

THE FLINN REPORT

ILLINOIS GENERAL ASSEMBLY
JOINT COMMITTEE ON ADMINISTRATIVE RULES

Elaine Spencer, Editor

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The Flinn Report is a weekly summary of regulatory actions of State agencies published in the *Illinois Register* and action taken by the Illinois General Assembly's Joint Committee on Administrative Rules (JCAR). The Flinn Report honors founding JCAR member Representative Monroe Flinn, and is designed to inform and involve the public in changes taking place in agency administration.

Proposed Rulemakings

▪ **TIMBER HARVESTING**

The DEPARTMENT OF NATURAL RESOURCES proposed amendments to the Parts titled Timber Buyer Licensing and Harvest Fees (17 IAC 1535; 47 Ill Reg 17755) and Revocation Procedures for Conservation Offenses (17 IAC 2530; 47 Ill Reg 17771) implementing Public Act 103-218, which amended the Timber Buyers Licensing Act. The rulemaking updates the requirements for obtaining a timber buyer license from DNR, including information to be included on a license application (which now must include the business name and its status as a partnership, corporation or limited liability company, if applicable); a certificate of liability insurance of at least \$500,000; and payment of an application fee of \$125 for Illinois residents and \$300 for non-residents. Timber buyer license holders and their agents will receive identification cards from DNR. Timber buyers must also report their

purchases of timber in Illinois to DNR on prescribed forms no later than 30 days after the end of the calendar quarter in which the purchases were made. Business records must be retained for at least 3 years after any purchase, cutting or transportation of timber. Additionally, timber growers who harvest their own timber for

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processing or resale must report the quantity, species, and dollar value of timber they have utilized for that purpose on a quarterly basis, along with the harvest fees paid to DNR (4% of the purchase price or minimum fair market value of harvested timber). The rulemaking also updates the formula for determining harvest fees and provides that persons convicted of violating the Act or this Part shall have their licenses revoked and will not be permitted to obtain or renew a license. Amendments to Part 2530

update the list of potential violations for timber buyers and points assigned to these violations. Those affected by these rulemakings include commercial timber growers, timber buyers, and their employees or agents.

▪ **LAND CONSERVATION**

DNR also proposed amendments to Conservation Stewardship Program (17 IAC 2580; 47 Ill Reg 17778) that update and clarify various aspects of the program. The rulemaking provides that if ownership of Conservation Stewardship Program (CSP)-enrolled land changes during a 10-year enrollment term, the new owners may continue the existing CSP enrollment if they submit an updated tax bill or deed, stand map, Schedule of Practices (for land management), and a DNR change of ownership form. The original enrollment expiration date remains in effect, after which the en-

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ADOPTED RULES: Rules adopted by agencies this week. **EMERGENCY RULES:** Temporary rules adopted for no more than 150 days.

PROPOSED RULEMAKINGS: Rules proposed by agencies this week, commencing a First Notice public comment period of at least 45 days.

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/or non-profit organizations. Agencies must consider comments from these groups and attempt to minimize regulatory burdens on them.

QUESTIONS/COMMENTS: Submit mail, e-mail or phone calls to the agency personnel listed below each summary.

RULE TEXT: First Notice proposed text, emergency rule and peremptory rule text is available at the Secretary of State website (<https://www.ilsos.gov/departments/index/register/home.html>) or at the Illinois General Assembly website (<http://www.ilga.gov>) under "Illinois Register". Second Notice text for proposed rulemakings (original version with any changes made by the agency during First Notice included) is available at the JCAR website.

Proposed Rulemakings

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rollment can be renewed. If the new landowner does not complete the enrollment process within 6 months after the sale of the land, DNR will remove the land from CSP and notify the county assessor and the Illinois Department of Revenue. DNR will also remove land from CSP and notify the county and DOR if a change in ownership reduces the property to less than 5 acres, or if the property has been foreclosed or has delinquent taxes. A Schedule of Practices for CSP-enrolled land must cover the entire 10-year enrollment period and the management practices used must be reported to DNR in the 3rd, 6th, and 9th years of enrollment. (Currently, a detailed schedule of management practices is required only for the first 5 years of enrollment and a more general schedule is required for the last 5 years; management practices must currently be reported annually.) Landowners participating in the Conservation Stewardship Program are affected.

