

ARKANSAS REGISTER

Proposed Rule Cover Sheet



Secretary of State
John Thurston
500 Woodlane, Suite 026
Little Rock, Arkansas 72201-1094
(501) 682-5070
www.sos.arkansas.gov



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 _____

Name of Rule _____

Newspaper Name _____

Date of Publishing _____

Final Date for Public Comment _____

Location and Time of Public Meeting _____

NOTICE OF PUBLIC COMMENT PERIOD

The Arkansas Department of Health is accepting public comments on the Rules Pertaining to Septic Tank Cleaners from November 22, 2021 to December 31th, 2021. The comment period is provided to allow interested parties and the public to provide any comments. The proposed changes update the rule to current licensing law and provides consistency with other ADH Rules. The proposed rule revision with a summary of changes can be viewed online at <https://www.healthy.arkansas.gov/proposed-amendment-to-existing-rules> or you may request a copy from our office at 501-661-2171.

Comments on the proposed changes can also be mailed to Arkansas Department of Health, Comments/Slot 46, 4815 West Markham, Little Rock Arkansas, 72205, or emailed to ADH.EHPrulecomments@Arkansas.gov



Arkansas Department of Health

4815 West Markham Street • Little Rock, Arkansas 72205-3867 • Telephone (501) 661-2000
Governor Asa Hutchinson
José R. Romero, MD, Secretary of Health

PROPOSED REVISIONS TO THE RULES PERTAINING TO SEPTIC TANK CLEANERS

November 16, 2021

BACKGROUND

Pursuant to A.C.A. § § 17-45-101-105 the Department has authority to promulgate the Rules Pertaining to Septic Tank Cleaners. These rules set standards for the business of cleaning and transportation of septic tanks in Arkansas.

KEY POINTS

The proposed rule:

- Makes updates to comply with 2021 legislation
- Adds alternate methods of record keeping.

DISCUSSION

The Rules Pertaining to Septic Tank Cleaning Operations within the State of Arkansas are duly adopted and promulgated by the Arkansas State Board of Health pursuant to the laws of the State of Arkansas including, Act 71 of 1973 as amended (Ark. Code Ann. § 17-45-101-105) and Act 96 of 1913 (Ark. Code Ann. § 20-7-101, et seq.).

The following changes and updates are proposed:

1. Updated rule to reflect requirements of Act 135 of the 2021 General Assembly.
2. Updated rule to reflect changes Act 725 of the 2021 General Assembly.
3. Section C. added requirement to review land application sites and soil testing every five years.
4. Section C. added clarification when a storage tank is required for a Cleaner.
5. Section C. changed set back from sinkholes to 100 feet.

6. Section H. added wording for alternate methods of record keeping.

RECOMMENDATION

We recommend that the proposed amendments to the Rules Pertaining to Septic Tank Cleaners in Arkansas be approved as proposed by the Department.

QUESTIONNAIRE
FOR FILING PROPOSED RULES WITH THE
ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT/AGENCY _____
DIVISION _____
DIVISION DIRECTOR _____
CONTACT PERSON _____
ADDRESS _____
PHONE NO. _____ FAX NO. _____ E-MAIL _____
NAME OF PRESENTER AT COMMITTEE MEETING _____
PRESENTER E-MAIL _____

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Rule" below.
- E. Submit two (2) copies of the Questionnaire and Financial Impact Statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Jessica C. Sutton
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

- 1. What is the short title of this rule?

- 2. What is the subject of the proposed rule?

- 3. Is this rule required to comply with a federal statute, rule, or regulation? Yes No
If yes, please provide the federal rule, regulation, and/or statute citation.

- 4. Was this rule filed under the emergency provisions of the Administrative Procedure Act?
Yes No
If yes, what is the effective date of the emergency rule? _____

When does the emergency rule expire? _____

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes No

5. Is this a new rule? Yes No If yes, please provide a brief summary explaining the rule.

Does this repeal an existing rule? Yes No If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule? Yes No If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled “mark-up.”

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation.

7. What is the purpose of this proposed rule? Why is it necessary?

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b).

9. Will a public hearing be held on this proposed rule? Yes No If yes, please complete the following:

Date: _____

Time: _____

Place: _____

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice. _____

13. Please provide proof of filing the rule with the Secretary of State as required pursuant to Ark. Code Ann. § 25-15-204(e). _____

14. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known.

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.

