ECONOMIC DEVELOPMENT AUTHORITY[261]

[Created by 1986 Iowa Acts, chapter 1245]
[Prior to 1/14/87, see Iowa Development Commission[520] and Planning and Programming[630]]
[Prior to 9/7/11, see Economic Development, Iowa Department of[261];
renamed Economic Development Authority by 2011 Iowa Acts, House File 590]

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PART I
DEPARTMENT STRUCTURE

CHAPTER 1
ORGANIZATION

261—1.1(15) Mission. The Iowa department of economic development was established in 1986 pursuant to Iowa Code chapter 15. The authority delegated to the department had previously been delegated to the Iowa development commission and the office for planning and programming. The mission of the Iowa department of economic development is to continually improve the economic well-being of all Iowans by working in focused partnerships with businesses, entrepreneurs, communities and educational entities. The department's primary responsibilities are in the areas of finance, marketing, local government and service coordination, exporting, tourism, job training and entrepreneurial assistance, and small business.

261—1.2(15) Definitions. As used in these rules, unless the context otherwise requires:

"Board" or *"IDED board"* means the Iowa economic development board created by Iowa Code chapter 15.

"Department" or *"IDED"* means the Iowa department of economic development authorized by Iowa Code chapter 15.

"Director" means the director of the Iowa department of economic development or the director's designee.

[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09]

261—1.3(15) Iowa department of economic development board.

1.3(1) *Composition.*

a. Board size. The board consists of 15 voting members appointed by the governor and 7 ex officio nonvoting members. The ex officio nonvoting members are 4 legislative members, 2 state senators and 2 state representatives; 1 president, or the president's designee, of the University of Northern Iowa, University of Iowa, or Iowa State University of Science and Technology designated by the state board of regents on a rotating basis; 1 president, or the president's designee, of a private college or university appointed by the Iowa association of independent colleges and universities; and 1 superintendent, or the superintendent's designee, of a merged area school, appointed by the Iowa association of community college presidents.

b. Terms. Board members are appointed for four-year terms that begin and end as provided by Iowa Code section 69.19.

c. Voting members—representation on the board following the transitional year (July 1, 2005, to June 30, 2006). Following the transitional year, at least one of the voting members shall be less than 30 years of age at the time of appointment. At least 9 voting members of the board shall be actively employed in the private, for-profit sector of the economy. Each of the following areas of expertise shall be represented by at least 1 voting member of the board who has professional experience in that area of expertise:

(1) Finance, insurance, or investment banking.
(2) Advanced manufacturing.
(3) Statewide agriculture.
(4) Life sciences.
(5) Small business development.
(6) Information technology.
(7) Economics or alternative and renewable energy including the alternative and renewable energy sectors listed in Iowa Code section 476.42, subsection 1, paragraph "*a*."
(8) Labor.
(9) Marketing.
(10) Entrepreneurship.

1.3(2) *Meetings.*

a. The board generally meets monthly at the department's offices located at 200 East Grand Avenue in Des Moines, Iowa. By notice of the regularly published meeting agendas, the board and its committees may hold regular or special meetings at other locations within the state. Meeting agendas are available on the department's Web site at www.iowalifechanging.com.

b. The board shall meet in May of each year for the purpose of receiving recommendations from the nominations committee, if established by the chairperson, and electing one of its voting members as chairperson and one of its voting members as vice chairperson. Nominations may also be made from the floor at the time of the election provided the consent of the nominee has been obtained. The chairperson and the vice chairperson shall not be from the same political party. The board shall meet at the call of the chairperson or when any eight members of the board file a written request with the chairperson for a meeting. Written notice of the time and place of each meeting shall be given to each member of the board. A majority of the voting members constitutes a quorum.

c. Any interested party may attend and observe board and committee meetings except for such portion as may be closed pursuant to Iowa Code section 21.5.

d. Observers may use cameras or recording devices during the course of a meeting so long as the use of such devices does not materially hinder the proceedings. The chairperson may order that the use of these devices be discontinued if they cause interference and may exclude any person who fails to comply with that order.

e. Open session and closed session proceedings are electronically recorded. Minutes of open meetings are available for viewing at the department's offices.

1.3(3) *Duties.* The board shall perform the duties as outlined in Iowa Code section 15.104, and other functions as necessary and proper to carry out its responsibilities.

1.3(4) *Board committees.* The board shall establish the following statutorily authorized committees: a due diligence committee pursuant to Iowa Code section 15.103(6), a loan and credit guarantee committee pursuant to Iowa Code section 15.103(6) as amended by 2009 Iowa Acts, Senate File 344, section 18, and a technology commercialization committee pursuant to Iowa Code section 15.116 as amended by 2009 Iowa Acts, Senate File 344, section 22. The board may, from time to time, establish other standing committees that the board members deem necessary to assist the board in carrying out its duties. Meetings of standing committees are open to the public pursuant to Iowa Code chapter 21. The board chairperson may appoint such other ad hoc advisory committees as deemed necessary for specific purposes. An ad hoc committee appointed by the chairperson shall be comprised of less than a quorum of the board. Meetings of ad hoc committees or subcommittees appointed by the board chairperson are not open to the public.

1.3(5) *Standing committees.*

a. Due diligence committee. The due diligence committee shall be an advisory committee composed of voting members of the board elected annually by the voting members of the board. The size of the committee and the terms of committee members will be established annually by the board. Duties of the due diligence committee include, but are not limited to, carrying out any duties assigned by the board in relation to programs administered by the department, reviewing applications for financial assistance, conducting a thorough review of proposed projects and making recommendations to the board regarding funding. A majority of committee members constitutes a quorum. Nonvoting, ex officio members of the board may be appointed by the chairperson of the due diligence committee to serve on the due diligence committee as nonvoting, ex officio members.

b. Loan and credit guarantee committee. The loan and credit guarantee committee shall be an advisory committee composed of voting members of the board elected annually by the voting members of the board. The size of the committee and the terms of committee members will be established annually by the board. Duties of the loan and credit guarantee committee include, but are not limited to, carrying out any duties assigned by the board in relation to the loan and credit guarantee program administered by the department, reviewing loan and credit guarantee applications and making recommendations to the board regarding funding. A majority of committee members constitutes a quorum. Nonvoting, ex officio members of the board may be appointed by the chairperson to serve on the loan and credit guarantee

committee as nonvoting, ex officio committee members. The loan and credit guarantee program was repealed by 2009 Iowa Acts, Senate File 344. This board committee shall continue to exist until the program has been closed out.

c. Technology commercialization committee. To evaluate and approve funding for projects and programs under Iowa Code section 15G.111 as amended by 2009 Iowa Acts, Senate File 344, section 2, the board shall create a technology commercialization committee composed of members with expertise in the areas of biosciences, engineering, manufacturing, pharmaceuticals, materials, information solutions, software, and energy. At least one member of the technology commercialization committee shall be a member of the economic development board. The size of the committee and the terms of committee members will be established annually by the board. An organization designated by the department, composed of members from both the public and private sectors and composed of subunits or subcommittees in the areas of already identified bioscience platforms, education and workforce development, commercialization, communication, policy and governance, and finance, shall provide funding recommendations to the technology commercialization committee. A majority of committee members constitutes a quorum.

d. Community and workforce development committee. The community and workforce development committee shall be an advisory committee to the board on workforce development matters. The committee shall review and make recommendations regarding programs such as CDBG and HOME programs which include housing, public infrastructure and public facilities funding programs; main street Iowa and downtown resource center; tourism office; training programs established by Iowa Code chapters 260E, 260F and 260G; workforce and economic development training fund; and programs administered by the innovation and commercialization division such as internship, career awareness, up-skilling and related programs.

1.3(6) *Ad hoc committees.* The board chairperson or committee chairpersons, as applicable, may appoint ad hoc advisory committees and subcommittees that meet for specific, limited purposes including but not limited to:

a. Nominations committee. Prior to May 1 of each year, the board chairperson may appoint a nominations committee comprised of voting members of the board for the purpose of developing recommendations to the full board for the election of a board chairperson, vice-chairperson, and membership on the board's standing committees. Upon recommendation of the nominations committee, the board shall elect the members of the committees, and the board chairperson shall designate the chairpersons and vice-chairpersons of all committees.

b. Finance review committee. The board chairperson may appoint a finance review committee comprised of voting members of the board for the purpose of periodically meeting with department officials to review the department's regularly maintained financial records and other financial information requested by the board. The finance review committee may also attend audit entrance and exit interviews conducted by the auditor of state with department officials. The finance review committee is advisory only and may provide recommendations to the board.

c. Due diligence subcommittee. The due diligence committee chairperson may appoint a due diligence subcommittee comprised of voting members of the board for the purpose of reviewing requests for project extensions, amended awards, workouts and project restructures. The due diligence subcommittee is advisory only and may provide recommendations to the due diligence committee.

1.3(7) *Appeals of department of revenue decisions—wage-benefit tax credit program appeals.* A business whose application for a wage-benefit tax credit has been denied by the department of revenue may appeal the decision to the board. The appeal must be made in writing and received by the department within 30 days of the date on the notice of denial sent to the business by the department of revenue. The board may uphold or overturn the decision of the department of revenue. If the IDED board overturns the decision of the department of revenue, the department of revenue will be instructed, subject to availability, to issue a tax credit certificate.

[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09]

261—1.4(15) Department structure.

1.4(1) *General.* The department's organizational structure consists of the director, deputy director, and four divisions.

1.4(2) *Director.* The Iowa department of economic development is administered by a director appointed by the governor, who serves at the pleasure of the governor and is subject to confirmation by the senate. The director is the chief administrative officer of the department and in that capacity administers the programs and services of the department in compliance with applicable federal and state laws and regulations. The duties of the director are as authorized in Iowa Code section 15.106 and include preparing a budget subject to board approval, establishing an internal administrative structure and employing personnel, reviewing and submitting to the board legislative proposals, recommending rules to the board, reporting to the board on grants and contracts awarded by the department, and other actions to administer and direct the programs of the department.

The administrators of the four divisions and the deputy director report to the director.

1.4(3) *Deputy director.* The deputy director, appointed by the director, directs and administers the department in the director's absence.

1.4(4) *Divisions.* The director has established the following administrative divisions within the department in order to most efficiently and effectively carry out the department's responsibilities:

1. Administration division;
2. Business development division;
3. Community development division; and
4. Innovation and commercialization division.

1.4(5) *Attachment for administrative purposes; board support.* The Iowa department of economic development provides office space and staff support to the city development board pursuant to Iowa Code sections 368.9 and 15.108(3)*"a"*(2). The department provides administrative support to the vision Iowa board pursuant to Iowa Code section 15F.104 and the renewable fuel infrastructure board pursuant to Iowa Code section 15G.202.

1.4(6) *Advisory committees.* The director may appoint committees to serve in an advisory capacity to the department that are deemed necessary to accomplish the work of the department. The size of the committee and the terms of committee members will be established by the director. These committees may be dissolved as deemed appropriate by the director, and other committees may from time to time be established for specific purposes.

261—1.5(15) Information. The general public may obtain information about the Iowa department of economic development by contacting the Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4700; or through the department's Web site at www.iowalifechanging.com.

These rules are intended to implement Iowa Code chapter 15 as amended by 2009 Iowa Acts, Senate File 344, chapter 15G as amended by 2009 Iowa Acts, Senate File 344, and section 17A.3.

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CHAPTER 2
GROW IOWA VALUES FUND ASSISTANCE

Rescinded IAB 7/4/07, effective 6/15/07; see 261—Ch 165

CHAPTER 3
Reserved

PART II
WORKFORCE DEVELOPMENT COORDINATION

CHAPTER 4
WORKFORCE DEVELOPMENT ACCOUNTABILITY SYSTEM

261—4.1(15) Purpose. The department of economic development, in conjunction with the department of education, has the responsibility under Iowa Code section 84A.5 to report information concerning the use of any state or federal training or retraining funds which are part of the workforce development system. The information reported shall be in a form that will permit the accountability system, which is a part of the workforce development system, to evaluate all of the following:

4.1(1) The impact of services on wages earned by individuals.

4.1(2) The effectiveness of training service providers in raising the skills of the Iowa workforce.

4.1(3) The impact of placement and training services on Iowa's families, communities and economy.

261—4.2(15) Compilation of information. The department of economic development, in conjunction with the community colleges, shall develop a mechanism and timetable for compiling relevant information which shall include the social security numbers of individuals trained, in order to access wages earned by those individuals, project identifier codes, and information needed to evaluate the effectiveness of training in raising the skills of trainees. When developing procedures for compiling this information, the community colleges and the department will incorporate procedures to safeguard confidentiality of social security numbers.

These rules are intended to implement Iowa Code section 84A.5.

[Filed 1/22/99, Notice 12/16/98—published 2/10/99, effective 3/17/99[1]]

[1] Effective date of Chapter 4 delayed 70 days by the Administrative Rules Review Committee at its meeting held March 8, 1999.

CHAPTER 5
IOWA INDUSTRIAL NEW JOBS TRAINING PROGRAM
[Prior to 1/14/87; Iowa Development Commission[520] Ch 5]

261—5.1(15,260E) Authority. The authority for rules governing the development of training projects under the Iowa industrial new jobs training Act and the operation of the program is provided in Iowa Code sections 260E.7 and 15.108(6)*"a."*

261—5.2(15,260E) Purpose. The purpose of the Act is to provide training for employees in new jobs with industries locating or expanding operations in Iowa and an incentive to industries considering locating or expanding operations in Iowa. The goal of the training should be skill development and enhancement for Iowa's workforce. The Iowa department of economic development is required to coordinate the training programs described in the Act.

261—5.3(15,260E) Definitions.

"Act" means Iowa Code chapter 260E.

"Agreement" means an agreement between an employer and a community college concerning a project and includes any written agreement, or amendment thereto, whether deemed by the parties to be preliminary or final.

"Base year" means, for the purpose of determining incremental property tax available to fund in part the jobs training agreement, the assessment rolls as of January 1 of the year preceding the first written agreement filed with the county assessor where the property is located or such other valuation as may be determined by the appropriate assessor as provided in Iowa Code section 403.19(1)*"c."*

"Board of directors" means the board of directors of a community college.

"Certificate" means an industrial new jobs training certificate issued pursuant to Iowa Code section 260E.6.

"Community college" means a community college established under Iowa Code chapter 260C.

"Date of commencement of the project" means the date of the agreement.

"Department" means the Iowa department of economic development. Contacts with the department regarding activities referenced in this chapter shall be through the division of administration, workforce development team.

"Employee" means the person employed in a new job.

"Employer" means the company providing new jobs in the merged area served by the community college and entering into an agreement.

"Expanding industry" means an industry which will require the addition of new jobs which did not exist in that industry in Iowa prior to the signing of an agreement for training and which exceeds the level of employment in that industry six months prior to the date of the agreement.

"Formerly existing jobs" means jobs that were part of the payroll of the industry within the state any of the time during the six months prior to the signing of an agreement for training. Jobs which formerly existed do not qualify for training under the provisions of Iowa Code section 260E.2, subsection 15.

"Incremental property taxes" means the taxes as provided in Iowa Code sections 403.19 and 260E.4.

"Industry" means a business engaged in interstate or intrastate commerce for the purpose of manufacturing, processing, or assembling products, conducting research and development, or providing services in interstate commerce, but excludes retail, health, or professional services. An industry is a business engaged in activities described as eligible in the Act rather than the generic definition encompassing all businesses in the state doing the same activities. An industry is considered to be a single, corporate entity or operating subdivision. An industry which closes or substantially reduces its operation in one area of the state of Iowa and relocates substantially the same operation in another area of the state is not eligible for a project. This definition does not prohibit a business from expanding its operations in another area of the state provided that existing operations of a similar nature are not closed or substantially reduced.

"New industry" means an industry which has not done business in Iowa or an existing industry implementing a new process and product used or produced for the first time in Iowa, which results in the creation of new jobs not previously available in that industry in the state.

"New job" means a job in a new or expanding industry but does not include jobs of recalled workers, or replacement jobs or other jobs that formerly existed in the industry in the state of Iowa. A new job shall be as defined in the Act subject to the clarifications of new and expanding industry described in subrules 5.3(11), 5.3(14), and 5.3(15) above, except that an industry in violation of state or federal labor laws or involved in a lockout or strike in Iowa shall not be eligible for a training program under the Act.

"New jobs credit from withholding" means the credit as provided in Iowa Code section 260E.5.

"New jobs training program" or *"program"* means the project or projects established by a community college for the creation of jobs by providing education and training of workers for new jobs for new or expanding industry in the merged area served by the community college. The proceeds of the certificates, as authorized by the Act, shall be used only to fund program services related to training programs made necessary by the creation of new jobs.

"Program services" includes but is not limited to the following:

1. New jobs training.
2. Adult basic education and job-related instruction.
3. Vocational and skill-assessment services and testing.
4. Training facilities, equipment, materials, and supplies.
5. On-the-job training.
6. Administrative expenses for the new jobs training program.
7. Subcontracted services with institutions governed by the board of regents, private colleges or universities, or other federal, state, or local agencies.
8. Contracted or professional services.
9. Issuance of certificates.

"Project" means a training arrangement which is the subject of an agreement entered into between the community college and an employer to provide program services.

261—5.4(15,260E) Agreements.

5.4(1) *Notification.* The community college shall notify the department of all agreements deemed to be final and ready for project funding by sending a copy of the notice of agreement to the department within 30 days of the execution by all parties. The corresponding official statement will be sent when it is completed. The notice of final agreement shall provide all pertinent training services and financial details in the manner determined by the department. The notice shall be signed by the community college officials authorized by the college. All written agreements shall also be reported and verified through updates by the college, provided in a time frame specified by the department, in the same manner that the annual report is provided to the department. Except where otherwise prescribed in these rules, the department, in conjunction with the community colleges, shall develop a format and timetable for reporting relevant information to the department. Such reporting shall include, but shall not be limited to, information and official statements with respect to all final agreements and related certificate sales, information regarding college procedures for training agreement review and training project monitoring, as well as documentation of identified events of default, remedies and repayment policies.

5.4(2) *Additional agreement items.* In addition to the provisions of an agreement described in Iowa Code section 260E.3, subsections 1 to 5, the agreement shall include the following items:

a. The length of time each new job category will be provided on-the-job training.

b. The completion date of all other training.

c. If the supplemental new jobs credit is to be utilized as authorized in Iowa Code section 15.331 and 261—Chapter 58, the agreement must be signed by the business(es), community college, and the department of revenue for the use of an additional 1½ percent withholding to educate and train new employees.

5.4(3) *Compliance with department of revenue requirements.* When an agreement for training is deemed final and ready for project funding, the community college shall notify the department of revenue

within 30 days of the date of execution of the agreement. Notification must be in writing on forms and in the manner determined by the department of economic development and is considered complete when response has been received on each item.

If, at any time after notification, the estimates are revised, or if changes are made in the agreement that would affect the above reporting requirements, the department of revenue and the department shall be notified within 30 days.

5.4(4) *Coordination with the relevant agencies.*

a. Before a project is implemented, the community college shall notify the local Job Training Partnership Act administrative entity and job service.

b. Evidence of coordination of effort shall be provided to the department on the notification form as described in 5.4(1) above.

5.4(5) *Allowable cost.* A community college may be reimbursed from certificate proceeds for reasonable administrative costs and legal fees incurred prior to the date of the preliminary agreement. Training costs incurred prior to the date of the preliminary agreement are not reimbursable.

5.4(6) *Cost standards.* The standard vocational preparation guide, as provided in the Dictionary of Occupational Titles for determining classification of jobs and the length of allowable training periods, shall be used by a community college in estimating the cost of on-the-job training. Where these standards are not appropriate, reasonable time periods for on-the-job training shall be based on the standard vocational preparation guide for similar classifications. Reimbursement of employee's wages for on-the-job training shall not exceed 50 percent of the new employee's annual gross payroll costs. The maximum project total for on-the-job training shall not exceed 50 percent of the total available training proceeds.

5.4(7) *Indirect cost rate.* The community colleges may be reimbursed indirect costs at the rate to be determined annually. The rate will be determined by the department and the Iowa department of education. The indirect cost rate and procedures will be communicated to the community colleges by the department. The rate will be based on function five and nine expenditures of the Iowa area community college uniform accounting system. The indirect cost rate shall be applied against the total issuance. Acceptable accounting procedures, as determined by the community college with the department of education and the state auditor, shall be followed in claiming indirect costs.

5.4(8) *Equipment.* Equipment required for training will be an allowable provision in a training project as described in Iowa Code chapter 260E. The cost of equipment used in training shall be prorated to the project in that proportion chargeable to the training program, and the remainder of the cost of such equipment will be the responsibility of the employer. Proceeds of the certificates shall not be used directly or indirectly to finance land, facilities or depreciable property to be owned by the employer or other private person.

261—5.5(15,260E) Resolution on incremental property tax. A copy of the resolution by the board of directors of the community college, as described in Iowa Code section 260E.4, shall be forwarded to the county auditor(s) affected by it within the merged area.

5.5(1) A community college board of directors anticipating the use of the incremental property tax as a source of funding for an eligible training program is referred to Iowa Code sections 403.19 and 403.21, and shall follow procedures as described therein, as provided in Iowa Code section 260E.4.

5.5(2) Reserved.

261—5.6(15,260E) New jobs withholding credit.

5.6(1) *Notification of payments and claims for credit.* Withholding credit for payments to community colleges shall be claimed by an employer on the semimonthly, monthly, or quarterly deposit forms during the calendar quarter in which payment is made to a community college. No credit may be claimed until the payment has been made to a community college. The community college shall notify the department of revenue within 30 days following the end of a calendar quarter of payments covering withholding credits that have been received for the quarter. If a credit is claimed by an employer and payment is not made to the community college, the amount of credit will be considered to be a

delinquent withholding liability and will be subject to assessment of tax, penalty, and interest according to the provisions of Iowa Code section 422.16(10).

5.6(2) *Notification of termination of credit.* Community colleges shall notify in writing the department of revenue and the department within 30 days when it is determined that payments for job training withholding credits will no longer be applied against the costs of a project. At project completion, any excess payments for jobs training withholding credits received by the community college will be forwarded to the department of revenue.

261—5.7(15,260E) Notice of intent to issue certificates. The notice of intent to issue certificates as provided in Iowa Code section 260E.6, subsection 5, shall be published by the community college in a legal newspaper in the merged area. The application for an allocation of Iowa industrial new jobs training certificates must be submitted to the department, in the format determined by the department, by an official of the community college, or an attorney or agent of the community college, prior to the issuance of certificates for that portion of the issuance that is tax-exempt. Notice of issuance of certificates must be filed with the department within ten days of the issuance and delivery of certificates.

261—5.8(15,260E) Standby property tax levy. A standby property tax levy shall be collected at any time other funds are insufficient as provided in Iowa Code section 260E.6, subsection 4. The county auditor shall be notified by the community college board of directors on an annual basis to adjust the annual standby tax.

261—5.9(15,260E) Reporting. An annual report shall be completed by the community college on or before August 15. The format and content will be determined by the department. The report shall include a report of the incremental property taxes and new jobs credits from withholding generated for the fiscal year, a specific description of the training conducted, the number of employees provided program services under the project, the median wage of employees in the new jobs in the project, and the administrative costs directly attributable to the project.

261—5.10(15,260E) Monitoring.

5.10(1) *Monitoring system.* Each community college shall establish a monitoring system which includes, at a minimum, a review of the business's compliance with the Act, these rules and the training agreement.

5.10(2) *Annual review.* Monitoring shall be conducted by the community colleges at least annually.

5.10(3) *Documentation.* Each community college shall document its monitoring efforts and promptly notify the department, on the forms provided, whenever it identifies an event(s) of default.

261—5.11(15,260E) State administration. The community colleges shall submit 1 percent of the gross sale of certificates within 30 days of receipt of proceeds from a sale of certificates to the department to defray administrative costs.

261—5.12(15,260E) Coordination with communities. The community colleges will follow the provisions of Iowa Code section 403.21.

261—5.13(15,76GA,SF2351) Supplemental 1½ percent withholding. For the purposes of determining new jobs training programs established under Iowa Code chapter 260E eligible to receive supplemental new jobs credit of 1½ percent of gross wages from withholding, the following criteria shall be met:

5.13(1) Only those new jobs training programs established by a 260E final agreement, approved by the community college board of directors after June 30, 1996, and including a provision for a supplemental new jobs credit from withholding from jobs created under the agreement are eligible for the supplemental credit.

5.13(2) For purposes of determining the average county or average regional wage, the department shall calculate the average county wage utilizing statistics compiled for the community economic betterment program. The average county wage will be calculated utilizing the most recent four quarters

of historical wage averages available at the beginning of each fiscal year. The regional average wage shall be calculated based on service delivery areas as defined in Iowa Code section 84B.2. This average will be the sum of the county averages divided by the number of counties in the region.

5.13(3) The department will make available to the community colleges the averages at the beginning of each state fiscal year for use in determining supplemental withholding credit eligibility for that fiscal year.

5.13(4) For the purposes of determining eligibility for the supplemental credit, starting wages for a new job shall be determined on a one-time basis by the community college as follows:

a. The employer shall agree, as a part of the final agreement, to pay starting wages which are equal to or greater than the county or regional average, whichever is lower.

b. Only those individual jobs for which the starting wage is equal to or greater than the average county wage or average regional wage, whichever is lower, are eligible for the supplemental new jobs credit from withholding.

c. For purposes of comparing starting wages to the county or regional average, the community college shall reduce the annual gross wages to be paid for the job to an hourly wage based upon a 40-hour workweek.

d. Such determination by the community college shall be conclusive and the individual job shall thereafter be eligible and may be used for the supplemental credit from withholding to fund the supplemental project under the agreement.

e. Future annual changes in county or regional averages shall not affect the eligibility of those jobs that have been determined by the community college to be eligible at the time of final agreement for a project.

5.13(5) The community college may require the employer to supply appropriate payroll records and projections to verify eligibility of the supplemental credit.

This rule is intended to implement the provisions of 1996 Iowa Acts, Senate File 2351, section 8, effective July 1, 1996, and does not affect agreements included in Iowa Code section 15.326, New Jobs and Income Act, Iowa Code section 15A.9, Quality Jobs Enterprise Zone, or those agreements under Iowa Code chapter 260E, Iowa Industrial New Jobs Training Program, which do not contain a provision for a supplemental new jobs credit from withholding.

These rules are intended to implement Iowa Code chapter 260E and Iowa Code chapter 403 as it relates to chapter 260E.

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CHAPTER 6
RETRAINING PROGRAM

Rescinded IAB 7/8/92, effective 7/1/92

CHAPTER 7
IOWA JOBS TRAINING PROGRAM

[Prior to 1/14/87 Iowa Development Commission(520), Ch 7]
[Prior to 7/8/92, see 261—Chs 6 and 7]

261—7.1(260F) Authority. The authority for establishing rules governing the development of training projects under the Iowa jobs training Act is provided in Iowa Code chapter 260F.

261—7.2(260F) Purpose. The purpose of the Act is to foster the growth and competitiveness of Iowa's workforce and industry by ensuring that Iowa's workforce has the skills and expertise to compete with any workforce outside the state of Iowa.

261—7.3(260F) Definitions.

"Act" means Iowa Code chapter 260F.

"Apprentice" means a person who is at least 16 years of age, except where a higher minimum age is required by law, who is employed in an apprenticeable occupation, and is registered with the United States Department of Labor, Bureau of Apprenticeship and Training.

"Apprenticeable occupation" means an occupation approved for apprenticeship by the United States Department of Labor, Bureau of Apprenticeship and Training.

"Apprenticeship program" means a program registered with the U.S. Bureau of Apprenticeship and Training which contains the terms and conditions for the qualification, recruitment, selection, employment and training of apprentices, including the requirement for a written apprenticeship agreement.

"Apprenticeship sponsor" means an entity operating an apprenticeship program or in whose name an apprenticeship program is being operated, registered or approved by the United States Department of Labor, Bureau of Apprenticeship and Training.

"Business network" means five or more businesses which are located in two or more community college districts and which share a common training need. A business network training project must have a designated lead community college, business, or organization to serve as the administrative entity that will coordinate the training program.

"Community college" means a community college established under Iowa Code chapter 260C.

"Community college consortium" means two or more businesses located in the same community college district which share a common training need.

"Department" means the Iowa department of economic development.

"High technology apprenticeship program" means a program that includes the definitions of apprenticeship program and high technology training.

"High technology training" means training that provides knowledge or skills that are clearly recognized throughout the industry as technologically up to date or advanced for a particular occupation.

"Lead apprenticeship sponsor" means an apprenticeship sponsor that is the applicant for an apprenticeship project.

"Lead business" means a business that is the applicant for a business network project.

"Lead organization" means a trade organization, labor organization or other incorporated entity representing a group of businesses that is the applicant for a business network project.

"Program costs" means all necessary and incidental costs of providing program services.

"Prospective employee" means an assessed individual who is anticipated to be hired upon completion of training.

"Supplier network training" means training provided to five or more businesses whose common training need results from a requirement of one common customer or business.

261—7.4(260F) Program funding.

7.4(1) Program funds consist of any moneys allocated by the department and the board for the purpose of this program, all repayments of loans or other awards or recaptures of awards, and earned interest, including interest earned on program funds held by the community colleges.

7.4(2) A community college 260F account is established in the department. The distribution of funds in this account, to the community colleges, shall be based upon the percentages prescribed in this rule, unless the general assembly stipulates otherwise in the appropriation process.

7.4(3) Sixty-seven point five percent of the funds from the community college 260F account shall be distributed to each community college using the distribution formula established in Iowa Code section 260C.18.

7.4(4) Twenty-five percent of the funds from the community college 260F account shall be distributed to community colleges for high technology apprenticeship programs based upon related eligible contact hours under the programs administered during the prior fiscal year as determined by the department of education. Contact hours generated in on-the-job training experiences are not eligible for consideration for apprenticeship funding.

7.4(5) Seven point five percent of the funds from the community college 260F account shall be held by the department to fund community college-sponsored business network training projects and shall be available on a first-come, first-served basis, based on the date an application is received by the department.

7.4(6) Any unexpended or uncommitted funds remaining in the community college 260F account on May 1 of the fiscal year shall revert to a general account to be available on a first-come, first-served basis, based on the date an application is received by the department.

7.4(7) Contingent on the availability of program funds, a department-sponsored business network training project account consisting of funds allocated by the department and the board is established in the department to fund department-sponsored business network training projects.

7.4(8) Contingent on the availability of program funds, a department-sponsored high technology apprenticeship project account consisting of funds allocated by the department board is established in the department to fund department-sponsored high technology apprenticeship training projects.

261—7.5(260F) Funding for projects which include one business.

7.5(1) The maximum award which may be approved for each project at a business site is $25,000.

7.5(2) A business site may be approved for multiple projects, but the total of the awards for two or more projects shall not exceed $50,000 within a three-year period. The three-year period shall begin with the department approval date of the first project approved within the three-year period.

7.5(3) Awards shall be made in the form of forgivable loans.

7.5(4) Financial assistance awarded to a project must be based on the actual cost of allowable services as identified in 261—7.9(260F).

7.5(5) Funds requested must be commensurate with training needs. Program funds shall not be used to cash flow a business.

7.5(6) Community colleges shall issue the proceeds of an award to a business on a reimbursement basis or directly pay for training expenses from the college-administered separate program account.

261—7.6(260F) Funding for projects which include multiple businesses.

7.6(1) A community college consortium of two or more businesses as defined in 261—7.3(260F) is eligible for a maximum award of $50,000 per training project.

7.6(2) A community college-sponsored business network training project as defined in 261—7.3(260F) is eligible for a maximum project award of $50,000 from each of the participating community colleges.

7.6(3) Department-sponsored business network training projects as defined in 261—7.3(260F) are not subject to a funding maximum.

7.6(4) Participation in a community college consortium or business network does not affect a business site's financial eligibility for individual project assistance.

261—7.7(260F) Funding for high technology apprenticeship programs.

7.7(1) A community college high technology apprenticeship program as defined in 261—7.3(260F) may be funded at the discretion of each specific community college at an amount up to, but not exceeding, the specific community college's apprenticeship distribution for the year.

7.7(2) Department-sponsored high technology apprenticeship programs as defined in 261—7.3(260F) are not subject to a funding maximum.

261—7.8(260F) Matching funds requirement.

7.8(1) An apprenticeship sponsor, business, community college consortium, or business network shall provide matching funds in order to be eligible for a program award.

7.8(2) An apprenticeship sponsor, business, community college consortium, or business network requesting a program award of less than $5,000 shall provide in-kind matching funds.

7.8(3) An apprenticeship sponsor, business, community college consortium, or business network requesting a program award of $5,000 or more shall provide cash to pay at least 25 percent of the total project cost, including training and administration costs.

7.8(4) In-kind matching funds include employee wages paid by the business during the training period, the value of business-provided facilities and equipment used for training, or the value of any other resources provided by the business or apprenticeship sponsor to facilitate the training program.

261—7.9(260F) Use of program funds.

7.9(1) The following costs associated with the administration of any project are eligible for program funding:

a. Community college administrative costs associated with the development and operation of a project, not to exceed the rate charged for a 260E project.

b. Legal fees.

7.9(2) The following costs associated with the provision of services for any project are eligible for program funding:

a. Vocational and skill assessment testing.

b. Adult basic education.

c. Job-related training.

d. Cost of company, college, or contracted trainer or training services.

e. Training-related materials, equipment, software, and supplies.

f. Lease or rental of training facilities.

g. Training-related travel and meals.

h. Subcontracted services.

i. Contracted or professional services.

j. Pre-employment training for prospective employees.

7.9(3) Reimbursement of employee wages while in training is not allowed.

7.9(4) Production equipment, when used for training, may be an allowable cost. The cost of equipment used in training but subsequently used in production shall be prorated, as identified in 261—8.12(15,76GA,ch1180), with the percentage of "used in production" cost paid by the business.

7.9(5) A community college may use funds awarded to a project to cover reasonable administrative costs and legal fees for that project when such costs are not covered by application fees or interest earnings. This includes administrative and legal costs incurred for a project that is canceled after funds are released to the community college but before being released to the business.

7.9(6) A community college may not use funds from one project's program award to cover any costs incurred by another project.

261—7.10(260F) Use of 260F earned interest.

7.10(1) The community college is authorized to use interest earned on program funds to pay administrative costs incurred as a result of administering the program. Administrative costs include all

costs incurred from the time the application process commences minus any costs covered by application fees paid by applicants.

7.10(2) The community college is authorized to use interest earned on program funds to enable a business which received small business new jobs training assistance prior to July 1, 1996, to meet its debt service obligation when the business is unable to generate sufficient withholding and property tax revenue to fulfill its obligation.

7.10(3) Earned interest which has not been spent by the end of any state fiscal year shall be refunded to the department within ten days of the end of the state fiscal year. The community college may designate and carry forward specified interest funds, as permitted by these rules, for identified payments which will occur during the next state fiscal year.

261—7.11(260F) Application fee.

7.11(1) Community colleges may charge each applicant an application fee to cover part or all administrative and legal costs incurred prior to project funding.

7.11(2) A community college which elects to charge an application fee must charge each business which applies a same or equitable fee.

261—7.12(260F) Separate account. The community college shall establish a separate program account in order to document all program transactions and from which repayments for loans shall be made to the department.

261—7.13(260F) Eligible business.

7.13(1) A business engaged in interstate or intrastate commerce for the purpose of manufacturing, processing, assembling products, warehousing, wholesaling, or conducting research and development is eligible. A business engaged in the provision of services must have customers outside of Iowa to be eligible.

7.13(2) The business site to receive training must be located in Iowa.

7.13(3) The project cannot be economically funded under Iowa Code chapter 260E.

261—7.14(260F) Ineligible business.

7.14(1) A business which is engaged in retail sales or provides health or other professional services is ineligible.

7.14(2) A business which closes or substantially reduces its workforce by more than 20 percent at existing operations in order to relocate substantially the same operation to another area of the state is ineligible for 36 consecutive months at any of its Iowa sites from the date the new establishment opens.

7.14(3) A business which is involved in a strike, lockout, or other labor dispute in Iowa is ineligible.

261—7.15(260F) Eligible employee.

7.15(1) An employee for whom training is planned must hold a current position intended by the employer to exist on an ongoing basis with no planned termination date.

7.15(2) Training is available only to an employee who is hired by the business, is currently employed by a business, and for whom the business pays withholding tax.

7.15(3) A prospective employee, as defined in rule 261—7.1(260F), may receive training.

261—7.16(260F) Ineligible employee.

7.16(1) A replacement worker who is hired as a result of a strike, lockout, or other labor dispute is ineligible for program services.

7.16(2) Training is not available for an employee hired as a temporary worker.

261—7.17(260F) Entrepreneurial training. Community colleges may use moneys in their respective job training fund allocations to conduct entrepreneurial development and support activities for individuals who currently operate or intend to operate any entrepreneurial venture.

261—7.18(260F) Agreement of intent.

7.18(1) A college and a business, apprenticeship sponsor or entrepreneurial training provider may, but are not required to, enter into an agreement of intent.

7.18(2) A college and a business or entrepreneurial training provider which enter into an agreement of intent shall use Agreement of Intent, Form 260F-2. A college and an apprenticeship sponsor which enter into an agreement of intent shall use Apprenticeship Agreement Intent, Form 260F-2A.

7.18(3) An agreement of intent shall remain in effect for a maximum of one calendar year from the date of the agreement. An agreement of intent for one project does not establish the commencement date for subsequent projects.

261—7.19(260F) Project commencement date. The earliest date on which program funds may be used to pay training expenses incurred by the project is the effective date of the agreement of intent or the date the application is received by the department, whichever is first.

261—7.20(260F) Application process.

7.20(1) An application for training assistance must be submitted to the department by a community college on behalf of a business or apprenticeship sponsor. An application shall not be accepted by the department if submitted directly by a business or apprenticeship sponsor.

7.20(2) Community colleges shall use Application for Assistance, Form 260F-1, to apply for 260F business assistance. Apprenticeship Application for Assistance, Form 260F-1D, shall be used for apprenticeship assistance.

7.20(3) Required contents of the application will be described in the application package.

7.20(4) Applications must be submitted to Iowa Department of Economic Development, Division of Administration, Workforce Development Programs, 200 East Grand Avenue, Des Moines, Iowa 50309. Required forms and instructions are available at this address.

7.20(5) The department will score applications according to the criteria specified in 261—7.21(260F).

7.20(6) To be funded, an application must receive a minimum score of 65 out of a possible 100 points and meet all other eligibility criteria specified elsewhere in these rules.

7.20(7) The department may approve, reject, defer, or refer an application to another training program.

7.20(8) The department reserves the right to require additional information from the business or apprenticeship sponsor.

7.20(9) Application approval shall be contingent on the availability of funds. The department shall reject or defer an application if funds are not available.

261—7.21(260F) Application scoring criteria.

7.21(1) The criteria used for scoring 260F business applications and the points for each criteria are as follows:

a. More than 50 percent of the business's sales are out of state, 5 points.

b. More than 50 percent of the business's operating expenditures are spent within the state of Iowa, 5 points.

c. The number of the business's in-state competitors is low, 5 points.

d. The business's products have increased or will increase the business's customer base in Iowa, 5 points.

e. The business's products have resulted in or will result in a decrease in the importation of foreign-made goods into the USA, 5 points.

f. The majority of the business's suppliers are located in Iowa, 5 points.

g. The business's current products help diversify Iowa's economy, 5 points.

h. The business indicates the potential for future growth and product diversification, 5 points.

i. The business's average wage rate for all employees is above the average wage rate in the county or region where the business is located, 5 points. "Region" is the service delivery area as defined in Iowa Code section 84B.2.

j. The business provides employee health insurance and other benefits, 5 points.

k. The majority of the business's employees are employed full-time, 5 points.

l. New skills which employees acquire from the training program will increase the marketability of their skills, 10 points.

m. The application has established the business's need for training, 10 points.

n. The 260F cost of training per employee does not exceed comparable costs for training at a state of Iowa community college or university, 5 points.

o. The business's contribution to the training project is above the minimum program match requirement, 5 points.

p. The application documents that all considerations, including funding required to begin the training project, have been addressed, 5 points.

q. The application establishes a positive training impact on the business's ability to survive, 10 points.

To be funded, applications must receive a minimum score of 65 out of 100 points and meet all other applicable eligibility criteria.

7.21(2) The criteria used for scoring a department-sponsored business network or community college business consortium or community college-sponsored business network application, and the points for each criterion are as follows:

a. The training will have a positive impact on the skills, knowledge and abilities of trainees, 29 points.

b. The training will help improve the competitive stance of participating businesses or the industry for which training is being provided, 28 points.

c. The training will result in economic benefits for the state, 28 points.

d. The average of the average wage rates for the businesses participating in the project is above the state average wage rate, which will be computed using the current county average wage rates, 10 points.

e. The project cost of training per employee does not exceed comparable costs for training at a state of Iowa community college or university, 5 points.

To be funded, applications must receive a minimum score of 65 out of 100 points and meet all other applicable eligibility criteria. Department-sponsored business network applications which receive a minimum score of 65 out of 100 points will be referred to the IDED board for approval.

7.21(3) The criteria used for scoring a community college-sponsored high technology apprenticeship or a department-sponsored high technology apprenticeship application and the points for each criterion are as follows:

a. The application represents high technology area training, 20 points.

b. The application shall identify the occupation or occupations for which training will be provided from the list of occupations in the Iowa workforce development annual wage survey. The most recent Iowa workforce development Iowa statewide wage survey average wage rate for the occupation(s) as identified shall be compared to the lowest of the average wage rate for the county or region where the training is to be provided. Ten points will be awarded if the wage rate for the occupation(s) exceeds the lowest of the average wage rates for the county or region. If the program will be providing training for more than one occupation or be conducted in more than one location, the points shall be awarded on a prorated basis by occupation and location. "Region" is the service delivery area as defined in Iowa Code section 84B.2.

c. New skills which employees acquire from the training program will increase the marketability of successful program participants, 20 points.

d. The application has established the need for training, 20 points.

e. The cost of training per trainee does not exceed comparable costs for training at a state of Iowa community college or university, 5 points.

f. The application documents that all considerations, including funding required to begin the training project, have been addressed, 10 points.

g. The application establishes a positive impact on the state's workforce competitiveness, 15 points.

To be funded, applications must receive a minimum score of 65 out of 100 points and meet all other applicable eligibility criteria. Department-sponsored high technology apprenticeship applications which receive a minimum score of 65 out of 100 points will be referred to the IDED board for approval.

7.21(4) The criteria used for scoring a community college entrepreneurial training application and the points for each criterion are as follows:

a. The knowledge attained by the individuals who attend this training will increase their ability to successfully maintain or establish a small business enterprise in the state, 23 points.

b. The state of Iowa will realize economic benefits as a result of providing this training, 23 points.

c. The businesses that are maintained or established will increase employment opportunities for the state's workforce, 22 points.

d. The higher the percentage of businesses or potential businesses participating in training that can be classified as information technology, advanced manufacturing or life sciences, the more points will be awarded, up to a maximum of 22 points.

e. The average wages that are or will be paid by the businesses participating in this training are or will be above the state average wage rates, 5 points.

f. The cost of this training does not exceed comparable costs for such training at a state of Iowa community college or university, 5 points.

To be funded, applications must receive a minimum score of 65 out of 100 points and meet all other applicable eligibility criteria.

261—7.22(260F) Training contract.

7.22(1) A community college shall enter into a training contract with the business(es), lead business, lead organization, apprenticeship sponsor(s), or lead apprenticeship sponsor within 90 days of written notice of application approval from the department, using Training Contract, Form 260F-4, for 260F business-driven projects and using Form 260F-4D for apprenticeship projects.

7.22(2) A business or apprenticeship sponsor shall not modify any provision of the contract without the written approval of the community college.

7.22(3) The community college, with the written consent of the business or apprenticeship sponsor, has the authority to modify all provisions of the contract except for 260F business, business network and consortium project modifications which result in a reduction of the number of employees to be trained or which significantly change the training program.

7.22(4) The community college and the business or apprenticeship sponsor are authorized to change the ending date of training, training provider, or other minor modifications to the training program. A signed copy of the modification must be sent to the department.

7.22(5) Modifications of 260F business, business network and consortium projects which result in a reduction of the number of employees to be trained or change the training program content must be approved by the department, community college, and business.

7.22(6) The contract shall not be modified in any way that would result in a violation of the Act.

7.22(7) Lead businesses, lead apprenticeship sponsors and lead organizations that choose to be the only signatory on the training contract for a department-sponsored business network, community college-sponsored business network, department-sponsored apprenticeship or community college-sponsored apprenticeship project shall be responsible for all default and reporting requirements on behalf of the other businesses or apprenticeship sponsors participating in the project.

261—7.23(260F) Special requirements for community college consortium projects.

7.23(1) The community college shall submit Consortium Application for Assistance, Form 260F-1A , to the department for project approval.

7.23(2) The community college shall enter into a training contract with the consortium within 90 days of written notice of application approval from the department, using Consortium Training Contract, Form 260F-4A.

7.23(3) All default provisions specified in 261—7.30(260F) shall apply to consortium projects.

7.23(4) In the event of a default, a financial penalty will be assigned by the department to the consortium business or businesses identified by the community college as being responsible for the default.

7.23(5) Each business that participates in the consortium shall complete a Final Performance Report, Form 260F-5, at the completion of training as a condition of the loan's being forgiven.

261—7.24(260F) Special requirements for community college-sponsored business network projects.

7.24(1) A business network must have a designated community college to serve as the project coordinator.

7.24(2) The designated community college shall serve as the network's representative and shall serve as the department's contact regarding all project matters.

7.24(3) The participating community colleges shall select one college as the project's designated organization and representative.

7.24(4) Business Network Application for Assistance, Form 260F-1B, shall be signed by each participating community college and shall be submitted by the designated community college to the department for project approval.

7.24(5) The designated community college shall enter into a training contract with the business network within 90 days of written notice of application approval from the department, using Business Network Training Contract, Form 260F-4B.

7.24(6) All department communications concerning a business network project, including notice of project approval or denial and issuance of financial awards, shall be with the designated community college.

7.24(7) All default provisions specified in 261—7.30(260F) shall apply to college-sponsored business network training projects.

7.24(8) In the event of a default, a financial penalty will be assigned by the department to the network business or businesses identified by the designated community college as being responsible for the default.

7.24(9) Each business that participates in the network shall complete a Final Performance Report, Form 260F-5, at the completion of training as a condition of the loan's being forgiven.

7.24(10) In the case of business network training assistance, which takes the form of supplier network training as defined in 261—7.3(260F), the department shall make a good faith effort to determine the probability that the proposed project will cause the displacement of employees of existing Iowa businesses. Any business network training project which takes the form of supplier network training and would have the effect of displacing employees of existing Iowa end-product manufacturers shall not be approved.

261—7.25(260F) Special requirements for department-sponsored business network projects.

7.25(1) Eligible applicants include a group of businesses who will be the beneficiaries of the proposed training program, a trade association, a labor organization, or other incorporated entity representing a group of businesses.

7.25(2) Each project shall designate a lead organization or business which shall serve as the project's representative.

7.25(3) An individual project may not be funded for more than three fiscal years.

7.25(4) Administrative costs shall be limited to 15 percent of the total project cost.

7.25(5) All administrative costs must be directly related to the project's operation, including but not limited to the costs of schedule coordination, securing facilities, and contracting with training providers.

7.25(6) The lead organization or business shall submit Business Network Application for Assistance, Form 260F-1C, to the department for project approval.

7.25(7) Applications shall be accepted on a first-come, first-served basis.

7.25(8) Application review shall be based on the positive impact that training will have on the skills, knowledge, and abilities of employees, improved competitive stance of the participating businesses, and economic benefits gained by the state.

7.25(9) Application approval is at the discretion of the department board and shall consider recommendations made by department staff.

7.25(10) The department shall enter into a training contract with the business network within 90 days of written notice of application approval from the department, using Business Network Training Contract, Form 260F-4C.

7.25(11) All default provisions specified in 261—7.30(260F) shall apply to college-sponsored business network training projects.

7.25(12) In the event of a default, a financial penalty will be assigned by the department to the business or businesses identified responsible for the default.

7.25(13) The lead business or organization shall submit quarterly progress reports for the duration of the project which detail training progress to date.

7.25(14) Each business that participates in the business network shall complete a Final Performance Report, Form 260F-5, at the completion of training as a condition of the loan's being forgiven.

7.25(15) Each project shall receive a two-month advance of total project funds to cover initial costs incurred, the use of which must be documented to the department, after which documented costs incurred will be reimbursed on a monthly basis.

7.25(16) In the case of business network training assistance, which takes the form of supplier network training as defined in 261—7.3(260F), the department shall make a good faith effort to determine the probability that the proposed project will cause the displacement of employees of existing Iowa businesses. Any business network training project which takes the form of supplier network training and would have the effect of displacing employees of existing Iowa end-product manufacturers shall not be approved.

261—7.26(260F) Special requirements for community college-sponsored high technology apprenticeship projects.

7.26(1) An apprenticeship sponsor must have a designated community college to serve as the project coordinator.

7.26(2) The designated community college shall serve as the apprenticeship sponsor's representative and shall serve as the department's contact regarding all project matters.

7.26(3) If more than one community college is involved in the project, the participating community colleges shall designate one college as the project's representative.

7.26(4) Apprenticeship Application for Assistance, Form 260F-1D, shall be signed by the community college or, in the case of a multicollege project, by each participating community college and shall be submitted by the community college to the department for project approval.

7.26(5) The community college shall enter into a training contract with the apprenticeship sponsor within 90 days of written notice of application approval from the department, using Apprenticeship Training Contract, Form 260F-4D.

7.26(6) All department communications concerning an apprenticeship project, including notice of project approval or denial and issuance of financial awards, shall be with the community college.

7.26(7) All default provisions specified in 261—7.30(260F) shall apply to college-sponsored apprenticeship training projects.

7.26(8) In the event of a default, a financial penalty will be assigned by the department to the apprenticeship sponsor identified by the designated community college as being responsible for the default.

7.26(9) Each apprenticeship sponsor that participates in the project shall complete a Final Performance Report, Form 260F-5A, at the completion of training as a condition of the loan's being forgiven.

261—7.27(260F) Special requirements for department-sponsored high technology apprenticeship projects.

7.27(1) Eligible applicants include any organization that is approved by the U.S. Department of Labor, Bureau of Apprenticeship and Training to provide an apprenticeship program. This group shall be referred to as an apprenticeship sponsor.

7.27(2) Administrative costs shall be limited to 15 percent of the total project cost.

7.27(3) All administrative costs must be directly related to the project's operation, including but not limited to the costs of schedule coordination, securing facilities, and contracting with training providers.

7.27(4) The apprenticeship sponsor shall submit an Apprenticeship Application for Assistance, Form 260F-1E, to the department for project approval.

7.27(5) Applications shall be accepted on a first-come, first-served basis.

7.27(6) Application approval is at the discretion of the department board and shall consider recommendations made by department staff.

7.27(7) The department shall enter into a training contract with the apprenticeship sponsor within 90 days of board approval, using Apprenticeship Training Contract, Form 260F-4E.

7.27(8) All default provisions specified in 261—7.30(260F) shall apply to college-sponsored apprenticeship training projects.

7.27(9) In the event of a default, a financial penalty will be assigned by the department to the business or apprenticeship sponsor identified as responsible for the default.

7.27(10) The apprenticeship sponsor shall submit quarterly progress reports for the duration of the project which detail training progress to date.

7.27(11) Each apprenticeship sponsor that participates in the high technology apprenticeship program shall complete a Final Performance Report, Form 260F-5A, at the completion of training as a condition of the loan's being forgiven.

7.27(12) Each project shall receive a two-month advance of total project funds to cover initial costs incurred, the use of which must be documented to the department, after which documented costs incurred will be reimbursed on a monthly basis.

261—7.28(81GA,HF868,HF809) Special requirements for job retention program projects.

7.28(1) *Purpose.* The purpose of the job retention program established by Iowa Code section 260F.9 is to provide training to employees of businesses that are major employers in the state and that are incurring a major investment in retooling at their facilities in order to be more competitive in the world marketplace.

7.28(2) *Definitions.* In addition to the definitions in rule 261—7.3(260F), the following definitions shall apply to the job retention program:

"Act" means Iowa Code section 260F.9, in which the job retention program is established.

"Board" or *"IDED board"* means the Iowa economic development board created by Iowa Code chapter 15 as amended by 2005 Iowa Acts, House File 868.

"Grow Iowa values fund" means the fund established by 2005 Iowa Acts, House File 868, section 1.

"Participating business" means a business for which a job retention project is being undertaken.

"Workplace" means the facility where new capital investment and employment are occurring and that meets the requirements of the job retention program.

7.28(3) *Eligibility requirements.*

a. To be eligible, a business shall meet one of the following requirements:

(1) Employ at least 1000 employees at the workplace location; or

(2) Represent at least 4 percent or more of the county's resident labor force as based upon the most recent annual labor force statistics from the department of workforce development; and

b. To be eligible, a business shall meet both of the following requirements:

(1) Provide a commitment that the participating business shall invest at least $15 million to retool the workplace and upgrade the facilities of the participating business; and

(2) Provide a commitment that the participating business shall not move the business operation out of this state or close the business operation for at least ten years following the date of the agreement.

7.28(4) *Funding assistance.* Assistance under this program may be provided under a multiyear agreement with training to be conducted over multiple fiscal years.

7.28(5) *Application.* The community college and business shall submit to the department an application in a form and manner as prescribed by the department.

7.28(6) *Type of training allowed.* Training costs as allowed in Iowa Code chapter 260F and 261—Chapter 7 are allowed under the job retention program.

7.28(7) *Match requirements.* Training projects funded through the job retention program of the grow Iowa values fund shall have a match provided by the business of at least 25 percent of the project's training costs. Match may include a pro-rata cost of equipment used during the period of structured training on the equipment.

7.28(8) *Application review.* Applications will be reviewed utilizing the scoring criteria established under rule 261—7.21(260F). Additional considerations for job retention program applications include the size of the investment that necessitates the training needs, time period over which investment is to occur, and number of employees to be trained.

7.28(9) *Agreement.*

a. The agreement between the participating business, community college and department shall include, but not be limited to, the following:

(1) The date of the agreement;

(2) The anticipated number of employees to be trained;

(3) The estimated cost of training;

(4) A statement regarding the number of employees employed by the participating business on the date of the agreement, which must equal at least the lesser of 1000 employees or 4 percent or more of the county's resident labor force based on the most recent annual labor force statistics from the department of workforce development;

(5) A commitment that the participating business shall invest at least $15 million to retool the workplace and upgrade the facilities of the participating business;

(6) A commitment that the participating business shall not move the business operation out of this state or close the business operation for at least ten years following the date of the agreement;

(7) Other conditions established by the Iowa department of economic development;

(8) Time frame in which the investment in retooling is to occur at the affected workplace;

(9) Time frame in which training is to occur;

(10) Type of training to be undertaken.

b. A job retention project agreement entered into pursuant to this rule must be approved by the board of trustees of the applicable community college, the Iowa department of economic development, and the participating business.

c. Awards under the job retention program that exceed $1 million shall require approval by the IDED board.

7.28(10) *Reporting requirements.*

a. A community college that enters into an agreement pursuant to this chapter shall submit to the IDED board an annual written report, in a manner and form prescribed by the department, by the end of each calendar year. The report shall provide information regarding how the agreement affects the achievement of the goals and performance measures provided in the Act. By January 15 of each year, the department shall submit a written report to the general assembly and the governor regarding the activities of the job retention program during the previous calendar year.

b. The annual progress report submitted by the community colleges shall include the information as provided in 261—Chapter 9.

7.28(11) *Events of default, options and procedures on default, remedies upon default.* Rules 261—7.30(260F) to 7.32(260F) shall apply to the job retention program. In addition, should the business cease operation or not maintain its presence at the workplace location for ten years following the date of the agreement, the award shall be repaid by the business, prorated over the number of years remaining in the required ten-year period.

261—7.29(81GA,HF868,HF809) Special requirements for projects funded through the grow Iowa values fund. Moneys allocated through the grow Iowa values fund to the workforce training and economic development funds of each community college for a fiscal year may be expended for the purposes allowed under Iowa Code chapter 260F, provided the use meets the requirements established under 261—Chapter 9. Moneys allocated under the workforce training and economic development fund are targeted primarily for use in projects in the areas of advanced manufacturing; information technology and insurance; and life sciences, which include the areas of biotechnology, health care technology, and nursing care technology.

7.29(1) *Exemption for award limits and IDED board approval.* Moneys under this rule will be exempt from maximum award limits as covered under subrules 7.5(1) and 7.5(2), and 7.6(1) and 7.6(2). Applications to be awarded from workforce training and economic development funds as appropriated from grow Iowa values fund moneys that are to exceed $1 million require approval of the IDED board.

7.29(2) *Availability of workforce training and economic development funds.* For a community college to utilize the funds afforded under the grow Iowa values fund for 260F projects, the college shall prepare and submit to the department a two-year implementation plan regarding the proposed uses of the grow Iowa values fund moneys. The plan shall be updated annually and submitted with a progress report to the department to be approved by the IDED board. This reporting requirement will be accomplished as described in 261—Chapter 9.

261—7.30(260F) Events of default.

7.30(1) A business or apprenticeship sponsor fails to complete the training project within the agreed period of time as specified in the training contract. Such business or apprenticeship sponsor shall be required to repay 20 percent of total project funds expended by the community college and the business.

7.30(2) A business or apprenticeship sponsor fails to train the agreed number of employees as specified in the training contract. Such business or apprenticeship sponsor shall be required to repay a proportionate amount of total project funds expended by the community college and the business or apprenticeship sponsor. The proportion shall be based on the number of employees not trained compared to the number of employees to have been trained.

7.30(3) If both 7.30(1) and 7.30(2) occur, both penalties shall apply.

7.30(4) A business or apprenticeship sponsor fails to comply with any requirements contained in the training agreement. The business or apprenticeship sponsor shall be sent written notice by the community college which specifies the issue(s) of noncompliance and shall be allowed 20 days from the date notice is sent to effect a cure. If noncompliance is of such a nature that a cure cannot be reasonably accomplished within 20 days, the community college has the discretion to extend the period of cure to a maximum of 60 days.

7.30(5) A business or apprenticeship sponsor ceases or announces the cessation of operations at the project site prior to completion of the training program.

7.30(6) A business or apprenticeship sponsor directly or indirectly makes any false or misleading representations or warranties in the program application or training agreement, reports, or any other documents which are provided to the community college or the department.

7.30(7) A business or apprenticeship sponsor acts in any manner contrary to, or fails to act in accordance with, any provision of the training contract.

7.30(8) A business takes corporate action to effect any of the preceding conditions of default.

261—7.31(260F) Options and procedures on default.

7.31(1) The community college shall notify the department within five working days, using Notice of Possible Default, Form 260F-6, whenever the community college determines that an event of default has occurred or is likely to occur.

7.31(2) The community college shall document its efforts to reconcile the condition(s) responsible for the default and shall provide the department with copies of all related correspondence and documents of the community college and the business or apprenticeship sponsor.

7.31(3) The community college shall notify the department, using Declaration of Default, Form 260F-7, when it has determined that an event of default cannot be cured.

7.31(4) When notice of failure to cure the default is received from the community college, the department shall communicate with the business or apprenticeship sponsor, in writing, in an attempt to resolve the default.

7.31(5) When the department's efforts to reconcile are successful, the department shall notify the community college, in writing, to continue project operations. Continuation of project operations may be subject to new conditions imposed by the department as part of the reconciliation.

7.31(6) When the department's efforts to reconcile are unsuccessful and upon the department's request, the community college shall assign the agreement to the department for appropriate proceedings at which time the department shall institute collection procedures or notify the attorney general to initiate appropriate legal actions.

7.31(7) When a community college assigns an agreement to the department for a project declared to be in default, the community college shall return all remaining 260F funds to the department within 45 days of assignment.

261—7.32(260F) Remedies upon default.

7.32(1) When a community college determines that a business or apprenticeship sponsor is in default, and the default has not been cured within the time period stated in the contract, the school is authorized to withhold training funds and payments to the business or apprenticeship sponsor, without notice to the business or apprenticeship sponsor.

7.32(2) The attorney general may take whatever action at law or in equity as necessary and desirable to satisfy the default, including pursuit of a tax sale of the employer's business property as provided for under Iowa Code section 260F.3(6).

7.32(3) No demand of amount due, from the community college to the business or apprenticeship sponsor, written or otherwise, is required to establish the business's or apprenticeship sponsor's financial liability.

7.32(4) No remedy conferred upon or reserved to the community college, the department, or the attorney general by the Act, these rules, or the training agreement is intended to be exclusive of any other current or future remedies existing in law, in equity, or by statute.

7.32(5) Any delay or omission by the community college, the department, or the attorney general, to exercise any right or power prescribed by the Act, these rules, or the training agreement does not relinquish or diminish authority to act and does not constitute a waiver of default status. Any such right or power may be exercised at any time required and as often as may be deemed expedient.

7.32(6) Unless required by these rules, neither the community college, department, nor attorney general is required to provide written or other notice to the business or apprenticeship sponsor regarding any circumstance related to and including a declaration of an event of default.

7.32(7) In the event any requirement of the Act, these rules, or the training agreement, relating to a default, should be breached by either party and then waived by the other party, such waiver shall be limited to the specific breach being waived and shall have no bearing on any subsequent breach.

261—7.33(260F) Return of unused funds. The community college shall return all unused funds to the department within 45 days of project completion or within 45 days after being notified by the department that a project is in default.

261—7.34(260F) Open records. Information submitted to the department is subject to Iowa Code chapter 22, the public records law. Applications for training funds submitted to the department are available for public examination. Information which the business believes contains trade secrets recognized and protected by such as law, or the release of which would give an advantage to competitors and serves no public purpose or which meets other provisions for confidential treatment as authorized in Iowa Code section 22.7, shall be kept confidential. The department has adopted, with certain exceptions described in 261—Chapter 100, Uniform Rules on Agency Procedure, relating to public records and fair information practices. The uniform rules are printed in the first Volume of the Iowa Administrative Code. Uniform rule X.5 describes how a person may request a record to be treated as confidential and withheld from public examination. Businesses requesting confidential treatment of certain information submitted to the department shall follow the procedures described in the uniform rule. The department will process such requests as outlined in uniform rule X.5 and 261—Chapter 100.

261—7.35(260F) Required forms. Use of the following forms by the community college is required:

1. Application for Assistance, Form 260F-1;
2. Consortium Application for Assistance, Form 260F-1A;
3. Business Network Application for Assistance (Community College), Form 260F-1B;
4. Business Network Application for Assistance (Department), Form 260F-1C;
5. Apprenticeship Application for Assistance (Community College), Form 260F-1D;
6. Apprenticeship Application for Assistance (Department), Form 260F-1E;
7. Agreement of Intent, Form 260F-2;
8. Apprenticeship Agreement of Intent, Form 260F-2A;
9. Request for Release of Funds, Form 260F-3;
10. Training Contract, Form 260F-4;
11. Consortium Training Contract, Form 260F-4A;
12. Business Network Training Contract (Community College), Form 260F-4B;
13. Apprenticeship Training Contract (Community College), Form 260F-4D;
14. Business Network Training Contract (Department), Form 260F-4C;
15. Apprenticeship Training Contract (Department), Form 260F-4E;
16. Performance Report, Form 260F-5;
17. Apprenticeship Performance Report, Form 260F-5A;
18. Notice of Possible Default, Form 260F-6;
19. Declaration of Default, Form 260F-7.

These rules are intended to implement 2003 Iowa Acts, First Extraordinary Session, House File 692, and Iowa Code chapter 260F as amended by 2003 Iowa Acts, First Extraordinary Session, House File 683.

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CHAPTER 8
WORKFORCE DEVELOPMENT FUND
[Prior to 9/6/00, see 261—Ch 75]

261—8.1(15,76GA,ch1180) Purpose. The purpose of the workforce development fund is to provide revenue for programs which address the workforce development needs of the state. Moneys are appropriated to the fund from the workforce development fund account and are to be used for the following programs and purposes: training and retraining programs for targeted industries, projects under Iowa Code chapter 260F, apprenticeship programs under Iowa Code section 260C.44 (including new or statewide building trades apprenticeship programs) and innovative skill development activities.

261—8.2(15,76GA,ch1180) Definitions.

"Agreement" means an informal agreement between the department and a grantee that authorizes expenditure of a workforce development fund award.

"Board" means the Iowa department of economic development board.

"Contract" means a formal agreement executed by the department and a grantee for purposes of operating a program under the workforce development fund.

"Department" or *"IDED"* means the Iowa department of economic development.

"Director" means the director of the Iowa department of economic development.

"Grantee" means any entity receiving a workforce development fund award from the Iowa department of economic development.

261—8.3(15,76GA,ch1180) Workforce development fund account. A workforce development fund account is established in the office of the treasurer of state under control of the department. Upon payment in full of a certificate of participation or other obligation issued to fund a job training program under Iowa Code chapter 260E, including a certificate of participation repaid in whole or in part by the supplemental new jobs credit from withholding under Iowa Code section 15A.7, the community college providing the job training program shall notify the department of the amount paid by the employer or business to the community college to retire the certificate during the last 12 months of withholding collections. The department shall notify the department of revenue of that amount. The department of revenue shall then credit to the workforce development fund account, established in Iowa Code section 15.342A, 25 percent of that amount each quarter for a period of ten years. If the amount of withholding from the business or employer is insufficient, the department shall prorate the quarterly amount credited to the workforce development fund account. The maximum amount from all employers which shall be transferred to the workforce development fund account in any year is $10,000,000. The legislature will make an annual appropriation from the workforce development fund account to the workforce development fund.

261—8.4(15,76GA,ch1180) Workforce development fund allocation. The director shall submit, not later than January 1 of each year, at a regular or special meeting, for approval by the IDED board, the proposed allocation of funds from the workforce development fund to be made for the next fiscal year for the programs and purposes intended. The director shall also submit a copy of the proposed allocation to the chairpersons of the joint economic development appropriations subcommittee of the general assembly. Notwithstanding Iowa Code section 8.39, the plan may provide for increased or decreased allocations if the demand for a program indicates that the need is greater or lesser than the allocation for that program. Workforce development funds are received quarterly. The sequence in which the funds are allocated to the various programs under the workforce development fund will be determined by the department based upon the demand for the respective programs.

261—8.5(15,76GA,ch1180) Workforce development fund reporting. The director shall report on a quarterly basis to the IDED board on the status of the funds and may present proposed revisions for approval by the IDED board in January and April of each year. The director shall also provide quarterly reports to the legislative services agency on the status of the funds. Unobligated and unencumbered

moneys remaining in the workforce development fund or any of its accounts on June 30 of each year shall be considered part of the fund for purposes of the next year's allocation.

261—8.6(15,76GA,ch1180) Training and retraining programs for targeted industries.

8.6(1) *Program purpose and targeted industries.* The purpose of this program is to provide training and retraining to develop the skills of employees employed in targeted businesses or industries or to address a workforce development need of a targeted industry. Targeted industries have been identified as industries engaged in the business or manufacture of:

a. Value-added agricultural products.

b. Insurance and financial services.

c. Plastics.

d. Metals.

e. Printing paper or packaging products.

f. Drugs and pharmaceuticals.

g. Software development.

h. Instruments and measuring devices and medical instruments.

i. Recycling.

8.6(2) *Other industries.* Training may be provided to industries other than those listed in 8.6(1); however, the applicant will have to provide a strong rationale regarding how that industry diversifies, strengthens or otherwise enhances Iowa's economy. Eligibility may be established by an industry other than those listed if that industry can provide rationale regarding the industry's benefit to Iowa's economic base. Rationale that is provided will be reviewed by department staff to determine eligibility as a targeted industry. Items that will be considered in determining an industry's benefit to Iowa's economic base will include:

a. The majority of the products or services produced by the industry are exported out of Iowa.

b. The inputs for the products produced in the industry are raw materials available in Iowa or are provided by Iowa suppliers.

c. The goods or services produced by this industry diversify Iowa's economy.

d. The goods or services provided by the industry resulted in, or will result in, a decrease in the importation of foreign-made goods into the United States.

e. The industry shows potential for future growth.

f. The functions of the industry do not produce harmful effects for Iowa's natural environment.

g. It is established that the average wages of the majority of the occupations in the industry are above the statewide average wage.

Businesses engaged in retail sales or the provision of health care or other professional services will not be considered targeted industries and are not eligible for this program.

8.6(3) *Eligible applicants.* Applicants must be an individual business, consortium of businesses, trade association or labor organization that represents one of the identified targeted industries in order to be eligible for funding.

8.6(4) *Length of projects and maximum grant awards.* The department will establish the desired project length and maximum grant awards based upon the amount of workforce development funds allocated to the program in a fiscal year and upon the training needs of the targeted industries. These limitations will be published in the application packet. Grantees may request extensions to the length of a project.

8.6(5) *Allowable activities.* Allowable activities include vocational and skill assessment testing; adult basic education; job-related training; cost of a company, college, or contracted trainer or training services; training-related materials, equipment, software and supplies; curriculum development; lease and rental of training facilities and equipment; training-related travel and meals; and contracted or professional services. Costs associated with the administration of the project (i.e., fiscal and reporting activities, project supervision and coordination) are allowable but are limited to 15 percent of the total program budget.

8.6(6) *Application procedure.* Application packets will be made available by the department. Application packets will outline eligibility criteria, the required application inclusions and points established for evaluation. Applications must be submitted to the Iowa Department of Economic Development, Workforce Development Coordinator, 200 East Grand Avenue, Des Moines, Iowa 50309. Only the applications of eligible applicants will be considered. Applications may be submitted at any time during the year but must be submitted at least 15 days prior to the start date of activities for which reimbursement through this program is being requested. Applications will be reviewed in the order in which they are received.

8.6(7) *Required proposal inclusions.* Required contents of an application will be described in the application. Applications must address all information requested in the application packet to be considered for award. If all requested information is not provided, applications will not be considered for funding. Applicants who have been denied funding may reapply. Reapplications will be treated as new applications.

8.6(8) *Evaluation and rating criteria.* The criteria used for scoring the application will include the following:

a. The training proposed in the project is needed to address industry demands, up to 10 points.

b. This project is for industry-specific training that is not currently available, up to 5 points.

c. The scope of the project is such that there is benefit for several businesses within the industry, up to 5 points.

d. It is proposed that the training will be provided to several businesses within the industry, up to 5 points.

e. The training is for an industry where there is anticipated job growth, up to 10 points.

f. Training is also made available to job seekers wishing to enter the industry, up to 5 points.

g. The training is required in order for the employee to retain employment or the training will improve the employee's opportunities for enhanced pay or benefits or for promotional opportunities within the industry, up to 10 points.

h. The project is feasible in terms of the reasonableness of the budget in comparison to the expected outcomes, other comparable training, and the demands of the industry, up to 15 points.

i. The expected outcomes enhance the competitiveness of the industry and the economy of the state, up to 15 points.

j. The previous experience of the training provider is sufficient to ensure quality training, up to 10 points.

k. Match contributed to the project evidences commitment to the project on behalf of the proposer, up to 10 points.

Proposals will be reviewed by two department staff. As a part of this review, staff will ascertain which community college district(s) the project corresponds to and notify the appropriate community college president from that district of the proposal for purposes of review and comment. Points will be assigned for each evaluation criteria by each of the respective staff and totaled. The two scores will then be averaged. Proposals receiving an average score of at least 70 out of a possible 100 points will be presented to the director for a final funding decision. The director will base a final funding decision upon available funding.

8.6(9) *Award process.* Upon approval by the director, the applicant will receive an award letter which will state the amount and conditions of the award. Awards will be made in the form of grants.

8.6(10) *Contract.* Following notification of award, a contract will be prepared for execution between the applicant and IDED. The final project application will become part of the contract. In addition, there will be other contract assurances which will include, but are not limited to, the provisions of these rules and applicable state and federal laws. After execution of the contract the grantee may request disbursement of funds on the form(s) prescribed by IDED.

261—8.7(15,76GA,ch1180) Projects under Iowa Code chapter 260F. The 260F program is funded in part through the workforce development fund. Administrative rules for this program can be found in 261—Chapter 7.

261—8.8(15,76GA,chs1180,1219) Apprenticeship programs under Iowa Code section 260C.44 (including new or statewide building trades apprenticeship programs). The apprenticeship program under Iowa Code section 260C.44 is funded by an allocation to the workforce development fund. Administrative rules for this program can be found in 261—Chapter 17.

261—8.9(15,76GA,chs1180,1219) Innovative skill development activities.

8.9(1) *Program purpose.* To develop and provide creative training programs that will enhance the skill development of Iowa employees or address a workforce development need. Projects should concentrate on developing skills in new or emerging businesses or industries or address technological skills needed for current or future workers to become or remain competitive in the current labor market in existing businesses. The department will establish priority innovative skill areas for project solicitation annually, prior to the beginning of each fiscal year. These priorities will be established based upon the workforce and economic development needs of the state. These priority areas will be reflected in the request for proposal.

8.9(2) *Eligible applicants.* Eligible applicants include individual businesses, consortia of businesses, trade associations, labor organizations which represent a majority of the employees to be trained, educational institutions, and other public or private not-for-profit organizations which represent a majority of the individuals or businesses that will benefit from the training.

8.9(3) *Length of projects and maximum grant awards.* The department will establish the desired project length and maximum grant awards based upon the amount of workforce development funds allocated to the program in a fiscal year and upon the annual priorities set for this program by the board. These limitations will be published in the application packet. Grantees may request extensions to the length of a project.

8.9(4) *Allowable activities.* Allowable program activities include purchase or development of training curricula and materials; purchase or provision of technological equipment and related materials needed for the delivery of training; activities needed to support a training program including, but not limited to, assessment, recruitment, outreach and applications; training site development; activities needed to develop a training program including, but not limited to, travel, research and development, focus group activities and legal fees; activities designed to creatively address a workforce development need identified by a community that, if successful, can be easily replicated in other communities; tuition and fee reimbursements for students; tutorial and remedial education services; counseling services; coordination services; vocational and skill assessment testing; adult basic education; job-related training; cost of a company, college, or contracted trainer or training services; training-related materials, equipment, software, and supplies; lease and rental of training facilities and equipment; training-related travel and meals; and contracted or professional services. Costs associated with the administration of the project (i.e., fiscal and reporting activities, project supervision, and coordination) are allowable but are limited to 15 percent of the total program budget.

8.9(5) *Application procedure.* Application packets will be made available by the department. Application packets will outline eligibility criteria, the required application inclusions, and points established for evaluation. Applications must be submitted to the Iowa Department of Economic Development, Workforce Development Coordinator, 200 East Grand Avenue, Des Moines, Iowa 50309. Only the applications of eligible applicants will be considered. Applications may be submitted at any time during the year but must be submitted at least 15 days prior to the start date of activities for which reimbursement through this program is being requested. Applications will be reviewed in the order in which they are received.

8.9(6) *Required proposal inclusions.* Required contents of an application will be described in the application. Applications must address all information requested in the application packet to be considered for award. If all requested information is not provided, applications will not be considered for funding. Applicants who are denied funding may reapply. Reapplications will be treated as new applications.

8.9(7) *Evaluation and rating criteria.* The criteria used for scoring the application will include the following:

a. Sufficient need for the project has been established by participating groups, up to 10 points.

b. The project will enhance the skill development of Iowa's current and potential employees or will address a skill development need, up to 10 points.

c. The scope of the project is such that there is benefit and the potential for replicability for several businesses, industries, communities, or individuals, up to 10 points.

d. The project represents a coordinated, collaborative approach to addressing the need or problem identified and involves appropriate organizations, up to 10 points.

e. The project is for a new or emerging industry that will benefit from the activities under this project or it addresses technological skills enhancements that will be realized as a result of this project, up to 10 points.

f. Individuals, industries, businesses or communities will benefit from this project from a workforce development perspective, up to 10 points.

g. The project is feasible in terms of the reasonableness of the budget in comparison to the expected outcomes, other comparable training, and the demands of the individuals, businesses, industries, or communities it will serve, up to 15 points.

h. The expected outcomes will assist the current labor market to become or remain competitive and will foster growth in the local and state economy. This may be evidenced by expected increases in wages or career opportunities of trainees, or by expected competitive advantages to be realized by companies or industries, or by projected enhancement of employment opportunities for communities, up to 10 points.

i. The previous experience of the project operator or service provider is sufficient to ensure quality programming, up to 5 points.

j. Match contributed to the project evidences commitment to the project on behalf of the proposer, up to 10 points.

Proposals will be reviewed by two department staff members. As a part of this review, staff will ascertain which community college district(s) the project corresponds to and notify the appropriate community college president from that district of the proposal for purposes of review and comment. Points will be assigned for each evaluation criteria by each of the respective staff and totaled. The two scores will then be averaged. Proposals receiving an average score of at least 70 out of a possible 100 points will be presented to the IDED board for a final funding decision. The IDED board will base a final funding decision upon the project's ability to address the annual priorities previously established by the IDED and board and upon availability of funding.

8.9(8) *Award process.* Upon approval of the IDED board, the applicant will receive an award letter which will state the amount and conditions of the award. Awards will be made in the form of grants.

8.9(9) *Contract.* Following notification of award, a contract will be prepared for execution between the applicant and IDED. The final project application will become part of the contract. In addition, there will be other contract assurances which will include, but are not limited to, the provisions of these rules and applicable state and federal laws. After execution of the contract the grantee may request disbursement of funds on the form(s) prescribed by IDED.

261—8.10(15,76GA,ch1180) Negotiation and award. The department reserves the right to negotiate the amount, terms or other conditions of the grants or forgivable loans prior to the award.

261—8.11(15,76GA,ch1180) Administration.

8.11(1) *Access to records.* The department or its designees, at all reasonable times, may enter the grantee's establishment during the course of or following the completion of the projects for any purpose arising from the performance of the contracted project or agreement.

8.11(2) *Waiver.* The department may waive particular provisions of the program requirements outlined in this chapter, provided the waiver does not conflict with applicable state laws. Waivers will be provided only in extreme circumstances when chapter requirements are hindering the ability of a specific project to carry out the intent of the applicable program.

8.11(3) *Record keeping and retention.* Grantees shall maintain all records required for compliance with applicable law, regulation and project contracts until the end of the fiscal year following the year the project was closed out.

8.11(4) *Data collection and reporting.* Grantees shall collect, maintain, and report to IDED information pertaining to the characteristics of the participants, activity and service levels, program outcomes, and expenditures as required for program analysis.

8.11(5) *Monitoring.* Each grantee must make available all of its records pertaining to all matters related to the program being operated. They shall also permit the department to utilize, monitor, examine or make excerpts of transcripts from such records, contracts, invoices, personnel records, conditions of employment, and other data and records related to all other matters covered by this program.

8.11(6) *Compliance problems.* When problems of compliance with law, regulation, or contract or agreement stipulations are noted or when it is discovered a grantee has made false or misleading representations in the program application, contract, or agreement, the department may require corrective action to be taken. Failure to respond to corrective action requests may result in the establishment of a debt on the part of the grantee.

8.11(7) *Remedies for noncompliance.* At any time before project closeout, the department may, for cause, find that a grantee is not in compliance with the requirements of a program under the workforce development fund. At the department's discretion, remedies for noncompliance may include the following:

a. Issue a warning letter that further failure to comply with program requirements within a stated period of time will result in a more serious sanction.

b. Condition a future grant or agreement.

c. Direct the grantee to stop incurring costs under the project.

d. Require that some or all of the grant amounts be remitted to the state.

e. Reduce the level of funds that the grantee would otherwise be entitled to receive.

f. Elect not to provide future workforce development fund moneys to the grantee until the appropriate actions are taken to ensure compliance.

8.11(8) *Compliance with applicable labor laws.* Grantees shall operate all projects in compliance with state and federal health, safety, equal opportunity, and other applicable labor laws.

261—8.12(15,76GA,ch1180) Training materials and equipment. Training materials and equipment that are needed to carry out the deliverables described within a project may be purchased by the grantee, unless specified otherwise in the program-specific requirements of these rules. For the purposes of this chapter, equipment means property with a purchase price of $1000 or more and an anticipated useful life in excess of one year. Equipment purchased with workforce development funds shall not be used by any entity for the purposes of generating a profit to the entity, unless the equipment purchase was prorated based upon anticipated usage between grant or forgivable loan funds and cash provided by the purchasing entity. Equipment with any remaining useful life may be disposed of at fair market value, with any funds realized from that sale being repaid to the department either in whole or on a prorated basis. Equipment that no longer has a useful life or that has no remaining value may be disposed of by the grantee with the permission of IDED.

261—8.13(15,76GA,ch1180) Redistribution of funds. The department reserves the right to recapture and redistribute funds based upon projected expenditures, if it appears that funds will not be expended in accordance with the proposed budget for a project.

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CHAPTER 9
WORKFORCE TRAINING AND ECONOMIC DEVELOPMENT FUNDS

261—9.1(15G,260C) Purpose. The purpose of the workforce training and economic development funds is to provide revenue for each community college to address the workforce development needs of the state with the primary focus of providing training and retraining of Iowa workers to develop the skills of employees employed in targeted industries or to address a workforce development need of a targeted industry. Moneys are appropriated for each community college fund from the grow Iowa values fund.

261—9.2(15G,260C) Definitions.

"Community college" or *"college"* means a community college established under Iowa Code chapter 260C.

"Department" or *"IDED"* means the Iowa department of economic development created in Iowa Code chapter 15.

"Fund" or *"funds"* means the workforce training and economic development funds created by Iowa Code section 260C.18A and allocated to each community college.

"GIVF" or *"grow Iowa values fund"* means moneys appropriated to the grow Iowa values fund established by Iowa Code section 15G.111.

"Iowa economic development board" or *"IDED board"* means the Iowa economic development board established in Iowa Code section 15.103.

"Project" means a training or educational activity funded with grow Iowa values funds.

261—9.3(15G,260C) Funds allocation. The department shall allocate moneys, appropriated by the general assembly or other moneys accepted by the department, for the workforce training and economic development fund established for each community college by utilizing the most current distribution formula that is used for the allocation of state general aid to the community colleges available on July 1 of the fiscal year for which funds are being allocated. Each community college shall establish a workforce training and economic development fund account within its college accounting system into which the department shall make deposits of the allocated moneys. The deposits shall be made quarterly or on a more frequent basis. Moneys that are not used and that remain in a community college's fund at the end of a fiscal year shall remain available to that college for expenditure in subsequent fiscal years.

261—9.4(15G,260C) Community college workforce and economic development plan and progress report. For the fiscal year beginning July 1, 2003, each community college, prior to receiving its allocation, shall adopt and submit to the department with a copy filed with the IDED board a two-year workforce training and economic development plan that outlines the community college's proposed use of the grow Iowa values fund moneys allocated to the community college. For the fiscal year beginning July 1, 2004, and each fiscal year thereafter, each community college, to receive its allocation for the forthcoming fiscal year, shall prepare and submit to the department for the IDED board the following items for the fiscal year:

9.4(1) *Two-year workforce training and economic development fund plan.* Each college shall adopt a two-year workforce training and economic development fund plan that outlines the community college's proposed use of the grow Iowa values fund moneys appropriated to its fund. Plans shall be based on fiscal years and must be submitted to the department by August 15 for the current fiscal year allocation.

9.4(2) *Plan updates.* Plans shall be updated annually outlining proposed uses for the next two fiscal years, and must be submitted to the department by August 15 for the current fiscal year allocation.

9.4(3) *Progress reports.*

a. Each college shall prepare an annual progress report on the two-year plan's implementation. This progress report shall address the following goals established by the general assembly for the GIVF:

(1) Expanding and stimulating the state's economy;

(2) Increasing the wealth of Iowans; and

(3) Increasing the population of the state.

b. The report shall be submitted in a manner and form as prescribed by IDED and shall meet the requirements of rule 261—9.8(15G,260C).

c. Each college shall annually submit the two-year plan and progress report to the department in a manner prescribed by these rules, and annually file a copy of the plan and progress report with the IDED board. Plans and progress reports shall be submitted to IDED by August 15. For the fiscal year beginning July 1, 2004, and each fiscal year thereafter, a community college shall not have moneys deposited in the workforce training and economic development fund of that community college unless the IDED board has approved the annual progress report of the community college.

261—9.5(15G,260C) Use of funds. Moneys deposited into each community college fund shall be used for the following purposes, provided that 70 percent of the moneys be used on projects in the areas of advanced manufacturing; information technology and insurance; alternative and renewable energy including the alternative and renewable energy sectors listed in Iowa Code section 476.42, subsection 1, paragraph *"a"*; and life sciences, which include the areas of biotechnology, health care technology, and nursing care technology:

9.5(1) Projects in which an agreement between a community college and an employer located within the community college's merged area meets all of the requirements of the accelerated career education (ACE) program pursuant to Iowa Code chapter 260G and IDED rules for the ACE program, 261—Chapter 20.

9.5(2) Projects in which an agreement between a community college and a business meets all the requirements of the Iowa jobs training Act under Iowa Code chapter 260F and IDED's administrative rules in 261—Chapter 7.

9.5(3) For the development and implementation of career academies designed to provide new career preparation opportunities for high school students that are formally linked with postsecondary career and technical education programs. "Career academy" means a program of study that combines a minimum of two years of secondary education with an associate degree in a career preparatory program. A diploma or certificate may be provided as options within the associate degree program. The career academy is a program of study that is nonduplicative, sequential, and ensures that the course of study is skill standards-based, integrates academic and technical instruction, utilizes work-based and work site learning where appropriate and available, utilizes an individual career planning process with parent involvement, and prepares an individual for entry and advancement in a high-skill and rewarding career field as specified in 2003 Iowa Acts, First Extraordinary Session, chapter 2, section 76. A career academy may include articulation of the community college associate degree to a baccalaureate degree. "Nonduplicative" means that the postsecondary component of the career academy is not currently offered at a participating secondary school. This definition is set forth in rule 281—47.1(260C) adopted by the Iowa department of education.

9.5(4) Programs and courses that provide vocational and technical training and programs for in-service training and retraining under Iowa Code section 260C.1, subsections 2 and 3. As it pertains to Iowa Code section 260C.1, subsection 2, vocational and technical training shall mean new or expanded vocational coursework that has Iowa department of education approval and that results in the conferring of a diploma, degree, or certificate. The enhancement of academic core courses within the vocational program is also eligible. As it pertains to Iowa Code section 260C.1, subsection 3, eligible activities shall be short-term training and retraining projects.

9.5(5) Job retention program projects as authorized by Iowa Code section 260F.9 and IDED administrative rules in 261—Chapter 7.

9.5(6) The portion of annual funds allocated pursuant to 2007 Iowa Acts, House File 927, shall be used for the development and expansion of energy industry areas and for the department's North American Industry Classification System (NAICS) for targeted industry areas established pursuant to Iowa Code section 260C.18A.

261—9.6(15G,260C) Approval of projects. Activity within each fund will be reviewed by the department to aid in ensuring that the college's fund is meeting the requirement that 70 percent of the

moneys allocated to the community college fund shall be used for projects in the areas of advanced manufacturing; information technology and insurance; alternative and renewable energy including the alternative and renewable energy sectors listed in Iowa Code section 476.42, subsection 1, paragraph *"a"*; and life sciences, which include the areas of biotechnology, health care technology, and nursing care technology. Any individual project using over $1 million of moneys from a workforce training and economic development fund shall require prior approval from the IDED board. The following procedures apply for approval of activities to be assisted by the grow Iowa values fund:

9.6(1) Projects which meet all of the requirements of the Iowa jobs training Act under Iowa Code chapter 260F will be reviewed and approved by the department under the applicable scoring criteria as found in 261—Chapter 7, Iowa Jobs Training Program.

9.6(2) Projects which meet all of the requirements of the accelerated career education (ACE) program pursuant to Iowa Code chapter 260G will be reviewed and approved by the department under the applicable scoring criteria as found in 261—Chapter 20, Accelerated Career Education (ACE) Program.

9.6(3) For career academies, projects shall meet the requirements of career academies as defined in subrule 9.5(3).

9.6(4) Vocational and technical training programs shall meet the requirements of new or expanded vocational and technical training.

9.6(5) In-service training and retraining projects shall meet the requirements for short-term training and retraining.

9.6(6) Community colleges may use moneys from the fund for operational expenses associated with vocational technical training.

261—9.7(15G,260C) Community college workforce and economic development plan. A community college shall adopt a plan describing how the college proposes to use moneys allocated from the grow Iowa values fund for the forthcoming two years. For the fiscal year beginning July 1, 2003, the plan shall be submitted to the department with a copy filed with the IDED board prior to the community college's receiving its allocation. For the fiscal year beginning July 1, 2004, and each fiscal year thereafter, the plan shall be submitted to the department and a copy filed with the IDED board prior to the beginning of the first fiscal year that is included in the plan. The plan shall include, at a minimum:

9.7(1) How the allocation will be distributed for the allowable uses of ACE, Iowa jobs training program, career academies, vocational and technical training programs, and in-service training and retraining projects;

9.7(2) The proposed amount of funds for use in the areas of advanced manufacturing; information technology and insurance; and life sciences, which include the areas of biotechnology, health care technology, and nursing care technology;

9.7(3) Under each proposed use, to what specific uses the funds would be directed;

9.7(4) The number of businesses proposed to be served or industry's training needs to be met by proposed distribution of funds;

9.7(5) The number of students or individuals proposed to be served;

9.7(6) Private investment, actual or proposed, that a business has incurred or will incur that creates the need for training;

9.7(7) Documentation, as necessary, to verify the above-listed factors.

261—9.8(15G,260C) Reporting.

9.8(1) Each community college that receives an allocation of moneys under rule 261—9.4(15G,260C) shall submit to the IDED board by August 15 of each year an annual written report regarding the accomplishments of the projects funded through the workforce training and economic development fund for the fiscal year, in a manner and form prescribed by the department. The report shall provide information regarding how projects aided by the community college's workforce training and economic development fund are meeting the goals of the grow Iowa values fund and have resulted in an increase in the number of higher education graduates.

9.8(2) The report shall include, but not be limited to, report forms as provided under each of the programs and the following additional reports:

a. For 260F projects, the college shall provide documentation of the state's return on investment for projects funded by grow Iowa values moneys. Such measures may include:

(1) Quantification of, as a result of the training assistance provided, annual monetary cost savings or sales increases attributed by the business; and

(2) The increase in wage or salary for individuals trained as a result of the projects using Iowa values funds for individual projects.

b. For the job retention program, the college shall provide documentation of the state's return on investment for projects funded by grow Iowa values fund moneys. Such measures may include:

(1) Quantification of, as a result of the training assistance provided, annual monetary cost savings or sales increases attributed by the business;

(2) The increase in wage or salary for individuals trained as a result of the projects using Iowa values funds for individual projects;

(3) Documentation of capital investment that creates the need for training activities funded through the grow Iowa values fund;

(4) Payroll for facility affected and documentation of the number of employees and wages paid.

c. For 260G projects:

(1) Increase in number of individuals enrolled in 260G programs;

(2) The number of graduates;

(3) Number of job placements of students who complete programs;

(4) Number of job placements in Iowa;

(5) Number of job placements with participating companies.

d. For projects funded under Iowa Code section 260C.1, subsections 2 and 3:

(1) Increase in number of individuals enrolled in programs;

(2) The number of graduates;

(3) Number of job placements of students who complete programs;

(4) Increase in student retention in programs at the postsecondary level.

e. For career academies projects:

(1) Increase in number of individuals enrolled in programs;

(2) The number of graduates;

(3) Number of job placements in Iowa for students completing programs, if applicable;

(4) Increase in student retention in programs at the postsecondary level;

(5) Reduction in the number of students needing remediation at the postsecondary level.

9.8(3) By January 15 of each year, the department shall submit a written report to the general assembly and the governor regarding the activities funded by the job retention program during the previous calendar year.

261—9.9(15G,260C) Annual progress report approval.

9.9(1) For the fiscal year beginning July 1, 2004, and each fiscal year thereafter, a community college shall not have moneys deposited in the workforce training and economic development fund of that community college unless the IDED board approves the annual progress report of the community college.

9.9(2) The board may reject a progress report for the following reasons, including but not limited to:

a. Information or data is incomplete;

b. Report does not address how grow Iowa values fund goals have been met;

c. Fund is determined not to meet the goals established under the grow Iowa values fund;

d. Use of funds fails to meet the college's two-year plan;

e. Seventy percent of the fund is not used for projects in the areas of advanced manufacturing; information technology and insurance; alternative and renewable energy including the alternative and renewable energy sectors listed in Iowa Code section 476.42, subsection 1, paragraph *"a"*; and life sciences which include the areas of biotechnology, health care technology, and nursing care technology;

f. Funds allocated pursuant to 2007 Iowa Acts, House File 927, are not used for the development and expansion of energy industry areas and for the department's North American Industry Classification System (NAICS) for targeted industry areas established pursuant to Iowa Code section 260C.18A.

261—9.10(15G,260C) Options upon default or noncompliance.

9.10(1) Should the board not accept a college's annual progress report, the college shall be subject to the following actions as prescribed by the IDED board based upon the severity of the noncompliance or default, including but not limited to:

a. Repayment of funds deemed ineligible or deemed not to meet the purposes of the grow Iowa values fund;

b. Withholding of a portion of new fiscal year moneys based upon amounts awarded deemed to be ineligible;

c. Tighter oversight and control of the college's fund by the department;

d. Loss of funds for one year;

e. Other action as deemed appropriate by the board.

9.10(2) Compliance with applicable labor laws. Recipients shall operate all projects in compliance with state and federal health, safety, equal opportunity, and other applicable labor laws.

These rules are intended to implement Iowa Code sections 15G.111 and 260C.18A and 2007 Iowa Acts, House File 927.

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CHAPTER 10
LABOR-MANAGEMENT COOPERATION PROGRAM

Transferred to 345—Ch 11, IAB 7/17/96, effective 7/1/96, pursuant to 1996 Iowa Acts, Senate File 2409.

CHAPTER 11
CERTIFIED SCHOOL TO CAREER PROGRAM

261—11.1(15) Purpose. The purpose of the certified school to career program is to provide an articulated sequential program of study, including secondary and postsecondary components (with the option of registered apprenticeship), resulting in a diploma, associate's degree, or other credential and utilizing paid work site internships in partnership with an employer to prepare students for specific employment. Additionally, the program assists students in preparing for a career field and provides postsecondary education financing and employment opportunities in Iowa.

261—11.2(15) Definitions.

"Certified school to career program" or *"certified program"* means a sequenced and articulated secondary and postsecondary program registered as an apprenticeship program under 29 CFR Subtitle A, Part 29, which is conducted pursuant to an agreement as provided in Iowa Code Supplement section 15.364 as amended by 2000 Iowa Acts, chapter 1013, or an individual program of study developed jointly by a secondary school, postsecondary institution, and an employer that meets the standards enumerated in Iowa Code section 15.363 as amended by 2000 Iowa Acts, chapter 1013, that integrates a secondary school curriculum with private sector job training which places students in job internships, which is designed to continue into postsecondary education that will result in new skills, add value to the wage-earning potential of participants and increase their long-term employability in the state, and which is conducted pursuant to an agreement as provided in Iowa Code Supplement section 15.364 as amended by 2000 Iowa Acts, chapter 1013.

"Department" means the Iowa department of economic development.

"Eligible postsecondary institution" means an institution as defined in Iowa Code section 261C.3.

"Employer" means the person or organization or a consortium of two or more employers that agrees to provide the paid internship; provide a mentor for the on-the-job training component of the education program; participate in curriculum development that identifies knowledge, skills and behaviors needed in the workplace; oversee the trust account and payroll expenditure fund; and employ the participant for a minimum of two years after completion of the participant's postsecondary education.

"Employer's expenditures" means 20 percent of the employer's costs for nonpaid participant experience expenses provided for in the certified program agreement which may include instructor expenses, instructional materials, up to one $150,000 of training facility costs per program, and project coordination.

"Participant" means an individual between the ages of 16 and 24 who is enrolled in a public or private secondary school or postsecondary institution and who initiated participation in a certified school to career program no later than the start of the student's senior year of high school.

"Payroll expenditures" means the base wages actually paid by an employer to a participant plus the amount held in trust to be applied toward the participant's postsecondary education.

"Registered apprenticeship program" means a program registered with the U.S. Bureau of Apprenticeship and Training which contains the terms and conditions for the qualification, recruitment, selection, employment and training of apprentices, including the requirement for a written apprenticeship agreement.

"Sponsor" means any person, association, committee, or organization operating a school to career program and in whose name the program is or will be registered or approved.

261—11.3(15) Certified program work site agreement. The certified program shall be conducted pursuant to a signed written agreement between each participant, parent or guardian, educational institution or sponsor, as appropriate, and the employer, which contains at least the following provisions:

11.3(1) *Employer, participant and parent/guardian signatures.* The names and signatures of the participant, sponsor or employer, and the signature of a parent or guardian if the participant is a minor are required.

11.3(2) *Educational institution or sponsor acknowledgment.* The secondary school or sponsor and the eligible postsecondary institution or registered apprenticeship program that the participant attends or has chosen to attend must provide an acknowledgment that will be attached to the agreement. The letter of acknowledgment must detail enrollment criteria and provide an acknowledgment that it is likely the participant will be accepted into the program of choice, given that the participant meets established admission criteria.

11.3(3) *Designation of a career field.* A description of the career field in which the participant is to be trained and the beginning date and duration of the training and employment shall be included. The corresponding program of study that the participant plans to enter at the eligible postsecondary institution or through the registered apprenticeship program provider must also be designated.

11.3(4) *Assignment of a mentor.* The employer shall identify a mentor for the participant. The mentor's occupation should be related to the participant's selected career field.

11.3(5) *Employer's agreement to pay a base wage.* The employer shall agree to provide paid employment, at a base wage, for the participant beginning no earlier than the participant's junior year in high school and ending no later than the fall after the participant's second year of postsecondary education.

11.3(6) *Minimum academic standards.* The participant and employer shall agree upon set minimum academic standards that must be maintained through the participant's secondary and postsecondary education.

11.3(7) *Compliance with workplace laws and regulations.* The base wage paid to the participant for hours worked shall not be less than the minimum wage prescribed by Iowa law or the federal Fair Labor Standards Act, whichever is applicable at the time the work is performed. The program shall also comply with all state and federal laws pertaining to the workplace, including equal employment opportunity and accident and liability insurance requirements.

11.3(8) *Additional amount to be held in trust for postsecondary tuition.*

a. In addition to the base wage paid to the participant, the employer shall pay an additional sum to be held in trust and applied toward the participant's postsecondary education required for completion of the certified program. The additional amount must be not less than an amount determined by the department to be sufficient to provide payment of tuition expenses toward completion of not more than two academic years of the required postsecondary education component of the certified program at an Iowa community college or an Iowa public or private college or university or through a registered apprenticeship program. The additional amount specified in this paragraph may include other related postsecondary educational expenses at the discretion of the employer. An employer that is a consortium of two or more employers shall not be subject to the requirements of this paragraph, provided the employers are currently paying a participant's tuition as part of a stipend paid by the employer to a participant and the stipend can be identified as such.

b. The eligible postsecondary institution or registered apprenticeship program provider that is identified in the agreement shall compute the anticipated tuition amount for the first two years for the postsecondary program of study identified in the agreement. If the postsecondary program of study is shorter than two years in length, the entire tuition amount shall be identified. Any financial aid in the form of grants or tax credits, and excluding loans, that is anticipated or has already been granted to the participant, may be subtracted from the program tuition costs computed by the eligible postsecondary institution or registered apprenticeship program provider. The resulting tuition costs shall be divided by the number of hours that the participant is anticipated to work for the employer over the three summer internships to determine the hourly amount that the employer must pay in addition to the base wage. The amount set aside for postsecondary tuition may be renegotiated at any time during the certified program based upon additional information that is obtained about the tuition costs, financial aid or other items that will affect the amount of funding needed to cover two years of postsecondary tuition, or all tuition expenses for programs shorter that two years in length, in the selected program. If, for circumstances at the discretion of the participant and beyond the control of the employer, the participant misses hours of work that cannot be made up, the employer is not responsible for funding the entire two years of postsecondary tuition.

c. This additional amount shall be held in trust by the employer for the benefit of the participant. Payment into an ERISA-approved fund for the benefit of the participant shall satisfy this requirement. ERISA is described in Title 19 of the United States Code, Chapter 18. The specific fund shall be specified in the agreement.

d. Payment of postsecondary tuition expenses from the trust fund established through this program shall be made directly to the postsecondary institution or registered apprenticeship program provider unless otherwise designated in the certified program agreement.

e. The certified program work site agreement shall specify any tax implications that the participant may encounter as a result of the accumulation of funds.

11.3(9) *Participant's agreement to work for the employer.* Rescinded IAB 11/14/01, effective 12/19/01.

11.3(10) *Repayment of tuition funding.* Rescinded IAB 11/14/01, effective 12/19/01.

11.3(11) *Additional tuition allowance.* Employers may, at their discretion, pay participants an additional amount that will cover more than two years of postsecondary tuition.

11.3(12) *Documentation of certified program.* Documentation of the internship's being part of registered apprenticeship program under 29 CFR Subtitle A, Part 29, which is conducted pursuant to an agreement as provided in 1998 Iowa Acts, chapter 1225, section 18, or a program approved by the state board of education must be part of the agreement.

11.3(13) *Certified program work site agreement submittal.* The certified program work site agreement must be submitted to the department for approval prior to the beginning of the internship. The department shall review the agreement and provide a letter of approval or denial within 30 days of receipt of the agreement.

261—11.4(15) Payroll expenditure refund.

11.4(1) *Eligible Iowa payroll expenditure refund.* An Iowa employer who employs a participant in a certified school to career program may claim a refund of 20 percent of the employer's payroll expenditures for each participant in the certified program or 20 percent of the employer's expenditures for nonpaid participant experience expenses provided for in the certified program agreement which may include instructor expenses, instructional materials, up to $150,000 of training facility costs per program, and project coordination. The refund is limited to the first 400 hours of payroll or nonpaid participant experience expenditures per participant for each calendar year the participant is in the certified program, not to exceed three years per participant. In order to receive the refund, an employer must submit a claim to the department by July 1 of the following calendar year. After July 1 the department will review claims for compliance and make a payment determination. Payment may be prorated based upon availability of funds.

11.4(2) *Claim submittal process.* To receive a refund under subrule 11.4(1) for a calendar year, the employer shall file the claim by July 1 of the following calendar year. Claims that are not received by July 1 of the calendar year following the payroll expenditure shall not receive a refund. The claim shall be filed on forms provided by the department of economic development and the employer shall provide such information regarding the employer's participation in a certified school to career program as the department may require. If the amount appropriated to the certified school to career program in any given fiscal year is insufficient to pay all of the refund claims for the applicable calendar year, each claimant shall receive a proportion of the claimant's refund equal to the ratio of the amount appropriated to the total amount of refund claims. Any unpaid portion of a claim shall not be paid from a subsequent fiscal year appropriation. The participant's social security number will be required for purposes of program evaluation.

These rules are intended to implement Iowa Code sections 15.362, 15.363 and 15.365 as amended by 2001 Iowa Acts, House File 695, and Iowa Code section 15.364.

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CHAPTER 12
Reserved

CHAPTER 13
IOWA BUSINESS-INDUSTRY INFORMATION AND TRAINING NETWORK

Rescinded IAB 7/19/95, effective 8/23/95

CHAPTER 14
Reserved

CHAPTERS 14 and 15
Reserved

CHAPTERS 14 to 16
Reserved

CHAPTER 17
HIGH TECHNOLOGY APPRENTICESHIP PROGRAM

Rescinded IAB 7/4/07, effective 6/15/07

CHAPTER 18
Reserved

CHAPTERS 18 and 19
Reserved

CHAPTER 20
ACCELERATED CAREER EDUCATION (ACE) PROGRAM

DIVISION I - GENERAL PROVISIONS

261—20.1(260G) Purpose. The ACE program has three parts: the capital costs component, the program job credits component, and the accelerated career education grants program. The Iowa department of economic development administers the first two components. The college student aid commission administers the career education grants portion of the ACE program as described in the commission's administrative rules. The goal of the ACE program is to provide an enhanced skilled workforce in Iowa.

261—20.2(260G) Definitions.

"Accelerated career education program" or *"ACE"* means the program established pursuant to Iowa Code chapter 260G.

"Agreement" means a program agreement referred to in Iowa Code section 260G.3 between an employer and a community college.

"Allotment" means the distribution of job credits based upon need as determined by the community colleges.

"Community college" means a community college established under Iowa Code chapter 260C or a consortium of two or more community colleges.

"Employee" means a person employed in a program job.

"Employer" means a business or consortium of businesses engaged in interstate or intrastate commerce for the purposes of manufacturing, processing or assembling products; construction; conducting research and development; or providing services in interstate or intrastate commerce, but excluding retail services.

"Highly skilled job" means a job with a broadly based, high-performance skill profile including advanced computation and communication skills, technology skills and workplace behavior skills, and for which an applied technical education is required.

"IDED" or *"department"* means the Iowa department of economic development.

"IDED board" means the Iowa economic development board authorized under Iowa Code section 15.103.

"Participant" means an individual who is enrolled in an accelerated career education program at a community college.

"Participant position" means the individual student enrollment position available in an accelerated career education program.

"Program capital cost" means classroom and laboratory renovation, new classroom and laboratory construction, site acquisition or preparation.

"Program job" means a highly skilled job available from an employer pursuant to a program agreement.

"Program job credit" means a credit that an employer may claim against all withholding taxes due in an amount up to 10 percent of the gross program job wage of a program job position as authorized in an agreement between a community college and an employer.

"Program job position" means a job position which is planned or available for an employee by the employer pursuant to a program agreement.

"Program operating costs" means all necessary and incidental costs of providing program services.

"Program services" means services that include all of the following provided they are pursuant to a program agreement: program needs assessment and development, job task analysis, curriculum development and revision, instruction, instructional materials and supplies, computer software and upgrades, instructional support, administrative and student services, related school to career training programs, skill or career interest assessment services and testing and contracted services.

"Vertical infrastructure" means land acquisition and construction, major renovation and major repair of buildings, all appurtenant structures, utilities, site development and recreation trails. Vertical

infrastructure does not include equipment; routine, recurring maintenance or operational expenses; or leasing of a building, appurtenant structure, or utility without a lease-purchase agreement.

261—20.3(260G) ACE program eligibility and designation.

20.3(1) In order to receive financial assistance under the capital projects program, tax credits from withholding under the program job credits component or financial assistance through the college student aid commission's accelerated career education grants program, a program must be designated by a community college as an eligible ACE program. All programs must demonstrate increased capacity to enroll additional students. To be eligible, a program must be either:

a. A credit career, vocational, or technical education program resulting in the conferring of a certificate, diploma, associate of science degree, or associate of applied science degree; or

b. A credit-equivalent career, vocational, or technical education program consisting of not less than 540 contact hours of classroom and laboratory instruction and resulting in the conferring of a certificate or other recognized, competency-based credential.

20.3(2) By resolution of a community college board of directors, an eligible program may be approved and designated as an ACE program. The respective community college board(s) of directors shall ensure compliance with Iowa Code chapter 260G. In designating ACE programs, the respective community college board(s) shall give priority to targeted industries as designated by the department.

20.3(3) A copy of the designated ACE program agreement shall be submitted to the department. The agreement shall state which of the three program components (capital projects, tax credits or education grants), or combination thereof, is included in the agreement. The department will maintain a record of all approved ACE programs.

20.3(4) The department will review ACE programs for issues of quality in accordance with rule 261—20.16(260G).

261—20.4(260G) Funding allocation.

20.4(1) *Base allocation.*

a. Funds for ACE program job credits and capital costs projects shall be allocated among the community colleges in the state for the fiscal years and in the amounts specified in Iowa Code chapter 260G and these rules.

b. Community colleges shall submit program agreements to access allotted funds. The program agreement shall document the findings of the community college that all ACE eligibility requirements have been met.

20.4(2) *Alternate allotment.* If a community college fails to commit any of its allotment by April 1 of the fiscal year, the funds for that community college will be allocated to other community colleges based upon need as described in these rules. Program job credits are considered to be committed if there is a signed program agreement in place or if there is a statement of intent in place that states that a signed program agreement will be in place by May 1 of the fiscal year.

261—20.5(260G) Eligible and ineligible business.

20.5(1) *Eligible business.* An eligible business is a business engaged in interstate or intrastate commerce for the purpose of manufacturing, processing, or assembling products; construction; conducting research and development; or providing services in interstate or intrastate commerce.

20.5(2) *Ineligible business.* A business engaged in retail services is ineligible to receive ACE program assistance.

261—20.6(260G) Program agreements.

20.6(1) Program agreements will be developed by an employer, a community college and any employee of an employer representing a program job. The development of the agreements may be facilitated by an entity representing a group of employers. Any community college that has an employer from its merged area involved in an ACE project must enter into the agreement. If a bargaining unit is in place with the employer pledging the jobs, a representative of the bargaining unit shall take part in the

development of the program agreement. All participating parties must sign the program agreement. The agreement must include employer certification of contributions that are made toward the program costs.

20.6(2) A program agreement shall include, at a minimum, the following terms: match provided by the employer; tuition, student fees, or special charges fixed by the community college board of directors; guarantee of employer payments; type and amount of funding sources that will be used to pay for program costs; description of program services and implementation schedule; the term of the agreement, not to exceed five years; the employer's agreement to interview graduates for full-time positions and provide hiring preference; for employers with more than four sponsored participants, certification that a job offer will be made to at least 25 percent of those participants that complete the program; an agreement by the employer to provide a wage level of no less than 200 percent of the federal poverty guideline for a family of two; a provision that the employer does not have to fulfill the job offer requirement if the employer experiences an economic downturn; a provision that the participants will agree to interview with the employer following completion of the program; and default procedures.

20.6(3) Projects that cross community college boundaries, or projects that involve employers from multiple community college areas, must be conducted pursuant to an agreement or agreements with each college.

261—20.7(260G) Administration. The department will administer the statewide allocations and will consult with representatives of the community colleges to promulgate necessary forms and collect necessary information. The department will monitor program agreements for the purposes of preparing a study of the needs and performance of approved programs for submission to the general assembly by the department by December 31, 2002. The department may deny the allocation of program job credits to any program which fails to comply with Iowa Code chapter 260G.

261—20.8(260G) Customer tracking system. Participants in the ACE program shall be included in the customer tracking system implemented by Iowa workforce development. In order to achieve this, social security numbers of all ACE program trainees will be required.

261—20.9(260G) Program costs recalculation. Program costs shall be calculated or recalculated on an annual basis based on the required program services for a specific number of participants. Agreement updates reflecting this recalculation must be submitted to IDED annually to review compliance with program parameters.

DIVISION II - CAPITAL COSTS COMPONENT

261—20.10(260G) Threshold requirements. To be considered for funding, the following threshold requirements shall be met:

1. The agreement must provide for pledged program positions paying at least 200 percent of the poverty level for a family of two. If the wage designated is to become effective after a training or probationary period, the employer must document that there is a plan in place regarding time frames for transition to the permanent full-time wage, and the employer must provide documentation that these time frames are reasonable and that the employer has previously adhered to the time schedule.
2. The agreement must demonstrate that the program meets the definition of an eligible ACE program.
3. The agreement must demonstrate that the project builds the capacity of the community college to train additional students for available jobs.
4. The agreement must establish a 20 percent employer cash or in-kind match for program operating funds.
5. The agreement shall describe how the project enhances geographic diversity of project offerings across the state.
6. The agreement must document that other private or public sources of funds are maximized prior to ACE program capital cost funding.

7. ACE program capital cost projects must enhance the geographic diversity of state investment in Iowa. The IDED board will continuously review projects to ensure that there is statewide impact. The IDED board will prioritize projects to ensure geographic diversity.

8. Funds shall be used only for ACE program capital costs for projects that meet the definition of vertical infrastructure. Building repair, renovation and construction for purposes of ACE program equipment installation shall be allowed.

261—20.11(260G) Application procedures.

20.11(1) *Final application.* Applicants shall submit a final agreement to IDED to request capital funds.

20.11(2) *Staff review and recommendation.* A committee of IDED staff will review and rate applications based upon the rating criteria stated in 261—20.12(260G). Based upon this review, a decision will be made regarding submittal of the application to the IDED board for action.

20.11(3) *IDED board action.* The IDED board will review ACE program capital costs projects meeting the requirements prescribed in these rules. A program agreement, which is approved by the community college board of directors, serves as the final application. Approval or denial of submitted applications that are complete and in final form shall be made no later than 60 days following receipt of the application by the department. Subsequent to board approval, an award letter will be sent. The award letter will be followed by a contract. After a signed contract is in place, funding for a project may be requested.

261—20.12(260G) Evaluation criteria for competitive awards—capital costs projects. Applications and accompanying program agreements meeting all ACE eligibility requirements will be prioritized and rated using the following point criteria:

1. The degree to which the applicant adequately demonstrates a lack of existing public or private infrastructure for development of the partnership. There must be a demonstration that the project will build capacity in order for the project to be considered. Capacity will be measured in terms of jobs that are pledged, students that are interested in the program area and the capacity that is built at the community college to undertake the programming. Up to 33 points will be awarded.

2. Demonstration that the jobs that would result from the partnership would include wages, benefits and other attributes that would improve the quality of employment within the region. Projects where the average wage for the pledged jobs exceeds the regional or county average wage, whichever is lower for the location where the training is to be provided, will be awarded points based upon the percentage that the average wage of the pledged jobs exceeds the applicable average wage. Up to 33 points will be awarded.

3. Evidence of local, public or private contributions that meet the requirements of Iowa Code Supplement chapter 260G as amended by 2000 Iowa Acts, chapter 1196. Projects will be rated based upon the percentage of match that is pledged to the ACE program capital cost for the project. Up to 34 points will be awarded.

Applications that do not receive at least 66 out of 100 points will not be forwarded to the IDED board for review. Projects will be competing against each other for IDED board approval, and the number of points that a project receives will be considered in the award process.

DIVISION III - PROGRAM JOB CREDITS

261—20.13(260G) Threshold requirements—program job credits. To be eligible to receive program job credits, the following threshold requirements shall be met:

1. The agreement must provide for pledged program positions paying at least 200 percent of the poverty level for a family of two. If the wage designated is to become effective after a training or probationary period, the employer must document that there is a plan in place regarding time frames

for transition to the permanent full-time wage, and the employer must provide documentation that these time frames are reasonable and that the employer has previously adhered to the time schedule.

2. The agreement must provide that the program meets the definition of an eligible ACE program.

3. The agreement must establish a 20 percent employer cash or in-kind match for program operating funds.

4. The agreement shall describe how the project enhances geographic diversity of project offerings across the state.

5. The executed agreement or a statement of intent must be submitted within the time periods described in these rules in order to establish a commitment of program job credits by the community college.

261—20.14(260G) Job credits allocation.

20.14(1) The department shall allot the total amount of program job credits authorized and available for the fiscal year to each community college based upon need ratios as follows:

	Merged Area	Need Based Proportionate Allotment Minimum $80,000 to Each Community College
I.	Northeast Iowa Community College	4.63%
II.	North Iowa Area Community College	4.63%
III.	Iowa Lakes Community College	2.67%
IV.	Northwest Iowa Community College	2.67%
V.	Iowa Central Community College	4.64%
VI.	Iowa Valley Community College District	4.38%
VII.	Hawkeye Community College	6.62%
IX.	Eastern Iowa Community College District	8.68%
X.	Kirkwood Community College	17.00%
XI.	Des Moines Area Community College	19.00%
XII.	Western Iowa Tech Community College	5.13%
XIII.	Iowa Western Community College	6.51%
XIV.	Southwestern Community College	2.67%
XV.	Indian Hills Community College	7.13%
XVI.	Southeastern Community College	3.64%
		100.00%

20.14(2) For purposes of allotment, the foregoing ratios shall be applied to commitments made by community colleges pursuant to three cycle periods during the fiscal year, beginning on the following cycle dates: August 1, December 1, and May 1.

20.14(3) A commitment for a cycle period is established by filing a copy of an executed agreement or a statement of intent with the department not later than ten days prior to the next cycle date. Each community college may commit all or a portion of its proportionate allotment during each cycle period. Any amount uncommitted as of the cycle date shall be reported in the statement of intent and will carry over to the next cycle period and be reallotted by the department to the other community colleges based upon the same proportionate allotment ratios set out in subrule 20.14(1).

20.14(4) Notwithstanding subrule 20.14(3), it is recognized that 2000 Iowa Acts, chapter 1196, section 5, requires that any portion of an allocation to a community college uncommitted on April 1 of a fiscal year may be available for use by other community colleges. As of April 1, each college shall have either an agreement or a statement of intent indicating that the college will enter into an agreement by May 1 to retain the college's current fiscal year allotment. Any job credit allotments that do not have

accompanying agreements as of the May 1 cycle date will be available for proportional reallotment to other community colleges with signed agreements that have not received all of the tax credits that are needed under the agreement.

20.14(5) Beginning with the May 1 cycle, the department will accept program agreements or statements of intent for the first cycle of the following fiscal year's tax credit allotment. For the fiscal year beginning July 1, 2002, proportionate allocation ratios as described in subrule 20.14(1) will be reviewed and examined for possible modification based upon need in the respective merged areas throughout the state. Such review shall take place immediately following the August 1, 2001, cycle period allocation of credits.

20.14(6) The department shall calculate and report to each community college the number of job credits available for distribution each cycle period during the fiscal year based upon the proportionate allocation ratios set out in subrule 20.14(1) and subrule 20.14(4). Ratios in subrule 20.14(1) will be updated every two years beginning July 1, 2002.

20.14(7) So long as job credits are available for a cycle period, if an agreement provides for a two-year student program, the commitment shall be deemed to include the full amount of credits necessary to fund the entire two-year program and the duration of the agreement even though allocations for more than one fiscal year may be required.

20.14(8) Allocation credits, once received, may be retroactively applied to eligible programs during the fiscal year so long as the amount to be received does not exceed the proportionate allocation for each cycle period.

261—20.15(260G) Determination of job credits, notice, and certification.

20.15(1) *Determination of job credit amounts.* If a program provides that part of the program costs are to be met by receipt of program job credits, the method to be used shall be as follows:

a. Program job credits shall be based upon the program job positions identified and agreed to in the agreement. No costs incurred prior to the date of a program agreement between a college and an employer may be reimbursed or eligible for program job credits.

b. Eligibility for program job credits shall be based on certification of program job positions and program job wages by the employer at the time established in the agreement.

c. An amount up to 10 percent of the gross program job wages as certified by the employer in the agreement shall be credited from the total payment made by an employer pursuant to Iowa Code section 422.16.

d. The employer shall remit the amount of the credit quarterly, in the same manner as withholding payments are reported to the department of revenue, to the community college to be allocated to and, when collected, paid into a special fund of the community college to pay, in part, the program costs.

e. When the program costs have been paid, the employer credits shall cease and any moneys received after the program costs have been paid shall be remitted to the treasurer of state to be deposited in the general fund of the state.

20.15(2) *Notice to revenue department.* The employer shall certify to the department of revenue that the program job credit is in accordance with the agreement and shall provide other information the department may require.

20.15(3) *Certification of amount of job credits.* A community college shall certify to the department of revenue that the amount of the program job credits is in accordance with an agreement and shall provide other information the department may require.

261—20.16(260G) Evaluation criteria for quality assurance—program job credits.

20.16(1) Agreements submitted for funding shall be in draft form and shall include an evaluation summary to assist the department in gathering information for making study recommendations required by 2000 Iowa Acts, chapter 1196, section 5, and to provide program quality within each merged area program. Quality issues shall be reviewed and rated by the department based upon the following evaluation criteria within each merged area:

a. Wage level assessment (1 to 5 points).

1 point	Statutory minimum wage level (see rule 261—20.13(260G), numbered paragraph "1").
2 points	Statutory minimum plus additional $2,500 per annum.
3 points	Above plus additional $2,500 per annum.
4 points	Above plus additional $2,500 per annum.
5 points	Above plus additional $2,500 per annum.

b. Skill profile (3 or 6 points).

3 points	Meets statutory definition of "highly skilled job" (see rule 261—20.2(260G)).
6 points	Above plus serves targeted industries as designated by the department (see subrule 20.3(2)).

c. Educational profile (1 or 2 points).

2 points	Credit career, vocational or technical educational program (see paragraph 20.3(1)*"a"*).
1 point	Credit-equivalent career, vocational or technical educational program consisting of not less than 540 contact hours (see paragraph 20.3(1)*"b"*).

d. Program job demand (0 or 3 points).

3 points	Program jobs are in demand within the merged area, region or company.

e. Availability of program services (0 or 3 points).

3 points	Adequate resources and curriculum necessary to implement the program.

f. Marketing plan (0 or 3 points).

3 points	Adequate marketing plan to recruit students for program jobs involving entities including but not limited to business, labor, and community college.

g. Merged area stakeholders support (0 or 1 point).

1 point	Agreement demonstrates substantial area stakeholder support for the program via letters or other supporting information.

h. Level of employer contributions (3 to 5 points).

3 points	Not less than 20 percent of program costs.
4 points	Not less than 22 percent of program costs.
5 points	Not less than 24 percent of program costs.

Agreements must receive a rating by the college and by the department of at least 18 points out of 28 total possible points to receive tax credits.

20.16(2) Each agreement will be submitted to the department in draft form at least 20 days before it is presented to the community college board for final approval. Within 20 days the department may approve without comment or append its statement of disapproval if it does not agree that the agreement merits at least 18 points out of 28 points.

261—20.17(260G) Committed funds. The department shall maintain an annual record of the proposed program job credits under each agreement for each cycle of each fiscal year. When the total available program job credits have been allocated for a fiscal year, the department shall inform all community colleges that the maximum amount has been allocated and that further program job credits will not be available for the remainder of the fiscal year. If any committed credits become uncommitted after the above-mentioned notice has been issued, the department will inform all community colleges that some job credits are again available and applications will be accepted for those job credits until they are again committed.

DIVISION IV - ACCELERATED CAREER EDUCATION GRANTS COMPONENT

261—20.18(260G) ACE program serving demand occupations. The college student aid commission administers the career education grants portion of the ACE program. The department will report to the college student aid commission those ACE programs which service demand occupations within targeted industries as designated by the department in consultation with the department of workforce development.

DIVISION V - WORKFORCE TRAINING AND ECONOMIC DEVELOPMENT PROGRAM OPERATING COSTS

261—20.19(81GA,HF868,HF809) Grow Iowa values fund assistance. Moneys allocated through the grow Iowa values fund to the workforce training and economic development funds to each community college for a fiscal year may be expended for the purposes allowed under Iowa Code section 260G.3, provided the use meets the requirements established under 261—Chapter 9. Moneys allocated under the workforce training and economic development fund are targeted primarily for use in projects in the areas of advanced manufacturing; information technology and insurance; and life sciences, which include the areas of biotechnology, health care technology, and nursing care technology.

20.19(1) *Use of funds.* Moneys from a workforce training and economic development fund created in Iowa Code section 260C.18A may be used for program operating costs of an approved 260G project. Such use may be authorized in an agreement between a community college and an employer. The amount of grow Iowa values funds available to any single 260G project shall be determined in the same manner as program job credits under subrule 20.15(1). Workforce training and economic development funds may be used in lieu of program job credits or in addition to program job credits.

20.19(2) *Availability of workforce training and economic development funds.* In order for a community college to utilize the funds afforded under the grow Iowa values fund for program operating costs of 260G projects, the college shall prepare and submit to the department a two-year implementation plan regarding the proposed uses of the grow Iowa values fund moneys. The plan shall be updated annually and submitted with a progress report to the department to be approved by the IDED board. This reporting requirement will be accomplished as described in 261—Chapter 9.

20.19(3) *Awards in excess of $1 million.* Applications to be awarded from workforce training and economic development funds as appropriated from grow Iowa values fund moneys that are to exceed $1 million require approval of the IDED board.

These rules are intended to implement Iowa Code chapter 260G and 2005 Iowa Acts, House File 868 and House File 809.

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PART III
COMMUNITY DEVELOPMENT DIVISION

CHAPTER 21
DIVISION RESPONSIBILITIES

261—21.1(15) Mission. The mission of the community development division is to continually develop the economic well-being and quality of life of Iowans by working with local governments, community organizations, businesses and others to build the organizational, entrepreneurial and physical capacity needed for community and economic improvement.

261—21.2(15) Division responsibilities. The division's primary responsibilities are tourism, investment management, community assistance, and infrastructure (project initiative and technical assistance).

21.2(1) *Tourism office.* The tourism office assists in diversifying Iowa's economy by supporting and promoting the Iowa hospitality industry and by enhancing the image of Iowa as a place to travel and live. To carry out its purpose, the office provides the following services and functions: advertising, fulfillments, group travel, Iowa film office, promotions and partnerships, publications, public relations and communications, tourism regions, welcome centers, and research.

21.2(2) *Investment management.* Investment management staff provide compliance and monitoring activities for programs including, but not limited to, the community development block grant (CDBG) program, community development fund (CDF) program, emergency shelter grants program (ESGP), homeless shelter operation grants (HSOG) program, and revitalization assistance for community improvement (RACI).

