

CHAPTER 58
NEW JOBS AND INCOME PROGRAM
[Prior to 7/19/95, see 261—Ch 62]

261—58.1(15) Purpose. The purpose of the new jobs and income program is to encourage relationships between state government and business by supporting mutual development objectives. The program is designed to encourage sustained profitability for eligible businesses that invest and operate in the state in return for the desired state outcomes of new jobs and higher income. Projects that have been initiated before receiving formal application approval by the department shall not be eligible for tax incentives and assistance under this program.

261—58.2(15) Definitions.

“*Board*” means the Iowa department of economic development board.

“*Community*” means a city, county, or an entity established pursuant to Iowa Code chapter 28E.

“*Contractor*” or “*subcontractor*” means a person who contracts with the eligible business or a supporting business or subcontracts with a contractor for the provision of property, materials, or services for the construction or equipping of a facility, located within the economic development area, of the eligible business or a supporting business.

“*Department*” means the Iowa department of economic development.

“*Director*” means the director of the Iowa department of economic development.

“*DR*” means the Iowa department of revenue.

“*Economic development area*” means a site or sites designated by the department of economic development for the purpose of attracting an eligible business and supporting businesses to locate facilities within the state.

“*Eligible business*” means a business which meets the requirements of rule 261—58.7(15).

“*Full-time*” or “*full-time equivalent job*” means the equivalent of employment of one person:

1. For 8 hours per day for a 5-day, 40-hour workweek for 52 weeks per year, including paid holidays, vacations, and other paid leave, or

2. The number of hours or days per week, including paid holidays, vacations and other paid leave, currently established by schedule, custom, or otherwise, as constituting a week of full-time work for the kind of service an individual performs for an employing unit.

“*Full-time positions*” means new full-time hourly nonmanagement production jobs with a starting wage of at least \$11 per hour indexed to 1993 dollars based on the gross national product implicit price deflator published by the Bureau of Economic Analysis of the United States Department of Commerce or 130 percent of the average county wage in the county in which the community is located, whichever is higher.

“*Group of businesses*” means two or more businesses that each provide a necessary component in the completion of an overall project.

“*Program*” means the new jobs and income program.

“*Project*” means the activity, or set of activities, proposed in the application by the business, which will result in accomplishing the goals of the new jobs and income program, and for which the business requests the benefits of the new jobs and income program.

“*Project completion*” means the first date upon which the average annualized production of finished product for the preceding 90-day period at the manufacturing facility operated by the eligible business within the economic development area is at least 50 percent of the initial design capacity of the operation of the facility. The eligible business shall inform the department of revenue in writing, on forms approved by the department of revenue, within two weeks of project completion. For existing facilities, project completion means the date of completion of all improvements included in the economic development area.

“*Project initiation*” means any one of the following: the start of construction of new or expanded buildings; the start of rehabilitation of existing buildings; the purchase or leasing of existing buildings; or the installation of new machinery and equipment or new computers to be used in the operation of the

business's project. The purchase of land or signing an option to purchase land or earth moving or other site development activities not involving actual building construction, expansion or rehabilitation shall not constitute project initiation.

"Supporting business" means a business under contract with the eligible business to provide property, materials, or services which are a necessary component of the operation of the manufacturing facility. To qualify as a supporting business, the business shall have a permanent facility or operations located within the economic development area, and the revenue from fulfilling the contract with the eligible business shall constitute at least 75 percent of the revenue generated by the business from all activities undertaken from the facility within the economic development area.

"Tax credit certificate" means a document issued by the department to an eligible business which indicates the amount of unused investment tax credit that the business is requesting to receive in the form of a refund. A tax credit certificate shall contain the taxpayer's name, address, tax identification number, the date of project completion, the amount of the tax credit certificate, the tax year for which the credit will be claimed, and any other information required by DR or the department.

"Value-added agricultural products" means agricultural products which, through a series of activities or processes, can be sold at a higher price than the original purchase price.

