

ARKANSAS REGISTER

Transmittal Sheet

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



Secretary of State

John Thurston

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Little Rock, Arkansas 72201-1094

(501) 682-5070

www.sos.arkansas.gov



For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency _____

Department _____

Contact _____ E-mail _____ Phone _____

Statutory Authority for Promulgating Rules _____

Rule Title: _____

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 12-29-2020

Adopted by State Agency 12-29-2020

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

Contact Person

E-mail Address

12-29-2020

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.)

Renée M. Doty
Signature

Phone Number

E-mail Address

Title

12-29-2020

Date



Michael Preston
Secretary of Commerce,
Executive Director
Arkansas Economic
Development Commission

Ready for Business Grant Program Emergency Rule 2020

EMERGENCY STATEMENT

The Arkansas Economic Development Commission (AEDC) has determined that a change to the terms and conditions of the Ready for Business Grant Program is necessary because of recent changes to federal law directly impacting the program.

The emergency rule will allow AEDC to extend the deadlines for recipients to incur expenses and submit receipts to September 30, 2021 and October 31, 2021, respectively. An emergency rule is necessary due to the pending deadlines under the program that have been directly affected by a change in federal law.

EMERGENCY RULE SUMMARY

- The Ready for Business Grant Program is funded entirely through federal CARES Act appropriation.
- The current Ready for Business Grant Program terms and conditions state that covered expenses under the program must be incurred no later than December 30, 2020, the deadline specified under the original CARES Act.
- On December 21, 2020, Congress amended the CARES Act to extend the deadline for eligible expenses to December 31, 2021.
- The proposed emergency rule changes the deadline for expenses to be incurred from December 20, 2020, to September 30, 2021.
- Similarly, the deadline for submitting receipts to AEDC is extended from January 31, 2021 to October 31, 2021.

EFFECTIVE DATE

This rule shall become effective on December 29, 2020 upon filing with the Secretary of State and shall expire 120 days thereafter.

RULEMAKING AUTHORITY

The Arkansas Economic Development Commission has grant making and rulemaking authority under A.C.A. § 15-4-209(a)(1) and § 15-4-209(b)(5).

QUESTIONNAIRE
FOR FILING PROPOSED RULES WITH THE
ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT/AGENCY Department of Commerce
DIVISION Arkansas Economic Development Commission
DIVISION DIRECTOR Mike Preston
CONTACT PERSON Jim Hudson; Renee Doty
ADDRESS 1 Commerce Way, Little Rock, AR 72202
PHONE NO. (501) 682-7303 **FAX NO.** _____ **E-MAIL** jhudson@arkansasedc.com
NAME OF PRESENTER AT COMMITTEE MEETING Jim Hudson; Renee Doty
PRESENTER E-MAIL jhudson@arkansasedc.com; rdoty@arkansasedc.com

INSTRUCTIONS

- A. Please make copies of this form for future use.
B. Please answer each question completely using layman terms. You may use additional sheets if necessary.
C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this
D. Rule" below.
E. Submit two (2) copies of the Questionnaire and Financial Impact Statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Jessica C. Sutton
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

1. What is the short title of this rule? Ready for Business Grant Program Emergency Rule

2. What is the subject of the proposed rule? To extend the deadline for incurring expenses under the grant program to September 30, 2021 and the deadline for submitting receipts to October 31, 2021.

3. Is this rule required to comply with a federal statute, rule, or regulation? Yes ☐ No ☒

If yes, please provide the federal rule, regulation, and/or statute citation.

4. Was this rule filed under the emergency provisions of the Administrative Procedure Act?

Yes ☒ No ☐

If yes, what is the effective date of the emergency rule? Upon filing of the approved final rule with the Sec. of State

When does the emergency rule expire? 120 days after filing of the approved final rule with the Secretary of State

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes ☒ No ☐

5. Is this a new rule? Yes ☒ No ☐ If yes, please provide a brief summary explaining the rule.

Current program terms and conditions were not promulgated as rules but were reviewed by ALC after publication. The proposed emergency rule includes all program provisions, with the changes to the two deadlines noted. We are not requesting review and approval of terms and conditions that are not changing.

