

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.

Emergency Rules

■ BUSINESS RELIEF

The DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY adopted emergency amendments to Business Interruption Grant Program (14 IAC 690; 44 Ill Reg 16836) effective 9/29/20, amending a Part that was adopted by emergency rulemaking effective 7/21/20 for the remainder of its 150-day term. The emergency amendments implement Business Interruption Grant (BIG) program provisions for financial relief to livestock management facilities impacted by the COVID-19 public health emergency. Affected facilities must apply for relief through one of 3 programs: the Swine Depopulation Program (SDP), the Meat and Poultry Capacity Program (MPCP) or the Agriculture Business Interruption Program (ABIP). SDP applicants must have experienced a

COVID-19 ACTIONS

Numerous Executive Orders and emergency rules have been issued in response to the COVID-19 pandemic. Executive Orders of the Governor concerning this pandemic can be accessed at <https://www2.illinois.gov/government/executive-orders>. Emergency rules adopted by State agencies will be summarized in The Flinn Report as they are published in the *Illinois Register*.

depopulation and disposal event (DDE; e.g., a mass slaughter of swine that could not be moved to market) on or after 4/15/20. An SDP applicant may apply for assistance for no more than 5 DDEs and may receive up to \$135 for each 1,000 pounds of disposed carcasses, up to a maximum of \$10,000. Swine producers who have received carcass disposal

(cont. page 2)

Proposed Rulemakings

■ REAL ESTATE LICENSEES

The DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION proposed amendments to the Part titled Real Estate License Act of 2000 (68 IAC 1450; 44 Ill Reg 16584) implementing recent revisions to the Act. The rulemaking includes criteria for establishment and operation of virtual offices, along with clarifications and updates regarding what is considered deceptive or misleading advertising and what is considered permissible; criteria for DFPR to use citations in place of formal disciplinary action against a licensee; handling of escrow accounts; use of electronic communication; and pre- and post-license education and continuing education. Individuals and businesses holding real estate licenses may be affected.

(cont. page 3)

ADOPTED 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.

Adopted Rules

■ STUDENT DRIVERS

The SECRETARY OF STATE adopted amendments to Issuance of Licenses (92 IAC 1030; 44 Ill Reg 9923) and Commercial Driver Training Schools (92 IAC 1060; 44 Ill Reg 9926), both effective 10/5/20, replacing emergency rules effective 5/21/20 and subsequent emergency amendments effective 6/25, 8/7 and 8/20/20. These rulemakings enable teens who have completed driver education courses, but have not been able to take road tests and obtain licenses due to the closure of SOS facilities during the COVID-19 pandemic, to complete road tests outside of SOS facilities. The Part 1030 amendments exempt students who have completed an entire driver education course through a commercial driver training school, or who earned a grade of B or higher in the classroom portion of a high school driver's ed course and completed behind-the-wheel instruction through a commercial driver training school, from the requirement to take road tests at an SOS facility. Students who meet these criteria may take road tests from SOS-approved commercial driver training school instructors. Commercial driver training schools wishing to offer road tests to high school students must apply to SOS for approval and must list the names of the instructors who will administer these tests. Amendments to Part 1060 allow commercial driver training schools to provide classroom instruction online through live streaming or pre-recorded sessions until the region in which the school is

located reaches Restore Illinois Phase 5 (complete recovery), or through 12/31/20, whichever occurs first. Students who start instruction virtually may be allowed to continue and complete virtual classroom instruction beyond those dates. Until Phase 5 or 12/31, in-person instruction may be offered, but is not required, provided that no more than 10 persons, including students and staff, are present in the classroom at any time; Department of Public Health social distancing guidelines are observed; face coverings are worn and disposable masks made available to students upon request; hand sanitizer is provided in the classroom; and classrooms are sanitized between sessions. In-person classroom instruction shall resume on 1/1/21, subject to these requirements (minus the 10-person limit), even if Phase 5 has not been attained. Behind-the-wheel instruction may resume in Phase 3 provided that instructors and students wear face coverings and disposable masks are provided to students upon request; hand sanitizer is kept in the training vehicle and vehicles are sanitized between lessons; and only one student and one instructor are present in the training vehicle (a parent may ride along if requested). For students under age 18, written consent to one-on-one behind-the-wheel instruction must be obtained from the student's parent or guardian. Minimum observation hour requirements will be waived until the school's region reaches Phase 5. These rulemakings also establish a 12-month pilot program

under which commercial driver training school instructors with at least 5 continuous years of experience in behind-the-wheel instruction to teens may administer licensing road tests to students who have successfully completed an approved driver education course through their high school or a commercial driving school. The instructors and the routes used for these road tests must be approved by SOS and the tests must be scored in the same manner and include the same maneuvers as tests administered by SOS employees. Changes since 1st Notice reflect intervening emergency amendments updating these requirements. Those affected by these rulemakings include commercial driver training schools and driver education students.

