

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

**Wednesday, May 15, 2019**

**9:00 a.m.**

**Room A, MAC**

**Little Rock, Arkansas**

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- A. Call to Order.
- B. Overview of Administrative Rules Subcommittee. (Ms. Jill Thayer, Bureau Staff)
- C. Adoption of Subcommittee Rules.
- D. Reports of the Executive Subcommittee.
- E. Reports on Administrative Directives Pursuant to Act 1258 of 2015.
  - 1. Department of Community Correction (Ms. Dina Tyler)
    - a. For the quarter ending December 31, 2018
    - b. For the quarter ending March 31, 2019
  - 2. Department of Correction (Mr. Solomon Graves)
    - a. For the quarter ending December 31, 2018
    - b. For the quarter ending March 31, 2019
  - 3. Arkansas Parole Board (Ms. Brooke Cummings)
    - a. For the quarter ending December 31, 2018
    - b. For the quarter ending March 31, 2019
- F. Rules Filed Pursuant to Ark. Code Ann. § 10-3-309.
  - 1. STATE BOARD OF DENTAL EXAMINERS (Mr. Kevin O'Dwyer)
    - a. SUBJECT: Amendment to Article IX-Credentials Required in Issuing Dental or Dental Hygiene Licenses

**DESCRIPTION:** This proposed amendment to Article IX, Credentials Required in Issuing Dental or Dental Hygiene License defines and explains licensure requirements for active military members.

**PUBLIC COMMENT:** A public hearing was held on November 16, 2018, and the public comment period expired on that date. No public comments were submitted. The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** There is no financial impact.

**LEGAL AUTHORIZATION:** The Arkansas State Board of Dental Examiners is authorized to promulgate rules in order to carry out the intent and purposes of the Arkansas Dental Practice Act, Ark. Code Ann. § 17-82-101 et seq. *See* Ark. Code Ann. § 17-82-208(a). These rules implement Act 248 of 2017, which required state boards and commissions to promulgate rules for licensure, certification, or permitting of active duty service members, returning military veterans, and spouses.<sup>1</sup> *See* Ark. Code Ann. § 17-1-106(g), as amended by Act 248 of 2017.

b. **SUBJECT: Amendment to Article XI – Dental Hygienists Functions**

**DESCRIPTION:** This clarifies how long a hygienist can see patients without the dentist in the office, and it states that placing silver diamine fluoride may only be delegated to a licensed dental hygienist.

**PUBLIC COMMENT:** A public hearing was held on November 16, 2018, and the public comment period expired on that date. No public comments were submitted. The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** There is no financial impact.

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<sup>1</sup> Act 820 of the 2019 Regular Session further amended Ark. Code Ann. § 17-1-106; however, because the Act does not contain an emergency clause, it has not yet become effective. *See e.g., Wait v. Hall*, 196 Ark. 508, 512, 118 S.W.2d 853, 854 (1938) (“But if no emergency clause is enacted the act does not become effective until ninety days after the adjournment of the session at which it was passed.”).

**LEGAL AUTHORIZATION:** The Arkansas State Board of Dental Examiners is authorized to promulgate rules in order to carry out the intent and purposes of the Arkansas Dental Practice Act, Ark. Code Ann. § 17-82-101 et seq. See Ark. Code Ann. § 17-82-208(a). Licensed dentists may employ licensed dental hygienists to act as assistants and to perform the acts, services, and practices described in Ark. Code Ann. § 17-82-102. Ark. Code Ann. § 17-82-103(a). No dental hygienist shall engage in any of the acts, services, or practices described in § 17-82-102 and the rules of the Arkansas State Board of Dental Examiners except as specifically provided in § 17-82-102 and those regulations. Ark. Code Ann. § 17-82-103(b)(1). All dental hygienist acts, services, and practices shall be performed under the supervision of a licensed dentist with the supervision being defined in the rules of the board. Ark. Code Ann. § 17-82-103(b)(2).

The board shall by rule prescribe those acts, services, procedures, and practices which may be performed by dental hygienists and dental assistants at the direction and under the direct supervision of a licensed dentist and shall impose requirements and restrictions on the performance thereof by dental hygienists and dental assistants as it shall deem proper and necessary to protect and promote the public health and welfare of the citizens of this state. Ark. Code Ann. § 17-82-208(c).

2. **DEPARTMENT OF EDUCATION** (Ms. Mary Claire Hyatt, item a; and Ms. Jennifer Dedman, item b)

a. **SUBJECT:** Special Education and Related Services, Section 2.00 Definitions and Section 5.00 Free and Appropriate Public Education (FAPE)

**DESCRIPTION:** Amendments to these sections of the Special Education Rules are necessary as a result of Act 874 of 2017. They also contain non-substantive edits.

Section 2.7.1 and Section 5.01.1 have been amended to incorporate the language added to Ark. Code Ann. § 6-41-205 by Act 874 of 2017, clarifying the age range for providing a free and appropriate education to a child with a disability. Section 2.30 has been amended to remove unnecessary language. Various definitions in Section 2.00 were removed because they were outdated, they were no longer required by federal law, or were not used in other

sections of the rule. No other substantive changes were made. Various other sections have been changed due to typing or grammatical errors.

Following the public comment period, additional changes were made. Section 2.25's definition of "equipment" was changed back to the original definition. Section 2.08.1's term "mental retardation" was replaced with "intellectual disability" to be consistent with 34 C.F.R. § 300.8 and Ark. Code Ann. § 6-41-203.

