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Joint Committee on Administrative Rules
Illinois General Assembly

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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

■ CANNABIS DISPENSARIES

The DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION adopted a new Part by emergency rulemaking titled Cannabis Regulation and Tax Act (68 IAC 1291; 43 Ill Reg 14934) effective 12/9/19 for a maximum of 150 days. The rule implements provisions of Public Act 101-27 with regard to multiple applicants for available cannabis dispensary licenses in the same region receiving the same application score. A tied applicant organization will be eliminated from consideration if it shares principal officers with other tied applicants. If two or more eligible applicants remain, DFPR will hold a random drawing to determine which applicants will have first, second, etc. right to the available licenses. Unsuccessful applicants who contest the Department's decision are not entitled to an

administrative hearing but may seek judicial review of the denial. Applicants for cannabis dispensary licenses may be affected by this emergency rule.

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

■ TIME OUT & RESTRAINT

The STATE BOARD OF EDUCATION adopted an emergency amendment to Public Schools Evaluation, Recognition and Supervision (23 IAC 1; 43 Ill Reg 14941), effective 12/4/19 for a maximum of 150 days, amending a previous emergency rule adopted at 43 Ill Reg 14305, effective 11/20/19. This emergency amendment clarifies when use of prone (lying face

Proposed Rulemakings

■ TIME OUT & RESTRAINT

The STATE BOARD OF EDUCATION proposed amendments to Public Schools Evaluation, Recognition and Supervision (23 IAC 1; 43 Ill Reg 14611) concerning the use of time out and physical restraint as safety measures for special needs students. Companion emergency amendments were adopted effective 11/20/19 (43 Ill Reg 14305) and 12/4/19 (43 Ill Reg 14941). (NOTE: The latter emergency amendment is summarized under Emergency Rules in this issue.) The proposed rulemaking prohibits isolated time out in which a student is involuntarily confined alone in a room or other clearly defined area from which the student is physically prevented from leaving. It also prohibits any use of time out or physical restraint as a form or

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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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down) or supine (lying face up) physical restraint upon students is permitted. (The previous emergency rule, which appeared in the 12/6/19 *Illinois Register* and Flinn Report, prohibited all forms of prone or supine physical restraint.) Prone/supine restraint is allowed only if all the following criteria are met:

- an emergency situation requires immediate intervention to prevent the student from self-harm or serious physical harm to others, and less restrictive interventions have proven ineffective;
- the student has no known medical or psychological

limitations that contraindicate such restraint;
—the student's ability to breathe or communicate normally is not impaired;
—restraints are applied only by personnel with appropriate training;
—a school staff person trained to identify signs of distress observes (but does not participate in restraining) the student during the incident;
—restraint ends immediately when the threat of imminent serious physical harm ends, and does not last longer than 30 minutes. If the emergency has not resolved in 30 minutes or another emergency incident arises on the same school

day, continuation or repeated use of the restraint must be authorized by a school administrator in consultation with a psychologist, social worker, nurse, or behavioral specialist.

Companion proposed amendments in this issue of the *Illinois Register* will allow only supine physical restraint under the conditions listed above. School districts and private educational entities that serve special needs students are affected by this emergency rule.

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

Proposed Rulemakings

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discipline or punishment, as a routine safety measure, for the convenience of staff, as retaliation, as a substitute for more appropriate interventions, or merely to prevent property damage when there is no imminent danger of physical harm to the student or others. Provisions that formerly allowed isolated time out under certain conditions are repealed.

Training

Adults who supervise students in time out or who apply physical restraint must receive at least 8 hours of annual training in de-escalation, restorative practices, behavior management practices, trauma-informed practices, and how to identify signs of distress

during time out or physical restraint. (Current rule requires training within the previous 2 years only for the use of physical restraint.) The training must address less restrictive or intrusive alternatives to time out/physical restraint, and how to safely use time out/physical restraint when alternative strategies have been tried and found ineffective. No individual may use time out or apply physical restraint until he/she has completed the required training and received a certificate of completion.

Time Out

“Time out” is defined, for purposes of this rulemaking, as a behavior management technique for the purpose of calming or de-escalation, involving the involuntary

monitored separation of a student from classmates with a trained adult for part of the school day, usually for a brief time, in a non-locked setting. Time out does not include: student-initiated or requested breaks, sensory breaks (for students with autism or sensory processing disorders), in-school suspensions or detentions, or other appropriate disciplinary measures such as a brief removal to a hallway or similar environment. Time out enclosures must meet all health/life safety requirements for school facilities. If a time-out enclosure has a door, it is not to be locked or physically blocked by furniture or other objects at any time during the time out. When a student is in time out, a trained adult must remain in the same room at

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Proposed Rulemakings

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all times. The student must also have reasonable access to food, medication, and toilet facilities and must not have any clothing removed unless there is a risk of self-injury. At least every 15 minutes a trained adult must assess whether the student has ceased the specific behavior for which the time out was imposed.

