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DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Rate Setting

2) Code Citation: 89 Ill. Adm. Code 356

3)

Section Numbers:	Proposed Action:
356.20	Amend
356.40	Amend
356.50	Amend

4) Statutory Authority: 20 ILCS 505

5) A Complete Description of the Subjects and Issues Involved: The Department is amending the rule by removing references to reporting requirements in this Part and is consolidating all the information in 89 Ill. Adm. Code 357.120. A cross-reference to that Section has been added.

6) Will this proposed rule replace an emergency rule currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Does this proposed rule contain incorporations by reference? No

9) Are there any proposed amendments to this Part pending? No

10) Statement of Statewide Policy Objectives: The proposed rule does not expand a State Mandate as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Comments on this proposed rulemaking may be submitted in writing for a period of 45 days following publication of this notice. Comments should be submitted to:

Jeff E. Osowski
Office of Child and Family Policy
Department of Children and Family Services
406 East Monroe Street, Station #65
Springfield, Illinois 62701-1498
Telephone: 217/524-1983
TDD: 217/524-3715
FAX: 217/557-0692

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENTS

E-Mail address: cfpolicy@idcfs.state.il.us

The Department will consider fully all written comments on this proposed rulemaking submitted during the 45-day comment period. Comments submitted by small businesses should be identified as such.

12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected: Agencies that provide contracted services for the Department

B) Reporting, bookkeeping or other procedures required for compliance: None

C) Types of professional skills necessary for completion: None

13) Regulatory Agenda on which this rulemaking was summarized: The need for amendment was not anticipated on either of the two most recent Regulatory Agendas.

The full text of the Proposed Amendments begins on the next page.

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENTS

TITLE 89: SOCIAL SERVICES
CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES
SUBCHAPTER c: FISCAL ADMINISTRATION

PART 356
RATE SETTING

Section

356.1 Purpose (Renumbered)
356.2 Definitions (Renumbered)
356.3 Types of Reimbursement Made by the Department (Renumbered)
356.4 Cost Information Requirements of Providers (Renumbered)
356.5 Determining Rate Reimbursement Levels (Renumbered)
356.6 Disallowable Costs and Reduced Reimbursement (Renumbered)
356.7 Notice and Appeal of Provider Rates (Renumbered)
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356.30 Types of Reimbursement Made by the Department
356.40 Cost Information Requirements of Providers
356.50 Determining Rate Reimbursement Levels
356.60 Disallowable Costs and Reduced Reimbursement
356.70 Notice and Appeal of Provider Rates
356.80 Reimbursement for Program Enhancements

AUTHORITY: Implementing and authorized by the Children and Family Services Act [20 ILCS 505].

SOURCE: Adopted at 5 Ill. Reg. 324, effective December 29, 1981; amended at 6 Ill. Reg. 11851, effective September 30, 1982; amended at 10 Ill. Reg. 11432, effective July 1, 1986; amended at 11 Ill. Reg. 675, effective January 2, 1987; amended at 11 Ill. Reg. 7255, effective April 15, 1987; amended at 18 Ill. Reg. 11512, effective July 8, 1994; emergency amendment at 20 Ill. Reg. 9265, effective July 1, 1996, for a maximum of 150 days; amended at 20 Ill. Reg. 14390, effective November 1, 1996; emergency amendment at 23 Ill. Reg. 8461, effective July 6, 1999, for a maximum of 150 days; emergency expired on December 2, 1999; amended at 24 Ill. Reg. 7692, effective June 1, 2000; amended at 28 Ill. Reg. _____, effective _____.

Section 356.20 Definitions

"Administrative cost" means those costs related to the management and organizational maintenance of the purchase of care provider such as program

administration, postage, and clerical support.

"Allowable costs" means those reasonable costs, as defined in this Section~~herein~~, that~~which~~ will be considered for reimbursement. Prior to the final rate determination, allowable costs are subject to revenue offset and application of reasonable cost standards if applicable, as specified in Section 356.50.

"Cost report" means a report of all costs incurred and revenue earned by~~to~~ a provider that~~which~~ are directly associated with services purchased by the Department for its clients.

"Department" or "DCFS" means the Department of Children and Family Services.

"Disallowable costs" means those costs that~~which~~ will not be considered for reimbursement.

"Fiscal year" means July 1 through June 30.

"For-profit agencies" means those agencies that~~which~~ are registered as for-profit by the Secretary of State and recognized as for-profit entities by the Internal Revenue Service.

"Fringe benefits" means those provider costs not paid as salaries but incurred by agencies directly for the benefit of their employees. Fringe benefits include, but are not limited to employee health and retirement benefits, payroll taxes, worker's compensation insurance and unemployment compensation insurance. Liability insurance and malpractice insurance are not considered fringe benefits because the provider itself receives substantial benefits and protections from incurring those costs.

"Historical costs" means the total expenditure incurred for all programs the purchase of care provider provided for the previous State ~~state~~ fiscal year~~,~~ that~~which~~ are presented via certified audit.

"Ownership costs" means the costs of maintenance, utilities, property and building insurance, depreciation, amortization of leasehold improvements, rent, property taxes, interest and other related costs.

"Preoperating expenses" are those operating expenses that~~which~~ are incurred in making preparation for rendering client care before the first client is admitted

(e.g., costs based upon the amount of time an executive director spends on developing a new program prior to the initiation of program services, staff salaries paid during training prior to the initiation of program services, etc.).

"Purchase of care providers" means those service providers with whom the Department of Children and Family Services (Department) does business through contracts on a reimbursable basis for units of service delivered to specific clients.

"Reasonable costs" means those costs incurred by purchase of care providers that~~which~~ are determined to be necessary and appropriate in accordance with Section 356.50.

"Reimbursement rates" are rate levels used by the Department to reimburse for institutional and group home care; foster care; day care center and day care home care; adoption, counseling and homemaker service; and others as required for contracting purposes. These services are further defined in 89 Ill. Adm. Code 302~~,~~ (Services Delivered by the Department of Children and Family Services).

"Revenues to be offset" means funding provided by a governmental unit via a grant mechanism that~~which~~ is not clearly linked to the provision of service to any one particular client. The Department will wholly or partially discount such funding in determining the providers' reimbursable costs.

"Support costs" means ~~the costs of:~~ food and dietary, laundry, housekeeping, and other related costs.

"Total agency costs" means the total expenditure incurred for all programs the purchase of care provider provides during a State fiscal year.

"Unit of service" means a measured length of time, such as an hour or a day or some other measurable service component, that will enable the Department to determine the amount of service provided individually or in aggregate to clients.

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

Section 356.40 Cost Information Requirements of Providers

a) Cost Reporting – Except as otherwise provided by this subsection, all providers shall annually file a certified cost report on a schedule provided by the Department. The time period covered by the cost report shall correspond to the

Department's fiscal year unless otherwise approved by the Department. The Department may designate cost reports filed by the provider with other state agencies as suitable for fulfilling this requirement when those reports provide all of the information needed by the Department in a clear and usable way. Any provider that completes an audit in accordance with 89 Ill. Adm. Code 357.120 (Purchase of Service Fiscal Reports and Records) shall bind the~~OMB Circular A-133 shall annually submit a copy of that audit to the Department in addition to the~~ DCFS cost report required by this subsection within that audit. Day care providers are exempt from all audit and cost reporting requirements unless they are involved in the cost based rate negotiations authorized under Section 356.30(a) of this Part. Providers involved in those rate negotiations shall file the cost report on the Department schedule, as described in this subsection, and, if required to file an OMB Circular A–133 audit, a copy of that audit with the cost report bound within the audit. ~~Cost reports shall be available to the general public upon written request. The Department will immediately notify a provider of any requests for its cost reports. No cost report will be released sooner than two weeks from the date the provider was notified of the request. The reports will be provided at cost.~~

b) Accrual Accounting – The provider shall use the accrual basis of accounting when reporting financial data.

c) Audits – Providers shall cooperate in any audits undertaken to verify the truth, accuracy, and completeness of reported costs, in accordance with 89 Ill. Adm. Code 434~~,~~ (Audits, Reviews, and Investigations).

d) Total Costs and Revenue – Providers must report all costs of service and must disclose their total costs and revenue. Supporting documentation will be required to verify the costs allocated to each of the various services the Department purchases and to the sum of other services the agency provides. The reported total cost and revenue must be certified by a licensed public accountant.

e) Historical Costs – Historical costs will be established when the provider has operated one or more years and independent auditors concur with the reported total costs. New providers who have not established their historical costs shall be permitted to submit budgeted information for the first fiscal reporting period. However, no rate increases shall be authorized for the next fiscal year until audited historical costs are available. When the rate increase is authorized based on historical costs, it will coincide with the effective date of the contract if the audit is received in accordance with contractual requirements.

f) Other Information Required – As a condition of contract issuance or renewal, the Department will request and receive promptly any other financial information, reasonably related to rate determination, needed to determine the provider's costs. For determining State Fiscal Year 2000 rates, this may include submission of program budgets. (See Section 356.50(f).)

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

Section 356.50 Determining Rate Reimbursement Levels

This Section applies to those situations where the Department promulgates standard or individual rates identified in Section 356.30(b)(2) and (3).

a) Forms – Financial reporting forms shall be used in establishing rates of reimbursement, regardless of the type of service provided.

b) For-Profit Agencies – Contracts with for-profit agencies must clearly identify any profit factor that~~which~~ must directly correspond to units of services provided. Profit will be categorized as an administrative cost and will be limited to 9%~~nine percent~~ of the total contract amount. Profit will also be included in calculating the overall administrative cost standard.

c) Reasonable Cost Standards – Reasonable cost standards shall be applied to certain categories of costs except that program and transportation costs may be exempted if warranted by the special needs of the clientele. The reasonable cost standards establish reimbursement ceilings for categories of costs. The standards are derived from the median costs of all agencies providing similar services. Fringe benefits above 25%~~ percent~~ of salaries shall not be reimbursed by the Department. Administrative costs may not exceed 20%~~ percent~~ of the costs for other services. Reimbursement may exceed the reasonable cost standards if a higher rate is negotiated as a result of a rate appeal or rate enhancement that clearly demonstrates that costs in excess of the standards are the result of a necessary level of resources purchased in a prudent manner. However, administrative costs may not exceed 20%~~ percent~~ of the costs of other services.

d) Revenues to be Offset – Revenues to be offset shall include grants, other non-purchase-of-service revenue from other governmental agencies, revenues from the school lunch program, and revenues from local education agencies. All revenues to be offset shall be reported by the provider. These revenues will be considered

as part of the resources available to the provider in determining reasonable costs. The Department will not reimburse a provider for the proportion of services or administrative charges that have been paid, wholly, or in part, by such revenues.

e) Units of Service and Provider Capacity – Reimbursement rates shall be determined on the basis of actual units of service provided or the median utilization for all agencies providing similar services, whichever is greater. However, significant deviations from the utilization level may be used in rate-setting if unusual circumstances beyond the control of the provider directly caused a significant change in occupancy rates.

f) Special Provisions for Calculating Individual Rate Reimbursement including Child Care Institutions, Group Homes, Maternity Centers, and Shelter Programs – For State Fiscal Year 2000 (from July 1, 1999 through June 30, 2000), the rates for all child care institutions, group homes, maternity centers, independent living, specialized foster care, treatment foster care and shelter programs will be calculated as outlined in this Section except that programs that would receive reductions will be held harmless at State Fiscal Year 1999 levels if both Fiscal Year 1998 cost reports and a program budget for State Fiscal Year 2000 are submitted within 30 days after notice to the program. If a program fails to submit a cost report within the 30-day period, the rate will be adjusted to 80% of the applicable State Fiscal Year 1999 rate. If a program files a cost report but not a budget, the rate will not be held harmless and will be adjusted downward based on the rate calculation methodology, but in no instance shall the rate be less than 80% of the program's State Fiscal year 1999 rate. This rate adjustment for State Fiscal Year 2000 applies regardless of the other provisions of this Part.

1) The Department will conduct a joint rate calculation with the Illinois Department of Human Services.

2) Reimbursement rates shall be determined on the basis of actual units of service provided, or the median utilization level for all similar providers, whichever is greater. The maximum utilization level that will be used to determine reimbursement rates shall be 98% ~~percent~~ of licensed or approved program capacity. For the purpose of establishing the median utilization level, residential programs will be grouped into two categories:

A) Child Care Institutions and Group Homes; and

B) Maternity Homes and approved Shelter programs.

3) The reasonable cost standards for support and ownership costs shall be 120% ~~percent~~ of the median costs of all similar providers. Providers shall be deemed dissimilar, and subject to an adjusted cost standard if one or more of the following conditions has occurred on or after July 1, 1983:

A) the provider has built an entirely new building used directly by clients of the program,

B) the provider has renovated a building used directly by program clients and the annual depreciation and/or interest costs are $20,000 or more, or

C) the provider has entered a first-time lease for a building used directly by program clients.

4) These costs shall be demonstrated by an annual audit cost report and accompanying notes as prescribed by 89 Ill. Adm. Code 357.120 (Purchase of Service Fiscal Reports and Records)~~434 (Audits, Reviews, and Investigations)~~. The reasonable cost standards shall include a geographic differential factor to reflect the differences in costs due to geographic location when such cost differentials exist. The existence of such differentials is determined by measurement of the audited costs reported by providers and the application of generally accepted statistical tests to these costs. Any geographic differential factor that ~~which~~ results from these tests is included in the Department's rate notices sent to providers.

5) Historical costs, except depreciation, interest and amortization of allowable pre-operating expenses shall be increased by inflation adjustment factor to reflect the increases in costs caused by general inflation. The maximum increase in a facility's reimbursement rate shall be 150% ~~percent~~ of the inflation adjustment factor for the most current year. The percentage limitation shall be applied to the most recent rate unless that rate declined due to a combination of both reduced utilization and reduced costs. In such case, the next most recent rate shall be used to determine the allowable maximum increase. This limitation will not be applied to cost increases mandated by regulatory agencies or program changes approved by the Department Director.

6) New programs not having historical costs shall have a rate set via a process that~~which~~ begins with completion of a projected historical cost budget in the same format used to set historical cost rates. The Regional Office developing the contract shall negotiate costs based on a comparison of the budget with levels of staffing generally needed for similar programs; with prevailing wage rates; and with levels of supply, ownership, support and other costs common to similar programs. The Department shall review the results and shall engage in further negotiations when an examination of submitted data determines an anomaly or disparity in the data in comparison to other data submitted by other providers. A new start rate shall then be set using the reasonable cost standards applying to the particular program under the terms of this Part with one exception: To allow for the phase-in placement of clients, the divisor applied to costs will be the greater of:

A) the number five percentage points lower than the median utilization level applying to ongoing programs of the same type; or

B) the projected utilization agreed to by the Department and the provider.

g) The Department will adopt Day Care Rates developed by the Illinois Department of Human Services for similar day care services.

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

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Purchase of Service

2) Code Citation: 89 Ill. Adm. Code 357

3)

Section Numbers:	Proposed Action:
357.20	Amend
357.30	Amend
357.40	Amend
357.100	Amend
357.110	Amend
357.120	Amend
357.130	Amend
357.140	Amend

4) Statutory Authority: 20 ILCS 505

5) A Complete Description of the Subjects and Issues Involved: In Section 357.20, the Department is adding a definition for its "Statewide Automated Child Welfare Information System (SACWIS)" that replaces the CANTS system. The Department is also updating the name of the "Statewide Child Sex Offender Registry" to the "Illinois Sex Offender Registry".

In Section 357.30, the Department is updating citations to its SACWIS system and the Illinois Sex Offender Registry.

In Section 357.40, the Department is correcting a citation.

In Section 357.100, Department is updating reporting requirements and financial citations.

In Section 357.120, the Department is clarifying reporting submission requirements. The Department collects required reports when all contracts are terminated with a provider. For contracts that remain in effect, required reports are due within 180 days after the end of the providers' fiscal year.

In Section 357.130, the Department is updating the list of items that must be included in a provider's financial recordkeeping.

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENTS

In Section 357.140, the Department is adding the provision that the Department will not be liable for any payments to individuals or entities for which the agency is contractually obligated.

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 proposed amendments to this Part pending? No

10) Statement of Statewide Policy Objectives: The proposed rule does not expand a State Mandate as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Comments on this proposed rulemaking may be submitted in writing for a period of 45 days following publication of this notice. Comments should be submitted to:

Jeff E. Osowski
Office of Child and Family Policy
Department of Children and Family Services
406 East Monroe Street, Station #65
Springfield, Illinois 62701-1498
Telephone: 217/524-1983
TDD: 217/524-3715
FAX: 217/557-0692
E-Mail address: cfpolicy@idcfs.state.il.us

The Department will consider fully all written comments on this proposed rulemaking submitted during the 45-day comment period. Comments submitted by small businesses should be identified as such.

12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected: Agencies that provide contracted services for the Department

B) Reporting, bookkeeping or other procedures required for compliance: None

C) Types of professional skills necessary for completion: None

13) Regulatory Agenda on which this rulemaking was summarized: The need for amendment was not anticipated on either of the two most recent Regulatory Agendas.

The full text of the Proposed Amendments begins on the next page.

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENTS

TITLE 89: SOCIAL SERVICES
CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES
SUBCHAPTER c: FISCAL ADMINISTRATION

PART 357
PURCHASE OF SERVICE

Section

357.1 Purpose (Renumbered)
357.2 Definitions (Renumbered)
357.3 Procuring Services (Renumbered)
357.4 Issuance of Requests for Proposals (Renumbered)
357.5 Content of Requests for Proposals (Renumbered)
357.6 Evaluation of Proposals (Renumbered)
357.7 Notification of Awards (Renumbered)
357.8 Disclosure of Proposals (Renumbered)
357.9 Contract Approval (Renumbered)
357.10 Purpose
357.11 Fiscal Reports and Records (Renumbered)
357.12 Required Documentation (Renumbered)
357.13 Contract Termination (Renumbered)
357.20 Definitions
357.30 Purchase of Day Care Services
357.40 Procuring Services
357.50 Issuance of Requests for Proposals
357.60 Content of Requests for Proposals
357.70 Evaluation of Proposals
357.80 Notification of Awards
357.90 Disclosure of Proposals
357.100 Contract Approval
357.110 Compliance During the Contract Period
357.120 Fiscal Reports and Records
357.130 Required Documentation
357.140 Contract Termination

AUTHORITY: Implementing 42 CFR 431 and authorized by Section 5 of the Department of Children and Family Services Act [20 ILCS 505].

SOURCE: Adopted and codified at 5 Ill. Reg. 14546, effective December 29, 1981; amended at 6 Ill. Reg. 9294, effective July 26, 1982; amended at 8 Ill. Reg. 12127, effective July 13, 1984;

amended at 9 Ill. Reg. 11292, effective July 15, 1985; amended at 13 Ill. Reg. 3344, effective March 1, 1989; amended at 21 Ill. Reg. 13160, effective October 1, 1997; amended at 26 Ill. Reg. 3015, effective February 15, 2002; amended at 28 Ill. Reg. _____, effective _____.

Section 357.20 Definitions

"Adult" means a person age 18 and older.

"Department", as used in this Part, means the Illinois Department of Children and Family Services.

"Equal proposals for family preservation services" means proposals received by the Department which have been assigned, after review, the same number of evaluation points and the services to be provided are equal pursuant to the requirements of Section 357.70.

"Fiscal Year" means July 1 through June 30.

"Illinois Sex Offender Registry" means the registry of felony child sex offenders operated and maintained by the Illinois State Police.

"Legal child care arrangement" means child care is being provided in a licensed child care facility, in a child care facility that~~which~~ is exempt from licensing, or in the child's own home.

"Minor traffic violation" means a traffic violation under the laws of the State of Illinois or any municipal authority therein or another state or municipal authority that~~which~~ is punishable solely by fines as a petty offense. (See Section 6-601 of the Illinois Driver Licensing Law [625 ILCS 5/6-601].)

"Negotiated contract" means a written contract with an agency or individual to provide needed child welfare or youth services, which contract is not competitively bid, but rather is mutually agreed upon with a provider. Use of such contracts is further described in Section 357.40.

"New service initiatives" means services that~~which~~ heretofore have not been provided by or purchased by the Department in the State or in a specific geographical area of the state.

"Professional services" as used in this Part means child welfare services as defined in~~ Department Rules,~~ 89 Ill. Adm. Code 302~~,~~ (Services~~Service~~ Delivered by the Department of Children and Family Services)~~,~~ and youth services, as defined in this Section~~below~~.

"Program plan" means that part of the purchase of service contract that~~which~~ explains in detail who will be served, where and how they will be served and what outcomes are expected from the service.

"Purchase of service provider" means an agency or individual offering services to a Department client through a signed contract with the Department. As used in this Part, the term does not include grants-in-aid that~~which~~ are awarded pursuant to 89 Ill. Adm. Code 360~~,~~ (Grants-in-Aid).

"Requests for proposals" or "RFPs" ~~(RFPs)~~ means a formal~~form of~~ invitation to bid that~~which~~ the Department uses to obtain professional services. The RFP explains the purpose, outlines the scope of the work and solicits proposals from individuals or organizations for the funding of services for certain initiatives or projects undertaken by the Department.

"SACWIS" means the Statewide Automated Child Welfare Information System operated by the Department that replaced the CANTS sytem.

~~"Statewide Child Sex Offender Registry" means the registry of felony child sex offenders operated and maintained by the Illinois State Police.~~

"Youth services" include but are not limited to community services, primary prevention, outreach and recreational opportunities, including the use of indigenous community volunteers to provide programs designed to correct conditions contributing to delinquency; diversion services, including client advocacy, family counseling, employment and educational assistance and service brokerage; and emergency services, including 24-hour crisis intervention and shelter care. Youth services are further defined in 89 Ill. Adm. Code 310~~,~~ (Delivery of Youth Services Funded by the Department of Human Services).

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

Section 357.30 Purchase of Day Care Services

a) The Department may purchase day care services for an eligible child in any legal

child care arrangement including, but not limited to, licensed day care facilities, facilities exempt from licensing, and relatives and individuals who provide care in the children's homes.

b) As a condition of receiving payment for day care services from the Department, each in-home day caregiver, license exempt day care provider and assistant, and all adult members of the household in which a day care home exempt from licensing operates shall:

1) complete and submit to the Department on a form prescribed by the Department a certification under penalty of perjury whether the person has been convicted of a crime, other than a minor traffic violation, or has been indicated as a perpetrator of child abuse and neglect; and

2) complete and submit to the Department an authorization for a background check which may include, solely at the discretion of the Department, a criminal history check, a check of the Statewide Automated Child Welfare Information System (SACWIS)~~Child Abuse and Neglect Tracking System (CANTS)~~, and a check of the Illinois~~Statewide Child~~ Sex Offender Registry; and

3) if requested, submit his or her fingerprints to the Department within 30 days after the Department's written request for such fingerprints.

c) The Department shall conduct a check of SACWIS~~the Child Abuse and Neglect Tracking System~~ and the ~~Statewide Child~~ Sex Offender Registry on all individuals listed in subsection (b) of this Section when:

1) care is being given to a child for whom the Department is legally responsible;

2) a child is a member of an intact family that~~which~~ is receiving Department services; or

3) one of the individuals required to complete the authorization for background checks as provided in subsection (b) of this Section acknowledges that he or she has been indicated as a perpetrator of child abuse or neglect.

d) The Department shall conduct a check of ~~the~~ SACWIS~~Child Abuse and Neglect~~

~~Tracking System~~ and the Illinois~~Statewide Child~~ Sex Offender Registry on a random basis for all other individuals required to complete the authorization for background checks in subsection (b) of this Section.

e) The Department shall send a notice to the individuals in subsection (b) of this Section requiring them to submit to fingerprinting whenever he or she acknowledges that he or she has been convicted of a crime, other than a minor traffic violation, as defined in Section 357.20.

f) The Department may, in its sole discretion and on a random basis, require fingerprints of not more than 15% of all other individuals in subsection (b) of this Section and submit the fingerprints to the Illinois State Police.

g) Authorization for payment for day care services shall be denied or withdrawn whenever an individual in subsection (b) of this Section:

1) failed or refused to submit the authorization for background checks and fingerprints (if requested), as required by subsection (b) of this Section; or

2) is found to have been convicted of any of the criminal acts listed in Appendix A of 89 Ill. Adm. Code 385~~,~~ (Background Checks), or to have been indicated as the perpetrator of child abuse or neglect, which bars~~bar~~ licensure under 89 Ill. Adm. Code~~Part~~ 385, or is listed in the Illinois~~Statewide Child~~ Sex Offender Registry.

h) In addition, if the Department learns one of the individuals in subsection (b) of this Section has falsified information on the certification form, the Department may deny or withdraw authorization for payment for day care services to that provider.

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

Section 357.40 Procuring Services

a) The Department procures professional child welfare and youth services by means of negotiated contracts and competitively bid contracts.

b) Negotiated contracts are used in the following circumstances:

1) When the nature of the service is such that it can only be obtained from a

single service provider.

2) When, in the opinion of the Department, maintenance of ongoing established services is necessary to ensure the continuity of care and assistance to children, youth and families served by the Department.

3) When, in the opinion of the Department, an emergency exists and the urgency for the service will not allow time for preparing requests for proposals.

4) When the Department is not required to use competitive bidding by statute or by the provisions of subsection (c)(1)~~ below~~:

c) Although the professional services governed by this Part are exempt from the competitive bidding procedures of the Illinois Procurement Code~~Purchasing Act~~ [30 ILCS 500~~505~~] as opposed to the goods and services governed by the standard procurement rules of the Department of Central Management Services, the Department nevertheless recognizes the value of competition and therefore issues Request for Proposals (RFPs) in the following situations:

1) The Department shall issue a RFP for all new service initiatives over $25,000 except where the RFP is required by Federal regulations such as 45 CFR 74. The Director shall waive the RFP requirement when a determination is made that an emergency exists. An emergency shall include, but not be limited to, the following situations:

A) When the service initiative is immediately needed to prevent interruption in services to current clients, or

B) The service initiative is immediately needed to assure the clients' health and welfare.

2) In addition, the Department shall issue RFPs for service contracts (except for substitute care and day care) over $50,000 at least once every 6~~six~~ years. However, comprehensive community-based youth services provided through local boards or local service systems shall be reviewed once every 4~~four~~ years in accordance with Department of Human Services' requirements found in 89 Ill. Adm. Code 334~~,~~ (Administration and Funding of Community-Based Services to Youth). When requests for proposals are issued, purchase of service providers shall submit a response

in accordance with the RFP in order to be considered for contracts for the fiscal year specified. When an RFP is not required, subsequent contracts may be negotiated and renewed at the Department's discretion without recourse to a RFP. The Department will review such contracts in order to determine that the provider is complying with the provisions of the current contract and providing effective services that~~which~~ meet the needs of the Department's clients.

3) When equal proposals for family preservation services have been submitted to the Department, not-for-profit corporations are to be given preference over for-profit corporations.

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

Section 357.100 Contract Approval

Federal and State regulations authorize the Illinois Department of Children and Family Services to purchase service and care for eligible children and families from purchase of service providers. Purchase of service providers shall meet the following prerequisites before a contract is approved:

a) When licensure is required to provide the service, the purchase of service provider has obtained the necessary license or permit from the appropriate licensing authority to provide the specified services throughout the contract period.

b) Except for individual foster care provider contracts and day care provider contracts, the purchase of service provider has submitted a detailed program plan that~~which~~ specifies and contains the following:

1) the type and extent of services that~~which~~ will be provided. The number of individual and/or family clients that~~which~~ may be served, and the number of hours or the number of days for which services are provided may be used to define the extent of services;

2) the number and types of staff available to provide the specified services;

3) the clientele for whom the services were designed;

4) the provisions for recordkeeping and reporting as required by Department rules or the purchase of service contract;

5) that the resources are sufficient to provide the service. "Resources" include the following:

A) facilities that~~which~~ are large enough to safely accommodate the clientele, which contain sufficient equipment and furniture to provide the services offered and that~~which~~ satisfy all public health and safety regulations and Department licensing requirements;

B) staff who possess accepted professional standards of education and experience for their assignments; and

C) administrative personnel with appropriate educational backgrounds and experience for their positions;

6) a clause titled "billable service" that~~which~~:

A) clearly defines the billable unit of services such as: hour, day, week or month;

B) stipulates whether the provider will bill for client "no shows," travel, telephone conversations, canceled~~cancelled~~ appointments, staffing and group sessions.

c) The purchase of service provider has a plan to assure that minimal staffing levels, as may be required by child care facility licensing standards, and as specified in the contract, are maintained.

d) The purchase of service provider shall submit documentation that the total Department reimbursement for administration costs, including personnel and other fixed and variable costs for administration do not exceed 20% of the cost of other reimbursable items.

e) The ~~current~~ purchase of service provider has submitted evidence of financial stability. ~~for the contract period including either balance sheet data and income statement or reconciled bank balances. If the provider has been receiving contracts that in the aggregate are $25,000 or more the balance sheet and income statement must be audited.~~

f) The new purchase of service provider has submitted evidence of financial stability

for the contract period including either letters of credit, statements of backing, or audited financial statements.

g) The purchase of service provider has submitted a budget of anticipated expenditures based on the negotiated rate or the negotiated contract maximum, if a budget is required by the contract.

h) The current purchase of service provider has submitted the required financial reporting documents in accordance with Section 357.120, unless the Department determines that circumstances do not warrant non-renewal or termination of the contract.

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

Section 357.110 Compliance During the Contract Period

Purchase of service providers under contract to the Department must comply with Federal and State laws and regulations and Department rules. When the provider signs the purchase of service contract, this signature shall be the provider's certification of compliance with the applicable laws, regulations and rules. ~~In addition, the Department may certify compliance by reviewing the purchase of service providers' records.~~

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

Section 357.120 Fiscal Reports and Records

a) Purchase of service providers shall furnish the Department with any required reports during the contract period~~. These reports shall detail functional expenses, revenues, and per person costs~~ in a manner specified by the Department. Reports shall be received by the Department ~~office responsible for contracts and grants~~ within the time frames specified in the contract.

b) When all of the contracts with one provider expire~~contract expires~~ or terminate~~terminates~~ prior to the end of the fiscal year, the revenue and expense sections of the Department's cost report shall be submitted with an opinion from a certified public accountant. This~~a~~ report and opinion shall be submitted within 30 days after the expiration or termination of the contract.

c) Any purchase of service provider (with the exception of day care providers, unless they are involved in cost based rate negotiations authorized under 89 Ill.

Adm. Code 356.30(a), and governmental agencies) who receives ~~more than~~ $150,000 or more from the Department within ~~a~~ the State fiscal year shall submit an agency-wide~~a~~ certified independent audit using the guidelines developed by the Department and in accordance with Government Auditing Standards, 2003 Revision. ~~The Director or Chief Auditor of the Department shall waive audit requirements when a contract is with an individual provider and payment is not related to expenses.~~

1) All governmental and not-for-profit organizations must also consider federal audit guidelines and complete audits in accordance with the guidance specified in the Office of Management and Budget (OMB) Circular A-133 Audits of States, Local Governments, and Non-Profit Organizations, when required by A-133 to conduct an audit. If required to prepare an audit in accordance with OMB Circular A-133, the audit must still contain the information listed in subsection (d). ~~The Director or Chief Auditor of the Department shall waive audit requirements when a contract is with an individual provider and payment is not related to expenses.~~

2) The Department may also request, at its sole discretion, certified agency-wide or limited-scope audits from any purchase of service providers (including day care providers and government entities) to ensure compliance with Federal, State and Department requirements. All governmental entities audited by the Illinois Auditor General will submit those audits to the Department within 60 days after completion.~~The audit shall contain the following information:~~

3) The audits for all entities must be completed within 180 calendar days after the completion of the provider's fiscal year.

4) A waiver of the certified audit requirement may be requested in writing and directed to the Department's Deputy Director of Monitoring and Quality Assurance. The request must state the reason for the waiver and shall be submitted prior to the due date of the report.

5) A request for an extension of the deadline for submittal of the audit and/or costs report beyond the time frame specified in subsection (c)(3) must be submitted in writing to the central office manager responsible for the administration of the reimbursement rates and excess revenue by the required due date in subsection (c)(3).

6) The Department will respond to the requests for waivers or extensions within 30 business days, specifying approval or rejection of the waiver or extension.

~~1) an expression of the auditor's opinion on the financial statement;~~

~~2) a balance sheet;~~

~~3) a statement of revenue and expenses and changes in fund balance. This statement should specifically identify revenue received from the Department programs. The cost of management and general expenses is to be shown;~~

~~4) a statement of functional expenses (expenses by program) in a multiple program agency;~~

~~5) notes on the financial statements that include a note on revenues showing the total number of service units provided, measured in hours, days, weeks, or months;~~

~~6) reports on review of internal controls;~~

~~7) report on compliance; and~~

~~8) a management letter from the certified independent audit firm that specifies those accounting and internal control deficiencies that merit attention.~~

d) Limited scope audits will be requested in the contract program plan and defined for each situation as necessary. Reports will address, specifically, the work requested on a case by case basis and may include a Report on Compliance with Requirements Applicable to Programs Funded by the Department; Reports on Internal Control Over Compliance with the Contract and 89 Ill. Adm. Code 357.110 and 357.130.~~Purchase of service providers shall maintain financial records for five years from the expiration of each contract. The Department reserves the right to inspect all purchase of service records that relate to services for which the Department provides funding. These records shall be kept according to the Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations (3rd Edition, 1988), National Health Council,~~

~~1730 M Street, N.W., Suite 500, Washington, DC 20036. These standards require accrual accounting. This incorporation by reference does not include any later amendments or editions to the previously cited publication.~~

e) Cost and Audit Reports are necessary to evaluate~~enable an evaluation of~~ the costs for all provider~~providers offering the same~~ services. Unless the Department determines that circumstances do not warrant the following action, noncompliance with the fiscal reporting requirements included in this Part and the cost reporting requirements in accordance with 89 Ill. Adm. Code 356.40 (Cost Information Requirements of Providers) will result in:

1) withholding of rate increases~~, if the provider does not comply with the fiscal reporting requirements as specified in the contract~~; or

2) ~~withholding of rate increases and~~ non-renewal or termination of the purchase of service contract~~, if the provider does not comply with the end of year fiscal reporting requirements.~~; or

3) withholding of current contract payments in full or in part for services provided. Such withholding of payments will occur 60 days after the provider has received written notice from the Director of the Department.

~~f) Unless the Department determines that circumstances do not warrant the following action, failure to submit the required audit, which must be submitted within 180 days after the end of the fiscal year, will result in:~~

~~1) non-renewal of the purchase of service contract, or~~

~~2) termination of the purchase of service contract, or~~

~~3) withholding of current contract payments for services provided. Such withholding of payments will occur 60 days after the provider has received written notice of the pending action from the Director of the Department.~~

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

Section 357.130 Required Documentation

a) Purchase of service providers shall maintain financial records for 5 years from the

expiration or termination of each contract. The Department reserves the right to inspect all purchase of service records that relate to services for which the Department provides funding. These records shall be kept in accordance with Generally Accepted Accounting Principles.~~are required to keep~~ The records must be~~which are~~ detailed and accurate enough to document the reasons for a decision, the ways monies were spent, and the beneficiaries of income, goods, and services. Such required recordkeeping shall include but not be limited to:

1) establishment of financial recordkeeping which includes:

A) Cash Receipts Journal

B) Cash Disbursements Journal

C) General Journal

D) General Ledger

E) All cash disbursements and/or expenses, ~~must be~~ fully supported by documentation, such as invoices, time sheets, time studies, or approved cost allocation plans~~.~~

F) Revenue and expenses by Department contract

G) Annual budgets and quarterly actual and budget variance analyses

H) Annual furniture and equipment inventory with procedure for disposition and explanation of the tagging system for Department contract items

2) establishment of programmatic compliance recordkeeping that~~which~~ includes:

A) individual~~Individual~~ client files on each client applying for and receiving service;~~,~~

B) schedule~~Schedule~~ of service provided to each client that~~which~~ includes the date and time service was provided~~,~~ and the agency's employee providing service;~~.~~

b) Purchase of service providers shall maintain individual client records for clients for whom services were purchased by the Department 5~~five~~ years from the date services are terminated. Individual client records shall contain:

1) the original referral from the Department or in the case of funded day care facilities the documentation of need for services if it was the provider's responsibility to gather it or if the Department submitted it to the provider;

2) documentation that~~which~~ supports Title IV-E and XIX (42 CFR 431) eligibility determinations, ~~and~~ redeterminations, court orders, and reasonable effort findings, as appropriate, if it was the provider's responsibility to gather it or if the Department submitted it to the provider;

3) documentation that~~which~~ supports the need for child protective services if it was the provider's responsibility to gather it or if the Department submitted it to the provider;

4) documentation of the service planning goals established within required timeframes, when the case was opened and the changes made in the service planning goals as the client's needs changed;

5) documentation of the child and family's progress or lack of progress toward achieving the service planning goals including the social service worker's or other responsible employee's reports and official records regarding the child and family's cooperation in meeting service planning goals;

6) basic client social history data and updates, as necessary, if it was the provider's responsibility to gather it or if the Department submitted it to the provider; and

7) any other documentation specifically required in the purchase of service contract, in compliance with Administrative Procedure #5 (Child Welfare Case Record Organization & Uniform Recording Requirements).

c) Purchase of service providers shall maintain personnel records of all employees who provide direct or supportive services to Department clients. Personnel records shall be maintained on each employee for 5~~five~~ years after the termination of employment. The following information shall be maintained:

1) proof of educational background including high school or college transcripts or a copy of the diploma; or, if the employee has attended a training program, documentation of the employee's completion of the program;

2) detailed summary of the employee's work experience;

3) at a minimum, yearly employee performance evaluations;

4) payroll data, including salary, accrued vacation and sick days, records of when vacation and sick days were taken, and travel expense records; and

5) documentation that a background check was completed for each employee in accordance with ~~the Department's rule,~~ 89 Ill. Adm. Code 385~~,~~ (Background Checks).

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

Section 357.140 Contract Termination

a) The Department of Children and Family Services and the purchase of service provider reserve the right to terminate a purchase of service contract at any time upon provision of 30 days written notice to the other party. However, if either party fails to comply with the terms of the contract, the contract may be terminated by the other party effective upon the date of written notice of termination.

b) The Department shall not be liable for payment for service provided after the contract termination date or after the last child for whom the Department is making payment is removed from the provider's care, whichever is later. The Department is also not liable for any payments to individuals or entities for which the agency is contractually obligated.

c) The agency shall return to the Department all funds received from the Department that are in excess of actual costs of providing the contract services that were delivered before the contract was terminated.

d) Upon expiration or termination of the contract, any building and equipment meeting the following two conditions shall be identified to the Department within 90 days and returned subject to final disposition decision:

1) exceeding $1,500 in value at the time of purchase with a useful life of 3~~three~~ years; and

2) purchased directly with Department funds and not included in an acceptable cost allocation plan.

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

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENTS

1) The Heading of the Part: Grants-In-Aid

2) Code Citation: 89 Ill. Adm. Code 360

3)

Section Numbers:	Proposed Action:
360.3	Amend
360.4	Amend
360.6	Amend

4) Statutory Authority: 20 ILCS 505

5) A Complete Description of the Subjects and Issues Involved: In Section 360.3, the Department is amending language that refers to a threshold of $50,000 at which a grantee must submit a certified audit. This language is outdated. The current threshold is $150,000. The amended language provides a cross-reference to the correct threshold as cited in Section 357.120 (Fiscal Reports and Records).

In Section 360.4, the Department is correcting citations to 89 Ill. Adm. Code 357 (Purchase of Service), which was recently renumbered.

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 proposed amendments to this Part pending? No

10) Statement of Statewide Policy Objectives: The proposed rule does not expand a State Mandate as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Comments on this proposed rulemaking may be submitted in writing for a period of 45 days following publication of this notice. Comments should be submitted to:

Jeff E. Osowski
Office of Child and Family Policy
Department of Children and Family Services

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENTS

406 East Monroe Street, Station #65
Springfield, Illinois 62701-1498
Telephone: 217/524-1983
TDD: 217/524-3715
FAX: 217/557-0692
E-Mail address: cfpolicy@idcfs.state.il.us

The Department will consider fully all written comments on this proposed rulemaking submitted during the 45-day comment period. Comments submitted by small businesses should be identified as such.

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 completion: None

13) Regulatory Agenda on which this rulemaking was summarized: The need for amendment was not anticipated on either of the two most recent Regulatory Agendas.

The full text of the Proposed Amendments begins on the next page.

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENTS

TITLE 89: SOCIAL SERVICES
CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES
SUBCHAPTER c: FISCAL ADMINISTRATION

PART 360
GRANTS-IN-AID

Section

360.1 Purpose
360.2 Definitions
360.3 General Characteristics of Grants in-Aid
360.4 Applications for Grants
360.5 Grants-in-Aid for Day Care (Repealed)
360.6 Grants-in-Aid for Child Abuse and Neglect Research, Demonstration and Development
360.7 Continuation of Grants-in-Aid (Repealed)
360.8 Monitoring and Required Reports (Repealed)

AUTHORITY: Implementing and authorized by the Children and Family Services Act [20 ILCS 505] and the Child Care Act of 1969 [225 ILCS 10].

SOURCE: Adopted and codified at 5 Ill. Reg. 7807, effective August 3, 1981; amended at 8 Ill. Reg. 17263, effective October 1, 1984; amended at 9 Ill. Reg. 7928, effective May 15, 1985; amended at 21 Ill. Reg. 15486, effective December 15, 1997; amended at 23 Ill Reg. 854, effective January 15, 1999; amended at 28 Ill. Reg. _____, effective _____.

Section 360.3 General Characteristics of Grants in-Aid

a) Grants-in-aid are subject to the Illinois Grant Funds Recovery Act [30 ILCS 705].

b~~a~~) Grants-in-aid are used for the following general purposes:

1) To provide initial start-up funding for programs in their developmental stages.

2) Demonstration or pilot projects.

3) Research or other non-direct service projects.

4) To promote local community-based programs in the areas that lack needed

services.

5) To promote programs of value to child welfare and youth service in general, even though the Department does not make direct use of them for its own clients.

c~~b~~) Grants are generally paid in advance or on a monthly or quarterly basis, as opposed to purchase of service contracts (see 89 Ill. Adm. Code 357: Purchase of Service) that~~which~~ are paid based on units of service after the service has been provided. However, grants may also be based on provision of a minimum level of units of service or a deliverable product.

d~~c~~) Other sources of support from the Department or the community should supplement grant support as the project moves from the development or demonstration phase to becoming an ongoing program. Projects that~~which~~ are not eligible for financing from other Department funding sources may be considered for grant funding continuation provided the project's goals and objectives are being met, there is a continuing need for the project, no other funding sources are available and continued grant funds from the Department are available. Department grants for the support of Children's Advocacy Centers can be provided after the first full year of operation only when supplemented by funding from community services.

e~~d~~) All grantees ~~receiving a grant of more than $50,000 from the Department~~ shall provide the Department with an ~~independent, certified~~ audit report within 180 days after the close of the grantee's fiscal year in accordance with 89 Ill. Adm. Code 357.120 (Fiscal Reports and Records). Additionally, all grantees shall provide the Department with reports as stipulated in the grant contract and keep fiscal and programmatic records that~~which~~ document the ways in which grant monies were spent and services were rendered in accordance with 89 Ill. Adm. Code 357.130 (Required Documentation). ~~Such required record keeping includes, but is not limited to:~~

~~1) establishment of financial record keeping which includes:~~

~~A) Cash Receipts Journal~~

~~B) Cash Disbursements Journal~~

~~C) General Journal~~

~~D) General Ledger~~

~~E) All cash disbursements and/or expenses must be fully supported by documentation; such as, invoices, time sheets, time studies, or approved cost allocation plans.~~

~~2) establishment of programmatic compliance record keeping which include:~~

~~A) individual client files on each client applying for and receiving service.~~

~~B) schedule of service provided to each client which includes the date and time service was provided, and the agency's employee providing service.~~

f~~e~~) Disallowable costs for which grant monies may not be used are the same as the disallowable costs set forth in ~~Rate Setting,~~ 89 Ill. Adm. Code 356.60 (Rate Setting).

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

Section 360.4 Applications for Grants

a) The Department accepts applications for grants on the basis of:

1) Proposals submitted in response to Requests for Proposals (RFP's) issued by the Department.

2) Direct applications for grants based on the applicant's demonstration that the proposal meets a need identified in the Department's yearly planning and needs assessment process (see 89 Ill. Adm. Code 326 Planning for Statewide Resource Allocation). This needs assessment process involves input from all Department divisions, executive offices and regions in order to identify incidences and/or the extent of problems within a specified geographical area or within a given population.

b) Requests for proposals for grants-in-aid follow the same RFP requirements of issuance, content, evaluation, notification and disclosure as contained in 89 Ill. Adm. Code 357, Purchase of Service, Sections 357.4 through 357.8.

c) Once a grant is awarded, the grantee must sign a contract with the Department and comply with the same contract requirements as described in 89 Ill. Adm. Code 357~~,~~ (Purchase of Service), Sections 357.110~~10,~~ (Compliance During the Contract Period), 357.120~~11,~~ (Fiscal Reports and Records), 357.130~~12,~~ (Required Documentation) and 357.140~~13,~~ (Contract Termination).

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

Section 360.6 Grants-in-Aid for Child Abuse and Neglect Research, Demonstration and Development

a) Grants-in-aid relating to child abuse and neglect may be provided as funding is available, for the specific purposes of:

1) reviewing or conducting applied or client research to further policy or practice development for the prevention or treatment of child abuse and neglect;

2) developing new programs, models or tools or techniques;

3) disseminating tested and validated programs and practices through support of projects which replicate these programs and practices.

b) The types of activities which may be supported by the grant program include:

1) applied research;

2) evaluation and technical assistance;

3) development or demonstration of new direct client service programs to prevent or treat child abuse or neglect;

4) education or public awareness programs or materials;

5) efforts to mobilize and coordinate community resources.

c) Each year the Department assesses the Department's research, demonstration and development needs. This assessment of need is used as the basis for the development of a statement of priorities. These priorities are issued with

guidelines requesting applications for new projects. Eligible applicants include public agencies, incorporated private agencies and qualified individuals. In order to apply for funding, applicants must develop written proposals which provide the following kinds of information:

1) the project's relationship to the Department's priorities;

2) a review of the literature in the field or other documentation of need for the project;

3) a program design which includes the project's objectives, goals, scheduled activities, and evaluation procedures;

4) the applicant's ability to implement the project;

5) personnel qualifications;

6) a budget detail and justification; and

7) other pertinent data, as requested.

d) The Department shall determine the number and amount of grant awards based upon the scope of the projects and the total grant funds available. Because the nature of the grant program is research, demonstration, and development, grant support of projects is time limited. The amount and length of funding of non-service projects, such as research and evaluation, will be based upon the scope and intent of these projects. Direct client service projects may be supported through the grant program for up to three years. Over this time period, grant support may be reduced.

e) Funding of client service projects under the grant program follows the stipulations listed below:

1) payments are made in quarterly allotments and are provided at the beginning of the quarter upon receipt of the previous quarter report;

2) payment for the upcoming quarter is based upon the completion of the task specified in the grantee's contract for the previous quarter and upon submission of the required programmatic and financial reports for the previous quarter;

3) the amount of funding for multi-year projects is determined by the terms of the grant award which will specify the levels of funding for which the grantee may be eligible over a specified time period.

f) The Director of the Department, or designee, shall determine, based on total grant funds available, grants requests received, and the scope and intent of the request in relationship to the Department's priorities, the awards to be made, the amounts of the grants and the schedule of payments. A written contract will be negotiated with the grant recipient.

g) The request for proposal will identify the criteria for determining continued need as well as the expected length of support with grant funds. Criteria for continuation of grants-in-aid will include, but are not limited to, the ability of the grantee to generate other sources of income, community support, and the availability of services in the geographic area.

h) Grantees may apply for continuation of a grant beyond the fiscal year for which the grant was initially awarded. The decision on renewal will be based on the continued need for the grant-in-aid such as client demand as evidenced by program caseload and the availability of grant funds and the Department's evaluation of the program for the funded year.

i) The Department will monitor the effectiveness of the grant in relationship to the program design that~~which~~ stipulated the objectives and goals of the grants.

j) The contract will specify~~include~~ all the required reports/materials and due dates that ~~which~~ must be submitted by the grantee~~, including cost reporting information on a quarterly basis. The grantee will be required to submit quarterly evaluation reports for services performed or will submit materials in compliance with the specifications of the RFP~~. These reports/materials will be reviewed by the administrator responsible for contracts and grants and by the program specialist in the Division of Policy and Plans. Grantees will receive copies of all monitoring reports for their programs.

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

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENT

1) Heading of the Part: Licensing Standards for Day Care Centers

2) Code Citation: 89 Ill. Adm. Code 407

3) Section Number: 407.370 — Proposed Action: Amend

4) Statutory Authority: The Child Care Act of 1969 [225 ILCS 10/5.2].

5) A Complete Description of the Subjects and Issues Involved: Implements changes to Section 5.6 of the Child Care Act that require licensed day care centers to abide by the requirements of Sections 10.2 and 10.3 of the Structural Pest Control Act, which make changes concerning notification requirements before application of pesticides in day care centers.

6) Will this proposed rulemaking replace any emergency rulemaking currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Does this proposed rule contain incorporations by reference? No

9) Are there any proposed amendments to this Part pending? No

10) Statement of Statewide Policy Objectives: These rules do not create or expand a State mandate as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Comments on this proposed rulemaking may be submitted in writing for a period of 45 days following publication of this notice. Comments should be submitted to:

Jeff Osowski
Office of Child and Family Policy
Department of Children and Family Services
406 East Monroe, Station # 65
Springfield, Illinois 62701-1498
Telephone: (217) 524-1983
TTY: (217) 524-3715
Internet address: cfpolicy@idcfs.state.il.us

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENT

The Department will consider fully all written comments on this proposed rulemaking submitted during the 45-day comment period. Comments submitted by small businesses should be identified as such.

12) Initial Regulatory Flexibility Analysis: The Department has determined that this amendment does not have an impact on small business.

13) Regulatory Agenda on which this rulemaking was summarized: None

The full text of the Proposed Amendment begins on the next page.

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENT

TITLE 89: SOCIAL SERVICES
CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES
SUBCHAPTER e: REQUIREMENTS FOR LICENSURE

PART 407
LICENSING STANDARDS FOR DAY CARE CENTERS

Section

407.1 Purpose (Repealed)
407.2 Definitions (Repealed)
407.3 Effective Date of Standards (Repealed)
407.4 Application for License (Repealed)
407.5 Application for Renewal of License (Repealed)
407.6 Provisions Pertaining to the License (Repealed)
407.7 Provisions Pertaining to Permits (Repealed)
407.8 Organization and Administration (Repealed)
407.9 Finances (Repealed)
407.10 General Requirements for Personnel (Repealed)
407.11 Child Care Director (Repealed)
407.12 Child Care Workers and Group Workers (Repealed)
407.13 Child Care Assistants (Repealed)
407.14 Use of Students (Repealed)
407.15 Service Staff (Repealed)
407.16 Substitutes and Volunteers (Repealed)
407.17 Background Inquiry (Repealed)
407.18 Admission and Discharge Procedures (Repealed)
407.19 Discipline (Repealed)
407.20 Personal Care and Hygiene (Repealed)
407.21 Program (Repealed)
407.22 Equipment and Materials (Repealed)
407.23 Grouping and Staffing (Repealed)
407.24 Nutrition (Repealed)
407.25 Night Care (Repealed)
407.26 Children with Special Needs (Repealed)
407.27 Infants and Toddlers (Repealed)
407.28 School-Age Children (Repealed)
407.29 Health Requirements for Children (Repealed)
407.30 Transportation (Repealed)
407.31 Plant and Equipment (Repealed)
407.32 Records and Reports (Repealed)
407.33 Confidentiality of Records and Information (Repealed)

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENT

407.34 Records Retention (Repealed)
407.35 Severability of This Part (Renumbered)

SUBPART A: INTRODUCTION, DEFINITIONS, AND APPLICABILITY

Section
407.40 Purpose and Applicability
407.45 Definitions

SUBPART B: PERMITS AND LICENSES

407.50 Application for License
407.55 Application for Renewal of License
407.60 Provisions Pertaining to the License
407.65 Provisions Pertaining to Permits

SUBPART C: ADMINISTRATION

407.70 Organization and Administration
407.80 Confidentiality of Records and Information

SUBPART D: STAFFING

407.90 Staffing Structure
407.100 General Requirements for Personnel
407.110 Background Checks for Personnel
407.120 Personnel Records
407.130 Qualifications for Child Care Director
407.140 Qualifications for Early Childhood Teachers and School-age Workers
407.150 Qualifications for Early Childhood Assistants and School-age Worker Assistants
407.160 Students and Youth Aides
407.170 Substitutes
407.180 Volunteers
407.190 Grouping and Staffing

SUBPART E: PROGRAM REQUIREMENTS

407.200 Program Requirements for All Ages
407.210 Special Requirements for Infants and Toddlers
407.220 Special Requirements for School-Age Children
407.230 Intergenerational Programs

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENT

407.240 Evening, Night, Weekend and Holiday Care

SUBPART F: STRUCTURE AND SAFETY

407.250 Enrollment and Discharge Procedures
407.260 Daily Arrival and Departure of Children
407.270 Guidance and Discipline
407.280 Transportation
407.290 Swimming and Wading
407.300 Animals

SUBPART G: HEALTH AND HYGIENE

407.310 Health Requirements for Children
407.320 Hand Washing
407.330 Nutrition and Meal Service
407.340 Diapering and Toileting Procedures
407.350 Napping and Sleeping
407.360 Medications

SUBPART H: FACILITY AND EQUIPMENT

407.370 Physical Plant/Indoor Space
307.380 Equipment and Materials
407.390 Outdoor Play Area

SUBPART I: SEVERABILITY OF THIS PART

407.400 Severability of This Part

407.APPENDIX A Equipment for Infants and Toddlers
407.APPENDIX B Equipment for Preschool Children
407.APPENDIX C Equipment for School-Age Children
407.APPENDIX D Infant Daily Food Requirements
407.APPENDIX E Meal Patterns and Serving Sizes for Child Care Programs
407.APPENDIX F Resource Reference List
407.APPENDIX G Early Childhood Teacher Credentialing Programs
407.APPENDIX H Playground Surfacing and Critical Height

AUTHORITY: Implementing and authorized by the Child Care Act of 1969 [225 ILCS 10] and the Children's Product Safety Act [430 ILCS 125].

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENT

SOURCE: Adopted and codified at 7 Ill. Reg. 9215, effective August 15, 1983; amended at 8 Ill. Reg. 8713, effective June 15, 1984; amended at 8 Ill. Reg. 24937, effective January 1, 1985; amended at 16 Ill. Reg. 7597, effective April 30, 1992; emergency amendment at 20 Ill. Reg. 11366, effective August 1, 1996, for a maximum of 150 days; emergency expired December 28, 1996; amended at 21 Ill. Reg. 923, effective January 15, 1997; amended at 22 Ill. Reg. 1728, effective January 1, 1998; amended at 24 Ill. Reg. 17036, effective November 1, 2000; amended at 28 Ill. Reg. 3011, effective February 15, 2004; amended at 28 Ill. Reg. _____, effective _____.

SUBPART H: FACILITY AND EQUIPMENT

Section 407.370 Physical Plant/Indoor Space

Partially exempt programs are exempt from these standards.

a) Buildings used for day care center programs shall be in good shape and operable and must comply with all applicable fire safety standards.

1) The building housing a center shall be approved prior to occupancy and license renewal by the Illinois Department of Public Health and the Office of the State Fire Marshal or local agencies authorized by those State agencies to conduct inspections on their behalf. Otherwise, inspection and approval shall be in accordance with the regulations of the proper health and fire authorities.

2) Day care centers that provide day care only for school-age children in a building currently being used as a pre-primary, primary, or secondary school do not need to obtain the fire clearance in subsection (a)(1) ~~above~~ if the day care center provides written documentation that a fire safety clearance has been received from the responsible party of the Illinois State Board of Education and/or the Regional School Superintendent and that all exit doors for the school remain unlocked. An acceptable fire safety clearance from the Illinois State Board of Education must be in writing and must indicate that the school complies with the applicable fire safety regulations adopted by the Illinois State Board of Education (23 Ill. Adm. Code 180).

b) The building or portion of the building to which children from the center have access shall be used only for a program of child care during the hours that the center is in operation. The space used for child care may be shared by other

groups or persons outside of the hours of operation.

c) Infants and toddlers shall be housed and cared for at ground level unless otherwise approved through the exception process below. Travel distance between any point in a room used for infants and toddlers and an exit discharging directly outside shall not exceed 150 feet. Only a fire inspector from the Office of the State Fire Marshal or the Chicago Fire Department's Fire Prevention Bureau may grant an exception to the requirement that infants and toddlers be housed and cared for at ground level.

d) There shall be sufficient indoor space to conduct the program.

1) There shall be a minimum of 35 square feet of activity area per child in centers for children two years of age and older. This space is exclusive of exit passages and fire escapes, which must be clear. This space is also exclusive of administrative space, storage areas, bathrooms, kitchen, space required for equipment that is not used for direct activities with children, and gymnasiums or other areas used exclusively for large muscle activity or active sports.

2) The amount of space required for infants and toddlers shall be determined according to the use of the space for sleep and play purposes.

A) Regardless of whether infants play and sleep in the same room or in two separate rooms, there shall be a minimum of 25 square feet of play space per child plus a minimum of 30 square feet of sleeping space per child, with at least two feet between each crib and the next crib.

B) When toddlers play and sleep in the same room using cots which can be stacked, there shall be 35 square feet of space per child. When children are in their cots, there must be a minimum of two feet between the cots.

C) When toddlers play and sleep in the same room using cribs, there shall be a minimum of 55 square feet per child. When children are in their cribs, there must be a minimum of two feet between the cribs.

D) When toddlers play and sleep in separate rooms, there shall be minimum of 35 square feet of play space per child and a minimum

of 30 square feet of sleeping space per child, with at least two feet between each cot or crib.

3) Storage space shall be provided for cots, bedding, and other equipment.

4) One room, no matter how large, shall accommodate only one group, except that room dividers or program equipment at least 3'6" in height may be used to define and separate the space for each group of children up to age five. Gymnasiums and similar sized areas may accommodate two groups, without dividers, when used for large muscle activity and active sports.

5) All rooms or spaces accommodating more than one group shall be provided with an acoustical ceiling or its equivalent in carpeting or wall covering. If carpeting is used to control noise, it shall not be required in water play, painting, and similar areas.

e) The building and indoor space shall be maintained in good repair and shall provide a safe, comfortable environment for the children.

1) Adjustable window shades, drapes, or blinds shall be provided in all rooms where children rest or nap or in rooms that receive direct sunlight while children are present.

2) The floors and floor coverings shall be washable and free from drafts, splinters, and dampness.

3) Toxic or lead paints or finishes shall not be used on walls, window sills, beds, toys or any other equipment, materials or furnishings which may be used by children or within their reach. Peeling or damaged paint or plaster shall be repaired promptly to protect children from possible hazards.

4) Any thermal hazards (radiators, hot water pipes, steam pipes, heaters) in the space occupied by children shall be out of the reach of children or be separated from the space by partitions, screens, or other means.

5) Sharp scissors, plastic bags, knives, cigarettes, matches, lighters, flammable liquids, drugs, sharp instruments, power tools, cleaning supplies and any other such items which might be harmful to children shall be kept in areas inaccessible to children. Hazardous items for infants

and toddlers also include coins, balloons, safety pins, marbles, Styrofoam© and similar products, and sponge, rubber or soft plastic toys.

6) All cleaning compounds, pesticides, fertilizers and other potentially hazardous or explosive compounds or agents shall be stored in original containers with legible labels in a locked area which is inaccessible to children.

7) A draft-free temperature of 65º F to 75º F shall be maintained during the winter months or heating season. For infants and toddlers, a temperature of 68º F to 82º F shall be maintained during the summer or air-conditioning months. When the temperature in the center exceeds 78º F, measures shall be taken to cool the children. Temperatures shall be measured at least three feet above the floor.

8) If electric fans are used to control temperature, measures shall be taken to assure the safety of the children in the group:

A) Stationary fans shall be mounted on the walls (at least five feet above the floor) or on the ceiling.

B) When portable fans on stands are used, they shall be anchored to prevent tipping.

C) All portable fans shall have blade guard openings of less than ½ inch and shall be inaccessible to children.

9) Exits shall be kept unlocked and clear of equipment and debris at all times.

10) Electrical outlets within the reach of children shall be covered.

11) The program shall be modified, as needed, when there are adverse conditions caused by weather, heating or cooling difficulties or other problems. When such conditions exceed a 24-hour period, the Department shall be notified regarding program modifications.

f) Drills for possible emergency situations including fire and tornado shall be conducted.

1) A floor plan shall be posted in every room indicating the following:

A) The building areas that will provide the most structural stability in case of tornado; and

B) The primary and secondary exit routes in case of fire.

2) Drills shall be conducted once a month for fire and twice a year (seasonally) for tornado.

3) Records shall be maintained of the dates and times that fire and tornado drills are conducted.

g) All areas of the center shall receive sufficient light.

1) Areas for reading, painting, puzzles or other close work shall be illuminated to at least 50 to 100 foot candles on the work surface.

2) Areas for general play, such as housekeeping and block building, shall be illuminated to at least 30 to 50 foot candles on the surface.

3) Stairways, walkways, landings, driveways and entrances shall be illuminated to at least 20 foot candles on the surface.

h) A safe and sanitary water supply shall be maintained. If a private water supply is used instead of a public water supply, the center shall supply written records of current test results indicating that the water supply is safe for drinking in accordance with the standards specified for non-community water supplies in the Drinking Water Systems Code (77 Ill. Adm. Code 900). New test results must be provided prior to relicensing. If nitrate content exceeds ten parts per million, bottled water must be used for infants.

i) There shall be no smoking or use of tobacco products in any form in the child care center or in the presence of children while on the playground or engaged in other activity away from the center.

j) Major cleaning shall not be done while children are present.

k) Basement or cellar windows used or intended to be used for ventilation, and all other openings to a basement or cellar, shall not permit the entry of rodents.

l) Openings to the outside shall be protected against the entrance of flies or other flying insects by doors, windows, screens, or other approved means.

m) Any extensive extermination of pest or rodents shall be conducted by a licensed pest control operator under the direct observation of a staff member to insure that residue is not left in areas accessible to children.

n) Pesticide Application

1) Chemicals for insect and rodent control shall be applied in minimum amounts and shall not be used when children are present in the facility. Toys and other items mouthed or handled by the children must be removed from the area before pesticides are applied. Children must not return to the treated area within 2 hours after a pesticide application or as specified on the pesticide label, whichever time is greater. Over-the-counter products may be used only according to package instructions. Commercial chemicals, if used, shall be applied by a licensed pest control operator and shall meet all standards of the Department of Public Health (Structural Pest Control Code, 77 Ill. Adm. Code 830). A record of any pesticides used shall be maintained at the facility.

2) The center shall notify all parents or guardians before a pesticide application, or maintain a registry of parents or guardians who wish to receive written notification of when the facility will receive a pesticide application and send a written notification to them. Notification of the intended date of the application of the pesticide, which may be in the form of newsletters, bulletins, calendars, or other written communication methods presently used by the center, must be given at least 2, but not more than 30, days before the pesticide application. When economically feasible, the center must adopt an Integrated Pest Management (IPM) program as defined in Section 3.25 of the Structural Pest Control Act [225 ILCS 235/3.25] involving the cooperation between day care staff and pest control personnel or other specialists to use a variety of non-chemical methods as well as pesticides, when needed, to reduce pest infestations to acceptable levels and to minimize children's exposure to pesticides.

3) Prior notice of pesticide application is not required if the application is due to an immediate threat to health or property, in which case the pesticide must be immediately applied. Children shall not be present during the application and shall not return to the treated area within 2 hours after a pesticide application or as specified on the pesticide label, whichever time is greater. If such a situation arises, the appropriate day care center personnel must sign a statement describing the circumstances that gave

rise to the health threat and ensure that written notice is provided to parents or guardians as soon as practicable.

o) All garbage and refuse shall be collected daily and stored in a manner that will not permit the transmission of disease, create a nuisance or a fire hazard or provide harborage for insects, rodents or other pests.

1) An adequate number of covered, durable, water-tight, insect and rodent-proof garbage and refuse containers shall be provided for use.

2) Garbage and refuse containers used to discard diapering supplies, food products or disposable meal service supplies shall be tightly covered and lined with plastic. Contents shall be covered immediately or removed for discarding.

p) The center shall be cleaned daily and kept in a sanitary condition at all times.

1) The center shall provide necessary cleaning and maintenance equipment.

2) Toys, table tops, furniture and other similar equipment used by children shall be washed and disinfected when soiled or contaminated with matter such as food, body secretions or excrement.

