

ARKANSAS DEPARTMENT OF EDUCATION
DIVISION OF ELEMENTARY AND SECONDARY EDUCATION
SPECIAL EDUCATION AND RELATED SERVICES
24.00 SPECIAL EDUCATION CATASTROPHIC OCCURRENCES
June 14, 2004 Proposed Effective Date – August 2019

24.01 REGULATORY AUTHORITY

24.01.1 These rules shall be known as Arkansas Department of Education Rules to Implement the Appropriation for Special Education Catastrophic Occurrences.

24.01.2 These rules are enacted pursuant to the State Board of Education's authority under Ark. Code Ann. §§ 6-20-2303, 6-20-2304, 6-41-207 and 6-11-105.

24.02 PURPOSE

24.02.1 It is the purpose of these rules to set forth the criteria for determining local school district eligibility for seeking reimbursement for Special Education Catastrophic Occurrences as defined under Ark. Code Ann. ~~6-20-2003~~ § 6-20-2303.

24.02.2 These rules define the process for local school district access to funds for Special Education Catastrophic Occurrences.

24.03 DEFINITIONS

24.03.1 For the purpose of these rules, Special Education Catastrophic Occurrences means those individual cases where special education and related services required by the individualized education program (IEP) of a particular child with disabilities are unduly expensive, extraordinary and/or beyond the routine and normal costs associated with special education and related services provided by the local education agency.

24.03.2 IDEA refers to the Individuals with Disabilities Education Act.

24.03.3 IEP means the individualized education program for a student with disabilities under the IDEA.

24.04 ADMINISTRATION

24.00 SPECIAL EDUCATION CATASTROPHIC OCCURENCES

- 24.04.1 The Special Education Catastrophic Occurrences fund will be administered by the Arkansas Department of Education.
- 24.04.2 In the event that requests for reimbursement exceed the amount of funds available in the Catastrophic Occurrences fund, reimbursements will be pro-rated.
- 24.05 ELIGIBILITY CRITERIA FOR CATASTROPHIC OCCURRENCE
- 24.05.1 A district is deemed eligible to apply for reimbursement under these rules for a catastrophic occurrence when the costs associated with an individual student, after offsets from other available revenue sources, equal or exceed \$15,000.
- 24.05.2 In calculating costs associated with an individual student, the costs must be incurred solely as a result of the provision of special education and related services to the individual student.
- 24.05.3 Ineligible costs include, but may not be limited to, the basic costs of the classroom, such as the maintenance and operation of the classroom, basic materials and supplies, basic transportation and other routine and normal costs associated with the provision of special education and related services to children with disabilities.
- 24.05.4 Eligible costs include any other costs not excluded in ~~§1.05.3~~ 24.05.3 that the district is incurring solely as a result of the provision of special education and related services to this student. Examples include private duty nursing services, special transportation aide, specialized equipment, specific staff development, occupational therapy, physical therapy, speech language pathology, personal care assistance, extended school year services, the pro-rata share of the costs of a teacher whose primary assignment is the student, and Medicaid match.
- 24.05.6 The district must demonstrate and document that it has fully accessed, to the maximum extent possible, other available revenue sources, including Medicaid and Title VI-B, or provide documentation as to why these other revenue sources were unavailable to the district for this catastrophic occurrence.

24.05.7 Other available revenue sources, including Medicaid and Title VI- B, are to be applied by the district as offsets to reimbursable costs for each catastrophic occurrence reimbursed through the Catastrophic Occurrences fund.

24.06 REIMBURSEMENT FOR CATASTROPHIC OCCURRENCES BASED ON INDIVIDUAL STUDENT

24.06.1 The Arkansas Department of Education, Special Education Unit, will provide local education agencies with a format for requesting catastrophic occurrence reimbursement to be completed and submitted to the Special Education Unit no later than ~~May~~ April 1 of each school year.

