

STATEMENT OF IMMINENT PERIL

Act 46 of 2003 (1st Ex. Sess.), which became effective July 1, 2003 created and established on the books of the Chief Fiscal Officer of the State (the same being the Director of the Department of Finance and Administration), the State Treasurer and the State Auditor, the "84th Session Projects Account" within the "General Improvement Fund," for the purpose of financing for various construction and other vital projects to be conducted by state and local governmental entities. This Act requires the Chief Fiscal Officer to collect documentation from recipients of funds appropriated pursuant to the Act verifying that the recipient has met all pre-conditions established in the appropriation act before any expenditure of funds is made. The Act also authorizes the Chief Fiscal Officer to set the policies and procedures for the presentation of such documentation and authorizes the Chief Fiscal Officer to require a compliance audit to determine whether such pre-conditions have been met. Therefore, the Chief Fiscal Officer has determined that a regulation is necessary to inform recipients of these funds of these policies and procedures.

Consequently, the Chief Fiscal Officer hereby determines that without this regulation, there will be confusion concerning the requirements for receiving these vital benefits. Further, it is imperative that such policies and procedures are set into place as the General Assembly has included within the Act an emergency clause making the Act effective July 1, 2003. Therefore, it is determined that a state of imminent peril exists requiring the adoption of this regulation on an emergency basis as provided in Ark. Code Ann. § 25-15-204, and that this regulation shall be effective on and after July 10, 2003.

Issued this _____ day of _____, 2003.

Richard A. Weiss, Director
Arkansas Department of Finance and
Administration and Chief Fiscal Officer of the State

QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE

DEPARTMENT/AGENCY	Department of Finance and Administration
DIVISION	Office of Internal Audit
DIVISION DIRECTOR	Richard A. Weiss, Director
CONTACT PERSON	Frank Ellis, Assistant Administrator, Office of Internal Audit
ADDRESS	1515 W 7 th Street, Room 215, Little Rock, Arkansas 72201
PHONE NUMBER	501-371-1470
FAX NO.	501-371-1471
E-MAIL	frank.ellis@dfa.state.ar.us

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 attached to the front of two (2) copies of your proposed rule and mail or deliver to:

Donna K. Davis
Subcommittee on Administrative Rules and Regulations
Arkansas Legislative Research
Bureau of Legislative Research
Room 315, State Capitol
Little Rock, AR 72201

1. What is the short title of this rule?

Implementing Act 46 of 2003 (1st Ex. Sess.). Eighty-Fourth Session Projects Account within the General Improvement Fund

2. What is the subject of the proposed rule?

The administration of the disbursements of the 84th Sessions Projects Account.

3. Is this rule required to comply with federal statute or regulations? Yes No

If yes, please provide the federal 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? July 10, 2003

When does the emergency rule expire? 10/28/2003

Will this emergency rule be promulgated under the regular 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.

To simplify and clarify the administration of the disbursements of the 84th Session Projects account; to provide for increased public confidence in the disbursement of funds used for 84th Session Projects Account; to ensure the fair and equitable treatment of all fund recipients, and to provide safeguards for the maintenance and administration of the disbursement process.

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 markup 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 should be clearly labeled "mark-up".

6. Cite the state law that grants the authority for this proposed rule. If codified, please give Arkansas Code citation.

Ark. Code Ann. 19-11-217, 19-11-715, 21-5-207, 25-8-102 and ACA 10-3-309

7. What is the purpose of this proposed rule? Why is it necessary?

To provide accountability for use of funds disbursed in accordance with ACT 46 of 2003 (1st Ex. Sess.) by: requiring a certification process for the disbursements of funds; requiring disclosure of any business relationships of related parties either directly or indirectly; and, requiring documentation to support the use of funds to ensure funds are expended in accordance with appropriated acts.

8. Will a public hearing be held on this proposed rule? Yes No

If yes, please complete the following:

Date: August 5, 2003

Time: 1 P.M.

Place: Ragland Building 2nd Floor Training Room, (2021) 1900 W 7th Street, Little Rock, AR

9. When does the public comment period expire for permanent promulgation? (Must provide a date.)

August 11, 2003

10. What is the proposed effective date of this proposed rule? (Must provide a date.)

September 15, 2003

11. Do you expect this rule to be controversial? Yes No If yes, please explain.

12. 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.

