

*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, also titled The Flinn Report in memory of founding JCAR member Rep. Monroe Flinn, is designed to inform and involve the public in changes taking place in agency administration.*

## Emergency Rulemaking

### ■ DRIVING PERMITS

The SECRETARY OF STATE adopted emergency amendments to Issuance of Licenses (92 IAC 1030; 46 Ill Reg 2156) effective 1/19/22, modifying an emergency rule adopted 12/17/21 at 46 Ill Reg 554 for the remainder of its 150-day term. An identical proposed rulemaking appears in this week's *Illinois Register* at 46 Ill Reg 2022. The emergency and proposed amendments extend through 3/31/22 the expiration dates of restricted driving permits (RDPs) that were scheduled to expire between 12/1/21 and 3/31/22. The amendments also remove a previous provision (implementing a federal waiver that was scheduled to expire on 2/28/22) allowing holders of a Commercial Learner's Permit (CLP) to take pre-trip, skills and road tests for a Commercial Driver's License (CDL) immediately instead of waiting 14 days after issuance of

### COVID-19 ACTIONS

Executive Orders of the Governor concerning the COVID-19 public health emergency can be accessed at <https://www2.illinois.gov/government/executive-orders>. Emergency rules adopted by State agencies will be summarized in The Flinn Report as they are published in the *Illinois Register*.

### Next JCAR Meeting

Tues., Feb. 15, 10:30 a.m.  
Room C-1, Stratton Bldg.,  
Springfield

the CLP. Persons who hold RDPs or CLPs are affected.

*Questions/requests for copies/comments on the proposed rulemaking through 3/21/22: Pamela Wright, SOS, 298 Howlett Building, Springfield IL 62756, [pwright@ilsos.gov](mailto:pwright@ilsos.gov)*

## Adopted Rules

### ■ MINIMUM WAGE

The DEPARTMENT OF LABOR adopted amendments to the Part titled Minimum Wage Law (56 IAC 210; 45 Ill Reg 6894) effective 1/21/22, addressing situations in which one individual is jointly employed by two or more closely associated employers. The rulemaking lists factors to be considered in determining whether a joint employment relationship exists among other entities that are associated with a person's main employer. If this is the case, the employee's work in a given period for all the related entities counts as one employment subject to the Minimum Wage Law and all joint employers become liable for any violations of that law. (If the entities are found to be completely independent of one another, the employee is considered to be working separate jobs and each

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**ADOPTED RULES:** Rules adopted by agencies this week. **EMERGENCY RULES:** Adopted for a temporary period not to exceed 150 days.  
**PROPOSED RULES:** Rules proposed by agencies this week, commencing a 45-day First Notice period during which public comments must be accepted.  
**PEREMPTORY RULES:** Rules adopted without prior public notice or JCAR review as authorized by 5 ILCS 100/5-50.  
■ Designates 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:** Submit mail, email or phone calls to the agency personnel listed below each summary.  
**RULE TEXT:** Available on the Secretary of State ([www.cyberdriveillinois.com](http://www.cyberdriveillinois.com)) and General Assembly ([www.ilga.gov](http://www.ilga.gov)) websites under *Illinois Register*. Second Notice text (original version with changes made by the agency during First Notice included) is available on the JCAR website.

# Adopted Rules

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employer may disregard work performed for the other employers.) Factors to be considered include: whether the employee's work benefits the alleged joint employer or is an integral part of the alleged joint employer's business; whether the alleged joint employer has direct or indirect control or influence over the employee's terms or conditions of employment (e.g., work schedule, work quality); whether the alleged joint employer owns or leases the premises where the work is performed or provides tools, equipment or materials used by the employee; and whether the alleged joint employer controls the main employer's operations via contractual obligations, ownership interest, joint management, or economic dependence. An inquiry into a joint employment relationship depends on all the facts of a particular case; no single factor should be regarded as determining, and not all factors need be present for a joint employment relationship to exist. Examples of what does and does not constitute a joint employment relationship are included (since 1<sup>st</sup> Notice, DOL has clarified some of these examples). Small businesses and non-profit entities with joint employment relationships may be affected by this rulemaking.