261—58.3(15) Agreement prerequisites. Before the department and a business or group of businesses enter into an agreement for program benefits, the following steps must be completed:

58.3(1) The business or group of businesses submits an application in compliance with the provisions of these rules.

58.3(2) The department determines that the business or group of businesses has met the threshold requirements for program participation.

58.3(3) The department enters into negotiations with the business or group of businesses regarding the amount of tax incentives and assistance the business or group of businesses may be eligible to receive. The department reserves the right to negotiate the amount of all program benefits except the following benefits: The new jobs supplemental credit; the value-added property tax exemption; the refund of sales, service and use taxes paid to contractors and subcontractors; the sales and use tax exemption; and the exemption from land ownership restrictions for nonresident aliens. The criteria to be used in the negotiations to determine the amount of tax incentives and assistance include but are not limited to:

a. The number and quality of jobs to be created. Factors to be considered include but are not limited to full-time, career path jobs; turnover rate; fringe benefits provided; safety; skill level.

b. The wage levels of the jobs to be created.

c. The amount of capital investment to be made.

d. The level of need of the business. Factors to be considered include but are not limited to the degree to which the business needs the tax incentives and assistance in order for the project to proceed. Methods of documenting need may include criteria such as financial concerns; risk of the business's locating in or relocating to another state; or return on investment concerns.

e. The economic impact and cost to the state and local area of providing tax incentives and assistance in relation to the public gains and benefits to be provided by the business. Factors to be considered include but are not limited to the amount of tax credits likely to be used by the business and the impact on the local and state tax base and economic base.

f. Other state or federal financial assistance received or applied for by the business for the project.

58.3(4) The board approves the application and the amount of tax incentives and assistance negotiated by the department that the business or group of businesses shall receive and authorizes the department to execute an agreement with the business or group of businesses.

261—58.4(15) Program benefits. The department reserves the right to negotiate, using the criteria in subrule 58.3(3), the amount of all program benefits except the following benefits: the new jobs supplemental credit; the value-added property tax exemption; the refund of sales, service and use taxes paid to contractors and subcontractors; the sales and use tax exemption; and the exemption from land ownership restrictions for nonresident aliens. The following benefits may be available to an eligible

business and are subject to the amount of incentives and assistance negotiated by the department with the eligible business and agreed upon as described in the executed agreement:

58.4(1) *New jobs supplemental credit.* A supplemental new jobs credit from withholding in an amount equal to 1½ percent of the gross wages paid by the business. The supplemental new jobs credit available under this program is in addition to and not in lieu of the program and withholding credit of 1½ percent authorized under Iowa Code chapter 260E. Approval and administration of the supplemental new jobs credit shall follow existing procedures established under Iowa Code chapter 260E.

58.4(2) *Value-added property tax exemption.* A value-added property tax exemption of all or a portion of the actual value added by improvements to real property directly related to new jobs created by the location or expansion of the business and used in the operation of the business. For purposes of this subrule “improvements” includes new construction and rehabilitation of and additions to existing structures. The exemption may be allowed by a community for a period of up to 20 years beginning the year the improvements are first assessed for taxation in that community. The community shall provide to the department a copy of the resolution adopted by its governing body which indicates the estimated value and duration of the exemption authorized. The community shall provide the assessor with a copy of the resolution establishing the exemption.

58.4(3) *Investment tax credit and insurance premium tax credit.*

a. Investment tax credit. An eligible business may claim an investment tax credit as provided in Iowa Code (2003) section 15.333. A corporate income tax credit may be claimed of up to a maximum of 10 percent of the new investment which is directly related to new jobs created by the location or expansion of the business. If the business is a partnership, subchapter S corporation, limited liability company, closed cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. Any credit in excess of tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs first. Subject to prior approval by the department in consultation with DR, an eligible business whose project primarily involves the production of value-added agricultural products may elect to apply for a refund for all or a portion of an unused tax credit. For purposes of this subrule, an eligible business includes a cooperative as described in Section 521 of the United States Internal Revenue Code. The refund may be used against a tax liability imposed for individual income tax, corporate income tax, or franchise tax. The eligible business shall not claim an investment tax credit for capital expenditures above the amount stated in the agreement described in 261—58.11(15). An eligible business may instead, prior to project completion, seek to amend the contract, allowing the business to receive an investment tax credit for additional capital expenditures.

