

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

☞ WAGE REPORTING

The DEPARTMENT OF EMPLOYMENT SECURITY adopted amendments to "Wages" (56 Ill Adm Code 2730, 36 Ill Reg 18065), "Employment" (56 Ill Adm Code 2732, 36 Ill Reg 18067), "Notices, Records, Reports" (56 Ill Adm Code 2760, 36 Ill Reg 18069), and "Payment of Unemployment Contributions, Interest and Penalties" (56 Ill Adm Code 2765, 36 Ill Reg 18072), effective 5/14/13, implementing Public Act 97-689 (SMART Act). Identical emergency amendments were effective 12/17/12. The Act requires DES to check employer reports of income and unemployment insurance payment information and employment information in its new hire directory database to protect against duplicate or fraudulent approvals of medical assistance. The amendments allow for the option of monthly reporting of tips and wages in addition to quarterly reporting by an employer. The amendments also make changes to the reporting requirements for employers who have filed for reorganization under the federal Bankruptcy Code. Additionally, the amendments set out guidelines for filing the wage report and how to report any wages that were paid in excess to an employee.

Standards for electronic filing are set for the 4th quarter of 2012 and for any subsequent filing period. The number of employees per calendar year that are required for an employer to file its wage report is reduced to 25 from 250. Finally, the amendments establish criteria for waiving reporting requirements. An employer may receive a temporary waiver of penalties for not filing its wage report electronically if an employer has more than 25 but less than 250 employees for the first 2 months of the calendar year if the employer submits its wage report for the third month or quarter electronically. The employer does not have to apply for the waiver. Some small businesses will be affected.

Questions/requests for copies of the 4 DES rulemakings above: Gregory Ramel, DES, 33 S. State St.-Room 937, Chicago, IL 60603, 312/793-4240.

☞ PROFESSIONAL REGULATION

The DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION adopted amendments to "Administrative Procedures for General Professional Regulation under the Administrative Code" (68 Ill Adm Code 1130,

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☞ EXPLOSIVES

The DEPARTMENT OF NATURAL RESOURCES proposed amendments to the Part titled "The Illinois Explosives Act" (62 Ill Adm Code 200; 37 Ill Reg 7230) that overhaul the explosives code and add numerous new Sections. Topics addressed include marking of explosives, information required on shipping containers, records for transferring explosive materials, availability of records, exemptions, transportation of materials on the same vehicle, scope of the explosives license, notice of licensure/renewal to local law enforcement, application and qualification for licensure, and refusal to issue an individual or temporary license. Other amendments address daily reporting and maintenance of records, inspections by DNR, enforcement actions, notice of violation, assessment of fines and the dollar amount of those fines, suspension or revocation of licenses and storage certificates, disposal of explosives, surrender or seizure of licenses or certificates, notice of DNR's intended action, request for or notice of a hearing, the proceedings of a hearing, pre-hearing conferences and final administrative decisions. Additionally,

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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.

New Regulations

37 Ill Reg 2405), effective 5/31/13, establishing aggravating and mitigating factors DFPR will consider when determining disciplinary sanctions for violating any licensing act it administers. Aggravating factors include the seriousness or number of offenses, a prior disciplinary history, the impact of the offense on injured parties, or the vulnerability of an injured party (e.g., due to age, disability or mental illness). Mitigating factors include lack of a prior disciplinary history, cooperation with investigators, self-reporting of misconduct, contrition for the offense, or voluntary remedial actions (e.g., restitution to victims). Those affected by this rulemaking include anyone who holds a license regulated by DFPR and their representatives.

Questions/requests for copies: Craig Cellini, 320 W. Washington, 3rd Floor, Springfield IL 62786, 217/785-0813.

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: Joanne M. Olson, IEPA, 1021 N. Grand Avenue East, PO Box 19276, Springfield IL 62794-9276, 217/782-5544; email joanne.olson@illinois.gov.

WATER QUALITY

The POLLUTION CONTROL BOARD adopted an amendment to "Water Quality Standards" (35 Ill Adm Code 302; 37 Ill Reg 2436), effective 5/16/13, that correct typographical errors in the preceding rulemaking on the Part (36 Ill Reg 18871) in the reporting requirements for the standards for fluoride and manganese. In Section 302.208(b) the word "metals" should have been stricken throughout the Section, and in Section 302.208(e) under the category "manganese" the word "dissolved" should have been added.

