



Administrative Rules Review Committee

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THE RULES DIGEST

August, 2008

Scheduled for committee review
Tuesday, August 12th, 2008 8:30 A.M.
Senate Committee Room #116

Reference
XXXI IAB No. 02(07/16/08)
XXXI IAB No. 03 (07/30/08)

HIGHLIGHTS IN THIS ISSUE:

RIVER ENHANCEMENT COMMUNITY ATTRACTION, Economic Development Department2
VETERANS TRUST FUND, Veterans Department3
DISASTER RULE SUSPENSIONS, Public Safety Department.....4-5
VENDOR LIABILITY: STATE CONTRACTS, Administrative Services Department7
2008 DEER HUNTING SEASON, Natural Resources Commission.....7

ENVIRONMENTAL PROTECTION
COMMISSION

8:40

Bottle and can recycling centers, IAB XXXI No. 3, ARC 7038B, Notice.

In 2008 Iowa Acts, House File 2700, \$1 million from the general fund is appropriated to an independent redemption center grant fund for improvements to independent redemption centers in existence prior to July 1, 2008. These centers are independent businesses authorized by law to redeem bottle and can deposits. Iowa Code Chapter 455C provides for both approved and unapproved redemption centers. Both redemption centers redeem empty beverage containers and pay the refund value to consumers. Approved redemption centers relieve specified grocers of the obligation to redeem cans on their own site. By law redemption centers receive one cent for each can received.

The goals of the fund are to enable independent redemption centers to become more sustainable, convenient, and accessible. Grant amounts are limited to a maximum of \$15,000 for any redemption center.

* * *

Commission voting requirements, IAB XXXI No. 01, ARC 6828B, EMERGENCY.

This emergency filing was initially reviewed by the Committee in July. It revises the number of commission members required to take action; the required number of affirmative votes for official action will vary depending on the number of commissioners currently appointed by the Governor. Essentially the rule provides that that four votes are sufficient to take action when there are only seven appointed members. The EPC has specific authority to establish quorum requirements, set out in Iowa Code §455A.6.

The "emergency" filing of this change was an issue at the July meeting. A Commission representative defended the emergency filing stating that the previous voting requirement "resulted in delayed agency action, gridlock, and stalemate, with the minority at times deciding an issue." A representative from the Attorney Generals Office, speaking only on the question of rulemaking procedure, stated that adequate grounds for emergency rulemaking did not exist.

ECONOMIC DEVELOPMENT
DEPARTMENT

9:00

THE RULES DIGEST

-2-

Community development block grant funds, XXXI IAB 02, ARC 6944B, NOTICE.

The Department periodically updates and revises the Community Development Block Grant (CDBG) program. This revision adds "sustainable community projects" as a replacement for the current "bold possibilities" projects, funded out of the contingency fund and changes the amount of the fund from five percent of all block grant funds to one million dollars. The revision also adds the eligibility criteria for the downtown revitalization fund. The maximum award is limited to \$500,000 and applications will be evaluated according to the following criteria:

- Community impact of the project.
- Readiness to proceed.
- Level of community support.
- Leverage by other funding sources and local financial support.
- Degree to which the activity meets or exceeds the minimum building and site design criteria.
- Level of planning.

* * *

Housing fund: green development, XXXI IAB 02, ARC 6943B, NOTICE.

The housing fund combines federal CDBG and HOME funds; this combined program will expand or retain the supply of decent and affordable housing for low and moderate income Iowans. This proposal adds "green development" in housing construction. Green development must be part of new construction and rehab and involves standards which promote public health, energy efficiency, water conservation, smart locations, operational savings and sustainable building practices. Additional funding is available specifically to offset at least part of the cost of these standards.

The proposal also revises the funding caps for the housing program. Single-family rehabilitation and new construction is limited to \$37,500, up from \$24,999. Multi-family rehabilitation and construction is limited to \$60,000 per unit, up from \$50,000.

* * *

Lean manufacturing institute, XXXI IAB 02, ARC 6940B, NOTICE.

