

OFFICE OF THE CHIEF INFORMATION OFFICER[129]

Adopted and Filed Emergency

The Office of the Chief Information Officer (Office) hereby amends Chapter 20, “Broadband Infrastructure—Targeted Service Areas,” 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.1(13), 8B.4(5), and 8B.11(9) and 2021 Iowa Acts, House File 848.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 8B and 2021 Iowa Acts, House File 848.

Purpose and Summary

This rulemaking implements changes to Iowa Code chapter 8B via 2021 Iowa Acts, House File 848, an act relating to broadband service, including matters under the purview of the Office, the Empower Rural Iowa Broadband Grant Fund, and including effective date and applicability provisions.

Reason for Adoption of Rule Making Without Prior Notice and Opportunity for Public Participation

Pursuant to Iowa Code section 17A.4(3), the Office finds that notice and public participation are unnecessary or impractical because a statute so provides.

In compliance with 2021 Iowa Acts, House File 848, section 4, the Administrative Rules Review Committee reviewed this rule making at its May 7, 2021, meeting.

Reason for Waiver of Normal Effective Date

Pursuant to Iowa Code section 17A.5(2)"b"(1), the Office also finds that the normal effective date of rule making, 35 days after publication, should be waived and the rule making made effective May 7, 2021, because a statute so provides. 2021 Iowa Acts, House File 848, section 4, authorizes waiver of the normal effective date.

Adoption of Rule Making

This rule making was adopted by the Chief Information Officer on May 7, 2021.

Fiscal Impact

This rule making has no fiscal impact to the state of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Office for a waiver of the discretionary provisions, if any, pursuant to 129—Chapter 7.

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 became effective on May 7th, 2021.

The following rule-making action is adopted:

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

129—20.1(8B,427) Definitions. The definitions in Iowa Code section 8B.1 ~~as amended by 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 facilitates broadband service in a particular 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).

“Broadband block” means:

1. Until the Federal Communications Commission (FCC) adopts and publishes a publicly-available data set identifying 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 and publishes a publicly-available data set identifying 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 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 exceeding Tier 1 upload and download speeds.~~

“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 materially underserved or without 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.~~

“Tier 1 targeted service area” or *“Tier 1 TSA”* means a targeted service area within which broadband speeds do not exceed tier 1 speed levels.

“Tier 2 targeted service area” or *“Tier 2 TSA”* means a targeted service area within which broadband speeds do not exceed tier 2 speed levels, but are greater than Tier 1 speed levels.

“Tier 3 targeted service area” or *“Tier 3 TSA”* means a targeted service area within which broadband speeds do not exceed tier 3 speed levels, but are greater than Tier 2 speed levels.

ITEM 2. Amend rule 129—20.2(8B) 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 2020 Iowa Acts, Senate File 2400~~; implements Iowa Code section 427.1(40) ~~as amended by 2020 Iowa Acts, Senate File 2400~~; and applies to the office's determinations of whether a broadband block is a targeted service area and to persons who wish to challenge the office's finding on whether a broadband block is a targeted service area.

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

129—20.3(8B,427) Broadband availability maps and data sources.

20.3(1) To determine whether a communications service provider facilitates broadband service in a particular broadband block at or above the tier 1, tier 2, or tier 3 download and upload speeds specified in the definition of targeted service area as of the as of date, the office may utilize the following data sources:

a. Fixed broadband availability maps and corresponding data sources made available by the FCC online, ~~which as of October 14, 2020, was available at www.fcc.gov/general/broadband-deployment-data-fcc-form-477~~.

b. No change.

c. No change.

d. Other data sources made available by or through federal or state 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) as follows:

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

20.4(1) The office will create a statewide map divided into broadband blocks. Based on the maps and data sources referenced in rule 129—20.3(8B,427), the statewide map will designate broadband blocks that qualify as tier 1, tier 2, or tier 3 targeted service areas as of the as of date. ~~This statewide map shall be published~~ The office will publicize the statewide map, which may include publishing online at ocio.iowa.gov/broadband.

20.4(2) In accordance with Iowa Code section 8B.10(1) ~~as amended by 2020 Iowa Acts, Senate File 2400~~, the office shall periodically make renewed determinations of whether a communications service provider facilitates broadband service at or above the tier 1, tier 2, or tier 3 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 2020 Iowa Acts, Senate File 2400~~. The office is not required to make renewed determinations of whether a communication service provider offers or facilitates broadband service at or above the tier 1, tier 2, or tier 3 download and upload speeds specified in the definition of targeted service area more frequently than once per year.

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 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 broadband block constitutes a tier 1, tier 2, or tier 3 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 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 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) The office will designate all projects as addressing difficult to serve targeted service areas based on the office's determination, made in its sole discretion, of whether a proposal will result in the installation of broadband infrastructure in areas meeting the conditions set forth in Iowa Code section 8B.11(7). For the sake of clarity, the office will identify all Tier 1 TSAs as difficult to serve targeted service areas.

