

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

DRIVER'S LICENSES

The SECRETARY OF STATE adopted amendments to Procedures and Standards (92 IAC 1001; 39 Ill Reg 16073), effective 3/23/16, implementing four Public Acts concerning penalties for multiple DUI offenders. The rulemaking allows persons with 4 or more DUI convictions whose driver's licenses have been revoked for life to obtain restricted driving permits after the revocation has been in effect at least 5 years, provided that the person can prove at least 3 years of abstinence from alcohol and only drives vehicles equipped with Breath Alcohol Ignition Interlock Devices (BAIIDs). A person with a lifetime revocation in Illinois who moves to another state may petition to terminate the Illinois revocation, but this revocation will be reinstated if the person returns to Illinois. For persons

convicted of 2 or more DUI offenses, the rulemaking requires them to hold restricted driving permits for at least 5 years, during which they may drive only BAIID-equipped vehicles and must install BAIIDs on any vehicles they own, before seeking reinstatement of driving privileges. New Illinois residents whose licenses have been

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revoked in another state must wait 10 years to apply for an Illinois license and must be eligible for a driver's license in their former state of residence when they apply. Finally, the rulemaking removes obsolete waiting periods of 30 days to 3 years before certain DUI offenders may apply for driving relief.

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Proposed Rulemakings

INDUSTRIAL HEMP

The DEPARTMENT OF AGRICULTURE proposed a new Part titled Industrial Hemp Pilot Program (8 IAC 1100; 40 Ill Reg 5741) implementing a provision of the Cannabis Control Act. The new Part establishes a pilot program under which institutions of higher education may receive approval from DOA, for a period of up to 3 years, to cultivate industrial hemp (a variety of cannabis) for research into the growth, cultivation and marketing of industrial hemp. Applications for registration must include a description of the research project, the site where hemp will be grown, contact information for an agent in charge of the project, the names of all persons involved in growing or cultivating hemp, a security plan, the start date and expected duration of the project,

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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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Questions/requests for copies: Amy Williams, SOS, 298 Howlett Bldg., Springfield IL 62756, 217/785-3094, awilliams3@ilsos.net

■ SALES TAX

The DEPARTMENT OF REVENUE adopted amendments to Retailers' Occupation Tax (86 Ill Adm 130; 39 Ill Reg 11865) effective 4/1/16 codifying a court ruling (*Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351 (2009)). The rulemaking makes shipping and transportation charges taxable as part of the gross receipts of a sale (retroactive to 11/9/09) when there is an inseparable link between the sale of the property and its delivery. Examples of how the tax should be applied are provided. This rulemaking may affect small businesses that ship products directly to purchasers and do not have locations for merchandise pickup.

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

■ FISHING

The DEPARTMENT OF NATURAL RESOURCES adopted amendments to Sport Fishing Regulations for the Waters of Illinois (17 IAC 810; 39 Ill Reg 15950), effective 3/25/16, updating site-specific fishing rules; changing "creel" limits to "harvest" limits; prohibiting transportation of collected live bait, including crayfish, between bodies of water or from spillway tailwaters to an impounded lake; allowing a Fishing Tournament Permit to take the place of a Site Activity Permit (instead of requiring fishing tournaments to obtain both permits); and setting the 2016 Free Fishing Days for June 17-20. Changes since 1st Notice clarify size limits for fish caught on the Ohio and Wabash rivers.

Questions/requests for copies: Anne Mergen, DNR, One Natural Resources Way, Springfield IL 62702-1271, 217/782-1809.

■ STATE EMPLOYEES

The DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

adopted amendments to Pay Plan (80 IAC 310; 39 Ill Reg 15850), effective 3/28/16, implementing recent actions of the Civil Service Commission and Illinois Labor Relations Board. The rulemaking adds new trainee and intern titles established by the CSC, along with their salary ranges, and removes trainee/provisional titles the CSC has abolished. The Painter Foreman title is added to the list of titles whose pay is determined by prevailing wage. Several Senior Public Service Administrator (SPSA) titles that ILRB has excluded from union representation are removed from the lists of titles represented by their former bargaining units. Also, corrections are made to certain bargaining unit pay rates and equivalent earned time provisions for consistency with the terms of the affected units' collective bargaining agreements.

