

**ADMINISTRATIVE RULES SUBCOMMITTEE  
OF THE  
ARKANSAS LEGISLATIVE COUNCIL**

**Thursday, March 19, 2020**

**9:00 a.m.**

**Room A, MAC**

**Little Rock, Arkansas**

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- A. Call to Order.
- B. Reports of the Executive Subcommittee.
- C. Rules Filed Pursuant to Ark. Code Ann. § 10-3-309.
1. **DEPARTMENT OF EDUCATION, DIVISION OF ELEMENTARY AND SECONDARY EDUCATION** (Ms. Mary Claire Hyatt, item a; Ms. Jennifer Dedman, items b-f)

- a. **SUBJECT: DESE Rules Governing Standards for Accreditation of Arkansas Public Schools and School Districts**

**DESCRIPTION:** Amendments to the Rules Governing Standards for Accreditation of Arkansas Public Schools and School Districts include stylistic changes, as well as the following:

- Title changed to reflect the change in name of the Division of Elementary and Secondary Education from the Arkansas Department of Education. Throughout, changes were made to reflect the name change.
- Sections 4.04 through 4.07 were changed to more accurately depict the rules promulgation process.
- Sections 7.04.4 and 8.01 were changed to clarify that the Division can make a change to the accreditation status at any time if a school or school district is in violation of the Standards.
- Section 8.02 was changed to remove the 90-day period and allow the Division to determine the timeline necessary to cure the deficiency.
- Section 10.01 was changed to reflect the changes made in Sections 7.04.4 and 8.01.
- Section 11.01.1 was changed to allow the Commissioner to waive the thirty-day timeline based on emergency circumstances.
- Section 1-A.4 was changed to require that the school calendar be posted on the district website.

- Section 1-B.3.1 was added to include the requirement that each public school and school district develop and implement a written health and wellness plan that must be submitted to the Division by October 1. This is already a requirement for public schools and school districts, but has not been included in the Standards.
- Sections 1-C.2.4 through 1-C.2.6 were added to ensure all graduation requirements are included in the Standards.
- Section 2-B.3 was changed to reflect changes to the law made in Act 676 of 2019.
- Section 3-A.8 was changed to reflect changes to the law made in Act 1083 of 2019.
- Sections 4-C.3, 4-C.4, 4-D.4, and 4-D.5 were added to require that first year administrators and teachers receive mentoring support and be evaluated once every four years. This is already a requirement of the Educator Licensure Division of the Division of Elementary and Secondary Education, but is new to the Standards.
- Section 4-E was changed to reflect changes to the law made by Act 190 of 2019.

Changes following the public comment period include:

- Section 1.02 was updated to reflect additional statutory authority for promulgation of the Standards.
- 1-A.4.3 was added to incorporate provisions of Act 641 of 2019. This Standard was monitored through Standard 1-B.3, but has been made its own Standard for clarity.
- 1-C.2.4 was changed back to the original language for clarity.
- 2-J.1 was changed so that the language of the Standard and the citation are consistent between 2-J.1 and 2-J.2.
- 3-A.2 was changed from “teacher salary schedule” to “salary schedules for the licensed and classified staff” so that the language matches the language used in Ark. Code Ann. § 6-17-2301 and § 6-17-201.
- Grammatical changes made throughout.

**PUBLIC COMMENT:** A public hearing was held on September 26, 2019. The public comment period expired on October 19, 2019. The Division provided the following summary of the comments received and its responses thereto:

**Comments from Stakeholder Meeting, Group led by Phoebe Bailey (Southwest Arkansas Education Cooperative)**

**Comment (1):** Do we need to clarify % of time in 4-E.3?

**Division Response:** The percent of time is detailed in the law cited in the Standard. No change made.

**Comment (2):** In 4-D.4, clarify ‘first year of employment’ for mentoring as this could be an experienced teacher in a new district.

**Division Response:** 4-D.4 is changed to clarify that “first year of employment” does not mean first year of employment in a district, but rather first year of employment as a teacher. Non-substantive change made.

**Comment from Stakeholder Meeting, Group led by Darin Beckwith (Dawson Education Service Cooperative)**

**Comment (1):** 4-D.4: Should it say any teacher in his “first teaching assignment” vs first year of employment?

**Division Response:** 4-D.4 is changed to clarify that “first year of employment” does not mean first year of employment in a district, but rather first year of employment as a teacher. Non-substantive change made.

**Comments from Stakeholder Meeting, Group led by Molly Humphries (Arkansas Dyslexia Support Group) and David Woolly (Alma School District)**

**Comment (1):** Section 4.02, in the last sentence, particularly those found to have the most violations or in conflict with state law or rules.

**Division Response:** Section 4.02 is changed to clarify that it is the Standards found to have the most violations. Non-substantive change made.

**Comment (2):** Section 9.03.7: Reconstitute is not defined.

**Division Response:** Comment considered. The language in Section 9.03.7 matches the language used in Ark. Code Ann. § 6-15-207(c)(7). No change made.

**Comment (3):** Section 11.01.1: Change Commissioner to Secretary of Education in Lines 2 and 3.

**Division Response:** Comment considered. No change made.

**Comment (4):** 4-C.3 and 4-D.4: Provide clarification on what is meant by 3 years. Example, is it three years in the present position, three years as an administrator, or three years in the district?

**Division Response:** 4-D.4 is changed to clarify that “first year of employment” does not mean first year of employment in a district, but rather first year of employment as a teacher. Non-substantive change made.

**Comment (5):** 4-C.4 and 4-D.5: Define and give parameters of what is a summative rating.

**Division Response:** Comment considered. No change made.

**Comment (6):** 4-E.2: Clarifying wording that the calculation is by district and not by school.

**Division Response:** 4-E.2 reads “Each public school district shall have a student/school counselor ratio of no more than one to 450 students.” Comment considered. No change made.

**Comment (7):** 2-B.3: Clarify what this report should look like.

**Division Response:** The Standard matches the language used in Ark. Code Ann. § 6-18-702. That code section is cited in the Standard and gives additional guidance on the requirements of the report. Comment considered. No change made.

**Comment (8):** 1-C.2.4: How will compliance be documented?

**Division Response:** Compliance is monitored by the Public School Accountability division of the Division of Elementary and Secondary Education. This Standard is monitored through the Statement of Assurance or by a review of Triand for student transcripts. Comment considered. No change made.

**Comment (9):** 1-C.2.5: How will compliance be documented? What is meant by digital for the purposes of this requirement?

**Division Response:** Compliance is monitored by the Public School Accountability division of the Division of Elementary and Secondary Education. This Standard is monitored through the Statement of Assurance or by a review of Triand for student transcripts. Comment considered. No change made. This digital course requirement can be found in Ark. Code Ann. § 6-16-1406.

**Comment (10):** 1-C.2.6: How will compliance be documented?

**Division Response:** Compliance is monitored by the Public School Accountability division of the Division of Elementary and Secondary Education. This Standard is monitored through the Statement of Assurance or by a review of Triand for student transcripts. Comment considered. No change made.

**Comments from Stakeholder Meeting, Group led by Paula Vasquez (Arkansas Department of Education)**

**Comment (1):** 2-J: Update the title/heading to read “English Language Services” to read “English Learner Services.” This better describes the services and specifies that it is for a specific population and aligns to federal wording.

**Division Response:** Comment considered. Non-substantive change made.

**Comment (2):** 2-J.1 and 2-J.2: Change from “each school” to “each public school district” and change the cite code from “S/C” to “D/C” to correspond.

**Division Response:** Comment considered. Non-substantive change made.

**Comments from Stakeholder Meeting, Group led by Lisa S. Johnson (Arkansas Department of Education)**

**Comment (1):** Section 7.04.2.1: “Suspected deficiencies”: Should there be any explanation as to from where the suspected deficiencies would come?

**Division Response:** Comment considered. No change made.

**Comment (2):** Section 9.03.8: This is the first mention of “Accredited–Corrective Action.” The other Accredited (Cited and Probation) definitions were detailed earlier in the document. This seems to need more explanation.

**Division Response:** Comment considered. Section is changed to clarify that the status applies when the Board accepts a corrective action plan to address the violations of the Standards and designates the public school or public school district as being Accredited–Corrective Action. Non-substantive change made.

**Comment (3):** Section 2-A.2: Why is disability not listed along with race, national origin, or ethnic background?

**Division Response:** Comment considered. Disability and sex have been added to race, national origin, and ethnic background. Non-substantive change made.

**Comment from Stakeholder Meeting, Group led by Brian Fields (AETN)**

**Comment (1):** 1-C.2.6: There are currently four levels of CPR certification. The lowest level is for laymen and the average cost is about \$75. If I am to assume the correct definition of “psychomotor,” then a short video with a demonstration should accommodate this task. If this is the case, I do feel this is a good change.

**Division Response:** Comment considered. This Standard incorporates the requirements of Ark. Code Ann. § 6-16-143. No change made.

**Comments from Stakeholder Meeting, Group led by Cheryl Weidmaier (Division of Career and Technical Education)**

**Comment (1):** Regarding “licensure exception” in Standard 4, does the word “exception” have a different meaning to school personnel?

**Division Response:** Yes. A licensure exception is granted through the Division of Elementary and Secondary Education, Educator Licensure Division, and is done on an individual educator basis. “Waiver” refers to

a waiver granted by the State Board of Education to a school district through one of the waiver paths (1240, charter contract, or SFA waivers). No change made.

**Comment (2):** Standard 1: Are “Stop the Bleed” and “Violence Awareness” required by schools? If so, they are not noted in the Standards document.

**Division Response:** Yes. Arkansas law requires schools to include stop the bleed (Act 245 of 2019) and violence awareness (Ark. Code Ann. § 6-16-1004) as part of a health course. Although they are not separated out, the health course is required in Section 1-A of the Standards.

**Comments from Stakeholder Meeting, Group led by Barbra Means (Arkansas Department of Education), Allison Greenwood (Arkansas State Teachers Association), and Kim Wright (Arkansas Department of Education)**

**Comment (1):** Check spacing throughout the document. In Section 7.03.3 and 7.03.4, bold “at any time” and in Section 8.01.

**Division Response:** Comment considered. No change made.

**Comment (2):** Section 8.01 “is not” replaced by “should be.”

**Division Response:** Comment considered. No change made.

**Comment (3):** The timeline needs clarification in Section 8.0. Timeline specifics are needed.

**Division Response:** Comment considered. No change made.

**Comment (4):** Section 10.1: Clarify what constitutes written notification (e-mail, certified letter, etc.).

**Division Response:** Comment considered. No change made.

**Comment (5):** Section 11.01.1: Clarify the 30 calendar days such as days the district is in session.

**Division Response:** Comment considered. The timeline is thirty (30) calendar days, regardless of whether school is in session. No change made.

**Comment (6):** Section 11.01.2: Would the May 20 date need to be there? All other timelines say at any time or within a number of calendar days.

**Division Response:** Concerning waivers of the Standards, the hearing must be conducted at a regular or special meeting, no later than May 20. No change made.

**Comment (7):** In 4-E.3, clarify that 90% of their school time is spent on counseling services and with students.

**Division Response:** The percent of time is detailed in the law cited in the Standard. No change made.

**Comment (8):** In 4-F, since high schools don't check out books or have classes and often do not have kids, can there be something added for duties assigned?

**Division Response:** Ark. Code Ann. § 6-25-101 et seq. outlines the responsibilities and duties of library media specialists. No change made.

**Comment (9):** In 4-F.2, raise the number for the whole v. half rule to 450 as it is for principals and counselors or revise the standards to reflect 2019 rather than 1989. This is not the pre-internet era.

**Division Response:** Comment considered. No change made.

**Comment (10):** 3-B.2: What was the purpose of the change of date? Our group feels like a fall date is most effective.

**Division Response:** Comment considered. The date has been changed to allow districts to hold the annual report to the public at a time that best meets the needs of their individual districts. No change made.

**Comment (11):** 2-A.1.1: Be specific with the date of the cycle 2 submission.

**Division Response:** Section 2-A.1.1 states that each public school district shall file an accurate and timely Equity Compliance Report by October 15 as part of the cycle 2 submission. No change made.

**Comment (12):** 2-H.1: Cite the law here or be consistent with both 1 and 2. It is included in 2.

**Division Response:** Comment considered. No change made.

### **Comments from Stakeholder Meeting, Group led by Melinda Kinnison**

**Comment (1):** In Rule 8.01, cutting the response time from 30 to 15 days may serve to rush the process and inhibit inclusion of the community in developing a plan. Yet in 8.02, there is not a provision for how long the Division has to review that plan so that it may be implemented.

**Division Response:** Comment considered. No change made.

**Comment (2):** In rule 12.02.2, what if there is no regularly circulated newspaper?

**Division Response:** This Standard reflects the language used in Ark. Code Ann. § 6-15-208. No change made.

**Comment (3):** Moving the posting of the Comprehensive Plan for Communication and Engagement to August may again inhibit inclusion of

the community in that plan. The plan should also be posted in an understandable format, which may require translations.

**Division Response:** Comment considered. No change made.

**Comment from Stakeholder Meeting, Group led by Pamela Castor**

**Comment (1):** In Rule 8.01, I believe that the time frame for submitting a plan or correcting a deficiency related to a Cite or Probationary status should remain at 30 days. Because deficiency removal and deficiency removal plans may require board action, I believe the response time of 30 days to be more appropriate. In addition, because the penalties in some cases may include or lead to reorganization, I believe the extended time is warranted.

**Division Response:** Comment considered. No change made.

**Commenter Name: Breta Dean (Greene County Tech School District)**

**Comment (1):** Shouldn't 1-C.2.4 be a one half credit?

**Division Response:** Yes, the Standard has been changed back to the original wording for clarity. Non-substantive change made.

**Commenter Name: Eric Saunders (Benton School District)**

**Comment (1):** Rule 8.01: Decreasing the amount of time a school or district has to correct a deficiency from 30 days to 15 days will create numerous unwarranted citations and/or assignment of probationary status. There are numerous false positives occurring within the Standards for Accreditation system and districts are required to submit DESE approved documents back to DESE to resolve some of these issues. In some instances, schools and districts are required to copy information from one DESE website and enter it into another system to avoid Standards citations. Additionally, to resolve many of these issues, requires responses from the Division with some responses not occurring for weeks. Regarding licensing of personnel, districts are at the mercy of college and universities across the state. As such, lessening the time would create the issuance of a citation or probationary status due to the timeliness of responses from DESE and/or Higher Education institutions.

