

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

☞ CEMETERY OVERSIGHT

The DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION adopted a new Part titled "Cemetery Oversight Act" (68 Ill Adm Code 1249; 35 Ill Reg 11050), effective 7/1/12, implementing Public Acts 96-863 and 97-679, which authorize DFPR to regulate cemeteries in the State of Illinois. The rules, which have undergone numerous changes since 1st Notice due to passage of PA 97-679, contain general provisions such as definitions of terms, applicable licensure and registration fees, license renewal provisions, inactive status procedures, lapsed or inactive license restoration, and procedures for granting variances. DFPR also specifies procedures for maintaining cemetery records and establishes a cemetery oversight database. The rules create 3 tiers of cemetery licensure and registration (fully exempt, partially exempt, and non-exempt) for which cemeteries must apply by 1/1/13. Cemetery owners seeking partial exemption from licensure must submit an application with the appropriate fee. Cemeteries seeking full exemption may submit applications free of charge. Non-exempt cemetery authorities must submit an application for licensure and

pay fees for licensure of the authority and each customer service employee or manager. The rules provide procedures for licensing newly organized cemetery authorities and licensing multiple locations under control of the same cemetery authority. Additional provisions address changes of cemetery ownership, cemetery signage and consumer brochures. Cemetery managers and customer service employees are required to be licensed, pay a licensure fee, and complete continuing education requirements. The Part also contains a code of professional conduct and ethics, and addresses enforcement and disciplinary proceedings affecting cemetery authorities and licensed employees. Changes since 1st Notice include reduction or elimination of various licensure and licensure exemption fees that had been based on cemetery size. Partial exemption will cost \$150 for initial registration and for status renewal, while all nonexempt cemeteries will be charged \$75 for licensure or license renewal for the cemetery authority and \$25 for initial licensure and renewals for each manager or customer service employee. Provisions allowing fees to be waived for reasons of financial hardship have

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☞ WORKERS' COMPENSATION

The ILLINOIS WORKERS' COMPENSATION COMMISSION proposed a new Part titled "Alcohol and Drug Sample Collection and Testing" (50 Ill. Adm Code 9140; 36 Ill. Reg. 8626) concerning alcohol and drug testing procedures in workers' compensation cases. The rules implement Public Act 97-18, which bars payment of workers' compensation when an employee's intoxication was the proximate cause of an accident, or if the employee was so intoxicated at the time of an accident that his or her condition constituted a "departure from employment". The PA also requires the Commission to adopt rules governing alcohol and drug testing procedures. The proposed rule outlines procedures to be followed for collecting and testing breath, blood, saliva or urine samples and maintaining a documented chain of custody for blood and urine samples. For each type of test the rule specifies which trained or licensed personnel may collect a sample, how a chain of custody form (documenting who has handled a sample) will be completed and to whom copies will be provided, steps to be taken to avoid contamination

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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.

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been added, and DFPR will pay all fees charged by the database provider for entering records into the database on and after 7/1/12 (instead of cemeteries paying fees to the database provider). Provisions removed from the final version of the rule include trust fund and care fund requirements; provisions applicable to cemetery association trustees; care and maintenance standards; requirements for maps and plats; and regulations that would have applied to independent contractors and cemetery workers other than managers and customer service employees. The written licensure examination has been replaced with a requirement to complete an approved certification program and the requirement of fingerprinting has been removed. Small businesses, small municipalities, and not-for-profit corporations that operate cemeteries may be affected by these rules.