24.06.2 Reimbursement requests will be reviewed to determine whether the district has incurred a “catastrophic occurrence” as defined in these rules.

24.06.3 After offsets from other revenue sources as specified in ~~§1.05.6~~ 24.05.6, the maximum amount of reimbursement for each catastrophic occurrence will be ~~\$15,000~~ and the sum of the following -

24.06.3.1 ~~Eighty (80)~~ One hundred percent (100%) of ~~any additional the amount above the \$15,000 threshold up to \$50,000 of the amount of the catastrophic occurrence~~ \$65,000, and

24.06.3.2 ~~Fifty (50)~~ Eighty percent (80%) of ~~any additional the amount above \$50,000 \$65,000 up to \$100,000 of the amount of the catastrophic occurrence.~~

24.07 LIMITATION ON REIMBURSEMENT

24.07.1 No individual catastrophic occurrence shall be eligible for reimbursement of more than \$100,000 from this fund per year.

Public Comment regarding Special Education and Related Services Rule, Section 24.00 Special Education catastrophic occurrences

Public Contact: Courtney Salas-Ford; ADE.RulesComments@arkansas.gov

Respectfully Submitted by: Tita De Vore, Rogers Public Schools

Date: March 15, 2019

Thank you for the opportunity to provide comments. Our district has concerns about the proposed changes in catastrophic funding revolving around the committee work, the “winners and losers” that the funding will create and the amount of time the submission process takes for districts.

A catastrophic committee was organized in February 2018. The committee met one time. There has been no summary from that meeting. There were 3 goals for the committee to consider; First, the reduction of paperwork. It takes countless hours to record the required data when in reality the department already has access to this information. The second area was to encourage more districts to seek reimbursement. The department produced a document with proposed reimbursement totals under the new rules. 90 districts will lose money and 74 will gain money. A total of 164 districts requested reimbursement during that year. If more districts lose money how is this encouraging for other and additional districts to request reimbursement? The third goal was to have a better understanding of the definition of catastrophic reimbursement and a profile of a student who would qualify for reimbursement.

According to a slide presentation from the Arkansas Department of Special Education, considerations for proposed changes include the promotion of “equitable distribution of resources for students with the most unduly expensive and extraordinary costs associated with the special education services they need, regardless of the school they attend.” However, in reality a student that meets the Catastrophic Reimbursement profile (ex. weekly speech therapy, physical therapy, occupational therapy, specialized transportation, one-on-one instructional support, and nursing) in a district with higher salaries and more available resources, lower student to staff ratio’s will yield higher balances therefore making it much easier to achieve the proposed required “more than \$15,000” threshold. In turn, this will result in a higher reimbursement. The same student with the same profile and programming in a district with minimum salaries and limited resources, high cost contracted service providers, and higher student to staff ratio’s will yield a much lower balance, therefore the requested reimbursement will be much lower. If these proposed rules were to pass and considering the above scenario this will only discourage districts from the process. If districts had a difficult time meeting the current threshold, it would be impossible for them to meet them under the proposed regulations.

Should the proposed regulations go into effect for the 2019-2020 school year, the districts will also be asked to submit all of the information by April 1st rather than the current deadline of May 1st. With the number of hours it takes districts to justify their requests for reimbursement, it will only further discourage districts in requesting reimbursement. They simply cannot spend the required hours it takes as well as perform or meet the day to day job demands and requirements of a special education supervisor.

The changes will negatively impact our reimbursement for services for our students and we fear that the changes will not promote additional submissions from other districts. Thank you for consideration of our remarks.

Public Comment regarding Special Education and Related Services Rule, Section 24.00 Special Education catastrophic occurrences

Public Contact: Courtney Salas-Ford; ADE.RulesComments@arkansas.gov

Respectfully submitted by: Tita De Vore on behalf of the Arkansas Association of Special Education Administrators

Date: March 15, 2019

Thank you for the opportunity to provide comments. The AASEA Board has concerns about the proposed changes in catastrophic funding revolving around the committee work, the “winners and losers” that the funding will create and the amount of time the submission process takes for districts.

