating a substance as a controlled substance. Ark. Code Ann. § 5-64-201(d).

15. **DEPARTMENT OF HUMAN SERVICES, DIVISION OF COUNTY OPERATIONS (DCO) (Mr. Mark White)**

- a. **SUBJECT: Community Services Block Grant Manual FY 2020 & 2021**

DESCRIPTION:

Statement of Necessity

The Community Services Block Grant Act (42 U.S.C. § 9901 et seq.) was created “to provide assistance to States and local communities, working through a network of community action agencies and other neighborhood-based organizations, for the reduction of poverty, the revitalization of low-income communities, and the empowerment of low-income families and individuals in rural and urban areas to become fully self-sufficient”

The CSBG Act mandates certain aspects of how state CSBG offices will operate in carrying out their defined roles as administrators of CSBG but leaves significant authority and flexibility in the hands of the states. This responsibility, which is fulfilled by each state individually, can more

easily be met when the state establishes clear policies for implementation of the Act.

State Community Services Block Grant policies serve four main purposes:

- To comply with the authorizing legislation of the Omnibus Reconciliation Act of 1981 (P.L. 97-35), Title VI, Subtitle B (CSBG Program), and Title XVII, Subtitle C, Chapter 2 (Block Grant Funds), and its subsequent amendments and the block grant rules issued by the federal Department of Health and Human Services;
- To assist states and local entities to comply with the authorizing legislation of the Omnibus Reconciliation Act of 1981;
- To assist states and local entities in complying with authorizing state legislation; and
- To assist states in implementing the CSBG Act in a consistent manner to ensure quality and minimize risk through non-compliance.

Thus, policies are a way to communicate directives in an organized manner.

Rule Summary

All uses of “procedure” or “procedures” were removed and replaced with “policy,” “policies,” “process,” or “processes” where applicable.

Section I: The revisions to this section define the Arkansas Department of Human Services and the roles and responsibilities obligated upon it. An expanded description of DHS’s work in partnerships as the Lead Agency has been added. Under Citizen Access, DHS changed the language to reflect the Arkansas Freedom of Information Act’s mandate that only costs of reproducing records plus mailing expenses can be charged by the custodian of records. The Programmatic Assurances section was deleted.

Section III: DHS updated this section regarding the governing boards of eligible entities as follows: (a) changed language regarding composition of the board to reflect the language in 42 U.S.C. § 9901 et seq.; (b) clarified conflict of interest in accordance with 2 C.F.R. § 200.112; (c) revised limitations of board service to clarify state expectations about terms in the eligible entity bylaws; (d) changed schedule and notice of meeting to calendar of meetings with requirements from the Arkansas Freedom of Information Act; (e) added “all minutes must be approved within ninety days of the meeting”; (f) clarified the role of DHS in verifying membership of the board.

Section IV: DHS simplified language regarding the service delivery system and linkages between entities and local cooperatives and shortened language regarding innovative community and neighborhood-based initiatives to better define the initiatives.

Section VI: DHS made numerous changes to this section to reflect federal regulations. DHS added block grant domains (service areas) and reference to 2 C.F.R. § 200.31. Under Programmatic and Case Management Costs, DHS added federal law citations and updated expectations for the number and percent of clients to move toward self-sufficiency. Under Eligible Entity Policies and Procedures, DHS stated that entities must follow current guidelines in developing agency policies in accordance with the requirements of 2 C.F.R. pt. 200. DHS revised language to reflect that the entities must follow current guidelines of the Federal Hatch Act to receive CSBG funds. DHS revised the annual audit to reflect that the entities must follow current guidelines in 2 C.F.R. pt. 200, while leaving intact descriptions of disallowed costs and debt collection for clarity. Finally, DHS added references to federal law under Purchase of Permanent Improvement.

PUBLIC COMMENT: A public hearing was held on this rule on March 6, 2020. The public comment period expired on March 28, 2020. The agency received the following public comment and provided the following response:

Commenter's Name: Curtis Gregory

COMMENT: Where do y'all get your number? Like 80 percent of Arkansas people are below the poverty. Where do you get your numbers? Where are you getting your averages? **RESPONSE:** The demographic and numerical information on the handouts were compiled from data collected from all 15 of the Arkansas Community Action Agencies for client services provided October 1, 2016 – September 30, 2017. FY 2017 is the last year for approved collected data that was submitted to the federal funding source – The federal Health and Human Services, Office of Community Services. The Community Services Block Grant eligibility level is 125% of the federal poverty line for client services. The percentage of people below the poverty level is gathered from Census Data included in the Community Action Agencies Community Needs Assessments.

Lacey Johnson, an attorney with the Bureau of Legislative Research, asked the following questions and received the following responses:

QUESTION 1: Was the description of the state lead agency in Section I written for this manual or borrowed from somewhere else? **RESPONSE:**

The description was taken from the Arkansas Department of Human Services website under About DHS
<https://humanservices.arkansas.gov/about-dhs>

QUESTION 2: It appears that DHS has retained the term “regulations” within the proposed changes. I just wanted to mention Act 315 of 2019, § 3204(b)(3), which concerns the uniform use of the term “rule” and requires governmental entities to ensure the use of the term “rule” upon promulgation of any rule after the effective date of the Act. Act 315 took effect on July 24, 2019. Is there a reason that DHS has retained the term “regulations” for the time being? I am specifically referencing page 5 of the markup underneath the heading “Severability.” **RESPONSE:** The proposed manual has been revised to comply with Act 315 of 2019 by replacing the word regulation with the word rule where appropriate. General references to federal regulations were retained. A copy of the revised manual is provided with these answers.

QUESTION 3: In Section II, under the heading "Eligible Entity Allocation," the proposed rules require that the state lead agency request necessary internal updates within thirty calendar days of receipt of the Notice of Grant Award. Is there a statutory basis for this timeframe? **RESPONSE:** Under the CSBG Federal and State Accountability Measures, which are tied to the CSBG Act that were enacted to improve the customer service performance of Federal, State, and local entities, the states are expected to make funds available to the eligible entities within 30 days after the Federal Award was provided, or consistently and without interruption.

QUESTION 4: In the subsection of Section II titled "5% Discretionary," there is a reference to the United States Code. However, the citation is missing the title number. What is the correct citation? **RESPONSE:** The citation has been corrected.

QUESTION 5: What is the statutory authority for the following statement? “This means that the eligible entity tripartite board makes the final approval of board members that have been elected according to the eligible entity democratic selection process”? (Section III, in the first bullet point under the heading “Board Composition.”) **RESPONSE:** 42 USCS § 9910(a)(2) of the federal CSBG Act requires the eligible entity to select all board members: “*The members of the board . . . shall be selected by the entity.*”

QUESTION 6: In Section III, in the third bullet point under “Conflict of Interest,” the proposed manual defines an immediate family member as "anyone related by blood or marriage." The prior manual contained a list of specific relatives considered immediate family members. Why did

DHS make this change? **RESPONSE:** The intent and effect is the same as in the prior manual but the new definition more succinctly covers the issue without the need to issue a comprehensive list (mother, father, brother, sister, daughter, son, son-in-law, daughter-in-law, mother-in-law, father-in-law, cousin, etc.).

QUESTION 7: Are news media in a county where a meeting is held only notified about special/emergency meetings if they have asked to be notified? Ark. Code Ann. § 25-19-106(b)(2) seems to require that they always receive notice. **RESPONSE:** The notice requirements for special/emergency meetings stated on page 12 of the manual have been corrected to comply with Ark. Code Ann. § 25-19-106(b)(2).

QUESTION 8: In Section III, under the heading "Committees" (page 13 of the markup), the proposed manual references the Arkansas Open Meetings Act. Is this a reference to the Arkansas Open Meetings Law, which is part of the Arkansas FOIA, or does it reference something else? **RESPONSE:** The manual has been revised to state Arkansas Open Meetings Law.

QUESTION 9: What is the statutory authority for the subsection of Section III titled "Tripartite Board Updates"? **RESPONSE:** CSBG Act Sec. 678(B) Monitoring of Eligible Entities (42 USCS § 9914). This is a part of monitoring of the entity board.

QUESTION 10: What is the statutory authority for the subsection of Section III titled "Tripartite Board Verification"? **RESPONSE:** CSBG Act Sec. 678(B) Monitoring of Eligible Entities (42 USCS § 9914). This is a part of monitoring of the entity board.

QUESTION 11: Section VI of the proposed manual lists several Community Service Block Grant domains. Are these categories taken from the federal Department of Health and Human Services annual CSBG report? If so, is there a reason the domains "Linkages," "Agency Capacity Building," and "Other (e.g. emergency management, disaster relief)" have been omitted? **RESPONSE:** Under the new Annual CSBG report, the Module 4 focus is on seven of the CSBG domains which includes information on services provided to individuals and families, demographic characteristics of people served by CSBG Eligible Entities, and the results achieved for individuals and families with low incomes.

QUESTION 12: What is the statutory authority for the requirement that each eligible entity set a goal that is at least 2% higher than its goal for the prior fiscal year (page 17 of the markup, paragraph 3)?

RESPONSE: One of the main purposes of the CSBG funds is to assist the low-income population in moving from crisis to self-sufficiency. The 2% higher achievement goal from the previous year for each of the CAAs is a part of the state oversight efforts to ensure that the funds are being utilized in the best possible way to move the clients along that continuum.

CSBG Act 672 (42 USCS § 9901) details the purposes and goals of the Act, including “the reduction of poverty, the revitalization of low-income communities, and the empowerment of low-income families and individuals in rural and urban areas to become fully self-sufficient (particularly families who are attempting to transition off a State program carried out under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.]” and to accomplish such the delivery of services may have measurables related to achieving self-sufficiency.

QUESTION 13: What is the authority for the requirement that carryover funds be obligated, expensed, and invoiced by the end date of the federal award to which the funds are attached (page 19 of the markup, paragraph 6)?

RESPONSE: The CSBG funds have a two-year life based on the Federal Appropriations Act in which the original grant was awarded. There is a three-month period after the grant award period ends to liquidate the funds and file a final report to the federal funder. Distribution of CSBG carryover funding to eligible entities will be done in accordance with relevant federal statutes.

CSBG Act Sec. 675C (42 U.S.C. § 9907(a)(3)(A)) details recapture and redistribution. The Act guarantees that eligible entities must receive back their unspent CSBG funds as carryover in an amount up to 20% of their original allocation. Per the CSBG Act, unspent funds in excess of 20% may be recouped and redistributed by the State.

