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NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Standards of Service Applicable to 9-1-1 Emergency Systems
- 2) Code Citation: 83 Ill. Adm. Code 725
- 3)

<u>Section Numbers</u> :	<u>Proposed Action</u> :
725.101	Amendment
725.105	Amendment
725.200	Amendment
725.205	Amendment
725.210	Amendment
725.220	Amendment
725.305	Amendment
725.400	Amendment
725.500	Amendment
725.505	Amendment
725.600	Amendment
725.620	Amendment
725.700	Amendment
725.800	Repeal
725.805	Repeal
725.810	Amendment
725.APPENDIX A	Amendment
- 4) Statutory Authority: Implementing and authorized by Section 10 of the Emergency Telephone System Act [50 ILCS 750/10]
- 5) A Complete Description of the Subjects and Issues Involved: The proposed amendments will account for changes in the telecommunications industry since the last revision of Part 725 in 1996. The proposed amendments recognize the existence of competitive local exchange carriers, which the current rules do not treat. The proposed amendments also account for changes in telecommunications technology and Federal Communications Commission rules.
- 6) Will these amendments replace any emergency amendments currently in effect? No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Do these amendments contain incorporations by reference? No
- 9) Are there any other proposed amendments pending on this Part? No

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- 10) Statement of Statewide Policy Objective: These proposed amendments neither create nor expand any State mandate on units of local government, school districts, or community college districts.
- 11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking:

Comments should be filed, within 45 days after the date of this issue of the *Illinois Register* in Docket 04-0071, with:

Chief Clerk
Illinois Commerce Commission
527 East Capitol Avenue
Springfield IL 62701
(217)782-7434

- 12) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: These amendments will not affect any small businesses as defined in the Illinois Administrative Procedure Act. These amendments will not affect any not for profit corporations but will affect any small municipalities that have established a 9-1-1 emergency system.
- B) Reporting, bookkeeping or other procedures required for compliance: Reporting procedures
- C) Types of professional skills necessary for compliance: Engineering, managerial
- 13) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on either of the 2 most recent regulatory agendas because: The Commission did not anticipate the need for this amendment at that time.

The full text of the proposed amendments begins on the next page:

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TITLE 83: PUBLIC UTILITIES
CHAPTER I: ILLINOIS COMMERCE COMMISSION
SUBCHAPTER f: TELEPHONE UTILITIES

PART 725

STANDARDS OF SERVICE APPLICABLE TO 9-1-1 EMERGENCY SYSTEMS

SUBPART A: GENERAL PROVISIONS

Section	
725.100	Application of Part
725.101	Waivers
725.105	Definitions

SUBPART B: AUTHORIZATION TO OPERATE

Section	
725.200	General Requirements
725.205	Tentative Plans
725.210	Final Plans
725.215	Order of Authority
725.220	Records and Reports
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SUBPART C: MANAGEMENT AND STAFFING

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SUBPART D: STANDARDS OF SERVICE

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725.400	General Standards

SUBPART E: ENGINEERING

Section	
725.500	Telecommunications Carriers

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725.505 Public Safety Answering Point

SUBPART F: OPERATIONS

Section

725.600 System Review
725.605 Written Operating Procedures
725.610 Call Handling Procedures
725.615 Electronic Communication Devices
725.620 Disaster Procedures

SUBPART G: FACILITIES

Section

725.700 Physical Security

SUBPART H: SURCHARGE

Section

725.800 Assessment of Surcharge (Repealed)
725.805 Surcharge Billing (Repealed)
725.810 Telecommunications Carrier Surcharge Administration and Monthly Report to the
Emergency Telephone System Board

725.APPENDIX A Telecommunications Carrier Monthly Report to ETSB

AUTHORITY: Implementing and authorized by Section 10 of the Emergency Telephone System Act [50 ILCS 750/10].

SOURCE: Adopted at 4 Ill. Reg. 2, p. 163, effective December 31, 1979; amended at 5 Ill. Reg. 888, effective January 9, 1981; codified at 8 Ill. Reg. 12188; Part repealed, new Part adopted at 20 Ill. Reg. 5335, effective April 1, 1996; amended at 28 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 725.101 Waivers

- a) A public agency or a telecommunications carrier may file a petition pursuant to 83 Ill. Adm. Code 200 for a temporary waiver from compliance with the

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requirements of Sections 725.205(d); 725.210(e); 725.220(c); 725.400(a), (d)(3) and (f); 725.500(c), (h), (i), (j), (k), (o), (p) and (q); 725.505(a), (e), (g), (i), (m) and (y); 725.620(b); 725.700; and 725.Appendix A, if the petitioner alleges that compliance with the provision is either technologically infeasible or that it is financially incapable of complying with the requirement. The petition must include a proposed schedule for compliance with the provision. In determining whether to grant a waiver from a specified requirement, the Commission shall consider the economic impact of compliance, costs and rate consequences (if applicable), and the effect of the waiver on the provision of emergency services.

- b) If granted, ~~this~~ waiver will be effective for a period of up to one year from the date of the order granting the waiver. A party seeking an extension of the waiver period must file a separate petition with the Commission. Any extension of the waiver period shall be for no longer than one year. A party may file for and be granted more than one waiver and more than one extension of the waiver period.

(Source: Amended at 28 Ill. Reg. _____, effective _____)

Section 725.105 Definitions

In the interpretation of this Part, the following definitions shall be used.

"9-1-1 System" – The geographic area that has been granted an order of authority by the Commission to use "9-1-1" as the primary emergency telephone number.

"(A)' Links" – Message trunks capable of providing ANI connecting the serving central office of the 9-1-1 calling party and the designated 9-1-1 selective routertandem control office.

"Access Line" – The connecting facility between a customer's premises network interface device and the local exchange carrier's facility that provides access to the switching network for local exchange and interexchange telecommunications service.

"Aid Outside Normal Jurisdiction Boundaries Agreement" – A written cooperative agreement entered into by all participating and adjacent agencies and public safety agencies providing that, once an emergency unit is dispatched to a request through a system, ~~that~~ unit shall render its services to the requesting party without regard to whether the unit is operating outside its normal

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jurisdictional boundaries.

"Alternate Routing" – Alternate routing allows 9-1-1 calls to be alternatively rerouted to another Public Safety Answering Point (PSAP) location in the case of the overflow calls on the "B" link or PSAP failure.

"Audible Signal" – A buzzer, bell, or tone device used to alert an individual that appropriate action is required.

"Automatic Alarm and Automatic Alerting Device" – Any device ~~that which~~ will access the 9-1-1 system for emergency services upon activation ~~and does not provide for two-way communication.~~

"Automatic Location Identification" or "ALI" – In an E9-1-1 system, ~~the automatic display at the PSAP of the caller's telephone number, the address/location of the telephone and supplementary emergency services information transmission of the originated caller's service address.~~

"Automatic Number Identification" or "ANI" – Automatic display of the 9-1-1 calling party's number on the PSAP monitor.

"(B) Links" – The special service circuits between the 9-1-1 ~~selective routers tandem control offices~~ and the PSAP.

"Backup PSAP" – A Public Safety Answering Point ~~that which~~ serves as an alternate to the primary PSAP for enhanced systems and is located at a different location than the municipality's/county's primary PSAP providing the service; ~~that which~~ will accept overflow calls and calls that are rerouted due to "B"-link failure or because the primary PSAP is disabled.

"Basic 9-1-1" – A general term ~~that which~~ refers to an emergency telephone system ~~that which~~ automatically connects a person dialing the digits "9-1-1" to an established PSAP through normal telephone service facilities.

~~"Billing Concession" – A telecommunications carrier service where employees are offered services at discounted rates.~~

"Busy Hour" – The two consecutive half-hours each day during which the greatest volume of traffic is handled in the central office.

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"Busy Tone" – An audible signal indicating a call cannot be completed because the called access line is busy. The tone is applied 60 times per minute.

"Call Box" – A device that is normally mounted to an outside wall of the serving telecommunications carrier central office and designed to provide emergency on-site answering by authorized personnel at the central office location in the event a central office is isolated from the PSAP.

"Called Party Hold" – A telephone service feature that enables the called party to maintain a connection, even if the calling party has hung up, on any circuit so equipped.

"Call Referral" – A 9-1-1 service in which the PSAP telecommunicator provides the calling party with the telephone number of the appropriate public safety agency or other provider of emergency services.

"Call Relay" – A 9-1-1 service in which the PSAP telecommunicator takes the pertinent information from a caller and relays that information to the appropriate public safety agency or other provider of emergency services.

"Call Transfer" – A 9-1-1 service in which the PSAP telecommunicator receiving a call transfers that call to the appropriate public safety agency or other provider of emergency services.

"Central Office" – A switching office/facility in a telephone system ~~that~~which provides service to the general public, having the capability of terminating and interconnecting subscriber lines and/or trunks.

"Circuit" – The physical connection (or path) of channels, conductors, and equipment between two given points through which an electronic signal may be established.

"Centrex-type Service" – A telecommunications carrier central office based service with characteristics similar to those of private branch exchange type systems. When making an emergency call from a Centrex phone, it is necessary to dial an outside access code, typically the digit 9, before dialing the 9-1-1 emergency number.

"Commission" – The Illinois Commerce Commission.

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"Control Office" – The control office controls the switching of ANI and selective routing information to the appropriate PSAP. The control office serves as a tandem switch in the 9-1-1 network.

"Dedicated Direct Trunking" – An arrangement where a telephone line connection has no intermediate switching points between the originating central office and PSAP location. The facilities utilized in this arrangement may be either intra- or inter-exchange.

"Default Routing" – A feature ~~thatwhich~~ allows E9-1-1 calls to be routed to a designated default PSAP if the incoming E9-1-1 call cannot be selectively routed due to ANI failure, garbled digits, or other causes ~~thatwhich~~ prevent selective routing.

"Direct Dispatch" – A 9-1-1 service ~~thatwhich~~ provides for the direct dispatch by a PSAP telecommunicator of the appropriate unit upon receipt of a telephone request for ~~thesueh~~ services and the decision as to the proper action to be taken.

"Diverse Routing" – The practice of routing circuits along different physical paths in order to prevent total loss of 9-1-1 service in the event of a facility failure.

"E9-1-1 ~~Selective Router Tandem-Office~~" – A telecommunications carrier switching office or stand alone selective routing switch equipped with enhanced 9-1-1 service capabilities. This switch serves as an E9-1-1 ~~selective routertandem office~~ for 9-1-1 calls from other local offices in the 9-1-1 service area.

"Emergency Call" – A telephone request for emergency services ~~thatwhich~~ requires immediate action to prevent loss of life, reduce bodily injury, prevent or reduce loss of property, and ~~anysueh~~ other situations as are determined by local custom.

"Emergency Service Number" or "ESN" – Sometimes known as emergency service zone (ESZ). An ESN is a three to five digit number representing a unique combination of public safety agencies (police, fire, and emergency medical service) designated to serve a specific range of addresses within a particular geographical area or ESZ. The term ESZ refers to the geographic area itself and is generally used only during the ESN definition process to label specific areas. The ESN facilitates the selective routing of calls to appropriate PSAPs. An ESN is a three to five digit number representing a unique combination of emergency service agencies designated to serve a specific range of addresses within a

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~~particular geographical area.~~

"Emergency Telephone System Board" or "ETSB" – A board appointed by the corporate authorities of any county or municipality that provides for the management and operation of a 9-1-1 system within the scope of ~~thosesuch~~ duties and powers as are prescribed by the Emergency Telephone System Act (ETSA) [50 ILCS 750]. The corporate authorities shall provide for the manner of appointment, provided that members of the board meet the requirements of the statute.

"English Language Translation" or "ELT" – Database table that provides the names of the public safety agencies associated with an ESN/ESZ number, that is displayed on the ALI screen at the PSAP.

"Enhanced 9-1-1" or "E9-1-1" – A general term ~~thatwhich~~ refers to an emergency telephone system with specific electronically controlled features such as ALI, ANI, or Selective Routing, and ~~thatwhich~~ uses the master street address guide (MSAG) geographic files.

"Error Ratio" – The percentage of database records that is not MSAG valid for a specific 9-1-1 system.

"Exempt Lines" – Exempt lines are lines other than those for which a 9-1-1 surcharge may be imposed under the criteria set forth in Section 15 of the ETSA [50 ILCS 750/15]. Exempt lines include, but are not limited to, telecommunications carrier official lines and federal government lines.

"Forced Disconnect" – A feature ~~thatwhich~~ allows the PSAP to release a telephone connection, even though the calling party has not been disconnected, to avoid caller jamming of the incoming trunks.

"Grade of Service" – The probability (P), expressed as a decimal fraction, of a telephone call being blocked. P.01 is the grade of service reflecting the probability that one call out of one hundred will be blocked.

"Idle Circuit Tone Application" – A feature ~~thatwhich~~ applies a distinctive tone toward the PSAP attendant to distinguish between calls that have been abandoned before the attendant answers and calls where the caller is unable to speak for some reason.

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"Key Telephone System" – A telephone system in which the telephones have multiple buttons permitting the user to directly select the outgoing line on which to place a call. These systems are traditionally found in relatively small business environments, typically in the range of 50 telephones, usually with a small number of lines and stations, in which each station functions as a switch and permits users a choice over the outgoing line on which to place a call.

~~"Local Exchange Carrier" or "LEC" – A telecommunications carrier under the Public Utilities Act that provides local exchange telecommunications services as defined in Section 13-204 of the Public Utilities Act [220 ILCS 5/13-204], except a telecommunications carrier that is owned or operated by one or more political subdivisions, public or private institutions of higher education or municipal corporations of this State.~~

"Local Loop" – A channel between a customer's network interface and its serving central office. The most common form of loop, a pair of wires, is also called a line.

"Local Number Portability" or "LNP" – A process by which a telephone number may be reassigned from one local exchange carrier to another.

"Logging Recorder" – A machine that records both sides of telephone and radio transmissions.

"Master Street Address Guide" or "MSAG" – The computerized geographical file ~~that~~which consists of all streets and address data within the 9-1-1 system area. This database is the key to the selective routing capability of E9-1-1 systems. It is to match an originating caller to a specific answering point based on the address data. The MSAG may require updating after the initial file is established.

"Mechanical Dialer" – A device that either manually or remotely triggers a dialing device to access the 9-1-1 system.

"Network" – The aggregate of transmission systems and switching systems. It is an arrangement of channels, such as loops, trunks, and associated switching facilities.

"Network Connections" – A voice grade communication channel directly between a subscriber and a telecommunications carrier's public switched network, without the intervention of any other telecommunications carrier's switched network,

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~~that~~which would be required to carry the subscriber's inter-premises traffic. The connection either:

is capable of providing access through the public switched network to a 9-1-1 system, if one exists; or

if no system exists at the time a surcharge is imposed under Section 15.3 of the ~~ETSA Emergency Telephone System Act~~ [50 ILCS 750/15.3], would be capable of providing access through the public switched network to the local 9-1-1 system if one existed.

"Network Segment" – A portion of the network in which there are no intermediate switching points. "A" links and "B" links are network segments.

~~"9-1-1 System" – The geographic area that has been granted an order of authority by the Commission to use "9-1-1" as the primary emergency telephone number.~~

"On-line Date" – A date that is agreed to by all parties as to when a 9-1-1 system is activated for the public.

~~"Operator Services" – Any of a variety of telephone services that need the assistance of an operator or an automated "operator" (i.e., using interactive voice response technology and speech recognition). These services include collect calls, third party billed calls, and person-to-person calls.~~

"Order of Authority" – A formal order of the Commission ~~that~~which authorizes public agencies or public safety agencies to provide 9-1-1 service in a geographical area.

"Originating Switchhook Status Indication" – An audible and/or visual indication of the status of a calling party being held.

"Overflow" – A call or position used when a call is blocked or rerouted due to excessive traffic.

"Primary Point of Contact" ~~or "9-1-1 Contact Person"~~ – The ~~individual~~entity designated by the ~~9-1-1~~ system management as the contact point for the participating ~~telecommunications carriers~~ local exchange carrier(s).

"Private Branch Exchange" or "PBX" – A telephone switchboard with many

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stations not individually connected to the local exchange carrier switching network.

"PSAP" – Public Safety Answering Point, sometimes called a Center or 9-1-1 Center; the initial answering location of a 9-1-1 call.

"Public Agency" – The State, or any unit of local government or special purpose district located in whole or in part within this State; ~~that~~which provides police, firefighting, medical or other emergency services or has authority to do so.

"Public Safety Agency" – A functional division of a public agency ~~that~~which provides police, firefighting, medical or other emergency services.

"Rate Center" – A geographically specified area used for determining mileage and/or usage dependent rates in the public switched network.

"Rehomings" – A major network change that involves moving a customer's local loop termination from one central office wireless center to another. Rehomings generally involves the retermination of private line facilities, although it can simply involve local loop termination for purposes of access to switched services. Rehoming also can be for the purpose of access to switched services. Rehoming also can be for the purposes of the carrier, perhaps in connection with a switch upgrade or switch move/decommission.

"Ringback" – A feature used in conjunction with "Called Party Hold" that allows the PSAP telecommunicator to ringback the caller who has disconnected before the necessary emergency data has been obtained.

"Ringback Tone" – A tone returned to the caller to indicate that a central office is providing ringing current to the called party's circuit.

~~"Route Diversity" – Two or more separate routes of communication arranged to reduce the possibility that, in the event of facility damage or failure, there would be any interruption of communications.~~

"Secondary PSAP" – A location where a 9-1-1 call is transferred for dispatching purposes.

"Selective Routing" – A switching system ~~that~~which automatically routes calls to predetermined PSAPs, based on the location of the calling telephone number.

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"Service Address" – The location of the primary use of the network connection or connections.

"Surcharge" – An amount levied by the corporate authorities of any municipality or county on billed subscribers of network connections for installing and maintaining an Enhanced 9-1-1 system.

"System Management" – The ETSB that provides for the management and operation of a 9-1-1 system within the scope of ~~those such~~ duties and powers as are prescribed by the Emergency Telephone System Act. If no ETSB is established, then those persons given the authority to operate the 9-1-1 system by the local public agencies.

"System Provider" – The contracted ~~An~~ entity that is certified as a telecommunications carrier by the Commission providing 9-1-1 network and or selective routing or database services.

"Tandem Trunking" – An arrangement whereby an E9-1-1 call is routed from a central office to the 9-1-1 selective router ~~tandem control office~~ to the PSAP.

"TDD" – A telecommunications device for the deaf. See "TTY."

"Telecommunications Carrier" – Shall have the same meaning as defined in Section 13-202 of the Public Utilities Act [220 ILCS 5/13-202], including those carriers acting as resellers of telecommunications services. For the purpose of 9-1-1 service, this definition shall include telephone systems operating as mutual concerns. A telecommunications carrier under the Public Utilities Act may provide competitive or noncompetitive local exchange telecommunications services or any combination of the two as defined in Section 13-204 of the Public Utilities Act [220 ILCS 5/13-204].

"Telecommunications Service" – Shall have the same meaning as defined in Section 13-203 of the Public Utilities Act [220 ILCS 5/13-203].

"Telecommunications Service Area" – The geographical area served by a telecommunications carrier.

"Telecommunicator" – A person who is trained and employed in public safety telecommunications. The term applies to complaint telephone operators, radio

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operators, data terminal operators or any combination of such functions in a PSAP.

"Terminal Equipment" – Telephone station apparatus.

"Transfer" – A feature ~~that~~which allows the PSAP telecommunicator to transfer E9-1-1 calls to a specific location or secondary PSAP.

"Trunk" – The general term for a telecommunications carrier facility that transmits signals between central offices or between a private branch exchange (PBX) and its local central office. A circuit used to connect a call between central offices.

"TTY" or "Teletypewriter" – A telegraph device capable of transmitting and receiving alphanumeric information over communications channels and capable of servicing the needs of those persons with a hearing or speech disability.

~~"TTY" – A teletypewriter, a device which employs graphic or braille communication in the transmission of coded signals through a wire or radio communication system.~~

"Uninterruptible Power SupplySource" – An emergency power source ~~that~~which can detect any change in power line frequency or voltage and automatically compensates for these changes by supplying additional power or converting to an auxiliary power source, without any loss of voltage or frequency.

(Note: Words importing the singular number may extend and be applied to several persons or things, and words importing the plural number may include the singular.)

(Source: Amended at 28 Ill. Reg. _____, effective _____)

SUBPART B: AUTHORIZATION TO OPERATE

Section 725.200 General Requirements

- a) All tentative and final plans for 9-1-1 systems shall be filed in compliance with this Part and the Emergency Telephone System Act [50 ILCS 750].
- b) Tentative plans shall be submitted to the Commission's 9-1-1 ProgramEmergency Telephone Section for review as detailed in Section 725.205(c) through (e).

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- c) Final plans shall be formally submitted to the Commission for approval as detailed in Section 725.210(a) through (f) (See 83 Ill. Adm. Code 200, "Rules of Practice").
- d) A 9-1-1 system shall not become operational without an order of authority from the Commission.
- e) The following modifications that require a Final Order from the Commission
Modification of the boundaries of an existing system or of the participants in an existing system shall be reported to the Commission, as prescribed in Section 725.210(d). Where modifications would result in the addition of a public agency as a participant in an existing system and such public agency is not exempt by law from submitting a plan for approval, such participation is subject to Commission approval and shall be approved provided that the petitioner has complied with all requirements of this Part and applicable laws.
- 1) Changing boundaries that require an intergovernmental agreement between local governmental entities to exclude or include residents within the 9-1-1 jurisdiction;
 - 2) Consolidating two or more 9-1-1 systems by intergovernmental agreement into a joint 9-1-1 system; and
 - 3) Contracting for dispatch services.
- f) The following modifications do not require a Final Order from the Commission. System management must, however, provide written notification of such change to the 9-1-1 Program 10 days prior to the change taking place. The written notification must consist of the revised application narrative and/or revised exhibits as prescribed in Section 725.210(d): Except for E9-1-1 systems, the outline of a 9-1-1 system must coincide with applicable telephone service area limits, which shall consist of the entire telephone exchange.
- 1) Addition/deletion of a system participant or adjacent public safety agency as prescribed by Section 725.210(d)(3)-(4);
 - 2) Relocation of a primary, backup, or secondary PSAP facility; and
 - 3) Reductions/additions of primary or secondary PSAPs.

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- g) *The Emergency Telephone System Board in counties passing referendums and the Chairman of the County Board in counties implementing a 9-1-1 system shall be responsible to insure that all areas of the county are served [50 ILCS 750/10.2].*
- h) ~~Modification to an approved application or system other than the items listed in Section 725.200(e) should be submitted to the Commission's 9-1-1 Emergency Telephone Section in writing no later than 10 days after the change.~~

(Source: Amended at 28 Ill. Reg. _____, effective _____)

Section 725.205 Tentative Plans

- a) A local public agency proposing to operate a 9-1-1 system shall first hold an informational meeting. ~~This~~Such meeting may include:
- 1) each public agency having jurisdiction in the telephone service ~~are~~exchange or exchanges of the proposed system;
 - 2) each public safety agency having jurisdiction in the telephone service ~~are~~exchange or exchanges of the proposed system;
 - 3) each telecommunications carrier~~LEC~~ providing the local exchange service ~~exchange or exchanges~~ in the proposed service area;
 - 4) recognized emergency medical planning groups, e.g., Area Wide Hospital Emergency Services (AHES);
 - 5) any other emergency service providers and planning agencies deemed necessary by local desire; and
 - 6) any telecommunications carrier providing 9-1-1 related services.
- b) ~~Any~~Such additional meetings as are necessary shall be held between the proposed served agencies and ~~any~~the telecommunications carrier serving the proposed 9-1-1 service area to determine the system design.
- c) Tentative plans shall consist of a narrative of the proposed system's operation and a completed "Application to Illinois Commerce Commission For the Provision of 9-1-1 Service," consisting of the following exhibits:

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- 1) Exhibit 1: A map showing the boundaries of the proposed system;
- 2) Exhibit 2: A map or maps showing the jurisdictional boundary of each system participant and adjoining public agencies and public safety agencies;
- 3) Exhibit 3: A list of system participants showing the land area in square miles and the estimated population served in their jurisdictions, including their addresses, telephone numbers and form of dispatch;
- 4) Exhibit 4: A list of the public agencies or public safety agencies adjacent to the proposed system boundaries, including their addresses and telephone numbers;
- 5) Exhibit 5: A list of the involved telecommunications carriers~~LECs~~, their telephone service areas~~exchanges~~ in the proposed system, area code, prefixes involved, and type of 9-1-1 system as specified in Section 725.500(g);
- 6) Exhibit 6: Identification of financial arrangements including revenues available for funding the 9-1-1 system;
- 7) Exhibit 7: A summary of the anticipated implementation cost and annual operating cost of the proposed system that~~which~~ are directly associated with the 9-1-1 call handling process. Copies of contractual agreements between System Management and any telecommunications carriers shall be included;
- 8) Exhibit 8: Call Handling Agreements: Copies of the proposed agreements between the PSAP and the public agencies and/or public safety agencies in a single system. Copies of the proposed agreements between PSAPs in adjacent systems or, in the absence of a PSAP, the public agencies or public safety agencies whose jurisdictional boundaries are contiguous. These agreements shall indicate the primary and secondary methods to be employed for notification of emergency calls received from requesting parties within their respective jurisdictions and shall include either direct dispatch, call referral, call relay, or call transfer;
- 9) Exhibit 9: Aid Outside Normal Jurisdictional Boundaries: A copy of the

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proposed annual agreement between the PSAP management and all public agencies and/or public safety agencies in a single system and in different systems but whose jurisdictional boundaries are contiguous. This agreement shall provide that, once an emergency unit is dispatched in response to a request through the system by direct dispatch, call referral, call relay, or call transfer, ~~this~~ unit shall render its service to the requesting party without regard to whether the unit is operating outside its normal jurisdictional boundaries. A copy of both agreements shall be filed with the Chief Clerk of the Commission at the time the petition is filed; and

- 10) Exhibit 10: A completed checklist supplied by the Commission, a network diagram, and a test plan pursuant to Section 725.505(y) (completed to the extent possible in consideration of the tentative plan).
- d) A copy of the tentative plan shall be filed for review by the Commission at least no later than 120 days after implementation of the approved surcharge or the signing of a contract or letter of intent with system providers, whichever comes first, but no later than one year prior to the proposed on-line date. A copy of the tentative plan shall also be provided to the telecommunications carriers providing service within the service area of the PSAP. The Commission's 9-1-1 Program Emergency Telephone Section shall review each tentative plan and provide an opinion to the originating agency within 120 days after receipt.
- e) Approval of tentative plans by the Commission's 9-1-1 Program Emergency Telephone Section shall be required prior to a final plan being submitted. Plans filed under Section 11 of the ETSA [50 ILCS 750/11] shall conform to minimum standards as established pursuant to Section 10 of the ETSA [50 ILCS 750/10].

(Source: Amended at 28 Ill. Reg. _____, effective _____)

Section 725.210 Final Plans

- a) Unless waived, the Commission shall hold hearings to review the final plan and shall either approve or disapprove the plan. The petitioner may request a waiver as described in subsection (b). The petitioner may request a hearing waiver as outlined below. The Commission, however, shall hold such hearings to formally review the final plan and shall either approve or disapprove the plan. The hearing shall be waived if requested by the petitioner and if neither Commission Staff nor any other party objects to the hearing waiver.

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- b) The following procedures must be taken in requesting a waiver of the Commission's hearing process:
- 1) The waiver request shall be stated in the cover letter to the Chief Clerk and in the petition. Replacement language to be inserted as (1) in the petition shall be:

Review the final (or modified) plan based on the information submitted in the application and allow the parties involved to waive a hearing on the matter.
 - 2) Publish a notice in local newspapers of general circulation at least 10 days prior to filing the application with the Commission. The notice shall appear in newspapers whose circulation covers all municipalities within the proposed system and those adjacent to the proposed system. A proof of publication from the newspapers shall be enclosed with the application.
 - 3) Notify all adjacent agencies of the intent to file a plan with the Commission for a 9-1-1 emergency telephone system. This letter shall state petitioner's address and telephone number and the Commission's 9-1-1 ~~Program~~Emergency Telephone Section address and telephone number for purposes of additional information or objections to the plan. Copies of these letters shall be attached to the submitted plan.
 - 4) An affidavit from the serving telecommunications carriers that all information contained in the application is correct. The affidavits must be signed and notarized and submitted with the petition.
- c) Final plans submitted to the Commission shall have the concurrence of their participants.
- d) Final plans shall consist of a narrative of the proposed system's operation and a completed "Application to Illinois Commerce Commission For the Provision of 9-1-1 Service" consisting of the following exhibits:
- 1) Exhibit 1: A map showing the boundaries of the proposed system;
 - 2) Exhibit 2: A map or maps showing the jurisdictional boundary of each system participant and adjoining public agencies and public safety

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agencies;

- 3) Exhibit 3: A list of system participants, the land area in square miles and the estimated population served in their jurisdictions, including their addresses, telephone numbers and form of dispatch;
- 4) Exhibit 4: A list of the public agencies or public safety agencies adjacent to the proposed system boundaries, including their addresses and telephone numbers;
- 5) Exhibit 5: A list of the involved ~~telecommunications carriers~~LECs, their ~~telephone service areas~~exchanges in the proposed system, ~~area code~~, prefixes involved and type of 9-1-1 system as specified in Section 725.500(g);
- 6) Exhibit 6: Identification of the financial arrangements including revenues available for funding the 9-1-1 system;
- 7) Exhibit 7: A summary of the anticipated implementation cost and annual operating cost of the proposed system ~~that~~which are directly associated with the 9-1-1 call handling process. Copies of contractual agreements between System Management and any telecommunications carriers shall be included;
- 8) Exhibit 8: Call Handling Agreements: Copies of the signed agreements between the PSAP and the public agencies and/or public safety agencies in a single system. Copies of the signed agreements between PSAPs in adjacent systems or, in the absence of a PSAP, the public agencies or public safety agencies whose jurisdictional boundaries are contiguous. These agreements shall indicate the primary and secondary methods to be employed for notification of emergency calls received from requesting parties with their respective jurisdictions and shall include either direct dispatch, call referral, call relay, or call transfer;
- 9) Exhibit 9: Aid Outside Normal Jurisdiction Boundaries: A copy of the signed annual agreement between the PSAP management and all public agencies and/or public safety agencies in a single system and in different systems but whose jurisdictional boundaries are contiguous. This agreement shall provide that, once an emergency unit is dispatched in response to a request through the system by direct dispatch, call referral,

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call relay, or call transfer, ~~this~~ unit shall render its service to the requesting party without regard to whether the unit is operating outside its normal jurisdictional boundaries. A copy of both agreements shall be filed with the Chief Clerk of the Commission at the time the petition is filed; and

- 10) Exhibit 10: A completed checklist supplied by the Commission, a network diagram, and a test plan pursuant to Section 725.505(y).
- e) Final plans shall be formally submitted to the Commission for approval no later than six months prior to the planned on-line date.
- f) The Commission shall approve final plans when the petitioner has complied with the requirements of this Part and applicable laws.

(Source: Amended at 28 Ill. Reg. _____, effective _____)

Section 725.220 Records and Reports

- a) The system management shall maintain ~~those~~ records ~~as~~ it considers necessary to document its operations and satisfy the requirements of interagency agreements. As a minimum, ~~those~~ records shall include:
- 1) a log of major system operations;
 - 2) critical equipment outages; and
 - 3) records of telecommunications carrier database queries by system management.
- b) The records specified in subsection (a) ~~of this Section~~ shall be preserved for a minimum of one year.
- c) The system management shall be required to file with the Commission's 9-1-1 Program, the Commission's Chief Clerk's Office, and the Illinois Attorney General Emergency Telephone Section ~~by January 31~~ the following items:
- 1) the current 9-1-1 contact person for the 9-1-1 system;
 - 2) the current error ratio for the E9-1-1 database;

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- 3) the current surcharge being collected;
- 4) the current makeup of the Emergency Telephone System Board;
- 5) the current networking for the 9-1-1 system; ~~and~~
- 6) copies of the annual certified notification of continuing agreement; ~~and-~~
- 7) names and locations of primary, secondary, and backup PSAPs.

(Source: Amended at 28 Ill. Reg. _____, effective _____)

SUBPART C: MANAGEMENT AND STAFFING

Section 725.305 Commission Liaison

Each 9-1-1 system shall designate an individual as the Commission liaison for the system. The Commission's ~~9-1-1 Program Emergency Telephone Section~~ shall be notified of any change in the name of this liaison and of any change in the telephone number or address within ten days after ~~this~~ change.

(Source: Amended at 28 Ill. Reg. _____, effective _____)

SUBPART D: STANDARDS OF SERVICE

Section 725.400 General Standards

- a) The digits "9-1-1" shall be the primary emergency telephone number within the system, but a public agency or public safety agency shall maintain a separate secondary seven digit emergency backup number for at least six months after the 9-1-1 system is in operation and shall maintain a separate number for non-emergency telephone calls.
- b) The system management shall ensure that 9-1-1 locatable addresses, with U.S. Postal Service notification, are assigned to all subscribers of an enhanced 9-1-1 system and provided to the 9-1-1 system provider.

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- c) The system management shall coordinate with the appropriate authorities to ensure that road or street signs that are essential to the implementation of an enhanced 9-1-1 system be installed prior to activating the system.
- db) Database queries will only be allowed by PSAPs for purposes of dispatching or responding to 9-1-1 emergency calls or for database integrity verification as set forth in subsections (fd)(3) through (5) of this Section.
- ee) Prior to an initial database integrity verification, system management shall obtain a court order detailing the information thatwhich is to be disclosed and the reason for disclosure.
- fd) The 9-1-1 database shall have the capability of allowing non-emergency database queries provided the following procedures are adhered to:
- 1) The system management shall be responsible for providing a level of security and confidentiality to the database thatwhich will prohibit any persons the means to access the database on a random inquiry;
 - 2) Direct access to 9-1-1 database information will be under strict control and, where the hardware being used is compatible, a password will be assigned for access;
 - 3) Non-emergency queries shall be by telephone number only and as necessary for purposes of database integrity. Non-emergency queries in excess of 10 per 24-hour period will only be done with 2 or more days advance notice to the respective telecommunications carrier system administrator for scheduling purposes. Queries may be for the specific purpose of cross-checking information in the 9-1-1 database with other sources of information, including telephone and other directories, maps, municipal database listings, etc.; and for verifying that database update information provided to the telecommunications carrier has indeed been posted and is correct. Queries will only be made on numbers that are present within the 9-1-1 system as identified in the Illinois Commerce Commission's order of authorization for the 9-1-1 system. On-site databases are exempt from telecommunications carrier advance notification requirements of this Section;
 - 4) Information retrieved will be used exclusively for the maintenance, update, and verification of the 9-1-1 database except as otherwise

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~~specified in subsection (d).~~ Any other use is expressly prohibited. The information is subject to strict non-disclosure agreements between the various telecommunications ~~carrier~~ and system management. All personnel associated in any way with the ETSB or the 9-1-1 system are bound by these agreements; and

- 5) Direct database queries shall not adversely affect the normal operation of the 9-1-1 system. Direct database queries shall be limited to off-peak times. Direct database queries shall be suspended during any incident ~~that~~which could possibly result in a number of calls from the public being made to 9-1-1. Direct database queries shall not be made if there is any known outage or impairment in the database system, including a database data link outage. Direct queries shall also be suspended if there is any abnormal lag or delay noticed in receiving responses to database queries, or if notified to cease queries by telecommunications carrier personnel. The telecommunications carrier shall treat notification of 9-1-1 system management of database query suspension as a priority. Where practicable, this notification by the telecommunications carrier to 9-1-1 system management shall be made not later than fifteen minutes after a confirmed incident or event ~~that~~which will cause database queries to be suspended.

~~ge)~~ The system management shall be responsible for the compliance of these standards, overall management, security and coordination of the 9-1-1 system.

~~hf)~~ Upon a written request of the system management, the ~~telecommunications carriers~~LECs shall provide within fourteen working days a report to assist in the validation of the accuracy of the 9-1-1 database. Before this report is delivered to the system management, the system management shall obtain a court order requiring the ~~telecommunications carriers~~LECs to release the information. A single court order may be used to comply with this Section and subsection ~~(ee)~~of this Section.

- 1) This report shall include the following information where available in the 9-1-1 database:

A) telephone number – area code, prefix, and number in separate fields;

B) pilot number – single telephone number used to tie multiple

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numbers within a system together;

- C) service address – including street name, street numbers, suffix, directional, community name, state, zip code, and location and/or descriptive information, including intersection if MSAG indicates an intersection, in separate fields;
 - D) billing address – if different than the service address, in separate fields, to be provided on a telephone number only basis pursuant to procedures defined by the telecommunications carrier and the system management. Billing address information shall be subject to non-disclosure agreements;
 - E) name – first, last, and middle names or initials in separate fields;
 - F) date service was initiated – the month, day, and year that service was initiated in separate fields. If this information is not available, the date reflecting the most current service order activity may be provided instead;
 - G) type of service – residential, business, coin, etc.;
 - H) PBX/Centrex Extensions/Station Numbers – identify those numbers that are part of a PBX/Centrex system where thisueh information is available;
 - I) surcharge status – where thisueh information is available, the report shall identify those lines on which a surcharge is being collected and the date on which the collection was initiated. Identify those lines on which no surcharge is being collected and the reason for each exemption, including telecommunications carrier lines, in separate fields;
 - J) Emergency Service Number (ESN) – appropriate ESN, if assigned, is to be made available only from the primary telecommunications carrier providing database development and routing services.
- 2) This report may be requested in writing, at a maximum, on a monthly basis. Information will be gathered from service order activity from the previous month. The information in this report is considered proprietary

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and shall be used exclusively for validating the accuracy of the 9-1-1 database. This report will be delivered in an electronic only ASCII or D-Base III format. It will not be delivered in paper format. There will be a charge for this report ~~that, which~~ will be a tariffed item by each telecommunications carrier.

- i) 9-1-1 system management will have the following responsibilities:
 - 1) Coordination of project management for system implementation and ongoing changes, including, but not limited to, project timeline, milestone progress report, and communications with all participants;
 - 2) Coordination of delivery of services between the 9-1-1 service provider, participating telecommunications carriers and the Commission; and
 - 3) Notification of Commission Staff within a minimum of 14 calendar days prior to 9-1-1 activation.

- j) Each E9-1-1 system shall have only one 9-1-1 system provider that shall provide the overall 9-1-1 database and selective routing network and associated duties for the entire system. In addition, the 9-1-1 system provider shall assume the lead role in coordinating entire projects for each telecommunications carrier in conjunction with 9-1-1 system management. Responsibilities of the 9-1-1 service provider shall include, but not be limited to:
 - 1) Adhering to the acceptable and agreed upon standards for database record exchange as prescribed, at a minimum, by the National Emergency Number Association (located at 422 Beecher Rd., Columbus OH 43230) in "Recommended Formats and Protocols for ALI Data Exchange, ALI Response and GIS Mapping" (NENA 02-010 approved on 1/2002, that combined versions 1, 2, 2.1, 3.1, and 4);
 - 2) Coordination of updating and maintaining subscriber 9-1-1 data provided by other participating telecommunications carriers to meet the requirements set forth in Section 15.4(d) of the ETSA [50 ILCS 750/15.4(d)];
 - 3) Coordination of updating and maintaining the Master Street Address Guide with 9-1-1 system management and the participating telecommunications carriers;

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- 4) Updating the ALI database on a daily basis during normal business days;
- 5) Providing notification of errors to the appropriate entities within 24 hours for corrective action;
- 6) Providing the error percentage status to 9-1-1 system management no more than once monthly, but, at a minimum, annually within the 4th quarter of each year, no later than December 31;
- 7) Providing a network diagram to 9-1-1 system management, no more than once monthly, but, at a minimum, annually within the 4th quarter of each year, no later than December 31;
- 8) Coordination of ordering and installation of all network components with all participating telecommunications carriers to meet the requirements in Section 725.500;
- 9) Coordination with all participating telecommunications carriers and 9-1-1 system management in order to obtain all required information for selective router tables, i.e., NPA/NXX, ESN, default ESN; and
- 10) Coordination with 9-1-1 system management for loading of the 9-1-1 database.

(Source: Amended at 28 Ill. Reg. _____, effective _____)

SUBPART E: ENGINEERING

Section 725.500 Telecommunications Carriers

- a) A 9-1-1 telecommunications service provides a terminating only service ~~that~~which connects a person who has dialed the universal emergency service code 9-1-1 to the PSAP assigned to that trunk group. Consistent with the language contained in subsection (c) ~~of this Section~~, 9-1-1 telecommunications service shall be provided through either dedicated direct trunking or tandem trunking. No 9-1-1 calls shall ever be delivered to Operator Services.
- b) Each telecommunications carrier shall file tariffs under Section 9-102 of the Public Utilities Act [220 ILCS 5/9-102] for 9-1-1 Telecommunications Service to

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be applied to all services peculiar to 9-1-1 installations.

- c) Dedicated direct trunking shall be considered to be the standard method of providing incoming 9-1-1 circuits. Incoming ~~trunking~~trunks shall initially be designed assuming a minimum offered load of 1.00 CCS (expected traffic load) per 1000 main stations to be served, or a minimum of two trunks, whichever is higher. Within 6 months ~~after~~of the on-line date, each trunk group shall be re-evaluated and maintained to assure 99% completion of calls placed to 9-1-1 during the average busy hour of the average busy day, or a minimum of two trunks, whichever is higher. In the event there is a host/remote central office configuration, additional trunks should be added in either a separate trunk group from each host/remote or in consolidated trunk groups based on cost and engineering considerations. Each trunk group should be sized to deliver calls to the selective routing switch being engineered in such a manner that will meet or exceed a ~~P.01p-01~~ P.01p-01 grade of service.
- 1) If dedicated direct trunking is not available from a remote switch, either to the host office or to the 9-1-1 control office serving the PSAPs, use of the umbilical for 9-1-1 will be allowed from the remote to the host. When direct remote trunking is available, dedicated trunk groups shall be provisioned directly from the remote switch.
 - 2) Alternative incoming 9-1-1 trunking methods may be utilized by the PSAP if technology and/or local telecommunications facilities can be designed and implemented. The quantity of trunks and related switching components in the telephone network shall be engineered in accordance with good engineering practices and the applicable Commission Standards of Service specified for the interoffice and intertoll network to ensure completion of calls placed to 9-1-1 during the average busy hour of the average busy day. A detailed description of the trunking method to be used must be included in tentative 9-1-1 plans. ~~Approval~~The approval by the Commission's 9-1-1 ~~Program regarding~~Emergency Telephone Section ~~of~~ alternative incoming 9-1-1 trunking methods shall be required by the petitioner prior to submitting the final application. Requests for alternative trunking methods for existing systems require a detailed written description of the trunking method to be used for approval by the Commission's 9-1-1 Program prior to implementation.
- d) All 9-1-1 circuits shall be arranged for one way incoming only service to the PSAP. Outbound dialing on 9-1-1 circuits is prohibited.

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- e) Telecommunications carriers shall use the Common Language Circuit Identifier "ES" in identification of 9-1-1 telecommunications service "A" link trunks and the circuit identifier "EMNC" shall be used for "B" link circuits to prevent confusion with other special services.
- f) Coin-free dialing shall be provided from all coin telephones within an exchange with 9-1-1 service. ~~Telephone companies shall notify all non-telecommunications carrier providers of 9-1-1 service in the system.~~
- g) "9-1-1 Telecommunications Service" may be of two types: Basic or Enhanced 9-1-1 or E9-1-1.
- 1) Consistent with the language contained in subsections (c) and (d) ~~of this Section~~, Basic 9-1-1 telecommunications service shall be provided through either dedicated direct trunking and/or tandem trunking. The features associated with the dedicated direct trunking service shall be according to the following format types:
- A) Type #1 – This is the most basic configuration available, and provides:
- i) no per-call charge,
 - ii) loop-type ringdown signaling toward PSAP,
 - iii) ringback tone to caller, and
 - iv) transmission path for communication between the caller and the PSAP.
- B) Type #2 – This configuration provides all the features of the Type #1 circuit with the following options:
- i) called party hold,
 - ii) forced disconnect,
 - iii) idle circuit tone application, and

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- iv) originating Switchhook Status Indication contingent on the installation of appropriate terminal equipment at the PSAP.
- C) Type #3 – This configuration provides all the features of the Type #1 and Type #2 circuits with the addition of ringback of the calling party on a held line.
- D) Type #4 – This configuration provides for optional features beyond those described in the configuration of Type #2 or Type #3. This type of Basic 9-1-1 also requires trunks capable of carrying ANI.
- 2) The E9-1-1 feature provides the capability to serve several PSAPs existing within the 9-1-1 service area with tandem trunking through the E9-1-1 ~~selective router~~~~tandem-office~~. The main characteristic of E9-1-1 service is the capability of the E9-1-1 ~~selective router~~~~tandem-office~~ to selectively route a 9-1-1 call originating from any station in the 9-1-1 service area to the correct primary PSAP. The features associated with tandem trunking in an E9-1-1 System may include the following:
- A) selective routing;
 - B) default routing;
 - C) alternate routing;
 - D) central office transfer;
 - E) ANI; and
 - F) ALI.
- h) The transmission grade of service on 9-1-1 circuits using inter-exchange facilities shall be at least equivalent to the transmission grade of service specified in 83 Ill. Adm. Code 730.520 dealing with interoffice transmission objectives.
- i) The transmission grade of service for the intra-exchange loop portion of any 9-1-1 circuit shall be at least equivalent to the transmission grade of service specified in 83 Ill. Adm. Code 730.525 dealing with local loop transmission objectives.
- j) When all 9-1-1 circuits are busy in the originating central office, the switching

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facility, where equipped to provide the function, shall route the caller to an announcement or busy tone. When an all-trunks busy situation occurs in an intermediate switching facility, that machine shall, where equipped, route the caller to an appropriate backup answering location, announcement, or busy tone.

- k) All telecommunications carriers shall arrange for each of their switching offices to accept the 9-1-1 code, ~~no later than two years after a referendum has passed or the signing of a contract or letter of intent in the area that is served by that switching office. When the 9-1-1 code is dialable in a switching office but not providing service, the caller shall receive either live or mechanical intercept service.~~
- l) No circuits associated with a 9-1-1 system shall be opened, grounded, short circuited, or tested in any manner until maintenance personnel have obtained release of the affected circuits from the appropriate PSAP personnel. Telecommunications carrier maintenance personnel will endeavor to advise PSAP personnel regarding the length of time that will be required to perform any work involving circuits associated with a 9-1-1 system. Telecommunications carrier personnel shall notify 9-1-1 system management a minimum of 48 hours prior to performing any action that could adversely affect 9-1-1 service, including, but not limited to: central office switching installations, E9-1-1 selective router installations, upgrades, rehomes, or NPA additions.
- m) Each telecommunications carrier shall adopt practices to minimize the possibility of service disruption on all circuits associated with 9-1-1 service to a PSAP. ~~These~~Such practices will provide for circuit guarding at all terminations with protective devices that will minimize accidental worker contact. ~~There~~Such practices shall also contain procedures for physical identification of all 9-1-1 circuit appearances with special warning tags and/or labels, and identification of circuits in company records.
- n) Prior to a 9-1-1 system going on-line, each telecommunications carrier is responsible for having in its records a contact number for each PSAP in the event of outage or failure of a 9-1-1 system.
- o) Except as otherwise provided in this Part, call boxes shall be a part of the 9-1-1 system. Each system shall be engineered and provisioned with call boxes to adequately serve a system in the event the central office is isolated from the control office or selective router. Call boxes shall only be provisioned to central offices and to those remote central offices that have the capability to stand alone

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and function when severed from the host central office. A high priority of attention shall be given to all trouble reports and requested restorals. Call boxes shall be designed to meet the following requirements:

- 1) Call boxes shall have a minimum of two lines, with additional lines agreed to by system management and the telecommunications carriers;
 - 2) The type of vault used to house the call box circuitry shall be weather resistant and have a locking capability;
 - 3) The call boxes shall be provisioned with a transfer switch for use by authorized personnel to route 9-1-1 calls from the network to the call box jacks;
 - 4) The call boxes shall be provisioned with the lines busied out until the transfer switch is thrown to prevent calls from ringing into an unattended call box;
 - 5) The call boxes shall be equipped with an intrusion alarm at an additional cost to be assessed to the system management through a tariff filed pursuant to Section 9-201 of the Public Utilities Act;
 - 6) Call boxes shall be located, installed and maintained so that 9-1-1 system personnel have unrestricted access to the call box 24 hours per day, 7 days per week. If the call box is to be located within any secured area, the telecommunications service provider shall provide 9-1-1 system management immediate, unrestricted access to the secured area; and
 - 7) The calls boxes shall be tested in conjunction with 9-1-1 system management annually, at a minimum.
- p) Where call boxes are not a viable solution for a telecommunications carrier, the following options are available:
- 1) Diverse routing is required if used in lieu of a call box and shall be provisioned to meet the P.01 grade of service by the telecommunications carrier and shall meet the following requirements:

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- A) A minimum of two facility paths that are in physically separate cable routes between the central office and the 9-1-1 selective router; and
 - B) Trunks divided as equally as possible in the two facility paths between the central office and the 9-1-1 selective router. Trunking shall be provisioned as stated in subsection (c).
- 2) Other viable solutions as technology permits may be utilized with prior approval by the Commission's 9-1-1 Program. A detailed written description of the proposed solution to be utilized must be submitted to the Commission's 9-1-1 Program for approval prior to deployment. Approval will be determined based on good engineering practices, the cost and rate consequences (if applicable), and the effect on the provisioning of 9-1-1 service.
- 3) All telecommunications carriers shall coordinate call box procedures or alternative call box procedures with 9-1-1 system management and the Commission's 9-1-1 Program.
- qp) Each telecommunications carrier shall adopt practices to notify a primary point of contact within a 9-1-1 system within 15 minutes after a confirmed outage within the system and to also advise the primary point of contact as to the magnitude of the outage. If more than one 9-1-1 system is served out of a central office, the telecommunications carrier shall make notification to a primary PSAP within each 9-1-1 system affected.
- rq) Each telecommunications carrier shall adopt practices to notify a primary point of contact within a 9-1-1 system within 15 minutes after the confirmed restoration of 9-1-1 services.
- s) Each telecommunications carrier shall provide written notification including 24 hour 9-1-1 service and repair center contacts to 9-1-1 system management prior to offering telecommunications services within the 9-1-1 service area.
- t) Each telecommunications carrier shall deliver 9-1-1 service elements as requested by 9-1-1 system management for the provisioning and ongoing maintenance of the 9-1-1 systems as follows:
- 1) Provide surcharge coordination with 9-1-1 system management;

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- 2) Provide database coordination with the system provider;
 - 3) Provide network coordination with the system provider; and
 - 4) Provide maintenance and repair procedures, service and repair center contact information, restoration plan and call trace procedures to 9-1-1 system management.
- u) Each telecommunications carrier shall adopt testing practices in conjunction with 9-1-1 system management to perform, at a minimum, central office to PSAP 9-1-1 test calls when any of the following changes occur:
- 1) New central office switching installations;
 - 2) E9-1-1 selective router installations, upgrades, or rehomes;
 - 3) NPA additions;
 - 4) Central office switch upgrades to allow LNP;
 - 5) Number pooling implementations; and
 - 6) Any other event that affects 9-1-1.
- v) Each telecommunications carrier shall adopt practices and implement procedures to reduce or minimize the conditions that cause default routed calls.
- w) Each telecommunications carrier shall provide the feature "default routing" to all 9-1-1 customers. Each telecommunications carrier shall adopt practices to coordinate default routing requirements with the 9-1-1 service provider for the 9-1-1 service area in which they are operating. Default routing will be provided, at a minimum, by county. Where an exchange boundary/rate center crosses county boundaries, the telecommunications carrier may establish a single default with the approval of 9-1-1 system management for those affected 9-1-1 systems.
- x) Each telecommunications carrier shall adopt practices and procedures to deliver 9-1-1 calls to the appropriate selective router based on the originating caller's location and assigned NPA for the 9-1-1 service provider's selective router coverage area.

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- y) Each telecommunications carrier will adopt practices to provide the appropriate telecommunications services to Private Business Switch and Private Residential Switch subscribers for the purposes of complying with Sections 15.5 and 15.6 of the ETSA [50 ILCS 750/15.5 and 15.6] and 83 Ill. Adm. Code 726.
- z) Each telecommunications carrier shall update the 9-1-1 database on a daily basis (Monday through Friday during business hours).

(Source: Amended at 28 Ill. Reg. _____, effective _____)

Section 725.505 Public Safety Answering Point

- a) All 9-1-1 call answering equipment used by a PSAP ~~must comply with applicable Federal Communications Commission rules, 83 Ill. Adm. Code 740, and local telecommunications carrier tariffs and~~ must be compatible with the telecommunications carrier's LEC's central office equipment and trunking arrangements.
- b) Each PSAP, after consultation with the telecommunications carrier LEC, shall designate an area of adequate size to be used by the telecommunications carrier LEC for termination of the company's lines and equipment.
- c) ~~Premises equipment for each~~ Each 9-1-1 circuit will indicate incoming calls by both audible and visible signals. Each outgoing circuit shall have a visual display of its status.
- d) Each 9-1-1 answering position shall have access to all incoming 9-1-1 lines and outgoing circuits peculiar to its zone of responsibility.
- e) Call transfer equipment shall be designed to achieve transfers with at least 99.9% completion. (This may require the use of dedicated direct trunking toward the responding agency.) ~~When~~ At such time as the telecommunicator verifies that the transfer has been completed and the telecommunicator's services are no longer required, the telecommunicator may manually release himself/herself from the call, provided that the telephone equipment is so designed. A 9-1-1 system should be designed so that a call will never be transferred more than once.
- f) Each answering position PSAP shall have direct access to an operational teletypewriter (~~TDD~~/TTY), and all PSAP telecommunicators~~personnel~~ shall be

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trained in its use at least every six months. 9-1-1 system management will ensure that TTY equipment is available to continue service in the event of emergency, malfunction, or power failure. A portable will be held in reserve per 9-1-1 system to replace any malfunctioning TDD/TTY.

- g) Each PSAP shall have at least one overflow answering position to handle those circumstances when the call volume exceeds the capability of the primary telecommunicator position. This position must have the capability of being answered by a trained PSAP telecommunicator and be capable of receiving the Enhanced 9-1-1 features if it is a participant in an Enhanced 9-1-1 system. Supervisory positions may be utilized to satisfy this requirement only if the position will be answered by emergency trained personnel. Overflow calls shall be routed to a backup PSAP except as provided for in subsection (i) ~~of this Section.~~
- h) System management shall provide continuous and uninterrupted operation to the persons within the system's boundaries 24 hours per day.
- i) Backup PSAP
- 1) Each 9-1-1 system shall have a backup PSAP. A backup PSAP shall meet the same standards as the primary PSAP except as provided for in subsections (i)(2) and (3) ~~of this Section.~~ Futhermore, 9-1-1 systems that were issued authorization to operate prior the effective date of this amendment and that still do not currently maintain a back-up PSAP must comply with this Section within 24 months after the effective date of this amendment.
- 2) In a ~~county~~ 9-1-1 system with less than 15,000 billable access lines, where the ~~system~~ ~~county~~ has demonstrated that the requirements of subsections (g) and (h) ~~of this Section~~ would place an undue financial burden upon the system, a full feature backup PSAP does not have to be maintained. For those systems, the backup PSAP requirement may be met by one of the following:
- A) An unattended PSAP shall have:
- i) the capability to provide 9-1-1 service;
- ii) the communication equipment necessary to dispatch

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emergency services;

iii) a backup power supply; ~~and~~

iv) the ability to communicate via TT; and

~~vi)~~ the capability to be immediately activated with authorized personnel.

B) Call Box devices only if:

i) the 9-1-1 system has five or fewer telecommunications carrier-LEC central offices;

ii) system management has provided the communication equipment necessary to dispatch emergency services; and

iii) they can be immediately activated with authorized personnel.

3) 9-1-1 systems with ~~fewer~~ less than 15,000 billable access lines that have two or more PSAPs shall meet the standards as outlined in subsections (g), (h), and (i) ~~of this Section~~. 9-1-1 systems operating under this exemption should, as funds become available, upgrade their backup PSAP capability to meet those standards as specified in subsections (g), (h), and (i) ~~of this Section~~. When a 9-1-1 system starting with ~~fewer~~ less than 15,000 billable access lines increases its billable access lines to 15,000 for a period of 1 year, it shall upgrade to meet the standards as specified in subsections (g), (h), and (i) ~~of this Section~~.

j) PSAP telecommunicators shall be trained in emergency dispatch procedures as specified by 9-1-1 system management to fulfill the responsibilities of their position.

1) Newly hired telecommunicators must receive, at a minimum, a 40-hour training curriculum approved by 9-1-1 system management prior to 9-1-1 call handling.

2) If emergency medical dispatch is being provided that involves the dispatch of any fire department or emergency medical service agency, additional

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training must be completed in accordance to the Emergency Medical Services (EMT) Systems Act [210 ILCS 50] and 77 Ill. Adm. Code 515.

3) Continuing education for existing telecommunicators is required and will be specified by 9-1-1 system management.

- k) System management shall provide for the installation of a master logging recorder of adequate capacity to record both sides of a conversation of each incoming 9-1-1 call and any radio transmissions relating to the 9-1-1 call and its disposition. ~~These Such~~ recordings shall have the time of each event noted. System management may elect to record on a circuit-by-circuit basis or by way of the telecommunicator's position.
- l) System management shall ensure that each PSAP maintains an archive of the storage mediatapes for a minimum of 30~~thirty~~ days without recirculation of any mediatape.
- m) In order for a 9-1-1 plan to be approved, the facility selected for the primary PSAP, backup PSAP, and, where instituted, a secondary PSAP, must be equipped with an emergency back-up power source capable of supplying electrical power to serve the basic power requirements of the PSAP, without interruption, for a minimum of four hours. The back-up power source shall be tested for reliability on a monthly basis.
- n) Where sophisticated telephone equipment or customer premise equipment is implemented and which is not tolerant of power fluctuations or interruptions, and is vital to the PSAP's operation, an uninterruptible power source shall be installed at all PSAP locations.
- o) In some instances, the system management may desire to have route diversity for its telephone circuits. The telecommunications carrier~~LEC~~ serving the PSAP shall be responsible for providing the necessary information regarding the availability and cost of this service.
- p) Each PSAP shall have at least one non-published telephone number to be provided to telecommunications carrier~~LEC~~ operators, adjoining PSAPs and agencies to advise the PSAP of emergency messages.
- q) System management shall adopt practices to ensure the following:

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- 1) When call box operation is necessary, authorized personnel shall respond to the call boxes who are trained in the operation of call box procedures;
 - 2) In instances where a call box is situated in split telecommunications carrier~~LEC~~ exchanges (an exchange shared with more than one 9-1-1 system or jurisdiction), procedures shall be developed by the 9-1-1 systems involved to respond to the call box in instances of outages or disasters; ~~and~~
 - 3) That when a primary point of contact is notified by telecommunications carrier personnel that an outage has occurred in a 9-1-1 system, the PSAP being notified must make notification to other PSAPs in the 9-1-1 system that is affected by the outage; ~~and-~~
 - 4) That default routing requirements will be coordinated with the 9-1-1 system provider, telecommunications carriers, and 9-1-1 system management.
- r) System management shall have the obligation of continual review using recognized administrative, engineering and database security procedures to determine and assure adequate service to the general public in accordance with the Act and this Part.
 - s) PSAP employees shall be instructed to be efficient and courteous in the handling of all calls and to comply with the provisions of all applicable federal and State laws in maintaining secrecy of communications.
 - t) Each PSAP shall insure that all 9-1-1 emergency calls are answered and handled without preference to the location of the caller.
 - u) It shall be the joint responsibility of the 9-1-1 system and the telecommunications carrier to ensure that the error ratio of each 9-1-1 system's database shall not, at any time, exceed 1%. Where LEC facilities permit, and assignable radio frequencies are available, wireless technology may be considered as an alternative to the call box system capability as required in Section 725.500(o) of this Part. System management shall be responsible for the identification and licensing of radio frequencies with the Federal Communications Commission; for costs for equipping or for converting any central office within the 9-1-1 system with wireless links that are equal to the number of land-based trunks; and for any other equipment necessary to provide emergency communications via wireless

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~~technology. When wireless technology is utilized, the wireless links will be activated in the event the central office is severed from the rest of the network. Wireless links shall be provisioned to all central offices that can stand alone and function when severed from the host central office. System management shall coordinate any conversion with the LEC. Approval of the Commission's 9-1-1 Emergency Telephone Section shall be required prior to implementation.~~

- v) Each PSAP should answer ~~90~~^{ninety} percent of all 9-1-1 calls within ~~10~~^{ten} seconds.
- w) All calls of an administrative or non-emergency nature shall be referred to the appropriate agency's published telephone number. After the referral is made, the telecommunicator shall release the circuit for public use.
- x) A current copy of this Part shall be on file in every PSAP.
- y) Call through testing is required prior to going on-line.
 - 1) ~~A formal written test plan shall be provided to the Commission's 9-1-1 Program as well as an attachment to the final plan submitted to the Commission for the system's authorization to operate. The test plan will explain how 9-1-1 system management plans to perform its testing set forth in subsection (y)(2). Testing shall be for a minimum of two weeks for communities or multi-jurisdictional communities and two weeks for county systems that are served by live 9-1-1 end offices.~~
 - 2) ~~System management shall ensure that call through and field testing has been performed on a minimum of 40% of all access lines in the 9-1-1 service area, including each NXX for every participating telecommunications carrier and for every ESN within each telecommunications carrier's service area prior to the 9-1-1 system being able to announce its availability to the public. Testing shall be:~~
 - A) ~~for a minimum of:~~
 - i) ~~Four weeks for communities or multi-jurisdictional communities; and~~
 - ii) ~~Six weeks for county systems that are not currently being served 9-1-1 service; or~~

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- ~~B) For a minimum of 80% of all access lines in a system for both communities or multi-jurisdictional communities and county systems.~~
- z) Ongoing testing after the 9-1-1 system is on-line shall include the following:
- 1) 9-1-1 system management shall conduct testing with all telecommunications carriers, including, but not limited to, the 9-1-1 database, network trunking, system overflow, system backup, default routing, call transfer and call boxes on a continuing basis to ensure system integrity. The testing shall be coordinated in advance by 9-1-1 system management, 9-1-1 service providers, and the participating telecommunications carriers.
 - 2) 9-1-1 system management shall participate in coordinated testing with the participating telecommunications carriers when any of the following occur:
 - A) New central office switching installations;
 - B) E9-1-1 selective router installations, upgrades or rehomes;
 - C) NPA additions;
 - D) When a central office switch is made LNP capable;
 - E) Number pooling; and
 - F) Any other event that affects 9-1-1.
 - 3) Upon request, after notification of implementation, 9-1-1 system management shall participate in coordinated testing with the private residential or business switch operators.
 - 4) 9-1-1 system management shall forward all error reports within two business days after finding the error to the 9-1-1 system provider.
 - 5) 9-1-1 system management shall attempt to retest and/or validate that all errors have been corrected (e.g., no record found, misroutes).