A catastrophic committee was organized in February 2018. The committee met one time. There has been no summary from that meeting. There were 3 goals for the committee to consider; First, the reduction of paperwork. It takes countless hours to record the required data when in reality the department already has access to this information. The second area was to encourage more districts to seek reimbursement. The department produced a document with proposed reimbursement totals under the new rules. 90 districts will lose money and 74 will gain money. A total of 164 districts requested reimbursement during that year. If more districts lose money how is this encouraging for other and additional districts to request reimbursement? The third goal was to have a better understanding of the definition of catastrophic reimbursement and a profile of a student who would qualify for reimbursement.

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The changes will negatively impact reimbursement for services for students with disabilities across the state and we fear that the changes will not promote additional submissions from other districts. Thank you for consideration of our remarks.

MEMO

Date: 03.25.2019

To: Courtney Salas-Ford

From: Ken Ramey, Superintendent

Re: Public Comment on Special Education and Related Services Rules, Section 24.00
Special Education Catastrophic Occurrences

Comments:

We appreciate the opportunity to share comments regarding the aforementioned rules related to funding for special education catastrophic occurrences. Our district leadership team has identified the following concerns about the impact adoption of these rules will have on school districts across the state:

- All things being equal, the difference between reimbursements under the current rules and those under the proposed rules will result in a loss of approximately \$192,000 to our district.
- The new rules are less likely to encourage districts to apply for catastrophic reimbursements because the amount of time required to document such expenses remains the same as under the current rules, while the amount of eligible reimbursements is likely to be less.
- The average cost of catastrophic occurrences for a majority of students who qualify under the current rules is between the proposed range of \$15,000-\$65,000 to earn 100% reimbursement. This is likely to result in a loss of revenue to cover those costs. For example, assume the total cost for services after offsets of one student is \$25,000. Under the current rules, the district is eligible to apply for the initial \$15,000 cost and 80% of the \$10,000 above the initial threshold or \$23,000. Under the proposed rules, the eligible reimbursement amount for this same student is \$10,000. That's a loss of \$13,000 for one student. The amounts submitted for 33 of our 34 students who qualified last year fit in the proposed range. Assuming this scenario is typical of those 33 students; under the new rules our district will have over \$429,000 less in eligible reimbursements even though costs remain the same.
- Districts cannot deny or reduce services based on funding amounts. Arkansas Code 6-41-205 guarantees the provision of all regular and special education, corrective, and supporting services required by children with disabilities to the end that they shall receive the benefits of a free and appropriate public education (FAPE). Arkansas Code 6-41-206(2)(b) states it is the responsibility of the local school district and state to provide FAPE based upon the individualized education program developed for children with disabilities. The high costs to

Siloam Springs School District

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districts for ensuring FAPE for students with disabilities make it difficult to ensure ALL students receive the benefits of FAPE.

- Based on Table 11 on page 17 of your report on catastrophic funding dated June 18, 2018, the number of students who qualify for catastrophic occurrences and the number of districts and charters who apply for reimbursements related to these occurrences have steadily increased from 2015 to 2017, while the funding per student and percent of approved funds received has steadily decreased during the same time period. Projections indicate this trend will continue in the near future.
- Districts are paying what we believe is a disproportionate amount of the costs incurred for these “supporting services”; that’s approximately 61% or \$509,000 for our district in the 2017-2018 school year. The state has disregarded the guidance of its consultants Picus & Associates, who in 2003 noted the need to provide supplemental funding for catastrophic occurrences. “The small category of students with severe and multiple disabilities...are not found in equal percentages in all districts and **their excess costs need to be fully funded by the state.**”
- Adoption of the new rules will result in an increased cost for just one of many already unfunded mandates. Consider a few of these requirements - licensed art and physical education teachers in elementary schools; teacher-to-pupil ratios, counselors spend 90% of their time for direct and indirect counseling services, meeting the needs of students who demonstrate the characteristics of dyslexia, the Right to Read Act, implementation of the PLC process, the “recommendations” of the governor’s safety commission, and maintenance. We believe all these requirements benefit our students and support their success at school; however, the state rarely provides additional funds for implementation and when funds are available they are often miniscule when compared to actual costs.

