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Illinois General Assembly

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Issue 35

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

GAS PIPELINES

The ILLINOIS COMMERCE COMMISSION adopted an amendment for "Minimum Safety Standards for Transportation of Gas and for Gas Pipeline Facilities" (83 Ill Adm Code 590; 35 Ill Reg 3878), effective 8/15/11, that updates the incorporation by reference of federal Department of Transportation regulations to the most recent 1/11 federal safety standards for natural gas pipelines. The updates concern reporting requirements for gas pipeline facilities, safety standards for pipeline transport of gas and liquefied natural gas, and employee drug and alcohol testing. Small businesses that own, operate, or repair gas pipelines may be affected by this rulemaking.

Questions/requests for copies: Conrad Rubinkowski, ICC, 527 E. Capitol Ave., Springfield IL 62701, 217/785-3922.

LABOR RELATIONS BOARD

The ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD adopted amendments to 5 Parts titled "General Procedures" (80 Ill Adm Code 1100; 34 Ill Reg 15615), "Hearing Procedures" (80 Ill Adm Code 1105; 34 Ill Reg 15620), "Representation Procedures" (80 Ill

Adm Code 1110; 34 Ill Reg 15625), "Unfair Labor Practice Proceedings" (80 Ill Adm Code 1120; 34 Ill Reg 15651), and "Fair Share Fee Objections" (80 Ill Adm Code 1125; 34 Ill Reg 15657), all effective 8/12/11. The amendments clarify and update IELRB hearing procedures and amend procedures for affected employees to vote on whether or not to join a union or accept a collective bargaining agreement. Specifically, the amendments to Part 1100 allow requests for, or motions to revoke, subpoenas to be filed with either the hearing officer or administrative law judge and move rules regarding standards for oral argument from Part 1120 to this Part 1100. Changes in Part 1100 since 1st Notice retain, rather than strike, a longer time period allowed for effecting service by first class mail and specify that subpoena requests may be filed with the chief administrative law judge in specified circumstances. An amendment to Part 1005 corrects a citation to Part 1110 text. The Part 1110 amendments require that notice of a collective bargaining representation or decertification petition be made by alternative means if a notice is posted when a substantial number of employees are not working (e.g., dur-

(cont'd next page)

KIDS' HEALTH INSURANCE

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES proposed amendments to the Part titled "Covering All Kids Insurance Program" (89 Ill Adm Code 123; 35 Ill Reg 14244) implementing two public acts that affect the Department's All Kids subsidized health insurance program for children who do not have access to affordable health insurance. Public Act 96-1502 caps the maximum income limit for All Kids eligibility at 300% of the federal poverty level (FPL) for families who apply for the program on or after 7/1/11. Annual out-of-pocket and copay expenses for each child enrolled in All Kids coverage level 2 (at or below 300% FPL) are reduced from \$500 to \$250 per child. Currently enrolled children whose household income exceeds 300% of FPL may remain enrolled through 6/30/12. After that date, All Kids coverage levels 3 through 8 (for families with incomes above 300% FPL) will be terminated. The rulemaking also implements Public Act 96-1272, which eliminates the current 3-month mandatory waiting period before resumption of coverage for families who lost All Kids coverage due to non-payment of premiums but

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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

ing a semester break). In cases where IELRB is hearing a petition for a representation or decertification vote and the only issues raised are logistical (e.g., when or where to hold the election), the Board, its director, or the hearing officer may issue an order for an election. The rulemaking addresses IELRB procedures for resolving a situation in which professional and non-professional employees or craft and non-craft employees included in a single proposed bargaining unit do not agree on the organization they wish to represent them. If a bargaining unit has been approved by majority vote, but the appropriateness of the chosen labor organization or the exclusion of certain positions has been contested, IELRB will not hold a hearing if the petition fails to raise any "issues of material fact". Since 1st Notice, Part 1110 rule text concerning alternative means of posting, resolving issues through consent decrees, and invoking the Board's unit clarification procedures in a majority interest case has been clarified. Amendments to Part 1120 clarify when a compliance hearing will be held and how testimony and documentation must be provided. Previous provisions regarding oral argument are moved from this Part to Part 1100. Changes in Part 1120 since 1st Notice specify that, if there are no issues of law or material fact as to when compliance has occurred, the executive director will issue a Recommended Decision and Order determining whether compliance has occurred. Further changes concern (1) the respondent's burden of proving that the backpay claimant has failed to mitigate damages or is not entitled to backpay and (2) awarding costs and attorney's fees related to subpoena enforcement. Part 1125 amendments clarify that the record in a hearing on a fair share fee objection is closed when the administrative law judge orders it closed (1) at the hearing, (2) after holding the record open to allow inclusion of additional evidence, or (3) after attempting to settle objections. A change since 1st Notice in Part 1125 clarifies that the record may be

held open so that any party may provide additional evidence.

