

THE FLINN REPORT

ILLINOIS GENERAL ASSEMBLY
JOINT COMMITTEE ON ADMINISTRATIVE RULES

Elaine Spencer, Editor

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The Flinn Report is a weekly summary of regulatory actions of State agencies published in the *Illinois Register* and action taken by the Illinois General Assembly's Joint Committee on Administrative Rules (JCAR). The Flinn Report honors founding JCAR member Representative Monroe Flinn, and is designed to inform and involve the public in changes taking place in agency administration.

Proposed Rulemakings

• BEHAVIOR ANALYSTS

The DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION proposed a new Part titled Behavior Analyst Licensing Act (68 IAC 1376; 48 Ill Reg 2313) implementing PA 102-953 (Behavior Analyst Licensing Act), which institutes a system of licensing for persons who provide Applied Behavior Analysis (ABA) therapy for children with autism spectrum disorders. The Part adopts the professional standards and licensing examinations of the national Behavior Analyst Certification Board (BACB) with regard to training and qualifications for licensed behavior analysts (LBAs) and licensed assistant behavior analysts (LABAs). The 500 hours of supervised experience required by the Act is deemed satisfied by meeting the field training requirements established by the BACB for a Board Certified Behavior Analyst or Board Certified Assistant Behavior Analyst. Persons who apply for either

license prior to 7/1/28 without the required hours of supervised experience may be considered for licensure if they hold a graduate degree (LBA) or bachelor's degree (LABA) from an accredited college or university in the field of behavior analysis and have passed the BACB licensing examination. The initial

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licensing fee for an LBA is \$400 and for an LABA is \$100; renewal fees are \$300 and \$75, respectively. All licenses expire on Oct. 31 of odd-numbered years, and 30 hours of approved continuing education (CE) will be required every renewal period beginning with the 2027 renewal cycle. CE may be offered in person or online. Approved CE sponsors include the BACB, American Psychological Association, any Illinois college or

university offering a degree in behavior analysis, or other entities approved by DFPR. Fees for CE sponsors (other than State agencies, universities or community colleges) are \$500 for initial approval and \$250 for each 2-year renewal. Other provisions address licensure by endorsement, restoration of lapsed or inactive licenses, waiver of CE requirements for good cause, unprofessional conduct and disciplinary actions, and the authority of DFPR to grant individual variances from these rules. Behavior analysts, assistant behavior analysts, and their employers are affected by this rulemaking.

Questions/requests for copies/comments through 4/1/24: Craig Cellini, DFPR, 320 W. Washington St., 2nd Floor, Springfield, IL 62786, 217-785-0810, fax 217-557-4451, Craig.Cellini@illinois.gov

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ADOPTED RULES: Rules adopted by agencies this week. **EMERGENCY RULES:** Temporary rules adopted for no more than 150 days.
PROPOSED RULEMAKINGS: Rules proposed by agencies this week, commencing a First Notice public comment period of at least 45 days.
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/or non-profit organizations. Agencies must consider comments from these groups and attempt to minimize regulatory burdens on them.
QUESTIONS/COMMENTS: Submit mail, e-mail or phone calls to the agency personnel listed below each summary.
RULE TEXT: First Notice proposed text, emergency rule and peremptory rule text is available at the Secretary of State website (<https://www.ilsos.gov/departments/index/register/home.html>) or at the Illinois General Assembly website (<http://www.ilga.gov>) under "Illinois Register". Second Notice text for proposed rulemakings (original version with any changes made by the agency during First Notice included) is available at the JCAR website.

Proposed Rulemakings

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• PARKING TAX

The DEPARTMENT OF REVENUE proposed amendments to Parking Excise Tax (86 IAC 195; 48 Ill Reg 2377) implementing Public Acts 102-700 and 103-9. The PAs and this rulemaking clarify how this tax (6% of each hourly, daily or weekly parking fee; 9% of monthly or annual parking fees) is imposed, collected and paid when booking intermediaries facilitate use of parking spaces on behalf of the registered or unregistered operators of parking areas and garages. Effective 1/1/24, the booking intermediary, rather than the operator, is responsible for collecting and remitting the tax to DOR. Provisions that applied to operators prior to and after 7/1/23 are explained, along with provisions that apply to operators and booking intermediaries effective 1/1/24. Businesses that operate parking facilities or that book or collect parking fees on their behalf are affected.