Requests for copies: Chad Kruse, PCB, 100 W. Randolph, Ste. 11-500, Chicago IL 60601, 312/814-5053, e-mail: Chad.Kruse@illinois.gov. Please reference docket R11-18(B).

☞ WATER POLLUTION

The ILLINOIS ENVIRONMENTAL PROTECTION AGENCY adopted amendments to "Permit Fees for National Pollutant Discharge Elimination System Permits and Domestic Sewage Sludge Generator or Sludge User Permits" (35 Ill Adm Code 325; 36 Ill Reg 17297), effective 6/1/13, that require permit holders to sign permit termination or modification requests (formerly, rule required written requests to be sent to the Agency but did not specify that they be signed). The rulemaking also implements Public Act 97-962

☞ INDOOR POLLUTANTS

PCB also adopted amendments to

rules titled "Tiered Approach to Corrective Action Objectives" (TACO) (35 Ill Adm Code 742; 36 Ill Reg 7340), effective 7/15/13, concerning methods for remediating environmental hazards. The amendments add indoor inhalation (e.g., seepage of vapors into a building from chemicals in soil or groundwater) as a possible exposure route for pollutants, list various substances that can pose such a hazard, and revise the levels of toxicity in accordance with USEPA standards. Provisions for addressing an indoor inhalation hazard via the TACO program tiered approach are added, and means for managing a hazard via building control technologies are included. Other changes, too numerous to mention in their entirety, are included. Since 1st Notice PCB has clarified when certain remediation objectives for indoor inhalation exposure can be used, and has added requirements for notifying students, parents, the IEPA and school officials when building control technologies at a school are inoperable for 5 consecutive calendar days or more. Those affected by this rulemaking include small business, municipal, or non-profit facilities that may be exposed to an indoor inhalation hazard.

Requests for copies: Richard McGill, PCB, 100 W. Randolph, Ste. 11-500, Chicago IL 60601, 312/814-6983 or download copies at www.ipcb.state.il.us, e-mail: richard.mcgill@illinois.gov. Please reference docket R11-9.

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the rulemaking updates several appendixes regarding storage of explosives and increases fees for licensure and storage certificates. There are modifications to the construction or use of most types of storage magazines and major modifications to rules governing records of transactions and the reporting of theft or loss of explosive materials, injuries, accidents or incidents. Cross references and incor-

porations by reference to the Code of Federal Regulations and other national standards are added or updated. Activities and materials that are exempt from the licensing requirements in this Part include agricultural fertilizers (when used for agricultural purposes); contract or common hauling of explosives authorized by the Interstate Commerce Act or the Illinois Commerce Commission; the posses-

sion and use of primers or propellant powders for reloading ammunition (under 25 lbs of powder or 5 lbs. of black powder and primers in suitable containers); and the acquisition, possession, use, transfer or disposal of explosives in connection with mine, quarry, construction, manufacturing, or wholesale or retail sales provided that the operation is overseen or monitored by an individual who meets the

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stated criteria. This rulemaking may affect small businesses, municipalities that use explosives and units of local government that have licensees or storage magazines within their jurisdictions.

Questions/requests for copies/comments through 7/15/13: Julia Lawrence, DNR, One Natural Resources Way, Springfield IL 62702-1271, 217/782-1809.

TEACHER CREDENTIALS

The STATE BOARD OF EDUCATION proposed amendments to five Parts: "New Teacher Induction and Mentoring" (23 Ill Adm Code 65; 37 Ill Reg 7356); "Agricultural Education Program" (23 Ill Adm Code 75; 37 Ill Reg 7363); "Calculation of Excess Cost under Section 18-3 of the School Code" (23 Ill Adm Code 140; 37 Ill Reg 7380); "Illinois Hope and Opportunity Pathways through Education Program" (23 Ill Adm Code 210; 37 Ill. Reg. 7385); and "Transitional Bilingual Education" (23 Ill Adm Code 228; 37 Ill Reg 7400). The first four rulemakings make technical changes reflecting SBE's shift from teacher certification to educator licensure. Revisions to Part 228 implement some of the recommendations from the report of the Illinois Advisory Council on Bilingual Education (IACBE) issued pursuant to PA 97-305. Changes include the following: switching terminology from "limited English proficient" (LEP) to "English learner" (EL); specifying criteria other than limited English proficiency that could be used in determining whether to place English learners in transitional bilingual education settings; updating learning standards to most recent version; clarifying role and composition of parent advisory committees; and updating terminology and cross-references.