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

with the Human Rights Commission. Concerning affirmative action obligations of State agencies, the rulemaking requires quarterly reports submitted to DHR to describe hires of employees with disabilities and any known changes in the employees' disability status. When an agency's Equal Employment Opportunity (EEO) officer reviews hiring or promotion decisions, information made available to the officer must include eligibility lists and other pertinent documents, including *Rutan* documentation (showing whether the position is covered by, or exempt from, the U.S. Supreme Court's *Rutan* decision forbidding State hiring or promotion based on political affiliation). In cases of underutilization (employment of very few or no members of an affirmative action group), when this occurs in a geographic region with labor market availability rates of less than 2% for a specific group, DHR will consider this in evaluating the agency's performance. Other changes expand affirmative action groups to include native Hawaiians and other Pacific islanders and update the types of information to be included in affirmative action plans. Amendments to 71 Ill Adm Code 2300 make non-substantive changes in a section devoted to definitions. Small businesses, non-profits and units of local government may be affected by these rulemakings.

Questions/requests for copies of the 2 DHR rulemakings above: David T. Rothal, DHR, 100 W. Randolph St., Ste. 10-100, Chicago IL 60601, 312/814-6257 or 217/785-5125 (TTY).

STATE EMPLOYEES

The DEPARTMENT OF CENTRAL MANAGEMENT SERVICES adopted amendments to "Conditions of Employment" (80 Ill Adm Code 303; 36 Ill. Reg. 3153), effective 5/30/12, implementing the Family Military Leave Act (FMLA) and the Civil Air Patrol Leave Act. The amendments grant State employees who have been employed at least 12 months and worked at least 1,250 hours up to 30 days unpaid

leave under either act if they apply at least 14 days in advance. Family military leave applicants (those requesting leave due to military deployment of a spouse, civil union partner, adult child, parent, or grandchild) must have exhausted vacation, personal, and compensatory time and all other forms of paid leave except sick and disability leave. Other unpaid leave under the FMLA need not be exhausted. Persons requesting leave for Civil Air Patrol missions are not required to exhaust vacation or personal time or any other form of leave. Time utilized under either type of leave continues to count toward an employee's continued service, vacation accrual and seniority dates. Changes since 1st Notice allow adult children and grandparents of deployed military personnel to take family military leave and remove references to "creditable service".

Questions/requests for copies: Mary Matheny, DCMS, 720 Stratton Bldg., Springfield IL 62706, 217/557-5404.

LIQUEFIED GAS STORAGE

The OFFICE OF THE STATE FIRE MARSHAL adopted amendments for "Storage, Transportation, Sale, and Use of Liquefied Petroleum Gas" (41 Ill Adm Code 200; 35 Ill Reg 12867), effective 8/1/12, to repeal text concerning conversion of anhydrous ammonia storage tanks to liquefied petroleum gas service. OSFM states that this regulation is contained in a 2011 National Fire Protection Association (NFPA) publication that is incorporated by reference in this Part. The rulemaking also adds 2008, 2009, and 2011 dates for 3 additional NFPA publications that are incorporated by reference and a 2001 date for an American Petroleum Institute incorporation by reference. A further amendment retains an NFPA standard requiring that the pressure relief valve discharge on each aboveground container larger than 2000 gallons be piped vertically upward at least 7 ft. above the con-

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HUMAN RIGHTS COMMISSION

The DEPARTMENT OF HUMAN RIGHTS adopted amendments to "Procedures of the Department of Human Rights" (56 Ill Adm Code 2520; 36 Ill Reg 2408), effective 6/1/12, and "Housing Discrimination" (71 Ill Adm Code 2300; 36 Ill Reg 2440), effective 5/30/12. The amendments to 56 Ill Adm Code 2520 include a change in the definition of "disability" from a mental or physical condition other than pregnancy lasting 6 months or longer that limits one's ability to work, to a "long lasting" impairment of physical, mental, cognitive, sensory, movement, self-care or independent living abilities. Regarding appeal procedures, the rulemaking provides that for charges filed on or after 1/1/08, if DHR issues a notice of default judgment against a respondent who has failed to appear at a hearing, it will also notify the respondent that he or she has 30 days to file a request for review

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tion of a sample, and what equipment or supplies may be used (e.g., specimen bottles). The rule specifies how to conduct direct observation of urine collection and preparation when there is evidence of possible tampering. The rule also provides for a medical review officer (MRO) to review blood and urine test results and provides for split testing of urine and blood specimens by more than one laboratory when there is a positive, substituted, or adulterated test result. Small businesses that conduct drug testing and screening, police departments that conduct alcohol/sobriety tests, hospitals, and medical practitioners are affected by this rulemaking.

