ADMINISTRATIVE RULES SUBCOMMITTEE
OF THE
ARKANSAS LEGISLATIVE COUNCIL

Wednesday, May 19, 2021
9:00 a.m.
Room A, MAC
Little Rock, Arkansas

A. Call to Order.

B. Adoption of Subcommittee Rules.

C. Reports of the Executive Subcommittee.

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

1. Department of Corrections (Ms. Lindsay Wallace)

a. For the quarter ending December 31, 2020

b. For the quarter ending March 31, 2021

2. Parole Board (Ms. Brooke Cummings)

a. For the quarter ending December 31, 2020

b. For the quarter ending March 31, 2021

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

1. <u>DEPARTMENT OF AGRICULTURE, STATE PLANT BOARD</u> (Mr. Wade Hodge, Mr. Scott Bray)

a. <u>SUBJECT</u>: Pesticide Applicators Rule

<u>DESCRIPTION</u>: The State Plant Board proposes changes to its rules under the Arkansas Pesticide Use and Application Act, Ark. Code Ann. § 20-20-201 et seq., establishing a minimum-age requirement for all commercial applicator, commercial applicator technician, noncommercial applicator, and private applicator licenses. The Environmental Protection Agency ("EPA") has adopted regulations requiring a minimum-age requirement for all restricted-use pesticide applicators. Specifically, EPA

regulations 40 C.F.R. § 171.103(a)(1) and 40 C.F.R. § 171.105(g) establish a minimum-age requirement for commercial and private pesticide applicators of at least eighteen (18) years old. EPA regulations classify all restricted-use pesticide applicators as either commercial or private applicators. Additionally, the EPA is currently requiring all states to provide "satisfactory documentation that the State standards for the certification of [commercial and private] applicators meet or exceed those standards prescribed" in the regulations, including a minimum-age requirement for licensure. Since the EPA regulations apply to all restricted-use pesticide applicators, the State Plant Board classifications of noncommercial applicators and commercial applicator technicians are also clearly covered by the minimum-age requirement of the EPA regulations. On November 20, 2020, the State Plant Board Pesticide Committee approved the proposed rules, and the changes were approved by the State Plant Board on December 2, 2020.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on April 5, 2021. The Board received no public comments.

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

Ark. Code Ann. § 20-20-206(a)(1), within the Arkansas Pesticide Use and Application Act ("Act"), Ark. Code Ann. §§ 20-20-201 to -227, directs that the State Plant Board shall administer and enforce the Act and shall have authority to issue rules "after a public hearing following due notice to all interested persons to carry out" the provisions of the Act. It is my understanding that the Board does not plan to hold a public hearing on these rules unless one is requested. Is the Board comfortable that its actions regarding a hearing and notice comport with the statute?
RESPONSE: Yes, we are comfortable with our rule adoption process. The Plant Board statute is a 1975 law and only addresses a public hearing and does not provide for the public to be able to submit comments in writing. The Administrative Procedure Act was amended in 1997 to provide that an oral hearing was not necessary unless requested by 25 people or an organization having 25 or more members. The legislature apparently recognized the wasteful nature of calling (in the case of the Plant Board) 18 members of the Board together to hold a hearing at which no one would appear. We have received no comments at all on the rules in question and will certainly afford the opportunity for public hearing if the need arises.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 20-20-207(b)(1), the State Plant Board in promulgating rules under the Arkansas Pesticide Use and Application Act, Ark. Code Ann. §§ 20-20-201 through 20-20-227, shall prescribe standards for the licensing of applicators of pesticides. Further, the Board is authorized to adopt standards in conformance with and at least equal to those prescribed by the United States Environmental Protection Agency and such additional standards as it deems necessary. *See* Ark. Code Ann. § 20-20-207(c).

The agency states that the amended rule is further required to comply with federal regulations, specifically, 40 C.F.R. § 171.103(a)(1) and 40 C.F.R. § 171.105(g).

~~**b. Pesticide Use and Application Rule (late-season permit rule)**~~

c. SUBJECT: Adoption of National Institute of Standards and Technology (NIST) Handbooks

DESCRIPTION: The State Plant Board proposes its Rules Regarding the Adoption of the National Institute of Standards and Technology (NIST) Handbooks to be administered by the Department of Agriculture's Bureau of Standards. NIST was established by the United States Congress in 1901 to develop national standards for uniform measurements in commerce, science, and technology. It has developed standards that are generally recognized and adopted across multiple industries and disciplines. The rules were drafted to eliminate the need for perpetual rulemaking. The proposed rules adopt NIST Handbooks 44, 112, 130, and 133 "as amended from time to time." Therefore, any revisions to the NIST Handbooks will be automatically adopted, fulfilling the Plant Board's statutory obligation to maintain traceability with national weights and measures standards and alleviating the burden of yearly rulemaking for every change to the referenced NIST Handbooks.

Arkansas Code Annotated § 4-18-303 provides that NIST "shall be the primary state standard for weights and measures." The Arkansas State Plant Board is authorized to adopt the following NIST Handbooks by rule:
• NIST Handbooks 44 and 112 as the rules governing standards for weighing and measuring devices (Ark. Code Ann. § 4-18-328);
• NIST Handbook 130 as the rules governing metrology and engine fuel quality (§ 4-108-212); and
• NIST Handbook 133 as the rules governing the "checking of the net contents of packaged goods" (Ark. Code. Ann. § 4-18-312(m)).

The Plant Board is required to "maintain traceability of the state standards to the national standards in the possession of the [NIST]." Ark. Code Ann. § 4-18-312(a). The rulemaking process set forth in the Arkansas Administrative Procedure Act, Ark. Code Ann. § 25-15-201 et seq., has made the process difficult to update standards in a timely fashion. The result is a state of perpetual rulemaking that consumes Department resources.

The Plant Board's Bureau of Standards Committee approved the rules on November 10, 2020. The full Plant Board approved the rules on December 2, 2020.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on April 5, 2021. The Board received no public comments.

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

(1) Typically, when adopting by reference, an agency will specify the date or version of the rules or regulations being incorporated so as to avoid any potential delegation-of-authority issues or issues under the Administrative Procedure Act, resulting from changes to the rules without having gone through the promulgation and/or legislative-review-and-approval processes. Is the Board comfortable with simply adopting the handbooks "as amended from time to time by the National Conference on Weights and Measures ("NCWM")? **RESPONSE:** Yes, we are. We are involved in meetings with national organizations instrumental in the changes to the NIST handbooks and always have advance notice of potential changes. Therefore, we can amend our rules to carve out exceptions if we foresee any coming changes that may not be right for Arkansas. Additionally, the statutes direct that the Plant Board shall apply those national standards, but do not say that those standards "as they existed on a certain date" are the ones that the Plant Board should adopt. In fact, in some places the statutes specifically state that the NIST handbooks "and supplements thereto or revisions thereof, shall apply." It appears that the statutes contemplate the rules being in compliance with the most up-to-date versions.

(2) In accord with Ark. Code Ann. § 4-18-328 and § 4-108-212(b), did the Bureau/Board consider whether the specifications, tolerances, and regulations published by the National Institute of Standards and Technology were consistent with the needs of Arkansas business and consumers? **RESPONSE:** Yes, and as can be seen, that is why we carved out certain exemptions from the National Standards.

(3) Just so that I am clear, the Bureau of Standards is now under the State Plant Board? If yes, am I correct that it is the result of Acts 610 and 624 of 1993? **RESPONSE:** Yes, and Act 587 of 2001 gives the State Plant Board rulemaking authority over weights and measures, and fuels and lubricants.

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 § 4-18-312(a), (c), the State Plant Board shall maintain traceability of the state standards to the national standards in the possession of the National Institute of Standards and Technology and shall issue reasonable rules for the enforcement of Title 4, Chapter 18, Subchapter 3, concerning uniform weights and measures law, which rules shall have the force and effect of law.

Further authority for the rulemaking can be found in Ark. Code Ann. § 4-18-328, which provides that the Arkansas Bureau of Standards, which was transferred to the State Plant Board pursuant to Acts 610 and 624 of 1993, "may by regulation adopted pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq., adopt as a regulation of the bureau specifications, tolerances, and regulations for commercial weighing and measuring devices set out in the National Institute of Standards and Technology Handbooks 44 and 130, or in any similar publication issued by the National Institute of Standards and Technology," and in drafting the regulations, the Bureau "shall consider whether the specifications, tolerances, and regulations published by the National Institute of Standards and Technology are consistent with the needs of Arkansas businesses and consumers and may modify, amend, or delete suggested language found in the National Institute of Standards and Technology handbooks." *See also* Ark. Code Ann. § 4-108-212 (similarly providing that the State Plant Board may by rule adopt as a rule of the Arkansas Bureau of Standards specifications, tolerances, and regulations for engine fuels, petroleum products, and automotive lubricants set out in National Institute of Standards and Technology Handbook 130, or in any similar publication issued by the National Institute of Standards and Technology and that in drafting the rules, the Bureau shall consider whether the specifications, tolerances, and regulations published by the National Institute of Standards and Technology are consistent with the needs of Arkansas businesses and consumers and may modify, amend, or delete suggested language found in the National Institute of Standards and Technology handbooks.).

2. DEPARTMENT OF COMMERCE, ARKANSAS DEVELOPMENT FINANCE AUTHORITY (Mr. Mark Conine)

a. SUBJECT: 2021 Arkansas Development Finance Authority Qualified Allocation Plan

DESCRIPTION: The Arkansas Development Finance Authority (ADFA) is proposing changes to its Qualified Allocation Plan. The agency provided the following summary of substantive changes:

1. With respect to the projects that may receive the ADFA-discretionary 30% basis boost, we removed an obsolete reference to counties designated in the consolidated plan and a reference to USDA Rural Development-funded projects.
2. With respect to the allocation of state low-income housing tax credits and (state) Affordable Neighborhood Housing Tax Credits, we and DF&A substituted references to tiers 3 and 4 of the job- creation incentive tiers of the Arkansas Economic Development Commission for obsolete references to counties designated in the consolidated plan. We and DF&A also removed the 10% nonprofit set-aside for state low-income housing tax credits.
3. We added the average-income set-aside as an option for applicants and added rules prohibiting market-rate units and requiring proportionate distribution of designations to avoid unintended consequences of that option.
4. We provided for the applicant – rather than ADFA – to commission the required market study, and required capture rates not exceeding 20%.
5. We made a Rental Rate Impact (RRI) score of at least 40 points a threshold requirement for 9% LIHTC applicants and required equitable distribution of RRI benefits.
6. We equalized certain operating deficit reserve requirements between rehabilitation and other projects.
7. We lowered the threshold limit on developer's fees from 15% to 10% of net development costs, and imposed a limit on the amount of the developer's fee that may be deferred.
8. We added a per-unit cost cap applicable to 4% LIHTC/bonds applications.
9. We changed the fair housing training requirement from 5 hours to 4 hours.
10. We prohibited applicant-architect/engineer affiliations.
11. We removed provision for funding assisted living projects.

12. We relaxed the survey requirements for rehabilitation projects.
13. We substituted points for profit and overhead limitations for points for public housing waiting lists.
14. We changed Rental Rate Impact (RRI) from a 100-point scoring category to a 4-point threshold category plus a 20-point scoring category.
15. We increased the importance of site selection in scoring and added residential character of the area as a scoring criterion.
16. We substituted points for a low capture rate for points for total development cost control.
17. We equalized fees for all applications.

Following the expiration of the public comment period, the agency provided the following summary of substantive changes:

1. On pages 15-16, we increased the permitted developer's fee with respect to bond-financed developments because of the increased complexity of those transactions.
2. On page 17, we increased the rehabilitation cost threshold from $15,000 to $25,000 to ensure that tax credits are devoted to rehabilitation projects that need substantial work.
3. On page 23, we provided a sliding-scale points deduction, rather than a flat 12-points deduction, for projects that have received tax credits within the past 20 years, to recognize that rehabilitation may be more appropriate the more time has passed.
4. On page 23, we increased from 4% to 6% the maximum level at which general requirements may be incurred and still receive points. We made this change in recognition of prevailing general requirements levels and the limited ability to control these costs.
5. On page 26, we clarified that 30% AMI units may not both receive points in 9% scoring and satisfy National Housing Trust Fund affordability requirements. This change merely states ADFA policy previously stated in an interpretative memo.

