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) History and 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. In 2011, the general assembly reorganized the delivery of economic development services to the state of Iowa by creating a formal collaboration between the public and private sectors. As part of this reorganization, the department was eliminated and the economic development authority was created as the successor entity to the department. All existing duties, responsibilities, and obligations of the former department are assumed by the authority.

The mission of the authority is to foster the economic vitality of the state by working in focused partnerships with businesses, entrepreneurs, communities and educational entities. The authority'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.
[**ARC 0441C**, IAB 11/14/12, effective 12/19/12]

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

"Authority" means the economic development authority created in Iowa Code section 15.105.

"Authority's website" means the information and related content found at www.iowaeda.com and may include content at affiliated sites whose content is integrated with that site, including www.traveliowa.com.

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

"Committee" means a committee established by the board and includes any standing committees established by rule or ad hoc committees created as necessary.

"Corporation" means the bioscience development corporation established pursuant to Iowa Code section 15.107.

"Director" means the director of the authority 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; **ARC 0441C**, IAB 11/14/12, effective 12/19/12; **ARC 6356C**, IAB 6/15/22, effective 7/20/22]

261—1.3(15) Economic development authority board.

1.3(1) *Composition.*

a. The authority's powers are vested in a board composed of 11 voting members appointed by the governor. These 11 members include 2 members from each of the four United States congressional districts in the state and 3 members selected at large. In addition, the appointed members represent certain industry sectors and have certain business expertise as described in Iowa Code section 15.105(1)*"a"*(2).

b. The board also includes 4 ex officio, nonvoting legislative members and 3 ex officio, nonvoting members from institutions of higher education in the state as described in Iowa Code section 15.105(1)*"b"* and *"c."*

1.3(2) *Terms.* Members of the board are appointed for staggered terms of four years beginning and ending as provided in Iowa Code section 69.19. A person appointed to fill a vacancy serves only for the unexpired portion of the term. A member is eligible for reappointment. A member of the board may be removed from office by the governor for misfeasance, malfeasance, or willful neglect of duty or other just cause, after notice and hearing, unless the notice and hearing is expressly waived in writing. Members of the board cannot serve as directors of the corporation.

1.3(3) *Quorum and voting requirements.* Seven or more voting members of the board constitute a quorum. The affirmative vote of a majority of the quorum is necessary for any action taken by the authority's board members.

1.3(4) *Board officers.* Members of the board elect a chairperson and vice chairperson annually and may elect other officers as and when the members of the board determine. The director, with the assistance of authority staff, serves as secretary to the authority.

1.3(5) *Meetings.*

a. Meetings of the authority are held at the call of the chairperson or when two members of the board request a meeting. The board generally meets monthly at the authority's offices. 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 authority's website.

b. Meetings of the board and any committee it may establish are conducted in accordance with the provisions of Iowa Code chapter 21. Any person may attend and observe the proceedings of the board and committee meetings except for those portions of the meetings conducted in closed session pursuant to Iowa Code section 21.5. Persons observing may use cameras or recording devices during the meeting so long as the use of such devices does not interfere with the proceedings. The chairperson may order any person to discontinue the use of such a device if the chairperson believes it is causing an interference with the proceedings. The chairperson may have any person excluded who fails to comply with such an order. The chairperson may also exclude any person generally causing a disruption of the proceedings.

1.3(6) *Functions.* The board will perform any duty required of it by law and may perform any other function authorized under the authority's general powers under Iowa Code chapter 15.

1.3(7) *Committees.*

a. A due diligence committee is established to assist the board in making awards of incentives and assistance under the authority's programs.

(1) The due diligence committee is an advisory body comprised of voting members of the board who are selected annually by the voting members of the board. The membership and size of the committee as well as the terms of committee members will be established annually by the board.

(2) The members of the due diligence committee will elect a member to serve as chairperson. The chairperson may appoint members of the due diligence committee to serve on a due diligence subcommittee if necessary. Such a subcommittee is advisory only and may perform such duties as may be assigned by the chairperson and members of the due diligence committee.

(3) The duties of the due diligence committee may include reviewing applications for financial assistance, conducting a thorough review of proposed projects, making recommendations to the board regarding the size and conditions of awards, and any other duty assigned by the board in relation to the programs administered by the authority.

(4) 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. A technology commercialization committee is established to assist the board in making awards of incentives and assistance under those programs that relate to innovation, commercialization, and early-stage industries including those programs that focus on information technology, advanced manufacturing, and biosciences.

(1) The technology commercialization committee is an advisory body comprised of persons selected annually by the voting members of the board. The membership and size of the committee as well as the terms of committee members will be established annually by the board. At least one member of the board shall serve on the technology commercialization committee.

(2) The members of the technology commercialization committee will elect a member to serve as chairperson. The chairperson may appoint members of the technology commercialization committee to serve on a technology commercialization subcommittee if necessary. Such a subcommittee is advisory only and may perform such duties as may be assigned by the chairperson and members of the technology commercialization committee.

(3) The duties of the technology commercialization committee may include reviewing applications for financial assistance, conducting a thorough review of proposed projects, making recommendations to the board regarding the size and conditions of awards, and any other duty assigned by the board in

relation to the programs administered by the authority to the extent such programs relate to the areas and industry sectors described in this paragraph.

(4) An organization designated by the authority, 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, will provide funding recommendations to the technology commercialization committee.

(5) A majority of committee members constitutes a quorum. Nonvoting, ex officio members of the board may be appointed by the chairperson of the technology commercialization committee to serve on the technology commercialization committee as nonvoting, ex officio members.

c. A finance committee is established to assist the board in the financial management of the authority and its programs.

(1) The finance committee is an advisory body comprised of voting members of the board who are selected annually by the voting members of the board. The membership and size of the committee as well as the terms of committee members will be established annually by the board.

(2) The members of the finance committee will elect a member to serve as chairperson. The duties of the finance committee may include meeting periodically with authority staff to review the authority's regularly maintained financial records and other financial information as may be requested by the board.

(3) The finance committee may make recommendations to the board, and members of the finance committee may also attend audit entrance and exit interviews conducted by the auditor of state with authority staff.

d. The director may appoint ad hoc committees to serve in an advisory capacity to the authority whenever the director deems them necessary to accomplish the work of the authority. The size of such committees and the terms of committee members will be established by the director. Such committees may be dissolved as deemed appropriate by the director, and other committees may from time to time be established for specific purposes.

[**ARC 0441C**, IAB 11/14/12, effective 12/19/12; **ARC 6356C**, IAB 6/15/22, effective 7/20/22]

261—1.4(15) Authority structure.

1.4(1) *General.* The authority's organizational structure consists of the board, the director, and such divisions as the director may from time to time create.

1.4(2) *Director.* The authority is administered by a director who is appointed by the governor, subject to confirmation by the senate, and who serves for a four-year term beginning and ending as provided in Iowa Code section 69.19. An appointment by the governor to fill a vacancy in the office of the director is for the balance of the unexpired four-year term. The director is the chief administrative officer of the authority and in that capacity oversees the administration of the authority's programs and services, ensuring their compliance with applicable federal and state laws, rules, and regulations. The responsibilities of the director are as described in Iowa Code section 15.106C and include preparing a budget subject to board approval, establishing an internal administrative structure and employing personnel, reviewing and submitting legislative proposals to the board, recommending rules to the board and ensuring their progression through the rule-making process, reporting to the board on grants and contracts awarded by the authority, and other actions reasonably necessary to administer and direct the programs of the authority.

1.4(3) *Chief designee.* The director may designate an employee to administer the authority in the director's absence. Such employee may bear the title of deputy director, chief operating officer, chief of staff, or other similar title as long as the director has executed an instrument clearly delegating the director's authority to that employee.

1.4(4) *Divisions.* The director may from time to time reorganize the authority into administrative divisions in order to most efficiently and effectively carry out the authority's responsibilities. This reorganization may include creating new divisions, eliminating existing divisions, or combining divisions as the director deems necessary.

1.4(5) *Attachment for administrative purposes; board support.* The staff and employees of the authority provide office space and support to the city development board pursuant to Iowa Code sections 368.9 and 15.108(3)*"a"*(2). The authority provides administrative support to the enhance Iowa board pursuant to Iowa Code section 15F.104.
[**ARC 0441C**, IAB 11/14/12, effective 12/19/12; **ARC 6356C**, IAB 6/15/22, effective 7/20/22]

261—1.5(15) Information. The general public may obtain information about the Iowa economic development authority by contacting the authority at its offices located at 1963 Bell Avenue, Des Moines, Iowa 50315; telephone (515)348-6200; or through the authority's website.
[**ARC 0441C**, IAB 11/14/12, effective 12/19/12; **ARC 6356C**, IAB 6/15/22, effective 7/20/22]

These rules are intended to implement Iowa Code chapter 15.

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[Filed ARC 0441C (Notice ARC 0279C, IAB 8/22/12), IAB 11/14/12, effective 12/19/12]
[Filed ARC 6356C (Notice ARC 6243C, IAB 3/23/22), IAB 6/15/22, effective 7/20/22]

CHAPTER 2
GROW IOWA VALUES FUND ASSISTANCE
Rescinded IAB 7/4/07, effective 6/15/07; see 261—Ch 165

CHAPTER 3
PETITION FOR DECLARATORY RULING
Renumbered 261—Ch 103, IAB 7/19/95

PART II
WORKFORCE DEVELOPMENT COORDINATION

CHAPTER 4
WORKFORCE DEVELOPMENT ACCOUNTABILITY SYSTEM
Rescinded **ARC 7056C**, IAB 8/9/23, effective 9/13/23

CHAPTER 5
IOWA INDUSTRIAL NEW JOBS TRAINING PROGRAM
[Prior to 1/14/87; Iowa Development Commission[520] Ch 5]
Transferred to 877—Chapter 16, IAC Supplement 10/18/23

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]
Transferred to 877—Chapter 17, IAC Supplement 10/18/23

CHAPTER 8
WORKFORCE DEVELOPMENT FUND
[Prior to 9/6/00, see 261—Ch 75]
Transferred to 877—Chapter 18, IAC Supplement 10/18/23

CHAPTER 9
WORKFORCE TRAINING AND ECONOMIC DEVELOPMENT FUNDS
Rescinded **ARC 6320C**, IAB 5/18/22, effective 6/22/22

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
Rescinded **ARC 6320C**, IAB 5/18/22, effective 6/22/22

CHAPTER 12
APPRENTICESHIP TRAINING PROGRAM
Transferred to 877—Chapter 19, IAC Supplement 10/18/23

CHAPTER 13
FUTURE READY IOWA REGISTERED APPRENTICESHIP DEVELOPMENT FUND
Transferred to 877—Chapter 20, IAC Supplement 10/18/23

CHAPTER 14
FUTURE READY IOWA EXPANDED REGISTERED
APPRENTICESHIP OPPORTUNITIES PROGRAM
Transferred to 877—Chapter 21, IAC Supplement 10/18/23

CHAPTER 15
STEM BEST APPROPRIATION

261—15.1(89GA,HF871,HF2564) Purpose. The authority is directed to adopt rules to establish criteria for the distribution of funds appropriated to the authority for the STEM BEST program.
[**ARC 6136C**, IAB 1/12/22, effective 2/16/22; **ARC 6794C**, IAB 1/11/23, effective 2/15/23]

261—15.2(89GA,HF871,HF2564) Definitions. As used in this chapter, unless the context otherwise requires:

"Authority" means the economic development authority created in Iowa Code section 15.105.

"Council" means the Iowa governor's STEM advisory council operated pursuant to Executive Order 74 dated July 26, 2011, and Executive Order 81 dated May 15, 2013.

"Program administrator" means the science, technology, engineering, and mathematics collaborative initiative established at the university of northern Iowa pursuant to Iowa Code section 268.7.

"STEM BEST program" or *"program"* means the grant program overseen by the council and program administrator to support curriculum development by K-12 schools and industry professionals to prepare students for careers in science, technology, engineering, or mathematics (STEM) or a related field.
[**ARC 6136C**, IAB 1/12/22, effective 2/16/22; **ARC 6794C**, IAB 1/11/23, effective 2/15/23]

261—15.3(89GA,HF871,HF2564) Eligible uses of funds. Funds appropriated to the authority for the STEM BEST program shall be transferred to the program administrator to fund grant awards. Awards shall be made in accordance with program guidance established by the council and program administrator. The program guidance is published at www.iowastem.org. Funds may also be used for program recruitment and applicant support.
[**ARC 6136C**, IAB 1/12/22, effective 2/16/22; **ARC 6794C**, IAB 1/11/23, effective 2/15/23]

These rules are intended to implement 2021 Iowa Acts, House File 871, section 3(11), and 2022 Iowa Acts, House File 2564, section 3(12).

[Filed ARC 6136C (Notice ARC 5983C, IAB 10/20/21), IAB 1/12/22, effective 2/16/22]
[Filed ARC 6794C (Notice ARC 6594C, IAB 10/19/22), IAB 1/11/23, effective 2/15/23]

CHAPTER 16
Reserved

CHAPTER 17
HIGH TECHNOLOGY APPRENTICESHIP PROGRAM
Rescinded IAB 7/4/07, effective 6/15/07

CHAPTER 18
WORK FORCE INVESTMENT PROGRAM
Transferred to 345—Ch 13, IAB 7/17/96, effective 7/1/96, pursuant to 1996 Iowa Acts, Senate File 2409

CHAPTER 19
IOWA JOB TRAINING PARTNERSHIP PROGRAM
Transferred to 345—Ch 14, IAB 7/17/96, effective 7/1/96, pursuant to 1996 Iowa Acts, Senate File 2409.

CHAPTER 20
ACCELERATED CAREER EDUCATION (ACE) PROGRAM
Transferred to 877—Chapter 22, IAC Supplement 11/1/23

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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[Filed ARC 9326B (Notice ARC 9060B, IAB 9/8/10), IAB 1/12/11, effective 2/16/11]

CHAPTER 22
NUISANCE PROPERTY AND ABANDONED BUILDING REMEDIATION ASSISTANCE

261—22.1(15) Authority and purpose. The authority is directed, pursuant to Iowa Code section 15.338, as enacted by 2015 Iowa Acts, chapter 136, section 48, to establish a fund to provide financial assistance to cities for purposes of assisting with the remediation of nuisance properties and abandoned buildings and other structures and to do so in such a manner as to make funds annually available to cities. In order to ensure that funds are continually available, the authority will administer the fund as a revolving fund.
[**ARC 2420C**, IAB 3/2/16, effective 4/6/16]

261—22.2(15) Definitions. For purposes of this chapter unless the context otherwise requires:

"Abandoned building" or *"abandonment"* means a building that meets either of the following:

1. In the case of a building located within a city's limits, a building that has remained vacant and has been in violation of the housing code or building code of the city for a period of six consecutive months.
2. In the case of a building located outside a city's limits, a building that has remained vacant and has been in violation of the housing code or building code applicable in the county in which the building is located for a period of six consecutive months.

"Agreement" means a contract for financial assistance under the program describing the terms on which the financial assistance is to be provided.

"Applicant" means a city applying for financial assistance under the program.

"Authority" means the economic development authority created in Iowa Code section 15.105.

"Building" means a structure located in a city, or outside the limits of a city in a county, that is either:

1. Used or intended to be used for commercial or industrial purposes; or
2. Used or intended to be used for residential purposes.

"Building" includes structures in which some floors may be used for retail stores, shops, salesrooms, markets, or similar commercial uses, or for offices, banks, civic administration activities, professional services, or similar business or civic uses, and other floors are used, designed, or intended to be used for residential purposes.

"Costs directly related" means expenditures that are incurred for acquisition, demolition, disposal, redevelopment, or rehabilitation of a project to the extent that they are attributable directly to the remediation or redevelopment of the property or its improvements. "Costs directly related" includes expenditures for site preparation work, surveying, construction materials, construction labor, architectural services, engineering services, building permits, building inspection fees, and interest accrued on a construction loan during the time period allowed for project completion under an agreement entered into pursuant to the program. "Costs directly related" does not include expenditures for furnishings, appliances, accounting services, legal services, loan origination and other financing costs, syndication fees and related costs, developer fees, or the costs associated with selling or renting the dwelling units whether incurred before or after completion of the housing project.

"Director" means the director of the authority.

"Financial assistance" means a loan or forgivable loan made by the authority to an applicant approved for funding under the program.

"Low- or moderate-income household" means a household earning 80 percent or less of the applicable area median income, as determined by the U.S. Department of Housing and Urban Development.

"Nuisance property" means a building, structure, or other real estate that is, or is likely to become, a public nuisance.

"Program" means the procedures, agreement, terms, and assistance established and provided pursuant to this chapter.

"Project" means a proposed plan for the remediation or redevelopment of nuisance and abandoned properties in a city. "Project" may include properties at multiple sites and locations, whether contiguous or not, as long as all properties to be remediated or redeveloped are included in the proposed plan upon

application and as long as the proposed plan demonstrates the steps and actions necessary to further remediation and redevelopment efforts in a comprehensive and coordinated manner.

"Public nuisance" means a building that is a menace to the public health, welfare, or safety, or that is structurally unsafe, unsanitary, or not provided with adequate safe egress, or that constitutes a fire hazard, or is otherwise dangerous to human life, or that in relation to the existing use constitutes a hazard to the public health, welfare, or safety by reason of inadequate maintenance, dilapidation, obsolescence, or abandonment. "Public nuisance" includes buildings with blighting characteristics as defined by Iowa Code section 403.2.

"Redevelopment" means development activities associated with a project that are undertaken either for the purpose of remediating nuisance or abandoned properties, for constructing new buildings or improvements at a site where formerly existing buildings have been demolished, or for rehabilitating, reusing or repurposing existing buildings or improvements at a project site. "Redevelopment" typically includes projects that result in the elimination of blighting characteristics as defined by Iowa Code section 403.2.

"Remediation" or *"remediating"* means the demolition, disposal, removal, repair, improvement, or rehabilitation of nuisance property or abandoned buildings at a site included in a project.

[**ARC 2420C**, IAB 3/2/16, effective 4/6/16]

261—22.3(15) Program description.

22.3(1) *Amount, form, and timing of assistance.* The program provides financial assistance to cities for the redevelopment or remediation of nuisance properties and abandoned buildings and other structures. The amount of assistance awarded will be negotiated between each applicant and the authority based on the total amount of funds available to the authority for the program and based on the project details.

22.3(2) *Application.*

a. Each fiscal year in which funding is available, the authority will accept applications for the assistance under the program and make funding decisions on a rolling basis.

b. Information on submitting an application under the program may be obtained by contacting the economic development authority. The contact information is:

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

22.3(3) *Approval of assistance.* The authority will consider, evaluate, and recommend applications for financial assistance under the program to the director. Authority staff will review applications for financial assistance and score the applications according to the criteria described in rule 261—22.4(15). Recommendations on funding amounts will depend upon the amount of funds available, the quality of the project applying, and the number and quality of the other applications received. Applications deemed to meet the minimum scoring criteria will be submitted to the director for a final funding decision. A project that does not receive funding may reapply.

22.3(4) *Contract required.* If the director approves an application for financial assistance under the program, the authority will prepare an agreement stating the terms on which the financial assistance is to be provided, and the applicant shall execute the agreement before funds are disbursed under the program.

22.3(5) *Use of funds.*

a. An applicant shall use funds only for purposes of the costs directly related to the project. The authority may require documentation or other information establishing the actual costs incurred for a project. Failure to use the funds for purposes of the costs directly related to a project shall be grounds for default under the agreement required pursuant to this chapter.

b. If a city receives financial assistance under the program, the amount of any lien created for costs related to remediation of a property included in a project plan shall not include any moneys that the city

received pursuant to this chapter for the remediation of the property. The contract executed pursuant to rule 261—22.5(15) will include a provision implementing this requirement.

22.3(6) *Form of financial assistance.* The authority will provide financial assistance in the form of a loan to the applicant. The amount of the loan, the term, the interest rate, any repayment requirements, and other standard terms shall be included in the contract required pursuant to rule 261—22.5(15).
[**ARC 2420C**, IAB 3/2/16, effective 4/6/16]

261—22.4(15) Program eligibility, application scoring, and funding decisions.

22.4(1) *Program eligibility.* To be eligible under the program, an applicant shall meet all of the following requirements:

a. The applicant shall be a city interested in developing a plan to address issues of slum and blight through the remediation or redevelopment of nuisance properties and abandoned buildings.

b. The applicant shall be willing to work with the authority's community development division in the development of the plan described in paragraph 22.4(1)*"a."*

c. The applicant may request an amount of financial assistance in its application, but shall be willing to accept financial assistance in whatever amount and on whatever terms the authority is able to offer, subject to the availability of funds and the prevailing interest rates at the time of application.

d. The applicant shall have closed all existing contracts under the program before it is eligible to apply for additional financial assistance. The authority may waive this requirement at its discretion for good cause shown. The authority will not waive this requirement if doing so would adversely impact other applicants.

e. The applicant shall submit any information the authority requests in order to evaluate and score the application under the criteria described in this rule.

22.4(2) *Application scoring criteria.* All applications for financial assistance under the program will be scored according to the following criteria:

a. The financial need of the city. 20 points.

For purposes of this criterion, the authority will consider the relative size of the city's budget, the relative scope of the city's problem with nuisance properties and abandoned buildings, and the debt capacity of the city.

b. The extent to which the city suffers from severe blighted areas, including the number of nuisance properties and abandoned buildings in a city relative to its size and the extent to which the successful remediation or redevelopment of the properties included in the project plan will reduce or eliminate such blight. 20 points.

For purposes of this criterion, the authority will consider whether the project plan includes areas meeting standard definitions of blight such as in Iowa Code section 403.17 or other state or federal programs. Cities demonstrating more severe blight will receive more points relative to other applicants with less severe blight.

c. The extent to which a city suffers from widespread dilapidated housing stock and the extent to which the successful remediation or redevelopment of the properties included in the project plan will reduce or eliminate such dilapidated housing stock. 20 points.

Cities demonstrating more dilapidated housing stock will receive more points relative to other applicants with less dilapidated housing stock.

d. The extent to which the city has the organizational strength, financial resources, human resources, and community participation necessary to successfully undertake the remediation or redevelopment described in the project plan. 20 points.

e. The number and percentage of low- and moderate-income households in the community. 20 points.

For purposes of this criterion, the authority will consider U.S. Census Bureau data or data collected from a communitywide income survey that meets the requirements of the state's community development block grant program. Cities demonstrating a higher percentage of low- and moderate-income households will receive more points relative to other applicants with lower percentages.

22.4(3) *Funding decisions.* Each application will be scored by staff in the community development division. The scores assigned by all participating staff will be averaged to reflect one numerical score. The application and the averaged numerical score will be referred to the director with a recommended funding decision. The director will make the final funding decision on each application, taking into consideration the amount of available funding, the numerical score of the application, and the funding recommendation of the community development division staff. The director may approve, deny, or defer funding for any application. The director will not approve funding for an application that receives an average score less than 50 points. A score greater than 50 points does not guarantee that the applicant will receive funding. Each applicant will be notified in writing of the funding decision within 60 days of application unless extenuating circumstances exist.
[**ARC 2420C**, IAB 3/2/16, effective 4/6/16]

261—22.5(15) Contract required.

22.5(1) Each applicant that is approved for financial assistance under the program shall enter into an agreement with the authority as evidenced by an executed contract. The contract will establish the terms on which the financial assistance is to be provided and may include any other terms reasonably necessary for the efficient administration of the program. The authority will develop a standard contract for use in the program, though the contract shall be subject to amendment from time to time as may be necessary to clarify the rights of the parties or to serve the best interests of the state.

22.5(2) The parties may amend the contract required pursuant to this rule at any time upon the mutual agreement of both parties.

22.5(3) The contract developed pursuant to this rule may require the successful applicant to submit information reasonably required by the authority to make reports to the authority's board, the governor's office, or the general assembly.
[**ARC 2420C**, IAB 3/2/16, effective 4/6/16]

These rules are intended to implement Iowa Code section 15.338.

[Filed ARC 2420C (Notice ARC 2263C, IAB 11/25/15), IAB 3/2/16, effective 4/6/16]

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:

"Annual action plan" means the annual plan required and approved by the U.S. Department of Housing and Urban Development that outlines the state's processes and procedures for distribution of CDBG funds. The annual action plan is available on the authority's website.

"Authority" means the economic development authority created in Iowa Code section 15.105.

"Authority's website" means the information and related content found at www.iowaeda.com and may include integrated content at affiliate sites.

"CDBG" means community development block grant.

"Citizen participation plan" means the plan required and approved by the U.S. Department of Housing and Urban Development that describes the state's process for including citizen participation in development of its consolidated plan and annual action plan. The citizen participation plan is available on the authority's website.

"Consolidated plan" means the five-year plan required and approved by the U.S. Department of Housing and Urban Development that establishes goals and objectives for the state's CDBG program. The consolidated plan is available on the authority's website.

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

"Management guide" means the administrative reference manual published by the authority for each program year. The management guide is available on the authority's website.

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

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

"Subrecipient" means a public or nonprofit entity contracting with and receiving funds from a recipient to carry out CDBG project activities.

[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09; **ARC 2038C**, IAB 6/24/15, effective 7/29/15; **ARC 6241C**, IAB 3/9/22, effective 4/13/22]

261—23.3(15) Annual action plan. The authority will prepare a CDBG annual action plan for submittal to and approval by HUD. The plan will provide a description of the activities and programs that will take place during the year to meet goals established in the consolidated plan.

23.3(1) The authority will follow the state's citizen participation plan during the development of the annual action plan. A draft annual action plan will be available on the authority's website for 30 days for public review and comment. The authority will hold a public hearing during the comment period to collect public input on the plan prior to its submittal to HUD.

23.3(2) The annual action plan will be submitted to HUD by November 15 of each year or 60 days after HUD announces the annual allocation amount. Upon review and approval by HUD, the annual action plan will cover activities from January 1 to December 31 of the year following plan submittal to HUD.

23.3(3) The annual action plan will include the proposed CDBG program funding allocation.

[**ARC 2038C**, IAB 6/24/15, effective 7/29/15; **ARC 6241C**, IAB 3/9/22, effective 4/13/22]

261—23.4(15) Allocation of funds. Upon approval by HUD, the authority will annually allocate CDBG funds among programs or activities described in the state's most recent annual action plan, which may include, but not be limited to, the following:

1. Housing assistance.
2. Job training and employment-related transportation services.
3. Water and sewer improvements.
4. Community facilities improvements.

5. Opportunities and threats fund.
6. Business or microenterprise assistance.
7. Neighborhood revitalization activities.

[**ARC 2038C**, IAB 6/24/15, effective 7/29/15; **ARC 6241C**, IAB 3/9/22, effective 4/13/22]

261—23.5(15) Requirements for funding. Applications for funds under any of the program-allocated funds pursuant to rule 261—23.4(15) shall meet the minimum criteria described in subrules 23.5(1) through 23.5(3).

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

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

a. 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.

b. 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.

c. 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.

23.5(3) Applicants shall certify their compliance with federal requirements applicable to the CDBG program including, but not limited to, the following:

a. 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;

b. Title I of the Housing and Community Development Act of 1974;

c. Age Discrimination Act of 1975;

d. Section 504 of the Housing and Urban Development Act of 1973;

e. Section 3 of the Housing and Urban Development Act of 1968;

f. Davis-Bacon Act (40 U.S.C. 276a-5) where applicable under Section 100 of the Housing and Community Development Act of 1974;

g. Lead-Based Paint Poisoning Prevention Act;

h. 24 CFR Part 58 and the National Environmental Policy Act of 1969;

i. Uniform Relocation Assistance and Real Property Acquisition Act of 1979, Titles II and III;

j. Americans with Disabilities Act;

k. Section 102 of the Department of Housing and Urban Development Reform Act of 1989;

l. Contract Work Hours and Safety Act;

m. Copeland Anti-Kickback Act;

n. Fair Labor Standards Act;

o. Hatch Act;

p. Prohibition on the Use of Excessive Force and Barring Entrance;

q. Drug-Free Workplace Act;

r. Governmentwide Restriction on Lobbying;

s. Single Audit Act;

t. State of Iowa Citizen Participation Plan; and

u. Other relevant regulations as noted in the CDBG management guide.

[**ARC 2038C**, IAB 6/24/15, effective 7/29/15; **ARC 6241C**, IAB 3/9/22, effective 4/13/22]

261—23.6(15) Award and administration. The authority may negotiate award amounts, terms and conditions prior to making any award under the program. Recipients shall comply with requirements and instructions set forth in the applicable CDBG management guide.
[**ARC 6241C**, IAB 3/9/22, effective 4/13/22]

261—23.7(15) Requirements for the economic development set-aside fund. Rescinded **ARC 6241C**, IAB 3/9/22, effective 4/13/22.

261—23.8(15) Requirements for the public facilities set-aside fund. Rescinded **ARC 6241C**, IAB 3/9/22, effective 4/13/22.

261—23.9(15) Requirements for the career link program. Rescinded **ARC 6241C**, IAB 3/9/22, effective 4/13/22.

261—23.10(15) Requirements for the opportunities and threats fund. Rescinded **ARC 6241C**, IAB 3/9/22, effective 4/13/22.

261—23.11(15) Requirements for the housing fund program. Rescinded **ARC 6241C**, IAB 3/9/22, effective 4/13/22.

261—23.12(15) Interim financing program. Rescinded **ARC 2038C**, IAB 6/24/15, effective 7/29/15.

261—23.13(15) Flood recovery fund. Rescinded IAB 9/18/02, effective 10/23/02.

261—23.14(15) Disaster recovery fund. Rescinded **ARC 6241C**, IAB 3/9/22, effective 4/13/22.

261—23.15(15) Administration of a CDBG award. Rescinded **ARC 6241C**, IAB 3/9/22, effective 4/13/22.

261—23.16(15) Requirements for the downtown revitalization fund. Rescinded **ARC 6241C**, IAB 3/9/22, effective 4/13/22.

261—23.17(15) Section 108 Loan Guarantee Program. Rescinded **ARC 6241C**, IAB 3/9/22, effective 4/13/22.

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
BROADBAND FORWARD AND TELECOMMUTER FORWARD CERTIFICATIONS

261—24.1(15E) Authority. The authority for establishing this program is provided in Iowa Code section 15E.167 as enacted by 2021 Iowa Acts, House File 871.
[**ARC 6085C**, IAB 12/15/21, effective 1/19/22]

261—24.2(15E) Purposes. The purpose of the broadband forward certification is to encourage political subdivisions to further develop broadband infrastructure and access to broadband. The purpose of the telecommuter forward certification is to encourage political subdivisions to further develop and promote the availability of telecommuting.
[**ARC 6085C**, IAB 12/15/21, effective 1/19/22]

261—24.3(15E) Definitions.

"Applicant" means a political subdivision that submits an application to the authority for a broadband forward certification or telecommuter forward certification.

"Authority" means the economic development authority created in Iowa Code section 15.105.

"Broadband" means the same as defined in Iowa Code section 8B.1.

"Broadband infrastructure" means the same as defined in Iowa Code section 8B.1.

"Certification" means a certificate issued to a political subdivision that meets the criteria in rule 261—24.5(15E) or 261—24.6(15E).

"Communications service provider" means a service provider that provides broadband service.

"Political subdivision" means a city, county, or township.

"Program" means the broadband forward and telecommuter forward certification program established in this chapter.
[**ARC 6085C**, IAB 12/15/21, effective 1/19/22]

261—24.4(15E) Application; review; approval.

24.4(1) *Application.* The authority will develop a standardized application process and make information on applying available on the authority's website at www.iowaeda.com. To apply for certification under the program, a political subdivision shall submit an application to the authority in the form and manner prescribed by the authority. A political subdivision may apply for broadband forward certification and telecommuter forward certification concurrently.

24.4(2) *Review.* The authority will review each complete application to determine whether an applicant meets the criteria in rule 261—24.5(15E) or 261—24.6(15E).

24.4(3) *Approval.* The authority may approve, deny or defer applications for certification. If the authority approves an application for certification, the authority will issue a broadband forward or telecommuter forward certificate and assist the political subdivision in publicizing its certification.
[**ARC 6085C**, IAB 12/15/21, effective 1/19/22]

261—24.5(15E) Broadband forward certification.

24.5(1) *Application requirements.* To obtain broadband forward certification, a political subdivision shall submit to the authority an application indicating all of the following:

a. The political subdivision's support and commitment to promote the availability of broadband.

b. Existing or proposed ordinances encouraging the further development of broadband infrastructure and access to broadband.

c. Efforts to secure local funding for the further development of broadband infrastructure and access to broadband.

d. A single point of contact for the political subdivision for all matters related to broadband and broadband infrastructure.

24.5(2) *Single point of contact.* The single point of contact designated pursuant to paragraph 24.5(1)*"d"* shall be responsible for all of the following:

a. Coordination and partnership with the authority, communications service providers, realtors, economic development professionals, employers, employees, and other broadband stakeholders.

b. Collaboration with the authority, communications service providers, and employers to identify, develop, and market broadband packages available in the political subdivision.

c. Familiarity with broadband mapping tools and other state-level resources.

d. Maintaining regular communication with the authority.

e. Providing to the political subdivision regular reports regarding the availability of broadband in the political subdivision.

24.5(3) *Evaluation.* The authority will evaluate whether the applicant demonstrates that its efforts or proposed efforts to develop broadband infrastructure and access to broadband will have a sufficient impact that warrants certification.

[**ARC 6085C**, IAB 12/15/21, effective 1/19/22]

261—24.6(15E) Telecommuter forward certification.

24.6(1) A political subdivision that meets the criteria for broadband forward certification in rule 261—24.5(15E) may apply for telecommuter forward certification. To obtain telecommuter forward certification, a political subdivision shall submit to the authority an application indicating the following:

a. The political subdivision's support and commitment to promote the availability of telecommuting options.

b. Existing or proposed ordinances encouraging the further development of telecommuting options.

c. Efforts to secure local funding for the further development of telecommuting options.

d. A single point of contact for coordinating telecommuting opportunities and options.

24.6(2) The single point of contact designated pursuant to paragraph 24.6(1)*"d"* shall be responsible for all of the following:

a. Coordination and partnership with the authority, communications service providers, realtors, economic development professionals, employers, employees, and other telecommuting stakeholders.

b. Collaboration with the authority, communications service providers, and employers to identify, develop, and market telecommuter-capable broadband packages available in the political subdivision.

c. Promotion of telecommuter-friendly workspaces, such as business incubators with telecommuting spaces, if such a workspace has been established in the political subdivision at the time the political subdivision submits the application.

d. Familiarity with broadband mapping tools and other state-level resources.

e. Maintaining regular communication with the authority.

f. Providing to the political subdivision regular reports regarding the availability of telecommuting options in the political subdivision.

24.6(3) The authority will evaluate whether the applicant demonstrates that its efforts or proposed efforts to further develop and promote the availability of telecommuting will have a sufficient impact that warrants certification.

[**ARC 6085C**, IAB 12/15/21, effective 1/19/22]

261—24.7(15E) Maintenance of certification.

24.7(1) *Reports.* A political subdivision certified pursuant to this chapter shall submit an annual report to the authority verifying its continued eligibility for certification pursuant to rule 261—24.5(15E) or 261—24.6(15E). If applicable, the report will also address a political subdivision's compliance with the restrictions in subrule 24.7(2).

24.7(2) *Restrictions on certified broadband forward communities.* A political subdivision that the authority has certified as a broadband forward community pursuant to subrule 24.4(3) shall not do any of the following:

a. Require an applicant to designate a final contractor to complete a broadband infrastructure project.

b. Impose a fee to review an application or issue a permit for a broadband infrastructure application in excess of $100.

c. Impose a moratorium of any kind on the approval of applications and issuance of permits for broadband infrastructure projects or on construction related to broadband infrastructure.

d. Discriminate among communications service providers or public utilities with respect to any action described in this rule or otherwise related to broadband infrastructure, including granting access to public rights-of-way, infrastructure and poles, river and bridge crossings, or any other physical assets owned or controlled by the political subdivision.

e. As a condition for approving an application or issuing a permit for a broadband infrastructure project or for any other purpose, require the applicant to provide any service or make available any part of the broadband infrastructure to the political subdivision or make any payment to or on behalf of the political subdivision, except for the fee allowed under paragraph 24.7(2)*"b."*

24.7(3) *Revocation of certification.* The authority shall revoke the certification of a political subdivision that does not comply with the requirements of subrule 24.7(1) or 24.7(2) or that the authority otherwise determines is no longer eligible for certification pursuant to this chapter.

[**ARC 6085C**, IAB 12/15/21, effective 1/19/22]

These rules are intended to implement Iowa Code section 15E.167.

[Filed ARC 6085C (Notice ARC 5929C, IAB 9/22/21), IAB 12/15/21, effective 1/19/22]

CHAPTER 25
HOUSING FUND

Rescinded **ARC 6320C**, IAB 5/18/22, effective 6/22/22

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.

[Filed emergency 6/28/96—published 7/17/96, effective 7/1/96]
[Filed 9/20/96, Notice 7/17/96—published 10/9/96, effective 11/13/96]

CHAPTER 27
NEIGHBORHOOD STABILIZATION PROGRAM

Rescinded **ARC 7056C**, IAB 8/9/23, effective 9/13/23

CHAPTER 28
RURAL HOUSING NEEDS ASSESSMENT GRANT PROGRAM

[Prior to 02/22/23, see Economic Development Authority[261] Ch 220]

261—28.1(88GA,SF608) Purpose. The purpose of the rural housing needs assessment grant program is to support the use of publicly available information and support community efforts to interpret hard data with supplemental information and to help communities implement changes to development codes, local ordinances, and housing incentives according to the community's needs.
[**ARC 5092C**, IAB 7/15/20, effective 8/19/20; **ARC 6892C**, IAB 2/22/23, effective 3/29/23]

261—28.2(88GA,SF608) Definitions. For purposes of this chapter, unless the context otherwise requires:

"Agreement" means a contract for financial assistance under the program describing the terms on which financial assistance is to be provided.

"Applicant" means an Iowa community applying for financial assistance under the program.

"Authority" means the economic development authority created in Iowa Code section 15.105.

"Community" means a county, an incorporated city, or a community designee.

"Community designee" means a legal entity established or designated by a county or incorporated city in an agreement pursuant to Iowa Code chapter 28E for the purposes of evaluating housing needs.

"Director" means the director of the authority.

"Financial assistance" means a grant made by the authority to an applicant approved for funding under the program.

"Program" means the rural housing needs assessment grant program established in this chapter.
[**ARC 5092C**, IAB 7/15/20, effective 8/19/20; **ARC 5693C**, IAB 6/16/21, effective 7/21/21; **ARC 6892C**, IAB 2/22/23, effective 3/29/23]

261—28.3(88GA,SF608) Program description.

28.3(1) *Amount, form, and timing of assistance.* The amount of assistance awarded will be determined by the authority and will be based on the total amount of funds available to the authority for the program and the costs specified in the application. The authority will establish a maximum grant award per application and a minimum grant award per application for each fiscal year in which funding is available. The authority will provide financial assistance in the form of a grant. Funds will be disbursed on a reimbursement basis for expenses incurred by the applicant after approval of an award by the director.

28.3(2) *Application.*

a. *Forms.* All applications and other filings related to the program shall be on such forms and in accordance with such instructions as may be established by the authority. Information about the program, the application, and application instructions may be obtained by contacting the authority.

b. *Application period.* Each fiscal year during which funding is available, applications for financial assistance will only be accepted during the established application period, or periods, as identified by the authority on its website.

c. *Complete application required.* An application shall not be considered submitted for review until the application is completed and all required supporting documentation and information are provided to the authority.

28.3(3) *Use of funds.*

a. An applicant shall use funds only for reimbursement of the costs directly related to the project. The authority may require documentation or other information establishing the actual costs incurred for a project. Failure to use the funds for reimbursement of the costs directly related to a project shall be grounds for default under the agreement required pursuant to this chapter.

b. For purposes of this subrule, "costs directly related" does not include any expenses specified as ineligible in the agreement required pursuant to this chapter.
[**ARC 5092C**, IAB 7/15/20, effective 8/19/20; **ARC 5693C**, IAB 6/16/21, effective 7/21/21; **ARC 6892C**, IAB 2/22/23, effective 3/29/23]

261—28.4(88GA,SF608) Program eligibility, application scoring, and funding decisions.

28.4(1) *Program eligibility.* An applicant must meet the following eligibility criteria to qualify for financial assistance under this program:

a. The applicant must be an Iowa community as defined in rule 261—28.2(88GA,SF608).

b. An applicant that is an incorporated city must have a population of 20,000 or less and shall not be contiguous to a city with a population of 40,000 or greater. An applicant that is a county shall be one of the 88 least populous counties in the state. An applicant that is a community designee shall have entered an agreement pursuant to Iowa Code chapter 28E with an incorporated city or county meeting the population criteria in this paragraph.

c. An eligible applicant will be allowed to submit only one application per application period.

d. The applicant must demonstrate the capacity for administering a grant.

e. The applicant must demonstrate the feasibility of the project's proposed scope and timeline with the funds requested.

f. The applicant must identify and describe other sources of funding for the proposed assessment and related activities.

g. The applicant must identify any partner organizations that will be utilized in interpreting and implementing the data collected through the assessment.

h. The applicant must provide a cash match of at least 50 cents for every dollar awarded as a grant under this program.

28.4(2) *Application scoring criteria.* All completed applications will be reviewed and scored. Each application will be scored using criteria set forth by the authority, which may include the following:

a. Applicant readiness and partnerships. The application should demonstrate that the applicant is actively addressing housing needs and has identified diverse partners.

b. Project goals and timeline. The application should demonstrate clearly defined, measurable goals and a timeline for execution of the project.

c. Project budget and financing. The application should include a complete budget that provides clear justification for all costs. The application should also demonstrate secured financing and that the cash match requirement has been met.

d. Additional points. Extra consideration is provided to applications that have projects supporting housing initiatives endorsed by the Iowa great places citizens advisory board, as well as those located in a community with a population of 10,000 or less.

28.4(3) *Funding decisions.* Funding decisions will be made using the following process:

a. *Staff review.* Each application will be reviewed by staff for eligibility and completeness. Complete applications meeting all eligibility requirements will be sent to a grant committee.

b. *Grant committee review and recommendation.* Following staff review, a grant committee will review and score applications using the criteria in subrule 28.4(2) and will make funding recommendations. The committee may utilize an outside technical panel if the committee determines additional expertise is necessary to review and score the application. The application and score will be referred to the director with a recommendation as to whether to fund the project and, if funding is recommended, a recommendation as to the amount of the grant.

c. *Director's decision.* The director will make the final funding decision on each application, taking into consideration the amount of available funding and the grant committee's recommendation. The director may approve, deny, or defer funding for any application.

d. *Notification.* Each applicant will be notified in writing of the funding decision within 15 days of the director's decision.

[**ARC 5092C**, IAB 7/15/20, effective 8/19/20; **ARC 5693C**, IAB 6/16/21, effective 7/21/21; **ARC 6319C**, IAB 5/18/22, effective 6/22/22; **ARC 6892C**, IAB 2/22/23, effective 3/29/23]

261—28.5(88GA,SF608) Agreement required.

28.5(1) Each applicant that is approved for financial assistance under the program shall enter into an agreement with the authority for the provision of such financial assistance. The agreement will establish

the terms on which the financial assistance is to be provided and may include any other terms reasonably necessary for the efficient administration of the program.

28.5(2) The authority and the applicant may amend the agreement at any time upon the mutual agreement of both the authority and the applicant.

28.5(3) The agreement may require an applicant that has been approved for financial assistance under the program to submit information reasonably required by the authority to make reports to the authority's board, the governor's office, or the general assembly.

[**ARC 5092C**, IAB 7/15/20, effective 8/19/20; **ARC 6892C**, IAB 2/22/23, effective 3/29/23]

These rules are intended to implement 2019 Iowa Acts, Senate File 608.

[Filed ARC 5092C (Notice ARC 4774C, IAB 11/20/19), IAB 7/15/20, effective 8/19/20]
[Filed ARC 5693C (Notice ARC 5535C, IAB 3/24/21), IAB 6/16/21, effective 7/21/21]
[Filed ARC 6319C (Notice ARC 6202C, IAB 2/23/22), IAB 5/18/22, effective 6/22/22]
[Filed ARC 6892C (Notice ARC 6737C, IAB 12/14/22), IAB 2/22/23, effective 3/29/23]

CHAPTER 29
RURAL INNOVATION GRANT PROGRAM

[Prior to 02/22/23, see Economic Development Authority[261] Ch 221]

261—29.1(88GA,SF608) Purpose. The purpose of the rural innovation grant program is to support creative, nontraditional ideas that focus on current issues and challenges faced by rural communities associated with the themes of community investment, growth, and connection.

[**ARC 5093C**, IAB 7/15/20, effective 8/19/20; **ARC 6892C**, IAB 2/22/23, effective 3/29/23]

261—29.2(88GA,SF608) Definitions. For purposes of this chapter, unless the context otherwise requires:

"Agreement" means a contract for financial assistance under the program describing the terms on which financial assistance is to be provided.

"Applicant" means an Iowa business, college, university, city, county, council of governments organization established by Iowa Code chapter 28H, K-12 educational institution, or private nonprofit agency or foundation applying for financial assistance under the program. A business will be considered an Iowa business if the business is incorporated in the state of Iowa or authorized to do business in the state of Iowa.

"Authority" means the economic development authority created in Iowa Code section 15.105.

"Director" means the director of the authority.

"Financial assistance" means a grant made by the authority to an applicant approved for funding under the program.

"Program" means the rural innovation grant program established in this chapter.

"Project" means a program or activity undertaken in and for the benefit of a community in Iowa with a population of 20,000 or less and not contiguous to a city with a population of 40,000 or greater.

[**ARC 5093C**, IAB 7/15/20, effective 8/19/20; **ARC 6319C**, IAB 5/18/22, effective 6/22/22; **ARC 6892C**, IAB 2/22/23, effective 3/29/23]

261—29.3(88GA,SF608) Program description.

29.3(1) *Amount, form, and timing of assistance.* The amount of assistance awarded will be determined by the authority based on the total amount of funds available to the authority for the program and based on the project details. The authority will establish a maximum grant award per application and a minimum grant award per application for each fiscal year in which funding is available. The authority will provide financial assistance in the form of a grant. Funds will be disbursed on a reimbursement basis for expenses incurred by the applicant after approval of an award by the director.

29.3(2) *Application.*

a. *Forms.* All applications and other filings related to the program shall be on such forms and in accordance with such instructions as established by the authority. Information about the program, the application, and application instructions may be obtained by contacting the authority.

b. *Application period.* Each fiscal year during which funding is available, applications for financial assistance will only be accepted during the established application period, or periods, as identified by the authority on its website.

c. *Frequency of application.* An eligible applicant may only be named as the primary entity on one application per application period. However, an applicant who has applied as the primary entity for an application may also be named as a partner on additional applications.

d. *Complete application required.* An application shall not be considered submitted for review until the application is completed and all required supporting documentation and information are provided.

29.3(3) *Use of funds.*

a. An applicant shall use funds only for reimbursement of the costs directly related to the project. The authority may require documentation or other information establishing the actual costs incurred for a project. Failure to use the funds for reimbursement of the costs directly related to a project shall be grounds for default under the agreement required pursuant to this chapter.

b. For purposes of this subrule, "costs directly related" does not include ineligible expenses such as international travel, domestic travel outside the state of Iowa, insurance, training or professional development courses, and any other expenses specified as ineligible in the agreement required pursuant to this chapter.

[**ARC 5093C**, IAB 7/15/20, effective 8/19/20; **ARC 6892C**, IAB 2/22/23, effective 3/29/23]

261—29.4(88GA,SF608) Program eligibility, application scoring, and funding decisions.

29.4(1) *Program eligibility.* An applicant must meet the following eligibility criteria to qualify for financial assistance under this program:

a. The applicant must meet the definition of "applicant" in rule 261—29.2(88GA,SF608).

b. If the applicant is not a local government entity, the applicant must demonstrate support from the local government entity as evidenced by a letter of support.

c. The applicant must serve a city that has a population of 20,000 or less and that is not contiguous to a city with a population of 40,000 or greater.

d. The applicant must demonstrate the capacity for administering a grant.

e. The applicant must provide a cash match of at least 50 cents for every dollar awarded as a grant under this program.

f. The applicant must demonstrate that the project does not consist of ongoing expenses for existing projects or programs.

29.4(2) *Application scoring criteria.* All completed applications will be reviewed and scored. Each application will be scored using criteria set forth by the authority, which may include the following:

a. Alignment with program purpose. The application should demonstrate that the project aligns with the program purpose by developing a nontraditional, concrete solution to increase rural community vibrancy.

b. Innovation. The application should demonstrate that the project will address rural challenges through exceptional and creative solutions.

c. Replicability. The application should demonstrate a clear opportunity for successful replication in rural communities across the state.

d. Roles defined. The application should identify and describe the roles of all partners involved in the project.

e. Project goals and timeline. The application should demonstrate clearly defined, measurable goals and a timeline for execution of the project.

f. Project budget and financing. The application should include a complete budget that provides clear justification for all costs. The application should also demonstrate secured financing and that the cash match requirement has been met.

g. Additional points. Extra consideration is provided to projects that have been endorsed by the Iowa great places citizens advisory board (additional five points added to score total), as well as those located in a community with a population of 5,000 or less.

29.4(3) *Funding decisions.* Funding decisions will be made using the following process:

a. *Staff review.* Each application will be reviewed by staff for eligibility and completeness. Complete applications meeting all eligibility requirements will be sent to a grant committee.

b. *Grant committee review and recommendation.* Following staff review, a grant committee will review and score applications using the criteria in subrule 29.4(2) and will make funding recommendations. The committee may utilize an outside technical panel if the committee determines additional expertise is necessary to review and score the application. The application and score will be referred to the director with a recommendation as to whether to fund the project and, if funding is recommended, a recommendation as to the amount of the grant.

c. *Director's decision.* The director will make the final funding decision on each application, taking into consideration the amount of available funding and the grant committee's recommendation. The director may approve, deny, or defer funding for any application.

d. *Notification.* Each applicant will be notified in writing of the funding decision within 15 days of the director's decision.

[**ARC 5093C**, IAB 7/15/20, effective 8/19/20; **ARC 6319C**, IAB 5/18/22, effective 6/22/22; **ARC 6892C**, IAB 2/22/23, effective 3/29/23]

261—29.5(88GA,SF608) Agreement required.

29.5(1) Each applicant that is approved for financial assistance under the program shall enter into an agreement with the authority for the provision of such financial assistance. The agreement will establish the terms on which financial assistance is to be provided and may include any other terms reasonably necessary for the efficient administration of the program.

29.5(2) The authority and the applicant may amend the agreement at any time upon the mutual agreement of both the authority and the applicant.

29.5(3) The agreement may require an applicant that has been approved for financial assistance under the program to submit information reasonably required by the authority to make reports to the authority's board, the governor's office, or the general assembly.

[**ARC 5093C**, IAB 7/15/20, effective 8/19/20; **ARC 6892C**, IAB 2/22/23, effective 3/29/23]

These rules are intended to implement 2019 Iowa Acts, Senate File 608.

[Filed ARC 5093C (Notice ARC 4775C, IAB 11/20/19), IAB 7/15/20, effective 8/19/20]

[Filed ARC 6319C (Notice ARC 6202C, IAB 2/23/22), IAB 5/18/22, effective 6/22/22]

[Filed ARC 6892C (Notice ARC 6737C, IAB 12/14/22), IAB 2/22/23, effective 3/29/23]

CHAPTER 30
EMPOWER RURAL IOWA PROGRAM

[Prior to 02/22/23, see Economic Development Authority[261] Ch 222]

261—30.1(89GA,HF871,HF2564) Purpose. The empower rural Iowa initiative was created by Executive Order Number 3 dated July 18, 2018, which directs the authority to provide staffing and administrative assistance for the initiative and its associated task forces.
[**ARC 5963C**, IAB 10/6/21, effective 9/17/21; **ARC 6892C**, IAB 2/22/23, effective 3/29/23]

261—30.2(89GA,HF871,HF2564) Definitions. As used in this chapter, unless the context otherwise requires:

"Authority" means the economic development authority created in Iowa Code section 15.105.

"Director" means the director of the authority.

"Empower rural Iowa initiative" or *"initiative"* means the initiative created by Executive Order Number 3 dated July 18, 2018.

"Rural community" means either an Iowa city with a population of 20,000 or less and that is not contiguous to a city with a population of 40,000 or greater, or an Iowa county that is one of the 88 least populous counties in the state.
[**ARC 5963C**, IAB 10/6/21, effective 9/17/21; **ARC 6892C**, IAB 2/22/23, effective 3/29/23]

261—30.3(89GA,HF871,HF2564) Eligible uses of funds.

30.3(1) Funds appropriated to the authority for the empower rural Iowa program shall be used to address the challenges and opportunities of rural communities. Uses of funds shall be approved by the director.

30.3(2) Eligible uses of funds include the following:

a. The rural housing needs assessment grant program administered pursuant to 261—Chapter 28;

b. The rural innovation grant program administered pursuant to 261—Chapter 29;

c. Support for entrepreneurship and cooperative business models for businesses in rural communities;

d. Leadership development training for representatives of rural communities;

e. Education and training opportunities relating to succession planning for businesses in rural communities;

f. Promotion of e-commerce opportunities for businesses in rural communities; and

g. Implementation of additional recommendations published by the investing in rural Iowa task force, the growing rural Iowa task force, and the connecting rural Iowa task force created by the empower rural Iowa initiative and administered by the authority.
[**ARC 5963C**, IAB 10/6/21, effective 9/17/21; **ARC 6892C**, IAB 2/22/23, effective 3/29/23]

These rules are intended to implement 2021 Iowa Acts, House File 871, and 2022 Iowa Acts, House File 2564.

[Filed Emergency After Notice ARC 5963C (Notice ARC 5789C, IAB 7/28/21), IAB 10/6/21, effective 9/17/21]

[Filed ARC 6892C (Notice ARC 6737C, IAB 12/14/22), IAB 2/22/23, effective 3/29/23]

CHAPTER 31
ECONOMIC DEVELOPMENT REGION INITIATIVES

261—31.1(15E) Purpose. If funding is made available, the authority 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.
8. Development of the alternative and renewable energy sector.

[**ARC 1626C**, IAB 9/17/14, effective 10/22/14; see Delay note at end of chapter; **ARC 1822C**, IAB 1/21/15, effective 12/19/14]

261—31.2(15E) 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.

[**ARC 1626C**, IAB 9/17/14, effective 10/22/14; see Delay note at end of chapter]

261—31.3(15E) Financial assistance. Financial assistance under the economic development region initiative comes from the moneys allocated for such purposes by the authority pursuant to Iowa Code section 15.335B.

[**ARC 1626C**, IAB 9/17/14, effective 10/22/14; see Delay note at end of chapter]

261—31.4(15E) Definitions.

"Economic development region" shall consist of three or more contiguous counties or two or more contiguous counties and one or more public or private, nonprofit entities that have entered into an agreement to pursue mutual economic development goals with a regional focus.

"Economic development region assistance fund" means a fund created pursuant to Iowa Code section 15.335B.

"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.

[**ARC 1626C**, IAB 9/17/14, effective 10/22/14; see Delay note at end of chapter]

DIVISION I
ECONOMIC DEVELOPMENT REGION INITIATIVE—FINANCIAL ASSISTANCE

261—31.5(15E) Uses of funds under the economic development region initiative. Financial assistance from the economic development region assistance 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 economic development region assistance 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 economic development region assistance 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 economic development region assistance 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 economic development region assistance 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 economic development region assistance fund.

31.5(5) *Business succession assistance program.* Match is one dollar of local funds for every two dollars received from the economic development region assistance fund.

31.5(6) *Unique or innovative regional projects.* Match is on a one-to-one basis.

[**ARC 1626C**, IAB 9/17/14, effective 10/22/14; see Delay note at end of chapter]

261—31.6(15E) Application process and approval process.

31.6(1) *Application process.* The authority will only accept competitive applications submitted during the filing window. For the purpose of this rule, the filing window shall start on July 1 and end on July 15 of any fiscal year in which the authority opens the application process. If July 15 falls on a weekend, the deadline shall be extended to the next business day. The authority has developed an application process and will post all relevant application information on iowagrants.gov.

31.6(2) *Approval process.* The director of the authority will establish a review committee consisting of the authority's industry partners. The committee may recommend full or partial funding or no funding of any or all applicants.

[**ARC 1626C**, IAB 9/17/14, effective 10/22/14; see Delay note at end of chapter]

261—31.7(15E) Reporting requirements. Award recipients in economic development regions shall provide a close-out report to the authority outlining how the funds were invested in Iowa's future. The authority shall develop the reporting format for all required close-out reports.

[**ARC 1626C**, IAB 9/17/14, effective 10/22/14; see Delay note at end of chapter]

DIVISION II
ECONOMIC ENTERPRISE AREAS

261—31.8(15E) 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.

[**ARC 1626C**, IAB 9/17/14, effective 10/22/14; see Delay note at end of chapter]

261—31.9(15E) 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 authority 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 the authority 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 economic development region assistance fund.

[**ARC 1626C**, IAB 9/17/14, effective 10/22/14; see Delay note at end of chapter]

261—31.10(15E) 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.

[**ARC 1626C**, IAB 9/17/14, effective 10/22/14; see Delay note at end of chapter]

261—31.11(15E) Application process and approval process.

31.11(1) *Application process.* The authority will only accept competitive applications submitted during the filing window. For the purpose of this rule, the filing window shall start on July 1 and end on July 15 of any fiscal year in which the authority opens the application process. If July 15 falls on a weekend, the deadline shall be extended to the next business day. The authority has developed an application process and will post all relevant application information on iowagrants.gov.

31.11(2) *Approval process.* The director of the authority will establish a review committee consisting of the authority's industry partners. The committee may recommend full or partial funding or no funding of any or all applicants.

[**ARC 1626C**, IAB 9/17/14, effective 10/22/14; see Delay note at end of chapter]

261—31.12(15E) Reporting requirements. Award recipients shall provide a close-out report to the authority outlining how funds were invested in Iowa's future.

[**ARC 1626C**, IAB 9/17/14, effective 10/22/14; see Delay note at end of chapter]

DIVISION III
BUSINESS ACCELERATORS

261—31.13(15E) Description and purpose. The authority 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.

[**ARC 1626C**, IAB 9/17/14, effective 10/22/14; see Delay note at end of chapter; **ARC 1822C**, IAB 1/21/15, effective 12/19/14]

261—31.14(15E) Definitions.

"Business accelerator" means an organization that fosters the accelerated growth of new and existing Iowa businesses.

[**ARC 1626C**, IAB 9/17/14, effective 10/22/14; see Delay note at end of chapter]

261—31.15(15E) 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 economic development authority.
9. The business accelerator must refer 20 businesses per year to the Venture Network of Iowa.

[**ARC 1626C**, IAB 9/17/14, effective 10/22/14; see Delay note at end of chapter]

261—31.16(15E) Other considerations. In determining whether a business accelerator qualifies for financial assistance, the authority 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.

[**ARC 1626C**, IAB 9/17/14, effective 10/22/14; see Delay note at end of chapter]

261—31.17(15E) Application procedures.

31.17(1) Application process and approval process.

a. Application process. The authority will only accept competitive applications submitted during the filing window. For the purpose of this rule, the filing window shall start on July 1 and end on July 15 of any fiscal year in which the authority opens the application process. If July 15 falls on a weekend, the deadline shall be extended to the next business day. The authority has developed an application process and will post all relevant application information on iowagrants.gov.

b. Approval process. The director of the authority will establish a review committee consisting of the authority's industry partners. The committee may recommend full or partial funding or no funding of any or all applicants.

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 authority.

[**ARC 1626C**, IAB 9/17/14, effective 10/22/14; see Delay note at end of chapter]

261—31.18(15E) Reporting. Business accelerators receiving financial assistance under this rule must submit an annual report to the authority documenting progress.

[**ARC 1626C**, IAB 9/17/14, effective 10/22/14; see Delay note at end of chapter]

DIVISION IV
SMALL BUSINESS DEVELOPMENT CENTERS

261—31.19(81GA,HF868,HF809) Small business development center assistance. Rescinded **ARC 1626C**, IAB 9/17/14, effective 10/22/14; see Delay note at end of chapter.

DIVISION V
IOWA BUSINESS RESOURCE CENTERS

261—31.20(81GA,HF868,HF809) Iowa business resource centers. Rescinded **ARC 1626C**, IAB 9/17/14, effective 10/22/14; see Delay note at end of chapter.

These rules are intended to implement 2013 Iowa Code sections 15E.231 to 15E.233; 2011 Iowa Acts, chapter 118, section 20; and 2014 Iowa Acts, Senate File 2359.

[Filed 10/21/05, Notice 8/3/05—published 11/9/05, effective 12/14/05]
[Filed ARC 1626C (Notice ARC 1540C, IAB 7/9/14), IAB 9/17/14, effective 10/22/14][1]
[Filed Emergency ARC 1822C, IAB 1/21/15, effective 12/19/14]

[1] October 22, 2014, effective date of ARC 1626C [31.1 to 31.20] delayed 70 days by the Administrative Rules Review Committee at its meeting held October 14, 2014; delay lifted at the meeting held November 18, 2014.

CHAPTER 32
TAX CREDITS FOR ECONOMIC DEVELOPMENT REGION REVOLVING LOAN FUND

Rescinded **ARC 7056C**, IAB 8/9/23, effective 9/13/23

CHAPTER 33
IOWA WINE AND BEER PROMOTION GRANT PROGRAM

[Prior to 7/4/07, see 261—Ch 104]

Rescinded **ARC 6320C**, IAB 5/18/22, effective 6/22/22

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]

Rescinded **ARC 7056C**, IAB 8/9/23, effective 9/13/23

CHAPTER 35
REGIONAL TOURISM MARKETING GRANT PROGRAM

Rescinded **ARC 7056C**, IAB 8/9/23, effective 9/13/23

CHAPTER 36
DOWNTOWN LOAN GUARANTEE PROGRAM

261—36.1(15) Purpose. Pursuant to Iowa Code section 15.431, the authority, in partnership with the Iowa finance authority, shall establish and administer a downtown loan guarantee program. The purpose of the program is to encourage Iowa downtown businesses and banks to reinvest and reopen following the COVID-19 pandemic.
[**ARC 6134C**, IAB 1/12/22, effective 12/17/21]

261—36.2(15) Definitions.

"Authority" means the economic development authority created in Iowa Code section 15.105.

"Authority's website" means the information and related content found at www.iowaeda.com and may include integrated content at affiliate sites.

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

"Borrower" means a business that is approved for a loan by a lender and that has applied for assistance under the program.

"Director" means the director of the authority.

"Iowa finance authority" means the public instrumentality and agency of the state created by Iowa Code section 16.1A.

"Lender" means a federally insured financial lending institution that issued a loan to a borrower.

"Program" means the downtown loan guarantee program established pursuant to this chapter.
[**ARC 6134C**, IAB 1/12/22, effective 12/17/21]

261—36.3(15) Eligibility. To be eligible for approval of a loan guarantee, a borrower must demonstrate that all of the following conditions are met:

36.3(1) The loan finances an eligible downtown resource center community catalyst building remediation grant project or main street Iowa challenge grant project within a designated district. A borrower does not need to receive a grant to be eligible for a loan guarantee under the program, but a borrower and proposed project must meet all eligibility criteria for either the community catalyst building remediation grant or main street Iowa challenge grant.

36.3(2) The loan finances a rehabilitation project, or finances acquisition or refinancing costs associated with the project.

36.3(3) At least 25 percent of the project costs are used for construction on the project or renovation.

36.3(4) The project includes a housing component.

36.3(5) The loan is used for construction of the project, permanent financing of the project, or both.

36.3(6) A federally insured financial lending institution issued the loan.

36.3(7) The loan does not reimburse the borrower for working capital, operations, or similar expenses.

36.3(8) The project meets downtown resource center and main street Iowa design review criteria.
[**ARC 6134C**, IAB 1/12/22, effective 12/17/21]

261—36.4(15) Application submittal and review process.

36.4(1) The authority will develop a standardized application process and make information on applying available on the authority's website. To apply for assistance under the program, the borrower and lender shall submit an application to the authority in the manner prescribed by the authority. Applications will be accepted and processed by authority staff on a continuing basis, or the authority may establish application periods as announced on the authority's website.

36.4(2) Each application shall include, at a minimum, the following: name(s) and address(es) of the borrower and participating lender, amount of loan, amount of loan guarantee requested, and certification of compliance with state law and lending practices.

36.4(3) The authority may refuse to accept incomplete applications.

36.4(4) The authority may refuse to accept applications because of insufficient funds.

36.4(5) Authority staff, in conjunction with Iowa finance authority staff, will review applications and make a recommendation as to whether an application should be approved and the guarantee percentage. The director may approve, deny, or defer an application.

36.4(6) The authority reserves the right to deny a loan guarantee for unreasonable bank loan fees or interest rates.

[**ARC 6134C**, IAB 1/12/22, effective 12/17/21]

261—36.5(15) Loan guarantee limitations.

36.5(1) For a loan amount less than or equal to $500,000, the authority may guarantee up to 50 percent of the loan amount. For a loan amount greater than $500,000, the authority may provide a maximum loan guarantee of up to $250,000.

36.5(2) A project loan must be secured by a mortgage against the project property.

36.5(3) The authority may guarantee loans for up to five years. The authority may extend the loan guarantee for an additional five years if an underwriting review finds that an extension would be beneficial. Extensions are subject to approval by the director.

36.5(4) The loan must not be insured or guaranteed by another local, state, or federal guarantee program.

36.5(5) The loan guarantee is not transferable if the loan or the project is sold or transferred.

36.5(6) In the event of a loss due to default, the loan guarantee proportionally pays the guarantee percentage of the loss to the lender as established in the agreement executed pursuant to rule 261—36.7(15).

[**ARC 6134C**, IAB 1/12/22, effective 12/17/21]

261—36.6(15) Annual fee. The lender shall pay an annual loan guarantee fee not to exceed 2 percent of the loan amount for the duration of the loan guarantee. The fee applicable to each approved loan guarantee will be established by the program agreement executed pursuant to rule 261—36.7(15).

[**ARC 6134C**, IAB 1/12/22, effective 12/17/21]

261—36.7(15) Agreement. Upon approval of an award, authority staff shall prepare an agreement between the authority, the lender, and the borrower. The agreement, at a minimum, shall include the conditions of the award, including the applicable annual fee to be paid by the lender pursuant to rule 261—36.6(15), the responsibilities of each party, and the potential actions in instances of noncompliance.

[**ARC 6134C**, IAB 1/12/22, effective 12/17/21]

261—36.8(15) Reporting. The borrower and lender shall submit any information reasonably requested by the authority in sufficient detail to permit the authority to prepare any reports required by the authority, the board, the general assembly, or the governor's office.

[**ARC 6134C**, IAB 1/12/22, effective 12/17/21]

These rules are intended to implement Iowa Code section 15.431.

[Filed Emergency After Notice ARC 6134C (Notice ARC 5984C, IAB 10/20/21), IAB 1/12/22, effective 12/17/21]

CHAPTER 37
CITY DEVELOPMENT BOARD

[Prior to 1/14/87; Planning and Programming(630), ch 7]

Rescinded **ARC 7056C**, IAB 8/9/23, effective 9/13/23

CHAPTER 38
REGIONAL SPORTS AUTHORITY DISTRICTS

261—38.1(15E) Definitions. For purposes of this chapter unless the context otherwise requires:

"Actively promote" or *"active promotion"* means to regularly undertake specific identifiable actions that encourage greater participation in an activity or that make an activity more visible and accessible. Active promotion includes the planning, organizing, advertising, marketing, managing, hosting, and sponsoring of a nonprofessional sporting event.

"Applicant" means a CVB that has submitted an application to the authority for certification of a proposed district. For purposes of this chapter, "applicant" may include more than one CVB and one or more area communities located within the proposed district.

"Authority" means the economic development authority.

"Board" means a regional sports authority district governing board consisting of members of the local communities served by an applicant.

"Convention and visitors bureau" or *"CVB"* means an organization engaged primarily in the marketing and promotion of a local community or communities to businesses and to leisure travelers interested in the area's facilities. Such organizations are typically engaged in a wide range of activities including but not limited to assisting businesses and leisure travelers in identifying meeting locations and convention sites; providing maps and other travel information; providing information on local attractions, lodging, and restaurants; and organizing tours of local historical, recreational, and cultural attractions.

"District" means a regional sports authority district certified by the authority pursuant to this chapter.

"Nonprofessional" means an activity typically engaged in by amateurs and primarily for pleasure rather than for pecuniary benefit or other reasons indicating a professional interest in the activity.

"Program" means the regional sports authority district program authorized under Iowa Code section 15E.321 and the rules in this chapter.

"Sporting event" means an athletic activity requiring skill or physical prowess, usually competitive in nature and governed by a set of rules provided by a nationally recognized sanctioning body or by a local organization engaged in the development and active promotion of the athletic activity. A sporting event typically includes the placing of competitors into a fixed order of finish, depending upon their respective athletic performance within the rules provided for that activity. For purposes of this chapter, "sporting event" includes but is not limited to youth sports, high school athletic activities, the Special Olympics, and other nonprofessional athletic activities.

[**ARC 0440C**, IAB 11/14/12, effective 12/19/12]

261—38.2(15E) Program description.

38.2(1) Each fiscal year in which funding is available, the authority will certify up to ten districts. The authority will certify the districts on a competitive basis. Certification will be based on the criteria described in subrule 38.4(1), and the authority will certify districts in a manner designed to prioritize those events that provide the greatest total benefit to the state as a whole.

38.2(2) The authority will award an equal amount of grant funds to each certified district. Funds will be awarded as reimbursement for expenditures that are directly related to the active promotion of one or more nonprofessional sporting events.

38.2(3) A district certified in one fiscal year retains its certification only for the duration of that fiscal year and must reapply for certification in each subsequent fiscal year.

38.2(4) The certification of districts and the awarding of grant funds are contingent upon the appropriation by the general assembly of moneys for such purposes.

[**ARC 0440C**, IAB 11/14/12, effective 12/19/12]

261—38.3(15E) Program eligibility and application requirements.

38.3(1) *Eligibility.* To be eligible under the program, an applicant shall meet all of the following requirements:

a. The applicant shall propose to operate a regional sports authority district that is governed by a board.

b. The board shall consist of seven members named by the applicant, of whom at least three members shall be city council members of any cities located in the proposed district.

c. The board shall propose, and be responsible for overseeing, a program of activities designed to foster the active promotion of one or more nonprofessional sporting events in the district during the fiscal year for which the applicant is applying for funding.

d. The applicant shall demonstrate an amount of local match equal to at least 50 percent of the amount of grant funds to be received by the applicant under the program. The local match shall be in the form of cash.

e. The applicant shall submit a completed application including all of the information described in subrule 38.3(2).

f. The applicant shall submit the application on or before the application deadline established in subrule 38.3(3).

38.3(2) *Application requirements.* When submitting an application for grant funds under the program, an applicant shall include all of the following information:

a. The applicant's name, mailing address, email address, telephone number, contact person, and federal employer identification number.

b. A detailed description of the nonprofessional sporting events the applicant intends to actively promote using funds received under the program.

c. The date each proposed nonprofessional sporting event will be held and the location at which the event will be held.

d. Written documentation establishing the amount and source of the required local cash match.

e. Names and contact information of the board and an indication as to which of the board members are city council members as required under this rule.

f. Detailed information and projections sufficient to enable the authority to accurately assess the economic impact of the nonprofessional sporting events described in the application. Such information shall include the estimated number of participants and the estimated number of spectators expected to attend the event. If the applicant has previously held substantially similar events, the information shall include actual attendance figures from past events.

38.3(3) *Deadlines.* The authority will only consider applications received on or before the applicable deadline. The deadline shall be 4:30 p.m. on September 1 of each fiscal year unless the authority, at its sole discretion, provides a different deadline for the submission of applications. The authority may provide a different deadline for the program as a whole, but the authority will not change the deadline at the request of any individual applicant. The authority will develop an application process and post all relevant application information, including deadline changes, on its Internet site at www.traveliowa.com.

