ADMINISTRATIVE RULES SUBCOMMITTEE
OF THE
ARKANSAS LEGISLATIVE COUNCIL

Thursday, November 14, 2024
2:00 p.m.
Room A, MAC
Little Rock, Arkansas

A. Call to Order

B. Reports from the Executive Subcommittee Concerning Emergency Rules

C. Reports from ALC Subcommittees Concerning the Review of Rules

D. Reports on Administrative Directives Pursuant to Act 1258 of 2015, for the Quarter Ending September 30, 2024

1. Department of Corrections (Tawnie Rowell)

2. Post-Prison Transfer Board (Kevin Smith)

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

1. <u>DEPARTMENT OF COMMERCE, ARKANSAS ECONOMIC DEVELOPMENT COMMISSION</u> (Jake Windley)

a. Digital Product and Motion Picture Industry Development Act Rule

<u>DESCRIPTION</u>: The Arkansas Economic Development Commission ("AEDC") is proposing amendments to the Digital Product and Motion Picture Industry Development Act Rule to reflect changes in the incentive program authorized by Act 517 of 2023. The Act added additional categories of expenditures that qualify to receive enhanced incentives. The amended rule is necessary to incorporate the Act's changes. The proposed amended rule increases the incentive base from 20% to 25% for qualified expenditures. Qualified productions or post-production companies may receive an additional 5% incentive on expenditures for hiring below-the-line employees or for paying qualified costs to a person or business located in a Tier 3 or Tier 4 county. In addition, the proposed amended rule allows a production company to receive an additional 5% incentive for producing a multi-project production in Arkansas. A multi-project production is defined in Section 2 of the rule as two or more productions by the same producer that have signed an incentive agreement

and commenced principal photography within a 12-month period. Additional technical and formatting changes have been made to the rule to bring it in line with the Code of Arkansas Rules' style requirements.

PUBLIC COMMENT: A public hearing was held on August 29, 2024. The public comment period expired September 1, 2024. The agency indicated that it received no public comments.

Jason Kearney, an attorney with the Bureau of Legislative Research, asked the following question and was provided with the following agency response:

1) Section 105(c), concerning production tax incentives, provides that the tax incentive shall be for "all qualified production costs associated with the ***post-production*** of a state-certified film project." (Emphasis added.) Should this provision instead state that the tax incentive is for costs associated with the production, and not post-production, of a state-certified film project, as is set out in Arkansas Code Annotated § 15-4-2005(a)(1)? **RESPONSE**: The "post-production" wording is correct. There are separate incentive provisions for when principal photography is taking place.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 15-4-2010, the Arkansas Economic Development Commission shall promulgate appropriate rules to carry out the intent and purposes of the Digital Product and Motion Picture Industry Development Act of 2009. *See* Ark. Code Ann. §§ 15-4-2001 through 15-4-2014.

The proposed amendments are those made in light of Act 517 of 2023, sponsored by Representative Charlene Fite, which amended the Digital Product and Motion Picture Industry Development Act of 2009.

2. DEPARTMENT OF COMMERCE, STATE INSURANCE DEPARTMENT (Booth Rand)

a. Rule 118: Pharmacy Benefits Managers Regulation

DESCRIPTION: The State Insurance Department proposes amendments to its Rule 118: Pharmacy Benefits Managers Regulation. AID began the rulemaking process to make amendments to Rule 118: Pharmacy Benefits Managers Regulation earlier this spring. Rule 118 is not a new rule. The

function and purpose of the amendments were to conform the language in that current rule to various legislative enactments concerning PBMs in 2023, specifically in the PBM Licensure Act ("PBMLA"). AID held a public hearing on these proposed amendments September 10, 2024, at AID and kept the public comments record open until October 10, 2024.

In response to various public comments, we did not adopt all of the originally filed language being proposed in the rule. I will refer you to our "Public Comments" summary we have submitted to BLR discussing what AID adopted or did not adopt in response to public comments. [Bureau Staff Note: The public comments and responses can be found below in the next section.]

The final draft rule makes the following changes to Rule 118: (1) changes the rule to apply its requirements to health plans issued outside the State of Arkansas but who insure residents living in this State (to comply with 2023 legislative changes to the PBMLA); (2) makes grammatical and cosmetic restructuring of the rule for better organization; (3) provides notice about reserving jurisdiction over medicare advantage plans as permitted by the federal courts; (4) changes financial review standards for licensure or re-licensure from "financially hazardous condition standard," to a "competency and trustworthy standard"; (5) Sections 7, 8, 9 of the proposed rule were made clear that such provisions would only apply to PBMS administrating plans for health care plans we are permitted by federal law to regulate; and (6) removed trade practice violations which provided a 50K cap, for violations of our affiliate compensation restrictions to a penalty of "up to" five thousand dollars for each violation with no cap.

These are the major changes to proposed Rule 118. Most of the large chunks of proposed markup language are simply us moving that section in the rule around for better organization.

PUBLIC COMMENT: A public hearing was held on September 10, 2024. The public comment period expired on October 10, 2024. The State Insurance Department provided the following summary of comments it received and its responses thereto:

Commenter Name: Pharmaceutical Care Management Association ("PCMA")
COMMENT: PCMA objects to proposed rule language which applies the PBM Licensure Act ("PBMLA") to pharmacy benefit plans or programs for health benefit plans to residents of this State. **RESPONSE**: The proposed rule language is consistent with changes made by the legislature in 2023 in the PBMLA to the term, "health benefit plan" to apply to any group plan, policy, or contract for healthcare services "issued outside this

State that provides benefits to residents of this State." AID is simply changing its rule language to conform to the 2023 legislative changes now codified in Ark. Code Ann. § 23-92-503(2). AID and the Legislature are indicating here that they are only regulating plans outside the state to the extent the law or rule applies to enrollees of that health plan living in Arkansas.

Commenter Name: Pharmaceutical Care Management Association ("PCMA")
COMMENT: PCMA objects to the Rule subsections (5)(B)(viii)(a) & (5)(B)(viii)(b) pertaining to whether the PBMLA and Rule 118 are to apply to medicare advantage plans, and suggests adding the phrase, "…to the extent permitted under federal law." **RESPONSE**: The legislature in the PBMLA did not exempt medicare advantage plans from that subchapter. However, AID has excepted such plans in its Rule 118. The above language was added to change the rule to therefore be more consistent with the legislative act, and the acknowledgment of the potential authority of the PBMLA to actually apply the medicare plans, if permitted under federal law. Due to court decisions over preemption issues under the Medicare Modernization Act, it is currently unclear about that jurisdiction. However, as requested, AID added the disclaimer, "to the extent permitted under federal law."

Commenter Name: Pharmaceutical Care Management Association ("PCMA")
COMMENT: PCMA requested editing subsection (3) under Section A related to providing individual contact information. **RESPONSE:** AID agrees and added the phrase, "(the PBM may instead provide the departmental contact name, mailing address, email address and direct phone number)".

Commenter Name: Pharmaceutical Care Management Association ("PCMA")
COMMENT: PCMA objects to Section 6 under the subject of Contract Review, of the proposed rule to the extent its regulating contract language for plans issued outside the State of Arkansas. PCMA contends that "AID has no authority to regulate out-of-state plan contracts." **RESPONSE**: We disagree. As indicated early, AID is simply changing its rule to comply with the extraterritoriality provisions adopted the legislature in 2023 now codified in § 23-92-503(2) and limiting its jurisdiction to those contracts to the extent they are complying with Arkansas PBM law(s) for only Arkansas resident certificate holders or enrollees.

Commenter Name: Pharmaceutical Care Management Association ("PCMA")
COMMENT: PCMA complains that Section 7 of the proposed rule should be amended to reflect the defined terms of healthcare insurer and healthcare payor in the PBMLA. **RESPONSE:** We added this language at the top of that section: "The provisions of this Section shall apply to healthcare insurers and healthcare payors as defined in Ark. Code Ann. § 3-92-503(2) and (3), and PBMs administrating such health benefit plans, to the extent as permitted by federal law."

Commenter Name: Pharmaceutical Care Management Association ("PCMA")
COMMENT: PCMA complains of Sections 8 and 9 of the proposed rule, and this could be the same issue actually for Section 10 as well, relating to the above same issues and ERISA concerns. **RESPONSE:** We agree with the ERISA concerns over Sections 8 and 9 on reporting and record keeping. Again, we added this language at the top of that section: "The provisions of this Section shall apply to healthcare insurers and healthcare payors as defined in Ark. Code Ann. § 23-92-503(2) and (3), and PBMs administrating such health benefit plans, to the extent as permitted by federal law."

Commenter Name: Pharmaceutical Care Management Association ("PCMA")
COMMENT: PCMA next complains about Section 10 of the proposed rule over the phrase, "statistical quarterly basis" and wants a definition of that term. **RESPONSE:** It just means statistics gathered on a quarterly rhythm or basis; we see no need of drafting an additional definition in the rule.

Commenter Name: Pharmaceutical Care Management Association ("PCMA")
COMMENT: PCMA asks for clarification under Section 11 of the proposed rule under MAC appeals and requests that AID clarify whether the intent of Section 11 is to address appeals made directly with the PBM, to the AID, or both. **RESPONSE:** It's referring to MAC complaints only being made to AID, in the form of a complaint to AID. AID added the phrase to that area of the rule, "…for complaints to AID."

Commenter Name: Pharmaceutical Care Management Association ("PCMA")
COMMENT: PCMA complains about the rule's proposed amendment to the penalty provisions in Section 14 under penalties and asks, "is it the intent of the AID to issue penalties in the event it determines a violation of Ark. Code Ann. § 23-92-506(b)(40(A) even if the health plans at issue are those that the AID does not have authority to regulate? **RESPONSE:** No.

To make that clear, we added this language under the title to that section: "The penalty provisions under this section apply to PBMs administrating health benefit plans or for healthcare payors under § 23-92-503(2) and (3) that are permitted to be regulated by the State and are not prohibited from State regulation under federal law."

Jason Kearney, an attorney with the Bureau of Legislative Research, asked the following questions and was provided with the following responses:

Question 1: The agency has amended the definitions for "Health benefit plan" and "Pharmacy benefits manager", on pages 3 and 4 of the proposed rule, respectively. Is the agency comfortable that is has the authority to amend such definitions to include provisions that do not appear in the definitions provided for in the Arkansas Code? *See* Arkansas Code Annotated §§ 23-92-503(2) and 23-92-503(8). **RESPONSE**: (5)(A) "Health benefit plan" means any individual, blanket, or group plan, policy, or contract for healthcare services issued or delivered by a Healthcare Payor in <u>to residents of</u> this state<u>, including any group plan, policy, or contract for healthcare services issued outside this state that provide benefits to residents of this state</u>.

(B) "Health benefit plan" does not include:

(i) Accidental-only plans;

(ii) Specified disease plans;

(iii) Disability income plans;

(iv) Plans that provide only for indemnity for hospital confinement;

(v) Long-term care only plans that do not include pharmacy benefits;

(vi) Other limited-benefit health insurance policies plans; or

(vii) Health benefit plans provided under Arkansas Constitution, Article 5, § 32, the Workers' Compensation Law, § 11-9-101 et seq., and the Public Employee Workers' Compensation Act, § 21-5-601 et seq.; and

(viii) Medicare Advantage plans or Medicare programs which provide pharmacy or prescription drug coverage.

<u>(a) However, such plans shall be included within the definition of health benefit plan, if the United States Supreme Court, or in the absence of such a ruling, the Eighth Circuit Court of Appeals, rules that such plans are subject to state regulation, with such regulation specific only to the authorities granted by the ruling court; and</u>

<u>(b) Should such a ruling occur and these plans become subject to regulation by the Department, the Department shall enforce any applicable law or regulation only against plans managed pursuant to contracts executed after the effective date of such ruling.</u>

The proposed rule language in (5)(A) is consistent with 23-92-503(2)(C) and in fact we are putting in the above in 5(A) because of the Act that recently changed the language in 23-92-503(2)(C).

The markup above in the rule under (5)(B)(a) and (b) are addressing our jurisdiction in our PBM rule over Medicare advantage plans due to recent 8th Circuit Court rulings. The state PBM statute is silent about excepting Medicare advantage. We are simply referencing a warning that we may regulate MAPS depending on court decisions. Our legislature has not addressed MAPS, so we really aren't conflicting with any language from the statute because they are simply not addressed by the legislature, so far.

On this in the rule:

(14)(A) "Pharmacy benefits manager," or "PBM," means a person, business, or entity, including a wholly or partially owned or controlled subsidiary of a pharmacy benefits manager <u>PBM</u>, that provides claims processing services or other prescription drug or device services, or both, for health benefit plans.
(B) "Pharmacy benefits manager" does not include any:
(i) Healthcare facility licensed in Arkansas;
(ii) Healthcare professional licensed in Arkansas;
(iii) Consultant who only provides advice as to the selection or performance of a pharmacy benefits manager <u>PBM</u>; <u>or</u>
(iv) Entity that provides claims processing services or other prescription drug or device services for the fee-for-service Arkansas Medicaid Program only in that capacity <u>unless the Arkansas Medicaid Program employs a PBM to maintain a Maximum Allowable Cost List, in which case, this entity shall be considered a PBM for purposes of Ark. Code Ann. § 17-92-507.</u>

We are not adopting the change in (14)(A) that is marked up starting with "unless…." Because of your exact point in what you are getting at, it's actually not consistent with the statutory act.

Question 2: Section 14(A)(1)(c) of the proposed amended rules provides that the Insurance Commissioner may impose a penalty of up to five-thousand dollars ($5,000.00) if he or she "finds that the PBM has not complied with Ark. Code Ann. § 23-92-506(b)(4)(A)." Is there a reason why the agency included this triggering circumstance when Ark. Code Ann. § 23-92-508, which concerns enforcement of the Arkansas Pharmacy Benefits Manager Licensing Act, does not explicitly include it?
RESPONSE: Agree, but I believe we are also independently explicitly authorized and empowered by that same statute to issue rules relating to penalties and fines, even to expand the statutory ones, the new language is

in there to address the significant number of complaints we have had on affiliate reimbursement.

Question 3: Section 14(C) – The word "Rules" appears to be misspelled in the second line of this section. **RESPONSE:** We will fix this.

The proposed effective date is January 1, 2025.

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

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 23-92-509(a)(1), the Insurance Commissioner may adopt rules regulating pharmacy benefits managers that are not inconsistent with the Arkansas Pharmacy Benefits Manager Licensure Act. *See* Ark. Code Ann. §§ 23-92-501 through 23-92-511. Rules that the commissioner may adopt under the Act include without limitation rules relating to licensing, application fees, financial solvency requirements, pharmacy benefits manager network adequacy, prohibited market conduct practices, data reporting requirements under Ark. Code Ann. § 4-88-803, compliance and enforcement requirements under Ark. Code Ann. § 17-92-507 concerning Maximum Allowable Cost Lists, rebates, compensation, and lists of health benefit plans administered by a pharmacy benefits manager in this state. *See* Ark. Code Ann. § 23-92-509(a)(2). In addition, rules adopted under the Act shall set penalties or fines, including without limitation monetary fines, suspension of licensure, and revocation of licensure for violations of the Act and rules adopted thereunder. *See* Ark. Code Ann. § 23-92-509(b)(1).

Additional authority for the rulemaking can be found in Ark. Code Ann. § 23-92-504(b), as amended by Act 302 of 2023, which provides that the commissioner shall issue rules establishing the licensing, fees, application, financial standards, penalties, compliance and enforcement requirements, and reporting requirements of pharmacy benefits managers under the Arkansas Pharmacy Benefits Manager Licensing Act.

Pursuant to Ark. Code Ann. § 23-79-2304(a), the commissioner shall also promulgate rules necessary to carry out the Arkansas Fairness in Cost Sharing Act. *See* Ark. Code Ann. §§ 23-79-2301 through 23-79-2304. The rules promulgated under that Act shall require a healthcare insurer and the Director of the Evidence-Based Prescription Drug Program of the College of Pharmacy of the University of Arkansas for Medical Sciences to submit to the commissioner plan-specific information related to savings and accountability to document how enrollees are realizing a cost savings under each plan. *See* Ark. Code Ann. § 23-79-2304(b).

Concerning network adequacy, the commissioner shall adopt rules relating to a pharmacy benefits manager's network adequacy, which shall require that an individual covered by a health benefit plan have access to a community pharmacy at a standard no less strict than the federal standards established under Tricare or Medicare Part D, 42 U.S.C. §§ 1395w-101 – 1395w-154, as it existed on January 1, 2021, if that standard requires, on average: (i) At least ninety percent (90%) of individuals covered by a health benefit plan in an urban area served by the health benefit plan to live within two (2) miles of a network pharmacy that is a retail community pharmacy; (ii) At least ninety percent (90%) of individuals covered by a health benefit plan in suburban areas served by the health benefit plan to live within five (5) miles of a network pharmacy that is a retail community pharmacy; and (iii) At least seventy percent (70%) of individuals covered by a health benefit plan in a rural area served by the health benefit plan to live within fifteen (15) miles of a network pharmacy that is a retail community pharmacy. *See* Ark. Code Ann. § 23-92-509(b)(2).

The proposed amendments include those made in light of the following Acts from the 2023 Regular Session:

Act 302 of 2023, which was sponsored by Senator Kim Hammer, modified the Arkansas Pharmacy Benefits Manager Licensure Act; amended the definition of "health benefit plan" under the Arkansas Pharmacy Benefits Manager Licensure Act; repealed the requirement for quarterly reports by a pharmacy benefits manager; and clarified the authority of the insurance commissioner under the Arkansas Pharmacy Benefits Manager Licensure Act; and

Act 333 of 2023, which was sponsored by Representative Brandon Achor, created the Healthcare Insurer Share the Savings Act, and created the Arkansas Pharmacy Benefits Manager Share the Savings Act.

3. DEPARTMENT OF CORRECTIONS, DIVISION OF CORRECTION (Tawnie Rowell)

a. AR 1200 Work/Study Release Program

DESCRIPTION: The Division of Correction is seeking review and approval of amendments to its AR 1200 Work/Study Release Program rule. The proposed amendments allow inmates with notification-only detainers to be transferred to Work-Release, expand the transfer eligibility window for consideration of placement in Work-Release from forty-two months to forty-eight months (meaning that an inmate must have a parole eligibility release date within 48 months of the date in which program eligibility is determined), and make minor terminology edits to the existing rules.

Extension of Public Comment Period
There has been significant Board of Corrections and Department of Corrections input on revisions to this Administrative Rule (AR) over the last several years. This coupled with change in Department staff responsible for editing this AR led to confusion in what version of the AR needed to be amended.