IELRB adopted amendments to "Public Information, Rulemaking, Organization and Personnel" (2 Ill Adm Code 2675; 34 Ill Reg 15595), effective 8/12/11, concerning the responsibilities of the Board and its staff. Amendments make the Board's executive director responsible for certifying the results of union representation or decertification votes; issuing certifications of union representation; dismissing representation petitions; issuing complaints, hearing notices, and dismissals of unfair labor practice charges; reviewing decisions of administrative law judges; and issuing recommended decisions and orders. IELRB staff are responsible for handling all personnel matters and for submitting budgets and appropriation requests to the Governor's Office of Management and Budget and the Legislature.

IELRB also adopted amendments to "Freedom of Information" (2 Ill Adm Code 2676; 34 Ill Reg 15603), effective 8/12/11, implementing Public Act 96-542, an extensive revision of the Illinois Freedom of Information Act (FOIA) affecting which documents and what information agencies must make public, the timelines for providing such information, and the appeals process when a request for information is denied. The amendments add files and records concerning appeals of Board decisions, other litigation involving the Board, and mediations conducted by Board employees to the categories of records IELRB must maintain. The previous distinction in rule between records that were immediately available and those that required advance notice prior to availability is removed. Information exempt from disclosure includes affidavits submitted in unfair labor practice cases and the identities of persons submitting affidavits; communications made during mediations conducted by Board employees; personal information (e.g., Social Security numbers, home addresses); certain personnel information exempt under the Personnel

Records Review Act; attorney-client communications; minutes of closed meetings; information that could compromise the security of data processing systems or materials exempted under FOIA; matters related to ongoing collective bargaining (except for final agreements or settlements, which are public information); preliminary drafts or notes; proposals or bids on contracts, including any information that could compromise the procurement or bid process; materials prepared or compiled for internal audits; and faculty evaluation information received from academic peers and faculty members' course materials or utilized research materials. Other provisions state how and to whom a request for public information should be submitted, shorten the timeline for IELRB response from 7 to 5 business days, and list conditions under which the timeline may be extended (e.g., if a large number of records are sought or they require an extensive search to locate). Provisions are included for appealing a denial of requested documents to the Attorney General's public access counselor. The rulemaking also lists charges for copies made in print (first 50 pages free of charge, 15 cents per page after that) and electronic formats (actual cost of purchasing a requested electronic medium, if needed). Finally, the rulemaking states that IELRB public records will be made available for inspection at the Board's Chicago and Springfield offices and updates the address of the Springfield office. Changes since 1st Notice specify that when records of FOIA requests are disclosed, personal information about the requester will be redacted unless the requester consents in writing to such disclosure. "Cross-exceptions" are added to the list of hearing materials that can be disclosed in both representation and unfair labor practice cases. Also, files in pending unfair labor practice and representation cases remain in the list of records exempted from disclosure although they were stricken from the list in the proposed text. Those affected by this rulemaking include individuals, groups, or businesses seeking public

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information or documents from IELRB.

Questions/requests for copies of the 7 IELRB rulemakings above: Susan J. Willenborg, IELRB, 160 N. La Salle, Ste. N-400, Chicago IL 60601, 312/793-3288, e-mail: Susan.Willenborg@illinois.gov.

☞ MEDICAID LONG-TERM CARE

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES adopted amendments to "Rights and Responsibilities" (89 Ill Adm Code 102; 34 Ill Reg 11655), effective 8/12/11, to implement provisions of the federal Deficit Reduction Act of 2005 (DRA) concerning Medicaid assistance for long-term care. The Part 102 amendments (1) add denial of hardship waivers under the DHFS Part 120 medical assistance regulations to a list of DHFS actions that can be appealed and (2) protect assets of deceased persons who held qualified long-term care insurance policies from estate claims by DHFS in an amount up to the amount of coverage provided by the policy. Those affected by this rulemaking include long-term care facilities that accept Medicaid recipients and small businesses and non-profit organizations that counsel seniors concerning asset transfers and Medicaid eligibility.

