

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 _____



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

Proposed Addendum to Arkansas Rural Connect Coronavirus Rule

EXECUTIVE SUMMARY

Purpose

The Arkansas Economic Development Commission and the Arkansas Broadband Office are promulgating an Addendum to Arkansas Rural Connect (ARC) Coronavirus Rule to conform with the Interim Final Rule for the Coronavirus State and Local Fiscal Recovery Funds issued by the U.S. Treasury. Due to the urgent need for broadband for distance learning, telemedicine and the need for telework, necessitated by the COVID-19 pandemic, this addendum to the ARC Coronavirus Rule is being issued so that funds may be disbursed and to accelerate the continued deployment of broadband network infrastructure in rural Arkansas.

Background

The Arkansas Broadband Office promulgated an Addendum to the ARC Coronavirus under emergency rule procedures. The emergency rule will expire on November 26, 2021. This proposed permanent addendum will go into effect after the emergency period expires. In 2020, AEDC issued the Arkansas Rural Connect Broadband Rule to implement the Arkansas Rural Connect Program. This Broadband Rule was promulgated prior to the issuance of State and Federal public health guidelines responding to the COVID-19 pandemic. The federal government instituted a major relief effort under the CARES Act. The State benefited from the CARES Act but still was in need. The federal government then passed the American Rescue Plan Act (ARPA). These funds allowed states to broaden and strengthen its broadband infrastructure in unserved or underserved areas. Federal guidance as it relates to dispensing ARPA funds for the expansion of broadband network infrastructure has resulted in the need to promulgate this addendum to conform the Arkansas Rural Connect Program.

Key points:

- ARPA funds must be used in unserved and underserved area of Arkansas.
- ARPA approved projects must be able to provide synchronous bandwidths of 100mbps download and 100 mbps upload speed.
- Where impractical due to geographical, topographical or financial constraints upload speed can be between 20mbps and 100mbps.
- An internet service provider must submit a letter to Commerce detailing why the required speed cannot be obtained at 100mbps. Commerce will determine if the letter is approved for the requested bandwidth modification.
- Priority attention will be given to projects that contain detailed and aggressive times for completion and reasonable pricing schedules approved by the Mayor/County Judge.

- Guidance issued by the U.S. Treasury with the promulgation of its interim final rule indicates that only fiber optic infrastructure may be used to build out broadband networks using ARPA funds.
- The Broadband Office has requested clarification as to whether fixed wireless infrastructure may be used when funded through ARPA Funds.

Addendum to Arkansas Rural Connect Coronavirus Rule

- 1. BACKGROUND**
- 2. AUTHORITY**
- 3. PURPOSE AND QUALIFICATION FOR RECEIVING ARP FUNDS**
- 4. DEADLINES, UNSERVED AND UNDERSERVED AREAS**
- 5. MAPS**
- 6. 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 by 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. COVID-19 has brought about an urgent and immediate need for broadband internet access. 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.

The federal government has instituted a major relief effort under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The State benefited from the CARES Act but still was in need. The federal government then passed the American Rescue Plan Act (ARPA). These funds allowed states to broaden and strengthen its broadband infrastructure in unserved or underserved areas. All ARPA Fiscal Recovery Funds (“ARPA Funds”) must be obligated by December 31, 2024. The period of performance will run until December 31, 2026.

The Arkansas Rural Connect program promotes broadband deployment in rural areas of Arkansas that lack meaningful and efficient broadband services. The ARC program and its purposes align with allowable uses of ARPA Funds.

Due to the urgent need for broadband for distance learning, telemedicine and the need for telework, necessitated by the COVID-19 pandemic, this addendum to the ARC Coronavirus Rule is being issued so that funds may be disbursed immediately and to accelerate the continued deployment of broadband network infrastructure in rural Arkansas, 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 economic development in the state. The ARC Program is therefore authorized to administer ARC grants and to issue administrative rules under Ark. Code Ann. § 15-4-209(b) (5) as a service offered by AEDC.

SECTION 3. PURPOSE AND QUALIFICATION FOR RECEIVING ARPA FUNDS

This purpose of this addendum is to conform the ARC Program with the Interim Final Rule for Coronavirus State and Local Fiscal Recovery Funds¹ and any subsequently promulgated rules and guidance issued by the United States Department of Treasury (the “Federal Rules”) whenever ARPA Funds are the source of funding for ARC grants. The ARC Broadband Rule and the ARC Coronavirus Rule will govern the terms of any grants issued using ARPA Funds except when the terms of the ARC Coronavirus Rule and ARC Broadband Rule conflict with the applicable Federal Rules, in which case the Federal Rules will control and be incorporated into the ARC program grant agreement with the ISP.

Under the Federal Rules, projects funded in whole or in part with ARPA Funds must be able to provide synchronous bandwidths of 100mbps download and 100mbps upload. Where impractical due to geographical, topographical or financial constraints the upload speed can be between 20mbps and a 100mbps in such instances. The internet service provider (“ISP”) must submit a letter detailing why the upload speeds cannot be obtained at 100mbps and the Department of Commerce AEDC Broadband Office (“Commerce Broadband Office”) will determine if the ISP letter is approved for the requested bandwidth modification. Those projects with an approved request for bandwidth modification must be scalable to 100mbps upload speed.

