

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

☞ ABANDONED HOUSING

The ILLINOIS HOUSING DEVELOPMENT AUTHORITY adopted amendments to "Abandoned Residential Property Municipality Relief Program" (47 Ill Adm Code 381; 37 Ill Reg 12670) effective 3/10/14. The program provides grants to local governments to help them cover the costs of dealing with abandoned housing. This rulemaking reflects statutory changes made in PA 98-20 which clarifies that the funds disbursed by the program are subject to the annual receipt of funds and adjusts the criterion for the downstate distribution of funds to give the Authority additional discretion in directing funds to the areas of greatest need. Since 1st Notice, IHDA has added criteria for evaluating grant applicants, clarified how it will consider the amount of foreclosure fees paid in each county when determining grant awards and explained circumstances in which it is not practicable for grants to be issued proportionately to those counties. Small municipalities that participate in the program will be affected.

Questions/requests for copies: Kristi S.

Poskus, Esq., IHDA, 401 N. Michigan Avenue, Suite 700, Chicago IL 60611, 312/836-7416.

☞ STRIP CLUB TAX

The DEPARTMENT OF REVENUE adopted a new Part titled "Live Adult Entertainment Facility Surcharge Act" (86 Ill Adm Code 900; 37 Ill Reg 18832) effective 3/10/14 implementing PA 97-1037, which imposes an annual surcharge upon strip clubs. The surcharge is \$3 per customer or, alternatively, a flat charge based upon annual gross receipts subject to sales tax (\$5,000 if gross receipts are less than \$500,000; \$15,000 if gross receipts are between \$500,000 and \$2 million; \$25,000 if gross receipts are \$2 million or more). Facilities subject to the charge include any strip club or other facility that serves alcohol or allows its consumption on the premises and which hosts nude or semi-nude dancing/performing at least 30 days per calendar year. The Part details persons subject to the surcharge, returns to be filed, record keeping and penalties and interest assessment procedures. Small businesses that own or operate strip clubs will be affected.

☞ DOL HEARINGS

The DEPARTMENT OF LABOR proposed amendments to "Rules of Procedures in Administrative Hearings" (56 Ill Adm Code 120; 38 Ill Reg 6520) repealing a number of obsolete rules and making a number of substantive changes. The new rules apply to all hearings except hearings conducted under the Wage Payment and Collection Act. The rules will apply to the decisions and orders of administrative law judges (ALJs) and recommendations for cases that are pending on 6/1/14. Filings received after 5 p.m. will be considered filed on the next business day. The day of the act, event or default will not be considered for day counting purposes. Private delivery services may be used. E-mail is not an acceptable form of service unless specifically requested or ordered by the ALJ. The date of service is the date when the matter is deposited in the US mail or with a private delivery service and may be different from the date filed. The rulemaking establishes guidelines for service and updates the format of written documents. Hearings will only be initiated by the Director when he or she issues

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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

Questions/ requests for copies: Richard Wolters, DOR, Legal Services, 101 W. Jefferson, Springfield IL 62794, 217/782-2844.

FOREVER GREEN PROGRAM

The DEPARTMENT OF AGRICULTURE adopted a new Part by emergency rulemaking titled "Forever Green Illinois Program" (8 Ill Adm Code 241; 38 Ill Reg 6702), effective 3/6/14 for a maximum of 150 days. An identical proposed rule was published in the 2/21/14 *Illinois Register* at 38 Ill Reg 4549. The new Part creates a pilot program designed to maintain and beautify trees, shrubs and other greenery on property owned by the State or by units of local government. Initial participating entities will be chosen by DOA based on criteria such as size, location, need, available funding, and other factors. Chosen entities may submit a list of problem trees (dead, diseased, pest infested or otherwise posing a hazard to public safety or infrastructure) to DOA, which will utilize Department-approved contractors to replace up to 150 problem trees with new trees or shrubs selected from an approved list. The participating entity remains responsible for repair-

ing or replacing any infrastructure (e.g., sidewalks, pavement, curbs) displaced or damaged by the tree removal. Those affected by this rule may include small municipalities and small businesses affected by problem trees.

