

Claire B. Eberle, Editor
Elaine Spencer, Assoc. Editor

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Illinois General Assembly

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Issue 36

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

AIR POLLUTION

The POLLUTION CONTROL BOARD adopted amendments to "Nitrogen Oxides Emissions" (35 Ill Adm Code 217; 35 Ill Reg 6770), effective 8/22/11, that extend from 1/1/12 to 1/1/15 the compliance date for the control of nitrogen oxide emissions (NO_x) for the following source categories: industrial boilers, process heaters, glass-melting furnaces, cement kilns, lime kilns, furnaces used in making steel and melting aluminum, and fossil-fuel-fired stationary boilers. An appendix concerning emission units at petroleum refineries strikes compliance dates that predate 1/1/15 for Exxon-Mobil and units of ConocoPhillips' Wood River refinery. Affected entities include NO_x sources in the Chicago and St. Louis ozone nonattainment areas that emit, or have the potential to emit, NO_x in an amount equal to or greater than 100 tons/year and any industrial boiler; process heater; glass-melting furnace; cement kiln; lime kiln; iron and steel reheat, annealing, or galvanizing furnace; aluminum reverberatory or crucible furnace; or fossil-fuel-fired stationary boiler within such sources that emit NO_x in an amount equal to or greater than 15 tons per year and equal to or greater than 5

tons per ozone season and subject to the provisions of the regulations.

Questions/requests for copies: Daniel Robertson, PCB, 100 W. Randolph, Ste. 11-500, Chicago IL 60601, 312/814-6931, e-mail: robertsd@ipcb.state.il.us. Please reference docket R11-24.

STATE INVESTMENT POOL

The OFFICE OF THE TREASURER adopted amendments to "Illinois Public Treasurers' Investment Pool for Public Treasurers in the State of Illinois" (74 Ill Adm Code 740; 35 Ill Reg 8795), effective 8/17/11. A companion emergency rulemaking became effective 5/26/11 but was suspended by JCAR from 7/14/11 to 8/17/11. (The State Treasurer administers investment opportunities for other custodians of public funds, such as counties, townships, school districts, the Chicago Park District, and fire protection districts.) The rulemaking provides that the State Treasurer will notify investment pool participants of any increase in the administrative fee above .05% (previously, any increase or decrease required notification). Also, the administrative fee may be less than .05% calculated on a daily basis.

(cont'd next page)

AIR POLLUTION

The POLLUTION CONTROL BOARD proposed an amendment to "Permits and General Provisions" (35 Ill Adm Code 201; 35 Ill Reg 14616) that allows qualifying "smaller sources" of air pollution to register with the Environmental Protection Agency as an alternative to applying for a permit. (A small source emits relatively low quantities of such hazardous air pollutants as carbon monoxide, lead, mercury, and nitrogen oxides and meets other specified criteria.) Owners and operators of such qualifying sources will no longer be required to apply for construction or operating permits, await review of permit applications and permit issuance, pay construction and operating permit fees, and submit an annual emissions report. Instead, they will pay an annual fee, submit initial and annual certifications stating that the source continues to meet program criteria, and keep records supporting the certification. Covered topics include how to determine whether emissions meet statutory criteria, initial and renewal registration, record-keeping, source changes that require notification or a permit, and re-entry into the program. Several thousand

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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: Bradley A. Rightnowar, Office of the State Treasurer, 1 W. Old State Capitol Plaza, Springfield IL 62701, 217/557-9360, e-mail: brightnowar@treasurer.state.il.us.

SPECIAL EDUCATION

The STATE BOARD OF EDUCATION adopted amendments for its rules titled "Certification" (23 Ill Adm Code 25; 35 Ill Reg 14663) and "Special Education" (23 Ill Adm Code 226; 35 Ill Reg 14836) and a new Part titled "Standards for Certification in Special Education" (23 Ill Adm Code 28; 35 Ill Reg 14709) by peremptory rulemaking in accordance with Public Act 97-461. The statute authorizes SBE to use peremptory rulemaking procedures to place its court-ordered policies

and guidelines into the *Illinois Administrative Code* pursuant to federal court dictate in the case *Corey H., et al. v. Board of Education of the City of Chicago, et al.* SBE has been implementing these policies and guidelines without specific adopted rules due to a Suspension of peremptory rules that JCAR issued in 2001. With the passage of P.A. 97-461, SBE is now authorized to implement these policies and guidelines through rules. The amendments to "Certification" establish the new system of certification of special education personnel, and the amendments to "Special Education" align the Part with the system of certification of special education personnel in Part 25. New Part 28 sets out the standards for all special educators and the various types of endorsement that are incorporated into the special

education preparation programs and reflected in the content of the examinations that candidates must pass to receive a particular endorsement. As the policies and guidelines contained in these peremptory rules have been implemented since 2001 under the federal court order, SBE anticipates no new impact on the affected teachers, institutions of higher education that prepare special education personnel, or school districts employing these teachers.

