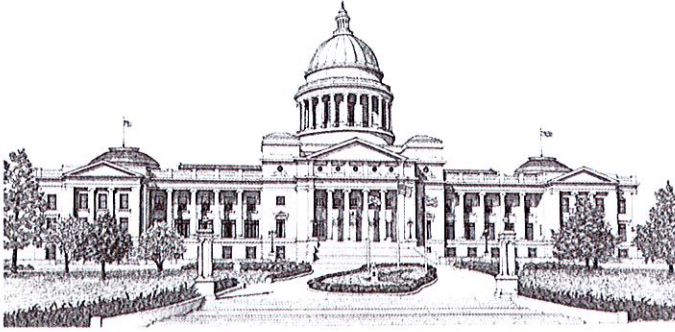


ARKANSAS REGISTER

Transmittal Sheet

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



Secretary of State
Mark Martin
500 Woodlane, Suite 026
Little Rock, Arkansas 72201-1094
(501) 682-5070
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For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency Commission for Arkansas Public School Academic Facilities and Transportation

Department Arkansas Division of Public School Academic Facilities and Transportation

Contact Lori Freno E-mail lori.freno@arkansas.gov Phone 501-682-4234

Statutory Authority for Promulgating Rules Ark. Code Ann. § 6-21-801 thru 816; 6-20-2512, 2513, 2516; 25-15-201 et seq.; Act 542 of 2017

Rule Title: CAPSAFT Rules Governing Appeals from Determinations of the Arkansas Division of Public School Academic Facilities and Transportation

Intended Effective Date

(Check One)

Emergency (ACA 25-15-204)

10 Days After Filing (ACA 25-15-204)

Other _____
(Must be more than 10 days after filing date.)

Legal Notice Published

Final Date for Public Comment

Reviewed by Legislatice Council

Adopted by State Agency

Date

12/14-12/16/17

1/15/18

12/21/18

6/26/18

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

Lori Freno lori.freno@arkansas.gov

12/21/18

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.)

Signature

(501) 682-4234

lori.freno@arkansas.gov

Phone Number

E-mail Address

General Counsel, Arkansas Department of Education

Title

December 21, 2018

Date

THE COMMISSION FOR ARKANSAS PUBLIC SCHOOL ACADEMIC FACILITIES AND TRANSPORTATION RULES GOVERNING APPEALS FROM DETERMINATIONS OF THE ARKANSAS DIVISION OF PUBLIC SCHOOL ACADEMIC FACILITIES AND TRANSPORTATION

Effective December 31, 2018

1.00 REGULATORY AUTHORITY

- 1.01 These Rules shall be known as the Commission for Arkansas Public School Academic Facilities and Transportation Rules Governing Appeals from Determinations of the Arkansas Division of Public School Academic Facilities and Transportation.
- 1.02 These Rules are promulgated pursuant to Ark. Code Ann. §§ 6-20-2512, 6-20-2513, 6-20-2516, and 25-15-201 *et seq.*

2.00 PURPOSES OF RULES, BURDEN OF PROOF AND DEFINITION OF TERMS

- 2.01 The first purpose of these Rules is to implement the requirements of Ark. Code Ann. §§ 6-21-801 through 6-21-815 to provide a method by which a school districts may appeal a decisions made by the Arkansas Division of Public School Academic Facilities and Transportation (Division) to the Commission for Public School Academic Facilities and Transportation (Commission).
- 2.02 The second purpose of these Rules is to implement the requirements of Ark. Code Ann. § 6-21-816 to provide a method by which a school district or public charter school may appeal a decision made by the Division to the Commission related to a waiver request.
- 2.03 The third purpose of these Rules is to implement the requirements of Ark. Code Ann. §§ 6-20-2512, 6-20-2513 and 6-20-2516 to provide a method by which a school districts may appeal a decisions made by the Division to the Academic Facilities Review Board (Review Board), as well as from a decisions made by the Review Board to the Commission.
- 2.04 For the purposes of all appeals brought pursuant to these Rules, the appealing party shall have the burden of proving that the Division's written determination is not supported by substantial evidence or is outside the legal authority vested in the Division.
- 2.05 For the purposes of these Rules, the term "substantial evidence" means relevant evidence that a reasonable mind might accept to support a conclusion. Substantial evidence is not based upon speculation and

conjecture. A review of substantial evidence is not based upon whether the facts would have supported a contrary finding by the Division, but whether the facts supported the finding made by the Division.