21.2(3) *Community assistance.* Activities in the area of community assistance include, but are not limited to, staff support to the city development board; administration of the CDF program; community volunteerism and leadership, and downtown resource center—main street Iowa program; community assistance services provided by IDED consultants; and staff support to the rural development council.

21.2(4) *Infrastructure (project initiative and technical assistance).* Functions performed in this category include, but are not limited to, administration of the following programs: CDBG, community facilities and services, ESGP, and HSOG.

[**ARC 9326B**, IAB 1/12/11, effective 2/16/11]

These rules are intended to implement Iowa Code chapter 15 and section 17A.3.

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CHAPTER 22
COMMUNITY ECONOMIC BETTERMENT PROGRAM

Renumbered as 261—Ch 53, IAB 7/19/95

CHAPTER 23
IOWA COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

261—23.1(15) Purpose. The primary purpose of the community development block grant program is the development of viable communities by providing decent housing and suitable living environments and expanding economic opportunities, primarily for persons of low and moderate income.

261—23.2(15) Definitions. When used in this chapter, unless the context otherwise requires:

"Activity" means one or more specific activities, projects or programs assisted with CDBG funds.

"Career link" means a program providing training and enhanced employment opportunities to the working poor and underemployed Iowans.

"CDBG" means community development block grant.

"EDSA" means economic development set-aside.

"HUD" means the U.S. Department of Housing and Urban Development.

"IDED" means the Iowa department of economic development.

"LMI" means low and moderate income. Households earning 80 percent or less of the area median income are LMI households.

"PFSA" means public facilities set-aside.

"Program income" means gross income a recipient receives that is directly generated by the use of CDBG funds, including funds generated by the use of program income.

"Program year" means the annual period beginning January 1 and ending December 31.

"Quality jobs program" means a job training program formerly funded with CDBG funds that is no longer operational.

"Recipient" means a local government entity awarded CDBG funds under any CDBG program.

"Sustainable community activities" means activities to develop viable communities while preserving precious environment and resources.

"Working poor" means an employed person with an annual household income between 25 and 50 percent of the area median family income.

[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09]

261—23.3(15) Eligible applicants. All incorporated cities and all counties in the state of Iowa, except those designated as entitlement areas by the U.S. Department of Housing and Urban Development, are eligible to apply for and receive funds under this program.

23.3(1) Any eligible applicant may apply directly or on behalf of a subrecipient.

23.3(2) Any eligible applicant may apply individually or jointly with another eligible applicant or other eligible applicants.

23.3(3) Applicants shall not apply on behalf of eligible applicants other than themselves.

261—23.4(15) Allocation of funds. IDED shall distribute CDBG funds as follows:

23.4(1) *Administration.* Two percent of total program funds including program income plus $100,000 shall be used for state administration.

23.4(2) *Technical assistance.* One percent of the funds shall be used for the provision of substantive technical assistance to recipients.

23.4(3) *Housing fund.* Twenty-five percent of the funds shall be reserved for a housing fund to be used to improve the supply of affordable housing for LMI persons.

23.4(4) *Job creation, retention and enhancement fund.* Twenty percent of the funds shall be reserved for a job creation, retention and enhancement fund to be for workforce development and to expand economic opportunities and job training for LMI persons. Job creation, retention and enhancement funds are awarded through three programs: the economic development set-aside (EDSA), the public facilities set-aside (PFSA), and career link. For CDBG federal program year 2008 only (October 1, 2007, through September 30, 2008), up to $5 million of funding normally allocated to this job creation, retention and enhancement fund may be allocated by the department to the contingency fund established in subrule 23.4(5). If reallocated, the funds will be used for disaster recovery activities.

23.4(5) *Contingency funds.* IDED reserves the right to allocate up to 5 percent of the funds for projects that address threats to public health and safety, or for disaster recovery activities, or for sustainable community demonstration projects. No more than $1 million may be utilized for sustainable community demonstration projects. For CDBG federal program year 2008 only (October 1, 2007, through September 30, 2008), an additional amount of up to $5 million of funding normally allocated to the job creation, retention and enhancement fund in subrule 23.4(4) may instead be allocated by the department to this contingency fund, and used for disaster recovery activities.

23.4(6) *Competitive program.* The remaining funds shall be available on a competitive basis through the water and sewer fund and community facilities and services fund. Of the remaining amount, 70 percent shall be reserved for the water and sewer fund, 15 percent shall be reserved for the community facilities and services fund and 15 percent shall be allocated to either the water and sewer fund or community facilities and services fund at the discretion of the director, based on requests for funds.

23.4(7) *Reallocation.* Any reserved funds not used for their specified purpose within the program year shall be reallocated in amounts and to funds as approved by the director to ensure the availability of resources to those funds in which the greatest need is demonstrated to exist or to respond to community or business needs.

23.4(8) *Recaptured funds.* Recaptured funds shall be available for use through the water and sewer fund, the community facilities and services fund, the contingency fund, the housing fund, and the downtown revitalization fund. As approved by the director, recaptured funds may be used to fund projects from the job creation, retention and enhancement fund in order to respond to an immediate business need if no funds are available through the economic development set-aside fund or public facilities set-aside fund. Recaptured funds remaining at the end of a program year shall be reallocated in amounts and to funds as approved by the director to ensure the availability of resources to those funds in which the greatest need is demonstrated to exist or to respond to a community or business need.

261—23.5(15) Common requirements for funding. Applications for funds under any of the CDBG programs shall meet the following minimum criteria:

23.5(1) Proposed activities shall be eligible, as authorized by Title I, Section 105 of the Housing and Community Development Act of 1974 and as further defined in 24 CFR 570, as revised April 1, 1997.

23.5(2) Proposed activities shall address at least one of the following three objectives:

1. Primarily benefit low- and moderate-income persons. To address this objective, 51 percent or more persons benefiting from a proposed activity must have incomes at or below 80 percent of the area median income.

2. Aid in the prevention or elimination of slums and blight. To address this objective, the application must document the extent or seriousness of deterioration in the area to be assisted, showing a clear adverse effect on the well-being of the area or community and illustrating that the proposed activity will alleviate or eliminate the conditions causing the deterioration.

3. Meet an urgent community development need. To address this objective, the applicant must certify that the proposed activity is designed to alleviate existing conditions that pose a serious and immediate threat to the health or welfare of the community and that are recent in origin or that recently became urgent; that the applicant is unable to finance the activity without CDBG assistance and that other sources of funding are not available. A condition shall be considered recent if it developed or became urgent within 18 months prior to submission of the application for CDBG funds.

23.5(3) Applicants shall demonstrate capacity for grant administration. Administrative capacity shall be evidenced by previous satisfactory grant administration, availability of qualified personnel or plans to contract for administrative services. Funds used for administration shall not exceed 10 percent of the CDBG award amount or 10 percent of the total contract amount, except for awards made under the career link program, for which funds used for administration shall not exceed 5 percent of the CDBG award amount.

23.5(4) Applicants who have received previous CDBG awards shall have demonstrated acceptable past performance, including the timely expenditure of funds.

23.5(5) Applications shall demonstrate the feasibility of completing the proposed activities with the funds requested.

23.5(6) To the greatest extent feasible, applications shall propose the use of CDBG funds as gap financing. Applications shall identify and describe any other sources of funding for proposed activities.

23.5(7) Applications shall include a community development and housing needs assessment.

23.5(8) Negotiation of awards. IDED reserves the right to negotiate award amounts, terms and conditions prior to making any award under any program.

23.5(9) Applicants shall certify their compliance with the following:

1. The Civil Rights Act of 1964 (PL 88-352) and Title VIII of the Civil Rights Act of 1968 (PL 90-284) and related civil rights, fair housing and equal opportunity statutes and orders;
2. Title I of the Housing and Community Development Act of 1974;
3. Age Discrimination Act of 1975;
4. Section 504 of the Housing and Urban Development Act of 1973;
5. Section 3 of the Housing and Urban Development Act of 1968;
6. Davis-Bacon Act (40 U.S.C. 276a-5) where applicable under Section 100 of the Housing and Community Development Act of 1974;
7. Lead-Based Paint Poisoning Prevention Act;
8. 24 CFR Part 58 and the National Environmental Policy Act of 1969;
9. Uniform Relocation Assistance and Real Property Acquisition Act of 1979, Titles II and III;
10. Americans with Disabilities Act;
11. Section 102 of the Department of Housing and Urban Development Reform Act of 1989;
12. Contract Work Hours and Safety Act;
13. Copeland Anti-Kickback Act;
14. Fair Labor Standards Act;
15. Hatch Act;
16. Prohibition on the Use of Excessive Force and Barring Entrance;
17. Drug-Free Workplace Act;
18. Governmentwide Restriction on Lobbying;
19. Single Audit Act;
20. State of Iowa Citizen Participation Plan; and
21. Other relevant regulations as noted in the CDBG management guide.

261—23.6(15) Requirements for the competitive program.

23.6(1) *Restrictions on applicants.*

a. An applicant shall be allowed to submit one application per year under the water and sewer fund and one application per year under the community facilities and services fund.

b. An eligible applicant involved in a joint application (not as the lead applicant) shall be allowed to submit a separate, individual application only if the applicant is bound by a multijurisdictional agreement by state statute to provide a public service that is facilitated by the joint application and the activity proposed in the joint application is not located in the applicant's jurisdiction.

23.6(2) *Grant ceilings.* Maximum grant awards are as follows:

1. Applicants with populations of fewer than 1,000 shall apply for no more than $300,000.
2. Applicants with populations of 1,000 to 2,499 shall apply for no more than $500,000.
3. Applicants with populations of 2,500 to 14,999 shall apply for no more than $600,000.
4. Applicants with populations of 15,000 to 49,999 shall apply for no more than $800,000.

However, no recipient shall receive more than $1,000 per capita based on the total population within the recipient's jurisdiction. If a county applies on behalf of one or more unincorporated communities within its jurisdiction, the $1,000 per capita ceiling shall pertain to any project benefiting all residents of the unincorporated community or communities, not the entire unincorporated population of the county applying. Applicants shall use one of the following for population figures to determine the applicable grant ceilings: 2000 census figures, special census figures or adjusted figures based on annexation

completed in accordance with statutory requirements in Iowa Code chapter 368. County populations shall be calculated for unincorporated areas only to determine applicable grant ceilings.

a. Joint applications for sewer and water projects shall be awarded no more than the cumulative joint total allowed according to the population of each jurisdiction participating in the project. For all other joint applications, an application shall be awarded no more than one and one-half times the maximum amount allowed for either of the joint applicants.

b. Applicants may apply for the maximum amount for which they are eligible under both the sewer and water fund and community facilities and services fund.

c. Applicants may apply for multiple activities under each fund for an amount up to the applicable ceilings.

23.6(3) *Water and sewer fund application procedure.* IDED shall announce the availability of funds and instructions for applying for funds through direct mail, public notices, media releases, workshops or other means determined necessary by IDED.

a. Application forms shall be available upon request from IDED, Community Development Division, 200 East Grand Avenue, Des Moines, Iowa 50309, or on the division's Web site at www.community.state.ia.us.

b. Applications shall be submitted by the deadline established by IDED.

c. IDED shall review applications and make funding decisions based on the following criteria:

(1) Magnitude of need for the project.

(2) Impact of the activity on standard of living or quality of life of proposed beneficiaries.

(3) Readiness to proceed with the proposed activity and likelihood that the activity can be completed in a timely fashion. Procurement of an engineer shall be considered evidence of readiness to proceed.

(4) Degree to which water and sewer fund assistance would be leveraged by other funding sources and documentation of applicant efforts to secure the maximum amount possible of local financial support for the activity.

(5) Capacity to operate and maintain the proposed activity.

(6) Capacity for continued viability of the activity after CDBG assistance.

(7) Scope of project benefit relative to the amount of CDBG funds invested.

(8) Degree to which the project promotes orderly, compact development supported by affordable public infrastructure.

d. Applicants shall submit preliminary engineering reports with their full applications for drinking water projects.

e. Applicants shall submit facility plans with their full applications for wastewater projects.

f. IDED staff may consult on proposed activities with other state agencies responsible for water- and sewer-related activities and may conduct site evaluations of proposed activities.

g. Applicants selected to receive awards shall be notified by letter from the IDED director by date(s) determined by IDED.

23.6(4) *Community facilities and services fund application procedure.* Each year, IDED shall announce the availability of funds and instructions for applying for funds through direct mail, public notices, media releases, workshops or other means determined necessary by IDED.

a. Application forms shall be available upon request from IDED, Community Development Division, 200 East Grand Avenue, Des Moines, Iowa 50309, or on the division's Web site at www.community.state.ia.us.

b. Applications shall be submitted by the deadline established by IDED.

c. IDED shall review applications and make funding decisions based on the following criteria:

(1) Magnitude of need for the project.

(2) Impact of the activity on standard of living or quality of life of proposed beneficiaries.

(3) Readiness to proceed with the proposed activity and likelihood that the activity can be completed in a timely fashion.

(4) Degree to which community facilities and services fund assistance would be leveraged by other funding sources and documentation of applicant efforts to secure the maximum amount possible of local financial support for the activity.

(5) Capacity to operate and maintain the proposed activity.

(6) Capacity for continued viability of the activity after CDBG assistance.

(7) Scope of project benefit relative to the amount of CDBG funds invested.

(8) Degree to which the project promotes orderly, compact development supported by affordable public infrastructure.

(9) Whether the project meets or exceeds the minimum building and site design criteria established by IDED to be eligible for funding.

d. IDED staff may consult on proposed activities with other state agencies responsible for community facilities and services-related activities and may conduct site evaluations of proposed activities.

e. Applicants selected to receive awards shall be notified by letter from the IDED director by date(s) determined by IDED.

23.6(5) *Contingent funding.* IDED may make awards contingent upon receipt of funding from other sources.

23.6(6) *Negotiation of awards.* IDED reserves the right to negotiate award amounts and terms.

261—23.7(15) Requirements for the economic development set-aside fund.

23.7(1) *Restrictions on applicants.*

a. Applicants shall apply only for direct loans or forgivable loans to make to private businesses for the creation of new jobs or the retention of existing jobs that would otherwise be lost.

b. The maximum grant award for individual business assistance applications from any city or county is $1,000,000.

c. To be eligible for assistance, applicants shall meet the qualifying wage threshold requirements described in 261—Chapter 174.

d. At least 51 percent of the permanent jobs created or retained by the proposed project shall be taken by or made available through first consideration activities to persons from low- and moderate-income families.

e. Projects must maintain a minimum ratio of one permanent job created or retained for every $10,000 in CDBG funds awarded.

f. Terms of conventional loans proposed for the project must be consistent with terms generally accepted by conventional financial institutions.

g. Applications must provide evidence of adequate private equity.

h. Applications must provide evidence that the EDSA funds requested are necessary to make the proposed project feasible and that the business requesting assistance can continue as a going concern in the foreseeable future if assistance is provided.

i. IDED shall not consider applications proposing business relocation from within the state unless evidence exists of unusual circumstances that make the relocation necessary for the business' viability.

j. No significant negative land use or environmental impacts shall occur as a result of the project.

k. Rescinded IAB 10/22/08, effective 11/26/08.

l. Unless in conflict with a federal HUD definition for CDBG, the standard definitions located in 261—Chapter 173 apply to the EDSA program.

23.7(2) *Application procedure.* Application forms and instructions shall be available upon request from IDED, Business Development Division, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4819. An original and two copies of completed applications with required attachments shall be submitted to the same address. IDED shall accept EDSA applications at any time and shall review applications on a continuous basis. IDED shall take action on submitted applications within 60 days of receipt. Action may include funding the application for all or part of the requested amount, denying the applicant's request for funding or requesting additional information from the applicant for consideration before a final decision is made.

23.7(3) *Review criteria.* IDED shall review applications and make funding decisions based on the following criteria:

1. Impact of the project on the community.
2. Appropriateness of the jobs to be created or retained by the proposed project.
3. Appropriateness of the proposed wage and benefit package available to employees in jobs created or retained by the proposed project.
4. Degree to which EDSA funding would be leveraged by private investment.
5. Degree of demonstrated business need.

In evaluating applications, IDED shall give supplementary credit to applicants who have executed a good neighbor agreement with the business to be assisted.

IDED may conduct site evaluations of proposed projects.

261—23.8(15) Requirements for the public facilities set-aside fund. PFSA funds are reserved for infrastructure projects in direct support of economic development activities that shall create or retain jobs.

23.8(1) *Restrictions on applicants.*

a. The maximum grant award for individual applications is $500,000.

b. At least 51 percent of the permanent jobs created or retained by the proposed project shall be taken by or made available through first consideration activities to persons from low- and moderate-income families.

c. Projects must maintain a minimum ratio of one permanent job created or retained for every $10,000 in CDBG funds awarded.

d. The applicant local government must contribute at least 50 percent of the total amount of funds requested.

e. Applications must provide evidence that the PFSA funds requested are necessary to make the proposed project feasible and that the business requesting assistance can continue as a going concern in the foreseeable future if assistance is provided.

f. Jobs created as a result of other jobs being displaced elsewhere in the state shall not be considered to be new jobs created.

g. No significant negative land use or environmental impacts shall occur as a result of the project.

h. Applications shall include a business assessment plan, projecting for each identified business the number of jobs to be created or retained as a result of the public improvement proposed for assistance.

23.8(2) *Application procedure.* Application forms and instructions shall be available upon request from IDED, Business Development Division, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4819. An original and one copy of completed applications with required attachments shall be submitted to the same address. IDED shall accept PFSA applications at any time and shall review applications on a continuous basis. IDED shall take action on submitted applications within 60 days of receipt. Action may include funding the application for all or part of the requested amount, denying the applicant's request for funding or requesting additional information from the applicant for consideration before a final decision is made.

23.8(3) *Review criteria.* IDED shall review applications and make funding decisions based on the following criteria:

1. Impact of the project on the community.
2. Number of jobs created or retained per funds requested.
3. Degree to which PFSA funding would be leveraged by private investment.
4. Degree of demonstrated need for the assistance.

IDED may conduct site evaluations of proposed projects.

261—23.9(15) Requirements for the career link program. Projects funded through the career link program assist the unemployed and underemployed to obtain the training and skills necessary to move into available higher-skill, higher-paying jobs.

23.9(1) *Restrictions on applicants.*

a. Identified positions shall pay an average starting wage that meets or exceeds the lower of 100 percent of the average county wage or 100 percent of the average regional wage.

b. Applications shall include evidence of business participation in the curriculum design and evidence that a number of positions are available equal to or greater than the number of persons to be trained.

c. The project length shall not exceed 24 months.

d. Applicants may use awarded funds for training, transportation and child care costs. Up to 5 percent of funds may be used for administration.

e. Rescinded IAB 1/19/05, effective 2/23/05.

23.9(2) *Application procedure.* Application forms and instructions shall be available upon request from IDED, Community Development Division, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4783. An original and five copies of completed applications shall be submitted to the same address. IDED shall accept career link applications at any time and shall review applications on a continuous basis until all program funds are obligated or the program is discontinued.

23.9(3) *Review criteria.* IDED shall review applications and make funding decisions based on the following criteria:

1. Quality of the jobs available and business participation.
2. Merit of the proposed training plan.
3. Degree to which career link funds are leveraged by other funding sources.
4. Merit of the recruitment/job matching plan.
5. Scope of project benefit relative to the amount of funds invested.

261—23.10(15) Requirements for the contingency fund. The contingency fund is reserved for communities experiencing a threat to public health, safety or welfare that necessitates immediate corrective action sooner than can be accomplished through normal community development block grant procedures, or for disaster recovery activities, or for communities developing a sustainable community demonstration project.

23.10(1) *Application procedure.* Those local governments applying for contingency funds shall submit a written request to IDED, Community Development Division, 200 East Grand Avenue, Des Moines, Iowa 50309. The request shall include a description of the situation, the project budget including the amount of the request from IDED, projected use of funds and an explanation of the reason that the situation cannot be remedied through normal CDBG funding procedures.

23.10(2) *Application review.* Upon receipt of a request for contingency funding, IDED shall determine whether the project is eligible for funding and notify the applicant of its determination. A project shall be considered eligible if it meets the following criteria:

a. Projects to address a threat to health and safety.

(1) An immediate threat to health, safety or community welfare must exist that requires immediate action.

(2) The threat must be the result of unforeseeable and unavoidable circumstances or events.

(3) No known alternative project or action would be more feasible than the proposed project.

(4) Sufficient other local, state or federal funds either are not available or cannot be obtained in the time frame required.

b. Projects to demonstrate sustainable community activities.

(1) The project is consistent with sustainability and smart growth principles.

(2) The project provides a beneficial impact on the standard of living and quality of life of proposed beneficiaries.

(3) The project can be ready to proceed and be completed in a timely manner.

(4) The project leverages the maximum amount of local funds possible.

(5) The project will continue to remain viable after CDBG assistance.

(6) The project meets the funding standards established by the funding criteria set forth in this rule.

(7) The applicant provides adequate information to IDED on total project design and costs as requested.

(8) The project is innovative and could be replicated in other communities.

(9) The project meets or exceeds the minimum building and site design criteria established by IDED.

23.10(3) *Additional information.* IDED reserves the right to request additional information on forms prescribed by IDED prior to making a final funding decision. IDED reserves the right to negotiate final project award and design components.

23.10(4) *Future allocations.* IDED reserves the right to reserve future funds anticipated from federal CDBG allocations to the contingency fund to offset current need for commitment of funds which may be met by amounts deferred from current awards.

261—23.11(15) Requirements for the housing fund program. Specific requirements for the housing fund are listed separately at 261—Chapter 25.

261—23.12(15) Interim financing program. The objective of the CDBG interim financing program is to benefit persons living in eligible Iowa communities by providing short-term financing for the implementation of projects that create or retain employment opportunities, prevent or eliminate blight or accomplish other federal and state community development objectives. Up to $25 million shall be made available for grants under the CDBG interim financing program during any program year.

23.12(1) *Eligible activities.* Funds provided through the interim financing program shall be used for the following activities:

1. Short-term assistance, interim financing or construction financing for the construction or improvement of a public work.

2. Short-term assistance, interim financing or construction financing for the purchase, construction, rehabilitation or other improvement of land, buildings, facilities, machinery and equipment, fixtures and appurtenances or other projects undertaken by a for-profit organization or business or a nonprofit organization.

3. Short-term or interim financing assistance for otherwise eligible projects or programs.

23.12(2) *Restrictions on applicants.*

a. No significant negative land use or environmental impacts shall occur as a result of the project.

b. Applications must provide evidence that the proposed project shall be completed within 30 months of the date of grant award.

c. The amount of funds requested shall not exceed $20 million.

d. Applications must provide evidence of an irrevocable letter of credit or equivalent security instrument from an AA- or better-rated lending institution, assignable to IDED, in an amount equal to the CDBG short-term grant funds requested, plus interest, if applicable.

e. Applications must provide evidence of the commitment of permanent financing for the project.

f. Applications must include assurance that program income earned or received as a result of the project shall be returned to IDED on or before the end date of the grant contract.

23.12(3) *Application procedure.* Applications may be submitted at any time in a format prescribed by IDED. Applications shall be processed, reviewed and considered on a first-come, first-served basis to the extent funds are available. IDED shall make funding decisions within 30 days of a receipt of a completed application. Applications that are incomplete or require additional information, investigation or extended negotiation may lose funding priority.

23.12(4) *Application review.* Applications shall be reviewed and funding decisions made based on the following review criteria:

1. Degree to which CDBG funds would be leveraged by other funding sources.

2. Reasonableness of the project cost per beneficiary ratio.

3. Documented need for the CDBG assistance.

4. Degree of public benefit, as measured by the present value of proposed assistance to direct wages and aggregate payroll lost, indirect wages and aggregate payroll lost, dislocation and potential absorption of workers and the loss of economic activity.

261—23.13(15) Flood recovery fund. Rescinded IAB 9/18/02, effective 10/23/02.

261—23.14(15) Disaster recovery fund. The disaster recovery fund is reserved for communities impacted by natural disasters when a supplemental disaster appropriation is made under the community development block grant program. Funds are available to repair damage and to prevent future threat to public health, safety or welfare that is directly related to the disaster for which HUD supplemental funds have been allocated to the state.

23.14(1) *Application procedure.* Communities in need of disaster recovery funds shall submit a written request to IDED, Community Development Division, 200 East Grand Avenue, Des Moines, Iowa 50309. The request shall include a description of the community's problem, the amount of funding requested, projected use of funds, the amount of local funds to be provided and the percent of low- and moderate-income persons benefiting from the project.

23.14(2) *Application review.* Upon receipt of a request, IDED, in consultation with appropriate federal, state and local agencies, shall make a determination of whether the community and project are eligible for funding and notify the applicant community of its determination. A project shall be considered eligible only if it meets all of the following criteria:

1. A threat must exist to health, safety or community welfare that requires immediate action.
2. The threat must be a result of a natural disaster receiving a presidential declaration for which IDED received a supplemental HUD appropriation.
3. No known alternative project or action would be more feasible than the proposed project.
4. Sufficient other local, state or federal funds (including the CDBG competitive program) either are not available or cannot be obtained in the time frame required.

23.14(3) *Compliance with federal and state regulation.* A community receiving funds under the disaster recovery fund shall comply with all laws, rules and regulations applicable to the CDBG competitive program, except those waived by HUD as a result of federal action in conjunction with the disaster recovery initiative and those not required by federal law that IDED may choose to waive. IDED shall make available a list of all applicable federal regulations and disaster-related waivers granted by Congress and relevant federal agencies to all applicants for assistance.

261—23.15(15) Administration of a CDBG award. This rule applies to all grant recipients awarded funds from any of the CDBG programs. Recipients shall comply with requirements and instructions set forth in the applicable CDBG management guide.

23.15(1) *Contracts.* After making an award notification to a recipient, IDED will issue a CDBG contract. The contract shall be between the recipient local government and IDED. These rules and applicable federal and state laws and regulations shall be part of the contract.

a. Recipients shall execute and return the contract to IDED within 45 days of the transmittal date from IDED. Failure to do so may be cause for termination of the award.

b. Certain activities require permits or clearances that shall be obtained from other state or federal agencies prior to proceeding with the project. IDED may include securing necessary permits or clearances as conditions to the CDBG contract.

23.15(2) *General financial management standards.* Recipients shall comply with 24 CFR 85, as revised January 1, 2007, Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments. Allowable costs shall be determined in accordance with OMB Circular A-87, "Cost Principles Applicable to Grants and Contracts with State and Local Governments."

23.15(3) *Requests for funds.* Recipients shall submit requests for funds in the manner described and on the forms provided in the CDBG management guide. Individual requests for funds shall be made in whole dollar amounts not less than $500, except for the final request for funds.

23.15(4) *Program income.* If a recipient receives program income before the contract end date, it must be expended before requesting additional funds. If a recipient receives program income on or after the contract end date, the recipient may reuse the program income according to an IDED-approved reuse plan, or the recipient may return the program income to IDED. If a recipient receives less than $25,000 of program income cumulative of all CDBG grants in a program year, it shall be considered miscellaneous revenue and may be used for any purpose.

23.15(5) *Record keeping and retention.* All records related to the project, including the original grant application, reports, financial records and documentation of compliance with state and federal requirements, shall be retained for five years after contract closeout. Representatives of HUD, the Inspector General, the General Accounting Office, the state auditor's office and IDED shall have access to all books, accounts, documents, records and other property belonging to or in use by recipients pertaining to the receipt of CDBG funds.

23.15(6) *Performance reports and reviews.* Recipients shall submit recipient performance reports to IDED as prescribed in the CDBG management guide. IDED shall perform project reviews and site inspections deemed necessary to ensure program compliance. When noncompliance is indicated, IDED may require remedial actions to be taken.

23.15(7) *Contract amendments.* Any substantive change to a funded CDBG project, including time extensions, budget revisions and significant alteration to proposed activities, shall be considered a contract amendment. The recipient shall request the amendment in writing. No amendment shall be valid until approved in writing by IDED. IDED shall not approve the addition of a new activity unrelated to the original contract activities, unless all original activities shall also be completed per the contract. In such cases, IDED may allow up to $10,000 of the original CDBG award to be used for a new activity. For projects funded under the economic development set-aside, IDED shall not approve amendments involving the replacement of one activity with another.

23.15(8) *Contract closeout and audit.* Upon completion of project activities and contract expiration, IDED shall initiate closeout procedures. Contracts may be subject to audit before closeout of the contract can be completed. Recipients that expend $500,000 or more of federal funds within one year must have these funds audited. The audit shall be performed in a manner consistent with the provisions set forth in the Single Audit Act, as revised in 1996, and described in the CDBG management guide.

23.15(9) *Contractors and subrecipients limitation.* CDBG funds shall not be used directly or indirectly to employ, award contracts to, otherwise engage the services of or fund any contractor or subrecipient during any period of debarment, suspension or placement in ineligibility status by HUD under the provisions of 24 CFR 24, as revised April 1, 1997.

23.15(10) *Compliance with federal and state laws and regulations.* Recipients shall comply with all applicable provisions of the Housing and Community Development Act of 1974 and these administrative rules. Recipients shall also comply with any provisions of the Iowa Code governing activities performed under this program.

23.15(11) *Noncompliance.* At any time before project closeout, IDED may, for cause, find that a recipient is not in compliance with requirements under this program. At IDED's discretion, remedies for noncompliance may include penalties up to and including the return of program funds to IDED. Findings of noncompliance may include the use of CDBG funds for activities not described in the application, failure to complete approved activities in a timely manner, failure to comply with any applicable state or federal rules or regulations or the lack of a continuing capacity of the recipient to carry out the approved project in a timely manner.

23.15(12) *Appeals process for findings of noncompliance.* Appeals shall be entertained in instances where it is alleged that IDED staff participated in a decision that was unreasonable, arbitrary, capricious or otherwise beyond the authority delegated to IDED. Appeals shall be addressed to the division administrator of the community development division. Appeals shall be in writing and submitted to IDED within 15 days of receipt of the finding of noncompliance. The appeal shall include reasons why the decision should be reconsidered. The director shall make the final decision on all appeals.

261—23.16(15) Requirements for the downtown revitalization fund. Downtown revitalization funds are reserved for eligible CDBG activities that assist in the revitalization of downtown areas.

23.16(1) *Maximum grant award.* The maximum grant award for individual applications is $500,000.

23.16(2) *Application procedure.* Application forms and instructions shall be available upon request from IDED, Community Development Division, 200 East Grand Avenue, Des Moines, Iowa 50309, or on the division Web site at www.iowalifechanging.com/community.

23.16(3) *Review criteria.* IDED shall review applications and make funding decisions based on the following criteria:

a. Impact of the project on the community.

b. Readiness to proceed with the proposed activity and likelihood that the activity can be completed in a timely fashion.

c. Level of community support for a downtown revitalization effort.

d. Degree to which downtown revitalization fund assistance would be leveraged by other funding sources and documentation of applicant efforts to secure the maximum amount of local financial support for the activity.

e. Degree to which the activity meets or exceeds the minimum building and site design criteria established by IDED to be eligible for funding.

f. Level of planning completed for comprehensive downtown revitalization efforts.

These rules are intended to implement Iowa Code section 15.108(1)*"a."*

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[1] See IAB Economic Development Department.

CHAPTER 24
EMERGENCY SHELTER GRANTS PROGRAM

261—24.1(PL100-628) Purpose. The program is designed to help improve the quality of services to the homeless, to make available needed services, to help meet the costs of providing essential social services so that homeless individuals have access not only to safe and sanitary shelter, but also to the supportive services and other types of assistance they need to improve their situations.

261—24.2(PL100-628) Definitions.

"Applicant" means a provider of homeless services applying for funds through the ESG program.

"Domestic violence shelter" means a shelter primarily serving clients who are homeless due to domestic violence.

"ESG program" or *"ESGP"* means the emergency shelter grants program.

"Grantee" means a qualifying city government, county government, or nonprofit organization receiving funds under this chapter.

"Homeless" or *"homeless individual"* means:

1. An individual who lacks a fixed, regular, and adequate nighttime residence; and
2. An individual who has a primary nighttime residence that is:

- A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);
- An institution that provides a temporary residence for individuals intended to be institutionalized; or
- A public or private place not designated for, or ordinarily used as, a regular sleeping accommodation for human beings.

"HUD" means the U.S. Department of Housing and Urban Development.

"HUD Desk Guide" means the document provided by HUD which supplements the federal regulations outlined by 24 Code of Federal Regulations Part 576 (June 1, 1999).

"IDED" means the Iowa department of economic development.

"Major rehabilitation" means rehabilitation that involves costs in excess of 75 percent of the value of the building before rehabilitation.

"Nonprofit recipient" means any private, nonprofit organization to which a unit of general local government distributes ESGP funds to provide assistance to the homeless. For purposes of this chapter, a nonprofit recipient is a subgrantee.

"Obligated" means that the grantee has placed orders, awarded contracts, received services, or entered similar transactions that require payment from the grant amount. Grant amounts awarded by IDED by a written agreement or letter of award requiring payment from the grant amounts are obligated.

"Private, nonprofit organization" means a secular or religious organization described in Section 501(c) of the Internal Revenue Code which:

1. Is exempt from taxation under Subtitle A of the Internal Revenue Code,
2. Has an accounting system and a voluntary board, and
3. Practices nondiscrimination in the provision of services to clients.

"Project" means an activity or activities undertaken by the applicant to be carried out at a specific facility or location. No more than one project shall be funded at any one facility or location.

"Rehabilitation" means repair directed toward an accumulation of deferred maintenance; replacement of principal fixtures and components of existing buildings; installation of security devices; and improvement through alterations or additions to, or enhancements of, existing buildings, including improvements to increase the efficient use of energy in buildings. Costs of rehabilitation may include labor, materials, tools, and other costs of improving buildings.

"Renovation" means rehabilitation that involves costs of 75 percent or less of the value of the building before rehabilitation.

"ServicePoint" means the data collection system used by IDED to collect information about homeless and near homeless Iowans.

"Value of the building" means the monetary value assigned to a building by an independent real estate appraiser, or as otherwise reasonably established by the grantee.

261—24.3(PL100-628) Eligible applicants. City governments, county governments, and private, nonprofit organizations are eligible applicants under the emergency shelter grants program. City or county governments may apply on behalf of a service provider within their jurisdictions when the nonprofit organization serves homeless and near homeless clients by providing overnight shelter, meals, clothing, transportation, counseling, child care, legal services, medical services, transitional housing services, and other services eligible under the emergency shelter grants program as determined by the U.S. Department of Housing and Urban Development.

261—24.4(PL100-628) Eligible activities. Eligible activities are based on guidelines established by the Stewart B. McKinney Homeless Assistance Amendment Act of 1987 and further defined in 24 Code of Federal Regulations Part 576 (June 1, 1999) and the HUD Desk Guide section 3. Activities assisted by this program may include only the following:

1. Rehabilitation, renovation, or conversion of buildings for use as providers of services for the homeless. Rehabilitation activities shall be allowed a maximum cost of $10,000 per project.
2. Provision of essential services if the service is a new service or a quantifiable increase in the level of service. No more than 30 percent of the IDED annual grant amount may be used for this purpose.
3. Payment of emergency shelter and transitional housing operating costs including shelter maintenance, operations, rent, repairs, security, fuel, equipment, insurance, utilities, food and furnishings. Staff salaries, including fringe benefits, paid under the operating cost category are limited to 10 percent of the grant amount. Maintenance and security costs are not subject to the 10 percent standard.
4. Payment for eligible activities that assist in prevention of homelessness. Grants may be made for homeless prevention as long as the total amount of such grants does not exceed 30 percent of the total emergency shelter grants program allocation. Examples of eligible activities include, but are not limited to, short-term subsidies to help defray rent and utility arrearages for families faced with eviction or termination of utility services; security deposits or first month's rent to enable a family to acquire its own apartment; programs to provide mediation services for landlord-tenant disputes; or programs to provide legal representation to indigent tenants in eviction proceedings. Other possible types of homeless prevention efforts include making needed payments to prevent a home from falling into foreclosure.
5. Administrative costs. A grantee may use a portion of a grant received for administrative purposes as determined by IDED. The maximum allowed for these administrative costs shall be 5 percent of the state ESGP allocation. IDED reserves the authority for distribution of administrative funds.

261—24.5(PL100-628) Ineligible activities. The general rule is that any activity that is not authorized under the provision of P.L. 100-628 is ineligible to be carried out with emergency shelter grants program funds. The following are items specially listed as ineligible in 24 Code of Federal Regulations Part 576 (June 1, 1999).

1. Acquisition or new construction of an emergency shelter for the homeless;
2. Rehabilitation administration, such as preparation of work specification, loan processing, or inspections;
3. Renovation, rehabilitation, or conversion of buildings owned by primarily religious organizations or entities unless the activity complies with all the requirements as outlined in 24 CFR 576.23(a) and (b).

261—24.6(PL100-628) Application procedures. The Iowa department of economic development will request applications from eligible applicants as often as the state expects funding from the U.S.

Department of Housing and Urban Development (HUD). Applicants will be given at least 30 days in which to reply to the state's request. The Iowa department of economic development will make funding decisions in conjunction with the time frame established by HUD. The application must be submitted on forms prescribed by IDED and must, at a minimum, include the amount of funds requested, the need for the funds, documentation of other available funding sources, source of required local match, and estimated number of persons to be served by the applicant (daily average). No individual project may receive more than $50,000 annually. Applicants may receive a maximum of $125,000 in ESGP funds annually. A minimum grant level of $10,000 is required per applicant. No more than one project per applicant shall be funded at any one facility or location.

261—24.7(PL100-628) Application review process. The following procedures will be used in the review of applications received under the emergency shelter grants program.

24.7(1) Applications will be reviewed by a panel of the staff of the Iowa department of economic development and coordinated with representatives of other homeless assistance programs. Applications will be reviewed to determine eligibility based on the following criteria:

a. The identified community need for the funds, including the number of clients proposed to be served, the current unmet need in the community, geographic area of service, and common factors leading to the need for the service. Maximum 25 points.

b. The comprehensiveness and flexibility of the proposed program, including how the applicant proposes to meet the total and special needs of its clients and how homeless assistance is integrated with other programs. Maximum 25 points.

c. The accessibility of the applicant's proposed services to its clients, including how well the applicant promotes its services within the community, any barriers to service, and any networking with other service providers in the area. Maximum 15 points.

d. How well the applicant deals with cultural diversity within its community. Maximum 10 points.

e. Any partnerships or collaborations between the applicant and other programs within the organization or with other organizations performing similar or complementary services. Maximum 15 points.

f. A description of specific outcome measures for short- or long-term objectives for clients. An applicant's past performance, if applicable, shall be assessed in terms of its ability to meet performance targets. Maximum 25 points.

g. How well the applicant maximizes or leverages resources. Maximum 20 points.

h. Threshold criteria. Applicants shall demonstrate capacity for grant administration as evidenced by previous satisfactory grant administration or by providing evidence of administrative ability to administer such a grant.

24.7(2) If an application contains an activity determined to be ineligible under the ESG program, the ineligible activity will be deleted from the application or referred to another funding source, if applicable.

24.7(3) IDED staff reserves the right to negotiate directly with the applicant to determine the priority of funding requested within the application.

24.7(4) IDED staff may also review applications with the department of human rights, department of human services, or other groups with expertise in the area of serving homeless persons before making final funding recommendations. Consultation with other agencies is intended to avoid duplication and promote maximum utilization of funding sources. Based on the review process, IDED may revise the overall funding request by activity or funding level and recommend a final funding figure to the director of IDED for approval. Applicants receiving funding will not receive less than a $10,000 award.

24.7(5) A city or county government or nonprofit organization may be designated, at the discretion of IDED, to administer a contract for multiple applicants within a prescribed geographic area.

24.7(6) IDED reserves the right to negotiate all aspects of a funding request prior to final approval.

24.7(7) Applicants that receive awards will receive funding for a one-year period.

261—24.8(PL100-628) Matching requirement. Each recipient of emergency shelter grants program funds must match the grant amount with an equal amount. This may come from the grantee, or through

nonprofit recipients whose contracts are being administered by a local city or county government. In calculating the amount of matching funds, the following may be included: the value of any donated material or building used in the project, the value of any lease on a building used in the project, any salary paid to staff of the grantee or to any state recipient in carrying out the emergency shelter program, and the time and services contributed by volunteers at the rate of $5 per hour. For purposes of this rule, IDED will determine the value of any donated material or building, or any lease, using any method reasonably calculated to establish fair market value. The state may grant an exemption of matching funds up to a maximum of $100,000 of the state allocation received from HUD for the recipients least capable of providing such matching amounts. The recipient must document its need to participate in this exemption from matching requirements, and must receive prior approval from IDED before the exemption will be effective.

261—24.9(PL100-628) Grant awards. Grants will be awarded to individual applicants. IDED may award a grant to a city or county government or a nonprofit organization on behalf of multiple applicants, at the discretion of IDED and with the approval of those applicants affected and the local governmental unit. If a city, county or nonprofit organization is designated as the grantee of an award, that city, county or nonprofit organization will be responsible for coordination of requests for funds by eligible private, nonprofit recipients within its jurisdiction by consolidating them into one contract between the local governmental unit or nonprofit organization and IDED. IDED reserves the right to negotiate the amount of the grant award, the scale of the project, and alternative methods for completing the project.

261—24.10(PL100-628) Restrictions placed on grantees.

24.10(1) *Use as provider of homeless services.* Any building for which emergency shelter grants program funds are used must be maintained as a provider of homeless services for not less than a three-year period, or for not less than a ten-year period if the grant amounts are used for major rehabilitation or conversion of the building. All other operating and maintenance costs have a one-year requirement. In calculating the applicable time period, the three- and ten-year periods are determined as follows:

a. In the case of a building that was not operated as a provider of services for the homeless before receipt of grant funds, on the date of initial occupancy as a provider of services to the homeless.

b. In the case of a building that was operated as a provider of services to the homeless before the receipt of grant funds, on the date that grant funds are first obligated to the homeless service provider.

24.10(2) *Building standards.* Any building for which emergency shelter grants program funds are used for renovation, conversion, rehabilitation, or major rehabilitation must meet the local government standard of being safe and in sanitary condition.

24.10(3) *Assistance to the homeless.* Homeless individuals must be given assistance in obtaining:

a. Appropriate supportive services including permanent housing, medical and mental health treatment, counseling, supervision, and other services essential for achieving independent living; and

b. Other federal, state, local, and private assistance available to them.

24.10(4) *Participation by homeless individuals and families.*

a. Recipients of ESGP funds must certify that they involve, through employment, volunteer services, or otherwise, homeless individuals and families, to the maximum extent practicable, in construction, renovation, maintenance, and operation of assisted facilities.

b. Local government recipients or qualified subrecipients must have the participation of at least one homeless person or formerly homeless person on their board of directors or equivalent policy-making entity. The Secretary of HUD may grant a waiver to the recipient if the recipient agrees to otherwise consult with homeless or formerly homeless individuals when making policy decisions.

24.10(5) *Termination of assistance.* Recipients or qualified subrecipients must establish and implement a formal process to terminate assistance to individuals or families who violate program requirements. This process must include a hearing that provides individuals a full opportunity to address issues of noncompliance.

24.10(6) *Data reporting system.* Recipients shall participate in the HUD-approved Homeless Management Information System (HMIS) developed by IDED as required in the executed contract.

261—24.11(PL100-628) Compliance with applicable federal and state laws and regulations. All grantees shall comply with the Iowa Code governing activities performed under this program and with all applicable provisions of the Stewart B. McKinney Homeless Assistance Amendment Act of 1987 and its implementing regulations. Use of ESGP funds must comply with the following additional requirements.

24.11(1) *Nondiscrimination and equal opportunity.* All grantees must comply with the following:

a. The requirements of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601-19 and implementing regulations; Executive Order 11063 and implementing regulations at 24 CFR Part 107 (June 1, 1999); and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2002d) and its implementing regulations at 24 CFR Part 1 (June 1, 1999).

b. Affirmative action requirements as implemented with Executive Orders 11625, 12432, and 12138 which require that every effort be made to solicit the participation of minority and women business enterprises (MBE/WBE) in governmental projects.

c. The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07).

d. The prohibitions against discrimination against disabled individuals under Section 504 of the Rehabilitation Act of 1973/Americans with Disabilities Act.

24.11(2) *Auditing.* Auditing requirements are as outlined in the Single Audit Act of 1996 and the implementing regulations found in OMB Circular A-133.

261—24.12(PL100-628) Administration.

24.12(1) *Contracts.* Upon selection of an application for funding, IDED will issue a contract. The contract shall be between IDED and the designated grantee as determined by IDED. If a local city or county government or a nonprofit organization is designated as the grantee, the private, nonprofit providers covered through the contract shall remain responsible for adherence to the requirements of the ESG program, including these rules. These rules and applicable federal and state laws and regulations become part of the contract. Certain activities may require that permits or clearances be obtained from other state or federal agencies prior to proceeding with the project. Grant awards may be conditioned upon the timely completion of these requirements.

24.12(2) *Record keeping and retention.* Financial records, supporting documents, statistical rec-~~~ords, and all other records pertinent to the grant program shall be retained by the grantee. Private, nonprofit recipients covered through an ESGP contract from a local city or county government or nonprofit organization are responsible for ensuring that pertinent records of their ESGP funds be made available to the administering city or county or nonprofit organization and to IDED upon request. Proper record retention must be in accordance with the following:

a. Records for any assisted activity shall be retained for three years after final closeout and, if applicable, until audit procedures are completed and accepted by IDED;

b. Representatives of the Secretary of the U.S. Department of Housing and Urban Development, the Inspector General, the General Accounting Office, the state auditor's office, and IDED shall have access to all books, accounts, documents, records, and other property belonging to or in use by a grantee pertaining to the receipt of assistance under these rules.

24.12(3) *Reporting requirements.* Grantees shall submit reports to IDED as prescribed in the contract. These reports are:

a. *ServicePoint data reports.* All recipients of ESGP funds are required to submit monthly reports on clients served using the ServicePoint reporting process as prescribed by IDED; provided, however, that a recipient that qualifies as a domestic violence shelter shall not be required to report personally identifiable information about its homeless domestic violence clients. "Personally identifiable information" shall include any information that the reporting domestic violence shelter reasonably determines could be used to identify a particular client.

b. *ESGP Form-1, Request for Funds.* Grantees must submit requests for funds as needed during the contract year as prescribed by IDED. IDED may perform any review or field inspections it deems necessary to ensure program compliance, including review of grantee records and reports. When problems of compliance are noted, IDED may require remedial actions to be taken. Failure to respond to notifications of need for remedial action may result in the implementation of 24.12(5).

24.12(4) *Amendments to contracts.* Contracts may be amended on an individual basis in emergency situations. Any request to amend a contract must be submitted in writing by the chief elected official to IDED. IDED will determine if the request to amend is justified based on the material presented in the letter of request. No amendment is valid until approved in writing by IDED.

24.12(5) *Remedies for noncompliance.* At any time before project closeout, IDED may, for cause, find that a grantee is not in compliance with the requirements under this program. At IDED's discretion, remedies for noncompliance may include the following:

a. Issue a warning letter that further failure to comply with program requirements within a stated period of time will result in a more serious action.

b. Condition a future grant.

c. Direct the grantee to stop incurring costs with grant funds.

d. Require that some or all of the grant amounts be remitted to the state.

e. Reduce the levels of funds the recipient would otherwise be entitled to receive.

f. Elect not to provide future grant funds to the recipient until appropriate actions are taken to ensure compliance. Reasons for a finding of noncompliance include, but are not limited to: the grantee's use of program funds for activities not described in its application, the grantee's failure to complete approved activities in a timely manner, the grantee's failure to comply with any applicable state or federal rules or regulations, or the lack of continuing capacity by the grantee to carry out the approved program in a timely manner.

These rules are intended to implement Iowa Code section 15.108(1)*"a."*

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CHAPTER 25
HOUSING FUND

261—25.1(15) Purpose. The primary purpose of the housing fund, made up of federal CDBG funds, is to retain the supply of decent and affordable housing for low- and moderate-income Iowans.
[**ARC 9326B**, IAB 1/12/11, effective 2/16/11]

261—25.2(15) Definitions. When used in this chapter, unless the context otherwise requires:

"Activity" means one or more specific owner-occupied housing rehabilitation activities, projects or programs assisted through the housing fund.

"Administrative plan" means a document that a housing fund recipient establishes that describes the operation of a funded activity in compliance with all state and federal requirements.

"CDBG" means the community development block grant non-entitlement program, the grant program authorized by Title I of the Housing and Community Development Act of 1974, for counties and cities, except those designated by HUD as entitlement areas.

"Consolidated plan" means the state's housing and community development planning document and the annual action plan update approved by HUD.

"Housing fund" means the program implemented by this chapter and funded through the state's CDBG allocation from HUD.

"HUD" means the U.S. Department of Housing and Urban Development.

"IDED" means the Iowa department of economic development.

"Iowa green communities criteria" means a set of rating factors, some optional and some mandatory, prepared by IDED and intended to promote public health, energy efficiency, water conservation, smart locations, operational savings and sustainable building practices.

"Lead hazard reduction or abatement carrying costs" means the additional costs incurred by lead professionals to ensure that target housing is lead-safe at the completion of rehabilitation. "Lead hazard reduction or abatement carrying costs" includes, but is not limited to, required notifications and reports, lead hazard or abatement evaluations, revisions to project specifications to achieve lead safety, lead hazard reduction or abatement oversight, and clearance testing and final assessment.

"Local financial support" means financial investment by the recipient through the use of the recipient's own discretionary funds that are a permanent financial contribution or commitment applied to and related to the objectives of the housing activity or project assisted through the housing fund and that are used during the same time frame as the requested housing activity or project.

"Local support" means involvement, endorsement and investment by citizens, organizations and the governing body of the local government in which the housing project is located that promote the objectives of the housing activity or projects assisted through the housing fund.

"Program income" means funds generated by a recipient or subrecipient from the use of CDBG funds.

"Recaptured funds" means housing fund moneys which are recouped by the recipient when the housing unit does not continue to be the principal residence of the assisted owner for the full affordability period required by the program.

"Recipient" means the entity under contract with IDED to receive housing funds and undertake the funded housing activity.

"Repayment" means housing fund moneys which the recipient must repay to IDED because the funds were invested in a project or activity that is terminated before completion or were invested in a project or activity which failed to comply with federal requirements.

"Single-family unit" means one dwelling unit designated or constructed to serve only one household or family as the primary residence. Single-family units include a detached single unit, condominium unit, cooperative unit, or combined manufactured housing unit and lot.

"Single parent" means an individual who (1) is unmarried or is legally separated from a spouse and (2) is pregnant or has one or more minor children for whom the individual has custody or joint custody.

"Technical services" means all services that are necessary to carry out individual, scattered site activities including but not limited to: (1) conducting initial inspections, (2) work write-up or project specification development, (3) cost estimate preparation, (4) construction supervision associated with activities that do not require an architect or engineer, (5) lead hazard reduction or lead abatement need determination and oversight, (6) lead hazard reduction or abatement carrying costs, (7) temporary relocation coordination, (8) financing costs such as security agreement preparation and recording or filing fees, (9) processing of individual applications for assistance, (10) income eligibility determination and verification, and (11) project-specific environmental clearance processes.

"Technical services provision" means the cost to provide other individual housing project-related services such as: (1) financing costs (security agreement preparation, recording and filing fees), (2) processing individual applications for assistance, (3) income eligibility determination and verification, and (4) project-specific environmental clearance.

[**ARC 9326B**, IAB 1/12/11, effective 2/16/11]

261—25.3(15) Eligible applicants. Eligible applicants shall comply with all requirements in 261—23.5(15). Eligible applicants for housing fund assistance include all non-entitlement incorporated cities and all counties within the state of Iowa.

1. Any eligible applicant may apply directly.
2. Any eligible applicant may apply individually or jointly with another eligible applicant or other eligible applicants.

[**ARC 9326B**, IAB 1/12/11, effective 2/16/11]

261—25.4(15) Eligibility and forms of assistance.

25.4(1) The only eligible activity for the housing fund is owner-occupied housing rehabilitation for low- to moderate-income households. Assisted housing shall be single-family housing designed for occupancy by homeowners as their principal residence. For owner-occupied housing rehabilitation, assisted households shall meet income limits established by federal program requirements. All single-family housing receiving rehabilitation assistance shall be rehabilitated in accordance with any locally adopted building or housing codes, standards, and ordinances. If locally adopted and enforced building or housing codes do not exist, the Iowa Minimum Housing Rehabilitation Standards shall apply.

25.4(2) Eligible forms of IDED assistance to its recipients include grants or other forms of assistance as may be approved by IDED.

25.4(3) For all single-family housing renovation projects assisting homeowners, the only form of housing fund assistance to the end beneficiary is a forgivable loan.

[**ARC 9326B**, IAB 1/12/11, effective 2/16/11]

261—25.5(15) Application review. Housing fund applications shall be reviewed through an annual competition. IDED reserves the right to withhold funding from the annual housing fund competitive cycle to compensate for insufficient numbers or quality of applications received and to reallocate de-obligated or recaptured funds. In the event that funds are withheld from the annual competitive cycle, IDED will entertain additional applications, requests for proposals, or other forms of requests as deemed appropriate by IDED.

[**ARC 9326B**, IAB 1/12/11, effective 2/16/11]

261—25.6(15) Minimum application requirements. To be considered for housing fund assistance, an application shall meet the following threshold criteria:

25.6(1) The application shall propose an owner-occupied housing rehabilitation program consistent with the housing fund purpose and eligibility requirements, sustainability and smart growth principles, and the state consolidated plan.

25.6(2) The application shall document the applicant's capacity to administer the proposed activity. Such documentation may include evidence of successful administration of prior housing activities. IDED reserves the right to deny funding to an applicant that has failed to comply with federal and state

requirements in the administration of a previous project funded by IDED. Documentation of the ability of the applicant to provide technical services and of the availability of certified lead professionals and contractors trained in safe work practices may also be required as applicable to the housing fund activity.

25.6(3) The application shall provide evidence of the need for the proposed activity, the potential impact of the proposed activity, consistency with sustainability and smart growth principles, and the feasibility of the proposed activity.

25.6(4) The application shall demonstrate local support for the proposed activity.

25.6(5) The application shall include a certification that the applicant will comply with all applicable state and federal laws and regulations.

[**ARC 8418B**, IAB 12/30/09, effective 2/3/10; **ARC 9326B**, IAB 1/12/11, effective 2/16/11]

261—25.7(15) Application review criteria. IDED shall evaluate applications and make funding decisions based on general activity criteria, need, impact, sustainability and feasibility. A workshop will be held at least 60 days prior to the application deadline to provide information, materials, and technical assistance to potential applicants.

25.7(1) As applicable, the review criteria for owner-occupied housing rehabilitation applications shall include the following:

a. *General criteria.*

(1) Activity objectives.

(2) Target area of benefit and reason for selection.

(3) Condition of infrastructure in the activity area served.

(4) Form of assistance to homeowners.

(5) Selection criteria for participants.

(6) Method to determine that the property is the homeowner's principal residence.

(7) Assurance of compliance with the most current version of Iowa's Minimum Housing Rehabilitation Standards.

(8) Assurance of compliance with HUD lead-safe housing regulations, as applicable.

(9) Plans for properties infeasible to rehabilitate.

(10) Activity time line.

b. *Need, impact and feasibility criteria.*

(1) Evidence of need for the activity.

(2) Percentage of need to be met through the activity.

(3) Number and percentage of low- and moderate-income persons in the community.

(4) Housing costs, housing supply, vacancy rate of owner-occupied units in the activity area served.

(5) Other recent or current housing improvement activities in the community.

(6) Ongoing comprehensive community development efforts in the activity area served.

(7) New businesses or industries in the past five years in the community, including startup dates.

(8) Local involvement and financial support.

(9) Condition of housing in the target area in the following criteria:

1. Number of housing units with minor deficiencies.

2. Number of housing units requiring replacement of one or two of the major components.

3. Number of housing units requiring both replacement of several major components and structural work.

4. Number of dilapidated housing units.

c. *Administrative criteria.*

(1) Plan for activity administration.

(2) Previous activity management experience.

(3) Budget for general administration.

(4) Budget for technical services assistance.

(5) List of prior CDBG owner-occupied rehabilitation funding and performance targets completed.

25.7(2) IDED staff may conduct site evaluations of proposed activities.

[**ARC 9326B**, IAB 1/12/11, effective 2/16/11]

261—25.8(15) Allocation of funds.

25.8(1) IDED may retain a portion of the amount provided for at rule 261—23.4(15) of the state's annual CDBG allocation from HUD for administrative costs associated with program implementation and operation.

25.8(2) IDED reserves the right to limit the amount of funds that shall be awarded.

25.8(3) The maximum per unit subsidy for all single-family activities involving rehabilitation projects is $37,500. The $37,500 per unit limit includes all applicable costs including, but not limited to, the hard costs of rehabilitation; technical services costs, including lead hazard reduction carrying costs; lead hazard reduction costs; and temporary relocation. All rehabilitation hard costs funded with housing funds are limited to $24,999. All applicable technical services costs, including any lead hazard reduction carrying costs, are limited to $4,500 per unit.

25.8(4) Recipients shall identify general administrative costs in the housing fund application. IDED reserves the right to negotiate the amount of funds provided for general administration, but in no case shall the amount for general administration exceed 10 percent of a total housing fund award.

25.8(5) IDED reserves the right to negotiate the amount and terms of a housing fund award.

[**ARC 8418B**, IAB 12/30/09, effective 2/3/10; **ARC 9326B**, IAB 1/12/11, effective 2/16/11]

261—25.9(15) Administration of awards. Applications selected to receive housing fund awards shall be notified by letter from the IDED director.

25.9(1) A contract shall be executed between the recipient and IDED. These rules, the approved housing fund application, the housing fund management guide and all applicable federal and state laws and regulations shall be part of the contract.

a. The recipient shall execute and return the contract to IDED within 45 days of transmittal of the final contract from IDED. Failure to do so may be cause for IDED to terminate the award.

b. Certain activities may require that permits or clearances be obtained from other state or local agencies before the activity may proceed. Contracts may be conditioned upon the timely completion of these requirements.

c. Awards shall be conditioned upon commitment of other sources of funds included in the application budget.

d. Release of funds shall be conditioned upon IDED's receipt of an administrative plan for the funded activity.

e. Release of funds shall be conditioned upon IDED's receipt and approval of documentation of environmental clearance.

25.9(2) Local administrative and technical services contracts.

a. Recipients awarded funds for general administration that employ the services of a third-party administrator to perform all or part of the general administrative functions for the recipient shall enter into a contractual agreement for the general administrative functions to be performed.

b. Recipients awarded funds for activities requiring technical services (e.g., inspections, work write-ups, cost estimates, construction supervision, lead hazard reduction need determination and oversight, lead hazard reduction carrying costs, and temporary relocation coordination) that employ a third-party entity to perform all or part of the technical services shall enter into a contractual agreement for the technical services to be performed.

c. Recipients that employ a third party to perform all or part of the general administration for the recipient and that also employ a third party to perform all or part of the technical services for the recipient shall conduct separate procurement transactions and shall enter into separate contractual agreements for each: one contract for general administration and one contract for technical services. Separate contracts are required even if both functions are performed by the same third-party entity.

25.9(3) Requests for funds. Recipients shall submit requests for funds in the manner and on forms prescribed by IDED. Individual requests for funds shall be made in whole dollar amounts equal to or greater than $500 per request, except for the final draw of funds.

25.9(4) Record keeping and retention.

a. CDBG-funded projects. For CDBG-funded projects, the recipient shall retain all financial records, supporting documents and all other records pertinent to the funded activity for five years after the state of Iowa has closed out the corresponding program year with HUD.

b. Representatives of IDED, HUD, the Inspector General, the General Accounting Office and the state auditor's office shall have access to all records belonging to or in use by recipients and subrecipients pertaining to a housing fund award.

25.9(5) Performance reports and reviews. Recipients shall submit performance reports to IDED in the manner and on forms prescribed by IDED. Reports shall assess the use of funds and progress of activities. IDED may perform reviews or field inspections necessary to ensure recipient performance.

25.9(6) Amendments to contracts. Any substantive change to a contract shall be considered an amendment. Changes include time extensions, budget revisions and significant alterations of the funded activities affecting the scope, location, objectives or scale of the approved activity. Amendments shall be requested in writing by the CEO of the recipient and are not considered valid until approved in writing by IDED following the procedure specified in the contract between the recipient and IDED.

25.9(7) Contract closeout. Upon the contract expiration date or work completion date, as applicable, IDED shall initiate closeout procedures. Recipients shall comply with applicable audit requirements described in the housing fund application and management guide.

25.9(8) Compliance with federal, state and local laws and regulations. Recipients shall comply with these rules, with any provisions of the Iowa Code governing activities performed under this program and with applicable federal, state and local regulations.

25.9(9) Remedies for noncompliance. At any time, IDED may, for cause, find that a recipient is not in compliance with the requirements of this program. At IDED's discretion, remedies for noncompliance may include penalties up to and including the return of program funds to IDED. Reasons for a finding of noncompliance include the recipient's use of funds for activities not described in the contract, the recipient's failure to complete funded activities in a timely manner, the recipient's failure to comply with applicable federal, state or local rules or regulations or the lack of a continuing capacity of the recipient to carry out the approved activities in a timely manner.

25.9(10) Appeals process for findings of noncompliance. Appeals will be entertained in instances where it is alleged that IDED staff participated in a decision which was unreasonable, arbitrary, or capricious or otherwise beyond the authority delegated to IDED. Appeals should be addressed to the division administrator of the division of community development. Appeals shall be in writing and submitted to IDED within 15 days of receipt of the finding of noncompliance. The appeal shall include reasons why the decision should be reconsidered. The IDED director will make the final decision on all appeals.

[**ARC 9326B**, IAB 1/12/11, effective 2/16/11]

These rules are intended to implement Iowa Code section 15.108(1)*"a."*

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CHAPTER 26
VARIANCE PROCEDURES FOR TAX INCREMENT FINANCING (TIF) HOUSING PROJECTS

261—26.1(403) Goals and objectives. These rules implement 1996 Iowa Acts, Senate File 2464, section 24, "Financing Public Improvements Related to Low Income Housing and Residential Development." The Iowa department of economic development is given the responsibility to rule on requests for variances in the percentage of low- and moderate-income benefit required in certain tax increment financing (TIF) district for residential development, as prescribed in the law. These rules establish procedures and criteria for variances so that the highest possible level of benefit to low- and moderate-income families will be achieved while ensuring the financial feasibility of the project.

261—26.2(403) Definitions.

"Department" means the Iowa department of economic development.

"Eligible applicant" means any county or incorporated city within the state of Iowa.

"Housing project" means a project in an urban renewal area established solely upon findings under Iowa Code section 403.2(3) that is primarily intended to support housing activities. These may include, but are not limited to, the following: public streets and utilities, site preparation, housing rehabilitation, real property acquisition, new housing construction, and conversion of existing structures into housing units.

"Low- and moderate-income families (LMI)" means those families earning no more than 80 percent of the median family income of the county as determined by the latest United States Department of Housing and Urban Development, Section 8 income guidelines. This includes single-person households.

"Tax increment financing district" means an area in an urban renewal area that the municipality has established by ordinance in an urban renewal area established solely upon findings under Iowa Code section 403.2(3) and has designated by ordinance that taxes levied on taxable property in that area each year by or for the benefit of the state, city, county, school district or other taxing district shall be divided as provided for in Iowa Code section 403.19.

"TIF-generated financial support" means the portion of the cost of a housing project which is financed from TIF revenues.

261—26.3(403) Requirements for benefit to low- and moderate-income families. A municipality is required to ensure that a TIF-supported housing project will provide for housing assistance for low- and moderate-income families. Absent a variance, the amount of assistance to be provided is as follows:

26.3(1) In municipalities with a population over 15,000, the amount to be provided for low- and moderate-income family housing by TIF-supported housing projects shall be either equal to or greater than the percentage of low- and moderate-income residents in the county in which the urban renewal area is located times the TIF-generated financial support for the housing project within the urban renewal area. However, the amount of benefit shall not be less than an amount equal to 10 percent of the TIF-generated financial support.

26.3(2) In municipalities with a population of 15,000 or less, the amount to be provided for low-and moderate-income family housing shall be the same as for municipalities in subrule 26.3(1) except that municipalities of 15,000 or less shall not be subject to the minimum low- and moderate-income benefit level of 10 percent of the original project cost.

26.3(3) The percentage of low- and moderate-income persons in a county is provided by the U.S. Department of Housing and Urban Development using the most currently available U.S. Census information.

261—26.4(403) Ability to request a variance. A municipality may request a variance in the low-and moderate-income benefit required (excluding the 10 percent minimum established in subrule 26.3(1)) from the department of economic development when the required low- and moderate-income benefit will make the TIF-supported housing project financially infeasible. The municipality must prepare a

plan for the provision of assistance to low- and moderate-income families that provides the proposed alternate level of low- and moderate-income benefit. The plan shall be adopted by the municipality and approved by the department.

261—26.5(403) Variance request procedure.

26.5(1) A municipality may request a variance at any time.

26.5(2) Requests for a variance shall be submitted on forms prescribed by the department. Requests for the necessary forms may be submitted in writing to: Bureau of Community Financing, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309. Information and forms may be received by calling the department at (515)242-4825.

26.5(3) Department staff will review requests for variance on a case-by-case basis.

26.5(4) Each request will be reviewed according to the criteria listed in rule 261—26.6(403).

26.5(5) The department may modify the request in order to maximize the level of benefit to low-and moderate-income families, while preserving the financial feasibility of the TIF-supported housing project.

26.5(6) The department will issue a decision in a letter to the applicant. If the request is approved, the letter will provide the level of the variance and the conditions for compliance with the variance. If the request is denied, the letter will state reasons for the denial.

26.5(7) All requests for variances and related DED file material are available for public inspection. Names of applicants will also be provided to the public upon request.

261—26.6(403) Criteria for review. A municipality must submit the following information and other information as may be required on forms developed by the department:

1. Narrative. A description of the project and explanation of the need for the variance on low-and moderate-income benefit percentage.
2. Total tax levy applied to TIF area, minus debt service levies.
3. Current tax rollback percentage.
4. Total project development cost.
5. Number of lots to be sold.
6. Projected average home value within the housing project area.
7. Value of unimproved lots.
8. Proposed debt structure, including interest rate, term of debt, transaction costs, repayment terms.
9. Projected revenue from a project by year, including amount from tax increment, sale of lots, development fees and other sources.
10. Projected sale of lots by year.
11. Projected number of homes completed by year.
12. Use of five-year extension, if available.
13. Comments solicited or received from parties affected by the variance.
14. Proposed amount of funds and activities to benefit housing needs of LMI persons.

These rules are intended to implement Iowa Code section 403.22.

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CHAPTER 27
NEIGHBORHOOD STABILIZATION PROGRAM

261—27.1(15) Purpose. The purpose of the neighborhood stabilization program is to prevent or reduce the decline of neighborhoods caused by abandoned and foreclosed homes, primarily by providing assistance for the redevelopment of the abandoned and foreclosed properties.
[**ARC 7709B**, IAB 4/8/09, effective 3/20/09; **ARC 7845B**, IAB 6/17/09, effective 7/22/09]

261—27.2(15) Definitions. When used in this chapter, unless the context otherwise requires:

"Act" or *"HERA"* means Title III of Division B of the Housing and Economic Recovery Act of 2008, as amended by the American Recovery and Reinvestment Act of 2009.

"Activity" means a discrete category of work as determined to be eligible under program guidelines.

"Blighted structure" means a structure exhibiting objectively determinable signs of deterioration sufficient to constitute a threat to public health, safety or welfare.

"CDBG" means the community development block grant program, authorized by Title I of the Housing and Community Development Act of 1974, as amended as of February 28, 2009.

"Contract" means the document executed between IDED and a recipient and all other instruments or documents executed by a recipient or otherwise required in connection with the contract, including the NSP plan or application together with any related submittal documents.

"Foreclosed property" means a home or residential property for which any mortgage or tax foreclosure with respect to such property is complete, and the title of such property has transferred to the appropriate person as determined under the mortgage or tax foreclosure proceeding.

"Home" means any type of permanent residential dwelling unit including, but not limited to, detached single-family structures, townhouses, condominium units, multifamily rental apartments (covering the entire property), and manufactured homes which are treated under state law as real estate and not personal property.

"HUD" means the federal Department of Housing and Urban Development.

"IDED" means the Iowa department of economic development established in Iowa Code chapter 15.

"Land bank" means any governmental or nongovernmental nonprofit entity established, at least in part, to assemble, temporarily manage, and dispose of homes and residential properties that have been foreclosed upon.

"Low-income household" means a household earning no more than 50 percent of the area median income as defined by HUD.

"Low-income person" means a member of a low-income household as defined above.

"Low-, moderate-, and middle-income household" or *"LMMH"* means a household earning no more than 120 percent of the area median income as defined by HUD.

"Low-, moderate-, and middle-income person" means a member of a low-, moderate-, and middle-income household as defined above.

"Residential property" means, collectively, homes and vacant land currently designated for residential use, such as through a zoning ordinance.
[**ARC 7709B**, IAB 4/8/09, effective 3/20/09; **ARC 7845B**, IAB 6/17/09, effective 7/22/09; **ARC 9504B**, IAB 5/18/11, effective 4/22/11; **ARC 9668B**, IAB 8/10/11, effective 9/14/11]

261—27.3(15) Program eligibility.

27.3(1) *Eligible applicants.* Eligible applicants are those communities within the state with the greatest need, as determined by IDED using the methodology specified by HUD, which would include the following factors: areas with the greatest number and percentage of home foreclosures, areas with the highest number and percentage of homes financed by a subprime mortgage-related loan, and areas with the highest number and percentage of homes in default or delinquency.

27.3(2) *Eligible activities.* Eligible activities, as limited by federal law and regulation, are the following:

a. Financing mechanisms for the purchase and redevelopment of foreclosed homes and residential properties, including such mechanisms as soft-seconds, loan loss reserves, and shared-equity loans for low- and moderate-income homebuyers;

b. Purchase and rehabilitation of homes and residential properties that have been abandoned or foreclosed upon, in order to sell, rent, or redevelop such homes and properties;

c. Establishment and operation of land banks for homes and residential properties that have been foreclosed upon;

d. Demolition of blighted structures;

e. Redevelopment of demolished or vacant properties.

[**ARC 7709B**, IAB 4/8/09, effective 3/20/09; **ARC 7845B**, IAB 6/17/09, effective 7/22/09; **ARC 9504B**, IAB 5/18/11, effective 4/22/11; **ARC 9668B**, IAB 8/10/11, effective 9/14/11]

261—27.4(15) Allocation of funding. The funding available to communities will be distributed on a competitive basis, upon receipt and review of applications from each community. The maximum award to a community will be $1 million.

[**ARC 7709B**, IAB 4/8/09, effective 3/20/09; **ARC 7845B**, IAB 6/17/09, effective 7/22/09; **ARC 9504B**, IAB 5/18/11, effective 4/22/11; **ARC 9668B**, IAB 8/10/11, effective 9/14/11]

261—27.5(15) Application procedures. Communities requesting funds must complete and submit an application, which shall include at least the following information:

1. General project description;
2. Budget for all activities;
3. Projected start and end dates;
4. Demonstration of how the project will meet all federal requirements, including the requirements to benefit households with incomes of less than 120 percent of area median income and that at least 25 percent of the funding will benefit households with incomes of less than 50 percent of area median income;
5. Targeted geographical area of the community for the proposed activities;
6. Additional detail on each of the separate proposed activities.

[**ARC 7709B**, IAB 4/8/09, effective 3/20/09; **ARC 7845B**, IAB 6/17/09, effective 7/22/09; **ARC 9504B**, IAB 5/18/11, effective 4/22/11; **ARC 9668B**, IAB 8/10/11, effective 9/14/11]

261—27.6(15) Plan and application review process. IDED will review eligible applicants to ensure that the proposed activities are eligible activities and that the plan as proposed is in conformance with federal law and regulations. Applications will be reviewed on a competitive basis. Each application will be reviewed, rated, and ranked by an IDED review committee on the following factors:

1. Need for assistance;
2. Impact of the proposed activities;
3. Degree of targeting of the activities within the community;
4. Timeliness of the proposed project;
5. Degree to which green development concepts are incorporated into the proposal.

[**ARC 7709B**, IAB 4/8/09, effective 3/20/09; **ARC 7845B**, IAB 6/17/09, effective 7/22/09; **ARC 9504B**, IAB 5/18/11, effective 4/22/11; **ARC 9668B**, IAB 8/10/11, effective 9/14/11]

261—27.7(15) Award process. Upon award decisions, each community that submitted an application will be notified in writing of the department's decision. Successful applicants will be required to execute a contract with IDED, which will include the proposed activities and budget, the terms of fund disbursement, the reporting requirements, and the federal and state compliance requirements.

[**ARC 7709B**, IAB 4/8/09, effective 3/20/09; **ARC 7845B**, IAB 6/17/09, effective 7/22/09; **ARC 9504B**, IAB 5/18/11, effective 4/22/11; **ARC 9668B**, IAB 8/10/11, effective 9/14/11]

261—27.8(15) Project management.

27.8(1) *Requests for funds.* Recipients shall submit requests for funds in the manner and on forms prescribed by IDED.

27.8(2) *Record keeping and retention.* Recipients shall retain all financial records, supporting documents and all other records pertinent to the NSP activities for five years after contract closeout. Representatives of IDED shall have access to all records belonging to or in use by recipients pertaining to NSP funds.

27.8(3) *Performance reports and reviews.* Recipients shall submit performance reports to IDED in the manner and on forms prescribed by IDED. Reports shall assess the use of funds and progress of activities. IDED may perform any reviews or field inspections necessary to ensure recipient performance.

27.8(4) *Amendments to contracts.* Any substantive change to a contract shall be considered an amendment. Such changes would include time extensions, budget revisions and significant alteration of the funded activities that change the scope, location, objectives or scale of the approved activity. Amendments must be requested in writing by a recipient and are not considered valid until approved in writing by IDED following the procedure specified in the contract between a recipient and IDED.

27.8(5) *Contract closeout.* Upon contract expiration, IDED will initiate contract closeout procedures.

27.8(6) *Compliance with federal, state and local laws and regulations.* Recipients shall comply with all applicable laws and rules, including the applicable federal CDBG, HERA and Frank-Dodd regulations, any provisions of the Iowa Code governing activities performed under this program, and with applicable local regulations.

27.8(7) *Remedies for noncompliance.* At any time before contract closeout, IDED may, for cause, find that a recipient is not in compliance with the requirements of this program. At IDED's discretion, remedies for noncompliance may include penalties up to and including the return of program funds to IDED. Reasons for a finding of noncompliance include, but are not limited to, the recipient's use of funds for activities not described in the contract, the recipient's failure to complete funded activities in a timely manner, the recipient's failure to comply with applicable state or local rules or regulations, or the lack of a continuing capacity of the recipient to carry out the approved activity in a timely manner.

27.8(8) *Appeals process for findings of noncompliance.* Appeals will be entertained in instances where it is alleged that IDED staff participated in a decision which was unreasonable, arbitrary, capricious or otherwise beyond the authority delegated to IDED. Appeals should be addressed to the division administrator of the division of community development. Appeals shall be in writing and submitted to IDED within 15 days of receipt of the finding of noncompliance. The appeal shall include reasons why the decision should be reconsidered. The director will make the final decision on all appeals.

[**ARC 7709B**, IAB 4/8/09, effective 3/20/09; **ARC 7845B**, IAB 6/17/09, effective 7/22/09; **ARC 9504B**, IAB 5/18/11, effective 4/22/11; **ARC 9668B**, IAB 8/10/11, effective 9/14/11]

These rules are intended to implement Iowa Code sections 15.108(11) and 15.109 and the Housing and Economic Recovery Act of 2008.

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CHAPTER 28
LOCAL HOUSING ASSISTANCE PROGRAM

261—28.1(15) Purpose. The local housing assistance program is designed to assist communities on a cooperative basis to address a range of housing development needs to position the communities for economic development, to meet housing needs arising as a result of other economic development in the area and to meet other unmet housing needs.

261—28.2(15) Definitions. When used in this chapter, unless the context otherwise requires:

"Activity" means one or more specific housing activities, projects or programs assisted with LHAP funds.

"Community" means a city or county, or an entity established pursuant to Iowa Code chapter 28E.

"Economic development" means community action that directly leads to creation of more jobs or higher-paying jobs than were available before the action.

"Economic development organization" means an entity organized for the purpose of creating more jobs or higher-paying jobs in an area.

"HART" means the housing application review team, a body of affordable housing funding agencies which meets to review housing proposals.

"Housing trust fund" means a fund for housing development that is sustained over time by dedicated revenues or earnings on invested capital.

"IDED" means the Iowa department of economic development.

"LHAP" means local housing assistance program.

"Local housing organization" means an entity organized to represent community housing development interests.

"Local support" means endorsement by local individuals or entities that have a substantial interest in a housing activity, particularly by those whose opposition or indifference would hinder the activity's success.

"Recipient" means the entity under contract with IDED to receive LHAP funds and undertake the funded housing activity.

"Recognized neighborhood association" means a group acknowledged by a city council or county board of supervisors as having the authority to speak for the general needs and welfare of a neighborhood.

"Subrecipient" means an entity operating under an agreement or contract with a recipient to carry out a funded LHAP activity.

261—28.3(15) Eligible applicants. Eligible applicants for LHAP funds include all incorporated cities and counties within the state of Iowa, housing trust funds, local housing organizations, recognized neighborhood associations, economic development organizations and homeless service providers.

28.3(1) Any eligible applicant may apply directly or on behalf of a subrecipient.

28.3(2) Any eligible applicant may apply individually or jointly with another eligible applicant or other eligible applicants.

261—28.4(15) Eligible activities and forms of assistance.

28.4(1) Eligible activities include those which better position a community to take advantage of economic development opportunities, meet housing needs arising as a result of previous successful economic development efforts in the area or meet other unmet housing needs. Eligible activities include new construction, rehabilitation, conversion, reconstruction, acquisition, demolition for the purpose of clearing lots for housing development, site improvement, provision of shelter and housing to homeless families and individuals and other housing-related activities as may be deemed appropriate by IDED.

a. Assisted housing shall be nonluxury housing with suitable amenities.

b. Assisted housing may be single-family housing or multifamily housing, and may be designed for occupancy by homeowners or tenants.

28.4(2) Eligible forms of assistance include grants, interest-bearing loans, non-interest-bearing loans, interest subsidies, deferred payment loans, forgivable loans, loan guarantees or other forms of assistance as may be approved by IDED.

261—28.5(15) Application procedure. LHAP funds shall be awarded through an annual competition.

28.5(1) IDED shall announce the availability of funds and instructions for applying for funds through direct mail, public notices, media releases, workshops and other means determined necessary by IDED.

28.5(2) Application forms shall be available upon request from IDED, 200 East Grand Avenue, Des Moines, Iowa 50309, (515)242-4825.

28.5(3) IDED may provide technical assistance as necessary to applicants.

28.5(4) to **28.5(7)** Rescinded IAB 1/23/02, effective 12/21/01.

261—28.6(15) Minimum application requirements. To be considered for funding under LHAP, an application must meet the following preliminary review criteria:

28.6(1) Rescinded IAB 1/23/02, effective 12/21/01.

28.6(2) The application must propose a housing development activity designed to position the community to take advantage of economic development opportunities, to meet housing needs arising as a result of previous successful economic development efforts in the area or to meet other unmet housing needs.

28.6(3) There must be demonstrated local support for the proposed activity.

28.6(4) A need for LHAP funds must exist after all other financial resources have been identified for the proposed activity.

28.6(5) Sufficient local, state or federal funds either are not available or cannot be obtained within the time frame required to complete the proposed activity.

261—28.7(15) Application review criteria. IDED shall evaluate applications and make funding decisions using criteria which include the following:

1. Did the need for the proposed activity arise as a result of economic development efforts or opportunities not reflected in the housing needs assessment? If so, can the applicant demonstrate that lack of LHAP funding will cause the failure of the economic development efforts necessitating the proposed housing activity?
2. Has a comprehensive housing plan for the community for which the activity is proposed been adopted?
3. To what extent are other financial resources leveraged by the proposed LHAP assistance?
4. Does the application demonstrate the linkages between the proposed housing activity and specific economic development efforts or opportunities in the area?
5. Is there evidence of local administrative capacity?
6. Can the proposed activity be completed in a timely manner?
7. Is there coordination with other housing and economic development efforts in conjunction with the proposed activity?
8. Does the form of assistance requested allow opportunities for reuse of funds?
9. Will the proposed activity have a significant impact on the identified housing need?
10. Have problems related to the proposed activity been resolved or are solutions addressed in the application?
11. Are costs related to the proposed housing activity reasonable?
12. IDED staff may conduct site evaluations of proposed activities.

261—28.8(15) Allocation of funds.

28.8(1) IDED may retain up to 2½ percent of LHAP funds for administrative costs associated with program implementation and operation.

28.8(2) LHAP awards shall be limited to no more than $500,000.

a. Recipients may use up to 5 percent of a total LHAP award for administrative costs.

b. IDED reserves the right to negotiate the amount and terms of an award and the amount of administrative costs proposed.

28.8(3) If LHAP funds remain after awards are made under the annual competition, IDED may announce the availability of remaining funds and award remaining funds through another competition consistent with the application procedures described in this chapter.

261—28.9(15) Administration of awards. Applications selected to receive LHAP awards shall be notified by letter from the IDED director at a date determined by IDED, which shall be no later than 90 days after the application due date.

28.9(1) *A contract shall be executed between the recipient and IDED.* These rules and applicable state laws and regulations shall be part of the contract.

a. The recipient must execute and return the contract to IDED within 45 days of transmittal of the final contract from IDED. Failure to do so may be cause for IDED to terminate the award.

b. Certain activities may require that permits or clearances be obtained from other state or local agencies before the activity may proceed. Awards may be conditioned upon the timely completion of these requirements.

c. Awards may be conditioned upon commitment of other sources of funds necessary to complete the housing activity.

d. Awards may be conditioned upon IDED receipt and approval of an administrative plan for the funded activity.

28.9(2) *Requests for funds.* Recipients shall submit requests for funds in the manner and on forms prescribed by IDED. Individual requests for funds shall be made in an amount equal to or greater than $500 per request, except for the final draw of funds.

28.9(3) *Record keeping and retention.* The recipient shall retain all financial records, supporting documents and all other records pertinent to the LHAP activities for three years after contract closeout. Representatives of IDED shall have access to all records belonging to or in use by recipients pertaining to LHAP funds.

28.9(4) *Performance reports and reviews.* Recipients shall submit performance reports to IDED in the manner and on forms prescribed by IDED. Reports shall assess the use of funds and progress of activities. IDED may perform any reviews or field inspections necessary to ensure recipient performance.

28.9(5) *Amendments to contracts.* Any substantive change to a contract shall be considered an amendment. Changes include time extensions, budget revisions and significant alteration of the funded activities that change the scope, location, objectives or scale of the approved activity. Amendments must be requested in writing by the recipient and are not considered valid until approved in writing by IDED following the procedure specified in the contract between the recipient and IDED.

28.9(6) *Contract closeout.* Upon contract expiration, IDED shall initiate contract closeout procedures.

28.9(7) *Compliance with state and local laws and regulations.* Recipients shall comply with these rules, with any provisions of the Iowa Code governing activities performed under this program and with applicable local regulations.

28.9(8) *Remedies for noncompliance.* At any time before contract closeout, IDED may, for cause, find that a recipient is not in compliance with the requirements of this program. At IDED's discretion, remedies for noncompliance may include penalties up to and including the return of program funds to IDED. Reasons for a finding of noncompliance include but are not limited to the recipient's use of funds for activities not described in the contract, the recipient's failure to complete funded activities in a timely manner, the recipient's failure to comply with applicable state or local rules or regulations or the lack of a continuing capacity of the recipient to carry out the approved activity in a timely manner.

28.9(9) *Appeals process for findings of noncompliance.* Appeals will be entertained in instances where it is alleged that IDED staff participated in a decision which was unreasonable, arbitrary, capricious or otherwise beyond the authority delegated to IDED. Appeals should be addressed to the division administrator of the division of community and rural development. Appeals shall be in writing and submitted to IDED within 15 days of receipt of the finding of noncompliance. The appeal shall

include reasons why the decision should be reconsidered. The director will make the final decision on all appeals.

These rules are intended to implement Iowa Code section 15.353.

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CHAPTER 29
HOMELESS SHELTER OPERATION GRANTS PROGRAM

261—29.1(15) Purpose. The program is designed to help improve the quality of services to the homeless; to make available additional needed services; and to help meet the costs of providing essential social services so that homeless individuals have access not only to safe and sanitary shelter, but also to the supportive services and other types of assistance they need to improve their situations.

261—29.2(15) Definitions.

"Applicant" means a provider of homeless services applying for funds through the homeless shelter operation grants program.

"Domestic violence shelter" means a shelter primarily serving clients who are homeless due to domestic violence.

"Grantee" means a qualifying city government, county government, or nonprofit organization receiving funds under this chapter.

"Homeless" or *"homeless individual"* means:

1. An individual who lacks a fixed, regular, and adequate nighttime residence; and
2. An individual who has a primary nighttime residence that is:

- A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);
- An institution that provides a temporary residence for individuals intended to be institutionalized; or
- A public or private place not designated for, or ordinarily used as, a regular sleeping accommodation for human beings.

"HSOG" means the homeless shelter operation grants program.

"HUD" means the U.S. Department of Housing and Urban Development.

"IDED" means the Iowa department of economic development.

"Legislature" means the Iowa general assembly.

"Nonprofit recipient" means any private, nonprofit organization to which a unit of general local government distributes HSOG funds to provide assistance to the homeless. For purposes of this chapter, a nonprofit recipient is a subgrantee.

"Obligated" means that the grantee has placed orders, awarded contracts, received services, or entered similar transactions that require payment from the grant amount. Grant amounts awarded by IDED by a written agreement or letter of award requiring payment from the grant amounts are obligated.

"Private, nonprofit organization" means a secular or religious organization described in Section 501(c) of the Internal Revenue Code which:

1. Is exempt from taxation under Subtitle A of the Internal Revenue Code,
2. Has an accounting system and a voluntary board, and
3. Practices nondiscrimination in the provision of assistance to homeless clients.

"Project" means an activity or activities undertaken by the applicant to be carried out at a specific facility or location. No more than one project shall be funded at any one facility or location.

"Rehabilitation" means repair directed toward an accumulation of deferred maintenance; replacement of principal fixtures and components of existing buildings; installation of security devices; and improvement through alterations or additions to, or enhancements of, existing buildings, including improvements to increase the efficient use of energy in buildings. Costs of rehabilitation may include labor, materials, tools, and other costs of improving buildings.

"Renovation" means rehabilitation that involves costs of 75 percent or less of the value of the building before rehabilitation.

"ServicePoint" means the data collection system used to collect information about homeless and near homeless Iowans.

"Value of the building" means the monetary value assigned to a building by an independent real estate appraiser, or as otherwise reasonably established by the grantee.

261—29.3(15) Eligible applicants. City governments, county governments, and private, nonprofit organizations are eligible applicants under the homeless shelter operation grants program.

261—29.4(15) Eligible activities. Activities assisted by this program may include but are not limited to the following:

1. Rehabilitation, renovation, or conversion of buildings for use as providers of services for the homeless. Rehabilitation activities shall be allowed a maximum cost of $10,000 per project.
2. Provision of essential services if the service is a new service or a quantifiable increase in the level of service.
3. Payment of normal operating expenses that include staff salaries, maintenance, insurance, utilities, furnishings, and all other documented normal operating expenses.
4. Payment for eligible activities that assist in prevention of homelessness. Examples of eligible activities include, but are not limited to, short-term subsidies to help defray rent and utility arrearages for families faced with eviction or termination of utility services; security deposits or first month's rent to enable a family to acquire its own apartment; programs to provide mediation services for landlord-tenant disputes; or programs to provide legal representation to indigent tenants in eviction proceedings. Other possible types of homeless prevention efforts include making needed payments to prevent a home from falling into foreclosure.
5. Administrative costs. A grantee may use a portion of a grant received for administrative purposes as determined by IDED. The maximum allowed for these administrative costs shall be 5 percent of the state of Iowa's HSOG allocation. IDED reserves the authority to determine the distribution of administrative funds.

261—29.5(15) Ineligible activities. The general rule is that any activity that is not allowed under 261—29.4(15) is ineligible to be carried out with homeless shelter operation grants program funds. The following items are ineligible under this rule:

1. Acquisition or new construction of an emergency shelter for the homeless;
2. Rehabilitation services, such as preparation of work specifications, loan processing, or inspections;
3. Renovation, rehabilitation, or conversion of buildings owned by primarily religious organizations or entities, unless the activity complies with all the requirements as outlined in HUD CFR 576.23(a) and (b).

261—29.6(15) Application procedures.

29.6(1) The Iowa department of economic development will request applications from eligible applicants as often as the state expects funding for the HSOG program. Applicants will be given at least 30 days in which to reply to the state's request for applications. The application must be submitted on forms prescribed by IDED and the application must, at a minimum, include the amount of funds requested, the need for the funds, documentation of other available funding sources, source of other funds utilized in the project, and estimated number of persons to be served by the applicant (daily average).

29.6(2) No individual project may receive more than $50,000 in a single application round.

29.6(3) Applicants shall apply for a minimum of $10,000 per funding round.

29.6(4) Applicants may receive a maximum of $125,000 in HSOG funds per funding cycle.

29.6(5) No more than one project per applicant shall be funded at any one facility or location.

261—29.7(15) Application review process. The following procedures will be used in the review of applications received under the homeless shelter operation grants program.

29.7(1) Applications will be reviewed by a panel established by the Iowa department of economic development and coordinated with representatives of other homeless assistance programs. Applications will be reviewed to determine eligibility based on the following criteria:

a. The identified community need for the funds, including the number of clients served, the current unmet need in the community, geographic area of service, and common factors leading to the need for service. Maximum 25 points.

b. The comprehensiveness and flexibility of the program, including how the applicant proposes to meet the total and special needs of its clients and how homeless assistance is integrated with other programs. Maximum 25 points.

c. The accessibility of the applicant's proposed service to its clients, including how well the applicant promotes its services within the community, any barriers to service, and any networking with other service providers in the area. Maximum 15 points.

d. How the applicant deals with cultural diversity within its community. Maximum 10 points.

e. Any partnerships or collaborations between the applicant and other programs within the organization or with other organizations performing similar or complementary services. Maximum 15 points.

f. A description of specific outcome measures for short- or long-term objectives for clients. An applicant's past performance, if applicable, shall be assessed in terms of its ability to meet performance targets. Maximum 25 points.

g. How well the applicant maximizes or leverages resources. Maximum 20 points.

h. Threshold criteria. Applicants shall demonstrate capacity for grant administrator as evidenced by previous satisfactory grant administration or by providing evidence of administrative ability to administer such a grant.

29.7(2) If an application contains an activity determined to be ineligible under the HSOG program, the ineligible activity will be deleted from the application or referred to another funding source, if applicable.

29.7(3) IDED staff reserves the right to negotiate directly with the applicant to determine the priority of funding requested within the application.

29.7(4) IDED staff may also review applications with the department of human rights, department of human services, or other groups with an expertise in the area of serving homeless persons before making final funding recommendations. Consultation with other agencies is intended to avoid duplication and promote maximum utilization of funding sources. Based on the review process, IDED may revise the overall funding request by activity or funding level and recommend a final funding figure to the director of IDED for approval. Applicants receiving funding will not receive less than a $10,000 award.

29.7(5) A city or county government or nonprofit organization may be designated, at the discretion of IDED, to administer a contract for multiple applicants within a prescribed geographic area.

29.7(6) IDED reserves the right to negotiate all aspects of a funding request prior to final approval.

29.7(7) Applicants that receive awards will receive funding for a one-year period.

261—29.8(15) Matching requirement. There is no matching requirement with the HSOG program.

261—29.9(15) Grant awards. Grants will be awarded to individual applicants. IDED may award a grant to a local city or county government or nonprofit organization on behalf of multiple applicants, at the discretion of IDED and with the approval of those applicants affected and the local governmental unit or nonprofit organization. If a city or county or nonprofit organization is designated as the grantee of an award, that city or county or nonprofit organization will be responsible for coordination of requests for funds by eligible private nonprofit recipients within its jurisdiction by consolidating them into one contract between the local governmental unit or nonprofit organization and IDED. IDED reserves the right to negotiate the amount of the grant award, the scale of the project, and alternative methods for completing the project.

261—29.10(15) Compliance with applicable federal and state laws and regulations. All grantees shall comply with the Iowa Code governing activities performed under this program. Use of HSOG funds must comply with the following nondiscrimination and equal opportunity requirements:

1. The requirements of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601-19 and implementing regulations; Executive Order 11063 and implementing regulations at 24 CFR Part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2002d) and its implementing regulations at 24 CFR Part 1.

2. Affirmative action requirements as implemented with Executive Orders 11625, 12432, and 12138 which require that every effort be made to solicit the participation of minority and women business enterprises (MBE/WBE) in governmental projects.

3. The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07).

4. The prohibitions against discrimination against disabled individuals under Section 504 of the Rehabilitation Act of 1973/Americans with Disabilities Act.

5. Recipients shall participate in the HUD-approved Homeless Management Information System (HMIS) developed by IDED as required in the executed contract.

261—29.11(15) Administration.

29.11(1) *Contracts.* Upon selection of an application for funding, IDED will issue a contract. The contract shall be between IDED and the designated grantee as determined by IDED. If a local city or county government or nonprofit organization is designated as the grantee, the private nonprofit providers covered through the contract shall remain responsible for adherence to the requirements of the HSOG program, including these rules. These rules and state laws and regulations become part of the contract. Certain activities may require that permits or clearances be obtained from other state or federal agencies prior to proceeding with the project. Grant awards may be conditioned upon the timely completion of these requirements.

29.11(2) *Record keeping and retention.* Financial records, supporting documents, statistical records, and all other records pertinent to the grant program shall be retained by the grantee for three years. Private nonprofit recipients covered through an HSOG contract from a local city or county government or nonprofit organization are responsible for ensuring that pertinent records of their HSOG funds be made available to the administering city or county or nonprofit organization and to IDED upon request. Proper record retention must be in accordance with the following:

a. Records for any assisted activity shall be retained for three years after final closeout and, if applicable, until audit procedures are completed and accepted by IDED;

b. Representatives of the state auditor's office and IDED shall have access to all books, accounts, documents, records, and other property belonging to or in use by a grantee pertaining to the receipt of assistance under these rules.

29.11(3) *Reporting requirements.* Grantees shall submit reports to IDED as prescribed in the contract. These reports are:

a. *ServicePoint data reports.* All recipients of HSOG funds are required to submit monthly reports on clients served using the ServicePoint reporting process as prescribed by IDED; provided, however, that a recipient that qualifies as a domestic violence shelter shall not be required to report personally identifiable information about its homeless domestic violence clients. "Personally identifable information" shall include any information that the reporting domestic violence shelter reasonably determines could be used to identify a particular client.

b. *HSOG Form-1, Request for Funds.* Grantees must submit requests for funds as needed during the contract year as prescribed by IDED. IDED may perform any review or field inspections it deems necessary to ensure program compliance, including review of grantee records and reports. When problems of compliance are noted, IDED may require remedial actions to be taken. Failure to respond to notifications of need for remedial action may result in the implementation of 29.11(5).

29.11(4) *Amendments to contracts.* Contracts may be amended on an individual basis in emergency situations. Any request to amend a contract must be submitted in writing to IDED by the chief elected

official. IDED will determine if the request to amend is justified based on the material presented in the letter of request. No amendment is valid until approved in writing by IDED.

29.11(5) *Remedies for noncompliance.* At any time before project closeout, IDED may, for cause, find that a grantee is not in compliance with the requirements under this program. At IDED's discretion, remedies for noncompliance may include the following:

a. Issue a warning letter that further failure to comply with program requirements within a stated period of time will result in a more serious action.

b. Condition a future grant.

c. Direct the grantee to stop incurring costs with grant funds.

d. Require that some or all of the grant amounts be remitted to the state.

e. Reduce the levels of funds the recipient would otherwise be entitled to receive.

f. Elect not to provide future grant funds to the recipient until appropriate actions are taken to ensure compliance. Reasons for a finding of noncompliance include, but are not limited to: the grantee's use of program funds for activities not described in its application, the grantee's failure to complete approved activities in a timely manner, the grantee's failure to comply with any applicable state rules or regulations, or the lack of continuing capacity by the grantee to carry out the approved program in a timely manner.

These rules are intended to implement Iowa Code section 15.108(11).

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CHAPTER 30
JOB OPPORTUNITIES FOR PERSONS WITH DISABILITIES PROGRAM

261—30.1(76GA,SF2470) Purpose. The purpose of this program is to provide technical assistance grants to Iowa nonprofit organizations providing training and employment opportunities for individuals with disabilities. The grant funds may be used for the direct purchase of technical services to further integrated employment initiatives at the local level. This program encourages: analytical decision making, comprehensive business planning, and pooling of resources among organizations/community groups/entities. The program is a joint effort by the department of education, division of vocational rehabilitation services; the Iowa department for the blind; and the Iowa department of economic development.

261—30.2(76GA,SF2470) Definitions.

"DVRS" means the Iowa department of education, division of vocational rehabilitation services.

"IDB" means the Iowa department for the blind.

"IDED" means the Iowa department of economic development.

"Client" means an individual who is an eligible client of the department of education, division of vocational rehabilitation services, or the Iowa department for the blind.

261—30.3(76GA,SF2470) Eligible applicant. Iowa nonprofit organizations providing training and employment opportunities for individuals with disabilities may apply. A consortium of eligible applicants may also apply. If a consortium applies, a lead Iowa nonprofit organization providing training and employment opportunities for individuals with disabilities must be designated in the application. This lead entity shall be responsible for all contractual obligations.

261—30.4(76GA,SF2470) Project awards. An applicant may receive an award of up to $10,000 to conduct a project; examples of projects include, but are not limited to, the following: business feasibility studies, business planning, business organization structure analysis, implementation planning including accommodation of facilities and equipment for people with disabilities, market research/planning/analysis, and business specific technical assistance.

261—30.5(76GA,SF2470) Eligible and ineligible use of grant funds.

30.5(1) *Eligible expenditures of grant funds.* Expenses eligible for reimbursement under the program include:

a. Fees to be paid to a private consultant to purchase technical assistance. The consultant name, address, biography including references and past experience, and fee schedule must be included in the application.

b. Fees to be paid to a council of governments, not-for-profit organization, or higher educational institution, including public and private universities and colleges and merged area schools, to purchase technical assistance.

30.5(2) *Ineligible expenditures of grant funds.* Expenses ineligible for reimbursement under the program include, but are not limited to, the following:

a. Operating capital or equipment.

b. The purchase of office equipment or office rental.

c. Meeting expenses (e.g., room rental).

d. Application preparation.

e. Administrative costs.

f. Purchase of land, buildings, or improvements.

g. Any proposal to duplicate the services of another program or organization.

261—30.6(76GA,SF2470) General guidelines for applications.

30.6(1) *Letters of endorsement.*

a. If services will be purchased from a not-for-profit entity or higher educational institution, including public and private universities and colleges and merged area schools, the application shall include a letter from the director of the not-for-profit entity or the appropriate official within the educational institution stating the staff assignment, agreement with the proposed timetable, and fee structure to the project. If services from a council of governments will be purchased, the application shall include a letter from the director of the council of governments stating the staff assignment, agreement with the proposed timetable, and fee structure to the project.

b. If a consultant is to be hired, a letter from the consultant shall be included stating: name, address, biography (including references and past experience); a detailed description of the technical assistance to be provided; and a fee schedule for the proposed project.

c. Applications shall include a letter of cooperation from any other fee or nonfee source pledging technical assistance or services to the project.

d. Applications shall include a letter of endorsement from the DVRS area supervisor and the local representative for IDB.

30.6(2) *Timetable.* Projects cannot exceed 12 months, unless a longer period is specified in the originally approved application or by the consensus of the review committee.

30.6(3) *Applications.* Applications from eligible applicants will be accepted on an ongoing basis throughout the year as long as funds are available.

30.6(4) *Applicant submission.* Applications shall be submitted to the IDED Program Administrator, Division of Community and Rural Development, 200 East Grand Avenue, Des Moines, Iowa 50309. Application forms and instructions are available from the DVRS, the IDB, and the IDED.

30.6(5) *Application contents.* Required contents of the applications include:

a. A brief statement of existing needs, issues, and capabilities of the applicant to complete the project.

b. A statement of the estimated economic impact and the impact on individuals with disabilities.

c. A work plan and objectives.

d. Timetable and budget.

e. Letters of endorsement as specified in subrule 30.6(1).

f. An executive summary of any planning, implementation, or fiscal analysis documents previously completed relating to the project.

g. Proof of nonprofit status.

261—30.7(76GA,SF2470) Review and award process.

30.7(1) *Review committee.* Each eligible application shall be reviewed by a committee made up of two representatives of the DVRS, two representatives of the IDB, two representatives of the IDED, and two individuals with disabilities. Applicants scoring fewer than 60 points under subrule 30.7(2) shall not be recommended for funding. Applicants may be interviewed further to gain additional information about the proposal or to negotiate the proposed plan of work. Recommendations of the committee will be forwarded to the director of IDB, director of IDED, and the administrator at DVRS or their designees. A funding award requires the approval of the director of IDB, director of IDED, and the administrator at DVRS or their designees.

30.7(2) *Scoring.* The scoring system has a maximum of 100 points.

a. Appropriateness of the project to the issues and problems. Maximum of 30 points.

b. Economic impact and impact on individuals with disabilities. Maximum of 35 points.

c. Viability of objectives and work plan. Maximum of 35 points.

261—30.8(76GA,SF2470) Program management.

30.8(1) *Record keeping.*

a. Financial records, supporting documents, statistical records, and all records pertinent to the project shall be retained by the recipient of funds for a period of three years after the contract expiration date.

b. Records pertaining to the employment of clients of the DVRS or the IDB will be maintained for a period of five years following the date of employment.

30.8(2) *Contract.* The IDED will negotiate with successful applicants any modifications to the work plan and budget recommended by the review committee. The DVRS or the IDB shall negotiate a contract with successful applicants to define the terms for disbursement of funds and responsibilities and the contract shall be consistent with authorized use of Title I vocational rehabilitation funds.

30.8(3) *Access to records.* Representatives of the DVRS, the IDB, the IDED, and the state auditor's office shall have access to all books, accounts, and documents belonging to or in use by the recipient pertaining to the receipt of assistance under this program.

30.8(4) *Monitoring.* The DVRS, the IDB, and the IDED may perform any review or field inspections they deem necessary to ensure program compliance. Applicants will be required to submit reports corresponding with the project duration and type of project. Measurable initiatives may include, but are not limited to: market opportunities identified, decision points achieved in a business plan, the potential number of jobs to be created, number of employment opportunities for individuals with disabilities, money invested to expand or create a business enterprise, and private and public investments pledged to the project. The report(s) will present progress toward the goals of the project. The first report shall present the results of the technical assistance and the local organization(s)'s response. If the decision is to proceed with the business opportunity, the additional report(s) shall present progress of the grantee's implementation of the findings of the technical assistance. A copy of all generated reports shall be forwarded to the DVRS, the IDB, and the IDED upon completion of the contract.

These rules are intended to implement 1996 Iowa Acts, Senate File 2470, section 95.

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CHAPTER 31
ECONOMIC DEVELOPMENT REGION INITIATIVES

261—31.1(81GA,HF868,HF809) Purpose. Department resources shall be available to assist an economic development region that has established a focused economic development effort. This effort shall include a regional development plan relating to one or more of the following areas:

1. Regional marketing strategies.
2. Development of the information solutions sector.
3. Development of the advanced manufacturing sector.
4. Development of the life sciences and biotechnology sector.
5. Development of the insurance or financial services sector.
6. Physical infrastructure including, but not limited to, horizontal infrastructure, water and sewer infrastructure, and telecommunications infrastructure.
7. Entrepreneurship.

261—31.2(81GA,HF868,HF809) Types of assistance. The following types of assistance are governed by the divisions of this chapter:

1. Establishment of economic development regions.
2. Economic development revolving loan funds.
3. Business accelerators.
4. Small business development center assistance.
5. Iowa business resource assistance.

261—31.3(81GA,HF868,HF809) Financial assistance. For the fiscal year period beginning July 1, 2005, and ending June 30, 2015, $1 million is made available each fiscal year for the economic development region initiative. 261—subrule 2.4(7) describes how the $1 million is allocated.

261—31.4(81GA,HF868,HF809) Definitions.

"Economic development region" shall consist of not less than three counties, unless two contiguous counties have a combined population of at least 300,000 based on the most recent federal decennial census.

"Economic development region revolving fund" means a fund established to benefit development efforts in an economic development region.

"Regional economic development revenue sharing pilot project" means a pilot project for one or more approved regions.

DIVISION I
ECONOMIC DEVELOPMENT REGION INITIATIVE—FINANCIAL ASSISTANCE

261—31.5(81GA,HF868,HF809) Uses of funds under the economic development region initiative. Financial assistance from the grow Iowa values fund may be used for the following:

31.5(1) *Physical infrastructure.* The installation of physical infrastructure needs including, but not limited to, horizontal infrastructure, water and sewer infrastructure, and telecommunications infrastructure, related to the development of fully served business and industrial sites by one or more of the region's economic development partners or for the installation of infrastructure related to a new business location or expansion. Match is one dollar of local funds for every two dollars received from the grow Iowa values fund. The economic development region must demonstrate all of the following:

a. The ability to provide matching moneys on a basis of dollars received from the grow Iowa values fund.

b. The commitment of the specific business partner including, but not limited to, a letter of intent defining a capital commitment or a percentage of equity.

c. That all other funding alternatives have been exhausted.

31.5(2) *Regional economic development revenue sharing pilot project.* Establishment and administration of a regional economic development revenue sharing pilot project for one or more regions.

31.5(3) *Entrepreneurial initiative.* Establishment of an approved entrepreneurial initiative. Match is one dollar of local funds for every two dollars received from the grow Iowa values fund.

31.5(4) *Business closure due to consolidation.* An existing business threatened with closure due to a potential consolidation to an out-of-state location. The economic development region may apply for financial assistance from the grow Iowa values fund for the purchase, rehabilitation, or marketing of a building that has become available due to the closing of an existing business as a result of a consolidation to an out-of-state location. Match is one dollar of local funds for every three dollars received from the grow Iowa values fund.

31.5(5) *Business succession assistance program.* Match is one dollar of local funds for every two dollars received from the grow Iowa values fund.

31.5(6) *Unique or innovative regional projects.* Match is on a one-to-one basis.

261—31.6(81GA,HF868,HF809) Application process. The department shall develop and make available a standardized application. Applications will be accepted on an open-window basis until funds are exhausted.

261—31.7(81GA,HF868,HF809) Reporting requirements. Award recipients in economic development regions shall provide an annual report to the department outlining how the funds were invested in Iowa's future. The department shall develop the reporting format for all required annual reports.

DIVISION II
ECONOMIC ENTERPRISE AREAS

261—31.8(81GA,HF868,HF809) Description. An "economic enterprise area" means a designated "economic development region" that shall consist of at least one county containing no city with a population of more than 23,500 and shall meet at least three of the following criteria:

1. A per capita income of 80 percent or less than the national average.
2. A household median income of 80 percent or less than the national average.
3. Twenty-five percent or more of the population of the economic enterprise area with an income level of 150 percent or less of the United States poverty level as defined by the most recently revised poverty income guidelines published by the United States Department of Health and Human Services.
4. A population density in the economic enterprise area of less than ten people per square mile.
5. A loss of population as shown by the 2000 certified federal census when compared with the 1990 certified federal census.
6. An unemployment rate greater than the national rate of unemployment.
7. More than 20 percent of the population of the economic enterprise area consisting of people over the age of 65.

261—31.9(81GA,HF868,HF809) Funding.

31.9(1) Approved areas may apply for up to $75,000 each fiscal year until June 30, 2015. The actual amount available each year will be established by the department in the annual allocation of funds for economic development region initiatives described in 261—paragraph 2.4(7)*"b."* No more than ten economic development regions may be approved by IDED as economic enterprise areas.

31.9(2) In order to receive financial assistance under this division, an economic enterprise area must demonstrate the ability to provide local matching moneys on a basis of a one dollar contribution of local moneys for every three dollars received from the grow Iowa values fund.

261—31.10(81GA,HF868,HF809) Eligible use of funds. Funds available for economic enterprise areas may be used as follows:

1. Economic development-related strategic planning and marketing for the region as a whole.
2. Economic development of fully served business sites.
3. The construction of speculative buildings on a fully served lot.
4. The rehabilitation of an existing building to marketable standards.

261—31.11(81GA,HF868,HF809) Application process. The department shall develop and make available a standardized application form. The application process shall be conducted on an open-window, ongoing basis until all funds are obligated.

261—31.12(81GA,HF868,HF809) Reporting requirements. Award recipients shall provide an annual report to the department outlining how funds were invested in Iowa's future.

DIVISION III
BUSINESS ACCELERATORS

261—31.13(81GA,HF868,HF809) Description and purpose. The department shall establish and administer a business accelerator program to provide financial assistance for the establishment and operation of a business accelerator for technology-based, value-added agricultural, information solutions, or advanced manufacturing start-up businesses or for a satellite of an existing business accelerator. The program shall be designed to foster the accelerated growth of new and existing businesses through the provision of technical assistance.

261—31.14(81GA,HF868,HF809) Definitions.

"Business accelerator" means an organization that fosters the accelerated growth of new and existing Iowa businesses.

261—31.15(81GA,HF868,HF809) Requirements and qualifications for business accelerator entities. Business accelerator applicants must meet all of the following criteria:

1. The business accelerator must be a not-for-profit organization affiliated with an area chamber of commerce, a community or county organization, or an economic development region.
2. The geographic area served by a business accelerator must include more than one county.
3. The business accelerator must possess the ability to provide service to a specific type of business as well as to meet the broad-based needs of other types of start-up entrepreneurs.
4. The business accelerator must possess the ability to market business accelerator services in the region and the state.
5. The business accelerator must possess the ability to communicate with and cooperate with other business accelerators and similar service providers in the state.
6. The business accelerator must possess the ability to engage various funding sources for start-up entrepreneurs.
7. The business accelerator must possess the ability to communicate with and cooperate with various entities for purposes of locating suitable facilities for clients of the business accelerator.
8. The business accelerator must possess the willingness to accept referrals from the Iowa department of economic development.
9. The business accelerator must refer 20 businesses per year to the Venture Network of Iowa.

261—31.16(81GA,HF868,HF809) Other considerations. In determining whether a business accelerator qualifies for financial assistance, the department may consider any of the following:

1. The business experience of the business accelerator's professional staff.
2. The business plan review capacity of the business accelerator's professional staff.

3. The business accelerator's professional staff with demonstrated disciplines in all aspects of business experience.

4. The business accelerator's professional staff with access to external service providers including legal, accounting, marketing, and financial services.

261—31.17(81GA,HF868,HF809) Application procedures.

31.17(1) Applicants may apply on an open-window basis. A request for proposal (RFP) will be posted on IDED's Web site www.iowalifechanging.com as funding is available.

31.17(2) All requests for financial assistance must demonstrate the ability to provide matching moneys on the basis of a two dollar contribution of recipient moneys for every one dollar received in financial assistance from the department.

261—31.18(81GA,HF868,HF809) Reporting. Business accelerators receiving financial assistance under this rule must submit an annual report to IDED documenting progress.

DIVISION IV
SMALL BUSINESS DEVELOPMENT CENTERS

261—31.19(81GA,HF868,HF809) Small business development center assistance. Beginning on July 1, 2005, and ending June 30, 2015, the department shall transfer $350,000 to Iowa State University of Science and Technology for the purpose of providing financial assistance to establish small business development centers in areas of the state previously served by a small business development center and to maintain existing small business development centers. Financial assistance for a small business development center shall not be awarded unless the city or county where the center is located demonstrates the ability to obtain local matching funds on a dollar-for-dollar basis. An award of financial assistance to a small business development center under this rule shall not exceed $20,000.

DIVISION V
IOWA BUSINESS RESOURCE CENTERS

261—31.20(81GA,HF868,HF809) Iowa business resource centers. The department may use up to $50,000 each fiscal year beginning July 1, 2005, and ending June 30, 2015, for the purposes of providing training, materials, and assistance to Iowa business resource centers.

These rules are intended to implement 2005 Iowa Acts, House File 868, sections 8, 9, 10, 11 and 12, and House File 809, section 19(6).

[Filed 10/21/05, Notice 8/3/05—published 11/9/05, effective 12/14/05]

CHAPTER 32
TAX CREDITS FOR ECONOMIC DEVELOPMENT REGION REVOLVING LOAN FUND

261—32.1(81GA,HF868,HF809) Purpose. The purpose of economic development region tax credits is to encourage and assist in the formation and development of economic development regions, including marketing efforts, business development, infrastructure and entrepreneurship.

261—32.2(81GA,HF868,HF809) Definitions.

"Economic development region" means a group of not less than three counties, unless two contiguous counties have a combined population of at least 300,000 based on the most recent federal decennial census.

"Economic development region revolving loan fund" means a fund established to benefit the development efforts in an economic development region.

261—32.3(81GA,HF868,HF809) Allocation of funds. The department shall authorize tax credits to individuals, nongovernmental entities and certain allowable nonprofit entities that make qualifying contributions to an economic development region revolving loan fund.

261—32.4(81GA,HF868,HF809) Credit amount. The total amount of tax credits and payments to contributors authorized during a fiscal year shall not exceed $2 million plus any unused credit carried forward from previous years.

32.4(1) Any credit amount which remains unused in a fiscal year may be carried forward to the succeeding fiscal year.

32.4(2) The maximum credit amount that may be authorized for a specific economic development region revolving loan fund is equal to $2 million plus any unused credit amount carried forward from previous years divided by the number of economic development region revolving loan funds existing in the state.

261—32.5(81GA,HF868,HF809) Eligible contributions. Nongovernmental entities, including organizations exempt from federal income taxation pursuant to Section 501(c)3 of the Internal Revenue Code, may contribute to an economic development revolving loan fund.

32.5(1) A nongovernmental entity may claim a tax credit equal to 20 percent of the amount contributed to the revolving loan fund.

32.5(2) A tax credit shall be allowed against taxes imposed in Iowa Code chapter 422, divisions II, III, and V, and in Iowa Code chapter 432, and against the moneys and credits tax imposed in Iowa Code section 533.24.

32.5(3) An individual may claim the tax credit of a partnership, limited liability company, S corporation, estate, or trust electing to have income directly taxed to the individual. The amount claimed by the individual shall be based upon the individual's pro rata share of the entity.

32.5(4) Any tax credit in excess of the taxpayer's liability for the tax year may be credited to the tax credit liability for the following ten tax years or until depleted, whichever occurs first.

32.5(5) A tax credit shall not be carried back to a tax year prior to the tax year in which the taxpayer redeems the tax credit.

32.5(6) A tax credit under this rule is not transferable.

32.5(7) An organization exempt from federal income tax pursuant to Section 501(c)3 of the Internal Revenue Code making a contribution to an economic development region revolving loan fund shall be paid from the general fund of the state of Iowa an amount equal to 20 percent of such contributed amount within 30 days after the end of the fiscal year during which the contribution was made.

261—32.6(81GA,HF868,HF809) Requests for tax credits. Requests for tax credits will be accepted on an ongoing basis. The department will make public by June 1 and December 1 of each calendar year the total number of requests for tax credits that have been submitted. The department will review these requests and issue tax credits within a reasonable period of time following the June 1 and December 1

announcements. Tax credits shall be authorized pursuant to this rule for contributions made to a qualified economic development region revolving loan fund after December 1, 2005.

These rules are intended to implement 2005 Iowa Acts, House File 868 and House File 809.

[Filed 10/21/05, Notice 8/3/05—published 11/9/05, effective 12/14/05]

CHAPTER 33
IOWA WINE AND BEER PROMOTION GRANT PROGRAM
[Prior to 7/4/07, see 261—Ch 104]

261—33.1(15) Purpose. The purpose of the Iowa wine and beer promotion grant program is to provide marketing funds to promote native Iowa wineries and breweries through festivals and events.

261—33.2(15) Definitions.

"Board" means the Iowa wine and beer promotion board created in Iowa Code section 15E.116.

"Category" means a native Iowa winery(ies) or a native Iowa brewery(ies).

"Department" or *"IDED"* means the Iowa department of economic development.

"Group" means at least three native Iowa wineries or breweries, unless there are fewer than three licensees in either category. If there are fewer than three licensees in a category, then all of the licensees in that category must be included in the event.

"Native Iowa wineries or breweries" means Iowa wineries and breweries that hold a Class "A" wine or beer permit.

261—33.3(15) Application and review processes. Subject to availability of funds, applications are reviewed and rated by IDED staff on an ongoing basis. Applications will be reviewed by staff for completeness and eligibility. If additional information is required, the applicant shall be provided with notice, in writing, to submit additional information. Recommendations from the IDED staff will be submitted to the director of the department for final approval, denial or deferral. Applicants shall be notified in writing following the department's final action.

33.3(1) *Eligible applicants.* To qualify for funding, applicants must include a group of at least three native Iowa wineries or breweries, unless there are fewer than three licensees in either category. If there are fewer than three licensees in a category, then all of the licensees in that category must be included in the event. There shall be a maximum of two awards per group per fiscal year.

33.3(2) *Eligible activities.* Eligible projects may include, but are not limited to, advertising placement in newspapers, billboards, magazines, radio, television, and Web advertising. Promotional pieces such as flyers, table tents, punch cards or coasters are eligible, as well as advertising specialty items. Other forms of marketing may also be eligible as determined through the review process.

33.3(3) *Application availability and content.* Applications must be completed and submitted to the department. Application materials may be obtained from IDED, Office of Tourism, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4737; or through IDED's Web site at www.iowalifechanging.com. The grant application materials will indicate how much funding is available for the fiscal year and the maximum grant amount available. The applicant shall submit a grant application, which shall include, but not be limited to:

a. Requirements for using the Iowa wine and beer logo;
b. Project identification;
c. Project budget;
d. Fifty percent matching funds (cash or in-kind contributions);
e. List of participating wineries or breweries, or both;
f. Anticipated number of attendees;
g. Dates and location of festival or event;
h. Contact information.

33.3(4) *Contract required.* Successful applicants shall enter into a grant agreement with the department. The department shall prepare an agreement, which includes, but is not limited to, a description of the allowable activities; length of the grant period; conditions to disbursement of funds, if any; and default and termination procedures.

These rules are intended to implement Iowa Code section 15E.117.

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CHAPTER 34
WELCOME CENTER PROGRAM

[Prior to 7/19/95, see 261—Ch 58]
[Prior to 9/6/00, see 261—Ch 63]
[Prior to 7/4/07, see 261—Ch 102]

261—34.1(72GA,HF540) Purpose. The primary goal of a statewide program for welcome centers is to provide to travelers high quality, accurate, and interesting information about the following: travel in the state; national, statewide, and local attractions; lodging, medical service, food service, vehicle service, and other kinds of necessities; general information about the state; and needed and convenient services such as restrooms, lodging information, and event reservation services. Settings for the welcome centers will convey a sense of being welcomed to the state through hospitable attitudes of personnel; high quality of site landscape architecture, architectural theme, and interior design of the buildings; special events that occur at the centers; and high level of maintenance.

261—34.2(72GA,HF540) Long-range plan. Reserved.

261—34.3(72GA,HF540) Definitions. Reserved.

261—34.4(72GA,HF540) Pilot projects. The department is authorized by 1987 Iowa Acts, House File 540, to establish site locations for a welcome center pilot project.

34.4(1) *Site categories.* A welcome center may be located in any of the following sites for the pilot project:

a. In proximity to interstate highways,

b. In proximity to primary highways,

c. In or near communities with populations of 5000 or less.

34.4(2) *Eligible applicant.* An applicant must either be an Iowa resident, a political subdivision of the state, or a business authorized to do business within the state to be eligible to apply under the pilot project.

34.4(3) *Project eligibility.* Eligible projects are those which expand the state's economy through the provision of facilities and programs where travelers can:

a. Obtain information about travel and hospitality services, tourism attractions, park and recreation opportunities, cultural and natural resources, lodging and other support information.

b. Have access to needed and convenient services, such as: restrooms; lodging information and event reservation services; souvenirs, crafts, arts, and food products originating in the state; food and beverages; and fishing, hunting, and other permits and licenses needed for recreation.

c. Be welcomed to the state in a high quality manner that presents a positive, lasting image of the state of Iowa.

34.4(4) *Assistance.*

a. *Assistance amount.* Assistance will be available not to exceed 50 percent of the total project cost. Projects with local matches greater than 50 percent will receive priority, other things being equal.

b. *Assistance match.* The local match may take the form of, but is not limited to: funds; donations; private foundation grants; any federal or state grant not administered by the department of economic development, the department of natural resources, the department of cultural affairs, or the department of transportation; land, buildings, and other types of in-kind services, such as long-term operation and maintenance costs, including personnel, management or other related supports. Assistance applicants shall provide evidence of local match sources and document all in-kind services. The department maintains the authority to verify the value of all forms of local matches, including independent, approved real estate appraisals.

34.4(5) *Application submission.*

a. Applications shall be on the forms provided by the department and contain the information specified in the application materials.

b. Applications shall be received by the date and time specified by the department in the application materials. Late applications will not be reviewed by the department.

c. All application materials submitted shall be deemed to be sealed bids.

d. The department will not, directly or indirectly or in any manner whatsoever, at any time other than as provided in the pilot project application materials, open any sealed bid or convey or divulge to any person any part of the contents of a sealed bid.

e. After submission of a completed application, applicants may be requested to present their project proposal to the project review committee.

f. Two or more eligible applicants may submit a joint proposal. One of the coapplicants must be designated as the lead applicant.

34.4(6) *Project review and selection.*

a. *Review committee.* The role of the review committee will be to evaluate, by site category, applications that are submitted based on information provided and make recommendations to the director of the department of economic development. The director will make recommendations to the IDED board who will approve the final selection decision. The review committee will consist of representatives from the department of economic development, the department of natural resources, the department of cultural affairs, the department of transportation, the Iowa chapter of the American Institute of Architects, the Iowa chapter of the American Society of Landscape Architects and the Iowa travel council.

b. *Consideration withheld.* The committee will not consider any application which is not complete upon submission and for which additional information was requested and not received, or which was not presented in an interview session as requested by the committee.

c. *Rating criteria.* Rating of the applications will be based upon the following criteria and total points:

1. Project/program cost and budget . . . . . 80 points

Evaluation of project/program cost and budget items includes development costs, operation costs, source of funding, and potential for self-sufficiency over time.

2. Project/program economic impact . . . . . 200 points

Evaluation of project/program economic impact includes job creation; the local, regional, and state level economic benefits; current project visitation; increased visitation; impact of new center upon existing center; types and presentation of information provided; types of service provided; and electronic data telecommunication systems.

3. Project/program feasibility . . . . . 200 points

Evaluation of project/program feasibility includes marketing and promotion, ownership, operation, average daily traffic, infrastructure availability, and project timing.

4. Project/program image quality . . . . . 200 points

Evaluation of project/program image quality includes concept plans, project/program image, plans for quality, potential for success, natural features, visual quality, and provision of a planning team.

34.4(7) *Project contract.*

a. Selected pilot projects shall be required to enter into a contract with the department. Terms and conditions will be as negotiated with the department.

b. Following the negotiation of a contract, applicants selected for assistance shall commence project planning within 30 days and commence construction within 12 months after the signing of the contract.

c. In the event there are funds remaining after the initial pilot projects are selected; or if the applicant(s) selected fails to sign a contract with the department; or if a contract is terminated before all contract funds are expended, the department reserves the right to negotiate a site contract with the next highest ranked applicant in that category that meets the established criteria.

34.4(8) *Record keeping.* Recipients of financial assistance shall keep adequate records relating to the welcome center project. These records are subject to audit by the department or the auditor of state.

34.4(9) *Project reviews.* The department may monitor and inspect the funded welcome center projects as deemed necessary by the department.

These rules are intended to implement Iowa Code sections 15.271 and 15.272.

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CHAPTER 35
REGIONAL TOURISM MARKETING GRANT PROGRAM

261—35.1(82GA,SF302) Purpose. The purpose of the regional tourism marketing grant program is to establish the procedures and guidelines for the distribution of department funding for out-of-state cooperative advertising grants.

261—35.2(82GA,SF302) Definitions.

"Cooperative advertising" means advertising placement that will appear in an out-of-state market targeted by the office of tourism of the Iowa department of economic development.

"Department" means the Iowa department of economic development.

"Eligible applicant" means a public or private member in a county in good standing in one of the three tourism regions.

"Match" means the local cash provided by the eligible applicant for advertising placement.

"Out-of-state market" means Illinois, Kansas, Minnesota, Missouri, Nebraska, South Dakota, or Wisconsin.

"Review committee" means a panel of members appointed by each tourism region (two per region) and a member of the department's advertising agency of record to read and score submitted applications.

"Tourism regions" means the following three tourism regions: Western Iowa Tourism Region (WITR), Central Iowa Tourism Region (CITR), and Eastern Iowa Tourism Association (EITA).