Physical Restraint

If physical restraint is used, it must not interfere with the student's ability to breathe or speak normally and it must end immediately when the threat of imminent serious physical harm ends, the student indicates that he/she cannot breathe, or when the restraint is observed to be causing the student severe distress or serious physical harm. Students who communicate by sign language or other non-verbal means must be permitted to have their hands free for brief periods unless the supervising adult determines that this could result in harm to the student or others. Staff who apply physical restraints must periodically halt the restraint to evaluate whether imminent danger of serious physical harm still exists; if it does, staff may continue to use the restraint and it will not be considered a separate instance of physical restraint.

Supine Restraint

Supine (lying face up) restraint is permitted only if all the conditions listed below are met, while prone

(lying face down) restraint is entirely prohibited:

- an emergency situation requires immediate intervention to prevent the student from self-harm or serious physical harm to others, and less restrictive interventions have proven ineffective;
- the student has no known medical or psychological limitations that contraindicate such restraint;
- the student's ability to breathe or communicate normally is not impaired;
- restraints are applied only by personnel that have completed required annual training;
- a school staff person trained to identify signs of distress observes (but does not participate in restraining) the student during the incident;
- restraint ends immediately when the threat of imminent serious physical harm ends, and does not last longer than 30 minutes. If the emergency has not resolved in 30 minutes or another emergency incident arises on the same school day, continuation or repeated use of the restraint must be authorized by a school administrator in consultation with a psychologist, social worker, nurse, or behavioral specialist.

If supine physical restraint is used on a student 2 or more times within a 30-school-day period, school personnel (who must include a psychologist, nurse, social worker or behavioral specialist) must review the effectiveness of the procedures used. This review must address consideration of additional or revised behavioral interventions, any medical/

psychological limitations that may contraindicate use of restraint, and consider modification of the student's individualized education plan or behavior intervention plan, if applicable.

Mechanical/Chemical Restraint

Mechanical restraint (use of any device or equipment to limit a student's movement or hold him/her immobile) and chemical restraint (use of medication to control behavior or limit freedom of movement), are entirely prohibited as behavioral interventions. Mechanical restraint does not include devices or equipment intended to treat a student's medical needs or protect the student from injury due to lack of coordination or seizures; position a student in a manner prescribed in his/her individualized education plan (e.g., to keep a student sitting upright in a wheelchair); provide an aid, service or accommodation; or promote student safety in transport vehicles. Chemical restraint does not include medication legally prescribed and administered as part of a regular medical regimen to manage a student's behavioral or medical symptoms.

Documentation/Review

Schools must make a reasonable effort to notify parents or guardians of students subject to time out or physical restraint on the same day that these measures are applied, and must send written

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Adopted Rules

■ SUBSTITUTE TEACHERS

The STATE BOARD OF EDUCATION adopted amendments to the Part titled Educator Licensure (23 IAC 25; 43 Ill Reg 4378), effective 12/4/19, implementing recent Public Acts concerning licensure of short-term substitute teachers. The rulemaking implements PA 100-596, which created short-term substitute teaching licenses valid through 6/30/23, and clarifies the qualifications necessary to serve as a substitute teacher under other types of educator licenses, stipulations or endorsements. Short-term substitutes may be employed for no more than 5 consecutive days per licensed teacher; a substitute with a different license must be hired if a licensed teacher under contract to a school district is absent for 6 days or more. Individuals who teach on short-term licenses must complete the required training, but a district may also require substitute teachers who are working on other educator licenses to complete the same training. School districts that had substitute teacher training programs in place prior to the Public Act may use those programs to satisfy the training requirements. Additionally, the rulemaking implements PA 100-813, which gave SBE authority to authorize the use of recruiting firms by school districts to supplement their substitute teacher recruitment efforts. Other provisions of the rulemaking clarify that professional educator license applicants who hold a bachelor's degree and a valid, comparable teaching

certificate or license (current and not expired), endorsed in the specific content area for which Illinois licensure is being sought, from another state or country need not provide evidence of student teaching. Changes since 1st Notice remove a proposed requirement for certain special education endorsements of either 18 semester hours of coursework or proficiency testing (existing requirements for both testing and an unspecified amount of coursework across different subject areas have been retained) and clarify that payment of student teachers is generally allowed (previously, only in specific circumstances). School districts and teacher education/certification programs are affected by this rulemaking.