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Agency or Division Name _____

Other Subdivision or Department, If Applicable _____

Previous Agency Name, If Applicable _____

Contact Person _____

Contact E-mail _____

Contact Phone _____

Name of Rule _____

Newspaper Name _____

Date of Publishing _____

Final Date for Public Comment _____

Location and Time of Public Meeting _____

Arkansas Department of Health
The Rules Pertaining to Septic Tank Cleaners



Promulgated under the authority of:

Act 71 of 1973 as amended

Ark. Code Ann. § 17-38-101, et seq.

And

Act 96 of 1913

Ark. Code Ann. § 20-7-101, et seq.

Effective Date:

Table of Contents

AUTHORITY	2
SECTION I. DEFINITIONS.....	2
SECTION II. COMPLIANCE.....	3
SECTION III. EQUIPMENT SPECIFICATIONS	3
SECTION IV. DISPOSAL.....	4
SECTION V. LICENSEE RESPONSIBILITIES.	6
SECTION VI. LICENSE REQUIRED	7
SECTION VII. RECIPROCITY AND LICENSURE (A.C.A. § 17-1-108(C),(D)(I)(A)) AND A.C.A. § 17-1-106	8
SECTION VIII. PENALTIES.	14
SECTION IX. SEVERABILITY.	14
SECTION X. REPEAL	14

AUTHORITY

The following Rules Pertaining to Septic Tank Cleaning Operations Within the State of Arkansas are duly adopted and promulgated by the Arkansas State Board of Health pursuant to the laws of the State of Arkansas including, Act 71 of 1973 as amended (Ark. Code Ann. § 17-45-101-105) and Act 96 of 1913 (Ark. Code Ann. § 20-7-101, et seq.).

SECTION I. DEFINITIONS

- A. APPROVED. Acceptable to the Department following a determination of compliance with appropriate public health and environmental standards.
- B. AUTHORIZED AGENT. The Environmental Health Specialist assigned to the County ~~Business Unit~~ by the Department.
- C. BOUND RECORD. A tamper resistant book with numbered, non-removable pages with entries made with indelible ink.
- D. THE DEPARTMENT. The Arkansas Department of Health or its authorized agent.
- E. EQUIPMENT. All tanks, devices, tools and implements used in the cleaning or pumping of septic tanks, holding tanks, marine sanitation devices, portable toilets, or other sewage handling facilities
- F. HOLDING TANK. A septic tank, marine sanitation device, portable toilet, or other device used for the temporary storage of untreated human waste.
- G. LAND APPLICATION. A method of septage disposal utilizing either surface spreading, subsurface injection, burial or other process approved by the Department.

- H. LICENSEE. The licensed owner or operator of a business, firm, or corporation engaged in the business of cleaning septic tanks, marine sanitation devices, portable toilets, and or the transporting of septage or sewage.
- I. MARINE SANITATION DEVICE. Any device on board a vessel designed to retain, treat, or discharge human body waste.
- J. PORTABLE TOILET. Any equipment used to receive and retain human waste prior to its delivery to a sewage treatment facility.
- K. PUMPER VEHICLE. Any truck, trailer, boat, tank or combination thereof used to transport septage or sewage.
- L. SCUM. The partially submerged mat of floating solids that forms at the surface of septic tanks or sewage handling facilities.
- M. SEPTAGE. The liquid, scum and sludge from a septic tank or sewage handling facility excluding biosolids from a municipal or publicly owned treatment facility.
- N. SEPTIC TANK CLEANER. Any person, firm, corporation, or association which cleans septic tanks, marine sanitation devices, portable toilets, or transports septage or sewage within the State of Arkansas.
- O. SEWAGE. The contents of holding tanks, marine sanitation devices, portable toilets, or other tanks used for the storage of human waste.
- P. SLUDGE. The accumulation of settled, solid material in the bottom of a septic tank or sewage handling facility.

SECTION II. COMPLIANCE

No person, firm, corporation, partnership, or association shall be engaged in the business of septic tank cleaning or the transportation of septage or sewage for compensation, unless they are in compliance with these rules

SECTION III. EQUIPMENT SPECIFICATIONS

- A. Tanks. The minimum tank size for tank pumper vehicles is 1000 gallons. Portable toilet cleaning vehicles and marine cleaning vessels are exempt from the 1000 minimum size requirement. All tanks used for the transportation of septage or sewage shall be constructed of metal throughout that is welded, water-tight and splash-proof. The firm or owner's name, license number, and the capacity of the tank shall be shown conspicuously on each side of the tank in letters at least 4 inches in height. ~~Some type of~~ A gauge or measuring device shall be provided on each tank to adequately measure the contents of the tank at varying depths. Before the initial licensing, a certified weight slip shall be filed with the Department showing the weight of the empty tank

and ~~also~~ the weight of the tank when full of water. Any changes or modifications to the tank shall require the submission of current weight slips to the Department.

