



Iowa General Assembly

2010 Committee Briefings

Legislative Services Agency – Legal Services Division

<http://www.legis.state.ia.us/asp/Committees/Committee.aspx?id=53>

ADMINISTRATIVE RULES REVIEW COMMITTEE

Meeting Dates: [December 14, 2010](#) | [November 9, 2010](#) | [October 12, 2010](#) | [September 14, 2010](#)
[August 16, 2010](#) | [July 13, 2010](#) | [June 8, 2010](#) | [May 10, 2010](#) | [April 13, 2010](#)

Purpose. This compilation of briefings on legislative interim committee meetings and other meetings and topics of interest to the Iowa General Assembly, written by the Legal Services Division staff of the nonpartisan Legislative Services Agency, describes committee activities or topics. The briefings were originally distributed in the Iowa Legislative Interim Calendar and Briefing. Official minutes, reports, and other detailed information concerning the committee or topic addressed by a briefing can be obtained from the committee's Internet page listed above, from the Iowa General Assembly's Internet page at <http://www.legis.state.ia.us/>, or from the agency connected with the meeting or topic described.

ADMINISTRATIVE RULES REVIEW COMMITTEE

[December 14, 2010](#)

Chairperson: Representative Marcella Frevert

Vice Chairperson: Senator Wally Horn

ENVIRONMENTAL PROTECTION COMMISSION, Regulation of Greenhouse Gas Emissions, 11/17/10 IAB, ARC 9224B, FILED.

Background. This rulemaking package stems from a recent federal court ruling in which greenhouse gases, including carbon dioxide, were determined to be air pollutants covered by the federal Clean Air Act. The decision prompted a number of actions by the federal Environmental Protection Agency (federal EPA). Specifically, the federal EPA issued a rule to regulate greenhouse gas (GHG) emissions from stationary sources, including thresholds that specify when GHG permit requirements are required for new and existing facilities. The permitting requirements will be gradually introduced, for new construction by 2011, and by 2013 the Act's Title V operating permit requirements will, for the first time, apply to sources based on GHG emissions of 100,000 tons of carbon dioxide "equivalent emissions," even if the requirements would not apply based on emissions of any other pollutant. Beginning January 2011, power plants, industrial facilities, ethanol plants, state universities, municipal utilities, and other facilities in Iowa that are already considered major sources under the Title V program will be affected under the proposed amendments, as they renew or modify their existing permits. Beginning July 2011, additional sources of GHG emissions, such as ethanol plants, municipal utilities, some hospitals, and some larger landfills, will be classified as major sources under Title V.

Concerns were raised at the September meeting when the rulemaking was noticed about the applicability and cost of the proposed rules, and the Committee approved a request for an informal regulatory analysis.

Commentary. Much of the discussion for this rulemaking centered around the Title V Tailoring Rule. Representatives from the Environmental Protection Commission (EPC) explained that this rulemaking is an implementation of federal standards for greenhouse gas emissions under Title V, to ensure that Iowa's standards match those of the federal Clean Air Act. The representatives explained that the Tailoring Rule allows for states to specify certain categories of sites by rule that will not be pulled into the new Title V regulations. In order to be covered by the Tailoring Rule, Iowa must adopt new rules on permitting requirements that will match the federal standards. If Iowa does not do this, state permits issued to sites by the Department of Natural Resources (DNR) under existing rules may be found to be deficient by the federal EPA, which would result in those sites being pulled into Title V regulation. Representatives stated that this could affect 61,000 sites in Iowa. Representatives noted that all motions to stay the federal rules had been recently denied in the federal District of Columbia Circuit Court.

Concerns were raised by members of the Committee about the effect of the proposed rules on ethanol plants. Other members of the Committee noted that they had received no contact from the ethanol industry regarding the proposed rules, that no industry representatives were present at the meeting, and that no representatives had been present at the September meeting.

Concerns were raised by members of the Committee about the legal uncertainties in this area. There were questions as to the federal EPA's authority in this area, a matter EPC representatives stated may only be settled in the U.S. Supreme Court. There were also questions as to whether the federal EPA would actually take any action against the state of Iowa in this matter. This is in light of the fact that some other states have not considered any rulemaking relating to Title V, and thus the federal EPA would presumably be more concerned about those states.

Committee members asked about the DNR's ability to process permits for the 61,000 sites in question under the current rules, and EPC representatives stated that task would be a difficult undertaking without the proposed rules, and would require additional staff, which would have to be funded from increased fees.

Committee members asked about the level of involvement in the process by the incoming DNR director named by the incoming administration, and EPC representatives stated that there had been no consultation or briefing as of yet.

A motion for a 70-day delay was moved, based on the lack of involvement by the new DNR director, the potential impact on ethanol plants, and concerns about the impact of the proposed rules on job creation. There was also discussion about holding the current permitting process in abeyance after such a delay. The motion failed.

Action. No action taken.

ENVIRONMENTAL PROTECTION COMMISSION, *Air Quality*, 10/20/10 IAB, ARC 9154B, Items 4-7, HELD OVER FROM NOVEMBER.

Background. This rulemaking adopts changes to the Environmental Protection Commission's chapters relating to emission standards for contaminants, excess emissions, and ambient air quality standards. The primary purpose of the proposed amendments is to update state air quality rules by adopting new federal requirements, including adoption of new national ambient air quality standards and adoption of new federal air toxin standards.

During the Committee's previous review of this rulemaking, much of the discussion centered around concerns relating to the rulemaking's application to certain engines utilized by local governments, particularly those used only in emergency situations, as well as concerns about the possibility of energy rate increases in the future. The Committee imposed a 70-day delay at its November meeting.

Commentary. EPC representatives noted that the new requirements will not be imposed on diesel engines immediately. The representatives explained that the federal EPA granted a motion to reconsider the new federal requirements at issue for 60 days. An expeditious ruling is expected after that. The representatives stated that implementation of these standards will be on a case-by-case basis. The representatives stated that after conferring with stakeholders, the impact of this rulemaking on energy rates remains unknown at this time.

Representatives from the Iowa Association of Municipal Utilities stated that they would be submitting feedback for the federal reconsideration, as well as sending staff to comment in person. The representatives explained that affected engines are particularly needed during snow storms and peak demand periods. The representatives further explained that the new regulations will result in new costs, both for capacity lost and to buy new capacity.

Committee members noted that the 70-day delay is still ongoing, and that changes to the rule can be made until January. The possibility was raised of a session delay to allow time for the federal EPA ruling to be issued and considered. Concerns were raised about the validity of the federal EPA's methodology, as well as the possibility that the new federal requirements may incentivize questionable practices in the energy sector. EPC representatives stated that there was no reason for concern about those matters.

Action. No further action taken.

DENTAL BOARD, *Examinations*, 12/01/10 IAB, ARC 9243B, NOTICE.

Background. As part of the licensing process, all licensing boards specify the type of examination that must be taken by applicants for licensure. Iowa Code §147.34 provides in part:

1. Each board shall by rule prescribe the examination or examinations required for licensure for the profession and the manner in which an applicant shall complete the examination process. A board may develop and administer the examination, may designate a national, uniform, or other examination as the prescribed examination, or may contract for such services. Dentists shall pass an examination approved by a majority of the dentist members of the dental board.

Current Dental Board rules identify the proprietary examinations that it will accept for license testing of dentists and hygienists. The proposal removes two current testing providers from the list.

Commentary. Board representatives stated this change was part of an effort to increase board participation in the testing and evaluation process, noting that at one time the board actually administered its own exam. The representatives agreed that senior students currently preparing for one type of examination would be allowed to take that examination.

Opposition came mainly from the University of Iowa Dental School, which contended that all regional examinations are valid and should be available for use. They also noted that when more examinations are made available, the easier it would be for a licensee to obtain licensure by reciprocity in another state.

