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

- **DAILY CARE FACILITIES**

The DEPARTMENT OF CHILDREN AND FAMILY SERVICES adopted amendments to Licensing Standards for Day Care Homes (89 IAC 406; 42 Ill Reg 8366), Licensing Standards for Day Care Centers (89 IAC 407; 42 Ill Reg 8369) and Licensing Standards for Group Day Care Homes (89 IAC 408; 42 Ill Reg 8372), all effective 1/1/19. These rules, which replace emergency amendments effective from 5/9/18 through 10/5/18, implement mandatory lead testing, by Illinois Environmental Protection Agency laboratories or IEPA-certified private labs, of all sources of drinking water in day care facilities built prior to 1/1/2000 that serve children up to age 6. If a facility’s water tests positive for lead (2.01 parts per billion or higher), temporary and long-term mitigation plans must be developed and submitted to DCFS within 120 days after the licensee is notified of the test results. The water must be retested within 6 months after the long-term mitigation plan is completed. Thereafter, annual retesting is required until 2 consecutive tests detect a lead level of 2.0 ppb or less. Retesting is also required if the facility changes its water source, water heater or piping system. New applicants for day care licenses must submit their lead testing results, and mitigation plans if required, to DCFS with their license applications. Parents of enrolled children, and the local DCFS licensing office, must be notified of a facility’s test results, any mitigation plans, and where these documents are posted.

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- **STATE PENSIONS**

The STATE EMPLOYEES’ RETIREMENT SYSTEM proposed amendments to the Part titled The Administration and Operation of the State Employees’ Retirement System of Illinois (80 IAC 1540; 43 Ill Reg 159) implementing provisions of Public Act 100-587 that create two accelerated pension benefit payment programs. A companion emergency rule, effective 11/13/18 for a maximum of 150 days, appeared in the 11/30/18 Illinois Register at 42 Ill Reg 21436. One program allows Tier 1 System members (State employees hired before 1/1/11) who retire prior to 6/30/21 to forgo a 3% compounded automatic annual increase (AAI) in exchange for a 1.5%, non-compounded AAI that begins on Jan. 1 following their 1st

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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.
within the facility. DCFS may also require testing if the agency suspects that the age of the building has been misrepresented, that false or altered testing results have been submitted, or that mitigation remedies have not been followed. Finally, the rulemakings require DCFS-approved lead safety training for all licensees, addressing mitigation plan strategies for positive test results and the impact of lead exposure. Since 1st Notice, DCFS has clarified the procedures and parameters for lead testing, defined “mitigation plan” and “water source”, listed possible mitigation measures that can be undertaken if water tests positive for lead, and clarified that license enforcement action may be taken if a licensee fails to take “reasonable” mitigation action. Owners and operators of day care homes and day care centers are affected by these rulemakings.

Questions/requests for copies: Jeff Osowski, DCFS, 406 E. Monroe, Station #65, Springfield IL 62701-1498, 217/524-1983, TDD 217/524-3715, e-mail: cfpolicy@idcfs.state.il.us

■ SEXUAL HARASSMENT

The SECRETARY OF STATE adopted amendments to Lobbyist Registration and Reports (2 IAC 560; 41 Ill Reg 1522) effective 12/20/18, implementing Public Act 100-554. The rulemaking implements the PA’s definition of and prohibition against sexual harassment, requires lobbyists’ employers to adopt and maintain written sexual harassment policies, and requires the employer to insure that lobbyists receive copies of these policies. Employers also must recognize the authority of the SOS Inspector General to investigate and review any complaints concerning sexual harassment by a lobbyist. Businesses, municipalities, and non-profits that employ registered lobbyists are affected.

Questions/requests for copies: Amy Williams, SOS, 298 Howlett Bldg., Springfield IL 62756, 217/785-3094, Awilliams3@ilsos.net

ABLE ACCOUNTS

The DEPARTMENT OF HUMAN SERVICES adopted amendments to Temporary Assistance for Needy Families (89 IAC 112; 42 Ill Reg 14263), Aid to the Aged, Blind or Disabled (89 IAC 113; 42 Ill Reg 14279), and Supplemental Nutrition Assistance Program (SNAP) (89 IAC 121; 42 Ill Reg 14296), all effective 12/20/18, that exempt Achieving a Better Life Experience (ABLE) savings accounts for persons with disabilities from consideration as assets in determining financial eligibility for TANF, AABD or SNAP.

Questions/requests for copies of the 3 DHS rulemakings: Tracie Drew, DHS, 100 S. Grand Ave. East, 3rd Fl., Springfield IL 62762, 217/785-9772.

