



THE RULES DIGEST

January 2011

Scheduled for committee review
Tuesday, January 4th, 2011
Senate Committee Room #116

Reference
XXXIII IAB No. 12(12/15/10)
XXXIII IAB No. 13(12/29/10)

HIGHLIGHTS IN THIS ISSUE:

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ECONOMIC DEVELOPMENT DEPARTMENT

9:30

Iowa jobs main street program (Iowa Jobs II), IAB Vol. XXXIII, No. 12, ARC 9291B, ADOPTED.

This rulemaking was initially reviewed by the Committee as an “emergency” filing in July; it implements a new grant program through the existing Iowa Main Street Program within the Community Development Division of the Department. The rules describe criteria for the Director’s determination of high-priority projects eligible for funding through the Iowa Jobs II Program implemented by 2010 Iowa Acts, Senate File 2389. The highest-priority list includes those projects that have previously applied for funding consideration or have received partial funding for façade master plans to rehabilitate storefronts in Iowa main street districts; that complete streetscape projects where planning and the majority of funding are already secure; that are unfunded main street challenge grant projects; and other building rehabilitation projects.

Under the rules, additional priority criteria include projects currently under construction or projects that could be under construction within 60 days of award, projects that could be completed within the grant period of 18 months from the date of award, projects with a broad base of funding outside the public investment, projects utilizing state or federal historic tax credits, projects that conform to the state of Iowa’s Green Streets Criteria, projects that are a key structure or group of structures in a

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historic commercial district, and projects likely to result in job creation or revenue increases for the community. Consideration will also be given to those projects that are identified in an Iowa great places agreement.

The rules also detail the timing of grants under the program, ineligible costs, and audit, reporting, and compliance requirements.

EDUCATION DEPARTMENT

10:00

Innovative school zones, IAB Vol. XXXIII, No. 12, ARC 9264B, ADOPTED.

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. These proposed rules implement Senate File 2033.

The state board may approve not more than ten innovation zone schools. The 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. 40 points
- Organization and structure. 10 points.
- Facilities/financial support. 10 points.
- Student achievement. 40 points.

The proposed rules also modify notice requirements for charter applications.

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Financial management of categorical funding, IAB Vol. XXXIII, No. 12, ARC 9267B, ADOPTED.

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

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additional definitions from Iowa Code §§ 276.3, 299A.8, and 301.1, guidance to school districts relating to specified unspent funds, amendments to the names of certain funds, and amendments relating to the educational excellence program.

INSPECTIONS AND APPEALS DEPARTMENT

10:20

Procedure for contested cases involving permits to carry weapons and acquire firearms, IAB Vol. XXXIII, No. 113, ARC 9299B, FILED EMERGENCY.

This rulemaking adopts new Chapter 11, "Procedure for Contested Cases Involving Permits to Carry Weapons and Acquire Firearms," which implements provisions contained in 2010 Iowa Acts, Senate File 2379, section 14, codified in Iowa Code section 724.21A. The law requires the Department to establish a procedural process through which Iowans who have been denied a permit to acquire firearms or carry weapons or whose permits have been suspended or revoked may appeal the decision of the sheriff or Commissioner of Public Safety to an administrative law judge. The unique appeal process created thus allows for a decision of local government to be appealed to a state agency, which has some precedent in the context of school boards.

Chapter 11 allows a person who has been denied a permit to appeal the decision to an administrative law judge in the Department for a hearing. The appeal must be made in writing within 30 days and must clearly state the reasons for rebutting the denial, suspension, or revocation. The hearing will be a contested case hearing conducted pursuant to Iowa Code chapter 17A. The hearing will be conducted by telephone unless a party requests an in-person hearing, which would occur in Des Moines. The parties may call witnesses and produce other evidence. The cost of the hearing will be paid by the Department. The statutorily required standard of review will be clear and convincing evidence that the issuing officer's reasons for the denial, suspension, or revocation constituted probable cause to deny an application or to suspend or revoke a permit. A decision by the administrative law judge will be considered final agency action without a right of appeal to the director of the Department, and may then be appealed to district court pursuant to Iowa Code chapter 17A.

These rules were both noticed and filed emergency. The emergency rules become effective January 1, 2011. A public hearing will be held on January 19, 2011.

PUBLIC SAFETY DEPARTMENT

11:00

E-85 fuel dispensers, IAB Vol. XXXIII, No. 12, ARC 9283B, FILED EMERGENCY.

