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Illinois General Assembly

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Issue 42

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

☞ HIGHWAY PROCUREMENT

The CHIEF PROCUREMENT OFFICER FOR THE DEPARTMENT OF TRANSPORTATION adopted amendments to "Chief Procurement Officer for the Department of Transportation -- Contract Procurement" (44 Ill Adm Code 6; 35 Ill. Reg 10654), effective 9/30/11. The rulemaking is a successor administrative rule to 44 Ill. Adm Code 660, to implement procurement reform measures enacted by Public Acts 96-795 and 96-920. The amendments place procurement authority for highway construction projects under the new chief procurement officer (CPO) rather than the Department of Transportation (DOT), which formerly had that authority. The Part has new defined terms: "contract" is revised to include contract adjustments and renewals (a contract adjustment is a price adjustment to a contract), "emergency affidavit" describes a new document required to be filed with the Procurement Policy Board (PPB) in order to justify an emergency procurement, and "subcontractor" refers to a person or entity that enters into a contractual agreement with a contractor that has a total value of \$25,000 or more. DOT is responsible for publishing its volume of the *Procurement*

Bulletin, including various required notices, bid invitations, and sole source contract information. Provisions for sole source hearings now required by the Illinois Procurement Code are prescribed. Revised policies on emergency contracting include: a limited 90-day term, required paperwork filings with both the PPB and the Auditor General, and procedures for extension of an emergency contract (notice and holding of a public hearing, provisions for PPB and public testimony, publication of the CPO's decision and supporting documents in the *Procurement Bulletin*). Also, amendments to any response to an invitation for bids will be published in the Bulletin. Federal aid contract awards or proposals by DOT or the CPO to reject bids are subject to the concurrence of the federal DOT division administrator. New statutory provisions regarding a required filing with the Legislative Audit Commission explaining why a lowest bidder was not selected are added, and extensive protocols for contracts when expenditures exceed the contract price are also added. Changes since 1st Notice clarify that "procurement" means the contractor has received oral or written notification to proceed, and the work

(cont'd next page)

☞ SCHOOLS

The STATE BOARD OF EDUCATION proposed amendments to "Student Records" (23 Ill Adm Code 375; 35 Ill Reg 16473) concerning accessibility, retention, maintenance, and transfer of educational records in public schools. The rulemaking clarifies the types of health information (e.g., examinations, immunizations) that belong in a student's permanent record, which is retained for 60 years, and that belong in a student's temporary record, which is retained for 5 years. The role and responsibilities of school record custodians are explained in greater detail, and a definition of "individually identifiable" information is provided that complies with the federal Family Educational Rights and Privacy Act (FERPA). Other topics addressed in this rulemaking concern inclusion of video or other electronic recordings in student records, use of electronic and digital images on school websites or in other publications, procedures parents may use to request that directory information about their child not be released, and forbidding use of social security numbers or unique student identifiers as directory information.

(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

has begun. Concerning contract bonds for construction contracts, an amendment allowing sureties to be an amount fixed by DOT conditioned on the contract completion for payment of material used in the work and for all labor performed in the work was not included in the adopted text. Also, certain competitively bid contracts will not be executed until the 30-day PPB notice period expires or the 30-day period is waived by PPB. Furthermore, the requirement that a contract provision state that DOT is the sole entity with authority to accept performance and make payments under a contract was not included in the adopted text. This rulemaking will affect small businesses seeking to win contracts with DOT.

Questions/requests for copies: Bill Grunloh, IDOT, 2300 S. Dirksen Pkwy., Rm. 200, Springfield IL 62764, 217/558-5434.

