

ARKANSAS REGISTER

Proposed Rule Cover Sheet



Secretary of State
John Thurston
500 Woodlane Street, Suite 026
Little Rock, Arkansas 72201-1094
(501) 682-5070
www.sos.arkansas.gov



Name of Department _____

Agency or Division Name _____

Other Subdivision or Department, If Applicable _____

Previous Agency Name, If Applicable _____

Contact Person _____

Contact E-mail _____

Contact Phone _____

Name of Rule _____

Newspaper Name _____

Date of Publishing _____

Final Date for Public Comment _____

Location and Time of Public Meeting _____

DRAFT
Arkansas Rural Connect Coronavirus Rule

- 1. BACKGROUND**
- 2. AUTHORITY**
- 3. EXPEDITED REVIEW**
- 4. DISTRIBUTION OF FUNDS**
- 5. MONITORING FUND DISBURSEMENTS**
- 6. MONITORING PROJECT**
- 7. EFFECTIVE DATE**

SECTION 1. BACKGROUND

The Director of the Arkansas Economic Development Commission (“Director”) issues this Rule to respond to urgent, telecommunication needs in this State for communities impacted to the COVID-19 pandemic. On or about February 21, 2020, the Director issued the Arkansas Rural Connect Broadband Rule (hereafter, the “Broadband Rule”) to implement the Arkansas Rural Connect Program (hereafter, “Arkansas Rural Connect,” or “Arkansas Rural Connect Program,” or “ARC”). This Broadband Rule was promulgated prior to the issuance of State and Federal public health guidelines responding to the COVID-19 pandemic.

The COVID-19 pandemic has severely impacted the citizens of this State. New public health guidelines encourage, and, in some cases require, citizens to practice “social distancing,” staying at least six (6) feet away from other people as much as possible. In light of these restrictions, COVID-19 has brought about an urgent and immediate need for broadband internet access. Normal day to day activities can no longer be done safely. Broadband enables workers to telework, patients to use telemedicine services, K-12 and college students and unemployed workers in need of reskilling to participate in distance education, religious people to participate in online worship services, and all citizens to shop online, interact with friends through Skype and other video chat tools, and keep up with the latest news and public health guidelines.

While the COVID-19 pandemic has negatively impacted the state’s economy, the federal government has instituted a major relief effort under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The CARES Act provides substantial allocations of funding to states for coronavirus response, broadly defined. Guidance provided by the US Treasury describes allowable uses of CARES Act funding. In general, CARES Act money cannot be used for regular budget support, and must be used for coronavirus response, but this includes both public health related measures and economic relief to address the “second-order effects” of the crisis. All CARES Act funds must be spent before the end of December 30, 2020.

The Arkansas Rural Connect program promotes broadband deployment in rural areas of Arkansas that lacks meaningful and efficient broadband services. The ARC program and its purposes align with allowable uses of CARES Act funds. However, Arkansas Rural Connect is

designed as a medium- to longer-term investment program, requiring deployment only by late in 2022, which lies well outside the CARES Act spending window.

Due to the urgent need for broadband for distance learning, telemedicine and the need for social distancing, necessitated by the COVID-19 pandemic, there is a need to issue the ARC Coronavirus Rule to disperse funds immediately and to accelerate deployment of broadband to address these needs to the extent possible.

SECTION 2. AUTHORITY

This Rule is authorized to be issued by the Director of the Arkansas Economic Development Commission (“AEDC”) under Ark. Code Ann. § 15-4-209(b) (5) which provides that AEDC may promulgate rules necessary to implement the programs and services offered by AEDC. On or about August 9, 2019, Governor Asa Hutchinson authorized a transfer of funding for the implementation and administration of the ARC Program to AEDC. Pursuant to Ark. Code Ann. § 15-4-209(a)(1), AEDC is authorized to administer grants to assist with the economic development in the State. The ARC Program is therefore authorized to administer the ARC grant and authorized to issue administrative rules under Ark. Code Ann. § 15-4-209(b) (5) as a service offered by AEDC.

