



IOWA GENERAL ASSEMBLY

Administrative Rules Review Committee

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THE RULES DIGEST

January 2010

Scheduled for committee review Tuesday, January 5th, 2010. Senate Committee Room #116

Reference XXXII IAB No. 13(12/16/09) XXXII IAB No. 14(12/30/09)

HIGHLIGHTS IN THIS ISSUE:

ELECTRICAL INSTALLATION ON A FARM, Public Safety1
COMPLAINTS, INVESTIGATIONS, CONTESTED CASE HEARINGS, Educational Examiners2
COMMUNITY COLLEGE REQUIREMENTS, EDUCATION DEPARTMENT3
ANIMAL FEEDING OPERATIONS, EPC4
HEALTH CARE FACILITIES: INSPECTION AND CITATION, Inspections and Appeals7

PUBLIC SAFETY DEPARTMENT

9:05

Electrician and electrical contractor licensing, IAB Vol. XXXII, No. 13 ARC 8396B, ADOPTED

2009 Iowa Acts, Senate File 159, and 2009 Iowa Acts, Senate File 478 revise Iowa's recently enacted electrician and electrical contractor licensing program. Senate File 159 in part authorizes an inactive master electrician license which can be converted to a class A master electrician or class B master electrician license by complying with continuing education and license requirements. Licensees must complete 18 hours of continuing education each three years.

The Act also exempts certain farm work from inspection; an employee of a farm is not required to hold a license while acting within the scope of the employees employment.

Certain electrical work is exempted from both inspection and permit requirements if:

- The installation is performed by a master electrician, journeyman electrician, or apprentice electrician working under the direct supervision of a master or journeyman electrician.
• The installation to be performed does not in any way involve work within an existing or new switchboard or panel board.
• The installation to be performed does not involve over-current protection of more than 30 amperes.
• The installation to be performed does not involve any electrical line-to-ground circuit of more than 277 volts, single phase.

At issue in this rulemaking is item 14, which in part states that:

THE RULES DIGEST

-2-

An electrical installation on a farm which is located outside the corporate limits of any municipal corporation (city) shall not be inspected by a political subdivision, shall require a state electrical permit, and may be subject to a state electrical inspection, unless the installation is subject to Exception 2 or Exception 3.

At the October 2009 Committee meeting Department representatives contended that farm installations are subject to regulation and inspection under code §103.23, as "commercial" applications. Representatives of the Iowa Farm Bureau and committee members objected to this interpretation, contending that the term commercial should be interpreted similarly to property tax usage, where residential, commercial and farm property are treated separately. Opponents noted that amendments in Senate File 478 establish other exceptions for farm installations, showing a legislative intent that farm operations are to be treated differently than other applications.

The head note to the final adoption of this rulemaking stated: "The Board, with advice of legal counsel, has determined that this authority is found in the statute; therefore, electrical installations on farms will be subject to inspection requirements parallel to those for electrical installations elsewhere."

EDUCATIONAL EXAMINERS BOARD

9:20

Complaints, investigations, contested case hearings, IAB Vol. XXXII, No. 13, ARC 8406B, ADOPTED.

These rules were controversial when initially reviewed by the committee in December. Current rules relating to the investigation of a complaint require the respondent to receive a copy of the complaint at the beginning stage of the investigation. This revision eliminates that requirement until the board investigation has found probable cause for a formal adjudication. Instead of the complaint itself, which would identify the person making the initial complaint, the respondent will receive a notice containing a concise statement of the facts which "clearly and specifically" details the alleged violation, an explanation of the facts underlying the complaint, and a citation to the specific rule or law which the complainant alleges has been violated.

Opponents of this change contend that a respondent is entitled, as a matter of due process, to see the complaint itself, including identification of the complainant. Board representatives contend that Iowa law has long required that identifiable information in the initial complaint be kept confidential, and that the complaint itself is provided to the respondent if the board determines that probable cause exists. Code §272.13 states in part:

All complaint files, investigation files, other investigation reports, and other investigative information in the possession of the board or its employees or agents, which relate to licensee discipline, are privileged and confidential, and are not subject to discovery, subpoena, or other means

THE RULES DIGEST

-3-

of legal compulsion for their release to a person other than the respondent and the board and its employees and agents involved in licensee discipline,...

DEPARTMENT OF EDUCATION

10:00

Community colleges, IAB Vol. XXXII, No. 13, ARC 8390B, NOTICE.