Questions/requests for copies/comments on the proposed rulemaking through 4/7/14: Susan Baatz, DOA, State Fairgrounds, P. O. Box 19281, Springfield, IL 62794-9281, 217/524-6905, fax 217/785-4505.

HFS RULE MODIFICATION

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES adopted a modification to emergency rules titled "Reimbursement for Nursing Costs for Geriatric Facilities" (89 Ill Adm Code 147; 38 Ill Reg 1205) effective 3/7/14, for the remainder of the 150 days that the original emergency rulemaking (effective 1/1/14) remains in effect. In response to a JCAR Objection, DHFS changed an add-on payment to nursing homes for care of ventilator dependent residents to \$208 per patient per day for supplies and service costs (was \$174/patient/day for supply costs only) effective for dates of service on

or after 1/1/14. Nursing homes will be affected by this modification of an emergency rule.

Questions/requests for copies: Jeanette Badrov, DHFS, 201 S. Grand Ave. East, 3rd Fl., Springfield IL 62763-0002, 217/782-1233.

STATE EMPLOYEES

The DEPARTMENT OF CENTRAL MANAGEMENT SERVICES adopted preemptory amendments to "Pay Plan" (80 Ill Adm Code 310; 38 Ill Reg 6725) effective 3/6/14, implementing a collective bargaining agreement with the Fraternal Order of Police covering the period 7/1/12-6/30/15. The agreement affects Department of Natural Resources Conservation Police sergeants and lieutenants and includes provisions for longevity pay, general 2% pay raises effective 7/1/13 and 7/1/14, new hire pay rates, and adjustments to pay rates based upon rank and other factors.

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

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a Notice of Hearing. Requirements for answers are updated. Answers must be filed within 15 days after the receipt of the complaint and Notice of Hearing. The answering party must serve an answer on the Director and all other parties. Any witnesses who are summoned to a hearing will be paid the witness and mileage fee for the court in the county where the hearing takes place. Other issues addressed in this rulemaking include motions, objections, prehearing conferences, exchanges of documents between parties, subpoenas, exceptions, and deadlines for filing various actions. Those who are currently involved in

administrative hearings with the Department or those who may be involved in a contested hearing may be affected.

Questions/requests for copies/comments through 5/5/14: Jim Preckwinkle, DOL, 900 S. Spring St., Springfield, IL 62704, 217/558-1270.

MEDICAID RATE REFORM

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES proposed amendments to the Parts titled "Specialized Health Care Delivery Systems" (89 Ill Adm Code 146; 38 Ill Reg 6499)

and "Hospital Services" (89 Ill Adm Code 148; 38 Ill Reg 6505) implementing aspects of PA97-689 (SMART Act) Medicaid payment rate reform. The Part 146 amendments set a payment rate of \$610 per day to children's community-based health care centers for transitional nursing care (up to 120 days) for children moved from a hospital to their home or another placement. (Currently, payment is at the lower of the usual and customary charge or half of the default base rate for the same service at children's hospitals.) The amendments also apply the SMART Act's general 2.7% non- (cont'd next page)

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institutional rate cut to services provided by children's community-based health care centers on or after 7/1/12. The Part 148 amendment terminates current provisions for outlier adjustments (additional payments covering exceptionally costly hospital stays) for hospital discharges that occur on or after 7/1/14. Hospitals are affected by this rulemaking.

Questions/requests for copies/comments concerning the 2 DHFS rulemakings through 5/5/14: Jeanette Badrov, DHFS, 201 S. Grand Ave. East, 3rd Fl., Springfield IL 62763-0002, 217/782-1233, e-mail: HFS.Rules@illinois.gov.

"Non-Home Rule Municipal Retailers' Occupation Tax" (86 Ill Adm Code 693; 38 Ill Reg 6653); and "County Motor Fuel Tax" (86 Ill Adm Code 695; 38 Ill Reg 6666). The amendments implement a decision of the Illinois Supreme Court in *Hartney Fuel Oil Co. v. Hamer*, invalidating current regulations that assign sales tax jurisdiction to the location where an individual sale is made. Instead, the new standard is where the general business of selling is located. The amendments are similar to emergency amendments that were effective 1/22/14 and to 10 previously proposed rulemakings on these Parts that have been withdrawn (see below), except that references to long term or blanket contracts are being removed. Retailers who have entered into agreements with local governments to source the point of sale to their jurisdictions may be adversely affected.