BIRTH RECORDS

The DEPARTMENT OF PUBLIC HEALTH adopted amendments to "Illinois Vital Records Code" (77 Ill Adm Code 500; 35 Ill Reg 750), effective 10/3/11. Provisions governing whether certain changes to gender will be noted on Illinois birth certificates are added. Gender changes brought about by specified surgical procedures may be reflected on birth certificates following physician verification and completion of required documentation. Changes in the sex designation on a baby's birth certificate may be considered a minor correction if changed within one year after the date of birth and if justified by the baby's given names or based on the hospital's newborn delivery records. The previous regulation that did not impose a time limit on corrections and allowed a change based on a notarized physician's statement is stricken. A change since 1st Notice specifies that applicants who undergo a gender reassignment operation outside of the U.S. must submit an affidavit from a licensed Illinois physician or licensed physician from another state in the

U.S.A. who personally examined the person and attests to the gender reassignment. Medical providers may be affected by this rulemaking.

MEDICAL SERVICES

DPH amendments to "Emergency Medical Services and Trauma Center Code" (77 Ill Adm Code 515; 35 Ill Reg 7271), effective 9/29/11, that implement a provision of Public Act 96-1469 authorizing DPH to establish standards for the use of "reserve" ambulances (vehicles that meet the requirements imposed on vehicle service providers, except for the required inventory of medical supplies and durable medical equipment that may be rapidly transferred from a fully functional ambulance to a reserve ambulance without the use of tools or special mechanical expertise). DPH-approved protocols for medical treatment (e.g., Basic Life Support, Emergency Medical Services (EMS), and other such protocols) are referenced. A process to resolve disputes between EMS systems, vehicle service providers, advisory committees, hospitals, EMS medical directors, or any combination of those entities is added to facilitate settling disputes that create an imminent threat to the availability or quality of emergency pre-hospital care. (Emergency Medical Services systems are organizations of hospitals, vehicle service providers, and personnel approved by DPH in specific geographic areas that coordinate and provide pre-hospital and inter-hospital emergency care and non-emergency medical transports at various levels pursuant to a DPH-approved plan and EMS regional plan.) Concerning dispute resolution, a change since 1st Notice specifies that the director or designee will endeavor to issue a written decision within 30 days, and "member of the public" is added to the list of those who cannot avail themselves of the dispute resolution process. Also, the rulemaking specifies that such proceedings will be governed by DPH's current hearing rules. Hospitals and vehicle service providers will be affected by this

rulemaking.

CHILD HEALTH EXAMS

DPH also adopted an amendment to "Child Health Examination Code" (77 Ill Adm Code 665; 35 Ill Reg 8766), effective 9/27/10. The rulemaking strikes the requirement that, if 10 years have elapsed since a child's most recent tetanus/diphtheria booster shot, an additional booster is required. Instead, proof is required, beginning with the 2011-12 school year, that children entering the 6th grade have been vaccinated against tetanus, diphtheria, and acellular pertussis (DTP vaccine) regardless of the time interval since the last vaccination. Children entering grades 7 through 12 who have not already received the DTP vaccine are required to receive only one dose regardless of the time interval since the last vaccination against the 3 infections. Entities affected by this rulemaking include medical providers.

Questions/requests for copies of the 3 DPH rulemakings above: Susan Meister, DPH, 535 W. Jefferson St., 5th Fl., Springfield IL 62761-0001, 217/782-2043, e-mail: dph.rules@illinois.gov.

HOSPITAL SERVICES

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES adopted amendments to "Hospital Services" (89 Ill Adm Code 148; 34 Ill Reg 15705), effective 10/1/11. A companion emergency rulemaking became effective 10/1/10 and expired on 2/27/11. The rulemaking concerns "disproportionate share hospital" (DSH) and "Medicaid percentage adjustment" (MPA) payments to hospitals with a higher than average share of low-income patients. It clarifies that a hospital must provide non-emergency inpatient newborn deliveries in order to receive DSH or MPA payments for obstetric services. The rulemaking also removes the required use of specified data in the federal Centers for Medicare and Medicaid Services *Hospital Price Index* in calculating DSH pay-

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ments to certain government-owned or government-operated hospitals. (DHFS states that the amendments are needed in order to conform to federal Medicaid law and to increase potential federal Medicaid matching funds.). Hospitals that accept Medicaid patients are affected by these rulemakings.