b. Insurance premium tax credit. If the business is an insurance company, the business may claim an insurance premium tax credit as provided in Iowa Code section 15.333A. An Iowa insurance premium tax credit may be claimed of up to a maximum of 10 percent of the new investment which is directly related to new jobs created by the location or expansion of the business. Any credit in excess of tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs first. The eligible business shall not claim an insurance premium tax credit for capital expenditures above the amount stated in the agreement described in 261—58.11(15). An eligible business may instead, prior to project completion, seek to amend the contract, allowing the business to receive an insurance premium tax credit for additional capital expenditures.

c. Eligible capital expenditures. For purposes of this rule, the capital expenditures eligible for the investment tax credit or the insurance premium tax credit under the new jobs and income program are the costs of machinery and equipment as defined in Iowa Code section 427A.1(1) “e” and “j” and purchased for use in the operation of the eligible business, the purchase price of which has been depreciated in accordance with generally accepted accounting principles. For the investment tax credit and for the insurance premium tax credit, the cost of improvements made to real property which is used in the operation of the eligible business is an eligible capital expenditure.

d. Real property. For business applications received on or after July 1, 1999, for purposes of the investment tax credit claimed under Iowa Code Supplement section 15.333 as amended by 2000 Iowa

Acts, chapter 1213, section 1, and for business applications received on or after May 26, 2000, for purposes of the insurance premium tax credit claimed under Iowa Code section 15.333A, subsection 1, the purchase price of real property and any existing buildings and structures located on the real property will also be considered a new investment in the location or expansion of an eligible business. However, if within five years of purchase, the eligible business sells or disposes of, razes or otherwise renders unusable the land, buildings, or other existing structures for which tax credit was claimed under Iowa Code Supplement section 15.333 as amended by 2000 Iowa Acts, chapter 1213, section 1, or under Iowa Code section 15.333A, subsection 1, the income tax liability or, where applicable, the insurance premium tax liability, of the eligible business for the year in which the property is sold, disposed of, razed, or otherwise rendered unusable shall be increased by one of the following amounts:

- (1) One hundred percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within one year after being placed in service.
- (2) Eighty percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within two years after being placed in service.
- (3) Sixty percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within three years after being placed in service.
- (4) Forty percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within four years after being placed in service.
- (5) Twenty percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within five years after being placed in service.

e. Refunds. An eligible business whose project primarily involves the production of value-added agricultural products and whose application was approved by the department on or after May 26, 2000, may elect to receive as a refund all or a portion of an unused investment tax credit.

(1) The department will determine whether a business's project primarily involves the production of value-added agricultural products. Effective July 1, 2001, an eligible business that elects to receive a refund shall apply to the department for a tax credit certificate.

(2) The business shall apply for a tax credit certificate using the form provided by the department. Requests for tax credit certificates will be accepted between May 1 and May 15 of each fiscal year. Only those eligible businesses that have completed projects before the May 1 filing date may apply for a tax credit certificate. For a cooperative described in Section 521 of the United States Internal Revenue Code, the department shall require the cooperative to submit a list of members whom the cooperative wishes to receive a tax credit certificate for their prorated share of ownership. The cooperative shall submit its list in a computerized electronic format that is compatible with the system used or designated by the department. The computerized list shall, at a minimum, include the name, address, social security number or taxpayer identification number, business telephone number and ownership percentage, carried out to six decimal places, of each cooperative member eligible for a tax credit certificate. The cooperative shall also submit a total dollar amount of the unused investment tax credits for which the cooperative's members are requesting a tax credit certificate.