All other changes shown in the mark-up are in the nature of clarification and not intended to make any substantive change.

PUBLIC COMMENT: A public hearing was held on November 23, 2020. The public comment period expired on December 15, 2020. ADFA provided the following summary of comments received and its responses thereto:

Commenters
1. Mark English, E&A Team, Inc. – Training specialist, 10/23/20
2. Casey Kleinhenz, CDC of Bentonville – Housing developer, 10/26/20, 11/17/20

3. Matt Darst, Upward Housing Group – Housing developer, 10/28/20, 11/14/20
4. Traci Wallis, S.E. Clark and Associates – Housing developer, 11/16/20
5. Andrea N. Frymire, MHEG – Tax-credit syndicator, 11/25/20
6. Steve Perry, KWL Properties, LLC – Housing developer, 11/25/20
7. Jim Petty, Strategic Realty Companies – Housing developer, 11/29/20
8. Thomas Embach, Leisure Homes Corporation – Housing developer, 11/30/20
9. Len Reeves, Ridgewood Consulting, LLC – Housing developer, 11/30/20
10. Ron Hughes, Home Energy Rating Services – Energy use consultant, 12/1/20
11. Ashley Wilson, BGC Advantage – Housing developer, 12/8/20
12. Jim Petty, Strategic Realty Companies – Housing developer, 12/9/20
13. Scott Christiansen, LRC Developers, Inc. – Housing developer, 12/10/20
14. Thom Amdur, National Housing & Rehabilitation Association – National trade association president, 12/15/20

ADFA Responses
ADFA considered each comment received, and implemented them to the extent described or noted below in italics. ADFA did not otherwise implement the comments.

Comments
I. QUALIFIED ALLOCATION PLAN ("QAP") MODIFICATION/ADOPTION PROCESS

Adopt changes to the existing QAP (four commenters)
Commenter 1 submitted draft QAP language intended to implement NCSHA's recent Best Practices regarding Accessibility and the Department of Justice's New Accessibility Initiative. The commenter suggested imposing the requirements stated in the draft language as application threshold requirements. The draft language pertains to completion of Capital Needs Assessments with respect to necessary improvements to physical accessibility, construction monitoring to evaluate compliance with Fair Housing and Accessibility rules, Training on Fair Housing and Accessibility rules, and encouraging Fair Housing compliance.

Commenter 5 asked that ADFA consider the AHIC Underwriting Guidelines, NCSHA best practices and comments from affordable housing stakeholders.

Commenter 6 asked for a definition of "material" for the requirement that "any material change to the original application, and all subsequent

changes shall be submitted to ADFA in writing at least thirty (30) days before the desired effective date of the change." Commenter 6 further stated that there are certain standard changes in the industry (such as equity pricing, a project's sources and uses) that shouldn't be considered "material."

Commenter 7 asked for clarification that ADFA still intended to utilize the State LIHTC. The QAP as proposed and adopted makes changes to the provisions relating to the State LIHTC and implicitly reaffirms their availability.

Commenter 7 noted that, with larger markets like NWA and higher economic growth areas, the minimum length of the option contract is more difficult for the seller to agree to. Commenter 7 thinks the option contract should only be required to run through September or October.

Eligible basis should go up and down with costs (one commenter)
Commenter 7 stated that, historically, eligible basis went up and down with costs. Commenter 7 further stated that, ultimately, not doing this hurts tenants since higher risk means lower equity means higher loan levels means and lastly higher rent.

ADFA should not constrain potential eligible basis for four percent transactions (one commenter)
Commenter 14 believes that implementing some of its best practices would allow ADFA to increase its financings through its bond program—as, in 2018, it is estimated that ADFA issued $51 million of the nearly $1.2 billion available in private activity bonds.

II. SCORING CRITERIA

Site Selection Criteria (six commenters)
Commenter 2 said, on the Site Selection criteria, it is noted that there is a maximum of 24 points. By Commenter 2's math, the maximum score is actually 27 points. ADFA clarified that the maximum available score is indeed 24 points.

Commenter 3 noted that the maximum number of points an application could achieve under the proposed 2021 QAP is 96 and suggested that the maximum might be brought to 100 points by (1) combining "Public Transportation" and "Access to Pedestrian Trails" and (2) making each of the 7 categories for points be worth 4 points instead of 3, thus bringing the total points for the Site Selection category up to 28 from 24. This would also allow rural areas and smaller cities to compete better since only bigger cities have public transportation. By permitting a maximum score of 24 points in the Site Selection criterion, ADFA made it possible for

developments in areas without public transportation to score the maximum number of points nevertheless.

Commenter 4 asked that, if points are deducted for the project's proximity to incompatible uses, there be an exhaustive list of those incompatible uses so that developers can make informed decisions about potential sites and their scores.

Commenter 6 asked that points be given for every amenity located within 3 miles of the site rather than 2 miles—since rural projects will have difficulty getting points for this—or possibly differentiate between rural and urban projects for amenity points. Commenter 7 echoed this sentiment.

Commenter 7 stated that points could be added if the site is within 3 miles of a large employer or a certain number of jobs.

Commenter 9 felt that more weight should be on location-related scoring items because this encourages developers to compete for the best sites, not the best spreadsheets. Commenter 9 also noted that ADFA could follow Louisiana's lead and, after set-asides, split the remaining credits evenly between rural and metro areas. The QAP's maximum score of 96 points, as compared to well over 100 points in 2020, does make site selection points a greater proportion of any application's score.

Commenter 11 asked that, in order for a 100-point maximum on the QAP, points should be awarded to (1) projects receiving rental subsidy and (2) projects using emerging building technologies that provide advanced sustainability over and above the minimum design standards.

Rental Rate Impact (five commenters)

Commenter 4 asserted that rental rate impact forces applicants to minimize net operating income and squeeze operating expenses, thus making it nearly impossible to leverage non-ADFA resources because the reduced NOI cannot support debt service. Commenter 4 believed that RRI favors low-cost, low-quality construction as well as encourages management to rely on inadequate staffing, substandard service, and deferred maintenance in order to minimize expenses. Commenter 4 said that RRI dis-incentivizes projects—especially higher quality projects—in smaller, rural markets, which are often the places with the greatest needs. Commenter 4 believed that minimizing rents does nothing to reduce the cost of building and operating a project—only encouraging projects that are not financially sound and discouraging reputable sponsors/developers from participating in the LIHTC program. Commenter 4 suggested possibly offering a scoring incentive for a project to commit a portion of case flow to provide

rent rebates to tenants, thus giving a benefit to the tenants while not hindering a project's viability.

Commenter 5 stated that RRI should be removed due to its being too easy to manipulate and too hard to track after allocation—specifically noting that, in many instances, the proposed lowered rents cannot support historic operating expenses. Commenter 5 believes RRI should be deleted, or at least the loopholes for it should be closed.

Commenter 6 stated that RRI should be removed from the scoring criteria due to it creating an advantage for non-rural projects. Commenter 6 also echoed the sentiments of Commenter 5 above in that RRI can create projects that are unattractive to syndicators and investors due to the projects being barely feasible.

Commenter 7 stated that RRI makes it more difficult for Arkansas projects to compete for capital from national investors. Commenter 7 further stated that RRI's minimum score disproportionately affects rural areas the maximum score will create a problem since developer will do whatever it takes to get points, even if it results in a financially unfeasible development.

Commenter 9 stated that RRI can be manipulated, and developers will do whatever it takes to get the maximum amount of points—even if it means producing less and less financially feasible developments.

ADFA did substantially revise the RRI provisions of the QAP, instituting a minimum threshold and reducing the percentage of the scores that will be attributable to RRI.

Rental Rate Impact & Project-Based Vouchers (one commenter)
Commenter 4 said, under the current RRI process, a voucher will only ever be worth the rental rate for a given unit—and if that rent is discounted under RRI, then the voucher is also discounted. Commenter 4 stated that, if rents are allowed to be set at the maximum payment standard, then that is additional income for the property that doesn't cause additional hardship to the tenant or ADFA.

Average Income Test (one commenter)
Commenter 4 asked that ADFA add language in the MFHA Guidelines to exclude any units designated above 60% AMI from the RRI calculation since, otherwise, projects utilizing the Average Income Test may not be able to meet the 40-point threshold for RRI.

Implement sliding scale for rehabilitation point deductions (one commenter)
Commenter 5 said that ADFA should utilize a sliding scale for rehabilitation point deductions so that, the longer the property has been place in service, the more points it gets. ADFA implemented this comment.

List of negative points should be published (one commenter)
Commenter 5 stated that ADFA should publish a list of people who have past performance deductions so that developers can know that information (and building their team accordingly) prior to application submission.

Remove profit and overhead from scoring criteria (two commenters)
Commenter 6 stated that profit and overhead should be removed from scoring criteria and profit limits left under threshold. Commenter 6 further stated that the threshold limits should be general requirements 7%, builder profits 8% and overhead 2%. ADFA changed the general requirements scoring maximum from 4% to 6%.

Commenter 7 similarly stated asked what happens if the developer/owner violates this provision when they do not have a construction company (and the costs are outside their control)? Commenter 7 stated that General Requirements are standard industry costs paid to outside, third parties and, as such, are market-driven and have minimal control by the contractor. See response to immediately preceding comment.

Add market rate units into LIHTC developments (one commenter)
Commenter 7 stated that more "blue collar" market rate units should be allowed into LIHTC developments. Points could be awarded on a sliding scale up to 20%, and there should be a cap on the difference between LIHTC and market rate rents—possible 20% or 30%.

Add "local support/leverage" scoring (one commenter)
Commenter 7 stated that points could be awarded for developments that bring additional sources of non-federal funding (local grants, loans, materials, etc.) to the project.

Allocate points for energy efficient projects (one commenter)
Commenter 10 noted that all ADFA-funded projects should be energy rated, and that points should be allocated to projects with lower HERS scores.

Raise percentage for and define "general requirements" (one commenter)
Commenter 12 noted that the "general requirements" under the "Profit and Overhead" part of the Scoring Criteria seem to be items where the cost is largely out of the developer's control. Commenter 12 recommended that

either the percentage be raised (above the current 4%) or at least what constitutes "general requirements" should be clearly defined. ADFA raised the percentage from 4% to 6%.

Developers should get points for bringing in community benefit programs (one commenter)
Commenter 13 asked that, in the Community Revitalization Plan aspect of the Scoring Criteria, developers be awarded the 4 points if they bring a community benefit plan to the area that goes beyond housing. Commenter 13 suggested adding the following language to the end of the first paragraph in the Community Revitalization Plan aspect: ", or a Developer of a project submits a Community Impact Plan of how it will invest in social programs that will have a direct impact on the residents of the community that fall below 80% AMI. This detailed plan must be accepted by the scoring committee in order to be awarded the 4 points of this section."

III. AFFILIATIONS (two commenters)

Commenter 3 noted that the proposed 2021 QAP contains a prohibition on affiliations between project architects and other development team members but asks if this is justified/workable and if there should be other prohibitions. The commenter states that the main issue is developers with "in house" construction. The commenter goes on to say that other states deal with this issue by requiring that developers with affiliated construction companies must limit their construction profits to levels lower (2% lower in one example given) than those permitted to third-party construction companies. The commenter stated that banning in-house architects or engineers will make little difference because few, if any, developers have in-house/affiliated architects or engineers.

Commenter 4, a developer with no affiliations with fellow development team members, wanted to discourage adding unnecessary/costly verification steps to the application process. Instead of adding cost and work for smaller, non-integrated developers, Commenter 4 said it's better to either (1) limit deals with vertically integrated developers or (2) consider implementing a cost-verification step for only the teams that have this type of affiliation.

IV. COSTS/FUNDING

Total Development Costs Per Unit (three commenters)
Commenter 4 wanted to develop high quality, single-family homes; however, the total development costs for these will always be higher than the costs for high-rise multifamily apartments—with ADFA's preference seeming to be for rehabilitation of same rather than construction due to the

lower costs—and it would be difficult to build single-family homes for less than the $150,000 per unit limit. As such, Commenter 4 believed that ADFA's total development cost limit is too low to be feasible for many types of projects to try to compete against the low per-unit cost of multifamily rehabilitation.

