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Joint Committee on Administrative Rules
Illinois General Assembly

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Issue 1

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

■ EMPLOYMENT COMPLAINTS

The DEPARTMENT OF LABOR adopted amendments to Equal Pay in Employment (56 IAC 320; 39 Ill Reg 11199), effective 12/21/15, that allow DOL to refer complaints under the Equal Pay Act of 2003 to the Department of Human Rights if the complaint also alleges a violation of the Illinois Human Rights Act. This rulemaking affects all private or public employers with 4 or more employees.

Questions/requests for copies: Chris Wieneke, DOL, 900 S. Spring St., Springfield IL 62704, 217/558-1270.

INSURANCE

The DEPARTMENT OF INSURANCE adopted amendments to Accident and Health Reserves (50 IAC 2004; 39 Ill Reg 12715), effective 12/31/15,

updating accounting standards to be used by accident and health insurers in calculating reserves (and reporting information to DOI). Insurers are to use the most recent edition of the Accounting Practices and Procedures Manual (APPM) as prescribed by the National Association of Insurance Commissioners (NAIC). Exceptions and qualifications are made for certain policies issued and claims made prior to 2008. The new standards may also be applied to claims occurring after 2002 provided that all future calculations are made on the basis of the new standards.

DOI also adopted amendments to Surplus Line Business Requirements (50 IAC 2801; 39 Ill Reg 11852) effective 12/21/15 in response to Public Act 98-978, which made statutory revisions

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Proposed Rulemakings

■ RADIOACTIVE MATERIAL

The ILLINOIS EMERGENCY MANAGEMENT AGENCY proposed a new Part titled Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material (32 IAC 337; 40 Ill Reg 1) to codify various rules promulgated by the U.S. Nuclear Regulatory Commission (NRC) regarding protection of radioactive material from theft, diversion and other criminal activity. The new Part formally establishes security requirements for licensees that use or transport category 1 or category 2 radioactive materials (defined by type of material and radioactivity thresholds contained in an appendix). Licensees that possess material exceeding the category 2 threshold must implement access authorization

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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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regarding surplus line insurance (insurance, not including life, accident or health insurance and which generally address liability for negligence, fraud or the acts of another) procured from a company not licensed in Illinois after an insurance producer is unable to procure the insurance from an authorized insurer. New provisions state that a surplus line producer may obtain insurance from an unauthorized producer domiciled outside the United States only if the insurer is permitted in its domiciliary jurisdiction to write the type of insurance involved or is listed in the Quarterly Listing of Alien Insurers maintained by the

National Association of Insurance Commissioners (NAIC). A surplus line producer may obtain insurance from an unauthorized insurer for an exempt commercial purchaser without making the required diligent effort to procure the insurance from an authorized insurer if the producer has disclosed to the exempt commercial purchaser that the insurance may or may not be available from authorized insurers that may provide greater protection with more regulatory oversight and the exempt commercial purchaser has subsequently requested the producer in writing to procure the insurance from an unauthorized insurer. The Surplus Line Association shall maintain

records of surplus line insurance submitted to the Association for 10 years and shall be audited annually. Each surplus line producer must keep records of the business transacted under its surplus line license for 7 years. Notices to surplus line policyholders are amended to state that the insurance contract is issued by a domestic surplus line insurer as defined in the Insurance Code and is not covered by the Illinois Insurance Guaranty Fund.

Questions/requests for copies of the 2 DOI rulemakings: Susan Anders, DOI, 320 W. Washington St., Springfield IL 62767-0001, 217-785-8220, Fax: 217-524-9033.

Proposed Rulemakings

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requirements (e.g., FBI background investigations) to insure that any personnel who handle such material are trustworthy and reliable. Access authorizations must be renewed, with new background checks, at least every 10 years. Persons exempt from these requirements include persons with active federal security clearances, certain State and federal government officials, law enforcement and emergency response personnel. Licensees must also develop written security plans for their facilities and operations, provide initial training for their personnel and provide refresher training every 12 months or whenever a

significant change is made to the security plan. Other provisions address security zones for radioactive material, monitoring and detection procedures, security program reviews, reporting of events, advance notification of radioactive material shipments, and physical protection of material while in transit. Those affected by this rulemaking include local emergency management agencies and facilities which produce, collect or transport radioactive material.

Questions/requests for copies/comments through 2/17/16: Traci Burton, IEMA, 1035 Outer Park Dr., Springfield IL 62704, 217/785-9860, fax 217/524-3698.

PCB PROCEEDINGS

The POLLUTION CONTROL BOARD proposed amendments to the Parts titled General Rules (35 IAC 101; 40 Ill Reg 52), Regulatory and Information Hearings and Proceedings (35 IAC 102; 40 Ill Reg 95), Enforcement (35 IAC 103; 40 Ill Reg 107), Regulatory Relief Mechanisms (35 IAC 104; 40 Ill Reg 114), Appeals of Final Decisions of State Agencies (35 IAC 105; 40 Ill Reg 121), Proceedings Pursuant to Specific Rules or Statutory Provisions (35 IAC 106; 40 Ill Reg 127), Petition to Review Pollution Control Facility Siting Decisions (35 IAC

