ADMINISTRATIVE RULES SUBCOMMITTEE
OF THE
ARKANSAS LEGISLATIVE COUNCIL

Thursday, November 16, 2023
10:00 a.m.
Room A, MAC
Little Rock, Arkansas

A. Call to Order

B. Reports from the Executive Subcommittee Concerning Emergency Rules

C. Reports from ALC Subcommittees Concerning the Review of Rules

D. Reports on Administrative Directives Pursuant to Act 1258 of 2015, for the Quarter Ending September 30, 2023

1. Department of Corrections (Brooke Cummings)

2. Parole Board (Brooke Cummings)

E. Rules Held at the October 19, 2023 Meeting of the Administrative Rules Subcommittee

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

a. <u>SUBJECT</u>: Arkansas Industrial Hemp Production Rule & REPEAL: Arkansas Industrial Hemp Research Program Rules

<u>DESCRIPTION</u>: The Department of Agriculture's State Plant Board proposes the repeal of its Arkansas Industrial Hemp Research Program Rules and the promulgation of its Arkansas Industrial Hemp Production Rule. The Board provided the following summary of the rule:

Act 565 of 2021, also known as the Arkansas Industrial Hemp Production Act ("Act"), was passed in response to the 2018 Farm Bill, which transitioned state hemp programs from research-only to a closely regulated industry. The Act requires the Department to obtain an approved state plan from the USDA under the 2018 Farm Bill for primary regulatory authority over hemp. The Department obtained an approved state plan from the USDA on December 10, 2021. The proposed Rule was reviewed by the Plant Board Industrial Hemp Committee on January 28, 2022,

followed by approval of the proposed Rule at the full Plant Board's meeting March 3, 2022. Since the Act repealed previous industrial hemp law, existing Board rules regarding industrial hemp will need to be repealed. The proposed Rule will implement the provisions of the new Act.

The Act provides that the Plant Board shall promulgate rules regarding sampling, testing, inspections, specific requirements for applications, and licensing fees. The Act also provides that the Board may adopt other rules necessary for the implementation of the Act. The Rule covers the areas necessary for oversight of industrial hemp production in Arkansas, including but not limited to the growing, processing, handling, storage, sale, transfer, importation, and distribution of industrial hemp. Other specific matters covered by the Rule include acquisition of hemp seeds and seedlings, the importation of hemp into Arkansas, and the submission of planting reports to the Farm Service Agency as required by the Act. The Rule also continues to prohibit the retail sale of hemp floral material or the manufacture and distribution of controlled substances.

Additional changes were made after the expiration of the public comment period. Act 629 of 2023 contains a definition of hemp that does not exactly track the definition of hemp in federal law. Ark. Code Ann. § 2-15-506 (The Arkansas Hemp Production Act) states that in any place where there is a conflict between Arkansas and federal law, federal law controls. While the 2018 federal Farm Bill does say we can regulate more restrictively, we cannot change federal law. The Federal definition is also recognized in Section 7 of Act 629, further evidencing that the intent is to be consistent with federal law. While the Department does not view the definition of hemp found in Act 629 to conflict in any way with federal law, we believe that it is appropriate to clarify the definition of hemp in the proposed rule. Accordingly, an amended definition of hemp has been incorporated into the proposed rule. Since it is only a clarification, it is not a substantial change and does not require approval of the Plant Board or additional public comment.

Section 8 of the proposed rule has been clarified to make it more consistent with statutory language. Ark. Code Ann. § 2-15-509(b) provides that growers shall pay the costs of inspections, and 2-15-505 provides that the board ***shall*** establish fees, therefore the fees are mandatory. Section 507 provides that any fees assessed are to administer the program. Therefore, we believe the proposed language in Section 8 of the proposed rule referencing cost recovery instead of fees will more clearly indicate that amount charged applicants and licensees are to recover the costs of administering the program. No new fees have been added so this is not a change that would require any additional public comment or Plant Board approval.

PUBLIC COMMENT: A public hearing was held on April 14, 2022. The public comment period expired that same day. The Board provided the following summary of the comments that it received and its responses thereto:

FOR

William Morgan, BioGen, LLC

The rules appear to be in line with current guidelines but would like to see more assistance offered to growers/researchers and less fees. Hemp industry in Arkansas faces two main obstacles: 1) "Lack of education of the market," and 2) burdensome fees. Commenter states he had to shut down a genetics research program because a $100 compliance fee "is ridiculous," and locally produced genetics need to be supported. Would like to see the Department of Agriculture offer more assistance and less rules.

RESPONSE:

The Board appreciates your comments and also believes the rules reflect current USDA and Arkansas legislative requirements. The Department of Agriculture receives no funding for the program or for assistance to hemp growers or researchers.

UNDECIDED

Brian Madan, Tree of Life Seeds

The Department is doing a great job administering the program but there should be additional funding to the Department so the program would not have to be supported by fees. Commenter states that he will not apply for a license this year due to the "cost of entry and poor commodity prices."

RESPONSE:

The Board appreciates your comments. The Department receives no funding for the program other than that authorized by Ark. Code Ann. §§ 2-25-505(d) and 507(h), which specifically state that the Plant Board may establish and collect fees to administer the program.

Ray Benton

"I'm out of the hemp business. Not growing this year or any other. I'm done with having to deal with all of it."

RESPONSE:

The Board appreciates your comments.

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

(1) Section 4(k): This section appears to be premised on Ark. Code Ann. § 2-15-513(a), as amended by Act 565 of 2021, § 2, which appears to render an individual convicted of a felony offense related to a controlled substance under federal or state law ineligible to participate in the program for the ten-year period *following* the date of the conviction. *See also* 7 USC § 1639p(e)(3)(B)(i). The rule as written, however, seems to suggest it is a ten-year period previous from the date of conviction. Is there a reason the language appears to differ? **AGENCY RESPONSE:** We do not read the rule as somehow allowing us to prohibit someone from holding a license prior to a conviction. That would in fact, be an impossibility, because *we would not know* prior to a conviction that the individual was going to be convicted. Accordingly, it would be impossible to implement the rule as you suggest.

(2) Section 5(7): Is there a reason the terminology of "with or without cause" was used in this section, when Section 15(a) uses "for any lawful purpose"? **AGENCY RESPONSE:** The two are interchangeable.

(3) Section 6(f): This section appears to be premised on Ark. Code Ann. § 2-15-513(c)(2), as amended by Act 565, § 2. Should the reference to "department" be to the Department of Public Safety in accord with the statute? **AGENCY RESPONSE:** The department in this context is the Department of Agriculture. The actual criminal background checks and their contents are not disclosed to the Plant Board unless it is used as evidence in an administrative hearing. This is to make sure the licensees understand this information will become public record should such a hearing occur.

(4) The rules appear to contemplate the licensing of processors of hemp. Ark. Code Ann. § 2-15-507(a) provides that the board may establish a procedure for the annual licensure of persons to grow industrial hemp, and "grower" is defined in Ark. Code Ann. § 2-15-503(3) as "a person licensed to grow and produce industrial hemp" by the board. Ark. Code Ann. § 2-15-508(a) requires that a person shall obtain a grower license under the Arkansas Industrial Hemp Act before planting or growing industrial hemp in the state. Additionally, while Ark. Code Ann. § 2-15-502(a)(2) provides that one of the purposes of the Act is to recognize the cultivation, processing, and transportation of industrial hemp as an agricultural activity in the state, the statute also provides that the Act shall not be construed to grant the Department of Agriculture the authority to regulate hemp processing practices or methodologies. *See* Ark. Code Ann. § 2-15-502(b). Under what authority will the board be licensing processors? **AGENCY RESPONSE:** Ark. Code Ann. 2-15-516(a)(1) & (2) provides in pertinent part that it shall be unlawful for a grower to: ". . . process . . . living industrial hemp plants, viable hemp seed, leaf, or floral material . . . in a manner inconsistent with this subchapter or Plant Board

rule." (and) ". . . provide false, misleading, or incorrect information to the department pertaining to **the licensee's** cultivation, **processing**, or transportation of industrial hemp, **including without limitation information provided in any application**, report, record, **or inspection** required or maintained in accordance with this subchapter and board rule;" (emphasis supplied).

As noted, the Act declares that it is prohibited to *process* hemp in a manner inconsistent with the law *or Plant Board rules*, and further indicates that it is prohibited to provide false information regarding *processing*, *including information submitted with an application or inspection*. This indicates that there is legislative intent for the Department and Plant Board to have jurisdiction over processing, and since the law specifically states that it is prohibited to provide false information regarding a *licensee's processing* or in an *application or inspection,* it also appears to indicate authority to license processors. The Plant Board just does not have authority to regulate the techniques that make up a licensee's hemp processing methods and practices, which would be the practices or methodologies referenced in 2-15-502(b).

(5) Section 3(14) – I see that you have redefined "'hemp' or 'industrial hemp'" in a manner that differs from the definition set forth in Ark. Code Ann. § 2-15-503(5), as amended by Act 629 of 2023, § 2. Can you explain the reasoning for this? **AGENCY RESPONSE:** Act 629 of 2023 contains a definition of hemp that does not exactly track the definition of hemp in federal law. Ark. Code Ann. § 2-15-506 (The Arkansas Hemp Production Act) states that in any place where there is a conflict between Arkansas and federal law, federal law controls. While the 2018 federal Farm Bill does say we can regulate more restrictively, we cannot change federal law. The Federal definition is recognized in Section 7 of Act 629, further evidencing that the intent is to be consistent with federal law. We believe that it is appropriate to clarify that the Department does not view the definition of hemp found in Act 629 to conflict in any way with federal law. Accordingly, an amended definition of hemp has been incorporated into the proposed rule to provide that clarification.

(6) Section 8 – It appears that the term "fee" has been changed to "cost." Arkansas Code Annotated §§ 2-15-505(d) and 2-15-507(h-i) authorize the establishment and collection of fees by the board to administer the provisions of the Arkansas Industrial Hemp Production Act. What is the reasoning behind the change in terms? **AGENCY RESPONSE:** Section 8 of the proposed rule has been clarified to make it more consistent with statutory language. Ark. Code Ann. § 2-15-509(b) provides that growers shall pay the ***costs*** of inspections, and 2-15-505 provides that the board ***shall*** establish fees, therefore the fees are mandatory. Section 507 provides that any fees assessed are to administer

the program. Therefore, we believe the proposed language in Section 8 of the proposed rule referencing cost recovery instead of fees will more clearly indicate that amount charged applicants and licensees are not only mandatory but are to recover the costs of administering the program.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The Board states that the repeal of its former rule and the promulgation of its new rule do not have a financial impact.

LEGAL AUTHORIZATION: The proposed rules implement Act 565 of 2021, which was sponsored by Representative David Hillman, amended the law regarding industrial hemp production, repealed the Arkansas Industrial Hemp Act, and established the Arkansas Industrial Hemp Production Act.