After a general comprehensive review involving the stakeholder groups, the Department is updating the standards for community colleges. The revisions are similar to existing provisions. One significant addition adds great detail for the various degree requirements. These can be summarized as:

- *Associate of arts (AA)*. Liberal arts and sciences requirements consisting of a minimum of 60 semester (90 quarter) credit hours and a maximum of 64 semester (96 quarter) credit hours.
- *Associate of science (AS)*. Mathematics or science requirements consisting of a minimum of 60 semester (90 quarter) credit hours and a maximum of 64 semester (96 quarter) credit hours.
- *Associate of general studies (AGS)*. A broad educational background consisting of a minimum of 60 semester (90 quarter) credit hours and a maximum of 64 semester (96 quarter) credit hours.
- *Associate of applied science (AAS)*. A program for entry-level career and technical occupations consisting of a minimum of 60 semester (90 quarter) credit hours and a maximum of 86 semester (129 quarter) credit hours.
- *Associate of applied arts (AAA)*. A program for a specific field of work such as consisting off a minimum of 60 semester (90 quarter) credit hours and a maximum of 86 semester (129 quarter) credit hours.
- *Diploma*. A program of a coherent sequence of courses consisting of a minimum of 15 semester (22.5 quarter) credit hours and a maximum of 48 semester (72 quarter) credit hours including at least 3 semester (4.5 quarter) credit hours of general education.
- *Certificate*. The certificate is a program designed for entry-level employment consisting of a maximum of 48 semester (72 quarter) credit hours.

The proposal outlines a series of additional instructional formats in community colleges include a variety of alternatives to traditional classroom study:

- Accelerated courses that allow students to complete courses or programs at a faster pace than if offered by conventional methods.
- Distance education the Internet, Iowa Communications Network (ICN), or other electronic means.
- Correspondence courses which the instruction is delivered through written material, computer, television, or electronic means.
- Television courses primarily via broadcast television such as Iowa Public Television, digital video disc, or other media.

THE RULES DIGEST

-4-

- Video conference courses via a closed synchronous audio-video conferencing system such as the Iowa Communications Network
- Internet courses delivered via the Internet.
- In-class hybrid courses that combine traditional classroom and computer-based instruction.
- Self-paced instruction that permit a student to enter at variable times or progress at the student's own rate of speed.
- Arranged study offered to students at times other than stated or scheduled class times
- Multi-format nontraditional instruction utilizing a variety of nontraditional methods that may incorporate self-paced learning, text, video, computer instructional delivery, accelerated training, independent study, Internet delivery, or other methods.
- Individualized learning experiences.

ENVIRONMENTAL PROTECTION COMMISSION

10:40

Animal feeding operations, IAB Vol. XXXII, No. 13, ARC 8398, NOTICE.

This proposal sets out a variety of revisions to the EPC's regulation of animal feeding operations; many of the changes are the result of legislation. Relating to separation distances for feeding operations, the size of the operation will no longer be expressed in animal weight capacity. Instead, animal unit capacity, will be used, allowing a single capacity limit to be set regardless of the species of livestock. For example, Slaughter and feeder cattle count as one unit, Mature dairy cattle count as 1.4 units and 7 pound turkeys count as .018 units.

The definition of common management is also expanded. Currently the term applies the same person has significant control of the day-to-day operations of two or more operations. This is now expanded to include majority ownership of two or more operations.

The proposal also expands the definition of residence, to include dwellings without electricity, running water or modern toilets. Animal feeding operations must be located a specific distance from any residence which is used as a place of habitation for humans on a permanent and frequent basis.

The proposal details standards for dry manure stockpiling. The standards include slope and siting requirements.

A detailed rule is added establishing the procedures for applying liquid manure during the winter. Applying manure to snow covered or frozen ground is limited to emergency situations, with specific application requirements.

THE RULES DIGEST

-5-

When applying for a permit for a new operation, if the location contains alluvial soils the owner must petition the department for a declaratory order or a determination that the confinement feeding operation structure is not in the one hundred year flood plain. The EPC must respond in 30 days. The order must state whether or not the proposed location is on the one hundred year flood plain. If the proposed location is on the one hundred year flood plain, the EPC shall prohibit the construction.

The proposal sets out additional permitting procedures and requirements. With some exceptions, applicants must provide a livestock odor mitigation evaluation certificate issued by Iowa State University; this evaluation is part of 2008 legislation now codified as §266.49. Additional procedures are established for sites located on alluvial soils or Karst terrain.

A new provision is added relating to separation distances for the expansion of existing operations. Different standards are established for operations constructed prior to January 1, 1999, or after January 1, 1999, but prior to March 1, 2003, or for operations constructed after that date.

PHARMACY BOARD

11:30

Support staff, IAB Vol. XXXII, No. 13, ARC 8380B, NOTICE.

Pharmacy technicians, certified pharmacy technicians, and pharmacy technician trainee's are currently regulated by the board. The duties that may be delegated to these technicians are currently set out in rule. 2009 Acts, House File 381 empowered the board to establish a "registration" program for pharmacy support persons who are not licensed pharmacists or registered pharmacy technicians. This registration is not a license; it serves for the purposes of identification, tracking, and disciplinary action. Beginning April 1, 2010, a pharmacy support person shall "register" with the board; registration does not include any determination of competency. Registration and renewal fees are both 30 dollars, there is no continuing education requirement. A pharmacy support person performs routine clerical and support functions. A support person does not perform any professional duties or any technical or dispensing duties. Examples of the duties that a support person may perform are outlined in this proposal.

PROFESSIONAL LICENSURE DIVISION

12:00

Licensure of social workers, IAB Vol. XXXII, No. 13, ARC 8374B, NOTICE.

