

## **Title 15. Natural Resources and Economic Development**

### **Chapter VIII. Arkansas Economic Development Commission, Department of Commerce**

#### **Subchapter C. Community Development Grants**

#### **Part 191. Supplemental Arkansas Rural Connect Coronavirus Rule**

**Codification Notes.** This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

##### "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 the 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."

##### "SECTION 4. EFFECTIVE DATE

This Rule is effective after review and approval by the Arkansas Legislative Council, ten (10) days after filing of the approved Rule with the Arkansas Secretary of State."

#### **Subpart 1. Generally**

##### **15 CAR § 191-101. Background.**

(a)(1) The Director of the Arkansas Economic Development Commission ("director") issues this part to respond to urgent telecommunication needs in this state for communities impacted by the coronavirus 2019 (COVID-19) pandemic.

(2) On or about February 21, 2020, the director issued the Arkansas Rural Connect Broadband Grant Program rule, 15 CAR pt. 189, to implement the Arkansas Rural Connect Broadband Grant Program (hereafter, "Arkansas Rural Connect", "Arkansas Rural Connect Program", or "ARC").

(3) The Arkansas Rural Connect Broadband Grant Program rule was promulgated prior to the issuance of state and federal public health guidelines responding to the coronavirus 2019 (COVID-19) pandemic.

(b)(1) The coronavirus 2019 (COVID-19) pandemic has severely impacted the citizens of this state.

(2)(A) New public health guidelines encourage, and in some cases require, citizens to practice social distancing, staying at least six feet (6') away from other people as much as possible.

(B) In light of these restrictions, coronavirus 2019 (COVID-19) has brought about an urgent and immediate need for broadband internet access.

(C) Normal day-to-day activities can no longer be done safely.

(3) Broadband enables:

(A) Workers to telework;

(B) Patients to use telemedicine services;

(C) K-12 and college students and unemployed workers in need of reskilling to participate in distance education;

(D) Religious people to participate in online worship services; and

(E) All citizens to:

(i) Shop online;

(ii) Interact with friends through Skype and other video chat tools;

and

(iii) Keep up with the latest news and public health guidelines.

(c)(1) While the coronavirus 2019 (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, Pub. L. No. 116-136.

(2) The Coronavirus Aid, Relief, and Economic Security Act provides substantial allocations of funding to states for coronavirus response, broadly defined.

(3) Guidance provided by the United States Department of the Treasury describes allowable uses of Coronavirus Aid, Relief, and Economic Security Act funding.

(4) In general, Coronavirus Aid, Relief, and Economic Security 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.

(5) All Coronavirus Aid, Relief, and Economic Security Act funds must be spent before the end of December 30, 2020.

(d)(1) The Arkansas Rural Connect program promotes broadband deployment in rural areas of Arkansas that lack meaningful and efficient broadband services.

(2) The ARC program and its purposes align with allowable uses of Coronavirus Aid, Relief, and Economic Security Act funds.

(3) 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 Coronavirus Aid, Relief, and Economic Security Act spending window.

(e)(1) An emergency ARC Coronavirus Rule is currently in force.

(2) However, due to the ever increasing need for broadband for distance learning and telemedicine and the need for social distancing necessitated by the coronavirus 2019 (COVID-19) pandemic, there is a need to issue this part to:

(A) Add other entities that are capable of deploying broadband quickly within the State of Arkansas;

(B) Offer match fund incentives for entities who have received federal awards for broadband deployment in Arkansas; and

(C) Allow the Arkansas Department of Commerce Broadband Office to purchase broadband deployment equipment or devices that aid or assist with receiving broadband as an Arkansas resident.

**Authority.** Arkansas Code § 15-4-209.

**15 CAR § 191-102. Electric cooperatives, other entities, and deadlines.**

**(a) Eligibility — Electric cooperatives and other entities.**

(1)(A) Electric cooperatives or their subsidiaries and any other entity that has a one-year track record of providing voice, internet, broadband, and/or electric distribution or transmission services to at least five hundred (500) retail customers are now eligible to apply for ARC grants.

(B) This includes municipalities that own their own utility service.

(C) Electric cooperatives and other qualified entities:

(i) Must follow all ARC rules the same as the internet service providers (ISP); and

(ii) Will receive the same treatment as ISPs under the ARC rules.

(D) Financial records, deployment experience, and/or retail customer lists are not an absolute bar to funding projects.

(E) Moreover, organizations or entities that do not meet this criteria for eligibility may submit an application, and the project will be reviewed on a case-by-case basis.

(F) These organizations may be required to submit financial records, customer lists, and any other documentation deemed necessary for the Arkansas Department of Commerce Broadband Office to determine the stability of the company and the ability for the company to deploy within the time prescribed by the broadband office.

(G) ARC funding caps may be waived.

(2)(A) Special attention entitling organizations for expedited review will be given to:

(i)(a) Qualified projects that are able to deploy, in six (6) months to a year, to at least ninety percent (90%) of the locations targeted by the project.

(b) The number of months to deploy is flexible and can be extended beyond one (1) year at the discretion of the broadband office, but one (1) year is the max time preferred.

(c) The ninety percent (90%) deployment rate is flexible, but preferred, and must be clearly stated in your application; and

(ii) Projects falling under the Arkansas Rural Connect Broadband Grant Program, 15 CAR pt. 189, cap of three thousand dollars (\$3,000) per unserved location connection are preferred, but flexible.

(B) These qualified projects must state, in a separate writing attached to the application, how they will assist with:

- (i) Telemedicine;
- (ii) Distance learning;
- (iii) Telework; or
- (iv) All three (3).

(C) Areas that are eligible for federal broadband grants will receive a low priority towards funding but will still be eligible to apply.

(D)(i) Preference may be given to applications that expedite current expansion plans of providers.

(ii) The expansion plans:

- (a) Must deploy to areas that lack broadband; and
- (b) Can be deployed in six (6) months or a year.

(E)(i) The ARC population threshold of five hundred (500) is preferred, but flexible.

(ii) 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.

(iii) Rural unserved or underserved communities is a primary goal of this program.

(iv) Communities that do not meet the population threshold will still be able to partner with other communities to meet that eligibility criteria.

(F) Focus will be given to:

(i) Internet speed; and

(ii) Whether there is internet service in the areas meeting the population threshold.

(G) The number of unserved residences in an area is flexible.

(H) All approved applications must:

(i) Meet eligibility criteria; and

(ii) Follow all program requirements under the ARC rules.

(I) However, grant awards under this part shall control over any conflicting ARC broadband rules.

**(b) Deadlines under the Arkansas Rural Connect Broadband Grant Program, 15 CAR pt. 189.**

(1) This part is in defense or preparation for not only coronavirus 2019 (COVID-19) but any other pandemic or disaster that may befall Arkansans now or in the foreseeable future.

(2)(A) Telemedicine/telehealth, telework, and distance learning statewide is one (1) of the goals of this program.

(B) As such, the broadband office and technical review team will evaluate applications until funding ends.

**Authority.** Arkansas Code § 15-4-209.