



Administrative Rules Review Committee

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THE RULES DIGEST

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Senate Room #24

Reference
XXVIII IAB No. 12 (12/07/05)
XXVIII IAB No. 13 (121/21/05)

HIGHLIGHTS IN THIS ISSUE:

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HUMAN SERVICES DEPARTMENT

9:10

Rating system for child care, IAB Vol. XXVIII, No. 12, ARC 4711B, NOTICE.

2005 Acts House File 761 replaces the "gold seal" rating program for child care facilities with a new, voluntary rating system. The program rates facilities at five levels, with each level imposing additional standards. Level I, the most basic, requires a license from the department and an affiliation with a public or accredited private school. Points are required at various levels based on the following criteria; each criteria contains detailed requirements:

- Professional development.....12 points;
Health and safety.....8 points;
Environment.....11 points;
Family and community
Partnerships.....2 points;
Leadership and administration....4 points.

A similar rating program is established for child development homes.

HUMAN SERVICES DEPARTMENT

9:10

Emergency Food Assistance Program, IAB Vol. XXVIII, No. 12, ARC 4710B, ADOPTED.

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.

LOTTERY AUTHORITY

9:30

Monitor vending machines, IAB Vol. XXVIII, No. 13, ARC 4732B, NOTICE.

The authority proposes rules relating to the placement of monitor vending machines (MVM). These self-service machines sell lottery tickets and display the result on a video screen. Under this proposal only two MVMs may be placed in any premises. However, fraternal or charitable social clubs may place up to four of the devices.

Premises in which MVMs are placed in a "monitored, age-restricted area" may also place up to four MVMs. An age-restricted area is a premises where persons younger than 21 years of age are not

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allowed or is partitioned or cordoned off to restrict access to the MVMs.

**ADMINISTRATIVE SERVICES
DEPARTMENT**

9:40

State vehicle fleet: E85, IAB Vol. XXVIII, No. 13, ARC 4747B, ADOPTED.

Executive Order 41 was signed in April, 2005. That order generally related to energy efficiency in state government and in part V. states:

V. All agencies shall ensure that 100% of the non-law enforcement, light-duty vehicles procured by 2010 shall be alternative fuel vehicles (as defined by Iowa Code Section 8A.362(5)) or hybrid-electric vehicles when an equivalent alternative fuel or hybrid-electric model is available. Furthermore, agencies shall ensure that their flexible fuel vehicles operate on E85 whenever an E85 fueling facility is available.

This filing was initially reviewed by the committee at its November meeting. There was some discussion the use of executive orders to create policy. Additional research shows several examples. The Iowa Commission on Volunteer Services was created by Executive Order #23 (1986) and the Traffic Safety Bureau was created by Executive Order #48 (1994). A variety of individual programs have also been created by executive order.

To implement this gubernatorial directive the department rule requires state agencies to use 85 percent ethanol (E85) for "flexible fuel vehicles whenever an E85 fueling facility is available; when such fuel is not available the driver is not to completely fill the tank with fuel when a lesser quantity will be adequate to complete the trip to an E85 fueling site. A "flexible fuel vehicle is defined in §8A.362(5), Iowa Code; the term includes a variety of renewable fuels, including an 85% blend of ethanol.

Procurement specifications for bulk diesel fuel calls for all bulk diesel procured has at least 5 percent renewable content by 2007, 10 percent renewable content by 2008, and 20 percent renewable content by 2010.

PHARMACY EXAMINERS BOARD

10:30

Electronic database, IAB Vol. XXVIII, No. 13, ARC 4757B, RULEMAKING TERMINATED.

During the 2005 legislative session House File 833 was considered by both the House and the

Senate; that legislation would have created a database, maintained by the board to track all purchases of certain prescription drugs. This legislation was not enacted, but in August the board commenced a rulemaking to implement parts of this legislation through rulemaking. After consideration of all public comments the board has now determined to terminate this rulemaking and seek new legislation.

**ENVIRONMENTAL PROTECTION
COMMISSION (EPC)**

1:20

Various revisions: clean water programs, IAB Vol. XXVIII, No. 13, ARC 4770B, NOTICE.