OIL WELLS

DNR proposed amendments to the Part titled The Illinois Oil and Gas Act (62 IAC 240; 47 Ill Reg 17786) that allow operators of oil production wells drilled prior to 10/25/21 that do not meet DNR's current well location and spacing requirements to obtain revisions to those requirements if the previously drilled well is located on or within 10 feet of a boundary line with a currently compliant drilling unit. In these cases, the previously drilled well can be treated as part of the compliant drilling unit. An application for this revision must explain the reasons for the request and include a \$400 fee. The rulemaking also clarifies

requirements for well drillers to notify coal mining companies of their intent to drill near or over a mine or mining property, and requires current oil and gas well permittees to provide an e-mail address with their annual reports. Oil drilling companies are affected by this rulemaking.

Questions/requests for copies/comments on the 4 DNR rulemakings through 1/16/24: 17 IAC 1535 and 2530, John Fischer; 17 IAC 2580, Nicole Thomas; 62 IAC 240, Carrie Leitner; DNR, One Natural Resources Way, Springfield IL 62702, 217-782-1809, dnr.rules@illinois.gov

HEALTH CARE WORKERS

The DEPARTMENT OF PUBLIC HEALTH proposed amendments to Health Care Worker Background Check Code (77 IAC 955; 47 Ill Reg 17803) implementing PA 103-303. The rulemaking adds financial management services entities that assist individuals with disabilities in hiring and keeping records for their personal support workers to the list of health care employers who must conduct background checks for prospective or current employees. It also clarifies that disqualifying offenses include federal or other state offenses equivalent to those listed in the Illinois Criminal Code and that these offenses must be verified by court records, records of a state agency, or an FBI criminal history records check.

Questions/requests for copies/comments through 1/16/24: Tracey Trigillo, DPH, 524 S. Second St., 6th Floor, Springfield IL 62701, 217-782-1159, dph.rules@illinois.gov

BIRTH CENTERS

The HEALTH FACILITIES AND SERVICES REVIEW BOARD proposed amendments to Narrative and

Planning Policies (77 IAC 1100; 47 Ill Reg 17619) and Processing, Classification Policies and Review Criteria (77 IAC 1110; 47 Ill Reg 17650) that establish a Certificate of Need process for freestanding birth centers licensed by the Department of Public Health. The Part 1100 rulemaking adds relevant definitions and establishes the birth center category of service, with a limit of 10 beds and a recommendation that birth centers operate at or above an annual minimum occupancy rate of 60%. Amendments to Part 1110 repeal the review criteria for birth centers as a demonstration program under the Alternative Health Care Delivery Act and replace them with review criteria established under the Birth Center Licensing Act. Birth centers in existence as of 9/1/23 must become licensed under 77 IAC 264 by 9/1/25. Birth centers located in medically underserved areas will receive priority in the Certificate of Need process. Proposed new birth centers and expansions or modernizations of existing birth centers must be approved by HFSRB. Applicants must demonstrate that the proposed new or expanded birth center will meet a demonstrable need and will not unnecessarily duplicate services already available in the geographic service area. The rulemaking also lists information that must be provided to HFSRB regarding the birth center's staffing, services, admission policies, transfer agreements with hospitals, and data reporting. Freestanding birth centers are affected by this rulemaking.

Questions/requests for copies/comments on the 2 HFSRB rulemakings through 1/16/24: Donald Jones, HFSRB, 525 W. Jefferson St., 2nd Floor, Springfield IL 62761, dph.hfsrb.rules@illinois.gov

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Proposed Rulemakings

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FOSTER CARE

The DEPARTMENT OF CHILDREN AND FAMILY SERVICES proposed amendments to Placement and Visitation Services (89 IAC 301; 47 Ill Reg 17563), Authorized Child Care Payments (89 IAC 359; 47 Ill Reg 17575) and Licensing Standards for Foster Family Homes (89 IAC 402; 47 Ill Reg 17589) to align various definitions in these Parts with Title IV-E of the federal Social Security Act (which governs federal funding for foster care, adoption, and kinship guardianship services). Amendments to Part 301 add definitions of "independent assessment" and "qualified residential treatment program" while the Part 402 rulemaking adopts the federal definition of a foster home and accompanying limits on the number of children under 18 that may be placed in a foster home. The Part 359 rulemaking defines "child care institutions," "foster care maintenance payments," "foster family homes," and "qualified residential treatment programs" in accordance with federal law, and also

adopts federal limitations on foster care maintenance payments.