Pursuant to Arkansas Code Annotated § 2-15-505(a), as amended by Act 565, § 2, the State Plant Board shall adopt rules to implement and administer the Arkansas Industrial Hemp Production Act ("Act"), Ark. Code Ann. §§ 2-15-501 to -516. Rules adopted by the Board shall prescribe the sampling, inspection, and testing procedures to ensure that the tetrahydrocannabinol concentration of industrial hemp planted, grown, or harvested in this state is not more than the acceptable hemp tetrahydrocannabinol level as defined by federal law; and provide due process for growers, including an appeals process. *See* Ark. Code Ann. § 2-15-505(b), as amended by Act 565, § 2. The Board is further permitted to establish and collect fees to administer the program. *See* Ark. Code Ann. § 2-15-505(d), as amended by Act 565, § 2; Ark. Code Ann. § 2-15-507(h), as amended by Act 565, § 2. *See also* Ark. Code Ann. § 2-15-507(e), as amended by Act 565, § 2 (providing that the Board shall establish a fee for an initial license and annual renewal license). Fees collected by the Board under the Act are not refundable and may be used by the Department of Agriculture to administer the Act. *See* Ark. Code Ann. § 2-15-507(i), as amended by Act 565, § 2.

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

1. ARKANSAS ETHICS COMMISSION (Graham Sloan)

a. SUBJECT: Rules on Ballot and Legislative Question Committees

DESCRIPTION: The purpose of these proposed amendments is to bring the Rules on Ballot and Legislative Question Committees into conformity with the legislation passed during the 94th General Assembly of the Arkansas Legislature. Act 455 of 2023 raised the contribution limit to political action committees on an annual basis from $5,000 to $10,000 a

year. This amendment needs to be reflected in the Rules on Ballot and Legislative Question Committees.

In rule 600(r), in order to mirror Ark. Code Ann. § 21-8-402(17), the definition of "public official" needs to be amended to add, "public official" includes without limitation a member of a school district board of directors." There is also a stray underline in Rule 606(b)(5) that needs to be removed.

PUBLIC COMMENT: A public hearing was held in this matter on September 22, 2023. The public comment period expired on September 22, 2023. The Commission received no comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 7-6-217(g)(1), the Arkansas Ethics Commission shall have authority to promulgate reasonable rules to implement and administer the requirements of Chapter 6, Subchapter 2 of the Arkansas Code concerning campaign financing, as well as § 7-1-114 [repealed]; the Disclosure Act for Public Initiatives, Referenda, and Measures Referred to Voters, § 7-9-401 et seq.; § 19-11-718; § 21-8-301 et seq.; the Disclosure Act for Lobbyists and State and Local Officials, § 21-8-401 et seq., § 21-8-601 et seq., § 21-8-701 et seq., and § 21-8-801 et seq.; § 21-8-901 et seq.; § 21-8-1001 et seq.; § 25-1-125; and Arkansas Constitution, Article 19, §§ 28-30; and to govern procedures before the commission, matters of commission operations, and all investigative and disciplinary procedures and proceedings.

This rule implements Act 455 of 2023, sponsored by Representative David Ray, which amended the law concerning contribution limits to political action committees, amended campaign finance law, and amended portions of Initiated Act 1 of 1990 and Initiated Act 1 of 1996.

b. SUBJECT: Rules on Campaign Finance & Disclosure

DESCRIPTION: The Arkansas Ethics Commission ("AEC") is proposing amendments to its rules on campaign finance and disclosure.

Act 85 moved the due date for final report from thirty (30) days after the end of the month in which an election took place, to being due on "the last day of the month" after the end of the month in which an election took place.

Likewise, it clarified that this final report is only for contributions and expenditures made "for that election."

Act 85 also clarified that if a candidate keeps remaining campaign funds after an election, "but does not have any activity before the end of the year, the candidate shall not be required to file a fourth quarter report."

Moreover, it clarified that, "If a candidate keeps remaining campaign funds and raises campaign funds for a future campaign, or expends campaign funds for office holder expenses or a future election," the candidate shall continue filing the reports required by this subsection. (Act 307)

Act 307 amended the description of the contribution limit from, "the total aggregate amount exceeds two thousand seven hundred dollars ($2,700) per election" to "the maximum campaign contribution limit established by rule of the AEC per election."

The AEC is required, pursuant to Ark. Code Ann. § 7-6-203(i) to adjust the campaign contribution limit once every two (2) years for inflation. This amendment removed the perennially outdated amount from the Code and protects the Code from having to be amended every time the limit changes. (Act 307)

When the printed campaign material is a two-sided sign, the "Paid for by" language required by this subsection shall appear on both sides of the sign. The effective date of this Section is on and after November 1, 2023. (Act 307)

Related to a filing of a complaint for filing/running for office after having been convicted of a public trust crime, Act 307 clarified that the AEC could investigate and "render findings and disciplinary action," and added that, "To be considered valid, a complaint alleging a violation of § 21-8-305 shall include a copy of a court record reflecting that the person has pleaded guilty or nolo contendere to or has been found guilty of a public trust crime."

Act 455 raised the contribution limit to Political Action Committees ("PAC") on an annual basis from $5,000 to $10,000 a year.

Act 753 amended the campaign finance reporting schedule, moving the monthly Contribution & Expenditure ("C&E") report due date from the 15th following the end of each month to 20th following the end of each month.

Act 753 raised the itemization threshold for contributions on C&Es filed by state and district candidates from $50 to $200.

Act 753 raised the itemization threshold on C&Es for contributions received by candidates for school district, township, or municipal office from $50 to $200.

Act 753 raised the itemization threshold on C&Es for contributions received by candidates for county office from $50 to $200.

Act 753 raised the itemization threshold for contributions made to Exploratory Committees from $50 to $200.

Act 753 mandated that the AEC issue one or more reporting calendars for candidates no later than December 31 preceding the year of the reporting calendar.

PUBLIC COMMENT: A public hearing was held in this matter on September 22, 2023. The public comment period expired on September 22, 2023. The Commission received no comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 7-6-217(g)(1), the Arkansas Ethics Commission shall have authority to promulgate reasonable rules to implement and administer the requirements of Chapter 6, Subchapter 2 of the Arkansas Code concerning campaign financing, as well as § 7-1-114 [repealed]; the Disclosure Act for Public Initiatives, Referenda, and Measures Referred to Voters, § 7-9-401 et seq.; § 19-11-718; § 21-8-301 et seq.; the Disclosure Act for Lobbyists and State and Local Officials, § 21-8-401 et seq., § 21-8-601 et seq., § 21-8-701 et seq., and § 21-8-801 et seq.; § 21-8-901 et seq.; § 21-8-1001 et seq.; § 25-1-125; and Arkansas Constitution, Article 19, §§ 28-30; and to govern procedures before the commission, matters of commission operations, and all investigative and disciplinary procedures and proceedings. This proposed changes to this rule implement the following Acts of the 2023 Regular Session:

Act 85 of 2023, which was sponsored by Senator Clarke Tucker, amended the filing of campaign finance reports; amended the law concerning candidate contribution filings; and amended portions of Initiated Act 1 of 1990 and Initiated Act 1 of 1996.

Act 307 of 2023, sponsored by Senator Jonathan Dismang, amended the law concerning: the creation and duties of the Arkansas Ethics Commission, campaign finance, candidate contributions, citizen complaints filed with the Arkansas Ethics Commission, the enforcement of the Code of Ethics, independent expenditures, expenditure reports, and portions of Initiated Act I of 1990 and Initiated Act I of 1996.

Act 455 of 2023, which was sponsored by Representative David Ray, amended the law concerning contribution limits to political action committees, amended campaign finance law, and amended portions of Initiated Act 1 of 1990 and Initiated Act 1 of 1996.

Act 456 of 2023, which was sponsored by Representative David Ray, repealed the law concerning the display of campaign literature on vehicles of candidates for public office or public officials while on State Capitol grounds.

Act 753 of 2023, sponsored by Representative Matthew Shepherd, amended the law concerning campaign finance; amended the law concerning campaign contributions and expenditures; amended the law concerning reporting deadlines; created an automatic fine for delinquent reporting; required the preparation on a reporting calendar; amended the law concerning the Arkansas Ethics Commission; allowed online and electronic complaints; and amended portions of Initiated Act I of 1990 and Initiated Act I of 1996. Pursuant to the Act, the Arkansas Ethics Commission shall promulgate rules to develop the complaint submission process under Ark. Code Ann. § 7-6-218(a)(3) and (a)(4). *See* Ark. Code Ann. § 7-6-218(a)(5). The Commission shall also promulgate to implement and administer Ark. Code Ann. § 7-6-232, concerning delinquent reports. *See* Ark. Code Ann. § 7-6-232(d).

c. <u>SUBJECT</u>: Rules on Conflicts

<u>DESCRIPTION</u>: The purpose of these proposed amendments is to bring the Rules on Conflicts into conformity with the legislation passed during the 94th General Assembly of the Arkansas Legislature. Act 883 of 2023 gave the Ethics Commission some oversight over the enforcement of Title 6, Chapter 24, which deals with school district board members, administrators, and employees. These amendments are taken from the language of Act 883 of 2023.

<u>PUBLIC COMMENT</u>: A public hearing was held in this matter on September 22, 2023. The public comment period expired on September 22, 2023. The Commission received no comments.

The proposed effective date of the amended rule is pending legislative review and approval. Pursuant to Act 883 of 2023, the proposed effective date of § 406 of the rule concerning school district board members, administrators, and employees is May 1, 2024.

FINANCIAL IMPACT: The Commission indicated that the amended rule does not have a financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 7-6-217(g)(1), the Arkansas Ethics Commission shall have authority to promulgate reasonable rules to implement and administer the requirements of Chapter 6, Subchapter 2 of the Arkansas Code concerning campaign financing, as well as § 7-1-114 [repealed]; the Disclosure Act for Public Initiatives, Referenda, and Measures Referred to Voters, § 7-9-401 et seq.; § 19-11-718; § 21-8-301 et seq.; the Disclosure Act for Lobbyists and State and Local Officials, § 21-8-401 et seq., § 21-8-601 et seq., § 21-8-701 et seq., and § 21-8-801 et seq.; § 21-8-901 et seq.; § 21-8-1001 et seq.; § 25-1-125; and Arkansas Constitution, Article 19, §§ 28-30; and to govern procedures before the commission, matters of commission operations, and all investigative and disciplinary procedures and proceedings.

This rule implements Act 883 of 2023, sponsored by Senator Kim Hammer, which amended Arkansas law concerning school district boards of directors and amended a portion of law resulting from initiated Act 1 of 1990. Pursuant to the Act, the Arkansas Ethics Commission may promulgate rules that it deems necessary to perform its duties under Title 6, Chapter 24, Section 118 concerning enforcement. *See* Ark. Code Ann. § 6-24-118(b)(3) *as amended by* Act 883 of 2023 (Eff. May 1, 2024).

d. SUBJECT: REPEAL – Rules on Display of Campaign Literature on Vehicle of Candidate or Public Official While on State Capitol Grounds

DESCRIPTION: The purpose of these proposed amendments is to bring the Rules on Display of Campaign Literature on Vehicle of Candidate or Public Official While on State Capitol Grounds into conformity with the legislation passed during the 94th General Assembly of the Arkansas Legislature. Act 456 of 2023 repealed the prohibition found in these rules; for that reason, these rules need to be repealed.