Questions/requests for copies of the 2 SOS rulemakings: Brenda Glahn, SOS, 298 Howlett Bldg., Springfield IL 62756, bglahn@ilsos.gov

■ NONPUBLIC SCHOOLS

The STATE BOARD OF EDUCATION adopted amendments to Voluntary Registration and Recognition of Nonpublic Schools (23 IAC 425; 44 Ill Reg 3844) effective 9/29/20, implementing Public Act 101-17 and aligning the Part with current practice. The rulemaking allows initial registration of a school via an application process specified by the State Superintendent

(cont. page 4)

Proposed Rulemakings

(cont. from page 1)

Questions/requests for copies/comments through 11/30/20: Craig Cellini, DFPR, 320 W. Washington St., 2nd Fl., Springfield IL 62786, 217/785-0813, fax 217/557-4451.

PORT FACILITY GRANTS

The DEPARTMENT OF TRANSPORTATION proposed a new Part titled Port Facilities Capital Investment Grant Program (92 IAC 600; 44 Ill Reg 16745) implementing provisions of Public

Act 101-10. The Part outlines the procedures and requirements for public port districts to apply for grants toward expansion or repair of docks and terminals; rehabilitation of roadways, warehouses and other buildings; improvements to port security (e.g., lighting); installation/improvement of equipment for loading or off-loading vessels; navigational aids; and other improvements that will benefit marine transportation. DOT will publish a Notice of Funding Opportunity (NOFO), including a grant application and other forms,

when funds become available. Applicants must register and become pre-qualified under the Grant Accountability and Transparency Act (GATA) and must submit applications within 60 days after the NOFO is published. The rule also addresses non-allowable uses of grant award funds and the process for obtaining cost reimbursement.

Questions/requests for copies/comments through 11/30/20: Greg Stucka, DOT, 2300 S. Dirksen Pkwy., Room 317, Springfield IL 62764.

Emergency Rules

(cont. from page 1)

assistance from the USDA are not eligible for SDP assistance. MPCP applicants with no more than 60 employees may apply for up to \$25,000 in assistance to cover the costs of equipment needed to facilitate product processing or reduce disease spread among employees (e.g., face shields, barriers, ventilation improvements, hand sanitizers). The ABIP program will pay up to \$10,000 for financial losses due to holding swine, beef cattle, dairy cattle, lamb, poultry or meat goats, or related products, between 4/15 and 5/15/20. Applicants to all 3 programs will receive 10% additional financial assistance if they are located in a disproportionately impacted area. Other provisions of these emergency amendments clarify other aspects of the BIG Program, including repayment of eligible

business loans, the selection process for emergency loans, and the prioritization and determination of acutely distressed industries (e.g., event venues, movie theaters, bus operating companies). Livestock producers and other businesses affected by the COVID-19 emergency are impacted by this emergency amendment.

Questions/requests for copies: Jolene Clarke, DCEO, 500 E. Monroe, Springfield IL 62701, 217/557-1820, jolene.clarke@illinois.gov

SCHOOLS

The STATE BOARD OF EDUCATION adopted emergency amendments to Public Schools Evaluation, Recognition and Supervision (23 IAC 1; 44 Ill Reg 16860) effective 9/29/20 for a maximum of 150 days,

implementing provisions applicable during a public health emergency declared by the Governor. The emergency rule extends the deadline for reporting results of the Kindergarten Individual Development Survey (KIDS) of pupil readiness until a date to be set by the State Superintendent (normally, 40 days after the first student attendance day of the school year). It also permits unlicensed persons of good character (e.g., parents, boosters) whom current rule allows to serve as supervisors, chaperones or sponsors of non-academic school activities to serve in the same role for academic activities during the public health emergency. These persons must be supervised by licensed personnel who are physically present in the same building and may not administer