**PUBLIC COMMENT:** A public hearing was held on August 29, 2018. The public comment period expired on September 17, 2018. Substantive changes were made, and a second public hearing was held on November 20, 2018. The second public comment period expired on December 11, 2018. The Department provided the following summary of the comments that it received and its responses thereto:

*Initial Public Comment Period*

**Commenter Name: Lucas Harder, Arkansas School Boards Association (8/21/18)**

**Comment (1):** Section 2.1: There is an unnecessary space between "300." and "8." Section 2.8.1: There are unnecessary spaces between "300" and both "304" and "311." Section 2.14: "date-based Problem-Solving has four primary steps" should be "data-based." Section 2.485.1.1: There is a reference to § 2.48.1 here that I believe is supposed to be to the new 2.45.1 instead. Section 2.752..2: There is an extra period between "752" and "2." "Relate service" should be "related service." **Response:** Comment considered. Non-substantive changes made. Changes made to fix the errors noted in Comment 1.

**Comment (2):** Section 2.8.1: "Mental retardation" was changed to "intellectual disability." **Response:** Comment considered. Non-substantive change made.

**Comment (3):** Section 5.10.4.2: 4 CFR § 300.550 is a reserved CFR section. I believe that this should actually reference 34 CFR § 300.114 as that would track the language from 34 CFR § 300.324(d)(2)(ii). **Response:** Comment considered. Non-substantive change made.

**Commenter Name: Cassie Howell, Disability Rights Arkansas (9/17/18)**

**Comment (1):** DRA is concerned that some of the proposed changes do not align with definitions included within the Individuals with Disabilities Education Act (IDEA). For example, Arkansas Department of Education (ADE) is proposing a definition of “Equipment” that is vastly different than that provided within the IDEA and that is not as clear as the current definition, which is identical to that within the IDEA. In addition, ADE is proposing to eliminate the “excess cost” definition. DRA is unclear as to why either of these definitions would be changed. DRA recommends that ADE maintain those definitions, and others, that are included within the IDEA to the maximum extent possible and to ensure definitions in ADE’s regulations do not deviate from those included within the IDEA. **Response:** Comment considered. Substantive change made. The term “excess costs” is not used in any section of the ADE Special Education Rules, so there is no need to define it in Section 2.00 Definitions. Section 2.25 is changed to the original definition of “equipment.”

**Comment (2):** While DRA understands ADE’s proposed change to eliminate the definition of “Highly Qualified Teacher,” DRA would recommend ADE include some definition of a special education teacher within this definition section. This is based upon DRA’s experience with parents expressing concerns about the qualifications of their students’ special education teachers and the training and tools these teachers have been provided in order to be adequately prepared to educate their students. DRA encourages ADE to include a definition within this section so that parents and school districts are aware of ADE’s expectations for special education teachers within Arkansas. All teachers, including special education teachers, have a profound impact on the lives of students with disabilities and help set the stage for their future success. Having the definition within this section that explains the requirements for a special education teacher will ensure that parents and school districts fully understand the training and skills required for teachers in this important area. **Response:** Comment considered. No change made. The Arkansas Department of Education’s requirements for individuals teaching in a special education environment can be found in the ADE Rules Governing Arkansas Qualified Teacher Requirements.

*Second Public Comment Period*

**Commenter Name: Lucas Harder, Arkansas School Boards Association (11/16/18)**

**Comment (1):** Section 2.08.1: “Mental retardation” should be replaced with “intellectual disability” to match the language in 34 CFR § 300.8 and ACA § 6-41-203.

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

**Comment (2):** Section 2.19: I would recommend adding “Early Intervening Services Activities” to the front of the definition’s paragraph to match the style of the other definitions. **Response:** Comment considered. No change made.

**Comment (3):** Section 2.26: There is a comma missing between “grade” and “or.” **Response:** Comment considered. No change made.

Rebecca Miller-Rice, an attorney with the Bureau of Legislative Research, asked the following question following the changes made after the first public comment period:

I received the revisions to the above-referenced rule. I was just curious as to why the definition for equipment was changed back to its original definition? **RESPONSE:** It was changed back because the new definition did not align with IDEA (Individuals with Disabilities Education Act).

The proposed effective date is pending legislative review and approval.

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

**LEGAL AUTHORIZATION:** The State Board of Education shall make the necessary rules in keeping with the provisions of the Children With Disabilities Act of 1973, codified at Arkansas Code Annotated §§ 6-41-201 through 6-41-223. *See* Ark. Code Ann. § 6-41-207(c). The proposed changes include revisions made in light of Act 874 of 2017, sponsored by Senator Blake Johnson, which amended provisions of the Arkansas Code concerning special education.

b. **SUBJECT: Federal Program Complaint Resolution**

**DESCRIPTION:** The purpose of the Arkansas Department of Education Rules Governing Federal Program Complaint Resolution is to provide a procedure for receiving, reviewing, and resolving complaints made by organizations or individuals against the Arkansas State Board of Education, Arkansas Department of Education, other state agency, or a local education agency. These Rules apply only to complaints regarding the administration of the programs contained within 34 C.F.R. § 299.10.