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- 6) The 9-1-1 system provider shall correct the error within two business days after receipt of an error report from 9-1-1 system management.
- 7) If the error affects multiple carriers and 9-1-1 systems, then the correction shall take place within two to four business days after receipt of an error from 9-1-1 system management.
- 8) 9-1-1 system management shall on a continuing basis maintain the MSAG, the ELT for each ESN, and the associated telephone numbers for the ELTs.

(Source: Amended at 28 Ill. Reg. _____, effective _____)

SUBPART F: OPERATIONS

Section 725.600 System Review

- a) The corporate authorities of any county or municipality that imposes a surcharge shall establish an Emergency Telephone System Board. The corporate authorities shall provide for the manner of appointment and the number of members of the Board, provided that the Board ~~The ETSB where appointed shall act as the advisory or policy board for each 9-1-1 system. If there is no ETSB, each system shall establish an advisory or policy board which~~ shall consist of not fewer than 5 members, one of whom ~~shall~~ may be a public member who is a resident of the local exchange service territory included in the 9-1-1 coverage area, one of whom (in counties with a population less than 100,000) shall be a member of the county board, and at least three of whom shall be representatives of the 9-1-1 public safety agencies, including but not limited to police departments, fire departments, emergency medical services providers, and emergency services and disaster agencies and appointed on the basis of their ability and experience. Elected officials are also eligible to serve on the board. ~~The board shall serve as the grievance committee for the resolution of disputes.~~
- b) Any two or more municipalities, counties, or combination thereof that impose a surcharge may, instead of establishing individual boards, establish by intergovernmental agreement a Joint Emergency Telephone System Board. The manner of appointment of such a Joint Board shall be prescribed in the agreement. The intergovernmental agreement must be consistent with subsection (a). Any participating agency which feels that adequate service is not being provided, in

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~~accordance with their negotiated agreement, may present its grievance before the advisory or policy board as identified in subsection (a) of this Section.~~

- c) The powers and duties of the Board shall be defined by ordinance of the municipality or county or by intergovernmental agreement in the case of a Joint Board.

(Source: Amended at 28 Ill. Reg. _____, effective _____)

Section 725.620 Disaster Procedures

- a) Each PSAP management shall develop procedures providing for the continued operation of a 9-1-1 answer point in the event that critical functions of the PSAP are partially or totally disabled due to natural or man-made disasters.
- b) Each ~~telecommunications carrier's LEC's~~ central office shall be equipped with call boxes to serve a 9-1-1 system if there is an outage or disaster or may be provisioned to provide diverse routing in lieu of a call box, except as provided in Section 725.500(p)(2). Once accessed by authorized personnel, the call boxes are under direct control of system management. Call boxes shall be designed to meet the following:
- ~~1) Have a minimum of two lines, with additional lines agreed to by system management and the LECs;~~
 - ~~2) The type of vault used to house the call box circuitry shall be weather resistant and have a locking capability;~~
 - ~~3) The call boxes shall be provisioned with a transfer switch for use by authorized personnel to route transfer 9-1-1 calls from the network to the call box jacks;~~
 - ~~4) The call boxes shall be provisioned with the lines busied out until the transfer switch is thrown to prevent calls from ringing into an unattended call box; and~~
 - ~~5) The call boxes shall be equipped with an intrusion alarm at an additional cost to be assessed to the system management through the tariff process.~~

(Source: Amended at 28 Ill. Reg. _____, effective _____)

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SUBPART G: FACILITIES

Section 725.700 Physical Security

- a) ~~System management must ensure that critical~~Critical areas of a PSAP, backup PSAP, and secondary PSAP shall have adequate physical security to prevent malicious disruption of service and shall be protected against damage due to vandalism, terrorism, and civil disturbances. ~~PSAP personnel shall be isolated from direct public contact. These~~Such critical areas shall, at a minimum, include all communications equipment, ~~PSAP~~communications personnel, electronic equipment rooms, and mechanical equipment rooms that are vital to the operation of the PSAP.
- b) ~~The PSAP and PSAP personnel shall be isolated from direct public contact. Wherever practical, service entrances for electric and telephone service shall be underground, at least to the respective utility's serving distribution facility. Sufficient protective measures shall be taken against vandalism and natural or manmade hazards at each PSAP.~~
- c) ~~Entry to the PSAP shall be restricted to authorized persons only. Additionally, doors that lead directly from the exterior into the PSAP or from within a building into the PSAP shall be secured at all times. Access to the communications mechanical equipment rooms shall be restricted within the building by means of secured doors.~~
- d) ~~Access to the communications and electronic equipment rooms shall be restricted within the building by means of secured doors.~~
- e) ~~Wherever practical, service entrances for electric and telephone service shall be underground, at least to the respective utilities' nearest serving distribution point. Protective measures shall be taken against vandalism and natural or manmade hazards at each PSAP.~~
- f) ~~The PSAP shall be equipped with a fire extinguisher. Personnel shall be instructed in proper use of these extinguishers.~~

(Source: Amended at 28 Ill. Reg. _____, effective _____)

SUBPART H: SURCHARGE

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Section 725.800 Assessment of Surcharge (Repealed)

- a) ~~Any municipality or any county may impose a monthly surcharge on billed subscribers of network connections provided by telecommunications carriers engaged in the business of transmitting messages by means of electricity originating within the corporate limits of the municipality or county imposing the surcharge, provided that:~~
- ~~1) The rate at which the surcharge shall be determined shall be established by passage of a referendum by the electors and passage of an ordinance imposing the surcharge by the municipality or county.~~
 - ~~2) The referendum requirement in subsection (a)(1) of this Section shall not apply to any municipality with a population over 500,000 and the surcharge may not exceed \$1.25 per network connection.~~
- b) ~~The surcharge per month per network connection allowed by Section 15.3 of the Emergency Telephone System Act [50 ILCS 750/15.3] and upon passage of an ordinance by the municipality or county shall be collected by the telecommunications carrier and held in a special fund for the municipality, county or joint ETSB imposing the surcharge. The amount of surcharge collected by the telecommunications carrier shall be paid to the particular municipality, county, or joint ETSB not later than 30 days after the surcharge is collected, net any network or other sophisticated 9-1-1 system charges due the particular telecommunications carrier. The telecommunications carrier collecting the surcharge shall be entitled to deduct 3% of the gross amount of the surcharge collected to reimburse the telecommunications carrier for the expense of accounting and collecting the surcharge. For Centrex type service, each telecommunications carrier shall assess the surcharge equal to one network connection for every ten Centrex lines, except for those municipal or county lines exempt from surcharge under the Act. Each telecommunications carrier's tariff rates for nonrecurring and recurring services attributable to Centrex type lines shall utilize the same ratio as utilized for surcharge.~~
- e) ~~The surcharge shall only be imposed by a municipality, county or Joint ETSB for the purposes of providing Enhanced 9-1-1 service.~~

(Source: Repealed at 28 Ill. Reg. _____, effective _____)

Section 725.805 Surcharge Billing (Repealed)

- a) ~~The surcharge shall only be applied to those in-service network connections as defined in Section 725.105.~~

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- b) ~~Trunks and/or lines supporting the following types of service shall be billed a 9-1-1 surcharge:~~
- ~~1) Centrex-type service (billed as described in Section 725.800(b));~~
 - ~~2) Dormitory service;~~
 - ~~3) Hospital service;~~
 - ~~4) Hotel/motel service;~~
 - ~~5) Pay telephones as defined in 83 Ill. Adm. Code 771;~~
 - ~~6) PBX;~~
 - ~~7) Semi-public coin;~~
 - ~~8) Services on temporary suspension;~~
 - ~~9) Billing concession;~~
 - ~~10) Key telephone systems;~~
 - ~~11) Business lines; and~~
 - ~~12) Residential lines.~~
- e) ~~The surcharge may also be assessed to other billed subscribers of network connections if and to the extent permitted under Section 15.3 of the ETSA.~~

(Source: Repealed at 28 Ill. Reg. _____, effective _____)

Section 725.810 Telecommunications Carrier Surcharge Administration and Monthly Report to the Emergency Telephone System Board

~~Telecommunications carriers, whether they are considered resellers or facility based carriers, are responsible for their own surcharge administration. Telecommunications carriers that have contracted with a wholesale provider to bill, collect, and remit the 9-1-1 surcharge shall have one year after the effective date of this Part to renegotiate their interconnection agreement with that provider and arrange to directly bill, collect and remit the appropriate 9-1-1 surcharge. In addition, each~~Each telecommunications carrier shall provide to the ETSB, PSAP, or jurisdiction a detailed monthly listing of the actual number of network connections, including the number of residential, business, payphone, Centrex, PBX, and exempt-type lines, ~~in the 9-1-1 or proposed system to assist the jurisdiction in determining the line count for planning and projecting revenues and costs for the 9-1-1 or proposed system.~~ See Appendix A of this Part. ~~The listing shall not contain information which the telecommunications carrier determines to be confidential.~~

(Source: Amended at 28 Ill. Reg. _____, effective _____)

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Section 725.APPENDIX A Telecommunications Carrier Monthly Report to ETSB

Telecommunications Local Exchange

Carrier Name: _____

Remittance for (Month/Year): _____

Total Number of Access Lines: _____

	Number	Rate	Revenues
Residential Lines	_____	_____	_____
Basic Business Lines	_____	_____	_____
Payphone Lines	_____	_____	_____
Centrex/ PBX Lines Billed	_____	_____	_____
Centrex/PBX Lines Not Billed (_____)	(_____)		
Exempt Lines (_____)	(_____)		
TOTALS	_____		_____

Date Prepared

~~Preparer~~ Originator

Telephone Number

(Source: Amended at 28 Ill. Reg. _____, effective _____)

DEPARTMENT OF PROFESSIONAL REGULATION

NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Nursing and Advanced Practice Nursing Act – Registered Nurse and Licensed Practical Nurse
- 2) Code Citation: 68 Ill. Adm. Code 1300
- 3) Section Number: 1300.15 Proposed Action: Amendment
- 4) Statutory Authority: Nursing and Advanced Practice Nursing Act [225 ILCS 65]
- 5) A Complete Description of the Subjects and Issues Involved: This proposed rulemaking increases the renewal fee for registered and licensed practical nurses by \$10 per year (from \$40 to \$60 for a biennial renewal).
- 6) Will this amendment replace an emergency amendment currently in effect? Yes
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Does this amendment contain incorporations by reference? No
- 9) Are there any other proposed amendments pending on this Part? No
- 10) Statement of Statewide Policy Objective (if applicable): This rulemaking has no impact on local governments.
- 11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may submit written comments within 45 days after this issue of the *Illinois Register* to:

Department of Professional Regulation
Attention: Barb Smith
320 West Washington, 3rd Floor
Springfield, IL 62786
217/785-0813 Fax: 217/782-7645

- 12) Initial Regulatory Flexibility Analysis:
 - A) Types of small businesses, small municipalities and not for profit corporations affected: Those providing nursing services.

DEPARTMENT OF PROFESSIONAL REGULATION

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- B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of professional skills necessary for compliance: Nursing skills are required for licensure.
- 13) Regulatory Agenda on which this rulemaking was summarized: July 2003

The full text of the proposed amendment is the same as the text that appears in the Emergency Amendment published in this issue of the *Illinois Register* on page 3928:

DEPARTMENT OF PUBLIC AID

NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Medical Assistance Programs
- 2) Code Citation: 89 Ill. Adm. Code 120
- 3) Section Number: Proposed Action:
120.530 New Section
- 4) Statutory Authority: Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-13]
- 5) Complete Description of the Subjects and Issues Involved: This new Section 120.530, Home and Community Based Services Waivers for Medically Fragile, Technology Dependent, Disabled Persons Under Age 21, is being proposed under Subpart I, Special Programs. Relative to the current waiver provisions at 89 Ill. Adm. Code 140.645, the proposed amendments have been updated to adhere to the current waiver as federally approved by the Centers for Medicare and Medicaid Services (CMS). Under the waiver program, in-home care is provided for disabled persons under the age of 21 years who are medically fragile and technology dependent, and who, without the in-home waiver services, would require the level of care provided in a hospital or skilled nursing facility for children.

The proposed amendments provide:

That the University of Illinois' Division of Specialized Care for Children (DSCC) performs the operational functions under the waiver program pursuant to an interagency agreement with the Department;

The waiver eligibility requirements;

That a determination must be made that lacking the provision of in-home care, the child would require institutionalization;

A description of all eligible services under the waiver;

Clarifications on cost effectiveness criteria and the formula for determining cost effectiveness;

Plan of Care requirements; and

A statement on non-compliance with the Department or DSCC by a family in implementing the Child's plan of care.

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Related amendments are being proposed to repeal 89 Ill. Adm. Code 140.645, Home and Community Based Services Waivers for Medically Fragile, Technology Dependent, Disabled Persons under Age 21. Section 140.645 is being repealed to allow a more appropriate placement for the waiver provisions in 89 Ill. Adm. Code 120.530.

- 6) Will these proposed amendments replace any emergency amendments currently in effect?
No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Do these proposed amendments contain incorporations by reference? No
- 9) Are there any other proposed amendments pending on this Part? Yes

<u>Sections</u>	<u>Proposed Action</u>	<u>Illinois Register Citation</u>
120.310	Amendment	27 Ill. Reg. 18961; 12/19/03
120.336	Amendment	27 Ill. Reg.17193; 11/14/03

- 10) Statement of Statewide Policy Objectives: These proposed amendments do not affect units of local government.
- 11) Time, Place, and Manner in Which Interested Persons May Comment on this Proposed Rulemaking: Any interested parties may submit comments, data, views, or arguments concerning this proposed rulemaking. All comments must be in writing and should be addressed to:

Joanne Scattoloni
Office of the General Counsel, Rules Section
Illinois Department of Public Aid
201 South Grand Avenue East, Third Floor
Springfield, Illinois 62763-0002
(217)524-0081

The Department requests the submission of written comments within 30 days after the publication of this notice. The Department will consider all written comments it receives during the first notice period as required by Section 5-40 of the Illinois Administrative Procedure Act [5 ILCS 100/5-40].

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These proposed amendments may have an impact on small businesses, small municipalities, and not-for-profit corporations as defined in Sections 1-75, 1-80 and 1-85 of the Illinois Administrative Procedure Act [5 ILCS 100/1-75, 1-80, 1-85]. These entities may submit comments in writing to the Department at the above address in accordance with the regulatory flexibility provisions in Section 5-30 of the Illinois Administrative Procedure Act [5 ILCS 100/5-30]. These entities shall indicate their status as small businesses, small municipalities, or not-for-profit corporations as part of any written comments they submit to the Department.

- 12) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: Nurses (RNs and LPNs) and other providers of in-home care services will be affected by this proposed rulemaking. The Department is unsure whether any of the affected entities may qualify as small businesses.
 - B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of professional skills necessary for compliance: None
- 13) Regulatory Agenda on Which this Rulemaking Was Summarized: January 2004

The full text of the proposed amendment begins on the next page:

DEPARTMENT OF PUBLIC AID

NOTICE OF PROPOSED AMENDMENT

TITLE 89: SOCIAL SERVICES
CHAPTER I: DEPARTMENT OF PUBLIC AID
SUBCHAPTER b: ASSISTANCE PROGRAMSPART 120
MEDICAL ASSISTANCE PROGRAMS

SUBPART A: GENERAL PROVISIONS

Section

120.1 Incorporation by Reference

SUBPART B: ASSISTANCE STANDARDS

Section

120.10 Eligibility For Medical Assistance
120.11 MANG(P) Eligibility
120.12 Healthy Start – Medicaid Presumptive Eligibility Program For Pregnant Women
120.20 MANG(AABD) Income Standard
120.30 MANG(C) Income Standard
120.31 MANG(P) Income Standard
120.32 KidCare Parent Coverage Waiver Eligibility and Income Standard
120.40 Exceptions To Use Of MANG Income Standard
120.50 AMI Income Standard (Repealed)

SUBPART C: FINANCIAL ELIGIBILITY DETERMINATION

Section

120.60 Cases Other Than Long Term Care, Pregnant Women and Certain Children
120.61 Cases in Intermediate Care, Skilled Nursing Care and DMHDD –
MANG(AABD) and All Other Licensed Medical Facilities
120.62 Department of Mental Health and Developmental Disabilities (DMHDD)
Approved Home and Community Based Residential Settings Under 89 Ill. Adm.
Code 140.643
120.63 Department of Mental Health and Developmental Disabilities (DMHDD)
Approved Home and Community Based Residential Settings
120.64 MANG(P) Cases
120.65 Department of Mental Health and Developmental Disabilities (DMHDD)
Licensed Community – Integrated Living Arrangements

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NOTICE OF PROPOSED AMENDMENT

SUBPART D: MEDICARE PREMIUMS

Section	
120.70	Supplementary Medical Insurance Benefits (SMIB) Buy-In Program
120.72	Eligibility for Medicare Cost Sharing as a Qualified Medicare Beneficiary (QMB)
120.73	Eligibility for Medicaid Payment of Medicare Part B Premiums as a Specified Low-Income Medicare Beneficiary (SLIB)
120.74	Qualified Medicare Beneficiary (QMB) Income Standard
120.75	Specified Low-Income Medicare Beneficiary (SLIB) Income Standards
120.76	Hospital Insurance Benefits (HIB)

SUBPART E: RECIPIENT RESTRICTION PROGRAM

Section	
120.80	Recipient Restriction Program

SUBPART F: MIGRANT MEDICAL PROGRAM

Section	
120.90	Migrant Medical Program (Repealed)
120.91	Income Standards (Repealed)

SUBPART G: AID TO THE MEDICALLY INDIGENT

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120.200	Elimination Of Aid To The Medically Indigent
120.208	Client Cooperation (Repealed)
120.210	Citizenship (Repealed)
120.211	Residence (Repealed)
120.212	Age (Repealed)
120.215	Relationship (Repealed)
120.216	Living Arrangement (Repealed)
120.217	Supplemental Payments (Repealed)
120.218	Institutional Status (Repealed)
120.224	Foster Care Program (Repealed)
120.225	Social Security Numbers (Repealed)
120.230	Unearned Income (Repealed)
120.235	Exempt Unearned Income (Repealed)
120.236	Education Benefits (Repealed)
120.240	Unearned Income In-Kind (Repealed)

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120.245	Earmarked Income (Repealed)
120.250	Lump Sum Payments and Income Tax Refunds (Repealed)
120.255	Protected Income (Repealed)
120.260	Earned Income (Repealed)
120.261	Budgeting Earned Income (Repealed)
120.262	Exempt Earned Income (Repealed)
120.270	Recognized Employment Expenses (Repealed)
120.271	Income From Work/Study/Training Program (Repealed)
120.272	Earned Income From Self-Employment (Repealed)
120.273	Earned Income From Roomer and Boarder (Repealed)
120.275	Earned Income In-Kind (Repealed)
120.276	Payments from the Illinois Department of Children and Family Services (Repealed)
120.280	Assets (Repealed)
120.281	Exempt Assets (Repealed)
120.282	Asset Disregards (Repealed)
120.283	Deferral of Consideration of Assets (Repealed)
120.284	Spend-down of Assets (AMI) (Repealed)
120.285	Property Transfers (Repealed)
120.290	Persons Who May Be Included in the Assistance Unit (Repealed)
120.295	Payment Levels for AMI (Repealed)

SUBPART H: MEDICAL ASSISTANCE – NO GRANT

Section	
120.308	Client Cooperation
120.309	Caretaker Relative
120.310	Citizenship
120.311	Residence
120.312	Age
120.313	Blind
120.314	Disabled
120.315	Relationship
120.316	Living Arrangements
120.317	Supplemental Payments
120.318	Institutional Status
120.319	Assignment of Rights to Medical Support and Collection of Payment
120.320	Cooperation in Establishing Paternity and Obtaining Medical Support
120.321	Good Cause for Failure to Cooperate in Establishing Paternity and Obtaining Medical Support

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- 120.322 Proof of Good Cause for Failure to Cooperate in Establishing Paternity and Obtaining Medical Support
- 120.323 Suspension of Paternity Establishment and Obtaining Medical Support Upon Finding Good Cause
- 120.324 Health Insurance Premium Payment (HIPP) Program
- 120.325 Health Insurance Premium Payment (HIPP) Pilot Program
- 120.326 Foster Care Program
- 120.327 Social Security Numbers
- 120.330 Unearned Income
- 120.332 Budgeting Unearned Income
- 120.335 Exempt Unearned Income
- 120.336 Education Benefits
- 120.338 Incentive Allowance
- 120.340 Unearned Income In-Kind
- 120.342 Child Support and Spousal Maintenance Payments
- 120.345 Earmarked Income
- 120.346 Medicaid Qualifying Trusts
- 120.347 Treatment of Trusts
- 120.350 Lump Sum Payments and Income Tax Refunds
- 120.355 Protected Income
- 120.360 Earned Income
- 120.361 Budgeting Earned Income
- 120.362 Exempt Earned Income
- 120.363 Earned Income Disregard – MANG(C)
- 120.364 Earned Income Exemption
- 120.366 Exclusion From Earned Income Exemption
- 120.370 Recognized Employment Expenses
- 120.371 Income From Work/Study/Training Programs
- 120.372 Earned Income From Self-Employment
- 120.373 Earned Income From Roomer and Boarder
- 120.375 Earned Income In Kind
- 120.376 Payments from the Illinois Department of Children and Family Services
- 120.379 Provisions for the Prevention of Spousal Impoverishment
- 120.380 Assets
- 120.381 Exempt Assets
- 120.382 Asset Disregard
- 120.383 Deferral of Consideration of Assets
- 120.384 Spend-down of Assets (AABD MANG)
- 120.385 Property Transfers for Applications Filed Prior to October 1, 1989 (Repealed)
- 120.386 Property Transfers Occurring On or Before August 10, 1993

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- 120.387 Property Transfers Occurring On or After August 11, 1993
120.390 Persons Who May Be Included In the Assistance Unit
120.391 Individuals Under Age 18 Who Do Not Qualify For AFDC/AFDC-MANG And Children Born October 1, 1983, or Later
120.392 Pregnant Women Who Would Not Be Eligible For AFDC/AFDC-MANG If The Child Were Already Born Or Who Do Not Qualify As Mandatory Categorically Needy
120.393 Pregnant Women And Children Under Age Eight Years Who Do Not Qualify As Mandatory Categorically Needy Demonstration Project
120.395 Payment Levels for MANG (Repealed)
120.399 Redetermination of Eligibility
120.400 Twelve Month Eligibility for Persons under Age 19

SUBPART I: SPECIAL PROGRAMS

Section

- 120.500 Health Benefits for Persons with Breast or Cervical Cancer
120.510 Health Benefits for Workers with Disabilities
120.520 SeniorCare
[120.530 Home and Community Based Services Waivers for Medically Fragile, Technology Dependent, Disabled Persons Under Age 21](#)
120.TABLE A Value of a Life Estate and Remainder Interest
120.TABLE B Life Expectancy

AUTHORITY: Implementing Articles III, IV, V and VI and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Arts. III, IV, V and VI and 12-13].

SOURCE: Filed effective December 30, 1977; peremptory amendment at 2 Ill. Reg. 17, p. 117, effective February 1, 1978; amended at 2 Ill. Reg. 31, p. 134, effective August 5, 1978; emergency amendment at 2 Ill. Reg. 37, p. 4, effective August 30, 1978, for a maximum of 150 days; peremptory amendment at 2 Ill. Reg. 46, p. 44, effective November 1, 1978; peremptory amendment at 2 Ill. Reg. 46, p. 56, effective November 1, 1978; emergency amendment at 3 Ill. Reg. 16, p. 41, effective April 9, 1979, for a maximum of 150 days; emergency amendment at 3 Ill. Reg. 28, p. 182, effective July 1, 1979, for a maximum of 150 days; amended at 3 Ill. Reg. 33, p. 399, effective August 18, 1979; amended at 3 Ill. Reg. 33, p. 415, effective August 18, 1979; amended at 3 Ill. Reg. 38, p. 243, effective September 21, 1979; peremptory amendment at 3 Ill. Reg. 38, p. 321, effective September 7, 1979; amended at 3 Ill. Reg. 40, p. 140, effective October 6, 1979; amended at 3 Ill. Reg. 46, p. 36, effective November 2, 1979; amended at 3 Ill. Reg. 47, p. 96, effective November 13, 1979; amended at 3 Ill. Reg. 48, p. 1, effective November

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15, 1979; preemptory amendment at 4 Ill. Reg. 9, p. 259, effective February 22, 1980; amended at 4 Ill. Reg. 10, p. 258, effective February 25, 1980; amended at 4 Ill. Reg. 12, p. 551, effective March 10, 1980; amended at 4 Ill. Reg. 27, p. 387, effective June 24, 1980; emergency amendment at 4 Ill. Reg. 29, p. 294, effective July 8, 1980, for a maximum of 150 days; amended at 4 Ill. Reg. 37, p. 797, effective September 2, 1980; amended at 4 Ill. Reg. 37, p. 800, effective September 2, 1980; amended at 4 Ill. Reg. 45, p. 134, effective October 27, 1980; amended at 5 Ill. Reg. 766, effective January 2, 1981; amended at 5 Ill. Reg. 1134, effective January 26, 1981; preemptory amendment at 5 Ill. Reg. 5722, effective June 1, 1981; amended at 5 Ill. Reg. 7071, effective June 23, 1981; amended at 5 Ill. Reg. 7104, effective June 23, 1981; amended at 5 Ill. Reg. 8041, effective July 27, 1981; amended at 5 Ill. Reg. 8052, effective July 24, 1981; preemptory amendment at 5 Ill. Reg. 8106, effective August 1, 1981; preemptory amendment at 5 Ill. Reg. 10062, effective October 1, 1981; preemptory amendment at 5 Ill. Reg. 10079, effective October 1, 1981; preemptory amendment at 5 Ill. Reg. 10095, effective October 1, 1981; preemptory amendment at 5 Ill. Reg. 10113, effective October 1, 1981; preemptory amendment at 5 Ill. Reg. 10124, effective October 1, 1981; preemptory amendment at 5 Ill. Reg. 10131, effective October 1, 1981; amended at 5 Ill. Reg. 10730, effective October 1, 1981; amended at 5 Ill. Reg. 10733, effective October 1, 1981; amended at 5 Ill. Reg. 10760, effective October 1, 1981; amended at 5 Ill. Reg. 10767, effective October 1, 1981; preemptory amendment at 5 Ill. Reg. 11647, effective October 16, 1981; preemptory amendment at 6 Ill. Reg. 611, effective January 1, 1982; amended at 6 Ill. Reg. 1216, effective January 14, 1982; emergency amendment at 6 Ill. Reg. 2447, effective March 1, 1982, for a maximum of 150 days; preemptory amendment at 6 Ill. Reg. 2452, effective February 11, 1982; preemptory amendment at 6 Ill. Reg. 6475, effective May 18, 1982; preemptory amendment at 6 Ill. Reg. 6912, effective May 20, 1982; emergency amendment at 6 Ill. Reg. 7299, effective June 2, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 8115, effective July 1, 1982; amended at 6 Ill. Reg. 8142, effective July 1, 1982; amended at 6 Ill. Reg. 8159, effective July 1, 1982; amended at 6 Ill. Reg. 10970, effective August 26, 1982; amended at 6 Ill. Reg. 11921, effective September 21, 1982; amended at 6 Ill. Reg. 12293, effective October 1, 1982; amended at 6 Ill. Reg. 12318, effective October 1, 1982; amended at 6 Ill. Reg. 13754, effective November 1, 1982; amended at 7 Ill. Reg. 394, effective January 1, 1983; codified at 7 Ill. Reg. 6082; amended at 7 Ill. Reg. 8256, effective July 1, 1983; amended at 7 Ill. Reg. 8264, effective July 5, 1983; amended (by adding Section being codified with no substantive change) at 7 Ill. Reg. 14747; amended (by adding Sections being codified with no substantive change) at 7 Ill. Reg. 16108; amended at 8 Ill. Reg. 5253, effective April 9, 1984; amended at 8 Ill. Reg. 6770, effective April 27, 1984; amended at 8 Ill. Reg. 13328, effective July 16, 1984; amended (by adding Sections being codified with no substantive change) at 8 Ill. Reg. 17897; amended at 8 Ill. Reg. 18903, effective September 26, 1984; preemptory amendment at 8 Ill. Reg. 20706, effective October 3, 1984; amended at 8 Ill. Reg. 25053, effective December 12, 1984; emergency amendment at 9 Ill. Reg. 830, effective January 3, 1985, for a maximum of 150 days; amended at 9 Ill. Reg. 4515, effective March 25, 1985; amended at 9 Ill. Reg. 5346, effective April 11, 1985; amended at 9 Ill. Reg. 7153,

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effective May 6, 1985; amended at 9 Ill. Reg. 11346, effective July 8, 1985; amended at 9 Ill. Reg. 12298, effective July 25, 1985; amended at 9 Ill. Reg. 12823, effective August 9, 1985; amended at 9 Ill. Reg. 15903, effective October 4, 1985; amended at 9 Ill. Reg. 16300, effective October 10, 1985; amended at 9 Ill. Reg. 16906, effective October 18, 1985; amended at 10 Ill. Reg. 1192, effective January 10, 1986; amended at 10 Ill. Reg. 3033, effective January 23, 1986; amended at 10 Ill. Reg. 4907, effective March 7, 1986; amended at 10 Ill. Reg. 6966, effective April 16, 1986; amended at 10 Ill. Reg. 10688, effective June 3, 1986; amended at 10 Ill. Reg. 12672, effective July 14, 1986; amended at 10 Ill. Reg. 15649, effective September 19, 1986; amended at 11 Ill. Reg. 3992, effective February 23, 1987; amended at 11 Ill. Reg. 7652, effective April 15, 1987; amended at 11 Ill. Reg. 8735, effective April 20, 1987; emergency amendment at 11 Ill. Reg. 12458, effective July 10, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 14034, effective August 14, 1987; amended at 11 Ill. Reg. 14763, effective August 26, 1987; amended at 11 Ill. Reg. 20142, effective January 1, 1988; amended at 11 Ill. Reg. 20898, effective December 14, 1987; amended at 12 Ill. Reg. 904, effective January 1, 1988; amended at 12 Ill. Reg. 3516, effective January 22, 1988; amended at 12 Ill. Reg. 6234, effective March 22, 1988; amended at 12 Ill. Reg. 8672, effective May 13, 1988; amended at 12 Ill. Reg. 9132, effective May 20, 1988; amended at 12 Ill. Reg. 11483, effective June 30, 1988; emergency amendment at 12 Ill. Reg. 11632, effective July 1, 1988, for a maximum of 150 days; emergency amendment at 12 Ill. Reg. 11839, effective July 1, 1988, for a maximum of 150 days; amended at 12 Ill. Reg. 12835, effective July 22, 1988; emergency amendment at 12 Ill. Reg. 13243, effective July 29, 1988, for a maximum of 150 days; amended at 12 Ill. Reg. 17867, effective October 30, 1988; amended at 12 Ill. Reg. 19704, effective November 15, 1988; amended at 12 Ill. Reg. 20188, effective November 23, 1988; amended at 13 Ill. Reg. 116, effective January 1, 1989; amended at 13 Ill. Reg. 2081, effective February 3, 1989; amended at 13 Ill. Reg. 3908, effective March 10, 1989; emergency amendment at 13 Ill. Reg. 11929, effective June 27, 1989, for a maximum of 150 days; emergency expired November 25, 1989; emergency amendment at 13 Ill. Reg. 12137, effective July 1, 1989, for a maximum of 150 days; amended at 13 Ill. Reg. 15404, effective October 6, 1989; emergency amendment at 13 Ill. Reg. 16586, effective October 2, 1989, for a maximum of 150 days; emergency expired March 1, 1990; amended at 13 Ill. Reg. 17483, effective October 31, 1989; amended at 13 Ill. Reg. 17838, effective November 8, 1989; amended at 13 Ill. Reg. 18872, effective November 17, 1989; amended at 14 Ill. Reg. 760, effective January 1, 1990; emergency amendment at 14 Ill. Reg. 1494, effective January 2, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 4233, effective March 5, 1990; emergency amendment at 14 Ill. Reg. 5839, effective April 3, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 6372, effective April 16, 1990; amended at 14 Ill. Reg. 7637, effective May 10, 1990; amended at 14 Ill. Reg. 10396, effective June 20, 1990; amended at 14 Ill. Reg. 13227, effective August 6, 1990; amended at 14 Ill. Reg. 14814, effective September 3, 1990; amended at 14 Ill. Reg. 17004, effective September 30, 1990; emergency amendment at 15 Ill. Reg. 348, effective January 1, 1991, for a maximum of 150 days; amended at 15 Ill. Reg. 5302, effective April 1, 1991; amended at 15 Ill. Reg. 10101,

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effective June 24, 1991; amended at 15 Ill. Reg. 11973, effective August 12, 1991; amended at 15 Ill. Reg. 12747, effective August 16, 1991; amended at 15 Ill. Reg. 14105, effective September 11, 1991; amended at 15 Ill. Reg. 14240, effective September 23, 1991; amended at 16 Ill. Reg. 139, effective December 24, 1991; amended at 16 Ill. Reg. 1862, effective January 20, 1992; amended at 16 Ill. Reg. 10034, effective June 15, 1992; amended at 16 Ill. Reg. 11582, effective July 15, 1992; amended at 16 Ill. Reg. 17290, effective November 3, 1992; amended at 17 Ill. Reg. 1102, effective January 15, 1993; amended at 17 Ill. Reg. 6827, effective April 21, 1993; amended at 17 Ill. Reg. 10402, effective June 28, 1993; amended at 18 Ill. Reg. 2051, effective January 21, 1994; amended at 18 Ill. Reg. 5934, effective April 1, 1994; amended at 18 Ill. Reg. 8718, effective June 1, 1994; amended at 18 Ill. Reg. 11231, effective July 1, 1994; amended at 19 Ill. Reg. 2905, effective February 27, 1995; emergency amendment at 19 Ill. Reg. 9280, effective July 1, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 11931, effective August 11, 1995; amended at 19 Ill. Reg. 15079, effective October 17, 1995; amended at 20 Ill. Reg. 5068, effective March 20, 1996; amended at 20 Ill. Reg. 15993, effective December 9, 1996; emergency amendment at 21 Ill. Reg. 692, effective January 1, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 7423, effective May 31, 1997; amended at 21 Ill. Reg. 7748, effective June 9, 1997; amended at 21 Ill. Reg. 11555, effective August 1, 1997; amended at 21 Ill. Reg. 13638, effective October 1, 1997; emergency amendment at 22 Ill. Reg. 1576, effective January 5, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 7003, effective April 1, 1998; amended at 22 Ill. Reg. 8503, effective May 1, 1998; amended at 22 Ill. Reg. 16291, effective August 28, 1998; emergency amendment at 22 Ill. Reg. 16640, effective September 1, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 19875, effective October 30, 1998; amended at 23 Ill. Reg. 2381, effective January 22, 1999; amended at 23 Ill. Reg. 11301, effective August 27, 1999; amended at 24 Ill. Reg. 7361, effective May 1, 2000; emergency amendment at 24 Ill. Reg. 10425, effective July 1, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 15075, effective October 1, 2000; amended at 24 Ill. Reg. 18309, effective December 1, 2000; amended at 25 Ill. Reg. 8783, effective July 1, 2001; emergency amendment at 25 Ill. Reg. 10533, effective August 1, 2001, for a maximum of 150 days; amended at 25 Ill. Reg. 16098, effective December 1, 2001; amended at 26 Ill. Reg. 409, effective December 28, 2001; emergency amendment at 26 Ill. Reg. 8583, effective June 1, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 9843, effective June 26, 2002; emergency amendment at 26 Ill. Reg. 11029, effective July 1, 2002, for a maximum of 150 days; emergency amendment at 26 Ill. Reg. 15051, effective October 1, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 16288, effective October 25, 2002; amended at 27 Ill. Reg. 4708, effective February 25, 2003; emergency amendment at 27 Ill. Reg. 10793, effective July 1, 2003, for a maximum of 150 days; amended at 27 Ill. Reg. 18609, effective November 26, 2003; amended at 28 Ill. Reg. _____, effective _____.

SUBPART I: SPECIAL PROGRAMS

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Section 120.530 Home and Community Based Services Waivers for Medically Fragile, Technology Dependent, Disabled Persons Under Age 21

- a) The Department shall administer a home and community-based service (HCBS) waiver program as set forth in 305 ILCS 5/5-2(7) and 305 ILCS 5/5-2.05(a) and pursuant to Section 1915(c) of the Social Security Act (42 USC 1396n(c)) for disabled persons under the age of 21 years who are medically fragile and technology dependent. Individuals under the age of 21 years who require institutionalization solely because of a severe mental or developmental impairment are not eligible to receive services under the waiver.
- b) A determination must be made that, except for the provision of in-home care, these individuals would require the level of care provided in a hospital or a facility that is certified by the Department of Public Health as an Intermediate Care Facility for the Mentally Retarded and licensed under 77 Ill. Adm. Code 390 as a long-term care facility for persons under 22 years of age (SNF/PED).
- c) The Division of Specialized Care for Children (DSCC) shall perform operational functions under the HCBS waiver program pursuant to an interagency agreement with the Department.
- d) In addition to being eligible for all of the services set forth in 89 Ill. Adm. Code 140.3, individuals covered under the HCBS waiver are eligible for the following waiver services:
- 1) Respite care;
 - 2) Environmental modifications;
 - 3) Special medical supplies and equipment;
 - 4) Medically supervised day care;
 - 5) Family and nurse training; and
 - 6) Maintenance counseling.
- e) Eligibility is subject to Department review. In order to be eligible for a HCBS waiver, an individual must meet all of the following criteria:

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- 1) The individual is under 21 years of age and has been determined to be disabled as defined in Section 120.314; and
- 2) A medical needs assessment has been performed by an attending physician and the attending physician has determined that, without home and community-based services, the individual would require the level of care provided by a hospital or SNF/PED and that such level of care can be provided safely in the home and community through the provision of medical support services referenced in subsection (d) of this Section; and
- 3) The estimated cost to the State for in-home care, as compared to the institutional level of care appropriate to the individual's medical needs (hospital or SNF/PED), cannot exceed:
 - A) if the appropriate comparable institutional level of care for a ventilator dependent individual is a hospital, the greater of:
 - i) 125 percent of the Statewide average per diem expenditure for hospital care for the previous fiscal year; or
 - ii) 100 percent of the average per diem expenditure provided in the hospital from which the individual was placed; or
 - B) if the appropriate comparable institutional level of care for a non-ventilator dependent individual is a hospital, 125% of the average per diem expenditure for hospital care in the previous fiscal year; or
 - C) if the appropriate comparable institutional level of care for the individual is a SNF/PED:
 - i) the per diem rate of the geographically closest SNF/PED meeting the individual's medical needs; or
 - ii) if the individual requires exceptional care services pursuant to 89 Ill. Adm. Code 144.100, an exceptional care rate based on the individual's medical needs; and
- 4) The individual would be eligible for Medicaid if his or her responsible relative's income and resources were excluded from consideration; and

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- 5) A written plan of care has been developed and approved pursuant to subsection (f) of this Section.
- f) Plan of Care
- 1) The Department shall review and approve the level of home and community-based services based on a written plan of care developed by the individual's attending physician, family or guardian and DSCC.
- 2) At a minimum, the plan of care must describe the medical and other services to be furnished, the frequency of the services, the type of provider required to render the service and a description of the family's or guardian's active participation as care givers in meeting the individual's medical needs.
- 3) The Department has the authority to approve a cost-effective alternative to services in the plan of care, as long as the alternative services meet the medical needs of the individual.
- 4) When determining the hours of nursing care necessary to maintain the individual at home, consideration shall be given to the availability of other services, including direct care provided by the individual's family or guardian, that can reasonably be expected to meet the medical needs of the individual.
- 5) During the first 18 months of participation in the waiver, the Department will review and approve the individual's plan of care every six months. After the first 18 months, the Department will review the plan of care every six months and, depending upon the individual's medical condition, may approve the plan of care for a period not to exceed 12 months.
- 6) Based on the results of the Department's review, a new plan of care may be developed if warranted by a change in the individual's need for medical services or a change in the individual's home environment.
- g) Failure of a family or guardian to cooperate with the Department, DSCC, or service providers in implementing a plan of care may result in termination of benefits under the HCBS waiver if the Department determines that, as a result of

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such non-cooperation, a plan of care cannot be implemented and the health and well-being of the individual could be jeopardized.

(Source: Added at 28 Ill. Reg. _____, effective _____)

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- 1) Heading of the Part: Medical Payment
- 2) Code Citation: 89 Ill. Adm. Code 140
- 3) Section Numbers: 140.645 Proposed Action: Repeal
- 4) Statutory Authority: Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-13]
- 5) Complete Description of the Subjects and Issues Involved: Section 140.645, Home and Community Based Services Waivers for Medically Fragile, Technology Dependent, Disabled Persons under Age 21, is being proposed for repeal because it is outdated and to allow a more appropriate placement for the waiver provisions in 89 Ill. Adm. Code 120.530 under Subpart I, Special Programs. The proposed amendments at Section 120.530 reflect the current waiver requirements as federally approved by the Centers for Medicare and Medicaid Services.
- 6) Will this proposed repealer replace an emergency amendment currently in effect? No
- 7) Does this rulemaking contain an automatic repeal date? No
- 6) Will this proposed repealer replace emergency amendments currently in effect? No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Do these proposed amendments contain incorporations by reference? No
- 9) Are there any other proposed amendments pending on this Part? Yes

<u>Sections</u>	<u>Proposed Action</u>	<u>Illinois Register Citation</u>
140.11	Amendment	27 Ill. Reg. 16385; 10/31/03
140.13	Amendment	27 Ill. Reg. 16385; 10/31/03
140.19	Amendment	28 Ill. Reg. 1330; 1/23/04
140.43	Amendment	27 Ill. Reg. 16385; 10/31/03
140.450	Amendment	27 Ill. Reg. 14384; 9/12/03
140.498	New Section	27 Ill. Reg. 16385; 10/31/03

- 10) Statement of Statewide Policy Objectives: These proposed amendments do not affect units of local government.

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- 11) Time, Place, and Manner in Which Interested Persons May Comment on this Proposed Rulemaking: Any interested parties may submit comments, data, views, or arguments concerning this proposed rulemaking. All comments must be in writing and should be addressed to:

Joanne Scattoloni
Office of the General Counsel, Rules Section
Illinois Department of Public Aid
201 South Grand Avenue East, Third Floor
Springfield, Illinois 62763-0002
(217)524-0081

The Department requests the submission of written comments within 30 days after the publication of this notice. The Department will consider all written comments it receives during the first notice period as required by Section 5-40 of the Illinois Administrative Procedure Act [5 ILCS 100/5-40].

These proposed amendments may have an impact on small businesses, small municipalities, and not-for-profit corporations as defined in Sections 1-75, 1-80 and 1-85 of the Illinois Administrative Procedure Act [5 ILCS 100/1-75, 1-80, 1-85]. These entities may submit comments in writing to the Department at the above address in accordance with the regulatory flexibility provisions in Section 5-30 of the Illinois Administrative Procedure Act [5 ILCS 100/5-30]. These entities shall indicate their status as small businesses, small municipalities, or not-for-profit corporations as part of any written comments they submit to the Department.

- 12) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: None
 - B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of professional skills necessary for compliance: None
- 13) Regulatory Agenda on Which this Rulemaking Was Summarized: January 2004

The full text of the proposed amendment begins on the next page:

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NOTICE OF PROPOSED AMENDMENT

TITLE 89: SOCIAL SERVICES
CHAPTER I: DEPARTMENT OF PUBLIC AID
SUBCHAPTER d: MEDICAL PROGRAMSPART 140
MEDICAL PAYMENT

SUBPART A: GENERAL PROVISIONS

Section

- 140.1 Incorporation By Reference
- 140.2 Medical Assistance Programs
- 140.3 Covered Services Under Medical Assistance Programs
- 140.4 Covered Medical Services Under AFDC-MANG for non-pregnant persons who are 18 years of age or older (Repealed)
- 140.5 Covered Medical Services Under General Assistance
- 140.6 Medical Services Not Covered
- 140.7 Medical Assistance Provided to Individuals Under the Age of Eighteen Who Do Not Qualify for AFDC and Children Under Age Eight
- 140.8 Medical Assistance For Qualified Severely Impaired Individuals
- 140.9 Medical Assistance for a Pregnant Woman Who Would Not Be Categorically Eligible for AFDC/AFDC-MANG if the Child Were Already Born Or Who Do Not Qualify As Mandatory Categorically Needy
- 140.10 Medical Assistance Provided to Incarcerated Persons

SUBPART B: MEDICAL PROVIDER PARTICIPATION

Section

- 140.11 Enrollment Conditions for Medical Providers
- 140.12 Participation Requirements for Medical Providers
- 140.13 Definitions
- 140.14 Denial of Application to Participate in the Medical Assistance Program
- 140.15 Recovery of Money
- 140.16 Termination or Suspension of a Vendor's Eligibility to Participate in the Medical Assistance Program
- 140.17 Suspension of a Vendor's Eligibility to Participate in the Medical Assistance Program
- 140.18 Effect of Termination on Individuals Associated with Vendor
- 140.19 Application to Participate or for Reinstatement Subsequent to Termination, Suspension or Barring
- 140.20 Submittal of Claims

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- 140.21 Reimbursement for QMB Eligible Medical Assistance Recipients and QMB Eligible Only Recipients and Individuals Who Are Entitled to Medicare Part A or Part B and Are Eligible for Some Form of Medicaid Benefits
- 140.22 Magnetic Tape Billings (Repealed)
- 140.23 Payment of Claims
- 140.24 Payment Procedures
- 140.25 Overpayment or Underpayment of Claims
- 140.26 Payment to Factors Prohibited
- 140.27 Assignment of Vendor Payments
- 140.28 Record Requirements for Medical Providers
- 140.30 Audits
- 140.31 Emergency Services Audits
- 140.32 Prohibition on Participation, and Special Permission for Participation
- 140.33 Publication of List of Terminated, Suspended or Barred Entities
- 140.35 False Reporting and Other Fraudulent Activities
- 140.40 Prior Approval for Medical Services or Items
- 140.41 Prior Approval in Cases of Emergency
- 140.42 Limitation on Prior Approval
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AUTHORITY: Implementing and authorized by Articles III, IV, V, VI and Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Arts. III, IV, V, VI and 12-13].

SOURCE: Adopted at 3 Ill. Reg. 24, p. 166, effective June 10, 1979; rule repealed and new rule adopted at 6 Ill. Reg. 8374, effective July 6, 1982; emergency amendment at 6 Ill. Reg. 8508, effective July 6, 1982, for a maximum of 150 days; amended at 7 Ill. Reg. 681, effective December 30, 1982; amended at 7 Ill. Reg. 7956, effective July 1, 1983; amended at 7 Ill. Reg. 8308, effective July 1, 1983; amended at 7 Ill. Reg. 8271, effective July 5, 1983; emergency amendment at 7 Ill. Reg. 8354, effective July 5, 1983, for a maximum of 150 days; amended at 7 Ill. Reg. 8540, effective July 15, 1983; amended at 7 Ill. Reg. 9382, effective July 22, 1983; amended at 7 Ill. Reg. 12868, effective September 20, 1983; peremptory amendment at 7 Ill. Reg. 15047, effective October 31, 1983; amended at 7 Ill. Reg. 17358, effective December 21, 1983; amended at 8 Ill. Reg. 254, effective December 21, 1983; emergency amendment at 8 Ill.

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Reg. 580, effective January 1, 1984, for a maximum of 150 days; codified at 8 Ill. Reg. 2483; amended at 8 Ill. Reg. 3012, effective February 22, 1984; amended at 8 Ill. Reg. 5262, effective April 9, 1984; amended at 8 Ill. Reg. 6785, effective April 27, 1984; amended at 8 Ill. Reg. 6983, effective May 9, 1984; amended at 8 Ill. Reg. 7258, effective May 16, 1984; emergency amendment at 8 Ill. Reg. 7910, effective May 22, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 7910, effective June 1, 1984; amended at 8 Ill. Reg. 10032, effective June 18, 1984; emergency amendment at 8 Ill. Reg. 10062, effective June 20, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 13343, effective July 17, 1984; amended at 8 Ill. Reg. 13779, effective July 24, 1984; Sections 140.72 and 140.73 recodified to 89 Ill. Adm. Code 141 at 8 Ill. Reg. 16354; amended (by adding sections being codified with no substantive change) at 8 Ill. Reg. 17899; peremptory amendment at 8 Ill. Reg. 18151, effective September 18, 1984; amended at 8 Ill. Reg. 21629, effective October 19, 1984; peremptory amendment at 8 Ill. Reg. 21677, effective October 24, 1984; amended at 8 Ill. Reg. 22097, effective October 24, 1984; peremptory amendment at 8 Ill. Reg. 22155, effective October 29, 1984; amended at 8 Ill. Reg. 23218, effective November 20, 1984; emergency amendment at 8 Ill. Reg. 23721, effective November 21, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 25067, effective December 19, 1984; emergency amendment at 9 Ill. Reg. 407, effective January 1, 1985, for a maximum of 150 days; amended at 9 Ill. Reg. 2697, effective February 22, 1985; amended at 9 Ill. Reg. 6235, effective April 19, 1985; amended at 9 Ill. Reg. 8677, effective May 28, 1985; amended at 9 Ill. Reg. 9564, effective June 5, 1985; amended at 9 Ill. Reg. 10025, effective June 26, 1985; emergency amendment at 9 Ill. Reg. 11403, effective June 27, 1985, for a maximum of 150 days; amended at 9 Ill. Reg. 11357, effective June 28, 1985; amended at 9 Ill. Reg. 12000, effective July 24, 1985; amended at 9 Ill. Reg. 12306, effective August 5, 1985; amended at 9 Ill. Reg. 13998, effective September 3, 1985; amended at 9 Ill. Reg. 14684, effective September 13, 1985; amended at 9 Ill. Reg. 15503, effective October 4, 1985; amended at 9 Ill. Reg. 16312, effective October 11, 1985; amended at 9 Ill. Reg. 19138, effective December 2, 1985; amended at 9 Ill. Reg. 19737, effective December 9, 1985; amended at 10 Ill. Reg. 238, effective December 27, 1985; emergency amendment at 10 Ill. Reg. 798, effective January 1, 1986, for a maximum of 150 days; amended at 10 Ill. Reg. 672, effective January 6, 1986; amended at 10 Ill. Reg. 1206, effective January 13, 1986; amended at 10 Ill. Reg. 3041, effective January 24, 1986; amended at 10 Ill. Reg. 6981, effective April 16, 1986; amended at 10 Ill. Reg. 7825, effective April 30, 1986; amended at 10 Ill. Reg. 8128, effective May 7, 1986; emergency amendment at 10 Ill. Reg. 8912, effective May 13, 1986, for a maximum of 150 days; amended at 10 Ill. Reg. 11440, effective June 20, 1986; amended at 10 Ill. Reg. 14714, effective August 27, 1986; amended at 10 Ill. Reg. 15211, effective September 12, 1986; emergency amendment at 10 Ill. Reg. 16729, effective September 18, 1986, for a maximum of 150 days; amended at 10 Ill. Reg. 18808, effective October 24, 1986; amended at 10 Ill. Reg. 19742, effective November 12, 1986; amended at 10 Ill. Reg. 21784, effective December 15, 1986; amended at 11 Ill. Reg. 698, effective December 19, 1986; amended at 11 Ill. Reg. 1418, effective December 31, 1986; amended at 11 Ill. Reg. 2323, effective January 16, 1987; amended at 11 Ill. Reg. 4002, effective February 25, 1987; Section 140.71 recodified to 89 Ill. Adm. Code 141 at 11 Ill. Reg. 4302;

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amended at 11 Ill. Reg. 4303, effective March 6, 1987; amended at 11 Ill. Reg. 7664, effective April 15, 1987; emergency amendment at 11 Ill. Reg. 9342, effective April 20, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 9169, effective April 28, 1987; amended at 11 Ill. Reg. 10903, effective June 1, 1987; amended at 11 Ill. Reg. 11528, effective June 22, 1987; amended at 11 Ill. Reg. 12011, effective June 30, 1987; amended at 11 Ill. Reg. 12290, effective July 6, 1987; amended at 11 Ill. Reg. 14048, effective August 14, 1987; amended at 11 Ill. Reg. 14771, effective August 25, 1987; amended at 11 Ill. Reg. 16758, effective September 28, 1987; amended at 11 Ill. Reg. 17295, effective September 30, 1987; amended at 11 Ill. Reg. 18696, effective October 27, 1987; amended at 11 Ill. Reg. 20909, effective December 14, 1987; amended at 12 Ill. Reg. 916, effective January 1, 1988; emergency amendment at 12 Ill. Reg. 1960, effective January 1, 1988, for a maximum of 150 days; amended at 12 Ill. Reg. 5427, effective March 15, 1988; amended at 12 Ill. Reg. 6246, effective March 16, 1988; amended at 12 Ill. Reg. 6728, effective March 22, 1988; Sections 140.900 thru 140.912 and 140.Table H and 140.Table I recodified to 89 Ill. Adm. Code 147.5 thru 147.205 and 147.Table A and 147.Table B at 12 Ill. Reg. 6956; amended at 12 Ill. Reg. 6927, effective April 5, 1988; Sections 140.940 thru 140.972 recodified to 89 Ill. Adm. Code 149.5 thru 149.325 at 12 Ill. Reg. 7401; amended at 12 Ill. Reg. 7695, effective April 21, 1988; amended at 12 Ill. Reg. 10497, effective June 3, 1988; amended at 12 Ill. Reg. 10717, effective June 14, 1988; emergency amendment at 12 Ill. Reg. 11868, effective July 1, 1988, for a maximum of 150 days; amended at 12 Ill. Reg. 12509, effective July 15, 1988; amended at 12 Ill. Reg. 14271, effective August 29, 1988; emergency amendment at 12 Ill. Reg. 16921, effective September 28, 1988, for a maximum of 150 days; amended at 12 Ill. Reg. 16738, effective October 5, 1988; amended at 12 Ill. Reg. 17879, effective October 24, 1988; amended at 12 Ill. Reg. 18198, effective November 4, 1988; amended at 12 Ill. Reg. 19396, effective November 6, 1988; amended at 12 Ill. Reg. 19734, effective November 15, 1988; amended at 13 Ill. Reg. 125, effective January 1, 1989; amended at 13 Ill. Reg. 2475, effective February 14, 1989; amended at 13 Ill. Reg. 3069, effective February 28, 1989; amended at 13 Ill. Reg. 3351, effective March 6, 1989; amended at 13 Ill. Reg. 3917, effective March 17, 1989; amended at 13 Ill. Reg. 5115, effective April 3, 1989; amended at 13 Ill. Reg. 5718, effective April 10, 1989; amended at 13 Ill. Reg. 7025, effective April 24, 1989; Sections 140.850 thru 140.896 recodified to 89 Ill. Adm. Code 146.5 thru 146.225 at 13 Ill. Reg. 7040; amended at 13 Ill. Reg. 7786, effective May 20, 1989; Sections 140.94 thru 140.398 recodified to 89 Ill. Adm. Code 148.10 thru 148.390 at 13 Ill. Reg. 9572; emergency amendment at 13 Ill. Reg. 10977, effective July 1, 1989, for a maximum of 150 days; emergency expired November 28, 1989; amended at 13 Ill. Reg. 11516, effective July 3, 1989; amended at 13 Ill. Reg. 12119, effective July 7, 1989; Section 140.110 recodified to 89 Ill. Adm. Code 148.120 at 13 Ill. Reg. 12118; amended at 13 Ill. Reg. 12562, effective July 17, 1989; amended at 13 Ill. Reg. 14391, effective August 31, 1989; emergency amendment at 13 Ill. Reg. 15473, effective September 12, 1989, for a maximum of 150 days; amended at 13 Ill. Reg. 16992, effective October 16, 1989; amended at 14 Ill. Reg. 190, effective December 21, 1989; amended at 14 Ill. Reg. 2564, effective February 9, 1990; emergency amendment at 14 Ill. Reg. 3241, effective February 14, 1990, for a maximum of 150 days; emergency expired July 14,

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1990; amended at 14 Ill. Reg. 4543, effective March 12, 1990; emergency amendment at 14 Ill. Reg. 4577, effective March 6, 1990, for a maximum of 150 days; emergency expired August 3, 1990; emergency amendment at 14 Ill. Reg. 5575, effective April 1, 1990, for a maximum of 150 days; emergency expired August 29, 1990; emergency amendment at 14 Ill. Reg. 5865, effective April 3, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 7141, effective April 27, 1990; emergency amendment at 14 Ill. Reg. 7249, effective April 27, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 10062, effective June 12, 1990; amended at 14 Ill. Reg. 10409, effective June 19, 1990; emergency amendment at 14 Ill. Reg. 12082, effective July 5, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 13262, effective August 6, 1990; emergency amendment at 14 Ill. Reg. 14184, effective August 16, 1990, for a maximum of 150 days; emergency amendment at 14 Ill. Reg. 14570, effective August 22, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 14826, effective August 31, 1990; amended at 14 Ill. Reg. 15366, effective September 12, 1990; amended at 14 Ill. Reg. 15981, effective September 21, 1990; amended at 14 Ill. Reg. 17279, effective October 12, 1990; amended at 14 Ill. Reg. 18057, effective October 22, 1990; amended at 14 Ill. Reg. 18508, effective October 30, 1990; amended at 14 Ill. Reg. 18813, effective November 6, 1990; Notice of Corrections to Adopted Amendment at 15 Ill. Reg. 1174; amended at 14 Ill. Reg. 20478, effective December 7, 1990; amended at 14 Ill. Reg. 20729, effective December 12, 1990; amended at 15 Ill. Reg. 298, effective December 28, 1990; emergency amendment at 15 Ill. Reg. 592, effective January 1, 1991, for a maximum of 150 days; amended at 15 Ill. Reg. 1051, effective January 18, 1991; amended at 15 Ill. Reg. 6220, effective April 18, 1991; amended at 15 Ill. Reg. 6534, effective April 30, 1991; amended at 15 Ill. Reg. 8264, effective May 23, 1991; amended at 15 Ill. Reg. 8972, effective June 17, 1991; amended at 15 Ill. Reg. 10114, effective June 21, 1991; amended at 15 Ill. Reg. 10468, effective July 1, 1991; amended at 15 Ill. Reg. 11176, effective August 1, 1991; emergency amendment at 15 Ill. Reg. 11515, effective July 25, 1991, for a maximum of 150 days; emergency expired December 22, 1991; emergency amendment at 15 Ill. Reg. 12919, effective August 15, 1991, for a maximum of 150 days; emergency expired January 12, 1992; emergency amendment at 15 Ill. Reg. 16366, effective October 22, 1991, for a maximum of 150 days; amended at 15 Ill. Reg. 17318, effective November 18, 1991; amended at 15 Ill. Reg. 17733, effective November 22, 1991; emergency amendment at 16 Ill. Reg. 300, effective December 20, 1991, for a maximum of 150 days; amended at 16 Ill. Reg. 174, effective December 24, 1991; amended at 16 Ill. Reg. 1877, effective January 24, 1992; amended at 16 Ill. Reg. 3552, effective February 28, 1992; amended at 16 Ill. Reg. 4006, effective March 6, 1992; amended at 16 Ill. Reg. 6408, effective March 20, 1992; expedited correction at 16 Ill. Reg. 11348, effective March 20, 1992; amended at 16 Ill. Reg. 6849, effective April 7, 1992; amended at 16 Ill. Reg. 7017, effective April 17, 1992; amended at 16 Ill. Reg. 10050, effective June 5, 1992; amended at 16 Ill. Reg. 11174, effective June 26, 1992; emergency amendment at 16 Ill. Reg. 11947, effective July 10, 1992, for a maximum of 150 days; amended at 16 Ill. Reg. 12186, effective July 24, 1992; emergency amendment at 16 Ill. Reg. 13337, effective August 14, 1992, for a maximum of 150 days; emergency amendment at 16 Ill. Reg. 15109, effective September 21, 1992, for a maximum of 150 days; amended at 16 Ill. Reg. 15561, effective September 30,

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1992; amended at 16 Ill. Reg. 17302, effective November 2, 1992; emergency amendment at 16 Ill. Reg. 18097, effective November 17, 1992, for a maximum of 150 days; amended at 16 Ill. Reg. 19146, effective December 1, 1992; expedited correction at 17 Ill. Reg. 7078, effective December 1, 1992; amended at 16 Ill. Reg. 19879, effective December 7, 1992; amended at 17 Ill. Reg. 837, effective January 11, 1993; amended at 17 Ill. Reg. 1112, effective January 15, 1993; amended at 17 Ill. Reg. 2290, effective February 15, 1993; amended at 17 Ill. Reg. 2951, effective February 17, 1993; amended at 17 Ill. Reg. 3421, effective February 19, 1993; amended at 17 Ill. Reg. 6196, effective April 5, 1993; amended at 17 Ill. Reg. 6839, effective April 21, 1993; amended at 17 Ill. Reg. 7004, effective May 17, 1993; emergency amendment at 17 Ill. Reg. 11201, effective July 1, 1993, for a maximum of 150 days; emergency amendment at 17 Ill. Reg. 15162, effective September 2, 1993, for a maximum of 150 days; emergency amendment suspended at 17 Ill. Reg. 18902, effective October 12, 1993; emergency amendment at 17 Ill. Reg. 18152, effective October 1, 1993, for a maximum of 150 days; amended at 17 Ill. Reg. 18571, effective October 8, 1993; emergency amendment at 17 Ill. Reg. 18611, effective October 1, 1993, for a maximum of 150 days; amended at 17 Ill. Reg. 20999, effective November 24, 1993; emergency amendment repealed at 17 Ill. Reg. 22583, effective December 20, 1993; amended at 18 Ill. Reg. 3620, effective February 28, 1994; amended at 18 Ill. Reg. 4250, effective March 4, 1994; amended at 18 Ill. Reg. 5951, effective April 1, 1994; emergency amendment at 18 Ill. Reg. 10922, effective July 1, 1994, for a maximum of 150 days; emergency amendment suspended at 18 Ill. Reg. 17286, effective November 15, 1994; emergency amendment repealed at 19 Ill. Reg. 5839, effective April 4, 1995; amended at 18 Ill. Reg. 11244, effective July 1, 1994; amended at 18 Ill. Reg. 14126, effective August 29, 1994; amended at 18 Ill. Reg. 16675, effective November 1, 1994; amended at 18 Ill. Reg. 18059, effective December 19, 1994; amended at 19 Ill. Reg. 1082, effective January 20, 1995; amended at 19 Ill. Reg. 2933, effective March 1, 1995; emergency amendment at 19 Ill. Reg. 3529, effective March 1, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 5663, effective April 1, 1995; amended at 19 Ill. Reg. 7919, effective June 5, 1995; emergency amendment at 19 Ill. Reg. 8455, effective June 9, 1995, for a maximum of 150 days; emergency amendment at 19 Ill. Reg. 9297, effective July 1, 1995, for a maximum of 150 days; emergency amendment at 19 Ill. Reg. 10252, effective July 1, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 13019, effective September 5, 1995; amended at 19 Ill. Reg. 14440, effective September 29, 1995; emergency amendment at 19 Ill. Reg. 14833, effective October 6, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 15441, effective October 26, 1995; amended at 19 Ill. Reg. 15692, effective November 6, 1995; amended at 19 Ill. Reg. 16677, effective November 28, 1995; amended at 20 Ill. Reg. 1210, effective December 29, 1995; amended at 20 Ill. Reg. 4345, effective March 4, 1996; amended at 20 Ill. Reg. 5858, effective April 5, 1996; amended at 20 Ill. Reg. 6929, effective May 6, 1996; amended at 20 Ill. Reg. 7922, effective May 31, 1996; amended at 20 Ill. Reg. 9081, effective June 28, 1996; emergency amendment at 20 Ill. Reg. 9312, effective July 1, 1996, for a maximum of 150 days; amended at 20 Ill. Reg. 11332, effective August 1, 1996; amended at 20 Ill. Reg. 14845, effective October 31, 1996; emergency amendment at 21 Ill. Reg. 705, effective December 31, 1996, for a maximum of 150 days;

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emergency amendment at 21 Ill. Reg. 3734, effective March 5, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 4777, effective April 2, 1997; amended at 21 Ill. Reg. 6899, effective May 23, 1997; amended at 21 Ill. Reg. 9763, effective July 15, 1997; amended at 21 Ill. Reg. 11569, effective August 1, 1997; emergency amendment at 21 Ill. Reg. 13857, effective October 1, 1997, for a maximum of 150 days; amended at 22 Ill. Reg. 1416, effective December 29, 1997; amended at 22 Ill. Reg. 4412, effective February 27, 1998; amended at 22 Ill. Reg. 7024, effective April 1, 1998; amended at 22 Ill. Reg. 10606, effective June 1, 1998; emergency amendment at 22 Ill. Reg. 13117, effective July 1, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 16302, effective August 28, 1998; amended at 22 Ill. Reg. 18979, effective September 30, 1998; amended at 22 Ill. Reg. 19898, effective October 30, 1998; emergency amendment at 22 Ill. Reg. 22108, effective December 1, 1998, for a maximum of 150 days; emergency expired April 29, 1999; amended at 23 Ill. Reg. 5796, effective April 30, 1999; amended at 23 Ill. Reg. 7122, effective June 1, 1999; emergency amendment at 23 Ill. Reg. 8236, effective July 1, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 9874, effective August 3, 1999; amended at 23 Ill. Reg. 12697, effective October 1, 1999; amended at 23 Ill. Reg. 13646, effective November 1, 1999; amended at 23 Ill. Reg. 14567, effective December 1, 1999; amended at 24 Ill. Reg. 661, effective January 3, 2000; amended at 24 Ill. Reg. 10277, effective July 1, 2000; emergency amendment at 24 Ill. Reg. 10436, effective July 1, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 15086, effective October 1, 2000; amended at 24 Ill. Reg. 18320, effective December 1, 2000; emergency amendment at 24 Ill. Reg. 19344, effective December 15, 2000, for a maximum of 150 days; amended at 25 Ill. Reg. 3897, effective March 1, 2001; amended at 25 Ill. Reg. 6665, effective May 11, 2001; amended at 25 Ill. Reg. 8793, effective July 1, 2001; emergency amendment at 25 Ill. Reg. 8850, effective July 1, 2001, for a maximum of 150 days; amended at 25 Ill. Reg. 11880, effective September 1, 2001; amended at 25 Ill. Reg. 12820, effective October 8, 2001; amended at 25 Ill. Reg. 14957, effective November 1, 2001; emergency amendment at 25 Ill. Reg. 16127, effective November 28, 2001, for a maximum of 150 days; emergency amendment at 25 Ill. Reg. 16292, effective December 3, 2001, for a maximum of 150 days; emergency amendment at 26 Ill. Reg. 514, effective January 1, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 663, effective January 7, 2002; amended at 26 Ill. Reg. 4781, effective March 15, 2002; emergency amendment at 26 Ill. Reg. 5984, effective April 15, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 7285, effective April 29, 2002; emergency amendment at 26 Ill. Reg. 8594, effective June 1, 2002, for a maximum of 150 days; emergency amendment at 26 Ill. Reg. 11259, effective July 1, 2002, for a maximum of 150 days; emergency amendment repealed at 26 Ill. Reg. 16593, effective October 22, 2002; emergency amendment at 26 Ill. Reg. 12461, effective July 29, 2002, for a maximum of 150 days; emergency amendment at 26 Ill. Reg. 12772, effective August 12, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 13641, effective September 3, 2002; amended at 26 Ill. Reg. 14789, effective September 26, 2002; emergency amendment at 26 Ill. Reg. 15076, effective October 1, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 16303, effective October 25, 2002; amended at 26 Ill. Reg. 17751, effective November 27, 2002; amended at 27 Ill. Reg. 768, effective January 3, 2003; amended at 27 Ill. Reg. 3041, effective

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February 10, 2003; amended at 27 Ill. Reg. 4364, effective February 24, 2003; amended at 27 Ill. Reg. 7823, effective May 1, 2003; amended at 27 Ill. Reg. 9157, effective June 2, 2003; emergency amendment at 27 Ill. Reg. 10813, effective July 1, 2003, for a maximum of 150 days; amended at 27 Ill. Reg. 13784, effective August 1, 2003; amended at 27 Ill. Reg. 14799, effective September 5, 2003; emergency amendment at 27 Ill. Reg. 15584, effective September 20, 2003, for a maximum of 150 days; emergency amendment at 27 Ill. Reg. 16161, effective October 1, 2003, for a maximum of 150 days; amended at 27 Ill. Reg. 18629, effective November 26, 2003; amended at 28 Ill. Reg. 2744, effective February 1, 2004; amended at 28 Ill. Reg. _____, effective _____.