- 2.06 As used in these Rules, the term “public charter school” has the same meaning as in Ark. Code Ann. § 6-21-815.
- 2.07 As used in these Rules, the term “school district”:
 - 2.07.1 Does not include a “public charter school” as defined in Ark. Code Ann. § 6-21-815.
 - 2.07.2 Includes a “conversion public charter school” as defined in Ark. Code Ann. § 6-23-103(5).

**DIRECT APPEALS TO THE COMMISSION
(ARK. CODE ANN. §§ 6-21-801 *et seq.*)**

3.00 APPEAL PROCESS: DIRECT APPEALS TO THE COMMISSION

- 3.01 Pursuant to Ark. Code Ann. § 6-21-814, a school district may appeal any final written determination of the Division made under the provisions of the Arkansas Public School Academic Facilities Program Act, Ark. Code Ann. § 6-21-801 *et seq.*, by following this process:
 - 3.01.1 A school district may request in writing, and the Division shall provide within twenty (20) calendar days, a written determination concerning a matter directly affecting the school district that is covered under Ark. Code Ann. §§ 6-21-801 through 6-21-815.
 - 3.01.1.1 A school district may not utilize the procedures outlined in this Section 3.00 to request a written determination that is in effect a request for reconsideration of an earlier written determination.
 - 3.01.2 If the school district wishes to appeal the written determination of the Division, the school district shall, within sixty (60) calendar days of receipt of the Division’s written determination, submit to the Arkansas Department of Education (ADE) Office of General Counsel, with a copy to the Division, a written request for an appeal or an appeal and hearing with the Commission. With its written request, the school district shall submit a brief written statement of no longer than fifteen (15) pages explaining, in clear and express terms, the facts of the case and how the Division’s determination is not supported by substantial evidence or is outside

the legal authority vested in the Division. At the time of submitting its initial brief, the school district shall indicate whether it requests a formal hearing before the Commission. If the appeal or appeal and request for hearing are not received within sixty (60) calendar days from the date of the receipt of the Division's written determination, the Commission shall deny the appeal on the grounds that it is untimely.

- 3.01.3 Upon timely receipt of the school district's written request for an appeal or appeal and hearing, the Division may prepare a written statement in response. The Division's written response is limited to fifteen (15) pages. The Division shall provide its written response to the ADE Office of General Counsel, with a copy to the school district, within thirty (30) calendar days of receipt of the school district's written request for an appeal.
 - 3.01.4 Once the written statements from the school district and the Division are received by the Commission, the Commission shall consider the appeal at the call of the chair of the Commission. Except for good cause shown, the chair of the Commission shall schedule the meeting for consideration of the appeal within thirty (30) calendar days of receipt of the Division's written response. Notice of the date, time, and location of the meeting shall be sent to the appealing school district and to the Division. If requested by the appealing school district, or if the Commission determines that a hearing is necessary, a hearing concerning the appeal shall be held during the meeting and in accordance with Section 4.00 of these Rules.
- 3.02 A school district or public charter school may appeal a final written determination of the Division made under Ark. Code Ann. § 6-21-816 related to a school district petition for a waiver by following this process:
- 3.02.1 A school district or public charter school may not utilize the procedures outlined in this Section 3.02 to request a written determination that is in effect a request for reconsideration of an earlier written determination.
 - 3.02.2 If the school district or public charter school wishes to appeal the written determination of the Division, it shall, within sixty (60) calendar days of receipt of the Division's written determination, submit to the ADE Office of General Counsel, with a copy to the Division and to the non-appealing party, a written request for an appeal or an appeal and hearing with the Commission. With its written request, the appealing party shall submit a brief written statement of no longer than fifteen (15) pages explaining, in clear

and express terms, the facts of the case and how the Division's determination is not supported by substantial evidence or is outside the legal authority vested in the Division. At the time of submitting its initial brief, the appealing party shall indicate whether it requests a formal hearing before the Commission. If the appeal or appeal and request for hearing is not received by the Division within sixty (60) calendar days from the date of the receipt of the Division's written determination, the Commission shall deny the appeal on the grounds that it is untimely.

3.02.3 Upon timely receipt of the appealing party's written request for an appeal or appeal and hearing, the Division and non-appealing party each may prepare a brief written statement in response, each of which is limited to fifteen (15) pages. The Division and non-appealing party shall provide any written response to the ADE Office of General Counsel, with a copy to the appealing party, within thirty (30) calendar days of receipt of the appealing party's written request for an appeal.

