



IOWA GENERAL ASSEMBLY

Administrative Rules Review Committee

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THE RULES DIGEST

January 2009,

Scheduled for committee review
Friday, January 9th, 2009.
Senate Committee Room #22

Reference
XXXI IAB No. 13(12/17/08)
XXXI IAB No. 14(12/31/08)

HIGHLIGHTS IN THIS ISSUE:

SUBSTITUTE DECISION-MAKER, Elder Affairs Department, 1
CONTINUING EDUCATION, PLUMBERS, Public Health Department 2
LANDFILL CLOSURE, EPC 3
LOW-INCOME HOUSING TAX CREDIT, Iowa Finance Authority 4

TRANSPORTATION DEPARTMENT

9:05

Close clearance: railroad signage, IAB XXXI No. 14, ARC 7451B, NOTICE TERMINATED.

Iowa Code §327F.13 was enacted in 2007, requiring the owner of a railroad track to place a warning device at a location where the "close clearance" between the track and a building, machinery, trees, brush, or other object is such that this limited clearance physically impedes a person who is riding the side of a train.

The Department publish a notice of intended action in July, which was reviewed at the Committees' September meeting. The proposal defined the term "close clearance" and set out placement and dimension requirements for the required warning devise. A representative of the United Transportation Union stated this was the weakest regulation in the nation and urged the adoption of a more comprehensive national code to ensure proper worker safety. Department representatives responded that the statute provided authority to regulate only the size and placement of these signs and that the statute did not provide any authority to adopt a broader safety code.

At the September meeting committee members requested that the Department meet with

stakeholders and resolve this issue. Subsequent discussions have not resolved these differences, and the six-month window for adopting the proposal has passed. A new rule-making will be commenced in 2009.

ELDER AFFAIRS DEPARTMENT

9:15

Office of the substitute decision-maker, IAB XXXI No. 14, ARC 7445B, ADOPTED.

Iowa Code chapter 231E was enacted in 2005, creating the state office of substitute decision maker; the office is to create and administer a statewide network of substitute decision makers to finalize a person's affairs after death or provide other services when there is no willing and appropriate person, such as a guardian, conservator, personal representative, or other representative available to serve in that capacity. Under these rules all substitute decision makers must have graduated from an accredited four-year college or university and be currently certified by the National Guardianship Association. A substitute may serve no more that ten clients at a time.

The rules establish a detailed fee schedule for substitute decision maker services. Fees may be adjusted or waived based on ability to pay; fees

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cannot be assessed on income or support derived from Medicaid.

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Family caregiver support program, IAB XXXI No. 14, ARC 7445B, NOTICE.

This new program is intended to provide support services for persons acting as caregivers to persons aged 60 and over, persons with Alzheimer's disease and for grandparents or persons who are caregivers of related children or persons with disabilities.

These services will be provided by the local Area Aging Agencies and include such things as counseling services, newsletter or other information services, respite care, and chore services.

UTILITIES DIVISION

9:25

Electric load service limiters, IAB XXXI No. 13, ARC 7409B, NOTICE.

The Utilities Board proposes amendments to rules relating to the use of electric load service limiters for residential customers. The Board initiated an inquiry into the use of electric load service limiters to examine were the scope of technology available, the range of applications, and legal and practical issues surrounding the use of electric load service limiters. Currently, only a few municipal utilities or cooperatives use them. The state's two investor-owned electric utilities, Interstate Power and Light Company and MidAmerican Energy Company, currently do not use service limiters. According to the Board, the current rules require updating because of the new technology, and the ambiguities in the current rules regarding when a service limiter can be used. Several groups filed written comments in the inquiry, and a workshop was held on May 14, 2008.

The proposed rules provide that when a customer has defaulted on a first payment agreement and could be disconnected or is eligible for a second payment agreement, the utility may offer the customer a service limiter in conjunction with a subsequent payment agreement as an alternative to disconnection. The loss of service that occurs when the service limit is exceeded is arguably not a disconnection because the proposed

rules provide that service must be able to be restored manually by the customer and also may be restored remotely or automatically within a short period of time. The winter moratorium rules and temperature rules would still apply. For example, a low-income home energy assistance program (LIHEAP) eligible customer who has agreed to a service limiter could not be disconnected during the winter moratorium, although the service limiter could be utilized if the requirements in the proposed rules were satisfied. However, the proposed rules provide that the service limiter could not be placed on the customer's meter without the customer's consent. The LIHEAP-eligible customer could decline the use of a limiter, continue receiving regular service during the moratorium, and be disconnected after April 1 if past-due bills remained.

PUBLIC HEALTH DEPARTMENT

9:50

Continuing education for plumbing and mechanical systems professionals, IAB XXXI No. 13, ARC 7429B, NOTICE.

2007 Iowa Acts, chapter 198, directed the Department of Public Health to establish continuing education requirements for plumbers and mechanical systems professionals. The Department proposes to adopt a new Chapter 30. The proposed rules establish a biennial continuing education compliance period, establish hour requirements, and address the standards governing the criteria for continuing education activities. The rules provide that the plumbing and mechanical systems examining board may conduct audits to review compliance with continuing education requirements and require licensees to retain information about their continuing education courses for a period of two years. A licensee who is the subject of an audit is ineligible for license renewal until the completion of the audit.

The proposed rules provide automatic exemptions from the continuing education requirements of a license biennium for military service, residence in another state while complying with that state's continuing education requirements, and other specified circumstances. The proposed rules also provide permissive exemptions for situations involving exceptional

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hardship or extenuating circumstances and provide the grounds for extending the time in which a licensee may fulfill the continuing education requirements.

A public hearing is scheduled for January 6, 2009, which will include five ICN sites throughout the state.

