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Illinois General Assembly

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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, also titled The Flinn Report in memory of founding JCAR member Rep. Monroe Flinn, is designed to inform and involve the public in changes taking place in agency administration.

New Rules

■ FRACKING RULES

The DEPARTMENT OF NATURAL RESOURCES adopted a new Part titled The Hydraulic Fracturing Regulatory Act (62 IAC 245; 37 Ill Reg 18097), effective 11/14/14, implementing the Act, which authorizes and regulates the practice of hydraulic fracturing (fracking) to unearth oil deposits. The new Part, which has undergone numerous changes since 1st Notice, defines terms related to fracking, incorporates national standards, and addresses topics such as bond and collateral security; the process for obtaining permits; public comment and hearings; well site preparation and construction; water quality monitoring; plugging and restoration of land after the fracking process is complete; and enforcement of the Act and rules through administrative

penalties, remediation or other measures. Applicants for fracking permits must pay a non-refundable fee of \$13,500, plus a permit bond of \$50,000 per permit or a blank bond of \$500,000 for multiple permits, and must show DNR proof of at least \$5 million in insurance coverage. Non-refundable fees

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for modification of a permit or permit application are \$13,500 for significant modifications and \$5,000 for insignificant modifications. Changes since 1st Notice include increased penalties for violations (originally, \$1,000 per day for each violation, now \$5,000/day/violation up to \$50,000; penalties for operating violations based on seriousness and past history of violations, originally \$100 to \$2,500, now \$1,000 to \$25,000). Also, public

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Proposed Rulemakings

■ SUBSTANCE ABUSE

The DEPARTMENT OF HUMAN SERVICES proposed amendments to the Part titled Alcoholism and Substance Abuse Treatment and Intervention (77 IAC 2060; 38 Ill Reg 22011) establishing multiple designated programs to provide screening, assessment, referral and tracking services for individuals with substance abuse or addiction-related problems who have been charged with, or convicted of, a crime and who elect treatment as an alternative to incarceration. Currently, DHS designates only one program for this purpose. Entities that wish to offer these programs must obtain a designated program intervention license, establish policies and procedures that conform to criteria established in this

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NEW RULES: Rules adopted by agencies this week. **EMERGENCY RULES:** Adopted for a temporary period not to exceed 150 days.

PROPOSED RULES: Rules proposed by agencies this week, commencing a 45-day First Notice period during which public comments must be accepted.

PEREMPTORY RULES: Rules adopted without prior public notice or JCAR review as authorized by 5 ILCS 100/5-50.

■ Designates 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: Submit mail, email or phone calls to the agency personnel listed below each summary.

RULE TEXT: Available on the Secretary of State (www.cyberdriveillinois.com) and General Assembly (www.ilga.gov) websites under Illinois Register. Second Notice text (original version with changes made by the agency during First Notice included) is available on the JCAR website.

New Rules

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hearings on a well site permit request must be held in the county where the well site is located or within 30 miles of that county (originally, in the county or any other location DNR deems appropriate), radioactivity testing for certain materials has been added, and open storage of radioactive materials has been prohibited. Other changes include clarifications regarding the permitting process, chemical disclosures, inspections, storage of fluids in reserve pits, reporting of venting or flaring of excess gas, and documentation of technical infeasibility or economic unreasonableness when applying for waivers from emission capture requirements; a simplified hearing request procedure; removal of a requirement that DNR be notified of the results of various tests only during normal business hours; provisions for notifying local health authorities of pollution linked to a fracking operation; and processes for compliance with DNR floodplain regulations. These amendments are too detailed to describe in their entirety; for further information see this week's *Illinois Register* or contact the agency. Those affected by this rulemaking include small businesses involved in oil extraction, units of local government, non-profits and other landowners.

DNR also adopted amendments to the Part titled The Illinois Oil and Gas Act (62 IAC 240; 37 Ill Reg 18081), effective 11/14/14,

concerning mandatory reporting and operating requirements for wells connected to a fracking operation when detectable seismic activity occurs. Class II wells regulated under this rulemaking must record pressure and flow data on a monthly basis and maintain these records for at least 5 years. The rulemaking establishes green light (magnitude less than 2.0), yellow light (magnitude 2.0 through 3.9), or red light (magnitude 4.0 or greater) alerts of seismic activity detected by the US Geological Survey or Illinois State Geological Survey. If USGS or ISGS detects seismic activity sufficient to trigger a yellow light or red light alert, DNR will notify Class II well permittees within a designated radius (6 miles for a yellow light alert, 10 miles for a red light alert) of the epicenter. Permittees that receive a certain number of yellow or red alerts may be ordered to cease operations under certain conditions. If DNR determines, after consultation with ISGS, that induced seismicity (an earthquake attributable to high pressure hydraulic fracturing) has occurred, an affected permittee must meet with representatives of DNR and ISGS within 30 days after a cessation order is issued to determine mitigation measures. Since 1st Notice, the magnitude thresholds for seismic activity alerts have been lowered and the radius from the epicenter that triggers notification to well permittees has been increased. Businesses with Class II well permits are affected by this rulemaking.

Questions/requests for copies of the 2 DNR rulemakings: Jeffrey P. Smith, DNR, One Natural Resources Way, Springfield IL 62702-1271, 217/782-1809.

