

ARKANSAS REGISTER

Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



Secretary of State
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For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency _____

Department _____

Contact _____ E-mail _____ Phone _____

Statutory Authority for Promulgating Rules _____

Rule Title: _____

Intended Effective Date

(Check One)

Date

Emergency (ACA 25-15-204) Legal Notice Published _____

10 Days After Filing (ACA 25-15-204) Final Date for Public Comment _____

Other _____ Reviewed by Legislatice Council _____
(Must be more than 10 days after filing date.)

Adopted by State Agency _____

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Contact Person

E-mail Address

Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

/s/Jennifer Dedman _____
Signature

Phone Number E-mail Address

Title

Date

DIVISION OF ELEMENTARY AND SECONDARY EDUCATION
RULES GOVERNING INSTRUCTIONAL MATERIALS
May 2020

1.00 REGULATORY AUTHORITY

- 1.01 These rules shall be known as the Division of Elementary and Secondary Education Rules Governing Instructional Materials.
- 1.02 These rules are enacted pursuant to the Arkansas State Board of Education's authority under Ark. Code Ann. §6-21-401 et seq. and Act 757 of 2019.

2.00 PURPOSE

The purpose of these rules is to set forth requirements related to the purchase, distribution and use of instructional materials.

3.00 DEFINITIONS

- 3.01 "Commissioner" means the Commissioner of Elementary and Secondary Education.
- 3.02 "Instructional materials" means:
- 3.02.1 Traditional books, textbooks, and trade books in printed and bound form;
 - 3.02.2 Activity-oriented programs that may include:
 - 3.02.1 Manipulatives;
 - 3.02.2 Hand-held calculators; or
 - 3.02.3 Other hands-on material; and
 - 3.02.3 Technology-based materials that require the use of electronic equipment in order to be used in the learning process.
- 3.03 "School" or "School District" as those terms are used in these rules, shall include open-enrollment public charter schools.

3.04 “State Board” means the Arkansas State Board of Education.

4.00 GENERAL POWERS AND DUTIES OF THE STATE BOARD OF EDUCATION

4.01 Pursuant to Ark. Code Ann. § 6-21-404, the State Board of Education may:

4.01.1 Require reports from school districts on the use and distribution of instructional materials; and

4.01.2 Do whatever else may be necessary for the general welfare of the public school instructional materials system in order to acquire the items at the lowest possible cost.

4.02 The powers enumerated in section 4.00 of these rules and in Ark. Code Ann. § 6-21-404 are cumulative and not restrictive.

5.00 GENERAL REQUIREMENTS RELATED TO INSTRUCTIONAL MATERIALS

5.01 Each school district shall select an instructional materials selection committee.

5.01.2 A majority of its members shall be licensed personnel, which shall include classroom teachers.

5.02 Public school districts shall provide instructional materials, including the availability of any equipment needed to access the instructional materials, for all pupils attending the public schools of this state in kindergarten through grade twelve (K-12), inclusive, in all subjects taught in those grades, without cost to the pupils.

5.03 School districts may select their own instructional materials, including the equipment needed to access the instructional materials.

5.04 Materials purchased with state funds shall be consistent with the Arkansas Academic Content Standards.

5.05 The Division of Elementary and Secondary Education shall monitor to ensure that all school districts in the State of Arkansas comply with Section 5.00 of these rules and with Ark. Code Ann. § 6-21-403. The primary method of compliance shall be through a school district’s Statement of Assurance filed with the Division of Elementary and Secondary Education pursuant to Ark. Code Ann. § 6-15-202.

5.05.1 The Division of Elementary and Secondary Education shall report in the annual school performance report a school district that fails to provide instructional materials including the availability of any equipment needed to access the instructional materials or any school district that charges any student a fee for use of or access to any instructional materials.

5.06 As used in this subsection, “person” means an individual, a partnership, a corporation, or an association.

5.06.1 A person who operates in this state shall not charge a school district a price for instructional materials that exceeds the lowest contracted price currently bid in another state on the same product.

5.06.2 A person shall sell instructional materials at the same price to all school districts in the state and must guarantee the price for the remainder of the school year.

6.00 CONDITIONS FOR OFFERING TEXTBOOKS FOR ADOPTION, SALE OR EXCHANGE

6.01 All publishers doing business in the State of Arkansas shall maintain one (1) or more book depositories at the publisher’s expense in this state.

7.00 ASSESSMENT OF DAMAGES FOR PUBLISHER’S FAILURE TO COMPLY

7.01 The State Board is authorized to assess any publisher any amount of damages to the State of Arkansas for failure to comply with the terms of Ark. Code Ann. § 6-21-401 et seq. or any published regulation of the State Board, provided that the publisher has been given a hearing before the State Board regarding the assessment of damages.

7.02 If a publisher fails to reimburse the State of Arkansas within six (6) months after notice of assessment has been served on the publisher, the state board may prohibit the publisher from selling instructional materials in Arkansas for a maximum period of five (5) years from the date that damages are assessed pursuant to Section 7.00 of these rules.

