



IOWA GENERAL ASSEMBLY

Administrative Rules Review Committee

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THE RULES DIGEST

July 2009

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Senate Committee Room #22

Reference
XXXI IAB No. 26(06/17/09)
XXXII IAB No. 01(07/01/09)

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TRANSPORTATION DEPARTMENT

10:05

Close clearance: railroad signage, IAB XXXII No. 01, ARC 7885B, NOTICE.

Iowa Code §327F.13 requires that: "[t]he owner of a railroad track shall place a warning device at a location where the close clearance between the track and a building, machinery, trees, brush, or other object is such that the building, machinery, trees, brush, or other object physically impedes a person who is lawfully riding the side of a train in the course of the person's duties in service to a railroad company from clearing the building, machinery, trees, brush, or other object."

The Department publish a notice of intended action in July, 2008. The proposal defined the term "close clearance" and set out placement and dimension requirements for the required warning devise. A representative of the United Transportation Union stated this was the weakest regulation in the nation and urged the adoption of a more comprehensive national code to ensure proper worker safety. Department representatives responded that the statute provided authority to regulate only the size

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and placement of these signs and that the statute did not provide any authority to adopt a broader safety code. At its' September, 2008 meeting Committee members requested that the Department meet with stakeholders and resolve this issue. Subsequent discussions have not resolved these differences, and the six-month window for adopting the proposal has passed.

A new rule-making has now begun. Again, this proposal follows the statutory language and sets out specific requirements for the size and placement of the warning signs and does not contain a safety code.

### ECONOMIC DEVELOPMENT DEPARTMENT

10:25

*Grayfield sites*, IAB XXXI No. 26, ARC 7844B, ADOPTED.

This rulemaking and the following filing, ARC 7845B, were initially reviewed as "emergency" adoptions in May, 2009. 2008 Iowa Acts, Chapter 1173 expanded the Brownfield redevelopment program to include vacated or blighted property; traditionally the Brownfield program redeveloped contaminated properties. A Grayfield site is defined in the statute as developed property, "*...but the property's current use is outdated or prevents a better or more efficient use of the property. Such property includes vacant, blighted, obsolete, or otherwise underutilized property.*"

A redevelopment tax credit is allowed against state income tax and the moneys and credit tax; the credit is transferable. The credit amounts to 12% of the investment in a Grayfield site or 15% of the investment in a Grayfield site if the qualifying redevelopment project meets the requirements of a green development. A green development is a development that meets or exceeds the "sustainable design standards" established by the state building code commissioner (*See Sustainable design standards*, ch. 310 ADOPTED ARC 7773B, 5/20/09 IAB). The Department is limited to \$1 million in credits annuals; no single project may receive more than 10% of the annual credit allotment.

\* \* \*

*Neighborhood stabilization program*, IAB XXXI No. 23, ARC 7845B, ADOPTED.

The program is intended to prevent or reduce the decline of neighborhoods caused by abandoned and foreclosed homes by providing assistance for the redevelopment of the abandoned and foreclosed properties. Activities under the program include: financing assistance, purchase and rehabilitation of abandoned and foreclosed residential property homes and residential properties, establishment and operation of land banks,

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demolition, and redevelopment. Eligible communities are ranked by need, according to the following criteria: the greatest percentage of home foreclosures, highest percentage of homes financed by a subprime mortgage-related loan, and areas likely to face a significant rise in the rate of home foreclosures.

Eligible communities are divided into two categories: entitlement and non-entitlement. An entitlement community includes the principal cities of metropolitan statistical areas, other metropolitan cities with populations of at least 50,000, and qualified urban counties with populations of at least 200,000, excluding entitled cities. A plan from an entitlement community is automatically approved if the proposed activities are eligible activities and that the plan conforms with federal law and regulations. Plans that meet both tests will be approved. A plan from a non-entitlement area is evaluated based on the:

- Need for assistance;
- Impact of the proposed activities;
- Degree of targeting of the activities within the community;
- Timeliness of the proposed project;
- Degree to which green development concepts are incorporated into the proposal.

## OFFICE OF ENERGY INDEPENDENCE

10:40

*Energy efficiency community grants*, IAB Vol. XXXII, No. 01, ARC 7913B, NOTICE.