Committee members urged the board and the various stakeholders to work together and resolve these issues before

adoption of the final rule.

Action. No action taken; there will be additional review on final adoption.

PUBLIC SAFETY DEPARTMENT, *Concealed Weapons Permits, 11/10/10 IAB, ARC 9238B, ADOPTED.*

Background. 2010 Iowa Acts, Chapter 1178 (S.F. 2379) and Chapter 1083 (S.F. 2357) relate to the process for obtaining concealed weapons permits; prior law provided that even if certain criteria were met, the issuing officer had discretion to decide whether a permit should be issued to the applicant. Senate File 2379 provides that an applicant who is not disqualified as provided in Code Chapter 724, and who has completed the required training *shall* be issued a permit to carry weapons for a five-year period. A background check is required.

Commentary. Both the new Iowa law and federal law set out restrictions on who is eligible for a permit. The denial, suspension, or revocation of a permit, either by the department or a sheriff may be appealed to an administrative law judge in the Department of Inspections and Appeals within 30 days; the decision of the judge is final agency action and may be immediately appealed to district court.

These rules were reviewed by the Committee in October 2010. At that time, stakeholders presented a number of areas of concern; the two major issues related to alcohol abuse and the definition of a resident for active duty military personnel. Stakeholders contended that the presence of alcohol abuse required a more precise, scientific measure, they noted that Iowa residents on active duty should retain the right to carry a concealed weapon under Iowa law.

In the adopted rules these issues appear to be resolved.

Action. No action taken.

PUBLIC HEALTH DEPARTMENT, *Volunteer Health Care Provider Program, 12/1/10 IAB, ARC 9245B, NOTICE.*

Background. This rulemaking was adopted to implement statutory changes to the Volunteer Health Care Provider Program (VHCPP). The proposal clarifies language on surgery to be performed in a volunteer health care provider clinic, where surgery can be performed, who can perform the surgery, and the required follow-up for the surgery. The proposal also includes additional definitions in the VHCPP chapter for further clarification on the program

Commentary. Iowa Department of Public Health (DPH) representatives explained that the new language is only for the purpose of clarification.

The Committee heard concerns from the dental community that the proposed rules purport to define the practice of dentistry, which was asserted to be solely the function of the Dental Board. Concerns were raised that the new language would limit the ability of would-be volunteers to provide free dental care, and may be relied on in subsequent rulemaking. Department representatives responded that the new language was undertaken with the agreement of the Dental Board, that volunteers for the program are indemnified, and that the new language is not being asserted to regulate the practice of dentistry as a whole. Representatives of the Iowa Dental Association (IDA) stated that a meeting had been promised between the IDA and DPH on this issue, and no such meeting ever took place. The representatives asserted that DPH has no authority in this area.

The Committee expressed their gratitude for the volunteer work done by volunteers in the program, and their hope that this work would continue.

Action. No action taken.

Next Meeting. The next Committee meeting will be held in Room 116, Statehouse Main Floor, on Tuesday, January 4, 2011, at 9:30 a.m.

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ADMINISTRATIVE RULES REVIEW COMMITTEE

November 9, 2010

Chairperson: Representative Marcella Frevert

Vice Chairperson: Senator Wally Horn

COMMITTEE BUSINESS, *Rules Notices to Legislative Committees, 2010 Iowa Acts, Chapter 1031, §52 (S.F. 2088).*

Background. 2010 Iowa Acts, Chapter 1031, §52 (S.F. 2088), revised the rulemaking process to require, beginning 1/11/2011, that agencies provide notice of rulemaking filings to standing committee chairpersons and ranking members.

Commentary. Mr. Glen Dickinson, Director of the Legislative Services Agency, demonstrated an Internet application that would allow standing committee chairpersons and ranking members to subscribe to the rulemaking notices and adoptions of specific agencies. At the same time the Iowa Administrative Bulletin is published on the Internet, these legislators would receive an e-mail listing each rulemaking filing by the agency along with a very brief description of the subject

matter of the rulemaking filing and a “hot link” to the rulemaking filing itself. Although the statute refers only to a notice, this application would deliver notices of intended action, notices of final adoption, and notices of emergency adoption. Mr. Dickinson also discussed an Internet application that would link rule filings to the Committee minutes and any Digest entry or fiscal note related to a particular filing.

In discussion, Committee members voiced support for delivering final, edited copies of filings instead of the raw documents themselves. It was the consensus that the notice process would provide adequate time to react to any rule issue. Members also accepted that the system would allow chairpersons and ranking members to subscribe to desired rules, instead of having them delivered by each agency. It was noted that legislative leaders would need to be notified about this process. The Committee members also supported plans to make this system available to the public.

Action. No action taken.

ENVIRONMENTAL PROTECTION COMMISSION, *Air Quality*, 10/20/10 IAB, ARC 9154B, FILED.

Background. This rulemaking adopts changes to the Environmental Protection Commission’s chapters relating to emission standards for contaminants, excess emissions, and ambient air quality standards. The primary purpose of the proposed amendments is to update state air quality rules by adopting new federal requirements, including adoption of new national ambient air quality standards and adoption of new federal air toxin standards.

During the Committee’s previous review of this rulemaking, much of the discussion centered around the rules’ possible application to certain combustion engines and stationary existing diesel engines.

Commentary. Committee members expressed appreciation for the work the Department of Natural Resources (DNR) has completed with interested parties during the rulemaking process. However, some Committee members continued to have concerns over the scope of this rulemaking’s application to certain engines utilized by local governments, particularly those used only in emergency situations. Additional concerns were raised about the possibility of energy rate increases in the future.

Action. 70-day delay approved on Items 4, 5, 6, and 7 of the rulemaking.

HUMAN SERVICES DEPARTMENT, *Prior Authorization: Mental Health Drugs*, 11/3/10 IAB, ARC 9175B, ADOPTED.

Background. These rules were initially reviewed by the Committee in August. The Medicaid program offers a full spectrum of prescription drugs. Because of the high cost, some of these drugs must have prior approval before they may be used. This proposed rule implements 2010 Iowa Acts, Chapter 1031, §349 (S.F. 2088), which provides that prior authorization is required for those mental health drugs which are not available with a supplemental rebate. This does not apply to a drug that has a significant variation in therapeutic or side effect profile from other drugs in the same therapeutic class. All established patients are exempted from the new requirement and will not have to switch drugs.

Commentary. Department representatives noted that the cost of prescription mental health drugs is 46 percent of the cost of all Medicaid drugs. The representatives also stated that the preferred drug list (PDL) used to implement prior authorization is not an exclusive list of drugs that are available and approved; all medications are available. The program requires that certain medications, listed on the PDL as nonpreferred, must be approved beforehand. Department representatives stated that clinical efficacy and therapeutic effectiveness are the key factors in determining a drug’s status on the preferred drug list. Drugs not on the list can be approved in a very short time.

Stakeholders agreed that drug efficacy is more important than the actual cost, since an ineffective drug could result in an extended hospital stay. Opponents expressed concern that prior authorization could result in less effective treatment and potential hospitalization of the patient; they contended that different drugs have a variety of effects and side effects, differing with each individual. Committee members expressed concern that patients should receive the most effective drug with little delay.

Action. No action taken.

IOWA FINANCE AUTHORITY, *Low-Income Housing Tax Credit Program—Qualified Allocation Plan*, 10/20/10 IAB, ARC 9160B, NOTICE.

Background. The Iowa Finance Authority proposed amendments to its rules relating to low-income housing tax credits, by replacing the current qualified allocation plan with the 2011 qualified allocation plan, which is incorporated by reference. The qualified allocation plan sets forth the purpose of the plan, the administrative information required for participation in the program, the threshold criteria, the selection criteria, the postreservation requirements, the appeal process, and the compliance monitoring component. The plan establishes fees for filing an application for low-income housing tax credits and for compliance monitoring. The proposed plan also includes limitations on fees charged by architects in completion of low-income housing projects.