3) Cleaning equipment, cleaning agents, aerosol cans and other hazardous chemical substances shall be labeled and stored in a space designated solely for this purpose. These materials shall be stored in a locked place which is inaccessible to children.

q) Kitchen sinks used for food preparation shall not be used as hand-washing lavatories nor counted in the total number of hand-washing lavatories required.

r) There shall be means for communication in emergencies.

1) An operable non-coin telephone shall be on the premises, easily accessible for use in an emergency and for other communications.

2) A list of emergency telephone numbers, such as the fire department, police department, poison control and emergency medical treatment, along with the full address of the day care center, shall be posted next to each telephone.

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENT

3) In facilities where communication between groups is difficult due to the design of the day care center, operation in multiple buildings on the same site or on multiple floors, an intercom or a written plan for other effective means of communication between groups shall be provided.

4) During hours of operation and at all times that children are present, there shall be a means for parents of enrolled children to have direct telephone contact with a center staff person.

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

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Audits, Reviews, and Investigations

2) Code Citation: 89 Ill. Adm. Code 434

3)

Section Numbers:	Proposed Action:
434.1	Amend
434.2	Amend
434.7	Amend
434.11	Repeal

4) Statutory Authority: 20 ILCS 505/4

5) A Complete Description of the Subjects and Issues Involved: In Section 434.7, the Department is updating its incorporation by reference of the Government Auditing Standards and an OMB circular. The Department is also clarifying language that allows agencies to retain portions of excess funds received from the Department for services. The Department's new organizational structure, as it pertains to this Part, is also amended.

The Department is repealing Section 434.11 as the Department of Central Management Services will now be handling these issues. Those portions that are still relevant to Department function will be recodified elsewhere in rule.

6) Will this proposed rulemaking replace any emergency rulemaking currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Does this proposed rulemaking contain incorporations by reference? No

9) Are there any proposed amendments to this Part pending? No

10) Statement of Statewide Policy Objectives: The proposed rule does not expand a State Mandate as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Comments on this proposed rulemaking may be submitted in writing for a period of 45 days following publication of this notice. Comments should be submitted to:

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENTS

Jeff E. Osowski
Office of Child and Family Policy
Department of Children and Family Services
406 East Monroe Street, Station #65
Springfield, Illinois 62701-1498
Telephone: 217/524-1983
TDD: 217/524-3715
FAX: 217/557-0692
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The Department will consider fully all written comments on this proposed rulemaking submitted during the 45-day comment period. Comments submitted by small businesses should be identified as such.

12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected: Agencies that provide contracted services for the Department

B) Reporting, bookkeeping or other procedures required for compliance: None

C) Types of professional skills necessary for completion: None

13) Regulatory Agenda on which this rulemaking was summarized: The need for amendment was not anticipated on either of the two most recent Regulatory Agendas.

The full text of the Proposed Amendments begins on the next page.

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENTS

TITLE 89: SOCIAL SERVICES
CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES
SUBCHAPTER f: GENERAL ADMINISTRATION

PART 434
AUDITS, REVIEWS, AND INVESTIGATIONS

Section

434.1 Purpose
434.2 Definitions
434.3 Audit Standards to be Applied and Audit Procedures to be Followed for the Office of Field Audits – OFA
434.4 Scope of the OFA Audit/Review or Investigation
434.5 Reports of OFA Auditors
434.6 Exit Conferences
434.7 Certified Audits, Cost Reports and Desk Reviews
434.8 Records Maintenance and Availability for Audit
434.9 Responsibilities of the Office of Field Audits
434.10 Administrative Hearings of Draft Audit Findings and Recommendations
434.11 Referrals by Department Employees to the Investigations Unit (Repealed)
434.12 Severability of This Part

AUTHORITY: Implementing and authorized by Section 4 of the Children and Family Services Act [20 ILCS 505/4] and the Fiscal Control and Internal Auditing Act [30 ILCS 10].

SOURCE: Adopted and codified at 5 Ill. Reg. 8634, effective September 1, 1981; amended at 8 Ill. Reg. 133, effective December 30, 1983; amended at 18 Ill. Reg. 6697, effective May 1, 1994; emergency amendment at 18 Ill. Reg. 8944, effective June 3, 1994, for a maximum of 150 days; emergency expired on October 31, 1994; amended at 19 Ill. Reg. 2760, effective February 27, 1995; amended at 21 Ill. Reg. 15469, effective December 15, 1997; amended at 26 Ill. Reg. 3021, effective February 15, 2002; amended at 27 Ill. Reg. 7971, effective April 30, 2003; amended at 28 Ill. Reg. _____, effective _____.

Section 434.1 Purpose

The purpose of this Part is to define the scope of the audits/reviews and investigations conducted by the Department. This Part also explains the process the Department will use when conducting audits/reviews and investigations of private agencies that~~who~~ contract with the Department, and agencies that are licensed by the Department.

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENTS

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

Section 434.2 Definitions

"Audit/Review" means an examination of financial transactions, accounts and reports, and an evaluation of internal controls or an evaluation of compliance with applicable laws and regulations. An audit/review may also include an examination of efficiency and economy in the use of resources (such as personnel, property, space), or an examination to determine whether desired results are effectively achieved.

"Certified Audits" means the entity's annual financial and compliance report that~~which~~ has been examined by an Independent Licensed Certified Public Accountant.

"Cost Report" means a report of all costs incurred and revenue earned by a provider that are directly associated with services purchased by the Department for its clients~~the Consolidated Financial Report~~.

"Department" or "DCFS" means the Illinois Department of Children and Family Services.

"Desk Review", as used in this Part, means a review by the Department's Office of Field Audits of certified public audits and cost reports submitted by the provider agency.

"Field Auditor" is a Department employee whose responsibilities include conducting audits of contracted purchase of service providers to confirm their compliance with applicable laws and regulations, and to make recommendations to the Director regarding the results of those audits.

"Follow-up Review" means a viewing of past occurrences or contemplation or consideration of past events, circumstances, or facts.

"Investigation" means an examination of employee conduct, security systems, and contractor conduct to assure compliance with State, federal and Departmental rules and regulations. A Department investigation is not intended to focus on criminality or prepare cases for prosecution, but rather to obtain sufficient documentation to assure the Director of the appropriateness of Department and service provider employee conduct and the safeguarding of Department assets.

"Limited Review" means an examination of financial transactions, accounts and reports, an evaluation of internal controls, or an evaluation of compliance with applicable laws and regulations that is limited in scope to examine only certain areas. (Although this is not a full scope audit, it may include an examination of efficiency and economy in the use of resources (such as personnel, property, space) and an examination to determine whether desired results are effectively achieved.)

"Preliminary Review" means a limited review of financial transactions, accounts, reports and internal controls and compliance with contract provisions to assess the full scope needed during an upcoming audit.

~~"Program Type" means services provided through the same appropriation account for similar services.~~

"Related Party Transaction" means a financial transaction in which one party has the ability to influence the management or operating policies of the other party. Disclosure of related party transactions should include the nature of the relationship, a description of the transactions, including dollar amounts, and amounts due to and from related parties.

"Scope of the Audit or Investigation" means the activities and testing procedures that the auditor or investigator deems necessary to conduct an examination or investigation.

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

Section 434.7 Certified Audits, Cost Reports and Desk Reviews

a) The Department's requirements for providers include the annual filing of a cost report ~~(for all providers~~ in accordance with 89 Ill. Adm. Code 356 (Rate Setting)~~357)~~ and an audit report in accordance with 89 Ill. Adm. Code 357 (Purchase of Service) and 360 (Grants-in-Aid)~~a certified audit of entities who receive annual payments in excess of $150,000 in any one contract year. The certified audit for all entities must be completed and submitted within 180 calendar days after the completion of their fiscal year as required by Purchase of Service (89 Ill. Adm. Code 357.120(f)). All governmental and not-for-profit entities must complete audits in accordance with OMB Circular A-133~~.

b) The certified audit reports are~~audit and related cost reports are to be~~ reviewed by the Office of Field Audits and the cost reports are reviewed by the Rate Setting Unit and, when appropriate, a report on the certified audit or cost reports will be issued to Department officials who are responsible for the contracts. The general objectives of the desk review and report shall determine whether:

1) financial and service unit information is appropriately presented and is consistent with the generally accepted accounting principles;

2) costs incurred in operating the contracted service are not less than the revenues received directly for the program;

3) related party transactions are appropriately recorded and disclosed;

4) significant accounting practices and other information that require disclosure (as described by generally accepted accounting principles) are disclosed appropriately; and

5) funds were used in accordance with Department policy and whether the entity has received monies in excess of actual reimbursable costs.

c) The Office of Field Audits is responsible for answering all questions regarding the preparation of a certified audit. If the Department has not received the certified audit by the deadline of 180 calendar days after the completion of the entity's fiscal year, the Department~~Office of Field Audits~~ will notify the entity of the delinquency and send a copy of the notice to the Department's Contracts and Grants unit and regional administrative staff.

d) All certified audit reports~~audits~~ are logged in upon receipt by the Office of Field I Audits and a check-in list~~an audit digest (summary of findings)~~ is prepared for each audit received. If the audit does not contain adequate information, the Office of Field Audits will send a letter to the entity to request additional information. If the certified audit does not meet the standards set out in 89 Ill. Adm. Code 357.120 (Purchase of Service Fiscal Reports and Records)~~subsection (a) of this Section~~, the entity will be given 10 business days to submit omitted items or 30 business days to submit a new certified audit.

e) The Office of Field Audits will prepare a desk review report that will highlight any deficiencies that are found in the audit and will contain specific recommendations for procedural changes in the preparation of certified audits.

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENTS

The completed desk review report will be sent directly to the entity, with a copy to appropriate Department regional staff.

f) Department regional staff are responsible for reviewing the recommendations contained in the desk review report and providing assistance as necessary to the entity in follow-up on the recommendations made. The desk review report may contain recommendations for contract or budget revisions that must be acted upon by the regional staff.

g) The desk review report may contain recommendations that require an additional response from the entity before the certified audit is accepted. The entity's response and concurrence with the recommendations of the desk review report will close the desk review process.

h) Effective with cost reports received for contract periods ending after July 1, 2003, excess~~Excess~~ revenue calculations shall be based on the information reported in the Cost~~Consolidated Financial~~ Report or other suitable financial report accepted by the Department. The certified independent audit report may be used to develop excess revenue calculations if sufficient detail exists within the report to support the excess revenue calculations, and an accurate cost report~~Consolidated Financial Report~~ or other suitable financial report is not available.

1) Programs Subject to Excess Revenue Determination:
The Department shall determine individual program excess revenues attributable to Department funding for contracted provider agency 24-hour substitute care programs. Examples of provider agency programs include, but are not limited to:

A) childcare institutions;

B) shelter care;

C) group homes;

D) independent living;

E) community integrated living arrangements;

F) agency foster care; and

G) other programs or contracted agencies, as determined by the Director or his/her designee.

2) Excess Revenue Determination Procedure

A) Excess revenue is the amount of purchase of service fees and governmental grant funding that exceeds total audited costs, less:

i) disallowable costs as listed in 89 Ill. Adm. Code 356.60 (Disallowable Cost and Reduced Reimbursement);

ii) fringe benefit costs, as defined in 89 Ill. Adm. Code 356.20 (Definitions), that exceed 25% of salaries and wages; and

iii) administrative costs that exceed 20% of all other allowable costs.

B) For excess revenue determinations, profit is considered as an allowable cost to the extent permitted in 89 Ill. Adm. Code 356 (Rate Setting).

C) Excess revenue attributable to Department funding is the amount of program excess revenues times Departmental revenue divided by all program purchase of service fees and government non-restricted grants.

3) Excess Revenue Amounts that May Be Retained

A) In each fiscal year, provider agencies may retain an amount of program excess revenues attributable to substitute care programs reimbursed through payments made according to standard reimbursement levels or through individual historical cost based program rates~~by means of an actual cost based rate that has been~~ calculated consistent with the process and standards defined in 89 Ill. Adm. Code 356~~. The amount retained may not exceed 7% of the program reimbursable costs~~, provided that:

i~~A~~) for programs with a licensed~~license~~ capacity, the total utilization is between 85% and 95% of the licensed or approved program capacity;

ii~~B~~) for the~~all~~ programs subject to the excess revenue review, administrative costs do not exceed 20% of reimbursable costs~~cost~~; and

iii~~C~~) the provider agency demonstrates that program staffing level meets the minimum requirements defined in the contract program plan and licensing standards where applicable. ~~Provider agencies choosing to retain excess revenues in accordance with this Section will be required to provide documentation supporting historical staffing levels in a report format prescribed by the Department.~~

B) The amount retained may not exceed the DCFS portion of 7% of the program reimbursable costs. Programs reimbursed through rates containing an enhancement add-on are not eligible to retain excess revenue amounts.

C) All DCFS identified program excess revenue amounts retained by the provider agency must be invested in direct service (non-administrative) activities in programs funded by the Department. Provider agencies unable to demonstrate that retained program excess revenue amounts have been invested consistent with the provisions of this subsection (h)(3) will be subject to forfeiture of the retained funds.

4) Amounts Returned to the Department
Amounts to be returned to the Department must be received within 60 days after the date the excess revenue amount has been finalized and notification is mailed to the provider agency's director or his/her designee or after a payment plan has been approved.

5) Program Excess Revenue Offsets
Program excess revenue may not be offset against other program deficits occurring in the year reviewed, or any other year, without the approval of the Director or his/her designee.

~~i) Waiver of the certified audit requirement must be requested in writing and directed to the Department's Chief Internal Auditor. The request should state the reason for the waiver request. A request for an extension of the deadline for~~

~~submittal of the audit beyond the time specified in the contract must be submitted in writing to the Associate Deputy Director of the Office of Field Audits. The Department's Chief Internal Auditor and Associate Deputy Director of the Office of Field Audits will respond to requests for waivers or extensions within 30 business days, specifying approval or rejection of the waiver or extension.~~

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

Section 434.11 Referrals by Department Employees to the Investigations Unit (Repealed)

~~a) Department employees are responsible for referring specific types of problems identified as a result of their work to the unit of the Department responsible for investigations. Examples of the type of problems or inappropriate activities which should be referred are:~~

~~1) employee or provider fraud;~~

~~2) submittal of erroneous travel vouchers by Department staff;~~

~~3) threatening letters or telephone calls received by Department employees;~~

~~4) reports of alleged child abuse or neglect by Department employees in their roles as employees;~~

~~5) kickbacks between providers, or between a provider and a Department employee;~~

~~6) misuse of State funds by a Department employee;~~

~~7) misrepresentation of vital information (employment history, criminal background, identifying information) by a Department employee or provider agency;~~

~~8) knowledgeable submittal of inaccurate Department, State or federal report; and~~

~~9) release of confidential information to unauthorized individuals.~~

~~b) Any other activities which are of a potentially criminal nature (i.e., violation of State or federal law) should also be reported to the investigations unit.~~

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENTS

~~e) The investigation process will require the investigator(s) assigned to the case to conduct a formal verbal interview with the employee reporting the incident/activity, which will later be supplemented by a written, signed statement summarizing the content of the interview. Full, accurate disclosure of all pertinent information will be necessary to ensure the integrity of the investigation.~~

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

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Duck, Goose and Coot Hunting

2) Code Citation: 17 Ill. Adm. Code 590

3)

Section Numbers:	Proposed Action:
590.10	Amendment
590.20	Amendment
590.60	Amendment
590.80	Amendments

4) Statutory Authority: Implementing and authorized by Sections 1.3, 1.4, 1.13, 2.1, 2.2, 2.18, 2.19, 2.20, 2.23, 2.33, 3.5, 3.6, 3.7, 3.8, and 3.10 of the Wildlife Code [520 ILCS 5/1.3, 1.4, 1.13, 2.1, 2.2, 2.18, 2.19, 2.20, 2.23, 2.33, 3.5, 3.6, 3.7, 3.8, and 3.10], and Migratory Bird Hunting (50 CFR 20).

5) A Complete Description of the Subjects and Issues Involved: This Part is being amended to update lawful shotgun shells; update permit requirements at permit controlled Department sites; update the list of sites and requirements at various other Department sites; and to update sites and requirements for early and late goose hunting regulations on Department sites.

6) Will this rulemaking contain an automatic repeal date? 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? No

10) Statement of Statewide Policy Objective: This rulemaking does not affect units of local government.

11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Comments on the proposed rulemaking may be submitted in writing for a period of 45 days following publication of this notice to:

Jack Price, Legal Counsel
Department of Natural Resources
One Natural Resources Way

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENTS

Springfield IL 62702-1271
217/782-1809

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: July 2003

The full text of the Proposed Amendments begins on the next page:

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENTS

TITLE 17: CONSERVATION
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES
SUBCHAPTER b: FISH AND WILDLIFE

PART 590
DUCK, GOOSE AND COOT HUNTING

Section
590.10 Statewide Regulations
590.15 Duck, Goose and Coot General Hunting Regulations on Department-Owned and -Managed Sites Listed in Sections 590.40 and 590.50
590.20 Permit Controlled Department Sites Only – Duck, Goose and Coot Hunting
590.25 Illinois Youth Waterfowl Hunting Permit Requirements (Repealed)
590.26 Illinois Youth Duck Hunting Permit Requirements (Repealed)
590.30 Duck, Goose and Coot General Hunting Regulations on all Department-Owned and -Managed Sites (Repealed)
590.40 Check Station Department Sites Only – Duck, Goose and Coot Hunting
590.50 Non-Check Station Department Sites Only – Duck, Goose and Coot Hunting
590.60 Various Other Department Sites – Duck, Goose and Coot Hunting
590.70 Ohio River
590.80 Early and Late Goose (all species) Hunting Regulations on Department Sites
590.EXHIBIT A The Non-Toxic Shot Zones of Illinois (Repealed)

AUTHORITY: Implementing and authorized by Sections 1.3, 1.4, 1.13, 2.1, 2.2, 2.18, 2.19, 2.20, 2.23, 2.33, 3.5, 3.6, 3.7, 3.8, and 3.10 of the Wildlife Code [520 ILCS 5/1.3, 1.4, 1.13, 2.1, 2.2, 2.18, 2.19, 2.20, 2.23, 2.33, 3.5, 3.6, 3.7, 3.8, and 3.10], and Migratory Bird Hunting (50 CFR 20).

SOURCE: Adopted at 5 Ill. Reg. 8857, effective August 25, 1981; emergency amendment at 5 Ill. Reg. 11386, effective October 14, 1981, for a maximum of 150 days; codified at 5 Ill. Reg. 10638; Part repealed at 6 Ill. Reg. 9647, effective July 21, 1982; new Part adopted at 6 Ill. Reg. 11865, effective September 22, 1982; amended at 7 Ill. Reg. 13229, effective September 28, 1983; emergency amendment at 7 Ill. Reg. 13948, effective October 6, 1983, for a maximum of 150 days; emergency expired March 3, 1984; amended at 8 Ill. Reg. 18968, effective September 26, 1984; amended at 9 Ill. Reg. 14242, effective September 5, 1985; peremptory amendment at 9 Ill. Reg. 15062, effective September 25, 1985; emergency amendment at 9 Ill. Reg. 15928, effective October 8, 1985, for a maximum of 150 days; emergency expired March 5, 1986; amended at 10 Ill. Reg. 16588, effective September 22, 1986; emergency amendment at 10 Ill. Reg. 17773, effective September 26, 1986, for a maximum of 150 days; emergency expired

February 23, 1987; amended at 11 Ill. Reg. 10560, effective May 21, 1987; emergency amendment at 11 Ill. Reg. 15242, effective August 28, 1987, for a maximum of 150 days; emergency expired January 25, 1988; amended at 12 Ill. Reg. 12200, effective July 15, 1988; emergency amendment at 12 Ill. Reg. 16233, effective September 23, 1988, for a maximum of 150 days; emergency expired February 20, 1989; emergency amendment at 12 Ill. Reg. 22244, effective December 7, 1988, for a maximum of 150 days; emergency expired May 6, 1989; amended at 13 Ill. Reg. 10525, effective June 20, 1989; amended at 13 Ill. Reg. 14925, effective September 7, 1989; emergency amendment at 13 Ill. Reg. 16579, effective October 4, 1989, for a maximum of 150 days; emergency expired March 3, 1989; amended at 13 Ill. Reg. 17354, effective October 27, 1989; amended at 14 Ill. Reg. 638, effective January 2, 1990; amended at 14 Ill. Reg. 13529, effective August 13, 1990; emergency amendment at 14 Ill. Reg. 17029, effective September 26, 1990, for a maximum of 150 days; emergency expired February 23, 1991; amended at 15 Ill. Reg. 1487, effective January 22, 1991; amended at 15 Ill. Reg. 13293, effective September 3, 1991; emergency amendment at 15 Ill. Reg. 16745, effective November 5, 1991, for a maximum of 150 days; emergency expired April 3, 1992; amended at 16 Ill. Reg. 570, effective December 31, 1991; amended at 16 Ill. Reg. 12491, effective July 28, 1992; emergency amendment at 16 Ill. Reg. 16672, effective October 15, 1992, for a maximum of 150 days; emergency expired March 9, 1993; emergency amendment at 16 Ill. Reg. 18851, effective November 17, 1992, for a maximum of 150 days; emergency expired April 11, 1993; emergency amendment at 17 Ill. Reg. 1658, effective January 20, 1993, for a maximum of 150 days; emergency expired June 14, 1993; amended at 17 Ill. Reg. 16443, effective September 27, 1993; emergency amendment at 17 Ill. Reg. 18867, effective October 14, 1993, for a maximum of 150 days; emergency expired March 13, 1994; amended at 18 Ill. Reg. 10023, effective June 21, 1994; emergency amendment at 18 Ill. Reg. 15161, effective September 27, 1994, for a maximum of 150 days; emergency expired February 23, 1995; amended at 19 Ill. Reg. 13209, effective September 11, 1995; amended at 20 Ill. Reg. 754, effective December 29, 1995; recodified by changing the agency name from Department of Conservation to Department of Natural Resources at 20 Ill. Reg. 9389; amended at 20 Ill. Reg. 12417, effective August 30, 1996; amended at 21 Ill. Reg. 578, effective December 30, 1996; amended at 21 Ill. Reg. 11713, effective August 12, 1997; amended at 22 Ill. Reg. 2182, effective January 2, 1998; amended at 22 Ill. Reg. 15961, effective August 24, 1998; amended at 22 Ill. Reg. 21881, effective December 3, 1998; emergency amendment at 23 Ill. Reg. 3092, effective March 10, 1999, for a maximum of 150 days; emergency expired August 6, 1999; amended at 23 Ill. Reg. 11195, effective August 26, 1999; emergency amendment at 23 Ill. Reg. 14640, effective December 13, 1999, for a maximum of 150 days; emergency expired May 10, 2000; amended at 24 Ill. Reg. 12517, effective August 7, 2000; amended at 25 Ill. Reg. 14131, effective October 22, 2001; amended at 26 Ill. Reg. 16238, effective October 18, 2002; amended at 27 Ill. Reg. 15409, effective September 18, 2003; amended at 28 Ill. Reg. _____, effective _____.

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENTS

Section 590.10 Statewide Regulations

a) Pursuant to Section 2.18 of the Wildlife Code [520 ILCS 5/2.18], *it shall be unlawful to take, possess, transport, or use migratory waterfowl except during such period of time and in such manner and numbers as may be provided in the Federal "Migratory Bird Treaty Act" (16 USC 703-711), the "Migratory Bird Hunting Stamp Act" (16 USC 1718 et seq.),* and annual "Rules and Regulations for Migratory Bird Hunting" (50 CFR 20 and 21) (collectively referred to in this Part as federal regulations) (no incorporation in this Part includes later amendments or editions), or contrary to any State regulations made in the Wildlife Code. Violation is a Class B misdemeanor (see 520 ILCS 5/2.18).

b) The regulations in Section 2.33 of the Wildlife Code on illegal devices shall apply to this Part, unless federal regulations are more restrictive. Violation is a Class B misdemeanor (see 520 ILCS 5/2.33), except that violation of Section 2.33(g), (i), (o), (p), (y) and (cc) are Class A misdemeanors with a minimum $500 fine and a maximum $5,000 fine in addition to other statutory penalties.

c) Duck, goose and coot regulations are in accordance with Federal Regulations (50 CFR 20) unless the regulations in this Part are more restrictive. Violation is a Class B misdemeanor (see 520 ILCS 5/2.18).

d) It shall be unlawful while attempting to take migratory waterfowl or coots to have in possession any shotgun shells not approved as non-toxic by federal regulations. Violation is a petty offense (see 520 ILCS 5/2.18-1).

e) It shall be unlawful to possess any shotgun shell loaded with a shot size larger than tungsten-iron (HEVI-steel) BBB, bismuth BBB, tungsten-iron BB, tungsten-polymer BB, tungsten-matrix BB, tungsten-bronze-iron (TBI) BB, ~~or~~ tungsten-nickel-iron (HEVI-SHOT) B or tungsten-tin-bismuth (SILVEX) 1 when attempting to take waterfowl. Violation is a petty offense (see 520 ILCS 5/2.18-1).

f) Emergency Closure

The Department of Natural Resources (Department or DNR) will close the Canada goose season giving 48 hours notice when quotas established by federal regulations are reached, when harvest in any area is excessive due to extreme weather conditions or when a serious outbreak of infectious disease occurs, such

as avian cholera or duck virus enteritis. Hunting Canada Geese after the season is closed is a Class B misdemeanor (see 520 ILCS 5/2.18). Possession of freshly killed wild geese during the closed season is a Class A misdemeanor (see 520 ILCS 5/2.33(cc)).

g) Closed Areas

Closed areas, including waterfowl refuges and rest areas, may be designated at certain sites in accordance with 17 Ill. Adm. Code 510. Boundaries of these closed areas will be posted. Violation is a petty offense (see 520 ILCS 5/2.20).

h) Commercial Migratory Waterfowl Hunting Area Permits

1) The holder of a permit shall forward information on harvest and hunters to the Department, by phone or on forms furnished by the Department, at times required by the Department. The Department shall give the permit holder reasonable written notice of the dates reports are required. Permit holders are required to retain a copy of their harvest records for at least 2 years after expiration of their permit. Failure to timely supply such reports will make the permit holder subject to revocation of his permit and suspension of the privilege to hold the permit for up to 5 years. Violation is a petty offense (see 520 ILCS 5/3.6).

2) On any property where the principal waterfowl harvest is wild geese, it is the permit holder's duty to ensure that no more than 5 persons occupy or attempt to take wild geese from any blind or pit at the same time during the Canada goose season. Violation is a petty offense (see 520 ILCS 5/3.8).

3) The Department may assign the maximum potential Canada goose harvest (number registered pits x 5 hunters x Canada goose bag limit) to the cumulative quota zone harvest for each day a club is late in reporting.

i) Waterfowl Hunting Zones:

1) North Zone – That portion of the State north of a line running east from the Iowa border along Illinois Route 92 to U.S. Interstate 280, east along U.S. Interstate 280 to U.S. Interstate 80, then east along U.S. Interstate 80 to the Indiana border.

2) Northern Illinois Quota Zone – DuPage, Kane, Lake, and McHenry counties, and those portions of LaSalle and Will counties north of I-80.

3) Central Zone – That portion of the State south of the northern zone boundary to the Modoc Ferry route on the Mississippi River and east along the Modoc Ferry Road to Modoc Road to St. Leo's Road to Illinois Route 3, then north to Illinois Route 159, then north to Illinois Route 161, then east to Illinois Route 4, then north to U.S. Interstate 70, then east along U.S. Interstate 70 to the Bond County line, north and east along the Bond County line to Fayette County, north and east along the Fayette County line to Effingham County, east and south along the Effingham County line to U.S. Interstate 70, then east along U.S. Interstate 70 to the Indiana border.

4) Central Illinois Quota Zone – Calhoun, Cass, Fulton, Jersey, Knox, Mason, Morgan, Peoria, Pike, Tazewell, and Woodford counties, as well as those portions of LaSalle, Grundy, and Will counties south of I-80.

5) South Zone – From the southern boundary of the Central Zone south to the remainder of the State.

6) Northeastern Illinois Canada Goose Zone – All lands and waters in the counties of Cook, DuPage, Grundy, Kankakee, Kane, Kendall, Lake, McHenry and Will.

7) Southern Illinois Quota Zone – Alexander, Union, Williamson, and Jackson Counties.

j) No person during the open season shall take or attempt to take wild geese prior to ½ hour before sunrise nor after sunset. In the Southern Illinois Quota Zone (SIQZ), no person shall take or attempt to take wild geese after the hour of 3:00 p.m.; except, during the last 3 days of the Canada goose season and during any goose seasons that occur after the regular Canada goose season and during any Canada goose season set in September, hunting hours in the SIQZ shall close at statewide closing time. During special light goose seasons as indicated in subsection (n), statewide hunting hours shall be ½ hour before sunrise to ½ hour after sunset daily. Hunting prior to ½ hour before sunrise during the open season is a Class A misdemeanor (see 520 ILCS 2.33(y)). Hunting after ½ hour after

sunset is a Class A misdemeanor (see 520 ILCS 2.33(y)). Hunting after closing hours is a Class B misdemeanor (see 520 ILCS 5/2.18).

k) On any property where the principal waterfowl harvest is wild geese in the Southern Illinois Quota Zone, no more than 5 persons shall occupy or attempt to take wild geese from any blind or pit at the same time during the Canada goose season. Violation is a petty offense (see 520 ILCS 5/3.8(b)(4)).

l) The following apply in the Northern and Central Illinois Quota Zones only:

1) It is unlawful to hunt Canada geese during seasons after September 15 without having in possession a current season's permit to hunt Canada geese, unless exempt from a State waterfowl stamp. Such permits are not transferrable and are not valid unless they contain the hunter's name, signature, date of birth, and the same State waterfowl stamp number that is on the State waterfowl stamp that is signed by the hunter or affixed to his/her license.

2) Immediately upon taking possession of a harvested Canada goose, hunters must mark with indelible ink, punch or slit the Permit to Hunt to indicate the date of kill (one date for each goose harvested) and zone where killed.

3) Hunters must report their kill on the same calendar day the geese are taken by calling 1-800-WETLAND (938-5263). Hunters must report the number of geese taken, date and zone where taken.

4) Violation is a Class B misdemeanor (see 520 ILCS 5/2.18).

m) Registration in the U.S. Fish and Wildlife Service Migratory Bird Harvest Information Program (HIP) is required for those persons who are required to have a hunting license before taking or attempting to take ducks, geese or coots. Instructions for registering are provided with issuance of hunting license. Violation is a petty offense (see 520 ILCS 5/3.1(f)).

n) If 50 CFR 20 or 21 allows light goose seasons to be liberalized, snow geese, blue geese and Ross' geese may be taken in accordance with federal regulations regarding hunting hours, method of taking and bag limits through March 31.

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

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENTS

Section 590.20 Permit Controlled Department Sites Only – Duck, Goose and Coot Hunting

a) Sites covered in this Section, which allow hunting by permit only, are:

Banner Marsh Fish and Wildlife Area

Horseshoe Lake Conservation Area

Sangchris Lake State Park subimpoundment

Snakeden Hollow State Fish and Wildlife Area

Union County Conservation Area

b) Permit Requirements

1) Permit reservations shall be accepted starting in September. Initial acceptance dates and methods for making reservations will be publicly announced. Only applications for reservations submitted by Illinois residents will be processed during the first 2 weeks of the application period. Applicants making reservations will be sent confirmation.

2) Permits shall be issued until the daily quota is filled. The daily quota is determined by the formula: one hunter per 10 to 40 huntable acres. Huntable acres are determined by, but not limited to, the biological studies on the number of the species available; the condition, topography, and configuration of the land at the site; the condition of the roads at the site; the number of employees available to work at the site; and the number of blinds which can be established on a site as set forth in Section 3.8 of the Wildlife Code [520 ILCS 5/3.8].

3) The permit shall be for the use of the entire blind. It shall be the responsibility of the permit holder to bring one hunting partner or one non-hunting partner or 2 non-hunting partners (3 persons per blind but not more than 2 hunters per blind) for Snakeden Hollow State Fish and Wildlife Area, Horseshoe Lake Conservation Area, and Union County Conservation Area, or 3 partners (hunters or non-hunters; 4 persons per blind) for Banner Marsh Fish and Wildlife Area and Sangchris Lake State

Park subimpoundment. Non-hunting partners are defined as persons under 21 years of age accompanying the hunter in the blind. Unallocated blinds shall be filled by a drawing at the sites.

4) Permits are not transferrable.

5) Permits will be issued from the Springfield Permit Office for permit-controlled sites. For other information write to:

Illinois Department of Natural Resources
Permit Office – Waterfowl
P.O. Box 19457
Springfield IL 62794-9457

c) General regulations

1) All use other than permit hunting as defined in subsection (b)(3) is prohibited at Snakeden Hollow State Fish and Wildlife Area from October 1 through close of Central Zone Canada goose season.

2) Hours, Permits and Stamp Charges

A) Hunting hours are from legal opening time until 1:00 p.m., except at Horseshoe Lake Conservation Area and Union County Conservation Area, which close at 12 noon.

B) At Snakeden Hollow State Fish and Wildlife Area from opening day through November 30, all hunters must register at the check station by 5:00 a.m. Permits are void after 5:00 a.m. From December 1 through December 31, all hunters must register at the check station by 5:30 a.m. Permits are void after 5:30 a.m. From January 1 through the close of goose season, all hunters must register at the check station by 6:00 a.m. Permits are void after 6:00 a.m. At Banner Marsh Fish and Wildlife Area, Horseshoe Lake Conservation Area and Union County Conservation Area hunters with permit reservations are required to check in at the check station between 4:30 a.m. and 5:00 a.m. Permits are void after 5:00 a.m. A drawing shall be held to allocate blind sites at all sites. At Sangchris Lake State Park subimpoundment hunters must

be checked in 90 minutes before legal hunting hours (2 hours before sunrise). Permits are void after this time.

C) A $15 Daily Usage Stamp must be purchased at Snakeden Hollow State Fish and Wildlife Area, Horseshoe Lake Conservation Area and Union County Conservation Area. Partners between 16 and 20 years of age must pay daily usage stamp fee. Partners under 16 are not required to purchase a daily usage stamp.

D) A $10 Daily Usage Stamp must be purchased at Banner Marsh Fish and Wildlife Area and Sangchris Lake State Park subimpoundment. Non-hunting partners between 16 and 20 years of age must pay daily usage stamp fee. All partners under 16 are not required to purchase a daily usage stamp.

3) Hunting shall be done from assigned blinds only and hunters shall not move from blind to blind or leave the blind and return.

4) Guns must be unloaded and encased at all times when not hunting.

~~5) The legal hunting season for Union County Conservation Area is the dates of the Southern Quota Zone goose hunting season except that the area shall be closed on Mondays and December 24, 25, 26 and the first weekday after December 26 other than a Monday. (This site shall be open only for the Illinois Youth Goose Hunt on the first weekday after December 26 other than a Monday, pursuant to Section 685.110.)~~

5~~6~~) The legal hunting season for Horseshoe Lake Conservation Area and Union County Conservation Area is the dates of the Southern Quota Zone goose hunting season except that these areas~~the area~~ shall be closed on Mondays, Tuesdays (except for the Illinois Youth Goose Hunt) and December 24, 25, 26 and the first weekday after December 26 other than a Monday. (These sites~~This site~~ shall be open only for the Illinois Youth Goose Hunt on the first weekday after December 26 other than a Monday, pursuant to Section 685.110.)

6~~7~~) The legal hunting season at Snakeden Hollow State Fish and Wildlife Area is the dates of the Central Zone goose hunting season except that the area shall be closed on Mondays, Tuesdays, Wednesdays, and December

24, 25 and 26.

7~~8~~) The legal hunting season at Banner Marsh Fish and Wildlife Area is the dates of the Central Zone duck hunting season.

8~~9~~) The legal hunting season for the Sangchris Lake Subimpoundment ~~subimpoundment~~ is the opening day of the Central Zone duck hunting season, Tuesdays, Thursdays and Sundays, and the last day of the Central Zone duck hunting season except during the second firearm deer season when the Subimpoundment will be closed on the first day of the season and hunting hours will close at 10:00 a.m. during the remaining days of the second firearm deer season (on Thursdays blinds will be allocated by a daily drawing at the site pursuant to Section 590.60(b)(40) ~~(32)~~(B)).

9~~10~~) At Horseshoe Lake Conservation Area and Union County Conservation Area during duck season hunters may possess up to 25 shot shells. When duck season is closed hunters may not possess more than 5 shot shells for every Canada goose allowed in the daily bag limit. At Snakeden Hollow State Fish and Wildlife Area hunters may not possess more than 5 shot shells for every Canada goose allowed in the daily bag limit.

10~~11~~) At Horseshoe Lake Conservation Area and Union County Conservation Area hunters may bring up to 3 dozen decoys per party. No full bodied or supermagnum shell decoys are allowed. At Sangchris Lake Subimpoundment only Department decoys may be used.

11~~12~~) Hunters without their guns may leave the blind to retrieve crippled waterfowl at Horseshoe Lake Conservation Area and Union County Conservation Area.

12~~13~~) Hunters must be at least 16 years of age (except for the Illinois Youth Goose/Duck Hunt) to draw for a pit or blind. Each person under 16 years of age must be accompanied by a supervising adult.

d) Violation of this Section is a petty offense (see 520 ILCS 5/2.20).

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

Section 590.60 Various Other Department Sites – Duck, Goose and Coot Hunting

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENTS

The sites listed in this Section conform to Statewide Regulations (Section 590.10) and the following regulations, except as noted.

a) Regulations

1) Hunting hours are from legal opening to 1:00 p.m., except hunting shall be permitted until sunset on those sites indicated by (1) following the location in subsection (b).

2) No permanent blinds allowed, except for Department constructed blinds; all blinds must be of a portable nature and constructed with natural vegetation at the blind site and no pits can be dug. All materials must be removed or dismantled at the end on the day's hunt.

3) Portable boat blinds must have been completed, including final brushing, before entering the water and must be removed at the end of the day's hunt.

4) Waterfowl hunters must maintain a distance of 200 yards between hunting parties, except for Department constructed blinds or staked locations.

5) No hunting is permitted within 200 yards of developed recreation areas, public use facilities, and construction or industrial sites.

6) No check station is operated nor is any check in/check out required, except as indicated in the remainder of this Section.

7) It shall be unlawful to trespass upon areas designated as waterfowl rest areas or refuges from 2 weeks prior to the start of regular duck season through the close of regular duck and Canada goose season except as indicated in the remainder of this Section.

8) It shall be unlawful to trespass upon the designated waterfowl hunting area during the 7 days prior to the regular duck season unless otherwise posted at the site.

b) Site specific regulations

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENTS

1) Blanding Wildlife Area (federal lands, boat access only; scull boat hunting for waterfowl is permitted but hunters must not get closer than 200 yards from a permanent duck blind or in areas posted as closed to scull hunters)

2) Boston Bay (no permanent blinds may be built; temporary blinds only; 200 yards apart)

3) Cache River State Natural Area (1)

4) Campbell Pond Wildlife Management Area (1)

5) Carlyle Lake Project Lands and Waters

A) No one may enter the subimpoundment area to hunt waterfowl before 4:30 a.m. each day of the waterfowl hunting season, or remain in the area after 3:00 p.m. each day of the waterfowl hunting season, except during the last 3 days of the Canada goose season and during any goose seasons that occur before or after Canada goose season, hunters must be out of the area by one hour after sunset and not return until 4:30 a.m. The subimpoundment area is defined as that area bordered by the Kaskaskia River on the east and south and extending north and west to the Carlyle Lake project boundary, and includes impoundment areas 1, 2, 3, and 4 and within the impoundments on the East Side Management Area located east of the Kaskaskia River.

B) The waters of Carlyle Lake are defined as the lake and that portion of the Kaskaskia River, northfork, eastfork, Peppenhorst Branch and Allen Branch north of the buoys only, and Hurricane Creek that are within the boundaries of the Carlyle Lake property.

C) Walk-in hunting shall be permitted in subimpoundment areas. Boats with no motors are allowed in the subimpoundments. Department personnel will designate boat launching locations.

D) When the water level in the subimpoundment area is too high (due to flooding) to allow walk-in hunting, Department personnel shall post that the area is open to boats with motors of 10 hp or less and will designate boat launching locations.

E) Known eagle protection areas will be posted by the Site Superintendent and will be closed to waterfowl hunting.

F) Each hunting party is required to hunt over a minimum of 12 decoys. Decoys shall not be left out unattended or after 3:00 p.m. each day of the waterfowl season, except during the last 3 days of the Canada goose season and during any goose seasons that occur after Canada goose season, decoys shall not be left out unattended or later than one hour after sunset.

G) All waterfowl hunters must register prior to hunting each day of the waterfowl hunting season at the nearest accessible registration box. All hunters must sign out and record their harvest daily before they exit the area.

H) The Army Corps of Engineers may build blinds on Corps managed lands and waters for management purposes only.

I) During the last 3 days of Canada goose season and during any goose seasons that occur after Canada goose season, hunting hours shall close at sunset daily.

J) The following rules apply to North Allen Branch Waterfowl Management Area (Eldon Hazlet State Park) only

i) Three designated blind sites are available on a first come-first served basis. Walk-in hunting only is permitted with a maximum of 4 hunters per site. All hunting must be from one blind site located between identically numbered stakes.

ii) Hunters must sign in prior to hunting, and sign out and report their harvest at the end of each day. All hunters must be checked out by 2:00 p.m. daily, except the last 3 days of the Canada goose season, and during any goose seasons that may occur after the Canada goose season, hunters must be checked out by one hour after sunset.

iii) Decoys shall not be left out unattended.

iv) When the lake floods this area and designated blind sites are not usable for walk-in hunting, the Department, by public announcement and/or posting, will open the affected area to hunting from boats per Carlyle Lake Project Lands and Waters' rules.

6) Chauncey Marsh (1)

Permit required, may be obtained at Red Hills State Park Headquarters and must be returned by February 15.

7) Clinton Lake (1)

A) Hunters must obtain a free site hunting permit and windshield card from the site office prior to hunting. While hunting, the windshield card must be visible in the windshield with the permit number clearly visible. Site hunting permits must be in the hunter's possession while in the field. Hunters must return the permit and report harvest by February 15 of the following year, or hunting privileges for the following season shall be forfeited.

B) Except as described in subsections (b)(5)(C) and (D), hunting is allowed only from anchored portable blinds, except that no waterfowl hunting is permitted in the area extending from a line between the west side boat ramp and the southern-most point of the central peninsula to the Davenport Bridge.

C) Waterfowl hunting is also permitted from staked sites in designated areas on a first come-first served basis. Walk-in or boat hunting only. Hunting parties must hunt within 25~~50~~ yards of a staked site. No more than 4 hunters per party are permitted.

D) Hunting is permitted from permanent land-based Disabled Hunting Program blinds.

E) Each party must hunt over a minimum of 12 decoys. Decoys must be removed from the sites following each day's hunt. Decoys must not be left unattended.

F) Except for the Handicap Hunting Program facilities, blinds must be portable or built from material brought in or available at the blind site. Blinds must be dismantled and removed at the end of each day's hunt. No trees or bushes may be cut.

8) Coffeen Lake State Fish and Wildlife Area

A) Hunters must sign in prior to hunting and sign out, reporting harvest at the end of each day.

B) Hunting from staked sites only.

C) No permanent blinds.

D) Hunting by boat access only.

E) No cutting vegetation on site.

F) Hunting north of railroad tracks only.

G) Hunting hours from legal opening to 1 p.m. Fishing allowed between the railroad tracks and the county road after 1:00 p.m.

H) Four hunters per blind site.

I) No hunting during firearm deer seasons.

J) All hunters must be checked out at sign in box by 2:00 p.m.

9) Cypress Pond State Natural Area (hunters must sign in prior to hunting and sign out reporting harvest at the end of each day) (1)

10) Devil's Island (1)

11)~~10)~~ Dog Island Wildlife Management Area (1)
Hunters must sign in prior to hunting and sign out reporting harvest at end of each day.

12)~~11)~~ Donnelley State Wildlife Area

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENTS

A) Hunting is prohibited on Tuesdays and Wednesdays except open on opening day and on the first Sunday immediately preceding the first firearm deer season as set forth in 17 Ill. Adm. Code 650.10 except as indicated in Section 590.25.

B) Goose hunting is prohibited after the close of the duck season.

C) All hunting shall be from designated blinds only. Refilling or changing blinds is not permitted.

D) All hunters must report to the check station to fill out an information card and turn in hunting licenses or Firearm Owner's Identification Cards before proceeding to blinds.

E) A hunter may bring one or 2 hunting partners under the age of 21.

F) $10 daily usage stamp must be purchased to hunt this area. Non-hunting partners between 16 and 20 years of age must pay daily usage stamp fee. Non-hunting partners under 16 are not required to purchase a daily usage stamp.

G) No outboard motors are allowed by public – only by authorized DNR personnel.

H) No more than 3 persons shall occupy a blind at any one time.

I) All parties are required to report to check station within one hour after termination of hunt or no later than 2:00 p.m.

J) All parties must hunt over a minimum of 12 decoys and a maximum of 48 decoys can be used, which must be removed upon the termination of the hunt.

K) The first weekend and the third Saturday of the regular duck season shall be designated as youth hunt days. This shall consist of youth or youths 15 and under plus one adult per blind. There shall be no charge for the youth on these days. Those blinds not allocated to youths shall be available to adults on those days.

L) One blind shall be made available by priority claim to "disabled" persons (as defined in Section 2.33 of the Wildlife Code).

13)~~12)~~ Fort de Chartres Historic Site (1)

A) Hunting is allowed from anchored, portable boat blinds only on a first come-first served basis.

B) Each hunting party is required to hunt over a minimum of 12 decoys which must be removed at the end of each hunting day.

C) No hunting is allowed during firearm deer season.

14)~~13)~~ Fox Ridge State Park (1)
Hunting restricted to Embarras River and its flood waters.

15)~~14)~~ Fox River (1)

A) Waterfowl hunting is prohibited on that portion of the Fox River running from the Kendall-Kane County line downstream to a line extending from the intersection of Route 71 and Douglas Street in Oswego, across the Fox River to the intersection of Hickory Lane and Riverview Drive.

B) Waterfowl hunting shall be from Department designated sites only on that portion of the Fox River downstream from the line extending from the intersection of Route 71 and Douglas Street in Oswego, across the Fox River to the intersection of Hickory Lane and Riverview Drive downstream to the Fox River Drive Bridge. Hunting at the designated sites will be on a first come-first served basis. Statewide regulations shall be in effect with no other Sections of this Part being applicable.

16)~~15)~~ Fox River – Chain of Lakes (Lake and McHenry Counties) (1)
Waterfowl blind regulations promulgated in accordance with the Illinois Administrative Procedure Act [5 ILCS 100] under the authority of the Fox Waterway Agency are in full force and effect on those public waters under their jurisdiction. Failure to comply with such regulations constitutes a

violation of this Section. Statewide regulations shall be in effect with no other Sections of this Part applicable.

17)~~16)~~ Freeman Mine
Hunting regulations will be publicly announced.

18)~~17)~~ Heidecke State Fish and Wildlife Area, Braidwood Fish and Wildlife Area and Powerton Lake

A) Blind sites shall be allocated on a daily draw basis conducted at the check stations 60 minutes before hunting time. Hunters shall register as parties for the drawing; each party drawn shall be allowed to select blind site in order drawn; only those hunters registered in party shall be allowed to hunt with their party; no more than 3 hunters per party; persons under the age of 16 shall not be allowed to hunt unless accompanied by an adult.

B) Blind sites not selected during the drawing shall be allocated on a first come-first served basis. Vacant blind sites shall not be allocated after the drawing until one hour after legal hunting time. No blind sites shall be allocated after 10:00 a.m. Hunters wishing to move to another blind site must report this move to the check station attendant in person before such a move.

C) Access to water blind sites must be by boat only and from designated boat launch sites.

D) All hunting must be from portable boat blinds, within 10 yards of the assigned numbered stake or buoy. No more than 3 persons shall use one blind.

E) Upon vacating blind sites, all hunters must report to the check station within one hour. At this time, waterfowl bagged must be checked in and displayed to the station operator and hunting licenses returned.

F) Each hunting party is required to hunt over a minimum of 12 decoys. Decoys must be picked up immediately after the hunt is over.

G) Heidecke Lake and Braidwood Lake shall be closed to all fishing and boat traffic except for legal waterfowl hunters from 10 days prior to regular duck season until the close of the regular duck and Canada goose season. Powerton Lake shall be closed to boat traffic from 7 days prior to opening of regular duck season until February 15, except for legal waterfowl hunters, and closed to all unauthorized entry during the regular duck season.

H) No hunting on Monday and Tuesday at Heidecke and Braidwood Lakes. No hunting at Powerton Lake on Monday through Thursday except hunting permitted on State holidays.

I) It is unlawful to hunt waterfowl on the water area in any watercraft less than 16 feet long and 60 inches in beam and without a gas-powered motor.

J) No guns may be carried from water blinds to retrieve waterfowl that fall on land.

K) Hunting is closed on Christmas Day and New Year's Day.

L) All water areas not posted with blind site numbers shall be refuge and are closed to all boat traffic except by authorized personnel.

M) It is unlawful to shoot across any dike.

N) Waterfowl hunting shall close with the conclusion of the duck season at Powerton Lake. At Heidecke and Braidwood Lakes, waterfowl hunting closes at the end of duck or goose season, whichever is later. No goose hunting is allowed prior to duck season.

19)~~18)~~ Horseshoe Lake (Alexander County) Public Hunting Area

A) Closed to waterfowl hunting on Mondays and Tuesdays.

B) When duck season is closed, goose hunters may not possess more than 5 shot shells for every Canada goose allowed in the daily bag

limit.

20~~19~~) Horseshoe Lake Refuge (no hunting allowed, no boat motors except trolling motors will be allowed on Horseshoe Lake from October 15 to March 1)

21~~20~~) Horseshoe Lake State Park (Madison County) – Gabaret, Mosenthein, Chouteau Island Unit (site permit required)

22~~21~~) Kaskaskia River Fish and Wildlife Area (only the last 3 days of duck season and the last 3 days of the regular Canada goose season) (1)

A) No waterfowl hunters may remain in the area after 3:00 p.m. For those lands lying south of Illinois Route 154 and north of Illinois Route 13, the legal hunting hours shall be from statewide opening hour until statewide closing hour.

B) All waterfowl hunting parties must use at least 12 decoys. Hunting is allowed on a first come-first served basis.

C) It is unlawful to leave duck and goose decoys unattended. Decoys must be picked up at the end of each day's hunt.

D) All waterfowl hunters must register prior to hunting each day of the waterfowl season at the nearest check station, and must sign out and record their harvest daily before they exit the area.

E) The following regulations apply to the Doza Creek Waterfowl Management Area:

i) No waterfowl hunters may enter the area before 3:00 a.m. each day of the waterfowl hunting season. No waterfowl hunters may remain in the area after 3:00 p.m. During the second firearm deer season, waterfowl hunting closes at 11:00 a.m. and no waterfowl hunters may remain in the area after 1:00 p.m.

ii) Only waterfowl, coot, firearm deer hunting (during the second firearm deer season only), archery deer and fall

archery turkey hunting (as provided by 17 Ill. Adm. Code 670 and 720) allowed in this area during the duck hunting season; goose hunting is closed during the second firearm deer season if the second firearm deer season occurs after duck season.

iii) For the first 4 days of the duck season, all waterfowl hunting must occur within 10 yards of an assigned, numbered stake, and only one hunting party may occupy a staked site at any given time. Starting on day 5 and for the remainder of the waterfowl season, hunting is allowed on a first come-first served basis and hunting need not occur by a stake. Waterfowl hunters must maintain a distance of 200 yards between hunting parties.

iv) A drawing for stake allocation will be done at the site office by mail no later than 4 weeks before the opening day of duck season. The application deadline and procedure will be publicly announced. Hunters who wish to hunt together at a staked location must register as a hunting party. Only 4 persons shall be in a hunting party. Only those persons in that party may hunt at the assigned stake. No later than 2 weeks prior to duck season, at least one person from each of the hunting parties drawn should appear at the site office to choose a staked site in the order that the hunting parties were drawn.

F) Handicapped accessible waterfowl hunting blind (Dry Lake Access Area)

i) Application for hunting dates should be received at the site office September 1-10 and will be allocated on a first request basis or via a drawing, if needed.

ii) Three hunters are allowed in the blind. At least one hunter must have a P-2 handicapped certification.

iii) Hunters must sign in/out and report harvest at check station after hunting.

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENTS

23)~~22~~) Kickapoo State Recreation Area

A) Hunting permitted only from staked sites. Sites will be allocated by daily drawing at the designated check in. Registration will be from 4:30 a.m. to 5:00 a.m. each day. The drawing will be held immediately after registration period.

B) Hunters must register and hunt as parties. No more than 4 hunters per party are permitted. Parties will select blind sites in the order they are drawn. No non-hunting partners.

C) Staked sites not selected during the drawing shall be allocated on a first come-first served basis.

D) Upon vacating their blinds, all hunters must take their completed harvest cards, issued daily on site, and place them in the collection box at the designated check station.

E) Each hunting party must hunt over a minimum of 12 decoys.

F) Waterfowl hunting is permitted only during the first 7 weekdays of the November portion of the Central Zone Canada goose season.

G) Hunting from staked sites only. Hunting must be within 10 feet of the staked location. All hunting must be from one portable blind or one anchored boat blind. Electric motors only for all boats.

H) Blind material must be brought in and taken out each day. No vegetation may be cut at the site.

I) Hunting hours are from legal opening to 1:00 p.m. Hunters must be out of the field by 2:00 p.m.

J) Hunters wishing to move to another vacant blind location may do so on a first come-first served basis, provided they include the blind change on the harvest card and report their harvest for each blind. If hunters do not occupy the stake they have drawn by legal shooting time, they forfeit the right to the staked hunting location.

24)~~23)~~ Kinkaid Lake Fish & Wildlife Area (1)

25)~~24)~~ Lake Shelbyville West Okaw and Kaskaskia Fish and Wildlife Area

A) Waterfowl hunting shall be permitted as described below except in duly posted restricted and "No Hunting" areas.

B) Waterfowl hunting in the Fish Hook, the North Dunn, the McGee, and the Jonathan Creek Waterfowl Areas shall be allotted by a daily drawing from opening day through the first Saturday and Sunday of the regular waterfowl season. Parties must register for drawings between 3:00 a.m. and 4:00 a.m. Central Standard Time at the check station on those days. Each party drawn shall be allowed to choose one of the staked sites in the waterfowl area. Parties must select sites in the order they are drawn. Maximum party size is 4 persons. In addition, the following regulations shall apply:

i) All parties must hunt within 10 yards of their assigned stake.

ii) All parties must be in place by ½ hour before hunting time.

iii) All parties are required to report their harvest by 2:00 p.m. following each hunt.

C) Hunting in the Jonathan Creek, North Dunn and McGee Waterfowl Areas shall be restricted to designated, staked sites on a first come-first served basis except as noted in subsections (b)(21)(A) and (B). Hunting in the Fish Hook Area shall be restricted to designated, staked sites on a first come-first served basis until the opening of the Illinois southern zone duck season, except as noted in subsections (b)(21)(A) and (B). A hunting party must hunt within 10 yards of the stake.

D) Each hunting party in the Fish Hook, Dunn, Jonathan Creek and McGee Waterfowl Areas are required to hunt over a minimum of 12 decoys.

E) Motors of over 10 horsepower shall not be operated in the Fish Hook, Jonathan Creek, Dunn, and McGee Waterfowl Areas.

F) Waterfowl hunting only is permitted in the Fish Hook, Dunn, Jonathan Creek and McGee Waterfowl Areas during the regular waterfowl season, except that pheasant, rabbit and quail hunting is permitted after 1:00 p.m. daily beginning the day after the close of the Central Zone Duck Season.

G) During the regular waterfowl season, only licensed waterfowl hunters with valid site waterfowl permits who are in the pursuit of waterfowl are permitted on the Kaskaskia River from the Strickland Boat Access north to the Illinois Central Railroad bridge from ½ hour before sunrise until 1:00 p.m.

H) A free permit is required, which is obtained from the site office. Permits must be in possession while hunting waterfowl. The permit must be returned and harvest reported by February 15 or the hunter will forfeit his hunting privileges at this site for the following year.

26)~~25)~~ Marshall State Fish and Wildlife Area – Duck Ranch Unit Only

A) On days open to hunting, blind or staked sites shall be allocated by a random drawing held at Marshall State Fish and Wildlife Area (MSFWA) check station, 5 miles south of Lacon on S.R. 26. The drawing will be conducted 60 minutes prior to legal shooting time. Hunters shall register as parties for the drawing; each party drawn shall be allowed to select hunting blinds in the order drawn. No more than 4 hunters per party; only registered party members shall be allowed to hunt in the party's blind.

B) Blinds or staked sites not selected during the drawing shall be allocated on a first come-first served basis. Vacant staked sites shall not be allocated after the drawing until one hour after legal hunting time. No blind sites shall be allocated after 11:00 a.m. Daily hunting hours will close at 1:00 p.m.

C) All hunting must be from a designated blind or staked site. Refilling or changing blinds or staked sites is not permitted.

D) Hunters are required to report their harvest at the end of the day's hunt on a harvest card located in the blind. Hunters are not required to report back to the MSFWA check station.

E) No hunting on Monday, Wednesday, or Friday.

27)~~26)~~ Mermet

A) Waterfowl hunting shall be permitted only during the duck hunting season.

B) Hunting is allowed in both the walk-in and blind areas only. Those individuals wishing to hunt in the walk-in area are required to deposit their hunting licenses and register at the check station prior to entering the area. Individuals who wish to use the blind area are required to deposit their hunting licenses and participate in a daily drawing during which blinds shall be assigned. Individual hunter, or hunting party, can only be allocated one blind per day.~~Hunting parties shall not change blinds without prior approval from the check station operator.~~ Those persons exempted by law from having hunting licenses must deposit their Firearm Owner's Identification Cards.

C) The daily drawing shall be held 1½ ~~one~~ hour prior to legal hunting~~opening~~ time.

D) All members of the hunting party shall register as a group (not to exceed 4 persons per group, except on the statewide Youth Waterfowl Hunting Day, as authorized in Section 590.15(f), 5 persons may occupy a blind at one time only if the party is comprised of 2 youth hunters, their non-hunting parents and one non-hunting guide) for the purpose of the drawing.

E) Hunter or hunting party is to accept and hunt the blind drawn, or reject it immediately. Hunters rejecting blinds are ineligible to hunt in the blind area for the remainder of that day. Any vacant

(rejected) blinds at the end of the drawing can be drawn for by parties who drew "blanks" during the original drawing.

F~~E~~) Those hunters in the blind area shall park in designated areas. These parking areas shall be numbered to correspond with particular blind sites located along the levee road.

G~~F~~) In the blind area, a minimum of 12 decoys per blind is required while hunting waterfowl.

H~~G~~) Boats without motors may be used in the walk-in areas.

I~~H~~) No hunting Christmas Day, Sundays and Mondays in the blind area.

J~~I~~) Hunting hours are from legal opening to 12 noon.

K) Hunters cannot possess more than 25 shotshells.

28)~~27)~~ Newton Lake Fish and Wildlife Area

A) Blind sites shall be allocated by a daily drawing to be conducted at 4:30 a.m. Blind sites not selected during the drawing (or in the event that personnel are not available to conduct drawing) shall be allocated on a first come-first served basis until one hour before shooting time; and then after 9:00 a.m. All hunters must register before entering the hunting area. Hunting hours end at 1:00 p.m.; all hunters must be off the water or out of the field by 2:30 p.m. daily.

B) Upon vacating their blinds, all hunters must place their completed harvest cards in the collection box located at the boat ramp or site headquarters.

C) There will be duly posted waterfowl refuges. These areas shall be closed to all boat traffic and boat fishing during the waterfowl season.

D) No more than 4 persons shall occupy a blind at one time.

E) The west arm of the lake shall be closed to all waterfowl hunting.

F) Blind sites shall be determined by the Department of Natural Resources and marked with numbered stakes. When it is deemed necessary, the Department shall remove, move or close blind sites in order to carry out the operations of the overall management program.

G) Hunters wishing to move to another vacant blind location may do so on a first come-first served basis, providing they include the blind change on the harvest card and report their kill for each blind. If hunters do not occupy the stake they have drawn by legal shooting time, they forfeit the right to the staked hunting location.

H) Access to water blind sites shall be by boat only and from the east~~west~~ side boat ramps. Access to land sites shall be by walk-in only and from nearby hunter parking lots. No parking is allowed along county roads.

I) All water hunting must be from one portable blind or one anchored portable boat blind located between the assigned numbered stakes, no more than 10 yards from shore. All land hunting must be done from a position within 50 feet of the assigned numbered stake.

J) Crippled waterfowl that fall on land, other than areas designated as refuge, shall be retrieved by foot. However, no gun may be carried while attempting to recover such birds.

K) Blind site water: A position between 2 like numbered stakes where a blind may be located. Blind site land: A position within 50 feet of numbered stakes where a hunter may set up or a temporary blind may be located.

L) Fishing shall be prohibited in the east arm of the lake during the waterfowl season.

M) Each party must hunt over a minimum of 12 decoys, and all decoys must be removed at the end of each day's hunt.

N) When it is deemed necessary for public safety reasons, such as flooding, high winds, or heavy fog, the Department will close the lake area to all fishing and all boating activity except for non-water hunting programs.

O) This site is closed to all users except firearm deer hunters during the firearms deer seasons.

29)~~28)~~ Oakford Conservation Area (1)

30)~~29)~~ Pyramid State Park – Captain Unit ~~(hunting regulations will be posted at the site)~~

A) All vehicles must have a site hunting permit displayed in windshield. Permits must be returned by February 15.

B) Hunting hours are from legal opening to 1:00 p.m.; hunters must be out of the field by 2:00 p.m.

C) Each hunting party is required to hunt over a minimum of 12 decoys; all decoys must be picked up at the end of each day's hunt.

D) No more than 4 hunters to a party.

E) 12 staked sites will be allocated by daily drawing at the Galum Unit Office beginning at 4:30 a.m. in November, 5:00 a.m. in December and 5:30 a.m. in January. All hunting must occur within 10 yards of an assigned, numbered stake, except for stakes identified at the check station where hunters may hunt from any place in the wetland in which the stake is located. There will be no moving to staked locations after initial drawing.

F) All names in a party must be on one card; successful participants will have card stamped with date and stake number. Waterfowl harvested must be reported on blind selection card and returned daily to a hunter check station box.

G) Waterfowl hunters not participating in daily draw must report their

harvest on site hunting permit by February 15.

H) Entry time for hunters not participating in daily lottery is 4:30 a.m. in November, 5:00 a.m. in December and 5:30 a.m. in January.

I) Waterfowl hunters may not hunt on main lakes other than staked locations. Hunters may hunt crop fields and wetlands that have not been staked; however, they must be a minimum of 200 yards from the nearest staked location or another hunter.

J) No waterfowl hunting within 200 yards from the nearest staked location or another hunter.

K) The land and water portion of the Captain Unit Waterfowl Rest Area is closed to all entry from October 28 through February 28. The location of the Captain Unit Waterfowl Rest Area is described as follows: All land and water west of Panda Bear Road north to Northern Haul Road, then south on Beltline Road to Western Haul Road, then east on Pyatt-Cutler Road.

L) After duck season is closed and during the Canada goose hunting season, hunters may not possess more than 5 shot shells for every Canada goose allowed in the daily bag.

M) The waterfowl daily drawing and 12 staked locations will be closed to hunting on December 25.

31)~~30)~~ Pyramid State Park – Denmark Unit ~~(hunting regulations will be posted at the site)~~

A) All vehicles must have a site hunting permit displayed in windshield. Permits must be returned by February 15.

B) Hunting hours are from legal opening to 1:00 p.m.; hunters must be out of the field by 2:00 p.m.

C) Each hunting party is required to hunt over a minimum of 12 decoys; all decoys must be picked up at the end of each day's hunt.

D) No more than 4 hunters to a party.

E) 32 staked sites will be allocated by daily drawing at the Galum Unit office beginning at 4:30 a.m. in November, 5:00 a.m. in December and 5:30 a.m. in January. All hunting must occur within 10 yards of an assigned, numbered stake, except for stakes identified at the check station where hunters may hunt from any place in the wetland in which the stake is located. There will be no moving to staked locations after initial drawing.

F) All names in a party must be on one card; successful participants will have card stamped with date and stake number. Waterfowl harvested must be reported on blind selection card and returned daily to a hunter check station box.

G) Waterfowl hunters not participating in daily draw must report their harvest on site hunting permit by February 15.

H) Entry time for hunters not participating in daily lottery is 4:30 a.m. in November, 5:00 a.m. in December and 5:30 a.m. in January.

