

# **Minority Business Enterprise and Women-Owned Business Enterprise Certification Program** **(Act 1456 of 2003, as amended)** **~~Rules and Regulations~~**

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## **I. Introduction**

The origins of the Minority Business Enterprise (MBE) and Women-Owned Business Enterprise (WBE) Certification Program date back to the creation of the Division of Minority Business Enterprise (Act 544 of 1977) and the passage of the “Minority Business Economic Development Act” (Act 698 of 1991) which established a goal for state agencies to annually procure ten percent (10%) of goods and services from minority businesses. Administration of the Minority Business Economic Development Act was transferred from the Department of Commerce to the Department of Economic Development, now the Arkansas Economic Development Commission (AEDC), in 1979 (Act 1060 of 1979).

Act 1456 of 2003 required the AEDC, through the Division of Minority Business Enterprise, to develop a certification process for minority business enterprises seeking state procurement opportunities. Currently, the Division of Minority Business Enterprise, renamed the Division of Minority and Women-Owned Business Enterprise (Division) by Act 1080 of 2017, and the Office of State Procurement of the Department of Finance and Administration work closely to implement program requirements.

Subsequent amendments to the Minority Business Economic Development Act in 2003, 2007, 2009, 2011, and 2017 have changed the name of the act to the Minority and Women-Owned Business Economic Development Act; expanded and added definitions; enhanced reporting requirements; renamed and expanded the duties of the Division of Minority Business Enterprise and the Minority Business Advisory Council; enhanced the responsibilities of the Office of State Procurement of the Department of Finance and Administration; modified procurement target percentages; and expanded the program to include additional minority groups, service-disabled veterans, and women-owned businesses.

Certification by the Minority Business Enterprise and Women-Owned Business Enterprise Certification Program, although not a prerequisite for contracting with the State of Arkansas for goods and services, enhances the ability of businesses to better understand the state procurement and contracting processes, be aware of state

contracting opportunities, and gain exposure through publication of company information in the Division’s online directory of minority business enterprises and women-owned business enterprises. This, consequently, helps minority-owned and women-owned businesses compete for state contracts and strengthens state agencies’ abilities to meet procurement spending targets which are:

- Ten percent (10%) for minority business enterprises with two percent (2%) allocated for service-disabled veteran-owned minority business enterprises and eight percent (8%) for all other minority business enterprises; and
- Five percent (5%) for women-owned business enterprises.

### **Contact Information**

For more information, please contact:

Arkansas Economic Development Commission

Division of Minority and Women-Owned Business Enterprise

900 West Capitol Avenue, Suite 400

Little Rock, AR 72201

(501) 682-1121

## **I. Introduction**

~~Act 1456 of 2003 states “The Division of Minority Business Enterprise of the Arkansas Economic Development Commission shall promulgate rules to create a certification process for minority business enterprises.”~~

## **II. Rulemaking Authority**

The AEDC has authority, at § 15-4-314, to promulgate rules necessary to create a minority business enterprise and women-owned business enterprise certification process.

## **III. Definitions**

~~A. “Minority Business Enterprise (MBE)” is an independent business entity, which is at least 51% owned by one (1) or more minority persons.~~

~~B. A. “Minority” means a lawful permanent resident of the State of Arkansas who is:~~

~~(i) an African American;~~

- (ii) American Indian;
- (iii) Asian American; ~~or~~
- (iv) Hispanic American;
- (v) Pacific Islander American; or
- (vi) ~~a Service-disabled~~ A service-disabled veteran as designated by the United States Department of Veteran Affairs;

- ~~C. “Minority Business Advisory Council” means the Advisory Council to the Division of Minority Enterprise created under Arkansas Code 15-4-303.~~
- ~~D. “Director” is the Administrator of the Division of Minority Business Enterprise of the Arkansas Economic Development Commission.~~
- ~~E. “Commission” means the Arkansas Economic Development Commission.~~
- B. “Minority and Women-Owned Business Advisory Council” means the appointed council of advisors to the Division of Minority and Women-Owned Business Enterprise whose duties and responsibilities are delineated under § 15-4-307;
- C. “Minority business enterprise” means a business that is at least fifty-one percent (51%) owned by one (1) or more minority persons;
- D. “Women-owned business enterprise” means a business that is at least fifty-one percent (51%) owned by one (1) or more women who are lawful permanent residents of this state.

### **III. IV. Eligible Applicants**

~~Eligible applicants are registered Arkansas Businesses which can submit documentation (see Appendix) to the Arkansas Economic Development Commission's Division of Minority Business Enterprise to prove they are at least 51% owned by a minority or group of minorities, legally entitled to conduct business in the United States, and can demonstrate the capacity to conduct business with the State of Arkansas.~~

~~The firm must be owned by a lawful permanent resident or residents of the state of Arkansas and its annual revenue must not exceed \$10,000,000.~~

To be eligible for certification, applicants must:

- A. Meet the definition of:
  - (i) Minority business enterprise; or
  - (ii) Women-owned business enterprise.

