



Administrative Rules Review Committee

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THE RULES DIGEST

October, 2005

Scheduled for committee review
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Senate Room #116

Reference
XXVIII IAB No. 06 (09/14/05)
XXVIII IAB No. 07 (09/28/05)

HIGHLIGHTS IN THIS ISSUE:

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HUMAN SERVICES DEPARTMENT

9:10

Emergency Food Assistance Program, IAB Vol. XXVIII, No. 7, ARC 4545B, NOTICE.

Several federal food programs are now being replaced by the emergency food assistance program (TEFAP). Eligible recipients must have a family income at 185% of the federal poverty guideline.

Under the program the department contracts with eligible charitable institutions, such as food banks, to actually hold and distribute the various commodities. These contractors may utilize subcontractors for distribution. Contractors are held accountable for missing commodities. The department will file a claim for any deficiency valued at more than \$100. Losses in excess of \$2,500 will be reported to the federal agency.

CORRECTIONS DEPARTMENT

9:30

Jail standards/temporary holding facilities, IAB Vol. XXVIII, No. 06 ARC 4516B-4517B, NOTICE.

Periodically the department updates its jail standards to bring them in line with a national standard. In ARC 4516B, the department proposes new physical requirements for new and remodeled

facilities; these revisions apply only to construction after the effective date of the rules.

Single cells must provide a minimum of 35 square feet of unencumbered floor space, with at least 70 square feet if confinement lasts for more than ten hours per day; the current provision is 70 square feet. Multiple occupancy cells must provide a minimum of 25 square feet of unencumbered floor space for each prisoner or at least 35 square feet of unencumbered floor space if confinement is more than ten hours per day (current rule requires 70 square feet). Dormitory units must provide a minimum of 35 square feet of unencumbered floor space for each prisoner; the current rules requires 60 total square feet.

A new jail must provide a dayroom with a minimum floor area of 35 square feet of space per maximum number of prisoners. Showers must be provided for each group of 12 prisoners (currently no population limit). Bathroom facilities must be provided for each group of 9 prisoners (currently 6). An exercise area, either indoor or outdoor, must contain 15 square feet per prisoner, with not less than 500 square feet of unencumbered space (no current minimum).

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The rules also propose new personnel requirements. Current rules simply provide that at least one staff member on duty at the jail must be currently trained in first aid (or the equivalent) and CPR. The proposal adds detail to the type of first aid training that is necessary and makes the requirement applicable to all jailers. Both jailers and administrators must either a 40-hour training program approved by the Iowa law enforcement academy or a National Sheriffs' Association correspondence course.

The proposed rules also expand a current provision requiring a hearing process for the adjudication of infractions. The rules require an investigation, a disciplinary report and an opportunity for an evidentiary hearing.

ARC 4617B sets out similar provisions for temporary holding facilities; such facilities hold prisoners for roughly 24 hours. Cell size requirements are similar to those mandated for jails; training requirement are less than those mandated at jails.

SECRETARY OF STATE

9:50

Voting systems, IAB Vol. XXVIII, No. 06 ARC 4520B, NOTICE.

The Secretary proposes a series of revisions relating to the testing and security of voting systems. The rules require that county commissioners test each voting device prior to an election; the type of test varies according to the device; for direct recording equipment the requirement is met by running some computer testing; however, the testing procedure for optical scan equipment is particularly detailed and requires a number of steps to be taken to test the variety of ballots.

The proposal also requires each county to have a security plan which will protect both election data and equipment from unauthorized access.

DENTAL BOARD

10:30

Services performed by hygienists, IAB Vol. XXVIII, No. 07 ARC 4535B, NOTICE.

This proposal outlines the services that may be performed by a hygienist prior to the dentist's examining the patient. Under the current rule, a hygienist may only begin treatment of a

patient after a dentist has first examined the patient and prescribed authorized hygiene services. The proposed rule would allow a hygienist to begin the assessment and treatment (e.g. cleaning, x-rays) prior to the dental exam, as long as a dental exam took place before the patient left the office.

