



Administrative Rules Review Committee

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THE RULES DIGEST

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Scheduled for committee review
Tuesday May 13th, 2008
Senate Committee Room #116

Reference
XXX IAB No. 21 (04/09/08)
XXX IAB No. 22 (04/23/08)

HIGHLIGHTS IN THIS ISSUE:

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EDUCATION DEPARTMENT

9:05

Extracurricular competition, IAB Vol. XXX No. 22, ARC 6741B, ADOPTED.

In 2006 the department revised the scholarship requirements rules for extracurricular competition, requiring each the student to be passing all coursework and 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.

The state board of education received feedback that the period of ineligibility should be adjusted to make the rule more equitable. The adopted rules extend the prohibition from 20 school days to 30 calendar days. Therefore, a student who does not pass all credited coursework will be ineligible for 30 calendar days in the next interscholastic athletic activity in which the student participates. Under the rules originally filed under notice, the requirement that the period of ineligibility be recognized only in a sport in which the student was a bona fide competitor was

the most heavily criticized. This requirement has been removed from the adopted rules.

The rules also clarify an existing prohibition relating to dressing in full team uniform, participating in pre-game warm-up exercises with team members, and practicing with college teams. The rules also add a prohibition against member schools allowing students to compete in interscholastic competitions in the absence of reasonably reliable proof that the student is eligible to compete and add a new paragraph to instruct member schools that all failing grades, even those remediated by the student for transcript purposes only, must be reported to a member school to which the student transfers.

A public hearing (via the ICN) was held in February and two written comments were also received. All commenters want additional substantive changes made to the rules to address the following concerns: excluding postseason play from the period of ineligibility; reconciling differences in final grading periods ("block scheduling" vs. traditional semesters); summer school for remediation of failed courses; and changing the "pass all" standard to include an overall minimum GPA as the standard.

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EDUCATIONAL EXAMINERS BOARD

9:15

Elimination of "Grandfathering" provisions, IAB Vol. XXX No. 22, ARC 6724B, 6726B, AND 6735B, NOTICE.

After the issuance of a license, an individual may add endorsements to that license which attest to the individuals' competence and training in a particular area. Each endorsement requires a particular course of preparation.

In some situations individuals began teaching in a particular area before an endorsement was developed; under the existing rules those individuals are "grandfathered" in and may continue to teach in that area. These proposals would terminate the grandfather privilege in three areas. For English as a second language, teachers must complete the endorsement requirements by July 1, 2012 and complete 18 semester hours of coursework in English as a second language. For talented and gifted, teachers must complete the endorsement requirements by July 1, 2012 and complete 12 undergraduate or graduate semester hours of coursework. For business marketing, teachers must complete the endorsement requirements by July 1, 2010 and complete 6 semester hours of marketing education.

UTILITIES BOARD

9:30

Procedures for electronic filing, IAB XXX No. 21, ARC 6707B, NOTICE.

After two years of work, the board is going "digital" with an electronic filing system that will allow Internet submission, search, and retrieval of documents filed with or issued by the board. The rules generally details the electronic filing requirement, identifies exceptions to that requirement, and specifies procedures for using the electronic filing system.

The requirement applies mainly to board proceedings; correspondence, public comment in rulemaking and similar proceedings may still be in written form. Persons who regularly do business with the board may become a registered user with their own password; persons who occasionally deal with the board may be guest users.

ECONOMIC DEVELOPMENT DEPARTMENT

9:40

Generation Iowa commission-organization and operation, IAB XXX No. 21, ARC 6309B, ADOPTED.

These rules were initially filed emergency in October, 2007. The Generation Iowa Commission is established within the Iowa Department of Economic Development by 2007 Iowa Acts, House File 617, to advise and assist the Department in the retention and attraction of the young adult population in the state in both urban and rural areas. It consists of 15 voting members appointed by the governor and four ex officio nonvoting legislative members. At the time of appointment or reappointment, voting members must be at least 18 years of age, but less than 35 years of age.

The Commission's duties include advising and assisting the department in activities designed to retain and attract a young adult population and developing a set of best practices guidelines for employers to attract young adult employees. The Commission is also responsible for submitting a written report to the governor and general assembly in odd-numbered years. The report will consist of the Commission's findings and recommendations regarding the efforts to attract and retain the young adult population, career opportunities and educational opportunities for young adults, and the movement of the young adult population between rural areas and urban areas and between Iowa and other states. In years when the report is not required, the Commission will submit a written status report of the progress made during the previous year.