SUBPART E: GROUP CARE

Section 140.645 Home and Community Based Services Waivers For Medically Fragile, Technology Dependent, Disabled Persons Under Age 21 (Repealed)

- a) ~~The Department shall operate waiver programs to provide medical and in-home care for disabled persons under age 21, who are medically fragile and technology dependent, to prevent unnecessary institutionalization. The waiver programs, pursuant to Section 1915(c) of the Social Security Act, allow the Department to receive federal financial participation for payments for medical services the Department and the person's physician or physicians agree are necessary.~~
- b) ~~The Department operates two home and community based services waivers for medically fragile and technology dependent persons under age 21.~~
 - 1) ~~Model Waiver I~~
 - A) ~~Serves only a limited number (200) of clients.~~
 - B) ~~Clients may receive the following services in the home: home health aides, respite care, environmental modification, private duty nursing, and special medical supplies and equipment.~~
 - 2) ~~Waiver II~~
 - A) ~~Serves a specified number of clients, but is not limited to 200 participants.~~
 - B) ~~Clients may receive the following services in the home: home health aides, respite care, environmental modification, private duty nursing, special medical supplies and equipment, medically~~

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~~supervised day care, and maintenance placement counseling.~~

- e) ~~Initial and continuing eligibility for the waivers is dependent upon all of the following criteria being satisfied:~~
- 1) ~~the client is 20 years or younger and qualifies as disabled as defined under the Federal Supplemental Security Income Program (20 CFR 416, Subpart F);~~
 - 2) ~~a physician (licensed to practice medicine in all its branches) has determined that the client requires a level of care provided by a hospital, nursing facility or intermediate care facility for the mentally retarded, and has determined that such level of care can be provided outside of an institution;~~
 - 3) ~~the estimated cost to the State for care outside of an institution for the client is not greater than the estimated cost to the State for care of the client in an institution;~~
 - 4) ~~the client would be eligible for Medicaid if the person's responsible relatives' income and resources were excluded from consideration.~~
- d) ~~With respect to each client who is determined by the Department to meet the criteria listed in subsection (c) above, the Department shall waive eligibility criteria for receipt of federally funded assistance pursuant to Section 1915(c) of the Social Security Act.~~
- e) ~~Medical coverage for a client shall be of the same extent of coverage as that provided to persons receiving medical assistance under Section 140.3.~~

(Source: Repealed at 28 Ill. Reg. _____, effective _____)

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- 1) Heading of the Part: Hospital Services
- 2) Code Citation: 89 Ill. Adm. Code 148
- 3) Section Number: 148.295 Proposed Action: Amendment
- 4) Statutory Authority: Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-13]
- 5) Complete Description of the Subjects and Issues Involved: These proposed amendments concerning hospital services provide additional fiscal year 2004 budget implementation changes. Funding increases will be provided for high volume Medicaid funded hospitals under Critical Hospital Adjustment Payments (CHAP) for Direct Hospital Adjustment (DHA) payments. The proposed changes are the result of a line item veto override in veto session that restored certain hospital funding. These changes will result in a spending increase of approximately \$1.7 million.
- 6) Will this proposed amendment replace any emergency amendment currently in effect?
No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Does this proposed amendment contain incorporations by reference? No
- 9) Are there any other proposed amendments pending on this Part? Yes

<u>Sections</u>	<u>Proposed Action</u>	<u>Illinois Register Citation</u>
148.30	Amendment	28 Ill. Reg. 1998; 2/6/04
148.82	Amendment	28 Ill. Reg. 1350; 1/23/04
148.126	Amendment	28 Ill. Reg. 1649; 1/30/04
148.210	Amendment	28 Ill. Reg. 1998; 2/6/04

- 10) Statement of Statewide Policy Objectives: These proposed amendments do not affect units of local government.
- 11) Time, Place, and Manner in Which Interested Persons May Comment on this Proposed Rulemaking: Any interested parties may submit comments, data, views, or arguments concerning this proposed rulemaking. All comments must be in writing and should be addressed to:

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Joanne Scattoloni
Office of the General Counsel, Rules Section
Illinois Department of Public Aid
201 South Grand Avenue East, Third Floor
Springfield, Illinois 62763-0002
(217)524-0081

The Department requests the submission of written comments within 30 days after the publication of this notice. The Department will consider all written comments it receives during the first notice period as required by Section 5-40 of the Illinois Administrative Procedure Act [5 ILCS 100/5-40].

Any interested persons may review these proposed amendments on the Internet at <http://www.dpainline.com/lawsrules/publicnotice.html>. Access to the Internet is available through any local public library. In addition, the amendments may be reviewed at the Illinois Department of Human Services' local offices (except in Cook County). In Cook County, the amendments may be reviewed at the Office of the Director, Illinois Department of Public Aid, 100 West Randolph Street, Tenth Floor, Chicago, Illinois. The amendments may be reviewed at all offices Monday through Friday from 8:30 a.m. until 5:00 p.m. This notice is being provided in accordance with federal requirements at 42 CFR 447.205.

These proposed amendments may have an impact on small businesses, small municipalities, and not-for-profit corporations as defined in Sections 1-75, 1-80 and 1-85 of the Illinois Administrative Procedure Act [5 ILCS 100/1-75, 1-80, 1-85]. These entities may submit comments in writing to the Department at the above address in accordance with the regulatory flexibility provisions in Section 5-30 of the Illinois Administrative Procedure Act [5 ILCS 100/5-30]. These entities shall indicate their status as small businesses, small municipalities, or not-for-profit corporations as part of any written comments they submit to the Department.

- 12) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: Medicaid funded hospitals will be affected.
 - B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of professional skills necessary for compliance: None

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- 13) Regulatory Agenda on Which this Rulemaking Was Summarized: This amendment was not included on either of the two most recent regulatory agendas because: This rulemaking was inadvertently omitted when the most recent regulatory agenda was published.

The full text of the proposed amendment begins on the next page:

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TITLE 89: SOCIAL SERVICES
CHAPTER I: DEPARTMENT OF PUBLIC AID
SUBCHAPTER d: MEDICAL PROGRAMSPART 148
HOSPITAL SERVICES

SUBPART A: GENERAL PROVISIONS

Section	
148.10	Hospital Services
148.20	Participation
148.25	Definitions and Applicability
148.30	General Requirements
148.40	Special Requirements
148.50	Covered Hospital Services
148.60	Services Not Covered as Hospital Services
148.70	Limitation On Hospital Services

SUBPART B: REIMBURSEMENT AND RELATED PROVISIONS

Section	
148.80	Organ Transplants Services Covered Under Medicaid (Repealed)
148.82	Organ Transplant Services
148.90	Heart Transplants (Repealed)
148.100	Liver Transplants (Repealed)
148.105	Psychiatric Adjustment Payments
148.110	Bone Marrow Transplants (Repealed)
148.115	Rural Adjustment Payments
148.120	Disproportionate Share Hospital (DSH) Adjustments
148.122	Medicaid Percentage Adjustments
148.126	Safety Net Adjustment Payments
148.130	Outlier Adjustments for Exceptionally Costly Stays
148.140	Hospital Outpatient and Clinic Services
148.150	Public Law 103-66 Requirements
148.160	Payment Methodology for County-Owned Hospitals in an Illinois County with a Population of Over Three Million
148.170	Payment Methodology for Hospitals Organized Under the University of Illinois Hospital Act
148.175	Supplemental Disproportionate Share Payment Methodology for Hospitals

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- 148.180 Organized Under the Town Hospital Act
Payment for Pre-operative Days, Patient Specific Orders, and Services Which Can Be Performed in an Outpatient Setting
- 148.190 Copayments
- 148.200 Alternate Reimbursement Systems
- 148.210 Filing Cost Reports
- 148.220 Pre September 1, 1991, Admissions
- 148.230 Admissions Occurring on or after September 1, 1991
- 148.240 Utilization Review and Furnishing of Inpatient Hospital Services Directly or Under Arrangements
- 148.250 Determination of Alternate Payment Rates to Certain Exempt Hospitals
- 148.260 Calculation and Definitions of Inpatient Per Diem Rates
- 148.270 Determination of Alternate Cost Per Diem Rates For All Hospitals; Payment Rates for Certain Exempt Hospital Units; and Payment Rates for Certain Other Hospitals
- 148.280 Reimbursement Methodologies for Children's Hospitals and Hospitals Reimbursed Under Special Arrangements
- 148.285 Excellence in Academic Medicine Payments
- 148.290 Adjustments and Reductions to Total Payments
- 148.295 Critical Hospital Adjustment Payments (CHAP)
- 148.296 Tertiary Care Adjustment Payments
- 148.297 Pediatric Outpatient Adjustment Payments
- 148.298 Pediatric Inpatient Adjustment Payments
- 148.300 Payment
- 148.310 Review Procedure
- 148.320 Alternatives
- 148.330 Exemptions
- 148.340 Subacute Alcoholism and Substance Abuse Treatment Services
- 148.350 Definitions (Repealed)
- 148.360 Types of Subacute Alcoholism and Substance Abuse Treatment Services (Repealed)
- 148.368 Volume Adjustment (Repealed)
- 148.370 Payment for Subacute Alcoholism and Substance Abuse Treatment Services
- 148.380 Rate Appeals for Subacute Alcoholism and Substance Abuse Treatment Services (Repealed)
- 148.390 Hearings
- 148.400 Special Hospital Reporting Requirements

SUBPART C: SEXUAL ASSAULT EMERGENCY TREATMENT PROGRAM

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Section

- 148.500 Definitions
148.510 Reimbursement

SUBPART D: STATE CHRONIC RENAL DISEASE PROGRAM

Section

- 148.600 Definitions
148.610 Scope of the Program
148.620 Assistance Level and Reimbursement
148.630 Criteria and Information Required to Establish Eligibility
148.640 Covered Services

- 148.TABLE A Renal Participation Fee Worksheet
148.TABLE B Bureau of Labor Statistics Equivalence
148.TABLE C List of Metropolitan Counties by SMSA Definition

AUTHORITY: Implementing and authorized by Articles III, IV, V and VI and Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Arts. III, IV, V, VI and 12-13].

SOURCE: Sections 148.10 thru 148.390 recodified from 89 Ill. Adm. Code 140.94 thru 140.398 at 13 Ill. Reg. 9572; Section 148.120 recodified from 89 Ill. Adm. Code 140.110 at 13 Ill. Reg. 12118; amended at 14 Ill. Reg. 2553, effective February 9, 1990; emergency amendment at 14 Ill. Reg. 11392, effective July 1, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 15358, effective September 13, 1990; amended at 14 Ill. Reg. 16998, effective October 4, 1990; amended at 14 Ill. Reg. 18293, effective October 30, 1990; amended at 14 Ill. Reg. 18499, effective November 8, 1990; emergency amendment at 15 Ill. Reg. 10502, effective July 1, 1991, for a maximum of 150 days; emergency expired October 29, 1991; emergency amendment at 15 Ill. Reg. 12005, effective August 9, 1991, for a maximum of 150 days; emergency expired January 6, 1992; emergency amendment at 15 Ill. Reg. 16166, effective November 1, 1991, for a maximum of 150 days; amended at 15 Ill. Reg. 18684, effective December 23, 1991; amended at 16 Ill. Reg. 6255, effective March 27, 1992; emergency amendment at 16 Ill. Reg. 11335, effective June 30, 1992, for a maximum of 150 days; emergency expired November 27, 1992; emergency amendment at 16 Ill. Reg. 11942, effective July 10, 1992, for a maximum of 150 days; emergency amendment at 16 Ill. Reg. 14778, effective October 1, 1992, for a maximum of 150 days; amended at 16 Ill. Reg. 19873, effective December 7, 1992; amended at 17 Ill. Reg. 131, effective December 21, 1992; amended at 17 Ill. Reg. 3296, effective March 1, 1993; amended at 17 Ill. Reg. 6649, effective April 21, 1993; amended at 17 Ill. Reg. 14643, effective August 30, 1993; emergency amendment at 17 Ill. Reg. 17323, effective October 1, 1993, for a maximum of 150 days; amended at 18 Ill. Reg. 3450, effective February 28, 1994; emergency

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amendment at 18 Ill. Reg. 12853, effective August 2, 1994, for a maximum of 150 days; amended at 18 Ill. Reg. 14117, effective September 1, 1994; amended at 18 Ill. Reg. 17648, effective November 29, 1994; amended at 19 Ill. Reg. 1067, effective January 20, 1995; emergency amendment at 19 Ill. Reg. 3510, effective March 1, 1995, for a maximum of 150 days; emergency expired July 29, 1995; emergency amendment at 19 Ill. Reg. 6709, effective May 12, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 10060, effective June 29, 1995; emergency amendment at 19 Ill. Reg. 10752, effective July 1, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 13009, effective September 5, 1995; amended at 19 Ill. Reg. 16630, effective November 28, 1995; amended at 20 Ill. Reg. 872, effective December 29, 1995; amended at 20 Ill. Reg. 7912, effective May 31, 1996; emergency amendment at 20 Ill. Reg. 9281, effective July 1, 1996, for a maximum of 150 days; emergency amendment at 20 Ill. Reg. 12510, effective September 1, 1996, for a maximum of 150 days; amended at 20 Ill. Reg. 15722, effective November 27, 1996; amended at 21 Ill. Reg. 607, effective January 2, 1997; amended at 21 Ill. Reg. 8386, effective June 23, 1997; emergency amendment at 21 Ill. Reg. 9552, effective July 1, 1997, for a maximum of 150 days; emergency amendment at 21 Ill. Reg. 9822, effective July 2, 1997, for a maximum of 150 days; emergency amendment at 21 Ill. Reg. 10147, effective August 1, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 13349, effective September 23, 1997; emergency amendment at 21 Ill. Reg. 13675, effective September 27, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 16161, effective November 26, 1997; amended at 22 Ill. Reg. 1408, effective December 29, 1997; amended at 22 Ill. Reg. 3083, effective January 26, 1998; amended at 22 Ill. Reg. 11514, effective June 22, 1998; emergency amendment at 22 Ill. Reg. 13070, effective July 1, 1998, for a maximum of 150 days; emergency amendment at 22 Ill. Reg. 15027, effective August 1, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 16273, effective August 28, 1998; amended at 22 Ill. Reg. 21490, effective November 25, 1998; amended at 23 Ill. Reg. 5784, effective April 30, 1999; amended at 23 Ill. Reg. 7115, effective June 1, 1999; amended at 23 Ill. Reg. 7908, effective June 30, 1999; emergency amendment at 23 Ill. Reg. 8213, effective July 1, 1999, for a maximum of 150 days; emergency amendment at 23 Ill. Reg. 12772, effective October 1, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 13621, effective November 1, 1999; amended at 24 Ill. Reg. 2400, effective February 1, 2000; amended at 24 Ill. Reg. 3845, effective February 25, 2000; emergency amendment at 24 Ill. Reg. 10386, effective July 1, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 11846, effective August 1, 2000; amended at 24 Ill. Reg. 16067, effective October 16, 2000; amended at 24 Ill. Reg. 17146, effective November 1, 2000; amended at 24 Ill. Reg. 18293, effective December 1, 2000; amended at 25 Ill. Reg. 5359, effective April 1, 2001; emergency amendment at 25 Ill. Reg. 5432, effective April 1, 2001, for a maximum of 150 days; amended at 25 Ill. Reg. 6959, effective June 1, 2001; emergency amendment at 25 Ill. Reg. 9974, effective July 23, 2001, for a maximum of 150 days; amended at 25 Ill. Reg. 10513, effective August 2, 2001; emergency amendment at 25 Ill. Reg. 12870, effective October 1, 2001, for a maximum of 150 days; emergency expired February 27, 2002; amended at 25 Ill. Reg. 16087, effective December 1, 2001; emergency amendment at 26 Ill.

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Reg. 536, effective December 31, 2001, for a maximum of 150 days; emergency amendment at 26 Ill. Reg. 680, effective January 1, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 4825, effective March 15, 2002; emergency amendment at 26 Ill. Reg. 4953, effective March 18, 2002, for a maximum of 150 days; emergency repealed at 26 Ill. Reg. 7786, effective July 1, 2002; emergency amendment at 26 Ill. Reg. 7340, effective April 30, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 8395, effective May 28, 2002; emergency amendment at 26 Ill. Reg. 11040, effective July 1, 2002, for a maximum of 150 days; emergency amendment repealed at 26 Ill. Reg. 16612, effective October 22, 2002; amended at 26 Ill. Reg. 12322, effective July 26, 2002; amended at 26 Ill. Reg. 13661, effective September 3, 2002; amended at 26 Ill. Reg. 14808, effective September 26, 2002; emergency amendment at 26 Ill. Reg. 14887, effective October 1, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 17775, effective November 27, 2002; emergency amendment at 27 Ill. Reg. 580, effective January 1, 2003, for a maximum of 150 days; emergency amendment at 27 Ill. Reg. 866, effective January 1, 2003, for a maximum of 150 days; amended at 27 Ill. Reg. 4386, effective February 24, 2003; emergency amendment at 27 Ill. Reg. 8320, effective April 28, 2003, for a maximum of 150 days; emergency amendment repealed at 27 Ill. Reg. 12121, effective July 10, 2003; amended at 27 Ill. Reg. 9178, effective May 28, 2003; emergency amendment at 27 Ill. Reg. 11041, effective July 1, 2003, for a maximum of 150 days; emergency amendment at 27 Ill. Reg. 16185, effective October 1, 2003, for a maximum of 150 days; emergency amendment at 27 Ill. Reg. 16268, effective October 1, 2003, for a maximum of 150 days; amended at 27 Ill. Reg. 18843, effective November 26, 2003; emergency amendment at 28 Ill. Reg. 1418, effective January 8, 2004, for a maximum of 150 days; emergency amendment at 28 Ill. Reg. 1766, effective January 10, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 2770, effective February 1, 2004; amended at 28 Ill. Reg. _____, effective _____.

SUBPART B: REIMBURSEMENT AND RELATED PROVISIONS

Section 148.295 Critical Hospital Adjustment Payments (CHAP)

Critical Hospital Adjustment Payments (CHAP) shall be made to all eligible hospitals excluding county-owned hospitals, as described in Section 148.25(b)(1)(A), unless otherwise noted in this Section, and hospitals organized under the University of Illinois Hospital Act, as described in Section 148.25(b)(1)(B), for inpatient admissions occurring on or after July 1, 1998, in accordance with this Section.

- a) **Trauma Center Adjustments (TCA)**
The Department shall make a TCA to Illinois hospitals recognized, as of the first day of July in the CHAP rate period, as a Level I or Level II trauma center by the Illinois Department of Public Health (IDPH) in accordance with the provisions of subsections (a)(1) through (a)(3) of this Section.

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- 1) Level I Trauma Center Adjustment.
 - A) Criteria. Illinois hospitals that, on the first day of July in the CHAP rate period, are recognized as a Level I trauma center by the Illinois Department of Public Health shall receive the Level I trauma center adjustment.
 - B) Adjustment. Illinois hospitals meeting the criteria specified in subsection (a)(1)(A) of this Section shall receive an adjustment as follows:
 - i) Hospitals with Medicaid trauma admissions equal to or greater than the mean Medicaid trauma admissions, for all hospitals qualifying under subsection (a)(1)(A) of this Section, shall receive an adjustment of \$21,365.00 per Medicaid trauma admission in the CHAP base period.
 - ii) Hospitals with Medicaid trauma admissions less than the mean Medicaid trauma admissions, for all hospitals qualifying under subsection (a)(1)(A) of this Section, shall receive an adjustment of \$14,165.00 per Medicaid trauma admission in the CHAP base period.
- 2) Level II Rural Trauma Center Adjustment. Illinois rural hospitals, as defined in Section 148.25(g)(3), that, on the first day of July in the CHAP rate period, are recognized as a Level II trauma center by the Illinois Department of Public Health shall receive an adjustment of \$11,565.00 per Medicaid trauma admission in the CHAP base period.
- 3) Level II Urban Trauma Center Adjustment. Illinois urban hospitals, as described in Section 148.25(g)(4), that, on the first day of July in the CHAP rate period, are recognized as Level II trauma centers by the Illinois Department of Public Health shall receive an adjustment of \$11,565.00 per Medicaid trauma admission in the CHAP base period, provided that such hospital meets the criteria described below:
 - A) The hospital is located in a county with no Level I trauma center; and

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- B) The hospital is located in a Health Professional Shortage Area (HPSA) (42 CFR 5), as of the first day of July in the CHAP rate period, and has a Medicaid trauma admission percentage at or above the mean of the individual facility values determined in subsection (a)(3) of this Section; or the hospital is not located in an HPSA and has a Medicaid trauma admission percentage that is at least the mean plus one standard deviation of the individual facility values determined in subsection (a)(3) of this Section.
- b) **Rehabilitation Hospital Adjustment (RHA)**
Illinois hospitals that, on the first day of July in the CHAP rate period, qualify as rehabilitation hospitals, as defined in 89 Ill. Adm. Code 149.50(c)(2), and that are accredited by the Commission on Accreditation of Rehabilitation Facilities (CARF), shall receive a rehabilitation hospital adjustment in the CHAP rate period that consists of the following three components:
- 1) **Treatment Component.** All hospitals defined in subsection (b) of this Section shall receive \$4,215.00 per Medicaid Level I rehabilitation admission in the CHAP base period.
 - 2) **Facility Component.** All hospitals defined in subsection (b) of this Section shall receive a facility component that shall be based upon the number of Medicaid Level I rehabilitation admissions in the CHAP base period as follows:
 - A) Hospitals with fewer than 60 Medicaid Level I rehabilitation admissions in the CHAP base period shall receive a facility component of \$229,360.00 in the CHAP rate period.
 - B) Hospitals with 60 or more Medicaid Level I rehabilitation admissions in the CHAP base period shall receive a facility component of \$527,528.00 in the CHAP rate period.
 - 3) **Health Professional Shortage Area Adjustment Component.** Hospitals defined in subsection (b) of this Section, that are located in an HPSA on July 1, 1999, shall receive \$276.00 per Medicaid Level I rehabilitation inpatient day in the CHAP base period.
- c) **Direct Hospital Adjustment (DHA) Criteria**

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- 1) Qualifying Criteria
Hospitals may qualify for the DHA under this subsection (c) under the following categories:
 - A) Except for hospitals operated by the University of Illinois, children's hospitals, psychiatric hospitals, rehabilitation hospitals and long term stay hospitals, all other hospitals located in Health Service Area (HSA) 6 that either:
 - i) were eligible for Direct Hospital Adjustments under the CHAP program as of July 1, 1999, and had a Medicaid inpatient utilization rate (MIUR) equal to or greater than the statewide mean in Illinois on July 1, 1999;
 - ii) were eligible under the Supplemental Critical Hospital Adjustment Payment (SCHAP) program as of July 1, 1999, and had an MIUR equal to or greater than the statewide mean in Illinois on July 1, 1999; or
 - iii) were county owned hospitals as defined in 89 Ill. Adm. Code 148.25(b)(1)(A), and had an MIUR equal to or greater than the statewide mean in Illinois on July 1, 1999.
 - B) Illinois hospitals located outside of HSA 6 that had an MIUR greater than 60 percent on July 1, 1999, and an average length of stay less than ten days. The following hospitals are excluded from qualifying under this subsection (c)(1)(B): children's hospitals; psychiatric hospitals; rehabilitation hospitals; and long term stay hospitals.
 - C) Children's hospitals, as defined under 89 Ill. Adm. Code 149.50(c)(3), on July 1, 1999.
 - D) Illinois teaching hospitals, with more than 40 graduate medical education programs on July 1, 1999, not qualifying in subsection (c)(1)(A), (B), or (C) of this Section.
 - E) Except for hospitals operated by the University of Illinois, children's hospitals, psychiatric hospitals, rehabilitation hospitals, long term stay hospitals and hospitals qualifying in subsection

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(c)(1)(A), (B), (C) or (D) of this Section, all other hospitals located in Illinois that had an MIUR equal to or greater than the mean plus one-half standard deviation on July 1, 1999, and provided more than 15,000 Total days.

- F) Except for hospitals operated by the University of Illinois, children's hospitals, psychiatric hospitals, rehabilitation hospitals, long term stay hospitals and hospitals otherwise qualifying in subsection (c)(1)(A), (B), (C), (D), or (E) of this Section, all other hospitals that had an MIUR greater than 40 percent on July 1, 1999, and provided more than 7,500 Total days and provided obstetrical care as of July 1, 2001.
- G) Illinois teaching hospitals with 25 or more graduate medical education programs on July 1, 1999, that are affiliated with a Regional Alzheimer's Disease Assistance Center as designated by the Alzheimer's Disease Assistance Act [410 ILCS 405/4], that had an MIUR less than 25 percent on July 1, 1999, and provided 75 or more Alzheimer days for patients diagnosed as having the disease.
- H) Except for hospitals operated by the University of Illinois, children's hospitals, psychiatric hospitals, rehabilitation hospitals, long term stay hospitals and hospitals otherwise qualifying in subsection (c)(1)(A) through (c)(1)(G) of this Section, all other hospitals that had an MIUR greater than 50 percent on July 1, 1999.

2) DHA Rates

- A) For hospitals qualifying under subsection (c)(1)(A) of this Section, the DHA rates are as follows:
 - i) Hospitals that have a Combined MIUR that is equal to or greater than the Statewide mean Combined MIUR, but less than one standard deviation above the Statewide mean Combined MIUR, will receive \$69.00 per day for hospitals that do not provide obstetrical care and \$105.00 per day for hospitals that do provide obstetrical care.

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- ii) Hospitals that have a Combined MIUR that is equal to or greater than one standard deviation above the Statewide mean Combined MIUR, but less than one and one-half standard deviation above the Statewide mean Combined MIUR, will receive \$105.00 per day for hospitals that do not provide obstetrical care and \$142.00 per day for hospitals that do provide obstetrical care.
 - iii) Hospitals that have a Combined MIUR that is equal to or greater than one and one-half standard deviation above the Statewide mean Combined MIUR, but less than two standard deviations above the Statewide mean Combined MIUR, will receive \$124.00 per day for hospitals that do not provide obstetrical care and \$160.00 per day for hospitals that do provide obstetrical care.
 - iv) Hospitals that have a Combined MIUR that is equal to or greater than two standard deviations above the Statewide mean Combined MIUR will receive \$142.00 per day for hospitals that do not provide obstetrical care and \$179.00 per day for hospitals that do provide obstetrical care.
- B) Hospitals qualifying under subsection (c)(1)(A) of this Section will also receive the following rates:
- i) County owned hospitals as defined in Section 148.25 with more than 30,000 Total days will have their rate increased by \$455.00 per day.
 - ii) Hospitals that are not county owned with more than 30,000 Total days will have their rate increased by \$330.00 per day.
 - iii) Hospitals with more than 80,000 Total days will have their rate increased by an additional \$423.00 per day.
 - iv) Hospitals with more than 4,500 Obstetrical days will have their rate increased by \$101.00 per day.

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- v) Hospitals with more than 5,500 Obstetrical days will have their rate increased by an additional \$194.00 per day.
 - vi) Hospitals with an MIUR greater than 74 percent will have their rate increased by \$147.00 per day.
 - vii) Hospitals with an average length of stay less than 3.9 days will have their rate increased by \$41.00 per day.
 - viii) Hospitals with an MIUR greater than the statewide mean plus one standard deviation that are designated a Perinatal Level 2 Center and have one or more obstetrical graduate medical education programs as of July 1, 1999, will have their rate increased by \$227.00 per day.
 - ix) Hospitals receiving payments under subsection (c)(2)(A)(ii) of this Section that have an average length of stay less than four days will have their rate increased by \$182.25 per day.
 - x) Hospitals receiving payments under subsection (c)(2)(A)(ii) of this Section that have an MIUR greater than 60 percent will have their rate increased by \$202.00 per day.
 - xi) Hospitals receiving payments under subsection (c)(2)(A)(iv) of this Section that have an MIUR greater than 70 percent and have more than 20,000 days will have their rate increased by \$98.00 per day.
- C) Hospitals qualifying under subsection (c)(1)(B) of this Section will receive the following rates:
- i) Qualifying hospitals will receive a rate of \$421.00 per day.
 - ii) Qualifying hospitals with more than 1,500 Obstetrical days will have their rate increased by \$369.00 per day.
- D) Hospitals qualifying under subsection (c)(1)(C) of this Section will receive the following rates:
- i) Hospitals will receive a rate of \$28.00 per day.

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- ii) Hospitals located in Illinois and outside of HSA 6 that have an MIUR greater than 60 percent will have their rate increased by \$55.00 per day.
 - iii) Hospitals located in Illinois and inside HSA 6 that have an MIUR greater than 80 percent will have their rate increased by \$573.00 per day.
 - iv) Hospitals that are not located in Illinois that have an MIUR greater than 45 percent will have their rate increased by \$32.00 per day for hospitals that have fewer than 4,000 Total days; or \$246.00 per day for hospitals that have more than 4,000 Total days but fewer than 8,000 Total days; or \$178.00 per day for hospitals that have more than 8,000 Total days.
 - v) Hospitals with more than 3,200 Total admissions will have their rate increased by \$248.00 per day.
- E) Hospitals qualifying under subsection (c)(1)(D) of this Section will receive the following rates:
- i) Hospitals will receive a rate of \$41.00 per day.
 - ii) Hospitals with an MIUR between 18 percent and 19.75 percent will have their rate increased by an additional \$14.00 per day.
 - iii) Hospitals with an MIUR equal to or greater than 19.75 percent will have their rate increased by an additional \$87.00 per day.
 - iv) Hospitals with a combined MIUR that is equal to or greater than 35 percent will have their rate increased by an additional \$41.00 per day.
- F) Hospitals qualifying under subsection (c)(1)(E) of this Section will receive \$188.00 per day.

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- G) Hospitals qualifying under subsection (c)(1)(F) of this Section will receive a rate of \$55.00 per day.
- H) Hospitals that qualify under subsection (c)(1)(G) of this Section will receive the following rates:
- i) Hospitals with an MIUR greater than 19.75 percent will receive a rate of ~~\$69.00~~\$34.50 per day.
 - ii) Hospitals with an MIUR equal to or less than 19.75 percent will receive a rate of ~~\$11.00~~\$5.50 per day.
- I) Hospitals qualifying under subsection (c)(1)(H) of this Section will receive a rate of \$268.00 per day.
- J) Hospitals that qualify under subsection (c)(1)(A)(iii) of this Section will have their rates multiplied by a factor of two. The payments calculated under this Section to hospitals that qualify under subsection (c)(1)(A)(iii) of this Section may be adjusted by the Department to ensure compliance with aggregate and hospital specific federal payment limitations. A portion of the payments calculated under this Section may be classified as disproportionate share adjustments for hospitals qualifying under subsection (c)(1)(A)(iii) of this Section.
- 3) DHA Payments
- A) Payments under this subsection (c) will be made at least quarterly, beginning with the quarter ending December 31, 1999.
 - B) Payment rates will be multiplied by the Total days.
 - C) Total Payment Adjustments
 - i) For the CHAP rate period occurring in State fiscal year 2004, total payments will equal the methodologies described in subsection (c)(2) of this Section. For the period ~~April 1, 2004~~October 1, 2003, to June 30, 2004, payment will equal the State fiscal year 2004 amount less the amount the hospital received under DHA for the

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~~quarters ending quarter ended~~ September 30, 2003,
December 31, 2003, and March 31, 2004.

- ii) For CHAP rate periods occurring after State fiscal year 2004, total payments will equal the methodologies described in subsection (c)(2) of this Section.

- d) Rural Critical Hospital Adjustment Payments (RCHAP)
RCHAP shall be made to rural hospitals, as described in 89 Ill. Adm. Code 140.80(j)(1), for certain inpatient admissions. The hospital qualifying under this subsection that has the highest number of Medicaid obstetrical care admissions during the CHAP base period shall receive \$367,179.00 per year. The Department shall also make an RCHAP to hospitals qualifying under this subsection at a rate that is the greater of:
 - 1) the product of \$1,367.00 multiplied by the number of RCHAP Obstetrical Care Admissions in the CHAP base period, or
 - 2) the product of \$138.00 multiplied by the number of RCHAP General Care Admissions in the CHAP base period.

- e) Total CHAP Adjustments
Each eligible hospital's critical hospital adjustment payment shall equal the sum of the amounts described in subsections (a), (b), (c) and (d) of this Section. The critical hospital adjustment payments shall be paid at least quarterly.

- f) Critical Hospital Adjustment Limitations
Hospitals that qualify for trauma center adjustments under subsection (a) of this Section shall not be eligible for the total trauma center adjustment if, during the CHAP rate period, the hospital is no longer recognized by the Illinois Department of Public Health as a Level I trauma center as required for the adjustment described in subsection (a)(1) of this Section, or a Level II trauma center as required for the adjustment described in subsection (a)(2) or (a)(3) of this Section. In these instances, the adjustments calculated shall be pro-rated, as applicable, based upon the date that such recognition ceased.

- g) Critical Hospital Adjustment Payment Definitions
The definitions of terms used with reference to calculation of the CHAP required by this Section are as follows:

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- 1) "Alzheimer days" means total paid days contained in the Department's paid claims database with a ICD-9-CM diagnosis code of 331.0 for dates of service occurring in State fiscal year 2001 and adjudicated through June 30, 2002.
- 2) "CHAP base period" means State Fiscal Year 1994 for CHAP calculated for the July 1, 1995, CHAP rate period; State Fiscal Year 1995 for CHAP calculated for the July 1, 1996, CHAP rate period; etc.
- 3) "CHAP rate period" means, beginning July 1, 1995, the 12 month period beginning on July 1 of the year and ending June 30 of the following year.
- 4) "Combined MIUR" means the sum of Medicaid Inpatient Utilization Rate (MIUR) as of July 1, 1999, and as defined in Section 148.120(k)(5), plus the Medicaid obstetrical inpatient utilization rate, as described in Section 148.120(k)(6), as of July 1, 1999.
- 5) "Medicaid general care admission" means hospital inpatient admissions that were subsequently adjudicated by the Department through the last day of June preceding the CHAP rate period and contained within the Department's paid claims data base, for recipients of medical assistance under Title XIX of the Social Security Act, excluding admissions for normal newborns, Medicare/Medicaid crossover admissions, psychiatric and rehabilitation admissions.
- 6) "Medicaid Level I rehabilitation admissions" means those claims billed as Level I admissions that were subsequently adjudicated by the Department through the last day of June preceding the CHAP rate period and contained within the Department's paid claims data base, with an ICD-9-CM principal diagnosis code of: 054.3, 310.1 through 310.2, 320.1, 336.0 through 336.9, 344.0 through 344.2, 344.8 through 344.9, 348.1, 801.30, 803.10, 803.84, 806.0 through 806.19, 806.20 through 806.24, 806.26, 806.29 through 806.34, 806.36, 806.4 through 806.5, 851.06, 851.80, 853.05, 854.0 through 854.04, 854.06, 854.1 through 854.14, 854.16, 854.19, 905.0, 907.0, 907.2, 952.0 through 952.09, 952.10 through 952.16, 952.2, and V57.0 through V57.89, excluding admissions for normal newborns.
- 7) "Medicaid Level I rehabilitation inpatient day" means the days associated with the claims defined in subsection (g)(5) of this Section.

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- 8) "Medicaid obstetrical care admission" means hospital inpatient admissions that were subsequently adjudicated by the Department through the last day of June preceding the CHAP rate period and contained within the Department's paid claims data base, for recipients of medical assistance under Title XIX of Social Security Act, with Diagnosis Related Grouping (DRG) of 370 through 375; and specifically excludes Medicare/Medicaid crossover claims.
- 9) "Medicaid trauma admission" means those claims billed as admissions that were subsequently adjudicated by the Department through the last day of June preceding the CHAP rate period and contained within the Department's paid claims data base, with an ICD-9-CM principal diagnosis code of: 800.0 through 800.99, 801.0 through 801.99, 802.0 through 802.99, 803.0 through 803.99, 804.0 through 804.99, 805.0 through 805.98, 806.0 through 806.99, 807.0 through 807.69, 808.0 through 808.9, 809.0 through 809.1, 828.0 through 828.1, 839.0 through 839.3, 839.7 through 839.9, 850.0 through 850.9, 851.0 through 851.99, 852.0 through 852.59, 853.0 through 853.19, 854.0 through 854.19, 860.0 through 860.5, 861.0 through 861.32, 862.8, 863.0 through 863.99, 864.0 through 864.19, 865.0 through 865.19, 866.0 through 866.13, 867.0 through 867.9, 868.0 through 868.19, 869.0 through 869.1, 887.0 through 887.7, 896.0 through 896.3, 897.0 through 897.7, 900.0 through 900.9, 902.0 through 904.9, 925, 926.8, 929.0 through 929.99, 958.4, 958.5, 990 through 994.99.
- 10) "Medicaid trauma admission percentage" means a fraction, the numerator of which is the hospital's Medicaid trauma admissions and the denominator of which is the total Medicaid trauma admissions in a given 12 month period for all Level II urban trauma centers.
- 11) "RCHAP general care admissions" means Medicaid General Care Admissions, as defined in subsection (g)(4) of this Section, less RCHAP Obstetrical Care Admissions, occurring in the CHAP base period.
- 12) "RCHAP obstetrical care admissions" means Medicaid Obstetrical Care Admissions, as defined in subsection (g)(7) of this Section, with a Diagnosis Related Grouping (DRG) of 370 through 375, occurring in the CHAP base period.

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- 13) "Total admissions" means total paid admissions contained in the Department's paid claims database, including obstetrical admissions multiplied by two and excluding Medicare crossover admissions, for dates of service occurring in State fiscal year 1998 and adjudicated through June 30, 1999.
- 14) "Total days" means total paid days contained in the Department's paid claims database, including obstetrical days multiplied by two and excluding Medicare crossover days, for dates of service occurring in State fiscal year 1998 and adjudicated through June 30, 1999.
- 15) "Total obstetrical days" means hospital inpatient days for dates of service occurring in State fiscal year 1998 and adjudicated through June 30, 1999, with an ICD-9-CM principal diagnosis code of 640.0 through 648.9 with a 5th digit of 1 or 2; 650; 651.0 through 659.9 with a 5th digit of 1, 2, 3, or 4; 660.0 through 669.9 with a 5th digit of 1, 2, 3, or 4; 670.0 through 676.9 with a 5th digit of 1 or 2; V27 through V27.9; V30 through V39.9; or any ICD-9-CM principal diagnosis code that is accompanied with a surgery procedure code between 72 and 75.99; and specifically excludes Medicare/Medicaid crossover claims.

(Source: Amended at 28 Ill. Reg. _____, effective _____)

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- 1) Heading of the Part: Income Tax
- 2) Code Citation: 86 Ill. Adm. Code 100
- 3) Section Number: 100.2190 Proposed Action: New Section
- 4) Statutory Authority: 35 ILCS 5/214
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking provides guidance for taxpayers entitled to the credit allowed in IITA Section 214 for affordable housing donations.
- 6) Will this proposed amendment replace an emergency rulemaking currently in effect? No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Does this proposed amendment contain incorporations by reference? No
- 9) Are there any other proposed amendments pending on this Part? Yes

<u>Section Numbers</u>	<u>Proposed Action</u>	<u>IL Register Citation</u>
100.5050	New Section	27 Ill. Reg. 15050; 9/26/03
100.5040	Amendment	27 Ill. Reg. 17970; 12/01/03
100.7040	Amendment	28 Ill. Reg. 1725; 1/30/04

- 10) Statement of Statewide Policy Objectives: This rulemaking does not create a State mandate, nor does it modify any existing State mandates.
- 11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on this proposed rulemaking may submit them in writing by no later than 45 days after publication of this notice to:

Paul Caselton
 Deputy General Counsel – Income Tax
 Illinois Department of Revenue
 Legal Services Office
 101 West Jefferson
 Springfield, Illinois 62794
 Phone: (217) 782-7055

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- 12) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: This rulemaking provides guidance for all taxpayers who wish to qualify for the credit, and for municipalities and not-for-profit corporations who wish to make donations to affordable housing projects and receive the benefit of the credit by selling the credit to a person (including a small business) who may take the credit, as expressly allowed by IITA Section 214.
 - B) Reporting, bookkeeping or other procedures required for compliance: None; all bookkeeping and other procedures are mandated by statute or are as provided in rules issued by the Illinois Housing Development Authority in 47 Ill. Admn. Code Part 355.
 - C) Types of professional skills necessary for compliance: None
- 13) Regulatory Agenda on which this rulemaking was summarized: January 2004

The full text of the proposed amendment begins on the next page:

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NOTICE OF PROPOSED AMENDMENT

TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUEPART 100
INCOME TAX

SUBPART A: TAX IMPOSED

Section	
100.2000	Introduction
100.2050	Net Income (IITA Section 202)

SUBPART B: CREDITS

Section	
100.2100	Replacement Tax Investment Credit Prior to January 1, 1994 (IITA 201(e))
100.2101	Replacement Tax Investment Credit (IITA 201(e))
100.2110	Investment Credit; Enterprise Zone (IITA 201(f))
100.2120	Jobs Tax Credit; Enterprise Zone and Foreign Trade Zone or Sub-Zone (IITA 201(g))
100.2130	Investment Credit; High Impact Business (IITA 201(h))
100.2140	Credit Against Income Tax for Replacement Tax (IITA 201(i))
100.2150	Training Expense Credit (IITA 201(j))
100.2160	Research and Development Credit (IITA 201(k))
100.2163	Environmental Remediation Credit (IITA 201(l))
100.2165	Education Expense Credit (IITA 201(m))
100.2170	Tax Credits for Coal Research and Coal Utilization Equipment (IITA 206)
100.2180	Credit for Residential Real Property Taxes (IITA 208)
<u>100.2190</u>	<u>Tax Credit for Affordable Housing Donations (IITA Section 214)</u>
100.2195	Dependent Care Assistance Program Tax Credit (IITA 210)
100.2197	Foreign Tax Credit (IITA Section 601(b)(3))
100.2198	Economic Development for a Growing Economy Credit (IITA 211)
100.2199	Illinois Earned Income Tax Credit (IITA 212)

SUBPART C: NET OPERATING LOSSES OF UNITARY BUSINESS GROUPS
OCCURRING PRIOR TO DECEMBER 31, 1986

Section	
100.2200	Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group. (IITA Section

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NOTICE OF PROPOSED AMENDMENT

- 202) – Scope
- 100.2210 Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group (IITA Section 202) – Definitions
- 100.2220 Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group. (IITA Section 202) – Current Net Operating Losses: Offsets Between Members
- 100.2230 Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group. (IITA Section 202) – Carrybacks and Carryforwards
- 100.2240 Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group: (IITA Section 202) – Effect of Combined Net Operating Loss in Computing Illinois Base Income
- 100.2250 Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group: (IITA Section 202) – Deadline for Filing Claims Based on Net Operating Losses Carried Back From a Combined Apportionment Year

SUBPART D: ILLINOIS NET LOSS DEDUCTIONS FOR LOSSES
OCCURRING ON OR AFTER DECEMBER 31, 1986

- Section
- 100.2300 Illinois Net Loss Deduction for Losses Occurring On or After December 31, 1986 (IITA 207)
- 100.2310 Computation of the Illinois Net Loss Deduction for Losses Occurring On or After December 31, 1986 (IITA 207)
- 100.2320 Determination of the Amount of Illinois Net Loss for Losses Occurring On or After December 31, 1986
- 100.2330 Illinois Net Loss Carrybacks and Net Loss Carryovers for Losses Occurring On or After December 31, 1986
- 100.2340 Illinois Net Losses and Illinois Net Loss Deductions for Losses Occurring On or After December 31, 1986, of Corporations that are Members of a Unitary Business Group: Separate Unitary Versus Combined Unitary Returns
- 100.2350 Illinois Net Losses and Illinois Net Loss Deductions, for Losses Occurring On or After December 31, 1986, of Corporations that are Members of a Unitary Business Group: Changes in Membership

SUBPART E: ADDITIONS TO AND SUBTRACTIONS FROM TAXABLE INCOME OF
INDIVIDUALS, CORPORATIONS, TRUSTS AND ESTATES AND PARTNERSHIPS

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Section

- 100.2410 Net Operating Loss Carryovers for Individuals, and Capital Loss and Other Carryovers for All Taxpayers (IITA Section 203)
- 100.2470 Subtraction of Amounts Exempt from Taxation by Virtue of Illinois Law, the Illinois or U.S. Constitutions, or by Reason of U.S. Treaties or Statutes (IITA Sections 203(a)(2)(N), 203(b)(2)(J), 203(c)(2)(K) and 203(d)(2)(G))
- 100.2480 Enterprise Zone Dividend Subtraction (IITA Sections 203(a)(2)(J), 203(b)(2)(K), 203(c)(2)(M) and 203(d)(2)(K))
- 100.2490 Foreign Trade Zone/High Impact Business Dividend Subtraction (IITA Sections 203(a)(2)(K), 203(b)(2)(L), 203(c)(2)(O), 203(d)(2)(M))

SUBPART F: BASE INCOME OF INDIVIDUALS

Section

- 100.2580 Medical Care Savings Accounts (IITA Sections 203(a)(2)(D-5), 203(a)(2)(S) and 203(a)(2)(T))
- 100.2590 Taxation of Certain Employees of Railroads, Motor Carriers, Air Carriers and Water Carriers

SUBPART G: BASE INCOME OF TRUSTS AND ESTATES

Section

- 100.2680 Capital Gain Income of Estates and Trusts Paid to or Permanently Set Aside for Charity (Repealed)

SUBPART I: GENERAL RULES OF ALLOCATION AND APPORTIONMENT OF
BASE INCOME

Section

- 100.3000 Terms Used in Article 3 (IITA Section 301)
- 100.3010 Business and Nonbusiness Income (IITA Section 301)
- 100.3020 Resident (IITA Section 301)

SUBPART J: COMPENSATION

Section

- 100.3100 Compensation (IITA Section 302)
- 100.3110 State (IITA Section 302)
- 100.3120 Allocation of Compensation Paid to Nonresidents (IITA Section 302)

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SUBPART K: NON-BUSINESS INCOME OF PERSONS OTHER THAN RESIDENTS

Section

- 100.3200 Taxability in Other State (IITA Section 303)
- 100.3210 Commercial Domicile (IITA Section 303)
- 100.3220 Allocation of Certain Items of Nonbusiness Income by Persons Other Than Residents (IITA Section 303)

SUBPART L: BUSINESS INCOME OF PERSONS OTHER THAN RESIDENTS

Section

- 100.3300 Allocation and Apportionment of Base Income (IITA Section 304)
- 100.3310 Business Income of Persons Other Than Residents (IITA Section 304) – In General
- 100.3320 Business Income of Persons Other Than Residents (IITA Section 304) – Apportionment (Repealed)
- 100.3330 Business Income of Persons Other Than Residents (IITA Section 304) – Allocation
- 100.3340 Business Income of Persons Other Than Residents (IITA Section 304)
- 100.3350 Property Factor (IITA Section 304)
- 100.3360 Payroll Factor (IITA Section 304)
- 100.3370 Sales Factor (IITA Section 304)
- 100.3380 Special Rules (IITA Section 304)
- 100.3390 Petitions for Alternative Allocation or Apportionment (IITA Section 304(f))
- 100.3400 Apportionment of Business Income of Financial Organizations (IITA Section 304(c))
- 100.3500 Allocation and Apportionment of Base Income by Nonresident Partners

SUBPART M: ACCOUNTING

Section

- 100.4500 Carryovers of Tax Attributes (IITA Section 405)

SUBPART N: TIME AND PLACE FOR FILING RETURNS

Section

- 100.5000 Time for Filing Returns: Individuals (IITA Section 505)
- 100.5010 Place for Filing Returns: All Taxpayers (IITA Section 505)
- 100.5020 Extensions of Time for Filing Returns: All Taxpayers (IITA Section 505)

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NOTICE OF PROPOSED AMENDMENT

- 100.5030 Taxpayer's Notification to the Department of Certain Federal Changes Arising in Federal Consolidated Return Years, and Arising in Certain Loss Carryback Years (IITA Section 506)
- 100.5040 Innocent Spouses

SUBPART O: COMPOSITE RETURNS

Section

- 100.5100 Composite Returns: Eligibility
- 100.5110 Composite Returns: Responsibilities of Authorized Agent
- 100.5120 Composite Returns: Individual Liability
- 100.5130 Composite Returns: Required forms and computation of Income
- 100.5140 Composite Returns: Estimated Payments
- 100.5150 Composite Returns: Tax, Penalties and Interest
- 100.5160 Composite Returns: Credits for Resident Individuals
- 100.5170 Composite Returns: Definition of a "Lloyd's Plan of Operation"

SUBPART P: COMBINED RETURNS

Section

- 100.5200 Filing of Combined Returns
- 100.5201 Definitions and Miscellaneous Provisions Relating to Combined Returns
- 100.5205 Election to File a Combined Return
- 100.5210 Procedures for Elective and Mandatory Filing of Combined Returns
- 100.5215 Filing of Separate Unitary Returns
- 100.5220 Designated Agent for the Members
- 100.5230 Combined Estimated Tax Payments
- 100.5240 Claims for Credit of Overpayments
- 100.5250 Liability for Combined Tax, Penalty and Interest
- 100.5260 Combined Amended Returns
- 100.5265 Common Taxable Year
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100.9400 Credits and Refunds (IITA Section 909)

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100.9505 Access to Books and Records – 60-Day Letters (IITA Section 913) (Repealed)

100.9510 Taxpayer Representation and Practice Requirements

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- 100.9700 Unitary Business Group Defined (IITA Section 1501)
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100.9800 Letter Ruling Procedures

100.APPENDIX A Business Income Of Persons Other Than Residents

100.TABLE A Example of Unitary Business Apportionment

100.TABLE B Example of Unitary Business Apportionment for Groups Which Include Members Using Three-Factor and Single-Factor Formulas

AUTHORITY: Implementing the Illinois Income Tax Act [35 ILCS 5] and authorized by Section 1401 of the Illinois Income Tax Act [35 ILCS 5/1401].

SOURCE: Filed July 14, 1971, effective July 24, 1971; amended at 2 Ill. Reg. 49, p. 84, effective November 29, 1978; amended at 5 Ill. Reg. 813, effective January 7, 1981; amended at 5 Ill. Reg. 4617, effective April 14, 1981; amended at 5 Ill. Reg. 4624, effective April 14, 1981; amended at 5 Ill. Reg. 5537, effective May 7, 1981; amended at 5 Ill. Reg. 5705, effective May 20, 1981; amended at 5 Ill. Reg. 5883, effective May 20, 1981; amended at 5 Ill. Reg. 6843, effective June 16, 1981; amended at 5 Ill. Reg. 13244, effective November 13, 1981; amended at 5 Ill. Reg. 13724, effective November 30, 1981; amended at 6 Ill. Reg. 579, effective December 29, 1981; amended at 6 Ill. Reg. 9701, effective July 26, 1982; amended at 7 Ill. Reg. 399, effective December 28, 1982; amended at 8 Ill. Reg. 6184, effective April 24, 1984; codified at 8 Ill. Reg. 19574; amended at 9 Ill. Reg. 16986, effective October 21, 1985; amended at 9 Ill. Reg. 685, effective December 31, 1985; amended at 10 Ill. Reg. 7913, effective April 28, 1986; amended at 10 Ill. Reg. 19512, effective November 3, 1986; amended at 10 Ill. Reg. 21941, effective December 15, 1986; amended at 11 Ill. Reg. 831, effective December 24, 1986; amended at 11 Ill. Reg. 2450, effective January 20, 1987; amended at 11 Ill. Reg. 12410, effective July 8, 1987; amended at 11 Ill. Reg. 17782, effective October 16, 1987; amended at 12 Ill. Reg. 4865, effective February 25, 1988; amended at 12 Ill. Reg. 6748, effective March 25, 1988; amended at 12 Ill. Reg. 11766, effective July 1, 1988; amended at 12 Ill. Reg. 14307, effective August 29, 1988; amended at 13 Ill. Reg. 8917, effective May 30, 1989; amended at 13 Ill. Reg. 10952, effective June 26, 1989; amended at 14 Ill. Reg. 4558, effective March 8, 1990; amended at 14 Ill. Reg. 6810, effective April 19, 1990; amended at 14 Ill. Reg. 10082, effective June 7, 1990; amended at 14 Ill. Reg. 16012, effective September 17, 1990; emergency

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amendment at 17 Ill. Reg. 473, effective December 22, 1992, for a maximum of 150 days; amended at 17 Ill. Reg. 8869, effective June 2, 1993; amended at 17 Ill. Reg. 13776, effective August 9, 1993; recodified at 17 Ill. Reg. 14189; amended at 17 Ill. Reg. 19632, effective November 1, 1993; amended at 17 Ill. Reg. 19966, effective November 9, 1993; amended at 18 Ill. Reg. 1510, effective January 13, 1994; amended at 18 Ill. Reg. 2494, effective January 28, 1994; amended at 18 Ill. Reg. 7768, effective May 4, 1994; amended at 19 Ill. Reg. 1839, effective February 6, 1995; amended at 19 Ill. Reg. 5824, effective March 31, 1995; emergency amendment at 20 Ill. Reg. 1616, effective January 9, 1996, for a maximum of 150 days; amended at 20 Ill. Reg. 6981, effective May 7, 1996; amended at 20 Ill. Reg. 10706, effective July 29, 1996; amended at 20 Ill. Reg. 13365, effective September 27, 1996; amended at 20 Ill. Reg. 14617, effective October 29, 1996; amended at 21 Ill. Reg. 958, effective January 6, 1997; emergency amendment at 21 Ill. Reg. 2969, effective February 24, 1997, for a maximum of 150 days; emergency expired July 24, 1997; amended at 22 Ill. Reg. 2234, effective January 9, 1998; amended at 22 Ill. Reg. 19033, effective October 1, 1998; amended at 22 Ill. Reg. 21623, effective December 15, 1998; amended at 23 Ill. Reg. 3808, effective March 11, 1999; amended at 24 Ill. Reg. 10593, effective July 7, 2000; amended at 24 Ill. Reg. 12068, effective July 26, 2000; emergency amendment at 24 Ill. Reg. 17585, effective November 17, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 18731, effective December 11, 2000; amended at 25 Ill. Reg. 4640, effective March 15, 2001; amended at 25 Ill. Reg. 4929, effective March 23, 2001; amended at 25 Ill. Reg. 5374, effective April 2, 2001; amended at 25 Ill. Reg. 6687, effective May 9, 2001; amended at 25 Ill. Reg. 7250, effective May 25, 2001; amended at 25 Ill. Reg. 8333, effective June 22, 2001; amended at 26 Ill. Reg. 192, effective December 20, 2001; amended at 26 Ill. Reg. 1274, effective January 15, 2002; amended at 26 Ill. Reg. 9854, effective June 20, 2002; amended at 26 Ill. Reg. 13237, effective August 23, 2002; amended at 26 Ill. Reg. 15304, effective October 9, 2002; amended at 26 Ill. Reg. 17250, effective November 18, 2002; amended at 27 Ill. Reg. 13536, effective July 28, 2003; amended at 27 Ill. Reg. 18225, effective November 17, 2003; emergency amendment at 27 Ill. Reg. 18464, effective November 20, 2003, for a maximum of 150 days; amended at 28 Ill. Reg. 1378, effective January 12, 2004; amended at 28 Ill. Reg. _____, effective _____.

