Arkansas Enterprise Zone Act
(Act 947 of 1993, as amended)
Advantage Arkansas Program
Rules and Regulations

I. Introduction

The goal of the Arkansas Enterprise Zone Act is to create an environment that produces a variety of economic opportunities for Arkansans. See Arkansas Code Annotated § 15-4-1701 et. seq. These rules are being jointly promulgated by the Arkansas Department of Economic Development and the Revenue Division of the Arkansas Department of Finance and Administration. The adoption of these regulations will replace the Department of Finance and Administration's Enterprise Zone Act of 1993 Regulation 1993-11.

For additional information contact:

Business Development Section
Arkansas Department of Economic Development
One Capitol Mall
Little Rock, Arkansas 72201
(501) 682-7675

Policy and Legal, Revenue Division
Arkansas Department of Finance and Administration
1900 West Seventh Street, Suite 2062
Little Rock, AR 72201-1272
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II. Definitions

A. "Average hourly wage" means the average wage of the net new full-time permanent employees based on payroll for the most recent quarter reported to the Arkansas Employment Security Department. The average wage is computed by using the total of the net new full-time permanent employees' reported taxable earnings, including overtime pay and one quarter of the employee's annual bonus, divided by the number of weeks worked during the most recent quarter, divided by the average hours worked per week per net new full-time permanent employee.

B. "Coal mining" means an operation that hires a minimum of 25 net full-time employees and extracts coal or lignite from within the boundaries of the State of Arkansas. (Act 1065 of 2001 added coal mining as a business eligible for benefits under the Enterprise Zone Act.)

C. "Corporate headquarters" means the home or center of operations, including research and development, of a national or multinational corporation with no retail sales to the general public.

D. "Department" means the Department of Economic Development.

E. "Director" is the director of the Department of Economic Development.

F. "Digital Content Production" means companies engaged in the creation of product that includes acquiring, modeling, and manipulating video imagery, film and animation. These products are created in digital form and are eligible for copyrighting under the copyrighting laws of the United States. Outlets for digital content products may include broadcast television, corporate presentations, cable shows, advertising, video games, movies and themed entertainment outlets. For companies engaged in digital content production to be eligible for benefits under this program, they must derive seventy-five percent (75%) of their revenue from out-of-state sales and have no retail sales to the general public.

G. "Digital Preservation" means companies engaged in the transformation, storage, archiving and/or distribution of various forms of media which have been transferred into a digital format. Media transformation into digital content may include film, video or written materials. For companies engaged in digital preservation to be eligible for benefits under this program, they must derive seventy-five percent (75%) of their revenue from out-of-state sales and have no retail sales to the general public.

H. "Distribution center" means a facility for the reception, storage, or shipping: (A) of a business' own products or products which the business wholesales to retail businesses or ships to its own retail outlets; or (b) of products owned by other companies with which the business has contracts for storage and shipping if seventy-five percent (75%) of the sales revenues are from out-of-state customers; or (C) of products for sale to the general public if seventy-five percent (75%) of the sales revenues are from out-of-state customers.

I. "Endorsement resolution" means a resolution approved by the governing body of a municipality or county within whose jurisdiction the facility is located and must:

1. Approve the specific entity's participation in the program; and
2. Specifically state whether the municipality or county authorizes the Department of Finance and Administration to refund local sales and use taxes to the entity under the program. A municipality or county can authorize the refund of all or part of a tax levied by it, but cannot authorize

the refund of any tax not levied by it.

J. “Existing employees” means those employees hired by the business prior to the date of the financial incentive agreement. Existing employees may be considered ‘net new full-time permanent employees’ only if:

1. The position or job filled by the existing employees was created as a result of the project; and
2. The position vacated by the existing employee was either filled by a subsequent employee or no subsequent employee will be hired because the business no longer conducts the particular business activity requiring such classification. To count existing employees that have no replacements, there must be sufficient evidence that the business is clearly discontinuing its old operations and beginning a new business activity.

