ADMINISTRATIVE RULES & REGULATIONS SUBCOMMITTEE
OF THE
ARKANSAS LEGISLATIVE COUNCIL

Room A, MAC
Little Rock, Arkansas

Tuesday, August 15, 2017
1:00 p.m.

A. Call to Order.

B. Reports of the Executive Subcommittee.

C. Report of the Department of Community Correction for the Quarter ending June 30, 2017. (Dina Tyler)

D. Rules Deferred from the May 16, 2017 Meeting of the Administrative Rules and Regulations Subcommittee:

1. APPRAISER LICENSING AND CERTIFICATION BOARD (Diana Piechocki)

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

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

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

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

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

LEGAL AUTHORIZATION: The Arkansas Appraiser Licensing and Certification Board shall establish by rule the minimum examination, education,

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

E. Presentation on Dissolved Minerals in Third-Party Rulemaking Rule Filings with the Department of Environmental Quality. (Jim Malcolm, FTN Associates)

F. Third Party Rule-Making Rules Filed Pursuant to Ark. Code Ann. § 10-3-309:

1. <u>DEPARTMENT OF ENVIRONMENTAL QUALITY, WATER DIVISION</u> (Caleb Osborne, ADEQ; and Allen Gates, representing Third Parties)

a. <u>SUBJECT</u>: Amendment to the Water Quality Standards; Third Party Rulemaking by Southwestern Electric Power Company

Southwestern Electric Power Company ("SWEPCO") owns and operates the John W. Turk, Jr. Power Plant which discharges treated wastewater from a single outfall to the Little River under the provisions of NPDES Permit No. AR0051136 issued by ADEQ. The Little River flows approximately 2 miles from the facility's discharge to the Red River.

The Red River contains elevated levels of dissolved solids caused by input from natural salt springs and seeps in Oklahoma and Texas. The states of Texas, Oklahoma, Arkansas, and Louisiana each have established total dissolved solids ("TDS") criterion for the river which are spatially inconsistent. Even within Arkansas the TDS criterion is inconsistent: 850 mg/L upstream of the confluence with the Little River; 500 mg/L downstream of the Little River. The segment of the Red River into which the Little River flows is listed as impaired for TDS in the Arkansas 2008 303(d) list.[1] The consequence of the listing is that the limitations set in the facility's NPDES permit adversely impact the operations of the facility preventing it from operating as designed despite the fact that the facility's discharge at full operation will have no effect on the concentration of dissolved minerals in the Red River or on the aquatic life in the river.

SWEPCO evaluated alternatives through a Use Attainability Analysis (UAA) which included field studies, toxicity testing, mass balance modeling, engineering analysis of alternatives for discharge and treatment, and an analysis of designated uses for the Red River and the Little River.

[1] The 2008 Arkansas 303(d) list is the last such list approved by EPA. The Arkansas draft 2010 and 2012 303(d) lists did not include the chloride impairment and the draft 2014 lists removed the TDS impairment because of the completion of a TMDL in 2013.

Based on the UAA, public comments, and a public hearing, approval by the Governor, and legislative review and approval, the Arkansas Pollution Control and Ecology Commission (APCEC) adopted SWEPCO's proposed amendment to amend Regulation No. 2 to modify the water quality criterion for TDS in the Red River from the mouth of the Little River the Arkansas/Louisiana state line from 500 mg/L to 860 mg/L. In July of 2016, EPA disapproved the modification of the TDS water quality criterion because the Agency concluded that the inadequate information was submitted to demonstrate protection of the aquatic life use and the proposed criteria was not protective of the downstream use in Louisiana, which set the TDS criteria in the Red River at the Arkansas/Louisiana state line as 780 mg/L. Following the submission of additional information to EPA, which demonstrated protection of the aquatic life use, SWEPCO agreed to modify its request to amend the TDS criteria in the Red River to match to TDS criteria set by Louisiana. SWEPCO is therefore requesting:

> modification of the TDS water quality criterion for the Red River from the mouth of the Little River to the Arkansas/Louisiana state line from 860 mg/L to 780 mg/L.

SWEPCO's proposed site-specific modification is supported by the following:

- TDS concentrations in the Red River historically exceed the TDS criterion due to elevated levels of dissolved solids from input from natural salt springs and seeps in Oklahoma and Texas.

- UAA and the subsequently submitted data established that the requested changes will have no adverse effect on the aquatic life communities;

- The toxicity threshold based on tests of *Ceridaphnia dubia* using the facility's effluent indicates that toxicity due to minerals is well above the anticipated mineral concentration in the effluent at the critical dilution and setting the TDS criterion at the site-specific level requested by SWEPCO in this segment of the Red River will not cause acute or chronic toxicity;

- There is no current economically feasible treatment technology for the removal of the minerals. Reverse osmosis treatment technology does exist; however, this technology is not cost effective and generates a concentrated brine, which is environmentally difficult to dispose of. The technology is not required to meet the designated uses and would produce no significant environmental protection.

- 40 CFR 131.11(b)(1)(ii) provides states with the opportunity to adopt water quality standards that are "modified to reflect site-specific conditions."

- The basis for site-specific standards is set forth in 40 CFR 131.10(g)(6), which provides that the state may establish less stringent criteria if naturally occurring pollutant concentrations, dams, or other types of hydrologic modifications limit the use or if controls more stringent than those required by

sections 301(b) and 306 of the Clean Water Act would result in substantial and widespread economic and social impact.

PUBLIC COMMENT: A public hearing was held on March 20, 2017 in Hope, Arkansas. The public comment period expired on March 30, 2017. The following public comment summary was provided detailing the public comments received during the public comment period and the responses by both the Department and the third party, Southwestern Electric Power Company ("SWEPCO"):

Two written comments were submitted during the public comment period. No oral comments were received during the public hearing.

Comment 1

Jerry Landrum stated "Please to not increase pollution limits for Turk Power plant."

ADEQ Response: SWEPCO's proposed amendment of APC&EC Regulation 2 does not request revision of criteria to allow for additional pollution. The petitioner's request was to align criteria to reflect ambient water quality conditions in the Red River. Oklahoma and Texas salt seeps and springs contribute the majority of ions responsible for elevated total dissolved solid (TDS) concentrations in the Red River. The proposed amendment will revise the Red River TDS criteria from the mouth of Little River to the Arkansas-Louisiana state line.

SWEPCO Response: SWEPCO's request to amend Arkansas Pollution Control and Ecology Commission Regulation No. 2 does not propose to increase any pollution. Rather it seeks to revise the total dissolved solids (TDS) water quality standard for the Red River from the mouth of the Little River to the Arkansas/Louisiana state line. This revision will make the standard correspond more closely to the historic concentrations of TDS that have been measured in the river for decades. These concentrations are due largely to naturally occurring salt springs and seeps upstream in Texas and Oklahoma.

Comment 2

Dr. Luis Contreras made several comments as set forth below:

Comment 2a: "I respectfully oppose increasing wastewater emissions from 500 mg/L to 780 mg/L. This is 56 percent higher than the current emissions of calcium, magnesium, chloride, and silica into the Little Red River."

ADEQ Response 2a: Please refer to ADEQ Response to Comment 1. In addition, an important point of clarification is that the proposed revision is for the Red River (Miller County), not the Little Red River (Cleburne and White Counties).

SWEPCO Response 2a: This requested modification of the TDS water quality standard has nothing to do with the Little Red River. The modification involves the Red River. The modification does not propose an increase in "wastewater

emissions." Instead, the modification will set the water quality standard for TDS to match the instream concentrations actually measured in the river for decades. There is no 56% increase in effluent requested by this Rulemaking. SWEPCO's permitted discharge contains TDS less than 0.16% of the average load in the Red River. SWEPCO adds minimal TDS to the River. The water is simply withdrawn from the River and used for evaporative non-contact cooling purposes. The amount of minerals that are taken in from the river go back out when the cooling water is discharged.

SWEPCO's request is to set the instream TDS water quality standard at 780 mg/L in a portion of the Red River from the mouth of the Little River to the Arkansas/Louisiana state line. Although the Arkansas TDS water quality standard had been set at 500 mg/L, the TDS in the river has, for decades, exceeded 500 mg/L because it contains elevated levels of TDS caused primarily by input from natural salt springs and seeps in Oklahoma and Texas.[2] On October 23, 2015, the Commission approved an increase in the TDS standard from 500 mg/L to 860 mg/L. After discussions with ADEQ and SWEPCO's consultants, and submission of supplemental aquatic life supporting data, EPA agreed that an increase in the TDS standard was supported by the record, but EPA asked that the increase be reduced from 860 mg/L to 780 mg/L to match the 780 mg/L TDS standard that had been in place for many years in Louisiana.

Comment 2b: "This is a major increase of toxic pollution. SWEPCO is requesting an additional 656 kilograms per day of calcium, magnesium, chloride, and silica, into the Little Red River." According to the Direct Testimony of James A. Kobyra P.E., APSC DOCKET NO. 06-154-U_19_1, the cooling tower wastewater emissions into the Little Red River are 430 gallons/minute, 1,628 liters per minute.

ADEQ Response 2b: Please refer to ADEQ Response to Comment 1.

SWEPCO Response 2b: TDS is not considered by EPA, or the relevant state agencies, to be a toxic pollutant or hazardous substance. Although toxicologists consider every chemical to have toxicity at some level, TDS has been demonstrated to be not toxic at the ambient concentrations involved in this proceeding. The Use Attainability Analysis Study (UAA) supporting the water quality standard request for the Red River (again, not the Little Red River) verified that there are no negative effects on aquatic life due to the TDS concentrations requested by SWEPCO. The commenter's assertion that the modification of the water quality standard would increase TDS in the river by an additional 656 kilograms per day is based on an invalid calculation, i.e. multiplying an effluent flow rate (1,628 liters/minute) times the 280 mg/L change in the water quality standard that SWEPCO has requested. The calculation is invalid because a flow rate for SWEPCO's effluent is being multiplied by a concentration that applies to the river, <u>not</u> the effluent. SWEPCO adds minimal TDS to the River (see below, Response 2c). The water is simply withdrawn from the River and used for evaporative non-contact

[2] The states of Texas, Oklahoma, Arkansas, and Louisiana each have established TDS criterion for the River. As it enters Arkansas, the Red River has a Texas TDS criterion of 1,100 mg/L and an Oklahoma TDS criterion of 1,220 mg/L. The TDS criterion for the Red River in Louisiana is 780 mg/L.

cooling purposes. The amount of minerals that are taken in from the river go back out when the cooling water is discharged.