In 2007 Iowa Acts, chapter 122, §§7(1), 7(2), and 7(8) The legislature authorized the creation of:

a "lean manufacturing institute" to provide executive level, in-depth training assistance to manufacturing companies in the state, a statewide supplier capacity and product database, and an executive level recruitment program to attract top talent to targeted companies. All three programs target companies in the area of biosciences, information technologies, and advanced manufacturing.

The lean manufacturing institute will provide technical assistance to enhance manufacturing efficiency. Awards are in the form of a grant and cannot exceed \$100,000 (the 2007 appropriation) for a single project, with a 50% local match. The award can be used for the development and delivery of performance improvement programs and for acquiring or developing learning materials.

The manufacturing supply chain development program is a collaboration between the Iowa department of economic development and the department of workforce development to provide targeted companies with technical assistance for supply chain development. The program will establish a database providing contacts with Iowa suppliers.

Awards are in the form of a grant and cannot exceed \$100,000 for a single project, with a 50% local match.

The management talent recruitment program will develop activities for the recruitment of out-of-state executive and operations management personnel for new or expanding targeted industries. The maximum grant award is \$10,000 and requires a 2:1 match. The grant can be used to identify management talent, participate in human resource-business opportunity matching events, marketing materials, or preparation of organized information.

* * *

River enhancement community attraction and tourism fund, XXXI IAB 02, ARC 6940B, NOTICE.

This proposal sets out a variety of amendments related to tourism. It establishes the new River Enhancement Community Attraction and Tourism Fund set out in 2008 Iowa Acts, Senate File 2430. This fund will provide financial assistance to projects that promote recreational opportunities

THE RULES DIGEST

-3-

and community attractions on and near rivers or lakes within cities. These would include: pedestrian trails, amphitheaters, bike trails, water trails, or whitewater courses.

The proposal also sets out additional evaluation criteria for community attraction and tourism programs, adding a "green" component to the evaluations. Green criteria include:

- Conservation of natural resources by reducing waste and pollution through efficient use of land, energy, water, and materials.
- Capture, retention, infiltration and harvesting of rainfall using storm water best management practices.
- Implementation of the green sustainable design principles set out in the green design checklist.
- Incorporation of renewable energy sources including solar, wind, geothermal, and biofuels.
- Use of healthy and sustainable building materials, furnishings, cleaning products, and maintenance practices.

EDUCATIONAL EXAMINERS BOARD

9:30

Legal counsel for board, XXXI IAB 02, ARC 6959B, EMERGENCY.

Iowa Code §272.2(7) authorizes the board to: "[h]ire an executive director, legal counsel, and other personnel and control the personnel administration of persons employed by the board." In the 1970's and early 1980's the board did retain private counsel to provide some legal services, not including licensee discipline.

The board has now *emergency* implemented a provision allowing the board to utilize either the Attorney General or private counsel. The issue with this filing is the lack of a true emergency. The board has a large backlog of cases that must be adjudicated, but that chronic problem has existed for some time, and the use of private legal counsel is a major shift in policy that should be discussed before its implementation.

VETERANS AFFAIRS DEPARTMENT

10:00

Veterans trust fund, IAB XXXI No. 3, ARC 7021B, FILED EMERGENCY.

2008 Iowa Acts, Senate File 2124 has significantly expanded the availability of the veterans trust fund and authorized the use of emergency rulemaking to speed these changes.

Household income for eligibility purposes is raised from 200% to 300% of the poverty guideline. Travel expenses are expanded to include both the injured veteran and the veterans spouse, limited to \$1000 in a twelve month period. Training is expanded from a technical college or school, to include a postsecondary institution.

Health care expenses were previously limited to residents in a care facility; that limitation has been eliminated and benefits expanded to include dental care and dentures; vision care, including eyeglasses. This benefit is limited to \$2,500 for dental care, \$500 for vision care, and \$1,500 per ear for hearing care, and \$1,500 for prescription drugs. This benefit is not available if available liquid assets of the veteran are in excess of \$5,000 (note this restriction has been raised from \$3,000).

