

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.

Proposed Rulemakings

■ WORKERS' COMPENSATION

The WORKERS' COMPENSATION COMMISSION proposed a new Part titled Electronic Filing (50 IAC 9015; 40 Ill Reg 10191) and proposed amendments to the following 9 Parts: Pre-Arbitration (50 IAC 9020; 40 Ill Reg 10199); Arbitration (50 IAC 9030; 40 Ill Reg 10221); Review (50 IAC 9040; 40 Ill Reg 10237); Oral Arguments (50 IAC 9050; 40 Ill Reg 10252); Judicial Review (50 IAC 9060; 40 Ill Reg 10256); Settlement Contracts and Lump Sum Petitions (50 IAC 9070; 40 Ill Reg 10260); Disciplining of Attorneys; Agents (50 IAC 9090; 40 Ill Reg 10268); Insurance Regulations (50 IAC 9100; 40 Ill Reg 10272); and Miscellaneous (50 IAC 9110; 40 Ill Reg 10307).

The new Part 9015 establishes rules for electronic formatting and filing of documents and

administrative procedures by which non-attorney *pro se* (self-representing) litigants may gain access to the electronic system. Users must first register with the Commission and provide all information required. If a statute, regulation or case law requires information to be in written form, or provides for certain consequences if it is not, an electronic record satisfies that rule of law. Documents must be submitted in the format prescribed by the Commission, or in PDF format directly from the program creating a document, rather than as a scanned image of a paper document. All electronically filed documents shall, as far as possible, be formatted in accordance with this Part. Documents with separate WC numbers must be filed individually. Documents not complying with the Electronic

(cont. page 2)

New Rules

■ UNDERGROUND TANKS

The POLLUTION CONTROL BOARD adopted amendments to Underground Storage Tanks (35 IAC 731; 40 Ill Reg 6991), effective 7/13/16, implementing updates to USEPA regulations. The rulemaking addresses previously deferred tank systems that are field-constructed, are part of airport fuel distribution systems, or store fuel solely for emergency power generation. Provisions that exceed PCB's mandate to maintain rules identical-in-substance to federal regulations are removed.

Questions/requests for copies: Michael McCambridge, PCB, 100 W. Randolph St., Ste. 11-500, Chicago IL 60601, 312/814-6924, Michael.McCambridge@illinois.gov. Please reference docket R16-16. Copies of the Board's opinion and order can be obtained online at <http://www.ipcb.state.il.us>.

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.

Proposed Rulemakings

(cont. from page 1)

Commerce Security Act or this Part may be rejected. The transmission date and time shall determine the electronic file mark (equivalent to a time stamp on a printed document). By filing a document electronically, the registered user thereby certifies that the document has been checked for and is free of viruses or malware. Electronic signatures are deemed to satisfy any legal requirement for a signed document. If an electronic filing is not received, the Commission may, upon satisfactory proof, permit the document to be filed again later, effective on the date the filing was first attempted. Reasons for permitting a subsequent filing may include an error in the transmission that was unknown to the transmitting party; a rejection of the document by the Commission; an erroneous exclusion of a party from the service list; or other technical problems experienced by the filing party.

Part 9020, not revised since 1996, is being updated to address new technology, make stylistic changes, and clarify existing procedures of the Commission. Filing requirements for various documents and pleadings, and other references, are aligned with the provisions in new Part 9015. Documents not filed with all parties shall be considered *ex parte* communications and disregarded.

The Part 9030 amendments address procedural changes

regarding WC arbitration hearings. All cases will now be assigned on a random basis (presently, random assignment occurs only in Cook County). Motions to consolidate a claim and cases re-filed are to be retained by the Arbitrator first assigned to that claim. Requests for a trial may be made by any party at the monthly status call on which the case appears. The Commission must first hold a hearing before issuing orders for taking depositions. The rulemaking clarifies that a proposed decision shall not be considered an admission by a party and shall not be made part of the record. Written decisions shall not contain an Arbitrator's findings of fact and conclusions of law, separately stated, unless requested by a party.

Part 9040, concerning Petitions for Review, includes the following changes: allows petitions to be filed electronically; makes numerous editing and technical corrections to this Part (last amended in 1990); states that petitions filed under named Sections of the Act shall be assigned to the original hearing Commissioner or the Commissioner assigned to the particular territory where the original hearing was held; states that interrogatories as special findings on review must be filed at the same time as the parties' Statement of Exceptions (rather than 5 days prior to oral argument); and clarifies that if more than one party files for review, each party may file its own Statement of Exceptions and

supporting briefs within 30 days from the Return Date of Review (rather than the date of closing of Proofs on Review).

Amendments to Part 9050 (concerning oral arguments) state that the right to oral argument requires compliance with the provisions for Statements of Exceptions, supporting briefs and abstracts contained in 50 IAC 9040, and make technical changes to the Part, which has not been updated since 1982.

The Part 9060 rulemaking, concerning judicial review of Commission actions, requires a party seeking such review to submit to the court clerk proof that a notice of intent to file for judicial review was filed with the Commission. New provisions require a party seeking review to file a copy of any remanding Order with the Commission within 30 days after receipt of the Order from the reviewing court, with a notice of filing provided to all parties. Upon receipt of such Order, the Commission shall docket the matter for hearing in the same manner as Petitions for Review, and when practical, the case shall be returned to the original Commissioner.