These Rules only govern complaints from the enumerated programs, as authorized by 34 C.F.R. § 299.10. The portions concerning the McKinney-Vento Homeless Education Assistance Act in Section 1 of the Rules have been removed because McKinney-Vento is governed by a separate complaint and dispute resolution procedure. Part A of Title V has been removed from these Rules because it is also not contained in the list provided in 34 C.F.R. § 299.10. Citations to No Child Left Behind have been updated to cite to the Every Student Succeeds Act. A complaint process for the participation of private school children has been added at Section 4 of the Rules in compliance with 20 U.S.C. §§ 6320, 7881, and 7883.

As a result of a public comment received, a change was made to Section 4.01 of the Rules to clarify that the complaint may allege that the local education agency did not make a decision that treats the private school *or its* students equitably as required by law, by the addition of the words “or its.”

**PUBLIC COMMENT:** A public hearing was held on October 26, 2018. The public comment period expired on November 19, 2018. The only comments received by the Department are those set forth below.

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

Section 4.01 – This section appears to be premised upon 20 U.S.C. § 7881(c)(6)(A). The section sets forth as one of the bases on which a complaint may be filed that the consultation “did not make a decision that treats the private school *or its* students equitably as required by this section.” (Emphasis added.) The rule, however, provides that particular basis as “did not make a decision that treats

the private school students equitably as required by law.” Was there a reason for the rule’s distinction? **RESPONSE:** Comment considered. The change was made.

Section 4.06 – This section appears to be premised upon 20 U.S.C. § 7883(b), which provides in relevant part that a resolution may be appealed “not later than 30 days after the [SEA] resolves the complaint.” The rule, however, provides that the request for review must be filed with the Secretary “within thirty (30) days of the complainant’s receipt of the Department’s decision.” Was there a reason for the rule’s distinction? My concern was that the Secretary may reject a request as untimely if one actually waited until 30 days from receipt rather than resolution. **RESPONSE:** Comment considered. No change made. The rule provides that the request must be filed within 30 days of the complainant’s receipt of the Department’s decision to allow the complainant to receive notice first for reasons of due process. The language of the rule allows the complainant to first be notified of the decision before s/he is obligated to meet the timeline to appeal the decision.

The proposed effective date is pending legislative review and approval.

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

**LEGAL AUTHORIZATION:** Pursuant to 34 C.F.R. § 299.10, a State Educational Agency (“SEA”) shall adopt written procedures, consistent with state law, for (1) receiving and resolving any complaint from an organization or individual that the SEA or an agency or consortium of agencies is violating a federal statute or regulation that applies to an applicable program listed in 34 C.F.R. § 299.10(b); (2) reviewing an appeal from a decision of an agency or consortium of agencies with respect to a complaint; and (3) conducting an independent on-site investigation of a complaint if the SEA determines that an on-site investigation is necessary. Further authority for the rulemaking can be found in Arkansas Code Annotated § 6-11-105, which provides in relevant part that the State Board of Education shall have general supervision of, and shall take action as it may deem necessary to promote the organization and efficiency of, the public schools of the state. See Ark. Code Ann. § 6-11-105(a)(1), (7)(B).



3. **DEPARTMENT OF FINANCE AND ADMINISTRATION,**  
**REVENUE DIVISION (Mr. Mike Wehrle and Mr. Dale Breshears)**

a. **SUBJECT: Apprenticeship Program Income Tax Credit**  
**under Act 1042 of 2017**

**DESCRIPTION:** Act 1042 of 2017 provides for an income tax credit for each qualified youth apprentice who is at least 16 years of age and is employed to learn an apprenticeable occupation or is in an apprenticeship or work-based learning program. To claim the benefits, a taxpayer must obtain a certification from the Office of Apprenticeship of the U.S. Department of Labor or the Department of Career Education, certifying to the Department of Finance and Administration that the taxpayer has met all the requirements and qualifications.

A taxpayer who employs an apprentice is allowed an income tax credit in the amount of \$2,000 or 10% of the wages earned by the youth apprentice, whichever is less, for each apprentice. The amount of the income tax credit claimed in a taxable year may not exceed the individual or corporate income tax otherwise due. Any unused credit may be carried forward for a maximum of two consecutive taxable years.

**PUBLIC COMMENT:** A public hearing was held on December 18, 2018. The public comment period expired on December 17, 2018. The Department received no public comments. The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The cost of the apprenticeship income tax credit to the state is expected to be less than \$100,000 per fiscal year.

**LEGAL AUTHORIZATION:** Act 1042 of 2017, which was sponsored by Senator English, expanded the income tax credit allowed for employing an apprentice in an apprenticeship program or work-based learning program. Under Arkansas Code Annotated § 26-51-509(g)(1), the Department of Finance and Administration shall promulgate such rules as may be deemed necessary to carry out the purposes of the Youth Apprenticeship Program. Additionally, pursuant to Arkansas Code Annotated § 26-51-509(g)(2), the Department was required to consult with the Department of Career Education during the rule-drafting process, and the agency reports that it has done so.

4. **DEPARTMENT OF ARKANSAS HERITAGE** (Ms. Stacy Hurst and Ms. Debra Fithen)

a. **SUBJECT: Arkansas Heritage Grant Program**

**DESCRIPTION:** This new rule expands the scope of the Heritage grants. Under the current Heritage Month Grant rules, applicants' projects were limited to the Heritage Month theme. Grants were only offered once per year. Under the proposed rules, the theme is not limited and grant opportunities may be offered more than once per year depending on available funding. The proposed rule is intended to replace Rule 012.10.97-001 "Heritage Month Grants."