[**ARC 0440C**, IAB 11/14/12, effective 12/19/12; **ARC 4509C**, IAB 6/19/19, effective 7/24/19]

261—38.4(15E) Application scoring and certification of districts.

38.4(1) *Scoring criteria.* The authority will not review or score an application unless it meets the requirements and deadlines of rule 261—38.3(15E). An application that meets the requirements and deadlines of rule 261—38.3(15E) will be given a numerical score between 0 and 100. The higher an application's numerical score, the more likely it will receive funding under the program. The criteria used to score the applications and the maximum number of points that may be attributed to each criterion are as follows:

a. Economic impact: 30 points. The authority will consider the amount of economic impact represented by the proposed nonprofessional sporting events and will view favorably events that have a greater economic impact. Economic impact will be determined by using the following calculation: Applicants will estimate the number of hotel room nights generated by each proposed nonprofessional sporting event and multiply the number of estimated hotel room nights by the average daily room rate for Iowa hotels. The average daily room rate will be provided by the Iowa tourism office based on information obtained from a hotel market data service. Intentionally inflated estimates of attendance or

a history of providing inaccurate estimates will negatively affect the scoring of an application and may result in noncertification of a district.

b. Leveraged funds ratio: 20 points. The authority will consider the proportion of state funds to total funds in the application and will view favorably a greater rate of financial participation from entities other than the state of Iowa.

c. Novelty and quality: 20 points. The authority will consider the novelty and quality of an event and will view favorably nonprofessional sporting events that are new to Iowa or that have been recently improved, enhanced, or enlarged.

d. Event size and scope: 15 points. The authority will consider the size of an event and will view favorably a project with a larger total budget.

e. Need: 10 points. The authority will consider the financial need of an applicant and will recognize the importance of funding events that would not take place without assistance under the program. The authority will also recognize the importance of funding nonprofessional sporting events that have never before been funded under the program or under another state program.

f. Geographic diversity: 5 points. The authority will consider the geographic diversity represented by the pool of applicants.

38.4(2) *Certification process.* The authority will certify not more than ten districts each fiscal year in which funding is available for the program. The director of the authority will establish a regional sports authority district review committee within the authority consisting of authority staff. The committee will score all completed applications according to the criteria described in subrule 38.4(1). The authority may certify fewer than ten districts in a fiscal year if fewer than ten completed applications are timely received or if fewer than ten completed applications meet the minimum threshold for certification. The minimum threshold for certification is the accumulation of 50 or more points out of 100 total points on the scoring criteria described in subrule 38.4(1). If, after all of the completed applications have been initially scored, fewer than ten districts would be certified, the authority may allow one or more additional rounds of applications to be submitted and scored. For each additional round of applications, the authority will follow the same eligibility requirements and use the same scoring criteria as used in earlier rounds. The authority may accept as many rounds of applications for certification as it deems appropriate. After the conclusion of all application rounds, the authority will award grant funds to each of the certified districts in equal amounts.

38.4(3) *Reallocation of award amounts.* If a certified district fails to hold a nonprofessional sporting event described in the application, then that district may reallocate the proposed expenses allocated for that event to another event provided such other event is also included on the application. If there are no other events included on the application to which the proposed expenses may be allocated, then the district shall forfeit the amount of proposed expenses and the authority may award that amount to other applicants or districts. The authority may rescore the application of any applicant seeking to reallocate award amounts, and if the failure to hold a nonprofessional sporting event as described in the initially scored application would cause a material change in the application's overall quality in relation to other applications, the authority may allow an additional round of applications as described in subrule 38.4(2). No applicant may reallocate award amounts, even after a rescoring, without executing a contract amendment as described in rule 261—38.5(15E).

[**ARC 0440C**, IAB 11/14/12, effective 12/19/12; **ARC 4509C**, IAB 6/19/19, effective 7/24/19]

261—38.5(15E) Contract administration.

38.5(1) *Notice of approval.* The authority will notify successful applicants in writing of approved requests for certification. Such a notification may include the terms or conditions under which approval is granted.

38.5(2) *Contract required.* Each successful applicant shall enter into a contract with the authority. The contract will describe the nonprofessional sporting events that the applicant will actively promote as part of the certified district and will include the terms and conditions under which the grant funds will be disbursed. The contract will also include the terms and conditions under which grant funds must be repaid or penalties incurred in the event the district does not fulfill all obligations under the contract.

38.5(3) *Contract amendments.* All requests by a district for an amendment to the contract will require the approval of the director of the authority. The director will review each such request and approve or deny it. If a request is approved, the district and the director will execute a written amendment to the contract. Only a written amendment duly executed by both parties to the contract will be valid and binding.

38.5(4) *Reports required.* Each certified district shall submit a written report to the authority within 90 days of the end of the performance period specified in the contract.

38.5(5) *Record keeping.* Each certified district shall maintain all records necessary for the verification and validation of the proper use of grant funds under the contract and shall submit such records to the authority upon request.

[**ARC 0440C**, IAB 11/14/12, effective 12/19/12]

261—38.6(15E) Expenses, records, and reimbursements.

38.6(1) *General.* Each certified district shall at all times incur expenses and be reimbursed for such expenses by the authority only as described in this chapter or in a contract executed hereunder. The authority may deny reimbursement for any expenditure not directly related to the active promotion of a nonprofessional sporting event.

38.6(2) *Eligible expenses.* Only expenditures directly related to the active promotion of a nonprofessional sporting event will be reimbursed under the program. Items that will be considered eligible expenses include but are not limited to bid fees, rights fees, sponsorships, payments to vendors, advertising, marketing, venue rental, equipment rental, promotional materials, production costs, and fees and costs for officiants.

38.6(3) *Ineligible expenses.* Expenses that are not directly related to the active promotion of a nonprofessional sporting event are not eligible for reimbursement. Ineligible expenses include but are not limited to travel costs of applicant staff, solicitation efforts, lobbying fees, meals or dining on occasions other than the dates of the nonprofessional sporting events described in the application, items that are purchased for resale, prizes given to participants, and alcoholic beverages.

38.6(4) *Required records and reimbursements.* A district shall submit any records requested by the authority as documentation of the expenditures incurred for purposes of the grant funds awarded under the program. Such records may include invoices, original receipts, or check copies. The authority will only accept records submitted in the name of the district that has executed a contract. If a district pays an expense using a credit card, the district shall submit a copy of a check register or bank statement indicating that the credit card invoice was paid. The authority will not reimburse any expenses included on a receipt that includes both eligible expenses and ineligible expenses. The authority will not reimburse expenses included on a nonitemized receipt.

38.6(5) *Repayments of certain funds.* If the authority reimburses a district for the cost of a refundable bid fee and the applicant is unsuccessful in the effort to win the right to hold that event, then the district shall return the amount of such reimbursement to the authority.

38.6(6) *Reallocation of funds.* If, at the time of a district's final reporting of expenses, the district cannot adequately document eligible expenses or documents an amount that is less than the awarded amount, the authority may award additional funds to other certified districts, open additional rounds of certification, or revert the moneys to the general fund. If the authority awards additional funds to already certified districts, such districts shall submit documentation establishing how such funds will be expended, and the authority will execute contract amendments providing for the expenditure of the additional funds.

[**ARC 0440C**, IAB 11/14/12, effective 12/19/12]

These rules are intended to implement Iowa Code section 15E.321.

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CHAPTER 39
MAIN STREET IOWA PROGRAM
[Prior to 1/14/87, Iowa Development Commission[520] Ch 9]

261—39.1(15) Purpose. The purpose of the main street Iowa 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 Iowa 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 Iowa 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 vitality.

Communities selected for participation in this program will receive technical assistance from the authority's main street Iowa staff, professional staff of the National 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 programs.
[**ARC 9455B**, IAB 4/6/11, effective 5/11/11; **ARC 2748C**, IAB 10/12/16, effective 11/16/16]

261—39.2(15) Definitions. The following definitions will apply to the main street Iowa program unless the context otherwise requires:

"Authority" means the economic development authority created in Iowa Code section 15.105.

"Director" means the director of the economic development authority.

"Eligible activity" includes organization, promotion, design and economic vitality activities to create a positive image and an improved economy in a city's traditional commercial district.

"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 Main Street Center" means a nonprofit subsidiary of the National Trust for Historic Preservation, a nonprofit organization chartered by the United States Congress. The National Main Street Center owns the licensed, trademarked Main Street Four-Point Approach®.

"Program" means the main street Iowa program established in this chapter.

"Traditional commercial district" means a downtown or neighborhood area that is walkable and is dominated by historic or older commercial architecture and contiguous commercial uses. A traditional commercial district defines the target area of the local program efforts.
[**ARC 9455B**, IAB 4/6/11, effective 5/11/11; **ARC 2748C**, IAB 10/12/16, effective 11/16/16]

261—39.3(15) Program administration.

39.3(1) *Administering agency.* The program is administered by the economic development authority.

39.3(2) *Subcontracting.* The authority may contract with the National Main Street Center for technical and professional services as well as with other appropriate consultants and organizations.

39.3(3) *Applications.* The authority, upon availability of funds, will distribute applications. The application will describe the program, outline eligibility requirements, and describe the application process.

39.3(4) *Program agreement.* Each selected community shall enter into a standard program agreement with the authority. The program agreement will describe the obligations of the authority and the community.

39.3(5) *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; **ARC 2748C**, IAB 10/12/16, effective 11/16/16]

261—39.4(15) Eligible applicants. Rescinded **ARC 2748C**, IAB 10/12/16, effective 11/16/16.

261—39.5(75GA,ch1201) Funding. Rescinded IAB 4/6/11, effective 5/11/11.

261—39.6(15) Application and selection process.

39.6(1) The authority will conduct application workshops around the state. Cities that wish to apply for selection as a main street community must attend one application workshop in order to receive an application form. The authority will send standard application forms to workshop attendees. A completed application shall be returned to the authority, be postmarked no later than the date specified by the authority in the application, and contain the information requested in the application.

39.6(2) The director will determine, contingent upon the availability of state funding, the number of cities to be selected for inclusion in the program.

39.6(3) Cities will be selected for participation in the program on a competitive basis as described in these rules.

39.6(4) Upon selection of the communities, the authority will notify selected communities in writing.
[**ARC 9455B**, IAB 4/6/11, effective 5/11/11; **ARC 2748C**, IAB 10/12/16, effective 11/16/16]

261—39.7(15) Selection criteria. The following factors shall be considered in the selection of a city for participation in the program:

39.7(1) The applicant has a well-planned budget demonstrating sustainable funding for ongoing operations and evidence of adequate local sources of funding to support the traditional commercial district revitalization organization and its programming.

39.7(2) The applicant has garnered broad-based financial and philosophical community support for the local program including support from the city.

39.7(3) The applicant has provided evidence of willingness by local stakeholders to get involved in the effort.

39.7(4) The applicant has demonstrated its commitment to the main street approach and has hired or will be hiring an executive director to manage the local program.

39.7(5) The applicant is committed to historic preservation and preservation-based economic development and has demonstrated its commitment by a track record of preservation planning and a commitment to future preservation projects.

39.7(6) The applicant has provided evidence of traditional commercial district planning efforts and clearly defined goals for the future.

39.7(7) The applicant has defined an organizational structure to manage local program efforts.

39.7(8) The applicant demonstrates an eagerness to learn and implement traditional commercial district revitalization strategies and techniques.

39.7(9) The applicant has clearly defined the boundaries of the proposed traditional commercial district and has articulated the reasons behind the location of the boundaries.

39.7(10) The applicant has identified a traditional commercial district that has clear potential for success, as demonstrated by the presence of the following elements:

a. Existence of historic character of the traditional commercial district.

b. Plans for the traditional commercial district demonstrate a recognition of traditional commercial district trends and address the challenges unique to that district.

c. Present market capacity defined by a current business environment upon which the district can build its revitalization efforts.

d. Present physical capacity defined by building stock and built environment upon which the district can build its revitalization efforts.
[**ARC 9455B**, IAB 4/6/11, effective 5/11/11; **ARC 2748C**, IAB 10/12/16, effective 11/16/16]

261—39.8(75GA,ch1201) Financial management. Rescinded IAB 4/6/11, effective 5/11/11.

261—39.9(15) Reports. Participating main street communities shall submit performance reports to the authority as required. The reports shall document the progress of the program activities.
[**ARC 9455B**, IAB 4/6/11, effective 5/11/11; **ARC 2748C**, IAB 10/12/16, effective 11/16/16]

261—39.10(15) Noncompliance. If the authority finds that a participating main street community is not in compliance with the requirements under this program or the terms of the program agreement, the authority shall terminate the program agreement.
[**ARC 9455B**, IAB 4/6/11, effective 5/11/11; **ARC 2748C**, IAB 10/12/16, effective 11/16/16]

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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[Filed ARC 2748C (Notice ARC 2653C, IAB 8/3/16), IAB 10/12/16, effective 11/16/16]

[1] History transferred from 261—Chapter 42 IAC 1/4/95.

CHAPTER 40
IOWA JOBS MAIN STREET PROGRAM
Rescinded **ARC 7056C**, IAB 8/9/23, effective 9/13/23

CHAPTER 41
COMMUNITY DEVELOPMENT FUND
Rescinded **ARC 7056C**, IAB 8/9/23, effective 9/13/23

CHAPTER 42
IOWA TOURISM GRANT PROGRAM

261—42.1(15) Definitions. For purposes of this chapter unless the context otherwise requires:

"Authority" means the economic development authority created in Iowa Code section 15.105.

"Collaborative application" means an application in which multiple partners are providing monetary support for the project.

"Head applicant" means the applicant on a collaborative application that is both the recipient of the funds and the administrator of the project.

"Marketing" means planning for or implementing efforts to publicize a community, event or destination using a range of strategies, tools and tactics.

"Meetings and events" means the acquisition of regional or national tourism-related meetings and conventions or execution of local festivals or similar tourism events that positively impact local and state economies.

"Project" means a tourism-related marketing initiative, meeting or event that benefits both state and local economies.

"Tourism" means a site or event that attracts people from beyond a 50-mile radius or people who spend the night away from home to visit a site or event.

[**ARC 1493C**, IAB 6/11/14, effective 5/19/14; **ARC 3023C**, IAB 4/12/17, effective 5/17/17]

261—42.2(15) Program description.

42.2(1) The authority will accept competitive applications for tourism-related projects in each fiscal year in which funding is available. The authority will award grants to projects based on the criteria described in subrule 42.4(1), and the authority will award grants to projects in a manner designed to prioritize those projects that provide the greatest benefit to state and local economies.

42.2(2) The authority will establish a maximum grant award per application and a minimum grant award per application for each fiscal year in which funding is available.

42.2(3) The authority will make awards based on the total amount of funding available each fiscal year. Funds will be awarded as reimbursement for expenditures that are directly related to the implementation of an eligible project.

42.2(4) An applicant may submit one application each fiscal year. If the application submitted by the applicant is a collaborative application, it will be counted as the head applicant's application for the fiscal year.

42.2(5) An applicant that has received an Iowa tourism grant award in the prior fiscal year cannot submit an application for a substantially similar project in the following fiscal year. If an applicant does submit an application for a substantially similar project in the following fiscal year, the application will be deemed ineligible.

[**ARC 1493C**, IAB 6/11/14, effective 5/19/14; **ARC 3023C**, IAB 4/12/17, effective 5/17/17; **ARC 6319C**, IAB 5/18/22, effective 6/22/22]

261—42.3(15) Program eligibility and application requirements.

42.3(1) *Eligibility.* To be eligible under the program, an applicant shall meet all of the following requirements:

a. The applicant must be a tourism-related entity based in the state of Iowa, including a nonprofit or for-profit organization, city, county, or regional government or planning entity.

b. The applicant shall demonstrate an amount of local match equal to at least 25 percent of the amount of grant funds to be received by the applicant under the program. The local match shall be in the form of cash. Other state sources of funds shall not qualify as local match. The local match must be spent on eligible expenses as described in rule 261—42.6(15).

c. The applicant shall submit a completed application, including all of the information described in subrule 42.3(2).

d. The applicant shall submit the application on or before the application deadline established in subrule 42.3(3).

42.3(2) *Application requirements.* When submitting an application for grant funds under the program, an applicant shall include all of the following information:

a. The applicant's name, mailing address, email address, telephone number, contact person, and federal employer identification number. If the application is a collaborative application, the head applicant shall identify itself and provide the names of all partner applicants.

b. A detailed description of the project, including an explanation of how the project either markets tourism in Iowa or is a tourism-related meeting or event, and an explanation of how state funds will support the project.

c. Written documentation that the grant request is consistent with the cost of implementing the project. Examples of written documentation include but are not limited to advertising rate sheets, bids, quotes, and invoices.

d. Written documentation establishing the amount and source of the required local cash match.

e. Detailed information sufficient to enable the authority to accurately assess the impact and quality of the project described in the application. Such information shall include how the project is part of an overall plan to increase tourism locally and in the state of Iowa.

f. A description of the applicant's plan to recognize the authority's Iowa tourism office for its investment in the project.

g. If the applicant is an event, attraction, restaurant or lodging facility, then the applicant must provide verification that the information about the applicant has been updated at or added to the authority's website, www.traveliowa.com, within the 18 months preceding the application deadline. The authority may waive this requirement at its sole discretion.

42.3(3) *Deadlines.* The authority will only consider applications received on or before the applicable deadline. The deadline shall be 4:30 p.m. the first Monday in August of each fiscal year unless the authority, at its sole discretion, provides a different deadline for the submission of applications. The authority may provide a different deadline for the program as a whole, but the authority will not change the deadline at the request of any individual applicant. The authority will develop an application process and post all relevant application information, including deadline changes, on its Internet site at www.traveliowa.com.

[**ARC 1493C**, IAB 6/11/14, effective 5/19/14; **ARC 3023C**, IAB 4/12/17, effective 5/17/17; **ARC 6319C**, IAB 5/18/22, effective 6/22/22]

261—42.4(15) Application scoring and approval process.

42.4(1) *Scoring criteria.* The authority will not review or score an application unless the application meets the requirements and deadlines of rule 261—42.3(15). An application meeting the requirements and deadlines of rule 261—42.3(15) will be given a numerical score between zero and 100. The higher an application's numerical score, the more likely it will receive funding under the program. The criteria used to score the applications and the maximum number of points that may be attributed to each criterion are as follows:

a. Project description: 20 points. The applicant will explain the project, the time line for its creation and implementation and how state funds will support the project. The authority will view favorably information that clearly articulates the project, sets forth a reasonable time line for the project's creation and implementation, and fully describes how state funds will be used to support the project.

b. Economic impact and ability to promote tourism industry growth: 20 points. The authority will consider how the project supports the mission of the Iowa tourism office and is part of the applicant's broader marketing strategy to increase the economic impact of tourism locally and in the state of Iowa.

c. Sustainability: 10 points. The authority will view favorably applications that illustrate capacity to implement and sustain the project upon completion.

d. Need: 15 points. The authority will consider the financial need of an applicant and will allot more points to applications that demonstrate how the applicant has exhausted other areas of funding to support the project.

e. Innovation: 20 points. The authority will consider the innovative quality of an event or marketing initiative and will view favorably new events and new marketing initiatives or those events and marketing initiatives that are enhanced or distinctive in nature.

f. Budget: 10 points. The authority will view favorably budgets that are well-developed and relevant to the project and that provide documentation of planned project expenses.

g. Collaboration: 5 points. The authority will view favorably applications that either represent a collaboration of multiple entities or show the benefit of the project to multiple entities within the tourism industry, or both.

42.4(2) *Approval process.* The director of the authority will establish a review committee consisting of individuals affiliated with the Iowa tourism industry. The committee will score all completed applications in accordance with the criteria described in rules 261—42.3(15) and 261—42.4(15) and will use those scores to determine successful applicants. The committee may recommend partial funding of any or all applicants. If, after initially scoring all of the completed applications, the review committee is not able to allocate all the funds available, the authority may allow one or more additional rounds of applications to be submitted and scored. If any awards are rejected, the authority may allow one or more additional rounds of applications to be submitted and scored. For each additional round of applications, the authority will follow the same eligibility requirements and use the same scoring criteria as used in earlier rounds. The authority may accept as many rounds of applications for awards as it deems appropriate.

[**ARC 1493C**, IAB 6/11/14, effective 5/19/14; **ARC 3023C**, IAB 4/12/17, effective 5/17/17]

261—42.5(15) Contract administration.

42.5(1) *Notice of approval.* The authority will notify successful applicants in writing of an approved request for funding. Such a notification may include the terms or conditions under which approval is granted.

42.5(2) *Contract required.* Each successful applicant that accepts the recommended award amount shall enter into a contract with the authority. The contract will describe the project that the applicant will institute as described in the application and will include the terms and conditions under which the grant funds will be disbursed. The contract will also include the terms and conditions under which grant funds must be repaid or penalties incurred in the event the grantee does not fulfill all obligations under the contract.

42.5(3) *Contract amendments.* All requests by a grantee for an amendment to the contract will require the approval of the director of the authority. The director will review each such request and approve or deny it. If a request is approved, the grantee and the director will execute a written amendment to the contract. Only a written amendment duly executed by both parties to the contract will be valid and binding.

42.5(4) *Reports required.* Each grantee shall submit a written report to the authority within 60 days of the end of the project completion date, as specified in the contract.

42.5(5) *Record keeping.* Each grantee shall maintain all records necessary for the verification and validation of the proper use of grant funds under the contract and shall submit such records to the authority upon request.

[**ARC 1493C**, IAB 6/11/14, effective 5/19/14]

261—42.6(15) Expenses, records, and reimbursements.

42.6(1) *General.* Each grantee shall at all times incur expenses and be reimbursed for such expenses by the authority only as described in this chapter or in a contract executed hereunder. The authority may deny reimbursement for any expenditure not directly related to the implementation of a tourism-related marketing initiative, meeting or event.

42.6(2) *Eligible expenses.* Only expenditures directly related to the implementation of a tourism-related marketing initiative, meeting or event will be reimbursed under the program. Examples of eligible expenses include the following:

a. The costs associated with all phases of the execution of marketing tactics and strategies, including planning and design and production of tools such as advertising, print materials, digital tools and exhibits for consumer-focused tradeshows.

b. The costs associated with acquiring a regional or national tourism-related meeting, including but not limited to bid fees, rights fees, sponsorships, payments to vendors, venue rental, and equipment rental.

c. The costs associated with executing a local event or festival, including but not limited to payments to vendors, payments to speakers or entertainers, venue rental, and equipment rental for new events or existing events in Iowa in order to augment the event.

42.6(3) *Ineligible expenses.* Expenses that are not directly related to the implementation of a tourism-related marketing initiative, meeting or event will be deemed ineligible. Ineligible expenses include but are not limited to vertical infrastructure; staff salaries and wages; equipment and software; solicitation efforts; lobbying fees; items that are purchased for resale; prizes given to participants or event/festival attendees; alcoholic beverages; internships; all travel, meal and lodging costs of applicant staff or the applicant's contractor; projects that receive funding from the authority's regional sports authority district program; marketing programs already subsidized by the authority including, but not limited to, advertising in the Iowa travel guide or participation in the cooperative partnership program; or a project of an Iowa tourism region.

42.6(4) *Required records and reimbursements.* A grantee shall submit any records requested by the authority as documentation of the expenditures incurred for implementation of the project. Such records may include invoices, original receipts, or check copies. If a grantee pays an expense using a credit card, the grantee shall submit a copy of a check register or bank statement indicating that the credit card invoice was paid. The authority will not reimburse expenses included on a nonitemized receipt.

42.6(5) *Repayments of certain funds.* If the authority reimburses a grantee for the cost of a refundable bid fee and the grantee is unsuccessful in the effort to win the right to hold that event, then the grantee shall return the amount of such reimbursement to the authority.

42.6(6) *Reallocation of funds.* If, at the time of a grantee's final reporting of expenses, the grantee cannot adequately document eligible expenses or documents an amount that is less than the awarded amount, the authority may award additional funds to other grantees, open additional rounds of applications, or revert the moneys to the general fund. If the authority awards additional funds to other grantees, such grantees shall submit documentation establishing how such funds will be expended, and the authority will execute contract amendments providing for the expenditure of the additional funds.

[**ARC 1493C**, IAB 6/11/14, effective 5/19/14; **ARC 3023C**, IAB 4/12/17, effective 5/17/17]

These rules are intended to implement Iowa Code section 15.106A.

[Filed Emergency After Notice ARC 1493C (Notice ARC 1380C, IAB 3/19/14), IAB 6/11/14, effective 5/19/14]

[Filed ARC 3023C (Notice ARC 2893C, IAB 1/18/17), IAB 4/12/17, effective 5/17/17]

[Filed ARC 6319C (Notice ARC 6202C, IAB 2/23/22), IAB 5/18/22, effective 6/22/22]

CHAPTER 43
HOOVER PRESIDENTIAL LIBRARY TAX CREDIT

261—43.1(15E) Purpose. The purpose of the Hoover presidential library tax credit is to encourage donations to the Hoover presidential foundation for the Hoover presidential library and museum renovation project.
[**ARC 6087C**, IAB 12/15/21, effective 11/19/21]

261—43.2(15E) Definitions.

"Authority" means the economic development authority created in Iowa Code section 15.105.

"Department" means the Iowa department of revenue.

"Donor" means a person who makes an unconditional charitable donation to the Hoover presidential foundation for the Hoover presidential library and museum renovation project fund.

"Tax credit" means the amount a taxpayer may claim against the taxes imposed in Iowa Code chapter 422, subchapters II, III, and V, and in Iowa Code chapter 432, and against the moneys and credits tax imposed in Iowa Code section 533.329.
[**ARC 6087C**, IAB 12/15/21, effective 11/19/21]

261—43.3(15E) Authorization of tax credits.

43.3(1) For tax years beginning on or after January 1, 2021, but before January 1, 2024, a tax credit shall be allowed against the taxes imposed in Iowa Code chapter 422, subchapters II, III, and V, and in Iowa Code chapter 432, and against the moneys and credits tax imposed in Iowa Code section 533.329, equal to 25 percent of a donor's charitable donation made on or after July 1, 2021, to the Hoover presidential foundation for the Hoover presidential library and museum renovation project fund.

43.3(2) A donor shall not claim a tax credit for a donation made during a tax year beginning before January 1, 2021, or after December 31, 2023.

43.3(3) To receive the tax credit, a donor shall file a claim with the department in accordance with any applicable administrative rules adopted by the department.
[**ARC 6087C**, IAB 12/15/21, effective 11/19/21]

261—43.4(15E) Tax credit limitations.

43.4(1) The aggregate amount of tax credits authorized for the program shall not exceed a total of $5 million.

43.4(2) The maximum amount of tax credits granted to any one person shall not exceed $250,000.

43.4(3) Ten percent of the aggregate amount of tax credits authorized, or $500,000, shall be reserved for those donations in amounts of $30,000 or less. If any portion of the reserved tax credits has not been distributed by September 1, 2023, the remaining reserved tax credits shall be available after September 1, 2023, to any other eligible person.
[**ARC 6087C**, IAB 12/15/21, effective 11/19/21]

261—43.5(15E) Distribution process and review criteria.

43.5(1) The authority shall develop and make available a standardized application pertaining to the authorization and distribution of tax credits. The application shall request information to document that a qualified donation has been made, and any other information required by the authority. Qualifying donors shall be issued a tax credit certificate to be included with the donor's Iowa tax return.

43.5(2) Applications will be accepted and awarded on an ongoing basis.

43.5(3) If, before September 1, 2023, the authority receives tax credit applications in excess of $4.5 million for donations greater than $30,000, the authority shall establish a waitlist to receive any portion of the reserved tax credits that are not distributed by September 1, 2023. Applications on the waitlist shall be prioritized by the date the authority received the applications. If any portion of the reserved tax credits under subrule 43.4(3) becomes available after September 1, 2023, the authority shall approve the waitlisted applications and issue tax credit certificates in the order they are listed on the waitlist, up to the amount of the remaining reserved tax credits. Placement on a waitlist does not constitute a promise binding the state that persons placed on the waitlist will actually receive a tax credit in a future year. The

availability of a tax credit and approval of a tax credit application in a future year is contingent upon the availability of tax credits in that particular year.

[**ARC 6087C**, IAB 12/15/21, effective 11/19/21]

These rules are intended to implement Iowa Code section 15E.364.

[Filed Emergency After Notice ARC 6087C (Notice ARC 5908C, IAB 9/22/21), IAB 12/15/21, effective 11/19/21]

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.

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CHAPTER 45
COMMUNITY CATALYST BUILDING REMEDIATION PROGRAM

261—45.1(15) Purpose. Pursuant to Iowa Code sections 15.231 and 15.106A, the authority is directed to establish a community catalyst building remediation program fund for the purpose of providing grants to cities for the remediation or redevelopment of underutilized buildings. The authority shall administer the fund in a manner to make grant moneys annually available to cities for the purposes of this chapter.
[**ARC 3384C**, IAB 10/11/17, effective 11/15/17]

261—45.2(15) Definitions. For purposes of this chapter, unless the context otherwise requires:

"Agreement" means a contract for financial assistance under the program describing the terms on which the financial assistance is to be provided.

"Applicant" means a city applying for financial assistance under the program.

"Authority" means the economic development authority created in Iowa Code section 15.105.

"Building" means a structure located in a city that is either:

1. Used or intended to be used for commercial or industrial purposes; or
2. Used or intended to be used for residential purposes.

"Building" includes structures in which some floors may be used for retail stores, shops, salesrooms, markets, or similar commercial uses, or for offices, banks, civic administration activities, professional services, or similar business or civic uses, and other floors are used, designed, or intended to be used for residential purposes.

"Community catalyst" means a building or buildings which, if remediated, would stimulate additional economic growth or reinvestment in the community, especially private sector financial investment. For purposes of this chapter, "economic growth" may include the creation of additional jobs, growth of new or existing businesses, development of new housing units, increased property values, or potential population growth. The building will be located in an area central to the city's economic development activities. A community catalyst project will be expected to have a significant positive expected impact on the community.

"Costs directly related" means expenditures that are incurred for acquisition, deconstruction, disposal, redevelopment, or rehabilitation of a community catalyst to the extent that the expenditures are attributable directly to the remediation or redevelopment of the community catalyst. "Costs directly related" includes expenditures for site preparation work, surveying, construction materials, construction labor, architectural services, engineering services, building permits, building inspection fees, and interest accrued on a construction loan during the time period allowed for project completion under an agreement entered into pursuant to the program. "Costs directly related" does not include expenditures for furnishings, appliances, accounting services, legal services, loan origination and other financing costs, syndication fees and related costs, developer fees, or the costs associated with selling or renting the dwelling units whether incurred before or after completion of the housing project.

"Director" means the director of the authority.

"Financial assistance" means a grant or loan made by the authority to an applicant approved for funding under the program.

"Program" means the procedures, agreement, terms, and assistance established and provided pursuant to this chapter.

"Project" means a proposed plan for the remediation of underutilized buildings in a city. "Project" must include at least one building but no more than two buildings. For two buildings to be considered part of the same project, the buildings must be contiguous and under the same ownership. All community catalyst buildings to be remediated must be included in the proposed plan upon application, and the proposed plan must demonstrate the steps and actions necessary to further remediation and redevelopment efforts in a comprehensive and coordinated manner.

"Public nuisance" means a building that is a menace to the public health, welfare, or safety, or that is structurally unsafe, unsanitary, or not provided with adequate safe egress, or that constitutes a fire hazard, or is otherwise dangerous to human life, or that in relation to the existing use constitutes a hazard

to the public health, welfare, or safety by reason of inadequate maintenance, dilapidation, obsolescence, or abandonment. "Public nuisance" includes buildings with blighting characteristics as defined by Iowa Code section 403.2.

"Redevelopment" means development activities associated with a project that are undertaken either for the purpose of remediating underutilized buildings, for constructing new buildings or improvements at a site where formerly existing buildings have been demolished, or for rehabilitating, reusing or repurposing existing buildings or improvements at a project site. "Redevelopment" typically includes projects that result in the elimination of blighting characteristics as defined by Iowa Code section 403.2.

"Remediation" or *"remediating"* means the redevelopment, repair, improvement, rehabilitation, disposal, or deconstruction of at least one but no more than two underutilized buildings at a site included in a project.

"Underutilized building" means a building that is vacant or mostly vacant, is blighted or severely deteriorated, and contains potential safety hazards including structural instability, code noncompliance, vermin infestation, vandalism or potential for vandalism, vagrancy, hazardous materials or generally unsafe or hazardous conditions. The building may or may not be considered a public nuisance.

[**ARC 3384C**, IAB 10/11/17, effective 11/15/17]

261—45.3(15) Program description.

45.3(1) *Amount, form, and timing of assistance.*

a. The program provides financial assistance to cities for the redevelopment or remediation of underutilized buildings. The amount of assistance awarded will be determined by the authority based on the total amount of funds available to the authority for the program and based on the project details. Each applicant shall receive no more than one grant per project per fiscal year. The maximum grant amount per applicant per fiscal year shall not exceed $100,000. If an applicant received a technical assistance grant under paragraph 45.3(2)*"b,"* the amount of the financial assistance for redevelopment or remediation plus the amount of the technical assistance grant shall not exceed the maximum grant amount of $100,000.

b. In providing grants under this chapter, the authority shall allocate 40 percent of the moneys available at the beginning of each fiscal year to funding grants to cities with populations of less than 1,500 as shown by the most recent federal census. If at the end of each application period the amount of grants awarded to cities with a population of less than 1,500 is less than the amount allocated to such grants under this rule, the balance may be awarded to any approved applicant, regardless of city population.

45.3(2) *Application.*

a. *Forms.* All applications and other filings related to the program shall be on such forms and in accordance with such instructions as may be established by the authority. Information about the program, the application, and application instructions may be obtained by contacting the authority or by visiting the authority's Web site:

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

b. *Preapplication.* An application may not be submitted to the authority until a preapplication has been submitted to the authority and the authority has approved submission of the application. A preapplication may be submitted to the authority at any time. Following the receipt of a preapplication, the authority may offer technical assistance, including technical assistance grants up to $5,000 per applicant per fiscal year. The purpose of such technical assistance and technical assistance grants shall be to ensure a complete application that is sufficiently detailed to enable the authority to make a determination. The authority reserves the right to deny an application if the applicant's preapplication was submitted less than 30 days before the announced application period.

c. Application period. Each fiscal year during which funding is available, applications for financial assistance other than applications for emergency projects submitted pursuant to paragraph 45.3(2)*"e"* will only be accepted during the established application period, or periods, as identified by the authority on its Web site. The authority will accept applications year-round for emergency projects submitted pursuant to paragraph 45.3(2)*"e."*

d. Complete application required. An application shall not be considered submitted for review until the application is completed and all required supporting documentation and information are provided.

e. Emergency project applications. Cities that identify projects which present a unique and immediate threat or opportunity may submit an application for funding at any time. For purposes of this subrule, a "unique or immediate threat" includes unforeseen challenges or problems that could result in catastrophic failure of a building's structural system and overall integrity. A threat includes various acts of nature, such as flood, fire, or storm damage, or sudden and unexpected structural failures, such as partial wall collapse. Deferred maintenance will not be considered an immediate threat. For purposes of this subrule, a "unique or immediate opportunity" means a time-sensitive remediation project that is reasonably expected to result in economic growth. All applications for financial assistance for projects submitted under this subrule must meet all other requirements of this program and shall be scored using the same criteria as the criteria that are applied to applications for financial assistance for projects submitted during the regular application period.

45.3(3) *Approval of assistance.* The authority will review, score, and recommend applications for financial assistance under the program to the director. Authority staff will review applications for financial assistance and score the applications in accordance with subrule 45.4(2). A project that does not receive funding may reapply.

45.3(4) *Agreement required.* The authority shall enter into an agreement with each applicant for the receipt of a grant under this chapter. The agreement must state the terms on which the financial assistance is to be provided. For an applicant to receive grant moneys under this chapter, the agreement must require the applicant to provide resources, including financial or in-kind resources, to the remediation project. The authority may negotiate the terms of the agreement. The applicant shall execute the agreement before funds are disbursed under the program.

45.3(5) *Form of financial assistance.* The authority will provide financial assistance in the form of a grant to the applicant. The amount of the grant and any other terms shall be included in the agreement required pursuant to this chapter.

45.3(6) *Use of funds.*

a. An applicant shall use funds only for reimbursement of the costs directly related to the project. The authority may require documentation or other information establishing the actual costs incurred for a project. Failure to use the funds for reimbursement of the costs directly related to a project shall be grounds for default under the agreement required pursuant to this chapter.

b. The authority shall coordinate with the applicant to develop a plan for the use of grant moneys that is consistent with the community development, housing, and economic development goals of the city. The terms of the agreement executed pursuant to these rules and the use of grants provided under this program shall be consistent with the plan developed.

[**ARC 3384C**, IAB 10/11/17, effective 11/15/17]

261—45.4(15) Program eligibility, application scoring, and funding decisions.

45.4(1) *Program eligibility.* An applicant must meet the following eligibility criteria to qualify for financial assistance under this program:

a. The applicant must be a city. If the project building or buildings are owned by an entity other than the city, the city must provide information to the authority regarding ownership and the relationship between the owner and the city.

b. The building or buildings that constitute the project must meet the definition of "underutilized building" as determined by the authority.

c. The building or buildings that constitute the project must meet the definition of "community catalyst." The authority shall determine whether the building or buildings meet the definition of "community catalyst" set out in rule 261—45.2(15).

d. The project must include financial or in-kind resources contributed by the city.

e. The applicant must complete the application and provide all other information and documents reasonably required by the authority.

45.4(2) *Application scoring criteria.* All completed applications will be reviewed and scored. In order for an applicant to be considered for funding, the application must meet or exceed a minimum score established by the authority. Each application will be scored using criteria set forth by the authority, which may include the following:

a. Economic impact of remediation project. The authority will take into account the potential economic growth and investment that is reasonably expected to occur as a result of the project. The applicant must provide information demonstrating that the expected economic impact of the project is reasonable based on existing factors.

b. Local government support. The level and amount of local government support, including financial support, will be considered for each applicant.

c. Readiness. The authority will assess whether the project is well-prepared and ready to begin within a reasonable amount of time.

d. Project plan and time line. The authority will assess whether the applicant has prepared a detailed project plan and time line for the execution of the project.

e. Project financing. The authority will assess whether the applicant has secured financing and is financially prepared to complete the project.

45.4(3) *Funding decisions.* Funding decisions will be made using the following process:

a. Staff review. Each application will be reviewed and scored by staff using the eligibility and scoring criteria under this rule. The scores assigned by all participating staff will be added together and divided by the number of participating staff to determine an average numerical score. The application and the average numerical score will be referred to the director with a recommendation as to whether to fund the project and, if funding is recommended, a recommendation as to the amount of the grant.

b. Director's decision. The director will make the final funding decision on each application, taking into consideration the amount of available funding, the average numerical score of the application, and the recommendations made by community development division staff. The director may approve, deny, or defer funding for any application.

c. Minimum score required. In order to receive financial assistance under this program, the application must receive an average minimum score established by the authority. A score exceeding the minimum does not guarantee that the applicant will receive funding.

d. Notification. Each applicant will be notified in writing of the funding decision within 60 days of receipt by the authority of a complete application unless extenuating circumstances exist.

[**ARC 3384C**, IAB 10/11/17, effective 11/15/17]

261—45.5(15) Agreement required.

45.5(1) Each applicant that is approved for financial assistance under the program shall enter into an agreement with the authority for the provision of such financial assistance. The agreement will establish the terms on which the financial assistance is to be provided and may include any other terms reasonably necessary for the efficient administration of the program.

45.5(2) The authority and the applicant may amend the agreement at any time upon the mutual agreement of both the authority and the applicant.

45.5(3) The agreement may require an applicant that has been approved for financial assistance under the program to submit information reasonably required by the authority to make reports to the authority's board, the governor's office, or the general assembly.

[**ARC 3384C**, IAB 10/11/17, effective 11/15/17]

These rules are intended to implement Iowa Code section 15.231.

[Filed ARC 3384C (Notice ARC 3256C, IAB 8/16/17), IAB 10/11/17, effective 11/15/17]

CHAPTER 46
ENDOW IOWA GRANTS PROGRAM

Rescinded **ARC 7056C**, IAB 8/9/23, effective 9/13/23

CHAPTER 47
ENDOW IOWA TAX CREDITS

261—47.1(15E) 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; **ARC 0008C**, IAB 2/8/12, effective 3/14/12]

261—47.2(15E) Definitions.

"Authority" means the economic development authority.

"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.

"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 authority 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 a taxpayer may claim against the taxes imposed in Iowa Code chapter 422, subchapters II, III, and V, and in Iowa Code chapter 432, and against the moneys and credits tax imposed in Iowa Code section 533.329.
[**ARC 8474B**, IAB 1/13/10, effective 2/17/10; **ARC 0008C**, IAB 2/8/12, effective 3/14/12; **ARC 6793C**, IAB 1/11/23, effective 2/15/23]

261—47.3(15E) Authorization of tax credits to taxpayers. The authority shall authorize tax credits to qualified taxpayers 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, subchapters II, III, and V, and in Iowa Code chapter 432, and against the moneys and credits tax imposed in Iowa Code section 533.329.

47.3(2) 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 aggregate amount of tax credits available under this rule annually is $6 million. For tax credits issued on or before December 31, 2022, the maximum amount of tax credit that may be granted to an individual taxpayer is limited to 5 percent of the aggregate amount available each year. For tax credits issued on or after January 1, 2023, the maximum amount of tax credit that may be granted to an individual taxpayer is limited to $100,000. If the authority receives applications for tax credits in excess of the amount available, the applications shall be prioritized by the date the authority received the applications. Applications received on or before June 30, 2023, will be placed on a waitlist for a subsequent year's allocation of tax credits if the number of applications exceeds the amount of annual tax credits available. Applications placed on the waitlist shall first be funded in the order listed on the waitlist. Applications received on or after July 1, 2023, in excess of the amount of tax credits available will not be placed on the waitlist and will be denied by the authority. For endowment gifts made on or after June 30, 2023, a taxpayer shall submit an application to the authority for the tax credit no later than 12 months from the date of the donation which qualifies the taxpayer for the tax credit.

47.3(4) To receive the tax credit, a donor shall file a claim with the department of revenue in accordance with any applicable administrative rules adopted by the department.
[**ARC 8474B**, IAB 1/13/10, effective 2/17/10; **ARC 0008C**, IAB 2/8/12, effective 3/14/12; **ARC 0613C**, IAB 2/20/13, effective 3/27/13; **ARC 6793C**, IAB 1/11/23, effective 2/15/23]

261—47.4(15E) Distribution process and review criteria. The authority 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 authority 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; **ARC 0008C**, IAB 2/8/12, effective 3/14/12]

261—47.5 Rescinded **ARC 6973C**, IAB 1/11/23, effective 2/15/23
[**ARC 8474B**, IAB 1/13/10, effective 2/17/10; **ARC 0008C**, IAB 2/8/12, effective 3/14/12]

These rules are intended to implement Iowa Code sections 15E.301 to 15E.303 and 15E.305 as amended by 2022 Iowa Acts, House File 2317.

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[Filed ARC 6793C (Notice ARC 6592C, IAB 10/19/22), IAB 1/11/23, effective 2/15/23]

CHAPTER 48
WORKFORCE HOUSING TAX INCENTIVES PROGRAM

261—48.1(15) Authority and purpose. The workforce housing tax incentives program is administered pursuant to Iowa Code sections 15.351 through 15.356 and 2022 Iowa Acts, Senate File 2325, sections 7 through 13. The purpose of the program is to assist the development of workforce housing in Iowa communities by providing incentives for housing projects that are targeted at middle-income households and that focus on the redevelopment or repurposing of existing structures.
[**ARC 1801C**, IAB 12/24/14, effective 1/28/15; **ARC 6467C**, IAB 8/24/22, effective 9/28/22]

261—48.2(15) Definitions. As used in this chapter, unless the context otherwise requires:

"Authority" means the economic development authority created in Iowa Code section 15.105.

"Average dwelling unit cost" means the costs directly related to the housing project divided by the total number of dwelling units in the housing project.

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

"Brownfield site" means an abandoned, idled, or underutilized property where expansion or redevelopment is complicated by real or perceived environmental contamination. A brownfield site includes property contiguous with the site on which the property is located. A brownfield site does 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, 42 U.S.C. §9601 et seq. In order to administer similar programs in a similar manner, the authority will attempt to apply this definition in substantially the same way as similar definitions are applied by the brownfield advisory council established in Iowa Code section 15.294 and may consult members of the council or other staff as necessary.

"Community" means a city or county.

"Costs directly related" means expenditures that are incurred for construction of a housing project to the extent that they are attributable directly to the improvement of the property or its structures. "Costs directly related" includes expenditures for site preparation work, surveying, construction materials, construction labor, architectural services, and engineering services. "Costs directly related" does not include expenditures for property acquisition, building permits, building inspection fees, furnishings, appliances, accounting services, legal services, loan origination and other financing costs including interest on construction loans, syndication fees and related costs, developer fees, or the costs associated with selling or renting the dwelling units whether incurred before or after completion of the housing project.

"Disaster recovery housing project" means a qualified housing project located in a county that has been declared a major disaster by the President of the United States on or after March 12, 2019, and that is also a county in which individuals are eligible for federal individual assistance.

"Grayfield site" means a property meeting all of the following requirements:

(1) The property has been developed and has infrastructure in place but the property's current use is outdated or prevents a better or more efficient use of the property. Such property includes vacant, blighted, obsolete, or otherwise underutilized property.

(2) The property's improvements and infrastructure are at least 25 years old and one or more of the following conditions exists:

1. Thirty percent or more of a building located on the property that is available for occupancy has been vacant or unoccupied for a period of 12 months or more.
2. The assessed value of the improvements on the property has decreased by 25 percent or more.
3. The property is currently being used as a parking lot.
4. The improvements on the property no longer exist.

In administering the program, the authority will attempt to apply this definition in substantially the same manner as similar definitions are applied by the brownfield advisory council established in Iowa Code section 15.294.

"Greenfield site" means a site that does not meet the definition of a brownfield site or grayfield site. A project proposed at a site located on previously undeveloped or agricultural land shall be presumed to be a greenfield site.

"Housing business" means a business that is a housing developer, housing contractor, or nonprofit organization that completes a housing project in the state.

"Housing project" means a project located in this state meeting the requirements of rule 261—48.4(15).

"Laborshed area" means the same as defined in 261—Chapter 173.

"Laborshed wage" means the same as defined in 261—Chapter 173.

"Multi-use building" means a building whose street-level ground story is used for a purpose that is other than residential, and whose upper story or stories are currently used primarily for a residential purpose, or will be used primarily for a residential purpose after completion of the housing project associated with the building.

"New dwelling units" means dwelling units that are made available for occupancy in a community as a result of a housing project and that were not available for occupancy as residential housing in the community for a period of at least six months prior to the date on which application is made to the authority under the program. If a dwelling unit has served as residential housing and been occupied during the six months preceding the date on which application is made to the authority under the program, then the dwelling unit shall be presumed not to be a new dwelling unit.

"Program" means the workforce housing tax incentives program administered under this chapter.

"Project completion" means the same as defined in Iowa Code section 15.355(2).

"Qualifying new investment" means costs that are directly related to the acquisition, repair, rehabilitation, or redevelopment of a housing project in this state. For purposes of this rule, "costs directly related to acquisition" includes the costs associated with the purchase of real property or other structures.

(1) The amount of costs that may be used to compute "qualifying new investment" shall not exceed the costs used for the first $150,000 of value for each dwelling unit that is part of a housing project.

(2) "Qualifying new investment" does not include the following:

1. The portion of the total cost of a housing project that is financed by federal, state, or local government tax credits, grants, forgivable loans, or other forms of financial assistance that do not require repayment, excluding the tax incentives provided under this program.

2. If a housing project includes the rehabilitation, repair, or redevelopment of an existing multi-use building, the portion of the total acquisition costs of the multi-use building, including a proportionate share of the total acquisition costs of the land upon which the multi-use building is situated, that are attributable to the street-level ground story that is used for a purpose that is other than residential.

3. Any costs, including acquisition costs, incurred before the housing project is approved by the authority.

"Refund notice" means a notice provided by the authority of the amount that an eligible housing business may claim as a refund of the sales and use tax under Iowa Code section 15.355(2).

"Rehabilitation, repair, or redevelopment" means construction or development activities associated with a housing project that are undertaken for the purpose of reusing or repurposing existing buildings or structures as new dwelling units. Rehabilitation, repair, or redevelopment does not include new construction of dwelling units at a greenfield site. Rehabilitation, repair, or redevelopment includes new structures at a qualified grayfield site.

"Small city" means a city that meets the applicable criteria in rule 261—48.3(15).

"Tax credit certificate" means a certificate issued by the authority stating the amount of workforce housing investment tax credits under Iowa Code section 15.355(3) that an eligible housing business may claim.

"Urban area" means any city or township, except for a small city, that is wholly located within one or more of the 11 most populous counties in the state, as determined by either the most recent population

estimate produced by the United States Bureau of the Census or the most recent decennial census released by the United States Bureau of the Census.
[**ARC 1801C**, IAB 12/24/14, effective 1/28/15; **ARC 3581C**, IAB 1/17/18, effective 2/21/18; **ARC 4724C**, IAB 10/23/19, effective 10/3/19; **ARC 6086C**, IAB 12/15/21, effective 1/19/22; **ARC 6467C**, IAB 8/24/22, effective 9/28/22]

261—48.3(15) Small cities. For the purposes of this chapter, the following subrules will determine which cities and townships will be considered small cities.

48.3(1) For projects that received a refund notice or tax credit certificate on or before June 30, 2021, a small city is any city or township located in this state, except those located wholly within one or more of the 11 most populous counties in the state, as determined by the most recent population estimates issued by the United States Bureau of the Census.

48.3(2) For projects that received a refund notice or tax credit certificate on or after July 1, 2021, a small city is any city or township located in this state, except those located wholly within one or more of the 11 most populous counties in the state, as determined by either the most recent population estimate produced by the United States Bureau of the Census or the most recent decennial census released by the United States Bureau of the Census.

48.3(3) On or after July 1, 2021, any city or township located wholly within one or more of the 11 most populous counties in the state, as determined pursuant to subrule 48.3(2), may be considered a small city if the city meets all of the following requirements:

a. The city or township has a population less than or equal to 2,500 as determined by either the most recent population estimate produced by the United States Bureau of the Census or the most recent decennial census released by the United States Bureau of the Census.

b. The city or township had population growth of less than 30 percent as calculated by comparing the population in the most recent decennial census released by the United States Bureau of the Census to the population in the decennial census released ten years prior.
[**ARC 6467C**, IAB 8/24/22, effective 9/28/22]

261—48.4(15) Housing project requirements.

48.4(1) *Eligible project types.* To receive workforce housing tax incentives pursuant to the program, a proposed housing project shall meet all of the following requirements:

a. The project includes at least one of the following:

(1) Four or more single-family dwelling units, except for a project located in a small city, then two or more single-family dwelling units.

(2) One or more multiple dwelling unit buildings each containing three or more individual dwelling units.

(3) Two or more dwelling units located in the upper story of an existing multi-use building.

b. The project consists of any of the following:

(1) Rehabilitation, repair, or redevelopment at a brownfield site or grayfield site that results in new dwelling units. Redevelopment at a brownfield site or grayfield site includes construction of new buildings.

(2) The rehabilitation, repair, or redevelopment of dilapidated dwelling units.

(3) The rehabilitation, repair, or redevelopment of dwelling units located in the upper story of an existing multi-use building.

(4) Development at a greenfield site, if the project meets the requirements of paragraph 48.4(1)*"a"* and is located in a small city.

c. Whether a dwelling unit should be classified as a single-family dwelling unit for the purposes of this subrule shall be as determined by the authority. Factors the authority may consider include, but are not limited to, the following:

(1) Whether a unit is separated from other units by a ground-to-roof wall;

(2) Whether the unit has a separate heating system;

(3) Whether the unit has an individual meter for public utilities; and

(4) Whether the unit has other units above or below.

d. The dwelling units, when completed and made available for occupancy, meet the U.S. Department of Housing and Urban Development's housing quality standards and all applicable local safety standards.

e. The project is not located in a 100-year floodplain.

48.4(2) *Maximum cost.* Except as provided in subrules 48.4(3) and 48.4(4) below, the average dwelling unit cost does not exceed the maximum amount established by the board for each fiscal year for the applicable project type and project location. The board shall establish the maximum average dwelling unit cost for the project types set forth in paragraphs 48.4(2)*"a"* through *"d."* In establishing each maximum average dwelling unit cost, the board shall primarily consider the most recent annual United States Bureau of the Census building permits survey and historical program data.

a. Single-family dwelling units located in a small city.

b. Single-family dwelling units located in an urban area.

c. Multiple dwelling unit buildings located in a small city.

d. Multiple dwelling unit buildings located in an urban area.

48.4(3) *Maximum cost for historic projects.* If the project is a qualified rehabilitation project, as that term is defined in Iowa Code section 404A.1(8)*"a,"* the average dwelling unit cost shall not exceed 125 percent of the maximum average dwelling unit cost established by the board for the applicable project type and project location as provided in subrule 48.4(2).

48.4(4) *Maximum cost on or before June 30, 2021.* For projects that received a refund notice or tax credit certificate on or before June 30, 2021, the average dwelling unit cost shall not exceed $200,000 per dwelling unit. If the project involves the rehabilitation, repair, redevelopment, or preservation of eligible property, as that term is defined in Iowa Code section 404A.1(8)*"a,"* the average dwelling unit cost does not exceed $250,000 per dwelling unit.

[**ARC 1801C**, IAB 12/24/14, effective 1/28/15; **ARC 3581C**, IAB 1/17/18, effective 2/21/18; **ARC 5139C**, IAB 8/12/20, effective 9/16/20; **ARC 6467C**, IAB 8/24/22, effective 9/28/22]

261—48.5(15) Housing project application and agreement.

48.5(1) *Application.*

a. A housing business seeking workforce housing tax incentives provided in rule 261—48.6(15) shall make application to the authority in the manner prescribed in this rule.

b. The application required in paragraph 48.5(1)*"a"* shall include all of the following:

(1) The following information establishing local participation for the housing project:

1. A resolution in support of the housing project by the community where the housing project will be located.

2. Documentation of local matching funds pledged for the housing project in an amount equal to at least $1,000 per dwelling unit, including but not limited to a funding agreement between the housing business and the community where the housing project will be located. For purposes of this paragraph, local matching funds shall be in the form of cash or cash equivalents or in the form of a local property tax exemption, rebate, refund, or reimbursement.

(2) A report that meets the requirements and conditions of Iowa Code section 15.330(9) if required.

(3) Information showing the total costs and funding sources of the housing project sufficient to allow the authority to adequately determine the financing that will be utilized for the housing project, the actual cost of the dwelling units, and the amount of qualifying new investment.

(4) Any other information deemed necessary by the authority to evaluate the eligibility and financial need of the housing project under the program.

48.5(2) *Application review—tax incentive award.*

a. All completed applications shall be reviewed and scored on a competitive basis by the authority pursuant to these rules. Review criteria include but are not limited to project need, project readiness, financial capacity, and project impact.

b. Upon review and scoring of all applications received during an application period, the authority may make a tax incentive award to a housing project. The tax incentive award shall represent the maximum amount of tax incentives the housing project may qualify for under the program. In

determining a tax incentive award, the authority shall not use an amount of project costs that exceeds the amount included in the application from the housing business. Tax incentive awards shall be approved by the director of the authority.

c. After making a tax incentive award, the authority shall notify the housing business of its tax incentive award. The notification shall include the amount of tax incentives under rule 261—48.6(15) for which the housing business has received an award and a statement that the housing business has no right to receive a tax incentive certificate or claim a tax incentive until all requirements of the program, including all requirements imposed by the agreement entered into pursuant to paragraph 48.5(3)*"a,"* are satisfied. The amount of tax credits included on a tax credit certificate issued pursuant to this chapter, or a claim for refund of sales and use taxes, shall be contingent upon completion of the requirements in subrule 48.5(3).

d. An applicant that does not receive a tax incentive award during an application period may make additional applications during subsequent application periods. Such applicant shall be required to submit a new application, which shall be competitively reviewed and scored in the same manner as other applications in that application period.

48.5(3) *Agreement and fees.*

a. Upon receiving a tax incentive award for a housing project, the housing business shall enter into an agreement with the authority for the successful completion of all requirements of the program. The agreement shall identify the tax incentive amount, the tax incentive award date, the project completion deadline and the total costs of the housing project.

b. The compliance cost fees imposed in Iowa Code section 15.330(12) shall apply to all agreements entered into under this program and shall be collected by the authority in the same manner and to the same extent as described in that provision.

c. Housing project completion deadline.

(1) Except as provided in subparagraph 48.5(3)*"c"*(2), a housing business shall complete its housing project within three years from the date the housing project is registered by the authority.

(2) The authority may for good cause within the discretion of the authority extend a housing project's completion deadline by up to 12 months upon application by the housing business, which application shall be made prior to the expiration of the three-year completion deadline in subparagraph 48.5(3)*"c"*(1) in the manner and form prescribed by the authority. The authority may approve a second extension of up to 12 months if prior to the expiration of the first 12-month extension the housing business applies and substantiates to the satisfaction of the authority that the second extension is warranted due to extenuating circumstances outside the control of the housing business. An application by a housing business shall be made in the manner and form prescribed by the authority.

d. Upon completion of a housing project, a housing business shall submit all of the following to the authority:

(1) An examination of the project in accordance with the American Institute of Certified Public Accountants' statements on standards for attestation engagements, completed by a certified public accountant (CPA) authorized to practice in this state. The attestation applicable to this examination is SSAE No. 10 (as amended by SSAE Nos. 11, 12, 14), AT section 101 and AT section 601. The procedures used by the CPA to conduct the examination should allow the CPA to conclude that, in the CPA's professional judgment, the expenditures claimed are eligible pursuant to the agreement; Iowa Code chapter 15, subchapter II, part 17; and all rules adopted pursuant to Iowa Code chapter 15, subchapter II, part 17, in all material respects. Within ten business days of a request by the authority, the housing business shall make available to the authority the documents reviewed by the CPA unless good cause is shown.

(2) A statement of the final amount of qualifying new investment for the housing project.

(3) Any information the authority deems necessary to ensure compliance with the agreement signed by the housing business pursuant to paragraph 48.5(3)*"a"*; the requirements of Iowa Code chapter 15, subchapter II, part 17; and these rules and rules adopted by the department of revenue pursuant to Iowa Code section 15.356.

e. Upon review of the examination, verification of the amount of the qualifying new investment, and review of any other information submitted pursuant to subparagraph 48.5(3)*"d"*(3), the authority may notify the housing business of the amount that the housing business may claim as a refund of the sales and use taxes under subrule 48.6(2) and may issue a tax credit certificate to the housing business stating the amount of workforce housing investment tax credits under rule 261—48.6(15) that the eligible housing business may claim. The sum of the amount that the housing business may claim as a refund of the sales and use tax and the amount of the tax credit certificate shall not exceed the amount of the tax incentive award.

f. If, upon review of the examination in paragraph 48.5(3)*"d,"* the authority determines that a housing project has incurred project costs in excess of the amount submitted in the application and identified in the agreement, the authority shall do one of the following for projects that received a refund notice or tax credit certificate on or after July 1, 2021:

(1) If the project costs do not cause the housing project's average dwelling unit cost to exceed the applicable maximum amount authorized in rule 261—48.4(15), the authority may consider the agreement fulfilled and may issue a tax credit certificate.

(2) If the project costs cause the housing project's average dwelling cost to exceed the applicable maximum amount authorized in rule 261—48.4(15) but do not cause the average dwelling unit cost to exceed 150 percent of such applicable amount, the authority shall reduce the tax incentive award and the corresponding amount of tax incentives the eligible project may claim under rule 261—48.6(15) by the same percentage that the housing project's average dwelling cost exceeds the applicable maximum amount under rule 261—48.4(15), and such tax incentive reduction shall be reflected on the tax credit certificate. If the authority issues a certificate pursuant to this subrule, the department of revenue shall accept the certificate notwithstanding that the housing project's average dwelling unit cost exceeds the maximum amount specified in rule 261—48.4(15).

(3) If the project costs cause the housing project's average dwelling unit cost to exceed 150 percent of the applicable maximum amount authorized in rule 261—48.4(15), the authority shall determine the eligible housing business to be in default under the agreement, shall revoke the tax incentive award and shall not issue a tax credit certificate. The housing business shall not be allowed a refund of sales and use tax under rule 261—48.6(15).

48.5(4) *Maximum incentives amount.*

a. The maximum aggregate amount of tax incentives that may be awarded under rule 261—48.6(15) to a housing business for a housing project shall not exceed $1 million.

b. If a housing business qualifies for a higher amount of tax incentives under rule 261—48.6(15) than is allowed by the limitation imposed in paragraph 48.5(4)*"a,"* the authority and the housing business may negotiate an apportionment of the reduction in tax incentives between the sales tax refund provided in subrule 48.6(2) and the workforce housing investment tax credits provided in subrule 48.6(3) provided the total aggregate amount of tax incentives after the apportioned reduction does not exceed the amount in paragraph 48.5(4)*"a."*

c. The authority shall issue tax incentives under the program on a first-come, first-served basis until the maximum amount of tax incentives allocated pursuant to Iowa Code section 15.119(2) is reached. The authority shall maintain a list of registered housing projects under the program so that if the maximum aggregate amount of tax incentives is reached in a given fiscal year, registered housing projects that were completed but for which tax incentives were not issued shall be placed on a wait list in the order the registered housing projects were registered and shall be given priority for receiving tax incentives in succeeding fiscal years.

48.5(5) *Termination and repayment.* The failure by a housing business in completing a housing project to comply with any requirement of this program or any of the terms and obligations of an agreement entered into pursuant to this rule may result in the reduction, termination, or rescission of the approved tax incentives and may subject the housing business to the repayment or recapture of tax

incentives claimed under rule 261—48.6(15). The repayment or recapture of tax incentives pursuant to this rule shall be accomplished in the same manner as provided in Iowa Code section 15.330(2).
[**ARC 1801C**, IAB 12/24/14, effective 1/28/15; **ARC 3581C**, IAB 1/17/18, effective 2/21/18; **ARC 4510C**, IAB 6/19/19, effective 7/24/19; **ARC 5139C**, IAB 8/12/20, effective 9/16/20; **ARC 6086C**, IAB 12/15/21, effective 1/19/22; **ARC 6467C**, IAB 8/24/22, effective 9/28/22]

261—48.6(15) Workforce housing tax incentives.

48.6(1) *Eligibility.* A housing business that has entered into an agreement pursuant to rule 261—48.5(15) is eligible to receive the tax incentives described in subrules 48.6(2) and 48.6(3).

48.6(2) *Sales tax refunds.* A housing business may claim a refund of the sales and use taxes paid under Iowa Code chapter 423 that are directly related to a housing project and specified in the agreement. The refund available pursuant to this subrule shall be as provided in Iowa Code section 15.331A to the extent applicable for purposes of this program.

48.6(3) *Income tax credits.*

a. A housing business may claim a tax credit in an amount not to exceed the following:

(1) For a housing project not located in a small city, 10 percent of the qualifying new investment of a housing project specified in the agreement.

(2) For a housing project located in a small city, 20 percent of the qualifying new investment of a housing project specified in the agreement.

b. The tax credit shall be allowed against the taxes imposed in Iowa Code chapter 422, subchapters II, III, and V, and in Iowa Code chapter 432, and against the moneys and credits tax imposed in Iowa Code section 533.329.

c. To claim a tax credit under this subrule, a taxpayer shall file a claim with the department of revenue pursuant to the department's applicable rules.

d. Tax credit certificates issued under an agreement entered into pursuant to subrule 48.5(3) may be transferred to any person pursuant to the department's applicable rules. However, tax credit certificate amounts of less than $1,000 shall not be transferable.
[**ARC 1801C**, IAB 12/24/14, effective 1/28/15; **ARC 3581C**, IAB 1/17/18, effective 2/21/18; **ARC 5139C**, IAB 8/12/20, effective 9/16/20; **ARC 6086C**, IAB 12/15/21, effective 1/19/22]

261—48.7(15) Annual program funding allocation, reallocation, and management of excess demand.

48.7(1) Each year the authority will allocate to the program a portion of the maximum aggregate tax credit cap described in Iowa Code section 15.119.

48.7(2) If, during a fiscal year, the authority determines that program demand is less than the amount initially allocated, the authority may reallocate unused amounts to other programs under Iowa Code section 15.119.
[**ARC 1801C**, IAB 12/24/14, effective 1/28/15; see Delay note at end of chapter; **ARC 5139C**, IAB 8/12/20, effective 9/16/20]

261—48.8(15) Application submittal and review process.

48.8(1) The authority will develop a standardized application and make the application available to eligible housing businesses and to communities. To apply for assistance under the program, an interested person shall submit an application to the authority. Applications must be submitted online at www.iowagrants.gov. Instructions for application submission may be obtained at www.iowagrants.gov or by contacting the Community Development Division, Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315.

48.8(2) The authority has final decision-making authority on requests for financial assistance for this program. Applications will be reviewed and scored by the staff of the authority. The director or the director's designee will make final funding decisions after considering the recommendations of staff. The director may approve, defer or deny an application.
[**ARC 1801C**, IAB 12/24/14, effective 1/28/15; **ARC 6086C**, IAB 12/15/21, effective 1/19/22]

DISASTER RECOVERY HOUSING PROGRAM

261—48.9(15) Housing project minimum requirements. To receive disaster recovery housing tax incentives pursuant to the program, a proposed disaster recovery housing project shall meet all of the following requirements:

48.9(1) The project includes at least one of the following:

a. Four or more single-family dwelling units, except for a project located in a small city, then two or more single-family dwelling units.

b. One or more multiple dwelling unit buildings each containing three or more individual dwelling units.

c. Two or more dwelling units located in the upper story of an existing multi-use building.

48.9(2) The project consists of any of the following:

a. Rehabilitation, repair, or redevelopment at a brownfield site or grayfield site that results in new dwelling units. Redevelopment at a brownfield site or grayfield site includes construction of new buildings.

b. The rehabilitation, repair, or redevelopment of dilapidated dwelling units.

c. The rehabilitation, repair, or redevelopment of dwelling units located in the upper story of an existing multi-use building.

d. For a project located in a small city that meets the minimum housing project requirements under this subrule, development at a greenfield site.

e. For a disaster recovery housing project, development at a greenfield site.

48.9(3) The average dwelling unit cost does not exceed the applicable maximum amount established by the board pursuant to rule 261—48.4(15).

48.9(4) The dwelling units, when completed and made available for occupancy, meet the U.S. Department of Housing and Urban Development's housing quality standards and all applicable local safety standards.

48.9(5) The project is not located in a 100-year floodplain.

[**ARC 4724C**, IAB 10/23/19, effective 10/3/19; **ARC 6467C**, IAB 8/24/22, effective 9/28/22]

261—48.10(15) Housing project application and agreement.

48.10(1) *Application.*

a. A housing business seeking disaster recovery housing tax incentives pursuant to rule 261—48.11(15) shall make application to the authority in the manner prescribed in this rule. The authority may establish a disaster recovery application period following the declaration of a major disaster by the President of the United States for a county in Iowa. The authority will acknowledge receipt of the application and review applications in a timely manner. The authority will notify applicants in writing of a tax incentive award for a disaster recovery housing project.

b. The application for disaster recovery housing tax incentives described in paragraph 48.10(1)*"a"* shall include all of the following:

(1) The following information establishing local participation for the housing project:

1. A resolution in support of the housing project by the community where the housing project will be located.

2. Documentation of local matching funds pledged for the housing project in an amount equal to at least $1,000 per dwelling unit, including but not limited to a funding agreement between the housing business and the community where the housing project will be located. For purposes of this paragraph, local matching funds shall be in the form of cash or cash equivalents or in the form of a local property tax exemption, rebate, refund, or reimbursement.

(2) A report that meets the requirements and conditions of Iowa Code section 15.330(9).

(3) Information showing the total costs and funding sources of the housing project sufficient to allow the authority to adequately determine the financing that will be utilized for the housing project, the actual cost of the dwelling units, and the amount of qualifying new investment.

(4) A certification that the applicant's housing project is located in a county that has been declared a major disaster by the President of the United States on or after March 12, 2019, and is also located in a county in which individuals are eligible for federal individual assistance.

(5) Documentation that provides evidence that the housing project is needed due to impact of the disaster that is the subject of the presidential major disaster declaration.

(6) Information showing that the housing project is located outside of a 100-year floodplain.

(7) Any other information deemed necessary by the authority to evaluate the eligibility and financial need of the housing project under the disaster recovery housing program.

48.10(2) *Application review—tax incentive award.*

a. Upon review and scoring of all applications received during a disaster recovery application period, the authority may make a tax incentive award to a disaster recovery housing project under the disaster recovery housing program. The tax incentive award shall represent the maximum amount of tax incentives that the disaster recovery housing project may qualify for under the program. In determining a tax incentive award, the authority shall not use an amount of project costs that exceeds the amount included in the application of the housing business. Tax incentive awards shall be approved by the director of the authority.

b. After making a tax incentive award, the authority shall notify the housing business of its tax incentive award under the program. The notification shall include the amount of tax incentives under rule 261—48.11(15) for which the housing business has received an award and a statement that a housing business has no right to receive a tax incentive certificate or claim a tax incentive until all requirements of the program, including all requirements imposed by the agreement entered into pursuant to subrule 48.10(3), are satisfied. The amount of tax credits included on a tax credit certificate issued pursuant to this chapter, or a claim for refund of sales and use taxes, shall be contingent upon completion of all requirements in subrule 48.10(3).

48.10(3) *Agreement and fees.*

a. Upon receipt of a tax incentive award to the disaster recovery housing project, the housing business shall enter into an agreement with the authority for the successful completion of all requirements of the disaster recovery housing program. The agreement shall identify the tax incentive award amount, the tax incentive award date, the project completion deadline, and the total costs of the disaster recovery housing project.

b. The compliance cost fees imposed in Iowa Code section 15.330(12) shall apply to all agreements entered into under the program and shall be collected by the authority in the same manner and to the same extent as described in Iowa Code section 15.330(12).

c. A housing business shall complete its disaster recovery housing project within three years from the date incentives are awarded by the authority to the disaster recovery housing project. The authority may extend a housing project's completion deadline as described in subparagraph 48.5(3)*"c"*(2).

d. Upon completion of a disaster recovery housing project, a housing business shall submit all of the following to the authority:

(1) An examination of the project in accordance with the American Institute of Certified Public Accountants' statements on standards for attestation engagements, completed by a certified public accountant (CPA) authorized to practice in this state. The attestation applicable to this examination is SSAE No. 10 (as amended by SSAE Nos. 11, 12, 14), AT section 101 and AT section 601. The procedures used by the CPA to conduct the examination should allow the CPA to conclude that, in the CPA's professional judgment, the expenditures claimed are eligible pursuant to the agreement; Iowa Code chapter 15, subchapter II, part 17; and all rules adopted pursuant to Iowa Code chapter 15, subchapter II, part 17, in all material respects. Within ten business days of a request by the authority, the housing business shall make available to the authority the documents reviewed by the CPA unless good cause is shown.

(2) A statement of the final amount of qualifying new investment for the housing project.