- B. Provide proof of legal organization as a for-profit business entity in good standing with the appropriate governmental agency;
- C. Verify minority or women majority ownership, operation, and management of the business, as applicable, based upon the type of certification requested;
- D. Submit a completed minority business enterprise/women-owned business enterprise application with all required attachments demonstrating the firm's capacity to conduct business with the State of Arkansas (see Appendix); and
- E. Demonstrate that the business's annual revenues are less than \$10,000,000.

Eligible minority and women-owned firms, as defined herein, enterprises that are actively certified with ~~the~~ any of the following organizations may qualify for a streamlined application by submitting the completed application and proof of certification from the qualifying organization:

- ~~Arkansas-Mississippi Southern Region~~ Southern Region Minority Supplier Development Council (AMMSDC), (MBE);
- ~~the Small Business Administration (SBA) 8(a) program~~ Business Development Program; ~~or~~
- ~~the Arkansas Highway and Transportation Department (AHTD) Disadvantaged Business Enterprise (DBE) program of the Arkansas Department of Transportation (DBE); are also eligible to apply for MBE certification from the State of Arkansas.~~
- Women's Business Council-Southwest (WBE); and
- United States Department of Veterans Affairs (SDVOSB).

#### **IV.V. Certification Benefits**

Although certification is not a requirement for contracting for goods and services with the State of Arkansas, Certified MBEs certified minority business enterprises (CMBE) and certified women-owned business enterprises (CWBE) will enjoy several benefits- which include:

- ~~Receive notification~~ Notification of opportunities to ~~do~~ conduct business with state agencies;
- ~~Receive notification~~ Notification of training events, workshops, networking events, and educational opportunities;
- Designation as a ~~certified MBE~~ CMBE or CWBE in the ~~Small and Minority Business Division's~~ Division's online directory;
- ~~Receive~~ Issuance of an official CMBE or CWBE certificate; and
- ~~Simplified re-certification~~ A streamlined certification process.

The State Procurement Director, state agency procurement agents, college and university procurement officials, MBE, WBE, Constitutional offices constitutional officers, and minority business officers will be notified of ~~firms which have attained minority businesses which are CMBE or CWBE certifications.~~

#### **V. VI. Application Certification Process**

- A. Interested applicants shall complete the required forms and send them to the Commission's Division of Minority Business Enterprise with copies of the required documents as listed in the Appendix. To request certification, eligible applicants shall, utilizing forms prescribed by the Division, submit a completed, signed application with all supporting documentation listed in the Appendix.
- B. The Commission Division shall review the application for completeness to determine that:
- (i) All required eligibility, fiscal, managerial, and organizational documentation and attachments have been submitted;
  - (ii) The applicant meets the definition of:
    - a. Minority business enterprise; or
    - b. Women-owned business enterprise;
  - (iii) The applicant has provided proof of legal organization as a for-profit business entity in good standing with the appropriate governmental agency;
  - (iv) There is sufficient documentation to verify minority or woman majority ownership, operation, and management of the business, as applicable, based upon the type of certification requested;
  - (v) ~~check the applicant's~~ All customer business references have been verified.
- C. The Division may:
- (i) ~~and may schedule~~ Schedule a pre-certification interview/site visit with the applicant; and
  - (ii) Examine vendor ~~Vendor~~ agreements, invoices, partnership agreements, and articles of incorporation that relate to business with the State of Arkansas ~~are subject to examination.~~

The Division shall also include as an integral component of the ongoing certification program:

- A. An education program to assist minority business enterprises and women-owned business enterprises in achieving certification; and
- B. Outreach to ensure the broadest possible participation of minority business enterprises and women-owned business enterprises and persons proposing new minority business enterprises or women-owned business enterprises.

Eligible minority and women-owned firms, as defined herein, enterprises that are actively certified with ~~the~~ any of the following organizations may qualify for a

streamlined application by submitting the completed application and proof of certification from the qualifying organization:

- Arkansas-Mississippi Southern Region Minority Supplier Development Council (AMMSDC), (MBE);
- the Small Business Administration (SBA) 8(a) program Business Development Program; or
- the Arkansas Highway and Transportation Department (AHTD) Disadvantaged Business Enterprise (DBE) program of the Arkansas Department of Transportation (DBE); are also eligible to apply for MBE certification from the State of Arkansas.
- Women's Business Council-Southwest (WBE); and
- United States Department of Veterans Affairs (SDVOSB).