Per the Terms and Conditions attached to the CSBG grant awards made to states, however, states are required to follow the most current federal appropriations act. For many years, the Consolidated Appropriations Act of each year has included the following language, “to the extent Community Services Block Grant funds are distributed as grant funds by a State to an eligible entity as provided under the CSBG Act, and have not been expended by such entity, they shall remain with such entity for carryover into the next fiscal year for expenditure by such entity consistent with program purposes.” In other words, the Consolidated Appropriations Act requires that eligible entities must receive back all of their unspent CSBG funds as carryover, regardless of the amount. The Appropriations Act takes precedence over the CSBG Act. However, if the Consolidated Appropriations Act of any given year were not to include the language

above, then the 20% limit from the CSBG Act would become the applicable law.

QUESTION 14: What is the statutory authority for the requirements outlined in Section VI under the heading "Agency Annual Audit"?

RESPONSE: CSBG Act Sec.678D(A): The State will establish fiscal controls, procedures, audits and inspections, as required under Sections 678D(a)(1) and 678D(a)(2) of the Act (42 USCS § 9916).

The proposed effective date is June 1, 2020.

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

According to the agency, the rule implements a federal rule or regulation. The cost to implement that federal rule or regulation is \$9,724,631 for the current fiscal year and \$9,724,631 for the next fiscal year. The agency indicated that this money will come entirely from federal funding. It stated that there will be no additional estimated cost to any private individual, entity, or business subject to the proposed rule. The agency also indicated that there will be no additional cost to state, county, or municipal government as a result of this rule.

LEGAL AUTHORIZATION: The Department of Human Services has the authority to administer assigned forms of public assistance and promulgate rules as needed to accomplish this duty. Ark. Code Ann. § 20-76-201(1), (12). The Department also has the authority to promulgate rules as needed to conform its programs to federal law and receive federal funding. Ark. Code Ann. § 25-10-129(b). "It is the intent of the General Assembly that the State of Arkansas utilize federal funding to the fullest extent possible to provide care to persons eligible for assistance or benefits under programs wholly or partially federally funded or fundable." Ark. Code Ann. § 25-10-129(a)(1).

The federal Community Services Block Grant Act, 42 U.S.C. § 9901 *et seq.*, provides funding for certain public assistance programs. In order to receive funds under the Act, a state must apply for a grant and submit a state plan that meets federal requirements, including use, distribution, and administration requirements. 42 U.S.C. § 9908(b).

16. **DEPARTMENT OF HUMAN SERVICES, DIVISION OF MEDICAL SERVICES (DMS) (Mr. Mark White, Ms. Janet Mann)**

a. **SUBJECT: Ambulatory Surgical Center Manual (ASC-1-19)**

DESCRIPTION:

Statement of Necessity

The purpose of this rule is to bring all Ambulatory Surgical Center (ASC) procedure codes up to date so that the ASC codes conversion can occur in conjunction with the annual Physician's Current Procedural Terminology (CPT) and Healthcare Common Procedure Coding System (HCPCS) codes conversions. In addition, the revision is necessary to bring the Division of Medical Services (DMS) payment policy processes up to date now that our new InterChange has been implemented and can be used to ensure timely compliance with updates.

Rule Summary

Effective for dates of service on or after June 1, 2020, procedure codes that require medical review, prior authorization, or diagnosis restriction are being removed from the text of the Ambulatory Surgical Center (ASC) Provider Manual and are being replaced with a hyperlink to a list of the procedure codes. The procedure codes are being removed from the manual pursuant to Ark. Code Ann. § 25-15-202(9)(B)(iv) and to allow for faster updates when national procedure codes change. The State Plan reimbursement methodology requires an annual review of the changes in procedure codes payable to ASCs based on the year's Medicare ASC Fee Schedule.

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired March 30, 2020. The agency indicated that it received no public comments.

The proposed effective date is June 1, 2020.

FINANCIAL IMPACT: The agency indicated that this rule does not have a financial impact.

LEGAL AUTHORIZATION: The Department of Human Services has the authority to administer assigned forms of public assistance and to make rules as necessary to carry out its duties. Ark. Code Ann. § 20-76-201(1), (12). The Department is specifically tasked with establishing and maintaining an indigent medical care program. Ark. Code Ann. § 20-77-107(a)(1). This includes promulgating rules to ensure compliance with federal law in order to receive federal funding. Ark. Code Ann. § 25-10-129(b). The Arkansas Administrative Procedures Act does not govern changes to medical codes used by Arkansas Medicaid. Ark. Code Ann. § 25-15-202(9)(B)(iv).

b. **SUBJECT: Billing Changes to Global OB (Obstetrics) Services**

DESCRIPTION:

Statement of Necessity

Currently, in InterChange, claims being billed by providers for global obstetrics (OB) services are erroneously being denied if the member has a change in benefit plan at any point during the global OB billing period. This revision is intended to remedy this issue.

Rule Summary

Effective June 1, 2020, Section 292.671 of the Physician/Independent Lab/CRNA/Radiation Therapy Center Medicaid Provider Manual is being revised to update the billing instructions for providers submitting global OB claims.

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired on March 23, 2020. The agency indicated that it received no public comments.

The proposed effective date is June 1, 2020.

FINANCIAL IMPACT: The agency indicated that this rule does not have a financial impact.

LEGAL AUTHORIZATION: The Department of Human Services has the responsibility to administer assigned forms of public assistance and is specifically authorized to maintain an indigent medical care program (Arkansas Medicaid). *See* Ark. Code Ann. §§ 20-76-201(1), 20-77-107(a)(1). The Department has the authority to make rules that are necessary or desirable to carry out its public assistance duties. Ark. Code Ann. § 20-76-201(12). The Department and its divisions also have the authority to promulgate rules as necessary to conform their programs to federal law and receive federal funding. Ark. Code Ann. § 25-10-129(b).

17. **DEPARTMENT OF LABOR AND LICENSING, STATE BOARD OF PUBLIC ACCOUNTANCY (Mr. Jimmy Corley)**

a. **SUBJECT: Board Rule 1 “Definitions”**

DESCRIPTION: Act 315 requires the usage of the term “rules” instead of “regulations.” While the Act does not require Boards to promulgate

rules to make this change, the State Board of Public Accountancy elected to update the rules while going through rule changes this year.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on March 6, 2020. The State Board of Public Accountancy provided the following summary of public comments and its responses thereto:

Source: Samantha Lewis - Arkansas CPA, 2/5/2020

Rule: All Rules, In Favor

Comment: I have reviewed the proposed rule changes, and I would like to comment that I agree with the changes, and I believe the continuing professional education rule changes are needed and appreciated, especially for those in industry related fields of accounting and finance, and not in public accounting. Thank you for reviewing the rules and allowing comments on the changes.

Board Response: N/A

Source: Chris Bell - Arkansas CPA, 2/13/2020

Rule: All Rules, In Favor

Comment: In regard to the Board proposed rule changes (CPA exam, CPE Nano learning, CPE content requirement, CPE group study requirement, quality review and prelicensure criminal background petition), I am in full agreement with these changes. I believe this is a great stride forward for our Arkansas CPAs and I appreciate the Board's foresight and willingness to potential changes for our betterment.

Board Response: N/A

Source: Michelle Elliott - Arkansas CPA, 2/13/2020

Rule: All Rules, In Favor

Comment: I am writing to comment on the rule changes proposed by board. I am in favor of all of them. They seem like very common-sense changes. Thank you!

Board Response: N/A

Source: Marsha Moffitt, Executive Director - Arkansas Society of CPAs, 2/27/2020

Rule: All Rules, In Favor

Comment: The Arkansas Society of CPAs Board of Directors would like to convey to the Arkansas State Board of Public Accountancy its complete support of the proposed changes to the accounting rules, as have been recently approved by the Governor.

Board Response: N/A

The proposed effective date of this rule is June 1, 2020.

FINANCIAL IMPACT: The Board states that this rule amendment does not have a financial impact.

LEGAL AUTHORIZATION: The State Board of Public Accountancy has authority to “adopt, and amend from time to time, rules for the orderly conduct of its affairs and for the administration of this chapter.” *See* Ark. Code Ann. § 17-12-203(a).

Act 315 of 2019, which was sponsored by Representative Jim Dotson, provides for the uniform use of the term “rule” for an agency statement of general applicability and future effect that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice of an agency and includes, but is not limited to, the amendment or repeal of a prior rule throughout the Arkansas Code as envisioned by defining the term in the Arkansas Administrative Procedure Act. *See* Act 315 of 2019, § 1(a)(4).

b. SUBJECT: Board Rule 2 “Board Rules and Meetings”

DESCRIPTION: Act 315 requires the usage of the term “rules” instead of “regulations.” While the Act does not require Boards to promulgate rules to make this change, the State Board of Public Accountancy elected to update the rules while going through rule changes this year.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on March 6, 2020. The State Board of Public Accountancy provided the following summary of public comments and its responses thereto:

Source: Samantha Lewis - Arkansas CPA, 2/5/2020

Rule: All Rules, In Favor

Comment: I have reviewed the proposed rule changes, and I would like to comment that I agree with the changes, and I believe the continuing professional education rule changes are needed and appreciated, especially for those in industry related fields of accounting and finance, and not in public accounting. Thank you for reviewing the rules and allowing comments on the changes.

Board Response: N/A

Source: Chris Bell - Arkansas CPA, 2/13/2020

Rule: All Rules, In Favor

Comment: In regard to the Board proposed rule changes (CPA exam, CPE Nano learning, CPE content requirement, CPE group study requirement, quality review and prelicensure criminal background petition), I am in full agreement with these changes. I believe this is a

great stride forward for our Arkansas CPAs and I appreciate the Board's foresight and willingness to potential changes for our betterment.

Board Response: N/A

Source: Michelle Elliott - Arkansas CPA, 2/13/2020

Rule: All Rules, In Favor

Comment: I am writing to comment on the rule changes proposed by board. I am in favor of all of them. They seem like very common-sense changes. Thank you!

Board Response: N/A

Source: Marsha Moffitt, Executive Director - Arkansas Society of CPAs, 2/27/2020

Rule: All Rules, In Favor

Comment: The Arkansas Society of CPAs Board of Directors would like to convey to the Arkansas State Board of Public Accountancy its complete support of the proposed changes to the accounting rules, as have been recently approved by the Governor.

Board Response: N/A

The proposed effective date of this rule is June 1, 2020.

FINANCIAL IMPACT: The Board states that this rule amendment does not have a financial impact.

LEGAL AUTHORIZATION: The State Board of Public Accountancy has authority to “adopt, and amend from time to time, rules for the orderly conduct of its affairs and for the administration of this chapter.” *See* Ark. Code Ann. § 17-12-203(a).