- B. Pumps. Pumps utilized for cleaning septic tanks or sewage treatment facilities shall be adequate to lift the scum, sludge, and liquid contents of the septic tank into the tank pumper vehicle. Pumps shall be so constructed that there is no leakage, spillage or splashing onto the outer surfaces of the tank or equipment. A tight metal hood shall be provided over the pump on all diaphragm or similar types of open pumps.
- C. Valves. A leak proof gate valve with a minimum of 2-1/2 inches in size shall be provided on each tank for the discharge of the contents while being emptied.
- D. Hoses. A discharge hose compatible with the discharge valve shall be provided for each vehicle. This hose shall have sufficient length to discharge into a manhole or near the ground surface when land application is utilized. The hoses used to pump the contents of septic tanks or holding tanks shall be of an adequate length and have the proper fittings to preclude spillage or leakage.
- E. Racks. All racks used for the carrying of equipment on the vehicle shall be made of metal. All parts of the truck and equipment shall be easily cleanable. No pockets shall be permitted where accumulation of septage or sewage may result.
- F. Marine cleaning vessels. Vessels designed and licensed to pump and transport marine wastes shall be equipped with a welded, leak and splash-proof tank constructed of metal or other approved material. All hoses, valves and fittings shall be designed and used in a manner that prevents the leakage or spillage of marine wastes into the environment. Each marine cleaning vessel shall be equipped with or provided with the necessary pumps, hoses, valves, fittings, and other devices necessary to transfer the marine wastes to the land vehicle or facility where the marine wastes will be transported to the receiving sewage treatment plant.
- G. Portable toilet cleaning vehicles. Vehicles used for the cleaning and maintenance of portable toilets shall be equipped with a welded, leak and splash-proof metal tank for the transport of waste to the receiving treatment facility. The vehicle shall also be equipped with separate tanks for wash down solution and disinfectant. Additionally, each portable toilet cleaning vehicle shall be provided with the hoses, brushes, and other equipment necessary to clean, service, and sanitize portable toilets.

SECTION IV. DISPOSAL

- A. The disposal of sewage or septage by any method that violates any state or federal law or rule is strictly prohibited. The wastes from holding tanks, portable toilets, and marine sanitation devices shall not be land applied. These wastes shall be disposed of in a permitted and properly operated sewage treatment facility.
- B. LAND APPLICATION DISPOSAL SITES. The land application of septage at any site not previously inspected, approved, and on file with the department shall be a violation of these rules. To obtain approval for land application of septage, each site shall be inspected by an authorized agent prior to licensing. A notarized statement from the landowner granting permission for the land application of septage shall be obtained for each disposal site. The licensee shall furnish a

legal description, topographical map, and vicinity map for each disposal site. The maps shall reflect pertinent information pertaining to the number of acres, GPS coordinates, the location and distance to property lines, nearby homes, roads, ditches, wells, utilities, gullies, streams and land use (cropland, pastures, etc.) relevant to septage disposal. Every five (5) years the department will assess approved land application sites and obtain soil samples to verify compliance with these rules.

- C. PROPER SEPTAGE DISPOSAL AT LAND APPLICATION SITES. Septage shall be evenly distributed across the site in a manner that prevents surface runoff, ponding, or the accumulation of septage more than one inch in depth. To achieve even distribution, the vehicle applying the septage shall remain in motion and utilize a splash plate or other approved method of dispersal. There shall be no disposal within 1000 feet of any place of habitation; 500 feet of any public road; ~~100~~ 25 feet of any rock outcrops or sink holes; 50 feet of property lines; 100 feet of streams, lakes, ponds, springs, wells or water supplies.