Questions/requests for copies/comments on the 3 DCFS rulemakings through 1/16/24: Jeff Osowski, DCFS, 406 E. Monroe, Station #65, Springfield IL 62701-1498, 217-524-1983, fax 217-557-0692, DCFS.Policy@illinois.gov

DISABILITY DETERMINATIONS

The DEPARTMENT OF HUMAN SERVICES proposed amendments to the Parts titled The Consultative Examination Process (89 IAC 840; 47 Ill Reg 17671), Disability Case Development Process (89 IAC 843; 47 Ill Reg 17686), Sequential Evaluation Process for the Determination of Disability (89 IAC 845; 47 Ill Reg 17702), Qualifications of Medical Consultants (89 IAC 846; 47 Ill Reg 17712), Medical Improvement Review Standard for Continuing Disability (89 IAC 850; 47 Ill Reg 17717), Disability Hearings at the Reconsideration Level (89 IAC 853; 47 Ill Reg 17722), Claimant Notification (89 IAC 855; 47 Ill Reg 17738), Listing of Impairments (89 IAC 860; 47 Ill Reg 17745) and The Disability Assistance Unit (89 IAC 870; 47 Ill Reg 17749). These amendments replace DHS' obsolete disability determination procedures with the Program Operations Manual System

(POMS) used by the federal Social Security Administration to determine disability.

Questions/requests for copies/comments on the 9 DHS rulemakings through 1/16/24: Tracie Drew, DHS, 100 S. Grand Ave. East, Springfield IL 62762, 217-785-9772, DHS.AdministrativeRules@illinois.gov

EEC ORGANIZATION

The EXECUTIVE ETHICS COMMISSION proposed an amendment to the Part titled Organization, Information, Rulemaking and Hearings (2 IAC 1620; 47 Ill Reg 17612) clarifying that officers elected by the Commission to fill vacancies are elected for the remainder of the two-year term of that office, and that chairs and vice chairs may succeed themselves for one full term after serving a partial term.

Questions/requests for copies/comments through 1/16/24: Stephen J. Rotello, EEC, 513 Stratton Office Building, 401 S. Spring St., Springfield IL 62706, EEC.LegalStaff@illinois.gov or Stephen.Rotello@illinois.gov

Adopted Rules

▪ CHILD CARE

The DEPARTMENT OF HUMAN SERVICES adopted amendments to Child Care (89 IAC 50; proposed at 47 Ill Reg 9555) effective 11/20/23 at 47 Ill Reg 17860, replacing emergency amendments that were effective 7/1/22. The rulemaking updates income eligibility thresholds for the Child Care Assistance Program (CCAP) to 225% of the current Federal Poverty Level for initial eligibility and 275% FPL for continuing eligibility, and also update the co-payment schedules based on income and family size. The rule also makes permanent a provision allowing parents to qualify for CCAP up to 3 months out of every 12 months while in the process of establishing an eligible employment or educational activity (this provision had been scheduled to expire on 6/30/23). Parents and child care providers enrolled in CCAP are affected by this rulemaking.

Questions/requests for copies: Tracie Drew, DHS, 100 S. Grand Ave. East, Harris Building, 3rd Floor, Springfield IL 62762, 217-785-9772.

