

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

■ PHARMACISTS

The DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION adopted amendments to the Part titled Pharmacy Practice Act (68 IAC 1330; 41 Ill Reg 1283), effective 8/18/17, concerning the duty of pharmacists to provide counseling to patients regarding their prescription medications. Pharmacists must provide verbal counseling to patients, or patients' agents, regarding pertinent medical information prior to dispensing prescriptions, and pharmacies must post signage notifying customers of their right to receive such counseling. Failure to respond to requests for patient counseling, discouraging patients from receiving such counseling, or attempting to circumvent patient counseling requirements under the Act are classified as unprofessional and unethical

conduct. However, pharmacists are not required to provide counseling if a patient or patient's agent refuses it. A change since 1st Notice clarifies that pharmacists at on-site or off-site institutional pharmacies are not required to provide counseling unless they are dispensing medications to a patient being discharged from the institution. Those affected by this rulemaking include licensed pharmacists, pharmacy technicians and pharmacies.

Questions/requests for copies: Craig Cellini, DFPR, 320 W. Washington, 3rd Fl., Springfield IL 62786, 217/785-0813, Fax: 217/557-4451.

■ SALES TAX

The DEPARTMENT OF REVENUE adopted amendments to

(cont. page 2)

Proposed Rulemakings

■ USE TAX

The DEPARTMENT OF REVENUE proposed an amendment to Use Tax (86 IAC 150; 41 Ill Reg 10532) that exempts out-of-State retailers attending Illinois trade shows from incurring use tax on sales to Illinois purchasers from their out-of-State locations if they attend no more than 2 Illinois trade shows per calendar year, engage in trade show-related activity at those events for no more than 8 days per calendar year, and their total gross sales receipts from those shows in a single calendar year do not exceed \$10,000. Sales made at trade shows remain subject to State and local sales taxes.

Questions/requests for copies/comments through 10/2/17: Jerilynn Troxell Gorden, DOR, 101 W. Jefferson St., Springfield IL 62794, 217/782-2844.

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)

Retailers' Occupation Tax (86 IAC 130; 41 Ill Reg 3168 and 3817) effective 8/1/17, that combine two separately proposed rulemakings and implement three Public Acts. The amendments implement PA 99-858, which sets a 1% sales tax rate for FDA-designated Class III medical devices used in cancer treatment and retains the 6.25% rate for grooming and hygiene products; PA 99-855, which makes tampons, menstrual pads and menstrual cups exempt from sales tax from 1/1/17 through 8/18/21; and PA 97-636, which extends the current sales tax exemptions for gasohol, majority blended ethanol, 100% biodiesel and biodiesel blends through 12/31/18. Small businesses may be affected by this rulemaking.

Questions/requests for copies: Debra M. Boggess, DOR, 101 W. Jefferson, Springfield IL 62794, 217/782-2844.

■ INCOME TAX

DOR also adopted amendments to Income Tax (86 IAC 100; 40 Ill Reg 15878 and 16711) effective 8/3/17, combining two separately proposed rulemakings. The amendments implement PA 98-478 by providing an alternative formula for apportioning business activities to Illinois when current rules do not fairly represent the apportionment. Exclusions from the sales factor are allowed for

incidental or occasional sales not made in the market; when a sale of assets is a recapture of depreciation; when a sale is attributable to goodwill or similar intangibles; or when sales of assets are made in a connection with a partial or complete withdrawal from the market. The amendments also update DOR policy on petitions for alternative allocation or apportionment. Other provisions exclude from the sales factor gross receipts from the licensing, sale or other disposition of a patent, copyright, trademark or similar item of intangible personal property if gross receipts from licenses or sales associated with the item are less than 50% of gross receipts during the tax year and during each of the previous 2 years. Regarding sales of electricity, sales taking place on or before 12/31/08 are classified as sales of other than tangible personal property; those made from 1/1/09 through 7/15/09, as sales of service; and those made on or after 7/16/09, as sales of tangible personal property. Beginning 1/1/14, gross receipts from winnings under the Illinois Lottery Law are attributable to Illinois. The rulemaking further clarifies and includes examples of when income is allocated to Illinois from sales or leases of real property, sales or rentals of tangible personal property, interest or net gains attributable to property located in Illinois, and sales of services. Small businesses may be affected by this rulemaking.