PUBLIC COMMENT: A public hearing was held on September 22, 2023. The public comment period expired on September 22, 2023. The Commission received no comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 7-6-217(g)(1), the Arkansas Ethics Commission shall have authority to promulgate reasonable rules to implement and administer the requirements of Chapter 6, Subchapter 2 of the Arkansas Code concerning campaign financing, as well as § 7-1-114 [repealed]; the Disclosure Act for Public Initiatives, Referenda, and Measures Referred to Voters, § 7-9-401 et seq.; § 19-11-718; § 21-8-301 et seq.; the Disclosure Act for Lobbyists and State and Local Officials, § 21-8-401 et seq., § 21-8-601 et seq., § 21-8-701 et seq., and § 21-8-801 et seq.; § 21-8-901 et seq.; § 21-8-1001 et seq.; § 25-1-125; and Arkansas Constitution, Article 19, §§ 28-30; and to govern procedures before the commission, matters of commission operations, and all investigative and disciplinary procedures and proceedings.

This rule implements Act 456 of 2023, sponsored by Representative David Ray, which repealed the law concerning the display of campaign literature on vehicles of candidates for public office or public officials while on State Capitol grounds.

e. SUBJECT: Rules on Independent Expenditures

DESCRIPTION: The purpose of these proposed amendments is to bring the Rules on Independent Expenditures into conformity with the legislation passed during the 94th General Assembly of the Arkansas Legislature. Likewise, there is a small grammatical change that was recommended by the Bureau of Legislative Research ("BLR") in the context of the codifications of the Code of Arkansas Rules.

Act 307 amended the reporting schedule for Independent Expenditures ("IE"). It now provides that the first IE report is due within fifteen (15) days following the month in which the five hundred-dollar ($500) threshold required under this section is met. Likewise, each subsequent report shall be filed no later than fifteen (15) days after the end of each month until the election is held.

Act 307 provided that when the printed campaign material is a two-sided sign, the "Paid for by" language required by this subsection shall appear on both sides of the sign.

Act 753 lowered the trigger amount for IE reporting from $500 to $200. Act 753 raised the itemization threshold for contributions reported on

Contribution and expenditure reports filed by state and district candidates from $50 to $200, which in turn, changes it for IEs as well.

Likewise, there is a small grammatical change that was recommended by the BLR in the context of the codifications of the Code of Arkansas Rules, specifically removing and replacing the phrase "and/or" whenever possible.

PUBLIC COMMENT: A public hearing was held in this matter on September 22, 2023. The public comment period expired on September 22, 2023. The Commission received no comments.

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

QUESTION: In the markup, the language in § 703(b) appears to come from Ark. Code Ann. § 7-6-227(a)(4). However, the language in the rule does not track the statute – it does not include a registration provision and contains a lower $200 figure (instead of $500 in the statute). Could you please explain this? **RESPONSE:** The draft of Rule 703(b) tracks Ark. Code Ann. § 7-6-220(a). Section 10 of Act 753 lowered the trigger for filing reports from $500 to $200. It did not lower the registration threshold which remains at $500. So, an IEC triggers reporting before it triggers registration based upon the passage of Act 753. There is an inconsistency in the registration (§ 7-6-227) and reporting (§ 7-6-220) thresholds.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 7-6-217(g)(1), the Arkansas Ethics Commission shall have authority to promulgate reasonable rules to implement and administer the requirements of Chapter 6, Subchapter 2 of the Arkansas Code concerning campaign financing, as well as § 7-1-114 [repealed]; the Disclosure Act for Public Initiatives, Referenda, and Measures Referred to Voters, § 7-9-401 et seq.; § 19-11-718; § 21-8-301 et seq.; the Disclosure Act for Lobbyists and State and Local Officials, § 21-8-401 et seq., § 21-8-601 et seq., § 21-8-701 et seq., and § 21-8-801 et seq.; § 21-8-901 et seq.; § 21-8-1001 et seq.; § 25-1-125; and Arkansas Constitution, Article 19, §§ 28-30; and to govern procedures before the commission, matters of commission operations, and all investigative and disciplinary procedures and proceedings. The rule implements the following Acts of the 94th General Assembly:

Act 307 of 2023, sponsored by Senator Jonathan Dismang, amended the law concerning: the creation and duties of the Arkansas Ethics Commission, campaign finance, candidate contributions, citizen complaints filed with the Arkansas Ethics Commission, the enforcement of the Code of Ethics, independent expenditures, expenditure reports, and portions of Initiated Act I of 1990 and Initiated Act I of 1996.

Act 753 of 2023, sponsored by Representative Matthew Shepherd, amended the law concerning campaign finance; amended the law concerning campaign contributions and expenditures; amended the law concerning reporting deadlines; created an automatic fine for delinquent reporting; required the preparation on a reporting calendar; amended the law concerning the Arkansas Ethics Commission; allowed online and electronic complaints; and amended portions of Initiated Act I of 1990 and Initiated Act I of 1996. Pursuant to the Act, the Arkansas Ethics Commission shall promulgate rules to develop the complaint submission process under Ark. Code Ann. § 7-6-218(a)(3) and (a)(4). *See* Ark. Code Ann. § 7-6-218(a)(5). The Commission shall also promulgate to implement and administer Ark. Code Ann. § 7-6-232, concerning delinquent reports. *See* Ark. Code Ann. § 7-6-232(d).

f. **SUBJECT: Rules on Local-Option Ballot Question Committees**

DESCRIPTION: The purpose of these proposed amendments is to bring the Rules on Local-Option Ballot Question Committees into conformity with the legislation passed during the 94th General Assembly of the Arkansas Legislature. Act 455 of 2023 raised the contribution limit to Political Action Committees ("PAC") on an annual basis from $5,000 to $10,000 a year. This amendment needs to be reflected in the Rules on Local -Option Ballot Question Committees.

PUBLIC COMMENT: A public hearing was held on September 22, 2023. The public comment period expired on September 22, 2023. The Commission received no comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 7-6-217(g)(1), the Arkansas Ethics Commission shall have authority to promulgate reasonable rules to implement and administer the requirements of Chapter 6, Subchapter 2 of the Arkansas Code concerning campaign financing, as well as § 7-1-114 [repealed]; the Disclosure Act for Public Initiatives, Referenda, and Measures Referred to Voters, § 7-9-401 et seq.;

§ 19-11-718; § 21-8-301 et seq.; the Disclosure Act for Lobbyists and State and Local Officials, § 21-8-401 et seq., § 21-8-601 et seq., § 21-8-701 et seq., and § 21-8-801 et seq.; § 21-8-901 et seq.; § 21-8-1001 et seq.; § 25-1-125; and Arkansas Constitution, Article 19, §§ 28-30; and to govern procedures before the commission, matters of commission operations, and all investigative and disciplinary procedures and proceedings.

This rule implements Act 455 of 2023, sponsored by Representative David Ray, which amended the law concerning contribution limits to political action committees, amended campaign finance law, and amended portions of Initiated Act 1 of 1990 and Initiated Act 1 of 1996.

g. **SUBJECT: Rules on Political Committees**

DESCRIPTION: The purpose of these proposed amendments is to bring the Rules on Political Committees into conformity with legislation passed during the 94th General Assembly of the Arkansas Legislature.

Act 307 of 2023 provided that when the printed campaign material is a two-sided sign, the "Paid for by" language required by this subsection shall appear on both sides of the sign. (The effective date of this Section is on and after November 1, 2023.)

Act 455 of 2023 raised the contribution limit to Political Action Committees ("PAC") on an annual basis from $5,000 to $10,000 a year. This amendment needs to be reflected in the Rules on Ballot and Legislative Question Committees.

Act 552 amended the law requiring PACs to re-register annually. The law now provides that the PAC shall be active unless the PAC has requested termination of its registration. Act 552 also amended the law to provide that a PAC shall indicate on its fourth quarter report if it wishes to "terminate." Furthermore, Act 552 added that that if a PAC does not file any quarterly reports for a period of two (2) years, the Secretary of State ("SOS") shall terminate the PAC's registration due to inactivity."

Act 753 lowered the itemization threshold for contributions received by PACs from $500 to $200. Act 753 raised the itemization threshold for contributions made by PACs from $50 to $200. Act 753 lowered the itemization threshold for contributions received by County Political Party Committees from $500 to $200. Act 753 raised the itemization threshold for contributions made by County Political Party Committees from $50 to $200.

PUBLIC COMMENT: A public hearing was held in this matter on September 22, 2023. The public comment period expired on September 22, 2023. The Commission received no comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 7-6-217(g)(1), the Arkansas Ethics Commission shall have authority to promulgate reasonable rules to implement and administer the requirements of Chapter 6, Subchapter 2 of the Arkansas Code concerning campaign financing, as well as § 7-1-114 [repealed]; the Disclosure Act for Public Initiatives, Referenda, and Measures Referred to Voters, § 7-9-401 et seq.; § 19-11-718; § 21-8-301 et seq.; the Disclosure Act for Lobbyists and State and Local Officials, § 21-8-401 et seq., § 21-8-601 et seq., § 21-8-701 et seq., and § 21-8-801 et seq.; § 21-8-901 et seq.; § 21-8-1001 et seq.; § 25-1-125; and Arkansas Constitution, Article 19, §§ 28-30; and to govern procedures before the commission, matters of commission operations, and all investigative and disciplinary procedures and proceedings. This proposed changes to this rule implement the following Acts of the 2023 Regular Session:

Act 307 of 2023, sponsored by Senator Jonathan Dismang, amended the law concerning: the creation and duties of the Arkansas Ethics Commission, campaign finance, candidate contributions, citizen complaints filed with the Arkansas Ethics Commission, the enforcement of the Code of Ethics, independent expenditures, expenditure reports, and portions of Initiated Act I of 1990 and Initiated Act I of 1996.

Act 455 of 2023, which was sponsored by Representative David Ray, amended the law concerning contribution limits to political action committees, amended campaign finance law, and amended portions of Initiated Act 1 of 1990 and Initiated Act 1 of 1996.

Act 552 of 2023, which was sponsored by Representative David Ray, amended the procedures for registration of political action committees, amended campaign finance law, and amended portions of Initiated Act 1 of 1990 and Initiated Act of 1996.

