ADMINISTRATIVE RULES & REGULATIONS SUBCOMMITTEE
OF THE
ARKANSAS LEGISLATIVE COUNCIL

Room A, MAC
Little Rock, Arkansas

Tuesday, May 16, 2017
1:00 p.m.

Sen. David Sanders, Co-Chair
Sen. Jim Hendren, Vice-Co-Chair
Sen. Larry Teague
Sen. Jonathan Dismang
Sen. Bruce Maloch
Sen. Bart Hester
Sen. Scott Flippo
Sen. Greg Standridge
Sen. Bill Sample, ex officio
Sen. Terry Rice, ex officio
Sen. Jane English, Alternate
Sen. Dave Wallace, Alternate
Sen. Eddie Cheatham, Alternate

Rep. Kim Hammer, CoChair
Rep. Ken Bragg, Vice-Co-Chair
Rep. Andy Davis
Rep. Jon S. Eubanks
Rep. Jeremy Gillam
Rep. Lane Jean
Rep. George B. McGill
Rep. Jeff Wardlaw
Rep. David Branscum, ex officio
Rep. Jim Dotson, ex officio
Rep. Karilyn Brown, Alternate
Rep. Stephen Magie, Alternate
Rep. John Maddox, Alternate

Rep. Laurie Rushing, Alternate
Rep. Steve Hollowell, Alternate
Rep. Jack Ladyman, Alternate
Rep. Charlie Collins, Alternate
Rep. Ron McNair, Alternate
Rep. Ken Henderson, Alternate
Rep. Lanny Fite, Alternate
Rep. Robin Lundstrum, Alternate
Rep. Austin McCollum, Alternate
Rep. Mary Bentley, Alternate
Rep. Mickey Gates, Alternate

A. Call to Order.

B. Overview of Administrative Rules and Regulations Subcommittee (Jill Thayer, Bureau Staff)

C. Adoption of Subcommittee Rules.

D. Reports of the Executive Subcommittee.

E. Reports on Administrative Directives pursuant to Act 1258 of 2015

1. Department of Community Correction (Dina Tyler)

a. For the quarter ending December 31, 2016
b. For the quarter ending March 31, 2017

2. Arkansas Parole Board (Brooke Cummings)

a. For the quarter ending December 31, 2016
b. For the quarter ending March 31, 2017

3. Department of Correction (Solomon Graves)

a. For the quarter ending December 31, 2016

F. Rules Deferred from the Meeting of the Administrative Rules and Regulations Subcommittee Meeting on December 13, 2016.

1. CAPITOL ZONING DISTRICT COMMISSION (Boyd Maher)

a. SUBJECT: Updates to the Capitol Zoning District Rule & Master Plan

DESCRIPTION: The following updates were made to the Capitol Zoning District Rule and Master Plan:

Throughout – Combine all rules into one document, standardize formatting, & eliminate redundant material
4. Clarify relationship between CZDC Rules & LR ordinances
8. Allow for staff approval of traditional style outbuildings, even when visible from right-of-way
9. Clarify the purpose of Conditional Use Permits
9. Allow for Variances for proposals that will return a structure to its historic appearance
12-13. Establish maximums (time, frequency, & signage) for Temporary Use Permits
13. Clarify staff role in issuing and modifying Commission-approved permits
13. Clarify time periods for permit expiration
15. Allow for staff denial of certain permit applications.
15. Staff (not applicant) will notify neighbors of meeting by regular mail
16. Clarify that Commission review of a first-impression application is not an adjudication
16. Clarify actions the Commission may take on an application
16. Create 100 day deadline after application by which Commission must take action on an application
17. Clarify that a show-cause hearing is an adjudication
17. Provide penalties for violations: suspension of previous permits and/or referral to District Ct
18. Clarify that undertaking previously denied work constitutes a violation
18. Allow for informal disposition of violations
19. Remove requirement that demo-by-neglect complaints may only be initiated by immediate neighbors or partner organizations.
21. Establish who may appeal to the Commission for reconsideration of a staff decision & when.
22. Clarify that an appeal of a staff decision is an adjudication

22. Appeals of Commission decisions shall be made to the Director of the Department of Arkansas Heritage.
28 – 33. Reformat zoning charts as lists.
29. Combine Zones A1 and A2 into a single Zone A
32. Allow for small-scale commercial-style new construction on corner lots in Zone N
33 – 34. Clarify allowed accessory uses.
35. Prohibit general industrial uses.
37. Define dwelling unit, family, & group living
37-38. Provide for group living facilities in the Mansion Area
38-39. Define different food & beverage uses
39. Define structure.
39 – 40. Allow for installation of cellular equipment on roofs of existing buildings *(previously adopted by CZDC as emergency rule, April 2015)*
42 – 46. Simplify & clarify use groups.
48. Rezone 700 blocks of Schiller, Park, & Dennison from D to B
48. Rezone block between 3rd & 4th and Victory & MLK from C to A
52. Eliminates parking requirements for 6 or fewer spaces
52. Allow staff to reduce parking requirements by half in commercial zones. Allows Commission to reduce parking requirements by half in residential zones, and waive them entirely in commercial zones
53. Allow for on-street parking to count toward requirements
54. Allows for gravel parking lots for less than 20 spaces
54. Allow for semi-pervious paving by right; requires CZDC review for new concrete or asphalt parking lots
59-62. Clarify various sign definitions.
64-65. Remove content-specific language from types of allowable signs
65. Additional signage may be approved by Commission (without a Variance)
67-68. Create standards for outdoor lighting
68. Create standard for tree protection
69. Applies standard for archeology to all properties (not just parcels w/ existing historic structures)
69. Establish standard for evaluating appropriateness of alternative energy equipment
84-85. Clarify rules for new fences at historic properties, incl. allowing for some masonry fences
96. Allow for metal awnings
121-122. Describe additional 20th Century architectural styles
151-152. Clarify agency's role in coordinating development on the State Capitol complex
242. Replica historic styles will be considered (not discouraged) for new construction in Gov Mansion Area
250. Zone O parking lot standards applicable to small parking areas throughout Mansion Area. (Larger parking lots will use Capitol Area standards.)

PUBLIC COMMENT: A public hearing was held on September 29, 2016. The public comment period expired on October 11, 2016. The department received the following comments:

Comment:
Dan Cook, resident and property owner in the Mansion Area and former Commissioner, spoke in opposition to the rulemaking process, indicating the current Commissioners and staff must retain the services of outside consultants and/or legal counsel with experience in zoning matters before proceeding with the rulemaking process. He also stated that adoption of the 1998 Master Plan precluded any subsequent changes to certain rules.

Ed Sergeant, resident and property owner in the Mansion Area and member of the Design Review Committee, also wrote to suggest using outside consultants to assist with changing the agency's rules:
"Most importantly, the process for revisions should be more formal. This is a major "surgery" for which a consultant in the field of preservation and planning should be used. The input for the last major rule changes in 1998 included (but was not limited to) 13 consultants including 8 members of Winter and Company, the 3 CZ Advisory Boards, and the Ordinance Committee. Most recent proposed revisions have been provided by staff. While those involved to date provided great insight, we recommend that they may instead provide the organization required for the process and help set goals. The cultural value of the historic district and real value of the properties effected far outweigh the expedience of the moment.
Have funding sources for consultants been investigated? The 1998 publication was financed in part with funds from the Arkansas Historic Preservation Program. Has the amount for the consultation fee been investigated, either with Winter and Company or other? Should the AHPP or other sources be identified, the amount of additional funds may not be that great."

Kathy Wells, resident and property owner in the Mansion Area, also spoke in supporting of retaining outside legal counsel to review proposed revisions to the agency's rules.

Agency response: The agency is authorized and uniquely qualified to develop, adopt, and change its own rules. Indeed, the ability and willingness to respond to change represents a best practice in both the planning profession and in state government. While the agency's enabling statute allows for it to employ outside consultants to develop its Master Plan, such consultation is not required.

A significant portion of the proposed changes are related to the formatting of the Rules. Staff hears regularly from constituents who struggle to

navigate between the seven documents in which the rules are currently found. Much of the volume of the marked-up document is related to removing redundant language and condensing the seven current documents one. Staff believes combining the rules into one will simplify them and make them easier for the public to understand. Also, past rule changes have failed to update multiple instances of the same rule, leading to internal inconsistencies. It is hoped that eliminating redundancies will eliminate future inconsistencies.

The proposed procedural changes are intended to bring the written procedures in line with the way in which the Commission has traditionally conducted business and to ease the burden of compliance for the public. For the changes related to the design and rehabilitation guidelines, zoning, parking, signage, etc., all of the proposed updates have been prompted either by members of the public raising concerns about particular provisions, the Commission consistently granting certain waivers, or staff observing deficiencies in the rule documents.

The agency believes that the proposed procedural and regulatory revisions represent only incremental change to the Master Plan, and that the proposed amendments do not rise to a level warranting outside expertise. The changes to substantive rules are based on feedback from constituents, a need to bring procedural provisions into closer alignment with the Commission's long-standing practice, and the recognition that best practices in zoning and preservation have evolved since 1998.

Comment:
Marvin Dalla Rosa, resident and property owner in the Mansion Area, wrote and spoke in opposition to some of the proposed changes:
"Section 2-105, Par. C.2: Please explain this paragraph. Is it your intent that the issuance of Conditional Use Permit be altered to include uses not codified in the Rules?"

Agency response: The text added in this section is meant to clarify the purpose of Conditional Use Permits, and to make the language consistent with current practice and interpretation.

"Section 2-105, Par. C.2.a: Why did you change "may" to "shall"?"

Agency response: The agency means to clarify that Conditional Uses are understood to be approved uses that -- although the Commission may choose to attach conditions -- shall be allowed. (If a particular use is never appropriate for a zone, then it should be removed from the list of Conditional Uses for that zone.)

"Section 2-105, Par. E: We STRONGLY OPPOSE the inclusion of this paragraph. Temporary and/or Conditional Use Permits should NOT be allowed to run with the parcel of land for which they are granted, but should lie only with the original applicant. If a new owner wishes to continue with the Temp. Use they should be required to re-apply. Please explain the staff's basis for this inclusion."

Ed Sergeant, resident and property owner in the Mansion Area and member of the Design Review Committee, also wrote in opposition to permits running with the property instead of the applicant:
"It should be clarified that all conditional use permits run with the applicant, not with the property. If it runs with the property, not only has the increase in use for that property been increased forever, but a legal precedence would then be set for all other properties with the same zoning classification."

Agency response: The agency disagrees with Mr. Dalla Rosa & Mr. Sergeant. The Commission believes it must not be a respecter of persons. That is, the Commission should not consider the characteristics of the person applying for a Conditional Use Permit. The advisory committees and Commission can attach conditions to a permit to insure compatibility of the use instead of relying on assumptions about how a particular individual will operate a business. If a given use is appropriate for a given property, it should not matter who the owner or tenant is.

The agency notes that this proposed language represents what is already current practice, and further notes that Conditional Use Permits would still expire after a period of disuse and revert to the underlying zoning.

Comment:
Marvin Dalla Rosa, resident and property owner in the Mansion Area, wrote and spoke with the following questions:
"Section 2-105, Par. C.3: What are the "several" provisions that the Commission may waive on a case-by-case basis? What is the basis for deciding what may or may not be "waived"?"

Agency response: The Commission may reduce, expand, or waive its Standards for parking, signage, height, setbacks, etc. The basis for considering such waivers is described in each of those sections. This text is intended to clarify that proposed changes that cannot be reviewed under the lower standard (waiver) will be considered under the higher standard (variance).

Comment:
Marvin Dalla Rosa, resident and property owner in the Mansion Area, wrote and spoke with the following questions:

"Section 2-105, Par.C.6.a.iii: Why is the temporary use permit duration changed to 14 days from 7? What is the basis for this change? And does this only apply to "Staff-granted" TU permits? (See Par. 6.b.i of this same section where you state that the Commission can grant a TU permit for up to a year)."

Agency response: Staff is occasionally asked to issue two consecutive TU permits at the same property (such as an outdoor sale). This provision would allow owners to obtain only one permit for a single 2-week event. The agency is also proposing a one-year maximum for Commission-issued TUPs, since the current Rules are silent on the maximum length of such permits.

"Section 2-105, Par.C.6.a.v: Has the square footage of signage for a Temp Use been changed? If so, from what and on what basis?"

Agency response: The current Rules are silent on the maximum size of signs associated with Temporary Uses. The proposed language was taken from the City of Little Rock's zoning code.

"Please provide the basis for the 8-week maximum time allowed for a particular property to have temporary use permits. This appears to be an attempt to broaden the temporary use permit to the extent that it begins to act as a conditional use permit."