The fund will also cover the purchase of durable equipment that allows the veterans to remain in their homes, to a limit of \$2,500. Again, this benefit is not available if available liquid assets of the veteran are in excess of \$5,000.

Mental health, substance abuse, and family counseling services are expanded, to an annual limit of \$5,000. Individual counseling is eligible for up to \$2,500; substance abuse treatment and counseling combined are eligible for up to \$3,500, and families counseling services are eligible for up to \$5,000.

Emergency expenses related to vehicle repair, housing repair, or temporary housing assistance may be covered up to \$2,500 for vehicle repair, \$3,000 for housing repair, and \$1,000 for transitional housing.

LABOR SERVICES DIVISION

10:25

Disaster emergency proclamation-asbestos abatement, IAB XXXI No. 2, ARC 6979B, FILED EMERGENCY.

In response to the recent damage caused by storms and flooding, the Labor Commissioner amends rules relating to construction contractor registration and asbestos removal and encapsulation. With one exception, these rules apply to work on structures that are both located in an area that is subject to a disaster emergency proclamation pursuant to Iowa Code section 29C.6

THE RULES DIGEST

-4-

and damaged by circumstances related to that proclamation.

Workers and businesses based in other states will be required to address the scope of disaster recovery work. These rules adopt a clarifying definition concerning which contractors are required to be registered pursuant to Iowa Code chapter 91C, establish criteria for asbestos abatement licenses, and ease the requirement that asbestos abatement permittees provide notice at least ten days in advance of beginning an asbestos abatement project. Furthermore, these amendments allow electronic transmission of asbestos abatement project notifications for all asbestos work.

PUBLIC SAFETY DEPARTMENT

10:40

Temporary storage of flammable liquids in disaster emergencies, IAB XXXI No. 2, ARC 6949B, Notice; ARC 6967B, Filed Emergency.

The State Fire Marshal to makes amendments to the rules for the safe transportation, storage, handling, and use of flammable liquids. The amendments are based upon the International Fire Code and relevant national standards published by the National Fire Protection Association. The recent flooding across the state, including the flooding of existing flammable liquid storage tanks at motor fuel dispensing facilities has left many of these facilities unable to meet the standards for aboveground storage of flammable liquids and the standards of the Department of Natural Resources for underground petroleum storage tanks.

These amendments provide standards for temporary emergency storage of flammable liquids in aboveground tanks in situations in which the usual storage provisions of a motor fuel dispensing facility are inoperable. These provisions would be available to facilities in areas covered by a disaster emergency proclamation or otherwise approved by the State Fire Marshal. Under the rules, use of temporary flammable liquid storage would be allowed for 90 days; however, an extension may be sought from the State Fire Marshal. The rules became effective July 1, 2008.

* * *

Suspension of installation requirements in proclaimed disaster emergencies, IAB XXXI No. 2, ARC 6969B, Notice; ARC 6970B, FILED EMERGENCY.

Following approval by the Building Code Advisory Council, the Building Code Commissioner amended the chapter relating to manufactured housing support and anchorage systems. The amendment was adopted through emergency procedures and became effective July 1, 2008.

According to the Commissioner, recent disasters in Iowa have created substantial demand for the immediate availability of manufactured housing. In order to facilitate such availability, the rule adopted allows for temporary occupancy of manufactured housing in the absence of compliance with all of the normal requirements for installation. The manufactured home must, however, be within an area that is currently subject to a disaster emergency proclamation issued by the governor. Additionally, any manufactured home whose installation is subject to a suspension of any requirement shall be occupied only for the duration of the disaster emergency proclamation and for no more than 180 days after the expiration of the proclamation, or for a shorter time specified by the commissioner, unless the home has been installed or reinstalled in compliance with all of the standards which normally apply to such installations.

* * *

Manufactured housing installer-temporary certification during proclaimed disaster, IAB XXXI No. 2, ARC 6965B, Notice; ARC 6966B, FILED EMERGENCY.