Part 9070 requires 4 settlement contracts to be filed, but only one copy need be provided for each additional case number listed in the settlement contract. Settlement contract forms are available at a website address

(cont. page 3)

Proposed Rulemakings

(cont. from page 2)

listed in the rulemaking. The rulemaking removes mandatory reporting requirements regarding injuries to an eye and how dependents of a decedent will be supported. When a settlement contract has been rejected by a Commissioner and re-assigned to an Arbitrator for hearing, no settlement contract may be approved by any Arbitrator. Parties may reserve the right to amend settlement contracts by stipulation and order of a Commissioner to conform to regulatory requirements such as Medicare and Social Security.

In Part 9090, the Commission is striking its provisions regarding attorney discipline and simply referring such cases to the Illinois Attorney Registration and Disciplinary Commission.

The Part 9100 amendments require companies that provide WC insurance benefits to provide for each client the company's name, FEIN, and description of the company's business operations in a manner satisfactory to the Commission. In determining whether facilities are adequate for investigation and payment of claims, a new factor is added: whether a current estimate of the expected cost for each claim is established based on facts of each claim, medical information and provisions of the Act. The estimation is not to be trended, based on discounted present value, or actuarially developed. The minimum security for self-insurance

programs is \$200,000. The termination of an employer's self-insurance does not relieve the employer of its responsibility to provide the Commission with security, and security will be released when the Chairman of the Commission determines that the employer has no outstanding liability under the WC or Occupational Diseases Acts. The Commission shall have the right to obtain reimbursement for any compensation obligations paid under the Injured Workers' Benefit Fund (IWBF) from any employer entity. To qualify for payment from the IBWF, a claimant must file an Application for Adjustment of Claim against the employer and must have named the State Treasurer as ex-officio custodian of the IBWF as a party respondent. Two new methods of demonstrating compliance with the Act are added: 1) submitting a copy of a pooling agreement showing employer membership in a licensed group workers' compensation pool; 2) for a firm that loans employees or supplies workers' compensation benefits, the firm must submit, for each client, the company's name, FEIN, address, etc. Procedures for conducting work-stop hearings triggered by an employer's failure to provide workers' compensation insurance are also prescribed.

Part 9110 extends from 120 to 365 days the amount of time a worker can be incapacitated before a vocational rehabilitation report is required. Petitions to Suspend Compensation for

Failure to Submit to Proper Medical Treatment shall be docketed and set for hearing in the same manner as Petitions for Immediate Hearing in 50 IAC 9020.80.

The changes in policy and procedure in these 10 rulemakings are numerous and may affect small businesses. Readers are urged to review the rulemakings in detail.

WCC PUBLIC INFORMATION

WCC also proposed repeal of the Part titled Freedom of Information Act (2 IAC 2026; 40 Ill Reg 10149) and proposed a new Part titled Access to Records of the Workers' Compensation Commission (2 IAC 2026; 40 Ill Reg 10168). These rulemakings update Freedom of Information Act (FOIA) procedures by which interested persons may inspect or request copies of the Commission's public records.

Questions/requests for copies/comments concerning the 12 WCC rulemakings through 9/12/16: Ronald Rascia, WCC, 100 W. Randolph, Suite 8-200, Chicago IL 60601, 312/814-4932, IWCC.Rules@illinois.gov

DRIVER'S LICENSES

The SECRETARY OF STATE proposed an amendment to Issuance of Licenses (92 IAC 1030; 40 Ill Reg 10137)

(cont. page 4)

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 August 9, 2016 meeting. Other items not published in the *Illinois Register* or The Flinn Report may also be considered. Further comments concerning these rulemakings should be addressed to JCAR using the contact information on page 1.

DEPT OF HUMAN SERVICES

Developmental Disabilities Services (89 IAC 144; 40 Ill Reg 7600) proposed 5/27/16

DEPT OF PUBLIC HEALTH

Health and Hazardous Substances Registry Code (77 IAC 840; 40 Ill Reg 1625)
proposed 1/22/16

Proposed Rulemakings

(cont. from page 3)

concerning driver's license photograph requirements for persons who wear religious head dressings. In order for a license applicant to be photographed in a religious head dressing, the item must not cover any area of the open face. The applicant must also sign a declaration stating that he or she wears the head dressing in public at all times unless circumstances require its removal (e.g., haircuts, medical examinations) and acknowledging that the license may be cancelled if SOS obtains evidence showing that the driver does not wear the head dressing at all times in public.

Questions/requests for copies/comments through 9/12/16: Nathan Maddox, SOS, 298 Howlett Building, Springfield IL 62756, 217/785-3094, email nmaddox@ilsos.net

■ SALES TAX

The DEPARTMENT OF REVENUE proposed an amendment to Retailers' Occupation Tax (86 IAC 130; 40 Ill Reg 10083) restructuring the sales tax exemption for the purchase of rolling stock, or repair or replacement parts for rolling stock, moving in interstate commerce. Motor vehicles, trailers, aircraft and watercraft qualify for the exemption if, during each 12-month period, the

total trips or total miles traveled for hire in interstate commerce exceed 50% of the total trips made or miles travelled. The rulemaking also gives numerous examples of instances illustrating when rolling stock does, or does not, qualify for the exemption. Some small businesses may be affected by this rulemaking.

Questions/requests for copies/comments through 9/12/16: Samuel Moore, DOR, 101 W. Jefferson, Springfield IL 62794, 217/782-2844.