

# ARKANSAS REGISTER

## Proposed Rule Cover Sheet



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Name of Department \_\_\_\_\_

Agency or Division Name \_\_\_\_\_

Other Subdivision or Department, If Applicable \_\_\_\_\_

Previous Agency Name, If Applicable \_\_\_\_\_

Contact Person \_\_\_\_\_

Contact E-mail \_\_\_\_\_

Contact Phone \_\_\_\_\_

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Name of Rule \_\_\_\_\_

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Location and Time of Public Meeting \_\_\_\_\_

**Subject:** Re: Notice of Rulemaking - Division of Elementary and Secondary Education  
**Date:** Wednesday, June 15, 2022 at 8:48:27 AM Central Daylight Time  
**From:** legalads@arkansasonline.com  
**To:** Cristy Park (ADE)

**Caution:** This is an external email and may contain a suspicious subject or content. Please take care when clicking links or opening attachments. When in doubt, contact [ADE IT Services](#).

Will run Fri 6/17, Sat 6/18, and Sun 6/19. Thank you.

Gregg Sterne, Legal Advertising  
Arkansas Democrat-Gazette  
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**From:** "Cristy Park, ADE" <Cristy.Park@ade.arkansas.gov>  
**To:** legalads@arkansasonline.com  
**Sent:** Tuesday, June 14, 2022 3:25:52 PM  
**Subject:** Notice of Rulemaking - Division of Elementary and Secondary Education

Good afternoon,

Would you please run the attached Notice of Rulemaking for three consecutive days and let me know on what dates the Notice will run? This Notice is for the following DESE rule:

Nutrition and Physical Activity Standards and Body Mass Index for Age Assessment Protocols in Arkansas Public Schools

Please feel free to call me if you have any questions. Thank you!

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**ARKANSAS DIVISION OF ELEMENTARY AND SECONDARY EDUCATION RULES  
GOVERNING NUTRITION AND PHYSICAL ACTIVITY STANDARDS AND BODY  
MASS INDEX FOR AGE ASSESSMENT PROTOCOLS IN ARKANSAS PUBLIC  
SCHOOLS**

**Effective Date: ~~October 1, 2020~~ \_\_\_\_\_**

**1.00 PURPOSE**

The purpose of these rules is to establish the requirements and procedures for governing nutrition and physical activity standards and body mass index for age assessment protocols in Arkansas Public Schools.

**2.00 REGULATORY AUTHORITY**

These Rules are enacted pursuant to the authority of the State Board of Education under Ark. Code Ann. §§ 6-16-102, 6-16-132, 6-18-719, 20-7-134, and 20-7-135.

**3.00 DEFINITIONS**

For the purpose of these rules, the following terms mean:

- 3.01 ~~A La Carte - Food items and/or beverages, individually priced, individually~~ priced food or beverage items provided by the non-profit school food service program. These items may or may not be part of the reimbursable meal. A la carte items must meet federal Smart Snacks requirements.
- 3.02 Alliance for a Healthier Generation Smart Snacks Calculator - A tool developed by the Alliance for a Healthier Generation to assist schools in identifying products that meet the federal nutrition standards ("Smart Snacks").
- 3.03 Arkansas Child Health Advisory Committee - A state level committee that was established by Ark. Code Ann. § 20-7-133 to develop nutrition and physical activity standards and make policy recommendations to the State Board of Education and the Arkansas Board of Health.
- 3.04 Body Mass Index (BMI) - Weight in pounds divided by height in inches squared multiplied by 703 (Metric: Weight in kilograms divided by height in meters squared).
- 3.05 BMI for Age Assessment - Calculating the height and weight as in the definition for BMI and applying the CDC growth charts for age and gender.
- 3.06 BMI for Age Assessment Protocols - A detailed plan designed to describe appropriate procedure for assessment.

3.07 Body Mass Index Percentile for Age - An indicator to assess the size and growth patterns of individual children based on the Centers for Disease Control and Prevention's (CDC) BMI-for-age growth charts for boys and girls.

3.08 Breastfeeding Education and Practices – Age-appropriate education for students regarding the nutritional benefits of breastmilk. Breastfeeding practices include the implementation of support and space made available in public schools facilities for breastfeeding mothers.

~~3.08~~3.09 Carpenter's Square - An instrument for ensuring a level reading of height.

~~3.09~~3.10 Child Nutrition Programs - The federal child nutrition programs operated by Arkansas public schools, including public charter schools, which include the National School Lunch Program, the School Breakfast Program, the After School Snack Program, the Special Milk Program and the Summer Feeding Program, as established by the Richard B. Russell National School Lunch Act (42 U.S.C. § 1751 et seq.) and the Child Nutrition Act of 1966 (42 U.S.C. § 1771 et seq.).

~~3.13~~3.11 Community Health Nurse Specialist (CHN) - Arkansas Department of Health Nurses located at educational cooperatives.

~~3.11~~3.12 Competitive Foods - Foods and beverages sold or made available to students that compete with the school's operation of the child nutrition programs, including, but not limited to, food and beverages sold or provided in a vending venue (machines, ice chests, cabinets) in school stores or as part of school fundraisers to students on school premises during the school day.

Note: This definition complies with the federal definition of "Competitive Foods," found in 7 CFR 210.11(a)(1).

~~3.11~~3.12.1 Provided Competitive Food and/or Beverages—Smart Snacks-compliant food and/or beverages that are provided free-of-charge to a student or group of students by school administrators or school non-licensed or licensed staff (principals, coaches, teachers, club sponsors, etc.), students or student groups, parents or parent groups, or any other person, company, or organization associated with the school site.

~~3.11~~3.12.2 Sold Competitive Food and/or Beverages—Smart Snacks-compliant food and/or beverages that are for sale to a student or group of students by school administrators or school non-licensed or licensed staff (principals, coaches, teachers, club sponsors, etc.),

students or student groups, parents or parent groups, or another person, company or organization associated with the school site.

