

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 Yes No If yes, a copy of the repealed rule is to be included with your completed questionnaire.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 _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

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

Total _____

Total _____

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

Current Fiscal Year

Next Fiscal Year

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

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
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.



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

May 14, 2020

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

Re: Proposed Emergency Rule for AEDC Military Affairs Grant Program

Dear Ms. Garrity:

Enclosed is a proposed emergency rule and necessary attachments for the AEDC Military Affairs Grant Program ("MAGP"). The effect of the rule would be to allow AEDC to make a grant to Morale, Welfare, and Recreation ("MWR") facilities at Camp Robinson and Fort Chaffee to provide for the facilities' working capital needs. The MWR facilities benefit Arkansas National Guard personnel and participants in Arkansas Youth Challenge. The MWR facilities are not supported by state general revenue and are dependent on the business that they generate.

An emergency rule is necessary because of the significant economic effects that COVID-19 has had on the level of business at the MWR facilities. Should AEDC be required to follow the standard APA rule-making process, the MWR facilities would likely be forced to close before a rule could be finalized. This is the type of need that MAGP is meant to address. The rule is supported by Governor Hutchinson and his military affairs advisory group.

Please pass along to the Executive Subcommittee of ALC our thanks for considering this proposed emergency rule and our request for a favorable determination.

Sincerely,

A handwritten signature in dark ink, appearing to read "JL Hudson", written over a horizontal line.

James L. Hudson
EVP – Operations & General Counsel

cc: Jessica C. Sutton

Military Affairs Grant Program Emergency Rules 2020

I. Introduction

Overview

As a key component of Governor Asa Hutchinson's 2015 Military Affairs Initiative, to grow, support, and promote the state's military missions, installations and related economic development interests, inaugural funding was appropriated to the Arkansas Economic Development Commission (AEDC) in 2016 to establish the Military Affairs Grant Program (MAGP).

Funds allocated to the MAGP may be granted, at the discretion of the AEDC Executive Director (Executive Director), to applicants meeting eligibility requirements for projects and programs that strengthen and sustain military installations in Arkansas, resulting in economic growth in host communities, surrounding regions, and the State of Arkansas. As such, grants are intended to leverage, not supplant, other funding sources.

Pursuant to authority granted under § 15-4-209(a)(1) and § 15-4-209(b)(5), AEDC has established these rules governing administration of the MAGP.

Program Rule Summary

1. AEDC will periodically solicit MAGP applications as funding becomes available.
2. Eligible applicants shall submit completed applications, on forms prescribed by AEDC and in accordance with submittal deadlines, to request grant funding from the MAGP.
3. The AEDC Military Affairs Director (Director), with advice from the Governor's Military Affairs Steering Committee (Committee), shall review and recommend applications for grant funding to the Executive Director.
4. Applicants receiving approval from the Executive Director shall execute grant agreements with AEDC specifying grant terms and conditions.
5. Grant funding shall be made available to grantees on a cost incurred basis, subsequent to submittal of requests for payment on forms prescribed by AEDC.
6. Grantees shall submit quarterly progress reports throughout the duration of the grant project in accordance with grant terms and conditions.
7. -A contingency of up to ten percent (10%) of the grant award may be withheld from final payment until all closeout documents have been submitted and have been approved by AEDC.

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Contact Information

For more information, please contact:
Arkansas Economic Development Commission
Military Affairs Director
900 West Capitol
Little Rock, AR 72201
(501) 682-5196

II. Rulemaking Authority

The AEDC has authority, at § 15-4-209(b)(5), to promulgate rules necessary to administer the MAGP.

