

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

UNIVERSITIES RETIREMENT

The STATE UNIVERSITIES RETIREMENT SYSTEM adopted an emergency amendment to the Part titled "Universities Retirement" (80 Ill Adm Code 1600; 38 Ill Reg 11376), effective 5/9/14, for a maximum of 150 days. The emergency rule stems from a provision of Public Act 98-599 (pension reform), effective 6/1/14, that, as currently written, requires SURS participants to have retired prior to 7/1/13 in order to receive certain benefits from a money-purchase annuity established under the former pension law. Legislation is pending to extend the cutoff date for these benefits to 7/1/14. The emergency rule applies the former policy regarding money-purchase annuities to SURS participants who retire on or before 6/30/14. Employees and retirees of State universities are affected by this emergency rule.

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

FOR CAPITAL DEVELOPMENT BOARD adopted a new Part titled "Procurement Practices" (44 Ill Adm Code 8; 37 Ill Reg 12143) and repealed the former Part with the same title (37 Ill Reg 12120) effective 5/7/14. These rulemakings reflect recent Public Acts placing procurement responsibility in the Chief Procurement Officer for the Capital Development Board (CDB), separate and distinct from the Board itself. The new Part 8 encompasses Illinois Procurement Code reforms of recent years. The rulemaking establishes the CPO for the CDB as the primary authority to conduct procurement activity for CDB, extending to procurement of architects and engineers, and construction and construction management services under the Code. Various defined terms are revised or added (e.g., construction management services, design-build contract, additional "germane" work to be performed for a contract), and references to 24 collateral bodies of work (e.g., the Code, Illinois Architecture Practice Act of 1989, Prevailing Wage Act, Lobbyist Registration and Steel Products Procurement Acts) are added. The role of CDB staff is stated, which includes working with user agen-

CARNIVALS & AMUSEMENTS

The DEPARTMENT OF LABOR proposed amendments to the Part titled "Carnival and Amusement Ride Safety Act" (56 Ill Adm Code 6000; 38 Ill Reg 10772) updating numerous standards for rides and amusements, inspections, inspector qualifications, hearing procedures, and other procedures. ASTM standards for design, inspection and auditing of amusement rides and devices are added. Inspectors must have a 4-year college degree and experience in engineering, physical sciences or related fields (e.g., military training in safety inspections, heavy machinery maintenance; experience in the amusement ride industry). Inspectors must also be proficient in Microsoft programs and pass necessary examinations. Inspections must include observations of operators, assistants or attendants during the operation of rides and attractions. The inspector must notify the owner or responsible party in writing if he or she observes any distracted attendants or assistants. A warning will be issued for the first violation; any subsequent violation may result in revocation of a permit, issuance of a stop order for

CAPITAL PROCUREMENT

The CHIEF PROCUREMENT OFFICE

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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

cies and making certain capital construction projects are in accord with the Code and applicable rules and publication of procurement information in the Illinois Procurement Bulletin. Source selection and contract formation provisions are prescribed, along with competitive bidding protocols (including bid evaluation policies), small purchase bidding exception policies, sole source policies and procedures, emergency procurement exceptions and procedures, other methods of source selection and procedures for tie bids, mistakes in the bidding process, or modification, withdrawal, or cancellation of bids. Vendor responsibility and prequalification requirements are prescribed. Contract duration cannot be longer than 10 years unless permitted by the Code. Public contracting and procurement ethics provisions include: bribery provisions, conflict of interest, contractors subject to the contractor registration and campaign contribution prohibition provisions of the Code and Election Code, Environmental Protection Act and Illinois Use Tax violators, revolving door and restrictions on future employment provisions, financial disclosure requirements, lobbying restrictions, and ex parte procurement communication limitations. Vendor suspension and contractor debarment procedures are listed, as well as administrative hearing procedures. Other provisions address procedures for cancelling, protesting and disputing contracts; evaluation and selection; procurement preferences and policies (e.g., small business, female/minority/disabled); and documents required for a procurement file. The new Part has undergone extensive changes since 1st Notice, including new and revised definitions (modification, renewal, amendment, change order, etc.); provisions for a vendor portal allowing vendors to submit information electronically; requirements for greater detail concerning use of subcontractors; establishing criteria for a small business; establishment of a Good Faith Effort Committee to evaluate requests for waivers of the business enterprise goals; addition of a 90-day timeline and \$25,000 thresh-

