

CHIEF INFORMATION OFFICER, OFFICE OF THE [129]

Notice of Intended Action

Proposing rule making related to broadband infrastructure and grants and Empower Rural Iowa and providing an opportunity for public comment

The Office of the Chief Information Officer (OCIO) hereby proposes to amend 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 proposed under the authority provided in Iowa Code sections 8B.4(5), 8B.10(2), 8B.11(8) and 427.1(40) and 2020 Iowa Acts, Senate File 2400.

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) and 2020 Iowa Acts, Senate File 2400.

Purpose and Summary

These proposed amendments interpret and implement 2020 Iowa Acts, Senate File 2400, relating to broadband service, including matters under the purview of the Chief Information Officer, the Empower Rural Iowa Broadband Grant Fund, and certain broadband infrastructure tax exemptions.

Fiscal Impact

In administering programs for Fiscal Year 2020-2021, OCIO will use existing budget and resources.

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

The Office’s general waivers chapter is located at 129—Chapter 7.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Office no later than 4:30 p.m. on August 18, 2020. Comments should be directed to:

Matt Behrens
Office of the Chief Information Officer
200 East Grand Avenue
Des Moines, Iowa 50309
Phone: 515.281.5503
Fax: 515.281.6137
Email: cio@iowa.gov

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held via conference call as follows:

August 18, 2020
9 to 10 a.m.

Via teleconference
Office of the Chief Information Officer
Conference Line: +1 619.738.1390
PIN: 175654661

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Office and advise of specific needs.

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).

The following rule-making actions are proposed:

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

129—20.1(8B,427) Definitions. The definitions in Iowa Code section 8B.1 as amended by ~~2019 Iowa Acts, House File 772,~~ 2020 Iowa Acts, Senate File 2400, 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~~ broadband 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 block” means:

1. Until the Federal Communications Commission (FCC) adopts a different or more granular unit of measurement(s) by appropriate regulation or order (such as location-specific, address-specific, or polygon-based), a census block.

2. If the FCC adopts a different or more granular unit of measurement(s) by appropriate regulation or order (such as location-specific, address-specific, or polygon-based), for purposes of the next iteration of the statewide map published in accordance with rule 129—20.4(8B,427) following the FCC's adoption of such unit of measurement(s), such unit of measurement(s) as adopted by the FCC and which is located in this state.

“Broadband unit” or *“broadband units”* means a home, farm, school, or business within a broadband block as of the as of date. The number of broadband units within a broadband block shall be as represented on the statewide map published in accordance with rule 129—20.4(8B,427).

“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.

“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.

“Materially served” means a broadband block within which 10 percent or greater of the geographic area comprising the broadband block is facilitated with broadband service at or above the download and upload speeds identified by the FCC pursuant to Section 706 of the federal Telecommunications Act of 1996, as amended.

“Materially underserved” means a broadband block within which less than 10 percent of the geographic area comprising the broadband block is facilitated with broadband service at or above the download and upload speeds identified by the FCC pursuant to Section 706 of the federal Telecommunications Act of 1996, as amended.

“Meaningfully available” means broadband service that is facilitated to consumers on a commercially reasonable basis and without significant interruption or delay. In determining whether broadband service is meaningfully available on a commercially reasonable basis, the office may consider product or delivery attributes or characteristics such as availability in terms of average uptime and downtime or latency or delays in the transmission of data.

“Targeted service area” means a broadband block:

1. Within which no communications service provider facilitates broadband service at or above the download and upload speeds identified by the FCC pursuant to Section 706 of the federal Telecommunications Act of 1996, as amended; or

2. That is not materially served with meaningfully available broadband service by one or more communications service providers at or above the download and upload speeds identified by the FCC pursuant to Section 706 of the federal Telecommunications Act of 1996, as amended, as of the as of date.

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~~ 2020 Iowa Acts, Senate File 2400; implements Iowa Code section 427.1(40) as amended by ~~2019 Iowa Acts, House File 772~~ 2020 Iowa Acts, Senate File 2400; and applies to the office’s determinations of whether a eensus broadband block is a targeted service area and to persons who wish to challenge the office’s finding on whether a eensus broadband 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.

20.3(1) To determine whether a communications service provider ~~offers or~~ facilitates broadband service in a particular eensus broadband block at or above the download and upload speeds specified in the definition of targeted service area as of the as of date, the office ~~utilizes fixed~~ may utilize the following data sources:

a. Fixed broadband availability maps and corresponding data sources made available by the ~~Federal Communications Commission (FCC)~~ FCC online, which as of ~~September 18, 2019~~ [the effective date of these amendments], was available at www.fcc.gov/general/broadband-deployment-data-fcc-form-477. ~~Such maps and data sources 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).~~

b. Broadband availability maps and corresponding data sources developed or produced by contractors or third parties retained or utilized by the office for such purpose.

c. For purposes of identifying or verifying the number and location of broadband units within a broadband block, next generation (NG) 911 structure data, statewide address location data, or United States census data.

d. Other data sources made available by or through federal agencies, directly or indirectly.