Section 100.2190 Tax Credit for Affordable Housing Donations (IITA Section 214)

- a) For tax years ending on or after December 31, 2001 and on or before December 31, 2006, a taxpayer who makes a donation under Section 7.28 of the Illinois Housing Development Act [20 ILCS 3805/7.28] is entitled to a credit under IITA Section 214.
- b) The credit shall be equal to 50% of the value of the donation, but in no event shall exceed the amount reserved by the administrative housing agency for that project

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pursuant to Section 7.28 of the Illinois Housing Development Act and 47 Ill. Adm. Code 355.209.

- c) Year in which credit is taken. At the election of the taxpayer, the credit shall be taken:
- 1) in the tax year in which the donation is made; provided that such election may not be made for any tax year ending after December 31, 2006;
 - 2) in the tax year in which the reservation letter is issued by the administrative housing agency under 47 Ill. Adm. Code 355.209, provided that the credit may not be claimed until the donation is made and, if the donation is not made before the taxpayer files its Illinois income tax return for the tax year in which the effective date occurs, the credit may not be claimed on the original return, but rather must be claimed on an amended return or claim for refund after the donation is made; or
 - 3) in the tax year in which the credit is transferred to the taxpayer; provided that, if the taxpayer elects under this subsection (c)(3) to take the credit in any tax year after the tax year in which the donation was made, the 5-year carryforward period allowed to the taxpayer in subsection (d) shall be reduced by the number of tax years of the taxpayer that ended on or after the date of the donation and on or before the date of the transfer to the taxpayer.

The election shall be made in the manner directed by the Department and, once made, shall be irrevocable.

Example: The administrative housing agency issues a reservation letter for a qualifying project in December 2003. A calendar-year donor makes a qualifying donation in January 2004. Under this subsection (c), the donor may elect to take the credit in 2003 or 2004. If, in 2008, the donor transfers any unused credit to a calendar-year taxpayer, the taxpayer may also elect to claim the transferred amount as a credit in 2003 or 2004. However, because the statute of limitations might prevent the taxpayer from deriving any benefit from claiming the credit in 2003 or 2004, subsection (c)(3) allows the taxpayer to claim the credit in 2008, the year of the transfer. If the taxpayer elects to claim the credit in 2008, it may carry forward any credit in excess of its liability only until 2009, 5 years after the year of the donation.

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- d) *If the amount of the credit exceeds the tax liability for the year, the excess may be carried forward and applied to the tax liability of the 5 taxable years following the excess credit year. The tax credit shall be applied to the earliest year for which there is a tax liability. If there are credits for more than one year that are available to offset a liability, the earlier credit shall be applied first. (IITA Section 214(b))*
- e) Transfer of credit.
- 1) Under IITA Section 214(c), the credit allowed under this section may be transferred:
- A) *to the purchaser of land that has been designated solely for affordable housing projects in accordance with the Illinois Housing Development Act; or*
- B) *to another donor who has also made a donation in accordance with Section 7.28 of the Illinois Housing Development Act.*
- 2) *Persons or entities not subject to the tax imposed by IITA Section 201(a) and (b) and who make a donation under Section 7.28 of the Illinois Housing Development Act are entitled to a credit as described in this Section and may transfer that credit as provided in this subsection (e). (IITA Section 214(a))*
- 3) Transfer of the credit shall be made pursuant to 47 Ill. Adm. Code 355.309.
- 4) Transfer may be made of all or of any portion of the credit allowable to the transferor. However, any portion of a credit that has already been used to reduce the tax of a transferor may not be transferred.
- f) In the case of a credit earned by or transferred to a partnership or Subchapter S corporation, the credit passes through to the owners for use against their regular income tax liabilities in the same proportion as other items of the taxpayer are passed through to its owners for federal income tax purposes. (See IITA Section 214(a).) The partners and shareholders shall be treated for all purposes as if their shares of the credit had been earned by or transferred to them directly, except that the election under subsection (c) of the tax year in which to take the credit shall be

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made by the partnership or Subchapter S corporation. Any credit passed through to a partner or shareholder under this subsection (f) may be used in the taxable year of the partner or shareholder in which ends the taxable year of the pass-through entity in which the entity would be allowed to claim the credit under subsection (c). In the case where the pass-through entity is the donor, the credit may be carried forward to the five succeeding taxable years of the partner or shareholder in the manner provided in subsection (d) until used. In the case where the pass-through entity is a transferee, the partner or shareholder shall be entitled to use the credit in the same number of taxable years as the pass-through entity would have been allowed to use the credit under subsection (c)(3).

- g) Documentation of the credit. A taxpayer claiming the credit provided by this Section must maintain and record any information that the Department may require by regulation regarding the affordable housing project for which the credit is claimed. When claiming the credit provided by this Section, the taxpayer must provide the following information regarding the taxpayer's donation to the development of affordable housing under the Illinois Housing Development Act. (IITA Section 214(d))
- 1) For the taxable year for which the credit is allowed under subsection (c), a donor (or a partner or Subchapter S corporation shareholder of the donor) claiming the credit shall attach to its Illinois income tax return a copy of the reservation letter issued by the administrative housing agency stating the amount of credit allocated to the affordable housing project under 47 Ill. Adm. Code 355.209.
- 2) For the taxable year in which a credit is transferred, the transferee (or a partner or Subchapter S corporation shareholder of the transferee) shall attach to its Illinois income tax return a copy of the certificate showing the names of the original donor and of the transferee, as provided in 47 Ill. Adm. Code 355.309.
- h) For purposes of this credit, the terms "administrative housing agency", "affordable housing project" and "certificate" shall have the meanings given to those terms in Section 7.28 of the Illinois Housing Development Act and 47 Ill. Adm. Code 355.

(Source: Added at 28 Ill. Reg. _____, effective _____)

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NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Retailers' Occupation Tax
- 2) Code Citation: 86 Ill. Adm. Code 130
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
130.120	Amendment
130.320	Amendment
130.325	Amendment
130.331	Amendment
130.332	Amendment
130.335	Amendment
130.340	Amendment
130.345	Amendment
130.350	Amendment
130.351	Amendment
130.551	Amendment
- 4) Statutory Authority: 35 ILCS 120
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking amends the Retailers' Occupation Tax regulations to reflect the repeal of the Manufacturer's Purchase Credit and several exemptions. The repealed exemptions include the Graphic Arts Machinery and Equipment Exemption; Automatic Vending Machines Exemption; Pollution Control Facilities Exemption; Oil Field Exploration, Drilling and Production Equipment Exemption; Coal Exploration, Mining, Off Highway Hauling, Processing, Maintenance and Reclamation Equipment Exemption; and Aggregate Manufacturing Exemption. (P.A. 93-24) Provisions regarding the prepayment of tax on Motor Fuel and Biodiesel are also included. (P.A. 93-0017 and P.A. 93-32) Minor date changes are made to Section 130.120 as a matter of clarification.
- 6) Will this rulemaking replace an emergency rulemaking currently in effect? No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Does this rulemaking contain incorporations by reference? No
- 9) Are there any other proposed amendments pending on this Part:

<u>Section Numbers</u>	<u>Proposed Action</u>	<u>Illinois Register Citation</u>
130.552	New Section	27 Ill. Reg. 18521; 12/12/03

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- 10) Statement of Statewide Policy Objective: This rulemaking does not create a State mandate, nor does it modify any existing State mandates.
- 11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on this proposed rule may submit them in writing by no later than 45 days after publication of this notice to:
- Terry D. Charlton
Associate Counsel
Illinois Department of Revenue
Legal Services Office
101 West Jefferson
Springfield, Illinois 62794
Phone: (217) 782-2844
- 12) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: Any small business that previously qualified for these exemptions and now cannot take them are affected.
- B) Reporting, bookkeeping or other procedures required for compliance: None
- C) Types of professional skills necessary for compliance: None
- 13) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on either of the 2 most recent agendas because: They were unanticipated at that time.

The full text of the proposed amendments begins on the next page:

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TITLE 86: REVENUE

CHAPTER I: DEPARTMENT OF REVENUE

PART 130

RETAILERS' OCCUPATION TAX

SUBPART A: NATURE OF TAX

Section

130.101	Character and Rate of Tax
130.105	Responsibility of Trustees, Receivers, Executors or Administrators
130.110	Occasional Sales
130.111	Sale of Used Motor Vehicles by Leasing or Rental Business
130.115	Habitual Sales
130.120	Nontaxable Transactions

SUBPART B: SALE AT RETAIL

Section

130.201	The Test of a Sale at Retail
130.205	Sales for Transfer Incident to Service
130.210	Sales of Tangible Personal Property to Purchasers for Resale
130.215	Further Illustrations of Sales for Use or Consumption Versus Sales for Resale
130.220	Sales to Lessors of Tangible Personal Property
130.225	Drop Shipments

SUBPART C: CERTAIN STATUTORY EXEMPTIONS

Section

130.305	Farm Machinery and Equipment
130.310	Food, Drugs, Medicines and Medical Appliances
130.315	Fuel Sold for Use in Vessels on Rivers Bordering Illinois
130.320	Gasohol, <u>Majority Blended Ethanol, Biodiesel Blends, and 100% Biodiesel</u>
130.321	Fuel Used by Air Common Carriers in International Flights
130.325	Graphic Arts Machinery and Equipment Exemption
130.330	Manufacturing Machinery and Equipment
130.331	Manufacturer's Purchase Credit
130.332	Automatic Vending Machines
130.335	Pollution Control Facilities <u>and Low Sulfur Dioxide Emission Coal-Fueled Devices</u>
130.340	Rolling Stock

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- 130.345 Oil Field Exploration, Drilling and Production Equipment
- 130.350 Coal Exploration, Mining, Off Highway Hauling, Processing, Maintenance and Reclamation Equipment
- 130.351 Aggregate Manufacturing

SUBPART D: GROSS RECEIPTS

Section

- 130.401 Meaning of Gross Receipts
- 130.405 How to Avoid Paying Tax on State or Local Tax Passed on to the Purchaser
- 130.410 Cost of Doing Business Not Deductible
- 130.415 Transportation and Delivery Charges
- 130.420 Finance or Interest Charges – Penalties – Discounts
- 130.425 Traded-In Property
- 130.430 Deposit or Prepayment on Purchase Price
- 130.435 State and Local Taxes Other Than Retailers' Occupation Tax
- 130.440 Penalties
- 130.445 Federal Taxes
- 130.450 Installation, Alteration and Special Service Charges
- 130.455 Motor Vehicle Leasing and Trade-In Allowances

SUBPART E: RETURNS

Section

- 130.501 Monthly Tax Returns – When Due – Contents
- 130.502 Quarterly Tax Returns
- 130.505 Returns and How to Prepare
- 130.510 Annual Tax Returns
- 130.515 First Return
- 130.520 Final Returns When Business is Discontinued
- 130.525 Who May Sign Returns
- 130.530 Returns Covering More Than One Location Under Same Registration – Separate Returns for Separately Registered Locations
- 130.535 Payment of the Tax, Including Quarter Monthly Payments in Certain Instances
- 130.540 Returns on a Transaction by Transaction Basis
- 130.545 Registrants Must File a Return for Every Return Period
- 130.550 Filing of Returns for Retailers by Suppliers Under Certain Circumstances
- 130.551 Prepayment of Retailers' Occupation Tax on Motor Fuel
- 130.555 Vending Machine Information Returns
- 130.560 Verification of Returns

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SUBPART F: INTERSTATE COMMERCE

Section	
130.601	Preliminary Comments
130.605	Sales of Property Originating in Illinois
130.610	Sales of Property Originating in Other States

SUBPART G: CERTIFICATE OF REGISTRATION

Section	
130.701	General Information on Obtaining a Certificate of Registration
130.705	Procedure in Disputed Cases Involving Financial Responsibility Requirements
130.710	Procedure When Security Must be Forfeited
130.715	Sub-Certificates of Registration
130.720	Separate Registrations for Different Places of Business of Same Taxpayer Under Some Circumstances
130.725	Display
130.730	Replacement of Certificate
130.735	Certificate Not Transferable
130.740	Certificate Required For Mobile Vending Units
130.745	Revocation of Certificate

SUBPART H: BOOKS AND RECORDS

Section	
130.801	General Requirements
130.805	What Records Constitute Minimum Requirement
130.810	Records Required to Support Deductions
130.815	Preservation and Retention of Records
130.820	Preservation of Books During Pendency of Assessment Proceedings
130.825	Department Authorization to Destroy Records Sooner Than Would Otherwise be Permissible

SUBPART I: PENALTIES AND INTEREST

Section	
130.901	Civil Penalties
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130.910	Criminal Penalties

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SUBPART J: BINDING OPINIONS

- Section
130.1001 When Opinions from the Department are Binding

SUBPART K: SELLERS LOCATED ON, OR SHIPPING TO, FEDERAL AREAS

- Section
130.1101 Definition of Federal Area
130.1105 When Deliveries on Federal Areas Are Taxable
130.1110 No Distinction Between Deliveries on Federal Areas and Illinois Deliveries Outside Federal Areas

SUBPART L: TIMELY MAILING TREATED AS TIMELY FILING AND PAYING

- Section
130.1201 General Information
130.1205 Due Date that Falls on Saturday, Sunday or a Holiday

SUBPART M: LEASED PORTIONS OF LESSOR'S BUSINESS SPACE

- Section
130.1301 When Lessee of Premises Must File Return for Leased Department
130.1305 When Lessor of Premises Should File Return for Business Operated on Leased Premises
130.1310 Meaning of "Lessor" and "Lessee" in this Regulation

SUBPART N: SALES FOR RESALE

- Section
130.1401 Seller's Responsibility to Determine the Character of the Sale at the Time of the Sale
130.1405 Seller's Responsibility to Obtain Certificates of Resale and Requirements for Certificates of Resale
130.1410 Requirements for Certificates of Resale (Repealed)
130.1415 Resale Number – When Required and How Obtained
130.1420 Blanket Certificate of Resale (Repealed)

SUBPART O: CLAIMS TO RECOVER ERRONEOUSLY PAID TAX

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Section

- 130.1501 Claims for Credit – Limitations – Procedure
- 130.1505 Disposition of Credit Memoranda by Holders Thereof
- 130.1510 Refunds
- 130.1515 Interest

SUBPART P: PROCEDURE TO BE FOLLOWED UPON
SELLING OUT OR DISCONTINUING BUSINESS

Section

- 130.1601 When Returns are Required After a Business is Discontinued
- 130.1605 When Returns Are Not Required After Discontinuation of a Business
- 130.1610 Cross Reference to Bulk Sales Regulation

SUBPART Q: NOTICE OF SALES OF GOODS IN BULK

Section

- 130.1701 Bulk Sales: Notices of Sales of Business Assets

SUBPART R: POWER OF ATTORNEY

Section

- 130.1801 When Powers of Attorney May be Given
- 130.1805 Filing of Power of Attorney With Department
- 130.1810 Filing of Papers by Agent Under Power of Attorney

SUBPART S: SPECIFIC APPLICATIONS

Section

- 130.1901 Addition Agents to Plating Baths
- 130.1905 Agricultural Producers
- 130.1910 Antiques, Curios, Art Work, Collectors' Coins, Collectors' Postage Stamps and Like Articles
- 130.1915 Auctioneers and Agents
- 130.1920 Barbers and Beauty Shop Operators
- 130.1925 Blacksmiths
- 130.1930 Chiropodists, Osteopaths and Chiropractors
- 130.1935 Computer Software
- 130.1940 Construction Contractors and Real Estate Developers

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- 130.1945 Co-operative Associations
- 130.1950 Dentists
- 130.1951 Enterprise Zones
- 130.1952 Sales of Building Materials to a High Impact Business
- 130.1955 Farm Chemicals
- 130.1960 Finance Companies and Other Lending Agencies – Installment Contracts – Bad Debts
- 130.1965 Florists and Nurserymen
- 130.1970 Hatcheries
- 130.1971 Sellers of Pets and the Like
- 130.1975 Operators of Games of Chance and Their Suppliers
- 130.1980 Optometrists and Opticians
- 130.1985 Pawnbrokers
- 130.1990 Peddlers, Hawkers and Itinerant Vendors
- 130.1995 Personalizing Tangible Personal Property
- 130.2000 Persons Engaged in the Printing, Graphic Arts or Related Occupations, and Their Suppliers
- 130.2004 Sales to Nonprofit Arts or Cultural Organizations
- 130.2005 Persons Engaged in Nonprofit Service Enterprises and in Similar Enterprises Operated As Businesses, and Suppliers of Such Persons
- 130.2006 Sales by Teacher-Sponsored Student Organizations
- 130.2007 Exemption Identification Numbers
- 130.2008 Sales by Nonprofit Service Enterprises
- 130.2009 Personal Property Purchased Through Certain Fundraising Events for the Benefit of Certain Schools
- 130.2010 Persons Who Rent or Lease the Use of Tangible Personal Property to Others
- 130.2011 Sales to Persons Who Lease Tangible Personal Property to Exempt Hospitals
- 130.2012 Sales to Persons Who Lease Tangible Personal Property to Governmental Bodies
- 130.2013 Persons in the Business of Both Renting and Selling Tangible Personal Property – Tax Liabilities, Credit
- 130.2015 Persons Who Repair or Otherwise Service Tangible Personal Property
- 130.2020 Physicians and Surgeons
- 130.2025 Picture-Framers
- 130.2030 Public Amusement Places
- 130.2035 Registered Pharmacists and Druggists
- 130.2040 Retailers of Clothing
- 130.2045 Retailers on Premises of the Illinois State Fair, County Fairs, Art Shows, Flea Markets and the Like
- 130.2050 Sales and Gifts By Employers to Employees
- 130.2055 Sales by Governmental Bodies

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130.2060	Sales of Alcoholic Beverages, Motor Fuel and Tobacco Products
130.2065	Sales of Automobiles for Use In Demonstration (Repealed)
130.2070	Sales of Containers, Wrapping and Packing Materials and Related Products
130.2075	Sales To Construction Contractors, Real Estate Developers and Speculative Builders
130.2076	Sales to Purchasers Performing Contracts with Governmental Bodies
130.2080	Sales to Governmental Bodies, Foreign Diplomats and Consular Personnel
130.2085	Sales to or by Banks, Savings and Loan Associations and Credit Unions
130.2090	Sales to Railroad Companies
130.2095	Sellers of Gasohol, Coal, Coke, Fuel Oil and Other Combustibles
130.2100	Sellers of Feeds and Breeding Livestock
130.2101	Sellers of Floor Coverings
130.2105	Sellers of Newspapers, Magazines, Books, Sheet Music and Musical Recordings, and Their Suppliers; Transfer of Data Downloaded Electronically
130.2110	Sellers of Seeds and Fertilizer
130.2115	Sellers of Machinery, Tools and Special Order Items
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130.2125	Trading Stamps and Discount Coupons
130.2130	Undertakers and Funeral Directors
130.2135	Vending Machines
130.2140	Vendors of Curtains, Slip Covers and Other Similar Items Made to Order
130.2145	Vendors of Meals
130.2150	Vendors of Memorial Stones and Monuments
130.2155	Tax Liability of Sign Vendors
130.2156	Vendors of Steam
130.2160	Vendors of Tangible Personal Property Employed for Premiums, Advertising, Prizes, Etc.
130.2165	Veterinarians
130.2170	Warehousemen

SUBPART T: DIRECT PAYMENT PROGRAM

Section	
130.2500	Direct Payment Program
130.2505	Qualifying Transactions, Non-transferability of Permit
130.2510	Permit Holder's Payment of Tax
130.2515	Application for Permit
130.2520	Qualification Process and Requirements
130.2525	Application Review
130.2530	Recordkeeping Requirements

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130.2535 Revocation and Withdrawal

130.ILLUSTRATION A Examples of Tax Exemption Card

AUTHORITY: Implementing the Illinois Retailers' Occupation Tax Act [35 ILCS 120] and authorized by Section 2505-25 of the Civil Administrative Code of Illinois [20 ILCS 2505/2505-25].

SOURCE: Adopted July 1, 1933; amended at 2 Ill. Reg. 50, p. 71, effective December 10, 1978; amended at 3 Ill. Reg. 12, p. 4, effective March 19, 1979; amended at 3 Ill. Reg. 13, pp. 93 and 95, effective March 25, 1979; amended at 3 Ill. Reg. 23, p. 164, effective June 3, 1979; amended at 3 Ill. Reg. 25, p. 229, effective June 17, 1979; amended at 3 Ill. Reg. 44, p. 193, effective October 19, 1979; amended at 3 Ill. Reg. 46, p. 52, effective November 2, 1979; amended at 4 Ill. Reg. 24, pp. 520, 539, 564 and 571, effective June 1, 1980; amended at 5 Ill. Reg. 818, effective January 2, 1981; amended at 5 Ill. Reg. 3014, effective March 11, 1981; amended at 5 Ill. Reg. 12782, effective November 2, 1981; amended at 6 Ill. Reg. 2860, effective March 3, 1982; amended at 6 Ill. Reg. 6780, effective May 24, 1982; codified at 6 Ill. Reg. 8229; recodified at 6 Ill. Reg. 8999; amended at 6 Ill. Reg. 15225, effective December 3, 1982; amended at 7 Ill. Reg. 7990, effective June 15, 1983; amended at 8 Ill. Reg. 5319, effective April 11, 1984; amended at 8 Ill. Reg. 19062, effective September 26, 1984; amended at 10 Ill. Reg. 1937, effective January 10, 1986; amended at 10 Ill. Reg. 12067, effective July 1, 1986; amended at 10 Ill. Reg. 19538, effective November 5, 1986; amended at 10 Ill. Reg. 19772, effective November 5, 1986; amended at 11 Ill. Reg. 4325, effective March 2, 1987; amended at 11 Ill. Reg. 6252, effective March 20, 1987; amended at 11 Ill. Reg. 18284, effective October 27, 1987; amended at 11 Ill. Reg. 18767, effective October 28, 1987; amended at 11 Ill. Reg. 19138, effective October 29, 1987; amended at 11 Ill. Reg. 19696, effective November 23, 1987; amended at 12 Ill. Reg. 5652, effective March 15, 1988; emergency amendment at 12 Ill. Reg. 14401, effective September 1, 1988, for a maximum of 150 days, modified in response to an objection of the Joint Committee on Administrative Rules at 12 Ill. Reg. 19531, effective November 4, 1988, not to exceed the 150 day time limit of the original rulemaking; emergency expired January 29, 1989; amended at 13 Ill. Reg. 11824, effective June 29, 1989; amended at 14 Ill. Reg. 241, effective December 21, 1989; amended at 14 Ill. Reg. 872, effective January 1, 1990; amended at 14 Ill. Reg. 15463, effective September 10, 1990; amended at 14 Ill. Reg. 16028, effective September 18, 1990; amended at 15 Ill. Reg. 6621, effective April 17, 1991; amended at 15 Ill. Reg. 13542, effective August 30, 1991; amended at 15 Ill. Reg. 15757, effective October 15, 1991; amended at 16 Ill. Reg. 1642, effective January 13, 1992; amended at 17 Ill. Reg. 860, effective January 11, 1993; amended at 17 Ill. Reg. 18142, effective October 4, 1993; amended at 17 Ill. Reg. 19651, effective November 2, 1993; amended at 18 Ill. Reg. 1537, effective January 13, 1994; amended at 18 Ill. Reg. 16866, effective November 7, 1994; amended at 19 Ill. Reg. 13446, effective September 12, 1995; amended at 19 Ill. Reg. 13568,

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effective September 11, 1995; amended at 19 Ill. Reg. 13968, effective September 18, 1995; amended at 20 Ill. Reg. 4428, effective March 4, 1996; amended at 20 Ill. Reg. 5366, effective March 26, 1996; amended at 20 Ill. Reg. 6991, effective May 7, 1996; amended at 20 Ill. Reg. 9116, effective July 2, 1996; amended at 20 Ill. Reg. 15753, effective December 2, 1996; expedited correction at 21 Ill. Reg. 4052, effective December 2, 1996; amended at 20 Ill. Reg. 16200, effective December 16, 1996; amended at 21 Ill. Reg. 12211, effective August 26, 1997; amended at 22 Ill. Reg. 3097, effective January 27, 1998; amended at 22 Ill. Reg. 11874, effective June 29, 1998; amended at 22 Ill. Reg. 19919, effective October 28, 1998; amended at 22 Ill. Reg. 21642, effective November 25, 1998; amended at 23 Ill. Reg. 9526, effective July 29, 1999; amended at 23 Ill. Reg. 9898, effective August 9, 1999; amended at 24 Ill. Reg. 10713, effective July 7, 2000; emergency amendment at 24 Ill. Reg. 11313, effective July 12, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 15104, effective October 2, 2000; amended at 24 Ill. Reg. 18376, effective December 1, 2000; amended at 25 Ill. Reg. 941, effective January 8, 2001; emergency amendment at 25 Ill. Reg. 1792, effective January 16, 2001, for a maximum of 150 days; amended at 25 Ill. Reg. 4674, effective March 15, 2001; amended at 25 Ill. Reg. 4950, effective March 19, 2001; amended at 25 Ill. Reg. 5398, effective April 2, 2001; amended at 25 Ill. Reg. 6515, effective May 3, 2001; expedited correction at 25 Ill. Reg. 15681, effective May 3, 2001; amended at 25 Ill. Reg. 6713, effective May 9, 2001; amended at 25 Ill. Reg. 7264, effective May 25, 2001; amended at 25 Ill. Reg. 10917, effective August 13, 2001; amended at 25 Ill. Reg. 12841, effective October 1, 2001; amended at 26 Ill. Reg. 958, effective January 15, 2002; amended at 26 Ill. Reg. 1303, effective January 17, 2002; amended at 26 Ill. Reg. 3196, effective February 13, 2002; amended at 26 Ill. Reg. 5369, effective April 1, 2002; amended at 26 Ill. Reg. 5946, effective April 15, 2002; amended at 26 Ill. Reg. 8423, effective May 24, 2002; amended at 26 Ill. Reg. 9885, effective June 24, 2002; amended at 27 Ill. Reg. 795, effective January 3, 2003; emergency amendment at 27 Ill. Reg. 11099, effective July 7, 2003, for a maximum of 150 days; amended at 27 Ill. Reg. 17216, effective November 3, 2003; emergency amendment at 27 Ill. Reg. 18911, effective November 26, 2003, for a maximum of 150 days; amended at 28 Ill. Reg. _____, effective _____.

SUBPART A: NATURE OF TAX

Section 130.120 Nontaxable Transactions

The tax does not apply to receipts from sales:

- a) of intangible personal property, such as shares of stocks, bonds, evidences of interest in property, corporate or other franchises and evidences of debt;
- b) of real property, such as lands and buildings that are permanently attached to the land;

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- c) of tangible personal property for purposes of resale in any form as tangible personal property, provided that the purchaser (except in the case of an out-of-State purchaser who will always resell and deliver the property to his customers outside Illinois) has an active registration number or active resale number from the Department and gives the number to the vendor in connection with certifying to the vendor that the sale to the purchaser is nontaxable on the ground of being a sale for resale (see Subparts B and N of this Part);
- d) of personal services, where rendered as such (see various rules relating to particular service occupations); however, for information concerning the tax on persons engaged in the business of making sales of service, see the Regulations pertaining to the Service Occupation Tax Act (86 Ill. Adm. Code 140);
- e) that are within the protection of the Commerce Clause of the Constitution of the United States (see Subpart F of this Part);
- f) that are isolated or occasional (see Section 130.110 of this Subpart);
- g) of newspapers and magazines (see Section 130.2105 of this Part);
- h) that are made to any corporation, society, association, foundation or institution organized and operated exclusively for charitable, religious or educational purposes, or any not-for-profit corporation, society, association, foundation, institution or organization that has no compensated officers or employees and that is organized and operated primarily for the recreation of persons 55 years of age or older. A limited liability company may qualify for the exemption under this subsection only if the limited liability company is organized and operated exclusively for educational purposes (see Section 130.2005 of this Part);
- i) that are made to any governmental body (see Section 130.2080 of this Part);
- j) through June 30, 2003, of pollution control facilities (see Section 130.335 of this Part);
- k) *of fuel consumed or used in the operation of ships, barges or vessels that are used primarily in or for the transportation of property or the conveyance of persons for hire on rivers bordering on this State if the fuel is delivered by the seller to the purchaser's barge, ship or vessel while it is afloat upon that bordering river [35 ILCS 120/2-5(24)]* (see Section 130.315 of this Part);

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- l) of tangible personal property to interstate carriers for hire for use as rolling stock moving in interstate commerce (see Section 130.340 of this Part);
- m) of a motor vehicle in this State to a nonresident even though the motor vehicle is delivered to the nonresident in this State, if the motor vehicle is not to be titled in this State, and if a drive-away permit is issued to the motor vehicle as provided in Section 3-603 of the Illinois Vehicle Code [625 ILCS 5/3-603], or if the nonresident purchaser has vehicle registration plates to transfer to the motor vehicle upon returning to his home state (see Section 130.605);
- n) until ~~December 31, 2001~~January 1, 2001, of merchandise in bulk when sold from a vending machine for 1¢; on and after January 1, 2002, the exemption applies to merchandise in bulk when sold from a vending machine for \$.0.50 or less (see 35 ILCS 120/1 and Section 130.2135 of this Part);
- o) of food and beverages by a person who is the recipient of a grant or contract under Title VII of the Older Americans Act of 1965 (42 USC 3021) and serves meals to participants in the Federal Nutrition Program for the Elderly in return for contributions established in amount by the individual participant pursuant to a schedule of suggested fees as provided for in the Federal Act;
- p) of farm chemicals (see Section 130.1955 of this Part);
- q) of manufacturing machinery and equipment that qualifies for exemption under provisions of Section 130.330 of this Part;
- r) of services included in gross receipts for purposes of the Retailers' Occupation Tax and that are designated mandatory service charges by vendors of meals to the extent that the proceeds of the service charge are in fact turned over to the employees who would normally have received tips had the service charge policy not been introduced. Service charges that are used to fund or pay wages, labor costs, employee benefits or employer costs of doing business are taxable gross receipts;
- s) *of any petroleum product, if the seller is prohibited by federal law from charging tax to the purchaser* [35 ILCS 120/2-5(16)].
 - 1) For example, federal law prohibits sellers from charging tax to Amtrak when it purchases petroleum products. However, federal law does not

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relieve the seller of Retailers' Occupation Tax liability in these transactions. For that reason, the exemption set out in this subsection is necessary to relieve the seller of Retailers' Occupation Tax liability when making sales of petroleum products to Amtrak.

- 2) The nontaxable transaction set out above is also applicable to local Retailers' Occupation Taxes imposed by municipalities, counties, the Regional Transportation Authority and Metro East Mass Transit District;
- t) *of farm machinery and equipment, both new and used including that manufactured on special order, certified by the purchaser to be used primarily for production agriculture, or state or federal agricultural programs, including individual replacement parts for the machinery and equipment and including machinery and equipment purchased for lease [35 ILCS 120/2-5(2)] (see Section 130.305);*
- u) through June 30, 2003, *of distillation machinery and equipment, sold as a unit or kit, certified by the user to be used only for the production of ethyl alcohol that will be used for consumption as a motor fuel or as a component of motor fuel for personal use of the user and not subject to sale or resale [35 ILCS 120/2-5(3)];*
- v) through June 30, 2003, *of graphic arts machinery and equipment, including repair and replacement parts [35 ILCS 120/2-5(4)] (see Section 130.325);*
- w) *a motor vehicle of the first division, a motor vehicle of the second division that is a self-contained motor vehicle designed or permanently converted to provide living quarters for recreational, camping, or travel use, with direct walk through access to the living quarters from the driver's seat, or a motor vehicle of the second division that is of the van configuration designed for the transportation of not less than 7 nor more than 16 passengers, as defined in Section 1-146 of the Illinois Vehicle Code that is used for automobile renting as defined in the Automobile Renting Occupation and Use Tax Act [35 ILCS 120/2-5(5)];*
- x) *of personal property sold by a teacher-sponsored student organization affiliated with an elementary or secondary school located in Illinois [35 ILCS 120/2-5(6)] (see Section 130.2006);*
- y) through June 30, 2003, *of that portion of the selling price of a passenger car, the sale of which is subject to the replacement vehicle tax of the Illinois Vehicle Code [625 ILCS 5/3-2001] [35 ILCS 120/2-5(7)];*

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- z) *of personal property sold to an Illinois county fair association for use in conducting, operating or promoting the county fair [35 ILCS 120/2-5(8)];*
- aa) *of personal property sold to any not-for-profit arts or cultural organization that establishes that it has received an exemption under Section 501(c)(3) of the Internal Revenue Code (26 USCA 501) and that is organized and operated for the presentation or support of arts or cultural programming, activities, or services. On and after July 1, 2001, the qualifying organizations listed in this subsection (aa) must also be organized and operated primarily for the presentation or support of arts or cultural programming, activities, or services. These organizations include, but are not limited to, music and dramatic arts organizations such as symphony orchestras and theatrical groups, arts and cultural service organizations, local arts councils, visual arts organizations, and media arts organizations [35 ILCS 120/2-5(9)] (see Section 130.2004 of this Part);*
- bb) *of personal property sold by a corporation, society, association, foundation, institution or organization that is organized and operated as a not-for-profit service enterprise for the benefit of persons 65 years of age or older if the personal property was not purchased by the enterprise for the purpose of resale by the enterprise [35 ILCS 120/2-5(10)] (see Section 130.2008);*
- cc) *of legal tender, currency, medallions, or gold or silver coinage issued by the State of Illinois, the government of the United States of America or the government of any foreign country and bullion [35 ILCS 120/2-5(11)], unless the items are transferred as jewelry and therefore subject to tax;*
- dd) *through June 30, 2003, of oil field exploration, drilling and production equipment [35 ILCS 120/2-5(19)] (see Section 130.345);*
- ee) *of photoprocessing machinery and equipment, including repair and replacement parts [35 ILCS 120/2-5(20)] (see Section 130.2000);*
- ff) *through June 30, 2003, of coal exploration, mining, off highway hauling, processing, maintenance and reclamation equipment, including replacement parts and equipment [35 ILCS 120/2-5(21)] (see Section 130.350);*
- gg) *of fuel and petroleum products sold to or used by an air common carrier, certified by the carrier to be used for consumption, shipment or storage in the conduct of*

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its business as an air common carrier, for a flight destined for or returning from a location or locations outside the United States without regard to previous or subsequent domestic stopovers [35 ILCS 120/2-5(22)] (see Section 130.321);

- hh) *of semen used for artificial insemination of livestock for direct agricultural production. [35 ILCS 120/2-5(26)] Exemption certifications must be executed by the purchaser. The certificate must include the seller's name and address, the purchaser's name and address, the purchaser's registration number with the Department, the purchaser's signature and date of signing and a statement that the semen purchased will be used for artificial insemination of livestock for direct agricultural production. The certificates shall be retained by the retailer and shall be made available to the Department for inspection or audit;*
- ii) *beginning with taxable years ending on or after December 31, 1995 and ending with taxable years ending on or before December 31, 2004, of personal property that is donated for disaster relief to be used in a State or federally declared disaster area in Illinois or bordering Illinois by a manufacturer or retailer that is registered in this State to a corporation, society, association, foundation, or institution that has been issued a sales tax exemption identification number by the Department that assists victims of the disaster who reside within the declared disaster area. [35 ILCS 120/2-5(30)] Exemption certifications must be executed by the purchaser. The certificate must include the seller's name and address, the purchaser's name and address, the purchaser's registration number with the Department, if applicable, the purchaser's signature and the date of signing, a description of the items being purchased for donation, a statement that the property purchased will be donated for disaster relief to be used in a State or federally declared disaster area in Illinois or bordering Illinois to a corporation, society, association, foundation, or institution that has been issued a sales tax exemption identification number by the Department that assists victims of the disaster who reside within the declared disaster area, and that entity's sales tax exemption identification number. The certificates shall be retained by the retailer and shall be made available to the Department for inspection or audit;*
- jj) *beginning with taxable years ending on or after December 31, 1995 and ending with taxable years ending on or before December 31, 2004, of personal property that is used in the performance of infrastructure repairs in this State, including but not limited to municipal roads and streets, access roads, bridges, sidewalks, waste disposal systems, water and sewer line extensions, water distribution and purification facilities, storm water drainage and retention facilities, and sewage treatment facilities, resulting from a State or federally declared disaster in Illinois*

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or bordering Illinois when such repairs are initiated on facilities located in the declared disaster area within 6 months after the disaster. [35 ILCS 120/2-5(31)] Exemption certifications must be executed by the purchaser. The certificate must include the seller's name and address, the purchaser's name and address, the purchaser's registration number with the Department, if applicable, the purchaser's signature and date of signing, a description of the items being purchased, and a statement that the property purchased is for use in the performance of infrastructure repairs initiated on facilities located in the declared disaster area within six months after the disaster in this State resulting from a State or federally declared disaster area in Illinois or bordering Illinois. The certificates shall be retained by the retailer and shall be made available to the Department for inspection or audit;

- kk) *of a transaction in which the purchase order is received by a florist who is located outside Illinois, but who has a florist located in Illinois deliver the property to the purchaser or the purchaser's donee in Illinois [35 ILCS 120/2-5(23)];*
- ll) *until June 1, 2000, of horses, or interests in horses, registered with and meeting the requirements of any of the Arabian Horse Club Registry of America, Appaloosa Horse Club, American Quarter Horse Association, United States Trotting Association, or Jockey Club, as appropriate, used for purposes of breeding or racing for prizes [35 ILCS 120/2-5(27)];*
- mm) *effective January 1, 1996 through December 31, 2000, and on and after August 2, 2001, of computers and communications equipment utilized for any hospital purpose and equipment used in the diagnosis, analysis or treatment of hospital patients sold to a lessor who leases the equipment, under a lease of one year or longer executed or in effect at the time of the purchase, to a hospital that has been issued an active tax exemption identification number by the Department under Section 1g of the Retailers' Occupation Tax Act [35 ILCS 120/2-5(28)] (see Section 130.2011 of this Part);*
- nn) *effective January 1, 1996 through December 31, 2000, and on and after August 2, 2001, of personal property sold to a lessor who leases the property, under a lease of one year or longer executed or in effect at the time of the purchase, to a governmental body that has been issued an active tax exemption identification number by the Department under Section 1g of the Retailers' Occupation Tax Act [35 ILCS 120/2-5(29)] (see Section 130.2012 of this Part);*

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- oo) *of tangible personal property sold to a common carrier by rail or motor that receives the physical possession of the property in Illinois and that transports the property, or shares with another common carrier in the transportation of the property, out of Illinois on a standard uniform bill of lading showing the seller of the property as the shipper or consignor of the property to a destination outside Illinois, for use outside Illinois [35 ILCS 120/2-5(17)];*
- pp) *through June 30, 2003, of aggregate exploration, mining, offhighway hauling, processing, maintenance, and reclamation equipment, including replacement parts and equipment, and including equipment purchased for lease, but excluding motor vehicles required to be registered under the Illinois Vehicle Code [35 ILCS 120/7];*
- qq) beginning July 20, 1999, game or game birds purchased at:
- 1) a game breeding and hunting preserve area licensed by the Department of Natural Resources (see Section 3.27 of the Wildlife Code [520 ILCS 5/3.27]);
 - 2) an exotic game hunting area licensed by the Department of Natural Resources (see Section 3.34 of the Wildlife Code [520 ILCS 5/3.34]); or
 - 3) a hunting enclosure approved through rules adopted by the Department of Natural Resources;
- rr) *beginning January 1, 2000, personal property, including food, purchased through fundraising events for the benefit of a public or private elementary or secondary school, a group of those schools, or one or more school districts if the events are sponsored by an entity recognized by the school district that consists primarily of volunteers and includes parents and teachers of the school children. This subsection (rr) does not apply to fundraising events:*
- 1) *for the benefit of private home instruction; or*
 - 2) *for which the fundraising entity purchases the personal property sold at the events from another individual or entity that sold the property for the purpose of resale by the fundraising entity and that profits from the sale to the fundraising entity [35 ILCS 120/2-5(34)];*

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- ss) *of machinery or equipment used in the operation of a high impact service facility located within an enterprise zone established pursuant to the Illinois Enterprise Zone Act. "High impact service facility" means a facility used primarily for the sorting, handling and redistribution of mail, freight, cargo, or other parcels received from agents or employees of the handler or shipper for processing at a common location and redistribution to other employees or agents for delivery to an ultimate destination on an item-by-item basis, and which:*
- 1) *will make an investment in a business enterprise project of \$100,000,000 or more;*
 - 2) *will cause the creation of at least 750 to 1,000 jobs or more in an enterprise zone established pursuant to the Illinois Enterprise Zone Act; and*
 - 3) *is certified by the Department of Commerce and Community Affairs as contractually obligated to meet the requirements specified in subsection (11)(1) and (2) within the time period as specified by the certification. The certificate of eligibility for exemption shall be presented by the business enterprise to its supplier when making the initial purchase of machinery and equipment for which an exemption is granted by Section 1j of the Act, together with a certification by the business enterprise that such machinery and equipment is exempt from taxation under Section 1j of the Act and by indicating the exempt status of each subsequent purchase on the face of the purchase order [35 ILCS 120/1i];*
- tt) *of jet fuel and petroleum products sold to and used in the conduct of its business of sorting, handling and redistribution of mail, freight, cargo or other parcels in the operation of a high impact service facility located within an enterprise zone established pursuant to the Illinois Enterprise Zone Act, provided that the business enterprise has waived its right to a tax exemption of the charges imposed under Section 9-222.1 of the Public Utilities Act [35 ILCS 120/1j.1]. High impact service facilities qualifying under the Act and seeking the exemption under Section 1j.1 shall be ineligible for the exemptions of taxes imposed under Section 9-222.1 of the Public Utilities Act. High impact service facilities qualifying under the Act and seeking the exemption under Section 9-222.1 of the Public Utilities Act shall be ineligible for the exemptions of taxes as described in Section 1j.1 of the Act. [35 ILCS 120/1j.2] The certification of eligibility for exemption shall be presented by the business enterprise to its supplier when making the purchase of jet fuel and petroleum products for which an exemption is granted by Section 1j.1*

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of the Act, together with a certification by the business enterprise that such jet fuel and petroleum product is exempt from taxation under Section 1j.1 of the Act, and by indicating the exempt status of each subsequent purchase on the face of the purchase order [35 ILCS 120/1i];

- uu) *of a motor vehicle, as that term is defined in Section 1-146 of the Illinois Vehicle Code, that is donated to a corporation, limited liability company, society, association, foundation, or institution that is determined by the Department to be organized and operated exclusively for educational purposes. For purposes of this exemption, “a corporation, limited liability company, society, association, foundation, or institution organized and operated exclusively for educational purposes” means all tax-supported public schools, private schools that offer systematic instruction in useful branches of learning by methods common to public schools and that compare favorably in their scope and intensity with the course of study presented in tax-supported schools, and vocational or technical schools or institutes organized and operated exclusively to provide a course of study of not less than 6 weeks duration and designed to prepare individuals to follow a trade or to pursue a manual, technical, mechanical, industrial, business, or commercial occupation. [35 ILCS 120/2-5(33)] Exemption certifications must be executed by the purchaser. The certificate must include: the seller’s name and address; the purchaser’s name and address; the purchaser’s registration number with the Department, if applicable; the purchaser’s signature and date of signing; a description of the motor vehicle that is being purchased for immediate donation to a corporation, limited liability company, society, association, foundation, or institution that is determined by the Department to be organized and operated exclusively for educational purposes (see Section 130.2005); the donee’s sales tax exemption identification number; and a statement that the motor vehicle is being purchased for immediate donation to a corporation, limited liability company, society, association, foundation, or institution that is determined by the Department to be organized and operated exclusively for educational purposes. The certificates shall be retained by the retailer and shall be made available to the Department for inspection or audit;*
- vv) *of food for human consumption that is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks, and food that has been prepared for immediate consumption) and prescription and nonprescription medicines, drugs, medical appliances, and insulin, urine testing materials, syringes, and needles used by diabetics, for human use, when purchased for use by a person receiving medical assistance under Article 5 of the Illinois Public Aid Code who*

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resides in a licensed long-term care facility, as defined in the Nursing Home Care Act [35 ILCS 120/2-5 (36)];

- ww) *beginning January 1, 2000 through December 31, 2001, of new or used automatic vending machines that prepare and serve hot food and beverages, including coffee, soup, and other items, and replacement parts for these machines. Beginning January 1, 2002 **and through June 30, 2003**, of machines and parts for machines used in commercial, coin-operated amusement and vending business if a use or occupation tax is paid on the gross receipts from the use of the commercial, coin-operated amusement and vending machines. [35 ILCS 120/2-5(35)] (See Section 130.332 of this Part.)*

(Source: Amended at 28 Ill. Reg. _____, effective _____)

SUBPART C: CERTAIN STATUTORY EXEMPTIONS

Section 130.320 Gasohol, Majority Blended Ethanol, Biodiesel Blends, and 100% Biodiesel

- a) *Effective January 1, 1990 and prior to July 1, 2003, sales of "gasohol" (a motor fuel that is no more than 90% gasoline and at least 10% denatured ethanol that contains no more than 1.25% water by weight [35 ILCS 105/3-40]~~containing at least 10% alcohol which alcohol contains no more than 1.25% water by weight~~) are subject to tax, based upon 70% of the proceeds of sales. On and after July 1, 2003 and on or before December 31, 2013, tax shall be based upon ~~80%~~100% of proceeds from sales of gasohol. On and after January 1, 2014, tax shall be based upon 100% of the proceeds of sales of gasohol. However, from July 1, 1997 to June 30, 1998, the rate was 85% for gasohol sold in this State during the 12 months beginning July 1 following any calendar year for which the Department determined that the percentages in Section 10 of the Gasohol Fuels Tax Abatement Act were not met. The Gasohol Fuels Tax Abatement Act was repealed effective July 1, 1998. Effective July 1, 2003, if at any time the tax under the Act on sales of gasohol is imposed at the rate of 1.25%, then the tax imposed by the Act applies to 100% of the proceeds of sales of gasohol made during that time. (Section 2-10 of the Retailers' Occupation Tax Act (ROTA))*
- b) *With respect to majority blended ethanol fuel, as defined in Section 3-44 of the Use Tax Act, the tax imposed by ROTA does not apply to the proceeds of sales made on or after July 1, 2003 and on or before December 31, 2013, but applies to 100% of the proceeds of sales made thereafter. (Section 2-10 of ROTA)*

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- c) With respect to biodiesel blends, as defined in Section 3-42 of the Use Tax Act, with no less than 1% and no more than 10% biodiesel, the tax imposed by ROTA applies to 80% of the proceeds of sales made on or after July 1, 2003 and on or before December 31, 2013 and 100% of the proceeds of sales made thereafter. If at any time, however, the tax under ROTA on sales of biodiesel blends, as defined in the Use Tax Act, with no less than 1% and no more than 10% biodiesel is imposed at the rate of 1.25%, then the tax imposed by ROTA applies to 100% of the proceeds of sales of biodiesel blends with no less than 1% and no more than 10% biodiesel made during that time. (Section 2-10 of ROTA)
- d) With respect to 100% biodiesel, as defined in Section 3-41 of the Use Tax Act, and biodiesel blends, as defined in Section 3-42 of the Use Tax Act, with more than 10% but no more than 99% biodiesel, the tax imposed by ROTA does not apply to the proceeds of sales made on or after July 1, 2003 and on or before December 31, 2013, but applies to 100% of the proceeds of sales made thereafter. (Section 2-10 of ROTA)

(Source: Amended at 28 Ill. Reg. _____, effective _____)

Section 130.325 Graphic Arts Machinery and Equipment Exemption

- a) General. Through June 30, 2003, notwithstanding~~Notwithstanding~~ the fact that sales may be at retail, the Retailers' Occupation Tax does not apply to the sale of machinery and equipment, including repair and replacement parts, both new and used and including that manufactured on special order to be used primarily in graphic arts production. The exemption extends to purchases by lessors who will lease the property for use primarily in graphic arts production. Taxpayers must certify the use of the equipment they are purchasing to their suppliers. (See subsection (i) of this Section.)
- b) Graphic Arts Production. *Provisions effective August 13, 1999* through June 30, 2003:
- 1) Graphic arts production has the following meanings and applications:
 - A) *Graphic arts production means printing, including ink jet printing, by one or more of the processes described in Groups 323110 through 323122 of Subsector 323, Groups 511110 through 511199*

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of Subsector 511, and Group 512230 of Subsector 512 of the North American Industry Classification System ("NAICS") published by the U.S. Office of Management and Budget, 1997 edition (no subsequent amendments or editions are included). Graphic arts production does not include the transfer of images onto paper or other tangible personal property by means of photocopying or final printed products in electronic or audio form, including the production of software or audio-books. (Section 2-30 of the Act) Groups 323110 through 323122 of Subsector 323, Groups 511110 through 511199 of Subsector 511, and Group 512230 of Subsector 512 include printing upon apparel and textile products, paper, metal, glass, plastics, and other materials except fabric (grey goods). Printing upon grey goods is part of the process of finishing fabric and is included in the NAICS Textile Mills subsector in Industry 31331, Textile and Fabric Finishing Mills.

- B) The North American Industry Classification System referenced in subsection (b)(1) can be obtained from the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161 (Phone: 1-800-553-6847). The Department also maintains a copy of this information, which may be obtained upon request and at cost, from the Legal Services Office, 5-500, 101 West Jefferson Street, Springfield, Illinois 62794.
- C) The exemption applies to machinery and equipment used in graphic arts production processes, as those processes are described in the NAICS. While the NAICS subsectors referenced in subsection (b)(1)(A) describe types of graphic arts establishments that typically engage in graphic arts production, the exemption is not limited to qualifying machinery and equipment used by the establishments described in the NAICS, but rather, to qualifying machinery and equipment used in the printing processes described in the NAICS (for example, lithography, gravure, flexography, screen printing, quick printing, digital printing and trade services such as prepress and binding and finishing services). The tangible personal property produced by graphic arts production need not be sold at retail in order for the exemption to apply. For instance, a company's purchase of qualifying graphic arts equipment used to produce its own printed materials qualifies for the exemption, even

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though the company is not in the business of selling printed materials at retail.

- D) The exemption includes printing by methods of engraving, letterpress, lithography, gravure, flexography, screen, quick, and digital printing. It also includes the printing of manifold business forms, blankbooks, looseleaf binders, books, periodicals and newspapers. Included in the exemption are prepress services described in Subsector 323122 of the NAICS (e.g., the creation and preparation of negative or positive film from which plates are produced, plate production, cylinder engraving, typesetting and imagesetting). The exemption also includes trade binding and related printing support activities set forth in Subsector 323121 of the NAICS (e.g., tradebinding, sample mounting and postpress services, such as book or paper bronzing, edging, embossing, folding, gilding, gluing, die cutting, finishing, tabbing and indexing).
- E) "Digital printing and quick printing" mean the printing of graphical text or images by a process utilizing digital technology, as provided in subsection (b)(4) of this Section. It also includes the printing of what is commonly known as "digital photography" (e.g., use of a qualifying integrated computer and printer system to print a digital image). The exemption extends only to machinery and equipment, including repair and replacement parts, used in the act of production. Accordingly, no other type or kind of tangible personal property will qualify for the exemption, even though it may be used primarily in the graphic arts business.
- 2) Machinery means major mechanical machines or major components of such machines contributing to graphic arts production. Equipment means any independent device or tool separate from any machinery but essential to the graphic arts production process; or any sub-unit or assembly comprising a component of any machinery or auxiliary, adjunct, or attachment parts of machinery. Beginning August 23, 2001, equipment includes chemicals or chemicals acting as catalysts but only if the chemicals or chemicals acting as catalysts effect a direct and immediate change upon a graphic arts product.
- A) The exemption does not include hand tools, supplies such as rags,

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lubricants, adhesives, solvents, ink, dyes, chemicals except as described in this subsection (b)(2), negatives, acids or solutions, fuels, electricity and steam or water. The exemption also does not include items of personal apparel, such as gloves, shoes, glasses, goggles, coveralls, aprons, and masks.

- B) This exemption does not include the sale of materials to a purchaser who manufactures those materials into an otherwise exempted type of graphic arts machinery or equipment.
 - C) Machinery and equipment does not include foundations or special purpose buildings to house or support graphic arts machinery and equipment.
 - D) Machinery and equipment does not include computer software unless purchased preinstalled in qualifying computer equipment. Computer software not purchased preinstalled in qualifying computer equipment, including upgrades or new software, is subject to tax.
- 3) Primary Use. The law requires that machinery and equipment be used primarily in graphic arts production.
- A) Therefore, machinery that is used primarily in an exempt process and partially in a nonexempt manner would qualify for the exemption. However, the purchaser must be able to establish through adequate records that the machinery or equipment is used over 50% in an exempt manner in order to claim the exemption.
 - B) The fact that particular machinery or equipment may be considered essential to the conduct of the business of graphic arts production because its use is required by law or practical necessity does not, of itself, mean the machinery or equipment is used primarily in graphic arts production.
- 4) By way of illustration and not limitation, the following activities will generally be considered graphic arts production:
- A) Prepress or preliminary processes. Prepress or preliminary processes include the steps required to transform an original into a

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state that is ready for reproduction by printing. Prepress or preliminary processes include typesetting, film production, color separation, final photocomposition (e.g., image assembly and imposition (stripping)), and platemaking. Prepress or preliminary processes include the manipulation of images or text in preparation for printing for the purpose of conforming those images to the specific requirements of the printing process being utilized. For example, the images must be conformed for a specific signature layout and formatted to a specific paper size. In addition, colors must be calibrated to the specific type of paper or printing process utilized, so that they conform to customer specifications. Prepress or preliminary processes do not, however, include the creation or artistic enhancement of images that will later be reproduced in printed form by a graphic arts process. For example, the creation of an advertisement pursuant to customer direction, or enhancement of a photograph received from a customer by adding a border, text or rearranging the placement of images in the photograph, is not the performance of a qualifying prepress or preliminary process. Prepress or preliminary processes can be performed at the printing facility, a separate prepress or preliminary facility, the customer's location, or other location. The following are examples of equipment used in qualifying prepress or preliminary activities:

- i) Large scale, fixed-position cameras used to photograph two dimensional copy to produce negatives or positives used in the production of plates; film processors; scanners; impositioners; RIP (raster image processor) equipment; proofing equipment; imagesetters, plate processors, helioklischographs and computer-to-plate and computer-to-press equipment.
- ii) Computers that qualify include computers used primarily to receive, store and manipulate images to conform them to the requirements of a specific printing process that will later be performed. Computers used in connection with what is commonly referred to as "digital photography" will qualify if used primarily to format the graphic image that will be printed (e.g., used to format the size and layout of images to be printed). If such computers are primarily used, however, to apply background colors, borders or

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other artistic enhancements, or to view and select particular digital images to be printed, they will not qualify for the exemption.

- iii) Digital cameras do not qualify if they are used primarily to create an original image that will later be reproduced by a graphic arts process.
 - iv) Servers used primarily to transfer images and text to qualifying equipment qualify, but do not qualify if used primarily in a non-exempt activity (for example, servers used to maintain an in-house email system).
 - v) Scanners used primarily to input previously created images or text that will be reproduced by a graphic arts process qualify for the exemption.
- B) The transfer of images or text from computers, plates, cylinders or blankets to paper or other stock to be printed. This process begins when paper is introduced on the press. Examples of qualifying equipment used in this activity include printing plates, printing presses, blankets and rollers, automatic blanket washers, scorers and dies, folders, punchers, stackers, strappers used in the pressroom for signatures, dryers, chillers and cooling towers. Laser or ink jet printers used to print on paper or other stock are also included in this exemption.
- i) Equipment used to handle or convey printed materials between production stations in an integrated on-line graphic arts process is included in the exemption (e.g., a forklift or bindery cart will qualify for the exemption if it is primarily used to convey book covers that have been printed and cut to binding and finishing equipment).
 - ii) Computer equipment used to operate exempt graphic arts equipment also qualifies for the exemption.
 - iii) Equipment, such as transformers, used primarily to provide power to qualifying printing presses or bindery lines, qualifies for the exemption. Similarly, heating and cooling

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machinery or equipment used to produce an environment necessary for the production of printed material qualifies for the exemption. For example, humidity-control equipment used to reduce static during the printing process qualifies for the exemption.

- C) Activities involving the binding, collating or finishing of the graphic arts product. Equipment used in these activities includes, for instance, binders, packers, gatherers, joggers, trimmers, selectronic equipment, blow-in card feeders, inserters, stitchers, gluers, spiral binders, addressing machines, labelers and ink-jet printers.
 - i) Machinery or equipment used to convey materials to packaging areas after the graphic arts product has been printed, bound and finished qualifies for the exemption. Such equipment includes, for instance, conveyor systems, hoists or other conveyance mechanisms used to direct the final printed product into packaging areas.
 - ii) Machinery or equipment used to package materials after the graphic arts product has been printed, bound and finished qualifies for the exemption. Such packaging equipment includes, for instance, cartoning systems, palletizers, stretch wrappers, strappers, shrink tunnels and similar equipment.
- 5) By way of illustration and not limitation, the following activities will generally not be considered to be graphic arts production:
 - A) The use of machinery and equipment in general maintenance or repair work on production machinery or equipment. This includes hand tools, welding tools, racks, and other machinery and equipment used in the maintenance area.
 - B) The use of machinery and equipment (e.g., fork lifts, roll clamps and roll grabbers) to convey raw materials to the press does not qualify for the exemption.
 - C) The use of machinery or equipment to convey materials to final storage or shipping areas. Such equipment includes, for instance,

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fork lifts used primarily to place the packaged printed product into final storage or shipping areas.

- D) The use of machinery or equipment to gather information, track jobs or to perform data-related functions prior to a qualifying prepress activity (e.g., computers used primarily to edit or create text, data, or other copy). Such equipment includes items such as inventory tracking devices and bar-code readers.
 - E) The use of machinery or equipment to photocopy printed matter. A copier that is capable of printing images or text transmitted to it in digital form will qualify. However, a copier that produces photocopies by means of xerographic technology is subject to tax.
 - F) The use of machinery or equipment in managerial, sales or other non-production, non-operational activities including inventory control, production scheduling, purchasing, receiving, accounting, physical management, general communications, plant security, marketing, or personnel recruitment, selection or training. Waste disposal equipment (e.g., equipment used to contain and recapture paper dust) does not qualify for the exemption. However, for information regarding the pollution control exemption, see Section 130.335 of this Part. Similarly, baling equipment used to recycle paper waste does not qualify under this exemption. However, the manufacturing machinery and equipment exemption may be applicable. (See Section 130.330 of this Part.)
 - G) The use of machinery and equipment to prevent or fight fires or to protect employees, such as protective masks, respirators, first-aid kits, gloves, coveralls and goggles, or for safety, accident protection or first-aid, even though that machinery or equipment may be required by federal, State or local law.
 - H) The use of machinery or equipment for general ventilation, heating, cooling, climate control or general illumination, except when the machinery or equipment is used to produce an environment necessary for the production of printed material.
- 6) An item of machinery or equipment that initially is used primarily in graphic arts production and having been so used for less than one-half of

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the useful life and is converted to primarily nonexempt uses will become subject to the tax at the time of the conversion. The tax will be collected on that portion of the price of the machinery or equipment as was excluded from tax at the time the sale or purchase was made.