K. “Financial incentive plan”, within this regulation, the “financial incentive plan” is referred to as a “financial incentive agreement” and consists of: 1) the application; 2) the endorsement resolution; and 3) the project plan.

L. “Governing authority” means the quorum court of a county or the governing body of a municipality.

M. “High unemployment” means an unemployment rate equal to or in excess of one hundred fifty percent (150%) of the state’s average unemployment rate for the preceding calendar year as specified by statewide annual labor force statistics compiled by the Arkansas Employment Security Department, when the state’s annual average unemployment rate is six percent (6%) or below. When the state’s annual average unemployment rate is above six percent (6%), “high unemployment” means an unemployment rate equal to or in excess of three percent (3%) above the state’s average unemployment rate for the preceding calendar year as specified by statewide annual labor force statistics compiled by the Arkansas Employment Security Department.

N. “Modernization”, in the context of this program, means a plan that will increase efficiency or productivity of an existing plant or facility or enable an earlier project to function as originally intended through investment in machinery and/or equipment, not including costs for routine maintenance.

O. “Motion picture production company” means a company that produces any motion picture or portion thereof for: display at theaters, video release, television shows, music videos and special effects, titles and credits all of which are embodied on film or prepared for digital presentation. Motion picture production companies are generally a subset of those companies classified in SIC code 7812 and must have no retail sales to the general public and derive at least 60% of their revenue from out of state sales.

P. <u>"Net new full-time permanent employee"</u> means a position or job which was created pursuant to the signed financial incentive agreement and which is filled by one (1) or more employees or contractual employees who were Arkansas taxpayers during the year in which the tax credits or incentives were earned; and

1. The position or job held by such employee or employees must have been filled for at least twenty-six (26) consecutive weeks with an average of at least thirty (30) hours per week;
2. Provided, however, in order to qualify as a net new full-time employee, a contractual employee must be offered a benefits package comparable to a direct employee of the business seeking incentives under this act; and
3. Employees could not have been claimed for tax credits or incentives under this subchapter during the preceding taxable year.
4. The number of net new full-time permanent employees shall be equal to the total number of new full-time permanent employees for the current year minus the total number of new full-time permanent employees for the previous tax year.

Q. <u>"Office sector business"</u> means control centers that influence the environment in which data processing, customer service, credit accounting, telemarketing, claims processing, and other administrative functions that act as production centers are performed. Office sector businesses can have no retail sales to the general public.

R. <u>"Program"</u> means the Arkansas Enterprise Zone Act of 1993, as amended.

S. <u>"Project"</u> means:

1. All activities and costs associated with the construction of a new plant or facility; or

2. The expansion of an established plant or facility by adding to the building or production equipment or support infrastructure, or both; or

3. The modernization through the replacement of production or processing equipment or support infrastructure, or both;

    (a) Expenditures for routine repair and maintenance that do not result in new construction or expansion are ineligible for benefits under this act.

4. In order to receive a refund for eligible project costs, such costs must be incurred within four (4) years from the date the project plan was approved by the department.

5. Routine operating expenditures are ineligible for benefits under this act.

T. "Project plan" means the plan submitted to the department containing such information as may be required by the director to determine eligibility for projects.

U. "Regional headquarters" means the home or center of operations for a multi-state geographical area, including research and development, of a national or multinational corporation with no retail sales to the general public.

V. "Routine maintenance" means the replacement of existing machinery parts with like parts.

W. "Routine operating expenditures" means: (1) costs normally associated with doing business; or (2) recurring expenditures for items which in the normal course of business must be routinely renewed, upgraded, improved, repaired, replaced or changed. Nothing contained herein limits a company's ability to obtain credit for items which are purchased as part of an approved project including material used in the construction of a building or buildings or any addition, modernization, or improvement thereon for housing any legitimate business enterprise and machinery and equipment to be located in or in connection with such building or buildings.