261—35.3(82GA,SF302) Eligible applicants.

35.3(1) Only members of tourism regions in good standing with the department are eligible to receive funding under this grant program.

35.3(2) The county in which the applicant is located must also be in good standing with its tourism region.

35.3(3) An organization may only submit one application for out-of-state advertising, either individually or as a partner in a joint advertising project. All partners in a joint advertising project must meet the eligible applicant criteria.

261—35.4(82GA,SF302) Use of funds.

35.4(1) Grant funds shall only be used to place advertising in out-of-state markets targeted by the department's office of tourism. Grant funds shall not be used to pay for production costs. Grant funds may be used to place advertising in newspapers, magazines, radio, television, billboards or online advertising.

35.4(2) Grant funds shall be used to pay for up to 50 percent of the advertising placement costs. The match for the advertising placement must be cash.

261—35.5(82GA,SF302) Application procedures and content.

35.5(1) Applications must be completed and submitted to the department.

35.5(2) Application materials may be obtained from the western (www.traveliowa.org), central (www.iowatourism.com), or eastern (www.easterniowatourism.org) Iowa tourism regions.

35.5(3) The source of funding for this grant program is a portion of gaming revenues that is allotted to the department quarterly. The grant application materials will indicate how much funding is available for the fiscal year and the maximum grant amount available.

35.5(4) An application shall include, at a minimum, the following:

a. The applicant's name, mailing address, E-mail address, telephone number, contact person and federal employer identification number.

b. A description of the advertising to be placed including the market targeted, the date or dates on which the advertising will appear, and the size or length of the advertising.

c. An advertising plan and budget for the advertising including source of match dollars.

d. A timetable for the advertising.

e. The advertising goals.

f. The proposed method for tracking and measuring the effectiveness of the advertising and the return on investment.

261—35.6(82GA,SF302) Application review and approval procedures.

35.6(1) The review committee shall read and score all applications.

35.6(2) The review committee shall review applications to ensure that the following program eligibility requirements are met: the application is from an eligible applicant; the advertising will be placed out of state in a market targeted by the office of tourism; a 50 percent match in cash is available; an advertising plan has been developed; and a method to measure the effectiveness of the advertising has been developed.

35.6(3) The review committee shall recommend to the department the applications to be approved for funding.

261—35.7(82GA,SF302) Funding of grants; contracting.

35.7(1) *Funding amount.* For fiscal year 2008, $100,000 is available to the department for regional tourism marketing. The amount of funding available in subsequent years is contingent upon the amount allotted to the department pursuant to 2007 Iowa Acts, Senate File 302.

35.7(2) *Contracts with tourism regions.* The department will enter into a contract with a tourism region to provide funding for those applicants located in that tourism region that were approved by the department to receive grant funds.

35.7(3) *Notice of approval.* Successful applicants will be notified by their tourism region in writing of the approval of a grant, including any conditions and terms of the approval.

35.7(4) *Contracts.* Each successful applicant shall contract with its respective tourism region (WITR, CITR, EITA) for cooperative advertising funding approved by the department. The tourism region shall prepare an agreement that includes, but is not limited to, a description of the advertising placement, terms and conditions to receipt of grant funds, and the repayment requirements or other penalties imposed in the event the grant recipient does not fulfill its obligations in the agreement.

35.7(5) *Evaluation.* Each successful applicant shall submit to its tourism region within 60 days of the placement of advertising a written evaluation summarizing the results of the out-of-state marketing grant.

35.7(6) *Records.* Each tourism region shall maintain adequate records to document and verify that grant funds were spent in accordance with the terms of the agreement.

These rules are intended to implement 2007 Iowa Acts, Senate File 302.

[Filed emergency 10/18/07 after Notice 9/12/07—published 11/7/07, effective 10/18/07]

CHAPTER 36
FILM, TELEVISION, AND VIDEO PROJECT PROMOTION PROGRAM

261—36.1(15) Purpose. The purpose of the film, television, and video project promotion program is to assist and encourage the production of legitimate film, television, and video projects within the state of Iowa.

261—36.2(15) Definitions. The following definitions apply to this chapter:

"Act" means Iowa Code sections 15.391 to 15.393 as amended by 2009 Iowa Acts, Senate File 480, that authorize tax credits for film, television, and video projects.

"Commercial domicile" means the principal place from which the trade of business of the taxpayer is directed or managed.

"IDED" means the Iowa department of economic development.

"Investor" means a person or entity that participates financially in a film, television, or video project that is registered by IDED.

"Iowa-based business" means a business whose commercial domicile is in Iowa.

"Producer" or *"production company"* means the legally designated entity that undertakes and pays for the project activities in Iowa.

"Project" means a film, television, or video production operation that involves expenditures and is undertaken in Iowa during the period of time defined in the application.

"Registered" or *"registered project"* means a film, television, or video production operation that has been determined by IDED to meet the criteria in 261—36.3(15).

[**ARC 7956B**, IAB 7/15/09, effective 7/1/09]

261—36.3(15) Request for registration of a film, television, or video project. To be eligible to receive tax credits under this program, a request for registration shall be submitted to IDED. Requests for registration of projects must be received in accordance with deadlines posted by the department. The Iowa film office at IDED will specify the form and content of the requests, which, at a minimum, shall document that the project:

36.3(1) Is a legitimate effort to produce an entire film, television, or video episode or a film, television, or video segment in the state.

36.3(2) Will include expenditures of at least $100,000 in the state and have an economic impact on the economy of the state or locality sufficient to justify assistance under the program.

36.3(3) Will further tourism, economic development, and population retention or growth in the state or locality.

36.3(4) Is intended to be widely distributed beyond the Midwest region.

36.3(5) Will not depict or describe any obscene material, as defined in Iowa Code section 728.1.

36.3(6) Has commitments for at least 50 percent of the funding.

36.3(7) The department may charge a nonrefundable fee for registration of a project under the program. The fee shall be paid to the department. The amount of the fee shall equal 1/8 of 1 percent of the value of the tax credit, and 1/16 of 1 percent of the estimated credit value shall be paid upon confirmation of the project's eligibility to contract with the state under the program. The remaining balance shall be paid upon calculation of the total project qualified spending. Registration fees collected by the department under this subrule shall be used to support industry training, to sponsor industry events and to market the program. One-half of the fees collected will be used for industry training, 25 percent of the fees collected will be used to sponsor industry events and 25 percent of the fees collected will be used to market the program.

[**ARC 7956B**, IAB 7/15/09, effective 7/1/09]

261—36.4(15) IDED list of registered film, television, or video projects.

36.4(1) Upon review of the information provided in an applicant's request for registration, if the request meets the criteria listed in rule 261—36.3(15), IDED will include the project on IDED's list of registered film, television, or video projects.

36.4(2) Projects included on IDED's list of registered film, television, or video projects will be eligible for the tax credits authorized by the Act, determined by the department and stipulated in the project contract.
[**ARC 7956B**, IAB 7/15/09, effective 7/1/09]

261—36.5(15) Contract administration.

36.5(1) *Notice of approval.* Successful applicants will be notified in writing of approval of a request for registration, including any conditions and terms of the approval.

36.5(2) *Contract required.* The department shall prepare a contract, which includes, but is not limited to, a description of the project to be completed by the business; terms and conditions for receipt of tax credit benefits; the amount of the tax credit and the repayment requirements or other penalties imposed in the event the recipient does not fulfill its obligations described in the contract.

36.5(3) *Contract amendments.* Projects approved under this program are limited to the descriptions and criteria stated on the application. Changes to a registered project must be reported in writing immediately to the Iowa film office along with a request for contract amendment. Upon review, the department will approve or deny the request for amendment. If the request is approved, a written contract amendment will be executed by the recipient and the department.

36.5(4) *Default.* Failure to complete the registered project in compliance with the descriptions and terms established in the application shall constitute a default and result in loss of tax credit benefits.
[**ARC 7956B**, IAB 7/15/09, effective 7/1/09]

261—36.6(15) Benefits available. Approved projects are eligible to claim the following tax credit benefits:

1. Qualified expenditure tax credit.
2. Qualified investment tax credit.

261—36.7(15) Qualified expenditure tax credit.

36.7(1) *Description.*

a. For tax years beginning on or after January 1, 2007, a qualified expenditure tax credit shall be allowed against the taxes imposed in Iowa Code chapter 422, divisions II, III, and V, and in Iowa Code chapter 432, and against the moneys and credits tax imposed in Iowa Code section 533.24, for a portion of a taxpayer's qualified expenditures in a project registered under the program.

b. The tax credit shall not exceed 25 percent of the qualified expenditures on a project. The department may negotiate the amount of the tax credit.

c. Under rule 261—36.7(15), an individual may claim a tax credit of a partnership, limited liability company, S corporation, 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, estate, or trust.

d. Any tax credit in excess of the taxpayer's liability for the tax year may be credited to the tax liability for the following five years or until depleted, whichever is earlier.

e. A tax credit shall not be carried back to a tax year prior to the tax year in which the taxpayer claims the tax credit.

36.7(2) *Qualified expenditures.*

a. A qualified expenditure by a taxpayer is a payment to an Iowa resident or an Iowa-based business for the sale, rental, or furnishing of tangible personal property or for services directly related to the registered project including, but not limited to:

1. Aircraft.
2. Vehicles.
3. Equipment.
4. Materials.
5. Supplies.
6. Accounting.
7. Animals and animal care.

8. Artistic and design services.
9. Graphics.
10. Construction.
11. Data and information services.
12. Delivery and pickup services.
13. Labor and personnel as described in 36.7(2)*"b."*
14. Lighting.
15. Makeup and hairdressing.
16. Film.
17. Music.
18. Photography.
19. Sound.
20. Video and related services.
21. Printing.
22. Research.
23. Site fees and rental.
24. Travel related to Iowa distant locations.
25. Trash removal and cleanup.
26. Wardrobe.

b. Labor and personnel. For purposes of this subrule, "labor and personnel" includes the following:

(1) Compensation that is paid to the principal producer, principal director, and principal cast members is a qualified expenditure if the principal producer, principal director, or principal cast member is an Iowa resident or an Iowa-based business and if the compensation paid meets one of the following conditions:

1. If the total of qualified expenditures is at least $10 million but less than $20 million, the qualifying compensation paid to each principal producer, principal director, and principal cast member shall not exceed $250,000 each.

2. If the total of qualified expenditures is at least $20 million, the qualifying compensation paid to each principal producer, principal director, and principal cast member shall not exceed $1 million each.

(2) Compensation that is paid to personnel other than the principal producer, principal director, or principal cast members qualifies if the compensation meets one of the following conditions:

1. If the total of qualified expenditures is less than $10 million, the qualifying compensation paid to labor and personnel other than the principal producer, the principal director, and principal cast members shall not exceed $150,000 for each detailed budget line item or for each budget accounting subcode.

2. If the total of qualified expenditures is at least $10 million but less than $20 million, the qualifying compensation paid to labor and personnel other than the principal producer, the principal director, and the principal cast members shall not exceed $200,000 for each detailed budget line item or for each budget accounting subcode.

3. If the total of qualified expenditures is at least $20 million, the qualifying compensation paid to labor and personnel other than the principal producer, the principal director, and the principal cast members shall not exceed $300,000 for each detailed budget line item or for each budget accounting subcode.

c. The department and the department of revenue shall establish a list of eligible expenditures and negotiable expenditures.

36.7(3) *Approval of tax credit—process.*

a. After project completion and verification of the eligibility for a tax credit under this program, IDED shall issue a film, television, and video project promotion program tax credit certificate to be attached to the taxpayer's tax return.

b. The tax credit certificate shall contain the taxpayer's name, address, tax identification number, the date of project completion, the amount of credit, other information required by the department of

revenue, and a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred.

c. A tax credit certificate issued may be transferred to any person or entity. Within 90 days of transfer, the transferee shall submit the transferred tax credit certificate to the department of revenue along with a statement containing the transferee's name, tax identification number, and address, and the denomination that each replacement tax credit certificate is to carry and any other information required by the department of revenue. Within 30 days of receiving the transferred tax credit certificate and the transferee's statement, the department of revenue shall issue one or more replacement tax credit certificates to the transferee. Each replacement tax credit certificate must contain the information required for the original tax credit certificate and must have the same expiration date that appeared in the transferred tax credit certificate. Any certificates issued on or after the program's effective date, May 17, 2007, may be freely transferred without regard to face value. A maximum of two transfers shall be allowed.

d. A qualified expenditure tax credit shall not be claimed by a transferee until a replacement tax credit certificate identifying the transferee as the proper holder has been issued.

e. The transferee may use the amount of the tax credit transferred against the taxes imposed in Iowa Code chapter 422, divisions II, III, and V, and in Iowa Code chapter 432, and against the moneys and credits tax imposed in Iowa Code section 533.24, for any tax year the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included as income under Iowa Code chapter 422, divisions II, III, and V, under Iowa Code chapter 432, or against the moneys and credits tax imposed in Iowa Code section 533.24. Any consideration paid for the transfer of the tax credit shall not be deducted from income under Iowa Code chapter 422, divisions II, III, and V, under Iowa Code chapter 432, or against the moneys and credits tax imposed in Iowa Code section 533.24.

36.7(4) *Approval of tax credit—reporting.* All qualified expenditures made for a registered project must be submitted in a format approved by the department prior to production once the producer has completed the project. No additional claims will be accepted once the Schedule of Qualified Expenses or previously approved documentation has been received by the Iowa film office.

[**ARC 7956B**, IAB 7/15/09, effective 7/1/09]

261—36.8(15) Qualified investment tax credit.

36.8(1) *Description.*

a. For tax years beginning on or after January 1, 2007, an investment tax credit shall be allowed against the taxes imposed in Iowa Code chapter 422, divisions II, III, and V, and in Iowa Code chapter 432, and against the moneys and credits tax imposed in Iowa Code section 533.24, for a portion of a taxpayer's investment in a project registered under the program.

b. The tax credit shall not exceed 25 percent of the investment in the project. Under rule 261—36.8(15), an individual may claim a tax credit of a partnership, limited liability company, S corporation, 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, estate, or trust.

c. Any tax credit in excess of the taxpayer's liability for the tax year may be credited to the tax liability for the following five years or until depleted, whichever is earlier.

d. A tax credit shall not be carried back to a tax year prior to the tax year in which the taxpayer claims the tax credit.

36.8(2) *Approval of tax credit—process.*

a. After project completion and verification of the eligibility for a tax credit under this program, the Iowa department of economic development shall issue a film, television, and video project promotion program tax credit certificate to be attached to the taxpayer's tax return.

b. The tax credit certificate shall contain the taxpayer's name, address, tax identification number, the date of project completion, the amount of credit, other information required by the department of

revenue, and a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred.

c. A tax credit certificate issued may be transferred to any person or entity. Within 90 days of transfer, the transferee shall submit the transferred tax credit certificate to the department of revenue along with a statement containing the transferee's name, tax identification number, and address, and the denomination that each replacement tax credit certificate is to carry and any other information required by the department of revenue. Within 30 days of receiving the transferred tax credit certificate and the transferee's statement, the department of revenue shall issue one or more replacement tax credit certificates to the transferee. Each replacement tax credit certificate must contain the information required for the original tax credit certificate and must have the same expiration date that appeared in the transferred tax credit certificate. Any certificates issued on or after the program's effective date, May 17, 2007, may be freely transferred without regard to face value. A maximum of two transfers shall be allowed.

d. An investment tax credit shall not be claimed by a transferee until a replacement tax credit certificate identifying the transferee as the proper holder has been issued.

e. The transferee may use the amount of the tax credit transferred against the taxes imposed in Iowa Code chapter 422, divisions II, III, and V, and in Iowa Code chapter 432, and against the moneys and credits tax imposed in Iowa Code section 533.24, for any tax year the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included as income under Iowa Code chapter 422, divisions II, III, and V, under Iowa Code chapter 432, or against the moneys and credits tax imposed in Iowa Code section 533.24. Any consideration paid for the transfer of the tax credit shall not be deducted from income under Iowa Code chapter 422, divisions II, III, and V, under Iowa Code chapter 432, or against the moneys and credits tax imposed in Iowa Code section 533.24.

36.8(3) *Limitation.* The same taxpayer cannot claim both an expenditure tax credit and an investment tax credit on the same project.

36.8(4) *Calculation.* The total of all investment tax credits per project cannot exceed 25 percent of qualified expenditures on that project. This amount will be awarded proportionally to each individual's investment in the registered project.

[**ARC 7956B**, IAB 7/15/09, effective 7/1/09]

261—36.9(15) Reduction of gross income due to payments received from qualified expenditures in registered projects.

36.9(1) For the tax year in which a qualified expenditure occurred, and for the ensuing three tax years, a taxpayer may claim a reduction in adjusted gross income not to exceed in a tax year 25 percent of the amount of the qualified expenditure for purposes of taxes imposed in Iowa Code chapter 422, divisions II and III, for payments received from the sale, rental, or furnishing of tangible personal property or services directly related to the production of a project registered under this chapter which meets the criteria of a qualified expenditure under rule 261—36.7(15).

36.9(2) A taxpayer claiming a qualified expenditure tax credit, a business in which such taxpayer has an equity interest, or a business in whose management such taxpayer participates is not eligible to receive the adjusted gross income reduction under this rule.

[**ARC 7956B**, IAB 7/15/09, effective 7/1/09]

These rules are intended to implement Iowa Code sections 15.391 to 15.393 as amended by 2009 Iowa Acts, Senate File 480.

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[Filed Emergency ARC 7956B, IAB 7/15/09, effective 7/1/09]

CHAPTER 37
CITY DEVELOPMENT BOARD
[Prior to 1/14/87; Planning and Programming(630), ch 7]

261—37.1(368) Expenses, annual report and rules. The Iowa department of economic development shall provide office space, staff assistance, and shall budget funds to cover expenses and compensation of the city development board and committees.

37.1(1) Pursuant to Iowa Code section 368.10, the city development board shall conduct studies of city development, and shall submit an annual report to the governor and the general assembly.

37.1(2) Pursuant to Iowa Code section 368.10, the city development board may establish rules for the performance of its duties and the conduct of proceedings before it.

a. The board's rules are subject to chapter 17A, as applicable.

b. Parties interested in a text of the rules promulgated by the city development board may obtain a text of "A Practical Guide for City Development Actions," from the Division for Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, telephone (515)281-3864.

261—37.2(17A) Forms. An explanation and copy of all forms that need to be completed as required by the city development board can be found in the document entitled "A Practical Guide for City Development Actions," available from the address noted under 37.1(2)*"b."*

[Filed July 15, 1975]

[Filed emergency 12/19/86—published 1/14/87, effective 12/19/86]

CHAPTER 38
REGIONAL SPORTS AUTHORITY DISTRICTS

261—38.1(82GA,SF2432) Purpose. The purpose of this chapter is to describe the procedures the department will follow to review applications and certify regional sports authority districts for promotion of nonprofessional sporting events.

261—38.2(82GA,SF2432) Definitions.

"Act" means the regional sports authority districts Act established by 2008 Iowa Acts, Senate File 2432, section 1(5)*"c."*

"Board" means the seven-member board that governs a regional sports authority district.

"Certified" means that the department has reviewed and approved an application from a CVB to be designated as a regional sports authority district.

"Convention and visitors bureau" or *"CVB"* means an establishment primarily engaged in marketing and promoting communities and facilities to businesses and leisure travelers through a range of activities, such as assisting organizations in locating meeting and convention sites; providing travel information on area attractions, lodging accommodations, and restaurants; providing maps; and organizing group tours of local historical, recreational, and cultural attractions.

"Department" means the Iowa department of economic development.

"District" means a regional sports authority district certified by the department.

"Eligible applicant" means a CVB that applies to the department for certification of a regional sports authority district, which may include more than one city and more than one CVB within the district.

"Match" means the local cash provided by the eligible applicant for promotion of the district.

261—38.3(82GA,SF2432) Regional sports authority district board. The board shall consist of seven members appointed by the CVB that files an application with the department requesting certification as a regional sports authority district. At least three members of the board shall consist of city council members of the cities located in the district. Each board shall be responsible for administering programs designed to promote nonprofessional sporting events.

261—38.4(82GA,SF2432) Use of funds.

38.4(1) A certified district shall actively promote youth sports, high school athletic activities, the special olympics, and other nonprofessional sporting events in the local area.

38.4(2) A certified district shall match the state funds with at least a 50 percent local cash match.

261—38.5(82GA,SF2432) Application review.

38.5(1) An eligible applicant may submit an application to the department. The department will establish application deadlines and post the due dates on its Web site at www.traveliowa.com. Applications will be reviewed by the department at least quarterly until all available funding has been committed. All applications that are received by the established due dates and that meet the threshold eligibility requirements will be reviewed by the department.

38.5(2) An application shall include, at a minimum, the following:

a. Applicant's name, mailing address, E-mail address, telephone number, contact person and federal employer identification number.

b. A description of the promotion the district plans for youth sports, high school athletic activities, the special olympics, and other nonprofessional sporting events in the local area.

c. A timetable for the promotion.

d. Documentation of the local cash match of at least 50 percent.

e. Names of the proposed seven-member governing board, including at least three members of the city council(s) located in the district.

f. The promotional goals and methods the district will employ to measure the success of the promotion.

261—38.6(82GA,SF2432) Certification determination.

38.6(1) The department shall not certify more than ten districts. If more than ten applications are received, the department shall consider regional and geographic distribution of funds when it makes certification determinations.

38.6(2) The department shall review all applications to ensure that the following threshold eligibility requirements are met:

a. The application is from a CVB.

b. The proposed district involves a CVB and may include more than one city and more than one CVB.

c. The application includes a plan for the district to promote youth sports, high school athletic activities, the special olympics, and other nonprofessional sporting events in the local area.

d. The proposed district has a seven-member governing board consisting of at least three members of the city council(s) located in the district.

e. The proposed district has provided documentation of a local cash match of at least 50 percent.

261—38.7(82GA,SF2432) Funding of grants.

38.7(1) The department will certify up to ten districts annually.

38.7(2) The department will award an equal amount of funding to each of the certified districts, from the funding available.

38.7(3) If by April 1 of each year the department has certified fewer than ten districts, the department will accept applications from those certified districts for additional promotional activities for youth sports, high school athletic activities, the special olympics, and other nonprofessional sporting events in the local area. Any unobligated funds will then be divided equally among the certified districts whose applications have been approved by the department.

261—38.8(82GA,SF2432) Contract administration.

38.8(1) *Notice of approval.* Successful applicants will be notified in writing of the approval of the request for certification, including any conditions and terms of the approval.

38.8(2) *Contract required.* The department shall prepare a contract which includes but is not limited to a description of the promotion to be completed by the certified district; terms and conditions for receipt of grant funds; and the repayment requirements or other penalties imposed in the event the certified district does not fulfill its obligations as described in the contract.

38.8(3) *Contract amendments.* All requests by a certified district to amend the contract will require approval from the department. The department will review the request and approve or deny it. If a request to amend a contract is approved, the certified district and the department shall execute a written contract amendment.

38.8(4) *Reporting.* Each certified district shall submit to the department a written evaluation of the promotional effort within 90 days of completion of the promotion.

38.8(5) *Record keeping.* Each certified district shall maintain adequate records to document and verify that grant funds were spent in accordance with the terms of the contract.

These rules are intended to implement 2008 Iowa Acts, Senate File 2432, section 1(5)*"c."*

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[Filed 9/18/08, Notice 7/16/08—published 10/8/08, effective 11/12/08]

CHAPTER 39
IOWA MAIN STREET PROGRAM
[Prior to 1/14/87, Iowa Development Commission[520] Ch 9]

261—39.1(15) Purpose. The purpose of the Iowa main street program is to stimulate economic development within the context of historic preservation and to establish a strong public/private partnership to revitalize traditional commercial districts in Iowa communities. The main street program emphasizes community self-reliance and the traditional assets of personal service, local ownership and unique architecture historically prevalent in traditional commercial districts. The main street program is based on four strategies which, when applied together, create a positive image and an improved economy in these districts. The strategies are organization, promotion, design and economic restructuring.

Communities selected for participation in this demonstration program will receive technical assistance from the department's main street staff, professional staff of the National Trust Main Street Center, and other professional consultants and may have professional services of other state agencies to draw upon in order to facilitate the communities' local main street program.
[**ARC 9455B**, IAB 4/6/11, effective 5/11/11]

261—39.2(15) Definitions. The following definitions will apply to the Iowa main street program unless the context otherwise requires:

"Department" means the Iowa department of economic development.

"Director" means the director of the Iowa department of economic development.

"Eligible activity" includes organization, promotion, design and economic restructuring activities to create a positive image and an improved economy in a city's traditional commercial districts.

"Eligible applicant" means a city in Iowa that files a joint application with a local nonprofit organization established by the community to govern the local main street program.

"National Trust Main Street Center" refers to an entity within the National Trust for Historic Preservation, a nonprofit national organization chartered by Congress.
[**ARC 9455B**, IAB 4/6/11, effective 5/11/11]

261—39.3(15) Program administration.

39.3(1) *Administering agency.* The Iowa main street program is administered by the Iowa department of economic development.

39.3(2) *Subcontracting.* The department may contract with the National Trust Main Street Center of the National Trust for Historic Preservation for technical and professional services as well as with other appropriate consultants and organizations.

39.3(3) *Request for applications (RFA).* The department, upon availability of funds, will distribute a request for applications which describes the Iowa main street program, outlines eligibility requirements, and includes an application and a description of the application procedures. Selection will be made on a competitive basis.

39.3(4) *Applications.* Applications may be obtained by contacting the Iowa Main Street Program Coordinator, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)725-3056.

39.3(5) *Deadline.* A completed application shall be returned to the department, postmarked no later than the date specified by the department in the application and contain the information requested in the application.

39.3(6) *Advisory council.* The director may appoint a state main street advisory council(s) composed of individuals knowledgeable in traditional commercial district revitalization to advise the director on the various elements of the program.
[**ARC 9455B**, IAB 4/6/11, effective 5/11/11]

261—39.4(15) Eligible applicants. All cities in Iowa are eligible to file a joint application along with their local community nonprofit organization established to govern the local main street program for selection as a main street demonstration community.
[**ARC 9455B**, IAB 4/6/11, effective 5/11/11]

261—39.5(75GA,ch1201) Funding. Rescinded IAB 4/6/11, effective 5/11/11.

261—39.6(15) Selection.

39.6(1) The director will determine, contingent upon the availability of state funding, the number of cities to be selected for inclusion in the main street program.

39.6(2) Cities will be selected for participation in the program on a competitive basis as described in these rules.

39.6(3) Upon selection of the demonstration projects, the department shall prepare an agreement which will include the terms and conditions of participation.
[**ARC 9455B**, IAB 4/6/11, effective 5/11/11]

261—39.7(15) Selection criteria. The following factors shall be considered in the selection of a city for participation in the main street program (the highest point total possible is 400 points):

39.7(1) *Support/funding. (100 points maximum)*

a. Evidence of a strong commitment from city government and various local and private sector organizations to support a local main street program for at least three years. This evidence will include a resolution of support from the city government and other organizations in the community such as merchants associations, chambers of commerce or economic development corporations in addition to letters of support from other private sector entities.

b. Evidence of local public and private funds available to finance a local main street program for three years. This evidence will include a proposed local main street budget, sources of funding and financial commitment letters from the city government and other identified sources.

c. Evidence of a positive commitment to hire a local main street program director for not less than a three-year period. This evidence shall include a written commitment to hire a program director, signed jointly by the local nonprofit organization established to govern the local program and the city. For cities with a population of less than 5,000, the local main street program director shall be hired for a minimum of 25 hours per week. For cities with a population of 5,000 or more, the local main street program director shall be hired full-time.

d. Evidence of the existence of, or a plan for, a nonprofit corporation organized under the laws of the state, such as a local main street organization, merchants association, chamber of commerce or economic development corporation that will be locally designated to serve as the governing body and policy board for the local main street program and program director. This evidence will include a copy of the proposed or filed articles of incorporation and the bylaws of such organization.

39.7(2) *Historic building fabric. (60 points maximum)*

a. Evidence of the existence of architecturally and historically significant buildings in the traditional commercial district that are currently listed on the National Register of Historic Places or are National Register-eligible or are in National Register-designated historic districts. This evidence shall include identification of such buildings or districts.

b. Evidence of a local historic preservation organization and any evidence that indicates the organization's involvement working on historic projects located in the traditional commercial district. This evidence shall include the identification of such organizations and activities over the past three years.

c. Evidence of any current historic preservation activities.

d. Evidence of the concentration of historic buildings located within the identifiable main street area.

e. Evidence of a locally designated historic district.

39.7(3) *Potential. (100 points maximum)*

a. Consideration of the possibility for demonstrable change in the proposed main street district as a result of being a main street city. Demonstration of this possibility includes the identified goals of the applicant, the potential for the realization of these goals and identification of the long-term impact the main street program will have on the city.

b. Potential for successfully completing the five-year program start-up period. Demonstration of this potential shall include the proposed structure of the organization, the responsibilities of the board members, the program director and the chain of command for the organization.

c. Demonstration of the need for economic revitalization and development in the district. Demonstration of this need includes a summary of the current economic trends in the area and their impact on the district and a summary identifying reasons for needing the main street program.

d. Identification of the size and location of the district as related to the whole community. This shall include justification for the size of the district.

39.7(4) *Current community demographics. (40 points maximum)*

a. Description of the housing characteristics of the city, including the average vacancy rate and the condition of housing stock.

b. Description of the cultural, tourism and recreational aspects of the community. The importance the community places on these quality of life issues provides a barometer for future community growth.

c. Description of the mix of retail, professional services, government offices and other commercial uses in the district.

d. Description of building ownership within the proposed main street district, such as the current use, percentage of owner-occupied buildings, average rent rates and the vacancy rate.

39.7(5) *Previous history. (60 points maximum)*

a. Identification of previous revitalization efforts, including identifying prior programs and their outcome.

b. Evidence of past public/private partnerships. This evidence shall include a summary of significant civic improvements completed by the community within the past three years.

c. Evidence of a good private investment record in the proposed main street district. This evidence shall include descriptions of commercial building rehabilitations and new construction within the past three years.

d. Evidence of comprehensive plans, studies or surveys, which include the proposed main street district, done within the past three years. This evidence shall include copies of such plans, studies or surveys and their outcome.

e. Evidence of participation in other Iowa department of economic development programs within the past three years.

f. Designation as a certified local government, an Iowa great place, or an Iowa cultural and entertainment district from the Iowa department of cultural affairs.

39.7(6) *Readiness. (40 points maximum)*

a. Identification of the community's familiarity with the main street program and principles as evidenced by prior exposure to main street conferences, community presentations, and contact with the main street Iowa program.

b. Demonstration of support shown for the main street program by the local financial community, the chamber of commerce, the merchants association, the local economic development organization, the local elected officials and the professional staff of city government.

c. Demonstration of the ability to implement the main street program and hire a program director upon selection. Demonstration of this ability shall include a work plan with established timetables to hire a program director and organize a board of directors, if needed.

[**ARC 9455B**, IAB 4/6/11, effective 5/11/11]

261—39.8(75GA,ch1201) Financial management. Rescinded IAB 4/6/11, effective 5/11/11.

261—39.9(15) Performance reviews. Participating main street communities shall submit performance reports to the department as required. The reports shall document the progress of the program activities.
[**ARC 9455B**, IAB 4/6/11, effective 5/11/11]

261—39.10(15) Noncompliance. If the department finds that a participating main street community is not in compliance with the requirements under this program, the department shall terminate the program agreement.
[**ARC 9455B**, IAB 4/6/11, effective 5/11/11]

261—39.11(15) Forms. The following forms will be used by the administering agency for the main street program.

1. Application form for the Iowa main street program (Form 1).
2. Performance reports for monitoring the performance of each grantee (Form 2).

[**ARC 9455B**, IAB 4/6/11, effective 5/11/11]

These rules are intended to implement Iowa Code section 15.108.

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[1] History transferred from 261—Chapter 42 IAC 1/4/95.

CHAPTER 40
IOWA JOBS MAIN STREET PROGRAM

261—40.1(83GA,SF2389) Authority. The authority for establishing the Iowa jobs main street program is provided in 2010 Iowa Acts, Senate File 2389, sections 10 and 68.
[**ARC 8922B**, IAB 6/30/10, effective 6/11/10; **ARC 9291B**, IAB 12/15/10, effective 1/19/11]

261—40.2(83GA,SF2389) Purpose. The purpose of the program is to fund projects that are currently on the department's highest-priority list. The highest-priority list shall include those projects that have previously applied for funding consideration or have received partial funding for façade master plans to rehabilitate storefronts in Iowa main street districts; that complete streetscape projects where planning and the majority of funding are already secure; that are unfunded main street challenge grant projects; and that are other building rehabilitation projects.
[**ARC 8922B**, IAB 6/30/10, effective 6/11/10; **ARC 9291B**, IAB 12/15/10, effective 1/19/11]

261—40.3(83GA,SF2389) Definitions.

"Department" means the Iowa department of economic development.

"Director" means the director of the department or the director's designee.

"Eligible applicant" means a department-designated main street organization that participates in the Iowa main street program described by 261—Chapter 39 and that has a current contract with the department for participation in the program.

"Grant" means funds received through the program as evidenced by an agreement with the department.

"Grantee" means any eligible applicant receiving funds under the program.

"Highest-priority list" means the list of projects developed under these rules that contains a description and prioritization of main street projects eligible for funding under the program.

"Program" means the Iowa jobs main street program.

"Project" means a project that has previously applied to the department under its main street program, sustainable community fund, or downtown revitalization fund.
[**ARC 8922B**, IAB 6/30/10, effective 6/11/10; **ARC 9291B**, IAB 12/15/10, effective 1/19/11]

261—40.4(83GA,SF2389) Highest-priority list. The director shall compile at least annually a highest-priority list of projects proposed for funding and shall publish the highest-priority list on the department's Web site.

40.4(1) *Eligibility.* To be eligible to be included on the highest-priority list, the proposed project must be managed or owned by an eligible applicant, be eligible for main street funding described in 261—Chapter 39, and meet one of the following requirements:

a. The project has previously applied for funding consideration or has received partial funding for façade master plans to rehabilitate storefronts in Iowa main street districts through the department's community development programs;

b. The project is a complete streetscape project for which planning and the majority of funding is already secure;

c. The project is an unfunded project through the main street challenge grant described in 261—Chapter 39; or

d. The project is a building rehabilitation project.

40.4(2) *Priority.* Proposed projects shall be prioritized based on the following criteria:

a. The eligible applicant is in good standing with the department, that is, the eligible applicant is conforming with contractual requirements or has satisfactorily performed under prior awards.

b. The project is currently under construction or has adequate development of construction documents so that it could be under construction within 60 days of award. For purposes of this subrule, "under construction" shall mean that construction contracts have been executed by the grantee or its subrecipients.

c. The project could be completed within the grant period of 18 months from the date of award.

d. The project has demonstrated a broad base of funding outside the public investment.

e. The project is utilizing, intends to utilize, or has utilized state or federal historic tax credits, as evidenced by appropriate filings to the state historic preservation office.

f. The project conforms to the state of Iowa's Green Streets Criteria, version 2.0, published in August 2009.

g. The project is considered a key structure or group of structures in a historic commercial district.

h. The project, if funded, would likely result in job creation or revenue increases for the community.

i. The estimated costs of the project are documented and credible.

40.4(3) *Additional information.* The department may request additional information from eligible applicants in developing the highest-priority list. Failure on the part of an eligible applicant to provide additional information to the department in the form and by the date requested may result in an eligible applicant's project not being included in the highest-priority list.

[**ARC 8922B**, IAB 6/30/10, effective 6/11/10; **ARC 9291B**, IAB 12/15/10, effective 1/19/11]

261—40.5(83GA,SF2389) Funding. All Iowa jobs funds shall be awarded and used as specified in 2009 Iowa Acts, Senate File 376, and 2010 Iowa Acts, Senate File 2389, and these rules. Funds shall be paid on a reimbursement basis as described in the grant agreement. Any portion of an amount awarded for projects that remains unexpended upon completion of the project may be reallocated to other projects on the highest-priority list at the discretion of the director.

40.5(1) *Timing of grants.* The funding of projects on the highest-priority list under the program is contingent upon the availability of funds allocated to the department. When funds are available, the department shall fund main street projects on the highest-priority list in the order they are listed and subject to the conditions of these rules.

40.5(2) *Grant period.* A grantee may receive a grant for a term not to exceed 18 months unless otherwise agreed upon by the department and included as part of the grant agreement or amendment thereof.

40.5(3) *Compliance and termination.* Continued funding through the grant period is contingent upon acceptable audit and monitoring reports received by the department and the grantee's compliance with the terms and conditions of the grant agreement. The department may terminate or suspend funding, in whole or in part, if there is a substantial violation of a specific provision of the agreement or these rules and corrective action has not been taken by the grantee.

40.5(4) *Allowable cost.* Funds granted by this program to a grantee shall be applied toward the project described in the grant agreement.

40.5(5) *Ineligible costs.* In addition to any limitations described in the grant agreement, funds shall not be used for the following:

a. Expenditures made prior to the date of the award.

b. The refinancing of a loan existing prior to the date of the award.

c. Administrative costs of the grantee.

d. Routine, recurring maintenance or operational expenses of the project.

e. Purchase of real property.

40.5(6) *Amendments.* Any substantive change to a grant agreement shall be considered an amendment. Amendments must be requested in writing by the grantee and shall not be considered effective until the director has approved and executed such an amendment. All amendments must be executed in conformance with the grant agreement and these rules.

[**ARC 8922B**, IAB 6/30/10, effective 6/11/10; **ARC 9291B**, IAB 12/15/10, effective 1/19/11]

261—40.6(83GA,SF2389) Financial management.

40.6(1) *Audits.* All grants under the program are subject to audit. Grantees shall be responsible for the procurement of audit services and for the payment of audit costs. Audits may be performed by the state auditor's office or by a qualified independent auditor. Representatives of the department and the state auditor's office shall have access to all books, accounts, documents and records belonging to, or in use by, grantees pertaining to the receipt of a grant under these rules.

40.6(2) *Record retention.* All records shall be retained for five years beyond the grant period or longer if any litigation or audit is begun or if a claim is instituted involving the grant or agreement covered by the record. In these instances, the records shall be retained until the litigation, audit or claim has been resolved.
[**ARC 8922B**, IAB 6/30/10, effective 6/11/10; **ARC 9291B**, IAB 12/15/10, effective 1/19/11]

261—40.7(83GA,SF2389) Reports.

40.7(1) *General reporting requirements.* Reports shall include information required by the grant agreement and shall be submitted to the department at intervals described in the grant agreement. The reports shall assess the use of funds in accordance with the program's objectives and progress of the program activities.

40.7(2) *Job creation.* The grantee shall report the total number of jobs created as a result of the project along with other information related to the quality of such jobs, including hours and wages, as requested by the department. For purposes of this rule, the number of jobs created may be calculated by determining which new employment positions created and filled would not have been continued were it not for this program. This would include both permanent and temporary positions filled by the grantee, a contractor or a subcontractor, including construction contractors and their employees. This requirement shall be in effect for two years beyond the project's completion.
[**ARC 8922B**, IAB 6/30/10, effective 6/11/10; **ARC 9291B**, IAB 12/15/10, effective 1/19/11]

261—40.8(83GA,SF2389) Signs. Each project shall recognize in a prominent location and manner the fact that the project was made possible, in part, through a grant from the Iowa jobs program. During the construction period, the recognition (including a display of the Iowa jobs logo) may be located on temporary signage. The completed project shall feature a permanent acknowledgment, such as a plaque or similar commemoration. Other benefactors of the project may be similarly acknowledged as well. The department may provide funding to the grantees for these signs using funds appropriated to the department through 2010 Iowa Acts, Senate File 2389, sections 10 and 68.
[**ARC 8922B**, IAB 6/30/10, effective 6/11/10; **ARC 9291B**, IAB 12/15/10, effective 1/19/11]

261—40.9(83GA,SF2389) Noncompliance. If the department finds that a grantee is not in compliance with the requirements under this program, the grantee will be required to refund to the state all disallowed costs. Reasons for a finding of noncompliance include, but are not limited to, a finding that the grantee is using program funds for unauthorized activities, has failed to complete approved activities in a timely manner, has failed to comply with applicable laws and regulations or the grant agreement, or lacks the capacity to carry out the purposes of the program.
[**ARC 8922B**, IAB 6/30/10, effective 6/11/10; **ARC 9291B**, IAB 12/15/10, effective 1/19/11]

261—40.10(83GA,SF2389) Great places consideration. In compliance with Iowa Code section 303.3C, projects that are identified in an Iowa great places agreement developed pursuant to Iowa Code section 303.3C that are otherwise eligible projects under these rules shall receive additional consideration for placement on the highest-priority list. Such additional consideration shall be afforded only to those projects that have been identified as an Iowa great place under Iowa Code section 303.3C within the past three years.
[**ARC 8922B**, IAB 6/30/10, effective 6/11/10; **ARC 9291B**, IAB 12/15/10, effective 1/19/11]

These rules are intended to implement 2010 Iowa Acts, Senate File 2389, sections 10 and 68.

[Filed Emergency ARC 8922B, IAB 6/30/10, effective 6/11/10]

[Filed ARC 9291B (Notice ARC 8921B, IAB 6/30/10), IAB 12/15/10, effective 1/19/11]

CHAPTER 41
COMMUNITY DEVELOPMENT FUND

261—41.1(79GA,HF718) Purpose. The purpose of this program is to assist communities in addressing community and economic development challenges and opportunities. Technical and financial assistance will be provided to communities to access consultation and technical assistance to further local collaborative initiatives or to select and prioritize strategies for the improvement of operations and structures to meet business and residential demands.

261—41.2(79GA,HF718) Program eligibility.

41.2(1) Eligible applicants include any Iowa county, city, council of government, or resource conservation and development organization which may apply on behalf of an economic development group or government entity. Applicants must be able to demonstrate a minimum match that equals at least 25 percent of the grant amount requested in the form of cash, and an additional in-kind services match of 10 percent.

41.2(2) Eligible projects. Projects eligible for funding include the following:

a. Telecommunications: education and training on enhanced telecommunications services, strategy development for access and use of advanced telecommunications;

b. Growth management: strategies to promote orderly development and rational land use;

c. Housing: area, regional or multicommunity strategy to address specific housing needs, particularly upper-story commercial areas and in-fill lot development;

d. Business development: strategies to enhance target industry clusters (information solutions, advanced manufacturing, and life sciences); entrepreneurship; international trade; e-commerce, education and training through local development groups and chambers of commerce; and capital development;

e. Community services: development of multicommunity or regional delivery of government services and community development services that directly enhance business development; innovative approaches to workforce shortages, skill development and employee retention; diversity of population capitalizing on immigration to sustain and revitalize communities;

f. Education and training: development of leadership strategies and regional workshops related to the targeted 2010 issues; and

g. Commercial development: one-to-one business assistance, market analysis training, upper-story reuse assistance, fundraising strategies, and building design assistance.

261—41.3(79GA,HF718) General policies for applications.

41.3(1) The maximum award for a single project is $50,000. Awards may be in the form of either cash or technical assistance. Cash or technical assistance awards will vary depending upon the complexity of the issue, geographic area of service, population in the service area, number of issues involved, and diversity of the collaborative partners.

41.3(2) Applications shall include letters of support from each entity indicating roles, responsibilities, and support in the form of either cash or in-kind services.

41.3(3) One community, county, or council of governments shall be designated as the recipient of funds. An official of that legal entity shall sign the application accepting responsibility for the funds.

261—41.4(79GA,HF718) Application procedures. Preapplications shall be submitted to the Community Development Fund, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309. The IDED consultant team will review preapplications, and written or oral comments will be returned to the applicant with appropriate application forms and instructions available at this address.

261—41.5(79GA,HF718) Application contents. Applications shall be submitted on forms developed by and available from IDED. Required contents of the application shall include:

1. A summary sheet including title and project overview; name, address, and telephone number of one person who will serve as the contact for the application; the geographic area to be served; and total program budget including applicant match.
2. A description of needs or problems, objectives, activities, project timetable, and the final product/manual/outcome.
3. A budget for the project including cash and in-kind match.
4. Other documentation as requested by IDED.

261—41.6(79GA,HF718) Review process. A committee within the department will review each eligible application. Applicants may be interviewed further to explore the potential for providing technical assistance, gain additional information concerning the proposal, and negotiate the project's work plan and budget.

41.6(1) *Application review.* The committee will review the applications based on the following deliverables:

a. Goals: are they obtainable in one year?

b. Economic impact: is it measurable?

c. Regional partners: is there a larger impact for the region?

d. Industry clusters: does the project advance industry retention or an expansion of the targeted groups?

e. Models for success: can the project be replicated in other parts of the state to address 2010 issues?

41.6(2) *Project description.* Each project description must include:

a. Demonstrated need for the project. (Economic or community enhancement impact to the area; how the project will improve the development potential of the project area, improve access to services, or create an environment for community improvement.)

b. Capacity of the applicant to sustain, implement, or reach stated objectives once grant period is concluded.

c. Demonstrated networking, cooperation and partnerships with other entities, organizations, and local governments necessary to meet stated goals and objectives, including past successful cooperative efforts that have been sustained over time. Multicommunity groups are strongly encouraged.

d. Local financial and volunteer contribution to the project that exceeds minimum match requirements. (Cash, office materials, supplies, volunteer support, office space, equipment, administrative assistance.)

e. Creativity and innovation of the proposed project to address issues presented. (Project demonstrates a new and creative approach to address a common issue/concern.)

f. Evidence of participation in local planning that supports the request for funds. (Community builder plan, housing needs assessment, comprehensive land use planning, or a similar planning activity that has led the applicant to the proposed activity which the application addresses.)

g. Demonstrated need for the funds requested.

h. Evidence of local planning.

41.6(3) *Ineligible expenses.* Expenses ineligible for reimbursement include, but are not limited to:

a. Purchase of land, buildings or improvements thereon.

b. Expenses for development of sites and facilities.

c. Cost of nonexpendable equipment (i.e., computers and fax and copy machines).

d. Cost of studies or plans that are routinely developed as part of a city or county function or operation, such as development of a comprehensive plan, community builder plans, master plans or engineering studies for water, sewer, roads, or parks.

261—41.7(79GA,HF718) Award process. Recommendations by the committee for funding will be forwarded to the director of the department for final decisions. Applicants will be notified in writing after the final decisions are made. Successful applicants will enter into a contract with IDED that

outlines recipient responsibilities for oversight of the project, terms of funds disbursement and reporting requirements.

261—41.8(79GA,HF718) Project management.

41.8(1) Record keeping. The recipient of funds shall retain financial records, supporting documents, statistical records and all other records pertinent to the project for a period of three years after the contract expiration date.

41.8(2) Representatives of the department and state auditors shall have access to all books, accounts and documents belonging to or in use by the grantee pertaining to the receipt of assistance under this program.

41.8(3) All contracts under this program are subject to audit.

261—41.9(79GA,HF718) Performance reviews.

41.9(1) Applicants will be required to submit performance reports to the department. The report will assess progress on the goals and project activities. Some projects may require the completion of a final product (such as a manual), study or report to be submitted to the department before final payment is made. Performance reports may be quarterly or semiannual and, for some projects, may be required for a period of time after contract period expires.

41.9(2) The department may perform field visits as deemed necessary.

These rules are intended to implement 2001 Iowa Acts, House File 718.

[Filed 9/16/99, Notice 8/11/99—published 10/6/99, effective 11/10/99]
[Filed 3/29/01, Notice 1/10/01—published 4/18/01, effective 5/23/01]
[Filed 11/29/01, Notice 10/17/01—published 12/26/01, effective 1/30/02]

CHAPTER 42
RURAL RESOURCE COORDINATION PROGRAMS FOR FIRE SERVICES

Rescinded IAB 7/9/03, effective 8/13/03

CHAPTER 43
MAIN STREET LINKED INVESTMENTS LOAN PROGRAM

Rescinded IAB 7/9/03, effective 8/13/03

CHAPTER 44
COG ASSISTANCE

261—44.1(28H) Purpose. The chapter provides grant funds to councils of governments for the provision of technical assistance to political subdivisions in their service delivery areas, as authorized in the Act.

261—44.2(28H) Definitions. The terms used in this chapter shall be defined as follows:

"Act" means Iowa Code section 28H.1 as amended by 2007 Iowa Acts, Senate File 444.

"Applicant" means any entity organized as a metropolitan, regional, areawide planning commission, or as a council of government and which applies for assistance under this chapter.

"COG" means a council of government.

"Community development" means any activity that supports one or more of the following: housing, transportation, education, infrastructure, recreation, economic development, health care, child care, environmental concerns, communications, natural and human resources, and training.

"Department" means the Iowa department of economic development.

"Grantee" means an applicant which receives funding under this chapter.

"Local government" means a city or county in Iowa.

"Political subdivision" means an Iowa city or county.

"Service delivery area" means the geographic area served by the applicant.

261—44.3(28H) Eligibility. Iowa entities authorized as a council of government by Executive Order Number 11, 1969, by a chapter 28E agreement, or by Iowa Code section 28H.1 as amended by 2007 Iowa Acts, Senate File 444, are eligible to receive assistance through this chapter.

261—44.4(28H) Eligible activities. Applicants may apply for grant funds to fund any one or more of the following community development activities: community planning, grant writing, coordination, shared staffing and materials, consultation services, staffing, capacity building, training, and provision of technical assistance.

261—44.5(28H) Application procedure. All eligible applicants will be provided with written notification when funds become available. In order to receive a grant the applicant must submit the following information to the Department of Economic Development, Division for Community Progress, 200 East Grand Avenue, Des Moines, Iowa 50309:

44.5(1) A description of the service delivery area that will be served with the grant funds. In no case shall the funds be utilized to provide assistance outside the borders of the state of Iowa.

44.5(2) A work plan outlining the specific community development technical assistance activities to be undertaken with the COG assistance funding provided under this chapter and the time frame for this assistance.

44.5(3) A budget which details how the grant funds will be expended to accomplish the work plan outlined in 44.5(2).

44.5(4) A narrative describing how the applicant may assist its service delivery area's regional coordinating council(s) in the implementation of its regional economic development coordination plan(s).

44.5(5) A narrative which specifies how the activities outlined by the work plan required in 44.5(2) complement the regional economic development coordination plan(s) of the regional coordinating council(s) in its service delivery area.

44.5(6) An explanation of how the work plan submitted under 44.5(2) supports the overall annual work plan developed by the applicant.

44.5(7) A narrative which describes how the applicant may work with its service delivery area's regional coordinating council(s) to coordinate delivery of services and to further delineate the roles of each entity.

261—44.6(28H) Grant awards. Grant awards will be made on a noncompetitive basis with each eligible applicant receiving an equal share of the funds available for the purpose of this chapter. One-seventeenth of the total funds allocated by the legislature for COG assistance shall be awarded to each COG.

261—44.7(28H) Funding. The department will execute a contract with the grantee for the provision of grant funds to undertake the work plan and budget submitted in accordance with 44.5(28H). The funding of an application under these rules is contingent upon the availability of funds appropriated for this purpose.

The department will allocate grant funds on a quarterly basis subject to the receipt of a quarterly requisition for payment from each grantee. The amount to be allocated each quarter is dependent upon the budget and work plan as outlined in 44.5(28H).

261—44.8(28H) Financial management standards. All contracts executed under these rules are subject to audit. The grantee shall be responsible for the procurement of audit services and for payment of audit costs. Audits may be performed by the state auditor's office or by a qualified independent auditor. The grantee shall comply with the Single Audit Act of 1984, P.L. 98-502, or with other applicable laws and regulations, as appropriate, in preparing the audit. Copies of the audit report shall be transmitted to the department within 30 days of its completion.

261—44.9(28H) Record keeping and retention. Financial records, supporting documents, statistical records, and all other records pertinent to the grant shall be retained by the recipient for three years beyond the submission of the final invoice, or longer if any litigation or audit is begun or if a claim is initiated involving the grant covered by the records. In these instances, the records shall be retained until the litigation, audit or claim has been resolved.

Representatives of the department and the state auditor's office shall have access to all books, accounts, documents, records, and other property belonging to or in use by the recipient pertaining to the receipt of assistance under these rules.

261—44.10(28H) Progress reports. Each grantee shall submit quarterly progress reports which outline its progress in the activities outlined by its application work plan. The progress report is due 30 days following the end of each calendar quarter.

261—44.11(28H) Noncompliance. If the department finds that the grantee is not in compliance with the requirements of these rules or grant agreement, the grantee may be required to refund to the state all disallowed costs. Reasons for a finding of noncompliance include, but are not limited to, a finding that the grant funds were used for unauthorized activities, the grantee has failed to complete approved activities in a timely manner, the grantee has failed to comply with applicable laws and regulations of the grant agreement, or the grantee lacks the capacity to carry out the purposes of the program.

261—44.12(28H) Grant closeouts. Upon completion of the time period covered by the grant agreement, the department shall initiate grant closeout.

261—44.13(28H) Compliance with state laws and regulations. The grantee must comply with any provisions of the Iowa Code governing activities performed with funds awarded under these rules.

These rules are intended to implement Iowa Code section 28H.1 as amended by 2007 Iowa Acts, Senate File 444.

[Filed 11/22/89, Notice 10/18/89—published 12/13/89, effective 1/17/90]
[Filed 9/20/07, Notice 7/4/07—published 10/10/07, effective 11/14/07]

CHAPTER 45
HOUSING ASSESSMENT AND ACTION PLANNING PROGRAM

Rescinded IAB 7/9/03, effective 8/13/03

CHAPTER 46
ENDOW IOWA GRANTS PROGRAM

261—46.1(81GA,HF868) Purpose. The purpose of the endow Iowa grants program is to encourage individuals, businesses, and organizations to invest in community foundations and community affiliate organizations to enhance the quality of life for citizens of this state through increased philanthropic activity. This purpose will be met by providing capital to new and existing citizen groups of this state organized to establish permanent endowment funds that will address community needs.

261—46.2(81GA,HF868) Definitions.

"Act" means the endow Iowa program Act, Iowa Code sections 15E.301 to 15E.306 as amended by 2005 Iowa Acts, House File 868.

"Board" means the governing board of the lead philanthropic entity identified by the department pursuant to Iowa Code section 15E.304.

"Business" means an entity operating within the state and includes individuals operating a sole proprietorship or having rental, royalty, or farm income in this state and includes a consortium of businesses.

"Community affiliate organization" means a group of five or more community leaders or advocates organized for the purpose of increasing philanthropic activity in an identified community or geographic area in this state with the intention of establishing a community affiliate endowment fund.

"Department" or *"IDED"* means the Iowa department of economic development.

"Endow Iowa qualified community foundation" means a community foundation organized or operating in this state that substantially complies with the national standards for U.S. community foundations established by the National Council on Foundations as determined by the department in collaboration with the Iowa Council of Foundations.

"Endowment gift" means an irrevocable contribution to a permanent endowment held by an endow Iowa qualified community foundation.

"Lead philanthropic entity" means the entity identified by the department pursuant to Iowa Code section 15E.304.

"Permanent endowment fund" means a fund held in an endow Iowa qualifying community foundation to provide benefit to charitable causes in the state of Iowa. Endowed funds are intended to exist in perpetuity, and to implement an annual spend rate not to exceed 5 percent.

261—46.3(81GA,HF868) Program procedures. The department shall identify a lead philanthropic entity for purposes of encouraging the development of qualified community foundations in this state. A lead philanthropic entity may receive a grant from the department. The board shall use the grant moneys to award endow Iowa grants to new and existing qualified community foundations and to community affiliate organizations as follows:

46.3(1) Endow Iowa grants awarded to new and existing endow Iowa qualified community foundations and to community affiliate organizations shall not exceed $25,000 per foundation or organization unless a foundation or organization demonstrates a multiple county or regional approach.

46.3(2) Endow Iowa grants may be awarded on an annual basis with not more than three grants going to a single county in a fiscal year.

46.3(3) Of any moneys received by a lead philanthropic entity from the state, not more than 5 percent of such moneys shall be used by the lead philanthropic entity for administrative purposes.

46.3(4) Lead philanthropic entity eligibility requirements. A lead philanthropic entity shall meet all of the following qualifications:

a. The entity shall be a nonprofit entity, which is exempt from federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code.

b. The entity shall be a statewide organization with membership consisting of organizations, such as community, corporate, and private foundations, whose principal function is the making of grants within the state of Iowa.

c. The entity shall have a minimum of 40 members, and that membership shall include qualified community foundations.

261—46.4(81GA,HF868) Eligible applicants. Eligible applicants for endow Iowa grants include new and existing endow Iowa qualified community foundations and community affiliate organizations. Endow Iowa grant funds may be awarded to endow Iowa qualified community foundations and community affiliate organizations that do all of the following:

1. Provide the board with all information required by the board.
2. Demonstrate a dollar-for-dollar funding match in a form approved by the board.
3. Identify a qualified community foundation to hold all funds. A qualified community foundation shall not be required to meet this requirement.
4. Provide a plan to the board demonstrating the method for distributing grant moneys received from the board to organizations within the community or geographic area as defined by the endow Iowa qualified community foundation or the community affiliate organization.

261—46.5(81GA,HF868) Application and review criteria. The lead philanthropic entity shall develop and make available a standardized application pertaining to the distribution of endow Iowa grants. Subject to the availability of funds, applications will be reviewed on an ongoing basis and reviewed at least quarterly by the board. In ranking applications for grants, the board shall consider a variety of factors including, but not limited to, the following:

1. The demonstrated need for financial assistance.
2. The potential for future philanthropic activity in the area represented or being considered for assistance.
3. The proportion of the funding match being provided.
4. For community affiliate organizations, the demonstrated need for the creation of a community affiliate endowment fund in the applicant's geographic area.
5. The identification of community needs and the manner in which additional funding will address those needs.
6. The geographic diversity of awards.

261—46.6(81GA,HF868) Reporting requirements. By January 31 of each year, pursuant to Iowa Code section 15E.306, the lead philanthropic entity, in cooperation with the department, shall publish an annual report of the activities conducted during the previous calendar year and shall submit the report to the governor and general assembly. The annual report shall include a detailed listing of endow Iowa grant funds awarded by the lead philanthropic entity and the amount of endow Iowa tax credits authorized by the department.

These rules are intended to implement Iowa Code sections 15E.301 to 15E.306 as amended by 2005 Iowa Acts, House File 868.

[Filed 11/20/03, Notice 9/17/03—published 12/24/03, effective 1/28/04]
[Filed 10/21/05, Notice 8/3/05—published 11/9/05, effective 12/14/05]

CHAPTER 47
ENDOW IOWA TAX CREDITS

261—47.1(15E,83GA,SF478) Purpose. The purpose of endow Iowa tax credits is to encourage individuals, businesses, and organizations to invest in community foundations and to enhance the quality of life for citizens of this state through increased philanthropic activity.
[**ARC 8474B**, IAB 1/13/10, effective 2/17/10]

261—47.2(15E,83GA,SF478) Definitions.

"Act" means Iowa Code sections 15E.301 to 15E.306 as amended by 2009 Iowa Acts, Senate File 478.

"Community affiliate organization" means a group of five or more community leaders or advocates organized for the purpose of increasing philanthropic activity in an identified community or geographic area in the state with the intention of establishing a community affiliate endowment fund.

"Department" or *"IDED"* means the Iowa department of economic development.

"Endow Iowa qualified community foundation" means a community foundation organized or operating in this state that substantially complies with the national standards for U.S. community foundations established by the National Council on Foundations as determined by the department in collaboration with the Iowa Council of Foundations.

"Endowment gift" means an irrevocable contribution to a permanent endowment held by an endow Iowa qualified community foundation.

"Permanent endowment fund" means a fund held in an endow Iowa qualifying community foundation to provide benefit to charitable causes in the state of Iowa. Endowed funds are intended to exist in perpetuity, and to implement an annual spend rate not to exceed 5 percent.

"Tax credit" means the amount an individual may claim against the taxes imposed in Iowa Code chapter 422, divisions II, III, and V, and in Iowa Code chapter 432, and against the moneys and credits tax imposed in Iowa Code section 533.24.
[**ARC 8474B**, IAB 1/13/10, effective 2/17/10]

261—47.3(15E,83GA,SF478) Allocation of funds. The department shall authorize tax credits to qualified individuals who provide an endowment gift to an endow Iowa qualified community foundation or a community affiliate organization affiliated with an endow Iowa qualified community foundation for a permanent endowment fund within the state of Iowa in accordance with the following provisions:

47.3(1) Approved tax credits shall be allowed against taxes imposed in Iowa Code chapter 422, divisions II, III, and V, and in Iowa Code chapter 432, and against the moneys and credits tax imposed in Iowa Code section 533.24.

47.3(2) Beginning January 1, 2010, approved tax credits will be equal to 25 percent of a taxpayer's gift to a permanent endowment held in an endow Iowa qualified community foundation. The amount of the endowment gift for which the endow Iowa tax credit is claimed shall not be deductible in determining taxable income for state income tax purposes.

47.3(3) The amount of tax credits authorized pursuant to this rule shall not exceed a total of $3 million annually, plus an additional amount pursuant to Iowa Code section 99F.11(3)*"e"*(3). The maximum amount of tax credits granted to a single taxpayer annually shall not exceed $100,000. If the department receives applications for tax credits in excess of the amount available, the applications shall be prioritized by the date the department received the applications. If the number of applications exceeds the amount of annual tax credits available, the department shall establish a wait list for the next year's allocation of tax credits and applications shall first be funded in the order listed on the wait list.

47.3(4) Any tax credit in excess of the taxpayer's tax liability for the tax year may be credited to the tax liability for the following five years or until depleted, whichever occurs first.

47.3(5) A tax credit shall not be carried back to a tax year prior to the tax year in which the taxpayer claims the tax credit.

47.3(6) A tax credit shall not be transferable to any other taxpayer.
[**ARC 8474B**, IAB 1/13/10, effective 2/17/10]

261—47.4(15E,83GA,SF478) Distribution process and review criteria. The department shall develop and make available a standardized application pertaining to the allocation of endow Iowa tax credits.

47.4(1) Twenty-five percent of the annual amount available for tax credits shall be reserved for those permanent endowment gifts made to community affiliate organizations. If by September 1 of any year the entire 25 percent reserved for permanent endowment gifts corresponding to community affiliate organizations is not allocated, the amount remaining shall be available for other applicants.

47.4(2) Ten percent of the annual amount available for tax credits shall be reserved for those permanent endowment gifts totaling $30,000 or less. If by September 1 of any year the entire 10 percent reserved for permanent endowment gifts totaling $30,000 or less is not allocated, the amount remaining shall be available for other applicants.

47.4(3) Applications will be accepted and awarded on an ongoing basis. The department will make public by June 1 and December 1 of each calendar year the total number of requests for tax credits and the total amount of requested tax credits that have been submitted and awarded.
[**ARC 8474B**, IAB 1/13/10, effective 2/17/10]

261—47.5(15E,83GA,SF478) Reporting requirements. By January 31 of each calendar year, the department shall publish an annual report of the activities conducted pursuant to these rules during the previous calendar year and shall submit the report to the governor and general assembly. The annual report shall include the information required by Iowa Code section 15.104(9)*"h."*
[**ARC 8474B**, IAB 1/13/10, effective 2/17/10]

These rules are intended to implement Iowa Code sections 15E.301 to 15E.306 as amended by 2009 Iowa Acts, Senate File 478.

[Filed 11/20/03, Notice 10/1/03—published 12/24/03, effective 1/28/04]
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CHAPTER 48
RURAL ACTION DEVELOPMENT PROGRAM

[Prior to 7/19/95, see 261—Ch 69]

Rescinded IAB 10/6/99, effective 11/10/99

CHAPTER 49
RURAL INNOVATION GRANTS

Rescinded IAB 10/6/99, effective 11/10/99

PART IV
BUSINESS DEVELOPMENT DIVISION

CHAPTER 50
DIVISION RESPONSIBILITIES

261—50.1(15) Mission. The division's mission is to continually strengthen Iowa's presence in the domestic and international marketplace, promote Iowa goods and services worldwide, attract and retain skilled workers, attract and retain business investment and facilitate the growth of Iowa's entrepreneurial and existing businesses to create new opportunities and wealth for Iowans.

261—50.2(15) Division responsibilities. The division's primary responsibilities are marketing, business assistance, operation of the office of science and technology, and business finance.

50.2(1) *Marketing.* Marketing activities include, but are not limited to, administration of the taste of Iowa program, business location assistance, assisting existing industry, export marketing, human resource recruitment consortium, reverse foreign investment and trade missions.

50.2(2) *Business assistance.* Business assistance includes, but is not limited to, administration of the following programs and services: business license information center (BLIC), economic development set-aside (EDSA) program, assistance to businesses and communities regarding immigration issues, brownfield redevelopment assistance, Iowa waste exchange program, physical infrastructure assistance program (PIAP), regional angel investors network (RAIN), recycle Iowa, regulatory assistance, venture network of Iowa (VNI), training assistance under Iowa Code chapters 260E and 260F, and accelerated career education (ACE) under Iowa Code chapter 260G.

50.2(3) *Business finance.* Business finance activities include, but are not limited to, program administration for community economic betterment account (CEBA), CEBA venture, comprehensive management assistance, entrepreneurs with disabilities, new jobs and income program (NJIP), enterprise zone (EZ) program, entrepreneurial ventures assistance (EVA) program, self-employment loan program (SELP), targeted small business financial assistance program (TSBFAP), and value-added agricultural products financial assistance program (VAAPFAP).

50.2(4) *Office of science and technology.* Reserved.

These rules are intended to implement Iowa Code chapter 15 and section 17A.3.

[Filed emergency 12/19/86—published 1/14/87, effective 12/19/86]
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[Filed 6/20/03, Notice 5/14/03—published 7/9/03, effective 8/13/03]

CHAPTER 51
SELF-EMPLOYMENT LOAN PROGRAM

[Prior to 7/19/95, see 261—Ch 8]

[Former Ch 51, "Speculative Building Loans," rescinded IAB 7/19/95, effective 8/23/95]

261—51.1(15) Transition. Prior to July 1, 2003, the Iowa department of economic development administered a self-employment loan program (SELP). The purpose of the SELP was to provide loans to low-income persons and persons with a disability to establish or expand small business ventures. Pursuant to 2003 Iowa Acts, House File 390, this program was repealed, and the targeted small business financial assistance program (TSBFAP) (261—Chapter 55) was amended to include applicants qualifying as low-income. The SELP rules in effect on June 30, 2003, apply to all SELP loans awarded prior to July 1, 2003.

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CHAPTER 52
SELF-EMPLOYMENT BUSINESS ASSISTANCE

[Prior to 7/19/95, see 261—Ch 9]

[Former Ch 52, "Business Incubator/Technical Assistance Center Program," rescinded IAB 7/19/95, effective 8/23/95]

Rescinded IAB 7/9/03, effective 8/13/03

CHAPTER 53
COMMUNITY ECONOMIC BETTERMENT ACCOUNT (CEBA) PROGRAM

[Prior to 1/14/87, Iowa Development Commission[520] Ch 8]
[Prior to 7/19/95, see 261—Ch 22]
[Former Ch 53, "Economic and Research and Development Grants," rescinded IAB 7/19/95, effective 8/23/95]

261—53.1(15) Purpose and administrative procedures.

53.1(1) *Purpose.* The purpose of the community economic betterment account (CEBA) program is to assist communities and rural areas of the state with their economic development efforts and to increase employment opportunities for Iowans by increasing the level of economic activity and development within the state. The program structure provides financial assistance to businesses and industries which require assistance in order to create new job opportunities or retain existing jobs which are in jeopardy. Also, the program may provide comprehensive management assistance to businesses involved with the CEBA program. Assistance may be provided to encourage:

1. New business start-ups in Iowa;
2. Expansion of existing businesses in Iowa; or
3. The recruitment of out-of-state businesses into Iowa.

53.1(2) *Administrative procedures.* The CEBA program is subject to the requirements of the department's rules located in 261—Part VII, additional application requirements and procedures, and 261—Part VIII, legal and compliance.

261—53.2(15) Definitions. In addition to the standard definitions located in 261—Chapter 173, the following definitions apply to the CEBA program:

"Applicant" means a city, county, or merged area school which requests state financial assistance on behalf of a business or a local development organization.

"Base economic activities" means those business activities which result in a net increase in the production of goods or services within the state. This would occur if a majority of the company's products or services were new, were sold outside the state, or were sold within the state in place of items previously purchased outside the state.

"Business start-up" means a business which has not been in operation for more than two years prior to the date of the CEBA application.

"Buydown" means participation by the state in a conventional loan to an assisted business by lowering either the effective principal or interest of the loan.

"CEBA" refers to the community economic betterment account funded by Iowa Code section 15.32(2).

"Comprehensive management assistance" means provision of technical business assistance through the use of department staff or professional business services provided by a public or private organization.

"Entrepreneurial development" means the promotion of small business ownership through the provision of technical management expertise.

"Modernization project" means an economic activity that is performed by a business to retool or upgrade production equipment to meet contemporary technology standards and that results in improving existing employees' job skills to enhance competitiveness for future growth and development.

"New business opportunity" means an economic activity performed by a start-up or recruited business that meets the definition of subrule 53.9(1).

"New product development" means an economic activity performed by an existing Iowa business through expansion or diversification and meets the definition of subrule 53.9(1).

"Project" means the activity, or set of activities proposed by the recipient, resulting in accomplishing the goals of the CEBA program, and which will require state assistance to accomplish.

"Retail business" means a business whose operation consists predominantly of the purchase of a product for sale to the final user or consumer who would not be purchasing for resale.

"Service business" means a business which produces and sells a thing of value which is not a tangible product.

"Small business" refers to a business which meets the size criteria for a small business as defined by the U.S. Small Business Administration and as published from time to time in the Federal Register.

"Twenty-eight E agreement" or *"28E agreement"* means an intergovernmental agreement formed according to Iowa Code chapter 28E.

"Venture project" means an economic activity performed by a start-up company, early-stage company, or existing company developing a new product or new technology.

261—53.3(15) Board and committee. Rescinded IAB 7/4/07, effective 6/15/07.

261—53.4(15) Eligible applicants. Only cities, counties, and merged area schools are eligible to apply to the department for funding under this program. Applicants which are awarded funds will pass those funds on to the recipient or approved recipient's vendor.

261—53.5(15) Provision of assistance.

53.5(1) *Eligible projects.* Projects eligible for CEBA funding include, but are not limited to, the following:

1. Building construction or reconstruction;
2. Acquisition of land;
3. Equipment purchases;
4. Operating and maintenance expenses;
5. Clearance, demolition and removal of buildings to develop sites;
6. Infrastructure improvements directly related to new employment;
7. Road construction projects directly supporting and assisting economic development;
8. Funds for guaranteeing business loans made by commercial lenders; and
9. Technical management assistance for businesses that are applying for or have received CEBA funding.

53.5(2) *Forms of assistance.* Assistance for projects may be provided in any of the following forms:

1. Principal buydowns to reduce the principal of a business loan;
2. Interest buydowns to reduce the interest on a business loan;
3. Forgivable loans;
4. Loans and loan guarantees, including short-term (float) loans. Float loans may only be made for projects where the department obtains an irrevocable letter of credit from an acceptable financial institution on behalf of the company in an amount equal to or greater than the principal amount of the loan;
5. Equity-like investments;
6. Cost reimbursement for technical/professional management services.

261—53.6(15) Application for assistance. The requirements outlined in this rule are applicable to all CEBA program components, except applications under the venture project component. Refer to rule 261—53.10(15) for application requirements for venture projects.

53.6(1) *General policies.*

a. An applicant may submit as many different applications as it wishes at any time. However, if the department is reviewing two or more applications from the same applicant at the same time, it may ask the applicant to rank them in the order preferred by the applicant.

b. Only one applicant may apply for any given project.

c. No single project may be awarded more than $1 million unless at least two-thirds of the members of the board approve the award. However, this restriction will not apply after the first $10 million has been credited to the CEBA program in any given year. This restriction does not apply to the float loan described in 53.5(2)"4."

d. No single project may be awarded a forgivable loan of more than $500,000.

e. No single project may be awarded more than $500,000 unless all other applicable CEBA requirements and each of the following criteria is met:

(1) The business has not closed or substantially reduced its operation in one area of the state and relocated substantially the same operation in the community. This requirement does not prohibit a business from expanding its operation in the community if existing operations of a similar nature in the state are not closed or substantially reduced.

(2) The business must provide and pay at least 80 percent of the cost of a standard medical and dental insurance plan or its equivalent for all full-time employees working at the facility in which the new investment occurred.

(3) The business shall agree to pay a wage for new full-time jobs of at least 130 percent of the average county wage in the county in which the community is located. This requirement may be waived by the department in the case of a float loan described in 53.5(2)"4" if the net value of the award is determined by the department to be less than $500,000.

f. To be eligible for assistance, the business shall provide for a preference for hiring residents of the state or the economic development area, except for out-of-state employees offered a transfer to Iowa or the economic development area.

g. To be eligible for assistance, applicants shall meet the qualifying wage threshold requirements described in 261—Chapter 174 and the following:

(1) Fifty percent or more of the jobs to be created or retained shall have a starting wage that pays at least the qualifying wage threshold.

(2) The department may approve a project where the starting project wage is less than the average county wage or average regional wage under the following conditions:

1. The starting wage is associated with a training period which is of relatively short duration as documented by the business; and

2. The wages will exceed 100 percent of the average county wage or 100 percent of the average regional wage at the conclusion of the training period as documented by the business; and

3. CEBA funds will be released only at the conclusion of the training period when the average county or average regional wage is achieved.

53.6(2) *Ineligible applications.* The department will not rate and rank ineligible applications. An application may be ruled ineligible if:

a. It is submitted by an ineligible applicant, or

b. The project consists of a business relocation from within the state unless unusual circumstances exist which make the relocation necessary for the business's viability, or

c. CEBA funds comprise more than 50 percent of the project's financing, or

d. The CEBA application is not properly signed by the applicant and the business, or

e. The project fails to meet the qualifying wage threshold requirements under 261—Chapter 174, or

f. The business has a record of violations of the law over a period of time that tends to show a consistent pattern as described in 261—Chapter 172.

53.6(3) *Procedures.*

a. Applications may be submitted at any time.

b. Applications should be submitted to: Division of Business Development, Department of Economic Development, CEBA Program, 200 East Grand Avenue, Des Moines, Iowa 50309. Application forms and instructions are available at this address, on the department's Web site, or by calling (515)242-4819.

c. Application contents. Required contents of application will be described within the application package itself.

d. Each eligible application will be reviewed by the department. The department may request additional information from the applicant or the proposed recipient, or perform other activities to obtain needed information.

e. The department will rate and rank applications according to the criteria in rule 53.7(15). Additionally, for small business gap financing applications, the department will use rule 53.8(15). For new business opportunities and new product development applications, the department will

use rule 53.9(15). Applications shall be reviewed and approved following the process described in 261—Chapter 175.

53.6(4) *Emergency applications.* Rescinded IAB 7/4/07, effective 6/15/07.

261—53.7(15) Selection criteria. In ranking applications for funding submitted under the small business gap financing component, the new business opportunities component, and the new product development component, at least the following criteria shall be considered:

53.7(1) *Relating to local/business involvement:*

a. The proportion of local match to be provided as compared to the local resources.

b. The proportion of private contribution to be provided, including the involvement of financial institutions.

c. The need of the business for financial assistance from governmental sources. More points shall be awarded to a business for which the department determines that governmental assistance is most necessary to the success of the project.

d. The level of need of the political subdivision.

e. The impact of the proposed project on the economy of the political subdivision and the state.

f. The certification of a community builder program for the community.

g. The expected recapture of these funds.

53.7(2) *Relating to job creation/retention:*

a. The total number of jobs to be created or retained. When rating a project, the department shall only consider those positions which meet the qualifying wage threshold requirements defined in 261—Chapter 174.

b. The quality of jobs to be created. In rating the quality of the jobs, the department shall award more points to those jobs that have a higher wage scale, a lower turnover rate, are full-time, career-type positions, or have other related factors. Those applications that have average starting wage scales which are 10 percent or more below that of the average county wage or average regional wage shall be given an overall score of zero. Business start-ups shall be given a score of zero only if their wage scales are 20 percent or more below that of the average county wage or average regional wage.

53.7(3) *Relating to business activity* :

a. The size of the business receiving assistance. The department shall award more points to small businesses as defined by the U.S. Small Business Administration.

b. The potential for future growth in the industry represented by the business being considered for assistance.

c. The impact of the proposed project on competitors of the business.

d. The capacity of the proposed project to create products by adding value to agricultural commodities.

e. The degree to which the proposed project relies upon agricultural or value-added research conducted at a college or university, including a regents institution, community college, or a private university or college.

261—53.8(15) Small business gap financing.

53.8(1) *Additional criteria.* Applications under this component shall be for businesses that meet the SBA definition of a small business. All geographic locations of the business will be used to determine the total number of employees. The criteria in rule 53.7(15) will be used for evaluating applications under this component.

53.8(2) *Application form.* Applicants applying for assistance under this component shall use the general business financial assistance application form provided by the department. The department may, at its option, transfer requests to a different financial assistance program, including but not limited to:

a. The new business opportunities or new product development components of CEBA;

b. EDSA (economic development set-aside program); or

c. PFSA (public facilities set-aside program).

53.8(3) *Scoring.* The criteria noted in rule 53.7(15) are incorporated into the scoring system as follows:

a. Local effort compared with local resources. Maximum — 20 points. This includes assistance from the city, county, community college, chambers of commerce, economic development groups, utilities, or other local sources, compared to the resources reasonably available from those sources. The form of local assistance compared to the form of CEBA assistance requested will be considered (e.g., in-kind, grant, loan, forgivable loan, job training, tax abatement, tax increment financing). The dollar amount of local effort and the timing of the local effort participation as compared to the dollar amount and timing of the requested CEBA participation will also be considered. Conventional financing, inadequately documented in-kind financing, and local infrastructure projects not specifically directed at the business are not considered local effort.

b. Community need. Maximum — 10 points. This includes considerations such as unemployment rates, per capita income, major closings and layoffs, declining tax base, etc.

c. Private contribution compared with CEBA request. Maximum — 30 points. The greater the contribution by the assisted business, the higher the score. Conventional financing will be considered a private contribution. Contribution in the form of "new cash equity" by the business owner will result in a higher score.

d. A project in a brownfield, blighted or distressed area or a business with a good neighbor agreement or an Iowa great places agreement, as described in 261—Chapter 171. Maximum — 10 points. Projects meeting these conditions will receive 10 points.

e. Extra points if small business, as defined by SBA. Maximum — 10 points.

f. Project impact on the state and local economy.

(1) Cost/benefit analysis. Maximum — 40 points. This factor compares the amount requested to the number of jobs to be created or retained as defined in paragraph 53.7(2)*"a"* and the projected increase in state and local tax revenues. Also considered here is the form of assistance (e.g., a forgivable loan will receive a lower score than a loan).

(2) Quality of jobs to be created. Maximum — 40 points. Higher points to be awarded for:

Higher wage rates;

Lower turnover rates;

Full-time, career-type positions;

Relative safety of the new jobs;

Health insurance benefits;

Fringe benefits;

Other related factors.

(3) Economic impact. Maximum — 40 points. Higher points to be awarded for base economic activities, e.g.:

Greater percentage of sales out of state, or import substitution;

Higher proportion of in-state suppliers;

Greater diversification of state economy;

Fewer in-state competitors;

Potential for future growth of industry;

Consistency with the state strategic plan for economic development prepared in compliance with Iowa Code section 15.104(2);

Increased value to agricultural commodities;

Degree of utilization of agricultural or value-added technology research from an Iowa educational institution;

A project which is not a retail operation;

A project which includes remediation or redevelopment of a brownfield site.

Maximum preliminary points for project impact — 120 points.

(4) Final impact score. Maximum — 120 points. Equal to preliminary impact score multiplied by a reliability factor (as a percent).

(NOTE OF EXPLANATION — Rating factors in 53.8(3)*"f"*(1) to (3) attempt to measure the expected impact of the project, if all predictions and projections in the application turn out to be accurate. Up to that point in the rating system, no attempt has been made to judge the feasibility of the business venture, the reliability of the job creation and financial estimates, the likelihood of success, the creditworthiness of the business, and whether the project would occur without state assistance. An attempt to analyze projects against these factors is also important. In order to incorporate this judgment into the rating system, the Preliminary Impact Score (Maximum of 120 points) is multiplied by a "reliability and feasibility factor" to obtain a final impact score, 53.8(3)*"f"*(4). This factor will range from 0 to 100 percent, depending upon the department's judgment as to the likelihood of the projections turning out as planned. If, in the department's judgment, the project would proceed whether it was funded or not, it will be assigned a zero percent on the reliability and feasibility factor and the final impact score will be zero. This is consistent with the intent of the program to use funds only where state assistance will make a difference.)

The maximum total score possible is 200 points.

Projects that score less than 120 points in rule 53.8(15) will not be recommended for funding by the staff to the committee.

53.8(4) *Project period.* Projects funded under rule 53.8(15) are considered to have a project period as described in 261—Chapter 187. This is the time period allowed for meeting and maintaining the job and performance obligations.

261—53.9(15) New business opportunities and new product development components.

53.9(1) *Additional criteria and targeting for new business opportunities and new product development components.* The criteria in rule 53.7(15) will be used for evaluating applications under these components. Applications for these components must be for businesses with projects that offer a quality economic opportunity to Iowans and meet one of the following characteristics:

a. The industry is one targeted within the state's strategic plan; or

b. The resulting economic activity is underrepresented in the state's overall economic activity mix.

53.9(2) *Applications.* Applicants applying for assistance under these components shall use the general business financial assistance application form provided by the department. The department may, at its option, transfer requests to a different financial assistance program, including but not limited to:

a. Small business gap financing component of CEBA;

b. EDSA (economic development set-aside program); or

c. PFSA (public facilities set-aside program).

53.9(3) *Rating system.* The rating system for proposed projects will be as follows:

a. Local effort (as defined in 53.8(3)*"a"*). Maximum — 20 points;

b. Private contributions as compared to CEBA request (as defined in 53.8(3)*"c"*). Maximum — 20 points;

c. A project in a brownfield, blighted or distressed area or a business with a good neighbor agreement or an Iowa great places agreement, as described in 261—Chapter 171. Maximum — 10 points. Projects meeting these conditions will receive 10 points;

d. Extra points if small business, as defined by the SBA. Maximum — 10 points;

e. Project impact, as defined in 53.8(3)*"f"* and 53.8(4). Maximum — 120 points;

f. Potential for future expansion of the industry in general. Maximum — 20 points. This factor awards additional points for those projects that tend to show a greater potential for expansion of that industry within Iowa.

The maximum total score possible is 200 points.

Projects that score less than 120 points in rule 53.9(15) will not be recommended for funding by the staff to the committee.

53.9(4) *Project period.* Projects funded under rule 53.9(15) are considered to have a project period as described in 261—Chapter 187. This is the time period allowed for meeting and maintaining the job and performance obligations.

261—53.10(15) Venture project components.

53.10(1) *Eligible applicants; projects; coordination with PROMISE JOBS.*

a. *Eligible businesses.* Eligible businesses include start-up companies, early-stage companies, and existing companies that are developing a new product or new technology.

b. *Form and amount of assistance.* The CEBA award will be in the form of an equitylike investment (e.g., royalty agreement or deferred loan). The maximum award amount shall not exceed $250,000.

c. *Eligible applicants.* Applications will be accepted from cities, counties, and community colleges on behalf of eligible businesses. Applications shall be submitted on the CEBA venture project application form provided by the department. If an application is approved, the department will contract directly with the business on whose behalf the application was submitted.

53.10(2) *Ineligible applications.* The department will not rate and rank ineligible applications. An application may be determined to be ineligible if:

a. It is submitted by an ineligible applicant; or

b. The project consists of a business relocation from within the state unless unusual circumstances exist which make the relocation necessary for the business's viability; or

c. The CEBA application is not properly signed by the applicant and the business; or

d. The business has a record of violations of the law over a period of time that tends to show a consistent pattern as described in 261—Chapter 172.

53.10(3) *Rating system.* Eligible applications will be reviewed and rated using the following criteria:

a. Jobs associated with the project. Factors considered include, but are not limited to, the following:

(1) The number of jobs created, if any, by the project;

(2) The potential for job creation as a result of the project;

(3) The quality of the wages and benefits for jobs actually or potentially created as a result of the project.

NOTE: For the venture project component, CEBA funds will not be leveraged on a per job basis.

Maximum — 10 points.

b. Additional funding sources. The amount of the total project costs coming from sources other than CEBA venture funds including, but not limited to, private equity investment, conventional loans, owner equity investment, or other acceptable forms of investment as determined by the department. Maximum — 10 points.

c. Strength of the business plan. Factors to be considered include, but are not limited to, the following:

(1) A description of the business and the overall industry;

(2) The experience level of the business management team;

(3) A description of the product and production plan;

(4) Project financial projections;

(5) Feasibility of the product and project;

(6) Market identification and marketing strategy.

Maximum — 60 points.

d. Potential return on investment of the CEBA venture award. Maximum — 10 points.

e. Potential for future growth of the business. Maximum — 5 points.

f. Local financial support. The amount of the total project costs attributable to local funding sources including, but not limited to, city, county, community college, chamber of commerce, economic development groups, utilities, or other local sources, compared to the resources reasonably available from those sources. Maximum — 10 points.

g. A project in a brownfield, blighted or distressed area or a business with a good neighbor agreement or an Iowa great places agreement, as described in 261—Chapter 171 will receive 5 extra points.

Applications must receive a minimum of 60 points to be recommended for funding.

53.10(4) *Application review and approval.* Rescinded IAB 7/4/07, effective 6/15/07.

261—53.11(15) Modernization project component. The general program policies described in rule 261—53.6(15) are applicable to modernization projects. Exceptions to these general rules are identified in this rule. If there is a conflict between the general program policies and the modernization project component requirements as described in this rule, this rule will take priority. Applications must receive a minimum of 60 points to be recommended for funding.

53.11(1) *Additional criteria and targeting for modernization projects.* Modernization projects shall meet the following additional requirements:

a. Applications for this component must be for businesses with projects that offer a quality economic opportunity to Iowans.

b. The business shall demonstrate that it is modernizing and retooling to remain competitive.

c. The business shall demonstrate how employee job skills are being enhanced through advanced training and educational opportunities.

53.11(2) *Applications.* Businesses applying for assistance under this component shall use the general business financial assistance application form provided by the department. The department may, at its option, transfer requests to a different financial assistance program administered by the department.

53.11(3) *Project period.* Rescinded IAB 7/4/07, effective 6/15/07.

53.11(4) *Rating system.* Eligible applications will be reviewed and rated using the following criteria:

a. *Strength of the business proposal.* Factors to be considered include, but are not limited to, the following:

(1) Description of the business and the overall industry;

(2) Description and feasibility of the modernization project;

(3) Market identification and the business's current position in that market;

(4) Project financial history and projections;

(5) Total cost of the modernization project.

Maximum — 25 points.

b. *Job positions associated with the project.* Factors to be considered include, but are not limited to, the following:

(1) Increase in job skills as a result of the project as measured by job training and educational opportunities;

(2) Increased quality of the wages and benefits as a result of the project;

(3) Number of jobs impacted by the project.

NOTE: For the modernization project component, CEBA funds will not be leveraged on a per-job basis.

Maximum — 25 points.

c. *Leverage of other additional funding sources.* The amount of the total project costs coming from sources other than CEBA modernization funds including, but not limited to, private equity investment, conventional loans, owner equity investment, or other acceptable forms of investment as determined by the department. Maximum — 15 points.

d. *Regional financial support.* The amount of the total project costs attributable to regional funding sources including, but not limited to, city, county, community college, chamber of commerce, economic development groups, utilities, or other regional sources, compared to the resources reasonably available from those sources. Maximum — 15 points.

e. *Potential for improved efficiency, capacity and competitiveness of the business.* Maximum — 10 points.

f. *Potential for future growth of the business and the industry.* Maximum — 10 points.

53.11(5) *Application review and approval.* Rescinded IAB 7/4/07, effective 6/15/07.

261—53.12(15) Comprehensive management assistance and entrepreneurial development.

53.12(1) *Eligible applicants.* Application for comprehensive management assistance is limited to:

a. Businesses that have either previously received a CEBA award or have a CEBA application under current review by the department; or

b. Businesses requesting assistance in meeting the regulatory requirements of other government agencies.

53.12(2) *Use of funds.* Assistance is available only in the form of technical or professional assistance. This may be accomplished by use of department staff or department-contracted professional services in assisting the business to develop:

a. Entrepreneurial management skills;

b. Employment hiring, recruiting, or personnel assistance;

c. Inventory controls;

d. Financial controls;

e. Marketing plans; or

f. Other related business assistance.

53.12(3) *Determination of assistance.* Rescinded IAB 7/4/07, effective 6/15/07.

261—53.13(15) Award process. Rescinded IAB 7/4/07, effective 6/15/07.

261—53.14(15) Administration of projects—financial management. Rescinded IAB 7/4/07, effective 6/15/07.

261—53.15(15) Default. Rescinded IAB 7/4/07, effective 6/15/07.

261—53.16(15) Standards for negotiated settlements or discontinuance of collection efforts. Rescinded IAB 7/4/07, effective 6/15/07.

261—53.17(15) Miscellaneous. Rescinded IAB 7/4/07, effective 6/15/07.

261—53.18(15,83GA,SF344) Applicability of CEBA program after July 1, 2009.

53.18(1) Effective July 1, 2009, the CEBA program is rescinded by 2009 Iowa Acts, Senate File 344, and replaced with the grow Iowa values financial assistance program. Rules for the grow Iowa values financial assistance program may be found in 261—Chapter 74.

53.18(2) For awards made prior to July 1, 2009, the rules of 261—Chapter 53 shall govern for purposes of contract administration and closeout of projects. A contract amendment is not allowable if the result of the amendment is to increase the benefits available.

This rule is intended to implement 2009 Iowa Acts, Senate File 344.

[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09]

These rules are intended to implement Iowa Code sections 15.315 to 15.320.

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◊ Two or more ARCs

CHAPTER 54
IOWA TARGETED SMALL BUSINESS PROCUREMENT PROGRAM

261—54.1(73) Purpose. The purpose of the Iowa targeted small business procurement program is to promote the growth, development and diversification of Iowa businesses owned by minorities, women, and persons with disabilities by encouraging each state department and agency, community college, area education agency, and school district to include targeted small businesses (TSBs) as contractors, vendors and suppliers in their bid solicitations for the procurement of goods and services, including construction.

261—54.2(73) Definitions. As used in this chapter, unless the context otherwise requires:

"Agency" or *"department"* means the departments and independent agencies established in Iowa Code chapter 7E.

"Board" means the targeted small business financial assistance board established by 2007 Iowa Acts, House File 890.

"Certification" means the process by which small businesses are identified as targeted small businesses by the department of inspections and appeals and determined eligible to participate in the targeted small business program.

"Contract" means any agreement or supplemental agreement between the state and its contractors, subcontractors, suppliers, vendors and professional service providers.

"DIA" means the department of inspections and appeals.

"Education institution" means a community college, area education agency, or a school district.

"Goals" means percentage or monetary goals set by a purchasing/contracting authority to encourage targeted small business participation.

"Good faith effort" includes, but is not limited to, efforts taken by a primary contractor to identify qualified TSBs for subcontract opportunities, notify qualified TSBs of potential subcontract opportunities, and assist TSBs in qualifying to bid as subcontractors.

"IDED" means the Iowa department of economic development.

"Minority" means an individual who is Black, Latino, Asian or Pacific Islander, or American Indian or Alaskan native.

"Primary contractor" means the individual, firm, partnership or corporation, or the lawful agent of any individual, firm, partnership or corporation, or surety under a contract bond, constituting one of the principals to the contract and undertaking to perform the contract work specified. A "primary contractor" includes all heirs, executors, administrators, successors and assigns of any of the above.

"Small business" and *"targeted small business"* shall have the meanings as defined in Iowa Code section 15.102.

"Subcontractor" means an individual or business contracting to perform part or all of a primary contractor's contract.

"TSB" means targeted small business. A "TSB" is a business that is 51 percent or more owned by women, minorities, or persons with disabilities.

261—54.3(73) Preliminary procedures.

54.3(1) *Purchasing review.* Quarterly, each agency, department, community college and area education agency shall review their anticipated purchasing requirements. School districts shall review their anticipated purchasing requirements on an annual basis.

54.3(2) *Notice to IDED.*

a. State departments and agencies. The director of each department or agency shall notify the director of IDED not later than August 15 of each fiscal year of the department's or agency's anticipated purchases outside the department of administrative services and recommended TSB goals.

b. Community colleges and area education agencies (AEAs). Community colleges and AEAs shall, on a quarterly basis, review their anticipated purchasing requirements. Each community college president and AEA administrator shall notify the department of education by August 15 of each fiscal year of their anticipated purchases and recommended procurements with unit quantities and total costs

for procurement contracts designated to satisfy the TSB procurement goal. The department of education shall forward the reports of the community colleges and AEAs to IDED no later than August 31.

c. School districts. School districts shall, on an annual basis, review their anticipated purchasing requirements. Each superintendent shall notify the department of education by August 15 of each fiscal year of their anticipated purchases and recommended procurements with unit quantities and total costs for procurement contracts designated to satisfy the TSB procurement goal. The department of education shall forward the reports of the school districts to the IDED no later than August 31.

54.3(3) *TSB goals.* The directors, community college presidents, school district superintendents and AEA administrators may divide larger, single project procurements into smaller contract award units to facilitate offers or bids from targeted small businesses. In designating TSB procurements, the directors, presidents, superintendents and administrators may vary the included procurements so that a variety of goods and services produced by different targeted small businesses may be identified each year.

54.3(4) *IDED review.* The director of IDED or designee shall review the information submitted and may require necessary modifications from the agencies, departments, and education institutions to provide opportunities for TSBs.

54.3(5) *Procurement set-aside procedures.* Rescinded IAB 3/21/90, effective 4/25/90.

261—54.4(73) Identification of targeted small businesses. Before a small business can participate in the Iowa targeted small business procurement program, it must be certified as a targeted small business by the DIA. The DIA will review applications from targeted small businesses to determine that they are eligible to participate in the program. Certification as a targeted small business by the DIA means that the business meets the minimum eligibility requirements; certification is not a representation that the business can perform targeted procurement.

261—54.5(73) IDED administration.

54.5(1) *Subcontracts.* If a primary contractor will be subcontracting part or all of a contract, the primary contractor shall make a good faith effort to provide TSBs with opportunities to bid. IDED may review a primary contractor's good faith efforts and request modifications to planned efforts to ensure compliance with the purpose of the TSB program.

54.5(2) *Good faith efforts.* Departments, agencies and education institutions may require primary contractors to submit documentation of good faith efforts to provide TSBs with subcontract opportunities along with the bid bond, noncollusion affidavit and similar documents which are submitted separate from the actual bid. Departments, agencies and education institutions may determine that the primary contractor has failed to meet minimum bidding qualifications due to inadequate documentation of good faith efforts to provide TSB opportunities to bid and may decline to open the bid. In cases where the good faith efforts documentation is submitted as part of the bid documents and after review of the low bidder's good faith efforts, departments, agencies and education institutions may reject the bid as nonresponsive due to inadequate documentation of good faith efforts.

54.5(3) *IDED review.* IDED may conduct a review of a department, agency or education institution where there is evidence of little or no progress toward reaching the TSB goal. The purpose of the review will be to identify the barriers encountered, evaluate the efforts taken to reach the goal, and provide needed assistance.

261—54.6(73) Certification. Transferred to 481—25.5(73), IAB 8/10/88.

261—54.7(73) Request for review of certification denial. Transferred to 481—25.6(73), IAB 8/10/88.

261—54.8(73) Certification review board. Transferred from 261—54.8(73) and rescinded, IAB 8/10/88, effective 7/22/88.

261—54.9(73) Decertification. Transferred to 481—25.7(73), IAB 8/10/88.

261—54.10(73) Notice of solicitation for bids.

54.10(1) *Directory consulted.* The director of each agency or department, the administrator of each area education agency, the president of each community college, and the superintendent of each school district releasing a solicitation for bids or request for proposal under the targeted small business procurement goal program shall consult a directory of certified targeted small businesses produced by the department of inspections and appeals that lists all certified targeted small businesses by category of goods or services provided prior to or upon release of the solicitation and shall send a copy of the request for proposal or solicitation to any appropriate targeted small business listed in the directory.

54.10(2) *Contents of solicitation or request for proposal.* The notice to TSBs of the release of a request for proposal or solicitation for bid shall, at a minimum, include the:

a. Description of the item to be bid;

b. Date the bid is to be open and the closing date for submission; and

c. Contact person in the soliciting agency, department, or education institution.

54.10(3) *TSB directory.* The department of inspections and appeals compiles, and updates on a monthly basis, a TSB directory. The TSB directory contains a listing of targeted small businesses that have been certified by DIA for participation in the TSB procurement program. The directory also includes a list of TSBs which have been decertified.

261—54.11(73) Negotiated price or bid contract. Rescinded IAB 3/21/90, effective 4/25/90.

261—54.12(73) Determination of ability to perform.

54.12(1) *Ability evaluation.* Prior to announcing the TSB award, the purchasing authority shall evaluate, in the same manner that other contractors and vendors are evaluated, whether the targeted small business scheduled to receive the award is able to perform the contract as a vendor or prime contractor. This determination shall include consideration of production and financial capacity and technical competence. In construction contracts, the prime contractor shall evaluate all subcontractors, including TSBs with whom the prime contractor has a contract.

54.12(2) *Notice of inability to perform.* If the purchasing authority determines that the targeted small business may be unable to perform, the director of IDED shall be notified.

54.12(3) *IDED assistance.* If, in the opinion of the purchasing authority, a TSB cannot perform, the purchasing authority shall immediately notify IDED. The IDED shall assist the targeted small business in attempting to remedy the causes of the inability to perform. In assisting the TSB, the IDED may use any management or financial assistance programs available through state or governmental agencies or private sources. Once IDED is notified of a TSB's inability to perform, IDED will respond to the purchasing authority within 14 days to indicate the planned course of action to assist the TSB. The IDED may contact a state agency, department, or education institution to verify that certified TSBs with whom they contract are performing under their contracts.

261—54.13(73) Other procurement procedures.

54.13(1) All laws and rules pertaining to solicitations, bid evaluations, contract awards, and other procurement matters apply to procurement for targeted small businesses to the extent there is no conflict.

54.13(2) If the provisions of the "Iowa Targeted Small Business Procurement Act" or these implementing rules conflict with other laws or rules, then the provisions of the Act and these rules shall govern.

261—54.14(73) Reporting requirements.

54.14(1) *Quarterly reports.* The director of each agency or department shall submit to the IDED quarterly reports which shall be in the format and by the due date specified by the IDED. Each community college president and AEA administrator shall submit their quarterly reports to the department of education which shall forward the reports to IDED. The quarterly reports shall include as a minimum:

a. The number of contracts awarded to TSBs under the TSB procurement program and the names of those contractors;

b. A description of the general categories of contracts awarded to TSBs;

c. The dollar value of contracts awarded to TSBs;

d. The dollar value of all contracts awarded to TSBs during this period compared to all contracts awarded for the period;

e. Progress made toward attainment of their TSB goals; and

f. In the end-of-year final report (4th quarter) an indication of whether the department or agency, community college, or AEA met its TSB goals. If the TSB goals were not met, the report shall indicate the reasons for not attaining the TSB goals including a description of any barriers encountered in meeting the TSB goals.

School districts shall submit to the department of education an annual report containing the information listed above, which shall be forwarded to IDED.

54.14(2) *Counting TSB participation toward meeting the TSB goal.* TSB participation shall be counted toward meeting the TSB goal as follows:

a. Once a firm is determined by the DIA to be a certified TSB, the total value of the contracts awarded to the TSB is counted toward the goal.

b. A department, agency, or education institution may count toward its goal only expenditures to TSBs that perform a commercially useful function in the work of a contract. A TSB is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing, and supervising the work involved. To determine whether a TSB is performing a commercially useful function, the department, agency, or education institution shall evaluate the amount of work subcontracted, normal industry practices, and other relevant factors.

c. Consistent with normal industry practices, a TSB may enter into subcontracts. If a TSB subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, a TSB shall be presumed not to be performing a commercially useful function. The TSB may present evidence to rebut this presumption to the department, agency, or education institution. The department's, agency's, or education institution's decision on the rebuttal of this presumption is subject to review by the IDED.

d. A department, agency, or education institution may count toward its TSB goal expenditures for materials and supplies obtained from TSB suppliers and manufacturers, provided that the TSBs assume the actual and contractual responsibility for the provision of the materials and supplies.

e. A department, agency, or education institution may count its entire expenditure to a TSB manufacturer (i.e., a supplier that produces goods from raw materials or substantially alters them before resale).

f. A department, agency or education institution may count 100 percent of its expenditures to TSB suppliers or brokers that are not manufacturers, provided that the TSB supplier or broker performs a commercially useful function in the supply process.

261—54.15(73) Maintenance of records.

54.15(1) In order to monitor the progress of its targeted small business program each department, agency, or education institution shall develop a record-keeping system which will identify and assess TSB contract awards and the department's, agency's, or education institution's progress in achieving the TSB goal.

54.15(2) Specifically, a department, agency, or education institution shall maintain records showing:

a. Procedures which have been adopted to comply with the requirements of this rule.

b. Awards to TSB. These awards shall be measured against the department's, agency's, or education institution's goals.

54.15(3) Records shall be available upon the request of IDED or the state auditor.

These rules are intended to implement Iowa Code sections 73.15 to 73.21.

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CHAPTER 55
TARGETED SMALL BUSINESS FINANCIAL ASSISTANCE PROGRAM
[Prior to 7/19/95, see 261—Ch 27]

261—55.1(15) Targeted small business financial assistance program (TSBFAP). The purpose of the targeted small business financial assistance program is to assist women, minorities, persons with disabilities and low-income individuals to establish or expand small business ventures in Iowa.

261—55.2(15) Definitions. As used in connection with the targeted small business financial assistance program, the following terms have the meanings indicated:

"Annual gross income" means total sales, before deducting returns and allowances but after deducting corrections and trade discounts, sales taxes and excise taxes based on sales, as determined in accordance with generally accepted accounting principles.

"Department" or *"IDED"* means Iowa department of economic development.

"Participating lender" means a financial institution participating in a project assisted by the targeted small business financial assistance program.

"Persons with a disability" means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of the individual, a record of physical or mental impairment that substantially limits one or more of the major life activities of the individual, or being regarded as an individual with a physical or mental impairment that substantially limits one or more of the major life activities of the individual. "Disability" does not include any of the following:

1. Homosexuality or bisexuality.
2. Transvestitism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders.
3. Compulsive gambling, kleptomania, or pyromania.
4. Psychoactive substance abuse disorders resulting from current illegal use of drugs.

"Major life activity" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, breathing, learning, or working.

"Small business" means any enterprise which is located in this state, which is operated for profit and has an average annual gross income of less than $4 million. The average annual gross income of the business is based on the prior three years.

"Sponsor" means a representative from an Iowa workforce development office, a local chamber of commerce, the institute for social and economic development (ISED) or any other organization approved by IDED willing to offer assistance and guidance.

"Targeted small business (TSB)" means a small business as defined in this rule that is 51 percent or more owned, operated, and actively managed by one or more women, minority persons, or persons with a disability. As used in this definition, "minority person" means an individual who is a Black, Latino, Asian or Pacific Islander, American Indian or Alaskan native.

261—55.3(15) Eligibility requirements.

55.3(1) *Residence.* An applicant must be a resident of Iowa for at least six months to be eligible to apply for assistance. Applicants may be asked to provide necessary documentation to prove legal residency.

55.3(2) *Business location.* The business, or proposed business, must be located in the state of Iowa and be a for-profit business.

55.3(3) *Targeted small business.* An applicant may apply on behalf of a business which meets the targeted small business definition. A business must be certified as a "targeted small business" by the department of inspections and appeals prior to application for financial assistance under this program. Only persons who are owners (i.e., at least 51 percent owners and operators) of a targeted small business are eligible to apply as a TSB. (This restriction does not prevent such individuals from receiving help in preparing an application from a city, county, areawide planning organization, community college, small business development center, private sector service provider or other similar agency.) An applicant

(targeted small business) must agree to work with one of the business advocate service providers that is assigned in the applicant's area for purposes of providing mentoring, outreach, and professional development services.

55.3(4) *Other program requirements.* All applicants for financial assistance shall comply with the requirements of 261—Chapter 171.

261—55.4(15) Loan and grant program.

55.4(1) *Application procedures.* Application materials may be obtained from the IDED business finance team, any small business development center (SBDC), or any of the business advocate service providers.

55.4(2) *Maximum funding levels.* In no case shall an award exceed $50,000, nor in the case of a loan shall the interest rate charged exceed 5 percent per annum or be less than 0 percent per annum. Under no circumstances shall the targeted small business financial assistance program fund 100 percent of a project. A targeted small business shall not receive a loan, grant, or loan guarantee or a combination of loans, grants, or loan guarantees under the program that provide more than 90 percent of the funding for a project. All applicants must invest at least 10 percent of the total project budget in cash.

55.4(3) *Forms of financial assistance available.* The following types of financial assistance may be awarded under this program: loans, grants, loan guarantees or a combination of loans, grants and loan guarantees.

a. *Direct loan.* The term of a loan shall not exceed five years; the interest rate shall not exceed 5 percent per annum.

b. *Grant.* Grant funds shall only be awarded in instances where the grant will leverage a significant amount of other financing, such as conventional or SBA financing packages. In order to receive a grant, the applicant must demonstrate a minimum of 10 percent cash investment in the project.

c. *Loan guarantee.* The program shall provide guarantees not to exceed 80 percent for loans of up to seven years made by qualified lenders.

55.4(4) *Eligible uses of funds.* Awards of funds under this program shall be used for legitimate business expenses, including, but not limited to, the following purposes: purchase of equipment and furnishings, inventory, purchase of and improvements to land and buildings and specific operating expenses.

55.4(5) *Ineligible uses of funds.* Targeted small business financial assistance funds shall not be used to refinance existing debt. Existing debt in the context of this rule does not include interim financing for allowable program purposes intended as a bridge loan obtained after the date of the targeted small business award. Neither shall the department award funds to facilitate financing of a project which would consist solely of relocation of an existing business within Iowa. IDED may waive this limitation if the business demonstrates to IDED that it faces unusual circumstances which make the relocation necessary for the business's continued viability.

55.4(6) *Threshold criteria.* Applicants for funds under the targeted small business financial assistance program must meet the following minimum criteria before their applications will be considered complete and eligible for ranking:

a. If applying as a TSB, the business must be certified as a "targeted small business" by the department of inspections and appeals before applying for funding. In order to be certified as a targeted small business, a business owner must be a woman, a targeted minority, or a person with a disability and have established at least 51 percent ownership of the business, and be actively involved in the day-to-day management of the business. (The targeted small business owner must have the expertise or related experience in order to be considered actively involved in the day-to-day management of the business.)

b. After the TSB has been awarded a loan or grant or a loan guarantee, the TSB must continue to be a certified TSB for the life of the loan or grant. Failure to meet this requirement may result in the loan or grant being called and due within 30 days. This will include all principal, interest and any penalties that have been assessed. If recertification occurs within 30 days of the date of the notice, the original terms will be reinstated.

55.4(7) *Submittal process.* All applications and related informational materials shall be submitted on forms prescribed by IDED. Completed applications shall be submitted to: Targeted Small Business Financial Assistance Program, Bureau of Business Finance, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309.

55.4(8) *Review process.* All completed TSB applications are reviewed by the program manager on an ongoing basis. Applications are reviewed for completeness. If additional information is required, the program manager shall send the applicant notice to submit additional information. The applicant shall then have three weeks from the date of the IDED letter to submit the requested information.

Application requests are initially rated for funding by IDED staff. They are then reviewed on a monthly basis by the board. The board is an advisory committee established by 2007 Iowa Acts, House File 890, to assist the department in the evaluation of applications. The board is comprised of private sector representatives experienced in small business management and operation. The board membership shall consist of seven members, including one each from the following populations: Latino, Black, Asian or Pacific Islander, Caucasian women, Native American, and a person with a disability as defined in Iowa Code section 15.102 as amended by 2007 Iowa Acts, House File 890. One of the members shall be a member of the economic development board appointed by the economic development board. A quorum is four members. It requires the vote of at least four board members to recommend action on an application to the director. The board may recommend to the director the approval, denial, or deferral of an application. If less than a quorum of the board is present at a meeting, an application will be forwarded to the director without a recommendation from the board.

55.4(9) *Rating factors.* Applicants must score a minimum of 60 out of a possible 100 points in order to be recommended for funding. Points are awarded based on the information contained in the application according to the following criteria:

a. *Business plan (20 points possible).* Factors considered include: Does the application contain significant information regarding the product or service to be offered? Has the applicant provided sufficient documentation to support/justify the cash flow assumptions, e.g., third-party documentation regarding market size, annual sales and competition?

b. *Financial plan (20 points possible).* Factors considered include: Does the application contain comprehensive two-year cash flow projections which show the viability of the business? Does the application provide completed personal financial information and information on other funding sources?

c. *Financial need (20 points possible).* Factors considered include: the applicant's personal liquid assets and the applicant's ability or inability to secure a loan from conventional sources (i.e., bank, savings and loan, credit union, SBA).

d. *Marketing plan (5 points possible).* Factors considered include: Does the application contain sufficient information to ascertain that the applicant fully understands who the customers are and how to effectively reach them?

e. *Management expertise and related experience (20 points possible).* Factors considered include: Does the applicant have education or work experience that is relevant to the proposed business? Does the application document previous business training or management experience?

f. *Loan repayment (10 points possible).* Factors considered include: Does the application document the business's ability to service its debt?

g. *Nontraditional (5 points possible).* Factors considered include: Is the proposed business category one in which TSBs have traditionally been underrepresented as owners?

h. *Extra points (up to 5 points).* Extra credit points may be awarded to applicants meeting the requirements described in 261—Chapter 171 for the award of extra points (e.g., project is in a blighted, brownfield or distressed area).

55.4(10) *Negotiations of funds awarded.*

a. The department reserves the right to negotiate the amount, term, interest rate, and other conditions of the loan or grant prior to award.

b. The department may decline to award funds to a business if there is a negative credit report (e.g., bankruptcy, foreclosure, tax liens, unpaid or past due child support).

55.4(11) *Award process.* Upon approval by the director, the applicant business will receive an award letter which shall state the amount of award, conditions of the award, any security agreements, and the amount of monthly loan repayments.

55.4(12) *Contract.* Following notification of award, contracts are prepared for execution between the business owner and IDED. After execution of the contract, the business owner may request disbursement of funds, on the form prescribed by IDED. The time frame between final award date and disbursement of funds will generally be one to two months.

55.4(13) *Deferral process.* Applications may be deferred only one time by the loan review committee. If all additional information requested is received within the three-week time frame, the application will be considered on the following month's agenda. If information is not received in a timely manner, second consideration will be delayed by 30 days. No application will be held for over 60 days. If the request for additional information is not answered, the application will be denied.

55.4(14) *Reapplication.* Upon denial by the director, an applicant cannot resubmit an application for funding under the targeted small business financial assistance program for 90 days (3 months) from the date of IDED's denial letter.

55.4(15) *Default.* When a loan is in default for a period of 60 days, the IDED shall notify the office of the attorney general and request appropriate action.

55.4(16) *Misuse of funds.* A person receiving funds under the TSB financial assistance loan program may be subject to criminal penalties under Iowa Code section 15A.3 if it is determined that the person knowingly made a false statement in writing to procure economic development assistance from the state.

55.4(17) *Comprehensive management assistance and entrepreneurial development.*

a. *Limitation.* Comprehensive management assistance and entrepreneurial development is limited to businesses or individuals that have been awarded TSB funding.

b. *Use of funds.* Assistance is available only in the form of technical or professional assistance. This may be accomplished by use of department staff or department-contracted professional services in assisting the business to develop:

1. Management skills;
2. Inventory controls;
3. Financial controls;
4. Marketing plans;
5. Personnel assistance; or
6. Other related business assistance.

c. *Determination of assistance.* The administrator for the division of business development shall have the authority to approve contracts for management assistance. The maximum of case management assistance shall not exceed $2,500 per business or individual.

261—55.5(15) Loan guarantee program.

55.5(1) *Loan guarantee program description.* This program is intended to allow a targeted small business to obtain a loan guarantee from a local lender for eligible uses in an amount not to exceed $50,000. Following the department's approval of the application, the targeted small business loan guarantee program will guarantee the financial institution up to 80 percent of the loan amount.

Applicants must meet the credit evaluation of the lending institution. The lending institution shall make credit risk evaluations and otherwise make the decision, based on sound lending practices, of whether or not to extend credit to the business.

After the decision to extend credit has been made by the participating lender, the lender shall forward the application to IDED. The department will review and rank the loan applications and, for approved applications, enter into a loan guarantee agreement with the participating lender guaranteeing payment to the lender in the event the project goes into default.

55.5(2) *Application procedure.* Eligible applicants for targeted small business loan guarantees must apply directly to participating lenders using the application form available from IDED.

Each application shall include, at a minimum, the following: name(s) and address(es) of the applicant and participating lender, amount of loan, amount of loan guarantee requested, and certification of compliance with state law and lending practices.

55.5(3) *Loan criteria.*

a. *Evaluation.* It is the lender's responsibility to make a sound and fair evaluation of a project and creditworthiness. The participating lender shall evaluate each application for a targeted small business loan guarantee to ensure that the following criteria are met:

(1) The applicant shall show evidence that it is able to operate the business successfully. This shall include an overall business management plan including, but not limited to, the following:

- New business.

1. A generalized projection of revenues and expenses for the three-year period beginning the month of anticipated loan closing;
2. Capital formation plans, if any, other than from the targeted small business loan guarantee program;
3. To the extent possible, identification and analysis of risks;
4. Plans for record keeping, personnel and financial management;
5. Plans for marketing; and
6. Personal financial information/history.

- Existing business.

1. Record-keeping process in place at time of application;
2. Tax returns for three prior years (personal and business);
3. Quarterly financial statements (balance sheet and income); and
4. Annual personal financial statements.

(2) IDED shall have the authority to obtain access to the financial records, ownership identity, and other information it may deem necessary regarding the business.

(3) The applicant shall have enough capital in the business so that, with assistance from the targeted small business loan guarantee program, the applicant will be able to operate the business on a financially sound basis. The applicant shall provide the participating lender, and IDED, access to its financial records including, but not limited to, information concerning the identity of all persons having an ownership interest in the small business, its capital structure, and its present and projected debt structure.

(4) The loan shall be so secured or of sound value as to reasonably ensure repayment. The participating lender may require any collateral, security or mortgage documents or other filings or protection as are reasonably necessary to insure security subject to the limitations of 55.5(3)*"b."*

(5) The business's past earnings record and future prospects shall indicate an ability to repay the loan out of income from the business. The applicant shall provide a summary of past earnings and future earnings prospects for the business and allow the participating lender reasonable access to its books and records.

b. *Guarantee amount and term.* No guarantee shall exceed the lesser of 80 percent or $50,000 of the principal of a loan made to a targeted small business. The term of the guarantee is the lesser of the length of the loan or seven years. The term may be extended for an additional year upon a showing of good cause. The lender shall not acquire any preferential security, surety, or insurance to protect the unguaranteed interest in a loan.

55.5(4) *Minority and women contractors.* Businesses awarded funds under this program shall, to the fullest extent possible, attempt to utilize minority and women contractors, suppliers, and professionals in performance of any project funded by a loan guaranteed under the targeted small business finance program.

55.5(5) *Loan eligibility and purposes.* A targeted small business loan guarantee shall be used for legitimate business expenses, including, but not limited to, purchase of and improvement to land and buildings, equipment and furnishings, working capital, inventory, supplies, or operating expenses.

55.5(6) *Ineligible uses.* The department shall not issue a loan guarantee to facilitate refinancing of existing debt. Existing debt in the context of this rule does not include interim financing obtained after the

date of a targeted small business loan guarantee award. The department shall not issue a loan guarantee to facilitate financing of a project which would consist of relocation of an existing business within Iowa.

55.5(7) *Lender responsibilities.* Participating lenders shall take affirmative action to encourage certified targeted small businesses to apply for loans which would be guaranteed under the targeted small business finance program. Lenders shall assist applicants in preparation of loan applications and supporting documentation and in determination of financial feasibility of proposed targeted small business ventures. Lenders shall prepare the targeted small business loan guarantee applications and shall submit them for consideration and action to the department. Lenders shall perform all necessary and standard loan servicing activities for each loan secured by a targeted small business loan guarantee.

55.5(8) *Administration of loans.* Participating lenders shall hold the loan instrument and shall receive all payments of principal and interest. The participating lender (noteholder) shall not, without prior consent of the department:

a. Make or consent to any substantial changes in the terms of any loan instrument;

b. Make or consent to releases of security or collateral on the loan;

c. Accelerate the maturity of the note;

d. Sue upon any loan instrument;

e. Waive any claim against any borrower, cosigner, guarantor, obligor, or standby creditor arising from any of the loan documents. All loan servicing actions shall be the responsibility of the participating lender, who shall follow accepted standards of loan servicing employed by prudent lenders.

55.5(9) *Events of default.* After a loan is in default for a period of 60 days, the lender shall within 10 days notify IDED of the default and recommend a course of action.

55.5(10) *Default and eligibility for payment.* A default is not eligible for payment until the lender has satisfied all administrative and legal remedies for settlement of the loan and the loan has been reduced to judgment by the lender. After the default has been reduced to judgment and the guarantee paid from the loan reserve account, the department is entitled to an assignment of the judgment. The attorney general may take all appropriate action to enforce the judgment or may enter into an agreement with the lender or the department to provide for enforcement. Upon collection of the amount guaranteed, any excess collected shall be applied first to principal and then to interest and be paid to the lender or to the department as their respective interests may appear.

55.5(11) *Costs of collection.* The participating lender is responsible for all costs and fees, including, but not limited to, attorney's fees associated with the collection of loans and reducing any default to judgment.

55.5(12) *Sharing of repayment proceeds and collateral.* All repayments, security or guarantee of any nature, including without limitation, rights of setoff and counterclaim, which the lender or the department jointly or severally may at any time recover from any course whatsoever or have the right to recover on any guaranteed loan, shall repay and secure the interest of the lender and the department in the same proportion as such interest bears respectively to the guaranteed loan.

55.5(13) *Reserve account.* The department shall establish a loan reserve account from funds provided for this program, from which any default on a guaranteed loan shall be paid. In administering the program, the department shall not guarantee loan values in excess of the amount credited to the reserve account and only money set aside in the loan reserve account may be used for the payment of a default. Each time a loan guarantee is approved by the department, the amount of value of the loan guarantee will be transferred into the loan reserve account set up for that purpose. As funds in the reserve account become unencumbered due to the repayment of loans, the department may transfer money between the reserve and the TSBFAP account. The reserve account shall at all times be actuarially sound.

55.5(14) *Waiver.* The department may waive or vary particular provisions of these rules to conform to requirements of the federal government in connection with a small business loan with respect to which federal assistance, insurance, or guaranty is sought, provided the waiver does not conflict with applicable state laws.

261—55.6(15) Award agreement. Upon approval of an award, IDED staff shall prepare an agreement between IDED and the business which at a minimum shall include the conditions of the award, the responsibilities of both parties, and potential actions in instances of noncompliance.

261—55.7(15) Monitoring and reporting for loan, grant, and loan guarantee programs.

55.7(1) *Monitoring.* IDED reserves the right to monitor the recipient's records to ensure compliance with the terms of the award. The department retains the authority to request information on the condition of the business at any time during the life of the loan to determine the status of the project. IDED staff will contact the loan or grant recipient within 90 days of the award and as frequently as conditions may warrant during the life of the loan or grant.

55.7(2) *Management assistance.* The department may require a program recipient to consult with designated small business service providers for assistance with various aspects of the management and operation of the business.

These rules are intended to implement Iowa Code sections 15.102 and 15.247.

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[1] Prior to 10/7/87, see Iowa Finance Authority 524—Chapter 11

CHAPTER 56
ENTREPRENEURS WITH DISABILITIES PROGRAM

[Prior to 7/19/95, see 261—Ch 30]

Rescinded IAB 9/26/07, effective 10/31/07

CHAPTER 57
VALUE-ADDED AGRICULTURAL PRODUCTS AND PROCESSES FINANCIAL ASSISTANCE PROGRAM (VAAPFAP)

[Prior to 7/19/95, see 261—Ch 29]

261—57.1(15E) Purpose and administrative procedures.

57.1(1) *Purpose.* The purpose of this program is to encourage the increased utilization of agricultural commodities produced in this state. The program shall assist in efforts to revitalize rural regions of this state by committing resources to provide financial assistance to new or existing value-added production facilities.

57.1(2) *Administrative procedures.* The VAAPFAP program is subject to the requirements of the department's rules located in 261—Part VII, additional application requirements and procedures, and 261—Part VIII, legal and compliance.

261—57.2(15E) Definitions. In addition to the standard definitions located in 261—Chapter 173, the following definitions apply to the VAAPFAP program:

"Agricultural biomass industry" means businesses that utilize agricultural commodity crops, agricultural by-products, or animal feedstock in the production of chemicals, protein products, or other high-value products.

"Agricultural biotechnology industry" means businesses that utilize scientifically enhanced plants or animals that can be raised by producers and used in the production of high-value products.

"Agriculture" means the science, art, and business of cultivating the soil, producing crops and raising livestock.

"Alternative energy industry" includes businesses involved in the production of ethanol, including gasoline with a mixture of 70 percent or more ethanol, biodiesel, biomass, hydrogen, or in the production of wind energy.

"Committee" means the renewable fuels and coproducts advisory committee established pursuant to Iowa Code section 159A.4.

"Coordinator" means the administrative head of the office of renewable fuels and coproducts appointed by the department of agriculture and land stewardship as provided in Iowa Code section 159A.3.

"Coproduct" means a product other than a renewable fuel which at least in part is derived from the processing of agricultural commodities and which may include corn gluten feed, distillers grain, solubles, a feed supplement, or can be used as livestock feed.

"Farming" means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing or the production of livestock. Farming shall not include the production of timber, forest products, nursery products, or sod; and farming shall not include a contract where a processor or distributor of farm products or supplies provides spraying, harvesting or other farm services.

"Fund" means the renewable fuels and coproducts fund established pursuant to Iowa Code section 159A.7.

"Innovative" means a new or different agricultural product or a method of processing agricultural products which is an improvement over traditional methods in a new, different, or unusual way.

"Livestock production operations" means the production, feeding and marketing of livestock, poultry and aquaculture. This includes, but is not limited to, beef and dairy cattle, swine, sheep, goat, poultry, turkey and equine operations. It also includes nontraditional agricultural operations such as ostrich, fallow deer, rabbit, fish and other aquaculture.

"Office" means the office of renewable fuels and coproducts created pursuant to Iowa Code section 159A.3.

"Organic products" means Iowa-grown or Iowa-raised agricultural products as defined by 21—Chapter 47, Iowa Organic Program.

"Person" means individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

"Producer-owned, value-added business" means a person who holds an equity interest in the agricultural business and is personally involved in the production of crops or livestock on a regular, continuous, and substantial basis.

"Renewable fuel" means an energy source at least in part derived from an organic compound, capable of powering machinery, including an engine or power plant. A renewable fuel includes but is not limited to ethanol-blended or soydiesel fuel.

"Renewable fuels and coproducts activities" means either of the following:

1. The research, development, production, promotion, marketing, or consumption of renewable fuels and coproducts.

2. The research, development, transfer, or use of technologies which directly or indirectly increases the supply or demand of renewable fuels and coproducts.

"Rural region" means any geographic area which is predominantly rural in nature, that is, having a relatively low population density and where agriculture is the predominant economic activity.

"Soydiesel fuel" means a fuel made of processed soybean oil which is mixed with diesel fuel, the mixture being a minimum of 20 percent processed soybean oil.

"VAAPFAP" means the value-added agricultural products and processes financial assistance program.

"Value-added product" means a product, which through a series of activities or processes, can be sold at a higher price than its original purchase price.

261—57.3(15E) General eligibility. A person is eligible to apply for assistance under this program if the following requirements are met:

1. The existing or proposed facility is located in this state.

2. The person applies to the department of economic development in a manner and according to procedures required by the department.

3. The person submits a business plan which demonstrates managerial and technical expertise.

261—57.4(15E) Program components and eligibility requirements. There will be six components to the VAAPFAP program. For program components described in subrules 57.4(1) through 57.4(4), the department shall prefer producer-owned, value-added businesses, education of producers and management boards in value-added businesses, and other activities that would support the infrastructure in the development of value-added agriculture, and public and private joint ventures involving an institution of higher learning under the control of the state board of regents or a private college or university to acquire assets, research facilities, and leverage moneys in a manner that meets the goals of the grow Iowa values fund. The component(s) include the following:

57.4(1) *Innovative agricultural products and processes component.* An application based on this component shall be considered if either of the following applies:

a. The business will produce a product derived from an agricultural commodity, if the product is not commonly produced in Iowa from an agricultural commodity; or

b. The business will utilize a process to produce a product derived from an agricultural commodity, if the process is not commonly used in Iowa to produce the product.