This rule establishes the guidelines and process for the administration of a grant program to promote education, awareness, and enjoyment of Arkansas's heritage. The rule includes items such as who is eligible to apply for the grant, how applications are evaluated, documentation required by the applicant, and the timeline for application and decision. Applications are voluntary.

**PUBLIC COMMENT:** There was no public hearing. The public comment period expired on November 30, 2018. No public comments were submitted. The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** There is no financial impact.

**LEGAL AUTHORIZATION:** Act 1001 of 1975 created the Department of Arkansas Heritage to be responsive to the cultural needs of the people of the State and to encourage greater participation of the public in the cultural affairs of the State. See Ark. Code Ann. § 25-3-101. Pursuant to Act 217 of the 2018 Fiscal Session, funds were appropriated to the department for grants/aid and other heritage programs, to be payable from the Arkansas Department of Heritage Fund Account and funded by the conservation tax levied by Amendment 75 for the fiscal year ending June 30, 2019. See also Act 902 of 2019, which contains the same appropriation with respect to the fiscal year ending June 30, 2020.

b. **SUBJECT: Public Art Grants**

**DESCRIPTION:** This rule establishes the guidelines and process for the administration of a grant program which encourages education, awareness, and enjoyment of public art. The grant funds the installation of public art in communities across Arkansas that participate in the Main Street Arkansas Program. The rule includes items such as who is eligible to apply for the grant, how applications are evaluated, documentation required by the applicant, and the timeline for application and decision. The maximum award per applicant is \$10,000.

**PUBLIC COMMENT:** There was no public hearing. The public comment period expired on December 31, 2018. No public comments were submitted. The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** There is no financial impact.

**LEGAL AUTHORIZATION:** Act 1001 of 1975 created the Department of Arkansas Heritage to be responsive to the cultural needs of the people of the State and to encourage greater participation of the public in the cultural affairs of the State. *See* Ark. Code Ann. § 25-3-101. In accordance with Act 217 of the 2018 Fiscal Session, funds were appropriated to the Department of Arkansas Heritage – Natural and Cultural Resources Council, to be payable from the Natural and Cultural Resources Historic Preservation Fund, for funds to augment federal funding and provide programs and grants by the Department of Arkansas Heritage – Natural and Cultural Resources Council – Main Street Program for the fiscal year ending June 30, 2019. *See* also Act 902 of 2019, which contains the same appropriation with respect to the fiscal year ending June 30, 2020.

5. **LIVESTOCK AND POULTRY COMMISSION (Mr. Wade Hodge)**

a. **SUBJECT: Licensing, Certification and Permitting of Active Duty Service Members, Returning Military Veterans and Spouses**

**DESCRIPTION:** These rules by the Livestock and Poultry Commission will allow for greater portability and provide for

temporary licensing of military members and spouses with professional or occupational agricultural licenses.

**PUBLIC COMMENT:** No public hearing was held. The public comment period expired on February 23, 2019. The Commission received no public comments.

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

(1) Section I.B.3. – Should the reference be to “described by (B)(1) or (2)”? **RESPONSE:** Change made.

(2) Section II.C. – Should the reference be to “described by (A) or (B)”? **RESPONSE:** Change made.

(3) Section IV. – Should the reference be to “A license, *certificate*, or permit”? **RESPONSE:** Change made.

(4) Section V.A.1. – Should the reference be to “An active duty military service member *deployed outside of the State*” to mirror Ark. Code Ann. § 17-1-106(f)(1)(A)? **RESPONSE:** Change made.

The proposed effective date is pending legislative review and approval.

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

**LEGAL AUTHORIZATION:** Pursuant to Arkansas Code Annotated § 17-1-106(g),<sup>2</sup> as amended by Act 248 of 2017, § 1, all state boards and commissions shall promulgate rules necessary to carry out the provisions of the statute, concerning the temporary licensure, certification, and permitting of active duty service members, returning military veterans, and spouses. The proposed rule implements Act 248, sponsored by Representative David Meeks, which required state boards and commissions to promulgate rules for the temporary licensure, certification, or

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<sup>2</sup> Act 820 of the 2019 Regular Session further amended Ark. Code Ann. § 17-1-106; however, because the Act does not contain an emergency clause, it has not yet become effective. *See e.g., Wait v. Hall*, 196 Ark. 508, 512, 118 S.W.2d 853, 854 (1938) (“But if no emergency clause is enacted the act does not become effective until ninety days after the adjournment of the session at which it was passed.”).

permitting of active duty service members, returning military veterans, and spouses.

6. **STATE MEDICAL BOARD** (Mr. Kevin O’Dwyer)

a. **SUBJECT: Regulation 42 – Licensure for Active Military Members**

**DESCRIPTION:** This defines and explains the licensure requirements for active military members.

**PUBLIC COMMENT:** A public hearing was held on December 6, 2018, and the public comment period expired on that date. No public comments were submitted. The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** There is no financial impact.

**LEGAL AUTHORIZATION:** The Arkansas State Medical Board is authorized to promulgate and put into effect such rules as are necessary to carry out the purposes of the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., and the intentions expressed therein. *See* Ark. Code Ann. § 17-95-303(2). These rules implement Act 248 of 2017, which required state boards and commissions to promulgate rules for licensure, certification, or permitting of active duty service members, returning military veterans, and spouses.<sup>3</sup> *See* Ark. Code Ann. § 17-1-106(g), as amended by Act 248 of 2017.

b. **SUBJECT: Proposed Amendment to Regulation 38 – Telemedicine**

**DESCRIPTION:** This amendment replaces the words “physician/physician assistant” with “Provider” and defines “Provider” as a person licensed by the Arkansas State Medical Board.

