

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

☞ DOT PROCUREMENT

The CHIEF PROCUREMENT OFFICER FOR THE DEPARTMENT OF TRANSPORTATION (CPO) adopted amendments to "Chief Procurement Officer for Department of Transportation-Contract Procurement" (44 Ill Adm Code 6; 35 Ill Reg 16052), effective 12/21/11, implementing Public Act 97-228. The rulemaking details the Department's target market program for certified disadvantaged business enterprises (DBEs), which typically are minority-owned or female-owned businesses (MFBs). DOT is required to review any and all evidence of egregious race or gender discrimination related to the performance of all contracts awarded for transportation construction projects each fiscal year and must determine and define a compelling interest in remedying the identified discrimination by documenting evidence disclosed by its review (e.g., the utilization and availability of qualified DBEs and MFBs in DOT's geographic market areas and specific construction markets). DOT may issue findings indicating there is a compelling interest present to remedy discrimination against a specific group and that the only remedy for the dis-

crimination is a narrowly tailored target market remedial action. If the CPO concurs with the DOT findings, a public hearing will be held at which MFB contractors and other parties may appear. The CPO, in consultation with DOT, will make a written determination either to implement a narrowly tailored target remedial action or to discontinue further action. Target market remedial actions may include designation of specific contract work reserved solely for DBEs or MFBs, separate MFB participation goals, establishment of bid incentives for achievement of MFB or DBE goals, or advertisement of specific set-asides. No contract will be eligible for inclusion in any target market action unless there are at least 3 eligible businesses interested in the contract. Participation in the target market program is limited to MFBs certified as disadvantaged under Illinois law and federal certification requirements available from the CPO. Changes since 1st Notice include added definitions, cross references, citations, and examples for terms such as "egregious race or gender discrimination", "geographic market area", "construction industry markets", and "goal-oriented remedial programs". The word "egregious"

FRAUD HOT LINE

The OFFICE OF THE AUDITOR GENERAL (OAG) proposed amendments to "Code of Rules" (74 Ill Adm Code 440; 36 Ill Reg 3) implementing Public Act 97-261 by establishing a hotline for the public to report fraud in the executive branch of State government. Allegations of fraud may be reported by use of the telephone hotline, the OAG website, or by U.S. mail. The rulemaking defines "fraud" as an intentional misrepresentation or omission of fact upon which another person relies with resulting injury or damage. The rulemaking establishes criteria for OAG review and referral of allegations and allows persons making allegations to remain anonymous to the general public, although a person's identity may be disclosed if an allegation is referred to a law enforcement agency for follow-up. The OAG must also keep a summary record of fraud allegations for 2 years after the date they are received.

Questions/requests for copies/comments through 2/21/12: Rebecca Patton, OAG, 740 E. Ash St., Springfield IL 62703, 217/782-6698, Fax 217/785-8222, TTY 888/261-2887.

(cont'd next page)

(cont'd page 4)

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

has been deleted from language concerning cases in which DOT finds a compelling interest exists to remedy "egregious discrimination" against a specific group. Regarding cases in which specific contract work is reserved for DBEs or MFBs, the rule now states that the action will be taken by DOT in consultation with the CPO (instead of by the CPO in consultation with the DOT). This rulemaking may affect small businesses seeking DOT contracts.

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

MORTGAGES

The DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION adopted amendments to rules titled "Residential Mortgage License Act of 1987" (38 Ill Adm Code 1050; 35 Ill Reg 14574), effective 1/1/12, to raise fees, revise reporting and new regulatory provisions regarding mortgage loan originators, and update regulatory requirements in conformity with Public Act 96-112. (A mortgage loan originator is an individual who, for compensation, takes a residential mortgage application or offers or negotiates terms of a residential mortgage loan.) Fee increases concern bounced checks (\$50 in addition to any other fee); mortgage loan license application and renewal fees increased from \$125 to \$200 and \$100 to \$150, respectively; registration or license transfer fees increased from \$35 to \$50; and registration or license reactivation fees increased from \$100 to \$150. Leased facilities used to provide a full-service office must have a minimum lease term of 12 months and must cover the full period of a licensee's license. The rulemaking forbids licensees to charge a late fee for any payment that is received in full by 5:00 p.m. on the due date and requires them to produce documentation of the date any payment was received upon DFPR demand. Regarding licensure application and approval, the