There were several non-substantive omissions in the draft posted for public comment. While examining those omissions, the Department discovered that the draft edited with proposed changes was not the correct draft and some portions of the AR were stricken that the Department wished to retain. Initially, public comment was set to close on October 31, 2022, for this proposed amendment. Due to these identified issues, the Department is providing new red-lined and clean versions of the proposed amendment and extending the public comment period until November 25, 2022.

Request for Placement on November 2024 Agenda
Because the public comment period expired after November 15, 2022, the rule was not eligible for placement on the December 2022 review agenda, and beginning in January of 2023, the General Assembly was convened in regular session. The Sanders administration subsequently issued an executive order requiring review of all Administrative Rules prior to beginning public comment. Because this rule had already been through public comment, there were procedural questions regarding how to proceed. The Department eventually elected to re-submit the proposed rule for approval by the Governor's office. Upon approval the Department requested that the rule be placed on the review agenda.

PUBLIC COMMENT: A public hearing was not held in this matter. The public comment period initially expired on October 31, 2022, but was extended to November 25, 2022. The agency received no comments.

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

1. Section IV: The proposed rule provides that "The Director of the Division is authorized to establish further policies necessary for the operation of a Work/Study Release Program." Would these further policies be established via promulgation as rules? **RESPONSE:** These "further policies" already exist in the form of an administrative directive on the Work/Study Release Program, AD 2019-19.

2. Section V(C)(4): Could you please explain the agency's rationale in removing the medical and mental health evaluation that were previously required under this section? **RESPONSE:** Our existing administrative directives, such as the Inmate Classification Manual, already identify things such as mental health and medical generally as items that will be taken into consideration when classifying inmates to determine suitability for placement in programs, including work release. This rule still takes medical classification into consideration (see p. 2 #4 under eligibility for work/study release program). The medical evaluation and mental health evaluation are completed at other junctures of classification. They are not stricken by any means, but are taken into consideration during the committee evaluation process along with the work supervisor's evaluation.

3. Section V(E)(7): The proposed rule provides that, "Net income is defined as income after taxes and compensation to the Division." Could you please explain what compensation means in this context? **RESPONSE:** Inmates who participate in Work Release are required to pay $17/day rent to the Department. That amount is set by the Board of Corrections and has been set at that amount since January 1, 2007.

Bureau Staff had no additional questions upon receiving the revised markup that followed the public comment period.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: Pursuant to Ark. Code Ann. § 12-30-403, the Board of Corrections and the Director of the Division of Correction will govern the administration of work-release programs with the promulgation of rules and procedures subject to the continuing review by the Governor, who shall have the right to revise and rescind any such rules and procedures. In addition, the division may institute "work-release" programs under which inmates selected to participate in the programs may be gainfully employed or attend school outside of the units maintained by the division under rules promulgated by the director with the approval of the board. *See* Ark. Code Ann. § 12-30-401(b).

4. DEPARTMENT OF EDUCATION, DIVISION OF ELEMENTARY AND SECONDARY EDUCATION (Daniel Shults)

a. Better Beginnings Tiered Quality Rating and Improvement System

DESCRIPTION: The Department of Education, Division of Elementary and Secondary Education seeks to amend its Better Beginnings, Tiered Quality Rating and Improvement System.

Background
Pursuant to Ark. Code § 20-78-201 et seq., the Division shall adopt the necessary rules to implement these code sections. Act 237 of 2023 moved the Office of Early Childhood from the Division of Childcare and Early Childhood Education to the Arkansas Department of Education. This amendment changes the rule language to reflect that change.

Key Points
• The rules are amended to state the regulatory authority as the Arkansas Department of Education, Office of Early Childhood instead of the Division of Childcare and Early Childhood Education.
• The rules are amended to delete the rules history and update definitions.

This draft amendment is an update primarily driven by Act 237 of 2023, which moved the Office of Early Childhood from the Division of Childcare and Early Childhood Education to the Arkansas Department of Education.

Post 1st Public Comment Period Changes:
•Arkansas Better Beginnings Childcare Center Requirements (chart): Component Learning Environment/Environment Assessment 6.C.1 Staff ratio for 5 years and up was increased to 1:20 from the prior 1:15. This policy change was not made pursuant to public comment.
•Arkansas Better Beginnings Out of School Time Requirements(chart): Component Learning Environment/Environment Assessment 6.C.1 Staff ratio for 5 years and up was increased to 1:20 from the prior 1:15. This policy change was not made pursuant to public comment.
•Arkansas Better Beginnings Out of School Time Requirements(chart): Component Child/Youth Health and Development 2.D.2 struck through the extra stages of development. This policy change was not made pursuant to public comment.
•20 CAR §1001-107(f)(1) was amended to add: New facilities that are opting into accepting childcare assistance must qualify for at least a provisional level II eligibility which consist of:(A) Completed and Approved Provisional Eligibility Application; (B) Meet Better Beginnings Level 2 within (90 days). This policy change was not made pursuant to public comment.

Post 2nd Public Comment Period Changes:
No substantive changes were made following the second public comment period. Minor changes were made to correct technical errors in the drafting or to provide procedural clarity.

PUBLIC COMMENT: A public hearing was held on May 31, 2024. The public comment period expired on June 10, 2024. A second public hearing was held on September 20, 2024. The second public comment period expired on October 1, 2024. The agency provided the following public comment summary:

Commenter Name: Lucas Harder, Arkansas School Board Association, May 29, 2024
COMMENTS: In 2.D.2, the phrase "stages of development" appears twice back to back. **RESPONSE**: Changes were made to correct erroneous non-substantive changes consistent with the comments. No additional changes were made.

Commenter Name: Donna Kirkwood, Program Coordinator, Childhood Services, ASU, May 24, 2024
COMMENTS: Hey there, I see that the BB rules have been updated to reflect DOE, OEC, etc. Since they are open to public comment, I'd like to suggest that the following updates if possible: Pages 6, 9, and 17-Update to the terms used to describe YPQI assessments. PQA is similar to ERS, OQA (formerly Form B) is similar to PAS/BAS. Page 3-The PAS Subscales have been updated as well. I highlighted the areas where these edits would be and included comments with each one. Thanks for considering these changes if possible. Wishing you well, Donna Kirkwood. **RESPONSE**: Comment considered; no changes made. Division declines to make the suggested policy changes.

Commenter Name: Lucas Harder, Arkansas School Board Association, September 20, 2024
COMMENTS: Better Beginnings: 20 CAR § 1001-107(f): Is the (1) here actually necessary as there is not currently an (2) to follow? (a): This sentence should end with a semicolon and a "and". 20 CAR § 1001-110(b)(2): "Commissioner of Education", should be changed to "Commissioner of Elementary and Secondary Education".
RESPONSE: Changes were made to correct erroneous non substantive changes consistent with the comments. No additional changes were made.

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

1) Will the amendments to the rules be published and furnished to all licensed childcare facilities and to all applicants for a license at least sixty (60) days before the effective date of the amendments, per Ark. Code Ann. § 20-78-206(a)(5)? **RESPONSE:** Yes, the department will meet this requirement.

2) Does the agency intend to submit these rules to the Senate Interim Committee on Children and Youth or an appropriate subcommittee thereof and the Subcommittee on Children and Youth of the House Committee on Aging, Children and Youth, Legislative and Military Affairs, per Ark. Code Ann. § 20-78-206(e)? **RESPONSE:** Yes, the department will meet this requirement.

3) What prompted the agency to amend the staff to child ratios for Level 4 and 5 facilities, from 1:18 to 1:20, for children five (5) years and up? **RESPONSE:** The ratios were increased to match and be consistent with the same ratios in kindergarten classrooms.

The proposed effective date is December 1, 2024.

FINANCIAL IMPACT: The division has indicated that the amended rule has no financial impact.

LEGAL AUTHORIZATION: Pursuant to Ark. Code Ann. § 20-78-206(a)(1)(A), the Division of Child Care and Early Childhood Education shall promulgate and publish rules setting minimum standards governing the granting, revocation, refusal, and suspension of licenses for a childcare facility and the operation of a childcare facility. *See also* Ark. Code Ann. § 25-43-502(a)(17) (providing that the administrative functions of the Division of Child Care and Early Childhood Education were transferred by a cabinet-level department transfer to the Department of Education). Rules promulgated by the division pursuant to Ark. Code Ann. § 20-78-206 may be amended by the division from time to time, provided that any amendment to the rules shall be published and furnished to all licensed childcare facilities and to all applicants for a license at least sixty (60) days before the effective date of the amendment. *See* Ark. Code Ann. § 20-78-206(a)(5).

In establishing requirements and standards for the granting, revocation, refusal, and suspension of a license for a childcare facility, the division shall adopt such rules as will: 1) promote the health, safety, and welfare of children attending a childcare facility; 2) promote safe, comfortable, and healthy physical facilities for the children who attend the childcare facility; 3) ensure adequate supervision of the children by capable, qualified, and healthy individuals; 4) ensure appropriate educational programs and activities; and 5) ensure adequate and healthy food service

where food service is offered by the childcare facility. *See* Ark. Code Ann. § 20-78-206(b). All rules promulgated pursuant to Ark. Code Ann. § 20-78-206 shall be reviewed by the Senate Interim Committee on Children and Youth or an appropriate subcommittee thereof and the Subcommittee on Children and Youth of the House Committee on Aging, Children and Youth, Legislative and Military Affairs. *See* Ark. Code Ann. § 20-78-206(e).

The proposed rule implements Act 237 of 2023, §71, sponsored by Senator Breanne Davis, which created the LEARNS Act and amended various provisions of the Arkansas Code as they relate to early childhood through grade twelve (12) education in the state of Arkansas.

b. Rule Governing Career-Ready Pathways to Diploma

DESCRIPTION: The Department of Education's Division of Elementary and Secondary Education proposes its Rule Governing Career-Ready Pathways to Diploma.

Background
Pursuant to Act 237 of 2023, the Division is charged with promulgating rules regarding career-ready pathways to a high school diploma. The relevant provisions of Act 237 are codified at Arkansas Code § 6-16-1801 et seq.

Key Points
• Establishes requirements for how public schools must incorporate career awareness and exploration activities for students.
• Establishes requirements for when students must be exposed to career pathways.
• Sets out processes for developing career-ready pathways to a diploma and utilizing existing student success plans to support them.

Discussion
Act 237 of 2023, otherwise known as the LEARNS Act, requires that school districts offer career-ready pathways to a high school diploma to prepare students to attend a college or university, attain an industry-based training or certification, pursue an apprenticeship, enlist in the military, or immediately enter a career field. The LEARNS Act also requires that DESE develop career-ready pathways for public schools to implement. This rule is necessary because it establishes requirements for how public schools must incorporate career awareness and exploration activities for students, for when students must be exposed to career pathways, and for how school districts must review and audit pathways that they offer to ensure that they are providing a high-quality career-ready education. The

rule also sets out processes for developing career-ready pathways to a diploma and utilizing student success plans to support them.

Post-Public Comment
After the first public comment period, substantive changes were made to the rule including requiring the division to reimburse employers of public school students involved in a career practicum or pre-apprenticeship work-based learning opportunities. In the original draft of the rule, this was at the discretion of the division. This change was made pursuant to public comment. The rule was subsequently released for a second public comment period. After the second public comment period, several grammatical and technical changes were made. No substantive changes were made.

PUBLIC COMMENT: A public hearing was held on June 28, 2024. The public comment period closed on July 14, 2024. A second public hearing was held on September 20, 2024. That public comment expired on October 4, 2024. The agency provided the following public comment summary:

First Public Comment Period
Commenter Name: David Gupta, Vice President, State and District Partnerships, College Board, 7/12/24
COMMENTS: The comment addresses several sections of the requirements of the new rule and assures the agency that the organization will be in compliance with the rule. **RESPONSE**: Comment considered. No changes made. The comment is a policy statement and does not propose any changes to the rule.

Commenter Name: Dr. Mike Hernandez, Executive Director, Arkansas Association of Educational Administrators, 7/14/24
COMMENTS: Section 7.02: Subject to legislative appropriation, the Department of Education may reimburse employers, including without limitation public school districts and open enrollment public charter schools, for the proportionate cost of workers' compensation premiums for students in work-based learning opportunities in accordance with department rules. Suggested Change: Replace "may" in the first sentence with "shall." Rationale: Since the LEARNS Act states that students in a work-based learning opportunity shall be covered by the workers' compensation insurance of his or her employer, the rules need to reflect that districts serving as an employer of these students will be reimbursed for this cost. It is understood that the rules reflect the law in its current form. However, if funds become available, schools should receive funding to cover insurance since they are mandated as employers to provide coverage with no clearly identified funding source.
RESPONSE: Comment considered. A substantive change was made.

Commenter Name: Arkansas Public School Resource Center, 7/15/24
COMMENTS: Section 2.02, Page 1: Will a career-ready pathway to a diploma be the Diploma with Merit? **RESPONSE**: Comment considered. No changes made. Career pathways which result in diplomas demonstrating merit and diplomas demonstrating distinction will be identified on the division's website.

Commenter Name: Arkansas Public School Resource Center, 7/15/24
COMMENTS: Section 4.02, Page 3: How was the number of "... minimum of four (4) career awareness and exploration activities for each student ..." determined? **RESPONSE**: Comment considered. No changes made. The early career exposure LEARNS work subgroup provided a minimum of four career awareness and exploration activities as a recommendation which was approved by the career ready pathways group.

Commenter Name: Lucas Harder, Policy Services Director, Arkansas School Boards Association, 7/15/24
COMMENTS: 4.01: There are commas missing following "including" and "limitation". **RESPONSE**: Comment considered. A non-substantive change was made.

Second Public Comment Period
Commenter Name: Lucas Harder, Policy Services Director, Arkansas School Boards Association, 9/20/24
COMMENTS: 2.01.1: The semicolon after "services" should be a comma. **RESPONSE**: Comment considered. A non-substantive change was made.

Commenter Name: Lucas Harder, Policy Services Director, Arkansas School Boards Association, 9/20/24
COMMENTS: 2.06: I would recommend changing "eighth grade" to "grade eight (8)" to align with 4.01. **RESPONSE**: Comment considered. A non-substantive change was made.

Commenter Name: Lucas Harder, Policy Services Director, Arkansas School Boards Association, 9/20/24
COMMENTS: 4.01: To align with 4.02.1.1, "(6-8)" should be added after "eight". **RESPONSE**: Comment considered. No changes made. The rule as written reflects the suggested changes.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: The State Board of Education may promulgate rules to implement Arkansas Code Annotated § 6-15-2911, which concerns student-focused learning systems, that include without limitation requirements for the development and review of a student success plan if a student is enrolled for the first time in or transfers to a public school district in the state during or after the student completes grade eight (8). *See* Ark Code. Ann. § 6-15-2911(b)(5). Each public school district shall develop and offer at least one (1) career-ready pathway that is aligned to state and regional workforce demands, according to rules adopted by the State Board of Education. *See* Ark Code. Ann. § 6-16-1803(b)(1). Each open-enrollment public charter school may develop and offer at least one (1) career-ready pathway that is aligned to state and regional workforce demands, according to state board rules. *See* Ark Code. Ann. § 6-16-1803(b)(2). Subject to legislative appropriation, the Department of Education may reimburse employers, including without limitation public school districts and open-enrollment public charter schools, for the proportionate cost of workers' compensation premiums for students in work-based learning opportunities in accordance with department rules. *See* Ark Code. Ann. § 6-16-1805(c).

The proposed rule implements Act 237 of 2023, §§ 12 and 20, sponsored by Senator Breanne Davis, which created the LEARNS Act and amended various provisions of the Arkansas Code as they relate to early childhood through grade twelve (12) education in the state of Arkansas.

c. Rules Governing Documents Posted to School District and Education Service Cooperative Websites

DESCRIPTION: The Department of Education's Division of Elementary and Secondary Education proposes amendments to its Rules Governing Documents Posted to School District and Education Service Cooperative Websites. Act 372, Section 4 of 2023, created a written policy for the selection, relocation, retention and challenging of materials under Ark. Code Ann. § 6-25-105. Act 237 of 2023 establishes that superintendent performance targets required under Ark. Code Ann. § 6-17-123(a) shall be included with a superintendent's contract. Act 780 of 2023 requires that each district shall create a reduction in force policy required under Ark. Code Ann. § 6-17-2407. The Division amended the rule to require districts and education cooperatives to post the above newly created policies to their respective websites. Specifies all website posting due dates which have been updated to align with the Rules Governing Standards of Accreditation.

Changes Made Post Public Comment
Public comments were received during the first round of public comments, and substantive changes were made to the rule requiring a second round of

public comment. This rule did not receive any public comments during the second public comment period. No additional substantive changes were made to the rule following the second public comment period. A typographical error was corrected in Section 6.02 of the rules.

PUBLIC COMMENT: A public hearing was held on June 28, 2024. The public comment period closed on July 14, 2024. A second public hearing was held on September 20, 2024. That public comment expired on October 4, 2024. The agency provided the following public comment summary:

Commenter Name: Tripp Walter, APSRC, Staff Attorney, 7.12.24
COMMENTS:
1. Section 4.01.10, p.2: What is the source of authority for adding this requirement? It is not found in either Ark. Code Ann. § 6-11-129 or § 6-25-105.
2. Section 6.01.1, p. 4: What is the source of authority for adding this requirement? It is not found in either Ark. Code Ann. § 6-11-129 or § 6-17-2407.
RESPONSES:
1. School district's media centers are required by § 6-25-105 to have a written policy for the selection, relocation, retention and challenging of materials in place, and this policy must be made publicly available. Therefore, DESE is requiring this policy to be made publicly available by requiring it to be posted on the website. This ensures awareness to parents of their options regarding the policy. Thus, this comment has been considered, but no substantive changes will be made.
2. School districts are required to have a reduction in force policy. Additionally, Ark. Code Ann. § 6-11-129(a)(1) states: "Each school district shall make the following information and data easily identified on its website or the website of the school district's education service cooperative, if the education service cooperative maintains the school district's website"—which then goes on to list several requirements, including section (B). Section (B) requires compliance with "each school district's personnel policies required under § 6-17-201 et seq. and § 6-17-2301 et seq. § 6-17-2301(b)(7) requires posting of the reduction in force policy. Therefore, posting the reduction in force policy on websites is required. Thus, this comment has been considered, but no substantive changes will be made.

Commenter Name: Lucas Harder, ARSBA, Policy Services Director, 7.15.24
COMMENTS:
1. 4.01: Due to the deletion of August 1 here, there are several items that no longer have a specified deadline for posting, including: 4.01.5, 4.01.6, 4.01.7, 4.01.8, 4.01.9, and 4.01.10.

2. 4.04: There is no deadline stated by when this must be posted.
3. 8.01: To align with the changes to the Standards for Accreditation Rules, the word "accredited" should be removed from "Accredited—Probation or Accredited—Corrective Action status".