Questions/requests for copies/comments through 4/1/24: Alexis K. Overstreet, DOR, 101 W. Jefferson St., Springfield IL 62794, 217-782-2844, REV.GCO@illinois.gov

CAREER & TECH EDUCATION

The STATE BOARD OF EDUCATION proposed amendments to the Part titled Career and Technical Education (23 IAC 256; 48 Ill Reg 2297) instituting a new funding formula for career and technical education (CTE) programming. The formula for high schools will be based on the number of CTE participants (students who have enrolled in at least one CTE course during the school year with an

Emergency Rule

IMMIGRANT HEALTHCARE

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES adopted an emergency amendment to Special Eligibility Groups (89 IAC 118; 48 Ill Reg 2712) effective 2/2/24, amending a previous emergency rule effective 11/12/23 for the remainder of its 150-day term. This emergency amendment removes a provision (added on 1/1/24) that had allowed healthcare providers to charge a copayment of up to \$100 for hospital emergency room visits by enrollees in the Health Benefits for Immigrant Adults (HBIA) and Health Benefits for Immigrant Seniors (HBIS) programs. HFS states that it is removing this copayment provision because the federal Centers for Medicare and Medicaid Services have confirmed that emergency room services to this patient population will receive federal matching reimbursement (other services covered by HBIA and HBIS are entirely State funded).

Questions/requests for copies: Steffanie Garrett, HFS, 201 S. Grand Ave. East, 3rd Floor, Springfield IL 62763-0002, 217-782-1233, HFS.Rules@illinois.gov

outcome of pass, fail or incomplete) and number of CTE concentrators (students who have successfully completed at least 2 CTE courses in a single program during their high school career). For elementary schools, the formula will be based on total student enrollment. For all schools, these numbers will be adjusted based on each district's final percent of adequacy (from SBE's evidence-based school funding formula) to calculate adequacy-adjusted counts for each district. Finally, the formula for area career centers will be based on the higher of its prior year enrollment or its 3-year average enrollment. Funds allocated for leadership programs will be based on regional average salary data for high school principals. SBE intends to phase in the new funding formula in such a way that no recipient loses funds year-over-year during the phase-in period.

Questions/requests for copies/comments through 4/1/24: Azita Kakvand, SBE, 555 W. Monroe

St., Suite 900, Chicago IL 60661, 312-783-2757, rules@isbe.net

INSURANCE EXCHANGE

The DEPARTMENT OF INSURANCE proposed amendments to the Part titled Navigator, In-Person Counselor and Certified Application Counselor Certification (50 IAC 4515; 48 Ill Reg 2347) implementing Public Act 103-103, which will transition the State's Affordable Care Act health insurance exchange to a State-based health insurance exchange on a federal platform by 2025 and a fully State-based exchange by 2026. This rulemaking updates existing federal training standards for Navigators, Certified Application Counselors, and other personnel who assist consumers in choosing affordable insurance plans or, if eligible, enrolling in Medicaid. This rulemaking also provides that when reviewing the criminal record of an applicant for certification under this Part, DOI will not consider juvenile

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Proposed Rulemakings

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offenses; arrests without a subsequent charge or conviction; charges that were dismissed; convictions overturned on appeal; or arrest/conviction records that were later expunged or sealed. If an applicant has a felony conviction record, DOI will consider mitigating factors and evidence of rehabilitation before deciding whether to deny, suspend or revoke certification/licensure.

Questions/requests for copies through 4/1/24: Robert Planthold, DOI, 122 S. Michigan Ave., 19th Floor, Chicago IL 60603, 312-814-5445, robert.planthold@illinois.gov or Susan Anders, DOI, 320 W. Washington St. 4th Floor, Springfield IL 62767, 217-558-0957, sue.anders@illinois.gov

DNR PROPERTIES

The DEPARTMENT OF NATURAL RESOURCES proposed amendments to the Part titled Regulations for the Letting of Concessions, Farm Leases, Sale of Buildings and Facilities, and Demolitions (17 IAC 150; 48 Ill Reg 2365) to align the Part with USDA regulations and with the Procurement Code. The rulemakings remove time limits on agricultural management leases and specific procedures for competitive bidding on such leases. All tracts that are 50 acres or less, or that are completely surrounded by private land, are exempted from competitive bidding for an agricultural management lease.