Questions/requests for copies: Jason Doggett, CMS, 504 Stratton Bldg. Springfield IL 62706, 217/782-7964, fax 217/524-4570, e-mail: CMS.PayPlan@illinois.gov

Proposed Rulemakings

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and a \$100 application fee. Criteria for evaluation of a registration application include the feasibility of the project, the adequacy of the security plan, and the project's compliance with federal, local and State law. DOA

may request background checks for any individuals identified in the application for registration. Other provisions address extensions of the registration period, random inspections of cultivation sites, notification of local law enforcement, penalties for violations, and reporting and

recordkeeping. Institutions of higher education that conduct agricultural research are affected by this rulemaking.

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Proposed Rulemakings

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■ MEAT PROCESSING

DOA also proposed an amendment to Meat and Poultry Inspection Act (8 IAC 125; 40 Ill Reg 5732) incorporating by reference a federal Food Safety and Inspection Service (FSIS) rule that takes effect 6/20/16. The rule requires meat processing establishments and retail stores that grind raw beef for consumer sale to maintain written records of the sources of their raw meat (including all supplier establishment numbers, lot numbers and production dates); record the date and time when each lot of raw ground beef product is produced; and record the date and time when grinding equipment and other related food-contact surfaces are cleaned and sanitized. Meat processing establishments, grocers and butchers are affected by this rulemaking.

Questions/requests for copies/comments on the 2 DOA rulemakings through 5/23/16: Susan Baatz, DOA, State Fairgrounds, P.O. Box 19281, Springfield IL 62794-9281, 217/524-6905, fax 217/785-4505.

■ INCOME TAX

The DEPARTMENT OF REVENUE proposed amendments to Income Tax (86 IAC 100; 40 Ill Reg 5823). The amendments allow DOR to make adjustments to liability outside the statute of limitations period for

DPH Public Hearings

The DEPARTMENT OF PUBLIC HEALTH has scheduled hearings on proposed amendments to Child Health Examination Code (77 IAC 665; 40 Ill Reg 3429) at the following times and locations:

-- **Monday, April 11, 10 a.m. to noon** in Room 212 of the Capitol Building, Springfield.

-- **Monday, April 18, 3 to 5 p.m.** at the DuPage County Health Department, Lower Level, Room 1, 111 North County Farm Rd., Wheaton.

Both hearings concern proposed amendments, published in the 3/4/16 *Illinois Register*, that update the schedule of immunizations required prior to a child's enrollment in day care, preschool, elementary or secondary school, and implement provisions for parents

purposes of issuing a notice of deficiency pursuant to recent case law and statute. In instances involving omission of more than 25% of base income, no return or fraudulent return filed, failure to report federal change, report of federal change, transferee liability, and net losses, the statute of limitations period is some period other than the standard three year period. The rulemaking further affects the limitations on claims for refund based in part on statute and case law. It also aligns with federal provisions rules regarding

to obtain Certificates of Religious Objection for immunizations or procedures to which they object on religious grounds. Persons wishing to provide oral testimony at these hearings must register at the door and must provide a written copy of their testimony. Remarks by individual commenters are limited to 3 minutes, while remarks by spokespersons representing organizations are limited to 5 minutes. Those affected by this rulemaking include public and private school students, children enrolled in day care or preschool, and healthcare providers.

Questions/requests for copies/comments concerning the rulemaking or the public hearings: Elizabeth Paton, DPH, 535 W. Jefferson St., 5th Fl., Springfield IL 62761, 217/782-2043, dph.rules@illinois.gov

periods of limitations suspended while a taxpayer is unable to manage financial affairs due to disability.