Does this repeal an existing rule? Yes ☐ No ☒ If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule? Yes ☐ No ☒ If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."

While not technically an amendment to an existing rule, we are requesting review and approval of the change to the existing program terms that had been previously reviewed by the ALC in connection with an appropriation request to fund the Ready for Business Grant Program. A mark-up is therefore provided indicating the changed terms which extend the deadlines for incurring expenses and reporting receipts due to changes in federal law adopted on December 21, 2020 pursuant to Division N, Title X, Sec. 1001 of the Consolidated Appropriations Act, 2021. Under the amended terms and conditions, the deadline for incurring expenses will now be September 30, 2021, and for submitting receipts will be October 31, 2021.

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

Pursuant to A.C.A. § 15-4-209(a)(1) and § 15-4-209(b)(5) AEDC has authority to promulgate rules governing administration of the Ready for Business Grant Program.

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

When the Ready for Business program terms and conditions were originally published, the federal CARES Act designated December 30, 2020 as the deadline by which program expenses must be incurred. AEDC required that recipients provide receipts no later than January 31, 2021. On December 21, 2020, Congress amended the CARES Act to extend the expense deadline to December 31, 2021. Based on the change in federal law, AEDC is extending the deadline for incurring expenses to September 30, 2021 and the deadline for submitting receipts to October 31, 2021. Amending the program terms to conform to new federal law will give grant recipients more time to expend their funds and benefit their businesses.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b).

www.arkansasedc.com/Rules

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

Date: _____

Time: _____

Place: _____

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

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

Upon the filing of the approved final rule with the Secretary of State

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice. _____

13. Please provide proof of filing the rule with the Secretary of State as required pursuant to Ark. Code Ann. § 25-15-204(e). We will provide after filing _____

14. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known.

Recipients of Ready for Business grants will benefit from the change and may choose to comment upon it.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Department of Commerce

DIVISION Arkansas Economic Development Commission

PERSON COMPLETING THIS STATEMENT Jim Hudson

TELEPHONE NO. (501) 682-7303 **FAX NO.** _____ **EMAIL:** jhudson@arkansasedc.com

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two (2) copies with the Questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Ready for Business Grant Program Emergency Rule

1. Does this proposed, amended, or repealed rule have a financial impact? Yes ☐ No ☒

2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?
Yes ☒ No ☐

3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes ☒ No ☐

If an agency is proposing a more costly rule, please state the following:

- a) How the additional benefits of the more costly rule justify its additional cost;

- b) The reason for adoption of the more costly rule;

- c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and

- d) Whether the reason is within the scope of the agency's statutory authority, and if so, please explain.

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

Next Fiscal Year

General Revenue _____

General Revenue _____

Federal Funds _____

Federal Funds _____

Cash Funds _____

Cash Funds _____

Special Revenue _____

Special Revenue _____

Other (Identify) _____

Other (Identify) _____

Total \$ 0.00

Total \$ 0.00

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

Current Fiscal Year

Next Fiscal Year

General Revenue _____

General Revenue _____

Federal Funds _____

Federal Funds _____

Cash Funds _____

Cash Funds _____

Special Revenue _____

Special Revenue _____

Other (Identify) _____

Other (Identify) _____

Total \$ 0.00

Total \$ 0.00

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

Current Fiscal Year

Next Fiscal Year

\$ 0

\$ 0

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

Current Fiscal Year

Next Fiscal Year

\$ 0

\$ 0

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7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?
Yes ☐ No ☒

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

- C. **Waivers.** No conditions or provisions of these terms and conditions may be waived unless approved by AEDC in writing.
- D. **Freedom of Information Act.** Applicant acknowledges that AEDC is a public entity of the State of Arkansas and is subject to the requirements of the Arkansas Freedom of Information Act, A.C.A. § 25-19-101 et. seq. ("FOIA"). AEDC must disclose to an FOIA requestor information concerning Applicant when, in the opinion of AEDC's legal counsel, AEDC is legally required to disclose the requested information. Information concerning Applicant that may be disclosed under FOIA includes the identity of Applicant and the amount of Grant Funds it may have received.