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

☞ ENVIRONMENTAL LABORATORIES

The DEPARTMENT OF PUBLIC HEALTH adopted amendments for "Certification and Operation of Environmental Laboratories" (77 Ill Adm Code 465; 34 Ill Reg 12325), effective 8/12/11, to reflect the changes to analytical methods for drinking water that were adopted by the U.S. Environmental Protection Agency for environmental laboratories involved in microbiological analyses of samples of water from public water supplies and their sources. Requirements for "proficiency testing samples" are updated, and the experience require-

ments of laboratory supervisors and analysts and the specifications for laboratory facilities, equipment, practices, methodology, samples, quality control procedures, and record maintenance are revised. Terms are defined, incorporations by reference of non-regulatory publications and federal regulations are added, and Illinois statutes and administrative rules are referenced. Changes since 1st Notice add "Fluorocult LMX" to a list of defined terms, update several tests that are referenced for detecting certain bacteria in water (e.g., from the 2000 to the 2007 version), and modify minimum specifications for some laboratory equipment and procedures. Those affected by this rulemaking include DPH-certified laboratories that perform microbiological analysis of public water supplies.

Questions/requests for copies: Susan Meister, DPH, 535 W. Jefferson St., 5th Fl., Springfield IL 62761-0001, 217/782-2043, e-mail: dph.rules@illinois.gov.

PATIENT RIGHT TO KNOW ACT

The DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION adopted an emergency amendment to rules titled "Medical Practice Act of 1987" (68 Ill Adm Code 1285; 35 Ill Reg 14564), effective 8/12/11, for a maximum of 150 days, implementing Public Act 97-280. An identical proposed rulemaking is published in this week's issue of the *Illinois Register* at 35 Ill Reg 14233. Public Act 97-280 creates the Patient Right to Know Act, which requires DFPR to make a profile of each physician licensed in Illinois available to the public. The rulemaking updates a statutory cross-reference to the Act and changes obsolete compliance dates. DFPR is required to provide all licensed physicians with a copy of their profile for review by 8/15/11. Physicians must review, verify, and complete the profile by 10/15/11. DFPR will begin providing physician information to the public on a DFPR website, regardless of whether the physician has verified the information, approximately on or after 10/19/11.

(By way of background, DFPR originally adopted physician profile rules in 2008. However, the authorizing statute was declared unconstitutional by the court because a different provision in the law created medical malpractice caps. Thus, DFPR delayed implementation of this physician profile program until a separate new public act was passed to authorize it.)

Questions/requests for copies/comments concerning the proposed rulemaking through 10/11/11: Craig Cellini, DFPR, 320 W. Washington, 3rd Fl., Spfld. IL 62767-0001, 217/785-0813.

PUBLICATION CORRECTIONS

The JOINT COMMITTEE ON ADMINISTRATIVE RULES announced correction of publication errors in the *Illinois Register* for an Environmental Protection Agency rulemaking titled "Permit Fees for National Pollutant Discharge Elimination System Permits and Domestic Sewage Sludge Generator or Sludge User Permits" (35 Ill Adm Code 325; 34 Ill Reg 2608), which was adopted in the 6/29/10 Register, and a Pollution Control Board rulemaking titled "Solid Waste" (35 Ill Adm Code 807; 35 Ill Reg 3199) adopted in the 7/8/11 Register. For the EPA rulemaking, the agency filed text setting permit action deadlines "within 180 days of" and "within 90 days of" permit expiration dates. The adopted rulemaking as published in the *Illinois Register* changed the text to "180 days after" and "90 days after." However, EPA's intended meaning was "prior to", not "after". The agency will clarify this in a future rulemaking. In the PCB rulemaking, the abbreviation "CV", meaning "current value of the trust", was inadvertently omitted from the rule text published in the *Illinois Register* at proposal and adoption, although the rulemaking text filed with the Secretary of State was correct. JCAR regrets both errors and any inconvenience they may have caused.

Questions/requests for copies: Deborah Connelly, JCAR, 700 Stratton Bldg., Springfield IL 62704, 217/785-2254.

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have since repaid all past-due premiums. Those affected by this rulemaking include medical providers who serve All Kids enrollees.

Questions/requests for copies/comments through 10/11/11: Jeanette Badrov at the DHFS address and telephone number above.

SCHOOL BUSES

The DEPARTMENT OF TRANSPORTATION proposed two new Parts titled "Minimum Safety Standards for Construction of Multifunction School Activity Buses" (92 Ill Adm Code 435; 35 Ill Reg 14271) and "Inspection Procedures for Multifunction School Activity Buses" (92 Ill Adm Code 436; 35 Ill Reg 14321) that implement Public Act 96-410. The statute requires DOT to codify construction standards and inspection criteria for "multifunction school activity buses" (MFSAB) manufactured on or after 7/1/12. An MFSAB is designed to transport 11 to 15 persons, including the driver, and is not used for transporting students to and from home or school bus stops. Part 435 establishes requirements for the construction of MFSABs, including construction standards in the 2011 federal motor vehicle safety standards that are incorporated by reference. The rulemaking provides definitions for use throughout the Part and separates specific MFSAB construction

standards into appendices (e.g., brakes, electrical system, seats). Part 436 establishes MFSAB inspection procedures and related operational requirements through references to the 2011 federal standards. The rulemaking provides definitions for use throughout the Part and separates specific MFSAB inspection procedures and specifications into appendices (e.g., brake performance test). Those affected by these 2 rulemakings include small businesses that manufacture, own, or operate multifunction school activity buses.