Act 753 of 2023, sponsored by Representative Matthew Shepherd, amended the law concerning campaign finance; amended the law concerning campaign contributions and expenditures; amended the law concerning reporting deadlines; created an automatic fine for delinquent reporting; required the preparation on a reporting calendar; amended the

law concerning the Arkansas Ethics Commission; allowed online and electronic complaints; and amended portions of Initiated Act I of 1990 and Initiated Act I of 1996. Pursuant to the Act, the Arkansas Ethics Commission shall promulgate rules to develop the complaint submission process under Ark. Code Ann. § 7-6-218(a)(3) and (a)(4). *See* Ark. Code Ann. § 7-6-218(a)(5). The Commission shall also promulgate to implement and administer Ark. Code Ann. § 7-6-232, concerning delinquent reports. *See* Ark. Code Ann. § 7-6-232(d).

h. SUBJECT: Rules of Practice and Procedure

DESCRIPTION: The purpose of these proposed amendments is to bring the Rules of Practice and Procedure into conformity with the legislation passed during the 94th General Assembly of the Arkansas Legislature. Act 753 of 2023 specified acceptable manners of delivery of complaints filed with the Arkansas Ethics Commission ("AEC'). Specifically, it provides complaints can be hand delivered…on or before the date that the complaint is due; mailed; or received via email or facsimile by the AEC on or before the date that the complaint is due, provided the original is received by the AEC within ten (10) days of the transmission. The AEC shall prepare a citizen complaint form and make it publicly available on the AEC website.

Relating to "Delinquent Reports," Act 753 of 2023 created a requirement that the AEC shall review the timeliness of reports filed with the Secretary of State by all candidates for state or district office. If a candidate for state or district office has failed to file a required report, the AEC shall notify the candidate in writing via regular mail that the report is delinquent and request that the report be filed within thirty (30) days of the report's original due date. Upon the third late report during an election cycle, the AEC shall bring a complaint against the candidate and, if a violation is found, impose a fine of one thousand dollars ($1,000) unless good cause shown. In addition to the fine, the AEC can do one or more of the following: issue a public letter, order the reports be filed, or report the matter and make recommendations to law enforcement.

Act 753 of 2023 also mandated that the AEC issue one or more reporting calendars for candidates no later than December 31 preceding the year of the reporting calendar.

PUBLIC COMMENT: A public hearing was held in this matter on September 22, 2023. The public comment period expired on September 22, 2023. The Commission received no comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 7-6-217(g)(1), the Arkansas Ethics Commission shall have authority to promulgate reasonable rules to implement and administer the requirements of Chapter 6, Subchapter 2 of the Arkansas Code concerning campaign financing, as well as § 7-1-114 [repealed]; the Disclosure Act for Public Initiatives, Referenda, and Measures Referred to Voters, § 7-9-401 et seq.; § 19-11-718; § 21-8-301 et seq.; the Disclosure Act for Lobbyists and State and Local Officials, § 21-8-401 et seq., § 21-8-601 et seq., § 21-8-701 et seq., and § 21-8-801 et seq.; § 21-8-901 et seq.; § 21-8-1001 et seq.; § 25-1-125; and Arkansas Constitution, Article 19, §§ 28-30; and to govern procedures before the commission, matters of commission operations, and all investigative and disciplinary procedures and proceedings.

This rule implements Act 753 of 2023, sponsored by Representative Matthew Shepherd, which amended the law concerning campaign finance; amended the law concerning campaign contributions and expenditures; amended the law concerning reporting deadlines; created an automatic fine for delinquent reporting; required the preparation on a reporting calendar; amended the law concerning the Arkansas Ethics Commission; allowed online and electronic complaints; and amended portions of Initiated Act I of 1990 and Initiated Act I of 1996. Pursuant to the Act, the Arkansas Ethics Commission shall promulgate rules to develop the complaint submission process under Ark. Code Ann. § 7-6-218(a)(3) and (a)(4). *See* Ark. Code Ann. § 7-6-218(a)(5). The Commission shall also promulgate to implement and administer Ark. Code Ann. § 7-6-232, concerning delinquent reports. *See* Ark. Code Ann. § 7-6-232(d).

2. ARKANSAS PUBLIC SERVICE COMMISSION (Doyle Webb, Valerie Boyce, Whit Cox)

a. SUBJECT: Net-Metering Rules

DESCRIPTION: The Arkansas Public Service Commission (Commission) adopts amendments to its Net-Metering Rules (NMRs) pursuant to Act 278 of 2023, which amended the Arkansas Renewable Energy Development Act of 2001, prevented cost-shifting and ensured fairness to all ratepayers, and created the Customer Protections for Net-Metering Customers Act. Through the promulgation of revised NMRs following notice, opportunity for public comment, and a hearing, the Commission establishes appropriate rates, terms, and conditions for Net-Metering in Arkansas pursuant to Ark. Code Ann. § 23-18-604(b)(1).

The Commission approves revised NMRs to implement the provisions of Act 278 of 2023. The following summarizes two key issues as they affect the applicability of the current and revised Net-Metering rate structures, terms, and conditions to individual Net-Metering Facilities (NMF) of individual Net-Metering Customers (NMC).

1. Interpretation of "rate structure, terms, and conditions" pursuant to Ark. Code Ann. § 23-18-604(c)(11)(A).

The Commission finds that the "rate structure, terms, and conditions" protected by Ark. Code Ann. § 23-18-604(c)(11)(A) for qualifying Net-Metering Facilities of individual Net-Metering Customers are properly categorized as the rate structure in effect as of December 31, 2022, (commonly referred to as "1:1") and those terms and conditions that relate to that rate structure for net-metering. By contrast, the Commission finds that other terms and conditions in the superseded statute related to the threshold question of whether a particular facility qualifies for net-metering treatment on the basis of the facility's physical characteristics (e.g., generating capacity) are properly categorized as terms and conditions of the net-metering rate, not the rate structure. The Commission finds that the applicable "rate structure, terms, and conditions" for the qualifying Net-Metering Facilities of Net-Metering Customers pursuant to Ark. Code Ann. § 23-18-604(c)(11)(A), are the 1:1 full retail credit rate structure and those terms and conditions of the net-metering rate structure that were previously set forth in the Arkansas Renewable Energy Development Act (AREDA), Ark. Code Ann. § 23-18-604(a),(b)(1)-(8), and (c), as in effect before December 31, 2022, and Rules 2.01 – 2.05 of the Commission's NMRs, as in effect before December 31, 2022. The Commission finds that the "rate structure, terms, and conditions" protected by Ark. Code Ann. § 23-18-604(c)(11)(A) do not include the prior statutory definitions that were revised by the CSPA in Section 603. On this point, the Commission likewise makes a distinction between the threshold question of a particular facility's qualification for net-metering treatment or status (as a "net-metering facility") and the question of the appropriate "rate structure, terms, and conditions" that should apply to Net-Metering Facilities that have satisfied these threshold questions.

2. Classification of Net-Metering Customers.
Based on its determination regarding the appropriate interpretation of "rate structure, terms, and conditions," the Commission finds that it is appropriate to distinguish between three categories of customers:

1. Legacy Net-Metering Customers (i.e., customers who submitted a Standard Interconnection Agreement (SIA) prior to the effective date of the CSPA);

2. Legacy-Transitional Net-Metering Customers (i.e., customers who submit an SIA, Facilities Agreement (FA), or complaint regarding a Facilities Agreement, on or after March 13, 2023, but no later than September 30, 2024); and

3. Non-Legacy Net-Metering Customers (i.e., customers who submit an SIA, Facilities Agreement, or complaint after September 30, 2024).

Applicability of the current and revised Net-Metering rate structures, terms, and conditions to individual Net-Metering Facilities of individual Net-Metering Customers may be illustrated as follows:

Customer Category	**Legacy NMCs**	**Legacy-Transitional NMCs**	**Non-Legacy NMCs**
Timeframe	**SIA by 3/12/23 (before CSPA effective date)**	**SIA after 3/12/23, but SIA, FA, or Complaint by 9/30/24**	**SIA, FA, or Complaint after 9/30/2024**
Residential NMF Capacity Limits	Greater of 25 kW AC or NMF capable of generating 100% of customer's highest monthly usage in the previous 12 months per former A.C.A. § 23-18-603(8)(B)(i), as in effect until 3/13/23	Lesser of 25 kW AC or NMF capable of generating 100% of customer's highest monthly usage in the previous 12 months per current A.C.A. § 23-18-603(9)(B)(i)(a), which became effective on 3/13/23	
Non-Residential NMF Capacity Limits	Lesser of 1 MW AC per NMF or 100% of customer's electricity requirements (based on either monthly bills or reasonable estimates) per former A.C.A. § 23-18-603(8)(B)(i); Up to 20 MW AC per NMF if approved per AREDA; No limit on cumulative capacity for multiple NMFs per AR Court of Appeals *Petit Jean* case	Lesser of 5 MW AC or NMF capable of generating 100% of customer's highest monthly usage in the previous 12 months per current A.C.A. § 23-18-603(9)(B): 1. If not used for meter aggregation (i.e., "behind the meter"), hard cap of 5MW per NMF, but no limit on # of NMFs per current A.C.A. § 23-18-603(9)(B)(i)(b); or 2. If used for meter aggregation (i.e., "remote"), limit of 5MW per utility service territory for all NMFs, subject to 3 exceptions per current A.C.A. § 23-18-603(9)(B)(ii)(a).	
Co-location of Multiple NMFs	No limit on co-located NMFs	Limit of 2 NMFs per property per current A.C.A. § 23-18-603(9)(B)(ii)(b)(1)	

Rate Structure Terms & Conditions: Statutory and NMR Sections	AREDA, former A.C.A. § 23-18-604, as in effect December 31, 2022; and Rules 2.01 – 2.05 of the NMRs, as in effect December 31, 2022	CSPA: Current A.C.A. § 23-18-603(8)(B), § 23-18-604, and § 23-18-606; and Revised NMRs
Net-Metering + Interruptible Service	Not prohibited by the terms and conditions of the net-metering rate structure in AREDA or NMRs as in effect before December 31, 2022	Prohibited by A.C.A § 23-18-603(8)(B) with 1 exception
Rate Structure	1:1 Full Retail Rate Credit (June 1, 2040) per former A.C.A. § 23-18-604 as in effect December 31, 2022	Per A.C.A. § 23-18-606: 2-Channel billing at Avoided Cost; or 1:1 Full Retail Rate Credit + Grid Charge
Meter Aggregation Radius Limit	No limits applicable to the distance of additional meters credited via meter aggregation (until June 1, 2040) per AREDA, former A.C.A. § 23-18-604 as in effect December 31, 2022	Within 100 miles per current A.C.A. § 23-18-604(d)(2)(A)(i), with 3 exceptions
Meter requirements for inter-connection	Standard meter capable of registering the flow of electricity in two (2) directions (until June 1, 2040) per AREDA, former A.C.A. § 23-18-604(a), as in effect December 31, 2022	Single standard two-channel digital meter per current A.C.A. § 23-18-604(a)(1)

Following comments made by parties and members of the public in Docket No. 23-021-R and the public hearing on August 31, 2023, the Commission made several changes to its proposed Net-Metering Rules. These changes are based on recommendations made in the comments as well as the Commission's interpretation of the plain meaning of the statute (Ark. Code Ann. §§ 23-18-601 et seq.). As outlined in the "Introduction" and "Major Issues" sections of Order No. 7, many of these changes provide clarification regarding the Commission's interpretation of scope of the "rate structure, terms, and conditions" protected by Ark. Code Ann. § 23-18-604(c)(11)(A). Other changes provide additional clarifications to address gaps or inconsistencies in the proposed rules that were identified by the parties in their comments. The specific changes made by the Commission in Order No. 7 are outlined by individual rule below:

Section 1: Definitions:
• Page 26: Added definitions in Rule 1.01(u) to implement findings regarding the classification of Net-Metering Customers (e.g., Legacy Net-Metering Customer, Legacy-Transitional Net-Metering Customer, and Non-Legacy Net-Metering Customer).