Questions/requests for copies: Brian Stocker, DOR Legal Services, 101 W. Jefferson St, Springfield IL 62796, 217/ 782-2844.

LABOR RELATIONS

The ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD adopted amendments to General Procedures (80 IAC 1100; 40 Ill Reg 15193), Hearing Procedures (80 IAC 1105; 40 Ill Reg 15202), Representation Procedures (80 IAC 1110; 40 Ill Reg 15215), Unfair Labor Practice Proceedings (80 IAC 1120; 40 Ill Reg 15242), Fair Share Fee Objections (80 IAC 1125; 40 Ill Reg 15256) and Collective Bargaining and Impasse Resolution (80 IAC 1130; 40 Ill Reg 15263), all effective 8/1/17. Amendments to Part 1100 permit documents to be filed electronically and clarify how dates are computed (e.g., documents must be received by the close of business in order to be considered filed that day). The Board will serve final Board opinions, complaints and notices of hearings, unfair labor charges, and fair share fee objections on a party by personal service, mail, or by leaving a copy at the office or place of business of the person to be served; other documents may be served other means. A party may also agree in writing to service by other means. Sections addressing recording of hearings and authority of a hearing officer are being

(cont. page 3)

New Rules

(cont. from page 2)

repealed. A party may be awarded costs and attorney's fees for seeking enforcement of a subpoena when there is frivolous litigation for the purpose of delay. Part 1105 amendments provide that requests for continuances must be in writing, but need not be submitted as formal motions. Multiple requests for continuances shall be viewed more strictly. Material relating to exceptions from decisions is being repealed, as that topic is covered in other amended Parts of this rulemaking package. The Part 1110 rulemaking lists the information required in a voluntary recognition notice (e.g., the name and affiliation of the employee organization to be recognized, a description of the proposed bargaining unit) as well as an employer request for voluntary recognition certification (e.g., name and address of the employer, description of the proposed bargaining unit, a statement why the employee organization represents the majority of employees in the bargaining unit). When ELRB issues a decision, any findings of fact must be based exclusively upon the evidence in the record and on matters of which official notice has been taken. Copies of all exceptions and briefs (and responses) shall be served upon all other parties and filed with the Board's General Counsel. A hearing officer's recommended decision shall be issued within 21 days after the conclusion of the presentation of evidence, receipt of the transcript and any

post-hearing briefs. An order of the Board dismissing a petition for clarification of an existing bargaining unit, or dismissing or granting an amendment of certification is deemed to be a final order. Amendments to Part 1120 state that withdrawal of an unfair labor practices charge after the issuance of a complaint shall be deemed to have occurred with prejudice. Motions in unfair labor practices proceedings shall be filed with the Executive Director in writing, must state with specificity the reason or grounds for the motion and must be served simultaneously on all parties when filed with the Executive Director. If an affirmative defense to an unfair labor practice charge is not included in the respondent's answer, it is deemed not to have been waived. The Part 1125 rulemaking provides that Notice of a Fair Share Fee may be provided electronically to nonmembers. The Executive Director shall appoint a fair share Administrative Law Judge to hold a hearing and issue a Recommended Decision. Funds from an escrow account shall be disposed of in accordance with the Uniform Disposition of Unclaimed Property Act if necessary. In the event of a religious objection to the disposition of fair share fees, the Board will select a charitable organization from a list of three charitable organizations established under Section 11 of the Illinois Educational Labor Relations Act. Finally,

amendments to Part 1130 provide that requests for mediation may be made electronically to the Board's electronic mailbox and that educational employers are no longer required to file copies of collective bargaining agreements with the Board. Those affected by these rulemakings include local school districts and institutions of higher education.

PUBLIC INFORMATION

IELRB also repealed the Part titled Freedom of Information (2 IAC 2676; 41 Ill Reg 279) and adopted a new Part titled Access to Records of the Illinois Educational Labor Relations Board (2 IAC 2676; 41 Ill Reg 289), both effective 8/1/17, implementing changes to the Illinois Freedom of Information Act (FOIA). The new Part updates the types of records that can be disclosed and the types of records exempt from disclosure, and adds statutory exemptions to disclosure. Since 1st Notice, files in pending fair share cases and records that could potentially identify how employees voted in a secret ballot election have been added to the list of records exempt from FOIA disclosure. The rulemaking also addresses procedures for submitting FOIA requests, requests made for commercial purposes, requests for records maintained online, the timeline requirements for Agency responses (shortened from 7 to

(cont. page 4)

New Rules

(cont. from page 3)

5 business days), and procedures for determining whether a request is unduly burdensome. Other provisions address recurrent requesters, electronic retrieval of records, fees for inspection and copying, request denials, and review of a denied request by the Attorney General's Public Access Counselor.

