

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.

Proposed Rulemakings

HUNTING & TRAPPING

The DEPARTMENT OF NATURAL RESOURCES proposed amendments to the following 12 Parts: Cock Pheasant, Hungarian Partridge, Bobwhite Quail, and Rabbit Hunting (17 IAC 530; 47 Ill Reg 10690); Raccoon, Opossum, Striped Skunk, Red Fox, Gray Fox, Coyote, Bobcat and Woodchuck (Groundhog) Hunting (17 IAC 550; 47 Ill Reg 10721); Muskrat, Mink, Raccoon, Opossum, Striped Skunk, Weasel, Red Fox, Gray Fox, Coyote, Badger, River Otter, Beaver, Bobcat and Woodchuck (Groundhog) Trapping (17 IAC 570; 47 Ill Reg 10735); Duck, Goose and Coot Hunting (17 IAC 590; 47 Ill Reg 10749); White-Tailed Deer Hunting By Use of Firearms (17 IAC 650; 47 Ill Reg 10823); White-Tailed Deer Hunting By Use of Muzzleloading Rifles (17 IAC 660; 47 Ill Reg 10837); White-Tailed Deer

Hunting By Use of Bow and Arrow (17 IAC 670; 47 Ill Reg 10849); Youth Hunting Seasons (17 IAC 685; 47 Ill Reg 10871); Squirrel Hunting (17 IAC 690; 47 Ill Reg 10879); The Taking of Wild Turkeys – Spring Season (17 IAC 710; 47 Ill Reg 10892); The Taking of Wild Turkeys – Fall Archery Season (17 IAC 720; 47 Ill Reg 10916); and Dove Hunting (17 IAC 730; 47 Ill Reg 10928). These amendments

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make site-specific changes regarding permit procedures, bagging limits, allowable hunting weapons, and other rules at DNR-controlled sites during upcoming hunting seasons. The Part 670 rulemaking also amends Statewide archery deer hunting rules to state that the Restricted Archery Zone, in which only

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Adopted Rules

■ CONSTRUCTION DEBRIS

The POLLUTION CONTROL BOARD adopted a new Part titled Standards for General Construction or Demolition Debris Recovery Facilities (35 IAC 820; 47 Ill Reg 1812) effective 7/6/23, implementing PA 102-310. The new Part establishes rules for permitting, operating, and closing recovery facilities for general construction or demolition debris (GCDD). Facilities that accepted GCDD prior to 8/24/09 and were not previously required to obtain permits must apply for a permit within 6 months after the effective date of this Part. Holders of existing permits must apply for a modification of their permit within 1 year after the effective date of this Part. Permit applications must include a map of the facility that shows all adjoining property and

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ADOPTED 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.

Adopted Rules

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any other property within 1,000 meters of the facility's boundary; all surface waters within 1,000 meters of the facility; any nearby wells or sole source aquifers; any 100-year floodplain boundaries that come within 1,000 meters of the facility; and all structures, roads and utilities within or entering the facility. The application must also include an estimate of the maximum total amount of GCDD that can be maintained at the facility at any one time, along with a closure cost estimate and financial assurances for that cost. The Part also includes procedures for modifying and transferring permits; establishes operational standards, including requirements for dust control, water drainage and runoff control, and vehicle safety; establishes recordkeeping requirements; requires GCDD facilities to have contingency plans for emergencies; and requires every load of GCDD brought to the facility to be inspected for the presence of any materials that cannot be accepted at the facility (e.g., landscape waste, tires, asbestos, lead-acid or lithium batteries). If a GCDD facility closes, it must notify the Illinois Environmental Protection Agency within 30 days after receiving its final load, move all GCDD and other materials to an appropriate, permitted site, and complete all

closure activities within 180 days. Owners and operators of construction/demolition debris facilities are affected by this rule.

Questions/requests for copies: Clerk's Office, PCB, 60 E. Van Buren, Suite 630, Chicago IL 60605. Please reference docket R23-17. Copies of the Board's opinion and order in R23-17 may be obtained from the Board's Web site at pcb.illinois.gov or by calling the Clerk's office at 312/814-3620.

SOS PROCEEDINGS

The SECRETARY OF STATE adopted amendments to Procedures and Standards (92 IAC 1001; 47 Ill Reg 1635) effective 7/10/23, requiring each party to a hearing before the Motor Vehicle Review Board to pay a \$2,500 deposit, along with an increased processing fee, to cover costs, expenses, and fees incurred by the party that does not substantially prevail. If the losing party fails to pay any fees in excess of the original \$2,500 deposit within 60 days, an additional penalty of \$2,500 will be assessed against that party. The party that substantially prevails will have its deposit refunded. Since 1st Notice, SOS has reduced the deposit and penalty for failure to pay fees from \$5,000 to \$2,500 and updated the statutory definition

of "motor vehicle". SOS is adopting this rulemaking as a deterrent to the filing of frivolous lawsuits and to assist in the payment of hearing costs and fees so that State funds are not required to cover them.