• Page 33: Revised Rule 1.01(a) to clarify the process by which a Net-Metering Customer may request to credit an Additional Meter, in response to party comments.
• Page 34: Revised Rule 1.01(g) to make the definition of Distribution Cooperative consistent with the applicable statute (Ark. Code Ann. §§ 23-18-301 et seq.).
• Page 35: Revised Rule 1.01(h) to incorporate applicable statutory reference.
• Page 39: Revised Rule 1.01(j) regarding the definition of Facilities Agreement to incorporate party comments.
• Page 42: Revised Rule 1.01(k) regarding the definition of Facilities Study incorporate party comments.
• Page 44: Rule 1.01(x): Revised the definition of Parallel Operation in response to party comments.
• Page 51: Rule 1.04(C): Added applicable statutory reference.
• Page 53: Rule 1.01(D): Revised rule regarding "highest monthly usage" based on comments from the parties and plain meaning of the statute.
• Pages 53-54: Added new Rule 1.04(E) to clarify that Legacy Net-Metering Customers are not subject to the new generating capacity limits that were passed after the interconnection of their Net-Metering Facilities.
• Page 54: Added new Rule 1.04(F) to clarify that the new limits on co-location of Net-Metering Facilities are not retroactive.

Section 2: Net-Metering Requirements:
• Page 57: Revised Rules 2.01 and 2.02 regarding electric utility requirements and meter requirements respectively to allow Legacy and Legacy-Transitional Net-Metering Customers to continue using standard meters until June 1, 2040, for consistency with the PSC's findings regarding the scope of the terms and conditions protected by Ark. Code Ann. § 23-18-604(c)(11)(A).
• Pages 68, 75, and 78: Revised Rule 2.04(B)-(D) based on utility proposals to clarify that legacy status attaches to a Net-Metering Facility that meets the requirements and to incorporate statutory language ("Net-Metering Surplus").
• Page 84: Revised Rule 2.05(B) based on party comments to incorporate requirements of Ark. Code Ann. § 23-18-604(c)(11)(A).
• Pages 103-105: Revised Rule 2.06 based on party comments to incorporate requirements of Ark. Code Ann. § 23-18- 604(c)(11)(A), reference statutory language (e.g., "or equivalent document"), and clarify the rules regarding upgrades to and repair of net-metering facilities.
• Page 110: Revised Rule 2.08 based on party comments to give utilities more time to file their annual avoided-cost updates.

Section 3: Interconnection:
• Page 118: Revised Rule 3.01 based on party comments to delete certain language for consistency with revised National Electric Code standards

and to incorporate statutory language from Ark. Code Ann. § 23-18-603(9)(D).
• Page 123: Revised Rule 3.02 based on party comments to clarify process for proposed modifications to facilities that have meet the requirements of Ark. Code Ann. § 23-18-604(c)(11)(A).
• Page 136: Revised Rule 3.03 based on party comments to clarify requirements for a preliminary interconnection site review request.
• Pages 154-156: Revised rule 3.04 based on party comments to clarify requirements for a facilities study and facilities agreement, including appropriate timelines and costs.

Section 4: Standard Interconnection Agreement, Preliminary Interconnection Site Review Request, Facilities Agreement, and Standard Net-Metering Tariffs:
• Pages 162-163: Revised Rule 4.01 based on party comments to make minor clarifications.

Section 5: Rules to guard against gaming:
• Page 165: Revised Rule 5.01 based on party comments to reference applicable rule (3.02).

Section 6: Appendix A: Standard Interconnection Agreement (SIA):
• Page 178-179: Revised SIA based on party comments to make SIA consistent with rule revisions and statute.

Section 8: Appendix B: Standard Net-Metering Tariffs
• Pages 190-196: Revised the Standard Net-Metering Tariffs for consistency with revisions made to the Net-Metering Rules based on party comments.

PUBLIC COMMENT: A public hearing was held on August 31, 2023. The public comment period expired on August 31, 2023. The Commission provided a summary of the public comments it received and its responses to those comments. Due to its length, that summary is attached separately.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The Commission states that the proposed rule has no financial impact. The Commission estimates zero total cost by fiscal year to any private individual, private entity, or private business subject to the amended rule, but states that utilities will need to file conforming amended tariffs before the end of the year per Act 278 of 2023. It further estimates as zero the total cost by fiscal year to a state, county, or municipal government to implement the rule, stating that the

Commission will incur only the normal costs of conducting the hearing, such as the court reporter fee.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 23-18-604(b)(1), as amended by Act 278 of 2023, § 1, following notice, and opportunity for public comment, and a hearing, the Arkansas Public Service Commission shall establish appropriate rates, terms, and conditions for net metering, including without limitation the adoption or revision of any applicable rules on or before December 31, 2023. Through its actions under Ark. Code Ann. § 23-18-604(b)(1), as amended by Act 278 of 2023, § 1, the commission shall establish rates for a net-metering customer using one (1) of the rate structures under Ark. Code Ann. § 23-18-606, as amended by Act 278 of 2023, § 1. *See* Ark. Code Ann. § 23-18-604(c)(4), as amended by Act 278 of 2023, § 1. Further rulemaking authority can be found in Act 278 of 2023, § 3(a), which provides that the Arkansas Public Service Commission, after notice and hearing, shall modify the commission rules to conform to the Act and submit the commission rules to the Legislative Council by December 31, 2023. Additionally, the commission shall approve modifications to the electric utilities' rate schedules applicable to net-metering to conform to the Act by December 31, 2023. *See* Act 278 of 2023, § 3(b). The proposed rule amendments include those made in light of Act 278 of 2023, sponsored by Senator Jonathan Dismang, which amended the Arkansas Renewable Energy Development Act of 2001, prevented cost-shifting and ensured fairness to all ratepayers, and created the Customer Protections for Net-Metering Customers Act.

3. DEPARTMENT OF FINANCE AND ADMINISTRATION, ARKANSAS RACING COMMISSION (John Campbell, Byron Freeland)

a. SUBJECT: ARC Horse Racing Rule 1152

DESCRIPTION: This proposed amendment requires bettors to present all winning pari-mutuel tickets on live and simulcast races within 180 days of the last live race day or within 180 days after the last simulcast season day.

PUBLIC COMMENT: A public hearing was held on this rule on September 21, 2023. The public comment period expired on September 20, 2023. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that this rule has no financial impact.

LEGAL AUTHORIZATION: The Arkansas Racing Commission has "sole jurisdiction over the business and the sport of horse racing in this state where the racing is permitted for any stake, purse, or reward[.]" Ark. Code Ann. § 23-110-204(a). The Commission has "full, complete, and sole power and authority" to promulgate rules related to its duties and may "make, amend, and enforce all necessary or desirable rules not inconsistent with law." Ark. Code Ann. § 23-110-204(b)(1)(E), (d).

b. SUBJECT: ARC Horse Racing Rule 2260

DESCRIPTION: The proposed amendment increases the payout for stakes and non-stakes races at Oaklawn.

PUBLIC COMMENT: A public hearing was held on this rule on September 21, 2023. The public comment period expired on September 20, 2023. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that this rule has no financial impact.

LEGAL AUTHORIZATION: The Arkansas Racing Commission has "sole jurisdiction over the business and the sport of horse racing in this state where the racing is permitted for any stake, purse, or reward[.]" Ark. Code Ann. § 23-110-204(a). The Commission has "full, complete, and sole power and authority" to promulgate rules related to its duties and may "make, amend, and enforce all necessary or desirable rules not inconsistent with law." Ark. Code Ann. § 23-110-204(b)(1)(E), (d).

c. SUBJECT: ARC Horse Racing Rule 2444

DESCRIPTION: The proposed amendment makes changes to the claiming preference rule time period and the posting of owners that hold claiming preferences.

PUBLIC COMMENT: A public hearing was held on this rule on September 21, 2023. The public comment period expired on September 20, 2023. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that this rule has no financial impact.

LEGAL AUTHORIZATION: The Arkansas Racing Commission has "sole jurisdiction over the business and the sport of horse racing in this state where the racing is permitted for any stake, purse, or reward[.]" Ark. Code Ann. § 23-110-204(a). The Commission has "full, complete, and sole power and authority" to promulgate rules related to its duties and may "make, amend, and enforce all necessary or desirable rules not inconsistent with law." Ark. Code Ann. § 23-110-204(b)(1)(E), (d).

d. SUBJECT: ARC Horse Racing Rule 2458

DESCRIPTION: The proposed amendment amends Rule 2458(b) to provide that horses claimed during the final 21 calendar days, rather than the final 15 scheduled race days, of an Oaklawn race meet are excepted from the requirements of Rule 2458(a).

PUBLIC COMMENT: A public hearing was held on this rule on September 21, 2023. The public comment period expired on September 20, 2023. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that this rule has no financial impact.

LEGAL AUTHORIZATION: The Arkansas Racing Commission has "sole jurisdiction over the business and the sport of horse racing in this state where the racing is permitted for any stake, purse, or reward[.]" Ark. Code Ann. § 23-110-204(a). The Commission has "full, complete, and sole power and authority" to promulgate rules related to its duties and may "make, amend, and enforce all necessary or desirable rules not inconsistent with law." Ark. Code Ann. § 23-110-204(b)(1)(E), (d).

e. SUBJECT: ARC Horse Racing Rule 2800

DESCRIPTION: This proposed amendment provides for verification of identification of wagerers using Advance Deposit Wagering (ADW) accounts.

PUBLIC COMMENT: A public hearing was held on this rule on September 21, 2023. The public comment period expired on September 20, 2023. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that this rule has no financial impact.

LEGAL AUTHORIZATION: The Arkansas Racing Commission has "sole jurisdiction over the business and the sport of horse racing in this state where the racing is permitted for any stake, purse, or reward[.]" Ark. Code Ann. § 23-110-204(a). The Commission has "full, complete, and sole power and authority" to promulgate rules related to its duties and may "make, amend, and enforce all necessary or desirable rules not inconsistent with law." Ark. Code Ann. § 23-110-204(b)(1)(E), (d). "No franchise holder shall permit any person under eighteen (18) years of age to be a patron of the pari-mutuel or certificate system of wagering conducted or supervised by it." Ark. Code Ann. § 23-110-405(c).

