

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

CAR DEALERS

The SECRETARY OF STATE adopted amendments to the Part titled "Dealers, Wreckers, Transporters and Rebuilders" (92 Ill Adm Code 1020; 37 Ill Reg 15503), effective 12/26/13, allowing police to issue an administrative citation instead of a criminal complaint to dealers, wreckers, transporters and rebuilders who violate any provision of the Illinois Vehicle Code (IVC) or any rule adopted by SOS under the IVC. At least 3 citations must be present at the time of the investigation and any violation will result in a \$50 per violation penalty. If the licensee agrees to pay the penalty, he or she waives the right to contest the citation through the administrative process. If the licensee pays the penalty but then receives additional citations, the previous citations may be used by SOS as evidence of a pattern or established habit. Licensees have 90 days after the date of the citation to pay or contest it. Failure to take action may result in the loss of a license renewal. This rulemaking affects small businesses engaged in selling, tow-

ing, rebuilding, or transportation of vehicles.

Questions/requests for copies: Carrie Leitner, SOS, 298 Howlett Building, Springfield, IL 62756, e-mail: cleitner@ilsos.net.

FLOODWAY CONSTRUCTION

The DEPARTMENT OF NATURAL RESOURCES adopted amendments to 4 Parts titled "Construction in Floodways of Lakes, Rivers and Streams" (17 Ill Adm Code 3700; 37 Ill Reg 4156), "Regulation of Public Waters" (17 Ill Adm Code 3704; 37 Ill Reg 4168), "Floodway Construction in Northeastern Illinois" (17 Ill Adm Code 3708; 37 Ill Reg 4183), and "Rules Establishing Horizontal and Vertical Clearances for Bridges Over the Fox River" (17 Ill Adm Code 3720; 37 Ill Reg 4199), all effective 12/27/13. These rulemakings reflect various provisions of Public Act 97-1136 that allow DNR to collect fees of up to \$5,000 per application for floodway construction permits issued under the Rivers, Lakes and Streams Act. In each Part, the fee schedule

DCFS FACILITIES

The DEPARTMENT OF CHILDREN AND FAMILY SERVICES proposed amendments to the Part titled "Use of Department Facilities and Grounds" (89 Ill Adm Code 433; 38 Ill Reg 610) restricting non-DCFS use of meeting space at Department facilities to employee organizations during business hours. (Currently, these facilities are available to community-based groups on a non-discriminatory, first-come first-served basis, not restricted to business hours, for religious, fraternal, educational or social activities.) Municipalities and non-profit organizations may be affected by this rulemaking.

Questions/requests for copies/comments through 2/24/14: Jeff Osowski, DCFS, 406 E. Monroe St., Station #65, Springfield IL 62701-1498, 217/524-1983, e-mail: cfpolicy@idcfs.state.il.us.

TELECOMMUNICATIONS

The ILLINOIS COMMERCE COMMISSION proposed amendments to

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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

and methods of payment are listed, fees are adjusted annually for inflation, refunds are not allowed except for overpayment, and permits are not transferrable. The Part 3700 amendments define a "floodplain" as an area lying at or below an elevation subject to flooding with a 1% annual chance of exceedence (100-year floodplain). A "floodway" is defined as that part of a floodplain that has been delineated for regulatory purposes, or if no specific area has been mapped, the entire floodplain. In the latter case, a construction project anywhere in the floodplain will require a permit unless an analysis demonstrating that the project is outside the floodway is approved by DNR. For projects that involve construction at more than one location, separate applications must be submitted for each location. To expedite processing of permit applications, DNR may issue general permits for certain types of activities (e.g. boat launching facilities). Changes since 1st Notice add a definition of "floodplain" and modify the definition of "floodway"; clarify that only those projects not covered by a general permit are subject to the permit application review fee; modify the fee schedule so that the minimum fee is \$200 (originally \$500); and state that fees will be deposited in the State Boating Act Fund. Amendments to Part 3704 make any activity along the Lake Michigan shoreline at or below the ordinary high water mark subject to the DNR floodway permitting process. If a bluff exists, DNR jurisdiction extends to the toe of the bluff. Activities exempt from the Part now include replacement of appurtenant navigation structures, such as mooring cells at barge terminals. Also, the portion of the Galena River designated as a public body of water begins at the County Highway 67 bridge (formerly the County Highway 3 bridge). The Part 3708 amendments require applications for floodway construction within a municipality or county to first be submitted to DNR to determine whether the local government is qualified to re-

