

Illinois Regulation is a summary of the weekly regulatory decisions of State agencies published in the Illinois Register and action taken by the Illinois General Assembly's Joint Committee on Administrative Rules. Illinois Regulation is designed to inform and involve the public in changes taking place in agency administration.

New Regulations

Proposed Regulations

RADIOLOGY

The ILLINOIS EMERGENCY MANAGEMENT AGENCY adopted amendments to Parts titled "Registration and Operator Requirements for Radiation Installations" (32 Ill Adm Code 320; 36 Ill Reg 13354), "Fees for Radioactive Material Licensees" (32 Ill Adm Code 331; 36 Ill Reg 13364), and "Quality Standards and Certification Requirements for Facilities Performing Mammography" (32 Ill Adm Code 370; 36 Ill Reg 13369), all effective 11/30/12. The Part 320 rulemaking updates X-ray installation classifications, increases fees for those classifications to cover the cost of the X-ray registration and inspection program, and adds quality assurance requirements for users of digital imaging acquisition systems. Since 1st Notice, IEMA has added a schedule for inspections (annual, every 2 years, or every 5 years) based on the type of radiation hazards found at a facility. However, all facilities are subject to inspection at any time. Also, the definition of a "Class A" installation (those using commercially manufactured cabinet x-ray machines) has been modified. Amendments to Part 331 update a reference to affected use categories. The Part 370 amendments increase the annual cer-

tification fee for certified mammography installations from \$750 to \$1,300 to cover increased program costs, and require every mammography facility with a radiographic unit to be accredited by, or have an application for accreditation pending with, an approved accrediting body (currently, the American College of Radiology). Those affected by these rulemakings include medical facilities that use X-ray equipment and persons licensed or certified as radiologists.

Questions/requests for copies of the 3 IEMA rulemakings above: Traci Burton, IEMA, 1035 Outer Park Drive, Springfield IL 62704, 217/785-9860, TDD-217/782-6133.

HOSPITAL POLICIES

The DEPARTMENT OF PUBLIC HEALTH adopted amendments for "Hospital Licensing Requirements" (77 Ill Adm Code 250; 35 Ill Reg 9), effective 12/3/12. A new Section allows a father or support person to attend a delivery by caesarean birth if authorized by the operating physician and the hospital's Obstetric and Neonatal Service Plan, which includes counseling and other preparation of the at-

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WELL CONSTRUCTION

The DEPARTMENT OF PUBLIC HEALTH proposed amendments to "Illinois Water Well Construction Code" (77 Ill Adm Code 920; 36 Ill Reg 17308) implementing Public Act 97-363 which amend both the Water Well and Pump Installation Contractor's License Act and the Water Well Construction Code. The rulemaking clarifies closed loop well standards and adds requirements for closed well loop contractor certification. (A closed loop well is a sealed, watertight loop of pipe, buried outside of a building foundation, which re-circulates liquid through a heat exchanger.) The rulemaking also revises the definition of "closed loop well" to exclude attached piping and to exclude systems that do not require grouting. DPH also added a new table that clarifies setback requirements between closed loop wells, water wells and sources of contamination and sets new setback requirements for closed loop wells using US Pharmacopeia food grade propylene glycol as a coolant and closed loop wells using other types of coolant. A number of technical changes have also been made such as adding and revising definitions,

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NEW REGULATIONS: Rules adopted by agencies this week.

PROPOSED REGULATIONS: Rules proposed by agencies this week, commencing a 45-day First Notice period. Public comments must be accepted by the agency for the period of time indicated.

☞: Symbol designating rules of special interest to small businesses, small municipalities, and not-for-profit corporations. Agencies are required to consider comments from these groups and minimize the regulatory burden on them.

QUESTIONS/COMMENTS/RULE TEXT: Direct mail or phone calls to the agency personnel listed below each summary. Providing volume and issue number of The Flinn Report or the Illinois Register will expedite the process. Some agencies charge copying fees. However, copy requests do not have to be made under the Freedom of Information Act.