▪ CAPITOL COMPLEX

The SECRETARY OF STATE adopted amendments to the Part titled Public Use of the Capitol Complex and Springfield Facilities (71 IAC 2005; proposed at 47 Ill Reg 6415) effective 11/16/23 at 47 Ill Reg 17881 that update the names and addresses of facilities to which the Part applies and clarify that the Office of the Secretary of State Department of Police (SOS Police) is responsible for law enforcement at all named facilities except for the Willard Ice Building, for which the Department of Revenue provides security. (The SOS Police do not control use of the General Assembly chambers or any

meeting/committee rooms or offices used by General Assembly members.) Public business hours at the Capitol Building (normally 8 a.m. to 5 p.m. Monday through Friday) on days when the General Assembly is in session will begin one hour before the earliest scheduled committee hearing or floor session and end one hour after adjournment of the last committee hearing or floor session. Observed State holidays at Capitol Complex buildings are: New Year's Day, Martin Luther King Jr. Day, Lincoln's Birthday, Presidents' Day, Easter Sunday, Memorial Day, Juneteenth, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day and the Friday following, Christmas Eve, and Christmas Day. The Capitol Building may be open for public tours from 9 a.m. to 3 p.m. on weekends and holidays. Parking lots at the Capitol Complex, other than the Visitor's Center parking lot at Spring and Edwards streets, are not open to the public. Parking is by permit only and employees with permits must park in their assigned spaces with parking placards clearly visible. Citations for unauthorized parking in any permit-required spot carry a \$50 fine, which must be either paid or contested within 30 days. A fine may be contested via the SOS administrative hearings process in 92 IAC 1001. Prohibited activities on the Capitol Complex grounds include: sleeping or sheltering in a manner that creates a fire hazard or threatens the property or safety of others; demonstrations or carrying signs, banners and posters in non-public areas including (but not limited to) office space and areas marked "authorized personnel only"; or operating unmanned (drone) aircraft without permission. Wearing masks that cover the face is also prohibited except for religious head coverings, nose and mouth masks

designed to prevent the spread of respiratory infections, and masks intended to protect workers or first responders from hazardous substances. The rulemaking also requires permit applications for conducting demonstrations, and appeals of permit denials, to be submitted electronically. Permit applications by non-profit organizations for non-demonstration or fundraising activities will be denied if the applicant organization is not authorized to transact business in Illinois. Launching, landing or operating drone aircraft on or above the Capitol Complex is prohibited unless approved in advance by the Director of the SOS Police or as part of emergency law enforcement or fire response activities, search and rescue operations, response to health or environmental incidents, or national defense activities, or to document construction sites at the request of the Architect of the Capitol. Since 1st Notice, SOS has clarified various provisions, including that parking restrictions in lots controlled by the Office of the Architect of the Capitol (OAC) will be enforced by the SOS Police when the OAC Director requests such enforcement. Other changes update the list of observed holidays and touring hours; clarify where public parking is available, when drone flights are permitted, and exceptions to the mask ban; and clarify that structures or displays are permitted in the Capitol Rotunda. Those affected by this rulemaking include non-profit organizations planning demonstrations, lobby days, or fundraising events at the Capitol.

Questions/requests for copies: Pamela Wright, SOS, 298 Howlett Building, Springfield IL 62756, 217-785-3094, pwright@ilsos.gov.

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Adopted Rules

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▪ RETIREMENT SAVINGS

The OFFICE OF THE STATE TREASURER adopted amendments to the Part titled Secure Choice Savings Program (74 IAC 721; proposed at 47 Ill Reg 13071) effective 11/16/23 at 47 Ill Reg 17903, reflecting PA 103-43. The amendment allows the Secure Choice Board to charge an administrative fee, consistent with industry standards, to employee participants to cover the administrative costs of the Program, which establishes a retirement savings program for employees of private employers that have not established a program of their own. The fee may not exceed 0.25% of total assets under management plus a dollar-based fee not to exceed \$4 per quarter. Participants will (changed since 1st Notice from “may”) also be charged fees of \$1.25 per quarter for delivery of paper documents, \$5 for delivery of a withdrawal by paper check, \$25 for each priority mail delivery, or \$20 for each payment rejected for insufficient funds. Employers and employees that participate in Secure Choice are affected.

