ADMINISTRATIVE RULES AND REGULATIONS SUBCOMMITTEE
OF THE
ARKANSAS LEGISLATIVE COUNCIL

Room A, MAC
Little Rock, Arkansas

Tuesday, December 12, 2017
1:00 p.m.

A. Call to Order.

B. Reports of the Executive Subcommittee on Emergency Rules.

C. Report of the Senate and House Interim Committees on Public Health, Welfare and Labor regarding the following rule that was referred by the full Legislative Council to the committees for a recommendation to the Administrative Rules and Regulations Subcommittee:

1. <u>STATE BOARD OF PHARMACY</u> (John Kirtley)

a. <u>SUBJECT</u>: Regulation 7; Drug Products/Prescriptions

<u>DESCRIPTION</u>: The changes follow:

1. Update definitions to match FDA definitions and glossary terms to add terms for biological product, biosimilar, biosimilar product, drug, generic drug, and interchangeable biological product.

2. Clarify language regarding pharmacists' ability to substitute products that are either generically equivalent, interchangeable biological products, or manufacturer authorized generics.

(The changes in 1 and 2 above are necessary to clarify confusion regarding whether or not biologic products are "drugs" and to proactively show how pharmacists can follow federal guidance in substituting those products shown to be interchangeable once products meet those qualifications.)

3. Add language to show that a pharmacist cannot dispense more of a schedule II narcotic medication than a prescriber can prescribe.

PUBLIC COMMENT: A public hearing was held on September 26, 2017, and the public comment period expired on that date. The board submitted a public comment summary, attached hereto, detailing all of the comments received regarding these rules. The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The Arkansas State Board of Pharmacy is authorized to make reasonable rules and regulations, not inconsistent with law, to carry out the purposes and intentions of the pharmacy laws of this state that the board deems necessary to preserve and protect the public health. Ark. Code Ann. § 17-92-205(a)(1).

The Board shall determine which drugs are generically equivalent as defined in § 17-92-101, relying on standards scientifically supported and generally accepted in the field of pharmacy, and, in making this determination, the Board may use a nationally recognized reference source that meets the requirements of this act. *See* § 17-92-503(c).

Additionally, a portion of the rules implements Act 820 of 2017, sponsored by Senator Jeremy Hutchinson, which requires the board to promulgate rules limiting the amount of Schedule II narcotics that may be dispensed by licensees of the board. *See* Ark. Code Ann. § 17-92-205(d), as amended by Act 820.

D. Reports on Administrative Directives and Administrative Memoranda Pursuant to Act 1258 of 2015:

1. Report of the Department of Correction on Administrative Directives for the Quarters ending June 30, 2017 and September 30, 2017 (Solomon Graves)

2. Report of the Arkansas Parole Board on Administrative Directives for the Quarters ending June 30, 2017 and September 30, 2017 (Brooke Cummings)

E. Rules Deferred from the November 14, 2017 Meeting of the Administrative Rules and Regulations Subcommittee:

1. ALCOHOLIC BEVERAGE CONTROL (Mary Robin Casteel)

a. SUBJECT: Section 1.27; Application for Transfer of Location of Premises

DESCRIPTION: Act 1112 of 2017 requires applicants for private club permits to obtain an ordinance from the municipality or county in which the club seeks to operate prior to filing an application with the ABC. The proposed rule change amends the existing rule to implement the requirements of Act 1112 of 2017, regarding private clubs.

PUBLIC COMMENT: A public hearing was held on September 20, 2017. The public comment period expired on September 18, 2017. No comments were received.

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

Will proposed subsection (4) apply to private clubs (including a large event center private club) seeking to transfer location within the *same* county or municipality as its current location? Or is it solely applicable to those seeking to transfer the location of premises to a *different* county or municipality from its current location? **RESPONSE:** It will apply to any transfer, including those within the same municipality or county.

This rule was promulgated on an emergency basis and was approved at a meeting of the Executive Subcommittee held on September 6, 2017. The proposed effective date for permanent promulgation is pending legislative review and approval.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: Changes to the rule were made in light of **Act 1112 of 2017**, sponsored by Senator Eddie Joe Williams, which served to authorize the governing bodies of counties and municipalities to initiate the permitting process for private clubs. Arkansas Code Annotated § 3-9-222(a)(1), as amended by Act 1112, § 1, allows an application for a permit to operate as a private club to be made first to the governing body of the county or municipality in which the private club seeks to be located. If the governing body of the county or municipality approves by ordinance the application for a permit made under subsection (a)(1) of the statute, the Alcoholic Beverage Control Division ("Division") may then issue a permit to operate as a private club to the applicant for the proposed location. *See* Ark. Code Ann. § 3-9-222(a)(2), as amended by Act 1112, § 1.

The instant proposed rule requires that any application to transfer a private club permit, including a large event center private club permit, likewise be accompanied by an ordinance of approval. The Alcoholic Beverage Control Board is authorized and directed to establish rules and regulations with respect to permits issued under the provisions of Ark. Code Ann. § 3-

9-222 to assure compliance with the provisions and to prohibit any permittee from engaging in the unlawful sale of alcoholic beverages. *See* Ark. Code Ann. § 3-9-225. The Director of the Division shall adopt and promulgate such rules and regulations as shall be necessary to carry out the intent and purposes of any alcohol control acts enforced in this state. *See* Ark. Code Ann. § 3-2-206(a). By the grant of this power to adopt rules and regulations, it is intended "that the director shall be clothed with 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).

b. SUBJECT: Section 1.34; Continuation of Permit Conditioned Upon Operation of Originally Proposed Business

DESCRIPTION: Act 1112 of 2017 requires applicants for private club permits to obtain an ordinance from the municipality or county in which the club seeks to operate prior to filing an application with the ABC. This rule is being amended to ensure that private clubs remain compliant with the local ordinance authorizing their operations.

PUBLIC COMMENT: A public hearing was held on September 20, 2017. The public comment period expired on September 18, 2017. No comments were received.

This rule was promulgated on an emergency basis and was approved at a meeting of the Executive Subcommittee held on September 6, 2017. The proposed effective date for permanent promulgation is pending legislative review and approval.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: Changes to the rule were made in light of **Act 1112 of 2017**, sponsored by Senator Eddie Joe Williams, which served to authorize the governing bodies of counties and municipalities to initiate the permitting process for private clubs. Arkansas Code Annotated § 3-9-222(a), as amended by Act 1112, § 1, allows an application for a permit to operate as a private club to be made first to the governing body of the county or municipality in which the private club seeks to be located, and if the governing body approves by ordinance the application for a permit made under subsection (a)(1) of the statute, the Alcoholic Beverage Control Division ("Division") may then issue a permit to operate as a private club to the applicant for the proposed location.

Pursuant to Ark. Code Ann. § 3-9-225, the Alcoholic Beverage Control Board is authorized and directed to establish rules and regulations with respect to permits issued under the provisions of Ark. Code Ann. § 3-9-

222 to assure compliance with the provisions and to prohibit any permittee from engaging in the unlawful sale of alcoholic beverages. Further authority for the proposed changes can be found in Ark. Code Ann. § 3-2-206(a), which provides that the director of the Division shall adopt and promulgate such rules and regulations as shall be necessary to carry out the intent and purposes of any alcohol control acts enforced in this state. By the grant of this power to adopt rules and regulations, it is intended "that the director shall be clothed with 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).

2. DEPARTMENT OF LABOR, BOARD OF ELECTRICAL EXAMINERS (Denise Oxley)

a. SUBJECT: Rule 010.13-008: The National Electrical Code

DESCRIPTION: The summary follows:

Rule 010.13-008. This rule would be amended to update the National Electrical Code from the 2014 edition to the 2017 edition, with the continued exception that arc fault circuit interrupters will not be required in the kitchen and laundry room.

Rule 010.13-023. This rule reflecting the history and effective dates of the board's rules would be amended to include the foregoing with an effective date of December 15, 2017.

PUBLIC COMMENT: A public hearing was held on September 19, 2017, and the public comment period expired on that date. Public comments were as follows:

Don Iverson, Midwest Field Representative, National Electrical Manufacturers Association (NEMA)

Mr. Iverson submitted written comments to the board on behalf of the over 400 member companies of NEMA. NEMA supports the adoption of the 2017 National Electrical Code (NEC) as the standard for performance of electrical work in Arkansas. The organization has a long history of supporting timely adoption of the NEC by state and local jurisdictions. Mr. Iverson states the organization believes that current codes mean safer and more economically prosperous communities.

NEMA requested that the board remove the Arkansas exception to the NEC adoption that would eliminate the requirement for arc fault circuit

interrupters (AFCI) in kitchen and laundry areas. NEMA cited other groups involved in fire and electrical safety that support AFCI expansion, including: the National Fire Protection Association, the Electrical Safety Foundation International, the National Association of State Fire Marshals, the National Electrical Contractors Association, the International Association of Electrical Inspectors, the Independent Electrical Contractors Association, the Underwriters Laboratories, and the U. S. Consumer Product Safety Commission.

RESPONSE: No change was made as a result of the comment.

Mike Stone, West Coast Field Representative, NEMA

Mr. Stone provided verbal testimony before the board that reiterated the position of NEMA as stated by Mr. Don Iverson.

RESPONSE: No change was made as a result of the comment.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The cost to the regulated party will vary depending on the nature and design of any particular construction project. This is particularly true for non-residential construction. Further, many of the large electrical contractors are already complying with the changes due to industry practice, client needs, contract requirements, or liability issues.

For residential construction, the cost estimate is under $150 per residence based on average construction. Specifically, this is itemized as follows:

a. If the new residence is to have lighting outlet(s) in a crawl space under the home, new requirements would increase costs less than $50.

b. There is a new requirement for a minimum 20 amp branch circuit for residential garage receptacles that would increase costs less than $100 if applicable.

Note: The 2014 National Electrical Code (NEC) would have required AFCI protection in the kitchen and laundry areas. This was specifically amended out of the 2014 NEC as adopted in Arkansas for statewide standards. Adoption of the 2017 NEC would continue these two exceptions, so that AFCI protection would not be required in the kitchen and laundry areas.

LEGAL AUTHORIZATION: The Board of Electrical Examiners is empowered to adopt rules and regulations to establish statewide standards for the construction, installation, and maintenance of electrical facilities

and the performance of electrical work. Ark. Code Ann. § 20-31-104(a). Pursuant to Arkansas Code Annotated § 20-31-104(b), the Board was required to adopt the National Electrical Code, 1990 edition, of the National Fire Protection Association. If there are updates and new editions to the National Electrical Code, the board, after notice and public hearing, shall adopt such changes and editions which it determines are necessary to ensure public health and safety. Ark. Code Ann. § 20-31-104(c).

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

1. DEPARTMENT OF CAREER EDUCATION (Dr. Charisse Childers and Trenia Miles)

a. SUBJECT: Adult Education Program Policies Update

DESCRIPTION: The Adult Education Policies and Procedures have been updated to align more effectively with state and federal laws, especially the Workforce Innovation and Opportunity Act (WIOA).

Policies regarding the *Termination of an Award to a Local Grantee: Voluntary* and *Termination of an Award to a Local Grantee: Involuntary* have been added to address the need for changes in the Local Education Agency administering a program.

The *Correctional/Institutional Federal Funding* policy has been amended to indicate that not more than 20 percent, rather than 8.25 percent of federal funds can be used for the education of institutionalized adults, including those in correctional or institutions.

A statement indicating that when funding is no longer provided to a LEA, a final inventory list must be provided and equipment purchased with Adult Education funds must be transferred back to the Arkansas Department of Career Education, Adult Education Division has been added to the *Purchase/Disposal of Equipment* policy.

In the *Enrollment Policy: Minimum Age Adult Education* and *Enrollment Policy: Private, Parochial or Home School Minimum Age* policies, the minimum passing score on the official GED practice test was updated for alignment with the new passing score as determined by the test provider.

An exception to the test score requirements for minor students who are court ordered was added to the *Enrollment Policy: Minimum Age Adult Education* policy.

A note was added to several policies requiring any alternate forms of documentation referenced in the policy regarding minimum age requirements for enrollment in adult education be approved by the Adult Education Division.

A policy regarding *Termination of Employment* for those paid with Adult Education funds was added.

A *Year-Round Education Services* policy on the continual operation of local programs throughout the year has been added.

A *Non-Profit Community-Based Organization Director Qualifications* policy has been added.

A *Waivers for Adult Education Teachers Without a License* policy has been added.

A *High School Equivalency Test* policy has been added.

A *Student Confidentiality* policy has been added.

An *Adult Education/Post-Secondary Co-Enrollment* policy has been added.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on October 20, 2017. The agency provided the following summary of the sole comment it received and its response:

Carol Birth, Director, Phillips Community College Adult Education
"Note: An exception to the minimum test score are allowable when a 16/17 year old has been court ordered to enroll in adult education. These individuals must adhere to all other requirements set forth in this policy."
Just a note on grammar:

An exception to the minimum test score IS allowable or
Exceptions to the minimum test score ARE allowable…

Everything else looks good.
AGENCY RESPONSE: Your email has been read and will be considered as we move forward on the decisions related to the rule. Specifically, there is a plan to implement the change to correcting the grammatical error. Thank you for your comment and your support of Adult Education and the students we serve.

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

(1) Are these policies promulgated by the Career Education and Workforce Development Board? **RESPONSE:** Yes, these rules were

brought to the Career Education and Workforce Development Board first before moving forward.

(2) These proposed changes are simply updates to the current rules, correct? None of the changes are based on any recent act or legislation? **RESPONSE:** You are correct in that these rules are updates to the current ones.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The authority and responsibility of the Department of Career Education and the Career Education and Workforce Development Board ("Board") shall include general control and supervision of all programs of vocational, technical, and occupational education in secondary institutions. *See* Ark. Code Ann. § 25-30-107(b)(1). Pursuant to Arkansas Code Annotated § 25-30-102(c)(2)(A)–(B), the Board shall administer the career education and workforce development programs administered by the Board and shall adopt rules to administer the Board and the programs developed by the Board.

2. ARKANSAS ETHICS COMMISSION (Graham Sloan)

a. SUBJECT: Rules on Prohibition of Gifts from Lobbyists to Certain Public Officials under Ark. Const. Art. 19, § 30

DESCRIPTION: The Ethics Commission is amending the existing set of Rules on Prohibition of Gifts from Lobbyists to Certain Public Officials to reflect statutory changes made during the 91st General Assembly to implement and administer the provisions of Acts 207 and 312 of 2017 and Act 2 of the first Extrordinary Session of 2017.

- In accordance with Act 2 of the first extraordinary special Session of 2017, the exceptions to the definition of "Gift" were expanded and amended to reflect a change to Arkansas Constitution, Article 19, § 30. The amendments also include some subsections that were renumbered, and some rewordings for clarity, as follows:

§ 1900 Definitions
(b) Gift – (1) As used in these rules, the term "gift" means:

(A) Any payment, entertainment, ~~advance,~~ service, or anything of value, unless consideration of equal or greater value has been given therefor~~.~~ ; or

(B) Advance or loan.

(2)"Gift" does not include:

~~(xi)(a)~~(K)(1) The use of one (1) or more rooms or facilities owned, operated, or otherwise utilized by a state agency or political subdivision of the state for the purpose of conducting a meeting of a specific governmental body.

