



THE RULES DIGEST

May 2011

Scheduled for Committee review
Tuesday, May 10th, 2011
Room #116

Reference
XXXIII IAB No. 20(04/06/11)
XXXIII IAB No. 21(04/20/11)
XXXIII IAB No. 22(05/04/11)

HIGHLIGHTS IN THIS ISSUE:

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AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT

8:40

Animal welfare, IAB Vol. XXXIII, No. 20, ARC 9456B, EMERGENCY.

In 2010, the legislature enacted a variety of amendments to Code Chapter 162, relating to animal welfare. In part, these amendments significantly expanded the state’s role in inspecting federally permitted facilities. Under prior law, a federally licensed facility was not regulated by the state. 2010 Iowa Acts, Chapter 1030, §4, provides that a federal licensee must obtain either a permit or a state license. These facilities now have a state enforceable obligation to provide adequate feed, water, housing facilities, and appropriate sanitary control, grooming practices and veterinary care.

The rules are editorial. They simply restate the statutory mandate; however, it should be noted that Chapter 1030 was enacted almost two years ago; the “emergency” is that the rule making is about a year overdue. Moreover, a stakeholder has expressed interest in providing public comment on the issue; this requires a Notice of Intended Action which needs to be added to this process.

EDUCATION DEPARTMENT

9:10

Extracurricular interscholastic competition, IAB Vol. XXXIII, No. 21, ARC 9475B, ADOPTED.

The Department implements a series of revisions to its rules governing extracurricular interscholastic competition; the changes were made in consultation with the Iowa High

School Athletic Association (IHSAA) and the Iowa Girls High School Athletic Union (IGHSAU). The most significant changes relate to the limitations imposed on all-star players competing in all-star contests. An all-star is a high school athlete chosen to compete individually in an all-star contest or to compete on an all-star high school team in an all-star contest. The National Collegiate Athletic Association (NCAA) will deny the first year of intercollegiate athletics competition if, following completion of high-school eligibility in the student-athlete's sport and prior to the student-athlete's high-school graduation, the student-athlete competes in more than two all-star football contests or two all-star basketball contests.

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Standards for school business official preparation programs, IAB Vol. XXXIII, No. 21, ARC 9474B, NOTICE.

In this rule making, the Department provides standards and procedures for the approval of training programs for individuals who seek authorization issued by the Educational Examiners Board for employment as school business officials responsible for the financial operations of a school district, in implementation of 2010 Iowa Acts, chapter 1099. The rule making sets out institutions eligible to provide a school business official preparation program; procedures for approval of programs; and standards for governance and resources, instructors, assessment systems and institution evaluations, and candidate knowledge and skills. The rule making also provides for a school business official mentoring program, periodic program reports upon request by the Department, and procedures for reevaluation of programs and approval of program changes.

REVENUE DEPARTMENT

9:40

Valuation of agricultural real estate, IAB Vol. XXXIII, No. 21, ARC 9469B, ADOPTED.

The Department implements a series of revisions to its rules governing the valuation of agricultural real estate. In part this filing rewrites the existing rules for the determination of aggregate actual values for agricultural property. This provision was reviewed as under Notice of Intended Action in November 2010. At that time, the Committee heard concerns from stakeholders regarding the changes. The concerns included the use and availability of data for pastureland and the types of data used for hay pricing. The Committee also received comments about the overall accuracy and equity of the agricultural real state productivity formula.

The adopted rules are identical to the Notice.

VETERANS AFFAIRS DEPARTMENT

11:00

Expanded benefits: Injured Veterans Grant Program, IAB Vol. XXXIII, No. 21, ARC 9471B, EMERGENCY.

Iowa Code §35A.14 creates the “Injured Veterans Grant Program,” which will pay an injured Iowa veteran up to a maximum of \$10,000 while the veteran is hospitalized or receiving medical care or rehabilitation services. A bill enacted in 2010 Iowa Acts, House File 755, and newly enacted 2011 Iowa Acts, Senate File 402, expand coverage to allow for additional grant awards for subsequent, unrelated injuries and to include injuries where the veteran is not immediately evacuated from the combat zone.