DNR also proposed amendments to Field Trials on Department-Owned or -Managed Sites (17 IAC 910; 48 Ill Reg 2369) raising fees for conducting field trials on Department property,

DFPR Public Hearing

▪ CREDIT UNIONS

The DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION will hold a public hearing on a proposed new Part titled Credit Union Community Reinvestment (38 IAC 185; 48 Ill Reg 621) on **Thursday, March 1, at 11 a.m.** at the DFPR offices at **555 W. Monroe St., Chicago**. Persons who cannot attend the hearing in person may participate via WebEx at: <https://illinois.webex.com/illinois/j.php?MTID=m0657fdc0b4ab9cc8c2bd9dd1db77e5c7>. The password for access to the stream is **cxBcMBgM456**. Participants may also join by phone at 1-312-535-8110 or 1-415-655-0002, access code 2631 190 0147.

The hearing concerns DFPR's proposed rules for credit unions implementing Public Act 101-657, the Illinois Community Reinvestment Act (ILCRA). The Act and these rules are intended to ensure that regulated financial institutions equitably provide financial services to individuals and businesses in low-income (less than 50% of an area's median income) and moderate-income (50% to 80% of area median income) neighborhoods and in areas that lack access to safe and affordable banking/lending services. Persons wishing to testify at this public hearing are asked to submit a written copy of their testimony prior to or at the hearing.

Questions regarding this rulemaking or the public hearing: Craig Cellini, DFPR, 320 W. Washington St., 2nd Floor, Springfield IL 62786, 217-785-0810, fax 217-557-4451.

effective 1/1/25, to \$100 (currently \$70) per day for pointer, retriever, fox hound and flushing breed trials and \$40 (currently \$25) per day for beagle and coon hound trials, while waiving any additional fees associated with an activity permit. The World Shooting and Recreational Complex (WSRC) in Sparta is added as a field trial site while Chain O' Lakes State Park is removed. Field trials at WSRC are generally limited to non-camping areas, but other areas may be used outside of camping season (i.e., before April 1 or after Oct. 31) or as the site allows.

Questions/requests for copies/comments on the 2 DNR rulemakings through 4/1/24: Part 150, Nicole Thomas; Part 910, John Fischer; DNR, One Natural Resources Way, Springfield IL 62702, 217-782-1809, dnr.rules@illinois.gov

CHILD SUPPORT

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES proposed amendments to Child Support Services (89 IAC 160; 48 Ill Reg 2333) reflecting PA 102-1115, which provides that all child support collected on or after 1/1/23 on behalf of a family receiving Temporary Assistance for Needy Families (TANF) is passed through to the family and disregarded in determining the amount of TANF assistance they will receive.

Questions/requests for copies/comments through 4/1/24: Steffanie Garrett, HFS, 201 S. Grand Ave. East, 3rd Floor, Springfield IL 62763-0002, 217-782-1233, HFS.Rules@illinois.gov

Adopted Rules

SCHOOLS

The STATE BOARD OF EDUCATION adopted amendments to Public Schools Evaluation, Recognition and Supervision (23 IAC 1; proposed at 47 Ill Reg 12978) effective 2/5/24 at 48 Ill Reg 2411, establishing a resolution process for disputes involving a student's claim of homeless status as determined under the State's Education for Homeless Children Act [105 ILCS 45] and the federal McKinney-Vento Education for Homeless Children Act. Issues that may be resolved through this procedure include, but are not limited to, the effect of the student's claimed homelessness on registration, enrollment, transportation, access to curricular or extracurricular programs, fee waivers, and program eligibility. The student must continue to be enrolled and receive services such as transportation while the dispute resolution process, including any appeal, is ongoing. Before beginning this process, the school district's local homeless liaison must attempt to resolve the disagreement between the district and the student and/or the student's parent or guardian. If the dispute remains unresolved, the district must notify the student, parent or guardian, along with the regional superintendent and the State Coordinator for education of homeless children and youth, of its intent to initiate the resolution process. The notification must include information regarding sources of low cost or free legal assistance and advocacy services available in the community. Within 10 school days after this notification, the regional superintendent must appoint a fair and impartial ombudsperson who will oversee the resolution process and arrange a meeting among the student, parent/guardian, and other interested parties. (Since 1st Notice, SBE has