Commenter 7 stated that the "cost per unit" sliding scale effectively sets the cost cap at less than $150,000 for any type of unit or size of unit. Commenter 7 noted that this would result in units being smaller and deals in larger, more costly metro areas will be difficult to make financially feasible.

Commenter 8 stated that there should be an additional 4 points awarded in Category #8 Total Development Costs to those who can stay under $100,000 total development cost per unit.

4% LIHTC and Tax-Exempt Bond Per-Unit Cost Cap (one commenter)
Commenter 4 stated that the proposed cost cap of $200,000 per unit makes it difficult to impossible to do new construction in a bond deal because it's difficult to build a new LIHTC unit for a total development cost of less than $200,000 even when bonds are not involved. Commenter 4 believed direct bond costs alone add approximately $5,000 to the per-unit cost, and having bonds in the deal puts upward pressure on legal and financing costs also. In short, Commenter 4 believed that per-unit cost caps have the effect of commoditizing LIHTC units, thus encouraging the construction of smaller, lower-quality, less marketable units.

Commenter 11 stated that the $200,000 per-unit cost cap should be revised in terms of funding types that it is applicable to—especially 4%/RAD deals where no additional funds are being requested. Commenter 11 also believed that there should be a reduction to the TDC based on third party sources of funds brought into the project.

Increase LIHTC credit cap (one commenter)
Commenter 7 stated that, especially in NWA, the LIHTC credit cap is getting pushed (due to high permit fees, lumbar costs, etc.)—and it would help to "bump" the credit calculation up a bit.

Minimum Operating Expenses (one commenter)
Commenter 3 stated that having a minimum amount of operating expenses per unit (like several other states have) would take care of many of the issues that syndicators are having and eliminate many ways developers are able to manipulate scoring categories—such as keeping RRI from being manipulated by a lower operating expense to get more points. Commenter 3 suggested the following:

a. Senior Housing Minimum Operating Expense per unit of $3,800
b. Family Housing Minimum Operating Expense per unit of $4,000

Increase minimum hard costs to $25,000 per unit (one commenter)
Commenter 5 suggested this. *ADFA implemented this comment.*

ADFA should consider a set-aside for RD developments and/or ac/rehabs for smaller communities (two commenters)
Commenter 5 stated that doing this would help smaller communities preserve affordable housing without having to be competitive with Springdale/Fayetteville.

Commenter 7 also stated that having a set-aside for smaller markets would be beneficial—adding that it would still be good to have a tax credit amount per development limit.

Cost containment should only pertain to profits (one commenter)
Commenter 7 stated that ADFA has broad discretion to ensure that people aren't taking advantage of the program through profit enhancement; however, beyond developer fees, contractor fees, the rest of the costs are based on factors outside a developer's control. Commenter 7 felt it was better for ADFA to exercise their discretion against those taking advantage of the program rather than to "punish" those who are not. Commenter 7 also felt that this could make projects less attractive to national investors.

Developer fees should not be limited to 10%(two commenters)
Commenter 11 stated that limiting developer fee to 10% for 9% transactions and 12.5% for 4% transactions puts the developers and their developments at risk—and with states like Tennessee having the developer fee cap at 25%, Arkansas risks losing quality developers to other states.

Commenter 14 urged ADFA to substantially increase its developer fee limit to match other states (like Tennessee [25%], Kentucky [20%], etc.), to generate additional eligible basis, and to compensate developers.

V. MDS-RELATED

Modify the communal-laundry requirement (one commenter)
Commenter 4 asked that ADFA remove the requirement from the Minimum Design Standards for a project to include a communal laundry facility if washers and dryers are already being provided in every unit. ADFA intends to revise the MDS to implement this comment.

VI. APPLICATION CONTENT/THRESHOLD REQUIREMENTS

Remove the due-at-application requirement for an ALTA/NSPS survey and topographical survey (one commenter)
Commenter 4 stated that only a general land survey should be required for new construction projects. Commenter 4 asserted that this is a major expense for an applicant to incur without knowing if the project will be funded—though adding that funded projects could provide ALTA/NSPS and Topo Surveys prior to initial closing.

Initiate an open records system to publish all non-personal, deal-related information (two commenters)
Commenter 5 stated that this (including the publishing of self-scores and final scores) would add transparency.

Commenter 3 asked that self-scores be published along with the application list for additional transparency.

Developers should be able to order their own market studies (two commenters)
Commenter 5 stated that, because many developers already order their own market study prior to the development proposal, having to pay for another doubles the cost. ADFA implemented this comment.

Commenter 7 wanted to confirm that it was now the developer's responsibility to order market studies.

Only require appraisals if there is identity of interest in landowner/buyer or Acquisition Credits are requested (one commenter)
Commenter 7 feels that requiring appraisals in situations where they are inapplicable is driving up costs. Commenter 7 stated that appraisals should only be required if there is an identity of interest in landowner/buyer or if the development is requesting Acquisition Credits.

Remove QAP's restriction on bond developers taking developer fee on acquisition costs if there is an identity of interest (one commenter)
Commenter 14 stated that this policy limits reasonable developer fees, which hurts the financial viability of projects and disincentivizes committed, high-quality developers from participating in the program. Commenter 14 further noted that the developer fee compensates developers for the risk of four percent tax credit tax-exempt bond transactions having a high proportion of foreclosable debt, for which the developer is ultimately responsible.

Only require land survey after project has been funded (one commenter)

Commenter 7 stated that having a survey at the time of application drives up costs since, by the time it's funded, another survey will be needed.

RRI should be removed from threshold (one commenter)
Commenter 6 stated that RRI should be removed from the threshold requirements since that is difficult for rural projects to achieve and still be financially feasible.

VII. POTENTIAL HOUSING DISRUPTERS FOR 2021 (one commenter)

Commenter 5 stated that there are a number of things that could disrupt the housing industry in 2021. These include supply chain disruptions, lumber pricing/availability, rehabs being conducted in a COVID-safe manner, the trend of mixed-income developments with discounts to the market rate units, lender concerns over LIHTC unit rent being comparable to market unit rent, and the potential for AMIs to remain flat or possibly decrease in the short term.

In addition, the agency provided a separate summary of comments received during the public hearing:

Commenters
1. Nathan Joseph, S.E. Clark and Associates, Inc. – housing developer
2. Ashley Wilson, BGC Advantage – housing developer
3. Andrea Frymire, MHEG – tax-credit syndicator
4. Casey Kleinhenz, CDC Bentonville – housing developer
5. Scott Christiansen, LRC Developers, Inc. – housing developer

ADFA Responses
ADFA considered each comment received, and implemented them to the extent described or noted below in italics. ADFA did not otherwise implement the comments.

Comments

I. SET-ASIDES, LIMITS, PREFERENCES

Create set-asides for different sorts of developments (one commenter)
Commenter 3 said that credits should be set aside for developments of various sorts, including new construction, acquisition/rehab, Rural Development, etc., in part to avoid multiple developments in a single town or small area.

Do not adopt the proposed reduced limit on developer's fee (one commenter)

Commenter 1 said that implementation of the proposed limit would deter good developers and lessen competition. ADFA increased the proposed limit with respect to bond-financed projects.

Increase minimum hard costs in rehabilitations to $25,000 per unit (one commenter)
Commenter 3 said this is an AHIC underwriting guideline. ADFA implemented this comment.

Increase or abolish the per-unit credit limits (one commenter)
Commenter 1 said that the limits increase the costs of housing by necessitating construction bridge loans and result in credit dollars being used to pay the costs of such loans rather than hard costs.

Do not adopt the proposed per-unit cost cap on 4%/bonds transactions (two commenters)
Commenter 1 said that the proposed cap is arbitrary and unjustified given that Arkansas has in recent years had more private activity bond volume cap that is used. The commenter said that fact should cause ADFA to encourage 4%/bonds developments.

Commenter 2 stated agreement with the comments described above and elaborated: ADFA's cost concerns and tighter limits result in excessive time spent with ADFA staff, investors, and lenders on structuring and explaining Arkansas transactions. ADFA should recognize that what it views as excessive costs are often paid by housing authorities and non-State of Arkansas participants and should not punish housing authorities and other participants for having those resources. The commenter also stated that the developments in RAD transactions are often much older, and thus more expensive to rehabilitate, than the developments in typical acquisition/rehabilitation transactions. Commenter 2 said that while it might be possible to adopt different cost limits on different types of transactions, a preferred approach would be to provide that sources of funds such as housing authority contributions and historic equity may be considered adjustments of otherwise-applicable cost caps.

Do not adopt more extensive cost certification requirements (one commenter)
Commenter 1 stated that such requirements would disproportionately disadvantage and place undue burdens on developers that are not vertically integrated and give undue advantage to developers that are. In accordance with this comment, ADFA did not adopt more extensive cost certification requirements.

II. SCORING CRITERIA

Do not adopt the proposed scoring criterion relating to limiting general requirements and contractor profit and overhead (one commenter)
Commenter 1 said that adoption of the proposed criterion would deter good participants and lessen competition. ADFA adjusted the scoring criterion with respect to general requirements.

Modify the AOI scoring criterion (one commenter)
Commenter 4 said that the AOI criterion and the criterion relating to community revitalization plan in a qualified census tract tend to cancel out one another.

Discontinue the "rental rate impact" ("RRI") scoring criterion (two commenters)
Commenter 1 said RRI has produced unintended consequences and has caused investors and lenders to withdraw from doing business in Arkansas due to unreasonably low rents. The commenter also said that RRI is a drain on human capital in determining how RRI works and may be complied with, and that it results in disproportionate awards to developments in Northwest Arkansas.

Commenter 3 said RRI is too easy to manipulate in the application and too hard to track compliance after allocation. The commenter said application budgets may show lowered rents and unsustainable expenses but such lowered rents cannot support historic operating expenses, meet AHIC Underwriting Guidelines, or satisfy investors. The commenter said that the COVID-19 pandemic may cause AMIs to be flat or even to fall, putting additional pressure on developments that may have insufficient revenues owing to RRI. This commenter said that while her company syndicated up to 40% of credits in Arkansas in previous years, financial infeasibility resulting from RRI scoring prompted her company to cease business in Arkansas over two years ago.

Reconsider the proposed changes to RRI (one commenter)
Commenter 4 said that RRI scoring, in the current QAP, permits ADFA to avoid qualitative assessments by making it unlikely that two applications score the same number of points. The commenter said the proposed changes to RRI implementation would cause more tie scores and questioned how the ties would be resolved.

Award points for a developer's non-housing contributions (one commenter)
Commenter 5 said that points should be awarded for non-housing services delivered to a community by the developer in addition to the housing development.

Award points to developments in areas that have not received an allocation in recent years (one commenter)
Commenter 2 made this suggestion.

III. ANNUAL 9% ROUND PROCESS

Publish self-scores and final scores of all applications, and otherwise institute an open-records system (one commenter)
Commenter 3 said this would add transparency to the system.

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

1. In the first paragraph of the "Application" section of the rule, the agency states that "an allocation of tax credits will be made only after the filing with the Authority of a MFHA in the form promulgated by the Authority." However, the next sentence seems to allow ADFA to add requirements not contained in the promulgated QAP. Does ADFA envision adding requirements in the future without going through the promulgation process? If so, could you please provide the authority that the agency is relying upon to do so? **RESPONSE:** ADFA does not envision adding any requirements which require APA promulgation without going through said process.

2. On page 6, the rule states that "ADFA may amend, make technical changes, and/or adopt rules ancillary to this QAP…" Would these changes have to go through the promulgation process under the APA and reviewed and approved under Ark. Code Ann. § 10-3-309? If not, please clarify. **RESPONSE:** ADFA will use the APA promulgation process for any "rule" as defined by Ark. Code Ann. § 25-15-202(8)(A).

3. On page 12, there was a change which requires the applicant to provide the market study and also requires capture rates not exceeding 20%. What was the reasoning behind this change? **RESPONSE:** Many developers order a market study prior to submitting an application to ADFA; therefore, having these developers pay ADFA to acquire an additional market study doubled the cost. To limit costs and increase efficiency, ADFA has placed the responsibility of ordering the market study solely in the hands of the developer. The imposing of a maximum capture rate of 20% serves as an objective evaluation of "need for additional affordable rental housing in the proposed geographic market area."

