

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

HEALTHCARE FACILITIES TAX

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES adopted amendments to "Medical Payment" (89 Ill Adm Code 140; 35 Ill Reg 12202), effective 4/27/12, that implement provisions of Public Act 96-1530. The statute and this rulemaking extend DHFS' current hospital assessment program an additional year, through State fiscal year 2014, and impose a new assessment of \$6.07 per occupied bed per day upon long-term care facilities. If a hospital or nursing home needs additional time to make an assessment payment, DHFS must receive the request before the due date of the payment. The nursing home assessment must be paid monthly and cannot be charged to residents. Facilities must pay each month's assessment within 30 days after receiving medical assistance payments from the State for that month. However, DHFS cannot require a facility to pay the assessment for any month for which the State has not yet made its medical assistance payments to the facility. The facilities subject to the assessment must file annual reports with DHFS between January 1st and March 31st. Other provisions

that currently apply to nursing home license fees (e.g., penalties for failure to make timely payment) are also applied to the assessment. The rulemaking also adds definitions of "long-term care facility" and "long-term care provider" that include facilities for the developmentally disabled licensed under the MR/DD Community Care Act, as well as facilities licensed under the Nursing Home Care Act. Since 1st Notice, the following changes have been made: Clarifying language was added stating that the assessment on any nursing home cannot be passed on to residents of any other homes operated by the same provider, and that extension of time to pay the assessment may be requested if "problems related to State cash flow" prevented the provider from receiving Medicaid reimbursement. DHFS must establish an electronic system for reporting and billing by 7/1/13, and if it fails to do so, providers will not be subject to penalty for failing to file required reports after that date. Other changes permit DHFS to use hypothetical annualized occupied bed projections to determine annual assessment amounts for certain providers and require DHFS to share information on outstanding assessments

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DRYCLEANER FACILITIES

The DRYCLEANER ENVIRONMENTAL RESPONSE TRUST FUND COUNCIL proposed amendments to "General Program" (35 Ill Adm Code 1500; 36 Ill Reg 6875) implementing Public Act 97-377. The Act and the rulemaking require any facility that receives reimbursement of remedial action costs from the Fund to purchase financial assurance coverage for pollution liabilities from 1/1/20 or the date the Council determines the facility is no longer active, whichever is earlier. The rulemaking also eliminates a prohibition against remedial program claimants receiving benefits if they declare bankruptcy after filing for remedial benefits. Drycleaning facilities are affected by this rulemaking.

Questions/requests for copies/comments through 6/25/12: H. Patrick Eriksen, DERTFC, P.O. Box 480, Bensenville IL 60106-0480, 630/741-0022.

PRESCRIBED BURNING

The DEPARTMENT OF NATURAL RESOURCES proposed amendments to rules titled "Illinois Prescribed Burn-

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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.

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and penalties with a potential buyer of a facility. Hospitals and long-term care facilities will be affected by this rulemaking.

NURSING HOMES

DHFS also adopted amendments to "Reimbursement for Nursing Costs for Geriatric Facilities" (89 Ill Adm Code 147; 35 Ill Reg 19015), effective 4/27/12, implementing other provisions of Public Act 96-1530. The PA and the rulemaking allocate \$8 million from the long-term care assessment on nursing homes to pay for services to residents with exceptional needs. "Exceptional needs" are defined as ventilator and tracheotomy care, bariatric care, complex wound care, and traumatic brain injury (TBI) care. For ventilator and TBI care, the rulemaking lists staffing, training, and other criteria a facility must meet to qualify for reimbursement. Payment formulas for each type of care are also listed. Changes since 1st Notice outline how funds will be allocated to different types of exceptional care reimbursements; require at least one licensed respiratory care practitioner to be on call or on site 24 hours a day based on the needs and number of residents; require a pulmonologist or physician experienced in ventilator care to direct the plan of care for ventilator-dependent residents no less than bi-weekly; and add more extensive and detailed protocols for ventilator care and areas for DHFS compliance review. Additional staffing, documentation, and assessment criteria for traumatic brain injury have been added, and new text clarifies that the enhanced TBI payment replaces the former Minimum Data Set (MDS) 2.0 rate and add-on payment. Nursing homes that receive Medicaid funds will be affected by this rulemaking.

Questions/requests for copies of the 2 DHFS rulemakings above: Jeanette Badrov, DHFS, 201 S. Grand Ave. East, 3rd Fl., Springfield IL 62763-0002, 217/782-1233.