2009 Iowa Acts, Senate File 452, §2 provides for a community grant program to assist communities and organizations implement projects to reduce energy consumption and make communities more sustainable and energy efficient. Applicants can include either government or private entities and must provide matching funds of at least fifty percent of the total cost of the project, either in cash or in kind. Eligible projects include any project or program that would save energy dollars or energy units. Grants awarded range from between one thousand dollars and fifty thousand dollars each.

## IOWA FINANCE AUTHORITY

10:50

*Water quality financial assistance*, IAB Vol. XXXII, No. 01, ARC 7896B, NOTICE.

2009 Iowa Acts, Senate File 376, §13(4) provides financial assistance to communities for water quality and wastewater improvement projects, funded through appropriations from the revenue bonds capital fund created in 2009 Iowa Acts, Senate File 376, §2. From these appropriations \$35 million shall be allocated to the small community

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(population of ten thousand or less) assistance fund and \$20 million shall be allocated to the large community assistance fund.

Under the small community assistance fund, priority is given to communities that have the greatest financial need. For all wastewater projects, priority is given to projects that will provide significant improvement to water quality; for all drinking water projects, priority is determined by the project priority system used for the drinking water state revolving fund.

\* \* \*

*Affordable housing assistance grant fund*, IAB Vol. XXXII, No. 01, ARC 7897B, EMERGENCY.

2009 Iowa Acts, Senate File 376, §30 established the affordable housing assistance grant fund; The fund assists government and private non-profit entities to provide housing for elderly, disabled, and low-income persons. Projects can include both new construction and the acquisition and rehabilitation of existing property. A grant may provide up to 50 percent of the total project cost, up to a maximum of \$50,000. Recipients have two years in which to expend all moneys received from the fund and complete all work activities identified in the project.

\* \* \*

*Public service shelter grant fund*, IAB Vol. XXXII, No. 01, ARC 7894B, EMERGENCY.

2009 Iowa Acts, Senate File 376, §28 established the public service shelter grant fund, to be used for construction, renovations, or improvements of homeless shelters, emergency shelters, and family and domestic violence shelters, to assist communities in providing certain essential social services including supportive services and other kinds of assistance to individuals in need of temporary housing necessary to improve their living situations. Projects can include both new construction and the acquisition and rehabilitation of existing property. For new construction, grants can range from \$100,000 to \$4 million dollars, not to exceed 50% of the project costs. For renovations or improvements, grants range from \$50,000 to \$3 million dollars. There is no local match requirement for the first \$250,000 of project costs, and 50% local match for any amounts in excess of \$250,000. Recipients have two years in which to expend all moneys received from the fund and complete all work activities identified in the project.

## ENVIRONMENTAL PROTECTION COMMISSION

11:15

*Underground storage tank operators*, IAB Vol. XXXI, No. 26, ARC 7854B, NOTICE.

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The EPC proposes a revision to its licensing requirements for underground storage tank operators. The proposed revisions provide for three levels of licensure. A class "A" operator is actually responsible for the proper operation of the facility, including training of personnel and compliance with all regulatory requirements. A class "B" operator implements applicable tank regulatory requirements and standards, including the day-to-day aspects of operating, maintaining, and record keeping for the tanks. A class "C" operator is the on-site employee who typically controls or monitors the dispensing or sale of the product. A class A or B operator should be immediately available for telephone consultation with the Class C operator when a facility is in operation, and be able to be on site at the tank facility within four hours. For staffed facilities, a class C operator must be on site whenever the facility is in operation.

Class A and B operators must be designated and trained by August 1, 2011; they must complete a department-approved training course and take an examination to verify their understanding and knowledge. Class C operators must receive written basic operating instructions, emergency contact names and telephone numbers, and basic procedures; and must receive some basic training within six months of the effective date of the rules. A facility may not operate after August 2011 unless operators have been designated and trained.

\* \* \*

*Water quality standards, effluent and pretreatment standards, IAB XXXI No. 26, ARC 7853B, Notice.*

The EPC proposes amendments to Chapter 61, "Water Quality Standards," and Chapter 62, "Effluent and Pretreatment Standards: Other Effluent Limitations or Prohibitions." The proposed amendments establish numerical water quality criteria for chloride and sulfate for the protection of aquatic life uses, update references to the "Supporting Document for Iowa Water Quality Management Plans" to reflect certain changes, and revise the default hardness level used for hardness-dependent chemical criteria.