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tendee. Application to DPH for approval of such measures will no longer be required. Further changes update the list of materials incorporated by reference (e.g., American Heart Assn. guidelines) and require telephone orders to be countersigned by the ordering practitioner or another practitioner responsible for the patient's care within 72 hours after the order's issuance and subsequently authorized by the same person. The rulemaking also strikes various specific obstetric standards and refers instead to the Regionalized Perinatal Health Care Code, Guidelines for Perinatal Care, and other source materials. Changes since 1st Notice include the following: Reviews of obstetric and neonatal service plans are required every 3 years (formerly, every 2 years). Level I nurseries must assign at least one registered nurse and one RN or licensed practical nurse to each shift (instead of two RNs per shift). Rules requiring immediate placement of newborns in incubators to keep them warm were clarified by stating that they apply to "non-stable" infants; stable infants are to be placed in direct skin contact with the mother after delivery. A definition of "non-birthing center hospitals" was added and the definition of "Level II Hospital with Extended Neonatal Capabilities" was corrected. Other changes clarify policies regarding hand washing in obstetric/neonatal departments, assessment of fetal lung maturity prior to an elective delivery, and information included in an infant's medical record. Those affected by this rulemaking include hospitals and medical staff.

☞ EMERGENCY MEDICAL SERVICES

Also, DPH adopted amendments to "Emergency Medical Services and Trauma Center Code" (77 Ill Adm Code 515; 36 Ill Reg 11937), effective 12/3/12. The rulemaking revises the list of recommended pediatric equipment for emergency departments to include pediatric and adult sized clear, standard masks and pediatric and adult sized, clear partial-non-rebreather or

non-rebreather masks and removes gastric lavage equipment from the list. DPH also modified Pediatric Critical Care Center plan application requirements to require submission of a completed Credentials of Fast Track Physicians form for physician staff, a completed pediatric disaster preparedness checklist and a curriculum vitae for the pediatric physician champion on staff. Emergency medical service providers and hospitals are affected.

Questions/requests for copies of the 2 DPH rulemakings above: Susan Meister, DPH, 535 W. Jefferson St., 5th Fl., Springfield IL 62761, 217/782-2043, e-mail: dph.rules@illinois.gov.

DEFERRED COMPENSATION

The ILLINOIS STATE BOARD OF INVESTMENT adopted amendments to "State of Illinois Employees' Deferred Compensation Plan" (80 Ill Adm Code 2700; 36 Ill Reg 13539), effective 1/1/13, that permit participants to borrow from their deferred compensation accounts under a loan program largely administered by the plan's recordkeeper (currently T. Rowe Price). Board responsibilities under this loan program include resolving all loan claims and loan claim appeals to the extent these responsibilities have not been otherwise delegated by the Board. Recordkeeper responsibilities include processing all loan applications, repayments, loan defaults and reamortizations as well as communicating with participants regarding various aspects of the loan program. Credits and debits to a participant's account from loans, repayments or defaults shall be documented on the participant's quarterly statement. Loans may be made only to employee participants and loan amounts must be between \$1,000 and the lesser of \$50,000 or one-half of the participant's account balance. The repayment period is 1-5 years and is nonrenewable. Loan amounts cannot be changed or revoked by the participant once the loan is made. The interest rate will be fixed at 1% above the prime rate published in *The Wall Street*

Journal on the last business day of the month preceding the month in which the loan was made. All loans are secured by the participant's remaining account balance and any outstanding loan must be repaid in full before a participant may apply for a new loan. Participants may appeal to the Board if a loan is not approved. Failure to make timely payments shall result in a default, for which the participant's account balance will be adjusted by the recordkeeper in accordance with applicable tax laws. Since 1st Notice, ISBI has removed a provision allowing 15-year loans for the purpose of purchasing a principal residence, and has added language explaining the loan initiation process and procedures for paying off a loan early.

Questions/requests for copies: Linsey Schoemehl, ISBI, 180 N. La Salle St., Ste. 2015, Chicago IL 60610, 312/793-1486, e-mail: linsey.schoemehl@illinois.gov.

☞ NURSING HOMES

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES adopted an amendment to "Long Term Care Reimbursement Changes" (89 Ill Adm Code 153; 36 Ill Reg 8128), effective 12/1/12, regarding changes in tax status and changes in the corresponding component of the capital rate when long term care facilities change ownership. In the case of non-profit facilities that become for-profit facilities and are added to local real estate tax rolls after 12/31/11, the rulemaking states that the facility must request in writing that the real estate tax component be added to its capital rate and must include a copy of the facility's first notice of assessment or property tax bill. These documents must include the initial date of the tax assessment, and the addition of the real estate tax component will be effective as of that date provided the request is submitted to DHFS within 2 years after the change of ownership date recognized by the Department of Public Health. If the request is received more than 2 years after change of owner-

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ship, the real estate tax component will be added as of the first day of the following month. For facilities that had been assigned a median tax rate but have since begun paying their full tax rate, the facility must request DHFS in writing to update its rate and must also include a copy of the tax bill. The updated rate will be effective the first day of the month after DHFS receives the request. Long-term care facilities that have recently changed ownership may be affected by this rulemaking.