Questions/requests for copies: Linda Jamali (217/557-6763) for Part 25, Vicki Phillips (217/782-2948) for Part 28, and David Andel (217/782-5589) for Part 226, SBE, 100 N. First St., Springfield IL 62777.

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small source entities may be affected by this rulemaking.

Requests for copies/comments through 10/17/11: John Therriault, Clerk, at the PCB address above, 312/814-3620, or download copies at www.ipcb.state.il.us. Questions: Tim Fox at the same address, 312/814-6085, e-mail: foxt@ipcb.state.il.us. Please reference docket R12-10.

TURKEY HUNTING

The DEPARTMENT OF NATURAL RESOURCES proposed amendments to "The Taking of Wild Turkeys - Spring Season" (17 Ill Adm Code 710; 35 Ill Reg 14595) that amend the spring season turkey hunting dates to conform to the 2012 calendar. Hunters will no longer be required to sign in and out at Pyramid State Park. Youth turkey hunters participating in the Youth Turkey Hunt while using an apprentice hunting license must be accompanied by a non-hunting par-

ent, grandparent, or guardian who possesses a valid Illinois hunting license. All other youth hunters participating in the Youth Turkey Hunt must be accompanied by a non-hunting, adult supervisor who possesses a valid Illinois hunting license (non-residents) or a FOID card (Illinois residents). Non-hunting supervisors must maintain the youth under their immediate control at all times, and each supervisor may accompany only one youth at a time during the hunt.

Questions/requests for copies/comments through 10/17/11: George Sisk, DNR, One Natural Resources Way, Springfield IL 62702-1271, 217/782-1809.

MORTGAGES

The DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION proposed amendments to rules titled "Residential Mortgage License Act of 1987" (38 Ill Adm Code 1050; 35 Ill

Reg 14574) to raise fees, revise reporting and new regulatory provisions regarding mortgage loan originators, and update regulatory requirements in conformity with Public Act 96-112. (A mortgage loan originator is an individual who, for compensation, takes a residential mortgage application or offers or negotiates terms of a residential mortgage loan.) Fee increases concern bounced checks (\$50 in addition to any other fee); mortgage loan license application and renewal fees increased from \$125 to \$200 and \$100 to \$150, respectively; registration or license transfer fees increased from \$35 to \$50; and registration or license reactivation fees increased from \$100 to \$150. Leased facilities used to provide a full-service office must have a minimum lease term of 12 months and must cover the full period of a licensee's license. The rulemaking forbids licensees to charge a late fee for any payment that is received in full by 5:00 p.m. on the due date and requires them to produce documen-

Proposed Regulations

tation of the date any payment was received upon DFPR demand. Regarding licensure application and approval, the rulemaking requires mortgage loan originators to complete applications for licensure within 90 days after initial filing through the Nationwide Mortgage Licensing System and Registry; otherwise the application will be considered withdrawn. Applications will also be deemed withdrawn if an applicant fails to respond to a DFPR request within 15 days. The rulemaking sets timelines for mortgage loan originators to notify DFPR of certain adverse actions against them (e.g., license revocation, bankruptcy, criminal conviction), allows DFPR to create an inactive licensure status, and requires licensees to file an annual report of purchasing activity. This rulemaking will affect mortgage loan originators and mortgage brokers.

☞ MEDICAL RULE WITHDRAWN

DFPR also announced withdrawal of proposed amendments to rules titled "Medical Practice Act of 1987" (68 Ill Adm Code 1285; 34 Ill Reg 11980). The rulemaking subjected all licensure by endorsement applicants to an expanded background check conducted by the Illinois State Police that included a Federal Bureau of Investigation-Criminal Justice Information Service name search request. Further amendments added criminal offenses committed against a patient or any other person that would block a licensure applicant from being deemed rehabilitated by the Disciplinary Board. The Department stated that the passage of Public Act 97-156, effective 8/19/11, conflicts with the rulemaking as it was originally proposed. Small businesses, small municipalities, and nonprofits that use the services of medical providers licensed under the Medical Practice Act would poten-

tially have been affected by this rulemaking.

Questions/requests for copies/comments concerning the proposed mortgage rulemaking until 10/17/11: Craig Cellini, DFPR, 320 W. Washington, 3rd Fl., Springfield IL 62767-0001, 217/785-0813, Fax 217/558-4451.