(2) As used in this subdivision §1900(K)(1):

(a) "Rooms or facilities" includes without limitation property belonging to a state agency or political subdivision used in connection with a meeting of a specific governmental body such as projectors, microphones, and computer equipment; and

(b) "State agency" means every department, division, office, board, commission, and institution of this state, including state-supported institutions of higher education;

(L) Nonalcoholic beverages provided to attendees at a meeting of a civic, social, or cultural organization or group;

(M) Food and nonalcoholic beverages provided to participants in a bona fide panel, seminar, or speaking engagement at which the audience is a civic, social, or cultural organization or group; and

(N) Anything of value provided by a recognized political party when serving as the host of the following events to all attendees as part of attendance at the event:

(1) The official swearing-in, inaugural, and recognition events of constitutional officers and members of the General Assembly; and

(2) An official event of a recognized political party so long as all members of either house of the General Assembly affiliated with the recognized political party are invited to the official event;

- In accordance with Act 2 of the first extraordinary special Session of 2017, the newly defined terms, "Recognized Political Party" and "Advanced or Loan" were added to reflect a changes to Arkansas Constitution, Article 19, § 30, as follows:

(n) **Recognized political party**- As used in these rules, the term "recognized political party**"** means a political party that:

(1)(A)(i)At the last preceding general election polled for its candidate for Governor in the state or nominees for presidential electors at least three percent (3%) of the entire vote cast for the office; or

(ii) Has been formed by the petition process under § 7-7-205.

(B) When a recognized political party fails to obtain three percent (3%) of the total votes cast in an election for the office of Governor or nominees for presidential electors, it shall cease to be a recognized political party; and

(o) Advance or Loan- As used in these rules, the term "advance or loan" means a sum of money that is borrowed with the expectation that it be paid back, regardless of whether interest is charged. (B) "Advance or loan" does not include an advance or loan made in the ordinary course of business by a: (i) Financial institution; or (ii) Business that regularly and customarily extends credit.

PUBLIC COMMENT: A public hearing was held on October 20, 2017. The public comment period expired on October 13, 2017. No public comments were submitted to the agency. The proposed effective date is December 31, 2017.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The Arkansas Ethics Commission is authorized, pursuant to the Arkansas Administrative Procedure Act, to promulgate reasonable rules and regulations to implement and administer applicable provisions of law under the commission's jurisdiction and to govern procedures before the commission, matters of commission operations, and all investigative and disciplinary procedures and proceedings. Ark. Code Ann. § 7-6-217(g). These rules implement Act 207 of 2017, sponsored by Senator Eddie Joe Williams, Act 312 of 2017, sponsored by Representative Jeremy Gillam, and Act 2 of the First Extraordinary Session of 2017, sponsored by Representative Jeremy Gillam, all relating to the definitions of "gift," "recognized political party," and "advance or loan" as defined by the ethics laws and the Arkansas Constitution, Article 19, § 30.

b. SUBJECT: Rules on Political Committees

DESCRIPTION: The Ethics Commission is amending the existing set of Rules on Political Committees to reflect statutory changes made during the 91st General Assembly to implement and administer the provisions of Act 616 of 2017.

- In accordance with Act 616 of 2017, this amendment provides that financial reports for Political Action Committees ("PAC") shall be filed in electronic format with the SOS, mandates that such filings shall be posted on the SOS website and be searchable, the S.O.S shall not accept a paper filing if the notarized affidavit was not submitted with the first report in the election cycle. It further adds an exception to electronic filing for a PAC if it does not have access to the technology necessary to submit reports in an electronic format and when submitting electronically would be a substantial hardship, PAC may file reports in paper form. These amendments reflect a changes to Ark. Code Ann. § 7-6-214 and Ark. Code Ann. § 7-6-215 (d)(5).

§ 502 Reporting by Political Action Committees

(a)(1) Within fifteen (15) calendar days after the end of each calendar quarter, approved political action committees are required to file a quarterly report with the Secretary of State, including the following information:

(5)(A) A report is timely filed if it is~~: (i) delivered by hand or mailed to the Secretary of State, properly addressed, postage prepaid, and bearing a postmark indicating that it was received by the post office or common carrier on or before the date that the report is due if the report is filed in paper form; or (ii)~~ filed in electronic form through the official website of the Secretary of State on or before the date that the report is due if the Secretary of State offers electronic filing of committee reports.

~~**(B)** The Secretary of State shall accept via facsimile any report if the original is received by the Secretary of State within ten (10) days of the date of transmission.~~

~~**(C)**~~ **(B)(i)** The Secretary of State ~~may~~ shall receive reports in a readable electronic format that is acceptable to the Secretary of State and approved by the Arkansas Ethics Commission.

~~**(D)** If the Secretary of State offers electronic filing of committee reports: (i) the Arkansas Ethics Commission shall approve a format used by the Secretary of State for the filing of committee reports in electronic form to ensure that all required information is requested; and (ii)~~

(ii) The Arkansas Ethics Commission shall approve the format used by the Secretary of State for the filing of political action committee reports in electronic form to ensure that all required information is requested.

(iii) The official website of the Secretary of State shall allow for searches of committee report information filed in electronic form.

(iv) A political action committee under this section may file reports in paper form under this section if:

(a) The political action committee does not have access to the technology necessary to submit reports in electronic form; and

(b) Submitting reports in electronic form would constitute a substantial hardship for the political action committee.

(v) A report submitted in paper form in accordance with §502(B)(iv) is timely filed if it is delivered by hand or mailed to the Secretary of State, properly addressed, postage prepaid, and bearing a postmark indicating that it was received by the post office or common carrier on or before the date that the report is due.

PUBLIC COMMENT: A public hearing was held on October 20, 2017. The public comment period expired on October 13, 2017. No public comments were submitted to the agency. The proposed effective date is December 31, 2017.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The Arkansas Ethics Commission is authorized, pursuant to the Arkansas Administrative Procedure Act, to promulgate reasonable rules and regulations to implement and administer applicable provisions of law under the commission's jurisdiction and to govern procedures before the commission, matters of commission operations, and all investigative and disciplinary procedures and proceedings. Ark. Code Ann. § 7-6-217(g). These rules implement Act 616 of 2017, sponsored by Representative Warwick Sabin, which amended the law concerning the filing and publication of certain campaign finance reports.

c. SUBJECT: Rules on Local-Option Ballot Question Committees

DESCRIPTION: The Ethics Commission is amending the existing set of Rules on Local-Option Ballot Question Committees to reflect statutory changes made during the 91st General Assembly to implement and administer the provisions of Act 721 of 2017.

- In accordance with Act 721 of 2017, this amendment removes the requirement that L-OBQC that are entities that are spending its own money (as opposed to raising money from sources, for example, a corporation or a professional society) need not list contributions received on its financial reports, because it has not received contributions,

reflecting a change to Ark. Code Ann. § 3-8-706(2)(B) and (C). Likewise, there were some style changes made to improve the readability and clarity:

§ 806 STATEMENT OF ORGANIZATION

(a)(1)(A) A local-option ballot question committee shall file a ~~statement of organization~~ Local-Option Ballot Question Committee Statement of Organization with the Arkansas Ethics Commission within five (5) days of receiving contributions or making expenditures in excess of five hundred dollars ($500) for the purpose of expressly advocating the qualification, disqualification, passage, or defeat of a local-option ballot question.

(B) The Arkansas Ethics Commission shall maintain the statement of organization until notified of the committee's dissolution.

(2) A local-option ballot question committee failing to file a statement of organization required by this section shall be subject to a late filing fee not exceeding fifty dollars ($50.00) for each day the statement remains not filed.

(b) The statement of organization for a local-option ballot question committee as defined in § 800 (i)(1) of these rules shall include the following information:

(1) The name, street address, and where available, the telephone number of the committee. A committee address and telephone number may be that of the residence of an officer or director of the committee;

(2) The name, street address, and where available, the telephone number of the treasurer and other principal officers and directors of the committee;

(3) The name and address of each financial institution in which the committee deposits money or anything else of monetary value;

(4) The name of each person who is a member of the committee. A person that is not an individual may be listed by its name without also listing its own members, if any; and

(5) A brief statement identifying the substance of each local-option ballot question, the qualification, disqualification, passage, or defeat of which the committee seeks to influence or of each legislative question, the passage or defeat of which the committee seeks to influence, and if known, the date each local-option ballot or legislative question shall be presented to a popular vote at an election.

(c) The statement of organization for a local-option ballot question committee as defined in § 800(i)(2) of these rules shall include the following information:

(1)(A) The name, the street address, and if available, the telephone number of the committee.

(B) A committee's address and telephone number may be that of the residence of an officer or a director of the committee;

(2) The name, street address, and where available, the telephone number of the treasurer and the other principal officers and directors of the committee;

(3) The name and address of each financial institution in which the committee deposits money or anything else of monetary value;

(4) The name of each person who is a member of the committee. A person that is not an individual may be listed by its name without also listing its own members, if any; and

(5) A brief statement identifying the substance of each ballot question, the qualification, disqualification, passage, or defeat of which the committee seeks to influence, and if known, the date each ballot or legislative question shall be presented to a popular vote at an election.

- In accordance with Act 721 of 2017, this amendment removes the requirement that L-OBQC report a list of paid canvassers, reflecting a change to Ark. Code Ann. § 7-9-407(2)(A)(x). Likewise, in accordance with Act 721 of 2017, this amendment amends the reporting requirements for certain types of Local Option Ballot question Committees, reflecting a change to Ark. Code Ann. § 3-8-706(2)(B) and (C), in accordance.

§ 808 CONTENTS OF FINANCIAL REPORTS

A financial report of a local-option ballot question committee, individual person, or elected official as required by § 807, shall contain the following information:

(1) The name, address, and telephone number of the local-option ballot question committee, individual person, or elected official filing the report;

(2) For a local-option ballot question committee as defined in § 800 (i)(1) of these rules:

~~**(j)** A list of all paid canvassers, officers, and directors and the amount each person was paid;~~

~~**(k)**~~ **(j)** A list of all expenditures by category, including without limitation the following: (i) advertising; (ii) direct mail; (iii) office supplies; (iv) travel; (v) expenses; and (vi) telephone;

~~**(l)**~~ **(k)** The total amount of nonitemized expenditures made during the period covered by the financial report; and

~~**(m)**~~ **(l)** The name and street address of each person to whom expenditures totaling one hundred dollars ($100) or more were made by the committee or on behalf of the committee by an advertising agency, public relations firm, or political consultant, together with the date and amount of each separate expenditure to each person during the period covered by the financial report and the purpose for each expenditure.

(3) For a local-option ballot question committee as defined in § 800(i)(2) of these rules:

(a) The total amount of contributions made by the committee to another ballot or legislative question committee reported during the period covered by the financial report; and

(b) The cumulative amount of contributions under subdivision (3)(a) of this section.

~~**(3)**~~ **(4)** For an individual person:

(a) The total amount of expenditures made by the individual person or on behalf of the individual person by an advertising agency, public relations firm, or political consultant during the period covered by the financial report;

(b) The cumulative amount of expenditures for each local-option ballot question; and

(c) The name and street address of each person to whom expenditures totaling one hundred dollars ($100) or more were made by the individual person or on behalf of the individual person by an advertising agency, public relations firm, or political consultant, together with the date and amount of each separate expenditure to each person during the period covered by the financial report and the purpose for each expenditure.

~~**(4)**~~ **(5)** For an elected official using public funds:

PUBLIC COMMENT: A public hearing was held on October 20, 2017. The public comment period expired on October 13, 2017. No public comments were submitted to the agency. The proposed effective date is December 31, 2017.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The Arkansas Ethics Commission is authorized, pursuant to the Arkansas Administrative Procedure Act, to promulgate reasonable rules and regulations to implement and administer applicable provisions of law under the commission's jurisdiction and to govern procedures before the commission, matters of commission operations, and all investigative and disciplinary procedures and proceedings. Ark. Code Ann. § 7-6-217(g). These rules implement Act 721 of 2017, sponsored by Senator David Sanders, concerning amendments to the Disclosure Act for Initiative Proceedings, registration and reporting requirements, and filing deadlines.

d. SUBJECT: Rules on Independent Expenditures

DESCRIPTION: The Ethics Commission is amending the existing set of Rules on Independent Expenditures to reflect statutory changes made during the 91st General Assembly to implement and administer the provisions of Act 616 of 2017.

- In accordance with Act 616 of 2017, the change to Ark. Code Ann. §7-6-214, 215, 216, and 220 as follows:

§ 702 Reporting of Independent Expenditures

(e)(1) A report is timely filed if it is ~~either hand-delivered or mailed to the Secretary of State, properly addressed, postage prepaid, bearing a postmark indicating that it was received by the post office or common carrier~~ filed in electronic form through the official website of the Secretary of State on or before the date that the report is due.

~~**(2)** The Secretary of State shall accept via facsimile any report if the original is received by the Secretary of State within ten (10) days of the date of transmission.~~

~~**(3)**~~ **(2)(A)** The Secretary of State ~~may~~ shall receive reports in a readable electronic format that is acceptable to the Secretary of State and approved by the Arkansas Ethics Commission.

(B) The Arkansas Ethics Commission shall approve the format used by the Secretary of State for the filing of independent expenditure

reports in electronic form to ensure that all required information is requested.

(C) The official website of the Secretary of State shall allow for searches of independent expenditure report information filed in electronic form.

(3) A person or independent expenditure committee under this section may file reports in paper form under this section if:

(A) The person or independent expenditure committee does not have access to the technology necessary to submit reports in electronic form; and

(B) Submitting reports in electronic form would constitute a substantial hardship for the person or independent expenditure.

(4) A report submitted in paper form in accordance with §702(e)(3) is timely filed if it is delivered by hand or mailed to the Secretary of State, properly addressed, postage prepaid, and bearing a postmark indicating that it was received by the post office or common carrier on or before the date that the report is due.

PUBLIC COMMENT: A public hearing was held on October 20, 2017. The public comment period expired on October 13, 2017. No public comments were submitted to the agency. The proposed effective date is December 31, 2017.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The Arkansas Ethics Commission is authorized, pursuant to the Arkansas Administrative Procedure Act, to promulgate reasonable rules and regulations to implement and administer applicable provisions of law under the commission's jurisdiction and to govern procedures before the commission, matters of commission operations, and all investigative and disciplinary procedures and proceedings. Ark. Code Ann. § 7-6-217(g). These rules implement Act 616 of 2017, sponsored by Representative Warwick Sabin, which amended the law concerning the filing and publication of certain campaign finance reports.

e. SUBJECT: Rules on Gifts

DESCRIPTION: The Ethics Commission is amending the existing set of Rules on Gifts to reflect statutory changes made during the 91st General

Assembly to implement and administer the provisions of Acts 312 and 449 of 2017.

- In accordance with Act 312 of 2017, the exceptions to the definition of "Gift" were expanded and amended to reflect a change to Ark. Code Ann. §21-8-402 (5)(B) as follows:

§ 300 Definitions

(b) **Gift** – As used in these rules, the term "gift" means any payment, entertainment,
advance, services, or anything of value, unless consideration of equal or greater value has been given therefor. It does not include:

(18) Anything of value provided by a political party under § 7-1-101 or § 7-7-205 when serving as the host of the following events to all attendees as part of attendance at the event:

(A) The official swearing-in, inaugural, and recognition events of constitutional officers and members of the General Assembly; and

(B) An official event of a recognized political party so long as all members of either house of the General Assembly affiliated with the recognized political party are invited to the official event.

- In accordance with Act 449 of 2017, the definitions of "legislator" and "public official" were amended to reflect a change to Ark. Code Ann. §21-8-402 as follows. Likewise, In accordance with Act 449 of 2017, a new term was defined, "recognized political party", to reflect the new term in Ark. Code Ann. §21-8-402.

§ 300 Definitions

(d) **Legislator** – As used in these rules, the term "legislator" means any person who is a member of the General Assembly, a quorum court of any county, ~~or~~ the city council or board of directors of any municipality, or a member of a school district board of directors.

(i) **Public Official** – (1) As used in these rules, the term "public official" means a legislator or any other person holding an elective office of any governmental body, whether elected or appointed to the office, and shall include such persons during the time period between the date they were elected and the date they took office.

(2) "Public official" includes without limitation a member of a school district board of directors.

(j) Public Servant – As used in these rules, the term "public servant" means all public officials, public employees, and public appointees.

