

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

August 21, 2015

Co-Chairs:

The Subcommittee on Administrative Rules and Regulations met on Wednesday, July 15, 2015 at 8:30 a.m. and Wednesday, August 19, 2015 at 9:00 a.m. in Room A, MAC.

Wednesday, July 15, 2015 Meeting

- 1. Since Act 1258 of 2015 goes into effect on July 22, 2015, the Subcommittee adopted the attached rules concerning review and approval of state agency rules. These will be effective on the effective date of the act.**
- 2. The Subcommittee reviewed the following rules that were deferred from May 13, 2015 meeting:**

ARKANSAS STATE MEDICAL BOARD (Kevin O'Dwyer)

- a. Regulation 6; Licensing and Practice of Occupational Therapists**

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

DEPARTMENT OF EDUCATION (Lori Freno, item a; Jennifer Davis, item b)

- a. Rules Governing Standards for Accreditation of Arkansas Public Schools and School Districts**
- b. Public School Choice Act of 2015**

**DEPARTMENT OF HEALTH, CENTER FOR HEALTH PROTECTION
(Bernie Bevill)**

- a. Rules and Regulations for Control of Sources of Ionizing Radiation**

**DEPARTMENT OF ARKANSAS HERITAGE, ARKANSAS HISTORIC
PRESERVATION PROGRAM (Frances McSwain, Patricia Blick)**

- a. Arkansas Historic Rehabilitation Income Tax Credit Program Rules**
- b. Historic Preservation Restoration Grants Program Rules**

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

- a. Revisions to Team Decision Making Policy and Procedures**
- b. Revisions to Notifications of Parents of a Sibling of a Juvenile Taken into
DHS Custody**
- c. Revisions to Differential Response Policy and Procedures**

STATE BOARD OF PHARMACY (John Kirtley)

- a. Regulation 3; Pharmacy Technicians**
- b. Regulation 5; Long Term Care Facilities**
- c. Regulation 9; Pharmaceutical Care/Patient Counseling**
- d. Regulation 11; Criminal Background Checks**

STATE PLANT BOARD (Tim Chesser)

- a. Arkansas Weights and Measures Regulations and Fuel and Lubricants
Regulations**

PUBLIC EMPLOYEES RETIREMENT SYSTEM (Jay Wills, Gail Stone)

- a. Regulation 408; Regular Interest**

**COMMISSION FOR PUBLIC SCHOOL ACADEMIC FACILITIES AND
TRANSPORTATION (Lori Freno)**

- a. Appendix B to the Rules Governing the Academic Facilities Partnership
Program**

- 4. The following rules were deferred to the August 19, 2015 meeting of the Administrative Rules and Regulations Subcommittee:**

DEPARTMENT OF HEALTH, HEALTH FACILITIES SERVICES (Connie Melton)

- a. Rules and Regulations for Critical Access Hospitals in Arkansas**
- b. Rules and Regulations for Hospitals and Related Institutions in Arkansas**

BOARD OF EXAMINERS IN SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY (Betty Bass)

- a. Rules and Regulations**

Wednesday, August 19, 2015 Meeting

1. The Subcommittee adopted the attached report of the Executive Subcommittee which noted its approval of an emergency rule proposed by the Arkansas Department of Health, Arkansas State Athletic Commission.
2. The Subcommittee reviewed and approved the following rules that were deferred from the July 15, 2015 meeting:

DEPARTMENT OF HEALTH, HEALTH FACILITIES SERVICES (Robert Brech)

- a. Rules and Regulations for Critical Access Hospitals in Arkansas
- b. Rules and Regulations for Hospitals and Related Institutions in Arkansas

BOARD OF EXAMINERS IN SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY (Betty Bass, Jamie Pultro, and Sharon Flynn)

- a. Rules and Regulations

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

ARKANSAS COMMUNITY CORRECTION (Dina Tyler)

- a. Public Release of Offender Information
- b. Reentry Facility Program
- c. Policy and Procedure Development
- d. Electronic Monitoring after 120 Days Served

DEPARTMENT OF EDUCATION (Jennifer Davis)

- a. 2015 Open Enrollment Public Charter School New Application (Emergency and Proposed)
- b. 2015 District Conversion Public Charter School New Application (Emergency and Proposed)
- c. Enrollment of Military Dependents
- d. Kindergarten through 12th Grade Immunization Requirements in Arkansas Public Schools

**DEPARTMENT OF HEALTH, HEALTH SYSTEMS LICENSING AND
REGULATION/COSMETOLOGY (Robert Brech)**

- a. **Rules and Regulations Pertaining to Cosmetology in Arkansas**

LIVESTOCK AND POULTRY COMMISSION (Bruce Holland)

- a. **Concentration Points of Cattle**
- b. **Regular and Special Cattle Sales Regulations**

OIL AND GAS COMMISSION (Lawrence Bengal)

- a. **B-9: Dry Gas Well Plugging Methods and Procedures**
- b. **B-43: Establishment of Drilling Units for Gas Production from Conventional and Unconventional Sources of Supply in Certain Areas not Covered by Field Rules (Fayetteville Shale)**

