

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 Rules

COVID-19 PRECAUTIONS

The DEPARTMENT OF PUBLIC HEALTH adopted an emergency amendment to Control of Communicable Diseases Code (77 IAC 690; 45 Ill Reg 987) effective 1/4/21 for a maximum of 150 days. This emergency rule replaces, and is nearly identical to, a previous emergency rule (44 Ill Reg 13807) effective 8/7/20 that expired 1/3/21.

NOTE: Sec. 5-45(c) of the Illinois Administrative Procedure Act exempts DPH public health-related measures from the general IAPA restriction prohibiting agencies from adopting the same emergency rule more than once in a 24-month period.

This emergency rule places the following requirements upon businesses, services, facilities, organizations, and schools to control the spread of COVID-19, but does not supersede any provisions of an Executive Order

COVID-19 ACTIONS

Numerous Executive Orders and emergency rules have been issued in response to the COVID-19 pandemic. Executive Orders of the Governor concerning this pandemic 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*.

or the authority of local entities to enforce local rules, orders or ordinances.

Face Coverings

— Any individual over age 2 who is medically able to tolerate a mask or cloth face covering shall be required to cover his or her nose and mouth with a mask or

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Adopted Rules

INTERNET SALES TAXES

The DEPARTMENT OF REVENUE adopted a new Part titled Leveling the Playing Field for Illinois Retail Act (86 IAC 131; 44 Ill Reg 14420) effective 12/31/20, implementing Public Acts 101-31 and 101-604, which impose State and local sales taxes on online retailers located out of State and marketplace facilitators as well as Illinois-based retailers. The new Part consolidates and expands upon DOR rules implementing these PAs in 86 IAC 130 and 150. Effective 1/1/21, marketplace facilitators are required to pay State and local sales taxes on both their own sales and sales made on behalf of marketplace sellers. For sales made by a marketplace facilitator on behalf of another seller, applicable tax rates are based on the rate in effect at the location to which the items are

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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) and General Assembly (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.

Emergency Rules

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face covering when in a public place (either indoors or outdoors) and unable to maintain at least a 6-foot social distance from others. All mandates to wear masks or face coverings apply only in situations where social distancing cannot be maintained.

— Any business, service, facility or organization (BSFO) open to the public or that has on-site employees shall require its employees, customers, and other individuals to wear a face covering over the nose and mouth when on the premises.

— BSFOs that offer food or beverages for in-person consumption may permit employees and customers to remove face coverings while eating or drinking, but must require face coverings at all other times.

— BSFOs that take “reasonable efforts” to require patrons and employees to wear face coverings shall be deemed in compliance with these rules. For retail businesses, reasonable efforts include, but are not limited to: posting signage stating that face coverings are required; providing masks/face coverings to customers; giving verbal or written warnings to customers to wear face coverings while on the premises; requesting that customers leave if not wearing a face covering; or making accommodations for customers unable to medically tolerate face coverings.

— All K-12 schools (public and nonpublic), higher education institutions, vocational programs,

and day care programs (both DCFS licensed and license-exempt) shall require students, employees, and other individuals to wear a face covering when on the premises. Schools and day cares may permit face coverings to be removed while eating and drinking, while outdoors and maintaining social distance, and while playing a musical instrument if necessary. Staff may use a face shield when necessary to allow facial visualization during instruction and communication.

Gatherings

Gatherings of more than 50 people, or more than 50% of maximum occupancy in an indoor space with a maximum occupancy of 100 or fewer people as determined by a local authority, are prohibited unless exempted by law or Executive Order. Public and nonpublic K-12 schools must limit the number of people in one indoor space to 50 or fewer.

Enforcement

Enforcing entities include local boards of health, health authorities and officers, police officers, sheriffs, and other officers/employees of the State or any locality, including officers/employees of DPH and certified local health departments. Only BSFOs, *not individuals*, are responsible for compliance. No individual shall be held responsible for compliance or penalized for noncompliance even if that individual is an owner, officer, principal or employee of a BSFO.