Questions/requests for copies/comments through 7/30/12: Kimberly Janas, IWCC, 100 W. Randolph St., Ste. 8-200, Chicago IL 60601, 312/814-6559, Fax:312/814-3520, kimberly.janas@illinois.gov

FUNERAL DIRECTORS

The DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION (DFPR) proposed amendments to rules titled "Funeral Directors and Embalmers Licensing Code" (Code) (68 Ill Adm Code 1250; 36 Ill Reg 8557). The rulemaking removes the requirement of a complete work history from internship and initial licensure application criteria. DFPR also removed a prohibition against issuance of new licenses as funeral directors or any new licenses for embalmers and clarifies that licensure applicants for a funeral director and embalmer are subject to examination. The rulemaking clarifies that individuals practicing on a lapsed or inactive license are in violation of the Code. Initial (\$500) and renewal (\$125 per year) application fee for continuing education (CE) sponsors are established and the licensure restoration fee is raised from \$20 to \$50 plus all lapsed renewal fees, not to exceed \$260. The rulemaking includes a new Section that details how to determine the representative of the licensee (funeral director) at final disposition at

the cemetery. The rulemaking also clarifies how the 24 hours of required CE is broken down, provides requirements for approving CE sponsors and revises the process by which a licensee may seek exemption from licensure regulation. Funeral homes will be affected by this rulemaking.

ACCOUNTANTS

Also, DFPR proposed amendments to rules titled "Illinois Public Accounting Act" (68 Ill Adm Code 1420; 36 Ill Reg 8579) broadening continuing education (CE) classifications by recognizing different methods for attaining formal and informal CE. DFPR raised the licensure restoration fee from \$20 to \$50 plus all lapsed renewal fees, not to exceed \$260. The rulemaking recognizes persons, firms, associations, corporations of other groups that are members of NASBA's National Registry of CPE Sponsors or Quality Assurance Service Program as DFPR recognized educational/professional sponsors. DFPR provides an updated list of acceptable professional development activities, verifiable (formal) activities and unverifiable (informal) activities that count as CE. The rulemaking limits each non-verifiable activity to 10 CE hours during a renewal period, not to exceed 60 hours total for non-verifiable activities. Accountants and firms that employ accountants will be affected.

Questions/requests for copies/comments concerning the 2 DFPR rulemakings above through 7/30/12: Craig Cellini, DFPR, 320 W. Washington, 3rd Fl., Springfield IL 62767-0001, 217/785-0813.

HORSE RACING

The ILLINOIS RACING BOARD proposed an amendment to "Pentafecta" (11 Ill Adm Code 324; 36 Ill Reg 8622) allowing a track to submit a request to distribute the carryover (the total amount of non-distributed pool money in a pool that is retained and added to a corresponding pool) if the IRB approves. (A pentafecta requires selec-

tion of the first five finishers, in their exact order, for a single contest.) If the carryover must be held over to the corresponding pentafecta of a subsequent meet, the carryover must be deposited in an IRB-approved interest-bearing account. With IRB approval, the track may contribute to the carryover a sum of money up to any designated cap.

Questions/requests for copies/comments through 7/30/12: Mickey Ezzo, IRB, 100 W. Randolph, Ste. 7-701, Chicago IL 60601, 312/814-5017

MEDICAL ASSISTANCE

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES proposed amendments to "Medical Payment" (89 Ill Adm Code 140; 36 Ill Reg 8594) concerning payment for services related to breast cancer screening. The rulemaking allows practitioners and imaging centers participating in the Department's Breast Cancer Quality Screening and Treatment Initiative to be reimbursed at the Medicare rate for mammography services, provided they meet reporting requirements and other criteria outlined in the rulemaking. Medical providers participating in the screening program will be affected by this rulemaking.

