

**CHIEF INFORMATION OFFICER, OFFICE OF THE[129]**

**Adopted and Filed**

**Rule making related to broadband infrastructure and grants**

The Office of the Chief Information Officer (Office) hereby amends Chapter 20, “Broadband Infrastructure—Targeted Service Areas,” Chapter 21, “Broadband Infrastructure—Project Certification,” and Chapter 22, “Broadband Grants Program,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 8B.4(5) and 8B.10(2) and sections 8B.11(8) and 427.1(40) as amended by 2019 Iowa Acts, House File 772.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 8B.1, 8B.10, 8B.11 and 427.1(40) as amended by 2019 Iowa Acts, House File 772.

*Purpose and Summary*

These amendments interpret and implement 2019 Iowa Acts, House File 772, the Empower Rural Iowa Act, which authorizes the continued operation of broadband programs currently administered by the Office through 2025, and implement several policy changes and requirements related to these programs. In addition, these amendments clarify aspects of the broadband programs identified as requiring clarification following the Office’s administration of these programs over the past several years and make several clerical and ministerial updates which were identified throughout the drafting process.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on June 19, 2019, as **ARC 4505C**. A public hearing was held on July 10, 2019, at 10 a.m. in the OCIO Innovation Lab, Room 12, Hoover State Office Building, Level A, Des Moines, Iowa. No one attended the public hearing. The Iowa Communications Alliance submitted comments stating, “The members of the Alliance have reviewed the proposed rulemaking and we support the proposed changes.” No other comments were received. One change from the Notice was made to correct a verb tense in Item 14.

*Adoption of Rule Making*

This rule making was adopted by the Office on July 24, 2019.

*Fiscal Impact*

The Office will use existing budget and resources to implement these rules, including specific appropriations made during the 2019 Legislative Session for such purposes.

*Jobs Impact*

These amendments and continued support and operation of these programs will lead to the deployment of additional broadband projects by communications service providers and therefore increased job opportunities across the state.

## *Waivers*

As it relates to the property tax program, an agencywide waiver provision has not yet been adopted by the Office but will be adopted in a subsequent rule making. As they relate to the broadband grants program, waivers will be handled in accordance with the terms of the Notice of Funding Availability, similar to the manner in which waivers for solicitations in the procurement context are handled.

## *Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

## *Effective Date*

This rule making will become effective on September 18, 2019.

The following rule-making actions are adopted:

ITEM 1. Amend rule 129—20.1(8B,427) as follows:

**129—20.1(8B,427) Definitions.** ~~For purposes of this chapter, the following definitions shall govern. The definitions in Iowa Code section 8B.1 as amended by 2019 Iowa Acts, House File 772, shall apply to this chapter. In addition, for purposes of this chapter, the following definitions shall apply.~~

~~“As of date” means the as of date of the broadband availability maps and corresponding data sources utilized by the office in determining whether a communications service provider offers or facilitates broadband service in a particular census block at or above the download and upload speeds specified in the definition of targeted service area and underlying the statewide map published and then in effect in accordance with rules 129—20.3(8B,427) and 129—20.4(8B,427). For example, until the office publishes an updated version of the statewide map in accordance with rules 129—20.3(8B,427) and 129—20.4(8B,427), the as of date remains July 1, 2015, which is the as of date of the first statewide map.~~

~~“Broadband” means a high-speed, high-capacity electronic transmission medium, including fixed wireless and mobile wireless mediums, that can carry data signals from independent network sources by establishing different bandwidth channels and that is commonly used to deliver Internet services to the public.~~

~~“Broadband infrastructure” means the physical infrastructure used for the transmission of data that provides broadband services. “Broadband infrastructure” does not include land, buildings, structures, improvements, or equipment not directly used in the transmission of data via broadband.~~

~~“Census block” means a U.S. Census Bureau census block located in this state, including any crop operation located within the census block.~~

~~“Chief information officer” or “CIO” means the state chief information officer or the state chief information officer’s designee.~~

~~“Communications service provider” means a service provider that provides broadband service.~~

~~“Crop operation” means a commercial enterprise where a crop is maintained on the property of the commercial enterprise.~~