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<sup>3</sup> Act 820 of the 2019 Regular Session further amended Ark. Code Ann. § 17-1-106; however, because the Act does not contain an emergency clause, it has not yet become effective. *See e.g., Wait v. Hall*, 196 Ark. 508, 512, 118 S.W.2d 853, 854 (1938) (“But if no emergency clause is enacted the act does not become effective until ninety days after the adjournment of the session at which it was passed.”).

**PUBLIC COMMENT:** A public hearing was held on December 6, 2018, and the public comment period expired on that date. No public comments were submitted. The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** There is no financial impact.

**LEGAL AUTHORIZATION:** The Arkansas State Medical Board is authorized to promulgate and put into effect such rules as are necessary to carry out the purposes of the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., and the intentions expressed therein. *See Ark. Code Ann. § 17-95-303(2).*

c. **SUBJECT: Proposed Amendment to Regulation 2.8 – Patient/Provider Relationships**

**DESCRIPTION:** This amendment replaces the words “physician/physician assistant” with “Provider” and defines “Provider” as a person licensed by the Arkansas State Medical Board.

**PUBLIC COMMENT:** A public hearing was held on December 6, 2018, and the public comment period expired on that date. No public comments were submitted. The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** There is no financial impact.

**LEGAL AUTHORIZATION:** The Arkansas State Medical Board is authorized to promulgate and put into effect such rules as are necessary to carry out the purposes of the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., and the intentions expressed therein. *See Ark. Code Ann. § 17-95-303(2).*

7. **OIL AND GAS COMMISSION (Mr. Lawrence Bengal and Mr. Shane Khoury)**

a. **SUBJECT: General Rule B-26 – General Lease Operating Requirements**

**DESCRIPTION:** General Rule B-26 by the Arkansas Oil and Gas Commission is a facility operational rule dealing with various oil and gas facilities. The proposed amendments incorporate various operational regulatory requirements, pertaining to certain disposal well surface facilities (tanks, flowlines, pumps, etc.), associated with disposal wells permitted by the Commission. These surface facilities were previously covered under the recently amended Arkansas Department of Environmental Quality Regulation 1, which was amended in order to eliminate dual jurisdiction and streamline the regulation of these facilities by both agencies. The inclusion of the operational requirements for certain disposal well surface facilities into the Commission's rule insures a seamless regulatory transition for the regulated community.

**PUBLIC COMMENT:** Public hearings were held on January 31, 2019, in Fort Smith, and on February 7, 2019, in El Dorado. The public comment period expired on February 27, 2019. The Commission received no comments.

The proposed effective date is pending legislative review and approval.

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

**LEGAL AUTHORIZATION:** After hearing and notice, the Oil and Gas Commission may make such reasonable rules and orders as are necessary from time to time in the proper administration and enforcement of its statutory authority relating to the exploration, production, and conservation of oil and gas. *See* Ark. Code Ann. § 15-71-110(a)(1), (d).

b. **SUBJECT: General Rule H-1 – Class II Disposal, Class II Commercial Disposal, Enhanced Oil Recovery Injection (EOR), and Class V Brine Disposal Well Permit Application Procedures**

**DESCRIPTION:** General Rule H-1 by the Arkansas Oil and Gas Commission is a permitting rule for various types of USEPA UIC (Underground Injection Control) wells. The amendments clarify which types of UIC wells, for which the Commission has program primacy under the USEPA, are covered by the rule. Class II and Class V UIC wells specified in the amendment were previously regulated using the existing rule; however, the amendments are

necessary to clearly enumerate which UIC wells are covered by the Commission's rule. The amendments also incorporate various permitting requirements pertaining to certain disposal well surface facilities associated with disposal wells permitted by the Commission. These surface facilities were previously covered under the recently amended Arkansas Department of Environmental Quality ("ADEQ") Regulation 1, which was amended in order to eliminate dual jurisdiction and streamline the regulation of these facilities by both agencies. In addition, the amendments clarify which disposal well surface facilities (those permitted by the Commission as commercial disposal wells and larger disposal wells—with more than 1000 barrels of on-site disposal storage) must maintain a separate permit in accordance with ADEQ Regulation 1. These amendments also provide clarification to the permitting requirements for certain disposal well surface facilities, which will insure a seamless regulatory transition for the regulated community.

**PUBLIC COMMENT:** Public hearings were held on January 31, 2019, in Fort Smith, and on February 7, 2019, in El Dorado. The public comment period expired on February 27, 2019. The Commission received no comments.

The proposed effective date is pending legislative review and approval.

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

**LEGAL AUTHORIZATION:** After hearing and notice, the Oil and Gas Commission may make such reasonable rules and orders as are necessary from time to time in the proper administration and enforcement of its statutory authority relating to the exploration, production, and conservation of oil and gas. *See* Ark. Code Ann. § 15-71-110(a)(1), (d).

- c. **SUBJECT:** General Rule H-2 – Well Construction, Operating, and Reporting Requirements for Class II Disposal and Enhanced Oil Recovery (EOR) Injection Wells

**DESCRIPTION:** General Rule H-2 by the Arkansas Oil and Gas Commission is being amended to clarify which types of US EPA UIC (Underground Injection Control) wells, for which the Commission has program primacy under the USEPA, are covered



by the rule. This amendment brings the rule into conformance with the proposed amendments to the Commission's General Rule H-1.