Agency response: The current requirements for Temporary Use Permits were silent regarding how often they may be issued. The proposed 8-week maximum was taken from the City of Little Rock's zoning ordinance.

Mr. Dalla Rosa also noted in the public hearing that this provision (maximum of 8 weeks per year for a staff-issued TUP) could be used back-to-back – one 8-week period at the end of a calendar year immediately followed by another 8 week period beginning in January – to effectively create a 4 month TUP.

Agency response: The Commission agrees with Mr. Dalla Rosa. The proposed 8-week (or other) maximum prescribed should be for a rolling 12-month period, not per calendar year. <u>This language has been incorporated in the final rule.</u>

"Section 2-105, Par. C.6.b: Why was the last sentence removed? Why are you eliminating the standard of demonstrating that a Temporary Use will be consistent with the Master Plan? Won't removing this requirement weaken the established Plan?"

Agency response: The language proposed for removal is redundant with language in subsection F.

"Also, with regard to Subsection ii of that same paragraph, what is the basis for temporary use permits being allowed up to a year in duration?"

Agency response: The current rules do not prescribe a maximum duration for Commission-approved Temporary Use Permits. The Commission believes one year is a reasonable maximum for a temporary permit.

Comment:
Marvin Dalla Rosa, resident and property owner in the Mansion Area, wrote and spoke with the following questions: "Section 2-105, Par F.2.c.i: Why was the certified mail requirement removed?"

Agency response: The agency's long-standing practice of requiring applicants to notify neighbors by certified mail is often criticized as costly and burdensome.

"What assurances would the Director have that the surrounding property owners were notified per the Rules?"

Agency response: The agency does not presently know whether notices are received, only whether they were sent. This proposal shifts the responsibility from the applicant to the agency.

"Same paragraph, section ii, why was this deleted? What is the proposed timeframe by which the affidavit and supporting exhibits for an application must be submitted prior to a review by the Commission? In what format will these be made available to the public?"

Agency response: The affidavit mentioned in the deleted paragraph relates to the notification procedures. In addition to the certified mail receipts, applicants were required to submit a signed and dated affidavit stating that they indeed had sent the notifications. With staff taking on that function, there is no need for the affidavit. Regarding exhibits, the agency typically requires all supporting materials to be submitted with the application itself several weeks before the Commission meeting. Meeting agendas & staff reports will continue to be published on the agency's website.

Comment:
Dan Cook and Kathy Wells, property owners and residents in the Mansion Area spoke in opposition to the proposal to remove the word "hearing" from the Commission's application review procedures.

Marvin Dalla Rosa, Mansion Area resident and property owner, also asked about the proposed changes:
"Why was the language changed from a hearing to a review? What is the basis for that?"

Agency response: The term "hearing" carries a particular meaning for a state agency. A "hearing" under the Arkansas Administrative Procedures Act indicates an adjudication – a quasi-judicial proceeding that implies swearing of witnesses, a hearing officer, a court reporter, etc. The Commission previously included the word "hearing" in its rules which unintentionally carried with it the requirement of this much more formal proceeding.

The proposed rule seeks to clarify that the Commission's long-standing practice of seeking public input on permit applications should not be construed as an adjudication. Adjudications are, by their very nature, adversarial proceedings, whereas the Commission's review process with public input is intended to serve as a consensus-building device.

The agency notes its enabling legislation specifically grants the Commission authority to "prescribe such rules and regulations concerning procedure before it and concerning the exercise of its functions and duties as it shall deem proper." [A.C.A. 22-3-307(a)]

"Section 2-105.F.4: Does this paragraph eliminate the Mansion Area Advisory Committee input opportunity from the public? Please explain."
Agency response: No. This paragraph seeks to clarify the purpose of soliciting public input on applications. It does not change the role of advisory committees.

Section 2-105.F.5.a: Why was "may issue" changed to "shall approve"?

Agency response: To clarify that the Commission must approve an application if it finds the proposal is substantially consistent with the review criteria.

"Section 4-301: Case-by-case: This language is added to the document. Please explain who will demonstrate to the Commission whether proposed work will not detract from the historic integrity of the property or surrounding properties. Is this the staff? The applicant? Who determines what "may nevertheless be suitable for some properties."?"

Agency response: This language is intended to clarify existing practices. Every historic property is different and the Commission has long reserved its authority to consider special cases. In all such cases, it is incumbent on

an applicant to demonstrate to the Commission's satisfaction that the proposed work will not detract from the overall historic character of the neighborhood.

Comment:
Marvin Dalla Rosa, resident and property owner in the Mansion Area, wrote and spoke with the following questions: "Section 2-1 05.F.5.e: If the Commission does not act on an application within 100 days is the application automatically approved? Regardless of its impact, detrimental or otherwise, on the District? Isn't this an avenue by which the Commission and/or Staff would abdicate their responsibility? What is the basis for this 100-day timeline? Is lack of action on applications a recurring issue?"

Agency response: The agency has been criticized by previous applicants for the Commission's ability to defer action on controversial applications, sometimes for months at a time. This provision is offered in response to this criticism and would require the Commission to take action, or else grant a default approval. The agency notes that if an approval, even by default, violates the Commission's rules, then that approval can be appealed.

Comment:
Adelia Kittrell, resident and property owner in the Mansion Area, wrote with a mixture of questions and comments: "What are the implications to violations running with the property, owner to owner? Would that mean I am responsible for past violations and could face court as insinuated in the proposed changes? Would it suppress real estate in the area, especially for young families who don't have the resources to fix all the violations? I am particularly worried about Paragraph B, section D. It seems antithetical to community growth or at least tips the balance in favor of people with more money to address them and away from the low-income members of the community or even new/young families buying into the neighborhood.

"Would violations have to be divulged before a sale? I would be seriously upset if I bought a new house and learned I couldn't do ANY repairs on my house until I addressed the $20,000 in violations the previous owner committed. It could *easily* reach that amount on an old home. Depending on the number and type of violations, it could result in a house falling into disrepair instead of being kept up through the years. It is exceedingly possible this might price out younger and low-income community members. I think it's unethical to hold someone into account for something they didn't do. Rather, we should incentivize sellers to make the correct repairs. I certainly feel like the implied effects of the rule change outweigh the current problem and possibly exacerbate it.

"I'm not sure I would have bought my house if I thought that I would be held responsible for past owner violations because I 1) wouldn't know what I was getting into and 2) wouldn't know if I had the money or skills to fix it. Is there any way to include a provision that would allow subsequent owners to make applications and secure permits for other projects, but if they file for permits that effect the violation in question, that they would have to address it at that time?

"For example, if I buy a house and it has a violation from a previous owner in regard to vinyl siding (which isn't allowed). and I want to build a fence in my front yard, my $1,000 fence project just turned into a $20,000+ project that has nothing to do with a fence. However, if I submit a permit for a new exterior, then I would then have to make sure the new exterior remedies the violation.

"In my personal experience (which I know isn't all-encompassing), I find that people typically want to make their houses worth more and fit the historic nature of the community. In most cases, the friction comes from a lack of money to meet those demands rather than a desire to skirt the rules. Part of the historic nature and value of our community is the varied demographics both in race and incomes. One of my biggest fears is forcing out low-income and minorities that have made up a part of this neighborhood since Central High was desegregated. I hope we can someday come up with a way to help support rather than penalize after the fact when it is too late anyway. From what I can tell, any sort of incentives are geared towards major renovations that mainly help higher-income individuals rather than the single family residence that needs some historically accurate repairs."

Agency response: Staff has received extensive feedback that the agency's current (unwritten) policy to hold harmless any new property owners for violations committed by previous owners has served to "grandfather in" numerous insensitive changes throughout the District. Moreover, this interpretation creates a perverse incentive for sellers to undertake unpermitted work immediately prior to conveying a property.

The agency does, however, recognize Ms. Kittrell's concern about current owners being suddenly held responsible for violations committed by previous owners. The Commission also discussed the difficulty of notifying prospective buyers of any outstanding violation(s) at a given property. <u>The Commission decided to remove this provision from the final rule.</u>

Though not directly germane to these proposed revisions, staff shares Ms. Kittrell's "big picture" concerns about the role of agency rules in displacing long-time residents from the Governor's Mansion Area. The

agency does not, however, believe this phenomenon, sometimes called "gentrification" is occurring at this time. Indeed, US Census data indicate the Mansion Area remains among the most diverse neighborhoods in Little Rock, racially, economically, and by age. Staff will continue to periodically monitor demographic trends and evaluate whether the agency's requirements are serving to decrease this robust diversity.

Comment:
Kathy Wells, resident and property owner in the Mansion Area, spoke in support of the proposed changes allowing any citizen of Arkansas to initiate a demolition-by-neglect complaint.

Marvin Dalla Rosa, resident and property owner in the Mansion Area, wrote and spoke with the following questions:
"Section 2-107.C: Why was this deleted? If the Staff no longer performs this function to whom does this responsibility fall? Is this not part of the Staff's job?"

Agency response: Under current Rules, only one of the groups listed may initiate a Demolition by Neglect investigation by submitting a written complaint. By removing this section, staff or any citizen of Arkansas may report a potential case of demo-by-neglect. However, leaving the final sentence about initiating enforcement actions may serve to clarify the proper proceedings in Demolition by Neglect cases. The Commission decided not to strike this sentence from the final rule.

Comment:
David & Teresa Carlisle, property owners in the Mansion Area wrote & spoke in support of the changes.

Ed Sergeant, resident and property owner in the Mansion Area and member of the Design Review Committee, wrote in opposition to the changes.
"Allowing small-scale commercial-style new construction on corner lots in Zone N would include a reduction in setbacks. In short, we would not want to live next door to one of these properties which blocks our view up the street and provides a 2 story blank wall for us to look at. This would be very detrimental to locations such as Broadway Street where the stability of the historic residential structures is already a problem. The street already suffers from excessive speeding and traffic accidents. The most important use in the inner city is residential and we should do more to protect the historic residential structures, not create more problems for them."

Agency response: The agency disagrees with Mr. Sergeant. The agency believes that allowing for small-scale commercial style new structures on

corner lots in Zone N (in the tradition of historic corner stores) will allow for a broader range of development without negatively impacting the neighborhood's overall residential character. The agency emphasizes that no new uses are being proposed for these properties; only a different style of allowable new structures. The agency also notes that small-scale corner store structures were part of the historic development pattern of the neighborhood.

Comment:
Ed Sergeant, property owner in the Mansion Area and member of the Design Review Committee, wrote in opposition to some zoning changes: "Hotel, Motel, Amusement, Consumer Goods and Services would be allowed as a Conditional Use in Zone N when the preservation of a historic commercial, multifamily or civic type building is involved. Generally, this is Broadway, Main from 19th to Roosevelt, Roosevelt and the area to the northeast of SoMa. Why is this increase in zoning important? Hotel, motel and amusement are regional not community uses. Uses should support the community/pedestrian qualities of the neighborhood within which they are sited. Instead, hotel, motel and amusement are driving based for which development requires maximum parking and signage. The increase of allowable uses for Broadway would be detrimental to the structures and houses behind them."

Agency response: The agency believes Mr. Sergeant is reading the document incorrectly. The proposed changes do not call for any additional use groups in Zone N.

Comment:
Dan Cook, resident and property owner in the Mansion Area and former Commissioner, spoke in opposition to allowing uses listed under Community Facilities 1 in the Mansion Area.

Agency response: The agency believes Dr. Cook is reading the document incorrectly. Community Facilities 1 is already, currently listed among the Conditional Uses that can be considered in the Mansion Area. No change is being proposed at this time.

Comment:
Kathy Wells, resident and property owner in the Mansion Area, spoke in support of the new language allowing the Commission to make reasonable accommodation for communal living facilities.

Marvin Dalla Rosa, resident and property owner in the Mansion Area, wrote and spoke with the following questions: "Section 3-202.Z.13.3.a: It appears that group homes will be approved by the Commission even if they do not meet the requirements of the District. Is that the case?"

Agency response: Yes. Federal and state Fair Housing laws require that the Commission make reasonable accommodation for groups of disabled individuals whose condition requires group living facilities.

"Section 3-203.U.6: Are homeless shelters also to be allowed in Zone M – Residential?"

Agency response: No.

Comment:
Susan Chambers, Terri Parker West, and Lloyd Litsey, residents and property owners in the Mansion Area, wrote in opposition to relaxing the parking requirements near the intersection of 23rd and Arch:
"I object to the relaxing of required parking spaces for the 23rd and Arch intersection. As you know, the 2200 and 2300 blocks of Arch are a mix of old commercial buildings and residential houses. The Homeowners need access to their front yards and doors to carry in groceries, children and to ensure the safety of their vehicles by parking in front of their homes. Any business going in on a block with residences needs to have a parking lot."