Options for the land application of septage include:

- I. The pH of the septage shall be raised to a minimum of twelve (12) or higher by the addition of an alkali such as hydrated lime or quick lime, and without adding more alkali, the septage shall remain at a pH of twelve (12) or higher for not less than thirty (30) minutes prior to being land applied. OR
2. Septage shall be injected below the surface of the soil. When septage is injected below the surface of the soil, no significant amount of septage shall be present on the surface of that soil after one (1) hour. OR
3. Septage shall be evenly spread over the surface of the soil and incorporated into the surface of that soil within six (6) hours of application.

Septage shall not be applied in excess of the below described annual application rates for nitrogen and phosphorus.

- I. During any 365-day period, the amount of domestic septage applied to a land application site shall not exceed the annual application rate calculated using the equation $AAR = N \div 0.0026$, where:

AAR = Annual application rate in gallons per acre per 365-day period

N = Amount of nitrogen in pounds per acre per 365-day period needed by the crop or vegetation grown

2. Annual septage land application shall not exceed the phosphorus rates for the crop or vegetation grown and shall not be applied in rates that result in phytotoxicity.

The septage being land applied shall be screened and shall contain no paper, plastic, or other solid material measuring more than one-half inch in any dimension. Grease and/or the contents of grease traps shall not be disposed of at any land application site approved under these rules.

Sites demonstrating a slope of 15% or greater are not suitable for land application. Land application shall be avoided when the soil is saturated, frozen, covered with snow, during rainy weather or when precipitation is in the immediate forecast.

Licensees utilizing land application sites only, for the disposal of septage ~~shall~~ must have available a storage tank sufficient to store the septage collected during periods when climatic conditions preclude land application. These tanks shall be provided with a spill containment berm.

Food crops with harvested parts above the ground surface shall not be harvested for fourteen (14) months after the last application of septage. Food crops with harvested parts that are at or below the ground surface shall not be harvested for thirty-eight (38) months after the last application of septage. At approved application sites, human contact shall be restricted for 30 days after application, and no grazing or harvesting of hay, silage or grain shall commence for 60 days.

For each land application site, the licensee shall maintain a permanent, bound site application record indicating each application of septage, the volume of septage applied, the date it was applied, the crop to which it was applied, a description of the vector and pathogen reduction method used, the method of land application used, and the name of the person applying the septage. These records shall be kept for a minimum of five years and shall be made available to both state and federal regulators on request.

- D. DISPOSAL INTO SEWAGE TREATMENT SYSTEMS. A current contract with each ~~and every~~ sewer improvement district and / or sewage treatment facility where the licensee disposes of sewage and / or septage shall be on file with the Department. The disposal of sewage or septage at a site or facility not on file with the Department is a violation of these rules.
- E. DISPOSAL OF HOLDING TANK, MARINE SANITATION DEVICE, AND PORTABLE TOILET CONTENTS. The contents of holding tanks, marine sanitation devices, and portable toilets is considered untreated sewage and shall not be land-applied under any circumstances. The only acceptable means of disposal for these wastes is into a public sewer system with which the licensee has a contract.

SECTION V. LICENSEE RESPONSIBILITIES.

- A. The licensee shall pass an examination as prescribed by the Department which will reflect the licensee's knowledge in the areas of diseases transmitted by septage and sewage, vector and pathogen reduction, applicable federal and state laws, stream pollution, land application, and permitting requirements.
- B. The licensee shall be responsible for the actions of his employees, partners, associates and co-owners regarding septic tank cleaning and the proper disposal of septage and sewage.
- C. Each licensee shall be responsible for displaying, on each licensed vehicle, a decal issued by the Department at the initial licensing. This decal shall be located on the tank of the pumper vehicle adjacent to the firm or owner's name, license number and tank capacity. When the annual re-licensing requirements are met, renewal decals will be issued by the Department.

- D. The annual license fee is \$25.00. Licenses shall be issued with an effective date of July 1 of each year and will expire one year from the effective date. In addition to the annual license fee, an annual fee of twenty-five dollars (\$25) will be charged for every pumper vehicle above the first vehicle owned by the licensee or the business ~~he represents~~.
- E. Applications for renewal shall include current inspection reports for each pumper vehicle, notarized permission statements from all receiving landowners, and contracts with all sewer improvement districts and treatment facilities where sewage and/ or septage will be disposed. Renewal applications shall be submitted to the Department by July 1 of each year. The renewal request shall include any equipment changes or modifications made to pumper vehicles during the previous license period.
- F. The annual vehicle inspection shall be conducted by the ~~local~~ authorized agent in the county of the licensee's or firm's residence or place of business. Inspection of each pumper vehicle shall be conducted with the tank filled. The required equipment shall be inspected at this time. The owners of pumper vehicles which are located outside of Arkansas shall contact the authorized agent of the nearest or most conveniently located Arkansas county and arrange a time and place for inspection.
- G. The owner or employee of a business licensed under these Rules shall, upon performing any work for which compensation is received, place his name and the number of the license issued to the business on the customer's receipt.
- H. Each pumper vehicle shall maintain and have on board a bound service record listing the operators name, the date and location of each septic tank, treatment plant, holding tank, marine sanitation device, portable toilet, or other sewage handling facility pumped, the vector and pathogen reduction method used, the date and location of disposal. Other methods of record keeping will be considered on a case-by-case basis.

