

From: [McGill, Richard](#)
To: [Brown, Don](#)
Subject: FW: Exempt rulemaking 35 IAC 725; 48 Ill. Reg. 4914
Date: Tuesday, April 2, 2024 11:07:15 AM
Attachments: [image001.png](#)

Good morning, Mr. Clerk:

Please docket this email exchange with JCAR staff as a public comment in consolidated rulemaking dockets R21-13, R22-13, and R24-4.

Thank you.

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From: McGill, Richard
Sent: Tuesday, April 2, 2024 11:04 AM
To: Rivas, Tobias <TobiasR@ilga.gov>
Subject: RE: Exempt rulemaking 35 IAC 725; 48 Ill. Reg. 4914

Good morning, Toby:

The *Illinois Register* entry for Part 725 describes the scope of all the proposed amendments in consolidated rulemaking dockets R21-13, R22-13, and R24-4. In this way, those reading the entry are notified that other related hazardous waste rule amendments are pending.

The Section 22.4(a) text you've highlighted allows the Board to address, in a single identical-in-substance (IIS) rulemaking docket, multiple sets of federal hazardous waste rule amendments adopted by USEPA during a period up to six months. The Environmental Protection Act repeats this six-month language in other IIS rulemaking provisions. *See* 415 ILCS 5/9.1(e), 10(H), 13(c), 13.3, 17.5, 22.4(a), 22.40(a). Based on this six-month language, the Board addresses USEPA amendments—in each IIS subject area—through two rulemaking dockets per calendar year: one docket for relevant USEPA actions during January 1 through June 30; and the other docket for relevant USEPA actions during July 1 through December 31. For example, if USEPA adopts hazardous waste rule amendments in January, March, and June of the same year, the Board may open a single IIS rulemaking docket to address all three sets of those USEPA amendments; the Board need not open three separate IIS rulemaking dockets.

If USEPA takes one or more actions in an IIS subject area requiring amendments to multiple

Parts of the Board's rules, the Board addresses all those affected Parts in one IIS rulemaking docket, rather than in a piecemeal manner of one docket per Part. And if two or more IIS rulemaking dockets (*i.e.*, covering different six-month periods) address associated subjects and doing so will make completing all the amendments more expedient, the Board consolidates the IIS rulemaking dockets.

These steps, which the Board has undertaken for decades, are designed to facilitate public participation, promote efficiency and coherent discussion, and avoid having one IIS rulemaking docket inadvertently undo amendments being made in another.

In consolidated rulemaking dockets R21-13, R22-13, and R24-4, because no IIS rulemaking docket covers greater than its own six-month period of USEPA action, the Board has acted within Section 22.4(a)'s authorization to "consolidate into a single rulemaking under this Section all such federal regulations adopted within a period of time not to exceed 6 months." 415 ILCS 5/22.4(a). First, IIS rulemaking docket R21-13 covers two USEPA actions, both from the second half of calendar year 2020, *i.e.*, 85 Fed. Reg. 40594 (July 7, 2020) and 85 Fed. Reg. 51650 (Aug. 21, 2020). USEPA's July 7, 2020 action, which includes rule changes concerning ignitable hazardous waste, requires amending seven Parts of Title 35: Parts 705, 720, 721, 722, 724, 725, and 726. USEPA's August 21, 2020 actions requires amending one of those Parts, *i.e.*, Part 705. Second, IIS rulemaking docket R22-13 covers a single USEPA action from the second half of calendar year 2021 concerning hazardous waste import-export recovery and disposal operations (86 Fed. Reg. 54381 (Oct. 1, 2021)). That USEPA action requires amending Parts 722, 724, and 725, *i.e.*, three Parts being amended due to USEPA action covered by IIS rulemaking docket R21-13. And third, IIS rulemaking docket R24-4 covers a single USEPA action from the first half of calendar year 2023 concerning Method 23 (88 Fed. Reg. 16732 (Mar. 20, 2023)), requiring the Board to amend Part 720, which is also being amended due to USEPA action covered by IIS rulemaking docket R21-13.

If you have any other questions, please let me know. Thank you.

Best regards,

Richard

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From: Rivas, Tobias <TobiasR@ilga.gov>

Sent: Monday, April 1, 2024 9:23 AM

To: McGill, Richard <Richard.McGill@illinois.gov>

Subject: [External] Exempt rulemaking 35 IAC 725; 48 Ill. Reg. 4914

Good morning:

The mentioned rulemaking incorporates “hazardous waste regulations adopted by the United States Environmental Protection Agency (USEPA) in the second halves of 2020, 2021, and the first half of 2023.”

However, this seems to go beyond PCB’s exempt rulemaking authority:

(415 ILCS 5/22.4) (from Ch. 111 1/2, par. 1022.4)

Sec. 22.4. Hazardous waste; underground storage tanks; regulations.

(a) In accordance with Section 7.2, the Board shall adopt regulations which are identical in substance to federal regulations or amendments thereto promulgated by the Administrator of the United States Environmental Protection Agency to implement Sections 3001, 3002, 3003, 3004, and 3005, of the Resource Conservation and Recovery Act of 1976 (P.L. 94-580). The Board may consolidate into a single rulemaking under this Section **all such federal regulations adopted within a period of time not to exceed 6 months.** The provisions and requirements of Title VII of this Act shall not apply to rules adopted under this subsection. Section 5-35 of the Illinois Administrative Procedure Act relating to procedures for rulemaking shall not apply to rules adopted under this subsection.

Is this an oversight on the part of the Board, or does PCB have a different understanding of the statute?

Best,

Toby Rivas

Joint Committee on Administrative Rules

(217) 785-2254

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