Marvin Dalla Rosa, resident and property owners in the Mansion Area, also wrote and spoke in opposition to this proposed change:
"Section 3-301-Parking: As per my previous query at the Mansion Area Committee meeting, please provide the objective basis utilized by the staff to reduce the parking requirements throughout the District. Do these changes apply to Zone O, N and M equally? What data, reports, studies, etc. were utilized by the Staff in making this determination? Please provide attribution of this information for public review. Lacking such, the 50 percent reduction appears to be arbitrary and CANNOT BE SUPPORTED."

Kathy Wells, resident and property owner in the Mansion Area, spoke in opposition to the proposed reductions, cautioning that such changes should be based on empirical data.

Agency response: Staff has repeatedly observed that the Commission's rules for off-street parking often serve as a barrier to small businesses (minority-owned businesses in particular) seeking to locate in the District and serve to undermine the very characteristics that make the neighborhood a desirable place to be. Staff has traced much of Commission's current parking rules back to City of Little Rock parking regulations dating from the 1950s. Those appear to have been derived from model codes first developed in the 1930s when automobiles were becoming ubiquitous in our cities. In other words, the underlying parking rules were not adopted during the 1998 master planning process.

There is a rich body of literature and research asserting that any attempt to 'solve' parking problems on the front end by requiring a certain amount of off-street parking as a condition of every new business license or construction permit produces large, negative unintended consequences. These include increased costs in construction and business operation, valuable land being devoted to large expanses of pavement that sit empty most of the time, gaps in the street frontage, underutilized on-street parking, increased traffic with all of its negative attributes, making car ownership a requirement rather than a choice, etc. A growing viewpoint in the planning and zoning world today is that the 1930s way of thinking has not worked for our cities. Parking lots abound, but vibrancy seems to have disappeared in the same places. The rigidly prescriptive top-down way of dealing with car storage is being replaced with more of a market-based solution.

Here is a sampling of papers and news articles about cities relaxing or eliminating off-street parking requirements:
http://www.fayettevilleflyer.com/2015/10/07/fayetteville-eliminates-minimum-parking-requirements/
http://www.uctc.net/research/papers/351.pdf
http://www.mapc.org/resources/parking-toolkit/strategies-topic/eliminate-minimum-reqs
http://www.slate.com/articles/news_and_politics/the_hive/2010/06/theres_no_such_thing_as_free_parking.html
http://shoup.bol.ucla.edu/Trouble.pdf
http://www.naiop.org/en/Magazine/2016/Summer-2016/Development-Ownership/Smaller-Cities-Lighten-Up-on-Minimum-Parking-Requirements.aspx
http://sdapa.org/download/PatrickSiegman_SDParkingSym_7-14-06.pdf
http://streets.mn/2015/06/11/minneapolis-proposes-to-eliminate-minimum-parking-requirements-near-transit/
http://www.psrc.org/growth/housing/hip/case-studies/sf
http://www.strongtowns.org/journal/2015/11/18/a-map-of-cities-that-got-rid-of-parking-minimums

The Commission has already relaxed its rules multiple times in part by implementing and refining a process for obtaining complete or partial parking waivers in certain circumstances. In recent years the Commission has declined to grant a waiver in only one instance at 23rd and Arch while granting numerous partial and total waivers elsewhere in the neighborhood. All of the churches in the neighborhood, a significant portion of the businesses currently located on Main Street, several of the offices on Broadway, the school at Roosevelt and Main, and others simply would not be allowed to operate had the Commission rigidly imposed its underlying parking rules as originally written. The proposed changes

would make it easier for uses that are allowed by right to begin operating without first having to seek a parking waiver from the Commission.

As context, many cities have completely eliminated minimum parking requirements citywide (Fayetteville, AR, for example) or in certain areas (Little Rock in its Urban Use zone downtown, immediately north of the CZDC's Mansion Area and east of the Capitol Area). Several citizens have expressed a desire to do so in the Capitol Zoning District, too. That level of change would best be preceded by an extensive dialog between the CZDC, City of Little Rock, Rock Region Metro, LRDNA, etc. about improved public transit, improved pedestrian and bike facilities, and possibly a resident parking pass for residential streets at some point in the future if parking demand grows too much.

In the meantime, however, the agency agrees that a greater need for off-street parking requirements remains in predominantly residential zones then in commercial zones. Instead of a District-wide 50% parking reduction, the Commission instead adopted of language that allows staff to reduce the required off-street parking by 50% reduction only commercial zones, while allowing the Commission to consider, on a case-by-case basis, parking waivers up to 50% in residential zones, and up to 100% in commercial areas.

Comment:
Ed Sergeant, property owner in the Mansion Area and member of the Design Review Committee, wrote in opposition to relaxing landscape requirements:
"Reducing landscaping requirements is counter to current movements to improve the green aspects of our communities and enhance pedestrian experience. Does this mean that the CZ standards will be even less than the City's?"

Agency response: The agency believes Mr. Sergeant is reading the document incorrectly. The proposed changes do not call for any reduction in landscape requirements.

Additional Signage
Ed Sergeant, property owner in the Mansion Area and member of the Design Review Committee, wrote in opposition to allowing larger signs:
"The allowable area of signs should not be increased by the Commission. This is also counter to current movements in downtown communities."

Kathy Wells, resident and property owner in the Mansion Area, spoke in opposition to the proposal to allow the Commission to approve more and larger signs than allowed by right.

Agency response: The agency disagrees with Mr. Sergeant and Ms. Wells, and believes the Commission should have the flexibility to consider extra signage in some limited circumstances. The agency notes the proposed rules call for an upper limit on what even the Commission may approve,

Comment:
Adelia Kittrell, resident and property owner in the Mansion Area, wrote with a mixture of questions and comments:
"… Tree Protection. What happens if a tree isn't approved for cutting and it subsequently falls on a house? Will the Commission be held liable? Will home owners be responsible for a registered/certified forester to come to their residence to affirm in writing that the tree is a hazard?

… I certainly think that there's a need to protect our lovely old trees. I'm a professional tree-hugger myself. If a tree professional is needed to review a case, who bears that cost? And if it isn't approved for cutting or trimming and something happens to a historic property, who is held liable for those costs? I'm also wondering about insurance companies. Mine requested that tree limbs be cut before they insured my house. Will there be conflicts between the CDZD and insurance companies? I'm all for protecting these trees, though. I'm just wondering about the implications."
Agency response: The agency believes that the sliding scale of review provided in the proposed tree protection language should serve to alleviate Ms. Kittrell's concerns. The agency also notes that certified foresters are available at the city, county, & state levels who provide professional advice to property owners free of charge.

Comment:
Kyle Pitsor, VP of Government Relations for the National Electrical Manufacturers Association, wrote:
"Our comments are intended to limit misdirected and excessive outdoor illumination. Such illumination wastes energy, intrudes on the privacy of others, creates glare which reduces the effect of lighting, deteriorates the natural nighttime environment, and reduces the ability for astronomical observation. In addition, our comments reflect recent New York state legislation that was signed into law and had the support of the International Association of Lighting Designers, the Illuminating Engineering Society, the International Dark-Sky Association, and NEMA.

Outdoor lighting is used to illuminate roadways, parking lots, yards, sidewalks, public meeting areas, signs, work sites and buildings. When well designed, it improves visibility, adds an element of safety and creates a sense of security, while at the same time minimizing energy use and operating costs. However, if it is not well designed it can be costly, inefficient, counterproductive, and harmful to the nighttime environment,

interfering with normal patterns of activity, behavior and physiology of flora and fauna.
Much of the outdoor lighting in use today wastes energy because it is poorly designed. This waste results in both higher costs for providing such lighting and increased pollution from the power plants that produce the wasted electricity. It is conservatively estimated that $3 to $4.5 billion a year is wasted in the United States in the unintended lighting of the sky rather than the streets, walkways, and outdoor public spaces which the light was intended to illuminate.
In addition to wasting energy, poorly designed lighting often causes blinding glare. Glare occurs when you see light directly from a fixture or bulb. The glare from poorly designed or positioned lighting hampers the vision of drivers and pedestrians, reducing its effectiveness and creating a hazard rather than increasing safety. It shines onto neighboring properties and into nearby residences, reducing privacy, hindering sleep, and diminishing the beauty of the natural surroundings in areas far removed from the source of such lighting.
NEMA believes that the commission's rules for outdoor lighting should follow these guidelines:

1. Fixtures should be fully shielded for those mounted to poles, buildings or other structures.
2. Building mounted fixtures should be fully shielded when its initial fixture lumens are greater than 3000 lumens and are not specifically intended for roadway lighting, parking-lot lighting, or facade lighting.
3. Facade fixture is shielded to reduce glare, sky glow, and light trespass to the greatest extent possible.
4. Ornamental roadway lighting fixtures cannot allow more than 700 lumens from the fixture above a horizontal plane through the fixture's lowest light emitting part.
5. For new illuminated permanent outdoor fixtures applications, only the illuminance levels required may be used.

The rules for outdoor lighting should be waived when:
1. Federal law preempts State law.
2. The fixture is temporarily used by emergency personnel or repair personnel for road repair.
3. Navigational lighting systems necessary for aviation and nautical safety.
4. Athletic playing lighting.
5. Safety or security needs exist that cannot be addressed by any other method.
6. Replacement of previously installed permanent outdoor fixtures that are destroyed, damaged or inoperative, have experienced electrical failure due to failed components or required standard maintenance.
7. Lighting is intended for tunnels and roadway underpasses."

Agency response: The agency agrees with NEMA's comments. The proposed rules for outdoor lighting are intended to reduce glare and light pollution and were developed in consultation with state Rep. Stephen Meeks and other Arkansas "dark sky" advocates. Some of NEMA's comments, however, go beyond what is being proposed, or are not applicable in the Capitol Zoning District (eg. 'tunnels and roadway underpasses'). The agency does not believe these suggestions should be incorporated into the final rule at this time.

Comment:
Muriel Lederman, a property owner in the Mansion Area:
"I believe your standards for solar panels are somewhat inconsistent. On p. 69, you state that for staff approval, panels cannot face the street, while on p. 106 you state that if a panel is to be located on a roof plane, facing the street, it should be designed to minimize glare and reflectivity.

In other words, anyone who own a home, such as I do, whose **only** south/west face roof surface faces a street, needs to get special permission to install a solar panel, while those homeowners whose houses are situated differently get a free pass. If the appearance of solar panels is a concern on historic houses, why is it not a concern through the district?

I would prefer that the standards allow solar panels with minimal reflectivity on any roof plane appropriate for capturing solar energy through staff approval."

Agency response: The agency disagrees with Ms. Lederman. The Commission has always held historic structures to a higher standard of review, as well as those parts of structures visible from the public right of way. The agency believes these distinctions should continue.

Comment:
Kathy Wells, resident and property owner in the Mansion Area, spoke in support of the new language allowing the Commission to consider historic architectural styles for new construction in the Mansion Area.
Agency response: The Commission has traditionally approved such designs. This language is intended to make the Rules consistent with existing practice.

Comment:
Kathy Wells, resident and property owner in the Mansion Area, spoke in supporting of combining all the Commission's rules into a single document.

Agency response: The agency believes a single document with a standard format will be easier for both property owners and commission members to use effectively.

Marvin Dalla Rosa, resident and property owner in the Mansion Area, wrote and spoke with the following questions: "Is this document identical in all ways to the one posted to the CZDC website late last month? Have any changes been made since then? If so, what are those changes and most importantly, when were they made? This is a 252-page document and having reviewed both this one and the one previously posted, I want to make certain there were no changes made in the interim. Please clarify."

Agency response: The document Mr. Dalla Rosa references on the agency's website was the proposed Rules, prior to any revisions.

"In Section 2-105, Paragraph C.1. please explain the deletion of paragraph e, which deals with applications for certificates of appropriateness and the Commission's review in light of the Standards, and replaced it with an item that deals primarily with windows. What is the basis for this change?"

Agency response: The text that was removed was redundant with language for evaluating all permits in subsection F. The text that was moved to this location dealt with Certificates of Appropriateness for damaged windows. The agency believes this text is better suited to the section on Certificates of Appropriateness than its current location.

"Section 2-105, Par. E: The deletion of the paragraph dealing with windows – same question as … above. Please clarify."

Agency response: This text was moved to the subsection dealing with Certificates of Appropriateness.

"Section 2-105.F.5: Why was the first sentence deleted?"

Agency response: It was moved to the following paragraph for clarity.

"Section 2-111: Why was this paragraph deleted?"

Agency response: It was moved to Article 1.

"Section 3-202.Z.e: Please clarify the changes in zoning with regard to home occupation. Especially with regard to subsection iii."
Agency response: Most of this language was moved to this location from another section. The new language is intended to clarify and make the text consistent with existing practice.