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

DRIVER'S LICENSES

The SECRETARY OF STATE adopted an amendment to Cancellation, Revocation or Suspension of Licenses or Permits (92 IAC 1040; 43 Ill Reg 6246), effective 12/6/19, updating statutory citations to the Cannabis Control Act for those cannabis-related offenses for which a driver's license or permit may be suspended or revoked.

*Questions/requests for copies:
Pamela Wright, SOS, 298 Howlett Bldg., Springfield IL 62756, pwright@ilsos.gov*

■ DOR HEARINGS

The DEPARTMENT OF REVENUE adopted amendments to Practice and Procedure for Hearings Before the Illinois Department of Revenue (86 IAC 200; 43 Ill Reg 7379), effective 1/1/20, updating various notices and hearing procedures. Notices, orders, and office dispositions may be served by e-mail if the involved parties agree to such service. A Director's decision or an administrative law judge's recommendation that is approved by the Director can be delivered by personal service or regular U.S. mail (currently, registered or certified U.S. mail) if the decision or recommendation is completely in the taxpayer's favor. Decisions or recommendations not completely favorable to the taxpayer must still be delivered in person or by registered or certified mail. Copies of decisions/recommendations may be sent by e-mail but will not be considered official for administrative review purposes. Other amendments address late discretionary hearings (held after a final assessment or Notice of Tax Liability has been issued) concerning amounts large enough to qualify for review by the Illinois Independent Tax Tribunal; clarify that property tax exemption decisions for hearings that are open to the public will not be redacted to remove taxpayer identifying information when the decisions are posted on DOR's website (since this information is

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Proposed Rulemakings

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documentation to the parent/guardian within 24 hours. Existing provisions allowing parents/guardians to waive the written notification are being repealed. Documentation of every use of time out or physical restraint must be submitted to the State Superintendent within 2 school days (48 hours under the current emergency rules) in a form and manner prescribed by the State Superintendent. This documentation must include, but is not limited

to, the information currently prescribed in rule (e.g., description of the behavior that prompted the time out, a log of the student's behavior during the time out, list of school personnel involved) as well as a description of any planned approach to future incidents, including any de-escalation methods that could be used as an alternative to time out or physical restraint. The State Superintendent reserves the authority to require districts to submit this information for previous school years. Any use of time out or physical restraint

permitted by a school board's policy must specify the circumstances under which these measures will be applied; include written procedures to be followed by staff; designate a school official who will be informed of all incidents and maintain the required documentation; and the process that will be used to evaluate such incidents. If a student experiences 3 instances of non-therapeutic time out or physical restraint, school personnel must review the

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Adopted Rules

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already public record); and remove obsolete provisions for providing electronic documents via floppy disk. Small businesses involved in DOR administrative hearings may be affected by this rulemaking.

Questions/requests for copies:
Terry D. Charlton, DOR, 101 W. Jefferson St., Springfield IL 62794, 217/782-6995.

DFPR PUBLIC INFORMATION

The DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION adopted amendments to the Part titled Freedom of Information Act Requests for Public Records (2 IAC 1326; 43 Ill Reg 14647), effective 12/20/19, updating its procedures for handling requests for public records under the Freedom of Information Act

(FOIA). DFPR documents that can be disclosed under FOIA now include: orders of fines and notices of hearing from the Division of Financial Institutions; cease and desist letters; and public orders issued by the Division of Banking. Records that are exempt from disclosure now include: recreational cannabis license/registration applications (medical cannabis license applications are already exempt); vacated or sealed orders and disciplinary actions; withdrawn formal complaints; documents obtained in the course of audits or investigations of financial institutions; and confidential supervisory information obtained by the Division of Banking.

Questions/requests for copies:
Craig Cellini, DFPR, 320 W. Washington St., 2nd Fl., Springfield IL 62786, 217/785-0813, fax 217/557-4451.

LETSB INFORMATION

The LAW ENFORCEMENT TRAINING AND STANDARDS BOARD adopted amendments to Public Information, Rulemaking and Organization (2 IAC 2100; 43 Ill Reg 14660) effective 12/3/19, updating its FOIA request procedures to conform to current statutes; clarifying that all rulemaking proposals will be approved by the Board before they are filed with the Secretary of State for First Notice publication; and updating the composition, contact information, and duties of the Board.

Questions/requests for copies:
Jennifer Woolridge, LETSB, 4500 S. Sixth St. Rd., Springfield IL 62704, 217/782-4540.

