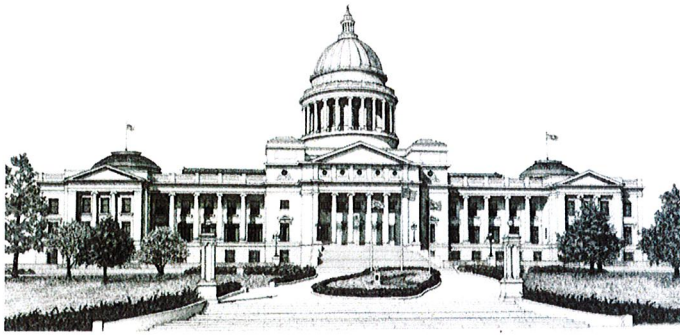


ARKANSAS REGISTER

Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



Secretary of State

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For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency ARKANSAS ECONOMIC DEVELOPMENT COMMISSION

Department DEPARTMENT OF COMMERCE

Contact STEVEN PORCH E-mail sporich@arkansasedc.com Phone 501-682-2432

Statutory Authority for Promulgating Rules _____

Rule Title: Supplemental Emergency Arkansas Rural Connect Coronavirus Rule

Intended Effective Date

(Check One)

Date

☒ Emergency (ACA 25-15-204)

Legal Notice Published _____

☐ 10 Days After Filing (ACA 25-15-204)

Final Date for Public Comment _____

☐ Other _____
(Must be more than 10 days after filing date.)

Reviewed by Legislative Council 8/31/2020

Adopted by State Agency 9/2/2020

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

Steven Porch

sporich@arkansasedc.com

9/21/2020

Contact Person

E-mail Address

Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Signature

501-682-2432

sporich@arkansasedc.com

Phone Number

E-mail Address

Chief Legal Counsel for Department of Commerce

Title

9/21/2020

Date

SUPPLEMENTAL EMERGENCY ARKANSAS RURAL CONNECT CORONAVIRUS RULE

2020 AUG 31 PM 12:22
FILED
DOCKETED SERVICES

1. **BACKGROUND**
2. **AUTHORITY**
3. **STATEMENT OF EMERGENCY**
4. **ELECTRIC COOPERATIVES, OTHER ENTITIES AND DEADLINES**
5. **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.

An Emergency ARC Coronavirus Rule is currently in force. However, due to the ever increasing 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 this Supplemental ARC Coronavirus Rule to add other entities that are capable of deploying broadband quickly within the State of Arkansas, to offer match fund incentives for entities who have received federal awards for broadband deployment in Arkansas and allow the Arkansas Economic Development Commission's Broadband Office to purchase broadband deployment equipment or devices that aid or assist with receiving broadband at an Arkansas resident.

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. This rule is also authorized to be issued under Ark. Code Ann. § 25-15-204(c). The Director finds that imminent peril to the public health, safety, or welfare or compliance with a federal law or regulation requires adoption of a rule upon less than thirty (30) days' notice.

SECTION 3. STATEMENT OF EMERGENCY

The Director finds that a public emergency exists for promulgation of this Rule as an Emergency Rule. Under the Coronavirus Aid, Relief, and Economic Security (CARES) Act funds have to be expended under this Act by the State prior to December 30, 2020 in order to be used by the State. Deploying broadband structures is a time consuming process, and the State needs as much time as possible for funding the various projects before the end of the year deadline.

SECTION 4. ELECTRIC COOPERATIVES, OTHER ENTITIES AND DEADLINES

A. Eligibility: Electric Cooperatives and Other Entities

Electric Cooperatives or their subsidiaries and any other entity that has a one-year track record of providing voice, internet, broadband and/or electric distribution or transmission services to at least 500 retail customers are now eligible to apply for ARC grants. This includes municipalities that own their own utility service. Electric Cooperatives and other qualified entities must follow all ARC rules the same as the internet service providers (ISP) and will receive the same treatment as ISPs under the ARC rules. Financial records, deployment experience and/or retail customer lists are not an absolute bar to funding projects. Moreover, organizations or entities that do not meet this criteria for eligibility may submit an application and the project will be reviewed on a case by case basis. These organizations may be required to

submit financial records, customer lists and any other documentation deemed necessary for the Broadband Office to determine the stability of the company and the ability for the company to deploy within the time prescribed by the Broadband Office. ARC funding caps may be waived.

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 number of months to deploy is flexible and can be extended beyond one year at the discretion of the ARC Broadband Office, but one year is the max time preferred. The 90% deployment rate is flexible, but preferred, and must be clearly stated in your application and; (b) projects falling under the Broadband Rule's \$3,000 cap per unserved location connection is preferred, but flexible. 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) is preferred, but flexible. 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. The number of unserved residences in an area is flexible. All approved applications must meet eligibility criteria and follow all program requirements under the ARC rules. However, grant awards under these Supplemental Emergency ARC Coronavirus Rules shall control over any conflicting ARC broadband rules.