ENVIRONMENTAL PROTECTION COMMISSION

10:20

Closure of existing MSWLF units, IAB XXXI No. 15, ARC 7474B, ADOPTED.

This rulemaking relates to sanitary landfills for municipal solid waste; the revisions address public comments in a prior rulemaking and an objection placed upon subrule 113.2(8) by the Administrative Rules Review Committee. That subrule was part of a larger rulemaking relating to the operation and environmental regulation of solid waste landfills. In December, the Committee determined that subrule 113.2(8) is unreasonable and stated, "These members are concerned that subrule 113.2(8) constitutes an improper regulatory taking." The legal effect of this objection is to shift the burden of proof to the Department in any legal challenge to the subrule. Such a legal challenge has been filed.

According to the Commission the amendments do no more than allow municipal solid waste landfills to continue to use previously approved landfill cells which have a basal liner and leachate collection system until those cells have been filled and is intended to address questions that have arisen regarding the closure requirements for sites that were closed pursuant to the previous rule requirements.

Changes made to the rules as originally noticed have the following impacts:

- Not to require the installation of a liner on top of existing waste at the next time of construction regardless of site-specific conditions.
- Require the construction of a compliant liner only in those areas that do not already have in place an approved liner and leachate collection system.
- Remove the definition of "liner" so that it is clear that the separatory liner in the

vertical expansion area does not have to be connected to the basal liner in the horizontal expansion area.

- Define that waste disposal on top of or against the side slopes of previously filled MSWLF units is considered a vertical expansion of the underlying unit.

These amendments were adopted by the Commission and will become effective February 4, 2009. With the adoption of a revision to subrule the objection placed on the earlier version of that subrule will no longer be in place.

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Maximum annual Title V operating permit fee, IAB XXXI No. 14, ARC 7473B, ADOPTED.

The Commission adopted this amendment to increase the maximum annual Title V Operating Permit fee on the first 4,000 tons of actual emissions. Currently the fee cap is \$39 per ton. The rules initially proposed an increase to \$62 per ton. According to the Commission, budget projections and estimates of actual emissions indicate that the annual fee will need to be increased to maintain the current level of service in FY 2010 through FY 2015. As a result of public comment, the proposed fee cap was reduced from \$62 per ton to \$56 per ton. This change is estimated to provide sufficient funding for three years rather than the proposed five years. The Commission adopted this rule and it will become effective on February 4, 2009. The Department of Natural Resources will continue to work with interested parties to examine alternative fee scenarios for the period of time beyond three years.

SECRETARY OF STATE

11:20

Revenue purpose statement ballots, IAB XXXI No. 14, ARC 7450B, ADOPTED.

This rulemaking is in response to the enactment of 2008 Iowa Acts, H.F. 2663, the relevant portions of which repealed the requirements for elections to approve or disapprove imposition of or changes in the local option sales and services tax for school infrastructure purposes (SILO). The local option tax has been replaced with a statewide penny sales

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tax that will be used for similar purposes. The new law requires that elections be held to extend or amend previously adopted revenue purpose statements that specify the uses of this sales tax revenue. This amendment rescinds the obsolete rule regarding SILO elections and replaces it with a rule that sets forth the form of ballot to be used whenever the adoption, amendment, or extension of a revenue purpose statement is proposed. The rules require the text of both the current and the proposed revenue statements be placed on the ballot when the ballot initiative involves a proposed amendment to the revenue purpose statement.

During the Committee's August meeting, the Iowa Association of School Boards expressed confusion regarding the difference between an "amended" revenue purpose statement and a "new" revenue purpose statement. In response to the public comment, the rulemaking was changed to clarify that the full text of the revenue purpose statement must be included on the ballot, even for extensions of current revenue purpose statements. The amendment becomes effective on February 4, 2009.

IOWA FINANCE AUTHORITY

Second 2009 Low-income housing tax credit program, IAB XXXI No. 14, ARC 7469B, ADOPTED.

These provisions were initially filed on an emergency basis and published in November. Iowa is annually allocated tax credit authority based on a per-capita amount derived from population estimates. In 2008, IFA's per capita authority was almost six million dollars. The initial 2009 plan was published in September; this revision incorporates changes as a result of the Housing and Recovery Act of 2008, and the Heartland Disaster Tax Relief Act of 2008. In addition to regular tax credits, Disaster Relief Tax Credits are available for projects located in federally-designated disaster affected counties.

There are two types of credits: nine percent credits and four percent credits; each has separate qualifications. There are three set-asides for the nine percent credits. Ten percent of the state credit, and the special disaster relief tax credit, is set-aside for qualified nonprofit organizations. Ten

percent of the state credit is set-aside for rural rental development. Fifteen percent of the state credit is set-aside for contingencies. A single developer is eligible to no more than \$7,000,000 in tax credits.

Applications are scored on a point basis considering a large variety of categories; general factors include: resident profile, location, and building characteristics.

Four percent credits are available in conjunction with projects financed with tax-exempt bonds.

PHARMACY BOARD

Centralized prescription filling and processing, IAB XXXI No. 13, ARC 7427B, ADOPTED.

This rulemaking, adopted by the Board of Pharmacy on November 19, 2008, eliminates the requirement for written authorization from a patient before a pharmacy outsources the filling or processing of a patient's prescription. Rather than obtaining a written authorization, the rules require the pharmacy to display a sign and provide written notice to patients prior to implementing a centralized filling or processing program or prior to providing pharmaceutical services to a new patient. The rules still require the pharmacy to provide the name of the filling or processing pharmacy or notify the patient that the filling or processing pharmacy is under common ownership.

No changes were made to the rules that were published under notice. The rules becomes effective January 21, 2009.