(3) Any information the authority deems necessary to ensure compliance with the agreement signed by the housing business pursuant to paragraph 48.10(3)*"a"*; the requirements of Iowa Code chapter 15,

subchapter II, part 17; and these rules and rules adopted by the department of revenue pursuant to Iowa Code section 15.356.

e. Upon review of the examination as described in paragraph 48.10(3)*"d,"* verification of the amount of the qualifying new investment, and review of any other information submitted pursuant to subparagraph 48.10(3)*"d"*(3), the authority may notify the housing business of the amount that the housing business may claim as a refund of the sales and use tax under Iowa Code section 15.355(2), and may issue a tax credit certificate to the housing business stating the amount of disaster recovery housing investment tax credits under rule 261—48.11(15) that the eligible housing business may claim. The sum of the amount that the housing business may claim as a refund of the sales and use tax and the amount of the tax credit certificate shall not exceed the amount of the tax incentive award.

f. If, upon review of the examination in paragraph 48.10(3)*"d,"* the authority determines that a housing project has incurred project costs in excess of the amount submitted in the application and identified in the agreement, the authority shall proceed as described in paragraph 48.5(4)*"f."*

48.10(4) *Maximum tax incentives amount.*

a. The maximum amount of tax incentives that may be awarded under rule 261—48.11(15) to a housing business for a disaster recovery housing project shall not exceed $1 million.

b. If a housing business qualifies for a higher amount of tax incentives under rule 261—48.11(15) than is allowed by the limitation imposed in paragraph 48.10(4)*"a,"* the authority and the housing business may negotiate an apportionment of the reduction in tax incentives between the sales and use tax refund provided in subrule 48.11(2) and the disaster recovery housing investment income tax credits provided in subrule 48.11(3) provided the total aggregate amount of tax incentives after the apportioned reduction does not exceed the amount in paragraph 48.10(4)*"a."*

48.10(5) *Termination and repayment.* The failure by a housing business in completing a disaster recovery housing project to comply with any requirement of the disaster recovery housing program or any of the terms and obligations of an agreement entered into pursuant to this rule may result in the revocation, reduction, termination, or rescission of the tax incentive award or the approved tax incentives and may subject the housing business to the repayment or recapture of tax incentives claimed under rule 261—48.11(15). The repayment or recapture of tax incentives pursuant to this rule shall be accomplished in the same manner as provided in Iowa Code section 15.330(2).

[**ARC 4724C**, IAB 10/23/19, effective 10/3/19; **ARC 6086C**, IAB 12/15/21, effective 1/19/22; **ARC 6467C**, IAB 8/24/22, effective 9/28/22]

261—48.11(15) Disaster recovery housing tax incentives.

48.11(1) *Eligibility.* A housing business that has entered into an agreement with the authority for the successful completion of program requirements pursuant to rule 261—48.10(15) is eligible to receive the tax incentives described in subrules 48.11(2) and 48.11(3).

48.11(2) *Sales tax refunds.* A housing business may claim a refund of the sales and use taxes paid under Iowa Code chapter 423 that are directly related to a disaster recovery housing project. The refund available pursuant to this subrule shall be as provided in Iowa Code section 15.331A to the extent applicable for purposes of the disaster recovery housing program.

48.11(3) *Income tax credits.*

a. For a disaster recovery housing project, a housing business may claim a tax credit in an amount not to exceed 20 percent of the qualifying new investment of a disaster recovery housing project.

b. The tax credit shall be allowed against the taxes imposed in Iowa Code chapter 422, subchapters II, III, and V, and in Iowa Code chapter 432, and against the moneys and credits tax imposed in Iowa Code section 533.329.

c. To claim a tax credit under this subrule, a taxpayer shall file a claim with the department of revenue pursuant to the department's applicable rules.

d. A tax credit certificate issued under an agreement entered into pursuant to subrule 48.10(3) may be transferred to any person pursuant to the department's applicable rules. However, tax credit certificate amounts of less than $1,000 shall not be transferable.

[**ARC 4724C**, IAB 10/23/19, effective 10/3/19; **ARC 6086C**, IAB 12/15/21, effective 1/19/22]

261—48.12(15) Program funding allocation and management of excess demand. The authority shall allocate $10 million to disaster recovery housing tax incentives pursuant to rules 261—48.9(15) to 261—48.13(15). In allocating tax credits pursuant to Iowa Code section 15.119(5) for the period beginning July 1, 2019, and ending June 30, 2024, the authority shall not allocate more than $10 million for purposes of Iowa Code section 15.119(5).
[**ARC 4724C**, IAB 10/23/19, effective 10/3/19; **ARC 6086C**, IAB 12/15/21, effective 1/19/22]

261—48.13(15) Application submittal and review process.

48.13(1) The authority will develop a standardized application and make the application available to eligible housing businesses and to communities. To apply for assistance under the disaster recovery housing program, an interested person shall submit an application to the authority. Applications must be submitted online at www.iowagrants.gov. Instructions for application submission may be obtained at www.iowagrants.gov or by contacting the Community Development Division, Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315.

48.13(2) The authority has final decision-making authority on requests for financial assistance for the disaster recovery housing program. Applications will be reviewed and scored by the staff of the authority. The director or the director's designee will make final funding decisions after considering the recommendations of staff. The director may approve, defer or deny an application.
[**ARC 4724C**, IAB 10/23/19, effective 10/3/19; **ARC 6086C**, IAB 12/15/21, effective 1/19/22]

These rules are intended to implement Iowa Code sections 15.351 through 15.356 and 2022 Iowa Acts, Senate File 2325, sections 7 through 13.

[Filed ARC 1801C (Notice ARC 1628C, IAB 9/17/14), IAB 12/24/14, effective 1/28/15][1]
[Filed ARC 3581C (Notice ARC 3377C, IAB 10/11/17), IAB 1/17/18, effective 2/21/18]
[Filed ARC 4510C (Notice ARC 4353C, IAB 3/27/19), IAB 6/19/19, effective 7/24/19]
[Filed Emergency ARC 4724C, IAB 10/23/19, effective 10/3/19]
[Filed ARC 5139C (Notice ARC 4967C, IAB 3/11/20), IAB 8/12/20, effective 9/16/20]
[Filed ARC 6086C (Notice ARC 5909C, IAB 9/22/21), IAB 12/15/21, effective 1/19/22]
[Filed ARC 6467C (Notice ARC 6359C, IAB 6/15/22), IAB 8/24/22, effective 9/28/22]

[1] January 28, 2015, effective date of 48.7(2) [ARC 1801C] delayed until the adjournment of the 2015 General Assembly by the Administrative Rules Review Committee at its meeting held January 6, 2015.

CHAPTER 49
HISTORIC PRESERVATION TAX CREDIT

FOR PROJECTS REGISTERED ON OR AFTER AUGUST 15, 2016

261—49.1(303,404A) Purpose. Pursuant to Iowa Code chapters 303 and 404A, the historic preservation tax credit program is administered by the authority with the assistance of the department of cultural affairs and the department of revenue. This chapter sets forth the administration of the program by the authority. The administrative rules for the department of cultural affairs' administration of the program can be found in 223—Chapter 48. The administrative rules for the department of revenue's administration of the program may be found in rules 701—304.19(404A,422), 701—304.55(404A,422), 701—501.48(404A,422), and 701—601.10(404A,422).
[**ARC 2944C**, IAB 2/15/17, effective 3/22/17; **ARC 6728C**, IAB 12/14/22, effective 1/18/23]

261—49.2(404A) Program transition and applicability. For projects registered prior to August 15, 2016, the program is administered by the department of cultural affairs and the department of revenue pursuant to the statutes and rules that apply to projects registered prior to August 15, 2016. On or after August 15, 2016, the program is administered by the economic development authority in consultation with the department of cultural affairs pursuant to Iowa Code chapter 404A. Chapter 49 applies to projects that are registered on or after August 15, 2016.
[**ARC 2944C**, IAB 2/15/17, effective 3/22/17; **ARC 6728C**, IAB 12/14/22, effective 1/18/23]

261—49.3(404A) Definitions. For purposes of this chapter, unless the context otherwise requires:

"Agreement" means an agreement between an eligible taxpayer and the authority concerning a qualified rehabilitation project as provided in Iowa Code section 404A.3(3) and rule 261—49.12(404A).

"Applicant" means an eligible taxpayer described in rule 261—49.9(404A).

"Assessed value" means the value of the eligible property on the most current property tax assessment at the time that the relevant application or agreement is submitted or the agreement is signed, as applicable.

"Authority" means the economic development authority.

"Authority's website" means the information and related content found at www.iowaeda.com and may include integrated content at affiliate sites.

"Barn" means an agricultural building or structure, in whatever shape or design, which was originally used for the storage of farm products or feed or for the housing of farm animals, poultry, or farm equipment.

"Certificate" means a historic preservation tax credit certificate issued pursuant to Iowa Code section 404A.3(5).

"Commencement date" means the date by which the qualified rehabilitation project must begin.

"Commercial property" means property classified as commercial, industrial, railroad, utility, or residential for property tax purposes under rules 701—102.1(405,427A,428,441,499B), 701—106.1(434), and 701—107.1(428,433,437,438). "Commercial property" does not include property classified as residential property under 701—subparagraph 102.1(4)*"c"*(1).

"Completion date" means the date on which property that is the subject of a qualified rehabilitation project is placed in service, as that term is used in Section 47 of the Internal Revenue Code.

"Department" means the department of cultural affairs.

"Director" means the director of the economic development authority.

"Eligible taxpayer" means the fee simple owner of the property that is the subject of a qualified rehabilitation project, or another person who will qualify for the federal rehabilitation credit allowed under Section 47 of the Internal Revenue Code with respect to the property that is the subject of a qualified rehabilitation project.

"Federal rehabilitation credit" or *"federal credit"* means the tax credit allowed under Section 47 of the Internal Revenue Code.

"Federal standards" means the U.S. Secretary of the Interior's standards for rehabilitation set forth in 36 CFR Section 67.7.

"Government funding" includes but is not limited to:

1. Any funding the applicant received from a federal, state, or local government; or
2. Funding from a third party or a series of third parties where those funds originally came from a government or were derived from a government payment, grant, loan, tax credit or rebate or other government incentive; or
3. Funding from a third party or a series of third parties where those funds are derived from, secured by, or otherwise received in anticipation of a government payment, grant, loan, tax credit or rebate or other government incentive.

"Historically significant" means a property that is at least one of the following:

1. Property listed on the National Register of Historic Places or eligible for such listing.
2. Property designated as contributing to a district listed in the National Register of Historic Places or eligible for such designation.
3. Property or district designated a local landmark by a city or county ordinance.
4. A barn constructed prior to 1937.

"Large project" means a qualified rehabilitation project with estimated final qualified rehabilitation expenditures of more than $750,000.

"National Register of Historic Places" means the same as defined in rule 223—35.2(303).

"Noncommercial property" means property other than "commercial property" as defined in this rule. "Noncommercial property" includes barns constructed prior to 1937.

"Nonprofit organization" means an organization described in Section 501 of the Internal Revenue Code unless the exemption is denied under Section 501, 502, 503, or 504 of the Internal Revenue Code. "Nonprofit organization" does not include a governmental body, as that term is defined in Iowa Code section 362.2.

"Part 1 application" means an application submitted to SHPO to determine whether a property is historically significant.

"Part 2 application" means an application submitted to SHPO to determine whether the proposed rehabilitation work meets the federal standards.

"Part 2B application" means an application submitted to the authority, after a Part 2 application has been approved by SHPO but before a Part 3 application is submitted, to determine whether a project should be registered for a tentative tax credit award.

"Part 3 application" means an application submitted to the authority, after a Part 2B application is approved, to determine whether a project has complied with the terms of an agreement as well as with applicable laws, rules and regulations, including federal standards, and is therefore eligible for issuance of a tax credit certificate.

"Placed in service" means the same as used in Section 47 of the Internal Revenue Code.

"Program" means the historic preservation tax credit program set forth in this chapter.

"Property" means the real property that is the subject of a "qualified rehabilitation project" or that is the subject of an application to become a qualified rehabilitation project.

"Qualified rehabilitation expenditures" or *"QREs"* means expenditures that meet the definition of "qualified rehabilitation expenditures" in Section 47 of the Internal Revenue Code and as described in rule 261—49.4(404A).

"Qualified rehabilitation project" or *"project"* means a project for the rehabilitation of property in this state that meets all of the following criteria:

1. The property is historically significant as defined in this rule.
2. The property meets the federal standards as defined in this rule.
3. The project is a substantial rehabilitation as defined in this rule.

"Related entities" means any entity owned or controlled in whole or in part by the applicant; any person or entity that owns or controls in whole or in part the applicant; or any entity owned or controlled in whole or in part by any current or prospective officer, principal, director, or owner of the applicant.

"Related persons" means any current or prospective officer, principal, director, member, shareholder, partner, or owner of the applicant.

"SHPO" means the state historic preservation office of the department of cultural affairs.

"Small project" means a qualified rehabilitation project with estimated final qualified rehabilitation expenditures of $750,000 or less.

"Substantial rehabilitation" means qualified rehabilitation costs that meet or exceed the following:

1. In the case of commercial property, costs totaling at least 50 percent of the assessed value of the property, excluding the land, prior to the rehabilitation or at least $50,000, whichever is less; or

2. In the case of noncommercial property, costs totaling at least $25,000 or 25 percent of the assessed value, excluding the land, prior to rehabilitation, whichever is less.

"Tax credit" or *"historic tax credit"* means the historic preservation tax credit established in Iowa Code chapter 404A.

[**ARC 2944C**, IAB 2/15/17, effective 3/22/17; **ARC 6728C**, IAB 12/14/22, effective 1/18/23]

261—49.4(404A) Qualified rehabilitation expenditures.

49.4(1) *Expenditures incurred by nonprofit organizations.* Notwithstanding the definition in rule 261—49.3(404A), expenditures incurred by an eligible taxpayer that is a nonprofit organization shall be considered "qualified rehabilitation expenditures" if they are any of the following:

a. Expenditures made for structural components, as that term is defined in Treasury Regulation §1.48-1(e)(2).

b. Expenditures made for architectural and engineering fees, site survey fees, legal expenses, insurance premiums, and development fees.

49.4(2) *What expenditures qualify.* "Qualified rehabilitation expenditures" may include:

a. For projects registered on or after January 1, 2023, expenditures incurred within five years prior to the date an agreement is entered into under Iowa Code section 404A.3(3).

b. Reasonable developer fees. The authority may establish limits on developer fees and may adjust those limits. Any adjustment made to the established limit shall take effect 24 months after the adjustment is published on the authority's website. Developer fees that are qualified rehabilitation expenditures and that meet the limits effective at the time the Part 2B application is submitted shall be deemed reasonable by the authority.

49.4(3) *Government financing.* "Qualified rehabilitation expenditures" does not include those expenditures financed by federal, state, or local government grants or forgivable loans unless otherwise allowed under Section 47 of the Internal Revenue Code. For an eligible taxpayer that is not eligible for the federal rehabilitation credit, expenditures financed with federal, state, or local government grants or forgivable loans are not qualified rehabilitation expenditures.

[**ARC 2944C**, IAB 2/15/17, effective 3/22/17; **ARC 6728C**, IAB 12/14/22, effective 1/18/23]

261—49.5(404A) Historic preservation tax credit.

49.5(1) *Tax credit.* An eligible taxpayer who has entered into and complied with an agreement under Iowa Code section 404A.3(3) and has complied with the program statutes and rules is eligible to claim a historic tax credit of 25 percent of the qualified rehabilitation expenditures of a qualified rehabilitation project that are specified in the agreement. Notwithstanding any other provision in Iowa Code chapter 404A, this chapter, or any provision in the agreement to the contrary, the amount of the tax credit shall not exceed 25 percent of the final qualified rehabilitation expenditures verified by the authority pursuant to Iowa Code section 404A.3(5)*"c."*

49.5(2) *How to claim the tax credit.* To receive the tax credit, a taxpayer shall file a claim in accordance with any applicable administrative rules adopted by the department of revenue.

[**ARC 2944C**, IAB 2/15/17, effective 3/22/17; **ARC 6728C**, IAB 12/14/22, effective 1/18/23]

261—49.6(404A) Management of annual aggregate tax credit award limit. The authority shall not register more projects in a given fiscal year for tentative awards than there are tax credits available for that fiscal year under Iowa Code section 404A.4. The authority will determine the projects for which

sufficient tax credits are available based on the estimated qualified rehabilitation expenditures identified in the Part 2B application, plus allowable cost overruns as described in paragraph 49.12(1)*"c."*

49.6(1) *Registration scoring.* If applicants' total tax credit requests from a fiscal year allocation exceed the tax credit allocation for that fiscal year, the authority will prioritize its determinations based on the applicants' registration scores. If there are no more projects that meet the minimum score as described in rule 261—49.11(404A), the authority may make the remaining tax credits available for small projects or allow the remaining tax credits for the fiscal year to carry forward to the succeeding fiscal year to the extent permitted by Iowa Code section 404A.4.

49.6(2) *Registrations for future tax credit allocations.* Registrations for future tax credit allocations require a new Part 2B application. When registering projects for a particular fiscal year, the authority shall not award, reserve, or register tax credits from future fiscal years' tax credit allocations. An applicant whose project is not registered due to an insufficient score or noncompliance with the application or the program statute or rules may submit future applications for future fiscal year tax credit allocations.

49.6(3) *Reallocation or rollover of available tax credit awards.* Tax credits may be reallocated or rolled over into future fiscal years to the extent permitted by Iowa Code section 404A.4.

[**ARC 2944C**, IAB 2/15/17, effective 3/22/17; **ARC 6728C**, IAB 12/14/22, effective 1/18/23]

261—49.7(404A) Applications.

49.7(1) All applications and other filings related to the program shall be on such forms and in accordance with such instructions as may be established by SHPO and the authority. Information about the program, including a link to the online applications and instructions, may be obtained by visiting the authority's website.

49.7(2) An application shall not be considered submitted for review until the application is completed and all required supporting documentation and information are provided.

[**ARC 2944C**, IAB 2/15/17, effective 3/22/17; **ARC 6728C**, IAB 12/14/22, effective 1/18/23]

261—49.8(404A) Small projects. If an applicant anticipates that the final qualified rehabilitation expenditures will exceed $750,000, the applicant shall not submit its application as a small project. The authority will not permit a small project applicant to submit additional or amended applications that would cause the final qualified expenditures to exceed $750,000.

49.8(1) *Small project fund.* The authority shall allocate at least 5 percent of its annual fiscal year tax credit award limit to small projects.

49.8(2) *Aggregate award limit.* For applicants that receive credits from the small project allocation, the cumulative total award for multiple applications for a single property shall not exceed $750,000 in qualified rehabilitation expenditures plus any allowable cost overruns as described in paragraph 49.12(1)*"c,"* regardless of the final qualified rehabilitation expenditures. The authority will not accept an application by the same owner for a property for which credits were previously received through the small project fund if the application causes the cumulative total to exceed $750,000, plus any allowable cost overruns as described in paragraph 49.12(1)*"c."*

49.8(3) *Small project Part 2B applications.* Small project application forms may be obtained by visiting the authority's website. Small project Part 2B applications may be accepted on a continuous basis or may be accepted during one or more application periods. Small project Part 2B applications may be evaluated on a first-come, first-served basis, subject to the availability of tax credits.

[**ARC 2944C**, IAB 2/15/17, effective 3/22/17; **ARC 6728C**, IAB 12/14/22, effective 1/18/23]

261—49.9(404A) Who may apply for the tax credit. Only an eligible taxpayer as defined in rule 261—49.3(404A) may apply for the tax credit. A nonprofit organization as defined in rule 261—49.3(404A) may apply for the tax credit if the nonprofit organization is the fee simple owner of the property.

49.9(1) *Preliminary documentation.* At the time a Part 1 application or Part 2 application is submitted, an applicant will be expected to provide preliminary documentation of the applicant's status as an eligible taxpayer.

a. An applicant that is the fee simple owner shall provide title documentation. If the title is held in the name of an entity, the applicant shall also provide documentation that indicates that the signatory is the authorized representative of the entity.

b. An applicant that is not the fee simple owner but plans to apply for the federal rehabilitation credit shall provide a copy of the approved federal Part 1 application, unless the property is individually listed on the National Register of Historic Places. The applicant must also certify that the applicant plans to apply and expects to qualify for the federal credit. The applicant must obtain from the fee simple owner of the property a written statement that indicates that the owner is aware of the application and has no objection and include the statement with the application.

49.9(2) *Final documentation.* At the time an eligible taxpayer enters an agreement with the authority pursuant to rule 261—49.12(404A), the eligible taxpayer must provide documentation that the eligible taxpayer is a fee simple owner or has a binding qualified long-term lease that meets the requirements of the federal rehabilitation credit.

49.9(3) *Who may not apply.* Governmental bodies as defined in Iowa Code section 362.2 may not apply.

[**ARC 2944C**, IAB 2/15/17, effective 3/22/17; **ARC 6728C**, IAB 12/14/22, effective 1/18/23]

261—49.10(404A) Part 1 and Part 2 applications. An eligible taxpayer shall submit preliminary applications to SHPO to evaluate, in consultation with the authority, whether the property is historically significant (Part 1) and whether the proposed rehabilitation work meets the federal standards (Part 2). Part 1 and Part 2 applications will be submitted and evaluated in accordance with the SHPO's rules in 223—Chapter 48. The authority will evaluate Part 1 and Part 2 applications to ensure applicants are eligible taxpayers. An applicant must submit a Part 1 application prior to the project being completed and placed in service.

[**ARC 6728C**, IAB 12/14/22, effective 1/18/23]

261—49.11(404A) Part 2B application. If SHPO has approved Part 1 and Part 2 applications for a project, the applicant may submit a Part 2B application to the authority during the registration application period as announced on the authority's website.

49.11(1) *Proof of status as eligible taxpayer.* An eligible taxpayer as defined in rule 261—49.3(404A) may submit a Part 2B application.

a. An applicant that is the fee simple owner must notify the authority of any changes in ownership status since the Part 2 application was filed.

b. If the applicant is not the fee simple owner but plans to apply for the federal rehabilitation credit, the applicant's application will be scored based on the steps taken toward ownership as described in subrule 49.11(6). The applicant must certify that the applicant understands that the applicant will not qualify for any state historic tax credit if the applicant is not the fee simple owner or not otherwise an eligible taxpayer. The applicant must also provide a written statement that indicates that the owner is aware of the application and has no objection.

49.11(2) *Submission period.* The authority may accept Part 2B applications on a continuous basis or may accept applications during one or more application periods.

49.11(3) *Required information.* The Part 2B application must include the following information as well as any additional information the authority may request: total project cost, an estimated schedule of qualified rehabilitation expenditures and a schedule of all funding sources received or anticipated to be received that will be used to fund the project, including those funding sources used or that will be used to finance or reimburse both qualified rehabilitation expenditures and those expenditures not being claimed as qualified rehabilitation expenditures, along with supporting documentation. The schedule must identify all government funding as defined in rule 261—49.3(404A), including any funding that originated or will originate from any government, whether federal, state, or local.

49.11(4) *Certification and release of information.* The applicant must identify and list all related persons and related entities, as those terms are defined in rule 261—49.3(404A). The applicant must release information requested by the authority regarding the applicant, related persons, and related entities. The applicant must also certify that all representations, warranties, documents, or statements

made or furnished in connection with the Part 2B application are true and accurate. The certification and release of information are intended to identify information that may disqualify an applicant from participating in the program or that may have an adverse impact on the project. The certification and release of information are also intended to provide the authority with information regarding the economic, ownership, and management realities related to the project by providing information about the actual persons and businesses affiliated with the applicant, the actual persons and businesses that will derive financial benefits from the project, and other businesses affiliated with the individuals involved with the project.

a. The authority may reject an application for registration if:

(1) The applicant fails to answer the questions and provide all requested information and documents in a timely manner.

(2) The applicant provides false or inaccurate information or documents to the authority.

(3) The applicant, a related person, or a related entity is not in good standing with any local, state, or federal taxing authority. This provision shall not apply to an applicant, related person, or related entity that has timely filed an extension to file a local, state or federal tax return.

(4) The applicant, a related person, or a related entity is currently in default, has an uncured breach, or is otherwise not in compliance with any entity or instrumentality of the state of Iowa.

(5) The applicant, a related person, or a related entity has any overdue amounts owed to the state of Iowa, any agency of the state of Iowa, any other entity or instrumentality of the state of Iowa, or any person or entity that is eligible to submit claims to the state offset system.

(6) The authority determines that the applicant will not be able to provide representations, warranties, conditions, or other terms of an agreement that would be acceptable to the authority.

(7) Information is disclosed to the authority that would cause the authority to decline to enter into an agreement with the applicant.

b. Scope of inquiry. The authority may ask the applicant to disclose information and documents about other entities affiliated with the applicant, a related person, or a related entity if the authority determines that the information regarding the applicant, related persons, and related entities does not adequately disclose to the authority the economic, ownership, and management structure and realities related to a project.

c. In determining whether to reject an application in accordance with this subrule, the authority will consider factors including, but not limited to, the nature of the information disclosed and whether the applicant has a record of violations of law over a period of time that tends to show a consistent pattern.

49.11(5) *Review period.* In general, the authority, in consultation with SHPO, will review fully completed Part 2B applications within 60 calendar days of receipt. The 60-day review period will be adhered to as closely as possible; however, it is not mandatory. If the application is incomplete when submitted or if for any other reason the authority must request additional information, the 60-day review period will restart when the requested information is received by the authority. The authority may reject an application if any requested information is not provided.

49.11(6) *Scoring process.* All completed applications will be reviewed and scored. Scoring of the application will take into account readiness criteria, including, but not limited to, the following:

a. Rehabilitation planning and project readiness. Projects will be scored based on whether the Part 2 application was approved with or without conditions.

b. Secured financing. Weighted preference will be given to projects that have financing or equity or both in place.

c. Steps taken towards ownership. Weighted preference will be given to the projects of applicants that are currently fee simple owners of the property.

d. Local government support. Weighted preference will be given to projects that have received support from their local jurisdiction.

e. Rehabilitation timeline. Weighted preference will be given to projects that will be completed in the shortest amount of time.

f. Zoning and code review. Weighted preference will be given to the projects of applicants that can demonstrate a determination by the authority having jurisdiction that the project complies with the guidelines for construction permitting.

g. Such other information as the authority may find relevant and request.

49.11(7) *Registration.* Upon reviewing and scoring all applications that are part of the application period, the authority may register the qualified rehabilitation projects to the extent sufficient tax credits are available based on the estimated qualified rehabilitation costs identified in the Part 2B applications. As described in rule 261—49.6(404A), in the case of insufficient funding, preference will be given to the projects with the highest registration score based on the criteria in subrule 49.11(6). At the time the project is registered, the authority shall make a preliminary determination as to the amount of tax credits for which the project qualifies. The authority shall make best efforts to notify the applicant within 60 calendar days after the close of the application period as to whether the applicant's project has been registered. The registration notice shall include the amount of the applicant's tentative tax credit award, along with a notice that the amount is a preliminary, nonbinding determination only. Small projects may submit Part 2B applications year-round; however, the application must be submitted no later than 12 months after receipt of approval of the Part 2 application.

[**ARC 2944C**, IAB 2/15/17, effective 3/22/17; **ARC 6728C**, IAB 12/14/22, effective 1/18/23]

261—49.12(404A) Agreement. Upon successful registration of the project as described in subrule 49.11(7), the eligible taxpayer shall have 90 calendar days or until the end of the fiscal year, whichever is less, to purchase or lease the property, if applicable, and enter into an agreement with the authority. Nothing in these rules shall affect the authority's ability to comply with the annual award limitations described in Iowa Code section 404A.4. The authority shall not enter an agreement until it receives proof that the eligible taxpayer is the actual fee simple owner or has a binding qualified long-term lease that meets the requirements of the federal rehabilitation credit. An eligible taxpayer shall not be eligible for historic tax credits unless the eligible taxpayer enters into an agreement with the authority concerning the qualifying rehabilitation project and satisfies the terms and conditions that must be met to receive the tax credit award.

49.12(1) *Terms and conditions.* The agreement shall contain mutually agreeable terms and conditions, which shall, at a minimum, provide for the following:

a. The maximum amount of the tax credit award. Notwithstanding anything in this chapter to the contrary, no tax credit certificate shall be issued until the authority verifies the amount of final qualified rehabilitation expenditures and compliance with all other requirements of the agreement, Iowa Code chapter 404A, and the applicable rules.

b. The rehabilitation work to be performed. An eligible taxpayer shall perform the rehabilitation work consistent with the U.S. Secretary of the Interior's standards for rehabilitation, as determined by the department.

c. The budget of the qualified rehabilitation project. The budget should include projected qualified rehabilitation expenditures, and those expenditures not qualified, and allowable cost overruns. The amount of allowable cost overruns provided for in the agreement shall not exceed the following amounts:

(1) For a qualified rehabilitation project with estimated final qualified rehabilitation expenditures of not more than $750,000, 15 percent of the projected qualified rehabilitation expenditures provided for in the agreement.

(2) For a qualified rehabilitation project with estimated final qualified rehabilitation expenditures of more than $750,000 but not more than $6 million, 10 percent of the projected qualified rehabilitation expenditures provided for in the agreement.

(3) For a qualified rehabilitation project with estimated final qualified rehabilitation expenditures of more than $6 million, 5 percent of the projected qualified rehabilitation expenditures provided for in the agreement.

d. A schedule of all funding sources received or anticipated to be received that will be used to fund the project, including those funding sources used or that will be used to finance or reimburse both qualified rehabilitation expenditures and those expenditures not being claimed as qualified rehabilitation

expenditures, along with supporting documentation. The schedule must identify all government funding as defined in rule 261—49.3(404A).

e. The commencement date.

f. The completion date.

g. The agreement termination date.

h. Such other terms, conditions, representations, and warranties as the authority may determine are necessary or desirable to protect the interests of the state.

49.12(2) *Agreement timeline.* The commencement date indicated in the agreement shall be no later than the end of the fiscal year in which the agreement is entered into. The completion date indicated in the agreement shall be no later than 36 months from the commencement date. The agreement termination date indicated in the agreement shall not be earlier than five years from the date on which the tax credit certificate is issued.

49.12(3) *Amendments.* The authority may for good cause amend an agreement. However, the authority may not amend an agreement to allow cost overruns in excess of the amount described in paragraph 49.12(1)*"c."* Any amendment approved by the authority shall be signed by both parties.

[**ARC 2944C**, IAB 2/15/17, effective 3/22/17; **ARC 6728C**, IAB 12/14/22, effective 1/18/23]

261—49.13(404A) Part 3 application—request for certification of completed work and verification of qualified rehabilitation expenditures. Part 3 of the application is used to determine whether the project has complied with the terms of the agreement as well as with applicable laws, rules and regulations, including federal standards.

49.13(1) *Submission period.* The fully completed Part 3 application must be submitted no more than 180 calendar days after the project completion date as defined in the agreement. The authority may extend this deadline under extenuating circumstances.

49.13(2) *Required information.* The Part 3 application must include the following information:

a. Certification that the eligible taxpayer is the fee simple owner or is qualified for the federal rehabilitation credit and has a binding qualified long-term lease that meets the requirements of the federal rehabilitation credit.

b. Using the qualified rehabilitation expenditures schedule form provided by the authority, a schedule of total expenditures for the project, which shall identify in detail the final qualified rehabilitation expenditures and those expenditures that are not qualified. The qualified rehabilitation expenditures schedules form may be obtained by contacting the authority or by visiting the authority's website.

c. A schedule of all funding sources used to finance the project, including those funding sources used to finance or reimburse both qualified rehabilitation expenditures and expenditures not being claimed as qualified rehabilitation expenditures, along with supporting documentation. The schedule must identify all government funding as defined in rule 261—49.3(404A).

d. CPA examination.

(1) An eligible taxpayer shall engage a certified public accountant authorized to practice in this state to conduct an examination of the project in accordance with the American Institute of Certified Public Accountants' statements on standards for attestation engagements. The attestation applicable to this examination is SSAE No. 10 (as amended by SSAE Nos. 11, 12, 14), AT section 101 and AT section 601. Upon completion of the qualified rehabilitation project, the eligible taxpayer shall submit the examination to the authority, along with a statement of the amount of final qualified rehabilitation expenditures and any other information deemed necessary by the authority in order to verify that all requirements of the agreement, Iowa Code chapter 404A, and all rules adopted pursuant to Iowa Code chapter 404A have been satisfied.

(2) The procedures used by the CPA to conduct the examination should allow the CPA to conclude that, in the CPA's professional judgment, the qualified rehabilitation expenditures claimed are eligible pursuant to the agreement, Iowa Code chapter 404A, and all rules adopted pursuant to Iowa Code chapter 404A in all material respects. The documents reviewed by the CPA should be readily available to the

authority upon request. The applicant should generally be able to provide the requested documents within ten business days of a request from the authority.

(3) The examination requirement is waived for an eligible taxpayer if the final qualified rehabilitation expenditures of the qualified rehabilitation project, as verified by the authority, do not exceed $100,000 and the qualified rehabilitation project is funded exclusively by private funding sources. The authority reserves the right to request any additional information necessary to verify the final qualified rehabilitation expenditures and, if deemed necessary by the authority, to require that such an eligible taxpayer engage a CPA to conduct an examination of the project pursuant to paragraph 49.13(2)*"d."*

e. Any other information deemed necessary by the authority in order to verify that all requirements of the agreement, Iowa Code chapter 404A, and all rules adopted pursuant to Iowa Code chapter 404A have been satisfied or any other information the authority may require for program evaluation.

f. Election to receive either a refundable or a nonrefundable tax credit.

49.13(3) *Review period.* The authority will make best efforts to review Part 3 applications within 60 calendar days after the application is filed. However, this time frame is not binding upon the authority. The authority, in consultation with SHPO, shall review the information submitted by the eligible taxpayer and determine whether a tax credit certificate may be issued, including whether the eligible taxpayer has complied with federal standards.

[**ARC 2944C**, IAB 2/15/17, effective 3/22/17; **ARC 6728C**, IAB 12/14/22, effective 1/18/23]

261—49.14(404A) Fees. Applicants must pay a nonrefundable fee for the processing of Parts 2 and 3 of an application. The review fee for Part 2 will be due with the filing of the Part 2 application and will be based on the estimated qualified rehabilitation costs. The fee for review of Part 3 will be due with the filing of the Part 3 application and will be based on the final qualified rehabilitation expenditures. The fee schedule is as follows:

For projects with qualified rehabilitation expenditures of:	Part 2 Processing Fee	Part 3 Processing Fee
$50,000 or less	No cost	No cost
$50,001 to $100,000	$250	$250
$100,001 to $750,000	$500	$500
$750,001 to $6,000,000	$1,000	0.5 percent of final qualified rehabilitation expenditures
Over $6,000,000	$1,500	$30,000

[**ARC 2944C**, IAB 2/15/17, effective 3/22/17; **ARC 6728C**, IAB 12/14/22, effective 1/18/23]

261—49.15(404A) Compliance.

49.15(1) *Annual reports.* The eligible taxpayer shall, for the length of the agreement, annually certify to the authority compliance with the requirements of the agreement.

49.15(2) *Burden of proof.* The eligible taxpayer shall have the burden of proof to demonstrate to the authority that all requirements of the agreement, Iowa Code chapter 404A, and the applicable rules are satisfied. The taxpayer shall notify the authority in a timely manner of any changes in the qualification of the rehabilitation project or in the eligibility of the taxpayer to claim the tax credit provided under this chapter, or of any other change that may have a negative impact on the eligible taxpayer's ability to successfully complete any requirement under the agreement.

49.15(3) *Events of default, revocation, recapture.* If, after entering into the agreement but before a tax credit certificate is issued, the eligible taxpayer or the qualified rehabilitation project no longer meets the requirements of the agreement, Iowa Code chapter 404A, and the applicable rules, the authority may find the taxpayer in default and may revoke the tax credit award.

a. Voluntary abandonment. To irrevocably decline the tax credit, the applicant shall send a letter to the authority stating the applicant's decision to irrevocably decline the tax credit. The authority shall acknowledge, in writing, that the tax credit has been irrevocably declined. The tax credit shall be reallocated to the extent permitted by Iowa Code section 404A.4. If the applicant wishes to apply for a tax credit on the same qualified rehabilitation project at a later date, the applicant must complete the application process as though the project is a new project.

b. Revocation and recapture for prohibited activity; liability of certain transferees. Pursuant to Iowa Code section 404A.3(4)*"c,"* if an eligible taxpayer obtains a tax credit certificate from the authority by way of a prohibited activity, the eligible taxpayer and any transferee shall be jointly and severally liable to the state for the amount of the tax credits so issued, interest and penalties allowed under Iowa Code chapter 422, and reasonable attorney fees and litigation costs, except that the liability of the transferee shall not exceed an amount equal to the amount of the tax credits acquired by the transferee.

[**ARC 2944C**, IAB 2/15/17, effective 3/22/17; **ARC 6728C**, IAB 12/14/22, effective 1/18/23]

261—49.16(404A) Certificate issuance; claiming the tax credit. After determining whether the terms of the agreement, Iowa Code chapter 404A, and the applicable rules have been met, the authority shall issue a tax credit certificate to the eligible taxpayer stating the amount of tax credit under Iowa Code section 404A.2 the eligible taxpayer may claim, or the authority shall issue a notice that the eligible taxpayer is not eligible to receive a tax credit certificate. To receive the tax credit, an eligible taxpayer shall file a claim in accordance with any applicable administrative rules adopted by the department of revenue. Notwithstanding the foregoing, the eligibility of the tax credit remains subject to audit by the department of revenue in accordance with Iowa Code chapters 421 and 422.

[**ARC 2944C**, IAB 2/15/17, effective 3/22/17; **ARC 6728C**, IAB 12/14/22, effective 1/18/23]

261—49.17(303,404A) Appeals. Appeals will be governed by Iowa Code sections 17A.10 to 17A.19. Challenges to an action by the department of revenue related to tax credit transfers, claiming of tax credits, tax credit revocation, or repayment or recovery of tax credits must be brought pursuant to department of revenue 701—Chapter 7.

[**ARC 2944C**, IAB 2/15/17, effective 3/22/17; **ARC 6728C**, IAB 12/14/22, effective 1/18/23]

These rules are intended to implement Iowa Code chapter 404A.

[Filed ARC 2944C (Notice ARC 2774C, IAB 10/12/16), IAB 2/15/17, effective 3/22/17]

[Filed ARC 6728C (Notice ARC 6546C, IAB 9/21/22), IAB 12/14/22, effective 1/18/23]

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.

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[Filed 6/20/03, Notice 5/14/03—published 7/9/03, effective 8/13/03]

CHAPTER 51
BUTCHERY INNOVATION AND REVITALIZATION PROGRAM

261—51.1(15E) Purpose. Pursuant to Iowa Code section 15E.370, the authority is authorized to provide financial assistance to businesses for projects relating to butchery innovation and revitalization as identified in this chapter.
[**ARC 5971C**, IAB 10/6/21, effective 9/17/21; **ARC 6638C**, IAB 11/16/22, effective 10/21/22]

261—51.2(15E) Definitions. For purposes of this chapter, unless the context otherwise requires:

"Agreement" means a contract for financial assistance under the program describing the terms on which the financial assistance is to be provided.

"Applicant" means a business applying for assistance under the program.

"Authority" means the economic development authority created in Iowa Code section 15.105.

"Authority's website" means the information and related content found at www.iowaeda.com and may include integrated content at affiliate sites.

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

"Business" means a sole proprietorship, partnership, corporation, or other business entity organized for profit under the laws of the state of Iowa or another state, under federal statutes, or under the laws of another country.

"CIRAS" means the center for industrial research and service at Iowa state university of science and technology.

"Committee" means the committee of application reviewers appointed by the director and the secretary pursuant to subrule 51.5(1).

"Department" means the department of agriculture and land stewardship.

"Director" means the director of the authority.

"Establishment" means the same as defined in Iowa Code section 189A.2.

"Federal grant of inspection" means a certification issued by the Food Safety and Inspection Service certifying that an establishment is in compliance with the applicable requirements of 9 Code of Federal Regulations Chapter III and has been granted daily inspection services by FSIS.

"Federally inspected small-scale meat processing business" means an establishment that has been issued a federal grant of inspection and meets eligible business criteria in subrule 51.3(1).

"Financial assistance" means assistance provided only from the funds and assets legally available to the authority pursuant to Iowa Code section 15.370 as enacted by 2021 Iowa Acts, House File 857, section 1, and includes assistance in the form of grants, low-interest loans, and forgivable loans.

"Food Safety and Inspection Service" or *"FSIS"* means the agency of the United States Department of Agriculture which regulates establishments.

"Grant" means an award of assistance with the expectation that, with the fulfillment of the conditions, terms and obligations of the contract with the authority for the project, repayment of funds is not required.

"Licensed custom locker" means an establishment that slaughters or prepares livestock exclusively for use by the owners of the livestock, members of their household, and their nonpaying guests and employees, that is periodically inspected by the department, and that meets the eligible business criteria in subrule 51.3(1).

"Mobile slaughter unit" means a self-contained slaughter establishment that can travel from site to site, that operates in compliance with applicable laws, regulations, and the most current mobile slaughter unit compliance guide issued by FSIS, and that meets the eligible business criteria in subrule 51.3(1).

"Program" means the butchery innovation and revitalization program established pursuant to this chapter.

"Project" means an activity or activities undertaken by the applicant to be carried out at an establishment.

"Secretary" means the secretary of agriculture, who is the head of the department.

"State grant of inspection" means a certification issued by the department certifying that an establishment is in compliance with the applicable requirements of 21—Chapter 76 and has been granted daily inspection services by the department.

"State-inspected small-scale meat processing business" means an establishment that has been issued a state grant of inspection and meets the eligible business criteria in subrule 51.3(1).

[**ARC 5971C**, IAB 10/6/21, effective 9/17/21; **ARC 6638C**, IAB 11/16/22, effective 10/21/22]

261—51.3(15E) Eligibility.

51.3(1) *Eligible businesses.* To be eligible for a grant under the program, an applicant shall meet all of the following requirements:

a. The business must be located in this state. For the purposes of this paragraph, a business is located in this state if at least 98 percent of the business's employees work at the business's operations in Iowa or if the employees that are paid at least 98 percent of the business's payroll work at the business's operations in Iowa.

b. The business must be incorporated or organized in Iowa or authorized to do business in Iowa.

c. The business must not have been subject to any regulatory enforcement action related to federal, state, or local environmental, worker safety, food processing, or food safety laws, rules, or regulations within the last five years. For the purposes of this paragraph, regulatory enforcement actions include, but are not limited to, an administrative order, consent order or similar formal order issued by an applicable enforcement agency or an involuntary withdrawal of a state grant of inspection or federal grant of inspection.

d. The business must only employ individuals legally authorized to work in the state.

e. The business must not currently be in bankruptcy.

f. The business must employ less than 50 individuals across all the business's locations at the time of application.

g. The business must be an establishment that holds a current license from the department in accordance with the requirements of Iowa Code chapter 189A or is actively working with the department to obtain a license. Factors the authority may consider in determining whether a business is actively working with the department to obtain a license include, but are not limited to, the number and frequency of contacts the business has had with the department, whether the business has submitted an application for inspection to the department or FSIS, and whether the department or FSIS has conducted a site visit at the business.

h. The applicant must have an assessment of the applicant's proposed investment completed by CIRAS prior to submission of an application.

51.3(2) *Eligible projects.* The applicant must propose one of the following types of projects:

a. To expand or refurbish an existing, or to establish a new, state-inspected small-scale meat processing business.

b. To expand or refurbish an existing, or to establish a new, federally inspected small-scale meat processing business.

c. To expand or refurbish an existing, or to establish a new, licensed custom locker.

d. To expand or refurbish an existing, or to establish a new, mobile slaughter unit.

e. To rent or purchase buildings, refrigeration facilities, freezer facilities, or equipment necessary to expand processing capacity, including mobile slaughter or refrigeration units used exclusively for meat or poultry processing by a federally inspected small-scale meat processing business, a licensed custom locker, a mobile slaughter unit, or a state-inspected small-scale meat processing business.

51.3(3) *Matching support required.* The applicant shall demonstrate the ability to provide matching financial support for the project on a one-to-one basis in the form of cash. The matching financial support must be obtained from private sources.

[**ARC 5971C**, IAB 10/6/21, effective 9/17/21; **ARC 6638C**, IAB 11/16/22, effective 10/21/22]

261—51.4(15E) Application submittal and review process.

51.4(1) The authority will develop a standardized application process and make information on applying available on the authority's website. To apply for assistance under the program, an eligible business shall submit an application to the authority in the form and manner prescribed by the authority.

51.4(2) Applications will be accepted only during established application periods as announced on the authority's website. Applications will be reviewed in the order received by the authority.

51.4(3) The authority may refuse to accept incomplete applications or may refuse to accept applications because of insufficient funds.

51.4(4) A scoring committee will consider, evaluate, and recommend applications for financial assistance under the program. The committee will review applications for financial assistance and score the applications according to the criteria described in subrule 51.5(2). Applications deemed to meet the minimum scoring criteria will be submitted to the board for a final funding decision.

51.4(5) The board, after considering the recommendations made by the committee, will determine which applications to fund and how much should be awarded to each applicant. The board has final decision-making authority on requests for financial assistance for the program. The board may approve an award, decline to award, or refer an application back to staff for further review and recommendation.

51.4(6) The maximum amount of financial assistance awarded to an eligible business for all applications under the program shall not exceed $100,000.

51.4(7) Successful applicants will be notified in writing of an award of financial assistance, including any conditions and terms of the award.

[**ARC 5971C**, IAB 10/6/21, effective 9/17/21; **ARC 6638C**, IAB 11/16/22, effective 10/21/22]

261—51.5(15E) Application scoring criteria.

51.5(1) *Application scoring.* A scoring committee composed of individuals with relevant expertise and experience will be appointed by the director in consultation with the secretary. The committee will evaluate the applications and give them an average numerical score between 0 and 100.

51.5(2) *Scoring criteria.* The criteria under which each application will be scored are:

a. The extent to which the project expands processing capacity or increases efficiency: 25 points. Projects that benefit local small-scale farmers by creating or expanding opportunities to market processed meat under private labels, provide greater flexibility or convenience to have animals processed, or establish an essential community asset will receive more points. Projects that are likely to negatively impact existing meat processing businesses will receive fewer points. The committee may also consider the extent of any likely negative impact.

b. The sufficiency of the proposed project's financing structure, the feasibility of the sources of funds, and the appropriateness of the proposed uses of the funds: 25 points. Applicants that can demonstrate that the applicant has planned for long-term use of the project will receive more points.

c. The extent to which the proposed investment is consistent with the opportunities identified in the assessment completed by CIRAS pursuant to paragraph 51.3(1)*"h"*: 15 points.

d. The number and quality of jobs to be created by the applicant as a result of the project or the extent to which the proposed investment uses automation to address workforce issues: 15 points. Projects that create more jobs or higher quality jobs will receive more points. Factors the committee will consider in assessing the quality of jobs include, but are not limited to, wages and benefits. Projects that utilize technology to address the workforce needs of the business, resulting in a more skilled workforce or increased processing capacity, will also receive more points.

e. The financial need of the applicant: 10 points. Applicants that received a business improvement grant from the department for expenses incurred between March 1, 2020, and December 1, 2020, or a previous grant from the program will receive fewer points.

f. The completeness of the application information and sufficiency of detail used to describe the project in the application: 10 points.

[**ARC 5971C**, IAB 10/6/21, effective 9/17/21; **ARC 6638C**, IAB 11/16/22, effective 10/21/22]

261—51.6(15E) Contract administration.

51.6(1) The authority will prepare a contract for each award approved by the board. The contract will reflect the terms of the award and may include other terms and conditions reasonably necessary for implementation of the program pursuant to this chapter.

51.6(2) Any substantive change to a proposed project shall require an amendment to the contract. Amendments shall be requested in writing. No amendment shall be valid until approved by the board. The authority may execute nonsubstantive or corrective changes to the contract without board approval.
[**ARC 5971C**, IAB 10/6/21, effective 9/17/21; **ARC 6638C**, IAB 11/16/22, effective 10/21/22]

261—51.7(15E) Disbursement of funds. The authority will disburse funds for a project only after a complete application has been received, an award has been approved by the board, a contract has been executed between the applicant and the authority, and all applicable conditions for disbursement have been met, including the submission of documentation pertaining to the eligible expenditures. Disbursement of funds under the contract will be on a reimbursement basis for expenses incurred by the applicant after the date the board approves the award and as provided under the contract.
[**ARC 5971C**, IAB 10/6/21, effective 9/17/21; **ARC 6638C**, IAB 11/16/22, effective 10/21/22]

261—51.8(15E) Reporting. An applicant receiving assistance under the program shall submit any information reasonably requested by the authority in sufficient detail to permit the authority to prepare any reports required by the authority, the board, the general assembly or the governor's office.
[**ARC 5971C**, IAB 10/6/21, effective 9/17/21; **ARC 6638C**, IAB 11/16/22, effective 10/21/22]

These rules are intended to implement Iowa Code section 15E.370.

[Filed Emergency After Notice ARC 5971C (Notice ARC 5851C, IAB 8/11/21), IAB 10/6/21, effective 9/17/21]

[Filed Emergency After Notice ARC 6638C (Notice ARC 6470C, IAB 8/24/22), IAB 11/16/22, effective 10/21/22]

CHAPTER 52
IOWA TARGETED SMALL BUSINESS CERTIFICATION PROGRAM

261—52.1(15) Definitions.

"Authority" means the economic development authority created in Iowa Code section 15.105.

"Certification" means the process which identifies small businesses as targeted and eligible for technical assistance.

"Contractor" means the person who contracts to perform work for the state.

"Cottage industry" means a business where the principal place of business is the owner's residence.

"Disability" means as defined in Iowa Code section 15.102(10)*"b."*

"Family" means a group of related people as follows: father, mother, son, daughter, brother, sister, husband, wife, grandmother, grandfather, grandchild, stepfather, stepmother, stepdaughter, stepson, stepbrother, stepsister, half-sister, or half-brother.

"Family-owned business" means a business owned by more than one member of one family. Characteristics of a family-owned business include, but are not limited to:

1. Ownership is shared by family members;
2. Profits are disbursed among family members;
3. A business tax return is filed in the name of the company with the family members listed as officers.

"Gross income" means the total sales less the cost of goods sold plus any income from investments and from incidentals or outside operations or sources.

"Intention" means an attempt has been made to perform the work.

"Lending institution" means any bank, savings and loan, or credit union.

"Minority person" means an individual who is a Black, Latino, Asian, Pacific Islander, American Indian or Alaskan Native American.

"Owner's residence" means the owner's legal residence.

"Person" means individual, corporation, government or governmental subdivision or agency, estate, trust, partnership or association, or any other legal entity.

"Program" means the targeted small business certification program described in this chapter.

"Service-disabled veteran" means the same as defined in 15 U.S.C. Section 632.

"Single management" means a business which is not a subsidiary of any other business.

"Targeted group person" or *"TGP"* means a person who is a minority, woman, person with a disability, or service-disabled veteran and is either an Iowa resident or a resident of a contiguous state who lives within 50 miles of the targeted small business the person owns, operates, and actively manages.

"Targeted small business (TSB)" means a small business which is 51 percent or more owned, operated, and actively managed by one or more targeted group persons provided the business meets all of the following requirements:

1. Is located in this state;
2. Is operated for profit;
3. Has an annual gross income of less than $4 million, computed as an average of the three preceding fiscal years.

"Targeted small business owner" means one or more women, minorities, persons with disabilities, service-disabled veterans, or a combination thereof, owning at least 51 percent of a business.

"Uniform small business vendor application" means the application developed by the Iowa economic development authority which can be adopted by all agencies and departments of state government to identify small businesses and targeted small businesses. The application contains information which can be used to determine certification as a targeted small business for participation in the Iowa targeted small business procurement program.

"Woman" means any female 18 years of age or older.

[**ARC 3582C**, IAB 1/17/18, effective 2/21/18; **ARC 5907C**, IAB 9/22/21, effective 10/27/21]

261—52.2(15) Certification. The authority is responsible for ascertaining that a small business is owned, operated, and actively managed by a targeted group person.

52.2(1) Regular certification. Before a small business can participate in the Iowa targeted small business program, it must be certified by the authority.

a. The authority shall review applications from small businesses to determine whether they are eligible to participate in the program pursuant to this chapter as in effect as of the date of application for certification.

b. Certification means the authority has determined that the business meets eligibility standards.

c. Applications for the targeted small business certification are available by contacting the authority or by visiting the authority's website:

Iowa Economic Development Authority
1963 Bell Avenue, Suite 200
Des Moines, Iowa 50315
515.348.6200
www.iowaeda.com

d. Applicants shall receive written notification of the authority's decision.

52.2(2) Recertification. Certified businesses shall submit verification of continued eligibility to the authority at least every two years.

a. The application for recertification will be provided by the authority.

b. Other documents will be requested to verify the continuing eligibility of the business.

c. The authority shall determine whether a certified business is eligible for recertification pursuant to this chapter as in effect as of the date of application for recertification.

52.2(3) Information required in application. Various and specific documentation may be required by the authority during the certification or recertification process. Each business shall provide relevant information upon the authority's request in order to be considered for certification or recertification. Applications shall be signed by an authorized representative of the business. An authorization to release information is part of each application and shall be signed by the applicant. This signature shall be notarized.

52.2(4) A business may reapply upon proof of compliance with TSB certification standards. Any company that is denied certification or decertified for any reason bears the burden of proving that all deficiencies previously cited have been corrected. Corrections shall be in accordance with requirements governing the targeted small business program. The burden of proof to recertify a business is the responsibility of the owner of that business.

52.2(5) The business shall notify the authority within 30 days following a change in ownership or control of a certified business. A new application shall be filed showing the change and must be accompanied by sufficient documentation to determine whether the business continues to be eligible to participate in the TSB program.

52.2(6) An applicant for certification as an Iowa targeted small business may indicate in writing that a similar application is pending with an agency other than the authority. When the authority considers another certification process equal to or more stringent than the process described in these rules, an applicant may submit the information required for the other process. The authority may certify a business as a TSB based on copies of the information provided to another agency. The Iowa application for certification as a TSB may still be required. Certification as a targeted small business in Iowa is granted only by the authority. Certification by any other entity does not ensure certification as a targeted small business in Iowa.

52.2(7) Disability determinations.

a. *Person with a disability.* In order to be considered a person with a disability for the purpose of the TSB program, the person must qualify and receive certification as having a disability from a licensed medical physician or physician assistant or must have been found eligible for vocational rehabilitation services by the department of education, division of vocational rehabilitation services, or by the department for the blind.

b. *Service-disabled veteran.* In order to be considered a service-disabled veteran for the purpose of the TSB program, the person must provide written verification from the Veterans Administration or the U.S. Department of Defense of a service-connected disability, as defined in 38 U.S.C. Section 101(16).
[**ARC 3582C**, IAB 1/17/18, effective 2/21/18; **ARC 5907C**, IAB 9/22/21, effective 10/27/21; **ARC 6794C**, IAB 1/11/23, effective 2/15/23]

261—52.3(15) Description of application. The TSB application requires information about the people who own, control, and manage the applicant business.

52.3(1) Names, current addresses, verification of targeted group status and the employer's federal identification number, if applicable, are required. The proportion of ownership of the business and the names of stockholders or owners must be included. Documents which establish financial responsibility may be required.

52.3(2) The authority may require the applicant to provide any information reasonably required to assess the applicant's eligibility for the program pursuant to this chapter, including but not limited to information regarding the applicant's contracts, income, inventory, loans, personnel, payroll, taxes, and volume of business.

52.3(3) The information contained in the application may be reviewed by the applicant upon request to the authority. Material to be added to a file may be sent to the authority.
[**ARC 3582C**, IAB 1/17/18, effective 2/21/18; **ARC 5907C**, IAB 9/22/21, effective 10/27/21]

261—52.4(15) Eligibility standards. Pursuant to the authority of Iowa Code section 15.108(7), the authority has established standards to certify targeted small businesses. These standards are intended to indicate whether a business is owned, operated and actively managed by targeted group persons.

52.4(1) The applicant shall be an independent business. The following list describes elements of a business which indicate independent status.

a. The targeted group person owner(s) shall enjoy the customary incidents and profits of ownership and shall share in the risks commensurate with the owner's ownership interest. Independence of ownership shall be demonstrated by the substance rather than the form of the arrangements. Title and authority shall be commensurate with ownership and control.

b. The business shall be owned and operated by the same targeted group persons, a single management.

c. A board of directors and stockholders shall each have a membership comprised of at least 51 percent targeted group persons.

d. The applicant business shall be compensated for facilities, inventory, equipment, labor, or other items which it owns and shares with any other business. Compensation shall not vary from common industry practice.

e. The targeted group person owner(s) shall have independent authority and ability to incur liability and to decide financial and policy questions. The business arrangements of owners, directors, officers or key employees with businesses which are not minority-, woman-, person with disability-, or service-disabled veteran-owned shall not vary from common industry practice. Each industry has practices which differ from other industries.

f. Independent authority and ability to hire and to fire all personnel shall be vested in the targeted group person owner(s).

g. Recognition of the business as a separate entity for tax or corporate purposes is not solely sufficient for certification as a targeted small business.

52.4(2) The targeted group person owner(s) shall make the business decisions for the business without any restrictions, either formal or informal. This includes, but is not limited to, bylaw provisions, partnership agreements, charter requirements for cumulative voting rights, or employment agreements.

52.4(3) The targeted group person owner(s) shall direct or cause the direction of the business. The owner(s) shall make day-to-day decisions as well as major decisions on management policy and operation of the business. The authority will consider particular positions to determine who has major responsibility in a company. These people include, but are not limited to, those who:

a. Hold any applicable license;

b. Devote substantial time to the business;
c. Supervise or direct the supervision of management and field operations;
d. Manage financial affairs;
e. Prepare or approve bids or estimates;
f. Participate in price and bidding negotiations;
g. Make final decisions about staff and personnel;
h. Sign contracts and checks or authorize action on behalf of the business.

52.4(4) Any relationship between a TSB and a business which is not a TSB, but which has an interest in the TSB, shall be carefully reviewed to determine if the interest of the non-TSB conflicts with the ownership and control requirements of this rule.

52.4(5) The contributions of capital and expertise by the targeted group person owner(s) to acquire interest in the business shall be real and substantial.

a. The following list includes acceptable elements of ownership.

(1) Company documents, such as stock certificates, articles of incorporation, minutes of board meetings, partnership agreements, or income tax returns reflect targeted group person ownership;

(2) Independent contributions of capital are made by the targeted group person owner(s). Proof of this independent contribution of capital made by the targeted group person owner(s) to acquire interest in the business must accompany the certification application;

(3) Independent contributions of expertise are made by the targeted group person owner(s). The targeted group person owner(s) must have an overall understanding of, managerial and technical competence in, and expertise directly related to the type of business in which the firm is engaged and in the firm's operations. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the activities of the business is insufficient to demonstrate control of the business;

(4) Independent risk of loss and share of profit by the targeted group person owner(s) is commensurate with the owner's proportion of ownership.

b. Fifty-one percent or more of securities which constitute ownership or control of a corporation for purposes of establishing it as a TSB shall be held directly by targeted group persons.

c. An inherited business may be eligible for targeted small business status. Capital contribution, expertise and experience in the inherited business are not required. All other standards apply.

d. Documentation may be required to prove compliance with all standards.

[**ARC 3582C**, IAB 1/17/18, effective 2/21/18]

261—52.5(15) Special consideration. In addition to the above standards, the authority may consider other circumstances to determine eligibility. Consideration of other circumstances is intended to ensure that only bona fide targeted group person-owned businesses are certified.

52.5(1) A previous or continuing employer-employee relationship between present owners will be carefully reviewed to ensure that the employee-owner has substantial management and decision-making responsibilities.

52.5(2) At the discretion of the authority, on-site audits may be conducted to determine eligibility.

[**ARC 3582C**, IAB 1/17/18, effective 2/21/18]

261—52.6(15) Family-owned business. Businesses which are owned and operated by one or more members of the same family will be closely scrutinized to determine whether the targeted group person identified as the owner of 51 percent or more of the business does in fact set policy and make day-to-day and long-term decisions for the operation and management of the business.

52.6(1) If any of the circumstances below prevail, the business shall be considered a family-owned business. Nontargeted group person family-owned businesses are not eligible for certification as targeted small businesses in Iowa. Any characteristic listed below may be cause to deny targeted small business status. This list is not to be construed as complete.

a. If a nontargeted group person family member:

(1) Is chief executive officer or president;

(2) Provides the expertise to conduct the business;

(3) Transfers ownership to the targeted group person owner for less than fair market value;

(4) Receives compensation equal to or greater than the targeted group person owner, not commensurate with their ownership;

(5) Provides occupational services for the business for less than fair market value;

(6) Possesses powers equal to or greater than the targeted group person owner to direct management and operations.

b. If the targeted group person owner:

(1) Is represented to those outside the business as not possessing the final authority to direct the operations and management of the business;

(2) Cannot document the date upon which the nontargeted group person family member was hired.

c. A recent transfer of ownership by a nontargeted group person family member to a targeted group person will be reviewed to determine if the previous owner is still the principal decision maker on policy or actually manages the existing business. Transfers in the past two years are considered recent, and these businesses shall not be certified, unless evidence substantiating the transfer is received and approved.

52.6(2) If a lending institution requires a signature other than the TSB owner's, another person may sign. When this happens, the owner must have the experience and expertise to own and operate the business. If a nontargeted group person family member has the expertise and has cosigned for business loans, the business is not eligible.

[**ARC 3582C**, IAB 1/17/18, effective 2/21/18]

261—52.7(15) Cottage industry. A cottage industry business may be eligible for certification as a TSB.

52.7(1) Characteristics of these businesses include, but are not limited to:

a. At least 51 percent of business equipment shall be owned by targeted group persons.

b. Business risks and profits shall be borne by the targeted group person owner(s) proportionate to the owner's ownership.

52.7(2) The intent of targeting some small businesses is to identify those businesses which have been traditionally excluded from economic growth. Therefore, for a cottage industry business, the residence and any adjacent outbuildings used by the cottage industry may be owned jointly with other family members.

52.7(3) All other TSB eligibility standards apply to the cottage industry.

[**ARC 3582C**, IAB 1/17/18, effective 2/21/18]

261—52.8(15) Decertification. A business shall be decertified by the authority if it is determined the business no longer complies with the requirements of the TSB program or its owners cannot be located by the authority.

52.8(1) Written notice of the intent to revoke certification shall be provided when the authority determines there is reasonable cause to believe a business does not comply. Notice shall be sent by U.S. mail at least 20 days before decertification is effective.

52.8(2) If the authority sends a letter by first-class mail to the last-known address provided to the authority by the TSB and it is returned as undeliverable, this is considered to be grounds for decertification.

52.8(3) Decertification procedures may be initiated by the authority or after the investigation of a complaint filed by the general public. A request for an investigation from the public must be written and shall specify the reason(s) why the certified targeted small business no longer complies with these rules. Supporting documentation may be attached to the request.

52.8(4) Eligibility to participate in the TSB program continues until the final decision is issued by the authority.

[**ARC 3582C**, IAB 1/17/18, effective 2/21/18]

261—52.9(15) Request for bond waiver. A targeted small business seeking a performance, surety, or bid bond waiver shall submit a sworn statement that it is unable to secure a performance, surety, or bid bond because of lack of experience, lack of net worth, or lack of capital. Documentation will be

requested from surety companies that the TSB is unable to obtain performance, surety, or bid bonding because of the lack of experience, lack of net worth, or lack of capital.

52.9(1) A waiver shall be applied only to a prime contract where the project or individual transaction does not exceed $50,000, notwithstanding Iowa Code section 573.2.

52.9(2) Granting a waiver shall not relieve any business from its contractual obligations. The state agency or department may pursue any remedy under law upon default or breach of contract.

52.9(3) The authority reviews all bond waiver documents. Information to assist the review process may be requested from the state department or agency involved. An applicant for a performance, surety, or bid bond waiver and the department or agency involved will be notified of the decision by U.S. mail.

52.9(4) Bond waivers will be reviewed and renewed at the time of TSB recertification.

[**ARC 3582C**, IAB 1/17/18, effective 2/21/18]

261—52.10(15) Fraudulent practices in connection with targeted small business programs. A violation under this rule is grounds for decertification of the TSB connected with the violation. Decertification shall be in addition to any penalty otherwise authorized by this chapter.

52.10(1) A person is considered to be guilty of a fraudulent practice if the person:

a. Knowingly transfers or assigns assets, ownership, or equitable interest in property of a business to a targeted group person primarily for the purpose of obtaining benefits under TSB programs if the transferor would otherwise not be qualified for such programs.

b. Solicits and is awarded a state contract on behalf of a TSB for the purpose of transferring the contract to another for a percentage if the person transferring or intending to transfer the work had no intention of performing the work.

c. Knowingly falsifies information on an application for the purpose of obtaining benefits under TSB programs.

52.10(2) The authority may investigate allegations or complaints of fraudulent practices and will take action to decertify a TSB upon concluding that a violation has occurred. A decertification by this action may be appealed.

[**ARC 3582C**, IAB 1/17/18, effective 2/21/18]

These rules are intended to implement Iowa Code section 15.108(7).

[Filed ARC 3582C (Notice ARC 3378C, IAB 10/11/17), IAB 1/17/18, effective 2/21/18]

[Filed ARC 5907C (Notice ARC 5622C, IAB 5/19/21), IAB 9/22/21, effective 10/27/21]

[Filed ARC 6794C (Notice ARC 6594C, IAB 10/19/22), IAB 1/11/23, effective 2/15/23]

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]

Rescinded **ARC 6320C**, IAB 5/18/22, effective 6/22/22

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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[1] Effective date of 54.10(73) delayed 70 days by the Administrative Rules Review Committee at its meeting held July 14, 1992.

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 this chapter, the following definitions shall apply:

"Authority" means the economic development authority created in Iowa Code section 15.105.

"Disability" means the same as defined in Iowa Code section 15.102(10)*"b."*

"Microloan service provider" means a service provider that has contracted with the authority to provide financial and technical assistance to targeted small businesses.

"Program" means the targeted small business financial assistance program established pursuant to this chapter.

"Review committee" means a committee established by the authority or microloan service provider to review program applications pursuant to subrule 55.3(8).

"Targeted small business" or *"TSB"* means a small business which is 51 percent or more owned, operated, and actively managed by one or more women, minority persons, service-disabled veterans, or persons with a disability provided the business meets all of the following requirements:

1. Is located in this state;
2. Is operated for profit;
3. Has an annual gross income of less than $4 million computed as an average of the three preceding fiscal years.

[**ARC 5907C**, IAB 9/22/21, effective 10/27/21]

261—55.3(15) Application and approval.

55.3(1) *Application procedures.* Application materials may be obtained from the authority or microloan service provider.

55.3(2) *Maximum funding levels.* In no case shall an award exceed $50,000. The interest rate charged shall not exceed 5 percent per annum or be less than 0 percent per annum. A targeted small business shall not receive a loan under the program that provides 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.

55.3(3) *Term.* The term of a loan shall not exceed five years.

55.3(4) *Eligible uses of funds.* Program funds 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.

55.3(5) *Ineligible uses of funds.* Program funds shall not be used to refinance existing debt. For the purposes of this subrule, existing debt does not include interim financing for allowable program purposes intended as a bridge loan obtained after the date a program loan is approved. Program funds shall not be used to facilitate financing of a project which would consist solely of relocation of an existing business within Iowa.

55.3(6) *Threshold criteria.* Applicants for funds under the program must meet the following minimum criteria before their applications will be considered complete and eligible for evaluation:

a. The business must be eligible for certification as a targeted small business pursuant to 261—Chapter 52 at the time of application. The authority or microloan service provider will educate applicants about the benefits of such certification and encourage applicants to seek certification.

b. 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.

c. All applicants shall comply with the requirements of 261—Chapter 172.

55.3(7) *Submittal process.* All applications and related informational materials shall be submitted on forms prescribed by and in the manner prescribed by the authority or microloan service provider.

55.3(8) *Review process.*

a. Applications are reviewed for completeness. If additional information is required, the authority or microloan service provider shall send the applicant notice to submit additional information. If the requested information is not provided by the deadline indicated in the notice, the application may be considered incomplete or ineligible.

b. The authority or microloan service provider will establish a committee of at least three individuals to review all applications.

55.3(9) *Evaluation.* Applications are evaluated according to the following criteria:

a. Applicant credit score and outstanding liabilities.

b. Source(s) of the applicant's income.

c. Debt service coverage ratio.

55.3(10) *Negotiations of funds awarded.*

a. The authority reserves the right to negotiate the amount, term, interest rate, and other conditions of the loan prior to award. The amount, term, interest rate, and other conditions may be negotiated by a microloan service provider on behalf of the authority.

b. The authority or microloan service provider may decline to award funds to a business if there is a negative credit report (e.g., bankruptcy, foreclosure, tax liens, or unpaid or past due child support).

55.3(11) *Award decision.* If an application is approved by the review committee, 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. If an application is denied by the review committee, the applicant will receive a denial letter stating the reason for denial.

55.3(12) *Reapplication.* An applicant whose application is denied by the review committee cannot resubmit an application for the program for 90 days (3 months) from the date of the denial letter.
[**ARC 5907C**, IAB 9/22/21, effective 10/27/21]

261—55.4(15) Monitoring.

55.4(1) The authority or microloan service provider reserves the right to monitor the recipient's records to ensure compliance with the terms of the award. The authority or microloan service provider may request information on the condition of the business at any time during the life of the loan to determine the status of the project. Authority or microloan service provider staff will contact the recipient as frequently as conditions may warrant during the life of the loan.

55.4(2) The authority or microloan service provider 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.

55.4(3) If the authority or microloan service provider determines that a borrower is in default, the authority may seek recovery of the loan plus interest or other penalties, negotiate alternative payment schedules, suspend or discontinue collection efforts and take other action as the authority deems necessary.

55.4(4) A person receiving funds under the 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.
[**ARC 5907C**, IAB 9/22/21, effective 10/27/21]

261—55.5(15) Disbursement of funds. An approved applicant shall acknowledge and agree to the terms proposed by the authority or microloan service provider prior to disbursement of funds. Requests for disbursement and loan documents shall be in the form and content specified by the authority.
[**ARC 5907C**, IAB 9/22/21, effective 10/27/21]

261—55.6(15) Award agreement. Rescinded **ARC 5907C**, IAB 9/22/21, effective 10/27/21.

These rules are intended to implement Iowa Code sections 15.102 and 15.108 and 2013 Iowa Acts, House File 324.

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[1] Prior to 10/7/87, see Iowa Finance Authority 524—Chapter 11

CHAPTER 56
EMPLOYEE STOCK OWNERSHIP PLAN (ESOP) FORMATION ASSISTANCE

261—56.1(85GA,HF648) Purpose. The authority is authorized to provide financial and technical assistance to businesses interested in establishing an employee stock ownership plan (ESOP). The purpose of this chapter is to create a program that will assist a business by (1) helping to determine whether an ESOP is a feasible form of ownership and (2) providing assistance to reduce the cost of forming an ESOP when it is feasible.
[**ARC 1249C**, IAB 12/25/13, effective 1/29/14]

261—56.2(85GA,HF648) Definitions. For purposes of this chapter, unless the context otherwise requires:

"Agreement" means a contract for financial assistance under the program describing the terms on which the financial assistance is to be provided.

"Applicant" means a business applying for assistance under the program.

"Authority" means the economic development authority created in Iowa Code section 15.105.

"Business" means a corporation eligible to become a qualified Iowa ESOP.

"Director" means the director of the authority.

"Financial assistance" means a payment made by the authority to an applicant approved for funding under the program.

"Program" means the ESOP formation assistance program established pursuant to this chapter.

"Qualified Iowa ESOP" means the same as defined in the department of revenue's rules for the determination of net income at 701—subrule 40.38(10).
[**ARC 1249C**, IAB 12/25/13, effective 1/29/14; **ARC 6891C**, IAB 2/22/23, effective 3/29/23]

261—56.3(85GA,HF648) Program description.

56.3(1) *Amount, form, and timing of assistance.* The program provides financial assistance to businesses interested in establishing an ESOP. An applicant to the program may be approved for financial assistance in an amount equal to 50 percent of the cost incurred for obtaining a feasibility study conducted by an independent financial professional. The total amount of financial assistance provided to an applicant will not exceed $25,000. The financial assistance may be provided in two tranches. The first tranche will be provided as a reimbursement of 25 percent of the cost of a feasibility study and will be remitted upon completion of the feasibility study. The second tranche will be provided as a reimbursement of 25 percent of the cost of the feasibility study and will be remitted only upon completion of an ESOP formation. A business that does not successfully complete the formation of an ESOP will not receive the second tranche. A business will be required to provide to the authority documentation establishing the costs incurred and the successful completion of all necessary transactions.