I) Waterfowl hunters may not hunt on main lakes other than staked locations. Hunters may hunt crop fields and wetlands that have not been staked; however, they must be a minimum of 200 yards from the nearest staked location or another hunter.

J) No waterfowl hunting within 200 yards of Denmark Unit Waterfowl Rest Area and 100 yards of any private property boundary.

K) The land and water portion of the Denmark Unit Waterfowl Rest Area is closed to all entry from October 28 through February 28. The location of the Denmark Unit Waterfowl Rest Area is described as follows: All land and water east of field DM 72 following Pipestone Creek, north and then east along Seven Island Trust Property Boundary, then east to Eastern Haul Road, then north to Pyatt-Cutler Road.

L) After duck season is closed and during the Canada goose hunting

season, hunters may not possess more than 5 shot shells for every Canada goose allowed in the daily bag.

M) The waterfowl daily drawing and 32 staked locations will be closed to hunting on December 25.

32)~~31)~~ Pyramid State Park – East Conant Unit ~~(hunting regulations will be posted at the site)~~

A) All vehicles must have a site hunting permit displayed in windshield. Permits must be returned by February 15.

B) Hunting hours are from legal opening to 1:00 p.m.; hunters must be out of the field by 2:00 p.m.

C) Each hunting party is required to hunt over a minimum of 12 decoys; all decoys must be picked up at the end of each day's hunt.

D) No more than four hunters to a party.

E) No waterfowl hunting within 100 yards from any private property boundary.

F) After duck season is closed and during the Canada goose hunting season, hunters may not possess more than 5 shot shells for every Canada goose allowed in the daily bag.

G) Entry time for hunters not participating in daily lottery is 4:30 a.m. in November, 5:00 a.m. in December and 5:30 a.m. in January.

H) Hunters may hunt crop fields and wetlands; however, they must be a minimum of 200 yards from the nearest staked location or another hunter.

33)~~32)~~ Pyramid State Park – Galum Unit ~~(hunting regulations will be posted at the site)~~

A) All vehicles must have a site hunting permit displayed in windshield. Permits must be returned by February 15.

B) Hunting hours are from legal opening to 1:00 p.m.; hunters must be out of the field by 2:00 p.m.

C) Each hunting party is required to hunt over a minimum of 12 decoys; all decoys must be picked up at the end of each day's hunt.

D) No more than 4 hunters to a party.

E) 4 staked sites will be allocated by daily drawing at the Galum Unit Office beginning at 4:30 a.m. in November, 5:00 a.m. in December and 5:30 a.m. in January. All hunting must occur within 10 yards of an assigned, numbered stake, except for stakes identified at the check station where hunters may hunt from any place in the wetland in which the stake is located. There will be no moving to staked locations after initial drawing.

F) All names in a party must be on one card; successful participants will have card stamped with date and stake number. Waterfowl harvested must be reported on blind selection card and returned daily to a hunter check station box.

G) Waterfowl hunters not participating in daily draw must report their harvest on site hunting permit by February 15.

H) Entry time for hunters not participating in daily lottery is 4:30 a.m. in November, 5:00 a.m. in December and 5:30 a.m. in January.

I) Waterfowl hunters may not hunt on main lakes other than staked locations. Hunters may hunt crop fields and wetlands that have not been staked; however, they must be a minimum of 200 yards from the nearest staked location or another hunter.

J) No waterfowl hunting within 100 yards of any private property boundary.

K) After duck season is closed and during the Canada goose hunting season, hunters may not possess more than 5 shot shells for every Canada goose allowed in the daily bag.

L) The waterfowl daily drawing and 4 staked locations will be closed to hunting on December 25.

34)~~33)~~ Ray Norbut State Fish and Wildlife Area (1)
Statewide season regulations apply except that the season closes December 15 in Eagle Roost Area, or the legal statewide closing, whichever is earlier.

35)~~34)~~ Rend Lake Project Lands and Waters

A) All waterfowl hunters and all boats must be out of the Casey Fork and Big Muddy subimpoundments by 2:00 p.m. each day of the waterfowl season and not return until 4:30 a.m., except during the last 3 days of the Canada goose season, and during any goose season occurring after the Canada goose season, hunters must be out of the areas by one hour after sunset and not return until 4:30 a.m.

B) No hunting permitted from the subimpoundment dams.

C) While waterfowl hunting, no one may have in his/her possession any tool or device designed to cut brush or limbs, except common hunting knives and pocket knives.

D) No waterfowl hunting permitted within 200 yards of the refuge boundary, or within 100 yards of any private property boundary.

E) All boat traffic is prohibited from entering the subimpoundments from one week before waterfowl season until opening day of waterfowl season.

F) All waterfowl hunters must sign in prior to hunting and sign out and report their harvest at the end of each day's hunt.

G) Air boats will not be allowed in the Casey Fork Subimpoundment, the Big Muddy Subimpoundment, and the impoundments on Corps of Engineers' managed areas such as Atchison Creek and Gun Creek during the regular duck and

Canada goose seasons. When ice conditions do not allow access at boat ramps by normal watercraft, then air boats can be used in the Casey Fork and Big Muddy Subimpoundments.

H) Permanent blinds at the Whistling Wings Access Area shall be regulated as follows:

i) During goose season, a separate drawing will be held for the pits at Whistling Wings. This drawing will be held at the Cottonwood check station following the drawing for staked hunting sites. Hunters may not register for more than one drawing per day. Unsuccessful hunters in the drawing for Whistling Wings pits may select any unclaimed staked location after the drawings.

ii) Hunters who wish to hunt together must register as a hunting party and be present at the drawing.

iii) All hunters must have the registration card from the check station in their possession while hunting.

iv) Hunters must occupy the pit they have drawn by legal shooting time. If a pit is not occupied by legal shooting time, another party who has registered at the check station may occupy the unclaimed pit.

v) No more than 6 dozen decoys may be used per pit.

vi) No more than 4 hunters will be allowed in a pit or hunting party.

I) Each hunting party is required to hunt over a minimum of 12 decoys at each blind site, and all decoys must be picked up at the end of each day's hunt.

J) During the last 3 days of Canada goose season and during any goose seasons occurring after Canada goose season, hunting hours shall close at sunset daily.

K) The land portion of the Rend Lake Refuge is closed to trespassing during waterfowl season. The location of the Rend Lake Refuge is described as follows:

i) Bounded on the south by a buoy line, approximating the Jefferson-Franklin County Line.

ii) Bounded on the east by a buoy line and/or signs approximating the channel of the Casey Fork Creek.

iii) Bounded on the west by a buoy line and/or signs approximating the channel of the Big Muddy River.

iv) Bounded on the north portion of the Big Muddy River by a buoy line and/or signs approximating a line which would extend west from Ina, Illinois.

v) Bounded on the north portion of the Casey Fork Creek by the Casey Fork Subimpoundment Dam.

vi) Bounded on Nason Point by refuge boundary signs at project limits.

L) After the close of regular duck season, goose hunters may not possess more than 5 shot shells for every Canada goose allowed in the daily bag limit.

M) Staked Hunting Areas – Those areas designated as a staked hunting area will be publicly announced and the following regulations will apply:

i) All hunting must occur within 10 yards of an assigned, numbered stake except for stakes identified at the check station where hunters may hunt from any place in the field in which the stake is located and only one hunting party may occupy a staked site at any given time.

ii) Stakes will be assigned via a daily drawing held at 4:00 a.m. during November, 4:30 a.m. in December and 5:00

a.m. in January. Check stations will be open from ½ hour before drawing time to 9:30 a.m. daily.

iii) Check station at the Bonnie Dam Access Area will be operated on a daily basis through the second weekend of the waterfowl season. Thereafter, Bonnie Dam check station will only be open on weekends and holidays as posted at the check station. Cottonwood Access Area will be operated on a daily basis throughout the waterfowl season for both Bonnie Dam and Cottonwood Hunting Areas. Hunters who wish to hunt together at a staked location must register as a hunting party and be present for the drawing. Only those persons in that party may hunt at the assigned stake. No more than 5 persons shall be in a hunting party.

iv) Hunters arriving at the check station after the draw may enter the staked area only if it is one hour prior to shooting time or between 9:00 a.m. and 9:30 a.m. All hunters must register at the check station.

v) When a staked hunting location is vacated by a hunting party any other registered hunting party may claim the vacant stake on a first come-first served basis. If hunters do not occupy the stake they have drawn by legal shooting time, they forfeit the right to the staked hunting location.

vi) When hunting parties have killed their legal daily bag limit of ducks (not including coots and mergansers) and/or Canada geese in respect to the legal hunting season dates they must vacate the hunting site.

vii) Hunters must sign in and out and report their harvest on the cards at the access area where they launch.

36) Sahara Woods State Fish and Wildlife Area (1)

37)~~35)~~ Saline County Conservation Area (1)

A) Waterfowl hunting is allowed north of the township road only.

B) Walk-in hunting only.

C) Hunters must sign in prior to hunting and sign out reporting harvest at the end of each day.

38)~~36)~~ Sand Ridge State Forest (Sparks Pond Land and Water Reserve) (1)

A) Hunting is permitted on Tuesdays and Saturdays during the duck season. Permits are issued on a first come-first served basis.

B) Two hunters are allowed per blind. At least one hunter must have a P-2 handicapped certification.

C) Hunters must report harvest to site office.

39)~~37)~~ Sanganois State Fish and Wildlife Area

A) Hunters using the main walk-in hunting area from opening day of the Central Zone duck season through the first Sunday of the Central Zone duck season must have a permit issued from the site office. Procedures for issuance of permits will be publicly announced.

B) Hunters using the walk-in area shall use the check station at the headquarters area located 8 miles northwest of Chandlerville just off Route 78 or the check station on the west side of the Illinois River one mile north of Browning near Route 100.

C) Walk-in waterfowl hunting shall be permitted only in the area posted for this purpose.

D) All hunters using a walk-in area must report to the check station to fill out information cards and to turn in hunting licenses or Firearm Owner's Identification Cards before proceeding to area.

E) Topper's Hole is a walk-in area accessed by boat only, no check-in, check-out, no permanent blinds, hunting parties must stay at least

200 yards apart, hunting parties shall hunt over no less than 12 decoys, daily hunting hours are legal shooting hours through 1:00 p.m. CST.

F) The Baker tract is a daily-draw walk-in area with 4 separate hunting compartments. One party of hunters (up to 4 hunters per party) will be permitted to hunt in each hunting compartment. The allocation of the 4 Baker tract hunting compartments will be by daily draw as part of the site's daily draw vacant blind allocation. Parties must register for the draw together on the same card.

G) Upon the completion of hunting, hunters must report to the check station within one hour.

H) Fishing is prohibited in the impoundment areas during the duck season, except that walk-in only access for fishing from the bank is permitted after 1:00 p.m.

I) No person shall trespass on the Barkhausen Refuge during the period from October 1 through end of goose season.

J) No person shall trespass on the Marion-Pickerel Waterfowl Refuge during the period from October 1 through the last day of the waterfowl season, unless prior permission for a specific reason (such as access to private land or to retrieve dead or wounded game) is granted by the site superintendent.

K) When the central zone goose season extends beyond the duck season, goose hunting shall be permitted with statewide hunting hours in effect. Hunters need not occupy a blind. All hunting must be conducted within non-refuge areas.

L) No hunting permitted from the walk-in area subimpoundment levee.

M) Hunters may use boats without motors in the walk-in area; the construction and/or use of permanent blinds in the walk-in area is prohibited.

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENTS

40)~~38)~~ Sangchris Lake State Park

A) During the last 3 days of the regularly scheduled Canada goose season, hunting hours will close at statewide closing.

B) Blind sites shall be allocated by a daily drawing to be conducted 90 minutes prior to hunting time. Blind sites not selected during the drawing (or in the event that personnel are not available to conduct the drawing) shall be allocated on a first come-first served basis. (During that portion of the Canada goose season which follows the duck season, the west side goose pit area, the west arm blind sites and east arm blind sites south of power lines shall be available for goose hunting and shall be allocated on a daily drawing basis to be held at 5:30 a.m. daily.)

C) During that portion of the light goose season which follows the regular Canada goose season, the west-side goose pit area blinds, subimpoundment blinds, and designated fields west of the west boat ramp shall be available daily on a first come-first served basis. Hunters must sign in at the appropriate parking area no earlier than 5 a.m.

D) All hunting must be from registered blind sites only and hunters must occupy their blinds within one hour after registering at the check station.

E) Upon vacating their blinds, hunters must place their completed harvest cards in the collection boxes located at either the east or west boatdock.

F) There will be a duly posted waterfowl refuge. These areas shall be closed to all boat traffic (except as allowed in subsection (b)(34)(J)) and boat fishing during the waterfowl season. Bank fishing along the dam shall be permitted.

G) No more than 4 persons shall occupy a blind at one time.

H) The center arm of the lake shall be closed to all waterfowl hunting.

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENTS

I) Blind sites shall be determined by the Department of Natural Resources and marked with a numbered stake. When it is deemed necessary, the Department of Natural Resources shall remove, move or close blind sites in order to carry out the operations of the overall management program.

J) Hunters wishing to move to another blind location may do so after 10 a.m. providing they include the blind change on the harvest card and report their kill for each blind.

K) Access to water blind sites shall be by boat only and from designated boat launch sites. Blinds on the peninsula subimpoundment shall be accessed on foot once the hunter has reached the peninsula by boat. Corridors located along the edges of the existing refuge will be established to provide access to all available blind sites as designated by site superintendent when conditions warrant.

L) All hunting must be from one portable blind or one anchored portable boat blind located within a numbered cove and between the assigned numbered stakes or from one Department designated blind or pit.

M) Crippled waterfowl that fall on land, other than areas designated as refuge, shall be retrieved by foot. However, no gun may be carried while attempting to recover such birds.

N) No unauthorized pits or blinds shall be built on State managed land.

O) Blind sites: A position between 2 like numbered stakes within a cove or other Department designated site where a blind may be located.

P) Fishing shall be prohibited in the east and west arms of the lake during the period from 10 days prior to the duck season through the end of the duck season, unless the youth waterfowl hunt is more than 10 days before the regular duck season, then the east and west arms will be closed to accommodate the youth waterfowl

hunt. Fishing shall be prohibited in the west arm of the lake and the east arm of the lake south of the power lines during that portion of the Canada goose season that follows the duck season.

Q) Each party must hunt over a minimum of 12 decoys, and all decoys must be removed at the end of each day's hunt ~~(except at peninsula subimpoundments where only Department decoys may be used)~~.

R) When it is deemed necessary for public safety reasons, such as flooding, high winds, or heavy fog, the Department of Natural Resources will close the lake area to all fishing and all boating activity except for non-water hunting programs.

S) During flood conditions, waterfowl hunters may hunt the tailwaters of Sangchris Lake dam including Clear Creek and the South Fork of the Sangamon River. Decoys must be removed at the end of each day's hunt.

T) West-side goose pit area blinds will be available every day each week except Tuesday and Wednesday, through the regular Canada goose season, except for the Tuesday and Wednesday preceding the last day of the Canada goose season.

U) Hunters in the west-side goose pit area may not possess more than 5 shot shells for every Canada goose allowed in the daily bag limit after the close of the Central Zone duck season.

V) All blinds will be closed during the first day of the second firearm deer season; hunting hours will be from statewide hunting hours until 10:00 a.m. the remaining days of the second firearm deer season.

41)~~39)~~ Shawnee National Forest, Upper and Lower Bluff Lakes
Goose hunting is prohibited at Lower Bluff Lake.

42)~~40)~~ Shawnee National Forest, LaRue Scatters
All hunting must be by walking in or in boats without motors.

43)~~41)~~ Shawnee National Forest, Oakwood Bottoms (Green Tree Reservoir west

of the Big Muddy levee)

A) All hunting must be by walking into the area.

B) Each hunting party must hunt over a minimum of 12 decoys in Compartments 19, 20 and 21.

C) No person shall tamper with or attempt to manipulate any of the gates, pumps or structures in the subimpoundment area.

44)~~42)~~ Sielbeck Forest Natural Area (1)

45)~~43)~~ Stephen A. Forbes State Park

A) On the main lake hunting is allowed from a boat blind only in the designated areas.

B) Only walk-in hunting is allowed in the subimpoundment.

C) Hunting shall be allowed on a first come-first served basis. All hunters must use 12 decoys, minimum.

46)~~44)~~ Ten Mile Creek Fish and Wildlife Area (1)

A) Waterfowl hunters must obtain permits prior to hunting. Permits must be returned by February 15.

B) Each hunting party is required to hunt over a minimum of 12 decoys at each blind site, and all decoys must be picked up at the end of each day's hunt.

C) Areas designated as Rest Areas are closed to all access during the Canada Goose Season only. Rest Area designation has been given to that part of the Belle Rive unit that lies south of Auxier Creek and is posted as Rest Area, and the 250 acre tract at the Western edge of the Eads Mine unit.

D) After the close of the duck season, goose hunters in that portion of Ten Mile Creek that lies in the Rend Lake Quota Zone may not

possess more than 5 shot shells for every Canada goose allowed in the daily bag limit.

47)~~45)~~ Turkey Bluffs State Fish and Wildlife Area (All hunters must sign in and out and report kill) (1)

48)~~46)~~ Union County (Firing Line Waterfowl Management Area)

A) Blind sites shall be allocated on a daily draw basis at the site shop building 60 minutes prior to hunting time. Hunters shall register as parties for the drawing; each party drawn shall be allowed to select a blind site in order drawn; only those hunters registered in a party shall be allowed to hunt with their party; no less than 2 hunters and no more than 4 hunters per party; persons under the age of 16 shall not be allowed to hunt unless accompanied by an adult.

B) Blinds not allocated during the drawing will not be hunted that day. Moving from blind to blind is not allowed.

C) Access to blind sites is from Clear Creek Levee only.

~~D) All hunting must be from assigned blinds or within 30 feet of the assigned, numbered, hunter stake site.~~

D~~E~~) Each hunting party must hunt over a minimum of 12 decoys. Decoys must be picked up immediately after the hunt is over.

E~~F~~) Hunting hours end at 1:00 p.m. and all hunters must be out of the area by 2:00 p.m. Daily entry into the area is restricted until after the drawing for hunting sites.

F~~G~~) When duck season is closed, hunters may not possess more than 5 shot shells for every Canada goose allowed in the daily bag limit.

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

Section 590.80 Early and Late Goose (all species) Hunting Regulations on Department Sites

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENTS

a) During goose hunting seasons that begin before or extend beyond the regular duck season, statewide regulations and site specific regulations for goose hunting, as indicated in Sections 590.40, 590.50 and 590.60, shall apply to all sites (except those closed in subsections (c), (d) and (e)) with the following exceptions:

1) Check in and check out (or sign in and out) is required only at sites with an asterisk (*).

2) No fees will be charged for hunting for seasons before duck season or for seasons after the regular Canada goose season.

3) No sites are closed to fishing during seasons before the regular duck season or for seasons after the regular Canada goose season.

4) Hunting from a completed blind or staked site is waived during seasons held before the regular duck season or for seasons held after the regular Canada goose season at sites marked with an @.

5) Hunting from a staked site (blind need not be completed) is required during seasons held before the regular duck season at sites marked with a #.

6) During goose seasons held prior to regular duck season, no hunting is allowed in designated dove management fields or within 100 yards of such fields.

7) During goose seasons held after the Canada goose season all restrictions regarding the use of decoys or the number of shotgun shells that hunters can possess are no longer in force.

8) During goose seasons held after Canada goose season, statewide hunting hours apply.

b) The following sites will be open to all goose hunting seasons:

Blanding Wildlife Area @

Cache River Natural Area *

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENTS

Carlyle Lake Project Lands and Waters, including North Allen Branch Waterfowl Management Area (no early goose hunting east of Kaskaskia River from Cox's Bridge Access north to the Department's boundary line) *

Chain O'Lakes State Park #

Chauncey Marsh (permit required, available at Red Hills State Park)

Clinton Lake State Recreational Area – early season goose hunting in waterfowl hunting areas east of Parnell Bridge and North of Route 54 only. Any goose hunting seasons after the regular Canada goose seasons will close March 15.

Des Plaines Conservation Area #

Devil's Island

Dog Island Wildlife Management Area *

Fort de Chartres Historic Site

Horseshoe Lake State Park (Madison County) (blind builders or partners must occupy their blinds by ½ hour before opening hunting hour each day in order to claim their blind for the day; attempts to claim blinds by any manner other than actual occupation shall be considered in violation of this Part and shall be cause for arrest; the insertion of a boat into the boat hide and/or the spreading of decoys before a blind shall not be considered legal occupation of a blind) # *

Kaskaskia River State Fish and Wildlife Area (Baldwin Lake Waterfowl Rest Area is closed to hunting) *

Kinkaid Lake Fish and Wildlife Area

Lake Shelbyville (except West Okaw and Kaskaskia Fish and Wildlife Area; season opens with teal season)

Marshall State Fish and Wildlife Area – Sparland and Duck Ranch Units @

Marshall State Fish and Wildlife Area – Spring Branch and Marshall Units * @

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENTS

Meredosia Lake

Mississippi River State Fish and Waterfowl Management Area (Pools 25 and 26) (no hunting is allowed in the designated Batchtown Waterfowl Rest Area; blind builders or partners must occupy their blinds by ½ hour before opening hunting hour each day in order to claim their blind for the day; attempts to claim blinds by any manner other than actual occupation shall be considered in violation of this Part and shall be cause for arrest; the insertion of a boat into the boat hide and/or the spreading of decoys before a blind shall not be considered legal occupation of a blind) @

Mississippi River Pools 16, 17, and 18 @

Mississippi River Pools 21, 22, and 24 @

Oakford Conservation Area

Rend Lake Project Lands and Waters @

Saline County Conservation Area *

Sanganois State Fish and Wildlife Area * @

Shawnee Forest, LaRue Scatters

Shawnee Forest, Oakwood Bottoms

Shawnee Forest, Upper Bluff Lake

Ten Mile Creek Fish and Wildlife Area (permit required; rest areas open to hunting during goose season before and after the regular goose season)

Turkey Bluffs State Fish and Wildlife Area *

Woodford Fish and Wildlife Area * @

c) The following sites will be open to any goose hunting seasons that occur before the regular duck season through the end of the regular Canada goose season:

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENTS

Anderson Lake (closed after regular duck season) * @

Clinton Lake State Recreation Area (hunting will be in designated walk-in areas only; boat blinds allowed where hunting will be within 50 yards of a staked site; free site permit required; no hunting within 200 yards of developed areas, construction zones and 300 yards of electrical power lines; no more than 4 persons per blind and a minimum of 12 decoys must be used)

Coffeen Lake State Fish and Wildlife Area (hunting north of County Road N6th only; no fishing north of County Road N6th during this season) * #

Lake Shelbyville West Okaw and Kaskaskia Fish and Wildlife Area (must have site specific permit; season opens with teal season)

Ray Norbut State Fish and Wildlife Area *

Rice Lake (season opens with teal season; sunrise until 1:00 p.m.; closed after regular duck season) * @

d) The following sites will be open to all goose hunting during any Canada goose hunting seasons that occur after the regular duck season:

Banner Marsh * @

Braidwood State Fish and Wildlife Area *

Heidecke State Fish and Wildlife Area *

Kankakee River State Park

Lake DePue Fish and Wildlife Area *

Lake Sinnissippi Fish and Wildlife Area

Newton Lake Fish and Wildlife Area *

Pekin Lake Fish and Wildlife Area

Spring Lake Fish and Wildlife Area (hunting from registered blinds or within 10

feet of staked blind sites is permitted after the close of the duck season) *

Starved Rock State Park *

e) The following sites will be open to any goose hunting seasons that occur after the regular Canada goose hunting season:

~~Clinton Lake State Recreation Area (season closes March 15)~~

Fulton County Goose Management Area (from pits or staked blinds sites only)*

Horseshoe Lake Conservation Area (controlled hunting and public hunting areas) * @

Jim Edgar Panther Creek State Fish and Wildlife Area (Open Unit, West Open Unit, Quail Management Unit only)

Pyramid State Park – Captain Unit (no hunting in Captain Unit Waterfowl Rest Area @

Pyramid State Park – Denmark Unit (no hunting in Denmark Unit Waterfowl Rest Area) @

Pyramid State Park – East Conant Unit

Pyramid State Park – Galum Unit @

Sangchris Lake State Park *

Stephen A. Forbes State Park *

Snakeden Hollow State Fish and Wildlife Area (from pits only) *

Union County Conservation Area (firing line and controlled hunting area) * @

William W. Powers Conservation Area

f) The following sites will be closed to all goose hunting seasons that occur outside the regular duck season dates:

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENTS

~~Campbell Pond Wildlife Management Area~~

Donnelley Fish and Wildlife Area

Mazonia State Fish and Wildlife Area *

Mermet Lake Fish and Wildlife Area

Powerton Reservoir

Redwing Slough/Deer Lake

g) The following sites will be open to any goose hunting seasons that occur before the regular duck season and after the regular Canada goose season:

Kidd Lake State Natural Area

h) Violation of this Section is a petty offense (see 520 ILCS 5/2.20).

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

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENT

1) Heading of the Part: The Taking of Wild Turkeys – Fall Archery Season

2) Code Citation: 17 Ill. Adm. Code 720

3) Section Numbers: Proposed Action:
720.40 Amendment

4) Statutory Authority: Implementing and authorized by Sections 1.3, 1.4, 2.9, 2.10 and 2.11 of the Wildlife Code [520 ILCS 5/1.3, 1.4, 2.9, 2.10 and 2.11].

5) A Complete Description of the Subjects and Issues Involved: This Part is being amended to update sites and site-specific regulations.

6) Will this rulemaking contain an automatic repeal date? No

7) Does this rulemaking contain an automatic repeal date? No

8) Do this proposed amendment contain incorporations by reference? No

9) Are there any other proposed amendments pending on this Part? No

10) Statement of Statewide Policy Objective: This rulemaking does not affect units of local government.

11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Comments on the proposed rulemaking may be submitted in writing for a period of 45 days following publication of this notice to:

Jack Price, Legal Counsel
Department of Natural Resources
One Natural Resources Way
Springfield IL 62702-1271
217/782-1809

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

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENT

C) Types of professional skills necessary for compliance: None

13) Regulatory Agenda on which this rulemaking was summarized: July 2003

The full text of the Proposed Amendment begins on the next page:

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENT

TITLE 17: CONSERVATION
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES
SUBCHAPTER b: FISH AND WILDLIFE

PART 720
THE TAKING OF WILD TURKEYS – FALL ARCHERY SEASON

Section

720.10 Hunting Seasons and Counties Open to Hunting
720.20 Statewide Turkey Permit Requirements
720.25 Turkey Permit Requirements – Landowner/Tenant Permits
720.30 Turkey Hunting Regulations
720.40 Regulations at Various Department-Owned or -Managed Sites
720.50 Releasing or Stocking of Turkeys (Repealed)

AUTHORITY: Implementing and authorized by Sections 1.3, 1.4, 2.9, 2.10 and 2.11 of the Wildlife Code [520 ILCS 5/1.3, 1.4, 2.9, 2.10 and 2.11].

SOURCE: Adopted and codified at 8 Ill. Reg. 7825, effective May 22, 1984; emergency amendments at 8 Ill. Reg. 20086, effective October 12, 1985, for a maximum of 150 days; emergency expired March 2, 1985; amended at 9 Ill. Reg. 14311, effective September 5, 1985; amended at 11 Ill. Reg. 9556, effective May 5, 1987; amended at 12 Ill. Reg. 12254, effective July 15, 1988; amended at 13 Ill. Reg. 12831, effective July 21, 1989; amended at 14 Ill. Reg. 12413, effective July 20, 1990; amended at 15 Ill. Reg. 11611, effective August 2, 1991; amended at 16 Ill. Reg. 11093, effective June 30, 1992; amended at 16 Ill. Reg. 15442, effective September 28, 1992; amended at 17 Ill. Reg. 281, effective December 28, 1992; amended at 17 Ill. Reg. 10850, effective July 1, 1993; amended at 18 Ill. Reg. 10104, effective June 21, 1994; amended at 19 Ill. Reg. 11799, effective August 3, 1995; amended at 20 Ill. Reg. 10890, effective August 5, 1996; amended at 21 Ill. Reg. 9102, effective June 26, 1997; amended at 22 Ill. Reg. 14856, effective August 3, 1998; amended at 23 Ill. Reg. 9082, effective July 28, 1999; amended at 24 Ill. Reg. 8956, effective June 19, 2000; amended at 25 Ill. Reg. 11448, effective August 14, 2001; amended at 26 Ill. Reg. 13867, effective September 5, 2002; amended at 27 Ill. Reg. 12658, effective July 21, 2003; amended at 28 Ill. Reg. _____, effective _____.

Section 720.40 Regulations at Various Department-Owned or -Managed Sites

Statewide regulations shall apply for the following sites, except those sites designated below by asterisk (*) shall be open to archery turkey hunting without regard to firearm deer season. Those sites followed by (1) require hunters to check in and check out. Violation of a site specific

regulation is a Class B misdemeanor (see 520 ILCS 5/2.9). Those sites followed by a (2) require hunters to obtain a permit from the site before hunting:

* Anderson Lake Conservation Area (1)

Apple River Canyon State Park – Salem and Thompson Units (1)

Argyle Lake State Park (1)

Beaver Dam State Park (2)

Big Bend State Fish and Wildlife Area (1)

Big River State Forest (1)

Cache River State Natural Area (1)

Campbell Pond Wildlife Management Area

Carlyle Lake Lands and Waters – Corps of Engineers Managed Lands

Carlyle Lake Wildlife Management Area (subimpoundment area closed 7 days prior to and during the southern zone waterfowl season)

Castle Rock State Park (1)

Chain O'Lakes State Park (closed Wednesday through Sunday of pheasant season; opens Monday prior to pheasant season and closes Tuesday following close of pheasant season; reopens December 26 through the close of regular season) (1)

Chauncey Marsh (permit available at Red Hills State Park) (2)

Clinton Lake State Recreation Area (2)

Crawford County Conservation Area (1)

Cypress Pond State Natural Area (1)

Devil's Island

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENT

Dixon Springs State Park (1)

Dog Island Wildlife Management Area (1)

Eagle Creek State Park (2)

Falling Down Prairie (1)

Ferne Clyffe State Park (1)

Fort de Chartres Historic Site

Fort Massac State Park (1)

* Franklin Creek State Park (hunting in designated area only) (1)

Giant City State Park (1)

Green River State Wildlife Area (1)

Hamilton County Conservation Area (must possess valid site archery permit) (2)

Hanover Bluff Natural Area~~—Kopper Tract~~ (1)

Harry "Babe" Woodyard State Natural Area (2)

Horseshoe Lake Conservation Area (Alexander County) (controlled goose hunting area closed 7 days prior to the Quota Zone goose season through the close of the Quota Zone goose season; remainder of the public hunting area open during the statewide season) (1) (2)

* Horseshoe Lake State Park – Gabaret, Mosenthein and Chouteau Island Units (Madison County) (2)

I-24 Wildlife Management Area (1)

Iroquois County State Wildlife Area

Jim Edgar Panther Creek State Fish and Wildlife Area (2)

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENT

Johnson-Sauk Trail State Park (closed Wednesday through Sunday during site's pheasant permit season) (1)

Jubilee College State Park (1)

Kaskaskia River State Fish and Wildlife Area

Kickapoo State Park (2)

Kinkaid Lake Fish and Wildlife Area

Kishwaukee River State Fish and Wildlife Area (2)

Lowden-Miller State Forest (1)

Mackinaw River State Fish and Wildlife Area (1)

Marseilles State Fish and Wildlife Area (closed each Friday, Saturday, and Sunday in October) (1)

Marshall State Fish and Wildlife Area (Duck Ranch Unit closed 7 days prior to the duck season through the close of duck season) (1)

* Matthiessen State Park (hunting in designated areas only; must have valid archery deer permit in possession to hunt turkeys; open concurrent with site archery deer season; during the statewide firearm deer seasons, hunters must meet orange clothing requirements) (1) ~~(2)~~

Mautino State Fish and Wildlife Area (2)

Mermet Lake State Fish and Wildlife Area (1)

Middle Fork State Fish and Wildlife Area (2)

Mississippi Palisades State Park (November 1 through December 31) (2)

Mississippi River Fish and Waterfowl Management Area (Pools 25 and 26)

Mississippi River Pools 16, 17 and 18

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENT

Mississippi River Pools 21, 22 and 24

Nauvoo State Park (Max Rowe Unit only)

Newton Lake Fish and Wildlife Area (must possess valid site archery permit) (2)

Oakford Conservation Area

Peabody River King State Fish and Wildlife Area (east and north subunits closed November 1) (1)

Pere Marquette State Park (1)

Pyramid State Park

Pyramid State Park – East Conant Unit (2)

* Ramsey Lake State Park (2)

* Randolph County Conservation Area

Ray Norbut State Fish and Wildlife Area (all hunting closes December 15 in Eagle Roost Area) (1)

* Red Hills State Park (1)

* Rend Lake Project Lands and Waters

Sahara Woods State Fish and Wildlife Area (1)

Saline County Conservation Area (1)

* Sam Dale Lake Conservation Area (2)

* Sam Parr State Park (1)

Sand Ridge State Forest (2)

* Sandy Ford Land and Water Reserve~~(permits available at Starved Rock State Park)~~ (1) ~~(2)~~

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENT

Sanganois State Fish and Wildlife Area (2)

* Shabbona Lake State Park (1)

Shelbyville Lake – Corps of Engineers Managed Lands

Shelbyville Wildlife Management Area (2)

Sielbeck Forest Natural Area (1)

Siloam Springs State Park

Siloam Springs State Park – Buckhorn Unit (resident hunters only) (1)(2)

~~Siloam Springs State Park – Scripps Unit (resident hunters only) (1)(2)~~

Snakeden Hollow Fish and Wildlife Area – Ives Unit (1)

* Spring Lake State Fish and Wildlife Area (2)

* Stephen A. Forbes State Park (2)

Tapley Woods State Natural Area (1)

Ten Mile Creek Fish and Wildlife Area (2)

Trail of Tears State Forest (1)

Turkey Bluffs State Fish and Wildlife Area

Union County Conservation Area (firing line unit – Statewide season, Public Hunting Area October 1 through October 31, reopens with the close of the Quota Zone goose season) (1)

* Washington County Conservation Area (1)

Weinberg-King State Park

Weinberg-King State Park – ~~(~~Cecil White Unit~~)~~

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Weinberg-King State Park – Scripps Unit (resident hunters only) (1)

Wildcat Hollow State Forest

Witkowsky State Wildlife Area (1)

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

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1) Heading of the Part: Illinois Professional Land Surveyor Act of 1989

2) Code Citation: 68 Ill. Adm. Code 1270

3)

Section Numbers:	Proposed Action:
1270.5	Amendment
1270.10	Amendment
1270.13	Amendment
1270.15	Amendment
1270.30	Amendment
1270.56	Amendment
1270.65	Amendment

4) Statutory Authority: Illinois Professional Land Surveyor Act of 1989 [225 ILCS 330].

5) A Complete Description of the Subjects and Issues Involved: This proposed rulemaking clarifies the experience requirements in Section 1270.13 and amends Section 1270.15 to clarify curriculum requirements. Section 1270.56 is also amended to change the number of professional development hours needed each renewal period and to clarify the requirements in obtaining professional development hours. Various technical changes are also included.

6) Will these proposed amendments replace emergency rules 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? No

10) Statement of Statewide Policy Objectives (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 to:

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

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All written comments received within 45 days after this issue of the *Illinois Register* will be considered.

12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected: Those providing the services of land surveyors.

B) Reporting, bookkeeping or other procedures required for compliance: None

C) Types of professional skills necessary for compliance: Land surveying skills are required for licensure.

13) Regulatory Agenda on which this rulemaking was summarized: January 2004

The full text of the Proposed Amendments begins on the next page:

DEPARTMENT OF PROFESSIONAL REGULATION

NOTICE OF PROPOSED AMENDMENTS

TITLE 68: PROFESSIONS AND OCCUPATIONS
CHAPTER VII: DEPARTMENT OF PROFESSIONAL REGULATION
SUBCHAPTER b: PROFESSIONS AND OCCUPATIONS

PART 1270
ILLINOIS PROFESSIONAL LAND SURVEYOR ACT OF 1989

Section

1270.5 Application for Licensure as a Professional Land Surveyor-in-Training by Examination
1270.10 Application for Licensure as a Professional Land Surveyor by Examination
1270.13 Experience
1270.15 Definition of Related Science
1270.20 Examinations
1270.30 Endorsement
1270.35 Inactive Status
1270.40 Restoration
1270.45 Professional Design Firm
1270.50 Renewals
1270.52 Fees
1270.55 Land Surveyor Complaint Committee
1270.56 Minimum Standards of Practice
1270.57 Standards of Professional Conduct
1270.58 Seal and Signature Requirements
1270.60 Granting Variances
1270.65 Professional Development
1270.APPENDIX A Rules for the Perpetuation of Monuments Under the Land Survey Monuments Act

AUTHORITY: Implementing the Illinois Professional Land Surveyor Act of 1989 [225 ILCS 330] and authorized by Section 2105-15(7) of the Civil Administrative Code of Illinois [20 ILCS 2105/2105-15(7)].

SOURCE: Rules and Regulations Promulgated for the Administration of the Illinois Land Surveyors Act, effective April 27, 1967; 2 Ill. Reg. No. 50, page 64, effective December 11, 1978; codified and amended at 5 Ill. Reg. 11039; 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; emergency amendment at 8 Ill. Reg. 5365, effective April 12, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 15485, effective

August 10, 1984; amended at 11 Ill. Reg. 1615, effective January 6, 1987; amended at 11 Ill. Reg. 4763, effective March 10, 1987; recodified from Chapter I, 68 Ill. Adm. Code 270 (Department of Registration and Education) to Chapter VII, 68 Ill. Adm. Code 1270 (Department of Professional Regulation) pursuant to P.A. 85-225, effective January 1, 1988, at 12 Ill. Reg. 2950; amended at 15 Ill. Reg. 5258, effective April 2, 1991; amended at 16 Ill. Reg. 15548, effective September 28, 1992; amended at 18 Ill. Reg. 5900, effective April 5, 1994; amended at 18 Ill. Reg. 14730, effective September 19, 1994; amended at 19 Ill. Reg. 16071, effective November 17, 1995; amended at 20 Ill. Reg. 5852, effective April 3, 1996; amended at 21 Ill. Reg. 14252, effective October 15, 1997; amended at 24 Ill. Reg. 576, effective December 31, 1999; amended at 24 Ill. Reg. 13719, effective August 28, 2000; amended at 24 Ill. Reg. 17548, effective November 20, 2000; amended at 25 Ill. Reg. 3865, effective March 1, 2001; amended at 26 Ill. Reg. 12263, effective July 24, 2002; amended at 28 Ill. Reg. 2228, effective January 23, 2004; amended at 28 Ill. Reg. _____, effective _____.

Section 1270.5 Application for Licensure as a Professional Land Surveyor-in-Training by Examination

An applicant for licensure as a Professional Land Surveyor-in-Training under the Illinois Professional Land Surveyor Act of 1989 (the Act) [225 ILCS 330] shall file an application, on forms supplied by the Department of Professional Regulation (the Department), by November 15 for the spring examination and May 15 for the fall examination. The application shall include the following:

a) Certification of education, completed by the educational institution attended, for one of the following:

1) A baccalaureate degree in land surveying from an accredited college or university; or

2) A baccalaureate degree from an accredited college or university in a related science, as defined in Section 1270.15, including 24 semester hours of land surveying courses.

b) A complete work history indicating all employment since fulfillment of the educational requirements set forth in subsection (a) above, if applicable.

c) The required fee specified in Section 1270.52 of this Part

d) Proof of passage of the Test of English as a Foreign Language (TOEFL) with a minimum score of 550 or 213 on the computer-based test and the Test of Spoken

English (TSE) with a minimum score of 50, for applicants who apply after January 1, 1997, who graduated from a land surveyor program outside the United States or its territories and whose first language is not English. In order to determine applicants whose first language is English, the applicant shall submit verification from the school that the land surveyor program from which the applicant graduated was taught in English.

e) Applicants who received their education in a foreign country shall have the education evaluated at their expense. Applicants shall obtain the forms from the American Association of Collegiate Registrars and Officers (AACRAO), 1 Dupont Circle, N.W., Suite 370, Washington, D.C. 20036-1110,~~National Council of Examiners for Engineers (NCEES), P.O. Box 1686, Clemson, South Carolina 29633-1686~~ or other evaluator approved by the Board. The Land Surveyors Licensing Board (the Board) will review all transcripts and the evaluation submitted to the Department to determine if the education meets the requirements set forth in this Section and Section 1270.15.

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

Section 1270.10 Application for Licensure as a Professional Land Surveyor by Examination

An applicant for licensure as a Professional Land Surveyor shall file an application, on forms supplied by the Department, by November 15 for the spring examination and May 15 for the fall examination. The application shall include the following:

a) Verification of education.

b) Proof of holding a license as a Professional Land Surveyor-in-Training.

c) Certification, on forms provided by the Department, from the state or territory of the United States in which the applicant was originally licensed as a Surveyor-in-Training and/or Land Surveyor and the state in which the applicant predominantly practices and is currently licensed, if applicable, stating:

1) The time during which the applicant was licensed in that jurisdiction, including the date of the original issuance of the license;

2) A description of the examination in that jurisdiction; and

3) Whether the file on the applicant contains any record of disciplinary actions taken or pending.

d) Verification of experience form, completed by a professional licensed land surveyor who was in direct supervision and control of his or her activities, indicating at least 4 years of responsible charge experience in land surveying as set forth in Section 1270.13.

e) A complete work history indicating all employment since passage of the Fundamentals of Surveying examination.

f) The required fee specified in Section 1270.52.

g) Proof of passage of the Test of English as a Foreign Language (TOEFL) with a minimum score of 550 or 213 on the computer-based test and the Test of Spoken English (TSE) with a minimum score of 50, for applicants who apply after January 1, 1997, who graduated from a land surveyor program outside the United States or its territories and whose first language is not English. In order to determine applicants whose first language is English, the applicant shall submit verification from the school that the land surveyor program from which the applicant graduated was taught in English.

h) Applicants who received their education in a foreign country shall have the education evaluated at their expense. Applicants may obtain forms from the American Association of Collegiate Registrars and Officers (AACRAO)~~Registrants~~, 1 Dupont Circle, N.W., Suite 370, Washington, D.C. 20036-1110 or other entity approved by the Board to evaluate educational programs. The Board will review all transcripts and the evaluation submitted to the Department to determine if the education meets the requirements set forth in this Section and Section 1270.15.

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

Section 1270.13 Experience

The experience requirements set forth in Section 1270.10 shall meet the criteria described below.

a) Credit shall be given for actual experience in the practice of land surveying as defined in Section 5 of the Act.

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b) Such experience shall be under the direct supervision and control of a professional land surveyor in responsible charge of land surveying operations. *Direct supervision and control means the personal review by a licensed professional land surveyor of each survey, including, but not limited to, procurement, research, field work, calculations, preparation of legal descriptions and plats. The personal review shall be of such a nature as to assure the client that the professional land surveyor or the firm for which the professional land surveyor is employed is the provider of the surveying services.* (Section 4 of the Act)

c) Experience shall be in areas of land surveying practice designated in this subsection (c) or in other areas which, in the opinion of the Board, provide the applicant with knowledge of practice of land surveying at least equivalent to that which is generally acquired by experience in the areas listed. An applicant need not have experience in all areas listed below.

1) The applicant shall have not less than 25% or more than 50% of cumulative actual experience in the following areas:~~Locating land boundaries and land boundary corners, including the following services:~~

A) Field procedures to perform boundary surveys of existing or proposed tracts of land;~~Researching public and private records;~~

B) Field procedures to locate or re-establish section corners that are part of the public land survey system; ~~Relocating lost or obliterated corners;~~

C) Field procedures to perform surveys for subdivisions and condominiums. ~~Establishing, reestablishing or perpetuating survey monuments;~~

~~D) Subdividing sections;~~

~~E) Establishing or retracing property lines to determine length and bearing;~~

~~F) Reestablishing obliterated property lines;~~

~~G) Preparing descriptions of real property from data acquired by field measurements;~~

~~H)~~ ~~Conducting resurveys; and~~

~~I)~~ ~~Writing and interpreting land descriptions.~~

2) The applicant shall have the remainder of cumulative actual experience in the following areas:~~Preparing maps, including:~~

A) Research of records to obtain data to perform boundary surveys or obtain other required data; ~~Maps of sections or portions of sections or townships as established by the original public land survey and subdivisions of those sections in accordance with the manuals of surveying instructions by the federal government and the State of Illinois;~~

B) Calculations and analyses of data to determine locations, dimensions and area of existing or proposed tracts of land;~~Subdivision plats prepared in accordance with the Illinois Statutes or local ordinances;~~

C) Calculations and analyses of data to determine position of section corners or locations, dimensions or areas of aliquot parts of sections, all in the public land survey system; ~~Certified survey maps prepared in accordance with the Illinois Statutes or local ordinances;~~

D) Preparation of legal descriptions;~~Maps showing other divisions of land not controlled by statute or ordinance; and~~

E) Preparation of plats of surveys for existing or proposed tracts of land;~~Official plats or maps of land in this State.~~

F) Preparation of plats of subdivisions and plats of condominiums;

G) Preparation of section corner monument records;

H) Field procedures to perform topographic surveys;

I) Preparation of topographic plats of surveys.

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

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Section 1270.15 Definition of Related Science

A baccalaureate degree in a Related Science is a baccalaureate degree from an accredited college or university that includes~~four-year curriculum that includes 24 hours of land surveying courses and~~ core courses in at least the following subjects, or their equivalents, for the minimum semester hours shown. The following subjects all may be completed prior to, concurrent with, or subsequent to receiving the baccalaureate degree.~~or their equivalent:~~

a) Mathematics (College Algebra and beyond) – 15 semester hours

b) Basic Sciences (Physics and/or Chemistry) – 8 semester hours

c) Additional Basic Sciences (including but not limited to: Geology, Geography, Dendrology, Astronomy, Biology, Soil Mechanics, and engineering sciences) – 20 semester hours

d) Land Surveying courses (including, but not limited to: fundamentals of land surveying, boundary surveying, route surveying, topographic surveying, descriptions, legal aspects, subdivision design, data computations and adjustments, map projections and geometric geodemy and photogrammetry) – 24 semester hours

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

Section 1270.30 Endorsement

a) An applicant who is licensed or registered to practice Land Surveying as a Professional Land Surveyor or a Professional Land Surveyor-in-Training under the laws of another state or territory of the United States who desires to become licensed by endorsement shall file an application with the Department together with:

1) Proof that the applicant has met the requirements substantially equivalent to those in force in this state for a Licensed Professional Land Surveyor at the time of original or subsequent licensure by examination in the other state or territory, including certification of education, and verification of experience as appropriate;

2) A certification by the state or territory of original licensure and

certification from the state or territory of predominant active practice, including the following:

A) The time during which the applicant was licensed in that state or territory, including the date of the original issuance of the license;

B) The basis of licensure and a description of all examinations by which the applicant was licensed in that state or territory and the date of passage of any such examinations; and

C) Whether the records of the licensing authority contain any record of disciplinary action taken or pending against the applicant;

3) A complete work history indicating all employment since fulfillment of educational requirements;

4) The required fee specified in Section 1270.52;

5) Applicants who received a license after January 1, 1997 and who received their education in a foreign country shall have the education evaluated at their expense. Applicants may obtain forms from the American Association of Collegiate Registrars and Officers (AACRAO),~~Registrants,~~ 1 Dupont Circle, N.W., Suite 370, Washington, D.C. 20036-1110 or other entity approved by the Board to evaluate educational programs. The Board will review all transcripts and the evaluation submitted to the Department to determine if the education meets the requirements set forth in this Section and Section 1270.15;

6) Proof of passage of the Test of English as a Foreign Language (TOEFL) with a minimum score of 550 or 213 on the computer-based test and the Test of Spoken English (TSE) with a minimum score of 50, for applicants who were licensed after January 1, 1997, who graduated from a land surveyor program outside the United States or its territories and whose first language is not English. In order to determine applicants whose first language is English, the applicant shall submit verification from the school that the land surveyor program from which the applicant graduated was taught in English.

b) An applicant for licensure under this Section shall be required to appear before the Board for an oral interview if the Department has questions about the

applicant's application, because of discrepancies or conflicts in information, information needing further clarification and/or missing information.

c) Applicants for licensure on the basis of endorsement shall successfully complete the Illinois Jurisdictional Examination as set forth in Section 1270.20.

d) The Department shall examine each endorsement application to determine whether the requirements in the state or territory of original licensure were substantially equivalent to the requirements then in force in the State of Illinois. The Department shall either issue a license by endorsement to the applicant or notify the applicant in writing of the reason for the denial of such application.

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

Section 1270.56 Minimum Standards of Practice

The minimum standards of practice set forth in this Section are intended to provide protection for the public by insuring that surveying services defined in this Section are completed in accordance with prevailing professional practices and current technological methods, and to provide a means by which professional performance of the individual practitioner can be assessed. These standards are to be binding upon every person and firm practicing land surveying in the State of Illinois, except where differing federal, State or local laws, ordinances or rules may be more stringent, or when special conditions exist that effectively prevent the survey from meeting these minimum standards. When special conditions exist any necessary deviations from the standards shall be noted on the plat of survey. It shall be a violation of this Part to use special conditions to circumvent the intent and purpose of the minimum standards. Any of the professional services set forth in this Section are greatly influenced by the evaluation of recorded information and field observations, and all those services shall be accomplished in compliance with these standards to ensure that they are located, described and platted in a professional manner. All terms used in these Minimum Standards of Practice shall be interpreted to agree with the definitions of those terms in the most current publication of Black's Law Dictionary, Definitions of Surveying and Associated Terms published by the American Congress on Surveying and Mapping (ACSM) and the American Society of Civil Engineers (ASCE), and Glossary of the Mapping Sciences published by American Society for Photogrammetry and Remote Sensing (ASPRS), ACSM and the ASCE.

a) ALTA/ACSM Land Title Survey

1) An ALTA/ACSM land title survey is a specialized survey that meets the specific needs peculiar to title insurance purposes, to enable title insurance

companies to insure title to land without exceptions as to survey matters.

2) All land title surveys shall be subject to the "Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys" published jointly by the American Land Title Association (ALTA), 1828 L. St., N.W., Suite 705, Washington, D.C. 20036; the American Congress on Surveying and Mapping (ACSM), 5410 Grosvenor Lane, Bethesda MD 20814; and the National Society of Professional Surveyors (NSPS), 5410 Grosvenor Lane, Bethesda MD 20814, 1999. This incorporation does not include any later amendments or editions.

3) All ALTA/ACSM land title surveys are to be performed to the current ALTA/ACSM Minimum Standard Detail Requirements. It is incumbent upon the licensed professional land surveyor to discuss with the client additional or optional requirements to be provided.

b) Boundary Survey

1) A boundary survey is a land survey that requires study, investigation and evaluation of major factors affecting and influencing the location of boundary lines and that culminates in the deliberate location or relocation of the perimeters, division lines or boundaries of a certain lot, parcel or quantity of real estate, according to the record title description of the parcel or parent tract. This description should be furnished by the client, unless otherwise jointly agreed upon by the client and surveyor.

2) The purpose of a boundary survey is to establish or re-establish the extent of title lines, and to define and identify those lines so as to uniquely locate each lot, parcel or other specific land area in relation to well recognized and established points of reference, adjoining properties, and rights of way.

3) A boundary survey shall include, but not be limited to, the following:

A) Clear and legible field notes containing all pertinent information, measurements and observations made in the course of the field survey.

B) Unless requested otherwise by the client or his/her agent, a plat of survey.

C) A legal description for any parcel surveyed.

D) Unless requested otherwise by the client or his/her agent, monuments or witness points shall be set for all accessible corners of the survey.

4) Information Research Required. Sufficient information to perform the survey shall be either furnished by the client and/or his/her agent or obtained by the surveyor by agreement with the client. The following appropriate factors must be evaluated by the surveyor:

A) A property description describing the subject parcel. If, in the opinion of the surveyor, the description furnished or obtained is insufficient to fully define the extent or location of the parcel to be surveyed due to ambiguity or calls for adjoining deeds, prior recorded survey plats, etc., it is the duty of the client (unless agreed upon otherwise) to furnish the additional information requested by the surveyor. This is not to be construed to indicate that the surveyor has an obligation to research the title of record.

B) A reproduction of the recorded subdivision plat that created the subject lot, block or parcel.

C) A reproduction of the Government Township Plat and pertinent Monument Records if the survey is of a section or aliquot part of a section.

D) Relevant data provided by the client regarding special circumstances, such as unrecorded easements, judgements or Court decrees that may influence the location of boundaries of the survey.

5) Monuments. Monuments set or called for, whether artificial or natural, bear witness to the footsteps of a surveyor and his/her professional opinion as to the proper marking of a desired position. Monumentation for public land survey systems corners shall be in accordance with the Land Survey Monuments Act. The following shall be considered acceptable types of artificial monuments for all other corners:

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A) Types

i) Iron bars or rods shall be a minimum of ½" in diameter by 24" in length. Iron pipes shall be a minimum of ½" in diameter by 24" in length, with a minimum wall thickness of ⅛". Where rocky soils prevent specified lengths, the bar, rod or pipe should be driven to refusal at depths where it will remain stable.

ii) Concrete monuments shall be a minimum size of 5" in diameter by 24" in length, or 4" square by 24" in length, and shall have a precise corner mark and shall be reinforced by at least a ¼" re-bar or ½" or larger iron pipe.

iii) Stone monuments shall be a minimum size of 4" square by 24" in length and shall have a precise corner mark.

iv) Commercial cast iron or aluminum survey markers no less than 24" in length. Non-ferrous markers shall have ceramic magnets attached to aid in recovery.

v) Other monuments, such as drill holes, chiseled marks in stone, concrete or steel, punch marks, precast bronze discs, nails or spikes, etc., shall be of sufficient size, diameter or depth to be definitive, stable and readily identified as a survey marker. Objects upon which the marks or markers are placed shall be of a stable and permanent nature.

B) Requirements

i) Where placement of corner monuments is a condition of the survey and it is physically impossible or impractical to set a monument at the corner, a witness corner or corners will be set, or noted if existing witness corners are found. Witness corners shall be referenced to the survey corner or survey lines.

ii) Monuments must be set to a sufficient depth so as to retain a stable and distinctive location. Material and size for monuments shall be chosen in regard to the terrain and

situation that exists at the site of the survey. All monuments shall be set vertically whenever possible.

6) Plats. On all boundary surveys the completed plat shall be drawn on a stable and durable medium with a minimum size of 8½" by 11" and shall contain the following:

A) Firm name, address and registration number.

B) Professional land surveyor seal, signature, date of signing, and license expiration date. Rubber-stamp signatures, computer generated signatures or other reproduced signatures are prohibited.

C) Client's name.

D) North arrow.

E) Scale-written or graphic.

F) Date of completion of field work.

G) Legal description of the property.

H) Legend for all symbols and abbreviations used on the plat.

I) Monuments or witness corners, whether set or found, intended to represent or reference corners of the survey, shall be shown and described as to size, shape and material, and their positions noted in relation to the survey corners.

J) Sufficient angles, bearings or azimuths, ~~and~~ linear dimensions and curve data must be shown on the plat to provide a mathematically closed figure for the exterior of the survey. Where record angular ~~or linear~~ dimensions, bearings or azimuths, linear dimensions or curve data exist, such data shall be shown on the plat and distinguished from measured dimensions or data. ~~of the survey differ from record data, both are to be shown.~~ Area of the survey ~~is a negotiable item and~~ is to be shown on the face of the plat unless otherwise~~if~~ requested by the client ~~or his agent~~.

K) Where bearing, azimuth or coordinate systems are used, the basis or proper names of the system shall be noted on the plat.

L) If the survey is a parcel in a recorded subdivision, any adjacent rights of way or easements and~~or~~ setback lines shown on the recorded plat that affect the subject parcel are to be shown and dimensioned.

M) Visible physical evidence of possession or occupation ~~within three feet~~ either way from the exterior lines of the survey shall be shown and dimensioned.

N) Show visible evidence of improvements, rights of way, easements, or use when requested by the client.

O) Exculpatory statements that attempt to restrict the uses of boundary surveys shall not be affixed to any plat.

P) The following statement shall be placed near the professional land surveyor seal and signature: "This professional service conforms to the current Illinois minimum standards for a boundary survey."

7) Field Procedures. All field work shall be performed by a professional land surveyor or a person under his/her direct control and supervision in accordance with accepted methods of surveying theory, practice and procedures. It is the responsibility of the professional land surveyor to insure conformance with the following specific requirements:

A) All surveying instruments shall be kept in proper adjustment and calibration.

B) All corners or monuments called for in the information provided or obtained under subsection (b)(4) that affect the location of the boundaries of the land to be surveyed shall be physically searched for in a methodical and meticulous fashion. Each corner or monument recovered shall be evaluated as to its agreement by description and location with the information in subsection (b)(4).

C) Other evidence that could influence the location of the lines or corners of the survey shall be located and evaluated.

D) When the survey is of an aliquot or divisional part of a larger tract, sufficient field work must be performed to ensure that the existence of excess or deficiency, if any, in the parent tract can be determined and distributed by the professional judgment of the surveyor.

E) All field data, including electronic field notes, shall be retained in a legible and orderly fashion that will be understandable to other surveyors.

8) It shall be the responsibility of each professional land surveyor to monitor his/her work and that of those working under his/her supervision, so that the methods used to perform the survey and produce the plat and/or report will be of such quality that the accuracy, precision and positional tolerance of the final product delivered to his/her client will equal or exceed that which would be provided by another competent surveyor under similar circumstances.

c) Condominium Surveys. Condominium surveys are a specialized class of boundary surveys and are governed by the "Condominium Property Act" [765 ILCS 605]. The plat requirements referred to in Section 5 of that Act must be the result of actual field measurements and are not to be transcribed from plans or other informational materials. The exterior boundaries of a condominium parcel shall be monumented as required by the Plat Act [765 ILCS 205]. Notes on the condominium plat must indicate whether the interior measurements shown are referring to finished or unfinished surfaces or planes and what data was used for any elevations depicted on the plat.

d) Subdivision Surveys.

1) Subdivision surveys are properly included in the boundary survey category and are primarily governed by the Plat Act. Subdivision surveys differ from the typical boundary survey in that monumentation for subdivision surveys is mandatory according to the statute. All exterior corners of the subdivision must be monumented prior to recordation of the subdivision plat. If, in the opinion of the subdividing surveyor, a disportionate number of interior monuments would be destroyed by grading, utility installation, etc., monumentation of the interior corners may be delayed unless local regulations or ordinances specify otherwise.

Interior corners of the subdivision must be monumented prior to the conveyance of any lot, block, parcel or unit within the subdivision and in all cases the monumentation must be in place within 12 months after the recording date of the subdivision plat. All of the interior corners subject to delayed staking shall be denoted on the record plat as "to be set", either by labeling or appropriate symbols. Upon completion of the monumentation the subdividing surveyor shall file an affidavit with the Recorder of the county in which the subdivision is located certifying that the monumentation of the subdivision has been completed. The affidavit shall include the name of the subdivision, date of plat recording and recording location information (book and page and/or document number).

2) Vertical subdivisions, i.e., subdivisions that divide property by horizontal, vertical, and oblique planes, require that all exterior boundary corners of the subdivision be monumented at its ground elevation prior to recordation of the subdivision plat. The physical features, if any, controlling the limits of the subdivided property must be defined on the subdivision plat. The datum used to control the dividing horizontal planes must be defined on the subdivision plat together with the benchmark used to determine the elevations of these planes. The interior corners or any lot or block corners other than those that are required for monumenting the exterior boundary corners do not require monumentation.

e) Mortgage Inspection. A Mortgage Inspection does not approach the standards of other survey categories, though by the provisions of Section 5 of the Illinois Professional Land Survey Act of 1989 [225 ILCS 330/5] the services of an Illinois Professional Land Surveyor are required. A mortgage inspection is not a type of boundary survey or ALTA/ACSM survey and does not constitute a boundary survey of the subject real property. A mortgage inspection includes field investigation, measurements and graphic representation of improvements.

1) Purpose. The mortgage inspection is intended for use by a mortgage lender and/or title insurer and is only a professional opinion of the relationship of improvements with respect to the deed lines and the existence, location and type of building on the property, the intent of which is to assist in the determination of the property's suitability to serve as collateral for a mortgage. It is not an opinion as to deed, title or platted lines. It is not to be used in matters of boundary disputes, legal actions between landowners, or for construction purposes. No new legal descriptions can be created from a mortgage inspection.

2) Product. A complete mortgage inspection will produce a drawing entitled "Mortgage Inspection" and, if required, a written report of the surveyor's findings and determinations.

3) Information.

A) The following information shall be furnished by the client and/or his/her agent:

i) Legal description and address for the tract of land.

ii) Copy of commitment of title insurance for the tract of land, if possible.

B) The following information shall be obtained by the surveyor:

i) Copy of recorded subdivision plats (if applicable).

ii) Recorded section corner tie monuments and original government surveys (if applicable).

iii) Other necessary surveying information.

4) Monuments. No monuments shall be set.

5) Tolerances. Tolerances cannot be mandated for a mortgage inspection since the very nature of recovering deed lines and other information for that purpose precludes a rigid adherence to any standard value.

6) Field Procedures. The following procedures should generally be considered as minimum, but deviations as dictated by specific conditions shall be allowed:

A) Preliminary search and recovery of existing monument evidence.

B) Field location of tract through measurement from some controlling locations, such as: street intersection, subdivision corner, section corners, etc., sufficient to eliminate the possibility of gross error in location of the premises.

C) Through field measurements, locate and dimension relevant improvements.

D) If evidence of deed lines does not exist, the surveyor is obligated to refuse to perform a mortgage inspection until satisfactory evidence is obtained, either through a boundary survey or a land title survey.

E) If evidence exists of the possibility that the improvements on the subject property or adjoining property are on or very near the apparent deed lines, the surveyor is obligated to note his/her findings and recommend that a boundary survey or land title survey be performed.

7) Drawing.

A) Minimum size: 8½" x 11".

B) The drawing shall be entitled:

MORTGAGE INSPECTION
THIS DOES NOT CONSTITUTE A BOUNDARY SURVEY

(The above two lines shall be of the same letter size and shall be twice the letter size of all other lettering on the drawing.)

C) A North arrow, scale of drawing, date and drawing legend shall be included.

D) Building dimensions and type of structure shall be shown.

E) Boundary dimensions shown shall be based on the public record or description provided; field measurements do not need to be shown.

F) No dimensional ties from structures or other improvements to apparent deed lines are required.

G) The legal description of the tract shall be given on the face of the drawing.

H) Use of the word "survey" in the title, or any implication in a certification that this drawing represents a "survey", is prohibited.

I) Professional land surveyor seal, signature, date of signing, and license expiration date. Rubber-stamp signatures, computer-generated signatures or other reproduced signatures are prohibited.

J) Address of the tract.

K) No found corner, boundary line or other survey monumentation shall be shown on the drawing.

L) Preceding the legal description and in the same size letters as the legal description the following statement shall appear:

"This mortgage inspection and drawing is not a boundary survey or plat of survey. This mortgage inspection was prepared to assist the mortgage company and title insurance company and is not to be used for any purposes of boundary disputes, location of actual deed, title or platted lines, or for construction of new improvements. Graphic representation shall be deemed approximate and no reliance should be placed on the scale of the drawing."

M) The following statement shall be placed immediately above the signature of the surveyor and in the same size letters as the legal description:

"This professional service conforms to the current Illinois minimum standards of practice for a mortgage inspection and is not a boundary survey."

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

Section 1270.65 Professional Development

The professional development required as a condition for license renewal under the Illinois Professional Land Surveyor Act is set forth in this Section. All land surveyors shall meet these requirements.

DEPARTMENT OF PROFESSIONAL REGULATION

NOTICE OF PROPOSED AMENDMENTS

a) Professional Development Hours Requirements

1) Beginning with the November 30, 2006~~2004~~ renewal and every renewal thereafter, in order to renew a license as a land surveyor, a licensee shall be required to complete 24~~20~~ professional development hours (PDH) relevant to the practice of land surveying. Failure to comply with these requirements may result in non-renewal of the land surveyor's license or other disciplinary action, or both. The total 24 professional development hours shall be in the following categories, with the listed minimum professional development hours per category.

A) Programs or courses in the area of State of Illinois Statutes and Rules that regulate professional land surveyors and surveys. Minimum required professional development hours in this category per renewal period is 4 hours.

B) Programs or courses in the area of professional conduct. Minimum required professional development hours in this category per renewal period is 2 hours.

C) Programs or courses in the area of land surveying or related sciences. Minimum required professional development hours in this category per renewal period is 18 hours, no more than 4 hours of which will be allowed to be obtained from on-line, distance learning or video courses.

