

**ECONOMIC DEVELOPMENT AUTHORITY[261]**

**Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code sections 15.106A and 15.321, the Iowa Economic Development Authority (IEDA) hereby gives Notice of Intended Action to adopt new Chapter 81, “Renewable Chemical Production Tax Credit Program,” Iowa Administrative Code.

The proposed amendment creates a new chapter of rules governing the administration of the Renewable Chemical Production Tax Credit Program. The program was created by 2016 Iowa Acts, Senate File 2300. The proposed new chapter provides for the administration of the program by IEDA and governs eligibility requirements, the application process and application review, the agreement, calculation of the tax credit, administration of the tax credit wait list, the process for claiming the credit, and the process used to add additional building block chemicals by administrative rule.

The Economic Development Authority Board approved these rules at a Board meeting on November 18, 2016.

Interested persons may submit comments on or before January 10, 2017. Comments may be submitted to Jennifer Klein, Economic Development Authority, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone number (515)725-3124; e-mail [Jennifer.Klein@iowa.gov](mailto:Jennifer.Klein@iowa.gov).

This rule making does not have any fiscal impact to the state of Iowa. In order to reduce the overall fiscal impact of this program to zero, 2016 Iowa Acts, Senate File 2300, division I, reduced the award cap for the High Quality Jobs Program by \$25 million each year for the next five fiscal years.

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

These rules are intended to implement Iowa Code sections 15.315 to 15.322.

The following amendment is proposed.

Adopt the following **new** 261—Chapter 81:

CHAPTER 81  
RENEWABLE CHEMICAL PRODUCTION TAX CREDIT PROGRAM

**261—81.1(15) Purpose.** The purpose of this Act is to encourage development of the renewable chemicals industry and stimulate job growth using the renewable chemical production tax credit program to incentivize new and existing businesses to produce high-value renewable chemicals in Iowa from biomass feedstock.

**261—81.2(15) Definitions.** As used in this chapter, the following definitions shall apply:

“*Authority*” means the economic development authority created in Iowa Code section 15.105.

“*Authority’s Web site*” means the information and related content found at [www.iowaeconomicdevelopment.com/](http://www.iowaeconomicdevelopment.com/) and may include integrated content at affiliate sites.

“*Biobased content percentage*” means, with respect to any renewable chemical, the amount, expressed as a percentage, of renewable organic material present as determined by testing representative samples using the American Society for Testing and Materials standard D6866.

“*Biomass feedstock*” means sugar, polysaccharide, crude glycerin, lignin, fat, grease, or oil derived from a plant or animal, or a protein capable of being converted to a building block chemical by means of a biological or chemical conversion process.

“*Board*” means the members of the economic development authority board appointed by the governor and in whom the powers of the authority are vested pursuant to Iowa Code section 15.105.

*“Building block chemical”* means a molecule converted from biomass feedstock as a first product or a secondarily derived product that can be further refined into a higher-value chemical, material, or consumer product. “Building block chemical” includes but is not limited to high-purity glycerol, oleic acid, lauric acid, methanoic or formic acid, arabonic acid, erythronic acid, glyceric acid, glycolic acid, lactic acid, 3-hydroxypropionate, propionic acid, malonic acid, serine, succinic acid, fumaric acid, malic acid, aspartic acid, 3-hydroxybutyrolactone, acetoin, threonine, itaconic acid, furfural, levulinic acid, glutamic acid, xylonic acid, xylaric acid, xylitol, arabitol, citric acid, aconitic acid, 5-hydroxymethylfurfural, lysine, gluconic acid, glucaric acid, sorbitol, gallic acid, ferulic acid, nonfuel butanol, nonfuel ethanol, or such additional molecules as may be included by the authority following the procedure in rule 261—81.8(15).

*“Crude glycerin”* means glycerin with a purity level below 95 percent.

*“Director”* means the director of the economic development authority or the director’s designee.

*“Eligible business”* means a business meeting the requirements of rule 261—81.3(15).

*“Food additive”* means a building block chemical that is not primarily consumed as food but which, when combined with other components, improves the taste, appearance, odor, texture, or nutritional content of food. The authority, in its discretion, shall determine whether or not a building block chemical is primarily consumed as food.

*“High-purity glycerol”* means glycerol with a purity level of 95 percent or higher.

*“Pre-eligibility production threshold”* means, with respect to each eligible business, the number of pounds of renewable chemicals produced, if any, by an eligible business during the calendar year prior to the calendar year in which the business first qualified as an eligible business pursuant to rule 261—81.3(15).

*“Production year”* means any calendar year after the year in which the eligible business’s pre-eligibility production threshold was established and in which the eligible business produces renewable chemicals.

*“Program”* means the renewable chemical production tax credit program administered pursuant to this chapter.