56.3(2) *Application.*

a. Each fiscal year in which funding is available, the authority will accept applications for assistance under the program and make funding decisions on a rolling basis.

b. Information on submitting an application under the program may be obtained by contacting the authority.

56.3(3) *Approval of assistance.* Authority staff will consider, evaluate, and recommend applications for financial assistance under the program. The authority may consult with an ESOP advisory panel consisting of individuals selected by the director who have demonstrated expertise in the formation and operation of ESOPs as needed. Authority staff will review applications for financial assistance and score the applications according to the criteria described in rule 261—56.4(85GA,HF648). Applications deemed to meet the minimum scoring criteria will be submitted to the director for a final funding decision.

56.3(4) *Contract required.* If the director approves an applicant for financial assistance under the program, the authority will prepare an agreement stating the terms on which the financial assistance is to be provided, and the applicant shall execute the agreement before funds are disbursed under the program.

56.3(5) *Use of funds.* An applicant shall use funds provided only for the purpose of reducing the cost of services of an independent financial professional for evaluating the feasibility of an ESOP and forming an ESOP. The authority may require documentation or other information establishing the actual costs incurred. The financial assistance shall be provided to the applicant after the costs are incurred and on a reimbursement basis. Costs incurred prior to approval of financial assistance will not be eligible for reimbursement.

[**ARC 1249C**, IAB 12/25/13, effective 1/29/14; **ARC 6891C**, IAB 2/22/23, effective 3/29/23]

261—56.4(85GA,HF648) Program eligibility, application scoring, and funding decisions.

56.4(1) *Program eligibility.* To be eligible under the program, an applicant shall meet all of the following requirements:

a. The applicant shall be a business interested in establishing an ESOP. To establish that this criterion is met, the applicant shall state the reasons for its interest in establishing an ESOP.

b. The applicant shall be, or be willing to become, an IRS subchapter C or subchapter S corporation. To establish that this criterion is met, the applicant shall include a copy of its articles and documentation establishing the applicable IRS election. An applicant not yet a corporation may be required to execute a letter of intent.

c. The applicant shall have a valuation that is sufficient to make an ESOP feasible. To establish that this criterion is met, the applicant shall provide information estimating the value of the business and information about the source of that estimate. This information may be a good-faith estimate. The authority will not set a specific minimum valuation; however, applicants are advised that a business with valuation less than $5 million may not be considered a feasible candidate for an ESOP.

d. The applicant shall have a number of employees, eligible employee types, and a total payroll that are sufficient to make an ESOP feasible. To establish that this criterion is met, the applicant shall provide relevant payroll information. The authority will not set a specific minimum number of employees; however, applicants are advised that a business with fewer than 25 employees may not be a feasible candidate for an ESOP.

e. The applicant shall have a cash flow level sufficient to make an ESOP feasible. To establish that this criterion is met, the applicant shall provide relevant financial statements. The authority will not set a minimum cash flow level; however, applicants are advised that a business with cash flow less than $500,000 may not be a feasible candidate for an ESOP.

f. The applicant is not a retail business.

g. The applicant is not a publicly traded company.

h. The applicant has not completed a feasibility study for purposes of exploring an ESOP formation in the three years prior to application for the program. An applicant who has engaged a service provider as of the time of application shall provide a copy of the engagement letter to the authority.

56.4(2) *Application scoring.* A business meeting the requirements of subrule 56.4(1) may apply to the authority for financial assistance under the program. The authority will review applications for completeness. The authority may engage an ESOP advisory panel for assistance in evaluating the applications as needed. As part of the evaluation process, an applicant may be required to interview with authority staff and with members of the ESOP advisory panel about the applicant's business, future plans, and interest in forming an ESOP. Authority staff will evaluate the applications and give them an average numerical score between 0 and 100. The numerical score will reflect the extent to which an applicant is a feasible candidate for an ESOP. In determining the numerical score, the authority will take into account the extent to which each applicant meets the requirements of subrule 56.4(1). The authority will keep records of the scoring process and make those records available to applicants.

56.4(3) *Funding decisions.* Each application, including its numerical score, will be referred to the director with a recommended funding decision. The director will make the final funding decision on each application, taking into consideration the score and the funding recommendation of authority staff.

The director may not approve funding for an application that receives an average score of less than 50 points.
[**ARC 1249C**, IAB 12/25/13, effective 1/29/14; **ARC 6891C**, IAB 2/22/23, effective 3/29/23]

261—56.5(85GA,HF648) Contract required. Each applicant that is approved for financial assistance under the program shall enter into an agreement with the authority. The agreement shall establish the terms on which the financial assistance is to be provided.
[**ARC 1249C**, IAB 12/25/13, effective 1/29/14]

These rules are intended to implement 2013 Iowa Acts, House File 648, section 9.

[Filed ARC 1249C (Notice ARC 1021C, IAB 9/18/13), IAB 12/25/13, effective 1/29/14]
[Filed ARC 6891C (Notice ARC 6738C, IAB 12/14/22), IAB 2/22/23, effective 3/29/23]

CHAPTER 57
EMPLOYER CHILD CARE TAX CREDIT

261—57.1(237A) Definitions.

"Authority" means the economic development authority created in Iowa Code section 15.105.

"Department" means the Iowa department of revenue.

"Federal credit" means the federal employer-provided child care tax credit provided in Section 45F of the Internal Revenue Code.

"Qualified child care expenditure" means the same as defined in Section 45F of the Internal Revenue Code.

"Qualified child care facility" means the same as defined in Section 45F of the Internal Revenue Code.

"Qualified child care resource and referral expenditure" means the same as defined in Section 45F of the Internal Revenue Code.

"Tax credit" means the amount a taxpayer may claim against the taxes imposed in Iowa Code chapter 422, subchapters II, III, and V, and in Iowa Code chapter 432, and against the moneys and credits tax imposed in Iowa Code section 533.329.

[**ARC 7057C**, IAB 8/9/23, effective 9/13/23]

261—57.2(237A) Authorization of tax credits.

57.2(1) An employer child care tax credit is authorized pursuant to Iowa Code section 237A.31 as amended by 2023 Iowa Acts, Senate File 181.

57.2(2) The proportion of a taxpayer's federal credit attributable to expenditures made in Iowa equals the ratio that the sum of the amount described in paragraph 57.2(2)*"a"* bears to the sum total of the amount described in paragraph 57.2(2)*"b."* The ratio shall be expressed as a percentage rounded to the nearest hundredth percent.

a. The qualified child care expenditures paid or incurred with respect to a qualified child care facility in Iowa, plus qualified child care resource and referral expenditures paid or incurred with respect to Iowa employees.

b. The qualified child care expenditures and qualified child care resource and referral expenditures.

[**ARC 7057C**, IAB 8/9/23, effective 9/13/23]

261—57.3(237A) Application and issuance process.

57.3(1) The authority will develop a standardized application pertaining to the authorization and distribution of tax credits. The application will request information relating to the taxpayer's eligibility for the federal credit, the proportion of the federal credit attributable to expenditures made by the taxpayer in Iowa as calculated pursuant to subrule 57.2(2), and any other information required by the authority. The certified public accountant (CPA) examination conducted pursuant to rule 261—57.4(237A) shall be submitted with the application.

57.3(2) A taxpayer shall submit an application for the credit within 90 calendar days of the end of the tax year during which qualified child care expenditures and qualified child care resource and referral expenditures are paid or incurred.

57.3(3) The authority shall issue tax credit certificates in the order the applications are determined complete and qualified until the maximum aggregate amount of tax credits that may be authorized pursuant to Iowa Code section 237A.31(3)*"a"* is reached. Applications for tax credits received in excess of the maximum aggregate amount of tax credits available each fiscal year will be denied by the authority. An application that can be partially approved without exceeding the maximum aggregate amount of tax credits may be approved as to the portion less than the maximum amount and denied as to the portion greater than the maximum amount.

57.3(4) The authority will issue a tax credit certificate to an approved taxpayer in an amount that represents the maximum amount of tax credit the taxpayer may claim. To receive the tax credit, the taxpayer shall file a claim with the department in accordance with any applicable administrative rules

adopted by the department. An approved taxpayer's tax credit may be subject to reduction in such circumstances described by any applicable rules adopted by the department.
[**ARC 7057C**, IAB 8/9/23, effective 9/13/23]

261—57.4(237A) CPA examination.

57.4(1) A taxpayer shall engage a certified public accountant authorized to practice in this state to conduct an examination of the taxpayer's qualified child care expenditures and qualified child care resource and referral expenditures in accordance with the American Institute of Certified Public Accountants' statements on standards for attestation engagements. The attestation applicable to this examination is SSAE No. 10 (as amended by SSAE Nos. 11, 12, 14), AT section 101 and AT section 601.

57.4(2) The procedures used by the CPA to conduct the examination should allow the CPA to conclude that, in the CPA's professional judgment, the qualified child care expenditures paid or incurred with respect to a qualified child care facility in Iowa and qualified child care resources and referral expenditures paid or incurred with respect to Iowa employees are eligible for a tax credit pursuant to Iowa Code section 237A.31 and all rules adopted by the authority and by the department pursuant to Iowa Code section 237A.31 in all material respects. The documents reviewed by the CPA shall be provided to the authority upon request. The authority may deny a tax credit application if such documents are requested and are not provided to the authority within 60 days.
[**ARC 7057C**, IAB 8/9/23, effective 9/13/23]

These rules are intended to implement Iowa Code section 237A.31 as amended by 2023 Iowa Acts, Senate File 181.

[Filed ARC 7057C (Notice ARC 7039C, IAB 6/14/23), IAB 8/9/23, effective 9/13/23]

CHAPTER 58
NEW JOBS AND INCOME PROGRAM

[Prior to 7/19/95, see 261—Ch 62]

Rescinded **ARC 6320C**, IAB 5/18/22, effective 6/22/22

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.

261—59.15(15E) Applicability on or after July 1, 2014.

59.15(1) Effective as of July 1, 2014, the enterprise zone program was repealed by 2014 Iowa Acts, House File 2448. No agreements shall be entered into under the program on or after July 1, 2014.

59.15(2) To the extent allowed by other provisions of law, the rules adopted in this chapter shall continue to apply to agreements entered into on or before June 30, 2014.

59.15(3) On or after July 1, 2014, a city or county shall not create an enterprise zone under Iowa Code chapter 15E, division XVIII, or enter into a new agreement under Iowa Code chapter 15E, division XVIII. A city or county and the authority, with the approval of the authority board, may amend an agreement for compliance reasons if the amendment does not increase the amount of incentives awarded under the agreement.

59.15(4) The authority and an eligible business may amend an agreement entered into prior to July 1, 2014, in order to avoid hardship to an eligible business in the performance or maintenance of the agreement but only to the extent that amending the agreement would not require amendment by a city or county. The determination as to whether a hardship exists shall be within the discretion of the authority. The authority shall not amend an agreement in any manner that would increase the amount of tax incentives provided under the agreement.

[**ARC 1801C**, IAB 12/24/14, effective 1/28/15; **ARC 3385C**, IAB 10/11/17, effective 11/15/17]

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)
Rescinded **ARC 6320C**, IAB 5/18/22, effective 6/22/22

CHAPTER 62
COGENERATION PILOT PROGRAM
Rescinded **ARC 6320C**, IAB 5/18/22, effective 6/22/22

CHAPTER 63
UNIVERSITY-BASED RESEARCH UTILIZATION PROGRAM
Rescinded **ARC 6320C**, IAB 5/18/22, effective 6/22/22

CHAPTER 64
NEW CAPITAL INVESTMENT PROGRAM
Rescinded **ARC 6320C**, IAB 5/18/22, effective 6/22/22

CHAPTER 65
BROWNFIELD AND GRAYFIELD REDEVELOPMENT

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 sites. The redevelopment tax credits program for brownfields and grayfields is designed to provide financial 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; **ARC 0007C**, IAB 2/8/12, effective 3/14/12; **ARC 1827C**, IAB 1/21/15, effective 2/25/15]

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:

"Abandoned public building" means a vertical improvement constructed for use primarily by a political subdivision of the state for a public purpose and whose current use is outdated or prevents a better or more efficient use of the property by the current owner. "Abandoned public building" includes vacant, blighted, obsolete, or otherwise underutilized property.

"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.

"Affiliate" or *"affiliated entity"* means any entity to which one or more of the following applies:

1. The entity directly, indirectly, or constructively controls another entity.
2. The entity is directly, indirectly or constructively controlled by another entity.
3. The entity is subject to the control of a common entity. A common entity is one which owns directly or individually more than 10 percent of the voting securities of the entity.

"Authority" means the economic development authority.

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

"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 abandoned public building or an industrial or commercial property that meets 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.

"Political subdivision" means a city, county, township, or school district.

"Previously remediated or redeveloped" means any prior remediation or redevelopment, including development for which an award of tax credits under this chapter has been made.

"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 or grayfield site.

"Redevelopment" means construction or development activities associated with a qualifying redevelopment project that are undertaken either for the purpose of constructing new buildings or improvements at a site where formerly existing buildings have been demolished or for the purpose of rehabilitating, reusing or repurposing existing buildings or improvements. Redevelopment typically includes projects that result in the elimination of blighting characteristics as defined by Iowa Code section 403.2.

"Redevelopment tax credits program" means the tax credits program administered pursuant to Iowa Code sections 15.293A and 15.293B.

"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.

"Vertical improvement," "improvement" or *"improved"* means the same as defined in Iowa Code section 15J.2.

[**ARC 7844B**, IAB 6/17/09, effective 7/22/09; **ARC 9746B**, IAB 9/7/11, effective 8/19/11; **ARC 0007C**, IAB 2/8/12, effective 3/14/12; **ARC 0944C**, IAB 8/7/13, effective 9/11/13; **ARC 1827C**, IAB 1/21/15, effective 2/25/15; **ARC 6042C**, IAB 11/17/21, effective 12/22/21]

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. The brownfield redevelopment program requires that an applicant has secured a sponsor prior to applying for program assistance. Sponsorship is encouraged but not required for the redevelopment tax credits program for brownfields and grayfields.

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. The brownfield redevelopment program requires that an applicant has secured a sponsor prior to applying for program assistance. Prior to applying for financial assistance under the brownfield redevelopment program, an applicant who is not an owner of a site 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:

a. The total cost for remediating the site.

b. 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.

c. 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.

65.3(3) *Phased projects ineligible for tax credits.* Tax credits for brownfield and grayfield redevelopment are only available for qualifying redevelopment projects. Because a qualifying redevelopment project does not include a previously remediated or redeveloped site, a project for subsequent redevelopment at the same site for which tax credits have already been awarded is not eligible for additional tax credits on redevelopment at that site. The authority and the council will determine whether a project constitutes subsequent redevelopment at the same site by considering the following factors:

a. Whether the redevelopment described in multiple proposed projects is planned for a single parcel.

b. Whether the redevelopment described in multiple proposed projects is planned for adjacent or contiguous parcels or parcels in very close physical proximity.

c. Whether all involved parcels are owned by the same entity, different entities, or affiliated entities.

d. Whether a proposed project is the result of the same planning process as another project.

e. Whether the proposed projects are being developed by the same entity, different entities, or affiliated entities.

f. Whether the development of one proposed project reflects a temporal connection to another proposed project.

[**ARC 7844B**, IAB 6/17/09, effective 7/22/09; **ARC 0007C**, IAB 2/8/12, effective 3/14/12; **ARC 0944C**, IAB 8/7/13, effective 9/11/13; **ARC 1827C**, IAB 1/21/15, effective 2/25/15]

261—65.4(15) Eligible forms of assistance and limitations.

65.4(1) *Financial assistance.* Eligible forms of financial assistance include grants, interest-bearing loans, forgivable loans, loan guarantees, tax credits, and other forms of assistance under the brownfield redevelopment program and the redevelopment tax credits program for brownfields and grayfields established in Iowa Code sections 15.292 and 15.293A.

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; **ARC 0007C**, IAB 2/8/12, effective 3/14/12; **ARC 1827C**, IAB 1/21/15, effective 2/25/15]

261—65.5(15) Repayment to economic development authority. Under the brownfield redevelopment program only, 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 actually disbursed to the applicant by the authority.
[**ARC 7844B**, IAB 6/17/09, effective 7/22/09; **ARC 9746B**, IAB 9/7/11, effective 8/19/11; **ARC 0007C**, IAB 2/8/12, effective 3/14/12]

261—65.6(15) General procedural overview.

65.6(1) Subject to availability of funds, applications to the brownfield redevelopment program will be accepted, reviewed and scored by economic development authority staff and by the advisory council on an annual basis. Brownfield redevelopment funds will be scored on a competitive basis by the council, which will make recommendations on award amounts to the board.

65.6(2) Subject to availability of funds, applications to the redevelopment tax credits program for brownfields and grayfields will be accepted and reviewed by economic development authority staff and scored by the advisory council on an annual basis. For the fiscal year beginning July 1, 2014, applications must be received by March 1, 2015. For each fiscal year thereafter, applications will be accepted beginning on July 1 and must be received by September 1. Subject to the availability of funding, the authority may set additional application deadlines after September 1 and before the end of a fiscal year.

65.6(3) Applications for all forms of financial assistance 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.

65.6(4) Application forms for the brownfield redevelopment program and the redevelopment tax credits program for brownfields and grayfields are available on the authority's website.

65.6(5) 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; **ARC 0007C**, IAB 2/8/12, effective 3/14/12; **ARC 1827C**, IAB 1/21/15, effective 2/25/15; **ARC 6792C**, IAB 1/11/23, effective 2/15/23]

261—65.7(15) Application to the brownfield redevelopment program—agreements.

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 council will score applications according to the application review criteria established pursuant to rule 261—65.9(15). The board shall approve or deny applications.

65.7(3) Approved applicants shall enter into an agreement with the authority.
[**ARC 7844B**, IAB 6/17/09, effective 7/22/09; **ARC 9746B**, IAB 9/7/11, effective 8/19/11; **ARC 0007C**, IAB 2/8/12, effective 3/14/12; **ARC 1827C**, IAB 1/21/15, effective 2/25/15]

261—65.8(15) Application to the redevelopment tax credits program—registration of projects—agreements.

65.8(1) *System for application, review, registration, and authorization of projects.* The authority will administer a system for application, review, registration, and authorization of projects as described in this subrule and will only issue tax credit certificates pursuant to subrule 65.11(3).

a. The authority will accept and, in conjunction with the council, review applications for tax credits provided in Iowa Code section 15.293A and, with the approval of the council, make tax credit award recommendations regarding the applications to the board.

b. Applications for redevelopment tax credits will only be accepted during the established application period as provided in subrule 65.6(2).

c. Upon review of an application, the authority may register the project with the redevelopment tax credits program. If the authority registers the project, the authority may, in conjunction with the council, make a preliminary determination as to the amount of tax credit for which an award recommendation will be made to the board.

d. After registering the project, the authority will notify the investor of successful registration under the redevelopment tax credits program. The notification may include the amount of tax credit for which an award recommendation will be made to the board. If an award recommendation is included in the notification, such notification will include a statement that the award recommendation is a recommendation only. The amount of tax credit included on a tax credit certificate issued pursuant to this rule shall be contingent upon an award by the board and upon completion of the requirements in this rule.

e. (1) All completed applications will be reviewed and scored, pursuant to subrule 65.8(2), on a competitive basis by the council and the board. In reviewing and scoring applications, the council and the board may consider any factors the council and board deem appropriate for a competitive application process, including but not limited to the financial need, quality, and feasibility of a qualifying redevelopment project.

(2) For purposes of this rule:

1. *"Feasibility"* means the likelihood that the project will obtain the financing necessary to allow for full completion of the project and the likelihood that the proposed redevelopment or improvement that is the subject of the project will be fully completed.

2. *"Financial need"* means the difference between the total costs of the project less the total financing that will be received for the project.

3. *"Quality"* means the merit of the project after considering and evaluating its total characteristics and measuring those characteristics in a uniform, objective manner against the total characteristics of other projects that have applied for the tax credit provided in this chapter during the same established application period.

f. Upon reviewing and scoring all applications that are part of an annual application period, the board may award tax credits provided in this chapter.

g. If the applicant for a tax credit provided in this chapter has also applied to an agency of the federal government or to the authority, the board, or any other agency of state government for additional financial assistance, the authority, the council, and the board will consider the amount of funding to be received from such public sources when making a tax credit award pursuant to this rule.

h. An applicant that is unsuccessful in receiving a tax credit award during an established application period may make additional applications during subsequent application periods. Such applicants must submit a new application and must be competitively reviewed and scored in the same manner as other applicants in that same application period.

65.8(2) *Scoring criteria.*

a. Each application for tax credits during each established application period will be scored according to criteria set forth in this paragraph. Points will be added together and the resulting score averaged with the scores of applications evaluated by all council members. Scoring criteria include:

(1) The project's feasibility: 25 points.

(2) The project's financial need: 25 points.

(3) The project's quality: 25 points.

b. There is no minimum score required for a project to receive a recommendation for funding, but a higher score indicates that the council views a project more favorably. The council's funding recommendation will reflect its overall view of the project in relation to other applying projects.

65.8(3) *Required information.* An investor applying for a tax credit shall provide the authority with 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 are directly related to the qualifying redevelopment project for which the investor is seeking approval for a tax credit, as provided in this chapter.

c. Any other information deemed necessary by the board and the council to review and score the application pursuant to this rule.

65.8(4) *Agreement required—recapture of credits.* If an investor is awarded a tax credit pursuant to this rule, the authority and the investor shall enter into an agreement concerning the qualifying redevelopment project. If the investor fails to comply with any of the requirements of the agreement, the authority may find the investor in default under the agreement and may revoke all or a portion of the tax credit award. The department of revenue, upon notification by the authority of an event of default, shall seek repayment of the value of any such tax credit already claimed in the same manner as provided in Iowa Code section 15.330(2).

65.8(5) *Project completion.* A registered project shall be completed within 30 months of the date the project was registered unless the authority provides additional time to complete the project. If the registered project is not completed within the time required, the project is not eligible to claim a tax credit pursuant to this chapter.

65.8(6) *Audit required.*

a. Upon completion of a registered project, an audit of the project, completed by an independent certified public accountant licensed in this state, must be submitted to the authority.

b. Upon review of the audit and verification of the amount of the qualifying investment, the authority will issue a tax credit certificate to the investor stating the amount of tax credit that the investor may claim.

[**ARC 1827C**, IAB 1/21/15, effective 2/25/15; **ARC 4511C**, IAB 6/19/19, effective 7/24/19; **ARC 6042C**, IAB 11/17/21, effective 12/22/21]

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; **ARC 0007C**, IAB 2/8/12, effective 3/14/12]

261—65.11(15) Redevelopment tax credit.

65.11(1) *Purpose.* The purpose of the redevelopment tax credits 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, and tax identification number; the amount of the credit; the name of the qualifying investor; whether the taxpayer has satisfied the requirements for the credit to be refundable; 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. *Claims.* To claim a tax credit under this rule, a qualified investor shall file a claim with the department of revenue pursuant to the department's applicable rules. The qualified investor must include one or more tax credit certificates with the qualified investor's tax return. A tax credit certificate shall not be used or included with a return filed for a taxable year beginning prior to the tax year listed on the certificate. The tax credit certificate or certificates included with 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.

c. *Transfer.* Tax credit certificates issued under this rule may be transferred to any person or entity pursuant to the department of revenue's applicable rules, except a tax credit certificate that is refundable pursuant to Iowa Code section 15.293A(1)*"c"*(2) as amended by 2022 Iowa Acts, House File 2317, shall not be transferable.

65.11(4) *Tax credit amount and limitations.*

a. *Refundability.* A tax credit in excess of the taxpayer's liability for the tax year is refundable only to the extent indicated in Iowa Code section 15.293A(1)*"c"*(2) as amended by 2022 Iowa Acts, House File 2317.

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, 2021, and for each subsequent fiscal year, the maximum amount of tax credits allocated to the program by the authority shall be an amount determined by the board but not in excess of the amount established pursuant to Iowa Code section 15.119. Tax credits awarded pursuant to paragraph 65.11(7)*"b"* shall not be counted against the allocation determined by the board pursuant to this paragraph.

65.11(5) *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(6) *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. 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, 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(7) *Tax credit carryover.*

a. 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.

b. Tax credits revoked under subrule 65.8(4) including tax credits revoked up to five years prior to July 1, 2021, and tax credits not awarded under subrules 65.8(5) and 65.8(6), may be awarded in the next annual application period established in Iowa Code section 15.293B(1)*"c."*

65.11(8) *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(9) *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; **ARC 0007C**, IAB 2/8/12, effective 3/14/12; **ARC 1827C**, IAB 1/21/15, effective 2/25/15; **ARC 4511C**, IAB 6/19/19, effective 7/24/19; **ARC 6042C**, IAB 11/17/21, effective 12/22/21; **ARC 6792C**, IAB 1/11/23, effective 2/15/23]

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 shall apply to the authority, and applications shall be reviewed by the council as established

in Iowa Code section 15.294. 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.

[**ARC 7844B**, IAB 6/17/09, effective 7/22/09; **ARC 9746B**, IAB 9/7/11, effective 8/19/11; **ARC 0007C**, IAB 2/8/12, effective 3/14/12]

These rules are intended to implement Iowa Code sections 15.291 to 15.295.

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[Filed ARC 0944C (Notice ARC 0686C, IAB 4/17/13), IAB 8/7/13, effective 9/11/13]
[Filed ARC 1827C (Notice ARC 1693C, IAB 10/29/14), IAB 1/21/15, effective 2/25/15]
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[Filed ARC 6042C (Notice ARC 5850C, IAB 8/11/21), IAB 11/17/21, effective 12/22/21]
[Filed ARC 6792C (Notice ARC 6593C, IAB 10/19/22), IAB 1/11/23, effective 2/15/23]

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

Rescinded **ARC 6320C**, IAB 5/18/22, effective 6/22/22

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 authority'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 program requirements; wage, benefit and investment requirements; application review and approval procedures; contracting; contract compliance and job counting; and annual reporting requirements. The standard definitions in 261—Chapter 173 in Part VII have been incorporated as applicable in subrule 68.1(2) and are not otherwise applicable to the HQJP.

68.1(2) *Definitions.*

"Annual base rent" means the business's annual lease payment minus taxes, insurance and operating or maintenance expenses.

"Authority" means the economic development authority created in Iowa Code section 15.105.

"Award date" means the date the board approved an application for project completion assistance, other direct financial assistance, or tax incentives.

"Base employment level" means the number of full-time equivalent positions at a business, as established by the authority and a business using the business's payroll records, as of the date a business applies for tax incentives or project completion assistance. The number of jobs the business has pledged to create shall be in addition to the base employment level. The number of jobs the business has pledged to retain are included as all or a part of the base employment level. If the project is a modernization project, the job obligations will not include created or retained jobs. The business will be required to maintain the base employment level.

"Benefits" means nonwage compensation provided to an employee. Benefits include medical and dental insurance plans; pension, retirement, and profit-sharing plans; child care services; and life insurance, vision insurance, and disability insurance coverage. Benefits may include other nonwage compensation as determined by the board.

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

"Brownfield site" means the same as defined in Iowa Code section 15.291.

"Business" means a sole proprietorship, partnership, corporation, or other business entity organized for profit under the laws of the state of Iowa or another state, under federal statutes, or under the laws of another country.

"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.

"Created job" means a new, permanent, full-time equivalent (FTE) position added to a business's payroll in excess of the base employment level.

"Department" means the Iowa department of revenue.

"Economically distressed area" means a county meeting the requirements of a distressed area pursuant to rule 261—174.6(15).

"Eligible business" means a business meeting the conditions of Iowa Code section 15.329.

"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).

2. A business's leased or contract employee, provided all of the following elements are satisfied:

- The business receiving the tax incentives or project completion 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 authority as conditions of the 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 authority, in form and content and as frequently as required by the authority, 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 authority, or its authorized representatives, to access the third-party provider's records related to the funded project.
- The business receiving the tax incentives or project completion assistance agrees to be contractually liable to the authority for the performance or nonperformance of the third-party provider.

"Financial assistance" means assistance provided only from the funds, rights, and assets legally available to the authority. Financial assistance includes assistance provided in the form of grants, loans, forgivable loans, float loans, equity-like assistance, and royalty payments and other forms of assistance 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 project completion assistance and tax 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 five-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, provided that the number of hours per week is at least 32 hours per week for 52 weeks per year, including paid holidays, vacations, and other paid leave.

For purposes of this definition, "employment of one person" means the employment of one natural person and does not include "job sharing" or any other means of aggregation or combination of hours worked by more than one natural person.

"Grayfield site" means the same as defined in Iowa Code section 15.291.

"Greenfield site" means a site that does not meet the definition of a brownfield site or grayfield site. A project proposed at a site located on previously undeveloped or agricultural land shall be presumed to be a greenfield site.

"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.

"Laborshed area" means the geographic area surrounding an employment center from which the employment center draws its commuting workers. The Iowa department of workforce development (IWD) determines the employment centers and defines the boundaries of each laborshed area. IWD defines laborshed areas by surveying commuters within the various zip codes surrounding an employment center, combining the zip codes into as many as three zones, and determining how many people commute from a zip code to the employment center from each zone. The zones reflect the fact that as the distance from an employment center increases, the number of people willing to commute to the employment center decreases. The laborshed wage applicable to the project shall be the laborshed wage for the closest laborshed area, as determined by road distance between the employment center and the zip code of the project location.

"Laborshed wage" means the same as defined in Iowa Code section 15.327. The authority will calculate the laborshed wage as follows:

1. The most current covered wage and employment data available from IWD will be used.

2. The wage will be computed as a mean wage figure and represented in terms of an hourly wage rate.

3. Only the wages paid by employers for jobs performed within the first two zones of a laborshed area will be included.

4. The wages paid by employers in the following categories will be excluded from the calculation: government, retail trade, health care and social assistance, and accommodations and food service. The wages paid by employers in all other categories will be included in the calculation.

5. To the extent that a laborshed area includes zip codes from states other than Iowa, the wages paid by employers in those zip codes may be included if IWD has finalized a data-sharing agreement with the state in question and has received the required data.

6. Only those wages within two standard deviations from the mean wage will be included.

"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 conditions of the award. "Loan" includes deferred loans, forgivable loans, and float loans. 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 (not to exceed 30 months) made from obligated but unexpended moneys.

"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. The specific date on which the maintenance period ends will be established by contract between the authority and the business. The maintenance period completion date will be a date on or after the project completion date and will be used to establish the period of time during which the project, the created jobs, and the retained jobs must be maintained. Rule 261—187.3(15) provides standard durations for project completion and maintenance periods.

"Modernization project" means a project that will result in increased skills and wages for current employees and that does not involve created or retained jobs. The business must maintain the base employment level.

"Program" means the high quality jobs program created pursuant to Iowa Code chapter 15, part 13.

"Project" means an activity or set of activities directly related to the start-up, location, modernization, or expansion of a business, and proposed in an application by a business, that are consistent with the goals of the program.

"Project completion assistance" means financial assistance or technical assistance provided to an eligible business in order to facilitate the start-up, location, modernization, or expansion of the business in this state and provided in an expedient manner to ensure the successful completion of the start-up, location, modernization, or expansion project.

"Project completion date" means the date by which a recipient of incentives or assistance has agreed to meet all the terms and obligations contained in an agreement with the authority. The specific date on which the project completion period ends will be established by contract between the authority and the business. The project completion date will be a date on which the project must be completed, all incented jobs must be created or retained, and all other applicable requirements must be met. Rule 261—187.3(15) provides standard durations for project completion and maintenance periods.

"Project completion period" means the period of time between the award date and the project completion date.

"Qualifying wage threshold" means the laborshed wage for an eligible business.

"Retail business" means any business engaged in the business of selling tangible personal property or taxable services at retail in this state. Retail business includes a business obligated to collect sales or use tax under Iowa Code chapter 423. "Retail business" includes any business engaged in selling tangible personal property or taxable services online.

"Retained job" means a full-time equivalent permanent position that is included in the base employment level 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 business is seeking assistance does not

proceed. The authority may require a business to verify that a job is at risk. Such verification may include the signed statement of an officer of the business, documentation that the business is actively exploring other sites for the project, or any other information the authority may reasonably require during the application review process to establish that a job is at risk.

[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09; **ARC 0442C**, IAB 11/14/12, effective 12/19/12; **ARC 1801C**, IAB 12/24/14, effective 1/28/15; **ARC 6188C**, IAB 2/9/22, effective 3/16/22]

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 project for purposes of receiving tax incentives and assistance under this program.

68.2(2) *Relocations and reductions in operations.*

a. The business shall not be solely relocating operations from one area of the state while seeking state or local incentives. A project that does not create new jobs or involve a substantial amount of new capital investment shall be presumed to be a relocation. In determining whether a business is solely relocating operations for purposes of this subrule, the authority will consider whether a letter of support for the move has been provided from the affected local community.

b. The business shall not be in the process of reducing operations in one community while simultaneously applying for assistance under the program.

(1) For purposes of this subrule, a reduction in operations within 12 months before or after an application for assistance is submitted to the authority will be presumed to be a reduction in operations while simultaneously applying for assistance under the program.

(2) Pursuant to 2021 Iowa Acts, Senate File 619, the authority shall not presume that a reduction in operations is a reduction in operations while simultaneously applying for assistance as described in subparagraph 68.2(2)*"b"*(1) with regard to a business that submits an application on or before June 30, 2022, if the business demonstrates to the satisfaction of the authority that the reduction in operations occurred after March 1, 2020, and that the reduction in operations was due to the COVID-19 pandemic. The authority shall consider whether the benefit of the project proposed by a business described in this subparagraph outweighs any negative impact related to the business's reduction in operations. A business described in this subparagraph shall remain subject to all other eligibility requirements of the program.

c. This subrule will 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) *Retail or service businesses.* The business shall not be a retail business. The business shall not be a service business unless a significant proportion of its sales, as determined by the authority, are outside this 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 120 percent of the qualifying wage threshold by the project completion date, and at least 120 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 120 percent of the qualifying wage threshold throughout both the project completion period and the maintenance period.

d. Notwithstanding paragraphs *"b"* and *"c"* of this subrule, a business located at a brownfield site or a grayfield site or in an economically distressed area may be awarded incentives for jobs that will pay less than 120 percent of the qualifying wage threshold if the conditions described in rule 261—174.6(15) apply.

68.2(5) *Determination of sufficient benefits.* The business shall offer a sufficient package of benefits to each full-time employee included in the business's base employment level and to each full-time employee at the project location until the maintenance period completion date. The benefits package

provided shall meet the criteria established by the board. The board shall periodically approve such criteria to reflect the most current benefits package typically offered by employers. The criteria established by the board may include, but not be limited to, premium percentages to be paid by the business, deductible requirements, and other such criteria as determined necessary to the evaluation of benefits offered by a business.

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 authority after calculating the fiscal impact ratio of the project.

68.2(7) *Violations of law.* If the authority 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 authority 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 authority 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 authority 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.

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; **ARC 0442C**, IAB 11/14/12, effective 12/19/12; **ARC 1801C**, IAB 12/24/14, effective 1/28/15; **ARC 6188C**, IAB 2/9/22, effective 3/16/22]

261—68.3(15) Application process and review.

68.3(1) *Application.* The authority 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. The project shall not be initiated prior to application. The authority will accept applications only for projects proposed to begin after application and board approval.

(1) Any one of the following may indicate that a project has been initiated:

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.

(2) The purchase of land or signing an option to purchase land or earthmoving 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.

b. A signature from an official authorized to represent the affected local community is required on the application as an indication that the community is aware of and supports the project. For a project with a qualifying investment of $10 million or more, the application shall include an ordinance or resolution of the community's governing body approving the project.

c. Each application will be reviewed by the authority. The authority 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 authority 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 authority may negotiate with the business regarding the amount of tax incentives and assistance the business is to receive under the program. All forms of tax incentives and assistance available under the program are subject to negotiations. The authority shall consider all of the following factors in negotiating with the business:

a. Level of need. The following factors will determine the authority's assessment of need:

(1) Whether the business can raise only a portion of the debt and equity necessary to complete the project. The existence of a gap between the financing required and the financing on hand indicates that tax incentives or assistance may be needed to fill the gap.

(2) Whether the likely returns of the project are inadequate to motivate a company decision maker to proceed with the project even if sufficient debt or equity can be raised to finance the project. The existence of such a condition indicates that the project's risks may outweigh its rewards and that tax incentives or assistance may be needed to reduce the project's risks.

(3) Whether the business is deciding between a site in Iowa ("Iowa site") and a site in another state ("out-of-state site") for its project and the cost of completing the project at the out-of-state site is demonstrably lower. Such a condition indicates that tax incentives or assistance may be needed to equalize the cost differential between the two sites. The authority will attempt to quantify the cost differential between the sites.

(4) Whether the project has already been initiated. Initiation of a project indicates that additional financing is not necessary to complete the project, and the authority will not provide incentives or assistance to a project that has been initiated prior to application.

b. Quality of the jobs. The authority 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 authority 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 authority 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; **ARC 0442C**, IAB 11/14/12, effective 12/19/12; **ARC 6188C**, IAB 2/9/22, effective 3/16/22]

261—68.4(15) Tax incentives.

68.4(1) *Sales and use tax refund.* Pursuant to Iowa Code section 15.331A, the approved business may claim a refund of the sales and use taxes paid under Iowa Code chapter 423 for gas, electricity, water, or sewer utility services, tangible personal property, 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 pursuant to the department's applicable rules.

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.

An approved business that receives a refund or a tax credit in one fiscal year shall not be considered in a succeeding fiscal year. No business shall receive more than $500,000 in refunds or credits pursuant to this paragraph.

68.4(2) *Third-party developer tax credit.* Pursuant to Iowa Code section 15.331C, the approved business may claim a 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, tangible personal property, 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 tax credit, the approved business shall file a claim with the department pursuant to the department's applicable rules.

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 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. An approved business that receives a refund or a tax credit in one fiscal year shall not be considered in a succeeding fiscal year. No business shall receive more than $500,000 in refunds or credits pursuant to this paragraph.

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 project 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 authority 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. The tax credit can be claimed when the qualifying asset is placed in service. The tax credit shall be amortized over a five-year period. The annual amounts that may be claimed by the business during that period are subject to negotiations. The final five-year amortization period and the negotiated annual amounts will be specified in a contract entered into with the authority. 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. The approved business shall not claim a tax credit in excess of the amount specified in a contract entered into with the authority.

b. Investment qualifying for the tax credit. For purposes of this subrule, new investment means all of the following:

(1) The cost of machinery and equipment, as defined in Iowa Code section 427A.1(1)*"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 specified in a contract entered into with the authority, 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.

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.

a. *Claiming the tax credit.* The tax credit can be claimed when the qualifying asset is placed in service. The tax credit shall be amortized equally over a five-year period which the authority will, in consultation with the eligible business, define. The five-year amortization period shall be specified in a contract entered into with the authority. 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. The approved business shall not claim a tax credit in excess of the amount specified in a contract entered into with the authority.

b. *Investment qualifying for the tax credit.* For purposes of this subrule, new investment means all of the following:

(1) The cost of machinery and equipment, as defined in Iowa Code section 427A.1(1)*"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 specified in a contract entered into with the authority, 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.

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. 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 for innovative renewable energy generation components shall not exceed the amount specified in Iowa Code section 15.335.

68.4(7) *Maximum tax incentives available.* Tax incentives 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 the amount of qualifying investment. The maximum possible award is based on the following schedule:

a. The business is required to maintain the base employment level, but no high quality jobs are created or retained and 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.

(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 third-party developer tax credit, 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 third-party developer tax credit, 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 third-party developer tax credit, 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 third-party developer tax credit, 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 third-party developer tax credit, 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 third-party developer tax credit, 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 third-party developer tax credit, 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 third-party developer tax credit, 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 third-party developer tax credit, 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 third-party developer tax credit, 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 third-party developer tax credit, 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 third-party developer tax credit, 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 third-party developer tax credit, 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 third-party developer tax credit, 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 third-party developer tax credit, or both, if applicable.
3. Research activities credit.
4. Value-added property tax exemption.
(2) Reserved.

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261—68.5(15) Project completion assistance.

68.5(1) *Awards and negotiations.* The authority may award project completion assistance to a business that meets the eligibility requirements of the HQJP. All award determinations are subject to the requirements of Iowa Code section 15.335B(3). The board, with the assistance of authority staff, will attempt to determine the amount of project completion assistance that will ensure successful completion of a project, and the board will make a good-faith effort to provide only the amount of incentives and assistance necessary to facilitate the project's successful completion. The amount, type, and terms of the assistance provided typically vary according to the needs of each project, and each award is subject to negotiation. The board and the authority will attempt to treat similarly situated applicants similarly; however, the amount, type, and terms of project completion assistance most appropriate for a given project are necessarily dependent on many factors, and awards of project completion assistance shall be entirely at the discretion of the board.

68.5(2) *Factors affecting the amount, type, and terms of project completion assistance.* When determining an award of project completion assistance, the board, with the assistance of authority staff, typically considers many factors, including the following:

a. The fiscal impact ratio of the project.

b. Whether the amount of assistance to be awarded is appropriate to the number of jobs that will be created.

c. The availability of funding.

d. Whether other forms of assistance, including tax incentives, are available.

e. The project's level of need, including whether the local community and the private sector are also contributing to the success of the project.

f. The total amount of funds from other sources that can be leveraged.

g. The quality of the project.

[**ARC 0442C**, IAB 11/14/12, effective 12/19/12; **ARC 6188C**, IAB 2/9/22, effective 3/16/22]

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CHAPTER 69
LOAN AND CREDIT GUARANTEE PROGRAM
Rescinded **ARC 6320C**, IAB 5/18/22, effective 6/22/22

CHAPTER 70
PORT AUTHORITY GRANT PROGRAM
Rescinded **ARC 7056C**, IAB 8/9/23, effective 9/13/23

CHAPTER 71
TARGETED JOBS WITHHOLDING TAX CREDIT PROGRAM

261—71.1(403) Definitions.

"Act" means Iowa Code section 403.19A.

"Authority" means the economic development authority.

"Award date" means the same as defined in 261—Chapter 173.

"Base employment level" means the same as defined in 261—Chapter 173.

"Board" means the members of the authority appointed by the governor and in whom the powers of the authority are vested pursuant to Iowa Code section 15.105.

"Business" means an enterprise that is located in this state and that is operated for profit and under a single management. "Business" includes professional services and industrial enterprises, including but not limited to medical treatment facilities, manufacturing facilities, corporate headquarters, and research facilities. "Business" does not include a retail operation, a government entity, 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 authority 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.

"Created job" means the same as defined in 261—Chapter 173.

"Due diligence committee" or *"DDC"* means the due diligence committee organized by the board pursuant to 261—Chapter 1.

"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 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.

"Full-time equivalent job" or *"full-time"* means the same as defined in 261—Chapter 173.

"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 261—71.2(403).

"Project initiation" means the same as defined in 261—Chapter 173.

"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. For purposes of this paragraph, "long-term lease costs" means those costs incurred or expected to be incurred under a lease during the duration of a withholding agreement, provided that the cumulative cost 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.

"Retained job" means a full-time equivalent position in existence at the time an employer applies to the authority for approval of a withholding agreement and which remains continuously filled and which is at risk of elimination if the project for which the employer is seeking assistance under the withholding agreement does not proceed. For the purposes of this definition, a position "at risk of elimination" includes a position that would be relocated out of state.

"Targeted job" means a job in a business which is or will be located in 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 authority, 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 261—71.4(403) between a pilot project city, the authority, and an employer concerning the targeted jobs withholding tax credit and that includes an application for a project that is the subject of a withholding agreement.

[**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; **ARC 1373C**, IAB 3/19/14, effective 2/24/14]

261—71.2(403) Eligibility requirements. An eligible city may apply to the authority 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); **ARC 1373C**, IAB 3/19/14, effective 2/24/14]

261—71.3(403) Pilot project city application process and review.

71.3(1) *Application.* The authority 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 authority. The authority shall determine if the application is complete.

b. The authority 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 a pilot project city. 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) 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 authority for status as a pilot project city.

d. The authority 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 authority 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 authority, shall determine which two cities hold the most potential to create new jobs or generate the greatest capital in their areas. Authority 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 authority 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); **ARC 1373C**, IAB 3/19/14, effective 2/24/14]

261—71.4(403) Withholding agreements.

71.4(1) *Designated account.* An approved pilot project city may provide by city resolution for the deposit of funds generated through withholding agreements into a designated withholding project fund under the targeted jobs withholding tax credit program.

71.4(2) *Entering into a withholding agreement.*

a. *Agreement between a pilot project city, the authority, and a business.* The authority and 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 a pilot project city. The authority and a pilot project city may enter into a withholding agreement with a business currently located in Iowa only if the business is creating or retaining at least ten jobs or making a qualifying investment of at least $500,000 within the pilot project city.

b. *Total amount of withholding tax credits.* The withholding agreement shall provide for the total amount of withholding tax credits awarded, as negotiated by the economic development authority, the pilot project city, and the employer. 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 authority.

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 and the authority.

e. *Board approval of withholding agreements.* Prior to entering into a withholding agreement with a business, a pilot project city shall request board approval of the withholding agreement. The process for requesting approval from the board 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 local development agreement between the pilot project city and employer that outlines local incentives or assistance for the project using urban renewal or urban revitalization incentives, if applicable, and 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, as negotiated by the authority, the pilot project city, and the employer. A withholding agreement specifying a term of years or a total amount of withholding credits shall either terminate upon the expiration of the term of years specified in the agreement or upon the award of the total amount of withholding credits specified in the agreement, whichever occurs first.

71.4(5) *Withholding generated through the program.*

a. Once a pilot project city, the authority, 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 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 section 422.16.

71.4(6) *Use of withholding funds.* A pilot project city shall allocate the withholding funds into a designated withholding project fund for the project. All funds deposited shall be used or pledged by the pilot project city for a 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 within 30 days of the termination of the withholding agreement. If the authority, following an 18-month performance period beginning on the date the withholding agreement is approved by the board, determines that the employer does not meet the requirements of the withholding agreement relating to retaining jobs, if applicable, the agreement shall be terminated by the authority and the pilot project city and any withholding credits for the employer shall cease. If the authority, following a three-year performance period beginning on the date the withholding agreement is approved by the board, determines that the employer has not met or is incapable of meeting the requirements of the withholding agreement relating to creating jobs, if applicable, or the requirement of the withholding agreement relating to the qualifying investment prior to the end of the withholding agreement, the authority may reduce the future benefits to the employer under the agreement or negotiate with the other parties to terminate the agreement early.

71.4(9) *Participation in other programs.* An employer may participate in the Iowa industrial new jobs training program under Iowa Code section 260E.5 or may claim a supplemental withholding credit under Iowa Code 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; **ARC 1373C**, IAB 3/19/14, effective 2/24/14; **ARC 4512C**, IAB 6/19/19, effective 7/24/19; **ARC 4990C**, IAB 3/11/20, effective 4/15/20]

261—71.5(403) Project approval.

71.5(1) *Request for board approval of withholding agreement.*

a. *Request for approval form.* Prior to entering into a withholding agreement with an employer and the authority, a pilot project city must receive approval from the board, on behalf of the authority. The authority shall develop a standardized form to be used by pilot project cities to request board approval of a proposed withholding agreement. To request board approval of a proposed withholding agreement, a pilot project city shall submit the standardized form to the authority 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 authority 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 letter or resolution of support from the local government showing support for the project.

b. *Timing of submittal.* Requests for board approval of a proposed withholding agreement may be submitted at any time. The authority will review requests for approval of a proposed withholding agreement in as timely a manner as possible.

c. *Board action on requests for approval.* The board, on behalf of the authority, may approve or deny a withholding agreement according to the provisions of this chapter. Each withholding agreement and the total amount of the withholding credits allowed under the withholding agreement shall be approved by the board after taking into account the incentives or assistance received by or to be received by the employer under other economic development programs. The board shall only deny a withholding agreement if the agreement fails to meet the requirements as stated in subrule 71.4(2) and paragraph 71.6(1)*"b"* 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 authority. The board shall have the authority to negotiate a withholding agreement and may suggest changes to any of the terms of the withholding agreement, including the total amount of withholding credits. A pilot project city and employer will be notified in writing of the board'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; **ARC 1373C**, IAB 3/19/14, effective 2/24/14]

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 authority 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. Pursuant to rules adopted by the authority, the pilot project city shall provide to the authority information documenting the compliance of each employer with each requirement of the withholding agreement, including but not limited to the number of jobs created or retained, the wages associated with the targeted jobs, and the amount of investment made by the employer. The pilot project city shall provide this information annually by September 1. The authority shall, in response to receiving such information from the pilot project city, assess the level of compliance by each employer and provide to the pilot project city recommendations for either maintaining employer compliance with the withholding agreement or terminating the agreement for noncompliance under subrule 71.4(8). The authority shall also provide each such assessment and recommendation report to the department of revenue.

c. The employer, in conjunction with the pilot project city, shall provide information documenting the total amount of payments and receipts from the withholding project fund under the withholding agreement, including all agreements between the pilot project city and the 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 employer and the pilot project city shall submit this information to the authority annually by September 1 covering the prior fiscal year (July 1 to June 30). The authority shall verify the information provided and determine whether the pilot project city and the employer are in compliance with Iowa Code section 403.19A and this chapter. The authority will verify job creation or retention using the method described in 261—Chapter 188.

d. The authority may request additional reports from pilot project cities as necessary to determine the status of the targeted jobs withholding tax credit program.

e. The authority 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)*"c."*

71.6(2) *Annual report.* As required by Iowa Code section 15.104(9)*"k,"* the authority 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; **ARC 1373C**, IAB 3/19/14, effective 2/24/14]

261—71.7(403) Applicability.

71.7(1) Except as provided in rule 261—71.2(403), this chapter applies to withholding agreements entered into on or after July 1, 2013, in accordance with 2013 Iowa Code section 403.19A as amended

by 2013 Iowa Acts, Senate File 433. Withholding agreements entered into prior to July 1, 2013, shall be governed by this chapter as it existed prior to the enactment of 2013 Iowa Acts, Senate File 433.

71.7(2) Paragraph 71.6(1)*"b"* applies to withholding agreements entered into prior to July 1, 2013, or entered into on or after July 1, 2013.

71.7(3) The authority will work with pilot project cities and businesses to amend existing agreements to reflect the requirements of subrule 71.7(2) of this rule.

[**ARC 1373C**, IAB 3/19/14, effective 2/24/14]

These rules are intended to implement Iowa Code section 403.19A.

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[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 international trade shows and trade missions by providing financial assistance to successful applicants.
[**ARC 4375C**, IAB 3/27/19, effective 5/1/19]

261—72.2(78GA,ch197) Definitions.

" Authority" means the Iowa economic development authority.

"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 authority 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 the 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; **ARC 4375C**, IAB 3/27/19, effective 5/1/19]

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 exportable services in the state of Iowa. To be eligible to receive trade assistance, applicants must meet all five of the following criteria:

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 an international trade show or trade mission,
3. Have at least one full-time employee or sales representative participate in 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 the authority as compliant with past ETAP contractual agreements.

[**ARC 9064B**, IAB 9/8/10, effective 10/13/10; **ARC 4375C**, IAB 3/27/19, effective 5/1/19]

261—72.4(78GA,ch197) Eligible reimbursements. The authority's reimbursement to approved applicants for assistance shall not exceed 75 percent of eligible expenses. Total reimbursement shall not exceed $4,000 per event. Payments will be made by the authority on a reimbursement basis upon

submission of proper documentation and approval by the authority of paid receipts received by the authority. 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. Shipping 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 international 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 international areas and will be paid for only one sales representative.

c. Shipping costs associated with shipment of equipment or exhibit materials to the participant's meeting site and return.

d. Interpreter fees, if not included in the participation fee, and as needed during the trade mission.

[**ARC 4375C**, IAB 3/27/19, effective 5/1/19]

261—72.5(78GA,ch197) Applications for assistance. The application for assistance shall be available on the authority's website. To qualify for the export trade assistance program, the applicant shall:

72.5(1) Complete the export trade assistance program's application form and submit it to the authority prior to trade event participation. Successful applicants will be required to enter into a contract for reimbursement with the authority prior to trade event participation.

72.5(2) Exhibit products or services or samples of Iowa products in conjunction with an international trade show or 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 eligible, documented expenses for reimbursement from the authority.

72.5(5) Complete the final report form and submit it to the authority before final reimbursement can be made.

[**ARC 4375C**, IAB 3/27/19, effective 5/1/19]

261—72.6(78GA,ch197) Selection process. Applications will be reviewed in the order received by the authority. 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.

[**ARC 4375C**, IAB 3/27/19, effective 5/1/19]

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 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.

[**ARC 4375C**, IAB 3/27/19, effective 5/1/19]

261—72.8(78GA,ch197) Forms. The following forms are available from the authority and will be used by the authority in the administration of the export trade assistance program:

1. ETAP application form,
2. ETAP final report (claim) form,
3. Grant agreement.

[**ARC 4375C**, IAB 3/27/19, effective 5/1/19]

These rules are intended to implement 1999 Iowa Acts, chapter 197, section 1, subsection 4.

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[Filed ARC 4375C (Notice ARC 4203C, IAB 1/2/19), IAB 3/27/19, effective 5/1/19]

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
Rescinded **ARC 6320C**, IAB 5/18/22, effective 6/22/22

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]

261—75.6(15) Applicability of the opportunities and threats program on or after July 1, 2012.

75.6(1) Effective as of July 1, 2012, the grow Iowa values fund and financial assistance program as amended by 2009 Iowa Acts, Senate File 344, and elsewhere in these rules referred to as IVF(2009), was repealed by 2011 Iowa Acts, chapter 133. The repeal took effect on June 30, 2012.

75.6(2) For awards made on or after July 1, 2009, and on or before June 30, 2012, the rules applicable to the opportunities and threats program shall be applicable for purposes of contract administration and closeout of projects.

75.6(3) A contract amendment will not be allowed if such an amendment would increase the amount of assistance to be provided under the contract.
[**ARC 0442C**, IAB 11/14/12, effective 12/19/12]

These rules are intended to implement 2011 Iowa Code Supplement chapter 15G, subchapter I.

[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]
[Filed ARC 0442C (Notice ARC 0293C, IAB 8/22/12), IAB 11/14/12, effective 12/19/12]

CHAPTER 76
AGGREGATE TAX CREDIT LIMIT FOR CERTAIN ECONOMIC DEVELOPMENT PROGRAMS

261—76.1(15) Authority. The authority for establishing rules governing the aggregate tax credit limit for certain economic development programs under this chapter is Iowa Code sections 15.106A and 15.119.
[**ARC 7954B**, IAB 7/15/09, effective 7/1/09; **ARC 8146B**, IAB 9/23/09, effective 10/28/09; **ARC 1573C**, IAB 8/20/14, effective 9/24/14]

261—76.2(15) 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; **ARC 1573C**, IAB 8/20/14, effective 9/24/14]

261—76.3(15) Definitions.

"Authority" means the economic development authority.

"Board" means the members of the board in whom the powers of the authority are vested pursuant to Iowa Code chapter 15.
[**ARC 7954B**, IAB 7/15/09, effective 7/1/09; **ARC 8146B**, IAB 9/23/09, effective 10/28/09; **ARC 1573C**, IAB 8/20/14, effective 9/24/14]

261—76.4(15) Tax credit cap—exceeding the cap—reallocation of declinations.

76.4(1) *Maximum aggregate limit on tax credits.* Except as provided in subrule 76.4(2), the authority shall not authorize for any one fiscal year an amount of tax credits that is in excess of $170 million.

76.4(2) *Exceeding the cap.* The authority may authorize an amount of tax credits during a fiscal year that is in excess of the amount specified in subrule 76.4(1), but the amount of such excess will not exceed 20 percent of the amount specified in subrule 76.4(1) and will be counted against the total amount of tax credits that may be authorized for the next fiscal year.

76.4(3) *Reallocation of declinations.* Any amount of tax credits authorized and awarded during a fiscal year for a program specified in Iowa Code section 15.119(2) which is irrevocably declined by the awarded business on or before June 30 of the next fiscal year may be reallocated, authorized, and awarded during the fiscal year in which the declination occurs. Tax credits authorized pursuant to this subrule will not be considered for purposes of subrule 76.4(2).
[**ARC 7954B**, IAB 7/15/09, effective 7/1/09; **ARC 8146B**, IAB 9/23/09, effective 10/28/09; **ARC 1573C**, IAB 8/20/14, effective 9/24/14; **ARC 6189C**, IAB 2/9/22, effective 3/16/22]

261—76.5(15) Allocating the tax credit cap.

76.5(1) *Procedure for allocations.* At a scheduled meeting of the board prior to the start of a fiscal year, the board will allocate a portion of the tax credits available under the cap to the applicable programs. 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 to be shared by programs with a common purpose. 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.

76.5(2) *Required suballocations.* Iowa Code section 15.119 requires the authority to make certain suballocations to the programs subject to the cap. In some cases, there is a minimum required suballocation and in others a maximum suballocation. The authority will make the required suballocations and count them against the maximum aggregate cap before making any discretionary allocations.
[**ARC 7954B**, IAB 7/15/09, effective 7/1/09; **ARC 8146B**, IAB 9/23/09, effective 10/28/09; **ARC 1573C**, IAB 8/20/14, effective 9/24/14; **ARC 6189C**, IAB 2/9/22, effective 3/16/22]

261—76.6(15) Reporting to the department of revenue. The authority shall submit an initial report to the department of revenue by August 15 of each year, which shows the initial allocation of the maximum aggregate tax credit cap. At the start of each subsequent fiscal year, the authority shall prepare a report to

summarize the final allocation for the fiscal year that just ended, the total amount of awards made under each program subject to the cap during that fiscal year, and the initial allocation for the subsequent fiscal year.

[**ARC 7954B**, IAB 7/15/09, effective 7/1/09; **ARC 8146B**, IAB 9/23/09, effective 10/28/09; **ARC 1573C**, IAB 8/20/14, effective 9/24/14; **ARC 6189C**, IAB 2/9/22, effective 3/16/22]

These rules are intended to implement Iowa Code section 15.119.

[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]

[Filed ARC 1573C (Notice ARC 1430C, IAB 4/16/14), IAB 8/20/14, effective 9/24/14]

[Filed ARC 6189C (Notice ARC 6047C, IAB 11/17/21), IAB 2/9/22, effective 3/16/22]

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
Rescinded **ARC 7056C**, IAB 8/9/23, effective 9/13/23

CHAPTER 79
DISASTER RECOVERY BUSINESS RENTAL ASSISTANCE PROGRAM
Rescinded **ARC 7056C**, IAB 8/9/23, effective 9/13/23

CHAPTER 80
IOWA SMALL BUSINESS LOAN PROGRAM
Rescinded **ARC 6320C**, IAB 5/18/22, effective 6/22/22

CHAPTER 81
RENEWABLE CHEMICAL PRODUCTION TAX CREDIT PROGRAM

261—81.1(15) Purpose. The purpose of this chapter is to encourage development of the renewable chemicals industry and stimulate job growth using the renewable chemical production tax credit program to incentivize new and existing businesses to produce high-value renewable chemicals in Iowa from biomass feedstock.
[**ARC 3004C**, IAB 3/29/17, effective 5/3/17]

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

"Authority" means the economic development authority created in Iowa Code section 15.105.

"Authority's website" means the information and related content found at www.iowaeconomicdevelopment.com and may include integrated content at affiliate sites.

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

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

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

"Building block chemical" means a molecule converted from biomass feedstock as a first product or a secondarily derived product that can be further refined into a higher-value chemical, material, or consumer product. "Building block chemical" includes but is not limited to high-purity glycerol, oleic acid, lauric acid, methanoic or formic acid, arabonic acid, erythronic acid, glyceric acid, glycolic acid, lactic acid, 3-hydroxypropionate, propionic acid, malonic acid, serine, succinic acid, fumaric acid, malic acid, aspartic acid, 3-hydroxybutyrolactone, acetoin, threonine, itaconic acid, furfural, levulinic acid, glutamic acid, xylonic acid, xylaric acid, xylitol, arabitol, citric acid, aconitic acid, 5-hydroxymethylfurfural, lysine, gluconic acid, glucaric acid, sorbitol, gallic acid, ferulic acid, nonfuel butanol, nonfuel ethanol, benzene, toluene, xylene, ethylbenzene, butanoic acid, hexanoic acid, octanoic acid, pentanoic acid, heptanoic acid, ethylene glycol, and 1,4 butanediol, or such additional molecules as may be included by the authority following the procedure in rule 261—81.8(15).

"Crude glycerin" means glycerin with a purity level below 95 percent.

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

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

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

"High-purity glycerol" means glycerol with a purity level of 95 percent or higher.

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

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

"Program" means the renewable chemical production tax credit program administered pursuant to this chapter.

"Renewable chemical" means a building block chemical with a biobased content percentage of at least 50 percent. "Renewable chemical" does not include a chemical sold or used for the production of food, feed, or fuel. "Renewable chemical" includes cellulosic ethanol, starch ethanol, or other ethanol

derived from biomass feedstock, fatty acid methyl esters, or butanol, but only to the extent that such molecules are produced and sold for uses other than food, feed, or fuel. "Renewable chemical" also includes a building block chemical that can be a food additive as long as the building block chemical is not primarily consumed as food and is also sold for uses other than food. "Renewable chemical" also includes supplements, vitamins, nutraceuticals, and pharmaceuticals, but only to the extent that such molecules do not provide caloric value so as to be considered sustenance as food or feed.

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

[**ARC 3004C**, IAB 3/29/17, effective 5/3/17; **ARC 4307C**, IAB 2/13/19, effective 3/20/19; **ARC 4971C**, IAB 3/11/20, effective 4/15/20; **ARC 5140C**, IAB 8/12/20, effective 9/16/20; Editorial change: IAC Supplement 4/7/21]

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

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

81.3(2) *Operated for profit and under single management.* The business must be operated for profit and under single management. For purposes of this rule, "single management" means that if the same eligible business has an ownership or equity interest in multiple facilities at which renewable chemicals are produced, the facilities under common ownership will be considered a single eligible business for purposes of calculating the maximum tax credit amount under rule 261—81.6(15). In calculating the maximum tax credit amount under rule 261—81.6(15), only the pro rata share of each eligible business's ownership in a facility will be attributed to that eligible business.

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

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

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

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

[**ARC 3004C**, IAB 3/29/17, effective 5/3/17; **ARC 6319C**, IAB 5/18/22, effective 6/22/22]

261—81.4(15) Application process and review.

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

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

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

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

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

a. The name of the qualifying building block chemical produced by the eligible business for which the business is claiming a tax credit.

b. The amount of renewable chemicals produced in the state from biomass feedstock by the eligible business during the calendar year, measured in pounds.

c. The amount of renewable chemicals produced in the state from biomass feedstock by the eligible business during the calendar year prior to the year in which the business first qualified as an eligible business under the program.

d. The city or county where the plant producing renewable chemicals is located.

e. The type of feedstock used to produce the renewable chemicals.

f. The date on which the eligible business organized, expanded or located in the state.

g. Any other information reasonably required by the authority in order to establish and verify eligibility under the program.

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

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

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

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

[**ARC 3004C**, IAB 3/29/17, effective 5/3/17; Editorial change: IAC Supplement 12/15/21]

261—81.5(15) Agreement.

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

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

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

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

[**ARC 3004C**, IAB 3/29/17, effective 5/3/17]

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

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

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

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

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

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

c. If an eligible business has been in operation in the state for five years or less at the time of application but is more than fifty percent owned by an eligible business that has been in operation in the state for more than five years, then that eligible business will be considered in operation in the state for more than five years pursuant to subparagraph 81.6(1)*"a"*(2).

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

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

81.6(4) *Maximum number of credits.* An eligible business shall not receive more than five tax credits under the program. Each tax credit must be applied for separately, and each application will be reviewed independently of past tax credits. Receipt of a tax credit in one year does not guarantee receipt of a tax credit in a subsequent year.

81.6(5) *Tax credit wait list.*

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

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

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

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

[**ARC 3004C**, IAB 3/29/17, effective 5/3/17]

261—81.7(15) Claiming the tax credit.

81.7(1) *Maximum tax credit claimed.* An eligible business that has entered into an agreement pursuant to rule 261—81.5(15) may claim a tax credit in an amount equal to the product of five cents multiplied by the number of pounds of renewable chemicals produced in this state from biomass feedstock by the eligible business during a given production year within the limits set forth in rule 261—81.6(15). An eligible business may claim a tax credit for the production of more than one

qualifying renewable chemical under this chapter, provided that the total tax credit claimed by the eligible business does not exceed the limits set forth in subrule 81.6(1). However, an eligible business shall not receive a tax credit for the production of a secondarily derived building block chemical if that chemical is also the subject of a credit at the time of production as a first product. The renewable chemical production tax credit shall not be available for any renewable chemical produced before the 2017 calendar year or after the 2026 calendar year.

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

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

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

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

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

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

[**ARC 3004C**, IAB 3/29/17, effective 5/3/17]

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

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

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

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

81.8(4) *Initiation of rule-making proceedings.* Following the consultation and review process set forth in subrule 81.8(3), the authority may initiate the administrative rule-making process to amend the

definition of "building block chemical" to add molecules which the authority, in the authority's sole discretion, finds to be consistent with the definitions in this chapter.
[**ARC 3004C**, IAB 3/29/17, effective 5/3/17]

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

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

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

81.9(3) *Public information.* The identity of a tax credit recipient and the amount of the tax credit shall be considered public information under Iowa Code chapter 22.
[**ARC 3004C**, IAB 3/29/17, effective 5/3/17]

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

[Filed ARC 3004C (Notice ARC 2867C, IAB 12/21/16), IAB 3/29/17, effective 5/3/17]
[Filed ARC 4307C (Notice ARC 4043C, IAB 10/10/18), IAB 2/13/19, effective 3/20/19]
[Filed ARC 4971C (Notice ARC 4669C, IAB 9/25/19), IAB 3/11/20, effective 4/15/20]
[Filed ARC 5140C (Notice ARC 4966C, IAB 3/11/20), IAB 8/12/20, effective 9/16/20]
[Editorial change: IAC Supplement 4/7/21]
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CHAPTERS 82 to 100
Reserved

PART V
INNOVATION AND COMMERCIALIZATION ACTIVITIES

CHAPTER 101
MISSION AND RESPONSIBILITIES

[Prior to 9/6/00, see 261—Ch 62]

261—101.1(15) Mission. The mission of the authority in regard to innovation and commercialization is to grow Iowa's economy by fostering entrepreneurship and supporting the workforce, commercialization, and marketing activities of innovative businesses, including businesses in the advanced manufacturing, biosciences, and information technology industries.
[**ARC 0611C**, IAB 2/20/13, effective 3/27/13]

261—101.2(15) Responsibilities. The authority'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 innovative businesses, including businesses in the industries of advanced manufacturing, biosciences, and information technology.

101.2(1) *Commercialization.* Commercialization activities include, but are not limited to, administration of the programs described in this part. Additionally, the authority's commercialization activities include the facilitation of technology transfer at Iowa's state universities to the greatest extent possible. Finally, such activities also include coordinating with the bioscience development corporation established pursuant to Iowa Code section 15.107 to ensure that the goal of public and private sector collaboration is furthered to the greatest 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 coordinating with services providers across the state to increase entrepreneurship in Iowa.

101.2(3) *Marketing, education, and workforce development.* Marketing, education, and workforce development efforts for innovative businesses include, but are not limited to, overseeing the targeted industries internship program.
[**ARC 0611C**, IAB 2/20/13, effective 3/27/13; **ARC 6356C**, IAB 6/15/22, effective 7/20/22]

These rules are intended to implement Iowa Code chapter 15.

[Filed 9/20/07, Notice 8/15/07—published 10/10/07, effective 11/14/07]
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[Filed ARC 6356C (Notice ARC 6243C, IAB 3/23/22), IAB 6/15/22, effective 7/20/22]

CHAPTER 102
ENTREPRENEUR INVESTMENT AWARDS PROGRAM

261—102.1(15E) Authority. The authority for adopting rules establishing the entrepreneur investment awards program under this chapter is provided in Iowa Code sections 15.106A and 15E.362.
[**ARC 0611C**, IAB 2/20/13, effective 3/27/13; **ARC 2501C**, IAB 4/27/16, effective 6/1/16]

261—102.2(15E) Purpose. The purpose of the entrepreneur investment awards program is to provide financial assistance to service providers that provide technical and financial assistance to entrepreneurs and start-up companies seeking to create, locate, or expand a business in the state.
[**ARC 0611C**, IAB 2/20/13, effective 3/27/13; **ARC 2501C**, IAB 4/27/16, effective 6/1/16]

261—102.3(15E) Definitions. As used in this chapter, unless the context otherwise requires:

"Applicant" means a person applying to the authority for financial assistance under the program.

"Authority" means the economic development authority created in Iowa Code section 15.105.

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

"Business development services" includes but is not limited to corporate development services, business model development services, business planning services, marketing services, financial strategies and management services, mentoring and management coaching, and networking services.

"Committee" means a committee of application reviewers appointed by the director.

"Deliverables" means the performance of duties or other obligations required of an applicant under a contract entered into with the authority in consideration for the receipt of financial assistance under the program. At a minimum, "deliverables" includes the continued maintenance of all initial eligibility requirements for the duration of a contract entered into under the program and may include such other terms and conditions as the authority deems necessary to effectuate the legislative intent of the program or to protect the interest of taxpayers.

"Director" means the director of the authority.

"Eligible entrepreneurial assistance provider" or *"service provider"* means a person meeting the requirements of rule 261—102.6(15E).

"Financial assistance" means the same as defined in Iowa Code section 15.327.

"Fund" means the entrepreneur investment awards program fund created pursuant to Iowa Code section 15E.363.

"Iowa-based business" means a service provider whose principal place of operations is in Iowa and that is actively providing business development services in the state.

"Operating costs" means the expenses associated with administering a service provider's activities on a day-to-day basis. "Operating costs" includes both fixed costs and variable costs. "Operating costs" does not include expenses associated with non-operating activities such as interest expenses, repayment of principal, or moneys invested by the service provider in clients' businesses or in other ventures.

"Program" means the entrepreneur investment awards program established pursuant to Iowa Code section 15E.362.
[**ARC 0611C**, IAB 2/20/13, effective 3/27/13; **ARC 2501C**, IAB 4/27/16, effective 6/1/16; **ARC 5513C**, IAB 3/10/21, effective 4/14/21]

261—102.4(15E) Program description, application procedures, and delegation of functions.

102.4(1) *Program description.* The program is designed to provide financial assistance to service providers meeting the eligibility requirements described in rule 261—102.6(15E). All awards of financial assistance must ultimately be approved by the board, and a contract must be entered into before funds will be disbursed. All contracts will specify the deliverables required in consideration for the provision of financial assistance.

102.4(2) *Application and award procedures.* Eligible service providers may submit applications to the authority. The applications will receive an initial review to confirm program eligibility before being sent to the committee for a recommendation on funding. The committee will provide its recommendation

to the board for a final determination on funding. The board may approve, deny, or defer each application for financial assistance under the program. The board will consider applications for financial assistance during the annual filing window described in subrule 102.4(4). The amount of financial assistance awarded to a service provider is within the discretion of the authority as determined by the board. If the board approves an award of financial assistance for a service provider, the authority will prepare a required contract specifying the terms and conditions under which financial assistance is provided to the service provider.

102.4(3) *Review procedure.*

a. The committee shall verify that all objective criteria for eligibility are met as described in subrule 102.6(1) and shall provide an opinion as to whether and to what extent the applicant meets the subjective criteria described in subrule 102.6(2). The analysis of eligibility shall be compiled in report form and submitted to the board for its use in making a final determination.

b. The committee shall recommend to the authority the terms and conditions to be included in the contract in consideration for receipt of the grant funds.

102.4(4) *Annual filing window.* In order to facilitate the competitive application and scoring process described in rule 261—102.6(15E), applications will be accepted only during the established application period, or periods, as identified by the authority on its website during each fiscal year in which funding is available. The authority may adjust the filing window dates under extenuating circumstances and will notify affected parties of such circumstances.

102.4(5) *Miscellaneous.* The authority may contract with outside service providers for assistance with the program. The authority may also make client referrals to eligible service providers regardless of the amount of financial assistance provided.