NO SECOND NOTICES THIS WEEK

Proposed Rulemakings

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effectiveness of the procedures used, prepare an individual behavior plan, and consider the student's potential need for alternative or special education, or if the student is already in special education, the need for a change in program. Written complaints alleging violations of these rules may be filed with the State Superintendent by any parent, individual, organization, or advocate within 1 year after the alleged violation occurs; the State Superintendent must issue a written response to each complaint. School districts and private educational entities that serve special needs students will be affected by this rulemaking.

SCHOOLS

SBE also proposed another amendment to Public Schools Evaluation, Recognition and Supervision (23 IAC 1; 43 Ill Reg 14596) and proposed a new Part titled State Seal of Biliteracy (23 IAC 680; 43 Ill Reg 14636) implementing Public Act 101-22, which allows nonpublic schools to participate in the State Seal of Biliteracy program. The program recognizes high school graduates who have attained a high level of proficiency in one or more languages in addition to English. Assessment criteria for earning the seal are contained in the new Part 680; the current State Seal of Biliteracy rules in Part 1 are being repealed because the new Part will apply to both public and nonpublic schools. Nonpublic schools

operated by non-profit organizations may be affected.

Questions/requests for copies/ comments on the 3 SBE rulemakings through 2/3/20: Azita Kakvand, SBE, 100 N. First St., Springfield IL 62777-0001, 217/782-6510, rules@isbe.net.

■ DOT PROCUREMENT

The CHIEF PROCUREMENT OFFICER FOR THE DEPARTMENT OF TRANSPORTATION proposed amendments to the Part titled Chief Procurement Officer for the Department of Transportation – Contract Procurement (44 IAC 6; 43 Ill Reg 14490) implementing recent changes to the Procurement Code. The rulemaking expands the jurisdiction of the CPO-DOT to include procurement of construction support services, defined as all equipment, supplies and services necessary to the operation of a construction agency's construction program, but not including construction-related services such as design, layout, inspection, etc. (Currently, the Part applies to construction and construction-related services.) Conditions for the use of sole source and sole economically feasible source purchasing, and the procedures for determining that such purchases can be made, are added. Definitions and provisions are added for piggyback contracts (cooperative purchasing in which the State accepts the pricing and terms of a contract entered into by another organization, agency or department; another state or its

agencies; or the federal government) and no-cost contracts (in which the vendor does not pay or make payments to the State, but charges another entity the State contracted rate for goods or services). A small purchase threshold of \$100,000 (below which competitive bidding is not required), adjusted annually for inflation, is established for construction purchases, individual purchases from any one source, and professional and artistic services contracted for a nonrenewable term of no more than 1 year. The notice period for execution of contracts is shortened from 30 to 14 days. Expenditures that exceed the contract price by more than \$100,000 (currently, \$30,000) require written approval or disapproval from DOT and contract change orders in excess of \$100,000 (currently \$30,000) must be published in the Procurement Bulletin. Procurement files also must be readily available for review or disclosure under the Freedom of Information Act, but must not include trade secrets or other competitively sensitive or proprietary information. Grounds for rejecting a bid during the procurement process now include failure to submit a Disadvantaged Business Enterprise utilization plan if the provisions of the procurement or project require such a plan. Other provisions of this rulemaking address requests for information (RFI), joint purchasing with other

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Proposed Rulemakings

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governmental entities, electronic systems for accepting and opening bids, goals for small business contracts, and financial disclosure requirements for multi-year contracts. Finally, provisions related to the defunct Target Market Program are repealed. Those affected by this rulemaking include small businesses seeking DOT contracts.

Questions/requests for copies/ comments through 2/3/20: Bill Grunloh, CPO-DOT, 2300 S. Dirksen Pkwy., Springfield IL 62764, 217/558-5434.

■ COMMUNITY CARE

The DEPARTMENT ON AGING proposed amendments to Community Care Program (89 IAC 240; 43 III Reg 14475) updating its maximum payment levels for person-centered plans of care. Maximum monthly payment rates are based on the CCP participant's Determination of Need (DON) score. For plans of care that include in-home care, effective 1/1/20, monthly payment rates will range from \$547 (currently, \$458) for participants with a DON score of 29 (the minimum required to qualify for CCP) up to \$5,200 (currently, \$4,354) for a DON score of 100. For plans of care that include adult day service, effective 12/1/19, maximum monthly payment rates range from \$1,120 (currently \$706) for a DON score of 29 to \$9,833 (currently \$6,202) for a DON score of 100. Agencies that provide CCP services are affected.