(3) The department will make public by June 1 of each year the total number of requests for tax credit certificates and the total amount of requested tax credit certificates that have been submitted. The department will issue tax credit certificates within a reasonable period of time.

(4) The department shall not issue tax credit certificates which total more than \$4 million during a fiscal year. If the department receives applications for tax credit certificates in excess of \$4 million, the applicants shall receive certificates for a prorated amount. In such a case, the tax credit requested by an eligible business will be prorated based upon the total amount of requested tax credit certificates received during the fiscal year. This proportion will be applied to the amount requested by each eligible business to determine the amount of the tax credit certificate that will be distributed to each business for the fiscal year. For example, if an eligible business submits a request in the amount of \$1 million and the total amount of requested tax credit certificates equals \$8 million, the business will be issued a tax credit certificate in the amount of \$500,000:

$$\frac{\$4 \text{ million}}{\$8 \text{ million}} = 50\% \times \$1 \text{ million} = \$500,000.$$

(5) Tax credit certificates shall not be valid until the tax year following project completion. The tax credit certificates shall not be transferred except in the case of a cooperative as described in Section 521 of the United States Internal Revenue Code. For such a cooperative, the individual members of the cooperative are eligible to receive the tax credit certificates. Tax credit certificates shall be used in tax years beginning on or after July 1, 2001. A business shall not claim a refund of unused investment tax credit unless a tax credit certificate issued by the department is attached to the taxpayer's tax return for the tax year during which the tax credit is claimed. Any unused investment tax credit in excess of the amount of the tax credit certificate issued by the department may be carried forward for up to seven years after the qualifying asset is placed in service or until depleted, whichever occurs first.

(6) An eligible business may apply for tax credit certificates once each year for up to seven years after the qualifying asset is placed in service or until the eligible business's unused investment tax credit is depleted, whichever occurs first. For example, an eligible business which completes a project in October 2001 and has an investment tax credit of \$1 million may apply for a tax credit certificate in May 2002. If, because of the proration of the \$4 million of available refundable credits for the fiscal year, the business is awarded a tax credit certificate in the amount of \$300,000, the business may claim the \$300,000 refund and carry forward the unused investment tax credit of \$700,000 for up to seven years or until the credit is depleted, whichever occurs first.

f. New jobs insurance premium tax credit. If the eligible business is an insurance company, the business may claim an insurance premium tax credit as provided in Iowa Code section 15.333A. This new jobs insurance premium tax may be taken by an eligible business which has entered into a chapter 260E agreement with a career and technical school or community college, and which has increased its base employment level in Iowa by at least 10 percent within the time set in the 260E training agreement. In the case of an eligible business without a base employment level, if the business adds new jobs within the time set in the 260E agreement, it is entitled to this new jobs insurance premium tax credit for the tax period to be selected by the business. In determining if the business has increased its base employment by 10 percent, only those new jobs resulting from the project covered by the 260E agreement shall be counted.

The new jobs insurance premium tax credit as provided in Iowa Code section 15.333A is determined by multiplying the qualifying taxable wages of new employees by 6 percent. For purposes of this credit, "qualifying taxable wages" is the amount of taxable wages upon which an employer is required to pay state of Iowa unemployment compensation fund taxes for new employees in new jobs. This insurance premium tax credit may be claimed in any reporting period which either begins or ends during the period beginning with the date of the 260E agreement and ending with the date by which the 260E training agreement is to be completed. Any credit in excess of the insurance premium tax liability for the year may be credited to the tax liability for the following seven years, or until depleted, whichever is earlier. This new jobs insurance premium tax credit is in lieu of, and not in addition to, the new jobs tax credit as stated in Iowa Code section 422.11A.