[**ARC 0611C**, IAB 2/20/13, effective 3/27/13; **ARC 2501C**, IAB 4/27/16, effective 6/1/16; **ARC 5513C**, IAB 3/10/21, effective 4/14/21]

261—102.5(15E) Program funding.

102.5(1) *Aggregate fiscal year limitation.* The authority will not award more than $1 million in financial assistance under the program in any one fiscal year.

102.5(2) *Individual applicant limitation.* The authority will negotiate the amount of financial assistance to be provided to a service provider. However, the authority will not award more than $200,000 to any one service provider in any one fiscal year.

102.5(3) *Program funding source and allocation.* Moneys for financial assistance under the program will be awarded from the moneys in the entrepreneur investment awards program fund created pursuant to Iowa Code section 15E.363. Moneys are deposited in this fund by the authority pursuant to Iowa Code section 15.335B. The amount deposited each year depends on the amount allocated for such purposes under Iowa Code section 15.335B.

102.5(4) *Use of funds.* An applicant receiving financial assistance under the program shall only use the funds for the purpose of defraying operating costs actually incurred by the service provider in providing business development services to emerging and early-stage innovation companies in this state. Financial assistance provided under the program shall not be distributed to owners or investors of the company to which business development services are provided and shall not be distributed to other persons assisting in the provision of business development services.

[**ARC 0611C**, IAB 2/20/13, effective 3/27/13; **ARC 2501C**, IAB 4/27/16, effective 6/1/16]

261—102.6(15E) Eligibility requirements and competitive scoring process.

102.6(1) *Eligibility.* In order to be eligible for financial assistance under the program, an applicant must meet the requirements of this rule. A service provider applying to the program must meet all of the following criteria for eligibility:

a. The service provider must have its principal place of operations located in this state.

b. The service provider must offer a comprehensive set of business development services to emerging and early-stage innovation companies to assist in the creation, location, growth, and long-term success of the company in this state.

c. The business development services may be performed at the physical location of the service provider or the company.

d. The business development services may be provided in consideration of equity participation in the company, a fee for services, a membership agreement with the company, or any combination thereof.

102.6(2) *Competitive scoring criteria.* The authority will award financial assistance on a competitive basis. In making awards of financial assistance, the authority will consider the following criteria:

a. The business experience of the professional staff employed or retained by the service provider. 25 points.

b. The business plan review capacity of the professional staff of the service provider. 15 points.

c. The expertise in all aspects of business disciplines of the professional staff of the service provider. 15 points.

d. The access of the service provider to external service providers, including legal, accounting, marketing, and financial services. 15 points.

e. The service model and likelihood of success of the service provider and its similarity to other successful service providers in the country. 15 points.

f. The financial need of the service provider. 15 points.

[**ARC 0611C**, IAB 2/20/13, effective 3/27/13; **ARC 2501C**, IAB 4/27/16, effective 6/1/16]

261—102.7(15E) Contract and report information required.

102.7(1) *Contract required.* An applicant awarded financial assistance under the program shall enter into a contract with the authority for the receipt of such funds. The authority will include certain deliverables in the contract as recommended by the committee. The authority will track and monitor all contract provisions including an analysis of whether the service provider's deliverables meet all requirements of the contract and including an evaluation of the value added by the service provider to the businesses of entrepreneurs. The authority will make the final determination as to compliance with the terms of the contract and will make the final determination as to whether and when to disburse funds to the applicant.

102.7(2) *Reporting information required.* Under Iowa Code section 15E.362, the authority is required to report on the success of the program to the legislature. An applicant may be required to submit all information necessary for the authority to produce such a report. The authority may include terms in the required contract effectuating this requirement.

[**ARC 0611C**, IAB 2/20/13, effective 3/27/13; **ARC 2501C**, IAB 4/27/16, effective 6/1/16; **ARC 5513C**, IAB 3/10/21, effective 4/14/21]

These rules are intended to implement Iowa Code sections 15E.362 and 15E.363.

[Filed ARC 0611C (Notice ARC 0408C, IAB 10/17/12), IAB 2/20/13, effective 3/27/13]

[Filed ARC 2501C (Notice ARC 2374C, IAB 1/20/16), IAB 4/27/16, effective 6/1/16]

[Filed ARC 5513C (Notice ARC 5386C, IAB 1/13/21), IAB 3/10/21, effective 4/14/21]

CHAPTER 103
INFORMATION TECHNOLOGY TRAINING PROGRAM
Rescinded **ARC 6320C**, IAB 5/18/22, effective 6/22/22

CHAPTER 104
INNOVATIVE BUSINESSES INTERNSHIP PROGRAM
Transferred to 877—Chapter 23, IAC Supplement 11/1/23

CHAPTER 105
DEMONSTRATION FUND

261—105.1(15) Authority. The authority for adopting rules governing the demonstration fund under this chapter is provided in Iowa Code section 15.411.
[**ARC 0611C**, IAB 2/20/13, effective 3/27/13]

261—105.2(15) Purpose. The program established in this chapter shall be known as the demonstration fund. The purpose of the demonstration fund is 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 objective of the fund is to help businesses with high-growth potential reach a position where they are able to attract later stage private sector funding.
[**ARC 0611C**, IAB 2/20/13, effective 3/27/13]

261—105.3(15) Definitions.

"Authority" means the economic development authority created in Iowa Code section 15.105.

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

"Committee" means the technology commercialization committee established by the board pursuant to 261—Chapter 1.

"Fund" means the demonstration fund.

"IP" means intellectual property.

"NAICS" means the North American Industry Classification System.
[**ARC 0611C**, IAB 2/20/13, effective 3/27/13]

261—105.4(15) 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.
[**ARC 0611C**, IAB 2/20/13, effective 3/27/13]

261—105.5(15) 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 authority.
[**ARC 0611C**, IAB 2/20/13, effective 3/27/13]

261—105.6(15) 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.

[**ARC 0611C**, IAB 2/20/13, effective 3/27/13]

261—105.7(15) 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.
[**ARC 0611C**, IAB 2/20/13, effective 3/27/13]

261—105.8(15) Application and review process.

105.8(1) An eligible business seeking financial or technical assistance under the fund must submit an application to the Economic Development Authority, 200 East Grand Avenue, Des Moines, Iowa 50309, on a form provided by the authority. Required forms and instructions are available by contacting the authority at that address or from the authority's Web site at www.iowaeconomicdevelopment.com.

105.8(2) To apply for financial assistance from the fund, a business shall submit an application to the authority, on a form provided by the authority. The application will be reviewed by authority 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.
[**ARC 0611C**, IAB 2/20/13, effective 3/27/13]

261—105.9(15) 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?
[**ARC 0611C**, IAB 2/20/13, effective 3/27/13]

261—105.10(15) 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 authority 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 authority in sufficient detail to permit the authority to prepare any reports required by the authority, the board, the general assembly or the governor's office.
[**ARC 0611C**, IAB 2/20/13, effective 3/27/13]

These rules are intended to implement Iowa Code section 15.411(3).

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CHAPTER 106
SMALL BUSINESS INNOVATION RESEARCH AND TECHNOLOGY TRANSFER OUTREACH PROGRAM

261—106.1(15) Authority. The authority for adopting rules establishing the small business innovation research and technology transfer outreach program under this chapter is provided in Iowa Code section 15.411.
[**ARC 0611C**, IAB 2/20/13, effective 3/27/13; **ARC 6356C**, IAB 6/15/22, effective 7/20/22]

261—106.2(15) Purpose and goals.

106.2(1) The purpose of the small business innovation research and technology transfer outreach program is to assist businesses with applications to the federal Small Business Innovation Research and Small Business Technology Transfer Programs. The program will provide financial and technical assistance to businesses for that purpose.

106.2(2) The goals of providing this assistance are to increase the number of successful grant and contract proposals in the state, increase the amount of funds awarded in the state, stimulate subsequent investment by industry, venture capital, and other sources, and encourage businesses to commercialize promising technologies.
[**ARC 0611C**, IAB 2/20/13, effective 3/27/13; **ARC 3195C**, IAB 7/5/17, effective 8/9/17]

261—106.3(15) Definitions. As used in this chapter, unless the context otherwise requires:

"Applicant" means a business applying to the authority for assistance under the program.

"Assistance" means technical and financial assistance available under the program.

"Authority" means the economic development authority created in Iowa Code section 15.105.

"Award" means SBIR/STTR grant and contract funds awarded by federal agencies.

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

"Committee" means the technology commercialization committee established by the board pursuant to 261—Chapter 1.

"Corporation" means the bioscience development corporation established pursuant to Iowa Code section 15.107.

"Financial assistance" means assistance provided only from the funds, rights, and assets legally available to the authority and includes but is not limited to assistance in the form of grants, loans, forgivable loans, and royalty agreements.

"Innovative business" means the same as defined in Iowa Code section 15E.52(1)*"c."*

"Program" means the small business innovation research and technology transfer outreach program established pursuant to Iowa Code section 15.411.

"SBIR/STTR" means the federal Small Business Innovation Research and Small Business Technology Transfer Programs.
[**ARC 0611C**, IAB 2/20/13, effective 3/27/13; **ARC 3195C**, IAB 7/5/17, effective 8/9/17; **ARC 6356C**, IAB 6/15/22, effective 7/20/22]

261—106.4(15) Program description, application procedures, and delegation of functions.

106.4(1) *General description.* The program provides technical assistance and financial assistance to applicants seeking SBIR/STTR funding. All awards of financial assistance must ultimately be approved by the board, after a recommendation by the committee, and an agreement must be entered into with the authority before moneys will be disbursed.

106.4(2) *Program components and activities.* The program has two primary components, a technical assistance component and a financial assistance component, both of which are intended to increase the number of phase I, phase II, and fast track SBIR/STTR awards for Iowa businesses. The corporation shall be the primary provider of technical assistance to applicants and shall also work with the authority to provide financial assistance.

a. In providing technical assistance, the corporation shall develop a pre-proposal submission component that facilitates expert peer reviews from commercial reviewers with in-depth market

knowledge. The resulting reviews should provide the applicant with a set of recommendations and tips for troubleshooting SBIR/STTR proposals. The corporation shall ensure that the applicants develop and implement recommendations for their proposals based on industry best practices.

b. The corporation shall provide services that include the following:

(1) Detailed outlines and other tools to make the drafting of a proposal and other accompanying documentation less daunting.

(2) Reviews and critiques of iterative drafts to improve the structure and narrative of both the research and the commercialization plans.

(3) Evaluation of budgets and budget justifications to produce stronger applications and avoid "leaving money on the table."

(4) Assistance with the electronic registrations and the application submission process.

c. In working with the authority to provide financial assistance, the corporation shall perform the functions delegated pursuant to subrule 106.4(4).

106.4(3) *Application and award procedures.* Eligible applicants may submit applications to the authority for financial assistance. To be eligible, an applicant must meet the requirements in rule 261—106.6(15). The applications will receive an initial review to confirm program eligibility before being sent to the committee for a recommendation on funding. The committee will provide its recommendation to the board for a final determination on the provision of financial assistance. The board may approve, deny, or defer each application for financial assistance under the program. The board will consider applications for financial assistance on a first-come, first-served basis. If the board approves funding for an applicant, the authority will prepare a required agreement specifying the terms and conditions under which the financial assistance is to be provided to the applicant.

106.4(4) *Delegation of certain administrative functions to the corporation.* The authority will delegate certain administrative functions of the program to the corporation. The functions that will be delegated are:

a. The initial application review process, including an analysis of whether the applicant meets all requirements of eligibility under the program and a recommendation on the amount of financial assistance to be provided and under what terms and conditions.

b. The tracking and monitoring of the applicant's SBIR/STTR application progress as well as the eventual outcome. The corporation shall report annually to the authority on the results of the program.

c. The tracking and monitoring of agreement terms and conditions for applicants receiving financial assistance under the program.

d. The provision of technical assistance as described in subrule 106.4(2).

106.4(5) *Administrative functions not delegated.* The authority will retain, and not delegate, the performance of the following functions: (1) the final determination as to whether to approve, deny, or defer an award of financial assistance; (2) the disbursal of moneys provided for in an award of financial assistance; (3) the final determination as to whether there is a default in the terms of an agreement entered into under the program, including all decisions regarding appropriate remedies for such a default; and (4) any other function not clearly delegated to the corporation pursuant to subrule 106.4(4).

[**ARC 0611C**, IAB 2/20/13, effective 3/27/13; **ARC 3195C**, IAB 7/5/17, effective 8/9/17]

261—106.5(15) Program funding.

106.5(1) *Program funding limitation.* Each year, the authority allocates moneys for purposes of the programs listed in Iowa Code section 15.411, including this program. The amount allocated each year will depend on the amount appropriated to the authority by the general assembly. The authority may allocate other funds to the program as such funds may from time to time become available.

106.5(2) *Individual applicant limitation.* The authority will not award more than $100,000 in financial assistance to any applicant for any individual federal SBIR/STTR award.

[**ARC 0611C**, IAB 2/20/13, effective 3/27/13; **ARC 3195C**, IAB 7/5/17, effective 8/9/17]

261—106.6(15) Eligibility requirements. In order to be eligible for financial or technical assistance under the program, an applicant must meet the following requirements:

106.6(1) The applicant must be an innovative business.

106.6(2) The applicant must have a reasonable likelihood of receiving SBIR/STTR grant funds, must be likely to stimulate subsequent investment by industry, venture capital, and other sources, and must be likely to commercialize some promising technology.
[**ARC 0611C**, IAB 2/20/13, effective 3/27/13; **ARC 3195C**, IAB 7/5/17, effective 8/9/17]

261—106.7(15) Agreement and report information required.

106.7(1) *Agreement required.* An applicant awarded financial assistance under the program shall enter into an agreement with the authority for the receipt of such funds. The authority will include in the agreement all terms and conditions for receipt of the funds, including any terms recommended by the corporation. The tracking and monitoring of the agreement terms will be delegated to the corporation. The corporation shall provide regular reports to the authority on the progress of the applicant and on the results of the tracking and monitoring. The authority will make the final determination as to compliance with the terms of the agreement and as to whether and when to disburse funds to the applicant.

106.7(2) *Reporting information required.* An applicant may be required to submit all information necessary for the authority to compile a report on the results of the program. The authority will include terms in the required agreement effectuating this requirement.
[**ARC 0611C**, IAB 2/20/13, effective 3/27/13; **ARC 3195C**, IAB 7/5/17, effective 8/9/17]

These rules are intended to implement Iowa Code section 15.411.

[Filed ARC 0611C (Notice ARC 0408C, IAB 10/17/12), IAB 2/20/13, effective 3/27/13]
[Filed ARC 3195C (Notice ARC 2938C, IAB 2/15/17), IAB 7/5/17, effective 8/9/17]
[Filed ARC 6356C (Notice ARC 6243C, IAB 3/23/22), IAB 6/15/22, effective 7/20/22]

CHAPTER 107
TARGETED INDUSTRIES NETWORKING FUND

Rescinded **ARC 6320C**, IAB 5/18/22, effective 6/22/22

CHAPTER 108
ACCELERATION AND DEVELOPMENT OF INNOVATIVE IDEAS AND BUSINESSES

261—108.1(15) Authority. The authority for adopting rules establishing a program to accelerate the development of innovative ideas and businesses by providing assistance for the expansion of the proof of commercial relevance concept, the expansion of applied research, and support for a manufacturing extension partnership program under this chapter is provided in Iowa Code section 15.411.
[**ARC 0611C**, IAB 2/20/13, effective 3/27/13; **ARC 6356C**, IAB 6/15/22, effective 7/20/22]

261—108.2(15) Purpose and description of program components.

108.2(1) The purpose of the program is to accelerate the development of innovative ideas and businesses.

108.2(2) The program has three primary components:

a. A component for the expansion of the proof of commercial relevance concept.

b. A component for the expansion of applied research.

c. A component to provide support for a manufacturing extension partnership program.
[**ARC 0611C**, IAB 2/20/13, effective 3/27/13]

261—108.3(15) Definitions. As used in this chapter, unless the context otherwise requires:

"Applicant" means an innovative business or other business, a university, a nonprofit organization, or another entity applying to the authority for assistance under the program.

"Applied research" means a systematic inquiry into the practical application of science and technology. Applied research includes translational research, participative research, and other related terms that are similar to or share the goals of applied research.

"Assistance" means technical and financial assistance available under the program.

"Authority" means the economic development authority created in Iowa Code section 15.105.

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

"Committee" means the technology commercialization committee established by the board pursuant to 261—Chapter 1.

"Financial assistance" means assistance provided only from the funds, rights, and assets legally available to the authority and includes but is not limited to assistance in the form of grants, loans, forgivable loans, and royalty agreements.

"Innovative business" means the same as defined in Iowa Code section 15E.52(1)*"c."*

"MEP" means a manufacturing extension partnership and its associated program component.

"POCR" means the proof of commercial relevance concept and its associated program component.

"Program" means the components of the program established in this chapter pursuant to Iowa Code section 15.411.
[**ARC 0611C**, IAB 2/20/13, effective 3/27/13; **ARC 6356C**, IAB 6/15/22, effective 7/20/22]

261—108.4(15) Program description, application procedures, and delegation of functions.

108.4(1) *General description.* The program provides technical assistance and financial assistance for the expansion of POCR, the expansion of applied research, and support for MEP. All awards of financial assistance must ultimately be approved by the board, after submission of a proposal by the applicant and a recommendation on the proposal by the committee. A contract must be entered into with the authority before moneys will be disbursed to an applicant.

108.4(2) *Program component descriptions and activities.* The program has three primary components: a POCR component, an applied research component, and an MEP component.

a. The POCR component makes financial assistance available to applicants who undertake projects that commercialize new technologies. The authority will award financial assistance to innovative businesses that are pursuing the validation of the marketability of a technology. Applicants may submit applications to the authority for assistance under this component. Such applications should describe in detail what technologies the applicant is researching, how the applicant is pursuing

commercialization of those technologies, and how the financial assistance will be used to bring the new technologies to market in Iowa.

b. The applied research component makes financial assistance available to innovative businesses in order to allow them to better connect university research to their needs and to accelerate the transfer of new technologies to the marketplace. The authority may award financial assistance to university researchers who are attempting to bring their research more in line with market and industrial needs by forming partnerships with innovative businesses. Financial assistance under this component may take the form of grant funds. If grant funds are awarded, the applicant shall be required to match the amount of grant funds with other moneys at a ratio of one to one. Applicants may submit applications to the authority for assistance under this component. Such applications should describe in detail what activities the applicant will engage in to accelerate the validation of technology for the marketplace.

c. The MEP component makes financial assistance available to service providers that form partnerships with innovative businesses to conduct workshops for the purpose of providing assistance in determining and prioritizing applied research needs based on gaps in productivity or product needs and that offer to broker connections between innovative businesses and the researchers who can perform the necessary applied research. Financial assistance is also available to innovative businesses under this component for product development, design verification, custom equipment development, manufacturing process development, and technology development and commercialization. The authority will award financial assistance to eligible innovative businesses. Applicants may submit applications to the authority for assistance under this component. Such applications should describe in detail the nature of the partnerships being formed, what activities the partnership will undertake, and how such activities will further the goals of this component. Applicants must submit applications for assistance under this component and must describe in detail how the proposed services will expand the applicant's market penetration, create a new product with market relevance, or enhance an existing product by further innovation.

108.4(3) *Application and award procedures.* Applicants to the program may submit applications to the authority for financial assistance. To be eligible, an applicant must meet the requirements of one of the components described in subrule 108.4(2). The applications will receive an initial review to confirm program eligibility before being sent to the committee for a recommendation on funding. The committee will provide its recommendation to the board for a final determination on the provision of financial assistance. The board may approve, deny, or defer each application for financial assistance under the program. The board will consider applications for financial assistance on a first-come, first-served basis. If the board approves funding for a business, the authority will prepare a required contract specifying the terms and conditions under which the financial assistance is to be provided to the business.

108.4(4) *Delegation of certain administrative functions.* The authority may delegate certain administrative functions of the program to a service provider engaged pursuant to Iowa Code section 15.411. The functions that may be delegated are:

a. The initial application review process, including an analysis of the application and a determination as to whether the applicant meets all requirements of eligibility under the program and a recommendation on the amount of financial assistance to be provided and under what terms and conditions.

b. The tracking and monitoring of the applicant's progress as well as the eventual outcomes achieved as a result of an award. The service provider shall report annually to the authority on the results of the program.

c. The tracking and monitoring of contract terms and conditions for applicants receiving financial assistance under the program.

d. The provision of technical assistance to applicants.

108.4(5) *Administrative functions not delegated.* The authority will retain, and not delegate, the performance of the following functions: (1) the final determination as to whether to approve, deny, or defer an award of financial assistance; (2) the disbursal of moneys provided for in an award of financial assistance; (3) the final determination as to whether there is a default in the terms of a contract entered

into under the program, including all decisions regarding appropriate remedies for such a default; and (4) any other function not clearly delegated to a service provider pursuant to subrule 108.4(4).
[**ARC 0611C**, IAB 2/20/13, effective 3/27/13; **ARC 6356C**, IAB 6/15/22, effective 7/20/22]

261—108.5(15) Program funding.

108.5(1) *Program funding limitation.* Each year, the authority allocates moneys for purposes of the programs listed in Iowa Code section 15.411, including this program. The amount allocated each year will depend on the amount appropriated to the authority by the general assembly. The authority may allocate other funds to the program as such funds may from time to time become available.

108.5(2) *Individual applicant limitation.* The authority reserves the right to determine how much financial assistance any one applicant will receive. A contract is required of each successful applicant, and such contract will provide for the amount and terms and conditions of the award.
[**ARC 0611C**, IAB 2/20/13, effective 3/27/13]

261—108.6(15) Contract and report information required.

108.6(1) *Contract required.* An applicant awarded financial assistance under the program shall enter into a contract with the authority for the receipt of such funds. The authority will include in the contract all terms and conditions for receipt of the funds. The tracking and monitoring of the contract terms may be delegated to a service provider. A service provider to which the authority delegates tracking and monitoring of contract terms shall provide regular reports to the authority on the progress of the applicant and on the results of the tracking and monitoring. The authority will make the final determination as to compliance with the terms of the contract and as to whether and when to disburse funds to the applicant.

108.6(2) *Reporting information required.* An applicant may be required to submit all information necessary for the authority to compile a report on the results of the program. The authority will include terms in the required contract effectuating this requirement.
[**ARC 0611C**, IAB 2/20/13, effective 3/27/13; **ARC 6356C**, IAB 6/15/22, effective 7/20/22]

These rules are intended to implement Iowa Code chapter 15.

[Filed ARC 0611C (Notice ARC 0408C, IAB 10/17/12), IAB 2/20/13, effective 3/27/13]
[Filed ARC 6356C (Notice ARC 6243C, IAB 3/23/22), IAB 6/15/22, effective 7/20/22]

CHAPTER 109
TARGETED INDUSTRIES CAREER AWARENESS FUND
Rescinded **ARC 6320C**, IAB 5/18/22, effective 6/22/22

CHAPTER 110
STEM INTERNSHIP PROGRAM
Transferred to 877—Chapter 30, IAC Supplement 11/1/23

CHAPTER 111
SUPPLY CHAIN DEVELOPMENT PROGRAM
Rescinded **ARC 6320C**, IAB 5/18/22, effective 6/22/22

CHAPTER 112
STATE SMALL BUSINESS CREDIT INITIATIVE (SSBCI)

261—112.1(15) Purpose. The purpose of this chapter is to establish the eligible uses of the funds allocated to the state of Iowa on October 11, 2022, from the State Small Business Credit Initiative established by the United States Department of the Treasury. The funds are administered by the authority.
[**ARC 6978C**, IAB 4/5/23, effective 5/10/23]

261—112.2(15) Definitions. For purposes of this chapter, unless the context otherwise requires:

"Allocation" means the funds allocated to the state of Iowa on October 11, 2022, from the SSBCI by the Treasury. "Allocation" does not include any funds allocated to the state of Iowa from the SSBCI prior to October 11, 2022.

"Authority" means the economic development authority created in Iowa Code section 15.105.

"SSBCI" means the State Small Business Credit Initiative established by the Treasury.

"Treasury" means the United States Department of the Treasury.
[**ARC 6978C**, IAB 4/5/23, effective 5/10/23]

261—112.3(15) Federal requirements. The allocation will be administered in accordance with all applicable federal laws, regulations, and guidance, including but not limited to any reporting requirements. The allocation will also be administered in accordance with any agreements between the state and Treasury relating to the SSBCI.
[**ARC 6978C**, IAB 4/5/23, effective 5/10/23]

261—112.4(15) Eligible uses. Eligible uses of the allocation include the following:

1. A loan participation program for manufacturing 4.0 investments.
2. A small business collateral support program.
3. A venture capital innovation fund program.
4. A venture capital co-investment fund program.
5. Any other purposes approved by the Treasury.

[**ARC 6978C**, IAB 4/5/23, effective 5/10/23]

261—112.5(15) Delegation of certain administrative functions. The authority may delegate certain administrative functions of the program to service providers who have entered into an agreement with the authority to provide such services. Functions that may be delegated pursuant to this rule include but are not limited to initial application review, tracking and monitoring of the applicant's progress, tracking and monitoring of contract terms and conditions, and provision of technical assistance to applicants. The authority will retain, and not delegate, any other function not delegated to a service provider pursuant to any agreement entered into between the authority and a service provider.
[**ARC 6978C**, IAB 4/5/23, effective 5/10/23]

These rules are intended to implement Iowa Code section 15.108(9)*"b."*

[Filed ARC 6978C (Notice ARC 6833C, IAB 1/25/23), IAB 4/5/23, effective 5/10/23]

CHAPTER 113
COMMUNITY MICROENTERPRISE DEVELOPMENT ORGANIZATION GRANT PROGRAM

Rescinded **ARC 1573C**, IAB 8/20/14, effective 9/24/14

CHAPTER 114
IOWA INNOVATION COUNCIL

261—114.1(15) Authority. The authority for establishing rules governing the Iowa innovation council under this chapter is provided in Iowa Code section 15.117A.
[**ARC 8850B**, IAB 6/16/10, effective 7/1/10; **ARC 9061B**, IAB 9/8/10, effective 10/13/10; **ARC 0611C**, IAB 2/20/13, effective 3/27/13]

261—114.2(15) Purpose. The purpose of the Iowa innovation council is to advise the authority 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; **ARC 0611C**, IAB 2/20/13, effective 3/27/13]

261—114.3(15) Definitions.

"Authority" means the economic development authority created in Iowa Code section 15.105.

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

"Chief technology officer" means the person appointed pursuant to Iowa Code section 15.117. The chief technology officer serves as chairperson of the council pursuant to Iowa Code section 15.117A.

"Committee" means the technology commercialization committee established by the board pursuant to 261—Chapter 1.

"Council" means the Iowa innovation council established by Iowa Code section 15.117A.

"Director" means the director of the authority 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; **ARC 0611C**, IAB 2/20/13, effective 3/27/13]

261—114.4(15) Iowa innovation council funding. The authority shall provide assistance to the council with staff and administrative support. The authority 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 authority 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 authority.
[**ARC 8850B**, IAB 6/16/10, effective 7/1/10; **ARC 9061B**, IAB 9/8/10, effective 10/13/10; **ARC 0611C**, IAB 2/20/13, effective 3/27/13]

261—114.5(15) 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 authority, or the director's designee.

(3) The chief technology officer appointed pursuant to Iowa Code section 15.117, who shall serve as chairperson of the council.

(4) The director of the department of workforce development, 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.

114.5(3) A vacancy on the council shall be filled in the same manner as the original selection and shall be for the remainder of the term.

[**ARC 8850B**, IAB 6/16/10, effective 7/1/10; **ARC 9061B**, IAB 9/8/10, effective 10/13/10; **ARC 0611C**, IAB 2/20/13, effective 3/27/13]

261—114.6(15) Responsibilities and deliverables.

114.6(1) The purpose of the council is to advise the authority 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 authority 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 authority, 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; **ARC 0611C**, IAB 2/20/13, effective 3/27/13]

261—114.7(15) 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 authority, 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; **ARC 0611C**, IAB 2/20/13, effective 3/27/13]

261—114.8(15) 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; **ARC 0611C**, IAB 2/20/13, effective 3/27/13]

261—114.9(15) 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; **ARC 0611C**, IAB 2/20/13, effective 3/27/13]

261—114.10(15) 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 authority, 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; **ARC 0611C**, IAB 2/20/13, effective 3/27/13]

261—114.11(15) 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; **ARC 0611C**, IAB 2/20/13, effective 3/27/13]

261—114.12(15) 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; **ARC 0611C**, IAB 2/20/13, effective 3/27/13]

261—114.13(15) Reporting. The executive committee shall review, comment on, 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 authority in sufficient detail to permit the authority to prepare any reports that may be required by the authority, 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; **ARC 0611C**, IAB 2/20/13, effective 3/27/13]

These rules are intended to implement Iowa Code section 15.117A.

[Filed Emergency ARC 8850B, IAB 6/16/10, effective 7/1/10]

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CHAPTER 115
TAX CREDITS FOR INVESTMENTS IN QUALIFYING BUSINESSES

261—115.1(15E) Tax credits for investments in qualifying businesses. Tax credits for investments in qualifying businesses may be claimed as provided in this rule and any applicable rules of the department of revenue.

115.1(1) *Tax credits allowed only after a certain date.* A taxpayer may claim a tax credit under this rule for equity investments in certain qualifying businesses. Only equity investments made on or after January 1, 2011, qualify for a tax credit under this rule. Equity investments made before that date must be claimed under 123—Chapter 2.

115.1(2) *Investments in qualifying businesses.*

a. A taxpayer may claim a tax credit under this subrule for a portion of the taxpayer's equity investment in a qualifying business if that investment was made on or after January 1, 2011.

b. The tax credit may be claimed against the taxpayer's tax liability for any of the following taxes:

(1) The personal net income tax imposed under Iowa Code chapter 422, division II.

(2) The business tax on corporations imposed under Iowa Code chapter 422, division III.

(3) The franchise tax on financial institutions imposed under Iowa Code chapter 422, division V.

(4) The tax on the gross premiums of insurance companies imposed under Iowa Code chapter 432.

(5) The tax on moneys and credits imposed under Iowa Code section 533.329.

c. Investments made in qualifying businesses on or after January 1, 2011, and before July 2, 2015, are governed by 2015 Iowa Code sections 15E.41 to 15E.46, 422.11F, 422.33, 422.60, 432.12C, and 533.329.

d. Investments made in qualifying businesses on or after July 2, 2015, are governed by 2016 Iowa Code sections 15E.41 to 15E.46, 422.11F, 422.33, 422.60, 432.12C, and 533.329.

115.1(3) *Amount of tax credit that may be claimed by taxpayer.*

a. In the case of investments made on or after July 2, 2015, the amount of tax credit available to a taxpayer under this rule is equal to 25 percent of the taxpayer's equity investment in a qualifying business.

b. In the case of investments made on or after July 2, 2015, the maximum amount of tax credit that may be issued per calendar year to a natural person and the person's spouse or dependent shall not exceed $100,000 combined. For purposes of this paragraph, a tax credit issued to a partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual shall be deemed to be issued to the individual owners based upon the pro rata share of the individual's earnings from the entity. For purposes of this paragraph, "dependent" has the same meaning as provided by the Internal Revenue Code. Applications received by the authority that exceed the maximum amount of tax credits per calendar year to a natural person and the person's spouse or dependent will be denied by the board, regardless of whether the investment was otherwise eligible to receive a tax credit award. Any application that can be partially approved without exceeding the maximum amount in this paragraph will be approved as to the portion less than the maximum amount and denied as to the portion greater than the maximum amount. For example, if an application is eligible for $50,000 of tax credits, but there is only $30,000 of the household maximum amount available, the application will be approved for $30,000 and denied for $20,000.

c. The maximum amount of tax credits that may be issued per calendar year for equity investments in any one qualifying business shall not exceed $500,000. Applications received by the authority that exceed the maximum amount of tax credits per calendar year in any one qualifying business will be denied by the board, regardless of whether the investment was otherwise eligible to receive a tax credit award. Any application that can be partially approved without exceeding the maximum amount in this paragraph will be approved as to the portion less than the maximum amount and denied as to the portion greater than the maximum amount. For example, if an application is eligible for $50,000 of tax credits,

but there is only $30,000 of the business maximum amount available, the application will be approved for $30,000 and denied for $20,000.

115.1(4) *Claiming an investment tax credit.* A taxpayer that makes an investment in a qualifying business and that otherwise meets the requirements of this chapter will receive a board-approved tax credit certificate from the authority. To claim the credit, the taxpayer must include the certificate with a tax return filed with the department of revenue. For more information on claiming the tax credit, see department of revenue rules 701—42.22(15E,422), 701—52.21(15E,422), and 701—58.11(15E,422).

[**ARC 0009C**, IAB 2/8/12, effective 3/14/12; **ARC 2541C**, IAB 5/25/16, effective 6/29/16; **ARC 6242C**, IAB 3/9/22, effective 4/13/22]

261—115.2(15E) Definitions. For purposes of this chapter, unless the context otherwise requires:

"Affiliate" means a spouse, child, or sibling of an investor or a corporation, partnership, or trust in which an investor has a controlling equity interest or in which an investor exercises management control.

"Authority" means the economic development authority created in Iowa Code section 15.105.

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

"Controlling equity interest" means ownership of more than 50 percent of the outstanding equity interests of a corporation, partnership, limited liability company or trust.

"Convertible debt" means debt that may be converted to equity at the option of the debt holder but has not yet been converted.

"Entrepreneurial assistance program" includes the entrepreneur investment awards program administered under Iowa Code section 15E.362, the receipt of services from a service provider engaged pursuant to Iowa Code section 15.411(1) or the program administered under Iowa Code section 15.411(2).

"Equity" means common or preferred corporate stock or warrants to acquire such stock, membership interests in limited liability companies, or partnership interests in partnerships. Equity shall be limited to securities or interests acquired only for cash and shall not include securities or interests acquired at any time for services, contributions of property other than cash, convertible debt, or any other non-cash consideration.

"Investor" means a person that makes a cash investment in a qualifying business on or after July 2, 2015. "Investor" does not include a person that holds at least a 70 percent ownership interest as an owner, member, or shareholder in a qualifying business.

"Management control" means holding more than 50 percent of the voting power on any board of directors or trustees, any management committee, or any other group managing a corporation, partnership, limited liability company or trust.

"Person" means an individual, corporation, limited liability company, business trust, estate, trust, partnership or association, or any other legal entity.

"Qualifying business" means a business that meets the criteria listed in subrule 115.5(2).

"Services requiring a professional license" includes but is not limited to the professions listed in Iowa Code section 496C.2.

[**ARC 0009C**, IAB 2/8/12, effective 3/14/12; **ARC 2541C**, IAB 5/25/16, effective 6/29/16; **ARC 6242C**, IAB 3/9/22, effective 4/13/22]

261—115.3(15E) Cash investments required. In order to qualify for a tax credit under this chapter, the taxpayer's investment must be made in the form of cash to purchase equity in a qualifying business. Convertible debt shall only be considered an investment in the form of cash to purchase equity as of the date of conversion.

[**ARC 0009C**, IAB 2/8/12, effective 3/14/12; **ARC 2541C**, IAB 5/25/16, effective 6/29/16; **ARC 6242C**, IAB 3/9/22, effective 4/13/22]

261—115.4(15E) Applying for an investment tax credit.

115.4(1) A taxpayer that desires to receive an investment tax credit for an equity investment in a qualifying business shall submit an application to the board for approval and provide such other information and documentation as may be requested by the board. Application forms for the investment tax credit may be obtained by contacting a qualifying business that has received a notice of certification pursuant to rule 261—115.5(15E).

115.4(2) Applications shall be date- and time-stamped by the authority in the order in which such applications are received. Applications for the investment tax credit shall be accepted by the authority until March 31 of the year following the calendar year in which the taxpayer's equity investment was made. Investors who do not submit an application by the March 31 deadline are ineligible to receive a tax credit.

EXAMPLE 1: A taxpayer makes an equity investment in a qualifying business on December 31, 2011. The taxpayer has until March 31, 2012, to apply to the authority for an investment tax credit.

EXAMPLE 2: A taxpayer makes an equity investment in a qualifying business on July 1, 2012. The taxpayer has until March 31, 2013, to apply to the authority for an investment tax credit.

The authority may accept applications after the deadline under extenuating circumstances. The authority shall not consider the lack of an available application filing window pursuant to paragraph 115.6(6)*"b"* as an extenuating circumstance.

[**ARC 0009C**, IAB 2/8/12, effective 3/14/12; **ARC 2541C**, IAB 5/25/16, effective 6/29/16; **ARC 6242C**, IAB 3/9/22, effective 4/13/22]

261—115.5(15E) Certification of qualifying businesses.

115.5(1) *Application for certification.* Within 120 days from the first date on which the equity investments qualifying for investment tax credits have been made, a qualifying business shall apply to the authority for certification as a qualifying business as prescribed by the authority. Investments made more than 120 days prior to receipt by the authority of a substantially complete application for certification shall not be eligible for a tax credit. The application for certification will include the following information:

a. A description of the general nature of the business's operations, the location of the principal business operations, the date on which the business was formed, and the date on which the business commenced operations;

b. A balance sheet that reflects the qualifying business's assets, liabilities and owner's equity as of the close of the most recent month or quarter;

c. A description of the manner in which the business satisfies one of the business experience requirements set forth in paragraph 115.5(2)*"c"*;

d. The names, addresses, shares or equity interests issued, consideration paid for the shares or equity interests, and amounts of any tax credits of all shareholders or equity holders who may initially qualify for the tax credits and the date on which the investment was made. The application shall contain a commitment by the qualifying business to amend its list of investors as may be necessary from time to time to reflect new equity interests or transfers in equity among current equity holders or as any other information on the list may change. Applications for tax credits for investments that are not reflected on the most recent listing of investors provided to the authority shall not be eligible for tax credits until an amended list is provided by the qualifying business;

e. A signed statement from an officer, director, manager, member, or general partner of the qualifying business certifying the accuracy of the information provided; and

f. Any other information as the authority may reasonably require to determine the business's eligibility for certification as a qualifying business and its investors' eligibility to receive tax credits.

115.5(2) *Eligibility for certification as a qualifying business.* A business shall meet all of the following criteria to be eligible for certification as a qualifying business:

a. The principal business operations of the business are located in the state of Iowa;

b. The business has been in operation for six years or less, as measured from the date of the investment for which a credit is claimed;

c. The business is participating in an entrepreneurial assistance program. The authority may waive this requirement if a business establishes that its owners, directors, officers, and employees have an appropriate level of experience such that participation in an entrepreneurial assistance program would not materially change the prospects of the business. The authority may consult with outside service providers in consideration of such a waiver;

d. The business is not a business engaged primarily in retail sales, real estate, or the provision of health care services or other services requiring a professional license. In determining whether a business

is primarily engaged in retail sales, factors the authority will consider include, but are not limited to, the sources of the business's revenue, whether the business manufactures a product it sells, and whether the business owns intellectual property associated with a product it sells;

e. The business does not have a net worth that exceeds $10 million as of the date of the investment for which the credit is claimed; and

f. The business shall have secured all of the following at the time of application for tax credits:

(1) At least two investors.

(2) Total equity financing, binding equity investment commitments, or some combination thereof, equal to at least $500,000 from investors. For the purposes of determining whether a business has secured at least $500,000 from investors, convertible debt shall only be considered equity as of the date of conversion.

For purposes of paragraph 115.5(2)*"f,"* "investor" includes a person that executes a binding investment commitment to a business.

115.5(3) *Authority review and notice of certification.*

a. Upon the authority's receipt of the information and documentation necessary to demonstrate satisfaction of the criteria set forth in subrule 115.5(2), the authority shall, within a reasonable period of time, determine whether a business shall be certified as a qualifying business and, if applicable, issue written notification to the qualifying business that such business has been certified with the authority for the purpose of issuing investment tax credits. The notice shall indicate that such certification is subject to revocation or expiration pursuant to subrule 115.5(4). The authority will indicate in its written notice the first date investments are eligible for a tax credit based on the date of application for certification and the date the authority expects the certification to expire based on the date the business began operations.

b. The authority will only accept applications for investment tax credits from investors in qualifying businesses that have received a written notice of certification.

115.5(4) *Revocation and expiration of certification.*

a. A certified qualifying business must notify the authority as soon as it becomes aware of any changes in its eligibility as a qualifying business or in the eligibility of its investors to receive tax credits. A certified qualifying business shall provide any information as the authority may reasonably request to confirm the business's continued eligibility for certification as a qualifying business and the eligibility of its investors to receive tax credits.

b. If a qualifying business fails to meet or maintain any requirement set forth in this chapter, the authority shall revoke the business's certification as a qualifying business by issuing written notification of revocation to the business. If applicable, the notification shall identify the last date on which the business was eligible to be certified as a qualifying business. Investments made after the identified date will not be eligible for a tax credit.

c. If a business continues to satisfy all eligibility requirements until it has been in operations for more than six years, the business's certification will expire on the date identified as the expected date of expiration pursuant to paragraph 115.5(2)*"a."* Investments made after the identified date will not be eligible for a tax credit.

[**ARC 6242C**, IAB 3/9/22, effective 4/13/22]

261—115.6(15E) Approval, issuance and distribution of investment tax credits.

115.6(1) *Approval by the board.* Upon certification by the authority of a qualifying business and approval of the taxpayer's application, the board will approve the issuance of a tax credit certificate to the taxpayer applying for the tax credit.

115.6(2) *Issuance by the authority.* Upon approval by the board, the authority shall issue a tax credit certificate to the applicant, provided, however, that such tax credit certificate shall be subject to rescission pursuant to rule 261—115.9(15E).

115.6(3) *Preparation of certificate.* The tax credit certificate shall be prepared by the authority in a form approved by the board and shall contain the taxpayer's name, address, and tax identification number, the amount of credit, the name of the qualifying business, the year in which the credit may be

redeemed and any other information that may be required by the department of revenue. In addition, the tax credit certificate shall contain the following statement:

> Neither the authority nor the board has recommended or approved this investment or passed on the merits or risks of such investment. Investors should rely solely on their own investigation and analysis and seek investment, financial, legal and tax advice before making their own decision regarding investment in this enterprise.

115.6(4) *Tax credit amount limitations.* The aggregate amount of tax credits issued per fiscal year pursuant to this chapter shall not exceed the amount allocated by the board pursuant to Iowa Code section 15.119.

115.6(5) *Waitlist for applications received on or before March 31, 2022.*

a. If the maximum aggregate amount of tax credits is awarded in a given fiscal year, investors who are determined eligible for a tax credit but were not awarded a tax credit shall be placed on a waitlist in the order the applications are received. Applications that are placed on a waitlist shall be given priority for receiving tax credits in succeeding fiscal years. Placement on a waitlist pursuant to this paragraph shall not constitute a promise binding the state. The availability of a tax credit and issuance of a tax credit certificate pursuant to this rule in a future fiscal year is contingent upon the availability of tax credits in that particular fiscal year or years. This subrule shall apply only to applications received on or before March 31, 2022.

b. Any application that can be partially approved without exceeding the maximum aggregate amount of tax credits will be approved as to the portion less than the maximum aggregate amount and placed on a waitlist as to the portion greater than the maximum aggregate amount. For example, if an application is eligible for $50,000 of tax credits, but there is only $30,000 of the maximum aggregate amount available, the application will be approved for $30,000 and placed on a waitlist for $20,000.

115.6(6) *Applications received on or after April 1, 2022.*

a. Applications for tax credits received on or after April 1, 2022, will not be placed on a waitlist if the maximum aggregate amount of tax credits is awarded in a given fiscal year.

b. Beginning on or after April 1, 2022, the authority will identify an application period, or periods, on the authority's Internet site at www.iowaeda.com for each fiscal year in which an allocation of tax credits is available and has not been fully utilized by applications previously placed on a waitlist pursuant to subrule 115.6(5). Only applications submitted during the established filing window will be reviewed for eligibility by the authority. Each identified application period will remain open until the date indicated by the authority for that fiscal year.

c. Applications received on or after April 1, 2022, in excess of the maximum aggregate amount of tax credits for the fiscal year in which they are received will be denied by the board, regardless of whether the investment was otherwise eligible to receive a tax credit award.

d. Any application that can be partially approved without exceeding the maximum aggregate amount of tax credits will be approved as to the portion less than the maximum aggregate amount and denied as to the portion greater than the maximum aggregate amount. For example, if an application is eligible for $50,000 of tax credits, but there is only $30,000 of the maximum aggregate amount available, the application will be approved for $30,000 and denied for $20,000.

[**ARC 0009C**, IAB 2/8/12, effective 3/14/12; **ARC 2541C**, IAB 5/25/16, effective 6/29/16; **ARC 6242C**, IAB 3/9/22, effective 4/13/22]

261—115.7(15E) Claiming the tax credits. To claim a tax credit under this chapter, a taxpayer must include with that taxpayer's tax return a certificate issued pursuant to this chapter when the return is filed with the department of revenue. For more information on claiming tax credits, see department of revenue rules 701—42.22(15E,422), 701—52.21(15E,422), and 701—58.11(15E,422).

[**ARC 0009C**, IAB 2/8/12, effective 3/14/12; **ARC 2541C**, IAB 5/25/16, effective 6/29/16; **ARC 6242C**, IAB 3/9/22, effective 4/13/22]

261—115.8(15E) Notification to the department of revenue. Upon the issuance and distribution of investment tax credits for a tax year, the authority shall promptly notify the department of revenue. Such notification shall also include, but not be limited to, the aggregate number and amount of tax credits issued for the tax year.

[**ARC 0009C**, IAB 2/8/12, effective 3/14/12; **ARC 2541C**, IAB 5/25/16, effective 6/29/16; **ARC 6242C**, IAB 3/9/22, effective 4/13/22]

261—115.9(15E) Rescinding tax credits. In the event that a qualifying business fails to meet or maintain any requirement set forth in this chapter, the authority, upon action by the board, shall rescind any tax credit certificates issued to taxpayers for investments made after the date as of which the business's certification was revoked or expired and shall notify the department of revenue that it has done so. A tax credit certificate that has been rescinded by the authority shall be null and void, and the department of revenue will not accept the tax credit certificate.

[**ARC 0009C**, IAB 2/8/12, effective 3/14/12; **ARC 1429C**, IAB 4/16/14, effective 5/21/14; **ARC 2541C**, IAB 5/25/16, effective 6/29/16; **ARC 6242C**, IAB 3/9/22, effective 4/13/22]

261—115.10(15E) Additional information—confidentiality—annual report.

115.10(1) *Additional information.* The authority may at any time request additional information and documentation from a qualifying business regarding the operations, job creation and economic impact of such qualifying business, and the authority may use such information in preparing and publishing any reports to be provided to the governor and the general assembly.

115.10(2) *Confidentiality.*

a. Except as provided in paragraph *"b,"* all information or records in the possession of the authority with respect to this chapter shall be presumed by the authority to be a trade secret protected under Iowa Code chapter 550 or common law and shall be kept confidential by the authority unless otherwise ordered by a court.

b. All of the following shall be considered public information under Iowa Code chapter 22:

(1) The identity of a qualifying business.

(2) The identity of an investor and the qualifying business in which the investor made an equity investment.

(3) The number of tax credit certificates issued by the authority.

(4) The total dollar amount of tax credits issued by the authority.

115.10(3) *Annual report.* The authority will publish an annual report of the activities conducted pursuant to Iowa Code chapter 15E, division V, and will submit the report to the governor and the general assembly. The report will include a listing of eligible qualifying businesses and the number of tax credit certificates and the amount of tax credits issued by the authority.

[**ARC 0009C**, IAB 2/8/12, effective 3/14/12; **ARC 2541C**, IAB 5/25/16, effective 6/29/16; **ARC 6242C**, IAB 3/9/22, effective 4/13/22]

These rules are intended to implement Iowa Code chapter 15E, subchapter V.

[Filed ARC 0009C (Notice ARC 9845B, IAB 11/16/11), IAB 2/8/12, effective 3/14/12]
[Filed ARC 1429C (Notice ARC 1289C, IAB 1/22/14), IAB 4/16/14, effective 5/21/14]
[Filed ARC 2541C (Notice ARC 2373C, IAB 1/20/16), IAB 5/25/16, effective 6/29/16]
[Filed ARC 6242C (Notice ARC 6140C, IAB 1/12/22), IAB 3/9/22, effective 4/13/22]

CHAPTER 116
TAX CREDITS FOR INVESTMENTS IN CERTIFIED INNOVATION FUNDS

261—116.1(15E) Tax credit for investments in certified innovation funds.

116.1(1) *Tax credit allowed.* For tax years beginning on or after January 1, 2011, a taxpayer may claim a tax credit for a portion of the taxpayer's equity investment in a certified innovation fund. The tax credit may be claimed against the taxpayer's tax liability for any of the following taxes:

a. The personal net income tax imposed under Iowa Code chapter 422, division II.

b. The business tax on corporations imposed under Iowa Code chapter 422, division III.

c. The franchise tax on financial institutions imposed under Iowa Code chapter 422, division V.

d. The tax on the gross premiums of insurance companies imposed under Iowa Code chapter 432.

e. The tax on moneys and credits imposed under Iowa Code section 533.329.

116.1(2) *Treatment of pass-through entities.* If the taxpayer that is entitled to an investment tax credit for an investment in an innovation fund is a pass-through entity electing to have its income taxed directly to its individual owners, such as a partnership, limited liability company, S corporation, estate or trust, the pass-through entity shall allocate the allowable credit to each of the individual owners of the entity on the basis of each owner's pro-rata share of the earnings of the entity, and the individual owners may claim their respective credits on their individual income tax returns.

116.1(3) *Credits for certain investments disallowed.* A taxpayer shall not claim an investment tax credit for an investment in an innovation fund if the taxpayer is a venture capital investment fund allocation manager for the Iowa fund of funds described in Iowa Code section 15E.65, an investor that receives a tax credit for the same investment in a community-based seed capital fund as described in Iowa Code section 15E.45, or an investor that receives a tax credit for the same investment in a qualifying business as described in Iowa Code section 15E.44.

116.1(4) *Cash investments required.* The taxpayer's equity investment must be made in the form of cash to purchase equity in an innovation fund.

116.1(5) *Amount of credit.* For tax years beginning and investments made on or after January 1, 2011, and before January 1, 2013, the taxpayer may claim a tax credit in an amount equal to 20 percent of the taxpayer's equity investment in a certified innovation fund. For tax years beginning and investments made on or after January 1, 2013, the taxpayer may claim a tax credit in an amount equal to 25 percent of the taxpayer's equity investment in a certified innovation fund.

[**ARC 0009C**, IAB 2/8/12, effective 3/14/12; **ARC 1098C**, IAB 10/16/13, effective 10/1/13]

261—116.2(15E) Definitions. For purposes of this chapter, unless the context otherwise requires:

"Authority" means the economic development authority created in Iowa Code section 15.105.

"Board" means the same as defined in Iowa Code section 15.102.

"Equity" means common or preferred corporate stock or warrants to acquire such stock, membership interests in limited liability companies, partnership interests in partnerships, or near equity. Equity shall be limited to securities or interests acquired only for cash and shall not include securities or interests acquired at any time for services, contributions of property other than cash, or any other non-cash consideration.

"Innovation fund" means a private, early-stage capital fund that has been certified by the board.

"Innovative business" means a business applying novel or original methods to the manufacture of a product or the delivery of a service. "Innovative business" includes but is not limited to a business engaged in advanced manufacturing, biosciences, or information technology.

[**ARC 0009C**, IAB 2/8/12, effective 3/14/12; **ARC 1098C**, IAB 10/16/13, effective 10/1/13]

261—116.3(15E) Certification of innovation funds.

116.3(1) An innovation fund shall provide to the authority information as a prerequisite to the issuance of any investment tax credits to investors in such innovation funds. The innovation fund must provide this information within 120 days from the first date on which the equity investments qualifying for the investment tax credit have been made (or, for investments made during the 2011 calendar year, by the later of 120 days from the first date on which the investments have been made or March 31, 2012).

116.3(2) Application forms setting forth the information required to certify the eligibility of an innovation fund may be obtained by contacting the Economic Development Authority, 200 East Grand Avenue, Des Moines, Iowa 50309. The telephone number is (515)725-3000. Applications shall be submitted to the authority at the address identified above.

116.3(3) The authority will not issue a tax credit certificate until the board has certified that a fund meets all of the following criteria:

a. The innovation fund has submitted a copy of the innovation fund's certificate of limited partnership, limited partnership agreement, articles of organization or operating agreement certified by the chief executive officer of the innovation fund.

b. The innovation fund has submitted a signed statement, from an officer, director, manager, member or general partner of the fund, stating the following:

(1) That the innovation fund will make investments in promising early-stage companies which have a principal place of business in the state. For purposes of rule 261—116.3(15E), "having a principal place of business in the state" means (1) that the business has at least 50 percent of all of its employees in the state, (2) that the business pays at least 50 percent of the business's total payroll to employees residing in the state, or (3) that the headquarters of the business (defined as the home office for a substantial amount of executive employees) is in the state.

(2) That the innovation fund proposes to make investments in innovative businesses which have a principal place of business in the state.

(3) That the innovation fund seeks to secure private funding sources for investment in such businesses.

(4) That the innovation fund proposes to provide multiple rounds of funding and early-stage private sector funding to innovative businesses with a high growth potential, and proposes to focus such funding on innovative businesses that show a potential to produce commercially viable products or services within a reasonable period of time. In order to establish that this criterion is met, the innovation fund shall provide a detailed description of the framework the innovation fund will use to evaluate a business's growth potential and its ability to produce commercially viable products or services within a reasonable period of time. The description shall list and discuss the criteria and the attendant process that the innovation fund will use to evaluate businesses. The authority will consider requests submitted under Iowa Code section 15.118 or 22.7 to treat the evaluation framework as confidential.

(5) That the innovation fund proposes to evaluate all prospective innovative businesses using a rigorous approach and proposes to collaborate and coordinate with the authority and other state and local entities in an effort to achieve policy consistency. In order to establish that this criterion is met, an innovation fund shall provide a detailed description of the methods by which each business will be evaluated. An innovation fund shall also submit a plan describing the actions it will take in order to collaborate and coordinate with other state and local entities and the ways in which the innovation fund intends to ensure consistency with the policy goals of this chapter. Such a plan shall propose to create relationships that can be substantiated in writing, which may include, without limitation, contracts, memoranda of understanding, letters of support, affidavits, or joint press releases from or with the entities that will be involved in the collaborative and coordinating efforts or through a list and summary description of the dates and locations for meetings held between the innovation fund and the other entities which allowed for collaboration and coordination between the innovation fund and those entities in an effort to achieve policy consistency.

(6) That the innovation fund proposes to collaborate with the regents institutions of this state and to leverage relationships with such institutions in order to potentially commercialize research developed at those institutions. In order to establish that this criterion is met, an innovation fund shall provide written confirmation of such relationships which may include, without limitation, contracts, memoranda of understanding, letters of support, affidavits, or joint press releases from or with the regents institutions of this state or a list and summary description of the dates and locations for meetings held between the innovation fund and the regents institutions, the names of representatives of regents institutions with whom the innovation fund has met, and a brief summary of the discussions at those meetings.

(7) That the innovation fund proposes to obtain at least $15 million in binding investment commitments and to invest a minimum of $15 million in companies that have a principal place of business in the state. In order to establish that this criterion is met, an innovation fund shall include provisions in the fund's governing documents that provide for the continued operations of the fund only if this minimum level of investment commitment is reached.

116.3(4) Upon the authority's receipt of the information and documentation necessary to demonstrate satisfaction of the criteria set forth herein, the authority shall, within a reasonable period of time, determine whether to certify the innovation fund. If the authority certifies the innovation fund, the authority shall register the fund on a registry that shall be maintained by the authority. The authority shall use the registry to authorize the issuance of further investment tax credits to taxpayers who make equity investments in the innovation funds registered with the authority. The authority shall issue written notification to the innovation fund that the fund has been registered as an innovation fund with the authority for the purpose of issuing investment tax credits. This written notification shall contain the following statement:

> The Authority shall not be liable either for an innovation fund's failure to maintain compliance with the certification requirements nor for an investor's loss of tax credit certificates resulting from either a failure to maintain compliance or from a revocation.

116.3(5) On May 24, 2013, significant changes to the innovation fund tax credit program were enacted. (See 2013 Iowa Acts, House File 615.) The legislation includes changes to the criteria required for certification and also changes to the tax credits available to investors in certified funds. An innovation fund certified before May 24, 2013, that wishes to take advantage of the changes in 2013 Iowa Acts, House File 615, must resubmit an application to the board and demonstrate that the innovation fund meets all new requirements for certification as described in subrule 116.3(3).

116.3(6) The board will not certify an innovation fund after June 30, 2023.

[**ARC 0009C**, IAB 2/8/12, effective 3/14/12; **ARC 1098C**, IAB 10/16/13, effective 10/1/13; **ARC 4512C**, IAB 6/19/19, effective 7/24/19]

261—116.4(15E) Maintenance, reporting, and revocation of certification.

116.4(1) In order to maintain certification, an innovation fund must demonstrate compliance with the eligibility criteria set forth in subrule 116.3(3) at all times during participation in the program. A failure to comply with the eligibility criteria on an ongoing basis may result in revocation of certification. The authority will notify an innovation fund if the authority finds that the fund is not in compliance and will allow the innovation fund a period of not more than 120 days in which to address such noncompliance. If after 120 days the innovation fund remains in noncompliance, the board may revoke the fund's certification. The authority will not issue tax credit certificates to investors in an innovation fund if such equity investments are made at any point after the innovation fund has been found to be in noncompliance or if the innovation fund's certification has been revoked.

116.4(2) On or before December 31 of each year, each certified innovation fund shall collect and provide to the board, in the manner and form prescribed by the authority, the following information:

a. The amount of equity investments made in the innovation fund, both on an annual and a cumulative basis.

b. For each investment by an innovation fund in a business:

(1) The amount and date of the investment.

(2) The name and industry of the business.

(3) The location or locations from which the business operates.

(4) The number of employees of the business located in Iowa and the number of employees of the business located outside Iowa on the date of the initial investment by the innovation fund in the business.

(5) The number of employees of the business located in Iowa and the number of employees of the business located outside Iowa at the close of the fiscal year which is the subject of the report.

c. In order to establish that an innovation fund has met the criterion found in subparagraph 116.3(3)*"b"*(5), the innovation fund shall provide documentation and information in the manner and form required by the authority. Such documentation and information may include, without limitation,

contracts, memoranda of understanding, letters of support, affidavits, joint press releases, or a list and summary description of the dates and locations for meetings held between the innovation fund and the other entities which allowed for collaboration and coordination between the innovation fund and those entities in an effort to achieve policy consistency.

d. In order to establish that an innovation fund has met the criterion found in subparagraph 116.3(3)*"b"*(6), the innovation fund shall provide documentation and information in the manner and form required by the authority. Such documentation and information may include, without limitation, contracts, memoranda of understanding, letters of support, affidavits, joint press releases, or a list and summary description of the dates and locations for meetings held between the innovation fund and regents institutions, the names of representatives of regents institutions with whom the innovation fund has met, and a brief summary of the discussions at those meetings. The innovation fund shall also indicate if any business in which it has invested is commercializing research developed at one of the regents institutions.

116.4(3) Upon obtaining the required minimum threshold of $15 million in binding investment commitments, an innovation fund shall submit a statement containing the names, addresses, equity interests issued and consideration paid for the interests of all limited partners or members who may initially qualify for the tax credits. An innovation fund shall submit an amended statement as may be necessary from time to time to reflect new equity interests or transfers in equity among current equity holders or as any other information on the list may change. The authority will consider requests submitted under Iowa Code section 15.118 to treat investor names and amounts as confidential.

116.4(4) The board may revoke an innovation fund's certification if any of the following events occur:

a. An innovation fund fails to secure the required $15 million in initial binding investment commitments within one year of the date of certification by the board or fails at any point thereafter to secure investment from its investors of at least $15 million. If an investor in an innovation fund fails to make a capital call by the innovation fund and that failure would cause the innovation fund to fail to secure the required minimum $15 million in investment, then the authority will provide the innovation fund a period of not more than 120 days after receiving notice of the failed capital call to secure additional investment commitments sufficient to meet the required minimum investment.

b. An innovation fund fails to timely submit the report required in subrule 116.4(2).

c. An innovation fund fails to maintain the eligibility criteria as set forth in subrule 116.3(3).

The board may forbear revocation under this subrule for good cause shown or for demonstration of extenuating circumstances. Such forbearance shall be at the board's discretion and for the period of time determined by the board to be in the best interest of the program and the state of Iowa.

116.4(5) If the board finds that a fund is in noncompliance or revokes an innovation fund's certification, the board will not issue tax credit certificates to investors in the innovation fund until the innovation fund manager demonstrates to the board that the innovation fund again meets the eligibility criteria set forth in rule 261—116.3(15E). If an investor makes an equity investment prior to a notice of noncompliance and a revocation of an innovation fund's certification, the board will issue the tax credit certificate as set forth in rule 261—116.6(15E). If an investor is issued a tax credit certificate prior to a revocation of certification, the investor shall have all the rights described in Iowa Code section 15E.52(5).

[**ARC 1098C**, IAB 10/16/13, effective 10/1/13]

261—116.5(15E) Application for the investment tax credit certificate. Upon certification and registration by the authority of an innovation fund, a taxpayer may make equity investments in the fund and may apply for an investment tax credit certificate for each equity investment made in a certified innovation fund by submitting an application to the authority for approval by the board and providing such other information and documentation as may be requested by the authority. Application forms for the investment tax credit certificate may be obtained by contacting the Economic Development Authority, 200 East Grand Avenue, Des Moines, Iowa 50309. Applications shall be submitted to the authority at the address identified above. Each application shall be date- and time-stamped by the

authority in the order in which such applications are received. Applications for the investment tax credit shall be accepted by the authority until March 31 of the year following the calendar year in which the taxpayer's equity investment is made.
[**ARC 0009C**, IAB 2/8/12, effective 3/14/12; **ARC 1098C**, IAB 10/16/13, effective 10/1/13]

261—116.6(15E) Approval, issuance and distribution of investment tax credits.

116.6(1) *Approval.* Upon certification and registration by the authority of an innovation fund and approval of the taxpayer's application, the board will approve the issuance of a tax credit certificate to the applicant. The board shall not issue a certificate to a taxpayer for an equity investment in an innovation fund until such fund has been certified as an innovation fund pursuant to rule 261—116.3(15E).

116.6(2) *Issuance.* Applicants shall receive tax credit certificates on a first-come, first-served basis until the maximum aggregate amount of credits authorized for issuance has been reached for any fiscal year. The board shall not issue a tax credit certificate prior to September 1, 2014.

116.6(3) *Waiting list.* If, during any fiscal year during which tax credits are to be issued under this chapter, applications totaling more than the maximum aggregate amount are received and approved, the board will establish a waiting list for certificates. Applications that were approved but for which certificates were not issued shall be placed on the waiting list in the order the applications were received by the board. If applications were placed on the waiting list, the authority shall:

a. Issue tax credit certificates to the taxpayers for such waitlisted tax credits before issuing any new tax credits to later applicants, and

b. Apply the aggregate amount of the waitlisted credits against the total amount of tax credits to be issued during the subsequent fiscal year before approving or issuing additional tax credits.

116.6(4) *Preparation of the certificate.* The tax credit certificate shall be in a form approved by the authority and shall contain the taxpayer's name, address, and tax identification number, the amount of credit, the name of the innovation fund, the year in which the investment was made and any other information that may be required by the department of revenue. In addition, the tax credit certificate shall contain the following statement:

> Neither the authority nor the board has recommended or approved this investment or passed on the merits or risks of such investment. Investors should rely solely on their own investigation and analysis and seek investment, financial, legal and tax advice before making their own decision regarding investment in this fund.

116.6(5) *Credit amount.* A tax credit for investment in an innovation fund is equal to 25 percent of the taxpayer's equity investment in the fund.

116.6(6) *Maximum aggregate limitation.* The maximum aggregate amount of tax credits issued pursuant to this chapter shall not exceed the amount allocated by the board pursuant to Iowa Code section 15.119(2). For fiscal year 2012 and all subsequent fiscal years, that amount is $8 million per year.
[**ARC 0009C**, IAB 2/8/12, effective 3/14/12; **ARC 1098C**, IAB 10/16/13, effective 10/1/13]

261—116.7(15E) Transferability of the tax credit.

116.7(1) *Transfer.* Tax credit certificates issued pursuant to this rule may be transferred, in whole or in part, 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, the denomination that each replacement tax credit certificate is to carry, and any other information required by the department of revenue.

116.7(2) *Only one transfer allowed.* A tax credit certificate shall only be transferred once.

116.7(3) *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. A replacement tax credit certificate may designate a different tax than the tax designated on the original tax credit certificate.

116.7(4) *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 received for the transfer of the tax credit shall not be included as income under Iowa Code chapter 422, divisions II, III, and V. 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. For more information on claiming transferred tax credits, see department of revenue rule 701—42.22(15E,422).
[**ARC 1098C**, IAB 10/16/13, effective 10/1/13]

261—116.8(15E) Vested right in the tax credit. A certificate and related tax credit issued pursuant to Iowa Code section 15E.52 shall be deemed a vested right of the original holder or any transferee thereof, and the state shall not cause either to be redeemed in such a way that amends or rescinds the certificate or that curtails, limits, or withdraws the related tax credit, except as otherwise provided in rules 261—116.6(15E) and 261—116.7(15E) or upon consent of the proper holder. A certificate issued pursuant to this rule cannot pledge the credit of the state, and any such certificate so pledged to secure the debt of the original holder or a transferee shall not constitute a contract binding the state. A taxpayer does not obtain a vested right in such a tax credit until a certificate has been issued by the authority.
[**ARC 1098C**, IAB 10/16/13, effective 10/1/13]

261—116.9(15E) Claiming the tax credits. To claim a tax credit under this chapter, a taxpayer must attach to that taxpayer's tax return a certificate issued pursuant to this chapter when the return is filed with the department of revenue. A tax credit may be claimed in the first year that a certificate is issued. 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. 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. For more information on claiming tax credits, see department of revenue rule 701—42.22(15E,422).
[**ARC 0009C**, IAB 2/8/12, effective 3/14/12; **ARC 1098C**, IAB 10/16/13, effective 10/1/13]

261—116.10(15E) Notification to the department of revenue. Upon the issuance and distribution of investment tax credits for a tax year, the authority shall promptly notify the department of revenue by providing copies of the tax credit certificates issued for such tax year to the department of revenue. Such notification shall also include, but not be limited to, the aggregate number and amount of tax credits issued for the tax year.
[**ARC 0009C**, IAB 2/8/12, effective 3/14/12; **ARC 1098C**, IAB 10/16/13, effective 10/1/13]

261—116.11(15E) Additional information. The authority may at any time request additional information and documentation from an innovation fund regarding the operations, job creation and economic impact of the fund, and the authority may use such information in preparing and publishing any reports to be provided to the governor and the general assembly.
[**ARC 0009C**, IAB 2/8/12, effective 3/14/12; **ARC 1098C**, IAB 10/16/13, effective 10/1/13]

These rules are intended to implement Iowa Code section 15E.52.

[Filed ARC 0009C (Notice ARC 9845B, IAB 11/16/11), IAB 2/8/12, effective 3/14/12]

[Filed Emergency After Notice ARC 1098C (Notice ARC 0940C, IAB 8/7/13), IAB 10/16/13, effective 10/1/13]

[Filed ARC 4512C (Notice ARC 4355C, IAB 3/27/19), IAB 6/19/19, effective 7/24/19]

CHAPTER 117
SSBCI DEMONSTRATION FUND

261—117.1(84GA,HF590) Authority. The authority for establishing rules governing the SSBCI demonstration fund under this chapter is provided in 2011 Iowa Acts, House File 590.
[**ARC 9846B**, IAB 11/16/11, effective 10/26/11]

261—117.2(84GA,HF590) Purposes, goals, and promotion.

117.2(1) *Purposes.* The SSBCI demonstration fund is established to provide financial and technical assistance to innovative entrepreneurs and businesses. The purposes of providing such assistance are to help innovative entrepreneurs overcome the challenges associated with launching new ventures, attract private capital investment, and expand the volume of high-technology prototype and concept development activities which have a clear potential to lead to commercially viable products or services within a reasonable period of time.

117.2(2) *Goals.* The fund will be used to help businesses with a high growth potential to reach a position from which they will be able to attract later-stage private sector funding and to leverage as much private investment as possible in accordance with the goals and requirements of the federal SSBCI program.

117.2(3) *Promotion.* The authority will market and promote the fund in a way that reflects the purposes of subrule 117.2(1).
[**ARC 9846B**, IAB 11/16/11, effective 10/26/11]

261—117.3(84GA,HF590) Definitions. For purposes of this chapter, unless the context otherwise requires:

"Authority" means the economic development authority.

"Award" means the provision of financial or technical assistance to a project.

"Board" means the members of the board in whom the powers of the authority are vested pursuant to Iowa Code chapter 15.

"Committee" means the technology commercialization committee created by the board.

"Financial assistance" means assistance provided only from the funds, rights, and assets legally available to the authority and includes but is not limited to assistance in the form of grants, loans, forgivable loans, and royalty agreements.

"Fund" means the SSBCI demonstration fund established in this chapter.

"Innovative business" means a business applying novel or original methods to the manufacture of a product or the delivery of a service. "Innovative business" includes a business engaged in one of the following industries classified by the NAICS:

1. Biosciences.
2. Information technologies.
3. Advanced manufacturing.

"IP" means intellectual property.

"NAICS" means the North American Industry Classification System.

"SSBCI" means the State Small Business Credit Initiative established by the United States Department of the Treasury.
[**ARC 9846B**, IAB 11/16/11, effective 10/26/11]

261—117.4(84GA,HF590) Project funding.

117.4(1) Awards shall be made on a per-project basis upon board approval. Each award shall be designed in such a way as to most effectively implement the purposes and goals of the fund as described in rule 261—117.2(84GA,HF590).

117.4(2) The board may determine the appropriate amount of financial assistance for a single project based on the merits of the project, the amount of private investment to be leveraged by the project, the amount of moneys available for purposes of the fund, and the requirements of the SSBCI program.

117.4(3) Funds awarded by the board may be used for intellectual property development and evaluation, in-depth analysis of market potential, analysis of competitive landscape, advancing proof of concept work for a scientific discovery, designing and developing prototypes, conducting research and development to attract venture capital and other financing, marketing and product promotion, hiring of key personnel, purchasing equipment, and paying construction costs.

117.4(4) Funds may not be used for university overhead expenses or for any work that was conducted prior to the term of the contract by the applicant or by any third-party consultant.

117.4(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.
[**ARC 9846B**, IAB 11/16/11, effective 10/26/11]

261—117.5(84GA,HF590) Leverage of financial assistance required. In order to be eligible for financial assistance, an applicant must demonstrate the ability to secure one dollar of private moneys for every one dollar of financial assistance received from the authority. The board shall consider the amount of private moneys leveraged that is in excess of the minimum matching amount required by this rule and shall make awards of financial assistance to those projects that most efficiently leverage the amount of moneys available in the fund.
[**ARC 9846B**, IAB 11/16/11, effective 10/26/11]

261—117.6(84GA,HF590) Eligible applicants. An eligible applicant must be located in Iowa, demonstrate the potential for high growth, and be an innovative business.
[**ARC 9846B**, IAB 11/16/11, effective 10/26/11]

261—117.7(84GA,HF590) Ineligible applicants. The following businesses are not eligible for financial assistance from the fund:

117.7(1) A business which is engaged in retail sales or provides health services.

117.7(2) A business which closes or substantially reduces its workforce by more than 20 percent at an existing operation in order to relocate substantially the same operation to another area of the state. Such a business is ineligible for financial assistance for 36 consecutive months at any of its Iowa sites from the date the new establishment opens.

117.7(3) A business that does not meet the requirements of the federal SSBCI program.
[**ARC 9846B**, IAB 11/16/11, effective 10/26/11]

261—117.8(84GA,HF590) Application and review process.