X. "Sudden and severe period of economic distress" means a period of hardship for a county which occurs as a result of the closure of a business entity which employs 500 or more full-time permanent jobs. A sudden and severe period of economic distress may also result from the closure of one or more business entities that close within a county which results in a minimum job loss of five percent (5%) of the employed labor force, determined by the most recent annual averages of "County Labor Force Statistics" published by the Arkansas Employment Security Department. In order to qualify for the designation based on a minimum job loss of five percent (5%) of the employed labor force, the losses must occur within one (1) year of the first closure.

Y. "Support infrastructure" means systems or equipment that are necessary for the operation of a business in the context of a modernization project.

Z. "Trucking sector business" means a business that is classified within the Federal Standard Industrial Classification (SIC) Code number 4231. This SIC code includes companies that operate terminal facilities used by highway-type property carrying vehicles and includes terminals which provide maintenance and service for motor vehicles. It does not include terminals operated by motor freight transportation companies for their own use.

III. <u>To Qualify for the Program a Business Must</u>

A. Be an eligible business as defined by one or more of the following:

1. A manufacturer in Standard Industrial Classification (SIC) codes 20 through 39 including semiconductor and microelectronic manufacturers creating one (1) or more net new full-time permanent jobs.
2. Computer businesses primarily engaged in providing computer programming services; the design and development of prepackaged software; businesses engaged in digital content production and preservation; computer processing and data preparation services; information retrieval services; computer and data processing consultants and developers. All businesses in this group must employ five (5) or more net new full-time permanent employees, after July 1, 2001 and derive at least seventy-five percent (75%) of their revenue from out of state sales and have no retail sales to the general public;
3. Businesses primarily engaged in commercial physical and biological research as classified by SIC code 8731, which will employ one (1) or more net new full-time permanent employees;
4. Businesses primarily engaged in motion picture production which will employ twenty-five (25) or more net new full-time permanent employees. All businesses in this group must derive at least sixty percent (60%) of their revenue from out of state sales and have no retail sales to the general public;
5. An office sector business, which will employ twenty-five (25) or more net new permanent employees and have no retail sales to the general public;
6. A national, corporate or regional headquarters which will employ twenty-five (25) or more net new full-time permanent employees and have no retail sales to the general public; or
7. A distribution center, with no retail sales to the public, unless seventy-five percent (75%) of the sales revenues are from out-of-state customers, creating twenty-five (25) or more net new full-time permanent jobs.
8. A trucking/distribution terminal (SIC 4231), with no retail sales to the public, creating twenty-five (25) or more net new full-time permanent jobs.
9. A coal mining operation that hires a minimum of twenty-five (25) net full-time employees and extracts coal or lignite from within the boundaries of the State of Arkansas.

B. Plan a project that will result in the creation of the requisite number of net new full-time permanent jobs.

1) A project includes one or more of the following: 1) the construction of and equipping of a new plant or facility; 2) the physical expansion of an established plan or facility; or 3) the modernization of an existing facility through the addition of production or processing equipment.

2) Each of the three (3) project elements may qualify under the program by itself. Each element must be identified separately when applying with the Director for qualifying project status. An estimated completion date for each element is required as part of the application.

3) A project to construct and equip a new plant or facility generally is complete when the equipment has been installed in the new plant or facility.

4) A project to physically expand and/or add equipment is generally complete when the construction is completed and/or the equipment has been installed.

5) A modernization project is generally complete when the addition of the last piece of production or processing equipment has been installed. A project of this type must be specific in describing the equipment to be added. Routine maintenance expenditures and routine operating expenditures are not eligible project costs.

6) Every project that includes the element of adding equipment or modernization without significant construction (either of a new facility or plant or the expansion of an existing facility or plant) must be able to document to the satisfaction of the Director that such project results directly in the creation of the requisite number of net new full-time permanent employees.

7) When included in an approved modernization project, purchases of replacement production or processing equipment can qualify as eligible project costs although such equipment is replaced prior to expiration of its useful depreciable life for income tax purposes if such equipment is expected to significantly improve the function of the replaced equipment or peripheral equipment.