SECTION VI. LICENSE REQUIRED

No person, firm, corporation, partnership, or association shall engage in the business of septic tank cleaning or the transportation of septage, sewage or sludge for compensation without a valid license as provided herein. Proceedings regarding a license shall be conducted pursuant to the Department's rules of administrative procedure. No part of this rule authorizes a licensee or any of his assigns to construct, repair, or modify an individual sewage system without that person first obtaining a valid Septic Tank ~~Installers~~ Cleaner's License. ~~and a valid Individual Sewage Disposal Permit from the Department.~~

- A. Pursuant to Act 725 of 2021, an applicant may receive a waiver of the initial licensure fee, if eligible. Eligible applicants are applicants who:
 - 1) Are receiving assistance through the Arkansas, or current state of residence equivalent, Medicaid Program, the Supplemental Nutrition Assistance Program (SNAP), the Special Supplemental Nutrition Program for Women, Infants, and Children (SSNP), the Temporary Assistance for Needy Families Program (TEA), or the Lifeline Assistance Program (LAP);

- 2) Were approved for unemployment within the last twelve (12) months; or
- 3) Have an income that does not exceed two hundred percent (200%) of the federal poverty income guidelines.

B. Applicants shall provide documentation showing their receipt of benefits from the appropriate State Agency.

- 1) For Medicaid, SNAP, SSNP, TEA, or LAP, documentation from the Arkansas Department of Human Services (DHS), or current state of residence equivalent agency;
- 2) For unemployment benefits approval in the last twelve (12) months, the Arkansas Department of Workforce Services, or current state of residence equivalent agency; or
- 3) For proof of income, copies of all United States Internal Revenue Service Forms indicating applicant's total personal income for the most recent tax year e.g., "W2," "1099," etc.

C. Applicants shall attest that the documentation provided under (b) is a true and correct copy and fraudulent or fraudulently obtained documentation shall be grounds for denial or revocation of license.

SECTION VII. RECIPROCITY AND LICENSURE (A.C.A. § 7-1-108(C)(D)(I)(A)) AND A.C.A. § 17-1-106

(a) Required qualifications.

(1) An applicant applying for reciprocal licensure shall meet the following requirements.

(2)(A) The applicant shall hold a substantially similar license in another United States jurisdiction.

(B) A license from another state is substantially similar to an Arkansas license if the other state's licensure qualifications require:

(i) The applicant shall hold his or her occupational licensure in good standing;

(ii) The applicant shall not have had a license revoked for:

(a) An act of bad faith; or

(b) A violation of law, rule, or ethics; and

(iii) The applicant shall not hold a suspended or probationary license in a United States jurisdiction.

(3) Required documentation.

(A) An applicant shall submit a fully executed application, the required fee, and the documentation described below.

(B) As evidence that the applicant's license from another jurisdiction is substantially similar to Arkansas, the applicant shall submit the following information:

(i)(a) Evidence of current and active licensure in that state.

(b) The Department of Health may verify this information online if the jurisdiction at issue provides primary source verification on its website or by telephone to the other's state's licensing board; and

(ii)(a) Evidence that the other state's licensure requirements match those listed in this subsection.

(b) The department may verify this information online or by telephone to the other's state's licensing group.

(C)(i) To demonstrate that the applicant meets the requirements in this subsection the applicant shall provide the department with:

(a) The names of all states in which the applicant is currently licensed or has been previously licensed; and

(b) Letters of good standing or other information from each state in which the applicant is currently or has ever been licensed showing that the applicant:

(1) Has not had his or her license revoked for the reasons listed in this subsection; and

(2) Does not hold a license on suspended or probationary status as described in this subsection.