- 3.123.13 Confidential - Information marked or intended for a specific person or persons.
- 3.133.14 Designee - A person approved or designated by a school district.
- 3.143.15 ~~Division~~ DESE - the Division of Elementary and Secondary Education of the Arkansas Department of Education.
- 3.153.16 Digital Scale or Scale - A digital instrument for measuring weight.
- 3.163.17 Elementary School - A campus with a designated Local Education Agency (LEA) number containing any combination of grades kindergarten through six (K-6).
- 3.17 ~~Foods of Minimal Nutritional Value (FMNV) – An obsolete United States Department of Agriculture (U.S.D.A.) term. The Smart Snacks program went into effect for School Year 2014–2015. Therefore, any competitive foods and beverages must meet the nutrition standards of Smart Snacks.~~
- 3.18 Health & Wellness School Improvement Plan – A school level plan that outlines goals and objectives related to the nutrition and physical activity environment for students and staff.
- 3.183.19 Healthy Nutrition Environment - A healthy school nutrition environment gives students consistent, reliable health information and ample opportunity to use it.
- 3.193.20 Height - A standing measurement in inches or meters.
- 3.203.21 High School - ~~Public school(s) having some combination of grades nine through twelve (9–12).~~ A campus with a designated Local Education Agency (LEA) number containing any combination of grades nine through twelve (9–12).
- 3.213.22 Healthy Hunger Free Kids Act of 2010 - The federal law that updated the meal patterns and nutrition standards for the National School Lunch and School Breakfast Programs, including access to drinking water, and updated nutrition standards for all food products sold and marketed on school grounds to align them with the Dietary Guidelines for Americans. The Act also updated policies regarding school wellness committees and the content, implementation, evaluation, and public reporting of wellness policies.

- 3.223.23 Junior High School - ~~Public school(s) having some combination of grades seven through nine (7-9). A campus with a designated Local Education Agency (LEA) number containing any combination of grades seven through nine (7-9).~~
- 3.233.24 Local Wellness Policy - ~~A policy required by federal law for public schools participating in a nutrition program authorized by the Richard B. Russell National School Lunch Act (42 U. S. C. § 1751 et seq.) or the Child Nutrition Act of 1966 (42 U. S. C. § 1771 et seq.)—a written document that guides a Local Educational Agency (LEA) or school district’s efforts to create supportive school nutrition and physical activity environments.~~
- 3.243.25 Middle School - ~~Public school(s) having some combination of grades five through eight (5-8). A campus with a designated LEA number containing any combination of grades five through eight (5-8).~~
- 3.253.26 Physical Activity - Any bodily movement produced by skeletal muscles that results in energy expenditure.
- 3.263.27 Physical and Built Environment – Infrastructure and spaces designed to promote physical activity (i.e. walking trails, sidewalks, indoor and outdoor fitness facilities, open recreational spaces such as playgrounds and soccer fields.)
- 3.263.28 Physical Education - A planned, sequential K-12 curriculum that provides cognitive content and learning experiences in a variety of activity areas including basic movement skills; physical fitness, rhythms, and dance; games team, dual, and individual sports; tumbling and gymnastics; and aquatics.
- 3.273.29 Private - Not openly or in public.
- 3.30 Recess – supervised, unstructured social time during which public school students may communicate with each other. Recess shall occur outdoors when weather and other relevant conditions permit and include, without limitation, opportunities for free play and vigorous physical activity regardless of whether it occurs indoors or outdoors.
- 3.283.31 Regular Basis - A regularly repeated or continuing occurrence at a specific school site. For example: every day, or on a particular day each week, or repeated on a defined schedule.
- 3.293.32 Reimbursable Meal - A meal which meets the U.S.D.A. criteria for reimbursement for one of the Child Nutrition Programs in Arkansas.
- 3.303.33 School Day – ~~A period, as defined by the federal government or defined by the State of Arkansas. The period from the midnight before to thirty~~

(30) minutes after the end of the day's classes, during which federal Smart Snacks requirements must be met.

~~3.30.1 Federal School Day— Found in 7 CFR § 210 and 7 CFR § 220, the period from the midnight before to thirty (30) minutes after the end of the day's classes, during which federal Smart Snacks requirements must be met.~~

~~3.30.2 Arkansas School Day ("School Day")— Specific to Arkansas, the period from the start of the first classes of the day to thirty (30) minutes after the end of the day's classes.~~

~~3.31~~3.34 School Events - Any occasion such as field day, holiday, school recognition activities, end of school events, etc. designated at the discretion of the school administration.

~~3.32~~3.35 School Fundraisers - For purposes of this rule, all food and beverage items sold by school administrators or school non-licensed or licensed staff (principals, coaches, teachers, club sponsors, etc.), students or student groups, parents or parent groups, or any other person, company or organization directly associated with the school programs.

~~3.33~~3.36 School Health Index - The School Health Index (SHI) is a self-assessment and planning guide designed by the Centers for Disease Control (CDC) to help schools identify strengths and weaknesses of the school's health promotion policies and programs develop an action plan for improving student health, and involving teachers, parents, students and various members of the community in improving the school's policies and programs. for the purpose of supporting student achievement and wellness.

~~3.34~~3.37 School Nurse - Nurses employed by school districts.

~~3.35— School Nutrition and Physical Activity Advisory Committee—(SNPAA) A committee operating within each public school district that shall help raise the awareness of the importance of nutrition and physical activity and shall include members from the school district's governing board, school administrators, food service personnel, teacher organizations, parents, students and professional groups such as nurses and community members. The SNPAA may also be referred to as the "Wellness Committee."~~

~~3.36~~3.38 School Site - Any and all locations associated with a Local Education Agency (LEA) number.

~~3.37~~3.39 Smart Snacks in School Program ("Smart Snacks") - The program established by amendments to the Healthy Hunger Free Kids Act of 2010 which specify that nutrition standards apply to all foods sold:

~~3.37.13.39.1~~ Outside the school meal programs;

~~3.37.23.39.2~~ On the school campus; and

~~3.37.33.39.3~~ At any time from the midnight before to thirty (30) minutes after the end of the day's classes.