"Section 3-203.USE GROUPS: There are a multitude of changes, both additions and deletions, in this Section. Given the redline/greenline/deletion segments throughout this document, we are requesting a version that shows the document in total as if all changes were accepted. This will help us to determine the final language as proposed by Staff."

Agency response: A "clean" version of the proposed changes was provided to the Bureau of Legislative Research, and is also available upon request.

"Section 3-203.U.5: Why was this Section deleted and replaced with one allowing up to 5 units. Would this apply within Zone M?"

Agency response: This language is intended to clarify the meaning of Multifamily use. This group has always been a Conditional Use in Zone M.

"Section 3-203.U.16: It appears that Commission and/or Staff can determine a group for a particular use at their discretion. Is that the case?"

Agency response: The agency has always had this discretion. This language is intended to clarify.

"Section 3-203.U.16: Please clarify the Home Occupations deletion/edits."

Agency response: This language was moved to another section.

"Section 3-301.P.13.1: What is the basis for deletion of the violation language?"

Agency response: The agency agrees with Mr. Dalla Rosa. <u>The Commission decided not to strike the sentence in question, believing it provides clarity.</u>

"Section 3-301.P.13.2: What is the basis for deletion of the "Paved" language/definition?"

Agency response: This language is obviated by new language in standard P8.

"Section 3-301.P.14: It appears there are numerous deletions of requirements in this section. Are they simply eliminated entirely or do they appear elsewhere in the Rules? Please clarify."

Agency response: Similar items were condensed into a single item. Others were moved to new groups according the proposed changes to use groups in the previous section.

"Section S.3 Definitions: Why was this section deleted? Do they appear elsewhere in the Rules? Please clarify."
Agency response: Some of these were definitions without a reference to any items elsewhere. Others were incorporated into the standard for the type of sign in question.

"Section 4-102: Why was language denoting the Mansion Area deleted?"

Agency response: Because this section applies to all historic properties in both the Mansion and Capitol areas.

"GLOSSARY: Why was this deleted?"

Agency response: Many of the items in this section defined terms that were not used elsewhere. Others are generally understood terms not requiring special definitions.

"Page 167 – Capitol Area Zones: Is it Staff's intent to delete these entirely?"

Agency response: This was redundant with an identical page in the General Standards.

"Section 6-201.B - Historic Survey Rating Categories: Why was this removed?"

Agency response: These categories have not been used since the adoption of the current (1998) Master Plan.

"Page 195 – Mansion Area Zones: Is it Staff's intent to delete these entirely? Same question for Page 200."

Agency response: The Mansion Area zoning requirements are covered in the General Standards. And the map on page 200 shows neighborhood conditions as they existed in 1998.

"Section 7 -101 Design Standards – Introduction (Pg. 207): Why was this section deleted?"

Agency response: This material is redundant with language found in the Capitol Area Master Plan.

"Section 7.C – Design Objectives: Why was this section deleted?"

Agency response: This material is redundant with language found in the Capitol Area Master Plan.

"Article Eight – Mansion Area Design Standards: As with the Capitol Area Standards, wholesale sections have been deleted. Are all of these captured elsewhere in the document? If so, please clarify. If not, what is the basis for their deletion?"

Agency response: This material is redundant with language found in the Mansion Area Master Plan.

"Section 8-101: The article appears to focus on new construction and work on non-historic existing structures. Where is language concerning historic structures, which is purportedly the primary focus of the CZDC? Of particular concern also is the addition of the last sentence concerning "O" standards for parking lot design and landscaping. What is the intent of that inclusion?"

Agency response: Rules for historic structures are found in the Rehabilitation Standards. The language on parking lots in meant to clarify that the "O" standards for parking lots apply to small lots (<20 spaces) throughout the Mansion Area.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 22-3-302, the Capitol Zoning District Commission is charged with the authority to promote the general welfare of the state with respect to the State Capitol as well as the area surrounding the Governor's mansion.

Arkansas Code Annotated § 22-3-307 states that the Capitol Zoning District Commission has the authority to prescribe such rules and regulations concerning the exercise of its functions and duties as it shall deem proper.

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

1. APPRAISER LICENSING AND CERTIFICATION BOARD
(Diana Piechocki)

a. SUBJECT: Section XII – Fees and Payment of Fees

DESCRIPTION: This implements A.C.A. § 17-14-203(6)(E)(i). This pertains to the pass-through fee for a criminal background check for applicants seeking an appraiser credential or to upgrade an existing credential. It also corrects a typographical error in Section XII – Fees and Payment of Fees A. 5. Delinquent Fees.

PUBLIC COMMENT: A public hearing was held on December 21, 2016, and the public comment period expired on that date. No public comments were submitted. The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The $37.50 background check fee is a pass-through fee only.

There is no additional cost to the agency to implement the rule.

LEGAL AUTHORIZATION: The Arkansas Appraiser Licensing and Certification Board shall establish by rule the minimum examination, education, experience, and continuing education requirements for state-registered, state-licensed, and state-certified appraisers. Ark. Code Ann. § 17-4-203(6). Every application for registering, licensing, and certification shall be accompanied by an application and examination fee, as applicable, and a criminal background check fee that the board may establish by rule. Ark. Code Ann. § 17-14-203(6)(E)(i).

b. SUBJECT: Section IX – Reinstatement Rules

DESCRIPTION: These rules provide concise steps for an appraiser to reactivate his/her appraiser credential that is in an inactive status. These changes to Section IX of the rules implement Act 1066 of the 90th General Assembly and they comply with the reinstatement requirements of the Appraiser Qualifications Board. Additional minor changes are made to comply with other sections of the ALCB rules.

PUBLIC COMMENT: A public hearing was held on December 21, 2016, and the public comment period expired on that date. One public comment was received by B.J. Burney in favor of the proposed regulation. No other public comments were submitted. The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The cost to an appraiser wanting to reinstate his/her appraiser credential will vary due to the amount of continuing education (CE) required. The cost of 28 hours of CE ranges from $510 to $825 or more depending on the education provider selected by the

appraiser. There is no clear way to estimate the cost. All fees will be paid prior to reinstatement.

There is no cost to the agency to implement the rule.

LEGAL AUTHORIZATION: These rules implement Act 1066 of 2015, which amends the law concerning reinstatement of licenses and certification. A licensing entity shall by rule adopt reduced requirements for reinstatement of a license, registration, or certification for a person who demonstrates that he or she: (1) was previously licensed, registered, or certified to practice in the field of his or her profession at any time in this state; (2) held his or her license in good standing at the time of licensing; (3) did not have his or her license revoked for an act of bad faith or a violation of law, rule, or ethics; (4) is not holding a suspended or probationary license in any state; and (5) is sufficiently competent in his or her field. Ark. Code Ann. § 17-1-107(b)(1).

2. STATE BANK DEPARTMENT (Susanna Marshall and John Ahlen)

a. SUBJECT: Messenger Service

DESCRIPTION: This reflects current bank and messenger service business practices as follows:

"47-101.7 – MESSENGER SERVICE (A.C.A. 23-47-101)

(a) To meet the requirements of its customers, a state bank may provide messenger services within the geographic limits of its operations by means of an armored car or otherwise, under which messenger service means any service, such as a courier service or armored car service, used by a state bank and its customers to pick up from, and deliver to, specific customers at locations such as their homes or offices, items relating to transactions between the bank and those customers.

(b) The messenger service shall be pursuant to a written contract between the bank and the customer wherein it is agreed that in performing the functions under 9a) above, the messenger is the agent of the customers; that where funds (including currency, coin, checks, or similar items) are transmitted to the bank by messenger for deposit, title to the funds shall remain with the customer until they are accepted by the bank and the depositor relationship shall not commence until such acceptance; that funds delivered by the bank to the messenger for transmission to a customer shall become the property of the customer when they are delivered to and accepted by the messenger, the customer's withdrawal to be deemed to have been affected as of that moment.

(c) Hazard insurance covering holdup, robbery, theft, messenger fidelity or misappropriation shall be carried for the protection of the customer for all funds transmitted by messenger to or from the bank. The premiums on such insurance may be paid by the bank."

PUBLIC COMMENT: A public hearing was held on February 16, 2017. The public comment period expired on February 16, 2017. The department received no comments. The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: Arkansas Code Annotated § 23-46-205 (a) states that the Bank Commissioner shall be charged with the general supervision of financial institutions, the execution of all laws passed by the State of Arkansas relating to the organization, operations, inspection, supervision, control, liquidation, and dissolution of banks, bank holding companies, subsidiary trust companies, and the general commercial banking business of Arkansas, and such other duties as prescribed by law.

Further, Ark. Code Ann. § 23-46-205 (b) (1) states that "[t]he commissioner shall have the power to issue such rules and regulations as may be necessary or appropriate to carry out the intent and purposes of all those…," and A.C.A. § 23-46-205 (b) (2) states that the commissioner may issue such rules and regulations only with the approval of the State Banking Board…"

b. SUBJECT: Corporate File

DESCRIPTION: This clarifies and makes more specific the documents that are contained in a bank's corporate files, as follows:

"46-101.3 G. Corporate File.

A bank's corporate file includes its: Articles of Incorporation, Amendment to Articles of Incorporation, list of stockholders, Articles of Merger, and other relevant documents. A bank's corporate file is subject to disclosure with the exception of any information in support of a petition for a stock transfer since such supportive information is confidential."

PUBLIC COMMENT: A public hearing was held on February 16, 2017. The public comment period expired on February 16, 2017. The department received no comments. The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: Arkansas Code Annotated § 23-46-205 (a) states that the Bank Commissioner shall be charged with the general supervision of financial institutions, the execution of all laws passed by the State of Arkansas relating to the organization, operations, inspection, supervision, control, liquidation, and dissolution of banks, bank holding companies, subsidiary trust companies, and the general commercial banking business of Arkansas, and such other duties as prescribed by law.

Further, Ark. Code Ann. § 23-46-205 (b) (1) states that "[t]he commissioner shall have the power to issue such rules and regulations as may be necessary or appropriate to carry out the intent and purposes of all those…," and A.C.A. § 23-46-205 (b) (2) states that the commissioner may issue such rules and regulations only with the approval of the State Banking Board…"

c. SUBJECT: Publication Requirements for Applications Before the State Banking Board

DESCRIPTION: This clarifies the publication requirements for proposed applications before the State Banking Board, as follows:

"46.403.1. – PUBLICATION REQUIREMENTS. APPLICATIONS BEFORE THE STATE BANKING BOARD (Reference A.C.A. § 23-46-403)

Sponsors of the following applications must publish notice of the proposed application once a week for three (3) consecutive weeks in a newspaper of statewide circulation. The first publication shall be within ten (10) calendar days prior to the application's filing date. Publications must provide for a fifteen (15) day comment period beginning with the actual filing of the application. These applications are:

(1) New state bank charters;
(2) Merger or consolidation applications between one or more banks, or saving and loan associations into a state bank;
(3) Purchase or assumption application (over 50% of the assets or liabilities) of another depository institution; and
(4) Change of a state bank's main banking office from one municipality to another (Simple or Complex Application)."

PUBLIC COMMENT: A public hearing was held on February 16, 2017. The public comment period expired on February 16, 2017. The department received no comments. The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: Arkansas Code Annotated § 23-46-205 (a) states that the Bank Commissioner shall be charged with the general supervision of financial institutions, the execution of all laws passed by the State of Arkansas relating to the organization, operations, inspection, supervision, control, liquidation, and dissolution of banks, bank holding companies, subsidiary trust companies, and the general commercial banking business of Arkansas, and such other duties as prescribed by law.

Further, Ark. Code Ann. § 23-46-205 (b) (1) states that "[t]he commissioner shall have the power to issue such rules and regulations as may be necessary or appropriate to carry out the intent and purposes of all those…," and A.C.A. § 23-46-205 (b) (2) states that the commissioner may issue such rules and regulations only with the approval of the State Banking Board…"

3. STATE BOARD OF DENTAL EXAMINERS (Chris Arnold)

a. SUBJECT: Amendment to Article XIV to Strengthen the Scope of Education Requirements for Dentists and Dental Hygienists

DESCRIPTION: Article XIV was recommended to be amended by the Arkansas State Board of Dental Examiners. First, we tried to streamline the article to read appropriately and to reference the correct definition the article was referring to throughout the article, i.e., ~~Units~~ CEUs and the writing out of numbers listed in the document. Secondly, after the evaluation of submitted continuing education courses of candidates applying for licensure in our state and review of audited continuing education by current licensees in our state, the board feels there is a need to put limits and restrictions on the way continuing education hours are obtained and the type of course work attended to help ensure our licensees are keeping their education current and up to date to provide the best care for the citizens of Arkansas. The limits and restrictions recommended are concurrent with other states across the nation. Lastly, the change suggested in the area of Cardiopulmonary Resuscitation was verbiage change that has previously been approved but not changed in this article. Universally, the term ~~Healthcare Provider~~ has been changed to Basic Life Support. The board also wanted to clarify that hours dedicated to CPR education could be counted towards CEUs. The board's ultimate goal with this amendment is to strengthen the continuing education our licensees receive in order to provide the best care for Arkansans.