**Division Response:** Standard 8.01 does not require public schools or districts to resolve an issue within fifteen days. The standard requires the violation to be corrected *or the appropriate documentation detailing the public school or public school district's plan, including necessary timelines, to correct the deficiency* to be submitted within fifteen days. No change made.

**Comment (2):** Item 1-C.2.4: The requirement for the freshman class of 2017-2018 to now receive one credit in personal and family finance standards to graduate as opposed to a 1/2 credit would have many consequences. Some of those consequences include: students not being

able to follow their personalized plans for graduation, hiring of additional staff, and jeopardizing a student's ability to graduate.

**Division Response:** Students only need 1/2 credit in personal and family finance. The language in 1-C.2.4 has been changed to clarify. Non-substantive change made.

**Comment (3):** Item 4-C.4: The required reporting of administrator's ratings is concerning as there is not any assurance regarding the protection of this data. If this data is reported out, using the cell size repression level of 10 (DESE current practice) would not provide any meaningful reports as most of the data would not be able to be reported and any disclosure of this data would be a violation of worker's protection of private personnel records.

**Division Response:** 4-C.4 does not require Districts to report the administrator's rating. The Standard requires that a rating be given at least once every four years. No change made.

**Commenter Name: Scarlett Golleher (Lonoke School District)**

**Comment (1):** 1-A.1.3.11 is being changed to 1-C.2.4. If I understand correctly, the previous personal and family finance requirement could be met with the embedded standards through Economics with a half credit. Now, students will be required to earn a full credit of personal and family finance. Is this correct?

**Division Response:** Students only need 1/2 credit in personal and family finance. The language in 1-C.2.4 has been changed to clarify. Non-substantive change made.

**Commenter Name: Harvie Nichols**

**Comment (1):** 1-A.1.3: This section of the rule does not indicate what advance notice districts will receive about the required courses to be taught. Hopefully the list for the following school year will be posted by November of the current year to allow districts to do adequate planning.

**Division Response:** The list is approved annually by the State Board of Education in a public meeting. Comment considered. No change made.

**Commenter Name: Mike Mertens (Arkansas Association of Educational Administrators)**

**Comment (1):** Regarding the changes in 8.01 and 10.01 from 30 calendar days to 15 calendar days, I would suggest 15 "business" days if we make a change. For violation notifications coming to districts right before Christmas or spring breaks, corrections may be difficult to implement if necessary personnel involved in the process are out of pocket.

**Division Response:** Standard 8.01 does not require public schools or districts to resolve an issue within fifteen days. The standard requires the violation to be corrected *or the appropriate documentation detailing the public school or public school district's plan, including necessary*

*timelines, to correct the deficiency* to be submitted within fifteen days. No change made.

**Comment (2):** In Sections 4-C.3 and 4-D.4, the “first year of employment” phrase needs to be clarified to exclude experienced teachers and administrators moving from district to district. Not sure what clarification would look like, maybe adding the word “initial” before employment.

**Division Response:** 4-D.4 is changed to clarify that “first year of employment” does not mean first year of employment in a district, but rather first year of employment as a teacher. Non-substantive change made.

**Commenter Name: Richard Abernathy (Arkansas Association of Educational Administrators)**

**Comment (1):** 8.01: We are shortening the amount of time a district has to respond to the Division’s reported status for a district/school from 30 days to 15 days. My question would be would a district ever need additional time to correct a problem? What is the reason to shorten the time frame that ADE is trying to address?

**Division Response:** Standard 8.01 does not require public schools or districts to resolve an issue within fifteen days. The standard requires the violation to be corrected *or the appropriate documentation detailing the public school or public school district’s plan, including necessary timelines, to correct the deficiency* to be submitted within fifteen days. No change made.

**Comment (2):** 10.01: A district is given 15 days to file an appeal after the Division issues a status of a school/district. However, the SBE no longer has a timeframe to conduct a hearing? It would seem the SBE would conduct a hearing on the subject within 15 days after the appeal, or at least 30 days after the appeal.

**Division Response:** Comment considered. No change made.

**Comment (3):** 1-A.1.3.1 0: Strike through Department.

**Division Response:** Comment considered. Non-substantive change made.

**Comment (4):** 1-B.3.1: Is this a new requirement and we are just adding it to the Standards for Accreditation?

**Division Response:** This is not a new requirement. It has been in the DESE Rules Governing Nutrition and Physical Activity since it became law in 2003. It is being added as a separate Standard for monitoring purposes. No change made.

**Comment (5):** 1-C.2.6: Is this a current requirement and we are just adding it to the Standards for Accreditation?

**Division Response:** This is not a new requirement. This Standard reflects the requirements of Ark. Code Ann. § 6-16-143. No change.

**Comment (6):** Section 2-E.2: I noticed that the status goes to the district only as school has been struck through. Does “each public school and” need to be struck through?

**Division Response:** No. Each public school and each public school district shall maintain appropriate materials and expertise to reasonably ensure the safety of students, employees, and visitors. Although the cite is district, each school must maintain the appropriate materials. No change made.

**Comment (7):** Section 2-F: The cite have all been struck through so now any violation will be probationary. Would it ever be appropriate to cite a district vs automatically assign the probationary status?

**Division Response:** If there is a deficiency of a Standard in 2-F, the district will have the opportunity to cure it before probationary status is assigned, following the procedures in Section 8-10 of these Rules. No change made.

**Comment (8):** 3-B.2: Removing the October 15 date, my thought, if you remove the date entirely then it will be harder to track and keep up with across the state. If the 15 is the problem, then you could just say in October.

**Division Response:** Comment considered. The date has been changed to allow districts to hold the annual report to the public at a time that best meets the needs of their individual districts. No change made.

**Commenter Name:** Lucas Harder (Arkansas School Boards Association)

**Comment (1):** Section 1.02: A.C.A. § 6-15-208 should be included in the list of references as it is the citation for most of the requirements under Section 12.

**Division Response:** Comment considered. Non-substantive change made.

**Comment (2):** Section 2.01: I would recommend removing “to all” so that this reads “These rules are to set forth the Standards for Accreditation of Arkansas public schools and public school districts.”

**Division Response:** Comment considered. No change made.

**Comment (3):** 3.02: I would recommend moving this down to 3.04 and move up the current 3.03 and new 3.04 so that the definitions are in alphabetical order.

**Division Response:** Comment considered. Non-substantive change made.

**Comment (4):** 3.08: I would recommend creating a new 3.08 as a definition for the State Board so that there can be easy consistency in the Rules as some places have “State Board of Education,” others have “State Board,” and sometimes just “Board.”

**Division Response:** Comment considered. No change made.

**Comment (5):** 4.00: There are two unnumbered paragraphs under this heading that should probably be 4.01 and 4.02 to provide consistency in the document when looking at other sectional headings. In the first paragraph, I would recommend changing this to read “shall review these Standards at least every two years” as the “at least” would allow for greater flexibility should there be a special session, court decision, or change in Federal law that requires amendment to the Standards.

**Division Response:** Comment considered. No change made.

**Comment (6):** 4.02: I would recommend changing “those” to “the Standards” so as to remove any ambiguity or misreading as to the object “those” is referring back to.

**Division Response:** Section 4.02 is changed to clarify that it is the Standards found to have the most violations. Non-substantive change made.

**Comment (7):** 4.07: I would recommend changing this to read “Submit the revised Standards for Accreditation to the State Board for final approval.”

**Division Response:** Comment considered. No change made.

**Comment (8):** 7.04.2.2: I would recommend changing “charging” to “alleging.”

**Division Response:** Comment considered. Non-substantive change made.

**Comment (9):** 8.04: Does the State Board not have to sign off on the accreditation status of all schools, even those that are not cited/probation? If so, it would make more sense for this to read: After approval by the State Board of Education, the public school or public school district will be identified as Accredited, Accredited–Cited, or Accredited–Probation. An identification as Accredited–Cited or Accredited–Probation shall be considered the first year of identification.

**Division Response:** Comment considered. Non-substantive change made.

**Comment (10):** 9.02: To more expressly clarify that this is for those schools and districts on probation and to more closely match the language in Section 9.03, I would recommend amending this as follows: . . . public school district ~~that has failed~~ on Accredited–Probation status for failing to meet. . . .

**Division Response:** Comment considered. Non-substantive change made.

**Comment (11):** 9.03.6: While I recognize that this mirrors the language in A.C.A. § 6-15-207(c)(6), if you consolidate into more than one district, you don't have a resulting district but rather have resulting districts. As such I would recommend changing this to read "to form a resulting district or districts."

**Division Response:** Comment considered. The language in the Standard mirrors the language in Ark. Code Ann. § 6-15-207(c)(6). No change made.

**Comment (12):** 9.03.9: I would recommend changing this to read "to assist in addressing the failure of a public school or public school district to meet" as "assist and address" seems duplicative.

**Division Response:** Comment considered. No change made.

**Comment (13):** 10.00: There is an unnumbered paragraph here that should probably be 10.01 for consistency with other sections.

**Division Response:** Comment considered. No change made.

**Comment (14):** 11.01.1: I would recommend moving the language authorizing the Commissioner to waive the submission timeline requirement to the beginning of the paragraph to ease the reading by not interrupting the Standard requirement.

**Division Response:** Comment considered. Non-substantive change made.

**Comment (15):** 1-C.2.3: "Beginning with the 2018-2019 school year," should be removed as we have completed this school year.

**Division Response:** Comment considered. Non-substantive change made.

**Comment (16):** 3-A.2: Because districts are required to post a set of salary schedules for both licensed and classified staff, I would recommend amending this to read "including the salary schedules for the licensed and classified staff."

**Division Response:** Comment considered. Non-substantive change made.

**Comment (17):** 3-A.4: As APSCN has not been previously written longhand, I would recommend writing it out here instead of using the abbreviation.

**Division Response:** Comment considered. Non-substantive change made.

**Comment (18):** 3-B.2: I understand that districts feel that the October 15 deadline is too close to when a lot of district data is released by the Division; however, I would recommend pushing the deadline back to the old date of November 15 instead of removing it entirely. Most superintendents should feel comfortable with the November 15 date and it would allow the community members a certain deadline by when they have to be informed.

**Division Response:** Comment considered. The date has been changed to allow districts to hold the annual report to the public at a time that best meets the needs of their individual districts. No change made.

**Comment (19):** 4-A.1: While I recognize that this is intended to refer to licensed individuals as those who are required to hold a license from the State Board of Education, 2-E.1 includes “licensed registered nurses” and so I would recommend changing this to be “licensed or classified.”

**Division Response:** Comment considered. The language in the Standard matches the DESE Rules Governing Background Checks and Ark. Code Ann. § 6-17-414. No change made.

**Comment (20):** 4-C.3 and 4-D.4: I would recommend changing this to read “first year of employment as an administrator” and “first year of employment as a teacher” so that it clarifies that the mentoring starts due to the individual’s start as a teacher or administrator, rather than general employment with the district.

**Division Response:** Comment considered. Non-substantive change made.

**Comment (21):** 4-C.4 and 4-D.5: I recommend changing this to read “at least once every four years” as a district may complete additional summative evaluations but has to do one at least every four years.

**Division Response:** Comment considered. Non-substantive change made.

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

(1) Sections 7.04.4 and 8.01 – What has prompted the Division to make this change “at any time,” as it appears that the statutory scheme contemplates notification of a failure to meet the standards to occur “not later than May 1 of each year” or at any time when the failure to meet

standards is discovered by the Division under the limited circumstances set forth in Ark. Code Ann. § 6-15-202(i)? *See* Ark. Code Ann. § 6-15-203(a)(1), (a)(2)(A). **RESPONSE:** Ark. Code Ann. § 6-15-203 states that the Division shall notify all schools or school districts failing to meet standards not later than May 1, but does not restrict the Division from notifying the schools or school districts prior to May 1. Section 7.04.4 is changed to read “at any time, but no later than May 1,” which is consistent with the statute. Section 8.01 is changed to allow a district to be placed in Accredited–Cited or Accredited–Probation status at any time if any violation of the Standards has not been corrected pursuant to Section 8.01. These changes are being made to reflect current practice of notifying districts immediately upon discovery of a Standards deficiency. The Standards for Accreditation monitoring tool allows real-time access to Standards compliance information. The change allows the Division and the district to begin working to cure deficiencies immediately, rather than wait until May 1.

(2) Section 10.01 – Along the same lines, the dates for appeal appear to be set forth in Ark. Code Ann. § 6-15-203(b)(3), and seem to be premised on a May 1 notification/determination of status, unless the notification is immediate due to a failure to meet standards under Ark. Code Ann. § 6-15-202(i), which is permitted the same time period for appeal as that provided in § 6-15-203(b)(3). What is the reasoning behind the Division’s removal of the dates set forth in the statute? **RESPONSE:** Ark. Code Ann. § 6-15-203 states that the Division shall notify all schools or school districts failing to meet standards not later than May 1, but does not restrict the Division from notifying the schools or school districts prior to May 1. Section 7.04.4 is changed to read “at any time, but no later than May 1,” which is consistent with the statute. Since the change is made in Section 7.04.4, it was necessary to make the change in 10.01 to allow the same appeal timeline if notification is given prior to May 1.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The agency states that the amended 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 further promulgate rules setting forth the process for identifying schools and school districts that fail to meet the standards; 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 6-15-216; 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 Act; 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).

The proposed changes include those made in light of Act 190 of 2019, sponsored by Senator Breanne Davis, which repealed the Public School Student Services Act and created the School Counseling Improvement Act of 2019; Act 641 of 2019, sponsored by Representative Jana Della Rosa, which allowed for extended learning opportunities through unstructured social time, required a certain amount of time for recess, and considered supervision during unstructured social time as instructional; Act 676 of 2019, sponsored by Representative Justin Boyd, which required public and private schools to report certain information regarding the number and percentage of students who have exemptions from or have not provided proof of required vaccinations; and Act 1083 of 2019, sponsored by Senator Alan Clark, which amended the name of national school lunch state categorical funding.

**b. SUBJECT: DESE Rules Governing Creation of School Districts by Detachment**

**DESCRIPTION:** The Division of Elementary and Secondary Education proposes changes to its Rules Governing the Creation of School Districts by Detachment. The rules set minimum area and attendance requirements for the creation of a school district by detachment from a larger original school district. They set forth the process for initiation of detachment, petition and election, creation of the new school district, and disbursement of the first year of state funding to the new school district.

