



IOWA GENERAL ASSEMBLY

Administrative Rules Review Committee

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THE RULES DIGEST

January, 2005

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Senate Room #116

Reference
XXVII IAB No. 12(12/08/04)
XXVII IAB No. 13(11/22/04)

HIGHLIGHTS IN THIS ISSUE:

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DEPARTMENT OF ECONOMIC DEVELOPMENT

9:20

American Dream Down Payment Initiative, IAB Vol. XXVII, No. 13, ARC 3730B, EMERGENCY AFTER NOTICE.

As part of the Home program, the department proposes a new component: The American Dream Down Payment Initiative (ADDI). This federal Housing and Urban Development program was created in 2003, providing over \$160 million in grants; it will provide down payment and closing cost assistance, for first time home buyers, towards the purchase of a family home. Program applicants must be either units of local government or non-profit organizations. Applicant funding is limited to \$2000,000; individual assistance can range from \$1,000 to \$10,000. Eligible recipients must have annual incomes that do not exceed 80 percent of the area median income.

REVENUE DEPARTMENT

9:30

Organization and operation: the state board of tax review, IAB Vol. XXVII, No. 13, ARC 3895B, NOTICE.

The department proposes to update the organization and operation rules for the state board of tax review. This entity, created in 1967 as a successor to the old tax commission, is a citizen-

panel which primarily functions as the appellate body to review and decide tax cases prior to judicial review. Under prior law only a taxpayer could seek judicial review by the state board of a decision or order previously issued by the director. Effective July 1, 2004, either the department or the taxpayer may seek judicial review of a decision or order rendered by the state board. The board also advises the director of revenue concerning tax laws and regulations.

The rules provide a detailed procedure for an appeal of a department decision to the board. The rules are highly detailed and implement the contested case provisions of §§17A.10 through 17A.18, with judicial review available pursuant to §17A.19.

ELDER AFFAIRS DEPARTMENT

9:50

Adult day care, elder care and assisted living: medication plans, IAB Vol. XXVII, No. 12, ARC 3874B, 3875B and 3878B, NOTICE.

The department proposes to re-write "boilerplate" language, appearing in three programs, relating to the administration of medications. The definition of person care is revised to allow the administration as part of the personal needs services provided by the program. The proposed revision relating to medications is

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very similar to the existing rule, except that it specifically recognizes that the registered nurse is empowered "to make prudent choices relating to implementation of a tenant's service plan." Additional detail is also provided concerning the medication service plan for each client.

CORRECTIONS DEPARTMENT

10:20

Sex offender registry, IAB Vol. XXVII, No. 12, ARC 3860B, ADOPTED.

Under Iowa law any person who has been convicted of a variety of sexually related offenses, as specified in the statute, must register as a sex offender. Under prior law §692A.13A required the development of methods and procedures for assessing the risk that an offender will repeat that type of sexual offense. Depending on the level of risk, the statute required a greater level of public notification concerning the offender. 2004 Iowa Acts, Senate File 2298 repealed the risk assessment procedures and therefore, for purposes of the Sex Offender Registry, agencies will no longer assess the risk that any particular offender will re-offend.

ETHICS BOARD

10:40

Misuse of government property, IAB Vol. XXVII, No 13, ARC 3848B, NOTICE.

§68B.32A(12), 2005 Code, directs the ethics board to establish rules relating to the misuse of public property by officials, employees, and candidates for statewide office. This proposal is a first step for regulation in this area. It provides a brief, non-exclusive list of the more common types of misuse; they include using public property:

- To engage in an outside employment or activity that leads to an unacceptable conflict of interest;
- To knowingly and purposefully send, receive, or view obscene material;
- For personal financial gain;
- For personal benefit to the detriment of the state;
- By removing it from a state building or facility for personal use.
- To engage in political activities.

INSPECTIONS & APPEALS

11:00

Quality awards for nursing facilities, IAB Vol. XXVII, No 12, ARC 3848B, NOTICE.

In 1999 §135C.20B was enacted to create a "Governor's Award for Quality Care", awarded

annually by the governor to a health care facility in the state which demonstrates provision of the highest quality care to residents. Rules were initially adopted in 2000 and are now being revised; the revisions are minor.

The department has established by rule the criteria to determine quality care, considering all of the following:

- The report cards completed by department inspectors;
- Any unique services provided by a facility to its residents to improve the quality of care in the facility.
- Any information submitted by care review committee members or residents with regard to the quality of care of the facility.
- Whether the facility accepts Medicaid residents.