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

PRESCRIPTION MONITORING

The DEPARTMENT OF HUMAN SERVICES adopted amendments to the Part titled Electronic Prescription Monitoring Program - Long Term Care (77 Ill. Adm. Code 2081; 47 Ill Reg 1787) effective 7/7/23, updating the Prescription Monitoring Program (PMP) requirements for long term care facility pharmacies. The rulemaking removes two defunct committees, the LTC Advisory Committee and the Long-Term Care Clinical Consulting Advisory Group, that are not required by statute. DHS has determined that neither committee is necessary, as the LTC facilities are actively engaging in connecting to the PMPnow interface.

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

Proposed Rulemakings

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antlered deer may be hunted from 10/1 through 10/31 (currently, 10/1 through 10/15), will be identified by DNR via an announcement on its website. (Currently, the Restricted Archery Zone consists of Champaign, Douglas, Macon, Moultrie and Piatt counties.) Amendments to Part 710, in addition to site-specific changes, replace fixed annual dates for the spring turkey hunting seasons in the Northern and Southern zones with a general statement that each season will last 32 days beginning on the first Monday after 4/2 in the Southern Zone and the second Monday after 4/2 in the Northern Zone. The spring youth turkey hunt will consist of the two weekends prior to the beginning of spring turkey season in the Southern Zone.

Questions/requests for copies/comments on the 12 DNR rulemakings through 9/5/23: John Fischer, DNR, One Natural Resources Way, Springfield IL 62702, 217/782-1809.

■ CHILD CARE

The DEPARTMENT OF HUMAN SERVICES proposed amendments to Child Care (89 IAC 50; 47 Ill Reg 10679) implementing the transition of the

Strengthen and Grow Child Care Grant Program to the Smart Start Transition Grants Program. Eligible child care providers must be licensed by DCFS as of 6/1/23 (currently, 3/11/21) and currently open; must operate year-round, defined as offering at least 8 consecutive hours of care per day, 5 days a week, for at least 47 weeks per year; have at least 10% of enrolled children being subsidized by the Child Care Assistance Program (CCAP) in at least one month since 1/1/22; receive no more than 75% (currently 50%) of revenues through Head Start, Preschool for All, and similar streams; be currently enrolled in the Registry Director portal; and have complete and accepted reporting for any previous federally-funded child care provider relief grants. Grant recipients must spend 75% (currently 50%) of grant funds on new or expanded investments in personnel, including but not limited to increased wages or salaries, bonuses, scholarships, retirement plans, health insurance, paid sick or family leave, and professional development or training. Child care providers enrolled in CCAP are affected by these rulemakings.

Questions/requests for copies/comments through 9/5/23: Tracie Drew, DHS, 100 S. Grand Ave. East, Harris Building, 3rd Floor,

Springfield IL 62762, 217/785-9772.

■ IEMA GRANTS

The ILLINOIS EMERGENCY MANAGEMENT AGENCY AND OFFICE OF HOMELAND SECURITY proposed amendments to Compensation of Local Governments for Emergency Planning and Participation in Nuclear Emergency Response Exercises (32 IAC 501; 47 Ill Reg 10673) aligning the Part with current statutes and procedures regarding grants to local governments. The amendments reflect statute allowing IEMA to either reclaim unexpended grant funds via the recovery process in the Grant Recovery Act, or offset funds not spent in a previous year by deducting them from grants in a subsequent year. (Current rule only allows for grant recovery.) Municipalities and other units of local government that receive IEMA grants for nuclear emergency response planning are affected.

Questions/requests for copies/comments through 9/5/23: Traci Burton, IEMA-OHS, 1035 Outer Park Drive, Springfield IL 62704, 217/785-9860, Traci.Burton@illinois.gov

**NO SECOND NOTICES
THIS WEEK**

JCAR Meeting Action

At its 7/18/23 meeting, the Joint Committee on Administrative Rules took the following actions:

OBJECTION & SUSPENSION

JCAR objected to and suspended portions of the Department of Children and Family Services' emergency rule titled Licensing Standards for Day Care Centers (89 Ill. Adm. Code 407; 47 Ill. Reg. 8756) because they fail to meet the criteria for emergency rulemaking in 1 Ill. Adm. Code 230.400(a)(1)(C) and (a)(3)(B) and meet the criteria for suspension in 1 Ill. Adm. Code 230.550(a)(3)(A). Suspended portions of the emergency rule include: (1) Section 407.90(e)(3)(A) and (e)(3)(B)(i), (ii), and (iii); (2) provisions in Section 407.90(e)(3) and 407.190(f) that limit early childhood assistants' supervision of day care center classrooms in the absence of early childhood teachers to classrooms of children age 2 and older, for only the first and last 90 minutes of the center's licensed program hours; and (3) provisions in Section 407.90(e)(3)(B) that allow no more than 50 percent of licensed classrooms in operation to be supervised by early childhood assistants. This emergency rule implements previous Department policy, with additional unjustified restrictions, that allowed day care center classrooms to be supervised for up to 3 hours a day by early childhood assistants when an early childhood teacher is not available and this substitution is included in the center's staffing plan. The Department initially implemented this 3-hour policy in 2020 via emergency rules that were allowed to expire and never adopted companion proposed amendments that would have made this policy permanent. The Department then revived this policy as guidance that was in effect from September 23, 2022, through May 31, 2023. This emergency is agency created because the Department previously implemented the 3-hour policy outside of rule and passed up previous opportunities to adopt this rule despite multiple requests from day care providers. Additionally, this emergency rule imposes new restrictions, without adequate justification, on the use of early childhood assistants that the previous emergency rules and Department guidance did not include. By limiting the times of day when assistants can substitute for teachers and the

