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Joint Committee on Administrative Rules
Illinois General Assembly

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Issue 24

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

■ UNDERGROUND TANKS

The OFFICE OF THE STATE FIRE MARSHAL adopted amendments to the following 4 Parts: General Requirements for Underground Storage Tanks and the Storage, Transportation, Sale and Use of Petroleum and Other Regulated Substances (41 IAC 174; 42 Ill Reg 3270), Technical Requirements for Underground Storage Tanks and the Storage, Transportation, Sale and Use of Petroleum and Other Regulated Substances (41 IAC 175; 42 Ill Reg 3313), Administrative Requirements for Underground Storage Tanks and the Storage, Transportation, Sale and Use of Petroleum and Other Regulated Substances (41 IAC 176; 42 Ill Reg 3457), and Compliance Certification for Underground Storage Tanks (41 IAC 177; 42 Ill Reg 3508), all of which will be effective 10/13/18. Amendments to Part 174 implement Public Act

100-299 by allowing IEPA-permitted landfills to utilize mobile fueling for off-road vehicles and equipment used in the operation of these landfill sites. The rulemaking also updates existing underground storage tank (UST) rules for storage, handling, and use of flammable or combustible liquids. Since 1st Notice, some incorporations by reference have been updated. The Part 175 and 176 rulemakings align UST technical requirements with federal regulations that became effective on 10/13/15, and update permit application and reporting procedures to allow for electronic document submissions. New UST system requirements include: federally acceptable proof of compatibility for USTs, piping and related systems that store or dispense fuel blends of more than 10%

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Proposed Rulemakings

■ RETIREMENT SAVINGS

The OFFICE OF THE TREASURER proposed a new Part titled Secure Choice Savings Program (74 IAC 721; 42 Ill Reg 10351) implementing the Secure Choice Savings Program Act [820 ILCS 80] that establishes a Statewide payroll deduction Individual Retirement Account (IRA) program open to private sector employees. Participation in the program is mandatory for businesses that have been operating for at least 2 years, have more than 25 employees and do not offer their own qualified retirement plans; employees of these businesses will be automatically enrolled in the program unless they opt out. Other employers may voluntarily offer the State program to their employees, either by itself or in addition to an existing retirement

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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

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ethanol or 20% biodiesel; monthly walkthrough inspections by certified operators; tightness testing of spill buckets and piping containments; and inspection of overfill prevention equipment every 3 years. Other provisions prohibit use of ball float vent valves at the time of installation or replacement and address the practice of combining formerly separate piping lines for regular and premium gasoline to create a midgrade product at the dispenser. Airport hydrant fueling systems and field constructed tanks are also made subject to these rules. Changes to Part 175 since 1st Notice clarify activities that do not require a permit, provisions for on-site evaluations, record keeping requirements, the definition of periodic monitoring (at least once every 30 days), and tasks that must be performed by OSFM-licensed contractors. Additionally, the Part 176 rulemaking extends the time interval between repeat training for operators from 2 to 4 years and allows Class A and B operators to retrain every year in lieu of being required to retrain in response to a notice of violation. Changes since 1st Notice to Part 176 apply recordkeeping requirements to upgrades as well as removals and require OSFM-licensed contractors to inspect, test and maintain containment sumps. Finally, the Part 177 amendments update procedures for issuing compliance certifications. Those affected by these rulemakings

include businesses such as fuel stations that have USTs on their premises.

Questions/requests for copies of the 4 OSFM rulemakings: Tom Andryk, OSFM, 1035 Stevenson Dr., Springfield IL 62703-4259, 217/785-5758, fax 217/524-5487.

INSURANCE

The DEPARTMENT OF INSURANCE adopted a new Part titled Domestic Insurers Service of Process Requirements (50 IAC 206; 41 Ill Reg 12761) effective 6/4/18, establishing procedures for domestic insurance companies to designate any registered agent with an Illinois address, or any officer or director at the company's home office, to accept service of legal documents on behalf of the company. Changes since 1st Notice clarify the process of designating an agent.

Questions/requests for copies: Marcy Savage, DOI, 320 W. Washington St., Springfield IL 62767-0001, 217/524-0016.

RADIOACTIVE MATERIAL

The ILLINOIS EMERGENCY MANAGEMENT AGENCY adopted amendments to Licensing Requirements for Source Material Milling Facilities (32 IAC 332; 42 Ill Reg 2970) and Status Signals for Nuclear Power Reactors (32 IAC 504; 42 Ill Reg 3034), both effective 5/31/18, to update references and maintain consistency of IEMA's rules with

U.S. Nuclear Regulatory Commission rules.

Questions/requests for copies of the 2 IEMA rulemakings: Traci Burton, IEMA, 1035 Outer Park Drive, Springfield IL 62704, 217/785-9860.

