

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

Joint Committee on Administrative Rules  
Illinois General Assembly

700 Stratton Office Bldg., Springfield IL 62706  
217/785-2254 [ilga.gov/commission/jcar](http://ilga.gov/commission/jcar)

VOL. 35

September 9, 2011

Issue 37

*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

### FOSTER CARE

The DEPARTMENT OF CHILDREN AND FAMILY SERVICES adopted amendments to "Permanency Planning" (89 Ill Adm Code 315; 34 Ill Reg 19788) and "Administrative Case Reviews and Court Hearings" (89 Ill Adm Code 316; 34 Ill Reg 19796), both effective 9/1/11. The rulemakings implement a provision of Public Act 96-600 that allows the court to choose continuing foster care as a permanency goal for a child who is a ward of the State. In Part 315, DCFS adds continuing foster care to the list of permanency goals and alternatives to returning a child to the home if reunification in the home is not appropriate. Additional amendments explain the option for continuing foster care, provide reasons for the use of this option, and state criteria for selection of foster care as a permanency planning goal. Part 316 adds a provision requiring DCFS or its provider agency to document in its written report why it recommended continuing foster care as a permanency planning goal, why all other options were ruled out, and any compelling reasons for selection of the goal.

Questions/requests for copies of the 2 DCFS rulemakings above: Jeff Osowski, DCFS, 406 E. Monroe, Station #65-D, Springfield IL 62701-1498, 217/524-1983, TTY 217/524-3715, Fax 217/557-0692, e-mail: [cfpolicy@idcfs.state.il.us](mailto:cfpolicy@idcfs.state.il.us).

### PAWN BROKERS

The DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION adopted amendments to "Licensing and Regulation of Pawnbrokers" (38 Ill Adm Code 360; 34 Ill Reg 19808), effective 9/9/11, to implement aspects of Public Acts 96-1365 and 96-1038, which make revisions to the Pawnbroker Regulation Act. The rulemaking requires applicants for pawnbroker licenses to provide the Department with proof of hazard insurance equal to at least twice the total value of all outstanding loans on all pawned items. It also requires pawnshop managers to obtain licenses that are valid for 2-year terms and carry a \$50 filing fee. A manager must be present whenever a pawnshop is open for business, and managerial licenses cannot be transferred from one person to another. Applicants for managerial licenses must also verify that they have not

## Proposed Regulations

### UNDERGROUND STORAGE TANKS

The OFFICE OF THE STATE FIRE MARSHAL proposed amendments to "Administrative Requirements for Underground Storage Tanks and the Storage, Transportation, Sale and Use of Petroleum and Other Regulated Substances" (41 Ill Adm Code 176; 35 Ill Reg 14895) implementing federal requirements creating 3 classes of operators for underground storage tank facilities (USTs) designated Class A, B, and C and specifying their responsibilities, minimum training requirements, examinations, fees, and continuing education. Class A and B operators must be trained within 30 days after assuming operation of the facility, and Class C operators must complete training before assuming responsibility for emergency responses. The training programs must be OSFM-approved and may include in-class, online, or hands-on training. A facility may not operate after 8/8/12 unless Class A, B, and C operators have been designated and trained for each UST operated at each facility, and a Class A, B or C operator must be onsite at a manned facility at all times. Unmanned facilities must post the

(cont'd next page)

(cont'd page 5)

**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

---

been convicted of a criminal felony involving dishonesty or breach of trust in relation to a pawnshop for the preceding 5 years. Unregistered buyers (persons who purchase metals, coins, or jewelry at temporary locations) must pay a \$100 registration fee to the sheriff of the county in which they intend to conduct business at a single temporary location. A separate \$100 fee is due for each separate "period of consecutive days" during which the unregistered buyer operates in the county. Finally, the rulemaking includes non-substantive changes reflecting the reorganization of DFPR since the Part was last amended (e.g., Office of Banks and Real Estate became a subdivision of DFPR). A change since 1<sup>st</sup> Notice adds the list of applicable fees to the rulemaking text and states that this information is also available on the Department's website. In addition, the statement that a pawnshop manager, or someone acting in that capacity, may not be "convicted of a felony or any criminal offense related to dishonesty or breach of trust in connection with the operation of a pawnshop" has been modified to state the manager must have no conviction for "any criminal felony involving dishonesty or breach of trust during the five years preceding the application". Also, a list of 10 specific application components is included (e.g., questions concerning child support, bankruptcy). Pawn shop owners, managers, and employees will be affected by this rulemaking.