Changes to the rules were necessary to implement the provisions of Act 528 of 2019. Formerly, these rules applied only to school districts that had an average daily membership (ADM) of at least 5,000 students, but not more than 20,000 students in the school year immediately preceding

the detachment. Act 528 eliminated the cap of 20,000 students, allowing the rules to apply to districts with an ADM of at least 5,000 students.

Language concerning the Department of Education was converted to Division of Elementary and Secondary Education. Non-substantive stylistic changes were also made.

Following the public comment period, non-substantive changes were made to the rules, including changing “national school lunch” to “enhanced student achievement” and replacing an omitted section originally in the rule at Section 5.03.

**PUBLIC COMMENT:** A public hearing was held on November 18, 2019. The public comment period expired on December 3, 2019. The Division provided the following summary of the comments that it received and its responses thereto:

**Name:** Lucas Harder, Arkansas School Boards Association

**Comment:** Title: “Rules Governing” currently appears between the Stricken ADE and the new DESE and appears to be intended to be stricken as well.

**Agency Response:** The change was made.

**Comment:** 8.04-8.04.4: “National school lunch” should be changed to “enhanced student achievement” in accordance with Act 1083.

**Agency Response:** The change was made.

**Comment:** 8.04.4: I would recommend changing this to read “under the results of an analysis.”

**Agency Response:** The word “under” was removed to resolve the issue instead of adding the word “the,” resulting in the recommended outcome.

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

(1) Title – It appears “Rules Governing” has been stricken? **RESPONSE:** The change was made.

(2) Section 5.03 – It appears that this section is premised on Ark. Code Ann. § 6-13-1504(b)(1); is there a reason that the language “after complying with Ark. Code Ann. § 6-13-1504(b)(2)” is being stricken when that language still appears in the statute? **RESPONSE:** After reviewing the statute once more, the portion containing the statute has been added back to the rule for clarity and to mirror the statute’s language. The change was made.

(3) I noticed a few references to “national school lunch state categorical funding.” That term has been changed recently in other ADE DESE rules pursuant to Act 1083 of 2019, which amended the name of national school lunch state categorical funding. Will these references also be amended at some point? **RESPONSE:** The change was made.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The agency states that the amended rules have no financial impact.

**LEGAL AUTHORIZATION:** Pursuant to Arkansas Code Annotated § 6-13-1505(f)(3), the State Board of Education shall have the right and duty to enact rules regarding the creation of school districts by detachment under Title 6, Chapter 13, Subchapter 15, of the Arkansas Code, concerning the creation of school district by detaching territory from existing school district. Revisions to the rules include those made in light of Act 528 of 2019, sponsored by Representative Jim Sorvillo, which amended the maximum average daily membership requirements for school districts that are subject to minimum area and attendance requirements, as well as Act 1083 of 2019, sponsored by Senator Alan Clark, which amended the name of national school lunch state categorical funding.

c. **SUBJECT: DESE Rules Governing Distance and Digital Learning**

**DESCRIPTION:** The Division of Elementary and Secondary Education proposes changes to its Rules Governing Distance and Digital Learning to implement Act 709 of 2019. This addition may be found at Section 10.06 of the rules. Other changes have been made to remove or replace outdated language. A short summary of the remaining changes is as follows:

Section 4, concerning the Distance Learning Coordinating Council has been removed. That council is defunct. The Quality Digital Learning Provider Task Force now fills this role. Language has been added to clarify that distance and digital courses must follow the requirements of the Arkansas Academic Standards. The amended rules also clarify the role of the teacher of record. Section 7.05.1 has been removed because the requirement is redundant to student records retention requirements and is not required by the distance and digital learning statutes. The application has been removed from the rule and not submitted for promulgation to allow the application to be placed on the DESE website instead and to give DESE flexibility to alter the application as needed.

Following the public comment period, a non-substantive change was made to Section 9.03 to remove the words “to these Rules.”

**PUBLIC COMMENT:** A public hearing was held on November 18, 2019. The public comment period expired on December 3, 2019. The Division provided the following summary of the comments that it received and its responses thereto:

**Name: Lucas Harder, Arkansas School Boards Association**

**Comment:** 409.03: Due to the posting of the application to the website, “to these Rules” between “website” and “and” is unnecessary. In addition, the paragraph about an electronic version of the application also being available that follows the submission address is unnecessary.

**Agency Response:** The changes were made.

**Name: Shannon Warren, Scranton Opportunity School**

**Comment:** In the “Distance & Digital Learning Rules,” remove the word alternative in Section 10.06.

I have been teaching in our ALE program for 10 years. Students who can do all their learning in a digital fashion, ARE NOT ALE KIDS! ALE kids need more one and one and personal interaction on a daily basis in order to gain the social, emotional, behavioral, and academic skills necessary for success after high school.

Students who have the motivation and skills to complete all their assignments online or in a digital format are more flexible and already have the skills for success that the true ALE student does not possess. It may be more flexible, but it is not beneficial for students who desperately need teachers who are there for them every day, teachers who model the skills they may not see at home, and teachers who encourage at-risk students to be their best every day.

**Agency Response:** Comment considered. No change was made. The language in Section 10.06 is the language provided in law at Ark. Code Ann. § 6-16-1406(g), as amended by Act 709 of 2019. The statute requires districts and charter schools that expel a student to offer the expelled student digital learning courses or other alternative educational courses.

**Name: Col. Don Berry, Arkansas Veterans Coalition**

**Comment:** Please find a proposed amendment to Rules Governing Distance and Digital Learning incorporating authority for districts to offer and teach distance learning courses to military dependent students transferring to the district.

#### *7.00 Participation in Distance Learning Courses*

*7.01 A public school district or open-enrollment public charter school may offer and teach distance learning courses to a student enrolled in a*

private school, ~~or~~ a home school, or a military dependent student transferring to the district if:

7.01.1 The student resides in the public school district where the public school or open-enrollment public charter school is located;

7.01.2 The parents/guardian of the military dependent student have contacted the receiving public school district notifying them of their intention to reside in the district due to military assignment notice. The student's parents/ guardian comply with DESE rules for enrollment of transitioning military dependent students.

7.01.23 The student agrees to physically attend the public school or open-enrollment public charter school for the purposes of taking state tests and assessments required for the particular course or courses taken by the student; and

7.01.23.1 Section 7.01.23 shall not be construed to require a home-schooled student, ~~or~~ private school student, or inbound military dependent student to take any test or assessment not specifically required for completion of the course for which the student is enrolled.

7.01.34 The distance learning course is approved by the Department Division of Elementary and Secondary Education, or is aligned with the appropriate content standards and curriculum frameworks developed and approved by the State Board of Education or Department Division of Career and Technical Education.

7.01.45 The Commissioner of Elementary and Secondary Education may waive the requirements of Section 7.01 on an individual basis for a student who is unable to attend due to conditions that prevent the child from physically attending a public school or open-enrollment public charter school, upon written request from the parent mailed to:

Office of the Commissioner  
ATTN: Distance and Digital Learning Waiver  
Division of Elementary and Secondary Education  
Four Capitol Mall  
Little Rock, Arkansas 72201

7.02 A public school district or open-enrollment public charter school that teaches or offers a distance learning course that complies with section 6.00 of these rules to one (1) or more home-schooled or private school students who meet the conditions of 7.01 shall be entitled to an amount equal to one-sixth (1/6) of the state foundation funding amount for each course taught to a private school student or home-schooled student.

*7.03 A public school district or open-enrollment public charter school shall not be entitled to more than the equivalent of state foundation funding for one (1) average daily membership per student regardless of the number of distance learning courses received by a particular home-schooled or private school student.*

*7.04 A student may take all courses virtually through a public school district or open-enrollment public charter school.*

*7.04.1 Once a student who formerly was home-schooled or attended a private school accesses all courses virtually through a public school district or open-enrollment public charter school, the student is a public school student accessing courses at a distance.*

*7.04.1.1 All laws pertaining to public school students shall pertain to a public school student accessing courses at a distance.*

**Agency Response:** Comment considered. No change was made. Ark. Code Ann. § 6-18-232 specifically provides for homeschool and private school students to enroll part time in public schools and provides for foundation funding to be applied. Because the statute does not provide for military dependent students, the Division believes the proposed change would require a change in the law.

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

(1) Section 4.00 – Is this section being deleted based on the repeal of Ark. Code Ann. § 6-47-305 by Act 540 of 2017, § 4? **RESPONSE:** Comment considered. No change was necessary. Yes, this section was deleted due to the repeal of Ark. Code Ann. § 6-47-305.

(2) Section 9.01.4 – Is this section being added in light of Act 745 of 2017, § 20, which amended Ark. Code Ann. § 6-16-1405(a)(4)?

**RESPONSE:** Comment considered. No change was necessary. Yes, this section has been added in light of Act 745, which added this language to Ark. Code Ann. § 6-16-1405(a)(4).

(3) Section 9.03 – I see in this section, and in your summary, that the application for digital learning providers is being removed from the rules and will be placed on the DESE website. Is the Division comfortable that the application does not meet the definition of rule found in Ark. Code Ann. § 10-3-309, since it had previously made it a part of the rules?

**RESPONSE:** Comment considered. No change was made. The application does not implement, interpret, or describe the organization, procedure, or practice of the agency and does not affect the private rights

or procedures available to the public. The application merely gathers the information necessary for the agency to determine whether the applicant meets the requirements set forth in law to become a digital provider.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The agency states that the amended rules have no financial impact.

**LEGAL AUTHORIZATION:** Pursuant to Arkansas Code Annotated § 6-16-1406(f), the State Board of Education may promulgate rules to implement Ark. Code Ann. § 6-16-1406, concerning digital learning courses. Pursuant to Ark. Code Ann. § 6-47-405, the State Board shall promulgate rules necessary for the implementation of the Arkansas Distance Learning Development Project Act of 2003, Ark. Code Ann. §§ 6-47-401 through 6-47-406. Revisions to the rules include those made in light of Act 709 of 2019, sponsored by Representative Don Glover, which required a public school district that expels a student to offer to the expelled student digital learning courses or alternative educational services for which the student may receive credit; Act 540 of 2017, sponsored by Senator Lance Eads, which amended the law concerning appointments to certain boards, commissions, committees, and other administrative bodies; and Act 745 of 2017, sponsored by Representative Bruce Cozart, which amended various provisions of the Arkansas Code concerning public education.

d. **SUBJECT: DESE Rules Governing Grading and Course Credit and Repeals**

**DESCRIPTION:** The Division of Elementary and Secondary Education proposes its new rules, the Rules Governing Grading and Course Credit. The proposed amendments to the rules are necessary to incorporate the changes of Acts 745 and 1118 of 2017 and Acts 429, 456, and 632 of 2019. These rules combine the Uniform Grading Scales, Advanced Placement/International Baccalaureate Degree Incentive Program, and Concurrent Credit Rules into a single rule governing grading and credit. There are also new sections covering weighted credit and credit by demonstrated mastery in the proposed new rules. The Rules seek to create a single set of rules for all of DESE's rules that govern the award of course credits.

The rules progress from 1) Uniform Grading Scales, which sets out the default method of awarding credit, to 2) Flexibility in Awarding High School Credit, which sets out how schools can use demonstrated mastery to award credits, to 3) Courses for Weighted Credit, which allows students in secondary grades to receive greater than the uniform credit for AP/IB or

Career and Technical Courses, to 4) Concurrent Credit, which sets out how students can gain college credits during high school, to 5) AP and IB, which sets out how students can gain weighted credit for taking advanced placement or international baccalaureate incentive program courses and the associated exams.

Following the public comment period, non-substantive changes were made, including the addition of two new definitions taken from language elsewhere in the rules. The definition for “standards-based grading” was pulled from Section 2-2.02 of the rules to further clarify Section 2-2.03, but is not substantially different than the explanation in 2-2.02. The definition for “Weighted Credit and AP Training Approval Committee” was pulled verbatim from Section 6-2.01.1.3 of the rules.

**PUBLIC COMMENT:** A public hearing was held on November 18, 2019. The public comment period expired on December 3, 2019. The Division provided the following summary of the comments that it received and its responses thereto:

**Name:** Lucas Harder, Arkansas School Boards Association

**Comment:** While the table of contents includes the chapter number followed by a hyphen followed by the subchapter number (1-1.01, 2-1.01, 3-1.01, etc.), the actual section numbers in the Rules are missing the chapter number and the hyphen, which would make it much easier to cite to a specific section in the Rules.

**Agency Response:** The changes were made.

**Comment:** 1-2.00: As there is not currently an explanation or definition of “Standards-based grading” for 2-2.03 and 2-2.04, I would recommend including a definition here.

**Agency Response:** The change was made. A definition was added at 1-2.19 as follows: “Standards-based grading” means demonstration of competencies before or during a course.

**Comment:** 6-2.01: The references to 2.01.1 and 2.01.2 here are missing chapter indicators.

**Agency Response:** The changes were made.

**Comment:** 6-2.03: The section references “Section 2.03.1 or 2.03.2,” but does not indicate which chapter those sections are under for specific citation.

**Agency Response:** The changes were made.

**Comment:** 6-3.01: “Outlined in 2.01, 2.02, 2.03, and 2.04 of these Rules” makes no reference to the specific chapter of the rules for those sections.

**Agency Response:** The changes were made.

**Comment:** 6-.4.01: I would recommend including “a” between “for” and “one-time.”

**Agency Response:** The change was made.

**Name: Jennifer Lee, Smackover-Norphlet School District**

**Comment:** Arkansas has instituted the Arkansas Course Transfer System for college courses. Any course with an ACTS code is transferable to any other public post-secondary education institution in the state.

I would like to recommend that 2.00 SCHOOL DISTRICT WEIGHTED CREDIT POLICIES FOR COLLEGE COURSES in the Draft Rules Governing Grading and Course Credit be changed to minimally allow any core (English, Math, Science, Social Studies) college course with an ACTS number offered as concurrent credit to high school students automatically be granted weighted credit without the school district having to submit an application to the Division of Elementary and Secondary Education.

This would include (but not limited to) common sense courses such as:

- Biology
- Composition I and II
- World Literature I and II
- Western Civilization I and II
- US History I and II
- College Math
- College Algebra

Why is this important?

- Our high school students have the opportunity to obtain a Certificate of General Studies from SouthARK Community College. Some of our students opt not to participate in the courses because of the potential effect on their GPA because the course is not weighted.
- Many schools across the state currently have partnerships with their local community college or four-year university.