- 7) Sales to Lessors of Graphic Arts Equipment. The statute provides for the purchase of graphic arts machinery and equipment by lessors who will lease that machinery and equipment for use in graphic arts production. Therefore, if the purchaser of the machinery or equipment leases the machinery and equipment to a lessee who uses it in an exempt manner, the sale to the purchaser-lessor will be exempt from tax. A supplier may exclude these sales from his taxable gross receipts provided that the purchaser-lessor provides to him a properly completed exemption certificate and the information contained in the certificate would support an exemption if the sale were made directly to the lessee. Should a purchaser-lessor subsequently lease the machinery or equipment to a lessee who does not use it in an exempt manner that would qualify directly for the exemption, the purchaser-lessor will become liable for the tax from which he was previously exempted.
 - 8) Exemption Certification. Purchasers wishing to claim the exemption must certify to their suppliers that the machinery and equipment will be used primarily for graphic arts production. Retailers must maintain the certificates in their books and records. The use of blanket certificates of exemption will be permitted. The certificate must include the seller's name and address, the purchaser's name and address and a statement that the property purchased will be used primarily in graphic arts production. So long as the retailer obtains a certificate of exemption that contains all the information required in this subsection (b)(8), the retailer need not verify that the equipment he sells is actually used as graphic arts production equipment. If a graphic arts producer or lessor purchases at retail from a vendor who is not registered to collect Illinois Use Tax, the purchaser must maintain a copy of the certification in his records to support the deduction taken on the return.
- c) Graphic Arts Production. Provisions in effect until August 13, 1999:
- 1) *Graphic arts production means printing by one or more of the common processes or graphic arts production services as those processes and services are defined in Major Group 27 of the U.S. Standard Industrial*

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Classification Manual. (Section 2-30 of the Act) The exemption includes printing by letterpress, lithography, gravure, screen, engraving and flexography and includes such printing trade services as typesetting, negative production, plate production, bookbinding, finishing, looseleaf binder production and other services set forth in Major Group 27. The exemption extends only to machinery and equipment used in the act of production. Accordingly, no other type or kind of tangible personal property will qualify for the exemption, even though it may be used primarily in the graphic arts business.

- 2) Machinery means major mechanical machines or major components of such machines contributing to graphic arts production. Equipment means any independent device or tool separate from any machinery but essential to the graphic arts production process; or any sub-unit or assembly comprising a component of any machinery or auxiliary, adjunct or attachment or parts of machinery. The exemption does not include hand tools, supplies, lubricants, adhesives or solvents, ink, chemicals, dyes, acids or solutions, fuels, electricity, steam or water, items of personal apparel such as gloves, shoes, glasses, goggles, coveralls, aprons, and masks, or such items as negatives, one-time use printing plates as opposed to multiple use cylinders or lithographic plates, dies, etc. which are expendable supplies. This exemption does not include the sale of materials to a purchaser who manufactures such materials into an otherwise exempted type of graphic arts machinery or equipment.
- 3) Machinery and equipment does not include foundations for or special purpose buildings to house or support graphic arts machinery and equipment.
- 4) Primary Use.
 - A) The law requires that machinery and equipment be used primarily in graphic arts production. Therefore, machinery which is used primarily in an exempt process and partially in a nonexempt manner, would qualify for the exemption. However, the purchaser must be able to establish adequate records that the machinery or equipment is used over 50% in an exempt manner in order to claim the deduction.
 - B) The fact that particular machinery or equipment may be considered

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essential to the conduct of the business of graphic arts production because its use is required by law or practical necessity does not, of itself, mean the machinery or equipment is used primarily in graphic arts production.

- C) By way of illustration and not limitation, the following activities will generally be considered to constitute an exempt use:
- i) Machinery and equipment to directly produce typesetting, negatives and plates including final photo-composition and color separation processes.
 - ii) The use of machinery and equipment to transfer images or text from type or plates or image carriers to paper or other stock to be printed.
 - iii) Equipment to collate, bind or finish the graphic arts product covered in subsection (c)(2), above.
 - iv) Large scale, fixed-position cameras used to photograph two dimensional copy to produce negatives or positives used in the production of plates.
- D) By way of illustration and not limitation, the following activities will generally not be considered to be graphic arts production:
- i) The use of machinery and equipment in general maintenance or repair work on production machinery or equipment.
 - ii) The use of machinery or equipment to store, convey, handle or transport materials.
 - iii) The use of machinery or equipment to place the printed product in the container package or wrapping in which such property is normally sold to the ultimate consumer thereof.
 - iv) The use of machinery or equipment to gather information, photograph, transmit data, edit text, prepare drafts or copy or perform other date-related functions prior to final

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- composition, typesetting, engraving or other preparation of the image carrier.
- v) Xerographic or photocopying machines do not qualify for the exemption.
 - vi) Word processing, text editing machinery or computerized equipment unless it is an integral part of a final graphic arts operation such as a computer-controlled typesetting machine or equivalent that is used primarily in graphic arts production.
 - vii) Computers used to store data and generate text, maps, graphs or other print-out formats unless the product is an image carrier to be used to repetitively transfer images by printing. For example, a computer which generates an image which may later be reproduced by a graphic arts process would not qualify while a computer-controlled engraving system which produces printing cylinders and computer-controlled digital typesetting equipment would qualify.
 - viii) The use of machinery or equipment in managerial, sales or other non-production, non-operational activities including disposal of waste, inventory control, production scheduling, purchasing, receiving, accounting, physical management, general communications, plant security, sales, marketing, product exhibition and promotion, or personnel recruitment, selection or training.
 - ix) The use of machinery and equipment to prevent or fight fires or to protect employees, such as protective masks, gloves, coveralls and goggles or for safety, accident protection or first-aid even though such machinery or equipment may be required by law.
 - x) The use of machinery or equipment for general ventilation, heating, cooling, climate control or general illumination.
- E) An item of machinery or equipment which initially is used

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primarily in graphic arts production and having been so used for less than one-half of the useful life is converted to primarily nonexempt uses, will become subject to the tax at the time of the conversion. Such tax will be collected on such portion of the purchase price of the machinery or equipment as was excluded from tax at the time the sale or purchase was made.

- 5) **Sales to Lessors of Graphic Arts Equipment.**

The statute provides for the purchase of graphic arts machinery and equipment by lessors who will lease such machinery and equipment for use in graphic arts production. Therefore, if the purchaser of the machinery or equipment leases the machinery and equipment to a lessee who uses it in an exempt manner, the sale to the purchaser-lessor will be exempt from tax. A supplier may exclude such sales from his taxable gross receipts provided that the purchaser-lessor provides to him a properly completed exemption certificate and the information contained therein would support an exemption if the sale were made directly to the lessee. Should a purchaser-lessor subsequently lease the machinery or equipment to a lessee who does not use it in an exempt manner that would qualify directly for the exemption, the purchaser-lessor will become liable for the tax from which he was previously exempted.
- 6) **Exemption Certification.**

Purchasers wishing to claim the exemption must certify to their suppliers that the machinery and equipment will be used primarily for graphic arts production. Retailers must maintain such certificates in their books and records. The use of blanket certificates of exemption will be permitted. If a graphic arts producer or lessor purchases at retail from a vendor who is not registered to collect Illinois Use Tax, the purchaser must maintain a copy of the certification in his records to support the deduction taken on the return. The certificate must include the seller's name and address, the purchaser's name and address and a statement that the property purchased will be used primarily in graphic arts production.
- 7) **For the purpose of determining the portion of the proceeds or cost which may be excluded from tax, a sale of property will be deemed to be made as of the date of delivery of such property. If a single sale of property is made which calls for multiple deliveries unrelated to payments and a portion of the sold property is delivered when one fraction of the proceeds or cost is excludable and the remainder of the property is delivered when a**

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different fraction of the proceeds or cost is excludable, the earliest date of delivery of any of the property will determine the portion of the proceeds or cost of the entire sale which may be excluded in computing the tax which is due on that entire sale. However, even when a contract provides for multiple deliveries, if a payment is closely related in time and quantity to the property delivered, the date of each delivery will determine the portion of the proceeds or cost which may be excluded in computing the tax that is due on that payment.

(Source: Amended at 28 Ill. Reg. _____, effective _____)

Section 130.331 Manufacturer's Purchase Credit

a) Earning Manufacturer's Purchase Credit

- 1) Effective January 1, 1995 through June 30, 2003, a manufacturer may earn a credit when purchasing exempt manufacturing machinery and equipment. Effective July 1, 1996 through June 30, 2003, a graphic arts producer may earn a credit when purchasing exempt graphic arts machinery and equipment. The credit is known as the Manufacturer's Purchase Credit or MPC. The amount of credit is limited to a percentage of the 6.25% State rate of tax that would have been incurred on the purchase of exempt manufacturing machinery and equipment. (See Section 130.325 and Section 130.330 of this Part.)
- 2) The percentage of credit earned based upon exempt purchases increases over time as follows:
 - A) *15% for purchases made on or before June 30, 1995.*
 - B) *25% for purchases made after June 30, 1995, and on or before June 30, 1996.*
 - C) *40% for purchases made after June 30, 1996, and on or before June 30, 1997.*
 - D) *50% for purchases made on or after July 1, 1997. (Section 3-85 of the Use Tax Act)*
- 3) The credit is earned at the time qualifying manufacturing machinery and

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equipment or qualifying graphic arts machinery and equipment is purchased. A qualifying purchase is considered to take place as of the date of invoice of that qualifying manufacturing machinery and equipment. The credit is considered to be earned on qualifying manufacturing machinery and equipment or qualifying graphic arts machinery and equipment that is purchased under an installment contract or progress payment contract at the time that each installment or progress payment is invoiced. The amount of credit that is earned is based on the amount of tax that would have been due on that portion of the purchase price that is invoiced.

- 4) No credit is earned for exempt purchases under the expanded Enterprise Zone exemption, as described in Section 130.1951 (b) of this Part, unless that purchase would also qualify as exempt under the Manufacturing Machinery and Equipment Exemption described in Section 130.330 of this Part or under the Graphic Arts Machinery and Equipment Exemption described in Section 130.325 of this Part.
 - 5) No credit is earned for a purchase of tangible personal property that qualifies as an occasional sale, as described in Section 130.110 (a) of this Part.
 - 6) No credit is earned for a purchase of tangible personal property that is purchased for resale. (See Section 130.210 (a) of this Part.)
- b) Using Manufacturer's Purchase Credit
- 1) The credit may be used to satisfy Use Tax or Service Use Tax liability incurred on the purchase of qualifying production related tangible personal property. (See Section 3-85 of the Use Tax Act [35 ILCS 105/3-85] and Section 3-70 of the Service Use Tax Act [35 ILCS 110/3-70].) *The credit cannot be used after September 30, 2003. (Section 3-85 of the Use Tax Act and Section 3-70 of the Service Use Tax Act)* The credit may be applied only to the 6.25% State rate of tax incurred. Prior to the credit being earned, credit may not be used on a qualifying purchase, except as provided in subsection (e)(7)(B) below. However, the credit may be used the same day that it is earned, but must be followed by proper reporting of the credit as set out in subsections (c), (d), and (e) ~~below~~. For purposes of when to use accumulated Manufacturer's Purchase Credit, a manufacturer or graphic arts producer is always safe to use the credit in a month after

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the month in which the credit was earned.

- 2) The credit is non-transferable and may not be used to satisfy the tax liability of any taxpayer other than the manufacturer or graphic arts producer that earned the credit. *Notwithstanding any other provision of this Section, the credit cannot be used after September 30, 2003. (Section 3-85 of the Use Tax Act and Section 3-70 of the Service Use Tax Act)*
 - A) A manufacturer or graphic arts producer may enter into a written contract with a construction contractor to authorize that construction contractor to utilize Manufacturer's Purchase Credit accumulated by the manufacturer or graphic arts producer for the purchase of tangible personal property to be installed into real estate within a manufacturing or graphic arts production facility for use in a production related process. The written contract must specify the specific dollar amount of Manufacturer's Purchase Credit that the construction contractor is authorized to utilize on behalf of the manufacturer or graphic arts producer.
 - B) To properly utilize the Manufacturer's Purchase Credit on behalf of the manufacturer or graphic arts producer when purchasing tangible personal property for installation into real estate within a manufacturing or graphic arts production facility for use in a production related process, the contractor must furnish the supplier with information stating:
 - i) The manufacturer's or graphic arts producer's name and address;
 - ii) The manufacturer's or graphic arts producer's registration or resale number; and
 - iii) A statement that a specific amount of Use Tax or Service Use Tax liability, not to exceed 6.25% of the selling price, is being satisfied with the Manufacturer's Purchase Credit.
 - C) To properly utilize the Manufacturer's Purchase Credit on behalf of the manufacturer or graphic arts producer when purchasing tangible personal property for installation into real estate within a manufacturing facility, the contractor must furnish the

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manufacturer or graphic arts producer with information stating:

- i) Each vendor's or supplier's name and address (including, if applicable, either the vendor's or supplier's registration number or Federal Employer Identification Number);
 - ii) The date of purchase, purchase price, and description of the tangible personal property purchased; and
 - iii) The amount of the Use Tax or Service Use Tax liability, not to exceed 6.25% of the selling price, that was satisfied by the Manufacturer's Purchase Credit utilized for each purchase.
- D) A credit reported under a particular Illinois Business Tax number may not be transferred to a related but separately registered division or company.
- 3) Production related tangible personal property means:
- A) All tangible personal property used or consumed in a production related process by a manufacturer in a manufacturing facility in which a manufacturing process described in Section 2-45 of the Retailers' Occupation Tax Act takes place.
 - B) All tangible personal property used or consumed in a production related process by a graphic arts producer in a graphic arts production facility in which a graphic arts production process described in Section 2-30 of the Retailers' Occupation Tax Act takes place.
 - C) All tangible personal property used or consumed by a manufacturer or graphic arts producer in research and development regardless of use within or without a manufacturing or graphic arts production facility. (See Section 3-85 of the Use Tax Act.)
- 4) By way of illustration and not limitation, the following uses of tangible personal property will be considered production related:
- A) Tangible personal property purchased by a manufacturer for

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incorporation into real estate within a manufacturing facility for use in a production related process; or tangible personal property purchased by a construction contractor for incorporation into real estate within a manufacturing facility for use in a production related process pursuant to a written contract described in subsection (b)(2)(A) of this Section.

- B) Supplies and consumables used in a manufacturing facility, including fuels, coolants, solvents, oils, lubricants, cleaners and adhesives.
- C) Hand tools, protective apparel, and fire and safety equipment used or consumed in a manufacturing facility.
- D) Tangible personal property used or consumed in a manufacturing facility for purposes of pre-production and post-production material handling, receiving, quality control, inventory control, storage, staging and packing for shipping or transportation.
- E) Fuel used in a ready-mix cement truck to rotate the mixing drum in order to manufacture concrete or cement. However, only the amount of fuel used to rotate the drum will qualify. The amount of fuel used or consumed in transportation of the truck will not qualify as production related tangible personal property. The amount of fuel used in a qualifying manner to rotate the drum may be stated as a percentage of the entire amount of fuel used or consumed by the ready-mix truck.
- F) Tangible personal property purchased by a graphic arts producer for incorporation into real estate within a graphic arts production facility for use in a production related process; or tangible personal property purchased by a construction contractor for incorporation into real estate within a graphic arts production facility for use in a production related process pursuant to a written contract described in subsection (b)(2)(A) of this Section.
- G) Supplies and consumables used in a graphic arts production facility, including solvents, oils, lubricants, cleaners and adhesives. Paper and ink that is transferred to a customer does not qualify as production related tangible personal property.

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- H) Hand tools, protective apparel, and fire and safety equipment used or consumed in a graphic arts production facility.
 - I) Tangible personal property used or consumed inside a graphic arts facility for purposes of preliminary or pre-press production, pre-production material handling, receiving, quality control, inventory control, storage, staging, sorting, labeling, mailing, tying, wrapping, and packaging.
- 5) By way of illustration and not limitation, the following uses of property will not be considered production related:
- A) The use of trucks, trailers, and motor vehicles which are required to be titled or registered pursuant to the Illinois Motor Vehicle Code [625 ILCS 5], and aircraft or watercraft required to be registered with an agency of State or federal government.
 - B) Office supplies, computers, desks, copiers and equipment which are used for sales, purchasing, accounting, fiscal management, marketing and personnel recruitment or selection activities, even if such use takes place within a manufacturing or graphic arts production facility.
 - C) Tangible personal property used or consumed for aesthetic or decorative purposes, including landscaping and artwork.
 - D) Tangible personal property used or consumed outside the manufacturing or graphic arts production facility, including tangible personal property listed in subsections (b)(4)(D) and (b)(4)(I) above with the exception of tangible personal property used or consumed for research and development purposes.
 - E) Tangible personal property purchased by a construction contractor for incorporation into a manufacturing or graphic arts production facility, unless such purchase by the construction contractor was made on behalf of a manufacturer or graphic arts producer pursuant to a written contract described in subsection (b)(2)(A) of this Section.

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- F) Except as otherwise provided in subsection (b)(2) of this Section, tangible personal property transferred to a manufacturer's customer or the customer of a person that is engaged in graphic arts production. For example, paper and ink transferred to a customer by a de minimis serviceman as described in 86 Ill. Adm. Code 140.108 that is engaged in graphic arts production is not considered production related.
- 6) The credit may be used to satisfy the State portion (6.25%) of a Use Tax or Service Use Tax liability arising under audit where the liability established is the result of:
- A) an erroneous claim of the Manufacturing Machinery and Equipment Exemption provided in Section 2-45 of the Retailers' Occupation Tax Act,
 - B) an erroneous claim of the Graphic Arts Machinery and Equipment Exemption provided in Section 2-5(4) of the Retailers' Occupation Tax Act, or
 - C) the manufacturer or graphic arts producer failing to self-assess and remit Use Tax or Service Use Tax on the purchase of production related tangible personal property.
- (See Section 3-85 of the Use Tax Act and Section 3-70 of the Service Use Tax Act.) The credit may only be used to satisfy the State portion (6.25%) of a Use Tax or Service Use Tax liability incurred on the purchase of qualifying production related tangible personal property. Under no circumstances may the credit be used to satisfy penalty and interest or other tax liability incurred by the manufacturer or graphic arts producer.
- 7) Credit may be used to satisfy the State portion (6.25%) of a qualifying Use Tax or Service Use Tax liability incurred by a manufacturer or graphic arts producer on a purchase of production related tangible personal property when payment of tax must be made directly to the Department.
- 8) The credit expires December 31st of the second calendar year following the calendar year in which the credit was earned. (See Section 3-85 of the Use Tax Act and Section 3-70 of the Service Use Tax Act.) However, for credit earned on or after June 30, 1995, the life of unreported credit may

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be extended during the period of an agreed extension of the statute of limitations as provided in subsection (e)(7)~~below~~.

- 9) A manufacturer or graphic arts producer may use credit to satisfy Service Use Tax liability only when purchasing production related tangible personal property transferred incident to a sale of service.
 - 10) *Notwithstanding any other provision of this Section, the credit cannot be used after September 30, 2003, including to satisfy an audit liability. (Section 3-85 of the Use Tax Act and Section 3-70 of the Service Use Tax Act)*
- c) Reporting Manufacturer's Purchase Credit Earned or Used for Periods from January 1, 1995 through June 29, 1995
- 1) In order to validate credit earned as the result of a qualifying purchase of exempt manufacturing machinery and equipment or credit used on a qualifying purchase, the manufacturer must report credit earned to the Department in a timely manner. Failure to report credit earned will result in expiration of the credit as of the date earned.
 - 2) On forms prescribed or approved by the Department, a manufacturer must report credit earned or used by the last day of the second month following the month of creation or use of the credit. No credit report is required for any month in which a manufacturer neither earned nor used credit. Original invoices or copies of original invoices are not to be filed with the Department.
 - 3) Credit Use or Misuse Causing Expiration of Credit. Credit used, whether properly or improperly, expires upon use and cannot be recreated once used. The manufacturer may be liable for tax, penalty and interest on the purchase of production related tangible personal property where expired credit was used, in accordance with provisions of the Uniform Penalty and Interest Act [35 ILCS 735]. The following represent examples of uses of credit that will result in expiration of the credit:
 - A) Failure to report credit or use of credit.
 - B) Failure to timely report credit or use of credit.

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- C) Use of credit prior to actually earning credit as described in subsection (a)(3)-~~above~~.
 - D) Return of goods to supplier for full refund including tax where credit was tendered in payment of tax. Credit expires once used and cannot be recreated once used regardless of reason for return.
- 4) A purchaser earning Manufacturer's Purchase Credit must maintain records, as to each purchase of manufacturing machinery and equipment on which the purchaser earned Manufacturer's Purchase Credit, that identify the following:
- A) The vendor or supplier (including, if applicable, either the vendor's or supplier's Illinois registration number or Federal Employer Identification Number);
 - B) The date of purchase, purchase price, and description of the exempt manufacturing machinery and equipment; and
 - C) The amount of Manufacturer's Purchase Credit earned on that purchase.
- 5) A purchaser using Manufacturer's Purchase Credit must maintain records, as to each purchase of production related tangible personal property on which the purchaser used Manufacturer's Purchase Credit to satisfy the purchaser's Use Tax or Service Use Tax liability, that identify the following:
- A) The vendor or supplier (including, if applicable, either the vendor's or supplier's Illinois registration number or Federal Employer Identification Number);
 - B) The date of purchase, purchase price, and description of the production related tangible personal property; and
 - C) The amount of Manufacturer's Purchase Credit used to satisfy the purchaser's Use Tax or Service Use Tax liability on that purchase.
- 6) As determined pursuant to audit by the Department, credit earned by purchase of exempt machinery and equipment that has not been timely and

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properly reported will result in expiration of the credit. Use of expired credit in this situation may result in an assessment for tax, penalty and interest on the subsequent purchase of production related tangible personal property. Credit that was properly reported when earned but was not timely and properly reported to the Department when used will likewise expire resulting in an assessment for tax, penalty and interest on the purchase of production related tangible personal property for which it was offered in payment of Use Tax or Service Use Tax liability.

- d) Reporting Manufacturer's Purchase Credit Earned or Used on June 30, 1995
 - 1) The reporting requirements for Manufacturer's Purchase Credit were changed by Public Act 89-89, effective June 30, 1995. In order to provide consistent and easier reporting requirements for manufacturers utilizing Manufacturer's Purchase Credit and the Department's Administration of the Manufacturer's Purchase Credit program, manufacturers are required to report Manufacturer's Purchase Credit earned or used on June 30, 1995, under the methods described in subsection (c) of this Section. However, the Manufacturer's Purchase Credit earned or used on that date will be subject to the provisions described in subsection (e) of this Section without the necessity of including those Manufacturer's Purchase Credits in an Annual Report of Manufacturer's Purchase Credit Earned or an Annual Report of Manufacturer's Purchase Credit Used.
 - 2) A manufacturer filing an amended Annual Manufacturer's Purchase Credit Report under subsection (e)(7) of this Section that includes Manufacturer's Purchase Credit earned or used on June 30, 1995 must disclose that such report includes Manufacturer's Purchase Credit earned or used on June 30, 1995.
- e) Reporting Manufacturer's Purchase Credit Earned or Used for Periods on or after July 1, 1995
 - 1) In order to validate credit earned as the result of a qualifying purchase of exempt manufacturing machinery and equipment or exempt graphic arts machinery and equipment, the manufacturer or graphic arts producer must report credit earned to the Department by signing and filing an Annual Report of Manufacturer's Purchase Credit Earned for each calendar year no later than the last day of the sixth month following the calendar year in which the Manufacturer's Purchase Credit is earned. The Annual Report

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of Manufacturer's Purchase Credit Earned shall be filed on forms prescribed or approved by the Department and shall state, for each month of the calendar year:

- A) The total purchase price of all purchases of exempt manufacturing machinery and equipment or graphic arts machinery and equipment on which the credit was earned;
 - B) The total State Use Tax or Service Use Tax which would have been due on those items;
 - C) The percentage used to calculate the amount of credit earned;
 - D) The amount of credit earned; and
 - E) Such other information as the Department may reasonably require. (See Section 3-85 of the Use Tax Act.)
- 2) A purchaser earning Manufacturer's Purchase Credit must maintain records, as to each purchase of manufacturing machinery and equipment and graphic arts machinery and equipment on which the purchaser earned Manufacturer's Purchase Credit, that identify the following:
- A) The vendor or supplier (including, if applicable, either the vendor's or supplier's Illinois registration number or Federal Employer Identification Number);
 - B) The date of purchase, purchase price, and description of the exempt manufacturing machinery and equipment and graphic arts machinery and equipment; and
 - C) The amount of Manufacturer's Purchase Credit earned on that purchase.
- 3) In order to validate credit used to satisfy the tax liability on purchases of production related tangible personal property, the manufacturer or graphic arts producer must report credit used to the Department by signing and filing an Annual Report of Manufacturer's Purchase Credit Used for each calendar year no later than the last day of the sixth month following the calendar year in which the Manufacturer's Purchase Credit is used. The

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Annual Report of Manufacturer's Purchase Credit Used shall be filed on forms prescribed or approved by the Department and shall state, for each month of the calendar year:

- A) The total purchase price of all production related tangible personal property purchased from Illinois vendors or suppliers;
 - B) The total purchase price of all production related tangible personal property purchased from out-of-State vendors or suppliers;
 - C) The total amount of Manufacturer's Purchase Credit used during each month; and
 - D) Such other information as the Department may reasonably require. (See Section 3-85 of the Use Tax Act.)
- 4) A purchaser using Manufacturer's Purchase Credit must maintain records, as to each purchase of production related tangible personal property on which the purchaser used Manufacturer's Purchase Credit to satisfy the purchaser's Use Tax or Service Use Tax liability, that identify the following:
- A) The vendor or supplier (including, if applicable, either the vendor's or supplier's Illinois registration number or Federal Employer Identification Number);
 - B) The date of purchase, purchase price, and description of the production related tangible personal property; and
 - C) The amount of Manufacturer's Purchase Credit used to satisfy the purchaser's Use Tax or Service Use Tax liability on that purchase.
- 5) *No Annual Report of Manufacturer's Purchase Credit Earned or Annual Report of Manufacturer's Purchase Credit Used may be filed with the Department before May 1, 1996 or after June 30, 2004.* (Section 3-85 of the Use Tax Act and Section 3-70 of the Service Use Tax Act)
- 6) A purchaser that fails to properly file an Annual Report of Manufacturer's Purchase Credit Earned or an Annual Report of Manufacturer's Purchase Credit Used with the Department by the last day of the sixth month

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following the end of the calendar year forfeits all Manufacturer's Purchase Credit earned or used for that calendar year, unless the purchaser establishes that the purchaser's failure to file was due to reasonable cause.

The reasonable cause provisions of this subsection (e)(6) do not apply after June 30, 2004.

- 7) Annual Manufacturer's Purchase Credit reports may be amended to report and claim credit on qualifying purchases of manufacturing machinery and equipment and graphic arts machinery and equipment not previously reported at any time before the credit would have expired, unless both the Department and the purchaser have agreed to an extension of the statute of limitations for the issuance of a Notice of Tax Liability as provided in Section 4 of the Retailers' Occupation Tax Act. However, such an agreed extension will not restore a credit that has previously been reported and has expired prior to the agreed extension. Manufacturer's Purchase Credit that had not been previously reported and is included in an amended Annual Report submitted as a result of such an agreed extension will expire as provided in subsection (b)(8) of this Section or at the end of the agreed extension period, whichever is longer. If the time for assessment or refund has been extended by agreement, amended reports for a calendar year may be filed at any time prior to the date to which the statute of limitations for the calendar year or portion thereof has been extended.
- Notwithstanding any other provision of this Section, the credit cannot be used after September 30, 2003, and no Annual Report of Manufacturer's Purchase Credit Earned or Annual Report of Manufacturer's Purchase Credit Used may be filed with the Department after June 30, 2004 even if the time for assessment or refund has been extended by agreement. (Section 3-85 of the Use Tax Act and Section 3-70 of the Service Use Tax Act) Manufacturer's Purchase Credit claimed on an amended report may be used to satisfy tax liability under the Use Tax Act or the Service Use Tax Act on:

- A) Qualifying purchases of production related tangible personal property made after the date the amended report is filed;
- B) Amounts assessed by the Department on purchases made on or after January 1, 1995 of machinery and equipment that did not qualify for the exemption described in Section 130.330 of this Part, but would have qualified as production related tangible personal property. The credit will be applied to the tax portion of the

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assessment liability as of the date that the Department receives a written request by the purchaser directing the Department to apply the credit to the assessment liability; or

- C) Amounts assessed by the Department on purchases made on or after July 1, 1996 of machinery and equipment that did not qualify for the exemption described in Section 130.325 of this Part, but would have qualified as production related tangible personal property. The credit will be applied to the tax portion of the assessment liability as of the date that the Department receives a written request by the purchaser directing the Department to apply the credit to the assessment liability.

- 8) A purchaser who used Manufacturer's Purchase Credit to satisfy the purchaser's Use Tax or Service Use Tax liability incurred on the purchase of property that is later determined not to qualify as production related tangible personal property may be liable for tax, penalty, and interest on the purchase of that property as of the date of the purchase. However, the purchaser is entitled to use such disallowed Manufacturer's Purchase Credit, so long as it has not expired, on qualifying purchases of production related tangible personal property not previously subject to credit usage.

- 9) *Notwithstanding any other provision of this Section, the credit cannot be used after September 30, 2003, including to satisfy an audit liability. (Section 3-85 of the Use Tax Act and Section 3-70 of the Service Use Tax Act)*

- f) Retailers or Servicemen Accepting Manufacturer's Purchase Credit

- 1) In order to accept Manufacturer's Purchase Credit from a manufacturer or graphic arts producer, the supplier or serviceman must obtain a Manufacturer's Purchase Credit certificate from the manufacturer or graphic arts producer unless the manufacturer or graphic arts producer has incorporated its certification into the manufacturer's or graphic arts producer's purchase order as described below. The manufacturer or graphic arts producer may provide the certification on a form provided by the Department or on the manufacturer's or graphic arts producer's own form containing the appropriate information. The certificate must be kept in the supplier's or serviceman's books and records, but need not be submitted to the Department with the supplier's or serviceman's return. A

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Manufacturer's Purchase Credit certificate must contain the following information:

- A) A signed statement that the manufacturer or graphic arts producer is using available accumulated Manufacturer's Purchase Credit to satisfy all or part of the 6.25% portion of Use Tax or Service Use Tax liability incurred on a qualifying purchase of production related tangible personal property;
 - B) The manufacturer's or graphic arts producer's name and address;
 - C) The manufacturer's or graphic arts producer's registration number, if registered;
 - D) The date of purchase of the production related tangible personal property; and
 - E) The credit being used. (See Section 3-85 of the Use Tax Act and Section 3-70 of the Service Use Tax Act.)
- 2) A manufacturer or graphic arts producer may incorporate the Manufacturer's Purchase Credit certification into the manufacturer's or graphic arts producer's purchase order if all of the required information is contained within that purchase order.
 - 3) Manufacturer's Purchase Credit accepted by the supplier or serviceman may be used by the supplier or serviceman to pay its liability incurred under the Retailers' Occupation Tax Act or Service Occupation Tax Act, so long as the supplier or serviceman complies with the following:
 - A) The supplier or serviceman may not accept credit in excess of 6.25% of the purchase price of qualifying production related tangible personal property. (See Section 3-85 of the Use Tax Act and Section 3-70 of the Service Use Tax Act.)
 - B) The supplier or serviceman must properly report the credit to the Department in order to use the credit to pay Retailers' Occupation Tax or Service Occupation Tax liability. The Manufacturer's Purchase Credit (MPC) does not create an exemption or an authorized deduction. The MPC is a means for the supplier or

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serviceman to pay Retailers' Occupation Tax or Service Occupation Tax, as the case may be. Therefore, the receipts from transactions in which customers have provided MPC cannot be deducted from the gross receipts reported on the Sales and Use Tax Return (Form ST-1). Receipts from transactions in which customers have provided MPC must be included in gross receipts subject to tax reported on line 1 and line 3 of the return. The resulting tax on those gross receipts can then be paid by using the credit on line 16a of the return.

4) *Notwithstanding any other provision of this Section, the credit cannot be used after September 30, 2003. Manufacturer's Purchase Credit reported on any original or amended return after October 20, 2003 will be disallowed. (Section 3-85 of the Use Tax Act and Section 3-70 of the Service Use Tax Act)*

g) Lessors Earning and Using Manufacturer's Purchase Credit

- 1) A lessor leasing exempt manufacturing machinery and equipment to a manufacturer or graphic arts machinery and equipment to a graphic arts producer may earn Manufacturer's Purchase Credit when purchasing such machinery and equipment, in the same manner as a manufacturer or graphic arts producer.
- 2) A lessor leasing qualifying production related tangible personal property to a manufacturer or graphic arts producer may use Manufacturer's Purchase Credit when purchasing such qualifying property in the same manner as a manufacturer or graphic arts producer. (See Section 3-85 of the Use Tax Act and Section 3-70 of the Service Use Tax Act.)
- 3) A lessor of exempt machinery and equipment and qualifying production related tangible personal property must report the accumulation and use of credit in the same manner as required for manufacturers or graphic arts producers.
- 4) Since the Manufacturer's Purchase Credit is a non-transferable credit, a lessor may not use credit earned by a lessee, nor may a lessor transfer credit it has earned to a lessee.

5) *Notwithstanding any other provision of this Section, the credit cannot be*

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earned after June 30, 2003 and cannot be used after September 30, 2003. (Section 3-85 of the Use Tax Act and Section 3-70 of the Service Use Tax Act)

- h) Retailers or Servicemen Accepting Manufacturer's Purchase Credit After Qualifying Purchases
- 1) A manufacturer or graphic arts producer that does not provide the certification or purchase order as provided in subsection (f) of this Section to a retailer or serviceman at the time of purchase of production related tangible personal property must pay the appropriate amount of Use Tax or Service Use Tax at that time to the retailer or serviceman. However, retailers and servicemen are not prohibited from accepting Manufacturer's Purchase Credit (MPC) certifications after qualifying sales of production related tangible personal property have taken place. Retailers and servicemen are not required to accept the certifications and are not required to refund the amount of Use Tax or Service Use Tax that was properly paid by the manufacturers or graphic arts producers in exchange for the certificates after the sales have taken place. *Notwithstanding any other provision of this Section, the credit cannot be used after September 30, 2003. Retailers and servicemen cannot accept MPC certifications for any purchase, including certifications for prior qualifying sales, after September 30, 2003. (Section 3-85 of the Use Tax Act and Section 3-70 of the Service Use Tax Act)*
 - 2) Retailers and servicemen that choose to accept MPC certifications from manufacturers and graphic arts producers after qualifying sales of production related tangible personal property have taken place and refund the amount of Use Tax or Service Use Tax that was properly paid by those manufacturers or graphic arts producers must file amended returns or claims for credit or refund as provided in Section 130.1501 of this Part. However, to avoid the potential of retailers and servicemen filing multiple amended returns and claims for credit or refund, retailers and servicemen may elect to report the acceptance of that MPC on line 16a of the retailers' and servicemen's sales and use tax returns for the period in which those refunds occurred. The retailer's or serviceman's election to report the acceptance of the credit on their current return, in lieu of filing an amended return and claim for credit or refund, does not supersede the applicability of the statute of limitations described in Section 130.1501(a)(4) of this Part to the claiming of that credit by the retailer or

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serviceman. Retailers and servicemen may only refund the 6.25% of State Use Tax or Service Use Tax paid by the manufacturers and graphic arts producers. (See subsection (b) of this Section.) *Manufacturer's Purchase Credit reported on any original or amended return after October 20, 2003 will be disallowed. (Section 3-85 of the Use Tax Act and Section 3-70 of the Service Use Tax Act)*

- 3) Manufacturers and graphic arts producers who provide MPC certifications to retailers or servicemen after qualifying sales of production related tangible personal property have taken place as provided in this subsection (h) must report the use of the credit on an Annual Report of Manufacturer's Purchase Credit Used for the calendar year in which the certification was provided listing the use of the credit in the month in which the certification is provided. *No Annual Report of Manufacturer's Purchase Credit Used may be filed with the Department after June 30, 2004. (Section 3-85 of the Use Tax Act and Section 3-70 of the Service Use Tax Act)*
 - 4) Example: A manufacturer purchased production related tangible personal property from a retailer in June 1999. The manufacturer paid Use Tax to the retailer at the time of purchase. In January 2001, the manufacturer asks the retailer to accept an MPC certification for the June 1999 purchase and refund the Use Tax (6.25%) paid previously by the manufacturer. The retailer chooses to accept the certification and refunds the amount of the Use Tax (6.25%) to the manufacturer. The retailer makes the election to report the acceptance of the credit on line 16a of the retailer's January 2001 sales and use tax return (rather than filing an amended return or claim for credit or refund). The manufacturer must report the use of the credit in the month of January on an Annual Report of Manufacturer's Purchase Credit Used for the year 2001.
- i) Manufacturers or Graphic Arts Producers Reporting Use of Manufacturer's Purchase Credit After Qualifying Purchases When Use Tax or Service Use Tax Was Already Paid Directly to the Department
- 1) Manufacturers and graphic arts producers who self-assess Use Tax or Service Use Tax directly to the Department are not prohibited from reporting the use of Manufacturer's Purchase Credit (MPC) after the qualifying purchase of production related tangible personal property when those manufacturers or graphic arts producers have already paid the

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appropriate amount of Use Tax or Service Use Tax directly to the Department. *Notwithstanding any other provision of this Section, the credit cannot be used after September 30, 2003. (Section 3-85 of the Use Tax Act and Section 3-70 of the Service Use Tax Act)*

- 2) Manufacturers and graphic arts producers who choose to use MPC as provided in this subsection (i) must file an amended return or claim for credit or refund with the Department as provided in Section 130.1501 of this Part. However, to avoid the potential of manufacturers and graphic arts producers filing multiple amended returns and claims for credit or refund, manufacturers and graphic arts producers may elect to report the use of that credit on line 16a of their current sales and use tax returns. The manufacturer's or graphic arts producer's election to report the acceptance of the credit on the current return, in lieu of filing an amended return and claim for credit or refund, does not supersede the applicability of the statute of limitations described in Section 130.1501(a)(4) of this Part to the claiming of that credit by the manufacturer or graphic arts producer. *Manufacturer's Purchase Credit reported on any original or amended return after October 20, 2003 will be disallowed. (Section 3-85 of the Use Tax Act and Section 3-70 of the Service Use Tax Act)*
- 3) Manufacturers and graphic arts producers who report the use of MPC on their current sales and use tax return as provided in this subsection (i) must also report the use of the credit on an Annual Report of Manufacturer's Purchase Credit Used for the calendar year in which the manufacturer's or graphic arts producer's current sales and use tax return falls. *No Annual Report of Manufacturer's Purchase Credit Used may be filed with the Department after June 30, 2004. (Section 3-85 of the Use Tax Act and Section 3-70 of the Service Use Tax Act)*
- 4) Example: A manufacturer, that self assesses Use Tax and Service Use Tax directly to the Department, made a qualifying purchase of production related tangible personal property in August 1999 and paid the Use Tax on that purchase to the Department with the manufacturer's August 1999 return. In January 2001, the manufacturer chose to use currently available MPC to satisfy the Use Tax liability that was incurred on that qualifying purchase back in August 1999. The manufacturer elected to report the use of the MPC on line 16a of the manufacturer's sales and use tax return for the month of January 2001 (rather than filing an amended return or claim for credit or refund). The manufacturer must also report the use of that

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credit in the month of January on an Annual Report of Manufacturer's Purchase Credit Used for the year 2001.

(Source: Amended at 28 Ill. Reg. _____, effective _____)

Section 130.332 Automatic Vending Machines

- a) General. Notwithstanding the fact that the sales may be at retail, effective January 1, 2000 and through December 31, 2001, the Retailers' Occupation Tax does not apply to sales of new or used automatic vending machines that prepare and serve hot food and beverages. The exemption also applies to individual replacement parts for these machines. Beginning January 1, 2002 and through June 30, 2003, the Retailers' Occupation Tax does not apply to sales of *machines and parts for machines used in commercial, coin-operated amusement and vending business if a use or occupation tax is paid on the gross receipts derived from the use of the commercial, coin-operated amusement and vending machines.* [35 ILCS 120/2-5(35)]
- b) Exempt Usage of Vending Machines – January 1, 2000 through December 31, 2001. Between January 1, 2000 and December 31, 2001, this exemption exempts from tax only automatic vending machines used in the preparation and serving of hot food and beverages. For purposes of this exemption, an automatic vending machine is an electrically operated machine into which customers insert U.S. legal tender coinage or paper money to cause a food or beverage item to be dispensed, the temperature of which is heated above the ambient temperature at the time it is removed by the customer. The use of vending machines in any other activity will not qualify for this exemption. The use of vending machines to dispense or serve unheated food or beverage products will not be an exempt use and those machines will be subject to tax. The use of vending machines to sell or dispense any non-food items is not an exempt use and those machines will be subject to tax.
- c) Exempt Usage of Vending Machines – On and after January 1, 2002 and through June 30, 2003
 - 1) After December 31, 2001 and through June 30, 2003, the exemption applies to machines and parts for machines used in commercial, coin-operated amusement and vending businesses, so long as the owner, operator or user of the machine incurs a use or occupation tax liability. The following are examples of situations in which the tax liability is

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incurred on machines:

- A) Retailers' Occupation Tax is incurred on the sale of tangible personal property through a vending machine.
 - B) Use Tax liability is incurred on tangible personal property that is awarded as a "prize" resulting from the operation of an amusement machine.
- 2) For those machines or parts where a use or occupation tax is not incurred, the exemption does not apply to sales of those machines or parts for those machines. For example, a seller does not incur Retailers' Occupation Tax on gross receipts derived from sales of items through bulk vending machines. As a result, sales of bulk vending machines and parts for those machines are subject to tax. (See Section 1 of the Act.)
 - 3) For purposes of this exemption, "parts for machines" includes replacement parts.
- d) Restrictions Applicable to All Periods
 - 1) The use of microwave ovens or other devices as units separate and apart from vending machines to heat food or beverages sold by vending machines is not an exempt use and the microwave ovens or other devices will be subject to tax.
 - 2) Constructed foundations or other buildings or structures that support or house vending machines do not qualify for this exemption.
 - e) Purchaser Certification
 - 1) The purchaser of machines or parts affected by this Section shall prepare a certificate of exemption for each transaction stating facts establishing the exemption for that transaction and submit the certificate to the retailer. Between January 1, 2000 and December 31, 2001, the certificate must include the seller's name and address, the purchaser's name and address and a statement that the property purchased will be a vending machine or replacement part used for the preparation and serving of hot food or beverages. After December 31, 2001, the certificate must include the seller's name and address, the purchaser's name and address and a

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statement that the property purchased will be a machine or part used in a commercial, coin-operated amusement or vending business where the owner, operator or user of the machine will incur a use or occupation tax liability. The certificates shall be retained by the retailer and shall be made available to the Department for inspection or audit.

- 2) If all purchases are for qualifying machines or parts as described in this Section, a purchaser may provide a blanket exemption certificate that specifies that all purchases are exempt.

(Source: Amended at 28 Ill. Reg. _____, effective _____)

Section 130.335 Pollution Control Facilities and Low Sulfur Dioxide Emission Coal-Fueled Devices

- a) ~~Through June 30, 2003, notwithstanding~~**Notwithstanding** the fact that the sales may be at retail, sales of pollution control facilities are exempt from the Retailers' Occupation Tax. This exemption extends to and includes the purchase of pollution control facilities by a contractor who retransfers the facilities to his customer in fulfillment of a contract to furnish such pollution control facilities to, and to install them for, his customer. The phrase "pollution control facilities" means any system, method, construction, device or appliance appurtenant thereto sold or used or intended for the primary purpose of eliminating, preventing, or reducing air and water pollution as the term "pollution" is defined in the Environmental Protection Act [415 ILCS 5], or for the primary purpose of treating, pretreating, modifying or disposing of any potential solid, liquid or gaseous pollutant which if released without such treatment, pretreatment, modification or disposal might be harmful, detrimental or offensive to human, plant or animal life, or to property. This exemption includes not only the pollution control equipment itself, but also replacement parts therefor, but does not extend to fuel used in operating any such equipment nor to any other tangible personal property which may be used in some way in connection with such equipment, but which is not an integral part of the equipment itself. If the purchaser or his contractor-installer buys an item that could reasonably qualify for exemption as a pollution control facility for use as a pollution control facility, the purchaser or his contractor-installer should certify this intended use of the item to the seller in order to relieve the seller of the duty of collecting and remitting the tax on the sale, but the purchaser who is buying the item in question allegedly for his use as a pollution control facility will be held liable for the tax by the Department if it is found that such purchaser does not use the item as a pollution

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control facility.

- 1) Asbestos removal systems. This exemption includes devices, materials, and equipment that are integral component parts of an asbestos removal system if the primary purpose of those items is to eliminate, reduce, or prevent pollution. These items may include, but are not limited to:
 - A) ~~protective~~Protective suits or clothing;
 - B) respirators;
 - C) gloves and glove bags;
 - D) filters and vacuum filtration equipment;
 - E) encapsulate materials;
 - F) materials, such as plastic sheeting, lumber, and adhesive tape, that are used to construct containment areas or air locks;
 - G) portable shower units, including water traps and filters, used to decontaminate equipment and personnel;
 - H) plastic bags used for disposal of asbestos; and
 - I) wetting agents used to remove asbestos dust from the air.
- 2) Chemicals used for filtration. This exemption includes any chemical that is primarily utilized for filtration purposes as an integral component of a system for eliminating, reducing, or preventing pollution. Examples of the use of such chemicals include the use of sodium hypochlorite, sodium hydroxide, hydrochloric acid, and nitric acid to filter pollutants in holding tanks and ground limestone mixed with water to remove sulfur dioxide from flue gases.
- 3) Equipment and materials used at landfills. This exemption includes devices, materials, and equipment that are integral component parts of a landfill operation if the primary purpose of those items is to eliminate, reduce, or prevent pollution. These items may include, but are not limited to:

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- A) membranes and liners;
 - B) filters;
 - C) materials used in constructing leachate collection systems;
 - D) materials used in constructing landfill gas flare and blower systems to combust and treat landfill gases;
 - E) litter control fences;
 - F) erosion control materials used to prevent water from entering the landfill site and creating water pollution;
 - G) sweepers used to remove debris from landfill sites; and
 - H) bulldozers and excavators that are used to cover waste materials.
- 4) Pollution control monitoring devices. Pollution control monitoring devices that do not prevent, reduce, or eliminate pollution or treat, pretreat, modify, or dispose of any pollutants do not qualify for the pollution control facilities exemption. However, if the pollution control monitoring devices directly adjust other devices that actually reduce or prevent pollution, the pollution control monitoring devices will qualify for the pollution control facilities exemption.
- b) Low Sulfur Dioxide Emission Coal-Fueled Devices
- 1) Notwithstanding the fact that the sales may be at retail, sales of low sulfur dioxide emission coal-fueled devices are exempt from the Retailers' Occupation Tax. This exemption extends to and includes the purchase of such a device, or materials to construct such a device which are physically incorporated into the device, by a contractor who retransfers the device to his customer in fulfillment of a contract to furnish such a device to, and install it for, his customer.
 - 2) *Low sulfur dioxide emission coal-fueled devices means any device sold or used or intended for the purpose of burning, combusting or converting locally available coal in a manner which eliminates or significantly*

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reduces the need for additional sulfur dioxide abatement that would otherwise be required under State or Federal air emission standards which will be determined by evaluating the output of sulfur dioxide from the device and consultation with the Pollution Control Board to determine if the device meets their standards and could be certified as a low sulfur dioxide emission device. With respect to coal gasification facilities, such devices include all machinery, equipment, structures and related apparatus including coal-feeding equipment designed to convert locally available coal into a low sulfur gaseous fuel and to manage all waste and by-product streams. (Section 1a-1 of the Act)

- 3) The exemption includes only the device and replacement parts. It does not extend to chemicals, catalysts, additives or fuels used in the combustion or conversion process. For devices which are not a part of a coal gasification facility, the exemption will not apply to buildings in which the device may be located, nor to machinery and equipment which may receive, store or process coal prior to its burning, combustion or conversion, nor to machinery and equipment used to distribute coal products, steam or energy from the process or remove waste products resulting from the process. For devices which are a part of a coal gasification facility, the exemption will include all machinery, equipment, structures and related apparatus including coal-feeding equipment and equipment to manage waste and by-product streams. A device will qualify for the exemption even if it serves an industrial, manufacturing or other purpose which confers an economic benefit on the purchaser or is used for other purposes in addition to the burning, combusting or converting coal.
 - 4) The device must use or be intended to use locally available coal, i.e., coal mined in Illinois.
 - 5) Coal conversion includes a variety of processes which produce coal gas, liquid fuel or solid fuels. It does not encompass coal production or preparation techniques such as washing, crushing or pelletization of coal.
 - 6) The device or the operation in which it is used must be subject to State or Federal emission control standards and must, in its operation, eliminate or significantly reduce the need for supplementary sulfur dioxide abatement that would otherwise be required.
- c) Generally, vehicles, such as garbage trucks and refuse hauling trucks, whose

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primary purpose is to haul garbage from one point to another do not qualify for the pollution control facilities exemption. (See *XL Disposal Corporation, Inc. v. Kenneth Zehnder* (304 Ill.App.3d 202, 709 N.E.2d 293 (4th Dist. 1999)).) However, escort trucks that are used primarily as part of a system of preventing or reducing potential pollution in the case of a spill by a vehicle transporting pollutants may qualify for the pollution control facilities exemption. (See *Beelman Truck Company v. Cosentino* (253 Ill.App.3d 420, 624 N.E.2d 454 (5th Dist. 1993)).)

(Source: Amended at 28 Ill. Reg. _____, effective _____)

Section 130.340 Rolling Stock

- a) *Notwithstanding the fact that the sale is at retail, the Retailers' Occupation Tax does not apply to sales of tangible personal property to interstate carriers for hire for use as rolling stock moving in interstate commerce, or lessors under leases of one year or longer executed or in effect at the time of purchase to interstate carriers for hire for use as rolling stock moving in interstate commerce. [35 ILCS 120/2-5(12)] In addition, notwithstanding the fact that the sale is at retail, the Retailers' Occupation Tax does not apply to sales of tangible personal property to owners, lessors, or shippers of tangible personal property that is utilized by interstate carriers for hire for use as rolling stock moving in interstate commerce as long as so used by the interstate carriers for hire. [35 ILCS 120/2-5(13)]* For example, the exemption may also apply to lessors under leases of less than one year's duration and manufacturers who provide tangible personal property (such as shipping containers) to interstate carriers for hire when those interstate carriers use that property as rolling stock moving in interstate commerce.
- b) The term "Rolling Stock" includes the transportation vehicles of any kind of interstate transportation company for hire (railroad, bus line, air line, trucking company, etc.), but not vehicles which are being used by a person to transport its officers, employees, customers or others not for hire (even if they cross State lines) or to transport property which such person owns or is selling and delivering to customers (even if such transportation crosses State lines). Railroad "rolling stock" includes all railroad cars, passenger and freight, and locomotives (including switching locomotives) or mobile power units of every nature for moving such cars, operating on railroad tracks, and includes all property purchased for the purpose of being attached to such cars or locomotives as a part thereof. The exemption includes some equipment (such as containers called

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trailers) which are used by interstate carriers for hire, loaded on railroad cars, to transport property, but which do not operate under their own power and are not actually attached to the railroad cars. The exemption does not apply to fuel nor to jacks or flares or other items that are used by interstate carriers for hire in servicing the transportation vehicles, but that do not become a part of such vehicles, and that do not participate directly in some way in the transportation process. The exemption does not include property of an interstate carrier for hire used in the company's office, such as furniture, typewriters, office supplies and the like.

- c) The rolling stock exemption cannot be claimed by a purely intrastate carrier for hire as to any tangible personal property which it purchases because it does not meet the statutory tests of being an interstate carrier for hire.
- d) Except as provided in subsection (g) of this Section, the~~The~~ exemption applies to vehicles used by an interstate carrier for hire, even just between points in Illinois, in transporting, for hire, persons whose journeys or property whose shipments, originate or terminate outside Illinois on other carriers. The exemption cannot be claimed for an interstate carrier's use of vehicles solely between points in Illinois where the journeys of the passengers or the shipments of property neither originate nor terminate outside Illinois.
- e) From August 14, 1999 through June 30, 2003, pursuant~~Pursuant~~ to Public Act 91-0587, motor vehicles, as defined in Section 1-146 of the Illinois Vehicle Code, trailers, as defined in Section 1-209 of the Illinois Vehicle Code, and all property purchased for the purpose of being attached to those motor vehicles or trailers as a part thereof, will qualify as rolling stock under this Section if they carry persons or property for hire in interstate commerce on 15 or more occasions in a 12-month period. [35 ILCS 120/2-51] The first 12-month qualifying period for the use of a vehicle or trailer begins on the date of registration or titling with an agency of this State, whichever occurs later. If the vehicle or trailer is not required to be titled or registered with an agency of this State and the vehicle or trailer is not titled or registered with an agency of this State, the first 12-month qualifying period for use of that vehicle or trailer begins on the date of purchase of that vehicle or trailer. The vehicle or trailer must continue to be used in a qualifying manner for each consecutive 12-month period. The Department will apply the provisions of this subsection in determining whether such items qualify for exempt status under this Section for all periods in which liability has not become final or for which the statute of limitations for filing a claim has not expired. A liability does not become final until the liability is no longer open to

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protest, hearing, judicial review, or any other proceeding or action, either before the Department or in any court of this State.

- 1) If a vehicle or trailer carries persons or property for hire in interstate commerce on 15 or more occasions in the first 12-month period or in a subsequent 12-month period, but then does not carry persons or property for hire in interstate commerce on 15 or more occasions in a subsequent 12-month period, the vehicle, trailer, or any property attached to that vehicle or trailer upon which the rolling stock exemption was claimed will be subject to tax on its original purchase price. For example, if a vehicle was used in a qualifying manner for the first 12-month period, but was not used in a qualifying manner for the second 12-month period, that vehicle will be subject to tax based upon its original purchase price even if it was then used in a qualifying manner in the third 12-month period.
- 2) For repair or replacement parts to qualify for the rolling stock exemption, the vehicle or trailer upon which those parts are installed must be used in a qualifying manner for the 12-month period in which the purchase of the repair or replacement parts occurred and each consecutive 12-month period thereafter. For example, if repair parts were attached or incorporated into a vehicle that was titled and registered prior to the audit period (beyond the limitations period for issuing a Notice of Tax Liability), that vehicle must be used in a qualifying manner for the 12-month period in which the purchase of the repair or replacement parts occurred and the 12-month periods thereafter in order for the parts to continue to qualify for the exemption. This applies regardless of whether the vehicle was originally used in a qualifying manner for the 12-month periods preceding the 12-month period in which the purchase of the repair or replacement parts occurred.
- 3) For vehicles, trailers, and all property purchased for the purpose of being attached to those motor vehicles or trailers as a part thereof that are *purchased by a lessor*, for lease to an interstate carrier for hire, by lease *executed or in effect at the time of the purchase, the lessor will incur Use Tax upon the fair market value of such property on the date that the property reverts to the use of the lessor* (i.e., the property is no longer subject to a qualifying lease). *However, in determining the fair market value at the time of reversion, the fair market value of such property shall not exceed the original purchase price of the property. The lessor shall file a return with the Department and pay the tax to the Department by the*

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last day of the month following the calendar month [35 ILCS 105/10] in which such property is no longer subject to a qualifying lease. The provisions of this subsection (e)(3) apply equally to owners, lessors or shippers who purchase tangible personal property that is utilized by interstate carriers for hire as rolling stock moving in interstate commerce when such property is no longer used in a qualifying manner.

- 4) The provisions of Public Act 91-0587 did not change the limitations period for issuing a Notice of Tax Liability under the Retailers' Occupation Tax Act [35 ILCS 120/4 and 5] or the Use Tax Act [35 ILCS 105/12] incorporating Sections 4 and 5 of the Retailers' Occupation Tax Act.
 - A) For example, a vehicle was purchased on January 15, 2000 and titled and registered on that date and was used in a qualifying manner for the first 12-month period ending on January 15, 2001. However, that vehicle was not used in a qualifying manner at anytime thereafter. The period in which the Department would be able to issue a Notice of Tax Liability for tax due regarding that vehicle would expire on June 30, 2003.
 - B) For example, a vehicle was purchased for lease to an interstate carrier for hire on August 15, 2000 and was titled and registered on that date. The lease to the interstate carrier for hire was executed or in effect at the time of purchase. The qualifying lease ended on November 15, 2001, and the vehicle was no longer used in a qualifying manner. The period in which the Department would be able to issue a Notice of Tax Liability for tax due regarding that vehicle would expire on December 31, 2003.
- f) When the rolling stock exemption may properly be claimed, the purchaser should give the seller a certification that the purchaser is an interstate carrier for hire, and that the purchaser is purchasing the property for use as rolling stock moving in interstate commerce. If the purchaser is a carrier, the purchaser must include its Interstate Commerce Commission Certificate of Authority number or must certify that it is a type of interstate carrier for hire (such as an interstate carrier of agricultural commodities for hire) that is not required by law to have an Interstate Commerce Commission Certificate of Authority. In the latter event, the carrier must include its Illinois Commerce Commission Certificate of Registration number indicating that it is recognized by the Illinois Commerce Commission as

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an interstate carrier for hire. If the carrier is a type which is subject to regulation by some Federal Government regulatory agency other than the Interstate Commerce Commission, the carrier must include its registration number from such other Federal Government regulatory agency in the certification claiming the benefit of the rolling stock exemption. If the purchaser is a long term lessor (under a lease of one year or more in duration), the purchaser must give the seller of the property a certification to that effect, similarly identifying the lessee interstate carrier for hire. The giving of such a certification does not preclude the Department from going behind it and disregarding it if, in examining such purchaser's records or activities, the Department finds that the certification was not true as to some fact or facts which show that the purchase was taxable and should not have been certified as being tax exempt. The Department reserves the right to require a copy of the carrier's Interstate Commerce Commission or other Federal Government regulatory agency Certificate of Authority or Illinois Commerce Commission Certificate of Registration (or as much of the certificate as the Department deems adequate to verify the fact that the carrier is an interstate carrier for hire) to be provided whenever the Department deems that to be necessary.

g) [Beginning on and after July 1, 2003, Public Act 93-0023 creates a new rolling stock exemption test for motor vehicles, trailers, and repair and replacement parts for motor vehicles and trailers.](#)

1) [Motor vehicles:](#)

A) [For purposes of this Section, the term "motor vehicle" means a motor vehicle as defined in Section 1-146 of the Illinois Vehicle Code. Because of the commercial distribution fee sales tax exemption provided in Section 130.341 of this Part, purchasers of motor vehicles of the second division with a gross vehicle weight in excess of 8,000 pounds and that are subject to the commercial distribution fee imposed under Section 3-815.1 of the Illinois Vehicle Code \[625 ILCS 5/3-815.1\] are exempt from tax regardless of whether those vehicles are used in a manner that qualifies for the rolling stock exemption. All other motor vehicles are subject to the provisions of this Section except that such motor vehicles must meet the following test to qualify as rolling stock instead of the previous test set forth in subsection \(e\). A motor vehicle must, during a 12 month period, carry persons or property](#)

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for hire in interstate commerce for 51 percent of its total trips to qualify for the exemption. [35 ILCS 120/2-51]

- B) Trips by motor vehicles that are only between points in Illinois are not counted as interstate trips when calculating whether the motor vehicle qualifies for the exemption, but such trips are included in the total trips taken within the 12-month period. Such trips that are only between points in Illinois are not counted as interstate trips even if those motor vehicles are transporting, for hire, persons whose journeys or property whose shipments originate or terminate outside of Illinois on other carriers. For an interstate trip to qualify, it must be for hire. However, the total amount of trips taken by a motor vehicle within the 12-month period includes trips for hire and those not for hire. An example of a not for hire trip is when a business uses its truck to transport its own merchandise.
- C) Documentation of all trips taken by the motor vehicle in each 12-month period must be maintained and be made available to the Department upon request. Any use of the motor vehicle in a movement from one location to another, including but not limited to mileage incurred by a motor vehicle returning from a delivery without a load or passengers, shall be counted as a trip. However, the movement of the motor vehicle in relation to the maintenance or repair of that motor vehicle shall not count as a trip. Any mileage shown for a motor vehicle that is undocumented as a trip or trips shall be counted as part of the total trips taken by that motor vehicle. The Department shall use its best judgment and information to determine the number of trips represented by such mileage. A trip whereby a motor vehicle or trailer is returning empty from a trip for hire shall be counted as a trip for hire. A trip whereby a motor vehicle or trailer is moving to a location where property or passengers are being loaded for a trip for hire shall be counted as a trip for hire.
- D) Examples of application of the 51% trips test:
- Example 1: An interstate carrier uses a truck to carry property for hire from Springfield, Illinois to Champaign, Illinois where part of that property is delivered. The carrier continues to Indianapolis, Indiana and delivers part of that property in that city. The truck

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then continues to Gary, Indiana and delivers the remainder of the property in that city. The truck then returns empty to Springfield, Illinois from the delivery in Gary, Indiana. The truck is considered to have made a total of four trips (one trip to Champaign, Illinois, one trip to Indianapolis, Indiana, one trip to Gary, Indiana, and a return trip back to Springfield, Illinois). If this were all the trips that the truck made within the first 12-month period after it was purchased (or was all the trips that truck made in a subsequent 12-month period), it would qualify for the test set forth in this subsection (g) for that 12-month period because it made 3 qualifying trips for hire that terminated or originated outside of Illinois and only one intrastate trip, thereby resulting in a percentage of 75% of its total trips during that first 12-month period. Any repair and replacement parts purchased for the truck during that first 12-month period would also have qualified for the exemption.