Commentary. Many of the comments received by the Committee centered around the proposed limitations on fees charged by architects. Several members of the architectural community asserted that the proposed limitation of 4 percent is not commensurate with the risks undertaken by architects during these projects. According to the architects, fees vary depending on the complexity of the project and appropriate fees should range between 5 and 10 percent. The architects asserted that a 4 percent limitation would severely limit the marketplace for such projects.

Action. No action taken.

NATURAL RESOURCES DEPARTMENT, *Interstate Sale of Nursery Material*, 9/8/10 IAB, ARC 9051B, ADOPTED.

Background. This rule was reviewed at the Committee's October meeting. It was delayed 30 days to allow time for additional review. Iowa law specifically authorizes the department to sell nursery stock, priced to cover all expenses related to the growing of the plants. 2010 Iowa Acts, Chapter 1193, §126 (H.F. 2531), authorizes the department to sell stock in surrounding states.

Commentary. It is estimated this rule would raise some \$120,000 for the conservation fund. Department representatives contended that it would have no impact on Iowa nurseries, because the state nursery is strictly limited to bare-root seedlings, less than four years old.

A number of nursery owners supported the rules, stating that the state nursery provides much of the stock they sell. Opponents stated that the state nursery is in direct competition with their own businesses.

Action. No further action.

NATURAL RESOURCES DEPARTMENT, *Special Event Fee*, 11/3/10 IAB, ARC 9114B, EMERGENCY.

Background. The DNR initially had permit requirements for boating events, but in June added a \$25 fee for each event. This fee was opposed by various boating organizations around the state. They noted that events are held virtually every week and the fees could run up to hundreds of dollars for each club. The Committee imposed a 70-day delay at its June meeting.

Commentary. The department has rescinded the June rulemaking on an emergency basis, restoring the original rules. The department will adopt new rules after the issues have been resolved.

Action. No further action.

REVENUE DEPARTMENT, *Valuation of Agricultural Real Estate*, 10/6/10 IAB, ARC 9113B, NOTICE.

Background. This rulemaking proposes amendments to the rules relating to the valuation of agricultural real estate for property tax purposes. The proposed rules amend the list of applicable data sources used in determining values under the agricultural productivity formula. The rulemaking would make additional changes to reflect changes to the data supplied by the various data sources.

Commentary. The Committee heard concerns from the property assessing community regarding the proposed changes. The concerns included the use and availability of data for pastureland and the types of data used for hay pricing. The Committee also received comments about the overall accuracy and equity of the agricultural real state productivity formula. Department representatives expressed concern over the ability to mediate between the interested parties on the issues raised.

Action. No action taken.

Next Meeting. The next Committee meeting will be held in Room 116, Statehouse Main Floor, on Tuesday, December 14, 2010, at 9:30 a.m.

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ADMINISTRATIVE RULES REVIEW COMMITTEE

October 12, 2010

Chairperson: Representative Marcella Frevert

Vice Chairperson: Senator Wally Horn

ENVIRONMENTAL PROTECTION COMMISSION, *Authorization Permit for Discharge of Biological and Chemical Pesticides*, 9/8/10 IAB, ARC 9056B, NOTICE.

Background. This rulemaking includes various amendments to the commission's chapters relating to wastewater construction and operation permits and pesticide application to waters. Specifically, this rulemaking will allow for the use of a new General Permit (No. 7) to authorize discharge of biological pesticides and chemical pesticides which leave a residue to waters of the United States, as required by a recent federal court decision. The states and the Environmental Protection Agency (EPA) have until April 9, 2011, to issue final general National Pollutant Discharge Elimination System (NPDES) permits for pesticide applications. Coverage under the draft NPDES Pesticides General Permit No. 7 will be required for the application of biological pesticides that results in residue discharges to waters of the United States. The draft permit requires all operators to implement Best Management Practices (BMPs) to minimize discharges resulting from pesticide applications. These BMPs include following label instructions, conducting regular equipment maintenance, and visually monitoring application sites when possible. Larger applicators will have additional requirements, including the submittal of a Notice of Intent for coverage under the permit, the submittal of annual activity reports, and the preparation of pesticide discharge management plans.

Commentary. The commission's representatives explained the differences in requirements for the large applicators (Department of Natural Resources, Department of Transportation, ISU Extension, and a few private applicators) and small applicators. For most applicators the new permit will mean no paperwork except for notification of adverse effects discovered by the applicator. Committee members inquired as to what other states were implementing in response to the federal court ruling. The commission's representative also explained that the rules' use of the term "waters of the United States" is a less stringent standard than the term "waters of the state."

Action. No action taken.

HUMAN SERVICES DEPARTMENT, *Background Checks on Volunteers*, 441 IAC Chapter 119, SELECTIVE REVIEW.

Background. The Department of Human Services is empowered by Iowa Code chapter 237A to regulate child care centers. As part of that regulation, subrule 109.6(6) requires criminal and child abuse record checks for all staff, including volunteers. Checks must be repeated every two years. Additional checks are required for any individual who commits a "transgression." If the department conducts the check on behalf of the facility, a \$35 fee is required. A national criminal history check is also required every four years; this is a criminal history record check from the FBI that is fingerprint-based for which a \$15 fee is required.

Commentary. The Committee reviewed this rule in response to comments that the cost of background checks for parent-volunteers was an unnecessary expense. Iowa law requires a check for a person being considered by a child care facility for "employment" [§237A.5(2)]. The issue was whether a volunteer was an employee under the meaning of the statute. Department representatives stated that the requirements ensure that personnel, whether paid or volunteer, working in care facilities do not pose a threat to children, and that purpose is best served by performing a check on all persons who have contact with the children. The representatives also stated that a check would not be required if the volunteer was not regularly scheduled, was not counted as part of the mandated staffing level, and did not have unsupervised access to the children. The representatives conceded these criteria did not appear in the rule, but they did agree to incorporate them into the rules.

Committee members discussed whether to object to the rules on the grounds that the statutory requirement applied only to employees, not volunteers. Proponents of an objection contended that the department had no authority to modify the specific requirement of a statute. Opponents contended that a broad interpretation of employment was essential to protect children from sexual predators. Following discussion, the objection was withdrawn.

Action. No further action.

NATURAL RESOURCES DEPARTMENT, *Interstate Sale of Nursery Material*, 9/8/10 IAB, ARC 9051B, ADOPTED.

Background. Iowa law specifically authorizes the department to sell nursery stock, priced to cover all expenses related to the growing of the plants. 2010 Iowa Acts, chapter 1193 (H.F. 2531), authorizes the department to sell stock in surrounding states.

Commentary. It is estimated this rule would raise some \$120,000 for the conservation fund. Department representatives contended that it would have no impact on Iowa nurseries, because the state nursery was strictly limited to bare-root seedlings less than four years old.

Committee members noted that the statute specifically authorized out-of-state sales but the members remained concerned over the possible impact on Iowa nurseries. The Committee imposed a temporary, 30-day delay on the filing for the sole purpose of retaining control over the filing until additional discussion and review can take place at the November meeting.

Action. 30-day delay, additional review on November 9, 2010.

PUBLIC SAFETY COMMISSION, *Concealed Weapons Permits*, 9/22/10 IAB, ARC 9085B, NOTICE.

Background. 2010 Iowa Acts, chapter 1178 (S.F. 2379), provides that an applicant who is not disqualified as provided in Iowa Code chapter 724, and who has completed the required training *shall* be issued a permit to carry weapons for a five-year period. Applicants must be 18 for a professional permit and 21 for a non-professional permit.

Commentary. Both the Act and federal law set out restrictions on who is eligible for a permit. The denial, suspension, or revocation of a permit, either by the department or a sheriff, may be appealed to an administrative law judge in the Department of Inspections and Appeals within 30 days; the decision of the judge is final agency action and may be immediately appealed to district court.