RESPONSES:

1. This comment was considered, and substantive changes have been made to now include deadlines where suggested. Deadlines align with the Standards for Accreditation rule too.
2. This comment was considered, and substantive changes have been made to now include deadlines where suggested. Deadline aligns with the Standards for Accreditation rule too.
3. This comment was considered, and the substantive change was made to remove "accredited" from the language of the rule so as to align with the language in the Standards of Accreditation rule.

Jason Kearney, at attorney with the Bureau of Legislative Research, asked the following questions and was provided with the following agency responses:

1) Section 4.01.10 of the amended rules references Ark. Code Ann. § 6-25-105, which concerns the establishment of guidelines for selection, relocation, and retention of materials. Is there a reason why the amended rules require a school district to post upon their website a written policy for the selection, relocation, retention and challenging of materials when the posting of such a policy is not required by the referenced section of the Arkansas Code? **RESPONSE:** The Division felt it was necessary to establish website posting requirements to create consistency across school districts.

2) Section 6.02 requires that a school district must, by September 1 of each year, provide the Division with the website where its current personnel policies and salary schedules may be found with respect to both licensed and classified personnel. However, Ark. Code Ann. § 6-17-201(d)(2)(A) provides that, by September 15 of each year, a school district shall provide the Division of Elementary and Secondary Education with the website address at which its current personnel policies, including the salary schedule, may be found. *See also* Ark. Code Ann. § 6-17-2301(c)(2) which provides that, by September 15 of each year, a school district shall provide the Division of Elementary and Secondary Education with the website address at which its current personnel policies for classified employees, including the salary schedule, may be found. Is there a reason why the deadline in the proposed rules differ from that set out in the Arkansas Code? **RESPONSE:** We will revise the deadline to September 15th so that it aligns with the code section and deadline set out in Standards for Accreditation. This was a typographical error on our part, and we appreciate you catching it.

The proposed effective date is January 1, 2025.

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

LEGAL AUTHORIZATION: Pursuant to Ark. Code Ann. § 6-15-209, which concerns rules made pursuant to the Quality Education Act of 2003, the State Board of Education shall promulgate rules as necessary to set forth the: 1) process for identifying and addressing a school or school district that is failing to meet the Standards for Accreditation of Arkansas Public Schools and School Districts; 2) process and measures to be applied to require a school or school district to comply with the Standards for Accreditation of Arkansas Public Schools and School Districts, including, but not limited to, possible annexation, consolidation or reconstitution of a school district under § 6-13-1401 et seq. and the Quality Education Act of 2003; 3) appeals process and procedures available to a school district pursuant to the Act and current law; and 4) definitions and meaning of relevant terms governing the establishment and governance of the Standards for Accreditation of Arkansas Public Schools and School Districts. The Division of Elementary and Secondary Education may promulgate rules as necessary to administer Ark. Code Ann. § 6-10-106, which concerns uniform dates for the beginning and ending of a school year. *See* Ark. Code Ann. §§ 6-10-106(g)(3)(A)(2) and 6-10-106(g)(5). Further, the Division may promulgate rules necessary to carry out the purposes of the School Performance Report Act. *See* Ark. Code Ann. §§ 6-15-1401 through 6-15-1402.

The division also may promulgate rules to implement Ark. Code Ann. § 6-15-2006, which concerns annual reports for public school student progression. *See* Ark. Code Ann. § 6-15-2006(a)(1)(C)(ii). The State Board shall establish by rule that compliance with Ark. Code Ann. § 6-15-2202, which concerns access to public school information on school improvement plans, is a requirement for accreditation of a public school or public school district. *See* Ark. Code Ann. § 6-15-2202(d)(1). The state board further shall incorporate the provisions of Ark. Code Ann. § 6-15-1704, which concerns annual review of parent and family engagement plans, into its rules for parent and family engagement plans. *See* Ark. Code Ann. § 6-15-1704(b)(4). Regarding kindergarten through grade twelve (K-12), the State Board of Education, after having consulted with the State Board of Health, shall promulgate appropriate rules for the enforcement of Ark. Code Ann. § 6-18-702, concerning immunization, by school district boards of directors, superintendents, and principals. *See* Ark. Code Ann. § 6-18-702(c)(2)(A). Further, the State Board of Education may promulgate rules to implement Ark. Code Ann. § 6-18-2005, concerning monitoring and support under the School Counseling

Improvement Act of 2019. *See* Ark. Code Ann. § 6-18-2005(d). Finally, the Division of Secondary and Elementary Education may promulgate rules to enforce and implement Ark. Code Ann. §§ 6-41-601 through 6-41-612, concerning dyslexia and related disorders. *See* Ark. Code Ann. § 6-41-611(b)(2).

The proposed amendments include those made in light of the following Acts:

Act 237 of 2023, §§6 and 21, sponsored by Senator Breanne Davis, which created the LEARNS Act and amended various provisions of the Arkansas Code as they relate to early childhood through grade twelve (12) education in the state of Arkansas; and

Act 372 of 2023, § 4, sponsored by Senator Dan Sullivan, which amended the law concerning libraries and obscene materials made available to minors; amended the law concerning the possession, sale, distribution, or furnishing of obscene materials; created the offense of furnishing a harmful item to a minor; amended the criminal code in relation to obscene materials loaned by a library; allowed a parent or legal guardian of a minor to access the minor's library records; provided for a civil cause of action against governmental entities that possess, sell, or distribute obscene materials; and amended the law concerning the process for challenging materials included in a library.

d. Rules Governing the Standards for Accreditation of Arkansas Public Schools and Public School Districts

DESCRIPTION: The Department of Education's Division of Elementary and Secondary Education seeks to amend its Rules Governing the Standards for Accreditation of Arkansas Public Schools and Public School Districts. Pursuant to Arkansas Code § 6-15-202 and this rule, the Division must review the Standards for Accreditation at least once every two years and determine whether the Standards should be amended.

Key Points

• Allows school districts more flexibility when structuring school calendars and class sizes without requesting a waiver from the State Board.

• Establishes a process by which a student may substitute comparable elective coursework for core academic credit.

• Includes several revisions to the Standards to incorporate requirements in the upcoming Rule Governing Career-Ready Pathways to a High School Diploma and Rule Governing Community Service.

Discussion
Act 237 of 2023, otherwise known as the LEARNS Act, requires that school districts offer career-ready pathways to a high school diploma to prepare students to enter a career immediately after high school. LEARNS also requires that students in public schools complete 75 clock hours of community service to graduate.

This amendment is necessary because both Acts included several requirements for public schools and public-school districts to provide high quality career-ready education to students in Arkansas and to allow students and parents more flexibility when structuring students' education. The Standards for Accreditation are the enforcement mechanism by which the Department can hold public schools and public-school districts accountable to ensure that the legislative mandate to provide a high-quality career-ready education to students in Arkansas is met.

Post Public Comment
During the first public comment period, the Department received several public comments. After the first public comment period, substantive changes were made to the rule per Department policy changes, not in response to public comments that were received. Those changes included adding an additional Standard (1-B.4.1), and clarifying Standard 1-C.2.7, and aligning dates with other Department rules. Subsequently the rule went out for a second round of public comment. The Department received several public comments. After the second public comment period, the Department made several grammatical and technical changes. No substantive changes were made.

PUBLIC COMMENT: A public hearing was held on June 28, 2024. The public comment period expired on July 14, 2024. A second public hearing was held on September 20, 2024. That public comment period expired on October 4, 2024. The agency provided a summary of public comments it received. Due to its length, that summary is attached separately.

Jason Kearney, at attorney with the Bureau of Legislative Research, asked the following question and was provided with the following agency response:

1) Sections 1-B.3 and 5-A.1 – What is the "AR App district strategic plan" referenced in these sections of the proposed rule? **RESPONSE:** The language you've referenced has been refined somewhat; however, in short, the AR App is an ADE initiative that streamlines funding applications for school districts into one system. You can find more detailed information here: https://dese.ade.arkansas.gov/Offices/Federal-Programs/ar-app.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency has indicated that the proposed rules do not have a financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 6-15-202(a)(1), the State Board of Education is authorized and directed to develop comprehensive rules, criteria, and standards to be used by the State Board and the Division of Elementary and Secondary Education in the accreditation of school programs in elementary and secondary public schools in this state. The State Board shall also promulgate rules necessary to administer Ark. Code Ann. § 6-15-202(b)(2)(B) through (b)(2)(E), concerning the waiver of a standard for accreditation. *See* Ark. Code Ann. § 6-15-202(b)(2)(F).

The State Board shall further promulgate rules setting forth the process for identifying schools and school districts that fail to meet the standards for accreditation; enforcement measures the State Board may apply to bring a school or school district into compliance with the standards, including, but not limited to, annexation, consolidation, or reconstitution of the school district in accordance with Ark. Code Ann. § 6-13-1401 et seq. and the Quality Education Act of 2003 ("Act"), Ark. Code Ann. §§ 6-15-201 through 216; and the appeal process available to a school district under the Act. *See* Ark. Code Ann. § 6-15-202(c). *See also* Ark. Code Ann. § 6-15-209 (providing that the State Board shall promulgate rules as necessary to set forth the process for identifying and addressing a school or school district that is failing to meet the Standards for Accreditation of Arkansas Public Schools and School Districts; process and measures to be applied to require a school or school district to comply with the standards, including, but not limited to, possible annexation, consolidation or reconstitution of a school district under Ark. Code Ann. § 6-13-1401 et seq. and the Quality Education Act of 2003; appeals process and procedures available to a school district pursuant to the Act and current law; and definitions and meaning of relevant terms governing the establishment and governance of the standards for accreditation). The Division of Elementary and Secondary Education shall also prepare and promulgate rules and guidelines for the maximum times allowable for correction of any violations of standards, provided no probationary status violation may exist for more than two (2) consecutive school years. *See* Ark. Code Ann. § 6-15-206(b)(2). Finally, the division may promulgate rules to implement Ark. Code Ann. § 6-15-216, which concerns flexibility in awarding course credit, including without limitation guidelines to assist public school districts in transitioning to awarding credits as provided under section 6-15-216. *See* Ark. Code Ann. § 6-15-216(c).

The proposed amendments include those made in light of the following Acts from the 2023 Regular Session:

Act 237 of 2023, §§ 12 and 20, sponsored by Senator Breanne Davis, which created the LEARNS Act and amended various provisions of the Arkansas Code as they relate to early childhood through grade twelve (12) education in the state of Arkansas; and

Act 242 of 2023, sponsored by Representative R. Scott Richardson, which concerned academic standards established by the Division of Elementary and Secondary Education; and required the division to include in the academic standards a means by which public school students may substitute comparable elective coursework in career and technical education for required core academic classes.

e. Rules Governing the Arkansas Better Chance Program

DESCRIPTION: The Department of Education's Division of Elementary and Secondary Education proposes its Office of Early Childhood Rules Governing the Arkansas Better Chance Program.[1]

Background
Pursuant to Ark. Code Ann. §§ 6-11-105 and 6-45-101 et seq., the Division shall adopt the necessary rules to implement these code sections. Act 237 of 2023, moved the Office of Early Childhood from the Division of Childcare and Early Childhood Education to the Arkansas Department of Education. This amendment changes the rule language to reflect that change.

Key Points
• The rule is amended throughout to state the regulatory authority as the Arkansas Department of Education, Office of Early Childhood instead of the Division of Childcare and Early Childhood Education.
• The rule is amended to include kindergarten readiness from Act 237 of 2023.
• The rule was amended to specify that funding is awarded based upon projected child enrollment from the previous year's October enrollment.
• The rule was updated to reflect funding is based on the number of days and that any ABC program providing less than 178 days will be pro-rated.

Discussion
This draft amendment is an update primarily driven by Act 237 of 2023, which moved the Office of Early Childhood from the Division of

[1] The Division of Child Care and Early Childhood Education of the Department of Human Services, created under § 20-78-205, was transferred to the Department of Education by a cabinet-level department transfer under § 25-43-101 et seq. *See* Act 237 of 2023, § 71.

Childcare and Early Childhood Education to the Arkansas Department of Education.

Post 1st Public Comment Changes
The following changes were made after the first public comment period:
• 8.4 DARDS/ and, or, or, Classroom programs were struck through as it was an internal typo. This Policy change was not made pursuant to public comment.
• 11.02.1 was struck through. This Policy change was not made pursuant to public comment.
• 11.9 was amended from thirty-six hours of staff development for ABC teachers to thirty. This Policy change was not made pursuant to public comment.
• 11.9.1 was amended from twenty-five hours of paraprofessional staff development to fifteen hours. This Policy change was not made pursuant to public comment.
• 16.3 was amended to only require an ABC program to have one handbook that incorporates ABC programmatic requirements instead of a separate one specifically for the ABC program. This Policy change was not made pursuant to public comment.
• 9.8 was removed to reduce redundancy. This Policy change was not made pursuant to public comment.

Post 2nd Public Comment Changes
No substantive changes were made following the second public comment period. Minor changes were made to correct technical errors in the drafting or to provide procedural clarity.

PUBLIC COMMENT: A public hearing was held on June 28, 2024. The public comment period closed on July 14, 2024. A second public hearing was held on September 20, 2024. That public comment period closed on October 1, 2024. The agency provided summary of public comments it received. Due to its length, that summary is attached separately.

The proposed effective date is December 1, 2024.

FINANCIAL IMPACT: The agency has indicated that the amended rules do not have a financial impact.

LEGAL AUTHORIZATION: Pursuant to Ark. Code Ann. § 6-45-105(a)(1)(A), the Division of Elementary and Secondary Education shall establish the Arkansas Better Chance Program to assist in the establishment and funding of the appropriate early childhood programs for children from birth through five (5) years of age. The programmatic standards and other rules necessary for the implementation of the

Arkansas Better Chance Program shall be adopted by the State Board of Education in accordance with the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq. *See* Ark. Code Ann. § 6-45-105(b). To facilitate the creation of the Unified Early Childhood Care and Education System, the state board shall establish and promulgate a definition of kindergarten readiness aligned with state content standards for elementary and secondary schools. *See* Ark. Code Ann. § 6-87-101(g).

The amended rule implements Act 237 of 2023, §§ 71 and 73, sponsored by Senator Breanne Davis, which created the LEARNS Act and amended various provisions of the Arkansas Code as they relate to early childhood through grade twelve (12) education in the state of Arkansas.

f. Rules Governing Consolidation and Annexation of School Districts

DESCRIPTION: The Department of Education's Division of Elementary and Secondary Education proposes changes to its Rules Governing Consolidation and Annexation of School Districts.

Purpose
Act 461 of 2023 removed the authority of the State Board to involuntarily consolidate a school district with less than 350 students. This amendment is necessary to bring the rule in compliance with statutory law. The amendment also provides procedures to implement for a third modification mechanism, boundary changes under Arkansas Code Annotated § 6-13-1414, which up until now were not provided for in rule.

Background
In addition to the amendments necessary to update the rule to the current state of the law, the new provisions set out a process for how the State Board will fulfill its obligations if a bound change request is presented to the board.

Key Points
• Updates rule to conform to statutory changes regarding the removal of the State Board's authority to involuntarily consolidate a school district with less than 350 students.
• Establishes a process in rule to implement an existing statutory procedure known as boundary changes that may be initiated by a single school district.
• Requires final changes to district lines to be filed with the County Auditor at the Request of GIS.
• Deletes forms currently codified consistent with the current policy of the Administrative Procedure Act.

Post Public Comment
A small number of non-substantive changes were made pursuant to public comment to improve the rule's conformity with the statutory text and code style.

PUBLIC COMMENT: A public hearing was held on August 20, 2024. The public comment period expired on September 13, 2024. The Division provided the following public comment summary:

Commenter Name: Tripp Walter, APSRC, Staff Attorney, and 9/12/2024
COMMENTS: Section 3.07, Page 2: a.) Add the word "adjoining" between the words "more" and "school", to comply with Ark. Code Ann. § 6-13-1414 (a)(l), and b.) The statute speaks in term of "an" adjoining school district, not multiple adjoining school districts.
RESPONSE: Comment considered; a non-substantive change was made regarding the inclusion of the word "adjoining." Regarding the remainder of the comment, the definition used in the draft amendment to the rule that contemplates multiple adjoining school districts is based on the statutory principle that when words importing a singular number are used regarding any subject matter, several matters shall be deemed to be included. A.C.A. § 1-2-203. As a policy matter, this language ensures that if a district seeks to petition a change to its boundary along two adjacent districts at the same time, the process before the State Board of Education will allow the resolution of the matter in a single process that considers all relevant districts.

Commenter Name: Tripp Walter, APSRC, Staff Attorney, and 9/12/2024
COMMENTS: Sections 8.01 and 8.02, Page 9: The language "or boundary change" is not contained in Ark. Code Ann. § 6-13-1408, which form the basis for these Sections. The statute concerning boundary lines is Ark. Code Ann. § 6-13-1414. **RESPONSE**: Comment considered; no changes were made. While the language of the rule does reflect statutory language, the intent of this amendment is to provide procedure to govern the statutory required boundary change process and to, wherever possible, have that process align with the annexation or consolidation processes. Consequently, the safeguards regarding desegregation that apply to annexations or consolidations are extended by rule to boundary change petitions.

Commenter Name: Tripp Walter, APSRC, Staff Attorney, and 9/12/2024
COMMENTS: Sections 29.02.2; 29.02.3.ld.-g., and 29.04.3-5, Pages 36-37: These sections contain language which is not contained in the statute.
RESPONSE: Comment considered; no changes were made. The purpose of this portion of the amendment is to provide a procedural structure to implement the statutory requirements set out in A.C.A. § 6-13-1414.

Commenter Name: Tripp Walter, APSRC, Staff Attorney, and 9/12/2024
COMMENTS: Section 32.03, Page 40: As the listed criteria are not contained in statute, they should not be the exclusive criteria used by the State Board of Education. **RESPONSE**: Comment considered; no changes were made. The rule establishes a list of factors that the board is required to consider but does not prohibit the consideration of other factors. *See* 32.03.

Commenter Name: Tripp Walter, APSRC, Staff Attorney, and 9/12/2024
COMMENTS: Page 40: The subsections numbered "33.03.1-33.04" are incorrectly numbered. **RESPONSE**: Comment considered; non-substantive changes were made.

Commenter Name: Lucas Harder, ASBA, Attorney, and 8/21/2024
COMMENTS: 3.07: There is an unnecessary "to" between "under" and "Ark". **RESPONSE**: Comment considered; a non-substantive change was made.

Commenter Name: Lucas Harder, ASBA, Attorney, and 8/21/2024
COMMENTS: 5.01: In order to more closely align with the statutory language, I would recommend changing "accreditation or failure to meet academic, fiscal, or facilities distress requirements" to "accreditation, failure to meet fiscal distress requirements, or failure to meet the requirements to exit Level 5 – Intensive support".
RESPONSE: Comment considered; a non-substantive change was made. The comment accurately reflects a change in the statutory language underlying this section of the rule that was made by Act 936 of 2017.

