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Joint Committee on Administrative Rules
Illinois General Assembly

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Issue 33

Illinois Regulation is a summary of the weekly regulatory decisions of State agencies published in the Illinois Register and action taken by the Illinois General Assembly's Joint Committee on Administrative Rules. Illinois Regulation, also titled The Flinn Report in memory of founding JCAR member Rep. Monroe Flinn, is designed to inform and involve the public in changes taking place in agency administration.

New Rules

STATE EMPLOYEES

The DEPARTMENT OF CENTRAL MANAGEMENT SERVICES adopted amendments to Pay Plan (80 IAC 310; 39 Ill Reg 5634), effective 7/28/15, establishing a \$10 per hour (\$1,632/month) starting wage for state employees who work in the City of Chicago and are assigned to the lowest (MS-01) salary range. The amendment reflects the city's establishment by ordinance of a \$10 per hour minimum wage effective 7/1/15. Clerical, public service, and office trainees; student interns; and conservation/historic preservation workers employed in Chicago are affected. Other provisions of this rulemaking add new job titles approved by the Civil Service Commission (e.g., computer evidence recovery specialist, food services program manager, criminal intelligence

analyst supervisor, firearms eligibility administrator, sex offender registration unit supervisor), assign these titles to the relevant bargaining unit, and remove obsolete pay rates for other bargaining units.

Questions/requests for copies: Jason Doggett, CMS, 504 Stratton Bldg., Springfield IL 62706, 217/782-7964, fax 217/524-4570, CMS.PayPlan@illinois.gov

HUNTING & TRAPPING

The DEPARTMENT OF NATURAL RESOURCES adopted amendments to the following 5 Parts: Cock Pheasant, Hungarian Partridge, Bobwhite Quail, and Rabbit Hunting (17 IAC 530; 39 Ill Reg 4531); Raccoon, Opossum, Striped Skunk, Gray Fox, Coyote and Woodchuck (Groundhog) Hunting (17 IAC

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Proposed Rulemakings

OCCUPATIONAL THERAPY

The DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION proposed amendments to the Part titled Illinois Occupational Therapy Practice Act (68 IAC 1315; 39 Ill Reg 11167) implementing Public Act 98-624, which renewed the Illinois Occupational Therapy Practice Act. The amendments add programs approved by the National Board for Occupational Therapy to the list of approved occupational therapy (OT) and occupational therapy assistant (OTA) programs; update continuing education requirements; clarify that there is no restriction on the number of CE hours that can be earned via courses from an accredited higher education institution; add distance learning courses, professional study groups, and

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NEW RULES: Rules adopted by agencies this week. **EMERGENCY RULES:** Adopted for a temporary period not to exceed 150 days.

PROPOSED RULES: Rules proposed by agencies this week, commencing a 45-day First Notice period during which public comments must be accepted.

PEREMPTORY RULES: Rules adopted without prior public notice or JCAR review as authorized by 5 ILCS 100/5-50.

■ Designates rules of special interest to small businesses, small municipalities, and not-for-profit corporations. Agencies are required to consider comments from these groups and minimize the regulatory burden on them.

QUESTIONS/COMMENTS: Submit mail, email or phone calls to the agency personnel listed below each summary.

RULE TEXT: Available on the Secretary of State (www.cyberdriveillinois.com) and General Assembly (www.ilga.gov) websites under Illinois Register. Second Notice text (original version with changes made by the agency during First Notice included) is available on the JCAR website.

New Rules

(cont. from page 1)

550; 39 Ill Reg 4560); Muskrat, Mink, Raccoon, Opossum, Striped Skunk, Weasel, Red Fox, Gray Fox, Coyote, Badger, River Otter, Beaver and Woodchuck (Groundhog) Trapping (17 IAC 570; 39 Ill Reg 4573); Duck, Goose and Coot Hunting (17 IAC 590; 39 Ill Reg 4587); and Crow, Woodcock, Snipe, Rail and Teal Hunting (17 IAC 740; 39 Ill Reg 4795), all effective 8/3/15. These rulemakings add or remove various State-owned or – managed sites and amend certain procedures (e.g., open hours or days for hunting) applicable to the types of hunting listed in each Part. Since 1st Notice, Burning Star State Fish and Wildlife Area has been removed from the site lists and other changes have been made to the lists of affected sites. Hunters, trappers and outfitters may be affected by these rulemakings.

Questions/requests for copies of the 5 DNR rulemakings above: Shelly Knuppel, DNR, One Natural Resources Way, Springfield IL 62702-1271, 217/782-1809.

