

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development adopts amendments to Chapter 68, “High Quality Job Creation (HQJC) Program,” Chapter 174, “Wage, Benefit, and Investment Requirements,” and Chapter 175, “Application Review and Approval Procedures,” Iowa Administrative Code.

These amendments update the rules that govern requests for wage waivers under the HQJC program, the IVF(2005) funding source, and the CEBA program. The amendments allow an applicant, under certain limited conditions, to request that the Iowa Economic Development Board waive wage and nonstatutory CEBA program requirements for businesses that have sustained substantial physical damage as a result of a natural disaster in a presidentially declared disaster area. The amendments update the HQJC program rules by rescinding references to the Board’s ability to waive other eligibility requirements because the statutory section that authorized the waiver of other eligibility requirements, Iowa Code section 15.337, has been repealed.

The Iowa Economic Development Board adopted these amendments on October 16, 2008.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are impracticable and contrary to the public interest because there is an immediate need to have procedures in effect for processing waiver requests from businesses that are located in presidentially declared disaster areas and suffered substantial physical damage due to flooding or tornadoes.

The Department finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that the normal effective date of the amendments should be waived and the amendments be made effective upon filing with the Administrative Rules Coordinator on October 16, 2008. These amendments confer a benefit on the public by ensuring that any business that wants to resume operations in a presidentially declared disaster area will be able to request a waiver of program requirements that are preventing the business from receiving needed assistance and resuming operations.

These amendments are also published herein under Notice of Intended Action as **ARC 7315B** to allow for public comment.

These amendments became effective on October 16, 2008.

These amendments are intended to implement Iowa Code chapters 15, 15E and 15G.

The following amendments are adopted.

ITEM 1. Amend subrule 68.2(6) as follows:

68.2(6) Waiver of ~~eligibility requirements~~ average county wage calculations. The department may waive any of the requirements listed above when good cause is shown. A community may apply to the board for a project-specific waiver from the average county wage calculations as authorized by Iowa Code section 15.335A(3). The waiver process is described in 261—Chapter 174 175.

ITEM 2. Amend subparagraph **68.4(7)“a”(1)** as follows:

(1) No high quality jobs are created but economic activity is furthered by the qualifying investment. For purposes of this subparagraph, “economic activity” means a modernization project which will result in increased skills and wages for the current employees ~~or~~; a project involving retained jobs; or a project that involves a waiver, granted by the board pursuant to rule 261—175.1(15), of the average county wage calculation if the reason for the waiver is that damages were sustained as a result of a natural disaster in a presidentially declared disaster area.

1. Less than \$100,000 in qualifying investment.
 - Investment tax credit or insurance premium tax credit of up to 1 percent.
2. \$100,000 to \$499,999 in qualifying investment.
 - Investment tax credit or insurance premium tax credit of up to 1 percent.

- Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.
- 3. \$500,000 or more in qualifying investment.
- Investment tax credit or insurance premium tax credit of up to 1 percent.
- Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.
- Research activities credit.

ITEM 3. Rescind and reserve rule **261—174.4(15)**.

ITEM 4. Adopt the following **new** rule 261—175.4(15):

261—175.4(15) Procedures for waiver of wage and other program requirements.

175.4(1) General information. Within the parameters described in this rule, the board may, for good cause shown, waive qualifying wage requirements and some nonstatutory CEBA program requirements. Iowa Code section 15G.112 permits applicants to apply to the board for a waiver of the IVF (2005) qualifying wage requirement (130 percent of the average county wage). Iowa Code section 15.335A(3) allows a community to apply to the board for a project-specific waiver from the average county wage calculations provided in the HQJC program in order for an eligible business to receive tax incentives. This rule also establishes a process for applicants to apply for a waiver of certain nonstatutory program requirements that the department has established by rule for the CEBA program. The waiver of CEBA nonstatutory program requirements is available only if the funding for the CEBA project is from program funds (“old money”). The meaning of “program funds (‘old money’)” is as described in subrule 175.2(3).

175.4(2) Definition of “good cause.” For purposes of this rule, “good cause” can include, but is not limited to, documentation of any of the following:

a. Economic distress. An applicant can establish good cause by demonstrating that the proposed project is located or plans to locate in an area that has experienced economic distress. Data that can be used to establish economic distress may be based on a combination of factors including, but not limited to:

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

b. Targeted industry project. An applicant can establish good cause by demonstrating that the proposed project meets all of the following criteria:

- (1) The business is in one of the state’s targeted industry clusters: life sciences, information solutions, and advanced manufacturing.
- (2) All jobs created as a result of the project have a qualifying wage, not including benefits, equal to or greater than 100 percent of the average county wage.
- (3) The business is headquartered in Iowa or, as a result of the proposed project, will be headquartered in Iowa. In lieu of the business’s being headquartered in Iowa, the proposed project has unique aspects which will assist the department in meeting one or more of its strategic objectives.