HORSE RACING

The ILLINOIS RACING BOARD adopted amendments to Medication (11 IAC 603; 42 Ill Reg 3102) effective 6/1/18, updating its incorporation of the Association of Racing Commissioners International foreign substances guidelines to the January 2018 edition, and also updating allowable threshold levels of caffeine and theobromine.

Questions/requests for copies: Mickey Ezzo, IRB, 100 W. Randolph St., Suite 5-700, Chicago IL 60601, 312/814-5017, mickey.ezzo@illinois.gov

WATER POLLUTION

The POLLUTION CONTROL BOARD adopted amendments to Sewer Discharge Criteria (35 IAC 307; 42 Ill Reg 4701) effective 5/29/18, implementing USEPA rules concerning wastewater pretreatment that were adopted from 1/1/17 through 12/31/17.

Requests for copies: Don A. Brown, PCB, 100 W. Randolph St., Suite 11-500, Chicago IL 60601. Please reference consolidated docket R18-6/R18-14.

Proposed Rulemakings

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plan. Persons working for employers that do not offer the State program may enroll in the program individually, but may be required to contribute through methods other than payroll deduction. The new Part establishes the responsibilities of the Secure Choice Savings Board, the Treasurer and the account administrator with regard to administration of the program; sets out investment policy and guidelines; establishes the registration and enrollment process, program fees and reporting requirements; and includes procedures through which employees may opt out of enrollment and employers who begin offering their own qualified retirement plans (thereby becoming exempt from mandatory participation in the State program) may terminate their participation in the program. Small businesses and non-profits that do not currently provide their own retirement plans may be affected by this rulemaking.

Questions/requests for copies/ comments through 7/30/18: Chris Flynn, Office of the Treasurer, 400 W. Monroe St., Suite 401, Springfield IL 62704, 217/558-0115, fax 217/785-2777, CFlynn@illinoistreasurer.gov

■ DISABILITY SERVICES

The DEPARTMENT OF HUMAN SERVICES proposed amendments to Assessment for

Determining Eligibility and Rehabilitation Needs (89 IAC 553; 42 Ill Reg 9620) and Individualized Plan for Employment (IPE) (89 IAC 572; 42 Ill Reg 9627) to align these Parts with recent changes to the federal Workforce Innovation and Opportunity Act. The Part 553 rulemaking clarifies the four categories of disability (disability, significant disability, very significant disability, most significant disability) and the criteria for each category. "Disability" is defined as a condition that creates an impediment to employment but does not seriously limit a person's functional capacities. The criteria for other categories of disability include a need for multiple (currently, 2 or more) vocational rehabilitation (VR) services for an extended period of time (currently, 6 months or longer). The rulemaking also replaces the term "mental retardation" with "intellectual disability". The Part 572 rulemaking establishes competitive integrated employment (work done for the same pay and benefits and under conditions comparable to those of workers without disabilities) as the goal of an IPE; clarifies which VR services must be included in an IPE; no longer requires that a timetable for reducing anticipated levels of support be included in a plan for supported employment services; and requires all IPE's, including those for high school students receiving transition services, to be developed within 90 days after the customer is determined

eligible for VR services. Those affected by this rulemaking include VR customers and their employers.

Questions/requests for copies/ comments on the 2 DHS rulemakings through 7/30/18: Tracie Drew, DHS, 100 S. Grand Ave. East, 3rd Fl., Springfield IL 62762, 217/785-9772.

■ DRUG ENFORCEMENT

The DEPARTMENT OF STATE POLICE proposed amendments to Intergovernmental Drug Enforcement Act (20 IAC 1220; 42 Ill Reg 10375) updating various aspects of the program, through which DSP oversees Metropolitan Enforcement Groups (MEGs). The amendments update statutory citations and definitions; replace a list of specific information to be retained regarding confidential sources with reference to applicable laws and DSP guidelines; require annual audits to begin on September 1 with final reports due by December 31; update provisions regarding costs, fund disbursements and procurements; and require records of each MEG unit to be retained for 5 years (currently 3 years) or the length of time required by the Secretary of State's Local Records Commission, whichever is longer. Local law enforcement units participating in MEGs are affected.

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Proposed Rulemakings

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Questions/requests for copies/ comments through 7/30/18: Matthew R. Rentschler, DSP, 801 S. Seventh St., Suite 1000-S, Springfield IL 62703, 217/782-7658.

■ WASTE DISPOSAL

The POLLUTION CONTROL BOARD proposed amendments to the following 6 Parts: RCRA and UIC Permit Programs (35 IAC 702; 42 Ill Reg 9633), RCRA Permit Program (35 IAC 703; 42 Ill Reg 9672); UIC Permit Program (35 IAC 704; 42 Ill Reg 9774), Procedures for Permit Issuance

(35 IAC 705; 42 Ill Reg 9856), Hazardous Waste Management System: General (35 IAC 720; 42 Ill Reg 9892) and Identification and Listing of Hazardous Waste (35 IAC 721; 42 Ill Reg 9980). These rulemakings are part of a consolidated PCB docket correcting and updating hazardous waste, underground injection control (UIC) and municipal solid waste landfill rules to align with federal EPA regulations approved during 2016 and 2017. Further rulemakings implementing this docket will appear in the next three issues of the *Illinois Register*. Small businesses and small municipalities that dispose

of or collect solid or hazardous waste may be affected by these rulemakings.