ITEM 5. Amend rule 129—20.5(8B) as follows:

129—20.5(8B,427) Appeals.

20.5(1) Notice of appeal. Within 20 days after the office makes its final determination of whether a particular broadband block constitutes a tier 1, tier 2, or tier 3 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. to b. No change.

20.5(2) Filing. Except to the extent that electronic filing is not feasible, a notice of appeal and all corresponding evidence and information shall be filed by email at ~~cio@iowa.gov~~ ociogrants@iowa.gov. To the extent electronic filing is not feasible, the notice of appeal and all corresponding 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~~ 200 East Grand Avenue, Des Moines, Iowa 50309. If the notice of appeal and corresponding evidence and information are filed by mail, such filing shall be accompanied by a written explanation of why electronic filing was not feasible.

20.5(3) Notification of and input from affected persons or parties. Within 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 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 email to ~~cio@iowa.gov~~ ociogrants@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~~ 200 East Grand Avenue, Des Moines, IA 50309. 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.

20.5(4) No change.

20.5(5) No change.

20.5(6) No change.

20.5(7) No change.

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 tier 1, tier 2, or tier 3 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 broadband block constitutes a ~~targeted service area~~ tier 1, tier 2, or tier 3 TSA include:

a. Signed attestations submitted to the office under penalty of perjury on forms provided by the office that the applicable broadband block(s) was or was not served as of the as of date with broadband service at or above the tier 1, tier 2, or tier 3 download and upload speeds specified in the definition of targeted service area.

b. No change.

ITEM 6. Amend rule 129—22.1(8B) as follows:

129—22.1(8B) Definitions. The definitions in Iowa Code section 8B.1 ~~as amended by 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 Iowa Code section 8B.11(5) “a” or “b” ~~as enacted by 2020 Iowa Acts, Senate File 2400~~ sections 8B.11(1) “a” or “b” or 8B.11(6), whichever is applicable, in one or more targeted service areas.

ITEM 7. 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 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 Iowa Code section 8B.11(5) “a” or “b” as enacted by 2020 Iowa Acts, Senate File 2400, whichever is applicable, and in accordance with Iowa Code section 8B.11 and this chapter.~~

ITEM 8. Amend rule 129—22.4(8B) 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 Iowa Code section 8B.11(5) “a” or “b” ~~as enacted by 2020 Iowa Acts, Senate File 2400, whichever is applicable~~ 8B.11. 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. The communications service provider’s legal and business name(s) and 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 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 Iowa Code section 8B.11(5) “a” or “b” ~~as enacted by 2020 Iowa Acts, Senate File 2400, whichever is applicable~~ 8B.11;
- d. Attestation that the broadband infrastructure installed will facilitate broadband service at or above the download and upload speeds specified in Iowa Code section 8B.11(5) “a” or “b” ~~as enacted by 2020 Iowa Acts, Senate File 2400, whichever is applicable~~ 8B.11;
- 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

Iowa Code section ~~8B.11(5) "a" or "b" as enacted by 2020 Iowa Acts, Senate File 2400, whichever is applicable, 8B.11~~ in the targeted service areas forming the basis of the project;

f. An anticipated project completion date, ~~which shall not exceed five years from the date the NOFA is issued in accordance with rule 129—22.6(3)(b).~~ An applicant's anticipated project completion date ~~shall~~ may 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).

(3) to (5) No Change.

ITEM 9. Rescind and reserve subrule **22.5(1)**.

ITEM 10. Rescind and reserve subrule **22.5(2)**.

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

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), and Iowa Code section 8B.11(4)(a)(6):~~

(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 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.

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) "a" or "b" as amended by 2020 Iowa Acts, Senate File 2400~~ 8B.11 and, if so, the percentage of the project cost that the applicant is requesting.

(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.

(5) The percentage of 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 Iowa Code section ~~8B.11(5) "a" or "b" as enacted by 2020 Iowa Acts, Senate File 2400, whichever is applicable, 8B.11~~ as a result of the project. The number of broadband units in a targeted service area shall be determined by reference to the statewide map referenced in rule 129—20.4(8B,427). 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) ~~The geographic diversity of the project areas of all applicants.~~ The proportion of proposed projects

that will result in the installation of broadband infrastructure in a targeted service area within which the only broadband service available provides the tier 1 download and upload speeds specified in the definition of targeted service area.

~~(7) The economic impact of the project to the area.~~

~~(8)(7)~~ 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 do any of the following:~~ make an award that exceeds the following percentages identified in Iowa Code sections 8B.11(5)(a), 8B.11(5)(b), 8B.11(5)(c), or 8B.11(6)(b), whichever is applicable, of any communications service provider's total estimated allowable project costs for a proposed installation of broadband infrastructure; or meeting the buildout speeds referenced in Iowa Code sections 8B.11(1) or 8B.11(6), whichever is applicable.