Questions/requests for copies: Erica Tremble, Office of the Treasurer, 555 W. Monroe St., 14th Floor, Chicago IL 60661, 217-557-4298, fax 312-814-5930, e-mail: ETremble@illinoistreasurer.gov

▪ COLLECTION AGENCIES

The DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION repealed the Part titled Collection Agency Act (68 IAC 1210; proposed at 47 Ill Reg 11964) effective 11/20/23 at 47 Ill Reg 17844, and adopted a new Part, also titled Collection Agency Act (38 IAC 150; proposed at 47 Ill Reg 11949), effective 11/20/23 at 47 Ill Reg 17827. These rulemakings implement PA 102-975, which transferred authority to regulate collection agencies from DFPR's Division of Professional Regulation to the Division of Financial Institutions (DFI) effective 1/1/23. The new Part aligns DFPR's rules for collection agencies with those of other industries regulated by DFI with regard to definitions; requirements for officers; procedures for applying for licensure or changes to licensure; changes in name or ownership; recordkeeping; fees; payments, and granting of variances. Other provisions address administration and enforcement, reporting requirements, and procedures for compliance investigations and examinations. Collection agencies are affected by these rulemakings.

▪ MEDICAL CANNABIS

DFPR also adopted amendments to Rules for Administration of the Compassionate Use of Medical Cannabis Pilot Program (68 IAC 1290; proposed at 47 Ill Reg 11980) effective 11/20/23 at 47 Ill Reg 17846, that permanently authorize curbside

access for medical cannabis patients, which DFPR allowed by variance throughout the COVID-19 public health emergency. Medical cannabis dispensaries and their patients are affected.

Questions/requests for copies of the 3 DFPR rulemakings: Craig Cellini, DFPR, 320 W. Washington, 2nd Floor, Springfield IL 62786, 217-785-0813, fax 217-558-4451, Craig.Cellini@illinois.gov

CDB ACTION

The CAPITAL DEVELOPMENT BOARD adopted amendments to the Part titled Board Action (71 IAC 10; proposed at 47 Ill Reg 11856) effective 11/15/23 at 47 Ill Reg 17823 that establish a process for allowing Board members to attend an open meeting by video or audio conference in accordance with Section 7 of the Open Meetings Act. A member who cannot be physically present at a Board meeting or committee meeting may participate by audio or video conference if a majority of the Board or committee approve.

Questions/requests for copies: Lauren Noll, CDB, 401 S. Spring St., 3rd Fl. Stratton Building, 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 December 12, 2023 meeting in Chicago. 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 at jcar@ilga.gov.

IL ENVIRONMENTAL PROTECTION AGENCY

Procedures for Issuing Loans from the Water Pollution Control Loan Program (35 IAC 365; 47 Ill Reg 12155) proposed 8/18/23

Procedures for Issuing Loans from the Public Water Supply Loan Program (35 IAC 662; 47 Ill Reg 12184) proposed 8/18/23

DEPT OF NATURAL RESOURCES

Rules for the Protection, Treatment and Inventory of Unmarked Human Burial Sites and Unregistered Graves (17 IAC 4170; 47 Ill Reg 13149) proposed 9/15/23

DEPT OF HUMAN SERVICES

Child Care (89 IAC 50; 47 Ill Reg 10679) proposed 7/21/23

Recovery and Mental Health Tax Credit (59 IAC 130; 47 Ill Reg 13443) proposed 9/22/23

Illinois Center for Rehabilitation and Education/Community Services for the Blind, Visually Impaired and Deafblind (89 IAC 730; 47 Ill Reg 12630) proposed 8/25/23

Role of Residential Educational Facilities Operated by the Illinois Department of Human Services (89 IAC 750; 47 Ill Reg 12638) proposed 8/25/23

Next JCAR Meeting: Tuesday, Dec. 12, 11 a.m.

Room C600, Bilandic Bldg., 160 N. La Salle St., Chicago
Meeting will be live streamed on the JCAR website

Joint Committee on Administrative Rules

Senator Bill Cunningham, Co-Chair
Senator Cristina Castro
Senator Donald DeWitte
Senator Dale Fowler
Senator Kimberly Lightford
Senator Sue Rezin

Representative Ryan Spain, Co-Chair
Representative Eva-Dina Delgado
Representative Jackie Haas
Representative Steven Reick
Representative Curtis Tarver, II
Representative Dave Vella

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