



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

January 4, 2022

Ms. Marty Garrity
Director
Arkansas Bureau of Legislative Research
State Capitol, Rm. 315
Little Rock, AR 72201

Re: Proposed Railroad Modernization Act Emergency Rule

Dear Ms. Garrity:

Enclosed is a proposed emergency rule with necessary attachments for the Railroad Modernization Act. The effect of the emergency rule would be to allow the Arkansas Economic Development Commission (AEDC) to have the rule in place for tax filing purposes in the first quarter of 2022. Act 967 of 2021 created the Railroad Modernization Act, and it was effective retroactive to January 1, 2021.

AEDC has determined that an emergency rule is necessary to allow eligible companies to utilize the tax credit authorized under the Act for tax year 2021. Railroad infrastructure is critical for community and economic development in Arkansas. An emergency will allow AEDC to immediately assist railroad companies that seek to improve and maintain this critical infrastructure network. Delaying implementation of the rule until it is first promulgated under the Administrative Procedures Act would result in delays for companies seeking to claim a credit for eligible expenditures. AEDC will also promulgate a permanent rule under the provisions of the APA.

Thank you for considering this proposed emergency rule.

Sincerely,

A handwritten signature in blue ink, appearing to read "James Hudson", with a long horizontal flourish extending to the right.

James Hudson
AEDC Deputy Director of Operations & General Counsel
Commerce Director of Strategy & Operations

Attachments

cc: Jill Thayer
Gina Seaton



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

Proposed Emergency Rule for Railroad Modernization Act of 2021

Purpose

The Arkansas Economic Development Commission is seeking consideration from the Executive Subcommittee of the Arkansas Legislative Council of a proposed emergency rule for the Railroad Modernization Act of 2021. The agency finds an emergency rule necessary to have program rule promulgation completed for tax filing purposes in the first quarter of 2022.

Background

Act 967 of 2021 created the Railroad Modernization Act. The Act authorizes eligible taxpayers to claim an income tax credit in the amount of 50% of railroad track maintenance expenditures. The maximum amount of the tax credit is \$5,000 per mile of track owned or leased by the taxpayer within the state. The Act is retroactively effective for tax years beginning on January 1, 2021. The Department of Commerce is required to promulgate rules to verify the expenditures and certify the amount of the expenditure that qualify for the tax credit. The Department of Finance and Administration has the discretion to promulgate rules to enable and certify the amount of the credit.

Key points

- The rule outlines the process by which the Department of Commerce will verify and certify an eligible taxpayer's railroad track maintenance expenditures to claim the income tax credit allowed under the program.
- An eligible taxpayer may seek pre-approval of railroad track maintenance expenditures prior to incurring the expenses by submitting a pre-approval application to the Department of Commerce.
- To receive a certificate of verification of railroad track maintenance expenditures a taxpayer shall submit a verification of qualified expenditures to the Department.
- The company must submit the following to the Department to receive a verification certificate:
 - The status of the railroad as an eligible taxpayer;
 - That the project work has been completed;
 - The miles of track owned or leased in the state; and
 - Any other information the Department may request to confirm verification.
- The verification of expenditures form must be submitted to the Department no later than 90 days following the end of the tax year in which the expenditures were incurred.
- The Department will review and verify documentation submitted by the taxpayer and issue a certificate setting the amount of expenditures verified as eligible to be claimed for a credit under the program.
- A taxpayer shall submit the certificate of verification issued by the Department to DFA to claim the tax credit.
- The Department of Commerce will promulgate a permanent rule under the Administrative Procedures Act for this program.

QUESTIONNAIRE
FOR FILING PROPOSED RULES WITH THE
ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT/AGENCY _____
DIVISION _____
DIVISION DIRECTOR _____
CONTACT PERSON _____
ADDRESS _____
PHONE NO. _____ FAX NO. _____ E-MAIL _____
NAME OF PRESENTER AT COMMITTEE MEETING _____
PRESENTER E-MAIL _____

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?

2. What is the subject of the proposed rule?

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? _____

When does the emergency rule expire? _____

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.

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.”

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

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

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).

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 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.

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.

Railroad Modernization Act of 2021 Rule

I. Overview

Acts 2021, No. 967 created the Railroad Modernization Act of 2021. Acts 2021, No. 967 authorizes eligible taxpayers to claim an income tax credit in the amount of fifty percent (50%) of railroad track maintenance expenditures up to the limits set forth in Acts 2021, No. 967.

In accordance with Arkansas Code Section 26-51-2804(b), the Department of Commerce is adopting this rule to:

- i. Permit verification of an eligible taxpayer's railroad track maintenance expenditures for purposes of claiming the income tax credit allowed under Acts 2021, No. 967;
- ii. Provide for the approval of railroad track maintenance expenditures before a project commences; and
- iii. Provide for a certificate of verification upon the completion of a project that uses railroad track maintenance expenditures.