Questions/requests for copies/comments through 7/30/12: Jeanette Badrov, DHFS, 201 S. Grand Ave. East, 3rd Fl., Springfield IL 62763-0002, 217/782-1233.

DHFS PUBLIC HEARING

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES will hold a public hearing concerning proposed medical assistance rate changes Tuesday, June 19th, from 3:30 to 4:30 p.m. at the Prescott E. Bloom Building, 1st Floor Conference Room, 201 S. Grand Avenue East, Springfield. The hearing will discuss proposed rate cuts to hospitals and nursing facilities detailed in Public Act 97-689, also known

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tainer and be unobstructed. Those affected by this rulemaking include gas appliance and gas piping installers.

Questions/requests for copies: Kenneth Wood, OSFM, 100 W. Randolph, Ste. 4-600, Chicago IL 60601, 312/814-2962, Fax 312/814-3459.

HAZARDOUS WASTE

The POLLUTION CONTROL BOARD adopted amendments to rules titled "Hazardous Waste Management System: General" (35 Ill Adm Code 720; 36 Ill Reg 1219), "Standards Applicable to Generators of Hazardous Waste" (35 Ill Adm Code 722; 36 Ill Reg 1252) and "Land Disposal Restrictions" (35 Ill Adm Code 728; 36 Ill Reg 1269), all effective 6/4/12. The rulemakings implement federal hazardous waste regulations regarding land disposal of carbamate wastes and manifest printing requirements and update incorporations by reference to the Code of Federal Regulations adopted by the federal Environmental Protection Agency (USEPA) during the 7/1/10-6/30/11 period. Amendments to Part 722 revise hazardous waste manifest printing requirements to allow the use of red or other contrasting color ink for copy distributions notations on the manifest form. Amendments to Part 728 revise the land disposal restrictions applicable to carbamate wastes to allow the use of best demonstrated available technologies for treating carbamate wastes instead of applying the existing numerical concentration limits for contaminants. Amendments to Part 720 update incorporations by reference to numerous federal regulations.

Questions/requests for copies: Michael J. McCambridge, PCB, 100 W.

Randolph, Ste. 11-500, Chicago IL 60601, 312/814-6924. Please reference consolidated docket R12-7.

RACING BOARD MEETINGS

The ILLINOIS RACING BOARD adopted an amendment to "Board Meetings" (11 Ill Adm Code 206; 36 Ill Reg 2481), effective 6/1/12, that requires individuals seeking Board action to submit copies of additional materials to the staff at least 7 calendar days prior to the meeting; late submission must be approved by the Executive Director. Notification of IRB staff by persons wishing to speak at a Board meeting on a specific agenda matter is required 7 days prior to the meeting and shall include their names, addresses and subject matter. Telephonic attendance at an open Board meeting is permitted if a quorum of members is physically present, upon approval by a majority of members, and if the member cannot otherwise attend because of personal illness or disability, employment obligations, other Board business, or a family or other emergency.

HORSE RACING MEDICATION

IRB also adopted amendments to "Medication" (11 Ill Adm Code 603; 36 Ill Reg 3162), effective 6/1/12, that update incorporations by reference to Association of Racing Commissioners International Uniform Classification Guidelines for Foreign Substances. An identical emergency rulemaking was adopted at 36 Ill Reg 3162, effective 2/15/12. The amendments reflect updated threshold levels and guidelines for the use by veterinarians of foreign substances of accepted therapeutic value; penalties for detection of the presence of benzoyllecgonine (a cocaine metabo-

lite), at or above 150 ng/ml; and penalties for Class 4 drug violations (which can result in suspension of the trainer and redistribution of prize money).

Questions/requests for copies of the 2 IRB rulemakings above: Mickey Ezzo, IRB, 100 W. Randolph, Ste. 7-701, Chicago IL 60601, 312/814-5017.