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

rulemaking affects only one facility, Stericycle Inc., in Clinton.

Questions/requests for copies: Kathleen Crowley (312/814-6929) at the PCB address above. Please reference docket R11-20.

HORSE RACING

The ILLINOIS RACING BOARD adopted an amendment to "Starting" (11 Ill Adm Code 1415; 35 Ill Reg 9996), effective 10/1/11, permitting the Board to identify a horse in a pari-mutuel race by microchip. (Previously, horses were identified by tattoos on the upper lip.) Such microchips must be compliant with regulations established by the International Organization for Standardization (ISO). A change since 1st Notice specifies that the 1996 edition of the ISO regulation is the applicable document.

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

AIR POLLUTION

The POLLUTION CONTROL BOARD adopted amendments to "Nitrogen Oxides Emissions" (35 Ill Adm Code 217; 35 Ill Reg 8363), effective 9/27/11, that sunset the trading provisions of the nitrogen oxide (NO_x) trading program for "non-electric generating units" beginning with the 2009 control period (May 1st -- September 30th) previously established as part of a federal clean air program to reduce ozone in the atmosphere. The units are no longer involved in NO_x air pollution allowances equal to their seasonal NO_x emissions because the federal Environmental Protection Agency is no longer allocating allowances for the NO_x Trading Program. Certain non-EGU monitoring, reporting, and recordkeeping requirements will remain in place, according to PCB. Fifty such non-EGUs will be affected by this rulemaking.

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 R11-08.

PCB also adopted amendments to "Hospital/Medical/Infectious Waste Incinerators" (35 Ill Adm Code 229; 35 Ill Reg 10224), effective 9/29/11, implementing new and stricter federal emission standards, with a compliance deadline of 1/1/14, for facilities that incinerate medical waste collected from hospitals and other medical facilities. According to PCB, this

INCOME TAX

The DEPARTMENT OF REVENUE adopted an amendment to "Electronic Filing of Returns or Other Documents" (86 Ill Adm Code 760; 35 Ill Reg 10292), effective 9/29/11, requiring that corporations required to file their federal income tax returns electronically must also file their Illinois income tax returns electronically. The electronic filing begins with tax year 2011. Corporations affected by this rulemaking will be those with at least \$10 million in assets or ones that file more than 250 returns, including W-2s and 1099s.

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

PUBLIC SCHOOLS

The STATE BOARD OF EDUCATION adopted amendments to "Public Schools Evaluation, Recognition and

Supervision" (23 Ill Adm Code 1; 35 Ill Reg 8622) and "Transitional Bilingual Education" (23 Ill Adm Code 228; 35 Ill Reg 8746), both effective 9/29/11, to address the current situation whereby school districts are unable to find sufficient numbers of bilingual education program administrators who hold the required endorsement or approval. The rulemaking postpones the date for compliance with the bilingual education program administrator requirements from 7/1/08 to 7/1/14 in response to this shortage. Additional amendments expand preparation options for transitional bilingual education administrators and transitional program-of-instruction administrators, beginning 7/1/14, to include completion of 18 semester hours of coursework in specified bilingual education areas (e.g., cross-cultural studies) as an alternative to holding the bilingual approval or endorsement or holding the English-as-a-new-language endorsement. Part 1 contains these new requirements, while Part 228 cross-references the Part 1 requirements. A change since 1st Notice for Part 1 provides that the 7/1/14 bilingual program administrator requirements of the Part apply only to bilingual programs with 200 or more students. School districts and charter schools with transitional bilingual education programs will be impacted by these rulemakings, as will institutions of higher education offering the bilingual education coursework.

Questions/requests for copies of the 2 SBE rulemakings above: Robin Lisboa, SBE, 100 W. Randolph, CH 14-300, Chicago IL 60601, 312/814-3850.