~~“Date of commencement” means the date first occurring after July 1, 2015, and before July 1, 2020, in which broadband infrastructure used in a certified project becomes property taxed as real property as determined by Iowa Code section 427A.1.~~

~~“Date of completion” or “completed” means the date that a communications service provider offers or facilitates broadband service delivered at or above 25 megabits per second of download speed and 3 megabits per second of upload speed in a targeted service area.~~

*“Installation of the broadband infrastructure”* means the labor, construction, building, and furnishing of new physical infrastructure used for the transmission of data that provides broadband services. “Installation of the broadband infrastructure” does not include the process of removing existing infrastructure, fixtures, or other real property in preparation of installation of the broadband infrastructure.

*“Is being performed”* includes but is not limited to the planning, preparation, design, architecture, labor, construction, building, and furnishing of new physical infrastructure used for the transmission of data that provides broadband services.

*“Office”* means the office of the chief information officer authorized by Iowa Code chapter 8B.

*“Targeted service area”* means a U.S. Census Bureau census block located in this state, including any crop operation located within the census block, within which no communications service provider offers or facilitates broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed as of July 1, 2015.

ITEM 2. Amend rule 129—20.2(8B,427) as follows:

**129—20.2(8B,427) Scope.** This chapter interprets relevant provisions of Iowa Code sections 8B.1, 8B.10, and 8B.11 as amended by 2019 Iowa Acts, House File 772; implements Iowa Code section 427.1(40) as amended by 2019 Iowa Acts, House File 772; and applies to the office’s determinations of whether a census block is a targeted service area and to persons who wish to challenge the office’s finding on whether a census block is a targeted service area.

ITEM 3. Amend rule 129—20.3(8B,427) as follows:

**129—20.3(8B,427) Broadband availability maps and data sources.** To determine whether a communications service provider offers or facilitates broadband service in a particular census block at or above 25 megabits per second of download speed and 3 megabits per second of upload speed as of July 1, 2015 the download and upload speeds specified in the definition of targeted service area as of the as of date, the office ~~utilized~~ utilizes fixed broadband availability maps and corresponding data sources made available by ~~Connect Iowa, LLC, a subsidiary of Connected Nation, Inc~~ the Federal Communications Commission (FCC) online, which as of September 18, 2019, was available at [www.fcc.gov/general/broadband-deployment-data-fcc-form-477](http://www.fcc.gov/general/broadband-deployment-data-fcc-form-477). Such maps and data sources ~~were~~ are widely accepted for accuracy and made available for public review and comment. By selecting these maps and data sources, the office has satisfied its obligation to reference broadband availability maps or data sources that are widely accepted for accuracy and available for public review and comment as required by Iowa Code section 8B.10(1).

ITEM 4. Amend rule 129—20.4(8B,427) as follows:

**129—20.4(8B,427) Targeted service area determination.**

**20.4(1)** The office will create a statewide map divided into census blocks. Based on the maps and data sources referenced in rule 129—20.3(8B,427), the statewide map will designate census blocks within which, as of ~~July 1, 2015~~ the as of date, no communications service provider offered or facilitated broadband service to the public at or above ~~25 megabits per second of download speed and 3 megabits per second of upload speed~~ the download and upload speeds specified in the definition of targeted service area. This statewide map shall be ~~available~~ published online at <http://ocio.iowa.gov/broadband>.

**20.4(2)** In accordance with Iowa Code section 8B.10(1) as amended by 2019 Iowa Acts, House File 772, the office shall periodically make renewed determinations of whether a communications service provider offers or facilitates broadband service at or above the download or upload speeds specified in the definition of targeted service area by publishing an updated version of the statewide map. Such updates shall be made, to the extent updated maps and data sources are available at the time, no less frequently than prior to each round of grant applications solicited by the office pursuant to Iowa Code section 8B.11 as amended by 2019 Iowa Acts, House File 772.

