



IOWA GENERAL ASSEMBLY

Administrative Rules Review Committee

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THE RULES DIGEST

September 2010

Scheduled for committee review Tuesday, September 14th, 2010. Senate Committee Room #116

Reference XXXIII IAB No. 03(08/11/10) XXXIII IAB No. 04(08/25/10)

HIGHLIGHTS IN THIS ISSUE:

Table listing items: SYNTHETIC MARIJUANA, Pharmacy Board (1); ANIMAL FEEDING OPERATIONS, EPC (3); GREENHOUSE GASSES, EPC (4); PERMITS FOR SPECIAL EVENTS, NRC (5); FIRE PROTECTION SYSTEM INSTALLER, Public Safety Department (7)

PHARMACY BOARD

9:35

Controlled substances: K-2, IAB Vol. XXXIII, No. 03 ARC 8989B and 9000B, EMERGENCY.

K-2 is a synthetic marijuana, produced under a variety of names and marketed openly as "incense"; however, the products are usually smoked by users. As yet synthetic marijuana is not regulated by the federal government.

Synthetic marijuana can be far more potent than the organic variety. The American Association of Poison Control Centers reports so far this year there have been 750 K2-related calls, up from just 13 in 2009. In June an Iowa teenager committed suicide after smoking K-2, sparking a demand for local action. The Pharmacy Board has two tools at its disposal to deal with this problem and has used both, in two different rulemakings. Iowa is the ninth state to ban K-2 and similar products.

Under Code Chapter 124 the Board has limited authority to temporarily designate a new substance as a controlled substance, pending legislative approval; this designation appears as ARC 8989B. Under Code Chapter 124A the Board may designate a substance as a controlled substance, by rule, if that appears to be or resembles a controlled substance. This designation is permanent, although the penalties are less severe; this designation appears as ARC 9000B.

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Manufacture or delivery of an imitation controlled substance under Chapter 124A is an aggravated misdemeanor. There is a wider variety of penalties for violation of Chapter 124, up to a class “B” felony.

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Uncertified pharmacy technician, IAB Vol. XXXIII, No. 02, ARC 8891B, FILED EMERGENCY.

This filing was initially placed under notice in June; these provisions have been placed into emergency effect prior to the completion of the “regular” rulemaking process.

Iowa law requires that pharmacy technicians attain nation certification; 2010 Iowa Acts, House File 2531 extends the deadline for that certification to December 31, 2013 for an uncertified pharmacy technician who was registered prior to January 1, 2010, and who worked as a pharmacy technician for a minimum 2,000 hours during the 18-month period prior to registration and who continues to work a minimum 2,000 hours during any 18-month period.

The duties of an uncertified technician are more limited than those of a certified technician, those duties include:

- Selecting the appropriate stock supply of a prescription drug;
- Counting dosage forms of prescription drugs into appropriate prescription vials or containers;
- Affixing required prescription labels;
- Returning or placing stock supplies.

EDUCATION DEPARTMENT

9:50

Financial management of categorical funding, IAB Vol. XXXIII, No. 4, ARC 9017B, NOTICE.

This rulemaking amends the Department’s Chapter 98, “Financial Management of Categorical Funding”, which provides guidance on financial management of multiple public school funds. Previous amendments to this chapter were adopted effective September 30, 2009, with the exception of rules 281–98.12(257,299A) and 281–98.112(275), both of which were delayed 70 days at the Committee’s meeting of September 8, 2009. During the December 2009 Committee meeting, no further action was taken on rule 281–98.112; however, a session delay was imposed on rule 281–98.12.

2010 Iowa Acts, Senate File 2376 was subsequently enacted, specifying the lawful purposes of the per-pupil funding received by a school district that operates a home school assistance program. That provision is implemented in Item 3. Other amendments to the chapter resulting from other 2010 legislation and Code provisions include additional definitions from Iowa Code §§ 276.3, 299A.8, and 301.1, guidance to

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school districts relating to specified unspent funds, amendments to the names of certain funds, and amendments relating to the educational excellence program.

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Innovative school zones, IAB Vol. XXXIII, No. 4, ARC 9014B, NOTICE.

2010 Iowa Acts, Senate File 2033 created “innovation zone schools” as an alternative to the current program for charter schools. A charter school is created as part of a single district. An innovation zone school is established by agreement between at least two school districts and an area education agency. These agreements must be renewed by the parties at least every four years.

