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Transmittal Sheet

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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 Division of Public School Academic Facilities and Transportation

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

Statutory Authority for Promulgating Rules Ark. Code Ann. §§ 6-20-2501 et seq.

Rule Title: Commission for Arkansas Public School Academic Facilities and Transportation Rules Governing the Academic Facilities Catastrophic Program

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 Legislative Council

Adopted by State Agency

Date

Dec 3-5, 2021

Jan 3, 2022

Jan 28, 2022

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

Lori Freno lori.freno@ade.arkansas.gov

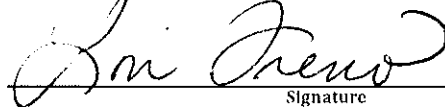
Contact Person

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

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Phone Number

E-mail Address

General Counsel, Arkansas Department of Education

Title

April 22, 2022

Date

**THE COMMISSION FOR ARKANSAS PUBLIC SCHOOL ACADEMIC
FACILITIES AND TRANSPORTATION RULES GOVERNING THE
ACADEMIC FACILITIES CATASTROPHIC PROGRAM**

Effective: May 2, 2022

1.00 REGULATORY AUTHORITY

The Commission for Arkansas Public School Academic Facilities and Transportation has authority to promulgate these Rules under Ark. Code Ann. §§ 6-20-2501 *et seq.* and 25-15-201 *et seq.*

2.00 PURPOSE

The purpose of these Rules is to establish a program and process of providing state financial participation to a school district based on a school district's academic facilities wealth index for eligible catastrophic repairs and new construction projects to supplement insurance or other public or private emergency assistance received by or payable to the school district.

3.00 DEFINITIONS

3.01 "Academic facility" has the same meaning as in Ark. Code Ann. § 6-20-2502(2).

3.02 "Academic facilities wealth index" has the same meaning as in Ark. Code Ann. § 6-20-2502(1).

3.03 "Act of God or violence" means an act, event, happening, or occurrence due to natural or man-made causes (whether a criminal act or otherwise) such as flood, tornado, fire, earthquake, explosion, or other disasters that could not have been prevented by reasonable maintenance, repair, or renovation of an academic facility.

3.04 "Average daily membership" has the same meaning as in Ark. Code Ann. § 6-20-2502(3).

3.05 "Catastrophic project" means a repair, renovation, or new construction project necessary due to such great damage or destruction to an academic facility caused by an Act of God or violence.

3.06 "Commission" means the Commission for Arkansas Public School Academic Facilities and Transportation.

3.07 "Division" means the Arkansas Division of Public School Academic Facilities and Transportation.

- 3.08 “Local enhancements” means the portion of any maintenance, repair, or renovation project or new construction project that is designed to bring an academic facility or related areas such as the physical plant or grounds to a state or condition or efficiency that exceeds state academic facilities standards.
- 3.09 “Local resources” means any moneys lawfully generated by a school district for the purpose of funding the school district’s share of financial participation in any academic facilities project for which a school district is eligible to receive state financial participation under priorities established by the Division. Also referred to as “raised funds” for the purpose of defining a self-funded project.
- 3.10 “Maintenance, repair, and renovation” means any activity or improvement to an academic facility and, if necessary, related areas such as the physical plant and grounds that maintains, conserves, or protects the state of condition or efficiency of an academic facility.
- 3.11 “Millage rate” means the millage rate listed in the most recent tax ordinance approved by the county quorum court under the authority of Ark. Code Ann. § 14-14-904.
- 3.12 “New construction” means any improvement to an academic facility and, if necessary, related areas such as the physical plant and grounds that brings the state of condition or efficiency of the academic facility to a state of condition or efficiency better than the academic facility’s current condition of completeness or efficiency. “New construction” includes a new addition to an existing academic facility and construction of a new academic facility.
- 3.13 “Project” means an undertaking in which a school district engages in:
- 3.13.1 Maintenance, repair and renovation activities with regard to an academic facility;
 - 3.13.2 New construction of an academic facility; or
 - 3.13.3 Any combination of maintenance, repair, and renovation activities with regard to an academic facility and new construction activities with regard to an academic facility.
- 3.14 “Space utilization” means the number of gross square feet per student in a public school academic facility adjusted for academic program, school enrollment, grade configuration, and type of public school in accordance

with rules promulgated by the Commission for Arkansas Public School Academic Facilities and Transportation.