**20.4(3)** ~~As of November 30, 2016~~ the date of the office's publication of each version of the statewide map online at [ocio.iowa.gov/broadband](http://ocio.iowa.gov/broadband), targeted service area designations as shown on the statewide map shall be considered the office's final determination and finding of whether a particular census block constitutes a targeted service area, unless a person or party successfully challenges the office's determination pursuant to the appeals and contested case process outlined in this chapter, in which case the office will update the statewide map to reflect the outcome of such challenge(s). For the sake of clarity, failure to challenge the office's determination and finding of whether a particular census block constitutes a targeted service area by filing a notice of appeal within the 20-day period established by subrule 20.5(1) shall render the office's determination and finding with respect to that particular census block final and no longer subject to challenge. A party's failure to challenge the office's determination and finding of whether a particular census block constitutes a targeted service area by filing a notice of appeal within the 20-day period established by subrule 20.5(1) shall be deemed a failure to exhaust administrative remedies.

**20.4(4)** Until the office publishes an updated version of the statewide map in accordance with this rule, the as of date for purposes of determining whether any communications service provider offered and facilitated broadband service to the public at or above the download and upload speeds specified in the definition of targeted service area in accordance with Iowa Code section 8B.10(1) as amended by 2019 Iowa Acts, House File 772, and rule 129—20.3(8B,427) and this rule shall remain July 1, 2015, which is the as of date of the first statewide map. Thereafter, the as of date shall be the same as the as of date of the maps and corresponding data sources utilized by the office each time the office makes its renewed determination in accordance with Iowa Code section 8B.10(1) as amended by 2019 Iowa Acts, House File 772, and rule 129—20.3(8B,427) and this rule.

ITEM 5. Amend subrule 20.5(3) as follows:

**20.5(3)** *Notification of and input from affected persons or parties.* Within ~~40~~ ten calendar days of receipt of a notice of appeal, the office shall provide notification to any affected persons or parties by posting the notice of appeal at ~~<http://ocio.iowa.gov/>~~ [ocio.iowa.gov/broadband](http://ocio.iowa.gov/broadband). From the date of such posting, any affected persons or parties will have 20 calendar days to submit evidence and information in support of, or in opposition to, such appeal. Except to the extent not feasible, any such evidence and information shall be submitted by ~~electronic mail (e-mail)~~ email to [cio@iowa.gov](mailto:cio@iowa.gov). To the extent electronic submission is not feasible, such evidence and information shall be mailed to: Office of the Chief Information Officer, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319. If such evidence or information is submitted by mail, the evidence or information shall be accompanied by a written explanation of why electronic submission was not feasible.

ITEM 6. Amend subrule 20.5(5) as follows:

**20.5(5)** *Final agency decision.* Following the internal review set forth in subrule 20.5(4), the office will issue a final agency decision stating the reasons for the office's decision concerning the census ~~block~~ block(s) in question. In issuing the decision, the office shall consider the evidence and information submitted by all appellants related thereto, in conjunction with any other evidence and information submitted by any affected persons or parties pursuant to subrule 20.5(3), the maps and data sources originally utilized in rule 129—20.4(8B,427), and any other information deemed relevant by the office. The final agency decision will be posted online at ~~<http://ocio.iowa.gov/>~~ [ocio.iowa.gov/broadband](http://ocio.iowa.gov/broadband). The final agency decision shall become final unless within 30 days of such posting an appellant or an affected person or party that submitted evidence in support of, or in opposition to, the appeal files a request for a contested case proceeding pursuant to rule 129—20.6(8B,427).

ITEM 7. Amend subparagraph **20.5(7)“a”(1)** as follows:

(1) Fully complete and submit to the office Form 22 (available online at <http://ocio.iowa.gov/> [ocio.iowa.gov/broadband](http://ocio.iowa.gov/broadband));

ITEM 8. Adopt the following new subrule 20.5(8):

**20.5(8)** *Probative evidence and information.* Examples of evidence and information the office would consider particularly probative of broadband service at or above the download and upload speeds

specified in the definition of targeted service area as of the as of date for purposes of adjudicating an appeal of the office's determination of whether a particular census block constitutes a targeted service area include:

*a.* Signed attestations submitted to the office under penalty of perjury on forms provided by the office that the applicable census block(s) was or was not served as of the as of date with broadband service at or above the download and upload speeds specified in the definition of targeted service area.