For purposes of this subrule, a product is "not commonly produced" and a process is "not commonly used" if the product or process is not usually, generally, or ordinarily produced or processed in Iowa.

57.4(2) *Renewable fuel component.* Applications for renewable fuel and ethanol production shall be considered by the department for funding. Applications based on ethanol fuel production must meet the following criteria to be considered for funding:

a. All fermentation, distillation, and dehydration of the ethanol occurs at the proposed facility.

b. The ethanol produced at the proposed facility is at least 190 proof and is denatured. However, if the facility markets the ethanol for further refining, the facility must demonstrate that the refiner produces at least 190 proof ethanol from the ethanol purchased from the facility.

57.4(3) *Agricultural biotechnology, biomass and alternative energy component.* Agricultural business facilities in the agricultural biotechnology industry, agricultural biomass industry, and alternative energy industry are eligible to submit applications.

57.4(4) *Organic and emerging markets component.* Facilities that add value to Iowa agricultural commodities through further processing and development of organic products and emerging markets are eligible for program assistance.

57.4(5) *Project development assistance.* The department, at its discretion, may also provide funding for project development related to proposed projects under this program. Project development assistance could be for the purpose of assisting in departmental evaluation of proposals, or could be one of the proposed activities in a funding request whose further project development could reasonably be expected to lead to a VAAPFAP-eligible commercial enterprise. Feasibility studies and basic research are not eligible for assistance under this program.

57.4(6) *Project creation assistance.* This component is for projects that eventually could be eligible for funding within the other VAAPFAP components. Periodically, a request for proposal (RFP) will be issued based on strategic initiatives developed by the department in consultation with relevant agricultural groups and advisors. The RFP will describe the desired outcome of the proposed effort. The desired outcome could be a new and innovative product, new processing or marketing techniques, or new forms of business operation or collaboration. These efforts could include:

a. Projects that can show need for special financial assistance to engage participation of expertise needed from sources external to the business sponsor of the project.

b. Endeavors where there is a need for financial assistance to plan and organize business consortia or joint ventures among firms or to support costs of special services to be acquired from university or other sources.

c. Situations where there is a need to provide matching funds to businesses to enter competition for federal research and development grants.

261—57.5(15E) Ineligible projects.

57.5(1) The department shall not provide financial assistance to support a value-added production facility if the facility or a person owning a controlling interest in the facility has demonstrated a continuous and flagrant disregard for the health and safety of its employees or the quality of the environment as more fully described in 261—Chapter 172.

57.5(2) The department shall not approve an application for assistance under this program to refinance an existing loan.

57.5(3) The department shall not directly award financial assistance to support an activity directly related to farming as defined in Iowa Code section 9H.1, including the establishment or operation of a livestock production operation, regardless of whether the activity is related to a renewable fuel production facility.

57.5(4) An applicant may not receive more than one award under this program for a single project. However, previously funded projects may receive an additional award(s) if the applicant demonstrates that the funding is to be used for a significant expansion of the project, a new project, or a project which results from previous project development assistance.

57.5(5) The department shall not approve an application for assistance in which VAAPFAP funding would constitute more than 50 percent of the total project costs.

261—57.6(15E) Awards.

57.6(1) *Form.* Financial assistance awarded under this program may be in the form of a loan, forgivable loan, deferred loan, grant, or a combination thereof. The department shall not award more than 25 percent of the amount allocated to the value-added agricultural products and processes financial assistance fund during any state fiscal year to support a single person. The department may finance any size of facility. However, the department may reserve up to 50 percent of the total amount allocated to the fund for purposes of assisting persons requiring $500,000 or less in financial assistance. The

amount shall be reserved until the end of the third quarter of the state fiscal year and may then become available for other projects.

57.6(2) *Amount.*

a. Grants, forgivable loans, and loans shall be awarded on the basis of the impact of the project and the degree to which the project meets the goals of the program.

b. The department reserves the right to negotiate the amount, term payback amount, and other conditions of an award.

261—57.7(15E) Application procedure. Application materials are available on line at www.iowalifechanging.com or from IDED, Business Finance, 200 East Grand Avenue, Des Moines, Iowa 50309, telephone (515)242-4819. A comprehensive business plan must accompany the application and shall include at least the following:

1. Marketing plan for the project;
2. Project budget and status of alternative financing (if applicable);
3. Production operations;
4. Management structure;
5. Personnel needs;
6. Description of product, process or practice;
7. Status of product/service development; and
8. Patent status (if applicable).

261—57.8(15E) Review process. Subject to availability of funds, applications are reviewed and rated by IDED staff on an ongoing basis. Applications will be reviewed by staff for completeness and eligibility. If additional information is required, the applicant shall be provided with notice, in writing, to submit additional information. If the applicant had previously consulted with the coordinator in completion of the application, the department may refer the application to the coordinator for further feasibility studies if deemed necessary. Applications will be reviewed as described in 261—Chapter 175.

The department may consult with other state agencies regarding any possible future environmental, health, or safety issues linked to technology related to the biotechnology industry.

The department reserves the right to informally consult with external resources to assist in the evaluation of projects or to contract with outside consultants, in an amount not to exceed $20,000 per project, for the same purpose.

261—57.9(15E) Deferral process. Rescinded IAB 7/4/07, effective 6/15/07.

261—57.10(15E) Evaluation and rating criteria. The IDED staff shall evaluate and rank applications based on the following criteria:

57.10(1) For the innovative products and processes component:

a. Feasibility (0-25 points). The feasibility of the existing or proposed facility, process, or operation to remain a viable enterprise. Rating factors for this criterion include, but are not limited to, the following: initial capitalization, project budget, financial projections, marketing analysis, marketing plan, management team, and production plan. In order to be eligible for funding, proposals must score at least 15 points on this rating factor.

b. Priority components (0-25 points). The degree to which the proposed project meets one of the four primary program components which include:

1. Innovative agricultural products and processes.
2. Renewable fuels.
3. Agricultural biotechnology, agricultural biomass, and alternative energy.
4. Organic products and emerging markets.

In order to be eligible for funding, proposals must score at least 15 points in the program component under which the applicant is eligible.

c. Utilization (0-25 points). The degree to which the facility will add value to and increase the utilization of agricultural commodities produced in this state. In order to be eligible for funding, proposals must score at least 15 points on this rating factor.

d. Producer ownership (0-15 points). The level of producer ownership will be given additional consideration.

e. The extent to which the existing or proposed facility is located in a rural region of the state (0-10 points).

f. The proportion of local match to be contributed to the project (0-5 points).

g. The level of need of the region where the existing facility is or the proposed facility is to be located (0-5 points). More points are awarded to those projects which exhibit greater need as measured by factors including, but not limited to, the following: regional unemployment rate, poverty level, or other measures of regional fiscal distress.

h. The degree to which the facility produces a coproduct which is marketed in the same locality as the facility (0-5 points).

A minimum score of 65 points is needed for a project to be recommended for funding.

57.10(2) For the project creation assistance component:

a. Any person is eligible to apply except educational or research institutions. However, an educational or research institution may be a partner to an eligible applicant.

b. The evaluation process will focus on the application of new technology and knowledge to agricultural processing and will be based upon the degree to which:

(1) The resulting business has potential to increase the utilization of agricultural commodities in Iowa; and

(2) The resulting business increases value-added economic activities (for example, facilities or employment) within the state of Iowa.

261—57.11(15E) Negotiation and award. Rescinded IAB 7/4/07, effective 6/15/07.

261—57.12(15E) Award process. Rescinded IAB 7/4/07, effective 6/15/07.

261—57.13(15E) Contract. Rescinded IAB 7/4/07, effective 6/15/07.

261—57.14(15E) Administration. Rescinded IAB 7/4/07, effective 6/15/07.

261—57.15(15E) Default. Rescinded IAB 7/4/07, effective 6/15/07.

261—57.16(15E,83GA,SF344) Applicability of VAAPFAP program after July 1, 2009.

57.16(1) Effective July 1, 2009, the VAAPFAP program is rescinded by 2009 Iowa Acts, Senate File 344, section 9, and replaced with the grow Iowa values financial assistance program. Rules for the grow Iowa values financial assistance program may be found in 261—Chapter 74.

57.16(2) For awards made prior to July 1, 2009, the rules of 261—Chapter 57 shall govern for purposes of contract administration and closeout of projects. A contract amendment is not allowable if the result of the amendment is to increase the benefits available.

This rule is intended to implement 2009 Iowa Acts, Senate File 344.

[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09]

These rules are intended to implement Iowa Code sections 15E.111 and 15E.112.

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CHAPTER 58
NEW JOBS AND INCOME PROGRAM
[Prior to 7/19/95, see 261—Ch 62]

261—58.1(15) Purpose. The purpose of the new jobs and income program is to encourage relationships between state government and business by supporting mutual development objectives. The program is designed to encourage sustained profitability for eligible businesses that invest and operate in the state in return for the desired state outcomes of new jobs and higher income. Projects that have been initiated before receiving formal application approval by the department shall not be eligible for tax incentives and assistance under this program.

261—58.2(15) Definitions.

"Board" means the Iowa department of economic development board.

"Community" means a city, county, or an entity established pursuant to Iowa Code chapter 28E.

"Contractor" or *"subcontractor"* means a person who contracts with the eligible business or a supporting business or subcontracts with a contractor for the provision of property, materials, or services for the construction or equipping of a facility, located within the economic development area, of the eligible business or a supporting business.

"Department" means the Iowa department of economic development.

"Director" means the director of the Iowa department of economic development.

"DR" means the Iowa department of revenue.

"Economic development area" means a site or sites designated by the department of economic development for the purpose of attracting an eligible business and supporting businesses to locate facilities within the state.

"Eligible business" means a business which meets the requirements of rule 261—58.7(15).

"Full-time" or *"full-time equivalent job"* means the equivalent of employment of one person:

1. For 8 hours per day for a 5-day, 40-hour workweek for 52 weeks per year, including paid holidays, vacations, and other paid leave, or

2. The number of hours or days per week, including paid holidays, vacations and other paid leave, currently established by schedule, custom, or otherwise, as constituting a week of full-time work for the kind of service an individual performs for an employing unit.

"Full-time positions" means new full-time hourly nonmanagement production jobs with a starting wage 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 county wage in the county in which the community is located, whichever is higher.

"Group of businesses" means two or more businesses that each provide a necessary component in the completion of an overall project.

"Program" means the new jobs and income program.

"Project" means the activity, or set of activities, proposed in the application by the business, which will result in accomplishing the goals of the new jobs and income program, and for which the business requests the benefits of the new jobs and income program.

"Project completion" means the first date upon which the average annualized production of finished product for the preceding 90-day period at the manufacturing facility operated by the eligible business within the economic development area is at least 50 percent of the initial design capacity of the operation of the facility. The eligible business shall inform the department of revenue in writing, on forms approved by the department of revenue, within two weeks of project completion. For existing facilities, project completion means the date of completion of all improvements included in the economic development area.

"Project initiation" means any one of the following: the start of construction of new or expanded buildings; the start of rehabilitation of existing buildings; the purchase or leasing of existing buildings; or the installation of new machinery and equipment or new computers to be used in the operation of the

business's project. The purchase of land or signing an option to purchase land or earth moving or other site development activities not involving actual building construction, expansion or rehabilitation shall not constitute project initiation.

"Supporting business" means a business under contract with the eligible business to provide property, materials, or services which are a necessary component of the operation of the manufacturing facility. To qualify as a supporting business, the business shall have a permanent facility or operations located within the economic development area, and the revenue from fulfilling the contract with the eligible business shall constitute at least 75 percent of the revenue generated by the business from all activities undertaken from the facility within the economic development area.

"Tax credit certificate" means a document issued by the department to an eligible business which indicates the amount of unused investment tax credit that the business is requesting to receive in the form of a refund. A tax credit certificate shall contain the taxpayer's name, address, tax identification number, the date of project completion, the amount of the tax credit certificate, the tax year for which the credit will be claimed, and any other information required by DR or the department.

"Value-added agricultural products" means agricultural products which, through a series of activities or processes, can be sold at a higher price than the original purchase price.

261—58.3(15) Agreement prerequisites. Before the department and a business or group of businesses enter into an agreement for program benefits, the following steps must be completed:

58.3(1) The business or group of businesses submits an application in compliance with the provisions of these rules.

58.3(2) The department determines that the business or group of businesses has met the threshold requirements for program participation.

58.3(3) The department enters into negotiations with the business or group of businesses regarding the amount of tax incentives and assistance the business or group of businesses may be eligible to receive. The department reserves the right to negotiate the amount of all program benefits except the following benefits: The new jobs supplemental credit; the value-added property tax exemption; the refund of sales, service and use taxes paid to contractors and subcontractors; the sales and use tax exemption; and the exemption from land ownership restrictions for nonresident aliens. The criteria to be used in the negotiations to determine the amount of tax incentives and assistance include but are not limited to:

a. The number and quality of jobs to be created. Factors to be considered include but are not limited to full-time, career path jobs; turnover rate; fringe benefits provided; safety; skill level.

b. The wage levels of the jobs to be created.

c. The amount of capital investment to be made.

d. The level of need of the business. Factors to be considered include but are not limited to the degree to which the business needs the tax incentives and assistance in order for the project to proceed. Methods of documenting need may include criteria such as financial concerns; risk of the business's locating in or relocating to another state; or return on investment concerns.

e. The economic impact and cost to the state and local area of providing tax incentives and assistance in relation to the public gains and benefits to be provided by the business. Factors to be considered include but are not limited to the amount of tax credits likely to be used by the business and the impact on the local and state tax base and economic base.

f. Other state or federal financial assistance received or applied for by the business for the project.

58.3(4) The board approves the application and the amount of tax incentives and assistance negotiated by the department that the business or group of businesses shall receive and authorizes the department to execute an agreement with the business or group of businesses.

261—58.4(15) Program benefits. The department reserves the right to negotiate, using the criteria in subrule 58.3(3), the amount of all program benefits except the following benefits: the new jobs supplemental credit; the value-added property tax exemption; the refund of sales, service and use taxes paid to contractors and subcontractors; the sales and use tax exemption; and the exemption from land ownership restrictions for nonresident aliens. The following benefits may be available to an eligible

business and are subject to the amount of incentives and assistance negotiated by the department with the eligible business and agreed upon as described in the executed agreement:

58.4(1) *New jobs supplemental credit.* A supplemental new jobs credit from withholding in an amount equal to 1½ percent of the gross wages paid by the business. The supplemental new jobs credit available under this program is in addition to and not in lieu of the program and withholding credit of 1½ percent authorized under Iowa Code chapter 260E. Approval and administration of the supplemental new jobs credit shall follow existing procedures established under Iowa Code chapter 260E.

58.4(2) *Value-added property tax exemption.* A value-added property tax exemption of all or a portion of the actual value added by improvements to real property directly related to new jobs created by the location or expansion of the business and used in the operation of the business. For purposes of this subrule "improvements" includes new construction and rehabilitation of and additions to existing structures. The exemption may be allowed by a community for a period of up to 20 years beginning the year the improvements are first assessed for taxation in that community. The community shall provide to the department a copy of the resolution adopted by its governing body which indicates the estimated value and duration of the exemption authorized. The community shall provide the assessor with a copy of the resolution establishing the exemption.

58.4(3) *Investment tax credit and insurance premium tax credit.*

a. *Investment tax credit.* An eligible business may claim an investment tax credit as provided in Iowa Code (2003) section 15.333. A corporate income tax credit may be claimed of up to a maximum of 10 percent of the new investment which is directly related to new jobs created by the location or expansion of the business. If the business is a partnership, subchapter S corporation, limited liability company, closed cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. Any credit in excess of tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs first. Subject to prior approval by the department in consultation with DR, an eligible business whose project primarily involves the production of value-added agricultural products may elect to apply for a refund for all or a portion of an unused tax credit. For purposes of this subrule, an eligible business includes a cooperative as described in Section 521 of the United States Internal Revenue Code. The refund may be used against a tax liability imposed for individual income tax, corporate income tax, or franchise tax. The eligible business shall not claim an investment tax credit for capital expenditures above the amount stated in the agreement described in 261—58.11(15). An eligible business may instead, prior to project completion, seek to amend the contract, allowing the business to receive an investment tax credit for additional capital expenditures.

b. *Insurance premium tax credit.* If the business is an insurance company, the business may claim an insurance premium tax credit as provided in Iowa Code section 15.333A. An Iowa insurance premium tax credit may be claimed of up to a maximum of 10 percent of the new investment which is directly related to new jobs created by the location or expansion of the business. Any credit in excess of tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs first. The eligible business shall not claim an insurance premium tax credit for capital expenditures above the amount stated in the agreement described in 261—58.11(15). An eligible business may instead, prior to project completion, seek to amend the contract, allowing the business to receive an insurance premium tax credit for additional capital expenditures.

c. *Eligible capital expenditures.* For purposes of this rule, the capital expenditures eligible for the investment tax credit or the insurance premium tax credit under the new jobs and income program are the costs of machinery and equipment as defined in Iowa Code section 427A.1(1)*"e"* and *"j"* and purchased for use in the operation of the eligible business, the purchase price of which has been depreciated in accordance with generally accepted accounting principles. For the investment tax credit and for the insurance premium tax credit, the cost of improvements made to real property which is used in the operation of the eligible business is an eligible capital expenditure.

d. *Real property.* For business applications received on or after July 1, 1999, for purposes of the investment tax credit claimed under Iowa Code Supplement section 15.333 as amended by 2000 Iowa

Acts, chapter 1213, section 1, and for business applications received on or after May 26, 2000, for purposes of the insurance premium tax credit claimed under Iowa Code section 15.333A, subsection 1, the purchase price of real property and any existing buildings and structures located on the real property will also be considered a new investment in the location or expansion of an eligible business. However, if within five years of purchase, the eligible business sells or disposes of, razes or otherwise renders unusable the land, buildings, or other existing structures for which tax credit was claimed under Iowa Code Supplement section 15.333 as amended by 2000 Iowa Acts, chapter 1213, section 1, or under Iowa Code section 15.333A, subsection 1, the income tax liability or, where applicable, the insurance premium tax liability, of the eligible business for the year in which the property is sold, disposed of, razed, or otherwise rendered unusable shall be increased by one of the following amounts:

(1) One hundred percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within one year after being placed in service.

(2) Eighty percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within two years after being placed in service.

(3) Sixty percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within three years after being placed in service.

(4) Forty percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within four years after being placed in service.

(5) Twenty percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within five years after being placed in service.

e. *Refunds.* An eligible business whose project primarily involves the production of value-added agricultural products and whose application was approved by the department on or after May 26, 2000, may elect to receive as a refund all or a portion of an unused investment tax credit.

(1) The department will determine whether a business's project primarily involves the production of value-added agricultural products. Effective July 1, 2001, an eligible business that elects to receive a refund shall apply to the department for a tax credit certificate.

(2) The business shall apply for a tax credit certificate using the form provided by the department. Requests for tax credit certificates will be accepted between May 1 and May 15 of each fiscal year. Only those eligible businesses that have completed projects before the May 1 filing date may apply for a tax credit certificate. For a cooperative described in Section 521 of the United States Internal Revenue Code, the department shall require the cooperative to submit a list of members whom the cooperative wishes to receive a tax credit certificate for their prorated share of ownership. The cooperative shall submit its list in a computerized electronic format that is compatible with the system used or designated by the department. The computerized list shall, at a minimum, include the name, address, social security number or taxpayer identification number, business telephone number and ownership percentage, carried out to six decimal places, of each cooperative member eligible for a tax credit certificate. The cooperative shall also submit a total dollar amount of the unused investment tax credits for which the cooperative's members are requesting a tax credit certificate.

(3) The department will make public by June 1 of each year the total number of requests for tax credit certificates and the total amount of requested tax credit certificates that have been submitted. The department will issue tax credit certificates within a reasonable period of time.

(4) The department shall not issue tax credit certificates which total more than $4 million during a fiscal year. If the department receives applications for tax credit certificates in excess of $4 million, the applicants shall receive certificates for a prorated amount. In such a case, the tax credit requested by an eligible business will be prorated based upon the total amount of requested tax credit certificates received during the fiscal year. This proportion will be applied to the amount requested by each eligible business to determine the amount of the tax credit certificate that will be distributed to each business for the fiscal year. For example, if an eligible business submits a request in the amount of $1 million and the total amount of requested tax credit certificates equals $8 million, the business will be issued a tax credit certificate in the amount of $500,000:

$$\frac{\$4 \text{ million}}{\$8 \text{ million}} = 50\% \times \$1 \text{ million} = \$500{,}000.$$

(5) Tax credit certificates shall not be valid until the tax year following project completion. The tax credit certificates shall not be transferred except in the case of a cooperative as described in Section 521 of the United States Internal Revenue Code. For such a cooperative, the individual members of the cooperative are eligible to receive the tax credit certificates. Tax credit certificates shall be used in tax years beginning on or after July 1, 2001. A business shall not claim a refund of unused investment tax credit unless a tax credit certificate issued by the department is attached to the taxpayer's tax return for the tax year during which the tax credit is claimed. Any unused investment tax credit in excess of the amount of the tax credit certificate issued by the department may be carried forward for up to seven years after the qualifying asset is placed in service or until depleted, whichever occurs first.

(6) An eligible business may apply for tax credit certificates once each year for up to seven years after the qualifying asset is placed in service or until the eligible business's unused investment tax credit is depleted, whichever occurs first. For example, an eligible business which completes a project in October 2001 and has an investment tax credit of $1 million may apply for a tax credit certificate in May 2002. If, because of the proration of the $4 million of available refundable credits for the fiscal year, the business is awarded a tax credit certificate in the amount of $300,000, the business may claim the $300,000 refund and carry forward the unused investment tax credit of $700,000 for up to seven years or until the credit is depleted, whichever occurs first.

f. *New jobs insurance premium tax credit.* If the eligible business is an insurance company, the business may claim an insurance premium tax credit as provided in Iowa Code section 15.333A. This new jobs insurance premium tax may be taken by an eligible business which has entered into a chapter 260E agreement with a vocational school or community college, and which has increased its base employment level in Iowa by at least 10 percent within the time set in the 260E training agreement. In the case of an eligible business without a base employment level, if the business adds new jobs within the time set in the 260E agreement, it is entitled to this new jobs insurance premium tax credit for the tax period to be selected by the business. In determining if the business has increased its base employment by 10 percent, only those new jobs resulting from the project covered by the 260E agreement shall be counted.

The new jobs insurance premium tax credit as provided in Iowa Code section 15.333A is determined by multiplying the qualifying taxable wages of new employees by 6 percent. For purposes of this credit, "qualifying taxable wages" is the amount of taxable wages upon which an employer is required to pay state of Iowa unemployment compensation fund taxes for new employees in new jobs. This insurance premium tax credit may be claimed in any reporting period which either begins or ends during the period beginning with the date of the 260E agreement and ending with the date by which the 260E training agreement is to be completed. Any credit in excess of the insurance premium tax liability for the year may be credited to the tax liability for the following seven years, or until depleted, whichever is earlier. This new jobs insurance premium tax credit is in lieu of, and not in addition to, the new jobs tax credit as stated in Iowa Code section 422.11A.

58.4(4) *Property tax exemption.* An exemption from taxation for machinery, equipment, and computers for a period of up to 20 years. A business may claim as exempt from taxation all or a portion of the value of the property directly related to new jobs created by the location or expansion of a business under the program and used by the business. Property eligible for this exemption shall be acquired or initially leased by the business or relocated by the business to the facility from a facility outside the state of Iowa. Property "directly related" includes the property the new employees will operate, repair, or maintain.

58.4(5) *Research activities credit.* A corporate tax credit for increasing research activities in this state during the period the business is participating in the program. For purposes of claiming this credit, a business is considered to be "participating in the program" for a period of ten years from the application approval date. This credit equals 6½ percent of the state's apportioned share of the qualifying expenditures for increasing research activities. The state's apportioned share of the

qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to total qualified research expenditures. This credit is in addition to the credit authorized in Iowa Code section 422.33. If the business is a partnership, subchapter S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. Any tax credit in excess of the tax liability shall be refunded to the eligible business with interest computed under Iowa Code section 422.25. In lieu of claiming a refund, the eligible business may elect to have the overpayment credited to its tax liability for the following year.

58.4(6) *Refund of sales, service and use taxes paid to contractors or subcontractors.*

a. An eligible business or supporting business may apply for a refund of the sales and use taxes paid under Iowa Code chapters 422 and 423 for gas, electricity, water or sewer utility services, goods, wares, or merchandise, or on services rendered, furnished or performed to or for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility within the economic development area.

b. Taxes attributable to intangible property and furniture and furnishings shall not be refunded. To receive a refund of the sales, service and use taxes paid to contractors or subcontractors, the eligible business or supporting business must, within one year after project completion, make an application to the Iowa department of revenue.

58.4(7) *Sales and use tax exemption.* An eligible business may claim an exemption from sales and use taxation property as defined under Iowa Code section 422.45, subsection 27, and also as defined under Iowa Code section 15.334. This effectively eliminates the sales and use taxes on industrial machinery, equipment and computers, including replacement parts which are depreciable for state and federal income tax purposes.

58.4(8) *Exemption from land ownership restrictions for nonresident aliens.*

a. An eligible business, if owned by nonresident aliens, may acquire and own up to 1,000 acres of land in the economic development area provided the eligible business is not actively engaged in farming within the economic development area. An eligible, nonresident alien-owned business may also lease up to an additional 280 acres of land in the economic development area. An eligible business owned by nonresident aliens may be allowed, before an application is submitted, to take out a purchase option on up to 1,000 acres the business intends to acquire and may be allowed to take out a lease option on up to an additional 280 acres. The purchase and lease options may be no longer than six months in duration, and the option acquired shall be contingent upon department approval of the business's NJIP application. The eligible business may receive one or more extensions of the five-year time limit for complying with requirements for the development of agricultural land as stated in Iowa Code section 567.4. Requests for an extension must be made in writing and received by the community and the department 90 days prior to the expiration of the current time limit. Each extension must be approved by the community prior to approval by the department. An eligible business may receive one five-year extension and one or more one-year extensions. The community, in consultation with the department, will determine whether a five-year or one-year extension is granted. The eligible business, if owned by nonresident aliens, must comply with all other provisions of Iowa Code chapter 567 which govern land ownership by nonresident aliens, provided they do not conflict with Iowa Code section 15.331B.

b. "Actively engaged in farming" means any of the following:

(1) Inspecting agricultural production activities within the economic development area periodically and furnishing at least half value of the tools and paying at least half the direct cost of production.

(2) Regularly and frequently making or taking an important part in management decisions substantially contributing to or affecting the success of the farm operations within the economic development area.

(3) Performing physical work which significantly contributes to crop or livestock production.

c. The nonresident alien owner is not considered to be actively engaged in farming if the nonresident alien owner cash rents the land to others for farming purposes.

d. An eligible business, if owned by nonresident aliens, may only receive the land ownership exemptions under this subrule provided the business has received final approval of a New Jobs and Income Program application before July 1, 2002.

e. The department will monitor the activities of eligible businesses owned by nonresident aliens that receive this exemption from land ownership restrictions. The department will submit a report to the general assembly by December 15 of each year.

261—58.5(15) Limitation on incentives. An eligible business may receive other applicable federal, state, and local incentives and credits in addition to those provided under this program. However, a business which participates in this program shall not receive funds for the same project from the community economic development account under the community economic betterment program described in 261—Chapter 22.

261—58.6(15) Application. To request participation in the program, a business shall submit application to the department. A business may submit an application individually or as a part of a group of businesses. Requests for an application should be directed to the Iowa Department of Economic Development, Division of Business Development, 200 East Grand Avenue, Des Moines, Iowa 50309.

261—58.7(15) Eligibility requirements. Retail business shall not be eligible to receive benefits under this program. To be eligible for program participation a business shall meet all of the threshold requirements of subrule 58.7(1) and at least three of the elements listed in subrule 58.7(2). If an application is submitted by a group of businesses, the group must meet the capital investment requirement and the job creation requirement of at least 75 full-time nonmanagement production positions. Each business within the group shall individually meet the other eligibility criteria.

58.7(1) *Mandatory six elements.* A business shall meet all of the following requirements in order to be eligible for program benefits:

a. The community has approved by ordinance or resolution the start-up, location, or expansion of the business for the purpose of receiving program benefits. If community approval is by resolution rather than ordinance and the business is requesting the exemption from land ownership restrictions for nonresident aliens under subrule 58.4(8), the community shall submit documentation that the public was afforded an opportunity to comment on the business's application and land ownership exemption request.

b. The business has not closed or substantially reduced its operation in one area of the state and relocated substantially the same operation in the community. This requirement does not prohibit a business from expanding its operation in the community if existing operations of a similar nature in the state are not closed or substantially reduced.

c. The business must provide and pay at least 80 percent of the cost of a standard medical and dental insurance plan for all full-time employees working at the facility in which the new investment occurred.

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 and salaries. Bonuses, commissions or overtime pay may also be included in the calculation if the business has a history of paying bonuses, commissions or overtime pay and will provide a guarantee that this type of additional compensation will continue while the business is participating in the program.

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 nonmanagement production 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 requirement for the number of jobs listed in paragraph 58.7(1)*"f."* However, in no event shall the minimum number of jobs created be fewer than 15 full-time, nonmanagement production positions.

a. The department may grant a waiver only when good cause is shown.

(1) "Good cause shown" includes the following economic distress criteria:

1. A county family poverty rate higher than the state average.
2. A county unemployment rate higher than the state average.
3. A unique opportunity to use existing unutilized facilities in the community.
4. A significant downsizing or closure by one of the community's major employers.
5. An immediate threat posed to the community's workforce due to business downsizing or closure.

(2) "Good cause shown" may also include a proposed project by a business that shall meet all of the following criteria:

1. The business is in one of the state's targeted industry clusters: life sciences, information solutions, and advanced manufacturing.
2. The business will make a higher than average capital investment.
3. The business will pay an average starting wage for all the new jobs created as the result of the project that is significantly higher than the wage requirement in paragraph 58.7(1)*"d."*

b. A request for a waiver shall be made in writing on the form provided by the department. A request for a waiver shall be submitted with the application to request program benefits. The board will review the request for a waiver when it reviews the application and may approve, deny, or defer the request for a waiver. If the request for a waiver is approved, the board may proceed with its final decision on the application.

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. The department shall develop a standardized application and make it available for use by a business applying for benefits and assistance. The community shall review the application to determine if the business is eligible for benefits and assistance. If the community determines that the business is eligible, it shall approve by resolution the start-up, location, or expansion of the business for the purpose of receiving program benefits. The community shall then submit the application for benefits and assistance to the department.

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 DR 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 DR 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. DR 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 the department, in consultation with the community, determines that business has failed in any year to meet any one of the requirements of the new jobs and income Act, these rules, and the agreement, the business or group of businesses is subject to repayment of all or a portion of the amount of incentives received.

Once it has been established, through the compliance monitoring, audit or otherwise, that the business or group of businesses is required to repay all or a portion of the incentives received, DR and the community, as appropriate, shall collect the amount owed. The community or DR may exercise forbearance in connection with collection of the amounts owed to the community or DR and elect, in consultation with the department, to grant the business or group of businesses a one-year period to meet its requirements under the agreement.

58.14(2) *Calculation of repayment due.*

a. *Investment tax credit.* If a business does not meet the capital investment requirement, repayment shall be calculated as follows:

(1) If the business has not met the minimum investment requirement as stated in 58.7(1)*"e,"* the business shall repay all of the incentives and assistance that it has received.

(2) If the business has met 50 percent or less of the requirement, the business shall repay the same percentage in benefits as the percentage that the business failed to invest.

(3) If the business has met more than 50 percent but not more than 75 percent of the requirement, the business shall repay one-half of the percentage in benefits that the business failed to invest.

(4) If the business has met more than 75 percent but not more than 90 percent of the requirement, the business shall repay one-quarter of the percentage in benefits that the business failed to invest.

b. Job creation. If a business does not meet its job creation requirement or fails to maintain the required number of jobs, repayment 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 that 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 that 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 that the business or group of businesses failed to create in jobs.

(4) If the business or group of businesses has not met the minimum job creation requirement as stated in paragraph 58.7(1)*"f"* or subrule 58.7(4), the business or group of businesses shall repay all of the incentives and assistance that it has received.

c. Wages and benefits. If the business or group of businesses fails to meet the wage requirement of paragraph 58.7(1)*"d"* or the benefits requirement of paragraph 58.7(1)*"c"* in any one year, the business or group of businesses must meet that requirement in the following year or forfeit the incentives for the year in which the business or group of businesses were not in compliance.

d. Additional required elements. If the business or group of businesses fails to meet the additional required elements of subrule 58.7(2) in any one year, the business or group of businesses must meet that requirement in the following year or forfeit the incentives for the year in which the business or group of businesses were not in compliance.

58.14(3) *Failure to meet other requirements.* Rescinded IAB 10/1/03, effective 11/5/03.

261—58.15(15) Amendments. Any substantive change to an approved project will be considered a contract amendment. The amendment must be requested on the form provided by the department and approved by the community. No amendment will be valid until approved by the department.

These rules are intended to implement Iowa Code chapter 15 as amended by 2003 Iowa Acts, House Files 612, 677 and 681.

261—58.16(81GA,HF868) Applicability of new jobs and income program after July 1, 2005.

58.16(1) Effective July 1, 2005, the NJIP program is rescinded by 2005 Iowa Acts, House File 868, and replaced with a new tax credit program, the high quality job creation program. Rules for the high quality job creation program may be found in 261—Chapter 68.

58.16(2) For awards made or contracts entered into prior to July 1, 2005, the rules of 261—Chapter 58 shall govern for purposes of contract administration and closeout of projects. A contract amendment is not allowable if the result of the amendment is to increase the benefits available.

This rule is intended to implement 2005 Iowa Acts, House File 868.

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CHAPTER 59
ENTERPRISE ZONE (EZ) PROGRAM

261—59.1(15E) Purpose and administrative procedures.

59.1(1) *Purpose.* The purpose of the establishment of an enterprise zone in a county or city is to promote new economic development in economically distressed areas. Businesses that are eligible and locating or located in an enterprise zone and approved by the department are authorized under this program to receive certain tax incentives and assistance. The intent of the program is to encourage communities to target resources in ways that attract productive private investment in economically distressed areas within a county or city. Projects that have already been initiated before receiving formal application approval by the department shall not be eligible for tax incentives and assistance under this program.

59.1(2) *Administrative procedures.* The EZ program is subject to the requirements of the department's rules located in 261—Part VII, additional application requirements and procedures, and 261—Part VIII, legal and compliance. Part VII and Part VIII include standard definitions; standard program requirements; wage, benefit and investment requirements; application review and approval procedures; contracting; contract compliance and job counting; and annual reporting requirements.

[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09]

261—59.2(15E) Definitions. In addition to the standard definitions located in 261—Chapter 173, the following definitions apply to the EZ program:

"Act" means Iowa Code sections 15E.191 to 15E.197 as amended by 2009 Iowa Acts, Senate File 344.

"Agricultural land" as defined in Iowa Code section 403.17 means real property owned by a person in tracts of ten acres or more and not laid off into lots of less than ten acres or divided by streets and alleys into parcels of less than ten acres, and that has been used for the production of agricultural commodities during three out of the past five years. Such use of property includes, but is not limited to, the raising, harvesting, handling, drying, or storage of crops used for feed, food, seed, or fiber; the care or feeding of livestock; the handling or transportation of crops or livestock; the storage, treatment, or disposal of livestock manure; and the application of fertilizers, soil conditioners, pesticides, and herbicides on crops. "Agricultural land" includes land on which is located farm residences or outbuildings used for agricultural purposes and land on which is located facilities, structures, or equipment for agricultural purposes. "Agricultural land" includes land taken out of agricultural production for purposes of environmental protection or preservation.

"Annual base rent" means the business's annual lease payment minus taxes, insurance and operating or maintenance expenses.

"Biotechnology-related processes" means the use of cellular and biomolecular processes to solve problems or make products. Farming activities shall not be included for purposes of this definition.

"Blighted area" as defined in Iowa Code section 403.17 means an area of a municipality within which the local governing body of the municipality determines that the presence of a substantial number of slum, deteriorated, or deteriorating structures; defective or inadequate street layout; faulty lot layout in relation to size, adequacy, accessibility, or usefulness; insanitary or unsafe conditions; deterioration of site or other improvements; diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land; defective or unusual conditions of title; or the existence of conditions which endanger life or property by fire and other causes; or any combination of these factors; substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations, or constitutes an economic or social liability and is a menace to the public health, safety, or welfare in its present condition and use. A disaster area referred to in Iowa Code section 403.5, subsection 7, constitutes a "blighted area." "Blighted area" does not include real property assessed as agricultural land or property for purposes of property taxation.

"Business closure" means a business that has completed the formal legal process of dissolution, withdrawal or cancellation with the secretary of state.

"Commission" or *"enterprise zone commission"* means the enterprise zone commission established by a city or county to review applications for incentives and assistance for businesses located within or requesting to locate within certified enterprise zones over which the enterprise zone commission has jurisdiction under the Act.

"Contractor" or *"subcontractor"* means a person who contracts with an eligible business or subcontracts with a contractor for the provision of property, materials, or services for the construction or equipping of a facility, located within the economic development zone, of the eligible business.

"Eligible business" means a business which meets the requirements of rule 261—59.5(15E).

"Enterprise zone" means a site or sites certified by the department of economic development board for the purpose of attracting private investment within economically distressed counties or areas of cities within the state.

"Permanent layoff" means the loss of jobs to an out-of-state location, the cessation of one or more production lines, the removal of manufacturing machinery and equipment, or similar actions determined to be equivalent in nature by the department. A permanent layoff does not include a layoff of seasonal employees or a layoff that is seasonal in nature. For purposes of these rules, a permanent layoff must occur on or after February 1, 2007.

"Project" means the activity, or set of activities, proposed in the application by the business, which will result in accomplishing the goals of the enterprise zone program, and for which the business requests the benefits of the enterprise zone program.

"Project jobs" means all of the new jobs to be created by the location or expansion of the business in the enterprise zone that meet the qualifying wage threshold requirements described in 261—Chapter 174.

"Tax credit certificate" means a document issued by the department to an eligible business which indicates the amount of unused investment tax credit that the business is requesting to receive in the form of a refund. A tax credit certificate shall contain the taxpayer's name, address, and tax identification number, the date of project completion, the amount of the tax credit certificate, the tax year for which the credit will be claimed, and any other information required by the department of revenue or the department.

"Transportation enterprise zone" means a site or sites certified by the Iowa department of economic development board for the purpose of attracting private investment within economically distressed areas of cities within the state which are in close proximity to transportation facilities.

"Value-added agricultural products" means agricultural products which, through a series of activities or processes, can be sold at a higher price than the original purchase price.

[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09]

261—59.3(15E) Enterprise zone certification. An eligible county or an eligible city may request the board to certify an area meeting the requirements of the Act and these rules as an enterprise zone. Certified enterprise zones will remain in effect for a period of ten years from the date of certification by the board. A county may request zone certification under subrule 59.3(1) at any time prior to December 1, 2003. A county or city may request zone certification under subrules 59.3(2), 59.3(3), 59.3(4) and 59.3(6) at any time prior to July 1, 2010.

59.3(1) *County—eligibility based on distress criteria in section 15E.194, Iowa Code (2001).*

a. Requirements. To be eligible for enterprise zone certification, a county must meet at least two of the following criteria:

(1) The county has an average weekly wage that ranks among the bottom 25 counties in the state based on the 1995 annual average weekly wage for employees in private business.

(2) The county has a family poverty rate that ranks among the top 25 counties in the state based on the 1990 census.

(3) The county has experienced a percentage population loss that ranks among the top 25 counties in the state between 1990 and 1995.

(4) The county has a percentage of persons 65 years of age or older that ranks among the top 25 counties in the state based on the 1990 census.

b. Zone parameters. Up to 1 percent of a county area may be certified as an enterprise zone. A county may establish more than one enterprise zone. The total amount of land certified as enterprise zones, other than those zones certified pursuant to subrules 59.3(3), 59.3(4) and 59.3(6), shall not exceed in the aggregate 1 percent of the total county area. An eligible county containing a city whose boundaries extend into an adjacent county may establish an enterprise zone in an area of the city located in the adjacent county if the adjacent county's board of supervisors adopts a resolution approving the establishment of the enterprise zone in the city and the two counties enter into an agreement pursuant to Iowa Code chapter 28E regarding the establishment of the enterprise zone.

59.3(2) *County—eligibility based on distress criteria in section 15E.194, Iowa Code (2003).*

a. Requirements. To be eligible for enterprise zone certification, a county must meet at least two of the following criteria:

(1) The county has an average weekly wage that ranks among the bottom 25 counties in the state based on the 2000 annual average weekly wage for employees in private business.

(2) The county has a family poverty rate that ranks among the top 25 counties in the state based on the 2000 census.

(3) The county has experienced a percentage population loss that ranks among the top 25 counties in the state between 1995 and 2000.

(4) The county has a percentage of persons 65 years of age or older that ranks among the top 25 counties in the state based on the 2000 census.

b. Zone parameters. Up to 1 percent of a county area may be certified as an enterprise zone. A county may establish more than one enterprise zone. The total amount of land certified as enterprise zones, other than those zones certified pursuant to subrules 59.3(3), 59.3(4) and 59.3(6), shall not exceed in the aggregate 1 percent of the total county area. An eligible county containing a city whose boundaries extend into an adjacent county may establish an enterprise zone in an area of the city located in the adjacent county if the adjacent county's board of supervisors adopts a resolution approving the establishment of the enterprise zone in the city and the two counties enter into an agreement pursuant to Iowa Code chapter 28E regarding the establishment of the enterprise zone.

59.3(3) *City—eligibility.*

a. Requirements. To be eligible for enterprise zone certification, a designated area within a city which includes at least three census tracts with at least 50 percent of the population in each tract located in the city, as shown by the 2000 certified federal census, must meet at least two of the following criteria:

(1) The area has a per capita income of $12,648 or less based on the 2000 census.

(2) The area has a family poverty rate of 12 percent or higher based on the 2000 census.

(3) Ten percent or more of the housing units are vacant in the area.

(4) The valuations of each class of property in the designated area is 75 percent or less of the citywide average for that classification based upon the most recent valuations for property tax purposes.

(5) The area is a blighted area, as defined in Iowa Code section 403.17.

b. Population limits. A city which includes at least three census tracts with at least 50 percent of the population in each tract located in the city, as shown by the 2000 certified federal census, may request enterprise zone certification by the board. The zone shall consist of one or more contiguous census tracts, as determined in the most recent federal census, or alternative geographic units approved by the department, for that purpose. In creating an enterprise zone, an eligible city may designate as part of the area tracts or approved geographic units located in a contiguous city if such tracts or approved geographic units otherwise meet the criteria on their own and the contiguous city agrees to be included in the enterprise zone.

c. Zone parameters. A city may establish more than one enterprise zone. The area meeting the requirements for eligibility for an enterprise zone shall not be included for the purpose of determining the 1 percent aggregate area limitation for enterprise zones. If there is an area in the city which meets the requirements for eligibility for an urban or rural enterprise community under Title XIII of the federal Omnibus Budget Reconciliation Act of 1993, such area shall be certified by the state as an enterprise zone.

59.3(4) *Transportation enterprise zone—eligibility.*

a. Transportation enterprise zone requirements. To be eligible for transportation enterprise zone certification, a designated area within a city which includes at least three census tracts with at least 50 percent of the population in each tract located in the city, as shown by the 2000 certified federal census, must be a blighted area as defined in Iowa Code section 403.17, but must not be agricultural land or property, and must include or be within four miles of at least three of the following:

(1) A commercial service airport, as defined by the Iowa department of transportation.

(2) A barge terminal or a navigable waterway, as defined by the Iowa department of transportation.

(3) Entry to a rail line.

(4) Entry to an interstate highway.

(5) Entry to a commercial and industrial highway network as identified pursuant to Iowa Code section 313.2A.

b. Transportation enterprise zone population limits. A city which includes at least three census tracts with at least 50 percent of the population in each tract located in the city, as shown by the 2000 certified federal census, may request transportation enterprise zone certification by the board.

c. Transportation enterprise zone parameters. A city may establish more than one transportation enterprise zone. The area being designated as a transportation enterprise zone shall not exceed four square miles. The area meeting the requirements for eligibility for a transportation enterprise zone shall not be included for the purpose of determining the 1 percent aggregate area limitation for enterprise zones.

d. Transportation enterprise zone award restrictions. In the period from July 1, 2007, through June 30, 2010, the cumulative total of benefits awarded to eligible businesses shall not exceed $25 million per fiscal year. Value-added property tax exemption benefits provided by the city shall not count against the $25 million. Transportation enterprise zones established pursuant to this subrule shall not be used to provide incentives for eligible housing businesses to construct new housing units or rehabilitate existing housing units.

59.3(5) *Certification procedures.*

a. Request with supporting documentation. All requests for certification shall be made using the application provided by the department and shall include the following attachments:

(1) A legal description of the proposed enterprise zone area and a detailed map showing the boundaries of the proposed enterprise zone.

(2) If the proposed county enterprise zone contains a city whose boundaries extend into an adjacent county, the resolution of the board of supervisors of the adjacent county approving the establishment of the zone and a copy of an executed 28E agreement.

(3) Resolution of the city council or board of supervisors, as appropriate, requesting certification of the enterprise zone(s). Included within this resolution may be a statement of the schedule of value-added property tax exemptions that will be offered to all eligible businesses that are approved for incentives and assistance. If a property tax exemption is made applicable only to a portion of the property within the enterprise zone, a description of the uniform criteria which further some planning objective that has been established by the city or county enterprise zone commission and approved by the eligible city or county must be submitted to the department. Examples of acceptable "uniform criteria" that may be adopted include, but are not limited to, wage rates, capital investment levels, types and levels of employee benefits offered, job creation requirements, and specific targeted industries. "Planning objectives" may include, but are not limited to, land use, rehabilitation of distressed property, or brownfields remediation.

The city or county shall forward a copy of the official resolution listing the property tax exemption schedule(s) to the department and to the local assessor.

b. Board review. The board will review requests for enterprise zone certification. The board may approve, deny, or defer a request for zone certification.

c. Notice of board action. The department will provide notice to a city or county of the board's certification, denial, or deferral of the city's or county's request for certification of an area as an enterprise zone. If an area is certified by the board as an enterprise zone, the notice will include the date of the zone certification and the date this certification expires.

d. Amendments. A certified enterprise zone may be amended at the request of the city or county that originally applied for the zone certification. Requests must be in writing and be received by the department prior to December 1, 2003, if the county is eligible pursuant to subrule 59.3(1) or prior to July 1, 2010, if the county or city is eligible pursuant to subrule 59.3(2), 59.3(3), or 59.3(4). Requests must include the enterprise zone name and number, as established by the department when the zone was certified, the date the zone was originally certified, the reason an amendment is being requested, the number of acres the zone will contain if the amendment is approved, and a resolution of the city council or board of supervisors, as appropriate, requesting the amendment. A legal description of the amended enterprise zone and a map which shows both the original enterprise zone boundaries and the proposed changes to those boundaries shall accompany the written request.

A city requesting an amendment that consists of an area being added to the enterprise zone must include documentation that demonstrates that the area being added meets the eligibility requirements of subrule 59.3(3) or 59.3(4). A city requesting an amendment that consists of an area being removed from the enterprise zone must include documentation that demonstrates that the remaining area still meets the eligibility requirements of subrule 59.3(3) or 59.3(4).

An amendment shall not extend the zone's ten-year expiration date, as established when the zone was initially certified by the board or when the board approved an extension. The board will review the request and may approve, deny, or defer the proposed amendment. A county or city shall not be allowed to remove a portion of an enterprise zone that contains an eligible business or eligible housing business that has received incentives and assistance under this program and whose agreement, described in rule 59.13(15E), has not yet expired.

e. Decertification. A county or city may request decertification of an enterprise zone. Requests must be in writing and be received by the department prior to December 1, 2003, if the county is eligible pursuant to subrule 59.3(1) or prior to July 1, 2010, if the county or city is eligible pursuant to subrule 59.3(2), 59.3(3), or 59.3(4). Requests must include the enterprise zone name and number, as established by the department when the zone was certified, the date the zone was originally certified, and a resolution of the city council or board of supervisors, as appropriate, requesting the decertification. Requests for enterprise zone decertification will be reviewed by the board and may be approved, denied or deferred. If the county or city requesting decertification designates a subsequent enterprise zone, the expiration date of the subsequent enterprise zone shall be the same as the expiration date of the decertified enterprise zone. A county or city shall not be allowed to decertify an enterprise zone that contains an eligible business or eligible housing business that has received incentives and assistance under this program and whose agreement, described in rule 59.13(15E), has not yet expired.

f. Extensions. Prior to the expiration of an enterprise zone, a city or county may apply for a one-time extension.

(1) Counties eligible under subrule 59.3(1) but not eligible under subrule 59.3(2). A county may request that the board extend the expiration date of a previously certified enterprise zone. The extended expiration date will be one year following the complete publication of the 2010 federal census, as determined by the department.

In applying for this one-time extension, the county may redefine the boundaries of the enterprise zone provided the size of the enterprise zone remains unchanged. A county shall not be allowed to redefine the boundaries of an enterprise zone if the redefinition would result in removing an area that contains an eligible business or eligible housing business that has received incentives and assistance under this program and whose agreement, described in rule 59.13(15E), has not yet expired.

(2) Counties eligible under subrule 59.3(2). A county may request that the board extend the expiration date of a previously certified enterprise zone by ten years. In applying for this one-time, ten-year extension, the county may redefine the boundaries of the enterprise zone provided the redefinition of the enterprise zone does not cause the county to exceed the 1 percent aggregate area limitation for enterprise zones. A county shall not be allowed to redefine the boundaries of an enterprise zone if the redefinition would result in removing an area that contains an eligible business or eligible housing business that has received incentives and assistance under this program and whose agreement, described in rule 59.13(15E), has not yet expired.

(3) Cities eligible under subrule 59.3(3). A city may request that the board extend the expiration date of a previously certified enterprise zone by ten years provided that at the time of the request, the enterprise zone meets the eligibility requirements established by paragraph 59.3(3)*"a."* In applying for this one-time, ten-year extension, the city may redefine the boundaries of the enterprise zone provided that the redefined enterprise zone meets the eligibility requirements established in paragraph 59.3(3)*"a."* A city shall not be allowed to redefine the boundaries of an enterprise zone if the redefinition would result in removing an area that contains an eligible business or eligible housing business that has received incentives and assistance under this program and whose agreement, described in rule 59.13(15E), has not yet expired.

(4) Extension requests. Extension requests shall be made using the form provided by the department and shall be accompanied by a resolution of the city council or board of supervisors, as appropriate, requesting the extension of the enterprise zone. The board will review requests for enterprise zone extensions. The board may approve, deny, or defer an extension request.

59.3(6) *City or county with business closure.*

a. Requirements. A city of any size or any county may designate an enterprise zone at any time prior to July 1, 2010, when a business closure or permanent layoff occurs involving the loss of full-time employees, not including retail employees, at one place of business totaling at least 1,000 employees or 4 percent of the county's resident labor force based upon the most recent annual resident labor force statistics from the department of workforce development, whichever is lower.

b. Zone parameters. The enterprise zone may be established on the property of the place of business that has closed or imposed a permanent layoff, and the enterprise zone may include an area up to an additional three miles adjacent to the property. The closing business or business imposing a permanent layoff shall not be eligible to receive incentives or assistance under this program. The area meeting the requirements for enterprise zone eligibility under this subrule shall not be included for the purpose of determining the area limitation pursuant to Iowa Code section 15E.192, subsection 4.

c. Certification procedures. All requests for certification shall be made using the application provided by the department. The board will review requests for enterprise zone certification. The board may approve, deny, or defer a request for zone certification.

d. Amendments. A city or county which designated an enterprise zone under this subrule on or after June 1, 2000, may request an amendment to include additional area within the enterprise zone. Requests must be in writing and be approved by the department within three years of the date the enterprise zone was originally certified. Requests must include the enterprise zone name and number, as established by the department when the zone was certified, the date the zone was originally certified, and the number of acres the zone will contain if the amendment is approved. A legal description of the amended enterprise zone and a map which shows both the original enterprise zone boundaries and the proposed changes to those boundaries shall accompany the written request.

e. Restrictions. Enterprise zones established pursuant to this subrule shall not be used to provide incentives for eligible housing businesses to construct new housing units or rehabilitate existing housing units.

261—59.4(15E) Enterprise zone commission. Following notice of enterprise zone certification by the board, the applicant city or county shall establish an enterprise zone commission. The commission shall review applications from eligible businesses and eligible housing businesses located in the zone and forward approved applications to the department for final review and approval. A county eligible to designate enterprise zones which contains a city which is eligible to designate enterprise zones, upon mutual agreement between the board of supervisors and the city council and in consultation with the department, may elect to establish one enterprise zone commission to serve both the county and the city.

59.4(1) *Commission composition.*

a. County enterprise zone commission. A county shall have only one enterprise zone commission to review applications for incentives and assistance for businesses (including eligible housing businesses) located or requesting to locate within a certified enterprise zone. The enterprise zone commission shall consist of nine members. Five of these members shall be comprised of:

(1) One representative of the county board of supervisors,

(2) One member with economic development expertise selected by the department,

(3) One representative of the county zoning board,

(4) One member of the local community college board of directors, and

(5) One representative of the local workforce development center selected by the Iowa workforce development department unless otherwise designated by a regional advisory board.

The five members identified above shall select the remaining four members. If the enterprise zone is located in a county that does not have a county zoning board, the representatives identified in 59.4(1)*"a"*(1), (2), (4), and (5) shall select an individual with zoning expertise to serve as a member of the commission.

b. *City enterprise zone commission.* A city in which an eligible enterprise zone is certified shall have only one enterprise zone commission. A city which includes at least three census tracts with at least 50 percent of the population in each census tract located in the city, as shown by the 2000 federal census, in which an eligible enterprise zone is certified shall establish an enterprise zone commission to review applications from qualified businesses located within or requesting to locate within an enterprise zone to receive incentives or assistance. The commission shall consist of nine members. Six of these members shall consist of:

(1) One representative of an international labor organization,

(2) One member with economic development expertise chosen by the department of economic development,

(3) One representative of the city council,

(4) One member of the local community college board of directors,

(5) One member of the city planning and zoning commission, and

(6) One representative of the local workforce development center selected by the Iowa workforce development department unless otherwise designated by a regional advisory board.

The six members identified above shall select the remaining three members. If the enterprise zone consists of an area meeting the requirements for eligibility for an urban enterprise community under Title XIII of the federal Omnibus Budget Reconciliation Act of 1993, one of the remaining three members shall be a representative of that community. If a city contiguous to the city designating the enterprise zone is included in an enterprise zone, a representative of the contiguous city, chosen by the city council, shall be a member of the commission.

59.4(2) *Department review of composition.*

a. Once a county or city has established an enterprise zone commission, the county or city shall provide the department with the following information to verify that the commission is constituted in accordance with the Act and these rules:

(1) The name and address of each member.

(2) An identification of what group the member is representing on the commission.

(3) Copies of the resolution or other necessary action of a governing body, as appropriate, by which a member was appointed to the commission.

(4) Any other information that the department may reasonably request in order to permit it to determine the validity of the commission's composition.

b. If a city has established an enterprise zone commission prior to July 1, 1998, the city may petition to the department of economic development to change the structure of the existing commission. A petition to amend the structure of an existing city enterprise zone commission shall include the following:

(1) The names and addresses of the members of the existing commission.

(2) The date the commission was approved by the department.

(3) The proposed changes the city is requesting in the composition of the commission.

(4) Copies of the resolution or other necessary action of a governing body, as appropriate, by which a member was appointed to the commission.

59.4(3) *Commission policies and procedures.* Each commission shall develop policies and procedures which shall, at a minimum, include:

a. Processes for receiving and evaluating applications from qualified businesses seeking to participate within the enterprise zone; and

b. Operational policies of the commission such as meetings; and

c. A process for the selection of commission officers and the filling of vacancies on the commission; and

d. The designation of staff to handle the day-to-day administration of commission activities.

e. Additional local eligibility requirements for businesses, if any, as discussed in subrule 59.9(1).

261—59.5(15E) Eligibility and negotiations.

59.5(1) *Program categories.* To participate in the enterprise zone program, a business must qualify under one of two categories: an eligible business or an eligible housing business. Refer to rule 261—59.6(15E) for a description of the eligibility requirements and benefits available to a qualified "eligible business." Refer to rule 261—59.8(15E) for a description of the eligibility requirements and benefits available to a qualified "eligible housing business."

59.5(2) *Negotiations.* The department reserves the right to negotiate the terms and conditions of an award and the amount of all program benefits except the following benefits: the new jobs supplemental credit; the value-added property tax exemption; and the refund of sales, service and use taxes paid to contractors and subcontractors. The criteria, as applicable to the category under which the business is applying, to be used in the negotiations to determine the amount of tax incentives and assistance include but are not limited to:

a. The number and quality of jobs to be created. Factors to be considered include but are not limited to full-time, career path jobs; number of jobs meeting or exceeding the qualifying wage threshold requirements described in 261—Chapter 174; turnover rate; fringe benefits provided; safety; skill level.

b. The wage levels of the jobs to be created.

c. The amount of capital investment to be made.

d. The level of need of the business. Factors to be considered include but are not limited to the degree to which the business needs the tax incentives and assistance in order for the project to proceed. Methods of documenting need may include criteria such as financial concerns; risk of the business's locating in or relocating to another state; or return on investment concerns.

e. The economic impact and cost to the state and local area of providing tax incentives and assistance in relation to the public gains and benefits to be provided by the business. Factors to be considered include but are not limited to the amount of tax credits likely to be used by the business and the impact on the local and state tax base and economic base.

f. Other state or federal financial assistance received or applied for by the business for the project.

59.5(3) *Limitation on negotiations.* Rescinded IAB 11/9/05, effective 12/14/05.

261—59.6(15E) Eligible business.

59.6(1) *Requirements.* A business which is or will be located, in whole or in part, in an enterprise zone is eligible to be considered to receive incentives and assistance under the Act if the business meets all of the following:

a. *No closure or reduction.* The business has not closed or reduced its operation in one area of the state and relocated substantially the same operation into the enterprise zone. This requirement does not prohibit a business from expanding its operation in an enterprise zone if existing operations of a similar nature in the state are not closed or substantially reduced.

b. *No retail.* The business is not a retail business or a business whose entrance is limited by a cover charge or membership requirement.

c. *Employee benefits.* The business offers or will offer a sufficient benefits package to its employees as defined in 261—Chapter 173.

d. *Wage levels.* The business pays or will pay the qualifying wage threshold for the enterprise zone program as established in 261—Chapter 174 and defined in 261—Chapter 173. However, in any circumstance, the wage paid by the business for the project jobs shall not be less than $7.50 per hour.

The local enterprise zone commission may establish higher company eligibility wage thresholds if it so desires.

e. *Job creation or retention.* The business expansion or location must result in at least ten full-time project jobs. The time period allowed to create the jobs and the required period to retain the jobs are described in 261—Chapter 187.

f. *Capital investment.* The business makes a capital investment of at least $500,000.

g. *Location within zone.* If the business is only partially located in an enterprise zone, the business must be located on contiguous land.

59.6(2) *Additional information.* In addition to meeting the requirements under subrule 59.6(1), an eligible business shall provide the enterprise zone commission with all of the following:

a. The long-term strategic plan for the business, which shall include labor and infrastructure needs.

b. Information dealing with the benefits the business will bring to the area.

c. Examples of why the business should be considered or would be considered a good business enterprise.

d. The impact the business will have on other Iowa businesses in competition with it. The enterprise zone commission shall make a good faith effort to identify existing Iowa businesses within an industry in competition with the business being considered for assistance. The enterprise zone commission shall make a good faith effort to determine the probability that the proposed financial assistance will displace employees of the existing businesses. In determining the impact on businesses in competition with the business being considered for assistance, jobs created or retained as a result of other jobs being displaced elsewhere in the state shall not be considered direct jobs created or retained.

e. A report describing all violations of environmental law or worker safety law within the last five years. If, upon review of the application, the enterprise zone commission finds that a business has a record of violations of the law, statutes, rules, or regulations that tends to show a consistent pattern, the enterprise zone commission shall not make an award of financial assistance to the business unless the commission finds either that the violations did not seriously affect public health, public safety, or the environment, or, if such violations did seriously affect public health, public safety, or the environment, that mitigating circumstances were present.

59.6(3) *Benefits.* The department reserves the right to negotiate the amount of all program benefits except the following benefits: the new jobs supplemental credit; the value-added property tax exemption; and the refund of sales, service and use taxes paid to contractors and subcontractors. The following incentives and assistance may be available to an eligible business within a certified enterprise zone, subject to the amount of incentives and assistance negotiated by the department with the eligible business and agreed upon as described in an executed agreement, only when the average wage of all the new project jobs meets the minimum wage requirements of 59.6(1)*"d"*:

a. *New jobs supplemental credit.* An approved business shall receive a new jobs supplemental credit from withholding in an amount equal to 1½ percent of the gross wages paid by the business, as provided in Iowa Code section 15E.197. The supplemental new jobs credit available under this program is in addition to and not in lieu of the program and withholding credit of 1½ percent authorized under Iowa Code chapter 260E. Additional new jobs created by the project, beyond those that were agreed to in the original agreement as described in 261—59.12(15E), are eligible for the additional 1½ percent withholding credit as long as those additional jobs meet the local enterprise zone wage eligibility criteria and are an integral part or a continuation of the new location or expansion. Approval and administration of the supplemental new jobs credit shall follow existing procedures established under Iowa Code chapter 260E. Businesses eligible for the new jobs training program are those businesses engaged in interstate commerce or intrastate commerce for the purpose of manufacturing, processing, or assembling products, conducting research and development, or providing services in interstate commerce, but exclude retail, health or professional services.

b. *Value-added property tax exemption.*

(1) The county or city for which an eligible enterprise zone is certified may exempt from property taxation all or a portion of the value added to the property upon which an eligible business locates or expands in an enterprise zone and which is used in the operation of the eligible business. This exemption

shall be authorized by the city or county that would have been entitled to receive the property taxes, but is electing to forego the tax revenue for an eligible business under this program. The amount of value added for purposes of Iowa Code section 15E.196 shall be the amount of the increase in assessed valuation of the property following the location or expansion of the business in the enterprise zone.

(2) If an exemption is made applicable only to a portion of the property within an enterprise zone, there must be approved uniform criteria which further some planning objective established by the city or county zone commission. These uniform criteria must also be approved by the eligible city or county. Examples of acceptable "uniform criteria" that may be adopted include, but are not limited to, wage rates, capital investment levels, types and levels of employee benefits offered, job creation requirements, and specific targeted industries. "Planning objectives" may include, but are not limited to, land use, rehabilitation of distressed property, or brownfields remediation.

(3) The exemption may be allowed for a period not to exceed ten years beginning the year value added by improvements to real estate is first assessed for taxation in an enterprise zone.

(4) This value-added property tax exemption may be used in conjunction with other property tax exemptions or other property tax-related incentives such as property tax exemptions that may exist in Urban Revitalization Areas or Tax Increment Financing (TIF). Property tax exemptions authorized under Iowa Code chapter 427B may not be used, as stated in Iowa Code section 427B.6, in conjunction with property tax exemptions authorized by city council or county board of supervisors within the local enterprise zone.

c. Investment tax credit and insurance premium tax credit.

(1) Investment tax credit. An eligible business may claim an investment tax credit as provided in Iowa Code section 15.333. A corporate income tax credit may be claimed of up to a maximum of 10 percent of the new investment which is directly related to new jobs created by the location or expansion of the business in the enterprise zone. The credit may be used against a tax liability imposed for individual income tax, corporate income tax, franchise tax, or against the moneys and credits tax imposed in Iowa Code section 533.24.

1. Five-year amortization period. For projects approved on or after July 1, 2005, the tax credit shall be amortized equally over a five-year period which the department, in consultation with the eligible business, will define. The five-year amortization period will be specified in the agreement referenced in rule 261—59.13(15E).

2. Flow-through of tax credits. If the business is a partnership, subchapter S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 or 501A and filing as a partnership for federal tax purposes, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed.

3. Seven-year carryforward. Any credit in excess of tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs first.

4. Refund of unused tax credit. Subject to prior approval by the department in consultation with the department of revenue, an eligible business whose project primarily involves the production of value-added agricultural products or biotechnology-related processes may elect to apply for a refund for all or a portion of an unused tax credit.

5. IRS Section 521. For purposes of this paragraph, an eligible business includes a cooperative as described in Section 521 of the United States Internal Revenue Code which is not required to file an Iowa corporate income tax return.

6. Maximum capital expenditures stated in agreement. The business participating in the enterprise zone may not claim an investment tax credit for capital expenditures above the amount stated in the agreement described in 261—59.12(15E). An eligible business may instead, prior to project completion, seek to amend the contract, allowing the business to receive an investment tax credit for additional capital expenditures.

(2) Insurance premium tax credit. The insurance premium tax credit benefit is available for a business that submits an application for enterprise zone participation on or after July 1, 1999. If the business is an insurance company, the business may claim an insurance premium tax credit as provided in Iowa Code section 15E.196.

1. Five-year amortization period. For projects approved on or after July 1, 2005, the tax credit shall be amortized equally over a five-year period which the department, in consultation with the eligible business, will define. The five-year amortization period will be specified in the agreement referenced in rule 261—59.13(15E).

2. Credit of up to 10 percent of new investment. An Iowa insurance premium tax credit may be claimed of up to a maximum of 10 percent of the new investment which is directly related to new jobs created by the location or expansion of the business in the enterprise zone.

3. Seven-year carryforward. Any credit in excess of tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs first.

4. Maximum capital expenditures as stated in agreement. The business participating in the enterprise zone may not claim an investment tax credit for capital expenditures above the amount stated in the agreement described in 261—59.12(15E). An eligible business may instead seek to amend the contract, allowing the business to receive an investment tax credit for additional capital expenditures, or may elect to submit a new application within the enterprise zone.

(3) Eligible capital expenditures. For purposes of this rule, the capital expenditures eligible for the investment tax credit or the insurance premium tax credit under the enterprise zone program are:

1. The costs of machinery and equipment as defined in Iowa Code section 427A.1(1)*"e"* and *"j"* purchased for use in the operation of the eligible business, the purchase prices of which have been depreciated in accordance with generally accepted accounting principles;

2. The cost of improvements made to real property which is used in the operation of the eligible business; and

3. The annual base rent paid to a third-party developer for a period equal to the term of lease agreement but not to exceed ten years, provided that the cumulative costs of the base rent payments for that period do not exceed the cost of the land and the third-party developer's costs to build or renovate the building. Annual base rent shall be considered only when the project includes the construction of a new building or the major renovation of an existing building. The eligible business shall enter into a lease agreement with the third-party developer for a minimum of five years.

(4) Real property. For business applications received on or after July 1, 1999, for purposes of the investment tax credit claimed under Iowa Code section 15.333 and for business applications received on or after May 26, 2000, for purposes of the insurance premium tax credit claimed under Iowa Code section 15.333A, subsection 1, the purchase price of real property and any existing buildings and structures located on the real property will also be considered a new investment in the location or expansion of an eligible business. However, if within five years of purchase, the eligible business sells or disposes of, razes or otherwise renders unusable the land, buildings, or other existing structures for which tax credit was claimed under Iowa Code section 15.333 or under Iowa Code section 15.333A, subsection 1, the income tax liability, or where applicable the insurance premium tax liability, of the eligible business for the year in which the property is sold, disposed of, razed, or otherwise rendered unusable shall be increased by one of the following amounts:

1. One hundred percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within one year after being placed in service.

2. Eighty percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within two years after being placed in service.

3. Sixty percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within three years after being placed in service.

4. Forty percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within four years after being placed in service.

5. Twenty percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within five years after being placed in service.

(5) Refunds. An eligible business whose project primarily involves the production of value-added agricultural products and whose application was approved by the department on or after May 26, 2000, or whose project primarily involves biotechnology-related processes and whose application was approved

by the department on or after July 1, 2005, may elect to receive as a refund all or a portion of an unused investment tax credit.

1. The department will determine whether a business's project primarily involves the production of value-added agricultural products or biotechnology-related processes. Effective July 1, 2001, an eligible business that elects to receive a refund shall apply to the department for a tax credit certificate.

2. The business shall apply for a tax credit certificate using the form provided by the department. Requests for tax credit certificates will be accepted between May 1 and May 15 of each fiscal year. Only those eligible businesses that have completed projects before the May 1 filing date may apply for a tax credit certificate. For a cooperative described in Section 521 of the United States Internal Revenue Code, the department shall require the cooperative to submit a list of members whom the cooperative wishes to receive a tax credit certificate for their prorated share of ownership. The cooperative shall submit its list in a computerized electronic format that is compatible with the system used or designated by the department. The computerized list shall, at a minimum, include the name, address, social security number or taxpayer identification number, business telephone number and ownership percentage, carried out to six decimal places, of each cooperative member eligible for a tax credit certificate. The cooperative shall also submit a total dollar amount of the unused investment tax credits for which the cooperative's members are requesting a tax credit certificate.

3. The department will make public by June 1 of each year the total number of requests for tax credit certificates and the total amount of requested tax credit certificates that have been submitted. The department will issue tax credit certificates within a reasonable period of time.

4. The department shall not issue tax credit certificates which total more than $4 million during a fiscal year. If the department receives applications for tax credit certificates in excess of $4 million, the applicants shall receive certificates for a prorated amount. In such a case, the tax credit requested by an eligible business will be prorated based upon the total amount of requested tax credit certificates received during the fiscal year. This proportion will be applied to the amount requested by each eligible business to determine the amount of the tax credit certificate that will be distributed to each business for the fiscal year. For example, if an eligible business submits a request in the amount of $1 million and the total amount of requested tax credit certificates equals $8 million, the business will be issued a tax credit certificate in the amount of $500,000:

$$\frac{\$4 \text{ million}}{\$8 \text{ million}} = 50\% \times \$1 \text{ million} = \$500{,}000.$$

5. Tax credit certificates shall not be valid until the tax year following project completion. The tax credit certificates shall not be transferred except in the case of a cooperative as described in Section 521 of the United States Internal Revenue Code. For such a cooperative, the individual members of the cooperative are eligible to receive the tax credit certificates. Tax credit certificates shall be used in tax years beginning on or after July 1, 2001. A business shall not claim a refund of unused investment tax credit unless a tax credit certificate issued by the department is attached to the taxpayer's tax return for the tax year during which the tax credit is claimed. Any unused investment tax credit in excess of the amount of the tax credit certificate issued by the department may be carried forward for up to seven years after the qualifying asset is placed in service or until the eligible business's unused investment tax credit is depleted, whichever occurs first. An eligible business may apply for tax credit certificates once each year for up to seven years after the qualifying asset is placed in service or until the eligible business's unused investment tax credit is depleted, whichever occurs first. For example, an eligible business which completes a project in October 2001 and has an investment tax credit of $1 million may apply for a tax credit certificate in May 2002. If, because of the proration of the $4 million of available refundable credits for the fiscal year, the business is awarded a tax credit certificate in the amount of $300,000, the business may claim the $300,000 refund and carry forward the unused investment tax credit of $700,000 for up to seven years or until the credit is depleted, whichever occurs first.

d. Research activities credit. A business is eligible to claim a research activities credit as provided in Iowa Code section 15.335. This benefit is a corporate tax credit for increasing research activities in

this state during the period the business is participating in the program. For purposes of claiming this credit, a business is considered to be "participating in the program" for a period of ten years from the date the business's application was approved by the department. This credit equals 6½ percent of the state's apportioned share of the qualifying expenditures for increasing research activities. The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to total qualified research expenditures. This credit is in addition to the credit authorized in Iowa Code section 422.33. If the business is a partnership, subchapter S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. Any tax credit in excess of the tax liability shall be refunded to the eligible business with interest computed under Iowa Code section 422.25. In lieu of claiming a refund, the eligible business may elect to have the overpayment credited to its tax liability for the following year.

For projects approved on or after July 1, 2005, "research activities" includes the development and deployment of innovative renewable energy generation components manufactured or assembled in Iowa. A renewable energy generation component will no longer be considered innovative when more than 200 megawatts of installed effective name plate capacity has been achieved. Research activities credits awarded under this program and the high quality job creation program for innovative renewable energy generation components shall not exceed a total of $1 million.

e. Refund of sales, service and use taxes paid to contractors or subcontractors.

(1) A business is eligible for a refund of sales, service and use taxes paid to contractors and subcontractors as authorized in Iowa Code section 15.331A.

1. An eligible business may apply for a refund of the sales, service and use taxes paid under Iowa Code chapters 422 and 423 for gas, electricity, water or sewer utility services, goods, wares, or merchandise, or on services rendered, furnished, or performed to or for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility within the enterprise zone.

2. Taxes attributable to intangible property and furniture and furnishings shall not be refunded. To receive a refund of the sales, service and use taxes paid to contractors or subcontractors, the eligible business must, within one year after project completion, make an application to the department of revenue. For new manufacturing facilities, "project completion" means the first date upon which the average annualized production of finished product for the preceding 90-day period at the manufacturing facility operated by the eligible business within the enterprise zone is at least 50 percent of the initial design capacity of the facility. For existing facilities, "project completion" means the date of completion of all improvements included in the enterprise zone project.

(2) If the project is the location or expansion of a warehouse or distribution center in the enterprise zone, the approved business may be entitled to a refund of sales and use taxes attributable to racks, shelving, and conveyor equipment. The approved business shall, within one year of project completion, make written application to the department for a refund. The application must include the refund amount being requested and documentation such as invoices, contracts or other documents which substantiate the requested amount. The department, in consultation with the department of revenue, will validate the refund amount and instruct the department of revenue to issue the refund.

The aggregate combined total amount of refunds and tax credits attributable to sales and use taxes on racks, shelving, and conveyor equipment issued by the department to businesses approved for high quality job creation program, new capital investment program, new jobs and income program, and enterprise zone program benefits shall not exceed $500,000 during a fiscal year. Tax refunds and tax credits will be issued on a first-come, first-served basis. If an approved business's application does not receive a refund or tax credits due to the limitation of $500,000 per fiscal year, the approved business's application shall be considered in the succeeding fiscal year.

f. New jobs insurance premium tax credit. Rescinded IAB 11/9/05, effective 12/14/05.

g. Limitation on receiving incentives. Rescinded IAB 11/9/05, effective 12/14/05.

59.6(4) *Duration of benefits.* An enterprise zone designation shall remain in effect for ten years following the date of certification. Any state or local incentives or assistance that may be conferred must

be conferred before the designation expires. However, the benefits of the incentive or assistance may continue beyond the expiration of the zone designation.

59.6(5) *Application review and submittal.* Eligible businesses shall first submit applications for enterprise zone program benefits to the local enterprise zone commission. Commission-approved applications shall be forwarded to the department for final review and approval.

[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09]

261—59.7(15E) Alternative eligible business. Rescinded IAB 9/17/03, effective 10/22/03.

261—59.8(15E) Eligible housing business. An eligible housing business includes a housing developer, housing contractor, or nonprofit organization.

59.8(1) *Requirements.* A housing business shall satisfy all of the following as conditions to receiving the benefits described in this rule.

a. The housing business must build or rehabilitate either:

(1) A minimum of four single-family homes located in that part of a city or county in which there is a designated enterprise zone, or

(2) One multiple dwelling unit building containing three or more individual dwelling units located in that part of a city or county in which there is a designated enterprise zone.

For purposes of this subrule, rehabilitation means any project in which the costs of improvements to the property are equal to or greater than 25 percent of the acquisition cost of the property.

b. The single-family homes or dwelling units which are rehabilitated or constructed by the housing business shall include the necessary amenities. When completed and made available for occupancy, the single-family homes or dwelling units shall meet the United States Department of Housing and Urban Development's housing quality standards and local safety standards.

c. The eligible housing business shall complete its building or rehabilitation within two years from the time the business begins construction on the single-family homes and dwelling units. The failure to complete construction or rehabilitation within two years shall result in the eligible housing business's becoming ineligible and subject to the repayment requirements and penalties in the agreement described in rule 261—59.13(15E).

d. An eligible housing business shall provide the enterprise zone commission with all of the following information:

(1) The long-term plan for the proposed housing development project, including labor and infrastructure needs.

(2) Information dealing with the benefits the proposed housing development project will bring to the area.

(3) Examples of why the proposed development project should be considered a good housing development project.

(4) An affidavit that it has not, within the last five years, violated state or federal environmental and worker safety statutes, rules, and regulations or if such violations have occurred that there were mitigating circumstances or such violations did not seriously affect public health or safety or the environment.

(5) Information showing the total costs and sources of project financing that will be utilized for the new investment directly related to housing for which the business is seeking approval for a tax credit provided in subrule 59.8(2), paragraph *"a."*

(6) The names of the partners if the business is a partnership, the names of the shareholders if the business is an S corporation, or the names of the members if the business is a limited liability company. The amount of each partner's, shareholder's or member's expected share of the percentage of benefits should be included.

59.8(2) *Benefits.* A business that qualifies under the "eligible housing business" category may be eligible to receive the following benefits:

a. *Investment tax credit.* An eligible housing business may claim a tax credit up to a maximum of 10 percent of the new investment which is directly related to the building or rehabilitating of a minimum of four single-family homes located in that part of a city or county in which there is a designated enterprise

zone or one multiple dwelling unit building containing three or more individual dwelling units located in that part of a city or county in which there is a designated enterprise zone.

(1) New investment which is directly related to the building or rehabilitating of homes includes, but is not limited to, the following costs: land, surveying, architectural services, building permits, inspections, interest on a construction loan, building materials, roofing, plumbing materials, electrical materials, amounts paid to subcontractors for labor and material provided, concrete, labor, landscaping, appliances normally provided with a new home, heating and cooling equipment, millwork, drywall and drywall materials, nails, bolts, screws, and floor coverings.

(2) New investment does not include the machinery, equipment, or hand or power tools necessary to build or rehabilitate homes.

(3) In determining the amount of tax credits to be awarded to a project, the department shall not include the portion of the project cost financed through federal, state, and local government tax credits, grants, and forgivable loans.

(4) The tax credit shall not exceed 10 percent of $140,000 for each home or individual unit in a multiple dwelling unit building.

(5) This tax credit may be used to reduce the tax liability imposed under Iowa Code chapter 422, division II, III, or V, or chapter 432. The tax credit may be taken on the tax return for the tax year in which the project is certified for occupancy. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs earlier. If the business is a partnership, S corporation, limited liability company, or estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust, except in projects using low-income housing tax credits authorized under Section 42 of the Internal Revenue Code to assist in the financing of the housing development. The approved housing business using federal Section 42 tax credits may designate each owner's or participant's share or percentage of the benefits.

(6) The department shall issue tax credit certificates once per year or when the department determines it to be necessary and appropriate to approve housing businesses eligible to receive the housing enterprise zone tax credit. The eligible housing business may claim the tax credit by attaching the certificate to the business's tax return for the year in which the housing units are completed.

(7) If the approved housing business is using federal low-income housing tax credits authorized under Section 42 of the Internal Revenue Code to assist in the financing of the project, the department shall issue a transferable tax credit certificate to the eligible housing business. The amount of any replacement tax credit certificates requested by the housing business will be based on documentation provided to the department by the applicant or by the Iowa finance authority and should be consistent with the amount contained in the project's 8609 CPA Certification on file with the Iowa finance authority.

(8) Housing enterprise zone tax credit certificates issued to eligible housing businesses also using low-income housing tax credits authorized under Section 42 of the Internal Revenue Code to assist in the financing of the project may be transferred to any person. Within 90 days of the sale of the housing enterprise zone tax credit, the eligible housing business must return the tax credit certificate issued by the department so that replacement tax credit certificate(s) can be issued. The original tax credit certificate shall be accompanied by a written statement from the eligible housing business which contains the names, tax identification numbers, and addresses of the taxpayers to which the tax credits are being transferred, along with the denomination that each replacement tax credit certificate is to carry and any other information required by the department of revenue. Within 30 days of receiving the eligible housing business's tax credit certificate and written statement, the department shall issue replacement tax credit certificate(s).

(9) The tax credit certificate shall also be transferable if the housing development is located in a brownfield site as defined in Iowa Code section 15.291 or if the housing development is located in a blighted area as defined in Iowa Code section 403.17. Not more than $3 million worth of tax credits for housing developments that are located in a brownfield site as defined in Iowa Code section 15.291 or housing developments located in a blighted area as defined in Iowa Code section 403.17 shall be

transferred in a calendar year. The $3 million annual limit does not apply to tax credits awarded to an eligible business having low-income housing tax credits authorized under Section 42 of the Internal Revenue Code to assist in the financing of the housing development. The department may approve an application for tax credit certificates for transfer from an eligible housing business located in a brownfield site as defined in Iowa Code section 15.291 or in a blighted area as defined in Iowa Code section 403.17 that would result in the issuance of more than $3 million of tax credit certificates for transfer, provided that the department, through negotiation with the eligible housing business, allocates those tax credit certificates for transfer over more than one calendar year. The department shall not issue more than $1,500,000 in tax credit certificates for transfer to any one eligible housing business located in a brownfield site as defined in Iowa Code section 15.291 or in a blighted area as defined in Iowa Code section 403.17. If $3 million in tax credit certificates for transfer have not been issued at the end of a calendar year, the remaining tax credit certificates for transfer may be issued at the end of a calendar year, the remaining tax credit certificates for transfer may be issued in advance to an eligible housing business scheduled to receive a tax credit certificate for transfer in a later calendar year. Anytime the department issues a tax credit certificate for transfer which has not been allocated at the end of a calendar year, the department may prorate the remaining certificates to more than one eligible applicant. If the entire $3 million of tax credit certificates for transfer is not issued in a given calendar year, the remaining amount may be carried over to a succeeding calendar year.

(10) The department will process requests for transfer of the tax credit and issuance of the replacement tax credit certificates for housing developments that are located in brownfield sites as defined in Iowa Code section 15.291 or blighted areas as defined in Iowa Code section 403.17 at the time of application or in writing each calendar year. Eligible requests for transfer of these credits will be considered in the order they are received. The transfer of the credit by replacement tax credit certificate will be limited to $3 million per calendar year and $1,500,000 per development per calendar year. Requests received after the $3 million limit is reached will be considered for the following year's allocation after any previously approved requests or negotiated allocations of the credit remaining from the current or previous years have been processed. When housing enterprise zone benefits are awarded to one housing business in an amount exceeding the annual transferable limit of $1,500,000 per year, the housing business may negotiate with the department to receive the tax credit benefits from future years' limits when possible. These limits do not apply to housing tax credits authorized by Section 42 of the Internal Revenue Code or to other housing enterprise zone developments not located in brownfield sites as defined in Iowa Code section 15.291 or blighted areas as defined in Iowa Code section 403.17.

b. Sales, service, and use tax refund. An approved housing business shall receive a sales, service, and use tax refund for taxes paid by an eligible housing business including an eligible housing business acting as a contractor or subcontractor, as provided in Iowa Code section 15.331A.

59.8(3) *Application submittal and review.* An eligible housing business shall first submit an application to the commission for approval. The commission shall forward applications that it has approved to receive benefits and assistance to the department for final review and approval.

261—59.9(79GA,ch141) Eligible development business. Rescinded IAB 11/9/05, effective 12/14/05.

261—59.10(15E) Commission review of businesses' applications.

59.10(1) *Additional commission eligibility requirements.* Under the Act, a commission is authorized to adopt additional eligibility requirements related to compensation and benefits that businesses within a zone must meet in order to qualify for benefits. Additional local requirements that may be considered could include, but are not limited to, the types of industries or businesses the commission wishes to receive enterprise zone benefits; requirements that preference in hiring be given to individuals who live within the enterprise zone; higher wage eligibility threshold requirements than would otherwise be required; higher job creation eligibility threshold requirements than would otherwise be required; the level of benefits required; local competition issues; or any other criteria the commission deems appropriate. If a commission elects to adopt more stringent requirements than those contained in the

Act and these rules for a business to be eligible for incentives and assistance, these requirements shall be submitted to the department.

59.10(2) *Application.* The department will develop a standardized application that it will make available for use by a business applying for benefits and assistance as an eligible business, an eligible housing business or an eligible development business. The commission may add any additional information to the application that it deems appropriate for a business to qualify as an eligible business, an eligible housing business or an eligible development business. If the commission determines that a business qualifies for inclusion in an enterprise zone and that it is eligible for benefits under the Act, the commission shall submit an application for incentives or assistance to the department.

261—59.11(15E) Other commission responsibilities.

59.11(1) Commissions have the authority to adopt a requirement that preference in hiring be given to individuals who live within the enterprise zone. If it does so, the commission shall work with the local workforce development center to determine the labor availability in the area.

59.11(2) Commissions shall examine and evaluate building codes and zoning in enterprise zones and make recommendations to the appropriate governing body in an effort to promote more affordable housing development.

261—59.12(15E) Department action on eligible applications. The department may approve, deny, or defer applications from qualified businesses. In reviewing applications for incentives and assistance under the Act, the department will consider the following:

59.12(1) *Compliance with the requirements of the Act and administrative rules.* Each application will be reviewed to determine if it meets the requirements of the Act and these rules. Specific criteria to be reviewed include, but are not limited to: medical and dental insurance coverage; wage levels; number of jobs to be created; and capital investment level.

59.12(2) *Competition.* The department shall consider the impact of the eligible business on other businesses in competition with it and compare the compensation package of businesses in competition with the business being considered for incentives and assistance under this program, to ensure an overall economic gain to the state.

59.12(3) *Displacement of workers.* The department will make a good-faith effort to determine the probability that the proposed incentives will displace employees of existing businesses. In determining the impact on businesses in competition with the business seeking incentives or assistance, jobs created as a result of other jobs being displaced elsewhere in the state shall not be considered direct jobs created.

59.12(4) *Violations of law.* The department will review each application to determine if the business has a record of violations of law as described in 261—Chapter 172.

59.12(5) *Commission's recommendations and additional criteria.* For each application from a business, the department will review the local analysis (including any additional local criteria) and recommendation of the enterprise zone commission in the zone where the business is located, or plans to locate.

59.12(6) *Other relevant information.* The department may also review an application using factors it reviews in other department-administered financial assistance programs which are intended to assess the quality of the jobs pledged.

59.12(7) *Negotiations.* The department may enter into negotiations regarding the amount of tax incentives and assistance the business may be eligible to receive. The department reserves the right to negotiate the amount of all program benefits except the following benefits: the new jobs supplemental credit; the value-added property tax exemption; and the refund of sales, service and use taxes paid to contractors and subcontractors. The criteria to be used in the negotiations to determine the amount of tax incentives and assistance are as described in subrule 59.5(2) and are subject to the limitations stated in subrule 59.5(3).

261—59.13(15E) Agreement. Rescinded IAB 7/4/07, effective 6/15/07.

261—59.14(15E) Compliance; repayment requirements; recovery of value of incentives. Rescinded IAB 7/4/07, effective 6/15/07.

These rules are intended to implement Iowa Code sections 15.333, 15.333A, and 15E.191 to 15E.196 and 2009 Iowa Acts, Senate File 344.

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CHAPTER 60
ENTREPRENEURIAL VENTURES ASSISTANCE (EVA) PROGRAM

261—60.1(15) Purpose and administrative procedures.

60.1(1) *Purpose.* The department of economic development administers the entrepreneurial ventures assistance (EVA) program. The purpose of the entrepreneurial ventures assistance program is to encourage the development of entrepreneurial venture planning and managerial skills in conjunction with the delivery of a financial assistance program for business start-ups and expansions.

60.1(2) *Administrative procedures.* The EVA program is subject to the requirements of the department's rules located in 261—Part VII, additional application requirements and procedures, and 261—Part VIII, legal and compliance.

261—60.2(15) Definitions. In addition to the standard definitions located in 261—Chapter 173, the following definitions apply to the EVA program:

"Early-stage industry company" or *"early-stage company"* means a company with three years or less of experience in a particular industry.

"Eligible applicant" means an individual or business that has consulted with and obtained a letter of endorsement from an IDED-approved business accelerator or from another IDED-recognized entrepreneurial development organization.

"Eligible business" means a start-up company, an early-stage company, or an existing company that is developing a new product or technology.

"EVA" means the entrepreneurial ventures assistance program, authorized by Iowa Code sections 15.338 and 15.339.

261—60.3(15) Eligibility requirements.

60.3(1) In order to be eligible for assistance, the business, or proposed business, must be located in the state of Iowa.

60.3(2) If the business is a sole proprietorship or a partnership, all applicable business owners must apply. If the business is a limited liability company, a limited liability partnership, or a corporation, the application must be submitted and signed by an individual who has been authorized by the business to do so.

60.3(3) In order to be eligible for assistance, the business owner or owners (or appropriate individual(s) in a limited liability company, limited liability partnership or corporation) must consult with and obtain a letter of endorsement from an IDED-approved business accelerator or from another recognized entrepreneurial development organization such as a John Pappajohn Entrepreneurial Center (JPEC), a Small Business Development Center (SBDC), or an equivalent organization recognized by IDED.

60.3(4) In order to be eligible for assistance, the individual or business must have a business plan which details the business's growth strategy, management team (if applicable), production/management plan, marketing plan, financial plan, and other standard elements of a business plan.

261—60.4(15) Financial assistance. Applicants may apply to IDED for financial assistance to assist with their business start-up or early-stage growth. The applicant may request up to $250,000 for start-up or early-stage growth activities to be used for business expenses and to leverage conventional financing from commercial lenders or private investors. Assistance will generally be made in staged investments with amounts to be determined by company development, growth, and defined milestones. The assistance under this program is limited to 50 percent or less of the total original capitalization, if a new business, or total project costs, if an existing business. Funds may be used to purchase machinery, equipment, or software, or for working capital needs, or other business expenses deemed reasonable and appropriate by IDED. Awards will be in the form of an equitylike investment (e.g., royalty agreement, deferred loan). A single recipient is limited to $250,000 in total financial assistance.

261—60.5(15) Technical assistance. Applicants may also apply for assistance in paying for consulting, or technical assistance, either in conjunction with the request for financial assistance, or after a period of time that the business has been in operation. Technical assistance of this nature is limited to no more than $25,000 per applicant.

261—60.6(15) Application process. Applications must be submitted in the format required by the department. Applications, the business plan, and related material shall be submitted on line or by mail to Entrepreneurial Ventures Assistance Program, Division of Business Development, Business Finance, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309.

261—60.7(15) Review criteria.

60.7(1) Applications will first be reviewed for completeness. If additional information is required, the program staff shall send the applicant notice to submit the additional needed information. The applicant shall submit the requested information within a reasonable time period in order to ensure further action on the request.

60.7(2) The applications will then be reviewed for content of the business plan, and an evaluation of the business's potential viability and potential for growth. The department may consult with the JPEC centers, or other knowledgeable agencies or individuals, as a part of the review process.

60.7(3) The following items will be reviewed and evaluated:

a. Type of business.

(1) Highest priority will be given to businesses in sectors of the Iowa economy with the greatest start-up and growth potential for Iowa, including but not limited to:

1. Biotechnology (including drugs and pharmaceuticals and value-added agricultural products);
2. Recyclable materials;
3. Software development and computer-related products;
4. Advanced materials;
5. Advanced manufacturing; and
6. Medical and surgical instruments.

(2) Assistance may be provided to industries other than those listed in "1" through "6" above; however, the applicant will have to provide a strong rationale regarding how that industry diversifies, strengthens or otherwise enhances Iowa's economy. Eligibility may be established by an industry other than those listed if that industry can provide rationale regarding the industry's benefit to Iowa's economic base. Rationale that is provided will be reviewed by department staff to determine eligibility as a targeted industry. Items that will be considered in determining an industry's benefit to Iowa's economic base will include:

1. The majority of the products or services produced by the industry are exported out of Iowa;
2. The inputs for the products produced in the industry are raw materials available in Iowa or are provided by Iowa suppliers;
3. The goods or services produced by this industry diversify Iowa's economy;
4. The goods or services provided by the industry resulted in, or will result in, a decrease in the importation of foreign-made goods into the United States;
5. The industry shows potential for future growth;
6. The functions of the industry do not produce harmful effects for Iowa's natural environment; and
7. Whether the average wages of the majority of the occupations in the industry are above the statewide average wage.

Businesses engaged in retail sales, personal services, consulting, franchises, the provision of health care or other professional services, and distributors of products or services will not be considered targeted industries and are not eligible for this program.

b. Management team and management expertise. Factors considered here would be whether the applicant(s) has a background (including education, training, work experience, and other factors) which

will be helpful and useful in the business in question. Also considered would be the degree to which the applicant's background is fully documented.

c. Business capitalization. Factors considered here would be the original sources of financing for the business. Although all projects must have at least 50 percent of their financing from sources other than the EVA program, preference would be given to those applications where the other sources of financing were even higher than 50 percent.

d. Strength of business plan. Factors considered here would be the quality of the business plan and how well it addresses all elements of the business, such as:

1. A description of the company and the overall industry;
2. The product and production plan;
3. The market, competition, and the marketing strategy;
4. The management team and business operations;
5. Patent issues (if applicable), critical risks and problems; and
6. Financial information and plan.

The strength of the business plan will be the most important factor in the evaluation and rating of applications. Rating factors in paragraphs *"a," "b,"* and *"c"* above will be evaluated as either satisfactory or not satisfactory. However, the business plan will be rated on an actual numerical or comparative scale. Those applications which are satisfactory on factors in paragraphs *"a," "b,"* and *"c"* above and which rate highest on strength of business plan will be funded first.

261—60.8(15) Negotiation, decision, and award process. Rescinded IAB 7/4/07, effective 6/15/07.

261—60.9(15) Monitoring, reporting, and follow-up. Rescinded IAB 7/4/07, effective 6/15/07.

261—60.10(15,83GA,SF344) Applicability of EVA program after July 1, 2009.

60.10(1) Effective July 1, 2009, the EVA program is rescinded by 2009 Iowa Acts, Senate File 344, section 9, and replaced with the grow Iowa values financial assistance program. Rules for the grow Iowa values financial assistance program may be found in 261—Chapter 74.

60.10(2) For awards made prior to July 1, 2009, the rules of 261—Chapter 60 shall govern for purposes of contract administration and closeout of projects. A contract amendment is not allowable if the result of the amendment is to increase the benefits available.

This rule is intended to implement 2009 Iowa Acts, Senate File 344.

[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09]

These rules are intended to implement Iowa Code sections 15.338 and 15.339.

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CHAPTER 61
PHYSICAL INFRASTRUCTURE ASSISTANCE PROGRAM (PIAP)

261—61.1(15E) Purpose and administrative procedures.

61.1(1) *Purpose.* The purpose of the physical infrastructure assistance program (PIAP) is to provide financial assistance for the physical infrastructure necessary to aid in community or business development or redevelopment projects which involve substantial investment; provide for the opportunity for creating quality, high-wage jobs; and have statewide impact.

61.1(2) *Administrative procedures.* The PIAP program is subject to the requirements of the department's rules located in 261—Chapters 171 through 175 and 261—Chapters 187 through 189.

261—61.2(15E) Eligible activities.

61.2(1) Eligible activities for assistance include, but are not limited to, physical infrastructure improvements of:

a. Any mode of transportation infrastructure; or

b. Public works and utilities such as water, sewer, power, or telecommunications; or

c. Physical improvements which mitigate, prevent, or eliminate environmental contaminants.

61.2(2) The department may also fund other activities deemed appropriate and consistent with program purposes.

261—61.3(15E) Eligibility requirements. To be eligible for program funds a business shall, as a result of the proposed project, demonstrate that it meets each of the following requirements:

61.3(1) *Quality, high-wage jobs.* A business shall create or retain quality, high-wage, full-time jobs or provide the foundation for creation of such jobs. The quality of the jobs will be measured by factors such as the wage level and benefits provided.

61.3(2) *Substantial capital investment.* A business shall make a substantial private capital investment in the project. Capital investment is defined as the costs associated with land acquisition, site development, building construction or improvements, fixtures, machinery and equipment.

61.3(3) *Statewide impacts.* An applicant shall show, as a result of the proposed project, significant beneficial impacts to the state.

61.3(4) *No closure or reduction in operations.* A business shall not close or substantially reduce operations at one location in Iowa and relocate substantially the same operation elsewhere in the state if the closure or reduction results in loss of employment.

61.3(5) *Other funding sources unable to assist.* The business's project must be of a size, nature or scope that the project could not be assisted through, or eligible for, financial assistance for the entirety of the project from other existing private, local, or state funds or programs.

261—61.4(15E) Application procedures.

61.4(1) *Application required.* To access program funds, an application must be submitted in the format specified by the department. Applications will be accepted from a city or county on behalf of the city or county, a nonprofit local development corporation, publicly owned utility, private utility, private developer or redeveloper. A business may also submit an application on its own behalf. Applicants other than a city or county shall obtain formal support from the city or county where the project is to be located.

61.4(2) *Application contents.* Applications shall include the following:

a. A project description including the private activity involved and the physical infrastructure affected.

b. A description of the consistency of the proposed project with state and local policies and plans for development. Project coordination with other physical infrastructure projects in the area shall also be included in this project description.

c. An identification of the number of jobs to be created or retained as a result of the project and an explanation of why they are considered quality, high-wage jobs. The explanation shall include the job classifications, the number of jobs that meet or exceed the qualifying wage threshold described in

261—Chapter 174, and benefits to be provided to the employees. If no jobs are to be created or retained as a direct result of the project, the applicant shall provide a description of how the project creates the foundation for the creation of high-quality jobs in the future.

d. An identification of the amount, terms, and sources of all proposed public and private investments that the project will leverage and a statement concerning whether the other financing has been secured or is still to be arranged.

e. Cost estimates for all project activities.

f. A time frame within which the project will be completed.

g. A description of the immediate (within 24 months) impacts as a result of the project.

h. A description of the long-term (beyond 24 months), speculative impacts as a result of the project.

i. A description of statewide impacts as a result of the project.

j. An explanation as to why the project could not be entirely assisted through, or is not eligible for, financial assistance from other existing private, local, or state funds or programs.

k. The type of financing (e.g., loan, forgivable loan) sought and the amount of assistance requested.

l. Signed acknowledgements from the city or county, or both, and the business stating that the project is supported and will occur if PIAP funding is provided.

m. Current company financials.

261—61.5(15E) Application review criteria, performance measures.

61.5(1) Quality of the jobs. In determining the quality of the jobs, the department will consider the wage levels, benefit package, turnover rate, full-time and career positions, and other relevant factors.

61.5(2) Substantiality of the capital investment pledged by the business.

61.5(3) Closure or relocation of the business's operations and any resulting loss of employment.

61.5(4) Access to other funding. The department will review the application to assess whether the project could reasonably be funded under other existing private, local, or state funds or programs.

61.5(5) The number of jobs to be created or retained or how the project contributes to the future creation of high-quality jobs.

61.5(6) The amount, terms, and sources of all proposed public and private investments that the project will leverage.

61.5(7) The immediate and long-term impacts the proposed project will have on the economy of the community and the state.

61.5(8) The financial need of the business.

61.5(9) The degree of coordination the project has with state and local development plans.

61.5(10) The feasibility of the project.

61.5(11) Any other information about the business that has a bearing on the likely success of the project.

61.5(12) Each fiscal year the department may allocate up to $5 million from the Iowa values fund to the PIAP program for eligible projects that shall not be subject to job and wage requirements established in Iowa Code section 15G.112. The department will establish performance measures for projects funded through this allocation. Performance measures may include but are not limited to the requirement of tenant businesses involved in business infrastructure projects to meet minimum job and wage requirements pursuant to Iowa Code section 15G.112, the requirement that a certain percentage of building space resulting from the project be leased to business tenants, documentation that the project is part of a larger redevelopment effort, or other measures deemed appropriate by the department. Performance measures for such projects will be determined at the time of award and incorporated into any contract between the department and the applicant. Performance measures shall be met within three years of the completion of the project.

261—61.6(15E) Award process. Rescinded IAB 7/4/07, effective 6/15/07.

261—61.7(15E) Forms of assistance available; award amount.

61.7(1) *Forms of assistance.* Funding is available for providing assistance in the form of a loan, forgivable loan, loan guarantee, cost-share, or any combination deemed to be the most efficient in facilitating the infrastructure project.

61.7(2) *Amount of award.* The maximum award per project shall not exceed $1 million. The director may waive this award limit upon a showing that the business exceeds the eligibility requirements for the program; or the wages to be paid are in excess of those paid in the community or the industry; or the project will bring a substantial economic benefit to the community or the state. If an award would exceed the $1 million level, the director shall advise and consult with the IDED board prior to approving a waiver of the award limit. Any award in excess of $1 million shall be secured by an irrevocable letter of credit, unless funded through special allocation of PIAP funds, up to $5 million, established in subrule 61.5(12).

261—61.8(15E) Program administration. Rescinded IAB 7/4/07, effective 6/15/07.

261—61.9(15E) Applicability of PIAP program after July 1, 2009.

61.9(1) Effective July 1, 2009, the PIAP program is rescinded by 2009 Iowa Acts, Senate File 344, section 9, and replaced with the grow Iowa values financial assistance program. Rules for the grow Iowa values financial assistance program may be found in 261—Chapter 74.

61.9(2) For awards made or contracts entered into prior to July 1, 2009, the rules of 261—Chapter 61 shall govern for purposes of contract administration and closeout of projects. A contract amendment is not allowable if the result of the amendment is to increase the benefits available.

This rule is intended to implement 2009 Iowa Acts, Senate File 344.

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These rules are intended to implement Iowa Code section 15E.175.

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CHAPTER 62
COGENERATION PILOT PROGRAM

261—62.1(80GA,HF391) Purpose. The purpose of the cogeneration pilot program (CPP) is to foster the development of electricity cogeneration within the state in order to diversify Iowa's electricity supply and foster economic development.

261—62.2(80GA,HF391) Eligible activities. The department may choose up to two projects for participation in the cogeneration pilot program.

261—62.3(80GA,HF391) Eligibility requirements. To be eligible for the cogeneration pilot program, a business shall meet each of the following requirements:

62.3(1) *Generation capacity.* Each cogeneration pilot project facility must involve a project of 200 megawatts or less of electric generation capacity.

62.3(2) *Investment location.* Each cogeneration pilot project facility must be located within Iowa.

62.3(3) *Economic impacts.* The business shall demonstrate, as a result of the proposed project, significant beneficial economic impacts to the state or to a region of the state.

62.3(4) *No closure or reduction in operations.* The business shall not close or substantially reduce operations at one location in Iowa and relocate substantially the same operation elsewhere in the state if the closure or reduction results in loss of employment.

261—62.4(80GA,HF391) Application procedures.

62.4(1) *Application required.* To receive designation as an approved cogeneration pilot program project, an application must be submitted in the format specified by the department. A business shall submit an application on its own behalf.

62.4(2) *Application contents.* Applications shall include the following:

a. A project description including the activities involved and the impact the project is expected to have on electricity cost, availability and reliability.

b. A description of the consistency of the proposed project with state and regional plans for economic development.

c. An identification of the number of jobs to be created or retained as a result of the project and an explanation of why the jobs are considered quality, high-wage jobs. The explanation shall include the job classifications, pay ranges, and benefits to be provided to the employees.

d. An identification of the amount, terms, and sources of all proposed public and private investments in the project and a statement that indicates whether the other financing has been secured or is still to be arranged.

e. Cost estimates for all project activities.

f. A time frame within which the project will be completed.

g. A description of the immediate (within 24 months) economic development impacts as a result of the project.

h. A description of the long-term (beyond 24 months), speculative economic development impacts as a result of the project.

i. An explanation as to why the project could not otherwise occur without the benefits of this program.

62.4(3) *Application due date.* In order to be considered for review, an application must be submitted to the department before April 1, 2007.

261—62.5(80GA,HF391) Application review. Completed applications will be reviewed using the following factors:

62.5(1) The expected immediate and long-term economic impacts the project will have on the state of Iowa and region(s) of Iowa including, but not limited to, the likelihood that the project will result in additional new private investment and quality job creation in Iowa. In determining the quality of possible

new jobs to be created, the department will consider projected wage levels, fringe benefit packages, turnover rate, full-time and career positions, and other relevant factors.

62.5(2) Substantiality of the capital investment pledged by the business.

62.5(3) The likelihood of closure or relocation of the business's operations and any resulting loss of employment.

62.5(4) The number of direct jobs to be created by the project.

62.5(5) The amount, terms, and sources of all proposed public and private investments that the project will leverage.

62.5(6) The degree of coordination the project has with state and regional economic development plans.

62.5(7) The feasibility of the project.

62.5(8) Any other information about the business that has a bearing on the likely success of the project.

62.5(9) The degree to which the project contributes to the diversification of Iowa's electricity supply and fosters economic development.

261—62.6(80GA,HF391) Award process.

62.6(1) Applications will be reviewed and summarized by department staff. Staff will prepare a summary for the director of the department, who shall make a final decision on the application.

62.6(2) Upon an application's submission, department staff will consult with the Iowa utilities board and any other relevant state agency or interested party in order to gain additional information or to seek comment.

62.6(3) The department shall not approve any application after June 30, 2007.

261—62.7(80GA,HF391) Annual progress report. Every approved pilot project designee shall submit an annual progress report, whose format will be determined by the department. The annual report shall be submitted no later than November 1, beginning in the year 2004 and every year thereafter, up to and including 2007.

These rules are intended to implement 2003 Iowa Acts, House File 391.

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CHAPTER 63
UNIVERSITY-BASED RESEARCH UTILIZATION PROGRAM

261—63.1(80GA,HF692,HF683) Purpose. The purpose of the university-based research utilization program is to promote the adoption of new technology developed at the state universities of Iowa state university, the university of Iowa and the university of northern Iowa in a way that will spur the establishment and growth of new business enterprises and promote new economic development within the state.

261—63.2(80GA,HF692,HF683) Definitions.

"Act" means 2003 Iowa Acts, First Extraordinary Session, House File 692, sections 111 to 113, and House File 683, section 82.

"Approved business" means an eligible business that has been approved to receive benefits under this program.

"Department" means the Iowa department of economic development.

"Director" means the director of the Iowa department of economic development.

"Eligible business" means a business that meets the requirements of rule 261—63.3(80GA,HF692,HF683) and that is either a new business or a business that has been in existence for a period of less than one year prior to applying for benefits under this program.

"Regents university" means Iowa state university, the university of Iowa or the university of northern Iowa.

"Tax credit certificate" means a document issued by the department to an eligible business or university employee which indicates the amount of income tax credit to which the eligible business or university employee is entitled. A tax credit certificate shall contain the taxpayer's name, address, tax identification number, the amount of the tax credit certificate, the tax year in which the credit may first be claimed and any other information required by the department or the Iowa department of revenue.

"University employee" means a regents university employee, or former regents university employee, who is responsible for developing the technology for which the regents university has received a patent which is then used by the eligible business and whose name is listed on the patent.

261—63.3(80GA,HF692,HF683) Business eligibility. A new or existing business may apply to the department to receive tax incentives if it meets all of the following:

63.3(1) The business utilizes a technology based on a patent awarded to a regents university.

63.3(2) The technology to be utilized by the business is based upon a patent awarded after July 1, 2003.

63.3(3) If the business has been in existence for more than one year prior to applying, the business shall organize a separate company to utilize the technology in order to be eligible for benefits under this program. The new business may then apply for benefits under this program.

63.3(4) The business shall develop a five-year business plan that must then be approved by the department. The five-year business plan shall include information concerning the applicant's Iowa employment goals and projected positive impact on the Iowa economy. The department will only approve applications whose business plans show sufficient potential positive impact on Iowa employment and economic development.

63.3(5) The business must be an applicant that has at least one full-time equivalent employee or will have at least two full-time equivalent employees within one year of approval of the business's application.

261—63.4(80GA,HF692,HF683) Program benefits.

63.4(1) *Tax credit benefits to the business.* An approved business under this program shall receive an income tax credit each year for up to five years to be used to offset taxes imposed in Iowa Code chapter 422, division II, personal income taxes, or division III, business income taxes. An individual may claim the business tax credit under this program by means of a partnership, limited liability company, S corporation, or 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, corporation, or estate or trust.

63.4(2) *Tax credit benefits to university employee(s).* A university employee or group of employees who are responsible for developing the technology leading to the patent by the regents university which is then utilized by the approved business shall be eligible for an income tax credit under this program. This credit is available each year for up to five years, to be used to offset taxes imposed in Iowa Code chapter 422, division II, personal income taxes. To be eligible to receive this tax credit, the university employee's name or employees' names must be listed on the patent awarded to the regents university.

63.4(3) *Assigning tax credits.* A tax credit shall not be claimed under this program unless a tax credit certificate issued by the Iowa department of economic development is attached to the taxpayer's tax return for the tax year for which the tax credit is claimed. The amount of a tax credit allowed under this program shall equal the amount listed on a tax credit certificate issued by the Iowa department of economic development pursuant to the Act. A tax credit certificate shall not be transferable. Any tax credit in excess of the taxpayer's liability for the tax year may be credited to the taxpayer's tax liability for the following five years or until depleted, whichever occurs first. A tax credit shall not be carried back to a tax year prior to the tax year in which the taxpayer redeems the tax credit. The tax credit certificate issued to an approved business may be used by another business with which the approved business is affiliated and with whom the approved business files state income tax returns on a consolidated basis. The Iowa department of economic development shall notify the Iowa department of revenue when a tax credit certificate is issued. The notification shall include the name and tax identification number appearing on any tax credit certificate.

63.4(4) *Determination of level of the tax credit benefits.* For the five tax years following the tax year in which an eligible business is approved under the program, the Iowa department of revenue shall provide the department with summary information regarding the annual tax returns filed by the approved business. Upon receiving the summary tax return information, the department will make a determination of the amount of tax credits the approved business and university employee may receive.

a. *Business tax benefits.* Effective for the fiscal year beginning July 1, 2004, and for subsequent fiscal years, the department shall issue a tax credit certificate to the approved business. The value of the tax credit certificate issued by the department for each of the five years following the tax year in which the business is approved under the program shall equal 30 percent of the tax liability of the approved business's tax return for the previous tax year before the approved business's tax liability is lessened or eliminated by tax credits received under this program from prior years. The value of a tax credit certificate issued to an approved business shall not exceed $225,000 in any single tax year and the total aggregate value of tax credit certificates issued to an approved business over a five-year period shall not exceed a total of $600,000.

b. *University employee(s) tax benefits.* Effective for the fiscal year beginning July 1, 2004, and for subsequent fiscal years, the department shall issue a tax credit certificate to the eligible university employee(s). The value of the tax credit certificate issued by the department for each of the five years following the tax year in which the business is approved shall equal 10 percent of the tax liability for the previous tax year of the approved business before the approved business's tax liability is lessened or eliminated by tax credits received under this program from prior years. If more than one university employee is listed on the patent awarded to the regents university, the tax credit certificate value equal to 10 percent of the tax liability of the approved business shall be divided equally among the individuals listed on the patent and individual tax credit certificates shall be issued to each university employee listed on the patent. Each year the total value of a tax credit certificate or certificates issued to a university employee, or group of employees, for each technology utilized by an approved business shall not exceed $75,000 and, for each technology utilized by an approved business, the total aggregate value of certificates issued to the university employee or employees over a five-year period shall not exceed $200,000.

c. *Fiscal limitations on tax credit certificates.* For the fiscal year beginning July 1, 2004, not more than $2 million worth of tax credit certificates in total shall be issued under this program. For the fiscal year beginning July 1, 2005, and every fiscal year thereafter, not more than $10 million worth of tax

credit certificates shall be issued under this program. In the event that the aggregate amount of eligible tax credits exceeds the limitations stated in this paragraph, the department will prorate in a fair and equitable manner the amounts of the tax credit certificates that it issues.

261—63.5(80GA,HF692,HF683) Funding appropriation to the regents university. In accordance with 2003 Iowa Acts, First Extraordinary Session, House File 683, section 82, the department will annually make a determination of the amount that will equal 30 percent of the tax liability of the approved business before the approved business's tax liability is lessened or eliminated by tax credits received under this program from prior years. This amount will then be appropriated to the regents university budget from the general fund of the state. A regents university appropriation under this rule shall not exceed $225,000 per year for each patented technology utilized by an approved business. For each patented technology utilized, the regents university's aggregate appropriation under this rule over a five-year period shall not exceed $600,000. The department shall maintain records for each regents university during each fiscal year regarding the amount of appropriations each regents university is entitled to receive pursuant to 2003 Iowa Acts, House File 683, section 82.

261—63.6(80GA,HF692,HF683) Business application. To receive designation as an approved business for the university-based research utilization program, a business shall submit an application in the format specified by the Iowa department of economic development. An eligible business shall submit an application on its own behalf.

261—63.7(80GA,HF692,HF683) Application and award process. Iowa department of economic development staff will review completed applications. Department staff will prepare a summary for the director who shall make a final decision on the application. The director may approve, defer or deny the application. Applications will be approved if the eligible business can demonstrate that it will provide a sufficient positive impact on Iowa employment and economic development.

261—63.8(80GA,HF692,HF683) Program administration.

63.8(1) *Compliance.* An approved business shall submit an annual report to the department describing the business's success, or lack thereof, in meeting its goals as stated in its five-year business plan. The submitted annual report shall also include the Employers Contribution and Payroll Report filed by the business with the Iowa department of workforce development. This report includes employment statistics and taxable wages paid by the approved business, and will be used to measure the business's success in creating new jobs.

63.8(2) *Nonperformance.* If the department determines that the activities of the approved business are not providing the benefits to Iowa employment and economic development as projected in the business's approved five-year business plan, the department shall not issue tax credit certificates for that year to the business or university employee(s), and shall determine any related regents university appropriation for that particular approved business to be zero for that year.

These rules are intended to implement 2003 Iowa Acts, First Extraordinary Session, House File 692, sections 111 to 131, and 2003 Iowa Acts, House File 683, section 82.

[Filed 12/22/03, Notice 11/12/03—published 1/21/04, effective 2/25/04]

CHAPTER 64
NEW CAPITAL INVESTMENT PROGRAM

261—64.1(80GA,HF677) Purpose. The purpose of the new capital investment program is to promote new economic development through new capital investments that upgrade and expand the capabilities of Iowa businesses by allowing the businesses to be more competitive in the world economy.

261—64.2(80GA,HF677) Definitions.

"Act" means 2003 Iowa Acts, House File 677.

"Average county wage" means the average wage the department calculates annually using the most current four quarters of wage and employment information as provided in the Quarterly Covered Wage and Employment Data report as provided by the Iowa workforce development department, audit and analysis section. Agricultural/mining and governmental employment categories are deleted in compiling the wage information.

"Biotechnology-related processes" means the use of cellular and biomolecular processes to solve problems or make products. Farming activities shall not be included for purposes of this definition.

"Board" means the Iowa department of economic development board.

"Capital investment" means:

1. The costs of manufacturing machinery and equipment and computers, as defined in Iowa Code section 427A.1(1)*"e"* and *"j,"* which are purchased for use in the operation of the business. The purchase price shall be depreciated in accordance with generally accepted accounting principles.
2. The cost of improvements made to real property that is used in the operation of the business.
3. The purchase price of real property and any existing buildings and structures located on the real property. For purposes of this definition, if the business is leasing the property, the overall cost or value of the lease shall constitute a capital investment if the lease is treated as a capital transaction for tax purposes. A capital transaction for tax purposes means that the asset must be depreciated for federal income tax purposes. The business must be depreciating the leased property on the business's income tax return in order to claim an investment tax credit for the cost or value of the leased property.

"Community" means a city, county, or other entity established pursuant to Iowa Code chapter 28E.

"Comprehensive health benefits" means a standard medical insurance plan provided by the business and of which the business pays at least 80 percent of the premiums for employee-only coverage. The department shall determine what constitutes a standard medical insurance plan. Additional health benefits provided and paid for by the business may be considered in situations in which the business is paying a lesser percentage of the medical premiums. Additional health benefits include dental insurance, vision insurance, prescription drug coverage and health promotion programs.

"Department" means the Iowa department of economic development.

"Director" means the director of the Iowa department of economic development.

"Full-time" means the equivalent of employment of one person:

1. For 8 hours per day for a 5-day, 40-hour workweek for 52 weeks per year, including paid holidays, vacations, and other paid leave, or
2. The number of hours or days per week, including paid holidays, vacations and other paid leave, currently established by schedule, custom, or otherwise, as constituting a week of full-time work for the kind of service an individual performs for an employing unit.

"Job creation goal" means the number of new high-quality jobs that the business pledged to create in its application.

"Program" means the new capital investment program.

"Project" means the activity, or set of activities, proposed in the application by the business, which will result in accomplishing the goals of the program and for which the business requests benefits. A project may include the start-up, location, or expansion of a business.

"Project completion" means the date of completion of all improvements necessary for the start-up, location, or expansion of the business within the community.

"Project initiation" means any one of the following:

1. The start of construction of new or expanded buildings;
2. The start of rehabilitation of existing buildings;
3. The purchase or leasing of existing buildings; or
4. The installation of new machinery and equipment or new computers to be used in the operation of the business's project.

The purchase of land or signing an option to purchase land or earth moving or other site development activities not involving actual building construction, expansion or rehabilitation shall not constitute project initiation.

"Retained jobs" means the full-time jobs that are at risk of being eliminated if the project does not proceed as planned.

"Tax credit certificate" means a document issued by the department to an approved business which indicates the amount of unused investment tax credit the business may receive in the form of a refund.

"Value-added agricultural products" means agricultural products which, through a series of activities or processes, can be sold at a higher price than the original purchase price.

261—64.3(80GA,HF677) Applying for benefits.

64.3(1) *Eligibility requirements.* To be eligible to receive benefits under this program, a business shall meet all of the following requirements:

a. *Business closures.* The business has not closed or reduced its operation in one area of the state and relocated substantially the same operation in the community. This requirement does not prohibit a business from expanding its operation in the community if existing operations of a similar nature in the state are not closed or substantially reduced.

b. *Retail businesses.* The business is not a retail business or a business where entrance is limited by a cover charge or membership requirement.

c. *Capital investment.* The business shall make a new capital investment of at least $1 million within three years of application approval.

d. *Environmental or worker safety violations.* The business has not, within the five years prior to the application date, violated state or federal environmental or worker safety statutes, rules or regulations. If such violations have occurred, the business must demonstrate that there were mitigating circumstances or that such violations did not seriously affect public health or safety or the environment. The business shall provide with the application an affidavit stating that this requirement has been met.

e. *Project initiation.* A business shall not be eligible for benefits under this program if the project for which it is requesting benefits has been initiated.

f. *Violations of law.* If the department finds that a business has a record of violations of law over a three-year period that tends to show a consistent pattern, the business shall not be eligible for benefits under this program. The time period that will be reviewed for violations of a federal or state environmental statute, regulation, or rule is the previous five years as required by Iowa Code section 15A.1(3)*"a."*

64.3(2) *Application.* The department shall develop a standardized application and make it available to a business applying for benefits. The application procedures are as follows:

a. Applications may be submitted at any time.

b. The community in which the business's project will be located shall review the application to determine whether the business is eligible for benefits. If the community determines that the business is eligible, it shall approve by resolution the start-up, location, or expansion of the business for the purpose of receiving program benefits. The community shall then submit the application for benefits to the department.

c. Each application received from a community will be reviewed by the department. The department may request additional information from the business applying for benefits or use other resources to obtain the needed information.

d. Department staff will rate applications according to the criteria in subrule 64.3(3).

e. Decision making on applications.

(1) Applications which involve the creation of 50 or more new jobs and a capital investment equal to or greater than the minimum capital investment required by the new jobs and income program shall be referred to the board. The minimum capital investment required by the new jobs and income program is $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. Department staff will prepare a report for the board which includes the staff recommendation and the application's rating. The board will make the final decision to approve, defer, or deny the application.

(2) For all other applications, department staff will present their recommendation and the application's rating to the director. The director will make the final decision to approve, defer, or deny the application.

f. Written notification of the board's or the director's decision will be sent to the business within two weeks of the date on which the decision is made.

64.3(3) *Application rating system.* Each application will be reviewed and rated using the following criteria:

a. Community and state impacts. Factors to be considered include, but are not limited to, the following:

(1) Impact of the proposed project on the community and the state.

(2) Local/regional community funding match.

(3) Impact on in-state competitors.

Maximum – 20 points.

b. Impact on current and new jobs. Factors to be considered include, but are not limited to, the following:

(1) Impact on the business's current employees, including the potential for increased skills and wages, as a result of this project.

(2) Total number of jobs to be created as the result of the project and the starting wages for these jobs.

(3) Number of high-quality jobs to be created. "High-quality jobs" means new full-time or new career-type positions that have a starting wage equal to or greater than the average county wage.

(4) Number of retained jobs.

(5) Other characteristics that contribute to the quality of jobs, including, but not limited to, turnover rate, safe working environment, and additional fringe benefits.

Maximum – 35 points.

c. Impact on the business. Factors to be considered include, but are not limited to, the following:

(1) Impact that the investment will have on the ability of the business to expand, upgrade, or modernize its capabilities.

(2) The extent to which the new capital investment will result in a more productive and competitive business enterprise and workforce.

(3) Potential for future growth in the industry.

Maximum – 30 points.

d. Insurance benefits. The business provides comprehensive health benefits, as defined in rule 261—64.2(80GA,HF677), to all full-time employees. If the business meets this criterion, it will receive 15 points.

The maximum total score possible is 100 points. Projects that score less than 60 points will not be recommended for approval to the board or the director.

64.3(4) *Project period.* An approved business must complete its project within three years of the application approval date. If the project involves the creation of new high-quality jobs, the approved business must, upon reaching its job creation goal, maintain those jobs for two additional years.

64.3(5) *Negotiations.* The department reserves the right to enter into negotiations with a business regarding the amount of benefits the business may be eligible to receive. The department reserves the right to negotiate the amount of all benefits except the refund of sales, services, and use taxes paid to contractors and subcontractors.

261—64.4(80GA,HF677) Benefits. The following benefits may be available to an approved business. The amount of the benefits will be negotiated by the department with the approved business and reflected in the executed agreement.

64.4(1) *Sales, services, and use tax refund.* Pursuant to Iowa Code section 15.331A, the approved business shall be entitled to a refund of the sales and use taxes paid under Iowa Code chapters 422 and 423 for gas, electricity, water, or sewer utility services, goods, wares, or merchandise, or on services rendered, furnished or performed to or for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility being built, expanded, or rehabilitated as part of the project. Taxes attributable to intangible property and furniture and furnishings shall not be refunded.

To receive a refund of sales, services, and use taxes paid to contractors or subcontractors, the approved business must, within one year after project completion, make an application to the Iowa department of revenue.

64.4(2) *Research activities credit.* Pursuant to Iowa Code section 15.335, the approved business shall be entitled to a research activities credit. This tax credit shall be allowed against taxes imposed under Iowa Code chapter 422, division II (personal) or division III (corporate). This incentive is a tax credit for increasing research activities in this state during the period the business is participating in the program. This credit may equal up to 6½ percent of the state's apportioned share of the qualifying expenditures for increasing research activities. The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to total qualified research expenditures. This credit is in addition to the credit authorized in Iowa Code sections 422.10 and 422.33, subsection 5. If the business is a partnership, S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. Any tax credit in excess of the tax liability shall be refunded to the approved business with interest computed under Iowa Code section 422.25. This tax credit may be used by another business with which the approved business is affiliated and with which the approved business files state income tax returns on a consolidated basis. In lieu of claiming a refund, the approved business may elect to have the overpayment credited to its tax liability for the following year.

64.4(3) *Investment tax credit or insurance premium tax credit.*

a. *Investment tax credit.* An approved business may claim a tax credit equal to a percentage of the new capital investment directly related to the approved project. The percentage shall be equal to the amount provided in paragraph *"c."* Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs first.

The tax credit shall be allowed against taxes imposed under Iowa Code chapter 422, division II (personal), division III (corporate), or division V (franchise). This tax credit may be used by another business with which the approved business is affiliated and with which the approved business files state income tax returns on a consolidated basis. If the business is a partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings from the partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes, or estate or trust.

The approved business may not claim an investment tax credit for a capital investment above the amount stated in the agreement described in subrule 64.5(1). An approved business may instead, prior to project completion, seek to amend the contract, allowing the business to receive an investment tax credit for additional capital expenditures.

b. *Insurance premium tax credits.* An approved business may claim a tax credit equal to a percentage of the new capital investment directly related to the start-up, location, or expansion of an approved business under the program. The percentage shall be equal to the amount provided in paragraph *"c."* The tax credit shall be allowed against taxes imposed in Iowa Code chapter 432.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs first. The approved business may not claim an insurance premium tax credit for a capital investment above the amount stated in the agreement described in subrule 64.5(1). An approved business may instead, prior to project completion, seek to amend the contract, allowing the business to receive an insurance premium tax credit for additional capital expenditures.

c. Tax credit percentage. The amount of tax credit claimed under this subrule shall be determined as follows:

(1) If the department determines, based on the application of the approved business, that high-quality jobs are not created but economic activity within the state is advanced, the approved business may claim a tax credit of up to 1 percent of the amount of new capital investment, as described in the agreement.