III. Definitions

1. “AEDC” means the Arkansas Economic Development Commission;
2. “City” means any city of the first class, city of the second class, or any incorporated town in this state;
3. “Committee” means the Governor’s appointed Military Affairs Steering Committee;
4. “County” means any county in this state;
5. “Economic development organization” means an organization registered in good standing with the Secretary of State’s Office whose major objectives are to promote community and economic development in a geographic area within the State of Arkansas;
6. “Eligible applicant” means a:
 - A. City;
 - B. County;
 - C. Economic development organization;
 - D. Military Community Council;
 - E. Military installation; and
 - F. State agency;
7. “Ineligible costs” means:
 - A. Obligations incurred prior to the eligibility date for incurring project costs as specified in the grant agreement;
 - B. Expenditures for routine repair, maintenance, and operation;
 - C. Expenditures that are unsupported by documentation;
 - D. Project administration costs, including salaries and benefits for grantee personnel, in excess of ten percent (10%) of the grant award;
 - E. Lobbying expenditures;

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- F. Purchases of alcohol;
- G. Entertainment expenses, including meals and activity fees;
- H. Travel not directly related to the project; and
- I. Purchases of material and services that result in benefits accruing to areas outside the State of Arkansas;

Notwithstanding any of the foregoing of this Section 7, during the State of Emergency and for 30 days thereafter, operating costs related to a military installation's morale, welfare, and recreation facility shall be eligible costs under MAGP.

- 8. "MAGP" means the Military Affairs Grant Program as administered by the Arkansas Economic Development Commission;
- 9. "Military Community Council" means an organization registered in good standing with the Arkansas Secretary of State's Office whose major objectives are to promote cooperation between military and civilian components of its designated geographic area by providing required infrastructure, safe and secure communities, support services, and a high quality of life through the adoption and implementation of matters of joint interest. Proof of documentation of Military Community Councils shall consist of:
 - A. Proof of legal organization as a business entity in good standing with the Arkansas Secretary of State's Office;
 - B. A copy of the council's current bylaws or governing documents approved by the council's governing board;
 - C. A map of the geographic region covered by the council;
 - D. The identity of each public organization and private organization comprising the council and the role each organization will undertake in the project; and
 - E. A list of the current members of the council's board of directors;
- 10. "Military installation" means:
 - A. Facilities located in Arkansas under the jurisdiction of the United States Department of Defense or the Arkansas State Military Department, including a:
 - (i) Base;
 - (ii) Camp;
 - (iii) Post;
 - (iv) Station;
 - (v) Yard;
 - (vi) Center; and
 - (vii) Homeport facility for any ship.
 - B. "Military installation" does not include any facility used primarily for:
 - (i) National guard armories;
 - (ii) Civil works;
 - (iii) Rivers and harbors projects; and

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(iv) Flood control projects.

11. “State of Emergency” refers to Executive Order 20-03 that declared a state of emergency in Arkansas from an outbreak of coronavirus disease 2019 (COVID-19).

IV. Eligibility

Applicants

To be eligible to receive MAGP funding, an applicant shall:

1. Meet program objectives stated in these rules;
2. Meet the definition of “eligible applicant”;
3. For projects within the legal boundaries of military installations, provide written support for the project by the commander of the military installation to which benefits will accrue; and
4. Submit a completed application, under forms and guidelines provided by AEDC to the Director.

Eligible Costs

The AEDC will review all expenditure requests prior to payment to ensure that costs are consistent with the terms and conditions of the grant agreement and are not “ineligible costs” as defined by these rules. The AEDC reserves the right to disallow all ineligible costs. It is the intention of AEDC to fund only expenditures directly related to projects.

V. Application Process

Application Submittal

The AEDC will periodically solicit MAGP applications as funding becomes available. To request funds under the MAGP, eligible applicants shall, utilizing forms prescribed by AEDC, submit a completed, signed application with all supporting documentation to the Director by the specified submittal due date. During the state of emergency, an eligible applicant may apply on a date other than the specified submittal due date upon approval of the Director. Applications shall include:

1. A project title;
2. Applicant contact information;
3. Organizational information;
4. Sources of all funds, including prior MAGP awards, for this project;
5. Previous MAGP awards not included in item 4 above;
6. Proposal information;
7. The amount of funding requested; and
8. Start and completion dates of the project.

Application Review and Approval

No grant offer shall be made by the Executive Director to an applicant until the applicant has completed the following review and approval process.