## HIGH-RISK HOME LOANS

DFPR adopted amendments to "High Risk Home Loans" (38 Ill Adm Code 345; 35 Ill Reg 6242), effective 9/9/11, to eliminate a duplicative reporting requirement that banks must report the average quarterly dollar amount of small family mortgage loans secured by Illinois real estate. Further changes reflect the new organizational structure of the Department, addition of standard defined terms, and updated material incorporated by reference.

## HAIR BRAIDING

DFPR adopted amendments to rules titled "The Barber, Cosmetology, Esthetics, Hair Braiding, and Nail Technology Act of 1985" (68 Ill Adm Code 1175; 35 Ill Reg 6626), effective 9/9/11, implementing Public Act 96-1246. The statute changes the name of the Act to include hair braiders; defines hair braiding; and establishes a procedure for licensing hair braiders, hair-braiding teachers, and hair-braiding schools. It also allows licensed cosmetologists and cosmetology teachers to perform or teach hair-braiding techniques without holding a hair braider's license after receiving DFPR approval. The rulemaking covers hair-braiding schools, hair braiders, and hair-braiding teachers with the same fee structure as others licensed under this Part (initial licensure, examination, annual renewal, and licensure restoration or endorsement fees). Cosmetology schools seeking approval to teach hair braiding are required to pay a \$50 fee for inspection. Individuals who have practiced hair braiding for at least 2 consecutive years may be grandfathered into licensure as a hair braider or hair-braiding teacher if their application is received before 12/31/12. The rulemaking also provides continuing education requirements and curriculum requirements, including internships. Detailed physical site and equipment requirements, enrollment agreements and refund policies, sanitary standards and agreements, and recordkeeping requirements are specified for hair-braiding schools. The rulemaking outlines change of ownership, location, or name procedures and requires a hair-braiding school to notify DFPR of such changes and apply for licensure. Hair-braiding schools seeking to expand or discontinue their program must also notify DFPR and provide appropriate documentation. DFPR reserves the right to withdraw, suspend, or place on probation a school's license for commission of a listed offense. This rulemaking may impact individuals operating hair-braiding

businesses and businesses employing hair braiders or hair-braiding teachers.

## REAL ESTATE TIME SHARES

DFPR adopted amendments to rules titled "Real Estate Timeshare Act of 1999" (68 Ill Adm Code 1451; 35 Ill Reg 6716), effective 9/9/11, implementing several provisions of Public Act 96-738 concerning regulating the business of timeshare plans, exchange programs, and resale agents. The rulemaking expands abbreviated, alternative, and comprehensive developer registration requirements to include consent to examine and audit special accounts held by the registrant and removes the questionnaire completion requirement. Information that DFPR may require resale agents to supply is expanded to include a copy of the listing agreement, escrow disbursement form, and Illinois license number of the real estate broker. The rulemaking adds requirements for listing agreements between the resale agent and the owner of a timeshare interest and records maintenance by the resale agent. Exchange companies are required to register with DFPR within 20 days prior to beginning operations in the State and must file an annual report with DFPR detailing the preceding year's audited statistics. The rulemaking also provides examples of what constitutes a preliminary permit; revises the fee schedule; provides registration renewal provisions for developers, managing entities, acquisition agents, sales agents, and exchange companies; and revises guidelines for advertising and promotional activities. A further amendment clarifies that exchange company registrations expire annually on August 1<sup>st</sup>, and the company must report its required audit during the month of August. Those affected by this rulemaking include businesses involved in timeshare plans and exchange programs for the voluntary exchange of timeshare interests or other property interests.