■ SALES TAX

DOR proposed an amendment to Retailers' Occupation Tax (86 IAC 130; 40 Ill Reg 5853) codifying an Appellate Court ruling in *Nokomis Quarry Co. v. Department of Revenue*, in which the Court held that machinery and equipment used in extractive

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Proposed Rulemakings

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activities, such as blasting, may qualify for the manufacturing machinery and equipment exemption from the tax. The exemption applies when blasting is deliberately and systematically performed with specific, desired results, and the process results in a new product of tangible personal property with a different form with new qualities or combinations. The amendment also implements PA 98-583, which excludes from the exemption equipment used in the generation of electricity, generate or treat natural or artificial gas or water for sale that is delivered by pipes, pipelines or mains.

DOR also proposed an amendment to Use Tax (86 IAC 150; 40 Ill Reg 5877) implementing PA 98-1089. The rulemaking governs the establishment of nexus for click-through transactions and details the process that DOR will require in order to rebut the presumption under the nexus provision that a retailer is maintaining a place of business in Illinois, thereby subjecting the transaction to the tax.

Questions/requests for copies/comments regarding the 3 proposed DOR rulemakings through 5/23/16: Part 100, Brian Stocker; Parts 130 and 150, Debra Boggess; DOR, 101 W. Jefferson St, Springfield IL 62794, 217/ 782-2844.

■ VIDEO GAMING

The ILLINOIS GAMING BOARD proposed amendments to Video Gaming (General) (11 IAC 1800; 40 Ill Reg 5753) establishing criteria the Board will consider to determine whether “undue economic concentration” will occur if it grants or renews a terminal operator license. Factors the Board will consider include the percent of market share controlled by the applicant, the relative position of other terminal operator licenses, current and projected financial condition of video gaming, and barriers to entry into the video gaming industry.

Questions/requests for copies/comments through 5/23/16: Agostino Lorenzini, IGB, 160 N. LaSalle St., Chicago IL 60601, agostino.lorenzini@igb.illinois.gov.

■ DENTAL PRACTICE

The DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION proposed amendments to Illinois Dental Practice Act (68 Ill Adm Code 1220; 40 Ill Reg 5697) implementing a PA allowing dentists to administer flu vaccinations to patients 18 and older. This rulemaking sets out the training requirements and clarifies that applicants must pass the restorative, periodontal, prosthodontic and endodontic portions of the dental licensing exam (not simply the exam as a whole). Restricted faculty licensees are made eligible for

controlled substances licenses. Finally, DFPR is updating its list of procedures dental assistants and hygienists are prohibited from performing and clarifying the examination that must be passed before placing, carving or finishing amalgam restorations. Dentists, dental assistants and hygienists, and dental schools are affected by this rulemaking.

Questions/requests for copies/comments through 5/23/16 to: Craig Cellini, 320 W. Washington, 3rd Floor, Springfield IL 62786, 217/785-0813.

■ EARLY INTERVENTION

The DEPARTMENT OF HUMAN SERVICES proposed amendments to Early Intervention Program (89 IAC 500; 40 Ill Reg 5765) updating the address to which requests for a due process hearing or mediation should be sent, and correcting an inconsistency regarding the length of time Early Intervention providers must keep records (the correct length of time is 6 years but one Section erroneously specifies 5 years). Providers of Early Intervention services and their client families are affected.

Questions/requests for copies/comments through 5/23/16: Tracie Drew, DHS, 100 S. Grand Ave. East, 3rd Fl., Springfield IL 62762, 217/785-9772.

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Proposed Rulemakings

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INSURANCE

The DEPARTMENT OF INSURANCE proposed amendments to 4 Parts: Medical Professional Liability Database (50 IAC 928; 40 Ill Reg 5783), Accident and Health Reserves (50 IAC 2004; 40 Ill Reg 12715), Licensing of Public Adjustors (50 IAC 3118; 40 Ill Reg 5813), and Suburban Police Pension Funds (50 IAC 4404; 40 Ill Reg 5817), and proposed a new Part titled Workers' Compensation Large Deductible Business (50 IAC 2909; 40 Ill Reg 5806). The Part 928 rulemaking establishes a uniform method of electronic reporting of information to DOI concerning allegations of provider liability. The amounts listed on a reconciliation report are the sum of all Supplement A to Schedule T Exhibits found in Schedule E of this Part. Amendments to Part 2004 require life, accident and health insurance companies to employ the most recent edition of an Accounting Practices and Procedures Manual for purposes of maintaining reserves. The new Part 2909 implements Public Act 99-369, which concerns large deductible agreements in which the policyholder bears a risk of \$100,000 or more per claim, and applies to workers' compensation insurers with an accreditation rating below A- and having less than \$200 million in surplus. Policies with a large deductible agreement must require full collateralization of the