Names	Category	For	Against
Unknown		<input type="checkbox"/>	<input type="checkbox"/>

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT: Department of Finance and Administration
DIVISION: Office of Internal Auditt
PERSON COMPLETING THIS STATEMENT: Frank Ellis, Assistant Administrator
TELEPHONE NO.: 501-371-1470 **FAX NO.:** 501-371-1471 **EMAIL:** frank.ellis@dfa.state.ar.us

FINANCIAL IMPACT STATEMENT

To comply with Act 1104 of 1995, please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE:

Implementing Act 46 of 2003 (1st Ex. Sess.). Eighty-Fourth Session Projects Account within the General Improvement Fund

1. Does this proposed, amended, or repealed rule or regulation have a financial impact?
Yes No
2. If you believe that the development of a financial impact statement is so speculative as to be cost prohibitive, please explain.
3. If the purpose of this rule or regulation is to implement a federal rule or regulation, please give the incremental cost for implementing the regulation. Please indicate if the cost provided is the cost of the program.

Current Fiscal Year

Next Fiscal Year

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

4. What is the total estimated cost by fiscal year to any party subject to the proposed, amended, or repealed rule or regulation? Identify the party subject to the proposed regulation, and explain how they are affected.

Current Fiscal Year

Next Fiscal Year

None _____ None _____

5. What is the total estimated cost by fiscal year to the agency to implement this regulation?

Current Fiscal Year

Next Fiscal Year

None _____ None _____

STATE OF ARKANSAS
DEPARTMENT OF FINANCE AND ADMINISTRATION

REGULATION

IMPLEMENTING ACT 46 OF 2003 (1st Ex. Sess.), EIGHTY-FOURTH SESSION
PROJECTS ACCOUNT WITHIN THE GENERAL IMPROVEMENT FUND

Pursuant to the authority vested in the Department of Finance and Administration by Ark. Code Ann. §§ 19-11-217, 19-11-715, 21-5-207, and 25-8-102, and in the Chief Fiscal Officer of the State by Ark. Code Ann § 10-3-309, the Director of the Department of Finance and Administration, with the approval of the Governor, does hereby promulgate the following Regulation for the enforcement and administration of ACT 46 of 2003 (1st Ex. Sess.), Eighty-Fourth Session Projects Account within the General Improvement Fund (84th Session Projects Account), to take effect on July 10, 2003.

1. Purpose - The purpose of this Regulation is to:

- a. Simplify and clarify the administration of the disbursements of the 84th Session Projects Account;
- b. Provide for increased public confidence in the disbursement of funds used for 84th Session Projects Account;
- c. Ensure the fair and equitable treatment of all fund recipients; and
- d. Provide safeguards for the maintenance and administration of the disbursement process.

2. Definitions – For purposes of this Regulation, unless otherwise required by the context, the following definitions apply:

A. **APPROPRIATION** shall mean a legislative act authorizing the expenditure of a designated amount of public funds for a specific purpose.

B. **BIENNIUM** shall mean a two-year period beginning the first of July immediately following the conclusion of the regularly scheduled Arkansas Legislative session.

C. **BUSINESS RELATIONSHIP** shall mean the relationship between an organization receiving funds and the individual or entity for which the organization agrees to purchase or lease tangible personal property, real property, or services (or any agreement for the disposal of commodities and services.) The term business relationship includes, but is not limited to, awards and notices of award; contracts of a fixed price, cost, or incentive type; contracts providing for the issuance of job or task orders, leases, lease purchase agreements, letter contracts, purchase orders, and professional or consultant services contracts.

D. COMPLIANCE AUDIT shall mean an audit conducted to determine whether the use of funds was in compliance with the appropriated purposes of the General Assembly.

E. CONSTITUTIONAL OFFICER shall mean the Governor, Lieutenant Governor, Secretary of State, Treasurer of State, Attorney General, Commissioner of State Lands, and Auditor of State.

F. DIRECT BENEFIT shall mean receiving immediate and straightforward favorable treatment or advantage without the intervention of any person, condition, or agency.

G. EMPLOYEE RELATIONSHIP shall mean the relationship between the organization receiving funds and a person employed by the organization on a full-time or part-time basis.

H. EXECUTIVE DISCRETIONARY DIVISION PROJECTS shall consist of the projects approved for funding in the 84th Session Projects Account for which the Governor shall authorize release of monies to fund such projects, subject to availability of funds in the State Treasury.

I. FUND RECIPIENT shall mean any entity, organization, institution, city or municipality, department and agency approved by the General Assembly to receive appropriated funds through the 84th Session Projects Account.

J. GENERAL IMPROVEMENT FUND shall consist of monies set aside by the General Assembly to be used for financing improvement projects.

K. IMMEDIATE FAMILY MEMBER shall mean an individual's spouse, children of that individual or his or her spouse, and brothers, sisters, or parents of the individual or his or her spouse and in-laws.

L. INDIRECT BENEFIT shall mean receiving favorable treatment or advantage other than by direct benefit such as through the efforts of intervening persons, conditions, or agencies.