view the application. The amendments also remove Mean Sea Level (1929 adjustment) as the benchmark for elevation measurements on floodway maps and in flood profiles. Amendments to Part 3720 clarify that the affected portion of the Fox River begins at the Algonquin Dam. The Part 3700 permit fee structure with corresponding changes since 1st Notice is also included in Parts 3704, 3708 and 3720. These rulemakings affect local governments, businesses and non-profit organizations with construction projects in or near floodways.

DAM PERMITS

DNR also adopted amendments to "Construction and Maintenance of Dams" (17 Ill Adm Code 3702; 37 Ill Reg 6614), effective 12/27/13, setting permit application fees and clarifying that when dams are inspected and the owner is notified of the need for a new permit or amendment to an existing permit, separate permit applications are required for each dam. The permit review fee ranges from \$1,500 to \$5,000 depending on the type of dam and whether it is being newly constructed, modified or removed. Total fees are capped at \$5,000 and fees will be adjusted annually for inflation. Payment methods are outlined, payments will not be refunded except for overpayment, and permits are not transferable. Since 1st Notice, the fee schedule has been modified (originally, it included a \$500 initial review fee plus principal review fees ranging from \$500 to \$4,500). Small businesses and units of local government that have dams within their jurisdictions may be affected.

RAPTORS

DNR adopted amendments to the Part titled "Falconry and the Captive Propagation of Raptors" (17 Ill Adm Code 1590; 37 Ill Reg 14526) effective 1/1/14. The rulemaking establishes a falconry permit good for 5 years and a corresponding fee of

\$200 and outlines the application and examination criteria, along with the inspection of facilities and equipment. The rulemaking also describes the various requirements and allowable activities of apprentice, general and master falconer classifications. Other topics include hunting seasons, banding requirements, captive propagation, capture, transfer acquisition and release of raptors, as well as corresponding reporting State and federal requirements.

Questions/requests for copies of the 6 DNR rulemakings above: Shelly Knuppel, DNR, One Natural Resources Way, Springfield IL 62702-1271, 217/782-1809.

NATURAL GAS SUPPLIERS

The ILLINOIS COMMERCE COMMISSION adopted a new Part titled "Qualifying Infrastructure Plant Surcharge" (83 Ill Adm Code 556; 37 Ill Reg 12950), effective 12/27/13. A companion emergency rulemaking at 37 Ill Reg 13567 was effective 8/5/13. The rule implements a provision of Public Act 98-57 that requires ICC to adopt rules authorizing the agency to approve tariffs that allow natural gas utilities that serve more than 700,000 customers to recover the costs of specified infrastructure improvements without seeking a general rate increase. Covered topics include defined terms, qualifying infrastructure plant (QIP), recoverable costs, determination of, application for, approval/withdrawal of, and amendment of the QIP surcharge, annual reconciliations and audits, gas utility commitments, and annual QIP plan updates. Changes since 1st Notice include changes to the definitions of "depreciation expense", "Net QIP", and "ActNetQIP", and revisions to descriptions of items for which information must be provided.

Questions/requests for copies: Brian Allen, ICC, 527 E. Capitol Ave., Springfield IL 62701, 217/558-2387, fax: 217/524-8928.