*“Renewable chemical”* means a building block chemical with a biobased content percentage of at least 50 percent. “Renewable chemical” does not include a chemical sold or used for the production of food, feed, or fuel. “Renewable chemical” includes cellulosic ethanol, starch ethanol, or other ethanol derived from biomass feedstock, fatty acid methyl esters, or butanol, but only to the extent that such molecules are produced and sold for uses other than food, feed, or fuel. “Renewable chemical” also includes a building block chemical that can be a food additive as long as the building block chemical is not primarily consumed as food and is also sold for uses other than food. “Renewable chemical” also includes supplements, vitamins, nutraceuticals, and pharmaceuticals, but only to the extent that such molecules do not provide caloric value so as to be considered sustenance as food or feed.

*“Sugar”* means the organic compound glucose, fructose, xylose, arabinose, lactose, sucrose, starch, cellulose, or hemicellulose.

**261—81.3(15) Eligibility requirements.** To be eligible to receive the renewable chemical production tax credit pursuant to the program, a business shall meet all of the following requirements:

**81.3(1) Physical location.** The business must have a facility that produces renewable chemicals and is physically located in the state of Iowa. If a business has facilities located in more than one state, only those renewable chemicals produced at facilities physically located in the state of Iowa may be counted for the purpose of calculating the tax credit under subrule 81.6(1).

**81.3(2) Operated for profit.** The business must be operated for profit and under single management. For purposes of this rule, “single management” means under common ownership or control. If the same entity owns or controls multiple facilities at which renewable chemicals are produced, the facilities under common ownership or control will be considered a single eligible business for purposes of receiving a tax credit under this chapter.

**81.3(3) Type of business.** The business may not be an entity providing professional services, health care services, or medical treatments or an entity engaged primarily in retail operations.

**81.3(4) Organization.** The business must have organized, expanded, or located in the state on or after April 6, 2016.

**81.3(5) Not reducing operations.** The business shall not be relocating or reducing operations as described in Iowa Code section 15.329(1) “b” and as determined under the discretion of the authority.

**81.3(6) Compliance.** The business must be in compliance with all agreements entered into under this program or other programs administered by the authority.

**261—81.4(15) Application process and review.**

**81.4(1)** An eligible business that produces a renewable chemical in this state from biomass feedstock during a calendar year may apply to the authority for the renewable chemical production tax credit.

**81.4(2)** The application shall be made to the authority in the manner prescribed by the authority. Information about the program and a link to the online application and instructions may be obtained by contacting the authority or by visiting the authority’s Web site:

Iowa Economic Development Authority  
Community Development Division  
200 East Grand Avenue  
Des Moines, Iowa 50309  
(515)725-3000  
[www.iowaeconomicdevelopment.com/](http://www.iowaeconomicdevelopment.com/)

**81.4(3)** The application shall be made to the authority during the calendar year following the calendar year in which the renewable chemicals were produced. For example, an eligible business may submit an application in calendar year 2018 to receive a tax credit based on renewable chemicals produced in calendar year 2017.

**81.4(4)** The application may be submitted to the authority electronically during the annual filing window. This filing window shall be from February 15 to March 15 of each calendar year. The authority may adjust the annual filing window dates under extenuating circumstances and will notify affected parties of such circumstances.

**81.4(5)** The application shall include all of the following information:

- a. The name of the qualifying building block chemical produced by the eligible business for which the business is claiming a tax credit.
- b. The amount of renewable chemicals produced in the state from biomass feedstock by the eligible business during the calendar year, measured in pounds.
- c. The amount of renewable chemicals produced in the state from biomass feedstock by the eligible business during the calendar year prior to the year in which the business first qualified as an eligible business under the program.
- d. The city or county where the plant producing renewable chemicals is located.
- e. The type of feedstock used to produce the renewable chemicals.
- f. The date on which the eligible business organized, expanded or located in the state.
- g. Any other information reasonably required by the authority in order to establish and verify eligibility under the program.

**81.4(6)** Applications will be reviewed by the authority on a first-come, first-served basis as described in subrule 81.6(5). Applications shall be date- and time-stamped by the authority in the order in which such applications are received. If the authority deems that additional information is needed before a determination of eligibility can be made, and the authority makes a written request for additional information from the applicant, the applicant must provide the requested information within 30 days of the date that the written request from the authority was made. If an applicant does not provide the requested information within 30 days, the applicant will be placed at the end of the queue of applications received. The authority shall review the queue of applications for eligibility and maintain a list of successful applicants as required by subrule 81.6(5).