Act 315 of 2019, which was sponsored by Representative Jim Dotson, provides for the uniform use of the term “rule” for an agency statement of general applicability and future effect that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice of an agency and includes, but is not limited to, the amendment or repeal of a prior rule throughout the Arkansas Code as envisioned by defining the term in the Arkansas Administrative Procedure Act. *See* Act 315 of 2019, § 1(a)(4).

c. **SUBJECT: Board Rule 3 “Examinations”**

DESCRIPTION: This rule change allows CPA exam candidates to take sections of the CPA exam multiple times per quarter. Currently, the same section of the exam can only be taken one time per quarter. This is a change being made across the country because of advances in technology

associated with administering and scoring the CPA exam. This will be a help to CPA exam candidates.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on March 6, 2020. The State Board of Public Accountancy provided the following summary of public comments and its responses thereto:

Source: Samantha Lewis - Arkansas CPA, 2/5/2020

Rule: All Rules, In Favor

Comment: I have reviewed the proposed rule changes, and I would like to comment that I agree with the changes, and I believe the continuing professional education rule changes are needed and appreciated, especially for those in industry related fields of accounting and finance, and not in public accounting. Thank you for reviewing the rules and allowing comments on the changes.

Board Response: N/A

Source: Chris Bell - Arkansas CPA, 2/13/2020

Rule: All Rules, In Favor

Comment: In regard to the Board proposed rule changes (CPA exam, CPE Nano learning, CPE content requirement, CPE group study requirement, quality review and prelicensure criminal background petition), I am in full agreement with these changes. I believe this is a great stride forward for our Arkansas CPAs and I appreciate the Board's foresight and willingness to potential changes for our betterment.

Board Response: N/A

Source: Michelle Elliott - Arkansas CPA, 2/13/2020

Rule: All Rules, In Favor

Comment: I am writing to comment on the rule changes proposed by board. I am in favor of all of them. They seem like very common-sense changes. Thank you!

Board Response: N/A

Source: Marsha Moffitt, Executive Director - Arkansas Society of CPAs, 2/27/2020

Rule: All Rules, In Favor

Comment: The Arkansas Society of CPAs Board of Directors would like to convey to the Arkansas State Board of Public Accountancy its complete support of the proposed changes to the accounting rules, as have been recently approved by the Governor.

Board Response: N/A

Source: Cathy Klein, Arkansas CPA, 2/13/2020

Rule: Rule 3, Opposed

Comment: I am opposed to changing the rules for CPA candidates to take sections of the CPA exam multiple times. I propose that the exam rules should not be changed. I am in support of having tough exam rules, which is what sets the successful candidate apart from the rest. Don't lower the expectations just so you can have people who can pass! It's not fair to those of us who took ALL of the exam at once, with no calculator or computer!

Board Response: Psychometricians with the AICPA have told us that this change will not make the CPA exam easier to pass. It will simply give candidates more opportunities to pass.

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

QUESTION 1: Rule 3.7 (a)(3) appears to be a conditional statement – “If the Board determines that the examination system changes necessary to eliminate the test window limitation.”

(a) What system changes are being made to the examination?

RESPONSE: The exam is scored by the American Institute of CPAs (AICPA). Due to advances in technology and enough years of testing via computer (it was a paper and pencil exam prior to 2004), they no longer need a blackout period in each testing quarter to evaluate exam questions and make changes to the bank of questions. That can be done during the quarter while the exam is being given.

(b) Who is making the changes? **RESPONSE:** AICPA

(c) What is the current status of the changes? **RESPONSE:** The AICPA is ready but the State Boards of Accountancy around the country have to make rule changes to allow for the change. It is a nation-wide effort that needs to happen at the same time. This is why we did not put a specific date in our proposed rule changes. We anticipate the change will be effective July 1, 2020 but that is dependent on enough Boards of Accountancy around the country getting through the rule making process in time to allow for that date to work out.

(d) When does the board anticipate that the changes will be complete?

RESPONSE: We plan to make it effective July 1, 2020.

QUESTION 2: Rule 3.7(c) appears to end in an incomplete sentence on the markup. Could you please explain/clarify? **RESPONSE:** There is another phrase that was not provided due to the page cutting off. Rule 3.7(c) will not be changed at this time. Here is the complete version:

(c) A Candidate shall be deemed to have passed the Uniform CPA Examination once the Candidate holds at the same time official credit for passing each of the four Test Sections of the examination. For purposes of this section, credit for passing a Test Section of the computer-based examination is valid from the actual date of the Testing Event for that Test

Section, regardless of the date the Candidate actually receives official notice of the passing grade.

The proposed effective date of this rule is June 1, 2020.

FINANCIAL IMPACT: The Board states that this rule amendment does not have a financial impact.

LEGAL AUTHORIZATION: A certificate as a certified public accountant shall be granted by the Arkansas State Board of Public Accountancy to any person who has met the education and experience requirements, and who has passed an examination in accounting and auditing and such related subjects as the board shall determine appropriate. *See Ark. Code Ann. § 17-12-301(a).* Additionally, the board may, by rule, prescribe the terms and conditions under which an applicant who passes the examination in one (1) or more of the subjects indicated may be reexamined in only the remaining subjects, with credit for the subjects previously passed. *See Ark. Code Ann. § 17-12-305(a).* The board may also provide by rule for a reasonable waiting period for an applicant's reexamination in a subject he or she has failed. *See Ark. Code Ann. § 17-12-305(b).*

d. SUBJECT: Board Rule 10 "Registration"

DESCRIPTION: Act 990 of 2019 required the State Board of Accounting to update this rule to comply with the new requirements surrounding the consideration of the criminal history of licensees and applicants.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on March 6, 2020. The State Board of Public Accountancy provided the following summary of public comments and its responses thereto:

Source: Samantha Lewis - Arkansas CPA, 2/5/2020

Rule: All Rules, In Favor

Comment: I have reviewed the proposed rule changes, and I would like to comment that I agree with the changes, and I believe the continuing professional education rule changes are needed and appreciated, especially for those in industry related fields of accounting and finance, and not in public accounting. Thank you for reviewing the rules and allowing comments on the changes.

Board Response: N/A

Source: Chris Bell - Arkansas CPA, 2/13/2020

Rule: All Rules, In Favor

Comment: In regard to the Board proposed rule changes (CPA exam, CPE Nano learning, CPE content requirement, CPE group study requirement, quality review and precicensure criminal background petition), I am in full agreement with these changes. I believe this is a great stride forward for our Arkansas CPAs and I appreciate the Board's foresight and willingness to potential changes for our betterment.

Board Response: N/A

Source: Michelle Elliott - Arkansas CPA, 2/13/2020

Rule: All Rules, In Favor

Comment: I am writing to comment on the rule changes proposed by board. I am in favor of all of them. They seem like very common-sense changes. Thank you!

Board Response: N/A

Source: Marsha Moffitt, Executive Director - Arkansas Society of CPAs, 2/27/2020

Rule: All Rules, In Favor

Comment: The Arkansas Society of CPAs Board of Directors would like to convey to the Arkansas State Board of Public Accountancy its complete support of the proposed changes to the accounting rules, as have been recently approved by the Governor.

Board Response: N/A

The proposed effective date of this rule is June 1, 2020.

FINANCIAL IMPACT: The Board states that this rule amendment does not have a financial impact.

LEGAL AUTHORIZATION:

The Arkansas State Board of Public Accountancy may require each applicant for a new or reinstated license as a certified public accountant, including reciprocity applicants, or public accountant to apply for or authorize the board to obtain state and national criminal background checks to be conducted by the Identification Bureau of the Division of Arkansas State Police and the Federal Bureau of Investigation. *See* Ark. Code Ann. § 17-12-303. The board was authorized to adopt rules to implement the provision of this section. *See* Ark. Code Ann. § 17-12-303(h).

Act 990 of 2019, sponsored by Senator John Cooper, amended the laws concerning criminal background checks for professions and occupations in order to obtain consistency regarding criminal background checks and disqualifying offenses for licensure. *See* Act 990 of 2019. Ark. Code Ann. § 17-3-102(a) contains a list of offenses, which would disqualify an individual from receiving or holding a license from a licensing entity, if

that individual pled guilty, nolo contendere or was found guilty of a listed offense. *See* Ark. Code Ann. § 17-3-102(a). A licensing entity may waive disqualification or revocation for an individual who has been convicted of a crime listed in Ark. Code Ann. § 17-2-102(a), if a request for waiver is made by an affected applicant or an individual holding a license subject to revocation. *See* Ark. Code Ann. § 17-3-102(b). Licensing entities were authorized to adopt or amend rules necessary for implementation. *See* Ark. Code Ann. § 17-3-104(a).

e. **SUBJECT: Board Rule 13 “Continuing Education”**

DESCRIPTION: The State Board of Public Accountancy is making changes to Board Rule 13 on Continuing Education, as requested by the Arkansas Society of CPAs. It will relax the content requirements of the annual continuing education requirement (less technical Continuing Professional Education credits will be required). It will also reduce the amount of continuing education that must be earned in a “live” classroom from sixteen (16) to eight (8) hours per year. Finally, it will allow up to four (4) hours on continuing education per year to be earned in ten minute increments.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on March 6, 2020. The State Board of Public Accountancy provided the following summary of public comments and its responses thereto:

Source: Samantha Lewis - Arkansas CPA, 2/5/2020

Rule: All Rules, In Favor

Comment: I have reviewed the proposed rule changes, and I would like to comment that I agree with the changes, and I believe the continuing professional education rule changes are needed and appreciated, especially for those in industry related fields of accounting and finance, and not in public accounting. Thank you for reviewing the rules and allowing comments on the changes.

Board Response: N/A

Source: Chris Bell - Arkansas CPA, 2/13/2020

Rule: All Rules, In Favor

Comment: In regard to the Board proposed rule changes (CPA exam, CPE Nano learning, CPE content requirement, CPE group study requirement, quality review and prelicensure criminal background petition), I am in full agreement with these changes. I believe this is a great stride forward for our Arkansas CPAs and I appreciate the Board’s foresight and willingness to potential changes for our betterment.

Board Response: N/A

Source: Michelle Elliott - Arkansas CPA, 2/13/2020

Rule: All Rules, In Favor

Comment: I am writing to comment on the rule changes proposed by board. I am in favor of all of them. They seem like very common-sense changes. Thank you!