clarified that the ombudsperson shall, if possible, arrange this meeting within 5 school days after receiving notice of the dispute.) After this meeting, the ombudsperson has 10 school days to issue a written decision as to whether the student is or is not homeless. This decision may be appealed to the State Coordinator for a final determination within 15 days after receiving the appeal. If the State Superintendent determines that a school district acted contrary to applicable law, the Superintendent may require the district to take remedial action and may place the district on probation if it does not comply.

Questions/requests for copies: Azita Kakvand, SBE, 555 W. Monroe St., Suite 900, Chicago IL 60661, 312-783-2757, rules@isbe.net

▪ HOME INSPECTORS

The DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION adopted amendments to the Part titled Home Inspector License Act (68 IAC 1410; proposed at 47 Ill Reg 14917) effective 2/2/24 at 48 Ill Reg 2424, that implement 2 Public Acts and make other updates and clarifications. The rulemaking implements PA 102-20 (sunset renewal of the Act through 1/1/27) and 102-970, updates the training curriculum and standards of practice, and requires sexual harassment prevention training as part of continuing education (CE). Provisions for online/virtual CE are added, and licensure applicants have 3 years to complete the application process from start to finish. Home inspector entities (e.g., partnerships, corporations, LLCs) must designate a managing home inspector who is licensed by DFPR. If an initial license is granted within 90 days of the blanket expiration date for all home inspector

licenses (Nov. 30 of even-numbered years) the licensee will not have to complete CE requirements for the next license term. Inspectors whose licenses expire while they are on active military duty or are employed by DFPR may renew their licenses within 2 years after honorable discharge or completion of their employment, without paying late renewal fees or taking an exam or additional CE. Other provisions add, effective 1/1/25, a second pre-license course with 5 field inspection events and a field inspection examination to the currently required 60-credit-hour pre-license course; clarify procedures for obtaining licensure by endorsement or claiming CE credit earned out of State; outline disclaimers and exclusions that may be included in a home inspection contract (e.g., the inspector is not required to enter areas that are unsafe or not readily accessible); list items to be included in inspection reports and allow reports to be completed in electronic format; add liability insurance requirements; and remove (in accordance with statute) provisions allowing a license to be suspended for failure to pay child support, taxes or student loans. Licensing fees for inspectors and for continuing education or pre-license education providers are generally unchanged, except that education providers must pay \$150 for initial licensure of a field inspection course and \$150 (formerly \$100) for the 60-hour pre-license course. Home inspectors, their employers, and their continuing education providers are affected by this rulemaking.

Questions/requests for copies: Craig Cellini, DFPR, 320 W. Washington St., 2nd Floor, Springfield IL 62786, 217-

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Adopted Rules

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785-0810, fax 217-557-4451,
Craig.Cellini@illinois.gov

HOSPITALS

The DEPARTMENT OF PUBLIC HEALTH adopted an amendment to Hospital Licensing Requirements (77 IAC 250; proposed at 47 Ill Reg 9134) effective 1/30/24 at 48 Ill Reg 2516, replacing an emergency amendment that was effective 11/23/23. This rulemaking implements a federal waiver (valid through 12/31/24) allowing qualifying hospitals, with approval from the federal Centers for Medicare and Medicaid Services, to provide limited inpatient services in patients' homes. DPH's rule requires Illinois hospitals that receive the Acute Hospital Care at Home (AHCH) waiver to provide DPH with specified documents, comply with various hospital health and safety requirements, and comply with all COVID-19 directives and guidance issued by the Centers for Disease Control and Prevention, DPH, other State agencies, and local health departments. Hospitals that have applied for or received the federal AHCH waiver are affected.