Comment 2c: "Why now? SWEPCO says the increase is to meet design specifications for the Turk plant. The Turk plant has been running with 500 mg/L for several years. If the design specifications called for additional waste water emissions, why was this not requested when the plant was proposed?'
ADEQ Response 2c: SWEPCO was originally permitted at 500 mg/L TDS because the Red River was listed as impaired for TDS, which resulted in the initial TDS permit limit being derived as an "end of pipe" limit to meet water quality criteria. The TDS impairment stemmed from the Red River TDS concentrations being routinely above the criterion of 500 mg/L because of natural causes described in ADEQ Response to Comment 1. Lower Red River TDS criteria are relatively low in comparison to other sections. Texas and Oklahoma, for example, have TDS criteria of 1,100 and 1,200 mg/L, respectively. Upon entering Arkansas, Red River TDS criteria is 850 mg/L before dropping significantly to 500 mg/L after the Little River confluence. At the Louisiana state line, the TDS criterion rises to 780 mg/L. The revision of the Red River TDS criterion from the mouth of the Little River to the Arkansas-Louisiana state line will reflect ambient conditions without an inappropriate and unnatural decrease in water quality criteria.
SWEPCO Response 2c: When the original discharge permit was issued, the Arkansas Department of Environmental Quality (ADEQ) could not allow the permit limit for TDS to exceed 500 mg/L because the water quality standard for the Red River immediately downstream of the Little River is 500 mg/L and that reach of the Red River was considered to be impaired on the 2008 303(d) list. To address this situation, SWEPCO initiated the process of revising the water quality standard. Limiting SWEPCO's discharge to 500 mg/L for TDS has resulted in increased use of water for cooling purposes and has caused the facility to operate at less than maximum efficiency ever since it began operating. The facility was designed to achieve its optimum efficiency by recycling the cooling water in the cooling tower multiple times. Each time (cycle) that water is recycled in the cooling tower it results in a net decrease of the volume of water discharged as blowdown and an increase in the TDS concentration in the blowdown discharge. Increased cycling in the cooling tower also results in more efficient use of chemical additives (some may be decreased in concentration and/or feed rate), such that the net discharge loading for TDS (net TDS released in lbs/day) may actually decrease as the cycling of the cooling water in the cooling tower is increased.

Comment 2d: "Increasing to 'match' is a flawed argument. Would SWEPCO agree to lower emissions, say 350 mg/L, if Louisiana's standard were 350 mg/L? Louisiana has a higher standard because it is downstream from the Turk plant."
ADEQ Response 2d: Pursuant to sections 303 and 101(a), the federal regulation 40 CFR 131.10(b) requires that, "*In designating uses of a water body and the appropriate criteria for those uses, the State shall take into consideration the water quality standards of downstream waters and shall ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream waters*." SWEPCO's

proposed revision for Red River TDS criterion from 860 mg/L to 780 mg/L will effectively align with the current TDS water quality criterion established by the Louisiana Department of Environmental Quality and will be compliant with all federal regulations.

SWEPCO Response 2d: SWEPCO's reason for proposing to modify the TDS water quality standard for TDS in the Red River is not to match Louisiana's standard, but to set the standard to a more appropriate value that includes the effects of naturally occurring loads coming into Arkansas from Oklahoma and Texas. SWEPCO's request is not "increasing to match"; it is actually seeking a decrease in the Commission approved TDS standard of 860 mg/L to 780 mg/L which is the same as the Louisiana TDS standard. Additionally, Louisiana's standard is not higher because of the Turk plant; Louisiana's standard for TDS in the Red River has been 780 mg/L since at least 1999, long before the Turk plant was built.

Comment 2e: "Louisiana waterways have the worst pollution. SWEPCO is asking for an additional 656 kilograms per day of calcium, magnesium, chloride, and silica, into the Little Red River."

ADEQ Response 2e: Please refer to ADEQ Response to Comment 2c. Louisiana Department of Environmental Quality and EPA have agreed that the existing criteria of 780 mg/L TDS for the Red River (Louisiana) is protective of all beneficial uses.

SWEPCO Response 2e: As noted in Response 2b above, the value of 656 kg/day is the result of an invalid calculation. This Rulemaking concerns TDS water quality standard in the Red River (again, not the Little Red River) in Arkansas. Toxic chemicals in Louisiana waterways are outside the scope of this Rulemaking, and the June 2014 report referenced in the comment cites figures for EPA's Toxic Release Inventory, which does <u>not</u> include TDS because it is not considered by EPA (or state regulatory agencies) to be a toxic chemical. The UAA Study supporting the water quality standard request for the Red River verified that there are no negative effects on aquatic life due to the TDS water quality standard requested by SWEPCO.

The proposed effective date is pending legislative review and approval.

<u>FINANCIAL IMPACT</u>: There is no financial impact.

<u>LEGAL AUTHORIZATION</u>: This amendment to Regulation No. 2, Water Quality Standards, stems from a third party rulemaking request made to the Arkansas Pollution Control and Ecology Commission ("Commission") by Southwestern Electric Power Company. Arkansas Code Annotated § 8-4-202(c)(1) bestows upon any person the right to petition the Commission for the issuance, amendment, or repeal of any rule or regulation. *See also* Ark. Code Ann. § 8-4-102(5) (defining "person" as "any state agency, municipality, governmental subdivision of the state or the United States, public or private corporation, individual, partnership, association, or other entity"). Pursuant to Ark. Code Ann. § 8-4-202(a), the Commission is given and charged with the power and duty to adopt, modify, or repeal, after notice and public hearings, rules and regulations implementing or effectuating the powers and duties of the

Commission and the Arkansas Department of Environmental Quality. It is further given and charged with the power and duty to promulgate rules and regulations including water quality standards. *See* Ark. Code Ann. § 8-4-201(b)(1)(A). *See also* Ark. Code Ann. § 8-4-202(b)(3).

b. <u>SUBJECT</u>: Amendment to the Water Quality Standards; Third Party Rulemaking by Fayetteville

<u>DESCRIPTION</u>: The City of Fayetteville owns and operates the Paul R. Noland Wastewater Treatment Plant ("Noland WWTP"), which discharges treated municipal wastewater under the provisions of NPDES Permit No. AR0020010 issued by ADEQ. The Noland WWTP treats the municipal wastewater from the cities of Fayetteville, Elkins, Greenland, sometimes Farmington and Johnson, as well as industrial and commercial enterprises, and discharges the treated wastewater via Outfall 001 to the White River in Washington County.

Because Fayetteville's permit contains final discharge limits for chloride (Cl), sulfate (SO_4), and total dissolved solids (TDS) based upon Arkansas water quality standards for the White River, Fayetteville evaluated alternatives through a Use Attainability Analysis (UAA) and a UAA Addendum, which included field studies, toxicity testing, mass balance modeling, engineering analysis of alternatives for discharge and treatment, and an analysis of designated uses for the White River.

Based upon the UAA and the UAA Addendum, Fayetteville is requesting the following site-specific modification to APCEC Regulation No. 2:

> modify the Cl, SO_4, and TDS standards for the White River from the outfall of Fayetteville's Noland WWTP outfall to a point 0.4 miles downstream (WR-02), as follows: Cl from 20 mg/L to 44 mg/L, SO_4 from 20 mg/L to 79 mg/L, and TDS from 160 mg/L to 362 mg/L; and
>
> modify the Cl, SO_4, and TDS standards for the White River from WR-02 to ADEQ Monitoring Station WH10052 (WR-03), as follows: Cl from 20 mg/L to 30 mg/L, SO_4 from 20 mg/L to 40 mg/L, and TDS from 160 mg/L to 237 mg/L.

Fayetteville's proposed site-specific modifications are supported by the following:

- Fayetteville is not seeking a change from historical water quality conditions in the White River; rather Fayetteville seeks a site-specific modification, which allows the Noland WWTP to be compliant with its NPDES Permit while making certain that its effluent does not limit the attainment of any of the designated uses of the stream segments.

- UAA and UAA Addendum data established that:

- setting the Cl, SO_4, and TDS at the site-specific levels requested will not cause acute or chronic toxicity in this stream segment;

- setting the Cl, SO_4, and TDS at the site-specific levels requested will not impair existing or attainable designated uses, including aquatic life in this stream segment; and

- setting the Cl, SO_4, and TDS at the site-specific levels will not impair Beaver Lake.

- All sampling locations influenced by Noland WWTP's discharge showed the presence of ecoregion key and indicator species and species composition consistent with the attainment of a Ozark Highlands fishery designated use. The requested changes will have no adverse effect on the aquatic life communities;

- Toxicity testing on *Ceridaphnia dubia and Pimphales promelas* using Noland WWTP effluent and spiked samples of the effluent showed no significant lethal or sub-lethal toxicity in either test organism at concentrations exceeding the levels requested herein;

- There are no current economically feasible treatment technologies for the removal of the minerals. Reverse osmosis treatment technology does exist; however, this technology is not cost effective and generates a concentrated brine, which is environmentally difficult to dispose of. The technology is not required to meet the designated uses and even if implemented would produce no significantly increased environmental protection.

- The basis for site-specific standards is provided in 40 CFR 131.10(g). Fayetteville's request for the modifications set forth above is supported by 40 CFR 131.10(g)(6), which provides that the state may establish less stringent criteria if controls more stringent than those required by sections 301(b) and 306 of the Clean Water Act would result in substantial and widespread economic and social impact.

- 40 CFR 131.11(b)(1)(ii) provides states with the opportunity to adopt water quality standards that are "modified to reflect site-specific conditions."

PUBLIC COMMENT: This proposed rule change was initially filed with the Legislative Council on December 20, 2013, and a public hearing in Fayetteville was held on February 13, 2014. The third party proposing the rulemaking, the City of Fayetteville, subsequently revised the criteria changes that it had proposed, re-filed the revisions, and had a second public hearing and public comment period. That public hearing was held in Fayetteville, Arkansas, on March 27, 2017, and the public comment period expired on April 10, 2017. The following public comment summary was provided detailing the public comments received during the public comment periods and the responses by both the Department and the City of Fayetteville:

Oral comments (transcribed in part) received at public hearing held on February 13, 2014

Comment 1: Ray Smith stated:

Thank you Commissioner Henry for this opportunity, I am here on behalf of Trout Unlimited, a conservation organization and we take water quality very seriously. Particularly, for our cold-water trout populations here in Arkansas. My concern, I recognize that Fayetteville has been trying to adhere to the standard and they reached the point where they must increase some of the discharge, levels on the discharge. My concern is that if Fayetteville is permitted to a new standards and discharge more of the chlorine, sulfate, and total solids. It appears that Huntsville is doing likewise and what my concern is that if all the municipalities that are discharging into the White River increase their standards what is the effect overall. Now, I recognize that Fayetteville is just one municipality, but when we put them all together and see what that discharge is into the White River. I think we need more study on that and I see no reason why it would not delay anything to see what all the municipalities are going to have to do before we decide whether the standard Fayetteville wants should be approved or whether we have something in between.