Board Response: N/A

Source: Marsha Moffitt, Executive Director - Arkansas Society of CPAs, 2/27/2020

Rule: All Rules, In Favor

Comment: The Arkansas Society of CPAs Board of Directors would like to convey to the Arkansas State Board of Public Accountancy its complete support of the proposed changes to the accounting rules, as have been recently approved by the Governor.

Board Response: N/A

Source: Shawn Mathis, Arkansas CPA, 2/13/2020

Rule: Rule 13, In Favor

Comment: I fully support the proposed rule changes as it relates to CPE content requirement and CPE group study.

Board Response: N/A

Source: Jake Phillips Arkansas CPA, 2/13/2020

Rule: Rule 13, In Favor

Comment: I am writing to comment on the following rule changes:

- CPE content requirement – would reduce the requirement that 50% of CPE (20 hours per year) be met through courses in Accounting & Auditing, Tax, or Ethics to 40% for those working in public accounting and to 20% for those who do not work in public accounting.
- CPE Group Study requirement – would reduce the group study requirement from 40% to 20% (16 hours to 8 hours per year).

I am highly supportive of both of these changes, as an out of state (and a formerly out of country CPA for 3 years), it is becoming increasingly difficult to obtain in-person/group CPE, as almost everything is online and often not considered Group interactive. Also, as the profession continues to expand into ancillary areas such as technology and IT, the CPE being offered, and indeed, some of the most exciting courses, are not in the Accounting & Auditing field.

Board Response: N/A

Source: Cliff Barnes, Arkansas CPA, 2/13/2020

Rule: Rule 13, In Favor

Comment: I am writing to support the changes related to CPE – I believe these proposals would provide additional flexibility to licensees without diminishing the effectiveness of the program. Thanks for the opportunity to comment.

Board Response: N/A

Source: Charles Warren, Arkansas CPA, 2/13/2020

Rule: Rule 13, In Favor

Comment: I fully support and advocate for the changes reflected in Section 13.2(a)(1). As a CPA not in public practice, the shift from 50% to 20% is beneficial to me and CPAs like me. I've attended CPE from nationally recognized experts in the field of public-school finance and governmental accounting oversight and the CPE doesn't qualify for these required areas because the CPE provider chooses to list the CPE generically and not targeted to accounting or attest or ethics. That CPE brings real value to me as a CPA and I prefer that it take up more than 50% of my CPE requirements. I fully support and advocate for the changes reflected in Section 13.3(b)(2). Nano learning courses provide for a wide range of topics and allow for a more focused, targeted learning opportunity. It's not just a trend, it's a paradigm shift that can benefit CPAs.

Board Response: N/A

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

QUESTION 1: What is the Board's rationale for decreasing the accounting, accounting ethics, attest and taxation CPE percentage requirement from 50% to 40% in 13.2(1)? **RESPONSE:** The Arkansas Society CPAs requested this change, to give CPAs more flexibility to schedule CPE courses that pertain to their job functions but that do not fit into the required categories.

QUESTION 2: For license holders engaged in attest or compilation functions, could attest CPE be used toward the 20% CPE requirement in that area (pursuant to 13.2 (2)) also count toward the 40% requirement (pursuant to 13.2(1))? **RESPONSE:** Yes

QUESTION 3: What is the Board's rationale for increasing the allowed percentage of CPE pursuant to 13.3(d) and 13.3(e), from 60% to 80%? **RESPONSE:** For years we have required that 16 hours a year must come from a live class room – either a brick and mortar traditional classroom or a webinar that is “live” whereby participants can interact and ask questions of the instructor. The CPE landscape has changed whereby more classes are offered as self-study / online courses, which are more convenient for most CPAs.

The proposed effective date of this rule is June 1, 2020.

FINANCIAL IMPACT: The Board states that the proposed amendments do not have a financial impact.

LEGAL AUTHORIZATION: Pursuant to Ark. Code Ann. § 17-12-502(a), every application for renewal of a license by a person who holds a certificate as a certified public accountant or registration as a public accountant shall be accompanied or supported by such evidence as the Arkansas State Board of Public Accountancy shall prescribe, documenting completion of forty (40) hours of acceptable continuing education, approved by the board, during the twelve-month period immediately preceding the expiration date of the license, or, one hundred twenty (120) hours of acceptable continuing education approved by the board, during the thirty-six-month period immediately preceding the expiration date of the license. *See* Ark. Code Ann. § 17-12-502(a).

The State Board of Public Accountancy is authorized to prescribe rules, procedures, and policies in the manner and condition under which credit shall be given for participation in a program of continuing education that the board may deem necessary and appropriate to maintain the highest standard of proficiency in the profession of public accounting. *See* Ark. Code Ann. § 17-12-502(e). The Board may prescribe content, duration, and organization of courses. *See* Ark. Code Ann. § 17-12-502(d)(2). The Board may also provide for relaxation or suspension of the requirements in regard to applicants who certify that they do not intend to engage in the practice of public accountancy and for instances of individual hardship. *See* Ark. Code Ann. § 17-12-502(d)(5).

f. **SUBJECT: Board Rule 14 “Quality Review”**

DESCRIPTION: The State Board of Public Accountancy is amending Board Rule 14 to update quality review rules pursuant to Act 278 of 2017. Peer Review has replaced the Board’s Quality Review program with the exception of compilation reports. As a result, the Quality Review program has been scaled back significantly.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on March 6, 2020. The State Board of Public Accountancy provided the following summary of public comments and its responses thereto:

Source: AICPA, 12/17/2019

Subject: Rule 14.3

Comment: A number of firms may inadvertently run afoul of your rules. Many reviewers, particularly in larger firms, may have spent their career performing audit and attest work. So, unless the Arkansas licensed firm makes sure the team captain has such experience, though they will have

received a peer review that meets our and other state board requirements, the firm will need to have a QR review to practice in Arkansas. I suspect this wasn't the Board's intent; hence I referred to this as an unintended consequence in the voice mail I left.

Board Response: We agree with the comment and have removed the wording mentioned.

Source: AICPA, 12/17/2019

Subject: Rule 14.1

Comment: In Section 14.1, there is a reference to assurance provided by compilation reports – compilation reports specifically tell the reader that no assurance is being provided – only that there are no known departures from GAAP of other basis of accounting described in the report.

Board Response: We agree with the comment and have updated the wording.

Source: Samantha Lewis - Arkansas CPA, 2/5/2020

Rule: All Rules, In Favor

Comment: I have reviewed the proposed rule changes, and I would like to comment that I agree with the changes, and I believe the continuing professional education rule changes are needed and appreciated, especially for those in industry related fields of accounting and finance, and not in public accounting. Thank you for reviewing the rules and allowing comments on the changes.

Board Response: N/A

Source: Chris Bell - Arkansas CPA, 2/13/2020

Rule: All Rules, In Favor

Comment: In regard to the Board proposed rule changes (CPA exam, CPE Nano learning, CPE content requirement, CPE group study requirement, quality review and prelicensure criminal background petition), I am in full agreement with these changes. I believe this is a great stride forward for our Arkansas CPAs and I appreciate the Board's foresight and willingness to potential changes for our betterment.

Board Response: N/A

Source: Michelle Elliott - Arkansas CPA, 2/13/2020

Rule: All Rules, In Favor

Comment: I am writing to comment on the rule changes proposed by board. I am in favor of all of them. They seem like very common-sense changes. Thank you!

Board Response: N/A

Source: Marsha Moffitt, Executive Director - Arkansas Society of CPAs, 2/27/2020

Rule: All Rules, In Favor

Comment: The Arkansas Society of CPAs Board of Directors would like to convey to the Arkansas State Board of Public Accountancy its complete support of the proposed changes to the accounting rules, as have been recently approved by the Governor.

Board Response: N/A

The proposed effective date of this rule is June 1, 2020.

FINANCIAL IMPACT: The Board states that this rule amendment does not have a financial impact.

LEGAL AUTHORIZATION: The Arkansas State Board of Accountancy may, by rule, require a quality review of each practice unit maintained in this state as a condition for renewal of a license. *See* Ark. Code. Ann. § 17-12-507(a). The board may charge the accountant or firm that is reviewed a fee for each quality review of a practice unit, and a fee for any follow-up action to a quality review that is not in conformity with applicable professional standards. *See* § 17-12-507(b)(1). The amount of the fee shall be established by board rule. *See* § 17-12-507(b)(2).

Act 278 of 2017, sponsored by then Senator David Wallace, established peer review, and provided that licensees that are required to enroll in peer review under Ark. Code Ann. § 17-12-508 were exempt from the requirements under Ark. Code Ann. § 17-12-507 (concerning quality review), and were also exempt from rules of the board implementing the section. *See* Ark. Code Ann. § 17-12-507(h).

g. **SUBJECT: Board Rule 21 “Prelicensure Criminal Background Petition”**

DESCRIPTION: The State Board of Public Accountancy is promulgating this new rule due to changes made by Act 990 of 2019. This new rule lays out the process by which an individual with a criminal background may petition the board for determination of whether the individual’s criminal background will disqualify them, and whether or not a waiver could be obtained.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on March 6, 2020. The State Board of Public Accountancy provided the following summary of public comments and its responses thereto:

Source: Samantha Lewis - Arkansas CPA, 2/5/2020

Rule: All Rules, In Favor

Comment: I have reviewed the proposed rule changes, and I would like to comment that I agree with the changes, and I believe the continuing

professional education rule changes are needed and appreciated, especially for those in industry related fields of accounting and finance, and not in public accounting. Thank you for reviewing the rules and allowing comments on the changes.

Board Response: N/A

Source: Chris Bell - Arkansas CPA, 2/13/2020

Rule: All Rules, In Favor

Comment: In regard to the Board proposed rule changes (CPA exam, CPE Nano learning, CPE content requirement, CPE group study requirement, quality review and prelicensure criminal background petition), I am in full agreement with these changes. I believe this is a great stride forward for our Arkansas CPAs and I appreciate the Board's foresight and willingness to potential changes for our betterment.

Board Response: N/A

Source: Michelle Elliott - Arkansas CPA, 2/13/2020

Rule: All Rules, In Favor

Comment: I am writing to comment on the rule changes proposed by board. I am in favor of all of them. They seem like very common-sense changes. Thank you!

Board Response: N/A

Source: Marsha Moffitt, Executive Director - Arkansas Society of CPAs, 2/27/2020

Rule: All Rules, In Favor

Comment: The Arkansas Society of CPAs Board of Directors would like to convey to the Arkansas State Board of Public Accountancy its complete support of the proposed changes to the accounting rules, as have been recently approved by the Governor.

Board Response: N/A

The proposed effective date of this rule is June 1, 2020.