old for disputes to be resolved by mediation; and clarifications regarding confidentiality rules, responsibilities of the CPO and State Purchasing Officers, and other provisions too numerous to list. Businesses seeking State construction contracts are affected by this rulemaking.

Questions/requests for copies: Lorri Lawton, CPO-CDB, 401 S. Spring, Stratton Office Bldg., Room 318, Springfield IL 62706, 217/558-2295, e-mail: lorri.rosenfeldt@illinois.gov.

EARLY INTERVENTION

The DEPARTMENT OF HUMAN SERVICES adopted amendments to "Early Intervention Program" (89 Ill Adm Code 500; 37 Ill Reg 6417) effective 5/12/14 that implement provisions necessary for compliance with Part C of the federal Individuals with Disabilities Education Act (IDEA) and federal regulations, specifically 34 CFR 303. DHS is revising its process for disseminating early intervention (EI) program information to parents of at risk infants and toddlers through a network of regional intake entities, local inter-agency councils and primary referral resources. The rulemaking clarifies that the Department is responsible for maintaining a central directory of EI resources accessible to the general public and outlines additional information to be maintained in the central registry. DHS is revising eligibility criteria used for determining eligibility, with parental consent, descriptions of what EI services entail, provider qualifications and credentialing requirements, and provider enrollment criteria. The Department clarifies that any findings from its comprehensive on-site monitoring visits must be addressed as soon as possible but in no case any later than 1 year after the identification of noncompliance. The rulemaking also clarifies intake procedure requirements, such as processing deadlines; intake activities; eligibility determination; and individualized family service plan development, implementation and updating. It also revises guidelines for transitioning a child from IDEA Part C services (early

intervention for infants and toddlers) to IDEA Part B services (school-age children). DHS revised the billing and enrollment requirements for individuals holding an EI Specialist Developmental Therapist credential on 7/1/13. The rulemaking also addresses case closure guidelines, service provider requirements, payor of last resort and family fee/insurance provisions, requests for due process hearing requirements, mediation, confidentiality and privacy provisions, and State complaint procedure requirements.

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

SCHOOL ADMINISTRATORS

The STATE BOARD OF EDUCATION adopted amendments to "Public Schools Evaluation, Recognition and Supervision" (23 Ill Adm Code 1; 38 Ill Reg 1) effective 5/6/14 reflecting the transition from teacher and administrator certification to educator licensure, clarifying the qualifications districts must use in assigning staff to administrative positions, reflecting new requirements for the elementary education and middle grades endorsements, and clarifying the administrative posts available to a teacher leader endorsement holder.

EDUCATOR LICENSURE

SBE also adopted numerous amendments to "Educator Licensure" (23 Ill Adm Code 25; 38 Ill Reg. 61), effective 5/6/14, that include the following: establishing requirements for part-time provisional career/technical educator endorsement; allowing certain endorsement holders with qualifications exceeding those for paraprofessional to serve as paraprofessionals without a separate application process; clarifying basic skills test requirements for substitute teachers; removing the 5-attempt limit on basic skills test completion; clarifying the minimum writing scores required to meet the basic skills test's writing requirement; and allowing student teachers to be