4.00 ACADEMIC FACILITIES CATASTROPHIC PROGRAM APPLICATION PROCESS

- 4.01 A school district may apply for state financial participation to assist with a catastrophic project provided an academic facility in the district has been damaged due to an Act of God or violence that otherwise could not have been prevented by reasonable maintenance, repair or, renovation of the academic facility. The school district must apply in writing to the Division within sixty (60) days of the event of damage occurring. However, the Division may waive this requirement for good cause.
- 4.02 As part of its application for state financial participation in a catastrophic project, the school district shall complete the Catastrophic Program Application form that is posted on the Division's website, and shall provide the Division with the completed form and the following documented evidence:
 - 4.02.1 The estimated cost of the project by a design or construction professional;
 - 4.02.2 The availability of insurance and any other public or private emergency assistance to pay for the project;
 - 4.02.3 A notarized statement from the school district treasurer certifying that the amount of state assistance requested for the emergency project is not covered by insurance or other public or private emergency assistance received by or payable to the school district;
 - 4.02.4 A written estimate from a licensed architect, engineer, or contractor of the cost to repair the damaged facilities;
 - 4.02.5 A written statement of how the catastrophic project supports the prudent and resourceful expenditure of state funds and improves the school district's ability to deliver an adequate and equitable education to public school students in the district;
and
 - 4.02.6 Proof of full replacement value insurance to include-a provision requiring code upgrades.
- 4.03 The Division shall evaluate a school district's application for catastrophic assistance and may conduct an on-site inspection prior to

making a decision on the application as it deems necessary.

4.04 The application shall be submitted to the office of the Director of the Division:

4.04.1 Via first class mail, return receipt requested;

4.04.2 Via hand delivery during normal business hours, with the school district receiving a stamped recognition of the delivery; or

4.04.3 Via electronic mail, with the school district receiving an electronic mail response confirming receipt (not including automatically generated delivery confirmations).

5.00 DIVISION APPROVAL CRITERIA

5.01 The Division's consideration and approval will be based on several factors, including but not limited to the following:

5.01.1 School district compliance with appropriate academic facility standards, including but not limited to, appropriate space utilization;

5.01.2 The amount of availability of insurance or other public or private emergency assistance;

5.01.3 The academic facilities wealth index of the school district;

5.01.4 The prudent and resourceful expenditure of state funds with regard to public school academic facilities;

5.01.5 Whether the facility is considered an academic facility. For example, the Division shall not consider for approval applications for the replacement or repair of administrative buildings, athletic fields, and other facilities not meeting the definition of an academic facility; and

5.01.6 Whether the insurance as required in Section 4.02.6 of these Rules is in force at the time of the catastrophic loss.

5.02 The Division shall consider each application for state financial participation in a catastrophic project on a case-by-case basis, taking into account the funding for the catastrophic program.

6.00 DIVISION AND SCHOOL DISTRICT OBLIGATIONS

- 6.01 If a school district qualifies for state financial participation under these Rules, the Division shall, within thirty (30) calendar days of approval, certify the amount of the state financial participation to the Commission for oversight purposes and the Commission shall, within thirty (30) calendar days of the receipt of the written notice of certification, certify the amount to the Arkansas Department of Education.
- 6.02 School districts shall track and account for the catastrophic funds received as state financial participation under these Rules as restricted funds and shall account for the funds in accordance with provisions of law, including but not limited to, the Arkansas Educational Financial Accounting and Reporting Act of 2004, Ark. Code Ann. § 6-20-2201 *et seq.* and rules established by the Arkansas State Board of Education and the Commission.
- 6.03 Approved school districts shall make every effort to conform a catastrophic project to current academic facilities standards, including appropriate space utilization requirements, unless the Division determines it is impractical to conform the catastrophic project to current standards.
- 6.04 School districts shall use state financial participation funds in a catastrophic program to pay only for the cost of that portion of a catastrophic project that is not covered by insurance or other public or private emergency assistance received by or payable to the school district.
- 6.05 School districts shall comply with all local, state, and federal laws and rules related to construction, repair, or renovation projects including, but not limited to, bidding laws and rules.
- 6.06 The amount of state financial participation shall not exceed the amount resulting from the application of the academic facilities wealth index to the cost necessary to bring the academic facility into compliance with the Arkansas Public School Academic Facility Manual, less any withholding or reduction imposed by the Commission under Ark. Code Ann. § 6-21-114(d) for a school district's failure to comply with the Commission's insurance requirements, including without limitation the failure to carry replacement cost coverage, if applicable, on all buildings and facilities. State financial participation for any approved catastrophic project will be calculated using the most current wealth index applicable to the school district at the time the application was approved.

7.00 APPEAL PROCESS

A school district may appeal any written determination of the Division in

accordance with 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.

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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Classification Number:		
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Contact Person:		Telephone:
Statutory Authority for Promulgating Rules:		
Title of Rule:		
Rule Status	Date Adopted by Agency	Effective Date
<small>(Use drop down to select different status)</small>	MM/DD/YYYY	10 Days After Filing Other: _____ <small>(if other, specify date)</small>
Rule above is proposed and will be replaced by final version		
Financial and/or Fiscal Impact Statement Attached		
Certification of Authorized Officer		
I hereby certify that the attached rules were adopted in compliance with Act 434 of 1967 as amended.		
Signature: _____		Date: _____
Title: _____		