2) A prerenewal period is the 24 months preceding November of each even-numbered year.

3) One professional development hour shall equal 50 minutes of instruction or participation. If a program is taken that awards continuing education units (CEU) rather than professional development hours, one continuing education unit equals 10 professional development hours of class in an approved continuing education course.

4) A renewal applicant shall not be required to comply with CE requirements for the first renewal of an Illinois license.

5) Land surveyors licensed in Illinois but residing and practicing in other states shall comply with the CE requirements set forth in this Section.

6) Professional development units used to satisfy the CE requirements of another jurisdiction may be applied to fulfill the CE requirements of the State of Illinois if they are substantially equivalent.

b) Professional Development Activities shall include, but not be limited to:

1) Successful completion of a college or university course in the area of land surveying, related sciences and surveying ethics. One semester credit hour of course work is equivalent to 15 PDHs and one quarter credit hour of course work is equivalent to 10 PDHs;~~.~~

2) Successful completion of land surveying courses or programs offering professional development hours;

3) Active participation and successful completion of land surveying programs, seminars, tutorials, workshops, short courses or in-house courses;

4) Attending program presentations at related technical or professional meetings;

5) Teaching or instructing. Teaching credit is valid for teaching a course or seminar for the first time only and does not apply to faculty in the performance of their regularly assigned duties. Two PDHs will be awarded for every hour of teaching or presentation;

6) Authoring papers or articles that appear in nationally circulated journals or trade magazines. Credit is earned in the biennium of publication. A maximum of 5 PDHs per renewal are allowed for this activity.

c) All programs or courses shall:

1) Contribute to the advancement, extension and enhancement of the professional skills and scientific knowledge of the licensee in the practice of land surveying;

2) Foster the enhancement of general or specialized practices and values of land surveying;

3) Be developed and presented by persons with education and/or experience in the subject matter of the program; and

4) Specify the course objectives and course content.

d) It shall be the responsibility of a licensee to maintain a record of PDHs for 5 years that:

1) Includes:

A) The name and address of the sponsor or provider;

B) A brief statement of the subject matter, printed program schedules, registration receipts or other proof of participation;

C) Certificate of attendance;

D) The number of hours attended in each program; and

E) The date and place of the program; or

2) Includes transcripts or records of professional development hours maintained by an acceptable provider as set forth in subsection (e).

e) Acceptable providers for structured educational activities shall include, but not be limited to:

1) Illinois Professional Land Surveyor Association;

2) National Council of Examiners for Engineering and Surveying (NCEES);

3) National Society of Professional Land Surveyors;

4) American Congress on Surveying and Mapping (ACSM);

5) American Society of Civil Engineers (ASCE);

6) Colleges, universities or other educational institutions;

7) Other technical or professional societies or organizations.

f) The Department shall not pre-approve individual courses or programs.

g) Certification of Compliance with CE Requirements

1) Each renewal applicant shall certify, on the renewal application, full compliance with the professional development requirements set forth in this Section.

2) The Department may require additional evidence demonstrating compliance with the CE requirements (e.g., certificate of attendance). This additional evidence shall be required in the context of the Department's random audit. It is the responsibility of each renewal applicant to retain or otherwise produce evidence of compliance.

3) When there appears to be a lack of compliance with CE requirements, an applicant shall be notified in writing and may request an interview with the Board. At that time the Board may recommend that steps be taken to begin formal disciplinary proceedings as required by Section 10-65 of the Illinois Administrative Procedure Act [5 ILCS 100/10-65].

h) Restoration of Nonrenewed License. Upon satisfactory evidence of compliance with PDH requirements, the Department shall restore the license upon payment of the required fee as provided in Section 1247.75.

i) Waiver of PDH Requirements

1) Any renewal applicant seeking renewal of a license without having fully complied with the PDH requirements shall file with the Department a renewal application along with the required fee set forth in Section 1247.75, a statement setting forth the facts concerning non-compliance and request for waiver of the PDH requirements on the basis of these facts. A request for waiver shall be made prior to the renewal date. If the Department, upon the written recommendation of the Board, finds from such affidavit or any other evidence submitted that extreme hardship has been shown for granting a waiver, the Department shall waive enforcement of PDH requirements for the renewal period for which the applicant has applied.

2) Extreme hardship shall be determined on an individual basis by the Board

and be defined as an inability to devote sufficient hours to fulfilling the PDH requirements during the applicable prerenewal period because of:

A) Full-time service in the armed forces of the United States of America during a substantial part of the prerenewal period;

B) An incapacitating illness documented by a statement from a currently licensed physician;

C) A physical inability to travel to the sites of approved programs documented by a currently licensed physician; or

D) Any other similar extenuating circumstances.

3) Any renewal applicant who, prior to the expiration date of the license, submits a request for a waiver, in whole or in part, pursuant to the provisions of this Section, shall be deemed to be in good standing until the final decision on the application is made by the Department.

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

SECRETARY OF STATE

NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Rulemaking in Illinois

2) Code Citation: 1 Ill. Adm. Code 100

3)

Section Numbers:	Proposed Action:
100.355	New Section
100.410	Amendment
100.Appendix A Illustration A	Amendment

4) Statutory Authority: Implements changes to and authorized by the Illinois Administrative Procedure Act (5 ILCS 100).

5) A Complete Description of the Subjects and Issues Involved: Section 100.355 will define underlying data, and the amendment to Section 100.410 will require that underlying data be cited on the notice page.

6) Will this proposed amendment replace an emergency rule 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? No

10) Statement of Statewide Policy Objectives: The proposed amendments do not require expenditures by units of local government.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Texts of the proposed amendments are posted on Secretary of State's web site, www.sos.state.il.us/departments/index/home as part of the *Illinois Register*. Interested persons may present their comments concerning this proposed rulemaking in writing within 45 days after publication of this notice to the:

Secretary of State
Nathan Maddox, Assistant General Counsel
298 Howlett Building
Springfield, IL 62701
217-785-3094

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: This rulemaking was not included on either of the 2 most recent regulatory agendas because: The need for this rulemaking was not anticipated at the time the agendas were prepared.

The full text of the Proposed Amendments begins on the next page:

SECRETARY OF STATE

NOTICE OF PROPOSED AMENDMENTS

TITLE 1: GENERAL PROVISIONS
CHAPTER I: SECRETARY OF STATE

PART 100
RULEMAKING IN ILLINOIS

SUBPART A: DEFINITIONS AND CODIFICATION

Section
100.100 Rulemaking Compliance
100.110 Definitions
100.120 Agencies Covered
100.130 Illinois Administrative Code Organization
100.140 Codification Outline
100.150 Notice of Codification Changes
100.160 Deletion or Transfer of Rules
100.170 Re-using Part or Section Numbers (Renumbered)
100.180 Style Manual

SUBPART B: ILLINOIS REGISTER

Section
100.200 Publication Schedule and Deadline
100.210 Contents
100.220 Publication Requirements
100.225 Cover Letter
100.230 Publication of Materials Incorporated by Reference
100.240 Notices of Corrections
100.250 Expedited Corrections
100.260 Indexes
100.270 Illinois Register Availability
100.280 Fees
100.290 Uncodified Rules (Repealed)

SUBPART C: RULE DRAFTING REQUIREMENTS

Section
100.300 Headings
100.310 Table of Contents
100.315 Re-using Part or Section Numbers

100.320 Authority Note
100.330 Source Notes
100.335 Automatic Repeal of Rules
100.340 Text of the Part; Subsections
100.345 Renumbering Sections within a Part
100.350 Supplementary Material
100.355 Underlying Data
100.360 Proper Format
100.370 Citation of Codified Rules
100.380 Statutory Language and Statutory Citations
100.385 Incorporation by Reference; Citation of Referenced Material
100.390 Footnotes; Agency Notes; Editor's Notes

SUBPART D: PROPOSED RULES

Section
100.400 Required Notice Periods
100.410 Notice of Proposed Rules
100.415 Other Statutory Requirements for Rulemaking
100.420 Text of Proposed Rules
100.430 Notice of Corrections
100.440 Notice of Modification, Withdrawal, or Refusal to Modify or Withdraw a Rule
100.445 Requirements for Submitting Materials for Register Publication
100.450 Index Department Review of Proposed Rules

SUBPART E: ADOPTED RULES

Section
100.500 Requirements for Filing
100.510 Other Documents Required for Filing Adopted Rules
100.520 Requirements for Illinois Register Publication
100.530 Notice of Adopted Rules
100.540 Text of Adopted Rules
100.545 Index Department Review of Adopted Rules
100.550 Certificate of Review and Approval

SUBPART F: EMERGENCY RULES

Section
100.600 Filing; Agency Certification

100.610 Notice of Emergency Rules
100.620 Text of Emergency Rules
100.630 File Copy of Emergency Rules
100.640 Effectiveness
100.650 Adoption as a Permanent Rule
100.655 Index Department Review of Emergency Rules
100.660 Certificate of Review and Approval
100.670 Modification of an Emergency Rule
100.680 Repeal of an Emergency Rule

SUBPART G: PEREMPTORY RULES

Section
100.700 Submission; Agency Certification
100.710 Notice of Peremptory Rules
100.720 Text of Peremptory Rules
100.730 File Copy of Peremptory Rules
100.735 Index Department Review of Peremptory Rules
100.740 Certificate of Review and Approval

SUBPART H: INTERNAL RULES

Section
100.800 Requirements
100.810 Effectiveness; Exemption from Notice
100.815 Index Department Review of Internal Rules
100.820 Certificate of Review and Approval

SUBPART I: PROHIBITED FILING

Section
100.900 Certified Statements from Joint Committee on Administrative Rules
100.910 Prohibition of the Filing of Rules
100.920 Continuation of Prohibition

SUBPART J: PUBLIC INSPECTION AND COPYING

Section
100.1000 Certified Rules; Inspection
100.1010 Photocopies and Fees

SECRETARY OF STATE

NOTICE OF PROPOSED AMENDMENTS

100.1020 Illinois Administrative Code
100.1025 Public Domain
100.1030 State Property (Repealed)

SUBPART K: MISCELLANEOUS

Section
100.1100 Recodification of Rules
100.1110 Notice of Recodification
100.1115 Index Department Review of Recodified Rules
100.1120 Certificate of Review and Approval
100.1130 Format for Register Publication of Notices of the Joint Committee on Administrative Rules
100.1140 Index Department Review of Other Notices and Materials Submitted for Register Publication
100.1150 Regulatory Agendas
100.1160 Regulatory Flexibility Notice

SUBPART L: ILLINOIS ADMINISTRATIVE CODE

Section
100.1200 Availability
100.1210 Fees

100.APPENDIX A Proposed Rules
100.ILLUSTRATION A Notice of Proposed Rules
100.ILLUSTRATION B Notice of Withdrawal of Proposed Rules
100.ILLUSTRATION C Notice of Modification, Withdrawal or Refusal in Response to an Objection by the Joint Committee on Administrative Rules
100.ILLUSTRATION D Notice of Corrections to Proposed Rules
100.ILLUSTRATION E Notice of Public Hearing on Proposed Rules
100.ILLUSTRATION F Notice of Corrections to Notice Only (Renumbered)
100.APPENDIX B Adopted Rules
100.ILLUSTRATION A Notice of Adopted Rules
100.ILLUSTRATION B Text of Adopted Rules (Repealed)
100.ILLUSTRATION C Agency Certification
100.ILLUSTRATION D Format for Filing Adopted Rules
100.ILLUSTRATION E Notice of Automatic Repeal of Adopted Rules
100.ILLUSTRATION F Notice of Corrections to Adopted Rules (Repealed)

100.ILLUSTRATION G	Request for Expedited Correction
100.ILLUSTRATION H	Refusal to Certify Expedited Correction
100.ILLUSTRATION I	Notice of Expedited Correction
100.APPENDIX C Emergency Rules	
100.ILLUSTRATION A	Notice of Emergency Rules
100.ILLUSTRATION B	Text of Emergency Rules (Repealed)
100.ILLUSTRATION C	Agency Certification of Emergency Rules
100.ILLUSTRATION D	Notice of Modification to Emergency Rules
100.APPENDIX D Peremptory Rules	
100.ILLUSTRATION A	Notice of Peremptory Rules
100.ILLUSTRATION B	Text of Peremptory Rules (Repealed)
100.ILLUSTRATION C	Agency Certification of Peremptory Rules
100.ILLUSTRATION D	Notice of Automatic Repeal of Peremptory Rules
100.APPENDIX E Miscellaneous	
100.ILLUSTRATION A	Notice of Recodification
100.ILLUSTRATION B	Notice of Corrections to Notice Only
100.ILLUSTRATION C	Certificate of Review and Approval
100.ILLUSTRATION D	Notice of Codification Changes
100.ILLUSTRATION E	Format for Statements of Objections or Recommendations Issued by the Joint Committee on Administrative Rules
100.ILLUSTRATION F	Regulatory Agenda
100.ILLUSTRATION G	Regulatory Flexibility Notice
100.ILLUSTRATION H	Notice of Publication Error

AUTHORITY: Implementing and authorized by the Illinois Administrative Procedure Act [5 ILCS 100].

SOURCE: Adopted at 7 Ill. Reg. 10880, effective September 1, 1983; amended at 7 Ill. Reg. 16460, effective January 1, 1984; amended at 8 Ill. Reg. 12488, effective July 1, 1984; amended at 8 Ill. Reg. 19831, effective October 1, 1984; emergency amendments at 9 Ill. Reg. 427, effective January 1, 1985, for a maximum of 150 days; amended at 9 Ill. Reg. 9180, effective May 31, 1985; emergency amendments at 10 Ill. Reg. 4014, effective February 19, 1986, for a maximum of 150 days; amended at 10 Ill. Reg. 12080, effective July 1, 1986; amended at 11 Ill. Reg. 724, effective January 1, 1987, and May 1, 1987; amended at 15 Ill. Reg. 13939, effective September 10, 1991; amended at 17 Ill. Reg. 10414, effective July 1, 1993; amended at 18 Ill. Reg. 13067, effective August 11, 1994; emergency amendments at 18 Ill. Reg. 17275, effective November 22, 1994, for a maximum of 150 days; emergency expired April 21, 1995; amended at 19 Ill. Reg. 7626, effective June 1, 1995; amended at 22 Ill. Reg. 11532, effective July 1, 1998; amended at 28 Ill. Reg. _____, effective _____.

SECRETARY OF STATE

NOTICE OF PROPOSED AMENDMENTS

SUBPART C: RULE DRAFTING REQUIREMENTS

Section 100.355 Underlying Data

a) For the purpose of this Part, underlying data is defined as a descriptive title or other description of any published study or research report used in developing a rule, the identity of the person who performed such study, and a description of where the public may obtain a copy of any such study or report.

b) If the study was performed by an agency or by a person or entity that contracted with the agency for the performance of the study, the agency shall also make copies of this underlying data available to members of the public upon request if the data are not protected from disclosure under the Freedom of Information Act [5 ILCS 140].

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

SUBPART D: PROPOSED RULES

Section 100.410 Notice of Proposed Rules

a) Each proposed rule (amendment, repealer) submitted for publication in the Illinois Register (see Section 100.220) must be part of a Notice of Proposed Rules (Amendments, Repealers) at the beginning of which the information listed in subsections (a)(1) through (12) below shall appear (see also Appendix A, Illustration A). The next page shall be the full text of the rules, amendments, or repealer and, if the proposal is an amendment to or repeal of an existing Part, the text shall appear as it is on file in the Index Department with all changes indicated by strike-outs and/or underscoring (however, if an entire Part is being repealed, the text is printed without strike-outs and if a new Part is being proposed the text appears without underscoring):

1) The heading of the Part;

2) The Code citation (include only the Chapter number, the Code abbreviation, the General Act Number followed by a colon and the Part number);

3)

SECRETARY OF STATE

NOTICE OF PROPOSED AMENDMENTS

Section Numbers (list in numerical order) (include supplementary material	Proposed Action (new Section, amendment, repeal, renumber, etc.)

4) The specific statutory citation upon which the Part is based and authorized;

5) A complete description of the subjects and issues involved;

6) Identification of sources of underlying data that were used when composing this rulemaking in accordance with 1 Ill. Adm. Code 100.355.

7~~6~~) Whether the proposed rule will replace an emergency rule currently in effect;

8~~7~~) Whether the proposed rule contains an automatic repeal date;

9~~8~~) Whether the proposed rule (amendment, repealer) contains incorporations by reference;

10~~9~~) Whether there are any other amendments to this Part, other than those appearing in the same Register issue, pending. If so, specify the Section numbers, the proposed action, and a Register citation to the Notice of proposal;

11~~10~~) A Statement of Statewide Policy Objectives (See Sections 100.110 and 100.415(b));

12~~11~~) The time, place and manner in which interested persons may present their views concerning the proposed action, and the name, address and phone number of the individual within the agency who may be contacted; and

13~~12~~) Initial Regulatory Flexibility Analysis (see "Regulatory Flexibility Analysis", Section 100.110):

A) Types of small businesses (see Section 1-75 of the Act), small municipalities (see Section 1-80 of the Act) and not for profit corporations (see Section 1-85 of the Act) affected

B) Reporting, bookkeeping or other procedures required for compliance

C) Types of professional skills necessary for compliance.

b) Under the Section Numbers and Proposed Action columns at the beginning of the Notice of Proposed Rules as described above in subsection (a)(3) of this Section shall be listed the specific Section Number(s) in numerical order and the specific action being taken. If several actions are occurring, each Section affected must be listed on a separate line with the appropriate action listed on the same line under the correct column. This enables the Code Division staff to accurately compile the Sections Affected Index for each week's Register on a quarterly basis. Appendices, Exhibits, Illustrations and Tables on which rulemaking activity is occurring must also be listed under these columns.

c) Only one Part shall be listed per Notice. All new Sections, amendments to existing Sections, and/or repealers of Sections shall be contained on this Notice. Only one Notice per Part for proposed rules will be accepted by the Index Department for publication in a single issue of the Register, unless the agency is repealing a Part in its entirety and proposing a new Part to replace the repealed Part (same subject matter). In this instance only, the Index Department will accept two Notices of proposed rulemaking for one Part number, one for the proposed repealer and one for the proposed new Part, for publication in the same issue of the Register.

d) If an agency is proposing, amending, or repealing more than one Section, and the agency wishes to have any of the Sections considered as separate rulemakings, the agency shall specify the statutory authority for each separate rulemaking. The agency shall follow the procedure in Section 100.410(a)(1) through 100.410(a)(12) and, if necessary, specify different people to be contacted for each separate rulemaking. This procedure permits an agency to take those portions of the rulemaking into second notice separately or adopt those portions of the Part at different times.

e) If an agency intends to hold a public hearing on the proposed rules, the information on the hearing may be included in the Time, Place, and Manner item on the Notice (subsection (a)(11) above) or the agency may submit a Notice of Public Hearing on Proposed Rules as shown in Appendix A, Illustration E. Notice for public hearings on proposed rules will be accepted for Register publication

unless a notice for another type of public hearing is required by State statute to be published in the Register.

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

SECRETARY OF STATE

NOTICE OF PROPOSED AMENDMENTS

Section 100.APPENDIX A Proposed Rules

Section 100.ILLUSTRATION A Notice of Proposed Rules

For detailed information on this Notice, please refer to Section 100.410.

ILLINOIS REGISTER

(AGENCY NAME)

NOTICE OF PROPOSED RULES

1) Heading of the Part:

2) Code Citation:

3) Section Numbers: Proposed Action:

4) Statutory Authority:

5) A Complete Description of the Subjects and Issues Involved:

6) Sources of underlying data used to compose this rulemaking:

7~~6~~) Will this proposed rule replace an emergency rule currently in effect?

8~~7~~) Does this rulemaking contain an automatic repeal date? __Yes __No

If "yes," please specify the date:

9~~8~~) Does this proposed rule (amendment, repealer) contain incorporations by reference?

10~~9~~) Are there any other proposed amendments pending on this Part?

Section Numbers Proposed Action Illinois Register Citation

11~~10~~) Statement of Statewide Policy Objectives:

12~~11~~) Time, Place, and Manner in which interested persons may comment on this proposed

rulemaking:

13~~12~~) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected:

B) Reporting, bookkeeping or other procedures required for compliance:

C) Types of professional skills necessary for compliance:

14~~13~~) Regulatory Agenda on which this rulemaking was summarized:

Jan. 20~~19~~ __ July 20~~19~~ __ OR

This rule was not included on either of the 2 most recent agendas because:

The full text of the Proposed Rule(s) begins on the next page:

AGENCY NOTE: The solid line shall be exactly one inch from the top of the page. Also, if the proposal is a new Part, use the type of action statement as shown in this illustration; if the proposal is an amendment to a Part (new Sections being added, existing Sections being amended or repealed), the action shall state NOTICE OF PROPOSED AMENDMENT(S); If the proposal is a repealer of an entire Part, the action shall state NOTICE OF PROPOSED REPEALER.

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

SECRETARY OF STATE

NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Statements of Economic Interest

2) Code Citation: 2 Ill. Adm. Code 565

3)

Section Numbers:	Proposed Action:
565.20	Amend
565.30	Amend
565.35	Amend

4) Statutory Authority: Implements Article 3A, Sections 30 and 35 of the State Officials and Employees Ethics Act (5 ILCS 420) and authorized by 5 ILCS 420 Section 3A-30/C.

5) A Complete Description of the Subjects and Issues Involved: Sections 565.20 and 565.30 will be amended to describe the purpose and definitions related to the disclosure of interests in State contracts by appointees. In addition, Section 565.35 will be added to further explain the requirements and procedures for this disclosure.

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? No

10) Statement of Statewide Policy Objectives: The proposed amendments do not require expenditures by units of local government.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Texts of the proposed amendments are posted on Secretary of State's web site, www.sos.state.il.us/departments/index/home as part of the *Illinois Register*. Interested persons may present their comments concerning this proposed rulemaking in writing within 45 days after publication of this notice to the:

Secretary of State
Nathan Maddox, Assistant General Counsel
298 Howlett Building
Springfield IL 62701
217-785-3094

SECRETARY OF STATE

NOTICE OF PROPOSED AMENDMENTS

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: This rulemaking was not included on either of the 2 most recent regulatory agendas because: The need for this rulemaking was not anticipated at the time the agendas were prepared.

The full text of the Proposed Amendments begins on the next page:

SECRETARY OF STATE

NOTICE OF PROPOSED AMENDMENTS

TITLE 2: GOVERNMENTAL ORGANIZATION
SUBTITLE C: CONSTITUTIONAL OFFICERS
CHAPTER III: SECRETARY OF STATE

PART 565
STATEMENTS OF ECONOMIC INTERESTS

Section
565.20 Purpose
565.30 Definitions
565.35 Disclosure of Interest in State Contracts by Appointees
565.40 Requests For Extensions
565.50 Reasons For Which Extensions Will Be Granted
565.60 Reasons For Which Extensions Will Not Be Granted
565.70 Failure to File Upon Receipt of Extension

AUTHORITY: Implementing and authorized by Section 4A-105 of the Illinois Governmental Ethics Act [5 ILCS 420/4A-105].

SOURCE: Adopted at 20 Ill. Reg. 12485, effective September 1, 1996; amended at 28 Ill. Reg. _____, effective _____.

Section 565.20 Purpose

Pursuant to Section 3A-30 of the Act [5 ILCS 420/3A-30] this Part shall apply to any appointees to a board, commission, authority, or task force authorized or created by State law or by executive order of the Governor, and ~~These rules shall apply only~~ to those persons notified by the Secretary of State of their requirement to file statements of economic interests pursuant to Section 4A-101 of the Act [5 ILCS 420/4A-101]. The purpose of this Part ~~these rules~~ is to extend the filing deadline for statements of economic interests upon a showing of just cause as to why the form cannot be filed in a timely manner. Persons granted filing extensions shall have 30 days from their original filing deadline in which to file forms without penalty, unless a longer extension is granted pursuant to Section 565.50 of this Part. In addition, the disclosure requirements for appointees are set forth in regard to State contracts and financial interests held by appointees and immediate family members of appointees.

Section 565.30 Definitions

"Act" means the Illinois Governmental Ethics Act [5 ILCS 420~~/4A~~].

"Department" means the Secretary of State Index Department.

"Disclosure" means the disclosure of any State contracts as established in Section 3A-30 of the Act.

"Filer" means a person notified by the Department of his or her requirement to file a statement of economic interests pursuant to Section 4A-101 of the Act and appointees to any board, commission, authority, or task force authorized or created by State law or by executive order of the Governor.

"Immediate family" means a spouse or immediate family members living with~~dependent child of~~ the filer.

"Serious illness" means any illness that ~~which~~ can be documented to the Department by a physician's note.

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

Section 565.35 Disclosure of Interest in State Contracts by Appointees

a) Every person required to disclose contractual interests under Section 565.20 shall file a disclosure report approved by the Secretary of State upon appointment.

1) Copies of official forms may be obtained from the Index Department.

2) Alternative methods of reporting are prohibited unless prior written approval has been received from the Director of the Index Department.

3) Prior written approval will be given based on the compatibility of alternative methods with the Index Department's public disclosure procedures.

b) The appointee shall file a disclosure for all contracts the person, his or her spouse, or immediate family members living with the person have with the State and all contracts between the State and any entity in which the person or his or her immediate family members living with the person have a majority financial interest.

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

SEX OFFENDER MANAGEMENT BOARD

NOTICE OF PROPOSED REPEALER

1) Heading of the Part: Sex Offender Management Board Standards and Guidelines for the Evaluation, Treatment and Monitoring of Adult Sex Offenders

2) Code Citation: 20 Ill. Admin. Code 1900

3)

Section Numbers:	Proposed Action:
1900.10	Repeal
1900.20	Repeal
1900.30	Repeal
1900.40	Repeal
1900.50	Repeal
1900.60	Repeal
1900.70	Repeal
1900.80	Repeal
1900.90	Repeal
1900.100	Repeal
1900.110	Repeal
1900.120	Repeal
1900.130	Repeal
1900.140	Repeal
1900.150	Repeal
1900.160	Repeal
1900.170	Repeal
1900.180	Repeal
1900.190	Repeal

4) Statutory Authority: Sex Offender Management Board Act [20 ILCS 4026], amended by P.A 93-616, effective January 1, 2004

5) A Complete Description of the Subjects and Issues Involved: This Part is being repealed to avoid confusion within the criminal justice system, among the public, and among sex offender evaluators and treatment providers with respect to the nature of the requirements that apply to evaluations and treatment that satisfy the requirements of Public Act 93-616. For more detail see the Notice of Emergency Rules for 20 Ill. Adm. Code Part 1905 in this issue of the *Illinois Register*.

6) Will this rulemaking replace any emergency rulemaking currently in effect? Yes

7) Does this rulemaking contain an automatic repeal date? No

SEX OFFENDER MANAGEMENT BOARD

NOTICE OF PROPOSED REPEALER

8) Does this rulemaking contain incorporations by reference? No

9) Are there any other proposed rulemakings pending on this Part? No

10) Statement of Statewide Policy Objectives: Neither creates nor enlarges a State mandate within the meaning of 30 ILCS 805/3b of the State Mandates Act.

11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: During the first notice period by writing:

Cara Smith, Chair
Sex Offender Management Board
James R. Thompson Center, 12th Floor
100 W. Randolph Street
Chicago IL 60601
(312) 814-2970

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: This rulemaking was not included on either of the 2 most recent regulatory agendas because: Last July the legislation necessitating these amendments had not yet been enacted, and the Board was in such flux (turnover in membership) at the end of the year, that decisions on how to proceed with the new legislation could not be made soon enough to publish an agenda in January.

The full text of the Proposed Repealer is identical to the text of the Emergency Repealer that appears on page 8204 of this issue of the *Illinois Register*.

SEX OFFENDER MANAGEMENT BOARD

NOTICE OF PROPOSED RULES

1) Heading of the Part: Interim Sex Offender Evaluations and Treatment

2) Code Citation: 20 Ill. Admin. Code 1905

3)

Section Numbers:	Proposed Action:
1905.10	New
1905.20	New
1905.30	New
1905.40	New
1905.50	New
1905.60	New
1905.70	New
1905.80	New
1905.100	New
1905.110	New
1905.120	New
1905.130	New
1905.140	New
1905.200	New
1905.210	New
1905.220	New
1905.230	New
1905.240	New
1905.250	New
1905.300	New
1905.310	New
1905.320	New

4) Statutory Authority: Sex Offender Management Board Act [20 ILCS 4026], amended by P.A 93-616, effective January 1, 2004

5) A Complete Description of the Subjects and Issues Involved: Prior to enactment of Public Act 93-616, the Sex Offender Management Board Act required the Board to develop separate guidelines and standards for a system of programs for the counseling of juvenile and adult sex offenders that could be utilized by offenders who were placed on probation, committed to the Department of Corrections or Department of Human Services, or placed on mandatory supervised release or parole. In addition, the Act required that the Board develop and prescribe separate standardized procedures for the evaluation and identification of sex offenders; recommend behavior management, monitoring, and treatment; and develop and implement measures of success and methods

of intervention. In partial response to these commands, the Board adopted Sex Offender Management Board Standards And Guidelines For The Evaluation, Treatment And Monitoring Of Adult Sex Offenders, 20 Ill. Adm. Code Part 1900. Neither sex offenders nor any element of the criminal justice system were, however, required to implement or comply with any particular element of the programs and procedures developed by the Board.

Effective January 1, 2004, Public Act 93-616 amended the Sex Offender Management Board Act and several other statutes to require not only that convicted adult felony sex offenders and juvenile sex offenders undergo sex offender evaluations and treatment at various stages of the criminal justice processes (e.g., evaluations before sentencing and before release into the community, and treatment as a condition of probation or conditional release), but also to require that evaluation and treatment be provided by persons approved by the Board and in conformance with standards adopted by the Board. In addition, Public Act 93-616 requires that examinations and treatment required by pre-existing statutes relating to sexually violent or sexually dangerous persons now be conducted by persons approved by the Board and in conformance with standards adopted by the Board.

Given that Part 1900 was adopted pursuant to a different grant of authority and with the understanding that it constituted a set of recommended best practices and not a set of mandatory requirements, Part 1900 does not comprise the Board's standards for approval of evaluators and treatment providers or for the provision of evaluation and treatment services for purposes of the requirements of Public Act 93-616. Consequently, there is an immediate need to adopt the requisite standards and procedures to implement the Act.

In adopting such standards and procedures, the Board will need to devote considerable attention to factors that were not as important with respect to the adoption of recommended best practices. For example, the Board will need to consider the availability of evaluators and providers who meet the qualifications in all parts of the State and the extent to which resources exist to procure the services of those individuals. Now that requirements are mandatory, it is likely that those who are subject to those requirements – sex offenders and government officers and employees in the criminal justice system – will have a greater incentive to comment on new standards and procedures. Thus, the Board expects that it will take substantial time to develop the rules necessary to implement the requirements of Public Act 93-616 on a long-term basis.

Balancing the need to act quickly against the need for time to develop a comprehensive program with an opportunity for those concerned to make comment, the Board has chosen to adopt interim standards and procedures for the approval of evaluators and

treatment providers and for the provision of evaluations and treatment to satisfy the various statutory commands and has done so on an emergency basis in a notice found elsewhere in this issue of the *Illinois Register*. Evaluators and treatment providers who meet the qualifications and comply with the procedures set forth in this Part will be approved by the Board to provide the services for which they are approved until July 1, 2005 if they remain in compliance with the requirements. They will also have their names included on an interim list of approved providers, which list will be made available to the public. In addition, evaluations and treatment provided in accordance with this Part will be deemed to satisfy the statutes until the same date.

Among the qualifications set forth are requirements relating to education, experience, training and criminal history. Standards for the conducting of evaluations and the provision of treatment are largely taken from the 20 Ill. Adm. Code Part 1900, which is being repealed by emergency and proposed repealers elsewhere in this issue of the *Illinois Register*.

6) Will this rulemaking replace any emergency rulemaking currently in effect? Yes

7) Does this rulemaking contain an automatic repeal date? No

8) Does this rulemaking contain incorporations by reference? Yes

9) Are there any other proposed rulemakings pending on this Part? No

10) Statement of Statewide Policy Objectives: Neither creates nor enlarges a State mandate within the meaning of 30 ILCS 805/3b of the State Mandates Act. Rather, this rulemaking makes it possible to comply with mandates issued by the General Assembly in P. A. 93-616.

11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: During the first notice period by writing:

Cara Smith, Chair
Sex Offender Management Board
James R. Thompson Center, 12th Floor
100 W. Randolph Street
Chicago, IL 60601
(312) 814-2970

12) Initial Regulatory Flexibility Analysis:

SEX OFFENDER MANAGEMENT BOARD

NOTICE OF PROPOSED RULES

A) Types of small businesses, small municipalities and not for profit corporations affected: Not for profit organizations that provide mental health or treatment programs to sex offenders will be affected by this Part.

B) Reporting, bookkeeping or other procedures required for compliance: Reports of evaluations of sex offenders and, with respect to offenders undergoing treatment, quarterly progress reports will need to be made to the Department of Corrections or other supervising agency. Treatment providers will be required to enter into written contracts with the sex offenders they treat, which contracts must have the elements specified in this Part. In addition, they will be required to completely explain the nature and conditions of the services to be provided.

C) Types of professional skills necessary for compliance: Individuals wishing to be approved by the SOMB to provide evaluation and/or treatment to sex offender in the criminal justice system have the education, training, and experience required by this Part and must provide services in accordance with the standards set by this Part.

13) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on either of the 2 most recent regulatory agendas because: Last July the legislation necessitating these amendments had not yet been enacted, and the Board was in such flux (turnover in membership) at the end of the year, that decisions on how to proceed with the new legislation could not be made soon enough to publish an agenda in January.

The full text of the Proposed Rules is identical to the text of the Emergency Rules that appears on page 8300 of this issue of the *Illinois Register*.

ATTORNEY GENERAL

NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Tobacco Products Manufacturers' Escrow Enforcement Act of 2003

2) Code Citation: 14 Ill. Adm. Code 250

3)

Section Numbers:	Adopted Action:
250.10	Amended
250.20	Amended
250.30	Amended
250.40	Amended
250.50	Amended
250.60	New
250.70	New
250.80	New
250.90	New
250.100	New
250.110	Renumbered and Amended

4) Statutory Authority: Tobacco Products Manufacturers' Escrow Enforcement Act of 2003 [30 ILCS 167], enacted by P.A 93-0446, effective January 1, 2004

5) Effective date of amendments: May 28, 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 amendments, including any incorporations by reference, is on file and is available for public inspection in the Attorney General's principal office in Chicago (12th Floor, James R. Thompson Center).

9) Notice of Proposal ublished in Illinois Register: January 9, 2004; 28 Ill. Reg. 472

10) Has JCAR issued a Statement of Objection to these amendments? No

11) Differences between proposal and final version: In addition to stylistic and other non-substantive changes, the reference in Section 250.80(e)(7) to "other relevant facts" for determining whether to place a non-participating manufacturer on the directory of compliant NPMs was made more specific.

NOTICE OF ADOPTED 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 an emergency rulemaking currently in effect? Yes

14) Are there any amendments pending on this Part? No

15) Summary and purpose of amendments: This Part was adopted to provide for enforcement of the Tobacco Product Manufacturers' Escrow Act [30 ILCS 168] in accordance with the Tobacco Product Manufacturers' Escrow Enforcement Act [30 ILCS 169]. Effective January 1, 2004, the Enforcement Act was replaced by the Tobacco Products Manufacturers' Escrow Enforcement Act of 2003 [30 ILCS 167]. Implementing the new Act, these amendments further explain and define the obligations of those manufacturers of tobacco products that are not participating in the Master Settlement Agreement and must, therefore, establish escrow accounts in Illinois that are to be funded in amounts based upon the quantity of product sold in Illinois. They also further detail the reporting obligations of distributors of the tobacco products manufactured by those non-participating manufacturers in this State. The reporting requirements are essential to the State's ability to enforce the Agreement and State law and to assure continued receipt of payments under the Settlement Agreement.

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

Philip J. Robertson
Public Interest Division
Office of the Attorney General
100 West Randolph Street - 12th Floor
Chicago, Illinois 60601
312/814-3000

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

ATTORNEY GENERAL

NOTICE OF ADOPTED AMENDMENTS

TITLE 14: COMMERCE
SUBTITLE A: REGULATION OF BUSINESS
CHAPTER II: ATTORNEY GENERAL

PART 250
TOBACCO PRODUCTS~~PRODUCT~~ MANUFACTURERS' ESCROW
ENFORCEMENT ACT OF 2003

Section	
250.10	General
250.20	Definitions
250.30	Distributor Filings
250.40	Prohibition of Distribution~~Sales~~ of Non-Compliant TPM ~~Noncompliant NPM~~ Cigarettes
250.50	Appointment of Agent for Service of Process~~Violations~~
250.60	Certification Requirements for Tobacco Product Manufacturers
250.70	NPMs Required to Make Quarterly Installment Payments
250.80	Establishment of Directory of Participating Manufacturers and Compliant NPMs
250.90	Release of Escrow Account Money
250.100	Review of AGO Determinations
250.110	Violations

AUTHORITY: Implementing and authorized by Sections 25 and 35 of the Tobacco Products Manufacturers' Escrow Enforcement Act of 2003 [30 ILCS 167].

SOURCE: Adopted at 27 Ill. Reg. 7719, effective April 16, 2003; emergency amendment at 28 Ill. Reg. 939, effective January 1, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 7904, effective May 28, 2004.

Section 250.10 General

This Part provides for enforcement of the Tobacco Product Manufacturers' Escrow Act [30 ILCS 168], in accordance with the Tobacco Products~~Product~~ Manufacturers' Escrow Enforcement Act of 2003 [30 ILCS 167~~169~~] (see P.A. 93-446~~92-0737~~). The former Act, passed as a result of the Master Settlement Agreement (MSA) entered into between 46 states, including Illinois, and the major tobacco companies, requires tobacco product manufacturers not participating in the MSA to set up qualified escrow accounts and to deposit funds into those~~the~~ accounts based on the number of manufacturers' cigarettes sold in each state. The latter Act provides for enforcement of the escrow obligations.

ATTORNEY GENERAL

NOTICE OF ADOPTED AMENDMENTS

(Source: Amended at 28 Ill. Reg. 7904, effective May 28, 2004)

Section 250.20 Definitions

"AGO" means the Office of the Illinois Attorney General~~General's Office~~.

"Brand family" has the same meaning prescribed in Section 10 of the Escrow Enforcement Act.

"Cigarette" has the same meaning prescribed~~means that term as defined~~ in Section 10 of the Escrow Act [30 ILCS 168], which includes roll-your-own ("RYO") tobacco.

"Department" means the Illinois Department of Revenue.

"Director" means Director of Revenue.

"Distributor" has the same meaning prescribed in Section 1 of the Cigarette Tax Act [35 ILCS 130], and Section 1 of the Cigarette Use Tax Act [35 ILCS 135], and, in addition, means a distributor of roll-your-own tobacco in accordance with Section 10-5 of the Tobacco Products Tax Act of 1995 [35 ILCS 143], as appropriate.

"Escrow Act" means the Tobacco Product Manufacturers' Escrow Act [30 ILCS 168].

"Escrow Enforcement Act" means the Tobacco Products~~Product~~ Manufacturers' Escrow Enforcement Act of 2003 [30 ILCS 167~~169~~] (see P.A. 93-446~~92-0737~~).

"Filed" means received by the AGO in readable form, however transmitted, or postmarked for delivery by the U.S. mail.

"Liability year" means the calendar year in which a tobacco product manufacturer's cigarettes are sold in Illinois, and to which the requirements of the Escrow Act apply.

"NPM" means a tobacco product~~non-participating~~ manufacturer that is not a Participating Manufacturer.

"Participating manufacturer" has the same meaning prescribed in Section 15(a)(1)

of the Escrow Act [30 ILCS 168].

"Qualified Escrow Fund" has the same meaning prescribed in Section 10 of the Escrow Act.

"Stamps or imprints" means revenue tax stamps or imprints as provided for in Section 3 of the Cigarette Tax Act or stamps or imprints evidencing the payment of cigarette use tax as provided for in Section 3 of the Cigarette Use Tax Act, as appropriate.

"Tobacco product manufacturer" or "TPM" has the same meaning prescribed in Section 10 of the Escrow Act.

"Units sold" has the meaning prescribed in Section 10 of the Escrow Act.

(Source: Amended at 28 Ill. Reg. 7904, effective May 28, 2004)

Section 250.30 Distributor Filings

a) Each distributor shall report quarterly to the AGO on paper or electronic forms provided by the AGO such information as is necessary for the AGO to ascertain the quantity of each NPM's cigarettes sold in Illinois by the distributor during the preceding quarter. Paper forms shall be sent to: Office of the Illinois Attorney General, 500 South Second Street, Springfield, Illinois 62706. Paper forms may alternatively be faxed to (217)524-4701. Electronic forms shall be e-mailed to tobacco@atg.state.il.us. The quarterly information to be reported shall include:

1) The number of each NPM's cigarettes distributed~~sold~~ by the distributor within Illinois, by brand.

2) The equivalent stick count~~number of ounces~~ of each NPM's RYO~~roll-your-own~~ tobacco distributed~~sold~~ by the distributor within Illinois, by brand.

3) The NPM name and address for each brand.

4) The name and address of the person or entity from whom the distributor purchased or obtained the brand.

5) The name and address of the first importer of foreign NPM brands or the

first purchaser of non-resident NPM brands.

b) The information required by subsection (a) shall be filed prior to~~by~~ the 20th ~~15th~~ day after~~of the month following~~ the end of each calendar~~the reporting~~ quarter. The filing for:

1) January, February, and March is due on or before April 20~~15~~.

2) April, May, and June is due on or before July 20~~15~~.

3) July, August, and September is due on or before October 20~~15~~.

4) October, November, and December is due on or before January 20~~15~~ of the following year.

c) Distributors not selling any NPM brands for the relevant time period shall timely file a form as described in subsection (a) marked "none".

d) Distributors shall maintain and make available to the Attorney General all records, invoices, and documentation~~keep all records~~ relating to or reflecting purchases and sales of NPM cigarettes, which records, invoices and documentation provide a basis for the filings under subsection (a), for a period of not less than five~~three~~ years after the date of sale.

e) Distributors shall provide an electronic mail address to the AGO for the purpose of receiving electronic mail updates and notifications.

f) Distributors shall provide any additional information requested by the AGO including, but not limited to, samples of packaging, labeling of each brand family, names of customers and quantities of each brand sold to them and a statement signed by an officer of the manufacturer, under penalty of perjury, certifying whether the manufacturer is, or is not, a participating tobacco manufacturer under the MSA.

g) Distributors not complying with this Section 250.30, or filing false or inaccurate information with the AGO, may be deemed to be in violation of the Escrow Enforcement Act and dealt with in accordance with Section 250.110~~250.50~~.

(Source: Amended at 28 Ill. Reg. 7904, effective May 28, 2004)

Section 250.40 Prohibition of DistributionSales of Non-Compliant TPM Noncompliant NPM Cigarettes

a) AAs set forth in Section 15(a) of the Escrow Enforcement Act, a distributor shall not affix or cause to be affixed stamps or imprints to individual packages of cigarettes delivered or causedcause to be delivered by the distributor in Illinois, and may not otherwise deliver or cause to be delivered in Illinois RYO cigarettes in the form of roll-your-own tobacco, if the tobacco product manufacturer of those cigarettes or RYO, including roll-your-own tobacco does not appear on either the directory of participating manufacturers or the directory of compliant NPMs., has:1) failed to become a participating manufacturer; or2) failed to create a qualified escrow fund for any cigarettes manufactured by the tobacco product manufacturer and sold in Illinois or otherwise failed to bring itself into compliance with Section 15(a)(2) of the Escrow Act. Compliance includes payment by the manufacturer of the statutorily-prescribed amount into the escrow fund in a timely manner and, where the manufacturer has not timely complied, payment of statutorily-prescribed penalties pursuant to 15(a)(2)(C) of the Escrow Act.

b) A distributor that affixes or causes to be affixed stamps or imprints to individual packages of cigarettes for delivery in Illinois, or that otherwise delivers or causes to be delivered RYO tobacco in Illinois, which cigarettes or RYO tobacco are manufactured by a tobacco product manufacturer whose name on the date of stamping or imprinting (of cigarettes), or on the date of delivery (of RYO tobacco), does not appear on either the directory of participating manufacturers or the directory of compliant NPMs, may be deemed to be in violation of the Escrow Enforcement Act and may be dealt with in accordance with Section 250.110. The AGO shall publish a list of participating manufacturers and a list of compliant NPMs who have created a qualified escrow fund and who are otherwise in compliance with Section 15(a)(2) of the Escrow Act. The lists shall be published on the AGO's web site (www.ag.state.il.us) and shall be revised as new information is received by the AGO.c) Distributors who affix or cause to be affixed stamps or imprints to packages of cigarettes manufactured by a tobacco product manufacturer whose name appears on the list of participating manufacturers or on the list of compliant NPMs on the date of stamping or imprinting shall not be deemed to have violated Section 15 of the Escrow Enforcement Act by virtue of that conduct.d) Distributors who deliver or cause to be delivered roll-your-own tobacco manufactured by a tobacco product manufacturer whose name appears on the list of participating manufacturers or on the list of compliant NPMs on the date of delivery shall not be deemed to have

~~violated Section 15 of the Escrow Enforcement Act or subsection (a) of this Section by virtue of that conduct. For purposes of this subsection, "delivery" means sale or otherwise passing out of the possession, custody and control of the distributor.~~ e) For purposes of enforcement proceedings in accordance with Section 250.50 of this Part, a distributor shall have as a defense the fact that its conduct falls within that permitted by subsection (c) or (d), provided, however, that the burden shall be on the distributor to establish the defense through documentation prepared contemporaneously with their stamping, imprinting or delivery of cigarettes, as the case may be.f) The AGO shall not place an NPM on the list of compliant NPMs provided for in subsection (b) unless:1) the NPM has had sales in one or more liability years prior to the date of the list's publication and is in full compliance with its escrow requirements under the Escrow Act as to such sales, including the payment of any applicable penalties under the Escrow Act; or2) the NPM, not having had sales in one or more prior liability years:A) has established a qualified escrow account under the Escrow Act; andB) is in fact depositing funds into the account on a quarterly basis based on sales of its cigarettes in Illinois during its first liability year of sales. g) In determining compliance for purposes of placing an NPM on the list of compliant NPMs, the AGO may consider distributor filings provided for in Section 250.30; the NPM's escrow agreement, if any, submitted to the AGO; the NPM's timely deposit of the requisite funds into the escrow account; the requirements for placement on the list as set forth in this Part; and other relevant facts that may come to the attention of the AGO. Any NPM dissatisfied with the AGO's determination of compliance may submit documents relevant to the determination to the AGO and request review of the determination by an Assistant Attorney General who is designated by the Attorney General to undertake such reviews and who did not participate in the initial determination. h) A distributor that affixes or causes to be affixed stamps or imprints to individual packages of cigarettes for delivery in Illinois, or that otherwise delivers or causes to be delivered in Illinois cigarettes in the form of roll-your-own tobacco, which cigarettes are manufactured by a tobacco product manufacturer whose name:1)on the date of stamping or imprinting, in the case of individual packages of non-roll-your-own cigarettes, or2) on the date of delivery in the case of roll-your-own cigarettes, does not appear on either the list of participating manufacturers or the list of compliant NPMs, may be deemed to be in violation of the Escrow Enforcement Act and dealt with in accordance with Section 250.50.

(Source: Amended at 28 Ill. Reg. 7904, effective May 28, 2004)

Section 250.50 Appointment of Agent for Service of Process~~Violations~~

a) Any non-resident or foreign NPM that has not registered to do business in this State shall appoint an agent located within the State of Illinois to receive service of process on behalf of that non-resident or foreign NPM. On forms provided by the AGO, the NPM shall submit the name, address, phone number, company name (if applicable) and hours of availability of the agent, as well as proof of appointment, to the Director and the AGO.

b) If the NPM terminates the authority of the agent, the NPM shall notify the Director and the AGO of the termination at least 30 calendar days prior to the termination, and provide proof at least 5 calendar days prior to the termination of the appointment of a new agent. If the agent terminates an agency appointment, the NPM shall notify the Director and the AGO of the termination no later than 5 calendar days after the termination, and shall include proof of the appointment of a new agent.

c) Any foreign or non-resident NPM that fails to appoint an agent as required by this Section and in Section 20 of the Escrow Enforcement Act shall be deemed to appoint the Illinois Secretary of State as the agent on whom process may be served on its behalf. However, such appointment will not satisfy the condition precedent for having its brand families listed in the directory of compliant NPMs.

(Source: Amended at 28 Ill. Reg. 7904, effective May 28, 2004)

Section 250.60 Certification Requirements for Tobacco Product Manufacturers

a) No later than April 30 of each year, on paper or electronic forms provided by the AGO, every tobacco product manufacturer whose cigarettes or RYO tobacco were sold in Illinois during the preceding calendar year shall execute and deliver to the AGO a certification acknowledging under penalty of perjury that:

1) as of the date of the certification, the tobacco product manufacturer is a participating manufacturer or an NPM;

2) if it is a participating manufacturer, it has generally performed its financial obligations under the MSA;

3) if it is an NPM, it is in full compliance with the Escrow Act and the Escrow Enforcement Act.

b) The certification of a participating manufacturer shall include:

1) a list of its brand families, which list shall be updated 30 days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the AGO;

2) that the brand family is deemed to be its cigarettes for purposes of calculating payments under the MSA in the volume and shares determined pursuant to the MSA.

c) The certification of an NPM shall include:

1) a complete list of all of its brand families, which list shall be updated 30 days prior to any addition to or modification of its brand families by executing a supplemental certification to the AGO, and the number of units sold for each brand family in Illinois during the preceding calendar year;

2) that the brand family is deemed to be its cigarettes for purposes of Section 15 of the Escrow Act;

3) a complete list of all of its brand families that have been sold in Illinois during the current calendar year;

4) a complete list of all of its brand families that were sold in Illinois during the preceding year that are no longer being sold in Illinois as of the date of the certification;

5) the name and address of any other manufacturer in the preceding calendar year of a brand family for which certification is sought;

6) that it is registered to do business in Illinois or has appointed a registered agent for service of process and provided notice thereof as required by Section 20 of the Escrow Enforcement Act;

7) that it has established, continues to maintain, and has fully funded a qualified escrow account pursuant to Section 15 of the Escrow Act;

8) that it has executed a qualified escrow agreement that has been reviewed and approved by the AGO;

9) the name, address and telephone number of the financial institution where the NPM has established its escrow account;

10) the account number of the escrow account, and the sub-account number for Illinois;

11) the amount the NPM deposited into the escrow account for cigarettes sold in Illinois during the preceding calendar year, including the dates and amounts of each deposit, and evidence thereof;

12) the dates and amounts of any withdrawal or transfer from any escrow account established, maintained, or funded by the NPM;

13) that it is otherwise in full compliance with the Escrow Act and the Escrow Enforcement Act as well as any regulations, including all quarterly installment payments.

d) All records, invoices and documentation relied upon for certification shall be maintained by a TPM for at least 5 years.

e) Participating manufacturers and NPMs shall provide any additional information requested by the AGO including, but not limited to, samples of packaging, labeling of each brand family, contracts to manufacture a brand family and proof of first importer status under the MSA.

(Source: Added at 28 Ill. Reg. 7904, effective May 28, 2004)

Section 250.70 NPMs Required to Make Quarterly Installment Payments

a) Whenever the AGO determines that compliance with the Escrow Act will be promoted by requiring certification and escrow deposits more frequently than on an annual basis, the AGO may require an NPM, on a case-by-case basis, to certify its compliance with the Escrow Act and make its required escrow deposits in quarterly installments during the Liability Year. Factors which may be considered in making this determination include, but are not limited to, the following:

1) the initial addition of an NPM to the directory of compliant NPMs;

2) a history of the NPM not complying with the Escrow Act;

3) a history of the NPM under-funding its qualified escrow account;

4) a history of the NPM failing to timely pay, or failing to pay entirely, judgments or penalties due under the Escrow Act to a qualified escrow account or to the AGO;

5) credible evidence supporting a concern by the AGO that the NPM may not be financially able to meet its fiscal obligations under the Escrow Act when they become due on April 30 of the following calendar year;

6) a volume of more than 2,000,000 cigarettes sold during a calendar quarter.

b) The initial notice of the AGO's determination requiring the payment of quarterly installments shall include:

1) the basis for the determination;

2) the date the first quarterly payment is due, such date being a minimum of 30 days after the date of notice;

3) that the NPM may request review of the AGO's determination in the manner set forth in Section 250.100 no later than 30 days after the date of notice;

4) the requirement that quarterly installment payments shall be made for four quarters where the basis for quarterly installment payments is the initial addition of an NPM to the directory of compliant NPMs; and

5) a copy of the State of Illinois Affidavit of Nonparticipating Manufacturer Regarding Quarterly Escrow Payment.

c) Each NPM required to make quarterly installment payments shall:

1) make its required escrow deposit based upon Illinois sales for the previous quarter;

2) provide proof of deposit for each quarterly installment;

3) file quarterly with the AGO the State of Illinois Affidavit of Nonparticipating Manufacturer Regarding Quarterly Escrow Payment; and

4) file a State of Illinois Affidavit of Nonparticipating Manufacturer Regarding Escrow Reconciliation Payment, make a final reconciliation payment and provide proof of deposit on or before April 15 of the year following the liability year.

d) The information required by subsection (c) shall be filed on or before the last day of the month following the end of the quarter. The filing for:

1) January, February, and March is due on or before April 30.

2) April, May and June is due on or before July 31.

3) July, August and September is due on or before October 31.

4) October, November and December is due on or before January 31 of the following year.

e) The AGO shall notify the NPM of the date it can cease making quarterly installment payments.

f) NPMs not complying with this Section, or filing false or inaccurate information with the AGO, may be deemed to be in violation of the Escrow Enforcement Act and will be dealt with in accordance with Section 250.110. In addition, NPMs not complying with this Section shall be subject to a penalty not to exceed 5% of the amount improperly withheld from escrow per each day of the violation, and in a total amount not to exceed 100% of the original amount improperly withheld from escrow.

(Source: Added at 28 Ill. Reg. 7904, effective May 28, 2004)

Section 250.80 Establishment of Directory of Participating Manufacturers and Compliant NPMs

a) The AGO shall develop, maintain, and publish a directory of participating manufacturers who have generally performed their financial obligations under the MSA (or provide a web address link to a directory maintained by the National Association of Attorneys General), and a separate directory of compliant NPMs

who have established a qualified escrow account and who are otherwise in compliance with Section 15(a)(2) of the Escrow Act and Section 15(a)(2) and (3) of the Escrow Enforcement Act.

b) The directories shall be published on the AGO's website (www.illinoisattorneygeneral.gov) and shall be revised as necessary as new information is received by the AGO. Notice of the addition or removal of an NPM or brand family from the directory shall be provided to distributors 10 calendar days prior to the change. Notice of such change shall also be provided to the NPM that is being added or removed (or whose brand family is being added or removed). The notice shall be sent to the NPM or its agent for service of process by certified mail 10 calendar days prior to the change.

c) The AGO shall not place an NPM on the directory of compliant NPMs unless all outstanding final judgments (including interest thereon) for violations of the Escrow Act and the Escrow Enforcement Act have been fully satisfied for that brand family and NPM, and:

1) the NPM has had sales in one or more Liability Years prior to the date of the directory's publication and it is in full compliance with its escrow obligations under the Escrow Act and the Escrow Enforcement Act and Section 250.70 as to such sales, including the payment of any applicable penalties; or

2) the NPM is a successor to a tobacco product manufacturer that has had sales in one or more Liability Years prior to the date of the directory's publication, and it has deposited funds into a qualified escrow account to fully fund all prior Liability Year obligations for all of its predecessor's brands and paid all the penalties due for all such brands for all prior Liability Years, if the NPM's predecessor has not already done so; or

3) the NPM has had no sales in any prior Liability Years but has established a qualifying escrow account (as evidenced by an approved Escrow Agreement) and is otherwise compliant with the Escrow Act and the Escrow Enforcement Act.

d) Under Section 15(a)(2) of the Escrow Act, each NPM for a particular brand family is jointly and severally liable with every other NPM for that particular brand family for all Liability Year escrow obligations and penalties.

e) In determining compliance for purposes of placing an NPM on the directory of compliant NPMs, the AGO may consider the following:

1) distributor filings;

2) the NPM's certifications and affidavits;

3) the NPM's escrow agreement;

4) the timeliness of the NPM's deposits into the escrow account;

5) the timeliness of the NPM's payment of penalties due;

6) the requirements for placement on the directory as set forth in this Part and in the Acts;

7) whether the NPM is, in fact, the manufacturer of the brands with respect to which the NPM seeks to be listed as compliant; and

8) information from any other source (e.g., U.S. Department of the Treasury, Department of Revenue, distributors) that pertains to the verification of the accuracy of the information provided by the NPM.

(Source: Added at 28 Ill. Reg. 7904, effective May 28, 2004)

Section 250.90 Release of Escrow Account Money

a) Funds deposited by a tobacco product manufacturer pursuant to Section 15 of the Escrow Act shall be released from escrow only:

1) to pay a judgment or settlement on any released claim brought against the tobacco product manufacturer by the State or any releasing party located or residing in the State;

2) to the extent a tobacco product manufacturer establishes that the amount it was required to place into escrow was greater than the MSA payments, as determined by Section IX(i) of that Agreement, in which case the excess shall revert back to the tobacco product manufacturer;

3) to the extent the funds were not released under subsection (a)(1) or (2) above in which case the remaining funds shall revert back to the tobacco product manufacturer 25 years after the date on which they were placed into escrow.

b) The release of escrow account funds under subsection (a)(1) above may be effectuated only pursuant to a Court order or a valid, fully executed Settlement Agreement. The order or agreement shall be forwarded to the escrow agent, who shall promptly release the funds to the AGO or the releasing party (as the case may be) in the order in which they were placed into escrow, and only in the amount specified in the order or agreement.

c) The release of escrow account funds under subsection (a)(2) above may be effectuated only upon the presentation to the AGO of sufficient documentary evidence demonstrating that the tobacco product manufacturer did in fact place funds into the escrow account, that it is current on all escrow obligations and penalties for any period for any brand family (including those of any predecessor above TPM), and that it was required to place into escrow amounts greater than it would have paid had it been a participating manufacturer under the MSA. Upon the presentation of such evidence, the AGO and the TPM will by letter direct the escrow agent to promptly release funds from the escrow account to the tobacco product manufacturer in the order in which they were placed into escrow, in the amount specified by the letter of direction.

d) The release of escrow account funds under subsection (a)(3) above may be effectuated only upon the presentation to the AGO of sufficient documentary evidence demonstrating that the tobacco product manufacturer did in fact place funds into the escrow account, that it is current on all escrow obligations and penalties for any period for any brand family (including those of any predecessor TPM), and that the funds for which it is seeking a release were placed in the account more than 25 years earlier and they are not needed to pay any judgment or settlement to the State or a releasing party. Upon the presentation of such evidence, the AGO and the TPM will by letter direct the escrow agent to promptly release funds from the escrow account to the tobacco product manufacturer in the order in which they were placed into escrow, in the amount specified by the letter of direction.

(Source: Added at 28 Ill. Reg. 7904, effective May 28, 2004)

Section 250.100 Review of AGO Determinations

Any TPM dissatisfied with the AGO's determination of compliance, or with the AGO's determination regarding quarterly installments, may submit documents relevant to the determination to the AGO and request review of the determination by an Assistant Attorney General who is designated by the Attorney General to undertake such reviews and who did not participate in the initial determination. Any such request for a determination shall be submitted in writing to: Office of the Illinois Attorney General, Special Litigation Bureau, 100 West Randolph Street, 13th Floor, Chicago, Illinois, 60601. The burden of proof shall be on the TPM to establish that it or a particular brand family is entitled to be listed in the directory.

(Source: Added at 28 Ill. Reg. 7904, effective May 28, 2004)

Section 250.110 Violations

a) The AGO may investigate conduct that appears to be in violation of the Escrow Act, the Escrow Enforcement Act, or ~~of~~ this Part, and may request the assistance of the Department in accordance with its investigatory powers under the Cigarette Tax Act [35 ILCS 130], the Cigarette Use Tax Act [35 ILCS 135], or the Tobacco Products Tax Act of 1995 [35 ILCS 143].

b) If the AGO determines that a violation has occurred, it shall give written notice to the distributor or the NPM that has committed the violation and shall provide written notice of the violation to the Director ~~of the Department of Revenue,~~. The notice shall include ~~including~~ copies of any documents evidencing the violation and a recommendation for revocation or suspension of license pursuant to Section 6 of the Cigarette Tax Act, Section 6 of the Cigarette Use Tax Act, or Section 10-25 of the Tobacco Products Tax Act of 1995, as appropriate.

c) The AGO may initiate litigation in Circuit Court to enforce the provisions of the Escrow Act, the Escrow Enforcement Act, and this Part, or to seek an injunction to restrain a threatened or actual violation of the Acts or rules. In any such action, the AGO shall be entitled to recover the costs of the investigation, the costs of the litigation, and reasonable attorney fees.

(Source: Renumbered from Section 250.50 and amended at 28 Ill. Reg. 7904, effective May 28, 2004)

ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD

NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Freedom of Information

2) Code Citation: 2 Ill. Adm. Code 2676

3)

Section Numbers:	Adopted Action:
2676.20	Amendment
2676.30	Amendment
2676.50	Amendment
2676.60	Amendment

4) Statutory Authority: 115 ILCS 5/5(i); 5 ILCS 140/3(g)

5) Effective date of amendments: May 28, 2004

6) Does this rulemaking contain an automatic repeal date? No

7) Do these amendments contain incorporations by reference? No

8) A copy of the adopted amendments, including any incorporations 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: January 30, 2004; 28 Ill. Reg. 1554

10) Has JCAR issued a Statement of Objection to these amendments? No

11) Differences between proposal and final version: None

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? No agreements were issued.

13) Will these amendments replace emergency amendments currently in effect? No

14) Are there any amendments pending on this Part? No

15) Summary and purpose of amendments: Updates statutory citations and agency addresses.

16) Information and questions regarding these adopted amendments shall be directed to:
Susan Willenborg
Illinois Educational Labor Relations Board
160 North LaSalle Street, Suite N-400

ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD

NOTICE OF ADOPTED AMENDMENTS

Chicago, Illinois 60601-3103
312/793-3288

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

ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD

NOTICE OF ADOPTED AMENDMENTS

TITLE 2: GOVERNMENTAL ORGANIZATION
SUBTITLE E: MISCELLANEOUS STATE AGENCIES
CHAPTER XLVIII: ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD

PART 2676
FREEDOM OF INFORMATION

Section
2676.10 General Categories of Board Records
2676.20 Availability of Certain records
2676.30 Requests for Access to Records
2676.40 Initial Response to Request
2676.50 Appeal of Denial of Access
2676.60 Place and Time of Inspection
2676.70 Copies

AUTHORITY: Implementing Section 3(g) of the Freedom of Information Act [5 ILCS 140/3(g)] and authorized by Section 5(i) of the Educational Labor Relations Act [115 ILCS 5/5(i)].

SOURCE: Adopted at 14 Ill. Reg. 4151, effective March 2, 1990; amended at 28 Ill. Reg. 7921, effective May 28, 2004.

Section 2676.20 Availability of Certain Records

a) The following records maintained by the Board are readily available for public inspection, meaning they are subject to disclosure and copies are maintained in such a fashion as to ordinarily be accessible for inspection on short notice:

1) Dockets of cases filed with the Board.

2) Pending Representation Petitions (including for certification, decertification, clarification and amendment of certification).

3) Current certifications of exclusive bargaining representatives and certifications of result.

4) Pending unfair labor practice charges.

5) Decisions and Orders rendered by hearing officers, the Executive Director

and the Board.

6) The Labor Mediation Roster, including vitae of roster members.

7) Minutes of Board meetings.

8) Freedom of Information Requests and the records showing their dispositions.

9) Files in unfair labor practice and representation cases that have been closed for six months or more.

b) The following records are deemed accessible for public inspection, but may not be available on short notice; advance arrangements should be made:

1) Hearing Records, including transcripts, briefs filed to hearing officers and exceptions and briefs filed with the Board and other record materials from Board-conducted hearings in both closed representation and unfair labor practice cases.

2) Mediation/Arbitration records, including requests to the Board for the appointment of mediators, fact-finders and arbitrators pursuant to Section 12 of the Act, the Board's responses to such requests, and the reports filed with the Board by fact-finders and interest arbitrators.

3) Rulemaking files, covering the Board's proposal, review and adoption of regulations.

4) Collective Bargaining Agreements filed with the Board by covered employers.

5) Files in unfair labor practice and representation cases that have been closed less than 6 months.

c) The following records are regarded as confidential and exempt from disclosure under all circumstances:

1) Showings of Interest submitted to the Board in conjunction with petitions in representation cases, and materials generated by the Board's investigations of such showings.