Services may be performed either under direct or public health supervision by the dentist. The term "public health supervision" it used in this proposal, but it has been in existing rules for some years. Under this concept the supervising dentist must be available to consult with the hygienist, establish general standing orders to direct the hygienist and specify the locations where the hygiene services will be provided. Prior to obtaining any additional hygiene services, the patient must be seen by a dentist within 12 months. The hygienist operating under public health supervision must have three years of experience. The locations for public health service are limited to schools; Head Start programs; federally qualified health centers; public health dental vans; free clinics; nonprofit community health centers; and public health programs.

Under existing rules the hygienist performs many functions under "direct supervision", where the dentist is readily available or "general supervision", where the dentist may be absent from the facility but has seen the patient prior to the treatment. Under the proposal many services may be performed under general or public health supervision. These services include: educational services, assessment, screening, or data collection for the preparation of preliminary written records for later evaluation by the dentist. A hygienist may administer local anesthesia or nitrous oxide inhalation analgesia only under *direct supervision*.

SOIL CONSERVATION DIVISION

10:50

Watershed improvement review board, IAB Vol. XXVIII, No. 06 ARC 4520B, EMERGENCY.

Senate File 200 has created a watershed improvement fund, administered by the treasurer of state and directed by the newly created watershed improvement review board. Money in the fund does not revert to the General Assembly. The board consists of eleven members appointed by the governor representing specific segments of Iowa

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agriculture. Four members of the General Assembly serve as voting members. Essentially the board will award local watershed improvement grants in order to improve water quality, and then monitor the progress of the grants. As part of its' list of duties, the board is to "independently" develop and adopt administrative rules to administer this program.

A local committee must be formed to apply for a watershed grant and administer the funds. The fund must be a non-profit entity and may be a local soil conservation district.

Grant awards are for not more than three years and may not exceed 10 percent of the funds available.

RAILWAY FINANCE AUTHORITY

11:10

State government E-mail, IAB Vol. XXVIII, No. 06, ARC 4523B, NOTICE.

Pursuant to House File 875, the Railway Finance Authority proposes rules to administer loans and grants from the railroad revolving loan and grant fund. Prior to the Act, the fund provided only loans and was under the Department of Transportation. The Act provides funds for "rail economic development projects". The rules at 5.6(2) require that an applicant, i.e. a railroad company, railroad user, city, county, and other entities, demonstrate that "its project will provide benefits to Iowa in terms of direct economic development and job growth or through economic benefits derived from railroad transportation service improvements." The rules set forth the various requirements for funding.

DEPARTMENT OF EDUCATION

11:20

Revisions: certificate of need, IAB Vol. XXVIII, No. 07, ARC 4530B, NOTICE.

Chapter 423E, Iowa Code, provides for a county imposed sales and services tax, at a maximum rate of one per cent, for school infrastructure purposes. An election may be called by petition. The initial legislation required that districts obtain a "certificate of need" from the department, and that districts with a total enrollment less than 300 students or districts with fewer than 30 students in each grade to be served in the building could not obtain a certificate unless a feasibility study

conducted within the past three years has determined that sharing or reorganization is not feasible. Section 96 of 2005 Iowa Acts, House File 882 limits the certificate of need requirements to districts with fewer than 250 students or an enrollment of fewer than 100 students in grades 9-12.

AGRICULTURE AND LAND STEWARDSHIP

1:00

Grain warehouse, IAB Vol. XXVIII, No. 06 ARC 4508B, NOTICE.

For the first time in 13 years the department proposes a re-write and updating of all its rules relating to grain storage and warehousing rules; chapters include grain warehousing, dealer licensing, and several chapters relating to the organization and operation of the grain indemnity fund.

Chapter 203C, Iowa Code, empowers the department to inspect and regulate grain warehouses in Iowa. Every warehouse must obtain a state license, meet specific solvency requirements and file highly detailed finance statements with the department. In situations where a deficiency exists, department personnel can actually supervise a deficient warehouse until the problem is corrected. Chapter 90 sets out detailed rules for meeting the statutory requirements and the recordkeeping necessary to document compliance.