*b.* Bills or invoices provided to or received by customers in the applicable census block(s) which identify the specific download and upload speeds provided or received as of the as of date.

ITEM 9. Amend **129—Chapter 20**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 8B.1, 8B.10, ~~47A.3~~, and 427.1(40) as amended by 2019 Iowa Acts, House File 772.

ITEM 10. Amend rule 129—21.2(8B,427) as follows:

**129—21.2(8B,427) Scope.** This chapter applies to communications service providers who request certification pursuant to Iowa Code section 427.1(40) from the office that an installation of the broadband infrastructure is ~~being performed or was completed in a targeted service area, and that the broadband infrastructure installed facilitates broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed~~ will facilitate broadband service at or above the download and upload speeds specified in the definition of targeted service area.

ITEM 11. Amend rule 129—21.3(8B,427) as follows:

**129—21.3(8B,427) Application for certification.** Applications for certification shall be completed and submitted by the means specified online at ~~http://ocio.iowa.gov/~~ ocio.iowa.gov/broadband. In order to receive certification from the office, applications must be filled out in their entirety. Communications service providers making application to the office will be required to certify that all of the information contained in the application is accurate. If it is later determined that any of the information contained in the application is inaccurate, the office may revoke the certification, in whole or in part. An application for certification shall include without limitation the following information:

1. The communications service provider's legal and business ~~name~~ name(s) and ~~address~~ address(es) and the name, address, telephone number, and ~~e-mail~~ email address of the person authorized by the communications service provider to respond to inquiries regarding the application for certification;

2. The census block number(s) as provided on the statewide map referenced in rule 129—20.4(8B,427) for the targeted service area(s) forming the basis of the application (i.e., the targeted service ~~area~~ area(s) in which the installation of the broadband infrastructure is ~~being performed or was completed~~ will facilitate broadband service at or above the download and upload speeds specified in the definition of targeted service area);

3. A description and overview of the specific technologies to be deployed (e.g., fixed wireless) that will facilitate broadband service at or above the download and upload speeds specified in the definition of targeted service area;

~~3.~~ 4. Attestation that the broadband infrastructure installed in the targeted service area(s) facilitates will facilitate broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed the download and upload speeds specified in the definition of targeted service area; and

~~4.~~ 5. Any other information as requested in the application.

ITEM 12. Amend rule 129—21.4(8B,427) as follows:

**129—21.4(8B,427) Time of filing.** Applications for certification must be received by the office at least ten days prior to the closure of the next applicable assessment deadline to be considered by the office for purposes of that reporting cycle. If the office does not receive an application within that time frame, the office may deny the application or consider the application as part of the next assessment cycle. Except

as otherwise authorized by the office, an application for certification shall be deemed filed on the date of its ~~online submission pursuant to rule 129—21.3(8B,427)~~ actual receipt by the office. Notwithstanding the foregoing, except as otherwise authorized by the office, when an application for certification is filed during an open 20-day appeal period specified in 129—subrule 20.5(1) following the publication of an updated statewide map in accordance with rule 129—20.4(8B,427), an application for certification will not be deemed filed prior to the expiration of the initial 20-day appeal period specified in 129—subrule 20.5(1).

ITEM 13. Amend rule 129—21.5(8B,427) as follows:

**129—21.5(8B,427) Notice of decision and issuance of certificate.** ~~The~~ Following the timely filing of an application for certification and before the closure of the next assessment cycle, the office shall notify the communications service provider by electronic means of its decision regarding an the application for certification within 30 days of the filing of an application and, if appropriate, shall issue a certification by electronic means within that same time frame. If the decision is to deny the application or part of the application, such notice shall include a concise statement of the office's reasons for such denial, in whole or in part. A determination by the office to deny an application for certification, in whole or in part, may be appealed pursuant to 129—Chapter 6.