The state board may approve not more than ten innovation zone schools. These proposed rules establish weighted criteria to evaluation applications, awarding up to 100 points. The criteria are the same as for charter schools; they include:

- Mission, purpose, innovation, and specialized focus of the charter school. 10 points
- Organization and structure. 25 points.
- Facilities/financial support. 25 points.
- Student achievement. 40 points.

ENVIRONMENTAL PROTECTION COMMISSION

10:10

Animal feeding operations, IAB Vol. XXXIII, No. 3, ARC 8998B, ADOPTED.

This rulemaking includes a variety of revisions to the EPC’s regulation of animal feeding operations. Many of the changes are the result of legislation or reflect current procedures and technical corrections. Twenty-two oral comments were received during 5 public hearings. The EPC also received 187 written comments. Many of the rules relate to separation distances for feeding operations. As part of this rulemaking the size of an animal feeding 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. The rules, in part, provide standards for dry manure stockpiling, slope requirements, and siting requirements. The rules also establish the procedures for applying liquid manure during the winter. Based on comments received, changes have been made to the rules as originally filed under notice. The following reflects some of those changes.

The definition of “common management” is amended to conform the definition to that currently in effect under Iowa Code chapter 459A. The proposed change to the definition of residence, to include dwellings without electricity, running water or modern toilets, has been removed from this rulemaking. The adopted rules also modify the definition of “animal feeding operation” and “open feedlot operation” to implement

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the new definition of “partially roofed animal feeding operation” and modify the definition of “liquid manure” to include liquid manure that is frozen or partially frozen.

Changes to the rules filed under notice also include the modification of the criteria for the base of a long-term, covered stockpile, the modification of provisions to allow insufficient manure storage capacity to be accepted as a reason for emergency manure application during the winters of 2010-11 through 2014-15, requiring the identification of fields when notification of emergency manure application occurs, removal of language requiring recalculation of the phosphorus index for emergency manure applications, the addition of language providing for a delayed implementation for the change in soil type used in the phosphorus index determination, and the removal of language that would have required the reporting the removal of drain tile intake protection prior to completion of snowmelt as a release.

Other changes have been made to the noticed rules governing operations that land-apply their own manure and rules designating who may submit hydrogeological reports on soil corings.

The rules take effect September 15, 2010.

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Greenhouse gasses, IAB Vol. XXXIII, No. 03, ARC 8999, NOTICE.

The United States Supreme Court has determined that greenhouse gases, including carbon dioxide, are air pollutants covered by the Clean Air Act. This decision has prompted a number of actions by the federal Environmental Protection Agency (EPA). Most recently the EPA issued a rule that establishes EPA’s approach to addressing greenhouse gas (GHG) emissions from stationary sources, setting thresholds that specify when GHG permit requirements are required for new and existing facilities. The federal agency estimates that nearly 70 percent of the national GHG emissions from stationary sources will be subject to these requirements.

The permitting requirements will be gradually introduced, for new construction by 2011, and by 2013 Title V operating permit requirements will, for the first time, apply to sources based on GHG emissions of 100,000 tons of carbon dioxide “equivalent emissions”, even if the requirements would not apply based on emissions of any other pollutant.

Beginning January 2, 2011, power plants, industrial facilities, ethanol plants, state universities, municipal utilities, and other facilities in Iowa that are already considered major sources under the Title V program will be affected under the proposed

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amendments, as the renew or modify their existing permits. Beginning on July 1, 2011, additional sources of GHG emissions, such as ethanol plants, municipal utilities, some hospitals, and some larger landfills, will be classified as major sources under Title V.

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Technical standards and corrective action: underground storage tanks, IAB XXXIII No. 03, ARC 8676B, ADOPTED.

This rulemaking amends chapter 135 relating to the risk-based corrective action (RBCA) assessment process for underground storage tank releases. Sites are classified based on the level of risk; a three-tiered process, including sophisticated computer modeling, is used to evaluate risk.

This filing changes the requirements for the replacement or relocation of certain water lines, based on the type of material used in the line. According to the EPC, the amendments revise the risk-based evaluation process for water lines by adding in gasketed drinking water lines and different action levels based on material composition and usage, allow consideration of “no action required” status if the contaminant plumes at low risk leaking underground storage tank sites are demonstrated to be stable and when an institutional control is implemented, and expand the Department of Natural Resources’ authority to require confirmation sampling prior to acceptance of a no action required classification or to waive “exit monitoring” criteria when a groundwater professional can justify a no action required classification for the site. Existing policy regarding confirmation soil sampling has been added to update the rules with the current practice. This rulemaking also takes into account and incorporates recent research conducted by Iowa State University and the American Water Works Association Research Foundation. In addition to a May, 2010 review by the committee, the EPC conducted three public hearings as part of this rulemaking.