4. On page 14, ADFA made a Rental Rate Impact score of 40 a threshold requirement and required equitable distribution of RRI benefits among units. What is ADFA's reasoning behind adding these provisions?

RESPONSE: One of ADFA's goals is ensuring that low-income Arkansans are not rent-burdened. Requiring a minimum overall Percentage Advantage of 40% is one way in which ADFA can ensure that rents are kept as low as practicable. Also, we have deleted the provision requiring equitable distribution of RRI benefits among units because it stated concerns that were too uncertain—and we believe that equity and fairness are implied requirements.

5. On page 6, why did ADFA choose to lower the threshold limit on developer's fee from 15% to 10%? **RESPONSE:** ADFA lowered the limit on developer's fee in order to maximize the percentage of each award that benefits low-income Arkansans. In this connection, ADFA noted that all applications for 9% credits filed in 2020 elected to limit developer's fee to 10% in order to be awarded points. Clearly, developers viewed a 10% fee sufficient. Please note that, in the QAP as adopted, the maximum developer fee in 4% transactions was raised to 12.5%, an acknowledgement of the greater complexity of these transactions.

6. On page 18, why was the fair housing training lowered from 5 hours to 4 hours? **RESPONSE:** The basic fair housing training course offered by the Arkansas Fair Housing Commission is 4 hours—so this change was to bring the requirement in line with the course.

7. On page 18, what is the rationale behind the prohibition of applicant-architect or applicant-engineer affiliations? **RESPONSE:** This is another step taken to maximum the benefit to low-income Arkansans from each award. Affiliations can create situations where applicants pay more to their affiliated entities than if they were third parties—so prohibiting this situation eliminates that possibility.

8. On the MFHA, a provision concerning criminal background check and disclosure was removed. Could you please explain why this section was removed? **RESPONSE:** In an attempt to simplify the QAP, the criminal background check section was eliminated, and its essential requirements were added to Section 25. Please note that no substantive change was intended; the criminal background checks are still required. In the QAP as adopted, language was added to clarify that the requirement remains.

9. Concerning the points criteria on pages 23-29, ADFA noted in red that several changes were made. However, upon reviewing the conventional blackline markup, I was unable to identify any of these changes. Could you please submit a revised conventional blackline markup including these changes? **RESPONSE:** Attached.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: ADFA indicated the proposed rules have a financial impact. The agency estimated a cost of $36,500 for the current fiscal year and next fiscal year to private individuals, entities and businesses subjected to the proposed rule. The agency provided the following explanation concerning the calculation of this figure: The annual amounts set forth above are net totals for all applicants and are calculated on the following assumptions: Approximately 12 LIHTC 9% applicants for projects with nonprofit participation will pay an additional (approximately) $4,500 each in application fees. Approximately five LIHTC 4% applicants for projects with nonprofit participation will pay an additional $7,000 each in application fees. Approximately 35 LIHTC applicants (i.e., all LIHTC applicants) will save approximately $1,500 each on the market studies' cost. Total additional cost is therefore estimated at $89,000 (($4500x12)+($7000x5)); total savings is estimated at $52,500 ($1500x35); and net additional cost is estimated at $36,500 ($89,000-$52,500).

In consideration of the alternatives to this rule, this rule was not determined by ADFA to be the least costly rule considered. The agency provided the following explanation:

a) How the additional benefits of the more costly rule justify its additional cost:
Section 42(m) of the Internal Revenue Code requires that a state housing finance agency (such as ADFA) adopt a Qualified Allocation Plan ("QAP") to govern the allocation and award of federal low-income housing (income) tax credits ("LIHTC"). ADFA is the state agency that allocates LIHTC in Arkansas. Accordingly, ADFA has had a QAP in effect for many years, and makes changes to the QAP from time to time.

Arkansas law also provides for state income tax credits relating to the provision of affordable housing, and ADFA's QAP also governs the award of those state credits. The provisions of the QAP relating to the state credits are joint rules of the Arkansas Department of Finance and Administration and ADFA.

The QAP governs the annual allocation and award of approximately $10,000,000 to $15,000,000 in federal and state income tax credits given in exchange for providing affordable multifamily rental housing. Entities applying to receive tax credits are the only persons subject to the rule.

The proposed rule amendment at issue here is to make certain changes in ADFA's QAP for 2021. Two proposed changes will have some financial impact: (1) ADFA is proposing to change its current application fee structure so that applications for developments involving material participation by nonprofit entities will be subject to the same application

fee as all other applications, and (2) ADFA is proposing to require applicants to commission and file with the application the market study required by section 42(m) of the Internal Revenue Code, rather than ADFA collecting $6000 from each applicant and commissioning the market study itself.

With respect to item (1) above (the only provision of the proposed rule that is expected to be more costly to applicants than is the current rule), it has been ADFA's experience that applications for developments involving material participation by nonprofit entities are submitted by development teams that have adequate wherewithal to pay the same application fees that are charged to all other applicants. ADFA is therefore proposing the equalization of application fees for all applicants in the interests of leveling the playing field for all participants and ensuring that ADFA continues to receive adequate fee revenue to administer the LIHTC program adequately and efficiently.

(b) The reason for adopting the more costly rule:
ADFA is proposing the amendment to level the playing field for all participants and to ensure that ADFA continues to receive adequate fee revenue.

(c) Whether the more costly rule is based on the interests of public health, safety, or welfare:
ADFA believes the imposition of equal application fees on all LIHTC participants is consistent with and promotes the public welfare.

(d) Whether the reason is within the scope of the agency's statutory authority:
ADFA is authorized by Ark. Code Ann. §§ 15-5-207(b)(14), (26), and (38) to impose the application fees discussed herein.

LEGAL AUTHORIZATION: The Arkansas Development Finance Authority has authority to make and issue such rules as may be necessary or convenient in order to carry out the purposes of Tile 15, Chapter 5 of the Arkansas Code. *See* Ark. Code Ann. § 15-5-207(b)(5). In addition, the Secretary of the Department of Finance and Administration and the Arkansas Development Finance Authority shall promulgate rules necessary to administer the provisions of Title 15, Chapter 5, Subchapter 13 concerning the Affordable Neighborhood Housing Tax Credit Act of 1997 (ANHTC) and Title 26, Chapter 51, Subchapter 17 concerning the Low-Income Housing Tax Credit (LIHTC). *See* Ark. Code Ann. §§ 15-5-1305 and 26-51-1705.

Concerning fee-making, ADFA has authority to: 1) 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, and 2) collect fees and charges in connection with loans, commitments, and servicing, including without limitation the reimbursement of the cost of financing, as determined reasonable and approved by the authority. *See* Ark. Code Ann. §§ 15-5-207(b)(14) and (b)(38).

3. DEPARTMENT OF COMMERCE, DIVISION OF WORKFORCE SERVICES, BLIND SERVICES (Ms. Cassondra Williams)

a. SUBJECT: DSB Policy and Procedure Manual

DESCRIPTION: The Division of Services for the Blind ("DSB" or "Division") proposes a new Policy and Procedure Manual to improve the Vocational Rehabilitation ("VR") process and to adhere to federal grant requirements. The proposed six chapters are designed to improve guidance to staff and consumers regarding the regulations and requirements of the VR program. Chapter 1: General Information, is a full replacement of the current Policy on the Protection of Legal Rights, Chapter 1, and Vocational Rehabilitation Process, Chapter 2, and outlines the general information and policies that govern all DSB VR policies and actions, such as confidentiality. Chapter 2: Informed Choice, is a full replacement of the current Informed Choice, Chapter 6, and defines informed choice and its role in the VR process. Chapter 3: Referral and Intake is a full replacement of the current Policy on Diagnosis and Evaluation, Chapter 3, and explains the process for receiving a referral for services and the requirements to complete a consumer intake/application. Chapter 4: Eligibility is a full replacement of the current Eligibility Policy, Chapter 4, and explains the process for determining eligibility to staff as well as identifying the eligibility requirements. Chapter 5: Order of Selection is a full replacement of the current Order of Selection, Chapter 5, and explains the process for implementing and using an Order of Selection based on federal guidelines should DSB ever be approved to enter an Order of Selection. Chapter 13: Pre-Employment Transition Services is a partial replacement, only replacing the current section on Pre-Employment Transition Services and Students with a Disability, and provides the federal definition of a student with a disability and the process for DSB staff to offer these services to students.

Per DSB, these changes to the rules are required by the federal Rehabilitation Services Administration to be followed by DSB in providing vocational rehabilitation services for individuals who are blind or visually impaired.

Technical assistance from the federal Rehabilitation Services Administration was also received, which changes were also incorporated.

PUBLIC COMMENT: A public hearing was held on March 11, 2021. The public comment period expired on April 5, 2021. No public comments were received.

The proposed effective date is June 1, 2021.

FINANCIAL IMPACT: The agency states that the amended rules have a financial impact. Per the agency, the costs to implement the federal rule or regulation are simply those operating costs already appropriated to the DSB. With respect to the total estimated costs by fiscal year to any private individual, entity and business subject to the amended rules, the agency states that any cost would be minimal and is not conducive to an estimate. It further states that the total estimated cost by fiscal year to state, county, and municipal government to implement the rule are simply the operating costs already appropriated to the DSB.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 25-10-204(a)(1), the Division is designated as the agency of the State of Arkansas primarily responsible for carrying out state and federal programs for rehabilitative social services or business enterprises for blind and visually handicapped citizens of the state, including, but not limited to, those programs and services established pursuant to the Rehabilitation Act of 1973, as amended, Pub. L. No. 93-112, and any subsequent legislation to Pub. L. No. 93-112. The Division shall be responsible for the administration of all functions and programs relating or pertaining to rehabilitation and social services, and business enterprise services for the blind, including the organized vending facility program as now established, for which the Division shall serve as the licensing agency for the blind. *See* Ark. Code Ann. § 25-10-204(a)(2). The Division was transferred from the Department of Human Services to the Department of Commerce pursuant to Act 910 of 2019, § 126, now codified at Ark. Code Ann. § 25-43-302(a)(19).

The agency states that the amended rules are required to comply with a federal statute, rule, or regulation, specifically, 34 C.F.R. § 361.50 and 34 C.F.R. § 361.20. Pursuant to 34 C.F.R. § 361.50(a), the state unit must develop and maintain written policies covering the nature and scope of each of the vocational rehabilitation services specified in 34 C.F.R. § 361.48 and the criteria under which each service is provided. In accord with Ark. Code Ann. § 25-10-204(c), the Division is authorized to enter into contracts with the federal government, to submit such plans to the federal government, and to adopt such methods of administration as the federal government may require in order to assure maximum federal

financial involvement in those services and functions that the Division is authorized to administer directly.

b. SUBJECT: DSB Older Individuals Who Are Blind (OIB) Policy Manual

DESCRIPTION: The Division of Services for the Blind ("DSB" or "Division") proposes a new rule, Older Individuals Who Are Blind Policy Manual. Until State Fiscal Year 2021, services under the Older Individuals Who are Blind ("OIB") Program were provided by a contract vendor with funding from the DSB. Because OIB services are now provided directly by DSB staff, a policy manual has been created to guide staff and consumers. The manual provides information on federal regulations, including the OIB services that are allowed, and requirements for implementation of the OIB program. The new rule defines the OIB Policy Manual as required by the federal Rehabilitation Services Administration to be followed by DSB in providing independent living services for individuals fifty-five (55) or older with blindness.

PUBLIC COMMENT: A public hearing was held on March 11, 2021. The public comment period expired on April 5, 2021. No comments were received.

The proposed effective date is June 1, 2021.

FINANCIAL IMPACT: The agency states that the proposed rule has a financial impact. It avers that the costs to implement the federal rule or regulation are simply those operating costs already appropriated to DSB. With respect to the total estimated cost by fiscal year to any private individual, entity, and business subject to the proposed rule, the agency states that any cost would be minimal and not conducive to an estimate. It further states that the total estimated cost by fiscal year to state, county, and municipal government to implement the rule are simply those operating costs already appropriated to DSB.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 25-10-204(a)(1), the Division is designated as the agency of the State of Arkansas primarily responsible for carrying out state and federal programs for rehabilitative social services or business enterprises for blind and visually handicapped citizens of the state, including, but not limited to, those programs and services established pursuant to the Rehabilitation Act of 1973, as amended, Pub. L. No. 93-112, and any subsequent legislation to Pub. L. No. 93-112. The Division shall be responsible for the administration of all functions and programs relating or pertaining to rehabilitation and social services, and business enterprise services for the blind, including the organized vending facility program as now

established, for which the Division shall serve as the licensing agency for the blind. *See* Ark. Code Ann. § 25-10-204(a)(2). The Division was transferred from the Department of Human Services to the Department of Commerce pursuant to Act 910 of 2019, § 126, now codified at Ark. Code Ann. § 25-43-302(a)(19).