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Proposed Regulations

that ride or attraction, or a fine (for which DOL will accept electronic payment). The rulemaking adds hearing procedures for denied, suspended or revoked permits or stop orders as required by PA 98-541 and clarifies when the administrative hearing fee is assessed. Regarding fees charged for expedited site inspections and permits, DOL clarifies that these fees are a surcharge paid to cover the costs of expediting the inspection and permitting process. The fee is \$250 for an inspection performed during normal inspection hours and \$500 for an inspection performed outside normal work hours. Employers of carnival workers must check the National Sex Offender Public Website for all applicants age 17 or older at the time of employment, and again annually for seasonal workers who are rehired (an annual check is not necessary for workers who are continuously employed); they must also perform random drug tests. No registered sex offender or anyone convicted of an offense in Article 9 (homicide) or Article 11 (sex offenses) of the Criminal Codes of 1961 or 2012 may be employed by a carnival or amusement operator. Attendants or assistants may not use cell phones or other handheld mobile devices while working, except in conjunction with the operation of the ride or amusement. Entrances and ride-specific requirements (e.g., minimum age or height) must be clearly marked. Daily maintenance logs must also be kept and made available for DOL inspection. The rulemaking also adds new requirements for haunted houses that include emergency planning, designation of exits, fire protection, electrical requirements, and the use of decorative materials, and repeals minimum width requirements for go-kart tracks. Carnival and amusement owners and operators and ride and amusement manufacturers are affected by this rulemaking.

Questions/requests for copies/comments through 7/7/14: Jim Preckwinkle, DOL, 900 S. Spring St., Springfield, IL 62704, 217/558-1270.

☞ DCFS RECORDS

The DEPARTMENT OF CHILDREN AND FAMILY SERVICES proposed amendments to the Part titled "Confidentiality of Personal Information of Persons Served by the Department of Children and Family Services" (89 Ill Adm Code 431; 38 Ill Reg 10700) addressing confidentiality and disclosure of Department records and of mental health information. The rulemaking implements PA 96-1164, which requires DCFS to retain unfounded reports of all allegations for at least 12 months (currently, 60 days or no retention period). It also requires DCFS to redact records as required by any applicable law and revises the list of entities with whom child abuse or neglect investigation records can be shared without the subject's consent. Mandated reporters who submit a report will receive appropriate follow-up information, including information regarding DCFS action, in response. The rulemaking clarifies that printouts from the Law Enforcement Agencies Data System (LEADS) must not be shared outside the Department, but summaries can be provided to child welfare workers on a need-to-know basis (currently, this information cannot be shared with child welfare workers). Regarding mental health records, the rulemaking clarifies that they may be released to DCFS during a child abuse/neglect investigation, or to the DCFS Office of Inspector General when the patient is a caretaker facing investigation or an alleged victim who is not a DCFS ward. Other provisions define what information a mental health provider may release to the parent or guardian of a patient ages 12-17; prohibit re-disclosure of mental health information by someone to whom it was disclosed without the patient's consent; and stipulate that patients are entitled to review their own mental health records. Information regarding substance abuse dependency or treatment cannot be disclosed without the patient's consent, except for information collected by the federal Veterans' Administration or Armed Forces, law enforcement, or qualified service organizations. Child welfare workers,

mandated reporters of child abuse or neglect, and law enforcement agencies may be affected by this rulemaking.

Questions/requests for copies/comments through 7/7/14: Jeff Osowski, DCFS, 406 E. Monroe St., Station #65, Springfield IL 62701-1498, 217/524-1983; cfpolicy@idcfs.state.il.us.

☞ MOTOR FUEL TAX

The DEPARTMENT OF REVENUE proposed amendments to the Part titled "Motor Fuel Tax" (86 Ill Adm Code 500; 38 Ill Reg 10885) implementing a formula for calculating motor fuel tax on compressed natural gas (CNG). The rulemaking establishes that for purposes of determining the per-gallon motor fuel tax, 5.66 pounds of CNG (126.67 cubic feet at 60 degrees F. and one atmosphere pressure) equals one gallon. Businesses that sell CNG to consumers are affected by this rulemaking.

Questions/requests for copies/comments through 7/7/14: Jerilynn T. Gordon, DOR, 101 W. Jefferson St., Springfield IL 62794, 217/782-2844.