MEDICAL ASSISTANCE

DHFS also adopted an emergency amendment to "Medical Assistance Programs" (89 Ill Adm Code 120; 36 Ill Reg 17549), effective 12/3/12 through 6/30/13 in accordance with the SMART Act (PA 97-689). The amendment specifies the types of medical providers that may participate in the Recipient Restriction Program (RRP), which limits medical assistance recipients to a single provider if DHFS determines that the recipient has used excessive or medically unnecessary medications, services or other goods. Those affected by this rulemaking include physicians, dentists, pharmacists, vendors of durable medical equipment, and other medical, mental health, or therapy providers.

Questions/requests for copies of the 2

DHFS amendments above: Jeanette Badrov, DHFS, 201 S. Grand Ave. East, 3rd Fl., Springfield IL 62763-0002, 217/782-1233.

FLOODED VEHICLES

The SECRETARY OF STATE adopted emergency amendments to "Certificate of Title, Registration of Vehicles" (92 Ill Adm Code 1010, 36 Ill Reg 17580, effective 11/28/12, for a maximum of 150 days. An identical proposed amendment appears in this week's *Illinois Register* at 36 Ill Reg 17374. These rulemakings create procedures to identify vehicles that have been in flooded areas affected by natural disasters. Requests for certificates of title for vehicles that were last registered in a flooded area will be checked against the National Insurance Crime Bureau (NICB) database to determine if the vehicles were flood damaged. If the vehicle is not on the register, the application must include a flood disclosure statement. Any vehicle that is registered as flood damaged on the NCIB database or whose application does not have a flood disclosure statement will be issued an Illinois salvage certificate branded "flood". When a flood disclosure statement accompanies a title application, the SOS will issue a certificate of title or salvage certificate based on the statement. These procedures may be

used for up to one year after the date of a natural disaster is declared.

Questions/requests for copies/comments on the proposed rulemaking through 1/28/13: Cynthia Grant, SOS, 298 Howlett Building, Springfield IL 62756, 217/785-3094, e-mail: cgrant@ilsos.net.

AABD BENEFITS

The DEPARTMENT OF HUMAN SERVICES adopted emergency amendments to "Aid to the Aged, Blind or Disabled" (89 Ill Adm Code 113; 36 Ill Reg 17567), effective 12/1/12 until 6/30/13, implementing a provision of the SMART Act (Public Act 97-869) that aligns annual increases to the professional funeral services and burial expenses exemption to increases in the Consumer Price Index. The identical proposed rulemaking appears in this issue of the *Illinois Register* at 36 Ill Reg 17306. The rulemakings also increase the exemption from \$4,000 to \$5,874 for each individual and his or her spouse.

Questions/requests for copies/comments concerning the proposed rulemaking through 1/28/13: Tracie Drew, DHS, 100 S. Grand Ave. E., 3rd Fl., Springfield IL 62762, 217/785-9772.

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updating incorporations by reference, and revising terminology for consistency with DPH rules. This rulemaking contains numerous amendments that cannot adequately be summarized here. For further information please contact DPH staff listed below. Businesses that install or service closed loop wells are affected.

Questions/requests for copies/comments through 1/28/13: Susan Meister, DPH, 535 W. Jefferson St., 5th Fl., Springfield IL, 62761, 217/782-2043, e-mail:

dph.rules@illinois.gov.

HORSE RACING

The ILLINOIS RACING BOARD proposed amendments to "Medication" (11 Ill Adm Code 603; 36 Ill Reg 17367), that update an incorporation by reference to Association of Racing Commissioners International Uniform Classification Guidelines for Foreign Substances to reflect penalties for Class 4 and 5 drug violations. An identical emergency rulemaking was

adopted at 36 Ill Reg 17131, effective 11/28/12, for a maximum of 150 days.

Questions/requests for copies/comments through 1/28/13: Mickey Ezzo, IRB, 100 W. Randolph, Ste. 7-701, Chicago IL 60601, 312/814-5017.