number and age range of classrooms that can be supervised by assistants, this rule imposes unreasonable and unnecessary economic costs on day care providers, many of whom have relied on this policy for the last 3 years and may be forced to curtail their hours or reduce their number of classrooms as a direct result of this emergency rule. JCAR finds that these specified provisions of this emergency rule pose a threat to the public interest and welfare.

OBJECTIONS

JCAR objected to the Pollution Control Board's rulemakings titled Permits and General Provisions (35 Ill. Adm. Code 201; 46 Ill. Reg. 20627), Alternative Control Strategies (35 Ill. Adm. Code 202; 46 Ill. Reg. 20638), and Visible and Particulate Matter Emissions (35 Ill. Adm. Code 212; 46 Ill. Reg. 20644), for failure to consider the economic effects of the rulemaking upon those regulated and for failure to consider less costly alternatives as required by 1 Ill. Adm. Code 220.900(a)(2)(B) and (C). Further, JCAR object to the Illinois Environmental Protection Agency's use of fast-track rulemaking to correct a deficiency the U.S. Environmental Protection Agency identified on June 12, 2015. USEPA first indicated that Illinois' start-up, shutdown, and malfunction provisions were inconsistent with the federal Clean Air Act in 2015, but the current rulemaking was not released to the impacted industry representatives until November 2022. Throughout the process, the Illinois Environmental Protection Agency and Pollution Control Board have cited the impending federal deadline and associated sanctions as reasons that stakeholders' alternative emissions limitation proposals cannot be considered. However, IEPA had more than enough time to address this situation and engage fully with commenters and their alternative proposals. By waiting to comply with the federal requirements until 2022, the Agency created a situation that could only be remedied in time to meet the federal sanctions deadline by using the fast-track process, and prevented the consideration of less costly alternative proposals. JCAR recommends

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IEPA respond to federal deficiency findings in a timely manner, well before mandatory sanctions are imposed, by proactively engaging stakeholders on solutions and providing stakeholders sufficient time to review compliance proposals without using the fast track process. JCAR asks that the Board and IEPA report back to JCAR at its August 16 meeting in Springfield on the progress of the subdocket for stakeholders' alternative proposals.

JCAR objected to the Department of Financial and Professional Regulation rulemaking titled Rules for the License Certified Professional Midwife Practice Act (68 Ill. Adm. Code 1345; 46 Ill. Reg. 20475) because the rulemaking does not align with the statutory authority and legislative intent which it is implementing and the Department has not considered the economic effects the rulemaking will impose upon the regulated public. Specifically, the adverse reporting requirements within this proposed rule differ significantly, without adequate justification, from the statutory reporting requirements within Section 90 of the Licensed Certified Professional Midwife Practice Act [225 ILCS 64]. Additionally, this rulemaking proposes an initial licensure fee of \$2,500 and a biennial renewal fee of \$2,000. 1 Ill. Adm. Code 220.900(a)(2)(B) requires an agency to consider the economic effects of a rulemaking upon those being regulated. These proposed fees would create a barrier to entry into the profession and are drastically higher than any other profession licensed by the Department. The Department has indicated its intent to withdraw this rulemaking and to restart the rulemaking process. JCAR supports this intention

to withdraw and further recommends the Department address these concerns and any additional concerns raised by the rulemaking's commenters before proposing a second rulemaking on this topic.

EXTENSIONS

JCAR and the respective agencies agreed to extend the Second Notice periods for the following rulemakings an additional 45 days. These rulemakings will be considered again at the Aug. 16 meeting.

Department of Lottery, General (11 IAC 1770; 47 Ill Reg 1206)

Department of Public Health, Birth Center Licensing Code (77 IAC 264; 47 Ill Reg 1846)

POSTPONEMENTS

JCAR postponed action on the following rulemakings until the Aug. 16 meeting:

Department of Healthcare and Family Services, Special Eligibility Groups (Emergency) (89 IAC 118; 47 Ill Reg 9114)

Department of Human Services, Electronic Prescription Monitoring Program (77 IAC 2080; 46 Ill Reg 16961)

Department of Public Health, Assisted Living and Shared Housing Establishment Code (77 IAC 295; 47 Ill Reg 356)

Joint Committee on Administrative Rules

Senator Cristina Castro
Senator Bill Cunningham, *co-chair*
Senator Donald DeWitte
Senator Dale Fowler
Senator Kimberly Lightford
Senator Sue Rezin

Representative Eva-Dina Delgado
Representative Jackie Haas
Representative Steven Reick
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Representative Curtis Tarver, II
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