SECRETARY OF STATE

10:00

Optical scan voting system purchase program, IAB XXX No. 22, ARC 6728B, Notice; ARC 6727B, FILED EMERGENCY.

The amendment rescinds and replaces a rule, which was first adopted in 2007 to implement the addition of voter-verifiable paper audit trails to direct recording electronic (DRE) voting equipment currently in use in Iowa. In 2008, the General Assembly outlawed the use of DRE voting equipment and mandated its replacement

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with optical scan voting equipment and ballot-marking devices. The new law, Senate File 2347, became effective on April 1, 2008.

The new rule, implementing Senate File 2347, provides a process for the purchase of the new voting equipment. The Secretary of State is directed to negotiate with the voting system vendors who serve Iowa counties for a uniform price for each vendor's optical scan voting system components. Counties currently using all DRE voting machines are required to purchase one optical scan tabulator and one ballot-marking device for use in each general election voting precinct. Those counties currently using an optical scan tabulator with a DRE voting machine as the accessible component in each precinct must purchase one ballotmarking device for each precinct used in general elections to replace the DRE voting machine.

The Secretary of State is required to prepare the allocation agreements setting forth the amount of funding each county in need of optical scan voting equipment will be allocated. Counties currently using the AccuVote TSX DRE must provide to the Secretary of State an affidavit showing that the AccuVote TSX DRE was returned to the vendor.

INSPECTIONS AND APPEALS DEPARTMENT

10:35

Food code provisions, IAB XXX No. 21, ARC 6708B, ADOPTED.

This rulemaking adopts the 2005 Food and Drug Administration Food Code with Supplement. The rules also update definitions and other provisions for consistency with Iowa Code changes. The rules update license fees to the amounts set in 2007 Iowa Acts, chapter 215, clarify the procedures for untimely fee payment and violations, and rescinds Chapter 32 on food protection and certification programs.

During the comment period, the department received comments from industry members on various aspects of the rules including: posting of reports, which has been clarified in the adopted amendments; increased penalties, which are no longer being changed; the time period for appeals, which is no longer being changed; the sale of wild

mushrooms and certain soft cheeses, which was clarified through communication with industry; the definition of "potentially hazardous foods," which was also clarified through communication with industry; concerns about whether the 2005 FDA Food Code exceptions relating to bare-hand contact were included in the rule making; and concerns about the training of food inspectors, which was clarified by providing industry with additional information about the training process.

Additionally, the adopted rules require the inspection of all nutrition sites by make changes the definition of "food establishment" and clarify what constitutes a current complaint.

These rules are effective on July 1, 2008.

ENVIRONMENTAL PROTECTION COMMISSION

10:40

Animal feeding operations, IAB XXX No. 21, ARC 6704B, FILED.

This rulemaking relates to those confinement feeding operations or open feedlot operations that are required to submit manure/nutrient management plans. The amendments limit the application of liquid manure, process wastewater, or settled open feedlot effluent to 100 pounds of available nitrogen per acre to land that is planted to soybeans or that will be planted to soybeans the next crop season.

The rules also state, effective May 14, 2013, the application of liquid manure, process wastewater, or settled open feedlot effluent to such land is prohibited unless the Commission determines that available scientific evidence justifies alternative action. The prohibition will not become effective unless the Commission publishes a notice in the Iowa Administrative Bulletin confirming that it has reviewed the available scientific evidence.

NATURAL RESOURCE COMMISSION

11:00

Deer hunting by residents, IAB XXX No. 21, ARC 6699B, NOTICE.

This rulemaking proposes changes to chapter 106, which sets season dates, shooting hours, license types, quotas and restrictions, method of take and tagging, reporting requirements for

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resident deer hunting, requirements for depredation licenses and shooting permits.

The proposed amendments clarify that it is illegal to carry another person's deer hunting license or transportation tag while hunting and restore the closing date for the late muzzleloader season to January 10 from January 13. The amendments also clarify that, if a youth hunter is unsuccessful, as specified in Iowa Code §483A.8(7), the youth hunter may continue to utilize the hunter's either-sex license.

The proposed amendments clarify rules relating to the use of a blind during the shotgun deer season by removing the definition of "ground blind," defining "blind", and requiring a hunter to display blaze orange consistent with the requirements of Code §481A.122. The proposed amendments remove the season extension that the commission established by an emergency rule making after the ice storms in 2007.