*Questions/requests for copies:*  
Jason Keller, DOL, 900 S. Spring St., Springfield IL 62704, 217/782-1706, [jason.keller@illinois.gov](mailto:jason.keller@illinois.gov)

## ■ PHARMACIES

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES adopted amendments to Medical Payment (89 IAC 140; 45 Ill Reg 11458) effective 1/21/22, establishing, for dates of service on or after 7/15/19, a professional dispensing fee of \$15.55 for Critical Access Pharmacies (CAPs), which must be brick and mortar pharmacies located in Illinois counties of fewer than 50,000 residents; whose owners have ownership interest in fewer than 10 pharmacies; that serve customers in person and conduct the majority of their business in person (rather than online or by mail); and are not owned by or located in a hospital. The rulemaking also raises professional dispensing fees for non-CAP pharmacies to \$8.85. (Formerly, HFS dispensing fees were \$5.50 for generic drugs and \$2.40 for brand name drugs.) The rulemaking also establishes the maximum reimbursement rate for prescription drugs as the lowest of: wholesale acquisition cost minus 4.4%, 10%, or 17.5% depending on the type of drug; the National Average Drug Acquisition Cost, if available; the federal upper limit; or the State upper limit. Finally, the rulemaking removes the 30-day limit on prescription quantities. Pharmacies are affected by this rulemaking.

*Questions/requests for copies:*  
Steffanie Garrett, HFS, 201 S. Grand Ave. East, 3<sup>rd</sup> Fl., Springfield IL 62763-0002, [HFS.Rules@illinois.gov](mailto:HFS.Rules@illinois.gov)

## ■ WIC VENDORS

The DEPARTMENT OF HUMAN SERVICES adopted amendments to WIC Vendor Management Code (77 IAC 672; 45 Ill Reg 9702) effective 1/21/22, updating DHS' rules for vendors participating in the Women, Infants and Children (WIC) supplemental food program. The rulemaking replaces references to paper food vouchers with Electronic Benefit Transfer (EBT) transactions, updates other outdated terms (e.g., replacing "Food Stamps" with "SNAP"), and clarifies how WIC item prices are determined. Prospective WIC vendors must submit an application and required documents, complete a site visit and a training seminar, demonstrate ability to process EBT transactions, and complete a vendor contract with DHS. The Department will maintain on its website a public list of WIC authorized foods that will be updated at least annually (formerly, a printed list was distributed to vendors and participants annually). DHS will also maintain a more detailed WIC Products List with specific bar codes and other information that vendors shall download to their point of sale terminals daily to ensure accuracy. Minimum required item quantities will be determined in the vendor contract based on the vendor type and location (formerly, specific quantities were established for vendors in Chicago and vendors elsewhere in Illinois). Grocery or pharmacy/grocery vendors must

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## Proposed Rulemakings

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### ■ INCOME TAX

The DEPARTMENT OF REVENUE proposed amendments to Income Tax (86 IAC 100; 46 Ill Reg 1997) implementing two Public Acts. The rulemaking establishes procedures for clawing back Economic Development for a Growing Economy (EDGE) credits authorized under PA 102-40 when a business that received the credit ceases operations at a location that is subject to an EDGE Agreement. It also implements PA 102-16, limiting to \$100,000 the amount of net losses that may be deducted in tax years ending on or after 12/31/21 and before 12/31/24. Businesses that participate in the EDGE tax credit program are affected.

*Questions/requests for copies/comments through 3/21/22: Brian Fliflet, DOR, 101 W. Jefferson St., MC 5-500, Springfield IL 62794, (217) 782-2844.*

### ■ STATE RETIREMENT

The STATE EMPLOYEES' RETIREMENT SYSTEM proposed amendments to The Administration and Operation of the State Employees' Retirement System of Illinois (80 IAC 1540; 46 Ill Reg 2024). The rulemaking clarifies that interest rebates associated with installment payments are only payable if the payment plan did not account for earned interest for contributions made during the payment plan. It also provides that if a nontaxable portion of a benefit is to be divided

in accordance with a Qualified Illinois Domestic Relations Order (generally used to divide pension benefits between divorced spouses), the full nontaxable portion shall be paid to the member. Finally, the rulemaking clarifies that compensation received in the final year of a final average compensation period that exceeds the actual final average compensation by 25% or more shall be excluded from the retirement benefit calculation.

