

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 is designed to inform and involve the public in changes taking place in agency administration.

New Regulations

Proposed Regulations

PROCUREMENT

The DEPARTMENT OF CENTRAL MANAGEMENT SERVICES adopted emergency amendments to the Part titled "Business Enterprise Program: Contracting with Businesses Owned and Controlled by Minorities, Females and Persons with Disabilities" (44 Ill Adm Code 10; 37 Ill Reg 3885), effective 3/14/13 for a maximum of 150 days. Identical proposed amendments appear in this week's *Illinois Register* at 37 Ill Reg 3460. The rulemakings outline procedures for establishing sheltered markets (a procurement procedure that sets aside certain contracts or projects for businesses owned and controlled by minorities, females or persons with disabilities, on a competitive bid or negotiated basis). The Business Enterprise Council for Minorities, Females and Persons with Disabilities, at every regular meeting, must receive evidence (in the form of written or oral testimony) of racial, ethnic, gender or disability-based discrimination in contract procurement. If the Council finds evidence of egregious discrimination in a given procurement area, it must recommend to DCMS establishment of a new sheltered market or adjustment of an existing sheltered market for the affected

industry or market area. Criteria that DCMS shall use to review the Council's recommendation include: disparities in utilization of minority/female/disabled (MFD) firms in the affected industry or market versus their frequency of utilization in other State contracts, availability of certified MFD vendors, or other documented incidents or evidence of discrimination. DCMS will also hold public hearings and issue a report to the Council, the various Chief Procurement Officers (CPOs) and other entities stating whether a need to remedy discrimination exists, and if so, whether a sheltered market action is warranted. Sheltered market actions must be narrowly tailored and limited in duration, and may include dividing procurements into smaller units, advertising contracts for award with specific MFD business goals, using bidding documentation and submission procedures more conducive to MFD firms, or reserving specific contract work for MFD businesses. MFD firms must be certified by DCMS as eligible in order to participate in the program, and a contract cannot be included in a sheltered market action unless the relevant CPO determines that at least 3 businesses are eligible. Those affected by this

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DRIVER'S LICENSES

The SECRETARY OF STATE proposed amendments to "Cancellation, Revocation or Suspension of Licenses or Permits" (92 Ill Adm Code 1040; 37 Ill Reg 3635) to implement provisions from several public acts. SOS is adding statutorily designated new offenses for which SOS can take sanctions against a driver's license, including modification of a rear registration plate, unauthorized use of a deceased person's disability placard or device, child visitation abuse, and text messaging while driving a commercial vehicle. The agency is also clarifying the definitions of existing violations.

Questions/requests for copies through 5/13/13: Jennifer Egizii, SOS, Driver Services Department, 2701 S. Dirksen Parkway, Springfield IL 62723, 217/557-4462.

STATE EMPLOYEES

The DEPARTMENT OF CENTRAL MANAGEMENT SERVICES proposed amendments to "Pay Plan" (80 Ill Adm Code 310; 37 Ill Reg 3462). The rulemaking changes the general effective date for pay rates in the Part to

(cont'd page 3)

NEW REGULATIONS: Rules adopted by agencies this week.

PROPOSED REGULATIONS: Rules proposed by agencies this week, commencing a 45-day First Notice period. Public comments must be accepted by the agency for the period of time indicated.

☞: Symbol designating 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/RULE TEXT: Direct mail or phone calls to the agency personnel listed below each summary. Providing volume and issue number of The Flinn Report or the Illinois Register will expedite the process. Some agencies charge copying fees. However, copy requests do not have to be made under the Freedom of Information Act.

New Regulations

rulemaking include small businesses that seek State contracts and are owned by minorities, females, or persons with disabilities.

Questions/requests for copies/comments concerning the proposed rulemaking through 5/13/13: Mary Matheny, DCMS, 720 Stratton Bldg., Springfield IL 62706, 217/557-5404, fax 217/558-2697, e-mail: mary.matheny@illinois.gov.

The OFFICE OF THE AUDITOR GENERAL (OAG) adopted amendments to "Purchases and Contracts" (44 Ill Adm Code 500; 36 Ill Reg 17694), effective 4/1/13, that implement recent amendments to the Illinois Procurement Code. The rulemaking revises defined terms, particularly the definition of subcontractor, now clarified to require a contract worth \$50,000 or more. The Auditor General Procurement Bulletin will be found at the OAG's website. A vendor's offer must be kept firm for at least 30 days after the bid or proposal opening date. Vendors must specify the grounds on which confidential data is exempt from disclosure under the Freedom of Information Act. Small purchase exemptions from bidding requirements are being raised from \$20,000 to \$30,000 for professional and artistic services and from \$40,100 to \$50,000 for construction projects. When a solicitation is cancelled, a notice of cancellation and explanation for that action shall be posted in the OAG Bulletin. Procurement files, open to the public after bid opening, shall not include trade secrets, or other confidential or proprietary information. A 20% or less mark-up for parts in conjunction with a service contract does not convert a services contract to a prohibited cost-plus-a-percentage-of-cost contract. Potential grounds for cancellation of a contract are specified (e.g., failure to provide a performance bond or make delivery as specified in the contract; products or services are rejected by the OAG for not meeting the terms of the contract; the vendor is adjudged bankrupt; misrepresentation or fraud).