4. DEPARTMENT OF HUMAN SERVICES, DIVISION OF COUNTY OPERATIONS (Mary Franklin, Mitch Rouse)

a. SUBJECT: ABLE Act Section 103 & REPEALS: DCO Form – 808 – Medicare Beneficiaries Application; Social Services Block Grant Comprehensive Services Program Plan

DESCRIPTION: The Director of the Division of County Operations (DCO) amends Sections E-610, E-660, and E-670 of the Medical Services Policy Manual and Section 2272 of the TEA Manual to comply with the ABLE ACT, Pub. L. No 113-295 (as amended Pub. L. No. 114-113), as detailed in guidance from the Centers for Medicare and Medicaid Services (CMS). All funds in ABLE accounts will be excluded as income and resources for the Supplemental Nutrition Assistance Program (SNAP). DCO also removed business processes, revised terminology, and updated formatting and date references in the above sections. The proposed rule has no estimated financial impact.

Pursuant to the Governor's Executive Order 23-02, DHS repeals the following two rules as part of this promulgation:

(1) DCO Form – 808 – Medicare Beneficiaries Application, and
(2) Social Services Block Grant Comprehensive Services Program Plan.

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired on September 25, 2023. The agency indicated that it received no public comments.

The proposed effective date is January 1, 2024.

FINANCIAL IMPACT: The agency indicated that this rule has no financial impact.

LEGAL AUTHORIZATION: The Department of Human Services has the responsibility to administer assigned forms of public assistance and is specifically authorized to maintain an indigent medical care program (Arkansas Medicaid). *See* Ark. Code Ann. §§ 20-76-201(1), 20-77-107(a)(1). The Department has the authority to make rules that are necessary or desirable to carry out its public assistance duties. Ark. Code Ann. § 20-76-201(12). The Department and its divisions also have the authority to promulgate rules as necessary to conform their programs to federal law and receive federal funding. Ark. Code Ann. § 25-10-129(b).

This rule implements the federal Stephen Beck, Jr. Achieving a Better Life Experience (ABLE) Act, as interpreted by the Centers for Medicare and Medicaid Services (CMS). *See* Ctrs. for Medicare and Medicaid Servs., SMD 17-002, *RE: Implications of the ABLE Act for State Medicaid Programs* (Sept. 7, 2017), https://www.medicaid.gov/sites/default/files/federal-policy-guidance/downloads/smd17002.pdf. Per the State Medicaid Director Letter, § 103 of the ABLE Act "requires that funds in an ABLE account, including earnings on the account (e.g., interest), be disregarded in determining eligibility for Medicaid and other federal need-based programs." *See id.* at 2.

Section 103 of the ABLE Act, codified as a note to 26 U.S.C. § 529A, states,

> Notwithstanding any other provision of Federal law that requires consideration of 1 or more financial circumstances of an individual, for the purpose of determining eligibility to receive, or the amount of, any assistance or benefit authorized by such provision to be provided to or for the benefit of such individual, any amount (including earnings thereon) in the ABLE account (within the meaning of section 529A of the Internal Revenue Code of 1986) of such individual, any contributions to the ABLE account of the individual, and any distribution for qualified disability expenses (as defined in subsection (e)(5) of such section) shall be disregarded for such purpose with respect to any period during which such individual maintains, makes contributions to, or receives distributions from such ABLE account, except that, in the case of the supplemental security income program under title XVI of the Social Security Act—
>
> (1) a distribution for housing expenses (within the meaning of such subsection) shall not be so disregarded, and
>
> (2) in the case of such program, any amount (including such earnings) in such ABLE account shall be considered a resource of the designated beneficiary to the extent that such amount exceeds $100,000.

Stephen Beck, Jr. ABLE Act of 2014, Pub. L. 113-295, div. B, tit. I, § 103 (Dec. 19, 2014).

b. **SUBJECT: Supplemental Nutrition Assistance Program (SNAP) 3000 Work Registration Requirements & REPEALS: DDS Policy 1005 – HDC Site Visits; DDS Policy 1010 – Services Concern Resolution**

DESCRIPTION:

Statement of Necessity

The Fiscal Responsibility Act of 2023 (FRA) became law on June 3, 2023. The FRA gradually increases the age of those subject to the able-bodied adults without dependents (ABAWD) time limit and adds new groups of individuals who are exempt from the ABAWD time limit. The changes related to ABAWD ages and exemptions are temporary and will no longer be effective beginning October 1, 2030. The FRA also decreases States' annual allotment of ABAWD discretionary exemptions from twelve (12%) percent to eight (8%) percent and limits States' ability to carry over unused discretionary exemptions.

Following passage of the FRA, the Food and Nutrition Service (FNS) of the U.S. Department of Agriculture quickly released two memorandums on June 9th and June 30th to assist states in quickly implementing the FRA requirements. This rule updates the Supplemental Nutrition Assistance Program (SNAP) Manual to comply with the Act.

Rule Summary

The following sections of the SNAP manual are revised.

1. SNAP 3100: Updated the work registration requirements and ABAWD age time limits consistent with the FRA.
2. SNAP 3200: Updated language and added explanation of exemptions.
3. SNAP 3502.1: Updated Requirement to Work exemptions, including veterans, the homeless (both short and long term), and individuals twenty-four (24) years of age or younger and who were in foster care under the responsibility of a state when they aged out.
4. SNAP 3502.2: Discretionary Exemptions reduced from twelve (12%) percent to eight (8%) effective October 1, 2023.
5. SNAP 3502.3: Updated language regarding domestic violence shelters.
6. SNAP 3620: Added the work registration requirements and ABAWD age time limits in the Employment & Training Program, specifically, all SNAP recipients who are subject to the Requirement to Work (RTW) will be referred to the Employment & Training Program.

Repeals pursuant to the Governor's Executive Order 23-02:

- (1) DDS Policy 1005 – HDC Site Visits; and
- (2) DDS Policy 1010 – Service Concern Resolution.

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired on September 25, 2023. The agency indicated that it received no public comments.

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

1. I'm not entirely sure how to word this, so please let me know if it needs clarification. 7 U.S.C. § 2015(o)(3)(A)(ii), as amended by the Fiscal Responsibility Act of 2023, states, "Paragraph (2) [regarding the work requirement] shall not apply to an individual if the individual is . . . in fiscal year 2023 over 51 years of age; fiscal year 2024 over 53 years of age; [or] fiscal year 2025 and each fiscal year thereafter over 55 years of age[.]" In § 3100 and § 3620, the proposed rules state that the age limit increases to 52 on 10/1/23, 54 on 10/1/24, and 55 on 10/1/25. Why do the proposed rules set the age limits at 52 ("over 51") and 54 ("over 53"), respectively, for the first two years, but 55 ("over 55") beginning 10/1/2025? **RESPONSE:** Please see page 2 of the USDA Guidance regarding the age designations. The rule was drafted to match the guidance.

2. Section 3620 states that "individuals will be systematically referred to the E&T Program if none of the following four (4) conditions are met[.]" This sentence is followed by a numbered list of 7 items. Should the rule read "7" rather than "4", or do three items on the list not relate back to the preceding sentence?

RESPONSE: We have replaced the number 4 with 7, and we additionally modified that section as follows for better readability and to remove any ambiguity.

- Pages 18 & 23 - Revised section 3620: replaced four (4) to seven (7);
- Pages 18 & 23 - Revised section 3620: replaced "if none" with "unless one" for readability; and
- Pages 19 & 23 - Revised section 3620: added "or" between #'s 1-6 to remove ambiguity.

The proposed effective date is January 1, 2024.

FINANCIAL IMPACT: The agency indicated that this rule has a financial impact.

Per the agency, this rule implements a federal rule or regulation. The total cost to implement the federal rule or regulation is $200,000 for the current fiscal year ($100,000 in general revenue and $100,000 in federal funds) and $0 for the next fiscal year. The total estimated cost by fiscal year to state, county, or municipal government to implement this rule is $100,000 for the current fiscal year and $0 for the next fiscal year. The agency stated that this is the state share of the costs to upgrade the state computer system.

LEGAL AUTHORIZATION: The Department of Human Services has the responsibility to administer assigned forms of public assistance, *see* Ark. Code Ann. §§ 20-76-201(1), and it has the authority to make rules that are necessary or desirable to carry out its public assistance duties. Ark. Code Ann. § 20-76-201(12). The Department and its divisions also have the authority to promulgate rules as necessary to conform their programs to federal law and receive federal funding. Ark. Code Ann. § 25-10-129(b).

This rule implements the federal Fiscal Responsibility Act of 2023, which guidance from the United States Department of Agriculture explains "changes the SNAP work requirement policy, including the exceptions from the able-bodied adults without dependents (ABAWD) time limit, and reduces the number of discretionary exemptions State agencies will earn and carry over annually." USDA, *Implementing SNAP Provisions in the Fiscal Responsibility Act of 2023* (June 30, 2023), https://www.fns.usda.gov/snap/implementing-fra-provisions-2023; *see also* 7 U.S.C. § 2015(o)(3), *as amended by* Fiscal Responsibility Act of 2023, Pub. L. 118-5, §§ 311, 312.

~~**5. DEPARTMENT OF HUMAN SERVICES, DIVISION OF MEDICAL SERVICES (Elizabeth Pitman, Mitch Rouse)**~~

~~**a. SUBJECT: Update to Third Party Liability Attestation in Arkansas Medicaid State Plan & REPEALS: DYS and DCFS Targeted Case Management Manual; Episodes of Care Manual**~~

6. DEPARTMENT OF HUMAN SERVICES, OFFICE OF CHIEF COUNSEL (Sommer Faulkenberry, Mitch Rouse)

a. SUBJECT: Office of Appeals and Hearings Update to DHS Policy 1098 & REPEALS: Description of Office on Aging and Adult Services; Long Term Care Ombudsman Act

DESCRIPTION:

Statement of Necessity

Act 474 of 2023 amends the Administrative Procedure Act to allow administrative adjudication decisions made by the Department of Human Services be served electronically by e-mail if the party consents. This rule updates DHS Policy 1098 to reflect the amendment. Also, the rule removes from the policy the requirement that certain notices be sent by certified mail, return receipt requested, so that the policy matches Arkansas Code § 25-15-210(c).

Summary

The following are the changes to DHS Policy 1098:

1. Grammatical changes throughout.
2. Clarifies that OAH may also send notice of the hearing electronically for parties that have opted to receive electronic communications.
3. Removes that notice of an untimely appeal shall be sent by "certified mail, return receipt requested."
4. Adds that notice of an untimely appeal shall be sent by "regular mail or electronically for parties that have opted to receive electronic communications."
5. Removes that notice of a defective appeal shall be sent by "certified mail, return receipt requested."
6. Adds that notice of a defective appeal shall be sent by "regular mail or electronically for parties that have opted to receive electronic communications."
7. Removes that a copy OAH findings of fact, conclusions of law, and order will be sent by "certified mail, return receipt requested."
8. Adds that that a copy OAH findings of fact, conclusions of law, and order will be sent by "regular mail or electronically for parties that have opted to receive electronic communications."