ITEM 14. Amend rule 129—21.6(8B,427) as follows:

**129—21.6(8B,427) Contents of certification.** The certification shall state the communications service provider for which the certification is being issued, the census block number(s) (as provided on the map referenced in rule 129—21.4(8B,427)) of the targeted service area(s) for which the certification is being issued and county(s) in which such targeted service area(s) resides, that the office has determined the census block(s) in which the installation ~~is being performed or was completed~~ will facilitate broadband service are targeted service area(s), that the broadband infrastructure ~~installed facilitates~~ will facilitate broadband service at or above ~~25 megabits per second of download speed and 3 megabits per second of upload speed~~ the download and upload speeds specified in the definition of targeted service area, and the date on which the certification is issued by the office. Such certification shall be signed by the CIO.

ITEM 15. Amend rule 129—21.8(8B,427) as follows:

**129—21.8(8B,427) Certification of completion and field testing.** To the extent applicable, after an installation of broadband infrastructure certified by the office is fully installed in a targeted service area, the communications service provider for which a certification was issued must certify to the office that such installation facilitates broadband service at or above ~~25 megabits per second of download speed and 3 megabits per second of upload speed~~ the download and upload speeds specified in the definition of targeted service area. The office may, in its discretion, conduct field tests for compliance with the requirements of Iowa Code section 427.1(40)“b” at any time after broadband service is available in a targeted service area. Such field tests may include but not be limited to speed tests from any location in a targeted service area in which the project was deployed or, in the case of wireline installations, the communications service provider's network operation center or central office. As applicable, noncompliance may be reported to the attorney general, the department of revenue, or applicable county board of supervisors.

ITEM 16. Amend **129—Chapter 21**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 8B.1, ~~8B.3, 8B.4(15), 17A.3,~~ and 427.1(40) as amended by 2019 Iowa Acts, House File 772.

ITEM 17. Amend rule 129—22.1(8B) as follows:

**129—22.1(8B) Definitions.** The definitions in Iowa Code section 8B.1 as amended by 2019 Iowa Acts, House File 772, and rule 129—20.1(8B,427) shall apply to this chapter. In addition, for purposes of this chapter, the following definitions shall ~~also~~ apply:

“Grantee” means a communications service provider awarded grant funds by the office pursuant to and in accordance with Iowa Code section 8B.11 and these rules.

“Project” means an installation of broadband infrastructure by a communications service provider that facilitates broadband service at or above the download and upload speeds specified in the definition of targeted service area in one or more targeted service areas. ~~Except in limited circumstances otherwise permitted herein, a project may not be comprised of, in whole or in part, census blocks that are not targeted service areas.~~

ITEM 18. Amend rule 129—22.2(8B) as follows:

**129—22.2(8B) Purpose and scope.** This chapter applies to the broadband grants program established by Iowa Code section 8B.11 and administered by the office. As authorized by Iowa Code section 8B.11(8), this chapter interprets relevant provisions of Iowa Code sections 8B.1 and 8B.11 as amended by 2019 Iowa Acts, House File 772, and establishes program process, management, and measurement rules designed to ensure the effective and efficient administration and oversight of the program, the key objective of which is to reduce or eliminate targeted service areas in the state of Iowa unserved and underserved areas in the state, leveraging federal funds and public and private partnerships where possible, by incentivizing the installation of broadband infrastructure by communications service providers therein awarding grants to communications service providers that reduce or eliminate targeted service areas by installing broadband infrastructure that facilitates broadband service in targeted service areas at or above the download and upload speeds specified in the definition of targeted service area in accordance with Iowa Code section 8B.11 as amended by 2019 Iowa Acts, House File 772, and with this chapter.

ITEM 19. Amend subrule 22.4(1) as follows:

**22.4(1) Application process.** Following the issuance of a NOFA by the office, communications service providers may apply to the office for grant funds for the installation of broadband infrastructure ~~at or above 25 megabits per second of download speed and 3 megabits per second of upload speed~~ that facilitates broadband service in targeted service areas at or above the download and upload speeds specified in the definition of targeted service area. Applications shall be made and submitted in accordance with the terms of these rules and the NOFA.

