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Joint Committee on Administrative Rules
Illinois General Assembly

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Issue 42

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

■ SALES TAX

DEPARTMENT OF REVENUE adopted amendments to Retailers' Occupation Tax (86 IAC 130; 38 Ill Reg 13161), Use Tax (86 IAC 150; 38 Ill Reg 13186) and Service Use Tax (86 IAC 160; 38 Ill Reg 13198), all effective 10/1/14, striking language inconsistent with a recent Illinois Supreme Court ruling (*Hartney vs. Hamer*) concerning how the location of a sale is determined for purposes of applying local sales taxes. The amendments to Part 130 repeal 2 Sections and delete language in a third Section that declares immaterial, for purposes of determining sales tax jurisdiction, the locations at which title to property passes to the purchaser, the contract of sale is negotiated and executed, or the purchaser resides. Amendments to Parts 150 and

160 strike language stating that the seller's acceptance of a purchase offer or other contracting action in making a sale is the single most important factor in determining where a sale took place (an interpretation rejected by the Court). Retailers subject to local sales taxes are affected by these rulemakings.

Questions/requests for copies of the 3 DOR rulemakings: Paul Berks, DOR, 100 W. Randolph St., 7th Fl., Chicago IL 60601, 312/814-4680, fax 312/814-4344.

DRIVER'S LICENSES

SECRETARY OF STATE adopted amendments to Issuance of Licenses (92 IAC 1030; 38 Ill Reg 13734), effective 10/1/14, requiring visa-status temporary visitor driver's license applicants to affirm under penalty of perjury

Proposed Rulemaking

■ VIDEO GAMING

ILLINOIS GAMING BOARD proposed an amendment to Video Gaming (General) (11 IAC 1800; 38 Ill Reg 19901) implementing and clarifying a provision of Public Act 98-31. The act authorizes the vendor of the Central Communications System to be licensed as a manufacturer or distributor, but prohibits this vendor from collecting and using data on gaming devices or individual game performance. The rulemaking clarifies that this prohibition applies only to data from competing licensees, not to data gathered by the licensee regarding its own operations.

Questions/requests for copies/comments through 12/1/14: Emily Mattison, IGB, 160 N. La Salle St., Chicago IL 60601, 312/814-7253, emily.mattison@igb.illinois.gov

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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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at the time of application that they are not eligible for a social security number, instead of obtaining verification from the Social Security Administration. Since 1st Notice, unrelated changes to Appendix A (questions asked of all driver's license applicants) that SOS had adopted, but had been inadvertently omitted from the text of later rulemakings, have been added to this rulemaking.

SOS also adopted amendments to the Part titled Illinois Safety Responsibility Law (92 IAC 1070; 38 Ill Reg 12826), effective 10/1/14, clarifying that a court order may be issued to certify a request for suspending the driver's license of a person more than 90 days behind in paying child support. If the obligor's driver's license number or social security number is not on the certification, then the certification must contain the obligor's name, date of birth, gender and case number. Those involved with child support cases may be affected.

Questions/requests for copies of the 2 SOS rulemakings: Jennifer Egizii, SOS, 2701 S. Dirksen Parkway, Springfield IL 62723, 217/557-4462.

■ CREDIT UNIONS

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION adopted amendments to the Part titled Illinois Credit Union Act (38 IAC 190; 38

Ill Reg 13122), effective 10/17/14, implementing Public Act 98-784, which amended Section 9 of the Credit Union Act to require the Secretary of DFPR to adopt rules to assure consistency and due process in the examination of credit unions and to issue guidelines clarifying the scope of examinations. The rulemaking states DFPR "shall make every reasonable effort to adhere to standards of performance stated in the rulemaking in conducting its examinations, and to supplement the rulemaking, DFPR may establish guidelines that define the scope of the examination process and clarify the manner in which the examination items shall be resolved." (A change since 1st Notice clarifies that the scope of these guidelines shall include, but is not limited to, protocol in identifying and addressing examination findings, preparation and delivery of examination reports, and procedures for enforcement and determining compliance.) Such guidelines may be relied upon by credit unions; while DFPR reserves the right to change these guidelines, it will provide reasonable notice when any change to the guidelines occurs. Unless criminal or unsafe activity is suspected, DFPR shall mail or e-mail a pre-examination memorandum (changed since 1st Notice from "make a reasonable effort to provide prior written notification" of an examination) to the management and board of directors of a credit union, and to the management of all joint