1. The Director shall conduct a preliminary review of each application to confirm that it:
 - A. Was received on or before the due date specified in the application solicitation unless the applicant received approval from the Director to apply on an alternative date during the state of emergency;
 - B. Was submitted by an eligible applicant;
 - C. Meets the objectives of the program;
 - D. Identifies clearly defined, measurable outcomes;
 - E. Includes a letter of support from the installation commander if the project is located within the legal boundaries of the military installation; and
 - F. Is complete, including all required appendices and attachments.
2. All applications meeting preliminary review requirements, as determined by the Director, will be forwarded to the Committee ~~at least fifteen (15) days~~ prior to the next scheduled Committee meeting. If the application for funding is received during the state of emergency the Director may call for a special Committee meeting to review an application.
3. The Committee shall:
 - A. Review each application in accordance with the MAGP Funding Recommendation Worksheet; and
 - B. Forward completed MAGP Funding Recommendation Worksheets to the Director.
4. The Director shall review each application in accordance with AEDC scoring criteria and funding recommendations provided by the Committee.
5. Upon completion of reviews, the Director will provide funding recommendations to the Executive Director.
6. The Executive Director, after reviewing the Director's recommendations, will specify which applicants may receive grants.
 - A. Unsuccessful applicants will be notified in writing by the Director.
 - B. Approved applicants will be required to execute a grant agreement with AEDC outlining the amount, terms, and conditions of the grant.

VI. Grant Agreements

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1. All MAGP grants shall be awarded at the discretion of the Executive Director. Grant agreements shall specify:
 - A. The eligibility date for incurring project costs;
 - B. The date by which the grantee shall complete the MAGP-funded portion of the project;
 - C. Terms and conditions of the grant agreement;
 - D. The amount of approved costs, determined through negotiations with the Director and applicant; and
 - E. The process by which grant funds shall be disbursed to the grantee.
2. The amount of the grant shall be discretionary and may be for amounts less than requested, subject to funding availability, and Executive Director's discretion.
3. Grants may be funded from any source of funds allocated to the MAGP.
4. Grants will be executed according to the following process:
 - A. Two original copies of the grant agreement will be prepared by the Director and forwarded to the grantee for signature and return.
 - B. Upon receipt of the signed grant agreements from the grantee, the Director will prepare an approval letter and forward the grant agreement and the approval letter to the Executive Director for signature.
 - C. One original copy of the grant agreement will be forwarded to the grantee with the approval letter.

VII. Grant Disbursement

1. Expenditures incurred before the eligibility date for incurring projects costs specified in the grant agreement are ineligible.
2. A contingency of up to ten percent (10%) of the grant award may be withheld from final payment until all closeout documents have been submitted and have been approved by AEDC.

VIII. Reporting

Grantees shall submit quarterly progress reports throughout the duration of the grant agreement in accordance with terms specified in the grant agreement. Failure to submit reports in a timely manner may delay disbursement of grant funds.

Quarterly reports shall be made available for discussion by the Committee and Director at Committee meetings.



**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
Estella Smith, Assistant Director
for Research Services

Memorandum

TO: Members, ALC – Executive Subcommittee

CC: Marty Garrity, Director, Bureau of Legislative Research;
Jessica Sutton, Administrator, Administrative Rules Review Section, Legal Services Division

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

DATE: May 14, 2020

SUBJECT: Legal Authorization for the Arkansas Economic Development Commission’s
Emergency Promulgation of the Military Affairs Grant Program Emergency Rule

The Department of Commerce’s Arkansas Economic Development Commission (“AEDC”) seeks legislative review and approval of its Military Affairs Grant Program Emergency Rule. AEDC states that the temporary amendment of the rule will assist military installations that have been impacted by the COVID-19 pandemic, and the rule will allow the grant to fund administrative costs related to a military installation’s morale, welfare, and recreational facility during the COVID-19 State of Emergency and for thirty (30) days thereafter. To assist with special needs during the pandemic, the proposed rule will further allow grant applications that would address the pandemic to be submitted to AEDC outside of the normal solicitation time frame. Additionally, the rule would allow the Military Affairs Director to call a special meeting of the Military Affairs Steering Committee to review grant applications received during the State of Emergency. Pursuant to Arkansas Code Annotated § 15-4-209, AEDC, in accordance with state and federal law, shall administer grants, loans, cooperative agreements, tax credits, guaranties, and other incentives, memoranda of understanding, and conveyances to assist with economic development in the state, and it may promulgate rules necessary to implement the programs and services it offers. *See Ark. Code Ann. § 15-4-209(a)(1), (b)(5).*