The proposed revision adds two new criteria:

- Whether there are any outstanding complaints against the facility, as well as the resolution of any complaint already investigated by the department.
- Whether the annual fiscal review conducted by the department indicated any irregularities in the residents' accounts.

Eligible nominations must be made by a resident, family member of a resident, member of a resident advocacy committee, or another health care facility having no corporate relationship with the nominee. Nominations must set out the reasons that the facility should be considered, including any unique or special care or services provided by the facility to its residents, or activities conducted by the facility to enhance the highest quality of life for its residents.

The department will select the winner of the award from five facilities recommended by the advisory council. The winner will receive a framed certificate in recognition of its designation as the quality health care provider of the year. The certificate will be awarded by the governor in a recognition ceremony held at the annual Governor's Conference on Aging.

IOWA FINANCE AUTHORITY

11:10

Iowa aftercare services rent subsidy program, IAB Vol. XXVII, No. 13, ARC 3867B, NOTICE.

Public Law 106-169, entitled the Foster Care Independence Act Of 1999 in part provides expanded services to former recipients of foster care; the Act provides for:

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"...financial, housing, counseling, employment, education, and other appropriate support and services to former foster care recipients between 18 and 21 years of age to complement their own efforts to achieve self-sufficiency..."

The authority proposes a rent subsidy component as part of this program. The program is available to persons between the ages of 18 and 21 who must pay more than 30 percent of the person's gross for rent and no other rental assistance is available. The subsidy cannot exceed \$350.

PUBLIC HEALTH DEPARTMENT

11:20

Automated external defibrillator grant program, IAB Vol. XXVII, No 12, ARC 3849B, EMERGENCY.

In 2004 §135.26 was enacted to create an "automated external defibrillator grant program". The program provides 50/50 matching funds to local boards of health, community organizations, or cities for providing increased access to automated external defibrillator equipment and training to rural emergency and community personnel.

The department now emergency implements rules for this program. Applicants may be a local board of health, a community organization, or a city. Under the rules the term "community organization" is defined as including an educational institution, nonprofit organization, social service agency, philanthropic organization, or business, trade, or professional association. The filing does not contain the evaluation process or the award criteria; instead that information will be set out in the request for proposals. At least the general parameters of the process and the criteria should be established in the rule.

NATURAL RESOURCES COMMISSION

1:30

Lands and waters conservation fund (LWCF), IAB Vol. XXVII, No. 12, ARC 3867B, ADOPTED.

This 40 year-old federal program funds projects by the state, a city or a conservation board, relating to the acquisition and development of lands and waters for public use. The size of grants varies depending on the population served, from \$50,000 to \$200,000. The grant is a 50% match.

The program contains a set of weighted eligibility criteria. Each criterion is given a score of from 1 to 10 which is then multiplied by the weight factor. This score, in turn, can be either increased or decreased based on other factors. For example, points are deducted for having prior projects; points are added for serving a minority population. Under this proposal two additional points will be available for the use of recycled material.

The federal government gives final approval for all projects.

NATURAL RESOURCES COMMISSION

1:30

Use of metal detectors in parks and recreation areas, IAB Vol. XXVII, No. 12, ARC 3869B, ADOPTED.

The use of metal detectors in public areas has always been a somewhat contentious issue; detectors want the freedom to pursue their hobby, while conservationists fear damage to plant life and park rangers are concerned about disputes over ownership of found property.

This revision, the first in 17 years, significantly restricts the use of these detectors. Under the current rules metal detectors may be used in all areas of state park and recreation areas at certain times, excepting unmowed areas, campgrounds and archeological sites. The new rule limits access to beach areas and the beds of drained lakes.

NATURAL RESOURCES COMMISSION

1:30

Stocking private ponds, IAB Vol. XXVII, No. 12, ARC 3865B, ADOPTED.

§481A.78, 2005 Code provides that the commission may stock a privately owned pond or water if the owner agrees to allow public fishing. If the commission finds a farm pond suitable, it may provide a breeding stock of fish for privately owned ponds on request of the owner. The commission now adopts rules to detail this program. The pond must be new, drained and refilled, or free of fish. Livestock must be separated by at least 60 feet. The pond must be at least eight feet deep at its deepest point and between one half and ten acres in size. The cost for stocking varies with the size of the pond, ranging from \$25 to \$250.

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ENVIRONMENTAL PROTECTION COMMISSION (EPC)

2:10

Open feedlots, IAB Vol. XXVII, No. 12, ARC 3873B,
NOTICE.

The EPC proposes to separate the regulation of animal feeding operations into two divisions, one for confinement feeding operations and one for open feedlots. An open feedlot is unroofed or partially roofed with no vegetation or residue ground cover while the animals are confined. The proposed revisions include permitting requirements minimum design standards and alternative standards.

