

**ADMINISTRATIVE RULE REVIEW SUBCOMMITTEE
OF THE
JOINT BUDGET COMMITTEE**

Thursday, March 18, 2021

7:30 a.m.

Room A, MAC

Little Rock, Arkansas

A. Call to Order.

B. Rules Filed Pursuant to Ark. Code Ann. § 10-3-309.

1. DEPARTMENT OF COMMERCE, ARKANSAS ECONOMIC DEVELOPMENT COMMISSION (Mr. Steven Porch)

a. SUBJECT: Arkansas Rural Connect Coronavirus Rule

DESCRIPTION: The Arkansas Economic Development Commission (“AEDC”) is proposing an amended Arkansas Rural Connect Coronavirus Rule. The proposed amendment extends CARES Act funding for the Arkansas Rural Connect Grant program to December 31, 2021. This proposed rule is the permanent promulgation of the agency’s emergency rule, which became effective on December 29, 2020. The agency provided the following summary of the proposed rule:

Legislative Authority for Rule

This rule is issued by the Director of the Arkansas Economic Development Commission (“Director”). Arkansas 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 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).

Background and Purpose of Rule

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 by December 31, 2021.

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 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.

Due to the urgent 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 the ARC Coronavirus Rule to disperse funds immediately and to accelerate deployment of broadband to address these needs to the extent possible.

Explanation of Proposed Supplemental Rule

A. Expedited Review and Approval of Completed

Applications must be completed to be entitled to Expedited Review. Due to the COVID-19 pandemic crisis, completed application submissions will receive an expedited review while the funding window is still open. The funding window shall remain open upon the passing of these rules, so long as funds are available. 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 90% deployment rate is flexible, but preferred, and must be clearly stated in your application); or (b) projects falling under the Broadband Rule's \$3,000 cap per unserved location connection (the \$3,000 cap is flexible, but preferred). 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) people still applies. 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 are 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. All approved applications must meet eligibility criteria and follow all program requirements under the ARC rules. However, grant awards under these ARC Coronavirus Rules shall control over any conflicting ARC broadband rules.

B. Deadlines under Broadband Rule

Due to the urgency of deploying broadband to underserved areas during the COVID-19 pandemic, some of the deadlines in the Arkansas Rural Connect program timeline may be moved forward to facilitate faster decision-making. Due to the need for expediency, the scoring rubric described in the Broadband Rule may or may not be used in making award decisions. The Broadband Office and technical review team will evaluate applications until funding ends.

Distribution of Funds

Due to COVID-19, approved projects will immediately receive disbursement of funds up to the maximum amount of funding allowable under the ARC program. Depending on the project, the Broadband Manager, with the approval of the Secretary of Commerce, may increase

the maximum amount of funding per project under the ARC program. This funding mechanism contrasts with the usual fiscal rules of the Arkansas Rural Connect program and helps to ensure that projects will not be delayed by cash flow constraints on the part of awardees. In other respects, including submittal of receipts and payment of penalties for non-performance or early termination of service, awardee ISPs shall be subject to the same obligations as other ARC participants. The Broadband Manager makes grant award recommendations to the Secretary of Commerce or his designee. The Secretary, or his designee, has final authority on who is awarded a grant. Funds may be distributed before August 15, 2020, when the original application window closes, upon project evaluation and approval.

Monitoring Fund Disbursements

Applicants which accept funding under this Rule shall follow all the requirements under the ARC rules. This includes these rules for monitoring deployment and use of funds until the conclusion of the project. Applicants receiving funds under this rule are subject to the right of the Broadband Office or its designee to conduct quarterly audits. The Broadband Manager, or his designee, with the permission of the Secretary of Commerce, may make random audits in addition to quarterly audits. This right to conduct audits does not eliminate the responsibility of grant awardees to submit timely receipts and documentation of quarterly expenditures. Grant recipients, upon receipt of these funds, shall follow these monitoring rules until the conclusion of deployment. Deployment will not end until an evaluation of the project is made by the Broadband Office or its designee.

Monitoring Project

The Broadband Office or its designee will be assigned to monitoring of implementation of broadband infrastructure construction awarded to approved applicants.

The Broadband Office or its designee will strategically review guidelines for the ARC broadband implementation projects within each region and awarded ISP network and shall report to the Broadband Office/Arkansas Department of Commerce should areas fall into non-compliance. This manner of compliance verification shall be achieved by, but not limited to, the following 3 stages:

Initial Stage:

Conduct pre-construction analysis of project scope prior to deployment.

Mid Stage:

1. Review project status updates (milestones) to ensure timely and proper implementation of network construction, and related equipment and material installation.
2. Inspect (Spot check) new construction sites in and around newly developed broadband areas and any improvements made to already existing broadband areas.
3. Oversight of the construction and tests of the new network segments and network topology to ensure the service delivery of a minimum of 25Mbps Down/3Mbps Up for end users regardless of geographical location.

Final Project Compliance:

Monitor the expenditure of awarded funds to ensure financial application is purposed as directed.

The Broadband Office or its designee, upon occurrences of non-compliance, will report its findings to the Arkansas Department of Economic Development, who will require awardees to take appropriate remedial measures to return the project to compliance.