**81.4(7)** The authority shall notify an applicant when the applicant has been placed on the list of successful applicants.

a. For applicants on the list for whom there are sufficient tax credits available in the aggregate cap for the fiscal year, the applicant must sign the agreement within 60 days of being notified of eligibility for the tax credit. Upon request by the applicant, the authority may extend the time period for signing the agreement by an additional 30 days.

b. For applicants on the wait list established in subrule 81.6(5), the authority shall notify the applicant of the applicant's status and position on the wait list.

#### **261—81.5(15) Agreement.**

**81.5(1) Agreement.** Before being issued a tax credit pursuant to this chapter, an eligible business shall enter into an agreement with the authority for the successful completion of all requirements of the program. As part of the agreement, and as a condition of receiving the tax credit, the eligible business shall agree to collect and provide any information reasonably required by the authority in order to allow the board to fulfill the board's reporting obligation under Iowa Code section 15.320.

**81.5(2) Fees.** The compliance cost fees authorized in rule 261—187.6(15) shall apply to all agreements entered into under this program and shall be collected by the authority in the same manner and to the same extent as described in that rule.

**81.5(3) Requirements.** An eligible business shall fulfill all the requirements of the program and the agreement before receiving a tax credit or entering into a subsequent agreement under this rule. The authority may decline to enter into a subsequent agreement under this rule or to issue a tax credit if an agreement is not successfully fulfilled.

**81.5(4) Issuance of credit.** Upon establishing that all requirements of the program and the agreement have been fulfilled, the authority shall issue a tax credit and related tax credit certificate to the eligible business stating the amount of renewable chemical production tax credit the eligible business may claim. The amount of the tax credit shall not exceed the amount allowable under rule 261—81.6(15).

#### **261—81.6(15) Renewable chemical production tax credit.**

**81.6(1) Calculation of tax credit amount.** An eligible business that has entered into an agreement pursuant to rule 261—81.5(15) may be issued a tax credit in an amount equal to the product of five cents multiplied by the number of pounds of renewable chemicals produced in this state from biomass feedstock by the eligible business during a given production year.

a. The maximum amount of tax credit that may be issued under the program to an eligible business for the production of renewable chemicals in a calendar year shall not exceed the following:

(1) In the case of an eligible business that has been in operation in the state for five years or less at the time of application, \$1 million.

(2) In the case of an eligible business that has been in operation in the state for more than five years at the time of application, \$500,000.

b. For purposes of this subrule, "operation" begins on the date the eligible business first began commercial production.

**81.6(2) Eligible business only.** An eligible business shall not receive a tax credit for renewable chemicals produced before the date the business first qualified as an eligible business pursuant to rule 261—81.3(15).

**81.6(3) Production above pre-eligibility production threshold.** An eligible business shall only receive a tax credit for renewable chemicals produced in a calendar year to the extent such production exceeds the eligible business's pre-eligibility production threshold as defined in rule 261—81.2(15). For example, if an eligible business produces 3 million pounds of renewable chemicals during calendar year 2016 and first becomes an eligible business under this chapter in calendar year 2017, the pre-eligibility production threshold for the business is 3 million pounds. If the same eligible business produces 10 million pounds of renewable chemicals during calendar year 2017, the eligible business may only receive a tax credit for the amount produced over the pre-eligibility production threshold, which in this example equals 7 million pounds.

**81.6(4) Maximum number of credits.** An eligible business shall not receive more than five tax credits under the program. Each tax credit must be applied for separately, and each application will be reviewed

independently of past tax credits. Receipt of a tax credit in one year does not guarantee receipt of a tax credit in a subsequent year.

**81.6(5) Tax credit wait list.**

*a.* The authority shall issue tax credits under the program on a first-come, first-served basis until the maximum amount of tax credits allocated pursuant to Iowa Code section 15.119(2)“h” is reached for any given fiscal year. The authority shall maintain a list of successful applicants under the program, so that if the maximum aggregate amount of tax credits is reached in a given fiscal year, eligible businesses that successfully applied but for which tax credits were not issued shall be placed on a wait list in the order the eligible businesses applied and shall be given priority for receiving tax credits in succeeding fiscal years.

*b.* Placement on a wait list pursuant to this subrule shall not constitute a promise binding the state. The availability of a tax credit and issuance of a tax credit certificate pursuant to this rule in a future fiscal year is contingent upon the availability of tax credits in that particular fiscal year.

**81.6(6) Termination and repayment.** The failure by an eligible business in fulfilling any requirement of the program or any of the terms and obligations of an agreement entered into pursuant to this chapter may result in the reduction, termination, or rescission of the tax credits under Iowa Code section 15.319 and may subject the eligible business to the repayment or recapture of tax credits claimed. The repayment or recapture of tax credits pursuant to Iowa Code section 15.319(4) shall be accomplished in the same manner as provided in Iowa Code section 15.330(2).