AG EDUCATION GRANTS

SBE adopted amendments to "Agricultural Education Program" (23 Ill Adm Code 75; 35 Ill Reg 8714), effective 9/29/11, that add regulations for 3 long-standing grant programs to this Part. These incentive grant programs provide funding for (1) secondary education programs, (2) accredited institutions of higher education or non-profit entities that offer SBE-approved

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teacher preparation programs in agricultural education, and (3) agricultural education programs known as Facilitating the Coordination of Agricultural Education (FCAE). Each grant program is set out in a separate Subpart that describes the grant program's purpose, eligible applicants, application procedures for new and continuing programs, criteria for SBE review of the proposals, funds allocation, and grant terms. Funding for secondary education programs and universities offering agricultural education teacher preparation programs is based on a flat grant for programs operating for 2 or fewer years if the applicant meets minimum standards, but funding is enhanced for programs in operation for 3 or more years if applicants achieve specified program standards (quality indicators). The FCAE project will be provided by public community colleges and universities offering agricultural programs throughout the State and will focus on curriculum improvement, classroom resources, program improvement, professional development, and data collection. FCAE programs will be funded for a 5-year period. A change since 1st Notice concerning grants to agricultural teacher preparation programs changes the entities eligible for grants from public four-year institutions to regionally accredited institutions of higher education or nonprofit entities that offer applicable teacher preparation programs. The title of the Part was shortened, also. Affected entities include public community colleges, universities, nonprofits that offer teacher preparation programs in agriculture, and school districts seeking grants for agricultural education programs.

EDUCATOR CERTIFICATION

SBE also adopted amendments to "Certification" (23 Ill Adm Code 25; 35 Ill Reg 8634), effective 9/29/11, to clarify existing certificate requirements; expand teacher education program approval to include out-of-state colleges and universities approved to offer educator preparation programs

by their out-of-state authority; address new principal endorsement requirements; reduce, from 3 years to one, the validity period for SBE's consideration of a certificate evaluation or an institutional recommendation for certification by entitlement; and add references to new tests and endorsements. Amendments to existing certificate requirements affect reinstated certificates, evidence of teaching experience, provisional vocational certificate renewal applications, and reading teacher and specialist clinical experiences. Teacher education program approval changes involve consideration of an institution's on-line coursework, requiring new preparation programs to establish a need for educators in that area, and correction of a time line for notifying an institution about SBE's review visit. The new principal endorsement provisions explain what constitutes a comparable out-of-state principal preparation program and specify the statutory procedure for converting a general administrative endorsement to the new principal endorsement. New procedures are included for persons seeking certificates whose certificates have previously been denied or suspended. The rulemaking prohibits evaluation of applications with denials or suspensions that occurred 5 or fewer years from the application date, and applications from individuals with revoked out-of-state certificates will not be considered. Denied applications are appealable, but application fees are not refundable. Available certification tests are expanded to include the assessment for professional teaching (preK-12), the principal endorsement, computer science, and the Malayalam language (transitional bilingual education). A further change advances from 1/1/10 to 1/12/10, the date after which an individual must pass a certification test in 5 attempts or less to accommodate a 1/9/10 test administration that did not fall within the original January 1st limit. An appendix setting out the endorsement structure as of 7/1/04 is updated, also. A change since 1st Notice specifies that for clinical experience purposes (whether in-

cluded in a practicum or not), a reading specialist candidate must work with both elementary and secondary students. An additional change affecting persons whose certificates were previously suspended states that a subsequent certification application will not be evaluated for a period of time equal to the suspension's length, and exceptions to this limitation are included, also. Not-for-profit entities and colleges and universities will be affected by this rulemaking if they provide educator preparation programs.

Questions/requests for copies of the 2 SBE rulemakings above: Linda Jamali, (217/524-1373) for Part 25 and Mark Williams (217/782-4620) for Part 75, SBE, 100 N. First St., Springfield IL 62777-0001, e-mail: rules@isbe.net.