8) When included in an approved modernization project, expenditures for items integral to the success of such project (for example, software upgrades) may qualify as eligible project costs, depending on the justification provided by the applicant and the acceptance of the justification by the Director.

C. Submit a properly completed application, endorsement resolution, and project plan (see Attachment) to:

Department of Economic Development
Incentives Coordinator
One Capitol Mall
Little Rock, AR 72201

D. The application, with endorsement resolution and project plan attached, must be filed with the department within 60 days of the endorsement resolution in order to use the endorsement resolution as the starting date for counting new employees and project costs. If the application is received after the 60-day period, only those employees hired after the date the application is received and only those project costs incurred from the date the application is received will be eligible for benefits.

IV. Powers and Duties of the Department of Economic Development

A. The Department will review the application to insure, among other things, that the project described complies with the requirements of the law, including sufficient detail as to the project elements and their expected completion dates. If the project description and application are approved, the Department of Economic Development will issue the business a letter of acceptance and a certificate of eligibility. This letter of acceptance shall include a provision that states that if the business exceeds the projected cost estimate by more than twenty percent (20%) of projected costs, the business shall be required to submit an amended application. In the amended application, the business should explain why the costs exceeded estimates and how these additional costs relate to the original project plan. A copy of the certificate and financial incentive agreement will be sent to the business contact person and the Department of Finance and Administration (DF&A). DF&A will contact the business and provide the forms and instructions needed for the business to receive the credits in accordance with the financial incentive agreement.

B. If declined, the Department of Economic Development will forward a letter to the business stating the basis for the denial and that they are ineligible for benefits.

C. A business whose application has been denied due to lack of documentation or sufficient detail must provide the lacking documentation or provide detail to satisfy the Department's needs to properly approve within thirty (30) days of such denial. Failure to provide the necessary information within this time will result in the business having to submit a new application.

V. Terms of the Incentive Agreement

A. Financial Incentive Agreement

The financial incentive agreement determines when a business may begin counting new employees and earning income tax credits. Only employees hired after the date of the financial incentive agreement are eligible for the income tax credits (except as provided in paragraph 2 below).

1. The financial incentive agreement will be issued to the business after a complete application, including an endorsement resolution and project plan, is received by the Department of Economic Development.

2. If the application is submitted within sixty (60) days of the endorsement resolution, the effective date of the financial incentive agreement is the date of the resolution. If the application is received after the sixty-(60) day period has expired, then the effective date of the financial incentive agreement is the date the application was received by the Department of Economic Development.
3. The Department will issue the financial incentive agreement certifying the business for participation in the Advantage Arkansas program within ten (10) working days of receipt of the complete application packet.

B. Conditions for receiving benefits:

1. The requisite number of net new full-time permanent employees must be employed by the business within twenty-four (24) months following the date the financial incentive agreement was signed (except as provided in paragraph C.1. of this section).
2. To be considered a "net new full-time permanent employee", the position or job must have been created pursuant to the signed financial incentive agreement. This position must be filled by one (1) or more employees or contractual employees who were Arkansas taxpayers during the year in which the tax credits or incentives were earned; and

    (a) be employed at the facility listed in the endorsement resolution;
    (b) the position or job held by such employee or employees must have been filled for at least twenty-six (26) consecutive weeks with an average of at least thirty (30) hours per week;
    (c) contractual employees must be offered a benefits package comparable to a direct employee of the business seeking incentives under this program;
    (d) employees could not have been claimed for tax credits or incentives under this program during the preceding taxable year; and
    (e) the number of net new full-time permanent employees is equal to the cumulative total number of new full-time permanent employees for the current year, since the issuance of the financial incentive agreement, minus the cumulative total number of new full-time permanent employees for the previous tax year, since the issuance of the financial incentive agreement.

3. Existing employees may be considered "net new full-time permanent employees" only if:

    (a) The position or job filled by the existing employee was created as a result of the project.

(b) A new employee will fill the position vacated by the existing employee or no new employee will be hired because the business no longer conducts that particular business activity.