■ INCOME TAX

The DEPARTMENT OF REVENUE adopted an amendment to Income Tax (86 IAC 100; 41 Ill Reg 15198), effective 12/18/18, providing guidance for determining the amount of the subtraction from taxable income that a partnership may claim for personal service income or as a reasonable allowance for compensation for services rendered by partners. Small business partnerships may be affected.


■ CREDIT UNIONS

The DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION adopted an amendment to the Part titled Illinois Credit Union Act (38 IAC 190; 42 Ill Reg 17285), effective 1/1/19, implementing a recent change in federal law and in National Credit Union Association rules. The rulemaking removes loans that are fully secured by a lien on a 1-to 4-family dwelling from the definition of a member business loan (MBL). Since these loans are now considered real estate loans
ADULT PROTECTIVE SERVICES

The DEPARTMENT ON AGING adopted emergency amendments to Adult Protection and Advocacy Services (89 IAC 270; 43 Ill Reg 787) effective 1/1/19 for a maximum of 150 days. The emergency rule implements Public Act 100-641, which expands the definition of an eligible adult (persons age 18-59 with disabilities, or any person age 60 and older, residing at home or in a non-institutional environment) on whose behalf DonA’s Adult Protective Services program may investigate allegations of abuse, neglect or financial exploitation. Residents of long-term care facilities and other institutions are now eligible for APS if abuse or neglect occurs outside the facility and the alleged abuser is a family member, caregiver, or other person who has a continuing relationship with the adult; or if alleged financial exploitation is perpetrated by a family member, caregiver, or another person who has a continuing relationship with the adult and who is not an employee of the facility in which the adult resides.

Questions/requests for copies: Tracy Trigillo, DonA, One Natural Resources Way #100, Springfield IL 62702-1271, 217/785-3346, fax 217/785-4477, Tracy.Trigillo@illinois.gov

DES HEARINGS

The DEPARTMENT OF EMPLOYMENT SECURITY adopted emergency amendments to Claims, Adjudication, Appeals and Hearings (56 IAC 2720; 43 Ill Reg 808) effective 1/1/19 for a maximum of 150 days. An identical proposed amendment appears in this week’s Illinois Register at 43 Ill Reg 15. The emergency and proposed rules implement Public Act 100-880, which requires that the e-mail addresses of administrative law judges be placed on agency administrative hearing notices effective 1/1/19. The rulemakings explain the procedure for submitting documents to a referee by e-mail and explain which documents cannot be submitted by e-mail.

Questions/requests for copies/comments on the proposed rulemaking through 2/19/19: Thomas D. Chan, DES, 33 S. State St., Room 933, Chicago IL 60603, 312/793-2338, fax 312/793-5645, Thomas.D.Chan@illinois.gov

Emergency Rules

anniversary of retirement, or on their 67th birthday, whichever is later. SERS members who choose this option will receive a lump sum payment equal to 70% of the difference between the present value of the 3% compounded AAI and the 1.5% non-compounded AAI. Another program allows inactive members with sufficient service credit to vest into the retirement plan (e.g., former employees who worked for the State at least 8 years) to forfeit all service credit and rights to future retirement benefits in exchange for a lump sum payment equal to 60% of the present value of their earned benefits. Applications for accelerated benefit payments must be submitted no later than 6/1/21, and only service credit earned under SERS may be used to determine eligibility. Persons who receive proportional annuities from a reciprocal State or local government retirement system before 12/1/18, and persons who would be in violation of the minimum distribution requirements of the Internal Revenue Code if they accepted an accelerated payment, are not eligible for these programs. Persons who owe overpayments to SERS are also ineligible for accelerated benefits until their debt is paid in full. The emergency rule also includes provisions for including accelerated benefits in Qualified Illinois Domestic Relations Orders (QILDROs) which allow pension benefits to be divided between spouses as part of a divorce or separation agreement, and for correcting overpayment or underpayment errors in an accelerated benefit.
and not MBLs, they no longer count toward the aggregate MBL cap for federally insured credit unions.


- NON-PROFITS

The OFFICE OF THE STATE TREASURER adopted an amendment to Rules for Charitable Trust Stabilization Committee (74 IAC 550; 42 Ill Reg 16913), effective 12/21/18, applying the criteria for identifying a depressed area in the Illinois Enterprise Zone Act to the determination of preferences for grants to non-profit entities with operating budgets of less than $1 million. Agencies applying for grants will be given “special attention” if they are located in a census tract that meets at least one of the following depressed area criteria: an unemployment rate 20% or more above the State average, a poverty rate of at least 20%, at least 20% of households receiving SNAP benefits, or at least 50% of children qualifying for free or reduced-price school meals. Non-profit organizations will be affected by this rulemaking.