DOR RULE WITHDRAWAL

DOR also has withdrawn proposed amendments to 86 Ill Adm Code 220, 270, 320, 370, 395, 630, 670, 690, 693, and 695 that appeared in the 2/7/14 *Illinois Register* at 38 Ill Reg 3502, 3504, 3506, 3508, 3510, 3512, 3514, 3516, 3518, and 3520. These proposed rules, as published in the Register, inadvertently omitted provisions that removed references to long term or blanket contracts. To provide ample public notice and opportunity for comment on all provisions of these amendments, DOR has withdrawn the earlier proposed rules and submitted the new proposed rules outlined above.

Questions/requests for copies/comments on the 10 DOR rulemakings through 5/5/14: Paul Berks, DOR, 100 W. Randolph St., 7th Floor, Chicago IL 60601, 312/814-4680, Fax: 312/814-4344.

SOS PUBLIC HEARING

The SECRETARY OF STATE will hold a public hearing on proposed amendments concerning adult driver's education Monday, March 31, at 9 a.m. at the Illinois State Library, Room 403, 300 S. Second St., Springfield. The hearings concern proposed amendments to Parts titled "Issuance of Licenses" (92 Ill Adm Code 1030; 38 Ill Reg 5163) and "Commercial Driver Training Schools" (92 Ill Adm Code 1060; 38 Ill Reg 5214) and a proposed new Part titled "Online Only Adult Driver Education Course Provider Certification" (92 Ill Adm Code 1066; 38 Ill Reg 5228). These amendments appeared in the 2/21/14 *Illinois Register* and implement PA 98-167, which requires adults ages 18 to 20 who have not previously obtained a driver's license or completed a driver education course to complete 6 hours of instruction if they wish to receive a license before reaching age 21. The proposed rules allow this instruction to take place online through approved providers.

Questions/requests for copies/comments on the 3 SOS rulemakings through 4/7/14: Jennifer Egizii, SOS, 2701 S. Dirksen Parkway, Springfield IL 62723, 217/557-4462.

LOCAL SALES TAXES

The DEPARTMENT OF REVENUE proposed amendments to 10 Parts: "Home Rule County Retailers' Occupation Tax" (86 Ill Adm Code 220, 38 Ill Reg 6549); "Home Rule Municipal Retailers' Occupation Tax" (86 Ill Adm Code 270; 38 Ill Reg 6562); "Regional Transportation Authority Retailers' Occupation Tax" (86 Ill Adm Code 320; 38 Ill Reg 6575); "Metro East Mass Transit District Retailers' Occupation Tax" (86 Ill Adm Code 370; 38 Ill Reg 6588); "Metro-East Park and Recreation District Retailers' Occupation Tax" (86 Ill Adm Code 395; 38 Ill Reg 6601); "County Water Commission Retailers' Occupation Tax" (86 Ill Adm Code 630; 38 Ill Reg 6614); "Special County Retailers' Occupation Tax for Public Safety" (86 Ill Adm Code 670; 38 Ill Reg 6627); "Salem Civic Center Retailers' Occupation Tax" (86 Ill Adm Code 690; 38 Ill Reg 6640);

JCAR Meeting Action

At its 3/19/14 meeting, the Joint Committee on Administrative Rules withdrew a filing prohibition against one proposed rulemaking and issued a recommendation concerning 10 emergency rules adopted by the Department of Revenue. The Committee also postponed consideration of two rulemakings proposed by the Chief Procurement Officer for the Capital Development Board, "Procurement Practices" (Repealer) (44 Ill Adm Code 8; 37 Ill Reg 12120) and "Procurement Practices" (New Part) (44 Ill Adm Code 8; 37 Ill Reg 12143), until the April 7 meeting.