117.8(1) An eligible business must submit an application for financial and technical assistance from the fund to the Iowa Economic Development Authority, 200 East Grand Avenue, Des Moines, Iowa 50309, on a form provided by the authority. Required forms and instructions are available at this address or in electronic form on the authority's Web site.

117.8(2) To apply for financial assistance from the fund, a business shall submit an application to the authority on a form provided by the authority. The application will be reviewed by authority 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.

117.8(3) The authority may contract with third-party service providers for assistance with the evaluation and review of applications.

117.8(4) An application for assistance shall include all information required by the authority 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.

[**ARC 9846B**, IAB 11/16/11, effective 10/26/11]

261—117.9(84GA,HF590) Application selection criteria. In reviewing applications for financial assistance, the committee and the board shall consider the following criteria:

117.9(1) Intellectual property, and how the ownership of the IP is structured. More points will be awarded for greater IP control by the business, with the greatest number of points being awarded for exclusive IP ownership by the business.

117.9(2) Experience. The business's experience in productization and commercialization, and ongoing product maintenance.

117.9(3) Estimate to completion.

a. What are the work requirements; how quickly will the work 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?

117.9(4) Market research.

a. Is there a competitor?

b. How large is the market outside 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?

117.9(5) Financial requirement.

a. Have the matching and necessary funds been secured?

b. Is the amount of funds available sufficient to take the product to market?

117.9(6) Distribution. Do the channels already exist to take the product to market?

117.9(7) Expected return. Is the expected return quantified based on time to break even and long-term economic impact?

[**ARC 9846B**, IAB 11/16/11, effective 10/26/11]

261—117.10(84GA,HF590) Contract and reporting.

117.10(1) *Notice of award.* Successful applicants will be notified in writing of an award of assistance, including any conditions and terms of the approval.

117.10(2) *Contract required.* The authority 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, the procedures and remedies available if there is an event of default under the contract, and any other specific repayment provisions ("clawback" provisions) to be established on a project-by-project basis.

117.10(3) *SSBCI requirements.* The contract required pursuant to subrule 117.10(2) shall include any and all provisions necessary for compliance with federal SSBCI program requirements. An applicant shall submit any and all information required by the authority in sufficient detail to permit the authority to prepare the reports required under the federal SSBCI program.

[**ARC 9846B**, IAB 11/16/11, effective 10/26/11]

These rules are intended to implement 2011 Iowa Acts, House File 590, section 5, subsection 1, and 2011 Iowa Acts, House File 590, section 7.

[Filed Emergency ARC 9846B, IAB 11/16/11, effective 10/26/11]

CHAPTER 118
STRATEGIC INFRASTRUCTURE PROGRAM

261—118.1(15) Authority. The authority for adopting rules establishing a strategic infrastructure program is provided in Iowa Code section 15.313 and in Iowa Code section 15.106A.
[**ARC 1825C**, IAB 1/21/15, effective 2/25/15]

261—118.2(15) Purpose. The purpose of the strategic infrastructure program is to assist projects that develop commonly utilized assets that provide an advantage to one or more private sector entities or that create necessary physical infrastructure in the state, and such projects are not adequately provided by the public or private sectors.
[**ARC 1825C**, IAB 1/21/15, effective 2/25/15]

261—118.3(15) Definitions.

"Authority" means the economic development authority created in Iowa Code section 15.105.

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

"Council" means the Iowa innovation council established pursuant to Iowa Code section 15.117A, or any panel or committee composed of members of the council.

"Director" means the director of the economic development authority.

"Eligible project" means a project meeting the requirements of rule 261—118.5(15).

"Financial assistance" means the same as defined in Iowa Code section 15.102.

"Program" means the strategic infrastructure program established in this chapter.

"Strategic infrastructure" means projects that develop commonly utilized assets that provide an advantage to one or more private sector entities or that create necessary physical infrastructure in the state, and such projects are not adequately provided by the public or private sectors. Such projects may include vertical improvement developments, facilities and equipment upgrades, or the redevelopment or repurposing of underutilized property or other assets, provided that each project is intended to attract additional public or private sector investment and result in broad-based prosperity in this state.

"Vertical improvement" means the same as defined in Iowa Code section 15J.2.
[**ARC 1825C**, IAB 1/21/15, effective 2/25/15]

261—118.4(15) Program description, disbursement of funds, and contract administration.

118.4(1) *Program description.* The program established in this chapter provides financial assistance to certain strategic infrastructure projects. The board, after considering the recommendations made by the council, will determine which projects to fund and how much should be awarded to each project. The director and staff of the authority will collect and process applications from applicants, advise the council and the board as to the available program funding, and help evaluate whether a proposed project meets the requirements of the program. The council will review applications meeting the program requirements, score them according to the criteria described in rule 261—118.7(15), and make recommendations to the board as to the completeness of applications and as to which projects to fund, how much to award to each project, and the type of financial assistance to be provided. While the council's recommendations are advisory and are not binding upon the board, the board will not take final action on an award unless the council has first considered the project, scored it, and made a recommendation. The board may approve an award for a project, decline to award a project, or refer a project back to the council for further review and recommendation.

118.4(2) *Disbursement of funds.* The authority will disburse funds to a project only after a complete application has been received, an award has been recommended by the council and approved by the board, a contract has been executed between the applicant and the authority, and all applicable conditions for disbursement have been met, including the submission of documentation pertaining to the eligible expenditures. Disbursement of funds under the contract will be on a reimbursement basis for expenses incurred by the applicant as provided under the contract.

118.4(3) *Contract administration.* The authority will prepare a contract for each project receiving an award from the board. The contract will reflect the terms of the award and may include other terms and conditions reasonably necessary for implementation of the program pursuant to this chapter. Substantial amendments to a contract must be approved by the board. The board may refer substantial amendments to the council for review and recommendation. Substantial amendments include the amount of financial assistance, the length of the contract, whether to terminate the contract, and the terms of a settlement following an event of default. Other changes or amendments to the contract may be negotiated by the authority with the approval of the director.
[**ARC 1825C**, IAB 1/21/15, effective 2/25/15]

261—118.5(15) Program eligibility and application requirements. To be eligible for financial assistance under the program, an applicant shall meet all of the following requirements:

118.5(1) The applicant must describe in detail the nature, scope, design, and goals of the project, including the relationships of the entities and individuals involved, and in addition, the applicant must explain how the project fulfills the requirements of each of the subrules in this rule. The council and the board will use the description for purposes of scoring the project pursuant to rule 261—118.7(15).

118.5(2) The applicant must propose to develop a commonly utilized asset that either benefits one or more private sector entities or that creates necessary physical infrastructure in the state.

118.5(3) The applicant must propose to develop a project that is not adequately provided by the public or private sectors.

118.5(4) The applicant must propose a project that includes vertical infrastructure improvement developments, facilities and equipment upgrades, or the redevelopment or repurposing of underutilized property or other assets and must describe how and to what extent the project will attract additional public or private sector investment and how the project will result in broad-based prosperity in the state.

118.5(5) The applicant must describe the project's proposed financing structure, including the sources of funds and the proposed uses of the funds, and must propose the manner in which any financial assistance received under the program will be used.
[**ARC 1825C**, IAB 1/21/15, effective 2/25/15]

261—118.6(15) Application submittal and review process.

118.6(1) The authority will develop a standardized application process and make information on applying available to applicants with eligible projects. To apply for assistance under the program, an applicant shall submit an application to the authority. Applications may be sent to the Economic Development Authority, 200 East Grand Avenue, Des Moines, Iowa 50309. Required forms and instructions are available by contacting the authority at that address. Other information may also be found on the authority's Internet site at www.iowaeconomicdevelopment.com.

118.6(2) The board has final decision-making authority on requests for financial assistance for this program. Applications will be accepted and processed by authority staff and reviewed and scored by the council. Applications will be reviewed in the order received by the authority. The authority and the board will consider applications on a continuing basis. The board will take final action on all applications for financial assistance; however, the authority may refuse to accept incomplete applications or may refuse to accept applications because of insufficient funds. The council will score applications according to the criteria specified in rule 261—118.7(15). There is no minimum score required for funding under the program; however, a lower score indicates that the council views the project less favorably than a project with a higher score.
[**ARC 1825C**, IAB 1/21/15, effective 2/25/15]

261—118.7(15) Application scoring criteria. When applications for financial assistance under the program are reviewed, the criteria below will be considered and the application scored as described. When scoring the application according to each of the criteria below, to the extent that a proposed project involves multiple public and private sector entities, for-profit and nonprofit organizations, and economic development and educational institutions, the council will review such partnerships as

indicating that a commonly utilized asset is being proposed and therefore may award more points under each criterion. The criteria under which each application will be scored are:

118.7(1) The overall quality of the project, especially as reflected in the description and explanation submitted pursuant to subrule 118.5(1): 20 points.

For purposes of this subrule, the council will consider a project's estimated economic impact and the extent to which it contributes to the overall quality of the project. The council will also consider the structure of the proposed project and the nature of the partnerships proposed to be formed as part of the proposed project.

118.7(2) The extent to which the commonly utilized asset proposed by the project benefits one or more private sector entities and the extent to which the commonly utilized asset creates necessary physical infrastructure in the state: 20 points.

For purposes of this subrule, more points will be awarded to projects demonstrating greater benefits or benefits to more entities and to projects demonstrating more critical necessary physical infrastructure.

118.7(3) The extent to which the proposed project provides benefits that are not adequately provided by the public or private sectors: 20 points.

118.7(4) The importance of the vertical infrastructure improvement developments, facilities and equipment upgrades, or the redevelopment or repurposing of underutilized property or other assets that are proposed, the extent to which the proposed project will attract additional public or private sector investment, and the likelihood that the project will result in broad-based prosperity in the state: 20 points.

118.7(5) The sufficiency of the proposed project's financing structure, the feasibility of the sources of funds, and the appropriateness of the proposed uses of the funds: 20 points.

For purposes of this subrule, the council will consider a proposed project's overall financing gap and the total amount of funds leveraged from other sources.

[**ARC 1825C**, IAB 1/21/15, effective 2/25/15]

261—118.8(15) Notice of award and reporting.

118.8(1) *Notice of award.* Successful applicants will be notified in writing of an award of financial assistance, including any conditions and terms of the award.

118.8(2) *Reporting.* An applicant receiving assistance under the program shall submit any information reasonably requested by the authority in sufficient detail to permit the authority to prepare any reports required by the authority, the board, the general assembly or the governor's office.

[**ARC 1825C**, IAB 1/21/15, effective 2/25/15]

These rules are intended to implement Iowa Code section 15.313.

[Filed ARC 1825C (Notice ARC 1691C, IAB 10/29/14), IAB 1/21/15, effective 2/25/15]

CHAPTER 119
MANUFACTURING 4.0 TECHNOLOGY INVESTMENT PROGRAM

261—119.1(15) Authority. The authority for adopting rules establishing the manufacturing 4.0 technology investment program is provided in Iowa Code section 15.371 as enacted by 2021 Iowa Acts, Senate File 619.
[**ARC 5972C**, IAB 10/6/21, effective 9/17/21]

261—119.2(15) Purpose. The purpose of the manufacturing 4.0 technology investment program is to provide financial assistance to projects intended to lead to the adoption of, and integration of, smart technologies into existing manufacturing operations located in the state.
[**ARC 5972C**, IAB 10/6/21, effective 9/17/21]

261—119.3(15) Definitions.

"Applicant" means a business applying for assistance under the program.

"Authority" means the economic development authority created in Iowa Code section 15.105.

"Authority's website" means the information and related content found at www.iowaeda.com and may include integrated content at affiliate sites.

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

"Eligible business" means a business meeting the requirements of rule 261—119.4(15).

"Employee" means an individual filling a full-time equivalent job that is part of the payroll of the business receiving financial assistance under this program. "Employee" does not include a business's part-time, leased, or contract employees.

"Financial assistance" means assistance provided only from the funds, rights, and assets legally available to the authority and includes but is not limited to assistance in the form of grants, loans, forgivable loans, and royalty payments.

"Full-time equivalent job" or *"full-time"* means the employment of one person:

1. For 8 hours per day for a five-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, provided that the number of hours per week is at least 32 hours per week for 52 weeks per year including paid holidays, vacations, and other paid leave.

For purposes of this definition, "employment of one person" means the employment of one natural person and does not include "job sharing" or any other means of aggregation or combination of hours worked by more than one natural person.

"Manufacturing 4.0 technology investments" or *"investments"* means projects that are intended to lead to the adoption of, and integration of, smart technologies into existing manufacturing operations located in the state by mitigating the risk to the manufacturer of significant technology investments. Projects may include investments in specialized hardware, software, or other equipment intended to assist a manufacturer in increasing the manufacturer's productivity, efficiency, and competitiveness.

"Program" means the manufacturing 4.0 technology investment program established in this chapter.
[**ARC 5972C**, IAB 10/6/21, effective 9/17/21]

261—119.4(15) Program eligibility. To be eligible for financial assistance under the program, an applicant shall meet all of the following requirements:

119.4(1) The applicant must propose a manufacturing 4.0 technology investment that has not been made prior to the date of application.

119.4(2) The applicant must manufacture goods at a facility located in Iowa.

119.4(3) The applicant must have a North American industry classification system code within the manufacturing sector range 31-33.

119.4(4) The applicant must have been an established business for a minimum of three years prior to the date of application to the program. The authority will presume a business was established as of the date of incorporation or organization of the applicant entity unless an applicant demonstrates to the authority's satisfaction that the business was established earlier.

119.4(5) The applicant must derive a minimum of 51 percent of the applicant's overall revenue from the sale of manufactured goods.

119.4(6) The applicant must employ a minimum of 3 employees and no more than 75 employees across all of the applicant's locations.

119.4(7) The applicant must have an assessment of the applicant's proposed manufacturing 4.0 technology investment completed by the center for industrial research and service at Iowa state university of science and technology prior to submission of an application.

119.4(8) The applicant shall demonstrate the ability to provide matching financial support for the applicant's manufacturing 4.0 technology investment on a one-to-one basis in the form of cash. The matching financial support must be obtained from private sources.

[**ARC 5972C**, IAB 10/6/21, effective 9/17/21]

261—119.5(15) Application submittal and review process.

119.5(1) The authority will develop a standardized application process and make information on applying available on the authority's website. To apply for assistance under the program, an applicant shall submit an application to the authority in the manner prescribed by the authority. The authority will identify specific types of investments for which it intends to provide financial assistance on the application form or forms.

119.5(2) Applications will be accepted and processed by authority staff on a continuing basis, or the authority may establish application periods as announced on the authority's website. The authority may engage an outside technical review panel to complete technical reviews of applications. Applications will be reviewed in the order received by the authority.

119.5(3) The authority may refuse to accept incomplete applications or may refuse to accept applications because of insufficient funds.

119.5(4) The board, after considering the recommendations made by authority staff or a technical review panel, will determine the financial assistance award if the board determines that financial assistance should be awarded. The board has final decision-making authority on requests for financial assistance for the program. The board will take final action on all applications for financial assistance, except those rejected pursuant to subrule 119.5(3). The board may approve an award, decline to award, or refer an application back to staff or a technical review panel for further review and recommendation. The board will consider applications on a continuing basis.

119.5(5) An applicant may submit multiple applications. The maximum amount of financial assistance awarded to any eligible business under the program for all its applications shall not exceed $75,000.

119.5(6) Applicants will be notified in writing of an award of financial assistance, including any conditions and terms of the award, or of a denial of an award of financial assistance.

[**ARC 5972C**, IAB 10/6/21, effective 9/17/21]

261—119.6(15) Application scoring criteria.

119.6(1) When applications for financial assistance under the program are reviewed by authority staff or a technical review panel, the criteria below will be considered and the application scored as described. There is no minimum score required for funding under the program. However, a lower score indicates that the authority views the application less favorably than an application with a higher score.

119.6(2) The criteria under which each application will be scored are:

a. The percentage of the applicant business's revenue derived from the sale of manufactured goods: 20 points. Applicants who derive a higher percentage of revenue from the sale of manufactured goods will receive higher scores in this category.

b. The extent to which the manufacturer's proposed manufacturing 4.0 technology investment is consistent with the opportunities identified in the assessment completed by the center for industrial

research and service at Iowa state university of science and technology pursuant to subrule 119.4(7): 20 points.

c. The extent to which the investment integrates smart technologies into existing manufacturing operations: 15 points.

d. The sufficiency of the proposed investment's financing structure, the feasibility of the sources of funds, and the appropriateness of the proposed uses of the funds: 15 points.

e. The extent to which the investment will enhance an applicant's workforce: 10 points.

f. The extent to which the applicant has planned for long-term use of the manufacturing 4.0 technology investment and an overall transition to smart technologies: 10 points.

g. The extent to which the investment corresponds to the specific type of investment identified by the authority on the application form or forms: 10 points.

[**ARC 5972C**, IAB 10/6/21, effective 9/17/21]

261—119.7(15) Contract administration.

119.7(1) The authority will prepare a contract for each award approved by the board. The contract will reflect the terms of the award and may include other terms and conditions reasonably necessary for implementation of the program pursuant to this chapter.

119.7(2) Any substantive change to a proposed investment shall require an amendment to the contract. Amendments shall be requested in writing. No amendment shall be valid until approved by the board. The authority may execute nonsubstantive or corrective changes to the contract without board approval.

[**ARC 5972C**, IAB 10/6/21, effective 9/17/21]

261—119.8(15) Disbursement of funds. The authority will disburse funds for an investment only after a complete application has been received, an award has been approved by the board, a contract has been executed between the applicant and the authority, and all applicable conditions for disbursement have been met, including the submission of documentation pertaining to the eligible expenditures. Disbursement of funds under the contract will be on a reimbursement basis for expenses incurred by the applicant after the date of application and as provided under the contract.

[**ARC 5972C**, IAB 10/6/21, effective 9/17/21]

261—119.9(15) Reporting. An applicant receiving assistance under the program shall submit any information reasonably requested by the authority in sufficient detail to permit the authority to prepare any reports required by the authority, the board, the general assembly or the governor's office.

[**ARC 5972C**, IAB 10/6/21, effective 9/17/21]

These rules are intended to implement Iowa Code section 15.371 as enacted by 2021 Iowa Acts, Senate File 619.

[Filed Emergency After Notice ARC 5972C (Notice ARC 5792C, IAB 7/28/21), IAB 10/6/21, effective 9/17/21]

CHAPTERS 120 to 130
Reserved

CHAPTER 131
[Prior to 9/6/00, see 261—Ch 67]
Rescinded IAB 7/9/03, effective 8/13/03

CHAPTER 132
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]
[Renumbered IAB 7/4/07; see 261—Ch 72]

CHAPTERS 133 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.

[Filed 6/26/95, Notice 5/10/95—published 7/19/95, effective 8/23/95]
[Filed without Notice 8/18/00—published 9/6/00, effective 10/11/00]
[Filed 6/20/03, Notice 5/14/03—published 7/9/03, effective 8/13/03]

CHAPTER 164
USE OF MARKETING LOGO

[Prior to 7/19/95, see 261—Ch 55]
[Prior to 9/6/00, see 261—Ch 72]

Rescinded **ARC 7056C**, IAB 8/9/23, effective 9/13/23

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]

261—165.7(15) Applicability of the grow Iowa values financial assistance program on or after July 1, 2012.

165.7(1) Effective as of July 1, 2012, the grow Iowa values fund and financial assistance program as amended by 2009 Iowa Acts, Senate File 344, and elsewhere in these rules referred to as IVF(2009), was repealed by 2011 Iowa Acts, chapter 133. The repeal took effect on June 30, 2012.

165.7(2) For awards made on or after July 1, 2009, and on or before June 30, 2012, the rules applicable to the IVF(2009) shall be applicable for purposes of contract administration and closeout of projects.

[**ARC 0442C**, IAB 11/14/12, effective 12/19/12]

These rules are intended to implement 2011 Iowa Code Supplement chapter 15G, subchapter I.

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CHAPTERS 166 and 167
Reserved

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

CHAPTER 169
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES
[Prior to 9/6/00, see 261—Ch 100]
[Renumbered IAB 7/4/07; see 261—Ch 195]

CHAPTER 170
DEPARTMENT PROCEDURE FOR RULE MAKING
[Prior to 9/6/00, see 261—Ch 101]
[Renumbered IAB 7/4/07; see 261—Ch 196]

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 authority 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, authority 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.
[**ARC 0442C**, IAB 11/14/12, effective 12/19/12]

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.

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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 authority 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 authority 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 authority 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 authority'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 authority prior to the authority's disbursement of financial assistance. Within 30 days of receipt of the audit, the individual or business must submit to the authority a copy of the completed audit conducted by the department of natural resources or by the Iowa waste reduction center.

[**ARC 0442C**, IAB 11/14/12, effective 12/19/12]

261—172.2(15A) Violations of law. Financial assistance applications shall be reviewed by the authority 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 authority with a report detailing violations of law within the most recent consecutive three-year period prior to application. If the authority 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 authority finds that the violations did not seriously affect public health or safety or the environment, or if the authority 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 authority shall be exempt from Iowa Code chapter 17A.

[**ARC 0442C**, IAB 11/14/12, effective 12/19/12]

These rules are intended to implement Iowa Code section 15A.1.

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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) Applicability.

173.1(1) *Current programs.* This chapter shall apply as follows:

a. EZ (enterprise zone) program (261—Chapter 59). Effective as of July 1, 2014, the EZ program was repealed. See 2014 Iowa Acts, House File 2448. The rules adopted in 261—Chapter 59 continue to apply to agreements entered into prior to that date. All amendments to this chapter made on or after July 1, 2014, shall not apply to agreements entered into under the EZ program prior to that date.

b. HQJP (high quality jobs program) (261—Chapter 68). This chapter does not apply to the HQJP. Terms applicable to the HQJP are incorporated into 261—Chapter 68. Chapters referencing this subrule in 261—Part VII, additional application requirements and procedures, and 261—Part VIII, legal and compliance, apply to the HQJP as described in 261—subrule 68.1(1).

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 authority:

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).

173.1(3) *Grow Iowa values fund (IVF(2009))—transition provision.* The grow Iowa values fund and financial assistance program as amended by 2009 Iowa Acts, Senate File 344, was repealed by 2011 Iowa Acts, chapter 133. The repeal took effect on June 30, 2012. The rules pertaining to the grow Iowa values fund and financial assistance program that were in effect upon the repeal of the program shall apply to all awards made and all contracts entered into under the program after July 1, 2009, and on or before June 30, 2012, and shall continue to apply until such time as all such contracts, including all amendments to such contracts, reach the end of their effective contract periods and are closed by the authority.

[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09; **ARC 0442C**, IAB 11/14/12, effective 12/19/12; **ARC 1801C**, IAB 12/24/14, effective 1/28/15; **ARC 2038C**, IAB 6/24/15, effective 7/29/15; **ARC 6188C**, IAB 2/9/22, effective 3/16/22]

261—173.2(15) Definitions. As used in these rules unless the context otherwise requires:

"Authority" means the economic development authority created in Iowa Code section 15.105.

"Award date" means the date the board or the director approved an application for project completion assistance, other direct financial assistance, or tax incentives.

"Base employment level" means the number of full-time equivalent positions at a business, as established by the authority and a business using the business's payroll records, as of the date a business applies for tax incentives or project completion assistance. The number of jobs the business has pledged to create and retain shall be in addition to the base employment level.

"Benefits" means nonwage compensation provided to an employee. Benefits include medical and dental insurance plans, pension, retirement, and profit-sharing plans, child care services, life insurance coverage, vision insurance coverage, and disability insurance coverage. Benefits may include other nonwage compensation as determined by the board.

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

"Brownfield site" means the same as defined in Iowa Code section 15.291.

"Business" means a sole proprietorship, partnership, corporation, or other business entity 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.

"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 tax incentives or project completion assistance.

"Director" means the director of the authority.

"Due diligence committee" or *"DDC"* means the due diligence committee organized by the board pursuant to 261—Chapter 1.

"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).

2. A business's leased or contract employee, provided all of the following elements are satisfied:

- The business receiving the tax incentives or project completion 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 authority as conditions of the 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 authority, in form and content and at the frequency found acceptable to the authority, 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 authority, or its authorized representatives, to access records related to the funded project.
- The business receiving the tax incentives or project completion assistance agrees to be contractually liable to the authority for the performance or nonperformance of the third-party provider.

"Equity investment" means common or preferred corporate stock or warrants to acquire such stock, membership interests in limited liability companies, partnership interests in partnerships, or near equity. Equity is limited to securities or interests acquired only for cash and does not include securities or interests acquired at any time for services, contributions of property other than cash, or any other non-cash consideration.

"Equity-like assistance" means assistance provided in such a manner that the potential return on investment to the provider varies according to the profitability of the company assisted. Equity-like assistance includes but is not limited to: royalty arrangements; success payments; warrant arrangements; or other similar forms of investments. Equity-like assistance does not include equity investments.

"Financial assistance" means assistance provided only from the funds, rights, and assets legally available to the authority. Financial assistance includes assistance provided in the form of grants, loans, forgivable loans, float loans, equity-like assistance, and royalty payments and other forms of assistance 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 project completion assistance and tax 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, provided that the number of hours per week is at least 32 hours per week for 52 weeks per year including paid holidays, vacations, and other paid leave.

For purposes of this definition, "employment of one person" means the employment of one natural person and does not include "job sharing" or any other means of aggregation or combination of hours worked by more than one natural person.

"Grant" means an award of assistance with the expectation that, with the fulfillment of the conditions, terms and obligations of the contract with the authority for the project, repayment of funds is not required.

"Grayfield site" means the same as defined in Iowa Code section 15.291.

"Greenfield site" means a site that does not meet the definition of a brownfield site or grayfield site. A project proposed at a site located on previously undeveloped or agricultural land shall be presumed to be a greenfield site.

"ICF" means the innovation and commercialization fund created in Iowa Code section 15.412.

"IVF(2009)" means the grow Iowa values fund and financial assistance program established by Iowa Code section 15G.111 as amended by 2009 Iowa Acts, Senate File 344, section 2, and as repealed by 2011 Iowa Code Supplement section 15G.107. IVF(2009) does not include programs funded under the grow Iowa values fund prior to 2009. Rule 261—173.1(15) applies in determining which rules apply to which programs.

"Laborshed area" means the geographic area surrounding an employment center from which the employment center draws its commuting workers. The Iowa department of workforce development (IWD) determines the employment centers and defines the boundaries of each laborshed area. IWD defines laborshed areas by surveying commuters within the various zip codes surrounding an employment center, combining the zip codes into as many as three zones, and determining how many people commute from a zip code to the employment center from each zone. The zones reflect the fact that as the distance from an employment center increases, the number of people willing to commute to the employment center decreases. When determining the applicable laborshed wage, the authority will use the closest laborshed area, as determined by road distance between the employment center and the zip code of the project location.

"Laborshed wage" means the same as defined in Iowa Code section 15.327. The authority will calculate the laborshed wage as follows:

1. The most current covered wage and employment data available from IWD will be used.
2. The wage will be computed as a mean wage figure and represented in terms of an hourly wage rate.
3. Only the wages paid by employers for jobs performed within the first two zones of a laborshed area will be included.
4. The wages paid by employers in the following categories will be excluded from the calculation: government, retail trade, heath care and social assistance, and accommodations and food service. The wages paid by employers in all other categories will be included in the calculation.
5. To the extent that a laborshed area includes zip codes from states other than Iowa, the wages paid by employers in those zip codes may be included if IWD has finalized a data-sharing agreement with the state in question and has received the required data.
6. Only those wages within two standard deviations from the mean wage will be included.

"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 conditions of the award. "Loan" includes deferred loans, forgivable loans, and float loans. 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 (not to exceed 30 months) made from obligated but unexpended moneys.

"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. The specific date on which the maintenance period ends will be established by contract between the authority and the business. The maintenance period completion date will be a date on or after the project completion date and will be used to establish the period of time during which the project, the created

jobs, and the retained jobs must be maintained. Rule 261—187.3(15) provides standard durations for project completion and maintenance periods.

"Project" means an activity or set of activities directly related to the start-up, location, modernization, or expansion of a business, and proposed in an application by a business, that will result in the accomplishment of the goals of the program.

"Project completion," in the case of the EZ program and HQJP, 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 assistance" means financial assistance or technical assistance provided to an eligible business in order to facilitate the start-up, location, modernization, or expansion of the business in this state and provided in an expedient manner to ensure the successful completion of the start-up, location, modernization, or expansion project.

"Project completion date" means the date by which a recipient of incentives or assistance has agreed to meet all the terms and obligations contained in an agreement with the authority. The specific date on which the project completion period ends will be established by contract between the authority and the business. The project completion date will be a date on which the project must be completed, all incented jobs must be created or retained, and all other applicable requirements must be met. Rule 261—187.3(15) provides standard durations for project completion and maintenance periods.

"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 laborshed wage for an eligible business. The qualifying wage thresholds for the authority's programs are described in 261—Chapter 174.

"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. The authority may require a business to verify that a job is at risk. Such verification may include the signed statement of an officer of the business, documentation that the business is actively exploring other sites for the project, or any other information the authority may reasonably require during the application review process to establish that a job is at risk.

"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.

"Technology commercialization committee" means the committee organized by the board pursuant to 261—Chapter 1.

[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09; **ARC 0442C**, IAB 11/14/12, effective 12/19/12; **ARC 1801C**, IAB 12/24/14, effective 1/28/15]

These rules are intended to implement Iowa Code chapters 15 and 17A and 2011 Iowa Code Supplement chapter 15G, subchapter I.

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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) Applicability. This chapter is applicable to the programs identified in 261—173.1(15).
[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09; **ARC 0442C**, IAB 11/14/12, effective 12/19/12]

261—174.2(15) Qualifying wage threshold calculations.

174.2(1) *Annual updates.* The authority will update the qualifying wage thresholds described in this chapter annually each fiscal year. The thresholds will take effect on September 1 of each fiscal year and remain in effect until August 31 of the following fiscal year.

174.2(2) *Applicability to applications.* The qualifying wage threshold applicable to a project is the threshold in effect on the date the fully completed project application for the applicable program is received by the authority. If such an application is received but not acted upon by the board before the qualifying wage thresholds are updated, the thresholds in effect on the date the application was received will remain in effect for a period of three months notwithstanding that the thresholds are subsequently updated. The authority shall have sole discretion in determining whether an application is fully completed.

174.2(3) *Phase-in of large increases.* Notwithstanding the definition of laborshed wage in 261—Chapter 173, if the authority updates qualifying wage thresholds pursuant to subrule 174.2(1) and determines that, after calculation by IWD, the laborshed wage of a laborshed area would increase by more than one dollar per hour, the authority will limit the amount of that laborshed area's increase for that annual update to one dollar per hour. This subrule will be applied at each annual update pursuant to subrule 174.2(1) and will be applied by measuring the result of the calculation described in the definition of laborshed area against the most recent qualifying wage threshold published pursuant to subrule 174.2(1). Thus, this subrule will be applied in such a manner as to phase in the full amount of an earlier increase over more than one subsequent update. For example, if, at one annual update, a laborshed wage would increase by three dollars per hour over the current qualifying wage threshold, the authority will limit the amount of the increase in that first annual update to one dollar. But if, at the second annual update, the laborshed wage calculation performed pursuant to 261—Chapter 173 remains what it was at the time of the first annual update, then the authority will apply up to one additional dollar at the second annual update, and so on.

174.2(4) *Effective date and applicability.* The laborshed-based qualifying wage thresholds were effective beginning on July 1, 2012, and the authority will apply the provisions of this rule to all qualifying wage threshold calculations made or updated on or after that date.
[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09; **ARC 0442C**, IAB 11/14/12, effective 12/19/12; **ARC 6188C**, IAB 2/9/22, effective 3/16/22; **ARC 6637C**, IAB 11/16/22, effective 12/21/22]

261—174.3(15) Qualifying wage threshold requirements—prior to July 1, 2009. The following 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 authority.

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; **ARC 0442C**, IAB 11/14/12, effective 12/19/12; **ARC 2038C**, IAB 6/24/15, effective 7/29/15; **ARC 6637C**, IAB 11/16/22, effective 12/21/22]

261—174.4(15) Reserved.

261—174.5(15) Qualifying wage threshold requirements—on or after July 1, 2009, and on or before June 30, 2012.

174.5(1) 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(2) 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 authority 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; **ARC 0442C**, IAB 11/14/12, effective 12/19/12; **ARC 2038C**, IAB 6/24/15, effective 7/29/15; **ARC 6637C**, IAB 11/16/22, effective 12/21/22]

261—174.6(15) Qualifying wage threshold requirements—effective on or after July 1, 2014. As of July 1, 2014, the qualifying wage thresholds described in this rule shall be in effect.

174.6(1) *Enterprise zone (EZ) program.* The qualifying wage threshold requirement applicable to the EZ program is 90 percent of the laborshed wage. The wage threshold described in this subrule continues to apply to agreements entered into before July 1, 2014. However, no new agreements may be entered into on or after July 1, 2014.

174.6(2) *High quality jobs program (HQJP).* The qualifying wage threshold requirement applicable to HQJP is 120 percent of the laborshed wage unless subrule 174.6(3) or 174.6(4) applies to a project.

174.6(3) *HQJP projects in distressed areas.*

a. Notwithstanding subrule 174.6(2), the qualifying wage threshold requirement applicable to an HQJP project may be lowered to 100 percent of the laborshed wage if the eligible business is located in an economically distressed area.

b. For purposes of this subrule, "economically distressed area" means a county that meets at least three of the following criteria:

(1) The county ranks among the 33 Iowa counties with the highest average monthly unemployment rates for the most recent 12-month period based on the applicable local area unemployment statistics produced by the United States Department of Labor, Bureau of Labor Statistics.

(2) The county ranks among the 33 Iowa counties with the highest average annualized unemployment rates for the most recent five-year period based on the applicable local area unemployment statistics produced by the United States Department of Labor, Bureau of Labor Statistics.

(3) The county ranks among the 33 Iowa counties with the lowest annual average weekly wages based on the most recent quarterly census of employment and wages published by the United States Department of Labor, Bureau of Labor Statistics.

(4) The county ranks among the 33 Iowa counties with the highest family poverty rates based on the most recent American Community Survey five-year estimate released by the United States Census Bureau.

(5) The county ranks among the 33 Iowa counties with the highest percentage population loss. Percentage population loss shall be calculated by comparing the most recent population estimate produced by the United States Census Bureau to the most recent decennial census released by the United States Census Bureau, except for a calendar year in which the decennial census data is released, in which case the percentage population loss shall be calculated by comparing the population in the decennial census released that calendar year to the population in decennial census released ten years prior.

(6) The county ranks among the 33 Iowa counties with the highest percentage of persons 65 years of age or older based on the most recent American Community Survey five-year estimate released by the United States Census Bureau.

c. The authority may designate a county that does not meet at least three of the criteria in paragraph 174.6(3)*"b"* as an economically distressed area if a business located in the county experiences a layoff or a closure that has a significant impact on a community within the county.

(1) Factors the authority will consider in determining whether a layoff or closure has a significant impact on a community within the county include, but are not limited to, total number of employees impacted, percentage of the applicable laborshed impacted, number of employees impacted as a percentage of population, current unemployment rate, and unemployment rate including the employees affected by a layoff or closure.

(2) A city or county shall request designation of a county as an economically distressed area pursuant to this paragraph in writing. Such requests are subject to approval by the board. Requests may be made simultaneously with a project application that would qualify for a lower qualifying wage threshold requirement pursuant to this subrule if the request is approved.

d. The authority will update the list of economically distressed areas, including those designated pursuant to paragraph 174.6(3)*"c,"* according to the same schedule as the qualifying wage thresholds are updated pursuant to subrule 174.2(1) and will apply the provisions of subrule 174.2(2) to the list of economically distressed areas in the same manner.

174.6(4) *HQJP projects at brownfield or grayfield sites.*

a. Notwithstanding subrule 174.6(2), the qualifying wage threshold requirement applicable to an HQJP project may be lowered to 90 percent of the laborshed wage if the eligible business is located at a brownfield site. The qualifying wage threshold for a brownfield site may be lowered to 90 percent regardless of where the project site is located as long as the project meets the requirements of a brownfield site.

b. Notwithstanding subrule 174.6(2), the qualifying wage threshold requirement applicable to an HQJP project may be lowered to 100 percent of the laborshed wage if the eligible business is located at a grayfield site. The qualifying wage threshold for a grayfield site may be lowered to 100 percent regardless of where the project site is located as long as the project meets the requirements of a grayfield site.

c. The authority may consult with the brownfield redevelopment advisory council established pursuant to Iowa Code section 15.294 in order to make a determination as to whether a project site meets the requirements of a brownfield site or grayfield site for purposes of this subrule. The determination as to whether a project site qualifies as a brownfield or grayfield site shall be within the discretion of the authority. In making such determinations, the authority will attempt to apply the same definition in substantially the same manner as similar definitions are applied by the brownfield redevelopment advisory council.

d. A project that does not meet the requirements of a brownfield site or grayfield site will be presumed to be a greenfield site.
[**ARC 0442C**, IAB 11/14/12, effective 12/19/12; **ARC 1801C**, IAB 12/24/14, effective 1/28/15; **ARC 2038C**, IAB 6/24/15, effective 7/29/15; **ARC 6637C**, IAB 11/16/22, effective 12/21/22]

261—174.7(15) Job obligations. Jobs that will be created or retained as a result of a project's receiving state or federal financial assistance, project completion assistance, or tax incentives from the authority 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 contained in the contract between the authority 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; **ARC 0442C**, IAB 11/14/12, effective 12/19/12]

261—174.8(15) 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

[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09; **ARC 0442C**, IAB 11/14/12, effective 12/19/12; **ARC 2038C**, IAB 6/24/15, effective 7/29/15; **ARC 6637C**, IAB 11/16/22, effective 12/21/22]

261—174.9(15) Sufficient benefits requirement—on or after July 1, 2009.

To be eligible to receive state financial assistance, project completion assistance, or tax incentives, applicants shall offer sufficient benefits to each FTE permanent position. The applicable sufficient benefits requirement shall be periodically approved by the board to reflect the most current benefits package typically offered by employers.
[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09; **ARC 0442C**, IAB 11/14/12, effective 12/19/12; **ARC 6637C**, IAB 11/16/22, effective 12/21/22]

261—174.10(15) Capital investment, qualifying investment for tax credit programs, and investment qualifying for tax credits.

174.10(1) *Capital investment.* The authority reports on the amount of capital investment involved with funded projects. This rule lists the categories of expenditures that are included when the authority 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; **ARC 0442C**, IAB 11/14/12, effective 12/19/12]

These rules are intended to implement Iowa Code chapters 15 and 15E.

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CHAPTER 175
APPLICATION REVIEW AND APPROVAL PROCEDURES

261—175.1(15) Applicability. This chapter shall apply to the programs listed in rule 261—173.1(15) 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; **ARC 0442C**, IAB 11/14/12, effective 12/19/12]

261—175.2(15) Application procedures for programs administered by the authority.

175.2(1) *Financial assistance programs.* The authority administers a number of programs that provide direct financial assistance of various types for approved projects. This includes ongoing administration of agreements executed under certain prior programs, such as the grow Iowa values fund and the power fund, that have been repealed. The authority will receive applications for direct assistance under current programs and will continue to receive amendment requests for contracts entered into under former programs. Beginning on July 1, 2012, most new applications for direct assistance will be received as requests for project completion assistance under HQJP.

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 authority administers tax credit programs that provide tax incentives for approved projects. The authority 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 authority administers federal programs including, but not limited to, the CDBG program. EDSA is the job creation component of the CDBG program. The authority 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 authority administers other state programs. The authority 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 an authority program shall submit an application to the authority. The applicant shall comply with the authority'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 authority's Web site at www.iowalifechanging.com or at the authority'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; **ARC 9754B**, IAB 9/21/11, effective 10/26/11; **ARC 0442C**, IAB 11/14/12, effective 12/19/12]

261—175.3(15) 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 which the authority shall also incorporate into each agreement as continuing obligations and conditions for the receipt of incentives or assistance under the program:

175.3(1) *Environmental and worker safety.* The applicant shall submit to the authority 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 comply with the provisions of 261—subrule 68.2(2) regarding relocations within the state and reductions in operations.

175.3(3) *Competition.* The proposed project shall not negatively impact other businesses in competition with the business being considered for assistance. The authority 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 authority 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 authority.

[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09; **ARC 9754B**, IAB 9/21/11, effective 10/26/11; **ARC 0442C**, IAB 11/14/12, effective 12/19/12]

261—175.4(15) Review and approval of applications.

175.4(1) *Staff review for eligibility.* Applications received by the authority 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 authority 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 authority, the authority 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.* Authority 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) *Application approval procedures.*

a. *Approval.* Application approval procedures must comply with the statutory requirements for each individual program or funding source and the applicable administrative rules. In general, the approval process begins with review of a completed application by authority staff. After review by staff, the application may be sent to a committee for further recommendation followed by final action on the application by the board or by the director, as the case may be. The director may take action on any application or activity that is not specifically identified as requiring board action. The authority's various programs and the application procedures are described in paragraph *"c,"* which contains the applicable recommending and approving entities by funding source and program.

b. Key to table.

ACE – The accelerated career education program job credits authorized under Iowa Code chapter 260G.

ASSISTIVE – The assistive device tax credits authorized in Iowa Code section 422.33.

BRN – The brownfield redevelopment advisory council established in Iowa Code section 15.294.

BROWN – Redevelopment tax credits for brownfield and grayfield sites and the brownfield redevelopment fund as established in Iowa Code chapter 15.

CDBG – Federal community development block grant funded programs.

DDC – Due diligence committee organized by the board pursuant to 261—Chapter 1.

EDSA – The economic development set aside component of the CDBG program established in 261—Chapter 23.

ETAP – The export trade assistance program established in 261—Chapter 72.

EZ – Enterprise zone program as established in Iowa Code chapter 15E, including both the business and housing development tax credits.

HQJP – High quality jobs program as established in Iowa Code chapter 15, including both tax incentives and project completion assistance.

INNOVATION – Programs related to innovation, commercialization, and targeted industries development, including the programs described in Iowa Code section 15.411 and the program rules in 261—Part V.

NSP – Neighborhood stabilization program as established in 261—Chapter 27.

TCC – Technology commercialization committee organized by the board pursuant to 261—Chapter 1.

TJWTC – Targeted jobs withholding tax credit program for pilot project cities established in Iowa Code section 403.19A.

WORKFORCE – Workforce housing tax incentives program established pursuant to Iowa Code section 15.351 et seq., as enacted by 2014 Iowa Acts, House File 2448.

c. Recommendation and approval entities for state and federal programs. The application approval process for applications for tax incentives, project completion assistance, other financial assistance, or other benefits under the authority's various programs is as follows:

PROGRAM	STATE/FEDERAL	RECOMMENDATION BY	FINAL DECISION BY
HQJP	State	DDC	Board
EZ (Business)	State	DDC	Board
EZ (Housing)	State		Director
INNOVATION	State	TCC	Board
ASSISTIVE	State		Director
EDSA	Federal	DDC	Board
CDBG	Federal		Director
NSP	Federal		Director
BROWN	State	BRN	Director
ETAP	State		Director
ACE	State		Director
TJWTC	State	DDC	Board
WORKFORCE	State		Director

[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09; **ARC 9754B**, IAB 9/21/11, effective 10/26/11; **ARC 0442C**, IAB 11/14/12, effective 12/19/12; **ARC 1801C**, IAB 12/24/14, effective 1/28/15]

261—175.5(15) Local match requirements for project awards.

175.5(1) *Requirements.* An applicant seeking tax incentives or assistance under one of the programs subject to this chapter shall include a local match for the project. The amount of the local match shall be as follows:

a. For projects seeking direct assistance under any program except EDSA, the amount of the local match shall be 20 percent of the amount of direct financial assistance requested. For projects seeking direct financial assistance under EDSA, the amount of the local match shall be 10 percent of the amount requested.

b. For projects seeking tax incentives, the local match shall be one of the following:

(1) A tax abatement or exemption for the project as provided under Iowa Code chapter 427B. The amount of such a local abatement or exemption will be determined according to the period of partial exemption described in Iowa Code section 427B.3.

(2) Any other acceptable form of local match, as described in this rule, provided the amount of such match is equal to or greater than the value of the tax abatement or exemption described in subparagraph (1).

c. For projects seeking both direct assistance and tax incentives, the amount of local match will be based on the amount required for each form of assistance.

175.5(2) *Entities that may provide a local match.* When a local match is required, the match may come from a local government entity, a local development organization or chamber of commerce, a utility company, a local nonprofit entity such as a foundation, institution, or endowment, or a council of government.

175.5(3) *Acceptable forms of local match.* The following types of contributions to a project qualify as acceptable forms of local match:

a. Cash contributions such as grants, loans, forgivable loans, gifts, and endowments.

b. Revolving loan funds provided that if a revolving loan fund is the only form of local match the interest rate and term match the terms of the direct assistance to be provided by the authority.

c. Tax abatement or exemption.

d. Industrial property tax exemption.

e. Tax increment financing, including rebates.

f. Bond financing, including general obligation bonds, tax increment financing bonds, and revenue bonds.

g. Direct investment in infrastructure that supports a business such as water and sewer extensions, gas and electric service, or street improvements.

h. Differentials in space or building costs such as subsidized building acquisitions or lease costs.

i. Differentials in rates provided by service providers, including water and sewer service, electric service, and gas or other services.

175.5(4) *Exception.* If a project is seeking only tax incentives and the project will not increase local tax revenues, then a local match is not required.

[**ARC 0442C**, IAB 11/14/12, effective 12/19/12; **ARC 1801C**, IAB 12/24/14, effective 1/28/15]

These rules are intended to implement Iowa Code chapters 15 and 15E and 2011 Iowa Code Supplement chapter 15G, subchapter I.

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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 authority shall prepare a contract that 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 authority; 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. The contract shall include the requirements that must be met to confirm eligibility pursuant to the program and the requirements that must be maintained throughout the period of the contract in order to retain the incentives or financial assistance received.

187.2(3) *Contract-signing deadline.* Successful applicants will be required to execute an agreement with the authority within 120 days of the authority's or board's approval of an award. Failure to do so may result in action by the entity that approved the award (the authority 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 authority 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; **ARC 0442C**, IAB 11/14/12, effective 12/19/12; **ARC 1573C**, IAB 8/20/14, effective 9/24/14]

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). A business that was in compliance with its maintenance obligations as of March 1, 2020, but not in compliance during the COVID-19 impacted period described below, may request, and the director may approve, a change to the maintenance period completion date if the business demonstrates to the authority's satisfaction that it failed to comply because of the COVID-19 pandemic. The business shall describe the impact of the pandemic on its ability to comply in such form and content acceptable to the authority. For the purposes of this subrule, "COVID-19 impacted period" means the period between March 2, 2020, and June 30, 2021. The board shall have the authority to extend the COVID-19 impacted period beyond June 30, 2021, if the board determines such extension is justified by continued widespread impacts on the ability of businesses participating in the program to comply with maintenance obligations because of COVID-19.

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 authority 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 (all components)	3 years	2 more years	5 years
High Quality Jobs Program	3 years	2 more years	5 years
Enterprise Zone Program	3 years	2 more years	5 years

187.3(5) Notwithstanding the standard project completion period and maintenance period lengths described in subrule 187.3(4), the authority may vary the length of the periods provided that the project completion period will not be less than three years and the total contract length will not be less than five years.

[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09; **ARC 0442C**, IAB 11/14/12, effective 12/19/12; **ARC 5624C**, IAB 5/19/21, effective 6/23/21]

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) *Contract amendments.*

a. General. In general, the amendment process for both awards and contracts mirrors the application process. That is, the same entity that recommended the initial application will also recommend the amendment, and the same entity that had final approval of the initial application will have final approval of the amendment. As with awards, contract amendments must comply with the statutory requirements for each individual program or funding source and the applicable administrative rules. In general, the amendment process begins with review of an amendment request by authority staff. After review by staff, the amendment may be sent to a committee for further recommendation followed by final action on the amendment by the board or by the director, as the case may be. The director may take action on any amendment that is not specifically identified as requiring board action. The authority's various programs and the amendment procedures are described in paragraph 187.4(2)*"c,"* which contains the applicable recommending and approving entities by funding source and program.

b. Key to table. ACE – The accelerated career education program job credits authorized under Iowa Code chapter 260G.

ASSISTIVE – The assistive device tax credits authorized in Iowa Code section 422.33.

BRN – The brownfield redevelopment advisory council established in Iowa Code section 15.294.

BROWN – Redevelopment tax credits for brownfield and grayfield sites and the brownfield redevelopment fund as established in Iowa Code chapter 15.

CDBG – Federal community development block grant funded programs.

DDC – Due diligence committee organized by the board pursuant to 261—Chapter 1.

EDSA – The economic development set aside component of the CDBG program established in 261—Chapter 23.

ETAP – The export trade assistance program established in 261—Chapter 72.

EZ – Enterprise zone program as established in Iowa Code chapter 15E, including both the business and housing development tax credits.

FILM – The film and video project promotion program tax credits available under the now repealed Iowa Code section 15.393.

GIVF – The grow Iowa values fund and financial assistance program established pursuant to the now repealed Iowa Code chapter 15G, including all prior versions and funding sources of the program.

HQJP – High quality jobs program, as established in Iowa Code chapter 15, including both tax incentives and project completion assistance.

INNOVATION – Programs related to innovation, commercialization, and targeted industries development, including the programs described in Iowa Code section 15.411 and the program rules in 261—Part V.

LCG – Loan and credit guarantee program as established in the now repealed Iowa Code chapter 15E, division XX.

NSP – Neighborhood stabilization program as established in 261—Chapter 27.

TCC – Technology commercialization committee organized by the board pursuant to 261—Chapter 1.

TJWTC – Targeted jobs withholding tax credit program for pilot project cities established in Iowa Code section 403.19A.

TSB – Targeted small business advisory council established in Iowa Code section 15.247(8).

TSB LOAN – The targeted small business financial assistance program established in Iowa Code section 15.247.

c. Recommendation and approval entities for state and federal programs. The contract amendment process for tax incentives, project completion assistance, other financial assistance, or other benefits under the authority's various programs is as follows:

PROGRAM	STATE/FEDERAL	RECOMMENDATION BY	FINAL DECISION BY
HQJP	State	DDC	Board
GIVF	State	DDC	Board
EZ (Business)	State	DDC	Board
EZ (Housing)	State		Director
INNOVATION	State	TCC	Board
LCG	State	DDC	Board
FILM	State		Director
ASSISTIVE	State		Director
EDSA	Federal	DDC	Board
CDBG	Federal		Director
NSP	Federal		Director
HOME	Federal		Director
BROWN	State	BRN	Director
TSB LOAN	State	TSB	Director
ETAP	State		Director
ACE	State		Director
TJWTC	State		Director

d. Exceptions. Notwithstanding paragraph 187.4(2)*"c,"* the director may approve contract amendments for the targeted industries internship program consistent with Iowa Code section 15.106C, or a change to the maintenance period completion date for a business impacted by the COVID-19 pandemic as described in subrule 187.3(1), without board approval.

187.4(3) *Amendments and other requests the authority is authorized to implement.* The authority 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 authority'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; **ARC 0442C**, IAB 11/14/12, effective 12/19/12; **ARC 5624C**, IAB 5/19/21, effective 6/23/21]

261—187.5(15) Default.

187.5(1) *Events of default.* The authority may, for cause, determine that a recipient is in default under the terms of the contract. The reasons for which the authority 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 authority.

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.

k. Failure of the recipient to comply with any other provision of the agreement required pursuant to Iowa Code section 15.330 or 15.330A.

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 authority 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 authority 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) *Authority actions upon default—direct financial assistance programs.*

a. The authority will take prompt, appropriate, and aggressive debt collection action to recover any funds misspent by recipients.

b. If the authority determines that the recipient is in default, the authority 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 authority will notify the recipient of the amount to be repaid to the authority. 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 authority may finalize the repayment plan with the recipient.

d. The authority 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 187.5(3)*"f."*

e. If the authority or board refers defaulted contracts to outside counsel for collection, then the terms of the agreement between the authority 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 table below describes 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 authority.

PROGRAM	STATE/FEDERAL	RECOMMENDATION BY	FINAL DECISION BY
HQJP	State	DDC	Board
GIVF	State	DDC	Board
EZ (Business)	State	DDC	Board
EZ (Housing)	State		Director
INNOVATION	State	TCC	Board
LCG	State	DDC	Board
FILM	State		Director
ASSISTIVE	State		Director
EDSA	Federal	DDC	Board
CDBG	Federal		Director
NSP	Federal		Director
HOME	Federal		Director
BROWN	State	BRN	Director
TSB LOAN	State	TSB	Director
ETAP	State		Director
ACE	State		Director
TJWTC	State	DDC	Board

187.5(4) *Authority actions upon default—tax credit programs.* If the authority determines that an event of default has occurred under the contract and that state tax incentives are required to be repaid, the eligible business and the department of revenue will both be notified of the event of default and of the required repayment amount. If the contract provided for local tax incentives, the community where the project is located will also be notified of the default. In the case of state tax incentives, the department of revenue will undertake collection efforts. In the case of local tax incentives, the local community will undertake collection efforts.

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. If the business is an entity that has elected pass-through taxation status for income tax purposes, the department of revenue may undertake collection efforts against members, individuals, or shareholders to whom the tax incentives were passed through.

b. *Calculation of repayment due for a business.* If the authority, 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 the incentives received.

(1) Job creation shortfall. If a business does not meet its job creation requirement or fails to maintain the required number of jobs, the repayment amount shall be the same proportion as the amount of the shortfall in created jobs. For example, if the business creates 50 percent of the jobs required, the business shall repay 50 percent of the incentives received.

(2) Capital investment shortfall. If a business does not meet the capital investment requirement, the repayment amount shall be the same proportion as the amount of the shortfall in required capital investment. For example, if the business meets 75 percent of the amount of required capital investment, the business shall repay 25 percent of the amount of the incentives received.

(3) Job creation and capital investment shortfalls. If a business has a shortfall in both capital investment and job creation requirements, the repayment amount shall be the same proportion as the

greater of the two shortfalls. For example, if a business creates 50 percent of the required jobs and meets 75 percent of the required capital investment, the business shall be required to repay 50 percent of the amount of the incentives received.

(4) Wages and benefits. Notwithstanding any other provision in this subrule, if a business fails to comply with the wage and benefit requirements of the contract, the business shall be required to repay all of the incentives received during the year in which the business was not in compliance with the wage and benefit requirements of the contract.

(5) Minimum eligibility. Notwithstanding any other provision in this subrule, if a program requires a minimum amount of job creation or capital investment in order to qualify for the program and a business fails to meet such minimum eligibility, the business shall repay all of the incentives received.

(6) Definitions. For purposes of this subrule, "incentives received" includes both amounts claimed from the department of revenue or the local community and any future incentives that remain unclaimed as of the date of default. "Capital investment" means the qualifying investment or investment qualifying for tax credits, as specified in the required contract.

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 the program pursuant to Iowa Code section 15.330 or 15E.196. The value of state incentives provided under the program shall include all 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 authority 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 authority, in consultation with the city or county, may elect to grant the business a one-year extension period to meet the requirements. Additional extensions may be granted at the board's discretion.

[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09; **ARC 0442C**, IAB 11/14/12, effective 12/19/12; **ARC 1373C**, IAB 3/19/14, effective 2/24/14; **ARC 1573C**, IAB 8/20/14, effective 9/24/14; **ARC 6188C**, IAB 2/9/22, effective 3/16/22]

261—187.6(15) Compliance cost fees. An eligible business that executes a contract required pursuant to this chapter is subject to the imposition of certain compliance cost fees as provided in this rule.

187.6(1) *One-time fee for closing costs.* After execution of the contract and prior to the issuance of a tax incentive certificate or the disbursement of financial assistance, an eligible business shall remit to the authority a one-time compliance cost fee in the amount of $500.

187.6(2) *Ongoing fees based on claims.* For each contract with an aggregate tax incentive value of $100,000 or greater, the business shall remit a compliance cost fee equal to one-half of 1 percent of the value of the tax incentives claimed pursuant to the agreement. The fee required pursuant to this subrule shall be due and payable upon the filing of the business's annual tax return for each tax year in which the business claims incentives under the required contract. The authority will coordinate with the department of revenue to determine which businesses claim incentive benefits each year and will invoice each business accordingly. The requirement to pay the fee required under this subrule shall continue for the duration of the applicable carryforward period of the tax incentives notwithstanding the duration of the other contract requirements.

187.6(3) *Applicability.* This rule applies to contracts entered into under the high quality jobs program and the enterprise zone program.
[**ARC 1573C**, IAB 8/20/14, effective 9/24/14]

These rules are intended to implement Iowa Code chapters 15 and 15E.

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[Filed ARC 6188C (Notice ARC 6046C, IAB 11/17/21), IAB 2/9/22, effective 3/16/22]

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 authority 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. On-site or remote monitoring will be conducted at the end of the maintenance period.
[**ARC 0442C**, IAB 11/14/12, effective 12/19/12; **ARC 6188C**, IAB 2/9/22, effective 3/16/22]

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 authority has established as the job base for a project based on payroll information provided by the business. 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 will include the number of full-time employees employed at the project location. It may include the business's full-time employees as identified by the authority who are employed in this state but are not employed at the project location.

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 authority 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 or at locations identified by the authority as indicated in subrule 188.4(1) (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 or at locations identified by the authority as indicated in subrule 188.4(1) 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 or employer ID 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 authority.

[**ARC 0442C**, IAB 11/14/12, effective 12/19/12; **ARC 6188C**, IAB 2/9/22, effective 3/16/22]

261—188.5(15) Job counting using base employment analysis. The authority will count jobs to be created or retained as part of a funded project using a base employment analysis. At the time of application, the business's employment base will be established using payroll records pursuant to subrule 188.4(4). The authority will determine 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 employment numbers as compared to the business's employment base will be collected and analyzed by the authority 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 maintenance period completion 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 or at other Iowa locations as identified at the time of application 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 or at other Iowa locations as identified at the time of application 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) Following is an example of the format that the authority will use for job counting and tracking using the base employment method.

JOB OBLIGATIONS Project Completion Date: Project Maintenance Date:	Employment Base	Jobs to Be Created	Total Job Obligations
Total employment at project location	1	6	8
Average wage of total employment at project location	2		
Qualifying wage (per hr)	3		
Number of jobs at or above qualifying wage	4	7	9
Average wage of jobs at or above qualifying wage	5		

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 in 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 applicable 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 number of jobs identified in Cell 1 that meets or exceeds the wage reflected in Cell 3. This number is calculated using the payroll documents. 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 since all jobs existing at the project site may not be considered retained.
5. The number entered in this cell is the average wage of all FTEs identified in Cell 4. This number is calculated using the payroll documents.
6. The number entered in this cell includes the number of "created" jobs, as well as the number of created "other" jobs.
7. The number entered in this cell is the number of "created" jobs in the project.
8. The number entered in this cell is the sum of Cell 1 and Cell 6.
9. The number entered in this cell is the sum of Cell 4 and Cell 7.

[**ARC 0442C**, IAB 11/14/12, effective 12/19/12; **ARC 6188C**, IAB 2/9/22, effective 3/16/22]

261—188.6(15) Wage determination for contract compliance purposes.

188.6(1) *Applicability.* This rule shall apply for purposes of administering contracts that require a determination as to the wage-based compensation provided to employees.

188.6(2) *Definition.* As used in the authority's contracts, unless the context otherwise requires, "wage" shall mean monetary compensation, represented in terms of an hourly rate, paid by an employer to an employee for work or services provided, typically on a weekly or biweekly basis.

188.6(3) *Determination of wages for contract administration purposes.* When determining wages for contract administration purposes, the wage will include only the regular hourly rate that serves as the base level of compensation. The wage will not include nonregular forms of compensation such as bonuses, unusual overtime pay, commissions, stock options, pensions, retirement or death benefits, unemployment benefits, life or other insurance, or other fringe benefits.

[**ARC 0442C**, IAB 11/14/12, effective 12/19/12]

These rules are intended to implement Iowa Code chapters 15 and 15E and 2011 Iowa Code Supplement chapter 15G, subchapter I.

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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 authority, in form and content acceptable to the authority, about the status of the funded project. Such reports shall include, but not be limited to, data about base employment, qualifying wages, benefits, project costs, capital investment, and compliance with the contract.
[**ARC 0442C**, IAB 11/14/12, effective 12/19/12]

261—189.2(15) January 31 report by authority to legislature. The authority's legal and compliance team will use the data it collects from businesses to prepare a report on the programs covered in 261—Chapter 173 to be included in the authority's annual report to the general assembly.
[**ARC 7970B**, IAB 7/15/09, effective 7/1/09; **ARC 8145B**, IAB 9/23/09, effective 10/28/09; **ARC 0442C**, IAB 11/14/12, effective 12/19/12]

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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 authority at the Director's Office, Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315, Attn: Legal Counsel. Petitions for rule making may be delivered, mailed, or sent by email or other electronic means reasonably calculated to reach the intended recipient. A petition is deemed filed when it is received by the authority. The authority must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the authority 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 IOWA ECONOMIC DEVELOPMENT AUTHORITY	
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 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 authority may deny a petition because it does not substantially conform to the required form.

[**ARC 5691C**, IAB 6/16/21, effective 7/21/21]

261—197.2(17A) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The authority may request a brief from the petitioner or from any other person concerning the substance of the petition.

[**ARC 5691C**, IAB 6/16/21, effective 7/21/21]

261—197.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the address indicated in rule 261—197.1(17A).

[**ARC 5691C**, IAB 6/16/21, effective 7/21/21]

261—197.4(17A) Authority consideration.

197.4(1) *Meeting.* Upon request by the petitioner in the petition, the authority shall schedule a brief and informal meeting between the petitioner and authority staff to discuss the petition. The authority may request the petitioner to submit additional information or argument concerning the petition. The authority 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 authority 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 authority 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 authority mails or delivers the required notification to petitioner. The authority shall submit the petition and the disposition of the petition to the administrative rules review committee.

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 rejection of the petition.

[**ARC 5691C**, IAB 6/16/21, effective 7/21/21]

These rules are intended to implement Iowa Code section 17A.7.

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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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[Filed 8/22/07, Notice 7/4/07—published 9/26/07, effective 10/31/07]

CHAPTER 199
UNIFORM WAIVER RULES

[Prior to 9/6/00, see 261—Ch 104]
[Prior to 7/4/07, see 261—Ch 173]

261—199.1(17A,15) Applicability. This chapter outlines a uniform process for the granting of waivers from rules adopted by the authority. The intent of this chapter is to allow persons to seek exceptions to the application of rules issued by the authority.

199.1(1) *Definitions.*

"Authority" means the economic development authority created in Iowa Code section 15.105.

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

"Director" means the director of the authority 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 261—199.2(17A,15).

"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" 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 from rules adopted by the authority may be granted in accordance with this chapter if (1) the authority has exclusive rule-making authority to promulgate the rule from which waiver is requested or has final decision-making authority over a contested case in which a waiver is requested; and (2) no statute or rule otherwise controls the grant of a waiver from the rule from which waiver is requested.

b. No waiver may be granted from a requirement which is imposed by statute. Any waiver must be consistent with statute.

[**ARC 5692C**, IAB 6/16/21, effective 7/21/21]

261—199.2(17A,15) Director/board discretion. The decision on whether the circumstances justify the granting of a waiver shall be made at the discretion of the director upon consideration of all relevant factors. The director may refer a petition for waiver to the board for decision. In the case of petition referred to the board by the director, the board shall make the decision on whether the circumstances justify the granting of a waiver, upon consideration of all relevant factors.

199.2(1) *Criteria for waiver.* The director/board may, in response to a completed petition, grant a waiver 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 undue hardship to that person; and

b. Waiver on the basis of the particular circumstances relative to that specified person would be consistent with the public interest; and

c. Waiver 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 is requested.

In determining whether waiver 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 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 rules not precluded.* These uniform waiver rules shall not preclude the director/board from granting waivers in other contexts or on the basis of other standards if a statute or other rule authorizes the director/board to do so, and the director/board deems it appropriate to do so.

[**ARC 5692C**, IAB 6/16/21, effective 7/21/21]

261—199.3(17A,15) Requester's responsibilities in filing a waiver petition.

199.3(1) *Petition.* All petitions for waiver must be submitted in writing to the Iowa Economic Development Authority, Office of the Director, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315, Attention: Legal Counsel. Petitions for waiver may be delivered, mailed, or sent by email or other electronic means reasonably calculated to reach the intended recipient. 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 shall include the following information where applicable and known to the requester (for an example of a petition for waiver, see Exhibit A at the end of this chapter):

a. A description and citation of the specific rule from which a waiver is requested.

b. The specific waiver requested, including the precise scope and operative period that the waiver will extend.

c. The relevant facts that the petitioner believes would justify a waiver.

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.

e. A history of any prior contacts between the authority and the petitioner relating to the regulated activity, license, grant, loan or other financial assistance affected by the proposed waiver, 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 authority'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.

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.

j. Signed releases of information authorizing persons with knowledge regarding the request to furnish the authority with information relevant to the waiver.

199.3(3) *Burden of persuasion.* When a petition is filed for a waiver from a 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.

[**ARC 5692C**, IAB 6/16/21, effective 7/21/21]

261—199.4(17A,15) Notice. The authority shall acknowledge a petition upon receipt. The authority 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 authority may give notice to other persons. To accomplish this notice provision, the authority may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law or who may be impacted by the requested waiver, and provide a written statement to the authority attesting that notice has been provided.

[**ARC 5692C**, IAB 6/16/21, effective 7/21/21]

261—199.5(17A,15) Authority responsibilities regarding petition for waiver.

199.5(1) *Additional information.* Prior to issuing an order granting or denying a waiver, 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 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 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 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 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.
[**ARC 5692C**, IAB 6/16/21, effective 7/21/21]

261—199.6(17A,15) Submission of waiver information. Within 60 days of granting or denying a waiver, the authority shall make a submission on the Internet site established pursuant to Iowa Code section 17A.9A for the submission of waiver information. The submission shall identify the rule(s) for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the authority's actions on waiver requests. If practicable, the report shall detail the extent to which granting a waiver has established a precedent for additional waivers and the extent to which the granting of a waiver has affected the general applicability of the rule itself.
[**ARC 5692C**, IAB 6/16/21, effective 7/21/21]

261—199.7(17A,15) Voiding or cancellation. A waiver 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 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 have failed to achieve the objectives of the statute, or the requester has failed to comply with the conditions of the order.
[**ARC 5692C**, IAB 6/16/21, effective 7/21/21]

261—199.8(17A,15) Violations. Violation of conditions in the waiver approval is the equivalent of violation of the particular rule for which the waiver is granted and is subject to the same remedies or penalties.
[**ARC 5692C**, IAB 6/16/21, effective 7/21/21]

261—199.9(17A,15) Defense. After the director/board issues an order granting a waiver, 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.
[**ARC 5692C**, IAB 6/16/21, effective 7/21/21]

261—199.10(17A,15) Appeals. Granting or denying a request for waiver 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

BEFORE THE IOWA ECONOMIC DEVELOPMENT AUTHORITY

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 from an authority rule shall include the following information in the petition for waiver where applicable and known:

a. Provide the petitioner's (person asking for a waiver) name, address, and telephone number.

b. Describe and cite the specific rule from which a waiver is requested.

c. Describe the specific waiver requested; include the exact scope and time period that the waiver will extend.

d. Explain the important facts that the petitioner believes justify a waiver. Include in your answer why (1) applying the rule will result in undue hardship or injustice to the petitioner; and (2) granting a waiver to the petitioner is consistent with the public interest; and (3) granting the waiver 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 is requested.

e. Provide history of prior contacts between the authority and petitioner relating to the regulated activity, license, grant, loan or other financial assistance that would be affected by the waiver; 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 authority'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.

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.

i. Provide the name, address, and telephone number of any person with knowledge of the relevant or important facts relating to the requested waiver.

j. Provide signed releases of information authorizing persons with knowledge regarding the request to furnish the authority with information relevant to the waiver.

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:

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 undue hardship or injustice to the petitioner; and (b) waiver on the basis of the particular circumstances relative to the petitioner would be consistent with the public interest; and (c) waiver 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 is requested.

2. The authority 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.

3. All petitions for waiver must be submitted in writing to the Iowa Economic Development Authority, Office of the Director, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315, 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.

[**ARC 5692C**, IAB 6/16/21, effective 7/21/21]

These rules are intended to implement Iowa Code section 17A.9A and chapter 15.

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PART X
COMMUNITY ATTRACTION AND INVESTMENT PROGRAMS

CHAPTER 200
REINVESTMENT DISTRICTS PROGRAM

261—200.1(15J) Purpose. The board is authorized by the general assembly and the governor to oversee the implementation and administration of certain provisions of the Iowa reinvestment Act, which was enacted in 2013 Iowa Acts, House File 641, and amended by 2020 Iowa Acts, House File 2641. The purpose of this chapter is to describe the manner in which the authority's part of the program will be administered. The program provides for as much as $100 million in state hotel and motel and state sales tax revenues generated by new revenue-generating projects in certain districts to be "reinvested" within those districts for districts approved on or before July 1, 2018, and provides as much as $100 million for districts approved after July 1, 2020. In general, the authority has the responsibility to evaluate projects and make funding decisions while the department of revenue has the responsibility for collecting the tax revenues used to fund projects under the program and making payments to municipalities. To the greatest extent possible, the board will fund projects in districts that are the most likely (1) to improve the quality of life of the municipality, the surrounding region, and the state as a whole; (2) to be unique to the municipality, the surrounding region, and the state as a whole; and (3) to substantially benefit the economy of the municipality, the surrounding region, and the state as a whole.
[**ARC 1175C**, IAB 11/13/13, effective 12/18/13; **ARC 5319C**, IAB 12/16/20, effective 1/20/21]

261—200.2(15J) Definitions. For purposes of this chapter unless the context otherwise requires:

"Account" means the district account that is created within the fund for each municipality which has established a district and that holds the new tax revenues deposited by the department under the program. Moneys in each account will be remitted quarterly by the department to the municipality pursuant to the department of revenue's rules in 701—Chapter 237.

"Applicant" means a municipality applying to the board and the authority for approval of a district under the program, including the preapplication process described in rule 261—200.4(15J).

"Appurtenant structure" means any building or other fixture on a piece of real estate other than the main building provided that such a building or fixture is permanent, is wholly or partially above grade, and will be constructed or substantially improved in conjunction with the main building. A structure is appurtenant when the structure is physically connected to a main building such that the connected structures combine to create a single, integrated facility. A structure is not physically connected if the structure has a function or purpose independent of the main building, even if the structures are in close proximity or are incidentally connected by some means such as a common wall, a sidewalk, or recreational trail.

"Authority" means the economic development authority created in Iowa Code section 15.105.

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

"Commencement date" means the date established for each district by the board pursuant to rule 261—200.7(15J) upon which the calculation of new state sales tax and new state hotel and motel tax revenue shall begin pursuant to rule 701—237.3(15J) and after which the department will make deposits in the fund pursuant to rule 701—237.4(15J).

"Department" means the department of revenue.

"Director" means the director of the authority.

"District" means the area that is designated a reinvestment district under the program. For purposes of this chapter, a district is designated during the application and approval process but is not created until it has both received the final approval of the board pursuant to rule 261—200.7(15J) and been established by ordinance or resolution of the municipality as described in rule 261—200.8(15J).

"Due diligence committee" means the due diligence committee of the board established pursuant to 261—subrule 1.3(7).

"Fund" means the state reinvestment district fund created in Iowa Code section 15J.6, consisting of new tax revenues, and under the control of the department.

"Governing body" means the county board of supervisors, city council, or other governing body in which the legislative powers of the municipality are vested.

"Joint board" means a legal entity established or designated in an agreement made pursuant to Iowa Code chapter 28E between two or more contiguous counties or incorporated cities.

"Maximum benefit amount" means the total amount of new tax revenues that may be remitted to a municipality's reinvestment project fund and used for development in a district. The maximum benefit will be established by the board when a final application to the program is approved pursuant to rule 261—200.7(15J).

"Municipality" means a county, an incorporated city, or a joint board.

