

d. The business shall agree to pay a median wage for new full-time hourly nonmanagement production jobs of at least \$11 per hour indexed to 1993 dollars based on the gross national product implicit price deflator published by the bureau of economic analysis of the United States Department of Commerce or 130 percent of the average wage in the county in which the community is located, whichever is higher. The business shall compute its median wage for all new full-time employees to include compensation in the form of hourly wages, salaries, bonuses, commissions and overtime pay.

e. The business will make a capital investment of at least \$10 million indexed to 1993 dollars based on the gross national product implicit price deflator published by the bureau of economic analysis of the United States Department of Commerce. If the business is occupying a vacant building suitable for industrial use, the fair market value of the building shall be counted toward the capital investment threshold.

f. The business shall agree to create at least 50, or the group of businesses at least 75, full-time positions at a facility located in Iowa or expanded under the program for a specified period which will be negotiated with the department and the community, but which shall be a minimum of five years. The jobs must be created within five years of the application approval date and the jobs must be maintained for a period of at least five years from the date the business first meets its job creation obligation.

58.7(2) Additional required elements. To be eligible for incentives under the program, a business or group of businesses shall do at least three of the following:

a. Offer a pension or profit-sharing plan to full-time employees.
b. Produce or manufacture high value-added goods or services or be in one of the following industries:

- (1) Value-added agricultural products.
- (2) Insurance and financial services.
- (3) Plastics.
- (4) Metals.
- (5) Printing paper or packaging products.
- (6) Drugs and pharmaceuticals.
- (7) Software development.
- (8) Instruments and measuring devices and medical instruments.
- (9) Recycling and waste management.
- (10) Telecommunications.

c. Make day care services available to its employees.
d. Invest annually no less than 1 percent of pretax profits from the facility located to Iowa or expanded under the program in research and development in Iowa.

e. Invest annually no less than 1 percent of pretax profits from the facility located to Iowa or expanded under the program in worker training and skills enhancement.

f. Have an active productivity and safety improvement program involving the management and worker participation and cooperation with benchmarks for gauging compliance.

g. Occupy an existing facility at least one of the buildings of which shall be vacant and shall contain at least 20,000 square feet.

58.7(3) Further evaluation factors. After a business has certified compliance with the threshold requirements of subrules 58.7(1) and 58.7(2), the board will consider a variety of additional factors in determining the eligibility of a business to participate in the program including, but not limited to, the following:

a. The quality of jobs to be created. The department shall place greater emphasis on those jobs that have a higher wage scale, have a lower turnover rate, are full-time or career-type positions, provide comprehensive health benefits, or have related factors which could be considered to be higher in quality than to other jobs. Businesses that have wage scales substantially below that of existing Iowa businesses in that area will be considered as providing the lowest quality of jobs and will be given the lowest consideration in determining program eligibility.

b. The impact of the proposed project on other businesses in competition with the business being considered for program participation. The department shall make a good faith effort to identify existing Iowa businesses within an industry in competition with the business being considered for program incentives. The department shall also make a good faith effort to determine the probability that the proposed financial assistance will displace employees of existing businesses. In determining the impact on businesses in competition with the business seeking program benefits, jobs created as a result of other jobs being displaced elsewhere in the state shall not be considered direct jobs created.

c. The impact to the state of the proposed project. In measuring the economic impact the department shall place greater emphasis on projects which have greater consistency with the state strategic plan than other projects. Greater consistency may include any or all of the following:

- (1) A business with a greater percentage of sales out of state or of import substitution.
- (2) A business with a higher proportion of in-state suppliers.
- (3) A project which would provide greater diversification of the state economy.
- (4) A business with fewer in-state competitors.
- (5) A potential for future job growth.
- (6) A project which is not a retail operation.

d. If the business has, within three years of application for program participation, acquired or merged with an Iowa corporation or company, whether the business has made a good faith effort to hire the workers of the acquired or merged company.

e. Whether a business provides a preference for hiring residents of the state or of the economic development area, except for out-of-state employees offered a transfer to Iowa or to the economic development area.

f. Whether all known required environmental permits have been issued and regulations met.

58.7(4) Waiver of program qualification requirements. A community may request a waiver of the capital investment requirement listed in paragraph 58.7(1)"e." The community may also ask for a waiver of the requirement for the number of jobs to be created listed in paragraph 58.7(1)"f." The department may grant a waiver to the community for either or both of these requirements only when good cause is shown.

a. For any community requesting a waiver of these requirements, in order to remain eligible for participation in the program the eligible business shall, as a minimum, agree to the following:

- (1) The business will make a minimum capital investment of at least \$3 million.
- (2) The business shall agree to create a minimum of at least 15 full-time positions at a facility located or expanded in Iowa.
- (3) Businesses that meet the minimum amounts listed above must also agree to a capital expenditure/job creation formula of at least \$200,000 in capital expenditures for every job created.

