

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

▪ WORKPLACE INSPECTIONS

The DEPARTMENT OF LABOR proposed amendments to the Part titled Health and Safety (56 IAC 350; 48 Ill Reg 8418) implementing changes to federal Occupational Safety and Health Act standards, promulgated 4/1/24. The OSHA rules and this rulemaking, which will be effective 9/28/24, clarify in what circumstances a covered employer may authorize an employee of a third party to accompany an Illinois OSHA inspector conducting an inspection of that employer. Local government employers subject to OSHA inspection are affected.

Questions/requests for copies/comments through 7/29/24: Anna Koeppel, DOL, 524 S. Second St., Suite 400, Springfield IL 62701, 217-558-1270, Anna.Koeppel@illinois.gov

HORSE RACING

The ILLINOIS RACING BOARD proposed amendments to the following Parts: Pari-Mutuels (11 IAC 300; 48 Ill Reg 8424), Concessionaire Rules (11 IAC 402; 48 Ill Reg 8428), Totalizator Operations (11 IAC 433; 48 Ill Reg 8432), Outstanding Tickets (11

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IAC 434; 48 Ill Reg 8439), Licensing (11 IAC 502; 48 Ill Reg 8443), Claiming Races (11 IAC 510; 48 Ill Reg 8449), Security and Admissions (11 IAC 1325; 48 Ill Reg 8453), Entries, Subscriptions, and Declarations (11 IAC 1413; 48 Ill Reg 8458) and Admissions and Credentials (11 IAC 1428; 48 Ill Reg 8464). Amendments to Parts 300 and 433 allow computer records of scanned tickets to be kept as an alternative to the licensee marking and retaining a physical ticket. The

Part 402 rulemaking updates statutory provisions prohibiting organization licensees, concessionaires and other racetrack employees and officials from making political contributions forbidden under the State Employees and Officials Ethics Act. An amendment to Part 434 reflects statutory provisions requiring organization licensees to submit to the State Director of Mutuels annually by January 10 a payment equal to the dollar amount of outstanding tickets still unpaid from the previous two calendar years, along with a list of cashed tickets submitted in the preceding calendar year. Provisions requiring the payment to be made by check and cashed tickets to be sorted by tote, calendar year and location are being removed. Amendments to Part 502 clarify rules stating that a sanction or ruling against a licensee will generally also apply to the licensee's

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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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spouse, unless IRB finds that continued participation in racing by the spouse does not circumvent the intent of the rule. The Part 510 rulemaking states that a claim to a horse in a claiming race shall be voided if the horse is a starter and dies on the racetrack or suffers an injury requiring euthanasia on the track as determined by the State veterinarian. A claim to a horse is voidable at the sole discretion of the new owner or their trainer, for a period of up to 1 hour after the race is made official, for any horse that cannot walk off the track under its own power, must be transported by van off the track after the race, or has been observed by a regulatory veterinarian to be lame or have

exercise-induced pulmonary hemorrhage. Amendments to Part 1325 update rules regarding who may be admitted to a racetrack's stable area and other areas. Racetrack operators must now prepare admission statements weekly instead of daily; the statement has been simplified and the admission tax has been reduced from 40 to 15 cents per attendee. IRB is also no longer required to approve an operator's proposed race track tickets and credentials before they are printed. The Part 1413 rulemaking requires non-claiming races and claiming races with a value of \$20,000 or more to be run if there are at least 7 (previously 6) entries. Trainers (currently, owners) may also withdraw horses from a purse race or overnight handicap down to a minimum of 9 (currently 8) horses still in the race. These withdrawals may be made only after the stewards have been notified of

any horses being scratched due to veterinary issues. Withdrawals that reduce the field to 8 or fewer horses may only be made with approval of the steward and must be due to medical reasons or a request to move one or more horses to a different race card. Finally, amendments to Part 1428 remove references to printed admission tickets, correct the amount of admission tax paid by the track operator to reflect the current amount of 15 cents, and allow persons to be admitted to a track without paying admission after the 6th (currently 7th) race.