■ FIREFIGHTERS

The OFFICE OF THE STATE FIRE MARSHAL adopted amendments to Certified Assessors for Fire Department Assessment Centers (41 IAC 145; 39 Ill Reg 5755) effective 7/31/15. The rulemaking adds to the requirements for certification as an assessor (a person qualified to evaluate and test firefighters

seeking promotion to a higher department rank) that the candidate must act as an assessor twice within one year of completion of the basic assessor training course. OSFM and the Joint Labor Management Committee (JLMC) will jointly maintain a roster of certified assessors. The assessor certification will be valid for a 2 year period. The JLMC will notify certified assessors in advance of the expiration date of the need for recertification. Certified assessors will have a 90 day grace period after the expiration date to be recertified and to submit proof of continuing education/experience. Certified assessors must complete 8 hours every 2 years in assessment center evaluations, continuing education, or courses related to appraisals or evaluation (approval on a case-by-case basis). JLMC may establish reasonable recertification deadlines, but failure to recertify within the 90 day grace period will result in removal from the list of certified assessors, unless the individual is granted an extension. Fire departments that utilize the services of certified assessors may be affected by this rulemaking.

Questions/requests for copies: Deborah Williams, OSFM, 1035 Stevenson Dr., Springfield IL 62703-4259.

■ ASSISTED LIVING

The DEPARTMENT OF PUBLIC HEALTH adopted an amendment to Assisted Living

and Shared Housing Establishment Code (77 IAC 295; 39 Ill Reg 5339) effective 7/31/15, doubling the nonrefundable license fees for assisted living and shared housing establishments. Fees for assisted living establishments are increased from the basic fee of \$1,000 plus \$10 per licensed unit to \$2,000 plus \$20 per licensed unit. The license fee for shared housing establishments increases from \$500 to \$1,000. Small businesses and non-profits who operate assisted living or shared housing establishments are affected by this rulemaking.

Questions/requests for copies: Elizabeth Paton, DPH, 535 W. Jefferson St., 5th Flr., Springfield IL 62761, 217/782-2043, dph.rules@illinois.gov

■ BLOOD ALCOHOL TESTING

The DEPARTMENT OF STATE POLICE adopted amendments to the Part titled Testing of Breath, Blood and Urine for Alcohol, Other Drugs, and Intoxicating Compounds (20 IAC 1286; 39 Ill Reg 2540) effective 7/29/15. The rulemaking requires a designated individual to perform a logged accuracy test of blood monitoring devices at the beginning of every month. Certified laboratories must notify DSP if any laboratory technician leaves or is hired to quantitate alcohol and/or other drugs in human biological fluids.

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Proposed Rulemakings

(cont. from page 1)

volunteer service as CE options; and add licensed hospitals, State agencies, and educational institutions that provide OT services as CE sponsors. Restoration of an expired or inactive license requires proof of completion of at least 12 CE hours for each year the license has been inactive, up to a maximum of 60 hours (currently, 24 CE hours within the previous 24 months are required). Additional restoration criteria for licenses inactive for 5 years or more may include proof of completion of an OT or OTA re-entry program offered by an accredited college or university. Other provisions update training requirements for various therapy modalities; add confidentiality provisions for DFPR investigations of licensees or applicants; clarify requirements for supervision of OTAs; and permit use of the terms “occupational therapy technician” or “occupational therapy paraprofessional” in reference to non-licensed OT aides. Those affected by this rulemaking include OTs, OTAs, their employers, and CE sponsors.

■ PROFESSIONAL LICENSURE

DFPR also proposed an amendment to Administrative Procedures for General Professional Regulation under the Administrative Code (68 IAC 1130; 39 Ill Reg 11161) clarifying that forcible felony convictions which disqualify persons from obtaining or holding professional

licenses include out-of-State convictions. References to the Criminal Code of 1961 are also updated to reflect the Criminal Code of 2012.

Questions/requests for copies/comments on the 2 DFPR rulemakings through 9/28/15: Craig Cellini, DFPR, 320 W. Washington, 3rd Fl., Springfield IL 62786, 217/785-0813, fax 217/557-4451.