**PUBLIC COMMENT:** Public hearings were held on January 31, 2019, in Fort Smith, and on February 7, 2019, in El Dorado. The public comment period expired on February 27, 2019. The Commission received no comments.

The proposed effective date is pending legislative review and approval.

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

**LEGAL AUTHORIZATION:** After hearing and notice, the Oil and Gas Commission may make such reasonable rules and orders as are necessary from time to time in the proper administration and enforcement of its statutory authority relating to the exploration, production, and conservation of oil and gas. *See* Ark. Code Ann. § 15-71-110(a)(1), (d).

8. **STATE BOARD OF OPTOMETRY (Mr. Kevin O'Dwyer)**

a. **SUBJECT: Chapter 1, Article IV – Reciprocity, Licensure by Endorsement, Military Personnel**

**DESCRIPTION:** The proposed amendment to Chapter 1, Article IV – Reciprocity, Licensure by Endorsement, Military Personnel defines and explains licensure requirements for active military members.

**PUBLIC COMMENT:** A public hearing was held on February 14, 2019, and the public comment period expired on that date. No public comments were submitted. The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** There is no financial impact.

**LEGAL AUTHORIZATION:** The State Board of Optometry is authorized to make rules for the administration and enforcement of Ark. Code Ann. §17-90-101 et seq., the law concerning optometrists. *See* Ark. Code Ann. §17-90-204(1). These rules

implement Act 248 of 2017, which required state boards and commissions to promulgate rules for licensure, certification, or permitting of active duty service members, returning military veterans, and spouses.<sup>4</sup> See Ark. Code Ann. § 17-1-106(g), as amended by Act 248 of 2017.

b. **SUBJECT: Chapter 5, Article IX – Prescribing Controlled Substances**

**DESCRIPTION:** This adds language under Section 1, Part A regarding prescribing of opiate medications and documentation of patient record as follows:

“It is incumbent of Optometrist to prescribe sufficient but minimal opiate medications. Any prescription for a Scheduled II or III opiate shall not exceed the total maximum manufacturer’s recommended daily dose for a total of 72 hours’ administration. Any refill of a prescription beyond the initial 72 hour prescription requires an inpatient visit and exam. Optometrist shall not prescribe more than 50 Morphine Milligram Equivalents (MME) per day.”

Patient record must be documented for a justification for the original prescription and for the need for any refill.”

**PUBLIC COMMENT:** A public hearing was held on February 14, 2019, and the public comment period expired on that date. No public comments were submitted. The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** There is no financial impact.

**LEGAL AUTHORIZATION:** The State Board of Optometry is authorized to make rules for the administration and enforcement of Ark. Code Ann. §17-90-101 et seq., the law concerning optometrists. See Ark. Code Ann. §17-90-204(1). Additionally, the board is authorized to promulgate rules limiting the amount of Schedule II narcotics that may be prescribed and dispensed by licensees of the board. Ark. Code Ann. § 17-90-204(8).

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<sup>4</sup> Act 820 of the 2019 Regular Session further amended Ark. Code Ann. § 17-1-106; however, because the Act does not contain an emergency clause, it has not yet become effective. See e.g., *Wait v. Hall*, 196 Ark. 508, 512, 118 S.W.2d 853, 854 (1938) (“But if no emergency clause is enacted the act does not become effective until ninety days after the adjournment of the session at which it was passed.”).

9. **STATE PLANT BOARD** (Mr. Wade Hodge)

a. **SUBJECT: Licensing, Certification and Permitting of Active Duty Service Members, Returning Military Veterans, and Spouses**

**DESCRIPTION:** The proposed rules by the State Plant Board will allow for greater portability and provide for temporary licensing of military members and spouses with professional or occupational agricultural licenses.

**PUBLIC COMMENT:** No public hearing was held. The public comment period expired on February 14, 2019. The Board received no public comments.

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

(1) **Section I.** – Both the title of the rule and the statute on which it is premised, Ark. Code Ann. § 17-1-106, as amended by Act 248 of 2017, concern licensure, certification, and permitting. Should the first line of the intro to the section state “will issue a temporary *permit*, license, or certificate”? **RESPONSE:** Change made.

(2) **Section I.A.** – Similarly, should the section read “Holds a substantially equivalent *permit*, license, or certificate”? **RESPONSE:** Change made.

(3) **Section II** – Should the title include “Expedited *Licensure*, Certification, and Permitting”? **RESPONSE:** Change made.

(4) **Section II** – Likewise, should the intro language include “shall expedite the *licensure*, certification, or *permitting* process”? **RESPONSE:** Change made.

(5) **Section II.A.** – Should it read “active duty military *service* member” to be consistent with the rest of the rule and the statute? **RESPONSE:** Change made.

(6) **Section III** – I believe there may be a typographical error in the title for “Experience.” **RESPONSE:** Change made.