FOOD PROGRAM

The DEPARTMENT OF HUMAN SERVICES (DHS) adopted a peremptory amendment to "Supplemental Nutrition Assistance Program (SNAP)" (89 Ill Adm Code 121; 35 Ill Reg 16904), effective 10/1/11. The peremptory rulemaking increases the SNAP asset disregard limit from \$3,000 to \$3,250 for households that have an elderly or disabled member. (Disregards may be subtracted from family income when calculating the family's eligibility for food assistance under the program, and therefore, the above changes will increase the maximum monthly SNAP benefit amounts for qualifying families.)

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

PSYCHOTROPIC DRUGS

The DEPARTMENT OF CHILDREN AND FAMILY SERVICES adopted emergency amendments to "Administration of Psychotropic Medications to Children for whom the Department of Children and Family Services is Legally Responsible" (89 Ill Adm Code 325; 35 Ill Reg 16877), effective 10/1/

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11, for a maximum of 150 days. An identical proposed rulemaking is also published in this week's *Illinois Register* at 35 Ill Reg 16169. The amendments implement Public Act 97-245, which creates the Administration of Psychotropic Medications to Children Act [20 ILCS 535]. The rulemakings update DCFS guidelines governing the administration of psychotropic medications to children for whom DCFS is responsible and require DCFS and private agency caseworkers and investigators to identify potential medical and mental health issues. The Department must publish its psychotropic medication administration guidelines and a list of psychotropic medications on its website and the website of its psychiatric consultants. The rulemakings address such issues as requiring licensed prescribers to use Department forms when requesting consent to prescribe a psychotropic

medication, psychotropic medication utilization, the approval process for one-time non-emergency medication administration, and designating an Oversight Treatment Team to review decisions to administer psychotropic medications. The rulemakings also cover training DCFS staff members who are allowed to consent to the administration of psychotropic medications to DCFS wards. Both facilities that house DCFS wards and medication prescribers are required to monitor the children's responses to medications, and DCFS-licensed residential facilities must have a written policy for psychotropic medication administration. The rulemakings require DCFS to offer residential facilities, hospitals, foster parents, and relative caregivers training concerning these regulations. Other changes include notification of a ward's guardian ad litem when the ward has been administered a psy-

chotropic medication and administrative case review of a ward who has been administered psychotropic medication in order to verify that the ward received the medication and that appropriate consent was obtained. A new section concerns how violations of these regulations by physicians and others will be adjudicated. Those who house or medically treat children who are wards of the State may be affected by these rulemakings.

Questions/requests for copies/comments concerning the proposed rulemaking through 11/28/11: Jeff Osowski at the DCFS address and telephone number below.

Proposed Regulations

SBE proposed amendments to "Certification" (23 Ill Adm Code 25; 35 Ill Reg 16443) implementing two public acts and updating various requirements for educator certification programs. The rulemaking requires educator preparation programs to incorporate SBE's Social and Emotional Learning Standards into their curricula and defines acceptable master's or doctoral programs for non-teaching speech-language pathologists as those which are accredited or have "accreditation candidate" status. Other provisions implement Public Act 97-233, which adds a fifth purpose of continuing professional development to four purposes already listed in the School Code, and Public Act 97-255, which allows individuals with master's degrees in public administration to apply for certification as a chief school business official if they meet certain requirements. The rulemaking also allows time employed in a school business office to be counted as part of internship requirements for certification as a chief school business official. Those affected by this rulemaking

include institutions of higher education and nonprofit entities that offer educator preparation programs or public administration graduate degrees.