SECTION 3. EXPEDITED REVIEW

A. Expedited Review and Approval of Completed Applications

(1) Applications must be completed to be entitled to Expedited Review. Due to the COVID-19 pandemic crisis, completed application submissions will receive an expedited review while the funding window is still open. The funding window shall remain open upon the passing of these rules so long as funds are available. Special attention entitling organizations for expedited review will be given to: (a) qualified projects that are able to deploy six months to a year, to at least 90% of the locations targeted by the project (the 90% deployment rate is flexible, but preferred, and must be clearly stated in your application); or (b) projects falling under the Broadband Rule’s \$3,000 cap per unserved location connection (the \$3,000 cap is flexible, but preferred). These qualified projects must state, in a separate writing attached to the application, how they will assist with telemedicine, distance learning, telework or all three. Areas that are eligible for federal broadband grants will receive a low priority towards funding but will still be eligible to apply. Preference may be given to applications that expedite current expansion plans of providers. The expansion plans must deploy to areas that lack broadband and can be deployed in six months or a year. The ARC population threshold of five hundred (500) people still applies. Failure to accurately state the number of unserved citizens in an area will not be a bar to applying or possibly receiving a grant award. Rural unserved or underserved communities is a primary goal of this program. Communities that do not meet the population threshold will still be able to partner with other communities to meet that eligibility criteria. Focus will be given to internet speed and whether there is internet service in the areas meeting the population threshold. All approved applications must meet eligibility criteria and follow all program requirements under

the ARC rules. However, grant awards under these ARC Coronavirus Rules shall control over any conflicting ARC broadband rules.

B. Deadlines under Broadband Rule

(1) Due to the urgency of deploying broadband to underserved areas during the COVID-19 pandemic, some of the deadlines in the Arkansas Rural Connect program timeline may be moved forward to facilitate faster decision-making. Due to the need for expediency, the scoring rubric described in the Broadband Rule may or may not be used in making award decisions. The Broadband Office and technical review team will evaluate applications until funding ends.

SECTION 4. DISTRIBUTION OF FUNDS

Due to COVID-19, approved projects will immediately receive disbursement of funds up to the maximum amount of funding allowable under the ARC program. Depending on the project, the Broadband Manager, with the approval of the Secretary of Commerce, may increase the maximum amount of funding per project under the ARC program. This funding mechanism contrasts with the usual fiscal rules of the Arkansas Rural Connect program and helps to ensure that projects will not be delayed by cash flow constraints on the part of awardees. In other respects, including submittal of receipts and payment of penalties for non-performance or early termination of service, awardee ISPs shall be subject to the same obligations as other ARC participants. The Broadband Manager makes grant award recommendations to the Secretary of Commerce or his designee. The Secretary, or his designee, has final authority on who is awarded a grant.

SECTION 5. MONITORING FUND DISBURSEMENTS

Applicants which accept funding under this Rule shall follow all the requirements under the ARC rules. This includes these rules for monitoring deployment and use of funds until the conclusion of the project. Applicants receiving funds under this rule are subject to the right of the Broadband Office or its designee to conduct quarterly audits. The Broadband Manager, or his designee, with the permission of the Secretary of Commerce, may make random audits in addition to quarterly audits. This right to conduct audits does not eliminate the responsibility of grant awardees to submit timely receipts and documentation of quarterly expenditures. Grant recipients, upon receipt of these funds, shall follow these monitoring rules until the conclusion of deployment. Deployment will not end until an evaluation of the project is made by the Broadband Office or its designee.

SECTION 6. MONITORING PROJECT

The Broadband Office or its designee will be assigned to monitoring of implementation of broadband infrastructure construction awarded to approved applicants.

The Broadband Office or its designee will strategically review guidelines for the ARC broadband implementation projects within each region and awarded ISP network and shall report to the Broadband Office/Arkansas Department of Commerce should areas fall into non-compliance. This manner of compliance verification shall be achieved by, but not limited to, the following 3 stages:

Initial Stage:

1. Conduct pre-construction analysis of project scope prior to deployment.

Mid Stage:

1. Review project status updates (milestones) to ensure timely and proper implementation of network construction, and related equipment and material installation.
2. Inspect (Spot check) new construction sites in and around newly developed broadband areas and any improvements made to already existing broadband areas.
3. Oversight of the construction and tests of the new network segments and network topology to ensure the service delivery of a minimum of 25Mbps Down/3Mbps Up for end users regardless of geographical location.