Commenter Name: Lucas Harder, ASBA, Attorney, and 8/21/2024
COMMENTS: 5.02.1: In order to more closely align with the statutory language, I would recommend changing "accreditation or failure to meet academic, fiscal, or facilities distress requirements" to "accreditation, failure to meet fiscal or facilities distress requirements, or failure to meet the requirements to exit Level 5 – Intensive support".
RESPONSE: Comment considered; a non-substantive change was made. The comment accurately reflects a change in the statutory language underlying this section of the rule that was made by Act 936 of 2017.

Commenter Name: Lucas Harder, ASBA, Attorney, and 8/21/2024
COMMENTS: 6.01.1: In order to more closely align with the statutory language, I would recommend changing "accreditation or failure to meet academic, fiscal, or facilities distress requirements" to "accreditation, failure to meet fiscal distress requirements, or failure to meet the requirements to exit Level 5 – Intensive support".
RESPONSE: Comment considered; a non-substantive change was made.

The comment accurately reflects a change in the statutory language underlying this section of the rule that was made by Act 936 of 2017.

Commenter Name: Lucas Harder, ASBA, Attorney, and 8/21/2024
COMMENTS: 6.02.1: In order to more closely align with the statutory language, I would recommend changing "accreditation or failure to meet academic, fiscal, or facilities distress requirements" to "accreditation, failure to meet fiscal distress requirements, or failure to meet the requirements to exit Level 5 – Intensive support".
RESPONSE: Comment considered; a non-substantive change was made. The comment accurately reflects a change in the statutory language underlying this section of the rule that was made by Act 936 of 2017.

Commenter Name: Lucas Harder, ASBA, Attorney, and 8/21/2024
COMMENTS: 11.02: In order to more closely align with the statutory language, I would recommend changing "accreditation or failure to meet academic, fiscal, or facilities distress requirements" to "accreditation, failure to meet fiscal distress requirements, or failure to meet the requirements to exit Level 5 – Intensive support". **RESPONSE**: Comment considered; a non-substantive change was made. The comment accurately reflects a change in the statutory language underlying this section of the rule that was made by Act 936 of 2017.

Commenter Name: Lucas Harder, ASBA, Attorney, and 8/21/2024
COMMENTS: 13.12.1: The language of "no more than twenty (20) years ago" has become confusing with the passage of time. As written, this could now indicate either twenty years from when the rules were amended, twenty years from when the Act was passed, or twenty years from when the district is looking to close the isolated campus. While I recognize that this aligns with the statutory language, I would recommend amending to read either "no earlier than 2001" or "nor more than twenty (20) years from the date the district intends to close the campus".
RESPONSE: Comment considered; no changes made. The language addressed by this comment is likely ambiguous as it appears in A.C.A § 6-13-1416; however, the division is not prepared to resolve the ambiguity by rule at this time. The resolution proposed in the comment is a reasonable reading of the statute but not necessarily the only reading. The division will consider this question for a future change to the rule.

Commenter Name: Lucas Harder, ASBA, Attorney, and 8/21/2024
COMMENTS: 16.043: To more closely align with the statutory language, everything after July 1 should be stricken. **RESPONSE**: Comment considered; a non-substantive change was made.

Commenter Name: Lucas Harder, ASBA, Attorney, and 8/21/2024
COMMENTS: 16.1109: I know that this matches the statutory language, but I would recommend changing "not designated as being in academic or fiscal distress: where it occurs here to "not designated as being in Level 5 – Intensive support or fiscal distress" in recognition that academic distress is no longer a classification. I know that this matches the statutory language, but I would recommend changing "subject to academic or fiscal distress" to "subject to Level 5 – Intensive support or fiscal distress".
RESPONSE: Comment considered; no changes made. The language addressed by this comment is likely antiquated as it appears in A.C.A § 6-13-1603; however, the division is not prepared to resolve this ambiguity by rule at this time. The resolution proposed in the comment is a reasonable reading of the statute but not necessarily the only reading. The division will consider this question for a future change to the rule.

Commenter Name: Lucas Harder, ASBA, Attorney, and 8/21/2024
COMMENTS: 16.1412: The "this" is unnecessary at "created under this Title 6". **RESPONSE**: Comment considered; a non-substantive change was made.

Commenter Name: Lucas Harder, ASBA, Attorney, and 8/21/2024
COMMENTS: 18.03.1: "Commissioner of Education" should be changed to "Commissioner of Elementary and Secondary Education".
RESPONSE: Comment considered; a non-substantive change was made.

Commenter Name: Lucas Harder, ASBA, Attorney, and 8/21/2024
COMMENTS: 20.01.43: As the definition for an Act 60 School District is being stricken, reference to it should be removed here so that it just reads "of a school district". **RESPONSE**: Comment considered; no changes made. The language addressed by this comment is likely ambiguous given that the definition of "Act 60 school district" was removed from statute but some reference to the term in A.C.A § 6-13-1610 was retained. The changes to this section of the rule mirrored the statutory changes. The division is not prepared to resolve any ambiguity created at this time. The division will consider this question for a future change to the rule.

Commenter Name: Lucas Harder, ASBA, Attorney, and 8/21/2024
COMMENTS: 20.032.2: As the definition for an Act 60 School District is being stricken, reference to it should be removed here so that it just reads "of a school district". **RESPONSE**: Comment considered; no changes made. The language addressed by this comment is likely ambiguous given that the definition of "Act 60 school district" was removed from statute but some reference to the term in A.C.A § 6-13-1610 was retained. The changes to this section of the rule mirrored the statutory changes. The division is not prepared to resolve any ambiguity

created at this time. The division will consider this question for a future change to the rule.

Commenter Name: Lucas Harder, ASBA, Attorney, and 8/21/2024
COMMENTS: 20.043.1: “Commissioner of Education” should be “Commissioner of Elementary and Secondary Education”.
RESPONSE: Comment considered; a non-substantive change was made.

Commenter Name: Lucas Harder, ASBA, Attorney, and 8/21/2024
COMMENTS: 29.03.3: There is a “of” missing from between “Division” and “Elementary”. **RESPONSE**: Comment considered; a non-substantive change was made.

Commenter Name: Lucas Harder, ASBA, Attorney, and 8/21/2024
COMMENTS: 31.04: There is an unnecessary “of” between “boundary” and “change”. **RESPONSE**: Comment considered; a non-substantive change was made.

Commenter Name: Lucas Harder, ASBA, Attorney, and 8/21/2024
COMMENTS: 32.02.3: “Financial destress” should be “Fiscal distress”.
RESPONSE: Comment considered; a non-substantive change was made.

Commenter Name: Lucas Harder, ASBA, Attorney, and 8/21/2024
COMMENTS: 32.03:
The section numbers for the following are incorrect:
33.03.1 should be 32.03.1.
33.03.2.1 should be 32.03.2.
33.02.1.1 should be 33.03.2.1.
33.02.3 should be 32.03.3.
33.02.4 should be 32.03.4.
33.02.5 should be 32.03.5.
33.02.6 should be 32.03.6.
33.04 should be 32.04.
RESPONSE: Comment considered; non-substantive changes were made.

Commenter Name: Lucas Harder, ASBA, Attorney, and 8/21/2024
COMMENTS: 33.01: There is a missing parenthetical Arabic numeral two after. **RESPONSE**: Comment considered; a non-substantive change was made.

Commenter Name: Lucas Harder, ASBA, Attorney, and 8/21/2024
COMMENTS: 33.02.2: This should end with a colon instead of a semicolon. **RESPONSE**: Comment considered; a non-substantive change was made.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: Pursuant to Ark. Code Ann. § 6-13-1409(a)(3), the State Board of Education shall have, among other duties regarding consolidations and annexations, the duty to enact rules regarding the consolidation and annexation of school districts under Title 6 of the Arkansas Code, which concerns education. Further authority for the rulemaking can be found in Ark. Code Ann. § 6-13-1603(j), which provides that the State Board shall promulgate rules to facilitate the administration of Title 6, Chapter 13, Subchapter 16 of the Arkansas Code, concerning the Public Education Reorganization Act. Finally, the Division of Elementary and Secondary Education shall establish rules to implement Ark. Code Ann. § 6-13-1612, concerning academic support centers. *See* Ark. Code Ann. § 6-13-1612(c).

The proposed changes include those made in light of Act 461 of 2023, sponsored by Senator John Payton, which amended the Public Education Reorganization Act and removed the authority of the State Board of Education to require an administrative consolidation for certain school districts.

5. DEPARTMENT OF EDUCATION, DIVISION OF HIGHER EDUCATION (Daniel Shults)

a. Rules Governing the Governor's Higher Education Transition Scholarship Program

DESCRIPTION: The Department of Education, Division of Higher Education seeks to amend its Rules Governing the Governor's Higher Education Transition Scholarship Program.

Act 413 of 2023 amended law concerning the Governor's Higher Education Transition Scholarship Program by creating an additional section to allow scholarship recipient students to utilize scholarship funds for enrolling and attending courses offered during a summer term at the postsecondary institution in which the student is enrolled.

Act 413 of 2023 establishes the rule shall include student eligibility and disbursement and administration of the funds utilized by a student to enroll in and attend courses offered during a summer term.

Act 413 of 2023 also defines "scholarship" within this section to include a scholarship program that is funded with the state funds or lottery proceeds

and administered by the division. In addition, Act 413 defines "academic semester" pertaining to scholarships.

Post Public Comment
No public comments received. No substantive changes have been made.

PUBLIC COMMENT: A public hearing was held on May 20, 2024. The public comment period expired June 6, 2024. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: Pursuant to Act 870 of 2023, § 47, the Department of Education's Division of Higher Education shall provide for the administration of the "Governor's Higher Education Transition Scholarship Program" as appropriated in the Student Assistance Grants and Various Scholarships Appropriation section of Act 870 to assist students accepted into transitional programs for students with intellectual and/or developmental disabilities at state institutions of higher education and shall promulgate rules for the implementation of the program and for the disbursement of scholarships to eligible students; the provisions of Act 870, § 47, shall be in effect only from July 1, 2023 through June 30, 2024. *See also* Act 169 of 2024, § 40 (providing the same to be in effect from July 1, 2024, through June 30, 2025). Further authority for the rulemaking can be found in Arkansas Code Annotated § 6-82-105(1), which provides that the Division of Higher Education shall administer all state college financial assistance programs provided by legislation or by law and in so doing shall have the authority and responsibility with respect to state college financial assistance programs provided by legislation or by law to adopt such rules as the division shall deem necessary or appropriate to carry out the purposes of Title 6, Chapter 82, Subchapter 1 of the Arkansas Code, which concerns scholarships generally.

Finally, pursuant to Ark. Code Ann. § 6-80-109(a), the Division of Higher Education shall promulgate or update existing division rules to allow a student who is a recipient of a scholarship to utilize scholarship funds to enroll in and attend courses offered during a summer term at the postsecondary institution in which the student is enrolled. Rules promulgated under Ark. Code Ann. § 6-80-109, which concerns rulemaking authority for the division, shall include without limitation requirements concerning student eligibility and the disbursement and administration of scholarship funds utilized by a student to enroll in and

attend courses offered during a summer term. *See* Ark. Code Ann. § 6-80-109(b).

The proposed changes are made in light of the following Acts:

Act 413 of 2023, sponsored by Representative Julie Mayberry, which concerned rules promulgated by the Division of Higher Education, and required the Division of Higher Education to promulgate certain rules concerning the administration of scholarships funded with state funds and lottery proceeds; and

Act 870 of 2023, sponsored by the Joint Budget Committee, which made an appropriation for personal services and operating expenses for the Department of Education – Division of Higher Education for the fiscal year ending June 30, 2024.

b. Rules Governing the Osteopathic Rural Medical Practice Student Loan and Scholarship Board

DESCRIPTION: The Department of Education, Division of Higher Education proposes its Rules Governing the Osteopathic Rural Medical Practice Student Loan and Scholarship Board.

Act 857 of 2019 and Act 725 of 2023 create and establish guidelines governing the Rules Governing the Osteopathic Rural Medical Practice Student Loan and Scholarship Board. Act 857 of 2019 provided board duties and responsibilities. It also details the criteria for allocating scholarships and loans to students within Arkansas, the dispute resolution process, community match programs and contracts, and the medical school alternates on waiting lists. Act 725 of 2023 cleans up language pertaining to members of the board.

Post Public Comment
This rule did not receive any public comments at the hearing held on October 8, 2024, nor during the public comment period; therefore, no substantive changes were made to the rule.

PUBLIC COMMENT: A public hearing was held on October 8, 2024. The public comment period expired on October 13, 2024. The agency indicated that they did not receive any public comments.

Jason Kearney, an attorney with the Bureau of Legislative Research, asked the following question and was provided with the following agency response:

1) Section 4.06 – Is there a reason why the proposed rules set a maximum loan amount per academic year ($12,000) that differs from the maximum amount ($16,500) set out in Ark. Code Ann. § 6-81-1808(a)?
RESPONSE: We changed the rule to comply with the code section, and it has been approved by the appropriate board.

The proposed effective date is January 1, 2025.

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

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 6-81-1803(b)(1), the Osteopathic Rural Medical Practice Student Loan and Scholarship Board shall, among other requirement set out in § 6-81-1803(b), promulgate reasonable rules necessary to execute the provisions of Ark. Code Ann. §§ 6-81-1801 through 6-81-1817, which concern the Osteopathic Rural Medical Practice Student Loan and Scholarship Program, including without limitation rules addressing the requirements and in conformance with the requirements of the Arkansas Administrative Procedure Act, § 25-15-201 et seq., and other appropriate state laws in promulgating and placing rules into effect: 1) for a health professions shortage area; 2) to become a qualified rural community eligible to participate in the Osteopathic Rural Medical Practice Student Loan and Scholarship Program under this subchapter; and 3) for a procedure to resolve disputes arising out of or relating to a rural practice or community match loan or income incentive contract. Additional authority for the rulemaking can be found in Ark. Code Ann. § 6-81-1812(b)(1), which provides that the Board, under Ark. Code Ann. § 6-81-1803(b)(1), shall promulgate rules establishing a procedure that may be used by a loan or income incentive recipient, the Board, or a qualified rural community to resolve any dispute arising out of or relating to an osteopathic rural medical practice or community match loan or income incentive contract, including the validity or interpretation of a contract term, contract enforcement or defenses, the occurrence of an event of default or breach, loan repayment, the assessment or imposition of contract damages or civil money penalties, or other related disputes. The rules may provide for alternative dispute resolution, such as mediation, as appropriate. *See* Ark. Code Ann. § 6-81-1812(b)(2). Finally, the Board shall promulgate rules setting forth additional terms and conditions of community match income incentive contracts. *See* Ark. Code Ann. § 6-81-1814(e).

The proposed rules implement Act 725 of 2023, sponsored by Representative Lee Johnson, which concerned the Osteopathic Rural Medical Practice Student Loan and Scholarship Program and amended the appointment process for the Osteopathic Rural Medical Practice Student Loan and Scholarship Board.

c. Rule Governing Emergency Response Equipment and Training at Arkansas Institutions of Higher Education

DESCRIPTION: The Department of Education, Division of Higher Education proposes its Rules Governing Emergency Response Equipment and Training at Arkansas Institutions of Higher Education.

Act 737 of 2023 amended the Arkansas Code to require that automated external defibrillators (AEDs) be placed at visible and appropriate locations at institutions of higher education (IHEs). This rule sets out training requirements for IHE personnel for administration of AEDs as well as maintenance and repair requirements for AEDs. Act 811 of 2023 requires IHEs to provide opioid rescue kits on their campuses. The rescue kits must be kept in a visible location with AEDs and the location must be registered with the campus police department. This rule also sets out training requirements for IHE personnel for administration of the rescue kits.

Post Public Comment
This rule did not receive any public comments at the hearing held on October 8, 2024, nor during the public comment period; therefore, no substantive changes were made to the rule.

PUBLIC COMMENT: A public hearing was held on October 8, 2024. The public comment period expired on October 13, 2024. The agency indicated that it received no public comments.

Jason Kearney, an attorney with the Bureau of Legislative Research, asked the following questions and was provided with the following agency responses:

1) Did the agency collaborate with all public university and community college presidents and chancellors or their designees, in developing and adopting these rules, per Arkansas Code Annotated § 6-60-121(a)?
RESPONSE: ADHE has a continued collaboration with universities pertaining to methods for implementing this rule and complying with procedures related to AEDs.

2) Did the agency consult with the Department of Health in developing rules for automated external defibrillator and cardiopulmonary resuscitation training, per Arkansas Code Annotated § 6-60-121(b)?
RESPONSE: Yes, the division consulted with the Arkansas Department of Health and the State School Nurse Consultant for ADH, Cheria McDonald, who advised us on drafting the rule to comply with Department of Health guidelines.

3) Did the agency consult with the Arkansas Drug Director within the Department of Human Services in implementing requirements related to opioid overdose rescue kits, per Arkansas Code Annotated § 6-60-122(a)? **RESPONSE:** Yes, the division consulted with the Arkansas Drug Director.

4) Section 2.01 – Should this section of the proposed rules, which concerns regulatory authority, reference Arkansas Code Annotated §§ 6-60-121 and 6-60-122, as opposed to § 6-60-119? **RESPONSE:** We have corrected the citation in the rule, and it has been approved by the appropriate board.

The proposed effective date is January 1, 2025.

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

LEGAL AUTHORIZATION: The Arkansas Higher Education Coordinating Board, in collaboration with all public university and community college presidents and chancellors or their designees, shall develop and adopt rules to require that: 1) an automated external defibrillator be placed in appropriate locations across each institution of higher education campus as determined by rule; 2) appropriate personnel be adequately trained on an ongoing basis; and 3) each institution of higher education-sponsored sporting event have an automated external defibrillator at the institution of higher education-sponsored sporting event. *See* Arkansas Code Annotated § 6-60-121(a). Furthermore, the Board, after consultation with the Department of Health, shall develop rules based on guidelines for automated external defibrillator and cardiopulmonary resuscitation training that incorporates at least the following: 1) healthcare provider oversight, including planning and review of the selection, placement, and maintenance of automated external defibrillators; 2) appropriate training of anticipated rescuers in the use of the automated external defibrillator and in cardiopulmonary resuscitation; 3) testing of psychomotor skills based on the American Heart Association scientific guidelines, standards, and recommendations for the use of the automated external defibrillator, as they existed on January 1, 2023, and for providing cardiopulmonary resuscitation as published by the American Heart Association or the American Red Cross, as they existed on January 1, 2023, or equivalent course materials; 4) coordination with the emergency medical services system; and 5) an ongoing quality improvement program to monitor training and evaluate the response with each use of the automated external defibrillator. *See* Ark. Code Ann. § 6-60-121(b). Finally, the Division of Higher Education shall consult and collaborate with the Arkansas Drug Director within the Department of

Human Services to implement requirements related to ensuring that each campus of each institution in the State of Arkansas, by January 1, 2024, has an opioid overdose rescue kit in a clearly visible location that is labeled with the words "Opioid Overdose Rescue Kit — Naloxone Nasal Spray" or other language approved by the division. *See* Ark. Code Ann. § 6-60-122(a).