Questions/comments/requests for copies on the 5 SBE rulemakings through 7/15/13: Shelley Helton, Agency Rules Coordinator, Illinois State Board of Education, 100 North First Street, S-493, Springfield, Illinois 62777-0001, phone:

217/782-5270, e-mail: rules@isbe.net.

BIRTH CENTERS

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES proposed amendments to the Part titled "Specialized Health Care Delivery Systems" (89 Ill Adm Code 146; 37 Ill Reg 7191) that allow birth centers (freestanding sites with no more than 10 beds where women may plan to give birth if they anticipate normal deliveries following low-risk pregnancies) to receive medical assistance reimbursement. A birth center must be licensed by the Department of Public Health and maintain all records required by DPH and DHFS in order to participate in medical assistance. DHFS will pay for services the center is licensed to provide, and any medically necessary observation services, at the billed rate or 75% of the rate paid to hospitals for uncomplicated normal births, whichever is lower. A transfer fee, capped at 15% of the average payment to a hospital for a normal delivery, will be paid to the birth center if a woman is transferred to a hospital due to complications that arise prior to delivery. Freestanding birth centers are affected by this rulemaking.

Questions/requests for copies/comments through 7/15/13: Jeanette Badrov, DHFS, 201 S. Grand Ave. East, 3rd Fl., Springfield IL 61763-0002, 217/782-1233.

AIR QUALITY

The POLLUTION CONTROL BOARD proposed amendments to "Air Quality Standards" (35 Ill Adm Code 243; 37 Ill Reg 7316) to implement Public Act 97-945, which requires PCB to adopt ambient air quality standards that are identical in substance to USEPA's National Ambient Air Quality Standards (NAAQS) specifying the maximum permissible short- and long-term concentrations of various contaminants in the atmosphere. Definitions are expanded and incorporations by reference are updated. Air quality monitoring data influenced by excep-

tional events requirements are set as are standards and measurement methods for sulfur oxides, carbon monoxides, nitrogen oxides, ozones, lead, and primary and secondary 24-hour NAAQS for particulates. A public hearing has been scheduled for 6/26/13 at 11:00 a.m. at the Sangamo Building, Room 1119N, 1021 N. Grand Ave., Springfield.

Requests for copies/comments through 7/15/13: John Therriault, PCB, 100 W. Randolph, Ste. 11-500, Chicago IL 60601, 312/814-3620. Questions: Michael J. McCambridge at the same address, 312/814-6924, e-mail: Michael.McCambridge@illinois.gov. Please reference consolidated docket R13-11.

HEALTH FACILITIES

The HEALTH FACILITIES AND SERVICES REVIEW BOARD (HFSRB) proposed amendments to "Health Facilities and Services Review Operational Rules" (77 Ill Adm Code 1130; 37 Ill Reg 7198). The rulemaking removes an obsolete provision regarding addition of dialysis stations to an existing facility from the listing of projects and transactions that are exempt from the permit requirement for consistency. (HFSRB recently repealed the requirements from this Part.) HFSRB also clarified procedures for requesting a public hearing and presentation of public comment during the 1st Notice period. The rulemaking also clarifies that if an administrative hearing is not requested within the required time frame, the right to a hearing will be considered waived. Also, the rulemaking transfers responsibility for appointing a new administrative law judge (ALJ) when an ALJ is disqualified from the Director of IDPH to the HFSRB Chairman.

Questions/requests for copies/comments through 7/15/13: Claire Burman, HFSRB, 122 S. Michigan Ave., 7th Fl., Chicago IL 60603, 312/814-8814, e-mail: Claire.Burman@illinois.gov.