policyholders' obligations under the agreement, with the initial collateral determined by first computing the standard premium then determining the amount by which the premium is reduced as a result of a large deductible credit, and which shall be set at the amount of the large deductible credit subject to other adjustments based on the insured's financial status, anticipated payment pattern of losses and the expected development above and below the deductible sufficient to secure the nonexempt insurer against the potential deductible reimbursement liability it is assuming. Collateral shall be adjusted at least annually. Provisions regarding collateral such as a letter or credit or surety bond are prescribed. During underwriting, a policyholder must provide an audited financial statement. The per occurrence deductible amount cannot exceed 20% of the policyholder's net worth. Companies that have issued a large deductible agreement must file an annual disclosure statement. Amendments to Part 3118 clarify DOI policy that public adjustor contracts that have not been filed and approved by the DOI Director are void. The Part 4404 rulemaking makes technical corrections to implement an aspect of Public Act 96-1495, in which a second pension tier (applicable to persons hired on or after 1/1/11) was enacted for downstate police officers. An example of the form used by the Department to document a

transfer of creditable service is revised to include both Tier 1 and Tier 2.

Questions/requests for copies/comments concerning the 5 DOI rulemakings through 5/23/16: Susan Anders, DOI, 320 W. Washington St., Springfield IL 62767-0001, 217-558-0957, Fax: 217-524-9033.

STATE EMPLOYEES

The DEPARTMENT OF CENTRAL MANAGEMENT SERVICES proposed amendments to Extensions of Jurisdiction (80 IAC 305; 40 Ill Reg 5749) to extend Personnel Code classification jurisdiction A, B and C to Sign Hanger and Sign Hanger Foreman job classifications. This is effective as of 12/9/13 and results from a Memorandum of Understanding between DCMS and the International Brotherhood of Teamsters.

Questions/requests for copies/comments through 5/23/16: Kelly Weston, DCMS, 720 Stratton Building, Springfield IL 62706, 217/524-7518.

DOL RULE WITHDRAWAL

The Joint Committee on Administrative Rules has issued a Notice of Withdrawal for the DEPARTMENT OF LABOR rulemaking titled Job Opportunities for Qualified Applicants Act (56 IAC 340; 39 Ill Reg 11206), pursuant to Section

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5-110(f) of the Illinois Administrative Procedure Act. DOL did not respond to JCAR's Objection to this rulemaking within 90 days as required under IAPA Section 5-110(c), therefore the rulemaking is deemed to have been withdrawn. The

rulemaking, which appeared in the 8/14/15 *Illinois Register*, created a new Part that would have established a process for complaints and investigations concerning alleged violations of the Job Opportunities for Qualified Applicants Act. The Act generally forbids employers from inquiring into a job

applicant's criminal record or history (e.g., by requiring applicants to check a box on the application form indicating whether the applicant has been convicted of a felony) until the applicant has been selected for an interview or given a conditional offer of employment.

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 May 10, 2016 meeting. Further comments concerning these rulemakings should be addressed to JCAR using the contact information on page 1.

DEPT OF AGRICULTURE

Anhydrous Ammonia, Low Pressure Nitrogen Solutions, Equipment, Containers, and Storage Facilities (8 IAC 215; 39 Ill Reg 9065) proposed 7/10/15

IL STATE TOLL HIGHWAY AUTHORITY

State Toll Highway Rules (92 IAC 2520; 40 Ill Reg 2440) proposed 2/5/16

Joint Committee on Administrative Rules

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Representative Greg Harris

Senator Karen McConnaughay

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Senator Matt Murphy

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