In 2004, the Department of Natural Resources moved forward with a proposed chloride standard. At that time, concerns were raised that the proposed standard was not scientifically defensible for use in Iowa. The 2004 proposed standard was not approved, and an interim strategy using total dissolved solids as an indicator regarding water quality was put in place while the Department worked through the issues surrounding the chloride standard. Recently, the research and analysis related to toxicity of total dissolved solids, chloride, and sulfate have been completed in

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conjunction with the EPA. The Department worked with the EPA to ensure that the research compiled met certain scientific standards. As a result of this cooperation with the EPA, new toxicity tests were performed in 2008 and 2009. According to the EPC, the information is now available to propose numeric criteria for chloride and sulfate to better protect river, stream, and lake aquatic life uses and remove the current interim approach for total dissolved solids criteria.

Seven public hearings are scheduled during July throughout the state.

## NATURAL RESOURCE COMMISSION

11:40

*Endangered, threatened, and special concern animals--birds, IAB XXXI No. 26, ARC 7856B, NOTICE.*

This rulemaking proposes amendments to chapter 77, which lists the plants and animals whose existence in Iowa has been found to be endangered, threatened, or of special concern. The proposed amendment would move the peregrine falcon and the bald eagle to the special concern category. The Department of Natural Resources will conduct additional monitoring to ensure that populations of these birds continue to increase or remain stable before they are removed from the special concern list.

## INSPECTIONS AND APPEALS DEPARTMENT

1:30

*General provisions for elder group homes, assisted living programs, and adult day services, IAB Vol. XXXI, No. 26, ARC 7877B, NOTICE.*

2007 Iowa Acts, Senate File 601 transferred the regulatory authority for elder group homes, assisted living programs, and adult day services from the Department of Elder Affairs to the Department of Inspections and Appeals. The rules begin by outlining tenant rights; these include:

- Consideration, respect, and full recognition of personal dignity and autonomy;
- Adequate and appropriate care, treatment and services;
- Confidentiality and written consent prior to release;
- Freedom from mental and physical abuse;
- A reasonable response to all requests;
- The right to associate and communicate privately and without restriction;
- The right to manage the tenant's own financial affairs unless a tenant's legal representative has been appointed for the purpose of managing the tenant's financial affairs;
- The right to present grievances and recommend changes in program policies and services.

A program can not prohibit a tenant from self-administering medications unless the occupancy agreement or signed service plan delegates medication setup to the program or some other person.

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The rules detail reporting requirements. The Department must be notified within 24 hours of any accident causing major injury which results in death; requires admission to a higher level of care for treatment; or requires consultation with the attending physician who determines that an injury is a "major injury". Reporting is also required:

- When damage to the program is caused by a natural or other disaster;
- When there is an act that causes major injury to a tenant;
- When a pattern of acts committed by the same tenant on another tenant that results in any physical injury;
- When a tenant elopes;
- When a tenant attempts suicide;
- When a fire occurs requiring the notification of emergency services, evacuation or causes physical injury to a tenant;
- When a defect or failure occurs in the fire sprinkler or fire alarm system for more than 4 hours in a 24-hour period.

The Department will investigate both complaints and incident reports from programs using a preponderance-of-the-evidence standard in determining whether or not a complaint or incident report is substantiated. Enforcement actions include: denial, suspension, or revocation of a certification; issuance of a conditional certification and the placement of conditions upon a certificate such as requiring additional training; restriction of the program from accepting additional tenants for a period of time; or any other action or combination of actions. Civil penalties up to \$10,000 may be assessed for violations where there is imminent danger or substantial probability of resultant death or physical harm. Civil penalties up to \$5,000 may be assessed for violations which have a direct relationship to the health, safety, or security of tenants. A program that prevents, interferes with or attempts to impede in any way any duly authorized representative of the Department in the lawful enforcement of applicable requirements may be assessed a civil penalty of not more than \$1,000. If a program does not contest a civil penalty and the civil penalty is paid within 30 days, the amount of the civil penalty shall be reduced by 35 percent.

The desire to "age in place" is a significant issue as deteriorating health or physical condition may indicate that a higher level of care is needed for a tenant. The rules provide for a *temporary* waiver, reviewed every six months. The Department will only issue a waiver if the waiver will not jeopardize the health, safety, security or welfare of the tenant, program staff, or other tenants; and the tenant has been diagnosed with a terminal illness and has been admitted to hospice.