At the minimum level of manure control for any open feedlot, all settleable solids must be removed from the manure prior to discharge of the effluent into a water of the state. For a concentrated animal feeding operation covered by the NPDES permit (see below) the feedlot must have the capability to control all manure flows resulting from the 25 year, 24 hour precipitation event. All releases must be reported to the department of natural resources (DNR).

CAFOs are considered point sources must obtain an operating permit or national pollutant discharge elimination system (NPDES) permit. The NPDES program regulates the discharge of pollutants from point sources to waters of the United States. There are three categories for CAFOs: large, medium and designated. Categories are based on the number of animals an operation can hold; each category lists a variety of species and the number of animals for that operation. For example, a large operation holds 1000 or more cattle while a medium operation holds 300 to 999 cattle. Currently, only 33 operations have permits; the EPC estimates as many as 300 hold 1000 or more cattle.

A designated operation can be any operation that is a "significant contributor" of manure or process wastewater to waters of the state, or is reasonably expected to be a significant contributor. The department will consider a number of factors:

- The size of the operation and the amount of manure or process wastewater reaching waters of the state;
- The location of the operation relative to waters of the state;

- The means of conveyance of manure or process wastewater to waters of the state;
- The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of manure or process wastewater into waters of the state; and
- Other relevant factors.

Any CAFO which does not currently have an NPDES permit must make application no later than February 13, 2006. Once application is made a CAFO may continue in operation until the permit process is complete. Each permit will contain conditions specific to the individual operation.

Every CAFO must obtain a construction permit for constructing, installing, or modifying a manure control system. The permit must be obtained prior to commencing a new operation or re-opening an operation that has been closed for 24 months. This permitting requirement does not apply to a structure used in conjunction either with an operation that does not require a NPDES permit or with a research facility.

The proposal establishes manure storage structure design requirements which apply to all animal feeding operation structures, unless specifically stated otherwise. The site must be investigated for drainage tiles. Soil testing is required for earthen structures and the groundwater table at the site must be determined. A minimum separation of two feet between the top of the liner and the seasonal high water table is required. A earthen open feedlot manure liquid or semiliquid storage structure cannot be constructed in areas which drain to known sinkholes or in karst terrain.

The proposal concludes with a detailed alternative for traditional effluent control. Under this alternative a bermed and vegetated area is used to contain and eventually filter and drain the effluent. Specific standards for this new technology are set out.

ENVIRONMENTAL PROTECTION COMMISSION (EPC)

2:10

Water quality standards, IAB Vol. XXVI, No. 14, ARC
3094B, ADOPTED.

In January 2004 the EPC published a series of drinking water standards. Rule 43.3, adopted in that filing, provided that any public water supply that

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does not meet the Ten States Standards and the American Water Works Association (AWWA) Standards must make the alterations as needed to comply with the drinking water standards.

This rule also reinstated construction permit fees. Representatives from the rural water association were concerned that fees may turn out to be a significant issue for smaller communities and requested that the committee review the fee structure after it had been implemented for a period of time.

ADMINISTRATIVE SERVICES DEPARTMENT

No representative requested

Disposal of state personal property, IAB Vol. XXVII, No. 12, ARC 3853B, ADOPTED.

The department implements a process for the disposal of surplus state personal property (i.e.: real property excluded). As set out in Code §8A.324 the director may dispose of personal property by two means: property that is "unfit or unnecessary" may be sold and the proceeds deposited in the general fund. The initial proposal, published in April, contain procedures for disposal of surplus state personal property. These provisions were not adopted; the final rule relates only to vehicle auctions.

ENGINEERING BOARD OF EXAMINERS

No representative requested

Continuing education, IAB Vol. XXVII, No. 13, ARC 3903B, NOTICE.

§272C.2 mandates that each licensing board establish continuing education requirements as a condition to license renewal. Each board must specify the requirements in rule. The engineering board proposes an amendment detailing a wide array of option for obtaining the required education. This rule could well serve as a model for the 30 odd licensing board; it recognizes the new technologies available in education and alternatives to traditional "con-ed" courses. Allowable alternatives each have a weighted value and include:

- College courses;
- Traditional continuing education courses;
- Correspondence, televised, videotaped, and other short courses or tutorials;

- On-line internet courses;
- Seminars, in-house courses, workshops, technical committees of professional engineering organizations, and professional conventions;
- Teaching or instructing newly developed and presented materials;
- Authoring published papers, articles or books;
- Obtaining patents;
- Satellite down-link video courses.