PUBLIC COMMENT: A public hearing was held on March 16, 2017, and the public comment period expired on that date. No public comments were submitted. The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The Arkansas State Board of Dental Examiners is authorized to promulgate rules and regulations in order to carry out the intent and purposes of the Arkansas Dental Practice Act. Ark. Code Ann. § 17-82-208(a).

4. ARKANSAS ECONOMIC DEVELOPMENT COMMISSION, RURAL SERVICES (Amy Fecher and Kyle Deen)

a. SUBJECT: Fish and Wildlife Conservation Education Grant Program

DESCRIPTION: This amends rules for the Fish and Wildlife Conservation Education Program to specify eligibility and make technical corrections to the existing rules. It removes letters of public support from the community's local governing State Senator and State Representative. It also clarifies eligibility requirements by listing which programs and program expenses are covered by the Game and Fish Commission.

PUBLIC COMMENT: A public hearing was held on April 3, 2017. The public comment period expired on April 3, 2017. The commission received no comments. The proposed effective date is June 1, 2017.

FINANCIAL IMPACT: With the exception of approximately $500 for legal and administrative fees and copying during the rule making process, there is no financial impact.

LEGAL AUTHORIZATION: Arkansas Code Annotated § 6-16-1101 states that the Rural Services Division of the Arkansas Economic Development Commission, in consultation with the Arkansas State Game and Fish Commission, shall establish and promulgate rules for school education programs and for fish and wildlife conservation.

5. DEPARTMENT OF HEALTH, CENTER FOR HEALTH PROTECTION (Robert Brech)

a. SUBJECT: Prescription Drug Monitoring Program

DESCRIPTION: This changes reporting by dispensers of controlled substances to the Prescription Drug Monitoring Program from weekly to daily. This change will provide more timely information for users of the Prescription Drug Monitoring Program. Prescription Drug Monitoring Programs of 33 other states are currently using daily reporting.

PUBLIC COMMENT: A public hearing was held on December 15, 2016. The public comment period expired on December 15, 2016. The department received no comments.

The proposed effective date is August 10, 2017.

FINANCIAL IMPACT: The additional cost ($54,050 per year for two years) will be funded by a CDC Prescription Drug Monitoring Enhancement Grant.

LEGAL AUTHORIZATION: Arkansas Code Annotated §20-7-613 gives the State Board of Health the authority to adopt rules to implement the Prescription Drug Monitoring Program.

6. HEALTH SERVICES PERMIT AGENCY (Tracy Steele)

a. SUBJECT: Regulation 100M Nursing Facility Bed Methodology

DESCRIPTION: A summary of the changes follows:

Section I.
The occupancy threshold to qualify for Population Based need was set at 80%. The signed Memorandum of Understanding between the Department of Human Services and the Arkansas Health Care Association and Governor Hutchinson's primary objective is to limit the addition of new nursing facility beds based on a population increase. The occupancy threshold is to be raised to 93%. The higher threshold will assure the Governor that no additional nursing facility beds would be issued for at least 10 years.

With the current threshold of 80%, 15 counties are eligible for the addition of beds under population based need. With this change to 93%, no counties will be eligible.

Section II. A
This proposed change of moving from 10% of licensed capacity or 10 beds whichever is greater to up to 25 beds (regardless of projected need in the county) will increase the number of beds a nursing facility may acquire in order to allow competitive facilities to host more clients if they meet the

utilization based methodology requirements. The requirements are listed below.

1. averaged 90.0% or greater occupancy according to the most recent 12 month census data available from DHS for at least four (4) months of the last six (6) month period; and
2. currently has no Approved but Unlicensed Beds; and
3. proposes to acquire beds from a facility that averaged 70% ~~80%~~or less occupancy for the previous 12 month period according to the most recent 12 month occupancy data available from Dept. of Human Services as reflected in the most current published Bed Need Book; and
4. has not acquired beds pursuant to this Subsection II. A. in the previous 12 month period.

Once relocated and licensed to the acquiring facility, beds may not be transferred back or returned to the original facility unless all the requirements of this section Part II. A. are satisfied.

The changes in the utilization based methodology requirements will be to complete a review of census data for at least four months of the last six months to assist those facilities where their occupancy fluctuates during the year; to acquire beds from facilities that average less than 70% than the current 80% occupancy for the previous 12 months. The percentage has been reduced to prevent those facilities with better occupancy rates from having to have a waitlist if they were to lose beds.

Section II. B.
This proposed change for nursing homes with less than 60 licensed beds could be approved to expand to 70 beds, if the facility met the above listed utilization based methodology requirements.

The Section II A. and B. changes do not allow an increase to the total number of nursing facility beds in the state.

Section III. A. B. & D.
The change in the Replacement of Facilities and Beds section allows qualified applicants to replace an existing licensed facility with "new" construction. Additional beds must be acquired from a facility that averaged less than 70% occupancy instead of 80% for the last 12 month period. Applicant may also apply to transfer existing licensed beds within the same county to be licensed in the replacement facility but the increase in beds by transfer shall not impact the calculation of the 20% increase of existing licensed beds in the applicant facility. Change in the average overall occupancy to 93% instead of 80% for the receiving county where beds are being moved.

These changes to Section III allow for facilities to be renovated and additional beds to be added but new beds come from underutilized facilities and are not taken from the bed pool. No longer increasing the total number of nursing facility beds in the state.

Section IV.
This change addresses the addition of priority #2 - of beds available being allocated to applicants who propose to add beds to an existing licensed facility under Utilization Review, Section II application approval provided all requirements for approval of the application are met.

Section V.
The changes in Section V enables facilities with OLTC deficiencies to not be penalized from having their application being reviewed if they are in the process of correcting a deficiency; places the number of "Beds in Transition" into the count with Approved but Unlicensed beds in the 10% rule; and expands the review of past abandonment history to not just owner/operator but also the majority of a facilities controlling members.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on December 27, 2016. The agency received no comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: Arkansas Code Annotated §20-8-104 (b) states "the agency shall possess and exercise such duties and powers as necessary to implement the policy and procedures adopted by the Health Services Permit Commission."

Pursuant to Ark. Code Ann. §20-8-103, The Health Services Permit Commission shall evaluate the availability and adequacy of health facilities and health services as they relate to long-term care facilities to determine which areas are underserved or overserved, as well as develop polices and adopt criteria to be utilized by the Health Services Permit Agency.

7. STATE HIGHWAY AND TRANSPORTATION DEPARTMENT
(Gill Rogers and Joe Sartini)

a. SUBJECT: Rules for Access Driveways to State Highways

DESCRIPTION: The Arkansas State Highway and Transportation Department's (Department) Rules for Access Driveways To State Highways were last updated in March of 1989. Since that time, the publication setting forth the guiding principles upon which the rules are based has been updated, necessitating these updates to the requirements. In addition, it was determined a process for appeals of the permit determination was necessary, resulting in those changes made in Section 2.

An effort has been made in this edition to also update the method of organizing the rules to provide for easier identification when referenced. This has resulted in broad technical corrections throughout the document. Other needed technical corrections have been made to create uniformity and consistency in all sections of the Rules.

Section 1. Changes have been made to simplify the process, and to provide for cooperation between the Department and local jurisdictions to allow those local jurisdictions to provide for access management which meets or exceeds the requirements of the Rules.

Section 2. This is a new section added to allow for review of the grant or denial of a permit for access consistent with statutory and constitutional requirements.

Section 3 and Section 4. These changes are largely format or technical corrections.

Section 5. These corrections concern definitions of terms used in the Rules, and those largely apply to the new language arising from the appeal process set out in Section 2, or the new Rules language resulting from a change in the national guidelines.

Section 6-Section 13. Technical corrections as well as substantive changes relating to the engineering of access driveways to state highways are covered in this section. Many of the changes result from the new organization of the rules, while many have been simplified.

The purpose of this rule is to provide opportunities to work with local jurisdictions to develop their own access management, while still regulating access management on state highways; to provide for an appeals process concerning the grant or denial of an access permit; to update standards for issuance to match those in the American Association of State Highway and Transportation Officials booklet entitled "Guide for Preparing Private Driveway Regulations for Major Highways"; and to make technical corrections.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on November 27, 2016. No public comments were submitted.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The State Highway and Transportation Department is authorized to adopt "reasonable rules and regulations from time to time for the protection of, and covering, traffic on and in the use of the state highway system and in controlling use of, and access to, the highways, except that no provision contained herein shall be construed as repealing the existing 'rules of the road.' " Ark. Code Ann. § 27-65-107(a)(14).

8. STATE PLANT BOARD, SEED DIVISION (Mary Smith and Terry Walker)

a. SUBJECT: Official Standards for Seed Certification in Arkansas

DESCRIPTION: This allows foundation seed to be sold in new, flexible mini-bulk (superbag) containers holding approximately 2000 pounds, with a limit on the lot size of 1500 bushels per lot. Also, some housekeeping changes have been proposed, including where the words "grade," "grades," or "graded" are used, substituting the words "class," "classes," or "assigned a class." The word "class" has been preferred for some time now because "grade" is in conflict with the USDA term "grade" used for grain. Portions of the Circular 15 Certification Standards have been amended previously to show the term "class," but not the whole document.

PUBLIC COMMENT: A public hearing was held on November 21, 2016. The public comment period expired on November 20, 2016. No negative comments were received. The agency did receive the following two public comments in favor of the proposed changes:

Pinnacle Ag. Dist., Inc.: phone call for clarification of proposal to allow foundation seed to be sold in larger mini-bulk containers (superbags)
Agency Response: Provided clarification – the regulations as proposed would allow foundation seed to be sold in both superbags and traditional size bags. The Board agreed with the comments and voted to approve the proposed regulations as written.

Arkansas Seed Growers Association: letter stating support of proposal to allow foundation seed to be sold in new, flexible mini-bulk containers
Agency Response: The concerns expressed in the comments in favor of the proposed regulations were considered during the discussions held in the development of the proposed regulations. This letter was read during the public hearing. The Board agreed with the comments and voted to approve the proposed regulations as written.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: Arkansas's State Plant Board ("Board") is "empowered to investigate and certify to varietal purity and fitness for planting of agricultural seed on request of the grower thereof." Ark. Code Ann. § 2-18-103(a)(1). For this purpose, the Board shall establish, in its rules and regulations, one (1) or more classifications of seed, designating the classifications as "Registered" or "Certified" or by any other one (1) or more names that it may specify. *See* Ark. Code Ann. § 2-18-103(a)(2)(A). It shall also specify in its rules and regulations the standards that seed must meet and the methods by which seed must be handled in order to be certified under the classifications. *See* Ark. Code Ann. § 2-18-103(a)(2)(B). The Board shall further promulgate all rules and regulations necessary to carry into effect the purpose of Title 2, Subtitle 2, Chapter 18, Seeds, of the Arkansas Code, which is to provide supplies of high-grade seed, true to name and free from disease, for planting purposes. *See* Ark. Code Ann. § 2-18-104(1).

9. PUBLIC SERVICE COMMISSION (John Bethel)

a. SUBJECT: Arkansas Gas Pipeline Code

DESCRIPTION: As the result of the need to adopt U.S. Department of Transportation changes to the Pipeline Safety Regulations, 49 CFR Parts 191, 192, 193, and 199, and the need to conform Arkansas regulations to federal and state law, PSC staff recommended the following substantive changes to the Arkansas Gas Pipeline Code (Code). The proposed Code also contains formatting, punctuation, grammatical, and purely technical changes to update the applicable dates, references, and sections of the Code.

Technical Changes

To make the Code more consistent with other Commission rules and to make the code more user-friendly and to recognize the various methods of reviewing such as by electronic means, the following technical changes were made:

REORGANIZATION

The preliminary sections of the Code have been reorganized to make it more consistent with other Commission regulations and to streamline the Code. The current version of the Code contains the following sections in order: *List of Applicable Pages*, *Administrative History, Table of Contents – Summary, Preface, and Table of Contents – Detailed*. PSC staff proposed reorganizing these sections to make the Code more consistent with the Commission's other regulations.