Repeals pursuant to the Governor's Executive Order 23-02:

1. Long-Term Care Ombudsman Act
2. Description of the Office on Aging and Adult Services

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired on September 25, 2023. The agency provided the following summary of the public comments it received and its responses to those comments:

Commenters' Names: Victoria Frazier and Nikki Clark, Attorneys, Legal Aid of Arkansas

1. Legal Aid of Arkansas ("Legal Aid") is a nonprofit law firm representing low-income Arkansans in civil legal matters throughout the state, including in rural areas in the Ozarks and the Delta. Legal Aid's mission is to improve the lives of low-income Arkansans by championing equal access to justice for all, regardless of location and economic or social circumstances. Through many years of advocacy for our clients, we have gained valuable insight into the barriers our clients face due to their location and limited resources. We offer these comments to help the Department of Human Services ("DHS") and the State understand how the proposed revisions can adversely affect our client community.

Sections 1098.9.2, 1098.9.3, 1098.9.4, and 1098.18 of the Appeals and Hearings Procedures, in sum, propose revisions that would authorize the Office of Appeals and Hearing ("OAH") to mail, by regular mail, all notices related to timely appeals and hearing information, untimely appeals and the appellant's rights as a result, as well as defective appeals and their rights as a result. The same sections propose revisions that would allow the OAH to send these same notices electronically for parties that have opted to receive electronic communications.

In short, the shift away from certified mail poses an unjustified risk of harm to beneficiaries' due process rights. Meanwhile, the introduction of electronic notification poses a similar risk, and with details about implementation lacking, requires extreme caution with robust safeguards to ensure due process for all beneficiaries.

RESPONSE: Thank you for your comments regarding updates to DHS Policy 1098. However, DHS respectfully disagrees with the assertions made within the comments. The amendments to Policy 1098 will offer faster mail delivery of notices and expanded options for beneficiaries to receive notices. The amendments will improve the service provided to clients that have initiated actions in the DHS Office of Appeals and Hearings ("DHS OAH").

Your comment letter presents two areas of concern: 1) the proposed amendments "pose an unjustified risk of harm to beneficiaries' due process rights;" and 2) the proposed amendments do not offer the assurances required by Policy 1098.2.7. These arguments and the

supporting reasoning have been reviewed and considered by DHS OAH. The arguments do not raise issues or concerns that would support a change to the proposed amendments.

2. 1098.9.3, 1098.9.4, and 1098.18: Regular Mail

The current policy provides each OAH decision be sent via certified mail return receipt requested as well as notice where an untimely appeal was filed and where an appeal was defective. Changing the current to send via regular mail would place Arkansans at a severe disadvantage because it eliminates the ability to track when decisions are received by claimants.

Certified mail provides the following benefits: proof of when mail was sent, delivery confirmation, and security in that only the intended recipient or authorized representative has to sign to receive the intended mail. Legal Aid has represented several clients in the past where clients did not timely receive an appeal decision. With certified mail tracking, they were able to show that they did not receive the decision. Under the new rule, these clients would have been entirely unable to file for reconsideration or to seek judicial review. Similarly, we have had many clients receive a decision after a significant mailing delay but technically within the timeframes for reconsideration or judicial review. Certified mail tracking ensured they had the full timeframe to consider taking appropriate next steps and secure counsel to do so. With the new rule, they would not have the full time guaranteed by law and could have only a couple of days. If there is no way to track when notices or decisions are received, Arkansans would have no remedy for hearings on untimely appeals.

Furthermore, during the unwinding process, where there has been an increase in appeals, Legal Aid is currently assisting clients where paperwork from DHS is sent to old addresses despite clients providing updated addresses. If sent by regular mail, there would be very little recourse for claimants. They would be unable to demonstrate when decisions are mailed, and the absence of the return receipt would provide no indication that the correct recipient received the notice and/or hearing decision.

Certified mail offers a faster means of delivery than regular mail. This is essential considering appeal timelines. If a claimant wishes to request a reconsideration of the OAH decision, then they must do so within ten days of receipt of the decision. Allowing decisions to be sent via regular mail shrinks due process rights by eliminating the only method that claimants rely on to demonstrate when they receive notices and decisions.

RESPONSE: The comments claim that certified mail is superior to regular mail for several reasons. However, the experience of DHS OAH

does not support those claims. Certified mail is routinely slower to be delivered than regular mail. Certified mail is often not correctly delivered; the return receipt may not be signed or may be signed by the wrong recipient. Certified mail is simply not as reliable as the comments suggest. Likewise, DHS OAH keeps track of all notices and correspondence sent out in every administrative proceeding. If the beneficiary has chosen to initiate an action before DHS OAH, they are able to contact the office and find out when a notice or other correspondence was mailed to them and to what address it was sent.

3. 1098.9.2, 1098.9.3, 1098.9.4, and 1098.18: Opting in for Electronic Communications

In addition to what was previously stated, removing the requirement of sending mail "certified" undermines the obligation outlined in Section 1098.2.7, which requires the OAH to have procedures that assure that appellants receive notice of the denial or other action, notice of the administrative adjudication proceedings, and an opportunity to appear, be represented, be heard, offer evidence, and call and cross examine witnesses. The proposed revisions suggest that individuals may "opt-in" for electronic communications as a method of receiving notice from the OAH.

Although this may serve as a benefit to people with knowledge of and access to appropriate technology, it is imperative that the OAH treats this "opt-in" as a voluntary option and not a mandate. To this end, implementation matters; how will recipients be informed of the ability to opt in? Will it be separate from or part of an existing form that requires other recipient signatures? Will it be clear that opting in is purely optional? Will there be an easy way to opt out if a recipient later decides they do not want electronic notifications?

Additionally, the agency must consider what these communications will look like to recipients. Will these messages be easy to read for those with standard pre-paid mobile devices that may not be smartphones? Will the messages be sent via text message? Will the messages be sent via email? Will the text or email contain the full information in the notice? Or will these messages include hyperlinks that will then send the recipient to a portal requiring a log-in – serving as additional steps in obtaining access to important notices that require prompt action? If DHS uses a portal, will the recipient have to have a separate password? What happens if the recipient forgets the password? In all circumstances, will the recipient be able to access the message later in the future? Will the key information be displayed in a way that is easily printed or shared? Will the messages be accessible to people with disabilities or people with limited English proficiency? What happens if people change email addresses or phone

numbers? Will they know to inform DHS? And, will DHS have the capacity to update contact information instantaneously?

It is also important to consider the barriers to internet access that exist in Arkansas. With hundreds of thousands of Arkansans lacking internet access or mobile-phone devices, an "opt-in" for electronic messages may not be a meaningful option for low-income people.[1] Some people lack a home broadband connection because no broadband service is available.

RESPONSE: The option for electronic notifications is a voluntary option that will offer expanded services to clients that have initiated actions before DHS OAH. The clients may continue to receive mailed, paper notifications. The clients may choose to receive only electronic notifications or both electronic and mailed notifications. This is at the discretion and preference of the client. This benefit is particularly helpful when clients change physical addresses; it is common for clients to change their physical address more often than their email address.

For these reasons, the proposed amendments do not pose a risk to beneficiaries' due process rights and do assure that a client appearing before DHS OAH will receive proper notice about the administrative appeal process. DHS appreciates the questions posed in the comments about the implementation of proposed amendments. These concerns were considered by the agency when drafting the proposed amendments. The agency also reached out to stakeholders before starting the rulemaking process and the proposed changes were supported by the stakeholders. These arguments do not raise issues or concerns that would support a change to the proposed amendments.

4. Arkansas, like many other states, has communities currently underserved by internet service providers. The Broadband Development Group submitted a report to state officials in April 2022 identifying 251,000 Arkansas households without adequate broadband access.[2] Another problem relates to the spread of residents in some communities. "While workers can more easily install services in flatter terrain, companies may not want to make investments in farming communities -- such as areas located in the delta --" - Philip Powell (Director of the Arkansas Farm Bureau's for Local Affairs and Rural Development). Arkansas statewide coverage maps were published, and, currently, a rather large portion of what is considered the "delta" remains without broadband internet access to date.[3] Furthermore, many people lack home broadband service for reasons other than network availability, like affordability.

[1] https://www.digitalinclusion.org/digital-divide-and-systemic-racism/.
[2] https://www.nwaonline.com/news/2023/may/28/us-senate-committee-hears-from-broadband-leaders.
[3] https://adfa-gov.maps.arcgis.com/apps/instant/interactivelegend/index.html

These are disproportionately people of color.[4] All told, tens of millions of Americans who still lack high-speed internet connections include large numbers of low income, older adult city residents, as well as residents of unserved rural communities.[5] These communities make up more than 60% of those who are receiving Medicaid in Arkansas, and, therefore, many of these beneficiaries have limited, if any internet access.[6]

RESPONSE: The option for electronic notifications is a voluntary option. It is not mandatory so if the beneficiary does not have access to reliable internet, they would not choose the electronic notification option, or they may select both electronic and mailed notifications. This is at the discretion and preference of the client. This benefit is particularly helpful when clients change physical addresses; it is common for clients to change their physical address more often than their email address.

5. Offering electronic-only notification to people with limited, inconsistent, or unreliable internet access endangers their due process rights, particularly absent robust safeguards. Many people are at risk of missing essential information that they only have a set number of days to respond to. It is important that the agency utilizes a system that offers confirmed delivery receipts and notifies them of message delivery failures. Moreover, mechanisms must be considered to take into account lapses in access due to outages, service disruptions, nonpayment of bills, or non-functioning equipment. How will recipients know to notify DHS of such lapses in access? Will hearing officers be explicitly required to consider lapses in access as good cause for hearing absences or untimely requests for appeals or reconsideration? How will DHS transition recipients back to paper-based notifications in such circumstances? These safeguards are important in satisfying due process generally and the assurances in Section 1098.2.7, and they will serve to counter the threat of a disparate impact these revisions pose.

Electronic-only notification may assist some low-income Arkansans if robust safeguards are implemented. However, many recipients—perhaps the majority—are likely not to be well-served though electronic-only notification due to lack of internet access, lack of technology to use the internet (e.g., home computers, smartphones), and lack of comfort conducting business electronically. Those people need a dependable way of doing business with DHS and OAH. Thus, the agency should not disinvest in established ways of communication. Rather, the agency should consider doing more to ensure that geography and access to technology do not become additional barriers to accessing DHS's services.