(k) Recognized political party- (1) As used in these rules, the term "recognized political party" means a political party that:

(A) At the last preceding general election polled for its candidate for Governor in the state or nominees for presidential electors at least three percent (3%) of the entire vote cast for the office; or

(B) Has been formed by the petition process under § 7-7-205.

(2) When a recognized political party fails to obtain three percent (3%) of the total votes cast in an election for the office of Governor or nominees for presidential electors, it shall cease to be a recognized political party.

~~(k)~~ **(l) Registered Lobbyist** – As used in these rules, the term "registered lobbyist" means a person who is registered as a lobbyist pursuant to the provisions of Ark. Code Ann. § 21-8-601 et seq.

PUBLIC COMMENT: A public hearing was held on October 20, 2017. The public comment period expired on October 13, 2017. No public comments were submitted to the agency. The proposed effective date is December 31, 2017.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The Arkansas Ethics Commission is authorized, pursuant to the Arkansas Administrative Procedure Act, to promulgate reasonable rules and regulations to implement and administer applicable provisions of law under the commission's jurisdiction and to govern procedures before the commission, matters of commission operations, and all investigative and disciplinary procedures and proceedings. Ark. Code Ann. § 7-6-217(g). These rules implement Act 312 of 2017, sponsored by Representative Jeremy Gillam, amending the definition of the term "gift" as defined by Ark. Code Ann. § 21-8-402(5), and Act 449 of 2017, sponsored by Representative DeAnn Vaught, concerning the applicability of certain ethics laws to members of school district boards of directors.

f. SUBJECT: Rules on Conflicts

DESCRIPTION: The Ethics Commission is amending the existing set of Rules on Conflicts to reflect statutory changes made during the 91st General Assembly to implement and administer the provisions of Act 449 of 2017.

- In accordance with Act 449 of 2017, the definition of "legislator" was amended to reflect a change to Ark. Code Ann. 21-8-402(9) as follows:

§ 400 Definitions

(h) Legislator – As used in these rules, the term "legislator" means any person who is a member ~~of the General Assembly, a quorum court of any county, or the city council or board of directors of any municipality.~~ of:

1. The General Assembly;
2. A quorum court of any county;
3. The city council or board of directors of any municipality; or
4. A member of a school district board of directors.

- In accordance with Act 449 of 2017, the definition of "public official" was amended to reflect a change to Ark. Code Ann. 21-8-301(4) as follows:

§ 400 Definitions

(n) Public official – (1) As used in these rules, the term "public official" means a ~~legislator or any other~~ person holding an elective office of any governmental body, whether elected or appointed to the office~~, and shall include such persons during the time period between the date they were elected and the date they took office.~~

(2) "Public official" includes without limitation:

(A) A person holding an elective office of any governmental body, whether elected or appointed to the office, during the time period between the date he or she is elected or appointed and the date he or she takes office; and

(B) A member of a school district board of directors.

- In accordance with Act 449 of 2017, this Rule amendment adds a prohibition that a member of a school district board of directors shall not appear for compensation on behalf of another person, firm, corporation, or entity before the member's school, in accordance with Ark. Code Ann. §21-8-802, as follows:

§ 404 Appearances

No legislator shall appear for compensation on behalf of another person, firm, corporation, or entity before any entity of:

State government, if the legislator is a member of the General Assembly;

The legislator's county government, if the legislator is a member of a quorum court; ~~or~~

The legislator's municipal government, if the legislator is a member of a city council or board of directors of a municipality~~.~~ ;or

The legislator's school district board of directors, if the legislator is a member of a school district board of directors.

This section shall not:

Apply to any judicial proceeding or to any hearing or proceeding which is adversarial in nature or character;

Apply to any hearing or proceeding on which a record is made by the entity of state government, entity of county government, ~~or~~ entity of municipal government, or school district board of directors;

Apply to an appearance which is a matter of public record;

Apply to ministerial actions; or

Preclude a legislator from acting on behalf of a constituent to determine the status of a matter without accepting compensation.

An appearance which is a matter of public record as provided in subdivision (b)(3) of this section may be made by:

(1)(A) Filing a written statement within twenty-four (24) hours with the agency head of the entity of state government, entity of county government, ~~or~~ entity of municipal government, or school district before which an appearance is sought.

PUBLIC COMMENT: A public hearing was held on October 20, 2017. The public comment period expired on October 13, 2017. No public comments were submitted to the agency. The proposed effective date is December 31, 2017.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The Arkansas Ethics Commission is authorized, pursuant to the Arkansas Administrative Procedure Act, to promulgate reasonable rules and regulations to implement and administer applicable provisions of law under the commission's jurisdiction and to govern procedures before the commission, matters of commission operations, and all investigative and disciplinary procedures and proceedings. Ark. Code Ann. § 7-6-217(g). These rules implement Act 449 of 2017, sponsored by Representative DeAnn Vaught, concerning the applicability of certain ethics laws to members of school district boards of directors.

g. SUBJECT: Rules on Campaign Finance and Disclosure

DESCRIPTION: The Ethics Commission is revising the existing set of Rules on Campaign Finance & Disclosure to reflect statutory changes made during the 91st General Assembly to implement and administer the provisions of Acts 318, 616, 721, and 787 of 2017.

- In accordance with Act 721 of 2017, these headings were amended to reflect a change to Ark. Code Ann. § 7-6-207 as follows:

§ 236 Reports of Contributions-Candidates for ~~Office Other Than School District, Township, Municipal or County Office~~ State or District Office, Including District Judge

§ 237 Contents of Reports of Contributions and Expenditures-Candidates for ~~Office Other Than School District, Township, Municipal or County Office~~ State or District Office, Including District Judge

§ 238 Exceptions to Filing Reports of Contributions-Candidates for ~~Office Other Than School District, Township, Municipal or County Office~~ State or District Office, Including District Judge

- In accordance with Act 787 of 2017, the following defined term was added to the definitions section to reflect a change to Ark. Code Ann. § 7-1-101 as follows:

§ 200 Definitions
(u) (1) "Printed campaign materials" means:

(a) Literature mailed to an elector that is intended to or calculated to influence the vote of an elector in an election in this state, including without limitation signs, banners, flyers, and pamphlets; and

(b) Yard signs and push cards intended to or calculated to influence the vote of an elector in an election in this state.

(2) "Printed campaign materials" does not mean political paraphernalia, including without limitation stickers, buttons, pens, T-shirts, nail files, or other similar trinkets.

~~(u)~~ **(v)** "Prohibited political action committee" means any person who receives contributions from one or more persons in order to make contributions to candidates, ballot question committees, legislative question committees, political parties, county political party committees, or other political action committees but who does not meet the requirements of an approved political action committee. "Prohibited political action committee" shall not include a political party that meets the definition of "political party" under Ark. Code Ann. § 7-1-101 or the requirements of Ark. Code Ann. § 7-7-205, the candidate's own campaign committee, a county political party committee, an exploratory committee, or a ballot or legislative question committee.

~~(v)~~ **(w)** "Public office" means any office created by or under authority of the laws of the State of Arkansas, or of a subdivision thereof, that is filled by the voters, except a federal office.

~~(w)~~ **(x)** "Surplus campaign funds" means any balance of campaign funds over expenses incurred as of the day of the election except for:

(A) Carryover funds; and

(B) Any funds required to repay loans made by the candidate from his or her
personal funds to the campaign or to repay loans made by financial institutions
to the candidate and applied to the campaign.

"Surplus campaign funds" does not include campaign signs, campaign literature, and other printed materials that were: (i) purchased by the campaign; (ii) reported on the appropriate contribution and expenditure report for the campaign at the time of the purchase; and (iii) retained for use in a future campaign by the same candidate.

~~(x)~~ **(y)** "Written instrument" means a check on which the contributor is directly liable or which is written on a personal account, trust account, partnership account, business account, or other account that contains the contributor's funds. In the case of a contribution by credit card or debit card, "written instrument" includes without limitation: (i) A paper record signed by the cardholder, provided that the paper record contains the following information for the cardholder at the time of making the contribution: (a) Valid name; (b) Complete address; (c) Place of business; (d) Employer; and (e) Occupation; or (ii) In the case of a contribution made through the internet, an electronic record created and transmitted by the cardholder, provided that the electronic record contains the following information for the cardholder at the time of making the contribution: (a) Valid name; (b) Complete address; (c) Place of business; (d) Employer; and (e) Occupation.

- In accordance with Act 1280 of 2015, the following "per se" use of campaign funds was eliminated based on the fact that candidates can no longer accept campaign contributions from another campaign, to reflect a change to Ark. Code Ann. § 7-6-203 as follows:

§ 209 Personal Expenses-Prohibited Uses

Campaign funds may not be used to pay personal expenses. The following expenses are considered "personal expenses" per se:

~~**(f) Contributions to the Campaigns of Others** -Generally, campaign funds may not be used to make a contribution to another candidate's campaign. Contributions are construed as a personal matter and transferring a contribution from one campaign to another person's campaign is considered a "personal use" of the funds. However, this general rule is a rebuttable presumption. There could be times and circumstances when a candidate may attend a fund raiser for another candidate and the purpose of attending would be to further the candidate's own campaign. Therefore, buying a ticket to the fund raiser would be permitted. Factual circumstances thus may justify a departure from the general rule that making a campaign contribution constitutes a personal use of funds. As noted in § 210 below, for this reason, the Commission will review the facts of each such situation separately with the rebuttable~~

~~presumption that such use is prohibited as a personal use of campaign funds.~~

NOTE: removing this also removes a footnote, early in the Rules, lowering by one number all remaining footnotes in the Rules.

- The following amendment was made to improve the readability and accuracy of the Rules, as follows.

§ 227 Carryover Funds-Used as Officeholder Expenses

(a) In addition to the uses of carryover funds as described in §§ 220-223 above, an officeholder with carryover funds may use such funds for future office-related or future campaign expenses. Nothing shall prohibit a person at any time from disposing of his or her carryover funds in the same manner that surplus campaign funds could be expended.

(b) If funds are retained pursuant to § 226(c) of ~~this chapter~~ these rules, the candidate shall establish a carryover account, separate from any personal or other account. Any carryover funds transferred to this account shall be used only for future campaigns involving the candidate in a non-federal office and/or legitimate expenses in connection with the candidate's public office.

- In accordance with Act 318 of 2017, Rule 228 was amended to reflect changes to Ark. Code Ann. § 7-6-203 (g)(4)(C) and 7-6-230, as follows:

§ 228 Carryover Funds-Time Frame for Reporting Expenditures

(c) (1) The carryover fund reports of a candidate for state or district office shall be filed with the Secretary of State.

(2) The carryover fund reports of a candidate for state or district office filed with the Secretary of State shall be filed in electronic form through the official website of the Secretary of State.

(3) The Arkansas Ethics Commission shall approve the format used by the Secretary of State for the filing of carryover fund reports in electronic form under § 228(c)(2) to ensure that all required information is requested.

(4) The official website of the Secretary of State shall allow for searches of carryover fund report information required to be filed in electronic form under §228(c)(2).

~~(c)~~ **(d)** The carryover fund reports of a candidate for school district, township, municipal, or county office shall be filed with the county clerk of the county in which the election was held. The carryover fund reports of a candidate for state or district office shall be filed with the Secretary of State.

(e) A candidate required to file carryover fund reports in electronic form under § 228(c) may file reports in paper form under this section if:

(1) The candidate does not have access to the technology necessary to submit reports in electronic form; and

(2) Submitting reports in electronic form would constitute a substantial hardship for the candidate.

(f) (1) A candidate filing reports in paper form under § 228 (e) shall submit with his or her first paper report in an election cycle a notarized affidavit on a form prepared by the Secretary of State declaring that:

(a) The candidate does not have access to the technology necessary to submit reports in electronic form;

(b) Submitting reports in electronic form would constitute a substantial hardship for the candidate; and

(c) The candidate agrees to file all other reports in paper form for the duration of the election cycle.

(2) The Secretary of State shall not accept a report in paper form under § 228 (e) if a notarized affidavit was not submitted with the first paper report in the election cycle.

(g) (1) The Secretary of State shall make available to candidates wishing to file reports in paper form under this section:

(a) Information on the deadlines for filing required reports; and

(b)(i) Appropriate forms and instructions for complying with the deadlines.

(ii) The Arkansas Ethics Commission shall approve the forms and instructions used by the Secretary of State to ensure that all required information is requested.

(2) Reports shall be filed on the forms furnished by the Secretary of State, except that computer-generated contribution and expenditure reports shall be accepted by the Secretary of State and the Arkansas Ethics Commission provided that all of the requisite elements are included.

(h) (1) A report submitted in paper form under this section other than a preelection report is timely filed if it is either hand delivered or mailed to the Secretary of State, properly addressed, and postage prepaid, bearing a postmark indicating that it was received by the post office or common carrier on the date that the report is due.

(2) The Secretary of State shall accept a report via facsimile, provided the original is received by the Secretary of State within ten (10) days of the date of facsimile transmission.

(i) The Secretary of State shall make available carryover fund reports submitted in paper form, and affidavits accompanying reports filed in paper form, on a portion of the official website of the Secretary of State.

- The following amendment was made to improve the readability and accuracy of the Rules.

§ 229 Retirement of Debt

(b) For purposes of this section, "*net debts outstanding"* means the total amount of unpaid debts, loans and obligations incurred with respect to the campaign, less the sum of:

(1) The total cash on hand available to pay those debts, loans and obligations, including: currency; balances on deposit in banks and other financial institutions; checks; drafts; money orders; traveler's checks; certificates of deposit; treasury bills; and any other candidate or committee investments valued at fair market value; and

(2) The total amount owed to the candidate or political committee in the form of credits, refunds of deposits, returns or receivables, or a commercially reasonable amount based on the ~~collectibility~~ collectability of those credits, refunds, returns, or receivables.

- The following amendment was made to improve the readability and accuracy of the Rules.

§ 230 Retirement of Past Campaign Debts

(d) A candidate, whose prior campaign debts relate to funds other than personal loans or personal contributions, may not use surplus funds from a current campaign to repay debts relating to a different campaign. Instead, the candidate must retire the prior debt in the manner described in § 229 ~~above~~ of these rules.

- In accordance with Act 318 of 2017, Rule 233 was amended to reflect a change to Ark. Code Ann. § 7-6-207(a)(3), as follows:

§ 233 Records of Contributions and Expenditures

(a) A candidate, a political party, or a person acting on a candidate's behalf shall keep records of all contributions and expenditures in a manner sufficient to evidence compliance with these rules and the campaign finance disclosure laws, Ark. Code Ann. § 7-6-201 *et seq.*

(b) The records shall be made available to the Arkansas Ethics Commission and the prosecuting attorney in the district in which the candidate resides and such records shall be maintained for a period of no less than four (4) years.

(c) If a candidate ends a campaign with carryover funds as defined by Ark. Code Ann. § 7-6-201(3) and § 200(d) of these rules, he or she must maintain records of such carryover fund for no less than ten (10) years or until such time as the funds are expended completely or disposed of, whichever occurs first.

(d) The information required by these reporting and disclosure rules, including any and all Contribution and Expenditure Reports, shall, upon proper filing, constitute a public record and shall be available within twenty-four (24) hours of the reporting deadline to all interested persons and the news media.

(e) The official website of the Secretary of State shall allow for searches of campaign contribution and expenditure report information required to be filed in electronic form under § 236(c)(1).