(2) If the department determines, based on the application of the approved business, that one to five high-quality jobs are created, the approved business may claim a tax credit of up to 2 percent of the amount of new capital investment, as described in the agreement.

(3) If the department determines, based on the application of the approved business, that six to ten high-quality jobs are created, the approved business may claim a tax credit of up to 3 percent of the amount of new capital investment, as described in the agreement.

(4) If the department determines, based on the application of the approved business, that 11 to 15 high-quality jobs are created, the approved business may claim a tax credit of up to 4 percent of the amount of new capital investment, as described in the agreement.

(5) If the department determines, based on the application of the approved business, that 16 or more high-quality jobs are created, the approved business may claim a tax credit of up to 5 percent of the amount of new capital investment, as described in the agreement.

64.4(4) *Investment tax credit refunds.* Subject to prior approval by the department, in consultation with the Iowa department of revenue, an approved business whose project primarily involves the production of value-added agricultural products or uses biotechnology-related processes may elect to apply for a refund of all or a portion of an unused tax credit. For purposes of this subrule, an approved business includes a cooperative described in Section 521 of the Internal Revenue Code whose project primarily involves the production of ethanol. The refund may be used against a tax liability imposed under Iowa Code chapter 422, division II (personal), division III (corporate), or division V (franchise). To apply to receive a refund of all or a portion of an unused investment tax credit, the following procedures apply:

a. Department approval required. The department will determine whether an approved business's project primarily involves the production of value-added agricultural products or uses biotechnology-related processes.

b. How to apply for tax credit certificate. The business shall apply for a tax credit certificate using the form provided by the department. Requests for tax credit certificates will be accepted between May 1 and May 15 of each fiscal year. Only those approved businesses that have completed projects before the May 1 filing date may apply for a tax credit certificate. For a cooperative described in Section 521 of the Internal Revenue Code, the department shall require the cooperative to submit a list of members whom the cooperative wishes to receive a tax credit certificate for their prorated share of ownership. The cooperative shall submit its list in a computerized electronic format that is compatible with the system used or designated by the department. The computerized list shall, at a minimum, include the name, address, social security number or taxpayer identification number, business telephone number and ownership percentage, carried out to six decimal places, of each cooperative member approved for a tax credit certificate. The cooperative shall also submit a total dollar amount of the unused investment tax credit for which the cooperative's members are requesting a tax credit certificate.

c. Application processing. The department will make public by June 1 of each fiscal year the total number of requests for tax credit certificates and the total dollar amount of requested tax credit certificates that have been submitted. The department will issue tax credit certificates within a reasonable period of time following the June 1 announcement.

d. *Issuance of tax credit certificates.* The department shall not issue tax credit certificates to approved businesses in the new capital investment program, the new jobs and income program, and the enterprise zone program which total more than $4 million during a fiscal year. If the department receives applications for tax credit certificates in excess of $4 million, the applicants shall receive certificates for a prorated amount. In such a case, the tax credit requested by an approved business will be prorated based upon the total dollar amount of requested tax credit certificates received during the fiscal year. This proportion will be applied to the amount requested by each approved business to determine the amount of the tax credit certificate that will be distributed to each business for the fiscal year. For example, if an approved business submits a request in the amount of $1 million and the total amount of requested tax credit certificates equals $8 million, the business will be issued a tax credit certificate in the amount of $500,000.

$$\frac{\$4 \text{ million}}{\$8 \text{ million}} = 50\% \times \$1 \text{ million} = \$500{,}000$$

e. *When claimed.* Tax credit certificates shall not be valid until the tax year following the date of project completion. The tax credit certificates shall not be transferred except in the case of a cooperative as described in Section 521 of the Internal Revenue Code whose approved project primarily involves the production of ethanol. For such cooperative, the individual members of the cooperative are approved to receive the tax credit certificates. The approved business may not claim a tax credit refund unless a tax credit certificate issued by the department is attached to the taxpayer's tax return for the tax year in which the tax credit refund is claimed. Any unused investment tax credit in excess of the amount of the tax credit certificate issued by the department may be carried forward for up to seven years after the qualifying asset is placed in service or until the tax credit is depleted, whichever occurs first.

f. *Carryforward.* An approved business may apply for a tax credit certificate once each year for up to seven years after the qualifying asset is placed in service or until the approved business's unused investment tax credit is depleted, whichever occurs first. For example, an approved business which completes a project in October 2004 and has an investment tax credit of $1 million may apply for a tax credit certificate in May 2005. If, because of the proration of the $4 million of available refundable credits for the fiscal year, the business is awarded a tax credit certificate in the amount of $300,000, the business may claim the $300,000 refund and carry forward the unused investment tax credit of $700,000 up to seven years or until the credit is depleted, whichever occurs first.

261—64.5(80GA,HF677) Agreement, compliance, and repayment provisions.

64.5(1) *Agreement.* After the department negotiates the amount of benefits that the approved business shall receive and approves the application, the department shall enter into an agreement with the approved business. This agreement shall include, but is not limited to:

a. Provisions governing the requirements of the Act and these rules which the approved business agreed to satisfy as described in the approved application;

b. Reporting requirements such as an annual certification by the approved business that it is in compliance with the Act and these rules;

c. The amount or level of tax benefits the approved business shall receive as negotiated by the department; and

d. The method of determining the amount of benefits received by the approved business, which will be repaid in the event of the failure to maintain the requirements of the Act and these rules.

In addition the agreement shall specify that an approved business that fails to maintain the requirements of the Act and these rules shall not receive benefits for each year during which the business is not in compliance. The approved business and the department must execute the agreement within 180 days from the application approval date. If the agreement is not signed by that date, the department may rescind the benefits awarded to the approved business unless the approved business has received prior written permission from the department to exceed the time frame for an agreed-upon time period.

64.5(2) *Annual certification.* An approved business shall certify annually to the community and the department that the business is in compliance with the Act, these rules, and the agreement it has entered into with the department.

64.5(3) *On-site monitoring.* The approved business shall, upon prior reasonable notice and at any time (during normal business hours), permit the department, its representatives or the state auditor to examine, audit or copy any plans and work details pertaining to the project; all of the approved business's books, records, and accounts relating to the project; and all other documentation or materials related to the agreement.

64.5(4) *Repayment of benefits.* If the approved business has received benefits and fails to meet and maintain any of the requirements of the Act, these rules, or the agreement, the business is subject to repayment of all or a portion of the benefits that it has received. The repayment will be calculated as follows:

a. *Job creation.* If the approved business does not meet its job creation goal as defined in the agreement or fails to maintain the required number of jobs, the business shall repay a percentage of the tax credits claimed under subrules 64.4(2) and 64.4(3). The repayment percentage will be equal to the percentage of jobs that the approved business failed to create or maintain.

b. *Wages and benefits.* If the approved business fails to comply with the wage or benefit requirements outlined in the agreement, the business shall not receive the tax credits described in subrules 64.4(2) and 64.4(3) for each year during which the business is not in compliance.

c. *Capital investment.* If the approved business does not meet the capital investment requirement in the agreement, repayment of the tax credits claimed under subrules 64.4(2) and 64.4(3) shall be calculated as follows:

(1) If the business has not met the minimum investment requirement of $1 million, the business shall repay all of the benefits that it has received.

(2) If the business has met 50 percent or less of the pledged capital investment, the business shall repay the same percentage in benefits as the percentage that the business failed to invest.

(3) If the business has met more than 50 percent but not more than 75 percent of the pledged capital investment, the business shall repay one-half of the percentage in benefits that the business failed to invest.

(4) If the business has met more than 75 percent but not more than 90 percent of the pledged capital investment, the business shall repay one-quarter of the percentage in benefits that the business failed to invest.

d. *Selling, disposing, or razing of property.* If, within five years of purchase, the approved business sells, disposes of, razes, or otherwise renders unusable all or a part of the land, building, or other existing structures for which an investment tax credit or insurance premium tax credit was claimed under subrule 64.4(3), the income tax liability of the approved business for the year in which all or part of the property is sold, disposed of, razed, or otherwise rendered unusable shall be increased by one of the following amounts:

(1) 100 percent of the tax credit claimed under subrule 64.4(3) if the property ceases to be approved for the tax credit within one full year after being placed in service.

(2) 80 percent of the tax credit claimed under subrule 64.4(3) if the property ceases to be approved for the tax credit within two full years after being placed in service.

(3) 60 percent of the tax credit claimed under subrule 64.4(3) if the property ceases to be approved for the tax credit within three full years after being placed in service.

(4) 40 percent of the tax credit claimed under subrule 64.4(3) if the property ceases to be approved for the tax credit within four full years after being placed in service.

(5) 20 percent of the tax credit claimed under subrule 64.4(3) if the property ceases to be approved for the tax credit within five full years after being placed in service.

64.5(5) *Layoffs or closures.* If an approved business experiences a layoff within the state or closes any of its facilities within the state prior to receiving the benefits and assistance, the department may reduce or eliminate all or a portion of the benefits and assistance. If a business experiences a layoff within the state or closes any of its facilities within the state after receiving the benefits and assistance,

the business may be subject to repayment of all or a portion of the benefits and assistance that it has received.

64.5(6) *Extensions.* If an approved business fails to meet its requirements under the Act, these rules, or the agreement, the department, in consultation with the community, may elect to grant the business a one-year period to meet the requirements. Only one 12-month extension will be granted to the approved business. Extensions may be granted only when one of the following conditions applies:

a. The delay in achievement of the job creation goal or pledged capital investment was caused by events over which the approved business had no control and could not have reasonably predicted and there is a reasonable probability that the originally proposed job creation goal or pledged capital investment can be achieved; or

b. The project does not fit under paragraph *"a"* and the approved business has demonstrated to the department's satisfaction the existence of special circumstances.

261—64.6(80GA,HF677) Amendments. Any substantive change to an approved project will be considered a contract amendment. The amendment must be requested in writing. No amendment will be valid until approved by the department.

261—64.7(80GA,HF677) Other benefits. An approved business may receive other applicable federal, state, and local incentives and tax credits in addition to those provided in this program. However, an approved business which participates in this program shall not receive any funds, tax credits, or incentives from the new jobs and income program or the enterprise zone program.

These rules are intended to implement 2003 Iowa Acts, House File 677.

261—64.8(81GA,HF868) Applicability of new capital investment program after July 1, 2005.

64.8(1) Effective July 1, 2005, the NCIP program is rescinded by 2005 Iowa Acts, House File 868, and replaced with a new tax credit program, the high quality job creation program. Rules for the high quality job creation program may be found in 261—Chapter 68.

64.8(2) For awards made or contracts entered into prior to July 1, 2005, the rules of 261—Chapter 64 shall govern for purposes of contract administration and closeout of projects. A contract amendment is not allowable if the result of the amendment is to increase the benefits available.

This rule is intended to implement 2005 Iowa Acts, House File 868.

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CHAPTER 65
BROWNFIELD REDEVELOPMENT PROGRAM

261—65.1(15) Purpose. The brownfield redevelopment program is designed to provide financial and technical assistance for the acquisition, remediation, or redevelopment of brownfield and grayfield sites.
[**ARC 7844B**, IAB 6/17/09, effective 7/22/09; **ARC 9746B**, IAB 9/7/11, effective 8/19/11]

261—65.2(15) Definitions. As used in these rules, unless the context otherwise requires, the definitions in Iowa Code section 15.292 shall apply to this chapter. The following definitions shall also apply:

"Acquisition" means the purchase of brownfield or grayfield property.

"Advisory council" means the brownfield redevelopment advisory council as established in Iowa Code section 15.294 consisting of five members.

"Authority" means the economic development authority.

"Board" means the economic development authority board pursuant to 2011 Iowa Acts, House File 590, section 3.

"Brownfield site" means an abandoned, idled, or underutilized industrial or commercial facility where expansion or redevelopment is complicated by real or perceived environmental contamination. A brownfield site includes property contiguous with the property on which the individual or commercial facility is located. A brownfield site shall not include property which has been placed, or is proposed for placement, on the national priorities list established pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601 et seq.

"CERCLA" means Comprehensive Environmental Response, Compensation, and Liability Act as defined at 42 U.S.C. 9601 et seq.

"Characterization" means determination of both the nature and extent of contamination in the various media of the environment.

"Community" means a city or county, or an entity established pursuant to Iowa Code chapter 28E.

"Contaminant" means any hazardous substance found in the various media of the environment.

"Council" means the brownfield redevelopment advisory council, as established in Iowa Code section 15.294.

"Fund" means the brownfield redevelopment fund established pursuant to Iowa Code section 15.293.

"Grant" means the donation or contribution of funds with no expectation or requirement that the funds be repaid.

"Grayfield site" means an industrial or commercial property meeting all of the following requirements:

1. Infrastructure on the property is outdated or prevents an efficient use of the property, including vacant, blighted, obsolete, or otherwise underutilized property.
2. Property improvements and infrastructure are at least 25 years old and one or more of the following conditions exist:

- Thirty percent or more of a building located on the property is available for occupancy and has been vacated or unoccupied for at least 12 months;
- Assessed value of improvements on the property has decreased by 25 percent or more;
- The property is used as a parking lot;
- Improvements on the property no longer exist.

"Green development" means development which meets or exceeds the sustainable design standards as established by the state building code commissioner pursuant to Iowa Code section 103A.8B.

"Hazardous substance" means "hazardous substance" as defined in 567—Chapter 137 and includes petroleum substances not addressed in 567—Chapter 135.

"Loan" means an award of assistance with the requirement that the award be repaid, and with term, interest rate, and any other conditions specified as part of the award. A deferred loan is one for which the payment of principal or interest, or both, is not required for some specified period. A forgivable loan is one for which repayment is eliminated in part or entirely if the borrower satisfies specified conditions.

A loan guarantee is a third-party commitment to repay all or a portion of the loan in the event that the borrower defaults on the loan.

"Qualifying investment" means costs that are directly related to a qualifying redevelopment project and that are incurred after the project has been registered and approved by the board. "Qualifying investment" only includes the purchase price, the cleanup costs, and the redevelopment costs.

"Qualifying investor" means an applicant who has been accepted by the department to receive a redevelopment tax credit.

"Qualifying redevelopment project" means a brownfield or grayfield site being redeveloped or improved by the property owner. "Qualifying redevelopment project" does not include a previously remediated or redeveloped brownfield site.

"Redevelopment" means projects that result in the elimination of blighting characteristics as defined by Iowa Code section 403.2.

"Remediation" includes characterization, risk assessment, removal and cleanup of environmental contaminants located on and adjacent to a brownfield site. Funding awards used for remediation must comply with appropriate Iowa department of natural resources requirements and guidelines.

"Risk evaluation" means assessment of risks to human health and environment by way of guidelines established in 567—Chapter 137.

"Sponsorship" means an agreement between a city or county and an applicant for assistance under the brownfield redevelopment program in which the city or county agrees to offer assistance or guidance to the applicant. Sponsorship is not required if the applicant is a city or county.

"Sustainable design" means construction design intended to minimize negative environmental impacts and to promote the health and comfort of building occupants including, but not limited to, measures to reduce consumption of nonrenewable resources, minimize waste, and create healthy, productive environments. Sustainable design standards are also known as green building standards pursuant to Iowa Code section 103A.8B.

[**ARC 7844B**, IAB 6/17/09, effective 7/22/09; **ARC 9746B**, IAB 9/7/11, effective 8/19/11]

261—65.3(15) Eligible applicants. To be eligible to apply for program assistance, an applicant must meet the following eligibility requirements:

65.3(1) *Site owner.* A person owning a site is an eligible applicant if the site for which assistance is sought meets the definition of a brownfield or grayfield site and the applicant has secured a sponsor prior to applying for program assistance.

65.3(2) *Nonowner of site.* A person who is not an owner of a site is an eligible applicant if the site meets the definition of a brownfield or grayfield site and the applicant has secured a sponsor prior to applying for program assistance.

65.3(3) *Agreement executed.* Prior to applying for financial assistance under this program, an applicant shall enter into an agreement with the owner of the brownfield site for which financial assistance is sought. The agreement shall at a minimum include:

1. The total cost for remediating the site.
2. Agreement that the owner shall transfer title of the property to the applicant upon completion of the remediation of the property. Title transfer is not required when the applicant is the owner of the property and no title transfer occurs.
3. Agreement that upon the subsequent sale of the property by the applicant to a person other than the original owner, the original owner shall receive not more than 75 percent of the estimated total cost of the remediation, acquisition or redevelopment.

[**ARC 7844B**, IAB 6/17/09, effective 7/22/09]

261—65.4(15) Eligible forms of assistance and limitations.

65.4(1) *Financial assistance.* Eligible forms of financial assistance under this program include grants, interest-bearing loans, forgivable loans, loan guarantees, tax credits, and other forms of assistance under the brownfield redevelopment program established in Iowa Code section 15.292.

65.4(2) *Other forms of assistance.* The authority may provide information on alternative forms of assistance.

65.4(3) *Limitation on amount.* An applicant shall not receive financial assistance of more than 25 percent of the agreed-upon estimated total cost of remediation, acquisition or redevelopment. This limitation does not apply to assistance provided in the form of tax credits pursuant to subrule 65.11(4).

65.4(4) *Exclusions.* Program funds shall not be used for the remediation of contaminants being addressed under Iowa's leaking underground storage tank (UST) program. However, a site's being addressed under the UST program does not necessarily exclude that site from being addressed under the Iowa brownfield redevelopment Act if other nonpetroleum contaminants or petroleum substances not addressed under 567—Chapter 135 are present.

[**ARC 7844B**, IAB 6/17/09, effective 7/22/09; **ARC 9746B**, IAB 9/7/11, effective 8/19/11]

261—65.5(15) Repayment to economic development authority. Upon the subsequent sale of the property by an applicant to a person other than the original owner, the applicant shall repay the authority for financial assistance received by the applicant. The repayment shall be in an amount equal to the sales price less the amount paid to the original owner pursuant to the agreement between the applicant and the original owner. The repayment amount shall not exceed the amount of financial assistance received by the applicant.

[**ARC 7844B**, IAB 6/17/09, effective 7/22/09; **ARC 9746B**, IAB 9/7/11, effective 8/19/11]

261—65.6(15) Application and award procedures. Subject to availability of funds, applications will be reviewed and rated by economic development authority staff on an ongoing basis and reviewed quarterly by the advisory council. Brownfield redevelopment funds will be awarded on a competitive basis. Applications will be reviewed by staff for completeness and eligibility. If additional information is required, the applicant shall be provided with notice, in writing, to submit additional information. Recommendations from the advisory council will be submitted to the board. The board may approve, deny or defer an application.

[**ARC 7844B**, IAB 6/17/09, effective 7/22/09; **ARC 9746B**, IAB 9/7/11, effective 8/19/11]

261—65.7(15) Application.

65.7(1) Every application for assistance shall include evidence of sponsorship and any other information the authority deems necessary in order to process and review the application. An application shall be considered received by the authority only when the authority deems it to be complete. Applications for assistance shall also include the following information:

a. A business plan. The business plan should, at a minimum, include a remediation plan, a project contact/applying agency, a project overview (which would include the background of the project area, goals and objectives of the project, and implementation strategy), and a project/remediation budget.

b. A statement of purpose describing the intended use of and proposed repayment schedule for any financial assistance received by the applicant.

65.7(2) The authority shall accept and review applications in conjunction with the council and the board. The council shall consider applications in the order complete applications are received and make application recommendations to the board. The board shall approve or deny applications.

65.7(3) Upon review of the application, the authority may register the project under the program. If the authority registers the project, it shall, in conjunction with the council and the board, make a preliminary determination as to the maximum amount of the tax credit for which the investor qualifies. After registering the project, the authority shall issue a letter notifying the investor of successful registration under the program. The letter shall include the maximum amount of tax credit for which the investor has received preliminary approval and shall state that the amount is a preliminary determination only. The preliminary determination is not a contract, contract term, promise, guarantee, assurance, or representation of the actual tax credit the investor will receive or should expect to receive. The preliminary determination is a nonbinding figure, provided purely for the investor's and the authority's information and convenience, based on the authority's existing understanding and estimates related to the project. The amount of tax credit included on a certificate issued pursuant to this subrule shall be contingent upon completion of the requirements of subrules 65.7(4) to 65.7(6) and shall be based solely on completion and compliance with all terms and conditions of the contract pursuant to this rule, rule

261—65.10(15), and Iowa Code sections 15.293A and 15.293B as amended by 2011 Iowa Acts, Senate File 514.

65.7(4) Approved applicants shall enter into an agreement with the authority. The agreement shall specify the requirements necessary in order to receive tax credit and the maximum amount of tax credit available.

65.7(5) Upon completion of a registered project, an audit of the project's qualifying expenses shall be completed by an independent certified public accountant licensed in the state of Iowa and shall be submitted to the authority.

65.7(6) Upon written notification of project completion, review of the independent audit, and verification of the amount of the investment, the authority may issue a certificate to the investor.
[**ARC 7844B**, IAB 6/17/09, effective 7/22/09; **ARC 9746B**, IAB 9/7/11, effective 8/19/11]

261—65.8(15) Application forms. Application forms for the brownfield redevelopment program shall be available upon request from Economic Development Authority, 200 East Grand Avenue, Des Moines, Iowa 50309. The authority may provide technical assistance as necessary to applicants. Authority staff may conduct on-site evaluations of proposed activities.
[**ARC 7844B**, IAB 6/17/09, effective 7/22/09; **ARC 9746B**, IAB 9/7/11, effective 8/19/11]

261—65.9(15) Application review criteria. Brownfield redevelopment funds will be awarded on a competitive basis. Applications will be reviewed and prioritized based on the following criteria:

1. Whether the project meets the definition of a brownfield site.
2. Whether alternative forms of assistance have been explored and used by the applicant.
3. The level of distress or extent of the problem on the site has been identified.
4. Whether the site is on or proposed to be added to the U.S. Environmental Protection Agency's list of CERCLA sites.
5. The degree to which awards secured from other sources are committed to the subject site.
6. The leveraging of other public and private resources beyond the 75 percent minimum required.
7. Type and terms of assistance requested.
8. Rationale that the project serves a public purpose.
9. The level of economic and physical distress within the project area.
10. Past efforts of the community/owner to resolve the problem.
11. Ability of the applicant to outline the goals and objectives of the project and describe the overall strategy for achieving the goals and objectives.
12. Ancillary off-site development as a result of site remediation.

[**ARC 7844B**, IAB 6/17/09, effective 7/22/09]

261—65.10(15) Administration of awards.

65.10(1) A contract shall be executed between the recipient and the authority. These rules and applicable state laws and regulations shall be part of the contract.

65.10(2) The recipient must execute and return the contract to the authority within 45 days of transmittal of the final contract from the authority. Failure to do so may be cause for the board to terminate the award.

65.10(3) Certain activities may require that permits or clearances be obtained from other state or local agencies before the activity may proceed. Awards may be conditioned upon the timely completion of these requirements.

65.10(4) Awards may be conditioned upon commitment of other sources of funds necessary to complete the activity.

65.10(5) Awards may be conditioned upon the authority's receipt and approval of an implementation plan for the funded activity.
[**ARC 7844B**, IAB 6/17/09, effective 7/22/09; **ARC 9746B**, IAB 9/7/11, effective 8/19/11]

261—65.11(15) Redevelopment tax credit.

65.11(1) *Purpose.* The purpose of the redevelopment tax credit program is to make tax credits available for a redevelopment project investment. The authority may cooperate with the department of natural resources and local governments in an effort to disseminate information regarding the redevelopment tax credit.

65.11(2) *Eligible applicant.* An individual, partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual may claim a redevelopment tax credit. Once an applicant is deemed eligible, the applicant shall be considered a qualifying investor for a redevelopment tax credit. A city or county may not apply for a redevelopment tax credit.

65.11(3) *Tax credit certificate.*

a. *Issuance.* The authority shall issue a redevelopment tax credit certificate upon completion of the project and submittal of proof of completion by the qualified investor. The tax credit certificate shall contain the qualified investor's name, address, tax identification number, the amount of the credit, the name of the qualifying investor, any other information required by the department of revenue, and a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred.

b. *Acceptance.* The tax credit certificate, unless rescinded by the board, shall be accepted by the Iowa department of revenue as payment for taxes imposed pursuant to Iowa Code chapter 422, divisions II, III, and V, and to Iowa Code chapter 432, and for the moneys and credits tax imposed in Iowa Code section 533.329, subject to any conditions or restrictions placed by the board upon the face of the tax credit certificate and subject to the limitations of this rule, for a portion of a taxpayer's equity investment in a qualifying redevelopment project.

c. *Transfer.* Tax credit certificates issued under this rule may be transferred to any person or entity. Within 90 days of transfer, the transferee shall submit the transferred tax credit certificate to the Iowa department of revenue, including a statement with the transferee's name, tax identification number, address, the denomination that each replacement tax credit certificate is to carry, and any other information required by the Iowa department of revenue.

d. *Replacement certificate.* Within 30 days of receiving the transferred tax credit certificate and the transferee's statement, the Iowa department of revenue shall issue one or more replacement tax credit certificates to the transferee. Each replacement tax credit certificate must contain the information required for the original tax credit certificate and must have the same expiration date that appeared in the transferred tax credit certificate.

e. *Claiming a transferred tax credit.* A tax credit shall not be claimed by a transferee until a replacement tax credit certificate identifying the transferee as the proper holder has been issued. The transferee may use the amount of the tax credit transferred against the taxes imposed in Iowa Code chapter 422, divisions II, III, and V, and in Iowa Code chapter 432, and against the moneys and credits tax imposed in Iowa Code section 533.329, for any tax year the original transferor could have claimed the tax credit. Any consideration paid or received for the transfer of the tax credit shall not be included or deducted as income under Iowa Code chapter 422, divisions II, III, and V, under Iowa Code chapter 432, or against the moneys and credits tax imposed in Iowa Code section 533.329.

65.11(4) *Amount of tax credit.*

a. *Pro rata share.* The qualified investor may claim the amount based upon the pro rata share of the qualified investor's earnings from the partnership, limited liability company, S corporation, estate, or trust. Any tax credit in excess of the qualified investor's liability for the tax year is not refundable but may be credited to the tax liability for the following five years or until depleted, whichever is earlier. A tax credit shall not be carried back to a tax year prior to the tax year in which the qualified investor receives the tax credit.

b. *Percentage.* The amount of the tax credit shall equal one of the following:

(1) Twelve percent of the taxpayer's qualifying investment in a grayfield site.

(2) Fifteen percent of the taxpayer's qualifying investment in a grayfield site if the qualifying redevelopment project meets the requirements of green development as defined in 261—65.2(15).

(3) Twenty-four percent of the taxpayer's qualifying investment in a brownfield site.

(4) Thirty percent of the taxpayer's qualifying investment in a brownfield site if the qualifying redevelopment project meets the requirements of green development as defined in 261—65.2(15).

c. *Maximum credit per project.* The maximum amount of a tax credit for a qualifying investment in any one qualifying redevelopment project shall not exceed 10 percent of the maximum amount of tax credits available in any one fiscal year pursuant to paragraph 65.11(4)*"d."*

d. *Maximum credit total.* For the fiscal year beginning July 1, 2009, the maximum amount of tax credits issued by the authority shall not exceed $1 million. For the fiscal year beginning July 1, 2011, and for each subsequent fiscal year, the maximum amount of tax credits issued by the authority shall be an amount determined by the board but not in excess of $5 million.

65.11(5) *Claiming a tax credit.* The qualified investor must attach one or more tax credit certificate(s) to the qualified investor's tax return. A tax credit certificate shall not be used or attached to a return filed for a taxable year beginning prior to July 1, 2009. The tax credit certificate or certificates attached to the qualified investor's tax return shall be issued in the qualified investor's name, expire on or after the last day of the taxable year for which the qualified investor is claiming the tax credit, and show a tax credit amount equal to or greater than the tax credit claimed on the qualified investor's tax return.

65.11(6) *Reduction of tax credit.*

a. Taxes imposed under Iowa Code section 422.11V, less the credits allowed under Iowa Code sections 422.12, 422.33, 422.60, 432.12L, and moneys and credits imposed under Iowa Code section 533.329 shall be reduced by a redevelopment tax credit allowed under Iowa Code sections 15.291 to 15.294.

b. For purposes of individual and corporate income taxes and the franchise tax, the increase in the basis of the redeveloped property that would otherwise result from the qualified redevelopment costs shall be reduced by the amount of the credit computed under this rule.

65.11(7) *Project completion.*

a. An investment shall be deemed to have been made on the date the qualifying redevelopment project is completed. An investment made prior to January 1, 2009, shall not qualify for a tax credit under this rule.

b. A registered project shall be completed within 30 months of the project's approval unless the authority, with the approval of the board, provides additional time to complete the project. A project shall not be provided more than 12 months of additional time. If the registered project is not completed within the time required, the project is not eligible to claim a tax credit.

c. Failure to comply. If a taxpayer receives a tax credit pursuant to Iowa Code section 15.293A as amended by 2011 Iowa Acts, Senate File 514, but fails to comply with any of the requirements, the taxpayer loses any right to the tax credit. The Iowa department of revenue shall seek recovery of the value of the credit the qualified investor received.

65.11(8) *Tax credit carryover.* If the maximum amount of tax credits available has not been issued at the end of the fiscal year, the remaining tax credit amount may be carried over to a subsequent fiscal year or the authority may prorate the remaining credit amount among other eligible applicants.

65.11(9) *Authority registration and authorization.* The authority shall develop a system for registration and authorization of tax credits. The authority shall control distribution of all tax credits distributed to investors, including developing and maintaining a list of tax credit applicants from year to year to ensure that if the maximum aggregate amount of tax credits is reached in one year, an applicant can be given priority consideration for a tax credit in an ensuing year.

65.11(10) *Other financial assistance considerations.* If a qualified investor has also applied to the authority, the board, or any other agency of state government for additional financial assistance, the authority, the board, or the agency of state government shall not consider the receipt of a tax credit issued pursuant to this rule when considering the application for additional financial assistance.

[**ARC 7844B**, IAB 6/17/09, effective 7/22/09; **ARC 9746B**, IAB 9/7/11, effective 8/19/11]

261—65.12(15) Review, approval, and repayment requirements of redevelopment tax credit.

65.12(1) A qualified investor seeking to claim a tax credit pursuant to Iowa Code sections 15.293A and 15.293B as amended by 2011 Iowa Acts, Senate File 514, shall apply to the authority, and

applications shall be reviewed by the council as established in Iowa Code section 15.294 as amended by 2011 Iowa Acts, Senate File 514. The council shall recommend to the board the tax credit amount available for each qualifying redevelopment project.

65.12(2) A qualified investor shall provide to the authority, the council and the board all of the following:

a. Information showing the total costs of the qualifying redevelopment project, including the costs of land acquisition, cleanup, and redevelopment.

b. Information about the financing sources of the investment which is directly related to the qualifying redevelopment project for which the taxpayer is seeking approval for a tax credit, as provided in Iowa Code section 15.293A as amended by 2011 Iowa Acts, Senate File 514.

[**ARC 7844B**, IAB 6/17/09, effective 7/22/09; **ARC 9746B**, IAB 9/7/11, effective 8/19/11]

These rules are intended to implement Iowa Code sections 15.293 and 15.295 and sections 15.291, 15.292, 15.293A, 15.293B and 15.294 as amended by 2011 Iowa Acts, Senate File 514.

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[Filed Emergency ARC 9746B, IAB 9/7/11, effective 8/19/11]

CHAPTER 66
ASSISTIVE DEVICE TAX CREDIT

261—66.1(78GA,ch1194) Purpose. The Iowa department of economic development and the department of revenue administer the assistive device tax credit jointly to encourage small businesses to purchase, rent or modify assistive devices and to make workplace modifications for an individual with a disability who is employed or will be employed by the business. The Iowa department of economic development administers the assistive device tax credit certification process. The department of revenue administers the distribution of tax credits to eligible small businesses that have been issued certificates of entitlement.

261—66.2(78GA,ch1194) Definitions. For the purpose of these rules, the following definitions apply:

"Assistive device" means any item, piece of equipment, or product system which is used to increase, maintain, or improve the functional capabilities of an individual with a disability in the workplace or on the job. "Assistive device" does not mean any medical device, surgical device, or organ implanted or transplanted into or attached directly to an individual. "Assistive device" does not include any device for which a certificate of title is issued by the state department of transportation, but does include any item, piece of equipment, or product system otherwise meeting the definition of "assistive device" that is incorporated, attached, or included as a modification in or to such a device issued a certificate of title.

"Department" or *"IDED"* means the Iowa department of economic development.

"Disability" means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of the individual, a record of physical or mental impairment that substantially limits one or more of the major life activities of the individual, or being regarded as an individual with a physical or mental impairment that substantially limits one or more of the major life activities of the individual. "Disability" does not include any of the following: homosexuality or bisexuality; transvestitism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders; compulsive gambling, kleptomania, or pyromania; psychoactive substance abuse disorders resulting from current illegal use of drugs; alcoholism.

"Employee" or *"employed"* means an individual with a disability and whose business qualifies as a small business.

"Small business" means a business that either had gross receipts for its preceding tax year of $3 million or less or employed not more than 14 full-time employees during its preceding tax year.

"Workplace modifications" means physical alterations to the work environment.

261—66.3(78GA,ch1194) Eligibility criteria. In order to be eligible to receive the assistive device tax credit, a small business must:

1. Be located in the state of Iowa.
2. Employ not more than 14 full-time employees or have gross receipts of no more than $3 million during its preceding tax year.
3. Purchase, rent or modify an assistive device or make workplace modifications for an individual with a disability who is employed or will be employed by the business.

261—66.4(78GA,ch1194) Application process.

66.4(1) To receive a certificate of entitlement for the assistive device tax credit, the eligible small business must submit an application to the Iowa department of economic development. Applications and related materials shall be submitted on forms as prescribed by the department. Applications for certification must be submitted to the Assistive Device Tax Credit Program, Division of Business Development, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309.

66.4(2) Applicant businesses must provide the following information to IDED:

a. Proof of disability status of disabled person(s) employed or to be employed by the small business. Proof may take the form of written verification from the department of education, division of vocational rehabilitation, or the department for the blind, or a completed verification of disability/physician's statement.

b. Business tax forms for the previous year or personal income tax forms if business tax forms are not available.

c. Written documentation verifying the existence, organizational structure, and good standing of the business. The IDED assistive device tax credit small business documentation list describes acceptable forms of proof.

261—66.5(78GA,ch1194) Review, decision and award process.

66.5(1) *Review.* Applications will first be reviewed for completeness. If additional information is required, the program staff shall send the applicant notice to submit the additional needed information. The applicant shall submit the requested information within a reasonable time period in order to ensure further actions on the request. The applications will then be reviewed for content. The following items will be reviewed and evaluated:

a. Eligibility of the small business.

b. Nature, scope, purpose and cost of the assistive device or workplace modification and the manner in which it enables the employer to hire or retain the employee or prospective employee, or accommodate the disability of the employee or prospective employee.

66.5(2) *Decision.* The small business liaison for the Iowa department of economic development will make the final decision on all awards under the assistive device tax credit program. Within a reasonable period after the decision has been made, the department will transmit to the applicant a letter that either provides the basic reasons for denial, or provides the certificate of entitlement.

261—66.6(78GA,ch1194) Certification. The certificate of entitlement shall be numbered and shall contain the taxpayer's name, address, tax identification number, the amount of credit, and tax year for which the certificate is claimed.

261—66.7(78GA,ch1194) Monitoring and misuse of funds.

66.7(1) *Monitoring.* IDED reserves the right to monitor the recipient's records to ensure compliance with all program requirements. IDED staff will contact the recipient to arrange such visits at a mutually agreeable time.

66.7(2) *Misuse of funds.* Any person receiving tax credits under the assistive device tax credit program is subject to criminal penalties under Iowa Code section 15A.3 if it is determined that the person knowingly made false statements to procure tax credits from the state or if it is determined that funds were used for purposes other than those stated in the application.

261—66.8(78GA,ch1194) Tax credit.

66.8(1) In a single tax year, a small business is eligible to receive a tax credit equal to 50 percent of the total cost to purchase, rent or modify an assistive device(s) or make workplace modifications. The tax credit shall not exceed $2,500.

66.8(2) The taxpayer must file the certificate of entitlement with the taxpayer's income tax return in order to claim the tax credit.

66.8(3) The tax year for which the assistive device tax credit may be allowed shall be determined by the date of project completion.

These rules are intended to implement 2000 Iowa Acts, chapter 1194, section 11.

[Filed emergency 12/22/00 after Notice 10/18/00—published 1/10/01, effective 12/22/00]

CHAPTER 67
LIFE SCIENCE ENTERPRISES

261—67.1(78GA,ch1197) Purpose. The purpose of this program is to promote economic growth in this state during this period of revolutionary technological advancement in animal and human health sciences by providing for the development of industries unrelated to traditional farming, but devoted to the production of life science products derived from animals.

261—67.2(78GA,ch1197) Definitions. When used in this chapter, the following definitions apply unless the context otherwise requires:

"Actively engaged in farming" means the same as defined in Iowa Code section 10.1.

"Agricultural commodity" means the same as defined in Iowa Code section 190C.1.

"Agricultural land" means land suitable for use in farming as defined in Iowa Code section 9H.1.

"Animal" means a creature belonging to the bovine, caprine, equine, ovine, or porcine species.

"Corporation" means a domestic or foreign corporation subject to Iowa Code chapter 490, a nonprofit corporation, or a cooperative.

"Department" means the Iowa department of economic development as defined in Iowa Code chapter 15.

"Economic development board" or *"board"* means the Iowa economic development board established by Iowa Code section 15.103.

"Family farm entity" means the same as defined in Iowa Code section 10.1.

"Life science by-product" means a commodity, other than a life science product, if the commodity derives from the production of a life science product and the commodity is not intended or used for human consumption.

"Life science enterprise" or *"enterprise"* means a corporation or limited liability company organized for the purpose of using biotechnological systems or techniques for the production of life science products.

"Life science product" or *"product"* means a product derived from an animal by using biotechnological systems or techniques and which includes any of the following:

1. Embryos or oocytes for use in animal implantation.
2. Blood, milk, or urine for use in the manufacture of pharmaceuticals or nutriceuticals.
3. Cells, tissue, or organs for use in animal or human transplantation.

"Limited liability company" means a limited liability company as defined in Iowa Code section 490A.102.

"Person" means an individual, group of individuals, corporation or limited liability corporation.

"Successor enterprise" means a corporation, person or limited liability company that is the transferee or successor in interest of all or a part of a particular life science activity of a life science enterprise, acquired on or after July 1, 2004, through sale, lease, license or other transfer.

261—67.3(78GA,ch1197) Filing of notice of intent. Any corporation or limited liability company which intends to file a plan to qualify as a life science enterprise under 2000 Iowa Acts, chapter 1197, shall first file a written notice of intent indicating its intent to file such a plan. The notice of intent shall be filed with the Iowa department of economic development no later than June 30, 2001. The notice of intent shall contain a short and concise statement that the corporation or limited liability company may file a plan no later than June 30, 2004, and shall contain the name of the principal officer, main office address and place of incorporation of the corporation or limited liability company.

261—67.4(78GA,ch1197) Filing of life science enterprise plan.

67.4(1) Any corporation or limited liability company desiring to qualify as a life science enterprise under 2000 Iowa Acts, chapter 1197, shall file with the department a written life science enterprise plan no later than June 30, 2004. Only those corporations or limited liability companies that have timely filed a notice of intent pursuant to these rules shall be eligible to file a life science enterprise plan.

67.4(2) A life science enterprise plan shall contain at least the following:

a. A description of the particular life science product or products to be developed by the enterprise.

b. The estimated time frame for the development of the life science product or products to be developed by the enterprise.

c. The estimated amount or range of capital investment required by the enterprise in order to develop the life science product or products.

d. The estimated number of acres of agricultural land required to produce the life science product or products.

e. The type and extent of anticipated participation in the life science enterprise or the production of life science products by persons who are individual or family farm entities. In the event the plan does not provide for minimal participation by such persons, the plan shall provide an explanation of the reasonable efforts made by the enterprise to provide for such participation.

f. The name and address of the life science enterprise, its officers and directors, its place of business and place of incorporation.

261—67.5(78GA,ch1197) Review by board. Upon receipt of a life science enterprise plan that is timely filed with the department with the appropriate number of copies, the director shall promptly provide a copy of the plan to the department of agriculture and land stewardship for review and comment. The board shall consider any comments of the department of agriculture and land stewardship, review and approve or disapprove the life science enterprise plan in a public meeting to be held no later than 90 days after the date of filing of the plan with the department. The board may invite the life science enterprise to make an oral presentation to the board.

261—67.6(78GA,ch1197) Life science enterprise land ownership exemption. A life science enterprise, upon approval of a life science enterprise plan by the board, may hold an ownership or leasehold interest in up to 320 acres of agricultural land. A life science enterprise is allowed, before a life science enterprise plan is approved by the board, to take out a purchase option or a lease option on land the life science enterprise intends to acquire or lease. The exercise of any purchase or lease option shall be contingent upon the board's approval of the life science enterprise plan.

261—67.7(78GA,ch1197) Amendment of plan. A life science enterprise plan may be amended as allowed by 2000 Iowa Acts, chapter 1197, by the filing of an amendment with the department in the same manner as the filing of a plan under these rules. Amendments shall be reviewed and approved or disapproved within the same time deadlines and under the same process as provided for a plan.

261—67.8(78GA,ch1197) Successor enterprise. A corporation, person or limited liability company, which is the successor or transferee of the interests in an approved life science enterprise, shall provide notice thereof to the board by filing such notice with the division of business development pursuant to rule 261—67.9(78GA,ch1197). The notice shall be filed within 30 days of the acquisition of the interest in a life science enterprise. A successor enterprise shall acquire or hold any agricultural land consistent with the terms of the approved life science enterprise plan, including any amendments to such plan, that is applicable to the particular life science activity.

261—67.9(78GA,ch1197) Filing. For the purposes of these rules and 2000 Iowa Acts, chapter 1197, a notice of intent, life science enterprise plan, amendment or notice of succession shall be considered filed with the department when such plan is received, with three additional copies, by the department's division of business development. Documents shall be filed with the Division of Business Development, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Attn: Life Science Enterprises.

These rules are intended to implement 2000 Iowa Acts, chapter 1197.

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CHAPTER 68
HIGH QUALITY JOBS PROGRAM (HQJP)

261—68.1(15) Administrative procedures and definitions.

68.1(1) *Administrative procedures.* The HQJP is subject to the requirements of the department's rules located in 261—Part VII, additional application requirements and procedures, and 261—Part VIII, legal and compliance. Part VII and Part VIII include standard definitions; standard program requirements; wage, benefit and investment requirements; application review and approval procedures; contracting; contract compliance and job counting; and annual reporting requirements.

68.1(2) *Definitions.* In addition to the standard definitions located in 261—Chapter 173, the following definitions apply to the HQJP:

"Act" means Iowa Code sections 15.326 to 15.337 as amended by 2009 Iowa Acts, Senate File 344.

"Annual base rent" means the business's annual lease payment minus taxes, insurance and operating or maintenance expenses.

"Biotechnology-related processes" means the use of cellular and biomolecular processes to solve problems or make products. For purposes of this definition, farming activities shall not be included.

"Community" means a city, county, or other entity established pursuant to Iowa Code chapter 28E.

"Contractor or subcontractor" means a person who contracts with the eligible business or subcontracts with a contractor for the provision of property, materials, or services for the construction or equipping of a facility of the eligible business.

"Eligible business" means a business meeting the conditions of Iowa Code section 15.329 as amended by 2009 Iowa Acts, Senate File 344, section 12.

"High quality jobs" means created or retained jobs that meet the wage requirements established in subrule 68.2(4) and subrules 68.2(7) and 68.2(8) when applicable.

"Program" means the high quality jobs program.

"Project" means the activity, or set of activities, proposed in the application by the business which will result in accomplishing the goals of the program and for which the business is requesting tax incentives and assistance. A project shall include the start-up, location, expansion, or modernization of a business.

"Value-added agricultural products" means agricultural products which, through a series of activities or processes, can be sold at a higher price than the original purchase price.

[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09]

261—68.2(15) Eligibility requirements.

68.2(1) *Community approval.* If the qualifying investment is $10 million or more, the community in which the business's project is or will be located shall approve by ordinance or resolution the start-up, location, expansion, or modernization of the business for purposes of receiving tax incentives and assistance under this program.

68.2(2) *Closures or relocations.* The business shall not close or substantially reduce operations in one area of this state and relocate substantially the same operations in a community in another area of this state. This subrule shall not be construed to prohibit the business from expanding its operations in a community if existing operations of a similar nature in this state are not closed or substantially reduced.

68.2(3) *No retail or service businesses.* The business shall not be a retail or service business. For purposes of this subrule, a service business is a business providing services to a local consumer market which does not have a significant proportion of its sales coming from outside the state.

68.2(4) *Created and retained jobs.* The business shall create or retain jobs as part of a project.

a. The business shall pay the qualifying wage threshold for HQJP as established in 261—Chapter 174.

b. If the business is creating jobs, the business shall demonstrate that the jobs will pay at least 100 percent of the qualifying wage threshold at the start of the project completion period, at least 130 percent of the qualifying wage threshold by the project completion date, and at least 130 percent of the qualifying wage threshold until the maintenance period completion date.

c. If the business is retaining jobs, the business shall demonstrate that the jobs retained will pay at least 130 percent of the qualifying wage threshold throughout both the project completion period and the maintenance period.

68.2(5) *Determination of sufficient benefits.* The business shall provide a sufficient package of benefits to each employee holding a created or retained job. The business shall offer a sufficient benefits package to its employees as defined in 261—Chapter 173.

68.2(6) *Sufficient fiscal impact.* The business shall demonstrate that the jobs created or retained will have a sufficient impact on state and local government revenues as determined by the department after calculating the fiscal impact ratio of the project.

68.2(7) *Violations of law.* If the department finds that a business has a record of violations of law over a period of time that tends to show a consistent pattern as described in 261—Chapter 172, the business shall not qualify for tax incentives and assistance under this program.

68.2(8) *Competition.* The department shall consider the impact of the proposed project on other Iowa businesses in competition with the business that is seeking tax incentives and assistance. The department shall make a good faith effort to identify existing Iowa businesses within an industry in competition with the business that is seeking tax incentives and assistance. The department shall make a good faith effort to determine the probability that the proposed financial assistance will negatively impact other existing Iowa businesses including but not limited to displacing employees of the existing business.

68.2(9) *Other benefits.* A business may seek benefits and assistance for its project from other applicable federal, state, and local programs in addition to those provided in this program. However, a business which has received assistance for its project from the wage-benefit tax credit program or the enterprise zone program shall not be eligible for tax incentives and assistance under this program. A business which has received assistance for its project from the new jobs and income program or the new capital investment program shall not be eligible for tax incentives and assistance under this program for the same project. However, the business may receive tax incentives and assistance under this program for subsequent projects.

68.2(10) *Ineligibility—no high quality jobs created or retained.* If a project is creating or retaining jobs, but none are high quality jobs, then the project is not eligible to receive benefits and assistance under this program.

[**ARC 7557B**, IAB 2/11/09, effective 3/18/09; **ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09]

261—68.3(15) Application process and review.

68.3(1) *Application.* The department shall develop a standardized application and make it available to a business applying for tax incentives and assistance. The application procedures are as follows:

a. An application will not be accepted after project initiation.

b. A signature from the appropriate community official shall be required on the application as indication that the community is aware of and supports the project. For a project with a qualifying investment of $10 million or more, the community ordinance or resolution approving the project shall accompany the application.

c. Each application will be reviewed by the department. The department may request additional information from the business that is applying for tax incentives and assistance or may use other resources to obtain the needed information.

d. If the business meets the eligibility requirements, the department staff will prepare a report which includes a summary of the project and a recommendation on the amount of tax incentives and assistance to be offered to the business.

68.3(2) *Wage waiver.* Rescinded IAB 7/4/07, effective 6/15/07.

68.3(3) *Benefit values.* Rescinded IAB 7/4/07, effective 6/15/07.

68.3(4) *Negotiations.* The department reserves the right to enter into negotiations with the business regarding the amount of tax incentives and assistance the business shall receive. All forms of tax incentives and assistance available under the program may be subject to negotiations. The department shall consider all of the following factors with respect to entering into negotiations with the business:

a. Level of need. The three general justifiable reasons for assistance are as follows:

(1) The business can raise only a portion of the debt and equity necessary to complete the project. A gap between sources and uses exists and state or federal funds or both are needed to fill the gap.

(2) The business can raise sufficient debt and equity to complete the project, but the returns are inadequate to motivate a company decision maker to proceed with the project. Project risks outweigh the rewards.

(3) The business is deciding between a site in Iowa (site A) and a site in another state (site B) for its project. The business argues that the project will cost less at site B and will require a subsidy to equalize costs in order to locate at site A. The objective is to quantify the cost differential between site A and site B.

Projects that have already been initiated will not be considered for funding.

b. Quality of the jobs. The department shall place greater emphasis on projects involving created or retained jobs that:

(1) Have a higher wage scale. Businesses that have wage scales substantially higher than those of existing Iowa businesses in that industry shall be considered as providing the highest quality of jobs.

(2) Have a lower turnover rate.

(3) Are full-time or career-type positions.

c. Percentage of created jobs defined as high quality jobs. The department will consider the number of high quality jobs to be created versus the total number of created jobs in determining what amount of tax incentives and assistance to offer the business.

d. Economic impact. In measuring the economic impact to this state, the department shall place greater emphasis on projects which demonstrate 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.

[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09]

261—68.4(15) Tax incentives and assistance.

68.4(1) *Sales and use tax refund.* Pursuant to Iowa Code section 15.331A, the approved business may be entitled to a refund of the sales and use taxes paid under Iowa Code chapter 423 for gas, electricity, water, or sewer utility services, goods, wares, or merchandise, or on services rendered, furnished, or performed to or for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility of the approved business. Taxes attributable to intangible property and furniture and furnishings shall not be refunded.

a. Filing a claim. To receive the refund, the approved business shall file a claim with the department of revenue as follows:

(1) The contractor or subcontractor shall state under oath, on forms provided by the department of revenue, the amount of sales or goods, wares, or merchandise, or services rendered, furnished, or performed, including water, sewer, gas, and electric utility services upon which sales or use tax has been paid prior to the project completion, and shall file the forms with the approved business before final settlement is made.

(2) The approved business shall, not more than 12 months following project completion, make application to the department of revenue for any refund of the amount of the sales and use taxes paid pursuant to Iowa Code chapter 423 upon any goods, wares, or merchandise, or services rendered, furnished, or performed, including water, sewer, gas, and electric utility services.

(3) The eligible business shall inform the department of revenue in writing within two weeks of project completion.

b. Racks, shelving, and conveyor equipment. If the project is the location, expansion, or modernization of a warehouse or distribution center, the approved business may be entitled to a refund of sales and use taxes attributable to racks, shelving, and conveyor equipment. The approved business

shall, not more than 12 months following project completion, make written application to the department for a refund. The application must include the refund amount being requested and documentation such as invoices or contracts which substantiate the requested amount. The department, in consultation with the department of revenue, will validate the refund amount and instruct the department of revenue to issue the refund.

The aggregate combined total amount of refunds and tax credits attributable to sales and use taxes on racks, shelving, and conveyor equipment issued by the department to businesses approved for high quality jobs program and enterprise zone program benefits shall not exceed $500,000 during a fiscal year. Tax refunds and tax credits will be issued on a first-come, first-served basis. If an approved business's application does not receive a refund or tax credits due to the $500,000 fiscal year limitation, the approved business's application shall be considered in the succeeding fiscal year.

68.4(2) *Corporate tax credit for certain sales taxes paid by third-party developer.* Pursuant to Iowa Code section 15.331C, the approved business may claim a corporate tax credit up to an amount equal to the sales and use taxes paid by a third-party developer under Iowa Code chapter 423 for gas, electricity, water, or sewer utility services, goods, wares, or merchandise, or on services rendered, furnished, or performed to or for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility of the approved business. Taxes attributable to intangible property and furniture and furnishings shall not be refunded.

Any tax credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs earlier. An approved business may elect to receive a refund of all or a portion of an unused tax credit.

a. Filing a claim. To receive the tax credit, the approved business shall file a claim with the department as follows:

(1) The third-party developer shall state under oath, on forms provided by the department of revenue, the amount of sales and use taxes paid and submit the forms to the approved business.

(2) The approved business shall, not more than 12 months following project completion, submit the completed forms to the department.

(3) In consultation with the department of revenue, the department shall issue a tax credit certificate in an amount equal to all or a portion of the sales and use taxes paid by a third-party developer under Iowa Code chapter 423 for gas, electricity, water, or sewer utility services, goods, wares, or merchandise, or on services rendered, furnished, or performed to or for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility of the approved business.

(4) The approved business shall not claim the tax credit provided in this subrule unless a tax credit certificate issued by the department is attached to the approved business's tax return for the tax year in which the tax credit is claimed. A tax credit certificate shall contain the approved business's name, address, tax identification number, the amount of the tax credit, and other information required by the department of revenue.

b. Racks, shelving, and conveyor equipment. If the project is the location, expansion, or modernization of a warehouse or distribution center, the approved business may claim a corporate tax credit up to the amount of sales and use taxes paid by a third-party developer and attributable to racks, shelving, and conveyor equipment. The approved business shall, not more than 12 months following project completion, make written application to the department for a tax credit. The application must include the tax credit amount being requested and documentation from the third-party developer such as invoices or contracts which substantiate the requested amount. The department, in consultation with the department of revenue, will confirm the tax credit amount and issue a tax credit certificate in an amount equal to all or a portion of the sales and use taxes attributable to racks, shelving, and conveyor equipment. The approved business shall not claim the tax credit provided in this subrule unless a tax credit certificate issued by the department is attached to the approved business's tax return for the tax year in which the tax credit is claimed. A tax credit certificate shall contain the approved business's name, address, tax identification number, the amount of the tax credit, and other information required by the department of revenue. Any tax credit in excess of the tax liability for the tax year may be

credited to the tax liability for the following seven years or until depleted, whichever occurs earlier. An approved business may elect to receive a refund of all or a portion of an unused tax credit.

The aggregate combined total amount of refunds and tax credits attributable to sales and use taxes on racks, shelving, and conveyor equipment issued by the department to businesses approved for high quality jobs program and enterprise zone program benefits shall not exceed $500,000 during a fiscal year. Tax refunds and tax credits will be issued on a first-come, first-served basis. If an approved business's application does not receive a refund or tax credits due to the $500,000 fiscal year limitation, the approved business's application shall be considered in the succeeding fiscal year.

68.4(3) *Value-added property tax exemption.* Pursuant to Iowa Code section 15.332, the community may exempt from taxation all or a portion of the actual value added by improvements to real property directly related to jobs created or retained by the location or expansion of the approved business and used in the operations of the approved business. The exemption may be allowed for a period not to exceed 20 years beginning the year the improvements are first assessed for taxation. For purposes of this subrule, improvements include new construction and rehabilitation of and additions to existing structures. The exemption shall apply to all taxing districts in which the real property is located. The community shall provide the department and the local assessor with a copy of the resolution adopted by its governing body which indicates the estimated value and duration of the authorized exemption.

68.4(4) *Investment tax credit.*

a. Claiming the investment tax credit. Pursuant to Iowa Code section 15.333, the approved business may claim an investment tax credit equal to a percentage of the new investment directly related to jobs created or retained by the start-up, location, expansion, or modernization of the approved business under the program. The tax credit shall be earned when the qualifying asset is placed in service.

(1) Five-year amortization period. The tax credit shall be amortized equally over a five-year period which the department will, in consultation with the approved business, define. The five-year amortization period will be specified in the agreement referenced in subrule 68.5(1). The tax credit shall be allowed against taxes imposed under Iowa Code chapter 422, division II, III, or V and against the moneys and credits tax imposed in Iowa Code section 533.24.

(2) Flow-through of tax credits. If the business is a partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 or 501A and filing as a partnership for federal tax purposes, or estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 or 501A and filing as a partnership for federal tax purposes, or estate or trust.

(3) Seven-year carryforward. A tax credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs first.

b. Investment qualifying for the tax credit. For purposes of this subrule, new investment directly related to jobs created or retained by the start-up, location, expansion or modernization of the approved business under the program means all of the following:

(1) The cost of machinery and equipment, as defined in Iowa Code section 427A.1, subsection 1, paragraphs *"e"* and *"j,"* purchased for use in the operation of the approved business.

(2) The purchase price of real property and any buildings and structures located on the real property.

(3) The cost of improvements made to real property which is used in the operation of the approved business.

(4) The annual base rent paid to a third-party developer by an approved business for a period equal to the term of the lease agreement but not to exceed the maximum term of the agreement referenced in subrule 68.5(1), provided the cumulative cost of the base rent payments for that period does not exceed the cost of the land and the third-party developer's costs to build or renovate the building for the approved business. Annual base rent shall be considered only when the project includes the construction of a new building or the major renovation of an existing building. The approved business shall enter into a lease agreement with the third-party developer for a minimum of five years.

Pursuant to subrule 68.4(9), the approved business shall not claim a tax credit above the amount defined in the final award documentation.

c. Refunds.

(1) Refund of unused tax credit. Subject to prior approval by the department, in consultation with the department of revenue, an approved business whose project primarily involves the production of value-added agricultural products or uses biotechnology-related processes may elect to receive a refund of all or a portion of an unused tax credit.

(2) IRS Section 521. For purposes of this paragraph, an approved business includes a cooperative, described in Section 521 of the Internal Revenue Code, that is not required to file an Iowa corporate income tax return and whose project primarily involves the production of ethanol.

(3) Refund of unused tax credit procedures. For application to receive a refund of all or a portion of an unused tax credit, the following procedures apply:

1. Department approval required. The department will determine whether an approved business's project primarily involves the production of value-added agricultural products or uses biotechnology-related processes.

2. Application for a tax credit certificate. The approved business shall apply for a tax credit certificate using the form provided by the department. Requests for tax credit certificates will be accepted between May 1 and May 15 of each fiscal year. Only those approved businesses that have been issued final award documentation pursuant to subrule 68.4(9) before the May 1 filing date may apply for a tax credit certificate.

The department shall require the cooperative, as described in Section 521 of the Internal Revenue Code, to submit a list of members whom the cooperative wishes to receive a tax credit certificate for their prorated share of ownership. The cooperative shall submit its list in a computerized electronic format that is compatible with the system used or designated by the department. For each cooperative member approved for a tax credit certificate, the computerized list shall, at a minimum, include the name, address, social security number or taxpayer identification number, business telephone number and ownership percentage, carried out to six decimal places. The cooperative shall also submit a total dollar amount of the unused investment tax credit for which the cooperative's members are requesting a tax credit certificate.

(4) Issuance of tax credit certificates. The department shall not issue tax credit certificates to approved businesses in the high quality jobs program and the enterprise zone program which total more than $4 million during a fiscal year. If the department receives applications for tax credit certificates in excess of $4 million, the applicants shall receive certificates for a prorated amount. In such a case, the tax credit requested by an approved business will be prorated based upon the total dollar amount of requested tax credit certificates received during the fiscal year. This proportion will be applied to the amount requested by each approved business to determine the amount of the tax credit certificate that will be distributed to each business for the fiscal year. For example, if an approved business submits a request in the amount of $1 million and the total amount of requested tax credit certificates equals $8 million, the business will be issued a tax credit certificate in the amount of $500,000 ($4 million / $8 million = 50% × $1 million = $500,000). The department will issue tax credit certificates within a reasonable period of time following the May 15 application deadline.

(5) Claiming the tax credit certificate. Tax credit certificates shall not be valid until the tax year following the date the final award documentation was issued. The tax credit certificates shall not be transferred except in the case of a cooperative as described in Section 521 of the Internal Revenue Code whose approved project primarily involves the production of ethanol. For such cooperative, the individual members of the cooperative are approved to receive the tax credit certificates. The approved business may not claim a tax credit refund unless a tax credit certificate issued by the department is attached to the taxpayer's tax return for the tax year in which the tax credit refund is claimed.

(6) Carryforward. An approved business may apply for a tax credit certificate once each year for up to seven years after the final award documentation is issued or until the approved business's unused tax credit is depleted, whichever occurs first. For example, an approved business which receives its final award documentation in October 2005 and has an investment tax credit of $1 million may apply for a tax

credit certificate in May 2006. If, because of proration of the $4 million of available refundable credits for the fiscal year, the business is awarded a tax credit certificate in the amount of $300,000, the business may claim the $300,000 refund and carry forward the unused investment tax credit of $700,000 up to seven years or until the credit is depleted, whichever occurs first.

68.4(5) *Insurance premium tax credit.* Pursuant to Iowa Code section 15.333A, the approved business may claim an insurance premium tax credit equal to a percentage of the new investment directly related to jobs created or retained by the start-up, location, expansion, or modernization of the approved business under the program.

a. Claiming the tax credit. The tax credit shall be earned when the qualifying asset is placed in service. The tax credit shall be amortized equally over a five-year period which the department will, in consultation with the eligible business, define. The five-year amortization period shall be specified in the agreement referenced in subrule 68.5(1). The tax credit shall be allowed against taxes imposed under Iowa Code chapter 432. A tax credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs first.

b. Investment qualifying for the tax credit. For purposes of this subrule, new investment directly related to jobs created or retained by the start-up, location, expansion or modernization of the approved business under the program means all of the following:

(1) The cost of machinery and equipment, as defined in Iowa Code section 427A.1, subsection 1, paragraphs *"e"* and *"j,"* purchased for use in the operation of the approved business.

(2) The purchase price of real property and any buildings and structures located on the real property.

(3) The cost of improvements made to real property which is used in the operation of the approved business.

(4) The annual base rent paid to a third-party developer by an approved business for a period equal to the term of the lease agreement but not to exceed the maximum term of the agreement referenced in subrule 68.5(1), provided the cumulative cost of the base rent payments for that period does not exceed the cost of the land and the third-party developer's costs to build or renovate the building for the approved business. Annual base rent shall be considered only when the project includes the construction of a new building or the major renovation of an existing building. The approved business shall enter into a lease agreement with the third-party developer for a minimum of five years.

Pursuant to subrule 68.4(9), the approved business shall not claim a tax credit above the amount defined in the final award documentation.

68.4(6) *Research activities credit.* Pursuant to Iowa Code section 15.335, the approved business may claim a corporate tax credit for increasing research activities in Iowa during the period the approved business is participating in the program.

a. Calculation. The credit equals the sum of the following:

(1) Six and one-half percent of the excess of qualified research expenses during the tax year over the base amount for the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities.

(2) Six and one-half percent of the basic research payments determined under Section 41(e)(1)(A) of the Internal Revenue Code during the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities.

The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to total qualified research expenditures.

b. Alternate calculation. In lieu of the credit amount computed in subparagraph 68.4(6)*"a"*(1), the approved business may elect to compute the credit amount for qualified research expenses incurred in Iowa in a manner consistent with the alternative incremental credit described in Section 41(c)(4) of the Internal Revenue Code. The taxpayer may make this election regardless of the method used for the taxpayer's federal income tax. The election made under subrule 68.4(6) is for the tax year and the taxpayer may use either the method outlined in paragraph *"a"* or in this paragraph for any subsequent year.

For purposes of this alternate credit computation method, the credit percentages applicable to the qualified research expenses described in clauses (i), (ii), and (iii) of Section 41(c)(4)(A) of the Internal Revenue Code are 1.65 percent, 2.20 percent, and 2.75 percent, respectively.

c. Additional research activities credit. The credit allowed in this subrule is in addition to the credit authorized in Iowa Code sections 422.10 and 422.33(5). However, if the alternative credit computation method is used in Iowa Code section 422.10 or 422.33(5), the credit allowed in this subrule shall also be computed using that method.

d. Flow-through of tax credits. If the eligible business is a partnership, S corporation, limited liability company, or estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings from the partnership, S corporation, limited liability company, or estate or trust.

e. Definitions. For purposes of this subrule, "base amount," "basic research payment," and "qualified research expense" mean the same as defined for the federal credit for increasing research activities under Section 41 of the Internal Revenue Code except that, for the alternative incremental credit, such amounts are for research conducted within Iowa. For purposes of this subrule, "Internal Revenue Code" means the Internal Revenue Code in effect on January 31, 2005.

f. Refunds. Any credit in excess of the tax liability for the taxable year shall be refunded with interest computed under Iowa Code section 422.25. In lieu of claiming a refund, a taxpayer may elect to have the overpayment shown on its final, completed return credited to the tax liability for the following year.

g. Renewable energy generation components. For purposes of this subrule, "research activities" includes the development and deployment of innovative renewable energy generation components manufactured or assembled in Iowa. A renewable energy generation component will no longer be considered innovative when more than 200 megawatts of installed effective nameplate capacity has been achieved. Research activities credits awarded under this program and the enterprise zone program for innovative renewable energy generation components shall not exceed $1 million.

68.4(7) *Maximum tax incentives available.* Tax incentives and assistance awarded under this program are based upon the number of jobs created or retained that pay the qualifying wage threshold for HQJP as established in 261—Chapter 174 and as defined in 261—Chapter 173 and the amount of qualifying investment. The maximum possible award is based on the following schedule:

a. No high quality jobs are created or retained but economic activity is furthered by the qualifying investment. For purposes of this paragraph, "economic activity" means a modernization project which will result in increased skills and wages for the current employees; a project involving retained jobs; or a project that involves a waiver, granted by the board pursuant to rule 261—174.6(15E,15G,83GA,SF344), of the qualifying wage threshold calculation if the reason for the waiver is that damages were sustained as a result of a natural disaster in a presidentially declared disaster area.

(1) Less than $100,000 in qualifying investment.

1. Investment tax credit or insurance premium tax credit of up to 1 percent.

2. Reserved.

(2) $100,000 to $499,999 in qualifying investment.

1. Investment tax credit or insurance premium tax credit of up to 1 percent.

2. Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.

(3) $500,000 or more in qualifying investment.

1. Investment tax credit or insurance premium tax credit of up to 1 percent.

2. Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.

3. Research activities credit.

b. 1 to 5 high quality jobs are created or retained.

(1) Less than $100,000 in qualifying investment.

1. Investment tax credit or insurance premium tax credit of up to 2 percent.

2. Reserved.

(2) $100,000 to $499,999 in qualifying investment.

1. Investment tax credit or insurance premium tax credit of up to 2 percent.

2. Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.

(3) $500,000 or more in qualifying investment.

1. Investment tax credit or insurance premium tax credit of up to 2 percent.

2. Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.

3. Research activities credit.

c. 6 to 10 high quality jobs are created or retained.

(1) Less than $100,000 in qualifying investment.

1. Investment tax credit or insurance premium tax credit of up to 3 percent.

2. Reserved.

(2) $100,000 to $499,999 in qualifying investment.

1. Investment tax credit or insurance premium tax credit of up to 3 percent.

2. Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.

(3) $500,000 or more in qualifying investment.

1. Investment tax credit or insurance premium tax credit of up to 3 percent.

2. Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.

3. Research activities credit.

d. 11 to 15 high quality jobs are created or retained.

(1) Less than $100,000 in qualifying investment.

1. Investment tax credit or insurance premium tax credit of up to 4 percent.

2. Reserved.

(2) $100,000 to $499,999 in qualifying investment.

1. Investment tax credit or insurance premium tax credit of up to 4 percent.

2. Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.

(3) $500,000 or more in qualifying investment.

1. Investment tax credit or insurance premium tax credit of up to 4 percent.

2. Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.

3. Research activities credit.

e. 16 to 30 high quality jobs are created or retained.

(1) Less than $100,000 in qualifying investment.

1. Investment tax credit or insurance premium tax credit of up to 5 percent.

2. Reserved.

(2) $100,000 to $499,999 in qualifying investment.

1. Investment tax credit or insurance premium tax credit of up to 5 percent.

2. Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.

(3) $500,000 or more in qualifying investment.

1. Investment tax credit or insurance premium tax credit of up to 4 percent.

2. Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.

3. Research activities credit.

f. 31 to 40 high quality jobs are created or retained.

(1) $10 million or more in qualifying investment.

1. Investment tax credit or insurance premium tax credit of up to 6 percent.

2. Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.

3. Research activities credit.

4. Value-added property tax exemption.

(2) Reserved.

g. 41 to 60 high quality jobs are created or retained.

(1) $10 million or more in qualifying investment.

1. Investment tax credit or insurance premium tax credit of up to 7 percent.

2. Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.

3. Research activities credit.

4. Value-added property tax exemption.

(2) Reserved.

h. 61 to 80 high quality jobs are created or retained.

(1) $10 million or more in qualifying investment.

1. Investment tax credit or insurance premium tax credit of up to 8 percent.

2. Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.

3. Research activities credit.

4. Value-added property tax exemption.

(2) Reserved.

i. 81 to 100 high quality jobs are created or retained.

(1) $10 million or more in qualifying investment.

1. Investment tax credit or insurance premium tax credit of up to 9 percent.

2. Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.

3. Research activities credit.

4. Value-added property tax exemption.

(2) Reserved.

j. 101 or more high quality jobs are created or retained.

(1) $10 million or more in qualifying investment.

1. Investment tax credit or insurance premium tax credit of up to 10 percent.

2. Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.

3. Research activities credit.

4. Value-added property tax exemption.

(2) Reserved.

68.4(8) *Award limitations.* Each calendar year, the department shall not approve more than $3.6 million worth of investment tax credits and insurance premium tax credits for projects with qualifying investments of less than $1 million. Tax credits subject to this limitation will be awarded on a first-come, first-served basis.

68.4(9) *Final award amounts.* Rescinded IAB 7/15/09, effective 7/1/09.

[**ARC 7557B**, IAB 2/11/09, effective 3/18/09; **ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09]

261—68.5(81GA,HF868) Agreement, compliance and repayment provisions. Rescinded IAB 7/4/07, effective 6/15/07.

These rules are intended to implement Iowa Code sections 15.326 to 15.336 as amended by 2009 Iowa Acts, Senate File 344.

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[Filed ARC 8145B (Notice ARC 7971B, IAB 7/15/09), IAB 9/23/09, effective 10/28/09]

CHAPTER 69
LOAN AND CREDIT GUARANTEE PROGRAM

261—69.1(15E,81GA,HF868) Purpose. The purpose of the loan and credit guarantee program is to create incentives and assistance to increase the flow of private capital to targeted industry businesses, microenterprises, and other qualified businesses, to promote industrial modernization and technology adoption, to encourage the retention and creation of jobs, and to encourage the export of goods and services sold by Iowa businesses in national and international markets. The department may invest up to 10 percent of the assets of the loan and credit guarantee fund or $500,000, whichever is higher, to provide assistance to microenterprises.

261—69.2(15E,81GA,HF868) Definitions.

"Act" means Iowa Code sections 15E.221 to 15E.227 as amended by 2005 Iowa Acts, House File 868.

"Board" or "IDED board" means the Iowa economic development board established in Iowa Code section 15.103 as amended by 2005 Iowa Acts, House File 868, section 4, and composed of 15 voting members and 7 ex officio nonvoting members.

"Committee" means the loan and credit guarantee committee described in 261—subrule 1.3(4) and created by the board to review applications requesting assistance from the loan and credit guarantee program and make funding recommendations to the board.

"Department" or *"IDED"* means the Iowa department of economic development.

"Financial institution" means a state bank as defined in Iowa Code section 524.103, subsection 33, a state bank chartered under the laws of any other state, a national banking association, a trust company, a federally chartered savings and loan association, an out-of-state state-chartered savings bank, a financial institution chartered by the federal home loan bank board, a non-Iowa chartered savings and loan association, an association incorporated or authorized to do business under Iowa Code chapter 534, or a production credit association or such other financial institution as defined by the department for purposes of this chapter.

"Microenterprise" means a business providing services with five or fewer full-time equivalent employee positions, and located in a municipality with a population under 50,000 that is not contiguous to a municipality with a population of 50,000 or more.

"Program" means the loan and credit guarantee program established in the Act.

"Qualified business" means an existing or proposed business entity with an annual average number of employees not exceeding 200 employees. "Qualified business" does not include businesses engaged primarily in retail sales, real estate, or the provision of health care or other professional services. "Qualified business" includes professional services businesses that provide services to targeted industry businesses or other entities. To be considered a qualified business, a professional services business must derive a majority of its revenue from targeted industry businesses.

"Targeted industry business" means an existing or proposed business entity, including an emerging small business or qualified business which is operated for profit and which has a primary business purpose of doing business in at least one of the targeted industries designated by the department, which include life sciences, software and information technology, advanced manufacturing, value-added agriculture, and any other industry designated as a targeted industry by the board.

261—69.3(15E,81GA,HF868) Application and review process. The department, with the advice of the loan and credit guarantee committee, shall develop and make available a standardized application pertaining to the issuance of loan and credit guarantees. Subject to the availability of funds, the loan and credit guarantee committee will review applications and make recommendations to the board pertaining to the approval of loan and credit guarantee awards.

69.3(1) Each participating financial institution shall identify and underwrite potential lending opportunities with qualified businesses, microenterprises, and targeted industry businesses. Upon determination by the financial institution that the business meets the financial institution's underwriting

criteria, subject to the approval of a loan and credit guarantee, the financial institution shall submit a loan and credit guarantee application and the underwriting information to the department.

69.3(2) It shall be the responsibility of the financial institution and the qualified business, microenterprise, or targeted industry business to submit a complete application. The department shall determine when an application is complete. Once the department has determined that an application is complete, the committee and the board shall consider the application as expeditiously as possible.

69.3(3) The department may develop an application procedure to allow a qualified business, microenterprise, or targeted industry business to apply directly to the department for a preliminary guarantee determination. A preliminary guarantee determination may be issued by the department, following board approval, subject to the qualified business's, microenterprise's, or targeted industry business's securing a commitment for financing from a financial institution.

261—69.4(15E,81GA,HF868) Application approval or rejection. Upon approval of an application, the department shall issue a loan and credit guarantee agreement with a financial institution outlining the terms and conditions upon which the loan will be guaranteed.

69.4(1) No guarantee shall become effective until the required fees have been paid. Such payment, along with an executed loan authorization, shall indicate the financial institution's acceptance of the terms of the loan authorization.

69.4(2) In the event the board rejects an application, the financial institution and the borrower will be sent notice, including reasons for the rejection.

261—69.5(15E,81GA,HF868) Terms and conditions. A loan and credit guarantee provided to a financial institution for a qualified business, microenterprise, or targeted industry business shall not exceed $1 million. Loan and credit guarantees provided under the program to more than one financial institution for a single qualified business, microenterprise, or targeted industry business shall not exceed $10 million. A single qualified business, microenterprise, or targeted industry business may have multiple guarantees with multiple financial institutions. The aggregate amount of loan or credit guarantees provided to financial institutions for any single qualified business, microenterprise, or targeted industry business shall not exceed $10 million.

69.5(1) A loan and credit guarantee provided under the program shall be for eligible project costs. Eligible project costs include expenditures for production equipment and machinery, land and real estate, working capital for operations and export transactions, research and development, marketing, engineering and architectural fees, and such other costs as the department may designate.

69.5(2) The loan and credit guarantee provided under the program shall be negotiated on a case-by-case basis and in no case shall exceed more than 50 percent of the amount to be loaned to the qualified business, microenterprise, or targeted industry business by the financial institution for the project as described in the loan and credit guarantee application.

69.5(3) Interest rate and term of the loan to be secured shall be agreed upon between the financial institution and the borrower, provided that no guarantee exceeds 15 years.

69.5(4) Repayment of a guaranteed loan shall be secured by such collateral as the department deems prudent.

69.5(5) The covenants and requirements of the loan shall be established by the financial institution and department in accordance with prudent lending practices.

261—69.6(15E,81GA,HF868) Administrative costs and program fees. The department shall establish fees for participation in the loan and credit guarantee program.

69.6(1) The department shall charge a nonrefundable application fee for a loan and credit guarantee. The department shall set the application fee annually and include the fee information in the application materials for the loan and credit guarantee program. This fee will be payable upon submission of an application for a loan and credit guarantee from a financial institution or a qualified business, microenterprise, or targeted industry business and shall not exceed $1,000.

69.6(2) Upon the approval of a loan and credit guarantee application, the department shall charge a fee for authorization of the loan or credit guarantee. The fee shall be 2.5 percent of the amount of funds to be guaranteed under the program. No loan and credit guarantee agreement will be executed until the fee is received by the department.

69.6(3) For a line of credit, the authorization fee shall be one-half percent per year renewable annually for a period not to exceed five years. The guarantee will automatically expire if the fee is not submitted upon renewal of the line of credit.

261—69.7(15E,81GA,HF868) Administration of guarantees. A preliminary commitment issued by the department shall be effective for 90 days from the date of issuance. If the contingencies outlined in the preliminary commitment are not met within 90 days, the preliminary commitment will be void.

69.7(1) A loan and credit guarantee agreement shall be executed between a financial institution, the borrower and the department. These rules and applicable state laws and regulations shall be part of the agreement. The loan and credit guarantee agreement shall include, but is not limited to, the following:

a. Provisions setting forth the responsibilities of the financial institution to prudently underwrite and service insured loans in such a manner as would be the normal and customary practice of a prudent lender making or servicing a loan.

b. A requirement that the financial institution notify the department in writing within 5 business days after a borrower's payment is 30 days late and within 15 business days of any other default or event or condition which indicates the loan may be difficult to collect in full. Upon default of the loan, the financial institution, in consultation with the department, shall take such action as may be prudent, including foreclosing on and liquidating collateral.

c. The department may, at its discretion, cancel or reduce a loan or credit guarantee if the financial institution demonstrates instances of fraud or gross malfeasance under the loan and credit guarantee agreement.

d. Awards may be conditioned upon commitment of other sources of funds necessary to complete the project or upon other matters as determined appropriate by the department.

69.7(2) The financial institution and borrower must execute and return the loan and credit guarantee agreement to the department within the time period specified by the department in the agreement. Failure to do so may be cause for the department to terminate the loan and credit guarantee.

69.7(3) Any substantive change to a loan and credit guarantee agreement, such as time extensions, budget revisions and significant alteration of the funded project that change the scope, location, objectives or scale of the approved project or changes in terms of credit, shall be considered a request for an amendment. Amendments must be requested in writing by the financial institution. Amendments are not considered valid until approved by the committee and the department and confirmed in writing by IDED following the procedure specified in the contract between the recipient and IDED.

69.7(4) Financial institutions shall comply with these rules, with any provisions of the Iowa Code governing activities performed under this program and with applicable local regulations.

261—69.8(15E,83GA,SF344) Applicability of LCG program after July 1, 2009.

69.8(1) Effective July 1, 2009, the LCG program is rescinded by 2009 Iowa Acts, Senate File 344, section 9.

69.8(2) For awards made prior to July 1, 2009, the rules of 261—Chapter 69 shall govern for purposes of loan guarantee contract administration and closeout of contracts. A contract amendment is not allowable if the result of the amendment is to increase the benefits available.

This rule is intended to implement 2009 Iowa Acts, Senate File 344.

[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09]

These rules are intended to implement Iowa Code sections 15E.221 to 15E.227 and 2003 Iowa Acts, First Extraordinary Session, chapter 2, section 69, and 2005 Iowa Acts, House File 868.

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CHAPTER 70
PORT AUTHORITY GRANT PROGRAM

261—70.1(81GA,HF2782) Purpose. The purpose of the Iowa port authority grant program is to provide support for programs that enhance, foster, aid, provide, or promote transportation, economic development, recreation, governmental operations, culture, or research within the jurisdiction of a port authority pursuant to Iowa Code Supplement chapter 28J.

261—70.2(81GA,HF2782) Definitions.

"Authorized purposes" means activities that enhance, foster, aid, provide, or promote transportation, economic development, housing, recreation, education, governmental operations, culture, or research within the jurisdiction of a port authority.

"Board" means the board of directors of a port authority established pursuant to Iowa Code Supplement section 28J.2.

"City" means the same as defined in Iowa Code section 362.2.

"Construction" means alteration, creation, development, enlargement, erection, improvement, installation, reconstruction, remodeling, and renovation.

"Contracting governmental agency" means any governmental agency or taxing district of the state that, by action of its legislative authority, enters into an agreement with a port authority pursuant to Iowa Code Supplement section 28J.17.

"Cost" as applied to a port authority facility means any of the following:

1. The cost of construction contracts, land, rights-of-way, property rights, easements, franchise rights, and interests required for acquisition or construction.
2. The cost of demolishing or removing any buildings or structures on land, including the cost of acquiring any lands to which those buildings or structures may be moved.
3. The cost of diverting a highway, interchange of a highway, and access roads to private property, including the cost of land or easements, and relocation of a facility of a utility company or common carrier.
4. The cost of machinery, furnishings, equipment, financing charges, interest prior to and during construction and for no more than 12 months after completion of construction, engineering, and expenses of research and development with respect to a facility.
5. Legal and administrative expenses, plans, specifications, surveys, studies, estimates of cost and revenues, engineering services, and other expenses necessary or incident to determining the feasibility or practicability of acquiring or constructing a facility.
6. The interest on the revenue bonds and pledge orders during the period or estimated period of construction and for 12 months thereafter, or for 12 months after the acquisition date, reserve funds as the port authority deems advisable in connection with a facility and the issuance of port authority revenue bonds and pledge orders.
7. The costs of issuance of port authority revenue bonds and pledge orders.
8. The cost of diverting a rail line, rail spur track, or rail spur track switch, including the cost of land or easements, and relocation of a facility of a utility company or common carrier.
9. The cost of relocating an airport's runways, terminals, and related facilities including the cost of land or easements, and relocation of a facility of a utility company or common carrier.

"Department" means the Iowa department of economic development.

"Facility" or *"port authority facility"* means real or personal property owned, leased, or otherwise controlled or financed by a port authority and related to or in furtherance of one or more authorized purposes.

"Governmental agency" means a department, division, or other unit of state government of this state or any other state, city, county, township, or other governmental subdivision, or any other public corporation or agency created under the laws of this state, any other state, the United States, or any department or agency thereof, or any agency, commission, or authority established pursuant to an interstate compact or agreement or combination thereof.

"Person" means the same as defined in Iowa Code section 4.1.

"Pledge order" means a promise to pay out of the net revenues of a port authority, which is delivered to a contractor or other person in payment of all or part of the cost of a facility.

"Political subdivision" means a city, county, city-county consolidation, or multicounty consolidation, or combination thereof.

"Political subdivisions comprising the port authority" means the political subdivisions which created or participated in the creation of the port authority under Iowa Code Supplement section 28J.2, or which joined an existing port authority under Iowa Code Supplement section 28J.4.

"Port authority" means an entity created pursuant to Iowa Code Supplement section 28J.2.

"Port authority revenue bonds" means revenue bonds and revenue refunding bonds issued pursuant to Iowa Code Supplement section 28J.21.

"Public roads" means all public highways, roads, and streets in this state, whether maintained by the state or by a county or city.

"Revenues" means rental fees and other charges received by a port authority for the use or services of a facility; a gift or grant received with respect to a facility; moneys received with respect to the lease, sublease, sale, including installment sale or conditional sale, or other disposition of a facility; moneys received in repayment of and for interest on any loans made by the port authority to a person or governmental agency; proceeds of port authority revenue bonds for payment of principal, premium, or interest on the bonds authorized by the port authority; proceeds from any insurance, condemnation, or guarantee pertaining to the financing of the facility; and income and profit from the investment of the proceeds of port authority revenue bonds or of any revenues.

261—70.3(81GA,HF2782) Program procedures.

70.3(1) Iowa port authority grants shall not exceed $80,000 per port authority unless the port authority demonstrates a multiple port authority or regional approach to other government agencies, private individuals or companies beyond the geographic boundaries of the political subdivisions comprising the port authority.

70.3(2) Iowa port authority grants may be awarded on an annual basis with not more than two grants awarded to a single port authority in a single fiscal year.

70.3(3) Not more than 10 percent of any moneys received by a port authority shall be used by the port authority for administrative purposes.

261—70.4(81GA,HF2782) Eligibility.

70.4(1) *Eligible applicants.* Only Iowa port authorities are eligible to apply to the department for funding under this program. Iowa port authority grant funds may be awarded to qualified port authorities that do all of the following:

a. Provide the department with all information required by the department.

b. Demonstrate a dollar-for-dollar funding match. Assistance is limited to 50 percent or less of the total project costs.

c. Provide a plan to the department demonstrating the method for distributing grant moneys received from the department in accordance with Iowa Code Supplement chapter 28J.

70.4(2) *Eligible projects.* Projects eligible for Iowa port authority grant funding include, but are not limited to, the following:

a. Start-up or early-stage growth activities to be used to leverage conventional financing from commercial lenders or private investors. Assistance will generally be made in stages with amounts to be determined by port authority development, growth, and defined milestones. Port authority grant moneys may not be used to cover payroll or payroll expenses for a port authority.

b. Feasibility, environmental, or engineering studies to be utilized by the port authority for costs relating to the development, expansion, or redevelopment of new, existing, or potential port authority facilities. Assistance will generally be made in stages with amounts to be determined by the progress of the study and completion of study objectives.

261—70.5(81GA,HF2782) Application and review criteria. Subject to the availability of funds, applications will be due to the department no later than the close of business on October 1, or the first following business day if that day falls on a nonbusiness day. In ranking applications for grants, the department shall consider a variety of factors including, but not limited to, the following:

1. The demonstration of need for financial assistance.
2. The proportion of the funding match being provided.
3. Previous Iowa port authority grant performance.
4. Identification and achievability of program objectives, with measurable milestones to evaluate the effectiveness of financial assistance.

261—70.6(81GA,HF2782) Monitoring, reporting and follow-up.

70.6(1) *Monitoring.* The department reserves the right to monitor port authority records to ensure compliance with the terms of the award. Department staff will contact the port authority to arrange such visits at a mutually agreeable time.

70.6(2) *Reporting.* Port authorities shall submit to the department reports in the form and on a schedule as required by the department. The department retains the right to request information on a more frequent basis at any time during the period of the project as a condition of the use of department moneys.

70.6(3) *Misuse of funds.* Any person receiving funds under the Iowa port authority grant program is subject to criminal penalties under Iowa Code section 15A.3 if it is determined that the person knowingly made a false statement to procure financial assistance from the state.

These rules are intended to implement 2006 Iowa Acts, House File 2782, section 1(4).

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CHAPTER 71
TARGETED JOBS WITHHOLDING TAX CREDIT PROGRAM

261—71.1(403) Definitions.

"Act" means Iowa Code section 403.19A.

"Board" means the Iowa economic development board created in Iowa Code section 15.103.

"Business" means any professional services or industrial enterprise, including medical treatment facilities, manufacturing facilities, corporate headquarters, and research facilities. "Business" does not include a retail operation or a business which closes or substantially reduces its operation in one area of this state and relocates substantially the same operation to another area of this state.

"Countywide average wage" means the average that the department calculates using the most current four quarters of wage and employment information as provided in the quarterly covered wage and employment data report as provided by the department of workforce development. Agricultural/mining and governmental employment categories are deleted in compiling the wage information.

"Department" means the Iowa department of economic development.

"Employee" means the individual employed in a targeted job that is subject to a withholding agreement.

"Employer" means a business creating or retaining targeted jobs in an urban renewal area of a pilot project city pursuant to a withholding agreement.

"Employer's taxable capital investment" means a capital investment in real property, including but not limited to the purchase of land and existing buildings and building construction included in the project, that is subject to taxation by the local taxing authority.

"Local financial support" or *"local match"* means cash or in-kind contributions to be used for the project from a private donor, a business, or the pilot project city. "Cash" includes but is not limited to loans, forgivable loans or grants. "In-kind contributions" means contributions directly related to the project and includes but is not limited to the construction of private or public infrastructure or other amenities and improvements.

"Pilot project city" means a city that has applied and been approved as a pilot project city pursuant to rule 71.2(403).

"Qualifying investment" means a capital investment in real property including the purchase price of land and existing buildings, site preparation, building construction, and long-term lease costs. "Qualifying investment" also means a capital investment in depreciable assets.

"Targeted job" means a job in a business which is or will be located in an urban renewal area of a pilot project city that pays a wage at least equal to the countywide average wage. "Targeted job" includes new or retained jobs from Iowa business expansions or retentions within the city limits of the pilot project city and those jobs resulting from established out-of-state businesses, as defined by the department, that are moving to or expanding in Iowa.

"Urban renewal area" means the same as defined in Iowa Code section 403.17.

"Withholding agreement" means an agreement authorized in rule 71.4(403) between a pilot project city and an employer concerning the targeted jobs withholding tax credit.

[**ARC 7561B**, IAB 2/11/09, effective 3/18/09 (See Delay note at end of chapter); **ARC 7848B**, IAB 6/17/09, effective 7/1/09; **ARC 8147B**, IAB 9/23/09, effective 10/28/09]

261—71.2(403) Eligibility requirements. An eligible city may apply to the department to be designated as a pilot project city. An eligible city is a city that contains three or more census tracts and is located in a county meeting one of the following requirements:

1. A county that borders Nebraska.
2. A county that borders South Dakota.
3. A county that borders a state other than Nebraska or South Dakota.

[**ARC 7561B**, IAB 2/11/09, effective 3/18/09 (See Delay note at end of chapter)]

261—71.3(403) Application process and review.

71.3(1) *Application.* The department shall develop a standardized application and make the application available to eligible cities. The application procedures are as follows:

a. An eligible city seeking approval as a pilot project city will submit an application to the department. The department shall determine if the application is complete.

b. The department will review the application and consider the following criteria:

(1) Need for pilot project status. The city shall demonstrate why status as a pilot project city is necessary, including how the city will utilize the program to attract and retain employers.

(2) Planned and current projects. The city shall provide information on planned and current economic development projects that are taking place or will take place in an urban renewal area. The city shall demonstrate its ability to enter into a withholding agreement with an eligible business within one year of the city's approval as a pilot project city.

(3) Use of withholding funds. If approved as a pilot project city, the city shall indicate how the city plans to utilize withholding funds generated from the program. The city shall provide an estimate of the number of withholding agreements the city anticipates executing, the amount of withholding funds the city expects to generate as a result of the program, and the investment to be leveraged by use of the program.

(4) Urban renewal areas. The city shall identify the number of urban renewal areas in the city and the location of the urban renewal areas where withholding funds may be utilized.

(5) Matching funds. The city shall identify its ability to provide matching funds for projects involving withholding credits, including the potential sources of matching funds.

c. A resolution of support from the city applying for approval as a pilot project city is required as part of the application. This resolution shall include approval of the submission of the application to the department for status as a pilot project city.

d. The department may request additional information from a city that is applying for pilot project city status or may use other resources to obtain the needed information.

e. Applications filed on or after October 1, 2006, shall not be considered.

71.3(2) *Approval of applications.* The department shall approve four eligible pilot project cities: one pursuant to 71.2"1," one pursuant to 71.2"2," and two pursuant to 71.2"3." If more than two cities meeting the requirements of 71.2"3" apply to be designated as a pilot project city, the department of management, in consultation with the department, shall determine which two cities hold the most potential to create new jobs or generate the greatest capital in their areas. Department staff will prepare a recommendation for each of the cities to be approved as pilot project cities. The board will make the final decision to approve, defer or deny applications. Once applications are approved by the board, all communities applying for pilot project city status will be notified of the status of their applications.

71.3(3) *Status as a pilot project city.* If a pilot project city does not enter into a withholding agreement within one year of its approval as a pilot project city, the city shall lose its status as a pilot project city. Upon such occurrence, the department shall take applications from other eligible cities to replace that city. Another city shall be designated within six months.

[**ARC 7561B**, IAB 2/11/09, effective 3/18/09 (See Delay note at end of chapter)]

261—71.4(403) Withholding agreements.

71.4(1) *Designated account.* An approved pilot project city may provide by city ordinance for a designated account for the deposit of funds generated through withholding agreements under the targeted jobs withholding tax credit program.

71.4(2) *Entering into a withholding agreement.*

a. *Agreement between pilot project city and business.* A pilot project city may enter into a withholding agreement with a business locating to the community from another state that is creating or retaining targeted jobs in an urban renewal area. The pilot project city may enter into a withholding agreement with a business currently located in Iowa only if the business is creating at least ten new jobs or making a qualifying investment of at least $500,000 within the urban renewal area.

b. Total amount of withholding tax credits. The withholding agreement shall provide for the total amount of withholding tax credits awarded. An agreement shall not provide for an amount of withholding tax credits that exceeds the amount of qualifying investment made in the project.

c. Ineligibility if there is competition between pilot project city and non-pilot project city. A withholding agreement shall not be entered into with an employer not already located in a pilot project city when another Iowa community is competing for the same project and both the pilot project city and the other Iowa community are seeking assistance from the department.

d. Option of a business to enter into withholding agreement. A business shall not be obligated to enter into a withholding agreement with a pilot project city.

e. 2013 sunset date. A pilot project city shall not enter into a withholding agreement with a business after June 30, 2013.

f. Department approval of withholding agreements. Prior to entering into a withholding agreement with a business, a pilot project city shall request department approval of the withholding agreement. The process for requesting approval from the department is described in subrule 71.5(1).

71.4(3) *Required components of a withholding agreement.* A withholding agreement shall be disclosed to the public and shall contain all of the following:

a. A copy of the adopted development agreement between the pilot project city and employer, including how withholding funds generated by the city will be used.

b. A list of all other incentives or financial assistance the business has requested or is receiving from other federal, state, or local economic development programs including loans, grants, forgivable loans, and tax credits.

c. The amount of assistance provided by the pilot project city for the project.

d. Documentation of the approval of the project by local participating authorities.

e. The total amount of withholding tax credits awarded.

f. The total number of created and retained jobs included in the project.

g. The required countywide average wage.

h. The total qualifying investment included in the project.

i. The total required matching local financial support for the project.

71.4(4) *Length of withholding agreements.* A withholding agreement may have a term of up to ten years.

71.4(5) *Withholding generated through the program.*

a. Once a pilot project city and an employer have entered into a withholding agreement, an amount equal to 3 percent of the gross wages paid by the business to each employee under a withholding agreement shall be credited from the payment made by the employer pursuant to Iowa Code Supplement section 422.16. If the amount of withholding by the employer is less than 3 percent of the gross wages paid to the employees covered by the withholding agreement, the employer shall receive a credit against other withholding taxes due by the employer or may carry the credit forward for up to ten years or until depleted, whichever occurs first.

b. The employer shall submit the amount of the credit quarterly, in the same manner as withholding payments are made to the department of revenue, to the pilot project city.

c. An employee whose wages are subject to a withholding agreement shall receive full credit for the amount withheld under the targeted jobs withholding tax credit program as provided in Iowa Code Supplement section 422.16.

71.4(6) *Use of withholding funds.* A pilot project city shall allocate the withholding funds into a designated account in the special fund for the urban renewal area in which the targeted jobs are located. All funds deposited shall be used or pledged by the pilot project city for an urban renewal project related to the employer pursuant to the withholding agreement.

71.4(7) *Local match requirement.* The intent of the program is to require a pilot project city to contribute to projects that result in an increase in the city's tax collections. If a pilot project city realizes an increase in tax revenues due to the project, then the pilot project city is required to contribute at least 10 percent of the required local match. For example, if a project includes the purchase and remodeling of a building that results in increased tax collections to the pilot project city by an amount equal to 10

percent of the total amount of the withholding tax credit award, then the pilot project city is required to contribute at least 10 percent of the required local match for the project. In cases in which a project would include the purchase of a building but there is no increase in tax collections to the pilot project city, the pilot project city is not required to contribute to the required local match.

a. A pilot project city entering into a withholding agreement shall arrange for matching local financial support for the project. The local match required shall be in an amount equal to one dollar for every one dollar of withholding tax credit received by the pilot project city.

b. If the project, when completed, will increase the amount of an employer's taxable capital investment by an amount equal to at least 10 percent of the amount of withholding tax credit dollars received by the pilot project city, then the pilot project city shall itself contribute at least 10 percent of the local match amount computed under paragraph *"a."*

c. If the project, when completed, will not increase the amount of the employer's taxable capital investment by an amount equal to at least 10 percent of the amount of withholding tax credit dollars received by the pilot project city, then the pilot project city shall not be required to make a contribution to the local match.

d. A pilot project city's contribution, if any, to the local match may include the dollar value of any new tax abatement provided by the city to the business for new construction. For purposes of this paragraph, new construction includes building additions, remodeling, renovations, and updates.

71.4(8) *Termination of a withholding agreement.* Following the termination of a withholding agreement, the employer credits shall cease and any funds received by the pilot project city after the agreement has been terminated shall be remitted to the state treasurer to be deposited in the general fund of the state. The pilot project city shall notify the department of revenue and the department of economic development within 30 days of the termination of the withholding agreement. If the employer does not meet the requirements of the withholding agreement, the agreement shall be terminated and any withholding credits for the employer shall cease. If the employer has created or retained the required number of new jobs under the agreement, and the number of jobs falls below the required level, the employer shall not be considered in default until 18 months after the date of the decrease in new jobs.

71.4(9) *Participation in other programs.* An employer may participate in the Iowa industrial new jobs training program under Iowa Code Supplement section 260E.5 or may claim a supplemental withholding credit under Iowa Code Supplement section 15E.197, at the same time the employer is participating in the targeted jobs withholding tax credit program. The withholding credit under section 260E.5 and the supplemental withholding credit under section 15E.197 shall be collected and disbursed prior to the collection and disbursement of the withholding credit under the targeted jobs withholding tax credit program.

[**ARC 7561B**, IAB 2/11/09, effective 3/18/09 (See Delay note at end of chapter); **ARC 7847B**, IAB 6/17/09, effective 5/21/09; **ARC 7848B**, IAB 6/17/09, effective 7/1/09; **ARC 8147B**, IAB 9/23/09, effective 10/28/09]

261—71.5(403) Project approval.

71.5(1) *Request for department approval of withholding agreement.*

a. *Request for approval form.* Prior to entering into a withholding agreement with an employer, a pilot project city must receive approval from the department. The department shall develop and make available to the pilot project cities a standardized form to request department approval of a proposed withholding agreement. To request department approval of a proposed withholding agreement, a pilot project city shall provide the department with the following information:

(1) A general description of the project, including how the pilot project city will utilize withholding funds generated by the project.

(2) Base employment of the number of full-time equivalent positions at a business as established by the department and the pilot project city, using the business's payroll records, as of the date that a business files an application with a pilot project city for financial assistance under the program.

(3) Information regarding the number of targeted jobs in the project, the wages of the targeted jobs, and the types of jobs created by the project.

(4) A budget for the project, showing the total project cost, the amount of local matching funds committed to the project, and the amount of withholding funds the pilot project city will receive from the project.

(5) A copy of the proposed withholding agreement to be entered into between the pilot project city and the employer.

(6) A letter or resolution of support from the local government showing support for the project.

b. *Timing of submittal.* Requests for department approval of a proposed withholding agreement may be submitted at any time. The department will review requests for approval of a proposed withholding agreement in as timely a manner as possible.

c. *Department action on requests for approval.* The department may approve, deny, or suggest changes to a withholding agreement. The department shall only deny an agreement if the agreement fails to meet the requirements as stated in subrule 71.4(2) or the local match requirement as stated in subrule 71.4(7) or if an employer is not in good standing as to prior or existing agreements with the department. A pilot project city will be notified in writing of the department's decision regarding the proposed withholding agreement.

71.5(2) *Certification to the department of revenue.*

a. The employer shall certify to the department of revenue that the targeted jobs withholding tax credit is in accordance with the withholding agreement and shall provide other information the department of revenue may require.

b. A pilot project city shall certify to the department of revenue the amount of the targeted jobs withholding tax credit an employer has remitted to the city and shall provide other information the department of revenue may require.

c. Notice of any withholding agreement shall be provided promptly to the department of revenue following its execution between a pilot project city and an employer.

[**ARC 7561B**, IAB 2/11/09, effective 3/18/09 (See Delay note at end of chapter); **ARC 7847B**, IAB 6/17/09, effective 5/21/09; **ARC 7848B**, IAB 6/17/09, effective 7/1/09; **ARC 8147B**, IAB 9/23/09, effective 10/28/09]

261—71.6(403) Reporting requirements.

71.6(1) *Required reports.*

a. At the time the pilot project city submits its budget to the department of management, the pilot project city shall submit to the department of management and the department a description of the activities involving the use of withholding agreements. The description shall include, but not be limited to, the following:

(1) The total number of targeted jobs associated with withholding agreements and the wages of those targeted jobs.

(2) A breakdown of the number of targeted jobs that are associated with Iowa business expansions or retentions within the city limits of the pilot project city and the number of targeted jobs resulting from out-of-state businesses moving to or expanding in Iowa.

(3) The number of withholding agreements and the amount of withholding credits associated with those agreements.

(4) The types of businesses that entered into withholding agreements with the city and the types of businesses that declined the city's proposal to enter into a withholding agreement with the city.

b. The pilot project city shall provide information documenting the total amount of payments and receipts from the special fund under the withholding agreement, including all agreements with an employer to suspend, abate, exempt, rebate, refund, or reimburse property taxes, to provide a grant for property taxes, to provide a grant not related to property taxes, or to make a direct payment of taxes. The pilot project city shall submit this information to the department annually by September 1 covering the prior fiscal year (July 1 to June 30). The department shall verify the information provided by the pilot project city. The department will verify job creation or retention using the method described in 261—Chapter 188.

c. The department may request additional reports from pilot project cities as necessary to determine the status of the targeted jobs withholding tax credit program.

d. The department shall make, at minimum, an annual on-site monitoring visit to each pilot project city to verify the documented information. The pilot project city shall provide the following:

(1) Payroll records that correspond to the quarterly report provided by the pilot project city for the department of revenue;

(2) Information substantiating the total amount of qualifying investment made in the project;

(3) Information substantiating the total amount of local financial support made in the project;

(4) Payments and receipts as described in paragraph 71.6(1)*"b."*

71.6(2) *Annual report.* As required by Iowa Code section 15.104(9)*"k,"* the department shall include in its annual report information about the targeted jobs withholding tax credit program. This report is due on January 31 of each year.

[**ARC 7561B**, IAB 2/11/09, effective 3/18/09 (See Delay note at end of chapter); **ARC 7848B**, IAB 6/17/09, effective 7/1/09; **ARC 8147B**, IAB 9/23/09, effective 10/28/09]

These rules are intended to implement Iowa Code section 403.19A.

[Filed emergency 7/19/06—published 8/16/06, effective 7/19/06]

[Filed 9/22/06, Notice 8/16/06—published 10/11/06, effective 11/15/06]

[Filed ARC 7561B (Notice ARC 7249B, IAB 10/8/08), IAB 2/11/09, effective 3/18/09][1]

[Editorial change: IAC Supplement 3/25/09]

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[Filed Emergency ARC 7848B, IAB 6/17/09, effective 7/1/09]

[Filed ARC 8147B (Notice ARC 7846B, IAB 6/17/09), IAB 9/23/09, effective 10/28/09]

[1] The March 18, 2009, effective date of **ARC 7561B** was delayed 70 days by the Administrative Rules Review Committee at its meeting held March 6, 2009.

CHAPTER 72
IOWA EXPORT TRADE ASSISTANCE PROGRAM

[Prior to 11/15/89, see 261—Ch 56]
[Prior to 7/19/95, see 261—Ch 61]
[Prior to 9/6/00, see 261—Ch 68]
[Prior to 7/4/07, see 261—Ch 132]

261—72.1(78GA,ch197) Purpose. The purpose of the Iowa export trade assistance program is to promote the development of international trade activities and opportunities for exporters in the state of Iowa through encouraging increased participation in overseas trade shows and trade missions by providing financial assistance to successful applicants.

261—72.2(78GA,ch197) Definitions.

"Department" means Iowa department of economic development.

"Division" means the international division of the department.

"Exporter" means a person or business that sells one of the following outside of the United States:

- A manufactured product.
- A value-added product.
- An agricultural product.
- A service.

"Sales representative" means a contracted representative of an Iowa firm with the authority to consummate a sales transaction.

"Trade mission" means a mission event led by the Iowa department of economic development or designated representative. Qualified trade missions must include each of the following:

- Advanced operational and logistical planning.
- Advanced scheduling of individualized appointments with prequalified prospects interested in participants' product or service being offered.
- Background information on individual prospects prior to appointments.

Trade missions may also include:

- In-depth briefings on market requirements and business practices for targeted country.
- Interpreter services.
- Development of a trade mission directory prior to the event containing individual company data regarding the Iowa company and the products being offered.
- Technical seminars delivered by the mission participants.

[**ARC 9064B**, IAB 9/8/10, effective 10/13/10]

261—72.3(78GA,ch197) Eligible applicants. The export trade assistance program is available to Iowa firms either producing or adding value to products, or both, or providing services in the state of Iowa. To be eligible to receive trade assistance, applicants must meet all five of the following criteria:

1. [1]Be an entity employing fewer than 500 individuals, 75 percent or more of whom are employed within the state of Iowa,
2. Exhibit products or services or samples of Iowa manufactured, processed or value-added products or agricultural commodities in conjunction with a foreign trade show or trade mission (catalog exhibits are permitted if they are used in conjunction with the exhibit of a product or service or in association with the firm's participation in a trade mission),
3. Have at least one full-time employee or sales representative attend the trade show or participate in the trade mission,
4. Provide proof of deposit or executed payment agreement for a trade show, or payment of the trade mission participation fee, and
5. Be considered by IDED as compliant with past ETAP contractual agreements.

[**ARC 9064B**, IAB 9/8/10, effective 10/13/10]

[1] See Objection at end of this Chapter.

261—72.4(78GA,ch197) Eligible reimbursements. The department's reimbursement to approved applicants for assistance shall not exceed 75 percent of eligible expenses. Total reimbursement shall not exceed $4000 per event. Payments will be made by the department on a reimbursement basis upon submission of proper documentation and approval by the department of paid receipts received by the division. Reimbursement is limited to the following types of expenses:

72.4(1) *Trade shows.*

a. Space rental.

b. Booth construction at show site.

c. Booth equipment or furniture rental.

d. Freight costs associated with shipment of equipment or exhibit materials to the participant's booth and return.

e. Booth utility costs.

f. Interpreter fees for the duration of the trade show.

g. Per diem (lodging and meals) for the day immediately before the opening day of the trade show through the day immediately after the closing day of the trade show; per diem is calculated at 50 percent of the rate schedules provided by the U.S. Department of State for travel in foreign areas; and per diem will be paid for only one sales representative.

72.4(2) *Trade mission.*

a. Mission participation fee.

b. Per diem (lodging and meals) for each day identified in the official mission itinerary. Per diem is calculated at 50 percent of the rate schedules provided by the U.S. Department of State for travel in foreign areas and will be paid for only one sales representative.

c. Freight costs associated with shipment of equipment or exhibit materials to the participant's meeting site and return.

d. Presentation equipment at the meeting site.

e. Interpreter fees, if not included in the participation fee, and as needed during the trade mission.

261—72.5(78GA,ch197) Applications for assistance. To access the export trade assistance program, the applicant shall:

72.5(1) Complete the export trade assistance program's application form and return it to the division prior to trade event participation. Successful applicants will be required to enter into a contract for reimbursement with the department prior to trade event participation.

72.5(2) Exhibit products or services or samples of Iowa products in conjunction with a foreign trade show or trade mission (catalog exhibits are permitted if they are used in conjunction with the exhibit of a product or service or in association with the firm's participation in a trade mission).

72.5(3) Have in attendance at the trade show or trade mission at least one full-time employee or sales representative of the applicant.

72.5(4) Pay all expenses related to participation in the trade event and submit for reimbursement from the department for eligible, documented expenses.

72.5(5) Complete the final report form and return it to the division before final reimbursement can be made.

261—72.6(78GA,ch197) Selection process. Applications will be reviewed in the order received by the division. Successful applicants will be funded on a first-come, first-served basis to the extent funds are available. When all funds have been committed, applications shall be held in the order they are received. In the event that committed funds are subsequently available, the applications shall be processed in the order they were received for events that have not yet occurred.

261—72.7(78GA,ch197) Limitations. A participant in the export trade assistance program shall not utilize the program's benefits more than three times during the state's fiscal year. Participants shall not utilize export trade assistance program funds for participation in the same trade show during two consecutive state fiscal years, or for participation in the same trade show more than two times.

Participants shall not utilize export trade assistance program funds for participation in multiple trade shows in the same country during the same state fiscal year.

261—72.8(78GA,ch197) Forms. The following forms are available from the department and will be used by the department in the administration of the export trade assistance program:

1. ETAP application form,
2. ETAP final report form,
3. Reimbursement agreement.

These rules are intended to implement 1999 Iowa Acts, chapter 197, section 1, subsection 4.

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[Filed ARC 9064B (Notice ARC 8833B, IAB 6/2/10), IAB 9/8/10, effective 10/13/10]

OBJECTION

At its meeting held February 3, 1992, the Administrative Rules Review Committee voted to object to the amendments to rule 261 IAC 61.3"1"* on the grounds those amendments are unreasonable. This rule originally appeared as part of **ARC 2215A**, published in IAB Vol. XIV No. 3 (08-07-91). The previous rule provided export trade assistance to Iowa residents or entities with corporate offices in Iowa. The amendment will provide the assistance to out-of-state entities, as long as they employ fewer than 500 people and 75 percent of those people are employed in Iowa. This rule has now been repromulgated as **ARC 2763A**, but the language of concern to the Committee remains unchanged, and for that reason the objection remains in place.

The Committee believes this amendment is unreasonable because it believes there are ample numbers of Iowa-based corporations that desire to participate in this program and that it is unnecessary to use Iowa-generated revenue to benefit out-of-state corporations.

*Renumbered 68.3"1," IAB 7/19/95; renumbered 132.3"1," IAB 9/6/00; renumbered 72.3"1," IAB 7/4/07.

CHAPTER 73
Reserved

CHAPTER 74
GROW IOWA VALUES FINANCIAL ASSISTANCE PROGRAM

261—74.1(83GA,SF344) Purpose and administrative procedures.

74.1(1) *Purpose.* The department shall establish and administer a grow Iowa values financial assistance program for purposes of providing financial assistance from the fund to applicants. The financial assistance shall be provided from moneys credited to the grow Iowa values fund and not otherwise obligated or allocated pursuant to 2009 Iowa Acts, Senate File 344.

74.1(2) *Program funding components.* The program shall consist of the following components:

a. 130 percent wage component.

b. 100 percent wage component.

c. Entrepreneurial component.

d. Infrastructure component.

e. Value-added agriculture component.

f. Disaster recovery component.

74.1(3) *Fiscal impact.* In making awards of financial assistance from the 130 percent wage component and the 100 percent wage component, the department shall calculate the fiscal impact ratio. In reviewing each application to determine the amount of financial assistance to award, the board shall consider the appropriateness of the award to the fiscal impact ratio of the project and to other factors deemed relevant by the board.

74.1(4) *Administrative procedures.* The grow Iowa values financial assistance program is subject to the requirements of the department's rules located in 261—Part VII, additional application requirements and procedures, and 261—Part VIII, legal and compliance. Part VII and Part VIII include standard definitions; standard program requirements; wage, benefit and investment requirements; application review and approval procedures; contracting; contract compliance and job counting; and annual reporting requirements.

[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09]

261—74.2(83GA,SF344) 130 percent wage component.

74.2(1) *Eligibility.* In order to qualify for financial assistance under this component of the program, a business shall meet all of the following requirements:

a. The business shall create or retain jobs as part of a project, and the jobs created or retained shall meet one of the following requirements:

(1) If the business is creating jobs, the business shall demonstrate that the jobs will pay at least 100 percent of the qualifying wage threshold at the start of the project completion period, at least 130 percent of the qualifying wage threshold by the project completion date, and at least 130 percent of the qualifying wage threshold until the maintenance period completion date.

(2) If the business is retaining jobs, the business shall demonstrate that the jobs retained will pay at least 130 percent of the qualifying wage threshold throughout both the project completion period and the maintenance period.

b. The business shall provide a sufficient package of benefits to each employee holding a created or retained job.

c. The business shall demonstrate that the jobs created or retained will have a sufficient impact on state and local government revenues as determined by the department after calculating the fiscal impact ratio of the project.

d. The business shall not be a retail business or a business where entrance is limited by a cover charge or membership requirement.

74.2(2) *Sufficient benefits credit.* A business providing a sufficient package of benefits to each employee holding a created or retained job shall qualify for a credit against any of the 130 percent qualifying wage threshold requirement.

[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09]

261—74.3(83GA,SF344) 100 percent wage component. In order to qualify for financial assistance under this component of the program, a business shall meet all of the following requirements:

74.3(1) The business shall create or retain jobs as part of a project, and the jobs created or retained shall meet one of the following qualifying wage thresholds:

a. If the business is creating jobs, the business shall demonstrate that the jobs created will pay at least 100 percent of the qualifying wage threshold at the start of the project completion period, by the project completion date, and until the maintenance period completion date.

b. If the business is retaining jobs, the business shall demonstrate that the jobs retained will pay at least 100 percent of the qualifying wage threshold throughout both the project completion period and the maintenance period.

74.3(2) The business shall provide a sufficient package of benefits to each employee holding a created or retained job.

74.3(3) The business shall demonstrate that the jobs created or retained will have a sufficient impact on state and local government revenues as determined by the department after calculating the fiscal impact ratio of the project.

74.3(4) The business shall not be a retail business or a business where entrance is limited by a cover charge or membership requirement.

[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09]

261—74.4(83GA,SF344) Entrepreneurial component.

74.4(1) *Purpose.* The purpose of this component is to encourage the development of early-stage businesses in conjunction with the delivery of a financial assistance program.

74.4(2) *Definitions.* In addition to the standard definitions in 261—Chapter 173, the following definitions shall apply to this component:

"Early-stage business" means a business that has been competing in a particular industry for three years or less.

"Eligible applicant" means a business that has consulted with and obtained a letter of endorsement from either a business accelerator approved by the department or from an entrepreneurial development organization recognized by the department.

"Eligible business" means an early-stage business that is developing a new product or technology.

74.4(3) *Eligibility.* In order to qualify for financial assistance under the entrepreneurial component of the program, a business shall meet all of the following requirements:

a. In order to be eligible for assistance, the business, or proposed business, must be located in the state of Iowa.

b. The business shall be an early-stage business.

c. If the business is a sole proprietorship or a partnership, all applicable business owners must apply. If the business is a limited liability company, a limited liability partnership, or a corporation, the application must be submitted and signed by an individual who has been authorized by the business to do so.

d. The business owner or owners (or appropriate individual(s) in a limited liability company, limited liability partnership or corporation) must consult with and obtain a letter of endorsement from either a business accelerator approved by the department or from an entrepreneurial development organization recognized by the department.

e. The individual or business must have a business plan which details the business's growth strategy, management team, production/management plan, marketing plan, financial plan, and other standard elements of a business plan.

74.4(4) *Local match not required.* A business applying for financial assistance under the entrepreneurial component is eligible for financial assistance regardless of whether the business has received matching funds from a city or county.

74.4(5) *Funding priorities.* In awarding financial assistance under the entrepreneurial component of the program, the department and the board shall give priority to businesses in those sectors of the Iowa economy with the greatest potential for growth and expansion. Sectors having such potential include but

are not limited to biotechnology, recyclable materials, software development, computer-related products, advanced materials, and advanced manufacturing.

74.4(6) *Financial assistance.* An applicant may apply to the department for financial assistance to assist with the applicant's early-stage business growth. The applicant may request up to $250,000 for early-stage growth activities to be used for business expenses and to leverage conventional financing from commercial lenders or private investors. Assistance will generally be made in staged investments with amounts to be determined by company development, growth, and defined milestones. The assistance under this program is limited to 50 percent or less of the total original capitalization, if a new business, or total project costs, if an existing business. Funds may be used to purchase machinery, equipment, or software or for working capital needs or other business expenses deemed reasonable and appropriate by the department. Awards will be in the form of a loan, royalty agreement, or other form of an equity-like investment. A single recipient is limited to $250,000 in total financial assistance.

74.4(7) *Technical assistance.* Applicants may apply for assistance in paying for consulting or other third-party technical assistance either in conjunction with the request for financial assistance or in a separate application. Applications submitted that are not in conjunction with a request for financial assistance must demonstrate financial need for the technical assistance. Financial need will be determined by the department based on review of the applicant's financial statements, narrative submitted by the applicant outlining the financial need, and other documentation as requested by the department. Awards will be in the form of a grant, loan, royalty agreement, or other form of an equity-like investment. Technical assistance of this nature is limited to no more than $25,000 per applicant.

74.4(8) *Application process.* Applications must be submitted in the format required by the department. Applications, the business plan, and related material shall be submitted online or by mail to the department at the address listed in 261—subrule 175.2(7).

74.4(9) *Review criteria.*

a. Applications will first be reviewed for completeness. If additional information is required, the program staff shall send the applicant notice to submit the additional needed information. The applicant shall submit the requested information within a reasonable time period in order to ensure further action on the request.

b. Applications will then be reviewed for content of the business plan and to evaluate the business's viability and potential for growth. The department may consult with the business accelerators or other knowledgable agencies or individuals as a part of the review process.

c. The following items will be reviewed:

(1) Type of business.

1. Highest priority will be given to businesses in sectors of the Iowa economy with the greatest start-up and growth potential for Iowa, including but not limited to:

- Biotechnology (including drugs and pharmaceuticals and value-added agricultural products);
- Recyclable materials;
- Software development and computer-related products;
- Advanced materials; and
- Advanced manufacturing.

2. Assistance may be provided to industries other than those listed in paragraph "1" above; however, the applicant shall provide strong rationale regarding how that industry diversifies, strengthens or otherwise enhances Iowa's economy. Eligibility may be established by an industry other than those listed if that industry can provide rationale regarding the industry's benefit to Iowa's economic base. Rationale that is provided will be reviewed by the department staff to determine eligibility as a targeted industry. Factors that will be considered in determining an industry's benefit to Iowa's economic base include:

- The majority of the products produced by the industry are exported out of Iowa;
- The inputs for the products produced in the industry are raw materials available in Iowa or are provided by Iowa suppliers;
- The goods produced by the industry diversify Iowa's economy;

- The goods produced by the industry resulted in, or will result in, a decrease in the importation of foreign-made goods into the United States;
- The industry shows potential for future growth; and
- The functions of the industry do not produce harmful effects for Iowa's natural environment.

Businesses engaged in retail sales, personal services, consulting, franchises, the provision of health care or other professional services, or the distribution of products or services will not be considered targeted industries and are not eligible for the program.

(2) Management team and management expertise. Factors considered for this criterion are whether the applicant(s) has a background (including education, training, work experience, and other factors) that will be helpful and useful in the business in question. The department will also consider the degree to which the applicant's background is fully documented.

(3) Business capitalization. Factors considered for this criterion are the original sources of financing for the business. Although all projects must have at least 50 percent of their financing from sources other than the entrepreneurial component, the department will give preference to those applications in which the other sources of financing are higher than 50 percent.

(4) Strength of business plan. The strength of the business plan is the most important factor in the evaluation of applications. Factors considered for this criterion are the quality of the business plan and how well it addresses all elements of the business, such as:

1. A description of the company and the overall industry;
2. The product and production plan;
3. The market, competition, and the marketing strategy;
4. The management team and business operation;
5. A well-defined project time line;
6. Patent issues (if applicable), critical risks and problems; and
7. Financial information and plan.

[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09]

261—74.5(83GA,SF344) Infrastructure component.

74.5(1) *Eligibility.* In order to qualify for financial assistance under the infrastructure component of the program, a business or community shall be engaged in a physical infrastructure project. For purposes of this component, "physical infrastructure project" means a project that creates necessary infrastructure for economic success throughout Iowa, provides the foundation for the creation of jobs, and involves the investment of a substantial amount of capital. Physical infrastructure projects include but are not limited to projects involving any mode of transportation; public works and utilities such as sewer, water, power, or telecommunications; physical improvements that mitigate, prevent, or eliminate environmental contamination; and other similar projects deemed to be physical infrastructure by the department.

74.5(2) *Local match not required.* A business applying for financial assistance under the infrastructure component is eligible for financial assistance regardless of whether the business has received matching funds from a city or county.

[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09]

261—74.6(83GA,SF344) Value-added agriculture component.

74.6(1) *Purpose.* The purpose of this component is to encourage the increased utilization of agricultural commodities produced in this state. The component shall assist in efforts to revitalize rural regions of this state by committing resources to provide financial assistance to new or existing value-added production facilities.

74.6(2) *Definitions.* In addition to the standard definitions located in 261—Chapter 173, the following definitions apply to the value-added agriculture component:

"Agricultural biomass industry" means businesses that utilize agricultural commodity crops, agricultural by-products, or animal feedstock in the production of chemicals, protein products, or other high-value products.

"Agricultural biotechnology industry" means businesses that utilize scientifically enhanced plants or animals that can be raised by producers and used in the production of high-value products.

"Agriculture" means the science, art, and business of cultivating the soil, producing crops and raising livestock.

"Alternative energy industry" means businesses involved in the production of ethanol, including gasoline with a mixture of 70 percent or more ethanol, biodiesel, biomass, or hydrogen or in the production of wind energy.

"Committee" means the renewable fuels and coproducts advisory committee established pursuant to Iowa Code section 159A.4.

"Coordinator" means the administrative head of the office of renewable fuels and coproducts appointed by the department of agriculture and land stewardship as provided in Iowa Code section 159A.3.

"Coproduct" means a product other than a renewable fuel which at least in part is derived from the processing of agricultural commodities and which may include corn gluten feed, distillers grain, solubles, or a feed supplement, or can be used as livestock feed.

"Farming" means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing or the production of livestock. "Farming" shall not include the production of timber, forest products, nursery products, or sod; and "farming" shall not include a contract where a processor or distributor of farm products or supplies provides spraying, harvesting or other farm services.

"Fund" means the renewable fuels and coproducts fund established pursuant to Iowa Code section 159A.7.

"Innovative" means a new or different agricultural product or a method of processing agricultural products which is an improvement over traditional methods in a new, different, or unusual way.

"Livestock production operations" means the production, feeding and marketing of livestock, poultry and aquaculture. "Livestock production operations" includes, but is not limited to, beef and dairy cattle, swine, sheep, goat, poultry, turkey and equine operations. "Livestock production operations" also includes nontraditional agricultural operations such as ostrich, fallow deer, rabbit, fish and other aquaculture.

"Office" means the office of renewable fuels and coproducts created pursuant to Iowa Code section 159A.3.

"Organic products" means Iowa-grown or Iowa-raised agricultural products as defined by 21—Chapter 47, Iowa organic program.

"Person" means individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

"Producer-owned, value-added business" means a person who holds an equity interest in the agricultural business and is personally involved in the production of crops or livestock on a regular, continuous, and substantial basis.

"Renewable fuel" means an energy source at least in part derived from an organic compound, capable of powering machinery, including an engine or power plant. "Renewable fuel" includes but is not limited to ethanol-blended or soydiesel fuel.

"Renewable fuels and coproducts activities" means either of the following:

1. The research, development, production, promotion, marketing, or consumption of renewable fuels and coproducts.

2. The research, development, transfer, or use of technologies which directly or indirectly increases the supply or demand of renewable fuels and coproducts.

"Rural region" means any geographic area which is predominantly rural in nature, that is, having a relatively low population density and where agriculture is the predominant economic activity.

"Soydiesel fuel" means a fuel made of processed soybean oil which is mixed with diesel fuel, the mixture being a minimum of 20 percent processed soybean oil.

"Value-added product" means a product which, through a series of activities or processes, can be sold at a higher price than its original purchase price.

74.6(3) *Eligibility.* In order to qualify for financial assistance under the value-added agriculture component of the program, a business shall be a production facility engaged in the process of adding

value to agricultural products. Projects considered eligible under this component include but are not limited to innovative agricultural products and processes, innovative and new renewable fuels, agricultural biotechnology, biomass and alternative energy production, and organic products and emerging markets. Financial assistance is available for project development as well as project creation.

a. *Innovative agricultural products and processes.* An application based on this component shall be considered if either of the following applies:

(1) The business will produce a product derived from an agricultural commodity, if the product is not commonly produced in Iowa from an agricultural commodity; or

(2) The business will utilize a process to produce a product derived from an agricultural commodity, if the process is not commonly used in Iowa to produce the product.

For purposes of this paragraph, a product is "not commonly produced" and a process is "not commonly used" if the product or process is not usually, generally, or ordinarily produced or processed in Iowa.

b. *Innovative and new renewable fuels.* Applications for renewable fuel and ethanol production shall be considered by the department for funding. Applications based on ethanol fuel production must meet the following criteria to be considered for funding:

(1) All fermentation, distillation, and dehydration of the ethanol occurs at the proposed facility.

(2) The ethanol produced at the proposed facility is at least 190 proof and is denatured. However, if the facility markets the ethanol for further refining, the facility must demonstrate that the refiner produces at least 190 proof ethanol from the ethanol purchased from the facility.

c. *Agricultural biotechnology, biomass and alternative energy.* Agricultural business facilities in the agricultural biotechnology industry, agricultural biomass industry, and alternative energy industry are eligible for program assistance.

d. *Organic products and emerging markets.* Facilities that add value to Iowa agricultural commodities through further processing and development of organic products and emerging markets are eligible for program assistance.

e. *Project development assistance.* The department, at its discretion, may also provide funding for project development related to targeted industries or proposed projects under this program. Feasibility studies and basic research are not eligible for assistance under this program.

f. *Project creation assistance.* This option is for projects that eventually could be eligible for funding within other value-added agriculture component funding areas.