The agency states that the proposed rule is required to comply with a federal statute, rule, or regulation, specifically, 34 C.F.R. § 361.50 and 34 C.F.R. § 361.20. Pursuant to 34 C.F.R. § 361.50(a), the state unit must develop and maintain written policies covering the nature and scope of each of the vocational rehabilitation services specified in 34 C.F.R. § 361.48 and the criteria under which each service is provided. In accord with Ark. Code Ann. § 25-10-204(c), the Division is authorized to enter into such contracts with the federal government, to submit such plans to the federal government, and to adopt such methods of administration as the federal government may require in order to assure maximum federal financial involvement in those services and functions that the Division is authorized to administer directly.

4. STATE BOARD OF FINANCE (Mr. TJ Fowler, Ms. Debbie Rogers)

a. SUBJECT: Arkansas State Treasury Investment Policy

DESCRIPTION: These proposed rules for the State Board of Finance reflect changes to the State Treasury Investment Policy. The changes made to the policy are (1) adding "Fitch" as a rating agency for commercial paper; (2) reducing the Treasury's permissible corporate bond rating from A- to BBB/Baa2 while extending the permitted maturity from one to ten years; (3) granting the Treasury additional flexibility to negotiate CD rates without formal rulemaking and the subsequent APA process.

PUBLIC COMMENT: A public hearing was held on this rule on December 31, 2020. The public comment period expired December 31, 2020. The agency indicated that it received no public comments.

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

Q. The old rules stated that eligible investments may include readily marketable commercial paper with certain ratings by Standard and Poor's Ratings Services and Moody's Investors Service. The proposed rules add Fitch Ratings Service as an acceptable NRSRO and replace the "and" with "or." Do these investments fall under Ark. Code Ann. § 19-3-518(b)(1)(B)(xiv)? If so, is this change intended to allow investments to

be considered eligible based on a single NRSRO rating, or are at least two BBB/A2/P2/equivalent ratings still necessary as required by § 19-3-518(b)(1)(B)(xiv)?

RESPONSE: Yes, the commercial paper investments do fall under Ark. Code Ann. § 19-3-518(b)(1)(B)(xiv). Therefore, at least two eligible ratings are still required.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The State Board of Finance has the responsibility to "establish, maintain, and enforce 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[.]" Ark. Code Ann. § 19-3-704(a)(4). "All purchases and sales of securities by the Treasurer of State shall be made using a competitive procedure that: [i]s approved by the State Board of Finance . . . ." Ark. Code Ann. § 19-3-518(b)(3)(B).

b. SUBJECT: Arkansas State Treasury Money Management Trust Policy

DESCRIPTION: These proposed rules for the State Board of Finance reflect changes to the State Treasury Money Management Trust Policies and Procedures Manual. The changes made to the policy are (1) adding "Fitch" as a rating agency for commercial paper; (2) reducing the Treasury's permissible corporate bond rating from A- to BBB/Baa2 while extending the permitted maturity from one to ten years; (3) granting the Treasury additional flexibility to negotiate CD rates without formal rulemaking and the subsequent APA process.

PUBLIC COMMENT: A public hearing was held on this rule on December 31, 2020. The public comment period expired December 31, 2020. The agency indicated that it received no public comments.

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

Q. The old rules stated that eligible investments may include readily marketable commercial paper with certain ratings by Standard and Poor's Ratings Services and Moody's Investors Service. The proposed rules add Fitch Ratings Service as an acceptable NRSRO and replace the "and" with "or." Do these investments fall under Ark. Code Ann. § 19-3-

518(b)(1)(B)(xiv)? If so, is this change intended to allow investments to be considered eligible based on a single NRSRO rating, or are at least two BBB/A2/P2/equivalent ratings still necessary as required by § 19-3-518(b)(1)(B)(xiv)?

RESPONSE: Yes, the commercial paper investments do fall under Ark. Code Ann. § 19-3-518(b)(1)(B)(xiv). Therefore, at least two eligible ratings are still required.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The State Board of Finance has the responsibility to "establish, maintain, and enforce 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[.]" Ark. Code Ann. § 19-3-704(a)(4). "All purchases and sales of securities by the Treasurer of State shall be made using a competitive procedure that: [i]s approved by the State Board of Finance . . . ." Ark. Code Ann. § 19-3-518(b)(3)(B).

5. DEPARTMENT OF HEALTH, HEALTH FACILITY SERVICES (Ms. Laura Shue)

a. SUBJECT: Rules for Abortion Facilities

DESCRIPTION: The Rules for Abortion Facilities are being amended as follows:

- Strike the term "regulations" throughout document
- Add severability clause in Section 14

Section 3, Definitions
- Update definition of "abortion" to meet the most recent legislative definition
- Add definitions
    - Abortion complication
    - Abortion-inducing drug
    - Adverse event
    - Born-alive infant
    - Emancipated minor
    - External member of the human body
    - Fertilization

- Final printed labeling
- Gestational age
- Human tissue
- Lethal fetal anomaly
- Minor
- Parent
- Post-fertilization age
- Probable post-fertilization age of the unborn child
- Reasonable medical judgment
- Respectful and proper manner

- Modify definitions
  - Consent
  - Patient (to include born-alive infants)

Section 4, Licensing
- Move paragraph on denial, suspension and revocation to licensing section
- Change “minutes” to “miles” in distance requirement

Section 6, General Administration
- Replace “Red Cross” with “blood services provider”
- Add “signed and witnessed” to written consent signature requirement
- Add notarized, written consent for minors and women under legal guardianship
- Require policies and procedures to include the following:
  - Specific emergency services
  - Two categories of patient: woman and born-alive infant
  - Follow-up appointments for medical abortion patients “as recommended in the final printed labeling”
  - Patient receipt of USFDA label for abortion-inducing drugs
  - Patient receipt of written notice on reversing the effects of abortion-inducing drugs, as required by Act 522 of 2019
  - Abdominal ultrasound for heartbeat detection
  - Informed consent
  - Child maltreatment and/or abuse reporting
  - Providing printed materials and answering questions in a language the patient can understand
  - Pre-procedure
  - Process to insure that perinatal palliative care information is provided in accordance with Act 953 of 2019
- Moved STD reporting and induced terminations of pregnancy reporting to this section

- Add adverse drug event report regarding adverse events associated with abortion-inducing drugs
- Add requirement to report abortion complications in accordance with Acts 620 and 801 of 2019
- Add 72-hour reflection period within which money may not be collected

Section 7, Patient Care Services
- Provide for follow-up appointments 12-18 days following abortion services "or as recommended in the final printed labeling"
- Make reasonable efforts to ensure patient returns for follow-up
- Require 72-hour pre-abortion counseling timeframe, ADH printed material and DVD on ADH website, and patient to receive copy of most current ADH printed materials and DVD
- Require patient to meet individually and in a private room with physician, referring physician, or qualified person
- Prohibit abortions by telemedicine
- Specify that initial administration of abortion-inducing drugs occurs in same room and physical presence of physician who prescribed
- Add requirement for patient receipt and acknowledgement of USFDA label(s) for abortion-inducing drugs

Section 8, Program Requirements
- Move STD reporting requirements and reports on induced termination to Section 6
- Add requirement to determine gestational age and location of pregnancy prior to medical abortion
- Add requirement for abdominal ultrasound to determine fetal heartbeat
- Require provision to patient of most current ADH printed materials and DVD
- Change language regarding complications to comport with Act 801 of 2019
- Move section on denial, suspension, and revocation to Section 4
- Add language regarding respectful and proper disposal of human and fetal tissue
- Require following of manufacturer guidelines for facility equipment and biologicals

Section 9, Health Information Services
- Require record-keeping to include documentation of
    - Informed Consent Checklist form
    - Documented evidence showing statistical probability of term birth where heartbeat is detected
    - Fetal pain checklist
    - Notarized parent/guardian or custodian consent for minors and women under guardianship or custodianship
    - Medical emergency documentation exceptions

- Gestational age
- Ultrasound image, including opportunity for patient to view ultrasound and patient acceptance or rejection of viewing ultrasound
- Testing for fetal heartbeat and, if heartbeat detected, an acknowledgement form as required by Ark. Code Ann. § 20-16-1303(e)
- For medical abortions, intrauterine location of pregnancy
- For surgical abortions, a written report describing surgical instruments used, surgical techniques, findings and tissues removed or altered
- For medical abortions, documentation regarding patient follow-up appointments
- Proof of relationship for parents/guardians where consent is required
- Physician affidavit for minor or incompetent woman

- Specify record retention time for documentation required

Section 10, Infection Prevention and Control
- Change "nosocomial" to "Healthcare Associated Infections"
- Require facility to follow national guidelines and manufacturer's instructions
- Add designated infection control and prevention officer
- Update infection prevention and control policies and procedures
- Update TB language to match other ADH regulated entities
- Move section on administrative reports to Section 6

Section 12, Physical Facility Requirements
- Add storage requirement for fetal remains
- Require signs posted to prevent forced abortions in each waiting room, patient consult room, and procedure room

Section 13, Forms
- Added forms to rules:
  - Form ADH AS-4010 Informed Consent Checklist
  - Form ADH AS-4010-A Fetal Pain Checklist
  - Form ADH AS-4011 Abortion Disclosure and Consent for Unemancipated Minors and Women under Legal Guardianship or Custodianship for Incompetency

PUBLIC COMMENT: A public hearing was held on these rules on September 3, 2020. The public comment period expired September 3, 2020. The agency provided the following summary of the public comments it received and its responses to those comments.

Commenter's Name: Bettina Brownstein, on behalf of Little Rock Family Planning Services, Inc.

COMMENT: Per letter, request that proposed Rule 8(G) be withdrawn. (See attached letter.)

RESPONSE: Changed. Section 8(G) removed from proposed amendments to rules.

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

1. Section 6(J) requires notarized written consent from both the patient and the parent, guardian or custodian in cases involving a minor or woman who has been adjudicated incompetent. However, Ark. Code Ann. § 20-16-805(a) does not require the woman's notarized written consent in cases of incompetency. Why has this requirement been added?

RESPONSE: Changed. Removed signature and notarization requirement for incompetent person and configured into two paragraphs: 6(J)(2)(a)-(b), pp. 6-1 and 6-2.

2. Section 8(E)(1), which quotes Ark. Code Ann. § 20-17-802, omits subsection (e)(6) of that statute – the exception for persons acting in accordance with Ark. Code Ann. § 20-17-801 or the Final Disposition Rights Act of 2009. Why was this subsection omitted?

RESPONSE: Enjoined by Hopkins v. Jegley.

3. Are the sterilization procedures in Section 10(A)(4)(j) adapted from something else or were they created for this rule?

RESPONSE: Adapted from nationally recognized AORN and CDC sterilization procedures.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The Arkansas Department of Health has the authority to adopt rules "regarding without limitations the facilities, equipment, procedures, techniques, medical records, informed consent signatures, parental consent signatures, and conditions of" abortion facilities within the state. Ark. Code Ann. § 20-9-302(b)(1). The Department has the responsibility to promulgate rules implementing the

Woman's Right to Know Act and regarding abortion reporting requirements. Ark. Code Ann. §§ 20-16-1707(a), -1708(a)(1).

This rule implements Acts 522, 620, 801, and 953 of 2019. Act 522, sponsored by Senator Missy Irvin, amended the Woman's Right to Know Act to require provision of information on reversing the effects of abortion-inducing drugs. Act 620, sponsored by Senator Trent Garner, required additional reporting requirements by certain physicians and healthcare facilities for abortion complications. Act 801, sponsored by Senator Gary Stubblefield, amended laws concerning abortion facilities and abortion reporting, amended the born-alive infant protection laws, and required an additional acknowledgement under the Woman's Right to Know Act. Act 953, sponsored by Representative Clint Penzo, created the Perinatal Palliative Care Information Act.