- In accordance with Act 318 of 2017, Rule 236 was amended to reflect a change to Ark. Code Ann. § 7-6-207(a)(3), as follows:

§ 236 Reports of Contributions-Candidates for ~~Office Other Than School District, Township, Municipal or County Office~~ State or District Office, Including District Judge

Required Reports and Time for Filing

(a) For all candidates for state or district office ~~other than school district, township, municipal, or county office~~, including district judge, the candidate or any person acting on the candidate's behalf shall comply with the filings required by these sections beginning with the first reporting period, either quarterly, monthly, or preelection, in which his total contributions or expenditures exceed five hundred dollars ($500). The payment of a filing fee from the candidate's personal funds must be reported as either a loan or a contribution to the campaign and also as a campaign expenditure but such payment shall not be counted towards the five hundred dollar ($500) reporting trigger**.** *See* § 238(b), *infra*.

(b) Except as provided in § 238 of these rules and Ark. Code Ann. § 7-6-207(c), each candidate for state or district office~~, other than a school district, township, municipal, or county office~~, including district judge, or a person acting on the candidate's behalf, shall file with the Secretary of State the following Contribution and Expenditure Reports:

(c) (1) ~~Any report, except a preelection report~~, A report is timely filed if it is filed in electronic form through the official website of the Secretary of State on or before the date that the report is due. ~~either hand-delivered or mailed to the Secretary of State properly addressed, postage prepaid, bearing a postmark indicating that it was received by the post office or common carrier on or before the date it was due. A preelection report is timely filed if it is received in the Secretary of State's office no later than seven (7) days prior to the election for which it is filed. The Secretary of State shall accept via facsimile any report, provided the original is received by the Secretary of State within ten (10) days of the transmission. The Secretary of State may receive reports in a readable electronic format which is acceptable to the Secretary of State and approved by the Arkansas Ethics Commission.~~

(2) The Arkansas Ethics Commission shall approve the format used by the Secretary of State for the filing of campaign contribution and expenditure reports in electronic form under § 236 (c)(1) of this section to ensure that all required information is requested.

(3) The official website of the Secretary of State shall allow for searches of campaign contribution and expenditure report information filed in electronic form under § 236 (c)(1) this section.

(d) A candidate required to file campaign contribution and expenditure reports in electronic form under § 236(c) may file reports in paper form under this section if:

(1) The candidate does not have access to the technology necessary to submit reports in electronic form; and

(2) Submitting reports in electronic form would constitute a substantial hardship for the candidate.

(e) (1) A candidate filing reports in paper form under § 236 (d) shall submit with his or her first paper report in an election cycle a notarized affidavit on a form prepared by the Secretary of State declaring that:

(A) The candidate does not have access to the technology necessary to submit reports in electronic form;

(B) Submitting reports in electronic form would constitute a substantial hardship for the candidate; and

(C) The candidate agrees to file all other reports in paper form for the duration of the election cycle.

(2) The Secretary of State shall not accept a report in paper form under subdivision (d) of this section if a notarized affidavit was not submitted with the first paper report in the election cycle.

(f) (1) The Secretary of State shall make available to candidates wishing to file reports in paper form under this section:

(A) Information on the deadlines for filing required reports; and

(B)(i) Appropriate forms and instructions for complying with the deadlines.

(ii) The Arkansas Ethics Commission shall approve the forms and instructions used by the Secretary of State to ensure that all required information is requested.

(2) Reports shall be filed on the forms furnished by the Secretary of State, except that computer-generated contribution and expenditure reports

shall be accepted by the Secretary of State and the Arkansas Ethics Commission provided that all of the requisite elements are included.

(g) (1)(A) A report submitted in paper form under this section other than a preelection report is timely filed if it is either hand delivered or mailed to the Secretary of State, properly addressed, and postage prepaid, bearing a postmark indicating that it was received by the post office or common carrier on the date that the report is due.

(B) A preelection report submitted in paper form under this section is timely filed if it is received by the Secretary of State no later than seven (7) days before the election for which it is filed.

(2) The Secretary of State shall accept a report via facsimile, provided the original is received by the Secretary of State within ten (10) days of the date of facsimile transmission.

(h) The Secretary of State shall make available carryover fund reports submitted in paper form, and affidavits accompanying reports filed in paper form, on a portion of the official website of the Secretary of State.

- In accordance with Act 721 of 2017, Rules 237 and 238 were amended to reflect a change to Ark. Code Ann. § 7-6-207, as follows:

§ 237 Contents of Reports of Contributions and Expenditures-Candidates for *State or District* Office, ~~Other Than School District, Township, Municipal or County Office~~ *Including District Judge*

…

(c) Candidates for state and district offices (including the office of district judge) shall file Campaign Contribution and Expenditure Reports with the Secretary of State.

§ 238 Exceptions to Filing Reports of Contributions-Candidates for *State or District* Office, ~~Other Than School District, Township, Municipal or County Office~~ *Including District Judge*
Office Other

- In accordance with Act 787 of 2017, Rule 245 was amended to reflect a change to Ark. Code Ann. § 7-6-228, as follows:

§ 245 Prohibited Campaign Activities Concerning Public Servants and Public Property;
Advertising Disclaimer; Display of Campaign Literature on State Capitol Grounds

…

(h) (1) All articles, statements, or communications appearing in any newspaper printed or circulated in this state intended or calculated to influence the vote of any elector in any election and for the publication of which a consideration is paid or to be paid shall clearly contain the words "Paid Political Advertisement", "Paid Political Ad", or "Paid for by" the candidate, committee, or person who paid for the message. Both the persons placing and the persons publishing the articles, statements, or communications shall be responsible for including the required disclaimer. In addition, all articles, statements, or communications appearing in any radio, television, or any other electronic medium intended or calculated to influence the vote of any elector in any election and for the publication of which a consideration is paid or to be paid shall clearly contain the words "Paid Political Advertisement" or "Paid Political Ad" or "Paid for by", "Sponsored by", or "Furnished by" the true sponsor of the advertisement. Both the persons placing and the persons publishing the articles, statements, or communications shall be responsible for including the required disclaimer.

(2) (a) Printed campaign materials as defined in § 200 (u) of these rules, shall clearly contain the words "Paid for by" followed by the name of the candidate, committee, or person who paid for the campaign sign, campaign literature, or other printed campaign materials.

(b) Subdivision (2)(a) of this section applies only to campaign signs, campaign literature, and other printed campaign materials created by or sponsored by a political candidate or the campaign of a political candidate.

- The following amendment was made to improve the readability and accuracy of the Rules.

~~(h)~~ (i) It is unlawful for a candidate or a public official, as defined in Ark. Code Ann. § 21-8-402, to display one (1) or more campaign banners, campaign signs, or other campaign literature larger than twelve inches by twelve inches (12" x 12") on a car, truck, tractor, or other vehicle belonging to the candidate or public official while on the State Capitol grounds.

- In accordance with Act 721 of 2017, the Rules were amended as follows to reflect changes made to Ark. Code Ann. § 21-8-703:

§ 249 Statement of Financial Interest-Filing Required of Public Officials, Appointees and Employees

(e) The Statement of Financial Interest shall be filed as follows:
…
(6) District judges shall file with the ~~county clerk~~ Secretary of State.

- In accordance with Act 616 of 2017, the Rules were amended to reflect changes made to Ark. Code Ann. § 7-6-215, 216, and 220, requiring electronic filing in most instances, as follows:

§ 251 Exploratory Committees-Registration and Reporting

…

(2) The reports required by this section shall be filed in electronic form through the official website of the Secretary of State.

(3) The Arkansas Ethics Commission shall approve the format used by the Secretary of State for the filing of exploratory reports in electronic form to ensure that all required information is requested.

(4) The official website of the Secretary of State shall allow for searches of exploratory committee report information filed in electronic form.

(d) An exploratory committee under this section may file reports in paper form under this section if:

(1) The exploratory committee does not have access to the technology necessary to submit reports in electronic form; and

(2) Submitting reports in electronic form would constitute a substantial hardship for the exploratory committee.

PUBLIC COMMENT: A public hearing was held on October 20, 2017. The public comment period expired on October 13, 2017. No public comments were submitted to the agency. The proposed effective date is December 31, 2017.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The Arkansas Ethics Commission is authorized, pursuant to the Arkansas Administrative Procedure Act, to promulgate reasonable rules and regulations to implement and administer applicable provisions of law under the commission's jurisdiction and to govern procedures before the commission, matters of commission operations, and all investigative and disciplinary procedures and proceedings. Ark. Code Ann. § 7-6-217(g). These rules implement various acts from the 2017 (regular) legislative session, specifically Act 721 of 2017, sponsored by Senator David Sanders (concerning amendments to the Disclosure Act for Initiative Proceedings, registration and reporting requirements, and filing deadlines); Act 318 of 2017, sponsored by Representative Jana Della Rosa (expanding the use of technology to improve campaign finance transparency, accuracy, and convenience); Act 787 of 2017, sponsored by Representative Carol Dalby (amending requirements for campaign signs and materials); and Act 616 of 2017, sponsored by Representative Warwick Sabin (amending the law concerning the filing and publication of certain campaign finance reports).

h. SUBJECT: Rules on Ballot and Legislative Question Committees

DESCRIPTION: The Ethics Commission is amending the existing set of Rules on Ballot and Legislative Question Committees to reflect statutory changes made during the 91st General Assembly to implement and administer the provisions of Act 721 of 2017.

- In accordance with Act 721 of 2017, this amendment adds "disqualification" to the list of purposes for which contributions and expenditures in excess of $500 shall trigger registration of a local option ballot question committee. Likewise, it provides a requirement that a ballot question committee as defined in Ark. Code Ann. § 7-9-402(2)(B) or a legislative question committee as defined in Ark. Code Ann. § 7-9-402(10)(B), shall include (A) The name of each person who is a member of the committee and (B) A person that is not an individual may be listed by its name without also listing its own members, if any. These amendments reflect a changes to Ark. Code Ann. § 7-9-404, and appear as follows:

§ 606 STATEMENT OF ORGANIZATION

(a)(1)(A) A ballot question committee or a legislative question committee shall file a statement of organization with the Arkansas Ethics Commission within five (5) days of receiving contributions or making expenditures in excess of five hundred dollars ($500) for the purpose of expressly

advocating the qualification, disqualification, passage, or defeat of a ballot question or the passage or defeat of a legislative question.

(B) The Arkansas Ethics Commission shall maintain the statement of organization until notified of the committee's dissolution.

(2) A ballot question committee or legislative question committee failing to file a statement of organization required by this section shall be subject to a late filing fee not exceeding fifty dollars ($50.00) for each day the statement remains not filed.

(b) The statement of organization for a ballot question committee as defined in § 600(c)(1) of these rules or a legislative question committee as defined in § 600 (l)(1) of these rules shall include the following information:

(1) The name, street address, and where available, the telephone number of the committee. A committee address and telephone number may be that of the residence of an officer or director of the committee;

(2) The name, street address, and ~~where~~ if available, the telephone number of the treasurer and other principal officers and directors of the committee;

(3) The name and address of each financial institution in which the committee deposits money or anything else of monetary value;

(4) The name of each person who is a member of the committee. A person that is not an individual may be listed by its name without also listing its own members, if any; and

(5) A brief statement identifying the substance of each ballot or legislative question, the qualification, disqualification, passage, or defeat of which the committee seeks to influence or of each legislative question, the passage or defeat of which the committee seeks to influence, and if known, the date each ballot or legislative question shall be presented to a popular vote at an election.

(c) The statement of organization for a ballot question committee as defined in § 600(c)(2) of these rules or a legislative question committee as defined in § 600(l)(2) of these rules shall include:

(1)(A) The name, the street address, and if available, the telephone number of the committee.

(B) The address and telephone number of a committee in subdivision (c)(1)(A) of this section may be that of the residence of an officer or a director of the committee;

(2) The name, street address, and if available, the telephone number of the treasurer and the other principal officers and directors of the committee;

(3) The name and address of each financial institution in which the committee deposits money or anything else of monetary value;

(4)(A) The name of each person who is a member of the committee.

(B) A person that is not an individual may be listed by its name without also listing its own members, if any; and

(5) A brief statement identifying the substance of each ballot or legislative question, the qualification, disqualification, passage, or defeat of which the committee seeks to influence, and if known, the date each ballot or legislative question shall be presented to a popular vote at an election.

~~**(c)**~~ **(d)** When any of the information required in a statement of organization is changed, an amendment shall be filed within ten (10) days to reflect the change, except that changes in individual membership may be filed when the next financial report is required. A committee failing to file a change as required shall be subject to a late filing fee not exceeding twenty-five dollars ($25.00) for each day the change remains not filed.

- In accordance with Act 721 of 2017, this amendment adds "legislative question committee" to the list of entities that must file a final report, regardless of whether or not it has spent or received in excess of $500. This amendment was made to bring the rules in conformity with the Ark. Code Ann. § 7-9-406(g) and appears as follows:

§ 607 FILING OF FINANCIAL REPORTS

(g) A final financial report as described in § 610(a)(3) is required regardless of whether a ballot question committee, legislative question committee, individual, or elected official received contributions or made expenditures in excess of five hundred dollars ($500).

- In accordance with Act 721 of 2017, this amendment repeals the requirement that LQCs and BQCs report a list of all paid canvassers and the amount each person was paid. Likewise, it removes the requirement

that ballot and legislative question committees that are entities spending its own money (as opposed to raising money from sources. For example, a corporation or a professional society spending money from profits or membership dues) need not list contributions received on its financial reports, because it has not received contributions. These amendments reflect changes to Ark. Code Ann. § 7-9-407(2)(A) (x), (B) and (C), and appear as follows:

§ 608 CONTENTS OF FINANCIAL REPORTS

A financial report of a ballot question committee, a legislative question committee, an individual person or an elected official, as required by § 607, shall contain the following information:

(1) The name, address, and telephone number of the committee, individual person or elected official filing the report;

(2)(A) For a ~~committee~~ ballot question committee as defined in § 600 (c)(1) of these rules or legislative question committee as defined in § 600 (l)(1) of these rules:

(i) The total amount of contributions received during the period covered by the financial report;

(ii) The total amount of expenditures made by the committee or on behalf of the committee by an advertising agency, public relations firm, or political consultant during the period covered by the financial report;

(iii) The cumulative amount of contributions and expenditures reported under § 608(2)(A)(i) and (ii) for each ballot question or legislative question;

(iv) The balance of cash and cash equivalents on hand at the beginning and the end of the period covered by the financial report;

(v) The total amount of contributions received during the period covered by the financial report from persons who contributed less than fifty dollars ($50.00), and the cumulative amount of that total for each ballot question or legislative question;

(vi) The total amount of contributions received during the period covered by the financial report from persons who contributed fifty dollars ($50.00) or more, and the cumulative amount of that total for each ballot question or legislative question;

(vii) The name and street address of each person who contributed fifty dollars ($50.00) or more during the period covered by the financial report, together with the amount contributed, the date of receipt, and the cumulative amount contributed by that person for each ballot question or legislative question;

(viii) For each person listed under § 608(2)(A)(vii) of this section, the contributor's principal place of business, employer, occupation, the amount contributed, the date the contribution was accepted by the committee, and the cumulative amount contributed for each ballot question or legislative question;

(ix) The name and address of each person who contributed a nonmoney item, together with a description of the item, the date of receipt, and the value, not including volunteer service by individuals;

~~**(x)** A list of all paid canvassers, officers, and directors and the amount each person was paid;~~

~~**(xi)**~~ **(x)** A list of all expenditures by category, including without limitation the following: (a) advertising; (b) direct mail; (c) office supplies; (d) travel; (e) expenses; and (f) telephone; and

~~**(xii)**~~ **(xii)** The total amount of nonitemized expenditures made during the period covered by the financial report;

(B) For a ballot question committee as defined in § 600(c)(2) of these rules or a legislative question committee as defined in § 600 (l)(2) of these rules shall include the following information:

(i) The total amount of contributions made by the committee to another ballot or legislative question committee during the period covered by the financial report; and

(ii) The cumulative amount of contributions under subdivision (2)(B)(i).