The proposed rules implement the following Acts from the 2023 Regular Session:

Act 737 of 2023, sponsored by Representative Lee Johnson, which required automated external defibrillators at certain school-sponsored sporting events and on campuses of institutions of higher education; and

Act 811 of 2023, sponsored by Representative Tara Shephard, which required that opioid overdose kits be located on each campus of each public high school and state-supported institution of higher education.

d. Rules Governing the Student Undergraduate Research Fellowship

DESCRIPTION: The Department of Education, Division of Higher Education proposes amendments to its Rules Governing the Student Undergraduate Research Fellowship.

Act 413 of 2023 amended the Arkansas Code to allow students who are recipients of scholarship funds to spend those scholarship funds on courses offered during a summer term. This rule amendment reflects the legislative change. The rule was also rewritten to make technical corrections in advance of the Code of Arkansas Rules.

Post Public Comment
This rule did not receive any public comments at the hearing held on October 8, 2024, nor did it receive any public comments via email during the public comment period. No substantive changes were made to the rule.

PUBLIC COMMENT: A public hearing was held on October 8, 2024. The public comment period expired on October 13, 2024. The agency indicated that it did not receive any public comments.

Jason Kearney, an attorney with the Bureau of Legislative Research, asked the following questions and was provided with the following agency responses:

1) Section 3.03 – Should there be an "and" between "Arkansas Code 6-61-236" and "these rules"? **RESPONSE:** We added the word "and" into the rule. It was a typo, and it has been approved by the appropriate board.

2) Sections 8.05 and 8.08 – Where can OMB Circular A21 and OMB Circular A110, referenced in these sections, be found? **RESPONSE:** These publications are documents of the federal Office of Management and Budget. The circulars can be referenced at this link: https://www.whitehouse.gov/omb/information-for-agencies/circulars/.

The proposed effective date is January 1, 2025.

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

LEGAL AUTHORIZATION: Pursuant to Act 870 of 2023, § 41, and Arkansas Code Annotated § 6-61-236(c), the Division of Higher Education shall promulgate rules necessary for the implementation and operation of the Student Undergraduate Research Fellowship Program. Further authority for the rulemaking can be found in Ark. Code Ann. § 6-80-109(a), which provides that the Division shall promulgate or update existing division rules to allow a student who is a recipient of a scholarship to utilize scholarship funds to enroll in and attend courses offered during a summer term at the postsecondary institution in which the student is enrolled. Rules promulgated under Ark. Code Ann. § 6-80-109, which concerns rulemaking authority for the Division, shall include without limitation requirements concerning student eligibility and the disbursement and administration of scholarship funds utilized by a student to enroll in and attend courses offered during a summer term. *See* Ark. Code Ann. § 6-80-109(b).

The proposed amendments are those made in light of the following Acts:

Act 413 of 2023, sponsored by Representative Julie Mayberry, which concerned rules promulgated by the Division of Higher Education, and required the Division of Higher Education to promulgate certain rules concerning the administration of scholarships funded with state funds and lottery proceeds; and

Act 870 of 2023, §§ 6 and 41, sponsored by the Joint Budget Committee, which made an appropriation for personal services and operating expenses for the Department of Education – Division of Higher Education for the fiscal year ending June 30, 2024. *See also* Act 169 of 2024, § 6 (providing the same to be in effect for the fiscal year ending June 30, 2025).

e. Rule Governing the Graduate Medical Education Residency Expansion Board

DESCRIPTION: The Department of Education, Division of Higher Education, proposes its Rules Governing the Graduate Medical Education Residency Expansion Board. Act 844 of 2023 amends the composition of the Graduate Medical Education Residency Expansion Board and calls for Governor appointment of Board members. The Graduate Medical Education Residency Expansion Board is codified at Ark. Code Ann. § 6-82-2001 et al. The Board was seated in Spring 2024 and as such, new rules are being promulgated to provide the duties and responsibilities of its board members. The rule also outlines the criteria for allocating one-time planning grants to medical entities within Arkansas that are either creating or expanding a graduate medical education program. It also stipulates funding for medical fellows from excess planning grants if deemed appropriate by the Board.

Post Public Comment
This rule did not receive any public comments at the hearing held on October 8, 2024, but did receive public comments via email. The public comments were considered but no substantive changes were made to the rule.

PUBLIC COMMENT: A public hearing was held on October 8, 2024. The public comment period expired on October 13, 2024. The agency provided the following public comment summary[2]:

Commenter Name: Michael Wood, CEO Mena Regional Health System
COMMENTS: Mr. Wood on behalf of Mena Regional Health System strongly endorses the efforts to expand the graduate medical education program in rural areas and increase the availability of residency positions in specialties like obstetrics. These initiatives are vital to addressing the physician shortages that have long plagued rural communities in Arkansas, and they believe that they will have a profound impact on the health and well-being of our population. **RESPONSE:** Comments considered. No substantive changes made.

Commenter Name: Darren Caldwell, Administrator, Mercy Hospital Berryville
COMMENTS: Section 4.00 limitations to amending the language of the rule due to how the statute is written, but due to the current language, Barryville's residents will already be seated and no longer considered "first year" residents. Section 3.03 applications should be accepted on a rolling basis and consider awarding funds retroactively. Section 4.02 the board should more inclusively describe allowable costs beyond direct

[2] Bureau Staff was also provided with the full version of each comment summarized.

resident costs since administrative costs associated with adding residency positions is one of the biggest barriers for a new or expanding program. Start-up costs mentioned in 4.02.3 should also be expanded to explicitly include administrative costs associated with the expansion of an existing program. **RESPONSE:** Comments considered. No substantive changes were made in rule; however, these comments will be considered for upcoming legislative change.

Commenter Name**:** Paul Bean, M.D., Chief Medical Officer, Mercy Fort Smith
COMMENTS: Section 4.00 specifies funds will be used to increase the number of first year positions and provide for the establishment of new graduate medical education programs with first year residency positions, however, Mercy's Fort Smith residents will already be seated and arguably no longer considered first-year residents. Section 3.01.2 indicates the grant can be used for existing programs. Section 3.03 requires applications to be submitted nlt [*sic*] July 15 and approved by August 15, but ACGME review process does not begin until October, nor does the review committees meet until January and February. A rolling application process is recommended. Additionally, awarding funds retroactively for the previous year is strongly encouraged. Section 4.02 start-up costs at the board's discretion should be expanded to explicitly include administrative costs associated with expansion of an existing program. Section 6.01 pertaining to funding should also include fellowship positions to existing programs qualifying for initial funding eligibility as outlined in Section 3.0 since like residencies, fellowship programs add bandwidth of care to an underserved area while increasing the likelihood of physicians staying in Arkansas underserved communities. **RESPONSE:** Comments considered. No substantive changes were made in rule; however, these comments will be considered for upcoming legislative change.

Commenter Name: Sheena Olson, VP for Government Relations, Arkansas Children's Hospital
COMMENTS: The Children's Hospital Graduate Medical Education (CHGME) program is the only federal program solely focused on the training of pediatricians and pediatric subspecialists. CHGME was created because Congress recognized the need for a dedicated source of funding to support training of the nation's pediatricians to ensure all children have access to needed health care. Children's hospitals care for almost no children covered by Medicare, so they receive very little Medicare GME funding which is the main federal funding source for physician training. Additionally, Medicare GME provides more than twice the amount of financial support per resident that CHGME provides. There is a significant decline in the number of medical students pursuing a career in pediatrics as compared to the number of students applying for adult residencies. As such, as we go forward in our efforts to strengthen

the physician workforce in Arkansas, we ask that the need for pediatricians and pediatric subspecialists is top of mind in developing our strategy to improve health care across the state. In addition, we want to take this opportunity to advocate that hospitals be granted the utmost level of flexibility and funding opportunities when establishing new programs or expanding current programs including fellowship opportunities.
RESPONSE: Comments considered. No substantive changes made.

Commenter Name: LaDonna Johnson, President/CEO, Unity Health-White County Medical Center
COMMENTS: As the UAMS GME will be represented by item 2.01.5, they ask that the hospitals represented by 2.01.3 and 2.01.4be familiar with GME programs other than UAMS. Across the state, there are various hospitals with residency or fellowship programs that represent other Sponsoring Institutions, such as Unity Health, Mercy Hospital in Fort Smith, CHI St. Vincent Hot Springs, or NEA Baptist in Jonesboro. Expansion of GME in Arkansas should involve more than one institution.
RESPONSE: Comments considered. No substantive changes were made in rule; however, these comments will be considered for upcoming legislative change.

Commenter Name: Ryan Cork, Vice Chancellor UAMS Northwest Regional Campus
COMMENTS: Section 4.02.3 take this into consideration and establish startup costs necessary to create successful GME programs and slots since the most significant costs of establishing a GME program are incurred during the initial phase, long before any residents enter the program. Hospitals should be given the opportunity to apply for and receive funding for the expansion of existing residency programs in accordance with Ark. Code Ann. § 6-82-2002 (b)(2)(B). This will have a significant impact by enabling hospitals that are already contributing to the training of our much-needed next generation of physicians to continue to grow and adapt, ensuring they can meet the increasing demand for healthcare services across the state. **RESPONSE:** Comments considered. No substantive changes were made in rule; however, these comments will be considered for upcoming legislative change.

Commenter Name: John W. Thompson, VP Physician Operations/DIO of St Bernard's Medical Center
COMMENTS: Section 4.04 should consider extensive costs that occur well in advance of the trainee's arrival to their training site, along with other indirect costs of training doctors, be considered. Their analysis shows costs of starting a 16 resident psychiatry program (4 residents per 4-year program) shows a net margin greater than $900,000 on 1 year and greater than 4700,000 dollars on years 2 and 3. This is with CMS funding. Mr. Thompson states that they agree funds should largely be used for

resident salaries, but other expenses should be considered.
RESPONSE: Comments considered. No substantive changes were made in rule; however, these comments will be considered for upcoming legislative change.

Commenter Name: Bo Ryall, President/CEO of Arkansas Hospital Association
COMMENTS: Member hospitals have varying levels of experience in managing residency programs, it is essential that the planning grant program offer funding opportunities that cater to all stages of development. Whether a hospital requires start-up resources to establish a new residency program or is looking to expand an already successful and well-established program, the grant program must be flexible enough to support the full spectrum of needs. We urge our policymakers to prioritize initiatives that bolster recruitment, retention, and training within these essential specialties, so that every Arkansan has access to the care they need when they need it most. **RESPONSE:** Comments considered. No substantive changes were made in rule; however, these comments will be considered for upcoming legislative change.

Commenter Name: Larry Shackleford, President/CEO of Washington Regional Medical Systems
COMMENTS: Section 4.02 could be significantly improved. The proposed regulation provides that these grants shall be used to support the direct resident costs to the graduate medical education program, including without limitation: 4.02.1 Stipends; 4.02.2 Benefits; and 4.02.3 Start-up costs, at the board's discretion. 4.02.3 be amended to establish that startup costs necessary to establishing GME programs and slots be prioritized. We also support limiting these funds to payment of direct costs of faculty rather than the costs of buildings, facility or administrative personnel costs. **RESPONSE:** Comments considered. No substantive changes were made in rule; however, these comments will be considered for upcoming legislative change.

Jason Kearney, an attorney with the Bureau of Legislative Research, asked the following question and was provided with the following agency response:

1) Did the agency elect not to include in the proposed rules the October 1st deadline for entities applying for a planning grant, which is set out in Arkansas Code Annotated § 6-82-2003(d)(2)? **RESPONSE:** We inadvertently left this out and have now included the language in the rule, and it has been approved by the appropriate board.

The proposed effective date is January 1, 2025.

FINANCIAL IMPACT: The agency has indicated that the proposed rules do not have a financial impact.

LEGAL AUTHORIZATION: The Graduate Medical Education Residency Expansion Board shall promulgate rules necessary to execute Arkansas Code Annotated §§ 6-82-2001 through 6-82-2005, which concern the Graduate Medical Education Residency Expansion Board, including without limitation rules that address the requirements and are in conformance with the requirements of the Arkansas Administrative Procedure Act, § 25-15-201 et seq. *See* Ark. Code Ann. § 6-82-2001(b)(1). Furthermore, the Board shall award planning grants on a competitive basis according to the criteria adopted by the Board under its rules. *See* Ark. Code Ann. § 6-82-2002(b)(3).

The proposed rule implements Act 844 of 2023, sponsored by Representative Lee Johnson, which concerned the Graduate Medical Education Residency Expansion Board and amended the composition of the Graduate Medical Education Residency Expansion Board.

6. DEPARTMENT OF ENERGY AND ENVIRONMENT, DIVISION OF ENVIRONMENTAL QUALITY (Kesia Morrison, Lawrence Bengal, Bailey Taylor)

a. Rule No. 1: Prevention of Pollution by Oil Field Waste

DESCRIPTION: The Department of Energy and Environment and the Division of Environmental Quality (DEQ) propose this rulemaking to modify Rule 1: Prevention of Pollution by Oil Field Waste. This rulemaking is necessary to streamline the regulation of Class II Disposal and Class II Commercial Disposal Wells. The Arkansas Pollution Control and Ecology Commission (Commission) has general rulemaking authority through Ark. Code Ann. § 8-1-203(b)(1)(A), and specific authority to promulgate this rule through Ark. Code Ann. § 8-4-202(a) and (b).

Background

Commission Rule 1: Prevention of Pollution by Oil Field Waste regulates the surface facilities of high volume Class II Disposal and Class II Commercial Disposal Wells. The Oil and Gas Commission (OGC) regulates the disposal wells themselves pursuant to General Rule H-1. Under the present regulatory scheme, operators of these facilities must obtain a permit from DEQ for operation of the surface facilities, and a permit from the OGC to drill and operate the disposal wells. Similarly, the surface facilities are regulated by a different regulatory scheme than the wells themselves. This present structure burdens the operators with regulatory overlap and duplicative permitting.

The Proposed Rule Amendments
The proposed amendment to Rule 1 will remove the regulatory responsibility for regulating and permitting the surface facilities of high volume Class II Disposal and Class II Commercial Disposal Wells. Simultaneously, the OGC is amending Rule H-1 to assume regulation of these same surface facilities. This will enable all of the regulatory responsibility for the operation of Class II wells to be exercised by the Oil and Gas Commission.

Necessity and Practical Impact of Rule Amendments
The rule amendment will eliminate an area of regulatory overlap and create more government efficiency in permitting and regulating Class II disposal wells. The amendment will allow the Oil and Gas Commission to permit and regulate both the Class II wells and the necessary surface facilities. This will allow the operators of these facilities to obtain permits from one government agency and allow the industry to rely upon the regulatory scheme of only the OGC. The rule amendments will ultimately save the State of Arkansas resources through greater regulatory efficiency.

PUBLIC COMMENT: A public hearing was held on August 29, 2024. The public comment period expired on September 8, 2024. The agency has indicated that it received no public comments.

The proposed effective date is December 1, 2024.

FINANCIAL IMPACT: The agency has indicated that the amended rule does have a financial impact. Per the agency, Oil and Gas Commission rules H-1 and B-2 will require approximately 30-35 commercial disposal well operators to obtain a bond to ensure proper clean-up of the surface facilities in the event that the company becomes insolvent and the sites are abandoned. The rules will require bond amounts ranging from $50 – $400K depending on the size and characteristics of the surface facility. DEQ is unable to quantify the exact cost that the disposal well operators will incur to purchase these financial assurances, but letters of credit, surety bonds, and CDs may be used to satisfy the bond amount.

LEGAL AUTHORIZATION: The Arkansas Pollution Control and Ecology Commission is given and charged with the power and duty to adopt, modify, or repeal, after notice and public hearings, rules implementing or effectuating the powers and duties of the Division of Environmental Quality and the Commission under the Arkansas Water and Air Pollution Control Act, codified at Title 8, Chapter 4 of the Arkansas Code. *See* Arkansas Code Annotated § 8-4-202(a).

7. DEPARTMENT OF ENERGY AND ENVIRONMENT, LIQUEFIED PETROLEUM GAS BOARD (Kesia Morrison, Kevin Pfalser, Dan Pilkington)

a. State Code: Liquefied Petroleum Gas Containers and Equipment

DESCRIPTION: The Department of Energy and Environment, Liquefied Petroleum Gas Board seeks to amend its State Code, Liquefied Petroleum Gas – Containers and Equipment.

Background

The Liquefied Petroleum Gas Board has long-established safety requirements for the storage and transportation of LP gas. Part of these safety requirements is to establish distance requirements, or safe distances, between storage containers and other types of objects such as houses, important buildings, air conditioner units, and other storage containers. These distance requirements have been in place since 1965 and have not been updated to consider modern improvements in the storage and transport of LP gas. Also, much of the liquefied petroleum gas sold in Arkansas is sold to consumers who lease the container from the gas provider. In such cases, the consumer does not have the right or ability under Arkansas law to fill the tank with LP gas from another seller of gas. *See* Ark. Code Ann. § 15-75-406(a)(1).

If the consumer chooses to change providers of LP gas, the consumer must also contract with the new provider to lease a new container. In these circumstances, the only entity that has authority to move an unused or old container is the owner, who formerly held the lease with the consumer. *See* Ark. Code Ann § 15-75-406(a) and (b). Because of the value of the container, most permit holders will recover their vessels very quickly after they are notified by the consumer that they are not renewing the lease agreement. However, there is a recent trend where permit holders are not recovering their containers or are not recovering the containers on a timely basis. These permit holders do not always have offices in Arkansas. There have been many instances recently where even though the consumer has requested the permit holder to retrieve the container, it still is not removed over one year after the notice. Propane tanks that have been disconnected from service and set aside on the consumer's property can be considered a safety risk. There can be an accidental release of propane caused by children playing, lawn equipment coming in contact with the container, a vehicle coming in contact with the container, or many other reasons.

The Proposed Rule

The proposed rule amendment updates the distance requirements in the rules. Specifically, the LP Gas Board is proposing that the rules be updated to the distance standards established by the National Fire

Protection Association (NFPA) in its 2020 edition of Pamphlet 58. These standards have been adopted by the vast majority of states and would establish distance requirements that are consistent with the states neighboring to Arkansas. The new distance standards take into consideration improvements made in LP gas equipment, as well as building and wiring improvements to buildings. The proposed rule amendments ensure that Arkansas rules are consistent with national standards. Also, the proposed new rule, Rule 19 "Installation and Painting of Containers," Subsection HH, will allow the LP Gas Board to help facilitate lessors or owners of unused gas containers to act promptly to retrieve their containers. The rule will allow the Board to provide notice to the permit holder that it must retrieve its container within thirty (30) days. If the container owner fails to retrieve the tank within the thirty (30) day period, the rule will allow the Board to fine the owner fifty dollars ($50.00) per day for every day beyond the thirty-day period that the container remains on the consumer's property. The rule also allows the Board to seek injunctive relief to remove the container if it remains after the initial thirty (30) day period.