Iowa law defines the practice of independent social work as providing "diagnosis and treatment of mental and emotional disorders or conditions." In September 2009 the board attempted to further define that term by adopting by reference the Diagnostic

THE RULES DIGEST

-6-

and Statistical Manual of Mental Disorders of the American Psychiatric Association (DSM IV). This proposal was controversial with opponents contending that the contend that the DSM IV is a diagnostic tool developed by psychiatrists to use in a medical model setting and that most social work does not practice in a medical model setting.

The board has withdrawn that notice and proposed a new definition. This revision provides that one component of diagnosis at the master's level for private practice must be utilization of the DSM IV. The proposal also provides that that master level social workers seeking their license for independent practice may utilize diagnostic tools and methods other than the DSM in their practice, but that one component of their diagnostic practice must involve the DSM.

DENTAL BOARD

No Rep

Practice of dentistry: teeth whitening, IAB Vol. XXXII, No. 13, ARC 8369B, ADOPTED.

The board implements a variety of revisions to its existing rules. The most significant of these revisions defines the practice of teeth whitening as part of the practice of dentistry. This means that any whitening service must be provided by a dentist or by other licensed personnel working under the supervision of a dentist. A second important addition prohibits a dentist from self-prescribing self-administering, or self-dispensing controlled substances or tramadol; or providing these medications to the dentist's immediate family.

No comment has been received on this filing.

ELDER AFFAIRS DEPARTMENT

No Rep

Elder abuse prevention initiative and dependent adult abuse, IAB Vol. XXXII, No. 14, ARC 8427B, NOTICE.

This proposal re-writes and expands an existing chapter relating to elder and dependent adult abuse. The current language largely provides for the development of a dependent adult abuse mandatory reporter training manual and training.

The new and detailed provisions provide a complete funding program for local elder abuse prevention initiatives, administered by local agencies or organizations. Eligible services include the prevention, reduction or elimination of abuse, neglect, self-neglect, or exploitation.

Service providers must prepare a comprehensive assessment each client, develop an intervention plan designed to address the client's situation and monitor the provision of services. The department also develops and maintains a dependent adult abuse

THE RULES DIGEST

-7-

mandatory reporter training curriculum in accordance with Iowa Code §235B.16, and certify the trainers for that program.

INSPECTIONS AND APPEALS

No Rep

Health care facilities: inspection and citation, IAB Vol. XXXII, No. 14 ARC 8433B, ADOPTED.

2009 Iowa Acts, Senate File 433, enacted several provisions relating to the inspection and citation of health care facilities and assisted living programs. Topics include conflict of interest restrictions for inspectors and monitors, training requirements for inspectors and monitors, and procedures and penalties for violations. Many of the new rules simply reflect the statutory changes.

These rules establish additional timeframes and procedures for inspections and the citation of deficiencies. They commit the Department to inspecting each facility at least once within a 30-month period. Medicare or Medicaid facilities may be inspected more frequently. The rule sets out a timeframe for investigating complaints or self-identified incidents:

- Two working days for immediate jeopardy deficiencies where there is a likely risk of serious injury, harm, impairment, or death to a resident.
- Ten days for nursing facilities and 20 working days for intermediate care facilities and residential care facilities for non-immediate jeopardy deficiencies where the impact may have caused harm that negatively impacts the resident's mental, physical, or psychosocial status.
- Forty-five calendar days in other situations where the deficiency may cause harm of limited consequence and does not significantly impair the individual's mental, physical, or psychosocial status or function.

The rules also detail a process for correcting deficiencies and re-inspections. Within 10 working days, the facility must submit a plan of correction detailing how the facility will correct the deficient practice; how the facility will protect residents in the future; what measures the facility will take to ensure that the problem does not recur; how the facility plans to monitor its performance; and a time frame for completion of the correction.

The specific standard for determining a regulatory deficiency under the rules is "preponderance of the evidence." This means that after evaluating all the evidence, the allegations or deficiency is more likely true than not true---51%. The standard does not require that the inspector personally witnessed the alleged violation.

The Act contains new provisions relating to the self-identification of deficiencies by a facility. If no complaint has been filed and the facility corrects that deficiency, no penalty will be imposed in most situations. The rules set out a process to document the self-identification and the correction.

THE RULES DIGEST

-8-

The existing statute contains provisions for a discretionary waiver of a fine for certain class II violations if the violation is corrected within the time specified in the citation. The Department now proposes criteria for those waivers and a procedure for making the request. The rules set out three criteria:

- The past history of the facility within the last 24 months of the violation as it relates to the nature of the violation;
- the rights of residents to make informed decisions with their doctor and family or legal representative; and
- the financial hardship the fine will cause the facility.

The process provides that the decision to deny a waiver request is not subject to appeal. The underlying citation or statement of deficiencies is eligible for appeal.

New training requirements provide that all nursing facility inspectors shall receive 12 hours of annual continuing education in gerontology, wound care, dementia, falls, or a combination of these subjects. Inspectors are not personally liable for financing the training required.