Stakeholders presented a number of areas of concern. The two major issues related to alcohol abuse and the definition of a resident for active duty military personnel. Stakeholders contended that alcohol abuse required a more precise, scientific measure, such as the definition of alcoholism in the *DSM-IV* used by mental health professionals. Stakeholders noted that Iowa residents on active duty should retain the right to carry weapons under Iowa law. Department representatives expressed their willingness to work through these and other issues in this proposal.

Action. No action taken; additional review likely when rule is adopted in final form.

Next Meeting. The next Committee meeting will be held in Room 116, Statehouse, on Tuesday, November 9, 2010, at

9:00 a.m.

SPECIAL REVIEW. DNR-Nursery stock, held over from September.

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ADMINISTRATIVE RULES REVIEW COMMITTEE

September 14, 2010

Chairperson: Representative Marcella Frevert

Vice Chairperson: Senator Wally Horn

ENVIRONMENTAL PROTECTION COMMISSION, *Regulation of Greenhouse Gas Emissions, 8/11/10 IAB, ARC 8999B, NOTICE.*

Background. This rulemaking package stems from a recent federal court ruling in which greenhouse gases, including carbon dioxide, were determined to be air pollutants covered by the federal Clean Air Act. The decision prompted a number of actions by the federal Environmental Protection Agency (EPA). Specifically, the EPA issued a rule to regulate greenhouse gas (GHG) emissions from stationary sources, including thresholds that specify when GHG permit requirements are required for new and existing facilities. The permitting requirements will be gradually introduced, for new construction by 2011, and by 2013 the Act's Title V operating permit requirements will, for the first time, apply to sources based on GHG emissions of 100,000 tons of carbon dioxide "equivalent emissions," even if the requirements would not apply based on emissions of any other pollutant.

Beginning January 2011, power plants, industrial facilities, ethanol plants, state universities, municipal utilities, and other facilities in Iowa that are already considered major sources under the Title V program will be affected under the proposed amendments, as they renew or modify their existing permits. Beginning July 2011, additional sources of GHG emissions, such as ethanol plants, municipal utilities, some hospitals, and some larger landfills, will be classified as major sources under Title V.

Commentary. Much of the discussion regarding this rulemaking centered around its potential applicability, including the types and number of facilities that would be impacted. The commission's representative explained the consequences for failing to adopt these rules, including the potential for the EPA to take over certain regulatory functions. Committee members inquired about the potential for waivers for individual sources, the cost of implementing this regulatory scheme, and the potential for increased fees upon permit holders.

Representatives from the regulated community articulated general support for the rulemaking, while also expressing concerns about specific provisions within the proposal. Several requests were made to include automatic repeal provisions in the rules to address adverse court decisions arising from pending litigation. In light of the uncertainty about the impact of this rulemaking, the Committee approved a request for an informal regulatory analysis.

Action. Informal regulatory analysis requested.

ENVIRONMENTAL PROTECTION COMMISSION, *Animal Feeding Operation, 8/11/10 IAB, ARC 8998B, FILED.*

Background. This rulemaking includes a variety of revisions to the Environmental Protection Commission's (EPC) regulation of animal feeding operations. Many of the changes are the result of legislation or reflect current procedures and technical corrections.

Commentary. At issue in this large filing was a provision to extend a current procedure allowing the application of manure on frozen ground when the operation has insufficient manure storage capacity. The rule extends this during the winters of 2010-2011 through 2014-2015. EPC representatives noted that runoff into public waters remains prohibited. This extension was opposed by stakeholders who contended the extension violates the federal Clean Water Act and would increase manure spills in Iowa's waterways. They contended that operators have already had ample time to construct adequate storage facilities.

This extension was supported by a number of Committee members who explained that it is intended to benefit a number of small dairy operations in Northeast Iowa who could not immediately comply with the storage requirement.

Action. Informal regulatory analysis requested.

NATURAL RESOURCES DEPARTMENT, *Special Event Fee, 6/2/10 IAB, ARC 8815B, FILED, 70-DAY DELAY.*

Background. These provisions create a general set of rules applying to boating, all-terrain vehicle (ATV) and snow events, such as an organized race, tournament, exhibition, or demonstration. The fee for each event is \$25. This filing was reviewed at the Committee's June meeting and a 70-day delay was imposed.

Commentary. The fee was opposed by various boating organizations around the state which contended that events are held virtually every week so the fees could run up to hundreds of dollars for each club. Discussions have been ongoing

since the June meeting, but a complete resolution of all issues has not yet been reached. For this reason the department has rescinded this entire rulemaking, on an emergency basis, and will adopt new rules after the issues have been resolved.

Action. No further action. The department will develop a revised set of rules.

PHARMACY BOARD, *Uncertified Pharmacy Technician*, 8/11/10 IAB, ARC 9009B, FILED EMERGENCY.

Background. These amendments have been placed into emergency effect prior to the completion of the “regular” rulemaking process. The original noticed rulemaking, however, has not been terminated. Iowa law requires that pharmacy technicians attain national certification; however, 2010 Iowa Acts, H.F. 2531, §112 extended the deadline for that certification to December 31, 2013, for an uncertified pharmacy technician who was registered prior to January 1, 2010, and who worked as a pharmacy technician for a minimum of 2,000 hours during the 18-month period prior to registration and who continues to work a minimum of 2,000 hours during any 18-month period. The amendments also include modifications to the functions that may be performed by an uncertified pharmacy technician.

Commentary. The board approved one change to the rules as a result of the public comment received. A memorandum was sent to all pharmacies and uncertified pharmacy technicians regarding this rulemaking. Committee members and members of the pharmacy community raised questions about the board’s statutory authority to impose limitations on the functions that an uncertified pharmacy technician may perform. Committee members specifically asked the board’s representative to explain the impetus for such changes to the allowable functions of an uncertified pharmacy technician. The changes were prompted by concerns and specific reports of unsatisfactory performance by such individuals. The board’s representative expressed interest in revisiting the concerns raised and indicated that future amendments could be included in the uncompleted rulemaking that was originally placed under notice.

Action. Objection to portion of rulemaking relating to the duties of uncertified pharmacy technicians.

PHARMACY BOARD, *Artificial Marijuana*, 8/11/10 IAB, ARC 9009B, FILED EMERGENCY.

Background. “K-2” is a popular brand name for a synthetic marijuana, produced under a variety of names and marketed openly as “incense”; however, the products are usually smoked by users. As of yet synthetic marijuana is not regulated by the federal government. In June, an Iowa teenager committed suicide after smoking K-2, sparking a demand for local action.

Commentary. Under Iowa Code Chapter 124 the board has limited authority to temporarily designate a new substance as a controlled substance, pending legislative approval; however, since the federal government has not acted in this area, the board has instead used the provisions of Iowa Code Chapter 124A. Under Iowa Code Chapter 124A the board may designate a substance as an imitation controlled substance, by rule, if that appears to be or resembles a controlled substance. This designation is permanent, although the penalties are less severe. Manufacture or delivery of an imitation controlled substance under Iowa Code Chapter 124A is an aggravated misdemeanor. There is a wider variety of penalties for violation of Iowa Code Chapter 124, up to a class “B” felony.

The Committee supported this action but did feel that the General Assembly should consider whether these substances should be legislatively classified as controlled substances subject to the Iowa Controlled Substances Act (Iowa Code Chapter 124) and thus subjecting sale or possession of these substances to greater criminal penalties.

Action. General referral.

PUBLIC SAFETY DEPARTMENT, *Insurance and Bonding Requirements: Fire Protection System Installers and Maintenance Workers*, 8/25/10 IAB, ARC 9032B, FILED.

Background. Iowa Code Chapter 100D, as enacted by 2008 Iowa Acts, Chapter 1094 (H.F. 2646), and amended by 2009 Iowa Acts, Chapter 91 (H.F. 400) provides for the licensing of fire protection system installers and maintenance workers. This filing sets out the general regulations for this program.