2) Files in pending unfair labor practice and representation cases.

3) Records in representation cases potentially identifying voters (or non-voters) and the character of their votes in secret ballot elections conducted by the Board.

4) Internal Personnel Files regarding Board employees.

5) Preliminary drafts, notes, recommendations and memoranda by Board members or Board personnel in which opinions are expressed or policies or actions are proposed or formulated.

6) Drafts, notes, recommendations, memoranda and other materials relating to pending litigation involving the Board.

d) All other records maintained by the Board~~,~~ shall be available for public inspection, to the extent mandated by the Freedom of Information Act [5 ILCS 140]~~(Ill. Rev. Stat. 1987, ch. 116, pars. 201 et seq.)~~, pursuant to the procedures specified in Section 2676.30.

(Source: Amended at 28 Ill. Reg. 7921, effective May 28, 2004)

Section 2676.30 Requests for Access to Records

Requests under the Freedom of Information Act for access to public records of the Illinois Educational Labor Relations Board shall be submitted to the Executive Director, Illinois Educational Labor Relations Board, 160 North LaSalle Street, Suite N-400, ~~20 North Wacker Drive, Suite 1000,~~ Chicago, Illinois 60601~~60606~~. Each request submitted by mail should be enclosed in an envelope clearly marked "FOIA REQUEST~~.~~".

(Source: Amended at 28 Ill. Reg. 7921, effective May 28, 2004)

Section 2676.50 Appeal of Denial of Access

a) A person whose written request for public records has been denied by the staff of the Board may appeal the denial to the Board. The appeal must be in writing and must include a copy of the original request, a copy of the denial (if any), and a statement of the reasons why the denial should be overturned.

b) An appeal to the Board shall be addressed to it, to the attention of the General Counsel, at 160 North LaSalle Street, Suite N-400, ~~20 North Wacker Drive, Suite 1000,~~ Chicago, Illinois 60601~~60606~~, and shall be clearly designated: "ATTN: FOIA APPEAL~~.~~".

c) The Board shall determine a requester's appeal within 7 working days after its receipt. If the Board grants the appeal, a written notice to that effect shall inform the requester how and when the records will be made available. If the Board denies the appeal, in whole or in part, a written notice shall inform the requester that judicial review of the denial is available under Section 11 of the Freedom of Information Act [5 ILCS 140/11]~~(Ill. Rev. Stat. 1987, ch. 116, par. 211.)~~.

d) The Board's failure to determine an appeal within 7 working days after its receipt may be treated by the requester as a denial of the appeal.

(Source: Amended at 28 Ill. Reg. 7921, effective May 28, 2004)

Section 2676.60 Place and Time of Inspection

Public records maintained by the Board will be made available for inspection pursuant to this Part at the Board's offices at either 320 West Washington Street, Suite 260~~Suite 200~~, Springfield, Illinois 62701 or 160 North LaSalle Street, Suite N-400,~~20 North Wacker Drive, Suite 1000,~~ Chicago, Illinois 60601~~60606~~, during regular office hours (8:30 a.m. to 5:00 p.m.) on days other than Saturdays, Sundays and legal holidays. The Board will determine at which office the records will be available.

(Source: Amended at 28 Ill. Reg. 7921, effective May 28, 2004)

ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD

NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Americans with Disabilities Act Grievance Procedure

2) Code Citation: 4 Ill. Adm. Code 900

3)

Section Numbers:	Adopted Action:
900.20	Amendment
900.50	Amendment

4) Statutory Authority: 115 ILCS 5/5(i)

5) Effective date of amendments: May 28, 2004

6) Does this rulemaking contain an automatic repeal date? No

7) Do these amendments contain incorporations by reference? No

8) A copy of the adopted amendments, including any incorporations 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: January 30, 2004; 28 Ill. Reg. 1560

10) Has JCAR issued a Statement of Objection to these amendments? No

11) Differences between proposal and final version: None

12) Have all changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? No agreements were issued.

13) Will these amendments replace emergency amendments currently in effect? No

14) Are there any amendments pending on this Part? No

15) Summary and purpose of amendments: Updates statutory citation and changes the address of the Designated Coordinator.

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

Susan Willenborg
Illinois Educational Labor Relations Board
160 North LaSalle Street, Suite N-400

ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD

NOTICE OF ADOPTED AMENDMENTS

Chicago, Illinois 60601-3103
312/793-3288

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

ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD

NOTICE OF ADOPTED AMENDMENTS

TITLE 4: DISCRIMINATION PROCEDURES
CHAPTER XXXIII: ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD

PART 900
AMERICANS WITH DISABILITIES ACT GRIEVANCE PROCEDURE

Section
900.10 Purpose
900.20 Definitions
900.30 Procedure
900.40 Designated Coordinator Level
900.50 Final Level
900.60 Accessibility
900.70 Case-by-Case Resolution

AUTHORITY: Implementing the Americans With Disabilities Act of 1990 (42 USC 12101 et seq.) and section 35.107 of Title II (28 CFR 35.107).

SOURCE: Adopted at 17 Ill. Reg. 9887, effective June 17, 1993; amended at 28 Ill. Reg. 7927, effective May 28, 2004.

Section 900.20 Definitions

a) Complainant
A complainant is an individual with a disability who files a Grievance Form provided by the Board under this procedure.

b) Designated Coordinator
The Designated Coordinator is the persons~~person(s)~~ appointed by the Chairman of the Board who is/are responsible for the coordination of efforts of the Board to comply with and carry out its responsibilities under Title II of the ADA including investigation of grievances filed by complainants. The Designated Coordinator may be contacted at 160 North LaSalle Street, Suite N-400, Chicago, Illinois 60601.~~320 West Washington, Floor 2, Springfield IL 62701.~~ See 28 CFR 35.107.

c) Grievance
A grievance is any complaint under the ADA by an individual with a disability who:

1) meets the essential eligibility requirements for participation in or receipt of

the benefits of a program, activity or service offered by the Board, and

2) believes he or she has been excluded from participation in, or denied the benefits of, any program, service or activity of the Board or has been subject to discrimination by the Board.

(Source: Amended at 28 Ill. Reg. 7927, effective May 28, 2004)

Section 900.50 Final Level

a) If the grievance has not been resolved at the Designated Coordinator Level to the satisfaction of the complainant, the complainant may submit a copy of the Grievance Form and Designated Coordinator's response to the Chairman of the Board for final review. The complainant shall submit these documents to the Chairman, together with a short written statement explaining the reasons~~reason(s)~~ for dissatisfaction with the Designated Coordinator's written response, within five ~~(5)~~ business days after receipt by the complainant of the Designated Coordinator's response.

b) The Chairman shall appoint a three-member panel to review the grievance at the Final Level. One member so appointed shall be designated chairman.

c) The complainant shall be afforded an opportunity to appear before the panel. Complainant shall have a right to appoint a representative to appear on his/her behalf. The panel shall review the Designated Coordinator's written response and may conduct interviews and seek advice as it deems appropriate.

d) Upon reaching a concurrence, the panel shall make recommendations in writing to the Chairman as to the proper resolution of the grievance. All recommendations shall include reasons for such recommendations and shall bear the signatures of the concurring panel members. A dissenting member of the panel may make a recommendation to the Chairman in writing and shall also sign such recommendation.

e) Upon receipt of recommendations from a panel, the Chairman shall approve, disapprove or modify the panel's recommendations, shall render a decision thereon in writing, shall state the basis therefor, and shall cause a copy of the decision to be served on the parties. The Chairman's decision shall be final. If the Chairman disapproves or modifies the panel's recommendations, the Chairman shall include written reasons for such disapproval or modification.

ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD

NOTICE OF ADOPTED AMENDMENTS

f) The Grievance Form, the Designated Coordinator's response, the statement of the reasons for dissatisfaction, the recommendations of the panel, and the decision of the Chairman shall be maintained in accordance with the State Records Act ~~(Ill. Rev. Stat. 1991, ch. 116, par. 43.4 et seq.)~~ [5 ILCS 160], or as otherwise required by law.

(Source: Amended at 28 Ill. Reg. 7927, effective May 28, 2004)

ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD

NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: General Procedures

2) Code Citation: 80 Ill. Adm. Code 1100

3)

Section Numbers:	Adopted Action:
1100.10	Amendment
1100.20	Amendment
1100.70	Amendment

4) Statutory Authority: 115 ILCS 5/5(i)

5) Effective date of amendments: May 28, 2004

6) Does this rulemaking contain an automatic repeal date? No

7) Do these amendments contain incorporations by reference? No

8) A copy of the adopted amendments, including any incorporations 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: January 30, 2004; 28 Ill. Reg. 1565

10) Has JCAR issued a Statement of Objection to these amendments? No

11) Differences between proposal and final version: In the final version, the term "e-mail" is consistently used to refer to electronic filings (Section 1100.20(a), (d), and (e)). Two references to an "Administrative Law Judge" are changed to a "hearing officer". In the final version, Board Agents are given the authority to permit filings by e-mail (Section 1100.20(a), (d), and (e)). The term "principle" is changed to "principal". "Chief" is added before "Administrative Law Judge" in describing the person who receives motions to revoke subpoenas prior to the opening of a hearing.

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? No agreements were issued.

13) Will these amendments replace emergency amendments currently in effect? No

14) Are there any amendments pending on this Part? No

ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD

NOTICE OF ADOPTED AMENDMENTS

15) Summary and purpose of amendments: Provides a definition of "representation petition" and "majority interest petition" to be used in the Board's card check rules. Authorizes filings by facsimile and e-mail, provides for service of documents filed by facsimile and e-mail, and establishes when documents filed by facsimile or e-mail are considered to have been filed. Provides for subpoenas duces tecum to specify the date for production of documents. Updates title of Chief Administrative Law Judge and statutory citations.

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

Susan Willenborg
Illinois Educational Labor Relations Board
160 North LaSalle Street, Suite N-400
Chicago, Illinois 60601-3103
312/793-3288

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

ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD

NOTICE OF ADOPTED AMENDMENTS

TITLE 80: PUBLIC OFFICIALS AND EMPLOYEES
SUBTITLE C: LABOR RELATIONS
CHAPTER III: ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD

PART 1100
GENERAL PROCEDURES

Section

1100.10 Definitions
1100.20 Filing and Service of Documents
1100.30 Computation and Extensions of Time
1100.40 Hearing Officers
1100.50 Recording of Hearings
1100.60 Representation of Parties
1100.70 Subpoenas
1100.80 Limitation on Practice Before the Board by Former Employees
1100.90 Amicus Curiae
1100.100 Gender Usage
1100.105 Qualifications of Administrative Law Judges
1100.110 Conflict of Interest

AUTHORITY: Implementing and authorized by the Illinois Educational Labor Relations Act [115 ILCS 5].

SOURCE: Emergency rules adopted at 8 Ill. Reg. 8638, effective June 6, 1984, for a maximum of 150 days; adopted at 8 Ill. Reg. 22548, effective November 5, 1984; amended at 14 Ill. Reg. 1270, effective January 5, 1990; amended at 26 Ill. Reg. 11472, effective July 23, 2002; emergency amendment at 28 Ill. Reg. 971, effective January 1, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 7932, effective May 28, 2004.

Section 1100.10 Definitions

a) The term "Act" shall mean the Illinois Educational Labor Relations Act [115 ILCS 5].~~(Ill. Rev. Stat. 1987, ch. 48, par. 1701 et seq.).~~

b) This Part incorporates the definitions contained in Section 2 of the Act.

c) The term "incumbent employee organization" or "incumbent exclusive representative" shall mean the existing exclusive representative of the employees in the bargaining unit.

ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD

NOTICE OF ADOPTED AMENDMENTS

d) The term "charging party" shall mean the person who files an unfair labor practice charge.

e) The term "respondent" shall mean the party named in an unfair labor practice charge or complaint as having allegedly committed the unfair labor practice.

f) The term "scheduled start of the forthcoming school year" shall mean the first date scheduled for student attendance for that year.

g) The term "professional instructional personnel" shall mean, in the case of a public school district, any employee whose position requires a certificate issued pursuant to Article 21~~Section 21-1 et seq.~~ of the~~The~~ School Code [105 ILCS 5/Art.21]. ~~(Ill. Rev. Stat. 1987, ch. 122, par. 21-1 et seq.).~~

h) The term "professional instructional personnel" shall mean in the case of an employer other than a public school district, any employee whose position includes or could include the provision of academic instruction to students.

i) The term "legal holiday" shall mean a "legal school holiday" as specified in Sec. 24-2 of the School Code (not to include "special holidays" or "commemorative holidays"), or a holiday observed by the Board.

j) The term "representation petition" shall include both a petition seeking recognition as exclusive representative through an election and a petition seeking recognition as exclusive representative through the Board's card check procedures (majority interest petition).

(Source: Amended at 28 Ill. Reg. 7932, effective May 28, 2004)

Section 1100.20 Filing and Service of Documents

a) All documents relating to any proceeding before the Illinois Educational Labor Relations Board (the Board) shall be filed in either the Board's Springfield or Chicago office. The original and seven copies of each document shall be filed in all proceedings before the members of the Board; the original and three copies of each document shall be filed in any proceeding before a Hearing Officer. Except as otherwise specified in the rules of the Board, documents shall be considered filed with the Board on the date they are received by the Board or on the date they are postmarked if sent by registered or certified mail. Documents sent by any

means other than registered or certified mail shall be considered filed on the date they are received by the Board, except that documents shall be considered filed on the date they are tendered to an overnight delivery service, if that service provides a receipt showing the date on which the documents were tendered for delivery. A party may file a document by facsimile if the party also sends a hard copy. A document filed by facsimile shall be considered filed with the Board on the date the Board receives the facsimile or the date the Board receives the hard copy of the document, whichever is first. Filings by e-mail may be permitted with the approval of the General Counsel in any proceeding before the members of the Board; with the approval of the hearing officer in any proceeding before a hearing officer; and with the approval of the Executive Director or Board Agent in any proceeding before the Executive Director.

b) Whenever 80 Ill. Adm. Code: Subtitle C, Chapter III requires that a document be on a form developed by the Board, the document may be prepared on a form obtained from the Board or on a facsimile thereof. Minor deviations in the form of a document shall not be grounds for objecting to the document. Minor deviations are those deviations that involve form but not substance and thus do not prejudice any other party to the case.

c) The Board will serve petitions, intervening claims and unfair labor practice charges on the appropriate parties by either personal service, registered or certified mail, or by leaving a copy at the principal~~principle~~ office or place of business of the person required to be served.

d) All documents, except those listed in subsection (c), ~~above,~~ will be served on the appropriate parties by the party propounding the document, either by the methods listed in subsection (c)~~,~~ or by first class mail~~,~~ or overnight delivery service. A document filed by facsimile or e-mail may be served by the same means as it is filed. When a party is represented in a proceeding before the Board, service shall be on the party's representative. When a party is not represented, service shall be on the party. Subpoenas will be served by the party requesting the subpoena, but in the manner provided in subsection (c)~~ above~~.

e) Whenever a document is filed with the Board, it shall be accompanied by a certificate of service. A certificate of service shall consist of a written statement, signed by the party effecting service, detailing the name of the party served and the date and manner of service. In the case of an e-mail, a signature on the certificate of service shall not be required.

ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD

NOTICE OF ADOPTED AMENDMENTS

f) Failure of a party to serve a document or failure to attach a certificate of service may be grounds to strike the document, if the~~said~~ failure results in prejudice to another party (such as lack of notice or detrimental reliance) or demonstrates disregard of the Board's processes (such as continued noncompliance).

(Source: Amended at 28 Ill. Reg. 7932, effective May 28, 2004)

Section 1100.70 Subpoenas

a) Subpoenas, including subpoenas duces tecum, shall be issued by the Board upon written application of a party to the Chief Administrative Law Judge~~Hearing Officer~~. The application shall contain the name and address of the party and its representative, and the name of the person to be subpoenaed, and, where applicable, a description of any documents to be produced.

b) A person objecting to the subpoena may file a motion to revoke the subpoena. Prior to the opening of a hearing, any motion to revoke a subpoena shall be filed with the Chief Administrative Law Judge~~Chief Hearing Officer~~. After the opening of a hearing, any motion to revoke a subpoena shall be filed with the hearing officer. The motion must be filed by the date on which the person is required to appear, and, in any event, no later than five days after service of the subpoena. Grounds for revocations of subpoenas shall include such factors as irrelevance, burdensomeness of compliance or privilege.

c) Witnesses appearing at a hearing pursuant to subpoenas are entitled to the same fees and mileage as are allowed witnesses in civil cases in the courts of the State of Illinois, pursuant to Section 4.3 of the Circuit Courts Act [705 ILCS 35/4.3].~~47 of "AN ACT in relation to the compensation of Sheriffs, Coroners, County Treasurers, County Clerks, Recorders, and Auditors with their necessary clerk hire, stationery, fuel and other expenses, in counties less than 2,000,000 inhabitants" (Ill. Rev. Stat. 1987, ch. 53, par. 65).~~ Witness fees and mileage shall be paid by the party at whose request the subpoena was issued.

d) A subpoena duces tecum shall specify the date for production of the documents. If the date so specified is other than at the hearing, the date specified for production shall be a date in advance of the hearing, which shall be no less than 10 days after the receipt of the subpoena by the person or entity to whom it is directed.

(Source: Amended at 28 Ill. Reg. 7932, effective May 28, 2004)

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1) Heading of the Part: Representation Procedures

2) Code Citation: 80 Ill. Adm. Code 1110

3)

Section Numbers:	Adopted Action:
1110.10	Amendment
1110.30	Amendment
1110.40	Amendment
1110.50	Amendment
1110.60	Amendment
1110.70	Amendment
1110.80	Amendment
1110.90	Amendment
1110.100	Amendment
1110.105	New Section
1110.120	Amendment
1110.140	Amendment
1110.160	Amendment
1110.180	Amendment
APPENDIX A	New Section

4) Statutory Authority: 115 ILCS 5/5(i)

5) Effective date of the amendments: May 28, 2004

6) Does this rulemaking contain an automatic repeal date? No

7) Do these amendments contain incorporations by reference? No

8) A copy of the adopted amendments, including any incorporations 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: January 30, 2004; 28 Ill. Reg. 1587

10) Has JCAR issued a Statement of Objection to these amendments? No

11) Differences between proposal and final version: "Card check" is changed to "majority interest" in various places. It is specified that the required statement in the representation petition of whether the petitioner intends to use the majority interest procedure or the

election procedure applies to petitions filed by an employee, a group of employees, or an employee organization. (See Section 1110.50(b)(9).) Rather than the rule stating that all representation petitions filed within the last three months of the 12-month period following an election will be processed, and that the card check will be conducted after the 12-month period has elapsed, the rule is changed to read that majority interest petitions filed within 12 months after an election will be dismissed. (See Section 1110.70(a).) "Or petitioning" is added in referring to the employee organization that is the subject of the showing of interest. "Subject to the provisions of Section 1110.105(p) of this Part. (See Section 1110.80(h).)" is changed to "except as provided in Section 1110.105(p) of this Part. (See Section 1110.90.)" The time by which the employer must post the notice of the petition is changed from "immediately" to "by the date after the employer receives the notice". A limit is set on the amount of additional time an employer can receive to provide the list of employees and the signature examples. (See Section 1110.105(b) and (c).) The rule is changed to specify "good cause" for allowing additional time for the party or employee alleging fraud or coercion to provide evidence. (See Section 1110.105(f).) The deadline for the Board to issue its decision is changed in a number of places from 60 to 45 days. "Pursuant to this subsection" is added in reference to the filing of briefs where fraud or coercion is alleged. (See Section 1110.105(g).) A provision is added that "the filing of exceptions shall not stay the certification if the alleged fraud or coercion is not sufficient to affect the majority status of the petition. (See Section 1110.105(g).)" The final version moves the language concerning the deadline for issuing a certification where there is not clear and convincing evidence of fraud or coercion sufficient to affect the majority status of the petition. (See Section 1110.105(i).) "Part" is changed to "subsection" in two places and a statutory quotation is corrected.

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? No agreements were issued.

13) Will these amendments replace emergency amendments currently in effect? Yes

14) Are there any amendments pending on this Part? No

15) Summary and purpose of amendments: Creates procedures for the recognition of unions as exclusive representatives by means of a card check in order to implement legislation on that issue. Provides for filing cross-exceptions in order to avoid unnecessary exceptions and the waiver of arguments when a party disagrees with a point in a decision but does not think it is worth filing exceptions unless the other party does. Modifies voluntary recognition procedures in order to reflect the statutory amendment making voluntary recognition mandatory. Clarifies that an employer may consent to an election

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when another union is the exclusive representative in order to encourage consent elections and avoid unnecessary hearings. Specifies the procedures that are to be followed when there are objections to a stipulated unit clarification. Updates a citation to the Illinois Educational Labor Relations Act.

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

Susan Willenborg
Illinois Educational Labor Relations Board
160 North LaSalle Street, Suite N-400
Chicago, Illinois 60601-3103
312/793-3288

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

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TITLE 80: PUBLIC OFFICIALS AND EMPLOYEES
SUBTITLE C: LABOR RELATIONS
CHAPTER III: ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD

PART 1110
REPRESENTATION PROCEDURES

Section

1110.10 General Statement of Purpose
1110.15 Investigations
1110.20 Employee Organizations Seeking Recognition
1110.30 Employer Responses to Recognition Requests
1110.40 Voluntary Recognition Procedures
1110.50 Representation Petitions
1110.60 Decertification Petitions
1110.70 Timeliness of Petitions and Bars to Elections
1110.80 Showing of Interest
1110.90 Posting of Notice
1110.100 Processing of Petitions Seeking an Election
1110.105 Processing of Majority Interest Petitions
1110.110 Consent Elections
1110.120 Bargaining Unit Determinations
1110.130 Eligibility of Voters
1110.140 Conduct of the Election
1110.150 Objections to the Election
1110.160 Petitions for Clarification of the Bargaining Unit
1110.170 Petitions to Amend Certification
1110.180 Petitions for Self-Determination
1110.APPENDIX A Model Authorization Card

AUTHORITY: Implementing and authorized by the Illinois Educational Labor Relations Act [115 ILCS 5].

SOURCE: Emergency rules adopted at 8 Ill. Reg. 4526, effective March 26, 1984, for a maximum of 150 days; adopted at 8 Ill. Reg. 16300, effective August 27, 1984; amended at 14 Ill. Reg. 1297, effective January 5, 1990; emergency amendment at 28 Ill. Reg. 975, effective January 1, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 7938, effective May 28, 2004.

Section 1110.10 General Statement of Purpose

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The regulations contained in this Part detail the procedures that employers, employees, and employee organizations should use for employer voluntary recognition of an employee organization and for instituting representation and related proceedings. These procedures are the exclusive means by which an educational employer may recognize an employee organization after the effective date of this Part if the bargaining relationship and any ensuing collective bargaining agreement are to be pursuant to the Illinois Educational Labor Relations Act (~~"~~the Act~~")~~, [115 ILCS 5]~~Supp. to Ill. Rev. Stat. 1983, ch. 48, par. 1701 et. seq.,~~ and subject to the processes of this Board.

(Source: Amended at 28 Ill. Reg. 7938, effective May 28, 2004)

Section 1110.30 Employer Responses to Recognition Requests

a) An employer faced with a request for recognition in a bargaining unit that is not currently represented by an employee organization ~~may agree to resort to the voluntary recognition procedures, may consent to a representation election,~~ may file a representation petition with the Board, ~~or~~ may decline to respond to the request, or, if an election is sought, may consent to a representation election. Where the bargaining unit is not currently represented, the employer shall recognize an employee organization that seeks voluntary recognition if that organization appears to represent a majority of employees in the unit and if the voluntary recognition procedures specified in Section 1110.40 of this Part are followed.

b) An employer faced with a request for recognition in a bargaining unit in which another employee organization has lawfully attained representation rights may file a representation petition with the Board, ~~or~~ may decline to respond to the request, or, if an election is sought, may consent to a representation election. The employer may not ~~agree to~~ resort to the voluntary recognition procedures in response to such a request.

(Source: Amended at 28 Ill. Reg. 7938, effective May 28, 2004)

Section 1110.40 Voluntary Recognition Procedures

a) Voluntary recognition procedures may not be used under the following circumstances:

1) whenever an employee organization has lawfully attained representation

rights as the exclusive representative of the employees in the bargaining unit;

2) whenever there has been a valid representation election or a majority interest petition has been dismissed within the preceding 12~~twelve~~ months;

3) whenever the proposed bargaining unit would include both professional and nonprofessional employees.

b) An employee organization is not required to follow voluntary recognition procedures prior to employing majority interest procedures.

c~~b~~) Whenever a party intends to use the voluntary recognition procedures, the party shall notify the Board of its intent. The notification shall be on a form developed by the Board and shall include:

1) the name and address of the employer;

2) the name, address, and affiliation, if any, of the employee organization to be recognized;

3) a description of the proposed bargaining unit;

4) the approximate number of employees in the proposed bargaining unit;

5) the reasons why ~~the employer believes that~~ the employee organization appears to represent a majority of the employees;

6) the date on which the employer posted or intends to post the voluntary recognition notice; and

7) a copy of the voluntary recognition notice that has been or will be posted.

d~~c~~) The employer must post the voluntary recognition notice on the date specified in the notification filed with the Board on bulletin boards and other places where notices for employees in the bargaining unit are customarily placed. The notice must be on a form developed by the Board, and must contain the following:

1) a statement that, subject to Board certification, the employer intends to

recognize the employee organization if no competing claims of representation are filed with the Board;

2) the name and affiliation, if any, of the employee organization to be recognized;

3) a description of the proposed bargaining unit;

4) the date of posting; and

5) the date by which a competing claim of representation must be filed with the Board, which is the date that the posting period is scheduled to terminate.

e~~d~~) The notice shall remain posted for a period of at least 20 school days. For purposes of computing the 20-day period, a school day shall not include weekends, days on which holidays are recognized, or any day on which a significant portion of the regularly scheduled work force in the bargaining unit is not scheduled to work. The employer shall attempt to insure that the notice is not removed or defaced and shall replace any notice which is removed or defaced.

f~~e~~) During the posting period, any competing employee organization may file a petition with the Board. Prior to, or simultaneously with, its filing with the Board, the petition shall also be served on the employer and the employee organization that was to have been voluntarily recognized. The petition shall be on a form developed by the Board and shall contain:

1) the name, address, and affiliation, if any, of the employee organization;

2) the names of the employer and employee organization that the employer intends to voluntarily recognize;

3) a description of the proposed bargaining unit;

4) the date the voluntary recognition notice was posted; and

5) the date the posting period is scheduled to terminate.

g~~f~~) A competing employee organization's petition must be supported by a showing of interest by *at least 15 percent of the employees in an appropriate bargaining unit*

which includes all or some of the employees in the unit intended to be recognized (Section 7(b) of the Act).

h~~g~~) Upon the filing of a competing employee organization's petition, the Board shall treat the notification of intent to use the voluntary recognition proceedings as a representation proceeding. The Board shall proceed in accordance with Section 7(c) of the Act and Sections 1110.90-1110.150 of this Part.

i~~h~~) If no competing employee organization petitions have been filed with the Board by the termination of the posting period, the employee organization~~employer~~ shall file with the Board a request for voluntary recognition certification. In the alternative, the employer may file such a request. The request shall be on a form developed by the Board. The request shall be signed and shall contain the following:

1) the name and address of the employer;

2) the name, address, and affiliation, if any, of the employee organization;

3) a description of the proposed bargaining unit;

4) the number of employees in the proposed bargaining unit;

5) the dates and locations of the posting of the voluntary recognition notice;

6) a statement that the notice was not removed or defaced during the posting period; and

7) a statement describing why ~~the employer is satisfied that~~ the employee organization represents the majority of the employees in the bargaining unit.

j~~i~~) The petition must be supported by objective evidence that a majority of the employees in the bargaining unit wish to be represented by the employee organization.

1) If authorization cards are offered as evidence, those cards that would not qualify as evidence in support of a representation petition, pursuant to Section 1110.80(c) and (d) of this Part, will not be considered sufficient evidence of majority status.

2) If employees signing such authorization cards have also signed cards authorizing other employee organizations to represent them, those cards will not be considered sufficient evidence of majority status.

k~~j~~) The Board will investigate the voluntary recognition request:

1) If the Board concludes that the employee organization represents a majority of the employees in the bargaining unit, and that the petition is otherwise consistent with the Act and this Part, the Board shall certify the employee organization as the exclusive representative of the employees.

2) If the Board determines that there is insufficient evidence to support the claim of majority status, or that the petition otherwise contravenes the Act or this Part, the Board shall dismiss the petition without prejudice to the filing of a representation petition by either the employer or the employee organization. ~~k)If, at the end of the posting period, the employer is no longer satisfied that the employee organization has demonstrated majority status, the employer shall petition the Board to withdraw the voluntary recognition request. Such withdrawal shall be without prejudice to the filing of a representation petition by either the employer or the employee organization.~~

(Source: Amended at 28 Ill. Reg. 7938, effective May 28, 2004)

Section 1110.50 Representation Petitions

a) A representation petition may be filed by:

1) an employee, a group of employees, or an employee organization; or

2) an employer *alleging that one or more labor organizations have presented a claim to be recognized as an exclusive bargaining representative of a majority of the employees in an appropriate unit and that it doubts the majority status of any of the organizations or that it doubts the majority status of an exclusive representative* (Section 7(c)(2) of the Act).

b) Representation petitions shall be signed by a representative of the petitioning party and shall contain:

1) the name and address of the employer;

2) the name, address, and affiliation, if any, of the employee organization;

3) a description of the proposed bargaining unit which petitioner claims to be appropriate;

4) the approximate number of employees in the proposed bargaining unit;

5) the name of any existing exclusive representative of any employees in the proposed bargaining unit;

6) a brief description of any collective bargaining agreements covering any employees in the proposed bargaining unit, and the expiration dates of the agreements;

7) the date that the employer recognized any existing exclusive representative of any employees in the proposed bargaining unit, and the method of recognition;

8) election and/or recognition history prior to January 1, 1984, to the extent known; ~~and~~

9) in the case of a petition filed by an employee, a group of employees, or an employee organization, a statement whether the petitioner intends to use the majority interest procedure or the election procedure;

10~~9~~) in the case of a petition filed by an employer, a statement that one or more employee organizations has demanded recognition and that the employer doubts either their majority status or the continued majority status of the existing representative.

c) The Board shall serve the representation petition on the appropriate parties.

1) Employer petitions shall be served on the employee organizations that demanded recognition, and on the existing exclusive representative, if any.

2) Employee and employee organization petitions shall be served on the employer and on the existing exclusive representative, if any.

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d) Employee and employee organization petitions seeking an election shall be accompanied by a showing of interest that at least 30 percent of the employees in the petitioned for bargaining unit wish to be represented by the employee organization. Employee and employee organization majority interest petitions shall be accompanied by a showing of a majority interest.

e) A petition may seek joint representation by two or more employee organizations if an instrument, such as a joint council, has been established to effectuate the joint representation. In such instances, the petition shall describe the instrument.

f) A petitioner may withdraw a ~~its~~ representation petition seeking an election as follows:

1) If there are no intervenors, at any time prior to the direction of an election.

2) If there are no intervenors, at any time after the direction of an election, but prior to the election. However, such withdrawal shall bar the petitioner from petitioning for an election or filing a majority interest petition in a bargaining unit covering all or part of the petitioned for unit for one year following the withdrawal.

3) If there are intervenors, the employee organization may not withdraw its petition without the consent of all parties. However, the employee organization may file a statement signed by its authorized representative that it no longer wishes to appear on the ballot. The statement shall be filed no later than ten days prior to the election. Upon receipt of such a statement, the Board shall strike the employee organization's name from the ballot.

g) A petitioner may withdraw a majority interest petition as follows:

1) If there are no intervenors, at any time. However, if the petitioner withdraws the petition after the Board has determined that there is clear and convincing evidence of fraud or coercion in obtaining the showing of interest, such withdrawal shall bar the petitioner from filing a representation petition in a bargaining unit covering all or part of the petitioned for unit for one year following the withdrawal.

2) If there are intervenors that meet the requirements of Section 1110.105(q) and Section 1110.80(b) of this Part, the employee organization may not

withdraw its petition without the consent of all parties. However, the employee organization may file a statement signed by its authorized representative that it no longer wishes to appear on the ballot. The statement shall be filed no later than 10 days prior to the election. Upon receipt of such a statement, the Board shall strike the employee organization's name from the ballot.

h~~g~~) Failure to complete the petition by listing all of the information contained in subsection (b) of this Section~~Part~~ shall not be grounds for dismissal of the petition so long as the unlisted information is available from any other party. A~~The~~ petition seeking an election may be revised by the filing party at any time prior to a hearing or agreement to a consent election. A majority interest petition may be revised by the filing party within 21 days after service of the petition. Notice of any revision shall be served upon all other parties.

(Source: Amended at 28 Ill. Reg. 7938, effective May 28, 2004)

Section 1110.60 Decertification Petitions

a) A petition to decertify an existing exclusive representative may be filed by an employee or group of employees. The Board shall serve the petition on the exclusive representative and on the employer. The petition shall be on a form developed by the Board. It shall be signed and shall contain the following:

1) the name and address of the petitioner;

2) the name, address, and affiliation, if any, of the exclusive representative;

3) the name and address of the employer;

4) a description of the bargaining unit;

5) the approximate number of employees in the bargaining unit;

6) the date that the exclusive representative was recognized and the method of recognition, if known; and

7) a brief description of any collective bargaining agreements covering any employees in the bargaining unit, and the expiration dates of the agreements.

b) An employer shall not instigate or lend support to a decertification petition. Allegations that an employer has violated this subsection may be raised in motions to dismiss the decertification petition, objections to the decertification election, or unfair labor practice charges.

c) The majority interest procedure shall not be used to decertify an employee organization.

(Source: Amended at 28 Ill. Reg. 7938, effective May 28, 2004)

Section 1110.70 Timeliness of Petitions and Bars to Elections

a) Election bar: With respect to any bargaining unit, *no election may be conducted in a bargaining unit, or subdivision thereof, in which a valid election has been held within the preceding 12 month period* (Section 7(d) of the Act). The Board will dismiss majority interest petitions for a bargaining unit, or subdivision thereof, in which a valid election has been held within the preceeding 12 month period. However, petitions seeking an election ~~representation and decertification petitions~~ filed within the last three months of the 12 month period will be processed, and any resulting election will be conducted~~held~~ after the 12 month period has elapsed. Petitions seeking an election ~~Representation and decertification petitions~~ filed in the first 9 months of the 12 month period will be dismissed.

b) Certification bar: With respect to any bargaining unit, absent unusual circumstances the Board will dismiss a representation or decertification petition filed within 12 months following the date of Board certification of an exclusive representative for all or some of the employees in the bargaining unit, as a result of voluntary certification, majority interest proceeding or representation election. Unusual circumstances include when the exclusive representative dissolves or becomes defunct; when as a result of a schism, substantially all of the members and officers of the exclusive representative transfer their affiliation to a new local or international; or the size of the bargaining unit fluctuates radically within a short time.

c) With respect to petitions with proposed bargaining units containing professional instructional personnel, representation and decertification petitions may not be filed whenever there is in effect a collective bargaining agreement of three years or shorter duration covering all or some of the employees in the bargaining unit.

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Collective bargaining agreements of longer than three years duration shall serve as a bar for the first three years of their existence. In all cases, representation and decertification petitions may be filed between January 15 and March 1 of the year in which the collective bargaining agreement is due to expire or in the third year of an agreement of more than three years duration. However, no such petition may be filed if it would otherwise be barred by subsection~~subsections~~ (a) or (b) of this Section.

d) With respect to petitions with proposed bargaining units not containing professional instructional personnel, representation and decertification petitions may not be filed whenever there is in effect a collective bargaining agreement of three years or shorter duration covering all or some of the employees in the bargaining unit. Collective bargaining agreements of longer than three years duration shall serve as a bar for the first three years of their existence. In all cases, representation and decertification petitions may be filed between 90 days and 45 days prior to the expiration date of a collective bargaining agreement of three years duration or less, or any time after 90 days prior to the end of the third year of an agreement of more than three years duration.

e) A collective bargaining agreement shall not bar the filing of a representation or decertification petition if the agreement is between an employer and an employee organization recognized by the employer after the effective date of this Part without having used the voluntary recognition, majority interest or representation election procedures specified in the Act and this Part.

(Source: Amended at 28 Ill. Reg. 7938, effective May 28, 2004)

Section 1110.80 Showing of Interest

a) Representation petitions filed by employees, groups of employees and employee organizations~~,~~ that seek an election and all decertification petitions must be accompanied by a 30 percent showing of interest. Majority interest petitions must be accompanied by a showing of majority interest.

1) The showing of interest in support of a representation petition seeking an election shall consist of authorization cards, petitions, or other evidence which demonstrates that at least 30 percent of the employees in the proposed bargaining unit desire to be represented for collective bargaining by the petitioned for or petitioning employee organization.

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2) The showing of interest in support of a decertification petition shall consist only of cards or petitions clearly stating that the employee does not want the incumbent employee organization to continue serving as exclusive representative.

3) The showing of interest in support of a majority interest petition shall consist of current dues deduction authorizations, authorization cards, petitions, or other evidence that demonstrates that more than 50 percent of the employees wish to be represented for collective bargaining by the petitioned for or petitioning employee organization. An authorization card including the information in Appendix A of this Part shall be considered sufficient to support a showing of majority interest.

b) A petition to intervene in an election or majority interest proceeding must be supported by a 15 percent showing of interest when the petition proposes a bargaining unit substantially similar to the originally proposed unit. In the case of a majority interest petition, the requirements of Section 1110.105(q) of this Part also apply. When the intervenor proposes a bargaining unit substantially different from the originally proposed unit, the petition must be supported by a 30 percent showing of interest in the case of a petition seeking an election and a showing of majority interest in the case of a majority interest petition. In determining whether the proposed bargaining units are substantially similar, the Board will consider the number and type of employees in each of the proposed units. The proposed units will not be considered substantially similar whenever less than 50 percent of the employees in the originally proposed unit are included in the unit proposed by the intervenor. An incumbent exclusive representative shall automatically be allowed to intervene without submitting any showing of interest.

c) If authorization cards or petitions are submitted as a showing of interest, each signature appearing thereon should be dated by the employee.

d) Each signature appearing on an authorization card or petition shall be effective for six months from the date it was given.

e) In the case of a petition seeking an election, whenever~~Whenever~~ an employee has signed authorization cards or petitions for two or more employee organizations, each card or petition shall be counted in computing the required showing of interest. In the case of a majority interest petition, whenever an employee has signed authorization cards or petitions for two or more employee organizations, neither card or signature on a petition shall be counted in computing the required

showing of interest.

f) The Board shall maintain the confidentiality of the showing of interest. The evidence submitted in support of the showing of interest shall not be furnished to any of the parties.

g) The Executive Director will determine whether the evidence submitted demonstrates the appropriate level of showing of interest pursuant to subsections (a) and (b)~~ of this section~~. Except as provided in Section 1110.105 of this Part, the~~The~~ showing of interest shall not be subject to collateral attack and shall not be an issue at hearing. However, any person who has evidence that the showing of interest was fraudulent or was obtained through misrepresentation or coercion may bring the evidence to the attention of the Board's agent investigating the petition.

h) If the Executive Director determines that the evidence submitted does not demonstrate the appropriate level of showing of interest, the petitioner or intervenor shall have 48 hours to provide the necessary showing of interest to the Executive Director, except as provided by Section 1110.105(p) of this Part. If the petitioner or intervenor is unable to present any necessary additional evidence of showing of interest within that time, then the petition shall be subject to dismissal.

(Source: Amended at 28 Ill. Reg. 7938, effective May 28, 2004)

Section 1110.90 Posting of Notice

Following the filing of a representation or decertification petition, the Board shall provide the employer with a notice that~~which~~ shall be posted, by the day after the employer receives the notice, on bulletin boards and other places where notices for employees in the bargaining unit are customarily posted, or in conspicuous places in the absence of a customary posting location.

(Source: Amended at 28 Ill. Reg. 7938, effective May 28, 2004)

Section 1110.100 Processing of Petitions Seeking an Election

a) All parties served with a representation petition seeking an election or a decertification petition shall respond to the petition within seven days after~~of~~ service. The response shall set forth the party's position with respect to the matters asserted in the petition, including, but not limited to, the appropriateness of the bargaining unit. A party that fails to file a timely response without good

cause shall be deemed to have waived its right to a hearing. Good cause will include when there is no prejudice to another party or the other parties have consented to a hearing without the filing of a timely response.

b) Upon receipt of the petition, the Board or its agent shall investigate the petition. If the investigation discloses that *there is no reasonable cause to suspect that a question of representation exists,* as defined in Section 7(c)(1) or (2) of the Act, the petition will be dismissed; provided that, the dismissal may be appealed within 14~~fourteen~~ days to the Board. If the investigation discloses that *there is reasonable cause to suspect that a question of representation exists,* as defined in Section 7(c)(1) or (2) of the Act, the matter will be set for hearing before a hearing officer. All parties shall be given a minimum of seven days notice of the hearing.

c) Petitions to intervene may be filed with the Board no later than 14 days prior to the date set for the election. Any intervenor who files after the date set for hearing, or if no hearing is held, after the approval of a consent election agreement or the direction of an election pursuant to subsection (j) of this Section, shall have waived objections to the bargaining unit.

d) Interested persons who wish to participate in the hearing shall direct such requests to the hearing officer. The request shall be in writing and shall state the grounds for participation. In determining whether to grant the request, the hearing officer shall base his decision on the timeliness of the request, the degree to which the person requesting participation has a real interest at stake, the ability of the parties to represent the interests of the person requesting participation and the complexity of the proceeding.

e) The hearing officer shall obtain a full and complete record by inquiring into all matters in dispute. The record shall be obtained either by evidentiary hearing or stipulation. Immediately prior to the close of the record, one or more parties may file motions to remove the case to the Board for decision. Responses to these motions may be filed as directed by the hearing officer. Within seven days after the close of the record, the hearing officer shall rule on the motions. The hearing officer may also order the case removed to the Board on his own motion within seven days after the close of the record. If the hearing officer orders a case removed, he shall certify that there are no determinative issues of fact that require a hearing officer's recommended decision.

f) Within seven days after removal, a party may move the Board to remand the case

to the hearing officer, identifying in detail the material factual issues in dispute. If the Board fails to rule on the motion within 14 days, the motion will be deemed denied; the General Counsel will set a briefing schedule for briefs to be submitted to the Board. In cases removed to the Board, the Board shall remand the case if, at any time, it determines that the case presents issues of material fact requiring a hearing officer's recommended decision.

g) In cases not removed to the Board and in cases remanded to the hearing officer, the hearing officer shall file and serve on the parties a recommended decision within 21 days after the conclusion of the presentation of evidence, the receipt of the transcript, and the receipt of any post-hearing briefs, unless additional time is required due to the length of the record and the complexity of the issues involved. Such additional time shall not exceed 90 days.

h) Parties may file exceptions to the hearing officer's recommendation and briefs in support of those exceptions no later than 14~~fourteen~~ days after receipt of the recommendation. Any party to the proceeding may file a response to any exceptions and supporting briefs within 14~~fourteen~~ days from receipt of a party's exceptions and supporting brief. Such response shall be filed with the Board and served on all parties. If no exceptions have been filed within the 14~~fourteen~~-day period, the parties will be deemed to have waived their exceptions. A party may also file cross-exceptions and a supporting brief within 14 days from receipt of another party's exceptions and supporting brief. Copies of the cross-exceptions and supporting brief shall be filed with the Board and served on all parties. Any other party may file a response to the cross-exceptions and supporting brief within 14 days from receipt of the cross-exceptions and supporting brief. Such response shall be filed with the Board and served upon all parties. If no cross-exceptions have been filed within 14 days after receipt of another party's exceptions and supporting brief, the parties will be deemed to have waived their cross-exceptions.

i) The Board will review the hearing officer's recommendation upon request by a party or on its own motion. If the Board determines that a question concerning representation exists, as defined in Section 7(c)(1) or (2) of the Act, the Board shall direct that an election be held and a notice of election be posted. An election shall not be held on a date on which a substantial portion of the regularly scheduled work force in the bargaining unit is not scheduled to work.

j) Within seven days following the direction of an election, the employer shall furnish all other parties and the Executive Director with a list of the names and addresses of the employees eligible to vote in the election.

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(Source: Amended at 28 Ill. Reg. 7938, effective May 28, 2004)

Section 1110.105 Processing of Majority Interest Petitions

a) Majority interest procedures may not be used when another employee organization has lawfully attained representation rights as the exclusive representative of the employees in the bargaining unit.

b) The employer shall provide to the Board and the employee organization a list of employees as of the date of the petition within seven days after receipt of the petition, unless more time, not to exceed 14 days, is granted by the Board due to the size of the unit.

c) Upon request of the Board, the employer shall provide to the Board and to the employee organization examples of the employees' signatures within 14 days after the Board's request, unless more time, not to exceed 21 days, is granted by the Board due to the size of the unit. If the employer does not provide the list of employees or the signature examples within the allotted time, the Board shall administratively determine the adequacy of the showing of interest, based upon the evidence submitted by the employee organization. A grant of more time to provide a list of employees or signature examples shall, if necessary, extend the time limitation for certifying an employee organization as exclusive representative.

d) Within 21 days after receipt of the petition, parties served with the petition shall file a written response to the petition. The response shall set forth the party's position with respect to the appropriateness of the unit, any proposed exclusions from the unit, any allegations of fraud or coercion in obtaining the showing of interest, and any other issues raised by the petition. A party that fails to file a timely response without good cause shall be deemed to have waived its right to a hearing. Good cause will include when there is no prejudice to another party or the other parties have consented to a hearing without the filing of a timely response.

e) Upon receipt of the petition, the Board or its agent shall investigate the petition. The Board shall certify the employee organization as the exclusive representative within 30 days after service of the petition if:

1) the Board concludes that the employee organization represents a majority of the employees in the bargaining unit;

2) there are no issues of fraud or coercion in obtaining the showing of interest;

3) the petition is otherwise consistent with the Act and with this Part; and

4) either there are no unit appropriateness or exclusion issues or the number of contested positions or employees is not sufficient to affect the determination of majority status.

f) Where fraud or coercion in obtaining the showing of interest is alleged, the party or employee alleging fraud or coercion must provide its evidence of fraud or coercion to the Board and to the other parties, including a synopsis of any affidavits submitted to the Board, within 21 days after receipt of the petition or the posting of notice, unless additional time is granted by the Executive Director for good cause shown, such as a joint request, an emergency or whenever the Executive Director believes that it would further the purposes of the Act. The petitioner may file a response no later than seven days following the receipt of that evidence, unless additional time is granted by the Executive Director for good cause shown. The Executive Director shall issue his decision within 21 days following the receipt of the petitioner's response.

g) The employee who alleges fraud or coercion or the parties may file exceptions to the Executive Director's decision and briefs supporting those exceptions no later than seven days after receipt of that decision, and a response to those exceptions may be filed no later than seven days after receipt of such exceptions and briefs. The Board shall issue its decision no later than 45 days from the date that the last brief must be filed pursuant to this subsection. If no exceptions are filed within the seven-day period, the parties and any employee who alleges fraud or coercion will be deemed to have waived their exceptions. The filing of exceptions shall not stay the certification if the alleged fraud or coercion is not sufficient to affect the majority status of the petition.

h) If the Executive Director determines that there is clear and convincing evidence of fraud or coercion sufficient to affect the majority status of the petition and no exceptions are filed to that determination, or if the Board makes such a determination, an election will be conducted according to the procedures set forth in this Part. The election shall be conducted within 45 days after the Executive

Director's or the Board's determination, unless proceedings concerning the appropriateness of the unit, exclusions from the unit sufficient to affect majority status, or the timeliness of the petition are pending.

i) If the Executive Director determines that there is not clear and convincing evidence of fraud or coercion sufficient to affect the majority status of the petition and no exceptions are filed to that determination, or if the Board makes such a determination, the Board shall certify the employee organization as the exclusive representative immediately after the Board's determination or within 10 days after service of an unappealed Executive Director's decision if:

1) the Board concludes that the employee organization represents a majority of the employees in the bargaining unit;

2) the petition is otherwise consistent with the Act and with this Part; and

3) there are no unit appropriateness or exclusion issues, those issues have been resolved, or the number of contested positions or employees is not sufficient to affect the determination of majority status.

j) If there are unit appropriateness or exclusion issues, but the number of contested positions or employees is not sufficient to affect the determination of majority status, a party may invoke the Board's unit clarification procedures. Invocation of the Board's unit clarification procedures shall not stay the issuance of a certification.

k) If there are unit appropriateness or exclusion issues, and the number of contested positions or employees is sufficient to affect the determination of majority status, a hearing shall be conducted to resolve these issues. A hearing shall also be conducted when there are issues of material fact concerning the timeliness of the petition under Section 1110.70 of this Part. The hearing shall commence no later than 30 days from service of the petition. The Board shall proceed in accordance with 80 Ill. Adm. Code 1105.10-1105.80, except that:

1) The hearing officer's recommended decision shall be issued not later than 21 days after the conclusion of the presentation of evidence, the receipt of the transcript, and the receipt of any post-hearing briefs, unless additional time (not to exceed 21 days) is required due to the length of the record or the complexity of the issues involved.

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2) The parties may file exceptions to the recommended decision and briefs in support of those exceptions no later than seven days after receipt of the decision. Any party to the proceeding may file a response to any exceptions and supporting briefs within seven days from receipt of a party's exceptions and supporting brief. Exceptions and briefs shall be simultaneously filed with the Board and served on the parties. A party may also file cross-exceptions and a supporting brief within seven days from receipt of another party's exceptions and supporting brief. Any other party may file a response to the cross-exceptions and supporting brief within seven days from receipt of the cross-exceptions and supporting brief. Cross-exceptions and briefs shall be simultaneously filed with the Board and served on the parties. The Board shall issue its decision no later than 45 days from the date that the last brief must be filed. If no exceptions have been filed within seven days after service of the hearing officer's recommended decision, the parties will be deemed to have waived their exceptions. If no cross-exceptions have been filed within seven days after receipt of another party's exceptions and supporting brief, the parties will be deemed to have waived their cross-exceptions.

l) Interested persons who wish to participate in the hearing shall direct such requests to the hearing officer. The request shall be in writing and shall state the grounds for participation. In determining whether to grant the request, the hearing officer shall base his decision on the timeliness of the request, the degree to which the person requesting participation has a real interest at stake, the ability of the parties to represent the interests of the person requesting participation and the complexity of the proceeding.

m) The hearing officer shall obtain a full and complete record by inquiring into all matters in dispute. The record shall be obtained either by evidentiary hearing or stipulation. Immediately prior to the close of the record, one or more parties may file motions to remove the case to the Board for decision. Responses to these motions may be filed as directed by the hearing officer. Within seven days after the close of the record, the hearing officer shall rule on the motions. The hearing officer may also order the case removed to the Board on his own motion within seven days after the close of the record. If the hearing officer orders a case removed, he shall certify that there are no determinative issues of fact that require a hearing officer's recommended decision.

n) Within seven days after removal, a party may move the Board to remand the case to the hearing officer, identifying in detail the material factual issues in dispute. If

the Board fails to rule on the motion within 14 days, the motion will be deemed denied; the General Counsel will set a briefing schedule for briefs to be submitted to the Board. In cases removed to the Board, the Board shall remand the case if, at any time, it determines that the case presents issues of material fact requiring a hearing officer's recommended decision.

o) The Board shall certify the employee organization as exclusive representative immediately upon issuance of the Board's opinion and order, or upon expiration of the time for filing exceptions to the hearing officer's recommended decision, if:

1) the bargaining unit found to be appropriate by the Board is sufficiently similar to the petitioned for bargaining unit that the showing of majority interest remains sufficient;

2) the employee organization agrees to represent the bargaining unit found to be appropriate;

3) the Board concludes that the employee organization represents a majority of the employees in the bargaining unit;

4) there is not clear and convincing evidence of fraud or coercion in obtaining the showing of interest; and

5) the petition is otherwise consistent with the Act and this Part.

p) If the bargaining unit approved by the Board is not sufficiently similar to the petitioned for bargaining unit that the showing of majority interest remains sufficient, the petitioner may submit a supplemental showing of interest within seven days after receipt of the Board's ruling, may participate in an election according to subsection (r), or may withdraw the petition.

q) Petitions to intervene may be filed no later than 14 days after the notice is posted. Intervention shall only be allowed when, as a result of the evidence submitted by the intervenor in support of its showing of interest, the original petitioner no longer has a valid showing of majority interest.

r) If the valid evidence presented by the employee organization to support its claim of majority status does not constitute a majority showing of interest, but demonstrates that at least 30 percent of the employees in the unit found appropriate desire to be represented for collective bargaining by the employee

organization, the Board shall conduct an election in the unit found appropriate if the petition is otherwise consistent with the Act and this Part.

s) Upon the filing of a petition or at any time thereafter that the case is pending, a party may allege that *the dues deduction authorizations and other evidence submitted in support of a designation of representative without an election were subsequently changed, altered, withdrawn, or withheld as a result of employer fraud, coercion, or any other unfair labor practice by the employer* (Section 7(c-5) of the Act). The party must submit its evidence in support of the allegation at the time that it makes the allegation, unless additional time is granted by the Executive Director for good cause shown. Any other party may submit its response to the allegation no later than seven days from receipt of the submission of the party making the allegation, unless additional time is granted by the Executive Director for good cause shown. The Board or its agent shall investigate the allegation. If the Executive Director finds that there is an issue of law or fact that such conduct occurred, the matter shall be set for hearing. The hearing shall be conducted according to the Board's procedures for contested case hearings (80 Ill. Adm. Code 1105.90-1105.220), except that:

1) The Administrative Law Judge's recommended decision shall be issued no later than 21 days after the conclusion of the presentation of evidence, the receipt of the transcript, and the receipt of any post-hearing briefs, unless additional time (not to exceed 21 days) is required due to the length of the record or the complexity of the issues involved.

2) The parties may file exceptions to the recommended decision and briefs in support of those exceptions no later than seven days after receipt of the decision. Any other party may file a response to the exceptions and briefs no later than seven days after receipt of those exceptions and briefs. Exceptions and briefs shall be simultaneously filed with the Board and served on the parties. A party may also file cross-exceptions and a supporting brief within seven days from receipt of another party's exceptions and supporting brief. Any other party may file a response to the cross-exceptions and supporting brief no later than seven days from receipt of the cross-exceptions and supporting brief. Cross-exceptions and briefs shall be simultaneously filed with the Board and served on the parties. The Board shall issue its decision within 45 days from the date that the last brief was due.

t) If the Administrative Law Judge, or the Board on review, *determines that a labor organization would have had a majority interest but for an employer's fraud, coercion, or unfair labor practice, it shall designate the labor organization as an exclusive representative without conducting an election* (Section 7(c-5) of the Act).

u) In order for an employee's dues deduction authorization, authorization card, signature on a petition or other evidence to be counted in determining whether an employee organization has demonstrated a majority interest, the employee must be in the bargaining unit on the date the petition was filed.

v) In cases where the proposed unit includes professional and nonprofessional employees, the Board will determine majority status separately for each group. If the employee organization has demonstrated majority status for each group, the Board will conduct a vote to determine whether a majority of each group desires a combined unit. If the majority does not vote for a combined unit, the Board will issue separate certifications for the resulting units.

w) In cases where the proposed unit includes craft and non-craft employees, the Board will determine majority status separately for each group. If the employee organization has demonstrated majority status for each group, the Board will conduct a vote to determine whether a majority of the craft employees desire a combined unit. If the majority of the craft employees does not vote for a combined unit, the Board will issue separate certifications for the resulting units.

(Source: Added at 28 Ill. Reg. 7938, effective May 28, 2004)

Section 1110.120 Bargaining Unit Determinations

a) In determining the appropriateness of a unit for purposes of collective bargaining, the Board shall consider all relevant factors, including, *but not limited to, such factors as historical pattern of recognition, community of interest, including employee skills and functions, degree of functional integration, interchangeability and contact among employees, common supervision, wages, hours, and other working conditions of the employees involved, and the desires of the employees* (Section 7(a) of the Act).

b) In cases where employees have historically been represented by employee organizations for purposes of collective bargaining, such historical pattern of recognition will not be negated or interfered with unless a majority of the

employees so represented express a contrary desire under the procedures set forth in the Act and this Part.

c) Any party seeking to represent a bargaining unit limited to employees of a craft shall submit a representation petition or intervening claim pursuant to Section 7(a) of the Act supported by a 30 percent showing of interest within the craft in the case of a petition seeking an election and a showing of a majority interest within the craft in the case of a majority interest petition. Whenever a party has so intervened, the Board shall proceed in accordance with Section 1110.105(w) in the case of a majority interest petition, and the election shall proceed in accordance with Section 1110.140(f) in the case of a petition seeking an election ~~of this Part~~.

d) Whenever a petition is filed alleging a bargaining unit that includes professional and nonprofessional employees, the petition shall so state. In the case of a majority interest petition, the Board shall proceed in accordance with Section 1110.105(v) of this Part. In the case of a petition seeking an election, the~~The~~ election shall be conducted in accordance with Section 1110.140(g) of this Part.

(Source: Amended at 28 Ill. Reg. 7938, effective May 28, 2004)

Section 1110.140 Conduct of the Election

a) The election shall be conducted under the supervision of the Board. Voting shall be by secret ballot.

b) Absentee ballots will be allowed only where an individual submits a written request to the Board no later than 10~~ten~~ days prior to the election and demonstrates in that request that he is not able to be physically present at the polling place at the time for which the election is scheduled and therefore would be unable to cast a ballot. The request must set forth the factual basis for the claim. Mere inconvenience to the individual shall not be cause for the issuance of an absentee ballot.

c) Each party shall be entitled to an equal number of observers as determined by the Board or its agent. The number of observers allowed shall be based on the number of polling locations and the number of eligible voters. The identity and conduct of observers are subject to such limitations as the Board or its agent shall prescribe in order to insure that voters are free from interference, coercion, or intimidation.

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d) The Board's agent is authorized to prescribe the area in proximity to the polling place in which electioneering shall be prohibited. The specified area shall be based on the size and nature of the specific polling place.

e) Ballots shall list all employee organizations that properly petitioned or intervened in the election, the incumbent exclusive representative, and the choice of "No Representative".

f) Where an election involves a bargaining unit that includes craft employees, and there has been a proper petition for a separate craft unit, craft employees shall be given two ballots: one to vote for or against craft severance and a second to vote on choice of representative. Noncraft employees shall only be given ballots for voting on choice of representative.

g) Where an election involves a bargaining unit containing professional and nonprofessional employees, all employees shall be given two ballots: one for indicating whether they desire a combined professional-nonprofessional unit and a second for indicating choice of representative, except as provided for in Section 1110.105(v) of this Part.

h) Ballot boxes shall be examined in the presence of the observers immediately prior to the opening of the polls and shall be sealed at the opening of the polls. The seal shall allow for one opening on the top of the ballot box for voters to insert their ballots.

i) The Board's agent or any authorized observer may question the identity of any voter. A voter whose identity has been questioned may establish his identity by showing a driver's license or any other equally reliable piece of identification. Challenged voters shall be permitted to vote in secret with their ballots set aside by the Board's agent with appropriate markings.

j) A voter shall mark a cross (X) or check (✓) in the circle or block designating his choice in the election. The intent of the voter shall be followed in the marking of the ballot. If the ballot is defaced, torn, marked in such a manner that it is not understandable, or identifies the voter, the ballot shall be declared void. If the voter inadvertently spoils a ballot, he may return it to the Board's agent who shall give the voter another ballot and shall preserve the spoiled ballot.

k) A voter shall fold his ballot so that no part of its face is exposed and, on leaving

the voting booth, shall deposit the ballot in the ballot box. If the election is continued for more than one period, the ballot box shall be sealed until the subsequent opening of the polls and shall remain in the custody of the Board's agent until the counting of the ballots.

l) The Board's agent may privately assist any voter who, due to physical or other disability, is unable to mark his ballot.

m) Prior to the close of the polls, each party shall designate a representative to observe the tallying of the ballots.

n) Immediately upon the conclusion of the polling, the votes shall be tallied as follows:

1) The Board's agent shall attempt to achieve a voluntary resolution of all ballot challenges before the ballots are counted.

2) If there was only one polling location, the Board's agent shall tally the votes in the presence of a representative designated by each party and shall serve a written tally on each of the representatives.

3) If there was more than one polling location, the Board's agent shall seal the ballot boxes and bring them to a predetermined central location. When all the ballot boxes have arrived, they shall be opened, the ballots shall be commingled, and the votes shall be tallied in the presence of a representative designated by each party. The Board's agent shall serve a written tally on each of the representatives.

4) The Board's agent shall count the number of challenged ballots separately. If the challenged ballots cannot affect the outcome of the election, the challenges will not be resolved. If the challenged ballots could affect the outcome of the election, the Board's agent shall again attempt to achieve a voluntary resolution of all the challenges.

5) If challenges to ballots have not been resolved, and if the challenges could affect the outcome of the election, the challenged ballots shall be investigated by the Executive Director, who shall issue a recommended decision concerning the application of Sections 2, 7, 8 and 9 of the Act and this Part to the challenged ballots. Parties may file exceptions to the Executive Director's recommendation and briefs in support of those

exceptions no later than 14 days after receipt of the recommendation. Copies of all exceptions and briefs shall be served upon all other parties and a certificate of service shall be attached. Any party to the proceeding may file a response to any exceptions and supporting briefs within 14 days from receipt of a party's exceptions and supporting brief. Such response shall be filed with the Board and served on all parties. If no exceptions have been filed within the 14 day period, the parties will be deemed to have waived their exceptions. The Board will review the Executive Director's recommendation upon request by a party or on its own motion.

6) When the election includes a vote on craft severance, the craft employee ballots on craft severance shall be tallied first. If a majority of the craft employees casting valid ballots choose craft severance, the craft and noncraft ballots on choice of representative shall be tallied separately. If a majority of the craft employees casting valid ballots do not choose craft severance, the ballots on choice of representative shall be tallied together.

7) When the election includes a vote on a combined professional-nonprofessional unit, the ballots on unit preference shall be tallied first. Separate tallies shall be made for professional and nonprofessional employees.

8) If a majority of the employees casting valid ballots in each group vote for a combined unit, the ballots on choice of representative shall be tallied together. If a combined unit fails to receive a majority vote in either or both groups, the ballots on choice of representative shall be tallied separately.

o) In all cases, the recipient of a majority of the valid ballots cast by those voting shall prevail.

p) When there are three or more choices on the ballot (two or more employee organizations and "No Representative") and no choice receives a majority, the Board shall conduct a runoff election between the two choices that received the most votes. The results of votes taken during the first election on craft severance and combined professional-nonprofessional units shall be binding on the runoff election.

q) Where there are three or more choices on the ballot, and either the vote is split equally among all of the choices, or there is a tie for second place, the Board shall

declare the election inconclusive and shall order a new election. The results of the craft severance and combined professional-nonprofessional unit votes in the first election shall be binding on the rerun election.

r) The Board shall preserve all ballots until such time as any objections to the election have been resolved and the results have been certified and served on the parties.

(Source: Amended at 28 Ill. Reg. 7938, effective May 28, 2004)

Section 1110.160 Petitions for Clarification of the Bargaining Unit

a) An exclusive representative or an employer may file a petition to clarify an existing bargaining unit. The Board shall serve the petition on the other party. The petition shall be signed and shall contain the following:

1) the name and address of the employer;

2) the name, address, and affiliation, if any, of the exclusive representative;

3) a description of the existing bargaining unit; and

4) the nature of the proposed clarification and the reasons therefor.

b) The exclusive representative or employer may file an answer to the petition within 14 days following service of the petition. Failure to answer without good cause shall be deemed a waiver of objections to the petition and a waiver of a hearing. Good cause will include when there is no prejudice to another party or the other parties have consented to a hearing without the filing of a timely answer.

c) The Executive Director or his agent shall investigate the petition and, if the petition does not present unresolved questions of material fact, the Executive Director shall then issue a Recommended Decision and Order. Parties may file exceptions to the Executive Director's recommendation and briefs in support of those exceptions no later than 14 days after receipt of the recommendation. Copies of all exceptions and briefs shall be served upon all other parties and a certificate of service shall be attached. Any party to the proceeding may file a response to any exceptions and supporting briefs within 14 days from receipt of a party's exceptions and supporting brief. Such response shall be filed with the Board and served on all parties. If no exceptions have been filed within the 14

day period, the parties will be deemed to have waived their exceptions. The Board will review the Executive Director's recommendation upon request by a party or on its own motion. If the petition presents unresolved questions of material fact, the Executive Director shall set it for a hearing.

1) Interested persons desiring to intervene in the hearing shall submit a written request to the hearing officer. The hearing officer shall base his decision on whether to allow intervention upon the timeliness of the request, the degree to which the person requesting intervention has a real interest at stake, the ability of the parties to represent the interests of the person requesting intervention, and the complexity of the proceeding.