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Iowa Code chapter 101 establishes the authority of the State Fire Marshal to establish requirements for the safe transportation, storage, handling, and use of flammable and combustible liquids, which include motor vehicle fuels such as gasoline, “traditional” ethanol (90% gasoline, 10% ethanol), and higher blends of ethanol, including E-85. Generally, dispensers used for motor vehicle fuels are required to be “listed” by an independent testing laboratory for use with the fuel dispensed. However, there has not, until recently, been a dispenser available which was listed for use with E-85.

Iowa Code section 455G.31 requires the State Fire Marshal to monitor the potential availability of one or more dispensers listed for use with E-85 and to issue an order regarding the use of listed dispensers once they have become commercially available. Recently, the State Fire Marshal was notified of the commercial availability of two dispensers listed for use with E-85 and issued an order regarding the use of those dispensers. The order carries out requirements specified in Iowa Code section 455G.31. 60 days after the issuance of the order, any new dispensers installed for use with E-85 must be listed for this use, and four years after the issuance of the order, E-85 may be dispensed only from dispensers listed for use with E-85.

These rules codify the terms of the order issued by the State Fire Marshal. The rules also modify the definition of “E-10” to include blends of gasoline and ethanol up to 16 % ethanol, rather than 15.

These rules were both noticed and filed emergency. The emergency rules became effective December 1, 2010. A public hearing will be held on January 4, 2011.

ENVIRONMENTAL PROTECTION COMMISSION

11:30

Concentrated animal feeding operations, IAB Vol. XXXIII, No. 12, ARC 9274B, NOTICE.

2010 Iowa Acts, Senate File 2248 requires that a concentrated animal feeding operation (CAFO) comply with applicable national pollutant discharge elimination system (NPDES) permit requirements as provided in the federal statute and rule. A CAFO is a point source for pollution and must obtain a NPDES permit if it discharges (current law) or proposes to discharge (new proposal) effluent. A “no discharge certification” is available if the operator can show that the facility has no potential to discharge manure, litter or process wastewater.

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Under these rules a permit issued to a CAFO must include a requirement to implement a nutrient management plan that details best management practices and applicable effluent limitations and standards. The rules propose two alternative methods to determine the rate of application of effluent to farmland. The “linear approach” expresses rates of application as pounds of nitrogen and phosphorus, according to specifications set out in federal rules. Large CAFOs that use this approach must calculate the maximum amount of manure, litter, and process wastewater to be land applied at least once each year using the results of the most recent representative manure, litter, and process wastewater tests for nitrogen and phosphorus taken within 12 months of the date of land application. The “narrative rate approach” expresses rates of application as a narrative rate of application that results in the amount, in tons or gallons, of manure, litter, and process wastewater to be land applied, according to federal rule. CAFOs that use this approach must calculate maximum amounts of manure, litter, and process wastewater to be land applied at least once each year, as set out in federal rules.

The department has scheduled five hearings around the state.

HUMAN SERVICES DEPARTMENT

12:00

ACT program, IAB Vol. XXXIII, No. 12, ARC 9276B, NOTICE.

This rulemaking proposes to add “assertive community treatment” to the Iowa Medicaid program. Assertive community treatment is a team approach for persons with serious mental illness. The intent is to build a team of mental health professionals which can provide all behavioral health services necessary to allow the client to remain in the community. Services are delivered in the client’s home or another community setting.

The team has representatives of various medical disciplines, such as nursing, case management, community support, medication monitoring, and crisis response, the supervision of a psychiatrist. All behavioral health services except for drugs and hospitalization are provided and coordinated by the team, resulting in comprehensive care provided 24-7-365.

ACT services require prior approval; approval must be renewed after 180 days.

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Emergency assistance, IAB Vol. XXXIII, No. 13, ARC93131B, ADOPTED.

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These amendments were initially reviewed by the Committee in November, as an “emergency” filing; they implement the Iowans Helping Iowans Unmet Needs Disaster Assistance Program for the counties which were presidentially declared as disaster areas after June 1, 2010. Funding for the program is established by the Governor of Iowa through the Iowans Helping Iowans Program. The Rebuild Iowa Office is responsible for determining a methodology to distribute the funding among the counties. The program will end when funds are exhausted or on June 30, 2011, whichever occurs first.

The program is administered through a local administrative entity designated by the county board of supervisors in each of the affected counties. The local administrative entity shall enter into a contract with the Department that delineates the entity’s responsibilities for the administration of the program. The local administrative entity will receive applications from households and determine each household’s eligibility for the program.

The local administrative entity shall disburse the funds allocated to the county by the Rebuild Iowa Office through direct reimbursement of documented expenses or issuance of vouchers for purchase of approved goods or services. The local administrative entity may keep up to five percent of the amount of benefits issued as administrative expense. The local administrative entity is required to submit weekly reports on program expenditures and to return any unused funds from its allocation when the program ends.