#### **VI. VII. MBE CMBE and CWBE Operations**

Certified Minority Business Enterprises CMBE and CWBE are subject to periodic reviews by the Commission Division. It is mandatory to report any change in the status of the business affecting the ability to meet product demand, ~~and/or~~ any change in ownership, with a notarized Notice of Change Affidavit. All business transactions, including billing and the remittance of such, must be conducted under the name appearing on the MBE or WBE certificate.

#### **VII. VIII. Annual Re-Certification Recertification**

Certified MBEs CMBEs and CWBEs are required to recertify every two (2) years. To initiate recertification, CMBEs and CWBEs shall send a Re-Certification Affidavit to the Division of Minority Business Enterprise Recertification Affidavit to the Division thirty (30) days prior to their current expiration date stating their desire to maintain certification.

The Affidavit shall state that the ~~firm is~~ business enterprise continues to be fifty-one percent (51%) 51% minority-owned, -operated and -managed, or fifty-one percent (51%) women-owned, -operated, and -managed, and must be signed by the ~~firm's~~ owner, executive officer, and the chairman of its board of directors, if applicable.

~~The commission maintains the right to re-evaluate the applicant prior to renewal.~~

#### **VIII. IX. Revocation**

The Director of the Division of Minority and Women-Owned Business Enterprise (Director) has the authority to suspend, ~~and/or, under just cause,~~ revoke, or both, the

certification of any business which fails to comply with the ~~intent~~ rules of this program. Any business with a revoked certification will be ineligible to ~~re-apply~~ reapply to the program for a period of ~~one year~~ two (2) years.

Prior to revocation of an MBE or WBE certification under ~~this regulation~~ these rules, the MBE or WBE shall be afforded an opportunity to discuss with the Director the issues which have given rise to the revocation.

## ~~IX.~~ **Moratorium**

~~Given evidence of non-compliance with these regulations, the Director of the Division of Minority Business Enterprise has the authority to place a moratorium for one year on the new certification of any business sector for which two or more firms have received sanctions within any six month period.~~

## **X. Appeals**

~~A.~~ Any applicant who is denied ~~their~~ its request for certification or recertification because they were unable to prove ~~their~~ its minority-owned or women-owned status may appeal the decision to the Minority and Women-Owned Business Advisory Council (Council). A written notice of appeal must be received ~~by the Commission~~ no more than thirty (30) days after the date of the notice of denial. The ~~Minority Business Advisory Council~~ shall meet to hear the appeal within forty-five (45) days of receipt of the written notice.

~~B.~~ Certified businesses may appeal a revocation action to the ~~Minority Business Advisory Council~~ Council. A written notice of appeal must be received ~~by the Commission~~ within thirty (30) days after the date on the notice of the revocation. The ~~Minority Business Advisory Council~~ Council shall meet to hear the appeal within forty-five (45) days of receipt of the written notice.

## Appendix

### List of Documents

1. Completed, signed MBE/WBE application form
2. ~~Copy~~ Proof of certification from qualifying organization\*
3. ~~Copy of the Articles of Incorporation, or Fictitious Name Certificate~~ Organization Information:
  - a. Sole proprietorships (assumed name documents)
  - b. Partnerships (limited partnership documents; partnership, buy-out, and/or profit sharing agreements; partnership or operating agreement required for businesses with two (2) or more owners, evidencing division of shares and profit distribution)
  - c. Corporations (Provide filings in good standing; bylaws; board of directors and/or shareholdings documentation)
4. Copy of bank signature authorization card, form or letter signed by a bank official at your financial institution identifying the person(s) authorized to sign checks on the ~~business~~ business's account (signatory authority)
5. Federal Tax Identification Number and Dun & Bradstreet Number (DUNS)
6. Proof of Arkansas residency (State-issued driver's license or identification card)
7. Evidence of United States citizenship or permanent legal resident alien status (United States passport, United States birth certificate, naturalization papers, permanent legal residence alien card ("green card"), or tribal card)
- ~~8. Copy of Birth Certificate/Passport/Green Card/Tribal Card~~
8. Copy of resume(s) of owner(s), board of directors, and other senior corporate governance/management
9. Company overview
10. Proof of state and federal business income tax filing returns as filed with the Internal Revenue Service (IRS federal transcript) and Arkansas Department of Finance and Administration for the previous ~~3~~ two (2) years, business or personal (Minimum of one (1) year tax filing required for businesses operations)



11. Copy of insurance\*\*
12. Bonding information\*\*
13. Copy of each professional license\*\*
- ~~14. Partnership or Operating Agreement for businesses with 2 or more owners, evidencing division of shares and profit distribution~~
14. Veterans Administration adjudication letter, if applicant is a service-disabled veteran
15. Financial statements\*\*
16. Service agreements\*\*
17. Proof of capital and/or equity\*\*
18. Business customer references

\* Eligible minority- or women-owned businesses certified by a qualifying organization identified in Section ~~V~~ IV. of these rules need only submit the MBE/WBE application form ~~along with~~ and proof of certification from the qualifying organization.