The sections *List of Applicable Pages* and *Table of Contents – Summary* are superfluous and have been removed. The Code would begin with the *Table of Contents*, followed by the *Preface*, *Administrative History*, *Definitions*, and then the parts, subparts, and sections of the Code. The summary and description of proposed changes below addresses these sections in the order they currently appear in the Code.

Table of Contents Because the Code is revised on a regular basis, it was necessary to stream-line the modification process. The previous Table of Contents had to be altered manually each time the Code was modified. A new Table of Contents has been created which automatically updates as the Code is modified, greatly streamlining the modification process. The new Table of Contents also contains hyperlinks to the sections listed for ease of navigation for the reader. The page numbers have been changed to accommodate the new Table of Contents and for ease of use. The pages are consecutively numbered throughout the Code.

List of Applicable Pages This section has been removed in favor of footers at the bottom of each page that will reflect the last revision date for each page of the Code.

Administrative History of the Code Corresponding, updated Docket numbers are provided for the pre-1981 Dockets and the description of the current proposed changes to the Code has been added.

Preface The Preface is revised to make technical changes and to incorporate the previously adopted increase in civil penalties under Act 1343 of 2013 by striking $100,000 and $1,000,000 and replacing the amounts with $200,000 and $2,000,000, respectively. Under Section 2 of Act 1343, codified at Ark. Code Ann. § 23-15-211(a), a person engaging in the transportation of gas or who owns or operates pipeline facilities who fails to comply with the Arkansas Gas Pipeline Code is subject to a civil

penalty, not to exceed $200,000 for each violation for each day the violation continues, except that the maximum civil penalty may not exceed $2,000,000 for any related series of violations. The Commission may also file suit to restrain violations of the Code, including the restraint of transportation of gas or the operation of a pipeline facility.

HYPERLINKS

Hyperlinks have been added to all website addresses referred to throughout the Code for ease of reference.

SUBSTANTIVE CHANGES

DEFINITIONS

1. Added the introductory language, "Except as otherwise provided in this Code:" to ensure that if a different or more specific definition is provided in a specific Part or section of the Code, for example "gas" as natural gas in § 193.2007, the specific definition for that Part or section of the Code will apply.

2. Added "unless the context otherwise requires" to the definition of "Commission" to differentiate the Arkansas Public Service Commission from other commissions mentioned in the Code.

3. Added the definition of "offshore" used in the corresponding CFR sections for clarity.

4. Added the definition of (the APSC) "Pipeline Safety Office or PSO" for clarity.

5. Combined the definition of "system" with the definition of "pipeline system" to which it referred for clarity.

PART 190 – PIPELINE SAFETY ENFORCEMENT PROCEDURES

1. Section 190.9 adds the provision in the federal counterpart concerning where to send a request for a finding or approval for an interstate (as opposed to intrastate) pipeline issue.

2. Section 190.15 updates the references to conform to Arkansas Code § 23-15-206 and the current version of the Commission's Rules of Practice and Procedure.

3. Section 190.29 incorporates the applicable Arkansas Statute (§ 23-15-211) by reference for applicable civil penalties.

4. Section 190.31 provides the statutory cites (§§ 23-15-211 – 23-15-212) for jurisdiction over suits by the Commission to enforce the payment of civil penalties.

PART 191-TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINES: ANNUAL REPORTS AND INCIDENT REPORTS

1. The title to Part 191 is revised to read as follows consistent with the CFR Heading:

PART 191-TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINES: ANNUAL REPORTS, INCIDENT REPORTS, AND SAFETY RELATED CONDITION REPORTS

2. In § 191.5, the section heading is changed from "Telephonic Notice" to "Immediate Notice" to match the CFR heading and because the section also permits electronic notice.

3. In § 191.7, the section heading is revised from "Addressee for Written Reports" to "Report Submission Requirements" to match the CFR heading and because the section has more requirements than just where to address the report; paragraph (c) is revised by adding the subtitle of "General" consistent with the CFR section; and the section is revised by adding the 2015 CFR amendment as paragraph "(g)" as follows:

(g) *National Pipeline Mapping System (NPMS)*. An operator must provide the NPMS data to the address identified in the NPMS Operator Standards manual available at www.npms.phmsa.dot.gov or by contacting the PHMSA Geographic Information Systems Manager at (202) 366-4595.

4. Section 191.25 (a) is revised consistent with the 2015 CFR amendment to change the recipient of the report from "the Associate Administrator, OPS" to "OPS", by striking the "in writing" requirement, and by adding the option to send the report by electronic mail to InformationResourceManager@dot.gov.

5. Section 191.29 is added to incorporate the 2015 CFR amendment requiring the operator of a gas transmission pipeline or liquefied natural gas facility to annually provide geospatial and other information for the pipeline or facility to assist the National Pipeline Mapping System.

PART 192-TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE: MINIMUM SAFETY STANDARDS

1. The definitions section, § 192.3, (1) adds the introductory language "As used in this part" consistent with the corresponding CFR section and to specify the applicability of the definitions; (2) adds the words "unless the context otherwise requires" to the definition of "Commission" to differentiate the Arkansas Public Service Commission from other

commissions mentioned in Part 192; (3) makes technical and grammatical corrections; (4) combines the definition of "system" with the definition of "pipeline system" to which it refers for clarity; and (5) adds the definitions for "Welder" and "Welding Operator" consistent with the 2015 CFR amendment.

2. Section 192.7 is re-written in its entirety to incorporate the 2015 CFR amendment to specify the applicable standards, or portions thereof, that Part 192 of this Code incorporates, advise where copies of the standards can be obtained, and to specify that to enforce any edition other than that specified in this section, PHMSA must publish a notice of change in the Federal Register.

3. In § 192.9, paragraph (d)(7) is added to require operators of Type B gathering lines to conduct leakage surveys in accordance with § 192.706 using leak detection equipment and promptly repair hazardous leaks that are discovered in accordance with § 192.703(c).

4. Section 192.11 is revised to incorporate the 2015 CFR amendment and the § 192.7 standards to update the standards required of suppliers and transporters of petroleum gas.

5. In § 192.55, paragraph (e) is revised to incorporate the 2015 CFR amendment and the § 192.7 standards to update the standards required for new steel pipe that has been cold expanded.

6. In § 192.59, paragraph (d) is added to incorporate the 2015 CFR amendment to provide that rework and/or regrind material is not allowed in plastic pipe produced after March 6, 2015, used under Part 192.

7. In § 192.63, paragraph (a)(1) is revised to incorporate the 2015 CFR amendment to provide that certain thermoplastic pipe and fittings made of plastic materials other than polyethylene must be marked in accordance with ASTM D2513-87 per § 192.7.

8. Section 192.65 is revised to incorporate the 2015 CFR amendment and the § 192.7 standards for the installation or use of pipe in a pipeline to be operated at a hoop stress of 20 percent or more of SMYS that is transported by rail, ship, barge, or truck.

9**.** The table in § 192.112 is revised to incorporate the 2015 CFR amendment and the § 192.7 standards and additional design and record-keeping requirements for a new or existing pipeline segment to be eligible for operation at the alternative maximum allowable operating pressure (MAOP) calculated under § 192.620.

10. The table in § 192.113 is revised to incorporate the 2015 CFR amendment to update the standards for the longitudinal joint factor for steel pipe.

11. In § 192.123, standards for the allowable design pressure of certain thermoplastic pipe are revised to incorporate the 2015 CFR amendment and the § 192.7 standards.

12. Section 192.145 is revised to incorporate the 2015 CFR amendment and the § 192.7 standards for valves that are not cast iron or plastic.

13. Section 192.147 is revised to incorporate the 2015 CFR amendment and the § 192.7 standards for flanges and flange accessories.

14. Section 192.153 is revised to incorporate the 2015 CFR amendments and the § 192.7 standards and other requirements, including testing requirements, for components fabricated by welding.

15. In § 192.163, paragraph (e) is revised to incorporate the 2015 CFR amendment by striking, "National Electrical Code, ANSI/NFPA 70" and adding "NFPA -70" with respect to the standards for electrical equipment and wiring installed in compressor stations.

16. Section 192.165, paragraph (b)(3), is revised to incorporate the 2015 CFR amendment, the § 192.7 standards, and the additional requirements of § 192.153(e) for manufactured liquid separators used to remove entrained liquids at a compressor station.

17. In § 192.177, paragraph (b)(1) is revised to incorporate the 2015 CFR amendment and the § 192.7 standards for a bottle-type holder made from alloy.

18. In § 192.189, paragraph (c) is revised to incorporate the 2015 CFR amendment and the § 192.7 standards for electrical equipment in vaults.

19. In § 192.191, paragraph (b) is revised to incorporate the 2015 CFR amendment to specify standards for plastic materials other than polyethylene and for polyethylene plastic materials.

20. Section 192.225, paragraph (a), is revised to incorporate the 2015 CFR amendment and the § 192.7 standards for welding procedures.

21. Section 192.227 is revised to incorporate the 2015 CFR amendment to specify the qualifications for a welding operator.

22. Section 192.229 is revised to incorporate the 2015 CFR amendment to specify the same welding restrictions for a welding operator that currently exist for a welder.

23. In § 192.241, paragraph (c) is revised to incorporate the 2015 CFR amendment to permit a weld that is nondestructively tested or visually inspected to meet the standards in Appendix A of API Std 1104, but not allow Appendix A of API Std 1104 to be used to accept cracks.

24. In § 192.243, paragraph (e) is revised to incorporate the 2015 CFR amendment to require that except for a welding operator whose work is isolated from the principal welding activity, a sample of each welding operator's work for each day must be nondestructively tested, when nondestructive testing is required under § 192.241(b).

25. In § 192.281, paragraph (d)(1) is revised to incorporate the 2015 CFR amendment and the § 192.7 standards by striking the term "Designation" from the specifications for adhesive joints and adding a reference to § 192.7.

26. Section 192.283 is revised to incorporate the 2015 CFR amendment to revise strength test requirements for plastic and polyethylene plastic materials pipe joints and fittings.

27. In § 192.285, paragraph (c) is revised to incorporate the 2015 CFR amendment to require a person who makes plastic pipe joints to be re-qualified once each calendar year at intervals not exceeding 15 months or after any production joint is found unacceptable by testing under § 192.513.

28. Section 192.305 is revised to incorporate the 2015 CFR amendment to clarify the requirements for the independence of inspections.

29. In § 192.485, paragraph (c) is revised to incorporate the 2015 CFR amendment to clarify the procedures for determining the strength of pipe for transmission lines.

30. In § 192.503, a new paragraph (e) is added to incorporate the 2015 CFR amendment to dispense with strength test requirements after installation if a component other than pipe is the only item being replaced or added to a pipeline and the component meets certain pressure test and manufacturing requirements.

31. In § 192.505, paragraph (d) is removed to incorporate the 2015 CFR amendment, which added the same provision as a general pipeline

requirement under § 192.503 described in the preceding paragraph; and re-designated paragraph (e) as paragraph (d).

32. In § 192.614, paragraph (a) is revised to revise the definition of "excavation activities" as "to dig, compress, or remove earth, rock, or other materials in or on the ground by use of mechanized equipment, tools manipulated only by human or animal power, or blasting, including without limitation augering, boring, backfilling, drilling, grading, pile-driving, plowing in, pulling in, trenching, tunneling, and plowing."

33. The definition of "key valves" was added to § 192.615(e) to place it in closer proximity to the substantive requirement to identify all key valves necessary for the safe operation of the system.

34. Section 192.620 is revised to incorporate the 2015 CFR amendment by amending the paragraph (c)(1) notification requirements for the use of alternative maximum allowable operating pressure; and by amending the paragraph (c)(8) requirements for upgrading a Class 1 or Class 2 pipeline location due to class changes under § 192.611(a).

35. In § 192.735, paragraph (b) is revised to incorporate the 2015 CFR amendment by striking "National Fire Protection Association Standard No. 30" and adding "NFPA-30 (incorporated by reference, see § 192.7)."

36. In § 192.805 paragraph (i) is revised to incorporate the 2015 CFR amendment by adding the following to the notification requirements for significant modifications to an operator's written qualification program for individuals who perform covered tasks on a pipeline facility: "Notifications to PHMSA may be submitted by electronic mail to InformationResourcesManager@dot.gov, or by mail to ATTN: Information Resources Manager DOT/PHMSA/OPS, East Building, 2nd Floor, E22-321, New Jersey Avenue SE., Washington, DC 20590."

37. In § 192.903, the note to the definition of "Potential Impact Radius" is revised to incorporate the 2015 CFR amendment by striking "ASME/ANSI B31.8S-2001 (Supplement to ASME B31.8; (incorporated by reference, *see* § 192.7))" and adding "ASME/ANSI B31.8S (incorporated by reference, *see* § 192.7)" to calculate the impact radius formula.