~~**6. DEPARTMENT OF HEALTH, DIVISION OF HEALTH RELATED BOARDS AND COMMISSIONS, STATE BOARD OF DENTAL EXAMINERS**~~

~~**a. Article XXII – Reciprocity**~~

7. DEPARTMENT OF HEALTH, DIVISION OF HEALTH RELATED BOARDS AND COMMISSIONS, STATE BOARD OF NURSING (Ms. Sue Tedford, Mr. David Dawson, Mr. Matt Gilmore)

a. SUBJECT: Chapter One – General Provisions

DESCRIPTION: The Arkansas State Board of Nursing is amending Chapter One of its rules. Specifically, the definition of "prescriptive authority" was changed from Schedule III to Schedule II pursuant to Act 593 of 2019.

PUBLIC COMMENT: A public hearing was held on November 24, 2020. The public comment period expired on November 27, 2020. The State Board of Nursing provided the following summary of comments received and its responses thereto:

Commenter: David Wroten, Arkansas Medical Society
Comment: Prescribing Authority- We suggest adding to the end of the definition, "subject to the provisions of Chapter 4, Section VIII (D)." We believe that clarification may serve to remove any confusion that might come up if someone is only looking at definitions and doesn't take the time to put the two chapters together for any review.
Agency Response: Comment taken under advisement.

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

QUESTION: There appears to be only one change, and that is extending prescriptive authority for advanced practice nurses to Schedules II through V, rather than III through V. Act 593 of 2019, codified as Ark. Code Ann. § 17-87-310(b)(2)(A) states that, "an advanced practice registered nurse's prescriptive authority shall extend only to drugs listed in Schedules III – V and, if expressly authorized by the collaborative practice agreement, also to hydrocodone combination products reclassified from Schedule III to Schedule II as of October 6, 2014." Ark. Code Ann. § 17-87-310(b)(2)(B) contains further conditions which must be met before prescriptive authority is extended to Schedule II. The language in the rule extending prescriptive authority to schedule II does not appear to capture the conditions in statute. Could you please explain or clarify this?
RESPONSE: Chapter 1 only contains definitions so we did not include in this chapter. The provisions outlined in statute can be found in Chapter 4, Section VIII(D)(3)(b) and (c).

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The State Board of Nursing indicated that the proposed rules do not have a financial impact.

LEGAL AUTHORIZATION: The Arkansas State Board of Nursing (ASBN) has authority to adopt rules applicable to advanced practice registered nurses that are consistent with the Arkansas State Medical Board's rules governing the prescription of dangerous drugs and controlled substances. *See* Ark. Code Ann. § 17-87-310(b)(3)(A). Before approval of the rules, the Arkansas State Medical Board shall review the proposed rules and verify that the rules are consistent with the Medical Board's rules concerning the prescription of dangerous drugs and controlled substances. *See* Ark. Code Ann. § 17-87-310(b)(4)(B). In addition, ASBN also has authority to promulgate rules limiting the amount of Schedule II narcotics that may be prescribed and dispensed by licensees of the board. *See* Ark. Code Ann. § 17-87-203(21).

b. SUBJECT: Chapter Two – Licensure: RN, LPN, and LPTN

DESCRIPTION: The Arkansas State Board of Nursing is making changes to Chapter Two of its rules concerning RN, LPN, and LPTN licensure. Changes made include:

1. In accordance with Act 990 of 2019, Ark. Code Ann. § 17-87-312 was changed to Ark. Code Ann. § 17-03-102.

2. The term "nonrenewable" was added, and clarification on application and review of pre-licensure determination of granting a waiver for specific criminal convictions was made.
3. For consistency among all compact states, we clarified how federal criminal records are handled among party states, how to handle active duty military personnel and their spouses, and on dispute resolution among party states.
4. Filed as emergency rule effective May 15, 2020 to expire September 13, 2020, "1,000 hours within the one year" was changed to "within the two years" after it was determined this was an impediment to qualified nurses being able to work where needed during this pandemic is an imminent peril to public health, safety and welfare.

PUBLIC COMMENT: A public hearing was held on November 24, 2020. The public comment period expired on November 27, 2020. The State Board of Nursing received no comments.

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

QUESTION: Concerning the interstate compact changes, are all those changes due to changes made to The Interstate Commission of Nurse Licensure Compact Administrators Final Rule? (a) Is Arkansas part of the compact? (b) Do the changes have to be adopted by states boards in order to remain part of the compact? **RESPONSE:** Arkansas has been part of the compact since 1999. All states must adopt the new rules to remain part of the compact.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The State Board of Nursing indicated that the proposed rule has a financial impact. The Board estimated a $600 potential savings to certain nurses seeking reinstatement of licensure for both the current fiscal year and the next fiscal year, and provided the following explanation: The $600 is a potential savings to a nurse who is applying for reinstatement. Currently, for a nurse who has been expired or inactive for more than 5 years, they may be approved, in part, by documenting active practice of nursing for a minimum of 1,000 hours within the one year immediately prior to application. The proposed rule changes that to 1,000 hours within two years immediately prior to application.

Currently, if they cannot document 1,000 hours within one year, they may have to take a board approved refresher course. For those applicants who can document 1,000 hours within the past two years, they would not need

to take the refresher course under the proposed rule change. The $600 is the estimated cost of the refresher course, and the savings would go to the nurse applicants who can document 1,000 hours within the past two years.

LEGAL AUTHORIZATION: The Arkansas State Board of Nursing has authority to license and renew the licenses of qualified applicants for professional nursing, practical nursing and psychiatric technician nursing. *See* Ark. Code Ann. § 17-87-203(14). The Nursing Board may promulgate whatever rules it deems necessary for the implementation of Title 17, Chapter 87 of the Arkansas Code concerning nursing. *See* Ark. Code Ann. § 17-87-203(1)(A). The proposed rules implement Act 990 of 2019, sponsored by Senator John Cooper, which amended the law regarding criminal background checks for professions and occupations to obtain consistency. A licensing entity shall adopt or amend rules necessary for the implementation of Title 17, Chapter 3, of the Arkansas Code, concerning occupational criminal background checks. *See* Ark. Code Ann. § 17-3-104(a).

c. SUBJECT: Chapter Four – Advanced Practice Registered Nurse

DESCRIPTION: The Arkansas State Board of Nursing is proposing changes to its Rule Four concerning advanced practice registered nurses. In accordance with Act 990 of 2019, Ark. Code Ann. § 17-87-312 was changed to Ark. Code Ann. §17-03-102, and the term "nonrenewable" was added to modify temporary permits to practice advanced practice nursing.

PUBLIC COMMENT: A public hearing was held on November 24, 2020. The public comment period expired on November 27, 2020. The State Board of Nursing received no comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The State Board of Nursing indicated that the proposed rules do not have a financial impact.

LEGAL AUTHORIZATION: The Arkansas State Board of Nursing has authority to license and renew the licenses of qualified applicants for registered nurse practitioner nursing and advanced practice nursing. *See* Ark. Code Ann. § 17-87-203(15). The Nursing Board may promulgate whatever rules it deems necessary for the implementation of Title 17, Chapter 87 of the Arkansas Code concerning nursing. *See* Ark. Code Ann. § 17-87-203(1)(A). The proposed rules implement Act 990 of 2019, sponsored by Senator John Cooper, which amended the law regarding criminal background checks for professions and occupations to obtain consistency. A licensing entity shall adopt or amend rules necessary for the implementation of Title 17, Chapter 3, of the Arkansas Code,

concerning occupational criminal background checks. *See* Ark. Code Ann. § 17-3-104(a).

d. **SUBJECT: Chapter Six – Standards for Nursing Education Program**

DESCRIPTION: In accordance with Act 990 of 2019, references to Ark. Code Ann. § 17-3-102 were added to Chapter Six of the Arkansas State Board of Nursing Rules concerning standards for nursing education programs.

PUBLIC COMMENT: A public hearing was held on November 24, 2020. The public comment period expired on November 27, 2020. The State Board of Nursing received no comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The State Board of Nursing indicated that the proposed rules do not have a financial impact.

LEGAL AUTHORIZATION: Pursuant to Ark. Code Ann. § 17-87-203(8), the Arkansas State Board of Nursing (ASBN) has authority to prescribe minimum standards and approve curricula for educational programs preparing persons for licensure as registered nurses, advanced practice registered nurses, registered nurse practitioner nurses, licensed practical nurses, and licensed psychiatric technicians nurses. ASBN has authority to promulgate whatever rules it deems necessary for the implementation of Title 17, Chapter 87 of the Arkansas Code. *See* Ark. Code Ann. § 17-87-203(1)(A).

The proposed rules implement Act 990 of 2019, sponsored by Senator John Cooper, which amended the law regarding criminal background checks for professions and occupations to obtain consistency. A licensing entity shall adopt or amend rules necessary for the implementation of Title 17, Chapter 3, of the Arkansas Code, concerning occupational criminal background checks. *See* Ark. Code Ann. § 17-3-104(a).

e. **SUBJECT: Chapter Seven – Rules of Procedure**

DESCRIPTION: In accordance with Act 990 of 2019, two references to Ark. Code Ann. §17-87-312 were changed to Ark. Code Ann. §17-3-102.

PUBLIC COMMENT: A public hearing was held on November 24, 2020. The public comment period expired on November 27, 2020. The State Board of Nursing received no comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The State Board of Nursing indicated that the proposed rules do not have a financial impact.

LEGAL AUTHORIZATION: Pursuant to Ark. Code Ann. §§ 17-87-203(13), (14), and (15) the Arkansas State Board of Nursing (ASBN) has authority to: (1) examine, certify, and renew the certification of qualified applicants for medication assistive persons, (2) examine, license, and renew the licenses of qualified applicants for professional nursing, practical nursing, and psychiatric technician nursing, and (3) license and renew the licenses of qualified applicants for registered nurse practitioner nursing and advanced practice nursing. Additionally, ASBN has authority to promulgate whatever rules it deems necessary for the implementation of Title 17, Chapter 87 of the Arkansas Code. *See* Ark. Code Ann. § 17-87-203(1)(A).

The proposed rules implement Act 990 of 2019, sponsored by Senator John Cooper which amended the law regarding criminal background checks for professions and occupations to obtain consistency. A licensing entity shall adopt or amend rules necessary for the implementation of Title 17, Chapter 3, of the Arkansas Code, concerning occupational criminal background checks. See Ark. Code Ann. § 17-3-104(a).

f. SUBJECT: Chapter Eight – Medication Assistant – Certified

DESCRIPTION: The State Board of Nursing is proposing changes to Chapter Eight of its rules concerning medication assistants certified (MA-C). We have changed the definition of the terms, "designated facilities" and "supervision." References to "nursing home" or "nursing homes" have been replaced with the term, "designated facility" to broaden use of MA-Cs in correctional facilities. Clarification for the practice of MA-Cs in nursing homes due to restrictions not needed in correctional facilities was made.

PUBLIC COMMENT: A public hearing was held on November 24, 2020. The public comment period expired on November 27, 2020. The State Board of Nursing received no comments.

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

1. The definition of "designated facility" in the proposed rule appears narrower than the definition contained in Ark. Code Ann. § 17-87-701(2). Ark. Code Ann. § 17-87-703(a) provides that ASBN shall designate the types of facilities that may use medication assistive persons. Are nursing homes and local correctional facilities the only ones

designated by ASBN that may utilize MA-Cs? **RESPONSE:** When the statute and rules were originally written, only nursing homes could use MACs. We are widening to correctional facilities with these rules. We anticipate new statute to be proposed to widen the use in other facilities.