Arkansas Ready for Business Grant Program Terms & Conditions
(Updated December 28, 2020)

1. **Grant Program.**

- A. Any applicant (“Applicant”) requesting grant funds (“Grant Funds”) from the Arkansas Economic Development Commission (“AEDC”) agrees to use such funds only as set forth in these terms and conditions. Applicant acknowledges and agrees that any grant made by AEDC is discretionary and that Applicant may not be awarded any Grant Funds or a lesser amount of Grant Funds than requested.
- B. Applicant acknowledges that it is responsible for correctly completing its application for Grant Funds and that AEDC will not consider incomplete applications.
- C. The provisions of the Arkansas Ready for Business Grant Program Summary are incorporated into these terms and conditions by reference.
- D. Fifteen percent (15%) of approved eligible applicants must be minority, women, or disabled veteran owned businesses as defined in Ark. Code § 15-4-303.
- E. Only one grant will be approved per applicant. If multiple applicants are affiliated under common shareholder or management control, only one grant will be approved per controlled group of affiliates.

2. **Purpose.** The purpose of the Grant Funds is to provide economic support pursuant to section 5001 of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) to businesses impacted by COVID-19. The Grant Funds may only be utilized for Qualifying Costs (as defined below). In consideration for receiving Grant Funds, Applicant agrees to use commercially reasonable best efforts to continue to employ the number of full-time and part-time employees set forth in its application for Grant Funds for the twelve-month period following receipt of Grant Funds.

3. **Use of Grant Funds.**

- A. **Political Activity.** No portion of the Grant Funds will be used for any partisan political activity or to further the election or defeat of any candidate for public office or influence the approval or defeat of any ballot issue.
- B. **Prohibition Against Payment of Bonus.** No portion of the Grant Funds will be used by Applicant to pay any bonus or commission in return for obtaining the Grant Funds.
- C. **Qualifying Costs.** Grant Funds will be used only towards the following Qualifying Costs:
 - i. Personal Protective Equipment (PPE) and no contact thermometers for Applicant’s employees and customers;
 - ii. Expenses related to reconfiguring Applicant’s business premises to meet recommended health and safety guidelines;
 - iii. No-contact Point of Sale (POS) payment equipment;
 - iv. Supplies and disinfectants to initially deep clean premises and for use on an ongoing basis; also included are expenses associated with hiring a third party to perform periodic deep cleaning services;
 - v. Hand sanitizer and other personal sanitary supplies for employees and customers;
 - vi. Signage;
 - vii. Marketing and advertising related to reopening the business or resuming normal operations;
 - viii. Supplies necessary for restocking;
 - ix. Other one-time expenses necessary to reopen a business or to resume normal operations.
 - x. Payroll and benefits costs are not eligible expenses.
 - xi. Applicant must expend Grant Funds between March 1, 2020 and September 30, 2021.
 - xii. Businesses with no employees must have a) customers physically coming to their business premises, or b) must conduct their business on customer premises.
 - xiii. Applicant may not use the Grant Funds for any expense for which Applicant has previously received reimbursement or payment from another program administered or funded by the federal government.