~~**(B)**~~ **(C)** For an individual person:

(i) The total amount of expenditures made by the individual person or on behalf of the individual person by an advertising agency, public relations firm, or political consultant during the period covered by the financial report; and

(ii) The cumulative amount of expenditures for each ballot question or legislative question; and

(D) For an elected official using public funds:

PUBLIC COMMENT: A public hearing was held on October 20, 2017. The public comment period expired on October 13, 2017. No public comments were submitted to the agency. The proposed effective date is December 31, 2017.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The Arkansas Ethics Commission is authorized, pursuant to the Arkansas Administrative Procedure Act, to promulgate reasonable rules and regulations to implement and administer applicable provisions of law under the commission's jurisdiction and to govern procedures before the commission, matters of commission operations, and all investigative and disciplinary procedures and proceedings. Ark. Code Ann. § 7-6-217(g). These rules implement Act 721 of 2017, sponsored by Senator David Sanders, concerning amendments to the Disclosure Act for Initiative Proceedings, registration and reporting requirements, and filing deadlines.

i. SUBJECT: Rules of Practice and Procedure

DESCRIPTION: The Ethics Commission is amending the existing set of Rules of Practice and Procedure to reflect statutory changes made during the 91st General Assembly to implement and administer the provisions of Acts 721 and 318 of 2017.

- In accordance with Act 721 of 2017, the section of the financial report form for Ballot Question Committees and Legislative Question Committees (BQC/LQCs) and Local-Option BQCs requiring the list of paid canvassers, was removed to reflect a change to Ark. Code Ann. § 7-9-4047.

- In accordance with Act 721 of 2017, the Instructions for the Statements of Financial Interest (SFI) and the SFI were amended, stating that district judges and candidates for district judge file with their SFI's with the Secretary of State.

- In accordance with Act 721 of 2017, the BQC/LQC and Local Option BQC Forms were bifurcated into two different forms, one form for a "Person Meeting The Definition Of BQC Set Forth In § 7-9-402(2)(A)"

and a second, separate form for a "Person Meeting the 2%/$10,000 Test in § 7-9-402(10(B)".

- The Appendix to these Rules, which includes all the forms under the jurisdiction of the Ethics Commission, was amended as follows:
    - To amend the name of the Form to clarify that District Judges file with State and District Candidates.

- To add new forms which were created, specifically, reporting forms for BQCs and Local-Option BQCs when they are entities spending their own money (as opposed to raising funds, or an individual spending his/her own money) with the section removed which showed required contributions to the entity to be listed, as noted above.

- Ballot Question Committee Financial Report of Person Meeting the Definition of BQC Set Forth in § 7-9-402(2)(A) - See attached

- Ballot Question Committee Financial Report of Person Meeting the 2%/$10,000 Test in § 7-9-402(2)(B) – See attached (new)

- Legislative Question Committee Financial Report of Person Meeting the Definition of LQC Set Forth in § 7-9-402(10)(A) – See attached

- Legislative Question Committee ("LQC") Financial Report of Person Meeting the 2%/$10,000 Test in § 7-9-402(10(B) – See attached (new)

- Local-Option Ballot Question Committee (L-OBQC) Financial Report of Person Meeting the Definition of L-OBQC Set Forth in § 3-8-702(7)(A)– See attached

- Local-Option Ballot Question Committee (L-OBQC) Financial Report of Person Meeting the 2%/$10,000 Test in § 3-8-702(7)(B) – See attached (new)

PUBLIC COMMENT: A public hearing was held on October 20, 2017. The public comment period expired on October 13, 2017. No public comments were submitted to the agency. The proposed effective date is December 31, 2017.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The Arkansas Ethics Commission is authorized, pursuant to the Arkansas Administrative Procedure Act, to promulgate reasonable rules and regulations to implement and administer applicable provisions of law under the commission's jurisdiction and to govern procedures before the commission, matters of commission operations, and all investigative and disciplinary procedures and proceedings. Ark. Code Ann. § 7-6-217(g). These rules implement Act 721 of 2017, sponsored by Senator David Sanders (concerning amendments to the Disclosure Act for Initiative Proceedings, registration and reporting requirements, and filing deadlines) and Act 318 of 2017, sponsored by Representative Jana Della Rosa (expanding the use of technology to improve campaign finance transparency, accuracy, and convenience).

3. ARKANSAS DEVELOPMENT FINANCE AUTHORITY (Ro Arrington and J. Benjamin Van Kleef)

a. **SUBJECT: Guidelines for Reserving Volume Cap for Multi-Family Housing Bonds**

DESCRIPTION: The purpose of this rule is to allow the issuance of short-term bonds for the development of affordable, multi-family residential rental developments. It is necessary because short-term bonds are the only financially feasible vehicle that can generate the equity needed to rehabilitate affordable rental complexes which have more than 75 units. ADFA's Housing Department is allocated roughly $30 million in volume cap each year for the issuance of tax-exempt multi-family bonds. ADFA has not issued multi-family bonds in nearly a decade. The cause for the lack of issuances is existing language in the guidelines that restricts the use of multi-family bonds only for permanent financing. This language was incorporated into the guidelines when market conditions caused high demand for tax-exempt private activity bond volume cap. The current market conditions are starkly different. There is little demand for tax-exempt bonds; therefore, little demand for tax-exempt multi-family bonds for the purposes of permanent financing. This means the tax-exempt private activity bond volume cap for Arkansas has gone untapped.

The proposed rule addresses two items. First, it removes language that restricts the use of multi-family bonds only for permanent financing. Second, it provides for a new issuance fee structure if a bond's maturity date is five years or less. Adopting this proposed rule will allow ADFA to issue short-term bonds. These bonds will be outstanding for the duration

of the construction/reconstruction period and subsequently paid off by the applicant.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on November 1, 2017. The Authority received no comments.

The Authority promulgated this rule change on an emergency basis, through which the Executive Subcommittee approved, effective September 22, 2017. The proposed permanent effective date for the guidelines is January 1, 2018.

FINANCIAL IMPACT: The financial impact is estimated at $75,000 for the next fiscal year to those who are subject to the rule.

LEGAL AUTHORIZATION: The Arkansas Development Finance Authority ("ADFA") shall have such rights, powers, and privileges and shall be subject to such duties as provided by Title 15, Chapter 5 of the Arkansas Code, concerning the Arkansas Development Finance Authority. *See* Ark. Code Ann. §15-5-207(a) (Supp. 2017). Pursuant to Ark. Code Ann. §15-5-106, the ADFA is authorized to issue bonds for residential community developments. Likewise, Ark. Code Ann. §15-5-301 authorizes and empowers the ADFA to issue bonds, whether or not the interest on the bond is subject to federal income taxation, either for a specific activity or for a particular project or on a pooled or consolidated basis for a series of related or unrelated activities or projects in such amounts as shall be determined by the ADFA for the purpose of enhancing a number of projects, including housing developments. *See* Ark Code Ann. §15-5-301(a) (Supp. 2017).

The ADFA has the power to administer the allocation of the state ceiling of private activity bonds, as that term is defined in the Tax Reform Act of 1986, which are subject to volume limitations under federal law, including particularly the limitations under 26 U.S.C. §146, and it shall have the power to make and issue such rules as may be necessary or convenient in order to carry out the purposes of Title 15, Chapter 5 of the Arkansas Code. *See* Ark. Code Ann. §15-5-207(b)(5), (32) (Supp. 2017). The ADFA also has the power to collect fees and charges in connection with its loans, bond guaranties, commitments, and servicing, including, but not limited to, reimbursement of costs of financing as the Authority shall determine to be reasonable and as shall be approved by the Authority. *See* Ark. Code Ann. §15-5-207(b)(14) (Supp. 2017).
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4. STATE BOARD OF FINANCE (Paul Louthian, T. J. Fowler, and Autumn Sanson)

a. SUBJECT: Money Management Trust Policy and Procedures Manual

DESCRIPTION: Changes to the State Treasury Money Management Trust Policy were made in light of Act 296 of 2017, which requires the State Board of Finance to establish the method of computing the rate of return, earnings, charges, fees, and expenses to determine the distribution for each participant, and pursuant to Act 710 of 2017, which prohibits public entities from investing in companies that boycott Israel.

PUBLIC COMMENT: A public hearing was held on October 19, 2017, and the public comment period expired on the same day. The State Board of Finance received no comments at the hearing or at the DFA Problem Resolution website.

Laura Kehler Shue, an attorney with the Bureau of Legislative Research, asked the following question:

In the portion of the proposed rule in Section D. Investment Restrictions, adopting Act 710 of 2017, sponsored by Senator Bart Hester, which prohibits a public entity from acquiring securities of companies that boycott Israel as part of its direct holdings, it refers to the good faith effort and reliance on a list of institutions or companies found at a linked document format from the New York Office of General Services, currently dated December 1, 2017: https://www.ogs.state.ny.us/eo/157/Docs/EO157_Institutions_Companies_List.pdf

It is my understanding that Governor Cuomo's 2016 order mandates that the Commissioner of General Services update the list every six months. In order to "assemble those identified companies into a list," notify the companies, and "keep and maintain" a list of restricted companies, when the incorporated New York list changes, will the Arkansas list also be amended every six months? See Ark. Code Ann. §25-1-504(a)(1), (4) (Supp. 2017).

RESPONSE: The investment team will reference the most current list published by the State of NY, which means revisiting that list every six months for the latest version.

Part of this proposed rule change in the State Treasury Money Management Trust Policy, dealing with the rate of return, was promulgated on an emergency basis and approved at a meeting of the

Executive Subcommittee on August 10, 2017. The proposed effective date is December 27, 2017.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: Generally, the State Board of Finance establishes, maintains, and enforces "all policies and procedures concerning the management and investment of funds in the State Treasury and the State Treasury Money Management Trust." *See* Ark. Code Ann. §19-3-704(a) (Supp. 2017).

The State Treasury Money Management Trust ("STMMT"), administered by the Treasurer of the State, was created for the deposit of moneys in order to permit the joint investment of participants' money so as to enhance investment opportunities and earnings. *See* Ark. Code Ann. §19-3-602 (Supp. 2017). Entities that may deposit money into the STMMT for the purpose of investment include a "[s]tate agency's cash funds", "[l]ocal governments," such as [a]ny city, county, school district, or community college district of this state," and '[a]ny department, instrumentality, or agency of these entities." Ark. Code Ann. §19-3-603 (1),(2) (Supp. 2017).

Changes to the STMMT Policy were made in light of Act 296 of 2017, sponsored by Representative Senator Charlie Collins, which requires the State Board of Finance to establish the method of computing the rate of return, earnings, charges, fees, and expenses to determine the distribution for each participant. *See* Ark. Code Ann. §19-3-604 (Supp. 2017). Additional authority for the proposed changes is Act 710 of 2017, sponsored by Senator Bart Hester, which prohibits public entities from investing in companies that boycott Israel. *See* Ark. Code Ann. §25-1-504 (Supp. 2017).

b. SUBJECT: Investment Policy

DESCRIPTION: The investment policy is revised to comply with Act 555 of 2017 requiring the State Board of Finance to establish the method of computing the rate of return, Act 644 that allows the Treasurer of State to purchase bonds from the State of Israel, and Act 710 that prohibits public entities from investing in companies that boycott Israel.

PUBLIC COMMENT: A public hearing was held on October 19, 2017, and the public comment period expired on the same day. The Board received no comments at the hearing or the DFA Problem Resolution website.

The Jewish Federation of Arkansas submitted an October 16, 2017, letter of support for the State's investing in Israel bonds to further enhance the connection between Arkansas and Israel.

Laura Kehler Shue, an attorney with the Bureau of Legislative Research, asked the following question:

In the portion of the proposed rule in Section D. Investment Restrictions, adopting Act 710 of 2017, sponsored by Senator Bart Hester, which prohibits a public entity from acquiring securities of companies that boycott Israel as part of its direct holdings, it refers to the good faith effort and reliance on a list of institutions or companies found at a linked document format from the New York Office of General Services, currently dated December 1, 2017: https://www.ogs.state.ny.us/eo/157/Docs/EO157_Institutions_Companies_List.pdf

It is my understanding that Governor Cuomo's 2016 order mandates that the Commissioner of General Services update the list every six months. In order to "assemble those identified companies into a list," notify the companies, and "keep and maintain" a list of restricted companies, when the incorporated New York list changes, will the Arkansas list also be amended every six months? See Ark. Code Ann. §25-1-504(a)(1), (4) (Supp. 2017).

RESPONSE: The investment team will reference the most current list published by the State of NY, which means revisiting that list every six months for the latest version.

Part of this proposed rule change in the Investment Policy, dealing with the rate of return, was promulgated on an emergency basis and approved at a meeting of the Executive Subcommittee on August 10, 2017. The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: Generally, the State Board of Finance establishes, maintains, and enforces "all policies and procedures concerning the management and investment of funds in the State Treasury and the State Treasury Money Management Trust," including an investment policy. *See* Ark. Code Ann. §19-3-704(a)(4) (Supp. 2017). Changes to the State Treasury Investment Policy were made in light of Act 555 of 2017, sponsored by Senator Bruce Maloch, which requires the State Board of Finance to establish the method of computing the rate of return and earning to determine the distribution to each participant state

agency, board, or commission in investments of state funds in the State Treasury. *See* Ark. Code Ann. §19-3-518 (Supp. 2017).

Further authorization for the proposed changes is found in Act 644 of 2017, sponsored by Senator Jason Rapert, which allows the Treasurer to purchase bonds from the State of Israel. *See* Ark. Code Ann. §19-3-523 (Supp. 2017). Additional authority for the proposed changes is Act 710 of 2017, sponsored by Senator Bart Hester, which prohibits public entities from investing in companies that boycott Israel. *See* Ark. Code Ann. §25-1-504 (Supp. 2017).

5. DEPARTMENT OF FINANCE AND ADMINISTRATION, INTERGOVERNMENTAL SERVICES (Doris Smith and Autumn Hemphill)

a. SUBJECT: Arkansas Domestic Violence Shelter Fund

DESCRIPTION: This establishes criteria for the Arkansas Department of Finance and Administration to administer the Domestic Violence Shelter Fund for domestic violence shelters in Arkansas.

PUBLIC COMMENT: There was a public hearing held on November 9, 2017, and the public comment period expired on the same day. The Department received no comments.

The proposed effective date of the rules and regulations is December 27, 2017.

FINANCIAL IMPACT: There is a $59,149.10 annual cost for one fulltime grants analyst plus 10% of the salary of one grants accounting staff person to support the administrative and accounting procedures required for the fund. This is the program cost to the state.

LEGAL AUTHORIZATION: Act 583 of 2017, sponsored by Representative Charlene Fite, provides for an additional court cost of $25.00 if a person is convicted of domestic abuse or is the respondent on a permanent order of protection entered pursuant to the Domestic Abuse Act. *See* Ark. Code Ann. §9-15-202, and §16-10-305 (Supp. 2017).

The Act also created the special revenue fund known as the "Domestic Violence Shelter Fund" (DVSF) to be used to provide funding for statewide grants awarded to a statewide domestic violence entities, *see* Ark. Code Ann. §19-6-838 (Supp. 2017), and authorized and directed the Department of Finance and Administration to develop and promulgate

rules, which set the criteria for the grant applications and award process. *See* Ark. Code Ann. §9-6-103 (Supp. 2017).

6. DEPARTMENT OF HEALTH (Robert Brech)

a. SUBJECT: Administration of Vital Records

DESCRIPTION: In addition to some formatting changes in the rule, in Regulation 11.0, "spontaneous fetal death from the weight of 350 grams or more, or if weight is unknown where the fetus completed 20 weeks gestation" is removed and replaced with "spontaneous fetal death of 12 weeks gestation" and requires the fetal death to be reported on a fetal death certificate. Also Regulation 12.1 changes spontaneous fetal death of "less than 350 grams or 20 weeks gestation" to "less than 12 weeks of gestation" to be reported on vital records form (VR-28) for statistical purposes only.