Questions/requests for copies/comments on the 9 IRB rulemakings through 7/29/24: Bob Denneen, IRB, 555 W. Monroe St., Suite 1700-S, Chicago IL 60661, 312-814-5017, Bob.Denneen@Illinois.gov

Adopted Rules

▪ ADULT PROTECTIVE SERVICES

The DEPARTMENT ON AGING adopted amendments to Adult Protection and Advocacy Services (89 IAC 270; proposed at 47 Ill Reg 17262) effective 5/28/24 at 48 Ill Reg 8469, expanding the acceptable education qualifications for Adult Protective Services (APS) provider agency staff. Persons with associate degrees in a health or human services field and 4 years' experience in health or human services, and persons with 4 years of experience in law enforcement or criminal investigations, may now qualify to be APS caseworkers. (Previously, a master's degree in a health or human services field; a bachelor's degree or Registered Nurse license with 1 year experience; or a Licensed Practical Nurse license plus 2 years' experience were required.) Report takers and case aides must have either an associate degree in a health or human services field or 2 years' experience working with older adults; these requirements can be waived if necessary and do not apply to persons currently employed as aides or report takers. Aides and report takers must also complete 2 hours of recertification training, 2 hours of dementia training, and 1 hour of trauma informed training annually. The rulemaking also amends the definitions of abuser, investment adviser, and mandated reporter, along with other existing text, to reflect statutory language in the Adult Protective Services Act and clarifies that timelines for responding to reports of abuse, neglect, self-neglect or financial exploitation are not waived during periods when an APS agency is closed (e.g., holiday weekends). Since 1st Notice, DonA has further amended the definition of abuse and neglect to include abandonment (reflecting a recent change in statute); clarified records

retention policies; and clarified the specific provisions of the Part from which variances may be granted on a case-by-case basis. APS provider agencies are affected.

Questions/requests for copies: Priscilla Chapman, DonA, One Natural Resources Way, Suite 100, Springfield IL 62702-1271, 217-606-1256, aging.rulemaking@illinois.gov

▪ MICROCHIP INDUSTRY

The DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY adopted a new Part titled Manufacturing Illinois Chips for Real Opportunity (MICRO) Act (14 IAC 120; proposed at 47 Ill Reg 14153) effective 5/31/24 at 48 Ill Reg 8505, implementing Article 110 of Public Act 102-700, known as the MICRO Act. The purpose of the Act and this Part is to attract semiconductor and microchip production to Illinois via tax credits to businesses that manufacture semiconductors, microchips or their component parts and are located, or planning to locate, in Illinois. To qualify for the tax credit, a new manufacturer must invest at least \$1.5 billion in capital improvements at the project site and create 500 full-time equivalent jobs within 5 years; a new component parts manufacturer must invest at least \$300 million in capital improvements and create at least 150 full-time equivalent jobs within 5 years. Manufacturers or component parts manufacturers planning to convert or expand an existing Illinois facility must invest at least \$100 million in capital improvements and create at least 75 full-time equivalent jobs within 5 years. The amount of the tax credit will be based on the jobs created that pay at least 20% above the average wage for full-time workers in similar positions in the

county where the facility is located. A business receiving the MICRO tax credit cannot also be receiving EDGE (Economic Development for a Growing Economy) tax credits or similar economic development tax credits. Once approved, the business may receive an income tax credit of up to 75% of the increased incremental income tax receipts attributable to its new employees, plus up to 10% of the training costs of the new employees. If the project is located in an underserved area or energy transition area (a county of fewer than 100,000 residents, or a municipality, in which a fossil fuel plant or a coal mine was closed in the last 6 years or is scheduled to be taken out of service in the next 6 years), 100% of the increased incremental income tax attributable to new employees may be claimed toward the credit, along with 10% of new employee training costs. Additionally, the business may receive an exemption from electricity excise taxes. Other provisions address training costs, the contents of the project agreement between the business and DCEO, credit for construction jobs, the processes of applying for and renewing the credit, and penalties for noncompliance with the project agreement. The tax credit will be granted for up to 15 years. Microchip and semiconductor businesses located in or planning to locate in Illinois are affected.