~~3.38.3.40~~ Stadiometer - An instrument for measuring standing height.

~~3.39.3.41~~ Student Health Report - A written notice to parents with student's health screening information.

~~3.40.3.42~~ Testing Day - A school day that involves one of the state-wide programs for education assessment, in which every student attending an Arkansas public school is required to participate as required in Ark. Code Ann. § 6-15-2907, and as established by the State Board of Education.

~~3.41.3.43~~ Vending - Means to sell or give away foods and beverages anywhere at a school site on a regular basis, including but not limited to a classroom, school store or concession stand, or equipment such as heated cabinets, hot or cold vending machines, ice chests, coolers, etc.

~~3.42.3.44~~ Weight - A measurement in pounds or kilograms.

~~3.45~~ Wellness Committee – school nutrition and physical activity advisory group concerned with the health and wellbeing of students and staff, also known as School Nutrition and Physical Advisory Committee.

~~3.43.3.46~~ Written Refusal - ~~A document~~ written notice to school district requesting a child not be included in assessing BMI.

For the purposes of any protocols developed pursuant to these rules, the following terms mean:

~~3.44.3.47~~ Certificate of Completion - A document provided upon completion of BMI assessment training protocol.

~~3.45.3.48~~ Fried Food - Foods that are cooked by total or partial immersion into hot oil or other fat, commonly referred to as "deep fat frying" or "pan frying."

~~3.46.3.49~~ Recorder - A person who writes down student heights and weights or enters measurements into a database.



#### **4.00 CHILD HEALTH ADVISORY COMMITTEE**

- 4.01 There is created a Child Health Advisory Committee ("Committee") to consist of twenty (20) members.
- 4.02 The Committee will consist of the following eleven (11) members appointed by the Secretary of the Department of Health:
  - 4.02.1 One (1) member to represent the Department of Health;
  - 4.02.2 One (1) member to represent the Arkansas Academy of Nutrition and Dietetics (previously known as the Arkansas Dietetic Association);
  - 4.02.3 One (1) member to represent the American Academy of Pediatrics, Arkansas Chapter;
  - 4.02.4 One (1) member to represent the Arkansas Academy of Family Practice;
  - 4.02.5 One (1) member to represent the Society of Health and Physical Educators ("SHAPE Arkansas") (previously known as Arkansas Association for Health, Physical Education, Recreation and Dance);
  - 4.02.6 One (1) member to represent jointly the Arkansas Heart Association, the American Cancer Society, and the American Lung Association;
  - 4.02.7 One (1) member to represent the Fay W. Boozman College of Public Health of the University of Arkansas for Medical Sciences;
  - 4.02.8 One (1) member to represent the Arkansas Center for Health Improvement;
  - 4.02.9 One (1) member to represent the Arkansas Advocates for Children and Families;
  - 4.02.10 One (1) member to represent the University of Arkansas Cooperative Extension Service; and
  - 4.02.11 One (1) member to represent the Office of Minority Health and Health Disparities of the Department of Health.
- 4.03 The Committee will also consist of the following nine (9) members appointed by the Commissioner of Elementary and Secondary Education:
  - 4.03.1 One (1) member to represent the Department of Education, DESE;

- 4.03.2 One (1) member to represent the Arkansas School Food Service Association (now known as the Arkansas School Nutrition Association);
- 4.03.3 One (1) member to represent the Arkansas School Nurses Association;
- 4.03.4 One (1) member to represent the Arkansas Association of Educational Administrators;
- 4.03.5 One (1) member to represent the Arkansas Parent Teacher Association;
- 4.03.6 One (1) member to represent the Arkansas School Boards Association;
- 4.03.7 One (1) member to represent the Arkansas Association of School Business Officials;
- 4.03.8 One (1) member to represent the Arkansas ASCD (formerly known as Arkansas Association for Supervision and Curriculum Development)-; and
- 4.03.9 One (1) member who is a classroom teacher.
- 4.04 Terms of the committee members will be three (3) years.
- 4.05 If a vacancy occurs, the officer who made the original appointment shall appoint a person who represents the same constituency as the member being replaced.
- 4.06 The committee will elect one (1) of its members to act as chair for a term of one (1) year.
- 4.07 A majority of the members shall constitute a quorum for the transaction of business.
- 4.08 The committee shall meet at least monthly and will make recommendations to the State Board of Education and the Arkansas Board of Health consistent with the intent and purpose of these rules and with Ark. Code Ann. §§ 20-7-133, 20-7-134, and 20-7-135.
- 4.09 The committee shall develop nutrition and physical activity standards and policy recommendations with consideration of the following:
  - 4.09.1 Foods sold individually in school cafeterias but outside the regulated National School Lunch Program;
  - 4.09.2 Competitive foods. ~~as defined by the U.S.D.A. as the definition is in existence on January 1, 2015: All food and beverages other than meals reimbursed under programs authorized by the Richard B. Russell National~~

~~School Lunch Act and the Child Nutrition Act of 1966 available for sale to students on the school campus during the school day;~~

- 4.09.3 The continuing professional development of food service staff;
  - 4.09.4 The expenditure of funds derived from competitive food and beverage contracts;
  - 4.09.5 Physical education and activity;
  - 4.09.6 Systems to ensure the implementation of nutrition and physical activity standards; and
  - 4.09.7 The monitoring and evaluating of results and reporting of outcomes.
  - 4.09.8 As the Smart Snacks standards published by the U.S.D.A. will allow schools to offer healthier snack foods to children while limiting ~~junk~~ less nutritious food, the committee shall promote Smart Snacks policies and procedures for identifying appropriate food and beverages for school campuses during the school day. The Smart Snacks regulation applies to foods sold a la carte and in the school store, and to vending machines, etc.
- 4.10 The committee shall examine the progress of the Arkansas Coordinated School Health Program and make recommendations to ~~the Division of Elementary and Secondary Education~~ DESE and the Department of Health concerning the implementation of the Arkansas Coordinated School Health Program.