HEALTH FACILITIES AND SERVICES REVIEW BOARD

Pursuant to Section 5-115 of the Illinois Administrative Procedure Act, JCAR withdraws the prohibition against the filing of the HFSRB rulemaking titled "Processing, Classification Policies and Review Criteria" (77 Ill Adm Code 1110; 37 Ill Reg 3982) contingent upon and effective with HFSRB adopting the agreed-upon modifications. The Committee originally issued this filing prohibition at its 11/19/13 meeting. (The rulemaking concerns HFSRB service approvals for ambulatory surgical treatment centers.)

DEPARTMENT OF REVENUE

With respect to the DOR emergency sales sourcing rules titled "Home Rule County Retailers' Occupation Tax" (86 Ill Adm Code 220, 38 Ill Reg 4047); "Home Rule Municipal Retailers' Occupation Tax" (86 Ill Adm Code 270; 38 Ill Reg 4060); "Regional Transportation Authority Retailers' Occupation Tax" (86 Ill Adm Code 320; 38 Ill Reg 4073); "Metro East Mass Transit District Retailers' Occupation Tax" (86 Ill Adm Code 370; 38 Ill Reg 4086); "Metro-East Park and Recreation District Retailers' Occupation Tax" (86 Ill Adm Code 395; 38 Ill Reg 4099); "County Water Commission Retailers' Occupation Tax" (86 Ill Adm Code 630; 38 Ill Reg 4112); "Special County Retailers' Occupation Tax for Public Safety" (86 Ill Adm Code 670; 38 Ill Reg 4125); "Salem Civic Center Retailers' Occupation Tax" (86 Ill Adm Code 690; 38 Ill Reg 4138); "Non-Home Rule Municipal Retailers' Occupation Tax" (86 Ill Adm Code 693; 38 Ill Reg 4151); and "County Motor Fuel Tax" (86 Ill Adm Code 695; 38 Ill Reg 4164), JCAR recommends that DOR continue to work with the affected taxpayers and local governments in an attempt to establish in the permanent rulemaking standards for determining the situs of sales tax liability that are enforceable and that are understandable by the entities that are affected by them. (These emergency rules, effective 1/22/14 for a maximum of 150 days, implement a recent Illinois Supreme Court ruling on sales sourcing. Companion proposed rules appear in this week's Illinois Register.)

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 April 7, 2014 meeting.

STATE BOARD OF EDUCATION

"Public Schools Evaluation, Recognition and Supervision" (23 Ill. Adm. Code 1) proposed 1/3/14 (38 Ill. Reg. 00001)

"Educator Licensure" (23 Ill. Adm. Code 25) proposed 1/3/14 (38 Ill. Reg. 61)

"Programs for the Preparation of Principals in Illinois" (23 Ill. Adm. Code 30) proposed 1/3/14 (38 Ill. Reg. 161)

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

"Specialized Health Care Delivery Systems" (89 Ill. Adm. Code 146) proposed 11/15/13 (37 Ill. Reg. 18005)

"Specialized Health Care Delivery Systems" (89 Ill. Adm. Code 146) proposed 12/2/13 (37 Ill. Reg. 18951)

"Hospital Services" (89 Ill. Adm. Code 148) proposed 12/2/13 (37 Ill. Reg. 18959)

ILLINOIS STATE TOLL HIGHWAY AUTHORITY

"State Toll Highway Rules" (89 Ill. Adm. Code 2520) proposed 12/27/13 (37 Ill. Reg. 20630)

IL INDEPENDENT TAX TRIBUNAL

"Organization, Information, Rulemaking and Hearings" (86 Ill. Adm. Code

5000) proposed 1/24/14 (38 Ill. Reg. 2597)

POLLUTION CONTROL BOARD

"Primary Drinking Water Standards" (35 Ill. Adm. Code 611) proposed 1/10/14 (38 Ill. Reg. 693)

SECRETARY OF STATE

"Cancellation, Revocation or Suspension of Licenses or Permits" (92 Ill. Adm. Code 1040) proposed 1/17/14 (38 Ill. Reg. 1850)