FORECLOSURE PREVENTION

The ILLINOIS HOUSING DEVELOPMENT AUTHORITY adopted a new Part titled "Foreclosure Prevention Program" (47 Ill Adm Code 385; 35 Ill Reg 20988), effective 4/30/12, to implement Public Act 96-1419. An identical emergency rulemaking was adopted in the 12/23/11 *Illinois Register*, effective 12/12/11, at 35 Ill Reg 20742. The Authority will administer the new Foreclosure Prevention Program Fund from which grants will be awarded to community-based organizations and counseling agencies for "eligible users" in order to provide housing counseling and foreclosure prevention. Grants will go to both Chicago and non-Chicago entities, and Chicago will also receive funds to cover administrative expenses. Covered topics include grant applicant eligibility criteria, eligible grant uses, the application process, grant monitoring, and required reports. Those affected by this rulemaking include counseling agencies certified by the federal Housing Development Authority and non-profit entities that provide pre-purchase and post-purchase home ownership counseling, education about the foreclosure process and homeowner options, and foreclosure prevention programs in conjunction with the Authority or a state or federally chartered financial institution.

Questions/requests for copies: Arthur J. Murphy III, IHDA, 401 N. Michigan Ave., Ste. 700, Chicago IL 60601, 312/836-5200.

SAFE DRINKING WATER

The POLLUTION CONTROL BOARD adopted amendments to rules titled "Primary Drinking Water Standards" (35 Ill Adm Code 611; 36 Ill Reg 2656), effective 4/25/12, that reflect federal Safe Drinking Water Act amendments adopted by the U.S. Environmental Protection Agency (USEPA) during the 1/1/11-6/30/11 time period. USEPA-approved alternative testing methods for use in demonstrating compliance with the drinking water standards are

added, including 11 alternative methods for analyzing various inorganic and organic chemical parameters and one radionuclide. Entities affected by this rulemaking include small municipalities that own or operate a public water supply.

Questions/requests for copies: Michael J. McCambridge, PCB, 100 W. Randolph, Ste. 11-500, Chicago IL 60601, 312/814-3620 or 312/814-6924. Please reference docket R12-4.

COMMERCIAL DRIVERS

The SECRETARY OF STATE adopted amendments to "Issuance of Licenses" (92 Ill Adm Code 1030; 36 Ill Reg 461), effective 4/26/12, implementing a Federal Motor Carrier Safety Administration (FMCSA) requirement. After 1/30/12, all commercial driver's license (CDL) applicants and current license holders must self-certify the type of driving (e.g., intrastate, interstate) they do and submit a medical examiner's certificate. (A medical examiner's certificate verifies that the CDL holder meets federal physical requirements to drive a commercial vehicle.) The rulemaking provides a list of information contained in the medical examiner's form that must be submitted to SOS. The rulemaking also addresses circumstances in which a CDL holder changes his or her self-certification status and the procedures that must be followed. Further changes expand the list of license restrictions by adding a Type V restriction indicating that the FMCSA has granted the CDL holder a medical variance to operate a commercial motor vehicle. Those affected by this rulemaking include commercial truck drivers.

Questions/requests for copies: Jennifer Egizii, SOS, 2701 S. Dirksen Pkwy., Springfield IL 62723, 217/557-4462.

CAR INTERLOCK DEVICES

The SECRETARY OF STATE adopted amendments to "Procedures and Standards" (92 Ill Adm Code 1001; 35 Ill Reg 14916), effective 4/30/12, making

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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 rulemaking 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.) A change since 1st Notice clarifies that no person may drive an exempted vehicle for more than 12 hours per day, 6 days

a week, as provided in the Illinois Vehicle Code.

Questions/requests for copies: Brenda Glahn, SOS, 298 Howlett Bldg., Springfield IL 62756, 217-785-3094, e-mail: bglahn@ilsos.net.

TOURISM SIGNAGE PROGRAM

The DEPARTMENT OF TRANSPORTATION (DOT) adopted amendments to "Tourism Attraction Signing Program" (92 Ill Adm Code 543; 36 Ill Reg 1049), effective 4/26/12, concerning wineries that wish to be listed on DOT's tourism attraction signs at interstate highway exits. The rulemaking requires participating wineries to ferment at least 200 gallons of wine per year. The wine must also be processed in Illinois. This rulemaking may impact small businesses that wish to participate in the program but do not meet the 200 gallon per year requirement.

Questions/requests for copies: Justan Mann, DOT, 2300 S. Dirksen Pkwy., Rm. 009, Spfld. IL 62764, 217/782-7231.