- (7) Section III – Should the intro language include “licensure, *certification, or permitting*”? **RESPONSE:** Change made.
- (8) Section III.A. – Should the reference be to the “applicable permit, *certificate, or license*”? **RESPONSE:** Change made.
- (9) Section III.B. – Should the references in both portions of the sentence be to “permit, *certificate, or license*”? **RESPONSE:** Change made.
- (10) Section IV. – Should the title include “License, *Certificate, or Permit Expiration*”? **RESPONSE:** Change made.
- (11) Section IV. – Should the reference be to “A license, *certificate, or permit*”? **RESPONSE:** Change made.
- (12) Section V.A.2. – Is the term “applying” applicable as it is not included in the statute, Ark. Code Ann. § 17-1-106(f)(1)(B), or are continuing education required at time of application by ASPB? **RESPONSE:** Change made.
- (13) Section VI – What is the Board’s statutory authority for the inclusion of this provision? **RESPONSE:** Section VI deleted entirely.
- (14) Section VI.A. – Is the Board comfortable relying on Ark. Code Ann. § 17-87-312, which appears to apply specifically to applicants for licensure by the Arkansas State Board of Nursing? **RESPONSE:** Section VI deleted entirely.
- (15) Section VII. – Pursuant to Ark. Code Ann. § 25-15-105, an agency shall not assess a fee or penalty without specific statutory authority to assess a certain type and amount of fee or penalty or impose a fee or penalty in general. On what specific statutory authority does the Board rely to assess the temporary permit fee? **RESPONSE:** Section VII deleted entirely.
- (16) Section VII. – Assuming the Board is comfortable with its specific statutory authority to assess the temporary permit fee, what amount does the Board intend to charge? Any such amount should be specified in the rules. **RESPONSE:** Section VII deleted entirely.

Upon receipt of the revisions to the proposed rules, Ms. Miller-Rice asked the following questions:

(1) Section I.B.3. – Should the reference be to “described by (B)(1) or (2)”? **RESPONSE:** Change made.

(2) Section II.C. – Should the reference be to “described by (A) or (B)”? **RESPONSE:** Change made.

(3) Section IV. – Should the reference be to “A license, *certificate*, or permit”? **RESPONSE:** Change made.

(4) Section V.A.1. – Should the reference be to “An active duty military service member *deployed outside of the State*” to mirror Ark. Code Ann. § 17-1-106(f)(1)(A)? **RESPONSE:** Change made.

The proposed effective date is pending legislative review and approval.

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

**LEGAL AUTHORIZATION:** Pursuant to Arkansas Code Annotated § 17-1-106(g),<sup>5</sup> as amended by Act 248 of 2017, § 1, all state boards and commissions shall promulgate rules necessary to carry out the provisions of the statute, concerning the temporary licensure, certification, and permitting of active duty service members, returning military veterans, and spouses. The proposed rule implements Act 248, sponsored by Representative David Meeks, which required state boards and commissions to promulgate rules for the temporary licensure, certification, or permitting of active duty service members, returning military veterans, and spouses.

## ~~10. ARKANSAS PUBLIC EMPLOYEES RETIREMENT SYSTEM~~

### ~~a. Age of Members – How Established~~

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<sup>5</sup> Act 820 of the 2019 Regular Session further amended Ark. Code Ann. § 17-1-106; however, because the Act does not contain an emergency clause, it has not yet become effective. *See e.g., Wait v. Hall*, 196 Ark. 508, 512, 118 S.W.2d 853, 854 (1938) (“But if no emergency clause is enacted the act does not become effective until ninety days after the adjournment of the session at which it was passed.”).

11. **COMMISSION FOR ARKANSAS PUBLIC SCHOOL ACADEMIC FACILITIES AND TRANSPORTATION (Mr. Taylor Dugan)**

a. **SUBJECT: Self-Construction Projects by Public Education Entities**

**DESCRIPTION:** Amendments to these rules reflect changes made to law concerning public improvement contracts, commodities purchasing, and subcontractor licensure under Acts 725 and 1124 of 2017 (public improvement contracts and commodities purchasing), as well as under Act 1048 of 2015 (subcontractor licensure). These Acts raised the monetary amounts that triggered bidding and licensure requirements. Other changes made throughout the rules were stylistic or made for the purpose of clarification.

Additional changes made during public comment include: (1) statutory symbol was added to Section 6.086; (2) the “Self Process Information Form” was missing the number “3,” therefore, the number was added and the signature line for School Board President was removed; (3) the language of the “Self-Construction Assurance Statement” was revised stating that the school district will comply with the rules instead of requiring certification that they have read the rules; (4) Ark. Code Ann. § 19-11-259 was added to include the process for determining the lowest bidder for in-state and out-of-state bidders; (5) added Ark. Code Ann. § 6-21-301 for definitions; (6) under 3.01, “district” was pluralized; (7) under 4.02, “See Item 3 of Form A in Appendix A” and “See Item 4 of Form A in Appendix A” was added to give direction to the appendix; (8) 6.01.1 allows the current amount for open market purchases to be set by the Commissioner of Education under Ark. Code Ann. § 6-21-304; (9) under 6.076, “filed in the county” revised to “filed with the clerk of the circuit court of the county”; (10) “School District” changed to “Entity” throughout appendixes to match the definition in 3.01; and (11) boxes were added on the appendixes to allow space for entities to fill in the questions.

**PUBLIC COMMENT:** A public hearing was held on August 13, 2018. The public comment period expired on September 4, 2018. The Commission provided the following summary of the comments that it received and its responses thereto:

**Commenter Name: Jennifer Wells, Arkansas Public School Resource Center Arkansas (09/04/2018)**

**Comment (1):** The Part B form lists four questions the district must answer. The questions are numbered 1, 2, 4, and 5. Not clear if question 3 is omitted or there are only four questions and misnumbered.