# New Regulations

Questions/requests for copies of the 4 DFPR rulemakings above: Craig Cellini, DFPR, 320W. Washington, 3<sup>rd</sup> Fl., Springfield IL 62786, 217/785-0813, Fax 217/557-4451.

boating) or "non-contact" recreational uses (except where designated as non-recreational waters). Commercial activity, including navigation and industrial water supply use, is limited only by the physical condition of these waters and hydrologic modification to them. Segments of CAWS and LDPR are designated as primary contact recreation waters, incidental contact recreation waters, non-contact recreation waters, and non-recreational waters. For example, Lake Calumet is designated as an incidental contact recreation water, part of the Calumet River is a non-contact recreation water, and a portion of the Chicago Sanitary and Ship Canal is a non-recreational water. A change since 1<sup>st</sup> Notice adds the "primary contact recreation waters" category, which means any recreation activity in which human contact consists of full-body contact with the waters (e.g., swimming). Also, obsolete requirements are repealed. Those affected by this rulemaking include entities desiring to use the listed waterways and canals for recreational activities.

Questions/requests for copies of the 2 PCB rulemakings above: Marie Tipsord, PCB, 100 W. Randolph, Ste. 11-500, Chicago IL 60601, 312/814-4925, e-mail: [tipsordm@ipcb.state.il.us](mailto:tipsordm@ipcb.state.il.us). Please reference docket R08-09(A).

## HORSE RACING

The ILLINOIS RACING BOARD adopted amendments to "Ownership, Partnership, and Stable Name" (11 Ill Adm Code 1409; 35 Ill Reg 8378), effective 9/1/11, in order to be consistent with the Association of Racing Commissioners International model rule on racing colors. The colors are unique to every harness racing driver or jockey and must be worn whenever he or she is in a race. In harness racing, the U.S. Trotting Association regulates the colors. However, in thoroughbred racing, there is no one regulator, and a jockey must wear the colors of the horse's owner. Therefore, stewards will use the model rule to

determine whether the colors are acceptable.

Questions/requests for copies: Mickey Ezzo, IRB, 100 W. Randolph, Ste. 7-701, Chicago IL 60601, 312/814-5017.

## 🔧 PYROTECHNICS

The OFFICE OF THE STATE FIRE MARSHAL adopted amendments to "Pyrotechnic Distributor and Operator Licensing Rules" (41 Ill Adm Code 230; 34 Ill Reg 13612), effective 9/1/11. The rulemaking makes licensees who fail to renew their license within 60 days after the expiration date subject to a \$100 reinstatement fee in addition to the standard renewal fee. A proposed amendment that added violation of the Pyrotechnic Use Act to the list of reasons for immediate license suspension was not included in the adopted text, and an additional change since 1<sup>st</sup> Notice specifies that participation in an unsafe or illegal act that causes the licensee's continued operations to constitute a public danger will result in immediate license suspension. This rulemaking may affect small businesses, small municipalities, or not-for-profit corporations providing fireworks displays or services.

Questions/requests for copies: Misty Matykiewicz, OSFM, 1035 Stevenson Dr., Springfield IL 62703-4259, 217/558-0639, Fax 217/558-4992.

## 🔧 WATER RECREATION

The POLLUTION CONTROL BOARD adopted amendments to "Introduction" (35 Ill Adm Code 301; 34 Ill Reg 12521) and "Water Use Designations and Site-Specific Water Quality Standards" (35 Ill Adm Code 303; 34 Ill Reg 12533), both effective 8/23/11, to establish recreational use designations for the Chicago Area Waterway System (CAWS) and the Lower Des Plaines River Waters (LDPR). Amendments to Part 301 define terms used in Part 303. Amendments to Part 303 regulate CAWS and LDPR in order to provide for "incidental contact" (e.g. fishing,

## 🔧 INCOME TAXES

The DEPARTMENT OF REVENUE adopted amendments to "Income Tax" (86 Ill Adm Code 100; 35 Ill Reg 8098, 8382, and 8777), effective 8/24/11, requiring employers who withhold income tax payments in excess of \$12,000 annually to make such payments to DOR semi-weekly by electronic funds transfer. Businesses and other organizations required to deduct and withhold Illinois income tax from wages paid to employees may be affected by this provision. The rulemaking also implements the extension through 2013 of the 0.5% replacement tax investment credit for qualified property used in Illinois by a taxpayer primarily engaged in manufacturing, retailing, coal mining, or fluorite mining. For retailing, the definition of tangible personal property does not include generation, transmission, or distribution of electricity. Also, the amendment updates the current federal maximum for expensing equipment in a single year from \$10,000 to \$25,000. Corporate taxpayers engaged in the industries listed above will be affected by this policy. Additional amendments allow an employer to earn a maximum \$500 tax credit for a 25% matching contribution to an Individual College Savings Pool account or Illinois Prepaid Tuition Trust Fund account established by his or her employee for a beneficiary. Excess credits may be carried forward for up to 5 years. The amendments require the employer to maintain proper documentation, and the amount of the credit offered to the employer must be added back to his or her wages expense deduction so that the credit is actually given by the Illinois government and not the employer. Finally, the employee benefits from the deduction made by the em-