Rules related to depredation permits are also amended by clarifying that each authorization number issued to a agricultural producer under a depredation agreement allows a hunter to obtain a depredation license. The depredation license will only be valid for the taking of antlerless deer on the land designated in the depredation plan. The producer may transfer an authorization number and the authorization number may be used to obtain a license in any season. The landowner may obtain one depredation license for each season and no other individual may initially obtain more than three depredation licenses per depredation plan. After a deer is reported harvested on one of the licenses, then another license may be obtained.

Finally, the commission also indicated that based on survey data received after the publication of this notice, the quotas provided for in the rules may be slightly modified to account for the results of those surveys.

HUMAN SERVICES DEPARTMENT

11:20

Child care expansion programs, IAB XXX No. 22, ARC 6725B, NOTICE.

This proposal is a re-write of the existing child care grant program. This revision will fund child

care programs that operate in conjunction with such programs as Head Start and similar development programs. This funding program supports the costs of the child care provided before and after the core program, including summer and other breaks.

The programs serve children who are between five years of age and 13.

MEDICAL BOARD

No Rep.

Standards of practice: pain medication, IAB Vol. XXX No. 22, ARC 6738B, ADOPTED.

This filing is based on an existing set of rules, but provides far more detail than the original rules. These rules encourage the use of acupuncture, physical therapy and massage in the treatment of acute and chronic pain deal extensively with the administration of controlled substances to provide relief from acute or chronic pain. The rules specifically establish in principle that providing pain management for persons suffering from chronic pain or a substance abuse problem is difficult, and that the board looks to a pattern of improper pain management or a single occurrence of willful or gross overtreatment or undertreatment of pain in determining proper practice..

The filing also establishes that inappropriate of pain is a departure from the acceptable standard of practice in Iowa. Inappropriate pain management may include nontreatment, undertreatment, overtreatment, and the continued use of ineffective treatments. Inappropriate pain management may be grounds for disciplinary action.

PROFESSIONAL LICENSURE

DIVISION

No Rep.

Funeral directors, IAB Vol. XXX, No. 21, ARC 6545B, ADOPTED.

These new rules specify the practices which require a funeral directors license, these include:

- a. Removal of the body.
- b. Embalming deceased human beings.
- c. Conducting funeral arrangements.
- d. Conducting funeral services when contracted to do so, including:
 - (1) Direct supervision of visitation and viewing.
 - (2) Funeral and memorial ceremonies.
 - (3) Committal and final disposition services.
- e. Cremation services).

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f. Signing death certificates.

The filing contains minor revisions to rules relating to cremation and re-writes existing provisions relating to the licensing of funeral establishments and cremation establishments; adding much detail concerning establishments holding both licenses. This filing received no comment when under notice.

VETERINARY MEDICINE BOARD

No Rep.

General update--veterinary assistants, IAB XXX No. 22, ARC 6749B, NOTICE.

This proposal contains a variety of amendments to the veterinary medicine board rules; many of the rules are "boilerplate" language to disciplinary hearings. The more significant changes add detail to the requirements of veterinary practice while others expand and re-define the role of veterinary assistants. This notice of intended action is the culmination of a multi-year review process.

New rules set out requirements for veterinary facilities generally relating to storage, equipment, sanitation, boarding and lighting. The rules also detail the scope of veterinary practice activities, setting out a list of veterinary functions that include several new concepts: dentistry, Pregnancy diagnosis, animal chiropractic, animal physical therapy and veterinary acupuncture or acupressure.

Section 169.20 provides that a veterinarian may employ "certified" assistants working under the direct supervision of a licensed veterinarian. The code does not detail the role of the assistants, but it does state that assistants may not provide diagnosis, prescription or surgery.

There are two types of assistants: veterinary technicians and veterinary assistants. Technicians are *licensed* and have completed a two or four year course of study and passed a veterinary technician examination. Assistants are *certified* after taking an examination. This proposal outlines the tasks that a technician or a certified assistant may perform under the direct supervision of a veterinarian and those the technician may perform under indirect supervision. There are three levels of supervision:

- "Immediate supervision" means that a licensed veterinarian is on the premises and within eyesight or hearing range.

- "Direct supervision" means that a licensed veterinarian is on the premises and is readily available.
- "Indirect supervision" means that a licensed veterinarian is not necessarily on the premises but is able to perform the duties of a licensed veterinarian by maintaining direct communication.

The rules contain an emergency exception allowing a licensed technician to perform certain life-saving functions in the absence of the veterinarian.

Both technicians and assistants must obtain periodic continuing education: technicians must obtain 30 credit hours in three years and assistants must get 15.