Commentary. Only one subrule was at issue in this filing. Under Iowa Code §100D.4, as a condition of licensure, the applicant must provide “...evidence of a public liability insurance policy and surety bond in an amount determined sufficient by the fire marshal by rule.” In this rulemaking, the Fire Marshal has determined that “requiring liability insurance of the licensee or the licensee’s employer provides adequate protection to the public” and has not imposed any requirements for a surety bond. Opponents of this decision contend that a surety bond serves a different purpose than liability insurance by protecting third parties in cases where the licensee has failed to perform.

Committee members expressed concern over the lack of a surety bond and requested that the department meet with stakeholders to resolve this issue.

Action. 70-day delay. The Committee will review this issue further at the October 12, 2010, meeting.

Next Meeting. The next Committee meeting will be held in Room 116, Statehouse Main Floor, on Tuesday, October 12, 2010, at 9:30 a.m.

SPECIAL REVIEW: Background checks for volunteers assisting at children’s events.

LSA Staff: Stephanie Hoff, Acting Administrative Code Editor, (515) 281-3355

LSA Contacts: Joe Royce, LSA Counsel, (515) 281-3084; Michael Duster, LSA Counsel, (515) 281-4800.

ADMINISTRATIVE RULES REVIEW COMMITTEE

August 16, 2010

Chairperson: Representative Marcella Frevert

Vice Chairperson: Senator Wally Horn

ENVIRONMENTAL PROTECTION COMMISSION (EPC), *Air Quality, Regulatory Analysis, 6/16/10 IAB, ARC 8845B, NOTICE.*

Background. This rulemaking, initially reviewed at the Committee's July meeting proposes various changes to the EPC's chapters relating to emission standards for contaminants, excess emissions, and ambient air quality standards. These amendments update state air quality rules by adopting federal "Performance Standards and National Emission Standards for Hazardous Air Pollutants" (NESHAP). Iowa must adopt these federal standards if the state wants to retain primary jurisdiction for the implementation of this program.

Commentary. The single issue in this rulemaking relates to the federal standard for reciprocating internal combustion engines. This change impacts certain electric companies which maintain large diesel generators for very infrequent use. The new rules apply to stationary existing diesel engines located at both area sources and major sources that meet specific siting, age, and size criteria. The EPC estimates that two-thirds of the diesel engines at power plants will be impacted by these rules—over 300 engines. Required modifications could cost between \$25,000 to \$75,000 for each engine, plus additional annual costs.

Committee members questioned the need for such upgrades for engines that are operational only for a few hours each year. Members urged EPC representatives to work with the stakeholders to minimize the impact on these little-used generators.

Action. No action taken. Committee members requested a copy of the public comments. Further review in October is anticipated.

HUMAN SERVICES DEPARTMENT, *Prior Authorization: Mental Health Drugs, 7/28/10 IAB, ARC 8975B, NOTICE.*

Background. The Medicaid program offers the full spectrum of prescription drugs. Because of the high cost, some of these drugs must have prior approval before they may be used. This proposed rule implements 2010 Iowa Acts, S.F. 2088 §349; the Act requires that prior authorization is required for those mental health drugs which are not available with a supplemental rebate from the drug manufacturer. This does not apply to a drug that has a significant variation in therapeutic or side effect profile from other drugs in the same therapeutic class. All established patients are exempted from the prior authorization requirement, and will not have to switch drugs.

Commentary. Department representatives noted that the cost of prescription mental health drugs is 46 percent of all Medicaid drugs. The representatives also noted that clinical efficacy and therapeutic effectiveness are the key factors in determining the preferred drug list. Stakeholders agreed that drug efficacy is more important than the actual cost, since an ineffective drug could result in an extended hospital stay. Stakeholders expressed concern that a lengthy process to determine the efficacy and effectiveness of a drug that could result in harm to the individual patient.

Action. No action taken. Committee members requested a copy of the public comments. Further review in October is anticipated.

HUMAN SERVICES DEPARTMENT, *IowaCare, 7/28/10 IAB, ARC 8977B, NOTICE.*

Background. The IowaCare program offers limited health care to adults who would not normally be covered by Medicaid. This program covers some inpatient and outpatient services, currently at Broadlawns Medical Center in Polk County and the University of Iowa Hospital and Clinics.

Commentary. In part this proposal would phase-in the IowaCare program to an additional 12-14 federally qualified health centers in Iowa. Committee members noted that neither Cedar Rapids nor Davenport had priority in the proposal, even though they are among Iowa's highest population areas. Department representatives noted that the enabling Act, 2010 Iowa Acts, S.F. 2356, required that the most highly underserved areas on a statewide and regional basis receive priority. The representatives noted that centers would be added as additional funding becomes available.

Action. No action taken.

BOARD OF MEDICINE, *Policy on Chronic Intervention Pain Management, 6/30/10 IAB, ARC 8918B, ADOPTED, HELD OVER FROM JULY.*

Background. This rulemaking sets out standards of practice for the practice of interventional chronic pain management; the rules set out in detail the techniques used in pain management and provide examples of those techniques in use. At the July meeting a motion was made to object to the rule. The objection failed on a five in favor to four opposed vote (an

objection requires six votes).

At the time of the vote an absent member was unsuccessfully attempting to join the meeting by telephone. The Committee agreed to discuss the rule at the August meeting.

Commentary. At the August meeting, discussion centered on whether the vote on the failed motion could be reconsidered. After lengthy discussion, it was determined that past Committee practice required that only a member who voted on the prevailing side (in this situation, a “no” vote) could make a motion to reconsider the July vote.

Action. No further action taken.

BOARD OF NURSING, *Expanded Intravenous Therapy for the Licensed Practical Nurse, 7/14/10 IAB, ARC 8930B, NOTICE.*

Background. This proposal would expand the role of a licensed practical nurse (LPN) in the practice of intravenous therapy.

Commentary. Both the existing rules and this proposal detail additional procedures that the LPN can perform under the supervision of a registered nurse and upon completion of the board-approved expanded intravenous therapy certification course. These additional procedures may only be performed in a licensed hospital, a licensed skilled nursing facility, and a certified end-stage renal dialysis unit.

The LPN must have 1040 hours of practice as a licensed practical nurse, and practice in a licensed hospital, a licensed skilled nursing facility, or a certified end-stage renal dialysis unit. The expanded practice includes the initiation of certain intravenous catheters not to exceed three inches in length, and the administration of certain solutions and antibiotic solutions. The rules also specify procedures which may not be delegated to an LPN.

Board representatives stated this proposal is only an expansion of duties delegated to LPN practice a decade ago, and would allow some services to be performed in a care facility that otherwise would require patient transport to a hospital. This proposal was opposed by some registered nurses who contend that the employing hospital or facility may compel a registered nurse to provide the required supervision, and thus assume responsibility for any harm caused by the LPN. Opponents also noted that the term “supervision” was not defined and could be differently interpreted facility-by-facility. Opponents also question the adequacy of training and experience requirements, noting that experience requirements are actually being reduced.

Action. No action taken, additional review is anticipated upon adoption of this proposal.

PUBLIC SAFETY DEPARTMENT, *Notification of Law Enforcement Agency by Hospital, 7/28/10 IAB, ARC 8942B, EMERGENCY.*

Background. This rulemaking implements 2010 Iowa Acts, S.F. 2352, relating to the emergency hospitalization of a person with a serious mental impairment.

Commentary. Senate File 2352 was enacted in response to a murder which resulted from the improper release of a mental patient from a hospital. The Act provides that if a peace officer delivers a person for emergency hospitalization for a serious mental impairment and an arrest warrant has been issued for or charges are pending against the person, the officer may request that any oral or written court order require the hospital or facility to notify the law enforcement agency prior to discharge of the person from the facility.