20.3(2) In accordance with Iowa Code section 8B.10(3) as enacted by 2020 Iowa Acts, Senate File 2400, all data sources relied on by the office in making the determination(s) contemplated by this rule and rule 129—20.4(8B,427) shall exclude mobile wireless or satellite data, capabilities, and delivery mediums.

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 eensus broadband blocks. Based on the maps and data sources referenced in rule 129—20.3(8B,427), the statewide map will designate eensus broadband blocks within which, that qualify as targeted service areas as of the as of date, ~~no communications service provider offered or facilitated broadband service to the public at or above the download and upload speeds specified in the definition of targeted service area.~~ This statewide map shall be published online at 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, 2020 Iowa Acts, Senate File 2400, 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 2020 Iowa Acts, Senate File 2400.

20.4(3) As of the date of the office's publication of each version of the statewide map online at 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 eensus broadband 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 eensus broadband 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 eensus broadband block final and no longer subject to challenge. A party's failure to challenge the office's determination and finding of whether a particular eensus broadband 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 subrules 20.5(1), 20.5(4), 20.5(5) and 20.5(8) as follows:

20.5(1) *Notice of appeal.* Within 20 days after the office makes its final determination of whether a particular eensus broadband block constitutes a targeted service area pursuant to rule 129—20.4(8B,427),

any person or party aggrieved or adversely affected by such determination may challenge the office's finding by filing a notice of appeal with the office.

a. The notice of appeal shall set forth:

- (1) The name, address, telephone number, and email address of the person or party;
- (2) The particular ~~eensus-block~~ broadband block(s) designation the person or party is challenging by stating:

1. The ~~eensus~~ broadband ~~block number~~ number(s) or other unique identifier as provided on the statewide map referenced in rule 129—20.4(8B,427);

2. The county in which the ~~eensus-block~~ broadband block(s) is located as provided on the statewide map referenced in rule 129—20.4(8B,427);

- (3) and (4) No change.

b. No change.

20.5(4) Internal review. At the end of the time periods specified in subrules 20.5(1) and 20.5(3), the office shall consolidate all appeals involving the same ~~eensus-block~~ broadband block(s) and conduct an internal review of 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 identified and originally utilized in ~~rule~~ rules 129—20.3(8B,427) and 129—20.4(8B,427), and any other information deemed relevant by the office.

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 ~~eensus~~ broadband 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 identified and originally utilized in ~~rule~~ rules 129—20.3(8B,427) and 129—20.4(8B,427), and any other information deemed relevant by the office. The final agency decision will be posted online at 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).

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 ~~eensus~~ broadband 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 ~~eensus~~ broadband 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 ~~eensus~~ broadband block(s) which identify the specific download and upload speeds provided or received as of the as of date.

ITEM 6. Amend subrules 20.6(1) and 20.6(2) as follows:

20.6(1) Notice of hearing. Upon receipt of a request for a contested case proceeding, the office shall inform the department of inspections and appeals of the filing and of relevant information pertaining to the appeal in question. The department of inspections and appeals shall send a written notice of the date, time and location of the hearing to all affected persons or parties who initiated a contested case related to the ~~eensus-block~~ broadband block(s) forming the basis of the contested case, or appealed the office's determination of the ~~eensus-block~~ broadband block(s) forming the basis of the contested case pursuant to subrule 20.5(1), or submitted evidence or information to the office pursuant to subrule 20.5(3) directly related to the ~~eensus-block~~ broadband block(s) forming the basis of the contested case. The presiding officer shall hold a hearing on the matter within 60 days of the date the notice of appeal was received by the office.

20.6(2) Consolidation. In the event any contested cases concerning the same ~~eensus block~~ broadband block(s) are initiated separately, such matters shall be consolidated.

ITEM 7. 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 will facilitate broadband service at or above the download and upload speeds specified in the definition of targeted service area in a targeted service area(s).

ITEM 8. 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 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. No change.
2. The ~~eensus~~ broadband block number(s) or other unique identifier 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(s) in which the installation of the broadband infrastructure will facilitate broadband service at or above the download and upload speeds specified in the definition of targeted service area);
3. to 5. No change.

ITEM 9. Amend rules 129—21.6(8B,427) and 129—21.7(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 ~~eensus~~ broadband 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 ~~eensus~~ broadband block(s) in which the installation will facilitate broadband service are targeted service area(s), that the broadband infrastructure will facilitate broadband service at or above 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.