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The Department revises existing regulations for the certification and operation of assisted living programs. Regulatory authority was transferred to the Department from the Department of Elder Affairs. Assisted living combines apartment-style living with an array of personal services, which may include health-related care, personal care, and assistance with daily living.

The proposal contains certification criteria common to many residential-type programs, relating to tenant care, service plans, staffing, and the facility itself. Specific standards are provided for dementia-specific assisted living programs. Standards include criteria for admission and retention of tenants. A program cannot admit *or retain* a tenant who:

- Is bed-bound; requires routine, two-person assistance with standing, transfer or evacuation;
- Is dangerous to self or other tenants or staff;
- Is in an acute stage of alcoholism, drug addiction, or uncontrolled mental illness;
- Is under the age of 18;
- Requires more than part-time or intermittent health-related care;
- Has unmanageable incontinence on a routine basis;
- Is medically unstable;
- Requires maximal assistance with activities of daily living.

Standards also include provisions for the involuntary transfer from the program. This has been a significant issue in assisted living programs as tenants and their families often oppose transfer to a higher level of care; the criteria for an involuntary transfer are set out in the previous paragraph. The program must provide the tenant with an opportunity to contest the transfer. If the transfer results from ongoing monitoring or a complaint, the Department must notify the program and identify the tenant who exceeds admission and retention criteria. The tenant must be provided with an opportunity to respond and appeal the transfer.

## NURSING BOARD

1:50

*Supervision of fluoroscopy*, IAB XXXII No. 01, ARC 7714B, NOTICE.

This filing allows an the advanced registered nurse practitioner to provide direct supervision in the use of fluoroscopic X-ray equipment. Fluoroscopy is a type of X-ray imaging that can display motion, using a continuous series of images produced at a maximum rate of 25-30 complete images per second. To provide supervision, an advanced registered nurse practitioner must complete an educational course including content in radiation physics, radiobiology, radiological safety, and radiation management applicable to the use of fluoroscopy. An annual radiological safety course



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is also required, which includes: time, dose, distance, shielding, and the effects of radiation. The nurse must collaborate "as needed" with a physician.

These provisions were controversial when first reviewed as a notice of intended action. Representatives of various medical groups contend the rules are contrary to national standards for supervising fluoroscopy. Opponents contend that there is no need to expand the ARNP scope of practice to supervise fluoroscopy. They also state there is a lack of specificity in the training standards and no method of ensuring competency, and contend that physicians have the proper training and competency to provide appropriate oversight of this procedure.

Supporters of these provisions contend that advanced registered nurse practitioners have the necessary training to provide this supervision.

## CULTURAL AFFAIRS DEPARTMENT

No Rep

*Iowa cultural trust fund, IAB XXXII No. 1, ARC 7925B, NOTICE.*

This rulemaking establishes requirements for the grant-making function and the establishment of trust credits under the Iowa Cultural Trust that was established in Code chapter 303A in 2002. The trust was established to assist certain nonprofit arts, cultural, and historical organizations.

The proposed rules establish procedures for certification of annual trust fund credits gained by each organization, establish eligibility criteria for the cultural trust fund grant program, specify the types of projects that may utilize stability grants, and establish application, review, and appeal procedures for the grant programs. Under the general stability grant program, an applicant may request up to 50 percent of the project cost, to a maximum of \$2,500, must show a dollar-for-dollar cash match, must be incorporated in their community for at least three years, must meet the certain training requirements, and may not receive multiple grants in a single year.

## IOWA ETHICS AND CAMPAIGN DISCLOSURE BOARD

No Rep

*Sham newspapers, IAB XXXI No. 26, ARC 7866B, ADOPTED.*

2007 Iowa Acts, Chapter 61 enacted the following provision:

"The board shall adopt rules prohibiting the owner, publisher, or editor of a sham newspaper from using the sham newspaper to promote in any way the candidacy of such a person for any public office. As used in this paragraph, "sham newspaper" means a newspaper that does not meet the requirements set forth in section 618.3 and "owner" means a person having an ownership interest exceeding ten percent of the equity or profits of the newspaper."