Funds must be used in the most efficient manner during deployment efforts. Any discovery of misappropriated or misapplied funds must be reimbursed by the awardees and applied appropriately to the project, as intended. Supporting documents shall be required from awardees demonstrating this was done. Nothing in this rule shall be construed as waiving the State's sovereign immunity.

Each project deployment shall be completed by the date specified by the Broadband Office, but in any event, each project funded with CARES Act funds shall be completed no later than December 31, 2021.

PUBLIC COMMENT: A public hearing will be held on March 15, 2021. The public comment period expires on March 15, 2021. As of March 11, 2021, AEDC received no public comments. In the event that the agency receives any comments, a supplemental summary will be provided at the conclusion of the public comment period.

This rule was promulgated as an emergency rule on December 29, 2020, following legislative approval. The proposed effective date of permanent promulgation is pending legislative review and approval.

FINANCIAL IMPACT: AEDC indicated that the proposed rule does not have a financial impact.

LEGAL AUTHORIZATION: The Arkansas Economic Development Commission has authority to administer grants, loans, cooperative agreements, tax credits, guaranties and other incentives, memoranda of understanding, and conveyances to assist with economic development in the state. *See* Ark. Code Ann. § 15-4-209(a)(1). Additionally, AEDC has authority to promulgate rules necessary to implement the programs and services offered by the commission. *See* Ark. Code Ann. § 15-4-209(b)(5).

2. DEPARTMENT OF HEALTH, DIVISION OF PHARMACY SERVICES AND DRUG CONTROL (Ms. Laura Shue)

a. SUBJECT: List of Controlled Substances for the State of Arkansas

DESCRIPTION: The proposed amendments update the List of Controlled Substances to include these drugs:

1. Acetyl fentanyl, Valeryl fentanyl, Isobutyryl fentanyl, 4-methoxy butyryl fentanyl and Acetyl norfentanyl are opiates listed as Schedule I controlled substances. Page 2, (b), (59), (60), (62), (64) and (66). These items are marked for cleanup. The salt designation is removed from the chemical nomenclature for these substances. References to salt formulations are currently documented in prefatory language for opiates in Schedule I. Page 2, (b), (59), (60), (62), (64) and (66).

2. Para-fluorobutyryl fentanyl is a Schedule 1 controlled substance. To follow DEA, a DEA Controlled Substance Code Number has been set forth opposite of this substance and is marked for cleanup. The salt designation has also been removed from the chemical nomenclature for this substance as references to salt formulation are documented in the prefatory language for opiates in Schedule I. Page 2, (b), (65).

3. Cyclopropyl fentanyl. N-(1-phenethylpiperidin-4-yl)-Nphenylcyclopropanecarboxamide. The DEA has placed this opioid analgesic into Schedule I because it has no recognized medical use. To follow DEA scheduling, this drug would be included as Schedule I. Page 3, (b), (75).

4. Methoxyacetyl fentanyl. 2-methoxy-N-(1-phenethylpiperidin-4-yl)-Nphenylacetamide. The DEA has placed this opioid analgesic into Schedule I because it has no recognized medical use. To follow DEA scheduling, this drug would be included as Schedule I. Page 3, (b), (76).

5. Ortho-fluorofentanyl. N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)propionamide. The DEA has placed this opioid analgesic into Schedule

I because it has no recognized medical use. To follow DEA scheduling, this drug would be included as Schedule I. Page 3, (b) (77).

6. Fentanyl-related substances, their isomers, esters, ethers, salts and salts of isomers, esters and ethers. Fentanyl-related substances means any substance not otherwise listed, and for which no exemption or approval is in effect under section 505 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355], that is structurally related to fentanyl by one or more of the following modifications:

- (A) Replacement of the phenyl portion of the phenethyl group by any monocycle, whether or not further substituted in or on the monocycle;
- (B) Substitution in or on the phenethyl group with alkyl, alkenyl, alkoxy, hydroxyl, halo, haloalkyl, amino or nitro groups;
- (C) Substitution in or on the piperidine ring with alkyl, alkenyl, alkoxy, ester, ether, hydroxyl, halo, haloalkyl, amino or nitro groups;
- (D) Replacement of the aniline ring with any aromatic monocycle whether or not further substituted in or on the aromatic monocycle; and/or
- (E) Replacement of the N-propionyl group by another acyl group.

Felisia Lackey, Chief Forensic Chemist-Drug Section, Arkansas State Crime Laboratory, requested this substance designation for fentanyl related substances with one or more of the following modifications and without a recognized medical use be included into Schedule I. Page 3, (b), (78).

7. Clonazepam. Felisia Lackey, Chief Forensic Chemist-Drug Section, Arkansas State Crime Laboratory, requested that this depressant substance with no recognized medical use be included into Schedule I. Page 6, (e), (6).

8. Flualprazolam. Felisia Lackey, Chief Forensic Chemist-Drug Section, Arkansas State Crime Laboratory, requested that this depressant substance with no recognized medical use be included into Schedule I. Page 6, (e), (7).