In 1996 the federal government enacted the Safe Drinking Water Act Amendments of 1996 (Pub. L. 104-182). Section 1452 of this Act authorized the U.S. Environmental Protection Agency (EPA) to enact a State Revolving Loan Fund (SRF) for drinking water-related projects, in order to help local water systems finance the costs of infrastructure needs. The EPC first adopted rules relating to the program in 1998; they are now being re-written and updated, in part to allow the Iowa Finance Authority to manage loan processing.

Each year the federal government provides a varying amount of money as a set-aside for smaller communities. In addition to infrastructure, a portion of the funds may be used for other purposes. Up to four percent can be used to fund the administration of a program. Ten percent (with a one-to-one match) may be used for a supervision program, this would include the administration of the state program, technical assistance, planning projects and operator certification programs. Two percent can be used to provide technical assistance to provide technical assistance to public water supplies serving 10,000 people or fewer and up to 15 percent can be used to fund local assistance and other "authorized activities".

The EPC will develop and maintain a project priority list of eligible applicants, ranked according to a rating system. An engineering study showing the need for drinking water improvements is a prerequisite. The rating system has a maximum of 130 points broken into five categories and a number of sub-categories:

human health risk.....60 points;

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Infrastructure and Engineering.....35 points;
affordability.....10 points;
special category improvements.....15 points;
population less than 10,000.....10 points;

A second series of revisions relates to funding for construction of wastewater treatment facilities and water pollution control works. This program provides loans of up to 100 percent of the eligible costs of water pollution control projects. The EPC will annually prepare an intended use plan (IUP) that identifies projects eligible for funding under this program. Projects will be set out in a priority list identifying eligible projects and fundable list identifying those projects scheduled for loans. Projects are evaluated based on a detailed series of weighted criteria relating to use classification of the receiving waters, water quality of the receiving waters, compliance status of the discharging facility, project benefits, readiness to proceed and a tiebreaker.

A third series of amendments relates to set-aside programs for non-point pollution control. These programs set aside a portion of the available funding for low interest loans for nonpoint source water pollution control projects. There are four separate set-asides:

Onsite wastewater treatment and disposal systems fund. This fund assists rural homeowners with low interest loans to improve existing onsite wastewater treatment and disposal systems. Loans are available for the improvement or rehabilitation of onsite wastewater treatment systems which are located outside of corporate boundaries and located in counties that have an environmental health program meeting minimum standards for onsite sewage systems.

Livestock water quality facilities set-aside. This set-aside provides low interest loans to animal feeding operations in order to assist these facilities meet state and federal requirements. Priority is given to facilities located in watersheds. No facility constructed after 2001 is eligible for this set-aside.

Local water protection projects set-aside. This set-aside provides low interest loans to local water protection projects that will provide water quality improvement or protection. Projects in certain types of watersheds or watersheds with approved management plans or total maximum daily load

implementation plans will be given priority for funding.

General nonpoint source project assistance set-aside. This set-aside assists general nonpoint source projects that will provide water quality improvements or water quality protection. Loan assistance is available to any landowner whose land needs local water protection projects installed to control runoff of sediments, nutrients, pesticides or other nonpoint source pollutants into waters of the state. Loans are not available to *concentrated* animal feeding operations.

NATURAL RESOURCES DEPARTMENT

1:45

Nuisance wildlife control, IAB Vol. XXVIII, No. 12, ARC 4716B, NOTICE.

The department proposes a general re-write of its program for the control of "nuisance" wildlife. The program has been in effect since 2001. Persons wishing to offer nuisance wildlife control services to the public must pass a test and obtain a permit from the department; the permit fee is unchanged at \$20. The person holding the permit and any designated helper must hold a fur harvested license and pay the required habitat fee. This profession is essentially a form of fur taking. Permittees are authorized to use traps or snares, preferably live-catch, to capture nuisance wildlife. When those methods fail chemicals, smoke or mechanical devices may be used. Captured wildlife may be release or destroyed. This license does not authorize the taking or possession of endangered or threatened species. In these cases department representatives must be contacted.