Guidance issued by the U.S. Treasury in connection with the promulgation of its interim final rule indicates that a fiber optic or wireline infrastructure may be used to build out broadband networks using ARPA Funds. The Commerce Broadband Office has requested clarification from the U.S. Treasury as to whether fixed wireless infrastructure may be used when funded with ARPA Funds. In the absence of confirmation from U.S. Treasury that ARPA Funds may be used to deploy fixed wireless infrastructure, the Commerce Broadband Office will not approve any ARC Program applications which rely on fixed wireless infrastructure.

¹ 31 C.F.R. § 35.6 (2021).

SECTION 4. DEADLINES, UNSERVED AND UNDERSERVED AREAS

Broadband infrastructure builds, using ARPA funds, must be completed no later than December 31, 2023. The Commerce Broadband Office will determine the dates by which awarded projects shall be completed within these allowed deadlines. Priority attention will be given to projects that 1) contain detailed and aggressive timelines for completing the project and 2) provide confirmation that the Mayor or County Judge, as co-applicant for the project, have been provided proposed pricing for the broadband services covered by the project. ARPA funds must be used in unserved and underserved areas in Arkansas. For purposes of ARPA funds, unserved and underserved areas are rural incorporated and unincorporated cities or communities where residents lack access to a wireline connection capable of reliably delivering at least minimum speeds of 25mbps download and 3mbps upload.

SECTION 5. MAPS

The Commerce Broadband Office, at its discretion, may request from the applicants maps and other information necessary to make informed decisions as to the proper unserved or underserved locations in Arkansas to expend funds. Applicants that accept funding under this Rule shall follow all the requirements under the ARC rules.

Again, each project deployment shall be completed by the date specified by the Broadband Office, but in any event, each project funded with ARPA funds shall be completed no later than December 31, 2023.

SECTION 6. EFFECTIVE DATE

This Rule is effective ten days upon filing of the approved final rule with the Arkansas Secretary of State.

MIKE PRESTON
DIRECTOR
ARKANSAS ECONOMIC DEVELOPMENT COMMISSION

DATE

TO: ALL INTERESTED PARTIES

FROM: ARKANSAS ECONOMIC DEVELOPMENT COMMISSION

DATE: SEPTEMBER 2, 2021

SUBJ: ADDENDUM TO ARKANSAS RURAL CONNECT CORONAVIRUS RULE

NOTICE OF PUBLIC HEARING

Please find attached or available by electronic publication by the Arkansas Economic Development Commission ("AEDC") Proposed Amended Rule, "ADDENDUM TO ARKANSAS RURAL CONNECT CONRONAVIRUS RULE." The Director of AEDC ("Director") is filing for public comment and public hearing a proposed regulation addressing participation in the Arkansas Rural Connect Broadband Grant Program (hereafter, the "ARC Program") for communities impacted by the COVID-19 pandemic. Pursuant to Arkansas Administrative Procedures Act, and other applicable laws or rules, NOTICE is hereby given that a PUBLIC HEARING will be held on OCTOBER 4, 2020, at 08:30 AM to 9AM. The purpose of the Public Hearing will be to determine whether the Director should adopt the proposed Rule, "ADDENDUM TO ARKANSAS RURAL CONNECT CORONAVIRUS RULE." This will be an electronically conducted public hearing using "Zoom." Please join from PC, Mac, Linux, iOS or Android at:

<https://arkansas.zoom.us/j/81036513335>

Telephone

Dial:

USA 636 651 0002

USA 8773361829 (US Toll Free)

Conference code: 7464157

Find local AT&T Numbers:

www.teleconference.att.com/servlet/glbAccess?process=1&accessNumber=6366510002&accessCode=7464157

This hearing will begin on Monday, October 4, 2021, from 8:30 AM until 9 AM. Interested persons may type in their questions in the "chat" function and a Department representative will answer them. Alternatively, any interested person may make written or electronic comments, statements or opinions to the address below before the administrative record is closed on October 3, 2021, at 9AM, unless the comment period is extended by the Director.

Persons wishing to testify or make comments are requested to submit intended statements in writing in advance. Direct your inquiries to: Steven Porch, Executive Broadband Manager, or Ms. Kimberly Young, 501-682-7306, email: broadband@arkansas.gov.

A copy of the proposed Rule may be obtained or viewed on the AEDC Website at www.arkansasedc.com/data-reports/rules. The rules may also be received by calling Mr. Steven Porch or Ms. Kimberly Young.

Sincerely,

Steven Porch
Chief Legal Officer
Executive Broadband Manager
Arkansas Department of Commerce

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT _____
DIVISION _____
PERSON COMPLETING THIS STATEMENT _____
TELEPHONE NO. _____ FAX NO. _____ EMAIL: _____

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

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 _____

Total _____

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 _____

Total _____

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

\$ _____

\$ _____

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.