Proposed Regulations

Parts titled "The Preservation of Records of Telephone Utilities (General Order 188)" (83 Ill Adm Code 705; 38 Ill Reg 614) and "Tariff Filings" (83 Ill Adm Code 745; 38 Ill Reg 671). The Part 705 rulemaking changes the name of the Part, which has not been amended since its adoption in 1962, to "The Preservation of Records of Telecommunications Carriers" and replaces references to "public utilities" with the term "telecommunications carrier". All records must be kept for at least 2 years, except for records of shareholders' and board of directors' meetings (which must be kept permanently) or supporting documents for required reports to ICC (must be kept for 6 years). Records may be stored on any form of recordable media. Telecom carriers must document their records management, retention and preservation policies and make them available to ICC. An appendix listing retention periods for various types of records is repealed. Proposed Part 745 amendments implement Public Act 98-45. The rulemaking allows changes in rates for competitive telecom services to take effect either upon the filing of a tariff with ICC or posting of the information to a provider's website. Newspaper publication of rate increases is an optional (currently mandatory) means of customer notification in addition to required mail or electronic notice to affected customers. For noncompetitive services, notice of rate increases must be made directly to customers by letter, post card, bill messages, or e-mail no later than 10 days following a tariff filing. For noncompetitive service changes other than rate increases, the change may be announced on the carrier's website or via direct notice to customers. Telecommunications providers and their customers are affected by these rulemakings.

Questions/requests for copies/comments on the 2 ICC rulemakings through 2/24/14: Elizabeth Rolando, ICC, 527 E. Capitol Ave., Springfield

IL 62701, 217/782-7434.

PENSION FUNDS

The DEPARTMENT OF INSURANCE proposed amendments to Parts titled "IRS Qualification Status Requirements for Article 3 Police Pension Funds" (50 Ill Adm Code 4440; 38 Ill Reg 679) and "IRS Qualification Status Requirements for Article 4 Firefighter Pension Funds" (50 Ill Adm Code 4445; 38 Ill Reg 686). Both rulemakings implement federal requirements necessary to maintain Internal Revenue Service qualified status for Illinois police and firefighter pension funds. The amendments add to the definition of "compensation" certain payments made from nonqualified, unfunded deferred compensation plans within 2 ½ months after the date of retirement (or the end of the year in which the employee retired, whichever is later) as well as compensation paid during a period of qualified military service under specified conditions. Compensation earned by a pension recipient is subject to annual limits set in the federal Internal Revenue Code. Municipal police and firefighter pension recipients and pension funds may be affected.

Questions/requests for copies/comments on the 2 DOI rulemakings through 2/24/14: Susan Anders, DOI, 320 W. Washington, Springfield IL 62767, 217/558-0957, or Simone Arthur, DOI, 122 S. Michigan Ave., 19th Fl., Chicago IL 60603, 312/814-8580, fax 312/814-2862.

DRINKING WATER TESTING

The POLLUTION CONTROL BOARD proposed amendments to "Primary Drinking Water Standards" (35 Ill Adm Code 611; 38 Ill Reg 693) that allow laboratories certified or approved in other states with drinking water regulations equivalent to the National Primary Drinking Water Regulations (NPDWR) to perform tests for particular water contaminants when no laboratory certified

by the Illinois EPA or USEPA is able to test for the contaminant. The rulemaking also updates incorporations by reference of USEPA water testing standards. This rulemaking may affect municipalities with public water supplies.

Requests for copies/comments through 2/24/14: John T. Therriault, PCB, 100 W. Randolph St., Suite 11-500, Chicago IL 60601, 312/814-3620. Questions: Michael McCambridge at the same address, 312/814-6924, e-mail: mccambm@ipcb.state.il.us. Please reference docket R14-8.

