

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

COLLECTIVE BARGAINING

The ILLINOIS LABOR RELATIONS BOARD adopted emergency amendments to "General Procedures" (80 Ill Adm Code 1200; 37 Ill Reg 5897) and adopted a new Part by emergency rulemaking titled "Gubernatorial Designation of Positions Excluded from Collective Bargaining" (80 Ill Adm Code 1300; 37 Ill Reg 5901), both effective 4/22/13 for a maximum of 150 days. Companion proposed amendments to Part 1200 appear in this week's Illinois Register at 37 Ill Reg 5762. The amendments to Part 1200 state that its rules do not apply to cases filed under Part 1300, unless specifically referenced. The new Part 1300 implements PA 97-1172 by establishing procedures used by the Governor to designate positions excluded from collective bargaining and for affected employees and labor organizations to file objections. The Governor must file a designation by electronic mail and deliver a hard copy to ILRB at its Springfield office. The designation must include the following: the job title and duties; name of the current employee, if any; name of the employing State agency, if any; and the category under which the position qualifies for exclusion from

collective bargaining. To qualify, the employment position must meet one or more of the following criteria: the position is that of a legislative liaison or high level agency executive (e.g., Executive Director, Deputy Director, HR Director, General Counsel); the position is *Rutan*-exempt (i.e., not covered by the U.S. Supreme Court *Rutan* decision forbidding political considerations in hiring or termination of non-policy-making State employees); the position is term-appointed under Sec. 8b.18 or 8b.19 of the Personnel Code; or the employee has significant and independent discretionary authority. Sections pertaining to administrative hearings are similar to those found in 80 Ill Adm Code 1200 but follow a shorter timeline as required by PA 97-1172. State employees who meet one or more of the stated job criteria may be affected by this rulemaking.

Questions/requests for copies/comments on the proposed rulemaking through 6/17/13: Jerald Post, ILRB, 160 N. LaSalle St., Suite S-400, Chicago, IL 60601, 312/793-6400, e-mail: Jerald.Post@illinois.gov.

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Proposed Regulations

SBE PUBLIC HEARINGS

The STATE BOARD OF EDUCATION will hold public hearings on proposed amendments to "Special Education" (23 Ill Adm Code 226; 37 Ill Reg 2637) at the following times and locations: Monday, May 6, 6-9 p.m., Southeast High School Auditorium, 2350 E. Ash St., Springfield; Wednesday, May 8, 6-9 p.m., SIU Student Center, Ballroom C, 1255 Lincoln Drive, Carbondale; and Thursday, May 9, 6-9 p.m., Elgin Community College, E-125 Seigle Auditorium, 1700 Spartan Drive, Elgin. Hearing participants should indicate whether their comments address class size for general education classrooms, class size for self-contained special education classrooms, or both, and must provide a written version of their comments to SBE staff prior to making their remarks. SBE will also receive public comments on this rulemaking via webinar on Tuesday, May 7, from 10 a.m. to 1:30 p.m. The webinar is limited to 1,000 participants and advance registration is required. To register for the webinar visit <https://www1.gotomeeting.com/register/546720104>. The rulemaking, published in the 3/8/13 *Illinois Register*, repeals SBE's current limits on class

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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

PROCUREMENT

The CHIEF PROCUREMENT OFFICER FOR THE DEPARTMENT OF TRANSPORTATION (CPO-DOT) adopted amendments to "Chief Procurement Officer for the Department of Transportation-Contract Procurement" (44 Ill Adm Code 6; 37 Ill Reg 1365), effective 4/19/13. The rulemaking makes numerous changes to implement further Procurement Code changes mandated by Public Act 97-895. Small business set-aside provisions are being altered to conform to US DOT requirements, including a provision allowing firms located outside of Illinois to be categorized as small businesses. Electronic signatures for bids will be accepted in accordance with protocols adopted by the Department of Central Management Services. Bids will no longer be required to be read publicly, but instead will be made public in the manner specified in the Invitation for Bids. Since 1st Notice, CPO-DOT restored language stating that a cashier's or certified check will (rather than "may") be accepted in lieu of a surety bid bond. This rulemaking will affect small businesses that seek contracts with DOT.

