

THE FLINN REPORT

ILLINOIS GENERAL ASSEMBLY
JOINT COMMITTEE ON ADMINISTRATIVE RULES

Elaine Spencer, Editor

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The Flinn Report is a weekly summary of regulatory actions of State agencies published in the *Illinois Register* and action taken by the Illinois General Assembly's Joint Committee on Administrative Rules (JCAR). The Flinn Report honors founding JCAR member Representative Monroe Flinn, and is designed to inform and involve the public in changes taking place in agency administration.

Proposed Rulemakings

▪ BUSINESS INCENTIVES

The DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY proposed a new Part titled Invest in Illinois Incentive Program (14 IAC 125; 48 Ill Reg 6423) establishing non-competitive economic incentive awards, including but not limited to grants and loans, to businesses that pledge to make capital investments and create new jobs, or to retain existing jobs, in Illinois. (In contrast to other DCEO incentive programs, Invest in Illinois is not limited to specific types of businesses or industries.) Applicant businesses must be in good standing under the laws of Illinois and any other states in which the business was formed or organized, and must owe no delinquent Illinois taxes. An applicant that closes, or reduces by at least 50%, its operations at any location in Illinois and moves them to another Illinois location is not eligible for these awards, unless DCEO determines the

move was necessary in order to expand the business' Illinois operations. Applications must include the location of the project; the amount of the capital investment to be made in the project; the number of jobs that will be created or retained; and the average salary for the jobs to be created or retained. DCEO will determine whether a project benefits

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the State and is eligible for an award based on factors that include the project's economic impact on the community and the likelihood that other businesses will be attracted to the project area or the State as a result of the project. Incentive agreements between DCEO and businesses that receive awards will specify performance conditions for each award, including the number of jobs created or retained and their average salaries; the minimum number of

years the awardee must maintain operations at the project location; the schedule of payments for loans or grants; the minimum capital investment to be made; claw-back provisions in the event of failure to comply with the agreement; and a requirement for an annual report to DCEO on the number of new employees and any other information the Department deems necessary. Failure to comply with the agreement may also require the awardee to share with the State any profits realized from a sale of the capital improvements funded by the award. Businesses planning investments or expansion in Illinois are affected.

Questions/requests for copies/comments through 6/17/24: Gina Arterberry, DCEO, 607 E. Adams St., 12th Fl. Springfield IL 62701, 217-524-8974, Gina.M.Arterberry@illinois.gov

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ADOPTED RULES: Rules adopted by agencies this week. **EMERGENCY RULES:** Temporary rules adopted for no more than 150 days. **PROPOSED RULEMAKINGS:** Rules proposed by agencies this week, commencing a First Notice public comment period of at least 45 days. **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/or non-profit organizations. Agencies must consider comments from these groups and attempt to minimize regulatory burdens on them.

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

RULE TEXT: First Notice proposed text, emergency rule and peremptory rule text is available at the Secretary of State website (<https://www.ilsos.gov/departments/index/register/home.html>) or at the Illinois General Assembly website (<http://www.ilga.gov>) under "Illinois Register". Second Notice text for proposed rulemakings (original version with any changes made by the agency during First Notice included) is available at the JCAR website.

Proposed Rulemakings

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▪ AMUSEMENTS

The DEPARTMENT OF LABOR proposed amendments to the Part titled Amusement Ride and Attraction Safety Act (56 IAC 6000; 48 Ill Reg 6438) implementing PA 103-177. The rulemaking removes the distinction between paid and volunteer carnival workers and makes volunteers subject to the same drug testing and background checks as paid employees. The Director of DOL may waive the requirement to apply for a permit at least 30 days in advance of operating a ride or attraction (or in advance of expiration of the current permit) if the applicant provides satisfactory proof that the application could not have been filed sooner. The Director may also accept permit applications filed less than 30 days in advance provided the application was submitted before the ride or attraction begins operation. Permits may be categorically denied to applicants who have previously made misrepresentations or material omissions on applications or documents submitted to DOL. Inspections by DOL and the associated fees may be waived if the operator provides proof that the ride/attraction has passed an inspection by another public or private agency (e.g., a municipality) whose standards are at least as stringent as DOL's standards under the Act. Operating permit holders must have a first aid and CPR-certified employee on staff at all times of operation. In instances where a ride or attraction is not in compliance with this Part but does not pose an immediate danger to the public or to workers, DOL may issue a correction notice with a specified compliance deadline, after which a stop operation