WATER POLLUTION

The ENVIRONMENTAL PROTECTION AGENCY proposed amendments to "Permit Fees for National Pollutant Discharge Elimination System Permits

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and Domestic Sewage Sludge Generator or Sludge User Permits" (35 Ill Adm Code 325; 36 Ill Reg 17297) that require permit holders to sign permit termination or modification requests (currently, rule requires written requests to be sent to the Agency but does not specify that they be signed). The rulemaking also implements Public Act 97-962 that sets new fees for large, medium and small concentrated animal feeding operations (CAFOs) as defined by federal regulation. The fees are \$750, \$350 and \$150, respectively. Entities affected by this rulemaking include small businesses that are CAFOs.

Questions/requests for copies/comments through 1/28/13: Joanne M. Olson, EPA, 1021 N. Grand Avenue East, PO Box 19276, Springfield IL 62794-9276, 217/782-5544; email joanne.olson@illinois.gov.

CAPITAL PROCUREMENT

The CAPITAL DEVELOPMENT BOARD proposed amendments to "Selection of Architects/Engineers (A/E)" (44 Ill Adm Code 1000; 36 Ill. Reg. 17192) to address minority and female contracting initiatives for architects and engineers in capital construction projects. The agency's selection committee has added minority and/or female ownership status of the A/E firm or its consultants as a criterion for making recommendations. For projects with an estimated basic services fee of \$75,000 or more, CDB shall set goals for minority and female owned businesses, which will be described in the CDB Professional Services Bulletin. Such goals shall be based on the availability of minority or female business in the area of the work. CDB may waive goals for a project if it determines there are no eligible firms to perform the work in the area, or if the work does not lend itself to the use of consultants. No A/E firm that fails to meet the goal shall be considered unless it provides sufficient evidence that, after a good faith effort, it was unable to find sufficient minority and female businesses able to perform the

work. An A/E firm attempting to demonstrate a good faith effort to meet the minority and female business goals shall submit all information stating why the goal could not be met; a list of firms that were contacted; copies of all solicitation letters to minority and female firms stating the project title and location, classification of work for which consultants were sought, and response information; and return acknowledgements of the solicitations, among other information. In evaluating whether an A/E firm made a good faith effort, CDB shall consider the number of minority and female firms contacted; whether the work to be allocated to minority and female business was selected in order to increase the likelihood of achieving the goal; whether the A/E firm negotiated in good faith with minority and female businesses; and, whether the firm engaged CDB's Fair Employment Practices Division to provide referrals. This rulemaking will affect small businesses that bid on State capital construction projects.

Questions/requests for copies/comments through 1/28/13: Thomas Klein, CDB, 401 S. Spring St., 3rd Fl., Stratton Building, Springfield IL 62706, 217/782-0700, Fax: 217/524-0565, e-mail: Thomas.klein@illinois.gov.

ABUSE REPORTS

The DEPARTMENT OF CHILDREN AND FAMILY SERVICES proposed amendments to "Confidentiality of Information of Persons Served by the Department of Children and Family Services" (89 Ill Adm Code 431; 36 Ill Reg 17289) extending the period the Department must keep records of unfounded abuse reports from non-mandated reporters to 12 months (currently 30 days). Records of unfounded reports involving Department wards (regardless of the report source) must also be kept for 12 months (currently 60 days).

BACKGROUND CHECKS

DCFS also proposed amendments to

"Background Checks" (89 Ill Adm Code 385; 36 Ill Reg 17278) that bar from DCFS child care licensure after 7/31/12 any applicant convicted of any of 11 financial or fraud-related felonies who would have access to confidential financial information or billing-related documentation. Child care providers may be affected.

Questions/requests for copies/comments on the 2 DCFS rulemakings through 1/28/13: Jeff Osowski, DCFS, 406 East Monroe, Station #65, Springfield IL 62701-1498; 217/524-1983.

STATE EMPLOYEES

The DEPARTMENT OF CENTRAL MANAGEMENT SERVICES proposed amendments to "Pay Plan" (80 Ill Adm Code 310; 36 Ill Reg 17198), changing Merit Compensation System (MS) pay rates assigned to 96 job titles. Other changes assign MS pay rates to the Cancer Registrar and Educator Trainee titles; assign Public Service Administrator (PSA) Option 6 positions to new bargaining units; update the list of PSA Options; and add certain PSA options to a list of bargaining unit pay rates affected by a fiscal year 2012 pay freeze. Also, the rulemaking removes two titles from a list of those represented by the Sheet Metal Workers International Association in accordance with the results of a bargaining unit election.