58.4(4) Property tax exemption. An exemption from taxation for machinery, equipment, and computers for a period of up to 20 years. A business may claim as exempt from taxation all or a portion of the value of the property directly related to new jobs created by the location or expansion of a business under the program and used by the business. Property eligible for this exemption shall be acquired or initially leased by the business or relocated by the business to the facility from a facility outside the state of Iowa. Property "directly related" includes the property the new employees will operate, repair, or maintain.

58.4(5) Research activities credit. A corporate tax credit for increasing research activities in this state during the period the business is participating in the program. For purposes of claiming this credit, a business is considered to be "participating in the program" for a period of ten years from the application approval date. This credit equals 6½ percent of the state's apportioned share of

the qualifying expenditures for increasing research activities. The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to total qualified research expenditures. This credit is in addition to the credit authorized in Iowa Code section 422.33. If the business is a partnership, subchapter S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. Any tax credit in excess of the tax liability shall be refunded to the eligible business with interest computed under Iowa Code section 422.25. In lieu of claiming a refund, the eligible business may elect to have the overpayment credited to its tax liability for the following year.

58.4(6) *Refund of sales, service and use taxes paid to contractors or subcontractors.*

a. An eligible business or supporting business may apply for a refund of the sales and use taxes paid under Iowa Code chapters 422 and 423 for gas, electricity, water or sewer utility services, goods, wares, or merchandise, or on services rendered, furnished or performed to or for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility within the economic development area.

b. Taxes attributable to intangible property and furniture and furnishings shall not be refunded. To receive a refund of the sales, service and use taxes paid to contractors or subcontractors, the eligible business or supporting business must, within one year after project completion, make an application to the Iowa department of revenue.

58.4(7) *Sales and use tax exemption.* An eligible business may claim an exemption from sales and use taxation property as defined under Iowa Code section 422.45, subsection 27, and also as defined under Iowa Code section 15.334. This effectively eliminates the sales and use taxes on industrial machinery, equipment and computers, including replacement parts which are depreciable for state and federal income tax purposes.

58.4(8) *Exemption from land ownership restrictions for nonresident aliens.*

a. An eligible business, if owned by nonresident aliens, may acquire and own up to 1,000 acres of land in the economic development area provided the eligible business is not actively engaged in farming within the economic development area. An eligible, nonresident alien-owned business may also lease up to an additional 280 acres of land in the economic development area. An eligible business owned by nonresident aliens may be allowed, before an application is submitted, to take out a purchase option on up to 1,000 acres the business intends to acquire and may be allowed to take out a lease option on up to an additional 280 acres. The purchase and lease options may be no longer than six months in duration, and the option acquired shall be contingent upon department approval of the business's NJIP application. The eligible business may receive one or more extensions of the five-year time limit for complying with requirements for the development of agricultural land as stated in Iowa Code section 567.4. Requests for an extension must be made in writing and received by the community and the department 90 days prior to the expiration of the current time limit. Each extension must be approved by the community prior to approval by the department. An eligible business may receive one five-year extension and one or more one-year extensions. The community, in consultation with the department, will determine whether a five-year or one-year extension is granted. The eligible business, if owned by nonresident aliens, must comply with all other provisions of Iowa Code chapter 567 which govern land ownership by nonresident aliens, provided they do not conflict with Iowa Code section 15.331B.

b. "Actively engaged in farming" means any of the following:

(1) Inspecting agricultural production activities within the economic development area periodically and furnishing at least half value of the tools and paying at least half the direct cost of production.

(2) Regularly and frequently making or taking an important part in management decisions substantially contributing to or affecting the success of the farm operations within the economic development area.

(3) Performing physical work which significantly contributes to crop or livestock production.

c. The nonresident alien owner is not considered to be actively engaged in farming if the nonresident alien owner cash rents the land to others for farming purposes.

d. An eligible business, if owned by nonresident aliens, may only receive the land ownership exemptions under this subrule provided the business has received final approval of a New Jobs and Income Program application before July 1, 2002.

e. The department will monitor the activities of eligible businesses owned by nonresident aliens that receive this exemption from land ownership restrictions. The department will submit a report to the general assembly by December 15 of each year.