NATURAL RESOURCES COMMISSION

10:30

Permits for special events, IAB Vol. XXXII, No. 25 ARC 8815B, ADOPTED---70 DAY DELAY (June).

The previous permitting requirements applied only for boating events. These new provisions create a general set of rules applying to boating, ATV and snow events, such as an organized race, tournament, exhibition, or demonstration. The Commission (NRC) may impose special conditions for any special event if deemed necessary to protect the resource or to ensure public safety.

The fee for each event is 25 dollars. Code §455A.5(6) gives the NRC specific authority to adopt a schedule of permits. This fee was opposed by various boating organizations

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around the state. They noted that events were held virtually every week at the fees could run up to hundreds of dollars for each club. NRC representatives noted that other clubs, such as all-terrain vehicle groups, also pay this fee. Committee members felt that the NRC and the stakeholders should attempt to find a compromise, and for that reason imposed a seventy day delay on this filing. Discussions have been ongoing since the June meeting, but a complete resolution of all issues has not yet been reached. For this reason the NRC has rescinded this entire rulemaking, on an emergency basis, and will adopt new rules after the issues have been resolved.

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Proof of residency, IAB Vol. XXXIII, No. 3, ARC 9004B, ADOPTED.

The NRC implements rules detailing proof of residency requirements to qualify for a resident license, permit or tag. A “resident” must physically reside in this state at the person’s “principal and primary” residence or domicile for not less than 90 consecutive days immediately before applying for or purchasing a resident license, tag, or permit, and possess an Iowa driver’s license or identification card. College student studying in this state qualify as residents and a college student under the age of 25, studying in another state will qualify if the student resides with a parent who is an Iowa resident. A member of the armed forces qualifies for residency if the individual is stationed in this state, or if all of the following apply: 1) is serving on active duty, 2) claims residency in this state, and 3) has filed a state individual income tax return as a resident.

PUBLIC HEALTH DEPARTMENT

10:45

Dental screening, IAB Vol. XXXIII, No. 3, ARC 8980B, FILED EMERGENCY AFTER NOTICE.

The rules amend the Department’s Chapter 51 relating to school dental screenings, including dental screening applicants, providers, and documentation. These amendments incorporate changes made in 2010 Iowa Acts, House File 2144.

Public comments received by the Department during the comment period included concerns relating to the time frame during which a screening is valid, the use of forms other than those provided by the Department, concerns over the ability to implement the rules during the current 2010-11 school year, the failure to include gingivitis on the referral form, and a request to allow paperless record keeping. Concerns were also raised about the lack of enforcement powers for students who do not comply; however, the Department noted that such rulemaking would require additional legislative authority.

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The Department did not make any changes to the rules as filed under notice and the rules became effective on July 14, 2010.

PUBLIC SAFETY DEPARTMENT

11:00

Fire protection system installer and maintenance worker licensing program, IAB Vol. XXXIII, No. 3
ARC 9032B, ADOPTED.

2009 Iowa Acts, chapter 1094, as amended by 2009 Iowa Acts, House File 400 provide for the licensing of fire protection system installers and maintenance workers.

The licensing requirements do not apply to:

- A licensed professional engineer providing consultation or develops planning services;
- A person whose work on fire protection systems is limited to routine maintenance;
- licensed plumber performing work within the scope of that license;
- An employee of a certified fire extinguishing system contractor who is working as an apprentice sprinkler fitter under the direct supervision of a licensed fire sprinkler installer and maintenance worker;
- A person who demolishes fire protection system components when the work involves the demolition of a complete fire protection system or if the work results in a fire protection system's being placed out of service;
- A person who is a responsible managing employee of a fire extinguishing system contractor.

Rules were initially noticed in September, 2009; due to extensive public comment that notice was terminated. The 2009 legislation has been supplemented by the enactment of 2010 Iowa Acts, Senate File 2355. That Act provides that a person is not required to be licensed in order to perform routine maintenance or demolish part of a system or a partial system, provided that the system is taken out of service. Restoration work must be performed by a licensed person or a responsible managing employee. Routine maintenance does not mean any new installation or any expansion or extension of any existing fire protection system, nor does it mean inspection and testing.