ENVIRONMENTAL PROTECTION COMMISSION

11:15

Regulatory analysis: Title V operating permit program, IAB Vol. XXXIII, No. 21.

Iowa’s air quality program is currently financed in part by a \$56 per ton fee for air pollutants emitted by large sources. In March, the EPC proposed to revise the fee structure. Iowa has 278 facilities affected by this rule making. The proposal sets out five options:

Alternatives in Rule Makii12	Title V Fee Cap	Summary
Option 1	\$65.00	1 year Title V fee cap.
Option 2	\$89.00	5 year Title V fee cap, Title V fee likely set at \$65/ton the first year.
Option 3	\$65.00	\$5,000 minimum Title V fee. Title V emission fee could remain at \$56/ton. The fee cap is estimated to be sufficient for 2 years.
Option 4	\$56.00	Remove 4,000 ton cap on emissions subject to fees. Title V fee could be lowered to \$47/ton.
Option 5	\$56.00	Construction permit fees from \$3,000 - \$20,000 or more per project. Title V fee could remain at \$56/ton.

A public hearing was held in March. At its March meeting, the Administrative Rules Review Committee requested a regulatory analysis on this proposal. The analysis notes that “[a]n inverse relationship exists between the level of emissions and fees. When chargeable emissions are declining, the cost of regulatory oversight for each Title V facility does not decrease in proportion to the emission levels.” An emission-based fee

structure results in declining fees as the regulatory program succeeds in reducing emissions.

The analysis denies allegations that the Title V fees fund other programs, stating that Title V program activities constitute 75%-80% of the EPC's work in air quality and that Title V funds represent 76.5% of the total air quality budget. Title V fees do fund the issuance of construction permits that must be included in Title V permits.

The analysis states that the \$1.2 million cost is spread over 278 facilities. The analysis reviews all five options for funding, detailing each and providing summaries of stakeholder comment. The fees from surrounding states are also detailed.

* * *

Landfills, 567 IAC Chapter 113, SELECTIVE REVIEW.

Rule making related to landfill issues was extensively reviewed at the Committee's January, July, August, September, October, November, and December 2007 meetings. The EPC adopted new rules intended to control groundwater contamination from solid waste landfills. The rules implement the federal Resource Conservation and Recovery Act (RCRA) and the federal regulations under that Act.

The most contentious issue related to the lining of "cells" at landfill sites. Under this new provision, side liners are required in new and existing cells. This requirement was opposed by landfill operators who had fill capacity beyond the three-year period. Opponents argued that the cells constructed under the 1997 rules complied with federal requirements and should continue in use until filled; at that point any new cells could be constructed to the new standards.

Following months of discussion, the following objection was imposed on 567 IAC subrule 113.2(8), relating to the closure of existing landfills:

“At its December 11, 2007 meeting the Administrative Rules Review Committee voted to object to the provisions of subrule 567 IAC 113.2(8), relating to the closure of existing landfills.

The vote on this motion was as follows:

AYES---6

Nays---3

Rep. Philip Wise, Vice-chair
Sen. Jeff Angelo
Sen. Thomas Courtney
Rep. David Heaton
Sen. James Seymour

Sen. Michael Connolly, Chair
Rep. Marcella Frevert
Sen. John Kibbie

Rep. Linda Upmeyer

Absent: Rep . David Jacoby

This subrule is part of ARC 5999B and published in IAB Vol. XXX, No. 1 (7-04-2007). The committee takes this action pursuant to the authority of §17A.4(5). This subrule states:

113.2(8) Closure of existing MSWLF units.

a. Existing MSWLF units that cannot make the demonstration specified in paragraph 113.6(2)“a,” pertaining to airports, in 113.6(2)“b,” pertaining to floodplains, or in 113.6(2)“f,” pertaining to unstable areas, must close in accordance with rule 113.12(455B) and conduct postclosure activities in accordance with rule 113.13(455B).