PROPERTY TAX APPEALS

The PROPERTY TAX APPEAL BOARD proposed amendments to the Part titled "Practice and Procedure for Appeals Before the Property Tax Appeal Board" (86 Ill Adm Code 1910; 38 Ill Reg 788) to update the Board's website address and the address of its Cook County regional office; clarify where PTAB meeting agendas are posted, and how paper and electronic petitions may be filed and by whom; provide for greater use of electronic documents (e.g., responses from county boards of review, requests for intervention by interested parties, rebuttal evidence); comply with changes in the Freedom of Information Act; prohibit use of fax machines to submit evidence; and state that any party that agrees to accept electronic transmission of hearing decisions also accepts the risk of an unsuccessful transmission. Electronic service of documents is also permitted in appeal cases seeking a change of \$1 million or more in assessed valuation. Various definitions and terms are also clarified. Those affected by this rulemaking include businesses and local governments that appeal property tax determinations.

Questions/requests for copies/comments through 2/24/14: Louis G. Apostol, PTAB, 402 Stratton Bldg., Spfld IL 62706, 217/785-4456, e-mail:

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New Regulations

MORTGAGE LOANS

The DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION adopted amendments to "Residential Mortgage License Act of 1987" (38 Ill Adm Code 1050; 37 Ill Reg 15590) effective 12/27/13. The rulemaking adjusts the Department's fee schedule and makes other revisions. Residential mortgage license investigation and license fees will now total \$2,700, up from \$2,043, with residential mortgage license renewal fees increasing by the same amount. Entities exempt from licensure by virtue of being chartered under federal law but wishing to sponsor individuals serving as mortgage loan originators under the State Act must also pay a fee of \$2,700. The rulemaking also requires loan brokerage agreements and broker/originator loan logs to contain the unique identifier in the Nationwide Mortgage Licensing System rather than the DFPR Mortgage Loan Originator license number. Banks and mortgage brokers are affected by this rulemaking.

Questions/requests for copies: Craig Cellini, DFPR, 320 W. Washington, 3rd Fl., Springfield IL 62786, 217/785-0813, fax: 217/557-4451.

VIDEO GAMING

The ILLINOIS GAMING BOARD adopted amendments to "Video Gaming (General)" (11 Ill Adm Code 11; 37 Ill Reg 14368), effective 12/27/13, establishing that licenses expire if the renewal fee is not received before the expiration date. Video gaming location licenses, technician licenses, and terminal handler licenses that have expired due to non-payment may be renewed by the Board without having to reapply if payment is received within 10 days of expiration. The rules on location restrictions will no longer apply to racetracks where inter-track wagering takes place and off-track betting facilities. Those affected by this

rulemaking include licensees and owners/operators of race tracks and off-track betting parlors.

Questions/requests for copies: Emily Mattison, IGB, 160 N. LaSalle St, Chicago, IL 60601, 312/814-7253, e-mail: emily.mattison@igb.illinois.gov.

AIR POLLUTION

The POLLUTION CONTROL BOARD adopted amendments to "Permits and General Provisions" (35 Ill Adm Code 201; 37 Ill Reg 6028), "Organic Material Emission Standards and Limitations for the Chicago Area" (35 Ill Adm Code 218; 37 Ill Reg 6054) and "Organic Material Emission Standards and Limitations for the Metro East Area" (35 Ill Adm Code 219; 37 Ill Reg 6083), all effective 12/23/13. Amendments to Part 201 correspond to changes made in Parts 218 and 219. Amendments to Part 218 phase out the requirement for gasoline dispensing operations in the Chicago area to install, maintain and operate Stage II vapor recovery systems (begins 1/1/14) and require the decommissioning (from 1/1/14-1/1/16) of existing Stage II equipment in the Chicago ozone nonattainment area. Amendments to Part 219 repeal Stage II vapor recovery test methods and a Stage II vapor recovery guidance document because this program was repealed in 1994. The Stage I vapor recovery registration permit exemption is also repealed due to overlapping federal notification requirements and other State tracking systems for gasoline dispensing operations. The exemption has been relocated to Part 201 and no longer requires registration. Other amendments clarify and update these Parts.