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261—58.5(15) Limitation on incentives. An eligible business may receive other applicable federal, state, and local incentives and credits in addition to those provided under this program. However, a business which participates in this program shall not receive funds for the same project from the community economic development account under the community economic betterment program described in 261—Chapter 22.

261—58.6(15) Application. To request participation in the program, a business shall submit application to the department. A business may submit an application individually or as a part of a group of businesses. Requests for an application should be directed to the Iowa Department of Economic Development, Division of Business Development, 200 East Grand Avenue, Des Moines, Iowa 50309.

261—58.7(15) Eligibility requirements. Retail business shall not be eligible to receive benefits under this program. To be eligible for program participation a business shall meet all of the threshold requirements of subrule 58.7(1) and at least three of the elements listed in subrule 58.7(2). If an application is submitted by a group of businesses, the group must meet the capital investment requirement and the job creation requirement of at least 75 full-time nonmanagement production positions. Each business within the group shall individually meet the other eligibility criteria.

58.7(1) Mandatory six elements. A business shall meet all of the following requirements in order to be eligible for program benefits:

a. The community has approved by ordinance or resolution the start-up, location, or expansion of the business for the purpose of receiving program benefits. If community approval is by resolution rather than ordinance and the business is requesting the exemption from land ownership restrictions for nonresident aliens under subrule 58.4(8), the community shall submit documentation that the public was afforded an opportunity to comment on the business's application and land ownership exemption request.

b. The business has not closed or substantially reduced its operation in one area of the state and relocated substantially the same operation in the community. This requirement does not prohibit a business from expanding its operation in the community if existing operations of a similar nature in the state are not closed or substantially reduced.

c. The business must provide and pay at least 80 percent of the cost of a standard medical and dental insurance plan for all full-time employees working at the facility in which the new investment occurred.

d. The business shall agree to pay a median wage for new full-time hourly nonmanagement production jobs of at least \$11 per hour indexed to 1993 dollars based on the gross national product implicit price deflator published by the Bureau of Economic Analysis of the United States Department of Commerce or 130 percent of the average wage in the county in which the community is located, whichever is higher. The business shall compute its median wage for all new full-time employees to include compensation in the form of hourly wages and salaries. Bonuses, commissions or overtime pay may also be included in the calculation if the business has a history of paying bonuses, commissions or overtime pay and will provide a guarantee that this type of additional compensation will continue while the business is participating in the program.

e. The business will make a capital investment of at least \$10 million indexed to 1993 dollars based on the gross national product implicit price deflator published by the bureau of economic analysis of the United States Department of Commerce. If the business is occupying a vacant building suitable

for industrial use, the fair market value of the building shall be counted toward the capital investment threshold.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

58.7(4) Waiver of program qualification requirements. A community may request a waiver of the requirement for the number of jobs listed in paragraph 58.7(1)“*f.*” However, in no event shall the minimum number of jobs created be fewer than 15 full-time, nonmanagement production positions.

a. The department may grant a waiver only when good cause is shown.

(1) “Good cause shown” includes the following economic distress criteria:

1. A county family poverty rate higher than the state average.
2. A county unemployment rate higher than the state average.
3. A unique opportunity to use existing unutilized facilities in the community.
4. A significant downsizing or closure by one of the community’s major employers.
5. An immediate threat posed to the community’s workforce due to business downsizing or closure.

(2) “Good cause shown” may also include a proposed project by a business that shall meet all of the following criteria:

1. The business is in one of the state’s targeted industry clusters: life sciences, information solutions, and advanced manufacturing.
2. The business will make a higher than average capital investment.
3. The business will pay an average starting wage for all the new jobs created as the result of the project that is significantly higher than the wage requirement in paragraph 58.7(1)“*d.*”

b. A request for a waiver shall be made in writing on the form provided by the department. A request for a waiver shall be submitted with the application to request program benefits. The board will review the request for a waiver when it reviews the application and may approve, deny, or defer the request for a waiver. If the request for a waiver is approved, the board may proceed with its final decision on the application.