3.02.4 Once written responses are received by the Commission or the time to provide a written response passes, whichever is earlier, the Commission shall consider the appeal at the call of the chair of the Commission. Except for good cause shown, the chair of the Commission shall schedule the meeting for consideration of the appeal within thirty (30) calendar days of receipt of the written response(s). Notice of the date, time, and location of the meeting shall be sent to the appealing party, the non-appealing party (regardless of whether it filed a written response), and the Division. If requested by the appealing party or if the Commission determines that a hearing is necessary, a hearing concerning the appeal shall be held during the meeting and in accordance with Section 4.00 of these Rules.

4.00 APPEAL HEARING PROCEDURES: DIRECT APPEALS TO THE COMMISSION

4.01 For hearings under Ark. Code Ann. §§ 6-21-801 through 6-21-815, the appealing school district and Division each shall have up to ten (10) minutes to present an opening statement, beginning with the appealing school district. The chair of the Commission may allow either party additional time to present an opening statement. For hearings under Ark. Code Ann. § 6-21-816, the same procedure applies except that the non-appealing party (whether the school district or public charter school) shall have like time to present an opening statement following the appealing party and Division.

- 4.02 For hearings under Ark. Code Ann. §§ 6-21-801 through 6-21-815, the appealing school district and the Division each shall have up to fifteen (15) minutes to present their cases-in-chief to the Commission, beginning with the appealing school district. The chair of the Commission may allow either party additional time to present their cases-in-chief. For hearings under Ark. Code Ann. § 6-21-816, the same procedure applies except that the non-appealing party (whether the school district or public charter school) shall have like time to present its case-in-chief following the appealing party and Division.
- 4.03 For hearings under Ark. Code Ann. §§ 6-21-801 through 6-21-815, after both parties have presented their cases-in-chief, the appealing school district and the Division each shall have up to five (5) minutes to present a closing statement, beginning with the appealing school district. The chair of the Commission may allow either party additional time to present a closing statement. For hearings under Ark. Code Ann. § 6-21-816, the same procedure applies except that the non-appealing party (whether the school district or public charter school) shall have like time to present a closing statement following the appealing party and Division.
- 4.04 Members of the Commission may ask questions of any party at any time throughout the proceedings.
- 4.05 For the purposes of the record, documents offered during the hearing marked in sequential, numeric order, and in a manner identifying the party offering the document.
- 4.06 After hearing all testimony and evidence presented, the Commission shall deliberate and may announce its decision at the close of the hearing or may take the matter under advisement.
- 4.07 The Commission shall render a written decision to approve, deny or place in abeyance each appeal within thirty (30) calendar days of the hearing of the appeal by the Commission.
- 4.08 If the appeal is brought under Ark. Code Ann. § 6-21-815 or 6-21-816, all time frames under those sections shall be tolled during the pendency of the appeal.
- 5.00 FINALITY OF COMMISSION DECISIONS

All decisions of the Commission resulting from the appeal of a Division determination shall be final and not subject to further appeal or request for rehearing to the Commission or petition for judicial review under the Arkansas Administrative Procedure Act, Ark. Code Ann. § 25-15-201 *et. seq.*

**APPEALS TO THE ACADEMIC FACILITIES REVIEW BOARD
(ARK. CODE ANN. §§ 6-20-2501 – 6-20-2516)**

6.00 REVIEW BOARD APPEAL PROCEDURES

6.01 Pursuant to Ark. Code Ann. § 6-20-2513, a school district may appeal any written determination of the Division made under the provisions of the Arkansas Public School Academic Facilities Funding Act, Ark. Code Ann. § 6-20-2501 *et seq.*, to the Academic Facilities Review Board.

6.01.1 For the purpose of this Section 6.00, the phrase “Written Determination” includes the Division’s notice of approval of construction projects eligible for state financial participation under Ark. Code Ann. § 6-20-2507.

6.02 A school district may request in writing, and the Division shall provide within twenty (20) calendar days, a written determination concerning a matter directly affecting the school district that is covered under Ark. Code Ann. §§ 6-20-2501 through 6-20-2516.

6.02.1 A school district may not utilize the procedures outlined in this Section 6.02 to request a written determination that is in effect a request for reconsideration of an earlier written determination.