Guiding question – Why should all school districts have to submit a request to the Division of Elementary and Secondary Education when the state has already determined that there should be transferability in these courses among all state public colleges and universities? This is an opportunity to reduce paperwork for school districts and DESE while doing something that encourages high school students to take actual college coursework while enrolled in high school.

**Agency Response:** Comment considered. No change was made. DESE requires all schools to apply for weighted credit and is unwilling to grant a

blanket approval without review of the particular course to ensure that it meets the requirement that the course meet or exceed curriculum frameworks approved by the State Board or comparable AP course. This review ensures students are not receiving weighted credit without standardization of accountability.

**Name: Aaron Randolph, Cabot School District**

**Comment:** With regards to weighted credit, the draft rules currently read:

*2.01 A local school district board of directors may adopt a policy to allow high school students in the public school district to take college courses for weighted credit equal to the numeric grade awarded in Advanced Placement courses, courses offered under the International Baccalaureate program, and approved weighted classes.*

*2.02 If a local school board adopts such a policy, the district must apply to the Division of Elementary and Secondary Education for approval of concurrent enrollment college courses to be designated as a weighted course, under Chapter 5 of these rules.*

*2.03 An application shall be reviewed for approval to assign a numeric grade value, which may include weighted credit, based on the following:*

*2.03.1 A letter from the superintendent of the public school district or principal of the public school describing how the course exceeds expectations for coursework required under the Standards for Accreditation of Arkansas Public Schools and School Districts;*

*2.03.2 The grade level or levels of public school students who will be enrolled in the course; and*

*2.03.3 Clear evidence that the concurrent credit course is substantially the same as an Advanced Placement Course.*

I would request that the Office for the Gifted and Talented and Advanced Placement at the Division of Elementary and Secondary Education be formally included in this process. This inclusion should be reflected in the rules and regulations under this subsection. As it currently stands, there is no particular body at DESE who would review this application for weighted credit.

**Agency Response:** Comment considered. A change was made to add the definition of the DESE Weighted Credit and AP Training Approval Committee at Section 1-2.21. This committee is not reviewing AP courses, but rather comparing submissions for weighted credit to the content of comparable AP courses. The Office of Gifted and Talented is included in this process, but is not the only office included.

**Comment:** In addition to this concern, I'd also like to make a request of Chapter 6 of these rules. Specifically, Section 2 of the Advanced Placement and The International Baccalaureate Diploma Incentive Program.

Section 2.00 currently reads, in regards to Teacher Training:

*2.01 A teacher of an AP course must meet Arkansas Teacher Licensure requirements and meet the requirements of either Section 2.01.1 or 2.01.2:*

*2.01.1 Attend at least one (1) of the following trainings no less than one (1) time every five (5) years:*

*2.01.1.1 College Board Advanced Placement Summer Institute;*

*2.01.1.2 College Board-endorsed training; or*

*2.01.1.3 Other similarly rigorous training approved by a committee comprised of Division program directors and advisors with AP and content expertise.*

I would request that 2.01.1.3 be amended as follows:

*2.01.1.3 Other similarly rigorous training approved by a committee comprised of The Office for the Gifted and Talented and Advanced Placement or their designees, Division program directors and advisors with AP and content expertise.*

**Agency Response:** Comment considered. A definition was added at Section 1-2.21 for the Weighted Credit and AP Training Approval Committee.

**Name:** Dustin Seaton, Northwest Arkansas Education Service Cooperative

**Comment:** Ch. 1, 2.03 – Definitions – Advanced Placement “exam” (rather than “test”) is the appropriate terminology.

**Agency Response:** The change was made.

**Comment:** Ch. 1, 2.03 – Definitions – The official name of The College Board should always have the “The” capitalized.

**Agency Response:** The change was made.

**Comment:** Ch. 1, 2.03 – The more appropriate phrasing should read “. . . a College Board Advanced Placement exam that incorporates all topics specified by The College Board and the Educational Testing Service on (omit “its standard” and add “the”) syllabus for a given subject

area and is approved “through” (rather than “by”) The College Board (add “audit process”) and Educational Testing Service.”

**Agency Response:** A change was made. See the language provided by The College Board in the comments at the end of this document. The section now reads as follows: ““Advanced Placement Exam’ means a standardized exam designed to measure how well a student has mastered the content and skills of a specific AP course. An Advanced Placement Exam is administered by Educational Testing Service on behalf of The College Board.”

**Comment:** Ch. 1, 2.05 – Capitalize “The” before College Board.

**Agency Response:** The change was made.

**Comment:** Ch. 1, 2.06 – Replace “test” with “exam” and capitalize “The” before College Board.

**Agency Response:** The change was made.

**Comment:** Ch. 1, 2.10.2 – Where is Chapter 5, Section 8.01 in the rules? I couldn’t find that section.

**Agency Response:** A change was made to indicate Chapter 5, Section 5-4.00.

**Comment:** Ch. 1, 2.15 – Omit “level” after “high school” and before “course.”

**Agency Response:** The change was made.

**Comment:** Ch. 1, 2.19 – How is the Division determining if weighted credit meets or exceeds the standards?

**Agency Response:** No change was made. DESE compares the district submission with state-approved frameworks and College Board course and exam descriptions. If the submission meets or exceeds comparable standards, approval for weighted credit may be awarded.

**Comment:** Ch. 3, 1.04 – “The CDM process is designed to allow students to demonstrate competency of a required graduation credit. . . .” How many and will it contain certified teachers in the areas of the credit sought?

**Agency Response:** No change was made. No limit is set by law or rule on the number of credits. The district will have a committee that evaluates student demonstration of mastery through two phases: a written exam and a demonstration of learning. Whether a certified teacher is involved will depend on whether the student is receiving classroom instruction as part of the process and other factors, including but not limited to whether the district has received a waiver of teacher licensure.

**Comment:** Ch. 4, 1.03 – “The Division in collaboration with the Division of Career and Technical Education may approve a career and technical course . . . .” Who determines and are they certified in the field of credit sought?

**Agency Response:** A definition was added at 1-2.21 for the Weighted Credit and AP Training Approval Committee. This committee will review and provide approval in collaboration with the Division of Career and Technical Education.

**Comment:** Ch. 4, 2.01 – Are local school district board of directors getting any training on weighted credit policies or how will this be equitably distributed to ensure continuity and fairness? Oftentimes school board directors are not curriculum specialists.

**Agency Response:** No change was made. The requirements for training for school board members are set by law and are contained in the DESE Rules Governing Required Training for School Board Members. Changes to the required training would require a legislative change. DESE provides support to districts in this area and districts are encouraged to contact DESE for resources. School districts are encouraged to provide their boards with beneficial training and information.

**Comment:** Ch. 4, 2.03 – Who is reviewing the application for approval?

**Agency Response:** Please see the added definition at Section 1-2.21 for the Weighted Credit and AP Training Approval Committee.

**Comment:** Ch. 4, 2.03.3 – “Clear evidence that the concurrent credit course is substantially the same as an Advanced Placement Course.” What evidence will be used? A national exam? Evidence of college faculty or some standard beyond one person? This language is vague and leaves open too much ambiguity.

**Agency Response:** DESE’s Weighted Credit and AP Training Approval Committee reviews and compares the district submission to comparable AP courses. Evidence submitted by a district includes a course outline and sample assessment. Visit the DESE course approvals page for more information at: <http://dese.ade.arkansas.gov/divisions/learning-services/curriculum-support/course-approvals>.

**Comment:** Ch. 5, 1.01 – Add “college” between “private” and “institution” otherwise any “private institution” could be considered here.

**Agency Response:** A change was made to clarify a private institution of higher education.

**Comment:** Ch. 5, 1.01.1 – Same as above.

**Agency Response:** See above response.

**Comment:** Ch. 5, 1.01.2 – Is this section requiring all three or is it and/or or either/or? It is confusing.

**Agency Response:** A change was made to indicate the course corresponding to the subscore. A subscore of 17 is required in the subject in which the student wishes to enroll. For example, a student with at least a subscore of 17 in math may enroll in a math course.

**Comment:** Ch. 5, 1.01.2 – Add “college” between “private” and “institution” otherwise any “private institution” could be considered here.

**Agency Response:** A change was made to clarify a private institution of higher education.

**Comment:** Ch. 5, 1.02 – Same as above.

**Agency Response:** See above response.

**Comment:** Ch. 5, 1.02.1-3 – Who is this information submitted to and who will maintain it?

**Agency Response:** See above response.

**Comment:** Ch. 5, 1.04 – Add “college” between “private” and “institution” otherwise any “private institution” could be considered here.

**Agency Response:** See above response.

**Comment:** Ch. 5, 1.05 – Same as above.

**Agency Response:** See above response.

**Comment:** Ch. 5, 1.07 – Same as above.

**Agency Response:** See above response.

**Comment:** Ch. 5, 1.08 – Same as above.

**Agency Response:** See above response.

**Comment:** Ch. 5, 1.02.1.3 – Who is this information submitted to and who will maintain it?

**Agency Response:** No change was made. The Arkansas Division of Higher Education (ADHE) requires these agreements to be submitted to ADHE.

**Comment:** Ch. 5, 3.05 – Insert “in which the student resides” after “public school district.”

**Agency Response:** Comment considered. No change was made.

**Comment:** Ch. 5, 4.02.2 – What is “substantially” used? Why not the same? How will this be determined?

**Agency Response:** No change was made. Pursuant to Ark. Code Ann. § 6-18-223, this is determined by each institution in consultation with the Arkansas Higher Education Coordinating Board.

**Comment:** Ch. 6, 2.01.1.3 – In what manner and depth is the content expertise determined?

**Agency Response:** No change was made. Ark. Code Ann. § 6-15-902 requires one of three options. The section indicated requires only “other similarly rigorous training approved by the Department.” The Division has provided more specific information in these rules that this “other training” will be approved by the Weighted Credit and AP Training Approval Committee. See the new definition added at Section 1-2.21.

**Comment:** Ch. 6, 2.01.2 – ATPs should really only be allowable for 2 years rather than 3 to ensure students are best served by qualified teacher.

**Agency Response:** Comment considered. No change was made. Three years is required by Ark. Code Ann. § 6-15-902(c)(2)(C)(i)(b).

**Comment:** Ch. 6, 2.03.2 – Same as above.

**Agency Response:** Please see previous response.

**Comment:** Ch. 6, 3.02 – Omit last phrase “. . . if training is required as a part of the teacher’s job requirements.”

**Agency Response:** Comment considered. No change was made. It is at each district’s discretion to approve funding training not required as part of the teacher’s job requirements. Districts may, but are not required to, fund teacher training above and beyond required professional development and training.

**Comment:** Ch. 6, 4.01 – Change “may” to “will” twice.

**Agency Response:** Comment considered. No change was made. This language was taken from Ark. Code Ann. § 6-16-804, which says “may.”

**Comment:** Ch. 6, 4.02 – Change “Division of Elementary and Secondary Education” to “Office of Gifted and Talented Education at the Division of Elementary and Secondary Education.”

**Agency Response:** Comment considered. No change was made. DESE administers the grants. The Office of Gifted and Talented is part of DESE.

**Comment:** Ch. 6, 5.01 – Change “may” to “will.”

**Agency Response:** Comment considered. No change was made. This language was taken from Ark. Code Ann. § 6-16-804, which says “may.”

**Comment:** Ch. 6, 6.01 – Change “may” to “will.”

**Agency Response:** See previous response.

**Comment:** Ch. 6, 6.02 – Replace “test” with “exam” and replace “in” with “for.”

**Agency Response:** The change was made.

**Comment:** Ch. 6, 6.03 – Replace “tests” with “exams.”

**Agency Response:** The change was made.

**Comment:** Ch. 7, 7.01 – Are districts required to offer a minimum of one course per year for all grade levels? This is very vague language.

**Agency Response:** Comment considered. No change was made. This language is the language of the statute, which may be found at Ark. Code Ann. § 6-16-1204. The requirement clearly states, “for a total of four (4) courses.” [Note from Agency: The chapter intended by the commenter is Chapter 6. There is no Chapter 7.]

**Comment:** Ch. 7, 7.02 – Spell out the acronym “AP” to “Advanced Placement” as well as “CTE” to “Career Technical Education.”

**Agency Response:** Comment considered. No change was made. The shortened “AP” is included in the definition for Advanced Placement at 1-2.02. The shortened “CTE” is spelled out and the abbreviation included in the definitions at 1-2.19. [Note from Agency: The chapter intended by the commenter is Chapter 6. There is no Chapter 7.]

**Comment:** Additional questions: How will this effect virtual learning guidelines since not all districts use the Arkansas Virtual Learning for AP courses? This doesn’t show-up in this document. NW Arkansas has lots of questions about the instructors and their AP certification, course audits approved, etc. especially if they are using instructors from out-of-state.

**Agency Response:** No change was made. It is the responsibility of the district to verify that all of these requirements are met for providers chosen by the district. These courses must meet the same requirements as any other AP course.

**Name: Pete Joenks, Prairie Grove School District**

**Comment:** 1. In my experience, a student has to have been enrolled in APSCN for a course (with proper coding) in order for that course to show on the student’s transcript. In Chapter 4, Proposed Rule 1.01 (page 359-9) states that a student can earn course credit for a high school course . . . without being enrolled or the minimum 120 clock hours. How would counselors get the course credit on a transcript for viewing by post-secondary schools? I assume proper course coding would need to be added and will that coding be specific enough to show reviewers of transcripts from colleges what course the student showed CDM in?

**Agency Response:** No change was made. Students are often coded in this manner and it is entered in APSCN using the course code. It is coded

similarly for community service learning and transfer students. Please contact our APCSN office if you require technical assistance.

**Comment:** 2. Will CDMs pass review by NCAA Clearinghouse?

**Agency Response:** No change made. This is a decision made by NCAA Clearinghouse. It is the responsibility of the district to seek approval.

**Comment:** 3. Is the language in Chapter 5, Proposed Rule 1.01 (page 359-11) stating that all students, that meet the requirement listed in Proposed Rule 1.01.1, be allowed to take courses for concurrent credit? This is confusing to me because in Proposed Rule 1.01.1 states that districts are “encouraged to consider the ACT benchmark readiness scores in addition to the minimum requirement for proper identification and placement of students in college coursework.” In my opinion, these two statements cause confusion. In other words, do school districts get to set their own guidelines on enrollment into concurrent classes that include a 19 on the ACT, or equivalent measure, AND other criteria? Or do school districts have to enroll students into concurrent classes based upon the 19 on the ACT or equivalent measure only.