Questions/requests for copies: Bill Grunloh, IDOT, 2300 S. Dirksen Pkwy, Rm. 200, Springfield IL 62764, 217/558-5434

RADIOACTIVE MATERIAL

The ILLINOIS EMERGENCY MANAGEMENT AGENCY adopted an amendment to "Licensing of Radioactive Material" (32 Ill Adm Code 330; 37 Ill Reg 2533), effective 4/16/13, that adds to the list of those exempt from the Part's licensing requirements persons who receive, possess, use, transfer, own or acquire ionization chamber smoke detectors containing not more than 37 kBq of americium-241 per detector in the form of a foil and designed to protect life and property from fires. The rulemaking also expands the exemption to all approved gas and aerosol detectors, not just

smoke detectors. This rulemaking will ensure compatibility with federal Nuclear Regulatory Commission regulations at 10 CFR 30.15.

Questions/requests for copies: Traci Burton, IEMA, 1035 Outer Park Drive, Springfield IL 62704, 217/785-9860, TDD-217/782-6133.

BANKS

The DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION adopted amendments to "Lending Limits" (38 Ill Adm Code 330; 36 Ill Reg 17671), effective 4/22/13, that authorize State-chartered banks and savings banks to engage in "derivative transactions" (transactions based upon trading of commodities, securities, currencies, or other assets, or upon changes in interest or other rates). The rulemaking is prompted by a federal law (the Dodd-Frank Act) which prohibits derivative transactions by state-chartered banks after 1/21/13 unless authorized by law in the state where the bank is chartered. The rulemaking defines terms related to derivative transactions and includes such transactions in the calculation of lending limits and credit exposure. Changes since 1st Notice clarify the definition of a non-credit derivative exposure and a formula for calculating potential future credit exposure.

Questions/requests for copies: Craig Cellini, DFPR, 320 W. Washington St., 3rd Fl, Springfield IL 62786, 217/785-0813, fax 217/557-4451.

INCOME TAX

The DEPARTMENT OF REVENUE adopted an amendment to "Income Tax" (86 Ill Adm Code 100; 36 Ill Reg 18149) clarifying the definition of residency for state income tax purposes. Residency is presumed when an individual receives a homestead exemption for an Illinois property or, after being an Illinois resident in the previous year, spends more days in Illinois than any other state in the year in question (presently, if an individual

spends more than 9 months in Illinois during any taxable year). Factors that an individual can use to rebut a presumption of residency include: location of spouse/dependents; the permanent or temporary nature of work assignments in a state; and the location of professional licenses, medical professionals, accountants, attorneys, and other service providers. Factors that cannot be considered include the locations of any organizations to which the individual makes tax-deductible donations, bequests, legacies, or devises. This rulemaking may affect small businesses.

Questions/requests for copies: Paul Caselton, DOR, Legal Services Office, 101 West Jefferson, Springfield, IL 62794, 217/782-7055.

IGNITION INTERLOCK DEVICES

The SECRETARY OF STATE adopted amendments to "Procedures and Standards" (92 Ill Adm Code 1001; 37 Ill Reg 720), effective 4/19/13, concerning Breath Alcohol Ignition Interlock Devices (BAIID) issued to persons with restricted driving permits or monitoring device driving permits (MDDPs, for first-time DUI offenders). No later than July 1, 2013, all BAIIDs installed shall include a camera that captures a clear image of the individual blowing into the BAIID, at a sufficiently wide angle to determine whether a circumvention device has been inserted into the mouthpiece of the BAIID. Captured images shall be stored by the vendor of the BAIID device and made accessible to the SOS, as prescribed by the SOS. For persons in the first-time monitoring driving permit program, preventing the camera from taking clear and accurate photos of the permittee blowing into the mouthpiece is a violation. Permit privileges shall be suspended for an additional 3 months when an image shows the MDDP permittee has used a product that allows the permittee to avoid blowing directly into the mouthpiece, or has tried to prevent a clear picture of the driver.