(cont. page 5)

Adopted Rules

(cont. from page 2)

(formerly, by submission of paper forms), and allows the school to document that it has an academic term which satisfies minimum statutory instructional requirements applicable to public schools (formerly, at least 176 days of student attendance with at least 5 clock hours of instruction daily, or 880 clock hours of instruction per year). Schools seeking recognition must comply with other relevant statutes, case laws and administrative rules in addition to complying with applicable provisions of the School Code. Registered nonpublic schools recognized by an SBE-approved accrediting organization must be visited by the accrediting organization in order to attain or maintain recognition, and the State Superintendent must periodically review accrediting organizations to insure they maintain alignment with the requirements of this Part. Schools seeking recognition must also document compliance with School Code requirements for administration or self-administration of medications; verify that students participating in interscholastic sports have had annual physicals and that the school complies with School Code concussion policy; and comply with SBE rules regarding transfer of student records (23 IAC 375.75). Schools that deliver instruction entirely via correspondence, online, or by other means in which students do not gather in a physical location must register with SBE before they can be recognized (previously, rule allowed them to be recognized

without registration) although some requirements of the Part (e.g., building codes) will not apply to them. The State Superintendent may allow a nonpublic school applying for recognition directly from SBE to select 2 members of the 3-person SBE review team that will visit the school. A school that fails to renew its registration (in years when it is due for an on-site review) or its recognition (in years between on-site reviews) forfeits its recognition status; since this loss is not due to any action by SBE, it cannot be appealed, and the school must reapply for initial registration and recognition. Recognition cannot be immediately removed by SBE administrative action without first placing the school on probation, except in emergency situations. Finally, the rulemaking implements PA 101-17 by removing the requirement that SBE approve textbooks selected for the textbook block grant program through which nonpublic schools may purchase secular textbooks. Nonpublic schools and their accrediting bodies are affected by this rulemaking.

Questions/requests for copies: Azita Kakvand, SBE, 100 N. First St., Springfield IL 62777-0001, 217/782-6510, rules@isbe.net

■ APPRENTICESHIPS

The DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY adopted a new Part titled Illinois Works Jobs Program Act (14 IAC 680; 44 Ill Reg 8470) effective 9/29/20, replacing an emergency rule

effective 5/8/20. The new Part implements the Illinois Works Apprenticeship Initiative that began on 7/1/20. Under this initiative, contractors, subcontractors and grantees undertaking State-funded public works projects with a total cost of \$500,000 or more must have apprentices perform at least 10% of the actual or estimated labor hours in each prevailing wage classification. Affected contractors may apply for a waiver from DCEO if this goal cannot be met and DCEO may hold public hearings on these requests. Small businesses and non-profits engaged in public works projects may be affected by this rulemaking.

Questions/requests for copies: Jolene Clarke, DCEO, 500 E. Monroe St., Springfield IL 62701, 217/557-1820 or 217/524-3701, jolene.clarke@illinois.gov

■ LIQUOR LICENSEES

The ILLINOIS LIQUOR CONTROL COMMISSION adopted an amendment to the Part titled The Illinois Liquor Control Commission (11 IAC 100; 43 Ill Reg 10763) effective 9/29/20 giving the Commission authority to authorize transfers of alcohol between retail licensees (which is generally prohibited) on a case-by-case basis. Requests to transfer alcohol between retail licensees must be submitted to the Commission on approved forms prior to the transfer. In approving or denying a request, the Commission may

(cont. page 5)

Emergency Rules

(cont. from page 3)

student discipline. School districts may be affected.

Questions/requests for copies: Azita Kakvand, SBE, 100 N. First St., Springfield IL 62777-0001, 217/782-6510, rules@isbe.net

■ LONG TERM CARE

The DEPARTMENT OF PUBLIC HEALTH adopted emergency amendments to Skilled Nursing and Intermediate Care Facilities Code (77 IAC 300; 44 Ill Reg 16894), Intermediate Care for the Developmentally Disabled Facilities Code (77 IAC 350; 44 Ill Reg 16908), and Medically Complex for the Developmentally Disabled Facilities Code (77 IAC 390; 44 Ill Reg 16920), all effective 10/2/20 for a maximum of 150 days. These emergency rules continue the provisions of COVID-19 Executive Orders and previous emergency rules that expired 10/1/20, both of which prohibit nursing homes and care facilities for

persons with developmental disabilities from discharging residents for late payment or non-payment.