Questions/requests for copies: Gina Arterberry, DCEO, 607 E. Adams St. 12th Fl., Springfield IL 60601, Gina.M.Arterberry@Illinois.gov

SCHOOLS

The ILLINOIS STATE BOARD OF EDUCATION adopted amendments to Public Schools Evaluation, Recognition

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Adopted Rules

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and Supervision (23 IAC 1; proposed at 47 Ill Reg 16165) effective 5/29/24 at 48 Ill Reg 8535, implementing three Public Acts and other updates and clarifications. This rulemaking implements PA 102-339 by removing remaining temporary exceptions, valid through the 2021-22 school year, to a general prohibition on prone (face down) restraint; establishes separate standards for time out and isolated time out rooms; and makes exceptions to the time out room requirements for educational facilities that are part of a correctional or detention facility. It also clarifies who can conduct time out safety checks and what training they are required to receive and adds a mediation process to resolve disputes concerning use of time out or restraint. Since 1st Notice, ISBE has added a new Section clarifying that exceptions to time out requirements for correctional/detention facilities apply to the personnel employed by the facility ("school staff" employed by a school district or regional office of education to conduct classes in a correctional facility are still subject to these requirements) and do not limit what rooms or facilities can be used for time out. ISBE has also clarified that incidents of time out or restraint in a correctional/detention facility must be reported by school staff, regardless of whether school staff or facility staff initiate the time out or restraint. Other provisions implement PA 103-111, which extends short-term substitute teaching licenses to 5 years and continues to make short-term substitute applications available through 6/30/28. A short-term substitute teacher may also work up to 15 (formerly 5) consecutive days per licensed teacher under contract. In accordance with PA 103-193, this rulemaking allows districts to continue

employing a substitute teacher in the same vacant position for 90 calendar days or through the end of the semester, whichever is longer. Finally, this rulemaking clarifies requirements for career and technical educators who coordinate or provide work-based learning experiences.

TEACHER EVALUATION & DISMISSAL

ISBE also adopted amendments to Evaluation of Educator Licensed Employees Under Articles 24A and 34 of the School Code (23 IAC 50; proposed 47 Ill Reg 16309) effective 5/29/24 at 48 Ill Reg 8582, and Dismissal of Tenured Teachers Under Article 24 and Dismissal of Tenured Teachers and Principals Under Article 34 of the School Code (23 IAC 51; proposed at 47 Ill Reg 16318), effective 5/29/24 at 48 Ill Reg 8591. The Part 50 amendment implements PA 103-85, which allows teachers who are scheduled to be evaluated in their last year before retirement to waive the results of that evaluation and keep their previous rating, unless the previous rating was "needs improvement" or "unsatisfactory". The Part 51 rulemaking implements PA 101-643, which allows notice of charges against a tenured teacher to be delivered electronically, and PA 103-354, which provides that in dismissal hearings, accommodations shall be made to protect a witness who is under 18 (or was at the time of the alleged offense) from being "intimidated, traumatized or re-traumatized" during their testimony. A hearing officer who fails to make such an accommodation or fails to produce a decision or finding within 30 days after closure of the hearing or hearing record must be removed from SBE's master list of hearing officers for no more than 2 years.

Questions/requests for copies of the 3 ISBE rulemakings: Azita Kakvand, ISBE,

555 W. Monroe St., Suite 900, Chicago
IL 60661, 312-783-2757,
rules@isbe.net

▪ TIMBER HARVESTING

The DEPARTMENT OF NATURAL RESOURCES adopted amendments to the Part titled Timber Buyer Licensing and Harvest Fees (17 IAC 1535; proposed at 47 Ill Reg 17755) effective 5/30/24 at 48 Ill Reg 8643, and Revocation Procedures for Conservation Offenses (17 IAC 2530; proposed at 47 Ill Reg 17771), effective 5/30/24 at 48 Ill Reg 8664, both implementing Public Act 103-218, which amended the Timber Buyers Licensing Act. Amendments to Part 2530 update the list of potential violations for timber buyers and points assigned to these violations. The Part 1535 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 processing or resale must report the quantity, species, and dollar value of timber they have utilized for that purpose on a quarterly basis, along

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Adopted Rules

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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. Since 1st Notice, DNR has added definitions and clarified how harvest fees and the value of harvest timber will be determined. Those affected by these rulemakings include commercial timber growers, timber buyers, and their employees or agents.