6.03 If the school district wishes to appeal the written determination of the Division, the school district shall, within sixty (60) calendar days of receipt of the Division’s written determination, submit to the ADE Office of General Counsel with a copy to the Division, a written request for an appeal or an appeal and hearing with the Review Board. With its written request, the school district shall submit a brief written statement of no longer than ten (10) pages explaining, in clear and express terms, the facts of the case and how the Division’s determination is not supported by substantial evidence or is outside the legal authority vested in the Division. At the time of submitting its initial brief, the school district shall indicate whether it requests a formal hearing before the Review Board. If the appeal or appeal and request for hearing are not received within sixty (60) calendar days of the Division’s written determination, the Review Board shall deny the appeal on the grounds that it is untimely.

6.04 Upon timely receipt of the school district’s written request for an appeal or an appeal and hearing, the Division may prepare a brief written statement in response. The Division’s written response is limited to ten (10) pages. The Division shall provide its written response to the ADE Office of General Counsel, with a copy to the school district, within thirty (30) calendar days of receipt of the school district’s written request for an appeal.

- 6.05 If the school district does not request a hearing, the Review Board shall meet upon the call of the chair to consider the appeal. Except for good cause shown, the chair of the Review Board shall schedule the meeting within thirty (30) calendar days of receipt of the Division's written response. Notice of the date, time and location of the meeting shall be sent to the appealing school district and to the Division.
- 6.06 If the school district requests a hearing or if the Review Board determines that a hearing is necessary, the Review Board shall meet upon the call of the chair. Except for good cause shown, the chair of the Review Board shall schedule the hearing within thirty (30) calendar days of receipt of the Division's written response. Notice of the date, time, and location of the hearing shall be sent to the appealing school district and to the Division. Hearings shall be conducted pursuant to Section 6.08 of these Rules.
- 6.07 A majority of the members of the Review Board shall constitute a quorum, and all actions taken by the Review Board shall be by a majority of the quorum present.
- 6.08 For each hearing, the appealing school district and the Division each shall have five (5) minutes to present an opening statement, beginning with the appealing school district. The chair of the Board may allow either party additional time to present an opening statement.
- 6.08.1 The appealing school district and the Division each shall have fifteen (15) minutes to present their cases-in-chief to the Review Board, beginning with the appealing district, which bears the burden of proof. The chair of the Board may allow either party additional time to present their cases-in-chief.
- 6.08.2 The appealing school district and the Division each shall have five (5) minutes to present a closing statement, beginning with the appealing school district. The chair of the Board may allow either party additional time to present a closing statement.
- 6.08.3 Members of the Review Board may, at any time during the proceedings, ask questions to representatives of either party.
- 6.08.4 For the purposes of the record, documents offered during the hearing shall be marked in sequential, numeric order, and in a manner identifying the party offering the document.
- 6.08.5 Following a hearing, the Review Board shall make a final determination accepting, rejecting, or modifying the determination of the Division. The Review Board may deliberate and announce

its determination at the close of the hearing, or the Review Board may take the matter under advisement. The Review Board shall provide to the school district and the Division its written final determination within ten (10) business days of the hearing.

7.00 APPEAL PROCESS: COMMISSION REVIEW OF DECISIONS OF THE REVIEW BOARD

- 7.01 If the school district wishes to appeal the final determination of the Review Board, the school district shall within thirty (30) calendar days of receipt of the Review Board's final determination, submit to the ADE Office of General Counsel, with a copy to the Division, a written request for an appeal or an appeal and hearing from the Review Board's final determination to the Commission. With its written request, the school district shall submit a brief written statement of no longer than fifteen (15) pages explaining, in clear and express terms, the facts of the case and how the Division's determination is not supported by substantial evidence or is outside the legal authority vested in the Division. At the time of submitting its initial brief, the school district shall indicate whether it requests a formal hearing before the Commission. If the appeal or appeal and request for hearing are not received within thirty (30) calendar days from the date of the receipt of the Review Board's written final determination, the Commission shall deny the appeal on the grounds that it is untimely.
- 7.02 Upon timely receipt of the school district's written request for an appeal or appeal and hearing, the Division may prepare a written statement in response. The Division's written response is limited to fifteen (15) pages. The Division shall provide its written response to the ADE Office of General Counsel, with a copy to the school district, within thirty (30) calendar days of receipt of the school district's written request for an appeal.
- 7.03 Once the written statements from the school district and the Division are received by the Commission, the Commission shall consider the appeal at the call of the chair of the Commission. Except for good cause shown, the chair of the Commission shall schedule the meeting for consideration of the appeal within thirty (30) calendar days of receipt of the Division's written response. Notice of the date, time, and location of the meeting shall be sent to the appealing school district and to the Division. If requested by the appealing school district or if the Commission determines that a hearing is necessary, a hearing concerning the appeal shall be held during the meeting and in accordance with Section 8.00 of these Rules.