Action. No action taken.

Next Meeting. The next Committee meeting will be held in Room 116, Statehouse Main Floor, on Tuesday, September 14, 2010, at 9:30 a.m.

LSA Staff: Stephanie Hoff, Acting Administrative Code Editor, (515) 281-3355.

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Internet Page: <http://www.legis.state.ia.us/aspx/Committees/Committee.aspx?id=53>

ADMINISTRATIVE RULES REVIEW COMMITTEE

July 13, 2010

Chairperson: Representative Marcella Frevert

Vice Chairperson: Senator Wally Horn

BOARD OF MEDICINE, *Policy on Chronic Intervention Pain Management, 6/30/2010 IAB, ARC 8918B, ADOPTED.*

Background. This filing was reviewed by the Committee in April. The board has developed this policy over a number of years and after earlier meetings with the Administrative Rules Review Committee the board determined that the policy should be adopted through the rulemaking process.

Commentary. This rulemaking sets out standards of practice for the practice of interventional chronic pain management. The rules set out in detail the techniques used in pain management and provide examples of those techniques in use.

The rules also describe the process of pain management: comprehensive patient assessment, pain diagnosis, evaluation and selection of treatment options, termination of treatment when appropriate, follow-up care, and collaboration with other health care providers.

The rules also provide that “[i]nterventional chronic pain management is the practice of medicine.” This phrase is the controversial portion of the rule. Board representatives state that the rule does not impact licensed practitioners operating within the scope of their own profession. The board representatives cited Code §148.2, which excludes the following from the practice of medicine:

“4. Licensed podiatric physicians, chiropractors, physical therapists, nurses, dentists, optometrists, and pharmacists who are exclusively engaged in the practice of their respective professions.”

Proponents also state that chronic pain management requires a great level of training and skill and that it would not be provided at every local hospital. Opponents contend that the phrase could be interpreted to mean that interventional chronic pain management is exclusive to the practice of medicine.

Following discussion a motion was made to object to the rule. Staff requested an opportunity to prepare and distribute a draft copy of an objection. That draft was considered later in the meeting. The objection failed on a five in favor to four opposed vote (an objection requires six votes). Discussion ensued and the vote was called into question over whether an absent member was denied a fair opportunity to vote by telephone.

Action. The Committee will discuss the objection at the August 16, 2010, meeting.

UTILITIES DIVISION, *High-Volume Access Service*, 6/30/10 IAB, ARC 8871B, FILED.

Background. The Utilities Board’s adopted rules address high-volume access service (HVAS) and the effect HVAS can have on a local exchange carrier’s (LEC) revenues from intrastate switched access services. In particular, these amendments are focused on situations in which an LEC’s rates for intrastate access services are based, indirectly, on relatively low traffic volumes, but the LEC then experiences a relatively large and rapid increase in those volumes, resulting in a substantial increase in revenues without a matching increase in the total cost of providing access service.

During the public comment period, the board received written comments from the Iowa Telecommunications Association, Rural Iowa Independent Telephone Association, Iowa Association of Municipal Utilities, and various other communications companies. Based on comments received, the board made some modifications to the rules. The rules become effective on August 4, 2010.

Commentary. According to the board’s representative, these rules would establish a trigger to reevaluate the rates being charged for certain access services. The board also asserts that these rules are needed for compliance with statutory requirements. In response to Committee questions regarding the scope of the rules, the board’s representative described the types of telephone calls that are affected. Members of the regulated community expressed concern with a portion of the rules that would expand the list of persons and entities who are allowed to initiate complaints with the board. Much of the discussion of this rulemaking, however, centered around the practice of “traffic pumping,” which is a controversial practice by LECs in rural areas to inflate the volume of incoming calls to their networks. The board also addressed the availability of waivers from these rules. A motion for a 70-day delay failed.

Action. No action taken.

**HUMAN SERVICES DEPARTMENT, *Provider Reimbursement Rates*, 6/30/10 IAB, ARC 8899B, FILED
EMERGENCY, ARC 8900B, NOTICE.**

Background. This rulemaking adopts a series of changes to provider reimbursement rates. At issue is item 13, which strikes a provision allowing Home- and Community-Based Services (HCBS) and certain other providers to retain 2.5 percent of any revenue in excess of adjusted actual cost. Providers contend this “float” is necessary because costs are settled retrospectively, meaning that reimbursement is based on past, not current cost. They contend that it can be 12-18 months before the cost report is approved and the rate increased. Providers maintain the 2.5 percent margin is needed to meet current cost increases. The department states that the filing continues for FY 2010-2011 the rate reductions instituted in December 2009 pursuant to Executive Order 19 for state fiscal year 2009-2010.

Commentary. Several service providers expressed concerns over the reduced reimbursement rates and the resulting elimination of the provider’s margin in determining those rates. According to those providers, the enabling legislation did not contemplate a modification or elimination of the margin component but only a reduction in the reimbursement rate. The department explained how the reimbursements were to be calculated and assured the Committee that the rule would not result in a 5 percent reduction. The parties acknowledged that the current reductions would only apply through June 30, 2011; however, the providers remained concerned that this policy change would become permanent in the future.

Action. No action taken.

Next Meeting. The next Committee meeting will be held in Room 116, Statehouse, on Monday, August 16, 2010, at 9:30 a.m.

LSA Staff: Stephanie Hoff, Acting Administrative Code Editor, (515) 281-3355.

Contact Persons: Joe Royce, LSA Counsel, (515) 281-3084; Michael Duster, LSA Counsel, (515) 281-4800.

ADMINISTRATIVE RULES REVIEW COMMITTEE

June 8, 2010

Chairperson: Representative Marcella Frevert

Vice Chairperson: Senator Wally Horn

ETHICS AND CAMPAIGN DISCLOSURE BOARD, *Independent Campaign Expenditure, 6/2/10 IAB, EMERGENCY, ARC 8795B.*

Background. 2010 Iowa Acts, S.F. 2354, creates new disclosure and other requirements in response to the United States Supreme Court decision *Citizens United v. Federal Election Commission*. The Act was effective upon enactment, April 8, 2010. The decision allows corporations and unions to use their general funds for their own independent political campaign activities, as long as those activities are not coordinated with a candidate's campaign.

Commentary. Noting that Iowa is one of the first states to implement the court decision, an agency representative stated that rule changes fall into four categories:

- The proposal creates a new independent expenditure regulation.
- Restrictions on corporate expenditures are revised in light of court action and the Iowa legislation.
- Restrictions on in-kind contributions are revised.
- Disclaimer clauses are required for corporations and expanded to cover television and video. It was noted that the requirement does not apply to radio or telephone calls.

Action. No action taken.

ENVIRONMENTAL PROTECTION COMMISSION (EPC), *Animal Feeding Operations, 12/16/09 IAB, NOTICE, ARC 8398B.*

Background. This proposal sets out a variety of revisions to the EPC's regulation of animal feeding operations; many of the changes are the result of legislation. Specific changes include those rules relating to separation distances for feeding operations. The definition of "common management" is also expanded. The proposal details standards for dry manure stockpiling. The standards include slope and siting requirements. A detailed rule is added establishing the procedures for applying liquid manure during the winter. Applying manure to snow covered or frozen ground is limited to emergency situations, with specific application requirements.

When applying for a permit for a new operation, if the location contains alluvial soils, the owner must petition the department for a declaratory order or a determination that the confinement feeding operation structure is not in the 100-year floodplain. The proposal sets out additional permitting procedures and requirements. With some exceptions, applicants must provide a livestock odor mitigation evaluation certificate issued by Iowa State University; this evaluation is part of 2008 legislation now codified as Code §266.49. Additional procedures are established for sites located on alluvial soils or karst terrain. A new provision is proposed relating to separation distances for the expansion of existing operations. Different standards are established based on the date of construction.