One perennial issue is emergency "ground pile" grain storage. Under the rule and at the discretion of the department a special five-month license is available, commencing August 1st. Other alternatives include the licensure of temporary facilities or the use of plastic storage bags.

Chapter 203, Iowa Code, empowers the department to license and supervise grain dealers. A dealer is defined as a person who buys at least one thousand bushels of grain from producers per month, if the grain is used for resale, milling, or processing in this state. Dealers must annually file detailed finance statements with the department and monthly statements detailing the volume of business. There are two types of license; a class one for persons who purchases grain by credit-sale contract, or purchases in the previous fiscal year

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exceeds five hundred thousand dollars, and a class two license for all other dealers.

Chapter 203D creates an indemnity fund; all licensed grain dealers and licensed warehouse operators are required to participate. The fund consists of a per-bushel fee on purchased grain imposed on licensed grain dealers and licensed warehouse operators; an annual fee paid by licensed grain dealers and licensed warehouse operators; delinquency penalties; sums collected by the department by legal action on behalf of the fund; and income generated by the fund itself.

ENVIRONMENTAL PROTECTION COMMISSION

1:10

Open feedlots, IAB Vol. XXVIII, No. 06 ARC 4507B, EMERGENCY.

House File 805 has created a specific division for open feedlot regulation, thus separating them from confinements. Concentrated Animal Feeding Operations (CAFOs) are considered point sources that 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.

An open feedlot is essentially an open area or a structure used to confine and feed animals; the term does not include a pasture or harvested cropland area where animals might be turned out to graze. An open feedlot must remove all "settleable solids" before wastewater may be discharged into a water of the state.

The Act requires the EPC to adopt rules relating to the construction, expansion, or operation of open feedlot operations, including related structures.

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. In some situations, the DNR may evaluate any animal feeding operation that is not defined as a large or medium CAFO, and designate it as a CAFO if it is a "significant contributor" of manure or process wastewater to federal waterways.

An operation which has an animal unit capacity of 1000 animal units or more, or an operation

which is a large, medium or a designated CAFO, must obtain an NPDES permit prior to any discharge. An existing operation intending to expand to a size that will be a CAFO needs to apply for an NPDES permit at least 180 days prior to the scheduled expansion. An NPDES permit may be issued up to a five year period.

An operation must obtain a construction permit for the construction of an effluent basin or alternative technology system if the operation is required to have an NPDES permit. The plan must be approved by the DNR.

The rules set out a series of construction and separation distance requirements for wells and stockpiles.

An operation which either 1) has an animal unit capacity of 1000 animal units or more; or, 2) which is required to be issued an NPDES permit must have a nutrient management plan. The proposed rules set out detailed standards for the plan contents. The plan must be approved by the DNR, following public notice and an opportunity for comment.

ENVIRONMENTAL PROTECTION COMMISSION

1:10

Water quality: stream designations, IAB Vol. XXVIII, No. 6, ARC 4504B and ARC 4505B, NOTICE.

Every state is required to have water quality standards approved by the federal Environmental Protection Agency (EPA). The EPA reviews each state's water quality standards to ensure standards are kept up to date based upon scientific advances and other considerations. Iowa's standards have not been formally disapproved by the EPA; however, the EPA has raised issues with several of Iowa's standards as some of these standards are inconsistent with the goals and intentions of the federal Clean Water Act (CWA). Environmental groups are threatening to bring suit against the EPA to have the EPA promulgate rules to correct the standards which are inconsistent with the EPA requirements. Environmentalists successfully sued the EPA over similar issues in Kansas. To avoid litigation over Iowa's current standards, but moreover, to meet the goals and intentions of the

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CWA, the commission proposes rules that are consistent with EPA requirements.