DNR PROPERTIES

DNR also adopted amendments to the Part titled Regulations for the Letting of Concessions, Farm Leases, Sale of Buildings and Facilities, and Demolitions (17 IAC 150; proposed at 48 Ill Reg 2365) effective 5/30/24 at 48 Ill Reg 8630, to align the Part with USDA regulations and with the Procurement Code. The rulemakings remove time limits of 15 years on agricultural management leases for land that is enrolled in the Conservation Reserve Program and 4 years for all other agricultural management leases. (Since 1st Notice, DNR has clarified that agricultural

management leases are subject to provisions in the DNR Conservation Law and the Procurement Code.) Specific procedures for competitive bidding on agricultural land management leases are removed and all tracts that are 50 acres or less, or that are completely surrounded by private land (formerly, 50 acres or less and surrounded by private land), are exempted from competitive bidding for an agricultural management lease.

DNR adopted amendments to Field Trials on Department-Owned or -Managed Sites (17 IAC 910; proposed at 48 Ill Reg 2369) effective 5/30/24 at 48 Ill Reg 8635, that increase fees for conducting field trials on Department property, effective 1/1/25, to \$100 per day (formerly \$70 per day) for pointer, retriever, fox hound and flushing dog breed trials and \$40 per day (formerly \$25) for beagle and coon hound trials, while waiving any additional fees associated with an activity permit. The World Shooting and Recreational Complex (WSRC) in Sparta is added as a field trial site while Chain O' Lakes State Park is removed. Field trials at WSRC are generally limited to non-camping areas, but other areas may be used outside of camping season (i.e., before April 1 or after Oct. 31) or as the site allows.

Questions/requests for copies of the 4 DNR rulemakings: Part 150, Nicole Thomas; Parts 910, 1535 and 2530,

John Fischer; DNR, One Natural Resources Way, Springfield IL 62702, 217-782-1809, dnr.rules@illinois.gov

IMDC PUBLIC INFORMATION

The ILLINOIS MEDICAL DISTRICT COMMISSION adopted amendments to the Part titled Public Information and Organization (2 IAC 2525; proposed at 48 Ill Reg 811) effective 5/28/24 at 48 Ill Reg 8616, updating procedures for Freedom of Information Act (FOIA) requests seeking public information or records of the Commission. The rulemaking aligns the Part with the current FOIA, updates the Commission's contact information, allows IMDC to provide electronic copies of records by e-mail, and updates the appeal procedure for FOIA request denials (which are now directed to the Public Access Counselor in the Office of the Attorney General). Other provisions update IMDC procedures and the duties of its officers; move the annual Commission meeting to May or June (formerly, November or December); and allow meetings by telephone or video conference in accordance with the Open Meetings Act.

Questions/requests for copies: Gina Oka, IMDC, 2100 W. Harrison St., Chicago IL 60612, 312-738-5851, goka@medicaldistrict.org

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 July 16, 2024 meeting in Chicago. Other items not published in the *Illinois Register* or The Flinn Report may also be considered. Further comments concerning this rulemaking should be addressed to JCAR at jcar@ilga.gov.

DEPT OF COMMERCE & ECONOMIC OPPORTUNITY

Coal to Solar and Energy Storage Initiative Fund Grant Program (14 IAC 710; 47 Ill Reg 12505) proposed 8/25/23

Next JCAR Meeting: Tuesday, July 16, 11 a.m.

Room C-600, Bilandic Bldg., 160 N. LaSalle 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 Napoleon Harris, III

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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