Final Project Compliance:

1. Monitor the expenditure of awarded funds to ensure financial application is purposed as directed.

The Broadband Office or its designee, upon occurrences of non-compliance, will report its findings to the Arkansas Department of Economic Development, who will require awardees to take appropriate remedial measures to return the project to compliance.

Funds must be used in the most efficient manner during deployment efforts. Any discovery of misappropriated or misapplied funds must be reimbursed by the awardees and applied appropriately to the project, as intended. Supporting documents shall be required from awardees demonstrating this was done. Nothing in this rule shall be construed as waiving the State's sovereign immunity.

SECTION 7. EFFECTIVE DATE

This Rule is effective upon signature by the Director after review and approval by the Arkansas Legislative Council, ten (10) days after filing of the approved Rule with the Arkansas Secretary of State.

MIKE PRESTON
DIRECTOR
ARKANSAS ECONOMIC DEVELOPMENT COMMISSION

DATE



DEPARTMENT OF COMMERCE

ASA HUTCHINSON | Governor MICHAEL PRESTON | Secretary

ECONOMIC IMPACT STATEMENT OF PROPOSED RULES OR REGULATIONS

EO 05-04: Regulatory Flexibility

Department: Arkansas Economic Development **Division:** Legal
Commission

Contact Person: Steven Porch
Contact Phone: 501-682-1121

Date: June 3, 2020
Contact Email: SPorch@ArkansasEDC.com

Title or Subject:

Rule: "Arkansas Rural Connect Coronavirus Rule"

Benefits of the Proposed Rule or Regulation

1. Explain the need for the proposed change(s). Did any complaints motivate you to pursue regulatory action? If so, please explain the nature of such complaints.

This Rule accelerates application review and funding under the ARC Rural Connect program to speed up implementation of broadband telecommunication technologies for communities responding to COVID-19 pandemic guidelines.

2. What are the top three benefits of the proposed rule or regulation?

This Rule: (1) accelerates review and approval of completed applications for broadband grants under the Rural Connect program to serve communities responding to the COVID-19 distancing requirements or public health requirements or guidelines; (2) accelerates funding for such projects; and (3) maintains required monitoring of such projects.

See the **Summary** we attached to the BLR Questionnaire for more details.

3. What, in your estimation, would be the consequence of taking no action, thereby maintaining the status quo?

Limitations or delay to adequately provide broadband needs to communities in need of such technology to urgently respond to COVID-19 restrictions.

4. Describe market-based alternatives or voluntary standards that were considered in place of the proposed regulation and state the reason(s) for not selecting those alternatives.

The proposed program and rule uses state grant based funds to partner with eligible areas and internet service providers to encourage market-based participation by partner ISPs and broadband providers.

Impact of Proposed Rule or Regulation

5. Estimate the cost to state government of collecting information, completing paperwork, filing, recordkeeping, auditing and inspecting associated with this new rule or regulation.

None.

6. What types of small businesses will be required to comply with the proposed rule or regulation? Please estimate the number of small businesses affected.

None.

7. Does the proposed regulation create barriers to entry? If so, please describe those barriers and why those barriers are necessary.

None.

8. Explain the additional requirements with which small business owners will have to comply and estimate the costs associated with compliance.

None.

9. State whether the proposed regulation contains different requirements for different sized entities, and explain why this is, or is not, necessary.

None.

10. Describe your understanding of the ability of small business owners to implement changes required by the proposed regulation.

The propose Rule does not require "small business owners" to implement provisions in the proposed Rule.

11. How does this rule or regulation compare to similar rules and regulations in other states or the federal government?

None that we are aware of at this time.

12. Provide a summary of the input your agency has received from small business or small business advocates about the proposed rule or regulation.

We have received no comments from small businesses at this time.