Necessity and Practical Impact of Rule Amendments
The current distance requirements in the LP Gas Code have been in place since 1965 and are outdated. Arkansas distance requirements are not consistent with national standards. The rule amendments are necessary to adopt national distance standards and to modernize the rules to reflect current technology. The rule amendments will make Arkansas distance requirements consistent with neighboring states. The rule amendments are necessary to allow for modern technology to be implemented in the storage of LP gas and the placement of storage containers. Much of the industry supports these national standards, and already is implementing them where not inconsistent with current Arkansas rules. The new rule, Section 19 "Installation and Painting of Containers," Subsection HH, will allow the LP Gas Board to protect the public from hazards associated with old or unused gas containers. The rule will allow the Board to encourage the owner of the container to promptly retrieve the container once its lease has expired or been terminated. The Board will have the ability to give notice to the LP gas provider to pick up the container and to enforce the directive with fines and injunctive relief, if necessary. These enforcement powers, which are lacking under the current law, will eliminate the hazard of unused containers being left or abandoned for excessively long periods of time. The rule is necessary to protect consumers from indolent lessors who are dilatory in retrieving unused containers.

PUBLIC COMMENT: A public hearing was held on October 1, 2024. The public comment period expired on October 7, 2024. The Board has indicated that it received no public comments.

The proposed effective date is November 28, 2024.

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

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 15-75-207(a), the Liquefied Petroleum Gas Board is empowered to make reasonable rules to carry out the provisions of Ark. Code Ann. §§ 15-75-201 through 15-75-209, which concern the Liquefied Petroleum Gas Board. Such rules shall have the force and effect of law. In addition to the functions, powers, and duties conferred and imposed upon the board by Ark. Code Ann. §§ 15-75-201 through 15-75-209, and the regulation of its own procedure and carrying out its functions, powers, and duties, it shall have the authority from time to time to make, amend, and enforce all reasonable rules not inconsistent with law, which will aid in the performance of any of the functions, powers, or duties conferred or imposed upon it by law. *See* Ark. Code Ann. § 15-75-207(b). Furthermore, the Board shall provide additional standards or specifications for containers, systems, appliances, and appurtenances, as may be reasonably necessary for the public safety. The standards or specifications are to be set forth in the rules of the state code governing liquefied petroleum gas containers and equipment. *See* Ark. Code Ann. § 15-75-208. Finally, any person violating any of the provisions of Title 15, Subtitle 6, Chapter 75 of the Arkansas Code, also known as the Liquefied Petroleum Gas Board Act, or any rule adopted pursuant thereto shall be guilty of a misdemeanor and upon conviction shall be fined in a sum of not less than twenty-five dollars ($25.00) nor more than one thousand dollars ($1,000) and, in addition, may be imprisoned for not more than one (1) year, or both. *See* Ark. Code Ann. § 15-75-103.

8. DEPARTMENT OF ENERGY AND ENVIRONMENT, OIL AND GAS COMMISSION (Kesia Morrison, Lawrence Bengal, Dan Pilkington)

a. Rule B-2: Proof of Financial Responsibility Required to Be Furnished

DESCRIPTION: The Department of Energy and Environment, Oil and Gas Commission ("OGC" or "Commission") proposes this rulemaking regarding General Rule B-2: Proof of Financial Responsibility Required to be Furnished. This rule establishes the specific financial responsibility requirements and procedures that must be met in order to satisfy the requirement of furnishing proof of financial responsibility set forth in Ark. Code Ann. § 15-72-204. The Oil and Gas Commission has rulemaking authority pursuant to Ark. Code Ann. § 15-71-110(d).

Background
OGC General Rule B-2: Proof of Financial Responsibility Required to be Furnished sets forth the standards and procedures for furnishing proof of financial responsibility regarding oil, gas and disposal wells, and surface facilities servicing those wells. The rule implements the statutory financial responsibility requirement referred to above. The rule allows for the Commission to require financial responsibility for all operators and applicants for drill permits or to transfer ownership, and to require that the operators ultimately provide the financial resources necessary to plug wells and restore the surface after the production has ended. The rule distributes the responsibility for restoration to the entities that have benefitted financially from the production or operation of the well facility.

The Proposed Rule Amendments
Subsection (c) of General Rule B-2 is amended to clarify that the financial assurance may remain in place for longer than one (1) year if the well is not drilled. Subsection (d) is amended to provide greater clarity regarding the conditions that must be met in order to release the financial assurance. Subsection (g)(1) is amended to add Class II UIC SWD wells associated with liquid hydrocarbons, water supply wells associated with an enhanced oil recovery project, and blanket financial assurance for oil or gas production or Class II Enhanced Recovery and water supply wells. Subsection (g)(2) is added to require for financial assurance for brine production wells. Section (g)(4) is amended to require for additional financial assurance for the surface facilities of Class II Commercial Disposal Wells.

Necessity and Practical Impact of Rule Amendments
The rule amendment will allow the Commission to satisfy its statutory duties as set forth in Ark. Code Ann. § 15-72-204. This statute requires that before a permit to drill is issued, all operators doing business in this state file a proof of financial responsibility with the Commission. The rule amendments provide the standards and methods to allow operators of all covered wells to satisfy this statutory duty. Specifically, the rule is being amended to allow for the bonding of salt water disposal (SWD) well surface facilities that will be regulated by the Commission with the amendment of General Rule H-1. These facilities are currently regulated by the Division of Environmental Quality and owners are not required to post a bond or covered under any other form of financial assurance. The rule amendment will streamline the regulatory process so that adequate financial bonding is in place to facilitate remediation of the well and surface facilities of the drilling site should the site be abandoned, and the operator become insolvent. Rule B-2 is also being amended to increase the bonding requirements for brine production wells in response to increased brine production resulting for Lithium processing. These brine

production wells require a greater level of financial assurance because of the increased cost associated with plugging this type of well.

PUBLIC COMMENT: A public hearing was held on August 29, 2024. The public comment period expired on September 2, 2024. The agency indicated that it received no public comments.

The proposed effective date is December 1, 2024.

FINANCIAL IMPACT: The agency has indicated that the amended rule does have a financial impact. Per the agency, the OGC currently requires that operators of Class II UIC wells, Class II Commercial Disposal wells and brine production and injection wells provide financial assurance. The rule will require additional bonding for the extensive surface facilities associated with the Class II UIC wells, Class II Commercial Disposal wells, which are now not covered by reclamation bonds. The rule will also require additional bonding amounts for brine production and injection wells due to the increased cost of plugging these wells. Because the cost of this financial assurance will vary (typical cost 1-15% of the bond amount) based upon the financial standing of the companies and the size and type of the facility and the number of wells and the type of financial instrument utilized to satisfy the requirement, the precise cost to the operators involved cannot be accurately tabulated. The rule will impact approximately 30-35 Class II Injection well operations and currently 5 brine producers. If adequate bonding is not maintained the State will not have sufficient funding to plug and reclaim these facilities in the event these companies become insolvent.

LEGAL AUTHORIZATION: After hearing and notice as provided in Title 15, Subtitle 6, Chapter 71 of the Arkansas Code, which concerns the Oil and Gas Commission, the Commission may make such reasonable rules and orders as are necessary from time to time in the proper administration and enforcement of Title 15, Subtitle 6, Chapter 71, including rules or orders to require reasonable financial assurance acceptable to the Commission conditioned on the performance of the duty to plug each dry or abandoned oil or gas well. *See* Ark. Code Ann. § 15-71-110(d)(1)(b). Further, the Commission shall establish by rule a fee structure to be paid annually by well operators of only those wells producing liquid hydrocarbons. *See* Ark. Code Ann. § 15-71-116(a)(1).

b. Rule H-1: Class II Disposal and Class II Commercial Disposal Well Permit Application Procedures

DESCRIPTION: The Department of Energy and Environment, Oil and Gas Commission ("OGC" or "Commission") proposes this rulemaking regarding General Rule H-1: Class II Disposal and Class II Commercial

Disposal Well Permit Application Procedures. The Oil and Gas Commission has general rulemaking authority pursuant to Ark. Code Ann. § 15-71-110(d), and specific rulemaking authority pursuant to Ark. Code Ann. § 15-76-306(c).

Background

OGC General Rule H-1: Class II Disposal and Class II Commercial Disposal Well Permit Application Procedures, sets forth the procedure necessary to apply for a permit to drill and maintain Class II Disposal Wells, Class II Commercial Disposal Wells, Class II Enhanced Oil Recovery Injection Wells, and Class V Brine Disposal Wells. The rule allows the disposal of such fluids in acceptable reservoirs, and necessarily requires that precautions are implemented to protect drinking water. The rule is part of a regulatory scheme that demarcates the responsibility for disposal of such fluids between the Oil and Gas Commission and the Division of Environmental Quality (DEQ). Currently, the OGC issues permits for and regulates the Class II wells themselves, while DEQ issues permits for and regulates the surface facilities of high volume Class II Disposal Wells and Commercial Disposal Wells.

The Proposed Rule Amendments

Subsection (d) of General Rule H-1 is amended to provide the Commission with regulatory responsibility for all Class II Disposal and Commercial Wells, as well as the surface facilities. The proposed amendment to General Rule H-1 allows the Oil and Gas Commission to issue permits for any Class II Disposal Well, or any Class II Commercial Disposal Well, as well as the surface facilities of these types of wells. The amendments also will require that the surface facilities of these wells provide financial assurance and bonding according to OGC General Rule B-2.

Necessity and Practical Impact of Rule Amendments

The rule amendment will eliminate an area of regulatory overlap and create greater government efficiency in permitting and regulating Class II Disposal wells and Class II Commercial Disposal wells. The amendment will allow the Oil and Gas Commission to permit and regulate Class II wells, as well as the necessary surface facilities. This will allow the operators of these facilities to obtain permits from one government agency and allow the industry to rely upon the regulatory scheme of the OGC. A practical impact of eliminating this regulatory overlap is that the OGC will require that the surface facilities of Class II wells be bonded to ensure proper clean-up of these improvements in the event that the wells are plugged. This requirement will ensure proper clean-up of closed facilities in a manner that will not result in increased costs to the state. The rule amendments will ultimately save the State of Arkansas resources both

through greater regulatory efficiency and in ensuring clean-up of facilities is paid by private enterprises through the purchase of bonds.

PUBLIC COMMENT: A public hearing was held on August 29, 2024. The public comment period expired on September 2, 2024. The agency indicated that it received no public comments.

The proposed effective date is December 1, 2024.

FINANCIAL IMPACT: The agency has indicated that the proposed rule does have a financial impact. Per the agency, the proposed rule will require approximately 30-35 commercial disposal well operators to obtain a bond to ensure proper clean-up of the surface facilities in the event that the company becomes insolvent and the sites are abandoned. The rule will require bond amounts ranging from $50 – $400K depending on the size and characteristics of the surface facility. OGC is unable to quantify the exact cost that the disposal well operators will incur to purchase these financial assurances, but letters of credit, surety bonds and CDs maybe used to satisfy the bond amount.

LEGAL AUTHORIZATION: After hearing and notice as provided in Title 15, Subtitle 6, Chapter 71 of the Arkansas Code, which concerns the Oil and Gas Commission, the Commission may make such reasonable rules and orders as are necessary from time to time in the proper administration and enforcement of its statutory authority relating to the exploration, production, and conservation of oil and gas. *See* Ark. Code Ann. § 15-71-110(a)(1), (d).

Per the agency, the amended rule is required to comply with federal law, specifically, 40 C.F.R. § 144.

9. DEPARTMENT OF FINANCE AND ADMINISTRATION, OFFICE OF INTERGOVERNMENTAL SERVICES (Doris Smith)

a. Pregnancy Help Organization Grant Program & REPEAL: Method of Administering Pregnancy Help Grant Program

DESCRIPTION: Pursuant to the authority vested in the Secretary of the Department of Finance and Administration (DFA) by Ark. Code Ann. §§ 25-8-102(a) and Act 125 of the 2024 Fiscal Session, 94th General Assembly, the Secretary of the Department of Finance and Administration, with the approval of the Governor, will administer the Pregnancy Help Organization Grant program by making sub-grants to organizations that provide services to pregnant women with the purpose of encouraging them to give birth to their unborn children.

The proposed rule:

- Defines the meaning of Pregnancy Help Organizations in reference to organizations eligible to receive grant funds.
- Establishes requirement for applicants to submit a grant plan to DFA for approval prior to receiving a sub-grant.
- The approved grant plan will govern the organization's use of its sub-grant.

Pregnancy help organizations preserve public peace, health, and safety by providing a range of services to individuals facing unintended pregnancies. These pregnancy help organizations have been underfunded. This grant program will allow centers in need to apply for grant funding to assist with serving pregnant women.

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired on October 15, 2024. The agency provided the following comment summary:

Commenter 1: Tiffany Yang
Affiliation: Unknown
Summary of Comment: It is imperative that taxpayer funds be used to support organizations that offer a full spectrum of reproductive healthcare. The commenter opposes funding being used to promote anti-abortion ideologies. The commenter is concerned about the lack of federal privacy protections addressing patient confidentiality and safety. **IGS Response:** Your comments have been received DFA Intergovernmental Services. Thank you for sharing your comments.

Commenter 2: Sarah Louderback
Affiliation: Unknown
Summary of Comment: The commenter opposes taxpayer funds being used to promote anti-abortion agendas or for clinics that do not provide comprehensive healthcare and are not equipped with qualified staff. The commenter is also concerned about privacy and HIPAA violations. **IGS Response:** Your comments have been received DFA Intergovernmental Services. Thank you for sharing your comments.

Commenter 3: Linda Farrell
Affiliation: Unknown
Summary of Comment: The commenter disapproves of the use of taxpayer funds for unregulated providers who provide little or no help to women in crisis and who have religiously motivated agendas and are promoting abstinence-only education models. The commenter states that these providers are religiously motivated in violation of the First Amendment of the Constitution. The commenter states that taxpayer monies should be spent on teaching genuine sex education in all schools.

The commenter states that the American Medical Association, scholars, reproductive rights organization, and honorable lawmakers have deemed these organizations to be unethical. The commenter states that the pregnancy centers are not genuine providers of medical care and may make "life-threatening errors." **IGS Response:** Your comments have been received DFA Intergovernmental Services. Thank you for sharing your comments.

Commenter 4: Ann Patterson
Affiliation: Unknown
Summary of Comment: The commenter states that it is imperative that taxpayer funding be directed to organizations that provide a full spectrum of reproductive health care. The commenter does not support using funds to support anti-abortion ideologies. The commenter states that there is a lack of privacy at these centers and expressed a concern for patient safety.
IGS Response: Your comments have been received DFA Intergovernmental Services. Thank you for sharing your comments.

Commenter 5: Sarah B. Thompson
Affiliation: On the Board of Grandmothers for Reproductive Rights
Summary of Comment: The commenter requested a two-week extension to allow members and supporters to have an adequate amount of time to comment. The commenter states that the rule was not publicized in a way that was easily located by ordinary citizens of the state. The commenter requested to know when and where the original notification was made.
IGS Response: Your comments have been received DFA Intergovernmental Services. Thank you for sharing your comments.

Commenter 6: George Wise
Affiliation: Unknown
Summary of Comment: The commenter disapproves of the use of taxpayer funds for anti-abortion agendas and does not support these clinics as providers of comprehensive reproductive health services. The commenter is concerned that there is a lack of qualified medical staff and organizations not bound by federal privacy laws like HIPAA. The commenter states that these clinics are putting patients' confidentiality at risk. **IGS Response:** Your comments have been received DFA Intergovernmental Services. Thank you for sharing your comments.

Commenter 7: Christine Hightower
Affiliation: Unknown
Summary of Comment: The commenter disapproves use of taxpayer funds to fund organizations that limit access to essential reproductive health services. The commenter believes tax dollars should support comprehensive care options that empower women rather than restrict their choices. The commenter is concerned these centers do not employ

qualified medical staff and do not adhere to privacy laws like HIPAA and this compromises patient confidentiality. **IGS Response:** Your comments have been received DFA Intergovernmental Services. Thank you for sharing your comments.

Commenter 8: Kilee Webb
Affiliation: Unknown
Summary of Comment: The commenter disapproves of the use of taxpayer funds to fund organizations that limit access to essential reproductive health services. The commenter believes tax dollars should support comprehensive care options that empower women rather than restrict their choices. The commenter is concerned these centers do not employ qualified medical staff and do not adhere to HIPAA and this this compromises patient confidentiality. **IGS Response:** Your comments have been received DFA Intergovernmental Services. Thank you for sharing your comments.

Commenter 9: Ulrike Meyer
Affiliation: Unknown
Summary of Comment: The commenter disapproves using public funds to promote anti-abortion and religious doctrine rather than evidence-based responses to the maternal mortality crisis. The commenter believes the Pregnancy Help Organizations do not provide medically proven information about pregnancy options and actively spread misinformation about abortion. The commenter believes that research shows such organizations provide little material support for parents through their programs. The commenter does not think the Pregnancy Health Organizations provide prenatal care and are not licensed or regulated and are not qualified to make meaningful interventions in the massive public health crisis. The commenter believes funding should be provided to health care organizations with licensed trained medical staff and regulated facilities. **IGS Response:** Your comments have been received DFA Intergovernmental Services. Thank you for sharing your comments.

Commenter 10: Shelley Taylor
Affiliation: Unknown
Summary of Comment: The commenter disapproves of taxpayer funding being used to support the Pregnancy Help Organizations due to their limited access to essential reproductive health services. The commenter believes taxpayer dollars should support comprehensive care options. The commenter believes the centers do not employ qualified medical staff and do not adhere to HIPAA which compromises patient confidentiality. **IGS Response:** Your comments have been received DFA Intergovernmental Services. Thank you for sharing your comments.

Commenter 11: Lara Schock
Affiliation: Unknown
Summary of Comment: The commenter disapproves using taxpayer funding to organizations that promote anti-abortion agendas. The commenter believes the centers do not employ qualified medical staff and do not adhere to HIPAA. **IGS Response:** Your comments have been received DFA Intergovernmental Services. Thank you for sharing your comments.

Commenter 12: Jeanne Olson
Affiliation: Unknown
Summary of Comment: The commenter disapproves public funds being used to promote anti-abortion and religious doctrine through so-called pregnancy help centers. **IGS Response:** Your comments have been received DFA Intergovernmental Services. Thank you for sharing your comments.