4. **Disbursement of Grant Funds.**

A. **Application for Grant Funds.** The Grant Funds shall be disbursed to Applicant upon it demonstrating to AEDC's reasonable satisfaction that it is a bona fide business eligible for the program. AEDC's approval of the completed electronic application is conditioned upon its receipt of each of the following:

- i. Applicant's electronic acknowledgment agreeing to be bound by these terms and conditions;
- ii. A Certificate of Good Standing of Applicant from the Arkansas Secretary of State (or, in the case of a sole proprietor, a copy of Applicant's business license, state sales tax permit or such other evidence reasonably satisfactory to AEDC demonstrating that Applicant is a legitimate business enterprise or nonprofit); AEDC may waive this requirement in the event information provided by the Department of Finance and Administration independently confirms that applicant is a bona fide business in Arkansas.
- iii. A completed IRS Form W-9;
- iv. A copy of the majority shareholder's current driver's license; and
- v. Applicant's voided check with bank routing number and bank account number.

B. **Disbursement of Grant Funds.** Within ten (10) business days following AEDC's approval of Applicant's application for Grant Funds, AEDC shall disburse Grant Funds via direct deposit to the bank account provided by Applicant in its application. AEDC will disburse Grant Funds only to the extent funds have been released to AEDC, as required by the General Accounting and Budgetary Procedures Law, the Revenue Stabilization Law and any other applicable fiscal control laws and regulations promulgated by the Arkansas Department of Finance and Administration.

5. **Close-out.** By no later than October 31, 2021, Applicant shall provide AEDC with a certification that it has fully expended the Grant Funds and provide an accounting for the expenditures for each category of Qualifying Costs listed in Section 3(C). Applicant must also submit with its certification to AEDC receipts evidencing the expenditures. **It is the responsibility of Applicant to maintain copies of receipts for all Qualifying Costs.** Prior to January 1, 2021, AEDC will provide Applicant with an electronic portal for submitting its certification and receipts. Applicant agrees to promptly return to AEDC any unexpended or improperly expended Grant Funds. All expenditures will be subject to audit by the State of Arkansas.

6. **Representations and Warranties of the Applicant.** Applicant represents and warrants that:

- i. It is authorized to do business in the State of Arkansas;
- ii. Each and every undertaking by Applicant in accordance with the terms and conditions hereunder are within the Applicant's powers, have been duly authorized by all necessary corporate action, have received all necessary approvals, and do not contravene any law, regulation or decree or any contractual restriction;
- iii. To the best of the Applicant's knowledge, it owes no tax to any governmental body within the State of Arkansas, excepting any tax attributable to a period in which a tax is not presently due; and
- iv. All information provide by Applicant to AEDC is true and complete in all material respects.

WARNING: MAKING ANY INTENTIONAL MISREPRESENTATION ON YOUR APPLICATION FOR GRANT FUNDS CONSTITUTES FRAUD AND IS SUBJECT TO CRIMINAL PROSECUTION UNDER STATE AND FEDERAL LAWS!

7. **Other Terms and Conditions**

- A. **Governing Law.** These terms and conditions shall be governed under the laws of the State of Arkansas. AEDC, as an agency of the State of Arkansas is protected from suit by sovereign immunity. Nothing in these terms and conditions is intended to nor shall waive the sovereign immunity of AEDC.
- B. **Severability.** If any provision of these terms and conditions or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalid part shall not affect the enforceability of any other provision.
- C. **Waivers.** No conditions or provisions of these terms and conditions may be waived unless approved by AEDC in writing.
- D. **Freedom of Information Act.** Applicant acknowledges that AEDC is a public entity of the State of Arkansas and is subject to the requirements of the Arkansas Freedom of Information Act, A.C.A. § 25-19-101 et. seq. ("FOIA"). AEDC must disclose to an FOIA requestor information concerning Applicant when, in the opinion of AEDC's legal counsel, AEDC is legally required to disclose the requested information. Information concerning Applicant that may be disclosed under FOIA includes the identity of Applicant and the amount of Grant Funds it may have received.

THESE TERMS AND CONDITIONS HAVE BEEN APPROVED BY:



Mike Preston, Executive Director
Arkansas Economic Development Commission