~~—— (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;~~

~~—— (2) Make an award that exceeds 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.~~

c. In determining whether a project serves difficult to serve areas and thus qualifies for the twenty percent allocation identified in Iowa Code section 8B.11(7), the office will solely consider whether the project serves one or more targeted service areas within which no provider offers or facilitates broadband service that provides download and upload speeds less than or equal to the tier 1 download and upload speeds specified in Iowa Code section 8B.1(13)(a)(1). In such cases, any funds awarded to the project will be assigned to the twenty percent allocation made by the office. In the event that the twenty percent allocation in Iowa Code section 8B.11(7) is not fully subscribed, the Office will be permitted to reallocate any unspent funds to projects that do not serve difficult to serve areas.

ITEM 12. 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 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 Iowa Code section ~~8B.11(5) "a" or "b" as enacted by 2020 Iowa Acts, Senate File 2400, whichever is applicable;~~ 8B.11 as a result of the project.

ITEM 13. 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 solely to the extent such broadband infrastructure facilitates broadband service at or above the download and upload speeds specified in Iowa Code section ~~8B.11(5) "a" or "b" as enacted by 2020 Iowa Acts, Senate File 2400, whichever is applicable;~~ 8B.11 within targeted service areas forming the basis of the project; and
3. No change.

ITEM 14. Amend subparagraph **22.6(3)"b"** as follows:

b. Performance/certification. After the completion of a project ~~utilizing, in whole or in part, grant funds, and not less than sixty (60) days prior to four years from the date of issuance of the NOFA, or sixty (60) days prior to four years from the appropriation of grant funds, whichever is earlier,~~ 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 Iowa Code section ~~8B.11(5) "a" or "b" as enacted by 2020 Iowa Acts, Senate File 2400, whichever is applicable,~~ 8B.11 in each of the applicable targeted service areas identified in the original application, and identify the total number of 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 Iowa Code section ~~8B.11(5) "a" or "b" as enacted by 2020 Iowa Acts, Senate File 2400, whichever is applicable,~~ 8B.11 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.

ITEM 15. Amend subparagraph **22.6(3)"c"** as follows:

c. Field Performance testing. The office may, in its discretion, conduct field performance 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 performance tests may include but not be limited to:

(1) No change.

(2) No change.

(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 Iowa Code sections ~~8B.11(5) "a" or "b" as enacted by 2020 Iowa Acts, Senate File 2400, whichever is applicable,~~ section 8B.11 in applicable targeted service areas identified in the original application. The costs of such certification shall be borne by the grantee.

ITEM 16. Amend numbered paragraph **22.6(3)"d"(1)"2"** as follows:

2. Claimed expenditures or the total amount previously reimbursed by the office exceeds ~~35 percent the amount determined by Iowa Code sections 8B.11(5) or 8B.11(6)~~ of the grantee's estimated or final total allowable project costs, whichever is less.

ITEM 17. Amend numbered paragraph **22.6(3)"d"(2)"1"** as follows:

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 Iowa Code section ~~8B.11(5) "a" or "b" as enacted by 2020 Iowa Acts, Senate File 2400, whichever is applicable,~~ 8B.11 in a targeted service area identified in the original application;

ITEM 18. Amend subparagraph **22.6(4)"b"(3)** as follows:

(3) A grantee's failure to comply with any applicable state or federal laws, rules, or regulations;

ITEM 19. 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 Iowa Code section ~~8B.11(5)“a” or “b” as enacted by 2020 Iowa Acts, Senate File 2400, whichever is applicable;~~ 8B.11 in a targeted service area identified in the original application;

ITEM 20. Amend subparagraph **22.6(4)“b”(7)** as follows:

(7) The total claimed expenditures ~~or the amount previously reimbursed by the office exceeds 35 percent of the grantee's estimated or final total allowable project costs, whichever is less~~ exceeds amounts allowed by the grant agreement or statute;

ITEM 21. Amend rule 129—22.7(8B) as follows:

129—22.7(8B) Reallocation of grant funds. Subject to applicable law, including but not limited to Iowa Code section 8B.11(2)“c,” if grant funds that the office had previously committed to specific grantees are not ultimately issued to a grantee (e.g., because applicable expenditures are not allowed or are disallowed, applicable expenditures were improperly or incorrectly allocated, or a grantee fails to provide sufficient or appropriate documentation to support a claim for reimbursement) or are otherwise repaid to the office pursuant to a grant agreement entered into between the office and a grantee or these rules, the office may award the grant funds to other previous grantees or applicants, or open additional rounds for applications. If the office awards additional grant funds to other grantees or applicants, such grantees shall submit documentation establishing how such grant funds will be expended and may, to the extent applicable, be required to execute contract amendments with the office providing for the expenditure of the additional grant funds and will otherwise be subject to Iowa Code section 8B.11 and these rules.