# New Regulations

ployer for tax purposes. Small businesses making payments to these college savings plans on behalf of their employees will be affected by this program. A change since 1<sup>st</sup> Notice combines 3 separately proposed rulemakings into this week's one adopted text.

Questions/requests for copies: Paul Caselton, DOR, Legal Services Office, 101 W. Jefferson, Springfield IL 62794, 217/782-7055.

## **TORTURE INQUIRY & RELIEF COMMISSION**

The TORTURE INQUIRY AND RELIEF COMMISSION adopted 2 new Parts titled "Policy, Hearings, and Forms" (20 Ill Adm Code 2000; 35 Ill Reg 8130) and "Organization, Public Information, Procedures and Rulemaking" (2 Ill Adm Code 3500; 35 Ill Reg 8113), both effective 8/25/11, establishing the Commission named above for the purpose of investigating claims of torture by Chicago police commander Jon Burge or any officer under his command referred to it by a court, person, or agency. Claims of such torture made by a convicted person who is currently incarcerated solely for the crime that gave rise to his or her alleged torture will be given priority. The Part 2000 rules define terms, state the powers and duties of the Commission, indicate the nature of investigations, explain the types of relief, and provide for review of decisions. Copies of the various forms used during the Commission's inquiry and decision process are included. Part 3500 is more procedural in nature. It details the Commission membership and staffing, handling of official records, and informal and formal inquiry procedures. If the Commission decides by a preponder-

ance of the evidence that there is sufficient evidence of torture to conclude that the claim is credible and merits judicial review for appropriate relief, the case will be referred to the chief judge of the Cook County circuit court.

Questions/requests for copies: David Thomas, TIRC, 160 N. LaSalle, Rm. N506, Chicago IL 60601, 312/814-4608.

## **STATE EMPLOYEES**

The DEPARTMENT OF CENTRAL MANAGEMENT SERVICES adopted peremptory amendments to "Pay Plan" (80 Ill Adm Code 310; 35 Ill Reg 15178), effective 8/29/11. One amendment implements a memorandum of understanding between the Illinois State Employees Association and the State that assigns specific senior public service administrator option 7 job titles within the Department of State Police (DSP) to a collective bargaining unit. (Examples of covered positions include senior terrorism advisor, assistant director of forensic science training, and research and development unit chief.) A second amendment adds the DSP public service administrator option 8L (law license required) job title to the collective bargaining unit, also.

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](mailto:CMS.PayPlan@Illinois.gov).

## **DHFS DRUG PROGRAM**

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES adopted emergency amendments to "Illinois Cares Rx Program" (ICRx) (89 Ill Adm Code 119; 35 Ill Reg 15163), effective 9/1/11, for a maximum of 150 days. The rulemaking concerns

DHFS' prescription drug program for low-income elderly and disabled persons. Identical proposed amendments were published in the *Illinois Register* at 35 Ill Reg 12187 on 7/22/11. The emergency amendments lower the maximum income for eligible individuals from 250% to 200% of the federal poverty level for their household size. DHFS is also abolishing the ICRx rebate program that pays \$25 monthly to persons with prescription coverage from private insurance, the federal Veterans Administration, or a non-coordinating Medicare Part D program. For ICRx participants covered by Medicare, the rulemaking increases co-payments to \$5 (previously \$2.50) for generic drugs, \$15 (previously \$6.30) for preferred brand name or specialty drugs, and \$20 (previously \$15) for non-preferred drugs. For non-Medicare ICRx participants, co-payments increase to \$5 for generic drugs and \$15 for brand name drugs (previously \$2.50 and \$6.30). The rulemaking also increases from 20% to 25% the share of reimbursable drug costs participants must pay, in addition to the co-payment, once they exceed the annual spending thresholds for ICRx or Medicare Part D. Certain prescriptions for Medicare Part D beneficiaries who have been diagnosed with HIV or AIDS are exempt from the cost-sharing provisions. The emergency rulemaking implements provisions of Public Act 97-74, which requires that these changes be effective 9/1/11. Those affected by this rulemaking include pharmacies.