Again, we appreciate the opportunity to make comments regarding this and all ADE proposed rules, and we trust that our comments will be given serious consideration.

Subject: Catastrophic Occurrences proposed rule changes

Date: Tuesday, March 26, 2019 at 11:17:08 AM Central Daylight Time

From: KELLY HAYES

To: ADE Rules Comments

Thank you for the opportunity to provide comments on the proposed rule changes for Catastrophic Occurrence reimbursement. The Springdale School District has approximately 22,000 students in grades K-12. Of that amount, approximately 2,375 students are served under the Individuals with Disabilities Education Act (IDEA).

In the 2017-18 fiscal year, the Springdale School District had approximately 117 students that met the criteria established for catastrophic reimbursement. The total expenses submitted for catastrophic reimbursement for these students was \$2,644,685. Our reimbursement for that year was \$914,359.53 or 34.5% of the expenses submitted.

Under the proposed rule changes to catastrophic reimbursement, Springdale's annual reimbursement would drop by almost three hundred thousand dollars. It is important to note that our district's costs to educate these students will not decrease at all. In fact, the costs will increase due to higher salaries, increased costs of supplies and equipment, etc. This rule change will create a financial hardship on our district.

It is clear that the amount of funds currently eligible to reimburse districts for students with significant needs is insufficient (as evidenced by the 34.5% reimbursement rate previously mentioned). However, simply changing the criteria by which school districts are eligible for reimbursement creates winners and losers. Springdale would lose approximately one-third of its annual reimbursement, not because of any changes our district has made, but simply because of the proposed rule changes.

We encourage the Special Education Unit of the Arkansas Department of Education to leave the present rules in place or to consider alternative rules that do not negatively impact any one district by hundreds of thousands of dollars in lost reimbursement. We would welcome the opportunity to discuss this issue.

--

Mr. Kelly Hayes
Comptroller
Springdale School District
479-750-8804

**ARKANSAS DEPARTMENT OF EDUCATION
RULES GOVERNING THE SPECIAL EDUCATION
CATASTROPHIC OCCURRENCE FUND**

PUBLIC COMMENTS AND AGENCY RESPONSES

Name: Tita De Vore, Rogers Public Schools, and on behalf of the Arkansas Association of Special Education Administrators

Comment: Our district has concerns about the proposed changes in catastrophic funding revolving around the committee work, the “winners and losers” that the funding will create and the amount of time the submission process takes for districts.

A catastrophic committee was organized in February 2018. The committee met one time. There has been no summary from that meeting. There were 3 goals for the committee to consider; First, the reduction of paperwork. It takes countless hours to record the required data when in reality the department already has access to this information. The second area was to encourage more districts to seek reimbursement. The department produced a document with proposed reimbursement totals under the new rules. 90 districts will lose money and 74 will gain money. A total of 164 districts requested reimbursement during that year. If more districts lose money how is this encouraging for other and additional districts to request reimbursement? The third goal was to have a better understanding of the definition of catastrophic reimbursement and a profile of a student who would qualify for reimbursement.