*Questions/requests for copies/comments through 3/21/22: Jeff Houch, SERS, 2101 S. Veterans Parkway, PO Box 19255, Springfield IL 62794-9255, 217/524-8105, fax: 217/558-8503, [jeff.houch@srs.illinois.gov](mailto:jeff.houch@srs.illinois.gov)*

## Adopted Rules

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maintain minimum required quantities of food and infant formula at all times; pharmacy vendors must maintain only the minimum required infant formula quantities. Before a vendor can be temporarily or permanently disqualified from the WIC program, DHS must determine if the disqualification would result in inadequate participant access to WIC items; if DHS makes this determination it will impose a civil money penalty (fine) on the vendor instead of barring them from the program. The rulemaking also sets minimum standards for vendor EBT processing, recordkeeping and notifying DHS of changes in

location or ownership. Since 1<sup>st</sup> Notice, DHS has clarified how it determines inadequate participant access; when an administrative warning will be given instead of a penalty; and the incorporation date of federal regulations. DHS has also repealed several Sections that duplicated provisions generally included in individual vendor contracts. Grocery stores, pharmacies, and other retailers that participate in the WIC Program are affected.

### ■ SNAP BENEFITS

DHS also adopted an amendment to Supplemental Nutrition Assistance Program (SNAP) (89 IAC 121; 45 Ill Reg 6881) effective

1/21/22, implementing PA 101-110. The PA and this rulemaking implement the Restaurant Meals Program authorized by USDA Food and Nutrition Services (FNS). It allows SNAP customers who are elderly, homeless, and/or disabled and their spouses to use SNAP benefits at restaurants that accept the Illinois Link card as payment for meals that are already prepared. Restaurants that participate in or intend to participate in this program are affected by this rulemaking.

*Questions/requests for copies of the 2 DHS rulemakings: Tracie Drew, DHS, 100 S. Grand Avenue East, 3<sup>rd</sup> Floor, Springfield IL 62762, 217/785-9772.*

## 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 the February 15, 2022, JCAR meeting in Springfield. Other items not published in the *Register* or The Flinn Report may also be considered. Further comments concerning these rulemakings should be addressed to JCAR using the contact information on page 1.

### OFFICE OF THE ATTORNEY GENERAL

Attorney General's Procurement (44 IAC 1300; 45 Ill Reg 14744) proposed 11/29/21

### DEPT OF COMMERCE & ECONOMIC OPPORTUNITY

Low-Income Household Water Assistance Program (47 IAC 105; 45 Ill Reg 13803) proposed 11/5/21

### DEPT OF EMPLOYMENT SECURITY

Recovery of Benefits (56 IAC 2835; 45 Ill Reg 13085) proposed 11/5/21

### IL HOUSING DEVELOPMENT AUTHORITY

Rental Housing Support Program (47 IAC 380; 45 Ill Reg 2169) proposed 2/19/21

### DEPT OF HUMAN SERVICES

Temporary Assistance for Needy Families (89 IAC 112; 45 Ill Reg 11739) proposed 10/1/21

Supplemental Nutrition Assistance Program (SNAP) (89 IAC 121; 45 Ill Reg 11777) proposed 10/1/21

### DEPT OF HEALTHCARE & FAMILY SERVICES

Medical Assistance Programs (89 IAC 120; 45 Ill Reg 14080) proposed 11/12/21

Medical Assistance Programs (89 IAC 120; 45 Ill Reg 14303) proposed 11/19/21

Medical Payment (89 IAC 140; 45 Ill Reg 13510) proposed 10/29/21

Hospital Services (89 IAC 148; 45 Ill Reg 13535) proposed 10/29/21

Child Support Services (89 IAC 160; 45 Ill Reg 13549) proposed 10/29/21

### STATE BOARD OF EDUCATION

Public Schools Evaluation, Recognition and Supervision (23 IAC 1; 45 Ill Reg 12250) proposed 10/8/21

## Joint Committee on Administrative Rules

**Senator Bill Cunningham, *co-chair***  
**Senator John F. Curran**  
**Senator Donald DeWitte**  
**Senator Kimberly Lightford**  
**Senator Tony Muñoz**  
**Senator Sue Rezin**

**Representative Tom Demmer**  
**Representative Michael Halpin**  
**Representative Frances Ann Hurley**  
**Representative Steven Reick**  
**Representative Curtis Tarver, II**  
**Representative Keith Wheeler, *co-chair***

**Kim Schultz**  
**Executive Director**