**81.6(7) Issuance of credit.** The authority shall not issue a tax credit certificate prior to July 1, 2018.

**261—81.7(15) Claiming the tax credit.**

**81.7(1) Maximum tax credit claimed.** An eligible business that has entered into an agreement pursuant to rule 261—81.5(15) may claim a tax credit in an amount equal to the product of five cents multiplied by the number of pounds of renewable chemicals produced in this state from biomass feedstock by the eligible business during a given production year within the limits set forth in rule 261—81.6(15). An eligible business may claim a tax credit for the production of more than one qualifying renewable chemical under this chapter, provided that the total tax credit claimed by the eligible business does not exceed the limits set forth in subrule 81.6(1). However, an eligible business shall not receive a tax credit for the production of a secondarily derived building block chemical if that chemical is also the subject of a credit at the time of production as a first product. The renewable chemical production tax credit shall not be available for any renewable chemical produced before the 2017 calendar year or after the 2026 calendar year.

**81.7(2) Who may claim the credit.** The tax credit shall be allowed against taxes imposed under Iowa Code chapter 422, division II or III. The tax credit shall be claimed for the tax year during which the eligible business was issued the tax credit. An individual may claim a tax credit under this chapter of a partnership, limited liability company, S corporation, cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes, estate, or trust electing to have income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual’s earnings from the partnership, limited liability company, S corporation, cooperative, estate, or trust.

*a.* To claim a tax credit under this rule, a taxpayer shall include one or more tax credit certificates with the taxpayer’s tax return.

*b.* The tax credit certificate shall contain the taxpayer’s name, address, tax identification number, the amount of the credit, the name of the eligible business, and any other information required by the department of revenue.

*c.* The tax credit certificate, unless rescinded by the authority, shall be accepted by the department of revenue as payment for taxes imposed pursuant to Iowa Code chapter 422, divisions II and III, subject to any conditions or restrictions placed by the authority upon the face of the tax credit certificate and subject to the limitations of the program.

**81.7(3) Refundability.** Any tax credit in excess of the tax liability is refundable. In lieu of claiming a refund, the taxpayer may elect to have the overpayment shown on the taxpayer's final, completed return credited to the tax liability for the following tax year.

**81.7(4) Transferability.** Tax credit certificates issued pursuant to this chapter shall not be transferred to any other person.

**261—81.8(15) Process to add building block chemicals.**

**81.8(1) General process.** The authority may add additional molecules to the definition of "building block chemical" in rule 261—81.2(15) pursuant to Iowa Code section 15.316. The authority may initiate the administrative rule-making process for the addition of such molecules to this chapter.

**81.8(2) Request to include additional molecules.** Any individual or business may request that an additional molecule be added to the definition of "building block chemical" by submitting a written request to the authority. Such requests shall be made in the form prescribed by the authority and shall be submitted to the authority during the filing windows prescribed by the authority. At a minimum, the authority shall accept requests between April 1 and May 1 of each calendar year and October 1 and November 1 of each calendar year. The authority may adjust these dates under extenuating circumstances and will notify affected parties of such circumstances.

**81.8(3) Consultation with experts.** Prior to initiating a rule making to add molecules to the definition of "building block chemical" in rule 261—81.2(15), the authority shall consult with appropriate experts from Iowa state university, including but not limited to the Iowa state university center for biorenewable chemicals. The authority shall conduct an initial staff review of any requests received by the authority pursuant to subrule 81.8(2). Following the initial staff review, the authority shall consult with the experts at Iowa state university regarding the molecules that the authority believes are consistent with the definitions under this chapter. The experts at Iowa state university shall provide a written recommendation to the authority indicating which chemicals, in the experts' opinion, meet the definition of "building block chemical" consistent with this chapter.

**81.8(4) Initiation of rule-making proceedings.** Following the consultation and review process set forth in subrule 81.8(3), the authority may initiate the administrative rule-making process to amend the definition of "building block chemical" to add molecules which the authority, in the authority's sole discretion, finds to be consistent with the definitions in this chapter.

**261—81.9(15) Additional information—confidentiality—annual report.**

**81.9(1) Additional information.** The authority may at any time request additional information and documentation from an eligible business regarding the operations, job creation, and economic impact of the eligible business, and the authority may use the information in preparing and publishing any reports to be provided to the governor and the general assembly.

**81.9(2) Confidential information.** Except as provided in subrule 81.9(3), any information or record in the possession of the authority with respect to the program shall be presumed by the authority to be a trade secret protected under Iowa Code chapter 550 or common law and shall be kept confidential by the authority unless otherwise ordered by a court.

**81.9(3) Public information.** The identity of a tax credit recipient and the amount of the tax credit shall be considered public information under Iowa Code chapter 22.

These rules are intended to implement Iowa Code sections 15.315 to 15.322.