Questions/requests for copies: Jennifer Olaya, Office of the Treasurer, 1 W. Old State Capitol Plaza, Suite 400, Springfield IL 62704, 217/557-9360, jolaya@illinoistreasurer.gov

- SCHOLARSHIPS

The ILLINOIS STUDENT ASSISTANCE COMMISSION adopted amendments to Grant Program for Dependents of Correctional Officers (23 IAC 2731; 42 Ill Reg 16191) and Grant Program for Dependents of Police or Fire Officers (23 IAC 2732; 42 Ill Reg 16193), both effective 1/1/19, replacing emergency amendments that were effective 8/7/18 and 9/27/18. These rulemakings implement Public Act 100-673, which expands eligibility for ISAC scholarship programs for dependents of police, fire and correctional officers killed or disabled in the line of duty to include children who were not yet born, legally adopted or in the legal custody of the officer at the time the officer’s disability occurred.

Questions/requests for copies of the 2 ISAC rulemakings: Jackie Eckley, ISAC, 500 W. Monroe St., 3rd Fl., Springfield IL 62704, 217/782-5161, jackie.eckley@illinois.gov

- INSURANCE

The DEPARTMENT OF INSURANCE adopted amendments to Prior Notification of Transactions (50 IAC 654; 42 Ill Reg 17316) effective 12/21/18 implementing statutory changes and updates to the National Association of Insurance Commissioners (NAIC) Model Law. The rulemaking specifies provisions to be included in agreements for cost sharing and management services; clarify the information to be provided on Form D-1 for providing statutorily required notice to DOI of a proposed transaction; and adds a severability clause allowing other rules in the Part to remain in effect if any provisions is struck down by a court.

DOI adopted amendments to Minimum Standards of Individual Accident and Health Insurance (50 IAC 2007; 42 Ill Reg 17349) effective 12/21/18 removing a requirement that persons applying for individual hospital or other fixed indemnity insurance attest to already having “minimum essential coverage” under federal law. Applications for this type of insurance will continue to be required to include an advisory to the consumer that the policy will not meet minimum essential coverage requirements under the federal Affordable Care Act (ACA).

DOI repealed the Parts titled Correlated Sales of Life Insurance and Mutual Funds (50 IAC 910; 42 Ill Reg 17336) and Business Entities (50 IAC 3115; 42 Ill Reg 17489) and adopted amendments to Producer Licensing (50 IAC 3121; 42 Ill Reg 17493), Payment of Annual Compliance Fees for Pension Funds (50 IAC 4415; 42 Ill Reg

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Proposed Rulemakings

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Questions/requests for copies/comments through 2/19/19: Jeff Houch, SERS, 2101 S. Veterans Pkwy., PO. Box 19255, Springfield IL 62794-9255, 217.524-8105, fax 217/557-3943, jeff.houch@srs.illinois.gov

FIRE CODES

The OFFICE OF THE STATE FIRE MARSHAL proposed amendments to the Part titled Fire Prevention and Safety (41 IAC 100; 43 Ill Reg 125) updating incorporated National Fire Protection Association (NFPA) 101 Life Safety Code standards to the 2015 edition, with specified exceptions and modifications for high rise buildings, day care facilities, apartment buildings, and historic structures. State-owned university dormitories and fraternity/sorority houses subject to statutes requiring them to have fire sprinklers are made subject to OSFM inspection and compliance with NFPA 101. Rules in this Part concerning fire safety aboard permanently moored water craft are being repealed and moved to a new Part (see below). The rulemaking also clarifies the criteria for considering a local fire safety code to have standards equal to or higher than those set by OSFM and to be enforceable by local fire authorities. Some small businesses and non-profit organizations may be affected.

OSFM also proposed a new Part titled Permanently Moored Craft Fire Prevention and Safety (41 IAC 149; 43 Ill Reg 148) containing and updating all rules currently in 41 IAC 100 pertaining to fire safety aboard water craft that are permanently fixed to a mooring or foundation, not used as transportation and not subject to U.S. Coast Guard regulation or inspection (e.g., riverboat gambling casinos).

Questions/requests for copies/comments on the 2 OSFM rulemakings through 2/19/19: Cathy Stashak, OSFM, 100 W. Randolph St., Suite 4-600, Chicago IL 60601, 312/814-2425.