M. LEGISLATIVE DIVISION PROJECTS shall consist of the projects approved for funding in the 84th Session Projects Account other than the projects listed as Executive Discretionary Division Projects.

N. MAINTENANCE shall mean to support, preserve, sustain and keep in a given existing condition of efficiency or state of repair.

O. MATCHING FUNDS shall mean the monies equal to or exceeding appropriated funds through sources outside of the appropriations creating the original funds, such as through federal matching funds and private donations.

P. MEMBERS OF THE GENERAL ASSEMBLY shall mean the elected members of the Arkansas House of Representatives or of the Arkansas Senate. The term “legislator,” when used in this Regulation shall have the same meaning.

Q. METHOD OF FINANCE shall mean a written summary statement setting forth a general description of a proposed project; its estimated overall costs; its estimated commencement and completion dates and the method proposed to finance its cost.

R. STATE EMPLOYEE shall mean any employee of any state agency employed in a regular salary position, full-time, part-time or extra-help position, not to include contract labor.

3. Available Funds

A. The Treasurer of State shall first make allocations on the basis of forty two and two tenths percent (42.2%) of the total available funds to the Executive Discretionary Division Projects and the remainder of the total available funds to the Legislative Division Projects until all Legislative Division Projects have been fully funded.

B. The Legislative Division Projects shall be used to provide funds to each project enumerated in the Legislative Division Projects in proportion that each project’s allocation bears to the total of the allocations of all projects enumerated in the Legislative Division Projects. **Although funding levels have been established, there are no guarantees that funds will become available and be released in amounts sufficient to reach the 100% level of funding. Therefore, fund recipients should judiciously plan accordingly.**

C. Funds made available to the Executive Discretionary Division Projects may be used for any project or portion thereof enumerated within the Executive Discretionary Division Projects, but not to exceed the amount set out for the project.

D. The Chief Fiscal Officer of the State shall notify the Legislative Council of the Governor’s released funds for projects at the time that the Department of Finance and Administration is notified.

4. Letter of Instruction

A. Each Fund Recipient shall provide their address of record, point of contact information and telephone number to the Disbursing Officer of the Department of Finance and Administration (DFA Disbursing Officer) by August 1, 2003. The address of record shall be the business address of the Fund Recipient.

B. By August 1, 2003, the DFA Disbursing Officer shall issue a letter of instruction to all designated Fund Recipients. The letter shall contain information regarding the disbursement process, required supporting documentation, blank forms to be completed by each fund recipient and returned to the DFA Disbursing Officer by September 1, 2003.

5. Funding Process

A. The DFA Disbursing Officer shall mail monies/warrants to Fund Recipients to the addresses of record within 20 working days after the Office of Accounting of the Department of Finance and Administration receives distribution from the Treasurer of the State. Distribution of funds will be delayed if the Fund Recipient fails to provide the required Certification for Use of Funds form (DFA-SP-1) or provides an incomplete Certification for Use of Funds form (DFA-SP-1) as required in 7(A) of these rules.

B. In the event that an incomplete Certification for Use of Funds form (DFA-SP-1) is received, the DFA Disbursing Officer shall notify the Fund Recipient by letter to their address of record within 10 working days. The initial distribution to the Fund Recipient maybe delayed up to 60 days after the receipt of a complete Certification for Use of Funds form (DFA-SP-1).

6. Disbursement Controls

A. Monies may not be disbursed under this Regulation in excess of the State Treasury funds actually available and provided by law.

B. Recipients of funds under this Regulation shall have the authority to accept and use grants and donations, including Federal funds, and its unobligated cash income or funds, to compensate for any deficiency in appropriated state funds for any approved project.

C. Applicable provisions of the State Purchasing Law, the General Accounting and Budgetary Procedures Law, the Revenue Stabilization Law and any other applicable fiscal control laws of this State and regulations promulgated by the Department of Finance and Administration, as authorized by law, shall be strictly complied with in disbursement of any funds provided by the 84th Session Projects Account unless specifically provided otherwise by law.

7. Use of Funds Notification Process

A. The initial application and certification by designated Fund Recipients establishing the intended purpose and specific use of the funds shall be delivered to the DFA Disbursing Officer, via the Certification for Use of Funds form (DFA-SP-1) by September 1, 2003.

B. The Fund Recipient shall provide updated notification to the DFA Disbursing Officer at any time that the specific use of the funds as disclosed on the initial Certification for Use of Funds form (DFA-SP-1) is changed. The new notification shall also be made on the Certification for Use of Funds form (DFA-SP-1).