Enforcement actions shall be taken as follows:

— First, a BSFO shall be given a written notice by the enforcing entity and a reasonable opportunity to take prompt action to comply. “Reasonable opportunity” will be determined by the enforcing entity based on various factors, including the nature of the activity taking place and whether it is indoors or outdoors; the size of the building or facility and crowd occupying that area; the degree of public health risk; and the number of individuals at risk of exposure. “Prompt action” may include but is not limited to distributing face coverings to customers and employees, or reducing the number of persons on-site by limiting entry until occupancy is below the 50-person/50% limit. The enforcing entity may remain on the premises and observe until compliance is achieved, or return at a later time to verify that compliance was achieved.

— If the enforcing entity concludes that the BSFO did not comply within a reasonable time after receiving written notice, it may issue a written order to disperse all or some of the persons on the premises until compliance is achieved.

— If the BSFO refuses to comply with the order to disperse, that BSFO will be subject to penalties set in Section 8.1 of the Department of Public Health Act (which makes refusal to obey a DPH rule or order a Class A misdemeanor for which up to one

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delivered or where the purchaser takes possession of the items (destination sourcing). For a facilitator's own marketplace sales, rates may be based either on destination sourcing or on the rate in effect at the Illinois location of the inventory from which the sale was made or where selling activities occurred (origin sourcing). The Part explains and offers examples of how the sourcing rules apply to different types of retailers. Remote retailers and marketplace facilitators become subject to Illinois sales tax if, during any 12-month period, their cumulative gross receipts from sales to Illinois purchasers total \$100,000 or more or they enter into 200 or more separate sales transactions with Illinois customers. Retailers and facilitators must determine on a quarterly basis whether they have met either threshold in the previous 12 months; if they have, they must begin remitting sales tax and filing returns regularly. Additionally, the new Part establishes requirements for certified service providers (CSP) and certified automated systems (CAS) used by remote retailers. Since 1st Notice, DOR has added various clarifications of how to report and pay taxes and examples of transactions that are subject to these taxes, including taxes incurred by auctioneers who are marketplace facilitators. Those affected by this rulemaking include out of State retailers making sales in Illinois, marketplace facilitators, and marketplace sellers.

Questions/requests for copies: Jerilynn Gorden, DOR, 101 W. Jefferson, Springfield IL 62794, 217/782-2844.

SCHOOLS

The STATE BOARD OF EDUCATION adopted an amendment to Public Schools Evaluation, Recognition and Supervision (23 IAC 1; 44 Ill Reg 10322) effective 1/4/21 aligning the Part with Public Act 100-1046. The rulemaking expands the Statewide survey of learning conditions to include teachers and students in grades 4 through 12 (formerly 6 through 12), requires that it be administered annually (formerly, the survey was required only every 2 years) and allows entities other than school districts (e.g., special education cooperatives, regional programs, lab schools, community-based early childhood centers) to participate in the survey if they choose. School districts must administer the surveys no sooner than 100 days after the start of the school year (formerly Jan. 1) and no later than March 31. By July 1 (formerly Sept. 1) each year, SBE must post on its website the survey that will be used for the upcoming school year and set the dates for its administration. Districts that wish to use approved alternate surveys must request SBE permission no later than Sept. 15 (formerly Aug. 1); districts approved to use an alternate survey have until May 31 to submit survey data.

TEACHER PREPARATION

SBE also adopted amendments to Educator Licensure (23 IAC 25; 44 Ill Reg 12106) implementing Public Act 101-643. This rulemaking replaces emergency rules that expired 9/23/20 and provides that, during a public health emergency declared by the Governor, candidates for educator licensure who are enrolled in an educator preparation course at that time of the emergency are not required to complete the teacher performance assessment; are not required to maintain a grade average of C minus or higher; can begin student teaching or another alternative educator preparation program before passing the required content area test; and can complete student teaching, internships, practicum hours and other supervised experience remotely. Since 1st Notice, SBE has added a provision that if the Governor rescinds the disaster declaration or allows it to expire, the provisions of this rulemaking will remain in effect through the end of either the then-current calendar year on 12/31 or the end of the then-current fiscal year on 6/30, whichever is later.