2) The hearing officer shall inquire into all matters in dispute and shall obtain a full and complete record. The hearing officer shall file and serve upon the parties a recommended disposition of the matter.

3) Parties may file exceptions to the hearing officer's recommendations and briefs in support of their exceptions within 14~~fourteen~~ days after receipt of the recommendation. Copies of all exceptions and supporting briefs shall be served upon all other parties and a certificate of service shall be attached. Any party to the proceeding may file a response to any exceptions and supporting briefs within 14 days from receipt of a party's exceptions and supporting brief. Such response shall be filed with the Board and served on all parties. A party may also file cross-exceptions and a supporting brief within 14 days from receipt of another party's exceptions and supporting brief. Copies of all cross-exceptions and supporting briefs shall be served upon all other parties and a certificate of service shall be attached. Any other party may file a response to any cross-exceptions and supporting briefs within 14 days from receipt of a party's cross-exceptions and supporting brief. Such response shall be filed with the Board and served on all parties. If no exceptions have been filed within 14 days after service of the hearing officer's recommended decision~~the fourteen-day period~~, the parties will be deemed to have waived their exceptions. If no cross-exceptions have been filed within 14 days after receipt of another party's exceptions and supporting brief, the parties will be deemed to have waived their cross-exceptions.

4) The Board will review the hearing officer's recommendation if a party has filed exceptions pursuant to Section 1105.80(b), or on the Board's own motion. The Board will issue its decision in accordance with 80 Ill. Adm.

Code 1105.80(c) and (e).

d) The parties may clarify the composition of the bargaining unit by stipulation. The stipulation shall be filed with the Board. A notice of the stipulation shall be posted on bulletin boards and at other places where notices for employees in the bargaining unit are customarily posted. The notice shall advise employees of the terms of the stipulation and direct persons objecting to the stipulation to file objections with the Board. The notice shall remain posted for at least 20 school days. The employer shall attempt to insure that the notice is not removed or defaced during the posting period and shall replace any notice which is removed or defaced.

e) During the posting period, interested persons may file objections with the Board. Objections shall be served on the employer and the exclusive representative prior to, or simultaneously with, their filing with the Board.

f) Following the posting period, if no objections have been filed, the Board shall approve or disapprove the clarification depending upon whether the clarification is consistent with the Act. If ~~no~~ objections have been filed, the Board shall proceed in accordance with subsection (c).

(Source: Amended at 28 Ill. Reg. 7938, effective May 28, 2004)

Section 1110.180 Petitions for Self-Determination

a) Adding to an Existing Bargaining Unit

1) A self-determination petition to add unrepresented employees to an existing bargaining unit, where a question concerning representation would be presented by their inclusion, may be filed by an employee, a group of employees, or exclusive representative of the existing bargaining unit. The Board shall serve the petition on the appropriate parties. The petition shall be on a form developed by the Board. It shall be signed and shall contain the following:

A~~1~~) the name and address of the petitioner;

B~~2~~) the name, address and affiliation, if any, of the exclusive representative;

C~~3~~) the name and address of the employer;

D~~4~~) a description of the bargaining unit;

E~~5~~) the approximate number of employees in the bargaining unit;

F~~6~~) a description of the employees who would be added to the existing unit;

G~~7~~) the approximate number of employees who would be added;

H) a statement whether the petitioner intends to use the majority interest procedure or the election procedure;

I~~8~~) the date that the exclusive representative was recognized and the method of recognition, if known; and

J~~9~~) a brief description of any collective bargaining agreements covering any employees in the bargaining unit, and the expiration dates of the agreements.

2)~~10)~~ A~~The~~ self-determination petition seeking an election shall be accompanied by a showing of interest that at least 30 percent of the employees sought to be added to the existing unit wish to be represented by the exclusive representative. A majority interest self-determination petition shall be accompanied by a showing of majority interest among the employees sought to be added to the existing unit.

3)~~11)~~ In any election conducted pursuant to this subsection~~Part~~, only those employees that the petition seeks to add to the unit shall vote on the question of representation. In any majority interest proceeding conducted pursuant to this subsection, a showing of majority interest among only the employees the petition seeks to add to the unit shall be required.

4)~~12)~~ No unit will include *both professional employees and nonprofessional employees unless a majority of employees in each group vote for inclusion in the unit* (Section 7 of the Act).

b) Merging Bargaining Units

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1) A petition to merge two or more existing bargaining units, where a question concerning representation would not be presented by their inclusion, may be filed by an employee, a group of employees, or exclusive representative of either existing bargaining unit. The Board shall serve the petition on the appropriate parties. The petition shall be on a form developed by the Board. It shall be signed and shall contain the following:

A~~1~~) the name and address of the petitioner;

B~~2~~) the name, address and affiliation, if any, of the exclusive representative;

C~~3~~) the name and address of the employer;

D~~4~~) a description of the proposed bargaining unit;

E~~5~~) the approximate number of employees in the proposed bargaining unit;

F~~6~~) a description of the employees in each of the existing units;

G~~7~~) the approximate number of employees who would be added in each existing unit;

H~~8~~) the date that the exclusive representative was recognized and the method of recognition, if known;~~,~~ and~~;~~

I~~9~~) a brief description of any collective bargaining agreements covering any employees in the bargaining units, and the expiration dates of the agreements.

2)~~10)~~ In any election conducted pursuant to this subsection~~Part~~, employees shall vote only on the question of unit merger.

3)~~11)~~ No unit will include *both professional employees and nonprofessional employees unless a majority of employees in each group vote for inclusion in that unit* (Section 7 of the Act).

(Source: Amended at 28 Ill. Reg. 7938, effective May 28, 2004)

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Section 1110.APPENDIX A Model Authorization Card

I authorize _____(employee organization)_____ to be my exclusive collective bargaining representative for all purposes of collective bargaining with my employer, _____.

_____
Name (printed or typed)

_____
Employment position

_____
Signature

_____
Date

(Source: Added at 28 Ill. Reg. 7938, effective May 28, 2004)

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1) Heading of the Part: Unfair Labor Practice Proceedings

2) Code Citation: 80 Ill. Adm. Code 1120

3)

Section Numbers:	Adopted Action:
1120.20	Amendment
1120.30	Amendment
1120.40	Amendment
1120.50	Amendment
1120.70	Amendment

4) Statutory Authority: 115 ILCS 5/5(i)

5) Effective date of amendments: May 28, 2004

6) Does this rulemaking contain an automatic repeal date? No

7) Do these amendments contain incorporations by reference? No

8) A copy of the adopted amendments, including any incorporations 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: January 30, 2004; 28 Ill. Reg. 1622

10) Has JCAR issued a Statement of Objection to these amendments? No

11) Differences between proposal and final version: "Hearing officer" is changed to "Administrative Law Judge" (See Section 1120.40(d) for these changes.) in various places. The final version adds a requirement that a motion to certify an issue to the Board must be made prior to the close of the hearing. The final version also adds grounds for certifying an issue to the Board and deadlines for the administrative law judge to rule on the motion, for briefs to be filed concerning the certified issue, and for the Board to rule on the certified issue. (See Section 1120.40(d) for these changes.)

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? No agreements were issued.

13) Will these amendments replace emergency amendments currently in effect? No

14) Are there any amendments pending on this Part? No

ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD

NOTICE OF ADOPTED AMENDMENTS

15) Summary and purpose of amendments: Changes the standard for allowing a late answer to a complaint in order to avoid unjustly harsh results. Provides for the administrative law judge to issue an order to show cause when there is a late answer in order to remove the uncertainty as to whether the opposing party will file a motion and force the issue to be dealt with. Provides for certifying an issue to the Board in order to expedite resolution of unresolved legal issues. Provides for cross-exceptions in order to avoid unnecessary exceptions and waiver of arguments when a party disagrees with a point in a decision but does not think it is worth filing exceptions unless the other party does. Changes the required notice of a hearing in order to conform to the Illinois Educational Labor Relations Act. Changes the deadline for the issuance of a compliance decision in order to provide a more realistic deadline. Changes the title of a compliance proceeding. Updates statutory citations.

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

Susan Willenborg
Illinois Educational Labor Relations Board
160 North LaSalle Street, Suite N-400
Chicago, Illinois 60601-3103
312/793-3288

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

ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD

NOTICE OF ADOPTED AMENDMENTS

TITLE 80: PUBLIC OFFICIALS AND EMPLOYEES
SUBTITLE C: LABOR RELATIONS
CHAPTER III: ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD

PART 1120
UNFAIR LABOR PRACTICE PROCEEDINGS

Section
1120.10 General Statement of Purpose
1120.20 Filing of a Charge
1120.30 Charge Processing and Investigation, Complaints and Responses
1120.40 Hearings
1120.50 Consideration by the Board
1120.60 Requests for Preliminary Relief
1120.70 Compliance Procedures
1120.80 Sanctions

AUTHORITY: Sections 5(i) and 15 of the Illinois Educational Labor Relations Act [115 ILCS 5/5(i) and 15].

SOURCE: Emergency rules adopted at 8 Ill. Reg. 7656, effective May 21, 1984, for a maximum of 150 days; adopted at 8 Ill. Reg. 19413, effective September 28, 1984; amended at 14 Ill. Reg. 1322, effective January 5, 1990; emergency amendments at 16 Ill. Reg. 6052, effective March 30, 1992, for a maximum of 150 days; amended at 16 Ill. Reg. 13500, effective August 25, 1992; amended at 28 Ill. Reg. 7973, effective May 28, 2004.

Section 1120.20 Filing of a Charge

a) An unfair labor practice charge may be filed with the Illinois Educational Labor Relations Board (the Board) by an employer, an employee organization, or an employee.

b) Unfair labor practice charges shall be on a form developed by the Board, shall be signed by the charging party, and shall contain:

1) the name, address, and affiliation, if any, of the charging party;

2) the name, address, and affiliation, if any, of the respondent;

3) a clear and complete statement of facts supporting the alleged unfair labor

practice, including dates, times and places of occurrence of each particular act alleged, and the sections of the Illinois Educational Labor Relations Act [115 ILCS 5] ~~(Ill. Rev. Stat. 1987, ch. 48, pars. 1701 et. seq.)~~ (the Act) alleged to have been violated; and

4) a statement of the relief sought, provided that the statement shall not limit the Board's ability to award relief based on the record.

c) The Board shall serve a copy of the charge upon the respondent.

d) Unfair labor practice charges may be filed no later than six months after the alleged unfair labor practice occurred.

e) A charging party may withdraw without prejudice a charge at any time prior to the issuance of a complaint. After issuance of a complaint, a charging party may withdraw a charge only with the approval of the Executive Director. The Executive Director shall approve such withdrawal when he finds that the withdrawal is consistent with the Act and this Part and was not obtained fraudulently or through duress.

(Source: Amended at 28 Ill. Reg. 7973, effective May 28, 2004)

Section 1120.30 Charge Processing and Investigation, Complaints and Responses

a) The Board hereby delegates to its Executive Director the authority to investigate charges and issue complaints.

b) Upon receipt of a charge, the Executive Director shall investigate the charge. Procedures for investigating requests for injunctive relief are set forth in Section 1120.60.

1) The charging party shall submit to the Executive Director all evidence relevant to or in support of the charge. Such evidence may include documents and affidavits.

2) The respondent shall submit to the Executive Director a complete account of the facts, a statement of its position in respect to the allegations set forth in the charge and all relevant evidence in support of its position. Such evidence may include documents and affidavits.

3) The Executive Director may hold an investigatory conference with the parties when the Executive Director determines that such investigatory conference will facilitate efforts, to explore whether the charge can be resolved informally or the facts stipulated, and to further develop the record for determination of whether the charge states an issue of law or fact.

4) If the Executive Director concludes that the investigation has established that there is *an issue of law or fact* sufficient to warrant a hearing, he shall issue a complaint (Section 15 of the Act). In determining whether the issues of law or fact are sufficient to warrant a hearing, the Executive Director shall consider whether the charge states a cause of action upon which relief can be granted under the Act and whether the facts provided in the course of the investigation state a prima facie case. The complaint shall specify the charges and shall be served on the respondent and the charging party.

5) If the Executive Director concludes that the investigation has established that there is not an issue of law or fact sufficient to warrant a hearing, the Executive Director shall dismiss the charge. In determining whether the issues of law or fact are sufficient to warrant a hearing, the Executive Director shall consider whether the charge states a cause of action upon which relief can be granted under the Act and whether the facts provided in the course of the investigation state a prima facie case. Notice of dismissal shall be served on the respondent and the charging party.

c) The charging party may file exceptions to the Executive Director's dismissal of the charge and briefs in support of those exceptions. Exceptions must be filed with the Board no later than 14~~fourteen~~ days after service of the notice of dismissal. Copies of all exceptions and supporting briefs shall be served upon all other parties and a certificate of service shall be attached. Any party to the proceeding may file a response to any exceptions and supporting briefs within 14 days from receipt of a party's exceptions and supporting brief. Such response shall be filed with the Board and served on all parties. The Board may review the Executive Director's decision on its own motion. In reviewing the exceptions, the Board will consider whether the Executive Director's decision is consistent with the Act and this Part and whether there has been an abuse of discretion.

d) Whenever an unfair labor practice complaint is issued, the respondent must file an answer within 15 days after service of the complaint.

ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD

NOTICE OF ADOPTED AMENDMENTS

1) The answer shall include a specific admission, denial or explanation of each allegation of the complaint or, if the respondent is without knowledge thereof, it shall so state and such statement shall operate as a denial. Admissions or denials may be made to all or part of an allegation but shall fairly meet the allegation.

2) The answer shall also include a specific, detailed statement of any affirmative defenses including, but not limited to, allegations that the violation occurred more than six months before the charge was filed, that the Board lacks jurisdiction over the matter, or that the complaint fails to allege an unfair labor practice.

3) Failure ~~On motion of a party, failure~~ to file a timely answer shall be deemed an admission of all allegations in the complaint. Failure to respond to any particular allegation of the complaint shall be deemed to be an admission of that particular allegation. Filing of a motion will not stay the time for filing an answer.

4) When a party has failed to file a timely answer, the Administrative Law Judge shall issue an order to show cause why allegations of the complaint should not be deemed admitted. Leave ~~leave~~ to file a late answer may be granted by the Administrative Law Judge~~Hearing Officer~~ in the absence of prejudice to the other parties if substantial justice is being done between the parties and if it is reasonable, under the circumstances, to compel the other parties to go to hearing on the merits. ~~for good cause shown.~~ If leave to file a late answer is granted~~good cause is shown~~, the answer shall be deemed timely. ~~Good cause will include: a written statement by the party of: ultimate facts showing a meritorious defense to the complaint; and either a reasonable excuse explaining the party's failure to file a timely answer, or that the party was prevented from filing a timely answer by: fraud, act or concealment of the opposing party; accident; excusable mistake; or lack of notice, lack of jurisdiction or other grounds traditionally relied upon for equitable relief from judgments.~~

(Source: Amended at 28 Ill. Reg. 7973, effective May 28, 2004)

Section 1120.40 Hearings

a) Upon the issuance of a complaint, the Executive Director shall set the matter for

hearing before an Administrative Law Judge~~a hearing officer~~. All parties shall be given at least five ~~seven~~ days' notice of the hearing. The notice shall comply with Section 10-25(a) of the Illinois Administrative Procedure Act [5 ILCS 100/10-25(a)]~~(Ill. Rev. Stat. 1991, ch. 127, par. 1010-25(a))~~.

b) Interested persons who wish to intervene in the hearing shall direct such requests to the Administrative Law Judge~~hearing officer~~. The request shall be in writing and shall state the grounds for intervention. The Administrative Law Judge~~hearing officer~~ shall have discretion to grant or deny the request for intervention. In determining whether to grant the request, the Administrative Law Judge~~hearing officer~~ shall base his decision on the timeliness of the request, the degree to which the person requesting intervention has a real interest at stake, and the ability of the parties to represent the interests of the person requesting intervention.

c) The Board will encourage Administrative Law Judges~~hearing officers~~ to schedule voluntary prehearing conferences with the parties when it appears that such conferences will aid in narrowing or resolving issues.

d) On motion of a party made prior to the close of the hearing and with the approval of the Chief Administrative Law Judge, the Administrative Law Judge may certify an issue to the Board for a ruling prior to the issuance of the Administrative Law Judge's recommended decision and order. An issue may be certified to the Board only if the Administrative Law Judge finds that the case involves an issue of law as to which there is substantial ground for difference of opinion and that an immediate appeal on the issue may materially advance the termination of the case. The Administrative Law Judge shall rule on the motion within seven days after a response to the motion is received or is due pursuant to 80 Ill. Adm. Code 1105.100(e)(2). The parties may file briefs concerning the certified issue no later 21 days after the Administrative Law Judge's certification. Within 60 days after the last day that briefs must be filed, the Board shall rule on the certified issue or shall remand the issue to the Administrative Law Judge upon a finding that certification of the issue is inappropriate. Intermediate rulings of the Administrative Law Judge~~hearing officer~~ shall not otherwise be subject to interlocutory appeal. Parties may raise objections to such intermediate rulings in their exceptions to the Administrative Law Judge's~~hearing officer's~~ recommended decision or, if there is no recommended decision, in their briefs to the Board.

e) The Complainant shall present the case in support of the complaint. *The respondent may present evidence in defense against the charges* (Section 15 of

the Act).

f) The Administrative Law Judge~~hearing officer~~ shall obtain a full and complete record by inquiring into all matters in dispute. The record shall be obtained either by evidentiary hearing or stipulation. Immediately prior to the close of the record, one or more parties may file motions to remove the case to the Board for decision. Responses to these motions may be filed as directed by the Administrative Law Judge~~hearing officer~~. Within 14~~fourteen~~ days after the close of the record, the Administrative Law Judge~~hearing officer~~ shall rule on the motions. The Administrative Law Judge~~hearing officer~~ may also order the case removed to the Board on his own motion within fourteen days after the close of the record. If the Administrative Law Judge~~hearing officer~~ orders a case removed, he shall certify that there are no determinative issues of fact that require ~~a~~ an Administrative Law Judge's~~hearing officer's~~ recommended decision.

g) Within seven days after removal, a party may move the Board to remand the case to the Administrative Law Judge~~hearing officer~~ identifying in detail the material factual issues in dispute. If the Board fails to rule on the motion within 60 days, the motion to remand will be deemed denied. In cases removed to the Board, the Board shall remand the case if at any time it determines that the case presents issues of material fact requiring an~~a~~ Administrative Law Judge's~~hearing officer's~~ recommended decision. A fact is material to the claim or defense in issue when the success of the claim or defense is dependent upon the existence of that fact.

h) In cases not removed to the Board and in cases remanded to the Administrative Law Judge~~hearing officer~~, the Administrative Law Judge~~hearing officer~~ shall file and serve on the parties a recommended decision as promptly as possible based on the length of the record and the complexity of the issues involved.

(Source: Amended at 28 Ill. Reg. 7973, effective May 28, 2004)

Section 1120.50 Consideration by the Board

a) In cases in which there is a recommended decision, the parties may file exceptions to the Administrative Law Judge's~~hearing officer's~~ recommendation and briefs in support of those exceptions. Briefs and exceptions shall be filed no later than 21 days after service of the recommendation. Copies of all exceptions and supporting briefs shall be served upon all other parties and a certificate of service shall be attached. Any party to the proceeding may file a response to any exceptions and supporting briefs within 21 days from receipt of a party's

exceptions and supporting brief. Such response shall be filed with the Board and served on all parties. A party may also file cross-exceptions and a supporting brief within 14 days from receipt of another party's exceptions and supporting brief. Copies of the cross-exceptions shall be filed with the Board and served on all other parties, and a certificate of service shall be attached. Any other party may file a response to the cross-exceptions and supporting brief within 14 days from receipt of the cross-exceptions and supporting brief. Such response shall be filed with the Board and served upon all parties, and a certificate of service shall be attached. If no exceptions have been filed within 21 days after service of the Administrative Law Judge's recommended decision~~the 21-day period~~, the parties will be deemed to have waived their exceptions. If no cross-exceptions have been filed within 14 days after receipt of another party's exceptions and supporting brief, the parties will be deemed to have waived their cross-exceptions.

b) The Board will review the Administrative Law Judge's~~hearing officer's~~ recommendation if a party has filed exceptions pursuant to 80 Ill. Adm. Code 1105.220(b)~~,~~ or on the Board's own motion. In cases removed to the Board, the parties will file briefs in the manner directed by the Board, the manner to include the dates on which briefs will be due and the subjects to be addressed in the briefs, as specified by the Board. In cases in which exceptions are filed and those which are removed to the Board, the Board shall issue and serve on all parties its decision and order in accordance with 80 Ill. Adm. Code 1105.220(c)-(e).

c) Oral argument shall be allowed only at the discretion of the Board. The Board shall direct oral argument when it determines that oral argument will assist determination of the issues.

(Source: Amended at 28 Ill. Reg. 7973, effective May 28, 2004)

Section 1120.70 Compliance Procedures

a) The compliance procedures set forth herein shall commence once a Respondent

1) has failed to file exceptions to a Recommended Decision and Order of an~~a~~ Administrative Law Judge~~Hearing Officer~~;

2) has failed to appeal a final order of the Board; or

3) when the appellate process initiated by a party after a final Board order has been exhausted and there remains an order requiring a Respondent to

take certain affirmative action or to refrain from engaging in any action.

b) If, upon the occurrence of any of the events designated ~~above~~ in Section 1120.70(a), compliance has not occurred, a compliance hearing~~conference~~ shall be conducted.

c) The compliance hearing~~conference~~ shall be conducted by the Executive Director or his designee and shall be in the nature of a fact-finding hearing~~conference~~, be recorded stenographically or by other appropriate means, at which the parties to the matter shall be afforded the opportunity to present documents, affidavits, and/or any other information, in addition to their positions, on the matter of Respondent's compliance with the order.

d) Within 30~~14~~ days after~~of~~ the compliance hearing~~conference~~ described ~~above~~ in Section 1120.70(c), or a determination made under Section 1120.70(b) that compliance has taken place, the Executive Director shall cause to be served upon the parties a Recommended Decision and Order in which all issues of law and all issues of fact bearing on compliance with the order shall be resolved.

e) For purposes of Section 1120.70(d), issues of fact are all issues bearing on the question of Respondent's compliance with the order other than those factual issues turning exclusively on the demeanor of a witness or witnesses.

f) Parties may file exceptions to the Executive Director's recommendation and briefs in support of those exceptions no later than 14 days after receipt of the recommendation. Copies of all exceptions and briefs shall be served upon all other parties and a certificate of service shall be attached. Any party to the proceeding may file a response to any exceptions and supporting briefs within 14 days from receipt of a party's exceptions and supporting brief. Such response shall be filed with the Board and served on all parties. A party may also file cross-exceptions and a supporting brief within 14 days from receipt of another party's exceptions and supporting brief. Copies of the cross-exceptions and supporting brief shall be served upon all other parties and a certificate of service shall be attached. Any other party may file a response to the cross-exceptions and supporting brief within 14 days from receipt of the cross-exceptions and supporting brief. Such response shall be filed with the Board and served upon all parties, and a certificate of service shall be attached. If no exceptions have been filed within 14 days after service of the Executive Director's recommendation~~the 14 day period~~, the parties will be deemed to have waived their exceptions. If no cross-exceptions have been filed within 14 days after receipt of another party's

exceptions and supporting brief, the parties will be deemed to have waived their cross-exceptions. The Board will review the Executive Director's recommendation upon request by a party or on its own motion.

(Source: Amended at 28 Ill. Reg. 7973, effective May 28, 2004)

ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD

NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Fair Share Fee Objections

2) Code Citation: 80 Ill. Adm. Code 1125

3)

Section Numbers:	Adopted Action:
1125.10	Amendment
1125.80	Amendment

4) Statutory Authority: 115 ILCS 5/5(i)

5) Effective date of amendments: May 28, 2004

6) Does this rulemaking contain an automatic repeal date? No

7) Do these amendments contain incorporations by reference? No

8) A copy of the adopted amendments, including any incorporations 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: January 30, 2004; 28 Ill. Reg. 1632

10) Has JCAR issued a Statement of Objection to these amendments? No

11) Differences between proposal and final version: "Hearing Officer" is changed to "Administrative Law Judge". The deadline for commencement of a fair share hearing is set based on the last day for filing an objection for any of the bargaining units, rather than the last day for filing an objection for the bargaining unit for which that date is latest (Section 1125.80(d)). Language is added providing that a party receiving a summary of a decision shall be entitled to receive the full decision on request (Section 1125.80(d)). The deadline for filing exceptions to a Recommended Decision and Order is changed from 21 days after the date of the Recommended Decision and Order to 21 days after receipt of the Recommended Decision and Order (Section 1125.80(e)).

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? No agreements were issued.

13) Will these amendments replace emergency amendments currently in effect? No

14) Are there any amendments pending on this Part? No

ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD

NOTICE OF ADOPTED AMENDMENTS

15) Summary and purpose of amendments: Changes the deadline for the commencement of fair share hearing in order to create a more realistic deadline. Provides for the service of summaries of decisions because, in general, the objectors would prefer to receive a summary rather than a lengthy, complex decision and because of cost considerations. Provides for cross-exceptions in order to avoid the filing of unnecessary filing of exceptions and the waiver of arguments when a party disagrees with a point in a decision but does not wish to file exceptions unless the other party does. Provides for the Chief Administrative Law Judge to appoint the fair share Administrative Law Judge. Changes "disperse" to "disburse" and updates statutory citations.

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

Susan Willenborg
Illinois Educational Labor Relations Board
160 North LaSalle Street, Suite N-400
Chicago, Illinois 60601-3103
312/793-3288

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

ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD

NOTICE OF ADOPTED AMENDMENTS

TITLE 80: PUBLIC OFFICIALS AND EMPLOYEES
SUBTITLE C: LABOR RELATIONS
CHAPTER III: ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD

PART 1125
FAIR SHARE FEE OBJECTIONS

Section
1125.10 General Statement of Purpose
1125.20 Notice of Fair Share Fees
1125.30 Objections to Fair Share Fees
1125.40 Escrow Accounts
1125.50 Responses to Objections (Repealed)
1125.60 Consolidation of Fair Share Fee Objections
1125.70 Investigation of Fair Share Fee Objections
1125.80 Hearings
1125.90 Consideration by the Board (Repealed)
1125.100 Internal Review Procedure

AUTHORITY: Implementing Sections 3(a), 11, 14(a)(1) and (b)(1) and authorized by Section 5(i) of the Illinois Educational Labor Relations Act [115 ILCS 5/3(a), 11, 14(a)(1) and (b)(1), 5(i)].

SOURCE: Emergency rules adopted at 9 Ill. Reg. 12873, effective August 5, 1985, for a maximum period of 150 days; adopted at 10 Ill. Reg. 206, effective December 19, 1985; emergency amendments at 12 Ill. Reg. 13707, effective August 10, 1988, for a maximum of 150 days; emergency expired January 7, 1989; amended at 13 Ill. Reg. 1784, effective January 31, 1989; emergency amendments at 13 Ill. Reg. 15469, effective September 13, 1989, for a maximum of 150 days; amended at 14 Ill. Reg. 2873, effective February 9, 1990; amended at 28 Ill. Reg. 7984, effective May 28, 2004.

Section 1125.10 General Statement of Purpose

a) The Illinois Educational Labor Relations Board (Board) finds that Sections~~Section~~ 3(a), 11, and 14(a)(1) and ~~14~~(b)(1) of the Illinois Educational Labor Relations Act (~~"~~the Act~~"~~) [115 ILCS 5/3(a), 11, 14(a)(1) and (b)(1)]~~(Ill. Rev. Stat. 1987, ch. 48, pars. 1703(a), 1711, 1714(a)(1), 1714(b)(1))~~ govern the collection and/or expenditure of fair share fees over an employee's objection. The procedures in this Part provide the exclusive method for handling fair share fees upon the filing of an objection by an employee. Failure to abide by these

procedures violates Section~~Sections~~ 14(a)(1) and (b)(1) of the Act. The nature of this unfair labor practice requires that special procedures be adopted for its efficient resolution.

b) The procedures set forth in this Part do not preclude the filing of unfair labor practice charges pursuant to 80 Ill. Adm. Code 1120 alleging violations of Section 11 of the Act resulting from fees in excess of *the dues uniformly required of members* or *fees for contributions related to the election or support of any candidate for political office* (Section 11 of the Act).

(Source: Amended at 28 Ill. Reg. 7984, effective May 28, 2004)

Section 1125.80 Hearings

a) Except as provided below, hearings on fair share fee objections shall proceed in the same manner as hearings in both contested cases, as set forth in 80 Ill. Adm. Code 1105, Subpart B, and hearings in unfair labor practice proceedings, as set forth in 80 Ill. Adm. Code 1120.40.

b) The Chief Administrative Law Judge~~Executive Director~~ shall appoint a fair share Administrative Law Judge~~Hearing Officer~~ to hold an evidentiary hearing and render a Recommended Decision and Order on the fair share fee objections.

c) The burden of proof shall be on the exclusive representative.

d) The hearing set forth in subsection (b)~~ above~~, shall commence no later than 60~~30~~ days from the last day for filing of an objection pursuant to Section 1125.30(a) of this Part. When objections involving two or more bargaining units are consolidated pursuant to Section 1125.60 of this Part, the hearing shall commence no later than 60 days from the last day for filing of an objection for any of the bargaining units. A Recommended Decision and Order shall be issued within 60 days of the close of the record, unless additional time (up to 30 days) is required due to the length of the record and/or the complexity of the issues involved. The Recommended Decision and Order or a summary of the Recommended Decision and Order shall be served on all parties to the proceeding. A party receiving a summary of the Recommended Decision and Order shall be entitled to receive a copy of the full Recommended Decision and Order on request.

e) Within 21 days after receipt~~of the date~~ of the Recommended Decision and Order, any party may file exceptions and briefs in support of those exceptions with the

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NOTICE OF ADOPTED AMENDMENTS

Board. A party may also file cross-exceptions and a supporting brief within 14 days after receipt of another party's exceptions and supporting brief. If no exceptions have been filed within 21 days after service of the Recommended Decision and Order~~in that 21-day period~~, the parties will be deemed to have waived their exceptions. If no cross-exceptions have been filed within 14 days after receipt of another party's exceptions and supporting brief, the parties will be deemed to have waived their cross-exceptions.

f) If timely exceptions are filed, the Board shall issue and serve on all parties a copy or a summary of its decision and order. A party receiving a summary of the Board's decision and order shall be entitled to receive a copy of the full decision and order on request.

g) Upon direction of the Board, the employer shall cease transmitting the fee to the Board and shall deduct, from the objector's pay, the amount determined by the Board to be appropriate and pay same to the exclusive representative. The Board shall disburse~~disperse~~ the amount held in escrow to the employee and the exclusive representative in accordance with its determination in the case. Interest earned by disputed fees during the time they were held in escrow shall be apportioned pro rata between the employee and the exclusive representative.

(Source: Amended at 28 Ill. Reg. 7984, effective May 28, 2004)

ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD

NOTICE OF ADOPTED AMENDMENT

1) Heading of the Part: Collective Bargaining and Impasse Resolution

2) Code Citation: 80 Ill. Adm. Code 1130

3) Section Number: 1130.40 — Adopted Action: Amendment

4) Statutory Authority: 115 ILCS 5/5(i)

5) Effective date of amendment: May 28, 2004

6) Does this rulemaking contain an automatic repeal date? No

7) Do this amendment contain incorporations by reference? No

8) A copy of the adopted amendment, including any incorporations 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: January 30, 2004; 28 Ill. Reg. 1637

10) Has JCAR issued a Statement of Objection to this amendment? No

11) Difference between proposal and final version: A statutory quotation is corrected.

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? No agreements were issued.

13) Will this amendment replace an emergency amendment currently in effect? No

14) Are there any amendments pending on this Part? No

15) Summary and purpose of amendment: Updates the amount of notice of intent to strike that must be given due to statutory change and corrects a quotation from the Illinois Educational Labor Relations Act.

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

Susan Willenborg
Illinois Educational Labor Relations Board
160 North LaSalle Street, Suite N-400

ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD

NOTICE OF ADOPTED AMENDMENT

Chicago, Illinois 60601-3103
312/793-3288

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

ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD

NOTICE OF ADOPTED AMENDMENT

TITLE 80: PUBLIC OFFICIALS AND EMPLOYEES
SUBTITLE C: LABOR RELATIONS
CHAPTER III: ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD

PART 1130
COLLECTIVE BARGAINING AND IMPASSE RESOLUTION

Section
1130.10 General Statement of Purpose
1130.20 Notices and Timetable for Bargaining
1130.30 Mediation
1130.40 Notice of Intent to Strike
1130.50 Fact Finding and Interest Arbitration
1130.60 Filing of Agreements
1130.70 Grievance Arbitration and No Strike Clauses
1130.80 Illinois Educational Labor Mediation Roster

AUTHORITY: Implementing Sections 10, 12, 13, and 14 and authorized by Section 5(i) of the Illinois Educational Labor Relations Act [115 ILCS 5/10, 12, 13, 14 and 5(i)].

SOURCE: Emergency adoption at 8 Ill. Reg. 8645, effective June 6, 1984, for a maximum of 150 days; adopted at 8 Ill. Reg. 22538, effective November 5, 1984; amended at 28 Ill. Reg. _____, effective _____.

Section 1130.40 Notice of Intent to Strike

a) *Educational employees… shall not engage in a strike* unless *at least 10~~5~~ days have elapsed after a notice of intent to strike has been given by the exclusive bargaining representative to the educational employer, the regional superintendent ~~Regional Superintendent~~ and the Illinois Educational Labor Relations Board.* (Section 13 of the Act)

b) For purposes of this Section~~rule~~, 10~~five~~ days shall mean 10~~five~~ calendar days. Intervening Saturdays, Sundays or legal holidays shall be included. The day on which the notice of intent to strike is given shall not be included. The last day of the period shall be included regardless of whether the last day falls on a Saturday, Sunday or legal holiday.

c) Notice of intent to strike shall be in writing and shall include:

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1) the name, address and affiliation, if any, of the exclusive representative;

2) the name and address of the employer;

3) a description of the bargaining unit; and

4) a statement of intent to strike.

d) Notice of intent to strike shall be considered given to the Board on the date written notice is received by the Board, unless telephonic notice is given the Board's Executive Director or his designee during the Board's regular office hours, and confirmed immediately by written notice personally delivered to the Board's office or mailed to the Board's office by certified or registered mail.

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

ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD

NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: University of Illinois Bargaining Units

2) Code Citation: 80 Ill. Adm. Code 1135

3)

Section Numbers:	Adopted Action:
1135.10	Amendment
1135.20	Amendment

4) Statutory Authority: 115 ILCS 5/5(i)

5) Effective date of amendments: May 28, 2004

6) Does this rulemaking contain an automatic repeal date? No

7) Do these amendments contain incorporations by reference? No

8) A copy of the adopted amendments, including any incorporations 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: January 30, 2004; 28 Ill. Reg. 1641

10) Has JCAR issued a Statement of Objection to these amendments? No

11) Difference between proposal and final version: None

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? No agreements were issued.

13) Will these amendments replace emergency amendments currently in effect? No

14) Are there any amendments pending on this Part? No

15) Summary and purpose of the amendments: Updates statutory citations.

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

Susan J. Willenborg
Illinois Educational Labor Relations Board
160 North LaSalle Street, Suite N-400
Chicago, Illinois 60601-3103

ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD

NOTICE OF ADOPTED AMENDMENTS

312/793-3288

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

ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD

NOTICE OF ADOPTED AMENDMENTS

TITLE 80: PUBLIC OFFICIALS AND EMPLOYEES
SUBTITLE C: LABOR RELATIONS
CHAPTER III: ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD

PART 1135
UNIVERSITY OF ILLINOIS BARGAINING UNITS

Section
1135.10 General Statement of Purpose
1135.20 Presumptively Appropriate Bargaining Units
1135.30 Bargaining Unit Determinations

AUTHORITY: Implementing Sections 3 and 7 and authorized by Sections 5(i) and 9 of the Illinois Educational Labor Relations Act [115 ILCS 5/7, 5/3, 5/5(i), 5/9].

SOURCE: Adopted at 13 Ill. Reg. 14969, effective September 8, 1989; amended at 28 Ill. Reg. 7993, effective May 28, 2004.

Section 1135.10 General Statement of Purpose

This Part sets forth presumptively appropriate bargaining units for educational employees employed by the Board of Trustees of the University of Illinois. Nothing in this Part shall negate historical units created prior to January 1, 1984 or units certified by the Illinois Educational Labor Relations Board prior to the effective date of these regulations. Nothing in this Part shall be construed to supersede this Part or rights of educational employees under Section 7 of the Act. Presumptively appropriate means that a bargaining unit has been found to have the requisite community of interest under Section 7a of the Educational Labor Relations Act (the Act) [115 ILCS 5/7(a)]~~(Ill. Rev. Stat. 1987, ch. 48, par. 1707)~~, unless the appropriateness is rebutted by contrary evidence.

(Source: Amended at 28 Ill. Reg. 7993, effective May 28, 2004)

Section 1135.20 Presumptively Appropriate Bargaining Units

a) With respect to educational employees employed at the Urbana-Champaign campus or employed in units located outside Urbana-Champaign which report administratively to the Urbana-Champaign campus, the following units shall be presumptively appropriate for collective bargaining:

1) Unit 1: All full-time (i.e., employees who have .51 or greater appointment

as a faculty member) tenured or tenure-track faculty; all full-time, nontenure-track faculty who possess a terminal degree appropriate to the academic unit in which the faculty member is employed; and all full-time, nontenure-track faculty without the appropriate terminal degree who have been employed for four consecutive semesters, excluding summer terms, but excluding all faculty members of the College of Law and the College of Veterinary Medicine. A terminal degree is the highest degree attainable in a discipline.

2) Unit 2: All full-time (i.e., employees who have .51 or greater appointment as a faculty member) tenure or tenure track faculty members of the College of Law.

3) Unit 3: All full-time (i.e., employees who have .51 or greater appointment as a faculty member) tenure or tenure track faculty members of the College of Veterinary Medicine.

4) Unit 4: All full-time non-visiting academic professionals exempted as Principal Administrative Employees from Section 36e of the State Universities Civil Service Act [110 ILCS 70/36e]~~"AN ACT to create the State Universities Civil Service System" (Ill. Rev. Stat. 1987, ch. 24½, par. 38b4),~~ who have a .50 or greater appointment in that position.

5) Unit 5: All full-time and regular part-time professional employees, as that term is defined in Section 2(k) of the Illinois Educational Labor Relations Act [115 ILCS 5/2(k)]~~(Ill. Rev. Stat. 1987, ch. 48, par. 1702(k)),~~ who are not exempt from the State Universities Civil Service Act.~~"AN ACT to create the State Universities Civil Service System."~~

6) Unit 6: All full-time and regular part-time technical and paraprofessional employees not exempt from the State Universities Civil Service Act [110 ILCS 70/36e].~~"AN ACT to create the State Universities Civil Service System" (Ill. Rev. Stat. 1987, ch. 24 1/2, par. 38b1 et seq.).~~ A technical and paraprofessional employee is a person who performs work that is typically laboratory or field work.

7) Unit 7: All full-time and regular part-time non-professional administrative and clerical employees not exempt from the State Universities Civil Service Act.~~"AN ACT to create the State Universities Civil Service System."~~

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8) Unit 8: All full-time and regular part-time service and maintenance employees not exempt from the State Universities Civil Service Act.~~"AN ACT to create the State Universities Civil Service System."~~

b) With respect to educational employees employed at the Chicago campus or employed in units located outside Chicago which report administratively to the Chicago campus, the following units shall be presumptively appropriate for collective bargaining:

1) Unit 1: All full-time (i.e., employees who have .51 or greater appointment as a faculty member) tenured or tenure-track faculty; all full-time, nontenure-track faculty who possess a terminal degree appropriate to the academic unit in which the faculty member is employed; and all full-time, nontenure-track faculty without the appropriate terminal degree who have been employed for four consecutive semesters, excluding summer terms, but excluding all faculty members of the College of Pharmacy, the College of Medicine and the College of Dentistry.

2) Unit 2: All full-time (i.e., employees who have .51 or greater appointment as a faculty member) tenure or tenure-track faculty members of the College of Dentistry.

3) Unit 3: All full-time (i.e., employees who have .51 or greater appointment as a faculty member) tenure or tenure-track faculty members of the College of Medicine.

4) Unit 4: All full-time (i.e., employees who have .51 or greater appointment as a faculty member) tenure or tenure track faculty members of the College of Pharmacy.

5) Unit 5: All full-time non-visiting academic professionals exempted as Principal Administrative Employees from Section 36e of the State Universities Civil Service Act ~~"AN ACT to create the State Universities Civil Service System,"~~ who have a .50 or greater appointment in that position.

6) Unit 6: All full-time and regular part-time professional employees, as that term is defined in Section 2(k) of the Illinois Educational Labor Relations Act [115 ILCS 5/2(k)]~~(Ill. Rev. Stat. 1987, ch. 48, par. 1702(k)),~~ who are

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not exempt from the State Universities Civil Service Act.~~"AN ACT to create the State Universities Civil Service System."~~

7) Unit 7: All full-time and regular part-time technical and paraprofessional employees not exempt from the State Universities Civil Service Act.~~"AN ACT to create the State Universities Civil Service System."~~

8) Unit 8: All full-time and regular part-time non-professional administrative and clerical employees not exempt from the State Universities Civil Service Act.~~"AN ACT to create the State Universities Civil Service System."~~

9) Unit 9: All full-time and regular part-time service and maintenance employees not exempt from the State Universities Civil Service Act.~~"AN ACT to create the State Universities Civil Service System."~~

(Source: Amended at 28 Ill. Reg. 7993, effective May 28, 2004)

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED RULES

1) Heading of the Part: Individuals Access to Services

2) Code Citation: 59 Ill. Adm. Code 109

3)

Section Numbers:	Adopted Action:
109.10	Added
109.20	Added
109.30	Added
109.40	Added

4) Statutory Authority: Implementing Section 2-104 of the Mental Health and Developmental Disabilities Code [405 ILCS 5/2-104] and authorized by Section 5-104 of the Mental Health and Developmental Disabilities Code [405 ILCS 5/5-104] and by Section 5 of the Mental Health and Developmental Disabilities Administrative Act [20 ILCS 1705/5].

5) Effective Date of Rulemaking: May 27, 2004

6) Does this rulemaking contain an automatic repeal date? No

7) Does this rulemaking contain incorporations by reference? Yes

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: January 9, 2004 at 28 Ill. Reg. 476

10) Has JCAR Issued a Statement of Objection to this rulemaking? No

11) Differences between proposal and final version:

In the Table of Contents, deleted "Subpart A: Possession and Use of Personal Computers".

Deleted the Subpart A heading in the text.

In Section 109.30,

subsection (a)(1), deleted ", within 30 days after the effective date of this Part, or upon the imposition of a new restriction," and added "If it becomes necessary to

restrict individuals who did not receive notice of the restriction upon admission, the professional responsible for overseeing implementation of an individual's services plan may, with the approval of the facility director, restrict the right to property when necessary to protect the individual or others from harm.".

subsection (a)(3), added "e-mail and internet related" before "uses".

subsection (c)(3), deleted "or from", deleted "programs or", deleted "or to", and added "Outgoing computer disks shall not be examined, impeded or censored unless the facility director makes an individual determination that it is necessary to protect the individual or others from harm, harassment or intimidation.".

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 rulemaking replace any emergency rulemaking currently in effect? No. The companion emergency rulemaking expired May 23, 2004.

14) Are there any other amendments pending on this Part? No

15) Summary and Purpose of Rulemaking: This rulemaking implements guidelines and parameters involving the use of the internet, e-mail and computers by recipients in certain State-operated facilities.

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

Tracie Drew, Bureau Chief
Bureau of Administrative Rules and Procedures
Department of Human Services
100 South Grand Avenue, East, Third Floor
Springfield, Illinois 62762
Telephone: (217) 785-9772

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

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED RULES

TITLE 59: MENTAL HEALTH
CHAPTER I: DEPARTMENT OF HUMAN SERVICES

PART 109
INDIVIDUALS ACCESS TO SERVICES

Section
109.10 Definitions
109.20 Applicability
109.30 Procedures
109.40 Department Access to E-mails and Internet Communications

AUTHORITY: Implementing Section 2-104 of the Mental Health and Developmental Disabilities Code [405 ILCS 5/2-104] and authorized by Section 5-104 of the Mental Health and Developmental Disabilities Code [405 ILCS 5/5-104] and by Section 5 of the Mental Health and Developmental Disabilities Administrative Act [20 ILCS 1705/5].

SOURCE: Adopted by emergency rulemaking at 28 Ill. Reg. 1006, effective December 26, 2003, for a maximum of 150 days; emergency expired May 23, 2004; adopted at 28 Ill. Reg. 7999, effective May 27, 2004.

Section 109.10 Definitions

"Computer programs" or "software" means instructions for the computer written generally in a machine language.

"CD-ROM" or "CD" means a compact computer memory storage device containing one or more computer programs that can be used by or installed onto a computer and which is removable.

"CPU" or "central processing unit" means the brains of the computer and physically consists of a large metal or plastic box.

"CRT" or "cathode ray tube" means one type of a computer monitor.

"Cyberstalking" means using electronic communication (such as a computer) to transmit a threat of bodily harm, sexual assault, confinement or restraint to a person, or place the person or his or her family member in reasonable apprehension of harm, sexual assault, confinement or restraint.

"EDP liaison" means the person designated by the facility to ensure computer software and hardware are compatible with DHS systems and requirements. The EDP liaison serves as the liaison between the facility and the Bureau of Management Information Systems.

"Educational purposes" means enrollment in a degree program from an accredited school or a class offered by an accredited school or adult learning center approved by the individual's treatment or interdisciplinary team.

"Employee", for the purposes of this Part only, means any person providing services at the direction of the Administrator or Director, or Department Secretary, on- or off-site. This includes payroll personnel, contractors, subcontractors, and volunteers.

"Facility" means a State-operated developmental disabilities or a State-operated mental health facility as defined by Sections 1-107 or 1-114 of the Mental Health and Developmental Disabilities Code [405 ILCS 5/1-107 and 1-114].

"Facility director" means the chief administrator of a facility or his or her designee. At a mental health facility, the designee may be a hospital administrator, medical director, medical administrator, physician, clinical psychologist, clinical social worker, or registered nurse. At a developmental disabilities facility, the designee may be any member of the center's executive staff or the EDP liaison coordinator.

"Inappropriate use" means the use of a computer in violation of this Part or facility policy or to harass or otherwise harm another person. Unless instructed otherwise by the court, it does not include using the computer to prepare for litigation to seek relief or against the Department.

"Individual" means a recipient of services as defined in Section 1-123 of the Mental Health and Developmental Disabilities Code [405 ILCS 5/1-123].

"Internet" or "World-wide web" means a method whereby two or more computers can interact.

"Laptop computer" means a portable computer that has all of the functions of a larger desktop computer.

"LCD" means liquid crystal display.

"Modem" means a device used to connect one computer to another or to the internet through telephone lines, radio frequencies, cable connections, or other means.

"Peripheral" means any device that is used in conjunction with a computer and includes, but is not limited to, printers, scanners, and disk drives.

"Printer" means a device that will put the information from a computer program on paper.

"Restriction" means limiting the individual's use of a computer or access to specified software, up to and including denial to use a computer.

"Treatment or Interdisciplinary team" means the facility employees responsible for developing, implementing, and evaluating an individual's programs and services.

Section 109.20 Applicability

This Part shall apply to all facilities.

Section 109.30 Procedures

a) General Provisions

1) The facility director shall be responsible for implementing this Part. He or she may restrict the possession or use of computers, peripherals, modems, CDs, disks, software, or other equipment used with the computer for all individuals in a facility, when necessary to protect an individual or others from harm, provided that notice of such restriction shall be given to all individuals upon admission. If it becomes necessary to restrict individuals who did not receive notice of the restriction upon admission, the professional responsible for overseeing implementation of an individual's services plan may, with the approval of the facility director, restrict the right to property when necessary to protect the individual or others from harm.

2) Due to safety concerns raised by metal in the CPU or glass in the CRT monitors, the facility director may choose to limit the approved computers

to laptop computers with LCD displays. If the facility director limits the type of equipment to be used, he or she will ensure that information concerning these limitations is included in notices to employees and individuals.

3) Except as provided in this Section, e-mail and internet use on State-owned computers by individuals is prohibited. Facilities are not required to provide individuals with e-mail or internet access on State-owned computers. Individuals may request to have e-mail and internet access for educational purposes only. No other e-mail and internet related uses of State-owned computers by individuals are permitted. The treatment or interdisciplinary team may deny the request if it determines that e-mail or internet access would be clinically inappropriate or that a restriction on e-mail or internet use is necessary to protect the individual or others from harm. Behaviors such as issuing written and verbal threats, obtaining personal information about other persons in order to intimidate or harass them, obtaining information about making bombs and other weapons, cyberstalking, and planning escapes from facilities will result in denial of e-mail and internet access.

4) If a facility prohibits possession of CDs by individuals while in the facility and an individual has an approved program on CD, the individual, under employee supervision, may load the program onto the computer after which the CD will be placed in personal storage until the individual is discharged. The facility shall not provide any equipment to convert any program from one format (CD) to another (disk) (see subsection (a)(1)).

5) The treatment or interdisciplinary team, with the approval of the facility director, may restrict an individual's possession of computers, modems, or computer peripherals when necessary to protect the individual or others from harm. Individuals wishing to purchase or obtain computers, modems, or computer peripherals for personal use must have prior approval from their case managers and the treatment team at a mental health facility or the interdisciplinary team and the EDP liaison at a developmental disabilities facility. Individuals will be asked to sign the "Agreement for Use of Computers" form (IL 462-0190) documenting their understanding of the terms of use and their agreement to those terms. Those terms may include restricting the use of the computer and any peripheral to non-treatment or habilitation time periods. Any computer or computer peripheral received by an individual that has not been approved

shall either be returned to the sender or placed in the individual's personal property storage, at the individual's choice. The individual may elect to seek approval for the computer or peripheral.

6) The treatment or interdisciplinary team, with the approval of the facility director, may restrict an individual's possession or use of computer software when necessary to protect the individual or others from harm. Individuals wishing to purchase or obtain computer software for personal use must have prior approval from their case managers and the treatment team at a mental health facility or the interdisciplinary team and the EDP liaison at a developmental disabilities facility. Individuals will be asked to sign the "Agreement for Use of Computers" form (IL 462-0190) documenting their understanding of the terms of use and their agreement to those terms. Any computer software received by an individual that has not been approved shall either be returned to the sender or placed in the individual's personal property storage, at the individual's choice. The individual may elect to seek approval for the computer software.

b) Individual Use

1) If an individual wishes to use a computer and software, employees will inform the individual concerning the stipulations/terms under which a computer and software may be used. The individual must sign the form attesting that he or she understands the terms of use and agrees to those terms. If an individual has a guardian, the treatment or interdisciplinary team shall review the form with the individual and his or her guardian. The guardian will also be asked to sign the agreement. The treatment or interdisciplinary team may specify additional terms and conditions for use of a computer in the individual's treatment or habilitation plan.

2) If an individual is approved to use a computer, software that is approved includes the following:

A) Operating system (i.e., DOS, Windows, OS2);

B) Utility programs (virus checkers, file managers, defragmenters, scan disk);

C) Word processing;

D) Accessories (calculators, paintbrush, print programs);

E) Games that the individual would be authorized to play on the unit, such as solitaire, card games, chess, checkers, various board games, or skills development games; and

F) The treatment or interdisciplinary team must approve any additional programs that the individual wishes to use. Any software in a factory-sealed container may be presumed to contain only the software that it indicates is included.

3) The individual's use of the computer will be determined based on clinical review and assessment, as well as the availability of space, the number of electrical outlets, and electrical devices. No extension cords or devices that multiply the number of outlets, such as outlet strips, etc., are permitted.

4) If an individual at a mental health facility uses a computer, any peripheral, power cord and/or other associated part in an attack or assault on another individual, employee, or visitor, the computer and all accompanying devices and equipment shall be confiscated and placed in personal property storage. The "Notice Regarding Restricted Rights of Individuals" form (IL 462-2004M) will be completed according to facility procedure. If an individual at a developmental disabilities facility uses a computer related item to harm or attempt to harm another person, the computer will be removed from the individual until the interdisciplinary team meets (within 3 working days) to determine the programmatic action warranted. The "Notice Regarding Restriction of Rights of an Individual" form (IL 462-2004D) and SODC Operations "Supplemental Report On the Use of Restraints and/or Emergency Behavior Intervention Procedures" are to be completed if an individual's computer is restricted and the forms processed in accordance with the developmental disabilities facility's procedures for processing documents.

5) If an individual inappropriately uses a computer, the treatment or interdisciplinary team may restrict his or her use of the computer until the treatment or interdisciplinary team meets to determine the programmatic action warranted.

6) The treatment or interdisciplinary team shall keep a record of the equipment and software that each individual is authorized to use. At least annually, there shall be an inventory of all individuals' rooms to ensure compliance. There may be random checks of what software is loaded onto each individual's computer. Any unauthorized software programs shall be deleted. The continued presence of unauthorized software or providing software to other persons may result in the restriction of the use of the computer.

7) Computers are approved for the individual's personal use. Allowing another individual to use a computer or using the computer to obtain personal gain from other individuals is a violation that can result in restrictions on the use of the computer.

c) Use of Disks

1) Individuals may purchase blank disks or software approved in accordance with subsections (b)(1) and (2) through a facility commissary or through the facility at a local store. If individuals are sent blank disks or software approved in accordance with subsections (b)(1) and (2), they must be in a factory sealed container. If they are not in a factory sealed container, they are to be treated as "computer disks from others" (see subsection (c)(3)).

2) When an individual has been approved to use a computer, he or she may wish to send and receive correspondence from his or her attorney on computer disk. The facility shall send a letter to the individual's attorney explaining that correspondence may be sent to the individual on computer disk, provided the attorney certifies, with each computer disk, that it only contains documents relating to that legal representation.

3) Computer disks coming to the individual shall be examined (except for disks sent to or from the individual's attorneys) and the documents on some or all of the disks will be reviewed. If unauthorized contraband material is present, those disks (and all other disks from that same person) could be restricted with the appropriate restriction of rights. Outgoing computer disks shall not be examined, impeded or censored unless the facility director makes an individual determination that it is necessary to protect the individual or others from harm, harassment or intimidation.

4) For security reasons, the facility director may restrict all disks coming to or from persons or organizations outside the facility, except for those disks coming to or from attorneys corresponding with individuals. The treatment or interdisciplinary team, with the facility director's approval, may restrict disks coming to or from an individual when necessary to protect the individual or others from harm, except for those disks coming to or from the individual's attorney.

Section 109.40 Department Access to E-mails and Internet Communications

a) Personal Information on Department Computers – The privacy of materials kept in electronic data storage, internet use, and electronic mail when using Department computers is not a right, nor is it guaranteed. Most materials on Department systems are, by definition, public records. As such, they are subject to laws and policies that may compel the Department to disclose them.

b) Monitoring of Computer Use – The facility director shall ensure e-mail and internet use by individuals on all State-owned computers is monitored to ensure compliance with sanctioned uses. Individuals using State-owned computers for sanctioned uses shall be informed, prior to use, that such use shall be monitored. The Office of Management Information Systems (MIS) administers the Department's information systems and data processing equipment. MIS may monitor computer use and system accesses by any individual or organizational entity in DHS. This includes the potential to monitor transaction executions, file accesses, communications such as e-mail and accesses of external resources such as the internet.

c) Contents of E-mail – The contents of electronic messages may be seen by a system administrator in the course of routine maintenance or in order to dispose of undeliverable messages. In addition, electronic mail systems store messages in files (e.g., the file containing a user's inbound mail). These files are copied in the course of system backups and these backup copies may be kept long after original messages are deleted.

d) System Files and Logs – In the course of resolving system performance or security problems, system administrators may examine the contents of files that control the flow of tasks through the system or that grant unauthenticated access to other systems. This includes systems logs that document activities of users.

DEPARTMENT OF LABOR

NOTICE OF ADOPTED RULES

1) Heading of the Part: Equal Pay in Employment

2) Code Citation: 56 Ill. Adm. Code 320

3)

Section Numbers:	Adopted Action
320.100	New Section
320.110	New Section
320.120	New Section
320.130	New Section
320.140	New Section
320.200	New Section
320.210	New Section
320.220	New Section
320.230	New Section
320.240	New Section
320.250	New Section
320.300	New Section
320.310	New Section
320.320	New Section
320.330	New Section
320.340	New Section
320.400	New Section
320.500	New Section
320.510	New Section
320.520	New Section
320.600	New Section
320.610	New Section
320.620	New Section
320.630	New Section
320.640	New Section
320.650	New Section
320.660	New Section
320.700	New Section
320.710	New Section
320.720	New Section
320.730	New Section
320.740	New Section

4) Statutory Authority: Public Act 93-0006 [820 ILCS 112]

DEPARTMENT OF LABOR

NOTICE OF ADOPTED RULES

5) Effective date of rules: May 26, 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 rulemaking, including any material incorporated by reference, is on file in the Department of Labor's principal office and is available for public inspection.

9) Notice of Proposal published in Illinois Register: January 2, 2004; 28 Ill. Reg. 295

10) Has JCAR issued a Statement of Objection to this rulemaking? No

11) Differences between proposal and final version:

Section 320.120 – In the definition of "Effort", add "or equal" after the word "unequal".

Section 320.120 – In the definition of "Responsibility", change the word "infrequent" to "occasional". Also, add "or equal" after the word "unequal".

Section 320.120 – In the definition of "Similar working conditions", add two new sentences: "The method used for testing this requirement is flexible. The mere fact that jobs are in different departments of a workplace or performed in different locations will not necessarily mean that the jobs are performed under dissimilar working conditions."

Section 320.120 – In the definition of "Substantially similar work", add a sentence: "Substantially similar is not dependent on a job classification or title but depends rather on actual job requirements and genuine differences in how work is performed.".

Section 320.140(b) – Add "hire," before the word "promotion." Also, add "written job offers," after "seniority systems,".

Section 320.210(a)(3) – Delete the phrase "a prima case of".

Section 320.210(b) – Add "of the post-mark or as" to the last sentence after the phrase "filed as of the date".

Section 320.240(d) – Delete "Any amendment to a complaint shall be provided to all parties" and replace with "The Department shall provide any amendment to a complaint to all parties.".

Section 320.310(d) – Add at the end of the paragraph: "At least ten calendar days prior to convening a fact-finding conference or an informal investigative hearing, the Department will provide to the respondent a copy of the complainant's rebuttal.".

Section 320.310(g) – Add at the end of the sentence: "Circumstances in which the Department may withhold a witness statement include, but are not limited to, when the safety or employment status of the witness is endangered or threatened.".

Section 320.500(a) – Delete "pursuant to Section 30 of the Act" and replace with "within 3 years from the date the employee learned of the underpayment.".

Section 320.620 – Add at the end of the paragraph a new sentence: "Good cause may be shown by, but not limited to, the failure of a party to receive notice of the hearing, the inability of a party to produce a material witness or relevant evidence, the illness or death of a party or counsel, the sudden and unexpected unavailability of counsel and substitution of counsel.".

Minor editorial changes were also made in response to comments and/or JCAR.

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? Yes

14) Are there any amendments pending on this Part? No

15) Summary and purpose of rules: The rulemaking is being implemented in order to comply with the provisions of Public Act 93-0006, the Equal Pay Act of 2003 (Act). The intent and purpose of the Act is to eliminate pay disparities between men and women who perform the same or substantially similar work on jobs that require equal skill, effort and responsibility and are performed under similar working conditions. The Act allows for employee relief, civil penalties for employers and equitable relief for persons who are discriminated or retaliated against for filing a complaint or participating in the Department's investigation. The Illinois Department of Labor (Department) must adopt rules necessary to administer and enforce the Act. The Act became effective January 1, 2004, and the rules enable the Department to accept and process complaints, conduct

investigations and make determinations of equal pay and retaliation violations. The rules also address recordkeeping requirements for employers, exemptions and definitions of equal pay provisions. The rules provide for appeal procedures for any party contesting the findings of the Department.

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

Valerie A. Puccini, Attorney
Illinois Department of Labor
160 N. LaSalle Street, C-1300
Chicago, IL 60601
312/793-1805

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

DEPARTMENT OF LABOR

NOTICE OF ADOPTED RULES

TITLE 56: LABOR AND EMPLOYMENT
CHAPTER I: DEPARTMENT OF LABOR
SUBCHAPTER b: REGULATION OF WORKING CONDITIONS

PART 320
EQUAL PAY IN EMPLOYMENT

SUBPART A: GENERAL PROVISIONS

Section
320.100 Purpose and Scope
320.110 Application of the Act
320.120 Definitions
320.130 Independent Contractor Exemption
320.140 Recordkeeping Requirements

SUBPART B: COMPLAINT

Section
320.200 Persons Who May File a Complaint
320.210 Contents and Time Limit for Filing
320.220 Confidentiality
320.230 Incomplete Complaint
320.240 Amendment of Complaint
320.250 Withdrawal of Complaint

SUBPART C: PROCEDURE UPON COMPLAINT AND DECISION

Section
320.300 Jurisdiction
320.310 Investigation
320.320 Fact-Finding Conference
320.330 Decision After Investigation
320.340 Enforcement Procedures

SUBPART D: SETTLEMENT

Section
320.400 Settlement

DEPARTMENT OF LABOR

NOTICE OF ADOPTED RULES

SUBPART E: DISMISSAL, DEFAULT AND CLOSURE

Section
320.500 Dismissal
320.510 Default
320.520 Closure

SUBPART F: INFORMAL INVESTIGATIVE HEARING

Section
320.600 Request for Informal Investigative Hearing
320.610 Convening an Informal Investigative Hearing
320.620 Continuances
320.630 Application of the Rules of Evidence, Pleading and Procedure
320.640 Attorneys and Witnesses at an Informal Investigative Hearing
320.650 Contumacious Conduct
320.660 Telephone Hearings

SUBPART G: REQUEST FOR REVIEW

Section
320.700 Filing with Chief Administrative Law Judge
320.710 Contents of Request for Review
320.720 Reply to Request for Review and Surreply
320.730 Extensions of Time
320.740 Additional Investigation and Order

AUTHORITY: Implementing the Equal Pay Act of 2003 [820 ILCS 112].

SOURCE: Emergency rule adopted at 28 Ill. Reg. 363, effective January 1, 2004, for a maximum of 150 days; adopted at 28 Ill. Reg. 8009, effective May 26, 2004.

SUBPART A: GENERAL PROVISIONS

Section 320.100 Purpose and Scope

This Part shall apply to actions arising under the Equal Pay Act of 2003 [820 ILCS 112] administered under the jurisdiction of the Director of Labor and/or the Department of Labor.

Section 320.110 Application of the Act

DEPARTMENT OF LABOR

NOTICE OF ADOPTED RULES

Men and women have equal protection under the Act. In areas where the State and federal government have concurrent powers under their respective statute, the stricter of the two laws shall prevail.

Section 320.120 Definitions

"Act" means the Equal Pay Act of 2003 [820 ILCS 112].

"Complaint" means an allegation of a violation of the Act filed with or initiated by the Department.

"Complainant" means a person who files a complaint, including the Department in cases initiated by the Department.

"Department" means the Illinois Department of Labor.

"Director" means the Director of Labor or a duly authorized representative.

"Effort" means the physical or mental exertion needed for the performance of a job. Job factors that cause mental fatigue and stress, as well as those factors that alleviate fatigue, are to be considered in determining the effort required for the job. Effort encompasses the total requirements of the job. Occasional or sporadic performance of an activity that may require extra physical or mental exertion is not alone sufficient to justify a finding of unequal or equal effort.

"Employee" *means any individual permitted to work by an employer* [820 ILCS 112/5].

"Employer" *means an individual, partnership, corporation, association, business, trust, person, or entity for whom 4 or more employees are gainfully employed in Illinois and includes the State of Illinois, any State officer, department, or agency, any unit of local government, and any school district*. [820 ILCS 112/5]

"Merit system" means an established, bona fide, uniform and objective system that rewards an employee with promotion, bonus, increased pay or other advantages based on competence, expertise, proficiency and human relations.

"Respondent" means an employer against whom a complaint is filed.

"Responsibility" means the degree of accountability required in the performance of the job. Minor or occasional responsibility added to an employee's duties that are not of significant consequence or importance will not justify a finding of unequal or equal responsibility.

"Seniority system" means a system that gives preference to employees based on years of service.