In response to the recent flooding and natural disasters within the state, the Building Code Commissioner has amended rules relating to manufactured housing installer certification. Iowa Code §103A.59 establishes the certification program for manufactured housing installers.

The recent disaster conditions have created a need for qualified installers from out of state to be able to work in Iowa. The rule adopted herein provides for the temporary emergency certification of manufactured housing installers, provided that they produce evidence of certification or licensing as installers from other states and proof of liability insurance coverage. The temporary emergency

THE RULES DIGEST

-5-

certificates will be valid for 90 days and may be renewed once. The fee for a temporary emergency certification is \$50. These rules became effective on July 1, 2008.

* * *

Inventory of impounded vehicles under emergency conditions, IAB XXXI No. 3, ARC 6999B, NOTICE; ARC 6986B, FILED EMERGENCY.

Through this rulemaking, the Department amends its impounded vehicle inventory search policy required under the U.S. Supreme Court's decision in *Florida v. Wells*, 495 U.S. 1 (1990). The Court in *Wells* held that if a law enforcement agency inventories impounded vehicles, any contraband found during an inventory is inadmissible evidence in a subsequent criminal case unless the agency has a written policy requiring inventories of impounded vehicles.

661 IAC Chapter 6 was adopted as the Department's required written policy and requires officers to conduct an inventory within 24 hours of impoundment of any vehicle. This timeframe, however, may be impracticable under emergency conditions, either because officers are urgently needed for duties directly related to an emergency or because large numbers of vehicles may be impounded in a short period during an emergency.

This amendment would allow for the 24-hour period to be extended in certain situations, including if the inventory search is rendered impracticable by road or weather conditions or by the volume of impounded vehicles requiring processing during a limited period of time. The exception also states that such an extension of time shall be granted automatically if the office processing the vehicles is affected by a disaster emergency proclamation issued by the governor pursuant to Iowa Code §29C.6 and may otherwise be granted by written permission of the commander of the district or zone office or another supervisor designated by the commander of the officer responsible for processing an impounded vehicle. The reason for any delay in completing the inventory and report beyond 24 hours after towing a vehicle shall be noted in the report.

This amendment, filed as an emergency rulemaking, became effective July 1, 2008.

SECRETARY OF STATE

11:00

Voting centers for certain elections, IAB XXXI No. 3, ARC 7046B, Notice; ARC 7047B, FILED EMERGENCY.

This rulemaking defines procedures for establishing and operating voting centers, which were authorized in 2008 Iowa Acts, House File 2620. The commissioner is permitted to establish voting centers for the regular city election, city primary election, city runoff election, regular school election, and special elections.

The rules allow one or more voting centers to be established in lieu of precinct polling places for the elections at which the use of voting centers is permitted. Regular polling place sites that are accessible to people with disabilities may be used as voting centers for any election at which the use of voting centers is permitted. Other suitable locations may also be used. A voting center is subject to the requirements of Iowa Code §49.21 relating to accessibility to persons who are elderly and persons with disabilities. Voting center hours shall be the same as permitted for an election pursuant to Code §49.67. Voting centers must be administered by a minimum of five precinct election officials.

The rules require that the location of each voting center be published in the same manner as the location of polling places and include a description of the voting center. Each voting center must have a list of all registered voters who are eligible to vote in that election, either in paper form or on a computer in an electronic format. However, the commissioner shall not provide direct access from voting centers to the I-Voters system on election day. A person who needs to register to vote may register and vote at a voting center provided that the person has appropriate identification and is a resident of the jurisdiction.

Within 30 days after the election, the commissioner shall review the signed declarations of eligibility or the signed election registers from each voting center, and if any person is found to have voted in more than one voting center in the election, the commissioner shall immediately notify the county attorney.

These rules, filed as an emergency rulemaking, became effective July 11, 2008.

THE RULES DIGEST

-6-

PUBLIC HEALTH DEPARTMENT

11:30

New dental programs, IAB Vol. XXXI No. 03, ARC 7023B and 7024B, ADOPTED.