DNR LICENSES

The DEPARTMENT OF NATURAL RESOURCES proposed amendments to Revocation Procedures for Conservation Offenses (17 IAC 2530; 43 Ill Reg 115) implementing Public Act 98-752 giving DNR authority to revoke hunting, trapping, fishing, and other licenses for violations of the Herptiles-Herps Act, which regulates hunting and possession of various species of amphibians and reptiles.

Questions/requests for copies/comments on the 2 DNR rulemakings through 2/19/19: John Heidinger, DNR, One Natural Resources Way, Springfield IL 62702-1271, 217/557-6379.

MORTGAGE LENDERS

The DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION proposed amendments to the Part titled Residential Mortgage License Act of 1987 (38 IAC 1050; 43 Ill Reg 18) implementing two Public Acts. PA 100-851 authorizes exempt entity registration for purposes of sponsoring independent loan processors as licensed mortgage loan originators; this rulemaking establishes the surety bond requirement for exempt independent loan processing entities. PA 100-795 and this rulemaking also revise advertising requirements to reference the Nationwide Multistate Licensing System (NMLS) and remove state-specific provisions.

AUCTIONEERS, INSPECTORS

DFPR also proposed amendments to the Parts titled Home Inspector License Act (68 IAC 1410; 43 Ill Reg 81) and Auction License Act (68 IAC 1440; 43 Ill Reg 93) requiring licensed home inspectors and auctioneers, beginning in 2020 and every two years thereafter, to complete required continuing education (CE) for license renewal by Aug. 31 for home inspectors and Sept. 30 for auctioneers. Licensees who complete CE after that deadline but before the license renewal deadline (Nov. 30 of every even-numbered year for home inspectors, Dec. 31 of every even-numbered year for auctioneers) may still renew their licenses but must pay an administrative fee of $100 for every credit hour

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New Rules

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910, Arlene Mehsling (217/785-9022); Part 2007, Sara Stanberry (217/558-3396); Parts 4415 and 4435, Kevin Fry (217/782-1756); Parts 3115, 3121 and 4515, David Murphy (217/782-5415); DOI, 320 W. Washington St., Springfield IL 62767.

AIR POLLUTION

The POLLUTION CONTROL BOARD adopted an amendment to Emissions Reduction Market System (35 IAC 205; 42 Ill Reg 6572; Docket R18-22), effective 12/26/18, establishing a sunset date of 4/30/18 for the Part. PCB states that the cap-and-trade program implemented in this Part was established in 2000 to help reduce ozone levels in the Chicago area; since then, emissions from the regulated sources have decreased and many emission allowances have expired unused.

HAZARDOUS WASTE

PCB also adopted amendments to Hazardous Waste Management System: General (35 IAC 720; 42 Ill Reg 15551), Identification and Listing of Hazardous Waste (35 IAC 721; 42 Ill Reg 15602), Standards Applicable to Generators of Hazardous Waste (35 IAC 722; 42 Ill Reg 15671), Standards Applicable to Transporters of Hazardous Waste (35 IAC 723; 42 Ill Reg 15694), Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities (35 IAC 724; 42 Ill Reg 15711), and Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities (35 IAC 725; 42 Ill Reg 15748), all effective 12/6/18. These rulemakings, included in PCB Docket R19-3, implement new hazardous waste disposal, transportation and storage regulations adopted by the federal Environmental Protection Agency from 1/1/18 through 6/30/18. PCB also adopted amendments to Standards for the Management of Used Oil (35 IAC 739; 42 Ill Reg 12722), effective 11/19/18, that were part of a consolidated docket (R17-14/R17-15/R18-12/R18-31) correcting and updating hazardous waste handling, storage, transport and disposal rules to align with federal EPA regulations approved during 2016 and 2017. Small businesses and small municipalities that collect, transport, store or dispose of hazardous waste may be affected by these rulemakings.

Requests for copies of the 8 PCB rulemakings: Michael J. McCambridge, PCB, 100 W. Randolph St., Chicago IL 60601, 312/814-3620 or download from the PCB website at http://www.ipcb.state.il.us.

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STATE EMPLOYEES

The STATE EMPLOYEES’ RETIREMENT SYSTEM adopted an amendment to The Administration and Operation of the State Employees’ Retirement System of Illinois (80 IAC 1540; 42 Ill Reg 16646), effective 12/19/18, clarifying that compensation for unused compensatory time will be applied to the pay period in which it was earned, rather than being applied at the time it is received. (Generally, if a State employee does not use all of his or her compensatory time before the end of the fiscal year in which it was earned, the employee receives a lump sum payment at the end of the fiscal year.)