C. Failure to meet required conditions

1. If a business fails to meet the required number of employees within twenty-four (24) months, the business can apply for a twenty-four (24) month extension if the Director of the Department of Economic Development and Chief Fiscal Officer of the State determine that additional time is needed because of:

   (a) Unanticipated and unavoidable delay in the construction of a facility that must be completed before the employees can be hired; or
   (b) The project, as originally planned, will require more than twenty-four (24) months to complete; or
   (c) A change in the business ownership or business structure due to a merger or acquisition.

2. If the business falls below the required number of new employees, the business should inform the Department of Finance and Administration that the business no longer employs the required number. Because of this, the business will no longer receive the benefits of the program.

   a) If the business fails to notify the Department of Finance and Administration, that business will be liable for the repayment of all benefits which were paid to the business after it no longer qualified for the benefits. Interest shall also be due at the rate of 10% per annum.

3. In the event that a business is receiving benefits of this incentive program but has failed to meet the requirements of the program or misrepresents its qualifications to receive benefits, the business:

   (a) Will be liable for the repayment of all sales and use taxes which were refunded;
   (b) Will be disqualified from receiving any further benefits under the program and shall be liable for the repayment of such additional income taxes as may be due after the income tax credits provided are disallowed plus interest at a rate of 10% per annum; and
   (c) If a business misrepresents its qualifications in order to receive benefits from this program, that business will be liable for the above plus penalty as allowed by law.

VI. Administration of Benefits

The program provides Arkansas income tax credits and sales and use tax refunds. Companies are eligible for benefits regardless of their location in Arkansas.

A. Earned income tax credits begin in the year in which the new employees are hired after the financial incentive agreement has been signed. However, employees hired as a result of the project, if an application is made within 60 days after the date of the endorsement resolution, may be considered as new full-time permanent employees, starting with the date of the endorsement resolution. Any unused portion of the credit may be applied against the income tax for the succeeding nine (9) tax years or until the credit is entirely used, whichever occurs first.

B. By participating in the Advantage Arkansas Program, a business is eligible for a refund of the state's sales and use taxes on building materials and on all taxable purchases of machinery and equipment, excluding licensed motor vehicles, connected with a project. Purchases of eligible items will qualify for a refund after the date of the endorsement resolution, if the application is filed in a timely manner. All requests for the refund of a local tax must be filed with and received by the Department of Finance and Administration within sixty (60) days of the invoice date which indicates that the local tax was paid.

C. Ineligible costs include:

   1. Expenditures for routine repair and maintenance that do not result in new construction or expansion are not subject to refund.
   2. Routine operating expenditures.
   3. Purchases of replacements of items previously purchased as part of a project unless the items previously purchased will not enable the project to function as originally intended.

D. A business may receive a refund for eligible purchases that are incurred within four (4) years from the date that the project plan was approved by the department.

E. All claims for sales and use tax refunds shall be filed with the Revenue Division of the Department of Finance and Administration within three (3) years from the date of the qualified purchase or purchases. The date of the qualified purchase is established by the date of the pertinent invoice.

F. REFUND OF LOCAL SALES AND USE TAX. A municipality or county can authorize the refund of all or part of the sales or use tax levied by it, but cannot authorize the refund of any tax not levied by it. Therefore, all requests for refunds for local sales and use tax must be supported by the original sales receipt which must reflect that the tax to be refunded is the tax of the municipality or county which authorized the refund of its sales or use tax to the applicant. All requests for the refund of a local tax must be filed with and received by the Department of Finance and Administration, Tax Credits/Special Refunds Section, P.O. Box 1272, Little Rock, Arkansas 72203 within sixty (60) days of the invoice date which indicates that the local tax was paid. If the request for refund is not received by the Department of Finance and Administration, Tax Credits/Special Refunds Section within this time period, the request for refund will be denied. However, in the event the request for refund is not timely filed with the Department of Finance and Administration, the request for refund of local tax can be filed with the local government that authorized the Department of Finance and Administration to refund the tax.