Questions/requests for copies/comments through 1/28/13: Jason Doggett, DCMS, 504 Stratton Bldg., Springfield IL 62706, 217/782-7964, fax 217/524-4570, e-mail: CMS.PayPlan@illinois.gov.

SUCSS PUBLIC HEARING

The STATE UNIVERSITIES CIVIL SERVICE SYSTEM will hold a public hearing on Thursday, Jan. 3, from 1 to 4 p.m. at SUCSS headquarters, 1717 Philo Road, Suite 24, Urbana. The hearing concerns a proposed amendment to "State Universities Civil Service System" (80 Ill Adm Code 250; 36 Ill Reg 3840), published in the 3/9/12

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Illinois Register. The amendment allows the University Civil Service Merit Board, which currently determines which positions will be exempt from civil service regulations, to delegate this authority to the agency's executive director. Oral testimony will be

limited to no more than 15 minutes and a written copy of the testimony must also be submitted.

Questions regarding the hearing or the proposed rulemaking: Lewis T. (Tom) Morelock, Executive Director, or Abby

Daniels, Manager/Legal Services, SUCSS, 1717 Philo Road, Suite 24, Urbana, IL 61802, 217/278-3150, e-mail: tomm@sucss.illinois.gov or abbyd@sucss.illinois.gov.

JCAR Meeting Action

At its 12/11/12 meeting, the Joint Committee on Administrative Rules voted to withdraw one suspension of an emergency rulemaking, object to a proposed rulemaking and issue a recommendation concerning another proposed rulemaking.

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

With regard to the DHFS emergency rule titled "Hospital Services" (89 Ill Adm Code 148; 36 Ill Reg 10326), JCAR withdraws its suspension of Section 148.70(g) of this rule contingent upon and effective with the Department adopting the agreed upon emergency amendments to this rule. The Committee originally issued the suspension at its 8/14/12 meeting. This rule (concerning Medicaid payments to hospitals for treatment of hospital acquired conditions) is among a series of DHFS emergency rules effective 7/1/12 through 6/30/13 under the extraordinary rulemaking authority of the SMART Act (PA 97-689).

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

JCAR objects to the DCMS rulemaking titled "Day Care" (80 Ill Adm Code 1300; 36 Ill Reg 14460) because the Part governs procurement of child care services by State agencies and DCMS under statutes that conflict with, or have been supplanted by, changes to the Procurement Code granting procurement authority to the Chief Procurement Officer for General Services (CPO-GS). An Objection will permit DCMS to withdraw this rulemaking and develop with the CPO-GS further rulemaking or legislation to address the statutory conflict.

DEPARTMENT OF AGRICULTURE

With regard to the DOA rulemaking titled "General Operations of the State Fairs and Fairgrounds" (8 Ill Adm Code 270; 36 Ill Reg 12940), JCAR recommends that in the future, the Department be more timely in implementing statutory mandates to adopt rules. The rulemaking establishes rules for bartering and exchange of State Fair tickets in return for volunteer, promotional and other services. Since 2004 the State Fair Act has required DOA to adopt rules for this purpose.

Second Notices

The following rulemakings were moved to Second Notice this week by the agencies listed below, commencing the JCAR review period. The rulemakings will be considered at JCAR's January 8, 2013 meeting.

IL COMMERCE COMMISSION

"Guidelines for Land and Right-of-Way Acquisitions" (83 Ill Adm Code 300) proposed 7/20/12 (36 Ill Reg 10558)

SECRETARY OF STATE

"Cancellation, Revocation or Suspension of Licenses or Permits" (92 Ill Adm Code 1040) proposed 10/19/12 (36 Ill Reg 15189)

POLLUTION CONTROL BOARD

"Definitions and General Provisions" (35 Ill Adm Code 211) proposed 5/11/12 (36 Ill Reg 6913)

"Organic Material Emission Standards and Limitations" (35 Ill Adm Code 215) proposed 5/11/12 (36 Ill Reg 6934)

"Organic Material Emission Standards and Limitations for the Chicago Area" (35 Ill Adm Code 218) proposed 5/11/

12 (36 Ill Reg 6950)

"Organic Material Emission Standards and Limitations for the Metro East Area" (35 Ill Adm Code 219) proposed 5/11/12 (36 Ill Reg 6975)

"Special Waste Hauling" (35 Ill Adm Code 809) proposed 10/5/12 (36 Ill Reg 14600)