Questions/requests for copies of the 8 IELRB rulemakings: Susan Willenborg, IELRB, 160 N. LaSalle St., Ste. N-400, Chicago IL 60601-3103, 312/793-3170, Fax 312/793-3369, Susan.Willenborg@illinois.gov

HOSPITAL ASSISTANCE

The OFFICE OF THE ATTORNEY GENERAL adopted amendments to Hospital Financial Assistance under the Fair Patient Billing Act (77 IAC 4500; 41 Ill Reg 4426), effective 8/4/17, updating the Federal Poverty Level guidelines used to determine financial eligibility. The eligibility threshold for each household size has been raised 1.5% (for example, the threshold for a family of 5 is increased from \$28,440 to \$28,780).

Questions/requests for copies: David Buysse, Office of the Attorney General, 100 W. Randolph St., 12th Fl, Chicago IL 60601, 312/814-7236.

AIDS DRUG ASSISTANCE

The DEPARTMENT OF PUBLIC HEALTH adopted an amendment to AIDS Drug Assistance Program (77 IAC 692; 41 Ill Reg 4964), effective 8/2/17, updating income eligibility limits based on the 2017 Federal Poverty Level guidelines. (To qualify for the program, an applicant's gross annual household income must be no more than 300% of the FPL for the person's household size, e.g., \$36,180 for 1 person, \$48,720 for 2 persons, etc.)

Questions/requests for copies: Elizabeth Paton, DPH, 535 W. Jefferson St., 5th Fl., Springfield IL 62761, 217/782-2043.

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 September 12, 2017 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 FINANCIAL AND PROFESSIONAL REGULATION

Consumer Installment Loan Act (38 IAC 110; 41 Ill Reg 6780) proposed 6/16/17

Currency Exchange Act (38 IAC 120; 41 Ill Reg 6787) proposed 6/16/17

Financial Institutions Code (38 IAC 200; 41 Ill Reg 6793) proposed 6/16/17

Payday Loan Reform Act (38 IAC 210; 41 Ill Reg 6800) proposed 6/16/17

Savings Bank Act (38 IAC 1075; 41 Ill Reg 6805) proposed 6/16/17

Title Insurance Act (50 IAC 8100; 41 Ill Reg 6822) proposed 6/16/17

Sex Offender Evaluation and Treatment Provider Act (68 IAC 1280; 41 Ill Reg 6829) proposed 6/16/17

IL COMMUNITY COLLEGE BOARD

Administration of the Illinois Public Community College Act (23 IAC 1501; 41 Ill Reg 7029) proposed 6/23/17

JCAR Meeting Action

At its 8/15/17 meeting, the Joint Committee on Administrative Rules approved the following actions:

OBJECTION

JCAR objected to the Illinois Gaming Board rulemaking titled Video Gaming (General) (11 IAC 1800; 41 Ill Reg 2751) because the rulemaking's prohibition against currently licensed video gaming terminal operators having an existing financial interest in the licensed video gaming locations with which they have a use agreement divests those operators of a property right that was legitimate at the time it was procured. The Board has indicated its desire to withdraw this rulemaking in response to this Objection so that it can work with the affected industry to resolve outstanding issues.

EXTENSION

JCAR and the Illinois Commerce Commission agreed to extend the Second Notice periods an additional 45 days for the rulemakings titled Obligations of Retail Electric Suppliers (83 IAC 412; 40 Ill Reg 14931) and Internet Enrollment Rules (83 IAC 453; 40 Ill Reg 14971). These rulemakings will be considered again at the September 12 JCAR meeting.

Joint Committee on Administrative Rules

Senator Bill Brady

Representative Peter Breen

Senator Karen McConnaughay

Representative Tom Demmer

Senator Don Harmon

Representative Greg Harris

Senator Tony Muñoz

Representative Lou Lang

Senator Ira Silverstein

Representative André Thapedi

Senator Chuck Weaver

Representative Keith Wheeler

**Vicki Thomas
Executive Director**