"New lessor" means a lessor, as defined in Iowa Code section 423A.2, operating a business in the district that was not in operation in the area of the district before the effective date of the ordinance or resolution establishing the district, regardless of ownership. "New lessor" also includes any lessor, as defined in Iowa Code section 423A.2, operating a business in the district if the place of business for that business is the subject of a project that was approved by the board.

"New retail establishment" means a business operated in the district by a retailer, as defined in Iowa Code section 423.1, that was not in operation in the area of the district before the effective date of the ordinance or resolution establishing the district, regardless of ownership. "New retail establishment" also includes any business operated in the district by a retailer, as defined in Iowa Code section 423.1, if the place of business for that retail establishment is the subject of a project that was approved by the board.

"New tax revenues" means all state sales tax revenues and state hotel and motel tax revenues that are collected within a district by new retail establishments and new lessors, provided that such new retail establishments and lessors are included as projects in an approved district plan. New tax revenues are remitted to the department after collection by new retail establishments and new lessors and deposited by the department in a fund for use by a municipality under the program.

"Program" means the reinvestment district program established pursuant to this chapter.

"Project" means a vertical improvement constructed or substantially improved within a district using new tax revenues. "Project" does not include any of the following:

1. A building, structure, or other facility that is in whole or in part used or intended to be used to conduct gambling games under Iowa Code chapter 99F.

2. A building, structure, or other facility that is in whole or in part used or intended to be used as a hotel or motel if such hotel or motel is connected to or operated in conjunction with a building, structure, or other facility described in paragraph "1" above.

"Retail business" means any business engaged in the business of selling tangible personal property or taxable services at retail in this state that is obligated to collect state sales or use tax under Iowa Code chapter 423. However, for the purposes of this chapter, "retail business" does not include a new lessor or a business engaged in an activity subject to tax under Iowa Code section 423.2(3).

"State hotel and motel tax" means the state-imposed tax under Iowa Code section 423A.3.

"State sales tax" means the sales and services tax imposed pursuant to Iowa Code section 423.2.

"Substantially improved" means that the cost of the improvements to a project is equal to or exceeds 50 percent of the assessed value of the property, excluding the land, prior to such improvements.

"Unique nature" means a quality or qualities of the projects to be developed in a district which, when considered in the entirety, will substantially distinguish the district's projects from other existing or proposed developments in the state. For purposes of this chapter, whether a project is of a unique nature is a subjective and contextual determination that will be made by the board. In determining whether a project is of a unique nature, the board will not necessarily require a project to be entirely without precedent or to be the only one of its kind in the state, but rather the board will evaluate whether the projects to be undertaken in a district will either (1) permanently transform the aesthetics or infrastructure of a local community for the better, including by preserving important historical

structures or neighborhoods; or (2) contribute substantially more to the state's economy or quality of life than other similar projects in the state.

"Vertical improvement" means a building that is wholly or partially above grade and all appurtenant structures to the building.

[**ARC 1175C**, IAB 11/13/13, effective 12/18/13; **ARC 5319C**, IAB 12/16/20, effective 1/20/21; Editorial change: IAC Supplement 12/15/21]

261—200.3(15J) Program overview.

200.3(1) *General.* The reinvestment districts program provides for new tax revenues generated by revenue-generating projects in certain districts to be "reinvested" within those districts. The program allows municipalities to designate areas within their corporate boundaries as reinvestment districts and to use new tax revenues collected within the district to finance the development of projects within the district. The authority and the board will take applications from municipalities for designation as a district and will consider and approve eligible applicants for funding under the program.

200.3(2) *Preapplication, provisional decisions, and final approval.* Each fiscal year in which funding is available, the authority will accept applications for assistance under the program. The program includes a preapplication process, a scoring process, a provisional funding decision, and a final board approval process.

200.3(3) *District establishment and financing.*

a. Upon final approval of a plan, a municipality shall establish a district and notify the department that new tax revenues may be deposited in a fund under the program as described in subrule 200.8(1). The collection and deposit of new tax revenues by the department begins only after final approval of the proposed district plan and the establishment of the district's maximum benefit amount and commencement date.

b. For districts established before July 1, 2020, the department will deposit in a fund 4 percent of the amount of retail sales subject to the state sales tax collected by new retail establishments within the district and 5 percent of the amount of sales subject to the state hotel and motel tax collected by new lessors within the district.

c. For districts established after July 1, 2020, the department will deposit in a fund:

(1) Four percent of the remainder of amount of sales subject to the state sales tax in the district during the quarter from new retail establishments minus the sum of the sales from the corresponding quarter of the 12-month period preceding establishment of the district, for new retail establishments identified under subparagraph 200.8(1)*"c"*(3) that were in operation at the end of the quarter; and

(2) Five percent of the remainder of amount of sales subject to the state hotel and motel tax in the district during the quarter from new lessors minus the sum of the sales from the corresponding quarter of the 12-month period preceding establishment of the district, for new lessors identified under subparagraph 200.8(1)*"c"*(4) that were in operation at the end of the quarter.

200.3(4) *Duration of funding and termination of district.* The department will deposit new tax revenues in the fund until the maximum benefit is reached or the district is terminated, whichever is earlier. A district shall be terminated as of the date 20 years after the commencement date unless a municipality dissolves the district prior to that date or the board has approved an extension pursuant to subrule 200.10(3).

200.3(5) *Use of funds.* A municipality may use moneys remitted by the department to the municipality from its account for purposes of funding development in a district according to an approved district plan as described in subrule 200.8(2).

[**ARC 1175C**, IAB 11/13/13, effective 12/18/13; **ARC 5319C**, IAB 12/16/20, effective 1/20/21]

261—200.4(15J) Preapplication process.

200.4(1) *Purpose.* The program includes a preapplication process to assist with the administration and implementation of the program. The purposes of the preapplication process are to provide information related to the requirements of this chapter, to determine the interest of municipalities in establishing districts under this chapter, including the amount of potential funding requests, and to assist municipalities in preparing a proposed district plan. The authority and the board will utilize

the preapplication process to gauge the level of demand for funding under the program, accept initial project plans and requests for funding, make provisional determinations about the amount of maximum benefits, and notify applicants of the board's provisional funding decisions. While all funding decisions made during the preapplication process are provisional and subject to change, the process is intended to indicate the board's willingness to approve future financial assistance for projects that meet the requirements of this chapter.

200.4(2) *Preapplication required.* The board will only approve a proposed district plan if that plan has been submitted during the annual filing window as described in this rule.

200.4(3) *Annual filing window.* Each year that funding is available, the authority will announce an annual filing window to accept preapplications under the program. The purpose of the annual filing window is to enable the competitive scoring of applications and facilitate funding decisions by the board that are within the limitations established for the program by the general assembly. A municipality interested in applying to the program must submit a preapplication during the annual filing window or wait until the next annual filing window.

200.4(4) *Preapplication submission requirements.* Each preapplication submission shall demonstrate compliance with the requirements listed in rule 261—200.5(15J) to the greatest extent possible. While the preapplication process is provisional in nature and is designed to allow applicants to make reasonable changes to the proposed district plan before a final application is considered, the board is more likely to approve funding for proposed districts that meet all requirements of rule 261—200.5(15J) during the preapplication process.

200.4(5) *Provisional funding decisions.*

a. The board, with the assistance of the authority, will evaluate the preapplications and assign them a provisional score based on the criteria described in rule 261—200.6(15J). Based on the results of the scoring, the board will make provisional funding decisions and notify applicants.

b. A provisional funding decision represents an initial judgment by the board about the merits of a proposed district plan and is provided for the convenience of both applicants and the board for the better administration of the program. A provisional funding decision shall not be construed as binding on the board nor will the applicant be required to meet all of the details contained in the preapplication. A provisional funding decision shall not be construed as a final approval by the board. A municipality shall not adopt an ordinance or resolution establishing a district based on a provisional funding decision.

c. The final details of a proposed district plan and a final funding decision, including a maximum benefit amount and a commencement date, shall be contingent upon the receipt of a full, final, and complete application and upon final action by the board to ratify, amend, defer, or rescind its provisional funding decision as provided in rule 261—200.7(15J).

d. The department of revenue will not deposit moneys into a fund until a final application is approved by the board and an ordinance or resolution has been adopted by the municipality.

200.4(6) *Posting of preapplication and materials to Internet site.* After the board makes a provisional funding decision, the proposed district plan, along with all accompanying materials, will be posted on the authority's Internet site for public viewing within ten days of approval by the board and will be available there until the final application is submitted, or for one year.

[**ARC 1175C**, IAB 11/13/13, effective 12/18/13; **ARC 5319C**, IAB 12/16/20, effective 1/20/21]

261—200.5(15J) Program eligibility and application requirements. To be eligible for benefits under the program, an applicant shall meet all of the following requirements:

200.5(1) *Area suitable for development.* An applicant must be a municipality and must have an area suitable for development within the boundaries of the municipality, or, in the case of a joint board, the combined boundaries of the incorporated cities or counties that established or designated the joint board, that has been proposed for designation as a reinvestment district under the program. Only areas that meet the following requirements will be approved for designation as a reinvestment district:

a. The area must consist only of parcels of real property that the governing body of the municipality determines will be directly and substantially benefited by development in the proposed district. In order to establish that this criterion is met, a municipality should submit information such

as an estimate of the expected increase in valuation or other data that lends itself to a quantitative assessment of the extent to which the real property will benefit.

b. The area must be in whole or in part either an economic development enterprise zone designated under 2014 Iowa Code chapter 15E, division XVIII, immediately prior to July 1, 2014, or an urban renewal area established pursuant to Iowa Code chapter 403. In order to establish that this criterion is met, a municipality should submit maps of the proposed area as well as maps of the existing enterprise zone or urban renewal area. A municipality should also submit copies of the local ordinance or resolution establishing the enterprise zone or the urban renewal area.

c. For districts approved before July 1, 2018, the area must consist of contiguous parcels and must not exceed 25 acres in total. For districts approved after July 1, 2020, the area must consist of contiguous parcels and must not exceed 75 acres in total. For purposes of this subrule, "contiguous" means parcels that are physically connected. Parcels connected by streets or other rights-of-way will be considered physically connected for purposes of this rule. In designating an area that includes a right-of-way, an applicant may include an area that is less than the full width of the right-of-way, but the applicant shall not include less than 60 feet of the right-of-way's width.

d. For a municipality that is a city or for a city that has established or designated a joint board, the area must not include the entire incorporated area of the city.

e. The area must not be located in whole or in part within another district established under this chapter.

200.5(2) *Proposed district plan.* An applicant must submit a proposed district plan. A proposed district plan must be approved by resolution of the governing body of the municipality and must state the governing body's intent to establish a district. A copy of this resolution should be submitted with the proposed district plan. The proposed district plan must also include all of the following:

a. A finding by the governing body that the area in the proposed district is an area suitable for development. This finding should be supported by the information required under subrule 200.5(1).

b. A legal description of the real estate forming the boundaries of the area to be included in the proposed district along with a map depicting the existing parcels of real estate located in the proposed district.

c. A list of the names and addresses of the owners of record of the parcels to be included in the proposed district. If, at the time an application is submitted, the parcels are not yet acquired or one or more parcels within the district are under consideration for a project, then the names and addresses of the owners of record of all parcels under consideration shall be submitted with the understanding that final board approval shall be contingent upon all parcels' being acquired and identified by address prior to final board approval and establishment of the commencement date.

d. A list of all projects proposed to be undertaken within the district, a detailed description of those projects, and a project plan for each proposed project. Each project plan shall clearly state the estimated cost of the proposed project, the anticipated funding sources for the proposed project, the amount of anticipated funding from each such source, and the amount and type of debt, if any, to be incurred by the municipality to fund the proposed project, and shall include a proposed project feasibility study conducted by an independent professional with expertise in economic development and public finance. The project plan for the project that proposes the largest amount of capital investment among all proposed projects within the district shall include an estimate of the date that construction of the project will be completed and of the date that operations will begin at the project. The feasibility study shall include projections and analysis of all of the following:

(1) The amount of gross revenues expected to be collected in the district as a result of the proposed project for each year that the district is in existence.

(2) A detailed explanation of the manner and extent to which the proposed project will contribute to the economic development of the state and the municipality, including an analysis of the proposed project's economic impact. The analysis shall include the same components and be conducted in the same manner as the economic impact study required under paragraph *"e"* of this subrule.

(3) An estimate of the number of visitors or customers the proposed project will generate during each year that the district exists.

(4) A description of the unique characteristics of the proposed project. The description should include an explanation of why the unique characteristics of the proposed project cause the project to be of a unique nature, within the meaning of that term as it is defined in rule 261—200.2(15J).

e. An economic impact study for the proposed district conducted by an independent economist retained by the municipality. The economic impact study shall, at a minimum, do all of the following:

(1) Contain a detailed analysis of the financial benefit of the proposed district to the economy of the state and the municipality.

(2) Identify one or more projected market areas in which the district can reasonably be expected to have a substantial economic impact.

(3) Assess the fiscal and financial impact of the proposed district on businesses or on other economic development projects within the projected market area.

200.5(3) *Additional conditions.* In addition to the requirements described in subrules 200.5(1) and 200.5(2), a municipality shall demonstrate to the board's satisfaction that all of the following additional conditions are met:

a. The area of the municipality proposed to be included in the district must meet the requirements of subrule 200.5(1).

b. The projects proposed to be undertaken in the district must be of a unique nature and must be likely to have a substantial beneficial impact on the economy of the state and the economy of the municipality. If, in the judgment of the board, an applicant's proposed district plan is not of a unique nature or will not result in benefits claimed, the board may decline to approve a proposed district plan or may defer a proposed district plan until amendments are made.

c. The proposed funding sources for each proposed project must be feasible.

d. At least one of the projects proposed to be undertaken in the district must include a capital investment of at least $10 million.

e. The total amount of proposed funding from new tax revenues to be remitted to the municipality from the fund for all proposed projects in the proposed district plan must not exceed 35 percent of the total cost of all proposed projects in the proposed district plan.

f. The amount of proposed capital investment within the proposed district related to retail businesses in the proposed district must not exceed 50 percent of the total capital investment for all proposed projects in the proposed district plan.

g. The applicant must have submitted an application under the preapplication process described in rule 261—200.4(15J) and, as part of a provisional funding decision by the board, must have been approved for a provisional maximum benefit amount.

h. The proposed district plan must meet a minimum score under the criteria described in rule 261—200.6(15J).

i. While multiple districts within a single municipality are not prohibited under the program, the size of any one district is limited by paragraph 200.5(1)*"c"* and overlapping districts are prohibited by paragraph 200.5(1)*"e."* Therefore, the board will consider whether the approval of an additional district is appropriate given the particulars of the proposed additional district and the goals of the program. If a municipality proposes an additional district, the board, at its discretion, may accept the application and score it, or if the board determines that approval of an additional district would not serve the goals of the program, the board may reject the application without scoring it.

j. The applicant is not requesting a plan amendment to increase the maximum benefit amount for an already approved district. While it is within the discretion of the board to increase the maximum benefit amount of an approved district, the board will carefully scrutinize whether an increase is justified by circumstances such as greater investment or improved projects within the district and whether any change in the maximum benefit amount serves the goals of the program.

200.5(4) *Application materials and submission.*

a. A municipality interested in applying for funding under the program shall submit a preapplication and a final application to the board for approval and, when applying, shall provide the information described in this chapter or any other information the board or the authority may reasonably require in order to process the application.

b. Information on submitting an application under the program may be obtained by contacting the economic development authority. The contact information is:

Iowa Economic Development Authority
Business Finance Team
businessfinance@iowaeda.com
www.iowaeda.com

[**ARC 1175C**, IAB 11/13/13, effective 12/18/13; **ARC 5319C**, IAB 12/16/20, effective 1/20/21]

261—200.6(15J) Application scoring and determination of benefits. For each applicant that meets the requirements of rule 261—200.5(15J) and that has submitted an application during the annual filing window as described in subrule 200.4(3), the board will evaluate and score the proposed district plan according to the criteria and process described in this rule.

200.6(1) *Scoring criteria and plan evaluation.* Each proposed district plan will be given a numerical score between 0 and 100. The higher the numerical score, the more likely the proposed district will be approved for designation and funding under the program. The scoring process will necessarily involve a subjective assessment of the quality of each proposed district plan as well as a consideration of how each proposed district plan compares to the plans proposed by other applicants. The criteria used to score each application and the maximum number of points that may be attributed to each criterion are as follows:

a. Uniqueness: 25 points. The program requires that the projects proposed to be undertaken must be of a unique nature. Therefore, the proposed district plan will be evaluated on this criterion in order to quantify the extent to which the projects in the proposed district plan are of a unique nature. The more unique the projects are, the more points will be received under this criterion.

b. Economic impact: 25 points. The program requires that the projects proposed to be undertaken must have a substantial beneficial impact on the economy of the state and the economy of the municipality. Therefore, the proposed district plan will be evaluated on this criterion in order to quantify the extent to which the projects in the proposed district plan will benefit the economy. The greater the economic impact of the proposed district plan, the more points will be received under this criterion.

c. Project feasibility: 10 points. The program requires that funding sources for projects must be feasible. Therefore, the proposed district plan will be evaluated on this criterion in order to quantify the extent to which the funding sources of the proposed projects are feasible. The more feasible the funding sources for the proposed projects are, the more points will be received under this criterion.

d. Capital investment: 10 points. The program requires that at least one project with a capital investment of $10 million or more be proposed. To the extent that the proposed district plan exceeds this minimum level of capital investment, more points will be received under this criterion.

e. Funding leverage: 10 points. The program limits the amount of new tax revenues that can be received to 35 percent of the total cost of all proposed projects in the proposed district plan. To the extent that a proposed district plan includes a financing plan in which the percentage of new tax revenues to be received is less than 35 percent of the total cost, more points will be received under this criterion.

f. Nonretail focus: 10 points. The program limits the amount of proposed capital investment in the district related to retail businesses to 50 percent of the total capital investment for all proposed projects in the proposed district. To the extent that a proposed district plan includes projects that provide cultural amenities, tourist attractions and accommodations, infrastructure, or quality of life improvements, more points will be received under this criterion.

g. Additional factors: 10 points. The program allows the board to establish additional criteria for the program. Therefore, in addition to the other criteria listed in this subrule, the board will consider the following additional factors:

(1) Readiness for development. The closer a municipality is to beginning development on a proposed district plan, the more points may be received under the additional factors criterion.

(2) Geographic diversity. To the extent that a proposed district is located in a region of the state not already funded under the program, more points may be received under the additional factors criterion. A proposed district plan that would create an additional district within a municipality or a request to

increase the maximum benefit amount of an already approved district will not be viewed as enhancing geographic diversity and may receive fewer points under the additional factors criterion.

(3) Funding need. To the extent that a funding gap exists in the proposed district plan's financing, more points may be received under the additional factors criterion.

200.6(2) *Scoring process and funding recommendations.* Proposed district plans will be scored by an evaluation committee consisting of members appointed by the director. Members of the committee will include authority staff and not more than five members of the board. Each member of the evaluation committee will judge the proposed district plan according to the scoring criteria, and then the scores of all members of the committee will be averaged together to reflect one numerical score between 0 and 100. The evaluation committee will not make a funding recommendation.

After all applications are scored, a copy of the proposed district plan and the results of the scoring will be referred to the due diligence committee, which will consider the quality of the proposed district plans and make funding recommendations to the board. The due diligence committee will take into account the requested funding levels, but will also attempt to establish maximum benefit amounts that seem most appropriate to both the quality of the proposed district plans and the total demand for program funding.

The scoring results will not be negotiated and, while both the board and the due diligence committee will consider the scoring results of the evaluation committee, those results are not binding on either the due diligence committee or the board.

200.6(3) *Minimum score required.* To receive funding under the program, a proposed district plan must receive an average score of 70 or more points under the criteria listed in subrule 200.6(1).

200.6(4) *Funding not guaranteed.* The program is subject to a total aggregate limit on the amount of new tax revenues that may be approved. Therefore, a proposed district plan that meets the required minimum score is not guaranteed funding if the board's funding decisions for other, higher scoring proposed district plans cause the program's total aggregate limit to be reached.

200.6(5) *Final action taken by board.* The final decision on whether to approve the designation of a proposed reinvestment district and the determination of the amount of maximum benefit to award an applicant rest entirely with the board. The recommendations of the evaluation committee and the due diligence committee with respect to the proposed district plans are of an advisory nature only.

200.6(6) *Availability of scoring results.* The board and the authority will keep records of the scoring process and make those records available to applicants.

200.6(7) *Denial of plans and resubmission.* If a proposed district plan is denied, the board will state the reasons for the denial. Reasons for denial may include a failure to meet filing deadlines, a failure to meet the basic requirements for eligibility, a failure to meet the required minimum score, or a lack of available funding. A municipality whose application is denied may resubmit the application at the next annual filing window provided there is funding available, but a resubmission must be rescored with all other applicants that apply during that filing window.

200.6(8) *Provisional nature of preapplication process.* The preapplication process described in rule 261—200.4(15J) will result in provisional scores and provisional funding decisions for applicants. However, these provisional scores and funding decisions are subject to change pending the final approval process described in rule 261—200.7(15J).

[**ARC 1175C**, IAB 11/13/13, effective 12/18/13]

261—200.7(15J) Final application and approval process.

200.7(1) *Final application required.*

a. An applicant that receives a provisional funding decision must submit a final application to the board within one year of the submission of the preapplication. An applicant that does not file a final application within that time will be scored again with all other applicants who file in the next annual filing window.

b. A final application shall meet all the requirements described in rule 261—200.5(15J).

200.7(2) *Amendments to preapplications and rescoring of plans.* An applicant may amend any part of the preapplication when submitting the final application and must amend the application if any part

of the proposed district plan will be materially different from the plan that was proposed during the preapplication process. If the board determines that a final application is substantially different from the related preapplication, then the board may rescore the application and reevaluate the provisional funding decision prior to taking final action. If the board elects to rescore and reevaluate an application, the application will be rescored and reevaluated in the same manner and according to the same criteria used initially.

200.7(3) *Final funding decision and establishment of commencement date.* After submission of all information required for the final application, the board will make a final funding decision, establish a final maximum benefit amount, and establish a commencement date for the district. The commencement date established by the board will be the first day of the first calendar quarter beginning after the later of the two dates identified for the project that proposed the largest amount of capital investment among all proposed projects in the district as described in subrule 200.5(2).

200.7(4) *Provisional funding decisions not determinative of final funding decision.* The board's final funding decision may be different from its provisional funding decision. The board may ratify, amend, defer, or rescind the provisional funding decision. If the board's final funding decision causes additional funding to become available, the board may amend a funding decision for another proposed district plan made during the same annual filing window or may reserve the additional funding capacity for the next annual filing window.

200.7(5) *Posting of application and materials to Internet site.* Upon final approval by the board, the district plan, along with the municipality's resolution and all accompanying materials, will be posted on the authority's Internet site for public viewing within ten days of approval by the board and will be maintained there for a period of three years.

[**ARC 1175C**, IAB 11/13/13, effective 12/18/13; **ARC 5319C**, IAB 12/16/20, effective 1/20/21]

261—200.8(15J) Adoption of ordinance and use of funds.

200.8(1) *Adoption of ordinance establishing a district and notice to department.*

a. Upon receiving approval by the board of the final application pursuant to rule 261—200.7(15J), the municipality shall adopt an ordinance, or, in the case of a joint board, a resolution, establishing the district.

b. For each district approved by the board before July 1, 2018, the ordinance or resolution adopted by the municipality shall include:

(1) The district's commencement date; and

(2) A detailed statement of the manner in which the approved projects to be undertaken in the district will be financed, including but not limited to the financial information included in the project plan.

c. For each district approved by the board after July 1, 2020, the ordinance or resolution shall include:

(1) The district's commencement date;

(2) A detailed statement of the manner in which the approved projects to be undertaken in the district will be financed, including but not limited to the financial information included in the project plan;

(3) For each new retail establishment that was in operation before the establishment of the district, the monthly amount of sales subject to the state sales tax from the most recently available 12-month period preceding adoption of the ordinance or resolution; and

(4) For each new lessor that was in operation before the establishment of the district, the monthly amount of sales subject to the state hotel and motel tax from the most recently available 12-month period preceding adoption of the ordinance or resolution.

d. For each district approved by the board before July 1, 2018, the municipality shall notify the director of revenue of the district's commencement date established by the board no later than 30 days after adoption of the ordinance or resolution establishing the district. For each district approved by the

board after July 1, 2020, the municipality shall provide a copy of the ordinance or resolution establishing the district to the director of revenue no later than 30 days after adoption of the ordinance or resolution.

200.8(2) *Use of funds.*

a. Following establishment of the district, a municipality may use the moneys deposited in the municipality's reinvestment project fund created pursuant to Iowa Code section 15J.7 to fund the development of those projects included within the district plan. For purposes of this subrule, "development" means all costs reasonably related to a project provided that such costs are described in a final application approved by the board. Development costs may include project planning, professional services, land acquisition, construction, maintenance, and operational expenses. A municipality shall enter into development agreements for the expenditure of program funds and submit copies of such agreements to the authority within 30 days of execution.

b. Moneys deposited in such a fund shall only be used to fund projects approved by the board as part of a proposed district plan. Moneys deposited in such a fund may be used for projects that do not generate new tax revenues provided such projects are part of an approved plan. A municipality shall maintain records documenting the use of funds under the program and make them available to the board or the department upon request.

c. Moneys from any source deposited into the fund shall not be expended for or otherwise used in connection with a project that includes the relocation of a commercial or industrial enterprise not presently located within the municipality. For the purposes of this subrule, "relocation" means the closure or substantial reduction of an enterprise's existing operations in one area of the state and the initiation of substantially the same operation in the same county or a contiguous county in the state. However, if the initiation of operations includes an expanded scope or nature of the enterprise's existing operations, the new operation shall not be considered to be substantially the same operation. "Relocation" does not include an enterprise expanding its operations in another area of the state provided that existing operations of a similar nature are not closed or substantially reduced.

d. Moneys from new tax revenues collected within a district and expended by a municipality under the program are subject to audit by the department of revenue or the auditor of state.

[**ARC 1175C**, IAB 11/13/13, effective 12/18/13; **ARC 5319C**, IAB 12/16/20, effective 1/20/21]

261—200.9(15J) Plan amendments and reporting.

200.9(1) *Plan amendments.*

a. A municipality may request an amendment to an approved district plan to add or modify projects. However, a proposed modification to a project, and each project proposed to be added, must first be approved by the board in the same manner as provided for the original plan, including updated or amended feasibility and economic impact studies as necessary. An applicant requesting a plan amendment is not required to file a preapplication pursuant to rule 261—200.4(15J) unless the amendment would increase the maximum benefit amount. A plan amendment request that does not increase the maximum benefit amount may be requested at any time.

b. There is no circumstance in which the board will approve an amendment to a district plan if that amendment would result in the extension of the final commencement date established by the board. A request to extend a district's established commencement date will be rejected.

c. If a district plan is amended to add or modify a project, the municipality shall, if necessary, amend the ordinance or resolution, as applicable, to reflect any changes to the financial information required to be included under the program.

d. If, after final approval and establishment of the district, a municipality is unable to carry out development of all the projects proposed to be undertaken in a district, the municipality shall seek a modification to the plan. If a requested plan amendment would reduce capital investment in a district or remove one or more of the projects originally approved for the district, the board in its discretion may reduce, rescind, or otherwise modify the maximum benefit amount accordingly.

200.9(2) *Reports required.* Following establishment of a district, the municipality shall on or before October 1 of each year submit a report to the board detailing all of the following:

a. The status of each project undertaken within the district in the previous 12 months.

b. An itemized list of expenditures from the municipality's reinvestment project fund in the previous 12 months that have been made related to each project being undertaken within the district.

c. The amount of the total project cost remaining for each project being undertaken within the district as of the date the report is submitted.

d. The amounts, types, and sources of funding used for each project described in paragraph *"a."*

e. The amount of bonds issued or other indebtedness incurred for each project described in paragraph *"a,"* including information related to the rate of interest, length of term, costs of issuance, and net proceeds. The report shall also include the amounts and types of moneys to be used for payment of such bonds or indebtedness.

200.9(3) *Reports posted to Internet site and submitted to governor and general assembly.* All reports received by the board under subrule 200.9(2) will be posted on the authority's Internet site as soon as practicable following receipt of the report. The board will submit a written report to the governor and the general assembly on or before January 15 of each year that summarizes and analyzes the information submitted by municipalities under subrule 200.9(2).

[**ARC 1175C**, IAB 11/13/13, effective 12/18/13; **ARC 5319C**, IAB 12/16/20, effective 1/20/21]

261—200.10(15J) Cessation of deposits, district dissolution, and requests for extension.

200.10(1) *Cessation of deposits.* As of the date 20 years after the district's commencement date, the department will cease to deposit new tax revenues into the district's account unless the municipality dissolves the district by ordinance or resolution prior to that date or the board has approved an extension pursuant to subrule 200.10(3). Once the maximum benefit amount approved by the board for the district has been reached, the department will cease to deposit new tax revenues into the district's account. If a district reaches the maximum benefit amount, the department will notify the municipality within a reasonable amount of time.

200.10(2) *District dissolution.* If a municipality dissolves a district by ordinance or resolution prior to the expiration of the 20-year period, the municipality shall notify the director of revenue of the dissolution as soon as practicable after adoption of the ordinance or resolution, and the department shall, as of the effective date of dissolution, cease to deposit state sales tax revenues and state hotel and motel tax revenues into the district's account within the fund. If a municipality is notified that its maximum benefit amount has been reached, the municipality shall dissolve the district by ordinance or resolution as soon as practicable after notification.

200.10(3) *Requests for extension.* Upon request of the municipality prior to the dissolution of the district, and following a determination by the board that the amounts of new state sales tax revenue and new state hotel and motel tax revenue deposited in the municipality's reinvestment project fund are substantially lower than the maximum benefit amount, the board may extend the district's 20-year period of time for depositing and receiving revenues by up to five additional years if such an extension is in the best interest of the public.

[**ARC 1175C**, IAB 11/13/13, effective 12/18/13; **ARC 5319C**, IAB 12/16/20, effective 1/20/21]

261—200.11(15J) Cross reference to department rules. The department has adopted rules for the administration and deposit of moneys into the fund. See 701—Chapter 237.

[**ARC 5319C**, IAB 12/16/20, effective 1/20/21]

These rules are intended to implement 2013 Iowa Acts, House File 641.

[Filed ARC 1175C (Notice ARC 0947C, IAB 8/21/13), IAB 11/13/13, effective 12/18/13]

[Filed ARC 5319C (Notice ARC 5185C, IAB 9/23/20), IAB 12/16/20, effective 1/20/21]

[Editorial change: IAC Supplement 12/15/21]

CHAPTERS 201 to 210
Reserved

CHAPTER 211
COMMUNITY ATTRACTION AND TOURISM (CAT) PROGRAMS

[Prior to 9/6/00, see 261—Ch 65]

DIVISION I
GENERAL PROVISIONS

261—211.1(15F) Purpose. The community attraction and tourism programs are designed to assist communities in the development and creation of multiple-purpose attraction and tourism facilities. The CAT 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.
[**ARC 4513C**, IAB 6/19/19, effective 7/24/19]

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.

"Authority" means the economic development authority created in Iowa Code section 15.105.

"Board" means the enhance Iowa board established by Iowa Code section 15F.102.

"CAT" means community attraction and tourism.

"CAT fund" means the community attraction and tourism fund established pursuant to Iowa Code section 15F.204.

"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 enhance Iowa board: one member from each congressional district and one member from the state at large.

"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.

"Local support" means endorsement by local individuals, organizations and political subdivisions that have a substantial interest in a project.

"Nonfinancial support" may include, but is not limited to, the value of labor and services. Real property and personal property donated for purposes of the project are considered financial support at their fair market value.

"Public organization" means a not-for-profit economic development organization or other not-for-profit organization, including one that sponsors or supports 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 enhance Iowa board to receive CAT or RECAT funds and undertake the funded activity.

"School district" means a school corporation organized under Iowa Code chapter 274.

"Vertical infrastructure" means land acquisition and construction, major renovation and major repair of buildings, all appurtenant structures, utilities, site development, recreational trails and water 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 enhance Iowa board: one member from each congressional district and two members from the state at large.
[**ARC 8034B**, IAB 8/12/09, effective 7/17/09; **ARC 8213B**, IAB 10/7/09, effective 11/11/09; **ARC 4513C**, IAB 6/19/19, effective 7/24/19]

261—211.3(15F) Forms of assistance.

211.3(1) *Community attraction and tourism—CAT.* The CAT program provides financial assistance for community-sponsored attraction and tourism projects.

211.3(2) *River enhancement community attraction and tourism—RECAT.* The RECAT program provides financial assistance for projects that create or enhance recreational opportunities and community attractions on and near lakes or rivers or river corridors within cities.

211.3(3) *Marketing component.* Rescinded IAB 4/8/20, effective 5/13/20.

[**ARC 4513C**, IAB 6/19/19, effective 7/24/19; **ARC 5028C**, IAB 4/8/20, effective 5/13/20]

261—211.4(15F) Eligible applicants. Eligible applicants for CAT and RECAT funds include cities, counties, public organizations, and school districts in cooperation with a city or county. Any eligible applicant may apply individually or jointly with another eligible applicant or other eligible applicants. A school district must apply jointly with a city or county.

[**ARC 4513C**, IAB 6/19/19, effective 7/24/19]

261—211.5(15F) Eligible projects.

211.5(1) Eligible projects provide recreational, cultural, entertainment and educational opportunities. Funded projects must 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. Completed projects must be open to the public for general use.

211.5(2) Eligible CAT and RECAT projects must be primarily vertical infrastructure projects.

211.5(3) The enhance Iowa board has the option of funding a component of a proposed project.

[**ARC 4513C**, IAB 6/19/19, effective 7/24/19]

261—211.6(15F) Ineligible projects.

211.6(1) The enhance Iowa board shall not approve an application for assistance under this program to refinance an existing loan.

211.6(2) A recipient may not receive more than one CAT or RECAT award 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 or a new project.

211.6(3) The enhance Iowa board shall not approve an application for assistance in which the combination of CAT or RECAT funding plus other state funds would constitute more than 50 percent of the total project costs.

211.6(4) Work completed and costs incurred, except the acquisition of real estate, prior to the date of a potential CAT or RECAT award are ineligible for funding under the CAT programs.

[**ARC 4513C**, IAB 6/19/19, effective 7/24/19]

261—211.7(15F) Application requirements. At a minimum, CAT and RECAT applications must contain the following information:

211.7(1) The total capital investment of the project, including but not limited to costs for construction, site acquisition, and infrastructure improvement.

211.7(2) The amount or percentage of local and private matching moneys which will be or have been provided for the project. Moneys raised at any time and not yet spent may be considered as local match. Up to 25 percent of the local match may be nonfinancial support.

211.7(3) The total number of jobs to be created or retained by the project.

211.7(4) The long-term tax-generating impact of the project.

211.7(5) A joint application from a school district in cooperation with a city or county must demonstrate that the intended future use of the project shall be by both joint applicants.

[**ARC 4513C**, IAB 6/19/19, effective 7/24/19]

261—211.8(15F) Application review.

211.8(1) Authority staff will review CAT and RECAT applications to ensure the applications meet the threshold requirements set forth in subrule 211.8(2). All eligible applications will be forwarded to and reviewed by the enhance Iowa board. Applications that do not meet the threshold requirements will not be forwarded to the enhance Iowa board for review.

211.8(2) Authority staff will review each application for the following information:

a. Local support for the proposed activity.

b. Whether the proposed project is primarily a vertical infrastructure project.

c. Certification from the applicant that the applicant will provide and pay for 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.

d. At least 65 percent of the funds needed to complete the proposed project have been raised or pledged. Other state funds cannot be counted as match until the applicant can document that at least 50 percent of the funds have been raised.

211.8(3) The CAT and vision Iowa program review committees shall consider, at a minimum, the following:

a. Whether the wages, benefits, including health benefits, safety, and other attributes of the project would improve the quality of life or the quality of the attraction or tourism employment in the community.

b. The extent to which such a project would generate additional recreational and cultural attractions or tourism opportunities.

c. The ability of the project to produce a long-term tax-generating economic impact.

d. The location of the projects and geographic diversity of the applications.

e. The project is primarily a vertical infrastructure project with demonstrated substantial regional or statewide economic impact.

f. Whether the applicant has received financial assistance under the program for the same project.

g. The extent to which the project has taken the following planning principles into consideration:

(1) 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.

(2) Provision for a variety of transportation choices, including pedestrian traffic.

(3) Maintenance of a unique sense of place by respecting local cultural and natural environmental features.

(4) Conservation of open space and farmland and preservation of critical environmental areas.

(5) Promotion of safety, livability, and revitalization of existing urban and rural communities.

[**ARC 8034B**, IAB 8/12/09, effective 7/17/09; **ARC 8213B**, IAB 10/7/09, effective 11/11/09; **ARC 4513C**, IAB 6/19/19, effective 7/24/19]

261—211.9(15F) Application procedure. Subject to availability of funds, applications will be accepted by the board quarterly. Authority staff will review applications for completeness and eligibility. A review, analysis and evaluation from the authority staff will be submitted to the CAT and vision Iowa program review committees of the board, which will then make a final recommendation to the complete board for final approval, denial or deferral.

211.9(1) Applicants must submit a notice of intent to apply on a form provided by the authority. The authority will send standard application forms to those applicants who have submitted a notice of intent to apply. The notice of intent to apply form will be available on the enhance Iowa web page. The authority can waive this requirement for good cause.

211.9(2) Authority staff may provide technical assistance as necessary. Authority 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 application requirements.

211.9(4) Incomplete or ineligible applications will not be forwarded to the board for review.

[**ARC 8034B**, IAB 8/12/09, effective 7/17/09; **ARC 8213B**, IAB 10/7/09, effective 11/11/09; **ARC 4513C**, IAB 6/19/19, effective 7/24/19]

261—211.10(15F) Administration.

211.10(1) *Administration of awards.*

a. A contract shall be executed between the recipient and the enhance Iowa board. These rules and applicable state laws and regulations shall be part of the contract. The board reserves the right to negotiate terms and conditions of the contract.

b. The recipient must execute and return the contract to the enhance Iowa board within 45 days of transmittal of the final contract from the enhance Iowa board. Failure to do so may be cause for the enhance 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 the authority's receipt and board approval of an implementation plan for the funded project.

f. The authority, with the approval of the chair or vice chair of the enhance Iowa board, reserves the right to make technical corrections that are within the intent of the terms of a board-approved award.

211.10(2) *Disbursement of funds.* Recipients shall submit requests for funds in the manner and on forms prescribed by the authority. 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 funded CAT or RECAT project for three years after contract closeout. Representatives of the authority shall have access to all records belonging to or in use by recipients pertaining to CAT and RECAT funds.

211.10(4) *Performance reports and reviews.* Upon request of the authority or the enhance Iowa board, recipients shall submit performance reports in the manner and on forms prescribed by the authority. Reports shall assess the use of funds and progress of activities. The authority may perform any reviews or field inspections necessary to ensure each recipient's performance.

211.10(5) *Amendments to contracts.* Any substantive change to a contract shall be considered an amendment. Substantive changes include time extensions, budget revisions and significant alterations 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 enhance Iowa board and confirmed in writing.

211.10(6) *Contract closeout.* Upon project completion, the authority 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.
[**ARC 4513C**, IAB 6/19/19, effective 7/24/19]

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) One-third of the moneys shall be allocated to provide assistance to projects located in 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(2) Two-thirds of the moneys shall be allocated to provide assistance to projects in any city and county in the state, which may include a city or county included under subrule 211.51(1).

211.51(3) 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(1) in order to receive any moneys allocated under that subrule.

211.51(4) If any portion of the allocated moneys under subrule 211.51(1) 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 enhance Iowa board to provide financial assistance from the CAT fund to projects located in any city or county in the state.

[**ARC 4513C**, IAB 6/19/19, effective 7/24/19]

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) Application contents. Applications for RECAT projects shall include information about the project's connection and interaction with a river, lake or river corridor. "Lake" means a lake of which the state or a political subdivision owns the lake bed up to the ordinary high water line and which is open to the use of the general public.

[**ARC 4513C**, IAB 6/19/19, effective 7/24/19]

DIVISION IV
CAT AND RECAT WAIVERS

261—211.103(15F) Procedures for waiver of local or private matching moneys. Rescinded **ARC 4513C**, IAB 6/19/19, effective 7/24/19.

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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[Filed ARC 4513C (Notice ARC 4329C, IAB 3/13/19), IAB 6/19/19, effective 7/24/19]
[Filed ARC 5028C (Notice ARC 4670C, IAB 9/25/19), IAB 4/8/20, effective 5/13/20]

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
ENHANCE IOWA BOARD: UNIFORM WAIVER RULES

261—213.1(17A,15F) Applicability. This chapter outlines a uniform process for the granting of waivers 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 *"enhance Iowa board"* means the enhance Iowa board established by Iowa Code section 15F.102.

"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" 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 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 is requested or has final decision-making authority over a contested case in which a waiver is requested; and (2) no statute or rule otherwise controls the grant of a waiver from the rule from which waiver is requested.

b. No waiver may be granted from a requirement which is imposed by statute. Any waiver must be consistent with statute.

[**ARC 4513C**, IAB 6/19/19, effective 7/24/19; **ARC 5644C**, IAB 6/2/21, effective 7/7/21]

261—213.2(17A,15F) Board discretion. The decision on whether the circumstances justify the granting of a waiver shall be made at the discretion of the board upon consideration of all relevant factors.

213.2(1) *Criteria for waiver.* The board may, in response to a completed petition, grant a waiver 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 undue hardship to that person; and

b. Waiver on the basis of the particular circumstances relative to that specified person would be consistent with the public interest; and

c. Waiver 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 is requested.

In determining whether waiver 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 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 rules not precluded.* These uniform waiver rules shall not preclude the board from granting waivers 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.

[**ARC 5644C**, IAB 6/2/21, effective 7/7/21]

261—213.3(17A,15F) Requester's responsibilities in filing a waiver petition.

213.3(1) *Petition.* All petitions for waiver must be submitted in writing to the Enhance Iowa Board, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315, Attention: Legal Counsel. Petitions for waiver may be delivered, mailed, or sent by email or other electronic means reasonably calculated to reach the intended recipient. 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 shall include the following information where applicable and known to the requester (for an example of a petition for waiver, see Exhibit A at the end of this chapter):

a. A description and citation of the specific rule from which a waiver is requested.

b. The specific waiver requested, including the precise scope and operative period that the waiver will extend.

c. The relevant facts that the petitioner believes would justify a waiver.

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.

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, 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.

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.

j. Signed releases of information authorizing persons with knowledge regarding the request to furnish the board with information relevant to the waiver.

213.3(3) *Burden of persuasion.* When a petition is filed for a waiver 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.

[**ARC 4513C**, IAB 6/19/19, effective 7/24/19; **ARC 5644C**, IAB 6/2/21, effective 7/7/21]

261—213.4(17A,15F) 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. The board may require the petitioner to serve the notice and a concise summary of the contents of the petition on all persons to whom notice is required by any provision of law or who may be impacted by the requested waiver, and provide a written statement to the board attesting that notice has been provided and attach a copy of the notice and summary to the written statement.

[**ARC 5644C**, IAB 6/2/21, effective 7/7/21]

261—213.5(17A,15F) Board responsibilities regarding petition for waiver.

213.5(1) *Additional information.* Prior to issuing an order granting or denying a waiver, 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 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 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 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 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.

[**ARC 5644C**, IAB 6/2/21, effective 7/7/21]

261—213.6(17A,15F) Submission of waiver information. Within 60 days of granting or denying a waiver, the board shall make a submission on the Internet site established pursuant to Iowa Code section 17A.9A for the submission of waiver information. The submission shall identify the rule(s) for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by the waived rules, and a general summary of the reasons justifying the authority's actions on waiver requests. If practicable, the report shall detail the extent to which granting a waiver has established a precedent for additional waivers and the extent to which the granting of a waiver has affected the general applicability of the rule itself.

[**ARC 5644C**, IAB 6/2/21, effective 7/7/21]

261—213.7(17A,15F) Voiding or cancellation. A waiver 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 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 have failed to achieve the objectives of the statute, or the requester has failed to comply with the conditions of the order.

[**ARC 5644C**, IAB 6/2/21, effective 7/7/21]

261—213.8(17A,15F) Violations. Violation of conditions in the waiver approval is the equivalent of violation of the particular rule for which the waiver is granted and is subject to the same remedies or penalties.

[**ARC 5644C**, IAB 6/2/21, effective 7/7/21]

261—213.9(17A,15F) Defense. After the board issues an order granting a waiver, 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.

[**ARC 5644C**, IAB 6/2/21, effective 7/7/21]

261—213.10(17A,15F) Appeals. Granting or denying a request for waiver 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

BEFORE THE ENHANCE 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 from a board rule shall include the following information in the petition for waiver where applicable and known:

a. Provide the petitioner's (person asking for a waiver) name, address, and telephone number.

b. Describe and cite the specific rule from which a waiver is requested.

c. Describe the specific waiver requested; include the exact scope and time period that the waiver will extend.

d. Explain the important facts that the petitioner believes justify a waiver. Include in your answer why (1) applying the rule will result in undue hardship to the petitioner; and (2) granting a waiver to the petitioner is consistent with the public interest; and (3) granting the waiver 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 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; 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.

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.

i. Provide the name, address, and telephone number of any person with knowledge of the relevant or important facts relating to the requested waiver.

j. Provide signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver.

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:

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 undue hardship to the petitioner; and (b) waiver on the basis of the particular circumstances relative to the petitioner would be consistent with the public interest; and (c) waiver 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 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.

3. All petitions for waiver must be submitted in writing to the Enhance Iowa Board, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315, 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.

[**ARC 4513C**, IAB 6/19/19, effective 7/24/19; **ARC 5644C**, IAB 6/2/21, effective 7/7/21]

These rules are intended to implement Iowa Code sections 17A.9A and 15F.102.

[Filed 10/23/00, Notice 9/6/00—published 11/15/00, effective 12/20/00]

[Filed ARC 4513C (Notice ARC 4329C, IAB 3/13/19), IAB 6/19/19, effective 7/24/19]

[Filed ARC 5644C (Notice ARC 5537C, IAB 3/24/21), IAB 6/2/21, effective 7/7/21]

CHAPTER 214
ENHANCE IOWA BOARD

261—214.1(15F) Definitions. When used in this chapter, unless the context otherwise requires:

"Authority" means the economic development authority created in Iowa Code section 15.105.

"Board" means the enhance Iowa board as created in Iowa Code section 15F.102.

[**ARC 2980C**, IAB 3/15/17, effective 4/19/17]

261—214.2(15F) Enhance Iowa board.

214.2(1) *Composition.*

a. The board is composed of 11 voting members appointed by the governor. These 11 members include 2 members from each of the four United States congressional districts in the state and 3 members selected at large. In addition, the appointed members represent certain industry sectors and have certain business expertise as described in Iowa Code section 15F.102(3).

b. The board also includes 4 ex officio, nonvoting legislative members as described in Iowa Code section 15F.102(4).

214.2(2) *Terms.* Members of the board are appointed for staggered terms of three years beginning and ending as provided in Iowa Code section 69.19. A person appointed to fill a vacancy serves only for the unexpired portion of the term. A member is eligible for reappointment.

214.2(3) *Quorum and voting requirements.* A majority of the total voting membership of the board constitutes a quorum. The affirmative vote of a majority of the quorum is necessary for any action taken by the board members.

214.2(4) *Board officers.* The governor designates the chairperson and vice chairperson of the board from the members appointed pursuant to Iowa Code section 15F.102(2). In the case of absence or disability of the chairperson and vice chairperson, the members of the board shall elect a temporary chairperson by a majority vote of those members who are present and voting.

214.2(5) *Duties.* The board shall do all of the following:

a. Organize.

b. Oversee the administration of the following programs:

(1) Community attraction and tourism;

(2) Sports tourism marketing and infrastructure;

(3) River enhancement community attraction and tourism; and

(4) Vision Iowa.

c. Review baseball and softball complex sales tax rebate applications and make awards.

214.2(6) *Committees.* Each voting member of the board shall serve on at least one of three review committees for the following programs: community attraction and tourism, river enhancement community attraction and tourism, and sports tourism.

[**ARC 2980C**, IAB 3/15/17, effective 4/19/17; **ARC 5028C**, IAB 4/8/20, effective 5/13/20; **ARC 6612C**, IAB 11/2/22, effective 12/7/22]

261—214.3(15F) Authority duties.

214.3(1) The board shall adopt administrative rules pursuant to Iowa Code chapter 17A necessary to administer the programs established pursuant to Iowa Code chapter 15F.

214.3(2) The authority shall provide the board with assistance in implementing administrative functions, marketing the programs, providing technical assistance and application assistance to applicants under the programs, negotiating contracts, and providing project follow-up.

214.3(3) The authority may conduct negotiations on behalf of the board with applicants regarding terms and conditions applicable to awards under the programs.

These rules are intended to implement Iowa Code sections 15F.101 to 15F.107.

[**ARC 2980C**, IAB 3/15/17, effective 4/19/17; **ARC 5028C**, IAB 4/8/20, effective 5/13/20]

[Filed ARC 2980C (Notice ARC 2864C, IAB 12/21/16), IAB 3/15/17, effective 4/19/17]

[Filed ARC 5028C (Notice ARC 4670C, IAB 9/25/19), IAB 4/8/20, effective 5/13/20]

[Filed ARC 6612C (Notice ARC 6444C, IAB 8/10/22), IAB 11/2/22, effective 12/7/22]

CHAPTER 215
SPORTS TOURISM PROGRAM: MARKETING FUND

261—215.1(15F) Definitions. When used in this chapter, unless the context otherwise requires:

"Accredited colleges and universities" means any college, university, or institution of higher learning that is accredited by the Higher Learning Commission or any other college, university, or institution of higher learning that is accredited by an accrediting agency that is recognized by the U.S. Department of Education.

"Authority" means the economic development authority created in Iowa Code section 15.105.

"Bid fees" means fees paid as part of proposing a location for an event.

"Board" means the enhance Iowa board as created in Iowa Code section 15F.102.

"Convention and visitors bureau" or *"CVB"* means an organization engaged primarily in the marketing and promotion of a local community or communities to businesses and to leisure travelers interested in the area's facilities. Such organizations are typically engaged in a wide range of activities including but not limited to assisting businesses and leisure travelers in identifying meeting locations and convention sites; providing maps and other travel information; providing information on local attractions, lodging, and restaurants; and organizing tours of local historical, recreational, and cultural attractions.

"District" means a regional sports authority district certified under Iowa Code section 15E.321.

"Financial assistance" means assistance provided only from the funds available to the authority or the board and includes assistance in the form of grants, loans, and forgivable loans.

"Infrastructure" means land acquisition and construction; major renovations of buildings; and all appurtenant structures, utilities, and site development that are related to the operation of a sporting event.

"Marketing" means planning for or implementing efforts to publicize a sporting event using a range of strategies, tools and tactics.

"Marketing fund" means the fund established pursuant to Iowa Code section 15F.403 for purposes of financing sports tourism marketing projects.

"Organization" means a corporation, conference, association, or other organization which has as one of its primary purposes the sponsoring or administration of extracurricular intercollegiate athletic contests or competitions, or professional sporting events.

"Professional sporting events" means any sporting events for which the competing athletes receive payment for their participation in such sporting event.

"Program" means the portion of the sports tourism marketing and infrastructure program administered pursuant to this chapter and funded by the marketing fund.

"Promote" or *"promotion"* means to undertake specific identifiable actions that encourage greater awareness of and attendance at a sporting event. This includes the planning, organizing, advertising, marketing, managing, hosting, and sponsoring of a sporting event.

"Public organization" means a not-for-profit economic development organization or other not-for-profit organization including one that sponsors or supports sporting events.

"Sporting event" means an athletic activity requiring skill or physical prowess, usually competitive in nature and governed by a set of rules provided by a nationally recognized sanctioning body. A sporting event typically includes the placing of competitors into a fixed order of finish, depending upon their respective athletic performance within the rules provided for that activity.

"Sports tourism program review committee" or *"review committee"* means the committee established by Iowa Code section 15F.402(2) and shall consist of members of the board, with one member from each congressional district under Iowa Code section 15F.102(2)*"a"* and one member from the state at large under Iowa Code section 15F.102(2)*"b."*

[**ARC 2980C**, IAB 3/15/17, effective 4/19/17; **ARC 6107C**, IAB 12/29/21, effective 12/2/21; **ARC 6612C**, IAB 11/2/22, effective 12/7/22]

261—215.2(15F) Eligible applicants. Eligible applicants for financial assistance from the marketing fund include cities or counties in the state or public organizations, including convention and visitors bureaus.

[**ARC 2980C**, IAB 3/15/17, effective 4/19/17; **ARC 6612C**, IAB 11/2/22, effective 12/7/22]

261—215.3(15F) Eligible marketing projects. Eligible projects must actively and directly promote sporting events for accredited colleges and universities, professional sporting events, and other sporting events in the area served by an eligible applicant as defined in rule 261—215.2(15F). Only projects that promote sporting events occurring in Iowa are eligible for assistance.

215.3(1) An eligible applicant may apply for and receive financial assistance for more than one project. The board may require additional information to substantiate the financial need for awarding more than one project in any fiscal year.

215.3(2) An eligible applicant may apply for financial assistance for a project that spans two fiscal years. If financial assistance is approved for two fiscal years, financial assistance will only be provided for the second fiscal year if all applicable contractual requirements are met. When considering whether to award financial assistance for two fiscal years, the board shall evaluate metrics including the amount of revenue generated by ticket sales, the estimated economic impact, and the number of overnight stays at hotels in the city or county where the sporting event is being held. For example, economic impact may be calculated as total estimated attendance multiplied by daily attendee spending multiplied by average length of stay. If an eligible applicant wishes to supply an alternative formula for calculating economic impact, the applicant must supply a credible source for using an alternative formula. The authority may include such metrics and estimates in a program agreement executed pursuant to Iowa Code section 15F.401.

215.3(3) A convention and visitors bureau shall not in the same fiscal year receive financial assistance under the program created in this chapter and financial assistance as part of a district created pursuant to 261—Chapter 38.

215.3(4) An eligible applicant shall demonstrate matching funds in order to receive financial assistance pursuant to this rule. The amount of matching funds that may be required shall be at the board's discretion. An applicant under the program shall not receive financial assistance in an amount exceeding 50 percent of the total cost of the project.

215.3(5) A city, county, or public organization may use financial assistance received under the program for marketing and promotions. Whether an activity or individual cost item is directly related to the promotion of the sporting event shall be within the discretion of the authority.

215.3(6) A city, county, or public organization shall not use financial assistance received under the program as reimbursement for completed projects.

215.3(7) The total amount of financial assistance provided to an applicant in any one fiscal year shall not exceed $500,000.

[**ARC 2980C**, IAB 3/15/17, effective 4/19/17; **ARC 6107C**, IAB 12/29/21, effective 12/2/21; **ARC 6612C**, IAB 11/2/22, effective 12/7/22]

261—215.4(15F) Eligible and ineligible marketing expenses.

215.4(1) *Eligible expenses.* Expenses directly related to the active promotion of a sporting event will be eligible for reimbursement under the program. Examples of eligible expenses include, but are not limited to:

a. Sponsorships;
b. Payments to vendors;
c. Advertising;
d. Equipment rental;
e. Promotional materials;
f. Production costs.

215.4(2) *Ineligible expenses.* Expenses that are not directly related to the active promotion of a sporting event will be ineligible for reimbursement under the program. Examples of ineligible expenses include, but are not limited to:

a. Bid fees, rights fees, solicitation efforts or lobbying fees;
b. Travel costs or compensation of applicant staff;
c. Meals, dining, or alcoholic beverages;
d. Items that are purchased for resale;
e. Prizes given to participants;
f. Costs related to infrastructure or ongoing costs of a facility;
g. Other costs that the board determines to be ineligible.
[**ARC 6107C**, IAB 12/29/21, effective 12/2/21; **ARC 6612C**, IAB 11/2/22, effective 12/7/22]

261—215.5(15F) Threshold application requirements. To be considered for funding under the program, an application must meet the following threshold application requirements:

215.5(1) There must be demonstrated local support for the proposed activity.

215.5(2) A detailed description of the project, outlining the sporting event and the plan for promoting it.

215.5(3) The proposed project budget must be spent on marketing and promotions directly related to the promotion of the sporting event.

215.5(4) Detailed information and projections sufficient to enable the authority to accurately assess the economic impact of the sporting event described in the application. Such information shall include the estimated number of spectators and estimated quality and quantity of advertising and media coverage the sporting event will generate. If the applicant has previously held substantially similar events, the information shall include actual attendance figures from past events and a summary of the advertising and media coverage generated.
[**ARC 2980C**, IAB 3/15/17, effective 4/19/17; **ARC 6107C**, IAB 12/29/21, effective 12/2/21]

261—215.6(15F) Application process.

215.6(1) Applications for assistance under the program shall be submitted to the authority. For those applications that meet the threshold application requirements and the eligibility criteria, the authority shall forward the applications to the board and provide a staff review analysis and evaluation to the sports tourism program review committee and to the board.

215.6(2) All applications to the authority for financial assistance shall be made at least 90 days prior to a sporting event's scheduled date.

215.6(3) When reviewing the applications, the review committee and the authority shall consider, at a minimum, all of the following:

a. Impact of the project on the local, regional, and state economies. Economic impact will be determined by using the following calculation: Applicants will estimate the number of hotel room nights generated by each proposed sporting event and multiply the number of estimated hotel room nights by the average daily room rate for Iowa hotels. The average daily room rate will be provided by the authority based on information obtained from a hotel market data service. Intentionally inflated estimates of attendance or a history of providing inaccurate estimates will negatively affect the scoring of an application.

b. Potential to attract Iowans and out-of-state visitors. Projects that market or promote a sporting event that is new to Iowa will receive a higher score. Established events will receive a lower score.

c. Amount of positive advertising or media coverage the project generates.

d. Quality, size, and scope of the project.

e. Ratio of public-to-private investment.

f. The extent to which the sporting event to be marketed or promoted is unique, innovative, or diverse.

215.6(4) Upon review of the recommendations of the review committee, the board shall make final funding decisions on each application. The board may approve, defer, deny, or modify applications for financial assistance under the program, in its discretion, in order to fund as many projects with the moneys available as possible. The board and the authority may negotiate with applicants regarding the

details of projects and the amount and terms of any award. In making final funding decisions pursuant to this subrule, the board and the authority are exempt from Iowa Code chapter 17A.
[**ARC 2980C**, IAB 3/15/17, effective 4/19/17; **ARC 6107C**, IAB 12/29/21, effective 12/2/21]

261—215.7(15F) Administration.

215.7(1) *Administration of awards.*

a. Each applicant receiving an award of financial assistance from the board shall enter into an agreement with the authority. The agreement shall contain such terms and conditions as the board may place on the award or the authority may deem necessary for the efficient administration of the program established in this chapter. The agreement will also include the terms and conditions under which financial assistance must be repaid or penalties incurred in the event the applicant does not fulfill all obligations under the agreement.

b. These rules and applicable state laws shall be part of the agreement.

c. The applicant must execute and return the contract to the board within 90 days of the transmittal of the final contract from the board. Failure to do so may be cause for the board to terminate the award.

d. Awards may be conditioned upon commitment of other sources of funds necessary to complete the project.

e. Awards may be conditioned upon authority receipt and board approval of an implementation plan for the funded project.

215.7(2) *Reports.* An applicant receiving financial assistance shall provide an annual report to the authority for years in which it receives financial assistance under this rule. The report shall include the information the authority deems relevant. The report shall be submitted in the manner and on forms prescribed by the authority. The authority may perform any reviews or site visits necessary to ensure performance by the applicant.

215.7(3) *Requests for funds.* Recipients shall submit requests for funds in the manner and on forms prescribed by the authority. 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.

215.7(4) *Record keeping and retention.* The recipient shall retain all financial records, supporting documents and all other records pertinent to the sports tourism award for three years after contract closeout. Representatives of the authority shall have access to all recipient records that pertain to sports tourism funds.

215.7(5) *Amendments to contracts.* Any substantive change to a contract shall be considered an amendment. Substantive 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 approved by the enhance Iowa board. The authority may execute nonsubstantive or ministerial changes to the contract without board approval.

215.7(6) *Project closeout.* Upon expiration of the agreement, the authority shall initiate project closeout procedures.

215.7(7) *Compliance.* If the board finds that an applicant is not in compliance with the requirements of this program or the terms and conditions of the agreement, the board may find the applicant noncompliant. 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 applicant's use of funds for activities not described in the contract, the applicant's failure to complete funded projects in a timely manner, the applicant's failure to comply with applicable state or local rules, or the lack of a continuing capacity of the applicant to carry out the approved project in a timely manner.
[**ARC 2980C**, IAB 3/15/17, effective 4/19/17; **ARC 6107C**, IAB 12/29/21, effective 12/2/21]

These rules are intended to implement Iowa Code sections 15F.401, 15F.402, and 15F.403 as amended by 2022 Iowa Acts, House File 2579.

[Filed ARC 2980C (Notice ARC 2864C, IAB 12/21/16), IAB 3/15/17, effective 4/19/17]
[Filed Emergency After Notice ARC 6107C (Notice ARC 5988C, IAB 10/20/21), IAB 12/29/21, effective 12/2/21]
[Filed ARC 6612C (Notice ARC 6444C, IAB 8/10/22), IAB 11/2/22, effective 12/7/22]

CHAPTER 216
SPORTS TOURISM PROGRAM: INFRASTRUCTURE FUND

261—216.1(15F) Definitions. When used in this chapter, unless the context otherwise requires:

"Accredited colleges and universities" means any college, university, or institution of higher learning that is accredited by the Higher Learning Commission or any other college, university, or institution of higher learning that is accredited by an accrediting agency that is recognized by the U.S. Department of Education.

"Authority" means the economic development authority created in Iowa Code section 15.105.

"Bid fees" means fees paid as part of proposing a location for an event.

"Board" means the enhance Iowa board as created in Iowa Code section 15F.102.

"Convention and visitors bureau" or *"CVB"* means an organization engaged primarily in the marketing and promotion of a local community or communities to businesses and to leisure travelers interested in the area's facilities. Such organizations are typically engaged in a wide range of activities including but not limited to assisting businesses and leisure travelers in identifying meeting locations and convention sites; providing maps and other travel information; providing information on local attractions, lodging, and restaurants; and organizing tours of local historical, recreational, and cultural attractions.

"District" means a regional sports authority district certified under Iowa Code section 15E.321.

"Financial assistance" means assistance provided only from the funds available to the authority or the board and includes assistance in the form of grants, loans, and forgivable loans.

"Infrastructure" means land acquisition and construction; major renovations of buildings; and all appurtenant structures, utilities, and site development that are related to the operation of a sporting event.

"Infrastructure fund" means the fund established pursuant to Iowa Code section 15F.404 for purposes of financing sports tourism infrastructure projects.

"Marketing" means planning for or implementing efforts to publicize a sporting event using a range of strategies, tools, and tactics.

"Organization" means a corporation, conference, association, or other organization which has as one of its primary purposes the sponsoring or administration of extracurricular intercollegiate athletic contests or competitions, or professional sporting events.

"Professional sporting events" means any sporting events for which the competing athletes receive payment for their participation in such sporting events.

"Program" means the portion of the sports tourism marketing and infrastructure program administered pursuant to this chapter and funded by the infrastructure fund.

"Promote" or *"promotion"* means to undertake specific identifiable actions that encourage greater awareness of and attendance at a sporting event. This includes the planning, organizing, advertising, marketing, managing, hosting, and sponsoring of a sporting event.

"Public organization" means a not-for-profit economic development organization or other not-for-profit organization including one that sponsors or supports sporting events.

"Sporting event" means an athletic activity requiring skill or physical prowess, usually competitive in nature and governed by a set of rules provided by a nationally recognized sanctioning body. A sporting event typically includes the placing of competitors into a fixed order of finish, depending upon their respective athletic performance within the rules provided for that activity.

"Sports tourism program review committee" or *"review committee"* means the committee established by Iowa Code section 15F.402(2) and shall consist of members of the board, with one member from each congressional district under Iowa Code section 15F.102(2)*"a"* and one member from the state at large under Iowa Code section 15F.102(2)*"b."*

[**ARC 6612C**, IAB 11/2/22, effective 12/7/22]

261—216.2(15F) Eligible applicants. Eligible applicants for financial assistance from the infrastructure fund include cities and counties in the state and public entities that are a convention and visitors bureau or a district.

[**ARC 6612C**, IAB 11/2/22, effective 12/7/22]

261—216.3(15F) Eligible infrastructure projects. Eligible projects must actively and directly support sporting events for accredited colleges and universities, professional sporting events, and other sporting events in the area served by an eligible applicant as defined in rule 261—216.2(15F). Only projects that support sporting events occurring in Iowa are eligible for assistance.

216.3(1) An eligible applicant may apply for and receive financial assistance for more than one project. The board may require additional information to substantiate the financial need for awarding more than one project in any fiscal year.

216.3(2) An eligible applicant may apply for financial assistance for a project that spans two fiscal years. If financial assistance is approved for two fiscal years, financial assistance will only be provided for the second fiscal year if all applicable contractual requirements are met. When considering whether to award financial assistance for two fiscal years, the board shall evaluate metrics including the amount of revenue generated by ticket sales, the estimated economic impact, and the number of overnight stays at hotels in the city or county where the sporting event is being held. For example, economic impact may be calculated as total estimated attendance multiplied by daily attendee spending multiplied by average length of stay. If an eligible applicant wishes to supply an alternative formula for calculating economic impact, the applicant must supply a credible source for using an alternative formula. The authority may include such metrics and estimates in a program agreement executed pursuant to Iowa Code section 15F.401.

216.3(3) A convention and visitors bureau shall not in the same fiscal year receive financial assistance under the program created in this chapter and financial assistance as part of a district created pursuant to 261—Chapter 38.

216.3(4) An eligible applicant shall demonstrate the availability of matching funds for financing the sports tourism infrastructure project in the form of a private and public partnership with financing from city, county, and private sources in order to receive financial assistance pursuant to this rule. The amount of matching funds that may be required shall be at the board's discretion. An applicant under the program shall not receive financial assistance in an amount exceeding 50 percent of the total cost of the project.

216.3(5) A city, county, or public organization may use financial assistance received under the program for infrastructure that actively and directly supports a sporting event. Whether an activity or individual cost item is related to the sporting event shall be within the discretion of the authority.

216.3(6) A city, county, or public organization shall not use financial assistance received under the program as reimbursement for completed projects or for costs incurred prior to approval of financial assistance.

216.3(7) Financial assistance shall be provided for sports tourism infrastructure projects that draw a national and international audience and attract a significant number of visitors from outside the state. Factors the authority will consider in determining whether a project is qualified under this subrule include, but are not limited to, whether the likelihood of a national or international audience is validated by any available data about the anticipated audiences for the event, whether the event is nationally or internationally televised, and projected visitor information or visitor information for similar events held in the state.

216.3(8) Financial assistance shall not be provided for sports tourism infrastructure projects located in reinvestment districts as defined and approved by the authority pursuant to Iowa Code section 15J.4 or to applicants that have received a rebate of sales tax imposed and collected by retailers pursuant to Iowa Code section 423.4(5).

[**ARC 6612C**, IAB 11/2/22, effective 12/7/22]

261—216.4(15F) Eligible and ineligible infrastructure expenses.

216.4(1) *Eligible expenses.* Examples of eligible expenses include, but are not limited to:

a. Land acquisition;

b. Construction;

c. Major renovation of buildings;

d. Site development;

e. Permanent or temporary structures; and

f. Purchase or long-term lease of equipment.

216.4(2) *Ineligible expenses.* Expenses that are not directly related to sporting events or are not considered infrastructure will be ineligible for reimbursement under the program. Examples of ineligible expenses include, but are not limited to:

a. Bid fees, rights fees, solicitation efforts, or lobbying fees;

b. Travel costs or compensation of applicant staff;

c. Expenses eligible for financial assistance from the sports tourism marketing fund pursuant to 261—subrule 215.4(1) or other costs associated with marketing or promotion;

d. Ongoing operational costs not specifically related to sporting events; and

e. Other costs that the board determines to be ineligible.

[**ARC 6612C**, IAB 11/2/22, effective 12/7/22]

261—216.5(15F) Threshold application requirements. To be considered for funding under the program, an application must meet the following threshold application requirements:

216.5(1) There must be demonstrated local support for the proposed activity.

216.5(2) The application must contain a detailed description of the project, outlining the sporting event(s) and the infrastructure expenses necessary to support it.

216.5(3) The proposed project budget must be spent on infrastructure that actively and directly supports the sporting event(s).

216.5(4) The application must contain detailed information and projections sufficient to enable the authority to accurately assess the economic impact of the sporting event(s) described in the application. Such information shall include the estimated number of spectators and estimated quality and quantity of advertising and media coverage the sporting event(s) will generate. If the applicant has previously held substantially similar events, the information shall include actual attendance figures from past events and a summary of the advertising and media coverage generated.

[**ARC 6612C**, IAB 11/2/22, effective 12/7/22]

261—216.6(15F) Application process.

216.6(1) Applications for assistance under the program shall be submitted to the authority. For those applications that meet the threshold application requirements and the eligibility criteria, the authority shall forward the applications to the board and provide a staff review analysis and evaluation to the sports tourism program review committee and to the board.

216.6(2) When reviewing the applications, the review committee and the authority shall consider, at a minimum, all of the following:

a. Impact of the project on the local, regional, and state economies.

b. Amount of positive advertising or media coverage the project generates in national and international markets.

c. Quality, size, and scope of the project.

d. The extent to which the project would generate additional recreational and cultural attractions or tourism opportunities.

e. The extent to which the sporting event to be supported by the infrastructure project is unique, innovative, or diverse.

216.6(3) Upon review of the recommendations of the review committee, the board shall make final funding decisions on each application. The board may approve, defer, deny, or modify applications for financial assistance under the program, in its discretion, in order to fund as many projects with the moneys available as possible. The board and the authority may negotiate with applicants regarding the details of projects and the amount and terms of any award. In making final funding decisions pursuant to this subrule, the board and the authority are exempt from Iowa Code chapter 17A.

[**ARC 6612C**, IAB 11/2/22, effective 12/7/22]

261—216.7(15F) Administration.

216.7(1) *Administration of awards.*

a. Each applicant receiving an award of financial assistance from the board shall enter into an agreement with the authority. The agreement shall contain such terms and conditions as the board may place on the award or the authority may deem necessary for the efficient administration of the program established in this chapter. The agreement will also include the terms and conditions under which financial assistance must be repaid or penalties incurred in the event the applicant does not fulfill all obligations under the agreement.

b. These rules and applicable state laws shall be part of the agreement.

c. The applicant must execute and return the contract to the board within 90 days of the transmittal of the final contract from the board. Failure to do so may be cause for the board to terminate the award.

d. Financial assistance shall not be provided until all financing for the sports tourism infrastructure project is secured and documented to the satisfaction of the authority.

e. Awards may be conditioned upon authority receipt and board approval of an implementation plan for the funded project.

216.7(2) *Reports.* An applicant receiving financial assistance shall provide an annual report to the authority for years in which the applicant receives financial assistance under this rule. The report shall include the information the authority deems relevant. The report shall be submitted in the manner and on forms prescribed by the authority. The authority may perform any reviews or site visits necessary to ensure performance by the applicant.

216.7(3) *Requests for funds.* Recipients shall submit requests for funds in the manner and on forms prescribed by the authority. 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.

216.7(4) *Record keeping and retention.* The recipient shall retain all financial records, supporting documents, and other records pertinent to the sports tourism award for three years after contract closeout. Representatives of the authority shall have access to all recipient records that pertain to sports tourism funds.

216.7(5) *Amendments to contracts.* Any substantive change to a contract shall be considered an amendment. Substantive changes include time extensions, budget revisions, and significant alterations of the funded project that change the scope, location, objectives, or scale of the approved project. Amendments must be approved by the board. The authority may execute nonsubstantive or ministerial changes to the contract without board approval.