☞ FOOD SAFETY

The DEPARTMENT OF PUBLIC HEALTH proposed amendments to "The Illinois Food, Drug and Cosmetic Act" (77 Ill Adm Code 720; 38 Ill Reg 10815) that establish an application process and requirements for issuance of Certificates of Free Sale for Illinois items from food and dairy manufacturers, processors, packers or warehousemen. DPH also proposed amendments to "Food Service Sanitation Code" (77 Ill Adm Code 750; 38 Ill Reg 10822) implementing a provision of Public Act 98-566 requiring DPH to establish food handler training requirements for any food handler working in a retail food establishment. The rulemaking provides general training program requirements, course approval and content standards, and specific food handler training requirements. Finally, DPH proposed amend-

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New Regulations (cont.)

paid for teaching while they are fulfilling early childhood education student teaching requirements and also to receive credit for that student teaching. A change since 1st Notice clarifies provisions for certain substitute teachers in the Chicago Public Schools.

PRINCIPAL MENTORING

SBE adopted amendments to "Programs for the Preparation of Principals in Illinois" (23 Ill Adm Code 30; 38 Ill Reg 161) effective 5/6/14 that permit superintendents, assistant superintendents or directors of special education with at least 2 years of successful experience as a building principal to mentor principal candidates (currently: only the principal of the school at which the candidate is placed may mentor), allow principal candidates to pass the applicable content-area test and evaluation assessment prior to licensure (currently, before beginning the internship and before beginning the last semester of the internship, respectively); and raise the maximum number of candidates a mentor may supervise to 5, or 6 with special permission from the State Educator Preparation and Licensure Board

(SEPLB) (currently 2, with a 3rd with SEPLB permission).

Questions/requests for copies of the 3 SBE rulemakings: Kellee Sullivan, SBE, 100 N. First Street, E-310, Springfield, Illinois 62777-0001, 217/557-6763.

TOLL HIGHWAYS

The ILLINOIS STATE TOLL HIGHWAY AUTHORITY adopted amendments to "State Toll Highway Rules" (92 Ill Adm Code 2520; 37 Ill Reg 20630), effective 5/9/14, increasing speed limits to 70 miles per hour on portions of I-90 and I-88 outside of urban areas, in accordance with recent legislation raising speed limits on Illinois interstates. A companion emergency rule was effective 1/7/14 at 38 Ill Reg 2433.

Questions/requests for copies: Robert T. Lane, ISTHA, 2700 Ogden Ave., Downers Grove IL 60515, 630/241-6800, ext. 1530, fax 630/271-7559.

HEALTH INFORMATION

The ILLINOIS HEALTH INFORMATION EXCHANGE AUTHORITY (HIXA)

adopted a new Part titled "Protection of Privacy of Public Aid Applicants and Recipients" (77 Ill Adm Code 4000; 37 Ill Reg 7107), effective 5/6/14. The new Part establishes HIXA's responsibility to abide by provisions of the Public Aid Code protecting the privacy of public assistance recipients. Employees, corporate affiliates, or subcontractors of the Office of Health Information Technology (OHIT), which handles electronic health information received from the Department of Healthcare and Family Services (DHFS), may not disclose to outside parties any information about a public assistance record or a recipient, including whether or not an individual has been or continues to be eligible for assistance or what type of assistance the person received. This information also cannot be used for commercial, personal or political purposes.

Questions/requests for copies: Elizabeth LaRocca, Governor's Office of Health Innovation and Transformation, 100 W. Randolph, Suite 2-201, Chicago IL 60601, 312/793-0054, Elizabeth.LaRocca@illinois.gov.

Proposed Regulations (cont.)

ments to "Grade A Pasteurized Milk and Milk Products" (77 Ill Adm Code 775; 38 Ill Reg 10853) codifying provisions for the certified pasteurizer sealer program, including issuance of the certified pasteurizer sealer permit. Certified pasteurizer sealers holding a valid permit would be authorized to test and temporarily seal pasteurization equipment prior to the prior to DPH re-testing and re-sealing within its 10 day allotted time period. Retail food establishments, food processors, and dairies are among those affected by these rulemakings.

cal clean-ups and clarifications, including updating reference materials to reflect the most recent editions/versions. The rulemaking also clarifies tanning facility application requirements and operator criteria.