## **5.00 IMPLEMENTATION OF NUTRITION AND PHYSICAL ACTIVITY STANDARDS**

- 5.01 After having consulted the Child Health Advisory Committee and the Arkansas Board of Health, the State Board of Education shall promulgate appropriate rules and regulations to ensure that nutrition and physical activity standards and body mass index for age assessment protocols are implemented to provide students with the skills, opportunities, and encouragement to adopt healthy lifestyles.
- 5.02 Every school district shall:
  - 5.02.1 Prohibit for elementary school students in-school access to vending machines offering food and beverages;
  - 5.02.2 If offering vending machine services, permit students in grades seven through twelve (7-12) in-school access to vending machines offering food and beverages that meet the nutrition standards of the federal Smart

Snacks in School program throughout the school day according to the school's Wellness Policy;

5.02.3 Ensure that there is no restriction regarding the times that vending machines under Subsection 5.02.2 of this Rule are powered on or powered off;

~~5.02.2~~ 5.02.4 Require schools to include as part of the annual report to parents and the community the amounts and specific sources of funds received and expenditures made from competitive food and beverage contracts;

~~5.02.3~~ 5.02.5 Beginning with kindergarten and then in even-numbered grades, require schools to include as a part of a student health report to parents a body mass index percentile by age for each student; and

~~5.02.4~~ 5.02.6 Permit any parent to refuse to have his or her child's body mass index percentile for age assessed and reported, by providing a written refusal to the school.

~~5.02.5~~ 5.02.7 Students in grades eleven and twelve (11-12) are exempt from any policy or requirement of a public school or the state for measuring or reporting body mass index.

5.03 ~~The Division of Elementary and Secondary Education~~ DESE shall:

5.03.1 Begin the implementation of standards developed by the committee and approved by the ~~Division~~DESE; and

5.03.2 Annually monitor and evaluate the implementation and effectiveness of the nutrition and physical activity standards and Smart Snacks requirements.

## **6.00 ~~SCHOOL NUTRITION AND PHYSICAL ACTIVITY ADVISORY~~ WELLNESS COMMITTEE**

6.01 Every school district shall convene a ~~school nutrition and physical activity advisory~~ Wellness ~~Committee~~ that shall include members from school district governing boards, school administrators, food service personnel, teacher organizations, parents, students, teachers of physical education, school health professionals, and professional groups such as nurses and community members.

6.01.1 Each school district shall develop a health and wellness district ~~priority plan~~ that identifies the district's ~~School Nutrition and Physical Activity Advisory~~ Wellness Committee members.

- 6.02 The ~~school nutrition and physical activity advisory~~ Wellness ~~Committee~~ will help raise awareness of the importance of nutrition and physical activity and assist in the development of local policies that address issues and goals, including, but not limited to the following:
- 6.02.1 Assist with the implementation of nutrition and physical activity standards developed by the ~~school nutrition and physical activity advisory~~ Wellness ~~Committee~~ with the approval of the ~~Division of Elementary and Secondary Education~~ DESE and the Arkansas Board of Health;
  - 6.02.2 Integrate nutrition and physical activity into the overall curriculum;
  - 6.02.3 Ensure that professional development for staff includes nutrition and physical activity issues;
  - 6.02.4 Ensure that students receive nutrition education and engage in healthy levels of vigorous physical activity;
  - 6.02.5 Improve the quality of physical education curricula and ~~increasing~~ increased training of physical education teachers;
  - 6.02.6 Enforce existing physical education requirements; and
  - 6.02.7 Pursue contracts that both encourage healthful eating by students and reduce school dependence on profits from the sale of competitive foods.
- 6.03 Every school district shall begin the implementation of standards developed by the Child Health Advisory Committee with the approval of the ~~Division~~ DESE and the Arkansas Board of Health.
- 6.04 Every school district shall require that goals and objectives for nutrition and physical activity be incorporated into the annual Health & Wellness School Improvement Plan. ~~school planning and reporting process.~~
- 6.05 The ~~School Nutrition and Physical Activity Advisory~~ Wellness Committee shall be structured in a way as to ensure age-appropriate recommendations that are correlated to the current grade configuration of the school district utilizing one of the following options:
- 6.05.1 Establish a ~~School Nutrition and Physical Activity Advisory~~ Wellness Committee at each school in addition to the district committee;
  - 6.05.2 Establish subcommittees of the District Committee, representing the appropriate age and grade configuration for that school district; or

- 6.05.3 Include representatives from each appropriate grade level group (elementary, middle, junior and senior high) on the membership of the district committee;
- 6.06 At a minimum, the ~~School Nutrition and Physical Activity Advisory~~ Wellness Committee will:
- 6.06.1 ~~Annually, assess each school campus, using the School Health Index for Physical Activity, Healthy Eating and a Tobacco-Free Lifestyle using the following modules:-~~ Ensure each school campus incorporates the Nutrition, Physical Activity, and Tobacco Use Health Topics to annually assess the following School Health Index Modules:
- #1 - School Health Policies and Environment;
  - #2 - Health Education;
  - #3 - Physical Education and other Physical Activity Programs;
  - #4 - Nutrition Services;
  - #10 – Family Engagement; and
  - #11 – Community Involvement.
- 6.06.2 Compare the physical education and health education assessment from the School Health Index to the standards defined by the Division of Elementary and Secondary Education Physical Education and Health Curriculum Framework;
- 6.06.3 Compile the results of the School Health Index and develop goals and objectives that are included in the Health & Wellness School Improvement Plan ~~health and wellness school improvement priority plan; By the 2022-2023 school year, pursuant to Ark. Code Ann. § 6-18-719, the following priority areas shall be included in the public school and open-enrollment public charter's school's health and wellness priority plan:~~
- 6.06.3.1 Physical and Built Environment
  - 6.06.3.2 Nutrition Standards
  - 6.06.3.3 Physical Education and Activity Standards
  - 6.06.3.4 Breastfeeding Education and Practices
- 6.06.4 Provide the annual completed School Health Index assessment results and the physical activity standards comparison to the principal of each school in the district to be maintained and presented to the local school board;
- 6.06.5 Review and make written recommendations to the district child nutrition director regarding the district's school meal menus.