- 7.03 The following procedures shall apply to a situation involving a publisher's alleged failure to comply with the terms of Ark. Code Ann. § 6-21-401 et seq. or any published rule of the State Board:
- 7.03.1 The Commissioner shall provide written notice, via certified mail, return receipt requested, to the publisher. The written notice shall include specific allegations of precisely how the publisher failed to comply with the terms of Ark. Code Ann. § 6-20-401 et seq. or any published regulation of the State Board. The written notice shall also include a recommendation from the Commissioner concerning the assessment of damages for the publisher's failure to comply.
- 7.03.2 Within thirty (30) days of receipt of the written notification from the Commissioner, the publisher shall respond in writing to the Commissioner, indicating one of the following:
- 7.03.2.1 The publisher concurs with the specific allegations and/or recommended assessment of damages; or
- 7.03.2.2 The publisher disputes the specific allegations and/or recommended assessment and requests an appeal before the State Board of Education. Such a notice of appeal shall include a brief statement of the reasons why the Commissioner's specific allegations and/or recommended assessment of damages should not be adopted.
- 7.03.4 If the publisher concurs with the Commissioner's specific allegations and/or recommended assessment of damages, or fails to respond to the same within thirty (30) days, the Commissioner shall place his or her recommended assessment of damages on the consent agenda of the next regularly scheduled State Board of Education meeting in accordance with the State Board of Education's procedures for the submission of agenda items.
- 7.03.5 If the publisher disputes the Commissioner's specific allegations and/or recommended assessment of damages, the State Board of Education shall hear the publisher's appeal within sixty (60) days of receipt of the notice of appeal. Through mutual agreement, the

Commissioner of Education and the publisher may extend the date of the hearing for an additional thirty (30) days.

- 7.04 The following procedures shall apply to a hearing before the State Board of Education:
- 7.04.1 Each party will have the opportunity to present an opening statement of no longer than five (5) minutes, beginning with the representative of the Division of Elementary and Secondary Education. The Chairperson of the State Board of Education may, only for good cause shown and upon the request of either party, allow either party additional time to present their opening statements.
- 7.04.2 Each party will be given thirty (30) minutes to present their cases, beginning with the representative of the Division of Elementary and Secondary Education. The Chairperson of the State Board of Education may, only for good cause shown and upon the request of either party, allow either party additional time to present their cases.
- 7.04.3 Every witness giving oral testimony must be sworn under oath by the chairperson of the Board and shall be subject to direct examination, cross examination, and questioning by the State Board of Education.
- 7.04.4 For the purposes of the record, documents offered during the hearing by the Division of Elementary and Secondary Education shall be clearly marked in sequential, numeric order (1, 2, 3).
- 7.04.5 For the purposes of the record, documents offered during the hearing by the publisher shall be clearly marked in sequential, alphabetic letters (A, B, C).
- 7.04.6 The Division of Elementary and Secondary Education shall have the burden of proving, by a preponderance of the evidence, that the Commissioner's specific allegations and/or recommended assessment of damages be adopted.
- 7.04.7 The State Board of Education may:
- 7.04.7.1 Adopt the Commissioner's specific allegations and/or adopt the recommended assessment of damages;

7.04.7.2 Modify the Commissioner's recommended assessment of damages; or

7.04.7.3 Grant the appeal of the publisher.

7.04.8 The State Board of Education may announce its decision immediately after hearing all arguments and evidence or may take the matter under advisement. The State Board of Education shall provide a written decision to the Division of Elementary and Secondary Education and the publisher within fourteen (14) days of the hearing.

8.00 NOTICE OF ILLEGAL ACTS INVOLVING SCHOOL OFFICIALS PURSUANT TO ARK. CODE ANN. § 6-21-410

8.01 It shall be illegal for the Commissioner or any other employee connected with the Division of Elementary and Secondary Education, any member of any selecting committee, or any member of any school board of directors to accept or receive any money, gift, property, or favor whatsoever from any person, firm, corporation, or any agent thereof offering for sale any item pursuant to Ark. Code Ann. § 6-21-401 et seq. or from any person in any way interested in such sale.

8.01.1 Any person who pleads guilty or nolo contendere to or is found guilty of violating Ark. Code Ann. § 6-21-410(a) shall be found guilty of a Class B misdemeanor.

8.01.2 Any fines collected under Ark. Code Ann. § 6-21-410(a) shall be deposited into the State Treasury to the credit of the Public School Fund.

8.02 It shall be illegal for any teacher in the public schools of Arkansas or any person connected with the public school system of Arkansas in any capacity to have any interest in the profits, proceeds, or sale of any instructional materials used in the schools of Arkansas under his or her charge or with which he or she is connected in any official capacity. However, this provision shall not apply nor have any reference to royalties or fees received by a person from the sale of instructional materials of which he or she is the author.

8.02.1 Any person who pleads guilty or nolo contendere to or is found guilty of violating Ark. Code Ann. § 6-21-410(b) shall be guilty of a violation and subject to a fine of no less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200).

8.02.2 Any fines collected under Ark. Code Ann. § 6-21-410(b) shall be deposited into the State Treasury to the credit of the Public School Fund.

8.03 It shall be illegal for any person directly or indirectly to promise or offer to give or cause to be promised, offered, or given any money, good, bribe, present, reward, or any valuable thing whatsoever to the Commissioner, his or her assistants, or any other employee of the Division of Elementary and Secondary Education, the Director of the Division of Career and Technical Education, his or her assistants, or any other employee of the Division of Career and Technical Education, any school board members, teachers, or other persons with the intent of influencing their decisions on any questions, matters, causes, or proceedings in the selection of any instructional materials.

8.03.1 Any person who pleads guilty or nolo contendere to or is found guilty of violating Ark. Code Ann. § 6-21-410(c) shall be guilty of a Class B misdemeanor.

8.03.2 Any fines collected under Ark. Code Ann. § 6-21-410(c) shall be deposited into the State Treasury to the credit of the Public School Fund.

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.