C. An Expenditure Report form (DFA-SP-3) shall be completed by the Fund Recipient as of December 31, 2004 and sent to the DFA Disbursing Officer within 10 working days thereafter. An Expenditure Report form (DFA-SP-3) shall then be prepared at the end of every calendar year until the project is completed or the final use of the appropriated funds.

D. Notification by Fund Recipient as to the actual purpose and use of the funds shall be delivered to the DFA Disbursing Officer, via the Expenditure Report form (DFA-SP-3), within 30 days after completion of the project or final use of the funds.

E. The failure of an applicant to comply with the certification process as set forth in this section may cause delays in receiving funding.

8. Matching Funds – Any matching funds as may be provided in law shall be certified to the Chief Fiscal Officer of the State prior to any disbursement of 84th Session Projects Account funds and the commencement of the project.

9. Criteria and Preconditions – Expenditure of the funds authorized by appropriation of 84th Session Projects Account shall be made only upon:

- (a) documentation to the Chief Fiscal Officer of the State that all criteria or preconditions established in the appropriation act have been met, and
- (b) a Method of Finance has been filed with the Office of Accounting in the Department of Finance and Administration, if required.

10. Disclosure

A. For purposes of the requirements of this Regulation, disclosure is required of any of the following that have a business or employment relationship with the Fund Recipient.

- (1) member of the Arkansas General Assembly;
- (2) constitutional officer;
- (3) board or commission member;
- (4) state employee; or
- (5) the immediate family member, including the spouse, of any of (1) through (4).

B. Failure to disclose information set out in this section shall result in potential penalties, such as recoupement of previously disbursed money or disqualification from receiving future distributions.

- (1) The DFA Disbursing Officer shall deliver all disclosures with potential conflicts to the Joint Budget Committee during legislative session and the Legislative Council between sessions and to the Chief Fiscal Officer of the State for determination of appropriateness. Approval from these sources must

be obtained before the DFA Disbursing Officer can release funds to the Fund Recipient.

- (2) Disclosures by Fund Recipients shall be delivered to the DFA Disbursing Officer via the Relationship Disclosure Form (DFA-SP-2) by September 1, 2003 or at such time as a relationship requiring disclosure may be discovered.

11. Adequate Records Maintenance – For audit purposes, Fund Recipients shall store and maintain on-site, for three years after final disbursement of funds, records of the following:

- (a) all receipts and invoices;
- (b) all applicable statutes and regulations;
- (c) all documents and forms required by this Regulation;
- (d) all correspondence pertaining to funds; and
- (e) all procurement contracts.

12. Compliance Audit – any recipient of appropriated funds from the 84th Session Projects Account:

- (a) may be required to file a compliance audit, and
- (b) is also subject to an audit by the Division of Legislative Audit in order to determine that the use of the funds was in compliance with the intent and appropriated purposes of the General Assembly.

13. Non-compliance with this Regulation – If it is found through a review of Fund Recipient reports, a compliance audit, or through any other means that a recipient of funds under Act 46 of 2003 (1st Ex. Sess.) or this Regulation has expended funds for any purpose other than that approved by law, the Chief Fiscal Officer of the State may take any or all of the following actions:

- (a) withhold current funds to said recipient pending correction of the unapproved use of funds;
- (b) require reimbursement of misused funds as outlined in Section 14 below; or
- (c) take any other action authorized by law to correct the misuse of funds or to demand reimbursement of misused funds.

14. Reimbursement of Funds

A. If, as a result of an audit as outlined in Section 12 above, it is found that a recipient of funds under Act 46 of 2003 (1st Ex. Sess.) or this Regulation has expended funds for any purpose other than that approved, that recipient shall provide reimbursement of expended funds within 30 days after said determination.

B. Reimbursement of expended funds shall be made through a check payable to: DFA Disbursing Officer and mailed to P.O. Box 2485, Little Rock, Arkansas 72203-2485. The DFA Disbursing Officer shall deposit the reimbursement as a refund of the expenditure into the fund from which it was originally disbursed. If a reimbursement check is returned due to insufficient funds or is dishonored for any other reason, it shall be considered that said payment was not made.

C. If a recipient of funds hereunder does not provide reimbursement of misused funds as directed under this section, the Chief Fiscal Officer of the State may make a recommendation to the Legislative Council between sessions and to the Joint Budget Committee during sessions that no further funds under Act 46 of 2003 (1st Ex. Sess.) or any other subsequent appropriation act be appropriated for use by the Fund Recipient.

15. Regulation Supplemental to Current Law - No provision of these rules shall be considered to repeal any requirement of existing law or regulations promulgated pursuant to existing law.

Date _____

Richard A. Weiss, Director
Arkansas Department of Finance and
Administration and Chief Fiscal Officer of the State