\*\*If required as a normal function of the business

**QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS  
WITH THE ARKANSAS LEGISLATIVE COUNCIL**

**DEPARTMENT/AGENCY** Arkansas Economic Development Commission  
**DIVISION** Division of Minority and Women-Owned Business Enterprise  
**DIVISION DIRECTOR** Pat Brown  
**CONTACT PERSON** Kurt Naumann; Pat Brown  
**ADDRESS** 900 West Capitol; Little Rock, AR 72201  
**PHONE NO.** 501-682-7308 **FAX NO.** 501-682-7499 **E-MAIL** [knaumann@arkansasedc.com](mailto:knaumann@arkansasedc.com)  
**NAME OF PRESENTER AT COMMITTEE MEETING** Kurt Naumann, Pat Brown, Anthony Armstrong  
**PRESENTER E-MAIL** [knaumann@arkansasedc.com](mailto:knaumann@arkansasedc.com); [pbrown@arkansasedc.com](mailto:pbrown@arkansasedc.com); [aarmstrong@arkansasedc.com](mailto:aarmstrong@arkansasedc.com)

**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:

**Donna K. Davis  
Administrative Rules Review Section  
Arkansas Legislative Council  
Bureau of Legislative Research  
One Capitol Mall, 5<sup>th</sup> Floor  
Little Rock, AR 72201**

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1. What is the short title of this rule? Minority Business Enterprise and Women-Owned Business Enterprise Certification Program

This rule implements changes to the Minority Business Enterprise and Women-Owned Business Enterprise Certification Program as a result of Act 1080 of 2017. Changes are as follows:

- A. Expands/amends the program to include women-owned business enterprises;
- B. Modifies procurement spending targets as follows:
  - i. Ten percent (10%) for minority business enterprises with two percent (2%) allocated for service-disabled veteran-owned minority business enterprises and eight percent (8%) for all other minority business enterprises; and
  - ii. Five percent (5%) for women-owned business enterprises.
- C. Adds certification programs from other agencies that would be acceptable as reciprocal under the AEDC program;
- D. Makes technical corrections;
- E. Expands the (renamed) Minority and Women-Owned Business Advisory Council by two (2) members to be appointed by the AEDC Executive Director and limits Council terms to five (5) years, and;
- F. Clarifies and expands the list of required application documents that must be submitted to receive consideration for certification.

2. What is the subject of the proposed rule?

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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 regulation.

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. § 15-4-209(b)(5)-AEDC Enabling legislation and § 15-4-314 for MBE/WBE certification process

7. What is the purpose of this proposed rule? Why is it necessary? This rule implements required changes to the Minority Business Enterprise and Women-Owned Business Enterprise Certification Program as a result of Act 1080 of 2017. Changes are as follows:

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  - Five percent (5%) for women-owned business enterprises.
- C. Adds certification programs from other agencies that would be acceptable as reciprocal under the AEDC program;
- D. Makes technical corrections;
- E. Expands the (renamed) Minority and Women-Owned Business Advisory Council by two (2) members to be appointed by the AEDC Executive Director and limits Council terms to five (5) years, and;
- F. Clarifies and expands the list of required application documents that must be submitted to receive consideration for certification.

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.arkansasedc.com

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

Date: July 5, 2017

Time: 9 am

Bessie Moore Conference Room; AR  
State Library; 900 West Capitol,

Place: Second Floor; LR 72201

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)  
July 5, 2017

11. What is the proposed effective date of this proposed rule? (Must provide a date.)  
September 1, 2017

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. See attached

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

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. None

### **FINANCIAL IMPACT STATEMENT**

#### **PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT** Arkansas Economic Development Commission

**DIVISION** Division of Minority and Women-Owned Business Enterprise

**PERSON COMPLETING THIS STATEMENT** Kurt Naumann

**TELEPHONE** 501-682-7308 **FAX** 501-682-7499 **EMAIL:** knaumann@arkansasedc.com

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** Minority Business Enterprise and Women-Owned Business Enterprise Certification 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, Yes  No

economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?

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) \_\_\_\_\_  
 Total \_\_\_\_\_

General Revenue \_\_\_\_\_  
 Federal Funds \_\_\_\_\_  
 Cash Funds \_\_\_\_\_  
 Special Revenue \_\_\_\_\_  
 Other (Identify) \_\_\_\_\_  
 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) \$250 (Legal Advertisement)  
 Total \$250

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**

**Next Fiscal Year**

\$ \_\_\_\_\_

\$ 0

\$0

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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**

\$ \_\_\_\_\_  
\$0

**Next Fiscal Year**

\$ 0 \_\_\_\_\_

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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

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.