conferences and the exit meeting. Protocols for DFPR examination meetings with credit union staff and issuance of reports are prescribed. Possible DFPR enforcement actions that may be taken include: Document of Resolution (DOR, an identified problem in the Examination Report and a corrective action plan to resolve the problem); Letters of Understanding and Agreement (LUAs, an enforcement action by which a credit union agrees to correct identified material deficiencies or weaknesses in the credit union's administration or operations); Cease and Desist Orders; Orders of Removal; and Civil Penalty Orders. Regarding any examination finding or action, resolution of an issue is encouraged at the lowest operational level, such as between the credit union and, in successive steps: the examiner; the Assistant or Supervisor of the Credit Union Section of DFPR; the Director of the Division of Financial Institutions; a possible Departmental Internal Review Committee or Secretary of DFPR, or a formal hearing. Two changes since 1st Notice are noted in the summary above. Credit unions are affected by this rulemaking.

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

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New Rules

■ AVIATION SAFETY

DEPARTMENT OF TRANSPORTATION adopted amendments to Aviation Safety (92 IAC 14; 38 Ill Reg 12836), effective 10/2/14, removing references to the approximate time frame for the Federal Aviation Administration to determine favorable airspace. (The rules formerly stated that FAA determinations are made in 30-60 days, but the FAA currently takes 3 to 12 months to complete this process.) Also, two new illustrations depicting Ultralight/STOL restricted landing area minimum dimensional standards and separation and gradient standards have been added. Pilots and airports may be interested in this rulemaking.

Questions/requests for copies: Linda Schumm, DOT Division of Aeronautics, 1 Langhorne Bond Dr., Springfield, IL 62707, 217/785-4215.

■ VIDEO GAMING

ILLINOIS GAMING BOARD adopted amendments to Video Gaming (General) (11 IAC 1800; 38 Ill Reg 12655), effective 10/2/14, requiring licensed manufacturers and licensed distributors to inform the terminal operators with whom they do business if the video gaming terminal's hardware or software has been revoked for any reason. Terminal operators must provide the Board with a monthly list of video gaming terminals in Illinois. Licensed video gaming

locations must promptly report to the terminal operator any unlawful activity on the property or in the location that involves or affects terminals or other gaming devices or services. Licensed video gaming locations must also report to the Board's administrator or designee: failure of the terminal operator to service and repair video gaming terminals, unauthorized or illegal video gaming terminals or devices, action against the licensed location's liquor license, and unlawful or unwarranted entry onto the property or location that involves or affects terminals or other gaming devices or services. All licensed video gaming locations must have a sign that states video gaming is restricted to people 21 years old and older. Licensed terminal operators, distributors and locations are affected by this rulemaking.

Questions/requests for copies: Emily Mattison, at the IGB address, telephone number and e-mail on page 1.

INSURANCE

DEPARTMENT OF INSURANCE adopted amendments to License and Documents Necessary to Engage in Activities and Examinations (50 IAC 752; 38 Ill Reg 7715) and Administrative Hearing Procedures (50 IAC 2402; 38 Ill Reg 7731) and repealed the Part titled Notice of Eligibility (50 IAC 5301; 38 Ill Reg 12669), all effective 9/30/14. The Part 752 amendment reflects an

increased fee for filing an application as an advisory organization in accordance with recent statute changes raising the amount from \$25 to \$50. Technical changes have also been made. Amendments to Part 2402 revise the Department's administrative hearing rules for the first time since 1979. By mutual agreement or by order of the hearing officer, parties may file documents by email or fax transmission, but the transmission must be received no later than 5 p.m. on the date on which the document is due. Certain policies concerning transcripts and records of a hearing are being repealed, statutory provisions are updated and other technical corrections are being made. Since 1st Notice, provisions for appearances by out-of-State attorneys have been updated to state that after 12/31/14, these attorneys must affirm their compliance with Illinois Supreme Court rules. The Part 5301 rulemaking repeals obsolete criteria for notices sent to persons rejected for health insurance coverage, since the federal Affordable Care Act forbids rejection based on pre-existing conditions and requires policies listed on the Illinois Exchange to be issued.

DOI also adopted amendments to Request for Regulatory Action (2 IAC 961; 38 Ill Reg 19934), effective 9/30/14, under the required rulemaking procedure in Section 5-15 of the IAPA. These

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New Rules

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amendments contain non-substantive technical corrections and updates.

Questions/requests for copies of the 4 DOI rulemakings: For 50 IAC 752, C. J. Metcalf (217/558-0853); for 50 IAC 2402, Joe Clennon (217/557-1396); for 50 IAC 5301, Jim Rundblom (217/785-8559); and for 2 IAC 961, Susan Anders (217/558-0957), all DOI, 320 W. Washington St., Springfield IL 62767-0001.