FINANCIAL IMPACT: The Board states that the proposed rule does not have a financial impact.

LEGAL AUTHORIZATION: Act 990 of 2019, sponsored by Senator John Cooper, amended the law concerning criminal background checks for professions and occupations to obtain consistency regarding criminal background checks and disqualifying offenses for licensure. *See* Act 990 of 2019. An individual with a criminal record may petition a licensing entity at any time for a determination of whether his or her criminal record will disqualify him or her from licensure, and whether or not he or she could obtain a waiver. *See* Act 990 of 2019, codified as Ark. Code Ann. §

17-3-103. Licensing entities were required to adopt or amend rules necessary to implement this chapter. *See* Ark. Code Ann. § 17-3-104.

The Arkansas State Board of Accountancy may adopt, and amend from time to time, rules for the orderly conduct of its affairs and for the administration of this chapter. *See* Ark. Code Ann. § 17-12-203(a).

18. DEPARTMENT OF PUBLIC SAFETY, DIVISION OF ARKANSAS STATE POLICE (Ms. Mary Claire McLaurin)

a. SUBJECT: Used Motor Vehicle Dealer Licensing Rules – Act 820 Amendments

DESCRIPTION: The Division of Arkansas State Police is amending its Used Motor Vehicle Dealer Licensing Rules. Rule 5.4 is added to permit expedited licensure process for certain military-affiliated applicants in accordance with Act 820 of 2019.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on January 20, 2020. The Division of Arkansas State Police received no public comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Department of Arkansas State Police may promulgate rules that are necessary to implement, enforce, and administer the Used Motor Vehicle Buyers Protection subchapter of the Arkansas Motor Vehicle Commission Act. *See* Ark. Code Ann. § 23-112-604(a). Pursuant to Act 910 of 2019, which was sponsored by Representative Andy Davis, the Department of Arkansas State Police was designated as the Division of Arkansas State Police and transferred to the newly created Department of Public Safety through a cabinet-level transfer. *See* Ark. Code Ann. §§ 12-8-101, 25-43-1401 and 25-43-1402(a)(10).

Act 820 of 2019, sponsored by Senator Missy Irvin, provided for automatic occupational licensure of active duty service members, returning military veterans and their spouses in circumstances where the individual is a holder in good standing of a substantially equivalent occupational license issued by another state, territory, or district of the United States. *See* Ark. Code Ann. § 17-1-106(b)(1). An occupational licensing entity may, however, submit proposed rules recommending an

expedited process and procedure for licensure to the Administrative Rules Subcommittee of the Legislative Council. *See* Ark. Code Ann. § 17-1-106(c). An occupational licensing entity shall be required to provide automatic licensure if the proposed rules are not approved as required under subsection (d)(2) of this section. *See* Ark. Code Ann. § 17-1-106(b)(2).

b. SUBJECT: Private Investigators & Private Security Agency – Act 820 Amendments

DESCRIPTION: The Division of Arkansas State Police is amending its Rules for Licensing and Regulation of Private Investigators, Private Security Agencies, Alarm System Companies, Polygraph Examiners, and Voice Stress Analysis Examiners. Rule 2.17 is added to clarify the expedited licensure process for certain military-affiliated applicants in accordance with Act 820 of 201.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on January 20, 2020. The Division of Arkansas State Police received no public comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Director of the Division of Arkansas State Police has the authority to promulgate rules relating to the granting, denial, suspension or revocation of any license, credential or commission issued under Chapter 40 of the Arkansas Code, concerning private investigators and private security agencies. *See* Ark. Code Ann. §§ 17-40-207(a)(3) and 17-40-207(a)(5).

Act 820 of 2019, sponsored by Senator Missy Irvin, provided for automatic occupational licensure of active duty service members, returning military veterans and their spouses in circumstances where the individual is a holder in good standing of a substantially equivalent occupational license issued by another state, territory, or district of the United States. *See* Ark. Code Ann. § 17-1-106(b)(1). An occupational licensing entity may, however, submit proposed rules recommending an expedited process and procedure for licensure to the Administrative Rules Subcommittee of the Legislative Council. *See* Ark. Code Ann. § 17-1-106(c). An occupational licensing entity shall be required to provide automatic licensure if the proposed rules are not approved as required under subsection (d)(2) of this section. *See* Ark. Code Ann. § 17-1-106(b)(2).

19. **PUBLIC SERVICE COMMISSION** (Mr. Rick Leeper, Ms. Donna Gray)

a. **SUBJECT: Anti-Spoofing Rules**

DESCRIPTION: The Arkansas Public Service Commission’s Anti-Spoofing Rules seek to implement Acts 677 and 1074 of the Regular Session of the 92nd General Assembly, which require providers of telecommunications service, a Voice over Internet Protocol service, a commercial radio service, or a similar service to provide documentation to the Commission that demonstrates the provider has implemented current and applicable technologies to identify and block telecommunications that violate §§ 4-88-107(a)(1), 4-88-108(a), 4-99-108(c), or 4-99-302(b) of the Arkansas Code. The proposed rules also contain procedures for complaints and dispute resolution.

PUBLIC COMMENT: A public hearing was held on February 20, 2020. The public comment period expired that same day. In its order, the Commission noted that no public comments were filed or submitted with respect to the rules and that no member of the public appeared at the hearing to offer a public comment. The order provided the following summary of the issues raised in joint comments from the Office of the Arkansas Attorney General and industry providers and the Commission’s responses thereto:

Rule 1.01(e)(3). Staff as a Party

Comment: The Joint Comments point out a typographical error and cross-reference error.

Finding: The Commission finds that the corrections suggested by the Joint Comments are appropriate.

Rule 1.01(j). Definition of Spoofing

Comment: The Joint Comments recommend the removal of the definition of “Spoofing” as it is only mentioned in the title of the ASRs and is not mentioned in the substantive part of the ASRs.

Finding: Even though the actual word “Spoofing” is not included in the substantive part of the ASRs, it is used in the title of the ASRs and is considered a colloquial term commonly used to describe the very actions these laws are intended to prohibit. As such, the Commission finds the definition of the term “Spoofing” necessary.

Rule 3.05. Protective Orders

Comment: The Joint Comments suggest that the ASRs should address the process for providers to obtain a protective order, and they have suggested language for the rule. Further, the Joint Comments suggest that

a protective order only be good for the year in which it was received, requiring each provider to re-apply for protection for the same category of information each successive year.

Finding: The Joint Comments suggest the need for an additional Rule, Rule 3.05 Protective Order of Non-Disclosure, addressing the process for obtaining a protective order. The suggested language cited by the Joint Comments for obtaining a protective order differs from that used in the RPPs, but the Joint Comments do not address a reason for the process used to apply for a protective order to be different for the ASRs.

The Commission finds no reason to vary the process for a protective order from that specified in RPP 4.04. The Commission disagrees with the suggestion of the Joint Comments that a protective order only be effective for the year in which it was sought. Once the Commission has made a finding that the category of information being sought to be protected should be protected, there is no need to require successive motions each year as to the same category of information. Requiring companies to re-apply for protection for the same category of information each year is an inefficient use of resources for both companies and the Commission.

While the Commission finds it to be appropriate for the ASRs to generally address the fact that a Provider may obtain a protective order, the Commission finds it would be best to simply refer the Provider to the process for obtaining a protective order used in the RPPs. As such, added Rule 3.05 is revised to state:

A Provider may file a written motion requesting that the Commission enter a Protective Order of Non-Disclosure. The process for obtaining a protective order is set out in RPP 4.04.

Section 4. Resolution of Disputes

Comment: The Joint Comments state that it does not appear necessary to include Section 4 in the ASRs since the general substance is already contained in the RPPs. In the alternative, the Joint Comments suggest several modifications to Section 4.

Finding: The Commission finds that because the complaint procedure is one of the major provisions of Acts 677 and 1074, and because the ASR procedures differ somewhat from the RPP procedures, Section 4 should be retained as amended below.

Rule 4.01. Complaints

Comment: The Joint Comments suggest a slight modification to Rule 4.01(a) to “ensure the ASRs reflect an appropriate jurisdictional scope of the Commission’s complaint authority. . . .”

Finding: The Commission accepts the proposed changes of the Joint Comments as to ASR Rule 4.01(a) as being reasonable to reflect the

appropriate jurisdictional scope of the Commission’s complaint authority. ASR Rule 4.01(b) shall remain as originally drafted.

Rule 4.02(e). Burden of Proof

Comment: The Joint Comments criticize proposed ASR 4.02(e), as it is not identical to the burden set out in RPP Rule 4.078(c), which states:

(c) The burden of proof in any case shall be on the Applicant, Complainant, or other moving party.

The Joint Comments also point out that the standard conflicts with decades-old Commission policy in its RPPs and general Arkansas law in other civil matters placing the burden of proof on the moving party. The Joint Comments state that “[g]iven that this subject is fully addressed in the Commission’s RPPs, it is unnecessary to include a conflicting rule in the ASRs.” As such, the Joint Comments suggest Rule 4.02(e) should be deleted from the ASRs.

Finding: In preparing the draft ASRs, the Commission carefully considered how to allocate the burden of proof, especially considering the fact that in these types of cases, it will usually be the Provider who possesses the bulk of the information that will be needed to establish a case. The proposed rule places the burden of establishing a *prima facie* case on the moving party, with the burden shifting to the Provider to prove it has complied with the law. Placing the burden of proof on a respondent in such a matter seemed reasonable in these types of cases in light of these facts.

However, at the hearing, Ms. Tacker, the witness for the AG, was questioned about whether discovery disputes would be inevitable when the providers had control of all the information and the other party had the burden of proof. Ms. Tacker, joined by the Industry Providers witness Mr. Pickering, emphatically stated that the AG is “comfortable with making the burden of proof consistent with rules of practice and procedure partly because of the commitment that the telecom companies have made this past year in the eight guiding principles that they committed to among all of states attorney generals¹ [sic] and the telecoms that are represented here.” She further testified that the commitments include specific promises with regard to technology that will be implemented, information sharing, and assistance in the identification of any individuals. Ms. Tacker verified that she has “had the opportunity to engage with consultants and to—and intends to stay fluent with the technologies that are available.”

¹ The AG cites to those commitments, stating they include “specific promises with regard to technology that will be implemented . . . specific promises with regard to information sharing . . . and establishes a commitment from the companies, to assist in the identification of any individual [presumably, any individual in violation of these Acts].”