SUMMARY

ARKANSAS ECONOMIC DEVELOPMENT COMMISSION

Arkansas Rural Connect Coronavirus Rule

=====

To: Arkansas Legislative Council & Arkansas Bureau of Legislative Research

From: Steven Porch, Chief Legal Officer, Arkansas Department of Commerce

Date: JUNE 3, 2020

=====

LEGISLATIVE AUTHORITY FOR RULE

This rule is issued by the Director of the Arkansas Economic Development Commission ("Director"). Ark. Code Ann. § 15-4-209(b) (5) provides that AEDC may promulgate rules necessary to implement the programs and services offered by AEDC. On or about August 9, 2019, Governor Asa Hutchinson authorized a transfer of funding for the implementation and administration of the ARC Program to AEDC. Pursuant to Ark. Code Ann. § 15-4-209(a)(1), AEDC is authorized to administer grants to assist with the economic development in the State. The ARC Program is therefore authorized to administer the ARC grant and authorized to issue administrative rules under Ark. Code Ann. § 15-4-209(b) (5) as a service offered by AEDC.

BACKGROUND AND PURPOSE OF RULE

The funding round of Arkansas Rural Connect (ARC) is occurring under circumstances that were not anticipated when the Arkansas Rural Connect program was developed. The COVID-19 pandemic has severely impacted the citizens of Arkansas and the world. COVID-19 has necessitated the imposition of new public health guidelines that encourage, and in some cases require, citizens to practice "social distancing," staying at least 6 feet away from other people as much as possible. COVID-19 has brought about an urgent and immediate need for broadband internet access. Normal day to day activities can no longer be done safely. Broadband enables workers to telework, patients to use telemedicine services, K-12 and college students and unemployed workers in need of reskilling to participate in distance education, religious people to participate in online worship services, and all citizens to shop online, interact with friends through Skype and other video chat tools, and keep up with the latest news and public health guidelines.

While the COVID-19 pandemic has negatively impacted the state's economy, the federal government has instituted a major relief effort entitled the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The CARES Act provides substantial allocations of funding to states for coronavirus response, broadly defined. Guidance provided by the US Treasury describes allowable uses of CARES Act funding. In general, CARES Act money cannot be used for regular budget support, and must be used for coronavirus response, but this includes both public health related measures and economic

relief to address the “second-order effects” of the crisis. All CARES Act funds must be spent before the end of December 30, 2020.

The Arkansas Rural Connect program promotes broadband deployment in rural areas of Arkansas that lacks meaningful and efficient broadband services. The ARC program and its purposes align with allowable uses of CARES Act funds. However, Arkansas Rural Connect is designed as a medium- to longer-term investment program, requiring deployment only by late in 2022, which lies well outside the CARES Act spending window.

Due to the urgent need for broadband, necessitated by the COVID-19 pandemic, this rule is needed to disperse funds immediately and to accelerate deployment to the extent possible.

EXPLANATION OF THE PROPOSED RULE

ACCELERATED APPLICATION REVIEW

This Rule accelerates review, approval and funding for the following ARC Rural Connect applicants: completed application submissions will receive an expedited review while the funding window is still open. Special attention will be given to qualified projects that are able to deploy in less than a year, preferably 6 to 8 months, if not sooner, to at least 90% of the locations targeted by the project. This 90% deployment rate is flexible, but preferred, and must be clearly stated in your application. The same is true with the ARC rules \$3,000 cap per unserved location connection. This \$3,000 cap is flexible, but preferred. All approved applications must meet eligibility criteria under the ARC rules. Due to the urgency of deploying broadband to underserved areas during the COVID-19 pandemic, some of the deadlines in the Arkansas Rural Connect program timeline may be moved forward to facilitate faster decision-making. Due to the need for expediency, the scoring rubric described in the ARC rules may or may not be used in making award decisions. The Broadband Office and technical review team will evaluate applications until funding ends.

DISTRIBUTION OF FUNDS

Due to COVID-19, approved projects will immediately receive disbursement of funds up to the maximum amount of funding allowable under the ARC program. Depending on the project, the Broadband Manager with the approval of the Secretary of the Arkansas Department of Commerce, can increase the maximum amount of funding per project under the ARC program. This funding mechanism contrasts with the usual fiscal rules of the Arkansas Rural Connect program and helps to ensure that projects will not be delayed by cash flow constraints on the part of awardees. In other respects, including submittal of receipts and payment of penalties for non-performance or early termination of service, awardee ISPs shall be subject to the same obligations as other ARC participants.