Commentary. The Department of Natural Resources provided an update to the Committee on a responsiveness summary currently being assembled by the department and provided an overview of this rulemaking. Members of the Committee expressed support for the progress made on these proposed rules. However, the Committee still sought clarification from the department on certain jurisdiction and definition questions. The Committee also sought clarification from the department on the requirements relating to the procedures for storage and applying liquid manure during the winter.

Action. No action taken.

HUMAN SERVICES DEPARTMENT, *Child Care Quality Rating System, 5/19/10 IAB, NOTICE, ARC 8757B.*

Background. The department proposes updates to the child care quality rating system; the system has been in operation for three years.

Commentary. At issue in this proposal is the department's decision to eliminate the use of a child care nurse consultant for the health and safety component of the rating program. The child care nurse consultant is a registered nurse who provides on-site consultation, technical assistance, and training to child care and early education providers regarding health and safety. Department representatives stated this service was paid out of community empowerment initiative funds, and that with recent budget reductions the department does not want to mandate that local community empowerment boards provide this service.

This action was opposed by child care providers and nurses who stated that health and safety is the core component to quality child care. They contended that the nurse consultant provides an objective assessment of the child care facility and provides on-site surveillance of health and safety concerns that cannot be replaced by a college training course or by

a nonhealthcare consultant.

Committee members voiced support for the continued use of nurse consultants and requested that the department meet with stakeholders to resolve this issue.

Action. No action taken, further review is likely when the rule is adopted.

WORKFORCE DEVELOPMENT DEPARTMENT—LABOR SERVICES DIVISION, *Mixed Martial Arts*, 5/5/10 IAB, Notice, ARC 8752B.

Background. Formally called “shoot fighting,” this proposal updates the regulation of mixed martial arts contests.

Commentary. The rules require that an authorized emergency medical technician transport service is on-site during an event, require three judges and two referees, increase the allowed size of a cage, and expand the list of fouls and the appropriate responses to fouls. Committee members questioned the economic impact of these requirements and wondered if this would put some promoters out of business. Division representatives responded that reputable promoters are already doing these things, and that these requirements protect both the fighters and the audience.

Action. No action taken.

NATURAL RESOURCES DEPARTMENT (DNR), *Special Event Fee*, 6/2/10 IAB, NOTICE, ARC 8815B.

Background. The DNR currently has permit requirements only for boating events. These provisions create a general set of rules applying to boating, all-terrain vehicle (ATV) and snow events, such as an organized race, tournament, exhibition, or demonstration. The department may impose special conditions for any special event if deemed necessary to protect the resource or to ensure public safety. The fee for each event is \$25. Code §455A.5(6) gives the department specific authority to adopt a schedule of permit fees.

Commentary. This fee was opposed by various boating organizations around the state. They noted that events are held virtually every week and the fees could run up to hundreds of dollars for each club. Department representatives noted that other clubs, such as ATV groups, also pay this fee. Committee members felt that the department and the stakeholders should attempt to find a compromise, and for that reason imposed a 70-day delay on this filing, with additional review on September 14, 2010.

Action. The Committee imposed a 70-day delay.

Next Meeting. The next Committee meeting will be held in Room 116, Statehouse Main Floor, on Tuesday, July 13, 2010, at 9:30 a.m.

LSA Staff: Kathie West, Administrative Code Editor, (515) 281-3355; Stephanie Hoff, Deputy Administrative Code Editor, (515) 281-3355.

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Internet Page: <http://www.legis.state.ia.us/asp/Committees/Committee.aspx?id=53>

ADMINISTRATIVE RULES REVIEW COMMITTEE

May 10, 2010

Chairperson: Representative Marcella Frevert

Vice Chairperson: Senator Wally Horn

EDUCATION DEPARTMENT, *Iowa Vocational Rehabilitation Services*, 04/07/10 IAB, NOTICE, ARC 8641B.

Background. This rulemaking makes various changes to the vocational rehabilitation services provided by the division of Vocational Rehabilitation. The rules amend certain definitions, clarify eligibility for division services, modify postsecondary education assistance, amend certain rules relating to purchasing by the division, amend certain appeal provisions, and amend provisions relating to the Iowa Self-Employment Program.

Commentary. Department representatives indicated that the rules would be adopted later in that week. Much of the Committee discussion focused on changes to postsecondary education assistance. The department’s rationale for the amendment is to provide postsecondary assistance to a larger number of clients. Under the proposed rules, the amount of assistance to an eligible client in the first or second year of college would be based on the tuition charged by the least expensive Iowa community college. Concerns were raised about the effect on individuals who are already receiving the education assistance and who may see a reduction in the amount of assistance in their second year of participation in the program. Committee members also inquired about the efforts to make transfers from community colleges to four-year institutions more efficient for the student.

Action. No action taken.

INSPECTIONS AND APPEALS DEPARTMENT, *Food Establishments — Inspection of Wild Morel Mushrooms*, 04/21/10 IAB, NOTICE, ARC 8697B, FILED EMERGENCY, ARC 8696B.

Background. The department has adopted by reference the United States Food Code maintained by the U.S. Food and

Drug Administration. The U.S. Food Code includes a general requirement that most mushrooms picked in the wild be individually inspected and found to be safe by an approved mushroom identification expert. The department's rulemaking amends this requirement by adopting an additional provision relating to morel mushrooms. Under the rule, morel mushrooms must be inspected by a certified morel mushroom identification expert before a food service establishment may serve or sell morel mushrooms. The amendment establishes training requirements for a identification expert.

Commentary. Department representatives stated that the recent offering of the morel mushroom training course was attended by over 100 people. Concerns were raised regarding the potential liability of morel mushroom inspectors if injury resulted from the consumption of inspected morel mushrooms. Comparisons were made to other types of inspectors in the food industry and determined that Iowa's law on comparative fault would likely control any litigation on such an issue. Committee members also expressed concern over the rule applicability to sales of morel mushrooms at farmers' markets.

Action. No action taken.

PUBLIC HEALTH DEPARTMENT, *Fluoroscopy*, 04/07/10 IAB, FILED, ARC 8659B.

Background. The department adopted by rule general requirements for the proper use of X-ray equipment and imaging systems by or under the supervision of an individual authorized and licensed "to engage in the healing arts or veterinary medicine." Fluoroscopy is a type of X-ray imaging that can display motion, and is often used in chronic interventional pain management. This rule states that the use of fluoroscopy by radiologic technologists and students shall be performed under the direct supervision of a licensed practitioner (defined as a person licensed or otherwise authorized by law to practice medicine, osteopathy, chiropractic, podiatry, or dentistry in Iowa, or certified as a physician assistant), or an advanced registered nurse practitioner (ARNP). This requirement is directly tied to rules promulgated by the Board of Nursing in July 2009 which allows an ARNP to provide direct supervision in the use of fluoroscopic equipment; the nurse must collaborate "as needed" with a physician. This rulemaking may also be impacted by rules proposed by the Board of Medicine which defines chronic pain management as the practice of medicine.

Commentary. Discussion of the rule included concerns over the amount of education and training that is currently required for the various persons who would be authorized to supervise a procedure using fluoroscopy. Concerns were also expressed about the scope of the rule, which allows all ARNPs, rather than only certified registered nurse anesthetists (CRNAs), to supervise such procedures. Various interested parties provided information to the Committee regarding a survey conducted among the nursing community relating to current practices and the approaches taken in other states on this issue. Committee members also questioned whether the credentialing process undertaken by hospitals and other health care facilities would adequately ensure patient safety.

Action. No action taken.

Next Meeting. The next Committee meeting will be held in Room 116, Statehouse Main Floor, on Tuesday, June 8, 2010, at 9:30 a.m.

LSA Staff: Kathie West, Administrative Code Editor, (515) 281-3355.