One of the reasons I have such a concern, in Pennsylvania they have no standards on chlorine, the sulfates, and total solids. And as a result, with the fracking processes that are going on in the Marcellus area up there, the pollutants have just been poured into the streams up there. And, it has had quite an effect, not only on the fisheries, but also chlorine, has quite an impact on aquatic insects which is one of the food supplies of fish. So, that's the concern we have.
ADEQ Response: The Department acknowledges the commenter's concerns regarding third-party rulemakings on the White River and protection of aquatic life from elevated mineral concentrations. The United States Geological Survey (USGS) performed a modeling exercise that would demonstrate potential affects to Beaver Lake with elevated mineral concentrations (USGS 2013). Modeling data indicate that impacts to mineral concentrations, particularly chlorides, sulfates, and total dissolved solids, would be minimal near the Beaver Lake dam. Aquatic life, including the Salmonid population, present in the White River below Beaver Lake will be protected.
Fayetteville Response: Fayetteville is not requesting a chlorine water quality criterion; rather it is requesting a chloride water quality criterion. The UAA supporting the requested water quality criteria changes as well as the further evaluation and analysis of the data discussed in response to ADEQ's comment (*see below*) established that the requested changes in the minerals standards will fully support aquatic life in the affected segment of the White River.

Comment 2: Aubrey Shepard stated:

My interests in reading newspaper story about this project. It hadn't been announced on the city website or anything and we don't have government channel here, so I will be putting this on public access, which also a city operated thing. The question about the mention of food waste being a critical part of the

reason that we are not meeting standards, can someone comment on that? My understanding is that, just that one sentence in the paper made me wonder if it has to do with the fact we are allowing people to use those grinders in their sink. What do they call them? (Commissioner Ann Henry, "Garbage disposals.") Yes, I don't own one. I spoke, since I read that article I spoken several people who happen to be like-minded. Who believe that if people would simply go through the trouble of mulch, compost using food waste, put it out in the woods for the critters. Things like that. That the intensity of these salts getting to the lake or even to the stream would be much reduced and Fayetteville has an attempt to protect the stream from direct pouring of and it's helping, I think, in both watersheds from here. We are constantly having people wanting variances from that ordinance and removal of vegetation and red-dirting the land. Those are the things cities have to deal with to try and protect the watershed from anything. Even if it is simply silt or sediment, but anything that will impair water quality for living things and then for human beings who will be drinking it as well after the treatment process. So, I am hoping that there won't have to be a change in Fayetteville's status. I think it is important considering how many millions of people may be affected by Beaver Lake water. So, I think giving out recommendations to cities about more ways to prevent these problems from occurring would be very helpful and that there is not a rapid rush to change the standards. Let's try and meet the standards.
ADEQ Response: The Department acknowledges this comment.
Fayetteville Response: Comment acknowledged; however, alternative disposal of food waste is beyond the scope of this rulemaking.

Comment 3: Larry Lloyd stated:

Thank you, Commissioner Henry. I am Larry Lloyd, Chief Operating Officer for Beaver Water District. We are the second largest water utility in the state and provide drinking water to over 300,000 people in Northwest Arkansas with Beaver Lake being our source of supply, of course and it receives water from various White River tributaries. We do anticipate making some written comments later by the deadline. My purpose tonight is to express gratitude to the City of Fayetteville for this process. They have been very open and involved us, kept us informed all the way. I think it represents a very good example of different stakeholders working together throughout this process and we do appreciate their efforts in working with us, cooperating, keeping us well informed.
ADEQ Response: The Department acknowledges this comment.
Fayetteville Response: Comment acknowledged. Fayetteville will continue to work with Beaver Water District to protect the drinking water supply for the people of Northwest Arkansas.

Written comments received on or before February 27, 2014

Comment 4: Submitted by the Arkansas Department of Health (ADH):

ADH is opposed to the removal of the domestic water supply designated use from any stream within the watershed of Beaver Lake, a source of drinking water

for 4 regional public water systems which supply drinking water to much of Northwest Arkansas. These systems and their population served are listed below (Table excluded).

The Paul R. Noland Wastewater Treatment Plant is located and discharges treated effluent into an impaired stream segment of the White River. Beaver Water District, serving a total population of 261,468 Arkansans, uses raw water in an impaired segment of Upper Beaver Lake.

Waterbodies impaired by minerals or turbidity can significantly increase the cost of treatment required to meet Safe Drinking Water Act standards. They can also increase the risk of exposure to regulated pathogenic contaminants. For example, high sediment in a stream increases the cost of the water utility to meet the drinking water standard for turbidity, and sediment is an indicator of the increased presence of microbiological contaminates in the source water, including *E. coli*, *Giardia lamblia*, and *Cryptosporidium*.

ADH requests that any effluent from the WWTP should include concentration limits on TDS, chlorides, and sulfates that meet the Secondary Maximum Contaminant Levels. The national secondary MCLs for TDS, chlorides, and sulfates in drinking water are 500, 250, and 250 mg/L, respectively.
ADEQ Response: Proposed site-specific criteria for segment 023 for the White River are below Secondary Maximum Contaminant Levels of 250 mg/L sulfates, 250 mg/L chlorides, and 500 mg/L total dissolved solids. The City of Fayetteville is not proposing to remove the Domestic Water Supply designated use.
Fayetteville Response: The TDS, chloride, and sulfate water quality criteria requested by Fayetteville upon which the effluent permit limits will be based are 44 mg/L chloride, 79 mg/L sulfate, and 362 mg/L TDS. The city anticipates that permit limits will include concentration limits of chloride, sulfate, and TDS that will meet or be lower than the Secondary Drinking Water Maximum Contaminant Levels.

Comment 5: Robert Cross stated:

I am making these comments as a resident of Fayetteville and as a Research Professor Emeritus of the Ralph E. Martin Department of Chemical Engineering at the University of Arkansas. I have had experience in the design and operation of water treatment and waste treatment plants.

I understand the challenges faced by the Noland WWTP in the treatment of the ever changing wastes received as well as the difficulties faced by ADEQ in regulating discharges in line with environmentally sound guidelines and practical limitations of treatment technology. However, our rivers and streams are a precious resource and once impaired are very difficult to restore to acceptable standards.

That said, while I can understand that Fayetteville needs relief from the current site specific specifications, I also believe that new specifications should only be

set as high as necessary to accommodate the existing situation. The mass balance model used to calculate the proposed water quality criteria, however, utilizes a series of inputs that are combined together in a way that will never occur and result in considerably higher than necessary levels. This is evident by a review of the actual in-stream water quality monitoring data that shows minerals concentrations generally well below the level of the proposed water quality criteria. When these higher than necessary concentrations are combined with the new assessment methodology that allows the water quality criteria to be exceeded twenty-five percent of the time, I believe that the proposed numbers are much higher than are necessary and reasonable.

ADEQ Response: The Department encourages site-specific criteria that are protective of aquatic life and are derived from observed instream data. (See ADEQ Response to Comment 6.)

Fayetteville Response: The re-evaluation and analysis discussed in response to ADEQ's comment (*see below*) led to agreement to revise downward the requested TDS, chloride, and sulfate water quality standards. However, the inputs into the mass balance model were correct in that the standards originally requested have actually occurred in the manner demonstrated by the mass balance model.

Comment 6: Submitted by the Arkansas Department of Environmental Quality

The Department is commenting on the proposed minerals criteria for segment 023 of the White River, in particular the disparity between long-term measured instream minerals concentrations and the proposed concentrations.

The Department has determined the study indicated the aquatic life is not impacted by minerals, and the aquatic life designated use is currently being maintained. The City of Fayetteville proposes 60mg/L chlorides, 100 mg/L sulfates, 440 mg/L total dissolved solids for segment 023 of the White River. The criteria need to be re-evaluated to insure they reflect instream concentrations based on either the submitted data or the minerals concentrations measured over the past 23 years of monitoring data. This historical monitoring data includes measurements taken from monthly samples collected at the Hwy 45 Bridge located approximately 4 miles downstream from the City of Fayetteville discharge.

ADEQ Response: The Department acknowledges that the issue raised in this comment was addressed by Fayetteville's amended petition that incorporated the split-segment proposal. On January 27, 2017, the Commission granted Fayetteville's amended petition by Minute Order 17-04.

Fayetteville Response: Fayetteville re-evaluated the data and gathered additional data, which was further analyzed and submitted to ADEQ. Based on ADEQ's written comments and the related discussions with Department staff, the City revised the criteria changes that it proposes to present to the Commission for final approval. Specifically, the City agrees with the Department's recommendation to divide the affected segment into two reaches, one from the Noland WWTP outfall to a point 0.4 miles downstream (WR-02), and another from WR-02 to WR-03. The new criteria proposed for the two segments are as follows:

Revised Proposal	Chloride	Sulfate	Total Dissolved Solids
Noland to WR-02	44 mg/L	79 mg/L	362 mg/L
WR-02 to WR-03	30 mg/L	40 mg/L	237 mg/L

Oral Comment (transcribed in part) received at public hearing held on March 27, 2017

Comment 1: Submitted by Emory Brown, Vice President Project Management for Superior Industries

My name is Emory Brown, Vice President Project Management for Superior Industries. Superior Industries is a manufacturer of aluminum wheels for the automotive industry. I am here tonight representing our Fayetteville, AR manufacturing location. Superior's local plant environmental manager, David Miller, has been in contact about the minerals issues since the beginning. He continues to be updated and informed by City officials and third party officials about this matter.

Superior Industry consumes considerable amounts of water in the fabrication of aluminum wheels. Our Fayetteville location continues to minimize the amount of water consumed per wheel produced thereby minimizing the amount of minerals discharged in the local POTW through BMPs. These ISO 14001 BMPs contain documented goals and objectives requiring reporting and annual updating. The BMPs showed results of approximately 30% in total water reduction since 2017.