rulemaking requires mortgage loan originators to complete applications for licensure within 90 days after initial filing through the Nationwide Mortgage Licensing System and Registry; otherwise the application will be considered withdrawn. Applications will also be deemed withdrawn if an applicant fails to respond to a DFPR request within 21 business days. The rulemaking sets timelines for mortgage loan originators to notify DFPR of certain adverse actions against them (e.g., license revocation, bankruptcy, felony conviction), allows DFPR to create an inactive licensure status, and requires licensees to file an annual report of purchasing activity. Since 1st Notice, the time limit for an applicant to respond to a DFPR request before the application is deemed withdrawn has been changed from 15 to 21 business days. Regarding adverse actions that mortgage loan originators must disclose to DFPR, misdemeanor convictions have been removed and adverse judgments of \$500 or more (originally, adverse judgments "involving monies, breach of trust or moral turpitude") have been added. An employing licensee now has 30 days (originally 10 days) to notify DFPR when a mortgage loan originator's employment has been terminated. Finally, language requiring a mortgage loan originator to notify DFPR of a lien, bankruptcy filing, tax delinquency, delinquency in child support or student loans, or change in identifying information has been changed to require submission of "accurate supplemental information" when any information in an initial application or renewal is no longer current. This rulemaking will affect mortgage loan originators and mortgage brokers.

PROFESSIONAL ENGINEERS

DFPR also adopted amendments to rules titled "The Professional Engineering Practice Act of 1989" (68 Ill Adm Code 1380; 35 Ill Reg 15512), effective 1/6/12, implementing Public Act 96-626, which was the reauthorization of the Act. The rulemaking clari-

fies that a foreign degree approved by the American Board for Engineering and Technology (ABET) will require course-by-course evaluation to determine if the degree meets DFPR standards, and a list of ABET accredited programs for which Illinois has withdrawn program approval is added. Criteria used for determining approval for graduate engineering programs is stricken, and the rulemaking specifies that acceptable structural engineering experience must be supervised by a legally practicing engineer and all experience verified and submitted on DFPR forms. Additional amendments provide specific experience requirements for graduates from an approved curriculum or from a related science or non-approved curriculum. New regulations are added allowing engineering students to take the Fundamentals of Engineering exam (Part I) prior to their graduation or completion of the experience requirement and then apply for engineer "intern" status. Additional new regulations explain how both engineer interns and non-interns proceed through their training, passage of the Part II engineering exam, and attainment of licensure as a professional engineer. Licensure restoration and licensure by endorsement requirements are updated for clarity, and the licensure restoration fee is increased. Licensure by endorsement applicants licensed prior to 1/1/96 may be required to submit proof of passage of the Test of English as a Foreign Language. The rulemaking also updates the appendix that details the chronology of significant changes to these professional engineering regulations since 1945. Engineering licensure applicants, licensed professional engineers, and engineering firms employing engineering interns and professional engineers may be impacted by this rulemaking.

Questions/requests for copies of the 2 DFPR rulemakings above: Craig Cellini, DFPR, 320W. Washington, 3rd Fl., Springfield IL 62786, 217/785-0813, Fax 217/557-4451.

New Regulations

CHILD LABOR

The DEPARTMENT OF LABOR adopted an amendment to rules titled "Child Labor Law" (56 Ill Adm Code 250; 35 Ill. Reg 10476), effective 12/22/11, implementing elements of Public Act 96-1247. The rulemaking revises the Department's non-resident employment certificate application requirements to conform to new provisions of the Public Act. For example, the applicant need not submit the application for a certificate in person (the requirement may be waived by the individual issuing the certificate), and an out-of-state minor may obtain an employment certificate from the applicable city or regional superintendent of schools or the State Superintendent of Education. Businesses that employ non-Illinois resident minors will be affected by this rulemaking.

Questions/requests for copies: Sara Meek, DOL, 900 S. Spring St., Springfield IL 62701, 217/558-1270, Fax 217/782-0596.