- 6.06.6 Assist the schools in implementing the Arkansas Child Health Advisory Committee recommendations for all foods and beverages sold or served anywhere on the school campus, including all foods and beverages other than those offered as part of reimbursable meals, including a la carte, vending machines, snack bars, fund raisers, school stores, class parties, and other venues that compete with healthy school meals;
- 6.06.7 Maintain and update annually a written list of recommended locally available, healthier options for food and beverages available for sale to students;
- 6.06.8 Encourage the use of non-food alternatives for fund-raisers;
- 6.06.9 Review and make written recommendations to the local school board regarding the components to be included in food and beverage vending contracts; and
- 6.06.10 Include as part of the district's annual report to parents and the community the amount of funds received and expenditures made from competitive food and beverage contracts.
- ~~6.07 The Local Wellness Policy is required under the current version of the Richard B. Russell National School Lunch Act (42 U.S.C. §1751 et seq.) or the Child Nutrition Act of 1966 (42 U.S.C. §1771 et seq.):~~
- 6.07.1 ~~Not later than the first day of the school year, each local educational agency LEA participating in a program authorized by the Richard B. Russell National School Lunch Act (42 U.S.C. §1751 et seq.) or the Child Nutrition Act of 1966 (42 U.S.C. §1771 et seq.) shall establish a local school wWellness pPolicy for schools under the local educational agency LEA. that: The Wellness Policy shall include goals for nutrition, physical activity, and other school-based activities that are designed to promote student wellness.~~
- ~~6.07.1.1 Includes goals for nutrition education, physical activity, and other school-based activities that are designed to promote student wellness, in a manner that the local educational agency determines is appropriate;~~
- ~~6.07.1.2 Includes nutrition guidelines selected by the local educational agency for all food available on each school campus under the local educational agency during the school day with the objectives of promoting student health and reducing childhood obesity;~~

~~6.07.1.3 — Provides an assurance that guidelines for reimbursable school meals shall not be less restrictive than regulations and guidance issued by the Secretary of Agriculture pursuant to subsections (a) and (b) of Section 10 of the Child Nutrition Act (42 U.S.C. §1779) and Sections 9(f)(1) and 17 (a) of the Richard B. Russell National School Lunch Act (42 U.S.C. §§1758(f)(1), 1766(a)), as those regulations and guidance apply to public schools;~~

~~6.07.1.4 — Establishes a plan for measuring implementation of the local wellness policy, including designation of one (1) or more persons within the local educational agency or at each school, as appropriate, charged with the operational responsibility for ensuring that the school meets the local wellness policy; and~~

~~6.07.1.5 — Involves parents, students, representatives of the school food authority, the school board, school administrators, and the public in the development of the school wellness policy.~~

6.08 ~~The Division DESE~~ and the Department of Health shall report annually on progress in implementing nutrition and physical education standards to the chairs of the House Interim Committee on Public Health, Welfare, and Labor and the Senate Interim Committee on Public Health, Welfare, and Labor, the House Interim Committee on Education and the Senate Interim Committee on Education.

6.09 The State Board of Education shall submit to the House Interim Committee on Education and the Senate Interim Committee on Education for the committees' review any proposed rules regarding physical education or physical activity standards for grades kindergarten through twelve (K-12).

## **7.00 PHYSICAL EDUCATION AND RECESS REQUIREMENTS AND STANDARDS**

7.01 The physical education curriculum and physical activity requirements for every public school student who is physically fit and able to participate are:

7.01.1 Except as provided in Section 7.01.2 of these rules, for students in grades kindergarten through six (K-6):

7.01.1.1 At least forty (40) minutes as determined by the superintendent of the school district, of physical education training and instruction each calendar week of the school year; and

7.01.1.2 Ninety (90) minutes of physical activity each calendar week of the school year, which may include without



limitation daily recess, physical education instruction in addition to the requirement of Section 7.01.1.1 of these rules, or intramural sports;

7.01.2 For students in grades five through eight (5-8) who attend a public school organized to teach grades 5-8 or any combination thereof, at least forty (40) minutes as determined by the superintendent of the school district, of physical education training and instruction each calendar week of the school year or an equivalent amount of time in each school year, with no additional requirement for physical activity; and

7.01.3 For students in grades nine through twelve (9-12) one-half (1/2) unit of physical education as required for high school graduation, with no additional requirement for physical activity.

7.02 Nothing in these rules prohibits:

7.02.1 A public school student's elective enrollment or voluntary participation in physical activity or physical education as a part of public school curriculum or extra-curricular activities; or

7.02.2 A school district's decision to require physical education instruction or physical activity in excess of the amounts identified in Section 7.01 of these rules.

7.03 The physical education training and instruction shall be designed to:

7.03.1 Improve the health of this state's school children;

7.03.2 Increase knowledge about the health benefits of physical activity and exercise;

7.03.3 Develop behavioral and motor skills that promote a lifelong commitment to healthy physical activity;

7.03.4 Promote health-focused activity among children and adolescents; and

7.03.5 Encourage physical activity outside of physical education.

7.04 Suitable modified courses shall be provided for students physically or mentally unable or unfit to take the course or courses prescribed for other pupils.