Superior Industries voices its support of the third party proposal by the City of Fayetteville's proposal to change Regulation 2 (Arkansas Water Quality Standards) before you. Our industry has been closely following these developments and the process the City of Fayetteville has taken with ADEQ and the Third Party rulemaking process. This proposed change to Regulation 2 remains well-grounded and supports the best interest of the State of Arkansas's citizens.
ADEQ Response: The Department acknowledges this comment.
Fayetteville Response: Comment acknowledged.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: This amendment to Regulation No. 2, Water Quality Standards, stems from a third party rulemaking request made to the Arkansas Pollution Control and Ecology Commission ("Commission") by the City of Fayetteville. Arkansas Code Annotated § 8-4-202(c)(1) bestows upon any person the right to petition the Commission for the issuance, amendment, or

repeal of any rule or regulation. *See also* Ark. Code Ann. § 8-4-102(5) (defining "person" as "any state agency, municipality, governmental subdivision of the state or the United States, public or private corporation, individual, partnership, association, or other entity"). Pursuant to Ark. Code Ann. § 8-4-202(a), the Commission is given and charged with the power and duty to adopt, modify, or repeal, after notice and public hearings, rules and regulations implementing or effectuating the powers and duties of the Commission and the Arkansas Department of Environmental Quality. It is further given and charged with the power and duty to promulgate rules and regulations, including water quality standards. *See* Ark. Code Ann. § 8-4-201(b)(1)(A). *See also* Ark. Code Ann. § 8-4-202(b)(3).

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

1. <u>DEPARTMENT OF ENVIRONMENTAL QUALITY, HAZARDOUS WASTE MANAGEMENT</u> (Basil Hicks)

a. <u>SUBJECT</u>: Regulation No. 9: Fee Regulation

<u>DESCRIPTION</u>: The proposed changes to Regulation 9 concerning fee regulation include:

1. **Amend the definitions.** The definition of "Q" or "Quantity" was added for clarification because it is used in formulas in Chapter 4 concerning the calculation of water permit fees.

2. **Amend Chapter 4 Formulas for Clarification.** Clarification to formulas in Chapter 4 were made concerning water permit fees to make the regulation easier to understand.

3. **Incorporate a proposed fee calculation for minor municipal and non-municipal facilities with National Pollutant Discharge Elimination System (NPDES) permits** under Reg.9.403 for limits of toxic pollutants based solely on Total Maximum Daily Load (TMDL) to allow ADEQ to assess lower water permit fees for qualifying facilities.

4. **Update the fee schedule in Chapter 4** to reflect permits currently offered by the Office of Water Quality and eliminate four (4) General Permits under Reg.9.404 no longer issued by the Officer of Water Quality.

5. **Incorporate updates to Arkansas Law.** Acts 94 and 575 of 2015 require revisions to Chapter 4 concerning contribution fees to the Nonmunicipal Domestic Sewage Treatment Works Trust Fund.

6. **Stylistic and Formatting Corrections.** Minor, non-substantive stylistic and formatting corrections were made throughout the regulation.

PUBLIC COMMENT: A public hearing was held on October 21, 2016. The public comment period expired on November 4, 2016. The following public comments were received:

Commissioner Wesley Stites of Arkansas Pollution Control and Ecology Commission

Comment: Reg.9.301(D) concerns failure to pay. One part reads "[c]ontinued refusal to pay the required fees after a reasonable notice shall constitute grounds for legal action by the Department…" Is there a particular reason for the use of the word 'refusal'? I, of course, am not a lawyer, but in my mind the use of that word evokes the question of intent or willfulness in the act. Might it not be better to use the word that is in the title line, 'failure,' in place of 'refusal'? Failure is devoid of intent. You either pay or don't and whether you are refusing to pay, or forgot to pay, or couldn't pay, or thought somebody else paid is immaterial.
Response: The use of "refusal" in Reg.9.301(D) is based on Ark. Code Ann. § 8-1-103(3) which states in part that the Department shall deny a permit, "if and when any facility subject to control by the department fails or refuses to pay the fees after reasonable notice..." In order to be consistent with Ark. Code Ann. § 8-1-103(3), the word "failure" has been added to that sentence in Reg.9.301(D) to read: "Continued failure or refusal to pay the required fees after a reasonable notice…"

Proposed revision of Reg.9.301(D) based on Comment:

(D) Failure to Pay Annual Fees

A permitted facility failing or refusing to pay the annual fee in a timely manner shall be subject to a late payment charge as established in these regulations. Continued failure or refusal to pay the required fees after a reasonable notice shall constitute grounds for legal action by the Department~~, which~~ that may result in revocation of the permit. When payment of fees is made by check ~~which~~ that is subsequently returned due to insufficient funds, all review work on the particular application ~~will~~ shall immediately cease until the fee is paid in cash or by money order.

Comment: Reg. [sic] 9.403 & Chapter 2 – The definition of Q is moved to Chapter 2. That makes sense. However, the new definition in Chapter 2 says "'Q' or 'Quantity' means the flow expressed in million gallons per day (mgd)." In the old reg, Q is the DESIGN flow. This is no longer specified in the proposed changes. If I am applying for a permit and my average daily flow is 80% of design, using my average daily flow to calculate my fee might save me money. I suggest that 'design' or, if that is what you intend, 'average daily' be inserted ahead of 'flow' in the new definition of Q in Chapter 2.
Response: The Department acknowledges the comment. For more clarification the word "permitted" has been added to the definition of "Q" or "Quantity." The term "Q" or "Quantity" is used in formulas for all permit categories, including those permits that do not use "design flow" for the permitted flow.

Proposed definition of "Q" or "Quantity" based on Comment:

"Q" or "Quantity" means the permitted flow expressed in million gallons per day (mgd), as used in formulas for calculating Water Permit Fees under Chapter 4.

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

(1) Reg.9.403(B)(1) – I just wanted to make sure that I understood this amendment correctly. It is not a change to the fee charged, but merely a rewriting/simplification of the formula? **RESPONSE:** Yes, that is correct.

(2) Reg.9.403(C)(1)(a) – Can you please provide me with the precise statutory authority on which the Department/Commission relies to reduce the maximum fee?
RESPONSE: Ark. Code Ann. § 8-1-103 provides the specific legal authority for ADEQ and APC&EC to determine permit fees. This change is warranted because facilities classified as minor domestic facilities will not have a value for the term "Q" in the formula greater than one million gallons per day (1 mgd). However, based on your comment and the agency's further review, it has been determined that the word "Domestic" should be added to the title of Reg.9.403(C) and read as "Minor Municipal and Minor Non-Municipal Domestic Facilities" with a maximum fee of $5,800. Additionally, for more clarification, a new Reg.9.403(D) has been added for "Minor Non-Municipal Facility" with a maximum fee of $10,000. The remaining subsections of Reg.9.403 will be reindexed to account for the changes from adding the new subsection.

Proposed revision of Reg.9.403(C) based on Comment:

(C) Minor Municipal and Minor Non-Municipal Domestic Facilities

Proposed addition of Reg.9.403(D) based on Comment:

(D) Non-Municipal Minor Facilities

Non-Municipal Minor Facilities with MRAT less than 80 are subject to fees as follows:

(a) Initial and annual fees shall be calculated as follows:

Fee = $200 + 5600 X Q
with Maximum Fee = $10,000

(b) Modification Fee

(i) Major …… $2,000

(ii)Minor ……$1,000

(3) Reg.9.403(C)(3) – Can you please provide me with the precise statutory authority on which the Department/Commission relies in implementing this fee?
RESPONSE: Ark. Code Ann. § 8-1-103 provides the specific legal authority for ADEQ and APC&EC to determine permit fees.

(4) Reg.9.407 – The amendment seems to merely set forth that the fee is authorized by statute; it does not state if the fee is required, will be collected, and/or how it will be calculated, despite Ark. Code Ann. § 8-4-203(b)(4) appearing to set forth some parameters. Is there a reason that this fee has not been expounded upon further as the other fees contained in the Regulation have been?
RESPONSE: Ark. Code Ann. § 8-4-203(b) requires that a Non-municipal Domestic Sewage Treatment Works pays the trust fund contribution fee and sets some parameters for those fees. The proposed revision below references Ark. Code Ann. § 8-4-203(b), and states that the assessment of trust fund contribution fees are limited by it. Ark. Code Ann. § 8-4-203(b) was amended in the 2017 legislative session following the close of public comments on APC&EC Regulation No. 9. For that reason, further changes are not within the scope of this rulemaking or the public notice for this rulemaking.

Proposed revision of Reg.9.407 based on Comment:

9.407. Nonmunicipal Domestic Sewage Treatment Works Trust Fund Contribution Fee.

(A) A Nonmunicipal Domestic Sewage Treatment Work is required to pay a trust fund contribution fee for the Nonmunicipal Domestic Sewage Treatment Works Trust Fund.

(B) The trust fund contribution fee shall be assessed in accordance with Ark. Code Ann. § 8-4-203(b).

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The Arkansas Department of Environmental Quality ("Department") and the Arkansas Pollution Control and Ecology Commission ("Commission") have the power and duty to "establish, by regulation, reasonable fees for initial issuance, annual review, and modification of water, air, or solid waste permits," following "a public hearing and based upon a record calculating the reasonable administrative costs of evaluating and taking action on permit applications and of implementing and enforcing the terms and conditions of permits and variances." Ark. Code Ann. § 8-1-103(1)(A). These fees shall consist of initial fees, annual review fees, and modification fees, as defined in Ark. Code Ann. § 8-1-102. *See id*. The Department is authorized to promulgate such rules and regulations necessary to administer the fees, rates, tolls, or charges for services established by section 8-

1-103 and is directed to prescribe and collect such fees, rates, tolls, or charges for the services delivered by the Department in such manner as may be necessary to support the programs of the Department as directed by the Governor and the General Assembly. *See* Ark. Code Ann. § 8-1-103(5). **The proposed rule changes further include revisions made in light of Acts 94 and 575 of 2015, both of which amended Ark. Code Ann. § 8-4-203(b) that concerns a Nonmunicipal Domestic Sewage Treatment Works Trust Fund contribution fee.**

2. DEPARTMENT OF ENVIRONMENTAL QUALITY, ARKANSAS ENERGY OFFICE (Mitchell Simpson and Kay Joiner)

a. SUBJECT: Arkansas Weatherization Assistance Program State Plan, July 1, 2017-June 30, 2018

DESCRIPTION: These are rules for administering the Weatherization Assistance Program Grant Application, Arkansas Economic Development Commission, Energy Office. A summary of the changes follows:

Realignment – New service provider(s) will be procured for 10 counties in central Arkansas.