HOSPICE PROGRAMS

DPH also adopted amendments to Hospice Programs (77 IAC 280; proposed 47 Ill Reg 13152) effective 1/30/24 at 48 Ill Reg 2531, implementing Public Act 103-224, which increases the number of allowable licensed hospice residences from 5 to 16 in each of 3 geographic areas (counties with a population of 700,000 or more; counties with populations of 200,000 up to 700,000; counties of less than 200,000 population) defined in the Act. Other amendments allow license applicants up to 90 days to submit additional

documentation after DPH completes its initial review of an application and update incorporated federal regulations.

ID/DD FACILITIES

DPH adopted amendments to Intermediate Care for the Developmentally Disabled Facilities Code (77 IAC 350; proposed at 47 Ill Reg 14205) and Medically Complex for the Developmentally Disabled Facilities Code (77 IAC 390; proposed at 47 Ill Reg 14296) both effective 1/30/24 at 48 Ill Reg 2546 and 2635, implementing PA 102-1007, which amended the ID/DD and MC/DD Acts to require facilities licensed under these Acts to inform their nurses of employee assistance programs. The Part 350 rulemaking also contains numerous other amendments designed to align the Part with the Act; updates construction and life safety requirements; updates certification requirements for CNAs and dietitians; institutes gender neutral language; and changes references to "mental retardation" to "intellectual disability." The Part 350 amendments additionally require ID/DD facilities to comply with the Authorized Electronic Monitoring in Long-Term Care Facilities Act and rules (77 IAC 389).

▪ EDUCATIONAL LOANS

DPH adopted amendments to Loan Repayment Assistance for Physicians (77 IAC 581; proposed at 47 Ill Reg 12852) and Underserved Health Care Provider Workforce Code (77 IAC 590; proposed at 47 Ill Reg 12990), both effective 1/30/24 at 48 Ill Reg 2647 and 2653, implementing Public Acts 103-219 and 103-507. The Part 581 rulemaking defines an eligible physician as a person licensed under the Medical Practice Act of 1987, but removes language stating that the physician must be licensed to "practice medicine in all of its

branches", thereby no longer excluding chiropractic physicians. The rulemaking also expands the definition of educational loans to include loans incurred while attending medical school or a chiropractic college or institution. Amendments to Part 590 extend educational loan repayment assistance under this Part to chiropractic physicians and anesthesiologists and make chiropractic students eligible for medical student scholarships. Chiropractors, anesthesiologists, and their employing healthcare providers are affected.

Questions/requests for copies of the 6 DPH rulemakings: Tracey Trigillo, DPH, 524 S. Second St., 6th Floor, Springfield, IL 62701, dph.rules@illinois.gov

▪ WIC VENDORS

The DEPARTMENT OF HUMAN SERVICES adopted amendments to WIC Vendor Management Code (77 IAC 672; proposed at 47 Ill Reg 13787) effective 1/30/24 at 48 Ill Reg 2491. These amendments clarify that 50% Vendors include initial Women, Infants and Children (WIC) Program Vendor applicants who estimate that WIC food benefits will comprise 50% or more of their SNAP-eligible sales. Applicants for WIC Vendor authorization have 60 days to complete each step in the authorization process once they have been notified of each requirement; if they fail to complete these steps in a timely manner, their applications will be rejected and they will have to start the application process again. The documentation required for an application is explained in greater detail. The probationary authorization issued after DHS receives a completed application is shortened from 90 to 60 days. Vendors must have at least one

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Adopted Rules

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location within Illinois, but additional out of State locations within 20 miles of the State border may be approved if they meet participant access criteria. For applicants that DHS determines are needed to ensure participant access, DHS may cover the costs of installing a stand-beside Point of Sale terminal. With regard to instances in which DHS determines that disqualification of a WIC Vendor would result in inadequate WIC participant access, DHS will impose civil monetary penalties on the vendor instead of disqualification. Small businesses applying for authorization as WIC vendors are affected by this rulemaking.

Questions/requests for copies: Tracie Drew, DHS, 100 S. Grand Ave. East, Harris Building, 3rd Floor, Springfield IL 62762, 217-785-9772.