Commenter 13: Sarah B. Thompson
Affiliation: Board Member of Grandmothers for Reproductive Rights
Summary of Comment: The commenter does not support taxpayer dollars being used to coerce and misinform vulnerable pregnant people into parenting. The commenter believes the maternal mortality crisis in Arkansas, particularly among black women, warrants evidence-based and coordinated statewide responses that promote increased access to healthcare. The commenter believes the Pregnancy Help Organizations do not provide prenatal care and are not licensed, regulated, and are not qualified to make meaningful interventions in the maternal mortality crisis. **IGS Response:** Your comments have been received DFA Intergovernmental Services. Thank you for sharing your comments.

Commenter 14: Jenny Flanagan
Affiliation: Unknown
Summary of Comment: The commenter opposes taxpayer funds being used for the Pregnancy Help Organizations Grant Program. The commenter states it is crucial that state funding is directed towards organizations that provide a full spectrum of reproductive health care, including safe and legal abortion services. The commenter does not support expending public money for organizations that promote anti-abortion ideologies and states that the lack of federal privacy protections at centers without medical staff raises concerns about patient confidentiality and safety. **IGS Response:** Your comments have been received DFA Intergovernmental Services. Thank you for sharing your comments.

Commenter 15: Murry Newbern
Affiliation: Unknown
Summary of Comment: The commenter stated concern in how their tax dollars are spent. The commenter posed the following questions, "What is the oversight for the grantees? Where are grantees required to report on how the money is spent, how many clients are served?... Are they overseen by the state medical board? Is information provided to clients supported by evidence-based research? Is medical and private information protected by HIPAA?" The commenter stated he/she expected DFA to hold the grantees to these standards before funding any grants. **IGS Response:** Your comments have been received DFA Intergovernmental Services. Thank you for sharing your comments.

Commenter 16: Ellison Poe
Affiliation: Poe Travel
Summary of Comment: The commenter stated that he/she does not support their tax dollars being used to coerce and misinform vulnerable pregnant people into parenting. **IGS Response:** Your comments have been received DFA Intergovernmental Services. Thank you for sharing your comments.

Commenter 17: Emily Parke Stevens
Affiliation: Unknown
Summary of Comment: The commenter states they do not support their taxpayer dollar being used to coerce and misinform vulnerable pregnant people into parenting. The commenter stated that he/she calls on the "Department to end the Pregnancy Help Organization grant program and direct funding to health care organizations with licensed, trained medical staff and regulated facilities that can make positive interventions for the health of families." **IGS Response:** Your comments have been received DFA Intergovernmental Services. Thank you for sharing your comments.

The proposed effective date is pending legislative review and approval.

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

Per the agency, the total estimated cost to implement this rule is $2,000,000 for the current fiscal year. The agency indicated that, per Act 125 of 2024, $2,000,000 is appropriated to fund sub-grant awards to pregnancy help organizations statewide.

LEGAL AUTHORIZATION: This rule implements Act 125 of 2024. The Act, sponsored by Senator John Payton, made an appropriation to reduce maternal and infant mortality by making an appropriation for pregnancy help organization grants for the Department of Finance and

Administration – Disbursing Officer for the fiscal year ending June 30, 2025. Special language contained within the Act required the Department to promulgate rules to implement the disbursement of the grant moneys from the Pregnancy Help Organization Grant Sub-Fund. *See* Act 125, § 3(c)(1). The rules shall include a requirement that the entity requesting the grant monies submit a plan describing how the entity will spend the grant moneys and a statement that the funds shall not be disbursed all at once, but in increments in accordance with the plan. *See* Act 125, § 3(c)(2).

10. DEPARTMENT OF FINANCE AND ADMINISTRATION, REVENUE DIVISION (Paul Gehring, Alicia Austin Smith)

a. Taxicab Liability Insurance and Self-Insurance Certification for Certain Persons and Religious Denominations

DESCRIPTION: Pursuant to Act 804 of 2023, the Department of Finance and Administration is mandated to promulgate rules to administer new taxicab licensing liability insurance requirements. The rule would also implement new procedures that certain persons and religious denominations would follow to obtain a certificate of self-insurance from the Department.

The proposed rule:

- Adds necessary definitions;
- Provides clarification on the procedure an operator of a taxicab or vehicle for hire must follow for submitting proof of liability insurance to the Department;
- Provides clarification on the procedure an operator of a taxicab or vehicle for hire must follow to submit the required annual disclosure statement to the Department; and
- Details the procedure certain persons and religious denominations must follow to obtain a certificate of self-insurance from the Department.

PUBLIC COMMENT: A public hearing was held on this rule on September 18, 2024. The public comment period expired on September 18, 2024. The agency indicated that it received no public comments.

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

Q. Arkansas Code § 27-14-1501(c)(2)(A) states that operators cannot be required to provide uninsured motorist coverage when a bond exists, while Section 4(b)(iii) of the proposed rules states that a bond filed under Rule (1)(4)(a) cannot be required to provide uninsured motorist coverage. Is

this a distinction without a difference and, if so, could you explain why?
RESPONSE: We believe it is a distinction without a difference. Our explanation is below.

Arkansas Code Annotated § 27-14-1501(c) provides as follows:

> (c) (1) In lieu of the policy of insurance, **an owner** may file a bond by some solvent surety company licensed to do business in this state or may file a bond by suitable collateral.
>
> (2) (A) The bond or collateral shall be in the form approved by the secretary and shall be conditioned for the payment of property damage and personal injuries and shall be in an amount no less than fifty thousand dollars ($50,000) for all claims for the operator's fleet, **and uninsured motorist coverage shall not be required of the operators.**
>
> (B) If the bond or collateral becomes insufficient because of claims or any other reason, the operator shall have seven (7) days to restore it to the full amount or lose its bonded status. [Emphasis added.]

DFA's Rule 2024-2 provides, in pertinent part, as follows:

> 4. BOND IN LIEU OF LIABILITY CONTRACT OR CERTIFICATE OF INSURANCE
>
> a. In lieu of a liability contract or certificate of insurance, a taxicab owner may file a bond from a solvent surety company licensed to do business in Arkansas.
>
> b. **A bond provided under subpart 4(a) of Section I of this part shall:**
>
> i. Be in the form approved by the Secretary of the Department of Finance and Administration;
>
> ii. Be in an amount not less than two hundred and fifty thousand dollars ($250,000) for all claims for the taxicab owner or operator's fleet; and
>
> iii. **Not be required to provide uninsured motorist coverage**. [Emphasis added.]

Under both the statute and the rule, a taxicab owner's/operator's bond for payment of property damage and personal injuries (in lieu of a policy of insurance) is not required to provide uninsured motorist coverage. The distinction in the wording of the statute and the rule is not consequential.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: This rule implements Act 804 of 2023. The Act, sponsored by Representative Lee Johnson, regulated the business of vehicles for hire, required certain disclosures by a business engaged in carrying passengers for hire, required liability insurance coverage for each taxicab, automobile, or similar vehicle used for hire, and amended the law regarding self-insurance by certain entities. Temporary language contained within the Act required the Secretary of the Department of Finance and Administration to promulgate rules necessary to implement the Act. *See* Act 804 of 2023, § 4.

11. DEPARTMENT OF HEALTH, ARKANSAS PSYCHOLOGY BOARD (Colin Davies, Matt Gilmore)

a. Arkansas Psychology Board Rules

DESCRIPTION: The Arkansas Department of Health is seeking review of proposed rule changes to the Arkansas Psychology Board Rules.

Per Act 842 of 2023, the proposed rule will allow the Board to create a scholarship to help with the shortages of Neuropsychological Technicians.

Per Act 137 of 2023, the proposed rule will allow the Board to stay up to date with the Arkansas Occupational Licensing of Uniformed Service Members, Veterans, and Spouses.

Per Act 573 of 2023, the proposed rule repealed the sunset date of Psychological Examiners, and this rule change will allow the board to license Psychological Examiners again. Act 573 of 2023 also states that no new Psychological Examiner shall be granted independent status if he or she submits an application to the board for independent status after December 31, 2024. Psychological Examiners primarily administer tests to individuals who are suffering from psychological, learning, and neurological disabilities. Psychological Examiners primarily work in hospitals, school districts, and social security services.

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired on August 17, 2024. The agency provided the following comment summary:

Commenter 1: Daniel Wysocki, Licensed Psychological Examiner – Independent, AR Psychology Board License 13-08EI
COMMENT: Thank you for the opportunity to provide feedback on the upcoming changes. I would like to address the lack of inclusion of

Licensed Psychological Examiners – Independent (LPE-I) in the internship and reference sections (5.3.C. and 5.3.E.). Given the current shortage of psychology professionals, the decision to exclude LPE-I from the training program could increase existing bottlenecks in the field. I hope to have the discussion that individuals holding an LPE-I be included in the opportunities to provide formal internship training programs and reference, as they are well-equipped to meet the internship criteria outlined, and I would be excited to provide training opportunities for these future professionals. I would also note that this proposal is distinct from Supervisor Status, as these services would be provided within a defined academic training framework, and I believe are excluded from being a requirement of providing an internship opportunity. Thank you for considering my comments. **RESPONSE:** This public comment was reviewed by the Arkansas Psychology Board in its monthly meeting on September 20, 2024. The Board did not adopt these suggested changes because they do not pertain to the current rule changes. The sections that the commentator references have to do with internships and reference letters. Historically, psychology internships have been overseen by psychologists as they have the most experience with education and working with clients. This is a national standard set by the American Psychological Association (APA) that internships should have psychologists as supervisors. The Board's rules also reflect this. Regarding letters of reference, applicants must have a letter from the Training Director of their program attesting they have completed the program successfully, and three letters of references from three psychologists. In most situations, the three letters of reference are the psychologists that supervised the individual. The Board's response to this comment as been sent to the commentor.

Commenter 2: Anonymous

COMMENT: I have significant concerns for new LPEs obtaining independent licensure, and I believe independent licensure should not be extended. Furthermore, forensic psychology has become an increasingly highly specialized specialty field within the field of psychology. The degree of advanced training, specialization, and expertise required to conduct these evaluations has significantly increased since the LPE license was sunset in the late 1990s. I believe, going forward, that LPEs should be precluded from conducting forensic psychological evaluations, much as they are not allowed to do neuropsychological evaluations. Both fields require a very significant degree of advanced training with very substantial ramifications of the work. In order to protect the public, forensic psychological evaluations and neuropsychological evaluations should be left to appropriately trained doctorate level psychologist only. Thank you for your consideration. **RESPONSE:** This public comment was reviewed by the Arkansas Psychology Board in its monthly meeting on September 20, 2024. The Board did not adopt these suggested changes because they

are already in the law as Act 573 of 2023. Licensed Psychological Examiners are not able to add to their statement of intent forensic psychological evaluations and neuropsychological evaluations. The changes being made to the Board's rules are due to Act 573 of 2023. The changes requested by the commentor are not allowed by Act 573.Only psychologists are able to add forensic psychological evaluations and neuropsychological evaluations to their statement of intent. The Board's response to this comment as been sent to the commentor.

The proposed effective date is pending legislative review and approval.

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

LEGAL AUTHORIZATION: "The Arkansas Psychology Board shall . . . [f]rom time to time adopt rules that comply with national guidelines and standards as it may deem necessary for the performance of its duties." Ark. Code Ann. § 17-97-203(3). The Board may adopt rules consistent with Title 6, Chapter 81, Subchapter 20 of the Arkansas Code, regarding the Psychological and Neuropsychological Testing Workforce Scholarship, Stipend, and Incentive Program, in order to effectively and efficiently carry out the subchapter's purposes. Ark. Code Ann. § 6-81-2008, *as created by* Act 842 of 2023. This rule implements Acts 137, 573, and 842 of 2023.

Act 137, sponsored by Senator Ricky Hill, amended the Arkansas Occupational Licensing of Uniformed Service Members, Veterans, and Spouses Act of 2021, added consideration of national certifications toward initial occupational licensure and extended the application to spouses, and eliminated the one-year limit for veterans to apply service education, training, or certifications toward initial occupational licensure.

Act 573, sponsored by Representative Brian Evans, repealed the prohibition on licensing new psychological examiners.

Act 842, sponsored by Representative Lee Johnson, created the Psychological and Neuropsychological Testing Workforce Scholarship, Stipend, and Incentive Program.

12. DEPARTMENT OF HEALTH, STATE BOARD OF HEALTH (Dr. Laura Rothfeldt, item a; Craig Smith and Laura Shue, items a-b)

a. Rules Pertaining to Rabies Control

DESCRIPTION: The Arkansas Department of Health (Department) is proposing amendments to the Rules Pertaining to Rabies Control.

Background
The Rules Pertaining to Rabies Control provide for the prevention and control of rabies and to protect the public health, welfare, and safety of the citizens of Arkansas.

Key Points
These changes were required to reflect amendments made to the Rabies Control Act (Ark. Code Ann. §§ 20-19-301 – 312) during the 2023 legislative session in accordance with Acts 161 and 522, which allow persons in addition to licensed veterinarians to administer rabies vaccinations and allows for home quarantines of vaccinated dogs and cats, respectively.

Discussion
It is proposed to modify the Rules Pertaining to Rabies Control as follows:

1. Removed "regulations" throughout Rule to comply with Act 315 of 2019.
2. Section II – Revised definition of "cat" to comply with Rabies Control Act, Ark. Code § 20-19-302.
3. Section II – Moved to alphabetize and revised definition of "dog" to comply with Rabies Control Act, Ark. Code § 20-19-302.
4. Section II – Moved "has been bitten" to alphabetize definitions.
5. Section II – Revised "vaccination against rabies" pursuant to Act 161 of 2023.
6. Section II – Revised "Confinement, quarantine, and observation" pursuant to Act 522 of 2023.
7. Section IV(B)(2) – Revised pursuant to Act 522 of 2023, to comply with Ark. Code § 20-19-307(a)(1)(A).
8. Section IX – Corrected position title from "Zoonotic Disease Section Chief" to "Arkansas State Public Health Veterinarian."
9. Section X – Corrected position title from "State Health Director" to "Director of Department of Health."

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired on September 24, 2024. The agency provided the following comment summary:

Commenter's Name: Dr. Lindy O'Neal, President, Arkansas Veterinary Medical Association
COMMENT: On behalf of the veterinarians of Arkansas, the Arkansas Veterinary Medical Association would like to offer support to the most recent changes to the rules pertaining to rabies control. The two major revisions are summarized as we believe to be true below.

1. The definition for "vaccination against rabies" was revised to be in accordance with Act 161 of 2023, which authorized persons in

addition to licensed veterinarians to administer rabies vaccinations, including veterinary technicians, veterinary technologists, and veterinary technician specialists. This change expands the official capacity for prevention and control of a deadly disease impacting both animal and public health.

2. The procedures for "confinement, quarantine, and observation" were revised to be in accordance with Act 522 of 2023, which allows for home confinement for dogs and cats under observation for biting a person as long as they are current on vaccination for rabies. Language was also revised to clarify confinement of dogs or cats under observation for biting a person when appropriate facilities are not available. This change relieves the burden of housing animals in facilities who pose very little to no risk of rabies and prevents unnecessary stress on the animals and their owners, which supports both animal and public health.

RESPONSE: The Department appreciates the support for the changes and recommends proceeding to adoption.

The proposed effective date is December 1, 2024.

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

LEGAL AUTHORIZATION: The State Board of Health shall adopt rules necessary to carry out the Rabies Control Act. Ark. Code Ann. § 20-19-312(a). This rule implements Acts 161 and 522 of 2023.

Act 161, sponsored by Representative DeAnn Vaught, provided clarity regarding the certification of a veterinary technician specialist and authorized a collaborative practice agreement between a veterinarian and a veterinary technician specialist.

Act 522, sponsored by Representative Stephen Magie, amended the Rabies Control Act related to the confinement of an animal when a person is bitten to allow an owner to confine an animal who has received a current vaccination against rabies.

b. REPEAL: Rules and Regulations for Retired Physician Immunity Act

DESCRIPTION: This rule is being repealed after it was incorporated into the Rules Pertaining to the Arkansas Volunteer Immunity Act for Health Care Professionals and the Arkansas Volunteer Health Care Act.

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired on October 15, 2024. The agency indicated that it received no comments.

The proposed effective date is January 1, 2025.

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

LEGAL AUTHORIZATION: The Department of Health has authority to make rules necessary for the implementation of the Volunteer Health Care Act. Ark. Code Ann. § 20-8-809. The State Board of Health may promulgate rules necessary to provide for the registration of free or low-cost healthcare clinics under Arkansas Code § 16-6-201, regarding volunteer immunity, healthcare professionals, and indigent care. Ark. Code Ann. § 16-6-201(c)(1).

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

a. Compacts of Free Association (COFA) SNAP and TEA Eligibility

DESCRIPTION:

Statement of Necessity
Pursuant to changes enacted by the Consolidated Appropriations Act (CAA) of 2024 (P.L. 118-42), Compact of Free Association (COFA) citizens from the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau now are eligible to apply for and receive Supplemental Nutrition Assistance Program (SNAP) and Transitional Employment Assistance (TEA) benefits if they meet all other eligibility requirements. This rule updates eligibility provisions contained in the Division of County Operations (DCO) rules to comply with the Act.

Summary
DCO updates the below manuals to grant eligibility as discussed above. Typographic and stylistic corrections are made throughout both manuals.

Supplemental Nutrition Assistance Program Manual § 1621:

- Removed Citizens of Micronesia including Marshall Islands and the Republic of Palau as being ineligible;
- Added COFA citizens residing in American Samoa, Puerto Rico, or the Commonwealth of the Northern Mariana Islands (CNMI) as ineligible;
- Added a provision granting COFA citizens from the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau eligibility to apply for and receive SNAP benefits if they meet all eligibility requirements; and

- Added a provision that eligible COFA citizens are not subject to a waiting period and are immediately eligible for benefits as long as they meet all other SNAP financial and non-financial eligibility requirements.

Transitional Employment Assistance Policy Manual § 2220

- Added a provision granting COFA citizens from the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau eligibility to apply for and receive TEA benefits if they meet all eligibility requirements.

PUBLIC COMMENT: No public hearing was held on this rule. The public comment period expired on September 30, 2024. The agency indicated that it received no public comments.

This rule was initially filed on an emergency basis and was reviewed and approved by the Executive Subcommittee. The agency indicated that the emergency rule was effective as of October 1, 2024, and expires on December 21, 2024.

The proposed effective date for permanent promulgation is December 1, 2024.