**Agency Response:** No change was made. Please see the language in Section 5-1.01 which states, “in accordance with the rules and regulations adopted by the college or university.” The student shall be eligible, but the student must also meet the admissions guidelines of the institution of higher education. Schools are encouraged to consider multiple measures beyond meeting a minimum score for placement in a concurrent credit course. It is at the district’s discretion to set criteria for enrollment for concurrent credit courses with the institution of higher education.

**Comment:** 4. In Chapter 5, Proposed Rule 1.01.1 (page 359-11) states . . . college course placement score greater than a score of 19 on the ACT or an equivalent measure. It would help if this rule has some clarification on what would be considered “an equivalent measure.” Does this mean just PSAT or perhaps ACT Aspire?

**Agency Response:** No change was made. Districts should work with their concurrent institution of higher education to determine entry requirements and measurement tools.

**Comment:** 5. In Chapter 5, Proposed Rule 1.04 (page 359-12), I am confused about the last sentence. *A remedial/developmental education course cannot be used to meet the core subject area/unit requirements in English and mathematics.* Does this imply that students CAN take a remedial/developmental education course in science or social studies to meet the core subject area/unit requirements? Furthermore, I think it might be helpful to have a definition of what constitutes a remedial/developmental education course in the “definitions” portion of these proposed rules.

**Agency Response:** A change was made to remove “in English and mathematics.”

**Name:** Davis Hendrix, Arkansans for Gifted and Talented Education

**Comment:** Our concerns about these important guidelines remain focused in the language used to communicate the process by which weighted credit will be awarded and alternatives to College Board Advanced Placement Summer Institutes as professional development requirements for Advanced Placement teachers in Arkansas.

**Agency Response:** Comment considered. See the added definition at Section 1-2.21. Weighted credit will be awarded by the DESE Weighted Credit and AP Training Approval Committee. Ark. Code Ann. § 6-15-902 requires one of three options. The section indicated requires only “other similarly rigorous training approved by the Department.” The Division has provided more specific information in these rules that this “other training” will be approved by the Weighted Credit and AP Training Approval Committee.

**Comment:** During the legislative session in which Act 632 was passed into law, we requested that the original law be amended to include the Office for the GT and AP as a member of both bodies that would be making decisions regarding the awarding of weighted credit as well as which trainings would qualify as professional development for Advanced Placement teachers in Arkansas.

**Agency Response:** See the previous response.

**Comment:** Since there is no description of how weighted credit will be awarded and who will be involved in that process, we respectfully submit that there should be a description similar to the one provided in the new AP and IB rules regarding who will be involved in making that decision.

**Agency Response:** See the previous response.

**Comment:** We once again request that the phrase “in consultation with the Office for the Gifted and Talented and Advanced Placement” be added to whatever description of the subcommittee within the DESE is added to clarify who will actually collaborate to make the decision. Without that specificity, a very important decision to award weighted credit to additional coursework can be made without any consultation with the Office for the Gifted and Talented and Advanced Placement in the future.

**Agency Response:** A change was made to add the Weighted Credit and AP Training Committee to the definitions at Section 1-2.21 and at 4-2.02 and 6-2.00.

**Comment:** In addition to this concern, AGATE also has expressed concerns within Section 2 of the Advanced Placement and The International Baccalaureate Diploma Incentive Program.

In section 2.00, Teacher Training:

*2.01 A teacher of an AP course must meet Arkansas Teacher Licensure requirements and meet the requirements of either Section 2.01.1 or 2.01.2:*

*2.01.1 Attend at least one (1) of the following trainings no less than one (1) time every five (5) years:*

*2.01.1.1 College Board Advanced Placement Summer institute;*

*2.01.1.2 College Board-endorsed training; or*

*2.01.1.3 Other similarly rigorous training approved by a committee comprised of Division program directors and advisors with AP and content expertise.*

AGATE continues to maintain that the flexibility of the language in this section requires that the decisions about what trainings will substitute for the College Board Advanced Placement Summer Institute should include the Office for the GT and AP. Once again, our rationale is the same as when we requested that the phrase be added to the law. AGATE accepted the word of the DESE that this phrase would be added in the language of the rules and regulations, and unfortunately, this mark-up still does not include that phrase. We respectfully request that the final version of the rules and regulations include the following amendment:

*2.01.1.3 Other similarly rigorous training approved by a committee comprised of The Office for the Gifted and Talented and Advanced Placement or their designees, Division program directors and advisors with AP and content expertise.*

If this phrase is added, the phrase “advisors with AP and content expertise” can be dropped. This would allow the Office of GT and AP, who are being held responsible for monitoring and supporting AP programs to have explicit, direct involvement in decisions that will ultimately affect their success.

**Agency Response:** Please see the previous responses.

**Name:** Lana Sveda, The College Board

**Comment:** Chapter 1, Section 2.03: Remove the reference to ETS and provide clarity that an AP course is a college-level course taken in high school. College Board proposes the following language: “‘Advanced Placement Course’ means a college-level course taken in high school that prepares students for the associated Advanced Placement Exam and has been approved by The College Board as part of the course audit process.”

**Agency Response:** The change was made.

**Comment:** Chapter 1, Section 2.05: Remove ETS from the definition for “College Board.” The new definition would read as: “‘College Board’ means The College Board, a mission-driven not-for-profit organization.”

**Agency Response:** The change was made.

**Comment:** Chapter 1, Section 2.06: Update the “College Board Advanced Placement Test” definition. The new definition would read as: “‘Advanced Placement Exam’ means a standardized exam designed to measure how well a student has mastered the content and skills of a specific AP course. An Advanced Placement test is administered by Educational Testing Service on behalf of the College Board.”

**Agency Response:** The change was made. The word “test” in the comment was changed to “exam” for consistency.

**Comment:** Chapter 4, Section 1.02: Provide additional information on what constitutes “must meet or exceed the standards of a comparable Advanced Placement class” found in section 1.02 of General Provisions.

**Agency Response:** Comment considered. No change was made. The Weighted Credit and AP Training Approval Committee compares submissions for weighted credit to the content of comparable AP courses.

**Comment:** Chapter 4, Section 2.03: Add the language below for clarity, which was taken from the current Uniform Grading Scales rule language that is scheduled to be repealed upon passage of these proposed rules. “Statement of learner outcomes, objectives and/or learning expectations based on revised curriculum frameworks where appropriate. Description of instructional strategies demonstrating problem solving, critical thinking, and higher order learning processes. This description should include at least one exemplary lesson.”

**Agency Response:** A change was made to add these two sections (previously promulgated as part of the ADE Rules Governing Uniform Grading Scales) at Sections 4-2.03.4 and 4-2.03.5 of the Rules.

**Comment:** Chapter 5: Add “comparable score on the SAT” alongside ACT to the eligibility language for concurrent credit found in the proposed rules.

**Agency Response:** The change was made to Sections 5-1.01.1 and 5-1.01.2.

**Comment:** Chapter 6, Section 7.00: Maintain a focus on Pre-AP courses, in particular the College Board’s Pre-AP course offerings, and the preparation these courses offer for more rigorous courses like AP by retaining a segment of the Pre-AP language that is scheduled to be repealed upon passage of these proposed rules: “In order to prepare

students for the rigor inherent in AP courses, districts and schools are encouraged to offer Pre-AP courses that align with the four (4) core courses of English, math, science, and social studies enrollment opportunity for students found in section 1.02 of this chapter.”

**Agency Response:** Comment considered. No change was made. The Division’s rules contain regulatory directives and guidance. Encouragements are not regulatory in nature and are excluded from the Rules to prevent the appearance of regulatory force.

**Comment:** Chapter 6, Section 7.01: Add “AP” to section 7.01 so that it matches the clear and specific language found in section 1.02 of the same chapter. The updated language would read as: “Districts are required to offer a minimum of one AP course per year in each of the four (4) core courses of English, math, science, and social studies.”

**Agency Response:** The change was made.

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

(1) Section 1-2.07 – I see a reference to “regulations.” I just wanted to make mention of Act 315 of 2019, § 3204(b)(3), which concerns the uniform use of the term “rule” and requires governmental entities to ensure the use of the term “rule” upon promulgation of any rule after the effective date of the Act, which was July 24, 2019. Is there a reason that the term has been retained in the rule for the time being? **RESPONSE:** The change was made.

(2) Section 2-2.04 – It appears that Ark. Code Ann. § 6-15-902(a) requires the use of the A-F grading scale for all public secondary schools. On what authority does the Division rely for permitting the use of standards-based grading in secondary schools? **RESPONSE:** Ark. Code Ann. § 6-15-216 provides the authority for demonstrated subject matter competency, which is covered in Chapter 3 of these Rules.

(3) Chapter 3 – Is this chapter, concerning credit by demonstrated mastery, the result of Act 872 of 2017? **RESPONSE:** Yes. Act 872 of 2017 amended Ark. Code Ann. § 6-15-216, which provides the authority for credit by demonstrated mastery.

(4) Section 4-1.02 – This section appears premised on Ark. Code Ann. § 6-15-902(c)(3)(B), as amended by Act 632 of 2019, § 1. Is there a reason the Division did not include the alternate basis for approving a course for weighted credit that “[e]xceeds the curriculum standards for a nonweighted credit class,” as provided in the statute? **RESPONSE:** The change was made.

(5) Section 4-2.02 – Should the term “must” be “shall” per the change in Ark. Code Ann. § 6-15-902(c)(5)(B)(i), as amended by Act 632 of 2019, § 1? **RESPONSE:** The change was made.

(6) Section 4-2.03.3 – While included in the current rules for Uniform Grading, it does not appear that this provision is included in Ark. Code Ann. § 6-15-902(c)(5)(B)(ii). What is the basis for its inclusion in the rule? **RESPONSE:** The basis for inclusion is found at Ark. Code Ann. § 6-15-902(c)(3), which allows the Division to approve a course for weighted credit if it meets or exceeds the curriculum standards for a nonweighted credit class or meets or exceeds standards of a comparable Advanced Placement class.

(7) Section 5-1.01 – Term “regulations.” **RESPONSE:** The change was made.

(8) Section 5-1.02 – Term “regulations.” **RESPONSE:** The change was made.

(9) Section 5-2.01.3 – Should this be a separate section due to it not being required of the student as provided in Section 5-2.01? **RESPONSE:** The change was made. This section has been removed and is found at 5-4.06. Please see the next comment below.

(10) Sections 5-4.05 through 5-4.06 – Are these sections duplicative of Sections 5-2.01 through 5-2.01.3? **RESPONSE:** Yes. The duplicative language has been removed from 5-4.06 and is now found at 5-2.01. Section 5-4.06 will remain and Section 5-2.01.3 has been removed as duplicative of Section 5-4.06.

(11) Section 5-4.08 – Is this section somewhat duplicative of Section 5-2.02? **RESPONSE:** Yes. Section 5-4.08 has been removed as duplicative of 5-2.02.

(12) Section 6-2.03.2 – In the current AP/IB rules, the similar provision at Section 4.04 requires that a teacher of pre-AP who has not obtained the College-Board endorsed training will complete an “Additional Training Plan (ATP) for *Pre-Advanced Placement*.” The proposed rule in Section 6-2.03.2 provides for an ATP for “Advanced Placement.” Which is the correct ATP for a pre-AP teacher? **RESPONSE:** The change has been made to indicate Pre-Advanced Placement in section 6-2.03.2. The ATP is a single form that requires teachers to indicate which courses are selected. The selection may include AP or Pre-AP or both.

(13) Section 6-2.05 – Should the initial references to AP teacher training be to “2.01.1 and 2.01.2” or simply “2.01” rather than “2.01 and 2.02,” as

Section 6-2.02 pertains to how students in classes of teachers on an ATP earn weighted credit? **RESPONSE:** A change was made to remove 6-2.02 as redundant to 6-2.05 and the reference in 6-2.05 is now only to 6-2.01.

(14) Section 6-3.01 – Along the same lines, is Section 2.02 relevant to the training programs in which the noted teachers must participate?

**RESPONSE:** See previous response.

(15) Section 6-3.02 – Is the grant referenced in this section administered by the host of the Advanced Placement Summer Institute or the Division, as the section also references it being contingent on appropriated funding?

**RESPONSE:** The grant is given to the Advanced Placement Summer Institute host universities by DESE, along with guidelines to prioritize which teachers receive funding.

(16) Section 6-5.01 – Since the section addresses coverage of fees for AP exams and IB exams, should the course referenced in the last line also reference an IB course? **RESPONSE:** The change was made.

(17) What changes are being made to these rules in relation to Act 456 of 2019, which created the Arkansas Concurrent Challenge Scholarship?

**RESPONSE:** Rulemaking authority for the Arkansas Concurrent Challenge Scholarship was reserved for the Division of Higher Education (see Ark. Code Ann. § 6-85-406), but these rules do require a student success plan to ensure students in concurrent courses are eligible for the scholarship. See Sections 5-2.02 and 6-7.02 of these Rules.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The agency states that the proposed rules have no financial impact.

**LEGAL AUTHORIZATION:** Pursuant to Arkansas Code Annotated § 6-16-804(e), the State Board of Education is authorized to promulgate rules necessary to implement the Arkansas Advanced Placement and International Baccalaureate Diploma Incentive Program Act of 1995, Ark. Code Ann. §§ 6-16-801 through 6-16-806. The State Board is further authorized to adopt rules as may be necessary for implementation of the requirement in Ark. Code Ann. § 6-18-223, which provides that a student who enrolls in and successfully completes a course by an institution of higher education shall be entitled to receive appropriate academic credit in both the institution of higher education and the public school in which the student is enrolled, which credit shall be applicable to graduation requirements. See Ark. Code Ann. § 6-18-223(b). The Division of Elementary and Secondary Education may promulgate rules to implement

Ark. Code Ann. § 6-15-216, concerning flexibility in awarding course credit, including without limitation guidelines to assist public school districts in transitioning to awarding credits based on a demonstration of subject matter competency instead of, or in combination with, completing hours of classroom instruction.