HORSE RACING

The ILLINOIS RACING BOARD adopted amendments to "Charitable Funds" (11 Ill Adm Code 208; 35 Ill Reg 15575) and "Inter-Track Wagering Facilities" (11 Ill Adm Code 435; 35 Ill Reg 15580), both effective 1/1/12. The Part 208 rulemaking requires the nonprofit organizations that desire to be awarded funds collected from racetrack owners in order to provide medical and family assistance, counseling, and similar services to persons who reside or work on the backstretch of Illinois racetracks to supply audited financial statements for the preceding year to the Board at the time they apply for the funds. The rulemaking also allows the nonprofits to request an extension of time for filing an audit report up to 30 days before the deadline. The Part 435 rulemaking eliminates the requirement that fire inspection reports must be submitted to IRB by each off-track betting facility by January 15th of each

year but retains the requirement to submit a July 15th report. It also requires updated health and safety reports to be submitted to IRB semi-annually.

IRB also adopted amendments for "Medication" (11 Ill Adm Code 603; 35 Ill Reg 15210), effective 1/1/12. A companion emergency rulemaking became effective 9/6/11. The rulemaking removes the anti-bacterial drug levamisole (tetramisole) from the list of allowable drugs that may be present in a horse that is participating in a race. The incorporation by reference of the Association of Racing Commissioners International document titled "Uniform Classification Guidelines for Foreign Substances" is also updated to the August 2011 version. (The update was proposed as July 2011 but was changed during the rulemaking process to the more current August version.)

Questions/requests for copies of the 3 IRB rulemakings above: Mickey Ezzo, IRB, 100 W. Randolph, Ste. 7-701, Chicago IL 60601, 312/814-5017.

STATE EMPLOYEES

The DEPARTMENT OF CENTRAL MANAGEMENT SERVICES adopted amendments to "Pay Plan" (80 Ill Adm Code 310; 35 Ill Reg 15345 and 15496), effective 12/22/11. The amendments change the Teamsters Local union number to 700 to reflect an Illinois Labor Relations Board decision, eliminate the step 1 pay rate for employees who possess a non-computer-science degree and work outside of Cook County as an information services intern, and lower the salary range for the librarian II job title. Job title codes and salary ranges for end-user computer services specialist I and II and end-user computer systems analyst job titles are added pursuant to memorandum of agreement between DCMS and the union. Additional changes bring rate tables up to date through Fiscal Year 2012 for highway maintainers (snow birds) and update rule text pursuant to previous preemptory

rules regarding the assignment of the senior public service administrative option 7 job title (law enforcement/correctional) to a collective bargaining unit. Further changes exclude the public service administrator (PSA) option 8L (law license) job title at the Property Tax Appeal Board from an American Federation of State, County and Municipal Employees collective bargaining unit to reflect that an Illinois Appellate Court directed the Illinois Labor Relations Board to revoke its "certification of representative" because DCMS asserted that the position is managerial/supervisory. A change since 1st Notice combines 2 separately proposed rulemakings into this one adopted text.

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.

DNA SAMPLING

The DEPARTMENT OF STATE POLICE adopted emergency amendments to "Sample Collection for Genetic Marker Indexing" (20 Ill Adm Code 1285; 36 Ill Reg 342), effective 1/1/12, for a maximum of 150 days to implement Public Act 97-383. An identical proposed rulemaking appears in this issue of the *Illinois Register* at 36 Ill Adm Code 1. (This Part concerns procedures and responsibilities for collecting body fluid samples from offenders and other individuals eligible for collection and databasing to enable genetic marker analysis and indexing for use in future criminal investigations and for other forensic purposes.) The amendments require that if a sample is determined to be ineligible for inclusion in the database but was matched in a search, the laboratory will proceed as if the sample had been eligible, the profile will be removed from the Combined DNA Index System, and the sample will be retained until an expungement order is received. Offenders convicted of home invasion, first degree murder, predatory criminal sexual assault of a

New Regulations

child, aggravated criminal sexual assault, or criminal sexual assault must submit samples of DNA. Also, offenders who transfer to Illinois under the Interstate Compact for Adult Offender Supervision or the Interstate Agreements on Sexually Dangerous Persons Act must submit samples. County sheriffs are

designated to collect samples from offenders required to provide a sample before conviction if the offender did not provide one previously. The agency designated to collect the DNA must also ensure that a complete set of fingerprints is on file with DSP. Finally, the amendments provide guidance concern-

ing court orders required for expungement of samples.