Proposed Regulations

COLLECTIVE BARGAINING

The ILLINOIS LABOR RELATIONS BOARD proposed a new Part titled "Gubernatorial Designation of Positions Excluded from Collective Bargaining" (80 Ill Adm Code 1300; 37 Ill Reg 7208). A companion emergency rulemaking, effective 4/22/13 for a maximum of 150 days, appeared in the *Illinois Register* at 37 Ill Reg 5901. The new Part implements PA 97-1172 by establishing procedures used by the Governor to designate positions excluded from collective bargaining and for affected employees and labor organizations to file objections. The Governor must file a designation by electronic mail and deliver a hard

copy to ILRB at its Springfield office. The designation must include the following: the job title and duties; name of the current employee, if any; name of the employing State agency, if any; and the category under which the position qualifies for exclusion from collective bargaining. To qualify, the employment position must meet one or more of the following criteria: the position is that of a legislative liaison or high level agency executive (e.g., executive director, deputy director, HR director, general counsel); the position is *Rutan*-exempt (i.e., not covered by the U.S. Supreme Court *Rutan* decision forbidding political considerations in hiring, promotion or termination of non-policy-making

State employees); the position is term-appointed under Sec. 8b.18 or 8b.19 of the Personnel Code; or the employee has significant and independent discretionary authority. Sections pertaining to administrative hearings are similar to those found in 80 Ill Adm Code 1200 but follow a shorter timeline as required by PA 97-1172. State employees who meet one or more of the stated job criteria may be affected by this rulemaking.

Questions/requests for copies/comments through 7/15/13: Jerald Post, ILRB, 160 N. LaSalle St., Suite S-400, Chicago, IL 60601, 312/793-6400, e-mail: Jerald.Post@illinois.gov.

Second Notices

The following rulemakings were moved to Second Notice this week by the agencies listed below, commencing the JCAR review period. These rulemakings will be considered at JCAR's June 11, 2013 meeting.

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

"General Provisions" (89 Ill Adm Code 101) proposed 2/1/13 (37 Ill Reg 903)

"Practice in Administrative Hearings" (89 Ill Adm Code 104) proposed 2/1/13 (37 Ill Reg 922)

"Medical Assistance Programs" (89 Ill Adm Code 120) proposed 2/1/13 (37 Ill Reg 947)

"Special Eligibility Groups" (89 Ill Adm Code 118) proposed 7/13/12 (36 Ill Reg 9888)

"Children's Health Insurance Program" (89 Ill. Adm. Code 125) proposed 2/1/13 (37 Ill Reg 992)

"Application Process" (89 Ill Adm Code 110) proposed 7/13/12 (36 Ill Reg 9886)

Repeal of "Illinois Cares Rx Program" (89 Ill Adm Code 119) proposed 7/13/12 (36 Ill Reg 9890)

"Hospital Reimbursement Changes" (89 Ill Adm Code 152) proposed 2/1/13 (37 Ill Reg 1102)

"Long Term Care Reimbursement Changes" (89 Ill Adm Code 153) proposed 2/1/13 (37 Ill Reg 1112)

"Medical Payment" (89 Ill Adm Code 140) proposed 2/8/13 (37 Ill Reg 1390)

DEPARTMENT OF PUBLIC HEALTH

"AIDS Drug Assistance Program" (77 Ill Adm Code 692) proposed 3/29/13 (37 Ill Reg 3624)

"Long-Term Care Assistants and Aides Training Programs Code" (77 Ill Adm Code 395) proposed 7/20/12 (36 Ill Reg 10584)

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

"Nurse Practice Act" (68 Ill Adm Code 1300) proposed 1/4/13 (37 Ill Reg 12)

DEPARTMENT OF INSURANCE

"Insurance Oversight Data Collection" (50 Ill Adm Code 2907) proposed 7/6/12 (36 Ill Reg 9749)

SECRETARY OF STATE

"Certificates of Title, Registration of Vehicles" (92 Ill Adm Code 1010) proposed 4/5/13 (37 Ill Reg 4213)

STATE BOARD OF EDUCATION

"Voluntary Registration and Recognition of Nonpublic Schools" (23 Ill Adm Code 425) proposed 1/4/13 (37 Ill Reg 1)