The proposed rules include revisions made in light of the following acts: Act 745 of 2017, sponsored by Representative Bruce Cozart, which amended various provisions of the Arkansas Code concerning public education; Act 872 of 2017, sponsored by then-Representative Charlotte Douglas, which provided flexibility in the awarding of course credits and allowed a public school district to develop and implement a plan that enables a student to earn course credits by demonstrating subject matter competency; Act 1118 of 2017, sponsored by Senator Missy Irvin, which amended provisions of the Arkansas Code concerning concurrent credit; Acts 429 and 430 of 2019, sponsored by Representative Mark Lowery, which prohibited a public school district or an open-enrollment public charter school from charging a private school or a home school student for the cost of an endorsed concurrent enrollment course and which amended the law concerning the enrollment in an academic course at a public school or an open-enrollment public charter school of a private school or home-schooled student; Act 456 of 2019, sponsored by Senator James Sturch, which created the Arkansas Concurrent Challenge Scholarship; and Act 632 of 2019, sponsored by Senator Jane English, which amended provisions of the Arkansas Code concerning weighted credit.

e. **SUBJECT: DESE Rules Governing Instructional Materials**

**DESCRIPTION:** The Division of Elementary and Secondary Education proposes changes to its Rules Governing Instructional Materials, which set forth the requirements for the selection of instructional materials, requirements for publishers, assessment of damages for publishers failing to comply, and hearing procedures for appeal to the State Board of Education. They also list criminal sanctions for illegal acts involving school officials in the selection of instructional materials. Changes to these rules were necessary to implement the provisions of Act 757 of 2019, §§ 52 and 53. The Act eliminated the requirement that the State Board report annually to the House and Senate Committees on Education any school districts out of compliance with Section 5.00 of the rules, concerning instructional materials selection. The language in Section 5.04 of the rules concerning the course content standards and curriculum frameworks has been updated to the Arkansas Academic Content Standards. Language concerning the Department of Education has been updated to Division of Elementary and Secondary Education.

Following the public comment period, non-substantive changes were made to the rules concerning general language changes, including changing “regulation” to “rule” and indicating that the chair, rather than the court reporter, swears in those testifying.

**PUBLIC COMMENT:** A public hearing was held on December 9, 2019. The public comment period expired on December 17, 2019. The Division provided the following summary of the comments that it received and its responses thereto:

**Name:** Lucas Harder, Arkansas School Boards Association

**Comment:** 3.01: Act 910 changed this to “Commissioner of Elementary and Secondary Education.”

**Agency Response:** The change was made.

**Comment:** 7.03: I would recommend changing “published regulation” to “published rule.”

**Agency Response:** The change was made.

**Comment:** 7.03.1: “Commissioner of Education” can be shortened to “Commissioner” in accordance with 3.01.

**Agency Response:** The change was made.

**Comment:** 7.03.2: “Commissioner of Education” can be shortened to “Commissioner” in accordance with 3.01.

**Agency Response:** The change was made.

**Comment:** 7.04.3: All other rules now have the chairperson of the board doing the swearing rather than the court reporter.

**Agency Response:** The change was made.

**Comment:** 7.04.7: For ease of reading, I would recommend changing 7.04.7.1 and 7.04.7.2 to read as follows: “7.04.7.1: Adopt the Commissioner’s specific allegations and recommended assessment of damages; 7.04.7.2: Adopt the Commissioner’s specific allegations but modify the Commissioner’s recommended assessment of damages.”

**Agency Response:** Comment considered. No change was made. The hearing procedures are aligned to the language of the rule as written.

**Comment:** 8.01: “Commissioner of Education” can be shortened to “Commissioner” under 3.01.

**Agency Response:** The change was made.

**Comment:** 8.02.2: “Ark. Code Ann.” is repeated twice.

**Agency Response:** The change was made.

**Comment:** 8.03: “Commissioner of Education” can be shortened to “Commissioner” under 3.01.

**Agency Response:** The change was made.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The agency states that the amended rules have no financial impact.

**LEGAL AUTHORIZATION:** Revisions to the rules include those made in light of Act 757 of 2019, sponsored by Representative Bruce Cozart, which amended and updated various provisions of the Arkansas Code concerning public education. Pursuant to Arkansas Code Annotated § 6-21-404(a)(1), the State Board of Education may make rules to implement the Free Textbook Act of 1975, Ark. Code Ann. §§ 6-21-401 through 6-21-413. *See also* Ark. Code Ann. § 6-21-403(d)(2), as amended by Act 757, § 53 (similarly providing that the State Board, through the Division of Elementary and Secondary Education, may promulgate rules as may be necessary to carry out the Free Textbook Act of 1975).

f. **SUBJECT: DESE Rules Governing Required Training for School Board Members**

**DESCRIPTION:** The Division of Elementary and Secondary Education proposes changes to its Rules Governing Required Training for School Board Members, which set forth the annual training requirements for school board members and the separate training requirements for new school board members and establish penalties for noncompliance. Changes to the rules are necessary to implement the provisions of Acts 168 and 1029 of 2019. Other changes include updating language concerning the Department of Education to the Division of Elementary and Secondary Education and updating outdated regulatory citations.

Formerly, the nine (9) hours of training required for a new school district board member was required to be completed within the first fifteen (15) months of service on the board. The first fifteen-month provision was eliminated and replaced with a requirement that the training include instruction on how to read and interpret an audit report. Board members must now receive as part of their training information on school safety and student discipline, but this training is only required once for each board member.

Following the public comment period, non-substantive changes were made to change “this Rule” to “these Rules,” to pluralize a word, and to correct a typo.

**PUBLIC COMMENT:** A public hearing was held on December 9, 2019. The public comment period expired on December 17, 2019. The Division provided the following summary of the comments that it received and its responses thereto:

**Name:** Lucas Harder, Arkansas School Boards Association

**Comment:** 1.01: For consistency with other rules, I would recommend changing “promulgates this Rule” to read “promulgates these Rules.”

**Agency Response:** The change was made.

**Comment:** 2.01: For consistency with other rules, I would recommend changing “of this Rule” to “of these Rules.”

**Agency Response:** The change was made.

**Comment:** 5.01.1.3.1: I would recommend changing this to read either “conducting a school district financial audit” or “conducting school district financial audits.”

**Agency Response:** The change was made.

**Comment:** 5.01.1.3.2: “Division of Legislative Audit” should be changed to “Arkansas Legislative Audit.”

**Agency Response:** The change was made.

**Comment:** 6.02: For consistency with other rules, I would recommend changing “this Rule” to “these Rules.”

**Agency Response:** The change was made.

**Comment:** 6.03: For consistency with other rules, I would recommend changing “this Rule” to “these Rules.”

**Agency Response:** The change was made.

**Comment:** 8.01: For consistency with other rules, I would recommend changing “this Rule” to “these Rules.”

**Agency Response:** The change was made.

**Comment:** 9.01: For consistency with other rules, I would recommend changing “this Rule” to “these Rules.”

**Agency Response:** The change was made.

**Comment:** 9.02: For consistency with other rules, I would recommend changing “this Rule” to “these Rules.”

**Agency Response:** The change was made.

**Comment:** Exhibit A, #8: “Statutes” appears to be missing the final “t.”

**Agency Response:** The change was made.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The agency states that the amended rules have no financial impact.

**LEGAL AUTHORIZATION:** Pursuant to Arkansas Code Annotated § 6-13-629(c)(2), the State Board of Education shall promulgate rules as necessary to carry out the provisions and intent of the statute, concerning training, instruction, and reimbursement for members of school district boards of directors. Revisions to the rules include those made in light of Act 168 of 2019, sponsored by Representative Jim Dotson, which amended the requirements regarding training and instruction required of a newly elected school board member, and Act 1029 of 2019, sponsored by Representative Jimmy Gazaway, which, among other things, required a school board member to receive information regarding school safety and student discipline.

**2. DEPARTMENT OF ENERGY AND ENVIRONMENT, DIVISION OF ENVIRONMENTAL QUALITY**

**a. Rule 5: Liquid Animal Waste Management Systems**

**b. Rule 6: State Administration of the National Pollutant Discharge Elimination System (NPDES)**

**3. DEPARTMENT OF FINANCE AND ADMINISTRATION, ALCOHOLIC BEVERAGE CONTROL DIVISION (Ms. Doralee Chandler)**

**a. SUBJECT: Hard Cider Manufacturing Permit**

**DESCRIPTION:** Act 691 of 2019 established the Hard Cider Manufacturing Permit. Rule 1.19(47) has been added to incorporate this new type of permit.

**PUBLIC COMMENT:** The public comment period for this rule expired on January 22, 2020. A public hearing was also held on January 22, 2020. The agency indicated that it received no public comments on this rule.

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

**QUESTION #1:** Where do the agent requirements in § 2.81 come from?

**RESPONSE:** Proposed ABC Rule 2.81 provides, “Hard cider manufacturer permittees shall designate a managing agent for the tap room

and permittees shall notify the Alcoholic Beverage Control of any change in the managing agent. The managing agent shall either live in the same county as the location of the tap room or within thirty five (35) miles of the tap room.” The agent requirements are set out in Ark. Code Ann. § 3-9-603(a), which applies to all licenses issued to a person authorizing the sale of wine or hard cider, or both, at retail for consumption on the premises.

**QUESTION #2:** What, if anything, is the statutory authority for the endorsement and appeal provisions in § 2.81?

**RESPONSE:** Proposed ABC Rule 2.81 provides, “Upon submission to the ABC of the required application and completion of the posting, publication, and notice requirements, the Director of the ABC may issue an endorsement to the Hard Cider Manufacturer Permittee for the operation of a Hard Cider Manufacturer Tap Room. The endorsement shall be posted on the premises of the tap room in compliance with the specifications set forth in Section 1.37. If the Director refuses to issue the Tap Room endorsement to the hard cider manufacturer permittee, the Director’s decision may be appealed to the Alcoholic Beverage Control Board pursuant to Section 1.51.”

Taprooms operate “under the license of the [small brewery or hard cider manufacturer.]” Ark. Code Ann. §§ 3-5-1405(a)(4)(B)(i), 3-4-611(e)(6)(B)(i). Because ABC permits are issued to specific, contiguous physical premises, however, ABC Division issues a separate, distinct permit to a remote taproom operated by a small brewery or a hard cider manufacturer.

**QUESTION #3:** Section 1(e)(10) of Act 691 provides for sale of hard cider at fairs and festivals if “the hard cider is sold for consumption by persons of legal age.” Why does § 2.83(5) of the proposed rules omit this language? **RESPONSE:** The language in the statute is superfluous, and it would be superfluous in the rule as well, because all sales of controlled beverages are restricted to persons of legal age, 21 or older. Ark. Code Ann. § 3-3-202(b)(1).

The proposed effective date is pending legislative review and approval.

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

**LEGAL AUTHORIZATION:** The director of the Alcoholic Beverage Control Division “shall adopt rules to implement and administer” the law surrounding the hard cider manufacturing permit. *See* Act 691, § 1(m). This rule implements Act 691 of 2019, sponsored by Senator Lance Eads.

Act 691 established a hard cider manufacturing permit, amended existing alcoholic beverage permits to authorize the sale of hard cider, and amended portions of the law resulting from initiated Act 1 of 1942.

b. **SUBJECT: Posting of Pregnancy Warning**

**DESCRIPTION:** This is a new rule. Act 860 of 2019 requires all alcohol permittees to post an 8.5 x 11 inch pregnancy warning.

**PUBLIC COMMENT:** The public comment period for this rule expired on January 22, 2020. A public hearing was also held on January 22, 2020. The agency indicated that it received no public comments on this rule.

The proposed effective date is pending legislative review and approval.

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

**LEGAL AUTHORIZATION:** The Director of the Alcoholic Beverage Control Division has the responsibility to promulgate rules as needed to carry out all “alcoholic control acts enforced in this state.” Ark. Code Ann. § 3-2-206(a). This rule implements Act 860 of 2019, sponsored by Representative Deborah Ferguson. The Act required the posting of a warning sign relating to drinking alcoholic beverages during pregnancy in an establishment that sells or dispenses alcoholic beverages.

c. **SUBJECT: Hard Cider Manufacturer Operations (Title J, Rules 2.77 – 2.84)**

**DESCRIPTION:** Subtitle J is a new addition resulting from Act 691 of 2019. The Act establishes the hard cider manufacturing permit and operations, and this subtitle reflects those legislative changes.

**PUBLIC COMMENT:** The public comment period for this rule expired on January 22, 2020. A public hearing was also held on January 22, 2020. The agency indicated that it received no public comments on this rule.

The proposed effective date is pending legislative review and approval.

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

**LEGAL AUTHORIZATION:** This rule implements Act 691 of 2019, sponsored by Senator Lance Eads. Act 691 established a hard cider manufacturing permit, amended existing alcoholic beverage permits to authorize the sale of hard cider, and amended portions of the law resulting

from initiated Act 1 of 1942. The director of the Alcoholic Beverage Control Division “shall adopt rules to implement and administer” the law surrounding the hard cider manufacturing permit. *See* Act 691, § 1(m).

d. **SUBJECT: Unauthorized Manufacture, Sale, Offer, Dispensing, Gift, or Possession of Controlled Beverage**

**DESCRIPTION:** Act 861 of 2019 amended Ark. Code Ann. §§ 3-5-202(5)(A) and 3-5-205(f)(1) to allow “home-brewed beer” to be removed from the manufacturer’s premises and taken to organized affairs, exhibitions, competitions, and tastings. Rule 1.79(20) is amended to allow this legislative change.

**PUBLIC COMMENT:** The public comment period for this rule expired on January 22, 2020. A public hearing was also held on January 22, 2020. The agency indicated that it received no public comments on this rule.

The proposed effective date is pending legislative review and approval.

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

**LEGAL AUTHORIZATION:** The Director of the Alcoholic Beverage Control Division has the responsibility to promulgate rules as needed to carry out all “alcoholic control acts enforced in this state.” Ark. Code Ann. § 3-2-206(a). These changes implement Act 861 of 2019, sponsored by Representative Deborah Ferguson. Act 861 amended the definition of “home-brewed beer” and authorized a manufacturer of home-brewed beer to remove home-brewed beer from the manufacturer’s premises for personal or family use.

e. **SUBJECT: Suspension of Permit When No Business Conducted for a Period of Thirty Days; Inactive Status of Permits**

**DESCRIPTION:** Act 571 of 2019 shortens the time for inactive status. The initial inactive status is now three months, rather than six. The Act shortens the total time for inactive status from 18 months, with extensions, to 12 months, with extensions. These changes to Rule 1.81 implement the Act.

**PUBLIC COMMENT:** The public comment period for this rule expired on January 22, 2020. A public hearing was also held on January 22, 2020. The agency indicated that it received no public comments on this rule.