Questions/requests for copies/comments concerning the 4 DPH rulemakings above through 6/7/14: Susan Meister, DPH, 535 W. Jefferson St., 5th Flr., Spgflld IL, 62761, 217/782-2043, e-mail: dph.rules@illinois.gov.

RADIATION SAFETY

The ILLINOIS EMERGENCY MANAGEMENT AGENCY proposed amendments to the following Parts: "General Provisions for Radiation Protection" (32 Ill Adm Code 310; 38 Ill Reg

10730); "Licensing of Radioactive Material" (32 Ill Adm Code 330; 38 Ill Reg 10752); "Licensing Requirements for Source Material Milling Facilities" (32 Ill Adm Code 332; 38 Ill Reg 10760); and "Licensing and Radiation Safety Requirements for Irradiators" (32 Ill Adm Code 346; 38 Ill Reg 10768). All of these amendments update the definitions of "commencement of construction" and "construction" to meet US Nuclear Regulatory Commission compatibility requirements. The amendments have been reviewed and approved by NRC.

Requests for copies/comments through 7/7/14: Traci Burton, IEMA, 1035 Outer Park Drive, Spfld IL 62704, 217/524-0770, fax 217/524-3698.

TANNING FACILITIES

DPH proposed amendments to "Tanning Facilities Code" (77 Ill Adm Code 795; 38 Ill Reg 10885) making techni-

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 June 17, 2014 meeting.

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

"Pay Plan" (80 Ill Adm. Code 310) proposed 3/28/14 (38 Ill Reg. 6751)

DEPARTMENT OF INSURANCE

"Improper Claims Practice" (50 Ill. Adm. Code 919) proposed 2/21/14 (38 Ill. Reg. 4999)

DEPARTMENT OF REVENUE

"Income Tax" (86 Ill. Adm. Code 100) proposed 2/21/14 (38 Ill. Reg. 5148)

"Income Tax" (86 Ill. Adm. Code 100) proposed 2/28/14 (38 Ill. Reg. 5503)

SECRETARY OF STATE

"Uniform Commercial Code" (14 Ill. Adm. Code 180) proposed 3/28/14 (38 Ill. Reg. 7088)

Meeting Action

At its 5/20/14 meeting, the Joint Committee on Administrative Rules voted an Objection to an emergency rule. The Committee and the affected agencies also agreed to extend the Second Notice periods for the following rulemakings an additional 45 days: Pollution Control Board, "General Provisions" (35 Ill Adm Code 501; 37 Ill Reg 18974), "Permits" (35 Ill Adm Code 502; 37 Ill Reg 19005), and "Implementation Program (Repealer)" (35 Ill Adm Code 504; 37 Ill Reg 19074) (these rules concern concentrated animal feeding operations); Department of Human Services, "Partner Abuse Intervention (Repealer)" (89 Ill Adm Code 501; 37 Ill Reg 19437) and "Partner Abuse Intervention" (89 Ill Adm Code 501; 37 Ill Reg 19457); and Department of Financial and Professional Regulation, "Illinois Dental Practice Act" (68 Ill Adm Code 1220; 37 Ill Reg 13687).

DEPARTMENT OF STATE POLICE

JCAR objects to DSP's use of emergency rulemaking to adopt rules titled "Firearm Concealed Carry Act Procedures" (20 Ill Adm Code 1231; 38 Ill Reg 9703) because the Department adopted the emergency rule 4 months after the underlying Public Act was effective. That 4 months provided sufficient time for adoption of a proposed rule. Any situation requiring use of emergency rulemaking appears to be Department-created. In addition, JCAR objects to Section 1231.20(a)(1) and (2) and Section 1231.30(a) of the emergency rule because they contain deficiencies and technical errors that result in rule text that does not clearly convey the Department's policy. (The emergency rule implements certain requirements for out-of-State instructors who conduct Firearm Concealed Carry License training in Illinois.)