According to a slide presentation from the Arkansas Department of Special Education, considerations for proposed changes include the promotion of “equitable distribution of resources for students with the most unduly expensive and extraordinary costs associated with the special education services they need, regardless of the school they attend.” However, in reality a student that meets the Catastrophic Reimbursement profile (ex. weekly speech therapy, physical therapy, occupational therapy, specialized transportation, one-on-one instructional support, and nursing) in a district with higher salaries and more available resources, lower student to staff ratio’s will yield higher balances therefore making it much easier to achieve the proposed required “more than \$15,000” threshold. In turn, this will result in a higher reimbursement. The same student with the same profile and programming in a district with minimum salaries and limited resources, high cost contracted service providers, and higher student to staff ratio’s will yield a much lower balance, therefore the requested reimbursement will be much lower. If these proposed rules were to pass and considering the above scenario this will only discourage districts from the process. If districts had a difficult time meeting the current threshold, it would be impossible for them to meet them under the proposed regulations.

Should the proposed regulations go into effect for the 2019-2020 school year, the districts will also be asked to submit all of the information by April 1st rather than the current deadline of May 1st. With the number of hours it takes districts to justify their requests for reimbursement, it will only further discourage districts in requesting reimbursement. They simply cannot spend the required hours it takes as well as perform or meet the day to day job demands and requirements of a special education supervisor. The changes will negatively impact reimbursement for services for students with disabilities across the state and we fear that the changes will not promote additional submissions from other districts.

Agency Response: The intent of the proposed revisions to these rules is to create a more equitable distribution of the funds available to assist school districts with students who meet the definition of "special education catastrophic occurrence" in state statute and restructure the process of determining eligibility for funding to meet its intended purpose. Each student must be

considered individually in determining the eligibility and need for funding, and not a total amount of supplemental funding for a district.

A committee of stakeholders was convened on April 4, 2018, to review current catastrophic funding procedures, including the funding formula, current allowable expenses, and required documentation, consider opportunities for streamlining the current process, review other states' methods for distributing catastrophic funds, compare differing processes, and make recommendations for revisions to the current process resulting in more equitable distribution.

As a result of the committee's work, the following changes will be implemented to reduce the burden to districts in requesting catastrophic funding:

- prior year student information will automatically be carried over into the current year;
- the application will include basic student information and description of services with estimated costs; the budget accompanies the application; and approval of the application is not based on using correct fund codes;
- after the threshold is met, the district will list the materials, services, support, and personnel that is being submitted for reimbursement;
- all applications will be reviewed by a team of ADE staff to determine allowable and eligible costs; and
- the ADE finance office will review the budgets.

It is believed that these improvements in streamlining the catastrophic process as well as further information being provided to districts will encourage more districts to participate. These changes aim to address the impact that the highest-cost students have on all school districts, regardless of the size of the district, which will benefit all school districts and decrease the amount of time necessary for staff to seek funding.

Name: Ken Ramey, Superintendent, Siloam Springs School District

Comment: Our district leadership team has identified the following concerns about the impact adoption of these rules will have on school districts across the state:

- All things being equal, the difference between reimbursements under the current rules and those under the proposed rules will result in a loss of approximately \$192,000 to our district.
- The new rules are less likely to encourage districts to apply for catastrophic reimbursements because the amount of time required to document such expenses remains the same as under the current rules, while the amount of eligible reimbursements is likely to be less.
- The average cost of catastrophic occurrences for a majority of students who qualify under the current rules is between the proposed range of \$15,000-\$65,000 to earn 100% reimbursement. This is likely to result in a loss of revenue to cover those costs. For example, assume the total cost for services after offsets of one student is \$25,000. Under the current rules, the district is eligible to apply for the initial \$15,000 cost and 80% of the \$10,000 above the initial threshold or \$23,000. Under the proposed rules, the eligible reimbursement amount for this same student is \$10,000. That's a loss of \$13,000 for one student. The amounts submitted for 33 of our 34 students who qualified last year fit in the proposed range. Assuming this scenario is typical of those 33 students; under the new rules our district will have over \$429,000 less in eligible reimbursements even though costs remain the same.
- Districts cannot deny or reduce services based on funding amounts. Arkansas Code 6-41-205 guarantees the provision of all regular and special education, corrective, and supporting services

required by children with disabilities to the end that they shall receive the benefits of a free and appropriate public education (FAPE). Arkansas Code 6-41-206(2)(b) states it is the responsibility of the local school district and state to provide FAPE based upon the individualized education program developed for children with disabilities. The high costs to districts for ensuring FAPE for students with disabilities make it difficult to ensure ALL students receive the benefits of FAPE.