☞ SUBSTANCE ABUSE TREATMENT RULES WITHDRAWN

The DEPARTMENT OF HUMAN SERVICES announced its withdrawal of 2 proposed rulemakings titled "Award and Monitoring of Funds" (77 Ill Adm Code 2030; 35 Ill Reg 1327) and "Subacute Alcoholism and Substance Abuse Treatment Services" (77 Ill Adm Code 2090; 35 Ill Reg 1329) in response to JCAR Objections. Companion emergency rulemakings became effective 1/7/11, were published in the 1/21/11 *Illinois Register*, and were repealed on 4/28/11 in response to JCAR Objections. The Part 2030 amendments provided grant-in-aid funding for adult and adolescent residential rehabilitation services for substance abuse treatment based upon medical necessity and subsequent approval based upon the utilization management process. The Part 2090 amendments required that any adult or adolescent residential treatment services (ASAM Level III.5) must be determined to be medically necessary by the utilization management process and cross-referenced the above amendments for Part 2030. Those affected by these rulemakings included Division of Alcoholism and Substance Abuse funded providers of residential rehabilitation services.

Questions/requests for copies: Tracie Drew, DHS, 100 S. Grand Ave., E., 3rd Fl., Springfield IL 62762, 217/785-9772.

☞ DHFS PUBLIC HEARINGS

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES will hold a public hearing on amendments to "Medical Payment" (89 Ill Adm Code 140; 35 Ill Reg 12600) on Monday, 9/12/11, from 1:00 to 3:00 p.m. at the Prescott E. Bloom Building, 201 S. Grand Ave. E., Springfield. The hearing concerns a proposed rulemaking published in the 7/29/11 *Illinois Register* that sets lower maximum reimbursement rates for prescription and over-the-counter drugs dispensed to recipients of DHFS medical assistance. Those affected by this rulemaking include pharmacies, clinics, and other medical providers that serve medical assistance clients.

NOTE TO READER: Notice of the following hearing concerning a different rulemaking on the same Part will appear in next week's *Illinois Register*. This hearing has been included in this week's *Flinn Report* in order to provide earlier public notice.

DHFS will also hold a public hearing on other proposed amendments to "Medical Payment" (89 Ill Adm Code 140; 35 Ill Reg 12202) from 11:00 a.m. to 12:30 p.m. on Monday, 9/12/11, at the same location noted above. This hearing concerns amendments proposed in the 7/22/11 *Illinois Register* that implement a nursing home occupied bed tax of \$6.07 per day per resident and extend the hospital assessment program by one year. Those affected by this rulemaking include hospitals and nursing homes.

Questions/comments concerning these rulemakings or the public hearings: Jeanette Badrov, DHFS, 201 S. Grand Ave. E., 3rd Fl., Springfield IL 62763-0002, 217/782-1233.

The Flinn Report

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700 Stratton Building Springfield IL 62706

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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.

DEPARTMENT OF TRANSPORTATION

"Chief Procurement Officer for the Department of Transportation Contract Procurement" (44 Ill Adm Code 6) proposed 7/8/11 (35 Ill Reg 10654)

POLLUTION CONTROL BOARD

"Hospital/Medical/Infectious Waste Incinerators" (35 Ill Adm Code 229) proposed 7/1/11 (35 Ill Reg 10224)

DEPARTMENT OF AGRICULTURE

"General Operations of the State Fairs and Fairgrounds" (8 Ill Adm Code 270) proposed 3/25/11 (35 Ill Reg 4707)

DEPT. OF HEALTHCARE & FAMILY SERVICES

"Hospital Services" (89 Ill Adm Code 148) proposed 10/15/10 (34 Ill Reg 15705)

DEPARTMENT OF PUBLIC HEALTH

"Emergency Medical Services and Trauma Center Code" (77 Ill Adm Code 515) proposed 5/20/11 (35 Ill Reg 7926)

DEPARTMENT OF HUMAN SERVICES

"General Assistance" (89 Ill Adm Code 114) proposed 4/22/11 (35 Ill Reg 6740)

"Supplemental Nutrition Assistance Program (SNAP)" (89 Ill Adm Code 121) proposed 6/3/11 (35 Ill Reg 8273)

"Aid to the Aged, Blind or Disabled" (89 Ill Adm Code 113) proposed 4/22/11 (35 Ill Reg 6738)

"Temporary Assistance for Needy Families" (89 Ill Adm Code 112) proposed 4/22/11 (35 Ill Reg 6736)