Certified Quality Control Inspections by AEO – Third-party certified Quality Control Inspector will be procured for the new program year.

Monitoring – New monitoring requirements will be implemented.

Training Plan – A new training plan has been developed since the Weatherization Training Center was closed June 30, 2016 by Pulaski Tech.

PUBLIC COMMENT: A public hearing was held on June 26, 2017. The public comment period expired on June 23, 2017. The department provided the following summary of the public comments received:

Beverly Palmer, CADC
COMMENT: On page 11, allocation of DOE funds to subgrantees, budget amounts and unit production are not the same for each agency. Why?

RESPONSE: Allocation of funds to each subgrantee is based on a funding formula used by AEO. In 2013, WAP contracted with UALR Institute for Economic Advancement (IEA) to develop an allocation formula based on methodology similar to that used by DOE to allocate funding to the states. The formula factors the following data by county: (1) population below poverty level, (2) annual average heating and cooling degree days, and (3) percentage of houses built prior to 1990.

Unit production is based on each subgrantee's actual average cost per unit (ACPU) for the first three (3) quarters of PY 2016.

COMMENT: Shouldn't the DOE average cost per unit be used to figure the number of units per subgrantee?

RESPONSE: DOE looks at the Arkansas average cost per unit (ACPU) for the previous year when approving the weatherization plan in the WAP application. DOE only has an average maximum cost per unit as a guideline which is an amount not to be exceeded; this maximum cannot be used to calculate the ACPU in Arkansas.

COMMENT: Why would production units for two (2) subgrantees be over the average DOE amount per unit?

RESPONSE: In the state plan, the average cost per unit (ACPU) used for each subgrantee is the actual ACPU for the first three (3) quarters of DOE PY2016. The ACPU cannot be determined from the budgeted amounts on page 11, which include all funds granted, whereas ACPU is based on amounts spent for Program Operations.

COMMENT: Executive Summary, page 3, references 220 houses based on DOE funding. However, Budget information, page 11, total units is 243.

RESPONSE: The number quoted on page 3, Executive Summary is an error. The correct number is 243. CORRECTION MADE.

COMMENT: Why are some agencies required to produce more with less dollars?

RESPONSE: Each subgrantee received an allocation based on the Arkansas funding formula (Administration and Training & Technical Assistance amounts are allocated separately); see response to Question #1 for an explanation of the funding formula. After Financial Audit and Liability Insurance amounts provided by subgrantees were subtracted, the remainder was divided between Program Operations and Health & Safety (H&S) based on actual percentage of H&S funds utilized by each subgrantee during the first three (3) quarters of PY 2016. The Program Operations amount was divided by the average cost per unit (ACPU) calculated from actual experience of each subgrantee's spending in the first three (3) quarters of PY2016 to determine the number of units projected for each subgrantee.

Amy Bryant, PBJCEOC
COMMENT: Page 29, Weatherization Conference dates are wrong.

RESPONSE: Weatherization Conference dates should be Oct. 31 – Nov 2, 2017 instead of Nov. 1 – 3, 2017. CORRECTION MADE.

Joe Mansfield, CRDC

COMMENT: Requests that a specific number of deferred units equal a completed unit, the idea being that the time spent on assessing each unit ending in a deferral takes time that could have been spent on weatherizing houses.

RESPONSE: AEO will look at the impact of number of deferrals on production on a case by case basis. AEO requests that each subgrantee experiencing deferrals in high enough numbers to believe that time spent on deferrals is impacting production contact the Weatherization Program Manager to discuss the situation.

COMMENT: Liability insurance - crew based agencies are at a disadvantage with the amount of insurance.

RESPONSE: The assumption is that liability insurance costs more for subgrantees which employ crews to do weatherization work as opposed to use contractors for weatherization work. AEO acknowledges this higher cost and allows each agency to project the cost of liability insurance to be included in that budget category in the DOE grant agreement. Therefore, crew-based subgrantees are able to include the full cost of liability insurance in a separate budget category which eliminates the disadvantage.

Johnie Dean, BRAD
COMMENT: BRAD's DOE 16 budget was $186,000.00. AEO stated the budgets for the DOE 17 year would be the same as previous year's budget (DOE 16). Looking at the budgets, DOE 17 has been cut by $34,181.00 from the previous year's budget, but requiring BRAD to produce the same amount of units, 29 units for DOE 17?

RESPONSE: AEO stated that the PY2017 state plan is based on the PY2016 allocation of $1,868,107 as directed by DOE.

COMMENT:
a) Regarding funding levels: $1,868,107 (PY 2016 allocation from DOE) was used to create the PY2017 budget. A difference between the PY2016 budget and the PY 2017 budget is that the PY2016 budget included estimated carryover funds of $220,000 while the PY2017 budget includes no carryover funds due to the fact that PY2016 is the last year of a 4-year funding cycle from which no carryover funds are available going into PY 2017. Therefore, there are differences in budget amounts between PY 2016 and PY 2017 although the base allocation from DOE is the same. AEO used the funding formula (see response to Question #1 for an explanation of the funding formula) to allocate $1,868,107 to subgrantees in the PY 2017 budget; BRAD's budgeted amount was calculated in this way as were amounts for all subgrantees.

b) Regarding number of units: AEO uses a funding formula to allocate amounts to each subgrantee (see response to Question #1 for an explanation of the funding formula). The net amount of Program Operations allocated to each subgrantee is divided by the subgrantee's actual average cost per unit (ACPU) for the first three (3) quarters of PY2016 to determine the number of units that

are projected to be completed by each. By basing the number of units projected to be completed on actual experience of each subgrantee's ACPU, AEO believes that a more accurate projection is achieved.
T&TA [training & technical assistance] funds for Tier 1 and Tier 2 training are limited for program year DOE 17. How to pay for training if needed?

RESPONSE: AEO has requested that each subgrantee submit a training plan that identifies training needed by Weatherization staff and the costs associated with obtaining that training. AEO will ensure that sufficient T&TA funds are allocated to each subgrantee to cover all approved training costs. If additional funds are needed above the amounts included in each subgrantee's PY 2017 allocation, AEO will provide amounts needed from T&TA funds retained for use by AEO.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: This rule was originally filed as an emergency rule to administer the Weatherization Assistance Program and allocate funds to agencies eligible to receive the funds to weatherize homes of low-income persons in the state and to explain program guidelines. The rules are being updated to comply with Public Law 94-385.

Arkansas Code Annotated § 15-10-205(a)(9) states that the Arkansas Energy Office (AEO) is authorized to carry out energy-related administrative and program functions established and required by federal law, regulations, or guidelines when applicable in Arkansas. The AEO is authorized to promulgate reasonable rules for the purpose of complying with the Arkansas Administrative Procedure Act. Ark. Code Ann. § 15-10-205(b)(3)(C).

3. DEPARTMENT OF CAREER EDUCATION, ADULT EDUCATION
(Dr. Charisse Childers and Trenia Miles)

a. SUBJECT: Adult Education State Funding Formula

DESCRIPTION: The previous state funding formula was designed to assist the state in meeting the requirements of the Workforce Investment Act. This proposal will put into place revisions to the current rule that will better align to the Workforce Innovation and Opportunity Act of 2014, which replaced the Workforce Investment Act. This change will fully implement the funding formula for Adult Education State Funds.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on June 5, 2017. One public comment was received:

Debbie, Shelton, Director, Lonoke and Prairie Counties Adult Education
Three suggestions: 1. Change AERIS to state data base system. 2. Delete CRC because we don't have enough information on how many of these certificates are issued throughout the state and its job placement effectiveness. I'm also concerned some programs with direct access to CRC testing will think this is an easy way to gain points and thus water down the funding formula. Our students would have to drive to Pulaski Tech or ASU Searcy to test. 3. Typo on high(s) school equivalency.
RESPONSE: The Department of Career Education, Adult Education Division received your email concerning the proposed funding formula rule on June 1, 2017. It was received within the time frame for written comments on the proposed rule. Your email has been read and will be considered as we move forward on the decisions related to the rule. Specifically, there is a plan to implement the change to remove the data system name, correcting the typographical error, and somehow indicating that the types of certificates listed, such as the CRC you mentioned, are options that may be considered for funding. Those that will be funded have not yet been determined. Thank you for your comments and your support of Adult Education and the students we serve.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: There is no financial impact. The rule will distribute state funds to Adult Education Programs. Adult Education centers provide basic academic education and workforce preparation to citizens in all 75 counties.

LEGAL AUTHORIZATION: Special language contained in Act of April 7, 2017, No. 1091, § 27, provides: "All funds that become available for Adult Education shall be distributed to those administrative units determined to be operating efficient and effective adult education programs, under criteria established by the Career Education and Workforce Development Board. The criteria shall include the relative efficiency of administration of the program in the counties served and achievement of federal performance indicators. The Career Education and Workforce Development Board shall promulgate rules and regulations for the distribution of funds in accordance with criteria to be determined by the Board. In the distribution of funds to local units the Board shall consider performance in meeting state and federal performance indicators." Arkansas Code Annotated § 25-30-102(c)(2)(B) further provides that the Career Education and Workforce Development Board shall adopt rules to administer the Board and the programs developed by the Board.

4. ARKANSAS ECONOMIC DEVELOPMENT COMMISSION
(Kurt Naumann, Becky Reinhardt, and Danny Games)

a. SUBJECT: Military Affairs Grant Program

DESCRIPTION: This defines the process by which the Arkansas Economic Development Commission may make discretionary grants to applicants meeting

the eligibility requirements for programs and projects that strengthen and sustain military installations in Arkansas.

The rule establishes a process by which a significant amount of discretionary grant funding ($750,000) may be awarded. Because this is a new and competitive program, in the interests of transparency, AEDC and Governor Hutchinson are requesting promulgation of rules.

PUBLIC COMMENT: A public hearing was held on June 12, 2017. The public comment period expired on June 12, 2017. The commission received no comments.

The proposed effective date is September 1, 2017.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: Arkansas Code Annotated § 15-4-209(b)(5) authorizes the commission to promulgate rules necessary to implement the programs and services offered by the commission.

5. ARKANSAS ECONOMIC DEVELOPMENT COMMISSION, MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE DIVISION
(Kurt Naumann and Pat Brown)

a. SUBJECT: Minority Business Enterprise and Women-Owned Business Enterprise Certification Program

DESCRIPTION: This rule implements changes to the Minority Business Enterprise and Women-Owned Business Enterprise Certification Program as a result of Act 1080 of 2017. Changes are as follows:

1. Expands/amends the program to include women-owned business enterprises.

2. Modifies procurement spending targets as follows:

- 10% for minority business enterprises with 2% allocated for service-disabled veteran-owned minority business enterprises and 8% for other minority business enterprises.
- 5% for women-owned business enterprises.