Example 2: An interstate carrier uses a truck to carry property for hire from Chicago, Illinois to Joliet, Illinois where that property is delivered. The carrier then continues to Gary, Indiana and picks up property for use by that carrier's business. The carrier then returns to Chicago, Illinois. The truck is considered to have made a total of three trips (one to Joliet, Illinois, one to Gary, Indiana, and a return trip to Chicago, Illinois). If this were all the trips that the truck made within the first 12-month period after it was purchased (or was all the trips that truck made in a subsequent 12-month period), it would not qualify for the test set forth in this subsection (g) for that 12-month period because it made no qualifying trips for hire that terminated or originated outside of Illinois.

- E) Motor vehicles must continue to be used in a qualifying manner for each consecutive 12-month period subject to the limitations period for issuing a Notice of Tax Liability under the Retailers' Occupation Tax Act [35 ILCS 120/4 and 5]; the Use Tax Act [35 ILCS 105/12] (incorporating Sections 4 and 5 of the Retailers' Occupation Tax Act); the Service Occupation Tax Act [35 ILCS 115/12] (incorporating Sections 4 and 5 of the Retailers' Occupation Tax Act); and the Service Use Tax Act [35 ILCS

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110/12] (incorporating Sections 4 and 5 of the Retailers' Occupation Tax Act).

- F) When motor vehicles and trailers that are purchased by a lessor, for lease to an interstate carrier for hire, by lease executed or in effect at the time of the purchase are no longer used in a qualifying manner, the lessor will incur Use Tax upon the fair market value of such property on the date that the property reverts to the use of the lessor (i.e., the property is no longer subject to a qualifying lease). However, in determining the fair market value at the time of reversion, the fair market value of such property shall not exceed the original purchase price of the property. The lessor shall file a return with the Department and pay the tax to the Department by the last day of the month following the calendar month [35 ILCS 105/10] in which such property is no longer subject to a qualifying lease. The provisions of this subsection (g)(1)(F) apply equally to owners, lessors or shippers who purchase tangible personal property that is utilized by interstate carriers for hire as rolling stock moving in interstate commerce when such property is no longer used in a qualifying manner.
- 2) Trailers – For purposes of this Section, the term “trailer” means a trailer as defined in Section 1-209 of the Illinois Vehicle Code. The test provided in subsection (g)(1) of this Section does not apply to trailers.
- 3) Repair and replacement parts for motor vehicles and trailers
- A) Repair and replacement parts for motor vehicles – repair and replacement parts purchased on and after July 1, 2003 must meet the test regarding motor vehicles described in subsection (g)(1) of this Section to qualify for the rolling stock exemption.
- B) Repair and replacement parts for trailers – repair and replacement parts purchased on and after July 1, 2003 are not subject to the test provided in subsection (g)(1).
- 4) Application of 51% test to motor vehicles and trailers that are currently in a 12-month period under the 15-trip test

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- A) Motor vehicles that were subject to the 15-trip test described in subsection (e) prior to July 1, 2003 will remain subject to such 15-trip test for the remainder of their current 12-month period only if the last 6 months of their 12-month period began on or after January 1, 2003 and before July 1, 2003. If the first 6 months of that 12-month period began on or after January 1, 2003 and before July 1, 2003, then the new 51% test provided in subsection (g)(1) will apply for such 12-month period. Any 12-month period beginning on or after July 1, 2003 is subject to the 51% test provided in subsection (g)(1).
- B) Trailers that were subject to the 15-trip test described in subsection (e) prior to July 1, 2003 will remain subject to such 15-trip test for the remainder of their current 12-month period only if the last 6 months of that 12-month period began on or after January 1, 2003 and before July 1, 2003. If the first 6 months of their 12-month period began on or after January 1, 2003 and before July 1, 2003, then the 15-trip test will no longer apply beginning July 1, 2003.

(Source: Amended at 28 Ill. Reg. _____, effective _____)

Section 130.345 Oil Field Exploration, Drilling and Production Equipment

a) General

- 1) Notwithstanding any other provision of this Section, the exemption provided in this Section is effective through June 30, 2003. On and after July 1, 2003, the tax applies to sales of new or used oil field exploration, drilling, and production equipment. Prior to June 25, 1996, notwithstanding the fact that the sales may be at retail, the Retailers' Occupation Tax Act does not apply to sales of new or used oil field exploration, drilling, and production equipment costing \$250 or more, including rigs and parts of rigs; rotary rigs; cable tool rigs; workover rigs; pipe and tubular goods, including casing and drill strings; pumps and pump-jack units; storage tanks and flow lines; any individual replacement part for oil field exploration, drilling, and production equipment, if the replacement part costs in excess of \$250; and machinery and equipment purchased for lease; but excluding motor vehicles required to be registered pursuant to the Illinois Vehicle Code. On and after June 25, 1996, the exemption is not conditioned upon the \$250 purchase threshold

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requirement.

- 2) Oil field exploration, drilling and production
 - A) This exemption applies only to equipment used primarily in oil field exploration, drilling and production. Use of the equipment in any other type of exploration, drilling or mineral production will not be a qualified use and such equipment will be subject to tax. The equipment used in drilling, production or exploration of minerals, coal or water is not a qualified use of such equipment and will be subject to the full rate of tax. Excluded from this exemption are motor vehicles required to be registered pursuant to the Illinois Motor Vehicle Code [625 ILCS 5]. Special mobile equipment other than motor vehicles may qualify for the exemption if they are used primarily in oil field exploration, drilling or production. The exemption does not include supplies (such as drilling mud, well cement, acid, chemicals or explosives), coolants, lubricants, adhesives, solvents, items of personal apparel (such as gloves, shoes, glasses, goggles, coveralls, aprons, masks, mask air filters, belts, harnesses or holsters), coal, fuel oil, electricity, natural gas, artificial gas, steam, gasoline, diesel fuel, refrigerants, water or chemical additives to crude oil.
 - B) "Oil field exploration" means the search for oil or natural gas. Exploration includes: Seismic studies, core testing and the drilling of test wells (wildcat wells).
 - C) "Drilling" means the act of boring a hole through which oil or gas may be produced if encountered in commercial quantities.
 - D) "Production" means the act or process of producing oil or gas.
 - E) "Drilling rigs" include rotary, cable tool and workover rigs and parts thereof.
 - F) "Production lease" means the land described in a lease instrument on which drilling for the production of oil or gas occurs.
 - G) "Pipe and tubular goods" include casing, drill strings, rods and wire rope. Prior to June 25, 1996, "pipe and tubular goods" sold

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by the linear foot qualify for the reduction if the cost of the total length sold in an individual transaction or sale exceeds \$250. On and after June 25, 1996, there is no such limitation.

- H) "Production equipment" includes gasoline, diesel and electric engines used as a power source, pumps and pump-jack units and parts thereof, storage tanks, flow lines and parts thereof located on the producing lease.
- I) "Kits" means kits comprised of several parts which are ordered from a manufacturer, inventoried and sold by a retailer as a single item, and items, such as a pump, which are assembled by the retailer at the time of sale from components selected by the purchaser and which are sold as a unit. Prior to June 25, 1996, kits will be treated as a single item for the purposes of the \$250 per individual item limitation. On and after June 25, 1996, there is no such limitation.

b) Nonexempt Illustrations

By way of illustration and not limitation, the following activities will not be considered oil field exploration, drilling, or use of production equipment:

- 1) The use of equipment in the construction, reconstruction, alteration, remodeling, servicing, repairing, maintenance or improvement of real estate. Material, such as steel, concrete, rock and other building material, will not qualify for the exemption;
- 2) the use of equipment in general maintenance or repair work on exploration, drilling or production equipment;
- 3) the use of equipment in research and development for drilling or oil field production or exploration;
- 4) the use of equipment off the production lease to store, convey, handle or transport oil;
- 5) the use of equipment, trailers or structures in management, sales or other nonproduction, nonoperational activities including inventory control, production or drilling scheduling, purchasing, receiving, accounting, fiscal management, communications, security, marketing, product exhibition and

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promotion, personnel recruitment, selection or training;

- 6) the use of equipment to prevent or fight fires, protective equipment such as face masks, helmets, gloves, coveralls, goggles, gas masks or for safety or accident protection or first-aid, even though such equipment may be required by law;
 - 7) the use of equipment for ventilation, heating or illumination not required by the exploration, drilling or production process.
- c) Sales to Lessors of Oil Field Exploration, Drilling and Production Equipment
- 1) For the exemption to apply, the purchaser need not, himself, employ the equipment in oil field exploration, drilling or production. If the purchaser leases that equipment to a lessee-explorer, driller or producer who uses it in a qualified manner, the sale to the purchaser-lessor will be eligible for the reduced rate of tax. A supplier may exclude such sales from his taxable gross receipts provided the purchaser-lessor provides to him a properly completed certificate and the information contained therein would support an exemption if the sale were made directly to the lessee-explorer or driller or producer.
 - 2) Should a purchaser-lessor subsequently lease the equipment to a lessee who does not use it in a manner that would qualify for the reduction, the purchaser-lessor will become liable for the tax which he previously did not pay.
- d) Certificates of Qualified Use

Certificates must be executed by the purchaser at the time of purchase. The certificate must include the seller's name and address, the purchaser's name and address and a statement that the property purchased will be used for oil field exploration or oil field drilling or as oil field production equipment. Retailers may accept blanket certificates, but have the responsibility to obtain, and must maintain, all certificates as part of their books and records. An item of oil field production, oil field drilling or oil field exploration equipment, which is initially used in oil field production, oil field drilling or oil field exploration and having been so used for less than one-half of its useful life, if converted to nonqualified uses, will become subject to tax at the time of conversion.

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(Source: Amended at 28 Ill. Reg. _____, effective _____)

Section 130.350 Coal Exploration, Mining, Off Highway Hauling, Processing, Maintenance and Reclamation Equipment

- a) General. Notwithstanding any other provision of this Section, the exemption provided in this Section is effective through June 30, 2003. On and after July 1, 2003, the tax applies to sales of coal exploration, mining, off highway hauling, processing, maintenance and reclamation equipment. Prior to June 24, 1996, notwithstanding the fact that the sales may be at retail, the Retailers' Occupation Tax Act does not apply to sales of coal exploration, mining, off highway hauling, processing, maintenance and reclamation equipment costing \$250 or more. The exemption also applies to individual replacement parts for coal exploration, mining, off highway hauling, processing, maintenance and reclamation equipment when the replacement part costs \$250 or more. Equipment and parts sold by the linear foot or similar measurement qualify for the exemption if the cost of the total length sold in an individual transaction or sale exceeds \$250. The exemption also applies to equipment and replacement parts costing \$250 or more purchased for lease if those items are used primarily (more than 50%) in the activities noted above. The exemption does not apply to motor vehicles required to be registered pursuant to the Illinois Vehicle Code [625 ILCS 5]. On and after June 24, 1996, the exemption is not conditioned upon the \$250 purchase threshold requirement.
- 1) This exemption applies only to equipment used primarily in coal exploration, mining, off highway hauling, processing, maintenance and reclamation. Use of the equipment in any other exploration, mining, off highway hauling, processing, maintenance or reclamation will not qualify for this exemption. Excluded from this exemption are motor vehicles required to be registered pursuant to the Illinois Vehicle Code. Special mobile equipment other than motor vehicles may qualify for the exemption if it is used primarily in coal exploration, mining, off highway hauling, processing, maintenance or reclamation. This exemption does not include supplies (such as chemicals, rust inhibitors, adhesives and explosives), coolants, lubricants, items of personal apparel (such as gloves, shoes, hats, helmets, coveralls, masks, mask air filters, belts, harnesses or holsters) or fuel of any type.
 - 2) "Coal Exploration" means the search for coal. Exploration includes, but is not limited to, excavating and drilling to locate coal deposits.

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- 3) "Mining" means the extraction of coal from the earth by underground and surface mining and includes the extraction of coal by the mine owner or operator or his nonpurchaser successors from the waste or residue of prior mining.
- 4) "Off Highway Hauling" means carrying or transporting and would include transport of overburden, waste material, including gob from the processing facility for disposal, and coal from the coal seam to the processing facility by conveyors or unlicensed vehicles.
- 5) "Processing" means preparation activities performed directly on the coal which are necessary for converting coal into a finished product so that it is ready for sale. Processing includes, but is not limited to, sizing, crushing, drying and washing.
- 6) "Maintenance" means keeping coal exploration, mining, off highway hauling, processing, maintenance and reclamation equipment in a state of repair and efficiency.
- 7) "Reclamation" means conditioning areas affected by mining operations. Examples of reclamation activities include, but are not limited to, backfilling, grading, seeding and planting.
- 8) "Replacement Parts" means parts that are used to replace parts of qualifying equipment and that require periodic replacement. To be considered a replacement part, the part must be purchased for the purpose of being installed and must, in fact, become a physical component part of coal exploration, mining, off highway hauling, processing, maintenance or reclamation equipment. Prior to June 24, 1996, there is a requirement that such replacement parts cost \$250 or more. On and after June 24, 1996, there is no such limitation.
- 9) "Kits" means commercially-packaged sets of parts which are ordered from a manufacturer, inventoried, and sold by a retailer as a single item. Prior to June 24, 1996, a kit will be treated as a single item for purposes of the \$250 per item limitation. The \$250 per item limitation is also satisfied when an item to be used primarily in a qualifying activity is assembled by the retailer at the time of sale from components selected by the purchaser and which is sold as a unit if the unit, as sold, costs \$250 or more. On and

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after June 24, 1996, there is no such limitation. An exempt example would be a "tire assembly" comprised of the rim, tire, foam filling and valve stem.

- b) Exempt Activities
By way of illustration and not limitation, the following activities will be considered to constitute coal exploration, mining, off highway hauling, processing or maintenance:
- 1) Coal is produced in a surface mining operation that begins with the clearing of surface obstacles and overburden from the land above the coal deposit to be mined, continues with the removal of waste material and with the extraction of the coal, continues with the transportation from the coal seam to the processing facility, continues further with the refilling and grading of the mined area with overburden and waste material from a subsequently mined area, continues further with the processing of the coal, and ends with the stockpiling of the coal to allow moisture to drain and evaporate from the washed coal. By way of illustration and not limitation, the following equipment is exempt:
 - A) Equipment used to drill holes for blasting material to dislodge the overburden and to transport the blasting material.
 - B) Equipment used to remove overburden and other waste materials from the pit to be mined.
 - C) Equipment used to modify the energy purchased for the surface mining process if the equipment is used to modify the energy for use on exempt equipment.
 - D) Pumps and hose used to remove water or to divert water from the active pit area.
 - E) Equipment used to load the overburden, waste material or coal to be transported to the processing facility into off highway haulage trucks or onto a conveyor system.
 - F) Unlicensed off highway haulage trucks or a conveyor system to transport overburden, waste material or coal to the processing facility.

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- G) Equipment used in grading, refilling and covering over a previously mined pit with the overburden removed from the next pit being mined.
 - H) Tangible personal property used in or for the purpose of temporarily storing raw coal before processing is exempt if the raw coal is ultimately processed for resale and is in fact resold.
 - I) Equipment used in a coal wash plant to clean the coal prior to sale to customers. Equipment used primarily in the cleaning, sizing, or grading of coal in a coal preparation plant may qualify as manufacturing machinery and equipment (see Section 130.330).
 - J) Equipment used to blend different grades of coal together so that the final product meets customer specifications regarding quality and sulfur content.
- 2) Coal is produced in an underground mining operation that begins with the boring of a shaft from the surface to the coal deposit to be mined, continues with the removal of waste material and the extraction of coal, continues further with the transportation from the coal seam to the processing facility, continues further with the installation of roof supports and the coating of walls with rock dust to prevent mine explosions and collapse, continues further with the processing of coal and disposal of waste material from the mine and processing facility, and ends with the stockpiling of coal to allow moisture to drain and evaporate from the washed coal. By way of illustration and not limitation, the following equipment is exempt:
- A) Continuous miners used to bore the shaft, cut the coal and load it into shuttle cars.
 - B) Shuttle cars used to transport the coal from the continuous miner to the feeder-breaker at the end of a conveyor belt or other transportation system.
 - C) The feeder-breaker which breaks the large lumps of coal and feeds the coal onto the conveyor belt which carries the coal outside the mine where it is stockpiled or transported to the processing facility.

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- D) Equipment used to modify the energy purchased for the underground mining process if the equipment is used to modify the energy for use on exempt equipment.
- E) Pumps and hose used to remove water from the underground mine.
- F) Equipment used to install roof bolt supports and side rib bolt supports to prevent mine collapse.
- G) Equipment used to coat mine walls with inert limestone as the coal is removed to prevent explosions caused by the escape of volatile materials.
- H) Equipment installed as improvements to real estate in underground mining such as elevators, rail, ventilating and illuminating systems.
- I) The use of equipment in the construction, reconstruction, alteration, remodeling, servicing, repairing, maintenance or improvement of underground mine structures. Materials, such as lumber, steel, concrete, rock and other building materials, qualify for the exemption only when used in underground mine structures.
- J) Additions to exempt underground rail conveyors, ventilating and illumination systems due to the progression of mining will be considered as exempt, as long as, prior to June 24, 1996, the addition is valued at \$250 or more. On and after June 24, 1996, there is no such limitation.
- K) Longwall equipment consisting of shields, shearers, face conveyors and related equipment.
- L) Tangible personal property used in or for the purpose of temporarily storing raw coal before processing is exempt if the raw coal is ultimately processed for resale and is in fact resold.
- M) Equipment used in a coal wash plant to clean the coal prior to sale to customers. Equipment used primarily in the cleaning, sizing, or grading of coal in a coal preparation plant may qualify as manufacturing machinery and equipment (see Section 130.330).

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- N) Equipment used to blend different grades of coal together so that the final product meets customer specifications regarding quality and sulfur content.
 - O) Roof bolt supports and side rib bolt supports to prevent mine collapse.
- 3) By way of illustration and not limitation, the following maintenance equipment is exempt:
- A) Unlicensed maintenance and welding trucks used for field repair of exempt equipment.
 - B) Lathes, drill presses, air compressors and welders used to work repair parts.
 - C) Mobile and overhead cranes.
- 4) By way of illustration and not limitation, the following coal exploration equipment is exempt unless registered pursuant to the Illinois Vehicle Code:
- A) Drill rigs used to drill exploration core holes.
 - B) Water trucks used in the drilling process.
 - C) Winch and casing trucks used in the drilling process.
 - D) Field maintenance trucks used to make repairs on field equipment.
 - E) Air compressors.
- c) **Nonexempt Activities**
By way of illustration and not limitation, the following activities will not be considered to constitute coal exploration, mining, off highway hauling, processing or maintenance:
- 1) The use of equipment in the construction, reconstruction, alteration, remodeling, servicing, repairing, maintenance or improvement of real

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estate except for underground mine structures. Material, such as lumber, steel, concrete, rock and other building materials, will not qualify for the exemption except when used in underground mine structures;

- 2) the use of equipment in research and development for new uses of coal;
 - 3) the use of equipment, trailers, sheds or structures in management, sales or other nonproduction, nonoperational activities including production or extraction scheduling, purchasing, receiving, accounting, fiscal management, communications, security, marketing, product exhibition and promotion, personnel recruitment, selection or training;
 - 4) the use of equipment to prevent or fight fires or other mining hazards, protective supplies such as face masks, gas masks, helmets, gloves, coveralls, goggles, or first aid equipment and supplies, even though such equipment and supplies may be required by law;
 - 5) the use of equipment for general ventilation, heating, cooling, climate control or general illumination not specifically required for the exploration, mining, off highway hauling, processing, maintenance or reclamation operation;
 - 6) facilities for storing coal after extraction and processing;
 - 7) ~~front-end~~Front-end loaders, cranes, equipment used to load coal onto trucks, railcars or barges for delivery to customers.
- d) Sales to Lessors of Coal Exploration, Mining, Off Highway Hauling, Processing, Maintenance and Reclamation Equipment
- 1) For the exemption to apply, the purchaser need not, himself, employ the equipment in coal exploration, mining, off highway hauling, processing, maintenance or production. If the purchaser leases the equipment to a lessee who uses it primarily in a qualified manner, the sale to the purchaser-lessor will be eligible for the exemption.

A supplier may exclude such sales from his taxable gross receipts if the purchaser-lessor provides him with a properly completed certificate and the information contained therein would support a reduction if the sale were made directly to the lessee.

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- 2) Should a purchaser-lessor subsequently lease the equipment to a lessee who does not use it primarily in a way that would qualify for the reduction, the purchaser-lessor will become liable for the tax which he previously did not pay.
- e) **Purchaser Certification**
Certificates must be executed by the purchaser. The certificate must include the seller's name and address, the purchaser's name and address and a statement that the property purchased will be used primarily for coal exploration, mining, off highway hauling, processing, maintenance or reclamation. Sellers may accept blanket certificates, but have the responsibility to obtain and keep all certificates as part of their books and records. If a retailer accepts the certificate and the purchaser does not, in fact, use the equipment in a qualifying manner, the purchaser will be liable to the Department for the tax. Equipment which is initially used primarily in a qualifying manner and, having been so used for less than one-half of its useful life, is converted to nonqualified uses, will become subject to tax at the time of conversion. Replacement parts purchased initially for use in a qualifying manner and used in a nonqualifying use will become subject to tax at the time of use.

(Source: Amended at 28 Ill. Reg. _____, effective _____)

Section 130.351 Aggregate Manufacturing

- a) General. ~~Through June 30, 2003, notwithstanding~~ ~~Notwithstanding~~ the fact that the sales may be at retail, the Retailers' Occupation Tax Act does not apply to sales of aggregate exploration, mining, off highway hauling, processing, maintenance and reclamation equipment used for the exploration and mining of mineral deposits and for the manufacture of resultant aggregate products. The exemption also applies to individual replacement parts for aggregate exploration, mining, off highway hauling, processing, maintenance and reclamation equipment. The exemption also applies to equipment and replacement parts purchased for lease if those items are used primarily (more than 50%) in the activities noted above. The exemption does not apply to motor vehicles required to be registered pursuant to the Illinois Vehicle Code [625 ILCS 5].
- 1) "Aggregate" shall mean any mineral deposit or finished product including but not limited to sand, gravel, stone, clay, industrial minerals, composites or other mineral solids, except coal.

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- 2) This exemption applies only to equipment used primarily in aggregate exploration, mining, off highway hauling, processing, maintenance and reclamation. Use of the equipment in any other exploration, mining, off highway hauling, processing, maintenance or reclamation will not qualify for this exemption. Excluded from this reduction are motor vehicles required to be registered pursuant to the Illinois Vehicle Code. Special mobile equipment other than motor vehicles may qualify for the exemption if it is used primarily in aggregate exploration, mining, off highway hauling, processing, maintenance or reclamation. This exemption does not include supplies (such as chemicals, rust inhibitors, adhesives and explosives), coolants, lubricants, items of personal apparel (such as gloves, shoes, hats, helmets, coveralls, masks, mask air filters, belts, harnesses or holsters) or fuel of any type.
- 3) "Aggregate Exploration" means the search for aggregate. Exploration includes, but is not limited to, excavating, dredging, and drilling to locate aggregate deposits.
- 4) "Mining" means the extraction of aggregate from the earth by underground and surface mining and includes the extraction of aggregate by the mine owner or operator or his nonpurchaser successors from the waste or residue of prior mining.
- 5) "Off Highway Hauling" means carrying or transporting and would include transport of overburden or waste material, including byproduct materials from the processing facility for disposal and aggregate from the aggregate deposit to the processing facility by conveyors or unlicensed vehicles.
- 6) "Processing" means preparation activities performed directly on the aggregate that are necessary for converting aggregate into a finished product so that it is ready for sale. Processing includes, but is not limited to, sizing, crushing, drying and washing.
- 7) "Maintenance" means keeping aggregate exploration, mining, off highway hauling, processing, maintenance and reclamation equipment in a state of repair and efficiency.
- 8) "Reclamation" means conditioning areas affected by mining operations. Examples of reclamation activities include, but are not limited to,

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backfilling, grading, seeding and planting.

- 9) "Replacement Parts" means parts that are used to replace parts of qualifying equipment that require periodic replacement. To be considered a replacement part, the part must be purchased for the purpose of being installed and must, in fact, become a physical component part of aggregate exploration, mining, off highway hauling, processing, maintenance or reclamation equipment.
 - 10) "Kits" means commercially packaged sets of parts that are ordered from a manufacturer, inventoried, and sold by a retailer as a single item. An exempt example would be a "tire assembly" comprised of the rim, tire, foam filling and valve stem.
- b) Exempt Activities. By way of illustration and not limitation, the following activities will be considered to constitute aggregate exploration, mining, off highway hauling, processing or maintenance:
- 1) Aggregate is produced in a surface mining operation that begins with the clearing of surface obstacles and overburden from the land above the aggregate deposit to be mined, continues with the removal of waste material and with the extraction of the aggregate, continues with the transportation from the aggregate deposit to the processing facility, continues further with the refilling and grading of the mined area with overburden and waste material, continues further with the processing of the aggregate, and ends with the stockpiling of the aggregate. By way of illustration and not limitation, the following equipment is exempt:
 - A) Equipment used to drill and load holes for blasting material used to fracture aggregate for extraction and to transport the blasting material.
 - B) Equipment used to remove overburden and other waste materials from the deposit to be mined.
 - C) Equipment used to modify the energy purchased for the surface mining process if the equipment is used to modify the energy for use on exempt equipment.
 - D) Pumps, hoses, piping and discharge apparatus, used in the

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- movement or removal of water or to divert water from the active mine area.
- E) Equipment used to load the overburden, waste material or aggregate to be transported to the processing facility into off highway haulage trucks or onto a conveyor system.
 - F) Equipment used to extract aggregate from the earth.
 - G) Unlicensed off highway haulage trucks or a conveyor system to transport overburden, waste material or aggregate to the processing facility.
 - H) Equipment used to backfill, grade, seed, plant or otherwise reclaim previously mined land.
 - I) Crushing, screening and other equipment used to beneficiate and size aggregate products.
 - J) Tangible personal property used in or for the purpose of temporarily storing aggregate before processing is exempt if the aggregate is ultimately processed for resale and is in fact resold.
 - K) Equipment used in an aggregate wash plant to clean the aggregate prior to sale to customers.
 - L) Equipment used to blend different grades of aggregate together so that the final product meets customer specifications.
 - M) Electrical cable that is part of an electrical distribution system supplying electricity to exempt equipment in the field.
- 2) Aggregate is produced in an underground mining operation that begins with creating access from the surface to the aggregate deposit to be mined, continues further with the installation of roof supports, continues with the removal of waste material and the extraction of aggregate, continues further with the transportation from the aggregate deposit to the processing facility, continues further with the processing of aggregate and disposal of waste material from the mine and processing facility, and ends with the stockpiling of aggregate. By way of illustration and not limitation, the

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following equipment is exempt:

- A) Equipment used to create access to the aggregate deposit and load aggregate into conveyor belts, trucks or other conveyances used to transport aggregate from the deposit to the processing operation.
- B) Conveyor belts, trucks or other conveyances used to transport aggregate from the deposit to the processing operation.
- C) The feeder and crusher used to break large pieces of aggregate.
- D) Equipment used to modify the energy purchased for the underground mining process if the equipment is used to modify the energy for use on exempt equipment.
- E) Pumps, hoses, piping and discharge apparatus, used in the movement or removal of water or to divert water from the underground mine area.
- F) Equipment used to install roof bolt supports and side rib bolt supports, and scaling prior to roof bolting, to prevent mine collapse.
- G) Equipment used to coat mine walls with inert material for loose rock safety.
- H) Equipment installed as improvements to real estate for mining, such as elevators and rail, ventilating and illuminating systems.
- I) Additions to exempt underground rail conveyors and ventilating and illumination systems due to the progression of mining.
- J) Equipment used to drill and load holes for blasting material used to fracture aggregate for extraction and to transport the blasting material.
- K) Equipment used for transporting aggregate to above-ground facilities.
- L) Tangible personal property used in or for the purpose of

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temporarily storing aggregate before processing if the aggregate is ultimately processed for resale and is in fact resold.

- M) Equipment used in an aggregate wash plant to clean the aggregate prior to sale to customers.
 - N) Equipment used to blend different grades of aggregate together so that the final product meets customer specifications.
 - O) Electrical cable that is part of an electrical distribution system supplying electricity to exempt equipment in the field.
 - P) Roof bolt supports and side rib bolt supports to prevent mine collapse.
- 3) By way of illustration and not limitation, the following maintenance equipment is exempt:
- A) Unlicensed maintenance and welding trucks used for field repair of exempt equipment.
 - B) Lathes, drill presses, air compressors and welders used to attach repair parts.
 - C) Mobile and overhead cranes.
 - D) Equipment used for dust suppression.
- 4) By way of illustration and not limitation, the following aggregate exploration equipment is exempt unless registered pursuant to the Illinois Vehicle Code:
- A) Drill rigs used to drill exploration core holes.
 - B) Water trucks used in the drilling process.
 - C) Winch and casing trucks used in the drilling process.
 - D) Field maintenance trucks used to make repairs on field equipment.

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- E) Air compressors.
- c) Nonexempt Activities
By way of illustration and not limitation, the following activities will not be considered to constitute aggregate exploration, mining, off highway hauling, processing or maintenance:
- 1) The use of equipment in the construction, reconstruction, alteration, remodeling, servicing, repairing, maintenance or improvement of real estate except for underground mine structures. Material, such as lumber, steel, concrete, rock and other building materials, will not qualify for the exemption except when used in underground mine structures;
 - 2) the use of equipment in research and development for new uses of aggregate;
 - 3) the use of equipment, trailers, sheds or structures in management, sales or other nonproduction, nonoperational activities including production of extraction scheduling, purchasing, receiving, accounting, fiscal management, communications, security, marketing, product exhibition and promotion, and personnel recruitment, selection or training;
 - 4) the use of equipment to prevent or fight fires or other mining hazards and protective supplies such as face masks, gas masks, helmets, gloves, coveralls, goggles, or first aid equipment and supplies, even though such equipment and supplies may be required by law;
 - 5) the use of equipment for general ventilation, heating, cooling, climate control or general illumination not specifically required for the exploration, mining, off highway hauling, processing, maintenance or reclamation operation;
 - 6) facilities for storing aggregate after extraction and processing;
 - 7) front-end loaders, cranes and equipment used to load aggregate onto trucks, railcars or barges for delivery to customers.
- d) Sales to Lessors of Aggregate Exploration, Mining, Off Highway Hauling, Processing, Maintenance and Reclamation Equipment

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- 1) For the exemption to apply, the purchaser need not, himself, employ the equipment in aggregate exploration, mining, off highway hauling, processing, maintenance or production. If the purchaser leases the equipment to a lessee who uses it primarily in a qualified manner, the sale to the purchaser-lessor will be eligible for the exemption. A supplier may exclude such sales from his taxable gross receipts if the purchaser-lessor provides him with a properly completed certificate and the information contained therein would support a reduction if the sale were made directly to the lessee.
 - 2) Should a purchaser-lessor subsequently lease the equipment to a lessee who does not use it primarily in a way that would qualify for the reduction, the purchaser-lessor will become liable for the tax that he previously did not pay. The tax will be assessed upon the fair market value of the equipment at the time of conversion.
- e) **Purchaser Certification**
Certificates must be executed by the purchaser. The certificate must include the seller's name and address, the purchaser's name and address and a statement that the property purchased will be used primarily for aggregate exploration, mining, off highway hauling, processing, maintenance or reclamation. Sellers may accept blanket certificates, but have the responsibility to obtain and keep all certificates as part of their books and records. If a retailer accepts the certificate and the purchaser does not, in fact, use the equipment in a qualifying manner, the purchaser will be liable to the Department for the tax. Equipment that is initially used primarily in a qualifying manner and, having been so used for less than one-half of its useful life, is converted to nonqualified uses, will become subject to tax at the time of conversion. Replacement parts purchased initially for use in a qualifying manner and used in a nonqualifying use will become subject to tax at the time of use.

(Source: Amended at 28 Ill. Reg. _____, effective _____)

SUBPART E: RETURNS

Section 130.551 Prepayment of Retailers' Occupation Tax on Motor Fuel

- a) Every distributor, supplier or other reseller of motor fuel registered under the Motor Fuel Tax Law shall remit the Retailers' Occupation Tax prepayment due from a person engaged in the business of selling any motor fuel, except liquid

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propane gas, at retail and who is not a licensed distributor or supplier, as defined in Section 1.2 or 1.14, respectively, of the Motor Fuel Tax Law [35 ILCS 505/1.2 and 1.14].

- b) Before July 1, 2000 and then beginning on January 1, 2001 through June 30, 2003 and thereafter, the Retailers' Occupation Tax paid to such distributor, supplier or other reseller of motor fuel shall be an amount equal to four cents per gallon of the motor fuel, except gasohol as defined in Section 2-10 of the Act which shall be an amount equal to 3 cents per gallon, purchased from such distributor, supplier or other reseller. Beginning on July 1, 2003 and thereafter, the Retailers' Occupation Tax paid to the distributor, supplier, or other reseller shall be an amount equal to \$0.06 per gallon of the motor fuel; except that, for gasohol as defined in Section 2-10 of the Act, the tax shall be an amount equal to \$0.05 per gallon, purchased from the distributor, supplier, or other reseller. Beginning on July 1, 2000 and through December 31, 2000, the Retailers' Occupation Tax paid to such distributor, supplier or other reseller of motor fuel shall be an amount equal to one cent per gallon of the motor fuel and of gasohol as defined in Section 2-10 of the Act.
- c) The distributor, supplier or other reseller required to remit such Retailers' Occupation Tax shall file returns and deliver statements of the tax paid in accordance with Sections 2e and 2f of the Act.
- d) The vendor's discount provided in Section 3 of the Retailers' Occupation Tax Act shall not apply to the amount of prepaid tax which is remitted to the Department as required by 35 ILCS 120/2d, 2e and 2f.

(Source: Amended at 28 Ill. Reg. _____, effective _____)

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- 1) Heading of the Part: Household Goods Carriers
- 2) Code Citation: 92 Ill. Adm. Code 1457
- 3)

<u>Section Numbers</u> :	<u>Adopted Action</u> :
1457.10	Amendment
1457.80	Amendment
1457.90	Amendment
1457.620	Amendment
1457.1020	Amendment
- 4) Statutory Authority: Implementing Sections 18c-1202 and 18c-2107 and authorized by Section 18c-1202 of the Illinois Commercial Transportation Law [625 ILCS 5/18c-1202 and 18c-2107]
- 5) Effective Date of Amendments: March 1, 2004
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Do these amendments contain incorporations by reference? No
- 8) Copies of these adopted amendments, including any material incorporated by reference, are on file and available for public inspection at the Illinois Commerce Commission, Transportation Division, 527 East Capitol Avenue, Springfield, Illinois 62701.
- 9) Notice of Proposal Published in Illinois Register: June 20, 2003; at 27 Ill. Reg. 9341
- 10) Has JCAR issued a Statement of Objection to these amendments? No
- 11) Differences between proposal and final version: The following changes were made in response to comments received during the First Notice period:

Proposed Section 1457.350: This new section titled Mediation – Arbitration was deleted.

Definition “Mediation-Arbitration” proposed in Section 1457.310 was deleted.

In addition, various technical, typographical, grammatical and form changes were made in response to the comments from JCAR.

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- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes
- 13) Will these amendments replace any emergency amendments currently in effect? No
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Amendments? The amendments make several changes to the rules applicable to Household Goods Carriers that are regulated by the Illinois Commerce Commission. The amendments:
- specify that it is the Motor Carrier Employee Board that has the responsibility of issuing the extension of the Temporary household goods authority;
 - allow a member or manager of an LLC or an officer of a corporation to take the pre-licensure exam;
 - specify that household goods movers who advertise insurance and personal property storage must be properly licensed, and that maintenance of statutorily required workers' compensation is a condition for continued fitness to hold a household goods license;
 - eliminate the requirement for inventories to be completed for "short haul" moves, and expands the definition of "short haul" to include moves made within Cook and the collar counties;
 - require an inventory for any move into storage, rather than just when storage-in-transit service is requested; and
 - authorize the establishment of hourly rates for moves that are completely within the area covered by Cook and the collar counties.
- 16) Information and questions regarding these adopted amendments shall be directed to:
- Steven L. Matrisch
Office of Transportation Counsel
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701
(217) 782-6447
smatrisc@icc.state.il.us

The full text of the adopted amendments begins on the next page:

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TITLE 92: TRANSPORTATION
CHAPTER III: ILLINOIS COMMERCE COMMISSION
SUBCHAPTER a: COMMERCIAL TRANSPORTATION GENERALLY

PART 1457
HOUSEHOLD GOODS CARRIERS

SUBPART A: APPLICATIONS

- Section
- 1457.10 Application for Temporary Household Goods Authority
 - 1457.20 Notice of Application for Permanent Household Goods Authority
 - 1457.30 Petitions for Leave to Intervene
 - 1457.40 Application for Permanent Household Goods Authority
 - 1457.50 Emergency Temporary Household Goods Authority Application
 - 1457.60 Transfer of Permanent Household Goods Authority

SUBPART B: FITNESS STANDARDS

- Section
- 1457.80 Requirements to Show Fitness
 - 1457.90 Continued Fitness Standards

SUBPART C: INSURANCE OR BOND COVERAGE

- Section
- 1457.100 Licenses Conditioned upon Compliance with Insurance Requirements
 - 1457.110 Proof of Insurance or Bond Coverage
 - 1457.120 Public Liability and Property Damage Coverage
 - 1457.130 Cargo Damage Coverage
 - 1457.140 Collect On Delivery (C.O.D.) Bond Coverage
 - 1457.150 Shipper Valuation Coverage
 - 1457.160 Shipper Insurance Coverage

SUBPART D: SELF-INSURANCE

- Section
- 1457.200 Effect of Qualification as Self-Insurer
 - 1457.210 Minimum Requirements for Self-Insurers
 - 1457.220 Reports to be Filed by Self-Insurers

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- 1457.230 Revocation of Authorization to be a Self-Insurer
1457.240 Reinstatement

SUBPART E: RESOLUTION OF HOUSEHOLD GOODS DISPUTES

Section

- 1457.300 Introduction
1457.310 Definitions
1457.320 Shipper-Carrier Negotiation
1457.330 Mediation
1457.340 Arbitration

SUBPART F: CLAIMS FOR OVERCHARGES OR DUPLICATE PAYMENT

Section

- 1457.400 Definitions
1457.405 Filing of Claims
1457.410 Documentation of Claims
1457.415 Investigation of Claims
1457.420 Claim Records
1457.425 Acknowledgment of Claims
1457.430 Disposition of Claims
1457.435 Disposition of Unidentified Payments, Overcharges, and Duplicate Payments Not Supported by Claims

SUBPART G: CLAIMS FOR LOSS OR DAMAGE

Section

- 1457.440 Definitions
1457.450 Limitations for Filing a Claim
1457.455 Requirements for Form and Content of Claims
1457.460 Documents Not Constituting Claims
1457.465 Claims Filed for Uncertain Amounts
1457.470 Multiple Loss and Damage Claims for the Same Shipment
1457.475 Acknowledgement of Loss or Damage Claims
1457.480 Loss or Damage Claim Records
1457.485 Investigation of Loss or Damage Claims
1457.490 Disposition of Loss or Damage Claims
1457.495 Processing of Salvage

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SUBPART H: ACCOUNTING AND FINANCIAL RECORD REQUIREMENTS

Section

- 1457.500 Generally Accepted Accounting Principles
- 1457.510 Records
- 1457.520 Examination and Audit
- 1457.530 Annual Report Filing Requirement

SUBPART I: BILLS OF LADING OR OTHER FORMS

Section

- 1457.600 Bills of Lading and Freight Bills
- 1457.610 Estimate of Charges
- 1457.620 Inventory Forms
- 1457.630 Storage Charges
- 1457.640 Determination of Weights
- 1457.650 Information Pamphlets for Shippers
- 1457.660 Retention of Bills and Other Forms

SUBPART J: CAB CARDS AND IDENTIFIERS

Section

- 1457.700 Cab Card/Identifier Carrying Requirements
- 1457.710 Exemption of Vehicles from Cab Card Requirements
- 1457.720 Transfer of Cab Card/Identifier
- 1457.730 Expiration, Alteration, and Replacement of Cab Card/Identifier
- 1457.740 Revocation of Exemptions under Section 18c-4601(2) of the Law

SUBPART K: CARRIER IDENTIFICATION

Section

- 1457.800 Carrier Identification of Vehicles and Format

SUBPART L: EQUIPMENT LEASES

Section

- 1457.900 Applicability
- 1457.910 Definitions
- 1457.920 General Leasing Requirements
- 1457.930 Actions Affecting Leases

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- 1457.940 Lease Terms and Conditions
- 1457.950 Lease Form
- 1457.960 Possession and Control of Leased Equipment
- 1457.970 Additional Requirements for Trip Leases between Authorized Carriers

SUBPART M: RATES BASED ON VALUE (RELEASED VALUE RATES);
LINE-HAUL RATES; AND ACCESSORIAL OR TERMINAL CHARGES

Section

- 1457.1000 Authority to Establish Released Value Rates
- 1457.1010 Released Rate Application Form
- 1457.1020 Establishment of Line-haul Rates
- 1457.1030 Accessorial or Terminal Service Charges

SUBPART N: APPLICATIONS FOR APPROVAL OF TARIFF BUREAU AGREEMENTS

Section

- 1457.1100 Definition of Tariff Bureau
- 1457.1110 Contents of Application
- 1457.1120 Required Exhibits
- 1457.1130 Independent Action

SUBPART O: TARIFF BUREAU RECORDS AND REPORTS

Section

- 1457.1200 Accounts
- 1457.1210 Ratemaking Records
- 1457.1220 Reporting Requirements
- 1457.1230 Prohibition Against Protests by Tariff Bureaus

SUBPART P: CARRIER/AGENT RELATIONSHIPS

Section

- 1457.1300 Carrier/Agent Relationships

SUBPART Q: FEES

Section

- 1457.1400 Filing Fees

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AUTHORITY: Implementing Sections 18c-1202 and 18c-2107 and authorized by Section 18c-1202 of the Illinois Commercial Transportation Law [625 ILCS 5/18c-1202 and 18c-2107].

SOURCE: Adopted at 24 Ill. Reg. 17072, effective November 1, 2000; amended at 28 Ill. Reg. 3840, effective March 1, 2004.

SUBPART A: APPLICATIONS

Section 1457.10 Application for Temporary Household Goods Authority

- a) Application for temporary household goods authority shall be filed on forms provided by the Commission.
- b) Public notice of application for temporary household goods authority shall be published in the official State newspaper and the Certificate of Publication must be received by the Commission no more than 30 days after the application has been filed. The published notice must include the docket number assigned to the application by the Commission.
- c) An application for temporary authority cannot be filed unless an application for permanent authority has been filed or is filed concurrently with the application for temporary authority.
- d) The applicant shall have 60 days from the issuance of the order granting a temporary authority to file the following with the Commission:
 - 1) Rates applicable to the full extent of the grant of temporary authority;
 - 2) If applicable, proof of insurance as required in compliance with the Workers' Compensation Act [820 ILCS 305];
 - 3) Proof of liability insurance, and any cargo and C.O.D. affidavits or bonds/insurance required; and
 - 4) Payment of franchise fees for each truck to be operated under the temporary authority.
- e) Failure to submit the above within the specified 60 day period will result in the order granting the temporary authority being vacated and the application being dismissed.

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- f) Temporary authority shall not be granted unless the application and the evidence presented at hearing demonstrate that a public need exists for the requested service and that the applicant is fit, willing, and able to provide the service requested.
- g) Fitness shall be determined in accordance with the provisions of Subpart B of this Part.
- h) In determining whether a public need exists for the requested service the Commission shall consider demographic statistics, supporting shipper testimony, or any other evidence presented that is material and relevant.
- i) An applicant may operate as a household goods carrier under a temporary authority for up to one year after the service date of the order granting temporary authority. During that year of operation, the temporary authority holder shall be subject to:
- 1) A compliance audit conducted by the Commission;
 - 2) A review of any and all consumer complaints against the temporary authority holder.
- j) If substantial violations of the rules and regulations of the Commission are found in either the compliance audit or the consumer complaint review conducted under subsection (i) of this Section, notice of revocation shall be sent to the temporary authority holder.
- 1) The temporary authority holder shall have 30 days from the service date of the notice of revocation to submit a written request to the Commission for either or both of the following:
 - A) A six month extension of its temporary authority to allow opportunity to come into compliance with the rules and regulations of the Commission; ~~or~~
 - B) A formal hearing regarding the allegations of violations.
 - 2) The Motor Carrier Employee Board shall act on requests for extensions of temporary authorities. A temporary authority holder shall be allowed only

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one six-month extension of its temporary operating authority.

- A) During the six-month extension, the Commission will conduct a compliance audit of the temporary authority holder and a review of consumer complaints against the temporary authority holder.
 - B) The six-month extension shall terminate six months after the date granting the extension.
- k) A temporary authority shall be converted to a permanent authority upon expiration~~after one year~~ if the authority holder is found to have operated in compliance with the rules and regulations of the Commission.

(Source: Amended at 28 Ill. Reg. 3840, effective March 1, 2004)

SUBPART B: FITNESS STANDARDS

Section 1457.80 Requirements to Show Fitness

The applicant shall present clear and convincing evidence that fitness has been established for the issuance of the requested authority.

- a) In determining whether the applicant is fit to operate as a household goods carrier, the Illinois Commerce Commission shall require proof of the following factors:
 - 1) The applicant has attended a seminar regarding this Part conducted or approved by the Commission's Compliance Advisory Service;
 - 2) The applicant has obtained a 75% or better passing grade on a written test administered by the Commission that tests the applicant's knowledge of this Part related to the requested authority.
 - A) The applicant may not take this test more than once in any seven day period;
 - B) An applicant may not have more than one partner or controlling stockholder take this test in any seven day period;
 - 3) The applicant possesses, or can acquire, equipment and facilities of a type required for the transport of household goods as evidenced by a

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description, submitted with the application, of the equipment to be used by the applicant in the conduct of intrastate transportation (which shall include equipment that is currently owned by the applicant, leased by the applicant, or is to be otherwise acquired by the applicant);

- 4) The applicant has established a safety, training, and maintenance program, including any policies regarding traffic citations issued against drivers and any refresher/remedial training courses required of drivers;
 - 5) The financial condition of the applicant as represented by the completed financial statement (Supporting Document FIS, consisting of balance sheet and projected income statement) included with the application. Evidence will be required at hearing to corroborate the information provided in the financial statement with the information in the shipper support statements;
 - 6) Required insurance coverage on file with the Commission including, where applicable, insurance in compliance with the Workers' Compensation Act [820 ILCS 305].
- b) In determining whether the applicant is fit to operate as a household goods carrier, the Commission shall consider the following:
- 1) The applicant's safety record as evidenced by a certification or record from the Federal Motor Carrier Safety Administration of the United States Department of Transportation, the Illinois Department of Transportation, or the appropriate regulatory body of another state, setting forth:
 - A) Any motor carrier safety citations issued against the applicant during the three years preceding application; and
 - B) Whether the file contains any record of any disciplinary action, taken or pending, during the three years preceding application.
 - 2) Any citations or disciplinary actions against the applicant to determine whether a pattern of violations exists and will consider the severity of the violations.
 - 3) The conviction of the applicant of a crime punishable by death or imprisonment in excess of one year under the law under which he/she was convicted, or a crime involving dishonesty or false statement regardless of

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the punishment. The Commission will consider the type of crime, when the crime occurred, and the age of the applicant at the time of the incident.

- 4) Whether the applicant is currently, or has been, the subject of civil penalty action by the Commission. In determining whether to grant authority to an applicant who is currently, or has been, the subject of prior civil penalty action, the Commission shall consider:
 - A) Whether the violations were committed knowingly and willfully;
 - B) Whether the violations caused economic harm to authorized carriers;
 - C) Whether a pattern of violations exists;
 - D) The applicant's cooperation in resolving previous violations; and
 - E) Whether the applicant is delinquent in paying a monetary settlement or civil penalty assessed by the Commission.
- 5) Other facts that may bear on the applicant's fitness to hold the license applied for.
- c) For purposes of subsections (a)(1) and (2) and (b)(4) of this Section, "applicant" shall mean proprietors, partners, a member or manager of a limited liability company, or, in the case of a corporation, an officer or anyone holding a controlling interest in the corporation.

(Source: Amended at 28 Ill. Reg. 3840, effective March 1, 2004)

Section 1457.90 Continued Fitness Standards

- a) Personnel Standards
 - 1) No household goods carrier shall permit any driver, helper, and/or packer to be used in the transportation of any household goods shipment or in the performance of accessorial services unless that person is trained in the movement of household goods.
 - 2) No household goods carrier shall knowingly permit drivers, helpers and/or

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packers to go on duty who are under the influence of alcoholic beverages or liquors of any kind, or narcotics, or habit-forming drugs not prescribed by a physician. Nor shall the use of these substances be allowed while the employees are on duty. Knowledge by the carrier is deemed to exist if known to the foreman or other manager of the crew.

b) Equipment Standards

- 1) Equipment and facilities utilized by a household goods carrier for the transportation of household goods shall be maintained in a manner that is sufficient to protect the goods from damage or breakage. The interior of those vehicles used to transport household goods shipments shall be clean and free from vermin and debris.
- 2) For shipments transported at hourly rates, the household goods carrier shall determine the number of men and the size and the number of motor vehicle equipment that is appropriate to provide safe and timely transportation services for the requested movement. If the carrier deviates from its initial determination as stated in the carrier's written estimate, the shipper shall not be charged for any resulting excess charges in unless the shipper is informed and agrees in writing. A notation shall be placed on the bill of lading indicating the number of men and motor vehicles initially estimated and the number actually furnished and used for the move.

c) Advertising Standards

- 1) For purposes of this Section, the term "advertisement" means any advertisement, solicitation, or other communication with the public in relation to the offer or sale of Illinois intrastate household goods transportation service. The term shall include advertisement by radio, television, internet, computer media or any other medium. The term shall not include a simple listing of household goods carriers' names, addresses, and telephone numbers, as in a telephone directory.
- 2) Each household goods carrier shall include, and shall require each of its agents to include, in every advertisement the full name of the originating household goods carrier as it appears on the carrier's license from the Commission. The advertisement shall also identify the carrier by showing the characters "ILL.C.C." followed by the license number assigned to the household goods carrier by the Commission.

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- 3) Household goods carriers who are duly authorized agents for other licensed carriers, including carriers operating under the jurisdiction of the Federal Motor Carrier Safety Administration, may advertise and represent themselves as such an agent.
- 4) The following advertising practices shall not be conducted by household goods carriers:
 - A) Household goods carriers shall not advertise rates unless the following caveats are included in the advertisement:
 - i) "Rates effective (date), subject to change"; and
 - ii) "Actual charges governed by applicable tariffs, this advertisement notwithstanding";
 - B) Household goods carriers shall not misrepresent the scope of services offered and made available to the public under authority of the license issued by the Commission; ~~and~~
 - C) Household goods carriers shall not advertise that their operations are conducted at addresses or locations where duly authorized employees are not on duty during all business hours. The location of a telephone answering service does not constitute an address or location where duly authorized employees are on duty; ~~and~~.
 - D) Household goods carriers shall not advertise or otherwise offer to provide insurance or storage of personal property for compensation unless the carrier is duly licensed to engage in the offered activity by the appropriate agency of the State of Illinois.
- d) Standards for Forms of Payment
 - 1) Household goods carriers shall accept payment tendered in the following forms:
 - A) Cash;
 - B) Cashier's check; or

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- C) Money order.
- 2) A household goods carrier may accept payment in other forms, including personal checks and credit cards, if to do so does not result in a practice that circumvents the statutory requirement that a carrier charge no more or less than the rate in the applicable tariff.
- 3) A household goods carrier shall not refuse to accept any ordinary form of payment unless, before rendition of the service, the carrier has advised the shipper, in writing, that it would not accept payment in the form tendered.
- e) Notification of any delay in pickup or delivery shall be given to the shipper by telephone, e-mail, fax, or in person, at the carrier's expense, as soon as it becomes apparent that the delay will occur, provided the shipper has given information sufficient for the communication.
- f) All household goods carriers shall hold themselves out to provide a guaranteed delivery service at the tariff charge. The term "guaranteed delivery" shall mean that a carrier providing service shall perform delivery on a specified date.
- g) No household goods carrier shall accept a shipment of household goods for transportation that is subject to the minimum weight, distance, or time provisions of the carrier's tariff without first having advised the shipper of the minimum weight, distance, or time provisions. Failure to advise the shipper, in writing, of the provisions shall void the minimum rate application.
- h) All household goods carriers shall maintain on file with the Commission all required insurance coverage including, where applicable, insurance in compliance with the Workers' Compensation Act [820 ILCS 305].

(Source: Amended at 28 Ill. Reg. 3840, effective March 1, 2004)

SUBPART I: BILLS OF LADING OR OTHER FORMS

Section 1457.620 Inventory Forms

- a) Definitions. As used in this Section, the term "intercity" means transportation other than "short haul". As used in this Section, the term "short haul" means transportation from the point of origin to the final destination of not more than 35

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miles, except that moves which begin and end within the area covered by the counties of Cook, DuPage, Kane, Kendall, Lake, McHenry, and Will shall be wholly within counties having a population of 1,000,000 or more are not considered "short haul".

- b) Each carrier shall, prior to loading at the point of origin, prepare a written inventory of each intercity shipment and of each shipment for which any type of storage which storage-in-transit service is requested.
- c) A properly executed copy of the inventory, signed by both the carrier and the shipper, shall be given to the shipper at the point of origin, prior to loading. Another properly executed copy, signed by the carrier and the shipper, and reflecting any changes in the number, nature, or condition of the lading, shall be given to the shipper at the final destination, subsequent to unloading. A written inventory shall also be prepared for short haul movements at the request of the shipper, provided the shipper agrees to pay the tariff rate for preparation of an inventory. The carrier, however, shall not require the preparation of an inventory at the shipper's expense for short haul movements.
- d) Information required on an inventory. Each inventory required under this Section shall:
 - 1) Show the name and current address of the carrier on file with the Commission where its employees can be reached;
 - 2) Show the shipper's name;
 - 3) Show the point of origin and the final destination of the shipment;
 - 4) Include the carrier's description of the goods contained within the shipment and the condition of those goods;
 - 5) Provide a column for the shipper to note exceptions to the inventory as prepared by the carrier;
 - 6) Note any goods held by the carrier pending payment of charges; and
 - 7) Identify spaces for both the shipper and carrier to sign at the point of origin and the final destination.

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- e) The shipper shall be permitted to make notations upon delivery concerning the condition or absence of goods in the shipment, and shall be made aware by the carrier that notations regarding the inventory are permitted upon delivery.
- f) The inventory shall be on a Commission-approved Household Goods Inventory Form. The Commission shall approve a carrier's inventory form if it meets the requirements of this Section and does not contain provisions contrary to the Illinois Commercial Transportation Law or any Commission rules.

(Source: Amended at 28 Ill. Reg. 3840, effective March 1, 2004)

SUBPART M: RATES BASED ON VALUE (RELEASED VALUE RATES);
LINE-HAUL RATES; AND ACCESSORIAL OR TERMINAL CHARGES

Section 1457.1020 Establishment of Line-haul Rates

- a) All carriers under the Commission's rate jurisdiction are required to establish rates in cents per 100 pounds, except as provided in subsections (b) and (c) of this Section.
- b) Rates may be established per unit of time:
 - 1) When the distance from the point of origin to the final destination of a shipment is not more than 35 miles; or
 - 2) When both the point of origin and the final destination of a shipment are within the area covered by the counties of Cook, DuPage, Kane, Kendall, Lake, McHenry, and Will-a county having a population of 1,000,000 or more; or
 - 3) When the transportation is exempt from Commission rate jurisdiction. Transportation is rate-exempt when both the point of origin and the final destination of a shipment are within the terminal area of a municipality, unless both the origin and destination are within a county having a population of 1,000,000 or more.
- c) Shipments rated upon units of time shall, except as otherwise provided in this subsection, be transported singly and not commingled with any other freight. Where shipments rated upon units of time are commingled, the burden shall be on the carrier to demonstrate that the charges for each commingled shipment are not

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greater than the charges that would have applied if the shipments had been transported singly and not commingled.

(Source: Amended at 28 Ill. Reg. 3840, effective March 1, 2004)

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- 1) Heading of the Part: Food Stamps
- 2) Code Citation: 89 Ill. Adm. Code 121
- 3) Section Number: 121.20 Adopted Action:
Amendment
- 4) Statutory Authority: Implementing Sections 12-4.4 through 12-4.6 and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-4.4 through 12-4.6 and 12-13] and Title IV of the 2002 Farm Bill (HR 2646 – the Food Stamp Reauthorization Act of 2002)
- 5) Effective Date of Rulemaking: February 13, 2004
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: August 22, 2003; 27 Ill. Reg. 13936
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between proposal and final version: Changes were made to this rulemaking to update the background text to reflect amendments adopted to 89 Ill. Adm. Code 121 at 27 Ill. Reg. 12569, effective July 21, 2003. No other substantive changes were made in the text of the proposed amendments.
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Rulemaking: This rulemaking allows non-citizen children under the age of 18, who are legally residing in the U.S., to qualify for Food Stamps.

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These changes are required by enactment of the Farm Bill (HR 2646 – the Food Stamp Reauthorization Act of 2002).

- 16) Information and questions regarding this adopted amendment shall be directed to:

Tracie Drew, Bureau Chief
Bureau of Administrative Rules and Procedures
Department of Human Services
100 South Grand Avenue East
3rd Floor, Harris Bldg.
Springfield, Illinois 62762
(217) 785-9772

The full text of the adopted amendment begins on the next page:

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TITLE 89: SOCIAL SERVICES
CHAPTER IV: DEPARTMENT OF HUMAN SERVICES
SUBCHAPTER b: ASSISTANCE PROGRAMS

PART 121
FOOD STAMPS

SUBPART A: APPLICATION PROCEDURES

Section

- 121.1 Application for Assistance
- 121.2 Time Limitations on the Disposition of an Application
- 121.3 Approval of an Application and Initial Authorization of Assistance
- 121.4 Denial of an Application
- 121.5 Client Cooperation
- 121.6 Emergency Assistance
- 121.7 Expedited Service
- 121.10 Interviews

SUBPART B: NON-FINANCIAL FACTORS OF ELIGIBILITY

Section

- 121.18 Work Requirement
- 121.19 Ending a Voluntary Quit Disqualification (Repealed)
- 121.20 Citizenship
- 121.21 Residence
- 121.22 Social Security Numbers
- 121.23 Work Registration/Participation Requirements
- 121.24 Individuals Exempt from Work Registration Requirements
- 121.25 Failure to Comply with Work Provisions
- 121.26 Period of Sanction
- 121.27 Voluntary Job Quit/Reduction in Work Hours
- 121.28 Good Cause for Voluntary Job Quit/Reduction in Work Hours
- 121.29 Exemptions from Voluntary Quit/Reduction in Work Hours Rules

SUBPART C: FINANCIAL FACTORS OF ELIGIBILITY

Section

- 121.30 Unearned Income
- 121.31 Exempt Unearned Income

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121.32	Education Benefits (Repealed)
121.33	Unearned Income In-Kind
121.34	Lump Sum Payments and Income Tax Refunds
121.40	Earned Income
121.41	Budgeting Earned Income
121.50	Exempt Earned Income
121.51	Income from Work/Study/Training Programs
121.52	Earned Income from Roomer and Boarder
121.53	Income From Rental Property
121.54	Earned Income In-Kind
121.55	Sponsors of Aliens
121.57	Assets
121.58	Exempt Assets
121.59	Asset Disregards

SUBPART D: ELIGIBILITY STANDARDS

Section	
121.60	Net Monthly Income Eligibility Standards
121.61	Gross Monthly Income Eligibility Standards
121.62	Income Which Must Be Annualized
121.63	Deductions from Monthly Income
121.64	Food Stamp Benefit Amount

SUBPART E: HOUSEHOLD CONCEPT

Section	
121.70	Composition of the Assistance Unit
121.71	Living Arrangement
121.72	Nonhousehold Members
121.73	Ineligible Household Members
121.74	Strikers
121.75	Students
121.76	Households Receiving AFDC, SSI, Interim Assistance and/or GA – Categorical Eligibility

SUBPART F: MISCELLANEOUS PROGRAM PROVISIONS

Section	
121.80	Fraud Disqualification (Renumbered)

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- 121.81 Initiation of Administrative Fraud Hearing (Repealed)
- 121.82 Definition of Fraud (Renumbered)
- 121.83 Notification To Applicant Households (Renumbered)
- 121.84 Disqualification Upon Finding of Fraud (Renumbered)
- 121.85 Court Imposed Disqualification (Renumbered)
- 121.90 Monthly Reporting and Retrospective Budgeting (Repealed)
- 121.91 Monthly Reporting (Repealed)
- 121.92 Budgeting
- 121.93 Issuance of Food Stamp Benefits
- 121.94 Replacement of the EBT Card or Food Stamp Benefits
- 121.95 Restoration of Lost Benefits
- 121.96 Uses For Food Coupons
- 121.97 Supplemental Payments
- 121.98 Client Training for the Electronic Benefits Transfer (EBT) System
- 121.105 State Food Program (Repealed)
- 121.107 New State Food Program
- 121.120 Redetermination of Eligibility
- 121.125 Redetermination of Earned Income Households
- 121.130 Residents of Shelters for Battered Women and their Children
- 121.131 Fleeing Felons and Probation/Parole Violators
- 121.135 Incorporation By Reference
- 121.140 Small Group Living Arrangement Facilities and Drug/Alcoholic Treatment Centers
- 121.145 Quarterly Reporting (Repealed)

SUBPART G: INTENTIONAL VIOLATIONS OF THE PROGRAM

Section

- 121.150 Definition of Intentional Violations of the Program
- 121.151 Penalties for Intentional Violations of the Program
- 121.152 Notification To Applicant Households
- 121.153 Disqualification Upon Finding of Intentional Violation of the Program
- 121.154 Court Imposed Disqualification

SUBPART H: FOOD STAMP EMPLOYMENT AND TRAINING PROGRAM

Section

- 121.160 Persons Required to Participate
- 121.162 Program Requirements
- 121.163 Vocational Training

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- 121.164 Orientation (Repealed)
- 121.165 Community Work
- 121.166 Assessment and Employability Plan (Repealed)
- 121.167 Counseling/Prevention Services
- 121.170 Job Search Activity
- 121.172 Basic Education Activity
- 121.174 Job Readiness Activity
- 121.176 Work Experience Activity
- 121.177 Illinois Works Component (Repealed)
- 121.178 Job Training Component (Repealed)
- 121.179 JTPA Employability Services Component (Repealed)
- 121.180 Grant Diversion Component (Repealed)
- 121.182 Earnfare Activity
- 121.184 Sanctions for Non-cooperation with Food Stamp Employment and Training
- 121.186 Good Cause for Failure to Cooperate
- 121.188 Supportive Services
- 121.190 Conciliation
- 121.200 Types of Claims (Recodified)
- 121.201 Establishing a Claim for Intentional Violation of the Program (Recodified)
- 121.202 Establishing a Claim for Unintentional Household Errors and Administrative Errors (Recodified)
- 121.203 Collecting Claim Against Households (Recodified)
- 121.204 Failure to Respond to Initial Demand Letter (Recodified)
- 121.205 Methods of Repayment of Food Stamp Claims (Recodified)
- 121.206 Determination of Monthly Allotment Reductions (Recodified)
- 121.207 Failure to Make Payment in Accordance with Repayment Schedule (Recodified)
- 121.208 Suspension and Termination of Claims (Recodified)

SUBPART I: WORK REQUIREMENT FOR FOOD STAMPS

Section

- 121.220 Work Requirement Components (Repealed)
- 121.221 Meeting the Work Requirement with the Earnfare Component (Repealed)
- 121.222 Volunteer Community Work Component (Repealed)
- 121.223 Work Experience Component (Repealed)
- 121.224 Supportive Service Payments to Meet the Work Requirement (Repealed)
- 121.225 Meeting the Work Requirement with the Illinois Works Component (Repealed)
- 121.226 Meeting the Work Requirement with the JTPA Employability Services Component (Repealed)

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AUTHORITY: Implementing Sections 12-4.4 through 12-4.6 and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-4.4 through 12-4.6 and 12-13].