ZIP LINE OPERATORS

The DEPARTMENT OF LABOR (DOL) adopted an emergency amendment to rules titled "Carnival and Amusement Ride Safety Act" (56 Ill Adm Code 6000; 36 Ill Reg 8979), effective 6/1/12 for a maximum of 150 days. DOL added new regulations governing the operation of zip lines effective 6/1/12. The rulemaking provides new definitions applicable to zip lines (rides consisting of a pulley or trolley, suspended from a cable mounted on an incline, which the rider is attached to or holds onto) and provisions for site plan, equipment design and course construction approval; general compliance criteria for equipment; zip line arrival point, customer protection, zip line braking systems and zip line take-off platforms. Zip line operators are required to maintain an operating manual with any amendments onsite; documentation, including manufacturer's paperwork; and emergency plans/procedures. DOL prohibits zip line operators from specifically using Department approval in any type of advertisements, including brochures, commercials, TV or radio spots, newspaper or other media. This rulemaking may impact small businesses operating zip lines.

Questions/requests for copies: Ryan Culton, DOL, 900 S. Spring Street, Springfield IL 62704, 217/558-7194, Fax 217/782-0596.

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as the SMART Act. The text of PA 97-689 can be found at www.ilga.gov and a chart of the proposed changes and their budgetary impact is available at <http://www2.illinois.gov/hfs/>

[agency/Pages/Budget.aspx](http://www2.illinois.gov/hfs/agency/Pages/Budget.aspx). Written comments from persons unable to attend the hearing must be submitted by June 19th to Greg Wilson, Bureau of Program and Reimbursement Analy-

sis, DHFS, 201 S. Grand Ave. East, Springfield IL 62794, or e-mailed to hfs.bpra@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 July 10, 2012 meeting.

DEPARTMENT OF VETERANS' AFFAIRS

"Payment of Maintenance Charges and Income Management at the Illinois Veterans Homes" (95 Ill Adm Code 108) proposed 4/6/12 (36 Ill Reg 5450)

DEPARTMENT OF NATURAL RESOURCES

"White-Tailed Deer Hunting By Use of Muzzleloading Rifles" (17 Ill Adm Code 660) proposed 3/23/12 (36 Ill Reg 4300)

"White-Tailed Deer Hunting By Use of Firearms" (17 Ill Adm Code 650) proposed 3/23/12 (36 Ill Reg 4283)

"White-Tailed Deer Hunting By Use of Bow and Arrow" (17 Ill Adm Code 670) proposed 3/23/12 (36 Ill Reg 4314)

"White-Tailed Deer Hunting By Use of Bow and Arrow" (17 Ill Adm Code 670) proposed 3/30/12 (36 Ill Reg 4682)

DEPARTMENT OF TRANSPORTATION

"Oversize and Overweight Permit Movements on State Highways" (92 Ill Adm Code 554) proposed 4/6/12 (36 Ill Reg 5378)

"Motor Carrier Safety Regulations: General" (92 Ill Adm Code 390) proposed 4/20/12 (36 Ill Reg 5971)

"Qualification of Drivers" (92 Ill Adm Code 391) proposed 4/20/12 (36 Ill Reg 5996)

"Driving of Commercial Motor Vehicles" (92 Ill Adm Code 392) proposed 4/20/12 (36 Ill Reg 6003)

POLLUTION CONTROL BOARD

"Nonhazardous Special Waste Hauling and the Uniform Program" (35 Ill Adm Code 809) proposed 4/6/12 (36 Ill Reg 5095)

"Clean Construction or Demolition Debris Fill Operations" (35 Ill Adm Code 1100) proposed 2/24/12 (36 Ill Reg 2801)

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

"Boxing and Full-contact Martial Arts Act" (68 Ill Adm Code 1370) proposed 3/30/12 (36 Ill Reg 4467)