3. Adds certification programs from other agencies that would be acceptable as reciprocal under the AEDC program.

4. Makes technical corrections.

5. Expands the renamed Minority and Women-Owned Business Advisory Council by two members to be appointed by the AEDC Executive Director and limits Council terms to five years.

6. Clarifies and expands the list of required application documents that must be submitted to receive consideration for certification.

PUBLIC COMMENT: A public hearing was held on July 5, 2017. The public comment period expired on July 5, 2017. The commission received no comments.

The proposed effective date is September 1, 2017.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: This rule is promulgated to incorporate the changes made by Act 1080 of 2017 to the Minority Business Economic Development Act. Arkansas Code Annotated § 15-4-314 (a) directs the Arkansas Economic Development Commission to promulgate rules to create a certification process for minority business enterprises and women-owned business enterprises.

6. ARKANSAS ECONOMIC DEVELOPMENT COMMISSION, SCIENCE AND TECHNOLOGY DIVISION (Kurt Naumann)

a. SUBJECT: Arkansas Business and Technology Accelerator Grant Program

DESCRIPTION: This proposed new rule implements grant submittal, review, and approval requirements pertaining to discretionary grants awarded under the Arkansas Business and Technology Accelerator Grant Program (ArBTAGP), created by Act 165 of 2017. Specific components of the rule include:

1. Eligible applicants shall submit completed applications, on forms prescribed by AEDC, to request grant funding from the ArBTAGP.

2. The Director of the Division of Science and Technology of the AEDC (Director), with advice from the Board of Directors of the Division of Science and Technology of AEDC (Board), shall review and recommend applications for grant funding to the Executive Director of AEDC (Executive Director).

3. Applicants receiving approval from the Executive Director shall execute grant agreements specifying grant terms and conditions.

4. Grant funding shall be made available to grantees on a reimbursement basis, subsequent to submittal of requests for payment as instructed in the grant agreement by the Division.

5. Grantees shall submit final reports, upon full expenditure of ArBTAGP grant funds, in accordance with terms specified in the grant agreement.

PUBLIC COMMENT: A public hearing was held on July 12, 2017. The public comment period expired on July 12, 2017. The department provided the following public comment summary:

The public hearing was attended by AEDC staff, Michael Harry from the Bureau of Legislative Research, Martial Trigeaud, Business Consultant from the Arkansas Small Business and Technology Development Center (ASBTDC), and Rebecca Norman, Innovation Consultant from the ASBTDC.

Because there were only two external attendees (Mr. Trigeaud and Ms. Norman from the ASBTDC), the floor was opened to them for any questions and comments directed to Mr. Naumann or Mr. Tom Chilton, Director of the Division of Science and Technology of the AEDC.

Q1 - Ms. Norman: Can you give us an overview of the program? A1 - Mr. Chilton: (provided a summary of the rule from the rules).
Q2 - Ms. Norman: Can you explain the application process? A2 – Mr. Chilton: The process is very similar to the SBIR Matching Grant program that was described in the preceding public hearing. Grants will be limited to $250,000 for each successful accelerator program, subject to availability.
Q3 – Mr. Trigeaud: Asked Tom to follow-up on his observation that the program would help plug seed and venture capital gaps in Arkansas. A3 – Mr. Chilton: Yes, agreed. Mr. Naumann: Governor Hutchinson support helped get the program off the ground. Mr. Chilton: Somewhat of a "ten-year overnight success." Many years of working toward this goal.
Q4 – Ms. Norman: Are these accelerators geared towards universities? A4 – Mr. Chilton: No, these are focused on corporate-sponsored accelerators like FinTech. Mr. Chilton asked if they were familiar with FinTech and both responded affirmatively.
Q5 - Mr. Trigeaud: Do you see the program as helping to retain businesses and entrepreneurs in Arkansas? A5 – Mr. Chilton: Yes, the program will help keep talent and capital here.
Q6 – Mr. Trigeaud: It has always been a challenge competing with places like San Francisco for European investment. Both the Accelerator and the SBIR Match program will be beneficial. A6 – Mr. Chilton: Yes, it will be especially helpful to stimulating investment on the local level. When you look at entrepreneurial ecosystems, every entity (AEDC, ASBTDC, local centers) have a role to play, especially in enhancing the ability of companies to be involved in incubation. Programs like this help to flow funds to
the state's technology development strategy-somewhat of a "ten-year overnight success." Accelerators will also help to push companies to achieve potential, even if it means enhanced chances of failure.
Q7 – Ms. Norman: Is the program cognizant of certain geographic distributions? A7 - Mr. Chilton: Yes, will be looking, but the program does not have specific geographic distribution requirements. The paramount focus of the program will be on small, innovative, technologically-sufficient companies. Other programs

may focus on all small entrepreneurs such as cleaners, plumbers, eating establishments, etc. All of these are important, however, technology will be the primary focus.
Q8 - Mr. Trigeaud: Socially conscious companies are especially important, too. (He referenced Tacos for Life.) A7 - Mr. Chilton: Yes, a good entrepreneurial climate/culture will help all like a rising tide lifts all ships.
Q9 - Ms. Norman: Is this somewhat of an experimental program? A9 – Mr. Chilton: Not particularly since funding has been secured. However, the program will be critically evaluated and data will be reported to the Governor in the hopes of securing continued funding based upon favorable results.

Mr. Chilton asked if there were any more questions and if all questions had been answered satisfactorily. Mr. Trigeaud and Ms. Norman responded affirmatively. The public hearing was then closed.

The proposed effective date is October 1, 2017.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: Act 165 of 2017 directs the Division of Science and Technology of the Arkansas Economic Development Commission to promulgate rules to carry out the purposes of the Arkansas Business Accelerator Grant Program.

b. SUBJECT: Arkansas Small Business Innovation Research Matching Grant Program

DESCRIPTION: This defines the process by which the Arkansas Economic Development Commission may make discretionary matching grants to applicants meeting the eligibility requirements for Phase I and Phase II SBIR grants as defined in Act 166 of 2017 which creates the Arkansas Small Business Innovation Matching Grant Program.

PUBLIC COMMENT: A public hearing was held on July 12, 2017. The public comment expired on July 12, 2017. The department submitted the following public comment summary:

The public hearing was attended by AEDC staff, Michael Harry from the Bureau of Legislative Research, Martial Trigeaud, Business Consultant from the Arkansas Small Business and Technology Development Center (ASBTDC), and Rebecca Norman, Innovation Consultant from the ASBTDC.

Kurt Naumann from the Arkansas Economic Development Commission (AEDC) provided an overview of the rule and rule process governing the Arkansas Small Business Innovation Research Matching Grant Program. Because there were only two external attendees (Mr. Trigeaud and Ms. Norman from the ASBTDC), the floor was open to them for any questions and comments directed to Mr. Naumann or Mr. Tom Chilton, Director of the Division of Science and Technology of the AEDC.

Q1 - Ms. Norman: Who makes the ultimate funding decisions regarding SBIR Matching Grant applications? A1 - Mr. Chilton: The AEDC Executive Director, Mike Preston.
Q2 - Ms. Norman: How will funding be provided? A2 – Mr. Chilton: Funding will be make on a reimbursement basis, based on eligible SBIR costs, subject to terms and conditions in a grant agreement that will govern each project. Mr. Chilton and Mr. Naumann provided an overview of the application process, including submittal of applications to the AEDC Incentives Manager, Hunter Hauk.
Q3 – Ms. Norman: Is funding still $50K for Phase I and $100K for Phase II SBIR awards? A3 – Mr. Chilton: Yes.
Q4 – Ms. Norman: Can you provide an update on the status of pending applications/ A4 – Mr. Chilton: Because this is a new project that will not become effective until October 1, 2017, applications have not yet been received, therefore none are pending. Mr. Naumann: Because there is an open window for applications, AEDC will begin reviewing applications, as received beginning on October 1, 2017, and will make awards until appropriated funds are exhausted. Applications will be submitted to the Board of
Directors of the Division of Science and Technology of AEDC. The Director of the Division of Science and Technology of AEDC will then make funding recommendations to the AEDC Executive Director based on Board advice.
Q5 - Ms. Norman: Is the purpose of the program to extend the SBIR phases or to bridge funding gaps.
A5 – Mr. Chilton: The program is to help plug federal funding gaps and to supplement federal funds. It will also serve as a bridge.
Q6 – Ms. Norman: Is there a limit to the number of grant awards which may be received. A6 – Mr. Naumann: Yes, only three (3) grants may be received per applicant for the life of the program. We hope to revisit this number once we have more data on program demand.
Q7 – Ms. Norman: Will approval be through the Incentive Manager? A7 - Mr. Chilton: Yes, application forms will be made available through the AEDC Incentives Manager. As of now there are no plans to make the forms available on-line. The intent is to work with applicants on developing complete applications rather than relying on blind submittals.
Q8 – Ms. Norman: What is the frequency of board meetings? A8 – Mr. Chilton: The Board meets monthly except for December, however, board meetings can be called more frequently if needed.
Q9 – Ms. Norman: What program information will be available? A9 – Mr. Chilton: The Board meetings aid transparency. The intent is to release whatever information is subject to public release and disclosure. As much statistical information on the program, as is available, will be released in the interest of transparency.
Q10 – Mr. Trigeaud: Do you have a guess regarding what the program impact will be? A10 – Mr. Chilton: The broad impact is that we hope to double the amount of SBIR awards in Arkansas and to stimulate SBIR investment throughout the state.
Q11- Ms. Norman: How do you plan to publicize the program before October 1st? A10 – Mr. Chilton: In addition to existing dialogue, we hope to formally

publicize the program at the Ecosystem Summit in August (date TBD). This will kick off the formal marketing of the program to the public.
Q12 – Ms. Norman: Can you talk about the application-concerns about complexity? Q12 – Mr. Chilton: The application is simple, without much duplication from the federal SBIR paperwork.

Mr. Chilton asked if there were any more questions and if all questions had been answered satisfactorily. Mr. Trigeaud and Ms. Norman responded affirmatively. The public hearing was then closed.