SOURCE: Adopted December 30, 1977; amended at 3 Ill. Reg. 5, p. 875, effective February 2, 1979; amended at 3 Ill. Reg. 31, p. 109, effective August 3, 1979; amended at 3 Ill. Reg. 33, p. 399, effective August 18, 1979; amended at 3 Ill. Reg. 41, p. 165, effective October 11, 1979; amended at 3 Ill. Reg. 42, p. 230, effective October 9, 1979; amended at 3 Ill. Reg. 44, p. 173, effective October 19, 1979; amended at 3 Ill. Reg. 46, p. 36, effective November 2, 1979; amended at 3 Ill. Reg. 47, p. 96, effective November 13, 1979; amended at 3 Ill. Reg. 48, p. 1, effective November 15, 1979; peremptory amendment at 4 Ill. Reg. 3, p. 49, effective January 9, 1980; peremptory amendment at 4 Ill. Reg. 9, p. 259, effective February 23, 1980; amended at 4 Ill. Reg. 10, p. 253, effective February 27, 1980; amended at 4 Ill. Reg. 12, p. 551, effective March 10, 1980; emergency amendment at 4 Ill. Reg. 29, p. 294, effective July 8, 1980, for maximum of 150 days; amended at 4 Ill. Reg. 37, p. 797, effective September 2, 1980; amended at 4 Ill. Reg. 45, p. 134, effective October 17, 1980; amended at 5 Ill. Reg. 766, effective January 2, 1981; amended at 5 Ill. Reg. 1131, effective January 16, 1981; amended at 5 Ill. Reg. 4586, effective April 15, 1981; peremptory amendment at 5 Ill. Reg. 5722, effective June 1, 1981; amended at 5 Ill. Reg. 7071, effective June 23, 1981; peremptory amendment at 5 Ill. Reg. 10062, effective October 1, 1981; amended at 5 Ill. Reg. 10733, effective October 1, 1981; amended at 5 Ill. Reg. 12736, effective October 29, 1981; amended at 6 Ill. Reg. 1653, effective January 17, 1982; amended at 6 Ill. Reg. 2707, effective March 2, 1982; amended at 6 Ill. Reg. 8159, effective July 1, 1982; amended at 6 Ill. Reg. 10208, effective August 9, 1982; amended at 6 Ill. Reg. 11921, effective September 21, 1982; amended at 6 Ill. Reg. 12318, effective October 1, 1982; amended at 6 Ill. Reg. 13754, effective November 1, 1982; amended at 7 Ill. Reg. 394, effective January 1, 1983; codified at 7 Ill. Reg. 5195; amended at 7 Ill. Reg. 5715, effective May 1, 1983; amended at 7 Ill. Reg. 8118, effective June 24, 1983; peremptory amendment at 7 Ill. Reg. 12899, effective October 1, 1983; amended at 7 Ill. Reg. 13655, effective October 4, 1983; peremptory amendment at 7 Ill. Reg. 16067, effective November 18, 1983; amended at 7 Ill. Reg. 16169, effective November 22, 1983; amended at 8 Ill. Reg. 5673, effective April 18, 1984; amended at 8 Ill. Reg. 7249, effective May 16, 1984; peremptory amendment at 8 Ill. Reg. 10086, effective July 1, 1984; amended at 8 Ill. Reg. 13284, effective July 16, 1984; amended at 8 Ill. Reg. 17900, effective September 14, 1984; amended (by adding Section being codified with no substantive change) at 8 Ill. Reg. 17898; peremptory amendment at 8 Ill. Reg. 19690, effective October 1, 1984; peremptory amendment at 8 Ill. Reg. 22145, effective November 1, 1984; amended at 9 Ill. Reg. 302, effective January 1, 1985; amended at 9 Ill. Reg. 6804, effective May 1, 1985; amended at 9 Ill. Reg. 8665, effective May 29, 1985; peremptory amendment at 9 Ill. Reg. 8898, effective July 1, 1985; amended at 9 Ill. Reg. 11334, effective July 8, 1985; amended at 9 Ill. Reg. 14334, effective September 6, 1985; peremptory amendment at 9 Ill. Reg. 15582, effective October 1, 1985; amended at 9 Ill. Reg. 16889, effective October 16, 1985; amended at 9 Ill. Reg. 19726, effective December 9, 1985; amended at 10 Ill. Reg.

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229, effective December 20, 1985; peremptory amendment at 10 Ill. Reg. 7387, effective April 21, 1986; peremptory amendment at 10 Ill. Reg. 7941, effective May 1, 1986; amended at 10 Ill. Reg. 14692, effective August 29, 1986; peremptory amendment at 10 Ill. Reg. 15714, effective October 1, 1986; Sections 121.200 thru 121.208 recodified to 89 Ill. Adm. Code 165 at 10 Ill. Reg. 21094; peremptory amendment at 11 Ill. Reg. 3761, effective February 11, 1987; emergency amendment at 11 Ill. Reg. 3754, effective February 13, 1987, for a maximum of 150 days; emergency amendment at 11 Ill. Reg. 9968, effective May 15, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 10269, effective May 22, 1987; amended at 11 Ill. Reg. 10621, effective May 25, 1987; peremptory amendment at 11 Ill. Reg. 11391, effective July 1, 1987; peremptory amendment at 11 Ill. Reg. 11855, effective June 30, 1987; emergency amendment at 11 Ill. Reg. 12043, effective July 6, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 13635, effective August 1, 1987; amended at 11 Ill. Reg. 14022, effective August 10, 1987; emergency amendment at 11 Ill. Reg. 15261, effective September 1, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 15480, effective September 4, 1987; amended at 11 Ill. Reg. 15634, effective September 11, 1987; amended at 11 Ill. Reg. 18218, effective October 30, 1987; peremptory amendment at 11 Ill. Reg. 18374, effective October 30, 1987; amended at 12 Ill. Reg. 877, effective December 30, 1987; emergency amendment at 12 Ill. Reg. 1941, effective December 31, 1987, for a maximum of 150 days; amended at 12 Ill. Reg. 4204, effective February 5, 1988; amended at 12 Ill. Reg. 9678, effective May 23, 1988; amended at 12 Ill. Reg. 9922, effective June 1, 1988; amended at 12 Ill. Reg. 11463, effective June 30, 1988; amended at 12 Ill. Reg. 12824, effective July 22, 1988; emergency amendment at 12 Ill. Reg. 14045, effective August 19, 1988, for a maximum of 150 days; peremptory amendment at 12 Ill. Reg. 15704, effective October 1, 1988; peremptory amendment at 12 Ill. Reg. 16271, effective October 1, 1988; amended at 12 Ill. Reg. 20161, effective November 30, 1988; amended at 13 Ill. Reg. 3890, effective March 10, 1989; amended at 13 Ill. Reg. 13619, effective August 14, 1989; peremptory amendment at 13 Ill. Reg. 15859, effective October 1, 1989; amended at 14 Ill. Reg. 729, effective January 1, 1990; amended at 14 Ill. Reg. 6349, effective April 13, 1990; amended at 14 Ill. Reg. 13202, effective August 6, 1990; peremptory amendment at 14 Ill. Reg. 15158, effective October 1, 1990; amended at 14 Ill. Reg. 16983, effective September 30, 1990; amended at 15 Ill. Reg. 11150, effective July 22, 1991; amended at 15 Ill. Reg. 11957, effective August 12, 1991; peremptory amendment at 15 Ill. Reg. 14134, effective October 1, 1991; emergency amendment at 16 Ill. Reg. 757, effective January 1, 1992, for a maximum of 150 days; amended at 16 Ill. Reg. 10011, effective June 15, 1992; amended at 16 Ill. Reg. 13900, effective August 31, 1992; emergency amendment at 16 Ill. Reg. 16221, effective October 1, 1992, for a maximum of 150 days; peremptory amendment at 16 Ill. Reg. 16345, effective October 1, 1992; amended at 16 Ill. Reg. 16624, effective October 23, 1992; amended at 17 Ill. Reg. 644, effective December 31, 1992; amended at 17 Ill. Reg. 4333, effective March 19, 1993; amended at 17 Ill. Reg. 14625, effective August 26, 1993; emergency amendment at 17 Ill. Reg. 15149, effective September 7, 1993, for a maximum of 150 days; peremptory amendment at 17 Ill. Reg. 17477, effective October 1, 1993; expedited correction at 17 Ill. Reg. 21216, effective

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October 1, 1993; amended at 18 Ill. Reg. 2033, effective January 21, 1994; emergency amendment at 18 Ill. Reg. 2509, effective January 27, 1994, for a maximum of 150 days; amended at 18 Ill. Reg. 3427, effective February 28, 1994; amended at 18 Ill. Reg. 8921, effective June 3, 1994; amended at 18 Ill. Reg. 12829, effective August 5, 1994; amended at 18 Ill. Reg. 14103, effective August 26, 1994; amended at 19 Ill. Reg. 5626, effective March 31, 1995; amended at 19 Ill. Reg. 6648, effective May 5, 1995; emergency amendment at 19 Ill. Reg. 12705, effective September 1, 1995, for a maximum of 150 days; peremptory amendment at 19 Ill. Reg. 13595, effective October 1, 1995; amended at 20 Ill. Reg. 1593, effective January 11, 1996; peremptory amendment at 20 Ill. Reg. 2229, effective January 17, 1996; amended at 20 Ill. Reg. 7902, effective June 1, 1996; amended at 20 Ill. Reg. 11935, effective August 14, 1996; emergency amendment at 20 Ill. Reg. 13381, effective October 1, 1996, for a maximum of 150 days; emergency amendment at 20 Ill. Reg. 13668, effective October 8, 1996, for a maximum of 150 days; amended at 21 Ill. Reg. 3156, effective February 28, 1997; amended at 21 Ill. Reg. 7733, effective June 4, 1997; recodified from the Department of Public Aid to the Department of Human Services at 21 Ill. Reg. 9322; emergency amendment at 22 Ill. Reg. 1954, effective January 1, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 5502, effective March 4, 1998; amended at 22 Ill. Reg. 7969, effective May 15, 1998; emergency amendment at 22 Ill. Reg. 10660, effective June 1, 1998, for a maximum of 150 days; emergency amendment at 22 Ill. Reg. 12167, effective July 1, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 16230, effective September 1, 1998; amended at 22 Ill. Reg. 19787, effective October 28, 1998; emergency amendment at 22 Ill. Reg. 19934, effective November 1, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 20099, effective November 1, 1998; emergency amendment at 23 Ill. Reg. 2601, effective February 1, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 3374, effective March 1, 1999; amended at 23 Ill. Reg. 7285, effective June 18, 1999; emergency amendment at 23 Ill. Reg. 13253, effective October 13, 1999, for a maximum of 150 days; emergency amendment at 24 Ill. Reg. 3871, effective February 24, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 4180, effective March 2, 2000; amended at 24 Ill. Reg. 10198, effective June 27, 2000; amended at 24 Ill. Reg. 15428, effective October 10, 2000; emergency amendment at 24 Ill. Reg. 15468, effective October 1, 2000, for a maximum of 150 days; amended at 25 Ill. Reg. 845, effective January 5, 2001; amended at 25 Ill. Reg. 2423, effective January 25, 2001; emergency amendment at 25 Ill. Reg. 2439, effective January 29, 2001, for a maximum of 150 days; emergency amendment at 25 Ill. Reg. 3707, effective March 1, 2001, for a maximum of 150 days; emergency expired July 28, 2001; amended at 25 Ill. Reg. 7720, effective June 7, 2001; amended at 25 Ill. Reg. 10823, effective August 12, 2001; amended at 25 Ill. Reg. 11856, effective August 31, 2001; emergency amendment at 25 Ill. Reg. 13309, effective October 1, 2001, for a maximum of 150 days; amended at 26 Ill. Reg. 151, effective January 1, 2002; amended at 26 Ill. Reg. 2025, effective February 1, 2002; amended at 26 Ill. Reg. 13530, effective September 3, 2002; peremptory amendment at 26 Ill. Reg. 15099, effective October 1, 2002; amended at 26 Ill. Reg. 16484, effective October 25, 2002; amended at 27 Ill. Reg. 2889, effective February 7, 2003; expedited correction at 27 Ill. Reg. 14262, effective

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February 7, 2003; amended at 27 Ill. Reg. 4583, effective February 28, 2003; amended at 27 Ill. Reg. 7273, effective April 7, 2003; amended at 27 Ill. Reg. 12569, effective July 21, 2003; peremptory amendment at 27 Ill. Reg. 15604, effective October 1, 2003; amended at 27 Ill. Reg. 16108, effective October 6, 2003; amended at 27 Ill. Reg. 18445, effective November 20, 2003; amended at 28 Ill. Reg. 1104, effective December 31, 2003; amended at 28 Ill. Reg. 3857, effective February 13, 2004.

SUBPART B: NON-FINANCIAL FACTORS OF ELIGIBILITY

Section 121.20 Citizenship

To be eligible for assistance, an individual shall be either a U.S. citizen or a non-citizen within specific categories and subject to specific restrictions as set forth below:

- a) Citizenship status – Persons born in the U.S. or in its possessions are U.S. citizens. Citizenship can also be acquired by naturalization through court proceedings or by certain persons born in a foreign country of U.S. citizen parents.
- b) Non-citizens – The following categories of non-citizens may receive assistance, if otherwise eligible regardless of their time in the U.S.:
 - 1) Lawful Permanent Resident Credited with 40 Quarters of Work
 - A) Aliens lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act (INA) who have worked 40 qualifying quarters of coverage (as defined under Title II of the Social Security Act). Effective January 1, 1997, in order for a quarter of work to count, the client must not have received any benefits under a federal means-tested program during that quarter.
 - B) Quarters of a parent count for an alien while the alien is under age 18.
 - C) Quarters of a spouse count for an alien if the alien is still married to that spouse or the spouse is deceased.
 - 2) Veterans, Active U.S. Military Service Persons and Their Dependents. A veteran honorably discharged from U.S. military service or a person in

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active U.S. military duty and the spouse or dependent child or children of such a person meet the citizenship requirement for food stamps if their INS status is:

- A) lawful permanent resident;
 - B) conditional entrant under ~~section~~Section 203(a)(7) of the INA (8 USCA 1153(a)(7));
 - C) parolee status for at least a year under ~~section~~Section 212(d)(5) of the INA (8 USCA 1182(d)(5));
 - D) deportation withheld under ~~section~~Section 243(h) (8 USCA 1253(h)) or 241(b)(3) (8 USCA 1231(b)(3)) of the INA; or
 - E) battered spouse or child, or parent or child of a battered person with a petition pending under ~~section~~Section 204(a)(1)(A) or (B) (8 USCA 1154(a)(1)(A) or (B)) or 244(a)(3) (8 USCA 1641(c)) of the INA. This status does not apply if the non-citizen lives with the abuser.
- c) The following non-citizens meet the citizenship requirement for food stamps indefinitely even if their status later changes to lawful permanent resident:
- 1) refugees admitted under ~~section~~Section 207 of the INA;
 - 2) asylees admitted under ~~section~~Section 208 of the INA;
 - 3) persons for whom deportation has been withheld under ~~section~~Section 243(h) (8 USCA 1253(h)) or 241(b)(3) (8 USCA 1231(b)(3)) of the INA;
 - 4) Cuban or Haitian national admitted on or after 4/21/80; or
 - 5) Amerasians from Vietnam and their close family members admitted through the Orderly Departure Program beginning on 3/20/88.
- d) ~~Elderly Children, disabled, or elderly~~ non-citizens who were lawfully residing in the U.S. on 8/22/96, and children lawfully residing in the U.S., and disabled persons lawfully residing in the U.S.—A person qualifies as a child if the person is under age 18. A person qualifies as elderly if the person was age 65 on 8/22/96.

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A person qualifies as a child if the person is under age 18. A person qualifies as disabled/blind if the person meets one of the requirements listed in Section 121.61(a)(1)(B) through (L). The person must also have the following status with INS:

- 1) lawful permanent resident;
 - 2) conditional entrant under ~~section~~Section 203(a)(7) of the INA (8 USCA 1153(a)(7));
 - 3) parolee status for at least a year under ~~section~~Section 212(d)(5) of the INA (8 USCA 1182(d)(5)); or
 - 4) battered spouse or child, or parent or child of a battered person with a petition pending under ~~section~~Section 204(a)(1)(A) or (B) (8 USCA 1154(a)(1)(A) or (B)) or 240A of the INA. This status does not apply if the non-citizen lives with the abuser.
- e) Hmong or Highland Laotian tribe members and the member's close family members. A person lawfully residing in the U.S. that was a member of a Hmong or Highland Laotian tribe when the tribe helped U.S. personnel by taking part in a military or rescue operation during the Vietnam era (between August 5, 1964 and May 7, 1975). This also includes the person's spouse, unmarried surviving spouse, if deceased, and unmarried dependent children.
- f) Certain American Indians born in Canada. An American Indian born in Canada to whom the provisions of ~~section~~Section 289 of the INA apply, and a member of an Indian tribe as defined in ~~section~~Section 4e of the Indian Self-Determination and Education Assistance Act.
- g) Noncitizens who have lived in the U.S. for at least 5 years in the following status with INS may receive assistance, if otherwise eligible:
- 1) lawful permanent resident;
 - 2) conditional entrant under ~~section~~Section 203(a)(7) of the INA;
 - 3) parolee status for at least a year under ~~section~~Section 212(d)(5) of the INA; or

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- 4) battered spouse or child, or parent or child of a battered person with a petition pending under ~~section~~Section 204(a)(1)(A) or (B) (8 USCA 1154(a)(1)(A) or (B)) or 240A of the INA. This status does not apply if the noncitizen lives with the abuser.

(Source: Amended at 28 Ill. Reg. 3857, effective February 13, 2004)

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- 1) Heading of the Part: Site Remediation Program
- 2) Code Citation: 35 Ill. Adm. Code 740
- 3)

<u>Section Numbers:</u>	<u>Adopted Action:</u>
740.100	Amend
740.120	Amend
740.900	Add
740.901	Add
740.905	Add
740.910	Add
740.911	Add
740.915	Add
740.920	Add
740.925	Add
740.930	Add
- 4) Statutory Authority: 415 ILCS 5/58 through 58.8 and 58.10 through 58.15
- 5) Effective Date of Amendments: February 17, 2004
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) The adopted amendments, including any material incorporated by reference, are on file in the Board's Chicago office at the James R. Thompson Center, 100 W. Randolph, Suite 11-500, and are available for public inspection.
- 9) Notices of Proposal Published in Illinois Register: 27 Ill. Reg. 11879; July 25, 2003
- 10) Has JCAR issued a Statement of Objection to these amendments? No
- 11) Differences between proposal and final version: The Board made only minor, nonsubstantive changes to the first notice proposal.
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements letter issued by JCAR? Yes
- 13) Will these amendments replace any emergency amendments currently in effect? No

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- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Amendments: The amendments, adopted by the Board on January 22, 2004 in docket R03-20, establish procedures and standards for administering the Brownfields Site Restoration Program (BSRP). The BSRP was created by recent amendments to Title XVII of the Environmental Protection Act (Act) (415 ILCS 5/58.15(B) (2002); see P.A. 92-715, eff. July 23, 2002). The BSRP will allow a person to be reimbursed by the State for the costs of voluntarily remediating contamination at an “abandoned” or “underutilized” property if the remediation will lead to a “net economic benefit” to the State. The adopted amendments add a new Subpart I to the Board’s Site Remediation Program (SRP) rules (35 Ill. Adm. Code 740). The amendments require that, prior to filing with the Agency for reimbursement of costs, a remediation applicant (RA) must submit an application for review of eligibility to the Department of Commerce and Economic Opportunity (DCEO). Only after DCEO has determined that the RA is eligible for reimbursement may the RA submit an application to the Agency for its consideration.

The rulemaking also contains procedures for the Agency’s preliminary reviews of estimated remediation costs and final reviews of remediation costs actually incurred, establishes fees for the Agency’s reviews, provides for appeals of Agency determinations, and includes listings of eligible and ineligible costs.

- 16) Information and questions regarding these adopted amendments shall be directed to:

Amy Antonioli
Illinois Pollution Control Board
100 West Randolph, Suite 11-500
Chicago IL 60601
312/814-3665

Copies of the Board's opinions and orders may be requested from the Clerk of the Board at the address listed in #16 above or by calling 312/814-3620. Please refer to the Docket number R03-20 in your request. The Board order is also available from the Board’s Web site (www.ipcb.state.il.us).

The full text of the adopted amendments begins on the next page:

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TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE G: WASTE DISPOSAL
CHAPTER I: POLLUTION CONTROL BOARD

PART 740
SITE REMEDIATION PROGRAM

SUBPART A: GENERAL

Section	
740.100	Purpose
740.105	Applicability
740.110	Permit Waiver
740.115	Agency Authority
740.120	Definitions
740.125	Incorporations by Reference
740.130	Severability

SUBPART B: APPLICATIONS AND AGREEMENTS FOR
REVIEW AND EVALUATION SERVICES

Section	
740.200	General
740.205	Submittal of Application and Agreement
740.210	Contents of Application and Agreement
740.215	Approval or Denial of Application and Agreement
740.220	Acceptance and Modification of Application and Agreement
740.225	Termination of Agreement by the Remediation Applicant (RA)
740.230	Termination of Agreement by the Agency
740.235	Use of Review and Evaluation Licensed Professional Engineer (RELPE)

SUBPART C: RECORDKEEPING, BILLING AND PAYMENT

Section	
740.300	General
740.305	Recordkeeping for Agency Services
740.310	Request for Payment
740.315	Submittal of Payment
740.320	Manner of Payment

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SUBPART D: SITE INVESTIGATIONS, DETERMINATION OF REMEDIATION OBJECTIVES, PREPARATION OF PLANS AND REPORTS

Section	
740.400	General
740.405	Conduct of Site Activities and Preparation of Plans and Reports by Licensed Professional Engineer (LPE)
740.410	Form and Delivery of Plans and Reports, Signatories and Certifications
740.415	Site Investigation – General
740.420	Comprehensive Site Investigation
740.425	Site Investigation Report – Comprehensive Site Investigation
740.430	Focused Site Investigation
740.435	Site Investigation Report – Focused Site Investigation
740.440	Determination of Remediation Objectives
740.445	Remediation Objectives Report
740.450	Remedial Action Plan
740.455	Remedial Action Completion Report

SUBPART E: SUBMITTAL AND REVIEW OF PLANS AND REPORTS

Section	
740.500	General
740.505	Reviews of Plans and Reports
740.510	Standards for Review of Site Investigation Reports and Related Activities
740.515	Standards for Review of Remediation Objectives Reports
740.520	Standards for Review of Remedial Action Plans and Related Activities
740.525	Standards for Review of Remedial Action Completion Reports and Related Activities
740.530	Establishment of Groundwater Management Zones
740.535	Establishment of Soil Management Zones

SUBPART F: NO FURTHER REMEDIATION LETTERS AND RECORDING REQUIREMENTS

Section	
740.600	General
740.605	Issuance of No Further Remediation Letter
740.610	Contents of No Further Remediation Letter
740.615	Payment of Fees
740.620	Duty to Record No Further Remediation Letter

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- 740.621 Requirements for No Further Remediation Letters Issued to Illinois Department of Transportation Remediation Sites Located in Rights-of-Way
- 740.622 Requirements for Perfection of No Further Remediation Letters Issued to Federal Landholding Entities Without Authority to Record Institutional Controls
- 740.625 Voidance of No Further Remediation Letter

SUBPART G: REVIEW OF ENVIRONMENTAL REMEDIATION COSTS FOR ENVIRONMENTAL REMEDIATION TAX CREDIT

Section

- 740.700 General
- 740.705 Preliminary Review of Estimated Remediation Costs
- 740.710 Application for Final Review of Remediation Costs
- 740.715 Agency Review of Application for Final Review of Remediation Costs
- 740.720 Fees and Manner of Payment
- 740.725 Remediation Costs
- 740.730 Ineligible Costs

SUBPART H: REQUIREMENTS RELATED TO SCHOOLS

Section

- 740.800 General
- 740.805 Requirements Prior to Public Use
- 740.810 Engineered Barriers and Institutional Controls
- 740.815 Public Notice of Site Remedial Action Plan
- 740.820 Establishment of Document Repository
- 740.825 Fact Sheet

SUBPART I: REVIEW OF REMEDIATION COSTS FOR BROWNFIELDS SITE RESTORATION PROGRAMSection

- 740.900 General
- 740.901 Pre-application Assessment and Eligibility Determination
- 740.905 Preliminary Review of Estimated Remediation Costs
- 740.910 Application for Final Review and Payment of Remediation Costs Following Perfection of No Further Remediation Letter
- 740.911 Application for Review and Payment of Remediation Costs Prior to Perfection of No Further Remediation Letter
- 740.915 Agency Review of Application for Payment of Remediation Costs

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740.920 Fees and Manner of Payment

740.925 Remediation Costs

740.930 Ineligible Costs

740.APPENDIX A Target Compound List

740.TABLE A Volatile Organics Analytical Parameters

740.TABLE B Semivolatile Organic Analytical Parameters

740.TABLE C Pesticide and Aroclors Organic Analytical Parameters

740.TABLE D Inorganic Analytical Parameters

740.APPENDIX B Review and Evaluation Licensed Professional Engineer Information

AUTHORITY: Implementing Sections 58 through 58.8 and 58.10 through 58.15 and authorized by Sections 58.5, 58.6, 58.7, 58.11, 58.14, and 58.15 of the Environmental Protection Act [415 ILCS 5/58 through 58.8 and 58.10 through 58.15].

SOURCE: Adopted in R97-11 at 21 Ill. Reg. 7889, effective July 1, 1997; amended in R98-27 at 22 Ill. Reg. 19580, effective October 26, 1998; amended in R01-27 and R01-29 at 26 Ill. Reg. 7197, effective April 25, 2002; amended in R03-20 at 28 Ill. Reg. _____, effective February 17, 2004.

SUBPART A: GENERAL

Section 740.100 Purpose

The ~~purposes~~purpose of this Part ~~are~~is:

- a) ~~To~~ establish *the procedures for the investigative and remedial activities at sites where there is a release, threatened release, or suspected release of hazardous substances, pesticides, or petroleum and for the review and approval of those activities*~~the procedures for the investigative and remedial activities at sites where there is a release, threatened release, or suspected release of hazardous substances, pesticides, or petroleum and for the review and approval of those activities~~. [415 ILCS 5/58.1(a)(1)]; ~~(Section 58.1(a)(1) of the Act)~~
- b) ~~To~~The purpose of this Part is also to establish procedures to be followed to obtain Illinois Environmental Protection Agency review and approval of remediation costs before applying for the environmental remediation tax credit under Section 201(1) of the Illinois Income Tax Act [35 ILCS 5/201(1)]; ~~and~~.

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- c) To establish and administer a program for the payment of remediation costs to be known as the Brownfields Site Restoration Program whereby the Agency, with the assistance of the Department of Commerce and Economic Opportunity (DCEO) through the program, shall provide remediation applicants with financial assistance for the investigation and remediation of abandoned or underutilized properties. [415 ILCS 5/58.15(B)(a)(1)]

(Source: Amended at 28 Ill. Reg. _____, effective February 17, 2004)

Section 740.120 Definitions

Except as stated in this Section, or unless a different meaning of a word or term is clear from the context, the definitions of words or terms in this Part shall be the same as that applied to the same words or terms in the Environmental Protection Act.

"Abandoned property" means real property previously used for, or that has the potential to be used for, commercial or industrial purposes that reverted to the ownership of the State, a county or municipal government, or an agency thereof, through donation, purchase, tax delinquency, foreclosure, default, or settlement, including conveyance by deed in lieu of foreclosure; or privately owned property that has been vacant for a period of not less than 3 years from the time an application is made to the Department of Commerce and Economic Opportunity. [415 ILCS 5/58.15(B)(b)(2)]

"Act" means the Environmental Protection Act [415 ILCS 5/~~1 et seq.~~].

"Agency" means the Illinois Environmental Protection Agency. [415 ILCS 5/3.01]

"Agency travel costs" means costs incurred and documented for travel in accordance with 80 Ill. Adm. Code 2800 and 3000 by individuals employed by the Agency. Such costs include costs for lodging, meals, travel, automobile mileage, vehicle leasing, tolls, taxi fares, parking and miscellaneous items.

"Agrichemical facility" means a site on which agricultural pesticides are stored or handled, or both, in preparation for end use, or distributed. The term does not include basic manufacturing facility sites. [415 ILCS 5/58.2]

"ASTM" means the American Society for Testing and Materials. [415 ILCS 5/58.2]

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"Authorized agent" means a person who is authorized by written consent or by law to act on behalf of an owner, operator, or Remediation Applicant.

"Board" means the Pollution Control Board.

"Contaminant of concern" or "*regulated substance of concern*" means any contaminant that is expected to be present at the site based upon past and current land uses and associated releases that are known to the Remediation Applicant based upon reasonable inquiry. [415 ILCS 5/58.2]

"Costs" means all costs incurred by the Agency in providing services pursuant to a Review and Evaluation Services Agreement.

"DCEO" means the Department of Commerce and Economic Opportunity (previously known as the Department of Commerce and Community Affairs).

"Federal Landholding Entity" means that federal department, agency or instrumentality with the authority to occupy and control the day-to-day use, operation, and management of Federally Owned Property.

"Federally Owned Property" means real property owned in fee by the United States on which an institutional control is or institutional controls are sought to be placed in accordance with this Part.

"GIS" means Geographic Information System.

"GPS" means Global Positioning System.

"Groundwater management zone" or "GMZ" means a three-dimensional region containing groundwater being managed to mitigate impairment caused by the release of contaminants of concern at a remediation site.

"Indirect costs" means those costs incurred by the Agency that cannot be attributed directly to a specific site but are necessary to support the site-specific activities, including, but not limited to, such expenses as managerial and administrative services, building rent and maintenance, utilities, telephone and office supplies.

"Institutional Control" means a legal mechanism for imposing a restriction on

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land use.

"Laboratory costs" means costs for services and materials associated with identifying, analyzing, and quantifying chemical compounds in samples at a laboratory.

"Land Use Control Memorandum of Agreement" or "LUC MOA" means an agreement entered into between one or more agencies of the United States and the Illinois Environmental Protection Agency that limits or places requirements upon the use of Federally Owned Property for the purpose of protecting human health or the environment, or that is used to perfect a No Further Remediation Letter that contains land use restrictions.

"Licensed Professional Engineer" or "LPE" means a person, corporation or partnership licensed under the laws of this State to practice professional engineering. [415 ILCS 5/58.2]

"Other contractual costs" means costs for contractual services not otherwise specifically identified, including, but not limited to, printing, blueprints, photography, film processing, computer services and overnight mail.

"Perfect" or "Perfected" means recorded or filed for record so as to place the public on notice, or as otherwise provided in Sections 740.621 and 740.622 of this Part.

"Person" means individual, trust, firm, joint stock company, joint venture, consortium, commercial entity, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state, or any interstate body, including the United States Government and each department, agency and instrumentality of the United States. [415 ILCS 5/58.2]

"Personal services costs" means costs relative to the employment of individuals by the Agency. Such costs include, but are not limited to, hourly wages and fringe benefits.

"Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest or any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant. [415 ILCS 60/4]

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"Practical quantitation limit" or "PQL" or "Estimated quantitation limit" means the lowest concentration that can be reliably measured within specified limits of precision and accuracy for a specific laboratory analytical method during routine laboratory operating conditions in accordance with "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," EPA Publication No. SW-846, incorporated by reference at Section 740.125 of this Part. For filtered water samples, PQL also means the Method Detection Limit or Estimated Detection Limit in accordance with the applicable method revision in: "Methods for the Determination of Metals in Environmental Samples," EPA Publication No. EPA/600/4-91/010; "Methods for the Determination of Metals in Environmental Samples, Supplement I," EPA Publication No. EPA/600/R-94/111; "Methods for the Determination of Organic Compounds in Drinking Water," EPA Publication No. EPA/600/4-88/039; "Methods for the Determination of Organic Compounds in Drinking Water, Supplement II," EPA Publication No. EPA/600/R-92/129; or "Methods for the Determination of Organic Compounds in Drinking Water, Supplement III," EPA Publication No. EPA/600/R-95/131, all of which are incorporated by reference at Section 740.125 of this Part.

"Reasonably obtainable" means that a copy or reasonable facsimile of the record must be obtainable from a private entity or government agency by request and upon payment of a processing fee, if any.

"Recognized environmental condition" means the presence or likely presence of any regulated substance or pesticide under conditions that indicate a release, threatened release or suspected release of any regulated substance or pesticide at, on, to or from a remediation site into structures, surface water, sediments, groundwater, soil, fill or geologic materials. The term shall not include de minimis conditions that do not present a threat to human health or the environment.

"Regulated substance" means any hazardous substance as defined under Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (P.L. 96-510) and petroleum products, including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas). [415 ILCS 5/58.2]

"Regulated substance of concern" or "contaminant of concern" means any contaminant that is expected to be present at the site based upon past and current

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land uses and associated releases that are known to the Remediation Applicant based upon reasonable inquiry. [415 ILCS 5/58.2]

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, but excludes any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer or such persons; emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine; release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the federal Atomic Energy Act of 1954, if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under Section 170 of such Act; and the normal application of fertilizer. [415 ILCS 5/3.33]

"Remedial action" means activities associated with compliance with the provisions of Sections 58.6 and 58.7 of the Act, including, but not limited to, the conduct of site investigations, preparation of work plans and reports, removal or treatment of contaminants, construction and maintenance of engineered barriers, and/or implementation of institutional controls. [415 ILCS 5/58.2]

"Remediation Applicant" or "RA" means any person seeking to perform or performing investigative or remedial activities under Title XVII of the Act, including the owner or operator of the site or persons authorized by law or consent to act on behalf of or in lieu of the owner or operator of the site. [415 ILCS 5/58.2]

*"Remediation costs" means reasonable costs paid for investigating and remediating regulated substances of concern consistent with the remedy selected for the site. For purposes of ~~Subparts~~ **Subpart G and I** of this Part, "Remediation Costs" shall not include costs incurred prior to January 1, 1998, costs incurred after the issuance of a No Further Remediation Letter under Subpart F of this Part, or costs incurred more than 12 months prior to acceptance into the Site Remediation Program under this Part. [415 ILCS 5/58.2]*

"Remediation objective" means a goal to be achieved in performing remedial action, including but not limited to the concentration of a contaminant, an engineered barrier or engineered control, or an institutional control established under Section 58.5 of the Act or Section 740.Subpart D of this Part.

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"Remediation site" means the single location, place, tract of land, or parcel or portion of any parcel of property, including contiguous property separated by a public right-of-way, for which review, evaluation, and approval of any plan or report has been requested by the Remediation Applicant in its application for review and evaluation services. This term also includes, but is not limited to, all buildings and improvements present at that location, place, or tract of land.

"Residential property" means any real property that is used for habitation by individuals, or where children have the opportunity for exposure to contaminants through soil ingestion or inhalation at educational facilities, health care facilities, child care facilities, or outdoor recreational areas. [415 ILCS 5/58.2]

"Review and Evaluation Licensed Professional Engineer" or "RELPE" means the licensed professional engineer with whom a Remediation Applicant has contracted to perform review and evaluation services under the direction of the Agency.

"Site" means any single location, place, tract of land or parcel of property or portion thereof, including contiguous property separated by a public right-of-way. [415 ILCS 5/58.2] This term also includes, but is not limited to, all buildings and improvements present at that location, place or tract of land.

"Soil management zone" or "SMZ" means a three dimensional region containing soil being managed to mitigate contamination caused by the release of contaminants at a remediation site.

"Underutilized property" means real property of which less than 35% of the commercially usable space of the property and improvements thereon are used for their most commercially profitable and economically productive uses. [415 ILCS 5/58.15(B)(b)(2)]

(Source: Amended at 28 Ill. Reg. _____, effective February 17, 2004)

**SUBPART I: REVIEW OF REMEDIATION COSTS FOR
BROWNFIELDS SITE RESTORATION PROGRAM**

Section 740.900 General

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- a) This Subpart sets forth the procedures an RA must follow to obtain Agency review, a final determination and payment of remediation costs under the Brownfields Site Restoration Program. It contains procedures for preliminary reviews of estimated remediation costs and final reviews of remediation costs actually incurred, establishes fees for the Agency's reviews, provides for appeals of Agency determinations, and includes listings of eligible and ineligible costs.
- b) For each State fiscal year in which funds are made available to the Agency for payment under this Subpart, the Agency must, subject to the availability of funds, allocate 20% of the funds to be available to Remediation Applicants within counties with populations over 2,000,000. The remaining funds must be made available to all other Remediation Applicants in the State. [415 ILCS 5/58.15(B)(a)(2)] Brownfields Site Restoration Program funds shall be subject to availability of funding and distributed based on the order of receipt of applications satisfying all the requirements of this Subpart.
- c) The total payment to be made to an applicant must not exceed an amount equal to 20% of the capital investment at the site. [415 ILCS 5/58.15(B)(a)(3)]
- d) Only those remediation projects for which a No Further Remediation Letter is issued after December 31, 2001 are eligible to participate in the Brownfields Site Restoration Program. The program does not apply to any sites for which a No Further Remediation Letter is issued on or prior to December 31, 2001 or to costs incurred prior to DCEO approving a site eligible for the Brownfields Site Restoration Program. [415 ILCS 5/58.15(B)(a)(4)]
- e) Except as provided in Section 740.911, an application for review of remediation costs must not be submitted until:
- 1) A No Further Remediation Letter has been issued by the Agency or has issued by operation of law; and
 - 2) The No Further Remediation Letter, or an affidavit under Section 740.620(a)(2) of this Part stating that the No Further Remediation Letter has issued by operation of law, has been recorded in the chain of title for the site in accordance with Subpart F of this Part. [415 ILCS 5/58.15(B)(e)]

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- f) *The Agency must not approve payment in excess of \$750,000 to a Remediation Applicant for remediation costs incurred at a remediation site. [415 ILCS 5/58.15(B)(a)(3)]*
- g) *Brownfields Site Restoration Program funds shall be subject to availability of funding and distributed based on the order of receipt of applications satisfying all applicable requirements as set forth in the Act and this Part. [415 ILCS 5/58.15(B)(a)(5)]*

(Source: Added at 28 Ill. Reg. _____, effective February 17, 2004)

Section 740.901 Pre-application Assessment and Eligibility Determination

- a) *Prior to submitting an application to determine eligibility to DCEO, a Remediation Applicant shall first submit to the Agency its proposed remediation costs. The Agency shall make a pre-application assessment, which is not to be binding upon DCEO or upon future review of the project, relating only to whether the Agency has adequate funding to reimburse the applicant for the remediation costs if the applicant is found to be eligible for reimbursement of remediation costs. [415 ILCS 5/58.15(B)(b)]*
- b) *If the Agency determines that it is likely to have adequate funding to reimburse the applicant for remediation costs, the Remediation Applicant may then submit to DCEO an application for review of eligibility. [415 ILCS 5/58.15(B)(b)] To be eligible for payment, an RA must have a minimum capital investment in the redevelopment of the site. Procedures for applying for eligibility and for obtaining a determination from DCEO must be obtained from DCEO.*
- c) *Once DCEO has determined that an RA is eligible, the RA may submit an application to the Agency in accordance with Section 740.910 or Section 740.911 of this Part.*
- d) *The Agency must rely on DCEO's decision as to eligibility. The maximum amount of the payment to be made to the RA for remediation costs may not exceed the "net economic benefit" to the State of the remediation project, as determined by DCEO, based on factors including, but not limited to, the capital investment, the number of jobs created, the number of jobs retained if it is demonstrated the jobs would otherwise be lost, capital improvements, the number of construction-related jobs, increased sales, material purchases, other increases in service and operational expenditures. [415 ILCS 5/58.15(B)(b)(3)]*

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(Source: Added at 28 Ill. Reg. _____, effective February 17, 2004)

Section 740.905 Preliminary Review of Estimated Remediation Costs

- a) *A Remediation Applicant may obtain a preliminary review of estimated remediation costs for the development and implementation of a Remedial Action Plan, required under Section 740.450 of this Part, by submitting a budget plan along with the Remedial Action Plan. [415 ILCS 5/58.15(B)(i)(1)] The Agency shall not accept a budget plan unless a Remedial Action Plan satisfying the requirements of Section 740.450 of this Part also has been submitted.*
- b) The budget plan must be set forth on forms prescribed and provided by the Agency and must include, but is not limited to, the following information:
- 1) Identification of applicant and remediation site, including:
 - A) The full legal name, address and telephone number of the RA, any authorized agents acting on behalf of the RA, and any contact persons to whom inquiries and correspondence must be addressed;
 - B) The address, site name, tax parcel identification number(s) and Illinois inventory identification number for the remediation site and the date of acceptance of the site into the Site Remediation Program; and
 - C) The Federal Employer Identification Number (FEIN) or Social Security Number (SSN) of the RA.
 - 2) Line item estimates of the costs that the RA anticipates will be incurred for the development and implementation of the Remedial Action Plan, including but not limited to:
 - A) Site investigation activities:
 - i) Drilling costs;
 - ii) Physical soil analysis;
 - iii) Monitoring well installation; and

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- iv) Disposal costs.
 - B) Sampling and analysis activities:
 - i) Soil analysis costs;
 - ii) Groundwater analysis costs;
 - iii) Well purging costs; and
 - iv) Water disposal costs.
 - C) Remedial activities:
 - i) Groundwater remediation costs;
 - ii) Excavation and disposal costs;
 - iii) Land farming costs;
 - iv) Above-ground bio-remediation costs;
 - v) Land application costs;
 - vi) Low temperature thermal treatment costs;
 - vii) Backfill costs; and
 - viii) In-situ soil remediation costs.
 - D) Report preparation costs.
- 3) A certification, signed by the RA or authorized agent and notarized, as follows:
- I, [name of RA, if individual, or authorized agent of RA], hereby certify that neither ["I" if RA is certifying or name of RA if authorized agent is certifying], nor any related party (as described in Section 201(l) of the Illinois Income Tax Act [35 ILCS 5/201(l)]), nor any person whose tax

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attributes ["I" if RA is certifying or name of RA if authorized agent is certifying] have [has] succeeded to under Section 381 of the Internal Revenue Code, caused or contributed in any material respect to the release or substantial threat of a release of regulated substance(s) or pesticide(s) that are identified and addressed in the Remedial Action Plan submitted for the site identified above.

- 4) The original signature of the RA or authorized agent acting on behalf of the RA.
- c) The RA must submit the applicable fee, as provided in Section 740.920 of this Subpart, with the budget plan, except as provided in subsections (f) and (i)(4) of this Section.
- d) Budget plans must be mailed or delivered to the address designated by the Agency on the forms. Requests that are hand-delivered must be delivered during the Agency's normal business hours.
- e) Submittal of a budget plan must be deemed an automatic 60-day waiver of the Remedial Action Plan deadlines set forth in the Act and Section 740.505 of this Part. [415 ILCS 5/58.15(B)(i)(4)]
- f) If the Remedial Action Plan is amended by the Remediation Applicant or as a result of Agency action, the corresponding budget plan must be revised accordingly and resubmitted. [415 ILCS 5/58.15(B)(i)(2)] No additional fee shall be required for this review.
- g) The following rules apply to the Agency's review period for budget plans:
 - 1) The Agency's review period begins on the date of receipt of the budget plan by the Agency. The Agency's record of the date of receipt of a budget plan shall be deemed conclusive unless a contrary date is proven by a dated, signed receipt from certified or registered mail.
 - 2) In reviewing budget plans and the Remedial Action Plans they accompany, the Agency is subject to the deadlines set forth in Section 740.505 of this Part with an additional 60 days, due to the automatic waiver, in accordance with subsection (e) of this Section.
 - 3) Submittal of an amended plan restarts the time for review.

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- 4) The RA may waive the time line for review upon a request from the Agency or at the RA's discretion.
- h) The Agency must review the budget plan along with the Remedial Action Plan to determine whether the estimated costs submitted are remediation costs and whether the costs estimated for the activities are reasonable. [415 ILCS 5/58.15(B)(i)(1)]
- i) Upon completion of the review, the Agency must issue a letter to the Remediation Applicant approving, disapproving or modifying the estimated remediation costs submitted in the budget plan. [415 ILCS 5/58.15(B)(i)(5)] The following rules apply regarding Agency determinations:
- 1) The Agency's notification of final determination shall be by certified or registered mail postmarked with a date stamp and with return receipt requested. The Agency's determination shall be deemed to have been made on the postmarked date that the notice is mailed.
 - 2) The Agency may combine the notification of its final determination on a budget plan with the notification of its final determination on the corresponding Remedial Action Plan.
 - 3) If a budget plan is disapproved or approved with modification of estimated remediation costs, the written notification shall contain the following information as applicable:
 - A) An explanation of the specific type of information or documentation, if any, that the Agency finds the RA did not provide;
 - B) The reasons for the disapproval or modification of estimated remediation costs; and
 - C) Citations to statutory or regulatory provisions upon which the determination is based.
 - 4) If the Agency disapproves a Remedial Action Plan or approves a Remedial Action Plan with conditions, in accordance with Subpart E of this Part, the Agency may return the corresponding budget plan to the RA

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without review. If the Remedial Action Plan is amended in response to Agency action, the RA may submit a revised budget plan for review. No additional fee shall be required for this review.

- 5) Within 35 days after receipt of an Agency letter disapproving or modifying a budget plan or expiration of the Agency deadline, the Remediation Applicant may appeal the Agency's decision or the Agency's failure to issue a final determination to the Board in the manner provided for the review of permits in Section 40 of the Act. [415 ILCS 5/58.15(B)(i)(6)]

(Source: Added at 28 Ill. Reg. _____, effective February 17, 2004)

Section 740.910 Application for Final Review and Payment of Remediation Costs Following Perfection of No Further Remediation Letter

- a) The RA for any site enrolled in the Site Remediation Program may submit an application for final review and payment of remediation costs following perfection of a No Further Remediation Letter.
- b) The application must be submitted on forms prescribed and provided by the Agency and must include, at a minimum, the following information:
- 1) Identification of RA and remediation site, including:
 - A) The full legal name, address and telephone number of the RA, any authorized agents acting on behalf of the RA, and any contact persons to whom inquiries and correspondence must be addressed;
 - B) The address, site name, tax parcel identification number(s) and Illinois inventory identification number for the remediation site;
 - C) The date of acceptance of the remediation site into the Site Remediation Program; and
 - D) The Federal Employer Identification Number (FEIN) or Social Security Number (SSN) of the RA;
 - 2) A true and correct copy of the No Further Remediation Letter, or affidavit(s) under Section 740.620(a)(2) of this Part stating that the No Further Remediation Letter has issued by operation of law, for the

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remediation site, as recorded in the chain of title for the site and certified by the appropriate County Recorder or Registrar of Titles;

- 3) A true and correct copy of DCEO's letter approving eligibility, including the net economic benefit of the remediation project [415 ILCS 5/58.15(B)(e)(4)];
- 4) Itemization and documentation of remediation activities for which payment is sought and of remediation costs incurred, including invoices, billings and dated, legible receipts with canceled checks or other Agency-approved methods of proof of payment;
- 5) A certification, signed by the RA or authorized agent and notarized, as follows:

I, _____ [name of RA, if individual, or authorized agent of RA], hereby certify that:

The site for which this application for payment is submitted is the site for which the No Further Remediation Letter was issued;

All the costs included in this application were incurred at the site and for the regulated substance(s) or pesticide(s) for which the No Further Remediation Letter was issued;

The costs incurred are remediation costs as defined in the Act and rules adopted thereunder;

The costs submitted were paid by _____ ["me" if RA is certifying or name of RA if authorized agent is certifying] and are accurate to the best of my knowledge and belief;

None of the costs were incurred before approval of the site by DCEO as eligible for the Brownfields Site Restoration Program; and

_____ ["I" if RA is certifying or name of RA if authorized agent is certifying] did not cause or contribute in any material respect to the release or substantial threat of a release of regulated substance(s) or pesticide(s) for which the No Further Remediation Letter was issued.

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- 6) The original signature of the RA or of the authorized agent acting on behalf of the RA.
- c) The application for final review must be accompanied by the applicable fee for review as provided in Section 740.920 of this Subpart. Applications must be mailed or delivered to the address designated by the Agency on the forms. Requests that are hand-delivered must be delivered during the Agency's normal business hours.
- d) The Agency's acceptance of a certification that the RA did not cause or contribute in any material respect to the release or substantial threat of a release for which the payment is requested shall not bind the Agency or the State and shall not be used as a defense with regard to any enforcement or cost recovery actions that may be initiated by the State or any other party.

(Source: Added at 28 Ill. Reg. _____, effective February 17, 2004)

Section 740.911 Application for Review and Payment of Remediation Costs Prior to Perfection of No Further Remediation Letter

- a) An application for review of remediation costs may be submitted to the Agency prior to the issuance of a No Further Remediation Letter (or an affidavit under Section 740.620(a)(2) of this Part stating that the No Further Remediation Letter has issued by operation of law) if the Remediation Applicant has a Remedial Action Plan approved by the Agency under Section 740.450 of this Part under the terms of which the Remediation Applicant will remediate groundwater for more than one year. [415 ILCS 5/58.15(B)(f)]
- b) The application must be on forms prescribed and provided by the Agency, shall be accompanied by the applicable fee for review as provided in Section 740.920(b) of this Subpart, and must include, at a minimum, the following information:
 - 1) Identification of RA and remediation site, including:
 - A) The full legal name, address and telephone number of the RA, any authorized agents acting on behalf of the RA, and any contact persons to whom inquiries and correspondence must be addressed;

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- B) The address, site name, tax parcel identification number(s) and Illinois inventory identification number for the remediation site;
- C) The date of acceptance of the remediation site into the Site Remediation Program; and
- D) The Federal Employer Identification Number (FEIN) or Social Security Number (SSN) of the RA;
- 2) A true and correct copy of the Agency letter approving the Remedial Action Plan [415 ILCS 5/58.15(B)(f)(2)];
- 3) A true and correct copy of DCEO's letter approving eligibility, including the net economic benefit of the remediation project [415 ILCS 5/58.15(B)(f)(4)];
- 4) Itemization and documentation of remediation activities for which payment is sought and of remediation costs incurred, including invoices, billings and dated, legible receipts with canceled checks or other Agency-approved methods of proof of payment;
- 5) A certification, signed by the RA or authorized agent and notarized, as follows:
- I, _____ [name of RA, if individual, or authorized agent of RA], hereby certify that:
- The site for which this application for payment is submitted is the site for which the Remedial Action Plan referenced in subsection (a) of this Section was approved;
- All the costs included in this application were incurred at the site for which the Remedial Action Plan referenced in subsection (a) of this Section was approved;
- The costs incurred are remediation costs as defined in the Act and rules adopted thereunder;

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The costs submitted were paid by _____ ["me" if RA is certifying or name of RA if authorized agent is certifying] and are accurate to the best of my knowledge and belief;

None of the costs were incurred before approval of the site by DCEO as eligible for the Brownfields Site Restoration Program; and

_____ ["I" if RA is certifying or name of RA if authorized agent is certifying] did not cause or contribute in any material respect to the release or substantial threat of a release of regulated substance(s) or pesticide(s) for which the Remedial Action Plan was approved.

- 6) The original signature of the RA or of the authorized agent acting on behalf of the RA.
- c) Until the Agency issues a No Further Remediation Letter for the site (or an affidavit under Section 740.620(a)(2) of this Part stating that the No Further Remediation Letter has issued by operation of law), no more than 75% of the allowed payment may be claimed by the Remediation Applicant. The remaining 25% may be claimed following the issuance by the Agency of a No Further Remediation Letter (or an affidavit under Section 740.620(a)(2) of this Part stating that the No Further Remediation Letter has issued by operation of law) for the site [415 ILCS 5/58.15(B)(g)].
- d) The Agency's acceptance of a certification that the RA did not cause or contribute in any material respect to the release or substantial threat of a release for which the payment is requested shall not bind the Agency or the State and shall not be used as a defense with regard to any enforcement or cost recovery actions that may be initiated by the State or any other party.

(Source: Added at 28 Ill. Reg. _____, effective February 17, 2004)

Section 740.915 Agency Review of Application for Payment of Remediation Costs

- a) The Agency must review each application submitted pursuant to Section 740.910 or Section 740.911 to determine, in accordance with Sections 740.925 and 740.930 of this Part, whether the costs submitted are remediation costs and whether the costs incurred are reasonable. [415 ILCS 5/58.15(B)(e), (f)]

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- b) Within 60 days after receipt by the Agency of an application meeting the requirements of Section 740.910 or Section 740.911, the Agency must issue a letter to the RA approving, disapproving, or modifying the remediation costs submitted in the application. [415 ILCS 5/58.15(B)(h)(1)]
- c) The Agency's review period begins on the date of receipt of the budget plan by the Agency. The Agency's record of the date of receipt of a budget plan shall be deemed conclusive unless a contrary date is proven by a dated, signed receipt from certified or registered mail.
- d) The RA may waive the time for review.
- e) Submittal of an amended application restarts the time for review.
- f) The Agency's notification of final determination shall be by certified or registered mail postmarked with a date stamp and with return receipt requested. The Agency's determination shall be deemed to have been made on the postmarked date that the notice is mailed.
- g) If a preliminary review of a budget plan has been obtained under Section 740.905 of this Part, the Remediation Applicant may submit, with the application, applicable fee under Section 740.920 of this Part, and supporting documentation under Section 740.910 or Section 740.911 of this Part, a copy of the Agency's final determination on the budget plan accompanied by a certification, signed by the RA or authorized agent and notarized, stating as follows:
- I, _____ [name of RA, if individual, or name of authorized agent of RA], hereby certify that the actual remediation costs incurred at the site for line items [list line items to which certification applies] and identified in the application for final review of remediation costs are equal to or less than the costs approved for the corresponding line items in the attached budget plan determination.
- h) If the budget plan determination and certification are submitted pursuant to subsection (g) of this Section, the Agency may conduct further review of the certified line item costs and may approve such costs as submitted. The Agency's further review shall be limited to confirmation that costs approved in the Agency's budget plan determination were actually incurred by the RA in the development and implementation of the Remedial Action Plan.

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- i) If the certification in subsection (g) of this Section does not apply to all line items as approved in the budget plan, the Agency shall conduct its review of the costs for the uncertified line items as if no budget plan had been approved. In its review, the Agency shall not reconsider the appropriateness of any activities, materials, labor, equipment, structures or services already approved by the Agency for the development or implementation of the Remedial Action Plan.
- j) If an application is disapproved or approved with modification of remediation costs, the written notification to the RA must contain the following information as applicable:
- 1) An explanation of the specific type of information or documentation, if any, that the Agency deems the RA did not provide;
 - 2) The reasons for the disapproval or modification of remediation costs; and
 - 3) Citations to statutory or regulatory provisions upon which the determination is based.
- k) Within 35 days after receipt of an Agency letter disapproving or modifying an application for approval of remediation costs, the Remediation Applicant may appeal the Agency's decision to the Board in the manner provided for the review of permits in Section 40 of the Act. [415 ILCS 5/58.15(B)(h)(3)]

(Source: Added at 28 Ill. Reg. _____, effective February 17, 2004)

Section 740.920 Fees and Manner of Payment

- a) The fee for the preliminary review of estimated remediation costs conducted under Section 740.905 of this Part shall be \$500 for each remediation site reviewed. (Derived from 415 ILCS 5/58.15(B)(j)(2))
- b) The fee for the final review of remediation costs under Section 740.910 or Section 740.911 of this Part shall be \$1000 for each remediation site reviewed. (Derived from 415 ILCS 5/58.15(B)(j)(1))
- c) The fee for a review under this Subpart shall be in addition to any other fees, payments or assessments under Title XVII of the Act and this Part.

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- d) All fees shall be paid by check or money order made payable to "Treasurer – State of Illinois, for deposit in the Brownfields Redevelopment Fund". The check or money order shall include the Illinois inventory identification number and the Federal Employer Identification Number (FEIN) or social security number (SSN) of the RA.

(Source: Added at 28 Ill. Reg. _____, effective February 17, 2004)

Section 740.925 Remediation Costs

- a) Activities, materials, labor, equipment, structure and service costs that may be approved by the Agency as remediation costs for payment under this Subpart include, but are not limited to, the following:
- 1) Preparation of bid documents and contracts for procurement of contractors, subcontractors, analytical and testing laboratories, labor, services and suppliers of equipment and materials;
 - 2) Engineering services performed in accordance with Section 58.6 of the Act and implementing regulations at Sections 740.235 and 740.405 of this Part;
 - 3) Site assessment and remedial investigation activities conducted in accordance with Sections 740.410, 740.415, 740.420 and 740.430 of this Part;
 - 4) Report or plan preparation conducted in accordance with Sections 740.425, 740.435, 740.445, 740.450 and 740.455 of this Part;
 - 5) Collection, analysis or measurement of site samples in accordance with Section 740.415(d) of this Part;
 - 6) Groundwater monitoring well installation, operation, maintenance and construction materials;
 - 7) Removal, excavation, consolidation, preparation, containerization, packaging, transportation, treatment or off-site disposal of wastes, environmental media (e.g., soils, sediments, groundwater, surface water, debris), containers or equipment contaminated with regulated substances or pesticides at concentrations exceeding remediation objectives pursuant

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to an approved Remediation Objectives Report in accordance with Section 740.445 of this Part. Activities must be in compliance with all applicable State or federal statutes and regulations;

- 8) Clean backfill materials in quantities necessary to replace soils excavated and disposed of off-site that were contaminated with regulated substances or pesticides at levels exceeding remediation objectives pursuant to an approved Remediation Objectives Report in accordance with Section 740.445 of this Part;
- 9) Transportation, preparation and placement of clean backfill materials pursuant to an approved Remedial Action Plan in accordance with Section 740.450 of this Part;
- 10) Design, testing, permitting, construction, monitoring and maintenance of on-site treatment systems pursuant to an approved Remedial Action Plan in accordance with Section 740.450 of this Part;
- 11) Engineering costs associated with preparation of a budget plan in accordance with Section 740.905 of this Subpart or an application for review and payment of remediation costs in accordance with Section 740.910 or Section 740.911 of this Subpart if prepared before the issuance of the No Further Remediation Letter (by the Agency or by operation of law);
- 12) Removal or replacement of concrete, asphalt or paving to the extent necessary to achieve remediation objectives pursuant to an approved Remedial Action Plan in accordance with Section 740.450 of this Part;
- 13) Clay, soil, concrete, asphalt or other appropriate materials as a cap, barrier or cover to the extent necessary to achieve remediation objectives pursuant to an approved Remedial Action Plan in accordance with Section 740.450 of this Part;
- 14) Placement of clay, soil, concrete, asphalt or other appropriate materials as a cap, barrier or cover to the extent necessary to achieve remediation objectives pursuant to an approved Remedial Action Plan in accordance with Section 740.450 of this Part;

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- 15) Destruction or dismantling and reassembly of above-grade structures to the extent necessary to achieve remediation objectives pursuant to an approved Remedial Action Plan in accordance with Section 740.450 of this Part;
- 16) Costs associated with obtaining a special waste generator identification number not to exceed \$100.
- b) An RA may submit a request for review of remediation costs that includes an itemized accounting and documentation of costs associated with activities, materials, labor, equipment, structures or services not identified in subsection (a) of this Section if the RA submits detailed information demonstrating that those items are necessary for compliance with this Part 740, 35 Ill. Adm. Code 742 and the approved Remedial Action Plan.