Questions/requests for copies/ comments through 2/3/20: Tracey Trigillo, DonA, One Natural Resources Way #100, Springfield IL 62702-1271, 217/785-3346, Tracey.Trigillo@illinois.gov

■ TANF & SNAP

The DEPARTMENT OF HUMAN SERVICES proposed amendments to Temporary Assistance for Needy Families (89 IAC 112; 43 III Reg 14540) and Supplemental Nutrition Assistance Program (SNAP) (89 IAC 121; 43 III Reg 14555) clarifying certain categories of non-U.S. citizens who may qualify for TANF or SNAP. The amendments include citations to provisions of the federal Immigration and Nationality Act affecting persons for whom deportation has been withheld indefinitely, as those provisions existed both before and on/after 9/30/96.

Questions/requests for copies/ comments on the 2 proposed DHS rulemakings through 2/3/20: Tracie Drew, DHS, 100 S. Grand Ave. East, 3rd Fl., Springfield IL 62702, 217/557-1544.

■ LIQUOR SALES

The ILLINOIS LIQUOR CONTROL COMMISSION proposed an amendment to the Part titled The Illinois Liquor Control Commission (11 IAC 100; 43 III Reg 14571) clarifying how manufacturers or distributors of alcoholic liquors may offer quantity discounting or cooperative purchasing agreements to retailers without

violating federal and State laws prohibiting them from offering items "of value" to retailers. Quantity discounting is permitted if its primary purpose is to increase product sales and merchandising to retailers; if it is applied as a price reduction at the time of sale, or as a rebate or credit following the sale; and if the sales incentives are temporary and offered to all similarly situated retailers. The rulemaking also lists criteria for cooperative purchasing agreements and prohibits any party to such an agreement from participating in more than one liquor-related cooperative purchasing agreement. Designated agents who place orders on behalf of participants in a cooperative purchasing agreement must not be compensated directly or indirectly merely for making purchases (though they may be compensated for actual costs incurred, or as a regular employee of one of the parties to the agreement) and cannot have any interest in a manufacturer or distributor. Failure to comply with these criteria will render an agreement void. Recordkeeping requirements for quantity discounts and cooperative purchasing agreements are also included. Those affected by this rulemaking include sellers, manufacturers and distributors of alcoholic liquors.

Questions/requests for copies/ comments through 2/3/20: Pamela Paziopoulos, LCC, 100 W. Randolph St., Suite 7-801, Chicago IL 60601, 312/814-1804.

JCAR Meeting Action

At its 12/17/19 meeting, the Joint Committee on Administrative Rules took the following actions:

WITHDRAWAL OF SUSPENSION

JCAR voted to withdraw the Suspension on portions of an Illinois Gaming Board emergency rule titled Video Gaming (General) (11 IAC 1800; 43 Ill Reg 9261) contingent upon, and effective with, IGB's adoption of the companion permanent rulemaking (11 IAC 1800; 43 Ill Reg 9209).

RECOMMENDATION

With respect to the Department of Insurance rulemaking titled Mistake in Benefit under Article 3 and Article 4 Pensions (50 IAC 4450; 43 Ill Reg 6242), JCAR recommends that the Department be more diligent in adhering to statutory mandates in a timely manner. PA 98-1117, effective 8/26/14, requires DOI's Public Pension Division to set the interest rate to be paid on an amount underpaid by downstate police and firefighter pension systems due to miscalculation. It has taken DOI 5 years to comply with statute.

EXTENSIONS

JCAR, with the concurrence of the respective agencies, agreed to extend Second Notice for the following rulemakings an additional 45 days. These rulemakings will be considered again at the January 14, 2020 meeting:

Department of Financial and Professional Regulation, Physician Assistant Practice Act of 1987 (68 IAC 1350; 43 Ill Reg 7335)

Department of Healthcare and Family Services, Medical Assistance Programs (89 IAC 120; 43 Ill Reg 7599)

Department of Natural Resources, Illinois Natural Areas Stewardship Grant Program (17 IAC 3051; 43 Ill Reg 8657)

Department of Public Health, Long-Term Care Assistants and Aides Training Programs Code (77 IAC 395; 43 Ill Reg 10275)

Joint Committee on Administrative Rules

Senator Don Harmon, *co-chair*

Representative Tom Demmer

Senator Kimberly Lightford

Representative Michael Halpin

Senator Tony Muñoz

Representative Frances Ann Hurley

Senator Sue Rezin

Representative Steven Reick

Senator Paul Schimpf

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Representative Keith Wheeler, *co-chair*

**Vicki Thomas
Executive Director**