G. DEVELOPERS AND CONTRACTORS. (a) Developers building a structure for lease to an approved enterprise zone business and contractors performing work for an approved enterprise zone business may be permitted to receive a sales and use tax refund on eligible purchases directly from the state only when the approved enterprise zone business requests the Department of Finance and Administration, Tax Credits/Special Refunds Section, in writing, that this be permitted and states the basis for this request. The Department of Finance and Administration, Revenue Division, will authorize this procedure only when it is satisfied that:

(1) This arrangement is crucial to the success of the business project; and

(2) All requirements of the Act and this regulation be adhered to; and

(3) A notarized affidavit (Form EZP 1201) is presented to the Department of Finance and Administration, Revenue Division, from the contractor or developer stating the enterprise zone business will receive the benefit of the sales and use tax refunds by having the cost of construction or lease payments reduced by the amount of the tax refund; and

(4) A notarized affidavit (Form EZP 1301) is presented to the Department of Finance and Administration, Revenue Division, from the approved enterprise zone business waiving the right to claim a refund of sales and use taxes, and passing on the right to claim refunds to the contractor or developer. The affidavit must state that the enterprise zone business acknowledges that if the enterprise zone business fails to comply with the conditions contained in this regulation, that business will be liable for the payment of all sales and use taxes which were refunded to contractors and developers under this section, plus penalty and interest.

b) An approved enterprise zone business may receive a sales and use tax refund on eligible purchases made by a contractor or developer performing work or building a structure for lease or sale to the approved enterprise zone business provided the enterprise zone business submits to the Department of Finance and Administration, Tax Credits/Special Refunds Section:

(1) A notarized Contractor's/Developer's Waiver of Refund Form (Form EZP 1101) completed by the contractor or developer waiving any and all rights to claim a refund of sales and use taxes; and
(2) An Enterprise Zone Business Sales and Use Tax Refund Request Form (Form EZP 1001), and a Schedule A listing the qualified enterprise zone purchases; and
(3) All other requirements of the Act and this regulation are adhered to.

VII. Benefit Calculations

For Projects Prior to April 6, 1999

A. This program provides an Arkansas income tax credit equal to the average hourly wage of each net new full-time permanent employee times the number of new employees times a multiplier of 100, with a $2,000 cap per employee.

B. In counties where the unemployment rate is in excess of ten percent (10%) or in excess of three percent (3%) of the state's average unemployment rate for the preceding calendar year, a multiplier of 200 is used, with a cap of $2,000 per employee.

C. The Advantage Arkansas income tax credits are calculated as follows:

Number of New Employees	x	Average Hourly Wage	x	Multiplier	=	Total Credits

For Projects Beginning April 6, 1999 to March 19, 2001

A. This program provides an Arkansas income tax credit equal to the average hourly wage of each net new full-time permanent employee times the number of new employees times a multiplier of 100, with a $3,000 cap per employee.

B. Average hourly wage is the average wage of the net new full-time permanent employees based on payroll for the most recent quarter that was reported to the Arkansas Employment Security Department. The average hourly wage is calculated by using the total net new full-time permanent employees reported taxable earnings (including overtime pay and one quarter of the net new full-time permanent employees annual bonus) divided by the number of weeks worked, divided by the average hours worked per net new full-time permanent employee.

Reported Taxable Earnings	÷	Number of Weeks Worked	÷	Average Hours Worked	=	Average Hourly Wage

C. In counties where the unemployment rate is 150 percent of the state's average unemployment rate for the preceding calendar year, a multiplier of 400 is used, with a cap of $6,000 per employee.

D. The Advantage Arkansas income tax credits are calculated as follows:

Number of New Employees	x	Average Hourly Wage	x	Multiplier	=	Total Credits

E. Unemployment is measured by yearly county unemployment averages. High unemployment counties are those with an unemployment rate equal to or in excess of one hundred fifty percent (150%) of the state's average unemployment rate for the preceding calendar year as specified by the statewide annual labor force statistics compiled by the Arkansas Employment Security Department.