PRESCHOOLS

SBE adopted amendments to the Part titled Early Childhood Block Grant (23 IAC 235; 44 Ill Reg 12141) effective 1/4/21, replacing emergency amendments that expired 8/23/20. During a public health emergency, this rulemaking

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Emergency Rules

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year imprisonment and up to \$2,500 in fines may be imposed). However, no individual may be subject to these penalties. A BSFO is also subject to these penalties if it engages in repeated or continued violations after receiving 2 or more written notices of noncompliance or one or more written orders to disperse.

— When determining whether a BSFO has failed to comply with these rules, enforcing entities shall consider all reasonable compliance efforts taken by the BSFO.

Schools & Day Care

Enforcing entities may also give written notices of noncompliance, and reasonable opportunity to remedy the situation, to any school or day care that does not comply with these rules. This notice shall also be given to the certified local health department, board of health or health authority, and to the local school district (K-12 public schools), the Illinois Community College Board, the Board of Higher Education, or to the parent institution with which a nonpublic school, college or university is affiliated, as applicable. Upon receipt of this notice, the school or day care must notify parents in writing that a notice of noncompliance has been issued and must disclose to parents its plan to comply. The certified local health department, board of health or health authority is authorized to take action to enforce school/day care compliance; DPH may take

this action if the local health authority fails to do so.

Case Investigations

DPH and local health authorities may investigate confirmed cases, suspect cases or carriers of COVID-19 in a public or private place in order to verify existence of the disease, locate and evaluate contacts of cases, identify those at risk of infection, and determine necessary control measures. These investigations may include entering a place of employment to examine conditions that are “relevant, pertinent and necessary” to the investigation. When 2 or more suspected COVID-19 cases occur in any BSFO, institution, school or day care, the owner or person in charge of the establishment shall cooperate with public health authorities in the investigation.

Closures

DPH or a certified local health department may order the closure of a BSFO, school or day care when an outbreak (2 or more cases) of COVID-19 occurs. An outbreak among school or day care students or staff may constitute an emergency that warrants shifting from in-person to remote instruction.

Those affected by this emergency rule include businesses, services, facilities, organizations, public and private schools, day cares, local health departments and local law enforcement.

Questions/requests for copies: Elizabeth Paton, DPH, 535 W. Jefferson St, 5th Fl., Springfield IL 62761, 217/782-2043, dph.rules@illinois.gov

■ CHILD CARE

The DEPARTMENT OF HUMAN SERVICES adopted an emergency amendment to Child Care (89 IAC 50; 45 Ill Reg 980) effective 1/1/21 for a maximum of 150 days. A companion proposed amendment appears in this week’s *Illinois Register* at 45 Ill Reg 860. The emergency rule reduces parent co-payment fees for the Child Care Assistance Program (CCAP) to \$1.25 per month through 2/28/21; co-payments based on income will resume effective 3/1/21. Both the emergency and proposed rulemakings provide that DHS may reduce CCAP co-payments in rule for limited periods of time whenever an “unforeseen, extraordinary event” occurs that prompts a federal or State disaster declaration. These events may include, but are not limited to, natural disasters (e.g., tornadoes, floods, blizzards) or public health-related emergencies. If the event affects only a specific geographic area, the reduced co-payments will apply only to the affected area. Child care providers and enrolled families are affected by these rulemakings.

Questions/requests for copies/comments on the proposed rulemaking through 3/1/21: Tracie Drew, DHS, 100 S. Grand Ave. East, 3rd Fl., Springfield IL 62762, 217/785-9772.

Adopted Rules

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allows programs currently funded by the Early Childhood Block Grant that are serving children of essential workers to use any excess funds to provide at-home materials for children and to purchase supplies and equipment. Block grant funding may also be used to pay existing full-time and part-time staff and to increase working hours of part-time staff. Programs must comply with the day care center requirements of the Department of Children and Family Services (89 IAC 407).

Questions/requests for copies of the 3 SBE rulemakings: Azita Kakvand, SBE, 100 N. First St., Springfield IL 62777-0001, 217/782-6510, rules@isbe.net

CAMPING

The DEPARTMENT OF NATURAL RESOURCES adopted an amendment to Camping on Department of Natural Resources Properties (17 IAC 130; 44 Ill Reg 14088) effective 12/30/20, updating provisions for Rent-A-Camp tent camping at designated State parks and recreational areas. If resources and funding allow, DNR or its concessionaires will make Rent-A-Camp tents available for use at primitive camping sites, consisting of (at a minimum) an already erected tent on a platform and one sleeping mattress, for a basic fee of \$6 per night, plus the per-night fee charged by the concessionaire for access to amenities and for set-up costs.