New Regulations

Questions/requests for copies: Brenda Glahn, SOS, 298 Howlett Building, Springfield IL 62756, 217-785-3094, email: bglahn@ilsos.net.

UNCLAIMED PROPERTY

The OFFICE OF THE TREASURER adopted amendments to the Part titled "Uniform Disposition of Unclaimed Property Act" (74 Ill Adm Code 760; 36 Ill Reg 13578), effective 4/18/13, to require reporting of unclaimed property as specified in Section 11(d) of the Act with the name, Social Security number or FEIN (if known), and last known address, including zip code, of an apparent owner of property. For unclaimed life insurance proceeds, the full name of the insured and any beneficiary or annuitant and last known address is to be reported in accordance with records maintained by the insurance company. Also, the date when the property became reportable under the Act must be reported. Since 1st Notice, the Treasurer removed a proposed \$5 threshold for reporting unclaimed property and replaced it with a citation to the Act (which currently sets a \$25 threshold).

Questions/requests for copies: Bradley Rightnowar, Office of the Treasurer, 1 West Old State Capitol Plaza, Ste. 400, Springfield IL 62701, 217/557-9360.

PUBLIC RECORDS

The DEPARTMENT OF TRANSPORTATION adopted an amendment to "Access to Records of the Department of Transportation" (2 Ill Adm Code 1226; 37 Ill Reg 5892), effective 4/19/13, updating the e-mail address (dot.foiaofficer@illinois.gov) to which requests for DOT records under the Freedom of Information Act must be submitted.

Questions/requests for copies: Barbara Brush, IDOT, 2300 S. Dirksen Pkwy., Rm. 300, Springfield IL 62764, 217/785-2965.

STATE EMPLOYEES

The DEPARTMENT OF CENTRAL MANAGEMENT SERVICES adopted peremptory amendments to "Pay Plan" (80 Ill Adm Code 310; 37 Ill Reg 5925), effective 4/18/13, implementing two

labor agreements. In accordance with a grievance resolution, the peremptory amendments restore step increases for fiscal year 2013 for members of 9 AFSCME bargaining units representing employees of at least 40 State agencies. Former employees who retired or resigned from affected positions between 7/1/12 and 4/17/13 will retroactively receive step increases or satisfactory performance increases for which they were eligible during the 2013 fiscal year. The peremptory rule also implements a memorandum of understanding (MOU) abolishing an AFSCME bargaining unit, reassigning the Public Service Administrator (PSA) Option 6 title to other AFSCME bargaining units, and assigning new bargaining unit pay grades (identical to the former pay grade) to the PSA Option 6 title. More than 16,000 State employees are affected by this peremptory rule.

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

Proposed Regulations

size for special education students.

Questions/requests for copies/comments concerning the proposed rulemaking or the public hearing: Shelley Helton, SBE, 100 N. First St. S-493, Springfield IL 62777-0001, 217/782-5270, e-mail: rules@isbe.net.

DHS RULE WITHDRAWAL

The DEPARTMENT OF HUMAN SERVICES has withdrawn a proposed repeal of the Part titled "Lekoteks" (89 Ill Adm Code 899; 36 Ill Reg 11888), which originally appeared in the 7/27/12 *Illinois Register*. DHS proposed

repeal of the Part due to lack of funding for the Lekotek program; however, JCAR issued an Objection since statute still requires DHS to administer the program. The action allows the Part to remain in effect.

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 JCAR's May 14, 2013 meeting.

IL EMERGENCY MGMT AGENCY

"Licensing of Radioactive Material" (32 Ill Adm Code 330) proposed 3/8/13 (37 Ill Reg 2597)

ILLINOIS GAMING BOARD

"Video Gaming (General)" (11 Ill Adm Code 1130) proposed 2/22/13 (37 Ill Reg 2410)

DEPARTMENT OF PUBLIC HEALTH

"Animal Population Control Code" (77 Ill Adm Code 996) proposed 1/18/13 (37 Ill Reg 521)