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Internet Page: <http://www.legis.state.ia.us/asp/Committees/Committee.aspx?id=53>

ADMINISTRATIVE RULES REVIEW COMMITTEE

April 13, 2010

Chairperson: Representative Marcella Frevert

Vice Chairperson: Senator Wally Horn

EDUCATION DEPARTMENT, *Nutrition and Physical Activity Standards in Schools*, 281 IAC Chapter 58, SELECTIVE REVIEW.

Background. 2008 Iowa Acts, chapter 1187 (S.F. 2425), the "Healthy Kids Act" in part mandates nutritional content standards for foods and beverages sold or provided on school grounds during the school day. These provisions were previously reviewed at the Committee's June 2009 meeting. At that time the Committee referred the rules to the General Assembly, which took no legislative action.

Commentary. The nutritional standards apply to ala carte items or "snack food" sales in vending machines; they do not apply to the nutritional content of food or beverages provided through a school breakfast program or a school lunch program, sold for fund-raising purposes, sold at concession stands, provided by parents, other volunteers, or students for class events, or provided by staff for the consumption by staff or students.

The Committee took testimony from representatives of the Iowa Dietetic Association, who contended that the rules adopted by the department did not fully implement the standards developed by the Nutrition Advisory Panel. The representatives also noted that many sports drinks and flavored waters contain no nutritional value. The Committee also took testimony from the Iowa Beverage Association, which urged consideration of the national standards developed by the industry itself.

Action. General referral to the Legislature.

ENVIRONMENTAL PROTECTION COMMISSION (EPC), *Leak Detection Requirements for Unstaffed Fueling Facilities*, 01/13/10 IAB, ARC 8469B, ADOPTED—70-DAY DELAY.

Background. This adopted filing establishes leak detection requirements for unstaffed fueling facilities. It requires in-line leak detection to shut off the pump and stop fuel flow to the dispenser. In February the Committee objected to these provisions of ARC 8469B on the grounds they are unreasonable and imposed a 70-day delay.

Commentary. The February actions were based on concerns the new detection requirements are unreasonable because of the uncertain economic impact they will have and the lack of evidence that unstaffed dispensing facilities pose a significant problem that justifies the cost of new equipment.

Discussion at the April meeting revealed that the EPC and concerned stakeholders had not had adequate opportunity to discuss these issues. The Committee voted a session delay to allow the parties additional time to resolve any differences. The Committee may rescind this delay at a future meeting.

Action. Session delay.

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM (IPERS), *Contribution Rates and Tax Treatment of Distributions*, 03/10/10 IAB, ARC 8601B, FILED.

Background. This rulemaking amends several chapters relating to the administration of IPERS. The amendments implement new contribution rates for special service members effective July 1, 2010, amend a provision overlooked in a previous rulemaking related to certain wages for a member on unpaid leave of absence, amend demographic reporting requirements for employers, amend the provisions for voluntary suspension of payments to certain retired reemployed members, add provisions for the administration of marital property orders involving same-gender spouses and same-gender former spouses, and add provisions for the tax treatment of distributions to same-gender spouses and same-gender former spouses. No persons attended the public hearing held on February 2, 2010, and no written comments were received. The amendments are effective April 14, 2010.

Commentary. Representatives from IPERS responded to questions from the Committee regarding the need for the portion of the rulemaking relating to same-sex marriage in the state. The IPERS representatives explained that there were no changes being made to IPERS based on the Iowa Supreme Court's recent decision on same-sex marriage. The changes, instead, are the result of an Internal Revenue Service (IRS) inquiry as to how IPERS would comply with the federal Defense of Marriage Act (DOMA) following the Iowa Supreme Court's decision. Compliance with the federal DOMA necessitated some of the changes in this rulemaking, specifically to accommodate the different tax treatments for specified distributions and property. IPERS representatives explained that failing to make these changes and comply with the federal DOMA may result in a delay or disapproval of the IPERS plan that is currently being reviewed by the IRS.

A motion for a session delay on items 7, 8, 10, 12, 13, 14, and 15 was made. The motion failed to receive the required number of votes to impose the session delay.

Action. No action taken.

BOARD OF MEDICINE, *Policy on Chronic Intervention Pain Management*, 03/10/2010 IAB, ARC 8554B, NOTICE.

Background. Since 2007, the board has expressed concern for patient safety in circumstances where high-risk invasive medical procedures and techniques have been performed on patients with chronic pain. In December 2008, the board directed staff to develop a proposed policy statement expressing this concern. To engage stakeholders in a public discussion on the issue, the board placed the draft policy statement on the board's Internet site in April 2009. The draft statement was discussed with board representatives and stakeholders at the May 2009 meeting of the Administrative Rules Review Committee. It was the general opinion of the Committee members that the draft statement would be a rule, even if it was not legally binding, and should be adopted through the rulemaking process. The board withdrew the draft statement, but continued a public dialogue with stakeholders, placing the issue on the board's public meeting agendas throughout 2009 and establishing an ad hoc committee of stakeholders to propose a rule that would address the public safety issues. The ad hoc committee met three times in October and November 2009 and was unable to propose a rule. In February 2010, the board noticed a staff-drafted rule to establish standards of practice for physicians who consider interventional techniques and procedures to treat patients with chronic pain. The rule complements an existing board rule for physicians on the pharmacological treatment of patients with chronic pain.

Commentary. The board proposal sets out standards of practice for the practice of interventional chronic pain management; the rules set out in detail the techniques used in pain management and provides examples of those techniques in use. The rules also describe the process of pain management: comprehensive patient assessment, pain diagnosis, evaluation and selection of treatment options, termination of treatment when appropriate, follow-up care, and collaboration with other health care providers.

The rules also provide that "[i]nterventional chronic pain management is the practice of medicine." This phrase sparked comment from the nursing and dental professions, both of which contended their practitioners also practice pain management. Board representatives responded that the rules are intended to provide guidance to board licensees. Physician groups voiced their support for the proposal.

Action. The Committee took no action on this proposal; members expressed the hope that the board and the various interests could come together and resolve differences without legislative action.

REVENUE DEPARTMENT, *Responsibility of Assessor*, 03/10/10 IAB, ARC 8559B, FILED.

Background. This rulemaking amends the department's rules relating to property taxation. The rules as published under notice require the local assessor to classify property, but not value property, according to its present use and not its highest and best use and provided that a property's value shall not be based on speculative highest and best use not supported by current comparable sales. The original rulemaking resulted from a court ruling that found the department's rules to be noncompliant with statute. When the proposed rules were first reviewed by the Committee, several interested parties expressed concern about the use of the term "speculative" and about potential conflicts with the guidelines and publications of certain industry organizations.

The rules adopted by the department only retain Item 1 from the original rules published under notice. Item 1 removes any reference regarding the valuation of real estate from subrule 71.1(1), which is intended to govern the classification of real estate.

Item 2 published under notice, an amendment to subrule 71.1(2), was unable to be agreed upon by the interested parties and was not adopted. This amendment becomes effective April 14, 2010.

Commentary. Committee members questioned the department about the inability to reach a consensus on Item 2 that was not adopted by the department. Representatives from the department and other interested parties expressed differing views and the potential problems that result from the use of "speculative" sales, particularly in areas described as transitional neighborhoods, where a mix of property classifications may exist or where the use of property in the area is changing. The court ruling that prompted this rulemaking invalidated only the rules pertaining to valuation. Discussion between the committee members and other interested parties included discussion about whether legislative action would ultimately be required to resolve the valuation issue. A motion to refer the issue to the General Assembly was approved.

Action. Referred to General Assembly.

Next Meeting. The next Committee meeting will be held in Room 116, Statehouse Main Floor, on Monday, May 10, 2010, at 9:30 a.m.

LSA Staff: Kathie West, Administrative Code Editor, (515) 281-3355.

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Internet Page: <http://www.legis.state.ia.us/asp/Committees/Committee.aspx?id=53>