PUBLIC COMMENT: A public hearing was held on October 25, 2017. The public comment period expired on October 25, 2017. No public comments were submitted.

Laura Kehler Shue, an attorney with the Bureau of Legislative Research, asked the following questions for clarification:

Is Section 1 of Act 168 of 2017 addressing the Certificate of Birth resulting in Stillbirth, codified in Ark. Code Ann. §20-18-410, addressed in the proposed amendments to the rules? Do the proposed amendments to the Rules and Regulations for the Administration of Vital Records just address Section 2 of Act 168 of 2017?
RESPONSE: There are some formatting corrections that were done in Regulation 4.0 – 4-2. It was re-numbered. It addresses both Section 1 and Section 2 of Act 168 of 2017.

In the draft rules, is the last sentence of Regulation 11.0 on page 17 referring to the certificate of birth for stillbirth, which was originally created in Act 509 of 2007?
RESPONSE: The certificate remains the same. There were no changes.

The proposed effective date is January 25, 2018.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: Act 168 of 2017, sponsored by Representative David Meeks, amends the law concerning a certificate of birth resulting in stillbirth by substituting "12" for "20" weeks' gestational

age in the definition of "Stillbirth." Arkansas Code Ann. § 20-18-410(a)(2). Act 168 of 2017 also authorizes a registration of a fetal death when the fetus completed 12 weeks' gestation or more. *See* Arkansas Code Ann. §20-18-603.

Further authority for the State Board of Health's rulemaking can be found in Ark. Code Ann. §20-18-202, which provides that the State Board of Health may adopt, amend, and repeal rules and regulations for Administration of Vital Records.

7. <u>DEPARTMENT OF HIGHER EDUCATION</u> (Maria Markham and Tara Smith)

a. <u>SUBJECT</u>: Arkansas Governor's Scholars Program

<u>DESCRIPTION</u>: These rules are being amended due to changes made during the 2015 and 2017 Regular Sessions by Act 850 of 2015 and Act 1008 of 2017. The formatting of the rules is also being updated. The Governor's Scholars Program has changed to awarding a $10,000 scholarship annually to those students that achieve a 32 or above on the ACT; and achieve at least a 3.5 high school GPA or have been selected as a finalist in either the National Merit Scholarship competition, the National Hispanic Recognition Program, or the National Achievement Scholarship competition. If any of the 75 counties was not represented in the initial awards, the Department of Higher Education shall select a student from each nonrepresented county with the highest qualifications and award a $5,000 annual scholarship. Additional amendments are proposed to more closely align the language used in the rules to that used in the law.

<u>PUBLIC COMMENT</u>: No public hearing was held. The public comment period expired on October 9, 2017. The agency provided the following summary of the sole comment it received and its response:

Lang Zimmerman, Commissioner for Arkansas Economic Development Commission

> "(ii) The Department of Higher Education shall ensure that the weight assigned to each individual criterion under this subdivision (b)(6)(B) does not place a home-schooled, public school, or private school student at a disadvantage."

The above paragraph is at the bottom of page 6. It would be more correct to change the last part to read: "…does not place a home-schooled, publicly-schooled, or privately-schooled student at a disadvantage." As it reads now a publicly-schooled student is left out and the public school itself is protected from a disadvantage it cannot suffer.

AGENCY RESPONSE: The Department is not amending the rules with the suggested language at this time. The language used in the rules is the same language used in A.C.A. § 6-82-306(b)(6)(B)(ii).

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

(1) In subsection (c)(2) of Continued Eligibility, it appears that the language is tracking that of Ark. Code Ann. § 6-82-311(c)(2), which was amended by Act 1008 of 2017. In the Act, it appears that "the additional" was stricken and replaced with "a." *See* Act 1008, § 2. Was there a reason the Department did not include this change with its others?
RESPONSE: Page 8 – In subsection (c)(2) of Continued Eligibility, "the additional" has been stricken and replaced with "a."

(2) While not a change to these rules, I happened to notice that subsection (d)(1)(b) of Scholarship Payment Policies provides that the award shall be terminated for failure to complete a baccalaureate degree within six years from initial college entrance; however, Ark. Code Ann. § 6-82-313 provides for termination for failure to complete within *five* years from initial college entrance. I just thought I'd make mention of it.
RESPONSE: Page 17 – In subsection (d)(1)(b) of Scholarship Payment Policies, six has been stricken and replaced with five. I did discuss this with the AG's Office and was advised that our rules needed to reflect what was in code.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The estimated financial impact is $16,000,000 for the current fiscal year and $16,000,000 for the next fiscal year. The projected cost of the Governor's Scholars Program is not expected to significantly change with the amendments to this rule.

LEGAL AUTHORIZATION: The Department of Higher Education shall administer all state college financial assistance programs provided by legislation or by law and in so doing shall have the authority and responsibility with respect to state college financial assistance programs provided by legislation or by law to adopt such rules as the Department shall deem necessary or appropriate. *See* Ark. Code Ann. § 6-82-105(1). Pursuant to Arkansas Code Annotated § 6-82-304, the Department shall administer the Arkansas Governor's Scholars Program and has the authority and responsibility with respect to the program to: prepare application and other forms, establish and consult as necessary with an advisory committee, select recipients of scholarships awarded pursuant to the relevant statutory provisions, establish the procedures for payment of scholarships to recipients, set a termination date for acceptance of

applications, review and evaluate the program's operation with regard to eligibility criteria and size of the scholarship award to ensure that the operation meets the intent of legislation, determine the necessary procedures for awarding scholarships if the number of eligible applicants exceeds available funds or awards, and approve a scholarship hold for a student for a period of twenty-four (24) months or less for the reasons established by statute without limitation. The instant proposed changes incorporate revisions brought about by **Act 850 of 2015**, sponsored by Representative Bruce Cozart, which amended the Arkansas Governor's Scholars Program, and **Act 1008 of 2017**, sponsored by Representative Andy Davis, which amended provisions of the Arkansas Code concerning scholarship programs.

8. DEPARTMENT OF HUMAN SERVICES, COUNTY OPERATIONS (Stephen Giese and Yolanda Geary)

a. SUBJECT: SNAP 17-5; Policy 11570.1 and 12460

DESCRIPTION: SNAP Policies 11570 and 12400 have been updated to include new sections in policy regarding the updated procedures of how to handle returned mail. The new sections are SNAP Policy 11570.1 and SNAP Policy 12460.

The updated policy states: "a Request for Contact (RFC) will need to be sent to the client when mail has been returned from the post office indicating that the addressee is unknown, has moved and left no forwarding address, or that the address provided does not exist. If the addressee does not respond to the RFC, then a 10-day notice to close the case will be sent. The worker must ensure that a county office error did not cause the mail to return. The county office worker must also ensure that the household has not reported an address change which was not processed or was processed incorrectly. The returned mail, including the envelope, must appear in the case record. The action to close the case must be fully documented."

PUBLIC COMMENT: No public hearings were held. The public comment period expired on November 14, 2017. The Department received no comments.

Laura Kehler Shue, an attorney with the Bureau of Legislative Research, asked the following:

If the mail is returned by the post office as undeliverable, to which address is the written request for contact ("RFC") sent? How long does the

household have to respond to the RFC before the 10-day notice to close the case is sent?

RESPONSE:
After any mail is returned, the county office worker will ensure that any address change is updated and correct. The RFC will be sent to the updated address entered in the system, if available. After the RFC is sent to the latest known address, the household has 10 days to respond. If no response, then the county office worker will send a 10-day notice to close the case.

The proposed effective date is January 1, 2018.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated §20-76-201, the Department of Human Services ("Department") shall administer assigned forms of public assistance and administer other welfare activities or services that may be vested in it. The Department is authorized to "make rules and regulations and take actions as are necessary or desirable to carry out the provisions of this chapter [Public Assistance] and that are not inconsistent therewith." Arkansas Code Annotated § 20-76-201 (12).

Per the agency, these rules are further being promulgated to comply with provisions of the federal Food and Nutrition Act of 2008 (Public Law No. 110-246) and to comply with 7 CFR 273.12 (c)(3), which provides for procedures for a state agency to issue a written request for contact (RFC) to clarify any unclear information about a household's circumstances prior to closing a case.

9. DEPARTMENT OF HUMAN SERVICES, MEDICAL SERVICES (Tami Harlan)

a. SUBJECT: State Plan #2017-008 and Episodes of Care #1-17

DESCRIPTION: Effective January 1, 2018, two sections of the Episodes of Care Provider Manual will be updated to remove the Attention Deficit Hyperactivity Disorder (ADHD) and Oppositional Defiant Disorder (ODD) Episodes of Care. The new Behavioral Health (BH) Transformation initiative transfers the episode of care incentive mechanisms to the Patient Centered Medical Home (PCMH) program. Transitional information will still be published for ADHD and ODD through July of 2018.

PUBLIC COMMENT: A public hearing was held on October 25, 2017. The public comment period expired on November 12, 2017. The Department provided the following comment and its response:

Joel Landreneau, an attorney with Crochet and Landreneau, PLLC in Little Rock, who represents and consults behavioral health providers, offered the following:

A defect in the [Episodes] design model made a supposedly incentive-based payment system not incentive-based at all. A provider didn't know whether or not you would be the principal accountable provider who would be eligible for gain share or risk share until after the period of time in question had already passed, you couldn't possibly be incentivized to do anything. Not only that, you couldn't even make reliable interim checks on where you stood in the gain share or risk share calculation to see how close you were to the threshold on any kind of regular basis. So, what happened was that you either hit the lottery with a small price or you got punished after the fact when you could do nothing else about it. In other words, it was backward-looking. And nothing that is meant to be an incentive can be an incentive if it's only backward-looking. The only incentive that Episodes of Care at least in ADHD and ODD, served, was to avoid it, and that's what a lot of people did. They would do what they could to avoid even having a patient load come into the Episodes of Care.

I have the same concerns about Department activities going forward, specifically the independent assessment. I have clients who have received their blocks for independent assessments for October, and what they are finding is that there is a pretty poor match between those people who they think need assessments and those people who were added to the list. There are people on the list who aren't all that sick, there are people on the list who are no longer beneficiaries of Medicaid at all.

At a recent Optum meeting, I found that perhaps a reason for that is that the list was derived mainly from the prior quarter's billing data. In other words, whoever was billing in April through June or maybe June through September, that is who is being identified now, instead of looking at a list that you could obtain from Beacon on who has active prior authorizations now. That's forward-looking. Because in order to get that authorization, you would have had to submit to Beacon medical information that projects what a client's need is going to be in the coming three months.

If the Department wants to look at billing data, they should have run a billing data analysis of how much you are spending on somebody who is projected to have needs in the future. This is the same flaw that Episodes had. It's backward-looking. If you are going to influence behavior and if you're going to create an incentive, then the method of selection and the

incentive needs to be, first of all, involve a feedback of information so you know where you stand in the process. Also, try to anticipate what the need is going to be and not simply provide a historical narrative of what the need used to be. I think that's what made Episodes less effective than it could have been, and I have the same concern for the independent assessments going forward.

RESPONSE: The Department appreciates the comments made at the public hearing. While it is true we are proposing the removal of the ADHD and ODD rules from Medicaid policy as a financial episode of care, we will be expanding our reporting on the cost and quality of behavioral health services across all providers. These reports will be beneficial and will still allow providers to measure their quality of care.

There are two reasons for proposing this rule change: 1) behavioral health transformation is moving the responsibility for cost and quality for tier one behavioral Health Services to the Primary Care Physician in a Patient Centered Medical Home, and 2) behavioral health transformation has introduced a new procedure coding system which would affect the validity of calculations and thresholds in the Behavioral Health Episodes of Care.

The commenter expresses his opinion that financial incentives cannot be based on retrospective episodes of care. He also expresses his opinion that it is difficult to track episodes throughout the performance period. Episodes of Care reports are published quarterly for Principal Accountable Providers. In these reports, every beneficiary with an open or closed episode is listed in detail showing the average adjusted cost of each episode and whether quality measures have been met. In the ADHD Level I Episode of Care's last performance period, there were 183 providers, of which 119 (65%) were in the commendable category and receiving gain share payments. Seven providers (3.8%) were in the non-acceptable category and subject to risk share. With regards to the commenter's comments regarding independent assessments, independent assessments are outside the domain of Episodes of Care and are not relevant to this rule change.

DHS made no changes to the proposed rule as a result of the comments received. The Department states that the instant rule change will require CMS approval, which is pending as of November 16, 2017. The proposed effective date is January 1, 2018.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The repeal of an existing rule removes two episodes of care, Attention Deficit Hyperactivity Disorder (ADHD) and Oppositional Defiant Disorder (ODD), from the episodes of care

program. The new Behavioral Health Transformation initiative, approved by Legislative Council and implemented on July 1, 2017, transfers the episode of care incentive mechanisms to the Patient Centered Medical Home (PCMH) program.

The Department of Human Services is authorized to "make rules and regulations and take actions as are necessary or desirable to carry out the provisions of this chapter [Public Assistance] and that are not inconsistent therewith." Arkansas Code Annotated § 20-76-201 (12). Arkansas Code §20-77-107 specifically authorizes the department to "establish and maintain an indigent medical care program."

10. <u>STATE BOARD OF NURSING</u> (Fred Knight)

a. <u>SUBJECT</u>: Chapter One-General Provisions; Chapter Two-Licensure: RN, LPN, and LPTN; Chapter Four-Advanced Practice Registered Nurse; Chapter Six-Standards for Nursing Education Programs; Chapter Seven-Rules of Procedure; Chapter Ten-Alternative to Discipline

<u>DESCRIPTION</u>: A summary of the proposed changes follows:

<u>Chapter 1</u>
The definition of "first level nurse" was added based upon terminology added to Chapter 6. The definition of "program" was revised to include a master's degree program as an entry level program which will give clarity and permit graduates of an entry-level pre-licensure program to obtain licensure as a Registered Nurse (RN). Definitions related to the alternative to discipline program (Chapter 10) were added.

<u>Chapter 2</u>
The enhanced Nurse Licensure Compact (eNLC) multistate licensure and Arkansas statute require graduates of an entry-level pre-licensure program to provide a Social Security Number to obtain licensure as a nurse. The eNLC also requires the ability to waive eligibility requirements be deleted. Also added to this chapter are the requirements to be consistent with current procedure for licensure. The eNLC statute requires the deletion of eligibility for Licensed Practical Nurse (LPN) licensure of non-graduate of RN programs. Act 248 of 2017 requires a timeframe be added for issuance of temporary permits for spouses of active duty service members. For clarification purposes, a reference to Chapter 4- Advanced Practice Registered Nurse (APRN) regarding continuing education. Act 204 of 2017 requires the waiver of the renewal fee for active duty service members. The other changes were clean-up of language.

Chapter 4

Act 372 of 2017 requires listing of official documents an APRN is authorized to sign. Act 820 of 2017 requires the addition of limits for prescribing Schedule II controlled substances. A statement regarding APRN continuing education is added for clarification. Act 820 of 2017 requires the addition of opioid prescribing guidelines. Act 72 of 2017 changes the definition of Tramadol dosage for chronic nonmalignant pain. Act 203 of 2017 requires a listing of the requirement for all services provided by APRNs providing care via telemedicine (our new section XIV mirrors Regulation 38 of the Medical Practice Act). Act 203 of 2017 also included standards for establishing a patient relationship which mirrors Regulation 2 of the Medical Practice Act.

After the public comment period ended, only two changes were made to this chapter. We added the word "also" before the word "deemed" (in Section XIII, C.) for clarification of the language used to define the requirements of minimum standards for establishing a patient relationship. We also changed Section XIV.B.5. to read as follows: An APRN using telemedicine may NOT issue a prescription for any controlled substances defined as any scheduled medication under schedules III through V and only hydrocodone combination products which were reclassified from Schedule III to Schedule II as of October 6, 2014 unless the APRN has seen the patient for an in-person exam or unless a relationship exists through consultation or referral; or on-call or cross-coverage situations.