Questions/requests for copies of the 3 PCB rulemakings: Richard McGill, PCB, 100 W. Randolph, Suite 11-500, Chicago IL 60601, 312/814-6983, e-mail: richard.mcgill@illinois.gov. Please reference docket R13-18.

CHILD ABUSE

The DEPARTMENT OF CHILDREN AND FAMILY SERVICES adopted an emergency amendment to the Part titled "Reports of Child Abuse and Neglect" (89 Ill Adm Code 300; 38 Ill Reg 1100), effective 1/1/14 for a maximum of 150 days. An identical proposed rulemaking appears in this week's *Illinois Register* at 38 Ill Reg 608. The rule implements a recent Illinois Supreme Court decision and Public Act 97-803 by reinstating and clarifying the criteria for alleging that a caregiver has placed a child at substantial risk of physical injury or in an "environment injurious to health and welfare".

Questions/requests for copies/comments regarding the proposed rulemaking through 2/24/14: Jeff Osowski, DCFS, 406 E. Monroe St., Station #65, Springfield IL 62701-1498, 217/524-1983, e-mail: cfpolicy@idcfs.state.il.us.

MEDICAL ASSISTANCE

The DEPT OF HEALTHCARE AND FAMILY SERVICES adopted emergency amendments to "Medical Assistance Programs" (89 Ill Adm Code 120; 38 Ill Reg 1139), "Children's Health Insurance Program" (89 Ill Adm Code 125; 38 Ill Reg 1153), and "Medical Payment" (89 Ill Adm Code 140; 38 Ill Reg 1174), all effective 1/1/14 for a maximum of 150 days. The Part 120 amendments eliminate spenddown (deducting medical expenses from income) as a means of qualifying for medical assistance for persons receiving Temporary Assistance for Needy Families (TANF) or for FamilyCare Assist applicants (parents or caretaker relatives with incomes at or below 133% of the Federal Poverty Level). However, pregnant women and children may still use spenddown to qualify for medical assistance. The Part 125 amendments repeal provisions for the All

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New Regulations (cont.)

Kids Rebate program, which formerly subsidized the purchase of private insurance coverage, effective 12/31/13. The rule also applies the Modified Adjusted Gross Income (MAGI) methodology of the federal Affordable Care Act to All Kids eligibility determinations. Amendments to Part 140 add preventive services as defined under ACA (e.g., immunizations, routine checkups) to covered medical services for medical assistance recipients, including those who became eligible as of 1/1/14 (adults ages 19 to 64 with incomes at or below 133% FPL who were not previously eligible, former foster children through age 25). Medical providers may be affected by these emergency rules.

LONG TERM CARE

DHFS adopted emergency amendments to "Reimbursement for Nursing Costs for Geriatric Facilities" (89 Ill Adm Code 147; 38 Ill Reg 1205) effective 1/1/14 for a maximum of 150 days. The amendments implement Public Act 96-1530 by implementing the most recent Resource Utilization Group methodology (RUG-IV) published by the U.S. Department of Health and Human Services for determining nursing care rate components. (RUG methodology places nursing home residents into groups based upon their level of care; the greater the number of residents in higher-care RUGs, the greater the rate paid to the nursing home.) Transitional rates based in part upon rates in effect as of 7/1/12 will be in effect for certain nursing homes through 12/31/14. The rule also prescribes procedures for nursing homes to complete and submit the resident care assessments upon which RUGs are based. Nursing homes will be affected by this emer-

gency rule.

DHFS adopted an amendment to "Medical Payment" (89 Ill Adm Code 140; 37 Ill Reg 13998), effective 12/23/13, implementing Public Act 98-104. A companion emergency amendment effective 8/20/13 was published at 37 Ill Reg 14196. The rulemaking reinstates bed reserve payments for residents of Intermediate Care Facilities for the Developmentally Disabled (ICF/DD) who are 21 years of age or older and are temporarily absent from the facility for therapeutic reasons other than inpatient hospitalization (e.g., family visits). For ICF/DD residents under age 21, bed reserve payment for hospitalization is limited to 45 consecutive days, with payment rates decreasing after the 10th and 30th days.