7.05 A student may be exempted from physical education and physical activity requirements by seeking a waiver from the local school board of directors. The

local school board of directors may grant such a waiver based upon the following criteria:

- 7.05.1 The student must present a statement by the student's attending physician indicating that participation in physical education and physical activity will jeopardize the student's health or well-being; or
- 7.05.2 The parent and student must show that attending physical education classes will violate the student's religious beliefs and would not be merely a matter of personal objection. The parent or student must be members of a recognized religious faith that objects to physical education as part of its official doctrine or creed.
- 7.05.3 The local school board of directors shall encourage a student granted a waiver under Section 7.05 of these rules to take, as an alternative to physical education, appropriate instruction in health education or other instruction in lifestyle modification if an exemption is granted.
- 7.06 Each school shall develop a physical education program that fits effectively and efficiently into the school's existing organization and into the standards and curriculum frameworks adopted by the State Board of Education, while incorporating the goals of these rules.
- 7.07 The State Board of Education shall submit to the House Interim Committee on Education and the Senate Interim Committee on Education for the committees' review any proposed rules regarding physical education or physical activity standards for grades kindergarten through twelve (K-12) developed pursuant to Section 7.00 of these rules that exceed the maximums identified in Section 7.01 of these rules.
- 7.08 At a minimum, school districts will work with their local ~~School Nutrition and Physical Activity Advisory~~ Wellness Committee to:
  - 7.08.1 Encourage participation in extracurricular programs that support physical activity, such as walk-to-school programs, biking clubs, after-school walking etc.;
  - 7.08.2 Encourage the implementation of developmentally appropriate physical activity in after-school childcare programs for participating children;
  - 7.08.3 Promote the reduction of time youth spend engaged in sedentary activities such as watching television and playing video games; and
  - 7.08.4 Encourage the development of and participation in family-oriented community-based physical activity programs.

7.09 Physical Education Instruction in Grades Kindergarten Through Six (K-6):  
For grades K-6, physical education classes will have a maximum student to adult ratio of thirty to one (30:1).

7.09.1 At least one of the adults directly supervising the physical education classes must be a licensed physical education teacher or, alternatively, a licensed elementary teacher. The licensed physical education teacher or licensed elementary teacher will be responsible for the delivery of physical education instruction. A licensed physical education teacher will be responsible for development of the physical education curriculum.

7.09.2 Non-licensed personnel may assist in filling the thirty to one (30:1) student to adult ratio requirement if they are trained and assigned to assist licensed personnel in supervising physical education classes.

7.10 Physical Education Instruction in Grades Seven Through Twelve (7-12):  
For grades 7-12, physical education instruction must be provided by a licensed physical education teacher with a license that corresponds to the grade levels being taught.

7.11 At least forty (40) minutes of instructional time per school day shall be used for recess for students attending public elementary schools:

7.11.1 For purposes of Section 7.11, "elementary school" means the educational model consistent with instructional grouping and scheduling used in ~~G~~grades ~~K~~kindergarten through ~~F~~four (K-4), but may include ~~G~~grades ~~F~~five through ~~S~~six (5-6).

7.11.2 Minutes provided under Section 7.11 may count towards the minimum number of minutes required for physical activity by Ark. Code Ann. § 6-16-132 and Section 7.01.1.2 of these Rules.

7.11.3 Minutes provided under Section 7.11 shall not count towards the minimum physical education requirements under Section 7.01.1.1.

~~7.11.2~~7.11.4 A public elementary school may seek a waiver from the requirements of Section 7.11 only if the school:

~~7.11.2.1~~7.11.4.1 Submits to ~~the Division~~ DESE for approval of an alternative plan for recess that meeting the following criteria:

~~7.11.2.1.1~~7.11.4.1.1 Exceeds the required minimum amount of minutes combined for physical activity under Ark. Code Ann. § 6-16-132, and Section 7.00 of these Rules, and recess

under Ark. Code Ann. § 6-16-102(a)(5), and Section 7.11 of these Rules; and

~~7.11.2.1.2~~7.11.4.1.2 Provides for both structured and unstructured social time; or

~~7.11.2.2~~7.11.4.2 Is approved by ~~the Division~~ DESE to operate as a virtual school.

- 7.12 The minutes of recess required by Section 7.11 shall:
- 7.12.1 Consist of supervised, unstructured social time during which students may communicate with each other;
  - 7.12.2 Occur outdoors when weather and other relevant conditions permit; and
  - 7.12.3 Include without limitation opportunities for free play and vigorous physical activity, regardless of whether recess occurs indoors or outdoors.
- 7.13 A public school principal may use discretion to adjust the recess time required under Sections 7.11 and 7.12 due to special circumstances or programs that interrupt a regular school day.
- 7.14 There is no requirement that recess be supervised by a licensed teacher.

## **8.00 GENERAL REQUIREMENTS FOR FOOD AND BEVERAGES IN PUBLIC SCHOOLS**

- 8.01 Access to Foods and Beverages in Public Schools
- 8.01.1 Elementary students will not have access to vending machines offering food and beverages.
  - 8.01.2 During the school day, all schools may serve or provide food or beverages that are compliant with Smart Snacks regulations. This includes competitive foods provided by school administrators or school non-licensed or licensed staff (principals, coaches, teachers, club sponsors, etc.) students or student groups, parents or parent groups, or any other person, company or organization associated with the school site.
    - 8.01.2.1 The school district shall maintain documentation that all food and/or beverages comply by utilizing the Alliance for a Healthier Generation Smart Snacks Calculator, including a

copy of the Smart Snacks Calculator product compliance screen and a copy of the nutrition fact label of the product.

8.01.2.2 Outside of meal service, schools shall limit the number of servings per day to one per student.

8.01.2.2.1 Food and beverages provided under Section 8.01.2 shall not be available in the food service area during meal service.

8.01.2.3 The school district shall maintain documentation that all fundraisers to which Section 8.01.2 of these Rules applies are approved by district administration.

8.01.3 During the school day, all schools ~~are prohibited from selling competitive food or beverages to students anywhere on school premises except:~~ may sell or provide competitive food or beverages to students anywhere on school premises thirty (30) minutes after the last lunch period has ended as long as those food and beverage items meet the Smart Snacks requirements and meet the following limitations:

8.01.3.1 Beverages shall be no larger than twelve (12) ounces.

8.01.3.2 Beverages shall not contain more than fifty-five (55) milligrams of caffeine per serving.

~~8.01.3.1 Prior to the start of the first classes of the official school day; or~~

~~8.01.3.2 Thirty (30) minutes after the last lunch period has ended.~~

~~8.01.3.3 This prohibition includes competitive foods and beverages sold by school administrators or school non-licensed or licensed staff (principals, coaches, teachers, club sponsors, etc.) students or student groups, parents or parent groups, or any other person, company or organization associated with the school site.~~

~~8.01.3.4 Foods and beverages sold shall be compliant with Smart Snacks regulations, and carbonated and sweetened non-carbonated beverages shall be restricted to no more than twelve (12) ounces per container and fifty-five (55) milligrams of caffeine per serving.~~

~~8.01.3.5 The school district shall maintain documentation that all food(s) and/or beverage(s) comply by utilizing the Alliance for a Healthier Generation Smart Snacks Calculator, including a copy of the Smart Snacks Calculator product compliance screen and a copy of the nutrition fact label of the product.~~

~~8.01.2.1 The school district shall maintain documentation that all fundraisers to which Section 8.01.3 of these Rules applies, are approved by district administration.~~

8.01.4 A la carte items sold in the food service area during meal times shall be compliant with Smart Snacks regulations. This includes entrees, side dishes, second trays, and all competitive foods.