Requests for copies/comments on the 6 PCB rulemakings through 7/30/18: Don A. Brown, Clerk, PCB, 100 W. Randolph St., Suite 11-500, Chicago IL 60601, 312/814-3620. Please reference consolidated docket R17-14/R17-15/R18-11/R18-31. Questions: Michael J. McCambridge, same address, 3 1 2 / 8 1 4 - 6 9 2 4 , michael.mccambridge@illinois.gov. Copies of the Board's opinion and order may be downloaded from the Board's website at <http://www.ipcb.state.il.us>.

Second Notices

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 the Committee's July 17, 2018 meeting. Other items not published in the *Illinois Register* or The Flinn Report may also be considered. Further comments concerning these rulemakings should be addressed to JCAR using the contact information on page 1.

DEPT OF COMMERCE AND ECONOMIC OPPORTUNITY

Angel Investment Credit Program (14 IAC 532; 42 Ill Reg 5932) proposed 4/6/18

CIVIL SERVICE COMMISSION

Civil Service Commission (80 IAC 1; 42 Ill Reg 7162) proposed 4/20/18

IL ENVIRONMENTAL PROTECTION AGENCY

Procedures for Issuing Loans From the Water Pollution Control Program (35 IAC 365; 42 Ill Reg 7272) proposed 4/20/18

DEPT OF HUMAN SERVICES

Aid to the Aged, Blind or Disabled (89 IAC 113; 42 Ill Reg 5676) proposed 3/30/18

DEPT OF INSURANCE

Universal Life Insurance (50 IAC 1411; 42 Ill Reg 1089) proposed 1/19/18

DEPT OF PUBLIC HEALTH

Sexual Assault Survivors Emergency Treatment Code (77 IAC 545; 42 Ill Reg 6577) proposed 4/13/18

JCAR Meeting Action

At its 6/12/18 meeting, the Joint Committee on Administrative Rules took the following actions:

OBJECTIONS

With regard to the Department of Children and Family Services' emergency rules titled Licensing Standards for Day Care Homes (89 IAC 406; 42 Ill Reg 8519), Licensing Standards for Day Care Centers (89 IAC 407; 42 Ill Reg 8555) and Licensing Standards for Group Day Care Homes (89 IAC 408; 42 Ill Reg 8593), JCAR objects to the Department's use of emergency rulemaking to implement its lead testing policy and to the Department's prior implementation of the policy before rules were adopted. PA 99-922 became effective on 1/17/17 and required DCFS to adopt lead testing and mitigation rules by 1/1/18. Although DCFS notified day care licensing staff and providers on 12/6/17 that the lead testing policy was effective immediately, it did not start the rulemaking process for another 5 months and then used emergency rulemaking to implement the policy. Any emergency situation addressed by these rules is agency created.

With respect to the Department of Human Services' rulemaking titled Alcoholism and Substance Abuse Treatment and Intervention Licenses (77 IAC 2060; 41 Ill Reg 14878), JCAR objects to the Department's failure to fulfill the mandate of PA 100-23 that it adopt a

methodology in rule increasing payment rates for licensed community-based substance abuse treatment providers within 30 days after the July 6, 2017 effective date of the Act.

With respect to the Law Enforcement Training and Standards Board emergency rulemaking titled Surcharge Fund Financial Assistance (20 IAC 1700; 42 Ill Reg 7972), JCAR objects to the use of emergency rulemaking to implement PA 99-352. While the PA was effective 1/1/16, the Board did not adopt the emergency rule until 4/25/18, almost 2 1/2 years later. Any emergency situation that exists has been created by the Board's failure to act in a timely manner.

EXTENSIONS

JCAR and the respective agencies agreed to extend Second Notice for the following rulemakings an additional 45 days. These rulemakings will be considered again at the July 17 meeting.

Secretary of State, Commercial Driver Training Schools (92 IAC 1060; 42 Ill Reg 4512), proposed 3/9/18

Department of Financial and Professional Regulation, The Barber, Cosmetology, Esthetics, Hair Braiding, and Nail Technology Act of 1985 (68 IAC 1175; 42 Ill Reg 3943), proposed 3/9/18

Joint Committee on Administrative Rules

Senator Pamela Althoff

Senator Karen McConaughay

Senator Don Harmon

Senator Tony Muñoz

Senator Ira Silverstein

Senator Chuck Weaver

Representative Peter Breen

Representative Barbara Flynn Currie

Representative Tom Demmer

Representative Greg Harris

Representative André Thapedi

Representative Keith Wheeler

**Vicki Thomas
Executive Director**