(1) Any person is eligible to apply, except educational or research institutions. However, an educational or research institution may be a partner to an eligible applicant.

(2) The evaluation process will focus on the application of new technology and knowledge to agricultural products and processing and will be based upon the degree to which:

1. The resulting business has potential to increase utilization of agricultural commodities in this state; and

2. The resulting business has potential to increase value-added economic activities within this state.

74.6(4) *Ineligible projects.*

a. The department shall not provide financial assistance to support a value-added production facility if the facility or a person owning a controlling interest in the facility has, in the previous five years, demonstrated a continuous and flagrant disregard for the health and safety of its employees or the quality of the environment.

b. The department shall not approve an application for assistance under this component to refinance an existing loan.

c. The department shall not directly award financial assistance to support an activity directly related to farming as defined in Iowa Code section 9H.1, including the establishment or operation of a livestock production operation, regardless of whether the activity is related to a renewable fuel production facility.

d. An applicant may not receive more than one award under this program for a single project. However, previously funded projects may receive an additional award(s) if the applicant demonstrates

that the funding is to be used for a significant expansion of the project, a new project, or a project which results from previous project development assistance.

e. The board and the department shall not award financial assistance under the value-added agriculture component in an amount exceeding 50 percent of the total capital investment in a project.

74.6(5) *Review process.*

a. Applications will be reviewed by staff for completeness and eligibility. If the applicant had previously consulted with the coordinator in completion of the application, the department may refer the application to the coordinator for further feasibility studies if deemed necessary. Applications will be reviewed as described in 261—Chapter 175.

b. The department may consult with other state agencies regarding any possible future environmental, health, or safety issues linked to technology related to the biotechnology industry.

c. The department reserves the right to informally consult with external resources to assist in the evaluation of projects or to contract with outside consultants, in an amount not to exceed $20,000 per project, for the same purpose.

74.6(6) *Evaluation criteria.* The department shall evaluate applications based on the following criteria:

a. *Feasibility.* The company must submit a feasible business plan which demonstrates managerial and technical expertise.

b. *Priority components.* The department will review the degree to which the proposed project meets one of the component elements which include:

(1) Innovative agricultural products and processes.

(2) Innovative and new renewable fuels.

(3) Agricultural biotechnology, agricultural biomass and alternative energy.

(4) Organic products and emerging markets.

c. *Utilization.* The department will review the degree to which the facility will add value to and increase the utilization of agricultural commodities in this state.

d. *Producer ownership.* The level of producer ownership will be given additional consideration.

e. *Rural region.* The department will review the extent to which the existing or proposed facility is located in a rural region of the state.

f. *Local match.* A business applying for financial assistance under the value-added agriculture component is eligible for financial assistance regardless of whether the business has received matching funds from a city or county.

g. *Need.* The department will review the level of need of the region where the existing facility is located or the proposed facility is to be located.

h. *Coproducts.* The department will review the degree to which the facility produces a coproduct which is marketed in the same locality as the facility.

i. *In-state suppliers.* The department will review the extent to which the facility utilizes in-state suppliers of inputs and feedstocks for processing and manufacturing.

j. *Sales.* The department will review the extent to which the facility sells its products outside the state.

[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09]

261—74.7(83GA,SF344) Disaster recovery component.

74.7(1) *Eligibility—for businesses affected by a disaster occurring before July 1, 2009.*

a. *Eligibility requirements.* In order to qualify for financial assistance under the disaster recovery component of the program, a business shall meet all of the following conditions:

(1) The business is located in an area declared a disaster area by a federal official before July 1, 2009.

(2) The business must document that it has sustained substantial physical damage related to the natural disaster. For purposes of this rule, "substantial physical damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

(3) The business must commit to bring its employment level up, within six months of the award date, to at lest 90 percent of its base employment prior to the closure of the business due to the natural disaster in a federally declared disaster area. The business shall submit payroll records to establish the business's employment base prior to the date of the federal disaster declaration.

(4) The business must commit to paying wages, within six months of the award date, that are no less than the wages paid prior to the closure of the business due to the natural disaster in a federally declared disaster area. The business shall submit payroll records to establish the wages that were paid prior to the date of the federal disaster declaration.

(5) The business must apply for assistance by July 31, 2009.

b. Project initiation. The board may elect to fund applications under this component for projects which have been initiated.

c. Local match. The board will determine if local match will be needed and what level of local match will be acceptable.

74.7(2) *Eligibility—for businesses affected by a disaster occurring on or after July 1, 2009.*

a. Eligibility requirements. In order to qualify for financial assistance under the disaster recovery component of the program, a business shall meet all of the following conditions:

(1) The business is located in an area declared a disaster area by a federal official on or after July 1, 2009.

(2) The business has sustained substantial physical damage and has closed as the result of a natural disaster. For purposes of this rule, "sustained substantial physical damage" means damage of any origin sustained by a structure or the machinery and equipment contained within whereby the cost of restoring the structure to its before-damaged condition or replacing the machinery and equipment would exceed 50 percent of the market value of the structure or machinery and equipment before the damage occurred. If the business is located in a multitenant building, the market value of the structure before the damage occurred may be prorated based on the percentage of space within the building which the business occupies.

(3) The business must commit to bringing its employment level up, within six months of the award date, to at least 90 percent of its base employment prior to the closure of the business due to the natural disaster in a federally declared disaster area. The business shall submit payroll records to establish the business's employment base prior to the date of the federal disaster declaration.

(4) The business must commit to paying wages, within six months of the award date, that are no less than the wages paid prior to the closure of the business due to the natural disaster in a federally declared disaster area. The business shall submit payroll records to establish the wages that were paid prior to the date of the federal disaster declaration.

(5) The business must apply for assistance within 12 months of the date of the declaration of disaster by a federal official.

b. Local match not required. A business applying for financial assistance under this disaster recovery component is eligible for financial assistance regardless of whether the business has received matching funds from a city or county. This paragraph only applies to businesses eligible for assistance under subrule 74.7(2).

[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 7978B**, IAB 7/29/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09]

These rules are intended to implement 2009 Iowa Acts, Senate File 344, section 3.

[Filed Emergency ARC 7970B, IAB 7/15/09, effective 7/1/09]

[Filed Emergency ARC 7978B, IAB 7/29/09, effective 7/1/09]

[Filed ARC 8145B (Notice ARC 7971B, IAB 7/15/09), IAB 9/23/09, effective 10/28/09]

CHAPTER 75
OPPORTUNITIES AND THREATS PROGRAM

261—75.1(83GA,SF344) Purpose. The purpose of the opportunities and threats program is to fund projects that present a unique opportunity for economic development in the state of Iowa or projects that address a situation constituting a threat to continued economic prosperity in Iowa.
[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09]

261—75.2(83GA,SF344) Administrative procedures. The opportunities and threats program is subject to the requirements of the department's rules located in 261—Part VII, additional application requirements and procedures, and 261—Part VIII, legal and compliance. Part VII and Part VIII include standard definitions, standard program requirements, application review and approval procedures, contracting, contract compliance and job counting, and annual reporting requirements.
[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09]

261—75.3(83GA,SF344) Eligible applicants. An eligible applicant may be a business, an individual, a development corporation, a nonprofit organization, a council of government as defined in Iowa Code section 28H.1, or a political subdivision in the state of Iowa.
[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09]

261—75.4(83GA,SF344) Review criteria. When applications are reviewed, the following shall apply:

75.4(1) A project shall not be eligible for financial assistance under another state program. If a project is eligible for assistance under another state program, then the project shall not be eligible for funding under this program.

75.4(2) The project must represent a unique economic development opportunity or involve a unique threat to economic development in the state of Iowa.

75.4(3) An applicant must demonstrate that any financial assistance received under this program leverages additional public or private funds.

75.4(4) An applicant must demonstrate that the project will lead to a positive economic impact for the state of Iowa.

75.4(5) An applicant must demonstrate financial need for assistance. Financial need may be demonstrated with financial statements, narrative statements outlining the financial need, and any other documentation that demonstrates financial need or that is requested by the department.
[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09]

261—75.5(83GA,SF344) Award criteria. An award made under this program shall not exceed 50 percent of the total project cost. The minimum award amount is $25,000. The maximum award amount is $250,000 per fiscal year. The board may award an amount in excess of $250,000 if that award is made over multiple fiscal years and the amount committed for each fiscal year within the multiyear award does not exceed $250,000.
[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09]

These rules are intended to implement 2009 Iowa Acts, Senate File 344, section 4.

[Filed Emergency ARC 7970B, IAB 7/15/09, effective 7/1/09]

[Filed ARC 8145B (Notice ARC 7971B, IAB 7/15/09), IAB 9/23/09, effective 10/28/09]

CHAPTER 76
AGGREGATE TAX CREDIT LIMIT FOR CERTAIN ECONOMIC DEVELOPMENT PROGRAMS

261—76.1(83GA,SF483) Authority. The authority for establishing rules governing the aggregate tax credit limit for certain economic development programs under this chapter is 2009 Iowa Acts, Senate File 483.
[**ARC 7954B**, IAB 7/15/09, effective 7/1/09; **ARC 8146B**, IAB 9/23/09, effective 10/28/09]

261—76.2(83GA,SF483) Purpose. The purpose of the aggregate tax credit limit for certain economic development programs is to limit the amount of tax credits awarded during a fiscal year.
[**ARC 7954B**, IAB 7/15/09, effective 7/1/09; **ARC 8146B**, IAB 9/23/09, effective 10/28/09]

261—76.3(83GA,SF483) Definitions.

"Board" means the Iowa economic development board established in Iowa Code section 15.103.

"Department" means the Iowa department of economic development.
[**ARC 7954B**, IAB 7/15/09, effective 7/1/09; **ARC 8146B**, IAB 9/23/09, effective 10/28/09]

261—76.4(83GA,SF483) Amount of the tax credit cap. The department shall not authorize tax credit awards made under the programs identified in rule 261—76.5(83GA,SF483) in excess of $185 million per fiscal year.
[**ARC 7954B**, IAB 7/15/09, effective 7/1/09; **ARC 8146B**, IAB 9/23/09, effective 10/28/09]

261—76.5(83GA,SF483) Programs subject to the cap.

76.5(1) Awards made under the following economic development programs are subject to the tax credit cap:

a. The assistive device tax credit program.

b. The enterprise zone program (business and housing awards).

c. The film, television, and video project promotion program.

d. The high quality jobs program.

76.5(2) In addition to the programs listed in subrule 76.5(1), the corporate tax research credit under the quality jobs enterprise zone program is also subject to the tax credit cap pursuant to 2009 Iowa Acts, Senate File 483, but this program is no longer utilized by the department. The quality jobs enterprise zone program was replaced with the high quality jobs program.
[**ARC 7954B**, IAB 7/15/09, effective 7/1/09; **ARC 8146B**, IAB 9/23/09, effective 10/28/09]

261—76.6(83GA,SF483) Allocating the tax credit cap. At a scheduled meeting of the board prior to the start of a fiscal year, the board will allocate $185 million among the programs listed in rule 261—76.5(83GA,SF483). The board is not required to allocate a portion of the cap to every program listed. The board may allocate a portion of the cap that is shared by other programs with a common purpose, for example, the business awards made under the enterprise zone program and high quality jobs program. Throughout the fiscal year, the board may review the allocation as necessary, but shall review the allocation at least one time during the fiscal year. Based on its review, the board may make adjustments to the allocation as deemed necessary.
[**ARC 7954B**, IAB 7/15/09, effective 7/1/09; **ARC 8146B**, IAB 9/23/09, effective 10/28/09]

261—76.7(83GA,SF483) Exceeding the cap. When the department recommends one or more awards that, when combined with awards already approved during the fiscal year, exceed the $185 million cap, the board may authorize the department to exceed the cap and approve the award. The aggregate award amount in excess of $185 million will be counted against the tax credit cap for the following fiscal year.
[**ARC 7954B**, IAB 7/15/09, effective 7/1/09; **ARC 8146B**, IAB 9/23/09, effective 10/28/09]

261—76.8(83GA,SF483) Reporting to the department of revenue. The department shall submit an initial report to the department of revenue by August 15, 2009, which shows the initial allocation of the $185 million cap. At the start of each subsequent fiscal year, the department shall prepare a report to

summarize final allocation for the fiscal year that just ended, the total amount of awards made under each program identified in rule 261—76.5(83GA,SF483) during that fiscal year, and the initial allocation for the current fiscal year. The report shall be submitted to the department of revenue on or before August 15 of each year.

[**ARC 7954B**, IAB 7/15/09, effective 7/1/09; **ARC 8146B**, IAB 9/23/09, effective 10/28/09]

These rules are intended to implement 2009 Iowa Acts, Senate File 483.

[Filed Emergency ARC 7954B, IAB 7/15/09, effective 7/1/09]

[Filed ARC 8146B (Notice ARC 7953B, IAB 7/15/09), IAB 9/23/09, effective 10/28/09]

CHAPTER 77
SITE DEVELOPMENT PROGRAM

DIVISION I
GENERAL PROVISIONS

261—77.1(15E) Purposes. The purposes of the site development program are to establish an inventory of sites in Iowa that may be suitable for development or redevelopment and to provide consultation to local governments about site development techniques.
[**ARC 9485B**, IAB 5/4/11, effective 6/8/11]

261—77.2(15E) Authority. The authority for establishing this program is provided in Iowa Code section 15E.18 and 2010 Iowa Acts, chapter 1184, section 37.
[**ARC 9485B**, IAB 5/4/11, effective 6/8/11]

261—77.3(15E) Definitions.

"Applicant" means the entity that submits an application to the department for a certificate of readiness for a site development area or areas.

"Certificate of readiness" means a certificate issued to a local government or local economic development official for a site that is determined to be ready for development or redevelopment based on criteria set forth in rule 261—77.13(15E).

"Department" means the Iowa department of economic development.

"Site development area" means property that is included as part of a site development plan and that is to be used or proposed to be used for development or redevelopment.

"Site development techniques" means environmental evaluations, property and wetland delineation, and historical evaluations.
[**ARC 9485B**, IAB 5/4/11, effective 6/8/11]

261—77.4 to **77.10** Reserved.

DIVISION II
CERTIFICATE OF READINESS

261—77.11(15E) Eligibility. Eligible applicants may apply to the department for a certificate of readiness which verifies that a particular site is ready for development or redevelopment. Eligible applicants include local governments or local economic development officials.
[**ARC 9485B**, IAB 5/4/11, effective 6/8/11]

261—77.12(15E) Application; review; approval.

77.12(1) *Application.* All requests for a certificate of readiness for a site development area shall be made using the application provided by the department. The application shall include at least the following information:

a. Applicant information, including name, address, telephone number and contact person.

b. Legal description of the site development area(s).

c. Identification of the property owner(s) related to the site development area(s).

d. Detailed site development plan(s) for the site development area(s).

77.12(2) *Review.* The department will review each complete application in the order the applications are received and based on the general criteria described in subrule 77.13(1). The department will evaluate each application to identify any barriers to development or redevelopment.

77.12(3) *Approval.* The department may approve, deny or defer applications for a certificate of readiness. If the department approves an application for a certificate of readiness, the department will issue a certificate of readiness in accordance with rule 261—77.14(15E).
[**ARC 9485B**, IAB 5/4/11, effective 6/8/11]

261—77.13(15E) Evaluation criteria.

77.13(1) *General.* When evaluating applications for certificates of readiness, the department will consider the following criteria:

a. The thoroughness and detail of the site development plan.

b. The site development plan's regard for compliance with applicable regulations, including without limitation land-use and zoning restrictions or environmental or cultural protections.

c. The presence of viable transportation infrastructure.

d. The presence of viable utility infrastructure.

e. The presence of viable vertical infrastructure, as defined in Iowa Code section 8.57, which includes existing land acquisition and construction, major renovation and major repair of buildings, all appurtenant structures, utilities, site development, and recreational trails.

f. The geologic and natural characteristics of the site development area(s) including the proximity or inclusion of any floodplains.

g. The ownership and control of the site development area(s).

h. Demonstrated support, including without limitation financial and local support, for the site development plan.

77.13(2) *Additional considerations.* In addition to the general criteria described above, the department will consider the following:

a. The site development plan for the site development area utilizes smart planning principles, as identified by the smart planning task force created by 2010 Iowa Acts, chapter 1184, section 25.

b. The site development plan for the site development area utilizes sustainable design and practices.

(1) For purposes of these rules, sustainable practices include those practices in accordance with the department's Iowa green streets criteria, which are available on the department's Web site.

(2) For purposes of these rules, sustainable design, as defined in rule 261—65.2(15), means construction design intended to minimize negative environmental impacts and to promote the health and comfort of building occupants, including, but not limited to, measures to reduce consumption of nonrenewable resources, minimize waste, and create healthy, productive environments. Sustainable design standards are also known as green building standards pursuant to Iowa Code section 103A.8B.

[**ARC 9485B**, IAB 5/4/11, effective 6/8/11]

261—77.14(15E) Certificate of readiness.

77.14(1) *Certification.* Upon approval of an application for a certificate of readiness, the department will issue a certificate of readiness to the applicant. The certificate of readiness will include a short description of how the site development plan meets the general criteria described in subrule 77.13(1) and will include whether the site development plan meets the additional considerations described in subrule 77.13(2) and a short discussion related thereto, if applicable. The certificate of readiness will be valid for the term described on the certificate, which may vary for each site development area depending on the nature of the development and the site characteristics. In no event shall the term of a certificate exceed ten years.

77.14(2) *Recertification.* The department shall not recertify site development areas for which a certificate of readiness has expired or will expire. The local government or local economic development official responsible for the site development area shall reapply for a certificate of readiness under these rules for the site to be considered for a subsequent certificate of readiness.

[**ARC 9485B**, IAB 5/4/11, effective 6/8/11]

261—77.15 to **77.20** Reserved.

DIVISION III
CONSULTATION

261—77.21(15E) Consultation.

77.21(1) The department shall consult with local governments and local economic development officials in regard to site development techniques. The department may contract with third parties to provide site development consultations regarding site development techniques directly to local governments and local economic development officials.

77.21(2) The department may charge a reasonable fee for consultation. A local government or local economic development official seeking assistance under subrule 77.21(1) shall make a request to the department and provide information requested by the department for use in formulating a fee estimate and work plan. Before any work is undertaken, the department shall provide a fee estimate to the interested local government or local economic development official and a description of the services that will be provided. The fee shall be reasonable and shall cover the department's costs of providing the service. The department may require the local government or local economic development official to enter into a contract that identifies the services to be performed and obligates the local government or local economic development official to pay the fee to the department or a third-party consultant for satisfactory completion of services.

77.21(3) Applicants are not required to seek consultation under the program to be eligible to apply for a certificate of readiness and may seek consultation from the department at any time.

[**ARC 9485B**, IAB 5/4/11, effective 6/8/11]

These rules are intended to implement Iowa Code section 15E.18 and 2010 Iowa Acts, chapter 1184, section 37.

[Filed ARC 9485B (Notice ARC 9255B, IAB 12/1/10), IAB 5/4/11, effective 6/8/11]

CHAPTER 78
SMALL BUSINESS DISASTER RECOVERY FINANCIAL ASSISTANCE PROGRAM

DIVISION I
2008 NATURAL DISASTER SMALL BUSINESS DISASTER RECOVERY FINANCIAL ASSISTANCE PROGRAM

261—78.1(15) Purpose. The purpose of the small business disaster recovery financial assistance program is to provide financial assistance to businesses that sustained physical damage or economic loss due to the 2008 natural disasters. Financial assistance in the form of working capital to help ensure businesses' survival and capital for acquisition of energy-efficient equipment is available to businesses that suffered physical damage or economic loss due to the 2008 natural disasters.
[**ARC 7558B**, IAB 2/11/09, effective 3/18/09]

261—78.2(15) Definitions.

"Administrative entity" means (1) selected cities that administer local disaster recovery programs, and (2) councils of government (COGs) established by Iowa Code chapter 28H.

"Business" means a corporation, a professional corporation, a limited liability company, a partnership, a sole proprietor or a nonprofit corporation. "Business" includes a commercial landlord.

"Department" or *"IDED"* means the Iowa department of economic development.

"Eligible lender" means any of the following entities that provide disaster recovery loans to businesses: the SBA; a financial institution; an economic development organization; a rural electric or telephone cooperative with an established Economic Development Administration (EDA)-based or U.S. Department of Agriculture (USDA)-based revolving loan fund program or intermediary relending program.

"Financial institution" means a state bank as defined in Iowa Code section 524.103, subsection 33; a state bank chartered under the laws of any other state; a national banking association; a trust company; a federally chartered savings and loan association; an out-of-state, state-chartered savings bank; a financial institution chartered by the federal home loan bank board; a non-Iowa chartered savings and loan association; an association incorporated or authorized to do business under Iowa Code chapter 534; a production credit association; a credit union; or such other financial institution as defined by the department for purposes of this chapter.

"SBA" means the U.S. Small Business Administration.
[**ARC 7558B**, IAB 2/11/09, effective 3/18/09]

261—78.3(15) Distribution of funds to administrative entities.

78.3(1) *Allocation of funds.* IDED will disburse funds in the form of a grant to administrative entities. The grant shall be used to provide financial assistance to eligible businesses in the form of forgivable loans and reimbursement for acquisition of energy-efficient equipment. Funds will be allocated to administrative entities on the basis of the percentage of SBA disaster loans awarded to businesses located within the city's jurisdiction or the disaster recovery area as defined by IDED.

78.3(2) *Application process.* To apply for funding, an administrative entity shall submit a letter to IDED stating its interest in receiving an allocation from the small business disaster recovery financial assistance program. Letters shall be sent to: Business Finance, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309.

78.3(3) *Redistribution of unobligated funds.* By April 30, 2009, if a local administrative entity has not obligated funds to eligible businesses for allowable activities, the department will reallocate funds to administrative entities that have demonstrated additional unmet need for financial assistance. Funds for this program shall be available through June 30, 2009.
[**ARC 7558B**, IAB 2/11/09, effective 3/18/09]

261—78.4(15) Eligible business. An eligible business is one that meets the following requirements:

78.4(1) The business has sustained physical damage or economic loss due to the 2008 natural disasters, and

78.4(2) The business has been approved for a disaster loan from an eligible lender. This subrule is retroactive to September 18, 2008.
[**ARC 7558B**, IAB 2/11/09, effective 3/18/09; **ARC 8600B**, IAB 3/10/10, effective 2/19/10]

261—78.5(15) Eligible program activities; maximum amount of assistance.

78.5(1) *Program funds available for working capital.* An eligible business may apply for funding for working capital to ensure the business's survival. The maximum amount of program funds available for working capital to ensure the business's survival is 25 percent of the business's loan from an eligible lender up to a maximum of $50,000.

78.5(2) *Program funds available for energy-efficient purchases.*

a. Up to $5,000 additional assistance. Up to $5,000 of additional assistance is available for energy-efficient purchases and installation. In addition to the assistance available under subrule 78.5(1), the amount of $5,000 per eligible business is available to reimburse the business for the full cost of purchasing energy-efficient equipment including, but not limited to, furnaces and boilers, appliances, air conditioners, hot water heaters, windows, and insulation. The cost that is eligible for reimbursement is the amount of the purchase price and installation less any utility rebates received.

b. OEI standards. To receive reimbursement, the eligible business shall provide documentation to verify that the energy-efficient equipment meets the standards established by the Iowa office of energy independence (OEI).

78.5(3) *Total program assistance capped at $55,000.* An eligible business shall not receive more than $55,000, including the program funds available for energy-efficient purchases (maximum of $5,000) through this small business disaster recovery financial assistance program.
[**ARC 7558B**, IAB 2/11/09, effective 3/18/09]

261—78.6(15) Allowable types of assistance to eligible businesses. An administrative entity shall provide financial assistance from this program to eligible businesses in compliance with the terms and conditions described in this rule. An administrative entity may award funds in the form of a forgivable loan to businesses that have received a disaster loan from an eligible lender. A forgivable loan is a loan that will be forgiven if the business reopens within 12 months of the award date and, if applicable, upon receipt of documentation that the business has purchased and installed the energy-efficient equipment.
[**ARC 7558B**, IAB 2/11/09, effective 3/18/09]

261—78.7(15) Program administration and reporting. Each local administrative entity shall enter into a contract with an eligible business to provide assistance under this program. The contract shall include terms and conditions that meet the requirements of these rules as well as provisions to require repayment if funds are not used in compliance with the program. Each local administrative entity shall provide oversight and contract administration to ensure that the recipients of program funds are meeting contract requirements. Each local administrative entity shall collect data and submit reports to IDED about the program in the form and content required by IDED.
[**ARC 7558B**, IAB 2/11/09, effective 3/18/09]

261—78.8 to **78.10** Reserved.

DIVISION II
2010 IOWANS HELPING IOWANS BUSINESS ASSISTANCE PROGRAM

261—78.11(15) Purpose. The purpose of the Iowans helping Iowans business assistance program is to provide financial assistance to businesses that sustained physical damage due to the 2010 natural disasters. The department will make financial assistance available for working capital to help ensure businesses' survival for those businesses that suffered physical damage due to the 2010 natural disasters.
[**ARC 9067B**, IAB 9/8/10, effective 8/20/10]

261—78.12(15) Definitions. Terms shall have the following definitions for purposes of this division:

"2010 natural disasters" means the natural disasters in and around Iowa resulting in the Presidential declaration of a major disaster for the state of Iowa, known as FEMA-1930-DR, dated July 29, 2010, and related determinations and updated designations.

"Administrative entity" means (1) selected cities that administer local disaster recovery programs, and (2) councils of governments established by Iowa Code chapter 28H, including organizations comprised of one or more councils of governments so established.

"Business" means a corporation, a professional corporation, a limited liability company, a partnership, a sole proprietorship or a nonprofit corporation. "Business" does not include a residential landlord or a home-based business for purposes of this division.

"Department" means the Iowa department of economic development.

"Eligible lender" means any of the following entities that provide disaster recovery loans to businesses: the U.S. Small Business Administration; a financial institution; an economic development organization; a rural electric or telephone cooperative with an established Economic Development Administration (EDA)-based or U.S. Department of Agriculture (USDA)-based revolving loan fund program or intermediary relending program.

"Financial institution" means a state bank as defined in Iowa Code section 524.103, subsection 39; a state bank chartered under the laws of any other state; a national banking association; a trust company; a federally chartered savings and loan association; an out-of-state, state chartered savings bank; a financial institution chartered by the federal home loan bank board; a non-Iowa chartered savings and loan association; an association incorporated or authorized to do business under Iowa Code chapter 534; a production credit association; a credit union; or such other financial institution as defined by the department for purposes of this division.

"Program" means the Iowans helping Iowans business assistance program.

[**ARC 9067B**, IAB 9/8/10, effective 8/20/10]

261—78.13(15) Eligible business. An eligible business is one that meets the following requirements:

78.13(1) The business has sustained physical damage due to the 2010 natural disasters;

78.13(2) The business is located in the presidentially declared disaster area eligible for individual assistance, as designated by FEMA-1930-DR; and

78.13(3) The business has been approved for a loan directly related to a 2010 natural disaster purpose from an eligible lender. The business shall not be required to execute a loan offered by an eligible lender for a 2010 natural disaster-related purpose to be eligible for participation in this program. The disaster loan from the eligible lender used to determine eligibility for the program under this rule shall not be conditional upon receipt of financing from the program or any other sources.

[**ARC 9067B**, IAB 9/8/10, effective 8/20/10]

261—78.14(15) Eligible program activities; maximum amount of assistance.

78.14(1) *Program funds available for working capital.* An eligible business may apply for funding for working capital to ensure the business's survival. The maximum amount of financial assistance available for working capital to ensure the business's survival is an amount equal to not more than 25 percent of the eligible lender's approved loan amount offered to the business, up to a maximum of $50,000.

78.14(2) *Total program assistance capped at $50,000.* An eligible business shall not receive more than $50,000 through the program. Participation in the program does not limit the eligible business's participation in other programs administered by the department, unless specifically limited by law.

[**ARC 9067B**, IAB 9/8/10, effective 8/20/10]

261—78.15(15) Distribution of funds; application.

78.15(1) *Distribution of funds.* The department will disburse funds to eligible businesses in the order applications are received and as long as funds are available for the program, as determined solely by the department. Incomplete applications shall not be deemed as received until all required information is received by the department, except as expressly allowed by the application.

78.15(2) *Application process.* Applicants shall be required to apply for financial assistance under the program using the department's online application form available at www.iowanshelpingiowans.com.
[**ARC 9067B**, IAB 9/8/10, effective 8/20/10]

261—78.16(15) Form of assistance available to eligible businesses. The department shall provide financial assistance through this program to eligible businesses, subject to an agreement with the business and in compliance with the terms and conditions described in this rule. The department may award funds in the form of a forgivable loan to eligible businesses. The department shall forgive a loan made to an eligible business under the program if the business remains open for business for at least 12 months from the date of the award. If the business closes or otherwise ceases to exist in substantially the same capacity in which it existed at the time the loan was awarded under this program, the business shall repay the entire loan to the department immediately.
[**ARC 9067B**, IAB 9/8/10, effective 8/20/10]

261—78.17(15) Grants to administrative entities.

78.17(1) The department may enter into agreements with administrative entities to administer the program on behalf of the department. Under such agreements, the department will provide grants to the administrative entities to administer and disburse financial assistance consistent with this division to eligible businesses. Nothing in this rule shall require the department to enter into an agreement with an administrative entity to administer the program on its behalf.

78.17(2) Each local administrative entity acting on behalf of the department under this rule shall enter into a contract with an eligible business to provide assistance under this program. The contract shall include terms and conditions that meet the requirements of these rules and repayment provisions if funds are not used in compliance with the program. Each local administrative entity shall provide oversight and contract administration to ensure that the recipients of program funds are meeting contract requirements. Each local administrative entity shall collect data relating to the program and shall submit a report to the department as required. The content and form of the report shall be consistent with the program and as directed by the department.

78.17(3) Administrative entities acting under this rule may elect to apply singly or join with other administrative entities. To the extent administrative entities act jointly or cooperatively in their participation in the Iowans helping Iowans housing assistance program administered by the Iowa finance authority pursuant to 265—Chapter 40, Iowa Administrative Code, the department may require the administrative entities to similarly act jointly or cooperatively in their participation under this division.
[**ARC 9067B**, IAB 9/8/10, effective 8/20/10]

261—78.18(15) Award; acceptance.

78.18(1) *Award.* The director of the department shall have the authority to award loans and grants made under this program and to execute loan documents, grant agreements and other related documents.

78.18(2) *Acceptance.* A business recommended for a loan under this program shall execute the necessary loan documents and return them to the department by the time described in the intent to award letter; otherwise, the department may rescind the loan award.
[**ARC 9067B**, IAB 9/8/10, effective 8/20/10]

These rules are intended to implement Iowa Code section 15.108.

[Filed emergency 9/18/08—published 10/8/08, effective 9/18/08]
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[Filed Emergency ARC 8600B, IAB 3/10/10, effective 2/19/10]
[Filed Emergency ARC 9067B, IAB 9/8/10, effective 8/20/10]

CHAPTER 79
DISASTER RECOVERY BUSINESS RENTAL ASSISTANCE PROGRAM

261—79.1(15) Purpose. The purpose of the disaster recovery business rental assistance program is to provide financial assistance to a business located in or planning to locate in a business rental space that was physically damaged by the 2008 natural disaster(s). Assistance will be in the form of rental assistance to help offset building rental lease payments for a maximum of six months, not to exceed a total award amount of $50,000. In-home businesses are not eligible for funds pursuant to this chapter.
[**ARC 7708B**, IAB 4/8/09, effective 3/20/09]

261—79.2(15) Definitions.

"Administrative entity" means a selected city that administers a local disaster recovery program or a council of government as established in Iowa Code section 28H.1.

"Business" means a corporation, a professional corporation, a limited liability company, a partnership, a sole proprietorship, or a nonprofit corporation.

"Department" means the Iowa department of economic development established by Iowa Code chapter 15.

"Disaster-damaged space" means a business rental space that was physically damaged by the 2008 natural disaster(s). This definition includes upper stories of a building that was physically damaged in the basement or ground floor, or both, as well as a building constructed at the same site to replace a building that was destroyed due to damage resulting from the 2008 natural disaster(s). In-home businesses are not eligible for funds pursuant to this chapter.

"Physically damaged" for the purpose of this program means physical damage caused by flooding, including overland flow, or physical damage caused by tornado. Damage caused by sanitary or storm sewer backup is not included unless the department determines that such damage was a direct result of the 2008 natural disaster(s).
[**ARC 7708B**, IAB 4/8/09, effective 3/20/09]

261—79.3(15) Eligible business; application review.

79.3(1) An eligible business is a business that:

a. Is located in or planning to locate in a business rental space that was physically damaged by the 2008 natural disaster(s), also referred to as disaster-damaged space; and

b. Has either leased disaster-damaged space for at least 12 months at a market rate or intends to enter or has entered into a minimum one-year, market-rate lease in disaster-damaged space.

79.3(2) Applications received from businesses located in or planning to locate in a building in which the only damage incurred was a result of sanitary or storm sewer backup are subject to review by the department to determine eligibility. Factors used by the department to determine eligibility include, but are not limited to, review of insurance claims filed, damage to critical infrastructure and review of prior sanitary or storm sewer backup.

79.3(3) Applications received from businesses located in or planning to locate in a building that is zoned residential are subject to review by the department to determine eligibility. Factors used by the department to determine eligibility include, but are not limited to, review of the rental lease agreement, business plan and community comprehensive plan.
[**ARC 7708B**, IAB 4/8/09, effective 3/20/09; **ARC 8852B**, IAB 6/16/10, effective 5/21/10]

261—79.4(15) Eligible program activities; maximum amount of assistance.

79.4(1) An eligible business may apply for rental assistance to help offset building rental lease payments for a maximum of six months.

79.4(2) The maximum amount of program funds available for rental assistance per business is the equivalent of six months' rent up to a maximum of $50,000.
[**ARC 7708B**, IAB 4/8/09, effective 3/20/09]

261—79.5(15) Distribution of funds to administrative entities.

79.5(1) *Types of financial assistance available.* An administrative entity shall provide financial assistance to an eligible business in compliance with the terms and conditions described in this rule. An administrative entity may award funds in the form of a forgivable loan to a business that has either leased disaster-damaged space for at least 12 months at a market rate or has entered into a minimum one-year, market-rate lease for disaster-damaged space. A forgivable loan is a loan that will be forgiven if the business remains open for the duration of the six-month period for which rental assistance is awarded.

79.5(2) *Allocation of funds by an administrative entity.* Applications will be processed by an administrative entity. Funds will be distributed upon request to the department from an administrative entity. The department will process requests for funds as received from an administrative entity no more frequently than once per week per administrative entity.

79.5(3) *Program termination.* Rescinded IAB 6/16/10, effective 5/21/10.

[**ARC 7708B**, IAB 4/8/09, effective 3/20/09; **ARC 8852B**, IAB 6/16/10, effective 5/21/10]

261—79.6(15) Program administration; reporting requirements. Each local administrative entity shall enter into a contract with an eligible business to provide assistance. The contract shall include terms and conditions that meet the requirements of these rules as well as provisions to require repayment if funds are not used in compliance with the program. Each local administrative entity shall provide oversight and contract administration to ensure that the recipients of program funds are meeting the contract requirements. Each local administrative entity shall collect data and submit reports to the department about the program in the form and content required by law.

[**ARC 7708B**, IAB 4/8/09, effective 3/20/09]

These rules are intended to implement Iowa Code section 15.109.

[Filed Emergency ARC 7708B, IAB 4/8/09, effective 3/20/09]

[Filed Emergency ARC 8852B, IAB 6/16/10, effective 5/21/10]

CHAPTER 80
IOWA SMALL BUSINESS LOAN PROGRAM

261—80.1(83GA,SF2389) Purpose. The purpose of the program is to promote the creation and retention of jobs in the state's economy and to assist businesses to be more competitive by aiding entrepreneurs and small businesses in their efforts to upgrade or modernize equipment; realize additional efficiencies in their supply chains; improve their distribution and transportation margins; reduce facility costs through increased energy efficiency; and leverage other sources of business financing.
[**ARC 8920B**, IAB 6/30/10, effective 6/11/10; **ARC 9062B**, IAB 9/8/10, effective 8/20/10]

261—80.2(83GA,SF2389) Authority. The authority for establishing the program is provided in 2010 Iowa Acts, Senate File 2389, sections 41 through 44.
[**ARC 8920B**, IAB 6/30/10, effective 6/11/10; **ARC 9062B**, IAB 9/8/10, effective 8/20/10]

261—80.3(83GA,SF2389) Definitions.

"Administrator" means the organization designated by the department pursuant to rule 261—80.4(83GA,SF2389) to administer portions of the program.

"Co-financed loan" means a loan made under this program to a recipient who has contingent approval from another lender for leverage of other sources of business financing for the recipient's Iowa small business at the time of origination of the loan. To be considered a co-financed loan under these rules, the other sources of business financing must meet or exceed at least one-third of the total amount borrowed. For example, a recipient that is approved for a $10,000 loan from the program must have leveraged at least $5,000 from other sources for the recipient's loan to be considered a co-financed loan.

"Conventional lender" means a federally or state chartered bank or credit union or the United States Small Business Administration.

"Department" means the Iowa department of economic development.

"Direct loan" means a loan made under this program that is not part of a co-financing arrangement with another lender.

"Director" means the director of the department.

"Iowa small business" means a business located in Iowa that is owned, operated and actively managed by an Iowa resident and that has 35 or fewer full-time equivalent employees.

"Program" means the Iowa small business loan program.

"Recipient" means an Iowa small business that has applied for and received a loan under the program.
[**ARC 8920B**, IAB 6/30/10, effective 6/11/10; **ARC 9062B**, IAB 9/8/10, effective 8/20/10]

261—80.4(83GA,SF2389) Administrator. The department may enter into an agreement with and thereby designate a nonprofit organization to administer portions of the program provided the nonprofit organization is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and is designated by the United States Small Business Administration as a statewide microloan provider. Among other duties identified in the agreement, the administrator may manage the program application and review process to ensure consistency with these rules and may make recommendations to the department for loan approval under the program.
[**ARC 8920B**, IAB 6/30/10, effective 6/11/10; **ARC 9062B**, IAB 9/8/10, effective 8/20/10]

261—80.5(83GA,SF2389) General loan terms. In addition to terms and conditions in the loan agreement, loans made under the program shall have the following terms:

80.5(1) *Amount.* Loans made under the program may be for $2,500 to $50,000.

80.5(2) *Interest rates.* The interest rates for the following loans made available under the program shall be:

a. Direct loans: annual percentage rate of 3.9 percent.

b. Co-financed loans: annual percentage rate of 2 percent.

80.5(3) *Security.* Recipients shall provide collateral to secure the entire loan value. The department may require a first position on any collateral offered in connection with receiving a loan under the

program or any equipment purchases or other uses that can be securitized. The department may, however, allow for a subordinated position on collateral on co-financed loans that involve a conventional lender.

80.5(4) *Term.* The term of any loan made under the program shall not exceed five years. The department may require a shorter loan term for loans at the sole discretion of the director.

80.5(5) *Unallowable uses.* Proceeds from any loans made under the program shall not be used for any of the following:

a. Compensation to employees, including without limitation any benefits and travel allowances.

b. Refinancing existing or future loans.

c. Working capital. Recipients shall not, without limitation, use the loan proceeds to keep cash on hand or fund inventories.

d. Payment of liabilities incurred prior to the origination of the loan, including unpaid taxes and money owed to creditors.

e. Charitable donations.

f. Purchase of real estate.

g. Purchase of a business unless the loan made under the program is leveraged with other sources of financing, including at least 10 percent equity investment by the owner.

h. Purchase of vehicles unless the vehicle is a special-use vehicle that shall only be used for purposes related to the Iowa small business throughout the term of the loan and personal use is not allowed.

i. Purchase of equipment unless the equipment is deployed and primarily used by the Iowa small business in Iowa throughout the life of the loan.

[**ARC 8920B**, IAB 6/30/10, effective 6/11/10; **ARC 9062B**, IAB 9/8/10, effective 8/20/10]

261—80.6(83GA,SF2389) Eligibility. An Iowa small business is eligible to apply for a loan under the program provided the Iowa small business meets the following requirements:

80.6(1) The Iowa small business has a business plan, has received assistance from an Iowa small business development center or qualified public or nonprofit business consultant as defined by the department, and has been declared eligible for program participation by such entity or person. For purposes of this rule, a qualified public or nonprofit business consultant may include individuals with appropriate expertise who are affiliated with department-sponsored business accelerators, John Pappajohn Centers for Entrepreneurship, or the Iowans for Social and Economic Development, otherwise known as ISED Ventures. All consultants must receive program orientation training from the administrator, agree to perform specific functions in reviewing and participating in the program, and receive approval by the department.

80.6(2) The Iowa small business is not in violation of environmental or worker safety laws or rules. This requirement shall apply only if the Iowa small business has been incorporated for at least two years.

80.6(3) The Iowa small business employs only workers legally authorized to work in the state.

80.6(4) The Iowa small business does not engage in the production, depiction or distribution of obscene material as defined in Iowa Code section 728.1.

80.6(5) The Iowa small business is not in bankruptcy or imminently contemplating filing for bankruptcy.

80.6(6) The Iowa small business has a demonstrated need for the funds and will use them for a purpose described in rule 261—80.1(83GA,SF2389).

[**ARC 8920B**, IAB 6/30/10, effective 6/11/10; **ARC 9062B**, IAB 9/8/10, effective 8/20/10]

261—80.7(83GA,SF2389) Application.

80.7(1) *General.* Applications will be evaluated at least monthly and in the order they are received. Iowa small businesses that desire to participate in the program shall submit to the administrator a standard application, which shall be made available on the department's Web site, www.lifechanging.com. In addition to the information requested in the application, Iowa small businesses applying under this rule may also be required to submit the following documents:

a. Business plan and summary.

b. Financial statements that show total assets and total liabilities.

c. Such other supporting documents as may be required by the administrator to demonstrate the Iowa small business's eligibility for the loan and its ability to repay the loan.

d. An energy audit of the facilities for which the loan is sought, if the loan is proposed to be used to reduce facility costs.

80.7(2) *Startup businesses.* In addition to the requirements described in subrule 80.7(1), Iowa small businesses that have been incorporated for less than two years must submit the following additional information unless the business can document that its assets are three times greater than its liabilities, including the loan sought under this program:

a. Contingent loan approval from a conventional loan source as an eligible co-financed loan under these rules; or

b. Contingent loan approval from the Iowa microloan program as an eligible co-financed loan under these rules; or

c. Contingent loan approval from the targeted small business loan program as an eligible co-financed loan under these rules.

[**ARC 8920B**, IAB 6/30/10, effective 6/11/10; **ARC 9062B**, IAB 9/8/10, effective 8/20/10]

261—80.8(83GA,SF2389) Application review.

80.8(1) *Criteria.* The administrator shall evaluate applications based on the following criteria:

a. The quality of the Iowa small business's business plan and whether it projects a positive cash flow after the loan repayment.

b. Cash flow of the Iowa small business.

c. Credit score and credit history of the principal owner(s) of the Iowa small business and any owners of the Iowa small business with an interest of greater than 25 percent in the Iowa small business. Applicants with a credit score lower than 625 shall not be considered for a loan under this program unless the applicant is able to demonstrate extenuating circumstances that have impacted the applicant's credit score, provide adequate explanation for the low credit score and show a recent positive credit history, and either secure a suitable guarantor or have one or more co-owners with credit scores above 625.

d. Value and quality of collateral.

e. Education and experience of the owner of the Iowa small business related to owning and operating a business.

f. The quality and results of a marketing plan related to the Iowa small business.

g. The legal history, including any UCC-1 filings, of the principal owner of the Iowa small business and any owners with an interest of greater than 25 percent in the Iowa small business to the extent that history could negatively impact the business.

80.8(2) *Additional information.* The administrator or the department may require additional information from the Iowa small business in reviewing applications made under the program.

80.8(3) *Additional expertise.* The administrator and the department may use or procure the services of individuals with particular or specialized expertise in evaluating applications.

[**ARC 8920B**, IAB 6/30/10, effective 6/11/10; **ARC 9062B**, IAB 9/8/10, effective 8/20/10]

261—80.9(83GA,SF2389) Recommendation; loan agreement.

80.9(1) *Recommendation.* Upon final review of the application, the administrator shall prepare loan closing documents, including a loan agreement, for those businesses the administrator recommends to participate in the program and deliver them, along with the business's file, to the department for its review and approval. The administrator shall recommend and make part of the proposed loan agreements requirements in addition to standard loan provisions when the business poses a higher risk.

80.9(2) *Loan agreement required.* The administrator shall prepare a loan agreement which includes, but is not limited to, a description of the project to be completed by the business, the term of the loan, conditions to disbursement, a requirement for annual reporting to the department, and the repayment requirements of the business or other penalties imposed on the business in the event the business does not fulfill its obligations described in the loan agreement and other specific repayment provisions ("clawback provisions") to be established on a project-by-project basis.

80.9(3) *Award.* The director shall have the authority to award loans made under this program and to execute loan documents and other related documents.

80.9(4) *Acceptance.* A business recommended for a loan under this program shall have 20 days from receipt of the notice of intended award issued by the department to execute the necessary loan documents and return them to the department; otherwise, the department may rescind the loan award. The 20-day time limit may be extended by the director.

80.9(5) *Security.* The department shall take security for any loan. The form of such security may include but not be limited to one or more of the following:

a. Real estate mortgage.

b. Lien on personal or real property.

c. Letter of credit.

d. Corporate or personal guaranty.

e. A certificate of deposit.

[**ARC 8920B**, IAB 6/30/10, effective 6/11/10; **ARC 9062B**, IAB 9/8/10, effective 8/20/10]

261—80.10(83GA,SF2389) Repayment. All loans made under the program shall be subject to repayment as described in the loan agreement. Loans made under the program shall not be forgivable.

[**ARC 8920B**, IAB 6/30/10, effective 6/11/10; **ARC 9062B**, IAB 9/8/10, effective 8/20/10]

261—80.11(83GA,SF2389) Default.

80.11(1) *Events of default.* The department may, for cause, determine that a recipient is in default under the terms of the loan agreement. The reasons for which the department may determine that the recipient is in default of the contract include, but are not limited to, any of the following:

a. Any material representation or warranty made by the recipient in connection with the application that was incorrect in any material respect when made.

b. A material change in the business ownership or structure occurs without prior written disclosure and the permission of the department.

c. A relocation or abandonment of the business during the term.

d. Expenditure of funds for purposes not described in the application or authorized in the agreement.

e. Failure of the recipient to make timely payments under the terms of the agreement, note or other obligation.

f. Failure of the recipient to perform or comply with the terms and conditions of the contract.

g. Failure of the recipient to comply with any applicable state rules or regulations.

h. Failure of the recipient to file the required annual report.

80.11(2) *Closures.* If a recipient closes any of its facilities within the state prior to receiving the incentives and assistance, the department may reduce or eliminate all or a portion of the loan assistance. If a business closes any of its facilities within the state after executing a contract to receive the loan assistance, the department may consider this an event of default and the business may be subject to repayment of all or a portion of the loan assistance that it has received.

80.11(3) *Department actions upon default.*

a. The department will take prompt, appropriate, and aggressive debt collection action to recover any funds misspent by recipients.

b. If the department determines that the recipient is in default, the department may seek recovery of all program funds plus interest, assess penalties, negotiate alternative repayment schedules, suspend or discontinue collection efforts, and take other appropriate action as the department deems necessary.

c. The department shall attempt to collect the amount owed. Negotiated settlements, write-offs or discontinuance of collection efforts is subject to final review and approval by the director.

d. If the department refers defaulted contracts to outside counsel for collection, then the terms of the agreement between the department and the outside counsel regarding the scope of counsel's authorization to accept settlements shall apply.

[**ARC 8920B**, IAB 6/30/10, effective 6/11/10; **ARC 9062B**, IAB 9/8/10, effective 8/20/10]

These rules are intended to implement 2010 Iowa Acts, Senate File 2389, sections 41 through 44.

[Filed Emergency ARC 8920B, IAB 6/30/10, effective 6/11/10]
[Filed Emergency After Notice ARC 9062B (Notice ARC 8919B, IAB 6/30/10), IAB 9/8/10, effective 8/20/10]

CHAPTERS 81 to 100
Reserved

PART V
INNOVATION AND COMMERCIALIZATION DIVISION

CHAPTER 101
DIVISION RESPONSIBILITIES

[Prior to 9/6/00, see 261—Ch 62]

261—101.1(15) Mission. The mission of the innovation and commercialization division is to grow Iowa's economy by fostering entrepreneurship and supporting the workforce, commercialization, and marketing activities of the advanced manufacturing, biosciences, and information technology industries.

261—101.2(15) Division responsibilities. The division's primary responsibilities are to assist start-up and existing companies with commercialization of new technologies; to foster entrepreneurship; and to coordinate the marketing, education, and workforce efforts of the state with respect to the industries of advanced manufacturing, biosciences, and information technology.

101.2(1) *Commercialization.* Commercialization activities include, but are not limited to, program administration of the demonstration fund, the information technology joint venture fund, and the business accelerator program and oversight of the efforts of the statewide commercialization entity. Additionally, the division's commercialization activities include the facilitation of technology transfer at Iowa's state universities to the extent possible.

101.2(2) *Entrepreneurship.* Entrepreneurship activities include, but are not limited to, administrating the venture network of Iowa, coordinating the Iowa equity funds, and staffing the small business advisory council.

101.2(3) *Marketing, education, and workforce development.* Marketing, education, and workforce development efforts for the targeted industries include, but are not limited to, overseeing the information technology job training program and the targeted industries internship program and assisting in the administration of a statewide career awareness program.

These rules are intended to implement Iowa Code chapter 15 and 2007 Iowa Acts, House File 829, section 1.

[Filed 9/20/07, Notice 8/15/07—published 10/10/07, effective 11/14/07]
[Filed 2/22/08, Notice 12/19/07—published 3/12/08, effective 4/16/08]

CHAPTER 102
INFORMATION TECHNOLOGY JOINT VENTURE FUND

261—102.1(82GA,HF829) Authority. The authority for establishing rules governing the information technology joint venture fund under this chapter is provided in 2007 Iowa Acts, House File 829, section 1(4).

261—102.2(82GA,HF829) Purpose. The purpose of the information technology joint venture fund is to provide financial and technical assistance to encourage joint venture development of targeted IT innovations. The primary purpose of this program is to encourage Iowa IT user companies and Iowa software product companies to work on joint research and development programs to commercialize specialized IT products and services.

261—102.3(82GA,HF829) Definitions.

"Board" means the Iowa economic development board established in Iowa Code section 15.103.

"Committee" means the technology commercialization committee created by the board pursuant to Iowa Code section 15.116.

"Department" means the Iowa department of economic development.

"Fund" means the information technology joint venture fund.

"IP" means intellectual property.

"IT" means information technology.

"NAICS" means North American Industry Classification System.

"Targeted IT innovations" means those technologies which have commercial potential, although the generators of the technology do not wish to further commercialize the innovation themselves.

261—102.4(82GA,HF829) Program funding.

102.4(1) The maximum award shall not exceed $100,000 for a single project.

102.4(2) Funds may be used for applications development, software, materials, supplies and equipment, creation of marketing materials, legal and consulting costs, or other business expenses deemed reasonable and appropriate.

102.4(3) No program funds shall be used for university overhead expenses or for any work that was conducted by an applicant company or any third-party consultant prior to the term of the contract.

102.4(4) Financial assistance shall be awarded to projects that will result in technologies being developed as commercial products for sale by Iowa companies rather than as custom applications for proprietary use by a participating firm.

102.4(5) The forms of financial assistance may consist of, but not be limited to, loans, forgivable loans, grants and such other forms of assistance the board deems appropriate and consistent with the needs of a given project.

261—102.5(82GA,HF829) Matching funds requirement. In order to receive financial assistance, an applicant must demonstrate the ability to secure two dollars of nonstate moneys for every one dollar received from the department.

261—102.6(82GA,HF829) Eligible applicants.

102.6(1) Eligible applicants must be classified within and are limited to the 2002 NAICS codes for the following targeted industries:

a. Biosciences.

b. Information technology.

c. Advanced manufacturing.

102.6(2) Eligible businesses must be technology-based and sufficiently innovative to provide a competitive advantage in the marketplace and have the potential for significant, high-performance growth.

102.6(3) Businesses applying for assistance shall be located in, or shall have relocated to, and shall be primarily domiciled in Iowa prior to the receipt of program funds.

261—102.7(82GA,HF829) Ineligible applicants. A business which closes or substantially reduces its workforce by more than 20 percent at existing operations in order to relocate substantially the same operations to another area of the state is ineligible for 36 consecutive months at any of its Iowa sites from the date the new establishment opens.

261—102.8(82GA,HF829) Application and review process.

102.8(1) An eligible business must submit an application for financial assistance, in the form specified by the department, to the Iowa Department of Economic Development, Innovation and Commercialization Division, 200 East Grand Avenue, Des Moines, Iowa 50309. Required forms and instructions are available at this address or at the department's Web site at www.iowalifechanging.com.

102.8(2) To apply for financial assistance from the fund, a business shall submit an application to the department, in the form specified by the department, on behalf of both the IT user company and the IT provider company. The application will be reviewed by department staff, the committee and the board. The committee will make a recommendation to the board regarding an application. The board has final decision-making authority on requests for financial assistance from the fund. The board may approve, defer or deny an application.

102.8(3) An application for financial assistance shall include all information required by the department including, but not limited to, the following:

a. *Proposed approach.* A description of the ownership structure of the IP, the experience of those involved in the proposal, and the company resources.

b. *Market research.* A market research analysis that addresses questions such as:

(1) What are the competing or alternative technologies?

(2) What is the advantage of this new approach?

(3) What are the distribution plans?

(4) What is the estimated return on investment?

c. *Commercialization.* A description of the key next steps to making an impact with the innovation and a description of the need for funding to overcome obstacles to success.

d. *Work plan.* A description of the strategy and key elements to be funded to address the goals of the work plan, including project milestones.

e. *Resources and budget.* A budget that includes a detailed description of the sources, including the required match, and uses of the funds.

261—102.9(82GA,HF829) Application selection criteria. When applications for financial assistance are reviewed, the following criteria shall be considered:

102.9(1) *Intellectual property.* How the ownership of the IP is structured. (More points will be awarded for greater IP control by an Iowa IT provider company, with the greatest number of points being awarded for exclusive IP ownership by an Iowa IT provider company.)

102.9(2) *Experience.* The level of experience the business has in product development and commercialization and ongoing product maintenance.

102.9(3) *Estimate for project completion.* What the work requirements are; how quickly the project will be completed; how credible the estimate is relative to the Iowa IT provider company's experience; and what resources the IT provider company has to execute project requirements.

102.9(4) *Market research.* Whether there is a competitor; how large the market outside of Iowa is; how credible the marketing plan is; the level of experience the IT provider company has in this industry; and whether there is an industry in Iowa that would be a natural client/market.

102.9(5) *Financial requirement.* Whether the matching and necessary funds have been secured and whether the amount available is sufficient to take the product to market.

102.9(6) *Distribution.* Whether channels already exist to take the product to market.

102.9(7) *Expected return.* What the expected return on investment is, based on the break-even point and the long-term economic impact of the project.

261—102.10(82GA,HF829) Contract and reporting.

102.10(1) *Notice of award.* Successful applicants will be notified in writing of an award of financial assistance, including any conditions and terms of the approval.

102.10(2) *Contract required.* The department shall prepare a contract, which includes, but is not limited to, a description of the project to be completed by the business; conditions to disbursement; required reports; and the repayment requirements imposed on the business in the event the business does not fulfill its obligations described in the contract and other specific repayment provisions ("clawback" provisions) to be established on a project-by-project basis.

102.10(3) *Reporting.* An applicant shall submit any information requested by the department in sufficient detail to permit the department to prepare the report required pursuant to 2007 Iowa Acts, House File 829, section 10, and any other reports deemed necessary by the department, the board, the general assembly or the governor's office.

These rules are intended to implement 2007 Iowa Acts, House File 829.

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CHAPTER 103
INFORMATION TECHNOLOGY TRAINING PROGRAM

261—103.1(15,83GA,SF142) Authority. The authority for establishing rules governing the information technology training program under this chapter is provided in Iowa Code section 15.411(10).
[**ARC 8210B**, IAB 10/7/09, effective 11/11/09]

261—103.2(15,83GA,SF142) Purpose. The purpose of the information technology training program is to assist businesses or departments of businesses engaged in the delivery of information technology services in the state in upgrading the high-level technical skills of existing employees.
[**ARC 8210B**, IAB 10/7/09, effective 11/11/09]

261—103.3(15,83GA,SF142) Definitions.

"Board" means the Iowa economic development board established in Iowa Code section 15.103.

"Committee" means the technology commercialization committee created by the board pursuant to Iowa Code section 15.116.

"Department" means the Iowa department of economic development.

"High-level technical training" means training that provides knowledge or skills that are clearly recognized throughout the industry as current and advanced for a particular occupation.

"Information technology professional" means an employee primarily engaged in the delivery of information technology services in one of the following SOC job classifications or in any similar SOC job classification:

1. Networking and systems support: 11-3021, 15-1041, 15-1051, 15-1061, 15-1071, 15-1081, 15-1099, 17-3023, 17-3024.
2. Programming and engineering: 15-1011, 15-1021, 15-1031, 15-1032, 15-2031, 15-2099.
3. Assembly, installation and repair: 17-3012, 49-2011, 49-2022, 49-2093, 49-2094, 49-9052, 51-2022, 51-2023, 51-4011, 51-4012, 51-9141.

"SOC" means Standard Occupational Classification (SOC) System.
[**ARC 8210B**, IAB 10/7/09, effective 11/11/09]

261—103.4(15,83GA,SF142) Program funding.

103.4(1) The maximum annual award that may be approved for any business site is $25,000.

103.4(2) Program training may be provided in state or out of state.

103.4(3) Financial assistance shall be based on the actual cost of allowable services as identified in rule 261—103.6(15,83GA,SF142).
[**ARC 8210B**, IAB 10/7/09, effective 11/11/09]

261—103.5(15,83GA,SF142) Matching funds requirement. A business shall provide matching funds of at least two dollars of nonstate moneys for every one dollar received from the department.
[**ARC 8210B**, IAB 10/7/09, effective 11/11/09]

261—103.6(15,83GA,SF142) Use of program funds.

103.6(1) The following costs associated with the operation of training services are eligible for program funding:

a. Cost of tuition.
b. Cost of company, college, or contracted trainer or training services.
c. Training-related materials and supplies.
d. Lease or rental of training facilities.
e. Training-related travel.
f. Subcontracted services.
g. Contracted or professional services.

103.6(2) Equipment and software, when used for training, may be an allowable cost. If equipment or software is purchased for use in training but is subsequently retained for use in the general operation of the applicant's business, only the prorated portion of the equipment or software costs directly related

to the training shall be eligible for program funding. Prorated costs for equipment or software shall not exceed $1,000, respectively.

103.6(3) Reimbursement of an employee's wages while the employee is in training is not allowed.
[**ARC 8210B**, IAB 10/7/09, effective 11/11/09]

261—103.7(15,83GA,SF142) Eligible business. To be eligible for this program, the business, or a department of the business, must be engaged in the delivery of information technology services and the business must be located in Iowa.
[**ARC 8210B**, IAB 10/7/09, effective 11/11/09]

261—103.8(15,83GA,SF142) Ineligible business. The following businesses are not eligible for this program:

103.8(1) A business which is engaged in retail sales or which provides health services is ineligible.

103.8(2) A business which closes or substantially reduces its workforce by more than 20 percent at existing operations in order to relocate substantially the same operations to another area of the state is ineligible for 36 consecutive months at any of its Iowa sites from the date the new establishment opens.
[**ARC 8210B**, IAB 10/7/09, effective 11/11/09]

261—103.9(15,83GA,SF142) Eligible employee.

103.9(1) The employee for whom training is planned must be an information technology professional whose principal place of employment is in Iowa.

103.9(2) The employee for whom training is planned must hold a current position intended by the employer to exist on an ongoing basis with no planned termination date.

103.9(3) Training is available only to an employee who is hired by the business, is currently employed by the business, and for whom the business pays Iowa withholding tax.
[**ARC 8210B**, IAB 10/7/09, effective 11/11/09]

261—103.10(15,83GA,SF142) Ineligible employee.

103.10(1) A replacement worker who is hired as a result of a strike, lockout, or other labor dispute is ineligible for program services.

103.10(2) An employee hired as a temporary worker is ineligible for program services.
[**ARC 8210B**, IAB 10/7/09, effective 11/11/09]

261—103.11(15,83GA,SF142) Application and review process.

103.11(1) An eligible business must submit an application for training assistance, on a form provided by the department, to the Iowa Department of Economic Development, Innovation and Commercialization Division, 200 East Grand Avenue, Des Moines, Iowa 50309. Required forms and instructions are available at this address or at the department's Web site at www.iowalifechanging.com.

103.11(2) The application will be reviewed by department staff, the committee and the board. The committee will make a recommendation to the board regarding an application. The board has final decision-making authority on requests for financial assistance for this program. The board may approve, defer or deny an application or may refer an application to another training program.

103.11(3) An application for assistance shall include all information required by the department including, but not limited to, the following:

a. The dates and location of the training.

b. The name of employee(s) attending training.

c. A copy of the quote from the training provider outlining costs of training.

d. A statement of how training will benefit the company and how the training supports Iowa's initiative to grow the targeted industries.

e. Identification of the skills the employees will acquire from the training and how the skills will increase the employees' value to the business.

f. A statement of the anticipated training outcomes.

103.11(4) The department and the committee will score applications according to the criteria specified in rule 261—103.12(15,83GA,SF142).

103.11(5) To be considered for funding, an application must receive a minimum score of 65 out of a possible 100 points and meet all other eligibility criteria specified in these rules.

103.11(6) Applications which receive a minimum score of 65 points shall be referred to the board for final action.

103.11(7) The department reserves the right to require additional information from a business.

103.11(8) Application approval shall be contingent on the availability of funds. The board shall reject or defer an application if funds are not available.

103.11(9) The board reserves the right to award program funds in an amount less than that requested in the application.

[**ARC 8210B**, IAB 10/7/09, effective 11/11/09]

261—103.12(15,83GA,SF142) Application scoring criteria. When applications for financial assistance are reviewed, the following criteria shall be considered:

1. The application has established the business's need for training. 15 points.
2. The application represents high-level technology training. 15 points.
3. The training will substantially improve the skills, knowledge and abilities of the employee. 15 points.
4. The average wages that are or will be paid by the business participating in this training are or will be above the state average wage rates. 10 points.
5. The training will help improve the business's competitiveness. 5 points.
6. The state of Iowa will realize economic benefits as a result of providing assistance for this training. 10 points.
7. The training will be provided at a state of Iowa community college or university. 5 points.
8. The training is jointly provided to IT employees from more than one Iowa company. 10 points.
9. The application documents that all considerations, including the funding required to begin the training project, have been addressed. 5 points.
10. The business provides its employees health insurance and other benefits. 5 points.
11. The majority of the business's employees are employed full-time. 5 points.

[**ARC 8210B**, IAB 10/7/09, effective 11/11/09]

261—103.13(15,83GA,SF142) Contract and reporting.

103.13(1) *Notice of award.* Successful applicants will be notified in writing of an award of assistance, including any conditions and terms of the approval.

103.13(2) *Contract required.* The department shall prepare a contract, which includes, but is not limited to, a description of the training to be completed; conditions to disbursement; required reports; and the repayment requirements imposed in the event the business does not fulfill its obligations described in the contract and other specific repayment provisions ("clawback" provisions) to be established on an individual basis.

103.13(3) *Reporting.* An applicant shall submit any information requested by the department in sufficient detail to permit the department to prepare the report required pursuant to Iowa Code section 15.104(9)*"l"* and any other reports deemed necessary by the department, the board, the general assembly or the governor's office.

[**ARC 8210B**, IAB 10/7/09, effective 11/11/09]

These rules are intended to implement Iowa Code section 15.411(5) and 2009 Iowa Acts, Senate File 142.

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CHAPTER 104
TARGETED INDUSTRIES INTERNSHIP PROGRAM

261—104.1(15) Authority. The authority for establishing rules governing the development of the targeted industries internship program is provided in 2007 Iowa Acts, House File 829, section 1(6).
[**ARC 8848B**, IAB 6/16/10, effective 5/20/10; **ARC 9063B**, IAB 9/8/10, effective 10/13/10]

261—104.2(15) Purpose. The purpose of the targeted industries internship program is to link Iowa students to internship opportunities in small and medium-sized firms in the biosciences, advanced manufacturing and information technology industries and to convert interns into prospective employees.
[**ARC 8848B**, IAB 6/16/10, effective 5/20/10; **ARC 9063B**, IAB 9/8/10, effective 10/13/10]

261—104.3(15) Definitions.

"Board" means the Iowa economic development board established in Iowa Code section 15.103.

"Committee" means the technology commercialization committee created by the board pursuant to Iowa Code section 15.116.

"Community college" means a community college established under Iowa Code chapter 260C.

"Department" means the Iowa department of economic development.

"Internship" means temporary employment of a student that focuses on providing the student with work experience in the student's field of study.

"Prospective employee" means a student who is anticipated to be hired upon graduation.

"Student" means a student of one of the Iowa community colleges, private colleges, or institutions of higher learning under the control of the state board of regents or a student who graduated from high school in Iowa but attends an institution of higher learning outside the state of Iowa.

"Targeted industry" means the industries of advanced manufacturing, biosciences, and information technology.
[**ARC 8848B**, IAB 6/16/10, effective 5/20/10; **ARC 9063B**, IAB 9/8/10, effective 10/13/10]

261—104.4(15) Program funding.

104.4(1) The maximum award shall not exceed $3,100 for any single internship or $9,300 for any single business.

104.4(2) Funds shall only be used for reimbursement of wages during the designated internship period. Students hired as interns shall be paid at least twice the minimum wage.

104.4(3) The department shall issue funds to a business based upon department approval of a completed application and the execution of a contract between the business and the department.

104.4(4) A business may receive financial assistance in an amount of one dollar for every two dollars paid by the business to the intern.
[**ARC 8848B**, IAB 6/16/10, effective 5/20/10; **ARC 9063B**, IAB 9/8/10, effective 10/13/10]

261—104.5(15) Eligible business. The targeted industries internship program is available to Iowa businesses that meet all of the following criteria:

104.5(1) An applicant must be an Iowa-based business with fewer than 500 employees, with a significant portion employed within the state of Iowa.

104.5(2) An applicant must be engaged in one of the targeted industries of biosciences, advanced manufacturing or information technology.

104.5(3) An applicant must offer the internship to students of Iowa community colleges, private colleges, or institutions of higher learning under the control of the state board of regents or to students who graduated from high school in Iowa but attend an institution of higher learning outside the state of Iowa.

104.5(4) An applicant's summer internships must last a minimum of 8 weeks (averaging no less than 30 hours per week), and an applicant's semester internships must last a minimum of 14 weeks (averaging no less than 10 hours per week).
[**ARC 8848B**, IAB 6/16/10, effective 5/20/10; **ARC 9063B**, IAB 9/8/10, effective 10/13/10]

261—104.6(15) Ineligible business. The following businesses are not eligible for this program:

104.6(1) A business which is engaged in retail sales or which provides health services is ineligible.

104.6(2) A business which closes or substantially reduces its workforce by more than 20 percent at existing operations in order to relocate substantially the same operations to another area of the state is ineligible for 36 consecutive months at any of its Iowa sites from the date the new establishment opens.
[**ARC 8848B**, IAB 6/16/10, effective 5/20/10; **ARC 9063B**, IAB 9/8/10, effective 10/13/10]

261—104.7(15) Eligible students. Students must be within one to two years of graduation and enrolled at one of Iowa's community colleges, private colleges, or institutions of higher learning under the control of the state board of regents. A student as defined in this chapter is eligible for an internship under this rule. The department shall encourage youth who reside in economically distressed areas, youth adjudicated to have committed a delinquent act, and youth transitioning out of foster care to participate in the targeted industries internship program.
[**ARC 8848B**, IAB 6/16/10, effective 5/20/10; **ARC 9063B**, IAB 9/8/10, effective 10/13/10]

261—104.8(15) Ineligible students. Students who are more than two years from graduation are ineligible. Students who are immediate family members of management employees or board members of the applicant business are ineligible. Students who do not otherwise meet the eligibility requirements described in rule 261—104.7(15) are not eligible.
[**ARC 8848B**, IAB 6/16/10, effective 5/20/10; **ARC 9063B**, IAB 9/8/10, effective 10/13/10]

261—104.9(15) Application submittal and review process.

104.9(1) The department shall develop a standardized application and make the application available to eligible businesses. To apply for moneys from the program, a business shall submit an application to the department. Applications must be submitted to the Iowa Department of Economic Development, Innovation and Commercialization Division, 200 East Grand Avenue, Des Moines, Iowa 50309. Required forms and instructions are available at this address or at the department's Web site at www.iowalifechanging.com.

104.9(2) The application will be reviewed by department staff, the committee and the board. The committee will make a recommendation to the board regarding an application. The board has final decision-making authority on requests for financial assistance for this program. The board may approve, defer or deny an application.
[**ARC 8848B**, IAB 6/16/10, effective 5/20/10; **ARC 9063B**, IAB 9/8/10, effective 10/13/10]

261—104.10(15) Application content and other requirements.

104.10(1) Applicants must complete an application for internship assistance and submit it to the department. Successful applicants must enter into a contract with the department prior to posting or advertising the internship.

104.10(2) If an award is made, the business shall secure an intern within the time period stated in the contract between IDED and the business.

104.10(3) The application shall include, but not be limited to, all of the following:

a. The dates and location of the internship.

b. A statement of duties the intern will be performing at the business site. The intern is to be involved in a substantive experience in one or more of the following areas: research and development; engineering; process management and production; product experimentation and analysis; product development; market research; business planning and administration. The application shall also include information regarding the intern's work space (i.e., access to telephone, computer, and other necessary items).

c. The name of the business's representative who will train and supervise the intern.

d. A statement of the anticipated workforce needs at the business, which shall include an explanation of the current workforce shortage and identify the intern's potential for prospective employment with the business following graduation.

104.10(4) The department reserves the right to require additional information from the business.
[**ARC 8848B**, IAB 6/16/10, effective 5/20/10; **ARC 9063B**, IAB 9/8/10, effective 10/13/10]

261—104.11(15) Selection process. Applications will be reviewed in the order received by the department. The board may approve, defer or deny each application for financial assistance, based on the availability of funds. The department and the committee will score applications according to the criteria specified in rule 261—104.12(15). To be considered for funding, an application must receive a minimum score of 65 out of a possible 100 points and meet all other eligibility criteria specified in these rules.
[**ARC 8848B**, IAB 6/16/10, effective 5/20/10; **ARC 9063B**, IAB 9/8/10, effective 10/13/10]

261—104.12(15) Application scoring criteria. When applications for financial assistance are reviewed, the following criteria shall be considered:

104.12(1) The intern is involved in a substantive experience in one or more of the following areas: research and development; engineering; process management and production; product experimentation and analysis; product development; market research; business planning and administration. 25 points.

104.12(2) The explanation of the applicant's anticipated workforce needs and of the intern's potential for prospective employment with the business following graduation. 20 points.

104.12(3) The extent to which the internship duties require independent judgment, creativity, and intelligence to complete and contribute to the business's goals or processes. 10 points.

104.12(4) The internship will have a positive impact on the intern's skills, knowledge and abilities. 15 points.

104.12(5) The internship pays more than twice the minimum wage. 10 points.

104.12(6) The business's contribution to the internship program is above the minimum program match requirement. 10 points.

104.12(7) Intern applications will be accepted from more than one private college, university or community college. 5 points.

104.12(8) The application documents that all considerations, including funding required to begin the internship, have been addressed. 5 points.
[**ARC 8848B**, IAB 6/16/10, effective 5/20/10; **ARC 9063B**, IAB 9/8/10, effective 10/13/10]

261—104.13(15) Contract and reporting.

104.13(1) *Notice of award.* Successful applicants will be notified in writing of an award of assistance, including any conditions and terms of the approval.

104.13(2) *Contract required.* The department shall prepare a contract, which includes, but is not limited to, a description of the internship to be completed; conditions to disbursement; required reports; and the repayment requirements imposed in the event the business does not fulfill its obligations described in the contract and other specific repayment provisions ("clawback" provisions) to be established on an individual basis.

104.13(3) *Reporting.* An applicant shall submit any information requested by the department in sufficient detail to permit the department to prepare the report pursuant to 2007 Iowa Acts, House File 829, section 10, and any other reports deemed necessary by the department, the board, the general assembly or the governor's office.
[**ARC 8848B**, IAB 6/16/10, effective 5/20/10; **ARC 9063B**, IAB 9/8/10, effective 10/13/10]

These rules are intended to implement 2009 Iowa Code Supplement section 15.411 as amended by 2010 Iowa Acts, Senate File 2076.

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CHAPTER 105
DEMONSTRATION FUND

261—105.1(82GA,HF829) Authority. The authority for establishing rules governing the demonstration fund under this chapter is provided in 2007 Iowa Acts, House File 829.

261—105.2(82GA,HF829) Purpose. The demonstration fund is established to provide financial and technical assistance to encourage high technology prototype and concept development activities that have a clear potential to lead to commercially viable products or services within a reasonable period of time. The primary purpose of the fund is to help businesses with a high-growth potential reach a position where they are able to attract later stage private sector funding.

261—105.3(82GA,HF829) Definitions.

"Board" means the Iowa economic development board established in Iowa Code section 15.103.

"Committee" means the technology commercialization committee created by the board pursuant to Iowa Code section 15.116.

"Department" means the Iowa department of economic development.

"Fund" means the demonstration fund.

"IP" means intellectual property.

"NAICS" means the North American Industry Classification System.

261—105.4(82GA,HF829) Project funding.

105.4(1) Awards shall be made on a per-project basis upon board approval.

105.4(2) The maximum award shall not exceed $150,000 for a single project.

105.4(3) Funds may be used for refining a prototype, acquiring managerial expertise, purchasing equipment, or creating marketing materials.

105.4(4) Funds may not be used for university overhead expenses or any work that was conducted prior to the term of the contract by the applicant or any third-party consultant.

105.4(5) The forms of financial assistance may consist of, but are not limited to, loans, forgivable loans, grants and such other forms of assistance the board deems appropriate and consistent with the needs of a given project.

261—105.5(82GA,HF829) Matching funds requirement. In order to receive financial assistance, an applicant must demonstrate the ability to secure one dollar of nonstate moneys for every two dollars received from the department.

261—105.6(82GA,HF829) Eligible applicants. Eligible applicants must be located in Iowa, demonstrate the potential for high growth, and be included in one of the following industries classified by the NAICS:

1. Biosciences.
2. Information technologies.
3. Advanced manufacturing.

261—105.7(82GA,HF829) Ineligible applicants. The following businesses are not eligible for this fund:

105.7(1) A business which is engaged in retail sales or provides health services is ineligible.

105.7(2) A business which closes or substantially reduces its workforce by more than 20 percent at existing operations in order to relocate substantially the same operation to another area of the state is ineligible for 36 consecutive months at any of its Iowa sites from the date the new establishment opens.

261—105.8(82GA,HF829) Application and review process.

105.8(1) An eligible business must submit an application for financial and technical assistance from the fund to the Iowa Department of Economic Development, Innovation and Commercialization

Division, 200 East Grand Avenue, Des Moines, Iowa 50309, on a form provided by the department. Required forms and instructions are available at this address or at the department's Web site at www.iowalifechanging.com.

105.8(2) To apply for financial assistance from the fund, a business shall submit an application to the department, on a form provided by the department. The application will be reviewed by department staff, the committee and the board. The committee will make a recommendation to the board about an application. The board has final decision-making authority on requests for financial assistance from the fund. The board may approve, defer or deny an application.

105.8(3) An application for assistance shall include all information required by the department including, but not limited to, the following:

a. *Proposed product or service.* A description of the proposed product or service, the experience of those involved in the proposed project, and the company resources.

b. *Market research.* A market research analysis that addresses questions such as:

(1) What are the competing or alternative technologies?

(2) What is the advantage of this new approach?

(3) What are the distribution plans?

(4) What is the estimated return on investment?

c. *Commercialization.* A description of the key next steps to making an impact with the innovation and a description of funding requirements necessary to overcome obstacles to success.

d. *Work plan.* A description of the strategy and key elements to be funded to address goals of the work plan, including project milestones.

e. *Resources and budget.* A budget that includes a detailed description of the sources, including the required match, and uses of the funds.

261—105.9(82GA,HF829) Application selection criteria. In reviewing applications for financial assistance, the committee and board shall consider the following criteria:

105.9(1) *Intellectual property.* How the ownership of the IP is structured. (More points are awarded for greater IP control by the business, with the greatest number of points being awarded for exclusive IP ownership by the business.)

105.9(2) *Experience.* The business's experience in productization and commercialization, and ongoing product maintenance.

105.9(3) *Estimate to completion.*

a. What are the work requirements; how quickly will it be completed?

b. How credible is this estimate relative to the business's experience?

c. Does the business have the resources to fulfill these requirements?

105.9(4) *Market research.*

a. Is there a competitor?

b. How large is the market outside of Iowa?

c. How credible is the marketing plan?

d. Does the business have experience in this industry?

e. Is there an industry in Iowa that would be a natural client/market?

105.9(5) *Financial requirement.*

a. Have the matching and necessary funds been secured?

b. Is the amount available sufficient to take the product to market?

105.9(6) *Distribution.* Do the channels already exist to take the product to market?

105.9(7) *Expected return.* As part of the evaluation process, is the expected return quantified based on time to breakeven and long-term economic impact?

261—105.10(82GA,HF829) Contract and reporting.

105.10(1) *Notice of award.* Successful applicants will be notified in writing of an award of assistance, including any conditions and terms of the approval.

105.10(2) *Contract required.* The department shall prepare a contract, which includes, but is not limited to, a description of the project to be completed by the business; conditions to disbursement; required reports; the repayment requirements imposed on the business in the event the business does not fulfill its obligations described in the contract and other specific repayment provisions ("clawback" provisions) to be established on a project-by-project basis.

105.10(3) *Reporting.* An applicant shall submit any information requested by the department in sufficient detail to permit the department to prepare the report required pursuant to 2007 Iowa Acts, House File 829, section 10, and any other reports deemed necessary by the department, the board, the general assembly or the governor's office.

These rules are intended to implement 2007 Iowa Acts, House File 829, section 1(3).

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CHAPTER 106
COMMUNITY COLLEGE EQUIPMENT AND TRAINING FUND

261—106.1(82GA,HF829) Authority. The authority for establishing rules governing the community college equipment and training fund under this chapter is provided in 2007 Iowa Acts, House File 829, section 7(10).

261—106.2(82GA,HF829) Purpose. The purpose of the community college equipment and training fund is to provide financial assistance to support the purchase and licensing of equipment and software that are current and competitive for use in training programs and courses related to the targeted industries.

261—106.3(82GA,HF829) Definitions.

"Board" means the Iowa economic development board established in Iowa Code section 15.103.

"Committee" means the technology commercialization committee created by the board pursuant to Iowa Code section 15.116.

"Community college" means a community college established under Iowa Code chapter 260C.

"Department" means the Iowa department of economic development.

"Equipment" means hard assets that are current and competitive for use in training programs and courses related to the targeted industries.

"Fund" means the community college equipment and training fund.

"Targeted industry" means the industries of advanced manufacturing, biosciences, and information technology.

"Training software" means software for training that is current and competitive for use in training programs and courses related to the targeted industries.

261—106.4(82GA,HF829) Program funding.

106.4(1) The maximum award shall not exceed $1 million for a single project.

106.4(2) Funds may be used for equipment and software for training or for other project expenses deemed reasonable and appropriate by the department.

106.4(3) The forms of financial assistance may consist of, but are not limited to, loans, forgivable loans, grants and such other forms of assistance the board deems appropriate and consistent with the needs of a given project.

261—106.5(82GA,HF829) Eligible applicants.

106.5(1) Eligible applicants must be one or more of the 15 community colleges established under Iowa Code chapter 260C.

106.5(2) Eligible applicants shall include one of the following:

a. Statewide collaboration among all 15 community colleges;

b. Two or more community colleges; or

c. One community college.

261—106.6(82GA,HF829) Application and review process.

106.6(1) A community college or a community college on behalf of a consortium of community colleges must submit an application for financial assistance, in the form specified by the department, to the Iowa Department of Economic Development, Innovation and Commercialization Division, 200 East Grand Avenue, Des Moines, Iowa 50309. Required forms and instructions are available at this address or at the department's Web site at www.iowalifechanging.com.

106.6(2) To apply for financial assistance from the fund, a community college shall submit an application to the department, in the form specified by the department. The application will be reviewed by department staff, the committee and the board. The committee will make a recommendation to the board regarding an application. The board has final decision-making authority on requests for financial assistance from the fund. The board may approve, defer or deny an application.

106.6(3) An application for financial assistance shall include all information required by the department including, but not limited to, the following:

a. *Project approach.* A description of the project, including how persons from targeted industries and the community college(s) are involved in the project.

b. *Work plan.* A description of the strategy and key elements to be funded that addresses the goals of the work plan, including project milestones.

c. *Resources and budget.* A budget that includes a detailed description of the sources and uses of the funds.

d. *Project outcomes.* A statement of the anticipated project outcomes, including how the new capabilities or new technology will benefit the targeted industries.

261—106.7(82GA,HF829) Application selection criteria. When applications for financial assistance are reviewed, the following criteria will be considered:

106.7(1) *Project approach.* Whether the proposed approach is beneficial to the targeted industries and builds capacity at the community college.

106.7(2) *Innovation.* Whether the project improves the use of technology to impact the competitiveness of the targeted industries.

106.7(3) *Workforce.* Whether the project ensures competitiveness by increasing the skills of youth and adults preparing for employment or currently employed in the targeted industries.

106.7(4) *Collaboration.* Whether the project demonstrates collaboration among community colleges, business partners, state agencies, and industry associations.

106.7(5) *Financial requirement.* Whether the funding available is sufficient to complete the project. Criteria for selection of the final award may include the amount of matching funds and in-kind match the proposal brings to the project.

106.7(6) *Expected return.* Whether the state of Iowa will realize economic benefits as a result of providing assistance for the project.

106.7(7) *Estimate for project completion.* Whether the required work can be completed in accordance with the time frame for the project.

261—106.8(82GA,HF829) Contract and reporting.

106.8(1) *Notice of award.* Successful applicants will be notified in writing of an award of financial assistance, including any conditions and terms of the approval.

106.8(2) *Contract required.* The department shall prepare a contract, which includes, but is not limited to, a description of the project to be completed by the community college(s); conditions for disbursement; required reports; and the repayment requirements imposed in the event the community college(s) does not fulfill its obligations described in the contract and other specific repayment provisions ("clawback" provisions) to be established on a project-by-project basis.

106.8(3) *Reporting.* An applicant shall submit any information requested by the department in sufficient detail to permit the department to prepare the report required pursuant to 2007 Iowa Acts, House File 829, section 10, and any other reports deemed necessary by the department, the board, the general assembly or the governor's office.

These rules are intended to implement 2007 Iowa Acts, House File 829.

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CHAPTER 107
TARGETED INDUSTRIES NETWORKING FUND

261—107.1(82GA,ch122) Authority. The authority for establishing rules governing the targeted industries networking fund under this chapter is provided in 2007 Iowa Acts, House File 829, section 7(7).

261—107.2(82GA,ch122) Purpose. The purpose of the targeted industries networking fund is to provide financial assistance to support sponsorships of networking events for the creation of new deal flow within the targeted industries. Sponsors of networking events will bring together entrepreneurs, start-up businesses, established companies, venture capitalists, and members of the academic research community to discuss new technologies, innovations, opportunities, resources, or needs of the targeted industries.

261—107.3(82GA,ch122) Definitions.

"Board" means the Iowa economic development board established in Iowa Code section 15.103.

"Committee" means the technology commercialization committee created by the board pursuant to Iowa Code section 15.116.

"Deal flow" means the creation and maintenance of a flow of business proposals for evaluation and decisions for financial backing.

"Department" means the Iowa department of economic development.

"Fund" means the targeted industries networking fund.

"Networking event" means a sponsored event that facilitates linkages between businesses, investors, and academic problem solvers to create new deal flow within the targeted industries.

"Targeted industry" means the industries of advanced manufacturing, biosciences, and information technology.

261—107.4(82GA,ch122) Program funding.

107.4(1) The maximum award shall not exceed $5,000 for a single project. However, as deemed appropriate, the committee may review proposals for funding in excess of $5,000 to support the presentation of a nationally recognized speaker in the field of innovation and commercialization.

107.4(2) Funds may be used for speaker fees, event marketing and collateral materials, facility rentals or other project expenses deemed reasonable and appropriate by the department.

107.4(3) The forms of financial assistance may consist of, but are not limited to, loans, forgivable loans, grants and such other forms of assistance the board deems appropriate and consistent with the needs of a given project.

261—107.5(82GA,ch122) Eligible applicants. Eligible applicants must be industry groups, businesses or other sponsors of networking events designed for the creation of new deal flow within the targeted industries.

261—107.6(82GA,ch122) Application and review process.

107.6(1) An industry group, business or other sponsor of a networking event must submit an application for financial assistance, in the form specified by the department, to the Iowa Department of Economic Development, Innovation and Commercialization Division, 200 East Grand Avenue, Des Moines, Iowa 50309. Required forms and instructions are available at this address or at the department's Web site at www.iowalifechanging.com.

107.6(2) To apply for financial assistance from the fund, an industry group, business or other sponsor of a networking event shall submit an application to the department, in the form specified by the department. The application will be reviewed by department staff, the committee and the board. The committee will make a recommendation to the board regarding an application. The board has final decision-making authority on requests for financial assistance from the fund. The board may approve, defer or deny an application.

107.6(3) An application for financial assistance shall include all information required by the department including, but not limited to, the following:

a. *Event topic.* A description of the theme for the networking event or planned topic of discussion. Topics must be substantive in nature and address key innovations, opportunities, resources, or needs of the event attendees.

b. *Event format.* Events must have a planned structure, including an agenda. Formats may include business panels, business executive presentations with question and answer periods, intellectual property showcases and presentations, roundtable discussions, "speed dating" sessions, workshops, plant and laboratory tours, or other formats deemed appropriate by the department. Strictly social events and member-only events for associations will not qualify for funding.

c. *Resources and budget.* A budget that includes a detailed description of the sources and uses of the funds.

d. *Project outcomes.* A statement of the anticipated project outcomes including potential industry connections and benefits to the targeted industries.

261—107.7(82GA,ch122) Application selection criteria. When applications for financial assistance are reviewed, the following criteria shall be considered:

107.7(1) *Event format.* Whether the event follows one of the required formats and is beneficial to the targeted industries.

107.7(2) *Event approach.* Whether the topic area is innovative and the recommended speakers and attendees are the appropriate targeted industries audience.

107.7(3) *Financial requirement.* Whether the application includes matching funds and in-kind match and whether the amount available is sufficient to complete the project.

107.7(4) *Project outcomes.* Whether the project outcomes include potential industry connections and benefits to the targeted industries.

261—107.8(82GA,ch122) Contract and reporting.

107.8(1) *Notice of award.* Successful applicants will be notified in writing of an award of financial assistance, including any conditions and terms of the approval.

107.8(2) *Contract required.* The department shall prepare a contract which includes, but is not limited to, a description of the networking event to be completed by the applicant; conditions for disbursement; required reports; and the repayment requirements imposed in the event the applicant does not fulfill its obligations described in the contract and other specific repayment provisions ("clawback" provisions) to be established on a project-by-project basis.

107.8(3) *Reporting.* An applicant shall submit any information requested by the department in sufficient detail to permit the department to prepare the report required pursuant to 2007 Iowa Acts, House File 829, section 10, and any other reports deemed necessary by the department, the board, the general assembly or the governor's office.

These rules are intended to implement 2007 Iowa Acts, chapter 122.

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CHAPTER 108
TARGETED INDUSTRIES STUDENT COMPETITION FUND

261—108.1(82GA,ch122) Authority. The authority for establishing rules governing the targeted industries student competition fund under this chapter is provided in 2007 Iowa Acts, House File 829, section 7(6).

261—108.2(82GA,ch122) Purpose. The purpose of the targeted industries student competition fund is to provide financial assistance to support sponsorships of student competitions in the targeted industries in order to increase the students' knowledge of the targeted industries and job opportunities in the targeted industries and to engage students, educators and parents in exploring careers in those industries. The goals of the sponsorships are to showcase educational and career opportunities in the targeted industries area to students; to increase the number of students enrolled in targeted industries technical programs and majors; and to connect students with business mentors for future career planning, internship and employment opportunities. The long-term goal of the fund is to encourage existing student competitions in the targeted industries to collaborate and implement a single, high-profile statewide student competition that features several student events and that highlights student achievements and career applicability.

261—108.3(82GA,ch122) Definitions.

"Board" means the Iowa economic development board established in Iowa Code section 15.103.

"Committee" means the technology commercialization committee created by the board pursuant to Iowa Code section 15.116.

"Department" means the Iowa department of economic development.

"Fund" means the targeted industries student competition fund.

"Student competition" means a business, industry group or academic institution sponsored event with statewide reach that facilitates linkages between students and career and educational opportunities within the targeted industries through academic competitions or showcase events.

"Targeted industry" means the industries of advanced manufacturing, biosciences, and information technology.

261—108.4(82GA,ch122) Program funding.

108.4(1) Funds may be used for competition marketing and collateral materials, facility rentals or other project expenses deemed reasonable and appropriate by the department, such as technical and logistical support.

108.4(2) The forms of financial assistance may consist of, but are not limited to, loans, forgivable loans, grants and such other forms of assistance the board deems appropriate and consistent with the needs of a given project.

261—108.5(82GA,ch122) Eligible applicants. Eligible applicants must be industry groups, businesses or academic sponsors of a student competition designed for the showcasing of career and educational opportunities to students within the targeted industries.

261—108.6(82GA,ch122) Application and review process.

108.6(1) For student competitions on or after September 1, 2007, an industry group, business or academic sponsor of a student competition must submit an application for financial assistance, in the form specified by the department, to the Iowa Department of Economic Development, Innovation and Commercialization Division, 200 East Grand Avenue, Des Moines, Iowa 50309. Required forms and instructions are available at this address or at the department's Web site at www.iowalifechanging.com.

108.6(2) To apply for financial assistance from the fund, an industry group, business or academic sponsor of a student competition event shall submit an application to the department, in the form specified by the department. The application will be reviewed by department staff, the committee and the board. The committee will make a recommendation to the board regarding an application. The board has final

decision-making authority on requests for financial assistance from the fund. The board may approve, defer or deny an application.

108.6(3) An application for financial assistance shall include all information required by the department including, but not limited to, the following:

a. *Event plan.* A description of the student competition, its statewide reach and key strategies to be funded to address the goals of the event, and plans for sustainability and growth of the event.

b. *Resources and budget.* A budget that includes a detailed description of the sources and uses of the funds and a projection for future event growth.

c. *Project outcomes.* A statement of the anticipated project outcomes including statewide reach and potential student-to-career and student-to-industry connections within the targeted industries.

261—108.7(82GA,ch122) Application selection criteria. When applications for financial assistance are reviewed, the following criteria shall be considered:

108.7(1) *Event plan.* Whether the student competition topic area is hands-on and innovative and showcases career and educational opportunities within the targeted industries.

108.7(2) *Event sustainability.* Whether the application includes a plan for event sustainability and future growth.

108.7(3) *Financial requirement.* Whether the application includes matching funds and in-kind match and whether the amount available is sufficient to complete the project.

108.7(4) *Collaboration.* Whether the student competition demonstrates collaboration among academic institutions, business partners, state agencies and industry groups.

108.7(5) *Project outcomes.* Whether the student competition outcomes include potential student-to-career and student-to-industry connections within the targeted industries.

108.7(6) *Review.* Applications will be reviewed in the order received by the department. The board may approve, defer or deny each application for financial assistance, based on the availability of funds. To be considered for funding, an application must receive a minimum score of 65 out of a possible 100 points and meet all other eligibility criteria specified in these rules.

261—108.8(82GA,ch122) Contract and reporting.

108.8(1) *Notice of award.* Successful applicants will be notified in writing of an award of financial assistance, including any conditions and terms of the approval.

108.8(2) *Contract required.* The department shall prepare a contract, which includes, but is not limited to, a description of the networking event to be completed by the applicant; conditions for disbursement; required reports; and the repayment requirements imposed in the event the applicant does not fulfill its obligations described in the contract and other specific repayment provisions ("clawback" provisions) to be established on a project-by-project basis.

108.8(3) *Reporting.* An applicant shall submit any information requested by the department in sufficient detail to permit the department to prepare the report required pursuant to 2007 Iowa Acts, House File 829, section 10, and any other reports deemed necessary by the department, the board, the general assembly or the governor's office.

These rules are intended to implement 2007 Iowa Acts, chapter 122.

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CHAPTER 109
TARGETED INDUSTRIES CAREER AWARENESS FUND

261—109.1(82GA,ch122) Authority. The authority for establishing rules governing the targeted industries career awareness fund under this chapter is provided in 2007 Iowa Acts, House File 829, section 7(9).

261—109.2(82GA,ch122) Purpose. The purpose of the targeted industries career awareness fund is to provide financial assistance to support a statewide public awareness campaign to educate students, parents and educators about career opportunities within the targeted industries. The goal of the fund is to showcase educational and career opportunities within the targeted industries and to assist students, teachers and parents in the development of educational plans and curriculum to take advantage of these opportunities.

261—109.3(82GA,ch122) Definitions.

"Board" means the Iowa economic development board established in Iowa Code section 15.103.

"Career awareness campaign" means a statewide educational and public awareness campaign to inform students, parents and educators about career opportunities within the targeted industries.

"Committee" means the technology commercialization committee created by the board pursuant to Iowa Code section 15.116.

"Department" means the Iowa department of economic development.

"Fund" means the targeted industries career awareness fund.

"Targeted industry" means the industries of advanced manufacturing, biosciences, and information technology.

261—109.4(82GA,ch122) Program funding.

109.4(1) Funds may be used for marketing and collateral materials, Web site development or other project expenses deemed reasonable and appropriate by the department, such as technical and logistical support.

109.4(2) The forms of financial assistance may consist of, but are not limited to, loans, forgivable loans, grants and such other forms of assistance the board deems appropriate and consistent with the needs of a given project.

261—109.5(82GA,ch122) Matching funds requirement. An eligible applicant shall provide matching funds of at least one dollar of nonstate moneys for every two dollars received from the department.

261—109.6(82GA,ch122) Eligible applicants. Eligible applicants must be industry associations, educational institutions or associations and their industry partners in the targeted industries with efforts or initiatives for a statewide educational/public awareness campaign(s) to inform students, parents and educators about career opportunities within the targeted industries.

261—109.7(82GA,ch122) Application and review process.

109.7(1) For career awareness campaigns beginning on or after September 1, 2007, an industry association group must submit an application for financial assistance, in the form specified by the department, to the Iowa Department of Economic Development, Innovation and Commercialization Division, 200 East Grand Avenue, Des Moines, Iowa 50309. Required forms and instructions are available at this address or at the department's Web site at www.iowalifechanging.com.

109.7(2) To apply for financial assistance from the fund, an industry association group shall submit an application to the department, in the form specified by the department. The application will be reviewed by department staff, the committee and the board. The committee will make a recommendation to the board regarding an application. The board has final decision-making authority on requests for financial assistance from the fund. The board may approve, defer or deny an application.

109.7(3) An application for financial assistance shall include all information required by the department including, but not limited to, the following:

a. *Project scope.* A description clearly defining the issue(s) to be addressed through the career awareness campaign.

b. *Target audience.* A description of distinct groups or segments of the population the campaign will reach.

c. *Campaign development.* A description of campaign strategies and goals to effectively communicate with the target audience.

d. *Campaign management.* A description of campaign execution and time frame for meeting project goals and milestones, including any collaborative partnerships for campaign success.

e. *Campaign budget.* A description of the campaign budget that includes a detailed explanation of the sources and uses of the funds and a description of future campaign sustainability.

f. *Campaign measurement.* A statement of anticipated campaign outcomes including industry connections and benefits to the targeted industries.

261—109.8(82GA,ch122) Application selection criteria. When applications for financial assistance are reviewed, the following criteria shall be considered:

109.8(1) *Project approach.* Whether the proposed approach is reaching its intended targeted audience and bringing awareness to the targeted industries.

109.8(2) *Campaign development.* Whether campaign strategies and goals will be effectively communicated to the target audience and increase awareness of careers within the targeted industries.

109.8(3) *Collaboration.* Whether the project demonstrates collaboration among business partners, academic institutions, and state agencies.

109.8(4) *Campaign sustainability.* Whether the application includes a plan for campaign sustainability and future growth.

109.8(5) *Financial requirement.* Whether the required matching funds have been secured and the total budget is sufficient to complete the campaign.

109.8(6) *Estimate for project completion.* Whether the required work can be completed in accordance with the time frame for the project.

109.8(7) *Project outcomes.* Whether the project outcomes include direct industry connections and increased awareness of careers within the targeted industries.

109.8(8) *Review.* Applications will be reviewed in the order received by the department. The board may approve, defer or deny each application for financial assistance, based on the availability of funds. To be considered for funding, an application must receive a minimum score of 65 out of a possible 100 points and meet all other eligibility criteria specified in these rules.

261—109.9(82GA,ch122) Contract and reporting.

109.9(1) *Notice of award.* Successful applicants will be notified in writing of an award of financial assistance, including any conditions and terms of the approval.

109.9(2) *Contract required.* The department shall prepare a contract, which includes, but is not limited to, a description of the activities to be completed by the applicant; conditions for disbursement; required reports; and the repayment requirements imposed in the event the applicant does not fulfill its obligations described in the contract and other specific repayment provisions ("clawback" provisions) to be established on a project-by-project basis.

109.9(3) *Reporting.* An applicant shall submit any information requested by the department in sufficient detail to permit the department to prepare the report required pursuant to 2007 Iowa Acts, House File 829, section 10, and any other reports deemed necessary by the department, the board, the general assembly or the governor's office.

These rules are intended to implement 2007 Iowa Acts, chapter 122.

[Filed emergency 9/20/07—published 10/10/07, effective 9/20/07]
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[Filed 9/18/08, Notice 8/13/08—published 10/8/08, effective 11/12/08]

CHAPTER 110
LEAN MANUFACTURING INSTITUTE PROGRAM
Rescinded IAB 10/7/09, effective 11/11/09

CHAPTER 111
SUPPLY CHAIN DEVELOPMENT PROGRAM

261—111.1(15,83GA,SF142) Authority. The authority for establishing rules governing the supply chain development program is Iowa Code section 15.411(10).
[**ARC 8211B**, IAB 10/7/09, effective 11/11/09]

261—111.2(15,83GA,SF142) Purpose. The purpose of this program is for the Iowa department of economic development to collaborate with the department of workforce development to create a supplier capacity and product database. Targeted industries will be provided technical assistance for supply chain development through improved linkages to Iowa suppliers, the targeted industries' production capabilities and capacities, and technology commercialization services.
[**ARC 8211B**, IAB 10/7/09, effective 11/11/09]

261—111.3(15,83GA,SF142) Definitions.

"Board" means the Iowa economic development board established in Iowa Code section 15.103.

"Committee" means the technology commercialization committee authorized by Iowa Code section 15.116.

"Department" means the Iowa department of economic development.

"Performance improvement programs" means process management philosophies, best practices, and appropriate tools from methodologies in use in manufacturing total quality and value systems that support supply chain development and provide a competitive advantage.

"Supply chain" means a network of facilities that procure raw materials, transform them into intermediate goods and then final products, and deliver the products to customers through a distribution system.

"Supply chain development" means strategic and operational activities implemented by manufacturers to effectively and efficiently meet the requirements of their existing customers and to identify possible new customers.

"Targeted industry" means the industries of advanced manufacturing, biosciences, and information technology.
[**ARC 8211B**, IAB 10/7/09, effective 11/11/09]

261—111.4(15,83GA,SF142) Program funding.

111.4(1) Awards shall be made on a per-project basis upon board approval. The maximum award shall not exceed $100,000 for a single project.

111.4(2) Funds shall be used for the analysis of targeted industry clusters and the development and delivery of manufacturing supply chain development programs. Funds may be used for personnel salaries, software, research data services, and the development and delivery of performance improvement programs. Funds may be used for the systematic design and layout planning for manufacturing operational areas and to purchase machinery and equipment.

111.4(3) Funds shall not be used for university overhead or indirect expenses or for any work that was conducted by the applicant or any third-party consultant prior to the term of the contract.

111.4(4) Awards from the program shall be in the form of a grant.
[**ARC 8211B**, IAB 10/7/09, effective 11/11/09]

261—111.5(15,83GA,SF142) Matching funds requirement. In order to receive financial assistance, an applicant must demonstrate the ability to secure one dollar of nonstate moneys for every one dollar received from the department. This requirement does not apply to collaborative projects between the Iowa department of economic development and the department of workforce development.
[**ARC 8211B**, IAB 10/7/09, effective 11/11/09]

261—111.6(15,83GA,SF142) Eligible applicants.

111.6(1) An eligible applicant must be a for-profit business located in Iowa and must demonstrate the commitment of more than one company from one or more of the following industries as classified by the North American Industry Classification System:

- Biosciences.
- Information technologies.
- Advanced manufacturing.

111.6(2) Applications from the U.S. Department of Commerce/NIST manufacturing extension partnership in Iowa (MEP) on behalf of eligible for-profit businesses located in Iowa will be considered for funding.

111.6(3) The department will establish discrete projects and collaborative projects with the department of workforce development, which do not require application, for supplier capacity and product database initiatives.

[**ARC 8211B**, IAB 10/7/09, effective 11/11/09]

261—111.7(15,83GA,SF142) Ineligible applicants.

111.7(1) A business which is engaged in retail sales or which provides health services is ineligible.

111.7(2) A business which closes or substantially reduces its workforce by more than 20 percent at existing operations in order to relocate substantially the same operation to another area of the state is ineligible for 36 consecutive months at any of its Iowa sites from the date the new establishment opens.

[**ARC 8211B**, IAB 10/7/09, effective 11/11/09]

261—111.8(15,83GA,SF142) Application process.

111.8(1) An organization, institution of higher learning, individual or business must submit an application to the Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, in a form provided by the department. Required forms and instructions are available at this address or may be printed from the department's Internet site at www.iowalifechanging.com.

111.8(2) The technology commercialization committee shall have the authority to evaluate each application and shall provide a suggested funding amount to the board for consideration.

111.8(3) An application for technical assistance under the program shall include any information required by the department including, but not limited to, all of the following:

a. Proposed services for manufacturing supply chain development, organized information, or technical assistance.

b. A listing of the Iowa companies and executives committed to participating in the technical assistance services.

c. A description of the scope of work.

d. A description of the performance metrics.

e. Resources and project budget.

f. Project time line and milestones.

[**ARC 8211B**, IAB 10/7/09, effective 11/11/09]

261—111.9(15,83GA,SF142) Application selection criteria. In reviewing applications for technical assistance, the committee shall consider the following criteria:

1. Experience in implementing successful supply chain development programs with Iowa manufacturing companies.

2. Experience in implementing successful performance improvement programs with Iowa manufacturing companies.

3. Formal linkages to resources available from national organizations providing supply chain development programs.

4. Number of Iowa original equipment manufacturers (OEMs) and suppliers involved in the application.

5. Established, existing data and experience in preparing organized information (e.g., database, product flow, analysis, GIS tools, charts) regarding Iowa manufacturers' supply chain development programs.

6. Ability to create and analyze targeted industry cluster and subcluster data to generate strategic recommendations for economic development.

7. The degree to which the supply chain development program could be sustained and replicated.

8. Potential impact on the manufacturing output of Iowa OEMs and suppliers.

9. Budget, financial matching, and total leverage.

10. Return on state investment.

[**ARC 8211B**, IAB 10/7/09, effective 11/11/09]

261—111.10(15,83GA,SF142) Intellectual property. All intellectual property developed or used for the application must be made available to the department for future supply chain development efforts with Iowa manufacturers and suppliers. If the applicant does not own the intellectual property described in the application, the applicant must provide satisfactory evidence of its right to use or further develop the intellectual property.

[**ARC 8211B**, IAB 10/7/09, effective 11/11/09]

261—111.11(15,83GA,SF142) Contract and reporting.

111.11(1) *Notice of award.* Successful applicants shall be notified in writing of an award of assistance, including any conditions and terms of the approval.

111.11(2) *Contract required.* The department shall prepare a contract which includes, but is not limited to, a description of the project to be completed by the business; conditions to disbursement; required reports; the repayment requirements imposed on the business in the event the business does not fulfill its obligations described in the contract; and other specific repayment provisions ("clawback" provisions) to be established on a project-by-project basis.

111.11(3) *Reporting.* An applicant shall submit any information requested by the department in sufficient detail to permit the department to prepare the report required pursuant to Iowa Code section 15.104(9)*"l"* and any other reports deemed necessary by the department, the board, the general assembly or the governor's office.

[**ARC 8211B**, IAB 10/7/09, effective 11/11/09]

These rules are intended to implement Iowa Code section 15.411 as amended by 2009 Iowa Acts, Senate File 142, section 1.

[Filed emergency 9/18/08 after Notice 7/16/08—published 10/8/08, effective 9/18/08]

[Filed ARC 8211B (Notice ARC 8031B, IAB 8/12/09), IAB 10/7/09, effective 11/11/09]

CHAPTER 112
MANAGEMENT TALENT RECRUITMENT PROGRAM

261—112.1(15,83GA,SF142) Authority. The authority for establishing rules governing the management talent recruitment program is Iowa Code section 15.411(10).
[**ARC 8212B**, IAB 10/7/09, effective 11/11/09]

261—112.2(15,83GA,SF142) Purpose. The purpose of this program is to develop activities for the recruitment of executive and operations management personnel. New or expanding targeted industries will be provided technical assistance to identify a network of potential human capital resources appropriate for the targeted industries' business life cycle.
[**ARC 8212B**, IAB 10/7/09, effective 11/11/09]

261—112.3(15,83GA,SF142) Definitions.

"Board" means the Iowa economic development board established in Iowa Code section 15.103.

"Committee" means the technology commercialization committee authorized by Iowa Code section 15.116.

"Department" means the Iowa department of economic development.

"Early-stage company" means a company with five or fewer years of operating experience.

"Eligible applicant" means an early-stage company that is commercializing a new product or process and seeking new venture capital financing or equity investment.

"Management talent" means individuals experienced in executive and operations functions who are willing to provide management or technical decision-making skills, based on a business consulting model.

"Targeted industry" means the industries of advanced manufacturing, biosciences, and information technology.
[**ARC 8212B**, IAB 10/7/09, effective 11/11/09]

261—112.4(15,83GA,SF142) Program funding.

112.4(1) Awards shall be made on a per-project basis upon board approval. The maximum award shall not exceed $10,000 for a single project.

112.4(2) Funds shall be used for the identification of potential management talent, participation in human resource-business opportunity matching events, marketing materials, preparation of organized information (e.g., database, Internet applications, networks, talent profiles), and management talent wages, salaries, and relocation expenses. Funds shall not be used for human resource recruitment, search, or placement service expenses or to purchase equipment.

112.4(3) Funds shall not be used for university overhead or indirect expenses or for any work that was conducted by the applicant or any third-party consultant prior to the term of the contract.

112.4(4) Awards from the program shall be in the form of a grant.
[**ARC 8212B**, IAB 10/7/09, effective 11/11/09]

261—112.5(15,83GA,SF142) Matching funds requirement. In order to receive financial assistance, an applicant must demonstrate the ability to secure two dollars of nonstate moneys for every one dollar received from the department.
[**ARC 8212B**, IAB 10/7/09, effective 11/11/09]

261—112.6(15,83GA,SF142) Eligible applicants.

112.6(1) An eligible applicant must be a for-profit business located in Iowa from one of the following industries as classified by the North American Industry Classification System:

- Biosciences.
- Information technologies.
- Advanced manufacturing.

112.6(2) Applications from venture capital companies (NAIC 523910) on behalf of an eligible for-profit business located in Iowa will be considered for funding.

112.6(3) The department will establish discrete projects and collaborative projects, which do not require application, for the identification and recruitment of executive and operations management talent benefitting Iowa targeted industry.
[**ARC 8212B**, IAB 10/7/09, effective 11/11/09]

261—112.7(15,83GA,SF142) Ineligible applicants.

112.7(1) A business which is engaged in retail sales or which provides health services is ineligible.

112.7(2) A business which closes or substantially reduces its workforce by more than 20 percent at existing operations in order to relocate substantially the same operation to another area of the state is ineligible for 36 consecutive months at any of its Iowa sites from the date the new establishment opens.
[**ARC 8212B**, IAB 10/7/09, effective 11/11/09]

261—112.8(15,83GA,SF142) Application process.

112.8(1) An individual or business must submit an application to the Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, in a form provided by the department. Required forms and instructions are available at this address or may be printed from the department's Internet site at www.iowalifechanging.com.

112.8(2) The technology commercialization committee shall have the authority to evaluate each application and shall provide a suggested funding amount to the board for consideration.

112.8(3) An application for technical assistance under the program shall include any information required by the department including, but not limited to, all of the following:

a. Proposed services for management talent recruitment, connectivity services, and technical assistance.

b. A listing of the Iowa companies and executives committed to participating in the technical assistance services.

c. A description of the scope of work.

d. A description of the performance metrics.

e. Resources and project budget.

f. Project time line and milestones.
[**ARC 8212B**, IAB 10/7/09, effective 11/11/09]

261—112.9(15,83GA,SF142) Application selection criteria. In reviewing applications for technical assistance, the committee shall consider the following criteria:

112.9(1) Experience in identifying and successfully recruiting management talent for Iowa targeted industries.

112.9(2) Formal linkages to associations and individual members of international organizations providing management talent recruitment.

112.9(3) Number of Iowa targeted industries involved in the application.

112.9(4) Established information, and methods for the identification, due diligence, profiling, and connectivity ability of management talent recruitment.

112.9(5) Strength of the business plan in the following areas:

a. Description of the company and the overall industry;

b. Product and production plan;

c. Market, competition, and the marketing strategy;

d. Executive or operations management; and

e. Financial information and business capitalization plan.

112.9(6) Management team, management expertise, and background (including education, training, work experience, and other factors) which will be provided to the business.

112.9(7) Budget, financial matching, and total leverage.

112.9(8) Return on state investment.
[**ARC 8212B**, IAB 10/7/09, effective 11/11/09]

261—112.10(15,83GA,SF142) Intellectual property. All intellectual property developed or used for the application must be made available to the department for future management talent recruitment for Iowa targeted industries. If the applicant does not own the intellectual property described in the application, the applicant must provide satisfactory evidence of its right to use or further develop the intellectual property.
[**ARC 8212B**, IAB 10/7/09, effective 11/11/09]

261—112.11(15,83GA,SF142) Contract and reporting.

112.11(1) *Notice of award.* Successful applicants shall be notified in writing of an award of assistance, including any conditions and terms of the approval.

112.11(2) *Contract required.* The department shall prepare a contract which includes, but is not limited to, a description of the project to be completed by the business; conditions to disbursement; required reports; the repayment requirements imposed on the business in the event the business does not fulfill its obligations described in the contract; and other specific repayment provisions ("clawback" provisions) to be established on a project-by-project basis.

112.11(3) *Reporting.* An applicant shall submit any information requested by the department in sufficient detail to permit the department to prepare the report required pursuant to Iowa Code section 15.104(9)*"l"* and any other reports deemed necessary by the department, the board, the general assembly or the governor's office.
[**ARC 8212B**, IAB 10/7/09, effective 11/11/09]

These rules are intended to implement Iowa Code section 15.411 as amended by 2009 Iowa Acts, Senate File 142.

[Filed emergency 9/18/08 after Notice 7/16/08—published 10/8/08, effective 9/18/08]
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CHAPTER 113
COMMUNITY MICROENTERPRISE DEVELOPMENT ORGANIZATION GRANT PROGRAM

261—113.1(15) Purpose. The purpose of the community microenterprise development organization grant program is to support microenterprise development through community microenterprise development organizations. Financial assistance will be in the form of grants to eligible community microenterprise development organizations not to exceed the maximum amount of $80,000 per organization. A match of at least 20 percent is required. The community microenterprise development organization shall use the funds to develop the capacity to provide technical assistance and business training to microentrepreneurs.
[**ARC 7764B**, IAB 5/6/09, effective 4/17/09; **ARC 7948B**, IAB 7/15/09, effective 8/19/09]

261—113.2(15) Definitions.

"Board" means the Iowa economic development board established in Iowa Code section 15.103.

"Community microenterprise development organization" means a community development, economic development, social service, or nonprofit organization that provides training, access to financing, and technical assistance to microenterprises as established in Iowa Code section 15.102(2).

"Department" means the Iowa department of economic development as established in Iowa Code chapter 15.

"Microenterprise" means any business with five or fewer employees that generally lacks collateral and has difficulty securing financing from conventional business lending sources. "Microenterprise" includes start-up, home-based, and self-employed businesses as established in Iowa Code section 15.102(5).

"Organization," for the purpose of this program, means the community microenterprise development organization.
[**ARC 7764B**, IAB 5/6/09, effective 4/17/09; **ARC 7948B**, IAB 7/15/09, effective 8/19/09]

261—113.3(15) Program funding.

113.3(1) The department shall award competitive grants to eligible community microenterprise development organizations. The maximum award shall not exceed $80,000 for any one community microenterprise development organization.

113.3(2) The department shall award grants to at least three community microenterprise development organizations in rural areas of the state that show an economic growth rate lower than the average economic growth rate of the state.

113.3(3) The department shall award grants to at least two community microenterprise development organizations in neighborhoods in urban areas of the state that show high rates of poverty and signs of economic distress.

113.3(4) The form of financial assistance shall be a grant.
[**ARC 7764B**, IAB 5/6/09, effective 4/17/09; **ARC 7948B**, IAB 7/15/09, effective 8/19/09]

261—113.4(15) Matching funds requirement. A grant shall not be awarded unless the community microenterprise development organization can match at least 20 percent of the funds to be awarded. The matching funds may be from private foundations, federal or local government funds, financial institutions, or individuals.
[**ARC 7764B**, IAB 5/6/09, effective 4/17/09; **ARC 7948B**, IAB 7/15/09, effective 8/19/09]

261—113.5(15) Eligible applicants. An eligible applicant must be a community microenterprise development organization serving a rural or an urban community. The organization must provide services to low-income and moderate-income individuals and underserved communities.
[**ARC 7764B**, IAB 5/6/09, effective 4/17/09; **ARC 7948B**, IAB 7/15/09, effective 8/19/09]

261—113.6(15) Application and review process.

113.6(1) To apply for a grant, a community microenterprise development organization shall submit an application for financial assistance, in the form specified by the department, to the Iowa Department of Economic Development, Innovation and Commercialization Division, 200 East Grand Avenue, Des Moines, Iowa 50309. Required forms and instructions are available at this address or on the department's Web site at www.iowalifechanging.com.

113.6(2) The application for financial assistance will be reviewed by department staff. Department staff will make a recommendation to the board regarding an application. The board has final decision-making authority regarding applications for financial assistance. The board may approve, defer or deny an application.

113.6(3) An application for financial assistance shall contain all information required by the department, including but not limited to the following:

a. *Geographic service area.* A description clearly defining the geographic area the community microenterprise development organization serves. For rural organizations, the description shall include the service area's economic growth rate in relation to the average growth rate of the state. For organizations located in urban neighborhoods of the state, the description shall include the poverty rate and the unemployment rate of the service area.

b. *Ability to provide services.* To help the department determine the ability of a community microenterprise development organization to provide services to low-income, moderate-income and underserved communities, all of the following shall be described in the application for financial assistance:

(1) The ability to identify potential microentrepreneurs within a community.

(2) The capacity to perform client assessment and screening.

(3) The ability to provide business training and technical assistance.

(4) The capacity to provide assistance in securing financing.

c. *Scope of services.* A description of the scope of services offered and methods used to ensure the efficient delivery of such services, especially to low-income, moderate-income, and minority individuals.

d. *Ability to monitor progress.* A description of the organization's ability to monitor the progress of clients and to identify those clients in need of additional technical and financial assistance.

e. *Ability to coordinate resources.* A description of the organization's ability to build relationships and coordinate resources with other entities supporting microentrepreneurs. These entities may include but are not limited to community colleges, cooperative extension services, small business development centers, business accelerators, targeted small business advocate services, chambers of commerce, community economic development organizations, workforce centers, and community nonprofit service providers that serve low-income and moderate-income individuals.

f. *Reporting.* A plan to report project outcomes, including: results from client assessments and screening; strategies developed to respond to results; new training and technical assistance capacity developed; the amount of financing secured by targeted populations; the amount of funding secured through for-profit entities; and the benefits to the geographic service area.

g. *Financial resources.* A statement providing information on the amount and sufficiency of operating funds available.

[**ARC 7764B**, IAB 5/6/09, effective 4/17/09; **ARC 7948B**, IAB 7/15/09, effective 8/19/09]

261—113.7(15) Application selection criteria. Applications for community microenterprise development organization grants shall be selected based upon the following criteria:

113.7(1) *Geographic service area.* The overall geographic diversity of the applicants for grants, including both urban and rural communities.

113.7(2) *Ability to provide services.* The organization's ability to provide services to low-income and moderate-income individuals and underserved communities.

113.7(3) *Services offered.* The scope of services offered and the ability to efficiently deliver such services to low-income, moderate-income, and minority individuals.

113.7(4) *Ability to monitor progress.* The organization's ability to monitor the progress of clients and provide additional technical assistance.

113.7(5) *Ability to coordinate resources.* The organization's ability to build relationships and coordinate resources with other entities supporting microentrepreneurs.

113.7(6) *Reporting.* The organization's plan to report and evaluate outcomes.

113.7(7) *Financial resources.* The amount and sufficiency of operating funds available.

[**ARC 7764B**, IAB 5/6/09, effective 4/17/09; **ARC 7948B**, IAB 7/15/09, effective 8/19/09]

261—113.8(15) Contract and reporting.

113.8(1) *Notice of award.* Successful applicants will be notified in writing of an award of financial assistance, including any conditions and terms of the approval.

113.8(2) *Contract required.* The department shall prepare a contract, which includes but is not limited to a description of the activities to be completed by the community microenterprise development organization(s); conditions of disbursement; required reports; and the repayment requirements imposed in the event the community microenterprise development organization(s) does not fulfill its obligations described in the contract and other specific repayment provisions ("clawback" provisions) to be established on a project-by-project basis.

113.8(3) *Reporting.* An applicant shall submit any information requested by the department in sufficient detail to permit the department to prepare reports deemed necessary by the department, the board, the general assembly or the governor's office.

[**ARC 7764B**, IAB 5/6/09, effective 4/17/09; **ARC 7948B**, IAB 7/15/09, effective 8/19/09]

These rules are intended to implement Iowa Code section 15.240.

[Filed Emergency ARC 7764B, IAB 5/6/09, effective 4/17/09]

[Filed ARC 7948B (Notice ARC 7765B, IAB 5/6/09), IAB 7/15/09, effective 8/19/09]

CHAPTER 114
IOWA INNOVATION COUNCIL

261—114.1(83GA,HF2076) Authority. The authority for establishing rules governing the Iowa innovation council under this chapter is provided in 2010 Iowa Acts, House File 2076, section 4.
[**ARC 8850B**, IAB 6/16/10, effective 7/1/10; **ARC 9061B**, IAB 9/8/10, effective 10/13/10]

261—114.2(83GA,HF2076) Purpose. The purpose of the Iowa innovation council is to advise the department on the development and implementation of public policies that enhance innovation and entrepreneurship in the targeted industries.
[**ARC 8850B**, IAB 6/16/10, effective 7/1/10; **ARC 9061B**, IAB 9/8/10, effective 10/13/10]

261—114.3(83GA,HF2076) Definitions.

"Board" means the Iowa economic development board established in Iowa Code section 15.103.

"Chief technology officer" means the person appointed pursuant to Iowa Code section 15.117 as amended by 2010 Iowa Acts, House File 2076. The chief technology officer serves as chairperson of the council pursuant to 2010 Iowa Acts, House File 2076, section 4.

"Committee" means the technology commercialization committee created by the board pursuant to Iowa Code section 15.116.

"Council" means the Iowa innovation council established by 2010 Iowa Acts, House File 2076, section 4.

"Department" means the Iowa department of economic development.

"Director" means the director of the department or the director's designee.

"Targeted industry" means the industries of advanced manufacturing, bioscience, and information technology. Alternative and renewable energy is considered a sector within the advanced manufacturing and bioscience industries.

"Vice chairperson" means the voting member elected to serve as the council vice chairperson for a one-year term.
[**ARC 8850B**, IAB 6/16/10, effective 7/1/10; **ARC 9061B**, IAB 9/8/10, effective 10/13/10]

261—114.4(83GA,HF2076) Iowa innovation council funding. The department shall provide assistance to the council with staff and administrative support. The department may expend moneys allocated to the innovation and commercialization fund in order to provide such support. The council shall not have the authority to expend moneys or resources or to execute contracts. The department may accept grant funds on behalf of the council, but the council shall not provide any form of financial assistance awards. Authority for and approval of all financial expenditures and contracts for the council shall be granted solely by the director on behalf of the department.
[**ARC 8850B**, IAB 6/16/10, effective 7/1/10; **ARC 9061B**, IAB 9/8/10, effective 10/13/10]

261—114.5(83GA,HF2076) Council membership.

114.5(1) The council shall consist of the following members:

a. Twenty voting members selected by the board to serve staggered, two-year terms beginning and ending as provided in Iowa Code section 69.19. Members to be selected shall include the following representatives:

(1) Seven shall be representatives from businesses in the targeted industries; and

(2) Thirteen shall be individuals who serve on the technology commercialization committee, or other committees of the board, and who have expertise with the targeted industries.

(3) Ten of the 20 members selected pursuant to subparagraphs (1) and (2) of paragraph *"a"* shall be executives actively engaged in the management of a business in a targeted industry.

b. Nine voting members as set forth below:

(1) One member, selected by the governor, who also serves on the Iowa capital investment board created in Iowa Code section 15E.63.

(2) The director of the department, or the director's designee.

(3) The chief technology officer appointed pursuant to Iowa Code section 15.117 as amended by 2010 Iowa Acts, House File 2076, who shall serve as chairperson of the council.

(4) The person designated as the chief information officer pursuant to Iowa Code section 8A.104, subsection 12, or, if no person has been so designated, the director of the department of administrative services, or the director's designee.

(5) The president of the state university of Iowa, or the president's designee.

(6) The president of Iowa state university of science and technology, or the president's designee.

(7) The president of the university of northern Iowa, or the president's designee.

(8) Two community college presidents from geographically diverse areas of the state, selected by the Iowa association of community college trustees.

c. Four members of the general assembly serving two-year terms in a nonvoting, ex officio capacity, with two from the senate and two from the house of representatives and not more than one member from each chamber being from the same political party. The two senators shall be designated one member each by the president of the senate after consultation with the majority leader of the senate, and by the minority leader of the senate. The two representatives shall be designated one member each by the speaker of the house of representatives after consultation with the majority leader of the house of representatives, and by the minority leader of the house of representatives.

114.5(2) To be eligible to serve as a designee, a person must have sufficient authority to make decisions on behalf of the organization being represented. A designee shall not permit a substitute to attend council meetings on the designee's behalf.

[**ARC 8850B**, IAB 6/16/10, effective 7/1/10; **ARC 9061B**, IAB 9/8/10, effective 10/13/10]

261—114.6(83GA,HF2076) Responsibilities and deliverables.

114.6(1) The purpose of the council is to advise the department on the development and implementation of public policies that enhance innovation and entrepreneurship in the targeted industries. Such advice may include evaluating Iowa's competitive position in the global economy; reviewing the technology typically utilized in the state's manufacturing sector; assessing the state's overall scientific research capacity; keeping abreast of the latest scientific research and technological breakthroughs and offering guidance as to their impact on public policy; recommending strategies that foster innovation, increase new business formation, and otherwise promote economic growth in the targeted industries; and offering guidance about future developments in the targeted industries.

114.6(2) The council shall do the following:

a. Prepare a report of the expenditures of moneys appropriated and allocated to the department for certain programs authorized pursuant to 2009 Iowa Code Supplement sections 15.411 as amended by 2010 Iowa Acts, House File 2076, and 15.412 relating to the development and commercialization of businesses in the targeted industries.

b. Prepare a summary of the activities of the technology commercialization committee and the Iowa innovation council.

c. Create a comprehensive strategic plan for implementing specific strategies that foster innovation, increase new business formation, and promote economic growth.

d. Review existing programs that relate to the targeted industries and suggest changes to improve efficiency and effectiveness.

e. Conduct industry research and prepare reports for the general assembly, the governor, the department, and other policy-making bodies within state government.

f. Act as a forum where issues affecting the research community, the targeted industries, and policy makers can be discussed and addressed.