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Iowa Code § 618.3 sets out specific criteria for a newspaper, which in essence requires that a newspaper be a regularly published, contain at least 25% news, and be at least partially paid for by subscribers. These rules establish a series of additional criteria:

- Whether the publication is published and made available on a regular schedule or interval;
- The proximity to the election in which the candidates and public affairs are discussed;
- Whether the publication contains news items and articles of opinion of a general character separate from discussions concerning candidates and public affairs;
- How widely the publication is circulated or is otherwise made available to the public in comparison to a targeted audience for potential campaign purposes;
- Whether the publication discusses all candidates for a particular election or otherwise gives all candidates equal space; and
- Whether the publication expressly advocates for the candidacy of the owner, publisher, or editor of the publication or for the defeat of a campaign opponent of the owner, publisher, or editor of the publication.

## PHARMACY BOARD

No Rep

*Iowa prescription monitoring program, IAB XXXII No. 01, ARC 7903B, ADOPTED.*

This filing creates a central database program of prescriptions for Schedule II, III, and IV controlled substances prescriptions dispensed in Iowa. Database information is privileged and strictly confidential and not subject to public or open records laws. Patients may review their own file. Regulatory or law enforcement agencies can access the database by order, subpoena, or other means of legal compulsion relating to a specific investigation of a specific individual and supported by a determination of probable cause. The database may provide summary, statistical, or aggregate data to public or private entities for statistical, research, or educational purposes, ensuring that all personally identifiable information has been deleted.

Iowa Code §124.551 provides that:

*"The information collected shall be used by prescribing practitioners and pharmacists on a need-to-know basis [emphasis added] for purposes of improving patient health care by facilitating early identification of patients who may be at risk for addiction, or who may be using, abusing, or diverting drugs for unlawful or otherwise unauthorized purposes at risk to themselves and others, or who may be appropriately using controlled substances lawfully prescribed for them but unknown to the practitioner."*

Essentially the database allows prescribers and providers to determine whether a patient is obtaining multiple prescriptions from multiple sources. Under this program each dispenser is required to report each reportable prescription dispensed during a reporting period. The reports contain detailed information concerning the prescription, the patient, the prescriber and the dispenser. The reporting requirement does not apply to hospital patients, nursing home or hospice patients. It does not apply to wholesale distributions or the providing of samples.

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*Transmission of new, refill or renewal orders; facsimile transmission of prescriptions, IAB XXXII No. 1, ARC 7910B, NOTICE.*

The proposed rules authorize a prescriber to direct the prescriber's agent to transmit to a pharmacy a new prescription drug order that has been manually or electronically signed by the prescriber. Additionally, the transmission must identify the prescriber's agent by name and title. The proposed rules also authorize the transmission by a prescriber's agent of a prescription refill or renewal as directed by the prescriber. Such transmission will not require the written or electronic signature of the prescriber if the transmission is electronic and if the refill or renewal is identical to the original order. However, the prescriber's agent must include their name and title in the electronic transmission.

These proposed rules do not amend the current restrictions on dispensing Schedule II controlled substances based on a faxed prescription.

## PUBLIC SAFETY DEPARTMENT

No Rep

*Ignition interlock devices, IAB XXXII No. 1, ARC 7887B, NOTICE.*

The Department rescinded existing rules and adopted a new chapter 158 that establishes standards and requirements that apply to ignition interlock devices (IIDs) installed in motor vehicles pursuant to court orders and administrative orders issued by the Department of Transportation under Code chapter 321J. Those provisions require that the devices that are going to be used be approved by the Commission of Public Safety. The new rules are intended to reflect technological advances in equipment.

The rules establish mandatory operational features of each IID, approval standards for IIDs, standards for the revocation of approval, and notification requirements for manufacturers of an IID relating to modifications its functionality. The rules also establish requirements for IID security, calibration and maintenance of an IID, and liability insurance for manufacturers and authorized service providers of IIDs.

The Department received numerous comments both in writing and during a public hearing held on March 10, 2009. The following substantive changes have been made to the proposed rules in response to comments received:

- Revocation of approval for the use of a device by another state has been added as a possible reason for revocation of such approval in Iowa.
- Language regarding reasons for revocation for approval has been modified in several ways to clearly reflect actions directly related to the installation and operation of IIDs.
- Language pertaining to the period before recalibration of a device is required has been clarified.

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- Records related to the use of an IID are required to be retained for five years after the device has been removed from a vehicle, rather than two years as specified in the proposed rules.
- Language regarding required randomized retests was clarified.

The rules become effective on October 1, 2009.