Questions/requests for copies: Jeff Houch, SERS, 2101 S. Veterans Pkwy., PO Box 19255, Springfield IL 62794-9255, 217/524-8105, fax 217/557-3943, jeff.houch@srs.illinois.gov

DFPR HEARINGS

Finally, DFPR proposed amendments to Rules of Practice in Administrative Hearings (68 IAC 1110; 43 Ill Reg 43) updating its general rules for hearings conducted by the Divisions of Professional Regulation and Real Estate concerning appeals of license denials, refusals to renew licenses, or other actions of the Department. The rulemaking allows service of various notices by e-mail; replaces the term “hearing officer” with “administrative law judge”; establishes requirements for filing intent to deny, intent to refuse to renew, and show cause cases; aligns rules for legal representation with those of Illinois courts; establishes the burden of proof for each type of case; addresses pleadings, discovery, agreed dispositions, and rules of evidence; and adds a new Section on privacy. Those affected by this rulemaking include persons contesting or appealing adverse decisions regarding professional licenses or real estate licenses.

Questions/requests for copies/comments on the 4 DFPR rulemakings through 2/19/19: Craig Cellini, DFPR, 320 W. Washington St., 3rd Fl., Springfield IL 62786, 217/785-0813, fax 217/557-4451.

CDB MEETINGS

The CAPITAL DEVELOPMENT BOARD proposed amendments to the Part titled Board Action (71 IAC 10; 43 Ill Reg 1) updating its provisions regarding conduct of Board meetings. The rulemaking removes provisions that require 48 hours advance public notice of special meetings or rescheduled or reconvened meetings; however, 48 hours written notice, transmitted by e-mail (instead of fax) is still required to members of the Board. Provisions guaranteeing the public free access to meeting agendas, minutes of open meetings, and minutes of closed meetings that have been released by the Board are removed, but new provisions are added allowing public comment at meetings (up to 5 minutes for each person recognized by the Chairman) and allowing informal recording of meetings by any person present if this action does not interfere with the conduct or decorum of the meeting. Additionally, the rulemaking gives the CDB Executive Director and its Office of Legal Counsel authority to file a lawsuit or file an appeal without prior Board authorization if the action must be
Proposed Rulemakings

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Educational Agencies (71 IAC 30; 43 Ill Reg 9) that defines “using educational agencies” (i.e., those that use the trust agreements regulated under this Part) as community colleges and references the statutory definition of the securities used to collateralize deposits.

Questions/requests for copies/comments on the 2 CDB rulemakings through 2/19/19: Lauren Noll, CDB, 401 S. Spring St., 3rd Fl., Stratton Bldg., Springfield IL 62706, 217/782-0700, fax 217/524-0565, lauren.noll@illinois.gov

TRUST AGREEMENTS

CDB also proposed amendments to the Part titled Trust Agreements—Using Educational Agencies (71 IAC 30; 43 Ill Reg 9) that defines “using educational agencies” (i.e., those that use the trust agreements regulated under this Part) as community colleges and references the statutory definition of the securities used to collateralize deposits.

Questions/requests for copies/comments on the 2 CDB rulemakings through 2/19/19: Lauren Noll, CDB, 401 S. Spring St., 3rd Fl., Stratton Bldg., Springfield IL 62706, 217/782-0700, fax 217/524-0565, lauren.noll@illinois.gov

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 15, 2019 meeting. Further comments on these rulemakings should be addressed to JCAR using the contact information on page 1.

DEPT OF CORRECTIONS

Records of Offenders (20 IAC 107; 42 Ill Reg 16574) proposed 9/14/18

DEPT OF HEALTHCARE AND FAMILY SERVICES

Medical Payment (89 IAC 140; 42 Ill Reg 18242) proposed 10/12/18

DEPT OF HUMAN SERVICES

Temporary Assistance for Needy Families (89 IAC 112; 42 Ill Reg 18285) proposed 10/12/18

Appeals and Hearings (89 IAC 510; 42 Ill Reg 18287) proposed 10/12/18

OFFICE OF THE STATE TREASURER

Illinois Public Treasurers’ Investment Pool for Public Treasurers in the State of Illinois (Repealer) (74 IAC 740; 42 Ill Reg 17103) proposed 9/28/18

IRB RULE WITHDRAWAL

The ILLINOIS RACING BOARD has withdrawn proposed amendments to Illinois Race Track Rules for Fire Safety (11 IAC 403; 42 Ill Reg 23677) that appeared in the 12/21/18 Illinois Register. IRB states that the rulemaking was withdrawn at the request of the Office of the State Fire Marshal.