ITEM 20. Amend subrule 22.4(2) as follows:

**22.4(2) Contents of application.** In addition to any other questions or requirements established by the NOFA, an application shall, at a minimum, include:

a. The communications service provider’s legal and business ~~name~~ name(s) and ~~address~~ address(es);

b. The name, address, telephone number, and email address of the person authorized by the communications service provider to respond to inquiries regarding the application;

c. The census block number(s) as provided on the statewide map referenced in rule 129—20.4(8B,427) for the targeted service area(s) forming the basis of the application/project (i.e., the targeted service area(s) in which the proposed installation of broadband infrastructure will ~~occur~~ facilitate broadband service at or above the download and upload speeds specified in the definition of targeted service area);

d. Attestation that the broadband infrastructure installed ~~in the targeted service area(s)~~ will facilitate broadband service at or above ~~25 megabits per second of download speed and 3 megabits per second of upload speed~~ the download and upload speeds specified in the definition of targeted service area;

e. Unless a specific cost allocation methodology is identified or required by the office as set forth in the NOFA, the specific methods or formulas the communications service provider will utilize in allocating the costs of and for broadband infrastructure for which reimbursement may be sought in proportion to such infrastructure’s actual facilitation of broadband service at or above the download and upload speeds specified in the definition of targeted service area in the targeted service areas forming the basis of the project;

~~e. f.~~ An anticipated project completion date, which shall not exceed five years from the date the NOFA is issued. An applicant's anticipated project completion date shall be used to determine whether a grantee's failure to complete a project in a timely manner warrants a finding of noncompliance for purposes of subparagraph 22.6(4) "b"(2).

ITEM 21. Rescind and reserve subrule **22.4(5)**.

ITEM 22. Amend subrule 22.5(1) as follows:

**22.5(1)** ~~Optional period~~ *Period for public comment and validation process.*

~~a.~~ Following the expiration of the deadline for the receipt of applications stated in the NOFA, the office ~~may, in its sole discretion, will~~ open a period for public comment as it relates to such applications ~~through the state of Iowa's public comment website: comment.iowa.gov. If the office elects to solicit public comment pursuant to this rule, any~~ Any member of the public will be permitted to submit comments regarding applications received by the office through the means specified in the NOFA.

~~b.~~ As required by Iowa Code section 8B.11(3) as amended by 2019 Iowa Acts, House File 772, the period for public comment will include the opportunity for the public to submit factual information as part of a validation process to address claims that a targeted service area forming the basis of an application received by the office is currently served with broadband service at or above the download and upload speeds specified in the definition of targeted service area. Examples of such factual information the office would consider particularly probative of current service include:

(1) Signed attestations submitted to the office under penalty of perjury on forms provided by the office that such targeted service areas are currently served with broadband service at or above the download and upload speeds specified in the definition of targeted service area.

(2) Bills or invoices provided to or received by customers in such targeted service areas which identify current broadband service at or above the download and upload speeds specified in the definition of targeted service area.

To the extent such factual information is credible and verifiable, the office may consider such factual information in considering the relative need factor set forth in Iowa Code section 8B.11(4) "a" and paragraph 22.5(3) "a" in determining whether, to which projects, and in what amount(s) to award grant funds. In addition, to the extent such factual information is credible and verifiable, such factual information may result in the disqualification of a project where the factual information demonstrates that a material portion of the proposed project is currently served with broadband service at or above the download and upload speeds specified in the definition of targeted service area. Further, to the extent such factual information is credible and verifiable, the office may incorporate such factual information into its next renewed determination of whether a communications service provider offers or facilitates broadband service at or above the download or upload speeds specified in the definition of targeted service area and thereby subsequent iteration of the statewide map, as determined and updated in accordance with Iowa Code section 8B.10(1) as amended by 2019 Iowa Acts, House File 772, and rules 129—20.3(8B,427) and 129—20.4(8B,427).

ITEM 23. Amend subrule 22.5(3) as follows:

**22.5(3)** *Office final decision.* Following the office's receipt of the review committee's input or recommendations and the closure of the period for public comment, ~~if any,~~ the office will review all applications received by the deadline and otherwise warranting review in accordance with the terms, conditions, and requirements of the NOFA, these rules, and Iowa Code chapter 8B; ~~the input/recommendations made by the review committee; and any public comment solicited/received~~ received, all in accordance with the terms, conditions, and requirements of the NOFA, these rules, and Iowa Code chapter 8B, and make a final agency decision regarding whether, to which projects, and in what amount(s) to award grant funds for the installation of broadband infrastructure that facilitates broadband service in targeted service areas at or above the download and upload speeds specified in the definition of targeted service area.