c. Natural disaster—limited to presidentially declared disaster areas. An applicant can establish good cause by demonstrating that the proposed project is located or plans to locate in a presidentially declared disaster area. To qualify for a waiver on the basis of a natural disaster in a presidentially declared disaster area, an applicant shall meet all of the following criteria:

- (1) The business must be located in a presidentially declared disaster area.
- (2) The business must apply for a waiver within 12 months of the date of the presidential disaster declaration.
- (3) The business must document that it has sustained substantial physical damage related to the natural disaster. For purposes of this criterion, “substantial damage” means damage of any origin

sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

(4) The business must commit to bringing its employment level up, within six months of the award date, to at least 90 percent of its base employment prior to the closure of the business due to the natural disaster in a presidentially declared disaster area. The business shall submit payroll records to establish the business's employment base prior to the date of the presidential disaster declaration.

(5) The business must commit to paying wages, within six months of the award date, that are no less than the wages paid prior to the closure of the business due to the natural disaster in a presidentially declared disaster area. The business shall submit payroll records to establish the wages that were paid prior to the date of the presidential disaster declaration.

175.4(3) Request to waive HQJC average county wage calculation.

a. Iowa Code section 15.335A(3) authorizes a community to request a project-specific waiver from the average county wage calculations in order for an eligible business to receive tax incentives.

b. Upon a showing of good cause as defined in subrule 175.4(2), the board may grant a project-specific waiver from the average county wage calculations for the remainder of the calendar year based on average county or regional wage calculations brought forth by the applicant county including, but not limited to, any of the following:

(1) The average county wage calculated without wage data from the business in the county employing the greatest number of full-time employees.

(2) The average regional wage calculated without wage data from up to two adjacent counties.

(3) The average county wage calculated without wage data from the largest city in the county.

(4) A qualifying wage guideline for a specific project based upon unusual economic circumstances present in the city or county.

(5) The annualized, average hourly wage paid by all businesses in the county located outside the largest city of the county.

(6) The annualized, average hourly wage paid by all businesses other than the largest employer in the entire county.

175.4(4) Request to waive IVF (2005) qualifying wage requirement.

a. Iowa Code section 15G.112 allows applicants to apply to the board for a waiver of the IVF(2005) qualifying wage requirement.

b. Upon a showing of good cause as defined in subrule 175.4(2), the board may grant a project-specific waiver of the IVF (2005) qualifying wage requirement. The board may grant a waiver from the average county wage calculations based on average county or regional wage calculations brought forth by the applicant including, but not limited to, any of the following:

(1) The average county wage calculated without wage data from the business in the county employing the greatest number of full-time employees.

(2) The average regional wage calculated without wage data from up to two adjacent counties.

(3) The average county wage calculated without wage data from the largest city in the county.

(4) A qualifying wage guideline for a specific project based upon unusual economic circumstances present in the city or county.

(5) The annualized, average hourly wage paid by all businesses in the county located outside the largest city of the county.

(6) The annualized, average hourly wage paid by all businesses other than the largest employer in the entire county.

c. The board will give extra consideration to wage waiver requests when the request is for a VAAPFAP project or for a project located in an economic enterprise area. "Economic enterprise area" means an area that shall consist of at least one county containing no city with a population of more than 23,500 and that 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 U.S. 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 consists of people over the age of 65.

175.4(5) *Request to waive CEBA requirements for CEBA projects funded with program funds (“old money”).*

a. CEBA projects may be funded by program funds (“old money”), IVF(FES) or IVF (2005). The definitions of IVF(FES) and IVF (2005) are located in 261—Chapter 173, “Standard Definitions.” The meaning of “program funds (“old money”)” is found in subrule 175.2(3).

b. The waiver provisions described in this rule are available only to CEBA projects funded with program funds (“old money”).

c. An applicant may apply to the board to waive the CEBA qualifying wage requirement or any other nonstatutory program requirement that the department has established by rule for the CEBA program.

d. Upon a showing of good cause as defined in subrule 175.4(2), the board may grant a project-specific waiver of the CEBA qualifying wage requirement or any other nonstatutory program requirement established by IDEED by rule. Examples of nonstatutory CEBA program requirements include requirements governing local match, the limitation on funding projects that have started (project initiation), and the \$500,000 limitation for forgivable loan awards.

175.4(6) *Waiver procedures and board action.*

a. Waiver requests shall be submitted in writing to the department when the business’s application is submitted. The request shall include documentation of good cause as defined in subrule 175.4(2).

b. Waiver requests shall include all necessary documentation, including documentation from other sources confirming any statistical data cited in the request.

c. Waiver requests will be reviewed as part of the application review process and acted upon by the board. If a request for a waiver is approved, the board will proceed with a final decision on the application.

d. The board may approve, deny, or defer action on waiver requests. The board reserves the right to condition its approval upon terms and conditions the board deems appropriate for the specific project.

[Filed Emergency 10/16/08, effective 10/16/08]

[Published 11/5/08]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 11/5/08.