2. Section V(A), concerning scope of work, states that "A MA-C shall not administer medications to more than forty (40) patients during a shift in a facility regulated by the Office of Long Term Care."
(a) Is the 40 patient limit based upon statute or an OLTC rule?
(b) If not, why did the Nursing Board choose to make this distinction between practice in a long-term care facility v. practice in a correctional facility?
RESPONSE: The 40 limit comes from OLTC, but I don't know if it is statute or rule. We didn't put a limit in correctional facilities due to the type of patients that the MAC will be serving in those facilities.
FOLLOW-UP QUESTION: Could you please identify where the 40-person limit comes from?
RESPONSE TO FOLLOW-UP: When we created MACs we had Peggy Moody from OLTC on the task force and this was something that was critical to include in the Rules. [ASBN provided a copy of OLTC Rule 520 concerning minimum direct-care staffing requirements, with the following portions highlighted:
520.1.1: *Direct-care staff* means any licensed or certified nursing staff who provides direct, hands-on care to residents in a nursing facility. *Direct-care Staff* sha11 not include therapy personnel or individuals acting as Director of Nursing for a facility**.**
520.3.1.1: Day Shift: One (1) direct-care staff to every six (6) residents; of which there shall be one (1) licensed nurse to every forty (40) residents.
520.3.1.2: Evening Shift: One (1) direct-care staff to every nine (9) residents; of which there shall be one (1) licensed nurse to every forty (40) residents.]

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The State Board of Nursing indicated that the proposed rules do not have a financial impact.

LEGAL AUTHORIZATION: The Arkansas State Board of Nursing has authority to examine, certify, and renew the certification of qualified applicants for medication assistive persons. *See* Ark. Code Ann. § 17-87-203(13). The board also has authority to promulgate whatever rules it deems necessary for the implementation of Title 17, Chapter 87 of the Arkansas Code concerning nursing. *See* Ark. Code Ann. § 17-87-203(1)(A).

g. SUBJECT: Chapter Nine – Insulin and Glucagon Administration

DESCRIPTION: The Arkansas State Board of Nursing (ASBN) is proposing amendments to Chapter Nine of its rules concerning insulin and glucagon administration. ASBN added a statement permitting public school employees to volunteer and updated the agency throughout the chapter as requested by Department of Education.

PUBLIC COMMENT: A public hearing was held on November 24, 2020. The public comment period expired on November 27, 2020. The State Board of Nursing received no comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The State Board of Nursing indicated that the proposed rules do not have a financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 17-87-103(11)(E), the State Board of Education and the Arkansas State Board of Nursing shall promulgate rules necessary to administer Ark. Code Ann. § 17-87-103(11), which exempts from the requirement of a nursing license certain trained volunteer school personnel who may administer glucagon or insulin, or both, to a student diagnosed with diabetes, as outlined in the statute. *See also* Ark. Code Ann. § 6-18-711(c) (providing that "[a] public school employee may volunteer to be trained to administer and may administer glucagon to a student with Type 1 diabetes in an emergency situation as permitted under § 17-87-103(11)").

8. DEPARTMENT OF HEALTH, DIVISION OF HEALTH RELATED BOARDS AND COMMISSIONS, STATE BOARD OF PHYSICAL THERAPY (Ms. Nancy Worthen)

a. SUBJECT: Arkansas State Board of Physical Therapy Rules

DESCRIPTION: The Arkansas State Board of Physical Therapy is proposing the following changes to its rules:

1. Reducing fees for reciprocity and renewal.
2. Correcting legal citation to the codification of Act 990 of 2019 – specifically changing Ark. Code Ann. § 17-2-102 to Ark. Code Ann. § 17-3-102.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on November 25, 2020. The State Board of Physical Therapy received no comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that the proposed rules have a financial impact. Specifically, the agency provided the following explanation:

The reciprocity fee is currently $160.00 for a PT and is being reduced to $100.00. The reciprocity fee is currently $110.00 for a PTA and is being reduced to $100.00. The PT Board also joined the PT Compact, which reduced reciprocity applications received. Instead of applying by reciprocity a PT or PTA can join the compact and pay a compact fee of $50.00. It is estimated that the $70.00 decrease in reciprocity fees and the decrease of reciprocity applications due to the compact will decrease the fees by approximately $7,000.00.

The renewal fee is being decreased by $5.00. The current Rule was effective on August 14, 2020 and PT renewal fees are $75.00 and PTA renewal fees are $50.00. Previous to August 14, 2020 the licensees that renewed online were given a $5.00 discount and approximately 90% renewed online. The income from the current PT renewal fees would be approximately $172,500 and the income from the current PTA renewal fees would be approximately $80,000.00. The $5.00 decrease will be approximately $19,500.00 less income.

LEGAL AUTHORIZATION: The Arkansas State Board of Physical Therapy has authority to license applicants who meet qualifications under Title 17, Chapter 93 of the Arkansas Code concerning physical therapists, as well as to adopt reasonable rules to carry out the purposes of the chapter. *See* Ark. Code Ann. §§ 17-93-202(a)(4) and (b)(1). In addition, the board has authority to adopt reasonable rules and require the payment of license fees adequate to carry out the purposes of Title 1, Chapter 93 of the Arkansas Code. *See* Ark. Code Ann. § 17-93-202(b)(1).

9. DEPARTMENT OF LABOR AND LICENSING, DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING BOARDS AND COMMISSIONS, FIRE PROTECTION LICENSING BOARD (Ms. Patricia White, Mr. Jim Holub, Ms. Denise Oxley)

a. SUBJECT: Fire Protection Licensing Board Sprinkler Rule (Rule 1)

DESCRIPTION: The Arkansas Fire Protection Licensing Board is proposing amendments to its Sprinkler Rule. The proposed changes include the following:

- The rule is completely re-organized into a more coherent and logical structure. Provisions regarding the same topic are grouped together and unnecessarily duplicative language is repealed. The new structure of this rule mirrors the structure of the Board's Portable/Fixed Rule for easy reference.
- Exempts from the Board's licensure requirements all firms and individuals performing a fire protection sprinkler system project for a residence (NFPA 13D system) if the project meets certain requirements. The purpose is to save lives by lowering costs so that more homeowners can afford to have fire protection sprinkler systems installed in their homes.
- Amends definitions to match the Board's statutory definitions or the definitions in the Board's Portable/Fixed Rule.
- Amends the Board's license reinstatement provision to comply with Ark. Code Ann. § 17-1-107.
- Clarifies the provisions of the Arkansas Fire Protection Code and the National Fire Protection Association standards adopted by the Board.
- In compliance with Act 1011, amends reciprocity requirements for an applicant who holds in good standing a substantially similar license in other state and is sufficiently competent. Such applicant is considered "sufficiently competent" if the applicant has passed the Arkansas examination. Also adds a temporary licensure provision. The Board based these provisions on the model rule by the Attorney General's Office.
- In compliance with Act 1011, adds a provision to license applicants from states that do not license those in the fire protection sprinkler system field. To show sufficient competency, an applicant must pass applicable National Fire Protection Association exams and the Arkansas exam. If necessary for the specific license, the applicant must hold a certification issued by the National Institute for Certification in Engineering Technologies. The Board based this provision on the model rule by the Attorney General's Office.
- Simplifies the requirements for an inspector license, and "grandfathers in" individuals that obtained an inspector license on or before the rule's effective date.
- In accordance with statutory definitions, adopts the term "fitter" in place of "installer."
- Lowers the branch office fee from $28 to $25. Lowers the exam retake fee and the fee for a license transfer/change/duplication from $30 to $25. Adds the following statutory Board fees for:
  - $50 for an initial fitter license, including exam fee, and renewal fitter license. (Pursuant to A.C.A § 20-22-610(b)(9)(A) and (B), the exam fee cannot exceed $200 and the initial and renewal fee cannot exceed $500.)

- $25 for an apprentice permit. (Pursuant to A.C.A. § 20-22-610(b)(6)(B)(ii), the apprentice permit fee cannot exceed $30)

- Changes tag size from "5 1/2 inches in height and 2 5/8 inches in width" to "no more than 5 ½ in height and no less than 5 1/4 in width."
- Lowers the passing score for the examinations from 90% to 80%, except for the fitter exam passing score that will remain 70%.
- Amends and clarifies the duties and responsibilities of a firm Responsible Managing Employee (RME), a fitter, and an inspector, such as:
  - Allows an RME to perform the duties of a fitter, as well as an inspector;
  - Holds the RME responsible for distributing the Contractor's Material and Test Certificate, while repealing the requirement that the document be sent to the Board and authority having jurisdiction (AHJ);
  - Requires at least one licensed fitter to be onsite when a sprinkler system is being installed or serviced;
  - Holds the fitter responsible for completing the Contractor's Material and Test Certificate and attaching the installation tag.
- Amends tagging requirements, such as:
  - Requires an inspection report to contain a notation on the first page if a system receives a yellow or red tag;
  - Only requires an inspection report to be filed with an AHJ if the system is yellow or red-tagged;
  - Requires a tag to include the license number of the individual performing the service;
  - Re-defines the conditions that require a yellow tag.
- Repeals provisions regarding backflow prevention and elevator safety.
- Clarifies the types of tags required by the Board.
- Adopts Board meeting provision from the Board's Portable/Fixed Rules.
- Clarifies and streamlines the regulatory process for a firm that changes its ownership.
- Limits a firm's branch office(s) to locations that share the same name and same tax identification number as the original firm. Therefore, if a firm has a separate business location(s) or office(s) that does not meet the new definition of "branch office," that separate location will be considered a different business that requires its own separate certificate of registration. A firm must pay a $25 fee for a certificate of registration for each separate location that meets the definition of "branch office." The rule "grandfathers in" firms that obtained a certificate of registration for a separate business location(s) or office(s) on or before the rule's effective date.

- Repeals the age restrictions for individual licensure.
- Repeals hearing procedures that are already contained in the Administrative Procedures Act.
- Repeals provisions regarding entities that board has no authority over, such as property owners.
- Adds a requirement that an application for a firm certificate of registration be accompanied by evidence of registration with the Secretary of State and also by individual license applications for the applicant's employees.
- The proposed changes also include "housekeeping" matters, such as replacing "regulation" with rule, pursuant to act 315; deleting unused and obsolete provision; updating and clarifying terminology.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on January 5, 2021. The Fire Protection Licensing Board did not receive any public comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The board indicated that the proposed rules have a financial impact. The board provided the following explanations:
- The amended rule lowers the branch office fee from $28 to $25 and lowers the exam retake fee and the change/transfer/duplicate fees from $30 to $25. Any other costs incurred will depend on each licensee's business practices.
- The board estimated a revenue loss of $87 annually due to the reduced branch office fee. The result of the other fee reductions will vary.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 20-22-607, the Arkansas Fire Protection Licensing Board has authority to formulate and administer policies as may be determined necessary for the protection and preservation of life and property in regard to: (1) The registration of firms engaging in the business of selling, system layout, installing, servicing, inspecting, or any aspect of fire protection sprinkler systems, including standpipe, fire pumps, and hose systems; (2) The examination and licensure of a person applying for a license as a responsible managing employee for the purpose of fire protection sprinkler system business, including designing, inspecting, installing, system layout, or servicing fire protection sprinkler systems, including standpipe, fire pumps, and hose systems; (3) The examination and licensure of a person applying for a license as a fire protection sprinkler systems inspector for the purpose of servicing or inspecting fire protection sprinkler systems, including standpipe, fire pumps, and hose systems; and (4) The examination and licensure of a person applying for a license as a fire protection sprinkler system sprinkler fitter or apprentice for the

purpose of installing, servicing, or placing fire protection sprinkler systems in service, including without limitation standpipe, fire pumps, and hose systems.

Additionally, the board has authority to regulate and license as a part of a fire protection sprinkler system the installation, service, and maintenance of a standpipe and hose system as defined under the National Fire Protection Association pamphlet number fourteen (No. 14): Standard for the Installation of Standpipe and Hose Systems. *See* Ark. Code Ann. § 20-22-607(6)(A).

Furthermore, installation and servicing of fire protection sprinkler systems shall be accomplished in accordance with the rules of the board. *See* Ark. Code Ann. § 20-22-613(i).

b. <u>SUBJECT</u>: Fire Protection Licensing Board Portable/Fixed Rule (Rule 2)

<u>DESCRIPTION</u>: The Arkansas Fire Protection Licensing Board is proposing amendments to its Portable/Fixed Rule. The proposed changes include the following:

- The rule is completely re-organized into a more coherent and logical structure. Provisions regarding the same topic are grouped together and unnecessarily duplicative language is repealed. The new structure of this rule mirrors the structure of the Board's Sprinkler Rules for easy reference.
- Definitions are amended to match the definitions in the Board's statutes or the definitions in the Board's Sprinkler Rules.
- Amends the Board's current license reinstatement provision to comply with Ark. Code Ann. § 17-1-107.
- Clarifies the provisions of the Arkansas Fire Protection Code adopted by the Board.
- In compliance with Act 1011, amends reciprocity requirements for applicants who hold in good standing a substantially similar license in other states and are sufficiently competent. Such applicant is considered "sufficiently competent" if the applicant has passed the Arkansas examination. Also adds a temporary licensure provision. The Board based these provisions on the model rule by the Attorney General's Office.
- In compliance with Act 1011, adds a provision to license applicants from states that do not license those in the portable/fixed fire extinguisher field. Top show sufficient competency, an applicant must pass applicable National Fire Protection Association exams and the Arkansas exam. The individual must hold any applicable NICET

certification. The Board based this provision on the model rule by the Attorney General's Office.