216.7(6) *Project closeout.* Upon expiration of the agreement, the authority shall initiate project closeout procedures.

216.7(7) *Compliance.* If the board finds that an applicant is not in compliance with the requirements of this program or the terms and conditions of the agreement, the board may find the applicant noncompliant. 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 applicant's use of funds for activities not described in the contract, the applicant's failure to complete funded projects in a timely manner, the applicant's failure to comply with applicable state or local rules, or the lack of a continuing capacity of the applicant to carry out the approved project in a timely manner.
[**ARC 6612C**, IAB 11/2/22, effective 12/7/22]

These rules are intended to implement Iowa Code sections 15F.401, 15F.402, and 15F.404 and 2022 Iowa Acts, House File 2579.

[Filed ARC 6612C (Notice ARC 6444C, IAB 8/10/22), IAB 11/2/22, effective 12/7/22]

CHAPTERS 217 to 219
Reserved

CHAPTER 220
RURAL HOUSING NEEDS ASSESSMENT GRANT PROGRAM
Transferred to 261—Chapter 28, **ARC 6892C**, IAB 02/22/23

CHAPTER 221
RURAL INNOVATION GRANT PROGRAM
Transferred to 261—Chapter 29, **ARC 6892C**, IAB 02/22/23

CHAPTER 222
EMPOWER RURAL IOWA PROGRAM
Transferred to 261—Chapter 30, **ARC 6892C**, IAB 02/22/23

CHAPTERS 223 to 299
Reserved

PART XI
Reserved

CHAPTER 300
Reserved

PART XI
ARTS AND CULTURE

CHAPTER 301
IOWA COMMUNITY CULTURAL GRANTS (ICCG) PROGRAM

[Prior to 11/1/23, see Cultural Affairs Department[221] Ch 6]

261—301.1(15) Program purpose. The purpose of the Iowa community cultural grants (ICCG) is to provide a program of grants to cities, county governments, tribal councils and nonprofit, tax-exempt community groups to support the development of community programs which provide jobs for local Iowans while promoting Iowa's cultural, ethnic, and historical heritages, through the development of festivals, music, drama, cultural programs, historic restorations, and tourism projects.
[Editorial change: IAC Supplement 11/1/23]

261—301.2(15) Program description. The ICCG program shall operate as a competitive grants program administered by the authority under the direction of the director or designee. Iowa cities, county governments, tribal councils and nonprofit, tax-exempt community groups may make application to the authority which will approve or disapprove all submissions based upon published criteria. The ICCG program shall provide funding to successful applications, subject to local matching funds provisions and contractual terms as set forth in an agreement between the authority and any successful grant recipient.
[Editorial change: IAC Supplement 11/1/23]

261—301.3(15) Definitions. The following definitions shall apply when used in this chapter unless otherwise noted:

"Advisory committee" means the committee comprised of at least three representatives from across the state with expertise in the arts, history, and economic development. The advisory committee shall review each application and make recommendations to the director for funding of eligible projects.

"Application" means an official ICCG application form as provided by the authority.

"Authority" means the Iowa economic development authority.

"Community group" means an Iowa nonprofit, tax-exempt organization which is open to the general public and established for the promotion and development of one or more of the following disciplines or activities: the arts, history, culture, ethnicity, historic preservation, tourism, economic development, festivals, or municipal libraries. "Community group" shall not include a school, college, university, political party, labor union, state or federal government agency, religious organization, church, convention, or association of churches operated primarily for religious purposes, or operated, supervised, controlled or principally supported by a religious organization, church, convention, or association of churches. "Community group" also shall not include any organization whose primary purpose is to support any excluded type of organization.

"Director" means the director of the authority, or designee.

"Eligible activity" means a qualified festival; performing, visual, or literary arts project; historic preservation, museum, tourism, or ethnic heritage project which will enhance Iowa's cultural climate, and which will provide jobs for Iowans while serving the general public.

"Eligible applicant" means an incorporated city in Iowa, county government, tribal council, or an Iowa community group which is federally tax-exempt under United States Internal Revenue Code Section 501(c)(3) and incorporated under the Iowa nonprofit corporation Act. Iowa community groups may apply for ICCG funds through a fiscal agent which is federally tax-exempt and otherwise eligible to apply.

"Fiscal agent" means an organization which meets the definition of eligible applicant, and which serves as the legal applicant of record, redistributes the funds to the intended receiver, and is responsible for all published requirements of the ICCG program including contracts, budgets, fiscal records, and reports.

"Grantee" means any applicant receiving grant funds under the ICCG program.

"ICCG" means the Iowa community cultural grants program as administered by the authority.

"In-kind contribution" means a noncash contribution provided by a grantee as a part of the grantee's matching share of a project.

"Matching funds" means those funds which are locally contributed for the specifically funded project and which, when combined with in-kind contributions, shall equal at least 50 percent or more of the total project cost. Matching funds shall be provided by the eligible applicant and shall not include any portion of another authority, Iowa arts council, or state historical society of Iowa grant.

"Proposed project" means an eligible activity for which an eligible applicant has submitted a single application for funding of a single project.

[**ARC 7734B**, IAB 5/6/09, effective 6/10/09; Editorial change: IAC Supplement 11/1/23]

261—301.4(15) Application procedures. All ICCG inquiries and correspondence, including the submission of completed application forms for consideration of funding, shall be addressed to the Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315, telephone 515.348.6200. All applications shall be submitted according to the authority's published guidelines. Handwritten, out-of-date, or telefacsimile applications shall not be accepted. All applications submitted shall be reviewed by the advisory committee, with the advisory committee's recommendations for grantees and grant awards being submitted to the director or designee who shall determine final grantees' awards to the extent funds are available.

[Editorial change: IAC Supplement 11/1/23]

261—301.5(15) Review criteria. Review criteria shall include the following minimum criteria:

1. The historical, ethnic, cultural, and tourism value and quality of the proposed project;
2. The number and impact of full- and part-time employment for Iowans created by the proposed project;
3. The degree of collaboration with other interested entities;
4. The financial need of the applicant for the proposed project; and
5. The appropriateness of the project budget.

Additional review criteria are as listed in the published project guidelines.

[Editorial change: IAC Supplement 11/1/23]

261—301.6(15) Award amounts. Grant awards shall be made from $1,000 at a minimum to $25,000 at a maximum. The director reserves the right not to grant all appropriated funds if there is an insufficient number of applications submitted to adequately achieve the purposes of the Act as defined in rule 261—301.1(15).

[Editorial change: IAC Supplement 11/1/23]

261—301.7(15) Grant deadline. The authority may establish one or more grant deadlines for the submission of ICCG applications each year funds are available.

[Editorial change: IAC Supplement 11/1/23]

261—301.8(15) Contractual agreement. The authority and each successful grantee shall enter into a contractual agreement prior to the expenditure of project-related funds. No grant or matching funds may be obligated or expended for the project prior to the execution of the contractual agreement by the authority and the grantee. A grantee must expend all awarded funds within the fiscal year named in the contractual agreement.

[Editorial change: IAC Supplement 11/1/23]

261—301.9(15) Auditing requirements. The authority reserves the right to request an audit of the expenditures of any ICCG-funded project at the expense of the grantee and may also require the grantee to submit copies of expense documentation prior to or in support of a reimbursement claim.

[Editorial change: IAC Supplement 11/1/23]

261—301.10(15) Informal appeals. An informal appeals process shall be made available only to applicants whose applications were declined on procedural impropriety or error as evidenced by one or more of the following reasons:

1. Application declined on the basis of review criteria other than those appearing in rule or relevant guidelines;

2. Application declined based on influence of the advisory committee willfully failing to disclose conflicts of interest;

3. Application declined based upon highly erroneous information provided by staff or advisory committee members at the time of the review despite the fact that the applicant provided the authority with accurate and complete information on regulation forms as part of the standard application process. Incomplete, ineligible, or applications failing to meet the annual deadline are specifically denied any appeals process. All requests for appeals shall be made in writing and shall be hand-delivered or bear a U.S. Postal Service postmark within 30 days of notification of the decision. The director shall consider and rule on the appeal and will notify the appellant in writing of the decision within 30 days from the receipt of the appeal. The decision of the director is final except as provided for in Iowa Code sections 17A.19 to 17A.20.

[Editorial change: IAC Supplement 11/1/23]

These rules are intended to implement Iowa Code section 15.436 as transferred by 2023 Iowa Acts, Senate File 514, section 2125.

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[Editorial change: IAC Supplement 11/1/23]

CHAPTER 302
CULTURAL LEADERSHIP PARTNERS (CLP) PROGRAM

[Prior to 11/1/23, see Cultural Affairs Department[221] Ch 8]

261—302.1(15) Purpose. The cultural leadership partners program provides multiyear, general operating budgetary support to major arts and cultural organizations which demonstrate an exemplary record of cultural and managerial excellence and community service on a continuing basis to the citizens of Iowa.
[Editorial change: IAC Supplement 11/1/23]

261—302.2(15) Definitions. As used in these rules, unless the context otherwise requires:

"Application" means a formal request on prescribed forms for funds available through this program.

"Arts organization" means an eligible organization whose primary mission, purpose, and services are centered in the arts.

"Authority" means the Iowa economic development authority.

"CLP" means the cultural leadership partners program.

"CLP coordinator" means the authority staff member assigned as the primary contact person for the CLP program.

"Cultural organization" means an eligible organization with a primary mission and purpose that is cultural in nature; the cultural organization must operate as a museum, botanical center, zoo, or center for the performing arts.

"Director" means the director of the authority.

"Eligible organization" means an Iowa arts or cultural organization that meets the criteria for eligibility described in published guidelines. "Eligible organization" shall not include an organization that uses a fiscal agent or the Iowa nonprofit or federal tax-exempt status of another organization; an organization that receives general operating support through other programs administered by the authority or its divisions; a for-profit corporation or business, religious organization, political party, or national service/professional organization; an agency, department or division of county, state or federal government, including libraries, parks, and recreation departments; an auditorium, convention center or similar venue; or an educational institution, organization or PK-12 school, whose primary orientation, mission and purpose are education and the awarding of academic credits.

"End-of-year report" means a report submitted to the authority following the end of a partner organization's operating year, detailing financial, operational, and programming data of the partner organization.

"Evaluation team" means a team of up to four individuals appointed by the director who have knowledge and expertise relevant to the arts or cultural applicant organization being evaluated for acceptance into the CLP program.

"Matching funds" means nonstate and nonfederal funds equal to or in excess of the grant award.

"Partner organization" means any eligible applicant that has been accepted by the director into the cultural leadership partners program.
[Editorial change: IAC Supplement 11/1/23]

261—302.3(15) Eligibility. Eligibility requirements are according to published program guidelines. Eligible organizations must meet all eligibility requirements of this program for the applicant's three previous operating years prior to the application deadline. Organizations receiving funding through this program must continue to meet all eligibility requirements annually to continue to receive funding.
[Editorial change: IAC Supplement 11/1/23]

261—302.4(15) Application procedure.

302.4(1) *Procedure.* All applications shall be submitted on official application forms available from the authority. Procedures for review of applications are according to published guidelines.

302.4(2) *Application deadline.* Applications will be accepted from eligible organizations every three years according to published guidelines.
[Editorial change: IAC Supplement 11/1/23]

261—302.5(15) Matching funds. Eligible organizations whose cash operating budgets include nonstate and nonfederal funds equal to or in excess of the grant award shall be determined to have met the matching requirements for this program. Grant funds from the department or its divisions shall not be used as matching funds for this program.
[Editorial change: IAC Supplement 11/1/23]

261—302.6(15) Evaluation team. The director shall appoint an evaluation team of up to four individuals to review each eligible organization's application and recommend approval for funding under the guidelines of this program. The members of the evaluation team shall serve until the review process for the applicant organization is completed. The evaluation team shall consist of representatives with knowledge and expertise pertinent to the types of organizations eligible for the cultural leadership partners program. The committee evaluation team shall be comprised of members who are not employed by an applicant and who do not serve on a board, council, or commission of an applicant, with or without compensation.
[Editorial change: IAC Supplement 11/1/23]

261—302.7(15) Application review and selection.

302.7(1) *Procedure.*

a. Each application shall be screened by the CLP coordinator for eligibility and completeness. Incomplete or ineligible applications or applications received after the deadline shall not be considered for funding.

b. The evaluation team shall evaluate all applications eligible for consideration and make recommendations for funding to the director.

c. Final decisions, certification of grant awards, and acceptance into the CLP program shall be determined by the director.

302.7(2) *Review criteria.* Review criteria shall be according to the authority's published guidelines and shall include the following at a minimum:

a. Programmatic excellence, leadership and cultural impact;

b. Sound fiscal and managerial practices and administrative stability; and

c. Community outreach and involvement.
[Editorial change: IAC Supplement 11/1/23]

261—302.8(15) Grant administration.

302.8(1) *Contracts.*

a. Upon certification by the director that an applicant organization is approved to become a CLP partner, the authority shall enter into a contract with the organization. The contract shall state the dates, terms, and conditions of the grant award, as well as the amount of the award. When allocating awards to cultural leadership partners, the director shall first ensure that funds are available to meet obligations to existing partners before entering into any contracts with new partner organizations.

b. All contracts shall be approved by the director and the legally responsible officer of the partner organization.

302.8(2) *Payments.* Payments of the grant award shall be made upon the receipt by the authority of a signed contract from the partner organization.

302.8(3) *Record-keeping and retention requirements.*

a. Financial records, supporting documents, and all other records pertinent to the program shall be retained by the partner organization for three years beyond the grant period.

b. Representatives of the authority and the state auditor's office shall have access to all books, documents, account information, or other property belonging to or in use by the partner organization pertaining to the receipt of funds under this program.

302.8(4) *Audits.* The recipient of any grant of $25,000 or more in any single grant cycle shall have conducted an on-site financial compliance audit. This audit shall not be an eligible grant expense.

302.8(5) *Reporting requirements.* The partner organization shall provide an end-of-year report of the use of CLP funds which shall be submitted according to a schedule as outlined in the contract.

302.8(6) *Finding of noncompliance.* The authority may, for cause, find that a partner organization is not in compliance with the requirements of this program or the terms of the contract. At the authority's discretion, remedies for noncompliance may include suspension or return of grant funds. Reasons for a finding of noncompliance may include, but are not limited to:

a. The partner organization's use of funds for activities not permitted under the guidelines of this program;

b. Failure of the partner organization to return the signed contract in a timely manner;

c. Failure of the partner organization to comply with any applicable state or federal rules, regulations, or laws; or

d. A violation of the terms of the contract.

[Editorial change: IAC Supplement 11/1/23]

261—302.9(15) Informal appeals.

302.9(1) Eligible applicants or partner organizations may informally appeal a decision of the authority not to grant CLP funds on any of the following bases:

a. Action was outside of the statutory authority;

b. Decision was influenced by a conflict of interest;

c. Action violated state law, administrative rules, or policy;

d. Insufficient public notice was given; and

e. Alteration of the review and certification processes was detrimental to the applicant.

302.9(2) Informal appeals in writing may be directed to the director within 15 days of the final certification of the incident. All informal appeals shall be directed to the Director, Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315.

302.9(3) All informal appeals shall contain:

a. Facts of the case;

b. Argument in favor of the appeal; and

c. Remedy sought.

302.9(4) The director shall consider and rule on the informal appeal after receiving all documentation from the appellant and shall notify the appellant in writing of the decision within 30 days. Decisions by the director may be appealed through the contested case process as set out in Iowa Code sections 17A.10 to 17A.19.

[Editorial change: IAC Supplement 11/1/23]

These rules are intended to implement Iowa Code section 15.436 as transferred by 2023 Iowa Acts, Senate File 514, section 2125.

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[Editorial change: IAC Supplement 11/1/23]

CHAPTER 303
CULTURAL AND ENTERTAINMENT DISTRICTS

[Prior to 11/1/23, see Cultural Affairs Department[221] Ch 9]

261—303.1(15) Purpose. The purpose of cultural and entertainment districts is to encourage city and county governments, organizations, businesses, and individuals to enhance the quality of life for citizens of this state and enrich local economies through developing and sustaining cultural facilities in a synergetic fashion. Certified cultural and entertainment districts will receive technical assistance from the authority's staff, will be eligible for certain incentives, and may have professional services of other state agencies to draw upon in order to facilitate the local program.
[Editorial change: IAC Supplement 11/1/23]

261—303.2(15) Definitions.

"Authority" means the Iowa economic development authority.

"Certified cultural and entertainment district" means a cultural and entertainment district that has been certified by the authority pursuant to these rules. A certified cultural and entertainment district must be a well-defined, compact, contiguous geographic area that includes both residential and commercial property and a high concentration of cultural facilities. Only certified cultural and entertainment districts are eligible for the incentives set forth in these rules.

"Cultural and entertainment district" means a well-recognized, labeled, compact mixed-use area in which a high concentration of cultural facilities serves as the anchor.

"Cultural facilities" are physical and cultural assets that play a vital role in the life and development of the community and contribute to the public through interpretive, educational, and recreational uses, including but not limited to museums, libraries, performance halls, studios, galleries, arts-related retail shops, music or media production houses, arboreta, and artist live/work spaces.

"Director" means the director of the authority.
[Editorial change: IAC Supplement 11/1/23]

261—303.3(15) Eligible applicants. All applicants shall represent a public-private partnership.

303.3(1) *Public element of partnership.* All cities and counties are eligible to serve as the public component of the partnership. Two or more cities or counties may apply jointly for certification of a district that extends across a common boundary.

303.3(2) *Private element of partnership.* A local community organization (nonprofit or for-profit) is eligible to serve as the private component of the partnership.
[Editorial change: IAC Supplement 11/1/23]

261—303.4(15) Program administration.

303.4(1) *Administering agency.* The cultural and entertainment district certification program will be administered by the authority.

303.4(2) *Advisory committee.* The director shall appoint a cultural and entertainment district advisory committee composed of individuals knowledgeable in subjects including but not limited to historic preservation, arts, tourism, and economic development to advise the director on the various elements of the program. The advisory committee shall have nine members who serve three-year staggered terms. At least one member will be a representative from the authority.

303.4(3) *Request for proposals (RFP).* The authority will distribute a request for proposals that describes the cultural and entertainment district certification program, outlines eligibility requirements, and includes an application and a description of the application procedures.

303.4(4) *Applications.* The authority shall develop and make available a standardized application pertaining to the certification of cultural and entertainment districts. Applications may be obtained by contacting the Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315; telephone 515.348.6200; www.iowaeda.com.

303.4(5) *Deadline.* A completed application shall be returned to the authority, postmarked no later than the date specified by the authority in the RFP, and shall contain the information requested in the application.
[Editorial change: IAC Supplement 11/1/23]

261—303.5(15) Selection.

303.5(1) The authority shall establish criteria for the selection of cultural and entertainment districts for certification. The following factors shall be considered:

a. Management structure.

b. Presence of cultural assets.

c. Level of community support.

d. Local incentives.

e. Plan for developing and sustaining the district.

303.5(2) The director will determine the number of cultural and entertainment districts to be selected for certification.

303.5(3) Cultural and entertainment districts will be selected for certification on a competitive basis from the applications received.

303.5(4) Staff review. Applications shall be reviewed by authority staff to ensure compliance with the program's administrative rules and guidelines. Applications meeting the requirements shall be forwarded to the advisory committee.

303.5(5) Advisory committee review. The advisory committee will review applications and make recommendations to the director.

303.5(6) Final selection. The director shall make final certification decisions. The director reserves the right to withhold certification if applications submitted do not adequately achieve the purposes of the cultural and entertainment district certification program.
[Editorial change: IAC Supplement 11/1/23]

261—303.6(15) Certification.

303.6(1) *Timing.* At least annually, the director will announce the certification of cultural and entertainment districts. If no new certifications have been issued, the director will so state.

303.6(2) *Compliance.* Certified cultural and entertainment districts must submit an annual report to the authority. Continued certification is contingent upon acceptable performance. The authority may amend, suspend, or terminate certification for reasons that may include, but are not limited to, a consistent failure to report, a dissolution of the management structure, or a significant deviation from the plan for cultural development.
[Editorial change: IAC Supplement 11/1/23]

261—303.7(15) Incentives. The authority shall encourage development projects and activities located in certified cultural and entertainment districts through incentives.

303.7(1) Owners of property located in certified cultural and entertainment districts may request tax benefits for substantial rehabilitation work on historic buildings. Property owners desiring these tax benefits shall make application under 223—Chapters 47 and 48 and shall comply with all requirements therein.

303.7(2) The authority shall provide incentives under cultural grant programs administered by the authority. Specific incentives may be reflected in the application instructions for each grant program.

303.7(3) Additional incentives may from time to time be offered by the authority, other state agencies, and other organizations.
[Editorial change: IAC Supplement 11/1/23]

261—303.8(15) Appeals. Eligible applicants may informally appeal a decision of the director not to certify a cultural and entertainment district on any of the following bases:

1. Action was outside statutory authority;
2. Decision was influenced by a conflict of interest;

3. Action violated state law, administrative rule, or written policy;
4. Insufficient public notice was given; and
5. Alteration of the review process was detrimental to the applicant.

Informal appeals shall be submitted in writing within 15 days of the notice of denial. All informal appeals shall be directed to the Director, Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315. All informal appeals shall contain the facts of the case, argument in favor of the appeal, and remedy sought.

The director shall consider and rule on the informal appeal after receiving all documentation from the appellant and shall notify the appellant in writing of the decision within 30 days. Decisions by the director may be appealed through the contested case process as set out in Iowa Code sections 17A.10 to 17A.19.

[Editorial change: IAC Supplement 11/1/23]

These rules are intended to implement Iowa Code section 15.438 as transferred by 2023 Iowa Acts, Senate File 514, section 2125.

[Filed 2/26/04, Notice 1/21/04—published 3/17/04, effective 4/21/04]
[Filed 9/9/05, Notice 8/3/05—published 9/28/05, effective 11/2/05]
[Editorial change: IAC Supplement 11/1/23]

CHAPTER 304
Reserved

CHAPTERS 305 to 310
Reserved

CHAPTER 311
RENEWABLE FUEL INFRASTRUCTURE BOARD—ORGANIZATION
Rescinded **ARC 6320C**, IAB 5/18/22, effective 6/22/22; see 21—Ch 13

CHAPTER 312
RENEWABLE FUEL INFRASTRUCTURE PROGRAM FOR
RETAIL MOTOR FUEL SITES
Rescinded **ARC 6320C**, IAB 5/18/22, effective 6/22/22; see 21—Ch 14

CHAPTER 313
RENEWABLE FUEL INFRASTRUCTURE PROGRAM FOR
BIODIESEL TERMINAL GRANTS
Rescinded **ARC 6320C**, IAB 5/18/22, effective 6/22/22; see 21—Ch 15

CHAPTER 314
RENEWABLE FUEL INFRASTRUCTURE PROGRAM ADMINISTRATION
Rescinded **ARC 6320C**, IAB 5/18/22, effective 6/22/22; see 21—Ch 16

CHAPTERS 315 to 399
Reserved

PART XII
ENERGY DIVISION

CHAPTER 400
RULES APPLICABLE TO PART XII

261—400.1(84GA,HF590) Definitions. For purposes of this part, unless the context otherwise requires:

"Authority" means the economic development authority created in Iowa Code chapter 15.

"Board" means the economic development authority board.

"Director" means the director of the economic development authority.

"Entity" or *"entities"* includes but is not limited to businesses, nonprofit organizations, educational institutions, units of state and local government, and individuals conducting business, research, or programs in Iowa.

"Foreign" means a locality outside of, or nation other than, the United States, Canada, or Mexico.

"Fund" means the moneys appropriated in prior fiscal years for purposes of the Iowa power fund created in 2011 Iowa Code section 469.9 and any repayments, recaptures, royalties, or other moneys accruing to the authority as a result of such appropriations.

[**ARC 9851B**, IAB 11/16/11, effective 10/26/11]

261—400.2(84GA,HF590) Purpose, administrative information, and implementation.

400.2(1) *Purpose.* In 2011 Iowa Acts, House File 590, the general assembly repealed Iowa Code chapter 469 which established the Iowa power fund, allowed for the provision of financial assistance from the fund to certain energy projects, and provided for the fund's administration by the office of energy independence. With the repeal of Iowa Code chapter 469, the general assembly transferred to the authority the administration of all outstanding projects funded under the Iowa power fund and the contracts entered into thereunder. The purpose of this part is to allow the authority to administer and wind down the contracts entered into under the power fund legislation before its repeal.

400.2(2) *Administrative information.* The projects and contracts formerly administered by the office of energy independence are now administered by the authority. The public may obtain information about the Iowa power fund, the office of energy independence, or the office's projects by contacting the Economic Development Authority, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)725-3000.

400.2(3) *Implementation.* This part is intended to implement 2011 Iowa Code chapter 469 and 2011 Iowa Acts, House File 590, division III.

[**ARC 9851B**, IAB 11/16/11, effective 10/26/11]

These rules are intended to implement 2011 Iowa Acts, House File 590, division III.

[Filed Emergency ARC 9851B, IAB 11/16/11, effective 10/26/11]

CHAPTER 401
ADMINISTRATION OF FINANCIAL ASSISTANCE
[Prior to 11/16/11, see 350—Ch 4]

261—401.1(84GA,HF590) Purpose.

401.1(1) Assistance was awarded under the Iowa power fund for purposes of the following:

a. Increasing the research, development, production, and use of biofuels and other sources of renewable energy;

b. Improving energy efficiency;

c. Reducing greenhouse gas emissions; and

d. Furthering the research, development, commercialization and distribution of technologies and practices to sustain the environment and develop business in this state.

401.1(2) Each individual project receiving a grant or loan need not meet all of these purposes, but the financial assistance provided, when considered on the whole, shall be consistent with these purposes.
[**ARC 9851B**, IAB 11/16/11, effective 10/26/11]

261—401.2(84GA,HF590) Appropriations. The fund includes appropriations made to the fund by the general assembly, other moneys available to or obtained or accepted from federal or private sources, interest earned, and repayments and recaptures of loans and grants.
[**ARC 9851B**, IAB 11/16/11, effective 10/26/11]

261—401.3(84GA,HF590) Control of fund assets. The fund is under the control of the authority. The director shall coordinate the administration of the fund. The board shall approve, defer, or deny applications for financial assistance from moneys appropriated to the fund. The board may amend or wind down contracts entered into for the provision of financial assistance under the fund.
[**ARC 9851B**, IAB 11/16/11, effective 10/26/11]

261—401.4(84GA,HF590) Allocation of fund moneys.

401.4(1) Moneys available in the fund may be used to provide financial assistance to entities conducting business, research, or programs in Iowa:

a. To accelerate research and development, knowledge transfer, and technology innovation and improve the economic competitiveness of efforts furthering the goals of the fund stated in rule 261—401.1(84GA,HF590).

b. To increase the demand for and educate the public about technologies and approaches furthering the goals of the fund stated in rule 261—401.1(84GA,HF590).

401.4(2) Appropriations are subject to actual receipt of moneys by the fund.

401.4(3) Repayments and recaptures of fund moneys may be allocated by the board for purposes of financial assistance under this part or for the administrative costs of the authority.
[**ARC 9851B**, IAB 11/16/11, effective 10/26/11]

261—401.5(84GA,HF590) Eligible applicants. Entities conducting or proposing or partnering to conduct business, research, or programs in Iowa are eligible to apply to the authority for financial assistance from the fund. Proposals must demonstrate potential for significant impact in Iowa. A single entity or group of entities may submit an application for assistance from the fund.
[**ARC 9851B**, IAB 11/16/11, effective 10/26/11]

261—401.6(84GA,HF590) Eligibility criteria for financial assistance.

401.6(1) *General criteria.* Applicants must include documentation relating to the actual or potential development of the following:

a. Utilization of crops and products grown or produced in this state that maximize the value of crops used as feedstock in biomanufacturing products and as coproducts.

b. Reduction of greenhouse gas emissions and carbon sequestration.

c. Commercialization of technology and product development for sale in the national and international market.

d. Alternative and renewable energy and increased energy efficiency.

e. Private or federal matching funds.

401.6(2) *Research criteria.* In addition to including documentation related to the general criteria in subrule 401.6(1), applicants seeking funding for research must include information related to the following:

a. The technical feasibility of the proposal.

b. The extent to which the proposed research builds on already-existing research.

c. The extent to which the proposed research meets a market need and demonstrates viability for commercialization.

401.6(3) *Commercialization criteria.* In addition to including documentation related to the general criteria in subrule 401.6(1), applicants seeking funding for commercialization projects must include information related to the following:

a. The extent to which the technology has been proven.

b. The technology sought to be commercialized.

c. The current scale-up status of the project.

401.6(4) *Education criteria.* In addition to including documentation related to the general criteria in subrule 401.6(1), applicants seeking funding for educational projects must include information related to the following:

a. The target audience, including the estimated number of people targeted.

b. An estimate of the energy savings possible or fossil fuel reductions achievable if the target audience implements the methods presented.

401.6(5) *Undesignated projects criteria.* In addition to including documentation related to the general criteria in subrule 401.6(1), applicants seeking funding for undesignated projects must include information that explains how the project meets the statutory goals of the fund.

[**ARC 9851B**, IAB 11/16/11, effective 10/26/11]

261—401.7(84GA,HF590) Forms of assistance.

401.7(1) *Types of assistance.* Financial assistance from the fund may consist of, but is not limited to, loans, forgivable loans, grants, investments, loan guarantees, and such other forms of assistance the board deems appropriate and consistent with the needs of a given project.

401.7(2) *Eligible uses of funds.* The eligible uses of the funds awarded by the board may be limited at the board's discretion. Generally, funds awarded by the board may not be used to fund the purchase of land or buildings, and no more than 10 percent of the funds awarded per application may be used for indirect costs.

[**ARC 9851B**, IAB 11/16/11, effective 10/26/11]

261—401.8(84GA,HF590) Application process.

401.8(1) *Preapplication.* To apply for moneys from the fund, an applicant shall submit a preapplication to the authority in a form provided by the authority on behalf of the board. The preapplication serves as an executive summary of the applicant's proposal. The authority shall review preapplications and request full applications for those projects that appear to meet the eligibility criteria and statutory goals of the fund.

401.8(2) *Full application.* An applicant requested to submit a full application shall submit such application to the authority in a form provided by the authority on behalf of the board. The authority shall review the full applications and any technical, scientific or financial review completed and make recommendations to the board. The board shall review the applications and make the final decision. The board shall have final authority to approve, defer, or deny such applications. The board or the authority may request additional information at any time and proceed with consideration of the application when that information is received.

401.8(3) *Technical, scientific or financial review.* The board or the authority may request an applicant to obtain a technical, scientific or financial review of a proposal which may wholly or partially be funded at the applicant's expense. The review may be obtained from a reviewer recommended by the board or the authority or may be obtained from a reviewer selected by the applicant and approved in advance by

the board or the authority. Only reviews from reviewers recommended by or approved by the board or the authority will be accepted.

401.8(4) *Agency review.* The authority may refer proposals to other state agencies for review as appropriate.

401.8(5) *Ongoing acceptance of applications.* Applications shall be accepted by the authority on behalf of the board on an ongoing basis. Review times will vary due to the complexity and diversity of applications.

401.8(6) *Forms and directions.* Application forms and directions for completing the forms are available from the authority.

[**ARC 9851B**, IAB 11/16/11, effective 10/26/11]

261—401.9(84GA,HF590) Confidentiality.

401.9(1) *Period of confidentiality.* All information contained in an application for financial assistance submitted to the board shall remain confidential while the board is reviewing the application, processing requests for confidentiality, negotiating with the applicant, and preparing the application for consideration by the board.

401.9(2) *Release of information for technical review.* The board may release certain information in an application for financial assistance to a third party for technical review. If the board releases such information, the board shall ensure that the third party protects such information from public disclosure.

401.9(3) *Applicant request for confidentiality.* An applicant may make a written request to the board to keep confidential certain details of an application, contract, or the material submitted in support of an application or a contract. If the request includes a sufficient explanation as to why the public disclosure of such details would give an unfair advantage to competitors, the board shall keep such details confidential.

401.9(4) *Criteria for determining confidential treatment.* In determining whether to grant a request for confidential treatment of applicant information, the board must appropriately balance an applicant's need for confidentiality against the public's right to information about the board's activities. The board may consider the following:

a. The nature and extent of competition in the applicant's industry sector.

b. The likelihood of adverse financial impact to the applicant if the information were to be released.

c. The risk that the applicant would locate in another state if the request is denied.

d. Any other factors the board may reasonably consider relevant.

401.9(5) *Confidentiality decision.* The board shall notify an applicant in writing of its decision regarding the confidentiality of an application, contract, or supporting materials. Once the board has notified the applicant of its decision, any information not deemed confidential by the board shall be made publicly available. Any information deemed confidential by the board shall be kept confidential by the authority and the board during and following the administration of a contract executed pursuant to a successful application.

401.9(6) *Withdrawal of application.* If the board denies an applicant's request for confidentiality, the applicant may withdraw an application and any supporting materials. The board shall not retain any copies of the application and supporting materials. Upon notice that an application has been withdrawn, the board shall not release a copy in response to a request for records pursuant to Iowa Code chapter 22.

[**ARC 9851B**, IAB 11/16/11, effective 10/26/11]

261—401.10(84GA,HF590) Contents of full application. A full application to request assistance from the fund shall include, but not be limited to, the following:

401.10(1) Documentation that the applicant meets the eligibility criteria stated in rules 261—401.5(84GA,HF590) and 261—401.6(84GA,HF590).

401.10(2) A description that explains how the applicant's project will promote one or more of the goals of the fund as set forth in rule 261—401.1(84GA,HF590).

401.10(3) A description of the proposed project, including all sources and uses of funding, the amount and type of funding requested, and an identification of the community or location for the project.

401.10(4) Information regarding benefits to the state of Iowa from the proposed project in terms of the state's return on investment in the project. A recipient of power fund moneys shall provide to the

board on a periodic basis as determined by the board a report on the use and effectiveness of the moneys granted or loaned.

401.10(5) A business plan, schedule of work, or equivalent that describes the applicant's current operations and future plans.

401.10(6) If applicable, a description of the applicant's violations of law in the preceding five years including, but not limited to, worker safety statutes, rules, and regulations. The description must include violations of any federal or state environmental protection statute, regulation, or rule within the previous five years. If the violations seriously affected the public health or safety, or the environment, the applicant shall provide an explanation of any mitigating circumstances and corrective action taken to achieve compliance. If requested by the authority, the applicant shall provide copies of materials documenting the type of violation, any fees or penalties assessed, court filings, final disposition of any findings, and other information that would assist the authority or the board in understanding the nature of the violation.

401.10(7) A certification by the applicant that the information provided in the application is true and accurate to the best of the applicant's knowledge.

401.10(8) A release of information to permit the authority and the board, and their respective attorneys and agents, to reasonably evaluate the application.

401.10(9) Financial information to the extent requested by the board, including, if applicable, information about the applicant's owners, investors, and business structure.

[**ARC 9851B**, IAB 11/16/11, effective 10/26/11]

261—401.11(84GA,HF590) Selection criteria. The board shall seek to maintain flexibility when making decisions to allocate moneys from the fund to specific proposals. In reviewing applications for financial assistance, the board shall consider the extent to which the proposal is consistent with the energy independence plan as developed in accordance with 2011 Iowa Code section 469.4 and consistent with the statutory purposes of the fund as described in subrule 401.1(1). In addition, the board shall consider the following:

401.11(1) *Proposal categories.*

a. The board may allocate moneys from the fund annually to projects in any or all of the following categories:

(1) Commercialization.

(2) Research.

(3) Education.

(4) Undesignated.

b. The allocation of moneys by the board to proposals in these categories is discretionary and depends on factors including, but not limited to, the quality and quantity of the applications submitted.

401.11(2) *Financial assistance.*

a. The board will consider whether the applicant has available financial resources in addition to the fund to support the proposal financially. In assessing available financial resources, the board may:

(1) Consider both private and public funds as available financial resources.

(2) Recognize the contribution of in-kind resources.

(3) Require a match of available financial resources for commercialization proposals.

(4) Give weight to available financial resources for research, education, or other undesignated proposals.

b. The significance of the availability of financial resources may be weighed by the board in its discretion when allocating moneys from the fund for specific proposals.

[**ARC 9851B**, IAB 11/16/11, effective 10/26/11]

261—401.12(84GA,HF590) Contract administration.

401.12(1) *Notice of award.* Applicants will be notified in writing of the board's decision, including any conditions and terms of approval.

401.12(2) *Contract required.* The board shall direct the authority to prepare an agreement which includes, but is not limited to, a description of the project to be completed by the recipient; length of the project period; conditions to disbursement as approved by the board; a requirement for a report,

to be made to the board on a periodic basis determined by the board, on the use and effectiveness of financial assistance from the fund; and 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 specific repayment provisions ("clawback" provisions) to be established on a project-by-project basis. Successful applicants shall execute an agreement within 120 days of the approval. Failure to do so may result in action by the board to revoke the award. The 120-day time limit may be extended by the board for good cause shown. No award is final until an agreement is signed by all parties.

401.12(3) *Contract amendments.* Any substantive change to a funded project will require a contract amendment. Such an amendment may be approved by the board or, if allowed by subrule 401.12(4), the amendment may be approved by the authority. Substantive changes include, but are not limited to, contract time extensions, budget revisions, and significant alterations of existing activities or beneficiaries.

401.12(4) *Situations not requiring board approval.* The authority may take final action on budget revision amendments that would not substantially change the terms or conditions of the award or contract, on the discontinuance or suspension of collection efforts, and on negotiated settlements for projects that do not meet contract requirements. The authority may decide to take final action or to refer the matter to the full board for action.

401.12(5) *Intellectual property.* The director shall promote statewide utilization of the results of research, development, and commercialization activities funded in whole or in part by the fund. The director is authorized to negotiate provisions with applicants that address issues relating to income generated from patents, trademarks, licenses, or royalties expected to be produced as a result of moneys proposed to be expended from the fund. The director may seek assistance from appropriate state agencies and may seek outside expertise. An applicant shall not be prevented from protecting any previously developed intellectual property.

[**ARC 9851B**, IAB 11/16/11, effective 10/26/11]

These rules are intended to implement 2011 Iowa Acts, House File 590, division III.

[Filed Emergency ARC 9851B, IAB 11/16/11, effective 10/26/11]

CHAPTER 402
ENERGY EFFICIENCY COMMUNITY GRANT PROGRAM

[Prior to 11/16/11, see 350—Ch 5]

Rescinded **ARC 6320C**, IAB 5/18/22, effective 6/22/22

CHAPTER 403
IOWA ENERGY CENTER

261—403.1(15) Purpose. The Iowa energy center is established within the authority with the following purposes:

1. To expand workforce and career opportunities for workers in the energy sector to ensure that the state is able to attract and train professionals to meet the state's future energy needs.
2. To support technology-based development by encouraging public-private partnerships and innovative manufacturers to develop and bring to market new energy technologies.
3. To support rural and underserved areas and vulnerable populations by creating opportunities for greater access to energy efficiency expertise, training, programs, and cyber security preparedness for small utilities.
4. To support the expansion of natural gas infrastructure to rural and underserved areas of the state where the absence is a limiting factor to economic development.
5. To promote and fund research, development, and commercialization of biomass technology to benefit the state economically and environmentally by further realizing the value-added attributes of biomass in the development of bioenergy, biofuels, and biochemicals.
6. To encourage growth of the alternative fuel vehicle market, particularly for electric vehicles, and the infrastructure necessary to support the market.
7. To support efforts to modernize the electric grid infrastructure of the state to support increased capacity and new technologies.
8. To support research and development of strategies for carbon management.

[**ARC 4063C**, IAB 10/10/18, effective 11/14/18; **ARC 6492C**, IAB 9/7/22, effective 10/12/22]

261—403.2(15) Definitions. As used in these rules, unless the context otherwise requires:

"Authority" means the economic development authority created in Iowa Code section 15.105.

"Board" means the governing board of the Iowa energy center established pursuant to Iowa Code section 15.120(2), and includes the members appointed to the board by the governor.

"Center" means the Iowa energy center established pursuant to Iowa Code section 15.120.

"Committee" means a committee established by the board.

"Director" means the director of the authority.

"Internet site" means the information and related content maintained by the authority and found at www.iowaeda.com. "Internet site" may include content at affiliated sites whose content is integrated with that site.

[**ARC 4063C**, IAB 10/10/18, effective 11/14/18; **ARC 5994C**, IAB 10/20/21, effective 9/30/21]

261—403.3(15) Iowa energy center board.

403.3(1) *Composition.* A governing board is established consisting of the following members appointed by the governor:

a. One member representing Iowa state university of science and technology, in consultation with the president of that university.

b. One member representing the university of Iowa, in consultation with the president of that university.

c. One member representing the university of northern Iowa, in consultation with the president of that university.

d. One member representing private colleges and universities within the state, in consultation with the Iowa association of independent colleges and universities.

e. One member representing community colleges, in consultation with the Iowa association of community college trustees.

f. One member representing the economic development authority, in consultation with the director of the economic development authority.

g. One member representing the state department of transportation, in consultation with the director of the department of transportation.

h. One member representing the office of consumer advocate, in consultation with the consumer advocate.

i. One member representing the utilities board, in consultation with the chair of the utilities board.

j. One member representing rural electric cooperatives, in consultation with the Iowa association of electric cooperatives.

k. One member representing municipal utilities, in consultation with the Iowa association of municipal utilities.

l. Two members representing investor-owned utilities, one representing gas utilities, and one representing electric utilities, in consultation with the Iowa utility association.

403.3(2) *Terms.* Members of the board are appointed for staggered terms of four years beginning and ending as provided in Iowa Code section 69.19. A person appointed to fill a vacancy serves only for the unexpired portion of the term. A member is eligible for reappointment. Any vacancy shall be filled by the governor as provided for in Iowa Code section 15.120(2). The terms of board members shall be staggered as determined by the director.

403.3(3) *Quorum and voting requirements.* Seven or more members of the board constitute a quorum, and any board action requires an affirmative vote by a majority of the members present.

403.3(4) *Board officers.* The board shall elect a chairperson and a vice chairperson annually and may elect other officers as necessary.

403.3(5) *Meetings.*

a. Meetings of the board are held at the call of the chairperson or when two members of the board request a meeting. The board generally meets quarterly at the authority's offices or by electronic means. 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 authority's Internet site.

b. Meetings of the board and any committee it may establish are conducted in accordance with the provisions of Iowa Code chapter 21. Any person may attend and observe the proceedings of the board and committee meetings except for those portions of the meetings conducted in closed session pursuant to Iowa Code section 21.5. Persons observing may use cameras or recording devices during the meeting so long as the use of such devices does not interfere with the proceedings. The chairperson may order any person to discontinue the use of such a device if the chairperson believes it is causing an interference with the proceedings. The chairperson may have any person excluded who fails to comply with such an order. The chairperson may also exclude any person generally causing a disruption of the proceedings.

403.3(6) *Committees.* The board may, from time to time, establish advisory committees for purposes of overseeing the center, its programs, and its operations. Such committees include but are not limited to the following:

a. A grant committee, the purpose of which shall be to assist the board in making and administering awards of grants under the center's programs.

(1) The grant committee is an advisory body comprised of voting members of the board who are selected annually by the voting members of the board. The membership and size of the committee as well as the terms of the committee members will be established annually by the board.

(2) The members of the grant committee will elect a chairperson. The chairperson may appoint members of the grant committee to serve on a grant committee subcommittee if necessary. Such a subcommittee is advisory only and may perform such duties as may be assigned by the chairperson.

(3) The duties of the grant committee may include reviewing applications for grant awards, conducting a thorough review of proposed grant applications, making recommendations to the board regarding the size and condition of grant awards, and any other duty assigned by the board in relation to the programs administered by the center.

(4) A majority of the committee members constitutes a quorum of the committee.

(5) Meetings of the grant committee are held at the call of the chairperson.

b. A loan committee, the purpose of which shall be to assist the board in making and administering loan awards under the center's programs, including the alternate energy revolving loan program and energy infrastructure revolving loan program.

(1) The loan committee is an advisory body comprised of voting members of the board who are selected annually by the voting members of the board. The membership and size of the committee as well as the terms of the committee members will be established annually by the board.

(2) The members of the loan committee will elect a chairperson. The chairperson may appoint members of the loan committee to serve on a loan committee subcommittee if necessary. Such a subcommittee is advisory only and may perform such duties as may be assigned by the chairperson.

(3) The duties of the loan committee may include reviewing applications for loans, conducting a thorough review of proposed loan applications, making recommendations to the board regarding the size and condition of loans, and any other duty assigned by the board in relation to the programs administered by the center.

(4) A majority of the committee members constitutes a quorum of the committee.

(5) Meetings of the loan committee are held at the call of the chairperson.

[**ARC 4063C**, IAB 10/10/18, effective 11/14/18; **ARC 5994C**, IAB 10/20/21, effective 9/30/21; **ARC 6492C**, IAB 9/7/22, effective 10/12/22]

These rules are intended to implement Iowa Code section 15.120.

[Filed ARC 4063C (Notice ARC 3842C, IAB 6/20/18), IAB 10/10/18, effective 11/14/18]

[Filed Emergency After Notice ARC 5994C (Notice ARC 5878C, IAB 8/25/21), IAB 10/20/21, effective 9/30/21]

[Filed ARC 6492C (Notice ARC 6383C, IAB 6/29/22), IAB 9/7/22, effective 10/12/22]

CHAPTER 404
IOWA ENERGY CENTER GRANT PROGRAM

261—404.1(15) Definitions.

"Activity" means one or more specific activities, projects or programs associated with Iowa energy center grant funds.

"Annual allocation" means the annual dollar amount the board allocates to the Iowa energy center for Iowa energy center grant activities.

"Authority" means the economic development authority created in Iowa Code section 15.105.

"Board" means the governing board of the Iowa energy center established pursuant to Iowa Code section 15.120(2).

"Co-investigator" means a person who shares the responsibility of conducting grant activities with the principal investigator of a project.

"Funding announcement" means a publicly available document that contains the official information for a grant, including the application deadline, goals of the activity, eligibility requirements, reporting requirements, availability of funds and instructions on applying for the grant.

"Iowa energy center" or *"IEC"* means the Iowa energy center created within the economic development authority pursuant to Iowa Code section 15.120.

"Principal investigator" means a person with the primary responsibility for conducting research.

"Recipient" means an organization that was awarded an Iowa energy center grant.

"Subinvestigator" means a person who is carrying out grant activities at the direction of the principal investigator and is receiving funds from the award made to the recipient.

"Subrecipient" means an organization contracting with and receiving funds from a recipient to carry out IEC grant activities.

[**ARC 4262C**, IAB 1/30/19, effective 3/6/19]

261—404.2(15) Policies and procedures handbook. The authority will prepare a policies and procedures handbook for approval by the board. The board will review the policies and procedures handbook on an annual basis. The policies and procedures will include the annual allocation to each grant activity.

[**ARC 4262C**, IAB 1/30/19, effective 3/6/19]

261—404.3(15) Eligibility.

404.3(1) *Eligible applicants.* Eligible applicants include Iowa businesses, colleges and universities, and private nonprofit agencies and foundations.

404.3(2) *Applications with subrecipients.* Any eligible applicant may submit an application that includes one or more subrecipients. The amount of an award that a subrecipient can receive is set forth in the policies and procedures.

404.3(3) *Joint applications.* Any eligible applicant may apply individually or jointly with another eligible applicant or other eligible applicants.

404.3(4) *Restrictions on applicants.* A principal investigator will be allowed to submit one application per funding announcement. An applicant who has submitted an application as the principal investigator for a funding announcement may also be named as a co-investigator on additional applications submitted for the same funding announcement, provided the applicant is not the principal investigator on any additional applications.

404.3(5) *Eligible projects.* Requirements for IEC grant awards include but are not limited to the following:

a. Applicants shall demonstrate a benefit for ratepayers.

b. Applicants shall demonstrate that they are eligible candidates.

c. Applicants shall demonstrate the capacity for grants administration.

d. Applicants who have previously received Iowa energy center awards shall have demonstrated acceptable past performance, including the timely expenditure of funds.

e. Applications shall demonstrate the feasibility of completing the proposed activities with the funds requested.

f. Applications shall identify and describe any other sources of funding for the proposed activities.

404.3(6) *Ineligible projects.* The following types of projects are ineligible for an award:

a. Relocation of a business.

b. Expansion of a business.

c. Funding for existing training programs.

d. Private asset development.

e. Pipeline, transmission line, and distribution line construction.

f. First generation ethanol.

g. Cellulosic ethanol.

[**ARC 4262C**, IAB 1/30/19, effective 3/6/19]

261—404.4(15) Funding and award terms.

404.4(1) For each fiscal year that funds are available, the board will determine the amount of funds available to be awarded as grants in that fiscal year.

404.4(2) If any funds are allocated to a specific grant activity but are not awarded after a funding cycle, the board may reallocate those funds to a different grant activity.

404.4(3) The board may reallocate any recaptured funds to a different grant activity.

404.4(4) The maximum grant award is $1 million per application. The minimum grant award is $10,000 per application.

404.4(5) The initial duration of a grant agreement will be no longer than three years. However, a recipient may apply for a no-cost extension of an agreement. If the approval of a no-cost extension would cause the duration of the grant agreement to exceed five years, the no-cost extension shall not be granted.

[**ARC 4262C**, IAB 1/30/19, effective 3/6/19]

261—404.5(15) Project budget.

404.5(1) Eligible expenses. Only expenditures directly related to the implementation of the funded grant activity will be reimbursed. Examples of eligible expenses can be found in the policies and procedures handbook. Vehicle purchases are eligible only when the purchase of the vehicle is an integral part of the funded grant activity and must be approved by the board at the time the award is made.

404.5(2) Ineligible expenses include but are not limited to:

a. Purchase or rental of buildings.

b. Office equipment.

c. Furniture and fixtures.

d. Intangible assets.

e. International travel.

f. Insurance.

g. Phone expenses.

404.5(3) Other budget requirements include the following:

a. Indirect costs shall not exceed more than 20 percent of a grant award.

b. IEC grant funds shall not be used as cost share to a federal grant award.

c. Vehicle purchases or other vehicle-related expenses are not eligible if the purchase or expense supports the proposed grant activity but is not an integral part of the proposed grant activity. If a vehicle purchase is an integral part of a grant activity but a recipient fails to obtain board approval prior to the purchase, then the vehicle purchase is ineligible.

[**ARC 4262C**, IAB 1/30/19, effective 3/6/19]

261—404.6(15) Application process and review.

404.6(1) The board will issue funding announcements for grant applications at least once per fiscal year, provided funds are available.

404.6(2) Application forms will be available at iowagrants.gov.

404.6(3) Applications will only be accepted during the established application period, as identified by the Iowa energy center on its website at www.iowaeconomicdevelopment.com.

404.6(4) The Iowa energy center will review applications and make funding decisions after each funding announcement. Review criteria typically include but are not limited to:

a. The proposed project demonstrates a need for further research, development, training or pilot projects.

b. The proposed project provides a benefit to ratepayers.

c. The application has a well-developed budget that is relevant to the project and that provides documentation of planned project expenses.

d. The application describes a dissemination plan for postgrant activities.

404.6(5) Applicants must first submit a preapplication. The authority will review the preapplication for eligibility and recommend preapplications to the grant committee. The grant committee will review the preapplications and determine which preapplications warrant submission of full applications.

404.6(6) An application may not be submitted to the Iowa energy center until a preapplication has been submitted to the Iowa energy center and the grant committee has approved submission of the application. The authority will review applications for completeness, eligibility, and technical and financial merit. The authority may engage an outside technical review panel to complete technical review of applications. The authority will prepare recommendations for the grant committee. The grant committee will review the applications and staff recommendations and make recommendations to the board. Upon review of the recommendations of the grant committee, the board shall approve, defer, or deny each application.

[**ARC 4262C**, IAB 1/30/19, effective 3/6/19]

261—404.7(15) Administration.

404.7(1) *Notice of approval.* The authority will notify successful applicants in writing of an approved request for funding. Notification will include the terms or conditions under which approval is granted.

404.7(2) *Agreement.* After notifying the recipient of an award, the authority will issue an agreement. The agreement shall be between the recipient and the authority.

404.7(3) *Transmittal.* The recipient must execute and return the agreement to the authority within 45 days of the transmittal of the final agreement from the authority. Failure to do so may be cause for the board to terminate the award.

404.7(4) *Disbursement of funds.* Recipients shall submit requests for grant funds in the manner prescribed by the authority. Disbursements shall be made on a reimbursement basis. No advance disbursements shall be allowed. Disbursements may be withheld if applicable performance reports have not been received and approved. 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.

404.7(5) *Record keeping and retention.* Recipients shall retain all financial records, supporting documents and all other records pertinent to the grant for five years after agreement closeout.

404.7(6) *Performance reports and reviews.* Recipients shall submit performance reports to the authority as described in the policies and procedures handbook. The authority may perform annual project reviews and site inspections as necessary to ensure program compliance.

404.7(7) *Agreement amendments.*

a. Any substantive change to a funded IEC project, including time extensions, budget revisions, and alterations to proposed activities, will be considered an agreement amendment. The recipient shall request an amendment in writing. No amendment shall be valid until approved by the board, except as provided in paragraph 404.7(7)*"b"* and confirmed in writing by the authority.

b. Staff approvals.

(1) Staff may approve one no-cost extension provided that the extension complies with subrule 404.4(5). Additional no-cost extensions shall be presented to the board for approval.

(2) Budget modifications. Any substantial modification of a project budget shall require board approval. Staff may approve budget modifications that are not substantial. For purposes of this

subparagraph, "substantial modification" means a budget modification of either $10,000 or 10 percent of the total grant award, whichever is less.

404.7(8) *Agreement closeout.* Upon agreement expiration or project completion, the authority shall initiate project closeout procedures.

404.7(9) *Compliance with state and local laws and rules.* Recipients shall comply with these rules, with any provisions of the Iowa Code governing activities performed under this program, and with any applicable local rules.

404.7(10) *Noncompliance.* At any time during a project, the IEC may, for cause, find that a recipient is not in compliance with the requirements of this program. At the board's discretion, remedies may include penalties up to and including the return of grant funds to the IEC. Findings of noncompliance may include the use of Iowa energy center 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, regulations, or laws; or the lack of a continuing capacity of the recipient to carry out the approved project in a timely manner.

[**ARC 4262C**, IAB 1/30/19, effective 3/6/19]

These rules are intended to implement Iowa Code section 15.120.

[Filed ARC 4262C (Notice ARC 4149C, IAB 12/5/18), IAB 1/30/19, effective 3/6/19]

CHAPTER 405
ALTERNATE ENERGY REVOLVING LOAN PROGRAM

261—405.1(15) Definitions.

"Authority" means the economic development authority created in Iowa Code section 15.105.

"Board" means the governing board of the Iowa energy center established pursuant to Iowa Code section 15.120(2).

"Iowa energy center" or *"IEC"* means the Iowa energy center created within the economic development authority pursuant to Iowa Code section 15.120.

"Project" means an alternate energy production facility as defined in Iowa Code section 476.42 or a small hydro facility as defined in Iowa Code section 476.42.

[**ARC 4263C**, IAB 1/30/19, effective 3/6/19]

261—405.2(15) Loan amounts and terms.

405.2(1) The minimum loan amount is $25,000 per project.

405.2(2) The board shall not lend more than 50 percent of eligible project costs as defined in rule 261—405.5(15).

405.2(3) A project shall be eligible for not more than $1 million in loans outstanding at any time under this program.

405.2(4) A borrower shall be eligible for not more than $1 million in loans outstanding at any time under this program.

405.2(5) The board shall not issue a loan that exceeds the value of the collateral provided.

405.2(6) Security for loans. The board will accept security for a loan. The following forms of collateral will be accepted:

a. Real property;

b. Dedicated certificate of deposit;

c. Irrevocable letter of credit;

d. Corporate guarantee;

e. Other forms of collateral if approved by the board, and only if the forms of collateral listed in paragraphs 405.2(6)*"a"* to *"d"* are inadequate.

405.2(7) Term. The duration of the loan shall be for 20 years, the estimated useful life of the project that is financed by the loan, the terms of any other loans used to finance the project, or the estimated return on investment for the project, whichever is shortest.

[**ARC 4263C**, IAB 1/30/19, effective 3/6/19]

261—405.3(15) Borrowers.

405.3(1) *Eligible borrowers.* The project shall be wholly owned by the borrower. Eligible borrowers include:

a. Persons whose primary residence is in Iowa.

b. Businesses registered and domiciled in Iowa. For businesses organized as limited liability companies, each member of the limited liability company must be domiciled in Iowa and be an eligible borrower.

c. Water and wastewater utilities subject to Iowa Code chapter 388, rural water districts subject to Iowa Code chapters 357A and 504, and sanitary districts subject to Iowa Code chapter 358.

405.3(2) *Ineligible borrowers.* Ineligible borrowers include:

a. An organization that is lending to a project and also owns the project or is a member of an organization that owns the project.

b. An individual or an organization with a history of defaulted loans or compliance violations with other state programs or rules.

c. Regents institutions.

d. Community colleges.

e. State agencies.

f. Cities, but not water or wastewater utilities subject to Iowa Code chapter 388.

g. Counties.

h. School districts.

i. Nonprofit organizations.

j. Gas and electric utilities subject to Iowa Code chapter 388 or rural electric cooperatives subject to Iowa Code chapter 476.

[**ARC 4263C**, IAB 1/30/19, effective 3/6/19]

261—405.4(15) Eligible projects. A proposed project must meet the following criteria to be eligible for a loan under this program:

405.4(1) The project shall be located in Iowa.

405.4(2) The project shall be an alternate energy production facility as defined in Iowa Code section 476.42 or a small hydro facility as defined in Iowa Code section 476.42.

405.4(3) The project shall be wholly owned by the borrower.

405.4(4) The borrower shall be the owner, contract purchaser or lessee of the real property where the project is located.

[**ARC 4263C**, IAB 1/30/19, effective 3/6/19]

261—405.5(15) Eligible and ineligible costs.

405.5(1) *Eligible costs.* Examples of eligible costs include:

a. Real and personal property comprising a project;

b. Materials and equipment required for necessary site preparation, construction and installation of a project;

c. Labor for site preparation, construction and installation of a project. Only labor that is performed by a third party such as an independent contractor will be considered an eligible cost.

405.5(2) *Ineligible costs.* Examples of ineligible costs include:

a. Feasibility studies;

b. Permits;

c. Administrative costs not associated with site preparation, construction and installation of a project;

d. Costs incurred prior to the board's approval of a loan;

e. Interconnection costs;

f. Costs associated with maintenance, operation or repair of a project; and

g. Other costs that the board determines to be ineligible.

[**ARC 4263C**, IAB 1/30/19, effective 3/6/19]

261—405.6(15) Application process. Rescinded **ARC 5994C**, IAB 10/20/21, effective 9/30/21.

261—405.7(15) Administration.

405.7(1) *Notice of approval.* The authority will notify successful applicants in writing of an approved request for funding. Such a notification may include the terms or conditions under which approval is granted.

405.7(2) *Contract.* After notifying the borrower of an award, the authority will offer a contract to the borrower. The contract shall be between the Iowa energy center and the borrower. An award shall not constitute a binding contract.

405.7(3) *Transmittal.* The borrower must execute and return the contract to the authority within 45 days of the transmittal of the final contract from the authority. Failure to do so may be cause for the board to terminate the award.

405.7(4) *Disbursement of funds.* Borrowers shall submit requests for disbursement of funds on the forms provided by the authority.

405.7(5) *Amendment.* Any substantive change to a project shall require an amendment to the contract. A substantive change to a project includes but is not limited to a change in the loan amount, loan term, or scope of work. The borrower shall request the amendment in writing. No amendment

shall be valid until approved by the board. The authority may execute nonsubstantive or corrective changes to the contract without board approval.

405.7(6) *Closeout.* Upon contract expiration or project completion, the authority shall initiate project closeout procedures.

405.7(7) *Record keeping and retention.* Borrowers shall retain all financial records, supporting documents and all other records pertinent to the loan for three years after the contract is closed or the loan is put in default and is not cured.

405.7(8) *Reporting and compliance.* A start-up report is due to the authority within 30 days of the date that the project is placed in service. The report shall include but is not limited to documentation of installed costs of the project, one or more photographs, a sample invoice, and a description of any unexpected problems encountered during construction or installation of the project. The authority reserves the right to conduct a site visit of all awarded projects to ensure the projects were built as proposed and to provide verification of ongoing operation. The authority will monitor all loans to ensure that loan proceeds have been spent as identified in the contract and that all other sources of financing have been committed to the project. Borrowers shall be required to notify the authority of any change in ownership. Any loan made pursuant to this program shall become due for payment upon sale of the project for which the loan was made.

405.7(9) *Default.*

a. At any time during the construction of a project or the repayment of the loan, the authority may find that a borrower is in default under the terms of the loan contract. The authority will take prompt, appropriate, and aggressive debt collection action to recover any funds misspent by borrowers.

b. If the authority determines that a borrower is in default, the authority may seek recovery of the loan plus interest or other penalties as authorized pursuant to Iowa Code section 476.46, negotiate alternative payment schedules, suspend or discontinue collection efforts and take other action as the authority deems necessary.

c. The authority shall attempt to collect the amount owed. Any negotiated settlement, write-off, or discontinuance of collection efforts is subject to final review by and approval of the board.

d. If the authority refers a defaulted contract to outside counsel for debt collection, then the terms of the contract between the authority and the outside counsel regarding the scope of counsel's authorization to accept settlements shall apply.

[**ARC 4263C**, IAB 1/30/19, effective 3/6/19]

261—405.8(15) Applicability after June 30, 2021.

405.8(1) Pursuant to 2021 Iowa Acts, Senate File 619, the authority shall not initiate any new loans under the alternate energy revolving loan program after June 30, 2021.

405.8(2) To the extent allowed by other provisions of law, the rules adopted in this chapter shall continue to apply to agreements entered into on or before June 30, 2021.

[**ARC 5994C**, IAB 10/20/21, effective 9/30/21]

These rules are intended to implement Iowa Code sections 15.120 and 476.46.

[Filed ARC 4263C (Notice ARC 4148C, IAB 12/5/18), IAB 1/30/19, effective 3/6/19]

[Filed Emergency After Notice ARC 5994C (Notice ARC 5878C, IAB 8/25/21), IAB 10/20/21, effective 9/30/21]

CHAPTER 406
ENERGY INFRASTRUCTURE REVOLVING LOAN PROGRAM

261—406.1(15,476) Definitions.

"Affiliates" means any entity which directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another entity or person. "Control" as used in this definition means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an enterprise through ownership, by contract or otherwise. A voting interest of 10 percent or more creates a rebuttable presumption of control.

"Authority" means the economic development authority created in Iowa Code section 15.105.

"Board" means the governing board of the Iowa energy center established pursuant to Iowa Code section 15.120(2).

"Borrower" means an applicant for the program that is approved for a loan or forgivable loan.

"Energy infrastructure" means the same as defined in Iowa Code section 476.46A(3)*"a"* as enacted by 2021 Iowa Acts, Senate File 619, section 33.

"Iowa energy center" or *"IEC"* means the Iowa energy center created within the economic development authority pursuant to Iowa Code section 15.120.

"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 conditions of the award.

"Loan committee" means the committee of the board established to review loan applications pursuant to 261—paragraph 403.3(6)*"b."*

"Program" means the energy infrastructure revolving loan program administered pursuant to Iowa Code section 476.46A as enacted by 2021 Iowa Acts, Senate File 619, section 33, and this chapter.

"Project" means an activity or set of activities directly related to energy infrastructure, and proposed in an application by a borrower, that will result in the accomplishment of the goals of the program.

[**ARC 5994C**, IAB 10/20/21, effective 9/30/21]

261—406.2(15,476) Policies and procedures handbook. The authority will prepare a policies and procedures handbook for the program for approval by the board. The board will review the policies and procedures handbook at least once annually and will establish its priorities for program funds. The policies and procedures shall include the amount of program funds to be allocated for each application cycle, scoring criteria to be used if the demand for loans exceeds the amount allocated for any application cycle, and the applicable interest rate or rates for approved loans. The policies and procedures handbook may include additional limitations and expectations for specific eligible project types.

[**ARC 5994C**, IAB 10/20/21, effective 9/30/21]

261—406.3(15,476) Loan amounts and terms.

406.3(1) The minimum loan amount is $50,000 per project.

406.3(2) The board shall not lend more than 75 percent of total project costs for any project type. For purposes of determining the amount the board may lend pursuant to this subrule, total project costs include eligible costs pursuant to subrule 406.6(1) as well as feasibility studies, engineering and final design, permitting and regulatory costs, or other costs determined by the board to be necessary to the development of energy infrastructure. The board may determine a higher percentage of funds that must be matched by the borrower that is applicable to specific project types as outlined in the policies and procedures approved pursuant to rule 261—406.2(15,476).

406.3(3) The board shall not issue a loan that exceeds the value of the collateral provided.

406.3(4) The board will accept security for a loan. The following forms of collateral will be accepted:

a. Real property.

b. Dedicated certificate of deposit.

c. Irrevocable letter of credit.

d. Corporate guarantee.

e. Utility revenue or reserve funds, if applicable.

f. Other forms of collateral if approved by the board, and only if the forms of collateral listed in paragraphs 406.3(4)*"a"* to *"e"* are inadequate.

406.3(5) The board may consider the borrower's credit rating in determining what form of collateral is acceptable.

406.3(6) The duration of the loan shall not be more than 15 years. If applicable, the board may consider the projected payback date of the project in determining the duration of the loan.

406.3(7) The interest rate shall not exceed the Wall Street Journal prime rate as of the date of approval.

[**ARC 5994C**, IAB 10/20/21, effective 9/30/21]

261—406.4(15,476) Eligible and ineligible borrowers.

406.4(1) *Eligible borrowers.* Eligible borrowers include:

a. Businesses incorporated or organized in Iowa or authorized to do business in Iowa, including businesses operated as sole proprietorships with a registered trade name;

b. Rural electric cooperatives; and

c. Municipal utilities.

406.4(2) *Ineligible borrowers.* Ineligible borrowers include:

a. A business that is not located in or operating in Iowa. A business that will be located and operating in Iowa upon completion of an eligible project may be eligible.

b. An individual or an organization with a history of defaulted loans or compliance violations with other state programs or rules.

c. Regents institutions.

d. Community colleges.

e. State agencies.

f. Cities, except municipal utilities that are eligible borrowers pursuant to paragraph 406.4(1)*"c."*

g. Counties.

h. School districts.

i. Nonprofit organizations.

[**ARC 5994C**, IAB 10/20/21, effective 9/30/21]

261—406.5(15,476) Eligible and ineligible projects.

406.5(1) A proposed project must meet the following criteria to be eligible for a loan under this program:

a. The project shall be located in Iowa or be for the primary use or benefit of Iowans. If any portion of the project is located outside of Iowa, the applicant bears the burden of demonstrating that the project as a whole will be for the primary use or benefit of Iowans.

b. The project shall develop energy infrastructure as defined in Iowa Code section 476.46A(3)*"a"* as enacted by 2021 Iowa Acts, Senate File 619, section 33.

c. The borrower shall be the owner, contract purchaser, lessee, or other interest holder of the real property where the project is located.

406.5(2) A project that generates energy for use only at a borrower's personal residence is not an eligible project.

[**ARC 5994C**, IAB 10/20/21, effective 9/30/21]

261—406.6(15,476) Eligible and ineligible costs.

406.6(1) *Eligible costs.* Examples of project costs that are eligible for financial assistance include, but are not limited to:

a. Real and personal property comprising a project.

b. Materials and equipment required for necessary site preparation, construction and installation of a project.

c. Labor for site preparation, construction and installation of a project.

d. Costs associated with maintenance, operation or repair of a project during the term of the loan.

406.6(2) *Ineligible costs.* Examples of project costs that are not eligible for financial assistance include, but are not limited to:

a. Administrative costs or employee salaries of the borrower or any affiliates that are not associated with site preparation, construction and installation of a project.

b. Costs incurred prior to the committee's recommendation to approve a loan. Costs incurred prior to the committee's recommendation may be eligible for assistance if the borrower demonstrates the necessity to begin incurring costs sooner.

c. Feasibility studies.

d. Engineering and final design.

e. Permitting or regulatory costs.

f. Other costs that the board determines to be ineligible.

[**ARC 5994C**, IAB 10/20/21, effective 9/30/21]

261—406.7(15,476) Application process.

406.7(1) Application forms shall be available at iowagrants.gov.

406.7(2) Applications will be accepted only during the established application periods identified by the authority on its Internet site at www.iowaeda.com.

406.7(3) Authority staff will review applications for completeness, eligibility, and whether the proposed project meets the financial and technical requirements of the Iowa energy center. The authority or board may engage outside reviewers to complete technical, financial, or other reviews of applications beyond the expertise of the board and authority staff.

406.7(4) Authority staff will recommend applications to the loan committee established by the board. The Iowa energy center may request additional information from applicants to process each loan application. The loan committee will review the applications and staff recommendations and then make recommendations to the board. The board will approve, defer, or deny applications for loans. Authority staff may negotiate the amount, terms, and other conditions of each loan before an award is approved.

406.7(5) The board will accept loan applications on a rolling basis. The board will make funding decisions at least once each quarter.

[**ARC 5994C**, IAB 10/20/21, effective 9/30/21]

261—406.8(15,476) Administration.

406.8(1) *Notice of approval or denial.* The authority will notify applicants in writing of the board's approval or denial of an application. If the application is approved, the notice will include any conditions and terms of the loan.

406.8(2) *Contract.* After notifying the borrower of an award, the authority will offer a contract to the borrower. The contract shall be between the Iowa energy center and the borrower. An award shall not constitute a binding contract.

406.8(3) *Transmittal.* The borrower must execute and return the contract to the authority within 90 days of the transmittal of the final contract from the authority. Failure to do so may be cause for the board to terminate the award.

406.8(4) *Disbursement of funds.* Borrowers shall submit requests for disbursement of funds on the forms provided by the authority.

406.8(5) *Amendment.* Any substantive change to the scope of work for a project or request to renegotiate loan terms shall require an amendment to the contract. The board may consider requests for loan forgiveness if the borrower demonstrates forgiveness is necessary to avoid a negative material impact on the project or potential default. The borrower shall request amendments in writing. No amendment shall be valid until approved by the board. The authority may execute nonsubstantive or ministerial changes to the contract without board approval.

406.8(6) *Closeout.* Upon contract expiration or project completion, the authority shall initiate project closeout procedures.

406.8(7) *Record keeping and retention.* Borrowers shall retain all financial records, supporting documents and all other records pertinent to the loan for three years after the contract is closed or the loan is put in default and is not cured.

406.8(8) *Reporting and compliance.* The borrower shall complete all reports required by the contract executed pursuant to subrule 406.8(2). The authority reserves the right to conduct site visits of all awarded projects to ensure the projects were built as proposed and to provide verification of ongoing operation. The authority will monitor all loans to ensure that loan proceeds have been spent as identified in the contract and that all other sources of financing have been committed to the project.

406.8(9) *Default.*

a. At any time during the project or the repayment of the loan, the authority may find that a borrower is in default under the terms of the loan contract. The authority will take prompt, appropriate, and aggressive debt collection action to recover any funds misspent by borrowers.

b. If the authority determines that a borrower is in default, the authority may seek recovery of the loan plus interest or other penalties, negotiate alternative payment schedules, suspend or discontinue collection efforts and take other action as the authority deems necessary.

c. The authority shall attempt to collect the amount owed. Any negotiated settlement, write-off, or discontinuance of collection efforts is subject to final review by and approval of the board.

d. If the authority refers a defaulted contract to outside counsel for debt collection, then the terms of the contract between the authority and the outside counsel regarding the scope of counsel's authorization to accept settlements shall apply.

[**ARC 5994C**, IAB 10/20/21, effective 9/30/21]

These rules are intended to implement Iowa Code section 15.120 and section 476.46A as enacted by 2021 Iowa Acts, Senate File 619.

[Filed Emergency After Notice ARC 5994C (Notice ARC 5878C, IAB 8/25/21), IAB 10/20/21, effective 9/30/21]

CHAPTER 407
Reserved