## 8.02 Exceptions to Limiting Access to Foods and Beverages in All Schools

8.02.1 Parents' Rights - This ~~policy~~ Rule does not restrict what parents may provide for their own child's lunch or snacks. Parents may provide competitive foods and/or beverages or candy items for their own child's consumption, but they may not provide restricted items to other children at school.

8.02.2 School Nurses - This ~~policy~~ Rule does not apply to school nurses using competitive foods and/or beverages during the course of providing health care to individual students.

8.02.3 Special Needs Students - This ~~policy~~ Rule does not apply to special needs students whose Individualized Education Program (IEP) plan or 504 plan indicates the use of competitive foods and/or beverages for behavior modification (or other suitable need).

8.02.4 School Events - Students may be given any food and/or beverage items during the school day for up to nine (9) different events each school year to be determined and approved by school officials. These items may not be given during meal times in the areas where school meals are being served or consumed.

8.02.5 Foods for Instructional Purposes - Foods integrated as a vital part of the instructional program are allowed at any time. Examples include edible manipulatives such as a square of cheese to teach fractions, a nutrition food experience, food production in family and consumer science units, and food science units.

8.02.6 U.S.D.A. Fresh Fruit and Vegetable Program - Fresh fruits and fresh vegetables may be provided through this program, which is administered by ~~the Division of Elementary and Secondary Education~~ DESE Child

Nutrition Unit and funded through the Food, Conservation, and Energy Act of 2008 to provide all children in participating schools with a variety of free, fresh fruits and fresh vegetables throughout the school day.

- 8.02.7 Self-Sustaining Fresh Fruit and Vegetable Program - Fresh fruits and fresh vegetables may be provided through this program administered at the local school level and funded through local Child Nutrition Funds (when exceeding an operating balance of three (3) months), school-sponsored groups, and/or private entities within the community. Schools participating in this program attest that the intent of the federal Fresh Fruit and Vegetable Program will be followed, including, but not limited to the requirements for only fresh fruits and fresh vegetables, nutrition education, and community involvement.
- 8.02.8 School Testing Days - School officials may authorize students to be provided any food and/or beverage items during the school day that meet the Alliance for a Healthier Generation Smart Snacks Calculator requirements on those days scheduled on the school calendar as testing days as defined in §Subsection 3.402 of these Rules.

## **9.00 NUTRITION STANDARDS FOR FOODS AND BEVERAGES**

- 9.01 The Arkansas nutrition standards will apply to all foods and beverages served, provided, or sold to students on elementary, middle, junior high and high school campuses (except the reimbursable school meals, which are governed by U.S.D.A. federal regulations). All schools will be required to meet federal Smart Snacks regulations and document compliance using the Alliance for a Healthier Generation Smart Snacks Calculator.
- 9.02 A list of the maximum portion size restrictions and nutrition standards will be provided to school districts. This list will apply to all foods and beverages served, sold, or made available to students during the school day at any school site with the exception of reimbursable school meals which have nutrition standards governed by the federal law and regulations.
- 9.02.1 On or before April 1, the list of maximum portion sizes and nutrition standards for foods and beverages for the upcoming school year will be developed by the Arkansas Child Health Advisory Committee and distributed by ~~the Division~~ DESE via Commissioner's Memo.
- 9.02.2 Compliance will be monitored by ~~the Division~~ DESE in addition to the self-monitoring by the ~~Local School Nutrition and Physical Activity Advisory~~ Wellness Committee.

- 9.02.3 A choice of two (2) fruits and/or 100% fruit juices must be offered for sale at the same time and place whenever competitive foods are sold. Fruits should be fresh whenever possible. Frozen and canned fruits should be packed in natural juice, water, or light syrup.
- 9.02.4 At the point of choice, at least 50% of beverage selections in vending machines, school stores and other sales venues shall be 100% fruit juice, low-fat or fat-free milk, and unflavored unsweetened water.
- 9.02.5 ~~At middle school and high school levels, local leaders are encouraged to implement vending policies that encourage healthy eating by students.~~
- 9.02.5 Any modification or revisions of vending contracts ~~in existence prior to August 8, 2005~~, must be in full compliance with all sections of these Rules.
- 9.02.6 Nothing in these rules shall be construed to prohibit or limit the sale or distribution of any food or beverage item through fund raisers by students, teachers, or other groups when the items are sold off the school campus.

## **10.00 NUTRITION EDUCATION**

- 10.01 ~~The Division of Elementary and Secondary Education~~ DESE shall promote grade-appropriate nutrition education as part of a broad based integrated health education program that is aligned with the Arkansas Physical Education and Health Education Framework. The Child Nutrition Unit of ~~the Division~~ DESE shall review nutrition standards prior to implementation. Examples of integration into the curriculum include comprehensive health education courses and Career Education courses which are taught within Family and Consumer Sciences, such as Nutrition and Wellness and/or Foods and Nutrition.
- 10.02 ~~The Division of Elementary and Secondary Education~~ DESE and the Division of Career and Technical Education will provide technical assistance in helping schools integrate health education curricula that will include the nutrition components.
- 10.03 Implementation of grade-appropriate nutrition education through a comprehensive education program will be included in the school improvement process.

