

# ARKANSAS REGISTER

## Proposed Rule Cover Sheet



Secretary of State  
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Little Rock, Arkansas 72201-1094  
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[www.sos.arkansas.gov](http://www.sos.arkansas.gov)



Name of Department Department of Transformation and Shared Services

Agency or Division Name Office of State Procurement

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

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

Contact Person Anthony W. Black

Contact E-mail anthony.black@arkansas.gov

Contact Phone 501-682-1011

Name of Rule Rules Governing Mandatory Procurement Training Program

Newspaper Name Arkansas Democrat-Gazette

Date of Publishing June 17, June 18, and June 19, 2022

Final Date for Public Comment July 18, 2022

Location and Time of Public Meeting June 29, 2022, at 2:00 p.m. in Ouachita Meeting Room, 501 Woodlane (Rockefeller Building)

**STATE OF ARKANSAS  
DEPARTMENT OF TRANSFORMATION AND SHARED SERVICES  
OFFICE OF STATE PROCUREMENT  
RULES GOVERNING MANDATORY PROCUREMENT TRAINING PROGRAM**

**PROPOSED RULES**

**R1:19-11-280. Mandatory Procurement Training Program.**

Pursuant to Ark. Code Ann. § 19-11-280, a tiered training and certification program has been established for the training, continuing education, and certification program for state agency "procurement personnel." For purposes of this rule, the term "procurement personnel" is understood to include "agency procurement officials" and "procurement agents," as defined in Arkansas Procurement Law, and personnel authorized to procure commodities or services on behalf of a "state agency," as defined in Arkansas Procurement Law, in an amount greater than the limit for "small procurements" set in Ark. Code Ann. § 19-11-204(13), regardless of their title. State employees who are not authorized to procure commodities or services in excess of the small procurement amount are not considered to be procurement personnel.

Beginning July 1, 2021, procurement personnel must annually complete the minimum number of hours of procurement training. The State Procurement Director shall set the minimum number of hours of procurement training required for the following fiscal year by June 30th. A listing of approved courses and requirements will be maintained by the Department of Transformation and Shared Services, Office of State Procurement, and displayed on a website or otherwise made available as needed. Additional courses may be approved by the State Procurement Director. In cases of disability or hardship, the State Procurement Director may approve an accommodation or a substitute training plan by which individuals may meet the training requirements.

**R2:19-11-280. Documentation of Compliance.**

As of July 1, 2021, it shall be the duty of each person seeking procurement authority through a delegation order from the State Procurement Director to maintain documentation certifying that he or she has completed the requisite procurement training before the written delegation order is issued. He or she shall also be responsible for ensuring that anyone who exercises procurement authority under his or her delegated authority also receives at least the minimum amount of procurement training required under Arkansas Procurement Law and these rules.

If a procurement official exercises procurement authority under a direct grant of statutory procurement authority, then as of July 1, 2021 it shall be his or her responsibility to document that he or she has satisfied the requirement for certification and continuing education and that anyone who exercises procurement authority under his or her

supervision also receives required procurement training and continuing education in compliance with these rules.

**R3:19-11-280. Apparent Non-compliance.**

If a person to whom these rules apply fails to obtain and maintain the required training and that apparent noncompliance is reported to the State Procurement Director, the Office of State Procurement shall notify the affected person and the chief executive officer of the Department, institution, board, or agency that employs the affected person. That notice may be sent electronically or by first class mail.

The notice shall contain a statement of the: (a) legal authority and jurisdiction under which the notice is being sent; (B) apparent noncompliance; (C) possible administrative revocation for noncompliance; and (D) the right to present satisfactory evidence of compliance or corrected noncompliance.

The named person must, within sixty (60) business days of the date of the notice of apparent noncompliance, provide the State Procurement Director satisfactory evidence that the person is either in compliance or has corrected the noncompliance. If the named person fails either to provide satisfactory evidence of compliance or that the noncompliance has been corrected within the allotted time provided in the paragraph above, the Office of State Procurement shall serve a notice of intent to revoke procurement certification and delegated authority to the affected person and the chief executive officer of the Department, institution, board, or agency that employs the affected person. The notice shall advise the person and the Department, institution, board, or agency that noncompliance shall be presumed and the delegated procurement authority or certification of that person shall be administratively revoked after the conclusion of thirty (30) or more business days from the date on the notice of intent to revoke.

No revocation shall be made without notice. The duration of the revocation should be commensurate with the gravity of the offense, but not less than three (3) months nor more than two (2) years. Administrative revocation may be rescinded subsequently upon a showing of compliance satisfactory to the Director.



## FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Department of Transformation and Shared Services

DIVISION Office of State Procurement

PERSON COMPLETING THIS STATEMENT Anthony W. Black

TELEPHONE NO. (501) 324-9316 FAX NO. (501) 324-9311 EMAIL: anthony.black@arkansas.gov

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 Rules Governing Mandatory Procurement Training Program

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 \$ 0.00

Total \$ 0.00

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 \$ 0.00

Total \$ 0.00

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

\$ 0.00

\$ 0.00

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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

\$ 0.00

\$ 0.00

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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 ☒ See attached for supplemental response to the following questions

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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**RULE SUMMARY**

**Purpose of Rule:** The proposed three-part rule establishes the mandatory procurement training program, addresses documentation of compliance, addresses apparent non-compliance, and provides notice for revocation of procurement certification or delegated authority.

**Reason for Creating or Amending the Rule:** The three-part rule addresses the requirements contained in Ark. Code Ann. § 19-11-280 for the establishment of a mandatory training and certification program for state agency procurement personnel and that, beginning July 1, 2021, a state agency employee shall not conduct a procurement unless certified through the required training and certification program.

**How does the Rule deviate from the Act:** The three-part rule implements the statutory requirement of establishing a mandatory training and certification program for state agency procurement personnel.

**Rule Based on a Rule From Different Jurisdictions:** ☐ Yes ☒ No **Jurisdictions:** \_\_\_\_\_

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**Short Summary of New Rule or Rule Changes:** (explain in greater detail in your executive summary)

The three-part rule addresses the requirements contained in Ark. Code Ann. § 19-11-280 for the establishment of a mandatory training and certification program for state agency procurement personnel and that, beginning July 1, 2021, a state agency employee shall not conduct a procurement unless certified through the required training and certification program.

The applicability of the rule is defined; the annual completion of a minimum number of hours of procurement training is required from a listing of approved courses and requirements maintained by the TSS Office of State Procurement; the duty to maintain documentation certifying completion of the requisite procurement training is placed upon the person seeking procurement authority through a delegation order, or who has a direct grant of statutory procurement authority, as well as ensuring compliance for anyone exercising procurement authority through that person's delegated authority; a non-compliance notice shall be sent to the affected person and the chief executive officer of the affected person's employment; the affected person must comply with the requirements within sixty (60) days or correct the non-compliance; if the affected person fails to do so, then the delegated procurement authority or certification shall be administratively revoked after thirty (30) business days from the date on the notice; the duration of the revocation is between three (3) months and two (2) years; and administrative revocation may be rescinded subsequently upon a showing of compliance satisfactory to the OSP Director.

**Applicable Federal Regulations:** ☐ Yes ☒ No **C.F.R. No:** \_\_\_\_\_

**Proposed Rule the Least Restrictive Alternative:** ☒ Yes ☐ No **If not, why?** \_\_\_\_\_

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Does it Mirror Federal Regulations or Impose Additional Requirements: ☐ Yes ☒ No

Explain: \_\_\_\_\_

**Note: In addition to these explanations, the Department/Agency seeking to promulgate this rule shall submit the attached executive summary. Failure to include the summary will result in the rule being denied.**

**CONTROVERSY**

Rule Controversial: ☐ Yes ☒ No Act Controversial in Legislative Session: ☐ Yes ☐ No

Known Interested Parties: State agency procurement personnel.

Comments Made at Legislative Session: \_\_\_\_\_

Public Hearing: ☒ Yes ☐ No Expect public comment from: Unknown at this time.

**FINANCIAL IMPACT**

Financial Impact: ☐ Yes ☒ No Total Impact: FY2020: 0.00 FY2021: 0.00

Impact Mitigated by Federal Funding: ☐ Yes ☒ No FY2020: \_\_\_\_\_ FY2021: \_\_\_\_\_

Reasons for Financial Impact: \_\_\_\_\_

**FINAL CHECKLIST**

**Please note that the Governor's office will not begin the approval process of the foregoing rule if any of the following applicable documents are not enclosed in the order listed in a single PDF file.**

- ☒ Rule Request Form
- ☒ Executive Summary
- ☒ Mark-Up Version of the Proposed Rule
- ☒ Clean Version of the Proposed Rule
- ☒ BLR Questionnaire
- ☒ BLR Financial Impact Statement
- ☒ Copy of Act or Regulation



## Notice of Rulemaking

Pursuant to Arkansas Code Annotated § 25-15-201 *et seq.*, notice is hereby given that the Arkansas Department of Transformation and Shared Services is considering the following new rules: 1) Rule Governing the Unlawful Propagation of Divisive Concept Training and 2) Rules Governing Mandatory Procurement Training Program. A public hearing will be held June 29, 2022, at 2:00 pm in the Ouachitas Bid Room, 501 Woodlane Avenue, Ground Floor, Little Rock, AR 72201. Written comments should be mailed to TSS, Attn: Public Comments at P.O. Box 3522, Little Rock, AR 72203. Comments may also be e-mailed to [TSS.RulesComments@arkansas.gov](mailto:TSS.RulesComments@arkansas.gov). Copies of the proposed rule may also be obtained from the Department of Transformation and Shared Services, 501 Woodlane Avenue, Suite 101-N, Little Rock, AR 72201, or by accessing the Department's website at <https://www.transform.ar.gov/secretarys-office/legal/rules-hearings/>.