HOSPITAL READMISSIONS

DHFS also adopted an amendment to "Hospital Reimbursement Changes" (89 Ill Adm Code 152; 37 Ill Reg 13043), effective 12/23/13. A companion emergency amendment published at 37 Ill Reg 13589 was effective 8/1/13. The rulemaking implements potentially preventable readmission (PPR) policies applicable to Illinois hospitals for State fiscal year 2014 and beyond. The rulemaking establishes State fiscal year 2010 as the base year against which current fiscal year readmission rates will be compared. DHFS will determine a targeted readmission rate for each hospital using mathematical formulas and factors included in the rule as well as specific annual editions of widely used PPR software programs created by the 3M Corporation. Hospitals that fail to meet their targeted rates may be subject to payment penalties

based on various factors (also outlined in these rulemakings). Admissions of patients under age 19 with a primary diagnosis in the behavioral health category do not count toward a hospital's PPR calculations, and the number of pediatric and behavioral health admissions will be considered in calculating a hospital's PPR rate. Transfers from one acute care hospital to another also are not counted. Other provisions include an explanation of PPR chains (one or more admissions that are clinically related to an initial admission, e.g., readmission for treatment of a post-surgical infection) and measures that hospitals may take, during the fiscal year following a fiscal year in which a PPR penalty was incurred, to reduce or eliminate the penalty. If any PPR payment penalties remain after all exemptions and cost avoidance measures are applied, the hospital must pay 50% of the penalty amount directly to DHFS in 12 equal monthly installments beginning on 7/1 of the next fiscal year. Since 1st Notice, DHFS has removed a provision that would have required hospitals to repay their entire PPR penalty (instead of 50%) if the federal government should demand that the federally matched portion of the penalty be refunded. DHFS also has incorporated by reference a document explaining the methodology upon which the 3M PPR software is based. Hospitals are affected by this rulemaking.

Questions/requests for copies of the 6 DHFS rulemakings above: Jeanette Badrov, DHFS, 201 S. Grand Ave. East, 3rd Fl., Springfield IL 62763-0002, 217/782-1233, e-mail: HFS.Rules@illinois.gov.

Proposed Regulations (cont.)

louis.apostol@illinois.gov.

☞ MEDICAL CANNABIS TAX

The DEPARTMENT OF REVENUE proposed an amendment to "Income Tax" (86 Ill Adm Code 100; 38 Ill Reg 832) that provides guidance for computing the Illinois income tax surcharge imposed upon entities licensed to cultivate or dispense medical cannabis under the Compas-

sionate Use of Medical Cannabis Pilot Program Act. The surcharge applies to income generated by the sale or exchange of assets, depreciable business property, real property used in the trade or business, or Internal Revenue Code Section 197 intangibles (trade names, contracts, goodwill) when the exchange involves a licensee under the Act and the income is subject to federal income tax liability. Transactions exempt from the surcharge (e.g., a

transfer resulting from a bankruptcy proceeding or termination of a license) are also listed. Those affected by this rulemaking include businesses involved in cultivation or dispensing of medical cannabis and their investors.

Questions/requests for copies/comments through 2/24/14: Paul Castleton, DOR, 101 W. Jefferson, Springfield IL 62794, 217/782-7055.

Second Notices

The following rulemakings were moved to Second Notice this week by the agencies listed below, commencing the JCAR review period. The Department of Public Health rulemaking will be considered at JCAR's January 14, 2014 meeting while the Secretary of State rulemaking will be on the February 18, 2014 meeting agenda.

DEPARTMENT OF PUBLIC HEALTH

"Control of Communicable Diseases Code" (77 Ill Adm Code 690) proposed 4/12/13 (37 Ill Reg 4479)

SECRETARY OF STATE

"Illinois Safety Responsibility Law" (92 Ill Adm Code 1070) proposed 11/8/13