[**ARC 8850B**, IAB 6/16/10, effective 7/1/10; **ARC 9061B**, IAB 9/8/10, effective 10/13/10]

261—114.7(83GA,HF2076) Executive committee. In order to effectively carry out the responsibilities of the council, an executive committee within the council shall be formed.

114.7(1) *Membership.* The executive committee shall include the chief technology officer, vice chairperson of the council, the director of the department, and four board-appointed members of the council who also serve on the technology commercialization committee in order to:

a. Solicit individuals to become council members;

b. Review vacancies and resignations;

c. Review all nominees and application materials and recommend nominees to the council to recommend to the board for appointment;

d. Nominate one of the voting members to serve as vice chairperson;

e. Approve the formation of work groups, appoint work group members and leaders, review activities of the work groups, and report to the council to ensure the coordination of activity of work groups;

f. Record the official proceedings for the council;

g. Act on behalf of the council between council meetings, as directed by the council;

h. Issue reports on behalf of the council, as directed by the council;

i. Meet with the chief technology officer to discuss the overall management of the business of the council; and

j. Review potential conflicts of interest on the part of any member of the council.

114.7(2) *Quorum; authority.* A majority of the members of the executive committee constitutes a quorum. A majority vote of the quorum is required to approve actions of the executive committee. The executive committee shall not have the authority to bind the council to its decisions or recommendations but merely the authority to recommend action to the council or to take action as directed by the council.
[**ARC 8850B**, IAB 6/16/10, effective 7/1/10; **ARC 9061B**, IAB 9/8/10, effective 10/13/10]

261—114.8(83GA,HF2076) Application and review process for board-appointed council members. The council shall review application materials for board-appointed nominees identified by the executive committee and shall recommend to the board for appointment those nominees who the council believes will add value to and further the purposes of the council.
[**ARC 8850B**, IAB 6/16/10, effective 7/1/10; **ARC 9061B**, IAB 9/8/10, effective 10/13/10]

261—114.9(83GA,HF2076) Voting. A majority of the members of the council constitutes a quorum. A majority vote of the quorum is required to approve actions of the council, including recommendations.
[**ARC 8850B**, IAB 6/16/10, effective 7/1/10; **ARC 9061B**, IAB 9/8/10, effective 10/13/10]

261—114.10(83GA,HF2076) Meetings and commitment of time. The chief technology officer shall be responsible for convening meetings of the council and is expected to convene at least four regular meetings of the council, within any period of 12 consecutive calendar months, beginning on July 1 or January 1, including at least one annual meeting. The annual meeting of the council shall be convened in January at a convenient location in Des Moines. The chief technology officer shall not convene a meeting of the council unless the director of the department, or the director's designee, is present at the meeting.
[**ARC 8850B**, IAB 6/16/10, effective 7/1/10; **ARC 9061B**, IAB 9/8/10, effective 10/13/10]

261—114.11(83GA,HF2076) Nonattendance.

114.11(1) Any member serving on the council shall be deemed to have submitted a resignation to the council if either of the following events occurs.

a. The member does not attend two or more consecutive regular meetings of the council.

b. The member attends less than one-half of the regular council meetings within any period of 12 calendar months beginning on July 1 or January 1.

114.11(2) The requirements of this rule shall supersede the attendance requirements described in Iowa Code section 69.15 only to the extent that statutory construction pursuant to Iowa Code chapter 4 allows.
[**ARC 8850B**, IAB 6/16/10, effective 7/1/10; **ARC 9061B**, IAB 9/8/10, effective 10/13/10]

261—114.12(83GA,HF2076) Council work groups.

114.12(1) The council shall establish work groups, both standing and temporary, to assist in the execution of responsibilities of the council and to expand the intellectual capacity of the council. Work groups shall be directed by a work group leader. Work groups shall encourage diversity of talent, the

size and geographic location of businesses in the targeted industries, and invite a wider assembly of corporate and university executives, scientists, financial executives, venture investors, and experienced entrepreneurs from across the state.

114.12(2) To be eligible to serve as a work group leader, a nominee must be one of the eligible voting members of the council. The executive committee shall review and approve the formation of proposed work groups and approve proposed work group members and leaders. The chief technology officer and vice chairperson shall serve as ex officio members of all work groups established by the council.
[**ARC 8850B**, IAB 6/16/10, effective 7/1/10; **ARC 9061B**, IAB 9/8/10, effective 10/13/10]

261—114.13(83GA,HF2076) Reporting. The executive committee shall review, comment, and formally submit any and all reports on behalf of the council. The chief technology officer is designated by the board as the signing officer for certain documents. The chief technology officer is authorized to sign correspondence, applications, reports, or other nonfinancial documents produced by the council. The chief technology officer shall serve as a key spokesperson for the council and be responsible for coordinating the communication of information requested by the department in sufficient detail to permit the department to prepare the report required pursuant to 2010 Iowa Acts, House File 2076, section 2, and any other reports deemed necessary by the department, the board, the general assembly or the governor's office.
[**ARC 8850B**, IAB 6/16/10, effective 7/1/10; **ARC 9061B**, IAB 9/8/10, effective 10/13/10]

These rules are intended to implement 2010 Iowa Acts, House File 2076.

[Filed Emergency ARC 8850B, IAB 6/16/10, effective 7/1/10]

[Filed ARC 9061B (Notice ARC 8851B, IAB 6/16/10), IAB 9/8/10, effective 10/13/10]

CHAPTER 131

[Prior to 9/6/00, see 261—Ch 67]

Rescinded IAB 7/9/03, effective 8/13/03

CHAPTERS 132 to 162

Reserved

PART VI
ADMINISTRATION DIVISION

CHAPTER 163
DIVISION RESPONSIBILITIES

[Prior to 9/6/00, see 261—Ch 71]

261—163.1(15) Mission. The division's mission is to enhance the capacity of the department and staff to proactively address issues affecting economic development in Iowa and be responsive to customers, and to properly administer the resources available to the department for program operations.

261—163.2(15) Structure. The division is comprised of the director's office and general administration.

163.2(1) *Director's office.* The office of the director provides overall oversight and management of all operations and programs administered by the department as well as providing for the development of strategic and economic development plans for the department and the state of Iowa. The office is the department's primary liaison with other agencies of state government. Staff in the director's office provide services in the following areas: communications, legislative liaison, legal, support to the vision Iowa board, and regional strategies.

163.2(2) *General administration.* Services provided by this area include, but are not limited to, accounting, human resource management, technology support, investment management, and research and evaluation.

These rules are intended to implement Iowa Code chapter 15 and section 17A.3.

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CHAPTER 164
USE OF MARKETING LOGO

[Prior to 7/19/95, see 261—Ch 55]
[Prior to 9/6/00, see 261—Ch 72]

261—164.1(15) Purpose and limitation.

164.1(1) *Purpose.* The purpose of the marketing logo program is to aid in the promotion and marketing of Iowa products and services. The IDED board has approved the following logo to market and promote Iowa products and services: A Taste of Iowa. A person shall not use this logo or advertise it or attach it to any promotional literature, manufactured article, or agricultural product without the approval of the department. The department will consult, as appropriate, with the advisory committee concerning program design, promotion and administration.

164.1(2) *Limitation.* By authorizing eligible applicants to use the marketing logo, the department, the IDED board and the state do not provide any guarantee or warranty regarding the product or service or its quality. Businesses that use the marketing logo expressly agree not to represent that the logo suggests any department, IDED board or state approval of the product or service.

261—164.2(15) Definitions.

"Advertisement" means any written, printed, verbal or graphic representation, or combination thereof, of any product with the purpose of influencing consumer opinion as to the characteristics, qualities or image of the commodity, food, feed, or fiber except labeling information as required by any government.

"Advisory committee" means the advisory committee appointed by the director to advise the department on how to promote and administer the A Taste of Iowa program.

"A Taste of Iowa program" or *"program"* means the promotional certification program authorized by these rules.

"Director" means the director of IDED.

"Label" means any written, printed, or graphic design that is placed on, or in near proximity to, any product whether in the natural or processed state or any combination thereof.

"License" means the written agreement through which IDED grants authorization to use the A Taste of Iowa logo.

"Person" means any natural person, corporation, partnership, association, or society.

"Processed" means any significant change in the form or identity of a raw product through, by way of example but not limited to, breaking, milling, shredding, condensing, cutting or tanning.

"Produced in Iowa" means:

1. For processed products, 50 percent or more of the product by weight or wholesale value was grown, raised or processed in Iowa.
2. For raw products, 100 percent of the product by weight, if sold by weight, by measure, if sold by measure, by number, if sold by count, was grown or raised in Iowa.

"Product" means any agricultural commodity, processed food, feed, fiber, or combinations thereof.

"Promotion" or *"promotional"* means any enticements, bonuses, discounts, premiums, giveaways, or similar encouragements that influence consumers' opinions regarding a product.

261—164.3(15) Guidelines. Before an applicant will be granted authorization to use the marketing logo, an applicant shall comply with the following guidelines to demonstrate to the department that the product or service is manufactured, processed or originates in Iowa.

164.3(1) *Eligible applicants.* Eligible applicants are those:

a. Companies whose products are manufactured, processed or originate within the state of Iowa; or

b. Service-oriented firms including, but not limited to, financial, wholesalers and distribution centers whose products qualify under paragraph *"a"* above.

164.3(2) *Criteria.* An applicant shall meet the following criteria to be eligible to use the marketing logo in conjunction with a designated product or service:

a. The company shall have a credible reputation as confirmed by the local chamber of commerce, the better business bureau, the regional coordinating council, or a local economic development group. The department may also contact the consumer protection, farm or other appropriate division of the Iowa attorney general's office or other state or federal agencies for information about the company.

b. The applicant's product or service shall be manufactured or processed or shall originate in Iowa.

c. Any applicant that has participated in the A Taste of Iowa program and whose license to use the logo was terminated by the department is ineligible to reapply for program participation for a period of five years from the date of termination.

d. The company shall furnish a signed and completed application on forms provided by the department. The application shall include, but not be limited to, the following:

(1) A description of the product(s) or service(s) for which the logo is sought.

(2) Information confirming that the applicant's product or service is manufactured or processed or originates in Iowa.

(3) A description of the distribution area for the product or service.

(4) Warranty or guarantee statements covering the product or service, if available.

(5) Copies of promotional literature or brochures, if available.

(6) A statement describing how the logo is to be used and on what product(s) or service(s).

(7) Any other information about the product or service as requested by the department.

261—164.4(15) Review and approval of applications.

164.4(1) Applications shall be reviewed by department staff to determine if the applicant has satisfactorily demonstrated that the product or service meets the eligibility requirements of these rules. Applicants shall, upon request and at no charge to the department, agree to provide product samples.

164.4(2) Following review of the application, department staff shall submit recommendations for approval or denial to the director. The director shall make the final decision to approve or deny an application.

261—164.5(15) Licensing agreement; use of logo.

164.5(1) *Licensing agreement.* An approved applicant shall enter into a licensing agreement with the department as a condition of using the A Taste of Iowa logo. The terms of the agreement shall include, but not be limited to, duration of the license and any renewal options; conditions of logo usage; identification of product(s) or service(s) authorized to use the logo; an agreement to hold harmless and indemnify the department, the state, its officers or employees; an agreement to notify the department of any litigation, product recall, or investigation by a state or federal agency regarding the product or service utilizing the logo; and an acknowledgment that the state is not providing a guarantee or warranty concerning the safety, fitness, merchantability, or use of the applicant's product or service.

164.5(2) *Use of logo.* Upon notification of approval and execution of a licensing agreement with the department, the applicant may use the logo on its product, package or promotional materials until notified by the department to discontinue its use. The department shall furnish the approved applicant with a copy of the "official reproduction sheet" of camera-ready logo copy from which the company can reproduce the logo. The licensee shall follow the graphic standards as provided to the licensee and incorporated in the license agreement.

261—164.6(15) Denial or suspension of use of logo.

164.6(1) *Denial.* The department may deny permission to use the label or trademark if the department reasonably believes that the applicant's planned use (or for licensees, if the planned or actual use) would adversely affect the use of the label or trademark as a marketing tool for Iowa products or its use would be inconsistent with the marketing objectives of the department.

164.6(2) *Suspension.* The department may suspend permission to use the label or trademark for the same reasons stated in subrule 164.6(1), prior to an evidentiary hearing which shall be held within a reasonable period of time following the suspension.

261—164.7(15) Request for hearing.

164.7(1) *Filing deadline.* An applicant who is denied permission to use the marketing logo or a licensee that has received notice of suspension of permission to use the marketing logo may request a hearing concerning the denial or suspension. A request for a hearing shall be filed with the department within 20 days of receipt of the denial or suspension notice. Requests for hearing shall be submitted in writing by personal service or by certified mail, return receipt requested, to: A Taste of Iowa, International Division, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309.

164.7(2) *Contents of request for hearing.* A request for a hearing shall contain the following information:

a. The date of filing of the request;

b. The name, address and telephone number of the party requesting the hearing and, if represented by counsel, the name, address and telephone number of the petitioner's attorney;

c. A clear statement of the facts, including the reasons the requesting party believes the denial or suspension of permission to use the marketing logo should be reconsidered; and

d. The signature of the requesting party.

164.7(3) *Informal settlement.* Individuals are encouraged to meet informally with department representatives to resolve issues related to a denied application or suspension of authorization to use the logo. If settlement is reached, it shall be in writing and is binding on the agency and the individual.

164.7(4) *Hearing procedures.* If an informal resolution is not reached, the department will follow the procedures outlined in the uniform rules on agency procedure governing contested cases located in the first volume of the Iowa Administrative Code.

261—164.8(15) Requests for information. Information about the logo marketing program may be obtained by contacting: A Taste of Iowa, International Division, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4743.

These rules are intended to implement Iowa Code section 15.108(2)*"b."*

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CHAPTER 165
ALLOCATION OF GROW IOWA VALUES FUND
[Prior to 7/4/07, see 261—Ch 2]

261—165.1(15G,83GA,SF344) Purpose. The purpose of the grow Iowa values fund is to provide financial assistance for business incentives, marketing efforts, and other programs and activities designed to spur the economy and improve the quality of life of Iowans. Moneys in the grow Iowa values fund provide financial assistance for allowable departmental purposes; for state parks pursuant to a plan from the department of natural resources (DNR); for the cultural trust fund; for workforce training and economic development funds of the community colleges; for economic development region initiatives; and for financial assistance to the regents for the University of Northern Iowa, Iowa State University, the University of Iowa, a bioscience organization, and private universities. The rules in this chapter apply to financial assistance awarded from the grow Iowa values fund by the board.
[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09]

261—165.2(15G,83GA,SF344) Definitions. The definitions located in 261—Chapter 173 apply to this chapter.
[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09]

261—165.3(15G,83GA,SF344) Grow Iowa values fund (2009). The grow Iowa values fund (2009) refers to the fund established by Iowa Code chapter 15G as amended by 2009 Iowa Acts, Senate File 344. The fund includes moneys appropriated to the department by the general assembly for the fund, payments of interest, repayments of moneys loaned, and recaptures of grants and loans made pursuant to the fund, and all moneys accruing to the department from the department's administration of preexisting programs. Pursuant to Iowa Code section 15G.111 as amended by 2009 Iowa Acts, Senate File 344, section 2, the fund is under the control of and administered by the department.
[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09]

261—165.4(15G,83GA,SF344) Allocation of annual appropriation for grow Iowa values fund moneys—$50M. Pursuant to Iowa Code section 15G.111 as amended by 2009 Iowa Acts, Senate File 344, section 2, $50 million is appropriated from the grow Iowa values fund to the department each fiscal year for the fiscal period beginning July 1, 2009, and ending June 30, 2015. If the full $50 million is appropriated in a fiscal year, the fund moneys are allocated as described below. If less than $50 million is appropriated in a fiscal year, then the amount available will be reduced on a pro-rata basis. The fund moneys are allocated as follows:

1. $32M—For:

- Departmental administrative costs,
- Awards of financial assistance from the grow Iowa values financial assistance program established in 2009 Iowa Acts, Senate File 344, section 3,
- Marketing,
- A statewide labor shed study,
- Responding to opportunities and threats,
- Technical assistance and information technology,
- Guarantees in existence as of July 1, 2009, under the loan and credit guarantee program,
- Renewable fuels infrastructure program for FY 2010 ($2M), and
- $1M for FY 2010 for research and development related to renewable energy pursuant to 2009 Iowa Acts, House File 817.

2. $3M—For deposit in the innovation and commercialization fund created by 2009 Iowa Acts, Senate File 142.
3. $5M—To the state board of regents for institutions of higher learning under the control of the state board of regents, for specific activities.
4. $1M—For projects in targeted state parks, state banner parks and destination parks.
5. $1M—For the cultural trust fund administered by the department of cultural affairs.

6. $7M—For workforce training and economic development funds of the community colleges.

7. $1M—For economic development region initiatives.

165.4(1) *Board allocation of appropriation to fund for departmental purposes—$32M.* Of the annual appropriation to the fund, the board may allocate $32 million (or a pro-rata amount if the annual appropriation to the fund is less than $50 million) for the following activities:

a. Departmental administrative costs. The board may allocate a portion of the funds to cover administrative costs. No more than $600,000 may be allocated for administrative costs.

b. Awards of financial assistance from the grow Iowa values financial assistance program established in 2009 Iowa Acts, Senate File 344, section 3. The grow Iowa values financial assistance fund consists of six components. The rules for the six components may be found in 261—Chapter 74.

c. Marketing. The board may allocate a portion of the amount available for departmental purposes for marketing proposals pursuant to Iowa Code section 15G.109.

d. Statewide labor shed study. The board may allocate a portion of the funds available to authorize a statewide labor shed study in coordination with the department of workforce development.

e. Responding to opportunities and threats. A portion of the funds may be allocated by the board to respond to opportunities and threats. The rules for this activity are found in 261—Chapter 75.

f. Technical assistance and information technology. The board may allocate a portion of the funds available for procuring technical assistance from either the public or private sector and for information technology purposes.

g. Loan guarantees in existence as of July 1, 2009, under the loan and credit guarantee program.

h. Renewable fuels infrastructure fund established in Iowa Code section 15G.205. For fiscal year 2010, $2 million shall be allocated to the renewable fuels infrastructure fund established in Iowa Code section 15G.205.

i. Renewable energy research and development. For fiscal year 2010, $1 million for research and development related to renewable energy pursuant to 2009 Iowa Acts, House File 817.

165.4(2) *Funding to the state board of regents for institutions of higher learning under the control of the state board of regents for specific activities—$5M.*

a. *Use of funds.* Five million dollars (or a pro-rata amount if the annual appropriation to the fund is less than $50 million) is available for financial assistance to institutions of higher learning under the control of the state board of regents (Iowa State University (ISU), University of Iowa (U of I), University of Northern Iowa (UNI)). These funds must be used for capacity building infrastructure in areas related to technology commercialization, for marketing and business development efforts in areas related to technology commercialization, entrepreneurship, and business growth, and for infrastructure projects and programs needed to assist in the implementation of activities under Iowa Code chapter 262B.

(1) In allocating moneys to institutions under the control of the state board of regents, the state board of regents shall require the institutions to provide a one-to-one match of additional moneys for the activities funded with moneys provided under this subrule.

(2) The state board of regents may allocate moneys available under this subrule for financial assistance to a single biosciences development organization determined by the department to possess expertise in promoting the area of bioscience entrepreneurship. The organization must be composed of representatives of both the public and the private sector and shall be composed of subunits or subcommittees in the areas of existing identified biosciences platforms, education and workforce development, commercialization, communication, policy and governance, and finance. Such financial assistance shall be used for purposes of activities related to biosciences and bioeconomy development under Iowa Code chapter 262B and to accredited private universities in this state.

b. *Annual state board of regents report.* Each fiscal year, the state board of regents shall report how the funds were used and allocated among ISU, U of I, UNI, a bioscience organization, and private universities. The report shall be submitted to the department by July 31. In order to determine the impact of the funding applied to accelerate research leading to commercial products/processes and to measure activities that demonstrate successes, the annual report shall include, at a minimum, the following information:

(1) Research and development commercialization agreements executed with Iowa companies (the number, the dollar amount).

(2) Corporate sponsored funding for R&D by Iowa companies (the number, the dollar amount).

(3) University centers and institutes: core laboratory equipment utilized and services provided (hours, samples, dollar amount).

(4) License and option agreements executed with Iowa companies (the number).

(5) New Iowa companies formed and jobs created from the result of licensed technologies (the number).

(6) Revenue to Iowa companies (based on sales) as a result of licensed technologies (the dollar amount).

c. Board action. The board shall review the annual report from the state board of regents and accept, or request additional information regarding, the use of the $5 million allocation from the grow Iowa values fund to the state board of regents. The board will include in its annual grow Iowa values fund report that is required to be submitted by January 31 each year pursuant to Iowa Code section 15.104(9) an evaluation of the annual report received from the state board of regents.

165.4(3) *Funding for projects in targeted state parks, state banner parks and destination parks—$1M.*

a. Use of funds. One million dollars (or a pro-rata amount if the annual appropriation to the fund is less than $50 million) is available for purposes of providing financial assistance for projects in targeted state parks, state banner parks, and destination parks. For purposes of this subrule, "state banner park" means a park with multiple uses and which focuses on the economic development benefits of a community or area of the state.

b. Annual DNR plan. The department of natural resources shall submit a plan to the department for the expenditure of moneys allocated under this subrule. The plan shall focus on improving state parks, state banner parks, and destination parks for economic development purposes.

c. Board action. The board shall approve, deny, modify, or defer proposed expenditures under the proposed plan for use of the $1 million allocation from the grow Iowa values fund for state parks. Upon approval of the plan, a contract shall be executed between the department and the department of natural resources to provide financial assistance to the department of natural resources for support of state parks, state banner parks, and destination parks.

165.4(4) *Funding for the cultural trust fund administered by the department of cultural affairs—$1M.* One million dollars (or a pro-rata amount if the annual appropriation to the fund is less than $50 million) shall be allocated by the department for deposit in the Iowa cultural trust fund created in Iowa Code section 303A.4 and administered by the department of cultural affairs. The department shall transfer the moneys allocated from the grow Iowa values fund for this purpose to the treasurer of state.

165.4(5) *Funding for workforce training and economic development funds of the community colleges—$7M.* Seven million dollars (or a pro-rata amount if the annual appropriation to the fund is less than $50 million) is allocated for deposit into the workforce training and economic development funds of the community colleges created pursuant to Iowa Code section 260C.18A. The department shall transfer the moneys allocated from the grow Iowa values fund to the workforce training and economic development fund.

165.4(6) *Funding for economic development region initiatives—$1M.*

a. Funds available. One million dollars (or a pro-rata amount if the annual appropriation to the fund is less than $50 million) is available for providing assistance to economic development regions. These moneys are allocated as follows:

$350,000—To ISU, for establishment of small business development centers in certain areas of the state.

$50,000—To the department, for assistance to Iowa business resource centers authorized in Iowa Code section 15G.111 as amended by 2009 Iowa Acts, Senate File 344, section 2.

$600,000—To the department, for financial assistance to economic development regions, for the establishment of a regional economic development revenue-sharing pilot project.

b. Allocation of $600,000 for economic development region initiatives. The board shall annually allocate the $600,000 available under this subrule for economic development region initiatives. The $600,000 is available for the following:

(1) Financial assistance to economic development regions. A portion of the $600,000 may be allocated for financial assistance to economic development regions. An economic development region may apply for:

1. Financial assistance for physical infrastructure needs;

2. Financial assistance to assist an existing business threatened with closure due to the potential consolidation of an out-of-state location;

3. Financial assistance to establish and operate an entrepreneurial initiative.

(2) Regional economic development revenue-sharing pilot project. The department may establish and administer a regional economic development revenue-sharing pilot project for one or more regions. The department shall take into consideration the geographical dispersion of the pilot projects. The department shall provide technical assistance to the regions participating in a pilot project.

(3) Designation as an economic enterprise area. An economic development region may apply to the department for approval to be designated as an economic enterprise area. The department shall approve no more than ten regions as economic enterprise areas.

[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09]

261—165.5(15G,83GA,SF344) Board allocation of other moneys in fund.

165.5(1) *Allocation for administrative and operations costs.* In addition to the moneys appropriated to the fund for departmental purposes pursuant to Iowa Code section 15G.111 as amended by 2009 Iowa Acts, Senate File 344, section 2, the board may allocate other moneys credited to the fund pursuant to Iowa Code section 15G.111 as amended by 2009 Iowa Acts, Senate File 344, section 2, for department administrative and operations costs. The board may allocate a portion of the moneys accruing to the fund resulting from preexisting programs that were repealed by 2009 Iowa Acts, Senate File 344: CEBA, EVA, VAAPFAP, PIAP, and LCG. Funds may be allocated by the board in an amount necessary to fund administrative and operations costs of the department. This allocation is in addition to any allocations the board makes pursuant to subrule 165.4(1).

165.5(2) *Allocation of other moneys for fund purposes.* The board may allocate for other allowable fund purposes a portion of the moneys accruing to the fund resulting from preexisting programs that were repealed by 2009 Iowa Acts, Senate File 344: CEBA, EVA, VAAPFAP, PIAP, and LCG. This allocation is in addition to any allocations the board makes pursuant to subrule 165.4(1).

[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09]

261—165.6(15G,83GA,SF344) Annual fiscal year allocations by board.

165.6(1) *Annual fiscal year allocations.* At the first scheduled meeting of the board after the start of a fiscal year, the board shall take action on each of the following:

a. Board allocation of appropriation to fund for departmental purposes—$32M. The board shall review the department's recommendation for the annual allocation of the $32 million (or of such lesser amount if the annual appropriation to the fund is less than $50 million) for departmental purposes described in subrule 165.4(1).

b. Board allocation of other moneys in the fund. The board shall review the department's recommendation for the annual allocation of other moneys in the fund as described in rule 261—165.5(15G,83GA,SF344).

c. Board allocation among the six components of the grow Iowa values financial assistance program. The board shall review the department's recommendation for the annual allocation among the six components of the grow Iowa values financial assistance program described in 261—Chapter 74.

165.6(2) *Reallocation during fiscal year.* The board may adjust each of the allocations described in subrule 165.6(1) during the fiscal year as necessary.

[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09]

These rules are intended to implement Iowa Code chapter 15G as amended by 2009 Iowa Acts, Senate File 344.

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CHAPTER 168
ADDITIONAL PROGRAM REQUIREMENTS

[Prior to 9/6/00, see 261—Ch 80]

Rescinded IAB 7/4/07, effective 6/15/07; see 261—Part VII

CHAPTERS 169 and 170
Reserved

PART VII
ADDITIONAL APPLICATION REQUIREMENTS AND PROCEDURES

CHAPTER 171
SUPPLEMENTAL CREDIT OR POINTS

[IAB 7/4/07, 261—Ch 171 renumbered as 261—Ch 197]
[Prior to 7/4/07, see 261—Ch 168, div I, III]

261—171.1(15A) Applicability. Pursuant to Iowa Code chapter 15A, the department will give additional consideration or additional points in the application of rating or evaluation criteria in providing a loan, grant, or other financial assistance for economic development-related purposes to a business or person that meets the requirements of this chapter. Unless prohibited by state or federal law or rule, department programs using a point system will provide supplementary credit of up to a maximum of ten points for applicants meeting the requirements of this chapter.

261—171.2(15A) Brownfield areas, blighted areas and distressed areas. To be eligible to receive the extra credit points, the person or business shall be located in an area that meets one of the following criteria:

1. The area is a brownfield site as defined in Iowa Code section 15.291.
2. The area is a blighted area as defined in Iowa Code section 403.17.
3. The area is located in a city or county that meets the distress criteria provided under the enterprise zone program in Iowa Code section 15E.194, subsection 1 or 2.

261—171.3(15A) Good neighbor agreements. Pursuant to Iowa Code section 15A.4, for any program providing financial assistance for economic development in which the assistance is provided on a competitive basis, a business which enters into a good neighbor agreement shall receive extra consideration of at least ten points or the equivalent.

171.3(1) *Definition.* A good neighbor agreement is an enforceable contract between the business and a community group or coalition of community groups which requires the business to adhere to negotiated environmental, economic, labor, or other social and community standards.

171.3(2) *Noncompliance.* A business which fails to abide by the good neighbor agreement shall repay all financial assistance received under the program.

261—171.4(82GA,HF647) Iowa great places agreements. Notwithstanding any restriction, requirement, or duty to the contrary, in considering an application for a grant, loan, or other financial or technical assistance for a project identified in an Iowa great places agreement developed pursuant to Iowa Code section 303.3C as amended by 2007 Iowa Acts, House File 647, sections 1 and 2, a state agency shall give additional consideration or additional points in applying the rating or evaluation criteria to such applications.

These rules are intended to implement Iowa Code chapter 15A and 2007 Iowa Acts, House File 647.

[Filed emergency 6/15/07—published 7/4/07, effective 6/15/07]
[Filed 8/22/07, Notice 7/4/07—published 9/26/07, effective 10/31/07]

CHAPTER 172
ENVIRONMENTAL LAW COMPLIANCE; VIOLATIONS OF LAW

[IAB 7/4/07, 261—Ch 172 renumbered as 261—Ch 198]
[Prior to 7/4/07, see 261—Ch 168, div II]

261—172.1(15A) Environmental law compliance. Iowa Code section 15A.1(3) provides that a state agency shall not provide a grant, loan, or other financial assistance to a private person or on behalf of a private person unless the business for whose benefit the financial assistance is to be provided makes a report detailing the circumstances of its violations, if any, of a federal or state environmental protection statute, regulation, or rule within the previous five years. The state agency shall take into consideration before allowing financial assistance this report of the business. If the business generates solid or hazardous waste, the business must conduct and submit documentation of in-house audits and must submit a copy of the management plan developed to reduce the amount of the waste and to safely dispose of the waste.

172.1(1) *Environmental report submitted.* Any individual or business applying for assistance through the department shall report on the application for assistance any cited violation(s) of federal or state environmental statutes, regulations or rules within the past five years and detail the circumstances of the violation(s). If the individual or business fails to report a violation(s) and the department discovers such violation(s), the individual or business shall be declared ineligible to receive assistance until such time as the report is submitted.

172.1(2) *Ineligibility for assistance.* Any individual or business which has been referred by the department of natural resources to the attorney general for an environmental violation(s) shall be ineligible to receive assistance from the department until such time as the violation(s) has been determined to be corrected.

172.1(3) *In-house audit.* If the individual or business generates solid or hazardous waste, that individual or business shall be required to conduct an in-house audit and have management plans to reduce the amount of waste and to safely dispose of the waste. If the individual or business has conducted an in-house audit and developed a management plan within the last three years, submission of a copy of the audit and management plan will fulfill this requirement. If the individual or business has not conducted an audit within the past three years, the individual or business must initiate the audit prior to the department's disbursement of financial assistance and submit a copy of the completed audit within 90 days of disbursement of the financial assistance.

172.1(4) *External audit.* In lieu of an in-house audit, the individual or business may elect to authorize the department of natural resources or the Iowa waste reduction center established under Iowa Code section 268.4 to conduct the audit. A copy of the authorization for the department of natural resources or the Iowa waste reduction center to conduct the audit shall be submitted to the department prior to the department's disbursement of financial assistance. Within 30 days of receipt of the audit, the individual or business must submit to the department a copy of the completed audit conducted by the department of natural resources or by the Iowa waste reduction center.

261—172.2(15A) Violations of law. Financial assistance applications shall be reviewed by the department to determine if the business has a record of violations of the law over a period of time that tends to show a consistent pattern. The business shall provide the department with a report detailing violations of law within the most recent consecutive three-year period prior to application. If the department finds that a business has a record of violations of the law that tends to show a consistent pattern, the business shall not be eligible to receive financial assistance unless the department finds that the violations did not seriously affect public health or safety or the environment, or if the department did find that the violations seriously affected public health or safety or the environment, that there were mitigating circumstances. In making the findings and determinations regarding violations, mitigating circumstances, and whether the business is disqualified for tax incentives and assistance under the program, the department shall be exempt from Iowa Code chapter 17A.

These rules are intended to implement Iowa Code section 15A.1.

[Filed emergency 6/15/07—published 7/4/07, effective 6/15/07]

[Filed 8/22/07, Notice 7/4/07—published 9/26/07, effective 10/31/07]

CHAPTER 173
STANDARD DEFINITIONS

[IAB 7/4/07, 261—Ch 173 renumbered as 261—Ch 199]
[Prior to 7/4/07, see 261—Ch 168, div V]

261—173.1(15,15G,83GA,SF344) Applicability.

173.1(1) *Current programs.* Effective July 1, 2009, this chapter shall apply to the following programs and funding sources:

a. EDSA (economic development set-aside) program (261—Chapter 23).

b. EZ (enterprise zone) program (261—Chapter 59).

c. HQJP (high quality jobs program) (261—Chapter 68).

d. Grow Iowa values fund—IVF(2009).

173.1(2) *Prior programs—transition provision.* The programs listed in paragraphs *"a"* to *"f"* were repealed by 2009 Iowa Acts, Senate File 344, effective July 1, 2009. The rules in effect on June 30, 2009, under this chapter shall apply to the following prior programs until such time as the contracts for these prior programs are closed by the department:

a. VAAPFAP (value-added agricultural products and processes financial assistance program) (261—Chapter 57).

b. CEBA (community economic betterment account) program (261—Chapter 53).

c. EVA (entrepreneurial ventures assistance) program (261—Chapter 60).

d. TSBFAP (targeted small business financial assistance program) (261—Chapter 55).

e. PIAP (physical infrastructure assistance program) (261—Chapter 61).

f. LCG (loan and credit guarantee) program (261—Chapter 69).

[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09]

261—173.2(15,15G,83GA,SF344) Definitions.

"Agricultural products advisory council" or *"APAC"* means the council which is composed of five members appointed by the secretary of agriculture and five members appointed by the director of the Iowa department of economic development who are experienced in marketing or exporting agricultural commodities or products, financing the export of agricultural commodities or products, or adding value to and the processing of agricultural products as further described in Iowa Code section 15.203 and which reviews value-added agriculture component applications and makes recommendations to the board.

"Award date" means the date the board or the director approved an application for direct financial assistance or tax credit incentives.

"Base employment level" means the number of full-time equivalent positions at a business, as established by the department and a business using the business's payroll records, as of the date a business applies for financial assistance. The number of jobs the business has pledged to create and retain shall be in addition to the base employment level.

"Benefits" means all of the following nonwage compensation provided to an employee: medical and dental insurance plans, pension, retirement, and profit-sharing plans, child care services, life insurance coverage, vision insurance coverage, and disability insurance coverage.

"Board" means the Iowa economic development board established under Iowa Code section 15.103.

"Business" means a sole proprietorship, partnership or corporation organized for profit or not for profit under the laws of the state of Iowa or another state, under federal statutes, or under the laws of another country.

"County wage" means the county wage calculation performed by the department pursuant to 2009 Iowa Acts, Senate File 344, section 3.

"Created job" means a new, permanent, full-time equivalent (FTE) position added to a business's payroll in excess of the base employment level at the time of application for assistance.

"Department" means the Iowa department of economic development created by Iowa Code section 15.105.

"Director" means the director of the Iowa department of economic development.

"Due diligence committee" or *"DDC"* means the due diligence committee composed of members of the board whose duties include, but are not limited to, carrying out any duties assigned by the board in relation to programs administered by the department, reviewing applications for financial assistance, conducting a thorough review of proposed projects and making recommendations to the board regarding funding.

"Employee" means:

1. An individual filling a full-time position that is part of the payroll of the business receiving financial assistance from any of the programs identified in rule 261—173.1(15,15G,83GA,SF344).

2. A business's leased or contract employee, provided all of the following elements are satisfied:

- The business receiving the state financial assistance has a legally binding contract with a third-party provider to provide the leased or contract employee.
- The contract between the third-party provider and the business specifically requires the third-party provider to pay the wages and benefits at the levels required and for the time period required by the department as conditions of the financial assistance award to the business.
- The contract between the third-party provider and the business specifically requires the third-party provider to submit payroll records to the department, in form and content and at the frequency found acceptable to the department, for purposes of verifying that the business's job creation/retention and benefit requirements are being met.
- The contract between the third-party provider and the business specifically authorizes the department, or its authorized representatives, to access records related to the funded project.
- The business receiving the state financial assistance agrees to be contractually liable to the department for the performance or nonperformance of the third-party provider.

"Equity-like investment" means the provision of assistance in such a manner that the potential return on investment to the provider varies according to the profitability of the company assisted. This includes but is not limited to: royalty arrangements; warrant arrangements; or other similar forms of investments.

"Financial assistance" means assistance in the form of grants, loans, forgivable loans, float loans, equity-like investment, and royalty payments and other forms deemed appropriate by the board, consistent with Iowa law.

"Fiscal impact ratio" or *"FIR"* means a ratio calculated by estimating the amount of taxes to be received by the state from a business and dividing the estimate by the estimated cost to the state of providing certain financial incentives to the business, reflecting a ten-year period of taxation and incentives and expressed in terms of current dollars. "Fiscal impact ratio" does not include taxes received by political subdivisions.

"Full-time equivalent job" or *"full-time"* means the employment of one person:

1. For 8 hours per day for a 5-day, 40-hour workweek for 52 weeks per year, including paid holidays, vacations and other paid leave; or

2. The number of hours or days per week, including paid holidays, vacations and other paid leave, currently established by schedule, custom, or otherwise, as constituting a week of full-time work for the kind of service an individual performs for an employing unit.

"Grant" means an award of assistance with the expectation that, with the fulfillment of the conditions, terms and obligations of the contract with the department for the project, repayment of funds is not required.

"ICF" means the innovation and commercialization fund established by 2009 Iowa Acts, Senate File 142.

"IVF(2009)" means the grow Iowa values fund established by Iowa Code section 15G.111 as amended by 2009 Iowa Acts, Senate File 344, section 2.

"Loan" means an award of assistance with the requirement that the award be repaid with term, interest rate, and other conditions specified as part of the award. A "deferred loan" is one for which the payment for principal, interest, or both, is not required for some specified period. A "forgivable loan" is one for which repayment is eliminated in part or entirely if the borrower satisfies specified conditions. A "float loan" means a short-term loan (maximum of 30 months) from obligated but unexpended IVF(2009) funds.

"Loan and credit guarantee committee" means the loan and credit guarantee committee composed of members of the board and whose duties include, but are not limited to, carrying out any duties assigned by the board in relation to the loan and credit guarantee program administered by the department, reviewing loan and credit guarantee applications and making recommendations to the board regarding funding.

"Loan guarantee" means a guarantee of all or part of a loan made by a commercial lender. Payment of all or a portion of the loan guarantee would occur if the business defaults on its repayment of the loan, provided the lender has exhausted standard legal remedies in an attempt to secure repayment from the borrower.

"Maintenance period" means the period of time between the project completion date and the maintenance period completion date.

"Maintenance period completion date" means the date on which the maintenance period ends. It is the specific date established by the department past the project completion date through which the recipient shall maintain the project, the created jobs, and the retained jobs.

"Project completion," for the EZ and HQJP tax credit programs, for purposes of reporting to the Iowa department of revenue that a project has been completed, means:

1. For new manufacturing facilities, the first date upon which the average annualized production of finished product for the preceding 90-day period at the manufacturing facility is at least 50 percent of the initial design capacity of the facility.
2. For all other projects, the date of completion of all improvements necessary for the start-up, location, expansion or modernization of a business.

"Project completion date" means the specific date established by the department by which a recipient of financial assistance shall have completed all pledged project activities, met its job creation and job retention obligations, and otherwise satisfied the terms and obligations of the contract with the department for a project. (See rule 261—187.3(15) for a listing of the duration of the project completion period and maintenance period for IDED's job creation and tax credit programs.)

"Project completion period" means the period of time between the date financial assistance is awarded (the "award date") and the project completion date.

"Project initiation" means, for all programs and funding sources except EDSA, any one of the following:

1. The start of construction of new or expanded buildings;
2. The start of rehabilitation of existing buildings;
3. The purchase or leasing of existing buildings; or
4. The installation of new machinery and equipment or new computers to be used in the operation of the business's project.

The purchase of land or signing an option to purchase land or earth moving or other site development activities not involving actual building construction, expansion or rehabilitation shall not constitute project initiation. The costs of any land purchase and site development work incurred prior to the award are not eligible qualifying investment expenses.

"Qualifying wage threshold" means the county wage or the regional wage, as calculated by the department, whichever is lower.

"Regional wage" means the regional wage calculation performed by the department pursuant to 2009 Iowa Acts, Senate File 344, section 3.

"Retained job" means a full-time equivalent permanent position in existence at the time an employer applies for financial assistance which remains continuously filled or authorized to be filled as soon as possible and which is at risk of elimination if the project for which the employer is seeking assistance does not proceed.

"Sufficient benefits" means that the employer applying for financial assistance offers to each full-time equivalent permanent position a benefits package that meets one of the following:

1. The employer pays 80 percent of the premium costs for a standard medical and dental plan for single employee coverage with a $750 maximum deductible; or
2. The employer pays 50 percent of the premium costs for a standard medical and dental plan for employee family coverage with a $1,500 maximum deductible; or

3. The employer provides medical coverage and pays the monetary equivalent of paragraph "1" or "2" above in supplemental employee benefits. Benefits counted toward monetary equivalent could include medical coverage, dental coverage, vision insurance, life insurance, pension, retirement (401k), profit sharing, disability insurance, child care services, and other nonwage compensation approved by the board.

"Sufficient benefits credit" means a benefits credit for which a business qualifies if the business provides sufficient benefits to each employee holding a created or retained job. This credit can be applied against the 130 percent qualifying wage requirement. The credit shall be calculated and applied as follows:

1. By multiplying the qualifying wage threshold of the county in which the business is located by one and three-tenths.
2. By multiplying the result of paragraph "1" by one-tenth.
3. The amount of the result of paragraph "2" shall be credited against the amount of the 130 percent qualifying wage threshold requirement that the business is required to meet.
4. The credit shall not be applied against the 100 percent qualifying wage threshold requirement.

"Technology commercialization committee" means the committee established by the board pursuant to Iowa Code section 15.116 to evaluate and approve funding for projects and programs referred to in Iowa Code section 15G.111 as amended by 2009 Iowa Acts, Senate File 344, section 2.

[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09]

These rules are intended to implement Iowa Code chapters 15, 15G as amended by 2009 Iowa Acts, Senate File 344, and 17A.

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CHAPTER 174
WAGE, BENEFIT, AND INVESTMENT REQUIREMENTS
[Prior to 7/4/07, see 261—Ch 168, div IV]

261—174.1(15,15G,83GA,SF344) Applicability. This chapter is applicable to the programs identified in 261—173.1(15,15G,83GA,SF344).
[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09]

261—174.2(15,15G,83GA,SF344) Annual qualifying wage threshold calculations.

174.2(1) The department will update the county and regional qualifying wage thresholds annually each fiscal year, and these thresholds will become effective on July 1 of each fiscal year.

174.2(2) Effective date of county wage and regional wage qualifying thresholds. Businesses that submit a project review form to the department will be subject to county and regional qualifying wage thresholds in effect on the date the department receives the project review form provided that the business's application is received and approved within six months of the date the project review form was received by the department. If more than six months have elapsed, the business will be subject to the wage thresholds in effect on the date the department receives the business's completed application.
[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09]

261—174.3(15,15G,83GA,SF344) Qualifying wage threshold requirements—prior to July 1, 2009. 2009 Iowa Acts, Senate File 344, became effective on July 1, 2009. 2009 Iowa Acts, Senate File 344, repealed a number of programs administered by the department, established IVF(2009), and transferred moneys from prior programs to the IVF(2009). This resulted in a simplification of state financial assistance programs. The following subrules regarding qualifying wage thresholds apply to awards made on or before June 30, 2009. This rule shall apply to the prior programs and funding sources until such time as the contracts for these prior programs are closed by the department.

174.3(1) *Qualifying wage threshold requirement—projects receiving IVF(FES) assistance.* Awards funded during the time period beginning July 1, 2003, but before June 16, 2004, from IVF(FES) shall meet the wage requirements in effect at that time as reflected in the contract between the department and the business. Awards funded after June 16, 2004, using IVF(FES) moneys shall meet the qualifying wage thresholds for the programs through which funding is sought.

174.3(2) *Qualifying wage threshold requirement—projects receiving IVF (2005) assistance.* In order to receive financial assistance from the IVF (2005), applicants shall demonstrate that the annual wage, including benefits, of project jobs is at least 130 percent of the average county wage. If an applicant is applying for IVF (2005) moneys, the department will first review the application to ensure that the IVF (2005) wage requirement is met. The department will then review the application for compliance with the requirements of the department program from which financial assistance is to be provided.

174.3(3) *Qualifying wage threshold requirement—projects funded by program funds ("old money").* Prior to July 1, 2003, direct financial assistance programs administered by the department were funded through state appropriations. After the creation of IVF(FES) and IVF (2005), these programs no longer received separate state appropriations. These programs were funded with IVF(FES) and IVF (2005) moneys. Moneys remaining, recaptured or repaid to these program funds remain available for awarding to projects. The department will review an application for compliance with the requirements of the department program from which financial assistance is to be provided.

174.3(4) *Qualifying wage threshold requirement—projects receiving EDSA funds.* EDSA is the job creation component of the federal CDBG program. The department will review an application for compliance with the federal CDBG EDSA requirements.

174.3(5) *Qualifying wage thresholds, by funding source and by program.*

a. *IVF (2005).* Projects that are funded with IVF (2005) moneys through the following programs shall meet the qualifying wage threshold listed below:

Funding Source: IVF (2005)		Qualifying Wage Threshold Requirement	Can benefits value be added to the hourly wage to meet the qualifying wage threshold?
CEBA:	Small business gap financing component	130% of average county wage	Yes
	New business opportunities and new product development components	130% of average county wage	Yes
	Venture project component	130% of average county wage	Yes
	Modernization project component	130% of average county wage	Yes
VAAPFAP		130% of average county wage	Yes
PIAP		130% of average county wage, unless funded through special allocation of PIAP funds, up to $5 million, established in subrule 61.5(12)	Yes
EVA		130% of average county wage	Yes

b. IVF(FES) and program funds. Projects that are funded with IVF(FES) through the following programs or directly from available program fund moneys shall meet the qualifying wage thresholds listed below:

Funding Source: IVF(FES) or Program Funds		Qualifying Wage Threshold Requirement	Can benefits value be added to the hourly wage to meet the qualifying wage threshold?
CEBA:	Small business gap financing component	100% of average county wage or average regional wage, whichever is lower 130% for awards over $500,000	No
	New business opportunities and new product development components	100% of average county wage or average regional wage, whichever is lower 130% for awards over $500,000	No
	Venture project component	100% of average county wage or average regional wage, whichever is lower	No
	Modernization project component	100% of average county wage or average regional wage, whichever is lower 130% for awards over $500,000	No
VAAPFAP		No statutory requirement	Not applicable
PIAP		No statutory requirement	Not applicable
EVA		No statutory requirement	Not applicable

c. *EDSA.* Projects that are funded with EDSA moneys shall meet the following wage threshold:

Program Source: CDBG	Wage Threshold Requirement	Can benefits value be added to the hourly wage to meet the wage threshold?
EDSA	100% of average county wage or average regional wage, whichever is lower	No

d. *EZ and HQJC.* Tax credit program projects shall meet the following wage thresholds:

Tax Credit Program	Wage Threshold Requirement	Can benefits value be added to the hourly wage to meet the wage threshold?
EZ	90% of average county wage or average regional wage, whichever is lower	No
HQJC	130% of average county wage More benefits are available if the wage rate is 160% or higher	Yes

[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09]

261—174.4(15) IVF (2005) wage waivers; HQJC eligibility requirement waivers. Rescinded IAB 11/5/08, effective 10/16/08.

261—174.5(15G,83GA,SF344) Qualifying wage threshold requirements—on or after July 1, 2009.

174.5(1) Projects that are funded through one of the IVF(2009) financial assistance program components shall meet the following qualifying wage thresholds:

Funding Source: IVF(2009) Grow Iowa Values Financial Assistance Program		Qualifying Wage Threshold Requirement	Credit for sufficient benefits?
Program Component:	130% wage component	130% of county wage or regional wage, whichever is lower	Yes
	100% wage component	100% of county wage or regional wage, whichever is lower	No
	Entrepreneurial component	No qualifying wage threshold	Not applicable
	Infrastructure component	No qualifying wage threshold	Not applicable
	Value-added agriculture component	No qualifying wage threshold	Not applicable
	Disaster recovery component	No qualifying wage threshold	Not applicable

174.5(2) HQJP and EZ. Projects funded through the HQJP or EZ tax credit program shall meet the following qualifying wage thresholds:

Tax Credit Program	Qualifying Wage Threshold Requirement	Credit for sufficient benefits?
HQJP	130% of county wage or regional wage, whichever is lower	Yes
EZ	90% of county wage or regional wage, whichever is lower	No

174.5(3) EDSA. Projects that are funded with EDSA moneys shall meet the following wage threshold:

Program Source: CDBG	Qualifying Wage Threshold Requirement	Credit for sufficient benefits?
EDSA	90% of county wage or regional wage, whichever is lower	No

174.5(4) Higher wage threshold applies if multiple programs are used in a project. Notwithstanding the qualifying wage threshold requirements for each program, if a business is a recipient of financial assistance from more than one program administered by the department and the qualifying wage thresholds are not the same, the business shall be required to pay the higher qualifying wage for the project.
[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09]

261—174.6(15E,15G,83GA,SF344) Wage waiver requests—130 percent wage component and HQJP.

174.6(1) *Waiver of qualifying wage threshold—130 percent wage component.* An applicant may apply to the board for a waiver of the qualifying wage threshold requirements of the 130 percent wage component of the grow Iowa values financial assistance program. The procedures to follow to request such a waiver are described in rule 261—175.5(15,15G,83GA,SF344).

174.6(2) *Waiver of HQJP qualifying wage threshold.* A community may apply to the board for a project-specific waiver from the qualifying wage threshold requirement in order to seek tax incentives for an eligible business. The procedures to follow to request such a waiver are described in rule 261—175.5(15,15G,83GA,SF344).
[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09]

261—174.7(15,15G,83GA,SF344) Job obligations. Jobs that will be created or retained as a result of a project's receiving state or federal financial assistance or tax credit benefits from the department shall meet the qualifying wage threshold requirements. Jobs that do not meet the qualifying wage threshold requirements will not be counted toward a business's job creation or job retention obligations outlined in the contract between the department and the business. A business's job obligations shall include the business's base employment level and the number of new jobs required to be created above the base employment level.
[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09]

261—174.8(15,15G,83GA,SF344) Benefit requirements—prior to July 1, 2009. This rule regarding benefit requirements applies to awards made on or before June 30, 2009. This rule shall apply to the prior programs and funding sources until such time as the contracts for these prior programs are closed by the department.

Program	Benefit Requirement	Deductible Requirements	Is a monetary equivalent to benefits allowed?	Benefits Counted Toward Monetary Equivalent
EZ	80% medical and dental coverage, single coverage only OR the monetary equivalent	$750 maximum for single coverage/ $1500 maximum for family coverage	Yes	-Medical coverage (family portion) -Dental coverage (family portion) -Pension/401(k) (company's average contribution) -Profit-sharing plan -Life insurance -Short-/long-term disability insurance -Vision insurance -Child care
HQJC	No benefit requirement (If, however, the company does not provide 80% medical and dental coverage for a single employee, the award will be reduced by 10%.)	$750 maximum for single coverage/ $1500 maximum for family coverage	No (Providing 80% medical and dental coverage for a single employee is one of eight qualifying criteria the company may use to qualify for the program. Monetary equivalent of other benefits is not considered.)	Not applicable

Program	Benefit Requirement	Deductible Requirements	Is a monetary equivalent to benefits allowed?	Benefits Counted Toward Monetary Equivalent
EDSA	80% medical and dental for single employees OR 50% medical and dental for family coverage OR the monetary equivalent	$750 maximum for single coverage/ $1500 maximum for family coverage	Yes	-Medical coverage (family portion) -Dental coverage (family portion) -Pension/401(k) (company's average contribution) -Profit-sharing plan -Life insurance -Short-/long-term disability insurance -Vision insurance -Child care -Other documented benefits offered to all employees (i.e., uniforms, tuition reimbursement, etc.)
CEBA	80% medical and dental for single employees OR 50% medical and dental for family coverage OR the monetary equivalent	$750 maximum for single coverage/ $1500 maximum for family coverage	Yes	-Medical coverage (family portion) -Dental coverage (family portion) -Pension/401(k) (company's average contribution) -Profit-sharing plan -Life insurance -Short-/long-term disability insurance -Vision insurance -Child care -Other documented benefits offered to all employees (i.e., uniforms, tuition reimbursement, etc.)
VAAPFAP	Not applicable	Not applicable	Not applicable	Not applicable
PIAP	Not applicable	Not applicable	Not applicable	Not applicable
EVA	Not applicable	Not applicable	Not applicable	Not applicable
TSBFAP	Not applicable	Not applicable	Not applicable	Not applicable

[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09]

261—174.9(15,15G,83GA,SF344) Sufficient benefits requirement—on or after July 1, 2009. To be eligible to receive state financial assistance or tax credit benefits, applicants shall offer sufficient benefits to each FTE permanent position. "Sufficient benefits" and "sufficient benefits credit" are defined in rule 261—173.2(15,15G,83GA,SF344). An employer may select one of the following options to meet the sufficient benefits requirement:

Option 1 80% Single Coverage	Option 2 50% Family Coverage	Option 3 Monetary Equivalent	
Pay 80% of premium costs for a standard medical and dental plan, single coverage. $750 maximum deductible	Pay 50% of premium costs for a standard medical and dental plan, family coverage. $1,500 maximum deductible	Provide medical and pay the monetary equivalent of Option 1 or Option 2 in supplemental employee benefits.	Benefits Counted Toward Monetary Equivalent ● Medical coverage ● Dental coverage ● Vision insurance ● Life insurance ● Pension ● 401(k) (company's average contribution) ● Short-/long-term disability insurance ● Child care services ● Other nonwage compensation

[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09]

261—174.10(15,15G,83GA,SF344) Capital investment, qualifying investment for tax credit programs, and investment qualifying for tax credits.

174.10(1) *Capital investment.* The department reports on the amount of capital investment involved with funded projects. This rule lists the categories of expenditures that are included when the department determines the amount of capital investment associated with a project.

174.10(2) *Qualifying investment for tax credit programs.* For the tax credit programs (EZ and HQJP), there are statutorily required minimum investment thresholds that must be met for the project to be considered to receive an award. Not all expenditures count toward meeting the investment threshold. This rule identifies the categories of expenditures that can be included when the amount of investment is calculated for purposes of meeting program eligibility threshold requirements.

174.10(3) *Investment qualifying for tax credits.* Not all of the expenditures categories used to calculate the investment amount needed to meet program threshold requirements qualify for purposes of claiming the tax credits. The following table identifies the expenditures that do not qualify for tax credits.

	Capital Investment[1]	Qualifying Investment[2]	Investment Qualifying for Tax Credits[3]
Land acquisition	Yes	Yes	Yes
Site preparation	Yes	Yes	Yes
Building acquisition	Yes	Yes	Yes
Building construction	Yes	Yes	Yes
Building remodeling	Yes	Yes	Yes
Mfg. machinery & equip.	Yes	Yes	Yes
Other machinery & equip.	Yes	No	No
Racking, shelving, etc.	Yes	No	No
Computer hardware	Yes	Yes	Yes
Computer software	No	No	No
Furniture & fixtures	Yes	Yes	No
Working capital	No	No	No
Research & development	No	No	No
Job training	No	No	No
Capital or synthetic lease	No	Yes	Yes
Rail improvements[4]	Yes	Yes	Yes
Public infrastructure[5]	Yes	Yes	Yes

1 "Capital investment" is used to calculate project investment on depreciable assets.

2 "Qualifying investment" is used to determine eligibility for EZ and HQJC programs.

3 "Investment qualifying for tax credits" is used to calculate the maximum available tax credit award for a project.

4 "Rail improvements" includes hard construction costs for rail improvements. (These costs are included as part of construction or site preparation costs.)

5 "Public infrastructure" includes any publicly owned utility service such as water, sewer, storm sewer or roadway construction and improvements. (These costs are included as part of construction costs.)

[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09]

These rules are intended to implement Iowa Code chapters 15, 15E and 15G as amended by 2009 Iowa Acts, Senate File 344.

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CHAPTER 175
APPLICATION REVIEW AND APPROVAL PROCEDURES

261—175.1(15,83GA,SF344) Applicability. This chapter shall apply to the programs listed in rule 261—173.1(15,15G,83GA,SF344) and to other state and federal programs identified in this chapter. This chapter describes the application review and approval procedures and the role of the advisory groups or board committees and identifies the final decision maker for each program.
[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09]

261—175.2(15,83GA,SF344) Application procedures for programs administered by the department.

175.2(1) *IVF(2009).* Effective July 1, 2009, pursuant to 2009 Iowa Acts, Senate File 344, the grow Iowa values fund was updated, streamlined and simplified, preexisting state financial assistance programs were repealed and previous funding for these programs was transferred to IVF(2009). The fund is administered by the department, and the board has final decision-making authority for IVF(2009) financial assistance awards and other activities.

175.2(2) *IVF (2005).* Rescinded IAB 7/15/09, effective 7/1/09.

175.2(3) *Projects funded by program funds ("old money").* Rescinded IAB 7/15/09, effective 7/1/09.

175.2(4) *Tax credit programs.* The department administers tax credit programs that provide tax incentives for approved projects. The department will review an application to ensure that the project meets the requirements for the tax credit programs through which an applicant is applying.

175.2(5) *Federal programs.* The department administers federal programs including, but not limited to, the HOME program and the CDBG program. EDSA is the job creation component of the CDBG program. The department will review an application to ensure that the project meets the requirements for the programs through which an applicant is applying.

175.2(6) *Other state programs.* In addition to the programs described herein, the department administers other state programs. The department will review an application to ensure that the project meets the requirements for the tax credit programs through which an applicant is applying.

175.2(7) *Application required.* A business or community seeking financial assistance or tax credit benefits from a department program shall submit an application to the department. The applicant shall comply with the department's application procedures, processes, rules, and, as applicable, the wage and benefit requirements for that program and its funding source. Application forms and directions for completing the forms are available online at the department's Web site at www.iowalifechanging.com or at the department's offices located at 200 East Grand Avenue, Des Moines, Iowa 50309.
[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09]

261—175.3(15,83GA,SF344) Standard program requirements. In addition to the eligibility requirements of the individual programs applicable to the financial assistance sought, an applicant shall be subject to all of the following requirements:

175.3(1) *Environmental and worker safety.* The applicant shall submit to the department with its application for financial assistance a report describing all violations of environmental law or worker safety law within the last five years. If, upon review of the application, the board finds that a business has a record of violations of the law, statutes, rules, or regulations that tends to show a consistent pattern, the board shall not make an award of financial assistance to the business unless the board finds either that the violations did not seriously affect public health, public safety, or the environment or, if such violations did seriously affect public health, public safety, or the environment, that mitigating circumstances were present.

175.3(2) *Sustained operations.* The applicant shall not have closed or substantially reduced operations in one area of this state and relocated substantially the same operations in a community in another area of this state. However, this subrule shall not be construed to prohibit a business from expanding its operations in a community if existing operations of a similar nature in this state are not closed or substantially reduced.

175.3(3) *Competition.* The proposed project shall not negatively impact other businesses in competition with the business being considered for assistance. The department shall make a good faith effort to identify existing Iowa businesses within an industry in competition with the business being considered for financial assistance. The department shall make a good faith effort to determine the probability that the proposed financial assistance will displace employees of the existing businesses. In determining the impact on businesses in competition with the business being considered for financial assistance, jobs created or retained as a result of other jobs being displaced elsewhere in the state shall not be considered direct jobs created or retained.

175.3(4) *Legally authorized employment.* The applicant shall only employ individuals legally authorized to work in this state. In addition to any and all other applicable penalties provided by current law, all or a portion of the assistance received by a business which has received financial assistance under the program and is found to knowingly employ individuals not legally authorized to work in this state is subject to recapture by the department.

[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09]

261—175.4(15,83GA,SF344) Review and approval of applications.

175.4(1) *Staff review for eligibility.* Applications received by the department will be reviewed by program staff to ensure that documentation of minimum program eligibility requirements has been submitted by the applicant. Complete applications will be forwarded to the appropriate decision maker for action.

175.4(2) *Additional review factors.* In addition to reviewing an application for eligibility, the department and the board may consider additional factors. Upon review of these additional factors, the board may determine that the applicant is ineligible to receive assistance until such time as the pending resolution of any outstanding issues identified by the board. Additional factors to be considered include:

a. *Applicant's past or current performance.* If an applicant has received a prior award(s) from the department, the department and board will take into consideration the applicant's past or current performance under the prior award(s).

b. *Results of due diligence review.* This review will include, but is not limited to, lien searches, reports of violations, lawsuits and other relevant information about the applicant.

c. *Report on environmental law compliance.* This report is required by rule 261—172.1(15A) and applicable program statutes.

d. *Report on violations of law.* This report is required by rule 261—172.2(15A) and applicable program statutes.

175.4(3) *Negotiations.* Department staff may negotiate with the applicant concerning dollar amounts, terms, collateral requirements, conditions of award, or any other elements of the project. The board or director may offer an award in a lesser amount or that is structured in a manner different from that requested. Meeting minimum eligibility requirements does not guarantee that assistance will be offered or provided in the manner sought by the applicant.

175.4(4) *Approval procedures.*

a. *Approval.* Application approval procedures shall comply with statutory requirements for the program or funding source and applicable program rules. The board shall take final action on all applications or activities funded through IVF(2009), HQJP, EZ and other programs as described in the following paragraphs. The director shall take action on all other applications or activities that are not identified as requiring board action. Paragraphs *"b"* to *"e"* describe the review and approval processes, by funding source and program.

Key to tables:

APAC – Agricultural policy advisory committee established in Iowa Code section 15.203 as amended by 2009 Iowa Acts, Senate File 344, section 23.

BRN – Brownfield redevelopment advisory council as established in Iowa Code section 15.294.

CWD – Community and workforce development committee created by the board.

DDC – Due diligence committee established by the board pursuant to Iowa Code section 15.103(6).

LCG – Loan and credit guarantee committee established in Iowa Code section 15.103(6) as amended by 2009 Iowa Acts, Senate File 344, section 18.

TSB – Targeted small business advisory council established in Iowa Code section 15.247(8).

TCC – Technology commercialization committee established in Iowa Code section 15.116 as amended by 2009 Iowa Acts, Senate File 344, section 22.

b. Advisory committee recommendations and final action—state financial assistance programs. The approval process for applications for financial assistance and any other request for funding from the department's direct financial assistance programs is as follows:

PROGRAM	RECOMMENDATION BY:							FINAL DECISION BY:	
	APAC	BRN	CWD	DDC	LCG	TSB	TCC	Board	Director
Grow Iowa Values Financial Assistance Program:									
130% wage component				•				•	
100% wage component				•				•	
Entrepreneurial component				•				•	
Infrastructure component				•				•	
Value-added agriculture component	•							•	
Disaster recovery component				•				•	
Loan and Credit Guarantee Program					•			•	
Other Iowa Values Fund (2009) activities:									
Marketing								•	
Labor shed study								•	
Technical assistance and information technology								•	
Opportunities and threats								•	
All other IVF assistance								•	
Innovation and Commercialization Fund:									
Demonstration Fund							•	•	
Information Technology Training Program							•	•	
Targeted Industries Internship Program							•	•	
Community College Equipment and Training Fund							•	•	

PROGRAM	RECOMMENDATION BY:							FINAL DECISION BY:	
	APAC	BRN	CWD	DDC	LCG	TSB	TCC	Board	Director
Targeted Industries Networking Fund							●	●	
Targeted Industries Student Competition Fund							●	●	
Targeted Industries Career Awareness Fund							●	●	
Lean Manufacturing Institute Program							●	●	
Supplier Capacity and Product Database Program							●	●	
Management Talent Recruitment Program							●	●	

c. Advisory committee recommendations and final action—tax credit programs. The approval process for applications for financial assistance and any other request for funding from the department's tax credit programs is as follows:

PROGRAM	RECOMMENDATION BY:							FINAL DECISION BY:	
	APAC	BRN	CWD	DDC	LCG	TSB	TCC	Board	Director
High Quality Jobs				●				●	
Enterprise Zone									
Business				●				●	
Housing									●
Film, Television, and Video Project Promotion									●
Assistive Device Tax Credits									●

d. Advisory committee recommendations and final action—federal programs. The approval process for applications for financial assistance and any other request for funding from the department's federal programs is as follows:

PROGRAM	RECOMMENDATION BY:							FINAL DECISION BY:	
	APAC	BRN	CWD	DDC	LCG	TSB	TCC	Board	Director
HOME									●
CDBG									
EDSA				●				●	
All other CDBG assistance									●
Neighborhood Stabilization Program									●

e. Advisory committee recommendations and final action—other department-administered programs. The approval process for applications for financial assistance and any other request for funding from other department-administered programs is as follows:

PROGRAM	RECOMMENDATION BY:							FINAL DECISION BY:	
	APAC	BRN	CWD	DDC	LCG	TCC	TSB	Board	Director
Brownfield Redevelopment Program		•							•
Targeted Small Business Financial Assistance Program							•		•
Export Trade Assistance Program									•
Accelerated Career Education Program			•					•	
Targeted Jobs Withholding Tax Credit Program									•

[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09]

261—175.5(15,15G,83GA,SF344) Procedures for waiver of wage and other program requirements.

175.5(1) *General information.* Within the parameters described in this rule, the board may, for good cause shown, waive qualifying wage threshold requirements. 2009 Iowa Acts, Senate File 344, section 3, permits applicants to apply to the board for a waiver of the qualifying wage threshold for the 130 percent wage component of the grow Iowa values financial assistance program. Iowa Code section 15.335A(3) as amended by 2009 Iowa Acts, Senate File 344, section 16, allows a community to apply to the board for a project-specific waiver from the qualifying wage threshold requirement provided in the HQJP in order to seek tax incentives for an eligible business.

175.5(2) *Definition of "good cause."* For purposes of this rule, "good cause" can include, but is not limited to, documentation of any of the following:

a. *Economic distress.* An applicant can establish good cause by demonstrating that the proposed project is located or plans to locate in an area that has experienced economic distress. Data that can be used to establish economic distress may be based on a combination of factors including, but not limited to:

(1) A county family poverty rate significantly higher than the state average.

(2) A county unemployment rate significantly higher than the state average.

(3) A unique opportunity to use existing unutilized facilities in the community.

(4) A significant downsizing or closure by one of the community's major employers.

(5) An immediate threat posed to the community's workforce due to the downsizing or closure of a business.

b. *Targeted industry project.* An applicant can establish good cause by demonstrating that the proposed project meets all of the following criteria:

(1) The business is in one of the state's targeted industry clusters: life sciences, information solutions, and advanced manufacturing.

(2) All jobs created as a result of the project have a qualifying wage threshold equal to or greater than 100 percent of the county wage.

(3) The business is headquartered in Iowa or, as a result of the proposed project, will be headquartered in Iowa. In lieu of the business's being headquartered in Iowa, the proposed project has unique aspects which will assist the department in meeting one or more of its strategic objectives.

175.5(3) *Request to waive HQJP qualifying wage threshold requirement.*

a. Iowa Code section 15.335A(3) as amended by 2009 Iowa Acts, Senate File 344, section 16, authorizes a community to request a project-specific waiver from the qualifying wage threshold requirement in order to seek tax incentives for an eligible business.

b. Upon a showing of good cause as defined in subrule 175.5(2), the board may grant a project-specific waiver from the county or regional wage calculations for the remainder of a calendar

year based on county wage or regional wage calculations brought forth by the applicant county including, but not limited to, any of the following:

(1) The county wage calculated without wage data from the business in the county employing the greatest number of full-time employees.

(2) The regional wage calculated without wage data from up to two adjacent counties.

(3) The county wage calculated without wage data from the largest city in the county.

(4) A qualifying wage guideline for a specific project based upon unusual economic circumstances present in the city or county.

(5) The annualized, average hourly wage paid by all businesses in the county located outside the largest city of the county.

(6) The annualized, average hourly wage paid by all businesses other than the largest employer in the entire county.

175.5(4) *Request to waive qualifying wage threshold for the 130 percent wage component of the grow Iowa values financial assistance program.*

a. 2009 Iowa Acts, Senate File 344, section 3, allows applicants to apply to the board for a waiver of the 130 percent wage component of the grow Iowa values financial assistance program.

b. Upon a showing of good cause as defined in subrule 175.5(2), the board may grant a project-specific waiver of the qualifying wage threshold for the 130 percent wage component of the grow Iowa values financial assistance program. The board may grant a waiver from the county wage calculations based on county or regional wage calculations brought forth by the applicant including, but not limited to, any of the following:

(1) The county wage calculated without wage data from the business in the county employing the greatest number of full-time employees.

(2) The regional wage calculated without wage data from up to two adjacent counties.

(3) The county wage calculated without wage data from the largest city in the county.

(4) A qualifying wage threshold for a specific project based upon unusual economic circumstances present in the city or county.

(5) The annualized, average hourly wage paid by all businesses in the county located outside the largest city of the county.

(6) The annualized, average hourly wage paid by all businesses other than the largest employer in the entire county.

[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09]

These rules are intended to implement Iowa Code chapters 15, 15E and 15G as amended by 2009 Iowa Acts, Senate File 344.

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CHAPTERS 176 to 186
Reserved

PART VIII
LEGAL AND COMPLIANCE

CHAPTER 187
CONTRACTING

[Prior to 7/4/07, see 261—Ch 168, div VI]

261—187.1(15) Applicability. This chapter is applicable to the programs identified in 261—173.1(15).

261—187.2(15) Contract required.

187.2(1) *Notice of award.* Successful applicants will be notified in writing of an award of assistance, including any conditions and terms of the approval.

187.2(2) *Contract required.* The department shall prepare a contract, which includes, but is not limited to, a description of the project to be completed by the business; the jobs to be created or retained; length of the project completion period and maintenance project completion period; the project completion date and maintenance period completion date; conditions to disbursement; a requirement for annual reporting to the department; and the repayment requirements of the business or other penalties imposed on the business in the event the business does not fulfill its obligations described in the contract and other specific repayment provisions ("clawback provisions") to be established on a project-by-project basis.

187.2(3) *Contract-signing deadline.* Successful applicants will be required to execute an agreement with the department within 120 days of the department's or board's approval of an award. Failure to do so may result in action by the entity that approved the award (the department or the board) to rescind the award. The 120-day time limit may be extended by the final decision maker that approved the award (the department or the board) for good cause shown.

[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09]

261—187.3(15) Project completion date and maintenance period completion date.

187.3(1) Projects shall be completed by the project completion date and maintained through the end of the maintenance date. The contract will establish the duration of the project period and maintenance period. Requests to change the project completion date and the maintenance period completion date shall follow the process for an amended award or contract as described in rule 261—187.4(15).

187.3(2) Projects receiving assistance from programs covered by this chapter shall conform to the time periods established by this rule.

187.3(3) By the project completion date, a recipient shall have completed the project as required by the contract. The jobs and project shall be maintained through the end of the maintenance period completion date. The project completion date is calculated by the department from the end of the month during which an award is made. For example, if an award is made on June 13, 2007, the three-year project completion date will be calculated from June 30, 2007. The project completion date for this award would be June 30, 2010. The maintenance period completion date would be June 30, 2012.

187.3(4) The following table describes, by program, the length of the project completion period and the maintenance period:

Program	Project Completion Period	Maintenance Period	Total Contract Length
Grow Iowa Values Financial Assistance Program:			
130% wage component	3 years	2 more years	5 years
100% wage component	3 years	2 more years	5 years
Entrepreneurial component	3 years	2 more years	5 years
Infrastructure component	3 years	2 more years	5 years
Value-added agriculture component	3 years	2 more years	5 years
Disaster recovery component	3 years	2 more years	5 years

Program	Project Completion Period	Maintenance Period	Total Contract Length
High Quality Jobs Program	3 years	2 more years	5 years
Enterprise Zone Program	3 years	2 more years	5 years

[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09]

261—187.4(15) Contract and award amendment approval procedures.

187.4(1) General rule. Generally, the final decision maker that approved the initial award shall approve any amendments or changes to that award.

187.4(2) All award and contract amendments will be reviewed by the applicable committee identified below, and final action will be taken by the board or director, as identified in the following tables.

Key to tables:

APAC – Agricultural policy advisory committee established in Iowa Code section 15.203 as amended by 2009 Iowa Acts, Senate File 344, section 23.

BRN – Brownfield redevelopment advisory council as established in Iowa Code section 15.294.

CWD – Community and workforce development committee created by the board.

DDC – Due diligence committee established by the board pursuant to Iowa Code section 15.103(6).

LCG – Loan and credit guarantee committee established in Iowa Code section 15.103(6) as amended by 2009 Iowa Acts, Senate File 344, section 18.

TSB – Targeted small business advisory council established in Iowa Code section 15.247(8).

TCC – Technology commercialization committee established in Iowa Code section 15.116 as amended by 2009 Iowa Acts, Senate File 344, section 22.

a. Amendments—state financial assistance programs. The approval process to amend an award or a contract for the department's direct financial assistance programs is as follows:

PROGRAM	RECOMMENDATION BY:							FINAL DECISION BY:	
	APAC	BRN	CWD	DDC	LCG	TSB	TCC	Board	Director
Grow Iowa Values Financial Assistance Program:									
130% wage component				•				•	
100% wage component				•				•	
Entrepreneurial component				•				•	
Infrastructure component				•				•	
Value-added agriculture component	•							•	
Disaster recovery component				•				•	
Loan and credit guarantee program					•			•	
Other Iowa Values Fund (2009) activities:									
Marketing								•	
Labor shed study								•	
Technical assistance and information technology								•	

PROGRAM	RECOMMENDATION BY:							FINAL DECISION BY:	
	APAC	BRN	CWD	DDC	LCG	TSB	TCC	Board	Director
Opportunities and threats								●	
All other IVF assistance								●	
Innovation and Commercialization Fund:									
Demonstration Fund							●	●	
Information Technology Training Program							●	●	
Targeted Industries Internship Program							●	●	
Community College Equipment and Training Fund							●	●	
Targeted Industries Networking Fund							●	●	
Targeted Industries Student Competition Fund							●	●	
Targeted Industries Career Awareness Fund							●	●	
Lean Manufacturing Institute Program							●	●	
Supplier Capacity and Product Database Program							●	●	
Management Talent Recruitment Program							●	●	

b. Amendments—tax credit programs. The approval process to amend an award or a contract for the department's tax credit programs is as follows:

PROGRAM	RECOMMENDATION BY:							FINAL DECISION BY:	
	APAC	BRN	CWD	DDC	LCG	TSB	TCC	Board	Director
High Quality Jobs				●				●	
Enterprise Zone									
Business				●				●	
Housing									●
Film, Television, and Video Project Promotion									●
Assistive Device Tax Credits									●

c. Amendments—federal programs. The approval process to amend an award or a contract for the department's federal programs is as follows:

PROGRAM	RECOMMENDATION BY:							FINAL DECISION BY:	
	APAC	BRN	CWD	DDC	LCG	TCC	TSB	Board	Director
HOME									●
CDBG									
EDSA				●				●	
All other CDBG assistance									●
Neighborhood Stabilization Program									●

d. *Amendments—other department-administered programs.* The approval process to amend an award or a contract for other programs administered by the department is as follows:

PROGRAM	RECOMMENDATION BY:							FINAL DECISION BY:	
	APAC	BRN	CWD	DDC	LCG	TCC	TSB	Board	Director
Brownfield Redevelopment Program		●							●
Targeted Small Business Financial Assistance Program							●		●
Export Trade Assistance Program									●
Accelerated Career Education Program			●					●	
Targeted Jobs Withholding Tax Credit Program									●

187.4(3) Amendments and other requests the department is authorized to implement. The department is authorized by the board to take action on nonsubstantive changes, including but not limited to the following:

a. Recipient name, address and similar changes.

b. Collateral changes that are the same or better security than originally approved by the board or director (e.g., securing a letter of credit to replace a UCC blanket filing) or collateral changes that do not materially and substantially impact the department's security.

c. Line item budget changes that do not reduce overall total project costs.

d. Loan repayment amounts or due dates that do not extend the final due date of a loan.

[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09]

261—187.5(15) Default.

187.5(1) *Events of default.* The department may, for cause, determine that a recipient is in default under the terms of the contract. The reasons for which the department may determine that the recipient is in default of the contract include, but are not limited to, any of the following:

a. Any material representation or warranty made by the recipient in connection with the application that was incorrect in any material respect when made.

b. A material change in the business ownership or structure that occurs without prior written disclosure and the permission of the department.

c. A relocation or abandonment of the business or jobs created or retained through the project.

d. Expenditure of funds for purposes not described in the application or authorized in the agreement.

e. Failure of the recipient to make timely payments under the terms of the agreement, note or other obligation.

f. Failure of the recipient to fulfill its job obligations.

g. Failure of the recipient to comply with wage or benefit packages.

h. Failure of the recipient to perform or comply with the terms and conditions of the contract.

i. Failure of the recipient to comply with any applicable state rules or regulations.

j. Failure of the recipient to file the required annual report.

187.5(2) *Layoffs or closures.* If a recipient experiences a layoff within the state or closes any of its facilities within the state prior to receiving the incentives and assistance, the department may reduce or eliminate all or a portion of the incentives and assistance. If a business experiences a layoff within the state or closes any of its facilities within the state after executing a contract to receive the incentives and assistance, the department may consider this an event of default and the business may be subject to repayment of all or a portion of the incentives and assistance that it has received.

187.5(3) *Department actions upon default—direct financial assistance programs.*

a. The department will take prompt, appropriate, and aggressive debt collection action to recover any funds misspent by recipients.

b. If the department determines that the recipient is in default, the department may seek recovery of all program funds plus interest, assess penalties, negotiate alternative repayment schedules, suspend or discontinue collection efforts, and take other appropriate action as the board deems necessary.

c. Determination of appropriate repayment plan. Upon determination that the recipient has not met the contract obligations, the department will notify the recipient of the amount to be repaid to the department. If the enforcement of such penalties would endanger the viability of the recipient, the board may extend the term of the loan to ensure payback, stability, and survival of the recipient. In certain instances, additional flexibility in a repayment plan may be necessary to ensure payback, stability, and survival of the recipient. Flexibility in a repayment plan may include, but is not limited to, deferring principal payments or collecting monthly payments below the amortized amount. In these cases, review and approval by the board, committee or director, as applicable, are necessary before the department may finalize the repayment plan with the recipient.

d. The department shall attempt to collect the amount owed. Negotiated settlements, write-offs or discontinuance of collection efforts is subject to final review and approval by the board, committee or director, as applicable, and described in paragraph *"f."*

e. If the department or board refers defaulted contracts to outside counsel for collection, then the terms of the agreement between the department and the outside counsel regarding scope of counsel's authorization to accept settlements shall apply. No additional approvals by the board, committee or director shall be required.

f. The tables below describe the approval procedures that shall be followed for all negotiated settlements, write-offs or discontinuance of collection efforts for state direct financial assistance programs, federal programs, and other programs administered by the department.

(1) Direct financial assistance programs:

PROGRAM	RECOMMENDATION BY:							FINAL DECISION BY:	
	APAC	BRN	CWD	DDC	LCG	TSB	TCC	Board	Director
Grow Iowa Values Financial Assistance Program:									
130% wage component				•				•	
100% wage component				•				•	
Entrepreneurial component				•				•	
Infrastructure component				•				•	
Value-added agriculture component	•							•	

PROGRAM	RECOMMENDATION BY:							FINAL DECISION BY:	
	APAC	BRN	CWD	DDC	LCG	TSB	TCC	Board	Director
Disaster recovery component				●				●	
Loan and Credit Guarantee Program					●			●	
Other Iowa Values Fund (2009) activities:									
Marketing								●	
Labor shed study								●	
Technical assistance and information technology								●	
Opportunities and threats								●	
All other IVF assistance								●	
Innovation and Commercialization Fund:									
Demonstration Fund							●	●	
Information Technology Training Program							●	●	
Targeted Industries Internship Program							●	●	
Community College Equipment and Training Fund							●	●	
Targeted Industries Networking Fund							●	●	
Targeted Industries Student Competition Fund							●	●	
Targeted Industries Career Awareness Fund							●	●	
Lean Manufacturing Institute Program							●	●	
Supplier Capacity and Product Database Program							●	●	
Management Talent Recruitment Program							●	●	

(2) Federal programs:

PROGRAM	RECOMMENDATION BY:							FINAL DECISION BY:	
	APAC	BRN	CWD	DDC	LCG	TSB	TCC	Board	Director
HOME									•
CDBG									
EDSA				•				•	
All other CDBG assistance									•
Neighborhood Stabilization Program									•

(3) Other programs administered by the department:

PROGRAM	RECOMMENDATION BY:							FINAL DECISION BY:	
	APAC	BRN	CWD	DDC	LCG	TSB	TCC	Board	Director
Brownfield Redevelopment Program		•							•
Targeted Small Business Financial Assistance Program						•			•
Export Trade Assistance Program									•
Accelerated Career Education Program			•					•	
Targeted Jobs Withholding Tax Credit Program									•

187.5(4) *Department actions upon default—tax credit programs.* Collection efforts for tax credit programs are handled by the local community that approved the local tax incentive and the Iowa department of revenue, the state agency responsible for the state tax incentives.

a. Repayment. If an eligible business or eligible housing business has received incentives or assistance under the EZ program or the HQJP and fails to meet and maintain any one of the requirements of the program or applicable rules, the business is subject to repayment of all or a portion of the incentives and assistance that it has received.

b. Calculation of repayment due for a business. If the department, in consultation with the city or county, determines that a business has failed in any year to meet any one of the requirements of the tax credit program, the business is subject to repayment of all or a portion of the amount of incentives received.

(1) Job creation. If a business does not meet its job creation requirement or fails to maintain the required number of jobs, repayment shall be calculated as follows:

1. If the business has met 50 percent or less of the requirement, the business shall pay the same percentage in benefits as the business failed to create in jobs.

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

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

4. If the business has not met the minimum job creation requirements for the tax credit program, the business shall repay all of the incentives and assistance that it has received.

(2) Wages and benefits. If a business fails to comply with the wage or benefit requirements for the tax credit program, the business shall not receive incentives or assistance for each year during which the business is not in compliance.

(3) Capital investment. If a business does not meet the capital investment requirement, repayment shall be calculated as follows:

1. If the business has met 50 percent or less of the requirement, the business shall pay the same percentage in benefits as the business failed to invest.

2. If the business has met more than 50 percent but not more than 75 percent of the requirement, the business shall pay one-half of the percentage in benefits as the business failed to invest.

3. If the business has met more than 75 percent but not more than 90 percent of the requirement, the business shall pay one-quarter of the percentage in benefits as the business failed to invest.

4. If the business has not met the minimum investment requirement for the tax credit program, the business shall repay all of the incentives and assistance that it has received.

c. Department of revenue; county/city recovery. Once it has been established, through the business's annual certification, monitoring, audit or otherwise, that the business is required to repay all or a portion of the incentives received, the department of revenue and the city or county, as appropriate, shall collect the amount owed. The city or county, as applicable, 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. The department of revenue shall have the authority to recover the value of state taxes or incentives provided under Iowa Code section 15E.193A or 15E.196. The value of state incentives provided under Iowa Code section 15E.193A or 15E.196 includes applicable interest and penalties.

d. Layoffs or closures. If an eligible business experiences a layoff within the state or closes any of its facilities within the state prior to receiving the incentives and assistance, the department may reduce or eliminate all or a portion of the incentives and assistance. If a business experiences a layoff within the state or closes any of its facilities within the state after receiving the incentives and assistance, the business shall be subject to repayment of all or a portion of the incentives and assistance that it has received.

e. Extensions. If an eligible business or eligible housing business fails to meet its requirements under the Act, these rules, or the agreement described in rule 261—187.2(15), the department, in consultation with the city or county, may elect to grant the business a one-year extension period to meet the requirements.

[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09]

These rules are intended to implement Iowa Code chapters 15, 15E and 15G as amended by 2009 Iowa Acts, Senate File 344.

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CHAPTER 188
CONTRACT COMPLIANCE AND JOB COUNTING

261—188.1(15) Applicability. This chapter is applicable to the programs identified in 261—173.1(15).

261—188.2(15) Contract compliance. The department shall provide oversight and contract administration to ensure that funded projects are meeting contract requirements. On-site monitoring will be conducted at the project completion date and the end of the maintenance period.

261—188.3(15) Job counting and tracking. Projects awarded on or after July 1, 2003, shall follow the job counting and tracking procedures described in this chapter. Only jobs that meet or exceed the qualifying wage thresholds will count toward the business's contract job obligations.

261—188.4(15) Business's employment base. "Business's employment base" means the number of jobs that the business and the department have established as the job base for a project. The number of jobs the business has pledged to create and retain shall be in addition to the business's employment base.

188.4(1) The business's employment base shall be project-specific. In most situations, this will include the number of full-time employees working at the facility receiving funding.

188.4(2) There are projects where the funded activity occurs at more than one physical location. If this is the case, the total number of full-time employees working at the identified locations constitutes the business's employment base.

188.4(3) If there are multiple awards made in different years to the same location, the business's employment base will be calculated by using the payroll document from the oldest award that is open. Over time, the job obligations from each new award will be added to this base.

EXAMPLES:

Company X receives award 1 on 5/1/06. The department has verified that the business's employment base is 100 FTEs. Award 1 obligates company X to create 10 jobs and retain 30 jobs; there are 10 other jobs in the project (the 10 other jobs are created jobs that do not meet the qualifying wage). The qualifying wage for this award is $16.50/hr and the benefit value is $4.00/hr. The award is made from the IVF (2005) program.

Company X receives award 2 on 9/1/06. After the payroll is reviewed, the actual number of FTEs at the facility is 107, but 120 (original base + award 1 obligations) will be used as the business's employment base for this award. Award 2 obligates company X to create an additional 25 jobs.

Company X receives award 3 on 3/1/07. After the payroll is reviewed, the actual number of FTEs at the facility is 140, but 145 (original base + award 1 obligations + award 2 obligations) will be used as the business's employment base for this award.

188.4(4) The business's employment base is calculated as part of the application process and is determined before an award is made. The following data points will be verified regarding a business's employment base:

a. The total number of FTEs at the funded facility (the business's employment base).

b. The average wage of all FTEs.

c. The qualifying wage used in the award.

d. The benefit value used in the award.

e. The total number of FTEs at the funded facility that are currently at or above the qualifying wage.

f. The average wage of the FTEs identified in paragraph *"e."*

g. The total number of FTEs at the funded facility that are currently at or above the qualifying wage after the benefit value has been added.

h. The average wage of the FTEs identified in paragraph *"g."*

188.4(5) Business's employment base verification. Payroll documents must be collected to calculate and verify the business's employment base used in each award. The payroll document must include an ID (name, employer ID number, or social security number) and the hourly rate of pay for all

FTEs. If the FTEs at the facility do not typically work 40 hours/week, documentation must be collected from the business outlining what the business considers a full-time workweek and how the business's interpretation fits within the norms of its industry standards. This interpretation may or may not be accepted by the department.

261—188.5(15) Job counting using base employment analysis. The department will count jobs to be created or retained as part of a funded project using a base employment analysis. At the time of application, a baseline employment number will be established using payroll records. The baseline data will include details about how many jobs at the project location already meet the qualifying wage thresholds (with and without the value of benefits added to the hourly wage). Changes in these baseline employment numbers will be collected and analyzed by the department as part of the annual reporting process.

188.5(1) A base employment analysis will be performed at the following stages of an award:

a. At the time of application, before the award is made.

b. Annually during the reporting cycle.

c. At the project completion date.

d. At the end of the maintenance date.

188.5(2) Payroll documents or lists run from payroll systems will be used to calculate and verify the base employment analysis. If a list run from a payroll system is used, the person who submits the documents must, under penalty of perjury, sign the list to verify that it is true and correct. The following items will be calculated and verified as part of the annual status report:

a. The total number of FTEs at the funded facility as of the date of the report.

b. The average wage of all FTEs.

c. The qualifying wage used in the award.

d. The benefit value used in the award.

e. The total number of FTEs at the funded facility that are currently at or above the qualifying wage.

f. The average wage of the FTEs identified in paragraph *"e."*

g. The total number of FTEs at the funded facility that are currently at or above the qualifying wage after the benefit value has been added.

h. The average wage of the FTEs identified in paragraph *"g."*

188.5(3) For projects involving more than two physical locations or involving more than 500 employees, an independent auditing service will be used to set the business's employment base and provide payroll analysis.

a. The following data points will be verified by the independent auditor regarding jobs:

(1) The total number of FTEs at the funded facility (the business's employment base).

(2) The average wage of all FTEs.

(3) If applicable, the total number of FTEs working at other company facilities within the state of Iowa (statewide base).

(4) The qualifying wage used in the award (provided by IDED).

(5) The benefit value used in the award (provided by IDED).

(6) The total number of FTEs at the funded facility that are currently at or above the qualifying wage.

(7) The average wage of the FTEs identified in subparagraph (6).

(8) The total number of FTEs at the funded facility that are currently at or above the qualifying wage after the benefit value has been added.

(9) The average wage of the FTEs identified in subparagraph (8).

b. All businesses are required to submit annual reports to the department. However, if an independent auditing agreement is in place, the business will be required to report only on the following data points concerning jobs:

(1) The total number of FTEs at the funded facility as of the date of the report.

(2) The average wage of all FTEs.

c. The business will not be required to verify this information as submitted for the annual reports and will not be required to submit annual payroll information.

d. Information submitted concerning the expenditures for the annual report will not change, but verification documents used at project closeout and at the end of project maintenance will be generated by the independent auditor.

188.5(4) Following is an example of the format that the department will use for job counting and tracking using the base employment method.

[program] JOB OBLIGATIONS Project Completion Date: Project Maintenance Date:	Employment Base	Jobs to Be Created	Total Job Obligations
Total employment at project location	1	9	12
Average wage of total employment at project location	2		
Qualifying wage (per hr)	3		
Benefit value (per hr)	4		
Number of jobs at or above qualifying wage	5	10	13
Average wage of jobs at or above qualifying wage	6		
Number of jobs at or above qualifying wage w/benefits	7	11	14
Average wage of jobs at or above qualifying wage w/benefits	8		

1. The number entered in this cell is the total number of FTEs working at the project location at the time of application. This number must be verified with payroll documents.
2. The number entered into this cell is the average wage of all the FTEs identified in cell #1. This number must be verified with payroll documents.
3. The number entered in this cell is the 90%, 100%, 130%, etc., qualifying wage threshold used in the award. This data point must include the wage/hr and the percentage in parentheses. [ex: $15.34/hr (130%)]
4. The number entered in this cell is the benefit value used in the award. N/A (not applicable) should be used for all projects that are not funded with IVF (2005) or HQJC. All supporting documentation must be included in the file.
5. The number entered in this cell is the number of jobs identified in cell #1 that meet or exceed the wage reflected in cell #3. This number is calculated using the payroll documents. If this project is not funded with IVF (2005) or HQJC, the number of "retained" jobs and retained "other" jobs must be included in this entry. Please note that the number of retained jobs and the number entered here may not match as all jobs existing at the project site may not be considered retained.
6. The number entered in this cell is the average wage of all FTEs identified in cell #5. This number is calculated using the payroll documents.
7. The number entered in this cell is the number of jobs identified in cell #1 that meet or exceed the wage reflected in cell #3, after the value identified in cell #4 has been added to all base hourly wages reflected in the payroll documents. If this project is an IVF (2005) or HQJC, the number of "retained" and retained "other" jobs must be included in this entry. Please note that the number of retained jobs and the number entered here may not match as all jobs existing at the project site may not be considered retained.
8. The number entered in this cell is the average wage of all FTEs identified in cell #7.
9. The number entered in this cell number includes the number of "created" jobs, as well as the number of created "other" jobs.
10. The number entered in this cell is the number of "created" jobs in the project. This entry is used only for projects that are not IVF (2005) or HQJC.
11. The number entered in this cell is the number of "created" jobs in the project. This entry is used only for projects that are IVF (2005) or HQJC.
12. The number entered in this cell is the sum of cell #1 and cell #9
13. The number entered in this cell is the sum of cell #5 and cell #10.
14. The number entered in this cell is the sum of cell #7 and cell #11.

These rules are intended to implement Iowa Code chapters 15, 15E and 15G.

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CHAPTER 189
ANNUAL REPORTING

261—189.1(15) Annual reporting by businesses required (for period ending June 30). Recipients shall report annually to the department, in form and content acceptable to the department, about the status of the funded project. The report shall include, but not be limited to, data about base employment, qualifying wages, benefits, project costs, capital investment, and compliance with the contract.

261—189.2(15) January 31 report by IDED to legislature. IDED's legal and compliance group will use the data it collects from businesses to prepare a report on the programs covered in 261—Chapter 173 to be included in IDED's consolidated annual report, which is due to the legislature by January 31 each year pursuant to Iowa Code section 15.104(9) as amended by 2009 Iowa Acts, Senate File 344, section 20.

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These rules are intended to implement Iowa Code chapters 15, 15E and 15G as amended by 2009 Iowa Acts, Senate File 344.

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CHAPTERS 190 to 194
Reserved

PART IX
UNIFORM PROCEDURES: RECORDS, RULE MAKING, DECLARATORY ORDERS, RULE WAIVERS

CHAPTER 195
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

[Prior to 9/6/00, see 261—Ch 100]
[Prior to 7/4/07, see 261—Ch 169]

261—195.1(17A,22) Statement of policy, purpose and scope of chapter.

195.1(1) The purpose of this chapter is to facilitate public access to open records. It also seeks to facilitate department determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. The agency is committed to the policies set forth in Iowa Code chapter 22; agency staff shall cooperate with members of the public in implementing the provisions of that chapter.

195.1(2) This chapter does not:

a. Require the agency to index or retrieve records which contain information about individuals by that person's name or other personal identifier.

b. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.

c. Govern the maintenance or disclosure of, notification of or access to, records in the possession of the agency which are governed by the rules of another agency.

d. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs.

e. Make available records compiled by the agency in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable rules of the agency.

f. Require the agency to create, compare or procure a record solely for the purpose of making it available.

261—195.2(17A,22) Definitions. As used in this chapter:

"Agency" means the Iowa department of economic development.

"Confidential record" in these rules means a record which is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records include records or information contained in records that the agency is prohibited by law from making available for examination by members of the public, and records or information contained in records that are specified as confidential by Iowa Code section 22.7, or other provision of law, but that may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly authorized to release the record. Mere inclusion in a record of information declared confidential by an applicable provision of law does not necessarily make that entire record a confidential record.

"Custodian" in these rules means the director of the Iowa department of economic development or the director's designee.

"Open record" in these rules means a record other than a confidential record.

"Personally identifiable information" in these rules means information about or pertaining to an individual in a record which identifies the individual and which is contained in a record system.

"Record" in these rules means the whole or a part of a "public record," as defined in Iowa Code section 22.1, that is owned by or in the physical possession of this agency.

"Record system" in these rules means any group of records under the control of the agency from which a record may be retrieved by a personal identifier such as the name of an individual, number, symbol, or other unique retriever assigned to an individual.

261—195.3(17A,22) Requests for access to records.

195.3(1) *Location of record.* A request for access to a record should be directed to the Director's Office, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309.

If a request for access to a record is misdirected, agency personnel will promptly forward the request to the appropriate person within the agency.

195.3(2) *Office hours.* Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m. daily, excluding Saturdays, Sundays and legal holidays.

195.3(3) *Request for access to open records.*

a. Requests for access to open records may be made in writing, in person, electronically, or by telephone.

b. Mail or telephone requests shall include the name, address, telephone number, and the E-mail address (if available) of the person requesting the information. A person shall not be required to give a reason for requesting an open record.

c. For all requested records, the person making the request shall set forth all available information that would assist in locating the records.

d. The request shall set out the maximum search fee the requester is prepared to pay. If the maximum search fee is reached before all the requested records have been located and copied, the requester shall be notified and asked for further directions before the search proceeds.

195.3(4) *Response to requests.*

a. *Timing.* Access to an open record shall be provided promptly upon request unless the size or nature of the request makes prompt access infeasible. Advance requests to have records available on a certain date may be made by telephone or correspondence. If the size or nature of the request for access to an open record requires time for compliance, the custodian shall comply with the request as soon as feasible. Records will be produced for inspection at the earliest date possible following the request. Records should be inspected within ten business days after notice is given that the records have been located and are available for inspection. After ten business days, the records will be returned to storage and additional costs may be imposed for having to produce them again.

b. *Reasonable delay.* Access to an open record may be delayed for one of the purposes authorized by:

(1) Iowa Code section 22.8(4), which includes good faith delay to seek an injunction or determine if the agency is entitled to seek an injunction; for the agency to determine if the public records are confidential; to determine if the confidential record should be made available (a reasonable delay for this purpose shall not exceed 20 calendar days and ordinarily should not exceed 10 business days); or

(2) Iowa Code section 22.10(4) (civil enforcement).

c. *Notice to requester.* The custodian shall promptly give notice to the requester of the reason for any delay in access to an open record and an estimate of the length of that delay and, upon request, shall promptly provide that notice to the requester in writing.

d. *Denial of access to records.* The custodian of a record may deny access to the record by members of the public only on the grounds that such a denial is warranted under Iowa Code sections 22.8(4) and 22.10(4), or that it is a confidential record, or that its disclosure is prohibited by a court order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the provisions of rule 195.4(17A,22) and other applicable provisions of law.

e. *Federal requirements.* The agency administers several federal programs and is authorized by Iowa Code section 22.9 to enforce confidentiality standards from federal law and regulations as are required for receipt of federal funds. Access to records covered by federal confidentiality requirements will not be permitted to the extent that examination or copying of such records would cause the denial of federal funds, services or essential information from the U.S. government that would otherwise be available to the agency.

195.3(5) *Security of record.* No person may, without permission from the custodian, search or remove any record from agency files. Examination and copying of agency records shall be supervised by the custodian or a designee of the custodian. Records shall be protected from damage and disorganization. Individuals will not be given access to the area where the records are kept and will not be permitted to search the files.

195.3(6) *Copying.* A reasonable number of copies of an open record may be made in the agency's office. If photocopy equipment is not available in the agency office where an open record is kept, the custodian shall permit its examination in that office and shall arrange to have copies promptly made elsewhere.

195.3(7) *Access to records for examination and copying.*

a. Location. As specified in Iowa Code section 22.3, the agency will provide a suitable place for examination of public records. If it is impracticable to do the work at the agency's office at 200 East Grand Avenue, Des Moines, Iowa, the person desiring to examine or copy shall pay all necessary expenses of providing a place for the work. All expenses of the work shall be paid by the person desiring to examine or copy the records.

b. Paper files. Hard copies of public records will be made available for examination and copying.

c. Electronic files. The agency will take reasonable steps to provide on-site access to electronically stored public records. To the extent the agency's technology permits, electronic records, including E-mail, will be made available through a secure, on-site computer terminal. If a requester prefers, copies of electronic records located during a records search will be provided and copying fees will apply.

d. Data processing software. Reserved.

e. Tapes. Public records maintained in the form of cassette, videotape or similar form are available for public examination. Upon request, copies of tapes will be made available, and the individual requesting the tape will bear all actual costs of copying.

f. Mixed records. If a record contains both public and confidential information, the agency will remove the confidential material before making it available for examination or copying. For paper files, a copy of the original will be made and the confidential material will be marked out. Copying fees will apply. For electronic files, if the agency is technologically able to block access to fields containing confidential materials, records will be made available as described in paragraph 195.3(7)*"c"* above.

195.3(8) *Fees.*

a. When charged. The agency may charge fees in connection with the examination, search, retrieval, restoration or copying of records. To the extent permitted by applicable provisions of law, the payment of fees may be waived in the case of small requests of ten or fewer copies when the imposition of fees is inequitable or when a waiver is in the public interest.

b. Copying, faxing and postage costs. Price schedules for published materials and for photocopies of records supplied by the agency shall be prominently posted in agency offices. Copies of records may be made by or for members of the public on agency photocopy machines or from electronic storage systems at cost as determined and posted in agency offices by the custodian. When the mailing of copies of records is requested, the actual costs of such mailing may also be charged to the requester. Actual costs to fax a document may also be charged to the requester.

c. Search and supervisory fee. An hourly fee may be charged for actual agency expenses in searching for, and supervising the examination and copying of, requested records when the time required is in excess of one hour. The fee shall be based upon the pay scale of the employee involved and other actual costs incurred. The agency shall post in agency offices the hourly fees to be charged in routine cases for search and supervision of records. The agency shall give advance notice to the requester if it will be necessary to use an employee with a higher hourly wage in order to find or supervise the examination and copying of particular records in question, and shall indicate the amount of that higher hourly wage to the requester.

d. Computer-stored information. All costs (including staff time) for retrieval, restoration and copying of information stored in electronic storage systems will be charged to the requester.

e. Advance deposits.

(1) When the estimated total fee chargeable under this subrule exceeds $25, the custodian may require a requester to make an advance payment to cover all or a part of the estimated fee.

(2) When a requester has previously failed to pay a fee chargeable under this subrule, the custodian may require advance payment of the full amount of any estimated fee before the custodian processes a new request from that requester.

261—195.4(17A,22) Access to confidential records. Under Iowa Code section 22.7 or other applicable provisions of law, the lawful custodian may disclose certain confidential records to one or more members of the public. Other provisions of law authorize or require the custodian to release specified confidential records under certain circumstances or to particular persons. In requesting the custodian to permit the examination and copying of such a confidential record, the following procedures apply and are in addition to those specified for requests for access to records in rule 195.3(17A,22).

195.4(1) *Proof of identity.* A person requesting access to a confidential record may be required to provide proof of identity or authority to secure access to the record.

195.4(2) *Requests.* The custodian may require a request to examine and copy a confidential record to be in writing. A person requesting access to such a record may be required to sign a certified statement or affidavit enumerating the specific reasons justifying access to the confidential record and to provide any proof necessary to establish relevant facts.

195.4(3) *Notice to subject of record and opportunity to obtain injunction.* After the custodian receives a request for access to a confidential record, and before the custodian releases such a record, the custodian may make reasonable efforts to notify promptly any person who is a subject of that record, is identified in that record, and whose address or telephone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian may give the subject of such a confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8, and indicate to the subject of the record the specific period of time during which disclosure will be delayed for that purpose.

195.4(4) *Request denied.* When the custodian denies a request for access to a confidential record, the custodian shall promptly notify the requester. If the requester indicates to the custodian that a written notification of the denial is desired, the custodian shall promptly provide such a notification that is signed by the custodian and that includes:

a. The name and title or position of the custodian responsible for the denial; and

b. A citation to the provision of law vesting authority in the custodian to deny disclosure of the record and a brief statement of the reasons for the denial to the requester.

195.4(5) *Request granted.* When the custodian grants a request for access to a confidential record to a particular person, the custodian shall notify that person and indicate any lawful restrictions imposed by the custodian on that person's examination and copying of the record.

261—195.5(17A,22) Requests for treatment of a record as a confidential record and its withholding from examination. The custodian may treat a record as a confidential record and withhold it from examination only to the extent that the custodian is authorized by Iowa Code section 22.7, another applicable provision of law, or a court order to refuse to disclose that record to members of the public.

195.5(1) *Persons who may request.* Any person who would be aggrieved or adversely affected by disclosure of a record and who asserts that Iowa Code section 22.7, another applicable provision of law, or a court order authorizes the custodian to treat the record as a confidential record may request the custodian to treat that record as a confidential record and to withhold it from public inspection.

195.5(2) *Request.* A request that a record be treated as a confidential record and be withheld from public inspection shall be in writing and shall be filed with the custodian. The request must set forth the legal and factual basis justifying such confidential record treatment for that record, and the name, address, and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request. A person requesting treatment of a record as a confidential record may also be required to sign a certified statement or affidavit enumerating the specific reasons justifying the treatment of that record as a confidential record and to provide any proof necessary to establish relevant facts. Requests for treatment of a record as such a confidential record for a limited time period shall also specify the precise period of time for which that treatment is requested.

A person filing such a request shall, if possible, accompany the request with a copy of the record in question from which those portions for which such confidential record treatment has been requested have been deleted. If the original record is being submitted to the agency by the person requesting such

confidential treatment at the time the request is filed, the person shall indicate conspicuously on the original record that all or portions of it are confidential.

195.5(3) *Failure to request.* Failure of a person to request confidential record treatment for a record does not preclude the custodian from treating it as a confidential record. However, if a person who has submitted business information to the agency does not request that it be withheld from public inspection under Iowa Code section 22.7(3) (trade secrets), 22.7(6) (advantage to competitors), or 22.7(18) (communications not required by law, rule, procedure or contract), the custodian of records containing that information may proceed as if that person has no objection to its disclosure to members of the public.

195.5(4) *Timing of decision.* A decision by the custodian with respect to the disclosure of a record to members of the public may be made when a request for its treatment as a confidential record that is not available for public inspection is filed, or when the custodian receives a request for access to the record by a member of the public.

195.5(5) *Request granted or deferred.* If a request for such confidential record treatment is granted, or if action on such a request is deferred, a copy of the record from which the matter in question has been deleted and a copy of the decision to grant the request or to defer action upon the request will be made available for public inspection in lieu of the original record. If the custodian subsequently receives a request for access to the original record, the custodian will make reasonable and timely efforts to notify any person who has filed a request for its treatment as a confidential record that is not available for public inspection of the pendency of that subsequent request.

195.5(6) *Request denied and opportunity to seek injunction.* If a request that a record be treated as a confidential record and be withheld from public inspection is denied, the custodian shall notify the requester in writing of that determination and the reasons therefor. On application by the requester, the custodian may engage in a good-faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief under the provisions of Iowa Code section 22.8, or other applicable provision of law. However, such a record shall not be withheld from public inspection for any period of time if the custodian determines that the requester had no reasonable grounds to justify the treatment of that record as a confidential record. The custodian shall notify the requester in writing of the time period allowed to seek injunctive relief or the reasons for the determination that no reasonable grounds exist to justify the treatment of that record as a confidential record. The custodian may extend the period of good-faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief only if no request for examination of that record has been received, or if a court directs the custodian to treat it as a confidential record, or to the extent permitted by another applicable provision of law, or with the consent of the person requesting access.

261—195.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records. Except as otherwise provided by law, a person may file a request with the custodian to review, and to have a written statement of additions, dissents, or objections entered into, a record containing personally identifiable information pertaining to that person. However, this does not authorize a person who is a subject of such a record to alter the original copy of that record or to expand the official record of any agency proceeding. Requester shall send the request to review such a record or the written statement of additions, dissents, or objections to the custodian. The request to review such a record or the written statement of such a record of additions, dissents, or objections must be dated and signed by the requester, and shall include the current address and telephone number of the requester or the requester's representative.

261—195.7(17A,22) Consent to disclosure by the subject of a confidential record. To the extent permitted by any applicable provision of law, a person who is the subject of a confidential record may have a copy of the portion of that record concerning the subject disclosed to a third party. A request for such a disclosure must be in writing and must identify the particular record or records that may be disclosed, and the particular person or class of persons to whom the record may be disclosed (and, where applicable, the time period during which the record may be disclosed). The person who is the subject

of the record and, where applicable, the person to whom the record is to be disclosed, may be required to provide proof of identity. Appearance of counsel before the agency on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the agency to disclose records about that person to the person's attorney.

261—195.8(17A,22) Notice to suppliers of information. When the agency requests a person to supply information about that person, the agency shall notify the person of the use that will be made of the information, which persons outside the agency might routinely be provided the information, which parts of the requested information are required and which are optional, and the consequences of a failure to provide the information requested. This notice may be given in these rules, on the written form used to collect the information, on a separate fact sheet or letter, in brochures, in formal agreements, in contracts, in handbooks, in manuals, verbally, or by other appropriate means.

261—195.9(17A,22) Disclosures without the consent of the subject.

195.9(1) Open records are routinely disclosed without the consent of the subject.

195.9(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

a. For a routine use as defined in rule 195.10(17A,22) or in the notice for a particular record system.

b. To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.

c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known address of the subject.

e. To the legislative services agency under Iowa Code section 2A.3.

f. In the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

261—195.10(17A,22) Routine use.

195.10(1) "Routine use" means the disclosure of a record without the consent of the subject or subjects, for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

195.10(2) To the extent allowed by law, the following uses are considered routine uses of all agency records:

a. Disclosure to those officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may upon request of any officer or employee, or on the custodian's own initiative, determine what constitutes legitimate need to use confidential records.

b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

c. Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the agency.

d. Transfers of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

e. Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

f. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

261—195.11(17A,22) Consensual disclosure of confidential records.

195.11(1) *Consent to disclosure by a subject individual.* The subject may consent in writing to agency disclosure of confidential records as provided in rule 195.7(17A,22).

195.11(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the agency may be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

261—195.12(17A,22) Release to subject.

195.12(1) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 195.7(17A,22). However, the agency need not release the following records to the subject:

a. The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18).

b. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

c. Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code. (See Iowa Code section 22.7(5).)

d. As otherwise authorized by law.

195.12(2) When a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

261—195.13(17A,22) Availability of records.

195.13(1) *Open records.* Agency records are open for public inspection and copying unless otherwise provided by rule or law.

195.13(2) *Confidential records.* The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Sealed bids received prior to the time set for public opening of bids. (Iowa Code section 73.2)

b. Tax records made available to the agency. (Iowa Code sections 422.20 and 422.72)

c. Records which are exempt from disclosure under Iowa Code section 22.7, including, but not limited to:

(1) Industrial prospect files which are considered confidential under Iowa Code section 22.7(8).

(2) Trade secrets which are treated as confidential under Iowa Code section 22.7(3).

(3) Reports which, if released, would give advantage to competitors and serve no public purpose. These records are considered confidential under Iowa Code section 22.7(6).

(4) Communications not required by rule, law, procedure or contract to the extent that the agency reasonably believes that such communications would not be made if the supplier knew the information would be made available for general public examination. These records are confidential under Iowa Code section 22.7(18).

d. Client database. The agency maintains a database of business prospects. This list identifies companies that may be seeking to expand or locate their businesses in Iowa. This list is considered confidential under Iowa Code sections 22.7(3), 22.7(6), 22.7(8) and 22.7(18).

e. Minutes of closed meetings of a governmental body as permitted under Iowa Code section 21.5(4).

f. Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1)*"d."*

g. Those portions of agency staff manuals, instructions or other statements issued which set forth criteria or guidelines to be used by agency staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics on allowable tolerances or criteria for the defense, prosecution or settlement of cases, when disclosure of those statements would:

(1) Enable law violators to avoid detection;

(2) Facilitate disregard of requirements imposed by law; or

(3) Give a clearly improper advantage to persons who are in an adverse position to the agency. (Iowa Code sections 17A.2 and 17A.3)

h. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa R.C.P. 1.503(3), Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

i. Data processing software, as defined in Iowa Code section 22.3A, which is developed by a governmental body.

j. Log-on identification passwords, Internet protocol addresses, private keys, or other records containing information which might lead to disclosure of private keys used in a digital signature or other similar technologies as provided in Iowa Code chapter 554D.

k. Records which if disclosed might jeopardize the security of an electronic transaction pursuant to Iowa Code chapter 554D.

l. Any other records considered confidential by law.

195.13(3) *Authority to release confidential records.* The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other provision of law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 195.5(17A,22). If the agency initially determines that it will release such records, the agency may, when appropriate, notify interested parties and withhold the records from inspection as provided in subrule 195.4(3).

261—195.14(17A,22) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 195.2(17A,22). This rule describes the means of storage of that information and indicates whether a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system. Unless otherwise stated, the authority for this agency to maintain the record is provided by Iowa Code chapter 15. The record systems maintained by the agency are:

195.14(1) *Personnel files.* Personnel records of department employees are maintained at the agency. Records of staff include such personally identifiable information as name, address, social security number and employee payroll number. Other data contained in staff personnel records are salary information, seniority date, employee deduction forms, insurance and savings bond contributions, deferred compensation information, current leave information, performance evaluations and performance review dates. Some information may be confidential under Iowa Code section 22.7(11). Data processing systems do not match, collate or compare the personally identifiable information of the staff personnel records with personally identifiable information contained in the records of other agencies.

195.14(2) *Travel records.* The agency maintains travel records of agency staff. Personally identifiable information collected includes the name, address, and social security number of the individual. This information is collected pursuant to Iowa Code section 421.39. Data processing systems do not match, collate or compare the personally identifiable information collected with similar information collected by other state agencies.

195.14(3) *Claim vouchers.* Requests for reimbursement from agency staff, contractors, and grantees are maintained by the agency. These records contain the name, address and social security number of the

individual requesting reimbursement for expenses. This information is collected pursuant to Iowa Code section 421.40. The information is not maintained in a data processing system which matches, collates or compares the information with other systems containing personally identifiable information.

195.14(4) *Contracts and grant records.* Contractual agreements and grant agreements are maintained by the agency. These records contain personally identifiable information when the agreement is with a specific individual. In those instances, the records include the name, address and social security number of the contractor/grant recipient. Other information in these records may include the proposal or work statement of the contractor or grant recipient, budget figures, modifications, correspondence and business information. Personally identifiable information is not contained in a data processing system which collates, matches or compares this information with other systems containing personally identifiable information.

195.14(5) *Payroll records.* Payroll records include time sheets of individuals, listings of prior years' earnings, current listings of deductions, and insurance billings. Personally identifiable information is included in these records. An employee's name, address and social security number are maintained in the payroll record. Personally identifiable information is not contained in a data processing system which collates, matches or compares this information with other systems containing personally identifiable information.

195.14(6) *Grant and loan application records.* The agency administers a variety of state and federal grant and loan programs. Records of persons or organizations applying for grants, awards or funds are available through the agency. These records may contain information about individuals collected pursuant to specific federal or state statutes or regulations. Personally identifiable information such as name, address, social security number and telephone number may be included in these records when the applicant is an individual. Many program applicants are political subdivisions or corporations, not individuals.

195.14(7) *Litigation files.* These files or records contain information regarding litigation or anticipated litigation, which includes judicial and administrative proceedings. The records include briefs, depositions, docket sheets, documents, correspondence, attorney's notes, memoranda, research materials, witness information, investigation materials, information compiled under the direction of the attorney, and case management records. The files contain materials which are confidential as attorney work product and attorney-client communications. Some materials are confidential under other applicable provisions of law or because of a court order. Persons wishing copies of pleadings and other documents filed in litigation should obtain these from the clerk of the appropriate court which maintains the official copies.

261—195.15(17A,22) Other groups of records. This rule describes groups of records maintained by the agency other than record systems as defined in rule 195.2(17A,22). These records are routinely available to the public. However, the agency's files of these records may contain confidential information as discussed in rule 195.13(17A,22). The records listed may contain information about individuals. Unless otherwise stated, the authority for the agency to maintain the record is provided by Iowa Code chapter 15.

195.15(1) *Rule making.* Rule-making records may contain information about individuals making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. Public documents generated during the promulgation of agency rules, including notices and public comments, are available for public inspection. This information is not stored in an automated data processing system.

195.15(2) *Board records.* Agendas, minutes, and materials presented to the Iowa department of economic development are available from the agency except for confidential records. Those records concerning closed sessions are exempt from disclosure under Iowa Code section 21.5(4). Board records contain information about people who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. This information is not retrieved by individual identifier and is not stored on an automated data processing system.

195.15(3) *Statistical reports.* Periodic reports of various agency programs are available from the Iowa department of economic development. Statistical reports do not contain personally identifiable information.

195.15(4) *Appeal decisions and advisory opinions.* All final orders, decisions and opinions are open to the public except for information that is confidential according to rule 195.13(17A,22).

195.15(5) *Publications.* Publications include news releases, annual reports, project reports, agency newsletters, etc., which describe various agency programs and activities. Agency news releases, project reports, and newsletters may contain information about individuals including agency staff or members of agency councils or committees.

195.15(6) *Address lists.* The names and mailing addresses of members of boards and councils, work groups, program grantees and members of the public indicating interest in particular programs and activities of the agency are maintained to generate mailing labels for mass distribution of agency mailings.

195.15(7) *Appeal decisions and advisory opinions.* All final orders, decisions and opinions are open to the public except for information that may be confidential according to rule 195.13(17A,22).

195.15(8) *Published materials.* The agency uses many legal and technical publications in its work. The public may inspect these publications upon request. Some of these materials may be protected by copyright law.

These rules are intended to implement Iowa Code chapters 17A and 22.

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CHAPTER 196
DEPARTMENT PROCEDURE FOR RULE MAKING

[Prior to 9/6/00, see 261—Ch 101]
[Prior to 7/4/07, see 261—Ch 170]

261—196.1(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules adopted by the department are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

261—196.2(17A) Advice on possible rules before notice of proposed rule adoption. In addition to seeking information by other methods, the department may, before publication of a Notice of Intended Action under Iowa Code section 17A.4(1)*"a,"* solicit comments from the public on a subject matter of possible rule making by the department by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

261—196.3(17A) Public rule-making docket.

196.3(1) *Docket maintained.* The department shall maintain a current public rule-making docket.

196.3(2) *Anticipated rule making.* The rule-making docket shall list each anticipated rule-making proceeding. A rule-making proceeding is deemed "anticipated" from the time a draft of proposed rules is distributed for internal discussion within the department. For each anticipated rule-making proceeding, the docket shall contain a listing of the precise subject matter which may be submitted for consideration to the economic development board for subsequent proposal under the provisions of Iowa Code section 17A.4(1)*"a,"* the name and address of department personnel with whom persons may communicate with respect to the matter, and an indication of the present status within the department of that possible rule. The department may also include in the docket other subjects upon which public comment is desired.

196.3(3) *Pending rule-making proceedings.* The rule-making docket shall list each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced, by publication in the Iowa Administrative Bulletin of a Notice of Intended Action pursuant to Iowa Code section 17A.4(1)*"a,"* to the time it is terminated, by publication of a Notice of Termination in the Iowa Administrative Bulletin or the rule's becoming effective. For each rule-making proceeding, the docket shall indicate:

a. The subject matter of the proposed rule.

b. A citation to all published notices relating to the proceeding.

c. Where written submissions on the proposed rule may be inspected.

d. The time during which written submissions may be made.

e. The names of persons who have made written requests for an opportunity to make oral presentations on the proposed rule, where those requests may be inspected, and where and when oral presentations may be made.

f. Whether a written request for the issuance of a regulatory analysis or a concise statement of reasons has been filed, whether such an analysis or statement or a fiscal impact statement has been issued, and where any such written request, analysis, or statement may be inspected.

g. The current status of the proposed rule and any department determinations with respect thereto.

h. Any known timetable for department decisions or other action in the proceeding.

i. The date of the rule's adoption.

j. The date of the rule's filing, indexing, and publication.

k. The date on which the rule will become effective.

l. Where the rule-making record may be inspected.

261—196.4(17A) Notice of proposed rule making.

196.4(1) *Contents.* At least 35 days before the adoption of a rule, the department shall cause Notice of Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

a. A brief explanation of the purpose of the proposed rule.

b. The specific legal authority for the proposed rule.

c. Except to the extent impracticable, the text of the proposed rule.

d. Where, when, and how persons may present their views on the proposed rule.

e. Where, when, and how persons may demand an oral proceeding on the proposed rule if the notice does not already provide for one.

Where inclusion of the complete text of a proposed rule in the Notice of Intended Action is impracticable, the department shall include in the notice a statement fully describing the specific subject matter of the omitted portion of the text of the proposed rule, the specific issues to be addressed by that omitted text of the proposed rule, and the range of possible choices being considered by the department for the resolution of each of those issues.

196.4(2) *Copies of notices.* Persons desiring to receive copies of future Notices of Intended Action must file with the department a written request indicating the name and address (including an E-mail address if electronic transmittal is requested) to which the notices shall be sent. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the department shall mail a copy of that notice to subscribers who have filed a written request for mailing with the department for Notices of Intended Action. The written request shall be accompanied by payment of the subscription price, if any, which covers the full cost of the subscription service, including its administrative overhead and the cost of copying and mailing the Notices of Intended Action for a period of one year. If persons have requested that the department electronically transmit a copy of the notice by E-mail, there shall be no charge for this service.

261—196.5(17A) Public participation.

196.5(1) *Written comments.* For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing or via electronic transmission, on the proposed rule. These submissions should identify the proposed rule to which they relate and should be submitted to the individual identified in the Notice of Intended Action.

196.5(2) *Oral proceedings.* The department may, at any time, schedule an oral proceeding on a proposed rule. The department shall schedule an oral proceeding on a proposed rule if, within 20 days after the published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the department by the administrative rules review committee, a governmental subdivision, a state agency, an association having not less than 25 members, or at least 25 persons. That request must also contain the following additional information:

1. A request by one or more individual persons must be signed by each of them and include the address and telephone number of each of them.

2. A request by an association must be signed by an officer or designee of the association and must contain a statement that the association has at least 25 members and the address and telephone number of the person signing that request.

3. A request by a state agency or governmental subdivision must be signed by an official having authority to act on behalf of the entity and must contain the address and telephone number of the person signing that request.

The department may waive technical compliance with these procedures.

196.5(3) *Conduct of oral proceedings.*

a. Applicability. This subrule applies only to those oral rule-making proceedings in which an opportunity to make oral presentations is authorized or required by Iowa Code section 17A.4(1)*"b"* as amended by 1998 Iowa Acts, chapter 1202, section 8.

b. Scheduling and notice. An oral proceeding on a proposed rule may be held in one or more locations and shall not be held earlier than 20 days after notice of its location and time is published in the Iowa Administrative Bulletin. That notice shall also identify the proposed rule by ARC number and citation to the Iowa Administrative Bulletin.

c. Presiding officer. An employee of the department, or another person designated by the department who will be familiar with the substance of the proposed rules, shall preside at the oral proceeding on the proposed rules. If an employee of the department does not preside, the presiding

officer shall prepare a memorandum for consideration by the department summarizing the contents of the presentations made at the oral proceeding unless the department determines that such a memorandum is not necessary because the department will personally listen to or read the entire transcript of the oral proceeding.

d. Conduct of proceeding. At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule. Persons wishing to make oral presentations at the proceeding are encouraged to notify the department at least one business day prior to the proceeding and indicate the general subject of their presentations. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they represent, and provide any other information relating to their participation deemed appropriate by the presiding officer. Oral proceedings shall be open to the public and shall be recorded by stenographic or electronic means.

(1) At the beginning of the oral proceeding, the presiding officer shall give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons for the department decision to propose the rule. The presiding officer may place time limitations on individual oral presentations when necessary to ensure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.

(2) Persons making oral presentations are encouraged to avoid restating matters which have already been submitted in writing.

(3) To facilitate the exchange of information, the presiding officer may, where time permits, open the floor to questions or general discussion.

(4) The presiding officer shall have the authority to take any reasonable action necessary for the orderly conduct of the meeting.

(5) Physical and documentary submissions presented by participants in the oral proceeding shall be submitted to the presiding officer. These submissions become the property of the department.

(6) The oral proceeding may be continued by the presiding officer to a later time without notice other than by announcement at the hearing.

(7) Participants in an oral proceeding shall not be required to take an oath or to submit to cross-examination. However, the presiding officer in an oral proceeding may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.

(8) The presiding officer in an oral proceeding may permit rebuttal statements and request the filing of written statements subsequent to the adjournment of the oral presentations.

196.5(4) *Additional information.* In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the department may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

The department may send notices of proposed rule making and a request for comments to any agency, organization, or association known to it to have a direct interest or expertise pertaining to the substance of the proposed rule.

196.5(5) *Accessibility.* The department shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the person identified in the Notice of Intended Action in advance to arrange access or other needed services.

261—196.6(17A) Regulatory analysis.

196.6(1) *Definition of small business.* A "small business" is defined in 1998 Iowa Acts, chapter 1202, section 10, subsection 7.

196.6(2) *Distribution list.* Small businesses or organizations of small businesses may be registered on the department's small business impact list by making a written application addressed to the Director's

Office, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309-1819, Attn: Legal Counsel. The application for registration shall state:

a. The name of the small business or organization of small businesses.

b. Its address.

c. The name of a person authorized to transact business for the applicant.

d. A description of the applicant's business or organization. An organization representing 25 or more persons who qualify as a small business shall indicate that fact.

e. Whether the registrant desires copies of Notices of Intended Action at cost or via electronic transmission, or desires advance notice of the subject of all or some specific category of proposed rule making affecting small business.

The department may at any time request additional information from the applicant to determine whether the applicant is qualified as a small business or as an organization of 25 or more small businesses. The department may periodically send a letter to each registered small business or organization of small businesses asking whether that business or organization wishes to remain on the registration list. The name of a small business or organization of small businesses shall be removed from the list if a negative response is received, or if no response is received within 30 days after the letter is sent.