9. Flubromazepam. Felisia Lackey, Chief Forensic Chemist-Drug Section, Arkansas State Crime Laboratory, requested that this depressant substance with no recognized medical use be included into Schedule I. Page 6, (e), (8).

10. Flubromazolam. Felisia Lackey, Chief Forensic Chemist-Drug Section, Arkansas State Crime Laboratory, requested that this depressant

substance with no recognized medical use be included into Schedule I. Page 6, (e), (9).

11. Ethylone. 1-(1,3-benzodioxol-5-yl)-2-(ethylamino)propan-1-one. The DEA has placed this synthetic cathinone into Schedule I because it has no recognized medical use. To follow DEA scheduling, this drug would be included as Schedule I. Page 7, (11), (b), (19).

12. Eutylone. 1-(1,3-benzodioxol-5-yl)-2-(ethylamino)-1-butanone. Felisia Lackey, Chief Forensic Chemist-drug Section, Arkansas State Crime Laboratory, requested this synthetic cathinone with no recognized medical use be included into Schedule I. Page 7, (11), (b), (20).

13. Noroxymorphone. The DEA placed this opioid analgesic into Schedule II. To follow DEA scheduling, this substance would be included as Schedule II. Page 8, (b), (1), (20).

14. Thiafentanil. The DEA placed this opioid analgesic into Schedule II. To follow DEA scheduling, this substance would be included as Schedule II. Page 9, (c), (28).

15. Norfentanyl. N-phenyl-N-(piperidin-4-yl)propionamide. The DEA has placed this immediate precursor to fentanyl into Schedule II. To follow DEA scheduling, this substance would be included as Schedule II. Page 10, (g), (3), (ii).

16. Brexanolone. The FDA approved this drug for the treatment of postpartum depression. To follow DEA, this drug would be included as Schedule IV. Page 16, (c), (57).

17. Lemborexant. The FDA approved this drug for the treatment of insomnia in adult patients. To follow DEA, this drug would be included as Schedule IV. Page 16, (c), (58).

18. Solriamfetol. The FDA approved this drug to improve wakefulness in adult patients with excessive daytime sleepiness associated with narcolepsy or obstructive sleep apnea. To follow DEA, this drug would be included as a Schedule IV. Page 16, (e), (14).

19. Lasmiditan. The FDA approved this drug for the acute treatment of migraine with or without aura in adults. To follow DEA, this drug would be included as Schedule V. Page 18, (e), (4).

20. Cenobamate. The FDA approved this drug for the treatment of partial-onset seizures in adult patients. To follow DEA, this drug would be included as Schedule V. Page 18, (e), (5).

21. A drug product in finished dosage formulation that has been approved by the U.S. Food and Drug Administration that contains cannabidiol (2-[1R3-methyl-6R-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol) derived from cannabis and no more than 0.1 percent (w/w) residual tetrahydrocannabinols. This drug is currently listed as a Schedule V substance. Page 18, (f), (1). To follow DEA this drug is removed from the controlled substance list.

22. The following synthetic cannabinoids are schedule VI controlled substances. To follow DEA, controlled substance code numbers have been set forth opposite the following substances:

- 5F-AKB-48, Page 21, (I), (v),
- 5-Fluoro-AMB, Page 22, (K), (xv),
- 5-Fluoro-ADB, Page 22, (K), (xvii),
- MDMB-CHMICA, Page 22, (K), (xix),
- FUB-AMB, Page 22, (K), (xx),
- MDMB-FUBINACA, Page 22, (K), (xxi).

23. Two items marked for cleanup:

- Page 22, (K), (xxiv).
- Page 22, (K), (xxvii).

24. ADB-FUBINACA. N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide. The DEA has scheduled this synthetic cannabinoid because it has no recognized medical use. This drug would be included as Schedule VI. Page 22, (K), (xxviii).

25. 4-Fluoro MDMB-BUTINACA. methyl (S)-2-(1-(4-fluorobutyl)-1Hindazole-3-carboxamido)-3,3-dimethylbutanoate. Felisia Lackey, Chief Forensic Chemist-Drug Section, Arkansas State Crime Laboratory, requested that this synthetic cannabinoid with no recognized medical use be included into Schedule VI. Page 23, (K), (xxix).

PUBLIC COMMENT: A public hearing was held on this proposed rule on December 15, 2020. The public comment period expired on December 15, 2020. The agency indicated that it received no public comments.

The proposed effective date is May 30, 2021.

FINANCIAL IMPACT: The agency indicated that this rule does not have a financial impact.

LEGAL AUTHORIZATION: The Department of Health administers the Uniform Controlled Substances Act and has authority to add substances to

the Controlled Substances List and to delete or reschedule “any substance enumerated in a schedule[.]” Ark. Code Ann. § 5-64-201(a)(1)(A)(i). “The Secretary of the Department of Health shall revise and republish the schedules annually.” Ark. Code Ann. § 5-64-216. If a substance is controlled under federal law, the Department “shall similarly control the substance” unless the Secretary objects to inclusion within thirty days of publication in the Federal Register of a final order designating a substance as a controlled substance. Ark. Code Ann. § 5-64-201(d).

C. Adjournment.