order may be issued if the deficiency is not corrected. A civil penalty of \$1,000 per violation may be imposed for any violation of the Act or this Part, and the maximum penalty for operating without a permit is raised to \$10,000 per day for a third or subsequent violation. Other provisions add a definition of "special amusement structures" including haunted houses (which need not be Halloween-themed) and prohibit amusement workers at haunted houses from making physical contact with patrons unless necessary to remove a patron or prevent injury to the patron or others; clarify administrative hearing procedures; incorporate the 2005 edition of the National Fire Protection Association Life Safety Code 101; and update requirements for bungee jumping, zip lines, aerial adventures and trampoline courts. Businesses, municipalities and non-profit organizations that sponsor carnivals, fairs, haunted houses and similar attractions are affected.

▪ NURSE AGENCIES

DOL also proposed amendments to the Part titled Nurse Agency Licensing Act (68 IAC 690; 48 Ill Reg 6519) implementing PAs 102-946 and 102-1124. The rulemaking clarifies which types of nurse staffing agencies that temporarily employ, refer or assign nurses or certified nurse aides to health care facilities are subject to the Act and this Part, and also provides guidance on how the requirements of the Act and this Part interact with other licensure laws. A nurse agency applying to DOL for a license must certify that it holds workers' compensation and professional liability insurance; provide copies of its facility contracts to DOL; pay an application fee of \$1,000 (currently \$250) online, plus \$250 for each Illinois branch office or location; and provide data on its shift fulfillment rate for the previous 3 quarters.

Applications no longer have to be notarized since they are being submitted electronically. Fines are raised to \$10,000 (currently \$500) per violation (other than submission of false/misleading information, for which the fine remains \$500). The rulemaking allows DOL to initiate an investigation of a suspected violation with or without a complaint and sets conditions for the employer to respond and request a hearing. Other provisions address recordkeeping, quarterly labor cost data reporting, verification of employees' current licensure and continuing education, background checks, on-boarding requirements, and non-compete agreements with employees. Nurse staffing agencies and healthcare facilities which use their services are affected.

Questions/requests for copies/comments on the 2 DOL rulemakings through 6/17/24: Anna Koepfel, DOL, 524 S. Second St. Suite 400, Springfield IL 62701, 217-558-1270, Anna.Koepfel@illinois.gov

▪ CHARITABLE ORGANIZATIONS

The OFFICE OF THE ATTORNEY GENERAL proposed amendments to the Part titled Solicitation for Charity Act (14 IAC 400; 48 Ill Reg 6330) reflecting Public Act 103-121. The rulemaking changes the thresholds for annual reporting and audit/financial review requirements for organizations that conduct charitable fundraising. Organizations that received more than \$25,000 but no more than \$300,000 (currently, \$150,000) in contributions, or employed professional fundraisers who collected up to \$25,000, during the organization's fiscal year must file the AG's required reports, fees, and a copy of their federal tax returns. Organizations that received more than

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\$300,000 but no more than \$500,000 in contributions but did not employ professional fundraisers who raised more than \$25,000 during the fiscal year must file the same documents, plus reviewed financial statements signed by an independent CPA. Organizations that received more than \$500,000 (currently, \$150,000) in contributions or that employed professional fundraisers who raised more than \$25,000 during the fiscal year must file required reports, fees, federal tax returns, and reviewed financial statements, plus a report form for each professional fundraising campaign conducted during the fiscal year. Requests for 60-day extensions of time to file reports will be automatically granted to organizations in compliance with the Act if the AG receives them by the organization's due date. The rulemaking also replaces the written report forms contained in appendices to the Part with links to electronic forms at the AG's website. Non-profit charitable organizations engaged in fundraising are affected by this rulemaking.

The OAG also proposed amendments to the Part titled Charitable Trust Act (14 IAC 480; 48 Ill Reg 6390) that clarify various aspects of charitable trust registration. The rulemaking replaces written financial report forms with links to electronic forms; automatically grants 60-day extensions upon written request to trusts that are in compliance with the Act and request more time to file their financial reports; and clarify that financial reports can be signed by a single trustee only if there is no more than one trustee. Otherwise, the report must be signed by two trustees.

Non-profit charitable trusts are affected.