Questions/requests for copies/comments concerning the proposed rulemaking through 2/21/12: Suzanne L. Y. Bond, DSP, 801 S. 7th St., Ste. 1000-S, Springfield IL 62794-9461, 217/782-7658.

Proposed Regulations

HOSPITAL LICENSURE

The DEPARTMENT OF PUBLIC HEALTH proposed amendments for "Hospital Licensing Requirements" (77 Ill Adm Code 250; 35 Ill Reg 9). A new section allows a father or support person to attend a delivery by caesarean birth if authorized by the operating physician and the hospital's Obstetric and Neonatal Service Plan, which includes counseling and other preparation of the attendee. Application to DPH for approval of such measures will no longer be required. Further changes update the list of materials incorporated by reference (e.g., American Heart Assn. guidelines) and require telephone orders to be countersigned by the ordering practitioner or another practitioner responsible for the patient's care within 72 hours after the order's issuance and subsequently authorized by the same person. The rulemaking also strikes various specific obstetric standards and refers instead to the Regionalized Perinatal Health Care Code, Guidelines for Perinatal Care, and other source materials. Those affected by this rulemaking include hospitals and medical staff.

HEALTH REGISTRIES

DPH proposed amendments for "Illinois Health and Hazardous Substances Registry" (77 Ill Adm Code 840; 36 Ill Reg 84) affecting several different registries maintained by the Department. Under general provisions, several definitions are added or updated (e.g., elevated blood lead level is deemed elevated at a lower level), materials incorporated by reference are updated for the North American Assn. of Central Cancer Registries, and Freedom of Information Act (FOIA) exceptions are explained. Concerning adverse pregnancy outcome reporting, required data is listed in detail, and a new section explains the referral process for follow-up services and public health surveillance for listed conditions (e.g., cleft palate, spina bifida). Concerning the Occupational Disease Registry, blood lead level testing and reporting are made more stringent per federal standards. Various forms for the Registry are being repealed because an electronic reporting system will be used instead, according to DPH. Those affected by this rulemaking include hospitals, laboratories, physicians, medical researchers, and others who create, maintain, or use the registries noted above.

WATER WELLS & PUMPS

DPH also proposed amendments for "The Illinois Water Well and Pump Installation Contractor's License Code" (77 Ill Adm Code 915; 36 Ill Reg 139) to add definitions and referenced materials used in this Part and require more documentation of a licensure applicant's experience to be a water well or water well pump installation contractor. Further changes explain how license expirations, renewals, reinstatements, and restorations are processed. Minimum standards for continuing education sessions are specified, grounds for license revocations or suspensions are added, and a website listing licensees and their business addresses is established. Those affected by this rulemaking include water well and pump installation contractors and continuing education providers.

Questions/requests for copies/comments concerning the 3 DPH rulemakings above through 2/21/12: Susan Meister, DPH, 535 W. Jefferson, 5th Fl., Springfield IL 62761, 217/782-2043, e-mail: dph.rules@illinois.gov.

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 February 7, 2012 meeting.

SECRETARY OF STATE

"Uniform Commercial Code" (14 Ill Adm Code 180) proposed 11/14/11 (35 Ill Reg 18582)

"Issuance of Licenses" (92 Ill Adm Code 1030) proposed 11/14/11 (35 Ill Reg 18575)

NOTICE TO READER: Beginning with this issue 1 of 2012, *The Flinn Report* will be available only on the internet at www.ilga.gov/commission/jcar/ rather than through bulk mail. This change is necessitated by budget reductions throughout State government.

**The Flinn
Report**

**Illinois
Regulation**

Illinois General Assembly

Joint Committee on Administrative Rules
700 Stratton Building Springfield IL 62706

PRSRT STD
U.S. Postage
PAID
Springfield IL
Permit NO. 870

RETURN SERVICE REQUESTED

Joint Committee on Administrative Rules

Senator Pamela Althoff

Representative Gregory Harris

Senator Maggie Crotty

Representative Louis Lang

Senator Don Harmon

Representative Don Moffitt

Senator John O. Jones

Representative Rosemary Mulligan

Senator Dale A. Righter

Representative Angelo "Skip" Saviano

Senator Ira Silverstein

Representative Andre Thapedi

**Vicki Thomas
Executive Director**