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

**QUESTION #1:** What is the statutory authority for the additions in paragraph 2 of the proposed rule? **RESPONSE:** The modifications are the result of Act 571 of 2019, which modified the terms for permit inactive status found in Ark. Code Ann. § 3-4-201.

**QUESTION #2:** What is the statutory authority for the date of resumption provision in the last paragraph of the proposed rule? **RESPONSE:** Ark. Code Ann. § 3-4-201.

**QUESTION #3:** Why do the proposed rules still indicate that they were last amended on 8-20-03? **RESPONSE:** Scrivener's error. It was corrected and attached as amended by the Board.

The proposed effective date is pending legislative review and approval.

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

**LEGAL AUTHORIZATION:** The Director of the Alcoholic Beverage Control Division has the responsibility to promulgate rules as needed to carry out all "alcoholic control acts enforced in this state." Ark. Code Ann. § 3-2-206(a). Some of these changes implement Act 571 of 2019, sponsored by Representative Douglas House, which amended Title 3 of the Arkansas Code regarding permits for alcoholic beverage businesses, amended the population ratio for permits to sell alcoholic beverages off-premises, and shortened the time period a permit is on inactive status.

f. **SUBJECT: Operation of Microbrewery-Restaurant Private Club**

**DESCRIPTION:** Act 681 of 2019 establishes the Microbrewery-Restaurant Private Club Permit. Subtitle H has been added to Title 5 of the ABC rules to incorporate this Act.

**PUBLIC COMMENT:** The public comment period for this rule expired on January 22, 2020. A public hearing was also held on January 22, 2020. The agency indicated that it received no public comments on this rule.

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

**COMMENT:** The word "permit" is missing from the end of the first sentence of § 5.84. **RESPONSE:** Scrivener's error. It was corrected and attached as amended by the Board.

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 by fiscal year to any private individual, entity, and business subject to the proposed rule is unknown. The agency indicated that there is no estimated cost to state, county, and municipal government to implement this rule.

**LEGAL AUTHORIZATION:** The Director of the Alcoholic Beverage Control Division has the responsibility to promulgate rules as needed to carry out all “alcoholic control acts enforced in this state.” Ark. Code Ann. § 3-2-206(a). These proposed rules implement Act 681 of 2019. The Act, sponsored by Representative Spencer Hawks, amended the law regarding alcoholic beverages and established a microbrewery-restaurant private club permit.

g. **SUBJECT: Information, Statements, and Documents to be Furnished by Applicant**

**DESCRIPTION:** Arkansas State Police can now process fingerprints for background checks remotely. This change to Rule 1.20(20) was requested by them to expedite processing for permittees and improve efficiency within the State Police.

**PUBLIC COMMENT:** The public comment period for this rule expired on January 22, 2020. A public hearing was also held on January 22, 2020. The agency indicated that it received no public comments on this rule.

The proposed effective date is pending legislative review and approval.

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

**LEGAL AUTHORIZATION:** The Director of the Alcoholic Beverage Control Division has the responsibility to promulgate rules as needed to carry out all “alcoholic control acts enforced in this state.” Ark. Code Ann. § 3-2-206(a). Ark. Code Ann. § 3-2-103 requires alcoholic beverage permit applicants to be fingerprinted.

h. **SUBJECT: Allowing Alcoholic Beverages to be Carried from Any On-Premises Alcoholic Beverage Outlet or Private Club**

**DESCRIPTION:** Act 812 of 2019 created Entertainment Districts. Rule 1.79(27) is amended to allow on-premises retailers to allow patrons to leave their permitted premises with alcohol, and the amendments establish the guidelines for cities that notify ABC of creation and removal of Entertainment Districts.

**PUBLIC COMMENT:** The public comment period for this rule expired on January 22, 2020. A public hearing was also held on January 22, 2020. The agency indicated that it received no public comments on this rule.

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

**QUESTION #1:** Where do the listed notification requirements come from? **RESPONSE:** Ark. Code Ann. § 14-54-1412(b)(4).

**QUESTION #2:** What is the authority for the opt-out provision? **RESPONSE:** The Director is clothed with broad discretionary power to govern the traffic in alcoholic liquor. Ark. Code Ann. § 3-2-206(d). Cities are allowing for locations to opt out of participating in the designated entertainment district. When this occurs ABC needs to know those locations so that we can continue to inspect them as required by the rules.

The proposed effective date is pending legislative review and approval.

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

**LEGAL AUTHORIZATION:** The Director of the Alcoholic Beverage Control Division has the responsibility to promulgate rules as needed to carry out all “alcoholic control acts enforced in this state.” Ark. Code Ann. § 3-2-206(a). This proposed rule implements Act 812 of 2019. The Act, sponsored by Senator Trent Garner, establishes areas of a city or town that highlight restaurant, entertainment, and hospitality options and establishes temporary or permanent designated entertainment districts.

i. **SUBJECT: 3.19(10) B: Persons Under Twenty-One (21); Exceptions**

**DESCRIPTION:** Ark. Code Ann. § 3-3-204(b) states: “With written consent of a parent or guardian, a person eighteen (18) years of age and older may: (1) Sell or otherwise handle beer and wine at retail grocery establishments.” ABC Rule 3.19(10)B currently states “beer and small farm wine.” This change adds “wine” in accordance with Ark. Code Ann. § 3-3-204(b).

**PUBLIC COMMENT:** The public comment period for this rule expired on January 22, 2020. A public hearing was also held on January 22, 2020. The agency indicated that it received no public comments on this rule.

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

**QUESTION:** Why do the proposed rules still indicate that they were last amended in 2013? **RESPONSE:** Scrivener's error. It was corrected and attached as amended by the Board.

The proposed effective date is pending legislative review and approval.

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

**LEGAL AUTHORIZATION:** The Director of the Alcoholic Beverage Control Division has the responsibility to promulgate rules as needed to carry out all "alcoholic control acts enforced in this state." Ark. Code Ann. § 3-2-206(a). Ark. Code Ann. § 3-3-204(b) allows a person over age eighteen to "[s]ell or handle beer and wine at retail grocery establishments."

j. **SUBJECT: Temporary Hard Cider Permit**

**DESCRIPTION:** Act 691 of 2019 amends Ark. Code Ann. § 3-4-105 to include hard cider among available temporary permits. This Rule sets forth application and issuance requirements for a temporary hard cider permit.

**PUBLIC COMMENT:** The public comment period for this rule expired on January 22, 2020. A public hearing was also held on January 22, 2020. The agency indicated that it received no public comments on this rule.

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

**QUESTION #1:** What is the authority for the provision giving the Director authority to determine whether the function for which a permit is applied is non-profit or charitable in nature and purpose? **RESPONSE:** ABC Division may issue a temporary permit for the sale of alcoholic beverages "at a function sponsored by or for the benefit of a nonprofit organization or charitable organization." Ark. Code Ann. § 3-4-105(a)(1). An application for a temporary permit issued under subsection (a)(1) "shall meet the requirements as established by the Director of the Alcoholic Beverage Control Division and set out in the application." Ark. Code Ann. § 3-4-105(a)(3).

**QUESTION #2:** Where do the two listed application requirements come from? **RESPONSE: (1) The location of the event must be in an area**

**which has voted for the sale of intoxicating liquors;** Sale of alcoholic beverages is prohibited in dry territories. Ark Code Ann. §§ 3-8-209; 3-8-312. It is unlawful for the Director to issue a license to a facility to sell hard cider for on-premises consumption in a dry territory. Ark. Code Ann. 3-9-602(b). **(2) The application must be received by the Alcoholic Beverage Control Division at least three (3) weeks prior to the event.** Ark. Code Ann. § 3-4-105(a)(3). This requirement is a practical matter arising from the time required to obtain the results of a criminal background check to confirm that the applicant is eligible to receive a temporary permit. *See* Ark. Code Ann. § 3-4-207.

The proposed effective date is pending legislative review and approval.

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

**LEGAL AUTHORIZATION:** The Director of the Alcoholic Beverage Control Division has the responsibility to promulgate rules as needed to carry out all “alcoholic control acts enforced in this state.” Ark. Code Ann. § 3-2-206(a). This proposed rule implements Act 691 of 2019, sponsored by Senator Lance Eads, which established a hard cider manufacturing permit and amended Ark. Code Ann. § 3-4-105 to provide for a temporary hard cider permit.

k. **SUBJECT: Definitions**

**DESCRIPTION:** Act 681 of 2019 establishes the microbrewery-restaurant private club permit. This proposed rule incorporates the following definitions from the Act:

- “Barrel,” which is consistent throughout Title 3 of the Arkansas Code, but has not yet been included in the ABC Rules;
- “Malt beverage,” which appears in the small brewery act as well as Act 681 and did not previously appear in the ABC Rules;
- “Microbrewery” and “microbrewery-restaurant private club,” which are included in the Rules to clarify the distinction between a microbrewery and a microbrewery-restaurant private club;
- “Restaurant,” which was already described in the ABC Rules, but which has been updated with an additional requirement found in Act 681 that was not already part of the ABC Rules definition.

**PUBLIC COMMENT:** The public comment period for this rule expired on January 22, 2020. A public hearing was also held on January 22, 2020. The agency indicated that it received no public comments on this rule.

The proposed effective date is pending legislative review and approval.

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

**LEGAL AUTHORIZATION:** The Director of the Alcoholic Beverage Control Division has the responsibility to promulgate rules as needed to carry out all “alcoholic control acts enforced in this state.” Ark. Code Ann. § 3-2-206(a). Act 681 of 2019, sponsored by Representative Spencer Hawks, established a microbrewery-restaurant private club permit and defined multiple terms.

**SUBJECT: Grocery Store Off-Premises Wine Permit**

**DESCRIPTION:** Act 508 of 2017 established and defined the grocery store wine permit. Act 691 of 2019 added hard cider as a product that may be sold under the grocery store wine permit. Rule 1.19(46) has been added to incorporate this new type of permit.

**PUBLIC COMMENT:** The public comment period for this rule expired on January 22, 2020. A public hearing was also held on January 22, 2020. The agency indicated that it received no public comments on this rule.

The proposed effective date is pending legislative review and approval.

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

**LEGAL AUTHORIZATION:** The Director of the Alcoholic Beverage Control Division has the responsibility to promulgate rules as needed to carry out all “alcoholic control acts enforced in this state.” Ark. Code Ann. § 3-2-206(a). Act 691 of 2019, sponsored by Senator Lance Eads, amended existing alcoholic beverage permits to authorize the sale of hard cider.

**SUBJECT: Beer Festival Permit**

**DESCRIPTION:** The following changes have been made to Rule 1.19(31):

- Added small breweries, hard cider manufacturers, and small brewery tap rooms to the list of authorized participants in beer festival events, in accordance with Act 950 of 2017 and Act 691 of 2019;
- Added sentence allowing beers from out-of-state breweries, in accordance with Act 950 of 2017;
- Added hard cider to the list of beverages permitted to be sold on festival grounds, in accordance with Act 691 of 2019.

**PUBLIC COMMENT:** The public comment period for this rule expired on January 22, 2020. A public hearing was also held on January 22, 2020. The agency indicated that it received no public comments on this rule.

The proposed effective date is pending legislative review and approval.

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

**LEGAL AUTHORIZATION:** The Director of the Alcoholic Beverage Control Division has the responsibility to promulgate rules as needed to carry out all “alcoholic control acts enforced in this state.” Ark. Code Ann. § 3-2-206(a). This proposed rule implements Act 950 of 2017, sponsored by Senator Will Bond, which clarified the law regarding the scope of small brewery operations, allowed transportation of in-house products between commonly owned small breweries and breweries that own small breweries, and created small brewery tap rooms. This proposed rule also implements Act 691 of 2019, sponsored by Senator Lance Eads, which amended existing alcoholic beverage permits to authorize the sale of hard cider.

**4. DEPARTMENT OF HEALTH, CENTER FOR LOCAL PUBLIC HEALTH  
(Mr. Chuck Thompson, Mr. Lance Jones, Mr. Jeff Stone)**

**a. SUBJECT: Rules Pertaining to General Sanitation**

**DESCRIPTION:** The following changes have been made to the Rules Pertaining to General Sanitation:

- Updated entire rule to reflect requirements of Act 315 of the 2019 General Assembly and replace “regulation” with “rule”;
- Added Section XII. Sanitary Infrastructure With Municipal Jurisdictions to the Table of Contents;
- Updated Section C. Connection to Public Sewer Required to match wording of Ark. Code Ann. § 14-235-304;
- Added Section XII with consensus wording pursuant to Act 708 of the 2019 General Assembly. This wording redefines certain improvement districts including debt and minimum water and sewer standards;
- Updated Section XIII. Penalty to match current law (Ark. Code Ann. § 20-7-101).

**PUBLIC COMMENT:** A public hearing was held on this rule on October 4, 2019. The public comment period expired on October 4, 2019.

The agency provided the following summary of the single public comment it received and its response to that comment:

**Commenter's Name:** David E. Johnson, General Counsel, Central Arkansas Water

**COMMENT:** ADH should provide guidance on the meaning of “designated utility service area.” **RESPONSE:** Mr. Charles Thompson, Arkansas Department of Health Deputy Chief Counsel, contacted the writers of the legislation pertaining to the wording of “designated utility service area” that was incorporated into the General Sanitation Rule revision. The sponsors indicated the wording was considered self-explanatory. If you have additional questions we will attempt to seek clarification.

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

**QUESTION #1:** Where does the notice provision in the new Section XII come from? **RESPONSE:** This was suggested language from stakeholders and legislative sponsors to effectuate the intent of Act 708. Right after session we had a meeting with stakeholders and the legislative sponsors to better understand the intent of Act 708, because the Act was broad and did not address specifics regarding improvement district water and sewer minimum standards. The language in the Rules are a result of that input and ADH understanding of legislative intent.

**QUESTION #2:** What is the statutory authority for the provision requiring a municipality's express consent before infrastructure can be connected to or serviced by a municipal utility? **RESPONSE:** [See answer to Question #1.] This was suggested language from stakeholders and legislative sponsors to effectuate the intent of Act 708.

**QUESTION #3:** What is the statutory authority for the provision requiring infrastructure improvements to conform to a municipality's standard utility construction specifications and piping size requirements? **RESPONSE:** [See answer to Question #1.] This was suggested language from stakeholders and legislative sponsors to effectuate the intent of Act 708.