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

**Comment (2):** Suggest removing school board president signature requirement, since it is burdensome for the district to obtain that signature. The district answers question 2 that states the date the school board approved.

**Response:** Comment considered. Signature line for school board president removed; signature line for Entity Administrator remains. Non-substantive change made.

**Comment (3):** On both Part A and Part B, eliminate "Signature Of" on the Entity Administrator. School districts do not sign Master Plans or Partnership Program project applications, and it is burdensome to provide a signature for construction approval forms for projects that must be contained on the district's Master Plan. Simply requiring the Entity Administrator assigns responsibility for the district.

**Response:** Comment considered. Superintendent in fact does sign Statement of Assurance as part of the Master Plan. No changes made.

**Comment (4):** The language of top of Part B, page 4 should be revised. Delete existing language and replace with, "The school district will:". Master Plan submission and Partnership Program project application submissions do not require a district certification that the district has read the rules.

**Response:** Comment considered. Language requiring certification that administrator of educational entity read applicable rules has been removed and replaced with language that the administrator will comply with the rules. Non-substantive change made.

**Commenter Name: Lucas Harder, Arkansas School Boards Association (8/31/2018)**

**Comment (1):** 1.02: Due to 6-21-109 defining these projects as "public works projects," I believe that A.C.A. § 19-11-259 should be added to the list as it has the potential to change the outcome of the bidding process for construction materials and equipment.

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

**Comment (2):** The definitions for commodities and open-market purchases comes from 6-21-301 rather than 6-21-304.

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

**Comment (3):** 3.01: To more closely match the statutory language, the “a” should be removed and “district” should be pluralized so that it reads “means Arkansas public school districts.”

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

**Comment (4):** I believe that the “of” at “a structure of physical object” should actually be an “or.”

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

**Comment (5):** 3.06: While this is the definition for commodities generally from 6-21-301, I believe that the definition for commodities from 19-11-259 would be more accurate in these circumstances.

**Response:** Comment considered. 6-21-301 more specific to school districts. No changes made.

**Comment (6):** 4.02: As sections 4.01.3 and 4.01.4 appear to have been stricken, I would recommend replacing the citation here with “See Item 3 of Form A in Appendix A” and “See Item 4 of Form A in Appendix A.”

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

**Comment (7):** 6.01.1: As the cut-off for open market purchases under 6-21-304 is set to annually increase, I would recommend changing this from including a specific dollar amount (since it has already increased from \$20,000 to \$20,500) and instead include language along the lines of “is less than the amount set by the most recent Commissioner’s Memo establishing the maximum purchase amount for open-market purchases.”

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

**Comment (8):** 6.01.2: Same recommendation as 6.01.1.

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

**Comment (9):** 6.053-6.064: I would recommend inserting a section between these two to incorporate the process for determining the lowest bidder when there are both in-state and out-of-state bids on construction materials and equipment from A.C.A. § 19-11-259.



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

**Comment (10):** 6.075: To more closely match the statutory language, I would recommend changing “filed in the county” to read “filed with the clerk of the circuit court of the county.”

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

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

Did the Commission consult with the “Arkansas Building Authority and any other entities” as provided in Ark. Code Ann. § 6-21-109(a)? **RESPONSE:** The Division of Public School Academic Facilities and Transportation consulted with the Arkansas Building Authority in accordance with 6-21-109(a).

Section 6.086 – Appears to be missing the statutory symbol being included in other sections. **RESPONSE:** Non-substantive change made.

The proposed effective date is pending legislative review and approval.

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

**LEGAL AUTHORIZATION:** Pursuant to Arkansas Code Annotated § 6-21-109(a), the Commission for Arkansas Public School Academic Facilities and Transportation, after consulting with the Arkansas Building Authority and any other entities, shall establish rules applicable to public educational entities for all public works projects when the public educational entity uses its own employees or acts as a general contractor. The proposed revisions include changes made in light of Act 725 of 2017, sponsored by Representative Mike Holcomb, which amended the award procedure for public improvement contracts; Act 1124 of 2017, sponsored by Senator Alan Clark, which raised the price threshold for the purchase of commodities that school districts must procure by soliciting bids and provided for annual adjustments in the purchase price threshold based on inflation; and Act 1048 of 2015, sponsored by Senator Bart Hester, which amended the law concerning the cost of work and materials requiring a general contractor’s license.

12. **SALINE COUNTY REGIONAL SOLID WASTE MANAGEMENT DISTRICT** (Ms. Tiffany Dunn and Mr. Sam Gibson)

a. **SUBJECT: SCRSWMD Recycling Fund Distribution and District Administered Grants Program**

**DESCRIPTION:** The purpose of the Rule is to establish policy and procedure for all grants made and administrated by the Saline County Regional Solid Waste Management District made with Act 1333 of 2013 funds or funds of the District which have been authorized by motion of the Board to make grants.

**PUBLIC COMMENT:** A public hearing was held on February 27, 2019. The public comment period expired on February 27, 2019. The Board received no public comments. The proposed effective date is upon legislative review and approval.

**FINANCIAL IMPACT:** This rule has no financial impact.

**LEGAL AUTHORIZATION:** Regional solid waste management boards have the power and duty to adopt rules under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., as are reasonably necessary to assure public notice and participation in any findings or rulings of the boards and to administer the duties of the boards, as well as to establish programs to encourage recycling. See Ark. Code Ann. § 8-6-704(a)(6), (7).

G. **Adjournment.**