Chapter 6

A detailed description of the purpose of the chapter is added for clarification. The term "masters" to the types of pre-licensure programs regulated by the ASBN Rules due to current trend in nursing education wherein a master's degree is the initial degree obtained for licensure as a RN. The term "feasibility study" replaces the term "proposal" for clarification purposes. Standards are increased by adding the requirement for a program to maintain a pass rate above 75% for two consecutive years in order to receive Continued Full Approval. An on-site survey will be decided on case-by-case review so the new language will provide ASBN discretion. The education requirements for a librarian are no longer applicable by the accrediting body. The requirement was added for a program director of a master's program to have a graduate degree in nursing and have a doctorate degree because all other program levels require the director to hold a degree above the program's degree level. The program director's responsibility to verify program completion is added for clarification purposes. The number of years of experience for assistant clinical instructors' is increased from one year to two years because one year is an insufficient amount of time. The old faculty to student ratio is removed for clarification purposes. The term "cloning" was removed because it is no longer applicable. In order to be in alignment with current trends in RN education in the United States, a

master's degree program leading to licensure as an RN will the meet same curriculum standards as BSN program. Practical nurse programs were removed for clarification purposes. In order to be consistent with current procedures, the requirement was added for a program director to appear to provide a second year low-pass rate report.

Chapter 7
A mechanism was added to allow issuance of disciplinary action based on noncompliance of terms of the alternative to discipline program. The definition of "fraud and deceit" was added to include payment of renewal/services with insufficient funds, which will permit disciplinary action if a licensee fails to submit proper funds.

Chapter 10
Act 325 of 2017 allows ASBN to create an alternative to discipline (ATD) program. Chapter 10 is new, and will be the rules for the ATD program.

PUBLIC COMMENT: A public hearing was held on October 10, 2017. The public comment period expired on November 3, 2017. Public comments were as follows:

Chapter 1

Dr. Stacy E. Harris, DNP, APRN, ANP-BC, University of Central Arkansas

COMMENT: "When I was reading Chapter 1, in the mark-up copy, page 5 under programs, I noticed that Masters of Science in Nursing was added but nothing about the DNP. At UCA, we will be moving to BSN-DNP for the APRNs, so I was thinking perhaps DNP program needs to be included in that section. Food for thought." **RESPONSE:** Explained this definition does not include DNP programs because it refers to RN prelicensure programs and not APRN programs.

Chapter 2

No comments received.

Chapter 4

Karen Reynolds, APRN

COMMENT: "I recently received an email from an individual who was concerned about the new proposed act. The concern was that in effect, it states that in order for an appropriate APRN/patient relationship to be

established, there must be a referral and a follow up with a collaborative physician. If read this way, it would in effect change collaboration agreement. After reading it again, I believe it was the intent of the Board to protect nurses who are covering call for other providers and allowing that to be considered an established relationship. I believe its purpose is to stop APRNs from prescribing to acquaintances who are not established patients. I am concerned that this section may be misread by others also. Maybe the intent should be clarified in wording. Please let me know what the intent for the section is or any clarification I can give others who are concerned." Requested the word "also" be added to Section XIII(B)(3) for the purpose of clarification. **RESPONSE:** Comment taken under advisement.

Ronette Wise

COMMENT: "I have reviewed the changes and I have a question regarding Section XIII B.A. Proper APRN/patient relationship, at a minimum require that: 3. Appropriate follow-up be provided or arranged, when necessary, at medically necessary intervals. I volunteer with Arkansas Baptist Association Medical/Dental clinics, there is a paper chart with assessment, dx and treatment, but there is not a follow up, so my question is, since there is not a follow up, then patient relationship is not established, is that correct? If this is correct, does that mean that APRNs cannot volunteer for this type of organization?" **RESPONSE:** Explained this does not apply to the APRN in the volunteer roles based on the definition of the practice of APRN nursing as noted in the Rules, Chapter 1, Section II(B).

Scott Smith, JD, Director of Governmental Affairs, Arkansas Medical Society

COMMENT: "As mentioned in my voicemail (maybe only left the specific concern with Sue, actually), we're concerned that the language on page 4-14, Section XIV on Telemedicine, B.5, may inadvertently leave an implication that all of Schedule II could be prescribed. I certainly don't have any preferred way to clarify, but here's one friendly recommendation…An APRN using telemedicine may issue a prescription for controlled substances defined as scheduled medications from schedule II hydrocodone combination through Schedule V only if the APRN has seen the patient for an in-person exam or if a relationship exists through consultation or referral; or on-call or cross-coverage situations. Again, I come in peace, hoping to avoid potential confusion down the road. Thanks for your consideration." **RESPONSE:** Revised section to clarify prescribing is limited to Schedule III-V and Schedule II, hydrocodone combination products.

Dr. Katherine Darling, DNP, PMHNP/FNP-C, FAANP

COMMENT: Referencing Chapter 4, Section XIII, Dr. Darling reiterated the necessity for exclusionary language to ensure the restriction of prescribing scheduled medications for family and friends. Requested clarification of "immediate family member" and prohibition of prescribing any controlled substance with a few exceptions. **RESPONSE:** Comment taken under advisement. Do not believe a more comprehensive definition of immediate family is necessary and restricting prescribing all controlled substances inhibits the APRN's ability to provide adequate care especially in the rural setting.

Karen Reynolds, CNP

COMMENT: Referencing Chapter 4, Section XIII, C., Ms. Reynolds suggested adding the word "also" on the first line of the section to clarify that all criteria is being met when establishing a patient relationship. **RESPONSE:** The word "also" was added.

Latoya Thomas, Director of State Policy Resource Center, American Telemedicine Association

COMMENT: Referencing Chapter 4, Section XIII requested "not imposing arbitrary physical examinations for mental health services." **RESPONSE:** No changes made. As written, allows real-time audio and visual technology in place of an in person examination.

COMMENT: Referencing Chapter 4, Section XIV(A) requested a change to modality neutral form of telemedicine. **RESPONSE:** No changes made. Written in alignment with the rules for physicians practicing telemedicine.

Chapter 6

Susan Kehl-Dean of the Harding University Nursing Program

COMMENT: Ms. Kehl spoke in favor of the changes to Chapter 6, articulating the increased educational standards for nursing instructors are a step in the right direction. **RESPONSE:** None.

Chapter 7

No comments received.

Chapter 10

No comments received.

The proposed effective date is January 1, 2018.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The Arkansas State Board of Nursing is authorized to promulgate whatever regulations it deems necessary for the implementation of Ark. Code Ann. § 17-87-101 et seq. (Arkansas Code regarding nursing profession). These rules implement various acts from the 2017 legislative session, specifically Act 72 of 2017, sponsored by Representative Justin Boyd (modifying the definition of "chronic nonmalignant pain" in the Combating Prescription Drug Abuse Act); Act 203 of 2017, sponsored by Senator Cecile Bledsoe (creating the Telemedicine Act); Act 204 of 2017, sponsored by Senator Missy Irvin (waiving the licensure renewal fee charged by the Nursing Board for certain active-duty military healthcare professions); Act 248 of 2017, sponsored by Representative David Meeks (requiring state boards and commissions to promulgate rules for temporary licensure, certification, or permitting of spouses of active duty service members); Act 325 of 2017, sponsored by Representative Justin Boyd (creating the Alternative to Discipline Act); Act 372 of 2017, sponsored by Representative Mary Bentley (authorizing advanced practice registered nurses and physician assistants to have signature authority); and Act 820 of 2017, sponsored by Senator Jeremy Hutchinson (authorizing the Board to promulgate rules limiting the amount of Schedule II narcotics that may be prescribed and dispensed by licensees of the Board).

11. STATE PLANT BOARD, PESTICIDE DIVISION (Susie Nichols)

a. SUBJECT: Pesticide Enforcement and Response Regulation

DESCRIPTION: This rule amends the Enforcement Response Regulations in accordance with Act 778 of 2017 that increases the maximum civil penalty from $1,000 to $25,000 for egregious violations from applications of Dicamba, or an Auxin containing herbicide, or any new herbicide technology released after August 1, 2017. The purpose of the amendment is to define terms in Act 778 and to incorporate the penalty range of "up to $25,000" into the civil penalty matrix.

PUBLIC COMMENT: A public hearing was held on September 21, 2017. The public comment period expired on September 19, 2017. The Board received no comments.

This rule was promulgated on an emergency basis and was approved at a meeting of the Executive Subcommittee on July 5, 2017. The proposed effective date for the permanent rule is pending legislative review and approval.

FINANCIAL IMPACT: Individuals who comply with the law will not have any financial impact. Anyone found to have committed an egregious violation will be subject to a civil penalty of up to $25,000. There will be no cost to state, county, or municipal government.

LEGAL AUTHORIZATION: The proposed rule implements **Act 778 of 2017**, sponsored by Senator Blake Johnson, which created penalties under the State Plant Board for the misuse of dicamba or dicamba-related products; limited the use of penalties above one thousand dollars ($1,000); and directed moneys to scholarships and training of personnel. Arkansas Code Annotated § 2-16-203(b)(1)(A)(ii)(*a*), as amended by Act 778, § 1, specifically permits the Board to assess a civil penalty greater than one thousand dollars ($1,000), but not more than twenty-five thousand dollars ($25,000), only if the Board finds that a violation is egregious. As defined by the statute, "[a] violation is egregious only if significant off-target crop damage occurred as a result of the application of dicamba or an auxin-containing herbicide or any new herbicide technology released after August 1, 2017." Ark. Code Ann. § 2-16-203(b)(1)(A)(ii)(*b*), as amended by Act 778, § 1. Pursuant to Ark. Code Ann. § 2-16-203(b)(2)(A), the Board shall by rule establish a schedule designating the minimum and maximum civil penalty that may be assessed under the statute for violation of each statute, rule, or order over which the Board has regulatory control. The Board may also promulgate any other regulation necessary to carry out the intent of the statute. *See* Ark. Code Ann. § 2-16-203(b)(2)(B).

b. SUBJECT: Dicamba Use and Application

DESCRIPTION: This rule to amend Arkansas Regulation on Pesticide Classification will restrict the use of dicamba for agricultural uses from April 16th through October 31st of all pesticides containing dicamba except for use on pastures, rangeland, turf, ornamental, direct injection for forestry activities and home use. The rule requires individuals who intend to apply dicamba by ground to complete online training provided by the University of Arkansas. This rule will protect farmers who have chosen not to use this pesticide technology and the general public.

PUBLIC COMMENT: A public hearing was held on November 8, 2017, and the public comment period expired on October 30, 2017. Provided by the Board and attached hereto is a summary of the public comments received and the Board's responses.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The State Plant Board shall administer and enforce the Arkansas Pesticide Use and Application Act, codified at Arkansas Code Annotated §§ 20-20-201 through 20-20-227, and shall have authority to issue regulations after a public hearing following due notice to all interested persons to carry out the provisions of the Act. *See* Ark. Code Ann. § 20-20-206(a)(1). When the Board finds it necessary to carry out the purpose and intent of the Act, regulations may relate to the time, place, manner, amount, concentration, or other conditions under which pesticides may be distributed or applied and may restrict or prohibit use of pesticides in designated areas during specified periods of time to prevent unreasonable adverse effects by drift or misapplication to: plants, including forage plants, or adjacent or nearby lands; wildlife in the adjoining or nearby areas; fish and other aquatic life in waters in reasonable proximity to the area to be treated; and humans, animals, or beneficial insects. *See id*.

12. ARKANSAS STATE POLICE (Col. William J. Bryant, Maj. Lindsey Williams, and Mary Claire McLaurin)

a. SUBJECT: Arkansas Concealed Handgun Carry License Rules

DESCRIPTION: The legislature established an "enhanced" concealed carry license and "firearm sensitive areas." ASP is responsible for the issuance of the licenses, development of the training for the enhanced license, and approval of the security plans required to establish a firearm sensitive area. Act 562 mandates that ASP promulgate rules for this purpose within 120 days of September 1, 2017. Other updates and revisions to the rules were also included to conform with current law and/or departmental procedures.

PUBLIC COMMENT: A public hearing was held on October 31, 2017. The public comment period expired on November 10, 2017. The agency submitted a public comment summary, attached hereto, detailing all of the comments received regarding these rules.

Jessica Sutton, an attorney with the Bureau of Legislative Research, asked the following questions:

(1) Page 4. Why are the words "enhancement" or "enhanced license" used throughout the Rules? The legislation consistently uses the term "concealed carry endorsement"? **RESPONSE:** Concealed carry licenses

with the "endorsement" were named "enhanced licenses" in the legislative title. The title of Act 562 is "An Act concerning the possession of a concealed handgun in a public university, public college, or community college building; concerning other privileges associated with an **enhanced** license to carry a concealed handgun; and for other purposes." Using the shorthand "enhanced license" makes it much more easily distinguishable from the license without an endorsement.

(2) Page 5. I'm curious why the definition of "concealed" is taken out of the Rules when it is still in the law? **RESPONSE:** I tried to remove as much redundant language from the rules as possible. If a definition is already contained in the law, I saw no reason to repeat the definition in the rules, unless further clarification was necessary.

(3) Page 9. Why is the agency removing the language requiring a "signed, agreed statement of allegiance to the United States Constitution and to the Arkansas Constitution" for issuance of a license? This is required under Ark. Code Ann. § 5-73-309(14). **RESPONSE:** We are subject to a consent decree and permanent injunction out of the Western District that requires us to allow all lawful permanent residents of the US residing in AR to apply and obtain a CHCL. It is my understanding that requiring foreign citizens to swear allegiance to the US Constitution and the Arkansas Constitution would be a violation of the consent decree.

(4) Page 11. The agency has stricken a few items from the application form (Rule 4.1) that are to be included under the law, specifically "any previous address of the applicant for the two (2) years preceding the date of the application" and "a statement whether or not the applicant has been found guilty of a crime of violence or domestic abuse." See § 5-73-310. **RESPONSE:** Change was made to match the language in the statute.

(5) Page 11. The agency is also striking language requiring a statement that the applicant has not been convicted of the offense of carrying a weapon within the last five (5) years. This could be a reason for denying a license under § 5-73-308, so I was curious why this item would be deleted from the form. **RESPONSE:** The statement by the applicant is not necessary (or ever used or considered) in processing the application. The Department relies on federal and state background checks for analysis of the individual's criminal history.

(6) Page 13. Why is the language under Rule 5.0 regarding the digital photograph of the licensee being deleted? This is required under § 5-73-313. **RESPONSE:** Change was made to match the language in the statute.

(7) Page 13-14. Regarding Rules 5.1 and 5.2, why is "a verified statement that the licensee remains qualified pursuant to the criteria specified in A.C.A. § 5-73-308(a) and § 5-73-309 " being deleted? Language is required under § 5-73-313. **RESPONSE:** Change was made to match the language in the statute.

(8) Page 21. Regarding the transfer of a license issued by another state to Arkansas, the rules require "at least one (1) full set of the applicant's classifiable fingerprints." However, Ark. Code Ann. § 5-73-319 requires two (2) properly completed fingerprint cards (which is the language that was originally in the rules). Why is there a discrepancy? **RESPONSE:** Change was made to match the language in the statute.

(9) Page 22. Under Rule 13.1, subsection (c) appears to be an incomplete thought. I wasn't sure if that language at the end of that subsection was meant to be stricken. **RESPONSE:** The way the redlining appears may make it confusing, but that is the correct statement. "(b) An instructor may not provide his or her own training certification for his or her own Arkansas concealed handgun carry license renewal application; however, the instructor may substitute his or her valid, current firearms safety training instructor registration issued by the Department for the renewal training requirement." Subsection (c) has been deleted.