B. Deadlines under Broadband Rule


These rules are in defense or preparation for not only COVID-19 but any other pandemic or disaster that may befall Arkansans now or the foreseeable future. Telemedicine/health, telework and distance learning statewide is one of the goals of this program. As such, the Broadband Office and technical review team will evaluate applications until funding ends.

SECTION 5. EFFECTIVE DATE

This Rule is effective upon approval under § 10-3-309 and shall be in effect for 120 days unless later replaced by a permanent rule.



**MIKE PRESTON, DIRECTOR
ARKANSAS ECONOMIC DEVELOPMENT COMMISSION**



DATE

DRAFT SUPPLEMENTAL EMERGENCY ARKANSAS RURAL CONNECT CORONAVIRUS RULE

- 1. BACKGROUND**
- 2. AUTHORITY**
- 3. STATEMENT OF EMERGENCY**
- 4. ELECTRIC COOPERATIVES, OTHER ENTITIES AND DEADLINES**
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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.

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SECTION 3. STATEMENT OF EMERGENCY

The Director finds that a public emergency exists for promulgation of this Rule as an Emergency Rule. Under the Coronavirus Aid, Relief, and Economic Security (CARES) Act funds have to be expended under this Act by the State prior to December 30, 2020 in order to be used by the State. Deploying broadband structures is a time consuming process, and the State needs as much time as possible for funding the various projects before the end of the year deadline.

SECTION 4. ELECTRIC COOPERATIVES, OTHER ENTITIES AND DEADLINES

A. Eligibility: Electric Cooperatives and Other Entities

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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 number of months to deploy is flexible and can be extended beyond one year at the discretion of the ARC Broadband Office, but one year is the max time preferred. The 90% deployment rate is flexible, but preferred, and must be clearly stated in your application and; (b) projects falling under the Broadband Rule's \$3,000 cap per unserved location connection is preferred, but flexible. 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) is preferred, but flexible. 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. The number of unserved residences in an area is flexible. All approved applications must meet eligibility criteria and follow all program requirements under the ARC rules. However, grant awards under these Supplemental Emergency ARC Coronavirus Rules shall control over any conflicting ARC broadband rules.

B. Deadlines under Broadband Rule

These rules are in defense or preparation for not only COVID-19 but any other pandemic or disaster that may befall Arkansans now or the foreseeable future. Telemedicine/health, telework and distance learning statewide is one of the goals of this program. As such, the Broadband Office and technical review team will evaluate applications until funding ends.

SECTION 5. EFFECTIVE DATE

This Rule is effective upon approval under § 10-3-309 and shall be in effect for 120 days unless later replaced by a permanent rule.

MIKE PRESTON, DIRECTOR
ARKANSAS ECONOMIC DEVELOPMENT COMMISSION

DATE

SUMMARY

ARKANSAS ECONOMIC DEVELOPMENT COMMISSION

Supplemental Emergency Arkansas Rural Connect Coronavirus Rule

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To: Arkansas Legislative Council & Arkansas Bureau of Legislative Research

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

Date: JUNE 16, 2020

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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. This rule is also authorized to be issued under Ark. Code Ann. § 25-15-204(c). The Director finds that imminent peril to the public health, safety, or welfare or compliance with a federal law or regulation requires adoption of a rule upon less than thirty (30) days' notice.

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

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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. The ARC program has recently received \$100 million in CARES Act money to fund broadband projects. The Supplemental Emergency Arkansas Rural Connect Coronavirus Rule allows more companies capable of deploying broadband in Arkansas an opportunity to apply and receive ARC grant funding.

The Director finds that a public emergency exists for promulgation of this Rule as an Emergency Rule. Under the Coronavirus Aid, Relief, and Economic Security (CARES) Act funds have to be expended under this Act by the State prior to December 30, 2020 in order to be used by the State. Deploying broadband structures is a time consuming process, and the State needs as much time as possible for funding the various projects before the end of the year deadline.

EXPLANATION OF THE PROPOSED SUPPLEMENTAL RULE

Electric Cooperatives or their subsidiaries and any other entity that has a one-year track record of providing voice, internet, broadband and/or electric distribution or transmission services to at least 500 retail customers are now eligible to apply for ARC grants. This includes municipalities that own their own utility service. Electric Cooperatives and other qualified entities must follow all ARC rules the same as the internet service providers (ISP) and will receive the same treatment as ISPs under the ARC rules. Financial records, deployment experience and/or retail customer lists are not an absolute bar to funding projects. Moreover, organizations or entities that do not meet this criteria for eligibility may submit an application and the project will be reviewed on a case by case basis. These organization may be required to submit financial records, customer lists and any other documentation deemed necessary for the Broadband Office to determine the stability of the company and the ability for the company to deploy within the time prescribed by the Broadband Office. ARC funding caps may be waived.

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