"Similar working conditions" means the surroundings and hazards, including the frequency and intensity of such conditions. Surroundings measure the elements, such as toxic chemicals or fumes, regularly encountered by an employee. Hazards take into account the physical hazards regularly encountered by an employee. Slight or inconsequential differences in working conditions that are not usually taken into account by employers or in collective bargaining in setting wage rates do not justify a differential in pay. The method used for testing this requirement is flexible. The mere fact that jobs are in different departments of a workplace or performed in different locations will not necessarily mean that the jobs are performed under dissimilar working conditions.

"Skill" means experience, training, education and ability. Possession of a skill not needed to meet the requirements of the job cannot be considered in making a determination regarding equality of skill.

"Substantially similar work" means comparable work on jobs with comparable requirements related to equal skill, effort and responsibility. Substantially similar is not dependant on a job classification or title but depends rather on actual job requirements and genuine differences in how work is performed.

"Wages", for purposes of the Equal Pay Act of 2003, means any compensation made to an employee as remuneration for employment regardless of whether paid periodically or deferred until a later date. Compensation includes but is not limited to: wages, salary, vacation pay, sick leave, holiday pay, overtime pay, premium pay, and other benefits such as health insurance, life insurance, disability insurance, commission, draw payments, pension and profit sharing, expenses, bonus, uniform cleaning allowance, hotel accommodations, use of vehicle, gasoline allowance, cafeteria plan and educational benefits.

"Workplace" means a distinct physical place of business rather than an entire business or enterprise that may include several separate places of business.

Section 320.130 Independent Contractor Exemption

a) As used in this Part, the term "employee" shall not include any individual:

1) who has been and will continue to be free from control and direction over the performance of the individual's work, both under the contract of service with the employer and in fact; and

2) who performs work that is either outside the usual course of business or is performed outside all the places of business of the employer unless the employer is in the business of contracting with third parties for the placement of employees; and

3) who is an independently established trade, occupation, profession or business.

b) "Control" means the existence of general control or right to general control, even though the details of the work are left to an individual's judgment.

c) "An independently established trade, occupation, profession or business" means the individual performing the services has a proprietary interest in such business, to the extent that the individual operates the business without hindrance from any other person and as the enterprise's owner, may sell or otherwise transfer the business.

d) All three conditions in subsection (a) must be satisfied for the independent contractor exemption to apply.

e) An individual may be an employee without being entirely dependent upon the relationship with a specified employer for the individual's livelihood. An individual engaged in other occupations may be an employee of a specified employer even though the individual only worked intermittently or part time.

f) In determining whether the exemption applies, the Department shall consider the actual, rather than the alleged, relationship between a respondent and complainant. Designations and terminology used by the parties, as well as the individual's status for tax purposes, are not controlling.

Section 320.140 Recordkeeping Requirements

a) An employer subject to any provision of the Act shall make and preserve records, including but not limited to: name, address, occupation and wages paid to each employee, payroll records and records of other forms of compensation, dates of hire, dates of promotion and dates of pay increases.

b) In addition, the employer shall preserve any records made in the regular course of the business operation that relate to personnel records, employee qualifications for hire, promotion, transfer, discharge or other disciplinary action, wage rates, skills testing certifications, job evaluations, job descriptions, merit systems, seniority systems, written job offers, individual employment contracts, collective bargaining agreements, description of practices or other matters that describe or explain the basis for payment of any wage differential to employees of the opposite sex by the same employer and that may be pertinent to a determination whether the differential is based on a factor other than sex.

SUBPART B: COMPLAINT

Section 320.200 Persons Who May File a Complaint

An employee or former employee claiming to be aggrieved under the Act may file a complaint, including the Department in cases initiated by the Department.

Section 320.210 Contents and Time Limit for Filing

a) A complaint shall be in such detail as to substantially apprise the parties of the dates, place and facts with respect to the alleged violation of the Act. Each complaint shall contain the following information:

1) the full name and address of the complainant;

2) the full name and address of each respondent;

3) a statement of the facts alleged to constitute a violation under the Act, including the dates and place of the alleged violation;

4) a statement of each specific harm the complainant has suffered as a consequence of the alleged violation;

5) complainant's signature, including date of signing; and

6) a statement as to any other action, civil or criminal, instituted in any other forum, and as to any pending administrative proceeding based on the same violation as alleged in the complaint, together with a statement as to the status or disposition of the other action.

b) All complaints and amendments shall be delivered by U.S. mail or personal delivery to the Department's Chicago office within 180 calendar days from the date the employee learned of the alleged violation of the Act. The complaint shall be deemed filed as of the date of the post-mark or as it is date stamped as received by the Department.

Section 320.220 Confidentiality

Where a complainant requests confidentiality, the Department will advise the complainant of the need to reveal the complainant's identity so that the Department can conduct its investigation. In such cases, the Department will allow the complainant an opportunity to withdraw the complaint pursuant to Section 320.250 before notification of the complainant's identity is given to the respondent.

Section 320.230 Incomplete Complaint

If the Department receives a written complaint from an individual that complies substantially with Section 320.210 but is lacking an element that still must be provided, the Department may accept and docket the complaint as an incomplete complaint. The Department shall notify the complainant in writing of the elements that must be supplied. If the complainant fails or refuses to perfect the complaint within 30 calendar days, the complaint may be dismissed pursuant to Section 320.500.

Section 320.240 Amendment of Complaint

a) A complaint may be amended to cure technical defects or to set forth additional facts or allegations related to the subject matter of the original complaint and the amendments, if timely filed pursuant to Section 320.210, shall relate back to the original filing date.

b) A complaint may be amended to substitute or name additional respondents. The amendment will relate back to the original filing date, if timely filed pursuant to Section 320.210, and if at the time of the amendment a separate complaint could have been timely filed against the additional respondent or the additional

respondent had timely notice of the original complaint and the fact that it might be involved in that complaint. Mere misnomer of a party may be cured at any time.

c) If a party dies while the proceedings are pending, the complaint may be amended to substitute the legal representative, or any other person with a legally recognized interest in the decedent's estate, for the deceased.

d) The Department shall provide any amendment to a complaint to all parties.

Section 320.250 Withdrawal of Complaint

A complaint may be withdrawn at any time prior to issuance of a notice dismissing the complaint or filing of a court action based on the complaint. A complainant's request to withdraw a complaint shall be in writing and signed by the complainant and shall specifically reference the Department's complaint number. The Department shall grant the request if it is shown that the request is made voluntarily. After the Department's review of the withdrawal request, the complaint may be closed and the Department will notify all parties in writing. Withdrawal does not preclude the Department from pursuing a complaint on its own motion based on the same facts.

SUBPART C: PROCEDURE UPON COMPLAINT AND DECISION

Section 320.300 Jurisdiction

a) At the time of filing, the Department shall determine initially whether the allegations in the complaint sufficiently state a claim under the Act so that the Department can proceed with the investigation.

b) If, at the time of filing, or at any subsequent time, it is determined that there is a lack of jurisdiction, the complaint shall be dismissed. All parties shall be notified of the dismissal pursuant to Section 320.500.

Section 320.310 Investigation

a) After the Department determines jurisdiction, the Department shall conduct an investigation to ascertain the facts relating to the violation alleged in the complaint and determine whether reasonable cause exists to believe a violation under the Act has occurred. The investigation may be made by written or oral inquiry, field visit, conference or any method or combination of methods deemed suitable in the discretion of the Department. The Department will limit its

investigation to reviewing up to 3 years prior to the date the complaint was filed, but in no case will review occur prior to the effective date of the Act, January 1, 2004.

b) The Department will notify the respondent of the existence of the complaint and forward a copy of the complaint to the respondent.

c) The respondent must remit a written response to the complaint within 30 calendar days after the date the Department forwarded the complaint. The response shall include relevant data regarding wages, hours and other conditions and practices of employment deemed necessary and appropriate to the Department's investigation.

d) Upon receipt of the respondent's response, the complainant is provided a copy of the response and shall submit a rebuttal. Failure of the complainant to submit a rebuttal to the Department within 30 calendar days after the date the Department forwarded the respondent's response will result in dismissal of the complaint pursuant to Section 320.500. At least 10 calendar days prior to convening a fact finding conference or an informal investigative hearing, the Department will provide to the respondent a copy of the complainant's rebutttal.

e) If during the investigation a respondent refuses to cooperate, the Director may either make a finding of reasonable cause or issue subpoenas to compel the attendance of respondent witnesses or the production of documents.

f) A complainant must promptly provide the Department with a notice of address or telephone change or any prolonged absence from the current address so that the complainant can be located. A complainant must cooperate with the Department, provide necessary information and be available for interviews, conferences and hearings upon reasonable notice or request by the Department. If a complainant cannot be located or does not respond to reasonable requests by the Department, the Department may dismiss the complaint pursuant to Section 320.500.

g) The Department may in its discretion withhold any witness statement or identity of any witness as confidential upon the request of a party or the witness. Circumstances in which the Department may withhold a witness statement include, but are not limited to, when the safety or employment status of the witness is endangered or threatened.

Section 320.320 Fact-Finding Conference

a) As part of its investigation, the Department may convene a fact-finding conference in person or by telephone for the purpose of obtaining evidence, identifying the issues in dispute, ascertaining the positions of the parties and exploring the possibility of settlement. The fact-finding conferences will be limited in scope to those issues the Department believes to be in question.

b) Notice of the conference shall be given to all parties at least 10 calendar days prior to the conference and shall identify the individuals requested to attend on behalf of each party.

c) A party may be accompanied at a fact-finding conference by the party's attorney and by a translator if necessary.

d) Department investigator shall conduct the conference and control the proceedings. No tape recordings, stenographic report or other verbatim record of the conference shall be made. If any person fails to cooperate at the conference and becomes so disruptive or abusive that a full and fair conference cannot be conducted, the Department investigator shall exclude the person from the conference.

e) A party who appears at the conference exclusively through an attorney or other representative unfamiliar with the events at issue shall be deemed to have failed to attend, unless, with respect to a respondent, it establishes that it does not employ or control any person with knowledge of the events at issue.

Section 320.330 Decision After Investigation

a) At the conclusion of an investigation, the Department must make one of the following findings:

1) Reasonable cause found. If the Department determines that there is reasonable cause to believe that a violation of the Act has occurred, it may:

A) Seek a voluntary settlement agreement signed by the respondent that eliminates the unlawful practice and provides appropriate relief to the complainant; or

B) Recommend the commencement of a civil action.

2) No reasonable cause found. If the Department determines that there is no reasonable cause to believe that a violation of the Act has occurred, the complaint will be dismissed pursuant to Section 320.500.

b) Whenever a decision is made under this Section, a written notice must be provided to the parties stating the action taken, findings of fact and the conclusions of law supporting the action and the right to request review under Subparts F and G of this Part. The notice must also advise the complainant of the right to bring a civil action as provided for in Section 30 of the Act.

Section 320.340 Enforcement Procedures

a) The payment of back wages and other relief found due pursuant to Section 30 after the Act will be evidence of compliance with the provisions of the Act. Payment shall be supervised, when possible, by the Director.

b) The Director may require proof that the employees or former employees received all the back wages and other relief due pursuant to Section 30 of the Act and the Director may require the respondent to send certified checks, cashier's checks or money orders, made payable to the individual employees or the Department of Labor, to the Department for disbursement.

c) If the respondent does not comply within 15 calendar days after the Director's order, the Director may bring a civil action against the respondent as provided for in Section 30 of the Act.

SUBPART D: SETTLEMENT

Section 320.400 Settlement

a) At any time prior to the commencement of a civil action, the parties may settle the complaint on mutually agreeable terms. Such an agreement will not affect the processing of a complaint made by any other complainant, the allegations of which are like or related to the individual allegations settled.

b) If the Department finds that the complainant's objections to a proposed settlement agreement are without merit or that the complainant is unavailable or unwilling to participate in settlement negotiations, or continuing the investigation would be otherwise detrimental, the Department may, in its discretion, dismiss the complaint pursuant to Section 320.500.

DEPARTMENT OF LABOR

NOTICE OF ADOPTED RULES

SUBPART E: DISMISSAL, DEFAULT AND CLOSURE

Section 320.500 Dismissal

a) The Department shall serve upon the parties a written notice of dismissal of all or part of a complaint. The dismissal notice shall state the grounds for dismissal and that the complainant may obtain review by filing a request for review under Subparts F and G of this Part within 15 calendar days after the dismissal notice. The dismissal notice shall also advise the complainant of the right to bring a private action within 3 years from the date the employee learned of the underpayment.

b) The dismissal may be based on, but not limited to, lack of reasonable cause that a violation under the Act occurred, lack of jurisdiction or complainant's failure to proceed pursuant to Section 320.310(f). The notice of dismissal shall specify the manner in which the complainant has failed to proceed.

Section 320.510 Default

Except for good cause shown, the failure of a respondent to appear at an informal investigative hearing shall constitute a default.

Section 320.520 Closure

When the Department becomes aware that there is a complaint pending in federal or State court containing some or all of the issues before the Department, it may close the issues of the complaint that are being litigated and continue to process the remaining issues. If all issues are being litigated, then the entire complaint will be closed. The Department shall notify all parties in writing that the complaint before the Department is closed.

SUBPART F: INFORMAL INVESTIGATIVE HEARING

Section 320.600 Request for Informal Investigative Hearing

Any complainant or respondent contesting the results of the Department's investigation may file a written request for an informal investigative hearing within 15 calendar days after the Department's written notice of decision. Such request shall be marked "Request for Informal Investigative Hearing" on both the letter and the envelope and shall be delivered by U.S. mail or personal delivery to the Department's Chicago office. The request must set forth reasons why

the party believes the Department's findings are incorrect as a matter of law or fact or any newly discovered evidence the party could not have discovered during the course of the investigation. Late submissions need not be considered by the Department.

Section 320.610 Convening an Informal Investigative Hearing

a) The Department shall make an initial determination with respect to the legal and factual merits of a "Request for Informal Investigative Hearing". If the request presents a reasonable issue of law or fact, the Department may schedule an informal hearing before an Administrative Law Judge for purposes of obtaining evidence and identifying the issue in dispute.

b) A written notice of an informal investigative hearing shall be sent, not less than 10 calendar days prior to the date of the hearing, to the complainant and respondent, and may also be sent to those employees, former employees or witnesses covered by the investigation at issue. Each notice shall identify the individual requested to attend and records or documents the party must produce at the hearing.

c) If a request for an informal investigative hearing is denied, the Department will notify the party who filed the request of the Department's determination in writing.

Section 320.620 Continuances

Parties shall be prepared to proceed at hearing. A request by one party for a continuance will be granted prior to the hearing if the request is in writing, the other party agrees and the Administrative Law Judge grants permission. Otherwise, a request for a continuance must be made in person to the Administrative Law Judge at the time of hearing with proof that the party notified or attempted to notify the other party in advance of the hearing of the intent to ask for a continuance. The continuance will be granted only upon a showing of good cause. Good cause may shown by, but not limited to, the failure of the party to receive notice of the hearing, the inability of a party to produce a material witness or relevent evidence, the illness or death of a party or counsel, the sudden and unexpected unavailability of counsel and substitution of counsel.

Section 320.630 Application of the Rules of Evidence, Pleading and Procedure

When an Administrative Law Judge conducts an informal investigative hearing, the Administrative Law Judge is not bound by the rules of evidence or by any technical or formal rules of pleading or procedure.

Section 320.640 Attorneys and Witnesses at an Informal Investigative Hearing

A party may be accompanied at an informal investigative hearing by the party's attorney and by a translator, if necessary. The parties may bring witnesses to the hearing, but the Administrative Law Judge shall decide which witnesses shall be heard and the order in which they shall be heard. The Administrative Law Judge may exclude witnesses and other persons from the hearing when they are not giving testimony. The Administrative Law Judge shall conduct and control the proceedings. No tape recordings, stenographic report or other verbatim record of the hearing shall be made.

Section 320.650 Contumacious Conduct

If any person becomes so disruptive or abusive that a full and fair hearing cannot be conducted, the Administrative Law Judge shall exclude the person from the proceeding. The Administrative Law Judge may take any of the following actions: continue the hearing without the participation of the excluded individual; render a decision based upon the evidence previously presented; dismiss the complainant's complaint; or strike the respondent's response.

Section 320.660 Telephone Hearings

a) Written requests to participate in an informal investigative hearing by telephone must be received by the Department's Chicago office no later than seven calendar days prior to the hearing date. The request shall be in writing and state a compelling reason why the party needs to participate by telephone and the name, address and telephone number of the person to be contacted.

b) A party shall not consider its request granted unless the party receives written notice of the Department's approval prior to the hearing date.

SUBPART G: REQUEST FOR REVIEW

Section 320.700 Filing with Chief Administrative Law Judge

a) A complainant may request review by the Chief Administrative Law Judge of a decision by the Department, including a decision made after an informal investigative hearing, to dismiss one or more allegations of a complaint for:

1) Lack of substantial evidence;

2) Lack of jurisdiction;

3) No reasonable cause found;

4) Failure of complainant to proceed; or

5) Failure of complainant to accept a settlement offer.

b) A respondent may request review by the Chief Administrative Law Judge of a decision by the Department, including a decision made after an informal investigative hearing, to issue a notice of default or a notice of reasonable cause found.

c) A request for review must be delivered by U.S. mail or personal delivery to the Chief Administrative Law Judge at the Department's Chicago office within 15 calendar days after the decision.

d) Neither the parties nor the Department may communicate directly or indirectly with the Chief Administrative Law Judge except in writing with copies to all parties and the Department.

Section 320.710 Contents of Request for Review

A request for review must be in writing and state the reasons the party disagrees with the Department's decision. The request must be prominently marked "REQUEST FOR REVIEW" on both the letter and the envelope. A copy of the decision sought to be reviewed must be included with the request. The request for review must set forth the reasons why the party believes the Department misconstrued the evidence or misapplied the law to the facts and any newly discovered evidence the party could not have discovered prior to the Department's decision.

Section 320.720 Reply to Request for Review and Surreply

a) When a party files a timely request for review, the Chief Administrative Law Judge may request other parties to submit a reply to the request for review. The reply must be filed with the Chief Administrative Law Judge within 14 calendar days after the request by the Chief Administrative Law Judge. The reply must be

served on all other parties and proof of service must be provided to the Chief Administrative Law Judge or the reply cannot be considered. A reply is limited to the issues raised in the request for review. Whether a reply is needed or required is in the sole discretion of the Chief Administrative Law Judge.

b) If a reply to a request for review is timely filed with the Chief Administrative Law Judge, the party requesting review may file a surreply to the reply with the Chief Administrative Law Judge. Such surreply must be filed within 14 calendar days after the deadline for filing the reply. The surreply must be served on all parties and proof of service must be provided to the Chief Administrative Law Judge or the surreply cannot be considered. A surreply is limited to the issues raised in the reply.

Section 320.730 Extensions of Time

a) For good cause shown, a party may request in writing an extension of time to file a request for review, reply or surreply. Such an extension shall be no more than 14 calendar days. Requests for extensions of time must be filed with the Chief Administrative Law Judge no later than the original deadline and will be granted if the Chief Administrative Law Judge determines that good cause has been shown.

b) A determination for an extension of time shall be sent to all parties.

Section 320.740 Additional Investigation and Order

At the conclusion of the request for review process, the Chief Administrative Law Judge must make one of the following findings:

a) Additional investigation. If the Chief Administrative Law Judge determines that additional investigation is needed, all parties will be notified of the decision. All parties will be informed of the results of the additional investigation and provided copies of any documents submitted in response to the decision for additional investigation. All parties will be given 14 calendar days to file a supplemental request for review, reply and surreply to address the results of the additional investigation.

b) Order. If after review of the Department's decision to dismiss a complaint, issue a notice of default, or issue a reasonable cause finding, the Chief Administrative Law Judge determines that the Department's decision should be sustained, an

order shall be entered stating the findings and reasons for the determination. Otherwise, the Chief Administrative Law Judge shall order that the dismissal, default or reasonable cause finding be vacated. The Chief Administrative Law Judge will either return the complaint to the Department for additional investigation or order a reasonable cause finding or order of dismissal be entered. The Chief Administrative Law Judge shall serve the order upon all parties to the complaint.

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: The Protection of Archaeological Resources

2) Code Citation: 17 Ill. Adm. Code 370

3)

Section Numbers:	Adopted Action:
370.10	Amendment
370.30	Amendment

4) Statutory Authority: Implementing and authorized by the Archaeological and Paleontological Resources Protection Act [20 ILCS 3435], Section 2 of the Illinois Historic Preservation Act [20 ILCS 3410/2], Sections 1-70 and 5-15 of the Illinois Administrative Procedure Act [5 ILCS 100/1-70 and 5-15], the Civil Administrative Code of Illinois [20 ILCS 805] and the State Parks Act [20 ILCS 835]

5) Effective date of amendments: May 26, 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 amendments, including all material incorporated by reference, is on file in the Department of Natural Resource's principal office and is available for public inspection.

9) Notice of Proposal published in Illinois Register: February 6, 2004; 28 Ill. Reg. 1931

10) Has JCAR issued a Statement of Objection to these amendments? No

11) Differences between proposal and final version: The Authority Note was updated to read as follows:

> Implementing and authorized by the Archaeological and Paleontological Resources Protection Act [20 ILCS 3435], Section 2 of the Illinois Historic Preservation Act [20 ILCS 3410/2], Sections 1-70 and 5-15 of the Illinois Administrative Procedure Act [5 ILCS 100/1-70 and 5-15], the Civil Administrative Code of Illinois [20 ILCS 805] and the State Parks Act [20 ILCS 835].

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

13) Will this rulemaking replace an emergency rulemaking currently in effect? No

14) Are there any amendments pending on this Part? No

15) Summary and purpose of rulemaking: This Part was amended to update statutory citations and to specify that the joint permit is issued by the Department of Natural Resources and the Illinois Historic Preservation Agency rather than the Illinois State Museum.

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

Jack Price, Legal Counsel
Department of Natural Resources
One Natural Resources Way
Springfield IL 62702-1271
217/782-1809

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

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

TITLE 17: CONSERVATION
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES
SUBCHAPTER a: LANDS

PART 370
THE PROTECTION OF ARCHAEOLOGICAL RESOURCES

Section
370.10 Purpose
370.20 Definitions
370.30 Prohibitions

AUTHORITY: Implementing and authorized by the Archaeological and Paleontological Resources Protection Act [20 ILCS 3435], Section 2 of the Illinois Historic Preservation Act [20 ILCS 3410/2], Sections 1-70 and 5-15 of the Illinois Administrative Procedure Act [5 ILCS 100/1-70 and 5-15], the Civil Administrative Code of Illinois [20 ILCS 805] and the State Parks Act [20 ILCS 835].

SOURCE: Adopted and codified at 6 Ill. Reg. 871, effective January 13, 1982; recodified by changing the agency name from Department of Conservation to Department of Natural Resources at 20 Ill. Reg. 9389; amended at 28 Ill. Reg. _____, effective _____.

Section 370.10 Purpose

This article provides essential definitions and guidelines to land managers and the public so that protection of Department of Natural Resources managed archaeological resources can be improved through the judicious and rational enforcement of the Archaelogical and Paleontological Resources Protection Act [20 ILCS 3435]~~"An Act to protect and preserve and to regulate the taking of aboriginal records and antiquities within the State of Illinois and to provide penalties for the violation of the act" (Ill. Rev. Stat. 1979, ch. 127, pars. 133c1 et seq.)~~ and the federal Archaeological Resources Protection Act of 1979 (16 USC~~U.S.C.~~ 470aa).

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

Section 370.30 Prohibitions

No person shall:

a) Excavate or remove any archaeological resource located on Department of Natural Resources lands; i.e., lands owned, managed, licensed, or leased by the

Department except as provided for in a permit issued jointly by the Department of Natural Resources and the Illinois Historic Preservation Agency~~State Museum~~.

~~(~~AGENCY NOTE: Procedures for the issuance of the joint permit are set forth in ~~Title~~ 17 Ill. Adm. Code 390~~)~~.

b) Collect or remove from the surface any archaeological resource located on Department of Natural Resources land, except as provided for in a permit issued by the Department of Natural Resources and the Illinois Historic Preservation Agency~~State Museum~~.

c) Alter, deface, vandalize, destroy, or otherwise damage any archaeological resource located on Department of Natural Resources lands; i.e., property owned, leased, or licensed by the Department of Natural Resources.

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

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Non-Departmental Archaeological Research on Department of Natural Resources Managed Lands

2) Code Citation: 17 Ill. Adm. Code 390

3)

Section Numbers:	Adopted Action:
390.20	Amendment
390.30	Amendment
390.40	Amendment

4) Statutory Authority: Implementing and authorized by Sections 1, 3, 4, and 6 of the Illinois Historic Preservation Act [20 ILCS 3410/1, 3, 4, and 6], Sections 1-70 and 5-15(a)(2) of the Illinois Administrative Procedure Act [5 ILCS 100/1-70 and 5-15(a)(2)], the Civil Administrative Code of Illinois [20 ILCS 805], the State Parks Act [20 ILCS 835], and the Archaeological and Paleontological Resources Protection Act [20 ILCS 3435]

5) Effective date of amendments: May 26, 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 amendments, including all material incorporated by reference, is on file in the Department of Natural Resource's principal office and is available for public inspection.

9) Notice of Proposal published in Illinois Register: February 6, 2004; 28 Ill. Reg. 1935

10) Has JCAR issued a Statement of Objection to these amendments? No

11) Differences between proposal and final version:

The Authority Note was changed to read as follows:

> Implementing and authorized by Sections 1, 3, 4, and 6 of the Illinois Historic Preservation Act [20 ILCS 3410/1, 3, 4, and 6], Sections 1-70 and 5-15(a)(2) of the Illinois Administrative Procedure Act [5 ILCS 100/1-70 and 5-15(a)(2)], the Civil Administrative Code of Illinois [20 ILCS 805], the State Parks Act [20 ILCS

835], and the Archaeological and Paleontological Resources Protection Act [20 ILCS 3435].

In Section 390.30, introductory paragraph, added "to the DNR director" following "investigation."

In Section 390.40(a), added "and that the applicant is in receipt of a permit from the Historic Preservation Agency" following "funded."

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 an emergency rulemaking currently in effect? No

14) Are there any amendments pending on this Part? No

15) Summary and purpose of rulemaking: This Part was amended to update information on issuance of permits to undertake archaeological investigations on Department lands and to remove provisions requiring that the proposal be submitted to the Illinois State Museum.

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

Jack Price, Legal Counsel
Department of Natural Resources
One Natural Resources Way
Springfield IL 62702-1271
217/782-1809

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

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

TITLE 17: CONSERVATION
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES
SUBCHAPTER a: LANDS

PART 390
NON-DEPARTMENTAL ARCHAEOLOGICAL RESEARCH ON
DEPARTMENT OF NATURAL RESOURCES MANAGED LANDS

Section
390.10 Purpose
390.20 Application
390.30 Review Criteria
390.40 Conditional Permit Issuance
390.50 Suspension or Revocation of Permits
390.60 Hearings and Appeals

AUTHORITY: Implementing and authorized by Sections 1, 3, 4, and 6 of the Illinois Historic Preservation Act [20 ILCS 3410/1, 3, 4, and 6], Sections 1-70 and 5-15(a)(2) of the Illinois Administrative Procedure Act [5 ILCS 100/1-70 and 5-15(a)(2)], the Civil Administrative Code of Illinois [20 ILCS 805], the State Parks Act [20 ILCS 835], and the Archaeological and Paleontological Resources Protection Act [20 ILCS 3435].

SOURCE: Adopted at 5 Ill. Reg. 7654, effective July 15, 1981; codified at 5 Ill. Reg. 10632; recodified by changing the agency name from Department of Conservation to Department of Natural Resources at 20 Ill. Reg. 9389; amended at 28 Ill. Reg. 8034, effective March 26, 2004.

Section 390.20 Application

In order to obtain permission from the Department of Natural Resources to undertake archaeological investigations on Department managed lands the proposer of the research must apply to the Division of Resource Review and Coordination, Cultural Resource Coordinator~~Historic Sites, Archaeology Section~~ at least ~~six (~~6~~)~~ months before the starting date of the proposed project. The proposer must submit a detailed research proposal:

a) This proposal must detail the significant archaeological/scientific research questions that the research will investigate, why such investigations can only be undertaken at the Department of Natural Resources managed site in question or why that site is the optimum choice for those investigations. The proposal must be sufficiently detailed to allow the Cultural Resource Coordinator~~Archaeology Section staff~~ to arrive at an objective evaluation of the research design, field

methodology, and techniques. The proposal must include detailed resumes of key project personnel (e.g., principal investigator, field director, and staff directing any specialized analyses proposed). ~~b)The proposer must submit a copy of the research proposal to the Illinois State Museum Anthropology Department for review and comment at the same time as it is submitted to the Department of Natural Resources. (The Illinois State Museum's comments will be provided to the Department of Natural Resources under the terms of an inter-agency memorandum of understanding. Copies of the memorandum of understanding are on file with the State Museum and the Department of Natural Resources.)~~

b)~~c)~~ An acknowledgement in writing that all materials recovered and documentary evidence generated by the research project remain the property of the State of Illinois.

c)~~d)~~ The proposal must indicate what plans the proposer has for publication of results and for the final disposition of the materials. All materials (artifacts, floral and faunal remains, C-14 samples, notes, maps, photographs, profiles, etc.) must be permanently curated ~~either~~ at the Illinois State Museum~~ or at another suitable curatorial facility acceptable to the Director of the Department of Natural Resources (in consultation with the Director of the Illinois State Museum)~~.

(Source: Amended at 28 Ill. Reg. 8034, effective March 26, 2004)

Section 390.30 Review Criteria

The research proposal will be reviewed by the Cultural Resource Coordinator who~~Archaeology Section and recommendations made to the Director of the Department of Natural Resources within 60 days of the receipt of the proposal. The Archaeology Section~~ shall not recommend the approval of an archaeological investigation to the DNR director if:

a) The Department of Natural Resources field management personnel (affected Site Superintendent, Regional Land Manager or Regional Historian) indicate that the proposed project will interfere with general site management, or is in conflict with established objectives for the site;~~,~~ or

b) The research is not deemed to be scientifically significant;~~,~~ or

c) Funding level is not sufficient to complete the proposed investigation;~~,~~ or

d) The research proposal is inadequate, or if any part of the proposal is found to be

deficient;~~,~~ or ~~e) The Illinois State Museum's comments are negative or indicate that they will not concur in the issuance of the excavation permit, or~~

e)~~f)~~ There is any question as to the ownership of the resulting materials;~~,~~ or

f)~~g)~~ The key project personnel are not adequately trained or lack sufficient experience to successfully complete the proposed project;~~,~~ or

g)~~h)~~ The facilities and institutional support for the proposer are inadequate to successfully complete the project.

(Source: Amended at 28 Ill. Reg. 8034, effective March 26, 2004

Section 390.40 Conditional Permit Issuance

a) All permits for archaeological investigations issued by the Department of Natural Resources are conditional on the applicant demonstrating to the Cultural Resource Coordinator ~~Director of the Department of Natural Resources~~, at least ~~thirty (~~30~~)~~ days before initiation of fieldwork, that the project is fully and adequately funded and that the applicant is in receipt of a permit from the Historic Preservation Agency.

b) The applicant must detail in writing the amount and source of all funding .

(Source: Amended at 28 Ill. Reg. 8034 effective March 26, 2004)

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: White-Tailed Deer Hunting by Use of Firearms

2) Code Citation: 17 Ill. Adm. Code 650

3)

Section Numbers:	Adopted Action:
650.10	Amendment
650.20	Amendment
650.40	Amendment
650.50	Amendment
650.60	Amendment

4) Statutory Authority: Implementing and authorized by Sections 1.3, 1.4, 1.13, 2.24, 2.25, 2.26 and 3.36 of the Wildlife Code [520 ILCS 5/1.3, 1.4, 1.13, 2.24, 2.25, 2.26 and 3.36]

5) Effective date of amendments: May 26, 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 amendments, including all material incorporated by reference, is on file in the Department of Natural Resource's principal office and is available for public inspection.

9) Notice of Proposal published in Illinois Register: February 6, 2004; 28 Ill. Reg. 1940

10) Has JCAR issued a Statement of Objection to these amendments? No

11) Differences between proposal and final version:

In Section 650.60(h), language was changed by rearranging the phrases in the parenthetical for Iroquois and adding "(3)" for Weinberg-King as follows:

Iroquois County Conservation Area (second season only; no hunting in the controlled pheasant hunting area) (2) (5)

Weinberg-King State Park – Scripps Unit (2) (3)

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Also, the main source note adds an entry to indicate that Section 650.60 of a 2-section emergency rulemaking that became effective November 10, 2003 was never adopted in a permanent rulemaking and, thus, expired on April 8, 2004.

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 an emergency rulemaking currently in effect? No

14) Are there any amendments pending on this Part? No

15) Summary and purpose of rulemaking: Amendments to this Part update statewide regulations and open or amend State-owned or State-managed sites for firearm deer hunting.

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

Jack Price, Legal Counsel
Department of Natural Resources
One Natural Resources Way
Springfield IL 62702-1271
217/782-1809

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

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

TITLE 17: CONSERVATION
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES
SUBCHAPTER b: FISH AND WILDLIFE

PART 650
WHITE-TAILED DEER HUNTING BY USE OF FIREARMS

Section

650.10 Statewide Season and Permit Quotas
650.20 Statewide Deer Permit Requirements
650.21 Deer Permit Requirements – Landowner/Tenant Permits
650.22 Deer Permit Requirements – Special Hunts
650.23 Deer Permit Requirements – Group Hunt
650.30 Statewide Firearms Requirements
650.40 Statewide Deer Hunting Rules
650.50 Rejection of Application/Revocation of Permits
650.60 Regulations at Various Department-Owned or -Managed Sites
650.65 Youth Hunt (Repealed)
650.67 Special Hunts for Disabled Hunters
650.70 Special Extended Season Firearm Deer Hunt (Repealed)

AUTHORITY: Implementing and authorized by Sections 1.3, 1.4, 1.13, 2.24, 2.25, 2.26 and 3.36 of the Wildlife Code [520 ILCS 5/1.3, 1.4, 1.13, 2.24, 2.25, 2.26 and 3.36].

SOURCE: Adopted at 5 Ill. Reg. 9771, effective September 17, 1981; codified at 5 Ill. Reg. 10640; amended at 6 Ill. Reg. 10730, effective August 20, 1982; amended at 7 Ill. Reg. 10798, effective August 24, 1983; amended at 8 Ill. Reg. 21602, effective October 23, 1984; amended at 9 Ill. Reg. 16213, effective October 10, 1985; emergency amendment at 9 Ill. Reg. 20922, effective December 18, 1985, for a maximum of 150 days; amended at 10 Ill. Reg. 4223, effective February 25, 1986; amended at 10 Ill. Reg. 16665, effective September 22, 1986; amended at 11 Ill. Reg. 3044, effective February 3, 1987; amended at 11 Ill. Reg. 9564, effective May 5, 1987; amended at 12 Ill. Reg. 8003, effective April 25, 1988; amended at 12 Ill. Reg. 12055, effective July 11, 1988; amended at 13 Ill. Reg. 12853, effective July 21, 1989; amended at 14 Ill. Reg. 12430, effective July 20, 1990; amended at 14 Ill. Reg. 19869, effective December 3, 1990; amended at 15 Ill. Reg. 10038, effective June 24, 1991; emergency amendment at 15 Ill. Reg. 15790, effective October 22, 1991, for a maximum of 150 days; emergency expired March 21, 1992; amended at 16 Ill. Reg. 11131, effective June 30, 1992; amended at 17 Ill. Reg. 13468, effective July 30, 1993; amended at 18 Ill. Reg. 5859, effective April 5, 1994; amended at 18 Ill. Reg. 13431, effective August 23, 1994; amended at 19 Ill. Reg. 6477, effective April 28, 1995; amended at 20 Ill. Reg. 7515, effective May 20, 1996; amended at 21 Ill. Reg. 5572, effective

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April 19, 1997; amended at 21 Ill. Reg. 9116, effective June 26, 1997; amended at 22 Ill. Reg. 8007, effective April 28, 1998; amended at 23 Ill. Reg. 5564, effective April 26, 1999; amended at 24 Ill. Reg. 8971, effective June 19, 2000; amended at 24 Ill. Reg. 10260, effective July 1, 2000; amended at 25 Ill. Reg. 7231, effective May 22, 2001; amended at 26 Ill. Reg. 9319, effective June 17, 2002; amended at 27 Ill. Reg. 10009, effective June 23, 2003; emergency amendment at 27 Ill. Reg. 17270, effective November 10, 2003, for a maximum of 150 days; Section 650.60 of the emergency rulemaking expired April 8, 2004; amended at 28 Ill. Reg. 353, effective December 19, 2003; amended at 28 Ill. Reg. 8039, effective May 26, 2004.

Section 650.10 Statewide Season and Permit Quotas

a) Season: 12:01 a.m. on Friday of the 3-day (Friday, Saturday and Sunday) weekend immediately before Thanksgiving to 6:00 p.m. on Sunday of the 3-day weekend before Thanksgiving, and 12:01 a.m. on Thursday of the first 4-day (Thursday, Friday, Saturday and Sunday) weekend following Thanksgiving to 6:00 p.m. on Sunday of the first 4-day weekend following Thanksgiving. Full season permits shall be for all days. Second season permits shall be valid for the last four days of the season only. Hunting hours are one-half hour before sunrise to sunset.

b) Permit quotas shall be set by the Department of Natural Resources (Department) on a county or special hunt area basis. Cook, DuPage and Lake Counties, and that portion of Kane County east of State Route 47, are closed to firearm deer hunting~~Cook, DuPage, Lake and Kane counties are closed to firearm deer hunting~~.

c) Hunting prior to ½ hour before sunrise or after ½ hour after sunset is a Class A misdemeanor with a minimum $500 and maximum $5,000 fine, in addition to other statutory penalties (see 520 ILCS 5/2.33(y)). Hunting during the closed season or between sunset and ½ hour after sunset is a Class B misdemeanor (see 520 ILCS 5/2.24).

(Source: Amended at 28 Ill. Reg. 8039, effective May 26, 2004)

Section 650.20 Statewide Deer Permit Requirements

a) Illinois resident hunters must have a current, valid "Firearm Deer Permit" ($15). Deer permit fees for non-resident firearm deer hunters shall be $200 for each either-sex firearm permit and $25 for each antlerless-only permit. A permit is issued for one county or special hunt area and is valid only in the county or

special hunt area stated on the permit. Only applicants who receive an either-sex permit in a county or special hunt area are eligible for an antlerless-only permit for that county or special hunt area, except in counties that are specially designated for more intensive removal of does in a given year. Any such counties will be identified prior to the Random Daily Drawing Period which begins in September, and a limited number of antlerless-only permits will be made available regardless of whether applicants already possess an either-sex permit. For permit applications and other information write to:

Department of Natural Resources
(Firearm or Landowner/Tenant or Non-Resident)
Deer Permit Office
P.O. Box 19227
Springfield, Illinois 62794-9227

b) Applications from Illinois residents for participation in the First Lottery Drawing will be accepted through the last weekday in April of the current year. Nonresidents may not apply to participate in the First Lottery Drawing. Applications received after the last weekday in April will not be included in this lottery. Permits will be allocated in a computerized random drawing. Permits will be issued as either sex, antlerless only, or antlered only. A maximum of one either-sex and one antlerless-only permit shall be issued per person. Applicants for free landowner/tenant permits are not eligible to participate in the First or Second Lottery Drawings. Landowners who receive permits in the First or Second Lottery Drawing are not eligible for landowner permits.

c) Applicants must complete all portions of the current year permit application form. Incomplete or incorrect applications will be returned along with the applicant's permit fee for correction or completion if received in the Permit Office prior to the deadline established in subsection (b).

d) Applicants must check the second-season box if they agree to accept a second-season permit upon being rejected for a full-season permit.

e) Applicants must check the antlerless-only box and enclose an additional $15 ($25 for non-residents) to apply for an additional antlerless-only permit. Antlerless-only permits will be issued until the antlerless-only quota is filled for a given county or special hunt area.

f) Permits for counties and special hunt areas with unfilled quotas after the First Lottery

Drawing will be allocated in a Second Lottery Drawing. This drawing is open only to nonresident applicants and to Illinois residents who were not previously issued firearm ~~or muzzleloader~~ permits for the current hunting season. Illinois residents will be given preference for permits allocated in the Second Lottery Drawing. Applications for the Second Lottery Drawing will be accepted through the tenth weekday in August of the current year. Applicants may also apply for remaining antlerless-only permits by checking the antlerless-only box and enclosing an additional $15 for residents and $25 for nonresidents. A list of unfilled counties and special hunt areas will be announced upon becoming available after the First Lottery Drawing. Applicants must apply on a current year Firearm Deer Permit application form. A maximum of one either-sex and one antlerless-only permit shall be issued per person.

g) No more than 6 single applications per envelope will be accepted during the application periods for the First and Second Lottery Drawings. Each applicant must submit a separate personal check or money order. Separate envelopes must be used to send permit applications to the Deer Permit Office for regular firearm, muzzleloading rifle, handgun, archery, and free or paid landowner/tenant permits.

h) There will be an application period which starts the first working day after September 14 and ends the fifth weekday in November, during which anyone (regardless of any other permit they may have, subject to subsection (a)) can apply for firearm deer permits left over from the county and special hunt area quotas. During this application period, the permits shall be issued in a random daily drawing. Applications received each day will not be processed until all applications received for that day are mixed. All applications received on a specific day will be processed before processing applications received for a subsequent day. All applications for the Random Daily Drawing will be processed individually (i.e., no group applications will be processed). Applicants can apply for one or more permits during this application period. Full-season antlerless-only permits shall only be issued to successful applicants that have full-season either-sex permits in the county applied for. Second-season antlerless-only permits shall be issued to successful applicants that have either full-season or second-season either-sex permits in the county applied for. Applicants submitting applications within the 20 working days prior to the start of the first season cannot be guaranteed a permit by the start of the first deer hunting season. Applicants must print "September Drawing – Multiple Permits" on the outside of the envelope and mark the "September Drawing – Multiple Permits" box on the firearm deer permit application.

i) Hunter preference in obtaining a permit during the First Lottery Drawing will be

given: to individuals that applied for an either-sex permit in the previous year's First Lottery Drawing who were rejected because the quota was depleted in their county choices; or to applicants that received, in the previous year, a second season either-sex permit in the First Lottery Drawing only. In order to be eligible for preference during the First Lottery Drawing, the second season box must have been checked on the application form of unsuccessful applicants when they were rejected. Preference will not be granted to applicants who received a full-season either-sex permit but who did not receive an antlerless-only permit. Persons with lottery preference will have first chance at receiving available either-sex permits. The following criteria must be met to obtain a preference in the First Lottery Drawing:

1) The applicant must apply using the official Department application.

2) The applicant must be a resident of the State, be eligible to receive a Firearm Deer Permit, and not had deer hunting privileges revoked pursuant to Section 650.50.

3) The applicant must apply for the same county choices that he/she listed on the previous year's application. Preference will not be granted for special hunt areas.

j) Applications may be accepted at the counter window of the permit office; however, permits will be mailed. In-person and mail-in applications will receive equal treatment in the drawings.

k) Permits are not transferable. Refunds will not be granted, unless the Department of Natural Resources has erroneously issued the permit after the quota has been depleted or where the applicant was unsuccessful in obtaining a permit.

l) A $3 service fee will be charged for replacement permits issued by the Department, except when permits are lost in the mail, then there will be no charge. Monies derived from this source will be deposited in the Wildlife and Fish Fund.

m) The periods for accepting applications for the First and Second Lottery periods may be extended if applications are not available to the public by April 1. A news release will announce the extension of the application periods.

n) Hunting without a valid permit is a Class B misdemeanor (see 520 ILCS 5/2.24).

(Source: Amended at 28 Ill. Reg. 8039, effective May 26, 2004)

Section 650.40 Statewide Deer Hunting Rules

a) The bag limit is one deer per legally authorized either-sex~~eligible~~, antlered-only or antlerless-only permit. All either-sex permits and antlered-only permits are subject to the following restriction: no hunter, regardless of the quantity or type of permits in his/her possession, may harvest more than 2 antlered deer during a year, including the archery, muzzleloader, and firearm seasons. For purposes of this Section, deer seasons are considered to be in the same year if their opening dates fall within the same 12-month period that begins on July 1. A hunter in possession of an either-sex permit after having harvested 2 antlered deer during a year, as defined above, may only use the permit to harvest an antlerless deer. Subject to this restriction, an either-sex permit holder is allowed to take a deer with or without antlers and an antlered-only permit holder is allowed to take only a deer having at least one antler of a length of 3 or more inches. An antlerless only permit holder is allowed to take only a deer without antlers or a deer having antlers less than 3 inches long.

b) Recipients of the Firearm Deer Hunting Permit shall record their signature on the permit prior to hunting and must carry it on their person while hunting.

c) The temporary harvest tag shall be attached and properly sealed immediately upon kill and before the deer is moved, transported or field dressed. No person shall leave any deer that has been killed without properly attaching the temporary harvest tag to the deer. The temporary harvest tag should be attached around the base of the antler of antlered deer (antlers 3 or more inches in length), and attached to the leg of antlerless deer (<3 inch antler length, or no antlers). A permanent harvest tag will be attached to the leg of the deer upon check out at the check station. If the head/antlers are delivered to a taxidermist for processing, the temporary harvest tag must accompany them and be kept with the head/antlers while at the taxidermist. If the carcass is taken to a meat processor, the permanent harvest tag must remain attached to the leg of the deer until it is processed, then must remain with the processed deer until it is at the legal residence of the person who legally took or possessed the deer. The deer shall be taken whole (or field dressed) to the designated check station (either the county check station or the nearest check station to the site of the kill) by the hunter in person by 8:00 p.m. of the day the deer was killed. The deer may not be quartered as during the archery deer season (17 Ill. Adm. Code 670.55). If a hunter is not able to locate a

harvested deer in sufficient time to enable checking the deer by 8:00 p.m., the hunter must take the deer to the appropriate check station upon its opening (8:00 a.m.) the following morning, or immediately upon retrieving it if that occurs later than the opening of the check station. If this situation occurs on a Sunday (e.g., the check station will not be open on Monday), the hunter must contact the appropriate regional DNR Law Enforcement Office by 10:00 a.m. Monday morning for instructions on checking in the deer. Failure to follow this Section constitutes illegal possession of deer. Site specific reporting requirements must be followed in addition to this Section. Persons delivering deer/parts of deer to a tanner for processing must supply the tanner with their deer permit number to verify lawful acquisition. In the absence of a permit number, the tanner may rely on the written certification of the person from whom the deer was received that the specimen was legally taken or obtained.

d) Hunters shall not have in their possession, while in the field during firearm deer season, any deer permit issued to another person (permits are non-transferable).

e) Permits will not be re-issued in cases involving deer taken which are found to be diseased or spoiled due to previous injury. Legal disposal of unfit deer taken shall be the responsibility of the hunter. For those hunters participating in the Department's Chronic Wasting Disease Surveillance Program, a free permit for the same county or special hunt area will be made available the subsequent year if their tested deer is determined to have chronic wasting disease.

f) Violation of this Section is a Class B misdemeanor (see 520 ILCS 5/2.24), except unlawful take or possession of 2 or more deer within 90 days is a Class 4 felony, and unlawful take of 2 or more deer as a single act or possession or single course of conduct is a Class 3 felony (see 520 ILCS 5/2.36(a)).

(Source: Amended at 28 Ill. Reg. 8039, effective May 26, 2004)

Section 650.50 Rejection of Application/Revocation of Permits

a) In the event that an applicant is in violation of one of the following subsections, the application shall be held in suspension, and the application fees shall be deposited, pending a determination by the permit office of whether or not the violation was knowing. If the permit office determines the violation was knowing, the application shall be rejected and the fee shall be retained by Natural Resources. The applicant may request a hearing on this decision pursuant to 17 Ill. Adm. Code 2530. Should it be determined that the violation was without the

knowledge of the applicant, the permit office will process only the number of applications allowed by administrative rule with additional applications rejected and fees returned.

1) Using hunting rights lease or mineral rights lease or other lease for land which does not evidence a genuine farm tenancy to obtain a firearm deer permit. Violation is a Class A misdemeanor (see 520 ILCS 5/2.38).

2) Submitting more applications in the same name or by the same person for Firearm Deer Permits than the number of legally authorized permits. Violation is a Class B misdemeanor (see 520 ILCS 5/2.24).

3) Applying prior to the Second Lottery Drawing for a firearm deer permit if the applicant has already been issued ~~a muzzleloading rifle deer permit,~~ a free landowner/tenant permit, or a paid landowner permit. Violation is a Class B misdemeanor (see 520 ILCS 5/2.24).

4) Providing false and/or deceptive information on the deer permit application form. Violation is a Class A misdemeanor (see 520 ILCS 5/2.38).

5) Submitting an application when the applicant has a license or permit currently revoked pursuant to Section 3.36 of the Wildlife Code [520 ILCS 5/3.36]. Violation is a Class A misdemeanor (see 520 ILCS 5/2.38).

b) Any violation of the Wildlife Code [520 ILCS 5] or administrative rules of the Department (17 Ill. Adm. Code, Chapter I), in addition to other penalties, may result in revocation of deer hunting permits as per 17 Ill. Adm. Code 2530.

(Source: Amended at 28 Ill. Reg. 8039, effective May 26, 2004)

Section 650.60 Regulations at Various Department-Owned or -Managed Sites

a) All the regulations in 17 Ill. Adm. Code 510 – General Hunting and Trapping apply in this Section, unless this Section is more restrictive.

b) It is unlawful to drive deer, or participate in a deer drive, on all Department-owned or -managed properties. A deer drive is defined as a deliberate action by one or more persons (whether armed or unarmed) whose intent is to cause deer to move within firearm range of one or more participating hunters.

c) Only one tree stand is allowed per deer permit holder. These tree stands must comply with restrictions listed in 17 Ill. Adm. Code 510.10(c)(3) and must be portable. Tree stands must be removed at the end of each day with the exception that they may be left unattended from September 15-January 31 at those sites listed in this Section that are followed by a (1). Any tree stand left unattended overnight must be legibly marked with the owner's name, address, and telephone number, or site assigned identification number.

d) Check-in, check-out, and reporting of harvest is required at those sites listed in this Section that are followed by a (2).

e) Only antlerless deer or antlered deer having at least four points on one side may be harvested at those sites listed in this Section that are followed by a (3).

f) Only antlerless deer or antlered deer having at least five points on one side may be harvested at those sites listed in this Section that are followed by a (4).

g) Statewide regulations shall apply at the following sites:

Cache River State Natural Area (1) (2)

Campbell Pond (1) (2)

Carlyle Lake Lands and Waters (Corps of Engineers managed lands)

Carlyle Lake Wildlife Management Area (except subimpoundment area)

Chauncey Marsh (1) (2)

Crawford County Conservation Area (1) (2)

Cypress Creek National Wildlife Refuge

Cypress Pond State Natural Area (1) (2)

Deer Pond State Natural Area (1)(2)

Dog Island Wildlife Management Area (1) (2)

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Ferne Clyffe State Park (1) (2)

Fort de Chartres State Historic Site (muzzleloading rifles only) (1) (2)

Giant City State Park (1) (2)

Hamilton County Conservation Area (1) (2)

Horseshoe Lake Conservation Area – Alexander County (all portions of the Public Hunting Area except the Controlled Goose Hunting Area) (1) (2)

I-24 Wildlife Management Area (1) (2)

Kaskaskia River Fish and Wildlife Area (1) (2, except south of Highway 154 and north of Highway 13) (during each day of the second firearm deer season, hunting within the Doza Creek Waterfowl Management Area is open from 1:00 p.m. until sunset and firearm deer hunters may not enter the area until 11:00 a.m.; antlerless deer only ~~(Doza Creek Waterfowl Management Area closed during duck season~~)

Kinkaid Lake Fish and Wildlife Area (1) (2)

Lake Le Aqua Na State Park (standby hunting allowed during the first season if all blinds not filled by youth hunters)

Mermet Lake Conservation Area (1) (2)

Mississippi Fish and Waterfowl Management Area – Pools 25 and 26 (1)

Mississippi River Pool 16 (1)

Mississippi River Pools 17, 18 (1)

Mississippi River Pools 21, 22, 24 (1)

Newton Lake Fish and Wildlife Area (2)

Oakford Conservation Area (1)

Pere Marquette State Park ~~(hunting in designated areas only)~~ (1) (2)

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Rend Lake Project Lands and Waters (1)

Saline County Fish and Wildlife Area (1) (2)

Sanganois State Wildlife Area (Ash Swale Waterfowl Rest Area will be closed to deer hunting during the waterfowl hunting seasons) (1)

Sielbeck Forest Natural Area (1) (2)

Ten Mile Creek Fish and Wildlife Area (1); Belle Rive Unit only (3)

Trail of Tears State Forest (1) (2)

Turkey Bluffs Fish and Wildlife Area (1) (2)

Union County Conservation Area (Firing Line Unit only) (1) (2)

Weinberg-King State Park (2)

Wildcat Hollow State Forest (1)

h) Statewide regulations shall apply at the following sites by special permit allocated through the regular statewide drawing. Season dates that differ from the statewide dates are in parentheses. Sites that offer standby hunting are followed by a (5). At sites offering standby hunting, permit holders must register at the check station by 5:00 a.m. each day of the hunt. Unvalidated permits are void after 5:00 a.m. Vacancies each day will be filled by a drawing held at 5:00 a.m. Vacancies may be filled by any person holding a valid hunting license, Habitat Stamp, and Firearm Owner Identification Card, unless exempt. Standby hunters will be issued a one-day site-specific deer permit at the check station, and charged a permit fee of $5. All hunters must check out and report harvest.

Apple River Canyon State Park – Thompson and Salem Units (first or second season only) (2)

Argyle Lake State Park (2) (5)

Beall Woods State Park (Friday, Saturday and Sunday before the first statewide firearm deer season and Friday, Saturday and Sunday following the muzzleloading deer season; antlerless deer only) (1) (2) (5)

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Big River State Forest (2) (5)

Castle Rock State Park (first or second season only) (antlerless only) (1) (2) (5)

Coffeen Lake State Fish and Wildlife Area

Des Plaines Conservation Area (first season only) (2) (5)

Devil's Island Wildlife Management Area

Falling Down Prairie State Natural Area (first or second season only) (2)

Fort Massac State Park (second season only) (antlerless deer only) (2)

Fox Ridge State Park (1)

Franklin Creek State Natural Area (first or second season only) (antlerless only) (2) (5)

Goose Lake Prairie State Natural Area (tree stands not allowed; first or second season only; antlerless deer only; "Texas" style tripod stands allowed) (2) (5)

Green River State Wildlife Area (first or second season only) (1) (2) (5)

Hanover Bluff State Natural Area (first or second season only) (2)

Harry "Babe" Woodyard State Natural Area (2) (3)

Heidecke State Fish and Wildlife Area (first or second season only) (2) (4) (5)

Hidden Springs State Forest (1)

Horseshoe Lake Conservation Area – Alexander County (Refuge, first 2 Satudays in November; separate permits required for each day~~last two Saturdays in October~~; antlerless only) (5)

Hurricane Creek Habitat Area

Iroquois County Conservation Area (first season only) (2) (5)

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Iroquois County Conservation Area (second season only; no hunting in the controlled pheasant hunting area) (2) (5)

Jim Edgar Panther Creek State Fish and Wildlife Area (1) ~~(2)~~ (3)

Jim Edgar Panther Creek State Fish and Wildlife Area (West Open Unit) (1) ~~(2)~~ (3)

Kaskaskia River Fish and Wildlife Area (Baldwin Lake Rest Area north of Dry Lake access road only; first or second season only; antlerless deer only; hunting from elevated stands only; six feet minimum above ground; hunting must occur within 10 yards of an assigned, numbered stake; an inhouse drawing will be held on the last Friday of October for such assignments; hunters will be notified by mail of their hunting location; no hunters may enter the area before 5:00 a.m.) (1) (2)

Kickapoo State Recreation Area (2)

Kishwaukee River State Fish and Wildlife Area (first or second season only)

Lowden-Miller State Forest (first or second season only) (1) (2) ~~(3)~~ (5)~~Lowden-Miller State Forest (second season only) (1) (2) (3) (5)~~

Mackinaw River Fish and Wildlife Area (1) (2) (5)

Marseilles Fish and Wildlife Area (first season only) (all tree stands must be removed no later than the last day of the archery deer season) (1) (2) (5)

Marseilles Fish and Wildlife Area (second season only) (all tree stands must be removed no later than the last day of the archery deer season) (1) (2) (5)

Marshall Fish and Wildlife Area (2) (5)

Middle Fork Fish and Wildlife Area (2)

Miller-Anderson Woods Nature Preserve (first or second season only; antlerless deer only) (2) (5)

Mississippi Palisades State Park (first season only)

Mitchell's Grove Nature Preserve (Monday, Tuesday, Wednesday and Thursday before the first statewide firearm deer season only; antlerless deer only) (2) (5)

Mitchell's Grove Nature Preserve (Monday, Tuesday and Wednesday before the second statewide firearm deer season only; antlerless deer only) (2) (5)

Momence Wetlands

Moraine Hills State Park (first or second season permits only; antlerless deer only, hunting from elevated stands only, 6~~six~~ feet minimum above ground except for designated accessible blinds; firearms must be fully enclosed in a case, except while the hunter is in an elevated stand or as otherwise authorized by an employee of the Department) (2)

Morrison-Rockwood State Park (first season only) (5)

Pyramid State Park (1) (2) (3)

Pyramid State Park – East Conant Unit (1) (3)

Pyramid State Park – Galum Unit (1) (3)

Ray Norbut Fish and Wildlife Area (2) (5)

Sahara Woods (1) (2)

Sand Ridge State Forest ~~(1)~~ (2)

Sangamon County Conservation Area (1)

Siloam Springs State Park (2) (3)

Snakeden Hollow Fish and Wildlife Area – Ives Unit (1) (2) ~~(5)~~

Starved Rock/Matthiessen ~~Dells~~ State Park (Monday, Tuesday, Wednesday and Thursday before the first statewide firearm deer season only;~~)~~ ~~(~~antlerless deer only) (2) (5)

Starved Rock/Matthiessen ~~Dells~~ State Park (Monday, Tuesday and Wednesday

before the second statewide firearm deer season only;~~) (~~antlerless deer only) (2) (5)

Tapley Woods State Natural Area (first or second season only) (2)

Union County Conservation Area (refuge, first Saturday in November~~last Saturday in October~~)

Wards Grove Nature Preserve (first or second season only; antlerless only) (2) ~~(5)~~

Weldon Springs State Park (Piatt County Unit; first season only)

Weinberg-King State Park – Scripps Unit (2) (3)

Witkowsky State Wildlife Area (first or second season only) (2)

Wolf Creek State Park (participants in the Corps of Engineers special disabled hunt program are exempt from site's antler restrictions) (3)

i) Violations of site specific regulations are petty offenses (see 520 ILCS 5/2.20).

(Source: Amended at 28 Ill. Reg. 8039, effective May 26, 2004)

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: White-Tailed Deer Hunting by Use of Muzzleloading Rifles

2) Code Citation: 17 Ill. Adm. Code 660

3)

Section Numbers:	Adopted Action:
660.10	Amendment
660.20	Amendment
660.30	Amendment
660.40	Amendment
660.50	Amendment
660.60	Amendment

4) Statutory Authority: Implementing and authorized by Sections 1.3, 1.4, 1.13, 2.24, 2.25, 2.26, 2.33 and 3.36 of the Wildlife Code [520 ILCS 5/1.3, 1.4, 1.13, 2.24, 2.25, 2.26, 2.33 and 3.36]

5) Effective date of amendments: May 26, 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 amendments, including all material incorporated by reference, is on file in the Department of Natural Resource's principal office and is available for public inspection.

9) Notice of Proposal published in Illinois Register: February 6, 2004; 28 Ill. Reg. 1957

10) Has JCAR issued a Statement of Objection to these amendments? No

11) Differences between proposal and final version: In Section 660.60(h), "Devils Island Management Area" was changed to "Devil's Island Management Area".

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 an emergency rulemaking currently in effect? No

14) Are there any amendments pending on this Part? No

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

15) Summary and purpose of rulemaking: Amendments to this Part update statewide regulations, statewide muzzleloading rifle requirements, statewide deer hunting rules, application requirements and the list of department-owned or department-managed sites.

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

Jack Price, Legal Counsel
Department of Natural Resources
One Natural Resources Way
Springfield IL 62702-1271
217/782-1809

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

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

TITLE 17: CONSERVATION
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES
SUBCHAPTER b: FISH AND WILDLIFE

PART 660
WHITE-TAILED DEER HUNTING BY USE
OF MUZZLELOADING RIFLES

Section

660.10 Statewide Season and Permit Quotas
660.20 Statewide Deer Permit Requirements
660.21 Deer Permit Requirements – Free Landowner/Tenant Permits
660.22 Deer Permit Requirements – Special Hunts
660.25 Deer Permit Requirements – Group Hunt
660.30 Statewide Muzzleloading Rifle Requirements
660.40 Statewide Deer Hunting Rules
660.45 Reporting Harvest
660.50 Rejection of Application/Revocation of Permits
660.60 Regulations at Various Department-Owned or -Managed Sites

AUTHORITY: Implementing and authorized by Sections 1.3, 1.4, 1.13, 2.24, 2.25, 2.26, 2.33 and 3.36 of the Wildlife Code [520 ILCS 5/1.3, 1.4, 1.13, 2.24, 2.25, 2.26, 2.33 and 3.36].

SOURCE: Adopted at 15 Ill. Reg. 4777, effective March 18, 1991; amended at 15 Ill. Reg. 11627, effective August 2, 1991; amended at 16 Ill. Reg. 11150, effective June 30, 1992; amended at 17 Ill. Reg. 10865, effective July 1, 1993; amended at 18 Ill. Reg. 5878, effective April 5, 1994; amended at 18 Ill. Reg. 13435, effective August 23, 1994; amended at 19 Ill. Reg. 6500, effective April 28, 1995; amended at 20 Ill. Reg. 6734, effective May 6, 1996; amended at 21 Ill. Reg. 5583, effective April 19, 1997; amended at 21 Ill. Reg. 9122, effective June 26, 1997; amended at 22 Ill. Reg. 8026, effective April 28, 1998; amended at 23 Ill. Reg. 5579, effective April 26, 1999; amended at 24 Ill. Reg. 10251, effective July 1, 2000; amended at 25 Ill. Reg. 6367, effective April 27, 2001; amended at 26 Ill. Reg. 9340, effective June 17, 2002; amended at 27 Ill. Reg. 10018, effective June 23, 2003; amended at 28 Ill. Reg. 8056, effective May 26, 2004.

Section 660.10 Statewide Season and Permit Quotas

a) Season: One-half hour before sunrise on Friday of the third 3-day (Friday, Saturday, Sunday) weekend following Thanksgiving to sunset on Sunday of this 3-day weekend in December. The hunter with a Muzzleloading Rifle Deer Permit

may also hunt during the second firearm deer season (the first 4-day weekend – Thursday, Friday, Saturday and Sunday – following Thanksgiving), providing the hunter must use only a legal muzzleloading rifle and must abide by 17 Ill. Adm. Code 650.60 when hunting on Department-owned or -managed sites. Hunting hours are one-half hour before sunrise to sunset.

b) Permit quotas shall be set by the Department of Natural Resources (Department) on a county or special hunt area basis. Cook, DuPage and~~,~~ Lake ~~and Kane~~ counties, and that portion of Kane County east of State Route 47, are closed to muzzleloading rifle deer hunting.

c) Hunting prior to ½ hour before sunrise or after ½ hour after sunset is a Class A misdemeanor with a minimum $500 and maximum $5,000 fine, in addition to other statutory penalties (see 520 ILCS 5/2.33(y)). Hunting during the closed season or between sunset and ½ hour after sunset is a Class B misdemeanor (see 520 ILCS 5/2.4).