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Iowa juvenile home and state training school, IAB Vol. XXXIII, No. 13, ARC 9318B, ADOPTED.

This rulemaking includes amendments to the Department’s rules governing the Iowa State Juvenile Home and the State Training School. The rulemaking rescinds the applicable administrative code chapters and adopts two new chapters in lieu thereof. The proposed rules reorganize, update, and clarify existing rules on admission procedures, communication with individuals residing in those facilities, employment of those individuals, alleged child abuse in the facility, approval of temporary home visits, tours of the facility and public use of buildings and grounds.

According to the Department, the specific changes from the previous rules include additional definitions, a revision of the list of persons who are denied visiting rights, a rule requiring supervision by an adult family member during a visit by a family member

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under the age of 18 (formerly age 12), and conforming changes to reflect the requirements relating to sex offender registration.

The new rules also incorporate population guidelines and criteria for accepting youth into care, rules relating to photographing and recording of individuals, provisions for the recovery of the cost of care from individuals with unearned income, and procedures for donations to the facility.

NO REPRESENTATIVE REQUESTED TO APPEAR

IOWA FINANCE AUTHORITY

Shelter programs, IAB Vol. XXXIII, No. 12, ARC 8921B, Notice, ARC 9291B, ADOPTED.

This rulemaking was initially published as an “emergency” filing in October, 2010. The HUD-based program provides financial assistance for the rehabilitation, expansion, or costs of operations of group home shelters for the homeless and domestic violence shelters. Eligible applicants include city governments, county governments, and private, nonprofit organizations. City or county governments may apply on behalf of a nonprofit service provider within their jurisdictions.

The program provides matching funds for the rehabilitation, renovation, or conversion of buildings, new construction is not eligible. Funding renovation, rehabilitation, or conversion of buildings owned by faith-based organizations is limited; they may not engage in inherently religious activities, such as worship, religious instruction, or proselytization as part of the programs or services funded by this program.

Up to 30% of the funds can be used for a new essential service. Operating costs may be funded by the program, but salaries are limited to 10% of the funds. Grants may be

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made for homeless prevention, not to exceed 30%. Five per cent may be used for administrative overhead.

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Iowans helping Iowans housing assistance program, IAB Vol. XXXIII, No. 12, ARC 9280B, ADOPTED.

These rules were initially reviewed in October as an emergency filing; they became effective on August 20, 2010. This rulemaking implements a program of housing assistance for persons affected by certain natural disasters that occurred in 2010. Under the program, the authority may grant funds to local government participants, including certain Iowa councils of governments, cities, and counties. The local government participants shall, in turn, loan funds to eligible residents under the conditions specified in this chapter to assist those eligible residents in purchasing homes generally comparable to those they lived in prior to the occurrence of the natural disasters of 2010 and in repairing or rehabilitating disaster-affected homes. Individual eligibility is conditioned on having been approved by FEMA for housing assistance as a result of the natural disasters of 2010.

Local government participants may make forgivable loans, provide down payment assistance, or provide assistance for housing repair or rehabilitation. The rules outline the process for allocating funds to local governments and the review of individual applications for assistance, designate eligible uses for the assistance, and specify terms for loans and other assistance.

PHARMACY BOARD

9:35

Uncertified pharmacy technician, IAB Vol. XXXIII, No. 13, ARC 9279B, NOTICE.

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.

This issue was initially noticed in June; these provisions were placed into emergency effect prior to the completion of the “regular” rulemaking process. At the Committee’s September meeting Committee members and members of the pharmacy community

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raised questions about the Board's statutory authority to impose limitations on the functions that an uncertified pharmacy technician may perform.

PROFESSIONAL LICENSURE DIVISION

Hearing aid dispensers, IAB Vol. XXXIII, No. 13, ARC 9317B, NOTICE.

In this rulemaking the Board of Hearing Aid Dispensers proposes amendments to its chapters to clarify the requirements for submission of supervision reports by temporary permit holders; rescind the requirement for mailing a renewal notice that is outdated given the current on-line renewal system; provide clarity in practice requirements, consistent with Iowa law and federal regulations; revise the continuing education requirements by updating the definition of "independent study," adding a new requirement for ethics coursework, increasing the hours allowed for independent study and on-line coursework, and providing credit for mandatory reporter training; and add additional required language to certain advertisements relating to hearing aids.

The Board also adopts new Code chapter 123, not clearly explained in the headnote for the rules, which offers definitions relating to the practice of hearing aid dispensation and adds new requirements relating to sales procedures and record keeping

A public hearing will be held on January 18, 2011.