■ EMPLOYMENT COMPLAINTS

The DEPARTMENT OF LABOR proposed amendments to Equal Pay in Employment (56 IAC 320; 39 Ill Reg 11199) and proposed a new Part titled Job Opportunities for Qualified Applicants Act (56 IAC 340; 39 Ill Reg 11206). The Part 320 rulemaking allows DOL to refer complaints under the Equal Pay Act of 2003 to the Department of Human Rights if the complaint also alleges a violation of the Illinois Human Rights Act. This rulemaking affects all private or public employers with 4 or more employees. The new Part 340 implements PA 98-774, the Job Opportunities for Qualified Applicants Act, which generally forbids employers (with listed exceptions) from inquiring into a job applicant’s criminal record or history until the applicant has been determined qualified for the position and has either been selected for an interview or given a conditional offer of employment. The Part outlines procedures for filing complaints, conducting investigations and

conducting informal investigative conferences regarding alleged violations of the Act. Private businesses with 15 or more employees are affected by this rulemaking.

Questions/requests for copies/comments on the 2 DOL rulemakings through 9/28/15: Chris Wieneke, DOL, 900 S. Spring St., Springfield IL 62704, 217/558-1270.

■ COMMERCIAL FISHING

The DEPARTMENT OF NATURAL RESOURCES proposed an amendment to Commercial Fishing and Musseling in Certain Waters of the State (17 IAC 830; 39 Ill Reg 11215) that aligns DNR’s rules for catfish harvesting in the Wabash and Ohio rivers with those of Indiana and Kentucky. Catfish less than 13 inches in length may not be taken from either river. For channel catfish 28 inches or more in length, or blue or flathead catfish 35 inches or more in length, only one fish of each species may be harvested per day. Commercial fishermen may be affected.

Questions/requests for copies/comments through 9/28/15: Anne Mergen, DNR, One Natural Resources Way, Springfield IL 62702-1271, 217/782-1809.

New Rules

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Instructional classes for persons using blood monitoring devices must have a minimum of 12 students. The rulemaking also addresses training and types of acceptable blood monitoring devices. If an individual refuses a breath test, the arresting officer or the device operator need not wait 20 minutes for observation, but may note the refusal and issue a refusal ticket immediately. Physician assistants and advanced practice nurses are also allowed to collect blood samples in accordance with statute. Since 1st Notice, DSP has clarified how instruments will be tested for accuracy and the requirements for training in the use of newly approved instruments. This rulemaking may affect not-for-profits and small businesses that provide legal assistance to DUI victims, provide testing or collect blood samples.

Questions/requests for copies: Matthew R. Rentschler, DSP, 801 S. 7th St, Suite 1000-S, Springfield IL 62703, 217/782-7658.

■ HORSE RACING

The ILLINOIS RACING BOARD adopted amendments to Medication (11 IAC 603; 38 Ill Reg 22022), effective 8/1/15, updating its medication rules to the current Association of Racing Commissioners International standards. IRB is adding 23 therapeutic medications including albuterol, Clenbuterol

and Procaine penicillin. Theobromine is being added as an acceptable environmental contaminant. The sex of the horse must be identified to the laboratory on all pre- and post-race samples. Changes since 1st Notice remove methylprednisone from the list of permitted substances and make threshold levels for some substances effective 10/4/15.

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

■ LOCAL SALES TAXES

The DEPARTMENT OF REVENUE adopted amendments to 4 Parts: Special County Retailers' Occupation Tax for Public Safety (86 IAC 670; 39 Ill Reg 647); Special County Service Occupation Tax for Public Safety (86 IAC 680; 39 Ill Reg 651); Non-Home Rule Municipal Retailers' Occupation Tax (86 IAC 693; 39 Ill Reg 655) and Non-Home Rule Municipal Service Occupation Tax (86 IAC 694; 39 Ill Reg 659), all effective 7/29/15, implementing Public Act 98-584. The amendments change from April 1 to May 1 the deadline for a county or municipality to adopt a resolution or ordinance imposing, discontinuing or changing the tax rate, and to file the ordinance or resolution with DOR, in order for the resolution/ordinance to be effective on July 1 in the same year. Local governments are affected by this rulemaking.

Questions/requests for copies of the 4 DOR rulemakings: Samuel J. Moore, DOR, Legal Services, 101 W. Jefferson, Springfield IL 62794, 217/782-2844.

■ COMMERCIAL DRIVERS

The SECRETARY OF STATE adopted amendments to Issuance of Licenses (92 IAC 1030; 39 Ill Reg 4193), effective 7/28/15, incorporating the latest Federal Motor Carrier Safety Administration rules. These include training and testing for commercial learner's permit and commercial driver's license holders. SOS staff and third party testers must undergo training, testing and background checks. SOS also adopted amendments to School Bus Driver Permit (92 IAC 1035; 39 Ill Reg 4296) and to Cancellation, Revocation of Suspension of Licenses or Permits (92 IAC 1040; 39 Ill Reg 4311), both effective 7/28/15, that update references to the current Code of Federal Regulations. The Part 1035 rulemaking also adds a definition of physician, while the Part 1040 amendment adds a definition for commercial learner's permit and amends the definition of commercial motor vehicle. Commercial license holders, instructors and testers may be interested in these rulemakings.

