



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

Proposed Emergency Addendum to Arkansas Rural Connect Coronavirus Rule

EXECUTIVE SUMMARY

Purpose and Emergency Need

The Arkansas Economic Development Commission and the Arkansas Broadband Office are seeking promulgation of a proposed emergency addendum to the Arkansas Rural Connect 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 emergency 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.

Background

Pursuant to A.C.A. § 15-4-209(b) (5) and § 15-4-209(a)(1), AEDC may promulgate rules necessary to implement the programs and services offered by AEDC and grants to assist with economic development in the state. The Executive Director of AEDC is proposing this emergency Rule to respond to urgent, telecommunication needs in this State for communities impacted to the COVID-19 pandemic. 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 a need to file emergency rules 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.
- The Arkansas Broadband Office plans to promulgate a permanent rule through the Administrative Procedures Act.
- 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.

Emergency 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 emergency 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. This emergency rule is also authorized to be issued under Ark. Code Ann. § 25-15-204(c) of the Administrative Procedures Act. 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. 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, 2022. 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, 2022.

SECTION 6. EFFECTIVE DATE

This emergency Rule is effective upon filing of the approved final rule with the Arkansas Secretary of State. This emergency rule will be effective for one hundred twenty (120) days.

MIKE PRESTON
DIRECTOR
ARKANSAS ECONOMIC DEVELOPMENT COMMISSION

DATE



DEPARTMENT OF COMMERCE

ASA HUTCHINSON | Governor MICHAEL PRESTON | Secretary

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

DEPARTMENT/AGENCY Dept. of Commerce/Arkansas Economic Development Commission ("AEDC")

DIVISION Legal Division

DIVISION DIRECTOR Steven Porch, Chief Legal Officer, Arkansas Department of Commerce

CONTACT PERSON Steven Porch

ADDRESS One Commerce Way, Little Rock, AR 72202

PHONE NO. 501-682-2432 FAX NO. 501-682-7499 E-MAIL SPorch@ArkansasEDC.com

NAME OF PRESENTER AT COMMITTEE MEETING Steven Porch

PRESENTER E-MAIL SPorch@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 Rule" below.
- D. Submit two (2) copies of this 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
Administrator, Administrative Rules Review Section
Arkansas Bureau of Legislative Research
One Capitol Mall, 5th Floor, Room L-513
Little Rock, AR 72201

1. What is the short title of this rule? Emergency Addendum To Arkansas Rural Connect Coronavirus Rule

2. What is the subject of the proposed rule? This proposed emergency rule is to comply with federal guidance concerning the American Rescue Plan Act funding for broadband infrastructure.

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. American Rescue Plan Act

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

If yes, what is the effective date of the emergency rule? Yes ☒ No ☐
Upon filing of the approved final rule with the Sec. of State

When does the emergency rule expire? 120 days after filing with the Sec. 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 regulation. This purpose of this emergency addendum is to harmonize with recent federal guidance as it relates to dispensing American Rescue Plan Act funds for the expansion of broadband infrastructure for the unserved and underserved areas of Arkansas.

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. DepD

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.

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

This Rule is 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. This emergency rule is authorized to be issued under Ark. Code Ann §25-15-204(c).

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

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. This purpose of this addendum is to harmonize with recent federal guidance as it relates to dispensing American Rescue Plan Act funds for the expansion of broadband infrastructure for the unserved and underserved areas of Arkansas.

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). <https://www.arkansasedc.com/data-reports/rules> and www.broadband.arkansas.gov

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.)

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 and the Arkansas State Library as required pursuant to Ark. Code Ann. § 25-15-204(e).

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.

The Department does not know at this time but will update BLR and ALC

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Dept. of Commerce/Arkansas Economic Development Commission ("AEDC")

DIVISION Legal Division

PERSON COMPLETING THIS STATEMENT Steven Porch, Chief Legal Officer, ADOC

TELEPHONE 501-682-2432 **FAX** _____ **EMAIL:** SPorch@ArkansasEDC.com

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

SHORT TITLE OF THIS RULE Emergency Addendum To Arkansas Rural Connect Coronavirus 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?

None.

Current Fiscal Year

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

Next Fiscal Year

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

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

Current Fiscal Year

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

Next Fiscal Year

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

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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.

Unknown at this time.

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.

NONE

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?

NOT APPLICABLE

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.