(ii) The department may verify this information:

(a) Online if the jurisdiction at issue provides primary source verification on its website; or

(b) By telephone to the other's state's licensing department.

~~(D) As evidence that the applicant is sufficiently competent in the field of design, installation, or monitoring of onsite wastewater systems, an applicant shall pass the Designated Representative test, Installer test, or the Certified Monitoring Test conducted by the department.~~

(b) Temporary and provisional license.

(1)(A) The department shall issue a temporary and provisional license immediately upon receipt of the application, the required fee, and the documentation required under this section.

(B) The temporary and provisional license shall be effective for least ninety (90) days or until the department makes a decision on the application, unless the department determines that the applicant does not meet the requirements in the reciprocity subdivisions in this section in which case the provisional and temporary license shall be immediately revoked.

(2) An applicant may:

(A) Provide the rest of the documentation required above in order to receive a license; or

(B) Only provide the information necessary for the issuance of a temporary and provisional license.

(3) License for person from state that does not license profession, Acts 2019, No. 1011, Arkansas Code § 17-1-108(d)(2).

(4) Required documentation.

(A) An applicant shall submit a fully executed application, the required fee, and the documentation described below.

(B) Passing the required test for Septic Tank Cleaner.

(5) Reciprocity and state-specific education — Acts 2019, No. 1011, Arkansas Code § 17-1-108(d)(3). The department shall require an applicant to take the test if the applicant is licensed in another state that does not offer reciprocity to Arkansas residents that is similar to reciprocity provided to out-of-state applicants in Arkansas Code § 17-1-108.

(6) Reciprocity in another state will be considered similar to reciprocity under Arkansas Code § 17-1-108 if the reciprocity provisions in the other state:

(A) Provide the least restrictive path to licensure for Arkansas applicants;

(B) Do not require Arkansas applicants to participate in the apprenticeship, education, or training required as a prerequisite to licensure of a new professional in that state, except that the state may require Arkansas applicants to participate in continuing education or training that is required for all professionals in that state to maintain the licensure; and

(C) Do not require Arkansas applicants to take a state-specific education unless required to do so under the same conditions described in Arkansas Code § 17-1-108.

~~Automatic licensure for active-duty service members, returning military veterans, and spouse.~~

~~A.C.A. § 17-1-106~~

~~As used in this subsection "automatic licensure" means granting the occupational licensure without an individual's having met occupational licensure requirements provided under this title or by the rules of the occupational licensing entity.~~

~~As used in this subsection, "returning military veteran" means a former member of the United States Armed Forces who was discharged from active duty under circumstances other than dishonorable.~~

~~The Department shall grant automatic licensure to an individual who holds a substantially equivalent license in another U.S. jurisdiction and is:~~

~~An active duty military service member stationed in the State of Arkansas;~~

~~A returning military veteran applying for licensure within one (1) year of his or discharge from active duty; or~~

~~The spouse of a person above~~

~~The Department shall grant such automatic licensure upon receipt of all of the below:~~

~~Payment of the initial licensure fee;~~

~~Evidence that the individual holds a substantially equivalent license in another state; and~~

~~Evidence that the applicant is a qualified applicant under above.~~

(c) Prohibiting criminal offenses.

(1) An individual is not eligible to receive or hold a license issued by the department if that individual has pleaded guilty or nolo contendere to or been found guilty of any of the offenses detailed in Arkansas Code § 17-3-102 by any court in the State of Arkansas or of any similar offense by a court in another state or of any similar offense by a federal court, unless:

(A) The conviction was lawfully sealed under the Comprehensive Criminal Record Sealing Act of 2013, Arkansas Code § 16-90-1401 et seq.; or

(B) Otherwise sealed, pardoned, or expunged under prior law.

(2) The department may grant a waiver as authorized by Arkansas Code § 17-3-102 in certain circumstances.

(3)(A) The department is not authorized to conduct criminal background checks, but may inquire about criminal convictions upon application or renewal of a license.

(B) Any applicant or licensee who provides false information to the State Board of Health regarding a criminal conviction may be subject to suspension, revocation, or denial of a license.

(d) Prelicensure prohibiting offense determination.

(1) Pursuant to Acts 2019, No. 990, an individual may petition for a prelicensure determination of whether:

(A) The individual's criminal record will disqualify the individual from licensure; and

(B) A waiver may be obtained.

(2) The individual must obtain the prelicensure criminal background check petition form from the department.