(4) The department may grant a waiver from the capital expenditures/job creation formula requirement listed above where it can be demonstrated the business otherwise far exceeds the requirements for eligibility in the program. Such waivers from the capital expenditures/job creation formula may include, but are not limited to, instances where the wages to be paid are far in excess of what is required; where the project can be demonstrated to have an extremely high positive multiplier effect on other Iowa businesses; or for other reasons where it can be demonstrated the project will bring substantial economic benefits to the state.

b. As used in this subrule, "good cause shown" includes but is not limited to:

(1) A demonstrated lack of growth in the community which may include population loss within the community or area or average per capita income levels or growth in per capita income levels that are below the statewide average.

(2) A community that has a higher than statewide average percentage of people that are considered to be living in poverty.

(3) A community whose unemployment rate is higher than the statewide average.

(4) When the project may provide a unique opportunity to use existing unutilized or underutilized facilities in the community such as the purchase or lease of any existing building.

(5) An immediate threat to the community's workforce such as when there is the possibility a business is downsizing or closing and the business will eliminate a significant number of full-time jobs or when the community can document the loss of a significant number of jobs in the community within the two years prior to the application date.

(6) When the proposed project will have a significant multiplier effect on other Iowa businesses that will cause those other businesses to increase their employment or investment in Iowa.

(7) Other factors, not listed here, may be considered by the board in deciding whether to grant a waiver.

c. Rescinded IAB 12/15/99, effective 1/19/00.

261—58.8(15) Ineligibility. If the department finds that a business has a record of violations of the law over a three-year period that tends to show a consistent pattern, the business shall not qualify for benefits under this program. The time period that will be reviewed for violations of a federal or state environmental protection statute, regulation or rule is the previous five years as required by Iowa Code section 15A.1(3)"a." Violations of law include, but are not limited to, environmental and worker safety statutes, rules, and regulations. A business shall not be ineligible for program participation if the department finds that the violations did not seriously affect the public health or safety, or the environment, or if they did, that there were mitigating circumstances.

261—58.9(15) Application contents. The application to request program benefits shall include, but not be limited to, the following:

58.9(1) A description of the proposed project.

58.9(2) Documentation that the business meets each of the threshold requirements of subrule 58.7(1) or meets the waiver requirements of subrule 58.7(4) including a copy of the ordinance or resolution of the community approving the start-up, location, or expansion of the business.

58.9(3) A description of how the business will meet the requirements of subrule 58.7(2).

58.9(4) A description of the quality of jobs to be created which includes information on wage scale, turnover rate, type of job (e.g., full-time, part-time, career-type), health benefits, and other factors impacting the quality of the jobs.

58.9(5) An identification of the business's competitors.

58.9(6) A description of the impact to the state of the proposed project in terms of consistency with the state strategic plan, diversification of the economy, and job growth potential.

58.9(7) An indication of whether within the three years prior to application the business has acquired or merged with an Iowa corporation or company. If yes, a description of the good faith efforts made to hire the workers of the acquired or merged company.

58.9(8) An indication of whether the business provides a preference for hiring residents of the state or of the economic development area.

58.9(9) A statement that all known environmental permits have been issued and regulations met or a time frame within which the permits will be issued and the regulations will be satisfied.

58.9(10) A description of any violations of law in the preceding three years including, but not limited to, environmental and worker safety statutes, rules and regulations. The description must include violations of a federal or state environmental protection statute, regulation or rule within the previous five years. If the violations seriously affected the public health or safety, or the environment, the business shall provide an explanation of any mitigating circumstances. If requested by the department, the business shall provide copies of materials documenting the type of violation(s), any fees or penalties assessed, court filings, final disposition of any findings and any other information which would assist the department in assessing the nature of any violation(s).

58.9(11) A certification by the business that the information provided in the application is true and accurate to the best of its knowledge.

58.9(12) A release of information to permit the department to reasonably evaluate the business's application.

58.9(13) A description of the site that is proposed to become an economic development area. This description must, at a minimum, include a legal description of the site and a detailed map showing the boundaries of the proposed economic development area.

261—58.10(15) Department and board action. The division of business development will review all completed applications to determine compliance with the threshold requirements of subrules 58.7(1) and 58.7(2). The division will prepare a report for the board which includes a summary of the application. The board will review applications from eligible businesses meeting the threshold requirements and consider the additional factors listed in subrule 58.7(3) in making its final decision. The board may approve, deny or defer a request for program participation. If an application is approved, the board shall authorize the department to enter into an agreement with the eligible business, or group of businesses, for program benefits. The department will provide DRF and the assessor with notice of the board's approval of an application and a copy of the agreement executed between the department and the business.