The proposed effective date is October 1, 2017.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: Act 166 of 2017 directs the Division of Science and Technology of the Arkansas Economic Development Commission to promulgate rules to carry out the purposes of the Arkansas Small Business Innovation Research Matching Grant Program.

c. SUBJECT: Nonprofit Incentive Act of 2005 (Repeal)

DESCRIPTION: This is the repeal of the Nonprofit Incentive Act of 2005 Rule. The current rule was finalized August 11, 2009. Act 208 of 2017 repealed the Nonprofit Incentive Act of 2005.

PUBLIC COMMENT: The public hearing was held on July 12, 2017. The public comment period expired on July 12, 2017. The department received no comments.

The proposed effective date is September 17, 2017.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: This rule is promulgated to repeal the Nonprofit Incentive Act of 2005 as enacted by Act 208 of 2017. Arkansas Code Annotated § 15-4-209(b)(5) authorizes the commission to promulgate rules necessary to implement the programs and services offered by the commission.

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

a. SUBJECT: Rules and Regulations for Control of Sources of Ionizing Radiation

DESCRIPTION: The Radiation Control Section is initiating the process for the revision of the Arkansas State Board of Health Rules and Regulations for Control of Sources of Ionizing Radiation. The Section regulates the possession and use of x-ray machines, accelerators, and radioactive material in the State of

Arkansas. Revisions to radioactive material regulations are driven by our agreement with the U.S. Nuclear Regulatory Commission (NRC). The State of Arkansas, as an Agreement State, is expected to have regulations that are compatible with NRC regulations. In order to maintain this compatibility, the following NRC regulation amendments are being addressed, as listed below.

- **Domestic Licensing of Special Nuclear Material –Written Reports and Clarifying Amendments:**

The objective of this rule is to amend current regulations related to reportable safety events involving special nuclear material. This rule increases the time NRC licensees are allowed to submit a written follow-up report from 30 days to within 60 days after the initial report of an event, updates the reporting framework for certain situations, and removes redundant reporting requirements. *(Section 2)*

- **Transportation Requirements and Harmonization with International Atomic Energy Agency Transportation Requirements:**

The purpose of this rule regards conforming changes to the NRC's regulations based on the IAEA's 2009 standards for the international transportation of radioactive material and maintaining consistency with the U.S. DOT regulations. In addition, this amendment re-establishes restrictions on materials that qualify for the fissile material exemption, clarifies requirements, updates administrative procedures, and makes editorial changes. *(Section 4)*

- **Miscellaneous Corrections, 10 CFR Parts 37 and 40:**

The objective of this rule is make miscellaneous corrections involving correcting references, typographical errors, and misspellings. *(Sections 2 and 12)*

- **Miscellaneous Corrections, 10 CFR Parts 19, 20, 30, 32, 37, 40, 61, 70, 71, and 150:**

The objective of this rule is to make miscellaneous corrections including renaming the Office of Information Services; capitalizing the word Tribe, Tribes, and Tribal; correcting a Web site address; and removing a Federal Register notice requirement. *(Sections 2, 3, 4, and 12)*

Also, the following sections not in conjunction with a particular NRC regulation amendment have been added, revised, or deleted in keeping with NRC compatibility. Some general clean-up is being performed as well.

RH-107.	Deliberate Misconduct
RH-200.	Definition of "decommission" and "sealed source"
RH-301.a.4.	Radioactive Material Other Than Source Material; exempt concentrations
RH-401.a.	General Licenses – Source Material; small quantities of source material

RH-405.c.	General Licenses – Source Material; certain industrial products or devices
RH-402.c.9.A. and 13.A.; 15; and e.	General Licenses – Radioactive Material Other Than Source Material; certain detecting, measuring, gauging, or controlling devices…;
RH-402.f.	Luminous safety devices in aircraft
RH-402.g.	Calibration and reference sources
RH-402.h.	Ownership of radioactive material
RH-402.i.	Ice detection devices
RH-402.j.	Products containing radium-226
RH-402.m.	Ownership of special nuclear material
RH-404.a.	General Requirements for the Issuance of Specific
RH-405.e.4.A. and B.	Licensing of the manufacture or initial transfer of devices to persons generally licensed under RH-402.a.
RH-405.g.	Licensing of the introduction of radioactive material into products in exempt concentrations
RH-409.c.	Specific Terms and Conditions of Licenses
RH-410.e.1. and j.1.	Expiration and Termination of Licenses and Decommissioning of
RH-501.a. and d.	Conditions of Transfer
RH-600.d. and e.	Records
RH-601.	Reporting Requirements
RH-1212.	Leak Tests
RH-1303.b.4. and 5.	Posting requirements
RH-1310.a.	Exemptions to Labeling Requirements
RH-1500.a.	Records; general provisions
RH-1500.d.	Determination of prior occupational dose; Footnote 6 to
RH-1500.f.1.	Records of individual monitoring results; recordkeeping
RH-1500.f.5.	Records of individual monitoring results (records of dose to embryo/fetus)
RH-1500.j.	Records of tests for leakage and/or contamination of
RH-1500.n.1.A.	Record retention periods
RH-1501.	Reports of Theft or Loss of Sources of Radiation
RH-1502.	Notification of Incidents
RH-1504.	Reports of Exposures, Radiation Levels, and Concentrations of
RH-1505.b.	Reports to individuals of exceeding dose limits
RH-1508.	Reports of Leaking Sealed Sources
RH-1513.f. and g.	Reports of Transactions Involving Nationally Tracked
RH-1800.c.	Definition of “radiographer instructor”

RH-1801.f.3.A. and k.	Equipment Control; leak testing and replacement of sealed sources;

RH-1802.b.2.A. and 3.A.	Personnel Radiation Safety Requirements for Radiographers and
RH-1802.g.	Personnel Radiation Safety Requirements for Radiographers and
RH-1803.f.	Precautionary Procedures in Radiographic Operations; specific requirements for radiographic personnel performing industrial radiography
RH-1935.a.	Leak testing of sealed sources; testing and recordkeeping requirements
RH-2804.f.	Notifications and Reports to Individuals
RH-3100.	Definition of "Certificate of Compliance (CoC)"
RH-3305.a. and b.	General License: Fissile Material
RH-3306.a. and b.	General License: Plutonium-Beryllium Special Form
RH-3602.	Quality Assurance Program
RH-3603.	Handling, Storage, and Shipping Control
RH-3604.	Inspection, Test, and Operating Status
RH-3605.	Nonconforming Materials, Parts, or Components
RH-3606.	Corrective Action
RH-3608.	Audits
RH-7021.a.	Performance Criteria for Sealed Sources; requirements
RH-7033.a. and b.	Irradiator Pools
RH-7039. preamble	Design Requirements
RH-7041. preamble	Construction Monitoring and Acceptance Testing
RH-7059.c.	Detection of Leaking Sources
RH-7083.b.	Reports
RH-11005.	Definition of "security zone"
RH-11043.d.7.	General Security Program Requirements; protection of
RH-11041.a.3.	Security Program; applicability
RH-11075.a.	Preplanning and Coordination of Shipment of Category 1 or

PUBLIC COMMENT: A public hearing was held on March 8, 2017. The public comment period expired on March 8, 2017. The department received the following comments from the U.S. Nuclear Regulatory Commission (NRC):

Comment: Arkansas regulations in RH-3301.b., 3304.b., 3305.b., 3306.b., 3600.b.,c., and 3602.a. should refer to their Agency and not to the NRC. Also,

cross-references should be to AR regulations, as this requirement applies to the AR licensee's quality assurance program.
Response: These regulations will maintain current rule language that lists the Department and its requirements as governing Arkansas licensee quality assurance programs instead of proposed language that indicates NRC has the authority.

Comment: Arkansas regulation RH-3301.c. should contain the AR point of contact.

Response: Paragraph c.3. of the "General License for NRC- Approved Packages" states the third requirement that each Arkansas general licensee must do and that is register with the NRC (not Arkansas) before first use of the package. Registration with the NRC is per U.S. DOT 49 CFR 173.471(a) and is for any offeror of a Type B(U), Type B(M), or fissile material package that has been approved by the NRC. Paragraph c.3. will retain proposed language with a correction to the NRC Division name listed.

Comment: Arkansas needs to include the phrase "design, fabrication, and assembly records; results of reviews…and the action taken in connection with any deficiencies noted" in RH-3506.c. after the reference to RH-3502.

Response: Paragraph c. will maintain current rule language that lists these records to be maintained by the licensee as evidence of quality of packaging, instead of proposed language that removes this list.

Comment: Arkansas may remove references in Section 4 to certificate holders and applicants for Certificates of Compliance due to these being NRC licensees and therefore not regulated by the State of Arkansas.

Response: References to certificate holders and applicants for Certificates of Compliance will be stricken from RH-3600.b., 3601.a., 3602.a.,b.,d.,e., and 3603.-3608. leaving "licensee."

Comment: Arkansas needs to remove the sentence "Each certificate holder and applicant for a package approval is responsible for satisfying the quality assurance requirements that apply to design, fabrication, testing, and modification of packaging subject to this Part." from RH-3600.a. as this applies to NRC certificate holders and applicants, or otherwise modify this paragraph to meet the essential objectives.

Response: Explanatory language will be added to paragraph a., "Purpose," in order to clarify agency authorities. There will be no change in requirements.

Comment: Arkansas may remove references in paragraphs b. and c. of RH-3602. to certificate holders and applicants for Certificates of Compliance due to these being NRC licensees and therefore not regulated by the State of Arkansas, or otherwise modify these paragraphs to meet the essential objectives.

Response: Explanatory language will be added to paragraphs b. and c. in order to better direct Arkansas licensees. There will be no change in requirements.

Comment: Arkansas needs to reference their Agency and not the NRC in RH-3602.e. as the State would approve their licensee's quality assurance program. Also, the cross-reference in paragraph e. should be to AR regulations, as this requirement applies to the AR licensee's quality assurance program.

Response: This regulation will indicate that Arkansas quality assurance programs, including changes, are approved by the Department pursuant to its requirements, like that of Comment 1.

Comment: In RH-600.a.2., Arkansas omits the phrase, "until the Commission terminates each license that authorizes the activity that is subject to the recordkeeping requirement." As written, AR's regulation is less restrictive than 10 CFR 40.61(a)(2) as it only requires the licensee to retain the records for three years, and not until the license is terminated. AR needs to add their equivalent regulation as indicated above.