## Anthony Black

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**From:** Jennifer Elkins  
**Sent:** Monday, June 13, 2022 3:38 PM  
**To:** legalads@arkansasonline.com  
**Cc:** Anthony Black  
**Subject:** RE: Notice of Rulemaking

I appreciate it. Thank you!

### Jennifer Elkins

Statewide Program Manager  
Transformation and Shared Services, Office of Personnel Management  
o. 501.682.5350  
[jennifer.elkins@arkansas.gov](mailto:jennifer.elkins@arkansas.gov)

### EPIC Service

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**From:** legalads@arkansasonline.com <legalads@arkansasonline.com>  
**Sent:** Monday, June 13, 2022 3:37 PM  
**To:** Jennifer Elkins <Jennifer.Elkins@arkansas.gov>  
**Subject:** Re: Notice of Rulemaking

Just barely able to pull it from Wed 6/15 (deadline was 12 noon today).

This will run, instead, on Fri 6/17, Sat 6/18, and Sun 6/19.

Thank you.

Gregg Sterne, Legal Advertising  
Arkansas Democrat-Gazette  
[legalads@arkansasonline.com](mailto:legalads@arkansasonline.com)

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**From:** "Jennifer Elkins" <Jennifer.Elkins@arkansas.gov>  
**To:** [legalads@arkansasonline.com](mailto:legalads@arkansasonline.com)  
**Cc:** "Anthony Black" <Anthony.Black@arkansas.gov>  
**Sent:** Monday, June 13, 2022 3:18:40 PM  
**Subject:** RE: Notice of Rulemaking

Mr. Sterne,

Can you please revise our publication dates to Fri 6/17, Sat 6/18, and Sun 6/19? Thank you.

### Jennifer Elkins

Statewide Program Manager  
Transformation and Shared Services, Office of Personnel Management  
o. 501.682.5350  
[jennifer.elkins@arkansas.gov](mailto:jennifer.elkins@arkansas.gov)

## EPIC Service

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**From:** Jennifer Elkins  
**Sent:** Monday, June 13, 2022 12:18 PM  
**To:** [legalads@arkansasonline.com](mailto:legalads@arkansasonline.com)  
**Cc:** Anthony Black <[Anthony.Black@arkansas.gov](mailto:Anthony.Black@arkansas.gov)>  
**Subject:** RE: Notice of Rulemaking

Thank you for the confirmation.

### Jennifer Elkins

Statewide Program Manager  
Transformation and Shared Services, Office of Personnel Management  
o. 501.682.5350  
[jennifer.elkins@arkansas.gov](mailto:jennifer.elkins@arkansas.gov)

## EPIC Service

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**From:** [legalads@arkansasonline.com](mailto:legalads@arkansasonline.com) <[legalads@arkansasonline.com](mailto:legalads@arkansasonline.com)>  
**Sent:** Monday, June 13, 2022 11:13 AM  
**To:** Jennifer Elkins <[Jennifer.Elkins@arkansas.gov](mailto:Jennifer.Elkins@arkansas.gov)>  
**Subject:** Re: Notice of Rulemaking

Will run Wed 6/15, Thurs 6/16, and Fri 6/17. Thank you.

Gregg Sterne, Legal Advertising  
Arkansas Democrat-Gazette  
[legalads@arkansasonline.com](mailto:legalads@arkansasonline.com)

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**From:** "Jennifer Elkins" <[Jennifer.Elkins@arkansas.gov](mailto:Jennifer.Elkins@arkansas.gov)>  
**To:** [legalads@arkansasonline.com](mailto:legalads@arkansasonline.com)  
**Cc:** "Anthony Black" <[Anthony.Black@arkansas.gov](mailto:Anthony.Black@arkansas.gov)>  
**Sent:** Monday, June 13, 2022 10:30:38 AM  
**Subject:** Notice of Rulemaking

Good morning,

Please run the attached Notice of Rulemaking for 3 consecutive days as soon as possible. The billing address is the Arkansas Department of Transformation and Shared Services, PO Box 3522, Little Rock, AR 72203.

If you have any questions, please contact me at 501-682-5350.

Please confirm the dates in which the notice will run. Thank you.





## **Jennifer Elkins**

Statewide Program Manager

Transformation and Shared Services, Office of Personnel Management

o. 501.682.5350

[jennifer.elkins@arkansas.gov](mailto:jennifer.elkins@arkansas.gov)

**EPIC Service**