SBE also proposed amendments to "Voluntary Registration and Recognition of Nonpublic Schools" (23 Ill Adm Code 425; 35 Ill Reg 16495) concerning timetables for meeting certain requirements of SBE's voluntary recognition program for nonpublic schools. The rulemaking sets an earlier deadline of November 15th (currently December 31st) for nonpublic schools to apply to renew their State recognition status for the remainder of the school year, allows schools recognized during the previous school year to retain that status until redetermination later in the current school year (instead of their recognition expiring at the end of the previous year), authorizes SBE staff to make "periodic" on-site visits to schools seeking recognition instead of requiring visits every 7 years, and requires schools applying for initial registration to submit materials to

SBE no later than June 25th for a June 30th registration. Those affected by this rulemaking include nonpublic schools operated by small businesses, religious organizations, or other nonprofit organizations.

Questions/requests for copies/comments concerning the 3 SBE rulemakings above through 11/28/11: Shelly Helton, SBE, 100 N. First St., S-493, Springfield IL 62777-0001, 217/782-5270, e-mail: rules@isbe.net.

HEALTH WORKER VACCINATION

The DEPARTMENT OF PUBLIC HEALTH proposed amendments for "Health Care Employee Vaccination Code" (77 Ill Adm Code 956; 35 Ill Reg 16431). The rulemaking adds long-term care facilities, as defined in the MR/DD Community Care Act and Specialized Mental Health Rehabilitation Act, to those facilities whose health care employees, both paid and unpaid, may be voluntarily vaccinated against seasonal influenza and other influenza viruses as vaccines become

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available. This Part was first adopted through emergency rulemaking on 12/29/09, and DPH states that omitting the facilities for the developmentally disabled (DD) was an oversight. Adding facilities that specialize in serving individuals with severe mental illness reflects Public Act 97-38, which became effective 6/28/11. Those affected by this rulemaking include personnel who provide patient care in DD and mental health long-term care facilities.

MEDICAL & DENTAL GRANTS

DPH also proposed amendments to "Allied Health Care Professional Assistance Code" (77 Ill Adm Code 598; 35 Ill Reg 16413), "Loan Repayment Assistance for Physicians" (77 Ill Adm Code 581; 35 Ill Reg 16399), and "Loan Repayment Assistance for Dentists" (77 Ill Adm Code 580; 35 Ill Reg 16381). Part 598 provides scholarships for certain health professional students. This rulemaking expands the definition section and the list of referenced materials, adds repayment penalties for scholarship recipients who complete school but fail to become licensed, holds harmless scholarship recipients who must involuntarily leave their employment before scholarship agreements are fulfilled, and specifies penalties for other contract breaches. Funds that recipients repay to DPH must be deposited into the Community Health Center Care Fund, and grant fund recovery procedures are explained. Those affected by the Part 598 rulemaking include students studying to become certified nurse midwives, certified nurse practitioners, certified registered nurse anesthetists, and physician assistants. Parts 580 and 581 provide loan assistance for medical and dental students. The rulemakings expand the definition section and the list of referenced materials, clarify loan eligibility and grant terms, explain penalties for breach of agreements, and add grant recovery procedures. Those affected by these 2 Parts include dental and medical students who avail themselves of the DPH loan programs.

Questions/requests for copies of the 3 DPH rulemakings above through 11/28/11: Susan Meister at the DPH address and telephone number above.

AIR POLLUTION

The ENVIRONMENTAL PROTECTION AGENCY proposed amendments to "Procedures For Collection of Air Pollution Site Fees" (35 Ill Adm Code 251; 35 Ill Reg 16172) and "Annual Emissions Report" (35 Ill Adm Code 254; 35 Ill Reg 16178) concerning site fees for facilities that emit EPA-regulated pollutants and greenhouse gas emissions. Amendments to both Parts exclude greenhouse gases from consideration as regulated pollutants when calculating facility operating permit fees. The Part 251 amendments define "greenhouse gas" as an air pollutant containing any of 6 types of gases that accumulate in the atmosphere (carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride) and raise site fees for facilities that generate regulated pollutants. Fees range from \$235 (currently \$200) for facilities generating less than 25 tons of emissions annually to \$4,112 (currently \$3,500) for facilities that emit more than 191 tons. These amendments may impact small businesses and nonprofits that must file annual pollutant emission reports.