PUBLIC RECORDS

ILLINOIS LABOR RELATIONS BOARD repealed the Part titled Freedom of Information (2 IAC 2501; 38 Ill Reg 19964) effective 9/19/14, adopted a new Part titled Access to the Records of the Illinois Labor Relations Board (2 IAC 2501; 38 Ill Reg 19966) effective 10/2/14, and adopted amendments to Public Information, Rulemaking and Organization (2 IAC 2500; 38 Ill Reg 19955) effective 10/2/14, all in accordance with the required

rulemaking process in Section 5-15 of the Illinois Administrative Procedure Act. The Part 2501 rulemakings replace outdated rules for responding to Freedom of Information Act (FOIA) requests with new rules reflecting recent changes to FOIA. These changes affect what documents and information agencies must make public, the timelines for providing such information, and the appeals process when a request for information is denied. The new Part outlines information that must be disclosed upon request; information exempt from disclosure; and how and to whom requests for information should be submitted. It also shortens the timeline for the agency's response from 7 to 5 business days; and lists conditions under which the agency may extend the timeline (e.g., if a large number of records are sought or if they require an extensive search to locate). Original records may be inspected and copied at ILRB headquarters and off-site copying may be allowed under the constant supervision of

agency staff. The new Part lists charges for copies made in various formats (e.g., black and white photocopies, color or oversized copies, CD ROM). New provisions for appealing a denial of requested documents to the Attorney General's Public Access Counselor are also included. The Part 2500 amendments update the ILRB's organizational rules to reflect the reorganization of the former State Labor Relations Board and Local Labor Relations Board into the State Panel and Local Panel of ILRB; to reflect a change in ILRB's Springfield office address; and to clarify which Illinois Administrative Code rules ILRB promulgates. Those affected by these rulemakings include individuals, groups, or business entities seeking public information or documents from ILRB.

Questions/requests for copies of the 3 ILRB rulemakings: Sarah Kerley, ILRB, One Natural Resources Way, 1st Fl., Springfield IL 62702-1271, 217/785-4004, Sarah.R.Kerley@illinois.gov

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 considered at the Committee's November meeting, scheduled for Thursday, Nov. 6, at 11:30 a.m. at the Michael Bilandic Building, Room 600C, 160 N. La Salle St., Chicago.

DEPT OF INSURANCE

Licensing of Public Adjusters (50 IAC 3118) proposed 6/27/14 (38 Ill Reg 13149)

JCAR Meeting Action

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

POSTPONEMENT

JCAR delayed action on the Department of Natural Resources rulemakings titled Hydraulic Fracturing Regulatory Act (62 IAC 245; 37 Ill Reg 18097) and The Illinois Oil and Gas Act (62 IAC 240; 37 Ill Reg 18081), both currently on extended Second Notice, until its Nov. 6 meeting.

OBJECTION AND FILING PROHIBITION

JCAR objected to and prohibited the filing of the Illinois Commerce Commission rulemaking titled Governmental Electric Aggregation (83 IAC 470; 37 Ill Reg 20544) because, as currently drafted, the rulemaking gives a competitive advantage to one group of electrical suppliers over others engaged in the same regulated activity. JCAR believed it was not the intent of the General Assembly to create an advantage for any specific

group of the entities marketing electrical service in this State, and found this unbalanced policy poses a threat to the public interest.

RECOMMENDATION

With regard to the State Board of Education rulemaking titled Charter Schools (23 IAC 650; 38 Ill Reg 11482), JCAR recommended that SBE be more timely in updating its rules to reflect statute. The rulemaking implements a portion of PA 97-152, effective 7/20/11.

EXTENSION

JCAR and the Illinois Environmental Protection Agency agreed to extend the Second Notice period for the IEPA rulemaking titled Collection of Out-of-Service Mercury Thermostats (35 IAC 190; 38 Ill Reg 15811) an additional 45 days. This rulemaking will be considered at JCAR's Nov. 6 meeting.

Joint Committee on Administrative Rules

Senator Pamela Althoff

Representative Greg Harris

Senator Don Harmon

Representative Lou Lang

Senator Tony Muñoz

Representative David Leitch

Senator Sue Rezin

Representative Don Moffitt

Senator Dale A. Righter

Representative Tim Schmitz

Senator Ira Silverstein

Representative André Thapedi

**Vicki Thomas
Executive Director**