**QUESTION #4:** Where does the provision allowing municipal utilities access to improvements during all phases of construction come from? **RESPONSE:** [See answer to Question #1.] This was suggested language from stakeholders and legislative sponsors to effectuate the intent of Act 708.

**QUESTION #5:** Where does the 30-day timeliness definition come from? **RESPONSE:** [See answer to Question #1.] This was suggested language from stakeholders and legislative sponsors to effectuate the intent of Act 708 but not provide unreasonable delay to construction within improvement districts.

The proposed effective date is April 1, 2020.

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

**LEGAL AUTHORIZATION:** The State Board of Health has the power to “make all necessary and reasonable rules of a general nature for . . . [t]he general amelioration of the sanitary and hygienic conditions within the state[.]” Ark. Code Ann. § 20-7-109(a)(1). Some of these changes implement Act 708 of 2019, sponsored by Representative Jasen Kelly, which concerned certain procedures of improvement districts. Act 708 instructed the Department of Health to “promulgate rules that establish minimum standards for water and sewer improvements made by districts under” the Act. *See* Ark. Code Ann. § 14-86-2205(a), *as created by* Act 708. The Act also instructed the Department to “promulgate rules necessary to implement” the Act. *See* Ark. Code Ann. § 14-86-2205(b)(1), *as created by* Act 708.

5. **DEPARTMENT OF HEALTH, PUBLIC HEALTH LAB (Dr. Glen Baker, Ms. Cristy Sellers, Ms. Laura Shue)**

a. **SUBJECT: Rules Pertaining to Testing of Newborn Infants**

**DESCRIPTION:** The proposed amendments to the Rules Pertaining to Testing for Newborn Infants add tests for newborn screening, including a test for Spinal Muscular Atrophy pursuant to Act 58 of 2019. The proposed amendments to the Rules also add three additional tests for Pompe Disease, MPS 1 spectrum of disease, and childhood onset (cerebral) X-ALD.

At the present time, 31 tests are performed on newborns, and 29 of the tests are performed in the Public Health Laboratory. The tests are performed on dried blood spots that are collected from the infants soon after birth. Of the four additional tests, three have FDA-approved procedures, while Spinal Muscular Atrophy does not at this time. The four tests can be performed in our local health laboratory utilizing existing blood samples without having to require new blood samples from the hospital.

The current fee is \$121.00 and the proposed amendment adds an additional \$10.00 charge for the Spinal Muscular Atrophy test.

**PUBLIC COMMENT:** A public hearing was held on this rule on February 12, 2020. The public comment period expired on February 12, 2020. The agency provided the following summary of the public comments it received and its responses to those comments:

Written comments were received from four individuals representing families, advocacy groups and medical specialists. Each individual provided letters of support for adoption of the proposed rules and swift action by the Arkansas Department of Health officials to begin screening all newborns born in the state of Arkansas.

**Commenter's Name:** Meredith Woodruff, parent of child affected by SMA and Cure SMA Supporter

**COMMENT:** Mrs. Woodruff respectfully asks that the Arkansas Department of Health adopt the proposed rule and quickly begin screening Arkansas newborns for SMA. She states the addition of SMA to the proposed rules will have an enormous impact for families across Arkansas. **RESPONSE:** The Arkansas Department of Health thanks these individuals for their comments and letters of support for the proposed changes to the Rules Pertaining to Testing of Newborn Infants.

**Commenter's Name:** Dr. Aravindhan Veerapandiyan, Pediatric Neurologist at Arkansas Children's Hospital

**COMMENT:** Dr. Veerapandiyan supports the adoption of these rules and would like to see swift action by the Arkansas Department of Health to join the growing number of states who screen for SMA. Early diagnosis and treatment of spinal muscular atrophy can lead to improved, long-lasting developmental outcomes for individuals living with SMA. Clinical data shows treatments are most effective when delivered early and pre-symptomatically. **RESPONSE:** The Arkansas Department of Health thanks these individuals for their comments and letters of support for the proposed changes to the Rules Pertaining to Testing of Newborn Infants.

**Commenter's Name:** Dr. Zdenek Berger, Medical Director, Late Stage Neuromuscular and Rare Disease, Biogen

**COMMENT:** Dr. Berger supports the proposed changes to Rules with specific backing for the elements adding spinal muscular atrophy to the state's newborn screening panel. Now that treatment options are available data indicate that initiation of treatment in the pre-symptomatic period improves clinical outcomes in newborns. **RESPONSE:** The Arkansas

Department of Health thanks these individuals for their comments and letters of support for the proposed changes to the Rules Pertaining to Testing of Newborn Infants.

**Commenter's Name:** Kenneth Hobby, President, Cure SMA

**COMMENT:** Mr. Hobby and Cure SMA fully support the revisions to the newborn screening rule to add SMA. He states that the rulemaking to add SMA to the state's newborn screening program comes at a critical and promising time for the SMA community. Treatments are available; however, promising outcomes are only possible with early diagnosis and timely treatment. Cure SMA and the entire Arkansas SMA community strongly supports finalizing the proposed newborn screening rule change.

**RESPONSE:** The Arkansas Department of Health thanks these individuals for their comments and letters of support for the proposed changes to the Rules Pertaining to Testing of Newborn Infants.

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

**QUESTION:** Where do the definitions of Pompe disease, MPS1, and X-ALD come from? **ANSWER:** The assistant director at the Public Health Laboratory responded that the definitions are consistent with standard medical literature.

The proposed effective date is pending legislative review and approval.

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

According to the agency, which stated that it received a cost estimate from the Department of Human Services, Division of Medical Services, the additional cost of the state rule for the current fiscal year will be \$32,421 in general revenue and \$80,114 in federal funds, for a total of \$112,535. The estimated cost for the next fiscal year will be \$63,987 in general revenue and \$161,083 in federal funds, for a total of \$225,070.

The agency estimated the total estimated cost by fiscal year to state, county, and municipal government to implement this rule at \$32,421 for the current fiscal year and \$63,987 for the next fiscal year. Per the agency, these estimates come from the Department of Human Services, Division of Medical Services.

The agency indicated that there is a new or increased cost or obligation of at least \$100,000 per year to a private individual, private entity, private business, state government, county government, municipal government, or

two or more of those entities combined. It stated that Act 58 of 2019 requires insurers to cover testing for spinal muscular atrophy. Per the agency, testing currently costs \$121 per sample and this rule would increase what ADH Public Health Lab charges hospitals by \$10 for all four tests. The agency provided the following written findings:

*(1) a statement of the rule's basis and purpose*

To comply with Act 58 of 2019 and detect disorders early for treatment

*(2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute*

Rule required by statute. Disorders need to be detected soon after birth for treatment to be most effective.

*(3) a description of the factual evidence that*

*(a) justifies the agency's need for the proposed rule; and*

*(b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs*

Early detection for the four conditions decreases medical costs as early treatment is more effective.

*(4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule*

There are no alternatives.

*(5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule*

There are no proposed alternatives.

*(6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response*

Previous newborn screenings did not include these tests.

*(7) an agency plan for review of the rule no less than every ten years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:*

*(a) the rule is achieving the statutory objectives;*

*(b) the benefits of the rule continue to justify its costs; and*

*(c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.*

ADH constantly monitors CDC guidelines, state and federal laws and regulations for opportunities to reduce and control costs.

**LEGAL AUTHORIZATION:** The Department has authority to prescribe tests to be administered to newborn infants. *See* Ark. Code Ann. § 20-15-304(2). It also has authority to promulgate rules relating to “[w]hat persons and institutions shall be required to obtain specimens from newborn infants . . . ; [t]he amount to be charged by the central laboratory for processing the specimens; and [t]he method of billing the charges to the persons and institutions[.]” Ark. Code Ann. § 20-15-304(3)(A)-(C).

Some of these rule changes implement Act 58 of 2019, sponsored by Representative Julie Mayberry, which required newborn screening for spinal muscular atrophy and mandated that insurance policies cover newborn screening for spinal muscular atrophy.

Along with spinal muscular atrophy, the Department of Health is specifically responsible for administering newborn testing for phenylketonuria, hypothyroidism, galactosemia, cystic fibrosis, and sickle-cell anemia. *See* Ark. Code Ann. § 20-15-302(a)(1)(A), as amended by Act 58, § 1 (2019); Ark. Code Ann. § 20-15-304. “In addition, if reliable and efficient testing techniques are available, all newborn infants shall be tested for other genetic disorders by employing procedures approved by the State Board of Health.” Ark. Code Ann. § 20-15-302(a)(1)(B). Per the agency, Pompe disease, MPS 1, and X-ALD all have FDA-approved testing procedures.

6. ~~**DEPARTMENT OF HUMAN SERVICES, DIVISION OF MEDICAL SERVICES (DMS)**~~

a. ~~**Living Choices Assisted Living Home and Community-Based Services Medicaid Waiver and Living Choices Assisted Living Medicaid Provider Manual**~~

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

a. **SUBJECT:** Used Motor Vehicle Dealer Licensing Rules – Act 820 Amendments

**DESCRIPTION:** The Division of Arkansas State Police is amending its Used Motor Vehicle Dealer Licensing Rules. Rule 5.4 is added to permit

an expedited licensure process for certain military-affiliated applicants in accordance with Act 820 of 2019.

**PUBLIC COMMENT:** A public hearing was not held in this matter. The public comment period expired on January 20, 2020. The Division of Arkansas State Police received no public comments.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The agency states that the proposed rule amendment has no financial impact.

**LEGAL AUTHORIZATION:** The Department of Arkansas State Police may promulgate rules that are necessary to implement, enforce, and administer the Used Motor Vehicle Buyers Protection subchapter of the Arkansas Motor Vehicle Commission Act. *See* Ark. Code Ann. § 23-112-604(a). Pursuant to Act 910 of 2019, which was sponsored by Representative Andy Davis, the Department of Arkansas State Police was designated as the Division of Arkansas State Police and transferred to the newly created Department of Public Safety through a cabinet-level transfer. *See* Ark. Code Ann. §§ 12-8-101, 25-43-1401 and 25-43-1402(a)(10).

Act 820 of 2019, sponsored by Senator Missy Irvin, provided for automatic occupational licensure of active duty service members, returning military veterans and their spouses, in circumstances where the individual is a holder in good standing of a substantially equivalent occupational license issued by another state, territory, or district of the United States. *See* Ark. Code Ann. § 17-1-106(b)(1). An occupational licensing entity may, however, submit proposed rules recommending an expedited process and procedure for licensure, to the Administrative Rules Subcommittee of the Legislative Council. *See* Ark. Code Ann. § 17-1-106(c). An occupational licensing entity shall be required to provide automatic licensure if the proposed rules are not approved as required under subsection (d)(2) of this section. *See* Ark. Code Ann. § 17-1-106(b)(2).

**b. SUBJECT: Private Investigators & Private Security Agency – Act 820 Amendments**

**DESCRIPTION:** The Division of Arkansas State Police is amending its Rules for Licensing and Regulation of Private Investigators, Private Security Agencies, Alarm System Companies, Polygraph Examiners, and Voice Stress Analysis Examiners. Rule 2.17 is added to clarify the expedited licensure process for certain military-affiliated applicants in accordance with Act 820 of 2019.

**PUBLIC COMMENT:** A public hearing was not held in this matter. The public comment period expired on January 20, 2020. The Division of Arkansas State Police received no public comments.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** The agency states that the proposed rule amendment has no financial impact.

**LEGAL AUTHORIZATION:** The Director of the Division of Arkansas State Police has the authority to promulgate rules related to the granting, denial, suspension or revocation of any license, credential or commission issued under Chapter 40 of the Arkansas Code, concerning private investigators and private security agencies. *See Ark. Code Ann. §§ 17-40-207(a)(3) and 17-40-207(a)(5).*

Act 820 of 2019, sponsored by Senator Missy Irvin, provided for automatic occupational licensure of active duty service members, returning military veterans and their spouses, in circumstances where the individual is a holder in good standing of a substantially equivalent occupational license issued by another state, territory, or district of the United States. *See Ark. Code Ann. § 17-1-106(b)(1).* An occupational licensing entity may, however, submit proposed rules recommending an expedited process and procedure for licensure, to the Administrative Rules Subcommittee of the Legislative Council. *See Ark. Code Ann. § 17-1-106(c).* An occupational licensing entity shall be required to provide automatic licensure if the proposed rules are not approved as required under subsection (d)(2) of this section. *See Ark. Code Ann. § 17-1-106(b)(2).*

**D. Proposed Rules Recommending Expedited Process and Procedure for Occupational Licensure Pursuant to Ark. Code Ann. § 17-1-106(c), as Amended by Act 820 of 2019**

**1. ~~DEPARTMENT OF LABOR AND LICENSING, STATE BOARD OF PUBLIC ACCOUNTANCY~~**

**a. ~~Rule 19 Licensure for Military Members/Veterans/Spouses~~**

**2. DEPARTMENT OF LABOR AND LICENSING, ELEVATOR SAFETY BOARD (Ms. Denise Oxley)**

**a. Rules of the Elevator Safety Board**

**E. Agency Updates on Delinquent Rulemaking under Act 517 of 2019.**

- 1. Department of Agriculture, Arkansas Bureau of Standards (Act 501)**
- 2. Department of Agriculture, Veterinary Medical Examining Board (Act 169)**
- 3. Department of Commerce, State Insurance Department (Acts 500, 698, 823)**
- 4. Department of Commerce, Office of Skills Development (Act 179)**
- 5. Department of Corrections, Arkansas Correctional School (Act 1088)**
- 6. Department of Education, Division of Elementary and Secondary Education (Acts 536, 640, 843)**
- 7. Department of Education, Division of Higher Education (Act 549)**
- 8. Department of Energy and Environment, Pollution Control and Ecology Commission (Act 1067)**
- 9. Department of Finance and Administration, Alcoholic Beverage Control Division (Act 691)**
- 10. Department of Finance and Administration, Director (Act 822)**
- 11. Department of Health (Acts 216, 708, 811)**
- 12. Department of Health, Division of Health Related Boards and Commissions, State Board of Chiropractic Examiners (Act 645)**
- 13. Department of Health, Division of Health Related Boards and Commissions, State Board of Nursing (Act 837)**
- 14. Department of Health, Division of Health Related Boards and Commissions, Arkansas Board of Podiatric Medicine (Act 112)**
- 15. Highway Commission (Act 468)**
- 16. Department of Transformation and Shared Services, Office of State Procurement (Act 422)**

**F. Adjournment.**