In 2007 Iowa Acts, Chapter 159 the position of state public health dental director was established and an oral health bureau was established, to promote dental health. The new unit will administer a variety of federal, state, and local initiatives.

2007 Iowa Acts, chapter 146 requires the parent or guardian of an elementary school child to provide evidence that between the ages of three and six the child has received a dental screening performed by a physician, a nurse, a physician assistant, a dental hygienist, or dentist. Similarly, the parent or guardian of a high school student must provide evidence that the student has received a dental screening performed within the prior year by a licensed dental hygienist or dentist. A school district or accredited nonpublic school is required to provide access to a process to complete the required screenings. The Act provides an exclusion for persons who are "unduly burdened" by the requirement (which is defined in rule as a financial hardship) or have a sincere religious conviction. Under these rules a dental screening is defined as a visual assessment that is noninvasive and nondiagnostic; it does not require the use of dental instruments. The screening can identify obvious or suspected oral health conditions that require or that might require examination by a dentist.

* * *

Lead blood testing, IAB Vol. XXXI, No. 03, ARC 7025B, ADOPTED.

Iowa Code Supplement §135.105D and 2008 Iowa Acts, Senate File 2111 require that every child enrolled in any elementary school must be tested for elevated blood lead levels or receive a waiver. The Department may grant a waiver if it determines that a child is of very low risk for elevated blood lead levels, or if the blood lead testing conflicts with a "genuine and sincere" religious belief.

Schools are required to give notice of the blood lead test requirement to parents at least ninety days before the start of the school year. Schools are

also required, in collaboration with the Department, to assure that each student complies with the blood lead testing requirement. The Department is required to provide for testing for those children under six years of age who do not have insurance.

NURSING BOARD

1:00

Administration of anesthetic agents - requirements and exceptions, IAB Vol. XXXI No. 3, ARC 7009B, NOTICE.

The Nursing Board proposes amendments to rules which set minimum standards of nursing practice for registered nurses. The proposed amendments prohibit a registered nurse (RN) and an advanced registered nurse practitioner (ARNP), with the exception of a certified registered nurse anesthetist (CRNA), from administering anesthetic agents (e.g., Propofol, Brevitol, Ketamine and Etomidate), during any operative, invasive or diagnostic procedure in any type of setting.

These amendments set forth the exceptions and requirements which allow an RN and an ARNP to administer anesthetic agents. Specifically, an RN and an ARNP may administer anesthetic agents in the following situations:

- When under the direction of a CRNA, anesthesiologist, or an oral and maxillofacial surgeon who is physically present in the procedure room at the time of medication administration and for the duration of the anesthetic agent's effectiveness.
- When administering these medications as part of a clinical experience as a student nurse anesthetist in an advanced educational program.
- When administering these medications to intubated, ventilated patients in a critical care setting.
- When assisting an individual qualified in advanced airway management for rapid sequence emergency intubation.

An RN and an ARNP, with the exception of a CRNA, who administer anesthetic agents as specified in the rules must attain certain certifications and receive annual education in the administration of anesthetic agents.

HUMAN SERVICES DEPARTMENT

1:20

Medicaid reimbursement for nursing facilities, IAB XXXI No. 3, ARC 7016B, FILED EMERGENCY.

Since 1992 additional Medicaid reimbursement has been available for care facilities, based on

THE RULES DIGEST

-7-

accountability measures. These measures are care facility characteristics that indicate the quality of care, efficiency, or commitment to care for the residents. Based on the number of points received a facility could receive additional reimbursement up to a three percent of the direct care and non-direct care cost component.

In this proposal the additional reimbursement is reduced by some 20 percent and can be further reduced based on the number of citations or deficiencies assessed against the facility.

* * *

PACE program, IAB Vol. XXXI, No. 3, ARC 7013B,
EMERGENCY AFTER NOTICE.