- Repeals the requirement that a firm submit affidavits and certificates of distributorship with the firm's application for a certificate of registration.
- Repeals the requirement that an individual applicant submit training certificates or affidavits from product manufacturers.
- Changes tag size from "no more and no less than 5 ¼ inches in height and 2 5/8 inches in width" to no more than 5 ½" in height and no less than 5 1/4" in width.
- Lowers the passing score for the Arkansas exam from 90% to 80%.
- Imposes mandatory notifications if a fixed fire protection system is red-tagged.
- Fee changes: clarifies that an individual's exam (first attempt) is covered in the Individual Licensing Fee; lowers the exam re-take fee and the fee for a license change/transfer/duplicate from $30 to $25; lowers the branch office fee from $28 to $25; renames the "licensing update fee" as "change" fee and groups it with transfer and duplicate fees; repeals "licensing packet" fee, which the Board does not assess; lowers renewal fees for some expired licenses.
- Clarifies and streamlines the regulatory process for a firm that changes its ownership.
- Limits a firm's branch office(s) to locations that share the same name and same tax identification number as the original firm. Therefore, if a firm has a separate business location(s) or office(s) that does not meet the new definition of "branch office," that separate location will be considered a different business that requires its own separate certificate of registration. A firm must pay a $25 fee for a certificate of registration for each separate location that meets the definition of "branch office." The rule "grandfathers in" firms that obtained a certificate of registration for a separate business location(s) or office(s) on or before the rule's effective date.
- Repeals the age restriction for individual licensure.
- Repeals hearing procedures that are already contained in the Administrative Procedures Act.
- Adds a requirement that an application for a firm certificate of registration be accompanied by evidence of registration with the Secretary of State and by individual license applications for its employees.
- Adds a provision from the Board's Sprinkler Rules by which a firm is held responsible for the acts of the firm's agents and employees.
- Adds definitions from the Board's Sprinkler Rules.

- Clarifies the types of systems for which the Board issues a firm certificate of registration and individual license.
- The proposed changes also include "housekeeping" matters, such as replacing "regulation" with rule, pursuant to act 315; deleting unused and obsolete provision; updating and clarifying terminology.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on January 5, 2021. The Fire Protection Licensing Board did not receive any public comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The board indicated that the proposed rules have a financial impact. The board provided the following explanations:

- The amended rule lowers the exam re-take fee and license transfer fee from $30 to $25; lowers the branch office fee from $28 to $25; lowers renewal fees for some expired licenses. The updated late fee formula will result in either equal or lower fees, depending on the license and the ultimate date of renewal. Any other costs incurred for compliance will depend on each licensee's business practices.
- The board estimated a revenue loss of $42 annually due to the reduced branch office fee. The result of the other fee reductions will depend on the number of duplicate licenses needed, the number of times individual applicants have to re-take the exam, etc.

LEGAL AUTHORIZATION: : Pursuant to Arkansas Code Annotated § 20-22-607, the Arkansas Fire Protection Licensing Board has authority to formulate and administer policies as may be determined necessary for the protection and preservation of life and property in regard to: (1) The registration of firms engaging in the business of installing, inspecting, or servicing portable fire extinguishers and of firms engaging or in the business of installing, inspecting, and servicing fixed fire protection systems; and (2) The registration of firms engaging in the business of hydrostatic testing of portable fire extinguishers.

Additionally, the board has authority to regulate and license as a part of a fire protection sprinkler system the installation, service, and maintenance of a standpipe and hose system as defined under the National Fire Protection Association pamphlet number fourteen (No. 14): Standard for the Installation of Standpipe and Hose Systems. *See* Ark. Code Ann. § 20-22-607(6)(A). Furthermore, installation and servicing of fixed fire protection systems shall be accomplished under the rules of the board. *See* Ark. Code Ann. § 20-22-613(h).

10. DEPARTMENT OF LABOR AND LICENSING, DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING BOARDS AND COMMISSIONS, MANUFACTURED HOME COMMISSION (Mr. Aaron Howard)

a. SUBJECT: Rules for Modular Homes

DESCRIPTION: The proposed rule changes will bring the existing rules for modular homes into conformance with the applicable requirements set forth by the 2019 legislative session. In accordance with Act 315, applicable instances of use of the word "regulations" have been changed to "rules." In accordance with Act 426, Sections 303 and 304 contain subsections for reciprocity and provisional licensure.

PUBLIC COMMENT: A public hearing was held on March 9, 2021. The public comment period expired on March 9, 2021. The Manufactured Home Commission received no comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The Manufactured Home Commission indicated that the proposed rules do not have a financial impact.

LEGAL AUTHORIZATION: The Arkansas Manufactured Home Commission has authority to set the requirements for and require licensing and certification of any retailer, salesperson, and others engaged in the sale of manufactured homes or modular homes for sale in this state. *See* Ark. Code Ann. § 20-25-106(a)(2)(B).

11. DEPARTMENT OF PUBLIC SAFETY, DIVISION OF ARKANSAS STATE POLICE (Ms. Mary Claire McLaurin)

a. SUBJECT: Rule 5.8 – Required Company Information Display

DESCRIPTION: The Department of Public Safety is proposing changes to Rule 5.8 of the Rules for Licensing and Regulation of Private Investigators, Private Security Agencies, Alarm Systems Companies, Polygraph Examiners, and Voice Stress Analysis Examiners. The title of Rule 5.8, which is currently "contract display," is being changed to "required company information display." The rule is being revised to clarify what information must be provided to a customer on contract documents and what information must be displayed on advertisements.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period expired on February 16, 2021. The Department of Public Safety received no comments.

The proposed effective date is June 1, 2021.

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

LEGAL AUTHORIZATION: The Director of the Division of Arkansas State Police has authority to establish and enforce standards governing the safety and conduct of persons licensed, credentialed, or commissioned under Title 17, Chapter 40 of the Arkansas Code concerning private investigators and private security agencies. *See* Ark. Code Ann. § 17-40-207(a)(6). Additionally, the Director has authority to promulgate reasonable rules in the manner provided by the Arkansas Administrative Procedure Act. *See* Ark. Code Ann. § 17-40-207(a)(5).

12. COMMISSION FOR ARKANSAS PUBLIC SCHOOL ACADEMIC FACILITIES AND TRANSPORTATION (Ms. Lori Freno)

a. SUBJECT: CAPSAFT Rules Governing the Academic Facilities Partnership Program; Section 6.02 Only

DESCRIPTION: The Commission for Arkansas Public School Academic Facilities and Transportation proposes an amendment to Section 6.02 of its Rules Governing the Academic Facilities Partnership Program. The amendment is intended to bring clarity to Section 6.02. As currently written, Section 6.02 has been interpreted by some to allow a Partnership Program project that is approved but not funded during a Partnership Program funding cycle (with each funding cycle being two consecutive years) to carry over indefinitely to upcoming cycles, without reapplication, until the project is funded.

The amendment to Section 6.02 would clarify that if a project is approved for the first year of a Partnership Program cycle, but is not funded that year, it will carry over into the second year of the *same* cycle and funded if funding is available. However, projects approved during a cycle that are not funded by the end of the cycle will *not* carry over to any subsequent cycles. With this amendment, school districts will be on notice of the need to reapply in a timely manner for each cycle in which they wish their project to be considered.

This will realign the Partnership Program with its original intent, which was a two-year funding cycle.

PUBLIC COMMENT: A public hearing was held on November 10, 2020. The public comment period expired on November 17, 2020. The Commission provided the following summary of the comments that it received and its responses thereto:

Charles Stein, Facilities Consultant (11/2/20)
Comment: With the proposed change it appears that districts would have to submit two applications for all Year Two projects, since funding for the first application in the first cycle would not be known until May 1, which is after the March 1 deadline for the second application for the next cycle. Is that correct? **Agency Response:** Comment considered. The Division [of Public School Academic Facilities and Transportation ("Division")] is working on a process to streamline the reapplication process so that it will provide the least amount of work for the school districts and the Division, while at the same time ensuring that applications contain updated and timely information concerning school district needs. No changes made.

Scott Smith, Arkansas Public School Resource Center (11/17/20)
Comment: The APSRC does not support this rule change because it would cause increased work requirements for school districts with no benefits to the districts. As currently existing in the Partnership Program Rules, Section 6.02 states that approved Partnership Program projects that are not funded in a project funding cycle may be carried over to the next cycle without submission of a new application. This current process has two benefits for both school districts and the Division. The first benefit is that school districts do not have to submit a new application to have the approved project considered for funding in the next funding cycle. To submit another application with the same information is redundant and not a beneficial use of the district's time and resources. The second benefit is that the existing process reduces paperwork for the Division that does not have to create another paper file folder for a duplicate project with the same information. During the presentation of this draft rule to the Commission for promulgation, the Division provided information that was incomplete. The Division stated that this rule change would revert to the original legislative intent that a new project application should be submitted for each funding cycle. That statement was true at the beginning of the Partnership Program in 2006 when the Commission funded projects for both years of the two-year project funding cycle following the Legislative Session every odd-numbered year. However, when the state initiated Fiscal Sessions in 2010 during the even-numbered years, the Commission began to fund projects annually following the Legislative session. Section 6.02 was inserted in rules following the annual funding process to alleviate districts from having to submit two project applications for Year Two projects due to timing issues as follows. Partnership Program project applications for the next funding cycle must

be submitted by March 1 of every odd-numbered year. But, funding for Year Two projects of the current funding cycle is not known until about May 1 of every odd-numbered year, two months after the project application deadline for the next funding cycle. This timing means that districts will be required to submit duplicate and redundant project applications for all Year Two projects in a funding cycle to be considered for the next funding cycle in case the project is not funded in the current funding cycle. The Division has stated that the second application process will be simplified, but it will still be redundant and increase work for the district and Division. **Agency Response:** Comment considered. See Response to comment of Charles Stein (11/2/20). No changes made.

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

What prompted the Commission to propose the change to Section 6.02?
RESPONSE: The CAPSAFT agreed with the Division's desire to realign Section 6.02 of the Partnership Program rules with the Partnership Program's biennial project funding cycle. Without this rule change, projects conceivably could roll over in perpetuity from one two-year funding cycle to another. This could result in an extensive list of unfunded projects from previous cycles that are no longer necessary or not truly tailored to a district's current needs. Additionally, school districts often complete unfunded projects on their own, thus making State Partnership Program funding no longer appropriate or available. The Division feels that this change to the rules will help ensure the long term stability of the Partnership Program and the prudent use of taxpayer funds.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 6-20-2512, the Commission for Arkansas Public School Academic Facilities and Transportation shall promulgate rules necessary to administer the Arkansas Public School Academic Facilities Funding Act ("Act"), Ark. Code Ann. §§ 6-20-2501 through 6-20-2517, which shall promote the intent and purposes of the Act and assure the prudent and resourceful expenditure of state funds with regard to public school academic facilities throughout the state. *See also* Ark. Code Ann. § 6-20-2507 (establishing the Academic Facilities Partnership Program). Further authority for the rulemaking can be found in Ark. Code Ann. § 6-21-114(e)(2)(A), which provides that the Commission may adopt, amend, and rescind rules as necessary or desirable for the administration of the

Arkansas Public School Academic Facilities Program and any other related program.

F. Agency Updates on Delinquent Rulemaking under Act 517 of 2019.

1. Department of Agriculture, Arkansas Bureau of Standards (Act 501) (REPORT BY LETTER PURSUANT TO MOTION ADOPTED AT JULY 22, 2020 MEETING)

G. Adjournment.