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Proposed Rulemakings

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107; 40 Ill Reg 138), Administrative Citations (35 IAC 108; 40 Ill Reg 144) and Tax Certifications (35 IAC 125; 40 Ill Reg 148), updating its hearing and meeting processes and clarifying definitions. All 9 Parts are being amended to allow PCB to conduct hearings via videoconference, while Parts 101, 105, 107 and 125 are being amended to require State agencies and siting authorities to file certain types of records (e.g. tax certifications, final or appealed decisions) electronically. Additional amendments to Part 101 expand the number of orders that are served by e-mail instead of paper, amend the requirement that a person must consent to e-mail service in writing, and require parties with e-mail capability to deliver their filings to the Board by e-mail. When paper documents are filed, the original and 2 copies (currently, 3 copies) must be submitted. Other amendments to Part 101 cite the statutory definition of "pollution control facility"; clarify rules regarding appeal timeframes, hearing notices, and hearing locations; and modify requirements for proposing copyrighted documents for incorporation by reference. Further amendments to Part 102 allow hearing notices to be published in the *Illinois Register* instead of in newspapers. Additional amendments to Parts 104 and 106 require petitioners to file an index of all documents

that comprise a filed petition. Businesses and agencies with cases pending before PCB will be affected by these rulemakings.

Requests for copies/comments on the 9 PCB rulemakings through 2/17/16: Clerk's Office, PCB, 100 W. Randolph St., Suite 11-500, Chicago IL 60601, 312/814-3620. Questions: Daniel Robertson, 312/814-6931 or to Daniel.Robertson@illinois.gov. Please reference docket R16-17. Copies of the Board's opinion and order can be downloaded at www.ipcb.state.il.us.

AIR POLLUTION

PCB also proposed amendments to Air Quality Standards (35 IAC 243; 40 Ill Reg 152) aligning the rules in this Part to federal National Ambient Air Quality Standards (NAAQS) amendments adopted by the US Environmental Protection Agency between 1/1/15 and 11/19/15. These amendments revise sunset provisions for the 1997 ozone NAAQS; designate new reference methods for fine particulates, coarse particulates, ozone and carbon monoxide; update the list of designated methods for testing air quality; and lower the NAAQS ozone standard from 75 to 70 parts per billion.

Requests for copies/comments through 2/17/16: John T. Therriault, Clerk, PCB, 100 W. Randolph St., Suite 11-500, Chicago IL 60601, 312-814-3620.

Questions: Michael McCambridge, same address, 312/814-6924, michael.mccambridge@illinois.gov. Please reference docket R16-2.

BUSINESS RECORDS

The SECRETARY OF STATE proposed an amendment to Regulations Under Illinois Securities Law of 1953 (14 IAC 130; 40 Ill Reg 175) requiring regulated businesses (e.g. investment advisors) to establish and maintain a written Business Continuity and Succession Plan addressing the following issues: protection, backup and recovery of books and records; alternate means of communication with customers, employees, key personnel, vendors and service providers; office relocation in the event the primary place of business is temporarily or permanently lost; assignment of duties to qualified responsible persons in the event that key personnel die or are unavailable; and other means of minimizing service disruptions or client harm from significant business interruption. SOS states that this rulemaking is based upon a model business continuity planning rule adopted by the North American Securities Administrators Association. Businesses regulated under the Illinois Securities Law of 1953 are affected by this rulemaking.

Questions/requests for copies/comments through 2/17/16: Tanya Solov, SOS, 69 W. Washington St.,

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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 January 13, 2015 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.

STATE UNIVERSITIES CIVIL SERVICE SYSTEM

State Universities Civil Service System (80 IAC 250; 39 Ill Reg 13175) proposed 9/25/15

IL STATE TOLL HIGHWAY AUTHORITY

State Toll Highway Rules (92 IAC 2520; 39 Ill Reg 14128) proposed 10/30/15

Proposed Rulemakings

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Suite 1220, Chicago IL 60602,
312/793-2525, tsolov@ilsos.net
or awilliams3@ilsos.net.

■ RADIOACTIVE MATERIAL

The STATE UNIVERSITIES RETIREMENT SYSTEM proposed amendments to Universities Retirement (80 IAC 1600; 40 Ill Reg 187) concerning employer contributions to the System for persons who are reemployed after retirement (affected annuitants). The rulemaking defines "highest

annual earnings" for purposes of pension calculation under the Illinois Pension Code; provides an appeal mechanism for employers contesting a recalculation of employer contributions; and specifies information that must be submitted to SURS when an affected annuitant is hired. An employer who fails to notify SURS in a timely manner that an affected annuitant is being employed is subject to a double contribution penalty. Contributions to SURS are not required if an affected annuitant is employed for no more than one

academic year in order to continue critical operations after the death or incapacity of a regular employee or after a catastrophic incident. If an affected annuitant elects to waive his or her pension while reemployed, the employer is not required to make contributions to SURS and contributions already paid under these circumstances will be refunded.

Questions/requests for copies/comments through 2/17/16: Albert J. Lee, SURS, 1901 Fox Dr., Champaign IL 61820, 217/378-8861.

Joint Committee on Administrative Rules

Senator Bill Brady
Senator Karen McConnaughay
Senator Matt Murphy
Senator Don Harmon
Senator Tony Muñoz
Senator Ira Silverstein

Representative Greg Harris
Representative Lou Lang
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Representative Ron Sandack
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