~~a.~~ In so doing, the office will take into consideration the following factors, in accordance with and in the manner specified by the terms, conditions, and requirements of the NOFA, affording the greatest weight to the factors in subparagraphs 22.5(3) "a"(1), 22.5(3) "a"(2), and 22.5(3) "a"(3):



(1) The relative need for broadband infrastructure in the area and the existing broadband service speeds, including whether the project serves a rural area(s). Existing broadband service speeds may be determined by reference to the statewide map referenced in rule 129—20.4(8B,427), although the office may also take into consideration factual information received through the validation process pursuant to and in accordance with Iowa Code section 8B.11(3) as amended by 2019 Iowa Acts, House File 772, and paragraph 22.5(1)“b.”

(2) The applicant’s total proposed budget for the project, including the amount or percentage of local or federal matching funds, if any, any funding obligations shared between public and private entities, and the percentage of funding provided directly from the applicant.

(3) The relative download and upload speeds of proposed projects for all the applicants.

(4) The specific product attributes resulting from the proposed project, including technologies that provide higher qualities of service, such as service levels, latency, and other service attributes as determined by the office.

~~(2)~~ (5) The percentage of the homes, schools, and businesses in the targeted service area(s) forming the basis of the project that will be provided access to broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed the download and upload speeds specified in the definition of targeted service area as a result of the project. The number of homes, schools, and businesses in a targeted service area may be determined by reference to the statewide map referenced in rule 129—20.4(8B,427). To the extent possible in light of the current unit of measurement incorporated into current maps and data sources relied on by the office (i.e., census blocks), considering this factor is the means by which the office ensures underserved areas within targeted service areas are, to the extent possible, reduced or eliminated.

~~(3)~~ (6) The geographic diversity of the project areas of all applicants.

~~(4)~~ (7) The economic impact of the project will have on to the area.

~~(5) The applicant’s total proposed budget for the project, including the amount or percentage of local match, if any. For purposes of this chapter, “local match” shall include any private and public sources of funding available to the applicant and to be utilized in connection with the applicant’s proposed project.~~

~~(6)~~ (8) Any other factors deemed relevant by the office as stated in the NOFA.

b. In determining whether, to which projects, and in what amount(s) to award grant funds, the office will not:

(1) Base its decision on the office’s prior knowledge of any applicant except for the information provided in the application obtained by the office during the application process or period for public comment; or

(2) Make an award that exceeds 15 percent of any communications service provider’s total estimated allowable project costs for a proposed installation of broadband infrastructure.

ITEM 24. Amend subrule 22.6(2) as follows:

**22.6(2) Mapping data required.** Upon project completion, a grantee must supply the office with geographic information system (GIS) data in a form mutually acceptable to both the office and grantee demonstrating specifically where broadband infrastructure for which grant funds have been utilized, in whole or in part, has been installed, regardless of whether such infrastructure actually serves any customers in targeted service area(s) forming a basis of the application at the time such mapping data is supplied to the office. Such GIS data must enable the office to determine which specific homes, schools, and businesses within each targeted service area forming the basis of the project have access to broadband service at or above ~~25 megabits per second of download speed and 3 megabits per second of upload speed~~ the download and upload speeds specified in the definition of targeted service area as a result of the project.

ITEM 25. Amend subparagraph **22.6(3)“a”(1)** as follows:

(1) General. A grantee shall only be reimbursed by the office for:

1. No change.

2. Expenditures for broadband infrastructure ~~installed in targeted service areas; or, in the limited circumstances permitted herein, to the extent any expenditures relate to broadband infrastructure installed outside of targeted service areas but which facilitates broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed within targeted service areas underlying the application, only for the proportionate amount that~~ solely to the extent such broadband infrastructure facilitates broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed the download and upload speeds specified in the definition of targeted service area within targeted service areas forming the basis of the project; and

3. No change.

ITEM 26. Amend paragraph **22.6(3)“b”** as follows:

*b. Performance/certification.* After the completion of a project utilizing, in whole or in part, grant funds, a grantee must:

(1) Certify to the office that the project was completed as proposed in the original application, including but not limited to that the final installation ~~was installed in or otherwise facilitates broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed~~ the download and upload speeds specified in the definition of targeted service area in each of the applicable targeted service areas identified in the original application, and identify the total number of homes, schools, and businesses actually receiving broadband service in each of the targeted service areas identified in the original application as a result of the project.