38. Section 192.923 is revised to incorporate the 2015 CFR amendment to make technical corrections and to clarify the requirements for an operator's direct assessment plan to address corrosion threats.

39. Section 192.925 is revised to incorporate the 2015 CFR amendment by striking, "-2008" after SP0502 and changing "indirect examination" to "indirect inspection" to clarify the requirements for using External Corrosion Direct Assessment.

40. In § 192.931, paragraph (d) is revised to incorporate the 2015 CFR amendment by striking "-2008" after SP0502 to clarify the current standard for scheduling the next assessment of a defect requiring near-term remediation.

41. Section 192.933 is revised to incorporate the 2015 CFR amendment to clarify the applicable standards and their applicability to addressing pipeline integrity issues.

42. In § 192.935, paragraph (b)(1)(iv) is revised to incorporate the 2015 CFR amendment by striking "-2008" after SP0502 to clarify the standards for mitigative measures when an operator finds physical evidence of encroachment involving excavation that the operator did not monitor near a covered segment.

43. Section 192.939, paragraphs (a)(1)(ii) and (a)(2) are revised to incorporate the 2015 CFR amendment to clarify standards in connection with the required reassessment intervals for an operator's covered pipeline segments.

44. Section 192.949 is re-written to incorporate the 2015 CFR amendment to read as follows:
"An operator must provide any notification required by this subpart by —
(a) Sending the notification by electronic mail to InformationResourcesManager@dot.gov; or
(b) Sending the notification by mail to ATTN: Information Resources Manager, DOT/PHMSA/OPS, East Building, 2nd Floor, E22-321, 1200 New Jersey Ave. SE., Washington, DC 20590."

45. Appendix B to Part 192 is revised to incorporate the 2015 CFR amendment to clarify the specifications for listed steel pipe and steel pipe of unknown or unlisted specification.

PART 193 – LIQUEFIED NATURAL GAS FACILITIES: FEDERAL SAFETY STANDARDS

1. The title to § 193.2013 is revised to incorporate the 2015 CFR amendment by striking the heading "Incorporation by reference" and adding in its place "What documents are incorporated by reference partly or wholly in this part?"

2. Section 193.2013 is re-written in its entirety to incorporate the 2015 CFR amendment to specify the applicable standards, or portions thereof, that Part 193 of this Code incorporates, advise where copies of the standards can be obtained, and to specify that to enforce any edition other than that specified in this section, PHMSA must publish a notice of change in the **Federal Register**.

3. Section 193.2019, paragraph (a), is revised to incorporate the 2015 CFR amendment to clarify the applicable standards for mobile and temporary liquefied natural gas (LNG) facilities by striking "NFPA 59A" and inserting in its place "NFPA-59A-2001."

4. Section 193.2051 is revised to incorporate the 2015 CFR amendment to clarify the applicable siting requirement standards for LNG facilities by striking "NFPA 59A" and inserting in its place "NFPA-59A-2001."

5. Section 193.2057, introductory text, is revised to incorporate the 2015 CFR amendment to clarify the applicable standards for thermal radiation protection by striking "NFPA-59A" and inserting in its place "NFPA-59A-2001."

6. Section 193.2059 is revised to incorporate the 2015 CFR amendment to clarify the applicable standards for flammable vapor-gas dispersion protection.

7. Section 193.2067, paragraph (b)(1), is revised to incorporate the 2015 CFR amendment to clarify the applicable standards for wind force requirements by striking "ASCE/SEI7-05" and inserting in its place "ASCE/SEI 7."

8. Section 193.2101 is revised to incorporate the 2015 CFR amendment to clarify the applicable design requirements for liquid natural gas facilities and liquid natural gas storage tanks.

9. Section 193.2301 is revised to incorporate the 2015 CFR amendment to clarify the applicable standards for the construction of liquid natural gas facilities.

10. Section 193.2303 is revised to incorporate the 2015 CFR amendment to clarify the applicable standards for the inspection, testing, and acceptance of newly constructed liquid natural gas facilities.

11. Section 193.2321 is revised to incorporate the 2015 CFR amendment to clarify the applicable standards for the examination and testing of welds within liquid natural gas storage tanks.

12. Section 193.2401 is revised to incorporate the 2015 CFR amendment to clarify the applicable standards for certain vaporization equipment, liquefaction equipment, and control systems.

13. Section 193.2513 is revised to incorporate the 2015 CFR amendment to clarify the applicable standards for transferring liquid natural gas and other hazardous fluids.

14. Section 193.2517 is revised to incorporate the 2015 CFR amendment to clarify the applicable purging procedures.

15. Section 193.2521 is revised to incorporate the 2015 CFR amendment to clarify the applicable record-keeping requirements for inspections, tests, and investigations.

16. Section 193.2615 is revised to incorporate the 2015 CFR amendment to clarify the applicable standards for certain maintenance activities on components handling flammable fluids.

17. Section 193.2639 is revised to incorporate the 2015 CFR amendment to clarify the applicable record-keeping requirements for maintenance activities.

18. Section 193.2801 is revised to correct the section heading and incorporate the 2015 CFR amendment to clarify the applicable standards for maintaining fire protection at liquid natural gas plants.

PART 199 – DRUG AND ALCOHOL TESTING

1. The definition of "operator" in § 199.3 is amended to clarify that Part 199 applies to a liquid natural gas operator under Part 193.

2. Section 199.111, concerning the retention of samples and additional drug testing, is removed and reserved to incorporate the 2015 CFR amendment to avoid a conflict with the drug testing procedures under 49 CFR Part 40.

PUBLIC COMMENT: The public comment period expired December 5, 2016. A public hearing was held on December 6, 2016. No public comments concerning the proposed rules were received. The Attorney General and Black Hills Energy, Inc., both of which entered an appearance in the Commission's docket, supported the adoption of the proposed revisions without modification and filed "no comment" letters in the docket.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The Arkansas Public Service Commission by order may promulgate, amend, enforce, waive, and repeal minimum safety standards for the transportation of gas and pipeline facilities. *See* Ark. Code Ann. § 23-15-205(a). The standards may apply to the design, installation, inspection, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities. *See* Ark. Code Ann. § 23-15-205(b)(1). Safety regulations promulgated for gas pipeline facilities or the transportation of gas shall be consistent with federal law and with rules and regulations promulgated under authority of the Natural Gas Pipeline Safety Act of 1968, Pub. L. No. 90-481, as amended. *See* Ark. Code Ann. § 23-15-205(d).

b. SUBJECT: Pole Attachment Rules

DESCRIPTION: These amendments provide effective regulation of the rates, terms, and conditions upon which a public utility shall provide access for a pole attachment.

PUBLIC COMMENT: A public hearing was held on October 27, 2015. The public comment period expired the same day. The Commission summarized the comments by the active parties in the docket as follows:

By Order No. 1 issued on March 20, 2015, the Commission established this docket to consider changes to its Pole Attachment Rules (PARs). The Arkansas Attorney General (AG), Entergy Arkansas, Inc. (Entergy), Southwestern Electric Power Company (SWEPCO), Oklahoma Gas and Electric Company (OG&E), and Empire District Electric Company (Empire) filed notices of intent to participate as active parties in the docket. Arkansas Electric Cooperative Corporation (AECC) and the state's 17 jurisdictional electric cooperatives also participated as active parties. Also actively participating as parties to the docket were the Arkansas Cable Telecommunications Association (ACTA), certificated competitive and incumbent local exchange carriers, Sprint Communications Company, LP (Sprint), CTIA – the Wireless Association (CTIA), PCIA – The Wireless Infrastructure Association (PCIA). ACTA, CenturyLink, E. Ritter Communications, Inc., MClmetro Access Transmission Services, LLC, Rice Belt Telephone Company, Inc., South Arkansas Telephone Company, Southwestern Bell Telephone Company, Windstream Arkansas, LLC, and Yelcot Telephone Company were collectively designated as the Joint Commenters.

Staff proposed PARs which maintained its position from the previous PAR rulemaking that the PARs "cannot and should not define every

aspect of the relationship between the public utility Pole Owner and the Attaching Entities." Staff believed that its proposed PARs incorporated the terms and conditions upon which a Pole Owner will provide nondiscriminatory access to poles, while maintaining the safety and reliability of public utility services. Staff's PARs encouraged voluntarily negotiated agreements. They are not intended to preempt the rates, terms, or conditions of voluntarily negotiated agreements. Some parties recommended allowing a "sign-and-sue policy" by which disagreeing parties could enter into a contract, but if dissatisfied could bring the matter before the Commission to reform the contract. The Commission declined to adopt a "sign-and-sue" rule finding that if the parties could not reach an accord, the matter could be brought before the Commission for timely resolution.

Staff also proposed several revisions to the definitions to add clarity to the regulation, but the Commission found that these definitions should be revised to more closely use the statutory language.

EAI's comments focused on safety and reliability. EAI also proposed a *Force Majeure* language be included. This language was ultimately rejected by the Commission as unnecessary. The Commission also rejected EAI's proposal for a 90-day period for establishing an attachment contract or agreeing to assignment of an existing contract. The Commission found that negotiations between the parties and the availability of the complaints process constitute an approach that is superior to establishing a hard-and-fast deadline.

OG&E focused its comments on safety responsibilities and supported the purpose of strengthening the preference for voluntarily negotiated agreements. The Commission found reasonable OG&E's proposal to allow for the removal of abandoned Pole Attachments after 60 days' notice, at the Attaching Entity's expense.

While AECC generally supported Staff's proposed Rules, it believed that there was additional refinement needed regarding the rate formula and safety and reliability matters. The Commission rejected as inconsistent with the explicit language of Act 740 AECC proposed language, which allowed utilities to prohibit Attaching Entities access to ducts or conduits, or both. However, the Commission found reasonable AECC's rationale for requiring a permit for all Overlashing, including fiber optic cable as well as AECC's addition of a subsection requiring good faith efforts to negotiate a new agreement within 90 days of the expiration of the current contract. AECC also commented that if additional space is needed by a Pole Owner as a consequence of Attaching Entities' presence on the pole, the space should be paid for by the Attaching Entities because a Pole Owner should not be required to reserve space on its own poles. AECC

wanted an assumption that a Pole Owner has reserved and can claim space on the pole in absence of language in the agreement addressing the issue. The Commission responded by modifying the language to provide written notification when the permit is being issued for the use of reserved space. The Commission rejected AECC's argument that no transmission poles should be subject to the PARs.

AECC also raised issues regarding violations of safety, unauthorized attachments, and poor construction practices of Attaching Entities. It alleged that Staff's proposed safety and reliability provisions were inadequate to protect utility facilities and the technicians that work on them. The Joint Commenters strongly objected to AECC's allegations. CTIA stated that AECC's claims are exaggerated and inaccurate. The Commission found that the safety rules will enhance what appears to be a working process for ensuring safety. This was based on a review of the six complaints filed since 2008 when the rules were established resulting in not a single violation.

AECC proposed to require immediate correction of a violation posing imminent danger to life or property and correction of other violations within 30 days. It also proposes, among other things, a requirement for liability insurance or a performance bond, or both for Attaching Entities. Joint Commenters recommended a modification that would allow an attacher to dispute the safety violation within 10 days and that the costs of correcting a violation be paid by the party responsible for the violation. AECC recommended that the dispute time should be extended to 30 days. The Commission found the extension of time reasonable. However, it found the issues related to insurance and performance bonds more suitable for contract negotiations rather than an amendment to the PARs.

Carroll Electric Cooperative (CECC) incorporated the comments of AECC and commented that the proposed rates would force CECC to permit the use of its poles without requiring the Attaching Entities to pay the cost of the pole or otherwise adequately compensate CECC in violation of the Takings Clause of the Arkansas and U.S. Constitutions. CECC also requested adequate compensation for the additional costs incurred due to safety violations. CECC also questioned whether the rules would result in trespass by the Attaching Entities or ouster of CECC from its property. However, the Commission found that the proposed formula is appropriately compensatory to the Pole Owners, is just and reasonable, and is not a taking.

The Joint Commenters alleged that Staff's proposed rules failed to meet the effective regulation standard required by Act 740. Among other things, the Joint Commenters recommended that the Commission adopt the Federal Communications Commission's (FCC) cable formula as the rate

standard. The Joint Commenters stated that the cable formula is compensatory to the Pole Owners and would be reasonable and not a subsidy. The Joint Commenters stated that with Arkansas' low ranking in terms of broadband availability and adoption, "Arkansans cannot afford what would effectively be a broadband tax created by high Pole Attachment rates."

The Joint Commenters also recommended a clarification that the rule would not require an attacher to remove its facilities when a customer moves and discontinues service. Staff agreed, but the Commission reduced the removal time to not more than 45 days after their replacement.