■ PLUMBING CONTRACTORS

The DEPARTMENT OF PUBLIC HEALTH adopted amendments to Lawn Irrigation Contractor and Lawn Sprinkler System Registration Code (77 IAC 892; 38 Ill Reg 8756) and Plumbing Contractor Registration Code (77 IAC 894; 38 Ill Reg 8772), effective 11/12/14, implementing changes recommended by the Plumbing Code Advisory Council. Both Parts increase annual registration fees and also add a new Section containing referenced materials. The Part 892 amendments also provide requirements for lawn sprinkler design and installation course providers to have their curriculum and organization approved by DPH. A change since 1st Notice to both rulemakings adds a \$200 fee for a dishonored check or insufficient payment. The Part 892 rulemaking also added a clarification regarding the process for obtaining approval for use of an alternative water source other than a public water system. Plumbers, landscapers and others who install lawn sprinklers are affected.

■ FOOD SALES

DPH also adopted amendments to The Illinois Food, Drug and Cosmetic Act (77 IAC 720; 38 Ill

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Emergency Rules

■ WAGE REPORTING

The DEPARTMENT OF EMPLOYMENT SECURITY adopted emergency amendments to Notices, Records, Reports (56 IAC 2760; 38 Ill Reg 22249), effective 11/17/14 for a maximum of 150 days, updating electronic reporting requirements for employers with 250 or more employees. Quarterly reports were required to be filed electronically starting in 2013. DES will allow a penalty waiver for employers who have been found eligible to waive the federal electronic reporting requirements in effect on 1/1/12. A new Section is added to phase in electronic reporting requirements on a fiscal year basis based on the number of

employees an employer had during a calendar year, starting with the 2013 calendar year. If an employer can show the IRS has or would have waived the electronic filing requirement, the Director will waive the electronic filing requirement. DES also adopted emergency amendments to Payment of Unemployment Contributions, Interest and Penalties (56 IAC 2765; 38 Ill Reg 22262) effective 11/17/14, waiving the electronic filing penalty for not reporting electronically for the first 2 months of a quarter if the employer files electronically in the third month. This provision is effective through 11/30/14. DES clarifies that a month for which the penalty has been waived is not considered a month in which an employer filed

a late report. Employers subject to reporting are affected by these emergency rules.

Questions/requests for copies/comments on the 2 DES emergency rules through 1/14/15 Gregory Ramel, DES, 33 S. State St.-Room 937, Chicago, IL 60603, 312/793-4240.

New Rules

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Reg 10815), effective 11/14/14, that establish an application process and requirements for issuance of Certificates of Free Sale for Illinois items from food and dairy manufacturers, processors, packers or warehousemen. Retail food establishments, food processors, and dairies are among those affected.

Questions/requests for copies of the 3 DPH rulemakings: Susan Meister, DPH, 535 W. Jefferson St., 5th Fl., Springfield IL, 62761, 217/782-2043.

TELECOMMUNICATIONS

The ILLINOIS COMMERCE COMMISSION adopted amendments to Tariff Filings (83 IAC 745; 38 Ill Reg 671) effective 11/17/14, to 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

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Proposed Rulemakings

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rulemaking, and submit an application to DHS outlining these policies and procedures. Businesses and non-profits that provide substance abuse treatment may be affected.

Questions/requests for copies/comments through 1/14/15: Tracie Drew, DHS, 100 S. Grand Ave. East, 3rd Fl. Springfield IL 62762, 217/785-9772.

HORSE RACING

The ILLINOIS RACING BOARD proposed amendments to Medication (11 IAC 603; 38 Ill Reg

22022) updating its medication rules to the current ARCI standards are based on RMTC recommendations. IRB is adding 23 therapeutic medications including albuterol, Clenbuterol and Procaine penicillin. Theobromine is being added as an acceptable environmental contaminant. The sex of the horse must be identified to the laboratory on all pre- and post-race samples.

Questions/requests for copies/comments on this proposed rulemaking through 1/14/15: Mickey Ezzo, IRB, 100 W. Randolph, Ste. 7-701, Chicago IL 60601, 312/814-5017.

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 the Committee's December 16, 2014 meeting.

DEPT OF FINANCIAL AND PROFESSIONAL REGULATION

Rules for Administration of the Compassionate Use of Medical Cannabis Pilot Program
(68 IAC 1290) proposed 8/22/14 (38 Ill Reg 17531)

DEPT OF NATURAL RESOURCES

Construction in Floodways of Lakes, Rivers and Streams (17 IAC 3700) proposed 8/8/14
(38 Ill Reg 16658)

Construction and Maintenance of Dams (17 IAC 3702) proposed 8/8/14 (38 Ill Reg 16664)

Regulation of Public Waters (17 IAC 3704) proposed 8/8/14 (38 Ill Reg 16670)

Floodway Construction in Northern Illinois (17 IAC 3708) proposed 8/8/14 (38 Ill Reg 16676)

The Taking of Reptiles and Amphibians Under a Sport Fishing License (17 IAC 880) proposed
8/8/14 (38 Ill Reg 16654)

DEPT OF REVENUE

Income Tax (86 IAC 100) proposed 9/26/14
(38 Ill Reg 19128)

Retailers' Occupation Tax (86 IAC 130) proposed 5/2/14 (38 Ill Reg 9171)

Hotel Operators' Occupation Tax Act (86 IAC 480) proposed 5/2/14 (38 Ill Reg 9198)

DEPT OF STATE POLICE

Concealed Carry Licensing Review (20 IAC 2900) proposed 10/3/14 (38 Ill Reg 19364)

New Rules

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website. Newspaper publication of rate increases is an optional (formerly 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 this rulemaking.

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