Contracts in excess of \$20,000 shall be filed with the Comptroller within 30 days (presently, \$10,000 and 15 days). Notification of selection and award shall be sent to all respondents making offers. If a false certification is made by a vendor that it or a subcontractor is not barred from being awarded, a contract may be voided. If a false certification is made by a subcontractor, the contract may not be voided unless the contractor refuses to terminate the subcontract. Ex parte procurement communication policy is revised to exclude communications with another State agency employee if the person making the communication is exercising his experience on that procurement in the normal course of business or is exercising oversight authority over the procurement. Communications that are privileged or protected under law are excluded from the reporting requirement, as are routine communications made in the course of the procurement. Protests may be made by any person at every stage of the procurement process, with the Chief Procurement Officer of the OAG acting as protest review officer. Protests must be in writing and physically received at the location specified. Hearing procedures for sole source, emergency procurement and debarment hearings are prescribed. A new Section addressing payment of taxes by vendors is added. Businesses seeking contracts with the Office of the Auditor General are affected.

Questions/requests for copies: Rebecca Patton, OAG, 740 E. Ash St., Springfield IL 62703, 217/782-6698, Fax: 217/785-8222, TTY 888/261-2887.

PUBLIC MEETINGS

The CIVIL SERVICE COMMISSION adopted amendments to the Part titled "Civil Service Commission" (80 Ill Adm Code 1; 36 Ill Reg 13743), effective 3/15/13, to permit public comment at the Commission's meetings. A transcript of any proceedings before the Commission is deemed complete upon the filing of the court reporter's

transcript of the final day of hearing or the last filed written closing statement, whichever is later.

Questions/requests for copies: Andrew Barris, Civil Service Commission, 400 West Monroe, Suite 306, Springfield IL 62704, 217/558-0554.

MEDICAL TRANSPORTATION

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES adopted amendments to "Medical Payment" (89 Ill Adm Code 140; 36 Ill Reg 15425), effective 3/13/13, implementing provisions of Public Acts 97-689 (SMART Act) and 97-842 concerning medical assistance payment for non-emergency ambulance transportation. The procedures and criteria set forth in this rulemaking apply to dates of service on or after 7/1/13. The rulemaking requires a physician, medical director (in the case of long term care facilities), or other licensed healthcare provider acting within his or her scope of practice and staff privileges to complete a discharge order or medical certification form whenever a medical assistance patient requires supervised ground ambulance transport to another facility in a non-emergency situation. The discharge order or certification form must verify that the patient's condition meets HFS criteria for approval of payment. Facilities must insure that discharge orders and medical certifications are completed prior to patient discharge. Providers authorized to sign orders or forms may designate other licensed healthcare providers, or discharge planners, to complete these documents, but the original provider remains responsible for the accuracy of the information contained in the document. HFS will approve payment for non-emergency ambulance transportation only if the patient cannot safely be transported by any other means (e.g., stretcher van, wheelchair van, automobile) and the transport is not solely intended to provide assistance in lifting the patient or navigating stairs at the destination facility. The patient must also require at least one of the following

New Regulations

measures during transport: isolation precautions, oxygen administration, advanced airway management, intravenous fluid administration, chemical or physical restraints, one-on-one supervision, specialized monitoring, special handling or positioning, or continuous clinical observation. Examples of situations that meet, or do not meet, these criteria are also listed. Since 1st Notice, HFS has delayed implementation of the new procedures and criteria until 7/1/13 (originally, 1/1/13). Those affected by this rulemaking include hospitals, long term care facilities, and ambulance service providers.

Questions/requests for copies/comments through 12/17/12: Jeanette Badrov, DHFS, 201 S. Grand Ave. East, 3rd Fl., Springfield IL 62763, 217/782-1233.

UNIVERSITY RETIREMENT

The STATE UNIVERSITIES RETIREMENT SYSTEM adopted amendments to "Universities Retirement" (80 Ill Adm Code 1600; 36 Ill Reg 15335), effective 3/15/13, to revise its Open Meetings Act policies and disability claims procedures. The rule permits recording devices at Board meetings, provided it does not disrupt the pro-

ceedings and subject to any limitations imposed by the Board or SURS staff. Mounted recording equipment must be set up prior to the meeting, with ancillary equipment such as cables placed in areas assigned by the Board or staff. Recording devices are not to be placed in exits, entrances or used during a closed meeting session. Members of the public who wish to address the Board for a period of up to 5 minutes shall provide written notice to the Board 48 hours prior to the Board meeting, identifying the speaker and subject matter of the address, and with any written materials attached to the notice. Other amendments allow the one-year time limit (from the date of disability) for applying for disability benefits to be waived if good cause can be shown. Since 1st Notice, SURS has added examples of good cause to the rule text.