TAX PENALTIES

The DEPARTMENT OF REVENUE adopted an amendment to the Part titled Uniform Penalty and Interest Act

(86 IAC 700; proposed 47 Ill Reg 14714) effective 1/31/24 at 48 Ill Reg 2676, implementing PA 103-0098, which clarifies that for State tax returns filed on and after 1/1/24, any additional State income tax liability resulting from a change to the taxpayer's federal income tax return that must be reported to DOR must be paid no later than the due date for filing the federal amended return in order to avoid State tax penalties.

Questions/requests for copies: Brian Fliflet, DOR, 101 W. Jefferson St., Springfield IL 62794, 217-782-2844, REV.GCO@illinois.gov

▪ CPA EXAMS

The BOARD OF EXAMINERS adopted amendments to Certificate of Education and Examination Requirements (23 IAC 1400; proposed at 47 Ill Reg 14911) effective 2/1/24 at 48 Ill Reg 2406, that increase the amount of time a candidate can pass all sections of the Certified Public Accountant (CPA) examination from 18 months after the candidate takes a section of the examination to 30 months after scores for that section are released to candidates.

Candidates for CPA certification and their employers are affected.

Questions/requests for copies: Carlarta Ratchford, BOE, 1120 E. Diehl Road, Suite 107, Naperville IL 60563, 847-753-8900, cratchford@ilboe.org

OSFM REPEALER

The OFFICE OF THE STATE FIRE MARSHAL repealed the Part titled Furniture Fire Safety Regulations (41 IAC 300; proposed at 47 Ill Reg 15247) effective 1/30/24 at 48 Ill Reg 2710, in response to a Public Act and federal regulations adopted in 2021. The federal regulation at 16 CFR 1640 created a federal standard for the flammability of upholstered furniture and preempts state regulation on this topic. PA 103-151 amended the Furniture Fire Safety Act (425 ILCS 45) and recognized the federal regulation.

Questions/requests for copies: Katherine Nunes, OSFM, 555 W. Monroe St., Ste. 1300-N, Chicago IL 60661, 312-814-8959, fax 312-814-3459, SFM.300rulemaking@fdmail.sfm.illinois.gov

Second Notices

The following rulemakings were moved to Second Notice this week by the agency listed below, commencing the JCAR review period. These rulemakings will be considered at the March 12, 2024 meeting in Springfield. Other items not published in the *Illinois Register* or The Flinn Report may also be considered. Further comments concerning these rulemakings should be addressed to JCAR at jcar@ilga.gov.

DEPT OF FINANCIAL AND PROFESSIONAL REGULATION

Illinois Occupational Therapy Practice Act (68 IAC 1315; 47 Ill Reg 17339) proposed 11/27/23

Optometric Practice Act of 1987 (68 IAC 1320; 47 Ill Reg 13402) proposed 9/22/23

Illinois Physical Therapy Act (68 IAC 1340; 47 Ill Reg 17367) proposed 11/27/23

DEPT OF HUMAN SERVICES

Medicaid Home and Community-Based Services Waiver Program for Individuals with Developmental Disabilities (59 IAC 120; 47 Ill Reg 3904) proposed 3/24/23

DEPT OF NATURAL RESOURCES

Conservation Stewardship Program (17 IAC 2580; 47 Ill Reg 17778) proposed 12/1/23

The Illinois Oil and Gas Act (62 IAC 240; 47 Ill Reg 17786) proposed 12/1/23

SECRETARY OF STATE

Issuance of Licenses (92 IAC 1030; 47 Ill Reg 4237) proposed 3/31/23

Issuance of Licenses (92 IAC 1030; 47 Ill Reg 12704) proposed 8/25/23

Next JCAR Meeting: Tuesday, March 12, 10:30 a.m.

Room C-1, Stratton Bldg., 401 S. Spring St., Springfield
Meeting will be live streamed on the JCAR website

Joint Committee on Administrative Rules

Senator Bill Cunningham, Co-Chair
Senator Cristina Castro
Senator Donald DeWitte
Senator Dale Fowler
Senator Napoleon Harris, III
Senator Sue Rezin

Representative Ryan Spain, Co-Chair
Representative Eva-Dina Delgado
Representative Jackie Haas
Representative Steven Reick
Representative Curtis Tarver, II
Representative Dave Vella

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