Questions/requests for copies/comments concerning the 2 EPA rulemakings above through 11/28/11: Charles E. Matoesian, EPA, 1021 N. Grand Ave. E., Springfield IL 62794-9276, 217/782-5544, e-mail: charles.matoesian@illinois.gov.

UNDERGROUND TANKS

The POLLUTION CONTROL BOARD proposed amendments to "Underground Storage Tanks" (35 Ill Adm Code 731; 35 Ill Reg 16183) and "Petroleum Underground Storage Tanks (Releases Reported on or after June 24, 2002)" (35 Ill Adm Code 734; 35 Ill Reg 16338) and proposed repeal of the Part titled "Petroleum Underground

Storage Tanks (Releases Reported September 23, 1994 through June 23, 2002)" (35 Ill Adm Code 732; 35 Ill Reg 16191). The rulemakings implement Public Act 96-908, which amends provisions of the Illinois Environmental Protection Act concerning cleanup of leaking underground petroleum storage tanks (USTs). Amendments to Part 731 clarify that owners and operators of heating oil USTs are subject to rules in Part 734, while the repeal of Part 732 reflects removal of pre-2002 provisions from the Act. The Part 734 amendments list the types of corrective action costs that are and are not eligible for reimbursement from the State's UST Fund; establish procedures for UST owners and operators to seek competitive bids on cleanup projects when the work cannot be done for less than the maximum payment amounts specified elsewhere in the Part; and remove the requirement to obtain a minimum of 3 bids on such projects. Also, new sections are added concerning use of PCB's Tiered Approach to Corrective Action Objectives (TACO) and corrective action costs that are eligible for payment from the UST Fund. Those affected by this rulemaking include small businesses, small municipalities, and non-profit corporations that own or operate USTs or perform cleanup work on leaking USTs.

Questions/requests for copies/comments concerning the 3 PCB rulemakings above through 11/28/11: John Therriault, PCB, 100W. Randolph, Ste. 11-500, Chicago IL 60601, 312/814-3620. Please reference Docket R11-22 for all 3 rulemakings.

ROADSIDE MEMORIALS

The DEPARTMENT OF TRANSPORTATION proposed amendments to "Roadside Memorials" (92 Ill Adm Code 549; 35 Ill Reg 16512) implementing a provision of Public Act 97-304 that statutorily extends the fatal accident memorial marker program until 12/31/12 (currently 12/31/11) and clarifies that this program applies only to streets and highways under DOT

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jurisdiction.

Questions/requests for copies/comments through 11/28/11: Justan Mann, DOT, 2300 S. Dirksen Pkwy., Rm. 009, Springfield IL 62764, 217/782-7231.

DISABILITY GRIEVANCES

The DEPARTMENT OF CHILDREN AND FAMILY SERVICES proposed a new Part titled "Americans With Disabilities Act Grievance Procedure" (4 Ill Adm Code 425; 35 Ill Reg 16162) in accordance with the federal Americans With Disabilities Act of 1990. The rulemaking establishes procedures whereby qualified persons with disabilities may grieve allegations of denial of public services on the basis

of disability. The Part specifies definitions, procedure, the roles of the designated coordinator and the defender, and case-by-case resolution of the grievance.

Questions/requests for copies/comments through 11/28/11: Jeff Osowski, DCFS, 406 E. Monroe, Station #65, Springfield IL 62701-1498, 217/524-1983, TDD: 217/524-3715, Fax: 217/557-0692, e-mail: cfpolicy@idcfs.state.il.us.

TAX RETURNS

The DEPARTMENT OF REVENUE proposed an amendment to "Electronic Filing of Returns or other Documents" (86 Ill Adm Code 760; 35 Ill

Reg 16437) lowering the threshold at which an income tax return preparer is required to file Illinois returns and documents electronically. Beginning with calendar year 2012, each preparer who was required to file electronically more than 10 (currently 100) federal tax returns for Illinois customers during the preceding year must also file each customer's Illinois return electronically. Also, any taxpayer who must file federal income tax returns electronically must also file Illinois returns electronically beginning with the taxable year 2011.