(Source: Added at 28 Ill. Reg. _____, effective February 17, 2004)

Section 740.930 Ineligible Costs

Costs ineligible for payment include, but are not limited to, the following:

- a) Costs not incurred by the RA, including:
- 1) Costs incurred for activities, materials, labor or services relative to remediation at a site other than the site for which the No Further Remediation Letter was issued;
 - 2) Costs for remediating a release or substantial threat of a release of regulated substances or pesticides that was caused or contributed to in any material respect by the RA;
- b) Costs incurred before approval of the site by DCEO as eligible for the Brownfields Site Restoration Program;
- c) Costs associated with material improvements to the extent that such improvements are not necessary to achieve remediation objectives pursuant to an approved Remedial Action Plan in accordance with Section 740.450 of this Part;
- d) Costs or losses resulting from business interruption;

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- e) Costs incurred as a result of vandalism, theft, negligence or fraudulent activity by the RA or the agent of the RA;
- f) Costs incurred as a result of negligence in the practice of professional engineering as defined in Section 4 of the Professional Engineering Practice Act of 1989 [225 ILCS 325/4];
- g) Costs incurred as a result of negligence by any contractor, subcontractor, or other person providing remediation services at the site;
- h) Costs associated with replacement of above-grade structures destroyed or damaged during remediation activities to the extent such destruction or damage and such replacement is not necessary to achieve remediation objectives pursuant to an approved Remedial Action Plan in accordance with Section 740.450 of this Part;
- i) Attorney fees;
- j) Purchase costs of non-consumable materials, supplies, equipment or tools, except that a reasonable rate may be charged for the usage of such materials, supplies, equipment or tools;
- k) Costs for repairs or replacement of equipment or tools due to neglect, improper or inadequate maintenance, improper use, loss or theft;
- l) Costs associated with activities that violate any provision of the Act or Board, Agency or Illinois Department of Transportation regulations;
- m) Costs associated with improperly installed or maintained groundwater monitoring wells;
- n) Costs associated with unnecessary, irrelevant or improperly conducted activities, including, but not limited to, data collection, testing, measurement, reporting, analysis, modeling, risk assessment or sample collection, transportation, measurement, analysis or testing;
- o) Stand-by or demurrage costs;
- p) Interest or finance costs charged as direct costs;

POLLUTION CONTROL BOARD

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- q) Insurance costs charged as direct costs;
- r) Indirect costs for personnel, labor, materials, services or equipment charged as direct costs;
- s) Costs associated with landscaping, vegetative cover, trees, shrubs and aesthetic considerations;
- t) Costs associated with activities, materials, labor, equipment, structures or services to the extent they are not necessary for compliance with this Part 740, 35 Ill. Adm. Code 742 and the approved Remedial Action Plan;
- u) Costs determined to be incorrect as a result of a mathematical, billing or accounting error;
- v) Costs that are not adequately documented;
- w) Costs that are determined to be unreasonable;
- x) Handling charges for subcontractor costs when the contractor has not paid the subcontractor.

(Source: Added at 28 Ill. Reg. _____, effective February 17, 2004)

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED RULES

- 1) Heading of the Part: Aircraft Use Tax
- 2) Code Citation: 86 Ill. Adm. Code 152
- 3)

<u>Section Numbers:</u>	<u>Adopted Action:</u>
152.101	New Section
152.105	New Section
152.110	New Section
152.115	New Section
- 4) Statutory Authority: Public Act 93-0024
- 5) Effective Date of Rules: February 13, 2004
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) A copy of the adopted rules, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: 27 Ill. Reg. 10195; July 11, 2003
- 10) Has JCAR issued a Statement of Objection to these Rules? No
- 11) Differences between proposal and final version: The only changes made were the ones agreed upon with JCAR. The changes made were grammar and punctuation or technical. No substantive changes were made.
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes
- 13) Will these rules replace an emergency rulemaking currently in effect? No, emergency rules have expired.
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Rules: Public Act 93-0024, which enacts the Aircraft Use Tax, became effective July 1, 2003. These rules describe the filing of returns, payment of tax and transactions that are taxable.

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED RULES

- 16) Information and questions regarding these adopted rules shall be directed to:

Melanie A. Jarvis
Associate Counsel
Legal Services Office
Illinois Department of Revenue
101 West Jefferson
Springfield, Illinois 62794
217/782-2844

The full text of the adopted rules begins on the next page:

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED RULES

TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUEPART 152
AIRCRAFT USE TAX

Section

152.101	Nature of the Aircraft Use Tax
152.105	Basis and Rate of the Tax
152.110	Returns and Payment
152.115	Nontaxable Transactions

AUTHORITY: Implementing and authorized by the Aircraft Use Tax Law [35 ILCS 157].

SOURCE: Emergency rules adopted at 27 Ill. Reg. 10518, effective July 1, 2003, for a maximum of 150 days; emergency expired November 27, 2003; adopted at 28 Ill. Reg. 3900, effective February 13, 2004.

Section 152.101 Nature of the Aircraft Use Tax

- a) The Aircraft Use Tax is a privilege tax imposed on the privilege of using, in this State, aircraft as defined in Section 3 of the Illinois Aeronautics Act. The tax applies to aircraft acquired by gift, transfer, or non-retail purchase after June 30, 2003. The tax is imposed on the use of aircraft in this State regardless of whether the aircraft is actually registered under the Illinois Aeronautics Act. Examples:
- 1) An aircraft that is acquired by non-retail purchase outside of Illinois prior to June 30, 2003 and is brought into Illinois after June 30, 2003 is not subject to the tax imposed by this Part.
 - 2) Fractional share ownership in an aircraft would be subject to tax if the plane were used in Illinois.
 - 3) A multi-state corporation leases a corporate aircraft from a related entity to transport its corporate executives on business travel throughout the United States. The aircraft is registered and hangered outside Illinois. As part of a corporate restructure, ownership of the aircraft will be moved to a new entity. The transfer of both possession and ownership of the aircraft will occur outside Illinois after June 30, 2003 and the transfer of the aircraft to the new entity will qualify as a tax-free capital contribution

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under the Internal Revenue Code. After completion of this restructuring the aircraft will be based in Illinois. This transfer is a taxable event in Illinois and Aircraft Use Tax is incurred.

- b) *"Aircraft" means any device used or designed to carry humans in flight as specified by the Department of Transportation by rule. All devices required to be licensed as "aircraft" by the Federal Aviation Administration (FAA) are "aircraft". [620 ILCS 5/3] Under Department of Transportation rules, aircraft is defined to mean any contrivance now known or hereafter invented, used or designed for navigation of or flight in the air. (See 93 Ill. Adm. Code 14.10.)*

Section 152.105 Basis and Rate of the Tax

- a) The rate of tax shall be 6.25% of the selling price for each non-retail purchase of aircraft that qualifies under this Part.
- b) Tax shall be imposed on the selling price of an aircraft. However, the selling price shall not be less than the fair market value of the aircraft on the date the aircraft is purchased or the date the aircraft is brought into the State, whichever is later. Trade-ins are not allowed to be credited against the tax base.
- c) For purposes of calculating the tax due when an aircraft is acquired by gift or transfer, the tax shall be imposed on the fair market value of the aircraft on the date the aircraft is acquired or the date the aircraft is brought into the State, whichever is later.
- d) For purposes of this Section, "selling price" means the consideration received for an aircraft subject to the tax imposed by this Section valued in money, whether received in money or otherwise, including cash, credits, service or property. In the case of gifts or transfers without reasonable consideration, "selling price" shall be deemed to be the fair market value as determined by the Department or the Department's vendor. *For the purpose of assisting in determining the validity of the "selling price" reported on returns filed with the Department, the Department may furnish the following information to persons with whom the Department has contracted for service related to making that determination: the selling price stated on the return; the aircraft identification number; the year, the make, and the model name or number of the aircraft; the purchase date; and the hours of operation (Section 10-30). Hours of operation means aircraft hours or airframe hours.*

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Section 152.110 Returns and Payment

- a) The purchaser, donee or transferee shall file a return signed by the purchaser, donee and transferee with the Department of Revenue on a form prescribed by the Department. The Department may request that the FAA bill of sale and the purchase agreement or invoice be filed with the return.
- b) The return and payment from the purchaser, donee, or transferee shall be submitted to the Department within 30 days after the date of purchase, donation, or other transfer or the date the aircraft is brought into the State, whichever is later.
- c) Such return and payment shall be a condition to securing registration of the aircraft from the Division of Aeronautics of the Department of Transportation.

Section 152.115 Nontaxable Transactions

- a) The tax does not apply:
 - 1) if the use of the aircraft is otherwise taxed under the Use Tax Act [35 ILCS 105];
 - 2) if the aircraft is bought and used by a governmental agency or a society, association, foundation, or institution organized and operated exclusively for charitable, religious, or educational purposes. An active Department issued exemption number is required to document this exemption;
 - 3) if the use of the aircraft is not subject to the Use Tax Act by reason of subsection (a), (b), (c), (d), or (e) of Section 3-55 of that Act dealing with the prevention of actual or likely multistate taxation; or
 - 4) if the transfer is a gift to a beneficiary in the administration of an estate and the beneficiary is a surviving spouse.
- b) Certification required to document exemption. A claim that a transaction is nontaxable under this Section must be supported by a certification indicating either payment of Use Tax, an active Department issued exemption number or surviving spouse beneficiary information. The certificate must be executed by the transferee, purchaser or donee and submitted at the time of filing the return. The Department may include the certification on the return. The certification must

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include the transferor, seller, or donor's name and address, the transferee, purchaser or donee's name and address, and a statement that describes the nature of the exemption.

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NOTICE OF ADOPTED AMENDMENT

- 1) Heading of the Part: Cigarette Tax Act
- 2) Code Citation: 86 Ill. Adm. Code 440
- 3) Section Number: 440.90 Adopted Action:
Amendment
- 4) Statutory Authority: 35 ILCS 130
- 5) Effective Date of Amendment: February 13, 2004
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this amendment contain incorporations by reference? No
- 8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: 27 Ill. Reg. 10197; July 11, 2003
- 10) Has JCAR issued a Statement of Objection to this Amendment? No
- 11) Differences between proposal and final version: The only changes made were the ones agreed upon with JCAR. The changes made were grammar and punctuation or technical. No substantive changes were made.
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes
- 13) Will this amendment replace any emergency amendment currently in effect? No, the emergency rule has expired.
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Amendment: Public Act 93-002 amends the Cigarette Tax Act to provide that, beginning July 1, 2003, all payments for cigarette tax stamps must be made by means of electronic funds transfer. The 30-day "float" procedure, which allows cigarette stamps to be purchased by means of a draft that is postdated 30 days, is no longer allowed.

DEPARTMENT OF REVENUE

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- 16) Information and questions regarding this adopted amendment shall be directed to:

Martha P. Mote
Associate Counsel
Legal Services Office
Illinois Department of Revenue
101 West Jefferson
Springfield, Illinois 62794
217/782-2844

The full text of the adopted amendment begins on the next page:

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENT

TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUEPART 440
CIGARETTE TAX ACT

Section	
440.10	Nature and Rate of Tax
440.20	Tax – How Paid
440.30	Tax – Who Liable For
440.40	Design
440.50	Tax Stamps – When and By Whom Affixed: License or Permit Required
440.60	Tax Stamps – How Affixed
440.70	Tax Stamps – Affixed Out of State
440.80	Transporter Permits
440.90	Tax Stamps – Purchase of: Cost: Discount
440.100	Returns Required: When Filed
440.110	Books and Records: Examination: Preservation
440.120	Unused Stamps and Meter Units: Sale of: Notice to Department
440.130	Mutilated Stamps
440.140	Tax Meters (Repealed)
440.150	Tax Meter Machine Settings (Repealed)
440.160	Vending Machines
440.170	Sales Out of Illinois
440.180	Sales to Governmental Bodies
440.190	Sample Packages of Cigarettes: Stamps or Other Evidence of Tax Payment Affixed
440.200	Credit for Stamps that Are Damaged, Unused, Destroyed or on Packages Returned to the Manufacturer
440.210	Sale of Forfeited Cigarettes and Vending Machines
440.220	Tax-Free Sales of Cigarettes for Use Aboard Ships Operating in Foreign Commerce Outside The Continental Limits of the United States
440.230	Claims for Credit or Refund
440.240	Protest Procedures

AUTHORITY: Implementing and authorized by the Cigarette Tax Act [35 ILCS 130].

SOURCE: Filed and effective June 17, 1958; amended at 6 Ill. Reg. 2831 and 2834, effective March 3, 1982; codified at 8 Ill. Reg. 17912; amended at 13 Ill. Reg. 10678, effective June 16, 1989; amended at 14 Ill. Reg. 6794, effective April 19, 1990; amended at 15 Ill. Reg. 117,

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effective December 24, 1990; emergency amendment at 23 Ill. Reg. 9541, effective July 29, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 14748, effective December 8, 1999; amended at 24 Ill. Reg. 9903, effective June 23, 2000; emergency amendment at 24 Ill. Reg. 10752, effective July 6, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 17793, effective November 28, 2000; amended at 25 Ill. Reg. 933, effective January 8, 2001; emergency amendment at 26 Ill. Reg. 9021, effective June 10, 2002, for a maximum of 150 days; emergency expired November 5, 2002; amended at 27 Ill. Reg. 1618, effective January 15, 2003; emergency amendment at 27 Ill. Reg. 10524, effective July 1, 2003, for a maximum of 150 days; emergency expired November 27, 2003; amended at 28 Ill. Reg. 3906, effective February 13, 2004.

Section 440.90 Tax Stamps – Purchase of: Cost: Discount

- a) Sales of stamps shall be made by the Department, or any person authorized by the Department, to licensed distributors in proper denominations, subject to discounts as explained in subsection (b) of this Section, which discount shall be allowed at the time of purchase of the stamps, when purchase is required by the Act.
- b) The discount allowable to distributors at the time of purchasing stamps during any year commencing July 1 and ending the following June 30 *shall be equal to 1.75% of the amount of the tax payable under the Cigarette Tax Act up to and including the first \$3,000,000.00 paid by such distributor to the Department during any such year and 1.5% of the amount of any additional tax paid by such distributor to the Department during any such year.* (Section 2 of the Act)
- c) Two or more distributors that use a common means of affixing revenue tax stamps or that are owned or controlled by the same interests shall be treated as a single distributor for the purpose of computing the discount.
- d) *On and after December 1, 1985 and until July 1, 2003, the ~~The~~ Department shall allow a distributor 30 days in which to make final payment of the amount to be paid for such stamps, by allowing the distributor to make payment for the stamps at the time of purchasing them with a draft which shall be in such form as the Department prescribes (i.e., a standard bank draft which the distributor may post-date), and which shall be payable within 30 days thereafter. Beginning January 1, 2003, such draft shall be payable by means of electronic funds transfers, as provided in 86 Ill. Adm. Code 750. A distributor's failure to pay any such draft, when due, shall also make such distributor automatically liable for a penalty equal to 25% of the amount of such draft.* (Section 3 of the Act)
- e) *On and after December 1, 1985 and until July 1, 2003, distributors ~~Distributors~~*

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making payment for stamps at the time of purchase by draft as explained in subsection (d) shall first file with the Department, and receive the Department's approval of, a bond (in a form provided for in this subsection), which is in addition to the bond required under Section 4 of the Act, payable to the Department in an amount equal to 100% of such distributor's average monthly tax liability under the Act during the preceding calendar year or \$750,000, whichever is less. The bond shall be joint and several and shall be in the form of a surety company bond or it may be in the form of a bank certificate of deposit or bank letter of credit. The bond shall be conditioned upon the distributor's payment of the amount of any 30-day draft which the Department accepts from that distributor for the delivery of stamps to that distributor under the Act. Prior continuous compliance taxpayers, as defined in Section 1 of the Act, are exempt from the bond requirements noted in this subsection. (Section 3 of the Act) For additional information concerning the exemption for prior continuous compliance taxpayers, see Section 3 of the Act.

- f) Beginning January 1, 2003; and through June 30, 2003, any taxpayer choosing not to make payment of tax by means of a draft payable within 30 days as provided ~~for~~ in subsection (d) and who has an annual tax liability of \$200,000 or more shall make all payments of that tax by means of electronic funds transfer, as provided in 86 Ill. Adm. Code 750. [20 ILCS 2505/2505-210] On and after July 1, 2003, all payment for revenue tax stamps must be made by means of electronic funds transfer. (Section 3 of the Act)
- g) The Department may refuse to sell cigarette tax stamps to any person who does not comply with the provisions of the Cigarette Tax Act. (Section 3 of the Act)

(Source: Amended at 28 Ill. Reg. 3906, effective February 13, 2004)

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- 1) Heading of the Part: Cigarette Use Tax Act
- 2) Code Citation: 86 Ill. Adm. Code 450
- 3) Section Number: 450.10 Adopted Action:
Amendment
- 4) Statutory Authority: 35 ILCS 135
- 5) Effective Date of Amendment: February 13, 2004
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this amendment contain incorporations by reference? No
- 8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: 27 Ill. Reg. 10199; July 11, 2003
- 10) Has JCAR issued a Statement of Objection to this Amendment? No
- 11) Differences between proposal and final version: The only changes made were the ones agreed upon with JCAR. The changes made were grammar and punctuation or technical. No substantive changes were made.
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes
- 13) Will this amendment replace any emergency amendment currently in effect? No, the emergency rule has expired.
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Amendment: This rulemaking implements the legislative changes made by Public Act 93-0022 to the Cigarette Use Tax Act. The legislation provided that all payments for Cigarette Use Tax stamps must be made by electronic funds transfer. The 30-day "float" procedure, which allows cigarette stamps to be purchased by means of a draft that is postdated 30 days, is no longer allowed.

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENT

- 16) Information and questions regarding this adopted amendment shall be directed to:

Martha P. Mote
Associate Counsel
Legal Services Office
Illinois Department of Revenue
101 West Jefferson
Springfield, Illinois 62794
217/782-2844

The full text of the adopted amendment begins on the next page:

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENT

TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUEPART 450
CIGARETTE USE TAX ACT

Section	
450.10	Nature and Rate of Tax
450.20	Tax Stamps – Affixed Out of State
450.30	Licenses and Permits – Bonds
450.40	Reports and Returns
450.50	Books and Records
450.60	Unused Stamps and Meter Units – Sale of – Notice to Department – Mutilated Stamps – Tax Meter Machine Settings
450.70	Cigarettes Used Outside Illinois
450.80	Purchase of Cigarettes by Governmental Bodies for Use
450.90	Credit for Stamps that Are Damaged, Unused, Destroyed or on Packages Returned to the Manufacturer
450.100	Sample Packages of Cigarettes – Stamps or Other Evidence of Tax Collection Affixed
450.110	Sale of Forfeited Cigarettes and Vending Machines
450.120	Claims for Credit or Refund
450.130	Protest Procedures

AUTHORITY: Implementing and authorized by the Cigarette Use Tax Act [35 ILCS 135].

SOURCE: Filed and effective June 17, 1958; codified at 8 Ill. Reg. 13838; amended at 13 Ill. Reg. 10687, effective June 16, 1989; amended at 14 Ill. Reg. 6804, effective April 19, 1990; amended at 15 Ill. Reg. 122, effective December 24, 1990; amended by emergency rulemaking at 23 Ill. Reg. 9546, effective July 29, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 14753, effective December 8, 1999; amended at 24 Ill. Reg. 9909, effective June 23, 2000; emergency amendment at 24 Ill. Reg. 10759, effective July 6, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 17800, effective November 28, 2000; amended at 25 Ill. Reg. 937, effective January 8, 2001; emergency amendment at 26 Ill. Reg. 9027, effective June 10, 2002, for a maximum of 150 days; emergency expired November 5, 2002; amended at 27 Ill. Reg. 1647, effective January 15, 2003; emergency amendment at 27 Ill. Reg. 10529, effective July 1, 2003, for a maximum of 150 days; emergency expired November 27, 2003; amended at 28 Ill. Reg. 3911, effective February 13, 2004.

Section 450.10 Nature and Rate of Tax

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- a) The Cigarette Use Tax is imposed upon the privilege of using cigarettes in this State, and the tax rate is 29 mills per cigarette so used or 58 cents on a package of 20 cigarettes; except that, beginning July 1, 2002, the tax rate is 49 mills per cigarette or 98 cents on a package of 20 cigarettes.
- b) The tax must be collected by a distributor maintaining a place of business in this State or a distributor authorized by Section 7 of the Act to hold a permit to collect the tax, and the amount of the tax shall be added to the price of the cigarettes sold by the distributor and must be stated on the invoice as a separate item from the selling price of the cigarettes except when the purchaser is a Federal or foreign government agency or instrumentality (see Section 450.50 of this Part).
- c) Distributors who are not subject to the Cigarette Tax Act [35 ILCS 130] (the Act), but who are subject to the Cigarette Use Tax Act [35 ILCS 135], must remit, to the Department of Revenue (the Department), the amount of Cigarette Use Tax to be collected by them through the purchase and affixation of tax stamps or meter impression units (where the use of meters is authorized by the Department) to any original package of cigarettes before delivering the cigarettes (or causing them to be delivered) in this State to any purchaser, or (in the case of manufacturers of cigarettes in original packages that are contained inside a sealed transparent wrapper) by imprinting the language to be prescribed by the Department on the original package of cigarettes beneath the outside wrapper.
 - 1) *On and after July 22, 1999, no stamp or imprint may be affixed to, or made upon, any package of cigarettes unless that package complies with all requirements of the federal Cigarette Labeling and Advertising Act, 15 USC 1331 and following, for the placement of labels, warnings, or any other information upon a package of cigarettes that is sold within the United States. Under the authority of Section 6 of the Cigarette Use Tax Act [35 ILCS 135], the Department shall revoke the license of any distributor that is determined to have violated this subsection (c)(1). A person may not affix a stamp on a package of cigarettes, cigarette papers, wrappers, or tubes if that individual package has been marked for export outside the United States with a label or notice in compliance with Section 290.185 of Title 27 of the Code of Federal Regulations. It is not a defense to a proceeding for violation of this subsection that the label or notice has been removed, mutilated, obliterated, or altered in any manner. (Section 3 of the Cigarette Use Tax Act)*

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- 2) On and after August 15, 1999, packages of cigarettes, cigarette papers, wrappers, or tubes stamped or imprinted in a manner not in accordance with subsection (c)(1) and found in the possession of a distributor create a rebuttable presumption that the packages of cigarettes, cigarette papers, wrappers, or tubes were stamped or imprinted in violation of the Cigarette Use Tax Act.
- 3) On and after September 1, 1999, packages of cigarettes, cigarette papers, wrappers, or tubes stamped or imprinted in a manner not in accordance with subsection (c)(1) and found in the possession of a retailer create a rebuttable presumption that the packages of cigarettes, cigarette papers, wrappers, or tubes were stamped or imprinted by the distributor from whom they were obtained in violation of the Cigarette Use Tax Act.
- 4) *On and after June 13, 2000, no stamp or imprint may be affixed to, or made upon, any package of cigarettes that:*
 - A) *bears any statement, label, stamp, sticker, or notice indicating that the manufacturer did not intend the cigarettes to be sold, distributed, or used in the United States, including but not limited to labels stating "For Export Only", "U.S. Tax Exempt", "For Use Outside U.S.", or similar wording; or*
 - B) *does not comply with:*
 - i) *all requirements imposed by or pursuant to federal law regarding warnings and other information on packages of cigarettes manufactured, packaged, or imported for sale, distribution, or use in the United States, including but not limited to the precise warning labels specified in the federal Cigarette Labeling and Advertising Act, 15 USC 1333; and*
 - ii) *all federal trademark and copyright laws;*
 - C) *is imported into the United States in violation of 26 USC 5754 or any other federal law or implementing federal regulations;*
 - D) *the person affixing the stamp or imprint otherwise knows or has reason to know the manufacturer did not intend to be sold,*

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distributed, or used in the United States;

E) *for which there has not been submitted to the Secretary of the U.S. Department of Health and Human Services the list or lists of the ingredients added to tobacco in the manufacture of the cigarettes required by the federal Cigarette Labeling and Advertising Act, 15 USC 1335a; or*

F) *has been altered, prior to sale or distribution to the ultimate consumer, so as to remove, conceal, or obscure:*

i) *any statement, label, stamp, sticker, or notice described in 86 Ill. Adm. Code 440.50(k)(1); or*

ii) *any health warning that is not specified in, or does not conform with the requirements of, the federal Cigarette Labeling and Advertising Act, 15 USC 1333 (Section 3-10 of the Act).*

- 5) On and after July 15, 2000, packages of cigarettes, cigarette papers, wrappers, or tubes stamped or imprinted in a manner not in accordance with subsection (c)(4) of this Section and found in the possession of a distributor create a rebuttable presumption that the packages of cigarettes, cigarette papers, wrappers or tubes were stamped or imprinted in violation of the Cigarette Use Tax Act.
- 6) On and after July 31, 2000, packages of cigarettes, cigarette papers, wrappers or tubes stamped or imprinted in a manner not in accordance with subsection (c)(4) of this Section and found in the possession of a retailer create a rebuttable presumption that the packages of cigarettes, cigarette papers, wrappers or tubes were stamped or imprinted by the distributor from whom they were obtained in violation of the Cigarette Use Tax Act.
- 7) *On and after June 13, 2000, on the first business day of each month, each person licensed to affix the State tax stamp to cigarettes shall file with the Department, for all cigarettes imported into the United States to which the person has affixed the tax stamp in the preceding month.*
- 8) *A copy of:*

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENT

- A) *the permit issued pursuant to the Internal Revenue Code, 26 USC 5713, to the person importing the cigarettes into the United States allowing the person to import the cigarettes; and*
 - B) *the customs form containing, with respect to the cigarettes, the internal revenue tax information required by the U.S. Bureau of Alcohol, Tobacco and Firearms.*
- 9) *A statement, signed by the person under penalty of perjury, which shall be treated as confidential by the Department and exempt from disclosure under the Freedom of Information Act, identifying the brand and brand styles of all such cigarettes, the quantity of each brand style of such cigarettes, the supplier of such cigarettes, and the person or persons, if any, to whom such cigarettes have been conveyed for resale.*
- 10) *In addition to the statement required in subsection (c)(9) of this Section, a separate statement, signed by the individual under penalty of perjury, which shall not be treated as confidential or exempt from disclosure, separately identifying the brands and brand styles of such cigarettes.*
- 11) *In addition to the statement required in subsection (c)(9) and (c)(10) of this Section, a separate statement, signed by an officer of the manufacturer or importer under penalty of perjury, certifying that the manufacturer or importer has complied with:*
- A) *the package health warning and ingredient reporting requirements of the federal Cigarette Labeling and Advertising Act, 15 USC 1333 and 1335a, with respect to such cigarettes; and*
 - B) *the provisions of Exhibit T of the Master Settlement Agreement entered in the case of People of the State of Illinois v. Philip Morris, et al. (Circuit Court of Cook County, No. 96-L13146), including a statement indicating whether the manufacturer is, or is not, a participating tobacco manufacturer within the meaning of Exhibit T.*
- 12) *The Department may revoke or suspend the license or licenses of any distributor, in the manner provided in Section 6 of the Cigarette Use Tax Act, if the Department determines that the distributor knew or had reason*

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENT

to know that the distributor was committing any of the acts prohibited in subsection (c)(4) of this Section or had failed to comply with any of the requirements of subsection (b) of Section 3-10 of the Cigarette Use Tax Act. In addition, the Department may impose on the distributor a civil penalty in an amount not to exceed the greater of 500% of the retail value of the cigarettes involved or \$5,000. Cigarettes acquired, held, owned, possessed, transported in, imported into, or sold or distributed in this State in violation of subsection (c)(4) of this Section shall be subject to seizure and forfeiture whether the violation is knowing or otherwise. (Section 3-10 of the Act)

- d) At the time of purchasing stamps from the Department or any person authorized by the Department, when purchase of the stamps is required by the Cigarette Use Tax Act or at the time when the tax that he has collected is remitted by a distributor to the Department without the purchase of stamps from the Department or any person authorized by the Department when that method of remitting the tax that has been collected is required or authorized by the Act, the distributor will be allowed a discount during any year commencing July 1 and ending the following June 30. The discount shall be equal to 1.75% of the amount of the tax payable under the Act up to and including the first \$3,000,000.00 paid by the distributor to the Department during any year and 1.5% of the amount of any additional tax paid by the distributor to the Department during any such year.
- e) This discount is to cover the distributor's cost of collecting the tax.
- f) Two or more distributors that use a common means of affixing revenue tax stamps or that are owned or controlled by the same interests shall be treated as a single distributor for the purpose of computing the discount.
- g) *On and after December 1, 1985; and until July 1, 2003, the Department shall allow a distributor 30 days in which to make final payment of the amount to be paid for such stamps, by allowing the distributor to make payment for the stamps at the time of purchasing them with a draft which shall be in such form as the Department prescribes (i.e. a standard bank draft which the distributor may post-date), and which shall be payable within 30 days thereafter: Beginning January 1, 2003, such draft shall be payable by means of electronic funds transfer, as provided in 86 Ill. Adm. Code 750. A distributor's failure to pay any such draft, when due, shall also make such distributor automatically liable for a penalty equal to 25% of the amount of such draft. (Section 3 of the Act)*

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- h) *On and after December 1, 1985 and until July 1, 2003, distributors ~~Distributors~~ making payment for stamps at the time of purchase by draft as explained in subsection (g) shall first file with the Department, and receive the Department's approval of, a bond (in a form provided for in this subsection), which is in addition to the bond required under Section 4 of the Act, payable to the Department in an amount equal to 100% of such distributor's average monthly tax liability under the Act during the preceding calendar year or \$750,000, whichever is less. The bond shall be joint and several and shall be in the form of a surety company bond or it may be in the form of a bank certificate of deposit or bank letter of credit. The bond shall be conditioned upon the distributor's payment of the amount of any 30-day draft which the Department accepts from that distributor for the delivery of stamps to that distributor under the Act. Prior continuous compliance taxpayers, as defined in Section 1 of the Act, are exempt from the bond requirements noted in this subsection. (Section 3 of the Act) For additional information concerning the exemption for prior continuous compliance taxpayers, see Section 3 of the Act.*
- i) *Beginning January 1, 2003; and through June 30, 2003, any taxpayer choosing not to make payment of tax by means of a draft payable within 30 days as provided for in subsection (g) and who has an annual tax liability of \$200,000 or more shall make all payments of that tax by means of electronic funds transfer, as provided in 86 Ill. Adm. Code 750. On and after July 1, 2003, all payment for revenue tax stamps must be made by means of electronic funds transfer. (Section 3 of the Act)*
- j) The Cigarette Use Tax collected by a distributor who is liable to collect and remit a like amount of tax with respect to the same cigarettes under the Cigarette Tax Act need not be remitted to the Department under the Cigarette Use Tax Act. In other words, the amount which the distributor is liable to collect and remit under the Cigarette Tax Act with respect to particular cigarettes is offset against the amount collected from the purchaser by ~~the such~~ distributor under the Cigarette Use Tax Act with respect to the same cigarettes. Sections 3 and 10 of the Cigarette Use Tax Act permit this offset in order to avoid the double remittance of tax to the State on the same transactions in the case of sales of cigarettes in Illinois.
- k) In those instances in which a distributor is required to affix tax stamps or meter impressions to original packages of cigarettes under the Cigarette Use Tax Act, rather than under the Cigarette Tax Act, the provisions of the Part relating to the Cigarette Tax Act (86 Ill. Adm. Code 440) shall apply and are incorporated herein

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENT

by reference.

- l) Where cigarettes are acquired for use in this State without Illinois tax stamps being affixed to the original packages thereof and without authorized tax imprints placed underneath the sealed transparent wrapper of ~~the such~~ original packages, the user is required to remit the amount of the Cigarette Use Tax directly to the Department. Before January 1, 2002, the tax shall be remitted to the Department by the user within 3 days after he acquires ~~the such~~ cigarettes. On and after January 1, 2002, the tax shall be remitted to the Department by the user within 30 days after he acquires the cigarettes.
- m) *The Department may refuse to sell cigarette stamps to any person who does not comply with the provisions of the Cigarette Use Tax Act. (Section 3 of the Act)*

(Source: Amended at 28 Ill. Reg. 3911, effective February 13, 2004)

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENT

- 1) Heading of the Part: Motor Fuel Tax
- 2) Code Citation: 86 Ill. Adm. Code 500
- 3) Section Number: 500.203 Adopted Action:
Amendment
- 4) Statutory Authority: 35 ILCS 505
- 5) Effective Date of Amendment: February 13, 2004
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this amendment contain incorporations by reference? No
- 8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: 27 Ill. Reg. 10203; July 11, 2003
- 10) Has JCAR issued a Statement of Objection to this amendment? No
- 11) Differences between proposal and final version: The only changes made were the ones agreed upon with JCAR. The changes made were grammar and punctuation or technical. No substantive changes were made.
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes
- 13) Will this amendment replace any emergency amendment currently in effect? No, the emergency rule has expired.
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Amendment: This rulemaking amends the Motor Fuel Tax Law to comply with the provisions of P.A. 93-0032, which changed the discount for distributors, suppliers, and receivers for returns timely filed and paid. The previous discount was 2%; beginning July 1, 2003, the discount became 1.75%.

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENT

- 16) Information and questions regarding this adopted amendment shall be directed to:

Martha P. Mote
Associate Counsel
Legal Services Office
Illinois Department of Revenue
101 West Jefferson
Springfield, Illinois 62794
217/782-2844

The full text of the adopted amendment begins on the next page:

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENT

TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUEPART 500
MOTOR FUEL TAX

SUBPART A: DEFINITIONS

Section	
500.100	Definitions
500.101	Definition of Receiver (Repealed)
500.102	Definition of Loss (Repealed)
<u>500.103</u>	<u>Basis and Rate of Tax Payable by Receivers (Recodified)</u>
<u>500.105</u>	<u>Monthly Returns (Recodified)</u>
<u>500.110</u>	<u>Report of Loss of Motor Fuel (Recodified)</u>
<u>500.115</u>	<u>Daily Gallonage Record (Recodified)</u>
<u>500.120</u>	<u>Licenses Are Not Transferable (Recodified)</u>
<u>500.125</u>	<u>Changes of Corporate Officers (Recodified)</u>
<u>500.130</u>	<u>Blenders' Permits Are Not Transferable (Recodified)</u>
<u>500.135</u>	<u>Vehicles of Distributors Transporting Petroleum Products (Recodified)</u>
<u>500.140</u>	<u>Other Vehicles (Recodified)</u>
<u>500.145</u>	<u>Cost of Collection – Determination (Recodified)</u>
<u>500.150</u>	<u>Cost of Collection – Books and Records (Repealed)</u>
<u>500.155</u>	<u>Motor Fuel Consumed by Distributors, Special Fuel Consumed by Suppliers and Fuel Consumed by Receivers (Recodified)</u>
<u>500.160</u>	<u>Claims for Refund – Original Invoices (Recodified)</u>
<u>500.165</u>	<u>Definition of Loss (Recodified)</u>
<u>500.170</u>	<u>Sales of Special Fuel – Variation in Usage (Recodified)</u>
<u>500.175</u>	<u>Special Motor Fuel Permits and Decals (Recodified)</u>
<u>500.180</u>	<u>Estimated Claims Not Acceptable (Recodified)</u>
<u>500.185</u>	<u>Claimants Owning Motor Vehicles (Recodified)</u>
<u>500.190</u>	<u>Detailed Answers (Recodified)</u>
<u>500.195</u>	<u>Revocation of License, Etc. – Notice – Hearing (Recodified)</u>

SUBPART B: MOTOR FUEL TAX

Section	
500.200	Basis and Rate of the Motor Fuel Tax
500.201	Licensure
500.202	Basis and Rate of Tax Payable by Receivers

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENT

500.203	Monthly Returns
500.204	Report of Loss of Motor Fuel
500.205	Daily Gallonage Record
500.206	Special Fuel Sold or Used for Non-Highway Purposes
500.210	Documentation of Tax-free Sales of Motor Fuel Made by Licensed Distributors and Suppliers
500.215	Documentation of Tax-free Sales of Fuel Made by Licensed Receivers
500.220	Vehicles of Distributors Transporting Petroleum Products (Repealed)
500.225	Other Vehicles (Repealed)
500.230	Motor Fuel Consumed by Distributors, Special Fuel Consumed by Suppliers and Fuel Consumed by Receivers
500.235	Claims for Refund – Invoices
500.240	Sales of Special Fuel – Variation in Usage (Repealed)
500.245	Estimated Claims
500.250	Claimants Owning Motor Vehicles (Repealed)
500.255	Detailed Answers
500.260	Revocation of License, Etc. – Notice – Hearing
500.265	Distributors' and Suppliers' Claims for Credit or Refund
500.270	Receivers' Claims for Credit
500.275	Procedure When Tax-Paid Motor Fuel is Returned to Licensee for Credit
500.280	Sales of Motor Fuel to Municipal Corporations Owning and Operating Local Transportation Systems
500.285	Sales of Motor Fuel to Certain Privately-Owned Public Utilities Owning and Operating Transportation Systems in Metropolitan Areas
500.290	When Purchaser's License Number With Department on Invoices Covering Sales of Special Fuel is Required (Repealed)
500.295	Cost of Collection – Determination (Repealed)
500.297	Protest Procedures for Certain Penalties
500.298	Civil Penalties for Dyed Diesel Fuel Violations

SUBPART C: MOTOR FUEL USE TAX

Section	
500.300	Licensure
500.301	Special Motor Fuel Permits and Decals (Repealed)
500.302	Motor Carrier's Quarterly Report (Repealed)
500.305	Licenses and Decals
500.310	Display of License and Decals
500.315	Renewal of Decals and Licenses
500.320	Single Trip Permits

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENT

500.325	Licensure of Lessors and Lessees
500.330	Cancellation of License
500.335	Quarterly Payment and Reporting
500.340	Credits and Refunds
500.345	Records Requirements
500.350	Revocation
500.355	Protest Procedures
500.360	Audits

SUBPART D: TIMELY MAILING TREATED AS TIMELY FILING AND PAYING

Section

500.400	General Information
500.405	Due Date That Falls on Saturday, Sunday or a Holiday

SUBPART E: GENERAL REQUIREMENTS APPLICABLE TO ALL LICENSES AND PERMITS ISSUED UNDER THE MOTOR FUEL TAX LAW

Section

500.500	Licenses and Permits Are Not Transferable
500.501	Blenders' Permits Are Not Transferable (Repealed)
500.505	Changes of Corporate Officers

SUBPART F: INCORPORATION BY REFERENCE OF RETAILERS' OCCUPATION TAX

Section

500.600	Incorporation of the Retailers' Occupation Tax Regulations by Reference
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AUTHORITY: Implementing the Motor Fuel Tax Law [35 ILCS 505] and authorized by Section 2505-20 of the Civil Administrative Code of Illinois [20 ILCS 2505/2505-20].

SOURCE: Adopted July 3, 1931; amended at 2 Ill. Reg. 1, p. 97, effective December 31, 1978; amended at 3 Ill. Reg. 13, p. 98, effective March 25, 1979; amended at 4 Ill. Reg. 28, p. 568, effective June 1, 1980; codified at 8 Ill. Reg. 8612; amended at 10 Ill. Reg. 4540, effective February 28, 1986; amended at 11 Ill. Reg. 10295, effective May 18, 1987; emergency amendment at 13 Ill. Reg. 13271, effective August 7, 1989, for a maximum of 150 days; emergency expired January 4, 1990; amended at 14 Ill. Reg. 6826, effective April 19, 1990; amended at 15 Ill. Reg. 6305, effective April 16, 1991; amended at 15 Ill. Reg. 13538, effective August 30, 1991; recodified at 18 Ill. Reg. 4451; amended at 19 Ill. Reg. 3008, effective February 28, 1995; amended at 19 Ill. Reg. 17195, effective December 18, 1995; amended at 20

DEPARTMENT OF REVENUE

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Ill. Reg. 10168, effective July 16, 1996; amended at 22 Ill. Reg. 2253, effective January 9, 1998; amended at 22 Ill. Reg. 14917, effective August 3, 1998; amended at 22 Ill. Reg. 16322, effective August 25, 1998; amended at 22 Ill. Reg. 20299, effective December 1, 1998; emergency amendment at 24 Ill. Reg. 880, effective January 1, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 6918, effective April 21, 2000; amended at 24 Ill. Reg. 17826, effective November 28, 2000; amended at 26 Ill. Reg. 9912, effective June 24, 2002; amended at 27 Ill. Reg. 7870, effective April 21, 2003; emergency amendment at 27 Ill. Reg. 10547, effective July 1, 2003, for a maximum of 150 days; emergency expired November 27, 2003; amended at 28 Ill. Reg. 3921, effective February 13, 2004.

SUBPART B: MOTOR FUEL TAX

Section 500.203 Monthly Returns

- a) Distributor, supplier and receiver monthly returns. Monthly Motor Fuel Tax returns of licensed distributors and suppliers must be compiled correctly on forms furnished by the Department and must be filed, accompanied by a remittance for the correct amount of tax due, by the 20th day of the month following the month for which the return is made. Receipt schedules showing monthly receipts of motor fuel must always accompany the monthly return, as well as all other applicable schedules. Receivers subject to the tax imposed by Section 2a of the Law must file returns by the 20th of each calendar month for fuel purchased, acquired or received and sold, distributed or used during the preceding calendar month.
- b) *If a distributor's only activities with respect to motor fuel are either:*
 - 1) *production of alcohol in quantities of less than 10,000 proof gallons per year or*
 - 2) *blending alcohol in quantities of less than 10,000 proof gallons per year which such distributor has produced;*

He shall file returns on an annual basis with the return for a given year being due by January 20 of the following year. Where the distributor has not established one calendar year's record of production, annual production will be projected on the basis of actual production and estimates submitted by the distributor. (Section 5 of the Law)

- c) Magnetic Schedule Support Data. Beginning October 1, 1994, data required by

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENT

all support schedules for licensed distributors, suppliers, and receivers who are required to file a return must be filed using magnetic media. Schedule support data must be submitted on either 3½" diskette, 5¼" floppy disk, or 9" magnetic tape which is IBM or IBM compatible. Schedules that must be filed on magnetic media include Schedules A, SA, LA, E, SE, LE, GA-1, B, SB, LB, C, SC, LC, D, SD, DA, DB, DC, DD, DD-1, and LD. Schedules not required to be filed in this manner are Schedules F, M and J. Amended schedules must still be filed on Department forms or approved computer-generated forms. The only exceptions to this requirement are persons who do not possess a computer, who have computers which are not IBM or IBM compatible, or who have ten business transactions or less per month, per schedule type. Persons seeking an exemption from these requirements must petition the Department's Motor Fuel Division in writing, explaining the basis for their exemption. All exceptions expire one year from the date they are granted.

- d) When returns are timely filed and paid in full, a supplier, distributor or receiver may take a discount of 2% through June 30, 2003 and 1.75% thereafter of the tax collected to reimburse himself for the expenses incurred in keeping records, preparing and filing returns, collecting and remitting the tax and supplying data to the Department on request. This discount is not permitted for motor fuels which are used or consumed by a supplier or distributor in his own vehicles or for any other purpose. The ~~2%~~ discount, however, shall be applicable only to the amount of payment which accompanies a return that is filed timely in accordance with Sections 2b, 5, or 5a of the Law.
- e) A person whose license to act as a supplier, distributor, or receiver of motor fuel has been revoked or cancelled shall make a return and payment to the Department covering the period from the date of the last return to the date of the revocation of the license, which return shall be delivered to the Department not later than 10 days from the date of the revocation or termination of the license. Any tax-free inventory remaining at the close of the reporting period must be paid in full.

(Source: Amended at 28 Ill. Reg. 3921, effective February 13, 2004)

DEPARTMENT OF PROFESSIONAL REGULATION

NOTICE OF EMERGENCY AMENDMENT

- 1) Heading of the Part: Nursing and Advanced Practice Nursing Act – Registered Nurse and Licensed Practical Nurse
- 2) Code Citation: 68 Ill. Adm. Code 1300
- 3) Section Number: 1300.15 Emergency Action: Amendment
- 4) Statutory Authority: Nursing and Advanced Practice Nursing Act [225 ILCS 65]
- 5) Effective Date of Amendment: February 11, 2004
- 6) If these emergency amendments are to expire before the end of the 150-day period, please specify the date on which they will expire: N/A
- 7) Date Filed in Index Department: February 10, 2004
- 8) A copy of the emergency amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Reason for Emergency: This emergency rulemaking is necessitated by the imminent renewal of all registered nurses in Illinois. Without this increase, projected revenues will not be sufficient over the upcoming 2 years covered by this renewal to support the projected expenses of regulation of the profession.
- 10) A Complete Description of the Subjects and Issues Involved: This emergency rulemaking increases the renewal fee for registered and licensed practical nurses by \$10 per year (from \$40 to \$60 for a biennial renewal).
- 11) Are there any proposed amendments to this Part pending? No
- 12) Statement of Statewide Policy Objective: This rulemaking has no impact on local government.
- 13) Information and questions regarding this amendment shall be directed to:

Department of Professional Regulation
Attention: Barb Smith
320 West Washington, 3rd Floor
Springfield, IL 62786

DEPARTMENT OF PROFESSIONAL REGULATION

NOTICE OF EMERGENCY AMENDMENT

217/785-0813 Fax #: 217/782-7645

The full text of the emergency amendment begins on the next page:

DEPARTMENT OF PROFESSIONAL REGULATION

NOTICE OF EMERGENCY AMENDMENT

TITLE 68: PROFESSIONS AND OCCUPATIONS
CHAPTER VII: DEPARTMENT OF PROFESSIONAL REGULATION
SUBCHAPTER b: PROFESSIONS AND OCCUPATIONS

PART 1300

NURSING AND ADVANCED PRACTICE NURSING ACT –
REGISTERED PROFESSIONAL NURSE AND LICENSED PRACTICAL NURSE

Section

1300.10 Definitions

1300.15 Fees

EMERGENCY

1300.20 Application for Examination or Licensure

1300.25 The Licensure Examination

1300.27 Application for Licensure on the Basis of Examination (Repealed)

1300.30 Licensure by Endorsement

1300.35 Remedial Education

1300.40 Approval of Programs

1300.41 Approval of Current Nursing Practice Update Course

1300.42 Standards of Professional Conduct for Registered Professional Nurses

1300.43 Standards of Professional Conduct for Licensed Practical Nurses

1300.44 Standards for Pharmacology/Administration of Medication Course for Practical
Nurses

1300.45 Renewals

1300.48 Restoration

1300.50 Granting Variances

1300.60 Practice of Nursing

1300.65 Unethical or Unprofessional Conduct in Nursing Practice

1300.70 Fines

1300.75 Refusal to Issue a Nurse License Based on Criminal History Record

1300.APPENDIX A Minimal Skills List for Registered Professional Nurses

1300.APPENDIX B Minimal Assignment List for Registered Professional Nurses

1300.APPENDIX C Minimal Skills List for Licensed Practical Nurses

1300.APPENDIX D Minimal Assignment List for Licensed Practical Nurses

AUTHORITY: Implementing the Nursing and Advanced Practice Nursing Act [225 ILCS 65] and authorized by Section 2105-15(7) of the Civil Administrative Code of Illinois [20 ILCS 2105/2105-15(7)].

DEPARTMENT OF PROFESSIONAL REGULATION

NOTICE OF EMERGENCY AMENDMENT

SOURCE: Adopted at 4 Ill. Reg. 4, p. 290, effective January 14, 1980; amended at 5 Ill. Reg. 801, effective January 7, 1981; codified at 5 Ill. Reg. 11044; amended at 5 Ill. Reg. 14171, effective December 3, 1981; emergency amendment at 6 Ill. Reg. 916, effective January 6, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 7448, effective June 15, 1982; amended at 6 Ill. Reg. 10023, effective August 1, 1982; amended at 9 Ill. Reg. 6297, effective April 24, 1985; amended at 9 Ill. Reg. 13355, effective August 21, 1985; amended at 11 Ill. Reg. 18251, effective October 27, 1987; transferred from Chapter I, 68 Ill. Adm. Code 300 (Department of Registration and Education) to Chapter VII, 68 Ill. Adm. Code 1300 (Department of Professional Regulation) pursuant to P.A. 85-225, effective January 1, 1988, at 12 Ill. Reg. 2938; amended at 12 Ill. Reg. 12088, effective July 12, 1988; amended at 14 Ill. Reg. 10035, effective June 12, 1990; emergency amendment at 15 Ill. Reg. 2855, effective February 5, 1991, for a maximum of 150 days; amended at 15 Ill. Reg. 8573, effective May 28, 1991; amended at 17 Ill. Reg. 1572, effective January 25, 1993; amended at 19 Ill. Reg. 13552, effective September 19, 1995; amended at 22 Ill. Reg. 3895, effective February 5, 1998; amended at 22 Ill. Reg. 19273, effective October 13, 1998; amended at 24 Ill. Reg. 1191, effective January 4, 2000; amended at 25 Ill. Reg. 3850, effective March 1, 2001; amended at 26 Ill. Reg. 17225, effective November 18, 2002; emergency amendment at 28 Ill. Reg. 3928, effective February 11, 2004, for a maximum of 150 days.

Section 1300.15 Fees**EMERGENCY**

The following fees shall be paid to the Department and are not refundable:

- a) Application Fees
 - 1) The fee for application for a license as a registered professional nurse and a licensed practical nurse is \$50. In addition, applicants for an examination shall be required to pay, either to the Department or to the designated testing service, a fee covering the cost of determining an applicant's eligibility and providing the examination. Failure to appear for the examination on the scheduled date, at the time and place specified, after the applicant's application for examination has been received and acknowledged by the Department or the designated testing service, shall result in the forfeiture of the examination fee.
 - 2) The fee for a temporary restoration or endorsement permit for a license as a registered professional nurse and licensed practical nurse is \$25.
- b) Renewal Fees

DEPARTMENT OF PROFESSIONAL REGULATION

NOTICE OF EMERGENCY AMENDMENT

The fee for the renewal of a license shall be calculated at the rate of ~~\$30~~\$20 per year.

c) General Fees

- 1) The fee for the restoration of a license other than from inactive status is \$20 plus payment of all lapsed renewal fees, but not to exceed \$125.
- 2) The fee for the issuance of a duplicate license, for the issuance of a replacement license, for a license which has been lost or destroyed or for the issuance of a license with a change of name or address other than during the renewal period is \$20. No fee is required for name and address changes on Department records when no duplicate license is issued.
- 3) The fee for a certification of a licensee's record for any purpose is \$20.
- 4) The fee to have the scoring of an examination authorized by the Department reviewed and verified is \$20 plus any fees charged by the applicable testing service.
- 5) The fee for a wall certificate showing licensure shall be the actual cost of producing such certificate.
- 6) The fee for a roster of persons licensed as registered professional nurses or licensed practical nurses in this State shall be the actual cost of producing such a roster.
- 7) The fee for processing a fingerprint card by the Department of State Police is the cost of processing which shall be made payable to the State Police Services Fund and shall be remitted to the State Police for deposit into the Fund.

(Source: Amended by emergency rulemaking at 28 Ill. Reg. 3928, effective February 11, 2004, for a maximum of 150 days)

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF CORRECTIONS TO NOTICE ONLY

- 1) Heading of the Part: White-Tailed Deer Hunting By Use of Bow and Arrow
- 2) Code Citation: 17 Ill. Adm. Code 670
- 3) The Notice of Proposed Amendments being corrected appeared at: 28 Ill. Reg. 1973; February 6, 2004
- 4) The information being corrected is as follows: The Department neglected to provide information on the affect this rulemaking will have on persons licensed to operate as outfitters. The number of nonresident combination archery deer permits the Department will issue for the 2004 season is being increased. This will provide increased business opportunities for persons providing outfitting services.

Initial Regulatory Flexibility Analysis:

- A) Types of small businesses, small municipalities and not for profit corporations affected: Persons licensed as outfitters by the Department of Natural Resources
- B) Reporting, bookkeeping or other procedures required for compliance: Must submit completed application for licensure, a list of the property they will be using, copies of plat maps and aerial photos of the property, a management plan detailing the number of deer they plan to harvest, including sex of deer. After the season is completed, they must submit a report of deer harvested by sex.
- C) Types of professional skills necessary for compliance: Guides employed by outfitters, and outfitters who are personally providing guide services, must successfully complete a Department Hunter Safety Course.

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

SECOND NOTICES RECEIVED

The following second notices were received by the Joint Committee on Administrative Rules during the period of February 10, 2004 through February 16, 2004 and have been scheduled for review by the Committee at its March 23, 2004 meeting in Springfield. Other items not contained in this published list may also be considered. Members of the public wishing to express their views with respect to a rulemaking should submit written comments to the Committee at the following address: Joint Committee on Administrative Rules, 700 Stratton Bldg., Springfield IL 62706.

<u>Second Notice Expires</u>	<u>Agency and Rule</u>	<u>Start Of First Notice</u>	<u>JCAR Meeting</u>
3/26/04	<u>Department of Natural Resources</u> , Camping on Department of Natural Resources Properties (17 Ill. Adm. Code 130)	12/12/03 27 Ill. Reg. 18495	3/23/04

PROCLAMATIONS

**2004-20
Sister Cities Day**

WHEREAS, in 1956, shortly after World War II and at the height of the Cold War, President Dwight D. Eisenhower proposed a “People-to-People” program, aimed at involving individuals and organized groups at all levels of society in citizen diplomacy, with the hope that these personal relationships would lessen the chance of future world conflicts; and

WHEREAS, by 1967, due to the program’s tremendous growth and popularity, the “People-to-People” program became a separate, nonprofit corporation known as Sister Cities International (SCI); and

WHEREAS, according to their mission statement, SCI exists to “Promote peace through mutual respect, understanding and cooperation – one individual, one community at a time;” and

WHEREAS, the work of SCI strengthens partnerships between the United States and international communities, which in turn increases global cooperation at the municipal level, promotes cultural understanding and stimulates economic development; and

WHEREAS, SCI represents more than 250,000 volunteers in over 1,400 United States cities, who work in collaboration with 140 countries around the globe. The Illinois chapter of SCI represents 60 communities from the state and works in partnership with 98 cities around the world; and

WHEREAS, by working to promote peaceful relations between the United States and the global community, SCI is working towards a better and brighter future for American citizens, as well as people throughout the world:

THEREFORE, I, Rod Blagojevich, Governor of the State of Illinois, do hereby proclaim March 11, 2004 as **SISTER CITIES DAY** in Illinois, in recognition of their tireless efforts at promoting international peace and cooperation.

Issued by the Governor February 10, 2004.

Filed by the Secretary of State February 11, 2004.

**2004-21
School Health Center Awareness Month**

WHEREAS, optimal physical and mental health of our students leads to optimal academic achievement and is very important to the overall health and well-being of the youth in Illinois; and

WHEREAS, all youth in Illinois deserve access to comprehensive health care; and

WHEREAS, school health centers provide accessible, affordable and quality health care and health education that improves the lives of young people and their families; and

WHEREAS, school health centers are supported in communities by parents, teachers, school administrators and other concerned citizens; and

PROCLAMATIONS

WHEREAS, the first school health center emerged in Illinois in 1982, and, today, there are more than forty school-based and school-linked health centers providing vital and necessary bridges among health care networks within many communities across Illinois; and

WHEREAS, fewer school absences, higher compliance with required immunizations and physical exams, decreased smoking of tobacco and marijuana, fewer hospitalizations and emergency room visits, and a decline in teen pregnancy are a few of the benefits to students of school health centers:

THEREFORE, I, Rod Blagojevich, Governor of the State of Illinois, do hereby proclaim March 2004 as **SCHOOL HEALTH CENTER AWARENESS MONTH** in Illinois, and urge all citizens to recognize the role of local school based and school linked health centers in improving the health and well-being of the young people in our state.

Issued by the Governor February 10, 2004.

Filed by the Secretary of State February 11, 2004.

2004-22**Estonian Independence Day**

WHEREAS, the Republic of Estonia gained independence in 1918 after withstanding centuries of Danish, Swedish, German and Russian rule, approving the country's first constitution in 1920; and

WHEREAS, joining the League of Nations in 1921, Estonia strived to maintain good relations with all nations, while dealing with numerous domestic issues, including an attempted coup d'etat by the Russian Bolsheviks and the gradual introduction of authoritarian rule; and

WHEREAS, despite declaring themselves neutral at the outbreak of World War II, Estonia was forced to sign a mutual assistance pact with Moscow in 1939. At the end of the war, 282,000 Estonians had either died in combat, fled the country or been deported, reducing their population by a full quarter; and

WHEREAS, in 1940, Estonia was forcibly integrated into the Soviet Union, only to be occupied briefly by Germany during World War II, before the Soviets resumed control in 1944; and

WHEREAS, this forced occupation led to decades of repression, in which Estonians struggled to maintain their national identity, before finally coming to an end in 1991 with the collapse of the Soviet Union; and

WHEREAS, on September 2, 1991, the United States of America officially recognized Estonia's independence, and, by the end of 1991, approximately one hundred nations had also done so. However, it was not until 1994 that the last of the Russian troops evacuated the country, leaving Estonia free to re-establish their diplomatic relations with the world; and

WHEREAS, Americans of Estonian descent are exemplary citizens, who continue to uphold their rich cultural traditions, take pride in their history, promote human rights and seek self-determination for their homeland:

PROCLAMATIONS

THEREFORE, I, Rod Blagojevich, Governor of the State of Illinois, do hereby proclaim February 24, 2004 as **ESTONIAN INDEPENDENCE DAY** in Illinois in recognition of the country's 86th Anniversary of Independence.

Issued by the Governor February 10, 2004.

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2004-23**Affordable Housing Week**

WHEREAS, there are over one million households in Illinois, and more than a quarter of all those households cost the owners more than 30 percent of their income, causing a housing affordability problem; and

WHEREAS, more than eight percent of Illinois citizens have experienced homelessness; and

WHEREAS, communities across the nation are threatened by a lack of affordable housing for many reasons, including that it makes attracting workers more difficult for business owners, causes employees to live farther away from their employers, and forces senior citizens out of their neighborhoods; and

WHEREAS, advocates for affordable housing are focusing their efforts on four major priorities to address what they see as the state's largest housing problems: creating housing for people with the lowest incomes, removing barriers to developing affordable housing, ending discrimination and promoting open access to housing, and increasing state government capacity to address housing issues; and

WHEREAS, the talents and efforts of grassroots organizations, non-profit housing professionals, financial institutions, elected officials, state agencies and others must be combined to address the immense challenge of increasing the amount of affordable housing; and

WHEREAS, last year, in recognition of the critical role affordable housing plays on the economy and the quality of life in every Illinois community, an Executive Order was signed, which established a task force that was charged with creating a comprehensive affordable housing initiative in Illinois:

THEREFORE, I, Rod Blagojevich, Governor of the State of Illinois, do hereby proclaim March 14 – March 20, 2004 as **AFFORDABLE HOUSING WEEK** in Illinois.

Issued by the Governor February 10, 2004.

Filed by the Secretary of State February 11, 2004.

2004-24**Veterans Upward Bound Day**

WHEREAS, the Veterans' Upward Bound (VUB) project is one of the federal TriO programs sponsored by the United States Department of Education; and

PROCLAMATIONS

WHEREAS, VUB exists to serve low-income and disadvantaged military veterans by assisting them with their academic skills and helping them to enroll in a post-secondary education school or program of their choice; and

WHEREAS, there are more than 45 VUB programs across the country, including programs in Washington, D.C. and the Commonwealth of Puerto Rico; and

WHEREAS, the Roosevelt University in Chicago is the host of the only VUB program in Illinois; and

WHEREAS, in April 2004, the National Association of Veterans Upward Bound Project Personnel, the national VUB organization, will celebrate its Silver Anniversary, commemorating 25 years of diligent service on behalf of our nation's armed forces:

THEREFORE, I, Rod Blagojevich, Governor of the State of Illinois, do hereby proclaim April 28, 2004 as **VETERANS UPWARD BOUND DAY** in Illinois, in recognition of the work provided to the brave men and women of our armed forces by this program.

Issued by the Governor February 10, 2004.

Filed by the Secretary of State February 11, 2004.

ILLINOIS ADMINISTRATIVE CODE

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