129—21.7(8B,427) Targeted service areas subject to challenge. To the extent an application for certification satisfies all other requirements of this chapter, if at the time such application is filed the office's determination of whether a particular ~~eensus~~ broadband block forming the basis of such 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 judicial review and appeal procedures outlined in Iowa Code sections 17A.19 and 17A.20, the office will issue a certification. Notwithstanding the foregoing, the aspect(s) of the office's certification concerning ~~eensus~~ broadband blocks forming the basis of the application for certification that is currently subject to such challenge shall be purely contingent and valid only to the extent the office's original determination is ultimately upheld at the end of the entire appeals process once final, including judicial review and any subsequent appeal. For purely administrative purposes, if a portion of an application for certification is later deemed invalid by operation of this rule, the office may require the communications service provider to file a new application pursuant to rule 129—21.3(8B,427).

ITEM 10. 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,~~ 2020 Iowa Acts, Senate File 2400, and rule 129—20.1(8B,427) shall apply to this chapter. In addition, for purposes of this chapter, the following definitions shall 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~~ Iowa Code section 8B.11(5) “a” or “b” as enacted by 2020 Iowa Acts, Senate File 2400, whichever is applicable, in one or more targeted service areas.

ITEM 11. 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,~~ 2020 Iowa Acts, Senate File 2400, 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 unserved and underserved areas in the state, leveraging federal funds and public and private partnerships where possible, by 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~~ section 8B.11(5) “a” or “b” as ~~amended enacted by 2019~~ 2020 Iowa Acts, House File ~~772~~ 2400, whichever is applicable, and in accordance with Iowa Code section 8B.11 and this chapter.

ITEM 12. Amend subrules 22.4(1) and 22.4(2) 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 that facilitates broadband service in targeted service areas at or above the download and upload speeds specified in ~~the definition of targeted service area~~ Iowa Code section 8B.11(5) “a” or “b” as enacted by 2020 Iowa Acts, Senate File 2400, whichever is applicable. Applications shall be made and submitted in accordance with the terms of these rules and the NOFA.

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. and b. No change.

c. The ~~census~~ broadband 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 facilitate broadband service at or above the download and upload speeds specified in ~~the definition of targeted service area~~ Iowa Code section 8B.11(5) “a” or “b” as enacted by 2020 Iowa Acts, Senate File 2400, whichever is applicable);

d. Attestation that the broadband infrastructure installed will facilitate broadband service at or above the download and upload speeds specified in ~~the definition of targeted service area~~ Iowa Code section 8B.11(5) “a” or “b” as enacted by 2020 Iowa Acts, Senate File 2400, whichever is applicable;

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~~ Iowa Code section 8B.11(5) “a” or

“b” as enacted by 2020 Iowa Acts, Senate File 2400, whichever is applicable, in the targeted service areas forming the basis of the project;

f. No change.

ITEM 13. Amend paragraph **22.5(1)“b”** as follows:

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~~ Iowa Code section 8B.11(5) “a” or “b” as enacted by 2020 Iowa Acts, Senate File 2400, whichever is applicable. 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~~ Iowa Code section 8B.11(5) “a” or “b” as enacted by 2020 Iowa Acts, Senate File 2400, whichever is applicable.

(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~~ Iowa Code section 8B.11(5) “a” or “b” as enacted by 2020 Iowa Acts, Senate File 2400, whichever is applicable.

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~~ Iowa Code section 8B.11(5) “a” or “b” as enacted by 2020 Iowa Acts, Senate File 2400. 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,~~ 2020 Iowa Acts, Senate File 2400, and rules 129—20.3(8B,427) and 129—20.4(8B,427).

ITEM 14. 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, 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 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~~ Iowa Code section 8B.11(5) “a” or “b” as enacted by 2020 Iowa Acts, Senate File 2400, whichever is applicable.

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) No change.

(2) The applicant’s total proposed budget for the project, including ~~the~~ all of the following:

1. The amount or percentage of local or federal matching funds, if any, and any funding obligations shared between public and private entities, and the

2. The percentage of funding provided directly from the applicant, including whether the applicant requested from the office an amount less than the maximum amount the office could award pursuant to Iowa Code section 8B.11(5) as amended by 2020 Iowa Acts, Senate File 2400, and, if so, the percentage of the project cost that the applicant is requesting.

(3) and (4) No change.

(5) ~~The percentage of the homes, schools, and businesses broadband units~~ in the targeted service area(s) forming the basis of the project that will be provided access to broadband service at or above the download and upload speeds specified in ~~the definition of targeted service area~~ Iowa Code section 8B.11(5) “a” or “b” as enacted by 2020 Iowa Acts, Senate File 2400, whichever is applicable, as a result of the project. The number of ~~homes, schools, and businesses broadband units~~ in a targeted service area ~~may shall~~ 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~~ 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.