State's Average Unemployment Rate	x	150%	=	High Unemployment Threshold
.055	X	1.5	=	8.25%

<u>For Projects Beginning on or after March 19, 2001</u>

F. This program provides an Arkansas income tax credit equal to the average hourly wage of each net new full-time permanent employee times the number of new employees times a multiplier of 100, with a $3,000 cap per employee.

G. Average hourly wage is the average wage of the net new full-time permanent employees based on payroll for the most recent quarter that was reported to the Arkansas Employment Security Department, including overtime pay and one quarter of the employee's annual bonus. The average hourly wage is calculated by using the total net new full-time permanent employees reported taxable earnings divided by the number of weeks worked, divided by the average hours worked per net new full-time permanent employee.

Reported Taxable Earnings	÷	Number of Weeks Worked	÷	Average Hours Worked	=	Average Hourly Wage

H. (1) When the state's annual average unemployment rate is six percent (6%) or below, in those counties where the unemployment rate is 150 percent of the state's average unemployment rate for the preceding calendar year, a multiplier of 400 is used, with a cap of $6,000 per employee. (2) When the state's annual average unemployment rate is above six percent (6%), in those counties where the unemployment rate is equal to or in excess of three percent (3%) above the state's average unemployment rate for the preceding calendar year, a multiplier of 400 is used, with a cap of $6,000 per employee.

Unemployment rates shall be calculated using the statewide annual labor force statistics compiled by the Arkansas Employment Security Department.

I. The Advantage Arkansas income tax credits are calculated as follows:

Number of New Employees	x	Average Hourly Wage	x	Multiplier	=	Total Credits

J. Unemployment is measured by annual county unemployment averages. In order to give a benefit to those counties experiencing high unemployment, three conditions prevail:

1. When the state's annual average unemployment rate is six percent (6%) or below, "high unemployment" counties are those with an unemployment rate equal to or in excess of one hundred fifty percent (150%) of the state's average unemployment rate for the preceding calendar year as specified by the statewide annual labor force statistics compiled by the Arkansas Employment Security Department.

2. When the state's annual average unemployment rate is above six percent (6%), "high unemployment" counties are those with an unemployment rate three percent (3%) or more above the state's average unemployment rate for the preceding calendar year as specified by the statewide annual labor force statistics compiled by the Arkansas Employment Security Department.

3. A county that does not qualify as a "high unemployment" county, but has experienced a sudden and severe period of economic distress caused by the closing of a business entity that results in the loss of a minimum of five hundred (500) full-time permanent jobs or a minimum of five percent (5%) of the employed labor force, as determined by the most recent "Labor Market Information" publication published by the Arkansas Employment Security Department, may be designated as a high unemployment county by the Arkansas Economic Development Commission. The designation as a high unemployment county shall be in effect for one (1) year after the closing of the business.

   (a) To initiate a designation as a high unemployment county because of a sudden and severe period of economic distress, the County Judge should send a letter to the Chairman of the Arkansas Economic Development Commission describing the employment situation in his or her county and ask the Commission to consider declaring their county a high unemployment county.

VIII. <u>Restrictions</u>

A. The additional benefits provided by Act 807 of 2001 shall only apply to those financial incentive agreements signed after March 19, 2001.

B. No person or entity may file for benefits under the Arkansas Enterprise Zone Act of 1993 (Advantage Arkansas) if an application for benefits has been filed and approved under the InvestArk program (ACA § 26-52-701 et seq.) for the same project. An application for benefits under the InvestArk program may be withdrawn if no tax credits have been taken under that act.

C. If a project has been approved under the InvestArk program, no application for a project under Advantage Arkansas will be accepted until the expiration of one (1) year after the date of approval of the application under InvestArk.

D. When a project has been approved under the Enterprise Zone Act of 1993 (Advantage Arkansas), no application for projects under the InvestArk program shall be accepted until the expiration of one (1) year after the date of approval of the application under Advantage Arkansas.