(3) The department will respond with a decision in writing to a completed petition within a reasonable time.

(4) The department response will state the reason or reasons for the decision.

(5) All decisions of the department in response to the petition will be determined by the information provided by the individual.

(6) Any decision made by the department in response to a prelicensure criminal background check petition is not subject to appeal.

(7) The department will retain a copy of the petition and response and it will be reviewed during the formal application process.

(8) An individual is not eligible to receive or hold a license issued by the department if that individual has pleaded guilty or nolo contendere to or been found guilty of any of the offenses detailed in Arkansas Code § 17-3-102 by any court in the State of Arkansas or of any similar offense by a court in another state or of any similar offense by a federal court, unless the conviction was:

(A) Lawfully sealed under the Comprehensive Criminal Record Sealing Act of 2013, Arkansas Code § 16-90-1401 et seq.; or

(B) Otherwise sealed, pardoned, or expunged under prior law.

(9) The department may grant a waiver as authorized by Arkansas Code § 17-3-102 in certain circumstances.

(10) The department is not authorized to conduct criminal background checks, but may inquire about criminal convictions upon application or renewal of a license.

(11) Any applicant or licensee that provides false information to the State Board of Health regarding a criminal conviction may be subject to suspension, revocation, or denial of a license.

(e) Uniform Service Members Licensure under Act 135 of 2021

(1)(A) "Automatic licensure" means granting the occupational licensure without an individual having met occupational licensure requirements provided under the Arkansas Code or by other provisions in these Rules.

(B) Uniformed service member" means an active or reserve component member of the United States Air Force, United States Army, United States Coast Guard, United States Marine Corps, United States Navy, United States Space Force, or National Guard; an active component member of the National Oceanic and Atmospheric Administration Commissioned Officer Corps; or an active or reserve component member of the United States Commissioned Corps of the Public Health Service.

(C) "Uniformed service veteran" means a former member of the United States uniformed services discharged under conditions other than dishonorable.

(2) Applicability

(A) This Rule applies to a:

(i) uniformed service member stationed in the State of Arkansas;

(ii) uniformed service veteran who resides in or establishes residency in the State of Arkansas;

(iii) The spouse of (1) or (2) including a:

(a) uniformed service member who is assigned a tour of duty that excludes the spouse from accompanying the uniformed service member and the spouse relocates to Arkansas; or,

(b) uniformed service member who is killed or succumb to his or her injuries or illness in the line of duty if the spouse establishes residency in Arkansas.

(3) Automatic Licensure

(A) Automatic Licensure shall be granted to persons listed in section 2 (A) if:

(i) The person is a holder in good standing of occupational licensure with similar scope of practice issued by another state, territory, or district of the United States; and,

(ii) The person pays the licensure fee.

(4) Credit toward initial licensure

(A) Relevant and applicable uniformed service education, training, or service-issued credential shall be accepted toward initial licensure for a uniformed service member or a uniformed service veteran who makes an application within one (1) year of his or her discharge from uniformed service.

(5) Expiration Dates and Continuing Education

(A) A license expiration date shall be extended for a deployed uniformed service member or spouse for one hundred eighty (180) days following the date of the uniformed service member's return from deployment.

(B) A uniformed service member or spouse shall be exempt from continuing education requirements in Rule for one hundred eighty (180) days following the date of the uniformed service member's return from deployment.

(C) Any uniformed service member or spouse exercising the exemption shall provide evidence of completion of continuing education evidence of before renewal or grant of a subsequent license.

SECTION VIII. PENALTIES.

Every firm, person, or corporation who violates any of the rules issued or promulgated by the State Board of Health or who violates any condition of a license, permit, certificate, or any other type of registration issued by the board may be assessed a civil penalty by the board. The penalty shall not exceed one thousand dollars (\$1,000) for each violation. Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessments.

SECTION IX. SEVERABILITY.

If any provision of these Rules, or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of these Rules which can give effect without the invalid provisions or applications, and to this end the provisions hereto are declared to be severable.

SECTION X. REPEAL

All Rules and parts of Rules in conflict herewith are hereby repealed.

CERTIFICATION

This will certify that the foregoing Rules Pertaining to Septic Tank Cleaners were adopted by the Arkansas Board of Health on the _____ day of _____.

José Romero, M.D., FAAP, FIDSA, FPIDS, FAAAS
Arkansas Secretary of Health