- 7.04 If the Review Board's final determination will result in a greater level of state financial participation in a project than previously authorized by the Division, the Board's final determination shall be reviewed by the Commission at the call of the chair of the Commission.
- 7.04.1 When the chair of the Commission determines that a review is mandated by Section 7.04 of these Rules, the chair shall, within thirty (30) calendar days of the date of the Review Board's decision, give written notice to the appealing school district and the Division that the final determination shall be reviewed by the Commission.
- 7.04.2 Within thirty (30) calendar days of receipt of notice from the chair of the Commission, the appealing school district shall submit to the ADE Office of General Counsel, with a copy to the Division, a brief written statement of no longer than fifteen (15) pages explaining, in clear and express terms, the facts of the case and how the Division's determination is not supported by substantial evidence or is outside the legal authority vested in the Division. At the time of submitting its initial brief, the school district shall indicate whether it requests a formal hearing before the Commission.
- 7.04.3 Upon timely receipt of the school district's brief written statement, the Division may prepare a written statement in response. The Division's written response shall be limited to fifteen (15) pages. The Division shall provide its written response to the ADE Office of General Counsel, with a copy to the school district, within thirty (30) calendar days of receipt of the school district's brief written statement.
- 7.04.4 Once the written statements from the school district and the Division are received by the Commission, the Commission shall consider the review at the call of the chair of the Commission. Except for good cause shown, the chair of the Commission shall schedule the meeting for consideration of the review within thirty (30) calendar days of receipt of the Division's written response. Notice of the date, time, and location of the meeting shall be sent to the appealing school district and to the Division. If requested by the appealing school district or if the Commission determines that a hearing is necessary, a hearing concerning the review shall be held during the meeting and in accordance with Section 8.00 of these Rules

8.00 COMMISSION HEARING PROCEDURES: APPEALS FROM THE REVIEW BOARD

- 8.01 For each hearing, the appealing school district and the Division each shall have up to ten (10) minutes to present an opening statement, beginning with the appealing school district. The chair of the Commission may grant additional time to either or both parties.
- 8.02 The appealing school district and the Division each shall have up to fifteen (15) minutes to present their cases-in-chief to the Commission, beginning with the appealing school district. The chair of the Commission may grant additional time to either or both parties.
- 8.03 After both parties have presented their cases-in-chief, the appealing school district and the Division each shall have up to five (5) minutes to present a closing statement, beginning with the appealing school district. The chair of the Commission may grant additional time to either or both parties.
- 8.04 Members of the Commission may ask questions of either party at any time throughout the proceedings.
- 8.05 After hearing all testimony and evidence presented, the Commission shall deliberate and may announce its decision at the close of the hearing or may take the matter under advisement.
- 8.06 The Commission shall provide to the school district and the division its final written determination within ten (10) business days of the hearing.

9.00 FINALITY OF COMMISSION DECISIONS

All decisions of the Commission under these rules shall be final and not subject to further appeal or request for rehearing to the Commission, or petition for judicial review under the Arkansas Administrative Procedure Act, Ark. Code Ann. § 25-15-201 *et. seq.*

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Commission for Arkansas Public School Academic Facilities and Transportation

DIVISION Division of Public School Academic Facilities and Transportation

PERSON COMPLETING THIS STATEMENT Lori Freno

TELEPHONE 501/682-4234 **FAX** 501/682-4249 **EMAIL:** lori.freno@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 Rules Governing Appeals from Division Determinations

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;
N/A

(b) The reason for adoption of the more costly rule;
N/A

(c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;
N/A

(d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.
N/A

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 N/A
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

General Revenue N/A
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

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

Current Fiscal Year

General Revenue Zero
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

Next Fiscal Year

General Revenue Zero
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

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

\$ Zero

Next Fiscal Year

\$ Zero

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

\$ Zero

Next Fiscal Year

\$ Zero

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.