b. Except as provided in paragraph 113.2(8)“c” below, existing MSWLF units that do not have an approved leachate collection system and a composite liner or a leachate collection system and an alternative liner modeled at an approved point of compliance shall cease accepting waste by October 1, 2007.

c. Existing MSWLF units that have an approved leachate collection system and a basal liner beneath the unit that is either a composite liner or an alternative liner modeled at an approved point of compliance, but that is not continuous onto the sides of the unit, may continue to place waste after October 1, 2007, in those portions of the unit directly underlaid by the basal liner. Such units shall be brought into compliance in accordance with subrule 113.2(9) by constructing a leachate collection system and liner on the sides of the unit that meet the requirements of subrule 113.7(5) and are continuous beneath and onto the sides of the unit.

A majority of the committee membership believes this rule is unreasonable because it terminates a right held by permitted facilities under the previous rules. That right was set out in subrule 113.7(1), which provided:

113.7(1) Design and construction. Sanitary disposal projects designed and constructed in accordance with rules in effect at the time of construction shall not be required to be redesigned or reconstructed due to subsequent rule changes unless the department finds that such facilities are causing pollution. Such facilities shall be brought into compliance with rules in effect at the time of reconstructing, enlarging, or otherwise modifying the sanitary disposal project, or at the time of permit renewal.

A majority of the committee membership believes this subrule, which dates to 1977, gives those facilities which held an operating permit under the previous rules the right to continue utilizing their existing cells, unless it can be show that a particular cell is causing pollution. These members are concerned that subrule 113.2(8) constitutes an improper regulatory taking.”

UNDERGROUND STORAGE TANK FUND BOARD

1:00

Removal of underground storage tanks, IAB Vol. XXXIII, No. 21, ARC 9460B, NOTICE

House File 2531, enacted in 2010, caps the amount that may be paid to remove old tanks. The board may pay up to \$15,000 for the permanent closure of an underground storage tank system that does not meet performance standards for new or upgraded tanks or is otherwise required to be closed.

HUMAN SERVICES DEPARTMENT

1:10

Record checks for volunteers or substitutes at child care centers, IAB Vol. XXXIII, No. 20, ARC 9441B,

ADOPTED.

In this rule making, the Department adopts an amendment to clarify when record checks are required for persons who volunteer or substitute for staff at a child care

center. The amendment provides that criminal and child abuse record checks are required when the volunteer or substitute:

- Is included in meeting the required child-to-staff ratio,
- Has direct responsibility for a child or children, or
- Has access to a child or children with no other staff present.

The child care center is responsible for the cost of the record checks and must maintain documentation that the checks were completed when required.

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Family investment program (FIP) and Medicaid for noncitizens, IAB Vol. XXXIII, No. 20, ARC 9439B, FILED.

These proposed rules update and clarify the Family Investment Program (FIP) and Medicaid rules on eligibility for persons who are not United States citizens in light of recent federal legislation and regulation affecting federal funding requirements. The rules clarify that a FIP participant must be a citizen or national of the United States or a qualified alien and specify how applicants and participants attest to citizenship or alien status. The rules clarify how qualified aliens become eligible for Medicaid. The rules add an exemption from verifying citizenship for a person born to a Medicaid-eligible mother and clarify other exemptions. The rules include provisions relating to the consideration for the purpose of eligibility for these programs of income and resources of a sponsor when an alien has been sponsored by a person who has executed an enforceable affidavit of support. Relevant definitions are added and updated.

* * *

ACT program, IAB Vol. XXXIII, No. 20, ARC 9440B, EMERGENCY AFTER NOTICE.

This rulemaking creates a new service, “assertive community treatment,” as part of 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. Most 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, under the supervision of a psychiatrist. When an individual is admitted to the program, that person has a comprehensive assessment that includes psychiatric history, medical history, work and educational history, substance use, problems with activities of daily

living, social interests, and family relationships. All behavioral health services except for drugs and hospitalization are provided and coordinated by the team, resulting in comprehensive care provided around the clock.

