

ARKANSAS REGISTER

Proposed Rule Cover Sheet



Secretary of State
John Thurston
500 Woodlane Street, 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 _____

PRE-LICENSURE CRIMINAL BACKGROUND CHECK AND WAIVER REQUEST

I. PRE-LICENSURE CRIMINAL BACKGROUND CHECK

- A. Individuals may petition for a pre-licensure determination of whether the individual's criminal record will disqualify the individual from licensure and whether a waiver may be obtained.
- B. The individual must obtain the pre-licensure criminal background check petition form from the Arkansas Department of Agriculture.
- C. The Board or its designee will respond with a written decision to a completed petition within a reasonable time and state the reasons for the decision.
- D. All decisions made in response to a pre-licensure criminal background check petition will be determined by the information provided by the individual, and are not subject to appeal.
- E. A copy of the petition and response will be retained and reviewed as necessary during the formal application process.

II. WAIVER REQUEST

- A. If an individual has been convicted of an offense listed in A.C.A. § 17-2-102(a), except those permanently disqualifying offenses found in subsection (e), the Board or a committee of the Board may waive disqualification of a potential applicant or revocation of a license based on the conviction if a request for a waiver is made by:
 - 1. An affected applicant for a license; or
 - 2. An individual holding a license subject to revocation.
- B. The Board or committee may grant a waiver upon consideration of the following, without limitation:
 - 1. The age at which the offense was committed;
 - 2. The circumstances surrounding the offense;
 - 3. The length of time since the offense was committed;
 - 4. Subsequent work history since the offense was committed;
 - 5. Employment references since the offense was committed;
 - 6. Character references since the offense was committed;
 - 7. Relevance of the offense to the occupational license; and
 - 8. Other evidence demonstrating that licensure of the applicant does not pose a threat to the health or safety of the public.
- C. A request for a waiver, if made by an applicant, must be in writing and accompany the completed application and fees.
- D. The Board, committee, or designee will respond with a decision in writing and will state the reasons for the decision. All committee decisions are subject to approval by the Board.
- E. An appeal of a determination under this section will be subject to the Administrative Procedures Act §25-15-201 *et seq.*

QUESTIONNAIRE FOR FILING PROPOSED RULES WITH THE
ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT/AGENCY Arkansas Department of Agriculture
DIVISION State Plant Board/ Plant Industries
DIVISION DIRECTOR Scott Bray, State Plant Board Director
CONTACT PERSON Wade Hodge
ADDRESS #1 Natural Resources Drive, Little Rock, AR 72205
PHONE NO. 501-225-1598 FAX NO. _____
E-MAIL scott.bray@agriculture.arkansas.gov
NAME OF PRESENTER AT COMMITTEE MEETING Wade Hodge
PRESENTER E-MAIL
wade.hodge@agriculture.arkansas.gov

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. Submit two (2) copies of this 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? Criminal Background Check rule
2. What is the subject of the proposed rule? Pre-licensure criminal background checks and waiver process for applicants with criminal history
3. Is this rule required to comply with a federal statute, rule, or regulation? Yes _____ No x _____
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 x _____
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."** (See attachment)

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. Ark. Code Ann. § 17-3-101 et seq; 2-16-207(c)(1)
7. What is the purpose of this proposed rule? Why is it necessary?
Act 990 of 2019 requires agencies issuing occupational licenses to adopt a rule providing for pre-licensure criminal background checks and waiver process for applicants with criminal history.
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). www.aad.arkansas.gov
9. Will a public hearing be held on this proposed rule? If requested. Yes ☒ No ☐
If yes, please complete the following:
Date: June 2, 2020
Time: 9:30am
Place: 1 Natural Resources Drive, Little Rock
10. When does the public comment period expire for permanent promulgation? (Must provide a date.)
June 21, 2020
11. What is the proposed effective date of this proposed rule? (Must provide a date.)
August 1, 2020
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. Unknown.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Department of Agriculture
DIVISION State Plant Board
PERSON COMPLETING THIS STATEMENT Wade Hodge
TELEPHONE NO. 501-219-6361 **FAX NO.** _____
EMAIL: wade.hodge@agriculture.arkansas.gov

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

SHORT TITLE OF THIS RULE Criminal Background Check rule

1. Does this proposed, amended, or repealed rule have a financial impact?
Yes _____ No X
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 x 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 x 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: N/A
- (a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue _____

Next Fiscal Year

General Revenue _____

Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____
Total _____ 0 _____

Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____
Total _____ 0 _____

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

Current Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____
Total _____ 0 _____

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____
Total _____ 0 _____

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

\$ _0 _____

Next Fiscal Year

\$ _0 _____

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

\$ _none _____

Next Fiscal Year

\$ _none _____

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___x_____

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.



Asa Hutchinson
Governor

ARKANSAS DEPARTMENT OF AGRICULTURE

1 Natural Resources Drive, Little Rock, AR 72205
agriculture.arkansas.gov
(501) 225-1598



Wes Ward
Secretary of Agriculture

Summary of Proposed Rule for the Arkansas State Plant Board for Criminal Background Checks

May 21, 2020

Purpose:

The purpose of the proposed new rule approved by the Arkansas State Plant Board (Board) is to comply with laws passed during the 2019 legislative session.

Background:

The Board met on December 3, 2019 to consider a new rule in response to Act 990 of 2019, which mandates that the Board promulgate a rule to establish a process for an individual to petition the Board for a determination about whether their criminal conviction disqualifies them from licensure and, if so, whether they can obtain a waiver from the Board.

Key Points:

The new rule:

- Establishes a petition process for a pre-licensure criminal background check
- Establishes a waiver process for individuals with criminal convictions
- Specifies that some criminal convictions are permanently disqualifying from licensure

Discussion:

The proposed rule is based on model rules drafted by the Attorney General's office. The rule allows an individual to petition the Board for a determination as to whether their criminal conviction disqualifies them from licensure. If the individual is disqualified from licensure based upon their criminal conviction, the rule allows the individual to request a waiver from the Board, unless the conviction is one that Act 990 identifies as permanently disqualifying. The rule aids in reducing barriers for individuals with criminal convictions who are trying to re-enter the workforce.

The Board issues multiple occupational licenses. Proposing multiple rules, one for each of the occupational licenses issued by the Board, could be cumbersome, time-consuming, and inefficient. Instead, the Board is proposing a rule which will contain the criminal background check provisions in one document for each occupational license it issues.