She also affirmed that the AG “intend[s] to review the reports that are filed.” Continuing, she stated:

Should the reports that are filed and our [consultant] inform us that the—the companies are not necessarily using current and applicable technology and there is no adequate justification for not using the current and applicable technology, we feel that we will be in a position because of the other enforcements we are taking to challenge whether that current and applicable technology is being used, even though the burden of proof is consistent with what’s in the rules of practice and procedure.

While these statements presume that the AG will be the only party to file a complaint and does not address all Providers, the Commission appreciates the AG’s commitment to stay informed on all issues arising under these Acts. The Commission observes that the AG’s input on these matters may be necessary and beneficial if a party other than the AG initiates a complaint concerning Acts 677 and 1094. With this understanding, the Commission finds that it is reasonable to delete Rule 4.02(e). If problems arise in the future in enforcements or complaints under the Acts, the Commission may reconsider whether the Rule should be further revised.

The Commission further provided a summary of the comments made during the February 20, 2020 hearing:

Office of the Arkansas Attorney General

Comment: General Rutledge led the fight against illegal robocalls and spoofing by working with state legislators to pass legislation to require telecommunication providers to submit annual reports to the Arkansas Public Service Commission to certify that all current and applicable technology is being employed to identify and block illegal robocalls and spoofing. As the Commission is aware, Acts 677 and 1074 of the 2019 legislative session were passed unopposed in both houses, demonstrating how determined Arkansans are to stopping illegal robocalls. The Attorney General was pleased to work with the Commission, Senator Dismang, and Representative Penzo in these efforts. The plague of illegal robocalls has been an issue the Attorney General has been addressing in all levels of government. General Rutledge has committed to take all measures necessary to advocate on behalf of Arkansans to stop these calls and prosecute those responsible. In addition, her efforts here with the Arkansas General Assembly, she has urged action by the Federal Communications Commission, supported President Trump’s signing of the TRACED Act, as well as engaging in public outreach efforts to educate consumers about the scams that are perpetrated by these illegal calls. The Attorney General’s efforts have coincided with the efforts of telecom companies to protect their customers from illegal robocalls. Earlier this year, General Rutledge joined a bipartisan public/private coalition

agreement with every state attorney general and twelve (12) phone companies to establish eight (8) guiding principles to fight illegal robocalls and pave the way for investigation and prosecution of these bad actors. This rulemaking is a crucial step in protecting Arkansans from illegal robocalls and spoofing. The Attorney General was pleased to, again, work with a number of Arkansas telecoms to reach consensus on the appropriate rules to implement Act 677 and 1074. As the Commission will see from the joint comments filed by the Attorney General and several of the telecoms in this docket, the State's top consumer advocate and the companies providing telephone service to Arkansans stand together in supporting the Commission's proposed rules with slight modifications addressed in the joint comments. The joint comments are a testament to the unified effort among industry and the Attorney General in how to address these rules, which will provide for crucial monitoring of the technology each company uses to reduce these illegal calls. Thank you for the opportunity to appear today. The Attorney General offers Senior Assistant Attorney General Sarah Tacker to sponsor the joint comments on behalf of the Attorney General, should the Commission have any questions.

Stephen Cuffman, on behalf of Verizon companies and Cox Arkansas Telecom

Comment: We support the comments [of the Attorney General's Office] and we support the joint comments filed by the AG and the industry providers.

Mr. Bill Atkinson, on behalf of Sprint

Comment: I can't add on the Attorney General's opening statement. I will just say that Sprint strongly supports the initial joint comments filed on November the 14th.

Mr. Tim Pickering, on behalf of AT&T

Comment: We totally agree with the Attorney General and fully support the comments.

Ms. Dawn Kelliher, on behalf of Windstream

Comment: Windstream also agrees with the Attorney General's comments.

Mr. Floyd Self, on behalf of the T-Mobile Companies

Comment: We agree with the comments and certainly urge adoption of the rules.

Mr. Jason Carter, on behalf of Conway Corporation

Comment: We have no objection and join in the comments of the Attorney General.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency states that the proposed rules have no financial impact. With respect to the total estimated cost by fiscal year to any private individual, entity, and business subject to the proposed rules, the agency estimates that the costs are negligible, stating that any “[a]dministrative costs incurred by industry providers in order to implement anti-spoofing procedures and annual reporting requirements are required by statute and are not materially affected by the rules.” In response to the total estimated cost by fiscal year to state, county, and municipal government to implement the rules, the agency states that “[a]dditional APSC staff could be required if the number of statutory complaints received for adjudication by the APSC warrants.”

LEGAL AUTHORIZATION: The proposed rules implement Act 677 of 2019, sponsored by Senator Jonathan Dismang, which regulated telecommunications service providers and third-party spoofing providers, and Act 1074 of 2019, sponsored by Representative Clint Penzo, which amended the law prohibiting spoofing and amended the law regulating telecommunications service providers and spoofing providers. Pursuant to Arkansas Code Annotated § 23-17-122(c)(1), the Arkansas Public Service Commission shall promulgate rules necessary to implement the statute, concerning annual certification of providers, as defined in the statute.

20. **ARKANSAS TEACHER RETIREMENT SYSTEM (Mr. Clint Rhoden, Ms. Martha Miller)**

a. **SUBJECT: ATRS Rule 6: Membership Rules**

DESCRIPTION: The Arkansas Teacher Retirement System proposes changes to its Rule 6: Membership Rules. The proposed amendments include the following substantive changes:

- ATRS reformatted and reorganized seven (7) current ATRS rules into one rule for consistency and professionalism.
- Although technically a “new” rule because the original rule has been renumbered and renamed, the language of the new rule is almost entirely transcribed verbatim from existing language in current ATRS Rules 6-1, 6-1A, 6-1B, 6-2, 6-10, 6-11, and 6-12.
- For ease in identifying changes, language in the new rule that remains the same as the current rules is underlined and appears as blue font. Any language that is added or amended, or has been relocated from its original order in the existing rules, is underlined and italicized, and appears as black font.

- The existing rules 6-1, 6-1A, 6-1B, 6-2, 6-10, 6-11, and 6-12, are, therefore, proposed to be repealed, and replaced with the new consolidated ATRS Rule 6 - Membership Rules.
- Definition of “Administrator” added as necessitated under Act 427 of 2019.
- Explanatory sentence added to the beginning of Section III, regarding Service Rules.
- Explanatory sentence added to the beginning of Section VII, regarding Privatized Employers and Nonprofit Corporations Rules.
- References added in Section VII to highlight ATRS’s federal requirements.
- A chart added to illustrate in-service legislation in chronological order and replaces the narrative in the rule, consistent with Act 297 of 2019.

Non-substantive changes include:

- Correct formatting issues, renumbering, grammar, and spelling, where appropriate.

Changes made after the public comment period include:

- Inserted phrase “as active member” in definition of “Administrator” to conform to statutory language.
- Corrected names of state agencies to track recent codification.
- Removed references to “and regulations” in light of Act 315 of 2019.
- Corrected numbering, grammar, and typographical errors where appropriate.
- Corrected date on the Chart for School District Employees, 1999-2007, Active, to July 1, 2000, to conform to statutory language.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on March 6, 2020. No public comments were received.

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

(1) I.A. – Is there a reason that “an active member” was omitted before “employed in a position grade GS13 or above or its equivalent” as that phrase is used in Ark. Code Ann. § 24-7-202(5)(A)(ii), as amended by Act 427 of 2019, § 5? **RESPONSE:** We are not aware of the reason the drafter omitted the phrase “an active member” in the definition of “Administrator,” and we agree that it should be re-inserted.

(2) I.B. – Should the reference be to the “*Division of Higher Education*” as referenced in Ark. Code Ann. § 24-7-801(1), as recently codified, and should the reference be to the “Department of Career Education” rather than “Department of Workforce Education” as used in Ark. Code Ann. § 24-7-901(1), as recently codified? **RESPONSE:** We agree that the names of state agencies should be changed to track recent codification.

(3) I.H. – Should the term “above” be “below” as “reciprocal system” is now defined following “preceding system”? **RESPONSE:** Yes, “above” should be changed to “below.”

(4) I.I. – See question (2) above referencing agency names. **RESPONSE:** We agree that the names of state agencies should be changed to track recent codification.

(5) I.J. – See question (2) above referencing agency names. **RESPONSE:** We agree that the names of state agencies should be changed to track recent codification.

(6) III.I. – It appears that this section is premised upon the current Rule 6-1A, § 7.B. and the latter portion of § 7.A. Is the first, or former, portion of the current § 7.A no longer necessary? **RESPONSE:** The portion of the current Rule 6-1A § 7.A. is no longer necessary.

(7) III.K. – It appears that this section is premised upon the current Rule 6-1A, § 9, but lacks the language “who received a refund of contributions.” Is that language no longer necessary? **RESPONSE:** The portion of the current Rule 6-1A § 9 (“who received a refund of contributions”) is no longer necessary.

(8) V. Intro – Does the reference to “above” refer to Section I. *Definitions*? **RESPONSE:** Yes.

(9) VI.G.4 – Is a “than” missing before “twelve”? **RESPONSE:** Yes, the word “than” should be inserted before “twelve.”

(10) VII. Intro – Should the citation be to Ark. Code Ann. § 24-7-202(18)(E)-(F)? **RESPONSE:** Yes, the correct citation should be as noted above.

(11) VII.A. – In light of Act 315 of 2019, is there a reason that the term “regulations” was retained? **RESPONSE:** We agree that the phrase “and regulations” should be deleted.

(12) VII.B. – See question (11) above referencing the term “regulations.”
RESPONSE: We agree that the phrase “and regulations” should be deleted.

(13) CHART, School District Employees, 1999-2007, Active – Should the date for “no election made by” be July 1, 2000, as in Ark. Code Ann. § 24-7-406(e)(1)(B)(i)(b), as recently codified and which provides “on or before July 1, 2000”? **RESPONSE:** We agree that the date should be changed as noted above.

(14) CHART, School District Employees, 2007 -, Inactive – Does “May elect contributory” only apply “if previously noncontributory” per Ark. Code Ann. § 24-7-406(e)(2)(C), as recently codified? **RESPONSE:** The phrase “if previously noncontributory” is not necessary since a member may be only either contributory or noncontributory. If a member decides to elect to become a contributory member, by implication the member’s current status is necessarily noncontributory.

(15) CHART, State Agency Employees – From where does the information for the State Agency Employees come? **RESPONSE:** Act 907 of 1999.

The proposed effective date is June 1, 2020.