(6) to (8) No change.

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

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

(2) Make an award that exceeds ~~45~~ 35 percent of any communications service provider’s total estimated allowable project costs for a proposed installation of broadband infrastructure; ~~or~~

(3) Award grant funds in a manner that violates or is otherwise inconsistent with the limitations or requirements of Iowa Code section 8B.11(5) as amended by 2020 Iowa Acts, Senate File 2400.

ITEM 15. Amend subrules 22.6(2) and 22.6(3) 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 broadband units~~ within each targeted service area forming the basis of the project have access to broadband service at or above the download and upload speeds specified in ~~the definition of targeted service area~~ Iowa Code section 8B.11(5) “a” or “b” as enacted by 2020 Iowa Acts, Senate File 2400, whichever is applicable, as a result of the project.

22.6(3) Reimbursements, record keeping/audits, performance/certification, and repayment. In the absence of more specific provisions in an agreement executed between a grantee and the office in accordance with these rules establishing conflicting or inconsistent terms and conditions, the following terms and conditions shall apply by default to any award of grant funds made by the office under Iowa Code section 8B.11 and these rules:

a. Reimbursement.

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

1. No change.

2. Expenditures for broadband infrastructure solely to the extent such broadband infrastructure facilitates broadband service at or above the download and upload speeds specified in ~~the definition of targeted service area~~ Iowa Code section 8B.11(5) “a” or “b” as enacted by 2020 Iowa Acts, Senate File 2400, whichever is applicable, within targeted service areas forming the basis of the project; and

3. No change.

(2) No change.

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 facilitates broadband service at or above the download and upload speeds specified in ~~the definition of targeted service area~~ Iowa Code section 8B.11(5) “a” or “b” as enacted by 2020 Iowa Acts, Senate File 2400, whichever is applicable, in each of the applicable targeted service areas identified in the original application, and identify the total number of ~~homes, schools, and businesses~~ broadband units 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 the download and upload speeds specified in ~~the definition of targeted service area~~ Iowa Code section 8B.11(5) “a” or “b” as enacted by 2020 Iowa Acts, Senate File 2400, whichever is applicable, 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) No change.

c. Field testing. The office may, in its discretion, conduct field tests, on one or multiple occasions, for compliance with the requirements of Iowa Code sections 8B.1 and 8B.11, these rules, and any grant agreement entered into between a grantee and the office pursuant to subrule 22.6(1) for up to five years after broadband service is certified as complete in accordance with paragraph 22.6(3) “b.” The office may exercise this right both before and after reimbursing a grantee for any claimed, allowable expenditures, but if the office elects to do so before reimbursing a grantee for any claimed, allowable expenditures, it will do so within a reasonable time, not to exceed one year, after broadband service is certified as complete in accordance with paragraph 22.6(3) “b.” Such field tests may include but not be limited to:

(1) Speed tests anywhere between a grantee’s central office and the demarcation at any customer’s location in a targeted service area or ~~census~~ broadband block in which the project was to be deployed;

(2) In the case of wireless installations, from any location in a targeted service area or ~~census~~ broadband block in which the project was to be deployed; or

(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 the download and upload speeds specified in ~~the definition of targeted service area~~ Iowa Code sections 8B.11(5) “a” or “b” as enacted by 2020 Iowa Acts, Senate File 2400, whichever is applicable, in applicable targeted service areas identified in the original application. The costs of such certification shall be borne by the grantee.

d. Disbursement/repayments.

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

1. No change.

2. Claimed expenditures or the total amount previously reimbursed by the office exceeds ~~45~~ 35 percent of the grantee’s estimated or final total allowable project costs, whichever is less.

(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 the download and upload speeds specified in ~~the definition of targeted service area~~ Iowa Code section 8B.11(5) “a” or “b” as enacted by 2020 Iowa Acts, Senate File 2400, whichever is applicable, in a targeted service area identified in the original application;

2. and 3. No change.

e. No change.

ITEM 16. 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 does not facilitate broadband service at or above the download and upload speeds specified in ~~the definition of targeted service area~~ Iowa Code section 8B.11(5) “a” or “b” as enacted by 2020 Iowa Acts, Senate File 2400, whichever is applicable, in a targeted service area identified in the original application;

ITEM 17. Amend subparagraph **22.6(4)“b”(7)** as follows:

(7) The total claimed expenditures or the amount previously reimbursed by the office exceeds ~~45~~ 35 percent of the grantee’s estimated or final total allowable project costs, whichever is less;

ITEM 18. Amend rule 129—22.8(8B,427) as follows:

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~~ broadband 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~~ broadband 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.