Questions/requests for copies: Michael Weinstein, SURS, 1901 Fox Dr., Champaign IL 61820, 217/378-8825.

AIDS DRUG ASSISTANCE

The DEPARTMENT OF PUBLIC HEALTH adopted emergency amendments to "AIDS Drug Assistance Program" (77 Ill Adm Code 692; 37 Ill Reg

3899) effective 3/18/13 for a maximum of 150 days. The emergency rule provides that applicants in the 301% to 500% FPL income bracket who have not had creditable coverage for 6 months prior to application, but were eligible for creditable coverage recently offered under a State or federal government entity, will be considered to have had active prescription coverage. According to DPH, the rule is intended to cover persons who would have qualified for the Illinois pre-existing condition insurance plan, which suspended new enrollment on 3/2/13 pending full implementation of the federal Affordable Care Act on 1/1/14. The emergency rule also defines creditable coverage and incorporates an applicable federal regulation. A companion proposed rulemaking, which appears in this issue of the *Illinois Register* at 37 Ill Reg 3624, contains the above provisions, plus a definition of AIDS Drug Assistance Program. The proposed rulemaking also removes obsolete references to Illinois Cares Rx, which was abolished on 7/1/12.

Questions/requests for copies/comments concerning the proposed rulemaking through 5/13/13: Susan Meister, DPH, 535 W. Jefferson St., 5th Fl., Springfield IL 62761, 217/782-2043, e-mail: dph.rules@illinois.gov.

Proposed Regulations

fiscal year 2014 and clarifies how pay rates are determined when a job classification under the Personnel Code is represented by one bargaining unit with one pay grade (whole class) or by more than one bargaining unit with multiple pay grades (divided class). Divided classes as of 2/21/13 are listed. The rulemaking also institutes the job titles of Blasting Expert, Blasting Specialist and Blasting Supervisor (for-

merly Public Service Administrator options) and assigns them to a bargaining unit represented by the Service Employees International Union (SEIU). A memorandum of understanding assigning bargaining unit pay rates to the titles of Cancer Registrar I and III, Cancer Registrar Manager and Assistant Manager, and Sex Offender Therapist I and II is implemented. Other provisions update or correct

references to titles affected by previous peremptory and adopted rulemakings.

Questions/requests for copies/comments through 5/13/13: Jason Doggett, DCMS, 504 Stratton Bldg., Springfield IL 62706, 217/782-7964, fax 217/524-4570, e-mail: CMS.PayPlan@illinois.gov.

Second Notices

The following rulemakings were moved to Second Notice this week by the agencies listed below, commencing the JCAR review period. The rulemakings will be considered at JCAR's April 16, 2013 meeting.

ILLINOIS HEALTH INFORMATION EXCHANGE AUTHORITY

"Provision for Protection of Public Aid Applicants and Recipients" (77 Ill Adm Code 4000) proposed 4/27/12 (36 Ill Reg 6341)

DEPARTMENT OF VETERANS' AFFAIRS

"Rules Governing Payment from the Disabled Veterans Property Tax Relief Fund" (95 Ill Adm Code 130) proposed 6/1/12 (36 Ill Reg 8241)

DEPARTMENT OF REVENUE

"Income Tax" (86 Ill Adm Code 100) proposed 12/28/12 (36 Ill Reg 18149)

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

"Medical Payment" (89 Ill Adm Code 140) proposed 1/4/13 (37 Ill Reg 18)

The following rulemakings were moved to Second Notice on 3/4/13 but were inadvertently omitted from publication in the Flinn Report. These rulemakings will also be considered at the April 16, 2013 meeting.

DEPARTMENT OF TRANSPORTATION

"Minimum Safety Standards for Construction of Multifunction School Activity Buses" (92 Ill Adm Code 435) proposed 1/4/13 (37 Ill Reg 117)

"Inspection Procedures for Multifunction School Activity Buses" (92 Ill Adm Code 436) proposed 1/4/13 (37 Ill Reg 148)

Joint Committee on Administrative Rules

Senator Pamela Althoff

Representative Greg Harris

Senator Don Harmon

Representative Lou Lang

Senator Tony Munoz

Representative David Leitch

Senator Sue Rezin

Representative Don Moffitt

Senator Dale A. Righter

Representative Tim Schmitz

Senator Ira Silverstein

Representative Andre Thapedi

**Vicki Thomas
Executive Director**