This revision creates a special program for the control of Canadian geese. A special permit must be obtained from the county biologist to trap and re-locate to kill Canada geese.

EDUCATION DEPARTMENT

2:15

Extracurricular competition, IAB Vol. XXVIII, No. 12, ARC 4731B, NOTICE.

The department proposes a series of revisions to its' rules concerning extracurricular competition. Part of this proposal implements 2005 Iowa Acts, House File 423. In regard to extracurricular

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interscholastic contests or competitions, Iowa law imposes some residency requirements on students who transfer into a different school district; the goal is to discourage the recruiting of especially talented students. Under the Act, a transfer student who is ineligible to play at the "varsity" level of competition will be allowed to compete at lesser levels. The term "varsity" is defined as: "the highest level of competition offered by one school or school district against the highest level of competition offered by an opposing school or school district." This provision is actually substantially similar to a rulemaking earlier proposed by the department.

The proposal also revises the "scholarship" rules for extracurricular competition. Under the current provisions a student wishing to participate in an extracurricular interscholastic competition must have earned 20 semester hours' credit toward graduation in the preceding semester and must currently be making passing grades in subjects for which 20 semester hours' credit is given. Under the proposal the student must be passing *all* coursework for which credit is given and shall be making "adequate progress" toward graduation, as defined in local policy. If the student fails to pass all such coursework, the student cannot compete in interscholastic athletic contests and competitions for 20 consecutive school days.

That 20 day prohibition can be renewed if the student does not improve.

ECONOMIC DEVELOPMENT DEPARTMENT

No Rep

Iowa wine and beer promotion, IAB Vol. XXVIII, No. 13, ARC 4740B, ADOPTED

The department in consultation with the Iowa wine and beer promotion board is charged under §15E.117 to promote wine and beer made in Iowa. Funds for this promotion come from a barrel tax imposed on wine and beer pursuant to chapter 123, Iowa Code.

The Iowa wine and beer promotion grant program will provide marketing funds to promote native Iowa wineries and breweries through festivals and events. Applicants must include a group of at least three native Iowa wineries or breweries, unless there are fewer than three licensees in either category. If there are fewer than

three licensees in a category, then all of the licensees in that category must be included in the event. There shall be a maximum of one award per group per fiscal year.

PROFESSIONAL LICENSURE DIVISION

No Rep.

Mandatory testing for drugs or alcohol, IAB Vol. XXVIII, No. 13, ARC 4733, 4734B, 4739B, NOTICE.

The division proposes "boilerplate" rules relating to board ordered mental, physical, or clinical competency examination or alcohol or drug screening. These rules will be adopted by the various health care professions regulated by the board.

Under this procedure, on a showing of probable cause, the board may order the testing or screening. The licensee may demand a confidential due process hearing to contest the validity of that order.

PROFESSIONAL LICENSING DIVISION

No Rep

Fee increase, IAB Vol. XXVIII, No. 12 & 13, ARC 4457B, 4454B, 4450B, 4460B, NOTICE and ADOPTED.

The division provides administrative support for 19 health related licensing boards. This series of filings is part of an effort where all of these health-related boards will be raising licensing fees this year, roughly 20%; in the last half of fiscal 2005 this is estimated to raised roughly \$175,000. Part of this increase will be used to purchase a new computer system. The present system is 30 years old and has very limited capabilities. The increase will also be used to fund additional investigative staff; the division currently has some 123 cases pending with 69 over a year old and 19 over two years old.

RAILWAY FINANCE AUTHORITY

No Rep

Railroad revolving loan and grant fund program, IAB Vol. XXVIII, No. 12, ARC 4705B, ADOPTED.

Pursuant to 2005 Acts, 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

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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.

SECRETARY OF STATE

No Rep

Approved voting systems, IAB Vol. XXVIII, No. 13, ARC 4742B, ADOPTED.

Section 52.5 requires a board of examiners to test and examine of all voting systems. Before actual use of a particular approved electronic voting system the state commissioner of elections must adopt, with the advice of the examiners, rules governing the development of vote counting programs and all procedures used in actual counting of votes by means of that system. This proposes sets out standards for the use of an additional system, using an audio ballot for visually impaired persons.