## **11.00 HEALTHY SCHOOL ENVIRONMENT**

- 11.01 No food or beverage shall be used as rewards or punishment for academic, classroom or sport performances and/or activities. For exceptions to this requirement, see Section 8.02 of these rules.



11.02 All school cafeterias and dining areas should reflect healthy nutrition environments.

11.03 Schools should ensure that all students have access to school meals.

11.03.1 A school shall not:

11.03.1.1 Provide a student requesting a meal or snack one that is different from the meal or snack being provided to other students in the school;

11.03.1.2 Prevent a student from accessing the school's meal or snack services; or

11.03.1.3 Establish policies, class schedules, bus schedules, or other barriers that directly or indirectly restrict meal access.

11.03.2 A school shall develop and follow a local charge policy according to the Hunger-Free Students' Bill of Rights.

~~11.03.3 A school shall abide by the Hunger-Free Students' Bill of Rights Act, Ark. Code Ann. § 6-18-715.~~

11.04 Drinking water via water fountains or other service receptacle should be available without charge to all students on campus according to Arkansas Department of Health standards.

## **12.00 SCREENING PROCESS FOR BMI ASSESSMENT**

12.01 All children in Kindergarten (K), grade two (2), grade four (4), grade six (6), grade eight (8), and grade ten (10) shall have their height and weight assessed to calculate body mass index for age percentile.

12.01.1 This requirement applies to public schools.

12.01.2 The responsibility for enforcement of this section rests equally with each school district.

12.01.3 Nothing in these rules shall preclude voluntary screening of any educational grade or preclude the referral of any child, regardless of grade, whom the parent, teacher or school nurse feels should be screened or examined unless the school has received written refusal from the student's guardian.

12.01.4 Each school district shall follow the approved screening process as outlined in the Height and Weight Measurement Training Manual.

12.02 Screening equipment shall include but is not limited to:

12.02.1 Stadiometer;

12.02.2 Scales for measuring weight; and

12.02.3 Carpenter's square.

12.03 Training/Assurance:

12.03.1 ~~The Division~~ DESE in conjunction with the Arkansas Department of Health shall develop standards for training school nurses or other school designees to perform body mass index for age assessments.

12.03.2 The Department of Health in consultation with ~~the Division~~ DESE shall assign all community health nurses under its supervision to work with schools to assure that body mass index for age assessment protocols are followed by school employees or their designees who conduct body mass index for age assessments and other student health screenings.

12.04 Beginning with kindergarten and then in even numbered grades, schools will be required to include, as a part of a student health report to parents, a body mass index percentile by age for each student in a private and confidential manner.

**Summary of Proposed Changes to DESE Rules Governing Nutrition and Physical Activity Standards and Body Mass Index for Age Assessment Protocols in Arkansas Public Schools**

Act 1070 requires school offering vending machines to grades 7-12 to have in-school access to vending machines offering food and beverages that meet the nutrition standard of the Smart Snacks in School program and ensure that there are not restrictions regarding the times such vending machines are powered on or off.

Act 1074 is the Healthy Active Arkansas School Act which requires public schools to address opportunities for physical activity, promoting public school gardens, nutritional standards, access to healthy foods, physical education, and breastfeeding in its health and wellness priorities.

In amending the Rules to incorporate these Acts, DESE also cleaned up the Rules by removing outdated language, adding clarification where necessary, reorganizing sections, ensuring consistent language/acronyms, and removing unnecessary federal citations and language. The definitions section was updated to add new terms from the above-mentioned Acts, as well as Ark. Code Ann. § 6-16-102, make the definition of “school day” (regarding start time) match the federal definition, replace terms that are no longer used with the current terms, and add clarification and consistency in the language.

## Notice of Rulemaking

Pursuant to Arkansas Code Annotated § 25-15-201 et seq., notice is hereby given that the Arkansas State Board of Education and the Division of Elementary and Secondary Education are considering amendments to the following DESE Rules and are releasing them for public comment: Nutrition and Physical Activity Standards and Body Mass Index for Age Assessment Protocols in Arkansas Public Schools.

A public hearing regarding these amended rules will be held on June 30, 2022, at 2:00 p.m. at the Arkansas Department of Education, Four Capitol Mall, Little Rock, AR, 72201.

Written comments regarding these proposed rules may be mailed to the Office of Legal Services at Four Capitol Mall, Room 301A, Little Rock, AR 72201. Comments also may be emailed to [ADE.RulesComments@ade.arkansas.gov](mailto:ADE.RulesComments@ade.arkansas.gov). A copy of the proposed rules can be found at the Department's website at: <http://www.arkansased.org/divisions/legal/rules/pending>. Copies also may be obtained by contacting ADE's Office of Legal Services at the above address or via phone at (501) 682-4227.

## **FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

DEPARTMENT \_\_\_\_\_  
DIVISION \_\_\_\_\_  
PERSON COMPLETING THIS STATEMENT \_\_\_\_\_  
TELEPHONE NO. \_\_\_\_\_ FAX NO. \_\_\_\_\_ EMAIL: \_\_\_\_\_

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two (2) copies with the Questionnaire and proposed rules.

### **SHORT TITLE OF THIS RULE**

1. Does this proposed, amended, or repealed rule have a financial impact? Yes No
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?  
Yes No
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes No

If an agency is proposing a more costly rule, please state the following:

- a) How the additional benefits of the more costly rule justify its additional cost;
- b) The reason for adoption of the more costly rule;
- c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and
- d) Whether the reason is within the scope of the agency's statutory authority, and if so, please explain.

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

Next Fiscal Year

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

Total \_\_\_\_\_

Total \_\_\_\_\_

b) What is the additional cost of the state rule?

Current Fiscal Year

Next Fiscal Year

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

Total \_\_\_\_\_

Total \_\_\_\_\_

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

Next Fiscal Year

\$ \_\_\_\_\_

\$ \_\_\_\_\_

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

Next Fiscal Year

\$ \_\_\_\_\_

\$ \_\_\_\_\_

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes      No

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (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;
- (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;
- (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;
- (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; and
- (7) an agency plan for review of the rule no less than every ten (10) 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.