ESTATE TAXES

The OAG proposed amendments to Illinois Estate and Generation-Skipping Transfer Tax Return (86 IAC 2000; 48 Ill Reg 6413) that update requirements for the Form 700 estate tax returns required for qualified terminable interest property (QTIP). (The QTIP is a form of irrevocable trust that allows a surviving spouse to receive income from the trust but retains the grantor's control over distribution of the trust after the spouse dies.) The rulemaking requires estates that claim a QTIP election to state the value of the property on the estate tax return (estates of \$4 million or more are subject to Illinois estate tax) and provide a schedule of assets identifying the property subject to the QTIP election. Any estate that includes QTIP property of a predeceased spouse must also provide the current value of any QTIP property belonging to the deceased spouse and a schedule of assets identifying this property. Real estate listings are not sufficient documentation of property value for a schedule of assets unless an underlying factual basis for the listed price (e.g., recent appraisal, comparable sales) is provided. The AG's website address and a Section addressing estate tax returns for civil union partners are also updated.

OAG REPEALER

The OAG also proposed repeal of the Part titled Crimes and Offenses, Impersonating Officer, Advertisements (14 IAC 440; 48 Ill Reg 6384) because the underlying statutory authority for this Part (subsection 17-2(c) of the Criminal Code of 1961) was repealed in 1999. The obsolete statute required persons soliciting advertisements for placement in magazines and

professional journals for law enforcement officers or firefighters to first obtain certification from the AG that the publication represented a bona fide police or firefighters' organization. The statute also required the AG to promulgate rules and provide forms for this purpose, which are no longer needed.

Questions/requests for copies/comments on the 4 OAG rulemakings through 6/17/24: 14 IAC 400, 440 and 480, Kristin Louis (312-814-2595, kristin.louis@ilag.gov); 86 IAC 2000, Frances J. Smith (312-814-6138, frances.smith@ilag.gov); Office of the Attorney General, 115 S. LaSalle St., Chicago IL 60603. For all 4 rulemakings: Kristin Creel, OAG, 500 S. Second St., Springfield IL 62701, 217-782-9070, Kristin.creel@ilag.gov.

ABANDONED INFANTS

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES proposed amendments to Rights and Responsibilities (89 IAC 102; 48 Ill Reg 6433) implementing PA 103-501, which requires hospitals to complete and submit an application for medical assistance on behalf of any abandoned newborn infant that is no more than 30 days old, was born outside the hospital and was later relinquished to the hospital, a police or fire station, or other emergency medical facility. Hospitals must obtain the application form from the HFS website and submit it by e-mail as an attachment. Once the application is received, the infant will be eligible for medical assistance for 12 months.

Questions/requests for copies/comments through 6/17/24: Katie Hill, HFS, 201 S. Grand Ave. East, 3rd Floor, Springfield IL 62763-0002, 217-782-1233, HFS.Rules@illinois.gov

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AIR POLLUTION

The POLLUTION CONTROL BOARD proposed amendments to Permits and General Provisions (35 IAC 201; 48 Ill Reg 6554), Alternative Control Strategies (35 IAC 202; 48 Ill Reg 6569), Major Stationary Sources Construction and Modification (35 IAC 203; 48 Ill Reg 6574), Prevention of Significant Deterioration (35 IAC 204; 48 Ill Reg 6655) and Toxic Air Contaminants (35 IAC 232; 48 Ill Reg 6676) that align the Board's Non-Attainment New Source Review (NA-NSR) rules to be consistent with the federal Clean Air Act and underlying NA NSR programs. Amendments to

Parts 201, 202, 204 and 232 are primarily clarifications or technical changes. Amendments to Part 203 add new Subparts I through R, which will become effective upon approval by the U.S. Environmental Protection Agency and include incorporated federal regulations, definitions, and specific provisions for affected emission sources.

Questions/requests for copies/comments on the 5 PCB rulemakings through 6/17/24: Clerk's Office, PCB, 60 E. Van Buren, Suite 630, Chicago IL 60605, don.brown@illinois.gov. Please reference Docket R22-17. Copies of the Board's opinions and orders are available at www.pcb.illinois.gov or can be requested by calling 312-814-3620.

DOR HEARINGS

The DEPARTMENT OF REVENUE proposed an amendment to Practice and Procedure for Hearings Before the Illinois Department of Revenue (86 IAC 200; 48 Ill Reg 6682) updating the address of DOR's Chicago hearing office (now 555 W. Monroe St., Suite 1100) and the office hours for both the Chicago and Springfield offices (8:30 a.m. to 4:30 p.m. Monday through Friday, excluding State holidays listed at the Department of Central Management Services website).