261—58.11(15) Agreement. The department shall prepare an agreement which includes, but is not limited to, a description of the project to be completed by the business, the number of jobs to be created, length of the project period, the program benefits available, and the repayment requirements of the business in the event the business does not fulfill its obligations. The department shall consult with the community during negotiations relating to the agreement.

261—58.12(15) Valuation of incentives. Rescinded IAB 7/17/96, effective 7/1/96.

261—58.13(15) Compliance monitoring; notice of noncompliance and penalties.

58.13(1) Compliance monitoring. The department will conduct an annual review of the business, or group of businesses, to monitor compliance with the agreement executed under this program.

58.13(2) Notice of noncompliance. The department will notify the community and DRF of a business's or group of businesses' unremedied noncompliance under the agreement.

58.13(3) Authority to recover. Following notice of noncompliance from the department, the taxing authority of the community shall have the authority to take action to recover the value of taxes not collected as a result of the exemption provided by the community to the business or group of businesses. DRF shall have the authority to recover the value of state taxes or incentives provided under the program. The value of state incentives provided under the program includes applicable interest and penalties.

58.13(4) False report of taxes paid. A contractor or subcontractor to an eligible business who willfully makes a false report to the eligible business under the sales and use tax refund provisions of subrule 58.4(6) is guilty of a simple misdemeanor and in addition is liable for the payments of the tax and any applicable penalty and interest.

261—58.14(15) Repayment.

58.14(1) Failure to meet requirements. If a business or group of businesses fails to meet any of its requirements under the agreement, the business or group of businesses shall repay to the local taxing authority and DRF the total value of the incentives received. The community or DRF may exercise forbearance in connection with collection of the amounts owed to the community or DRF and elect to grant the business or group of businesses a one-year period to meet its requirements under the agreement.

58.14(2) Failure to meet job creation requirements.

a. Repayment of property tax exemption. If a business or group of businesses has not met more than 90 percent of the job creation requirements of subrule 58.7(1), paragraph “f,” it shall pay a percentage of the value of the incentive received for exemption from taxation for machinery, equipment and computers.

b. Repayment of investment tax credit. If a business or group of businesses has not met more than 90 percent of the job creation requirements of subrule 58.7(1), paragraph “f,” and did not receive the exemption from taxation for machinery, equipment and computers incentive, it shall repay a percentage of the value of the exemption received.

c. Calculation of repayment percentage. Repayment of the property tax exemption or the investment tax credit shall be calculated as follows:

(1) Fifty percent or less of job creation. If the business or group of businesses has met 50 percent or less of the requirement, the business or group of businesses shall pay the same percentage in benefits as the business or group of businesses failed to create in jobs.

(2) More than 50 percent, less than 75 percent. If the business or group of businesses has met more than 50 percent but not more than 75 percent of the requirement, the business or group of businesses shall pay one-half of the percentage in benefits as the business or group of businesses failed to create in jobs.

(3) More than 75 percent, less than 90 percent. If the business or group of businesses has met more than 75 percent but not more than 90 percent of the requirement, the business or group of businesses shall pay one-quarter of the percentage in benefits as the business or group of businesses failed to create in jobs.

58.14(3) Failure to meet other requirements. If the business or group of businesses fails to meet the wage requirement of subrule 58.7(1), paragraph “d,” or any of the three criteria selected under subrule 58.7(2) in any one year, it must meet that requirement in the following year or forfeit the incentives for that year in which the business was not in compliance.

These rules are intended to implement Iowa Code chapter 15 and Iowa Code Supplement section 15.333 as amended by 2000 Iowa Acts, chapter 1213, section 1.

[Filed emergency 5/20/94 after Notice 4/13/94—published 6/8/94, effective 5/20/94]

[Filed emergency 7/29/94 after Notice 6/8/94—published 8/17/94, effective 7/29/94]

[Filed emergency 9/23/94—published 10/12/94, effective 9/23/94]

[Filed 6/26/95, Notice 5/10/95—published 7/19/95, effective 8/23/95]

[Filed emergency 6/28/96—published 7/17/96, effective 7/1/96]

[Filed 9/20/96, Notice 7/17/96—published 10/9/96, effective 11/13/96]

[Filed 10/18/96, Notice 9/11/96—published 11/6/96, effective 12/11/96]

[Filed 11/18/99, Notice 10/6/99—published 12/15/99, effective 1/19/00]

[Filed 1/19/01, Notice 12/13/00—published 2/7/01, effective 3/14/01]

[Filed 12/21/01, Notice 11/14/01—published 1/23/02, effective 2/27/02]