(10) Page 22. Act 1017 of 2017 appears to remove language regarding the live-fire training requirement for active duty military. Why do the Rules require substitute documentation in place of a live-fire training requirement? **RESPONSE:** Act 1017 does remove the live-fire training requirement, but it does require under subsection (D) a letter from the commanding officer, and, under subsection (E) a form, as designated by the department, showing that the applicant has met the military qualification requirements for issuance and operation of a handgun within one (1) year of the application date. The Rules do not require any additional documentation that is not required under the law.

The proposed effective date is January 1, 2018.

FINANCIAL IMPACT: There will be a nominal cost to those who choose to enroll in training for an enhanced license.

The estimated cost to the state, county, and municipal government to implement the rule is unknown. The department does not receive any funding for the issuance of enhanced licenses or to administer security plan approval for "firearm-sensitive areas." Depending on demand by the public for enhanced licenses and submissions of security plans by public universities and colleges, there could be a detrimental financial impact on the department in terms of resources and personnel.

The cost is unknown to public universities and colleges, UAMS, and the State Hospital for preparation and submission of security plans for designation of "firearm-sensitive areas."

LEGAL AUTHORIZATION: The Director of the Department of Arkansas State Police may promulgate rules and regulations to permit the efficient administration of § 5-73-301 et seq., concerning concealed handguns. Ark. Code Ann. § 5-73-317. These rules implement Act 562 of 2017, sponsored by Representative Charlie Collins, concerning concealed carry endorsements. The Department of Arkansas State Police shall promulgate rules to design a training program under this act within 120 days of the effective date of the act.

13. ARKANSAS TEACHER RETIREMENT SYSTEM (Rod Graves, Rett Hatcher, and Laura Gilson)

a. SUBJECT: Rule 6-2 Reciprocity

DESCRIPTION: This rule change is necessary after the passage of Act 612 of 2017, which provides members with the option to voluntarily waive all or part of their service credited in ATRS and to retire under a reciprocal system. Minor modifications were made to improve clarity and consistency in the rule.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on October 27, 2017. The System received no comments.

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

(1) Will the ATRS approved form for the waiver include the member's acknowledgement "that the waiver is a voluntary surrender of the member's concurrent service credit in the system and cancels the member's concurrent service credit in the system" in accord with Ark. Code Ann. § 24-7-601(g)(3)(A), as amended by Act 612 of 2017, § 1?
RESPONSE: Yes, that will be included on the approved form. The submitted ATRS Rule 6-2 amendment makes clear that the member "elects" to waive concurrent service by "submitting *their* intention." The rule states the option; the form will emphasize the voluntary nature of the action and the canceling of the member's concurrent service credit (partially or fully) in the system consistent with Act 612 of 2017.

(2) Arkansas Code Annotated § 24-7-601(g)(3), as amended by Act 612 of 2017, § 1, seems to require that in order to waive the concurrent service, the member must not only make the aforementioned acknowledgement, but the "member's employer-accrued contributions and employee-accrued contributions in the system [are to] remain with the system." I may be missing it, but I'm not seeing this requirement referenced. Is it included? **RESPONSE:** Service credit and contributions are separate components of the retirement formula. Act 612 provides that the accrued money will stay in the system in which it was earned; only the service credit may be waived. Prior to Act 612, the member was required to waive all of the other system's service. Now the member can choose to waive all or part, which allows the member to use a higher final average salary or service credit from the reciprocal system or ATRS to compute benefits.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The proposed rule includes revisions made in light of **Act 612 of 2017**, sponsored by Senator Bill Sample, which provided members of the Arkansas Teacher Retirement System ("System") with the option to waive concurrent service credit. The general administration and responsibility for the proper operation of the System and for making effective the relevant statutory provisions are vested in a board of trustees. *See* Ark. Code Ann. § 24-7-301. Pursuant to Arkansas Code Annotated § 24-7-305(b)(1), the "board shall promulgate rules as it deems necessary from time to time in the transaction of its business and in administering the [System]."

b. SUBJECT: Rule 9-2 Age and Services (Voluntary Retirement)

DESCRIPTION: This change is necessary after the passage of Acts 293 and 780 of 2017 to maintain and provide a more flexible mechanism to protect the financial strength of ATRS and to protect its members.

First, the rule allows purchased and free credited service to be included in the calculation of credited service.

Next, the rule change also modified the existing right of the ATRS Board to reverse a compounded COLA as needed to maintain actuarial soundness. The board may already reverse the 2009 compounding of a COLA. The reversal may include a chart or proxy formula to be applied for members that have complicated changes in their benefits due to divorce, remarriage, death of the member, or death of a spouse. This rule

would allow the board to phase in reversal to prevent a retiree from receiving a reduction of benefits at any time.

Finally, the rule reflects changes in a member's designated beneficiary as requested by the member.

Non-substantive changes include minor modifications to improve clarity and consistency to language and numbering in the rule.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on October 27, 2017. The System received no comments.

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

With respect to section IV.E., concerning alternative residual beneficiaries, what prompted the addition of the section? Is it based on a specific statute or act? **RESPONSE:** Yes. Act 243 of 2017 allows for alternative beneficiaries. Since the mention of beneficiaries appears throughout ATRS' rules, we had to amend every rule that addresses the designation of a beneficiary. You will see more of this language allowing for alternative beneficiaries in your review of ATRS Rules 10-3 and 11-1.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The proposed changes to the instant rule include revisions made in light of **Act 243 of 2017**, sponsored by Representative John Maddox, which served to allow members of the Arkansas Teacher Retirement System ("System") to designate one or more residual beneficiaries; **Act 293 of 2017**, also sponsored by Representative John Maddox, which amended the requirements for voluntary retirement under the System and made other changes; and **Act 780 of 2017**, sponsored by Representative Gary Deffenbaugh, which amended the law concerning the compounded cost of living adjustment under the System. The general administration and responsibility for the proper operation of the System and for making effective the relevant statutory provisions are vested in a board of trustees. *See* Ark. Code Ann. § 24-7-301. Pursuant to Arkansas Code Annotated § 24-7-706(f), the board shall promulgate rules as necessary to administer the statute, which concerns annuity options. Further authority for the rulemaking can be found in Ark. Code Ann. § 24-7-305(b)(1), which provides that the "board shall promulgate rules as it deems necessary from time to time in the transaction of its business and in administering the Arkansas Teacher Retirement System."

c. **SUBJECT: Rule 9-4 Disability Retirement**

DESCRIPTION: This rule change is necessary after the passage of Act 549 of 2017 to give disability retirees flexibility and to encourage and enable them to return to work and then be off disability retirement.

The rule streamlines the ATRS disability process and allows disability retirees to return to work on a full-time or part-time basis to assist schools in meeting critical staffing needs. It also safeguards the disability retiree benefit if they attempt to go back to work full-time, but find that their disability prevents them from doing so. Furthermore, it helps prevent a disability retiree's loss of ATRS disability benefits by allowing a review by the ATRS' medical committee within three (3) months of disability benefits ceasing due to lack of a favorable disability determination letter from the Social Security Administration.

In addition, the rule allows all reciprocal service credit with another Arkansas public retirement system to be counted for vesting purposes for disability retirement.

Non-substantive changes include minor modifications to improve clarity and consistency to language and numbering in the rule.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on October 27, 2017. The System received no comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The general administration and responsibility for the proper operation of the Arkansas Teacher Retirement System ("System") and for making effective the relevant statutory provisions are vested in a board of trustees. *See* Ark. Code Ann. § 24-7-301. Pursuant to Arkansas Code Annotated § 24-7-305(b)(1), the board shall promulgate rules as it deems necessary from time to time in the transaction of its business and in administering the System. The proposed changes also include revisions made in light of **Act 549 of 2017**, sponsored by Senator Eddie Cheatham, which allowed members of the System with reciprocal service to retire upon a determination of disability; amended disability retirement procedures; and encouraged disability retirees of the System to return to employment.

d. **SUBJECT: Rule 9-8 Error Corrections and Collection of Overpayments**

DESCRIPTION: This rule change is necessary after the passage of Act 241 of 2017, which allows an additional exception in the five (5) year look-back period for understated service credit of a member upon which all required contributions were paid at the time and when the understatement was due to an obvious or documented error by an employer or by ATRS.

Non-substantive changes include minor modifications to improve clarity and consistency to language.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on October 27, 2017. The System received no comments.

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

(1) It appears that the original subsection E language has been deleted, despite that language remaining in Ark. Code Ann. § 24-7-205(c), as amended by Act 241 of 2017, § 1. What was the Board's rationale for the deletion from the rule? Is it the Board's position that the language from subsection (c) of the statute is now encompassed in the rule's revised subsection E's referenced exceptions? **RESPONSE:** Yes, you are correct. ATRS prefers to leave statutory language intact and in the Code, and not repeat the language in the Rules. The Rule language is meant only to simplify and clarify the corresponding code language and not repeat it or alter it.

(2) I believe that subsection E may contain a typographical error and should read "exists" instead of "exits"? **RESPONSE:** Correct. Should read "exists."

(3) I just thought I'd note that I see where "under Nos. 1 and 2 above" was deleted in subsection G, but the same language remains in subsection C. **RESPONSE:** The language "under Nos. 1 and 2 above" should be deleted.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The general administration and responsibility for the proper operation of the Arkansas Teacher Retirement

System ("System") and for making effective the relevant statutory provisions are vested in a board of trustees. *See* Ark. Code Ann. § 24-7-301. Pursuant to Arkansas Code Annotated § 24-7-305(b)(1), the board shall promulgate rules as it deems necessary from time to time in the transaction of its business and in administering the System. The proposed changes to this rule include revisions made in light of **Act 241 of 2017**, sponsored by Representative Dwight Tosh, which served to require the System to correct an error in its records at any time that understates the service credit of a member**.**

e. SUBJECT: Rule 9-9 Retirement Application

DESCRIPTION: This new rule is necessary for the proper administration of retirement applications and benefits. It sets a "window" of three (3) months in which a member may apply for retirement benefits before their effective date of retirement. (The Arkansas Public Employees Retirement System has such an application window for its members.) In addition, it allows ATRS to hold a member's application if the member applies too early or too late, and requires the member to fill out a simple form once an allowable date is reached, directing ATRS to file the application at that later date.

This new rule applies to voluntary retirement, early retirement, and T-DROP. It does not apply to disability retirement or survivor benefits.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on October 27, 2017. The System received no comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The general administration and responsibility for the proper operation of the Arkansas Teacher Retirement System and for making effective the relevant statutory provisions are vested in a board of trustees. *See* Ark. Code Ann. § 24-7-301. Pursuant to Arkansas Code Annotated § 24-7-305(b)(1), the "board 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."

f. SUBJECT: Rule 10-3 Teacher Deferred Retirement Option Plan (T-DROP)

DESCRIPTION: This rule change is necessary after the passage of Acts 243 and 1049 of 2017. It allows the board to adopt either a fixed or a

variable T-DROP interest rate. A variable interest rate formula would likely be based upon investment returns and other similar factors. The board may adopt a T-DROP participation incentive rate during a fiscal year, in addition to the applicable interest rate, if investment returns and financial conditions justify an incentive rate for the fiscal year.

The rule also allows the member to change a spousal benefit to an alternative beneficiary, and vice-versa.

Non-substantive changes include minor modifications to improve clarity and consistency in the rule.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on October 27, 2017. The System received no comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The proposed rule change includes revisions brought about by **Act 243 of 2017**, sponsored by Representative John Maddox, which served to allow members of the Arkansas Teacher Retirement System ("System") to designate one or more residual beneficiaries, and **Act 1049 of 2017**, sponsored by Senator Bart Hester, which served to modify the method used to set the Teacher Deferred Retirement Option Plan interest rate and to allow balance transfers between reciprocal systems. In lieu of terminating employment and accepting a service retirement benefit pursuant to Arkansas Code Annotated § 24-7-101 et seq., any person who is a member of the System and who meets the condition of having at least thirty (30) years of service credit in the System may elect to participate in the Teacher Deferred Retirement Option Plan and to defer the receipt of retirement benefits in accordance with the provisions of Title 24, Chapter 7, Subchapter 13 of the Arkansas Code. *See* Ark. Code Ann. § 24-7-1301(a), (b). Pursuant to Ark. Code Ann. § 24-7-1301(c), the board of trustees of the System may promulgate rules necessary for the orderly administration of the plan, including without limitation the rules for eligibility for continuance of deposits for part-time employment. The board may further adopt rules to carry out the provisions of Ark. Code Ann. § 24-7-710, concerning survivor annuity benefits. *See* Ark. Code Ann. § 24-7-710(b)(3).

g. SUBJECT: Rule 11-1 Survivor Benefits

DESCRIPTION: This change is necessary after the passage of Act 243 of 2017, which eliminates the current automatic statutory designation that

residual benefits must go to a spouse, even if the member objects. It allows a member of ATRS to voluntarily designate an alternative residual beneficiary in lieu of an automatic spousal designation to receive a lump sum payment of the member's residue amount upon death of an active or T-DROP member. This means that no spousal survivor benefit shall be payable if an alternate beneficiary is named.

The rule also strikes language regarding the inclusion of the monthly stipend because the board now has greater flexibility to adjust the benefit stipend if needed in order to maintain actuarial soundness.

Non-substantive changes include minor modifications to improve clarity and consistency to language in the rule.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on October 27, 2017. The System received no comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The proposed change includes revisions made in light of **Act 243 of 2017**, sponsored by Representative John Maddox, which served to allow members of the Arkansas Teacher Retirement System ("System") to designate one or more residual beneficiaries, and **Act 782 of 2017**, sponsored by Representative Gary Deffenbaugh, which amended the law concerning the application and adjustment of benefit stipends under the System. Pursuant to Arkansas Code Annotated § 24-7-706(f), the board of the System shall promulgate rules as necessary to administer the section, concerning annuity options, and institute fair procedures for members of the System, including without limitation: requirements for designating a beneficiary and spousal election. Further authority for the rulemaking can be found in Ark. Code Ann. § 24-7-305(b)(1), which provides that the "board shall promulgate rules as it deems necessary from time to time in the transaction of its business and in administering" the System.

h. SUBJECT: Rule 13-1 Administration Adjudications: Staff Determinations and Appeals

DESCRIPTION: This rule change includes non-substantive changes. From the time this rule was originally promulgated in 2010, there have been changes to improve clarity and consistency of the administrative adjudication process, including staff determinations and member appeals. The current rule changes continue those efforts to ensure that all parts of

the administrative adjudication process have been thoroughly explained and are easy to interpret.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on October 27, 2017. The System provided the following summary of the comments it received:

An ATRS internal comment was made to strike an obsolete facsimile number in paragraph VI. A., page 13-1-4. A second internal public comment was submitted by the ATRS Deputy Director to remove a proposed strike-through of the words "Pulaski County" in paragraph XIII, page 13-1-9, since the reference to venue is still applicable law under § 24-7-211. Both comments were considered, and the changes were made.

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

In Section IV.D., is the Executive Director's permission to affirm, reverse, or modify the staff determination at any point prior to *the ED's decision becoming final or* the final determination of the Board *if it is appealed*? Am I correct that the Board does not make a final determination unless the ED's decision is appealed to it? **RESPONSE:** Yes, the Board does not make a final determination unless the member appeals a final Executive Director Decision. Section IV D anticipates the point in the process *before* the Executive Director Decision, when the Executive Director is reviewing the Staff Determination, and ATRS wants to be clear that once the Board has made a final determination, the Executive Director cannot at that point, without Board direction, modify the Staff Determination.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The general administration and responsibility for the proper operation of the Arkansas Teacher Retirement System and for making effective the relevant statutory provisions are vested in a board of trustees. *See* Ark. Code Ann. § 24-7-301. Pursuant to Arkansas Code Annotated § 24-7-305(b)(1), the "board 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."

G. Adjournment.