Questions/requests for copies/comments through 11/28/11: Paul Caselton, DOR, Legal Services, 101 W. Jefferson, Springfield IL 62794, 217/524-3951.

JCAR Meeting Action

At its October 11, 2011 meeting, the Joint Committee on Administrative Rules voted the 3 Objections noted below and lifted a filing prohibition on a Department of Healthcare and Family Services proposed rulemaking.

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

Concerning amendments to "Medical Assistance Programs" (89 Ill Adm Code 120; 34 Ill Reg 11664), JCAR withdrew its filing prohibition effective upon the Department filing the rulemaking for adoption with the Second Notice agreements and JCAR-approved modifications included in the adopted text. This rulemaking will implement federal Deficit Reduction Act of 2005 requirements concerning sheltering assets and subsequent qualification for Medicaid benefits to cover nursing-home care. Topics covered include allowable asset transfers, hardship waivers, and penalties.

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

JCAR objects to DFPR's rulemaking titled "Cemetery Oversight Act" (68 Ill Adm Code 1249; 35 Ill Reg 11050) because licensure fees, indemnification costs, and continuing education

requirements, as well as cemetery maintenance standards that are not differentiated based on the size and financial strength of the cemetery as is required by the statute, will create a serious financial hardship for some cemeteries. Further, the Department is acting prematurely in urging the adoption of these rules while legislation is still pending before the General Assembly that would offer the Department additional direction on the implementation of the Cemetery Oversight Act.

ILLINOIS RACING BOARD

The Committee objects to the Illinois Racing Board's emergency rules titled "Medication" (11 Ill Adm Code 603; 35 Ill Reg 15296) because the incorporation by reference of the Association of Racing Commissioners International (RCI) Uniform Classification of Foreign Substances incorrectly cites the wrong version. Additionally, JCAR objects to the use of emergency rulemaking to remove levamisole from

the list of approved substances. RCI revised its guidelines to recommend against the use of levamisole at least as early as 2009. If IRB had acted in a more timely manner, this use of emergency rulemaking could have been avoided.

DEPT. OF TRANSPORTATION

JCAR objects to the Department of Transportation's use of emergency rulemaking to adopt rules titled "Prequalification of Contractors, Authorization to Bid, and Subcontractor Registration" (44 Ill Adm Code 650; 35 Ill Reg 15485) because the Department has not demonstrated the existence of a situation requiring the use of emergency rulemaking. Public Act 96-795 became effective 7/1/10, over 13 months before these emergency rules were adopted. Any emergency that exists appears to be due to the Department's delay in implementing Public Act 96-795.

The Flinn Report

Illinois Regulation

Illinois General Assembly

Joint Committee on Administrative Rules
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RETURN SERVICE REQUESTED

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 November 8th meeting.

ILLINOIS LAW ENFORCEMENT TRAINING AND STANDARDS BOARD

"Illinois Police Training Act" (20 Ill Adm Code 1720) proposed 7/8/11 (35 Ill Reg 10482)

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

"Long Term Care Reimbursement Changes" (89 Ill Adm Code 153) proposed 5/13/11 (35 Ill Reg 7454)

"Reimbursement for Nursing Costs for Geriatric Facilities" (89 Ill Adm Code 147) proposed 5/13/11 (35 Ill Reg 7444)

DEPARTMENT OF PUBLIC HEALTH

"Emergency Medical Services and Trauma Center Code" (77 Ill Adm Code 515) proposed 7/8/11 (35 Ill Reg 10520)

SECRETARY OF STATE

"Issuance of Licenses" (92 Ill Adm Code 1030) proposed 8/12/11 (35 Ill Reg 13054)