The state fire marshal is required to issue a fire protection system installer and maintenance worker license with endorsements restricted to pre-engineered fire protection systems applicants who do not qualify for a general license. The Act sets out alternative requirements for this specialized license.

The notice of intended action proposed a fee for a permanent or provisional license of \$250. The fee has been reduced from the noticed amount to \$200. Licensure is for a two year period and may include a variety of endorsements for additional specialties, which include: automatic sprinkler systems, special hazards fire suppression, or pre-engineered dry chemical or wet agent systems. There is an additional fee of \$25 for each endorsement beyond the first. Licensees must carry liability insurance in the following

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amounts: \$500,000 per person, \$1,000,000 per occurrence, and \$1,000,000 property damage.

The rules resolve a potential problem relating to apprenticeship. Iowa Code §100D.3(1) requires that an applicant for licensure complete a United States department of labor apprenticeship program. Under the rules, if no such program is readily available for a particular endorsement, the fire marshal may allow the substitution of documentation of 8500 hours or more of employment in installation and maintenance of special hazards systems in lieu of meeting the apprenticeship requirement.

HUMAN SERVICES DEPARTMENT

11:15

Amount, duration and scope of medical and remedial services, IAB Vol. XXXIII, No. 3, ARC 8993B, ADOPTED.

This rulemaking relates to the coverage for oxygen and nutritional products. Specifically, the rules clarify criteria for coverage of oxygen in nursing facilities, establish criteria for coverage of oxygen for infants and small children, delete outdated documentation requirements for oxygen claims, clarify that nutritional products consumed orally are not separately payable for members in nursing facilities or intermediate care facilities for persons with mental retardation.

The Department made minor changes to the amendments as published under notice. The Council on Human Services adopted these amendments on July 21, 2010.

These amendments become effective on October 1, 2010.

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Iowa promoting healthy marriage program, IAB Vol. XXXIII, No. 4, ARC 9019B, NOTICE.

This rulemaking proposes amendments to the Department's Chapter 47, "Diversion Initiatives." These amendments implement a new program, the Promoting Healthy Marriage Program. This program will use federal funds from the Temporary Assistance to Needy Families (TANF) block grant to provide information to certain households about the benefits of a healthy and stable marriage. The Department is implementing this program as a means of expanding categorical eligibility for Food

Assistance, as directed by the Legislature in 2010 Iowa Acts, House File 2526.

The rules do not require a separate application for the Promoting Healthy Marriage Program. Instead, eligibility for the program will automatically be determined when a household applies for Food Assistance and there will be no asset test for eligibility. The income limit will be 160 percent of the federal poverty level for the household size. Under the proposed rules, eligibility for this program will also establish categorical

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eligibility for the Iowa Food Assistance Program. Accordingly, related amendments to Food Assistance rules are published in the August 25, 2010 IAB as ARC 9020B.

ACCOUNTANCY EXAMINING BOARD

No Rep

Continuing education, IAB Vol. XXXIII, No. 03 ARC 9002B, ADOPTED.

The Board re-writes existing rules relating to continuing education requirements for accountants. Both certified public accountants and licensed public accountants must complete required continuing education on a three year cycle. Subjects include accounting, assurance/auditing, consulting services, specialized knowledge and applications, management, taxation, and ethics. Other subjects may be approved by the board on a case-by-case basis. 120 hours (50 minute periods) are required for license renewal over a three year period. Fifty percent of the required hours can come from formal correspondence or self study courses, or from passing certain professional examinations. Twenty-five percent of the required credit may be awarded for published articles and books.

Every licensee must complete a minimum of four hours of continuing education devoted to ethics and rules of professional conduct. Additional requirements are imposed on licensees who are responsible for supervising compilation services or who signs or authorizes someone to sign the accountant's compilation report on the financial statements.

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Professional ethics, IAB Vol. XXXIII, No. 03 ARC 9003B, ADOPTED.

In this second filing the Board, in consultation with stakeholder groups, re-writes existing rules relating to professional ethics. The rules provide ethical guidance in the areas of public interest, integrity, professional objectivity, due care in the performance of all professional activities, competence, confidentiality, and independence. Additional rules relate to record retention, advertising, reporting of unlawful activity, fees, and accounting standards. Specific rules detail standards for audit, review and other attest services, compilation of financial information, tax practice, and consulting, advisory and other accounting services.