II. Definitions

- a. "Eligible taxpayer" means a railroad that is classified as a Class II or Class III railroad by the United States Surface Transportation Board.
- b. "Railroad track maintenance expenditures" means gross expenditures for maintenance, reconstruction, or replacement of railroad track, including without limitation roadbed, bridges, industrial leads and side track, and related track structures, to the extent the expenditures are on a railroad track that:
 - i. Is located in Arkansas;
 - ii. Is owned or leased by an eligible taxpayer; and
 - iii. Existed as of July 28, 2021

III. Pre-Approval of Railroad Track Maintenance Expenditures

- a. An eligible taxpayer seeking pre-approval of railroad track maintenance expenditures prior to incurring the expense may submit a preapproval application to the Department of Commerce on a form provided by the Department for that purpose. The application shall include:
 - i. An estimated amount of qualified railroad track maintenance

- expenditures for the year;
 - ii. A description of the qualified railroad track maintenance expenditures expected for the year;
 - iii. The miles of railroad track owned or leased in Arkansas; and
 - iv. Any other information that the Department may request.
- b. Following receipt and review of the application, the Department of Commerce will notify the eligible taxpayer in writing as to whether the proposed railroad track maintenance expenditures set forth on the application constitute railroad track maintenance expenditures under Acts 2021, No. 967.
- c. An eligible taxpayer is not required to apply for pre-approval of railroad track maintenance expenditures under this Section III in order to claim a tax credit for the expenditures under Acts 2021, No. 967.

IV. Certificate of Verification of Railroad Track Maintenance Expenditures

- a. The eligible taxpayer shall submit to the Department of Commerce a verification of railroad track maintenance expenditures on a form provided for that purpose by the Department. The verification shall include a statement certifying:
 - i. The status of the railroad as an eligible taxpayer;
 - ii. The project work has been completed;
 - iii. A description and amount of the qualified railroad track maintenance expenditures incurred
 - iv. The miles of railroad track owned or leased in Arkansas; and
 - v. Any other information that the Department may request.
- b. The verification shall be submitted to the Department no later than ninety (90) days following the end of the tax year in which the railroad track maintenance expenditures were incurred.
- c. Following receipt and review of the verification, the Department shall issue a certificate setting forth the amount of railroad track maintenance expenditures verified by the Department as being eligible to be claimed for a tax credit under Arkansas Code Section 26-51-2803 of Acts 2021, No. 967.
- d. The certificate of verification of railroad track maintenance expenditures issued by the Department under this rule shall satisfy all requirements of the Department of Finance and Administration with respect to determining:

- i. The eligibility of the taxpayer to claim the tax credit under Acts 2021, No. 967; and
 - ii. The amount of railroad track maintenance expenditures which may be claimed as a tax credit.
- e. The certificate of verification shall be submitted by the eligible taxpayer to the Department of Finance and Administration for issuance of the tax credit in accordance with its rules.

V. Rulemaking Authority

The Department of Commerce has authority under Arkansas Code Section 26-51-2804(b) of Acts 2021, No. 967 to promulgate this rule.



**STATE OF ARKANSAS
BUREAU OF
LEGISLATIVE RESEARCH**

Marty Garrity, Director
Kevin Anderson, Assistant Director
for Fiscal Services
Tim Carlock, Assistant Director
for Information Technology
Matthew Miller, Assistant Director
for Legal Services
Jessica Whittaker, Assistant Director
for Research Services

Memorandum

TO: Members, ALC – Executive Subcommittee

CC: Marty Garrity, Director, Bureau of Legislative Research

**FROM: Rebecca Miller-Rice, Legislative Attorney, Administrative Rules Review Section,
Legal Services Division**

DATE: January 6, 2022

**SUBJECT: Legal Authorization for the Emergency Promulgation of the Railroad Modernization
Act of 2021 Rule by the Arkansas Department of Commerce’s Arkansas Economic
Development Commission**

The Arkansas Economic Development Commission (“AEDC”) of the Department of Commerce (“Department”) seeks legislative review and approval for the emergency promulgation of its Railroad Modernization Act of 2021 Rule, which outlines the process by which the Department will verify and certify an eligible taxpayer’s railroad track maintenance expenditures to claim the income tax credit allowed under the program. Pursuant to Act 967 of 2021, § 1, now codified at Arkansas Code Annotated § 26-51-2804(b), the Department of Commerce shall adopt rules to permit verification of an eligible taxpayer’s railroad track maintenance expenditures for purposes of claiming the income tax credit allowed under the Railroad Modernization Act of 2021 (“Act”), codified at Ark. Code Ann. §§ 26-51-2801 to -2804; provide for the approval of railroad track maintenance expenditures before a project commences; and provide for a certificate of verification upon the completion of a project that uses railroad track maintenance expenditures. The certificate of verification provided for by rule under Ark. Code Ann. § 26-51-2804(b)(3) shall satisfy all requirements of the Department of Finance and Administration pertaining to the eligibility of the person claiming an income tax credit under the Act. *See* Ark. Code Ann. § 26-51-2804(b)(3)(B).