[4] Id.
[5] https://www.digitalinclusion.org/digital-divide-and-systemic-racism/.
[6] https://humanservices.arkansas.gov/wp-content/uploads/Annual-Statistical-Report-v7.pdf

RESPONSE: The option for electronic notifications is a voluntary option. It is not mandatory so if the beneficiary does not have access to reliable internet, they would not choose the electronic notification option, or they may select both electronic and mailed notifications. This is at the discretion and preference of the client. This benefit is particularly helpful when clients change physical addresses; it is common for clients to change their physical address more often than their email address.

6. Conclusion

The revisions in Sections 1098.9.2, 1098.9.3, 1098.9.4, and 1098.18 of the Appeals and Hearings procedures proposed by the Office of Appeals and Hearings, do not appear ripe for the picking or application. Proposing electronic notices as a new optional way of communicating while removing the requirement of certified mail appears to be an attempt to save money by the Office of Appeals and Hearings, with foreseeable discriminatory impacts along racial and economic lines. Removing the mail tracking and delivery assurances of certified mail and introducing an electronic system that lacks a "fail safe" delivery plan, creates a notification system that is without any safeguards. These revisions threaten the due process rights of the people DHS serves and their access to DHS's vital services.

RESPONSE: The comments claim that certified mail is superior to regular mail for several reasons. However, the experience of DHS OAH does not support those claims. Certified mail is routinely slower to be delivered than regular mail. Certified mail is often not correctly delivered; the return receipt may not be signed or may be signed by the wrong recipient. Certified mail is simply not as reliable as the comments suggest. Likewise, DHS OAH keeps track of all notices and correspondence sent out in every administrative proceeding. If the beneficiary has chosen to initiate an action before DHS OAH, they are able to contact the office and find out when a notice or other correspondence was mailed to them and to what address it was sent. This mail tracking by DHS provides due process protection for the clients served by DHS. No completely "fail safe" delivery plan exists, but adding the electronic notification option provides another tool to assist DHS in notifying beneficiaries in a timely manner.

The proposed effective date is January 1, 2024.

FINANCIAL IMPACT: The agency indicated that this rule has a financial impact.

Per the agency, this rule will result in a cost reduction of $36,750 for the current fiscal year ($20,948 in general revenue and $15,803 in federal funds) and $73,500 for the next fiscal year ($41,895 in general revenue

and $31,605 in federal funds). The total estimated cost reduction to state, county, and municipal government as a result of this rule is $20,948 for the current fiscal year and $41,895 for the next fiscal year.

LEGAL AUTHORIZATION: "In addition to other rulemaking requirements imposed by law, each agency shall . . . adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available[.]" Ark. Code Ann. § 25-15-203(a). This rule implements Act 474 of 2023. The Act, sponsored by Senator Jim Dotson, amended the Administrative Procedure Act and allowed administrative adjudication decisions to be served electronically.

7. DEPARTMENT OF PARKS, HERITAGE, AND TOURISM, STATE PARKS, RECREATION, AND TRAVEL COMMISSION (Suzanne Grobmyer, Marty Ryall)

a. SUBJECT: Arkansas State Parks Alcoholic Beverage Permit Rule & REPEALS: 2021 Rates/Fees; Wildlife Observation Trails Pilot Grant Program

DESCRIPTION: As required by Ark. Code Ann. § 3-9-103(g)(1), this proposed rule establishes a process for Secretary approval and administration of sales of alcoholic beverages in state parks. The proposed rule:

- Specifies the method for a state park to seek approval from the Secretary to sell/serve alcoholic beverages, and specifies the requirements for such a permit issued by the Secretary.
- Establishes that an authorized park shall serve alcohol only during operating hours or hours of an outdoor event; incorporates by reference the Alcoholic Beverage Control Division rules pertaining to distribution and sale of alcoholic beverages; and inspection, monitoring and reporting requirements for the Division of State Parks.
- Sets out a process for third party vendors to obtain and utilize a permit.
- Provides that a current ABC permit held by any park shall remain in effect until replaced by a Secretary's permit issued under these rules.

Additionally, two (2) obsolete rules pertaining to 2021 Rates/Fees and Wildlife Observation Trails Pilot Grant Program are being repealed.

PUBLIC COMMENT: Public hearings were held concerning this matter on August 17, 2023 and August 31, 2023. The public comment period expired on September 11, 2023. The agency provided the following summary of comments it received, and its responses thereto:

AGAINST:

Lonnie Siler, Hindsville, AR; Myrna Siler, Hindsville, AR; Elsie White, Hindsville, AR; Floyd Nelson, Hindsville, AR; Rita Nelson, Hindsville, AR; Melissa Nelson, Hindsville, AR; Emily Kritz, Hindsville, AR; Alison Frazier, Elkins, AR; Joyce Eubanks, Huntsville, AR; Morris Lawson, Farmington, AR; Henry Hawley, Huntsville, AR; Luther Cline, Elkins, AR:

Summary: Act 655 is unconstitutional with respect to overriding local option elections. Act 655 is a departure from and a liability to Arkansas's natural beauty and recreational resources. Act 655 allows State Parks to operate without rules for control of alcohol.

Agency Response: These comments are appreciated. Act 655 is presumed constitutional, and these proposed rules provide for implementation of the state parks permitting process. While the Act creates an exception to Alcoholic Beverage Control permitting, it still requires the agency follow all other applicable laws for distribution and sale of alcohol that do not conflict with the Act. This is referenced in Section V of the proposed rules. These comments are primarily aimed at the Act, not the language of the proposed rules. The agency did not make changes based on these comments.

Connie Burks, Huntsville, AR:

Summary: This comment expresses dissatisfaction with the passage of Act 655 and the ability of State Parks to serve alcohol in a dry areas. It asserts the Act is unconstitutional, and requests the agency and commission seek repeal of Act 655 and refuse to promulgate rules for this reason. The comment is primarily directed at the potential for an alcohol permit at Ozark Folk Center in Mt. View, asserting that there could be liability concerns, and that potential harm from alcohol sales should outweigh any potential increased revenue and attention to the park. Further, it asserts that the Act and proposed rules use vague terms and that State Parks are exempted from Alcoholic Beverage Control Rules.

Agency Response: These comments are appreciated. Act 655 is presumed constitutional, and these proposed rules provide for implementation of the state parks permitting process. While the Act creates an exception to Alcoholic Beverage Control permitting, it still requires the agency follow all other applicable laws for distribution and sale of alcohol that do not conflict with the Act. This is referenced in Section V of the proposed rules. These comments are primarily aimed at the Act and the potential for a permit at Ozark Folk Center, not the language of the proposed rule. The agency did not make changes based on this comment.

Donna Franks, Mt. View, AR:

Summary: This comment primarily expresses dissatisfaction with the passage of Act 655 and the ability of State Parks to serve alcohol in a dry

areas. Further, it asserts that Act 655 is unconstitutional with respect to overriding local option elections.
Agency Response: These comments are appreciated. Act 655 is presumed constitutional, and these proposed rules provide for implementation of the state parks permitting process. These comments are primarily aimed at the Act, not the language of the proposed rules. The agency did not make changes based on this comment.

GENERAL:
Eric Pendergrass, Burford Distributing, Inc., Fort Smith, AR:
Summary: Suggested enhanced procurement models and specifying retail location within Parks.
Agency Response: This comment is appreciated. While these comments are very practical, the agency determined the procurement suggestions are more operational in nature and better addressed once permitting begins. Additionally, the agency may be able to address the location concerns by its ability to designate Secretary permits in Section III(A). The agency did not make changes based on this comment.

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

1. On the financial impact statement, the agency indicated that the rule has a financial impact to state, county, or municipal government. The agency explained that the Division anticipated some costs associated with additional training in locations currently without alcoholic beverage service, and possible equipment upgrades.
(a) Are these costs unknown at this time? If so, please explain.
(b) Is the agency able to provide an estimate on these costs?
RESPONSE: The financial impact is speculative/unknown. The Division is not certain which parks may utilize these permits in the future and what types of service will be provided.

2. Section I, E. In this section of the rule, the agency referenced Rule 3. What is Rule 3? Could you please provide a copy? **RESPONSE:** That should be "III." I will correct. [The agency provided a revised markup].

3. Sections II, III, and VII appear to contain some possibly ambiguous language concerning permits and approvals issued under this rule. (For example, Section I,G appears to indicate that third-party vendors may need to obtain a permit, Section II.C appears to indicate that the Secretary issues a permit to the state park, and Section III.A appears to indicate that permits are issue to the park superintendent or other party designated by the Director. The language in Section VII appears to indicate that the state

park obtains the permit and the third-party gets approval, whereas Section II appears to indicate that the state park obtains approval.)
(a) Could you please explain/clarify the approval and permitting process, and make any necessary changes to the rule?
(b) What is a permit? Who is it issued to?
(c) What is an approval? Who is it issued to?
RESPONSE: [The agency submitted a markup clarifying these issues.]

4. In Section VI,C, why did the agency choose "within 15 days of discovery" as the timeframe for reporting violations of the rules to the Alcoholic Beverage Control Board? **RESPONSE:** After discussion with ABC and our staff, that time frame was determined to be a reasonable time to report.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that the proposed rule has a financial impact. The agency initially explained that the division anticipated some costs associated with additional training in locations currently without alcoholic beverage service, and also equipment upgrades. However, the division anticipated that any initial financial impact would be offset by sales and the ability to purchase alcohol from wholesalers. In response to Bureau Staff question #1 above, the agency further stated that the financial impact is speculative/unknown, because the division was not certain which parks may utilize these permits in the future and what types of service would be provided.

LEGAL AUTHORIZATION: This rule implements Act 655 of 2023, sponsored by Senator Missy Irvin, which amended the law regarding alcoholic beverages, and authorized a state park to sell alcoholic beverages for on-premises consumption without obtaining a permit from the Alcoholic Beverage Control Division. The Division of State Parks shall promulgate rules to implement the section, which pertains to state parks and definitions concerning on-premises consumption of alcoholic beverages. *See* Ark. Code Ann. § 3-9-103(g)(1).

G. Agency Updates on the Status of Outstanding Rulemaking Pursuant to Act 595 of 2021[7]

1. Department of Agriculture* (Scott Bray)

2. Department of Education (Andrés Rhodes)

[7] For that item designated by an asterisk ("*"), no update may be required depending on the action taken by the Subcommittee with respect to the agency's rules under Item E.

H. Agency Requests to Be Excluded from Reporting Requirements of Act 595 of 2021

1. Arkansas Teacher Retirement System (Acts 63, 183, and 504 of 2023) (Mark White, Sarah Linam, Jennifer Liwo)

2. Department of Health, Arkansas State Board of Pharmacy and Arkansas State Medical Board (Act 575 of 2023) (John Kirtley, Amy Embry, Matt Gilmore)

3. Department of Health, Board of Examiners in Speech-Language Pathology and Audiology (Act 301 of 2023) (Nate Roe, Matt Gilmore)

I. Agency Monthly Written Updates Pursuant to Act 595 of 2021 Concerning Rulemaking from the 2023 General Session

J. Adjournment