The proposed changes involve the use designation of rivers and streams to ensure water quality protection for all of Iowa's perennial rivers and streams and intermittent streams with perennial pools. These rules are merely the first step in making stream use designations. After these rules are in effect, the Department of Natural Resources (DNR) will proceed with field work to determine the appropriate use designation for each stream. (Each designation is subject to EPA approval.) Then, rulemaking will commence for each stream's designation. The rules committee will review each stream designation.

The following are some of the rule changes:

The rules change the definition of "general use segments" to exclude a provision that allows streams resulting from the discharge from wastewater treatment plants to be considered as a general use segment. Only intermittent streams will be defined as general use segments. Some streams that are currently classified general use segments may be designated for recreational and aquatic life uses. The rules provide that all perennial streams and intermittent streams with perennial pools be designated as Class A1, B(WW-1) waters for protection of recreational and aquatic life uses. This is consistent with the Clean Water Act's goal that water should be "fishable and swimmable". The CWA outlines that the state start with this high water quality designation and then lower the designation based upon the DNR's field work.

The rules also eliminate the protected flow concept and apply the actual critical low flow of the stream to provide adequate protection for aquatic life. This will impact water quality based effluent limits for some waste water treatment plants.

ADMINISTRATIVE SERVICES DEPARTMENT

No rep.

Bids: internet website, IAB Vol. XXVIII, No. 06, ARC 4510B, ADOPTED.

House File 814 amends Iowa Code Chapter 8A to require the posting, by September 1, 2005, of

any formal request for bids or proposals on the official state Internet site operated by the Department of Administrative Services. The Act is an attempt to create a single source of information for the myriad of bidding opportunities offered by state government. As an alternative to actually posting the bid itself, agencies may instead post an electronic link to their own website. Although not required by the Act, agencies may also post *informal* bidding opportunities (generally small purchases) and solicitations for architectural or engineering services. These rules were initially published as an emergency filing in July.

ADMINISTRATIVE SERVICES DEPARTMENT

No rep

Capitol parking, IAB Vol. XXVIII, No. 07, ARC 4528B, NOTICE.

The department proposes minor revisions to current rules relating to capitol complex parking. The revisions include provisions to allow parking access for state board and commission members, who can be characterized as part-time employees.

Another, unrelated provision explicitly states that legislative employees are not required obtain parking decals from the department.

IOWA FINANCE AUTHORITY

No rep.

Home and community-based services rent subsidy program, IAB Vol. XXVIII, No. 7, ARC 4548B, ADOPTED.

This new program was initially reviewed at the committees' August meeting; it provides a rent subsidy for persons who participate in a home and community-based service (HCBS) waiver program. The subsidy is available to persons who pay more than 30 percent of their gross income for rent who are not eligible other rental assistance. Those persons must also have a need for nursing facility level of care, and, because of a lack of affordable alternatives, may be forced to enter a nursing facility.

The amount of the subsidy is limited to 100 percent of the fair market rent under guidelines of the HUD low-rent housing program, with that amount reduced by 30 percent of the gross income of the applicant. A minimum contribution of 25

dollars toward the cost of rent is expected from all applicants.

RECORDS COMMISSION

No rep.

State government E-mail, IAB Vol. XXVIII, No. 07, ARC 4537B, ADOPTED.

This rule is intended to clarify that under Iowa law electronic communications can, under some circumstances, be considered a public record; the rule establishes a specific retention policy for electronic mail--commonly called E-mail. In essence this rule will mean that e-mail cannot be automatically treated as private or non-consequential. The rule defines a "record" as:

a document, book, paper, electronic record, photograph, sound recording, or other material regardless of physical form or characteristics, made, produced, executed, or received pursuant to law *in connection with the transaction of official business of state government.*[see: §305.2(9)]

Under this proposed rule electronic mail that falls within this definition is to be retained and disposed of in accordance with records series retention and disposition schedules. This rule requires that "e-mail" which qualifies as a record must be maintained as "authentic, reliable and trustworthy" during the retention period. Unauthorized users must not be able to modify, destroy or distribute E-mail messages from an E-mail storage system.