ILLINOIS RACING BOARD

"Medication" (11 Ill Adm Code 603) proposed 4/20/12 (36 Ill Reg 5954)

"Weights, Penalties, and Allowances; Scale of Weights for Age" (11 Ill Adm Code 1412) proposed 4/20/12 (36 Ill Reg 5956)

"Regulations for Meetings (Thoroughbred)" (11 Ill Adm Code 1424) proposed 4/20/12 (36 Ill Reg 5961)

"Claiming Races" (11 Ill Adm Code 510) proposed 4/20/12 (36 Ill Reg 5950)

ILLINOIS BOARD OF HIGHER EDUCATION

"Private Business and Vocational Schools" (23 Ill Adm Code 1095) proposed 4/27/12 (36 Ill Reg 6077)

DEPARTMENT OF EMPLOYMENT SECURITY

"Recovery of Benefits" (56 Ill Adm Code 2835) proposed 4/6/12 (36 Ill Reg 5072)

ILLINOIS LAW ENFORCEMENT TRAINING AND STANDARDS BOARD

"Intern Training Program" (20 Ill Adm Code 1725) proposed 4/6/12 (36 Ill Reg 5077)

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

"Licensing Standards for Group Homes" (89 Ill Adm Code 403) proposed 9/30/11 (35 Ill Reg 15502)

JCAR Meeting Action

At its 6/10/12 meeting, the Joint Committee on Administrative Rules voted to object to and prohibit filing of one proposed rulemaking and to issue recommendations concerning three other proposed rulemakings. The Committee also agreed to extend Second Notice periods for the Illinois Commerce Commission rulemaking titled "Standards of Service for Local Exchange Telecommunications Carriers" (83 Ill Adm Code 730; 35 Ill Reg 15695) and the Environmental Protection Agency rulemaking titled "Alternate Fuels Program" (35 Ill Adm Code 275; 36 Ill Reg 441) for an additional 45 days.

ILLINOIS COMMERCE COMMISSION

JCAR objects to and prohibits the filing of ICC's rulemaking titled "Obligations of Retail Electric Suppliers" (83 Ill Adm Code 412; 35 Ill Reg 12996) because unresolved issues remain in the rulemaking that JCAR deems a serious threat to the public interest. JCAR is particularly concerned that ICC has not been able to cite specific statutory authority for various policies established in this proposed rulemaking. The rulemaking addresses consumer protection and marketing practices of retail electric suppliers. Provisions at issue include rules governing early termination fees and use of utility names and logos.

DEPARTMENT OF AGRICULTURE

With regard to the DOA emergency rulemaking titled "Motor Fuel and Petroleum Standards Act" (8 Ill Adm Code 850; 36 Ill Reg 7330), JCAR recommends that DOA limit its use of emergency rulemaking to emergency situations. The agency used emergency rulemaking to delay enforcement of new ethanol standards, which it has done twice before. DOA could have anticipated that a

third delay would be required and initiated proposed rulemaking under Section 5-40 of the Illinois Administrative Procedure Act. Any emergency that exists appears to have been created by the agency's failure to act earlier.

DEPT. OF CENTRAL MANAGEMENT SERVICES

Regarding the DCMS rulemaking titled "Merit and Fitness" (80 Ill Adm Code 302; 36 Ill Reg 3990), JCAR recommends that DCMS be more timely in adopting rules reflecting statutory changes. Responsibility for verifying a veteran's preference was shifted to CMS by Public Act 91-481 in 2000.

SECRETARY OF STATE

Concerning the SOS rulemaking titled "Department of Personnel" (80 Ill Adm Code 420; 36 Ill Reg 3625), JCAR recommends that SOS be more timely in adopting administrative rules to implement changes in policy or Public Acts. This rulemaking implements various types of leave that were authorized by Public Acts in 1993, 2003 and 2006.

Joint Committee on Administrative Rules

Senator Pamela Althoff

Representative Greg Harris

Senator Maggie Crotty

Representative Lou 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**