Questions/requests for copies/comments through 6/17/24: Brian Fliflet, DOR, 101 W. Jefferson St., MC5-500, Springfield IL 62794, 217-782-2844, REV.GCO@illinois.gov

Adopted Rules

DISTANCE LEARNING

The BOARD OF HIGHER EDUCATION adopted amendments to Higher Education Distance Learning and Interstate Reciprocity (23 IAC 1033; proposed at 47 Ill Reg 13759) effective 4/22/24 at 48 Ill Reg 6686, replacing emergency amendments that were effective 12/15/23. These amendments align the Part with the National Council for State Authorization Reciprocity Agreements (SARA) policy manual, which regulates awarding of credit for distance learning among institutions in all states except California and in the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. These

amendments clarify that accreditation, for the purposes of this Part, includes distance education recognition; clarifies how private institutions that do not participate in federal student aid programs can demonstrate financial stability; defines and clarifies aspects of the formulas BHE uses to determine financial stability and whether an out of State institution has physical presence in Illinois; explain how an institution which offers courses leading to professional certification satisfies requirements for disclosure regarding their professional licensure programs (e.g., listing all states in which the program does, or does not, satisfy licensure criteria for that

profession); and requires BHE to consider actions by federal and state regulatory agencies, other states' attorneys general, or similar bodies when reviewing an institution's application to participate in SARA. Two new Sections establish a "provisional" admission or renewal status for institutions that do not meet various criteria for admission, along with a procedure for institutions to appeal denial of membership in or removal from SARA.

Questions/requests for copies: David A. Kelm, BHE, 1 N. Old State Capitol Plaza, Suite 333, Springfield IL 62701, 217-866-1428, Kelm@IBHE.org

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 May 14, 2024 meeting in Springfield. 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 at jcar@ilga.gov.

CHIEF PROCUREMENT OFFICER – DEPT OF TRANSPORTATION
Chief Procurement Officer for the Department of Transportation – Standard Procurement (44 IAC 6; 48 Ill Reg 1753) proposed 2/2/24

DEPT OF FINANCIAL AND PROFESSIONAL REGULATION
Administrative Procedures for General Professional Regulation Under the Administrative Code (68 IAC 1130; 47 Ill Reg 18250) proposed 12/15/23

Cannabis Regulation and Tax Act (68 IAC 1291; 47 Ill Reg 12526) proposed 8/25/23

DEPT OF HUMAN SERVICES
Aid to the Aged, Blind or Disabled (89 IAC 113; 48 Ill Reg 2021) proposed 2/9/24

Fiscal/Administrative Recordkeeping and Requirements (89 IAC 509; 48 Ill Reg 2769) proposed 2/23/24

DEPT OF INSURANCE

Contraceptive Coverage (50 IAC 2014; 48 Ill Reg 2033) proposed 2/9/24

DEPT OF NATURAL RESOURCES

Regulations for the Letting of Concessions, Farm Leases, Sale of Buildings and Facilities, and Demolitions (17 IAC 150; 48 Ill Reg 2365) proposed 2/16/24

Field Trials on Department-Owned or -Managed Sites (17 IAC 910; 48 Ill Reg 2369) proposed 2/16/24

DEPT OF REVENUE

Income Tax (86 IAC 100; 47 Ill Reg 18412) proposed 12/15/23

SECRETARY OF STATE

Illinois Safety Responsibility Law (92 IAC 1070; 47 Ill Reg 18974) proposed 12/26/23

Issuance of Licenses (92 IAC 1030; 48 Ill Reg 3092) proposed 3/1/24

Next JCAR Meeting: Tuesday, May 14, 10:30 a.m.

Room C-1, Stratton Bldg., 401 S. Spring St., Springfield

Meeting will be live streamed on the JCAR website

Joint Committee on Administrative Rules

Senator Bill Cunningham, Co-Chair

Senator Cristina Castro

Senator Donald DeWitte

Senator Dale Fowler

Senator Napoleon Harris, III

Senator Sue Rezin

Representative Ryan Spain, Co-Chair

Representative Eva-Dina Delgado

Representative Jackie Haas

Representative Steven Reick

Representative Curtis Tarver, II

Representative Dave Vella

Kim Schultz, Executive Director ■ Kevin Kulavic, Deputy Director

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