- Based on Table 11 on page 17 of your report on catastrophic funding dated June 18, 2018, the number of students who qualify for catastrophic occurrences and the number of districts and charters who apply for reimbursements related to these occurrences have steadily increased from 2015 to 2017, while the funding per student and percent of approved funds received has steadily decreased during the same time period. Projections indicate this trend will continue in the near future.
- Districts are paying what we believe is a disproportionate amount of the costs incurred for these “supporting services”; that’s approximately 61% or \$509,000 for our district in the 2017-2018 school year. The state has disregarded the guidance of its consultants Picus & Associates, who in 2003 noted the need to provide supplemental funding for catastrophic occurrences. “The small category of students with severe and multiple disabilities...are not found in equal percentages in all districts and **their excess costs need to be fully funded by the state.**”
- Adoption of the new rules will result in an increased cost for just one of many already unfunded mandates. Consider a few of these requirements - licensed art and physical education teachers in elementary schools; teacher-to-pupil ratios, counselors spend 90% of their time for direct and indirect counseling services, meeting the needs of students who demonstrate the characteristics of dyslexia, the Right to Read Act, implementation of the PLC process, the “recommendations” of the governor’s safety commission, and maintenance. We believe all these requirements benefit our students and support their success at school; however, the state rarely provides additional funds for implementation and when funds are available they are often miniscule when compared to actual costs.

Agency Response: The comparison between reimbursement under the current and proposed rules does not take into account the proration necessary under the current process in which claims were paid at approximately 40%. The comparison also does not calculate claims individually, which is the appropriate process, and would have actually resulted in an increase in funding under this scenario. The proposed changes to these rules are intended to address the high-cost of students impacting school districts, not supplement funding for school districts.

In addition to the \$15,000 threshold, the 2006 Odden Picus adequacy report recommended that catastrophic funding be made available when costs exceed state and federal funding received by districts including IDEA Part B and Medicaid. Catastrophic funding was not intended to supplement special education programming, but it has become a mechanism for doing so in some districts. We believe by restructuring the formula to better align with the definition of a "catastrophic occurrence" in state statute, we will better be able to project if increased funding is necessary.

Name: Kelly Hayes, Comptroller, Springdale School District

Comment: The Springdale School District has approximately 22,000 students in grades K-12. Of that amount, approximately 2,375 students are served under the Individuals with Disabilities Education Act (IDEA). In the 2017-18 fiscal year, the Springdale School District had approximately 117 students that met the criteria established for catastrophic reimbursement. The total expenses submitted for catastrophic

reimbursement for these students was \$2,644,685. Our reimbursement for that year was \$914,359.53 or 34.5% of the expenses submitted.

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We encourage the Special Education Unit of the Arkansas Department of Education to leave the present rules in place or to consider alternative rules that do not negatively impact any one district by hundreds of thousands of dollars in lost reimbursement.

Agency Response: The intent of the proposed revisions to these rules is to create a more equitable distribution of the funds available to assist school districts with students who meet the definition of "special education catastrophic occurrence" in state statute and restructure the process of determining eligibility for funding to meet its intended purpose; not to create "winners and losers". Catastrophic funding was not intended to supplement special education programming, but it has become a mechanism for doing so in some districts. We believe by restructuring the formula to better align with the definition of a "catastrophic occurrence" in state statute, we will better be able to project if increased funding is necessary.

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

Current Fiscal Year

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

Total N/A

Next Fiscal Year

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

Total N/A

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

\$ 0

Next Fiscal Year

\$ 0

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

\$ _____

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.