(2) Attest that any claimed, allowable expenditures are true and accurate, were directly related to the installation of broadband infrastructure that facilitates broadband service at or above ~~25 megabits per second of download speed and 3 megabits per second of upload speed~~ the download and upload speeds specified in the definition of targeted service area in eligible targeted service areas forming the basis of the project, and were properly allocated in accordance with the terms, conditions, and requirements of the NOFA or grant agreement.

(3) Supply the office with updated GIS data in accordance with subrule 22.6(2).

ITEM 27. Amend subparagraph **22.6(3)“c”(3)** as follows:

(3) In the case where a grantee does not have a customer in a targeted service area being served by the installation, certification obtained by the grantee and supplied to the office from an independent third party who is a properly licensed engineer that the installation facilitates broadband service at or above ~~25 megabits per second of download speed and 3 megabits per second of upload speed~~ the download and upload speeds specified in the definition of targeted service area in applicable targeted service areas identified in the original application. The costs of such certification shall be borne by the grantee.

ITEM 28. Amend subparagraph **22.6(3)“d”(2)** as follows:

(2) A grantee shall not be entitled to any grant funds or shall be obligated to repay the office the entire amount of any grant funds previously distributed by the office to the grantee if the office determines that:

1. Claimed expenditures or a prior reimbursement, in whole or in part, was used for the installation of broadband infrastructure that was not in or does not facilitate broadband service at or above ~~25 megabits per second of download speed and 3 megabits per second of upload speed~~ the download and upload speeds specified in the definition of targeted service area in a targeted service area identified in the original application;

2. and 3. No change.

ITEM 29. Amend subparagraph **22.6(4)“b”(5)** as follows:

(5) Claimed expenditures or a prior reimbursement, in whole or in part, was used for the installation of broadband infrastructure that ~~was not in or that~~ does not facilitate broadband service at or above ~~25 megabits per second of download speed and 3 megabits per second of upload speed~~ the download and upload speeds specified in the definition of targeted service area in a targeted service area identified in the original application;

ITEM 30. Adopt the following new rule 129—22.8(8B,427):

**129—22.8(8B,427) Targeted service areas subject to challenge.** If at the time a grantee is awarded grant funds the office's determination of whether a particular census block forming the basis of the grantee's application, in whole or in part, is a targeted service area currently subject to challenge pursuant to the appeal and contested case procedures set forth in 129—Chapter 20, or the office's administration of the award process is subject to challenge pursuant to subrule 22.5(4), including any subsequent judicial review or appeal therefrom as outlined in Iowa Code sections 17A.19 and 17A.20, the office may proceed to enter into a grant agreement with the grantee pursuant to subrule 22.6(1). Notwithstanding the foregoing or any contract executed between the parties to the contrary, the aspect(s) of the office's award(s) that is subject to such challenge at the time of such execution shall be valid and enforceable only to the extent the office's original determination or award process, as applicable, is ultimately upheld at the end of the entire appeals and contested case process once final, including judicial review and any subsequent appeal. If a census block is ultimately determined to not constitute a targeted service area, or a portion of an award is later deemed invalid, in whole or in part: the grantee shall not be entitled to any grant funds or reimbursement to the extent of any such noneligibility or invalidity; the office may require the grantee to amend the grant agreement to reflect such result; and the grantee will be required to reimburse the office for any corresponding funds previously distributed by the office.

ITEM 31. Amend **129—Chapter 22**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~section~~ sections 8B.1, 8B.10(1), and 8B.11 as amended by 2019 Iowa Acts, House File 772.

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