These provisions were originally reviewed by the Committee in June; this emergency implemented filing adds Medicaid coverage for a new type of managed health care, "Programs of All-Inclusive Care for the Elderly" (PACE). The service provider is paid a prospective monthly capitation payment for each Medicaid enrollee. The monthly capitation payment amount is negotiated annually between the service provider and the Department, but must be less than the amount that would otherwise have been paid under the Medicaid program and is a fixed amount regardless of changes in the enrollee's health status.

Enrollment is limited to Medicaid recipients who are 55 years of age or older and who need care at the nursing facility level but are able to live in a community setting, receiving preventive and coordinated medical care that allows them to live in their homes. If a person chooses to enroll in a PACE program, the member must receive Medicaid benefits solely through the PACE organization while enrolled in the program.

Program services are determined by a comprehensive plan of care developed by an interdisciplinary team based on a comprehensive assessment of the individual. The interdisciplinary team provides an initial assessment, periodic reassessments, plan of care, and coordination of 24-hour care delivery for each PACE enrollee. An in person re-assessment must be conducted at least twice a year.

ADMINISTRATIVE SERVICES DEPARTMENT

1:50

Vendor liability, information technology procurement, XXX
IAB 25, ARC 6809, NOTICE.

These proposed rules were initially reviewed by the committee at its July, 2008 meeting. Iowa Code §8A.311(21) requires the Department of Administrative Services (DAS) to establish a policy for determining when limitation of vendor liability may be acceptable in state procurements for goods and services. These proposed rules apply only to information technology procurements by DAS or on behalf of another state agency.

The enabling legislation prohibits any limitation on liability for intentional torts, criminal acts, or fraudulent conduct. The rules specify certain other obligations or damages that cannot be limited. The proposed rules would in most cases limit vendor liability to two times the amount of the contract. However, the rules also provide discretion to negotiate limited vendor liability. The rules' criteria for allowing limited liability are the same as set out in the statute, with the addition of a section dealing with special circumstances. These are circumstances where the risk to the state is so significant that the statutory criteria are "not appropriate."

NATURAL RESOURCES COMMISSION

No Rep.

Deer hunting by residents, IAB XXXI No. 2, ARC 6933B,
FILED.

This rulemaking proposes changes to the Commission's rules that set season dates, shooting hours, license types, quotas and restrictions, method of take and tagging, reporting requirements for 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

THE RULES DIGEST

-8-

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.

A public hearing was held on April 29, 2008, and 13 comments were received in addition to 50 written comments that were received. Changes have been made to the noticed rules. Item 3, which specifies county quotas, has been added based upon the results of deer population data gathered since the Notice was published. Additionally, Items 6, 7, and 8 were either added or modified to meet the requirements specified in 2008 Iowa Acts, Senate File 2328. These amendments shall become effective August 20, 2008.

* * *

Hunting and trapping of furbearers, IAB XXXI No. 2, ARC 6932B, FILED.

The Commission revises rules relating to season dates, bag limits, possession limits, and areas open to hunting and trapping furbearers. Specifically, the amendments add Harrison, Monona,

Pottawattamie, and Woodbury counties to the area open for taking bobcat. The amendments also increase the quota from 400 to 500 for river otters and from 150 to 200 for bobcats. Restrictions on beaver trapping in Linn County are also eliminated.

The Commission held a public hearing on April 29, 2008, and 15 comments were received. The Commission received an additional 9 written comments regarding this rulemaking. The comments included requests to open the bobcat season statewide and increase limits while other comments requested that the DNR not allow hunting or trapping of bobcats and river otters.

The Commission made no changes to the rules published under notice and the amendments become effective August 20, 2008.

PUBLIC HEALTH DEPARTMENT

No Rep

Smoking restrictions, IAB XXXI No. 3, ARC 6989B and 6990B, NOTICE and FILED EMERGENCY.

2008 Iowa Acts, House File 2212 sets out specific restrictions on smoking; section 8 of the Act delegates both enforcement and rulemaking duties to the Department of Public Health.

THESE RULES WILL BE REVIEWED AT THE COMMITTEES' SEPTEMBER MEETING, FOLLOWING COMPLETION OF THE PUBLIC COMMENT PERIOD.