CTIA generally agreed with the Joint Commenters' comments and encouraged removal of barriers to Distributed Antenna Systems and small cell networks and promote mobile broadband. PCIA also agreed with the need to include wireless attachments to increase the availability of mobile broadband access. PCIA asserts that wireless infrastructure development is necessary for safety and economic growth. PCIA requested the Commission adopt PARs that would allow wireless attachments clear access to utility infrastructure, including pole-tops, shortens Make-Ready timelines, provides attachers the option to replace poles for capacity enhancements, improve dispute resolution options, and adopt a rate formula in line with the FCC's cable rate. The Commission specifically found that Act 740 does not limit "telecommunications service" to services only via wires, as opposed to services offered via wireless means; therefore, it is unnecessary to make the additions recommended by PCIA and CTIA.

SWEPCO recommended technical changes and adjustments to timeframes. It also stated that CTIA's and PCIA's proposals would allow Attaching Entities to build facilities without regard to potential safety hazards and without recognition of the impact on infrastructure reliability. It was also concerned about a *de minimis* cost on infrastructure paid for by Arkansas electric ratepayers and that the proposals would degrade safety and reliability and under-recover Pole Attachment expenses. SWEPCO also opposed a general rule regarding antennae attachments as each situation is unique from a safety and engineering standpoint. The Commission agreed and found that the Pole Attachment agreement was the appropriate medium for defining when denial of access due to insufficient capacity is permitted. If the parties are unable to reach an agreement, the issue may be brought before the Commission through the Complaint process.

SWEPCO also requested modification of the rule regarding Safety Inspections so that safety inspections would be at the discretion of the Pole Owner. However, the Joint Commenters objected to the proposal of EAI

and AECC to preclude an attacher from disputing the results of an inspection if the attacher fails to participate. PCIA wanted the Commission to reject the proposal that an Attaching Entity's failure to participate in a safety inspection results in an inability to dispute the results. The Commission found that the requirement to participate in a Safety Inspection procedure under Staff's proposed rule protects the interest of both Owners and Attachers. The parties are free to negotiate levels of participation on a case-by-case basis. Various parties had differing opinion on term of the inspection schedule. The Commission found however, that the safety inspections should be completed at least every 5 years, but not more frequently than every 3 years. However, the parties may negotiate different timeframes in their contract. The commenters also varied in the assignment of Safety Inspection costs to Attaching Entities anywhere between 100% to 50%. The Commission found as reasonable the assignment of 75% of costs to the Attaching Entities. Many of the same arguments were made regarding attachment audits. The Commission found Staff's requirements reasonable including a timeframe of 3 years. Many of these arguments were repeated for the audit inspections. The Commission also found that the assignment of 75% of such costs to the Attaching Entities was reasonable and in the public interest.

Many of the parties disagreed over the definition of the term "Unusable Space" specifically related to the safety and cost allocation issues. The Commission found the term "Unusable Space" proposed by Staff to be reasonable as serving the dual purpose of being available for use by the electric utilities to place street lights and other facilities and provide a barrier between electric and communications facilities. Staff's proposal to include "safety space" in the unusable space would allocate the cost of this space to the Pole Owner and Attaching Entities.

Numerous parties also commented on the timeframes in which the Pole Owner had to respond with Make-Ready Work provisions. The Commission modified the provision to provide more time and allow the use of a contractor approved by the Pole Owner to complete the Make-Ready Work.

Staff proposed rules that require adherence to the Pole Owner's engineering and safety standards, the basic standards in the National Electric Safety Code (NESC), and any additional standards imposed by governing bodies. AECC wanted an addition to require compliance with NESC Heavy Loading standards. The Joint Commenter stated that AECC had not demonstrated a more stringent standard is necessary. PCIA recommended a requirement that Pole Owners receive Commission approval when mandating safety standards in excess of NESC. The Commission found that the resolution of disputes regarding such standards

is more suitable to negotiation process leading to a contract. The Commission noted that if compliance with NESC Heavy Loading standards is part of the Pole Owner's applicable engineering standards and is necessary for safety and reliability, compliance with the standard is already required by the PARs.

As explained in detail in Order No. 5, two divergent views emerged regarding Staff's proposed rate formula, either the proposed formula allocated too much or too little of the pole cost to Attaching Entities depending on whether the commenter was an attaching entity or owner. The allocation 38% to Attaching Entities, 62% to Pole Owner, was not derived from either the FCC cable formula or the FCC telecom formula or from the other two methodologies used in Arkansas, the RUS electric cooperative formula and the ILEC joint use agreements. The proposed formula would not be used to determine the maximum rate unless the parties failed to negotiate a rate and a complaint is filed with the Commission. The Commission declined to exempt the cooperatives from the PARs as they are specifically subject to Act 740.

The parties also disagree regarding the "Usable Space" and "Unusable Space," and presumptive average number of attachers on a pole in Staff's proposal. The Commission found that the rule defines a rebuttable presumption which may be overcome by the specific facts of a case and that Staff's proposal was reasonable.

AECC, the Joint Commenters, and PCIA commented regarding the respective responsibilities for Make Ready Costs when a pole is replaced. The Commission agreed with Staff, PCIA, and the Joint Commenters that the rule properly allocates the costs of replacing a pole to the cost causer.

The Commission made changes in the Complaints Section to make the procedures more consistent or reflective of the Commission's existing Rules of Practice and Procedure. In addition, the Commission rejected CTIA's comment that the Commission should decide in this docket whether the Commission may hear certain complaints on an existing contract. The Commission also rejected AECC's proposal to include a provision for dismissal of a complaint in the event that a party may not provide required information in its complaint due to confidentiality considerations. The Commission found that each case should be examined on its facts.

AECC proposed a new section for penalties for safety and other violations. The Joint Commenters believed that the Commission does not have the authority to codify a private levy of a fine or penalty in its rules. CTIA and PCIA agree with the Joint Commenters. The Commission rejected AECC's proposal.

On July 22, 2016, an Application for Rehearing (Application) was filed by the Joint Commenters and ACTA. Staff, Ozarks Electric Cooperative Corporation (Ozarks), and AECC and its member cooperatives filed responses.

The Joint Commenters and ACTA (Applicants) raised the following issues in their Application: (1) a request to introduce additional evidence; (2) operational issues on overlashing, reservation of space, and inspections and audits; (3) rate issues concerning the primary pole purpose, effective ratemaking and the presumed number of attachers, and safety space; (4) compliance with Ark. Code Ann. §§ 23-4-1003(b)(2) and 23-17-411(c); and (5) the Financial Impact Statement.

The Joint Commenters requested the Commission take judicial notice of an Order issued by the FCC and an announcement concerning the creation of OzarksGo LLC. The Commission found that the announcement was not relevant to this rulemaking. The Commission also found that the FCC Order was not relevant to this rulemaking because it did not adopt a rate formula based on an FCC formula nor did it rely on any reasoning by the FCC which the FCC Order reversed or revised.

The Joint Commenters also requested that the Commission rehear and reconsider its Rules to: (1) decide whether overlashings involving fiber optic cable should be subject to the permitting process as contemplated in the Rules; and (2) ensure Ozarks, and all other Pole Owners, are prohibited from using information obtained through overlashing, or any other activity associated with making attachments, for competitive purposes. The Commission found that the Applicants raised no new issues which support a revision to the rule regarding Overlashing. The evidence continues to support the need for a permit for Overlashing because of safety and reliability concerns. In addition, the issue was not raised in the hearing.

The Joint Commenters also raised the issue of reservation of space, especially in light of the OzarksGo announcement. However, the Commission found that Rule 2.02(d) did not need to be revised as requested because it already states that a pole owner may reserve space only for the future provision of its core utility service. The Commission found that Rule 2.02(e) is consistent with the principles of cost causation to assign the interim attaching entity the cost of expanding capacity.

The Joint Commenters also request the Commission rehear the mandate for inspections and audits every five years and the cost allocation for these inspections and audits. However, the Commission found no new evidence to support a rehearing on these issues.

The Applicants also argue that Act 740 of 2007 did not state that the primary purpose of the pole is to provide utility services, but instead stated all pole attachments are treated equally. They believe that the proposed rate significantly favors the utility pole owner. The Commission found that the primary purpose as stated was consistent with the statutory definition of pole attachment and that the proposal balances the interest of both owners and attachers.

The Applicants also alleged that the number of attachers used in the formulas is exclusively controlled by the pole owners and cannot be readily independently verified by the attacher or Commission. However, the number is presumed which may be overcome by the specific facts of the case. The Commission declined to revise the rate formula.

The Applicants also assert that the decision to include the safety space in the definition of unusable space is not supported by substantial evidence. However, the Commission found that the Applicants raised no new issues.

The Commission also found that Order No. 5 considered all the appropriate factors pursuant to Ark. Code Ann. §§ 23-4-1003(b)(2) and 23-17-411(c). The Commission found that Order No. 5 recites the plethora of evidence by the parties on these factors and makes appropriate findings on the issues raised by the parties.

The Joint Commenters also assert that the Commission did not conduct a cost benefit analysis for telecommunications providers in compliance with the statute. The Commission found that the Joint Commenters had not provided substantial evidence that the PARs increase regulatory burdens on telecommunications service providers. The PARs and statutes encourage voluntarily negotiated agreements, with the PAR applying only in the absence of such agreements. With such agreements, the PARs impose no burdens since they do not apply. In fact they should decrease regulatory burdens since they now give more specificity in a starting point for setting the rates, terms and conditions when a complaint is filed in the absence of a voluntarily negotiated agreement.

Finally, ACTA alleges that the Financial Impact Statement (FIS) submitted to the Governor's Office and filed on October 19, 2015, is inaccurate and that the record should be reopened to receive evidence of the impact of the rate formula on other PARs so that a more accurate FIS can be sent to the Governor's Office. The Commission found that there was nothing to indicate that the FIS was inaccurate. In addition, it was not introduced into the record or that it was relevant to the rulemaking.

Because the Commission found against the Applicants on all points, the Application was denied.

In addition to the foregoing comments by the active participants, the Commission received one written public comment from Kirk Bayless of Little Rock. Mr. Bayless commented that communications companies are taking advantage of power poles whose existence is due to easements awarded in the public interest. He stated that, as such, the landowner should share in any monetization of the sharing. The Commission states that it gave Mr. Bayless's comment appropriate consideration in the formulation of the rules.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 23-4-1003(a), the Arkansas Public Service Commission shall regulate the rates, terms, and conditions upon which a public utility shall provide access for a pole attachment. Accordingly, the Commission is authorized and directed to develop rules necessary for the effective regulation of the rates, terms, and conditions upon which a public utility shall provide access for a pole attachment. *See* Ark. Code Ann. § 23-4-1003(b)(1). It is further empowered to hear and determine all complaints arising from a public utility's failure or refusal to provide access for a pole attachment; the inability of a public utility and an entity seeking access to reach an agreement governing access for a pole attachment; and disputes over the implementation of an existing contract granting access for a pole attachment. *See* Ark. Code Ann. § 23-4-1004(a). With respect to those rule changes relating to complaint procedures, the Commission is charged with prescribing "the rules of procedure and for taking of evidence in all matters that may come before" it. Ark. Code Ann. § 23-2-403(a).

10. ARKANSAS WATERWAYS COMMISSION (Gene Higginbotham

a. SUBJECT: Arkansas Port, Intermodal, and Waterway Improvement Development Grant

DESCRIPTION: These amendments do the following:

1. Clarify the difference between calendar year and state fiscal year.

2. Eliminate the undue burden on ports or intermodal authorities of opening a new account to receive funding each year.

PUBLIC COMMENT: A public hearing was held on March 15, 2017. The public comment period expired that same day. One written comment was received from Jim Jackson of Little Rock in support of the proposed changes.

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

What prompted the Commission's change in the time frame for the expenditure of funds from one calendar year to the current fiscal year?
RESPONSE: The main reason for the change was so that funds/awards did not carry over into the next fiscal year.

The proposed effective date is July 1, 2017.

FINANCIAL IMPACT: There is no financial impact. Under the amended rules, port authorities will no longer be required to open a new account each year.

LEGAL AUTHORIZATION: The Arkansas Waterways Commission shall establish and administer the Arkansas Port, Intermodal, and Waterway Development Grant Program that shall be used to provide financial assistance to port authorities and intermodal authorities for the purpose of funding port development projects, including without limitation the construction, improvement, capital facility rehabilitation, and expansion of a public port facility, including without limitation an intermodal facility and a maritime-related industrial park infrastructure development. *See* Ark. Code Ann. § 15-23-205(a)(1). The Commission shall promulgate rules to implement the grant program. *See* Ark. Code Ann. § 15-23-205(f).

H. Adjournment.