(Formerly, Rent-A-Camp tents came with either 4 or 8 sleeping cots and cost \$8 or \$12 per night plus concession fees.) DNR states that this rulemaking is intended to facilitate tent camping by persons who do not possess their own camping equipment. Since 1st Notice, DNR has clarified that additional sleeping mattresses and other amenities may be obtained from the concessionaire, at his or her discretion, for an additional fee for each amenity.

Questions/requests for copies/ comments through 10/19/20: George Sisk, DNR, One Natural Resources Way, Springfield IL 62702, 217/785-8693.

JCAR Meeting Action

At its 1/12/21 meeting, the Joint Committee on Administrative Rules took the following actions:

OBJECTION

JCAR objected to the Illinois Educational Labor Relations Board rulemaking titled General Procedures (80 IAC 1100; 44 Ill Reg 17536) because it allows service of documents by email when that is not one of the three acceptable methods for service specified in Section 5(h) of the Illinois Educational Labor Relations Act.

EXTENSION

JCAR and the Department of Financial and Professional Regulation agreed to extend the Second Notice period for the rulemaking titled Illinois Professional Land Surveyor Act of 1989 (68 IAC 1270; 44 Ill Reg 16065) an additional 45 days. This rulemaking will be considered again at the 2/16/21 JCAR meeting.

OTHER

With regard to the Department of Public Health emergency rule titled Control of Communicable Diseases Code (77 IAC 690; 45 Ill Reg 987), effective 1/4/21, concerning face covering and social distancing requirements for businesses, facilities, schools and other entities, a motion to object to and suspend this rule failed on a 6-5 vote (8 affirmative votes are required to impose a suspension). The rule appears in this week's *Illinois Register* and is summarized in this issue of The Flinn Report under Emergency Rules.

MEMBERSHIP & OTHER CHANGES

This meeting was the last for Sen. Paul Schimpf, R-Waterloo, whose General Assembly term expired 1/13/21. It was also the last meeting for Executive Director Vicki Thomas, who is retiring effective 1/29/21. More information regarding JCAR's leadership change will appear in next week's issue.

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 listed in next week's *Illinois Register* and considered at the February 16, 2021 JCAR meeting. 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.

DEPT OF FINANCIAL & PROFESSIONAL REGULATION

Illinois Certified Shorthand Reporters Act of 1984 (68 IAC 1200; 44 III Reg 17839) proposed 11/13/20

Electrologist Licensing Act (68 IAC 1246; 44 III Reg 17853) proposed 11/13/20

Funeral Directors and Embalmers Licensing Code (68 IAC 1250; 44 III Reg 17859) proposed 11/13/20

Nursing Home Administrators Licensing and Disciplinary Act (68 IAC 1310; 44 III Reg 17868) proposed 11/13/20

Optometric Practice Act of 1987 (68 IAC 1320; 44 III Reg 18543) proposed 11/20/20

Illinois Physical Therapy Act (68 IAC 1340; 44 III Reg 17879) proposed 11/13/20

Real Estate License Act of 2000 (68 IAC 1450; 44 III Reg 16584) proposed 10/16/20

Illinois Roofing Industry Licensing Act (68 IAC 1460; 44 III Reg 18546) proposed 11/20/20

IL GAMING BOARD

Video Gaming (General) (11 IAC 1800; 44 III Reg 17542) proposed 11/6/20

STATE BOARD OF EDUCATION

Standards for All Illinois Teachers (23 IAC 24; 44 III Reg 14574) proposed 9/11/20

Special Education (23 IAC 226; 44 III Reg 14630) proposed 9/11/20

DEPT OF TRANSPORTATION

Port Facilities Capital Investment Grant Program (92 IAC 600; 44 III Reg 16475) proposed 10/16/20

Joint Committee on Administrative Rules

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

Representative Tom Demmer
Representative Michael Halpin
Representative Frances Ann Hurley
Representative Steven Reick
Representative André Thapedi
Representative Keith Wheeler, *co-chair*

Vicki Thomas
Executive Director