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

* * *

Medicaid remedial services--coverage as behavioral health intervention under Iowa Plan for Behavioral Health, IAB Vol. XXXIII, No. 22, ARC 9487B, ADOPTED.

This rule making is part of the implementation of the plan developed by the remedial services transition committee to transition remedial services from a fee-for-service program administered by the Iowa Medicaid Enterprise to administration by the Iowa Plan for Behavioral Health, a managed care program under contract to Iowa Medicaid. This transition is pursuant to 2010 Iowa Acts, House File 2526, section 31. The amendments rename Medicaid remedial services to “behavioral health intervention,” a term relating to the provision of skill-building services to assist members who are diagnosed with clinical mental disorders, including major mental disorders and learning disorders, but excluding personality disorders and mental retardation, to better manage their behavior and symptoms. The amendments require the Iowa Plan for Behavioral Health to cover behavioral health intervention for members who are enrolled in the Iowa Plan. Behavioral health intervention will be covered under the fee-for-service program only for members not enrolled in the Iowa Plan for Behavioral Health when the services are provided. The amendments require that all behavioral health intervention providers be enrolled in the Iowa Plan for Behavioral Health in order to receive Medicaid fee-for-service payment. The amendments remove community psychiatric supportive treatment and rehabilitation programs as covered services. The definition of “rehabilitation program” is similar to the definition of “skill training and development,” which remains a covered service. The amendments add family training as a covered behavioral health intervention service for members under the age of 21. The amendments require that the recommendation for behavioral health intervention be part of a comprehensive treatment plan which also includes other behavioral health services. The amendments provide that all behavioral health intervention services will be subject to telephone authorization by the Iowa Plan for Behavioral Health. Services may be community-based or may be directed to children at risk of or currently in group care placement. The amendments provide that all behavioral health intervention

services will be reimbursed according to a fee schedule developed by the Iowa Plan for Behavioral Health.

* * *

Child abuse prevention program, IAB Vol. XXXIII, No. 22, ARC 9489B, FILED EMERGENCY AFTER NOTICE.

This rule making rescinds 441 IAC Chapter 155 governing the child abuse prevention program and adopts a new chapter with the same title. The new chapter updates the rules that define and structure the child abuse prevention program. Program services are provided at the local level through community-based child abuse prevention projects. Program funds are administered by an entity under contract with the Department. The current administrative services contract for this program will expire on June 30, 2011. The Department is issuing a request for proposals for a single statewide performance-based administrative services contract for fiscal year 2012. The newly adopted chapter contains a more generalized description of the program which will allow the Department to guide the program's direction through the RFP and contracting process. Annual goals will be set for the program by the child abuse prevention program advisory committee and implemented through the contractor's process for disbursement of program funds. The new chapter sets detailed program objectives and processes through the request for proposals and the contract for program administration which will allow the Department to implement program changes as required by the federal government without requiring the need for rule changes. The newly adopted chapter aligns the purchasing process with current state rules for the purchase of services.

NATURAL RESOURCE COMMISSION

2:00

Mourning dove season, IAB Vol. XXXIII, No. 22 ARC 9496B, NOTICE.

2011 Iowa Acts, Senate File 464, added the mourning dove to the list of game birds or animals for which the Natural Resources Commission may establish a hunting season. With this specific statutory authorization, the Commission proposes the following season:

571--97.6(481A) Mourning dove season. Open season for hunting mourning doves shall begin on September 1 and continue for 70 consecutive days. Shooting hours shall be from one-half hour before sunrise to sunset each day. Daily bag limit is 15; possession limit is 30. The entire state is open.

The proposal states that the new season will have a positive effect on Iowa's economy, with Iowa hunters spending \$104/day hunting upland game. The Commission estimates a potential for 67.5 to 90 new jobs.

The commission will hold its own public hearing on May 24, 2011, at 1 p.m. in the Auditorium on the second floor of the Wallace State Office Building.