ETHANOL

The DEPARTMENT OF AGRICULTURE adopted an emergency amendment to rules titled "Motor Fuel and Petroleum Standards Act" (8 Ill Adm Code 850; 36 Ill Reg 7318), effective 5/1/12 for a maximum of 150 days. An identical proposed amendment appears in this week's *Illinois Register* at 36 Ill Reg 6873. The amendment delays enforcement of ethanol fuel blend standards adopted by the National Institutes of Standards and Technology (NIST) until 5/1/13. Rules delaying enforcement of the new standards were also adopted in 2010 and 2011 due to petroleum marketers' and refiners' concerns about the cost and availability of compliant fuel. Businesses which process or sell motor fuel products containing ethanol are affected by this rulemaking.

Questions/requests for copies/comments on the proposed rulemaking through 6/25/12: Linda Rhodes, DOA, State Fairgrounds, Springfield IL 62794-9281, 217/524-9050, fax 217/785-4505.

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ing Act" (17 Ill Adm Code 1565; 36 Ill Reg 6904) that extend until 12/31/15 grandfathering provisions allowing persons who participated in at least 7 prescribed burns, including at least 5 in which they served as a burn manager, prior to 11/1/09 to be certified as having met DNR's apprenticeship and training requirements for burn managers. Other amendments increase the size of the Prescribed Burn Manager Certification Board to 6 (currently 5) members, 4 (currently 3) of whom must be appointed by the DNR Director and one of whom must not be a State employee; establish 4 Board members as a quorum; and allow the Board to conduct meetings by conference call or other electronic means in accordance with the Open Meetings Act. Persons who perform or

supervise controlled burns will be affected by this rulemaking.

Questions/requests for copies/comments through 6/25/12: George Sisk, DNR, One Natural Resources Way, Springfield IL 62702-1271, 217/782-1809.

AIR POLLUTION

The POLLUTION CONTROL BOARD has proposed amendments to "Definitions and General Provisions" (35 Ill Reg 211; 36 Ill Reg 6913), "Organic Material Emission Standards and Limitations" (35 Ill Adm 215; 36 Ill Reg 3934), "Organic Material Emission Standards and Limitations for the Chicago Area" (35 Ill Adm Code 218; 36 Ill Reg 6950) and "Organic Material Emis-

sion Standards and Limitations for the Metro East Area" (35 Ill Adm Code 219; 36 Ill Reg 6975). The rulemakings eliminate State gasoline volatility standards that have now been replaced by federal reformulation gas standards in ozone attainment areas, and also update incorporations by reference to ASTM standards.

Requests for copies/comments through 6/25/12: John Therriault, PCB, 100 W. Randolph, Ste. 11-500, Chicago IL 60601, 312/814-3620 or download copies at www.ipcb.state.il.us. For more information: Kathleen Crowley at the same address, 312/814-6929, e-mail: crowlek@ipcb.state.il.us. Please reference docket R12-24.

Proposed Regulations

SOS PERSONNEL

The SECRETARY OF STATE proposed amendments to "Department of Personnel" (80 Ill. Adm Code 420; 36 Ill. Reg. 6998) providing that the SOS will retain an original test score

for an applicant if the score on a retest is lower. Also, hours for "intermittent" status employees, which currently cannot vary more than 10% from the original in-hire work schedule, cannot vary more than 10% from the current work schedule in any 12 month period

unless approved by the Director of SOS Personnel.

Questions/requests for copies/comments through 6/25/12: Steve Roth, SOS, Rm. 197 Howlett Bldg., Springfield IL 62578, 217/782-1750

Second Notice

The following rulemakings were moved to Second Notice this week by the agencies listed below, commencing the JCAR review period. These rulemakings will be considered at JCAR's June 12, 2012 meeting.

ATTORNEY GENERAL

"Attorney General's Procurement" (44 Ill Adm Code 1300) proposed 12/30/11 (35 Ill Reg 20859)

SECRETARY OF STATE

"Cancellation, Revocation or Suspension of Licenses or Permits" (92 Ill Adm Code 1040) proposed 3/9/12 (36 Ill Reg 3361)

Joint Committee on Administrative Rules

Senator Pamela Althoff

Representative Greg Harris

Senator Maggie Crotty

Representative Lou Lang

Senator Don Harmon

Representative Don Moffitt

Senator John O. Jones

Representative Rosemary Mulligan

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Representative Angelo "Skip" Saviano

Senator Ira Silverstein

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**Vicki Thomas
Executive Director**