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

Per the agency, this rule implements a federal rule or regulation. The total estimated cost to implement the federal rule or regulation is $88,525,056.95 for the current fiscal year ($133,928.47 in general revenue and $88,391,128.47 in federal funds) and $65,817,528.86 for the next fiscal year ($27,464.43 in general revenue and $65,790,064.43 in federal funds). The total estimated cost by fiscal year to a state, county, or municipal government to implement this rule is $133,928.47 for the current fiscal year and $27,464.43 for the next fiscal year. The agency indicated that this amount represents state general revenue required for administrative expenses related to implementing the rule.

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

This rule implements changes to federal law enacted by the Consolidated Appropriations Act of 2024, Pub. L. 118-42. Qualified aliens are generally ineligible for specified Federal programs, including the supplemental security income (SSI) program and the food stamp program. *See* 8 U.S.C. § 1612(a)(1) and (3). The Act added an exception to this general ineligibility for "any individual who lawfully resides in the United States in accordance with section 141 of the Compacts of Free Association between the Government of the United States and the Governments of the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau." 8 U.S.C. § 1612(a)(2)(N).

F. Rules Filed Pursuant to Ark. Code Ann. § 10-3-309 to Be Considered Pending Suspension of the Subcommittee Rules

1. DEPARTMENT OF AGRICULTURE (Corey Seats)

a. Liquid Animal Waste Management Systems

DESCRIPTION: The Department of Agriculture proposes its Liquid Animal Waste Management System Rule.

Background
Act 824 of 2023 transferred the authority related to liquid animal waste management systems from the Arkansas Department of Energy and Environment to the Arkansas Department of Agriculture.

Discussion
Act 824 conferred to the Arkansas Department of Agriculture the authority to promulgate rules related to liquid animal waste management systems, to issue and modify permits related to liquid animal waste management systems, approve design plans and site requirements related to liquid animal waste management systems, and to take any other action related to liquid animal waste management systems.

Conclusion
The rule will implement the transfer of authority related to liquid animal waste management systems to the Arkansas Department of Agriculture in accordance with Act 824 of 2023.

PUBLIC COMMENT: A public hearing was held on August 26, 2024. The public comment period expired on September 2, 2024. The agency provided a summary of the public comments it received and its responses thereto. Due to its length, that summary is attached separately.

Jason Kearney, an attorney with the Bureau of Legislative Research, asked the following questions and was provided with the following agency responses:

1) Did the Department consult with the Division of Environmental Quality in promulgating this rule, per Arkansas Code Annotated § 15-20-102(a)? **RESPONSE:** Yes, we consulted extensively with ADEQ in this draft.

2) Are the permit fee amounts contained in Section II(7) of the proposed rule set by statute? **RESPONSE:** The permit fee schedule is not found in statute. The fees in our rule are unchanged from those that were set by ADEQ and are found in their Regulation 9 (Permit Fee Regulations).

FINANCIAL IMPACT: The agency has indicated that the proposed rule does not have a financial impact. In addition, the agency states that the total estimated cost by fiscal year to any private individual, private entity, or private business subject to the proposed rule is $200.00 for the current fiscal year and $200.00 for the next fiscal year. Per the agency, the fee for the application, renewal, or modification of a Liquid Animal Waste Management System permit is $200.00. This amount is unchanged from the fees charged by the Arkansas Department of Environmental Quality when Liquid Animal Waste Management Systems were governed by ADEQ Regulation 5. Further, the agency states that the total estimated cost by fiscal year to a state, county, or municipal government to implement this rule is $35,000.00 for the current fiscal year and $35,000.00 for the next fiscal year. Per the agency, this amount represents staff salaries and fringe for Department employees who oversee this program, in addition to other duties.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 15-20-102(a), in consultation with the Division of Environmental Quality, the Department of Agriculture has authority over all liquid animal waste management systems in this state, including without limitation the authority to: promulgate rules related to liquid animal waste management systems; issue and modify permits related to liquid animal waste management systems; approve design plans and site requirements related to liquid animal waste management systems; and take any other action related to liquid animal waste management systems. The Department shall promulgate rules to implement Ark. Code Ann. § 15-20-102, concerning liquid animal waste management systems, and in promulgating such rules, the Department shall consider the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq.

The proposed amendments are those made in light of Act 824 of 2023, sponsored by Representative DeAnn Vaught, which regarded liquid animal waste management systems; and transferred the authority related to

liquid animal waste management systems from the Department of Energy and Environment to the Department of Agriculture.

2. <u>DEPARTMENT OF ENERGY AND ENVIRONMENT, DIVISION OF ENVIRONMENTAL QUALITY</u> (Kesia Morrison, Bailey Taylor, Basil Hicks)

a. Rule No. 6: Rules for State Administration of the National Pollutant Discharge Elimination System (NPDES)

<u>DESCRIPTION</u>: The Department of Energy and Environment and the Division of Environmental Quality (DEQ) propose this rulemaking to modify Regulation 6: Regulations for State Administration of the National Pollutant Discharge Elimination System (NPDES). The Arkansas Pollution Control and Ecology Commission has general rulemaking authority through Ark. Code Ann. §8-1-203(b)(1)(A), and specific authority to promulgate this rule through Ark. Code Ann. § 8-4-202(a).

Background
The purpose of Regulation 6 is to adopt the federal regulations necessary to qualify the State of Arkansas to receive and maintain authorization to implement the state water pollution control permitting program, in lieu of the federal NPDES program, pursuant to the federal Clean Water Act, 33 U.S.C. § 1251 et seq. In order for DEQ to maintain its delegated authority to administer the NPDES permit program, DEQ must have rules as stringent as the federal program administered by the United States Environmental Protection Agency.

The Proposed Rule Amendments
The DEQ proposes this rulemaking to Regulation 6 before the Arkansas Pollution Control and Ecology Commission: to adopt federal revisions to the NPDES program, incorporate statutory revisions made by the Arkansas General Assembly, and make corrections and stylistic and formatting updates throughout the regulation. Regulation 6 establishes the parameters for the state water pollution control permitting program in lieu of the federal NPDES program and pursuant to the federal Clean Water Act, 33 U.S.C. § 1251 et seq. The state legislative acts prompting the regulatory amendments are Acts 94 and 575 of 2015, Acts 987 and 1037 of 2017, 315 and 910 of 2019, Act 441 of 2021, and Act 46 of 2023. The federal regulatory changes prompting the amendments are 40 C.F.R §§ 122.21(e)(3), 122.44(i)(l)(iv), 136.1(c), 125(I) and (J), 423, 122, 123, 127, and 401.17.

Proposed changes to Rule 6 include:
Incorporation of Updates to Federal Regulations. Amendments to Regulation 6.104 to incorporate changes made to federal regulations;

Incorporation of Updates to Arkansas Law. Acts 94 and 575 of 2015, Acts 987 and 1037 of 2017, 315 and 910of 2019, Act 441 of 2021, and Act 46 of 2023, were enacted by the Arkansas General Assembly and require revisions to Regulation 6;
Amendments to Provide Clarification and Minor Corrections. Corrections to the rule, including adding necessary definitions and corrections to be consistent with other state rules; and
Amendments to Chapter 6. To amend Chapter 6 to be consistent with the Department of Agriculture's rule for Liquid Animal Waste Management Systems.

Stylistic and Formatting Corrections. To make minor, non-substantive stylistic and formatting corrections throughout the regulation.

Necessity and Practical Impact of Rule Amendments
DEQ must have rules as stringent as the federal program administered by the United States Environmental Protection Agency to maintain its delegated authority to administer the NPDES permit program. Pursuant to 40 C.F.R. § 123.62(e), states administering the NPDES program must make revisions to its rules to conform to the federal regulations within one year of the date of promulgation of the federal regulation, with the exception that if a state must amend or enact a statute in order to make the required revision, the revision shall take place within two years of promulgation of the federal regulations. The risk of not updating this rule is that EPA could attempt to remove Arkansas's delegated authority to issue NPDES permits under the federal Clean Water Act. Loss of delegated authority would result in EPA becoming the permitting authority for Arkansas.

PUBLIC COMMENT: A public hearing was held on August 26, 2024. The public comment period was set to expire on September 5, 2024. The comment period was extended by the agency and ultimately expired on September 16, 2024. The agency provided a summary of public comments it received and its responses thereto. Due to its length, that summary is attached separately.

Jason Kearney, an attorney with the Bureau of Legislative Research, asked the following questions and was provided with the following agency responses:

1) Will the agency still recognize the NPDES financial assurance exceptions which were removed from Sections 6.205(B) and (D) of the amended rules, and those which are enumerated in Arkansas Code Annotated § 8-4-203(b)(1)(C), as amended by Act 46 of 2023?
RESPONSE: Yes.

2) What was the agency's reasoning for amending the permit restrictions under Section 6.602 of the proposed rules, which concerns the Buffalo National River Watershed? **RESPONSE:** The amendments to Section 6.602 do not change the current permit restrictions under that section. The amendments reflect the movement of the permitting program for Liquid Animal Waste Management Systems to Department of Agriculture. In addition, these amendments to Chapter 6 are consistent with the Department of Agriculture's rule for Liquid Animal Waste Management Systems.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency has indicated that the amended rule does not have a financial impact. The agency further states that implementing the revised federal rules and clarification/correction of various sections of this rule is not expected to cause an increase in costs to private entities because permittees were expected to comply with these requirements prior to incorporation. Implementing the revised state rule should result in reduced costs to non-municipal domestic sewage treatment works permittees. Changes to the general permit process are expected to reduce costs to facilities.

LEGAL AUTHORIZATION: The Arkansas Pollution Control and Ecology Commission is given and charged with the power and duty to adopt, modify, or repeal, after notice and public hearings, rules implementing or effectuating the powers and duties of the Division of Environmental Quality and the commission under the Arkansas Water and Air Pollution Control Act, codified in Title 8, Chapter 4 of the Arkansas Code. *See* Ark. Code Ann. § 8-4-202(a). Without limiting the generality of this authority, these rules may, among other things, prescribe: 1) Effluent standards specifying the maximum amounts or concentrations and the physical, thermal, chemical, biological, and radioactive nature of the contaminants that may be discharged into the waters of this state or into publicly owned treatment facilities; 2) Requirements and standards for equipment and procedures for monitoring contaminant discharges at their sources, including publicly owned treatment facilities and industrial discharges into such facilities, the collection of samples, and the collection, reporting, and retention of data resulting from such monitoring; and 3) Water quality standards, performance standards, and pretreatment standards. *See* Ark. Code Ann. § 8-4-202(b).

The proposed amendments include those made in light of Act 46 of 2023, sponsored by Representative Richard McGrew, which amended the Arkansas Water and Air Pollution Control Act; and exempted certain property owners' associations and homeowners' associations from certain

permit actions related to National Pollutant Discharge Elimination System permits or state permits for a municipal domestic sewage treatment works.

Per the agency, the amended rules are required to comply with federal law, specifically, 40 C.F.R. §§ 122.21(e)(3), 122.44(i)(l)(iv), 125 Subparts I and J, 127, and 136.1(c).

G. Agency Updates on the Status of Outstanding Rulemaking from the 2023 Regular Session Pursuant to Act 595 of 2021[3]

1. Department of Agriculture (Corey Seats)

Rules Outstanding as of November 1, 2024, as Reported and Updated by the Agency

- ***Liquid Animal Waste Management Systems Rule (Act 824 of 2023)**

2. Department of Commerce, Arkansas Economic Development Commission (Jake Windley)

Rules Outstanding as of November 1, 2024, As Reported and Updated by the Agency

- **Consolidated Incentive Act Rules (Act 834 of 2023)**
  - This rule is not currently in any stage of rulemaking as internal discussions are ongoing as to whether the existing rule should be amended or repealed in its entirety. The Act does not require rules promulgation, and the current version largely restates the statute. No anticipated date for placement on agenda.
- ***Digital Product & Motion Picture Industry Development Act of 2009 (Act 517 of 2023)**

3. Department of Commerce, State Insurance Department (Booth Rand)

Rules Outstanding as of November 1, 2024, As Reported and Updated by the Agency

- ***Rule 118: Pharmacy Benefits Managers (Acts 302 and 333 of 2023)**

4. Department of Corrections (Tawnie Rowell)

Rules Outstanding as of November 1, 2024, As Reported and Updated by the Agency

Secretary of Corrections

- **Visitation (Act 659, § 112 of 2023)**
  - This rule will be promulgated by the Secretary of Corrections, who has approved it. It is anticipated that

[3] Outstanding rules that are on the current agenda for legislative review and approval are designated by an asterisk (*).

review and approval will be sought in February 2025.

Board of Corrections

- **Earned Release Credits (Act 659, § 112 of 2023)**
  - This rule is being promulgated by the Board of Corrections and is slated for review and approval on the December 2024 agenda.

Post-Prison Transfer Board

- **Transfer to Post Release Supervision (Act 659, § 2 of 2023)**
  - This rule is being promulgated by the Post-Prison Transfer Board, and its drafting is in progress. It is anticipated that review and approval will be sought in March 2025.
- **Revocation from Supervision (Act 659, § 2 of 2023)**
  - This rule is being promulgated by the Post-Prison Transfer Board and is pending approval from the Governor's Office. It is anticipated that review and approval will be sought in January 2025.

5. Department of Education (Daniel Shults)

Rules Outstanding as of November 1, 2024, As Reported and Updated by the Agency

Commission for Arkansas Public School Academic Facilities and Transportation

- **Rules Governing the Transportation Modernization Grant Program (Act 237, § 44 of 2023)**
  - The final draft of the rule has been approved by the Commission for Arkansas Public School Facilities and Transportation. The final rule will be submitted for ALC review in December 2024.
- **Rules Governing the Academic Facilities Partnership Program (Act 237, § 8 of 2023)**
  - The final draft of the rule has been approved by the Commission for Arkansas Public School Facilities and Transportation. The final rule will be submitted for ALC review in December 2024.

Arkansas State Library

- **Rules Governing the Standards for State Aid to Public Libraries (Act 566, § 11 of 2023)**
  - This amendment has been drafted and is undergoing agency staff review. It is anticipated the final rule will be submitted for legislative review in February 2025.

Division of Career and Technical Education

- **Rules Governing the Approval of Computer Science-Related Career and Technical Education Course (Act 654, § 4 of 2023)**
  - This amendment has been drafted and is undergoing agency staff review. It is anticipated the final rule will be submitted for legislative review in February 2025.

- **Rules Governing the Vocational Start-Up Grant Program (Act 867, § 7 of 2023)**
    - This amendment has been drafted and is undergoing agency staff review. It is anticipated the final rule will be submitted for legislative review in February 2025.

Division of Elementary and Secondary Education

- **Rules Governing the Child Sexual Abuse and Human Trafficking Prevention Program (Act 237, § 16)**
    - This amendment has been drafted and is undergoing agency staff review. It is anticipated the final rule will be submitted for legislative review in February 2025.
- **Rules Governing School District Waivers (Act 347, § 1 of 2023)**
    - This amendment has been drafted and is undergoing agency staff review. It is anticipated the final rule will be submitted for legislative review in February 2025.
- **Rules Governing Grading and Course Credit (Act 654, §§ 2, 4 of 2023)**
    - This rule has been placed on the Agenda of the State Board of Education's November 7th meeting to be released for public comment.

State Board of Education

- **Rules Governing the Course Choice Program (Act 237, § 20 of 2023)**
    - This amendment has been drafted and is undergoing agency staff review. It is anticipated the final rule will be submitted for legislative review in February 2025.
- **Rules Governing Dyslexia Screenings in Schools (Act 237, § 51 of 2023)**
    - This rule has completed a public comment period and is anticipated to start a new round of public comment. It is anticipated the final rule will be submitted for legislative review in February 2025.
- ***Rules Governing the Arkansas Unified Early Childhood Care and Education System (Arkansas Better Chance) (Act 237, § 58 of 2023)**
- ***Rules Governing Career-Ready Pathways in Arkansas Public Schools (Act 237, § 20 of 2023)**
- ***Rules Governing Consolidation and Annexation of Public School Districts (Act 572, § 10 of 2023)**
- **Rules Governing Implementation of the Inpatient and Residential Facilities Appropriation (Act 572, § 11 of 2023)**
    - This amendment has been drafted and is undergoing agency staff review. It is anticipated the final rule will be submitted for legislative review in February 2025.
- **Rules Governing Implementation of the Juvenile Detention Facilities Appropriation (Act 572, § 12 of 2023)**

- This amendment has been drafted and is undergoing agency staff review. It is anticipated the final rule will be submitted for legislative review in February 2025.

- **Rules Governing Public Charter Schools (Act 237, § 49 of 2023)**
  - This amendment has been drafted and is undergoing agency staff review. It is anticipated the final rule will be submitted for legislative review in February 2025.

Division of Higher Education

- ***Rules Governing the Governor's Higher Education Transition Scholarship (Act 413, § 1 of 2023)**
- ***Rules Governing the Student Undergraduate Research Fellowship Program (Act 870, § 41 of 2023)**
- ***Rules Governing Automated External Defibrillators and Opioid Rescue Kits (Emergency Response Equipment) (Act 737, § 2, and Act 811, § 2 of 2023)**
- **Rules Governing Universal Academic Credit (Act 237, § 54 of 2023)**
  - This amendment has been drafted and is undergoing agency staff review. It is anticipated the final rule will be submitted for legislative review in February 2025.

6. Department of Energy and Environment (Kesia Morrison)

Rules Outstanding as of November 1, 2024, As Reported and Updated by the Agency

- **Rule 36: Tire Accountability Program (Act 713 of 2023)**
  - A hearing for public comment is scheduled for October 30, 2024, and the public comment period extends through November 7, 2024. The agency hopes to have the final rule approved by the APC&EC at its December 6 meeting, such that the rule will be ready for legislative approval the first opportunity in 2025.

7. Department of Finance and Administration, Revenue Division (Paul Gehring, Alicia Austin Smith)

Rules Outstanding as of November 1, 2024, As Reported and Updated by the Agency

- ***Taxicab Liability Insurance and Self-Insurance Certification for Certain Persons and Religious Denominations (Act 804 of 2023)**
- **Waterways Investment Tax Credit (Act 881 of 2023)**
  - The draft rule has been forwarded to the Governor's Office for review. DFA anticipates requesting that the rule be placed on an agenda for review and approval in January 2025.

8. Department of Health (Laura Shue)

Rules Outstanding as of November 1, 2024, As Reported and Updated by the Agency

- ***Rules Pertaining to Rabies Control (Acts 161 and 522 of 2023)**

9. Department of Public Safety (Joan Shipley)

Rules Outstanding as of November 1, 2024, As Reported and Updated by the Agency

- **State Fire Marshal Rule (Arkansas Fire Prevention Code) (Act 841 of 2023)**
  - This rule is out for public comment, which ends November 12. It is anticipated that the rule will be placed on the December 2024 agenda of the Rules Subcommittee.

H. Agency Monthly Written Updates Pursuant to Act 595 of 2021 Concerning Rulemaking from the 2024 Fiscal Session

I. Adjournment