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

## Proposed Notices

---

emergency contact information for the Class A, B, and C operators. No Class B operator may be assigned to more than 50 facilities at the same time. If a facility fails to remain in compliance with these rules, OSFM may prohibit any further operation of the facility until it is compliant. Additionally, the rulemaking outlines recordkeeping requirements for each facility, retraining for out-of-compliance personnel following a Notice of Violation, inspection procedures, and maintenance plans. This rulemaking may affect small businesses, small municipalities, and not-for-profit entities that have UST's on their property.

Questions/requests for copies/comments through 10/24/11: Shelly Bradley, OSFM, 1035 Stevenson Dr., Springfield IL 62703-4259, 217/557-3131, Fax 217/524-9284.

### **CAR INTERLOCK DEVICES**

The SECRETARY OF STATE proposed amendments to "Procedures and Standards" (92 Ill Adm

Code 1001; 35 Ill Reg 14916) making minor clarifications to regulations for the monitoring device driving permit (MDDP) offender program. (The program allows certain substance abuse first offenders to drive if their vehicle is equipped with an ignition interlock device that prevents engine start-up if alcohol consumption is detected.) The rulemaking clarifies that an offender may be declared indigent if the offender earns 150% or less of the federal poverty income level. The rule-making further refines the employment exemption by specifying that an exemption will not apply when the MDDP holder uses an employer's vehicle for commuting to and from work or other personal use and modifies the penalties for tampering with, or unauthorized circumvention of, a breath alcohol ignition interlock device. (Suspensions of driving privileges are extended as provided in the Illinois Vehicle Code, although an offender may still petition for a restricted driving permit after a formal hearing is conducted by the SOS.)

Questions/requests for copies/comments through 10/24/11: Brenda Glahn, SOS, 298 Howlett Bldg., Springfield IL 62756, 217-785-3094, e-mail: [bglahn@ilsos.net](mailto:bglahn@ilsos.net).

### **DHFS PUBLIC HEARING**

DEPT. OF HEALTHCARE & FAMILY SERVICES will hold a public hearing on amendments to "Medical Payment" (89 Ill Adm Code 140; 35 Ill Reg 12202) on Monday, 9/12/11, from 11:00 a.m. to 12:30 p.m. at the Bloom Bldg. (1<sup>st</sup> fl. large conference room), 201 S. Grand Ave. E., Springfield. The hearing concerns a proposed rulemaking published in the 7/22/11 *Illinois Register* that implements a nursing home occupied bed tax of \$6.07 per day per resident and extends the DHFS hospital assessment program by one year. Those affected by this rulemaking include hospitals and nursing homes.

Questions/comments: Jeanette Badrov at the DHFS address and telephone number above.

## 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 October 11<sup>th</sup> meeting.

### **DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY**

"Illinois Promotion Act Programs" (14 Ill Adm Code 510) proposed 4/29/11 (35 Ill Reg 7023)

### **DEPARTMENT OF PUBLIC HEALTH**

"Psychiatry Incentive Program Code" (77 Ill Adm Code 577) proposed 7/15/11 (35 Ill Reg 11202)

"Hospital Capital Investments" (77 Ill Adm Code 976) proposed 7/8/11 (35 Ill Reg 10652)

**The Flinn  
Report**

**Illinois  
Regulation**

*Illinois General Assembly*

Joint Committee on Administrative Rules  
700 Stratton Building Springfield IL 62706

PRSRT STD  
U.S. Postage  
PAID  
Springfield IL  
Permit NO. 870

RETURN SERVICE REQUESTED

***Joint Committee on Administrative Rules***

**Senator Pamela Althoff**

**Representative Gregory Harris**

**Senator Maggie Crotty**

**Representative Louis Lang**

**Senator Don Harmon**

**Representative Don Moffitt**

**Senator John O. Jones**

**Representative Rosemary Mulligan**

**Senator Dale A. Righter**

**Representative Angelo "Skip" Saviano**

**Senator Ira Silverstein**

**Representative Andre Thapedi**

**Vicki Thomas  
Executive Director**