HEALTH CARE WORKERS

DPH also adopted emergency amendments to Health Care Employee Vaccination Code (77 IAC 956; 44 Ill Reg 16931) effective 9/30/20 for a maximum of 150 days. Identical proposed amendments appear in this week's *Illinois Register* at 44 Ill Reg 16742. The emergency rule extends the current DPH mandate for health care facility workers to obtain annual influenza vaccinations to employees of developmental centers and mental health centers. Employees of these facilities are affected.

Questions/requests for copies/comments on the proposed rulemaking through 11/30/20: Elizabeth Paton, DPH, 535 W. Jefferson St., 5th Fl., Springfield IL 62761, 217/785-9192, dph.rules@illinois.gov

DHR PROCEDURES

The DEPARTMENT OF HUMAN RIGHTS adopted an emergency amendment to Procedures of the Department of Human Rights (56 IAC 2520; 44 Ill Reg 16886) effective 10/1/20 for a maximum of 150 days. The emergency rule implements Public Act 101-221, which requires employers with adverse DHR judgments or administrative rulings against them (for discrimination or harassment based on sex, race, religion, or other protected categories) during the previous calendar year to disclose the number and type of judgments or rulings to DHR beginning 7/1/20 and every July 1 thereafter. The rule permits employer disclosures for judgments/rulings made in 2019 to be filed with DHR by 10/31/20.

Questions/requests for copies: Mary M. (Betsey) Madden, DHR, 100 W. Randolph St., Suite 10-100, Chicago IL 60601, 312/814-3386, TTY 866/740-3953.

Adopted Rules

(cont. from page 4)

consider factors such as unforeseeable circumstances beyond the control of the licensee; whether the licensee is facing bankruptcy or temporary or permanent closure; and whether a new, non-common ownership licensee is planning to take possession of the closing licensee's current inventory. The rulemaking also clarifies that "retail

licenses" include licenses granted to caterers, special event/non-profit retailers, railroads, boats, airplanes, winemakers, distiller pubs, and brew pubs. Since 1st Notice, LCC removed a requirement that a transfer request be made at least 10 days prior to the transfer unless the transfer is prompted by an "imminent act of god" (e.g., flood or other disaster) and added provisions for distiller pub licensees. Small businesses

and non-profits that sell or serve alcoholic beverages may be affected by this rulemaking.

Questions/requests for copies: Abraham Zisook, LCC, 100 W. Randolph St., Suite 7-801, Chicago IL 60601, 312/814-2206.

(cont. page 6)

Adopted Rules

(cont. from page 5)

JUVENILE JUSTICE

The DEPARTMENT OF JUVENILE JUSTICE adopted amendments to the Part titled Research and Evaluation (20 IAC 2206; 44 Ill Reg 3304) effective 9/29/20 that update the required information to be submitted in any formal research proposal (for studies or evaluations of former or present committed youth, employees, programs or facilities). Research proposals must now include steps that will be taken to ensure participant confidentiality and anonymity in the process of data collection and reporting. Proposals must also include a data sharing agreement. All requests for research and evaluation must be approved by the DJJ Director and the Deputy Director of the appropriate division. DJJ also repealed the Part titled Reimbursement for Expenses (20 IAC 2210; 44 Ill Reg 3309), effective 9/29/20, to reflect Public Act 101-235. This PA repealed the statute that, formerly, authorized DJJ (and its predecessor, the adult Department of Corrections) to seek reimbursement from offenders for the costs of their incarceration.