ARKANSAS STATE POLICE (Major Lindsey Williams, Sergeant Michael Moyer, Mary Claire McLaurin)

- a. **Licensing and Regulation of Private Investigators, Private Security Agencies, Alarm Systems Companies, Polygraph Examiners, and Voice Stress Analysis Examiners**

- 4. **While Representative Bell made a motion to vote on disapproval of the following two rules, stating his grounds that the Arkansas Constitution prohibits a taking of property without just compensation, a majority of the quorum was not obtained to take a vote on disapproval. The following two rules were subsequently reviewed and approved:**

**DEPARTMENT OF ENVIRONMENTAL QUALITY, WATER DIVISION
(Sam Ledbetter, Arkansas Public Policy Panel and the Ozark Society and former Congressmen Vic Synder and Ed Bethune)**

- a. **Regulation No. 5; Liquid Animal Waste Management Systems Third Party Rulemaking by Ozark Society and the Arkansas Public Policy Panel**
- b. **Regulation No. 6; Regulations for State Administration of the National Pollutant Discharge Elimination System Third Party Rulemaking by Ozark Society and the Arkansas Public Policy Panel**

Respectfully submitted,

Senator David Sanders, Co-Chair

Representative Andy Davis, Co-Chair

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

CONCERNING REVIEW AND APPROVAL OF STATE AGENCY RULES

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

(a) As used in these rules:

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

(B) "Rule" does not mean:

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

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

(iii) Intraagency memoranda; and

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

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

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

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

(iii) An institution of higher education.

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

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

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

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

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

shall have expired by the 15th of the month prior to the Subcommittee meeting date at which the state agency would like the proposed rule to appear on the agenda; and

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

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

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

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

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

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

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

(C) A summary of the proposed rule; and

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

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

(4)(A) Review and Approval. Upon conclusion of its review of the proposed rule, the Chair of the Subcommittee shall state, "Without objection, the rule is considered reviewed and approved."

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

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

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

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

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

(ii) If a state agency presenting a proposed rule to the Subcommittee indicates its intent or agreement to revise a proposed rule in response to

discussions by the Subcommittee, and revision of the rule in such a manner would not violate any of the requirements of the Administrative Procedure Act, the Subcommittee may review and approve the proposed rule with the revisions agreed to by the state agency.

(5)(A)(i) **Referral of Proposed Rules.** The Subcommittee may refer a rule to a committee of the General Assembly or another subcommittee of the Legislative Council for the committee's or subcommittee's consideration.

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

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

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

(6)(A) **Statutory Requirement for Review by a Specific Subject Matter Committee.** If a statute requires a proposed rule to be reviewed or considered by a specific subject matter committee or subcommittee, the subject matter committee or subcommittee shall consider the proposed rule before the Subcommittee undertakes review and approval of the proposed rule.

(B)(i) Either chair of the Subcommittee may waive the requirement of subsection (d)(6)(A) if he or she determines that prior review by the subject matter committee or subcommittee will or has already resulted in an undue delay in the review and approval process.

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

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

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

(1) A proposed rule approved by the Administrative Rules and Regulations Subcommittee shall be considered approved by the Legislative Council upon adoption by the Legislative Council of the Subcommittee's report in which the rule is contained.

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

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

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

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

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

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

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

(ii) Upon conclusion of the Executive Subcommittee's review of the proposed emergency rule, the rule shall be considered approved unless a majority of a quorum present request a vote regarding approval of the proposed emergency rule. If the Executive Subcommittee votes on the issue of approval, the proposed emergency rule shall be approved unless a majority of a quorum present vote for the proposed emergency rule not to be approved.

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

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

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

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

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

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

ARKANSAS LEGISLATIVE COUNCIL

Officers

Senator Bill Sample
Senate Co-Chair

Representative David L. Branscum
House Co-Chair

Senator Terry Rice
Senate Co-Vice Chair

Representative Mark Lowery
House Co-Vice Chair



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August 10, 2015

Senator David Sanders, Senate Co-Chair
ALC - Administrative Rules and Regulations
Via Electronic Mail

Representative Andy Davis, House Co-Chair
ALC - Administrative Rules and Regulations
Via Electronic Mail

Dear Senator Sanders & Representative Davis:

Pursuant to Act 1258 of 2015, the Executive Subcommittee met on August 10, 2015 to consider the Request by the Arkansas State Athletic Commission, Arkansas Department of Health, to immediately implement Emergency Rule to Reduce Weight Cutting in the Amateur Class of Combative Sports.

The proposed emergency rule was approved and shall be effective as of 12:01 a.m. August 12, 2015.

A handwritten signature in black ink that reads "Bill Sample". The signature is written in a cursive style with a large, stylized "B" and "S".

Senator Bill Sample, Senate Chair
Executive Subcommittee

A handwritten signature in black ink that reads "David Branscum". The signature is written in a cursive style with a large, stylized "D" and "B".

Rep. David Branscum, House Chair
Executive Subcommittee