Questions/requests for copies of the 3 SOS rulemakings: Jennifer Egizii, SOS, 2701 S. Dirksen Parkway, Springfield IL 62723, 217/557-4462.

JCAR Meeting Action

At its 8/11/15 meeting, the Joint Committee on Administrative Rules approved the following actions:

FILING PROHIBITION

JCAR objected to and prohibited the filing of the Department of Public Health rulemaking titled Grade A Pasteurized Milk and Milk Products (77 IAC 775; 38 Ill Reg 18346) because this rulemaking has not achieved an adequate balance between the State's role in protecting the public health and its mission to avoid unduly burdensome restrictions on small business. JCAR finds that adoption of this rulemaking in its current form would not be in the public interest. (The rulemaking institutes a two-tiered permit system for sellers of raw, unpasteurized milk.)

OBJECTIONS

JCAR objected to the Department of Human Services use of emergency rulemaking to adopt rules titled Child Care (89 IAC 50; 39 Ill Reg 10072) because the Department has not shown the existence of any situation warranting the use of emergency rulemaking. As DHS has not yet received its FY16 appropriation for the Child Care Assistance Program, it cannot, at this time, know that those appropriations will be inadequate to serve all those who were eligible prior to the adoption of this emergency rule, or the extent of any such inadequacy.

JCAR objected to the Department of Healthcare and Family Services' use of emergency rulemaking to adopt rules titled Medical Payment (89 IAC 140; 39 Ill Reg 10427) because the Department has not shown the existence of any situation warranting the use of emergency rulemaking. Since HFS has not yet received its FY16 appropriation for medical transportation services, it cannot, at this time, know that those appropriations will be inadequate to fund medical transportation services at the rates that existed in the most recent appropriation for this program (FY15) or the extent of any such inadequacy.

JCAR objected to the Department of Healthcare and Family Services' use of emergency rulemaking to adopt rules titled Hospital Services (89 IAC 148; 39 Ill Reg 10453) because the Department has not shown the existence of any situation warranting the use of emergency rulemaking. Since HFS has not yet received its FY16 appropriation for transitional supplemental Medicaid payments to hospitals, which include the Medicaid Facilitation and Utilization Payments terminated by this emergency rule, it cannot, at this time, know that those appropriations will be inadequate to continue these payments.

JCAR objected to the Illinois Labor Relations Board's use of emergency rulemaking to adopt rules titled General Procedures (80 IAC 1200; 39 Ill Reg 10641) because the Board has not shown the existence of any situation warranting the use of emergency rulemaking. Since ILRB has not yet received its FY16 appropriation for court reporting services, it cannot, at this time, know that those appropriations will be inadequate to fund court reporting services.

JCAR objected to the Illinois Racing Board's use of emergency rulemaking to adopt rules titled Entries, Subscriptions, and Declarations (11 IAC 1413; 39 Ill Reg 10465) because the emergency rule can have a negative economic impact on Illinois businesses that own, breed and train thoroughbred horses, some of which are small businesses. The Board should make every effort to avoid unnecessary use of emergency rulemaking.

RECOMMENDATION

With regard to the Board of Higher Education rulemaking titled Dual Credit Courses (23 IAC 1009; 39 Ill Reg 5945), JCAR recommended that BHE be more timely in implementing new statute in its rules. Public Act 96-194, which is being implemented in this rulemaking, became effective on 1/1/10.

Second Notice

The following rulemaking was moved to Second Notice this week by the agency listed below, commencing the JCAR review period. This rulemaking will be considered at the Committee's September 15, 2015 meeting. Other items not published in the *Illinois Register* or The Flinn Report may also be considered. Further comments concerning this rulemaking should be addressed to JCAR using the contact information on page 1.

DEPT OF HUMAN SERVICES

Medicaid Community Mental Health Services Program (59 IAC 132; 39 Ill Reg 7763)
proposed 6/5/15

Joint Committee on Administrative Rules

Senator Pamela Althoff

Representative Greg Harris

Senator Bill Brady

Representative Lou Lang

Senator Karen McConnaughay

Representative David Leitch

Senator Don Harmon

Representative Ron Sandack

Senator Tony Muñoz

Representative André Thapedi

Senator Ira Silverstein

Representative Michael Tryon

**Vicki Thomas
Executive Director**