Response: RH-600.a.2. as it currently reads was approved by the NRC in Department regulations effective July 1, 2002. The retention period for radioactive material transfer records was also approved by the NRC on May 12, 2010, as part of the Conference of Radiation Control Program Director's Suggested State Regulations. Arkansas does not have the authority to regulate the same types of Part 40, "source material," licensees that the NRC does (e.g., uranium mills, enrichment facilities, and UF_6 production facilities); therefore, three years is an adequate retention period for Arkansas source material licensees. This retention period meets the essential objective.

Comment: In RH-11027.c.1., Arkansas needs to update the Mail Stop and phone number listed to Mail Stop TWB-05 B32M and 1-630-829-9565.

Response: Paragraph c.1. will be revised to reflect the change in Mail Stop and phone number as well as the zip code and the use of "https" instead of "http."

Comment: Unclear language exists in RH-3002.d.1., "Purpose and Scope."

Response: The language will be simplified so that readers will be more clearly directed to Part C of Section 4 that contains the exemption requirements.

Comment: For consistency and simplicity, "this Section" should be used in RH-3305.a. and RH-3306.a.

Response: "This Section," instead of the Section number and its title, will be used.

Comment: A type-o exists where paragraph c. of RH-3508. is incorrectly shown as paragraph d.

Response: Paragraph c. will be shown as such.

Michael Harry, attorney for the Bureau of Legislative Research, asked the Department of Health regarding the authority of the Center for Health Protection to promulgate this rule as the statutes confer the authority to the State Radiation Control Agency.

Robert Brech, Department of Health, responded that the Department of Health placed the State Radiation Control Agency under the division of the Center for Health Protection for organizational purposes.

The proposed effective date is September 1, 2017.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The Department of Health has general authority to make all necessary and reasonable rules and regulations for the protection of the public health and safety. Arkansas Code Annotated §20-7-109(a) (1) (A). The current rule is promulgated under Ark. Code Ann. §20-21-207(3) which authorizes the State Radiation Control Agency (under the authority of the Department of Health) to "[f]ormulate, adopt, promulgate, and repeal codes, rules, and regulations which may provide for licensing or registration relating to control, storage, or disposal of sources of ionizing radiation with due regard for compatibility with the regulatory programs of the federal government."

8. DEPARTMENT OF HUMAN SERVICES, COUNTY OPERATIONS (Dave Mills)

a. SUBJECT: Medical Services Policy Manual Section A-210, B-500 and D 372

DESCRIPTION: Changes to the Arkansas Works Program regulations are:

1. A-210 – Retroactive coverage for the Adult Expansion Group has been eliminated.

2. B-500 – Emergency Medicaid eligible cannot be approved in the Adult Expansion group for retroactive coverage.

3. D-372 – Retroactive coverage for adult expansion group recipients who are incarcerated has been removed.

PUBLIC COMMENT: No public hearing was held. The public comment period expired on July 13, 2017. The department received no comments.

The proposed effective date is September 1, 2017.

FINANCIAL IMPACT: There will be a savings to implement this federal rule of $266,549 in general revenue and $4,493,807 in federal funds for the current fiscal year and a savings of $371,265 in general revenue and $5,340,503 in federal funds for the next fiscal year.

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

9. MILITARY DEPARTMENT (MJR Harold Williams and LTC Jeffrey Wood)

a. SUBJECT: Arkansas National Guard Tuition Assistance Program NGAR Regulation 621-203

DESCRIPTION: This regulation implements Act 471 of 2017 and establishes rules for the eligibility of guardsmen; defines the purpose of the Arkansas National Guard Tuition Assistance Program; defines necessary responsibilities of the program; and sets forth the entitlement criteria.

PUBLIC COMMENT: A public hearing was held on June 22, 2017. The public comment period expired on June 25, 2017. The sole comment received at the hearing was made by **Major General Retired Kendall Penn:**

Ladies and gentlemen, the National Guard Association of Arkansas would like to speak out in support of this regulation as currently written to enact the guard Tuition Assistance Program, Act 471 of the 91st General Assembly. This regulation has several attractive features, which we think will help our constituency become better educated. It maximizes accessibility for Arkansas Guardsmen and prospective Guardsmen; it's utilization of technical classes, on-line courses, courses at brick and mortar institutions of higher learning will enable our Guardsmen and prospective Guardsmen to take advantage of this program and to utilize and maximize their education obtainment, and become productive members of the Arkansas society.

This program also produces the greatest possible value to the Arkansas tax payer through its joint efforts of the Arkansas Military Department and the Department of Higher Education. The program uses funds already appropriated for Guard education along with new processes to maximize utilization of State and Federal programs and incentives.

This is the first of its kind partnership which should educate the greatest number of guardsmen at the lowest possible price. It's also designed to achieve the desired end state of Act 471, which is to increase recruiting for the Arkansas

National Guard; as well as to provide incentives for guardsmen already serving to remain in uniform in order to take advantage of this program.

It also has the necessary internal controls coordination touch points between the Military Department and the Department of Higher Education to monitor the program outcomes. Where necessary this program enables changes and updates to be made to ensure that the program stays current and supports the needs of both organizations into the future.

Sir, I have a memorandum I would like to have entered into the record and that concludes my statement. **RESPONSE:** The Department received both the verbal comment and the memorandum for the record.

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

1) An overarching question is whether this program is truly a waiver program as it is entitled or a tuition-assistance program. The title and language of Act 471 seem to suggest the latter in that the state-supported institutions will not be waiving the tuition, but instead will be reimbursed by the State for any tuition expenses not covered by other funding sources. That said, there is Ark. Code Ann. § 6-60-211, which does allow institutions of higher learning to waive up to one hundred percent of tuition for National Guard soldiers and airmen and also requires the Adjutant General to "establish and publish regulations for the eligibility and implementation of tuition assistance programs sponsored by the armed services." Ark. Code Ann. § 6-60-211(b)(1). My understanding though is that the instant proposed rules are being promulgated under the authority of Act 471, not section 6-60-211. Can you provide any clarification for me on the true nature of the program, the choice of title, and the authority under which the Department is promulgating the instant proposed rules? **RESPONSE:** We have edited the name of the rule to the "Tuition Assistance Program" to reflect the true nature of the program, as it is not a waiver program.

2) In Section 1-2, Entitlements, should the statutory reference be to Ark. Code Ann. *§ 6-60-214* instead of "Arkansas Code § 6-61-112" as it currently provides?
RESPONSE: We have made this edit state 6-60-214 as the statutory authority, as highlighted in the final draft version of the rule.

3) In Section 3-4(b), the language appears to coincide for the most part with that that will be codified in Ark. Code Ann. § 6-60-214(f)(1). The statute, however, provides that in the event of a nonmedical discharge or a medical discharge not caused by illness or injury related to National Guard duties, the guardsman is eligible to receive the tuition-free benefit from the date of discharge "and for the longer of (A) One (1) semester *or* (B) A period of time equal to the length of mobilization, if any, that interrupted the enrollment." Ark. Code Ann. § 6-60-214(f)(1) (emphasis added). The proposed rule lacks this "longer of" language. Can you reconcile the deviation for me?

RESPONSE: We have made this edit to exactly mirror the language of Act 471, as highlighted in the final draft version of the rule.

4) In Section 3-4(d), should it read "must not drop more than 6 *semester* credit hours" to mirror Ark. Code Ann. § 6-60-214(d)(2) and to be consistent with Sections 1-2 and 3-3(b)? **RESPONSE:** We have made this edit to exactly mirror the language of Act 471, as highlighted in the final draft version of the rule.

5) In Section 3-5(b), there may be a typographical/printer error in the spelling of recoupment. **RESPONSE:** We have corrected this spelling error.

Following receipt of the final revisions to the rules, Ms. Miller-Rice posed the following question:

In Section 3-4(d), it appears that the Department has rewritten the entire section to now track much of the language used in what will be Ark. Code Ann. § 6-60-214(d), regarding continuing eligibility in the program. I see that subsection (d)(2) was included and mirrors the statute. Was there a reason the Department did not also include subsection (d)(1), which provides that a Guardsman "[s]hall maintain satisfactory academic progress as determined by the state-supported institution of higher education in which the soldier or airman is enrolled; and"? **RESPONSE:** The intent is to include subsection (d)(1), into the final revision of the rule. The change was made.

The proposed effective date is September 1, 2017.

FINANCIAL IMPACT: The state government would refund the institutions the balance of the in-state tuition (only) of participating guardsmen. This program is revenue neutral as $1.4 million was recently appropriated, the same amount appropriated for GTIP last year.

LEGAL AUTHORIZATION: These rules implement Act 471 of 2017, the purpose of which was to provide tuition assistance for soldiers and airmen of the Arkansas National Guard. Pursuant to Section 2 of the Act, the Adjutant General, in coordination with the Department of Higher Education, shall promulgate rules for the implementation of this section, including without limitation rules for the eligibility of soldiers and airmen. Upon the effective date of the Act, this authority will be codified at Arkansas Code Annotated § 6-60-214(h)(1).

10. REAL ESTATE COMMISSION (Gary Isom)

a. SUBJECT: Reg. 11.5: Post-License Education Requirements

DESCRIPTION: This amendment will expedite the completion time for post-license education by new real estate licensees from 12 months to 6 months. The post-license education requirement is 30 classroom hours for new brokers and 18

classroom hours for new salespersons. Consumer protection will be enhanced by having new licensees complete their post-license education requirements sooner. Many real estate brokers already consider it advisable to have their new licensees complete this education as soon as possible and require such internally.

PUBLIC COMMENT: A public hearing was held on July 10, 2017, and the public comment period expired on that date.

Prior to the public hearing, the commission received written comments expressing support for the amendment from Maurice Taylor, President of the Arkansas REALTORS® Association, and from Sally Goss, representing the Arkansas Chapter of the National Association of Residential Property Managers.

During the public hearing, support for the amendment was voiced by Maurice Taylor, President of the Arkansas REALTORS® Association; Ralph Bogner, Real Estate Instructor, Fort Smith School of Real Estate; and Howard Lee Kilby, Consumer.

The proposed effective date is October 1, 2017.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The Arkansas Real Estate Commission may do all things necessary and convenient for carrying into effect the provisions of the Real Estate License Law, Ark. Code Ann. § 17-42-101 *et seq*., and may from time to time promulgate necessary or desirable rules and regulations. Ark. Code Ann. § 17-42-203(a).

The commission shall establish a post-licensure education requirement for individuals in their first year of licensure as salespersons or brokers. Ark. Code Ann. § 17-42-303(c)(1). The commission shall not require more than thirty (30) classroom hours of post-licensure education hours. Ark. Code Ann. § 17-42-303(c)(2).

H. Adjournment.