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

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 24-7-305(b)(1), the Board of Trustees of the Arkansas Teacher Retirement System shall promulgate rules as it deems necessary from time to time in the transaction of its business and in administering the Arkansas Teacher Retirement System. The proposed changes include those made in light of Act 297 of 2019, sponsored by Senator Eddie Cheatham, which amended the law concerning member contributions under the Arkansas Teacher Retirement System; and Act 427 of 2019, sponsored by Representative John Maddox, which made technical corrections to Title 24 of the Arkansas Code concerning retirement and pensions under the Arkansas Teacher Retirement System.

b. SUBJECT: ATRS Rule 7: Reporting and Eligibility

DESCRIPTION: The Arkansas Teacher Retirement System proposes changes to its Rule 7: Reporting and Eligibility. The proposed amendments include the following substantive changes:

- Definition of “Full service year” added.
- Amends the language to reflect changes enacted under Acts 427, 594 and 595 of 2019 that the calculation of “final average salary” will exclude partial service years.
- Clarifies when sick leave, payments for claims of wrongful termination, or payments under an early retirement plan or contract non-renewal can be used as “salary” in the calculation of “final average salary” per Act 427 of 2019.
- Clarifies that “final average salary” is set annually by the Board for the highest three, up to five, years of service, within standards of actuarial appropriateness per Act 427 of 2019.
- Clarifies Proof of Service Credit as based on number of days or hours worked, and the days specified in a contract between an ATRS employer and member, including those employed in specialized support positions.
- Adds that additional employer contributions will be paid from additional funds appropriated per Act 594 of 2019. See Section VI.H.

Non-substantive changes include:

- Corrects formatting issues, renumbering, grammar, and spelling, where appropriate.
- Amends language for consistent use of defined terms, i.e., use “final average salary” instead of “final average compensation” per Act 595 of 2019.
- Significant rewrite of sentences for ease of understanding.

Changes made after the public comment period include:

- Inserted the word “additional” before “funds appropriated” to conform to Act 594 of 2019.
- Corrected typographical errors where appropriate.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on March 6, 2020. No public comments were received. The System provided the following summary of comments received from System staff and its responses thereto:

Martha Miller, ATRS

Comment: I.B.4.b.ii. – Should the phrase “and the member continues to work on-site for the employer” be removed?

Agency Response: We believe that the phrase should be removed.

Kevin Odom, ATRS

Comment: I.B.6 intro – Should the word “a” before “participating ATRS” be changed to “an”?

Agency Response: Yes.

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

(1) II.J. – Should “no” be “not” preceding “begin earlier”? **RESPONSE:** Yes, this should be corrected.

(2) V.C. – Should something be clarified? Is something missing from the mark-up or should “either” also be stricken through? **RESPONSE:** Yes, this is a typographical error, and the word “either” should be stricken.

(3) VI.H. – Should the term “additional” precede “funds appropriated” per the change to Ark. Code Ann. § 24-7-401(e)(7)(B) by Act 594, § 1? **RESPONSE:** Yes, adding the word “additional” would mirror the language of the Code and should be added.

The proposed effective date is June 1, 2020.

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

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 24-7-305(b)(1), the Board of Trustees of the Arkansas Teacher Retirement System shall promulgate rules as it deems necessary from time to time in the transaction of its business and in administering the Arkansas Teacher Retirement System. The proposed changes include those made in light of Act 427 of 2019, sponsored by Representative John Maddox, which made technical corrections to Title 24 of the Arkansas Code concerning retirement and pensions under the Arkansas Teacher Retirement System; Act 594 of 2019, sponsored by Representative Les Warren, which amended the law concerning fund contributions and fund rates under the Arkansas Teacher Retirement System; and Act 595 of 2019, also sponsored by Representative Maddox, which amended the law concerning credited service and voluntary retirement under the Arkansas Teacher Retirement System.

c. SUBJECT: ATRS Rule 8: Purchases and Refunds

DESCRIPTION: The Arkansas Teacher Retirement System proposes changes to its Rule 8: Purchases and Refunds. The proposed amendments include the following substantive changes:

- Allows for overpayments of “de minimus” amounts (\$25.00 under current Board resolution) to be credited to the member’s account and not refunded, unless requested by the member.

Non-substantive changes include:

- Corrects formatting issues, renumbering, grammar, and spelling, where appropriate.
- Amends language for consistent use of defined terms.
- Significant rewrite of some sentences for ease of understanding.

Changes made after the public comment period include:

- Corrects spelling, punctuation, and spacing where appropriate.
- Corrects placement of the phrase “after deduction and payment of federal taxes” to clarify that rollover payments are not affected.
- Language added to clarify purchases related to resolution of claims of wrongful termination.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on March 6, 2020. The System provided the following summary of all comments received and its responses thereto:

Various Parties

Comment: Punctuation and spacing corrections should be made in II.A., II.C., VI.A., and IX.D..

Agency Response: We agree.

Martha Miller, ATRS

Comment: IV.A. The word “periodically” is misspelled and should be corrected.

Agency Response: We agree.

Comment: Should VII.B.3. be revised to clarify that deduction of federal taxes are not due on funds that are rolled over to another qualified plan?

Agency Response: We agree. The phrase “after deduction and payment of federal taxes” has been moved to the end of the sentence so that it applies only if contributions are refunded directly to the member.

Comment: To clarify VIII.F., shouldn’t the word “in” be added last line before “ATRS”?

Agency Response: We agree.

Comment: To clarify IX.C.2., shouldn’t the phrase “in ATRS” be added after “five (5) or more years of actual service”?

Agency Response: We agree.

Comment: To clarify X.A and X.B., language has been added regarding how a member might acquire additional credited service and salary in cases of alleged wrongful termination.

Agency Response: We agree that additional language should be added.

The proposed effective date is June 1, 2020.

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

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 24-7-305(b)(1), the Board of Trustees of the Arkansas Teacher Retirement System shall promulgate rules as it deems necessary from time to time in the transaction of its business and in administering the Arkansas Teacher Retirement System.

d. SUBJECT: ATRS Rule 9: Retirement and Benefits

DESCRIPTION: The Arkansas Teacher Retirement System proposes changes to its Rule 9: Retirement and Benefits. The proposed amendments include the following substantive changes:

- ATRS reformatted and reorganized seven (7) current ATRS rules into one rule for consistency and professionalism, and added language where necessary to incorporate changes from the 2019 General Assembly Acts.
- Although technically a “new” rule because the original rule has been renumbered and renamed, the language of the new rule is substantially transcribed verbatim from existing language in current ATRS Rules 9-01, 9-02, 9-03, 9-04, 9-07, 9-08, and 9-09.
- For ease in identifying changes, language in the new rule that remains the same as the current rules is underlined and appears as blue font. Any language that is added or amended, or has been relocated from its original order in the existing rules, is underlined and italicized, and appears as black font.
- Reflects language of Act 595 of 2019, which allowed that if a member has accrued a full year of service credit for a fiscal year, the member’s retirement benefit will not begin before July 1 of the subsequent fiscal year.
- Reflects language of Act 209 of 2019 to allow that an ATRS disability retiree may work for a covered employer and still receive disability retirement if employed less than eighty (80) days, and removed the “waiver” requirement.
- Adds definition of “808 Employee” for clarity in the rule, to delineate employees affected by the Early Retirement Incentive Law of 1987 (Act 808 of 1987), which refers to a particular group of employees who may elect to have credited service in ATRS transferred to APERS.

Non-substantive changes include:

- Corrects formatting issues, renumbering, grammar, and spelling, where appropriate.

Changes made after the public comment period include:

- Corrects typographical errors.
- Clarifies paying agency and cost-sharing of payments to Act 808 employees who elect to transfer to APERS.
- Clarifies that a member may not draw ATRS disability and work indirectly for an ATRS covered employer.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on March 6, 2020. No public comments were received. The System provided the following summary of comments received from System staff and its responses thereto:

Clementine Infante, ATRS

Comment: I.A. – On line three “ATRS” is followed by “(ATRS).” Shouldn’t the first “ATRS” be deleted?

Agency Response: Yes, this appears to be a typographical error that should be corrected.

Martha Miller, ATRS

Comment: III.E. – For clarity, the word “retiree” should be added in the first line before “member” so that the beginning phrase reads: “If the marriage of the *retiree* member. . . .”

Agency Response: Yes, we agree.

Comment: VI.G. – For clarity, “that amount” should be changed to “it’s pro-rata portion.”

Agency Response: Yes, we agree.

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

(1) I.A. – Is the “ATRS” following “member of the Arkansas Public Employees Retirement” necessary? **RESPONSE:** This appears to be a typographical error and “ATRS” should be deleted.

(2) VI.D. – The proposed rule makes reference to “Act 808 employee contributions.” Is that correct? **RESPONSE:** Yes, that is correct.

(3) VI.F. – The proposed rule states that for Act 808 employees who elect to transfer to APERS, ATRS will pay the monthly benefits. Is that correct or would it be APERS that would pay the monthly benefits?

RESPONSE: We agree that APERS should be identified as the paying system instead of ATRS.

(4) VII.D.2 – This section appears to be premised upon Ark. Code Ann. § 24-7-704(a)(4)(B). If that is the case, is there a reason that the qualifying language for the member indirectly employed was not included to make clear the parameters of the precluded employment?

RESPONSE: We assume that the drafter’s intent was to paraphrase the language of the Code rather than simply repeat the language. We suggest that the proposed language be modified to cite to the specific section of the Code in question.

(5) VIII. Intro – Will the reference to “policy 9-4” be accurate if the proposed changes to Rule 9 are adopted? **RESPONSE:** We agree that “Policy 9-4” will no longer be accurate. Appropriate reference should be “Rule 9.VII.H. above.”

(6) X.A. – Is the term “of” missing after “copy”? **RESPONSE:** Yes, we agree that the word “of” should be added after “copy.”

The proposed effective date is June 1, 2020.

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

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 24-7-305(b)(1), the Board of Trustees of the Arkansas Teacher Retirement System shall promulgate rules as it deems necessary from time to time in the transaction of its business and in administering the Arkansas Teacher Retirement System. The proposed changes include those made in light of Act 209 of 2019, sponsored by Representative Michelle Gray, which amended the law concerning the rehiring of disability retirees of the Arkansas Teacher Retirement System, and Act 595 of 2019, sponsored by Representative John Maddox, which amended the law concerning credited service and voluntary retirement under the Arkansas Teacher Retirement System.

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

DESCRIPTION: The Arkansas Teacher Retirement System proposes changes to its Rule 10: T-Drop and Return to Service. The proposed amendments include the following substantive changes:

- Changed language regarding plan deposits consistent with Act 296 of 2019 to clarify the calculation of plan deposits for T-DROP and early participants.