Questions/requests for copies/comments concerning the 2 rulemakings above through 10/11/11: Catherine Allen, DOT, 1340 N. 9th St., Springfield IL 62794-9212, 217/785-3031.

REAL ESTATE APPRAISERS

The DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION proposed an amendment to "Real Estate Appraiser Licensing" (68 Ill Adm Code 1455; 35 Ill Reg 14235) that increases the initial application fee (\$75 to \$90) and licensure renewal fee (\$250 to \$265 annually) for appraisers to reflect a \$15 increase (from \$25 to \$40) in the federal Appraisal Subcommittee's (ASC) annual National Registry fee, effective 1/1/12. ASC requires states to collect the National Registry fee and, in turn, lists a licensure applicant's credentials in the National Registry. Those affected by this rulemaking

include real estate appraisal schools and businesses that use the services of real estate appraisers.

Questions/requests for copies/comments through 10/11/11: Craig Cellini at the DFPR address and telephone number above.

TEACHERS' RETIREMENT

The TEACHERS' RETIREMENT SYSTEM (TRS) proposed amendments to "The Administration and Operation of the Teachers' Retirement System" (80 Ill Adm Code 1650; 35 Ill Reg 14259) to implement federal retirement plan policy statements required by the federal Internal Revenue Service (IRS) for its continued approval of the TRS retirement plan under federal tax law. The rulemaking affirms past compliance by TRS and validity of various statutory provisions of the Illinois Pension Code, as well as named provisions of the federal Internal Revenue Code as of a date certain prescribed in the rulemaking. (For example, specific dates are added for the exclusive benefit rule, required minimum distributions, and mortality tables.)

Questions/requests for copies/comments through 10/11/11: Cynthia Fain, TRS, 2815 W. Washington, Springfield IL 62794-9253, 217/753-0375.

Second Notices

The following rulemakings were moved to Second Notice this week by the agencies listed below, commencing the JCAR review period, and will be considered at JCAR's September 13th meeting.

STATE BOARD OF EDUCATION

"Certification" (23 Ill Adm Code 25) proposed 6/10/11 (35 Ill Reg 8634)

"Public Schools Evaluation, Recognition and Supervision" (23 Ill Adm Code 1) proposed 6/10/11 (35 Ill Reg 8622)

"Transitional Bilingual Education" (23 Ill Adm Code 228) proposed 6/10/11 (35 Ill Reg 8746)

"Incentive Grants for Agricultural Science Teacher Education" (23 Ill Adm Code 75) proposed 6/10/11 (35 Ill Reg 8714)

ILLINOIS COMMERCE COMMISSION

"Licensure of Retail Electric Agents, Brokers and Consultants" (83 Ill Adm Code 454) proposed 1/7/11 (35 Ill Reg 333)

DEPARTMENT OF HUMAN SERVICES

"Individualized Plan for Employment (IPE)" (89 Ill Adm Code 572) proposed 1/14/11 (35 Ill Reg 711)

"Customer Financial Participation" (89 Ill Adm Code 562) proposed 12/17/10 (34 Ill Reg 19362)

ILLINOIS DEPARTMENT OF REVENUE

"Electronic Filing of Returns or Other Documents" (86 Ill Adm Code 760) proposed 7/1/11 (35 Ill Reg 10292)

DEPARTMENT OF PUBLIC HEALTH

"Child Health Examination Code" (77 Ill Adm Code 665) proposed 6/10/11 (35 Ill Reg 8766)

BOARD OF EXAMINERS

"Certificate of Certified Public Accountant" (23 Ill Adm Code 1400) proposed 6/24/11 (35 Ill Reg 9204)

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

Repeal of "Hearings for Removal or Prohibition of Directors, Officers, Employees or Agents of a State Bank or a Branch of an Out-of-State Bank, Subsidiary or Holding Company of a State Bank or a Branch of an Out-of-State Bank, or Corporate Fiduciary, Subsidiary or Parent Company of a Corporate Fiduciary" (38 Ill Adm Code 900) proposed 7/1/11 (35 Ill Reg 10175)

ILLINOIS STATE TOLL HIGHWAY AUTHORITY

"Office of the Inspector General" (2 Ill Adm Code 3430) proposed 7/1/11 (35 Ill Reg 10298)

DEPARTMENT OF INSURANCE

"Suitability in Annuity Transactions" (50 Ill Adm Code 3120) proposed 4/1/11 (35 Ill Reg 4868)

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