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

261—58.9(15) Application. The department shall develop a standardized application and make it available for use by a business applying for benefits and assistance. The community shall review the application to determine if the business is eligible for benefits and assistance. If the community determines that the business is eligible, it shall approve by resolution the start-up, location, or expansion of the business for the purpose of receiving program benefits. The community shall then submit the application for benefits and assistance to the department.

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

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

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

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

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

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

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

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

261—58.14(15) Repayment.

58.14(1) Failure to meet requirements. If the department, in consultation with the community, determines that business has failed in any year to meet any one of the requirements of the new jobs and income Act, these rules, and the agreement, the business or group of businesses is subject to repayment of all or a portion of the amount of incentives received.

Once it has been established, through the compliance monitoring, audit or otherwise, that the business or group of businesses is required to repay all or a portion of the incentives received, DR and the community, as appropriate, shall collect the amount owed. The community or DR may exercise forbearance in connection with collection of the amounts owed to the community or DR and elect, in consultation with the department, to grant the business or group of businesses a one-year period to meet its requirements under the agreement.

58.14(2) Calculation of repayment due.

a. Investment tax credit. If a business does not meet the capital investment requirement, repayment shall be calculated as follows:

(1) If the business has not met the minimum investment requirement as stated in 58.7(1) "e," the business shall repay all of the incentives and assistance that it has received.

(2) If the business has met 50 percent or less of the requirement, the business shall repay the same percentage in benefits as the percentage that the business failed to invest.

(3) If the business has met more than 50 percent but not more than 75 percent of the requirement, the business shall repay one-half of the percentage in benefits that the business failed to invest.

(4) If the business has met more than 75 percent but not more than 90 percent of the requirement, the business shall repay one-quarter of the percentage in benefits that the business failed to invest.

b. Job creation. If a business does not meet its job creation requirement or fails to maintain the required number of jobs, repayment shall be calculated as follows:

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

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

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

(4) If the business or group of businesses has not met the minimum job creation requirement as stated in paragraph 58.7(1)“*f*” or subrule 58.7(4), the business or group of businesses shall repay all of the incentives and assistance that it has received.

c. Wages and benefits. If the business or group of businesses fails to meet the wage requirement of paragraph 58.7(1)“*d*” or the benefits requirement of paragraph 58.7(1)“*c*” in any one year, the business or group of businesses must meet that requirement in the following year or forfeit the incentives for the year in which the business or group of businesses were not in compliance.

d. Additional required elements. If the business or group of businesses fails to meet the additional required elements of subrule 58.7(2) in any one year, the business or group of businesses must meet that requirement in the following year or forfeit the incentives for the year in which the business or group of businesses were not in compliance.

58.14(3) Failure to meet other requirements. Rescinded IAB 10/1/03, effective 11/5/03.

261—58.15(15) Amendments. Any substantive change to an approved project will be considered a contract amendment. The amendment must be requested on the form provided by the department and approved by the community. No amendment will be valid until approved by the department.

These rules are intended to implement Iowa Code chapter 15 as amended by 2003 Iowa Acts, House Files 612, 677 and 681.

261—58.16(81GA, HF868) Applicability of new jobs and income program after July 1, 2005.

58.16(1) Effective July 1, 2005, the NJIP program is rescinded by 2005 Iowa Acts, House File 868, and replaced with a new tax credit program, the high quality job creation program. Rules for the high quality job creation program may be found in 261—Chapter 68.

58.16(2) For awards made or contracts entered into prior to July 1, 2005, the rules of 261—Chapter 58 shall govern for purposes of contract administration and closeout of projects. A contract amendment is not allowable if the result of the amendment is to increase the benefits available.

This rule is intended to implement 2005 Iowa Acts, House File 868.

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