196.6(3) *Time of distribution.* Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the department shall mail or electronically transmit to all registered small businesses or organizations of small businesses, in accordance with their request, either a copy of the Notice of Intended Action or notice of the subject of that proposed rule making. In the case of a rule that may have an impact on small business adopted in reliance upon Iowa Code section 17A.4(2), the department shall mail notice of the adopted rule to registered businesses or organizations prior to the time the adopted rule is published in the Iowa Administrative Bulletin.

196.6(4) *Qualified requesters for regulatory analysis—economic impact.* The department shall issue a regulatory analysis of a proposed rule that conforms to the requirements of 1998 Iowa Acts, chapter 1202, section 10, subsection 2, paragraph *"a,"* after a proper request from:

a. The administrative rules coordinator.

b. The administrative rules review committee.

196.6(5) *Qualified requesters for regulatory analysis—business impact.* The department shall issue a regulatory analysis of a proposed rule that conforms to the requirements of 1998 Iowa Acts, chapter 1202, section 10, subsection 2, paragraph *"b,"* after a proper request from:

a. The administrative rules review committee.

b. The administrative rules coordinator.

c. At least 25 or more persons who sign the request provided that each represents a different small business.

d. An organization representing at least 25 small businesses. That organization shall list the name, address and telephone number of not less than 25 small businesses it represents.

196.6(6) *Time period for analysis.* Upon receipt of a timely request for a regulatory analysis, the agency shall adhere to the time lines described in 1998 Iowa Acts, chapter 1202, section 10, subsection 4.

196.6(7) *Contents of request.* A request for a regulatory analysis is made when it is mailed or delivered to the department. The request shall be in writing and satisfy the requirements of 1998 Iowa Acts, chapter 1202, section 10, subsection 1.

196.6(8) *Contents of concise summary.* The contents of the concise summary shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10, subsections 4 and 5.

196.6(9) *Publication of a concise summary.* The department shall make available, to the maximum extent feasible, copies of the published summary in conformance with 1998 Iowa Acts, chapter 1202, section 10, subsection 5.

196.6(10) *Regulatory analysis contents—rules review committee or rules coordinator.* When a regulatory analysis is issued in response to a written request from the administrative rules review committee or the administrative rules coordinator, the regulatory analysis shall conform to the

requirements of 1998 Iowa Acts, chapter 1202, section 10, subsection 2, paragraph *"a,"* unless a written request expressly waives one or more of the items listed therein.

196.6(11) *Regulatory analysis contents—substantial impact on small business.* When a regulatory analysis is issued in response to a written request from the administrative rules review committee, the administrative rules coordinator, at least 25 persons signing that request who each qualify as a small business or by an organization representing at least 25 small businesses, the regulatory analysis shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10, subsection 2, paragraph *"b."*

261—196.7(17A,25B) Fiscal impact statement. A rule that mandates additional combined expenditures exceeding $100,000 by all affected political subdivisions or agencies and entities which contract with political subdivisions to provide services must be accompanied by a fiscal impact statement outlining the costs associated with the rule. A fiscal impact statement must satisfy the requirements of Iowa Code section 25B.6.

If the department determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the department shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

261—196.8(17A) Time and manner of rule adoption.

196.8(1) *Time of adoption.* The department shall not adopt a rule until the period for making written submissions and oral presentations has expired. Within 180 days after the later of the publication of the Notice of Intended Action, or the end of oral proceedings thereon, the department shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication of a notice to that effect in the Iowa Administrative Bulletin.

196.8(2) *Consideration of public comment.* Before the adoption of a rule, the department shall consider fully all of the written submissions and oral submissions received in that rule-making proceeding or any written summary of the oral submissions and any regulatory analysis or fiscal impact statement issued in that rule-making proceeding.

196.8(3) *Reliance on department expertise.* Except as otherwise provided by law, the department may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

261—196.9(17A) Variance between adopted rule and published notice of proposed rule adoption.

196.9(1) *Allowable variances.* The department shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based unless:

a. The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that notice; and

b. The differences are a logical outgrowth of the contents of that Notice of Intended Action or the comments submitted in response thereto; and

c. The Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question.

196.9(2) *Fair warning.* In determining whether the Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question, the department shall consider the following factors:

a. The extent to which persons who will be affected by the rule should have understood that the rule-making proceeding on which it is based could affect their interests;

b. The extent to which the subject matter of the rule or the issues determined by the rule are different from the subject matter or issues contained in the Notice of Intended Action; and

c. The extent to which the effects of the rule differ from the effects of the proposed rule contained in the Notice of Intended Action.

196.9(3) *Petition for rule making.* The department shall commence a rule-making proceeding within 60 days of its receipt of a petition for rule making seeking the amendment or repeal of a rule that differs from the proposed rule contained in the Notice of Intended Action upon which the rule is based, unless the

department finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to petitioner, the administrative rules coordinator, and the administrative rules review committee, within three days of its issuance.

196.9(4) *Concurrent rule-making proceedings.* Nothing in this rule disturbs the discretion of the department to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

261—196.10(17A) Exemptions from public rule-making procedures.

196.10(1) *Omission of notice and comment.* To the extent the department for good cause finds that public notice and participation are unnecessary, impracticable, or contrary to the public interest in the process of adopting a particular rule, the department may adopt that rule without publishing advance Notice of Intended Action in the Iowa Administrative Bulletin and without providing for written or oral public submissions prior to its adoption. The department shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

196.10(2) *Categories exempt.* The following narrowly tailored category of rules is exempted from the usual public notice and participation requirements because those requirements are unnecessary, impracticable, or contrary to the public interest with respect to each and every member of the defined class: rules mandated by federal law, including federal statutes or regulations establishing conditions for federal funding of departmental programs where the department is not exercising any options under federal law.

196.10(3) *Public proceedings on rules adopted without them.* The department may, at any time, commence a standard rule-making proceeding for the adoption of a rule that is identical or similar to a rule it adopts in reliance upon subrule 196.10(1). Upon written petition by a governmental subdivision, the administrative rules review committee, a state agency, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the department shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 196.10(1). This petition must be filed within one year of the publication of the specified rule in the Iowa Administrative Bulletin as an adopted rule. The rule-making proceeding on that rule must be commenced within 60 days of the receipt of the petition. After a standard rule-making proceeding commenced pursuant to this subrule, the department may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 196.10(1) or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

261—196.11(17A) Concise statement of reasons.

196.11(1) *General.* When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the department shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to the Director's Office, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309-1819, Attn: Legal Counsel. The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests shall be considered made on the date received.

196.11(2) *Contents.* The concise statement of reasons shall contain:

a. The reasons for adopting the rule.

b. An indication of any change between the text of the proposed rule contained in the published Notice of Intended Action and the text of the rule as finally adopted, with the reasons for any change.

c. The principal reasons urged in the rule-making proceeding for and against the rule, and the department's reasons for overruling the arguments made against the rule.

196.11(3) *Time of issuance.* After a proper request, the department shall issue a concise statement of reasons by the later of the time the rule is adopted or 35 days after receipt of the request.

261—196.12(17A) Contents, style, and form of rule.

196.12(1) *Contents.* Each rule adopted by the department shall contain the text of the rule and, in addition:

a. The date the department adopted the rule.

b. A brief explanation of the principal reasons for the rule-making action if the reasons are required by 1998 Iowa Acts, chapter 1202, section 8, or the department in its discretion decides to include the reasons.

c. A reference to all rules repealed, amended, or suspended by the rule.

d. A reference to the specific statutory or other authority authorizing adoption of the rule.

e. Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule.

f. A brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waiver or special exceptions provided in the rule if the reasons are required by 1998 Iowa Acts, chapter 1202, section 8, or the department in its discretion decides to include the reasons.

g. The effective date of the rule.

196.12(2) *Documents incorporated by reference.* The department may incorporate by reference in a proposed or adopted rule, and without causing publication of the incorporated matter in full, all or any part of a code, standard, rule, or other matter if the department finds that the incorporation of its text in the department proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the department proposed or adopted rule shall fully and precisely identify the incorporated matter by location, title, citation, date, and edition, if any; shall briefly indicate the precise subject and the general contents of the incorporated matter; and shall state that the proposed or adopted rule does not include any later amendments or editions of the incorporated matter. The department may incorporate such matter by reference in a proposed or adopted rule only if the department makes copies of it readily available to the public. The rule shall state how and where copies of the incorporated matter may be obtained at cost from this department, and how and where copies may be obtained from the agency of the United States, this state, another state, or the organization, association, or persons, originally issuing that matter. The department shall retain permanently a copy of any materials incorporated by reference in a rule of the department.

196.12(3) *References to materials not published in full.* When the administrative code editor decides to omit the full text of a proposed or adopted rule because publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient, the department shall prepare and submit to the administrative code editor for inclusion in the Iowa Administrative Bulletin and Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the proposed or adopted rules and of significant issues involved in these rules. The summary statement shall also describe how a copy of the full text of the proposed or adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the department. The department shall provide a copy of that full text at actual cost upon request and shall make copies of the full text available for review either electronically or at the state law library.

At the request of the administrative code editor, the department shall provide a proposed statement explaining why publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient.

196.12(4) *Style and form.* In preparing its rules, the department shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

261—196.13(17A) Department rule-making record.

196.13(1) *Requirement.* The department shall maintain an official rule-making record for each rule it proposes by publication in the Iowa Administrative Bulletin of a Notice of Intended Action, or adopts. The rule-making record and materials incorporated by reference shall be available for public inspection.

196.13(2) *Contents.* The department rule-making record shall contain:

a. Copies of or citations to all publications in the Iowa Administrative Bulletin with respect to the rule or the proceeding upon which the rule is based and any file-stamped copies of department submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based.

b. Copies of any portions of the department's public rule-making docket containing entries relating to the rule or the proceeding upon which the rule is based.

c. All written petitions, requests, and submissions received by the department, and all other written materials of a factual nature as distinguished from opinion that are relevant to the merits of the rule and that were created or compiled by the department in connection with the formulation, proposal, or adoption of the rule or the proceeding upon which the rule is based, except to the extent the department is authorized by law to keep them confidential; provided, however, that when any materials are deleted because they are authorized by law to be kept confidential, the department shall identify in the record the particular materials deleted and state the reasons for that deletion.

d. Any official transcript of oral presentations made in the proceeding upon which the rule is based or, if not transcribed, the stenographic record or electronic recording of those presentations, and any memorandum prepared by a presiding officer summarizing the contents of those presentations.

e. A copy of any regulatory analysis or fiscal impact statement prepared for the proceeding upon which the rule is based.

f. A copy of the rule and any concise statement of reasons prepared for that rule.

g. All petitions for amendment or repeal or suspension of the rule.

h. A copy of any objection to the issuance of that rule without public notice and participation that was filed pursuant to Iowa Code section 17A.4(2) by the administrative rules review committee, the governor, or the attorney general.

i. A copy of any objection to the rule filed by the administrative rules review committee, the governor, or the attorney general pursuant to Iowa Code subsection 17A.4(4), and any department response to that objection.

j. A copy of any executive order concerning the rule.

196.13(3) *Effect of record.* Except as otherwise required by a provision of law, the department rule-making record required by this rule need not constitute the exclusive basis for department action on that rule.

196.13(4) *Maintenance of record.* The department shall maintain the rule-making record for a period of not less than five years from the later of the date the rule to which it pertains became effective or the date of the Notice of Intended Action.

261—196.14(17A) Filing of rules. The department shall file each rule it adopts in the office of the administrative rules coordinator. The filing shall be executed as soon after adoption of the rule as is practicable. At the time of filing, each rule shall have attached to it any fiscal impact statement and any concise statement of reasons that was issued with respect to that rule. If a fiscal impact statement or statement of reasons for that rule was not issued until a time subsequent to the filing of that rule, the note or statement must be attached to the filed rule within five working days after the fiscal impact statement or concise statement is issued. In filing a rule, the department shall use the standard form prescribed by the administrative rules coordinator.

261—196.15(17A) Effectiveness of rules prior to publication.

196.15(1) *Grounds.* The department may make a rule effective after its filing at any stated time prior to 35 days after its indexing and publication in the Iowa Administrative Bulletin if it finds that a statute so provides, the rule confers a benefit or removes a restriction on some segment of the public, or that the effective date of the rule is necessary to avoid imminent peril to the public health, safety, or welfare. The department shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

196.15(2) *Special notice.* When the department makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)*"b"*(3), the department shall

employ all reasonable efforts to make its contents known to the persons who may be affected by that rule prior to the rule's indexing and publication. The term "all reasonable efforts" requires the department to employ the most effective and prompt means of notice rationally calculated to inform potentially affected parties of the effectiveness of the rule that is justified and practical under the circumstances considering the various alternatives available for this purpose, the comparative costs to the department of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that may be used for providing notice of such rules prior to their indexing and publication include, but are not limited to, any one or more of the following means: radio, newspaper, television, signs, mail, telephone, personal notice, or electronic means.

A rule made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)*"b"*(3) shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of this subrule.

261—196.16(17A) Review by department of rules.

196.16(1) *Request for review.* Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator for the department to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the department shall conduct a formal review of a specified rule to determine whether a new rule should be adopted instead or the rule should be amended or repealed. The department may refuse to conduct a review if it has conducted a review of the specified rule within five years prior to the filing of the written request.

196.16(2) *Conduct of review.* In conducting the formal review, the department shall prepare within a reasonable time a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report shall include a concise statement of the department's findings regarding the rule's effectiveness in achieving its objectives, including a summary of any available supporting data. The report shall also concisely describe significant written criticisms of the rule received during the previous five years, including a summary of any requests for exceptions to the rule received by the department or granted by the department. The report shall describe alternative solutions to resolve the criticisms of the rule, the reasons any were rejected, and any changes made in the rule in response to the criticisms as well as the reasons for the changes. A copy of the department's report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report shall also be available for public inspection.

261—196.17(17A) Written criticisms of department rules. Any interested person may submit written criticism of a rule adopted by the department.

196.17(1) *Where submitted, form.* Rule criticisms shall be in writing and submitted to the Director's Office, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309-1819, Attn: Legal Counsel. The criticism must be typewritten, or legibly handwritten in ink, and must substantially conform to the following form:

DEPARTMENT OF ECONOMIC DEVELOPMENT

Criticism of Rule: (specify rule)

Reason(s) for Criticism:

Submitted By: Name:_____
Address:_____
_____
Telephone Number:_____
Signature:_____
Date:_____

196.17(2) *Maintenance.* Written criticisms of department rules will be maintained in a separate record for a period of five years from the date of receipt by the department. This record will be open for public inspection.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code section 25B.6.

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CHAPTER 197
PETITION FOR RULE MAKING

[Prior to 7/19/95, see 261—Ch 2]
[Prior to 9/6/00, see 261—Ch 102]
[Prior to 7/4/07, see 261—Ch 171]

261—197.1(17A) Petition for rule making. Any person or state agency may file a petition for rule making with the department at the Director's Office, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309-1819, Attn: Legal Counsel. A petition is deemed filed when it is received by that office. The department must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the department an extra copy for this purpose. The petition must be typewritten, or legibly handwritten in ink, and must substantially conform to the following form:

BEFORE THE DEPARTMENT OF ECONOMIC DEVELOPMENT

Petition by (Name of Petitioner) for the (adoption, amendment, or repeal) of rules relating to (state subject matter).	PETITION FOR RULE MAKING

The petition must provide the following information:

1. A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.
2. A citation to any law deemed relevant to the department's authority to take the action urged or to the desirability of that action.
3. A brief summary of petitioner's arguments in support of the action urged in the petition.
4. A brief summary of any data supporting the action urged in the petition.
5. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the proposed action which is the subject of the petition.
6. Any request by petitioner for a meeting provided for by subrule 197.4(1).

197.1(1) The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

197.1(2) The department may deny a petition because it does not substantially conform to the required form.

261—197.2(17A) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The department may request a brief from the petitioner or from any other person concerning the substance of the petition.

261—197.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the Director's Office, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309-1819, Attn: Legal Counsel.

261—197.4(17A) Department consideration.

197.4(1) *Forwarding of petition and meeting.* Within five working days after the filing of a petition, the department shall submit a copy of the petition and any accompanying brief to the administrative rules coordinator and to the administrative rules review committee. Upon request by the petitioner in the petition, the department shall schedule a brief and informal meeting between the petitioner and a member of the staff of the department to discuss the petition. The department may request the petitioner to submit additional information or argument concerning the petition. The department may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the department by any person.

197.4(2) *Action on petition.* Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the department shall, in writing, deny the petition, and notify petitioner of its action and the specific grounds for the denial, or grant the petition and notify petitioner that it has instituted rule-making proceedings on the subject of the petition. Petitioner shall be deemed notified of the denial or grant of the petition on the date when the department mails or delivers the required notification to petitioner.

197.4(3) *Denial of petition for nonconformance with form.* Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the department's rejection of the petition.

These rules are intended to implement Iowa Code section 17A.7 as amended by 1998 Iowa Acts, chapter 1202, section 11.

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CHAPTER 198
PETITION FOR DECLARATORY ORDER

[Prior to 7/19/95, see 261—Ch 3]
[Prior to 9/6/00, see 261—Ch 103]
[Prior to 7/4/07, see 261—Ch 172]

261—198.1(17A) Petition for declaratory order. Any person may file a petition with the department for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the department at the Director's Office, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309-1819, Attn: Legal Counsel. A petition is deemed filed when it is received by that office. The department shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the department an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and should substantially conform to the following form:

BEFORE THE DEPARTMENT OF ECONOMIC DEVELOPMENT

Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	PETITION FOR DECLARATORY ORDER

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers. A request which seeks to change rather than to declare or determine policy will be denied.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by the petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by the petitioner for a meeting provided for by rule 261—198.7(17A).

The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative and a statement indicating the person to whom communications concerning the petition should be directed.

261—198.2(17A) Notice of petition. Within five working days of receipt of a petition for a declaratory order, the department shall give notice of the petition to all persons not served by the petitioner pursuant to rule 261—198.6(17A) to whom notice is required by any provision of law. The department may give notice to any other persons.

261—198.3(17A) Intervention.

198.3(1) *Nondiscretionary intervention.* Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 15 working days of the filing of a petition for declaratory order and before the 30-day time for department action under rule 261—198.8(17A) shall be allowed to intervene in a proceeding for a declaratory order.

198.3(2) *Discretionary intervention.* Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the department.

198.3(3) *Filing and form of petition for intervention.* A petition for intervention shall be filed at the Director's Office, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309-1819, Attn: Legal Counsel. A petition is deemed filed when it is received by that office. The department shall provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and should substantially conform to the following form:

BEFORE THE DEPARTMENT OF ECONOMIC DEVELOPMENT

Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	PETITION FOR INTERVENTION

The petition for intervention must provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
5. The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.
6. Whether the intervenor consents to be bound by the determination of the matters presented by the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and the intervenor's representative, and a statement indicating the person to whom communications should be directed.

261—198.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The department may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

261—198.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the Director's Office, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309-1819, Attn: Legal Counsel.

261—198.6(17A) Service and filing of petitions and other papers.

198.6(1) *Service.* Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served by mailing or personal delivery upon each of the parties of record to the proceeding, and on all other persons identified as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons. All documents filed shall indicate all parties or other persons served and the date and method of service.

198.6(2) *Filing.* All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Director's Office, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309-1819, Attn: Legal Counsel. All documents are considered filed upon receipt.

261—198.7(17A) Consideration. Upon request by the petitioner, the department shall schedule a brief and informal meeting between the original petitioner, all intervenors, and a member of the staff of the department to discuss the questions raised. The department may solicit comments from any person on

the questions raised. Also, comments on the questions raised may be submitted to the department by any person.

261—198.8(17A) Action on petition.

198.8(1) *Time frames for action.* Within 30 days after receipt of a petition for a declaratory order, the director or the director's designee shall take action on the petition as required by 1998 Iowa Acts, chapter 1202, section 13, subsection 5.

198.8(2) *Date of issuance of order.* The date of issuance of an order or of a refusal to issue an order is the date of mailing of the order or refusal or date of delivery if service is by other means unless another date is specified in the order.

261—198.9(17A) Refusal to issue order.

198.9(1) *Reasons for refusal to issue order.* The department shall not issue a declaratory order where prohibited by 1998 Iowa Acts, chapter 1202, section 13, subsection 1, and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. The petition does not substantially comply with the required form.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the department to issue an order.
3. The department does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in a current rule making, contested case, or other department or judicial proceeding, that may definitively resolve them.
5. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
8. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a department decision already made.
9. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.
10. The petitioner requests the department to determine whether a statute is unconstitutional on its face.

198.9(2) *Action on refusal.* A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final department action on the petition**.**

198.9(3) *Filing of new petition.* Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the department's refusal to issue an order.

261—198.10(17A) Contents of declaratory order—effective date. In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.

261—198.11(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

261—198.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the department, the petitioner,

and any intervenors who consent to be bound and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the department. The issuance of a declaratory order constitutes final agency action on the petition.

These rules are intended to implement 1998 Iowa Acts, chapter 1202, section 13.

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CHAPTER 199
UNIFORM WAIVER AND VARIANCE RULES

[Prior to 9/6/00, see 261—Ch 104]
[Prior to 7/4/07, see 261—Ch 173]

261—199.1(ExecOrd11) Applicability. This chapter outlines a uniform process for the granting of waivers or variances from rules adopted by the department. The intent of this chapter is to allow persons to seek exceptions to the application of rules issued by the department.

199.1(1) *Definitions.*

"Board" or *"IDED board"* means the Iowa department of economic development board created by Iowa Code chapter 15.

"Department" or *"IDED"* means the Iowa department of economic development authorized by Iowa Code chapter 15.

"Director" means the director of the department of economic development or the director's designee.

"Director/board" means either the director or the board depending on which one has decision-making authority pursuant to rule 199.2(ExecOrd11).

"Person" means an individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any legal entity.

"Waiver or variance" means an agency action which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person.

199.1(2) *Authority.*

a. A waiver or variance from rules adopted by the department may be granted in accordance with this chapter if (1) the department has exclusive rule-making authority to promulgate the rule from which waiver or variance is requested or has final decision-making authority over a contested case in which a waiver or variance is requested; and (2) no statute or rule otherwise controls the grant of a waiver or variance from the rule from which waiver or variance is requested.

b. No waiver or variance may be granted from a requirement which is imposed by statute. Any waiver or variance must be consistent with statute.

261—199.2(ExecOrd11) Director/board discretion. The decision on whether the circumstances justify the granting of a waiver or variance shall be made at the discretion of the director upon consideration of all relevant factors, except for the below-listed programs, for which the board shall make the decision, upon consideration of all relevant factors:

1. Community Economic Betterment Account (CEBA) program, 261—Chapter 53.
2. New Jobs and Income Program (NJIP), 261—Chapter 58.
3. Workforce Development Fund, 261—Chapter 8.
4. Accelerated Career Education Program Physical Infrastructure Assistance Program (ACE PIAP), 261—Chapter 20.

199.2(1) *Criteria for waiver or variance.* The director/board may, in response to a completed petition or on its own motion, grant a waiver or variance from a rule, in whole or in part, as applied to the circumstances of a specified situation if the director/board finds each of the following:

a. Application of the rule to the person at issue would result in hardship or injustice to that person; and

b. Waiver or variance on the basis of the particular circumstances relative to that specified person would be consistent with the public interest; and

c. Waiver or variance in the specific case would not prejudice the substantial legal rights of any person; and

d. Where applicable, substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.

In determining whether waiver or variance should be granted, the director/board shall consider whether the underlying public interest policies and legislative intent of the rules are substantially

equivalent to full compliance with the rule. When the rule from which a waiver or variance is sought establishes administrative deadlines, the director/board shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all licensees, grantees and constituents.

199.2(2) *Special waiver or variance rules not precluded.* These uniform waiver and variance rules shall not preclude the director/board from granting waivers or variances in other contexts or on the basis of other standards if a statute or other department rule authorizes the director/board to do so, and the director/board deems it appropriate to do so.

261—199.3(ExecOrd11) Requester's responsibilities in filing a waiver or variance petition.

199.3(1) *Application.* All petitions for waiver or variance must be submitted in writing to the Iowa Department of Economic Development, Office of the Director, 200 East Grand Avenue, Des Moines, Iowa 50309-1819, Attention: Legal Counsel. If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

199.3(2) *Content of petition.* A petition for waiver or variance shall include the following information where applicable and known to the requester (for an example of a petition for waiver or variance, see Exhibit A at the end of this chapter):

a. A description and citation of the specific rule from which a waiver or variance is requested.

b. The specific waiver or variance requested, including the precise scope and operative period that the waiver or variance will extend.

c. The relevant facts that the petitioner believes would justify a waiver or variance.

d. A signed statement from the petitioner attesting to the accuracy of the facts provided in the petition, and a statement of reasons that the petitioner believes will justify a waiver or variance.

e. A history of any prior contacts between the department and the petitioner relating to the regulated activity, license, grant, loan or other financial assistance affected by the proposed waiver or variance, including a description of each affected license, grant, loan or other financial assistance held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity, license, grant or loan within the last five years.

f. Any information known to the requester regarding the department's treatment of similar cases.

g. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question, or which might be affected by the grant of a waiver or variance.

h. The name, address, and telephone number of any person or entity who would be adversely affected by the grant of a petition.

i. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver or variance.

j. Signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver or variance.

199.3(3) *Burden of persuasion.* When a petition is filed for a waiver or variance from a department rule, the burden of persuasion shall be on the petitioner to demonstrate by clear and convincing evidence that the director/board should exercise its discretion to grant the petitioner a waiver or variance.

261—199.4(ExecOrd11) Notice. The department shall acknowledge a petition upon receipt. The department shall ensure that notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law, within 30 days of the receipt of the petition. In addition, the department may give notice to other persons. To accomplish this notice provision, the department may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law, and provide a written statement to the department attesting that notice has been provided.

261—199.5(ExecOrd11) Department responsibilities regarding petition for waiver or variance.

199.5(1) *Additional information.* Prior to issuing an order granting or denying a waiver or variance, the director/board may request additional information from the petitioner relative to the petition and

surrounding circumstances. If the petition was not filed in a contested case, the director/board may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the director/board, the director's/board's designee, a committee of the board, or a quorum of the board.

199.5(2) *Hearing procedures.* The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply in three situations: (a) to any petition for a waiver or variance of rule filed within a contested case; (b) when the director/board so provides by rule or order; or (c) when a statute so requires.

199.5(3) *Ruling.* An order granting or denying a waiver or variance shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and operative period of the waiver if one is issued.

199.5(4) *Conditions.* The director/board may condition the grant of the waiver or variance on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means.

199.5(5) *Time for ruling.* The director/board shall grant or deny a petition for a waiver or variance as soon as practicable, but in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the director/board shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

199.5(6) *When deemed denied.* Failure of the director/board to grant or deny a petition within the required time period shall be deemed a denial of that petition by the director/board.

199.5(7) *Service of order.* Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains, and to any other person entitled to such notice by any provision of law.

261—199.6(ExecOrd11) Public availability. Subject to the provisions of Iowa Code section 17A.3(1)*"e,"* the department shall maintain a record of all orders granting or denying waivers and variances under this chapter. All final rulings in response to requests for waivers or variances shall be indexed and available to members of the public at the Iowa Department of Economic Development, Office of the Director, 200 East Grand Avenue, Des Moines, Iowa 50309-1819.

261—199.7(ExecOrd11) Voiding or cancellation. A waiver or variance is void if the material facts upon which the request is based are not true or if material facts have been withheld. The director/board may at any time cancel a waiver or variance upon appropriate notice if the director/board finds that the facts as stated in the request are not true, material facts have been withheld, the alternative means of compliance provided in the waiver or variance have failed to achieve the objectives of the statute, or the requester has failed to comply with the conditions of the order.

261—199.8(ExecOrd11) Violations. Violation of conditions in the waiver or variance approval is the equivalent of violation of the particular rule for which the waiver or variance is granted and is subject to the same remedies or penalties.

261—199.9(ExecOrd11) Defense. After the director/board issues an order granting a waiver or variance, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

261—199.10(ExecOrd11,17A) Appeals. Granting or denying a request for waiver or variance is final agency action under Iowa Code chapter 17A. An appeal to district court shall be taken within 30 days of the issuance of the ruling in response to the request unless a contrary time is provided by rule or statute.

Exhibit A

Sample Petition (Request) for Waiver/Variance

BEFORE THE IOWA DEPARTMENT
OF ECONOMIC DEVELOPMENT

Petition by (insert name of petitioner) for the waiver of (insert rule citation) relating to (insert the subject matter).	PETITION FOR WAIVER

Requests for waiver or variance from a department rule shall include the following information in the petition for waiver or variance where applicable and known:

a. Provide the petitioner's (person asking for a waiver or variance) name, address, and telephone number.

b. Describe and cite the specific rule from which a waiver or variance is requested.

c. Describe the specific waiver or variance requested; include the exact scope and time period that the waiver or variance will extend.

d. Explain the important facts that the petitioner believes justify a waiver or variance. Include in your answer why (1) applying the rule will result in hardship or injustice to the petitioner; and (2) granting a waiver or variance to the petitioner is consistent with the public interest; and (3) granting the waiver or variance will not prejudice the substantial legal rights of any person; and (4) where applicable, how substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.

e. Provide history of prior contacts between the department and petitioner relating to the regulated activity, license, grant, loan or other financial assistance that would be affected by the waiver or variance; include a description of each affected license, grant, loan or other financial assistance held by the petitioner, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity, license, grant or loan within the last five years.

f. Provide information known to the petitioner regarding the department's treatment of similar cases.

g. Provide the name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question, or which might be affected by the grant of a waiver or variance.

h. Provide the name, address, and telephone number of any person or entity who would be adversely affected or disadvantaged by the grant of the waiver or variance.

i. Provide the name, address, and telephone number of any person with knowledge of the relevant or important facts relating to the requested waiver or variance.

j. Provide signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver or variance.

I hereby attest to the accuracy and truthfulness of the above information.

_____ _____

Petitioner's signature Date

Petitioner should note the following when requesting or petitioning for a waiver or variance:

1. The petitioner has the burden of proving, by clear and convincing evidence, the following to the director/board: (a) application of the rule to the petitioner would result in hardship or injustice to the petitioner; and (b) waiver or variance on the basis of the particular circumstances relative to the petitioner would be consistent with the public interest; and (c) waiver or variance in the specific case would not prejudice the substantial legal rights of any person; and (d) where applicable, how substantially equal

protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.

2. The department may request additional information from or request an informal meeting with the petitioner prior to issuing a ruling granting or denying a request for waiver or variance.

3. All petitions for waiver or variance must be submitted in writing to the Iowa Department of Economic Development, Office of the Director, 200 East Grand Avenue, Des Moines, Iowa 50309-1819, Attention: Legal Counsel. If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

These rules are intended to implement Executive Order Number 11 and 2000 Iowa Acts, House File 2206.

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CHAPTERS 200 to 210
Reserved

CHAPTER 211
COMMUNITY ATTRACTION AND TOURISM DEVELOPMENT (CATD) PROGRAMS

[Prior to 9/6/00, see 261—Ch 65]

DIVISION I
GENERAL PROVISIONS

261—211.1(15F) Purpose. The community attraction and tourism development programs are designed to assist communities in the development and creation of multiple-purpose attraction and tourism facilities. The CATD programs include the CAT fund and the RECAT fund. The rules in this division apply to all applications and awards from the CAT and RECAT funds.

261—211.2(15F) Definitions. When used in this chapter, unless the context otherwise requires:

"Attraction" means a permanently located recreational, cultural, educational, or entertainment activity that is available to the general public.

"Board" means the vision Iowa board established by Iowa Code section 15F.102.

"CAT" means the community attraction and tourism component of the CATD programs.

"CATD" means community attraction and tourism development.

"CATD programs" means the CAT fund and RECAT fund.

"CAT fund" means the community attraction and tourism fund established pursuant to Iowa Code section 15F.204.

"Community" or *"political subdivision"* means a city or county, or an entity established pursuant to Iowa Code chapter 28E.

"Community attraction and tourism program review committee" or *"CAT review committee"* means the committee established by Iowa Code section 15F.203(2) and identified as the following members of the vision Iowa board: three members of the general public, one from each of the three tourism regions; the mayor of a city with a population of less than 20,000; and the county supervisor from a county that has a population ranking in the bottom 33 counties according to the 1990 census. The chair and vice chair of the vision Iowa board may serve as ex officio members of any subcommittee of the board.

"Department" or *"IDED"* means the Iowa department of economic development.

"Economic development organization" means an entity organized to position a community to take advantage of economic development opportunities and strengthen a community's competitiveness as a place to work and live.

"Float loan" or *"interim financing"* means a short-term loan (maximum of 30 months) from obligated but unexpended funds.

"Loan" means an award of assistance with the requirement that the award be repaid with term, interest rate, and other conditions specified as part of the award. A deferred loan is one for which the payment of principal, interest, or both is not required for some specified period. A forgivable loan is one for which repayment is eliminated in part or entirely if the borrower satisfies specified conditions.

"Local support" means endorsement by local individuals and organizations that have a substantial interest in a project.

"Nonfinancial support" may include, but is not limited to, the value of labor and services which may not total more than 25 percent of a local match. Real property and personal property donated for purposes of the project are considered financial support at their fair market value.

"Private organization" means a corporation, partnership, or other organization that is operated for profit.

"Public organization" means a not-for-profit economic development organization or other not-for-profit organization including those that sponsor or support community or tourism attractions and activities.

"RECAT" means river enhancement community attraction and tourism.

"RECAT fund" means the river enhancement community attraction and tourism fund established pursuant to Iowa Code section 15F.205.

"Recipient" means the entity under contract with the vision Iowa board to receive CAT or RECAT funds and undertake the funded activity.

"Recreational and cultural attraction" means an attraction that enhances the quality of life in the community.

"River enhancement community attraction and tourism project" means a project that creates or enhances recreational opportunities and community attractions on and near lakes or rivers or river corridors within cities across the state under the purview of the program.

"School district" means a school corporation organized under Iowa Code chapter 274.

"Subrecipient" means a private organization or other entity operating under an agreement or contract with a recipient to carry out a funded CAT or RECAT activity.

"Tourism opportunity" means a facility that draws people into the community from at least 50 miles (one way) away from home.

"Vertical infrastructure" means land acquisition and construction, major renovation and major repair of buildings, all appurtenant structures, utilities, site development, and recreational trails. "Vertical infrastructure" does not include routine, recurring maintenance or operational expenses or leasing of a building, appurtenant structure, or utility without a lease-purchase agreement.

"Vision Iowa program review committee" means the committee established by Iowa Code section 15F.304(2) as amended by 2009 Iowa Acts, House File 822, and identified as the following members of the vision Iowa board: four members of the general public, the mayor of a city with a population of 20,000 or more, the director of the Iowa department of economic development or designee, the treasurer of state or designee, and the auditor of state or designee. The chairperson and vice chairperson of the vision Iowa board may serve as ex officio members of any subcommittee of the board.

[**ARC 8034B**, IAB 8/12/09, effective 7/17/09; **ARC 8213B**, IAB 10/7/09, effective 11/11/09]

261—211.3(15F) Program components. There are four direct components of the CATD programs. The first component relates to community attraction, tourism or leisure projects that are sponsored by political subdivisions, public organizations, and school districts in cooperation with a city or county. This component is referred to as the community attraction component. The second component provides community attraction and tourism development funds for interim financing for eligible projects under the community attraction component. This component is referred to as the interim financing component. The third component relates to river enhancement community attraction and tourism projects. This component is referred to as the river enhancement component. The fourth component relates to marketing projects that have received funding from the vision Iowa or CATD programs. This component is referred to as the marketing component.

211.3(1) *Community attraction component—CAT.* The objective of the CAT component is to provide financial assistance for community-sponsored attraction and tourism projects. Community attraction projects may include but are not limited to the following: museums, theme parks, cultural and recreational centers, heritage attractions, sports arenas and other attractions.

211.3(2) *Interim financing component.*

a. The objective of the interim financing component is to provide short-term financial assistance for eligible community attraction and tourism projects. Financial assistance may be provided as a float loan. A float loan may only be made for projects that can provide the vision Iowa board with an irrevocable letter of credit or equivalent security instrument from a lending institution rated AA or better, in an amount equal to or greater than the principal amount of the loan.

b. Applications for float loans shall be processed, reviewed and considered on a first-come, first-served basis to the extent funds are available. Applications that are incomplete or require additional information, investigation or extended negotiation may lose funding priority. Applications for float loans shall meet all other criteria required for the community attraction component.

211.3(3) *River enhancement component—RECAT.* The objective of the RECAT component is to provide financial assistance for projects that are related to, closely connected with, and enhance rivers, lakes, or river corridors within cities. River enhancement projects may include but are not limited

to pedestrian trails and walkways, amphitheaters, bike trails, water trails or white water courses for watercraft, and any modifications necessary for the safe mitigation of dams.

211.3(4) *Marketing component.* The objective of the marketing component is to provide financial assistance for the marketing of vision Iowa or CATD projects.

[**ARC 8034B**, IAB 8/12/09, effective 7/17/09]

261—211.4(15F) Eligible applicants. Eligible applicants for CAT and RECAT funds include political subdivisions, public organizations, and school districts in cooperation with a city or county.

211.4(1) Any eligible applicant may apply directly or on behalf of a subrecipient.

211.4(2) Any eligible applicant may apply individually or jointly with another eligible applicant or other eligible applicants.

261—211.5(15F) Eligible projects and forms of assistance.

211.5(1) Eligible projects include those which are related to a community or tourism attraction, and which would position a community to take advantage of economic development opportunities in tourism and strengthen a community's competitiveness as a place to work and live. Eligible projects include building construction or reconstruction, rehabilitation, conversion, acquisition, demolition for the purpose of clearing lots for development, site improvement, equipment purchases, and other projects as may be deemed appropriate by the vision Iowa board.

211.5(2) Eligible forms of assistance include grants, interest-bearing loans, non-interest-bearing loans, float loans under the interim financing component, interest subsidies, deferred payment loans, forgivable loans, or other forms of assistance as may be approved by the vision Iowa board.

211.5(3) Financial assistance for an eligible project may be provided in the form of a multiyear award to be paid in increments over a period of years, subject to the availability of funds.

211.5(4) IDED, with the approval of the chair or vice chair of the vision Iowa board, reserves the right to make technical corrections which are within the intent of the terms of a board-approved award.

211.5(5) Applicants must report other sources of funding or pending funding, public or private, for the project including the local recreation infrastructure grants program administered by the Iowa department of natural resources and the Iowa historic site preservation grant program administered by the historical division of the Iowa department of cultural affairs. IDED may consult with appropriate staff from the department of cultural affairs and the department of natural resources to coordinate the review of applications under the programs.

261—211.6(15F) Ineligible projects.

211.6(1) The vision Iowa board shall not approve an application for assistance under this program to refinance an existing loan.

211.6(2) An applicant may not receive more than one award under the CATD programs for a single project. However, previously funded projects may receive an additional award(s) if the applicant demonstrates that the funding is to be used for a significant expansion of the project, a new project, or a project that results from previous project-development assistance.

211.6(3) The vision Iowa board shall not approve an application for assistance in which the combination of RECAT and CAT funding would constitute more than 50 percent of the total project costs. RECAT funding may constitute up to one-third of the total project cost. A portion of the resources provided by the applicant for project costs may be in the form of in-kind or nonfinancial contributions.

261—211.7(15F) Threshold application requirements. To be considered for funding under the CATD programs, an application must meet the following threshold requirements:

211.7(1) There must be demonstrated local support for the proposed activity.

211.7(2) A need for the CAT or RECAT funds must exist after other financial resources have been identified for the proposed project.

211.7(3) The proposed project must primarily involve the creation or renovation of vertical infrastructure with demonstrated substantial regional or statewide economic impact.

211.7(4) The project must provide and pay at least 50 percent of the cost of a standard medical insurance plan for all full-time employees working at the project after the completion of the project for which financial assistance was received.

261—211.8(15F) Application review criteria. Applications meeting the threshold requirements of rule 261—211.7(15F) will be reviewed by IDED staff and passed on to the vision Iowa board. IDED staff shall provide a review, analysis and evaluation of the applications to the CAT and vision Iowa program review committees of the vision Iowa board. All eligible applications will be reviewed by the vision Iowa board. The CAT review committee shall evaluate and rank CAT applications and the vision Iowa program review committee shall evaluate and rank RECAT applications based on the following criteria:

211.8(1) *Feasibility (0-25 points).* The feasibility of the existing or proposed facility to remain a viable enterprise. The applicant's comprehensive business plan and operational plan will be reviewed as part of this criterion. Rating factors for this criterion include, but are not limited to, the following: analysis of the comprehensive business plan which shall include a description of initial capitalization, sources of funding, project budget, detailed financial projections for five years, marketing analysis, marketing plan, management team, and operational plan that provides detailed information about how the proposed attraction will be operated and maintained including a time line for implementing the project. In order to be eligible for funding, proposals must score at least 15 points on this rating factor.

211.8(2) *Economic impact (0-25 points).* Number of jobs created and other measures of economic impact including long-term tax generation, but excluding the use of economic multipliers. The evaluation of the economic impact of a proposed project shall also include a review of the wages and benefits (including health benefits) associated with the jobs to be created, safety, and other attributes of the project that would improve the quality of attraction and tourism employment in the community. Additionally, the economic impact of the project shall be reviewed based on the degree to which the project enhances the quality of life in a community; increases the recreational and cultural attraction and tourism opportunities; contributes to the community's efforts to retain and attract a skilled workforce; and creatively uses existing resources in the community. In order to be eligible for funding, proposals must score at least 15 points on this rating factor.

211.8(3) *Leveraged activity (0-10 points).* The degree to which the facility or project will stimulate the development of other recreational and cultural attractions or tourism opportunities and enhance economic growth and job opportunities. In order to be eligible for funding, proposals must score at least 6 points on this rating factor.

211.8(4) *Matching funds (0-25 points).* The proportion of nonstate match to be contributed to the project, and the extent of public and private participation. Moneys raised at any time but not yet spent may be considered to be a local match.

211.8(5) *Planning principles (0-10 points).* The extent to which the project has taken the following planning principles into consideration:

a. Efficient and effective use of land resources and existing infrastructure by encouraging compact development in areas with existing infrastructure or capacity to avoid costly duplication of services and costly use of land. Compact development maximizes public infrastructure investment and promotes mixed uses, greater density, bike and pedestrian networks, and interconnection with the existing street grid.

b. Provision for a variety of transportation choices, including public transit, pedestrian and bicycle traffic.

c. Maintenance of unique sense of place by respecting and enhancing local cultural, historical and natural environmental features.

d. Conservation of open space and farmland and preservation of critical environmental areas.

e. Promotion of the safety, livability, and revitalization of existing urban and rural communities.

f. Construction and promotion of developments, buildings, and infrastructure that conserve natural resources by reducing waste and pollution through efficient use of land, energy, water, and materials.

g. Capture, retention, infiltration and harvesting of rainfall using storm water best management practices such as permeable pavement, bioretention cells, bioswales, and rain gardens to protect water resources.

h. Implementation of the green sustainable design principles described in the CAT and RECAT application green design checklist.

i. Extent to which project design, construction, and use incorporate renewable energy sources including, but not limited to, solar, wind, geothermal, and biofuels, and support the following state of Iowa plans and goals:

(1) Office of energy independence's Iowa energy independence plan.

(2) General reduction of greenhouse gas emissions.

211.8(6) *Technology and values (0-5 points).* Whether the project has taken the following into consideration:

a. Extent to which the project encourages technologies that allow regional or statewide access for long-distance learning and Internet access to facility resources.

b. Extent to which the project enhances education, wellness (health), and breadth of the project to attract Iowans of all ages.

c. Extent to which facilities are nonsmoking.

d. Extent to which facilities enhance or promote fine arts. For purposes of this paragraph, "fine arts" means "fine arts" as defined in Iowa Code section 304A.8(2) and also includes landscaping.

e. Extent to which facilities promote healthy indoor environments by employing the use of healthy and sustainable building materials, furnishings, cleaning products, and maintenance practices.

A minimum score of 65 points is needed for a project to be recommended for funding.

[**ARC 8034B**, IAB 8/12/09, effective 7/17/09; **ARC 8213B**, IAB 10/7/09, effective 11/11/09]

261—211.9(15F) Application procedure. Subject to availability of funds, applications are reviewed by IDED staff on an ongoing basis and reviewed at least quarterly by the board. Applications will be reviewed by staff for completeness and eligibility. If additional information is required, the applicant shall be provided with notice, in writing, to submit additional information. A review, analysis and evaluation from the IDED staff will be submitted to the CAT and vision Iowa program review committees of the board, who will then make a final recommendation to the complete board for final approval, denial or deferral. The vision Iowa board has the option of funding a component of a proposed project if the entire project does not qualify for funding.

211.9(1) Application forms shall be available upon request from IDED, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)725-3197; and on IDED's Web site at www.iowalifechanging.com.

211.9(2) IDED may provide technical assistance to applicants as necessary. IDED staff and board members may conduct on-site evaluations of proposed projects.

211.9(3) Applications shall include, at a minimum, the information detailed in rule 211.8(15F), application review criteria.

[**ARC 8034B**, IAB 8/12/09, effective 7/17/09; **ARC 8213B**, IAB 10/7/09, effective 11/11/09]

261—211.10(15F) Administration.

211.10(1) *Administration of awards.*

a. A contract shall be executed between the recipient and the vision Iowa board. These rules and applicable state laws and regulations shall be part of the contract. The board reserves the right to negotiate wage rates as well as other terms and conditions of the contract.

b. The recipient must execute and return the contract to the vision Iowa board within 45 days of transmittal of the final contract from the vision Iowa board. Failure to do so may be cause for the vision Iowa board to terminate the award.

c. Certain projects may require that permits or clearances be obtained from other state or local agencies before the project may proceed. Awards may be conditioned upon the timely completion of these requirements.

d. Awards may be conditioned upon commitment of other sources of funds necessary to complete the project.

e. Awards may be conditioned upon IDED receipt and board approval of an implementation plan for the funded project.

211.10(2) *Requests for funds.* Recipients shall submit requests for funds in the manner and on forms prescribed by IDED. Individual requests for funds shall be made in an amount equal to or greater than $500 per request, except for the final draw of funds.

211.10(3) *Record keeping and retention.* The recipient shall retain all financial records, supporting documents and all other records pertinent to the community attraction and tourism development activity for three years after contract closeout. Representatives of IDED shall have access to all records belonging to or in use by recipients pertaining to community attraction and tourism development funds.

211.10(4) *Performance reports and reviews.* Recipients shall submit performance reports to IDED in the manner and on forms prescribed by IDED. Reports shall assess the use of funds and progress of activities. IDED may perform any reviews or field inspections necessary to ensure recipient performance.

211.10(5) *Amendments to contracts.* Any substantive change to a contract shall be considered an amendment. Changes include time extensions, budget revisions and significant alteration of the funded project that change the scope, location, objectives or scale of the approved project. Amendments must be requested in writing by the recipient and are not considered valid until approved by the vision Iowa board and confirmed in writing by IDED following the procedure specified in the contract between the recipient and IDED.

211.10(6) *Contract closeout.* Upon contract expiration, IDED shall initiate contract closeout procedures.

211.10(7) *Compliance with state and local laws and regulations.* Recipients shall comply with these rules, with any provisions of the Iowa Code governing activities performed under this program, and with applicable local regulations.

211.10(8) *Remedies for noncompliance.* At any time before contract closeout, the board may, for cause, find that a recipient is not in compliance with the requirements of this program. At the board's discretion, remedies for noncompliance may include penalties up to and including the return of program funds to the board. Reasons for a finding of noncompliance include but are not limited to the recipient's use of funds for activities not described in the contract, the recipient's failure to complete funded projects in a timely manner, the recipient's failure to comply with applicable state or local rules or regulations, or the lack of a continuing capacity of the recipient to carry out the approved project in a timely manner.

261—211.11 to **211.49** Reserved.

DIVISION II
COMMUNITY ATTRACTION AND TOURISM (CAT) FUND

261—211.50(15F) Applicability. The rules in this division are in addition to the general provisions of division I and only apply to the CAT fund.

261—211.51(15F) Allocation of funds.

211.51(1) Except as otherwise noted in this rule, all CAT funds shall be awarded for projects as specified in rule 211.3(15F).

211.51(2) One-third of the moneys shall be allocated to provide assistance to cities and counties which meet the following criteria:

a. A city which has a population of 10,000 or less according to the most recently published census.

b. A county which has a population that ranks in the bottom 33 counties according to the most recently published census.

211.51(3) Two-thirds of the moneys shall be allocated to provide assistance to any city and county in the state, which may include a city or county included under subrule 211.51(2).

211.51(4) If two or more cities or counties submit a joint project application for financial assistance from the CAT fund, all joint applicants must meet the criteria of subrule 211.51(2) in order to receive any moneys allocated under that subrule.

211.51(5) If any portion of the allocated moneys under subrule 211.51(2) has not been awarded by April 1 of the fiscal year for which the allocation is made, the portion which has not been awarded may be utilized by the vision Iowa board to provide financial assistance from the CAT fund to any city or county in the state.

261—211.52 to **211.100** Reserved.

DIVISION III
RIVER ENHANCEMENT COMMUNITY ATTRACTION AND TOURISM (RECAT) FUND

261—211.101(15F) Applicability. The rules in this division are in addition to the general provisions of division I and only apply to the RECAT fund.

261—211.102(15F) Allocation of funds.

211.102(1) Except as otherwise noted in this rule, all river enhancement community attraction and tourism funds shall be awarded for projects as specified in rule 211.3(15F).

211.102(2) Application contents. Applications for river enhancement projects shall include, as an exhibit to the standard CATD program application, information about the project's connection and interaction with a river, lake or river corridor.

211.102(3) Application review criteria. In addition to the application review criteria in rule 211.8(15F), river enhancement projects shall be reviewed using the following additional criteria:

a. Connection and interaction with a river, lake or river corridor. The extent that the project relates to, connects with, and enhances a body of water. An explanation of the relevance of the body of water with regard to the project overall (0-5 points).

b. A description of the green sustainable design and construction practices, including storm water best management practices, such as permeable pavement, bioretention cells, and bioswales that will be utilized on the project to protect from pollution the body of water enhanced by the project (0-5 points).

DIVISION IV
CAT AND RECAT WAIVERS

261—211.103(15F) Procedures for waiver of local or private matching moneys.

211.103(1) *General information.* Within the parameters of this rule, the board may, for good cause shown, waive any requirements for local or private matching moneys for CAT and RECAT beginning July 1, 2009, and ending June 30, 2010. 2009 Iowa Acts, Senate File 336, allows a community to apply to the board for a project-specific waiver of any local or private matching moneys required of the applicant by the board pursuant to Iowa Code section 15F.202. This rule also establishes a process for applicants to apply for a waiver of requirements for local or private matching moneys that the department has established by rule for the CATD programs.

211.103(2) *Definition of "good cause."* For purposes of this rule, "good cause" includes only a proposed project that is located or plans to locate in an area declared a disaster area by the governor or by a federal official. To qualify for a waiver on the basis of a disaster area, an applicant shall meet all of the following criteria:

a. The project must be located within an area declared a disaster area by the governor or by a federal official.

b. The community must apply for the waiver within 24 months of the date of the disaster declaration.

c. The community must document why a waiver is necessary as a result of the natural disaster.

211.103(3) *Waiver procedures and board action.*

a. Waiver requests shall be submitted in writing to the department at the time the CAT or RECAT application is submitted. The request shall include documentation of good cause as defined in subrule 211.103(2).

b. Waiver requests will be reviewed as part of the application review process and acted upon by the board. If a request for a waiver is approved, the board will proceed with a final decision on the application.

c. The board may approve all or a portion of the request or deny or defer action on waiver requests. The board reserves the right to condition its approval upon terms and conditions the board deems appropriate for the specific project.

[**ARC 8034B**, IAB 8/12/09, effective 7/17/09; **ARC 8213B**, IAB 10/7/09, effective 11/11/09]

These rules are intended to implement Iowa Code chapter 15F as amended by 2009 Iowa Acts, House File 822, and 2009 Iowa Acts, Senate File 336.

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CHAPTER 212
VISION IOWA PROGRAM

261—212.1(15F) Purpose. The vision Iowa board is charged by the Iowa legislature and the governor with establishing, overseeing and providing approval of the administration of the vision Iowa program, the community attraction and tourism (CAT) program, and the river enhancement community attraction and tourism (RECAT) fund. The board will encourage and support creative projects that enhance the lives of Iowans throughout the state, will encourage and support visionary thinking in cities and towns and counties of all sizes and in all areas, and will leverage state moneys as heavily as possible to attract funds for these projects from other sources. The vision Iowa board will support projects that build on Iowa's unique assets and values and expand the recreational, cultural, educational, and entertainment opportunities in the state.

261—212.2(15F) Definitions. When used in this chapter, the following definitions apply unless the context otherwise requires:

"Attraction" means a permanently located recreational, cultural, educational or entertainment activity that is available to the general public.

"Board" means the vision Iowa board as established in Iowa Code section 15F.102.

"Department" or *"IDED"* means the Iowa department of economic development.

"Economic development organization" means an entity organized to position a community to take advantage of economic development opportunities and strengthen a community's competitiveness as a place to work and live.

"Float loan" or *"interim financing"* means a short-term loan (maximum of 30 months) from obligated but unexpended funds.

"Fund" means the vision Iowa fund established pursuant to Iowa Code section 12.72.

"Loan" means an award of assistance with the requirement that the award be repaid with term, interest rate, and other conditions specified as part of the award. A deferred loan is one for which the payment of principal, interest, or both, is not required for some specified period. A forgivable loan is one for which repayment is eliminated in part or entirely if the borrower satisfies specified conditions.

"Local support" means endorsement by local individuals and organizations that have a substantial interest in a project.

"Major tourism facility" means a project of at least $20 million in scope that has substantial regional or statewide economic impact.

"Nonfinancial support" may include, but is not limited to, the value of labor and services which may not total more than 25 percent of a local match. Real property and personal property donated for purposes of the project are considered financial support at their fair market value.

"Political subdivision" means a city or county, or an entity established pursuant to Iowa Code chapter 28E.

"Private organization" means a corporation, partnership, or other organization that is operated for profit.

"Program" means the vision Iowa program established in Iowa Code section 15F.302.

"Public organization" means a not-for-profit economic development organization or other not-for-profit organization including those that sponsor or support community or tourism attractions and activities.

"Recipient" means the entity under contract with the vision Iowa board to receive vision Iowa funds and undertake the funded project.

"School district" means a school corporation organized under Iowa Code chapter 274.

"Subrecipient" means a private organization or other entity operating under an agreement or contract with a recipient to carry out a funded vision Iowa project.

"Vertical infrastructure" means land acquisition and construction, major renovation and major repairs of buildings, all appurtenant structures, utilities, site development, and recreational trails.

"Vertical infrastructure" does not include routine, recurring maintenance or operational expenses or leasing of a building, appurtenant structure, or utility without a lease-purchase agreement.

"Vision Iowa program review committee" means the committee established by Iowa Code section 15F.304(2) and identified as the following members of the vision Iowa board: four members of the general public, the mayor of a city with a population of 20,000 or more, the director of the Iowa department of economic development or designee, the treasurer of state or designee, and the auditor of state or designee. The chair and vice chair of the vision Iowa board may serve as ex officio members of any subcommittee of the board.

261—212.3(15F) Allocation of funds. Except as otherwise noted in Iowa Code chapter 15F, all vision Iowa funds shall be awarded for projects as specified in Iowa Code section 12.72.

261—212.4(15F) Eligible applicants.

212.4(1) Eligible applicants for vision Iowa funds include political subdivisions, public organizations, and school districts in cooperation with a city or county.

212.4(2) Any eligible applicant may apply directly or on behalf of a subrecipient.

212.4(3) Any eligible applicant may apply individually or jointly with another eligible applicant or other eligible applicants.

261—212.5(15F) Eligible projects and forms of assistance.

212.5(1) Eligible projects include those which are related to a major tourism facility which would position a community to take advantage of economic development opportunities in tourism and strengthen a community's competitiveness as a place to work and live. Eligible projects include building construction or reconstruction, rehabilitation, conversion, acquisition, demolition for the purpose of clearing lots for development, site improvement, equipment purchases, and other projects as may be deemed appropriate by the vision Iowa board.

212.5(2) Eligible forms of assistance include grants, interest-bearing loans, non-interest-bearing loans, interim financing, interest subsidies, deferred payment loans, forgivable loans, loan guarantees, float loans, or other forms of assistance as may be approved by the vision Iowa board.

212.5(3) Financial assistance for an eligible project may be provided in the form of a multiyear award to be paid in increments over a period of years, subject to the availability of funds.

212.5(4) IDED, with the approval of the chair and vice chair of the vision Iowa board, reserves the right to make technical corrections which are within the intent of the terms of a board-approved award.

212.5(5) Applicants must report other sources of funding or pending funding, public or private, for the project including the local recreation infrastructure grants program administered by the department of natural resources and the Iowa historic site preservation program administered by the department of cultural affairs. IDED may consult with appropriate staff from the department of cultural affairs and the department of natural resources to coordinate the review of applications under the programs.

261—212.6(15F) Ineligible projects. The board shall not approve an application for assistance under this program under any of the following circumstances:

1. To refinance an existing loan.
2. To fund a project that has previously received financial assistance under the vision Iowa program, unless the applicant demonstrates that the assistance would be used for a significant expansion of the project.
3. A project in which vision Iowa funding would constitute more than 50 percent of the total project costs. A portion of the resources provided by the applicant for project costs may be in the form of nonfinancial support.

261—212.7(15F) Threshold application requirements. To be considered for funding under the vision Iowa program, an application shall meet the following threshold requirements:

212.7(1) There must be demonstrated local support for the proposed project.

212.7(2) A need for vision Iowa program funds must exist after other financial resources have been identified for the proposed project.

212.7(3) The proposed project must primarily involve the creation or renovation of vertical infrastructure with demonstrated substantial regional or statewide economic impact.

212.7(4) The project must provide and pay at least 50 percent of the cost of a standard medical insurance plan for all full-time employees working at the project after the completion of the project for which financial assistance was received.

261—212.8(15F) Application review criteria. Applications meeting the threshold requirements of rule 212.7(15F) will be reviewed by IDED and passed on to the vision Iowa board. IDED staff shall provide a review, analysis and evaluation of applications to the vision Iowa program review committee of the vision Iowa board. All eligible applications will be reviewed by the board. The vision Iowa program review committee shall evaluate and rank applications based on the following criteria:

212.8(1) *Feasibility (0-25 points).* The feasibility of the existing or proposed facility to remain a viable enterprise. The applicant's comprehensive business plan and operational plan will be reviewed as part of this criterion. Rating factors for this criterion include, but are not limited to, the following: analysis of the comprehensive business plan which shall include a description of initial capitalization, sources of funding, project budget, detailed financial projections (including revenues and expenses) for five years, marketing analysis, marketing plan, and management team; and analysis of the operational plan which shall provide detailed information about how the proposed attraction will be operated and maintained including a time line for implementing the project. In order to be eligible for funding, proposals must score at least 15 points on this rating factor.

212.8(2) *Economic impact (0-25 points).* Number of jobs created and other measures of economic impact including long-term tax generation, but excluding the use of economic multipliers. The evaluation of the economic impact of a proposed project shall also include a review of the wages and benefits (including health benefits) associated with the jobs to be created, safety, and other attributes of the project that would improve the quality of employment in the community. Additionally, the economic impact of a project shall be reviewed based on the degree to which the project enhances the quality of life in a region, increases diversity of projects available, contributes to the community's efforts to retain and attract a skilled workforce, and creatively uses existing resources in the community. In order to be eligible for funding, proposals must score at least 15 points on this rating factor.

212.8(3) *Leveraged activity (0-10 points).* The degree to which the facility or project will stimulate the development of other recreational and cultural attractions or tourism opportunities and enhance economic growth and job opportunities. The degree to which the facility or project is strategically aligned with other existing regional or statewide cultural, recreational, entertainment, or educational activities in the community. In order to be eligible for funding, proposals must score at least 6 points on this rating factor.

212.8(4) *Matching funds (0-25 points).* The proportion of local match to be contributed to the project, and the extent of public and private participation. Moneys expended toward implementation of the project after May 9, 2000, may be considered to be a local match. Moneys raised at any time but not yet spent may also be considered to be a local match.

212.8(5) *Planning principles (0-10 points).* The extent to which the project has taken the following planning principles into consideration:

a. Efficient and effective use of land resources and existing infrastructure by encouraging development in areas with existing infrastructure or capacity to avoid costly duplication of services and costly use of land.

b. Provision for a variety of transportation choices, including pedestrian traffic.

c. Maintenance of unique sense of place by respecting and enhancing local cultural, historical and natural environmental features.

d. Conservation of open space and farmland and preservation of critical environmental areas.

e. Promotion of the safety, livability, and revitalization of existing urban and rural communities.

212.8(6) *Technology and values (0-5 points)*. Whether the project has taken the following into consideration:

a. Extent to which the project encourages technologies that allow regional or statewide access for long-distance learning and Internet access to facility resources.

b. Extent to which the project enhances education, wellness (health), and breadth of the project to attract Iowans of all ages.

c. Extent to which facilities are nonsmoking.

d. Extent to which facilities enhance or promote fine arts. For purposes of this paragraph, "fine arts" means "fine arts" as defined in Iowa Code section 304A.8(2) and also includes landscaping.

A minimum score of 65 points is required for a project to be recommended for funding.

261—212.9(15F) Application procedure.

212.9(1) Subject to availability of funds, applications will be reviewed by IDED staff on an ongoing basis and reviewed at least quarterly by the board. Applications will be reviewed by staff for completeness and eligibility. If additional information is required, the applicant shall be provided with notice, in writing, to submit additional information. A review, analysis and evaluation from the IDED staff will be submitted to the vision Iowa program review committee of the board who will then make a final recommendation to the complete board for final approval, denial or deferral. The vision Iowa board has the option to fund a component of a proposed project if the entire project does not qualify for funding.

212.9(2) Application forms for vision Iowa are available upon request from IDED, 200 East Grand Avenue, Des Moines, Iowa 50309.

212.9(3) IDED may provide technical assistance as necessary to applicants. IDED staff may conduct on-site evaluations of proposed projects.

212.9(4) Applications shall include, at a minimum, the information detailed in rule 212.8(15F).

261—212.10(15F) Administration of awards.

212.10(1) A contract shall be executed between the recipient and the vision Iowa board. These rules and applicable state laws and regulations shall be part of the contract. The board reserves the right to negotiate wage rates as well as other terms and conditions of the contract.

212.10(2) The recipient must execute and return the contract to the vision Iowa board within 45 days of transmittal of the final contract from the vision Iowa board. Failure to do so may be cause for the vision Iowa board to terminate the award.

212.10(3) Certain projects may require that permits or clearances be obtained from other state or local agencies before the activity may proceed. Awards may be conditioned upon the timely completion of these requirements.

212.10(4) Awards may be conditioned upon commitment of other sources of funds necessary to complete the project.

212.10(5) Amendments to contracts. Any substantive change to a contract shall be considered an amendment. Changes include time extensions, budget revisions and significant alteration of the funded projects that change the scope, location, objectives or scale of the approved project. Amendments must be requested in writing by the recipient and are not considered valid until approved by the vision Iowa board and confirmed in writing by IDED following the procedure specified in the contract between the recipient and the vision Iowa board.

These rules are intended to implement Iowa Code chapter 15F as amended by 2008 Iowa Acts, Senate File 2430 and House File 2450.

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CHAPTER 213
VISION IOWA BOARD: UNIFORM WAIVER AND VARIANCE RULES

261—213.1(17A,ExecOrd11) Applicability. This chapter outlines a uniform process for the granting of waivers or variances from rules adopted by the board. The intent of this chapter is to allow persons to seek exceptions to the application of rules issued by the board.

213.1(1) *Definitions.*

"Board" or *"vision Iowa board"* means the vision Iowa board established by 2000 Iowa Acts, chapter 1174.

"Person" means an individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any legal entity.

"Waiver or variance" means an agency action which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person.

213.1(2) *Authority.*

a. A waiver or variance from rules adopted by the board may be granted in accordance with this chapter if (1) the board has authority to promulgate the rule from which waiver or variance is requested or has final decision-making authority over a contested case in which a waiver or variance is requested; and (2) no statute or rule otherwise controls the grant of a waiver or variance from the rule from which waiver or variance is requested.

b. No waiver or variance may be granted from a requirement which is imposed by statute. Any waiver or variance must be consistent with statute.

261—213.2(17A,ExecOrd11) Board discretion. The decision on whether the circumstances justify the granting of a waiver or variance shall be made at the discretion of the board upon consideration of all relevant factors.

213.2(1) *Criteria for waiver or variance.* The board may, in response to a completed petition or on its own motion, grant a waiver or variance from a rule, in whole or in part, as applied to the circumstances of a specified situation if the board finds each of the following:

a. Application of the rule to the person at issue would result in hardship or injustice to that person; and

b. Waiver or variance on the basis of the particular circumstances relative to that specified person would be consistent with the public interest; and

c. Waiver or variance in the specific case would not prejudice the substantial legal rights of any person; and

d. Where applicable, substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.

In determining whether waiver or variance should be granted, the board shall consider whether the underlying public interest policies and legislative intent of the rules are substantially equivalent to full compliance with the rule. When the rule from which a waiver or variance is sought establishes administrative deadlines, the board shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all licensees, grantees and constituents.

213.2(2) *Special waiver or variance rules not precluded.* These uniform waiver and variance rules shall not preclude the board from granting waivers or variances in other contexts or on the basis of other standards if a statute or other board rule authorizes the board to do so, and the board deems it appropriate to do so.

261—213.3(17A,ExecOrd11) Requester's responsibilities in filing a waiver or variance petition.

213.3(1) *Application.* All petitions for waiver or variance must be submitted in writing to the Vision Iowa Board, 200 East Grand Avenue, Des Moines, Iowa 50309-1819. If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

213.3(2) *Content of petition.* A petition for waiver or variance shall include the following information where applicable and known to the requester (for an example of a petition for waiver or variance, see Exhibit A at the end of this chapter):

a. A description and citation of the specific rule from which a waiver or variance is requested.

b. The specific waiver or variance requested, including the precise scope and operative period that the waiver or variance will extend.

c. The relevant facts that the petitioner believes would justify a waiver or variance.

d. A signed statement from the petitioner attesting to the accuracy of the facts provided in the petition, and a statement of reasons that the petitioner believes will justify a waiver or variance.

e. A history of any prior contacts between the board and the petitioner relating to the regulated activity, license, grant, loan or other financial assistance affected by the proposed waiver or variance, including a description of each affected license, grant, loan or other financial assistance held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity, license, grant or loan within the past five years.

f. Any information known to the requester regarding the board's treatment of similar cases.

g. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question, or which might be affected by the grant of a waiver or variance.

h. The name, address, and telephone number of any person or entity that would be adversely affected by the grant of a petition.

i. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver or variance.

j. Signed releases of information authorizing persons with knowledge regarding the request to furnish the board with information relevant to the waiver or variance.

213.3(3) *Burden of persuasion.* When a petition is filed for a waiver or variance from a board rule, the burden of persuasion shall be on the petitioner to demonstrate by clear and convincing evidence that the board should exercise its discretion to grant the petitioner a waiver or variance.

261—213.4(17A,ExecOrd11) Notice. The board shall acknowledge a petition upon receipt. The board shall ensure that notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law within 30 days of the receipt of the petition. In addition, the board may give notice to other persons. To accomplish this notice provision, the board may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law, and provide a written statement to the board attesting that notice has been provided.

261—213.5(17A,ExecOrd11) Board responsibilities regarding petition for waiver or variance.

213.5(1) *Additional information.* Prior to issuing an order granting or denying a waiver or variance, the board may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the board may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the board's designee, a committee of the board, or a quorum of the board.

213.5(2) *Hearing procedures.* The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply in three situations: (a) to any petition for a waiver or variance of rule filed within a contested case; (b) when the board so provides by rule or order; or (c) when a statute so requires.

213.5(3) *Ruling.* An order granting or denying a waiver or variance shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and operative period of the waiver if one is issued.

213.5(4) *Conditions.* The board may condition the grant of the waiver or variance on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means.

213.5(5) *Time for ruling.* The board shall grant or deny a petition for a waiver or variance as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the board shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

213.5(6) *When deemed denied.* Failure of the board to grant or deny a petition within the required time period shall be deemed a denial of that petition by the board.

213.5(7) *Service of order.* Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains, and to any other person entitled to such notice by any provision of law.

261—213.6(17A,ExecOrd11) Public availability. Subject to the provisions of Iowa Code section 17A.3(1)*"e,"* the board shall maintain a record of all orders granting or denying waivers and variances under this chapter. All final rulings in response to requests for waivers or variances shall be indexed and available to members of the public at the Vision Iowa Board, 200 East Grand Avenue, Des Moines, Iowa 50309-1819.

261—213.7(17A,ExecOrd11) Voiding or cancellation. A waiver or variance is void if the material facts upon which the request is based are not true or if material facts have been withheld. The board may at any time cancel a waiver or variance upon appropriate notice if the board finds that the facts as stated in the request are not true, material facts have been withheld, the alternative means of compliance provided in the waiver or variance have failed to achieve the objectives of the statute, or the requester has failed to comply with the conditions of the order.

261—213.8(17A,ExecOrd11) Violations. Violation of conditions in the waiver or variance approval is the equivalent of violation of the particular rule for which the waiver or variance is granted and is subject to the same remedies or penalties.

261—213.9(17A,ExecOrd11) Defense. After the board issues an order granting a waiver or variance, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

261—213.10(17A,ExecOrd11) Appeals. Granting or denying a request for waiver or variance is final agency action under Iowa Code chapter 17A. An appeal to district court shall be taken within 30 days of the issuance of the ruling in response to the request unless a contrary time is provided by rule or statute.

Exhibit A

Sample Petition (Request) for Waiver/Variance

BEFORE THE VISION IOWA BOARD

Petition by (insert name of petitioner) for the waiver of (insert rule citation) relating to (insert the subject matter).	}	PETITION FOR WAIVER

Requests for waiver or variance from a board rule shall include the following information in the petition for waiver or variance where applicable and known:

a. Provide the petitioner's (person asking for a waiver or variance) name, address, and telephone number.

b. Describe and cite the specific rule from which a waiver or variance is requested.

c. Describe the specific waiver or variance requested; include the exact scope and time period that the waiver or variance will extend.

d. Explain the important facts that the petitioner believes justify a waiver or variance. Include in your answer why (1) applying the rule will result in hardship or injustice to the petitioner; and (2) granting a waiver or variance to the petitioner is consistent with the public interest; and (3) granting the waiver or variance will not prejudice the substantial legal rights of any person; and (4) where applicable, how substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.

e. Provide history of prior contacts between the board and petitioner relating to the regulated activity, license, grant, loan or other financial assistance that would be affected by the waiver or variance; include a description of each affected license, grant, loan or other financial assistance held by the petitioner, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity, license, grant or loan within the past five years.

f. Provide information known to the petitioner regarding the board's treatment of similar cases.

g. Provide the name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question, or which might be affected by the grant of a waiver or variance.

h. Provide the name, address, and telephone number of any person or entity that would be adversely affected or disadvantaged by the grant of the waiver or variance.

i. Provide the name, address, and telephone number of any person with knowledge of the relevant or important facts relating to the requested waiver or variance.

j. Provide signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver or variance.

I hereby attest to the accuracy and truthfulness of the above information.

_____ _____

Petitioner's signature Date

Petitioner should note the following when requesting or petitioning for a waiver or variance:

1. The petitioner has the burden of proving to the board, by clear and convincing evidence, the following: (a) application of the rule to the petitioner would result in hardship or injustice to the petitioner; and (b) waiver or variance on the basis of the particular circumstances relative to the petitioner would be consistent with the public interest; and (c) waiver or variance in the specific case would not prejudice the substantial legal rights of any person; and (d) where applicable, how substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.

2. The board may request additional information from or request an informal meeting with the petitioner prior to issuing a ruling granting or denying a request for waiver or variance.

3. All petitions for waiver or variance must be submitted in writing to the Vision Iowa Board, 200 East Grand Avenue, Des Moines, Iowa 50309-1819. If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

These rules are intended to implement Executive Order Number 11, Iowa Code chapter 17A, and 2000 Iowa Acts, chapter 1174.

[Filed 10/23/00, Notice 9/6/00—published 11/15/00, effective 12/20/00]

CHAPTERS 214 to 299
Reserved

PART XI
RENEWABLE FUEL INFRASTRUCTURE BOARD

CHAPTERS 300 to 310
Reserved

CHAPTER 311
RENEWABLE FUEL INFRASTRUCTURE BOARD—ORGANIZATION

261—311.1(15G) Definitions. As used in these rules, unless the context otherwise requires, the definitions in Iowa Code section 15G.201 as amended by 2008 Iowa Acts, House File 2689, shall apply to this chapter and to 261—Chapters 312, 313, and 314. The following definitions shall also apply:

"Agreement" means the cost-share agreement executed by the department after approval of the grant by the board.

"Applicant" means a person, as defined in this rule, who owns or operates a site.

"Biodiesel," for the purpose of this rule, must be at least B99.

"Biodiesel blended fuel," as defined in Iowa Code section 214A.1, means a blend of biodiesel with petroleum-based diesel fuel which meets the standards, including separately the standard for its biodiesel component. For the purpose of this rule, biodiesel blended fuel must contain at least 2 percent biodiesel at a terminal site and at least 1 percent at a retail site.

"Biofuel" means ethanol or biodiesel as defined in Iowa Code section 214A.1.

"Blender pump," for the purpose of this rule, means blending biofuel. When blending ethanol, the pump must dispense E-85 gasoline at all times.

"Board" means the renewable fuel infrastructure board established by Iowa Code section 15G.202.

"Checklist" or *"IDNR checklist"* means the most recent version of the Underground Storage Tank System Checklist for Equipment Compatibility with E-Blend Fuels (greater than 10 percent by volume) issued by the Iowa department of natural resources.

"Grant" or *"cost-share grant"* means moneys awarded by the board on a cost-share basis from the renewable fuel infrastructure fund created by Iowa Code section 15G.202 to help pay for a project.

"Person" means an individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity as defined in Iowa Code section 4.1(20).

"Project" means the installation of equipment for motor fuel storage, dispensing and distribution of E-85 gasoline, biodiesel or biodiesel blend.

"Rack" means a metered motor fuel, special fuel or renewable fuel loading facility with the capacity to pump fuel at a rate of at least 100 gallons per minute (100 gpm); whether from an overhead, lateral, or underneath position, into a transportation vessel for further delivery.

"Renewable fuel," as defined in Iowa Code section 214A.1, means a combustible liquid derived from grain starch, oilseed, animal fat, or other biomass; or produced from a biogas source, including any nonfossilized decaying organic matter which is capable of powering machinery, including but not limited to an engine or power plant. Renewable fuel includes but is not limited to biofuel, ethanol blended gasoline, or biodiesel blended fuel meeting the standards provided in Iowa Code section 214A.2 as amended by 2008 Iowa Acts, House File 2689.

"Retail" means offered for sale to the public for final consumption.

"Retail motor fuel site" means a site at which motor fuel is offered for sale to the public for final consumption. A retail motor fuel site may include a tank vehicle or transport.

"Tank vehicle" means a motor vehicle designed to transport liquid or gaseous materials within a tank having a rated capacity of 1,001 or more gallons either permanently or temporarily attached to the vehicle or chassis.

261—311.2(15G) Renewable fuel infrastructure board.

311.2(1) *Composition.*

a. Board structure. The board shall consist of 11 voting members appointed by the governor. The composition of the board shall be as described in Iowa Code section 15G.202. Six voting members shall constitute a quorum. An affirmative vote of a majority of voting members, excluding any member who has a conflict of interest, is necessary for the board to take substantive action.

b. *Terms.* Board members shall be appointed for five-year terms that begin and end as provided by Iowa Code section 69.19. However, the initial members shall be appointed to terms of less than five years to ensure that members serve staggered terms.

c. *Department administrative functions.* As specified in Iowa Code section 15G.202, the Iowa department of economic development shall perform administrative functions necessary for the management of the infrastructure board, and the infrastructure programs as provided in 261—Chapters 312 and 313. The department shall provide the infrastructure board with the necessary facilities, supplies, and clerical support. The department will also market the renewable fuel infrastructure program throughout the state.

311.2(2) *Meetings.*

a. The board will generally meet at the department's offices located at 200 East Grand Avenue, Des Moines, Iowa. By notice of regularly published meeting agendas, the board may hold regular or special meetings at other locations within the state. Meeting agendas will be available on the department's Web site at www.iowalifechanging.com.

b. The board shall annually elect a chairperson, on a rotating basis, from among its members.

c. Any interested party may attend and observe board and committee meetings except for such portion as may be closed pursuant to Iowa Code Supplement section 21.5.

d. Observers may use cameras or recording devices during the course of a meeting so long as the use of such devices does not materially hinder the proceedings. The chairperson may order that the use of these devices be discontinued if they cause interference and may exclude any person who fails to comply with that order.

e. Open session and closed session proceedings will be electronically recorded. Minutes of open meetings will be available for viewing at the department's offices.

311.2(3) *Duties.* The board shall perform the duties as outlined in Iowa Code section 15G.202 and other functions as necessary and proper to carry out its responsibilities.

311.2(4) *Board committees.* Reserved.

These rules are intended to implement Iowa Code section 15G.202.

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CHAPTER 312
RENEWABLE FUEL INFRASTRUCTURE PROGRAM FOR RETAIL MOTOR FUEL SITES

261—312.1(15G) Purpose. The purpose of the renewable fuel infrastructure program is to install, replace and convert infrastructure to store, blend, and dispense renewable fuels at a retail fuel site.

261—312.2(15G) Eligible applicants. To be eligible to receive a retail motor fuel site infrastructure grant, an applicant shall:

312.2(1) Be an owner or operator of a retail motor fuel site.

312.2(2) Submit an application to the department in form and content acceptable to the department and the board.

312.2(3) Meet the following eligibility requirements established by the board:

a. The fuel storage and dispensing infrastructure may include either an aboveground or belowground storage tank and ancillary equipment.

b. The fuel storage tank may be on a tank vehicle or transport if regularly parked overnight in Iowa.

c. The storage tank must, however, be used exclusively for retail delivery to the final consumer.

d. If a tank has multiple compartments, at least one of the compartments must be used exclusively for the storage and dispensing of E-85 gasoline, biodiesel or biodiesel blended fuel at retail. The compartment used exclusively for the storage of E-85 gasoline, biodiesel or biodiesel blended fuel is considered the tank for purposes of this program.

e. The tank and ancillary equipment must be approved for E-85 gasoline, biodiesel or biodiesel blended fuel use by either the Iowa department of natural resources or the state fire marshal, as evidenced by the most recent IDNR checklist.

f. The dispenser must be described by type and model in a written statement by the manufacturer of the dispenser. The manufacturer's written statement must be signed by a responsible official on behalf of the manufacturer and must be provided either to the applicant or to the Iowa department of natural resources or the state fire marshal. If provided to the applicant, the statement must be kept on file on the premises of the applicant for the five-year term of the agreement. The written statement must state that:

(1) The dispenser is, in the opinion of the manufacturer, not incompatible with E-85 gasoline; and

(2) The manufacturer has initiated the process of applying to an independent testing laboratory for listing of the equipment used in dispensing E-85 gasoline.

g. Conversion kits. If a UL-listed E-85 dispenser conversion kit is used, it must be approved by the state fire marshal to be eligible for the E-85 grant.

These rules are intended to implement Iowa Code Supplement section 15G.203 as amended by 2008 Iowa Acts, House File 2689.

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CHAPTER 313
RENEWABLE FUEL INFRASTRUCTURE PROGRAM FOR BIODIESEL TERMINAL GRANTS

261—313.1(15G) Purpose. The purpose of the renewable fuel infrastructure program for biodiesel terminal grants is to provide grants to a terminal facility which stores, blends, or distributes biodiesel fuel, including B2 through B98 and B99/B100, to dealers and retailers.

261—313.2(15G) Eligible applicants. To be eligible to receive a biodiesel terminal grant, an applicant shall:

313.2(1) Be an owner or operator of a biodiesel terminal.

313.2(2) Submit an application to the department in form and content acceptable to the department and the board.

313.2(3) Meet the following eligibility requirements established by the board:

a. The terminal must not be a retail motor fuel site.

b. The terminal must not be a facility at which fuel or blend stocks are used in the manufacture of products other than motor fuel and from which no fuel is removed.

c. The terminal must have at least one storage tank of at least a 10,000-gallon capacity, used exclusively for or dedicated exclusively to the storage of biodiesel fuel. The terminal may also have storage for one or more biodiesel blends. The terminal must have facilities for the dispensing of either biodiesel, biodiesel blends, or both.

d. The dispensing of motor fuel at the terminal must be done at a rack in excess of 100 gpm pumping capacity.

These rules are intended to implement Iowa Code Supplement section 15G.204 as amended by 2008 Iowa Acts, House File 2689.

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CHAPTER 314
RENEWABLE FUEL INFRASTRUCTURE PROGRAM ADMINISTRATION

261—314.1(15G) Allocation of awards by congressional district. The board shall use the boundaries of the state's five congressional districts, and prorate and equally distribute the amount available each fiscal year for each district. The board shall have at its discretion a prorated amount (up to $500,000) to distribute to any congressional district. On April 1 of each year, if funds allocated to a district have not been committed, the unobligated balance shall revert to the reserve fund and be available for other projects approved by the board.

261—314.2(15G) Form of award available; award amount.

314.2(1) *Form of award.* Eligible applicants may apply for financial incentives on a cost-share basis. Funding shall be available in the form of a grant.

314.2(2) *Prospective grants for projects not commenced.* A grant may be awarded for an eligible project not yet commenced.

314.2(3) *Amount of award.*

a. Retail award site.

(1) Three-year cost-share agreement for a retail site. The maximum award amount is 50 percent of the actual cost of making the improvements or $30,000, whichever is less.

(2) Five-year cost-share agreement for a retail site. The maximum award amount is 70 percent of the actual cost of making the improvements or $50,000, whichever is less.

(3) Supplemental financial incentives. A person may be granted supplemental financial incentives as an amendment to the cost-share agreement.

1. Supplemental award for Underwriter Laboratories upgrade. The purpose of an award for Underwriter Laboratories (UL) is to upgrade to UL-certified dispensers, blender pumps and dispensing infrastructure, UL-approved conversion kits and approved and insurable installation project(s). The maximum amount available as a supplemental financial incentive is 75 percent of the actual cost of making the improvements or $30,000, whichever is less. The dispenser can be listed by an independent certified testing laboratory or Underwriter Laboratories (UL) as compatible with ethanol blended gasoline classified as E-9 or higher.

2. Supplemental award for additional tank and associated infrastructure. A person may request a supplemental financial incentive for tank and associated infrastructure, as an amendment to the subsequent cost-share agreement(s). The purpose of an award for an additional tank(s) and associated infrastructure is to accelerate the installation of an additional tank(s) and associated infrastructure at an additional retail motor fuel site after an initial grant award is provided. To be eligible, the initial grant award must be awarded to the person on or after May 12, 2008. The maximum award amount available as a supplemental financial incentive is $6,000 per supplemental site. The person is limited to four supplemental financial incentive awards within the 12-month period following the completion of the initial retail motor fuel site project.

b. Terminal facility award for biodiesel B2 through B98 and B99/B100 for year-round distribution.

(1) Biodiesel fuel B2 through B98.

1. Duration. The duration of the cost-share agreement shall be five years.

2. Maximum award. The maximum award amount is 50 percent of the actual cost of making the improvements or $50,000, whichever is less.

(2) Biodiesel fuel B99/B100 for year-round distribution.

1. Duration. The duration of a cost-share agreement is five years.

2. Maximum award amount. The maximum award amount is 50 percent of the actual cost of making the improvements or $100,000, whichever is less.

3. Application acceptance begins January 1, 2009. Grant applications for B99/B100 projects will be accepted beginning January 1, 2009.

4. Lifetime cap amount. The maximum or lifetime cap for B99/B100 biodiesel terminal grants is $800,000 per person.

c. *Tank vehicle.*

(1) December 31, 2008, deadline. A tank vehicle application must be postmarked no later than December 31, 2008, to be eligible.

(2) Duration. The duration of the cost-share agreement is three years. The maximum award amount is 50 percent of the actual cost of making the improvements or $30,000, whichever is less.

(3) Limitation on number of grants. A person may receive one grant for one tank vehicle used to store and dispense E-85 gasoline and one grant for one tank vehicle used to store and dispense biodiesel or biodiesel blend. If a person received an award for a tank vehicle(s) prior to May 12, 2008, that person is eligible to apply for an additional tank vehicle.

314.2(4) *Time of payment.* The grant shall be paid only upon timely completion of the project and upon the board's receipt of records satisfying the board of the applicant's qualifying expenditures.

a. The applicant must deliver to the board prior to payment a certificate of completion on the board's form.

b. The certificate of completion must include the IDNR checklist completed and signed by an Iowa-certified installer showing review and approval of the completed project.

c. The certificate of completion must be accompanied by proof of financial responsibility as necessary to meet federal requirements for underground storage tank installation.

314.2(5) *Deadline for completion.* The project must be completed within eight months of the board's approval of the award. An extension may be granted by the board upon application showing demonstrable progress toward completion.

314.2(6) *Multiple awards for multiple fuel types.*

a. *At a single fuel site.* A person must file a separate application form for an ethanol infrastructure improvement grant and a biodiesel infrastructure improvement grant, respectively, at a single fuel site. The infrastructure board may approve multiple improvements to the same retail motor fuel site for the full amount available for ethanol infrastructure and biodiesel infrastructure. Applications for ethanol and biodiesel infrastructure improvements must be written in separate cost-share agreements.

b. *At multiple fuel sites.* A person may receive multiple grants as described in paragraph 314.2(6)*"a"* for more than one motor fuel site. When considering multiple grants for multiple fuel sites, the infrastructure board will make awards fairly and properly among applicants and geographic areas.

314.2(7) *Exhaustion of funds.* In the event funding is exhausted at the end of the fiscal year or June 30, 2012, the board shall approve remaining applications based on criteria implemented by the board.

261—314.3(15G) Application process.

314.3(1) *Application procedures.*

a. Applications may be submitted at any time, but will be reviewed on a first-come, first-served basis as established by the date stamp on the filed application.

b. Applications shall be submitted to: Renewable Fuel Infrastructure Board, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309. Application forms and instructions are available at this address.

314.3(2) *Contents of application.*

a. Statutory requirements. An application shall include the information required in Iowa Code Supplement section 15G.203.

b. Other information required by the board:

(1) Assurance that the project will be for the purpose of installing, replacing, or converting equipment for the storage or dispensing of the renewable fuel under consideration.

(2) Assurance that all equipment funded by the grant is designed and will be used exclusively to store or dispense E-85 gasoline, biodiesel or biodiesel blended fuel, respectively, for the period specified in the agreement.

(3) An IDNR checklist indicating the current status of the site.

(4) Assurance of compliance with any and all federal requirements for financial responsibility.

(5) Assurance of compliance with any and all state and federal laws and regulations.

(6) A cost proposal from an Iowa-licensed underground storage tank installer (for underground storage projects) and a qualified aboveground storage tank installer (for aboveground storage projects).

(7) Documentation of initiation of the process of applying to an independent laboratory and the manufacturer's written statement that the dispenser is "not incompatible."

261—314.4(15G) Review process.

314.4(1) The underground storage tank fund board has chosen not to review the applications. The renewable fuel infrastructure board will review an application for final approval or disapproval. The renewable fuel infrastructure board shall determine the amount of financial incentives to be awarded to an applicant.

314.4(2) Completed applications, including supporting documentation of meeting eligibility requirements, will be reviewed on a first-come, first-served basis. If the amount of funding requests exceeds available funds, the board shall evaluate applications based upon criteria that include, but are not limited to, the following:

a. Submittal of a completed application, including supporting documentation.

b. Location factors such as demographics, proximity to major transportation corridors, and proximity to existing renewable fuel retail and storage facilities.

c. Projected annual sales volume.

d. Other sources of funding.

e. Previous grants awarded.

261—314.5(15G) Contract administration.

314.5(1) *Notice of award.* The department shall notify approved applicants in writing of the board's award of grants, including any conditions and terms of the approval.

314.5(2) *Contract required.* The board shall direct the department to prepare a cost-share agreement which shall include terms and conditions of the grant established by the board. The agreement will:

a. Describe the project in sufficient detail to demonstrate the eligibility of the project.

b. State the total cost of the project expressed in a project budget included in sufficient detail to meet the requirements of the infrastructure board.

c. State the project completion deadline.

d. State the project completion requirements which are preconditions for payment of the grant by the board.

e. Recite the penalty for the storage or dispensing of motor fuel other than the type of renewable fuel for which the grant was awarded.

(1) Awards for projects under construction or not yet started. The three- or five-year obligation to continue dispensing renewable fuel begins on the date the project is completed.

(2) Awards for projects already completed. The three- or five-year obligation to continue dispensing renewable fuel begins on the date the department issues the first disbursement of grant funds, not on the date of project completion.

f. Be amended to include a supplemental financial incentive, if a supplemental financial incentive is awarded by the board.

314.5(3) *Repayment penalty for nonexclusive renewable fuel use.* In the absence of a waiver from the board, the department may impose a 25 percent penalty due to a grant recipient's use of infrastructure equipment for which a grant was awarded, for the storage or dispensing, within the time frame stated in the agreement, of motor fuel other than the type of renewable fuel for which the grant was awarded.

314.5(4) *Repayment or board waiver.* A grant recipient may not use the infrastructure to store and dispense motor fuel other than the type approved by the board, unless one of the following applies: (1) the grantee is granted a waiver by the board, or (2) the grantee pays back the moneys awarded including a 25 percent penalty.

314.5(5) *Waiver criteria.* The board may waive repayment of grant funds plus the 25 percent penalty. A grant recipient seeking a waiver during the time period in which a cost-share agreement is in effect

shall submit a written waiver request to the board. The board will consider waiver requests under the following circumstances:

a. Permanent waiver.

(1) Waiver due to demonstration of good cause (no repayment and no 25 percent penalty). A grant recipient may request a permanent waiver during the time period in which a cost-share grant agreement is in effect if the grant recipient can demonstrate good cause for failure to continue using the approved renewable fuel. "Good cause" includes, but is not limited to, events such as the following:

1. Permanent business closure due to bankruptcy.
2. Permanent closure of underground or aboveground storage tanks.

(2) Waiver due to demonstration of financial hardship (repayment on a sliding scale and no 25 percent penalty). A grant recipient may seek a permanent waiver of exclusive use of the approved renewable fuel during the time period in which a cost-share agreement is in effect due to financial hardship. The grant recipient must demonstrate that continuing to dispense the renewable fuel at a project site will cause a financial hardship. A request for waiver due to financial hardship shall include documentation to show a "good faith" effort to market the fuel, specifically the most recent six-month history of gallons of approved renewable fuel sold by month, marketing/advertising efforts, retail price comparison of E-85 to E-10 (or regular gasoline) or of biodiesel to regular diesel. If a waiver is granted, the 25 percent penalty will not be assessed, but the grant funds will be repaid as follows:

1. Three-year cost-share agreement: Months 1 through 11 of the cost-share agreement, 100 percent of grant amount. Months 12 through 36 of cost-share agreement, 4 percent of grant amount for each month remaining on the cost-share agreement.
2. Five-year cost-share agreement: Months 1 through 10 of the cost-share agreement, 100 percent of grant amount. Months 11 through 60 of the cost-share agreement, 2 percent of grant amount for each month remaining on the cost-share agreement.

b. Temporary waiver (temporary suspension of repayment and 25 percent penalty). A grant recipient may request a temporary suspension of the obligation to use only the approved renewable fuel and a temporary waiver of the repayment plus penalty requirement. A request for a temporary waiver, or an extension of a temporary waiver, will only be considered by the board if the recipient can document to the board's satisfaction that market forces are not allowing for advantageous sales of the approved renewable fuel. A grant recipient shall submit documentation of the previous six-month sales history and marketing attempts to substantiate the grant recipient's request for a temporary waiver. The following conditions apply to requests for a temporary waiver:

(1) A temporary waiver will not be granted during the first six months of a cost-share agreement.

(2) A temporary waiver will not shorten the grant recipient's obligation to use the infrastructure to store and dispense the approved renewable fuel for a minimum of three years or five years. If the board approves a temporary waiver, the duration of the cost-share agreement will be extended by the length of the approved waiver period.

(3) A grant recipient may request a temporary waiver of up to six months. The board may approve one or more six-month waivers, provided the total cumulative time period allowed for temporary waivers shall not exceed two years.

(4) If a state executive order suspending the Iowa Renewable Fuel Standard (RFS) schedule is issued, the board may decide to grant a temporary waiver to all grant recipients. The board will establish the duration of the waiver and provide written notice to all grant recipients of the board's action. When the board determines that a temporary waiver is necessary due to suspension of the Iowa RFS schedule, the three-year or five-year duration of the cost-share agreement will not be extended by the length of the temporary waiver.

[**ARC 7949B**, IAB 7/15/09, effective 6/19/09]

These rules are intended to implement Iowa Code sections 15G.201, 15G.202 and 15G.205, Iowa Code Supplement sections 15G.203 and 15G.204, and 2008 Iowa Acts, House File 2689, and House File 2450, section 6(9)*"f."*

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CHAPTERS 315 to 399
Reserved

PART XII
GENERATION IOWA COMMISSION

CHAPTER 400
COMMISSION ORGANIZATION AND PROCEDURES

261—400.1(15,17A) Definitions.

"Commission" means the generation Iowa commission established by Iowa Code Supplement section 15.421.

"Department" or *"IDED"* means the Iowa department of economic development authorized by Iowa Code chapter 15.

261—400.2(15,17A) Generation Iowa commission.

400.2(1) *Composition.*

a. *Commission structure.* The commission shall consist of 15 voting members appointed by the governor and 4 ex officio nonvoting members. The ex officio nonvoting members are 4 legislative members, 2 state senators and 2 state representatives and not more than 1 member from each chamber being from the same political party. Eight voting members shall constitute a quorum. An affirmative vote of a majority of voting members, excluding any member who has a conflict of interest, is necessary for the commission to take substantive action.

b. *Terms.* Commission members shall be appointed for three-year terms that begin and end as provided by Iowa Code section 69.19. However, the initial members shall be appointed to terms of less than three years to ensure that members serve staggered terms.

c. *Voting members.* At the time of appointment or reappointment, a voting member shall be at least 18 years of age, but less than 35 years of age.

400.2(2) *Meetings.*

a. The commission generally meets monthly. By notice of the regularly published meeting agendas, the commission may hold regular or special meetings at various locations within the state.

b. The commission shall annually elect a chairperson and vice chairperson.

c. Any interested party may attend and observe commission meetings except for such portion as may be closed pursuant to Iowa Code section 21.5.

d. Observers may use cameras or recording devices during the course of a meeting so long as the use of such devices does not materially hinder the proceedings. The chairperson may order that the use of these devices be discontinued if it causes interference and may exclude any person who fails to comply with that order.

e. Minutes of open meetings will be available for viewing at the commission's offices.

400.2(3) *Duties.* The duties of the commission are as follows:

a. Advise and assist the department in activities designed to retain and attract the young adult population.

b. Develop and make available best practices guidelines for employers to attract and retain young adult employees.

c. In the years that the written report required by rule 261—400.3(15,17A) is not updated, submit a written status report which shall include an analysis of progress made during the previous calendar year.

400.2(4) *Commission offices.* The commission is established within the department. Information about the commission is available through the department's Web site at www.iowalifechanging.com or at Attn: Generation Iowa Commission, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309. Written requests may be submitted to the commission at this address.

261—400.3(15,17A) Written report.

400.3(1) The commission shall submit a written report to the governor and general assembly of findings and recommendations regarding the status of efforts to attract and retain the young adult

population in the state, career opportunities and educational needs of young adults, and the movement of the young adult population between rural areas and urban areas and between Iowa and other states.

400.3(2) The commission shall submit this report by January 15, 2008, January 15, 2009, and every odd-numbered year thereafter.

400.3(3) The commission shall vote on material to be included in the written report. An affirmative vote of two-thirds of the voting members shall be required for approval of the final report.

These rules are intended to implement Iowa Code Supplement section 15.421.

[Filed emergency 10/5/07—published 10/24/07, effective 10/5/07]
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CHAPTERS 401 to 409
Reserved

PART XIII
IOWA BROADBAND DEPLOYMENT GOVERNANCE BOARD

CHAPTER 410
BOARD STRUCTURE AND PROCEDURES

261—410.1(83GA,SF376) Purpose. Pursuant to 2009 Iowa Acts, Senate File 376, section 13(5), the Iowa broadband deployment governance board is charged with establishing a comprehensive broadband plan and a competitive process for granting funds to deploy and sustain high-speed broadband services. The Iowa broadband deployment governance board was established by the IUB, IDED and ITTC. Administrative support and planning costs will be provided jointly by the IUB, IDED and ITTC.
[**ARC 8218B**, IAB 10/7/09, effective 9/17/09; **ARC 8473B**, IAB 1/13/10, effective 2/17/10]

261—410.2(83GA,SF376) Definitions. As used in these rules, unless the context otherwise requires:

"Administrative support and planning costs" means costs that include, but are not limited to, providing staff to perform the following functions for the governance board:

1. Review and summarize grant applications.
2. Offer technical and other advice to the board.
3. Prepare and distribute public notices, record meetings, prepare minutes, attend board meetings, and complete other tasks related to board meetings.
4. Assist and advise the board in preparing a comprehensive plan for high-speed broadband access.
5. Assist and advise the board in developing and implementing a competitive process for disbursing funds.
6. Establish and maintain separate accounts for the use of bond proceeds and non-bond proceeds.

"Board" or *"governance board"* means the Iowa broadband deployment governance board created by IUB, IDED, and ITTC as authorized by 2009 Iowa Acts, Senate File 376, section 13(5).

"IDED" means the Iowa department of economic development created by Iowa Code section 15.103.

"ITTC" means the telecommunications and technology commission created by Iowa Code section 8D.3.

"IUB" means the Iowa utilities board created by Iowa Code section 474.1.
[**ARC 8218B**, IAB 10/7/09, effective 9/17/09; **ARC 8473B**, IAB 1/13/10, effective 2/17/10]

261—410.3(83GA,SF376) Iowa broadband deployment governance board.

410.3(1) *Composition.* The board shall be comprised of one member from each of the following categories:

1. Educational users.
2. Cities.
3. Counties.
4. Urban residential users.
5. Rural residential users.
6. Cable providers.
7. Wireline providers.
8. Wireless providers.
9. Utilities board.
10. Economic development board.
11. Telecommunications and technology commission.
12. House majority party (nonvoting member).
13. House minority party (nonvoting member).
14. Senate majority party (nonvoting member).
15. Senate minority party (nonvoting member).

410.3(2) *Quorum.* A quorum of the board shall be a majority of the voting members.

410.3(3) *Terms.* Board members shall be appointed for three-year terms.

410.3(4) *Officers.* The board shall annually elect a chairperson of the board and a vice-chairperson of the board. The board may annually elect such other officers as the board deems proper. The chairperson,

vice-chairperson, and any other officers of the board shall be elected by a majority vote of the voting members who are present.

410.3(5) *Board committees.*

a. *Advisory committees.* The board may establish an application review committee and may create such other advisory committees as deemed necessary by the board to perform its duties. The board shall elect the members of committees by majority vote. The board chairperson shall designate the chairperson and vice-chairpersons of all committees.

b. *Nominations committee.* The board chairperson may appoint a nominations committee for the purpose of making recommendations regarding the election of a board chairperson, board vice-chairperson, and membership on board committees and the appointment of committee chairpersons and committee vice-chairpersons.

[**ARC 8218B**, IAB 10/7/09, effective 9/17/09; **ARC 8473B**, IAB 1/13/10, effective 2/17/10]

261—410.4(83GA,SF376) Board duties. The board shall perform the duties as outlined in 2009 Iowa Acts, Senate File 376, section 13(5), and other functions as necessary and proper to carry out its responsibilities. The board's duties include the following:

410.4(1) *Comprehensive plan for broadband access.* The board shall establish a comprehensive statewide plan for the deployment and sustainability of high-speed broadband access in areas capable of timely implementation of such access. The plan shall be consistent with federal requirements established for federal funds made available for the purposes of projects that may be considered by the board. The plan shall require collaboration involving qualified private providers and public entities as appropriate. The plan shall allow for the participation of public entities to accomplish project purposes that are financially feasible in areas of the state that remain unserved or underserved as a result of a lack of private sector investment.

410.4(2) *Competitive grant program for broadband deployment.* The board shall establish a competitive process for the disbursement of funds in the form of grants for the deployment and sustainability of high-speed broadband services.

410.4(3) *Legislative recommendations.* The board shall make recommendations to the general assembly regarding any necessary legislation needed to further the purposes of the board.

410.4(4) *Program oversight and transparency.* The board shall establish a process for the oversight and transparency of grants distributed by the board.

[**ARC 8218B**, IAB 10/7/09, effective 9/17/09; **ARC 8473B**, IAB 1/13/10, effective 2/17/10]

261—410.5(83GA,SF376) Board and committee procedures.

410.5(1) *Meetings and agendas.* Meetings of the board and committee(s) are generally held monthly. By notice of the regularly published meeting agenda, the board and committee may hold regular or special meetings at locations within the state. Meeting agendas are available at the following Web site: www.broadband.iowa.gov.

410.5(2) *Meeting procedures.*

a. Any interested party may attend and observe board and committee meetings except for such portion as may be closed pursuant to Iowa Code section 21.5.

b. Observers may use cameras or recording devices during the course of a meeting so long as the use of such devices does not materially hinder the proceedings. The chairperson may order that the use of these devices be discontinued if they cause interference and may exclude any person who fails to comply with that order.

c. Open-session proceedings may be electronically recorded. Minutes of open meetings shall be available for viewing at www.broadband.iowa.gov.

[**ARC 8218B**, IAB 10/7/09, effective 9/17/09; **ARC 8473B**, IAB 1/13/10, effective 2/17/10]

261—410.6(83GA,SF376) Conflicts of interest.

410.6(1) *Definition.*

"Conflict of interest" means that a member of the board:

1. Has a significant employment relationship with an applicant; or

2. Is a member of the board of directors or a stockholder of a corporate applicant; or

3. Has a financial relationship with an applicant, including but not limited to an investor, a contractor, or a consultant; or

4. Is an immediate family member of a person who has a conflict of interest under this rule. For the purposes of this rule, "immediate family" means a member's spouse, children, grandchildren and parents.

410.6(2) *Procedures.* As soon as a member of the board or a committee becomes aware of a conflict of interest in a project for which applications are filed with the board or for which potential applications are discussed by the board or committee, the member shall follow these procedures:

a. If the conflict is known before a meeting, the member shall fully disclose the interest to the chairperson of the board in writing at least 24 hours before the meeting.

b. If the conflict is discovered during a meeting, the member shall orally inform the board, and the nature of the conflict shall be reported in writing to the chairperson of the board within 24 hours after the meeting.

c. The member who has the conflict shall not participate in discussion or vote on any issues concerned with the project.

[**ARC 8218B**, IAB 10/7/09, effective 9/17/09; **ARC 8473B**, IAB 1/13/10, effective 2/17/10]

These rules are intended to implement 2009 Iowa Acts, Senate File 376, section 13(5).

[Filed Emergency ARC 8218B, IAB 10/7/09, effective 9/17/09]

[Filed ARC 8473B (Notice ARC 8219B, IAB 10/7/09), IAB 1/13/10, effective 2/17/10]

CHAPTER 411
IOWA BROADBAND DEPLOYMENT PROGRAM

261—411.1(83GA,SF376) Purpose. These rules are intended to implement 2009 Iowa Acts, Senate File 376, section 13(5), relating to public broadband technology grants for the deployment and sustainability of high-speed broadband access. The purpose of the Iowa broadband deployment program is to promote universal access to sustainable high-speed broadband services, at speeds to exceed federal requirements, throughout the state for the benefit of Iowans, by awarding state grant funds to be used as matching funds for the federal funds available for broadband infrastructure projects.
[**ARC 8218B**, IAB 10/7/09, effective 9/17/09; **ARC 8473B**, IAB 1/13/10, effective 2/17/10]

261—411.2(83GA,SF376) Definitions. In addition to the definitions in 261—Chapter 410, the following definitions shall apply to the Iowa broadband deployment program:

"Affordable rates" means the current price for high-speed broadband services being charged for similar services in areas with two or more broadband providers, as demonstrated by published or advertised unbundled prices. If there are no existing high-speed broadband services in the proposed funded service area or if there is only one existing provider of high-speed broadband services in the proposed funded service area, projects will be evaluated on the ability of applicants to demonstrate that their proposed pricing is affordable for the service area.

"Areas capable of timely implementation of high-speed broadband access" means those areas in Iowa where broadband infrastructure projects can be deployed or completed consistent with requirements established for federal funding.

"Community anchor institutions" means schools, libraries, medical and health care providers, public safety entities, community colleges and other institutions of higher education, and other community support organizations and agencies that provide outreach, access, equipment, and support services to facilitate greater use of broadband service by vulnerable populations, including low-income, unemployed, and the aged.

"Critical community facilities" means public facilities that provide community services essential for supporting the safety, health, and well-being of residents, including, but not limited to, emergency response and other public safety activities, hospitals and clinics, libraries and schools.

"Economically sustainable" means that a broadband project funded by the board will require no further government assistance beyond the funding period to remain viable into the future. A broadband project shall not be deemed "economically sustainable" if the broadband project will only continue beyond the funding period with the assistance of additional government grants. Notwithstanding anything to the contrary in this definition, "government assistance" shall not include: (1) fees or other revenues paid from government users in exchange for the ordinary use of broadband services, or (2) ongoing government funding provided by the federal Universal Service Fund. For purposes of this definition, "government" refers to any branch or level of government, including the federal government, any state government, or any political subdivision.

"Federal funds" means funding available for broadband infrastructure initiatives under the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (Feb. 17, 2009) that will be awarded by either the U.S. Department of Agriculture Rural Utilities Service through the Broadband Initiatives Program (BIP) or the U.S. Department of Commerce National Telecommunications and Information Administration through the Broadband Technology Opportunities Program (BTOP).

"Federal requirements" means requirements established for the receipt of federal funds for broadband infrastructure initiatives pursuant to the American Recovery and Reinvestment Act of 2009.

"Grant agreement" means the agreement between the grantee and the ITTC, on behalf of the board for grants awarded under the program, including any amendments thereto.

"Grantee" means the recipient of a grant under the program.

"Grant funds" means state funds provided pursuant to a grant made under the program.

"High-speed broadband service" or *"broadband"* means providing two-way data transmission with advertised speeds that exceed 768 kilobits per second (kbps) downstream and at least 200 kbps

upstream to end users, or providing sufficient capacity in a middle mile project to support the provision of broadband service to end users.

"Last mile project" means any infrastructure project the predominant purpose of which is to provide broadband service to end users or end-user devices (including households, businesses, community anchor institutions, public safety entities, and critical community facilities).

"Middle mile project" means a broadband infrastructure project that does not predominantly provide broadband service to end users or to end-user devices, and may include interoffice transport, backhaul, Internet connectivity, or special access.

"Program" means the Iowa broadband deployment program administered by the governance board to award funds available for broadband deployment pursuant to the competitive grant process established in these rules and to oversee the establishment and implementation of a statewide high-speed broadband deployment plan.

"Qualified private providers" means nongovernmental local exchange carriers, cable television companies, commercial mobile radio service companies, or other entities that offer or are capable of offering broadband services in Iowa and that make minimum broadband capacity available to all business, government, educational, and residential locations within the project area.

"State broadband mapping project" means the statewide broadband data collection, mapping, and planning project conducted by the state's designated eligible entity in cooperation with the Iowa utilities board under the Broadband Data Improvement Act of 2008 (BDIA), Title I of Public Law 110-385, 122 Stat. 4096 (Oct. 10, 2008) and as funded by the State Broadband Data and Development Grant Program.

"Synchronous data transmission" means broadband transmission services where the upstream and downstream speeds are equal.

"Underserved areas of the state" means, for last mile projects, a proposed funded service area composed of one or more contiguous census blocks where (1) no more than 50 percent of the households have access to facilities-based, terrestrial broadband service at speeds that exceed the minimum broadband transmission speeds set forth in the definition of "broadband" above; (2) no fixed or mobile broadband service provider advertises broadband transmission speeds of at least three megabits per second downstream; or (3) the rate of broadband subscribership is 40 percent of households or less. A proposed funded service area may qualify as underserved for middle mile projects if one interconnection point terminates in a proposed funded service area that qualifies as unserved or underserved for last mile projects.

"Unserved areas of the state" means a proposed funded service area composed of one or more contiguous census blocks where at least 90 percent of households in the proposed funded service area lack access to facilities-based, terrestrial broadband service, either fixed or mobile, at speeds that exceed the minimum broadband transmission speeds set forth in the definition of "broadband" above. A household has access to broadband service if the household can readily subscribe to that service upon request.

[**ARC 8218B**, IAB 10/7/09, effective 9/17/09; **ARC 8473B**, IAB 1/13/10, effective 2/17/10]

261—411.3(83GA,SF376) Eligible applicants. The following entities are eligible to apply for assistance:

1. State agencies and local governments, including municipal utilities;
2. A nonprofit foundation, a nonprofit corporation, a nonprofit institution, or a nonprofit association, or other nonprofit entities; and
3. Qualified private providers.

[**ARC 8218B**, IAB 10/7/09, effective 9/17/09; **ARC 8473B**, IAB 1/13/10, effective 2/17/10]

261—411.4(83GA,SF376) Forms of assistance. Financial assistance for an application approved by the board will be provided in the form of a grant. Grants shall be subject to the provisions of 2009 Iowa Acts, Senate File 376, section 13(5), the administrative rules in 261—Chapters 410 through 412, and the terms and conditions of a grant agreement.

[**ARC 8218B**, IAB 10/7/09, effective 9/17/09; **ARC 8473B**, IAB 1/13/10, effective 2/17/10]

261—411.5(83GA,SF376) Threshold application requirements. Applicants must satisfy threshold eligibility requirements to qualify for funding. Applications that fail to meet threshold eligibility requirements will not be considered by the board. An applicant must meet each of the following threshold eligibility factors in order to be considered for a grant award by the board:

411.5(1) *Fully completed application.* Applicants must submit a complete application and provide all supporting documentation required for the application.

411.5(2) *Timely project completion.* A project is eligible only if the application demonstrates that the project can be completed within 24 months of the award date or by December 31, 2012, whichever date is earlier.

411.5(3) *Fully funded project costs.* A project is eligible only if, after approval of the grant and any federal grants and loans, all project costs can be fully funded. To demonstrate this, applicants must include with the application evidence of all funding necessary to support the project.

411.5(4) *Capital projects.* A project is eligible only if the proposed project is for capital expenditures. Program grant funds shall only be used for capital expenditures. The board may require applicants to submit descriptions and itemized lists of capital expenditures for which the applicants intend to use grant money. Additionally, all uses and proposed uses of grant funds shall be subject to review by the board, attorneys for the board or the state of Iowa, and any accountants or auditors retained by the board or the state of Iowa. If a use or proposed use of grant funds is not for capital expenditures, as defined by the board's legal counsel or generally accepted accounting principles, the board may withdraw all or part of a grant award and the board may seek recovery of any grant funds already disbursed to the grantee. Nothing in this subrule shall be construed as limiting the board's authority or any remedies available to the board to ensure that grant awards are spent only on capital expenditures. Furthermore, nothing in this subrule shall be construed as limiting the board's authority to impose additional restrictions on the use of grant funds in award contracts with grantees.

411.5(5) *Economically sustainable.* Only projects that are economically sustainable are eligible for an award. Applicants must demonstrate through a viable business plan that any project undertaken and funded by the board shall be economically sustainable.

411.5(6) *Minimum broadband capacity.* Only projects that intend to provide "high-speed broadband service," as defined in 261—411.2(83GA,SF376), throughout the project area are eligible for an award.

411.5(7) *Federal funds.* Only projects that will further the purposes of 2009 Iowa Acts, Senate File 376, section 13(5), and that have received a notice of an award of federal funds under either the BIP or BTOP Program are eligible for an award.

411.5(8) *Project meets statutory requirements.* 2009 Iowa Acts, Senate File 376, section 13(5), establishes minimum eligibility requirements for the program. Only projects that meet these statutory requirements for assistance are eligible for an award. To qualify, projects must be designed to accomplish all of the following:

a. Provide minimum broadband capacity throughout the area as determined by the governance board consistent with any applicable state and federal law or guidelines. The governance board shall ensure that the minimum broadband capacity established exceeds any federal requirements established with regard to the availability of federal funds.

b. Make broadband connections available to all business, government, educational, and residential locations within the project area, as appropriate for the type of project.

c. Utilize, where appropriate and feasible, existing privately owned telecommunications fiber infrastructure and wireless facilities to establish universal access to high-speed broadband services, as appropriate and consistent with the priorities established by the governance board for the program.

d. Demonstrate that any project undertaken and funded by the governance board shall be economically sustainable with no further government assistance based upon expected revenue generation.

[**ARC 8218B**, IAB 10/7/09, effective 9/17/09; **ARC 8473B**, IAB 1/13/10, effective 2/17/10]

261—411.6(83GA,SF376) Application process.

411.6(1) *Notice of intent to apply for state broadband deployment funds.* Potential applicants are encouraged to submit a Notice of Intent to Apply form to the board prior to submitting an application with the board. A copy of the form is available at www.broadband.iowa.gov. Failure to complete and submit a Notice of Intent to Apply form shall not preclude an entity from applying for or receiving a grant from the board. Furthermore, the board shall not prejudice or take other adverse action against an entity because that entity failed to complete and submit a Notice of Intent to Apply form.

411.6(2) *Application contents.* The board shall develop a standardized application for the program and make the application available at www.broadband.iowa.gov.

411.6(3) *Application time line and submittal.* Applicants for state broadband deployment funds shall submit a completed application within 15 calendar days after being notified that the applicant has been awarded federal funds under either the BIP or BTOP Program. Along with the completed state broadband grant application, all applicants shall submit: (1) a copy of the applicant's federal application and all information required to be submitted with the applicant's federal application, and (2) all records the applicant received from the BIP and BTOP Programs that relate to the applicant's federal award, including but not limited to any award letters. Completed state broadband grant applications and all information required to be submitted with the application shall be submitted to ITTC via the Iowa Grant Notification Storefront and Electronic Grant Management System (www.iowagrants.gov).

411.6(4) *Request for confidential treatment.* Applicants who would like to request that the board treat a record or part of a record as a confidential record must comply with the fair information practices listed at 751—Chapter 2.

[**ARC 8218B**, IAB 10/7/09, effective 9/17/09; **ARC 8473B**, IAB 1/13/10, effective 2/17/10]

261—411.7(83GA,SF376) Application review procedures.

411.7(1) *Application review committee and final board action.*

a. Application review committee. Applications meeting the threshold requirements of rule 261—411.5(83GA,SF376) will be reviewed by an application review committee ("the committee"). The committee shall consist of at least two board members and at least five staff members jointly provided by IDED, ITTC, and IUB.

b. Committee review and recommendation to the board. The committee members will score the applications according to the criteria set forth in subrule 411.7(2). A copy of the application scoring sheet that will be used by the committee is available for viewing at www.broadband.iowa.gov. The committee shall use consensus scoring and shall rank order the applications. The committee shall prepare a summary of the applications and the rank order scoring results and shall present to the board the committee's recommendations for approval, denial, or deferral of applications.

c. Board action. All eligible applications and any summaries and recommendations by the application review committee will be reviewed by the board. Summaries, scores, and recommendations by the application review committee shall be wholly advisory and shall be for the board's convenience. The board shall not be bound by any findings or conclusions of the application review committee, and the board shall not be required to give deference to any determination by the application review committee. The board may create summaries, award scores, or make conclusions that depart in whole or in part from those conclusions reached by the application review committee. The board shall make the final decision on all applications.

411.7(2) *Evaluation criteria.* The application review committee shall evaluate and score applications based on the following criteria:

a. Project purpose. (0-25 points) An application will be reviewed to evaluate the purpose of the project and its consistency with statutory intent for this program. Rating factors for this criterion include, but are not necessarily limited to, the following:

(1) Promote universal access. The degree to which a project will provide service to unserved areas or improve service to underserved areas of Iowa as identified by current broadband availability data or as ultimately determined by the state broadband mapping project.

1. If a project proposes to serve an unserved area, the percentage of households in the proposed service area (as defined by census block) that will be served by the project.

2. If a project proposes to improve service to an underserved area, the percentage of households in the proposed service area (as defined by census block) that will have improved service.

Points will be awarded on a sliding scale. The higher the percentage of households that will be served or that will have improved service, the more points awarded.

(2) Private enterprise. Whether the applicant is a qualified private provider. Additional consideration will be given to applications from qualified private providers of broadband service.

(3) Public-private partnership. Whether public and private collaboration is required for the project, as appropriate.

(4) Public entities. Whether participation by the public entity will promote access in an area that remains unserved or underserved due to lack of private sector investment.

b. Project benefits. (0-25 points) Applications will be reviewed to evaluate the degree to which the proposed project will offer service at an advertised speed which exceeds the federal requirements. Rating factors for this criterion include, but are not necessarily limited to, the following:

(1) Advertised speeds above federal minimums. For wireline last mile projects and wireless last mile projects, the advertised downstream and upstream speeds. More points will be awarded for higher speeds.

(2) Middle mile projects. For middle mile projects, the degree to which the proposed project is sustainable and supports the goal of universal access to high-speed broadband service for the benefit of Iowans. Consideration will be given to the project's impact on the area, including proposed connections to last mile networks and benefit to community anchor institutions or public safety entities; the level of need for the project in the area, including whether projected end users are located in unserved or underserved areas; and network capacity, i.e., whether the network provides sufficient capacity to serve last mile networks, community anchor institutions and public safety entities.

(3) Synchronous data transmission. Whether the proposal contemplates synchronous data transmission capabilities and at what speed.

(4) Affordability of services offered. Proposed pricing will be evaluated based on comparison to published unbundled prices and speeds for existing broadband services in the proposed funded service area. If there are no existing broadband services present, an applicant must demonstrate that proposed pricing is appropriate for the proposed service area.

(5) Community impact. How the project impacts job creation and economic development and provides other benefits to the targeted community.

(6) Speed of completion. How quickly the project will be completed.

c. Project viability. (0-25 points) Applications will be reviewed to evaluate the viability of the proposed project. Rating factors for this criterion include, but are not necessarily limited to, the following:

(1) Economic sustainability. The extent to which the proposed project will not require any additional funding from the state in the course of normal operations.

(2) Applicant's track record. Whether the applicant possesses a record of accomplishment for historically similar projects.

(3) Financial metrics. How the project compares to similar projects, including but not limited to return on investment, internal rate of return, net present value, payback, break-even analysis, capital cost per household, and debt metrics.

d. Project budget and sustainability. (0-25 points) Applications will be reviewed to evaluate the reasonableness of the budget and sustainability of the proposed project. Rating factors for this criterion include, but are not necessarily limited to, the following:

(1) Reasonableness of the budget. Points will be awarded based on adequacy and completeness of the proposed budget.

(2) Ratio of state funding request to number of households passed (cost of funding request per household). Points will be awarded on a sliding scale. More points will be awarded for lower cost per household.

(3) Funding leverage (outside funding/government funding). The degree to which the proposed project leverages outside funding sources. The higher the ratio, the more points awarded.
[**ARC 8218B**, IAB 10/7/09, effective 9/17/09; **ARC 8473B**, IAB 1/13/10, effective 2/17/10]

261—411.8(83GA,SF376) Administration of awards.

411.8(1) *Notice of award and conditions.* Applicants will be notified in writing of the board's decision, including any conditions and terms of approval. Award conditions may include but are not limited to the following:

a. *Awards conditioned on completion of external requirements.* Certain activities may require that permits or clearances be obtained from other state or local agencies before the activity may proceed. Awards may be conditioned upon the timely completion of these requirements.

b. *Awards conditioned on other financial sources.* Awards may be conditioned upon commitment of other sources of funds necessary to complete the activity, including the receipt of federal grants or loans.

c. *Awards conditioned on implementation plan.* Awards may be conditioned upon ITTC's receipt and approval on behalf of the board of an implementation plan for the funded activity.

411.8(2) *Contract required.*

a. *Contract contents.* A contract shall be executed between the recipient and ITTC on behalf of the board. The rules in 261—Chapters 410 to 412 and applicable state laws and regulations shall be part of the contract. The agreement will include, but is not limited to:

(1) A description of the project to be completed by the recipient.

(2) Length of the project period.

(3) Conditions to disbursement as approved by the board.

(4) Reporting requirements, to be made to the board consistent with federal requirements, on the use and effectiveness of the grant funding.

(5) The reimbursement requirements of the recipient or other penalties imposed on the recipient in the event the recipient does not meet the commitments set forth in the contract, in the documentation provided to establish eligibility, or in other provisions negotiated on a project-by-project basis.

b. *Contract amendments.* Any substantive change to a funded project will require a contract amendment approved by the board. Substantive changes include, but are not limited to, contract time extension, budget revisions, and significant alterations of existing activities or beneficiaries.

411.8(3) *Deadline for contract execution.* A recipient must execute and return the contract to ITTC within 60 days after the contract is sent to the recipient. Failure to do so may be cause for the board to terminate the award.

411.8(4) *Accounting.* On behalf of the board, the telecommunications and technology commission shall establish separate accounts for the bond proceeds and non-bond proceeds received to fund Iowa broadband deployment program grants.

411.8(5) *Grant information posted on Web site.* All disbursements and related, nonconfidential information for each grant will be posted on www.broadband.iowa.gov and will be accessible by the public within 30 days after distribution of funds.

411.8(6) *Project status reports.*

a. *Quarterly status reports and contents.* Each grantee shall submit a quarterly state status report to the board on or before each of the following dates: March 31, June 30, September 30, and December 31. Each quarterly status report shall, at a minimum, include the following information:

(1) The total amount of the grant from the board;

(2) The total amount of grant funds that the grantee has expended or obligated; and

(3) A detailed list of all projects or activities for which Iowa grants were expended or obligated, including:

1. The name of the project or activity,
2. A description of the project or activity,
3. An evaluation of the completion status of the project or activity, and

4. An estimate of the number of jobs created and the number of jobs retained by the project or activity.

b. *Copies of federal status reports.* At the time the grantee submits this state quarterly status report, the grantee shall also submit copies of the grantee's most recent federal status reports.

c. *Final project completion report.* Within 30 days of completing a project funded by grant funds, a grantee shall submit to the board a final report that summarizes the grantee's quarterly filings, describes the nature of the completed project, and states whether the project's goals have been satisfied.

411.8(7) *Report to legislature.* The board shall provide a report to the general assembly, the legislative services agency, and the department of management on the status of all projects completed or in progress. The board shall submit the report each year, on or before January 15.

a. The report shall include the following information about each project funded by grants awarded by the board:

(1) A description of the project,

(2) The work completed on the project,

(3) The total estimated costs of the project,

(4) A list of all revenue sources being used to fund the project,

(5) The amount of funds expended on the project,

(6) The amount of funds obligated to the project, and

(7) The date the project was completed or an estimated completion date of the project.

b. The report may include any other information related to the board and the board's activities, including but not limited to descriptions of significant board actions and requests for additional legislation that would further the purposes of the board.

[**ARC 8218B**, IAB 10/7/09, effective 9/17/09; **ARC 8473B**, IAB 1/13/10, effective 2/17/10]

These rules are intended to implement 2009 Iowa Acts, Senate File 376, section 13(5).

[Filed Emergency ARC 8218B, IAB 10/7/09, effective 9/17/09]

[Filed ARC 8473B (Notice ARC 8219B, IAB 10/7/09), IAB 1/13/10, effective 2/17/10]

CHAPTER 412
FAIR INFORMATION PRACTICES, WAIVER AND VARIANCE, AND PETITION FOR RULE MAKING

261—412.1(83GA,SF376) Fair information practices. The board shall follow ITTC's rules in 751—Chapter 2, regarding public records and fair information practices.
[**ARC 8218B**, IAB 10/7/09, effective 9/17/09; **ARC 8473B**, IAB 1/13/10, effective 2/17/10]

261—412.2(83GA,SF376) Waiver and variance. The board shall follow IDED's rules in 261—Chapter 199, regarding waivers and variances of administrative rules.
[**ARC 8218B**, IAB 10/7/09, effective 9/17/09; **ARC 8473B**, IAB 1/13/10, effective 2/17/10]

261—412.3(83GA,SF376) Petition for rule making. The board shall follow IDED's rules in 261—Chapter 197, regarding petitions for rule making.
[**ARC 8218B**, IAB 10/7/09, effective 9/17/09; **ARC 8473B**, IAB 1/13/10, effective 2/17/10]

These rules are intended to implement 2009 Iowa Acts, Senate File 376, section 13(5).

[Filed Emergency ARC 8218B, IAB 10/7/09, effective 9/17/09]

[Filed ARC 8473B (Notice ARC 8219B, IAB 10/7/09), IAB 1/13/10, effective 2/17/10]