- Amended definition of “Early participant” consistent with Act 296 of 2019, which repealed A.C.A. § 24-7-1314 and moved the language regarding early participants into § 24-7-1306.

Act 296 of 2019 did not affect the benefits of T-DROP and early participants.

Non-substantive changes include:

- Corrected formatting issues, renumbering, grammar, and spelling, where appropriate.

Changes made after the public comment period include:

- Corrected punctuation, grammar, and numbering where appropriate.
- Clarified that employer contributions are still required for working retirees who return to work for a covered employer even though employee contributions are no longer required.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on March 6, 2020. No public comments were received. The System provided the following summary of comments received from System staff and its responses thereto:

Martha Miller, ATRS

Comment: For clarity, punctuation and grammar errors should be corrected in II. Title, III., IV.A., IV.E.

Agency Response: We agree.

Comment: II.E. should be made more specific about what part of Rule 9 (Rule 9.VII.) outlines return-to-work rules applicable to disability retirees.

Agency Response: We agree.

Otis Willis, ATRS

Comment: An additional sentence should be added at the end of II.D. to emphasize that, although no employee contributions are required on salary paid to a retiree who has returned to work, employer contributions are still required.

Agency Response: We agree.

The proposed effective date is June 1, 2020.

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

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 24-7-305(b)(1), the Board of Trustees of the Arkansas Teacher Retirement System shall promulgate rules as it deems necessary from time to time in the transaction of its business and in administering the Arkansas Teacher Retirement System. The proposed changes include those made in light of Act 296 of 2019, sponsored by Senator Eddie Cheatham, which amended the law concerning deposits in the Teacher Deferred Retirement Option Plan and repealed certain provisions concerning the Teacher Deferred Retirement Option Plan.

f. **SUBJECT: ATRS Rule 11: Survivors and Domestic Relations Order**

DESCRIPTION: The Arkansas Teacher Retirement System proposes changes to its Rule 11: Survivors and Domestic Relations Orders. The proposed amendments include the following substantive changes:

- ATRS reformatted and reorganized four (4) current ATRS rules into one rule for consistency and professionalism.
- Although technically a “new” rule because the original rule has been renumbered and renamed, the language of the new rule remains the same as in current ATRS Rules 11-01, 11-02, 11-03 and 11-05, and incorporates necessary changes under Acts 210 and 427 of 2019.
- For ease in identifying changes, language in the new rule that remains the same as the current rules is underlined and appears as blue font. Any language that is added or amended, or has been relocated from its original order in the existing rules, is underlined and italicized, and appears as black font. Grammatical changes for ease of understanding are not italicized since they do not change the meaning or effect of the rule.
- The existing rules 11-01, 11-02, 11-03 and 11-05, are proposed to be repealed and replaced with the new consolidated ATRS Rule 11 – Survivors and Domestic Relations Orders.
- Act 210 of 2019 allowed a deceased member’s dependent child to receive benefits until 23 years of age if the child remains in school, and the rule is amended to reflect that change. *See* Rule 11 IV. Dependent Children Benefits.
- Act 427 of 2019 defines “final average salary” as the highest salaries earned by a member in a state fiscal year, and the language in the rule is changed to reflect the definition. *See* Rule 11 IV.H.
- Clarifies that a deceased member’s spouse will receive the member’s accumulated contributions, *plus interest*, if they waive their spousal annuity. *See* Rule 11 III.B.2.

Non-substantive changes include:

- Grammatical changes for ease of understanding and consistency, renumbering for consolidated rule where appropriate, and correction of formatting issues and typographical errors.

Changes made after the public comment period include:

- Corrects grammar, numbering, and typographical errors.
- Deletes language regarding calculation of the amount of lump-sum death benefits as this is set by Board resolution.
- Deletes language that payment of a lump-sum death benefit is dependent upon a member's submission of an ATRS approved lump-sum death beneficiary form since the requirement has no basis in law.
- Deletes language that payments to alternate payee under a Qualified Domestic Relations Order (QDRO) are calculated only on service credit earned during the marriage since this requirement has no basis in law.
- Restores language regarding lost payees and the binding nature of communication addressed to the last filed address in a member's record.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on March 6, 2020. No public comments were received. The System provided the following summary of comments received from System staff and its responses thereto:

Martha Miller, ATRS

Comment: VII.C. – The word “a” should be added in the first line before “QDRO.”

Agency Response: We agree.

Comment: VII.C.7. – Should the phrase “includes only service credit earned by the member during the marriage” be deleted?

Agency Response: Yes, this phrase is not a legal requirement, is misleading, and should be deleted.

Comment: VI.A.1. and VI.A.3. should be deleted because the Board has determined how to calculate the lump-sum death benefit by resolution.

Agency Response: We agree. This language is redundant and would be confusing if the Board changes the calculation in the future. Paragraphs 1. and 3. should be deleted and remaining paragraphs should be re-numbered accordingly.

Comment: VII.E. should be deleted because it contains an error: Lump-sum death benefits will be paid to eligible beneficiaries regardless of whether the member has filed an ATRS beneficiary form.

Agency Response: We agree. The remaining paragraphs should be re-numbered as appropriate.

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

(1) I.C. – Should the reference be to “lump-sum death beneficiaries” in accord with I.B.? **RESPONSE:** Yes, the word “death” should be added.

(2) IV.B.2. – Is the System comfortable that “without interruption” has the same meaning as “stays continuously enrolled” as used in Ark. Code Ann. § 24-7-710(c)(2)(B)(i), as amended by Act 210 of 2019, § 1?

RESPONSE: Yes, ATRS uses these phrases interchangeably.

(3) V.D. – What was the rationale for changing “shall” as used in current Rule 11-1, IV.D., to “may”? **RESPONSE:** We are not aware of the drafter’s rationale for changing “shall” to “may.” As ATRS currently administers the payment of survivor benefits, the results will be the same whether the word is “shall” or “may.”

(4) VIII.B. – Was there a reason that the rewrite of current rule 11-5. II. omits the binding nature of any communication addressed to the last filed address, per Ark. Code Ann. § 24-7-734(a)(2)? **RESPONSE:** We are not aware of the reason the drafter omitted the language in question, but believe that it should be added back to this provision.

The proposed effective date is June 1, 2020.

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

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 24-7-305(b)(1), the Board of Trustees of the Arkansas Teacher Retirement System shall promulgate rules as it deems necessary from time to time in the transaction of its business and in administering the Arkansas Teacher Retirement System. The proposed changes include those made in light of Act 210 of 2019, sponsored by Representative Stu Smith, which amended the law concerning eligibility for a dependent child annuity under the Arkansas Teacher Retirement System, and Act 427 of 2019, sponsored by Representative John Maddox, which made technical corrections to Title 24 of the Arkansas Code concerning retirement and pensions under the Arkansas Teacher Retirement System.

D. Proposed Rules Recommending Expedited Process and Procedure for Occupational Licensure Pursuant to Ark. Code Ann. § 17-1-106(c), as Amended by Act 820 of 2019

- 1. DEPARTMENT OF AGRICULTURE, ARKANSAS WATER WELL CONSTRUCTION COMMISSION (Mr. Wade Hodge)**
 - a. Arkansas Water Well Construction Commission Rules**
- 2. DEPARTMENT OF HEALTH, DIVISION OF HEALTH RELATED BOARDS AND COMMISSIONS, STATE BOARD OF PHARMACY (Mr. John Kirtley, Ms. Brenda McCrady)**
 - a. Rule 1—General Operations**
 - b. Rule 2—Pharmacists**
- 3. DEPARTMENT OF HEALTH, DIVISION OF HEALTH RELATED BOARDS AND COMMISSIONS, STATE BOARD OF PHYSICAL THERAPY (Ms. Nancy Worthen)**
 - a. State Board of Physical Therapy – Act 820 Amendments**
- 4. DEPARTMENT OF LABOR AND LICENSING, DIVISION OF OCCUPATIONAL & PROF. LICENSING BOARDS AND COMMISSIONS, APPRAISER LICENSING AND CERTIFICATION BOARD (Ms. Diana Piechocki)**
 - a. Appraiser Licensing and Certification Board – Act 820 Amendments**
- 5. DEPARTMENT OF LABOR AND LICENSING, DIVISION OF OCCUPATIONAL & PROF. LICENSING BOARDS AND COMMISSIONS, ELEVATOR SAFETY BOARD (Ms. Denise Oxley)**
 - a. Rules of the Elevator Safety Board**
- 6. DEPARTMENT OF LABOR AND LICENSING, DIVISION OF OCCUPATIONAL & PROF. LICENSING BOARDS AND COMMISSIONS, BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND PROFESSIONAL SURVEYORS (Ms. Heather Richardson, Ms. Denise Oxley)**
 - a. Rules of the Board of Licensure for Professional Engineers and Professional Surveyors**

7. DEPARTMENT OF LABOR AND LICENSING, DIVISION OF OCCUPATIONAL & PROF. LICENSING BOARDS AND COMMISSIONS, STATE BOARD OF PUBLIC ACCOUNTANCY (Mr. Jimmy Corley)

a. Rule 19 Licensure for Military Members/Veterans/Spouses

E. Agency Updates on Delinquent Rulemaking under Act 517 of 2019.

- 1. Department of Agriculture, Arkansas Bureau of Standards (Act 501)**
- 2. Department of Agriculture, Veterinary Medical Examining Board (Act 169)**
- 3. Department of Commerce, State Insurance Department (Acts 500, 698, 823)**
- 4. Department of Commerce, Office of Skills Development (Act 179)**
- 5. Department of Corrections, Arkansas Correctional School (Act 1088)**
- 6. Department of Education, Division of Elementary and Secondary Education (Acts 536, 640, 843)**
- 7. Department of Education, Division of Higher Education (Act 549)**
- 8. Department of Energy and Environment, Pollution Control and Ecology Commission (Act 1067)**
- 9. Department of Finance and Administration, Alcoholic Beverage Control Division (Act 691)**
- 10. Department of Finance and Administration, Director (Act 822)**
- 11. Department of Health (Acts 216, 708, 811)**
- 12. Department of Health, Division of Health Related Boards and Commissions, State Board of Chiropractic Examiners (Act 645)**
- 13. Department of Health, Division of Health Related Boards and Commissions, State Board of Nursing (Act 837)**
- 14. Department of Health, Division of Health Related Boards and Commissions, Arkansas Board of Podiatric Medicine (Act 112)**
- 15. Highway Commission (Act 468)**

16. Department of Transformation and Shared Services, Office of State Procurement (Act 422)

F. Adjournment.