Questions/requests for copies of the 2 DJJ rulemakings: Lindsay M. Bentivegna, DJJ, 2715 W. Monroe St., Springfield IL 62704, 217/557-1030, DJJ.Rules@illinois.gov

■ PROCUREMENT

The OFFICE OF THE ATTORNEY GENERAL adopted an amendment to the Part titled Attorney General's Procurement (44 IAC 1300; 44 Ill Reg 10831) effective 9/30/20, implementing Public Act 100-801. The rulemaking establishes aspirational goals for the AG's goods and services contracts in accordance with the Business Enterprise for Minorities, Women, and Persons with Disabilities Act. These goals are for at least 20% of the total dollar value of these contracts to be awarded to businesses owned by minorities, women and persons with disabilities, with at least 11% to be awarded to minority-owned businesses, 7% to women-owned businesses, and 2% to businesses owned by persons with disabilities. Contracts for services related to investigations or litigation are not included in these goals. The rulemaking also authorizes the OAG to: establish set-asides for minority/women/disability owned businesses and other preferred vendors; rely upon certifications by the Department of Central Management Services or other certifying entities to determine that a business meets the Business Enterprise Act criteria; and use measures such as targeted advertising, removal of extended experience/capitalization requirements if feasible, and division of projects into smaller tasks/quantities to meet these goals. Information regarding utilization of affected businesses shall be posted annually at the

OAG's website. Small businesses seeking contracts with the OAG may be affected.

Questions/requests for copies: Melissa Mahoney, OAG, 100 W. Randolph St., 12th Fl., Chicago IL 60601, 312/814-3950, or Lynn Patton, OAG, 500 S. Second St., Springfield IL 62701, 217/524-1504.

STATE EMPLOYEES

The DEPARTMENT OF CENTRAL MANAGEMENT SERVICES adopted an amendment to Extensions of Jurisdiction (80 IAC 305; 43 Ill Reg 11808) effective 9/30/20 that extends Personnel Code Jurisdictions A (job classifications and pay), B (merit and fitness requirements) and C (conditions of employment) to the positions of Nuclear Safety Information Systems Specialist I and II at the Illinois Emergency Management Agency effective 2/1/20. (These positions and their functions are being transferred to the Department of Innovation and Technology.)

Questions/requests for copies: Sean Coombe, CMS, 720 Stratton Building, Springfield IL 62706, 217/524-7518.

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 listed in next week's *Illinois Register* and considered at the November 17, 2020 JCAR meeting. Other items not published in the *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.

STATE EMPLOYEES' RETIREMENT SYSTEM

The Administration and Operation of the State Employees' Retirement System of Illinois (80 IAC 1540; 44 Ill Reg 13312) proposed 8/14/20

JCAR Meeting Action

At its 10/14/20 meeting, the Joint Committee on Administrative Rules took the following actions:

OBJECTIONS

JCAR objected to the Illinois Educational Labor Relations Board emergency rulemaking titled General Procedures (80 IAC 1100; 44 Ill Reg 15998) because it allows service of documents by e-mail when that is not one of the three acceptable methods for service specified in Section 5(h) of the Illinois Educational Labor Relations Act [115 ILCS 5].

JCAR objected to the Torture Inquiry and Relief Commission rulemaking titled Organization, Public Information, Procedures and Rulemaking (2 IAC 3500; 44 Ill Reg 13427) because the Commission inappropriately used the required rulemaking process. Sec. 5-15 of the IAPA permits the use of required rules when nonsubstantive organizational changes are needed. The adopted rulemaking made substantive changes in policy, which should be enacted through the proposed rulemaking process.

RECOMMENDATIONS

With regard to the Department of Healthcare and Family Services rulemaking titled Hospital Services (89 IAC 148; 44 Ill Reg 10065) JCAR recommended that HFS be more timely in implementing statutory changes in its rules. PA

101-265 required HFS to implement, by rule, its payment methodology for hospital long-term care days by 10/1/19.

With respect to the Illinois Community College Board's rulemaking titled Administration of the Illinois Public Community College Act (23 IAC 1501; 44 Ill Reg 10855) JCAR recommended that ICCB be more timely in implementing statute in rule. One of the underlying statutes, PA 99-482, became effective in 2015.

EXTENSIONS

JCAR and the respective agencies agreed to extend the Second Notice periods for the following rulemakings an additional 45 days. These rulemakings will be considered again at the November 17, 2020 meeting:

Department of Public Health, Skilled Nursing and Intermediate Care Facilities Code (77 IAC 300; 44 Ill Reg 435) and Illinois Clinical Laboratories Code (77 IAC 450; 44 Ill Reg 3073).

Department of Insurance, Tie Breaking When Conducting and Administering a Board of Trustee Election (50 IAC 4451; 44 Ill Reg 11394)