(Source: Amended at 28 Ill. Reg. 8056, effective May 26, 2004)

Section 660.20 Statewide Deer Permit Requirements

a) Illinois resident hunters must have a current, valid "Muzzleloading Rifle Deer Permit" ($15). Muzzleloading rifle deer permit fees for non-residents shall be $200 for each either-sex muzzleloading permit and $25 for each antlerless-only permit. A permit is issued for one county and is valid only in the county stated on the permit. Only applicants who receive an either-sex permit in a county or special hunt area are eligible for an antlerless-only permit for that county or special hunt area, except in counties that are specially designated for more intensive removal of does in a given year. Any such counties will be identified prior to the Random Daily Drawing Period which begins in September, and a limited number of antlerless-only permits will be made available regardless of whether applicants already possess an either-sex permit. For permit applications and other information write to:

Department of Natural Resources
(Muzzleloading Rifle)
Deer Permit Office
P.O. Box 19227
Springfield, IL 62794-9227

b) Applications from Illinois residents for participation in the First Lottery Drawing shall be accepted through the last weekday in April of the current year. Nonresidents may not apply to participate in the First Lottery Drawing. Applications received after the last weekday in April shall not be included in this lottery. Permits shall be allocated in a computerized random drawing. Permits shall be issued as either-sex, antlerless-only or antlered only. A maximum of one either-sex and one antlerless-only permit shall be issued per person.

c) Applicants must complete all portions of the current year permit application form. Incomplete or incorrect applications will be returned along with the applicant's permit fee for correction or completion if received in the Permit Office prior to the last weekday in April of the current year.

d) Applicants must check the antlerless-only box and enclose an additional $15 to apply for an additional antlerless-only permit. Antlerless-only permits will be issued until the antlerless-only quota is filled for a given county or special hunt area.

e) Permits for counties and special hunt areas with unfilled quotas after the First Lottery Drawing shall be allocated in a Second Lottery Drawing. This drawing is open only to nonresident applicants and to Illinois residents who were not previously issued ~~firearm or~~ muzzleloader permits for the current hunting season. Illinois residents will be given preference for permits allocated in the Second Lottery Drawing. Applications for the Second Lottery Drawing will be accepted through the tenth weekday in August of the current year. Applicants may also apply for remaining antlerless-only permits by checking the antlerless-only box and enclosing an additional $15 for residents and $25 for nonresidents. A list of unfilled counties shall be announced upon becoming available after the First Lottery Drawing. Applicants must apply on a current year "Muzzleloading Rifle" Deer Permit application form. A maximum of one either-sex and one antlerless-only permit shall be issued per person.

f) No more than 6 single applications per envelope shall be accepted during the application periods for the First and Second Lottery Drawings. Each applicant must submit a separate personal check or money order. Separate envelopes must be used to send permit applications to the Deer Permit Office for regular firearm, muzzleloading rifle, handgun, archery, and free or paid landowner/tenant permits.

g) There will be an application period which starts the first working day after September 14 and ends the fifth weekday in November during which anyone

(regardless of any other permit they may have, subject to the restriction in subsection (a)) can apply for muzzleloading deer permits left over from the county and special hunt area quotas. During this application period, the permits shall be issued in a random daily drawing. Applications received each day will not be processed until all applications received for that day are mixed. All applications received on a specific day will be processed before processing applications received for a subsequent day. All applications for the Random Daily Drawing will be processed individually (i.e., no group applications will be processed). Applicants can apply for one or more permits during this application period. Full season antlerless-only permits shall only be issued to successful applicants that have full season either-sex permits in the county applied for. Applicants must print "September Drawing – Multiple Muzzleloader Permits" on the outside of the envelope and mark the "September Drawing – Multiple Permits" box on the muzzleloading rifle deer permit application.

h) Hunter preference in obtaining a muzzleloading rifle permit during the First Lottery Drawing shall be given to individuals that applied for an either-sex muzzleloading permit in the previous year's First Lottery Drawing who were rejected because the quota was depleted in their county choices. The following criteria must be met to obtain a preference in the muzzleloading rifle First Lottery Drawing:

1) The applicant must apply using the official agency preprinted data-mailer application.

2) The applicant must be a resident of the state, be eligible to receive a Muzzleloading Rifle Deer Permit, and not had deer hunting privileges revoked pursuant to Section 660.50.

3) The applicant must apply for the same county choices that he/she listed on the previous year's application. Preference will not be granted for special hunt areas.

4) Where applicants apply as a group, preference for the entire group shall apply as it does above for the individual. All county choices for the group must be identical.

i) Applications shall be accepted at the counter window of the permit office; however, permits shall be mailed. In-person and mail-in applications will receive equal treatment in the drawings.

j) Permits are not transferable. Refunds shall not be granted unless the Department of Natural Resources has erroneously issued the permit after the quota has been depleted or where the applicant was unsuccessful in obtaining a permit.

k) A $3 service fee shall be charged for replacement permits issued by the Department, except when permits are lost in the mail, then there shall be no charge. Monies derived from this source shall be deposited in the Wildlife and Fish Fund.

l) The period for accepting applications for the First and Second Lottery periods shall be extended if applications are not available to the public by April 1. A news release will announce the extension of the application period.

m) Hunting without a permit is a Class B misdemeanor (see 520 ILCS 5/2.24). Providing false information on a permit application is a Class A misdemeanor (see 520 ILCS 5/2.38).

(Source: Amended at 28 Ill. Reg. 8056, effective May 26, 2004)

Section 660.30 Statewide Muzzleloading Rifle Requirements

a) The only legal hunting device is a single or double barreled muzzleloading firearm of at least .45 caliber shooting a single projectile through a barrel of at least 16 inches in length. ~~(Except that the otherwise lawful possession of rifles to take furbearing mammals and game mammals other than deer shall not be prohibited during the muzzleloading rifle deer season as set in Section 660.10.)~~

b) The standards and specifications for muzzleloading firearms and ammunition are as follows:

1) A muzzleloading firearm is defined as a blackpowder firearm that is incapable of being loaded from the breech end.

2) The minimum size of the muzzleloading firearm projectile shall be .44 caliber. A wad or sleeve is not considered a projectile or a part of the projectile. Non-expanding, military-style full metal jacket bullets cannot be used to harvest white-tailed deer; only soft point or expanding bullets (including copper/copper alloy rounds designed for hunting) are legal ammunition.

3) Only black powder or a "black powder substitute" such as Pyrodex may be used. Modern smokeless powders (nitrocellulose-based) do not qualify as a "black powder substitute".

4) Only percussion caps, wheellock, matchlock or flint type ignition may be used.

5) Removal of percussion cap or removal of prime powder from frizzen pan with frizzen open and hammer all the way down or removal of prime powder from flashpan and wheel unwound or removal of prime powder and match with match not lit shall constitute an unloaded muzzleloading firearm.

c) It shall be unlawful to use or possess any other firearm or ammunition in the field while hunting white-tailed deer during the muzzleloading rifle deer season. However, the lawful possession of firearms to take furbearing mammals and game mammals other than deer by persons other than muzzleloading deer hunters shall not be prohibited during the muzzleloading rifle deer season as set in Section 660.10.

d)~~e)~~ Violation of this Section is a Class B misdemeanor (see 520 ILCS 5/2.24).

(Source: Amended at 28 Ill. Reg. 8056, effective May 26, 2004)

Section 660.40 Statewide Deer Hunting Rules

a) The bag limit is one deer per legally authorized either-sex, antlered-only or antlerless-only permit. All either-sex permits and antlered-only permits are subject to the following restriction: no hunter, regardless of the quantity or type of permits in his/her possession, may harvest more than 2 antlered deer during a year, including the archery, muzzleloader, and firearm seasons. For purposes of this Section, deer seasons are considered to be in the same year if their opening dates fall within the same 12-month period that begins on July 1. A hunter in possession of an either-sex permit after having harvested 2 antlered deer during a year, as defined above, may only use the permit to harvest an antlerless deer. Subject to this restriction, an either-sex permit holder is allowed to take a deer with or without antlers and an antlered-only permit holder is allowed to take only a deer having at least one antler of a length of 3 or more inches. An antlerless only permit holder is allowed to take only a deer without antlers or a deer having

antlers less than 3 inches long.

b) Recipients of the Muzzleloading Rifle Deer Hunting Permit shall record their signature on the permit prior to hunting and must carry it on their person while hunting.

c) The temporary harvest tag shall be attached and properly sealed immediately upon kill and before the deer is moved, transported or field dressed. No person shall leave any deer that has been killed without properly attaching the temporary harvest tag to the deer. The temporary harvest tag should be attached around the base of the antler of antlered deer (antlers 3 or more inches in length), and attached to the leg of antlerless deer (<3 inch antler length, or no antlers). A permanent harvest tag will be attached to the leg of the deer upon check out at the check station. If the head/antlers are delivered to a taxidermist for processing, the temporary harvest tag must accompany them and be kept with the head/antlers while at the taxidermist. If the carcass is taken to a meat processor, the permanent harvest tag must remain attached to the leg of the deer until it is processed, then must remain with the processed deer until it is at the legal residence of the person who legally took or possessed the deer. Persons delivering deer/parts of deer to a tanner for processing must supply the tanner with their deer permit number to verify lawful acquisition. In the absence of a permit number, the tanner may rely on the written certification of the person from whom the deer was received that the specimen was legally taken or obtained. It is permissible to quarter the deer carcass prior to checking it in, so long as all parts of the carcass (except the entrails removed during field dressing) are transported together and the carcass is tagged in the appropriate location, except during the second firearm deer season (Section 660.10). However, it is illegal to possess or transport a deer carcass, prior to checking it in, without evidence of sex naturally attached. If the carcass is quartered, evidence of sex only needs to be attached to one quarter or another major part of the carcass. Evidence of sex is:

1) For a buck: head with antlers attached to carcass, or attached testicle, scrotum, or penis.

2) For a doe: head attached to carcass, or attached udder (mammary) or vulva.

d) During the second firearm deer season, the deer shall be taken whole (or field dressed) to the designated check station (either the county check station or the nearest check station to the site of the kill) by the hunter in person by 8:00 p.m. of

the day the deer was killed. The deer may not be quartered as during the archery deer season (17 Ill. Adm. Code 670.55).

e) Hunters shall not have in their possession, any deer permit issued to another person, while in the field during muzzleloading rifle deer season (permits are non-transferable).

f) Permits will not be re-issued in cases involving deer taken which are found to be diseased or spoiled due to previous injury. Legal disposal of unfit deer taken shall be the responsibility of the hunter. For those hunters participating in the Department's Chronic Wasting Disease Surveillance Program, a free permit for the same county or special hunt area will be made available the subsequent year if their tested deer is determined to have chronic wasting disease.

g) Unlawful take or possession of one deer is a Class B misdemeanor (see 520 ILCS 5/2.4); unlawful take or possession of 2 or more deer in a 90-day period is a Class 4 felony (see 520 ILCS 5/2.36a); unlawful take or possession of 2 or more deer as a single act or single course of conduct is a Class 3 felony (see 520 ILCS 5/2.36); and any other violation of this Section is a Class B misdemeanor (see 520 ILCS 5/2.24).

(Source: Amended at 28 Ill. Reg. 8056, effective May 26, 2004)

Section 660.50 Rejection of Application/Revocation of Permits

a) In the event that an applicant is in violation of one of the following subsections, the application shall be held in suspension, and the application fees shall be deposited, pending a determination by the permit office of whether the violation was knowing. If the permit office determines the violation was knowing, the application shall be rejected and the fee shall be retained by Natural Resources. The applicant may request a hearing on this decision pursuant to 17 Ill. Adm. Code 2530. Should it be determined that the violation was without the knowledge of the applicant, the permit office will process only the number of applications allowed by administrative rule with additional applications rejected and fees returned.

1) Using hunting rights lease, or mineral rights lease or other lease for land which does not evidence a genuine farm tenancy to obtain a landowner or tenant firearm deer permit. Violation is a Class A misdemeanor (see 520 ILCS 5/2.38).

2) Submitting more applications in the same name or by the same person for Muzzleloading Rifle Deer Permits than the number of legally authorized permits. Violation is a Class B misdemeanor (see 520 ILCS 5/2.24).~~3) Applying prior to the Second Lottery Drawing for a muzzleloading rifle deer permit if the applicant has already been issued a regular firearm deer permit, a free landowner/tenant permit, or a paid landowner permit. Violation is a Class B misdemeanor (see 520 ILCS 5/2.24).~~

3)~~4)~~ Providing false and/or deceptive information on the deer permit application form. Violation is a Class A misdemeanor (see 520 ILCS 5/2.24).

4)~~5)~~ Submitting an application when the applicant has a license or permit currently revoked pursuant to Section 3.36 of the Wildlife Code. Violation is a Class A misdemeanor (see 520 ILCS 5/2.36).

b) Any violation of the Wildlife Code or administrative rules of the Department, in addition to other penalties, may result in revocation of hunting licenses and permits as per 17 Ill. Adm. Code 2530.

(Source: Amended at 28 Ill. Reg. 8056, effective May 26, 2004)

Section 660.60 Regulations at Various Department-Owned or -Managed Sites

a) All the regulations in 17 Ill. Adm. Code 510 – General Hunting and Trapping apply in this Section, unless this Section is more restrictive.

b) Only one tree stand is allowed per deer permit holder. Tree stands must comply with restrictions listed in 17 Ill. Adm. Code 510(c)(3) and must be portable. Tree stands must be removed at the end of each day with the exception that they may be left unattended from September 15-January 31 at those sites listed in this Section that are followed by a (1). Any tree stand left unattended overnight must be legibly marked with the owner's name, address, and telephone number, or site assigned identification number.

c) It is unlawful to drive deer or participate in a deer drive on all Department-owned or -managed properties. A deer drive is defined as a deliberate action by one or more persons (whether armed or unarmed) whose intent is to cause deer to move within firearm range of one or more participating hunters.

d) Check-in, check-out and reporting of harvest is required at those sites listed in this Section that are followed by a (2).

e) Handicapped preferred hunting opportunities are provided at those sites listed in this Section that are followed by a (3).

f) Only antlerless deer or antlered deer having at least four points on one side may be harvested at those sites listed in this Section that are followed by a (4).

g) Only antlerless deer or antlered deer having at least five points on one side may be harvested at those sites listed in this Section that are followed by a (5).

h) Statewide regulations shall apply at the following sites:

Cache River State Natural Area (1) (2)

Campbell Pond Fish and Wildlife Area (1) (2)

Carlyle Lake Wildlife Management Area except subimpoundment areas

Carlyle Lake Lands and Waters – Corps of Engineers managed lands

Chauncey Marsh (1) (2)

Crawford County Fish and Wildlife Area (1) (2)

Cypress Creek National Wildlife Refuge

Cypress Pond State Natural Area (1) (2)

Deer Pond State Natural Area (1) (2)

Devil's Island Management Area

Dog Island Wildlife Management Area (1) (2)

Ferne Clyffe State Park (1) (2)

Fort de Chartres Historic Site (1) (2)

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

Giant City State Park (1) (2)

Hamilton County Fish and Wildlife Area (1) (2)

Horseshoe Lake Conservation Area – Alexander County (all portions of the Public Hunting Area except the Controlled Goose Hunting Area) (1) (2)

I-24 Wildlife Management Area (1) (2)

Jim Edgar Panther Creek State Fish and Wildlife Area West Open Unit (closed during second firearm season; site issued permit required, must be returned by February 15) (1) ~~(2)~~ (4)

Kaskaskia River Fish and Wildlife Area (1) (2, except south of Highway 154 and north of Highway 13) (Doza Creek Waterfowl Management Area is closed during duck season)

Kickapoo State Park (closed during second firearm deer season) (1) (2)

Kinkaid Lake Fish and Wildlife Area (1) (2)

Mermet Lake Conservation Area (1) (2)

Middle Fork Fish and Wildlife Area (closed during second firearm deer season) (1) (2)

Mississippi River Pool 16 (1)

Mississippi River Pool 17 (1)

Mississippi River Pool 18 (1)

Mississippi River Pools 21, 22, 24 (1)

Mississippi Fish and Waterfowl Management Area – Pools 25 and 26 (1)

Oakford Conservation Area (1)

Pere Marquette State Park (hunting in designated area only) (1) (2)

Pyramid State Park (1) (2)

Ray Norbut Fish and Wildlife Area (2)

Rend Lake Project Lands and Waters (1)

Saline County Fish and Wildlife Area (1) (2)

Sand Ridge State Forest (site issued permit required; must be returned by February 15)~~(1) (2)~~

Sanganois Fish and Wildlife Area (Ash Swale Waterfowl Rest Area will be closed to deer hunting during the waterfowl hunting seasons) (1)

Sielbeck Forest Natural Area (1) (2)

Starved Rock State Park (antlerless deer only) (2)

Ten Mile Creek Fish and Wildlife Area (1); Belle Rive Unit only (4)

Trail of Tears State Forest (1) (2)

Turkey Bluffs Fish and Wildlife Area (1) (2)

Union County Conservation Area (Firing Line Unit only) (1) (2)

Weinberg-King State Park (2)

Weinberg-King State Park − Scripps Unit (2)

Wildcat Hollow State Forest (1)

i) Statewide regulations shall apply at the following sites by special permit allocated through the regular statewide drawing. Season dates that differ from the statewide dates are in parentheses. Sites that offer standby hunting are followed by a (6). At sites offering standby hunting, permit holders must register at the check station by 5:00 a.m. each day of the hunt. Unvalidated permits are void after 5:00 a.m. Vacancies each day will be filled by a drawing held at 5:00 a.m. Vacancies may be filled by any person holding a valid hunting license, Habitat

Stamp, and Firearm Owner Identification Card, if required. Standby hunters will be issued a one-day site-specific deer permit at the check station, and charged a permit fee of $5. All hunters must check out and report harvest.

Castle Rock State Park (closed during second firearm season; antlerless deer only) (2) (6)

Clinton Lake State Recreation Area (North Fork Management Unit, north of the county road at the North Fork boat ramp) (1)

Falling Down Prairie (closed during the second firearm deer season) (2)

Hanover Bluff-Kopper Tract (closed during the second firearm deer season) (2)

Hidden Springs State Forest (closed during second firearm deer season) (1) (2)

Marseilles Fish and Wildlife Area (closed during second firearm deer season) (all tree stands must be removed from this area no later than sunset of the last day of archery deer season) (1) (2) (6)

Midewin National Tallgrass Prairie (closed during the second firearm deer season) (5)

Pyramid State Park – East Conant Unit (1)(4)

Sahara Woods (1) (2)

Sangchris Lake State Park (open to muzzleloading rifle hunting during the second firearm deer season only; antlerless deer only; hunting will begin the first day at legal shooting time and at 10:30 a.m. on all other days of the season) (1) (2)

Sangamon County Conservation Area (closed during second firearm deer season) (1)

Tapley Woods State Natural Area (closed during the second firearm deer season)

Wards Grove Nature Preserve (closed during the second firearm deer season; antlerless deer only) (2) (6)

j) Violations of site specific regulations are petty offenses (see 520 ILCS 5/2.20).

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

(Source: Amended at 28 Ill. Reg. 8056, effective May 26, 2004)

DEPARTMENT OF PUBLIC AID

NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Hospital Services

2) Code Citation: 89 Ill. Adm. Code 148

3)

Section Numbers:	Adopted Action:
148.30	Amendment
148.210	Amendment
148.295	Amendment

4) Statutory Authority: Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-13]

5) Effective Date of Amendments: June 1, 2004

6) Does this rulemaking contain an automatic repeal date? No

7) Do these amendments contain incorporations by reference? No

8) A copy of the adopted amendments, including any materials 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:

Sections 148.30 and148.210 - February 6, 2004 (28 Ill. Reg. 1998)
Section 148.295 - February 27, 2004 (28 Ill. Reg. 3719)

10) Has JCAR issued a Statement of Objection to these amendments? No

11) Differences Between Proposal and Final Version: No substantive changes have been made to the 2 proposed rulemakings, but they have been combined into this one rulemaking at adoption.

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 these amendments replace any emergency amendments currently in effect?
Sections 148.30 and 148.210 - No
Section 148.295 - Yes

14) Are there any other amendments pending on this Part? Yes

Sections	Proposed Action	Illinois Register Citation

DEPARTMENT OF PUBLIC AID

NOTICE OF ADOPTED AMENDMENTS

148.85	New Section	April 9, 2004 (28 Ill. Reg. 5808)
148.90	New Section	April 9, 2004 (28 Ill. Reg. 5808)
148.95	New Section	April 9, 2004 (28 Ill. Reg. 5808)
148.100	New Section	April 9, 2004 (28 Ill. Reg. 5808)
148.103	New Section	April 9, 2004 (28 Ill. Reg. 5808)
148.110	New Section	April 9, 2004 (28 Ill. Reg. 5808)
148.112	New Section	April 9, 2004 (28 Ill. Reg. 5808)
148.150	Amendment	March 19, 2004 (28 Ill. Reg. 4848)
148.310	Amendment	April 9, 2004 (28 Ill. Reg. 5808)

15) Summary and Purpose of Amendments:

Sections 148.30 and 148.210

These amendments relating to hospital cost reports provide several clarifications and updates concerning current practices and Medicare provisions.

Section 148.30 is being updated by indicating that hospitals are required to file both Medicaid and Medicare cost reports with the Department.

Section 148.210 provides updates and clarifications on cost report filing practices, extensions of filing due dates, and the suspension of payment when a hospital has not filed the required costs reports within 150 days after the close of the hospital's fiscal year. Other changes provide specific requirements for filing financial statements by hospitals that are accredited by the Joint Commission on the Accreditation of Healthcare Organizations, but are not subject to Medicare certification.

Section 148.295

These amendments 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 the 2003 veto session that restored certain hospital funding.

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

Joanne Scattoloni
Office of the General Counsel, Rules Section
Illinois Department of Public Aid

DEPARTMENT OF PUBLIC AID

NOTICE OF ADOPTED AMENDMENTS

201 South Grand Avenue East, Third Floor
Springfield, Illinois 62763-0002
(217) 524-0081

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

DEPARTMENT OF PUBLIC AID

NOTICE OF ADOPTED AMENDMENTS

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CHAPTER I: DEPARTMENT OF PUBLIC AID
SUBCHAPTER d: MEDICAL PROGRAMS

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HOSPITAL SERVICES

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148.TABLE A Renal Participation Fee Worksheet
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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

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.

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; emergency amendment at 28 Ill. Reg. 5902, effective April 1, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 7101, effective May 3, 2004; amended at 28 Ill. Reg. 8072, effective June 1, 2004; emergency amendment at 28 Ill. Reg. 8167, effective June 1, 2004, for a maximum of 150 days.

SUBPART A: GENERAL PROVISIONS

Section 148.30 General Requirements

a) For the purpose of hospital inpatient, outpatient and hospital-based clinic reimbursement, the following requirements must be met by a hospital to qualify for enrollment in the Illinois Medical Assistance Program:

1) The hospital must be certified for participation in the Medicare Program (Title XVIII) unless the provisions of subsection (a)(2) of this Section ~~below~~ apply.

2) If not eligible for or subject to Medicare certification, the hospital must be accredited by the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO).

3) The hospital must agree to accept the Department's ~~Department of Public Aid~~ basis for reimbursement.

b) Hospitals shall be required to file ~~submit~~ Medicaid and Medicare cost reports with ~~to~~ the Office of Health Finance, Illinois Department of Public Aid, in accordance with Section 148.210, and shall have reimbursable hospital inpatient, outpatient and hospital-based clinic rates approved by the Department ~~of Public Aid~~.

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

SUBPART B: REIMBURSEMENT AND RELATED PROVISIONS

Section 148.210 Filing Cost Reports

a) All hospitals in Illinois, those hospitals in contiguous states providing 100 or more paid acute inpatient days of care to Illinois Medicaid Program~~program~~ participants, and all hospitals located in states contiguous to Illinois that elect to be reimbursed under the methodology described in 89 Ill. Adm. Code 149 (the Diagnosis Related Grouping (DRG) Prospective Payment System (PPS)), shall be required to file Medicaid and Medicare cost reports within 150 days after the close of that provider's fiscal year ~~and submit a copy of the filed Medicare report~~.

1) Any hospital certified in the Medicare Program (Title XVIII) and electing, for the first time, to be reimbursed under the DRG PPS must include a copy of the two most recently audited Medicare cost reports at the time of enrollment.

2) Any hospital accredited by the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO) not eligible for or subject to Medicare certification shall be required to file financial statements, a statement of revenues and expenses by program, and census logs by program and financial class. The Office of Health Finance may request an audit of the financial statements by an independent Certified Public Accountant (CPA) firm if the financial statements are to be used as the base year for rate analysis. Should the hospital elect not to comply with the audit request, or

the financial statements are given other than an unqualified opinion, the hospital will receive an alternate rate as described in Section 148.270.

b) No extension of the Medicaid cost report due date will be granted by the Department unless the Centers for Medicare and Medicaid Services (CMS) grants an extension of the due date for the Medicare cost report. Should CMS extend the Medicare cost report due date, the Department will extend the Medicaid and Medicare cost reports due date by an equivalent period of time.

c) If the hospital has not filed the required Medicaid cost reports within 150 days after the close of the hospital's fiscal year, the Department shall suspend payment for covered medical services until the Department receives the required information.

d)~~c)~~ The assessment or license fees described in 89 Ill. Adm. Code 140.80, 140.82, 140.84, 140.94 and 140.95 may not be reported as allowable Medicaid costs on the Medicaid cost report.~~d) A hospital that is electing to participate in the Illinois Medicaid Program and has not previously filed a Medicaid cost report must submit the two most recently audited Medicare cost reports at the time of enrollment.~~

(Source: Amended at 28 Ill. Reg. 8072, effective June 1, 2004)

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.

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

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

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 (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.

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.

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.

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.

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

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:

DEPARTMENT OF PUBLIC AID

NOTICE OF ADOPTED AMENDMENTS

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.

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.

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. 8072, effective June 1, 2004)

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Illinois Home Health Agency Code

2) Code Citation: 77 Ill. Adm. Code 245

3)

Section Numbers:	Adopted Action:
245.20	Amendment
245.30	Amendment

4) Statutory Authority: Home Health Agency Licensing Act [210 ILCS 55]

5) Effective date of amendments: May 26, 2004

6) Does this rulemaking contain an automatic repeal date? No

7) Does this rulemaking contain any incorporations by reference? No

8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the Department's principal office and is available for public inspection.

9) Notice of Proposal Published in Illinois Register: August 29, 2003; 27 Ill. Reg. 14147

10) Has JCAR issued a Statement of Objection to these amendments? No

11) Difference between proposal and final version: In Section 245.30(f)(4), line 4, and 245.30(f)(5), line 4, "state" was stricken and "State" was added.

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 these amendments replace any emergency amendments currently in effect? No

14) Are there any other amendments pending on this Part? No

15) Summary and purpose of the amendments: The Illinois Home Health Agency Code is being amended to add two new requirements for personnel policies. Before hiring an individual in a position that requires a State license, the agency will be required to contact the Illinois Department of Professional Regulation to verify that the individual's license is active. Agencies will also be required to check the Nurse Aide Registry status of all employee prospects who have direct care responsibilities.

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

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NOTICE OF ADOPTED AMENDMENTS

Susan Meister
Division of Legal Services
Department of Public Health
535 West Jefferson, Fifth Floor
Springfield, Illinois 62761
217/782-2043

e-mail: rules@idph.state.il.us

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

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

TITLE 77: PUBLIC HEALTH
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH
SUBCHAPTER b: HOSPITALS AND AMBULATORY CARE FACILITIES

PART 245
ILLINOIS HOME HEALTH AGENCY CODE

SUBPART A: GENERAL PROVISIONS

Section
245.10 Purpose
245.20 Definitions
245.25 Incorporated and Referenced Materials

SUBPART B: OPERATIONAL REQUIREMENTS

Section
245.30 Organization and Administration
245.40 Staffing and Staff Responsibilities
245.50 Services
245.60 Annual Financial Statement
245.70 Home Health Aide Training
245.72 Health Care Worker Background Check

SUBPART C: LICENSURE PROCEDURES

Section
245.80 Licensure Required
245.90 License Application
245.100 Provisional License
245.110 Inspections and Investigations
245.120 Violations
245.130 Adverse Licensure Actions
245.140 Penalties and Fines
245.150 Hearings

AUTHORITY: Implementing and authorized by the Home Health Agency Licensing Act [210 ILCS 55].

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NOTICE OF ADOPTED AMENDMENTS

SOURCE: Adopted at 2 Ill. Reg. 31, p. 77, effective August 2, 1978; emergency amendment at 3 Ill. Reg. 38, p. 314, effective September 7, 1979, for a maximum of 150 days; amended at 3 Ill. Reg. 40, p. 153, effective October 6, 1979; emergency amendment at 4 Ill. Reg. 18, p. 129, effective April 21, 1980, for a maximum of 150 days; amended at 4 Ill. Reg. 40, p. 56, effective September 23, 1980; emergency amendment at 6 Ill. Reg. 5855, effective April 28, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 11006, effective August 30, 1982; amended at 7 Ill. Reg. 13665, effective October 4, 1983; codified at 8 Ill. Reg. 16829; amended at 9 Ill. Reg. 4836, effective April 1, 1985; amended at 14 Ill. Reg. 2382, effective February 15, 1990; amended at 15 Ill. Reg. 5376, effective May 1, 1991; amended at 18 Ill. Reg. 2414, effective January 22, 1994; emergency amendments at 20 Ill. Reg. 488, effective January 1, 1996, for a maximum of 150 days; emergency expired May 29, 1996; amended at 20 Ill. Reg. 3273, effective February 15, 1996; amended at 20 Ill. Reg. 10033, effective July 15, 1996; amended at 22 Ill. Reg. 3948, effective February 13, 1998; amended at 22 Ill. Reg. 22050, effective December 10, 1998; amended at 23 Ill. Reg. 1028, effective January 15, 1999; amended at 24 Ill. Reg. 17213, effective November 1, 2000; amended at 25 Ill. Reg. 6379, effective May 1, 2001; amended at 26 Ill. Reg. 11241, effective July 15, 2002; amended at 28 Ill. Reg. 3487, effective February 9, 2004; amended at 28 Ill. Reg. 8094, effective May 26, 2004.

SUBPART A: GENERAL PROVISIONS

Section 245.20 Definitions

Act – the Home Health Agency Licensing Act [210 ILCS 55].

Administrator – any one of the following:

a physician;

a registered nurse;

an individual with at least one year of supervisory or administrative experience in home health care or in related health provider programs; or

an individual who meets the requirements for Public Health Administrator as contained in 77 Ill. Adm. Code 600.300 of the Certified Local Health Department Code (77 Ill. Adm. Code 600) as promulgated by the Department.

Agency – a Home Health Agency, unless otherwise designated.

Audiologist – a person who has received a license to practice audiology pursuant

to the Illinois Speech-Language Pathology and Audiology Practice Act [225 ILCS 110].

Branch Office – a location or site from which a home health agency provides services within a portion of the total geographic area served by the parent agency. The branch office is part of the home health agency and is located sufficiently close to share administration, supervision and services in a manner that renders it unnecessary for the branch independently to meet the conditions of participation as a home health agency.

Bylaws or Equivalent – a set of rules adopted by a home health agency for governing the agency's operation.

Clinical Note – a dated, written notation by a member of the health team of a contact with a patient containing a description of signs and symptoms, treatment and/or drug given, the patient's reaction and any changes in physical or emotional condition.

Clinical Record – an accurate account of services provided for each patient and maintained by the agency in accordance with accepted professional standards.

Department – The Department of Public Health of the State of Illinois. (Section 2.01 of the Act)

Director – the Director of Public Health of the State of Illinois, or his designee. (Section 2.02 of the Act)

Discharge Summary – the written report of services rendered, goals achieved and final disposition at the time of discharge from service.

Employee Prospect – a person or persons to whom an agency expects to extend an offer of employment.

Geographic Service Area – the area from which patients are drawn. This area is to be clearly defined by readily recognizable boundaries.

Home Health Agency – *a public agency or private organization which provides skilled nursing services and at least one other home health service as defined* in this Part. (Section 2.04 of the Act)

Home Health Aide – a person who provides personal care and emotional comfort

to assist the patient toward independent living in a safe environment. A person may not be employed as a home health aide unless he/she meets the requirements of Section 245.70 of this Part.

Home Health Services – services provided to a person at his residence according to a plan of treatment for illness or infirmity prescribed by a physician or podiatrist. *Such services include part-time and intermittent nursing services and other therapeutic services such as physical therapy, occupational therapy, speech therapy, medical social services or services provided by a home health aide.* (Section 2.05 of the Act)

Licensed Practical Nurse – a person currently licensed as a licensed practical nurse under the ~~Illinois~~ Nursing and Advanced Practice Nursing Act ~~of 1987~~ [225 ILCS 65].

Medical Social Worker – a person who is a licensed social worker or a licensed clinical social worker under the Clinical Social Work and Social Work Practice Act [225 ILCS 20] and has one year of social work experience in a health care setting.

Occupational Therapist – a person who is licensed as an occupational therapist under the Illinois Occupational Therapy Practice Act [225 ILCS 75] and meets one or more of the following requirements:

is a graduate of an occupational therapy curriculum accredited jointly by the Council on Medical Education of the American Medical Association and the American Occupational Therapy Association, or

is eligible for the National Registration Examination of the American Occupational Therapy Association, or

has two years of appropriate experience as an occupational therapist and has achieved a satisfactory grade on a proficiency examination conducted, approved or sponsored by the U.S. Public Health Service, except that such examinations of proficiency do not apply with respect to persons initially licensed by a state or seeking initial qualification as an occupational therapist after December 31, 1977.

Occupational Therapy Assistant – a person who is licensed as an occupational therapy assistant under the Illinois Occupational Therapy Practice Act and meets one or more of the following requirements:

meets the requirements for certification as an occupational therapy assistant established by the American Occupational Therapy Association; or

has two years of appropriate experience as an occupational therapy assistant and has achieved a satisfactory grade on a proficiency examination conducted, approved or sponsored by the U.S. Public Health Service, except that such determinations of proficiency do not apply with respect to persons initially licensed by a state or seeking initial qualification as an occupational therapy assistant after December 31, 1977.

Part Time or Intermittent Care – home health services given to a patient at least once every 60 days or as frequently as a few hours a day, several times per week.

Patient – a person who is under treatment or care for illness, disease, injury or conditions appropriately responsive to home health services to maintain health or prevent illness.

Patient Care Plan – a coordinated and combined care plan prepared by and in collaboration with each discipline providing service to the patient, to the patient's family, or to both.

Person – any individual, firm, partnership, corporation, company, association or any other legal entity. (Section 2.03 of the Act)

Physical Therapist – a person who is licensed as a physical therapist under the Illinois Physical Therapy Act [225 ILCS 90] and who meets the qualifications for a physical therapist under the Federal Conditions of Participation for Home Health Agencies established by the Health Care Financing Administration (42 CFR 484.1 through 484.40).

Physical Therapist Assistant – a person who is licensed as a physical therapist assistant under the Illinois Physical Therapy Act and who meets the qualifications for a physical therapist assistant under the Federal Conditions of Participation for Home Health Agencies established by the Health Care Financing Administration (42 CFR 484.1 through 484.40).

Physician – Any person licensed to practice medicine in all of its branches under the Medical Practice Act of 1987 [225 ILCS 60]. For a patient who has received

medical care in another state, or has moved from another state, and who has not secured the services of a physician licensed in Illinois, an individual who holds an active license to practice medicine in another state will be considered the physician for the patient during this emergency (as determined by the physician) as provided in Section 3 of the Medical Practice Act of 1987. Such an emergency may not extend more than six months in any case.

Plan of Treatment – a plan based on the patient's diagnosis and the assessment of the patient's immediate and long-range needs and resources. The plan of treatment is established in consultation with the home health services team, which includes the attending physician or podiatrist, pertinent members of the agency staff, the patient and members of the family.

Podiatrist – a person who is licensed to practice under the Podiatric Medical Practice Act of 1987 [225 ILCS 100].

Professional Advisory Group – a group composed of at least one practicing physician, one registered nurse (preferably a public health nurse), and with appropriate representation from other professional disciplines that are participating in the provision of home health services. It is highly recommended that a consumer be a member of the group. At least one member of the group is neither an owner nor an employee of the agency.

Progress Notes – a dated, written notation by a member of the health team, summarizing facts about care and the patient's response during a given period of time.

Purchase of Services/Contractual – the provision of services through a written agreement with other providers of services.

Registered Nurse – a person who is currently licensed as a registered nurse under the ~~Illinois~~ Nursing and Advanced Practice Nursing Act ~~of 1987~~ [225 ILCS 65].

Social Work Assistant – a person who has a baccalaureate degree in social work, psychology, sociology, or other field related to social work and has had at least one year of social work experience in a health care setting; or has two years of appropriate experience as a social work assistant and has achieved a satisfactory grade on a proficiency examination conducted, approved or sponsored by the U.S. Public Health Service, except that such determinations of proficiency do not apply with respect to persons initially licensed by a state or seeking initial qualifications as a social work assistant after December 31, 1977.

Speech-Language Pathologist – a person who is licensed as a speech-language pathologist under the Illinois Speech-Language Pathology and Audiology Practice Act [225 ILCS 110].

Student – an individual who is enrolled in an educational institution and who is receiving training in a health-related profession.

Subdivision – a component of a multi-function health agency, such as the home care department of a hospital or the nursing division of a health department, which independently meets the federal conditions of participation for home health agencies. A subdivision that has branches is regarded as a parent agency.

Substantial compliance or substantially meets – meeting requirements except for variance from the strict and literal performance, which results in unimportant omissions or defects given the particular circumstances involved.

Subunit – a semi-autonomous organization, which serves patients in a geographic area different from that of the parent agency. The subunit by virtue of the distance between it and the agency is judged incapable of sharing administration, supervision and services.

Summary Report – a compilation of the pertinent factors from the clinical notes and progress notes regarding a patient, which is submitted to the patient's physician or podiatrist.

Supervision – authoritative procedural guidance by a qualified person of the appropriate discipline.

(Source: Amended at 28 Ill. Reg. 8094, effective May 26, 2004)

SUBPART B: OPERATIONAL REQUIREMENTS

Section 245.30 Organization and Administration

a) Governing Body. The home health agency shall have a governing body or a clearly defined body having legal authority and responsibility for the conduct of the home health agency. Where the governing body of a large organization is functionally remote from the operation of the home health agency, the Department may approve the designation of an intermediate level "governing body". For the purposes of this Section the governing body shall:

1) Have bylaws or the equivalent, which shall be reviewed annually and be revised as needed. They shall be made available to all members of the governing body and of the professional advisory group. The bylaws or the equivalent shall specify the objectives of the agency.

2) Appoint members of the professional advisory group.

3) Employ a qualified administrator.

4) Adopt and revise, as needed, policies and procedures for the operation and administration of the agency.

5) Meet to review the operation of the agency.

6) Keep minutes of all meetings.

7) Provide and maintain an office facility adequately equipped for efficient work and that provides a safe working environment in compliance with local ordinances and fire regulations.

b) Professional Advisory Group

1) The professional advisory group shall assist in developing and recommending policies and procedures for administration and home health services provided by the agency. These policies and procedures shall be in accordance with the scope of services offered by the agency and based on the home health needs of the patient and the area being served. Policies and procedures shall be reviewed annually or more frequently as needed to determine their adequacy and suitability. Recommendations for any improvements are made to the Governing Body. These policies and procedures shall include but not be limited to:

A) Administration and supervision of the agency and the home health services it provides.

B) Criteria for the acceptance, non-acceptance and discharge of patients.

C) Home health services.

D) Medical supervision and plans of treatment.

E) Patient care plans.

F) Clinical records.

G) Personnel data.

H) Evaluation.

I) Coordination of services.

2) The group shall keep minutes of its meetings and meet as often as necessary to carry out its purposes.

c) Administration

1) The home health agency shall have written administrative policies and procedures to ensure ~~insure~~ the provision of safe and adequate care of the patient.

2) The home health agency shall show evidence of liability insurance.

d) Agency Supervision

1) The home health agency shall designate a person with one of the following sets of qualifications to supervise the provision of home health services:

A) A~~a~~ physician;

B) A~~a~~ registered nurse who:

i) Has~~has~~ completed a baccalaureate degree program approved by the National League for Nursing; and

ii) Has~~has~~ at least one year of nursing experience.

C) A~~a~~ registered nurse who does not have a baccalaureate degree, but who has at least three years of nursing experience, which meets the following requirements:

i) At least two years of such nursing experience must have been in either: a home health agency; a community health program that included care of the sick; or a generalized family-centered nursing program in a community health agency.

ii) At least two years of the three years nursing experience must have been obtained within five years prior to current employment with the home health agency.

2) The agency supervisor shall be available at all times during operating hours of the agency and participate in all activities relevant to the provision of home health services.

3) Any person employed as an agency supervisor ~~Agency Supervisor~~ prior to July 1, 1983, may continue to serve in that capacity at that agency only without meeting the qualifications for agency supervisor ~~Agency Supervisor~~ that were in effect prior to October 1, 1983.

4) One person may hold the positions of both administrator and agency supervisor, if that person meets the requirements of both positions.

e) Supervising Nurse

1) The skilled nursing service of a home health agency shall be under the supervision of a full-time registered nurse.

2) The supervising nurse shall be responsible for:

A) The overall supervision of all registered nurses, licensed practical nurses and home health aides.

B) The assurance that the professional standards of community nursing practice are maintained by all nurses providing care.

C) Maintaining and adhering to agency procedure and patient care policy manuals.

D) Participation in the establishment of service policies and procedures.

E) Participation in the selection of nursing personnel and the evaluation of nursing personnel.

F) Coordination of patient care services.

G) Keeping and maintaining records of case assignments and case management.

H) Preparation and maintenance of scheduling of cases to be brought to the clinical record review committee.

I) The conduct of selective program evaluations to improve deficient services and the development and implementation of plans of correction.

f) Personnel Policies

1) Personnel policies applicable and available to all full- and part-time employees shall include but not be limited to the following:

A) Wage scales, fringe benefits, hours of work and leave time.

B) Requirements for an initial health evaluation of each new employee who has contact with patients, including a physical examination and any other components as specified by the governing body.

C) Orientation to the home health agency and appropriate continuing education.

D) Job descriptions for all positions utilized by the agency.

E) Annual performance evaluation for all employees.

F) Compliance with all applicable requirements of the Civil Rights Act of 1964.

G) Provision for confidentiality of personnel records.

H) Employee health policies that require employees to report health symptoms and exposure to any communicable or infectious disease

and that specify conditions under which employees are to be removed from patient contact and conditions under which employees may resume patient contact.

2) Prior to employing any individual in a position that requires a State professional license, the home health agency shall contact the Illinois Department of Professional Regulation to verify that the individual's license is active. A copy of the verification of the individual's license shall be placed in the individual's personnel file.

3) The home health agency shall check the status of employee prospects who have direct patient care responsibilities with the Nurse Aide Registry prior to hiring.

4)~~2)~~ Personnel records for all employees shall include the name and address of the employee, social security number, date of birth, name and address of next of kin, evidence of qualifications (including any current licensure, registration, or certification that is required by state or federal law for the functions performed), dates of employment and separation from the agency and the reason for separation.

5)~~3)~~ Home health agencies that provide other home health services under arrangement through a contractual purchase of services shall ensure that these services are provided by qualified personnel, who hold any current licensure, registration, or certification that is required by state or federal law for the functions performed, under the supervision of the agency.

(Source: Amended at 28 Ill. Reg. 8094, effective May 26, 2004)

DEPARTMENT OF PUBLIC AID

NOTICE OF EMERGENCY AMENDMENTS

1) Heading of the Part: Medical Payment

2) Code Citation: 89 Ill. Adm. Code 140

3)

Section Numbers:	Emergency Action:
140.80	Amendment
140.82	Amendment
140.84	Amendment

4) Statutory Authority: Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-13] and Public Act 93-0659

5) Effective Date: June 1, 2004

6) If this emergency amendment is to expire before the end of the 150-day period, please specify the date on which it is to expire: No

7) Date Filed with the Index Department: May 28, 2004

8) A copy of the emergency amendment, including any materials incorporated by reference, is on file in the agency's principal office and is available for public inspection.

9) Reason for Emergency: These emergency amendments are being filed pursuant to Public Act 93-0659 which establishes a new annual assessment for hospital inpatient services. Immediate implementation of these amendments is necessary because, under the Act, the annual assessment due for fiscal year 2004 must be paid by June 18, 2004. Emergency rulemaking is specifically authorized for the implementation of these changes for fiscal years 2004 and 2005 by Section 5A-13 of Public Act 93-0659.

10) Complete Description of the Subjects and Issues Involved: These emergency amendments pertain to the Department's provider assessment rules.

Section 140.80, Hospital Provider Fund, is being revised pursuant to Public Act 93-0659, to establish a new annual assessment on hospital inpatient services. These changes are expected to increase the Hospital Provider Fund by approximately $558 million.

Section 140.82, Developmentally Disabled Care Provider Fund, and Section140.84, Long Term Care Provider Fund, are being revised to provide clarifications on granting penalty waivers by the Assessment Unit staff, and to more closely align the rules with related procedures.

DEPARTMENT OF PUBLIC AID

NOTICE OF EMERGENCY AMENDMENTS

11) Are there any other amendments pending on this Part? Yes

Section Numbers:	Proposed Action	Illinois Register Citation
140.80	Amendment	April 9, 2004 (28 Ill. Reg. 5749)
140.82	Amendment	April 9, 2004 (28 Ill. Reg. 5749)
140.84	Amendment	April 9, 2004 (28 Ill. Reg. 5749)
140.486	Amendment	April 30, 2004 (28 Ill. Reg. 6576)
140.491	Amendment	March 26, 2004 (28 Ill. Reg. 5167)
140.645	Amendment	February 27, 2004 (28 Ill. Reg. 3700)

12) Statement of Statewide Policy Objectives: These emergency amendments neither create nor expand any state mandates affecting units of local government.

13) Information and questions regarding this amendment shall be directed 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 full text of the Emergency Amendments begins on the next page:

DEPARTMENT OF PUBLIC AID

NOTICE OF EMERGENCY AMENDMENTS

TITLE 89: SOCIAL SERVICES
CHAPTER I: DEPARTMENT OF PUBLIC AID
SUBCHAPTER d: MEDICAL PROGRAMS

PART 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

DEPARTMENT OF PUBLIC AID

NOTICE OF EMERGENCY AMENDMENTS

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
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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].

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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, l983; amended at 8 Ill. Reg. 254, effective December 21, 1983; emergency amendment at 8 Ill. 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;

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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, 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.

DEPARTMENT OF PUBLIC AID

NOTICE OF EMERGENCY AMENDMENTS

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, 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; 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 at 26 Ill. Reg. 12461, effective July 29, 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. 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 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. 4958, effective March 3, 2004; emergency amendment at 28 Ill. Reg. 6622, effective April 19, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 7081, effective May 3, 2004; emergency amendment at 28 Ill. Reg. _____, effective June 1, 2004, for a maximum of 150 days.

SUBPART C: PROVIDER ASSESSMENTS

Section 140.80 Hospital Provider Fund
EMERGENCY

a) Purpose and Contents

1) The Hospital Provider Fund ("Fund") was created in the State Treasury upon enactment of Public Act 93-065~~87-861, Public Act 88-88, Public Act 89-21 and Public Act 89-499~~. Interest earned by the Fund shall be credited to the Fund. The Fund shall not be used to replace any funds appropriated to the Medicaid program by the General Assembly.

2) The Fund is created for the purpose of receiving and disbursing monies in accordance with this Section and Public Act 93-065~~87-861, as amended by Public Act 88-88, Public Act 89-21 and Public Act 89-499~~.

3) The Fund shall consist of:

A) All monies collected or received by the Department under subsection (b) of this Section~~below~~;

B) All federal matching funds received by the Department as a result of expenditures made by the Department that are attributable to

monies deposited in the Fund;

C) Any interest or penalty levied in conjunction with the administration of the Fund;

D) Monies transferred from another fund in the State treasury;

E)~~D)~~ All other monies received for the Fund from any other source, including interest earned on those monies.~~thereon;~~

~~E) All monies transferred from the Hospital Services Trust Fund; and~~

~~F) All monies transferred from the Tobacco Products Tax Act.~~

b) Provider Assessments

An annual assessment on hospital inpatient services is imposed on each hospital provider for State fiscal years 2004 and 2005 in an amount equal to the hospital's occupied bed days multiplied by $84.19. The Department shall use the number of occupied bed days as reported, by February 3, 2004 (the date of enactment of Public Act 93-0659), by each hospital on the Annual Survey of Hospitals conducted by the Department of Public Health to calculate the hospital's annual assessment. If the sum of a hospital's occupied bed days is not reported on the Annual Survey of Hospitals, then the Department may obtain the sum of occupied bed days from any source available, including, but not limited to, records maintained by the hospital provider, which may be inspected at all times during business hours of the day by the Department or its duly authorized agents and employees.~~ Effective July 1, 1994, through June 30, 1996, an annual assessment is imposed upon each hospital provider in an amount equal to the provider's adjusted gross hospital revenue, as described in subsection (l)(1) of this Section, for the most recent calendar year ending before the beginning of that fiscal year, multiplied by a Provider's Savings Rate. Effective July 1, 1996, through March 31, 1997, an assessment is imposed in an amount equal to three-fourths of the Provider's adjusted gross hospital revenue for calendar year 1995 multiplied by the Provider's Savings Rate.~~

~~1) Effective July 1, 1994, through June 30, 1995, the Provider's Savings Rate is obtained by multiplying 1.88 percent by a fraction, the numerator of which is the Maximum Section 5A-2 Contribution minus the Cigarette Tax Contribution, and the denominator of which equals the Maximum Section 5-2 Contribution (see subsections (l)(2), (8) and (10) of this Section).~~

~~2) Effective July 1, 1995, through March 31, 1997, the Provider's Savings Rate is obtained by multiplying 1.25 percent by the fraction described in subsection (b)(1) above.~~

~~3) The Department reserves the right to audit the reported data. The Department shall notify hospital providers of the Provider's Savings Rate by mailing a notice to each provider's last known address as reflected by the records of the Department.~~

c) Payment of Assessment Due

1) The annual assessments imposed for State fiscal year 2004 shall be due and payable on June 18, 2004. The assessment imposed for State fiscal year 2005 ~~in subsection (b) above~~ shall be due and payable in quarterly installments, each equaling~~equalling~~ one-fourth of the assessment for the year, on July 19~~September 30~~, October 19~~December 31~~, January 18~~March 31~~, and April 19. No installment payments of an assessment shall be due and payable, however, until after:~~May 31 of the year, modified to accommodate weekends and holidays, except that for fiscal year 1997 (July 1, 1996 through June 30, 1997), the assessment imposed shall be due and payable in three equal installments on September 30, December 31 and March 31. Providers will be notified, in writing, of the due dates. Assessment payments postmarked on the due date will be considered as paid on time.~~

A) the hospital provider receives written notice from the Department that the payment methodologies to hospitals required under Public Act 93-0659 have been approved by the Centers for Medicare and Medicaid Services of the federal Department of Health and Human Services and the waiver under 42 CFR 433.68 for the assessment has been granted by the Centers for Medicare and Medicaid Services; and

B) the hospital has received payments required under Public Act 93-0659. Assessment payments postmarked on the due date will be considered as paid on time.

2) All payments received by the Department shall be credited first to unpaid installment amounts (rather than to penalty or interest), beginning with the most delinquent installments.

d) Notice~~Reporting~~ Requirements, Penalty, and Maintenance of Records

1) After December 31 of each year, and on or before March 31 of the succeeding year, the Department shall send a notice of assessment to every hospital provider subject to an assessment under subsection (b) of this Section, except that the notice for the State fiscal year commencing July 1, 2003, shall be sent on or before June 1, 2004, and no notice shall be sent until the Department receives written notice that the payment methodologies to hospitals required under Public Act 93-0659 have been approved by the Centers for Medicare and Medicaid Services of the federal Department of Health and Human Services and the waiver under 42 CFR 433.68 for the assessment has been granted by the Centers for Medicare and Medicaid Services.~~above shall file a report with the Department. The report shall be on a form prepared by the Department. The report shall include the adjusted gross hospital revenue from the calendar year just ended and shall be utilized by the Department to calculate the assessment for the State fiscal year commencing on the next July 1.~~

2) If a hospital provider conducts, operates, or maintains more than one hospital licensed by the Illinois Department of Public Health, a separate notice shall be sent~~report shall be filed~~ for each hospital. ~~In the case of a hospital provider existing as a corporation or legal entity other than an individual, the report filed by it shall be signed by its president, vice-president, secretary, or treasurer or by its properly authorized agent.~~

~~2) If the hospital provider fails to file its report for a State fiscal year on or before the due date of the report, there shall be, unless waived by the Department for reasonable cause, added to the assessment imposed in subsection (b) above a penalty assessment equal to 25 percent of the assessment imposed for the year.~~

~~3) Every hospital provider subject to an assessment under subsection (b) above shall keep records and books that will permit the determination of adjusted gross hospital revenue on a calendar year basis. All such books and records shall be maintained for a minimum of three years following the filing date of the assessment report and shall, at all times during business hours of the day, be subject to inspection by the Department or its duly authorized agents and employees.~~

~~4) Amended Assessment Reports. With the exception of amended assessment reports filed in accordance with subsection (d)(5) or (6) below, an amended assessment report must be filed within 30 calendar days of the original report due date. The amended report must be accompanied by a letter identifying the changes and the justification for the amended report. The provider will be advised of any adjustments to the original annual assessment amount through written notification from the Department. Penalties may be applied to the amount underpaid due to a filing error.~~

~~5) Submission of Financial Audit Statements. All hospital providers are required to submit a copy of all financial statements audited by an external, independent auditor, to the Department within 30 days after the close of such externally performed financial audits. If the hospital's year end does not coincide with the December 31 ending date for the assessment report, the hospital must submit all financial audits covering the assessment report period. An amended assessment report must accompany such external financial audit statements if the data submitted on the initial assessment report changes based upon the findings of such external financial audits and as indicated in the audited external financial statements. Penalties may be applied to the amount underpaid due to a filing error.~~

~~6) Reconsideration of Adjusted Tax. If the Department, through an audit conducted by the Department or its agent within three years after the end of the fiscal year in which the assessment was due, changes the assessment liability of a hospital provider, the hospital provider may request a review or reconsideration of the adjusted assessment within 30 days after the Department's notification of the change in assessment liability. Requests for reconsideration of the assessment adjustment shall not be considered if such requests are not postmarked on or before the end of the 30 day review period. Penalties may be applied to the amount underpaid due to a filing error.~~

e) Procedure for Partial Year Reporting/Operating Adjustments

1) Cessation of business during the fiscal year in which the assessment is being paid. If a hospital provider ceases to conduct, operate, or maintain a hospital for which the person is subject to assessment under subsection (b) of this Section~~above~~, the assessment for the State fiscal year in which the cessation occurs shall be adjusted by multiplying the assessment computed under subsection (d) of this Section by a fraction, the numerator of which

is the number of days in the year during which the provider conducts, operates, or maintains the hospital and the denominator of which is 365. Immediately upon ceasing to conduct, operate or maintain a hospital, the person~~The person shall file a final, amended report with the Department not more than 30 calendar days after the cessation, reflecting the adjustment, and~~ shall pay the assessment for the year as adjusted (to the extent not previously paid)~~with the final return the assessment for the year as so adjusted, to the extent not previously paid~~.

2) Commencing of business during the fiscal year in which the assessment is being paid. A hospital provider who commences conducting, operating, or maintaining a hospital for which the person is subject to assessment under subsection (b) of this Section~~above~~, upon notice by the Department,~~shall file an initial report for the State fiscal year in which the commencement occurs within 30 calendar days thereafter and~~ shall pay the assessment under subsection (d) of this Section~~above~~ as computed by the Department in ~~equal~~ installments on the due dates stated on the notices~~date of the initial assessment determination~~ and on the regular installment due dates for the State fiscal year occurring after the due date of the initial assessment notice~~determination~~. In determining the annual assessment amount for the provider, the Department shall develop hypothetical annualized occupied bed~~revenue~~ projections based upon geographic location, facility size and patient case mix or, if there is not enough information to develop a methodology, may base the projection on the average occupied bed percentage of all hospitals in the State. The assessment determination made by the Department is final.

3) Partial Calendar Year Operation Adjustment. For a hospital provider that did not conduct, operate, or maintain a hospital throughout the entire calendar year reporting period, the assessment for the ~~following~~ State fiscal year shall be annualized based on the provider's actual occupied bed information~~revenues~~ for the portion of the reporting period the hospital was operational (dividing occupied beds~~adjusted gross hospital revenue~~ by the number of days the hospital was in operation and then multiplying the amount by 365). Occupied bed information reported~~Revenues realized~~ by a prior provider from the same hospital during the calendar year shall be used in the annualization equation, if available.

4) Change in Ownership and/or Operators. The full quarterly assessment must be paid on the designated due dates regardless of changes in ownership or operators. Liability for the payment of the assessment

amount (including past due assessments and any interest or penalties that may have accrued against the amount) rests on the hospital provider currently operating or maintaining the hospital regardless if these amounts were incurred by the current owner or were incurred by previous owners. Collection of delinquent assessment fees from previous providers will be made against the current provider. Failure of the current provider to pay any outstanding assessment liabilities incurred by previous providers shall result in the application of penalties described in subsection (f)(1) of this Section.

f) Penalties

1) Any hospital that fails to pay the full amount of an installment when due shall be charged, unless waived by the Department for reasonable cause, a penalty equal to five percent of the amount of the installment not paid on or before the due date, plus five percent of the portion thereof remaining unpaid on the last day of each monthly period~~month~~ thereafter, not to exceed 100 percent of the installment amount not paid on or before the due date. Waiver due to reasonable cause may include but is not limited to:

A) A provider can demonstrate to the Department's satisfaction that a payment was made prior to the due date.

B) A provider is a new owner/operator and the late payment occurred in the quarter in which the new owner/operator assumed control of the facility.

2) Within 30~~45~~ days after~~from~~ the due date, the Department may begin recovery actions against delinquent hospitals participating in the Medicaid Program. Payments may be withheld from the hospital until the entire assessment, including any penalties, is satisfied or until a reasonable repayment schedule has been approved by the Department. If a reasonable agreement cannot be reached or if a hospital fails to comply with an agreement, the Department reserves the right to recover any outstanding provider assessment, interest and penalty by recouping the amount or a portion thereof from the hospital's future payments from the Department. The provider may appeal this recoupment in accordance with the Department's~~Department~~ rules at~~contained in~~ 89 Ill. Adm. Code 104. The Department has the right to continue recoupment during the appeal process. Penalties pursuant to subsection (f)(1) of this Section~~above~~ will

continue to accrue during the recoupment process. Recoupment proceedings against the same hospital two times in a fiscal year may be cause for termination from the Program. Failure by the Department to initiate recoupment activities within 30~~45~~ days shall not reduce the provider's liabilities nor shall it preclude the Department from taking action at a later date.

3) If the hospital does not participate in the Medicaid Program, or is no longer doing business with the Department, or the Department cannot recover the full amount due through the claims processing system, within three months after ~~of~~ the fee due date, the Department may begin legal action to recover the monies, including penalties and interest owed, plus court costs.

g) Delayed Payment – Groups of Hospitals
The Department ~~Director~~ may establish delayed payment of assessments and/or waive the payment of interest and penalties for groups of hospitals such as disproportionate share hospitals or all other hospitals when:

1) the State delays payments to hospitals due to problems related to State ~~state~~ cash flow; or

2) a cash flow bond pool's, or any other group financing plans', requests from providers for loans are in excess of its scheduled proceeds such that a significant number of hospitals will be unable to obtain a loan to pay the assessment.

h) Delayed Payment – Individual Hospitals
In addition to the provisions of subsection (g) of this Section ~~above~~, the Department ~~Director~~ may delay assessments for individual hospitals that are unable to make timely payments under this Section due to financial difficulties. No delayed payment arrangements shall extend beyond the last business day of the calendar quarter following the quarter in which the assessment was to have been received by the Department as described in subsection (c) of this Section~~above~~.

1) Criteria. Delayed payment provisions may be instituted only under extraordinary circumstances. Delayed payment provisions may be made only to qualified hospitals who meet all of the following requirements:

A) the provider has experienced an emergency which necessitates

institution of delayed payment provisions. Emergency in this instance is defined as a circumstance under which institution of the payment and penalty provisions described in subsections (c)(1), (c)(2), (f)(1) and (f)(2) of this Section ~~above~~ would impose severe and irreparable harm to the clients served. Circumstances which may create such emergencies include, but are not limited to, the following:

i) Department system errors (either automated system or clerical) which have precluded payments, or which have caused erroneous payments such that the provider's ability to provide further services to clients is severely impaired;

ii) cash flow problems encountered by a provider which are unrelated to Department technical system problems and which result in extensive financial problems to a facility, adversely impacting on its ability to serve its clients.

B) the provider serves a significant number of clients under the medical assistance program. "Significant" in this instance means:

i) a hospital that serves a significant number of clients under the medical assistance program; significant in this instance means that the hospital qualifies as a disproportionate share hospital (DSH) under 89 Ill. Adm. Code 148.120(a)(1) through 148.120(a)(5); or qualifies as a Medicare DSH hospital under the current federal guidelines.

ii) a government-owned facility, which meets the cash flow criterion under subsection (h)(1)(A)(ii) of this Section~~above~~.

iii) a hospital which has filed for Chapter 11 bankruptcy, which meets the cash flow criteria under subsection (h)(1)(A)(ii) of this Section~~above~~.

C) the provider must file a delay of payment request as defined under subsection (h)(3)(A) of this Section~~below~~, and the request must include a Cash Position Statement which is based upon current assets, current liabilities and other data for a date which is less than 60 days prior to the date of filing. Any liabilities payable to

owners or related parties must not be reported as current liabilities on the Cash Position Statement. A deferral of assessment payments will be denied if any of the following criteria are met:

i) the ratio of current assets divided by current liabilities is greater than 2.0.

ii) cash, short term investments and long term investments equal or exceed the total of accrued wages payable and the assessment payment. Long term investments which are unavailable for expenditure for current operations due to donor restrictions or contractual requirements will not be used in this calculation.

D) the provider must show evidence of denial of an application to borrow assessment funds through a cash flow bond pool or financial institutions such as a commercial bank. The denial must be 90 days old or less.

E) the provider must sign an agreement with the Department which specifies the terms and conditions of the delayed payment provisions. The agreement shall contain the following provisions:

i) specific reason(s) for institution of the delayed payment provisions;

ii) specific dates on which payments must be received and the amount of payment which must be received on each specific date described;

iii) the interest or a statement of interest waiver as described in subsection (h)(5) of this Section~~below~~ that shall be due from the provider as a result of institution of the delayed payment provisions;

iv) a certification stating that, should the entity be sold, the new owners will be made aware of the liability and any agreement selling the entity will include provisions that the new owners will assume responsibility for repaying the debt to the Department according to the original agreement;

v) a certification stating that all information submitted to the Department in support of the delayed payment request is true and accurate to the best of the signator's knowledge; and

vi) such other terms and conditions that may be required by the Department.

2) A hospital which does not meet the above criteria may request a delayed payment schedule ~~and/or the waiver of interest and penalties~~. The Department ~~Director~~ may approve the request, notwithstanding the hospital not meeting the above criteria, upon a sufficient showing of financial difficulties and good cause by the hospital. If the request for a delayed payment schedule ~~and/or waiver of interest and penalties~~ is approved, all other conditions of this subsection (h) shall apply.

3) Approval Process~~.~~

A) In order to receive consideration for delayed payment provisions, providers must submit their request in writing (telefax requests are acceptable) to the Bureau of Program and Reimbursement Analysis. The request must be received by the date designated by the Department. Providers will be notified, in writing, as to the due dates for submitting delay of payment requests. Requests must be complete and contain all required information before they are considered to have met the time requirements for filing a delayed payment request. All telefax requests must be followed up with original written requests, postmarked no later than the date of the telefax. The request must include:

i) an explanation of the circumstances creating the need for the delayed payment provisions;

ii) supportive documentation to substantiate the emergency nature of the request including a cash position statement as defined in subsection (h)(1)(C) of this Section, a denial of application to borrow the assessment as defined in subsection (h)(1)(D) of this Section and an explanation of the risk of irreparable harm to the clients; and

iii) specification of the specific arrangements requested by the

provider.

B) The hospital shall be notified by the Department, in writing prior to the assessment due date, of the Department's decision with regard to the request for institution of delayed payment provisions. An agreement shall be issued to the provider for all approved requests. The agreement must be signed by the administrator, owner, chief executive officer or other authorized representative and be received by the Department prior to the first scheduled payment date listed in such agreement.

4) Waiver of Penalties. The penalties described in subsections (f)(1) and (f)(2) of this Section may be waived upon approval of the provider's request for institution of delayed payment provisions. In the event a provider's request for institution of delayed payment provisions is approved and the Department has received the signed agreement in accordance with subsection (h)(3)(B) of this Section~~above~~, such penalties shall be permanently waived for the subject quarter unless the provider fails to meet all of the terms and conditions of the agreement. In the event the provider fails to meet all of the terms and conditions of the agreement, the agreement shall be considered null and void and such penalties shall be fully reinstated.

5) Interest. The delayed payments shall include interest at a rate not to exceed the State of Illinois borrowing rate. The applicable interest rate shall be identified in the agreement described in subsection (h)(1)(E) of this Section~~above~~. The interest may be waived by the Department ~~Director~~ if the facility's current ratio, as described in subsection (h)(1)(C) of this Section~~above~~, is 1.5 or less and the hospital meets the criteria in subsections (h)(1)(A) and (B) of this Section~~above~~. Any such waivers granted shall be expressly identified in the agreement described in subsection (h)(1)(E) of this Section~~above~~.

6) Subsequent Delayed Payment Arrangements. Once a provider has requested and received approval for delayed payment arrangements, the provider shall not receive approval for subsequent delayed payment arrangements until such time as the terms and conditions of any current delayed payment agreement have been satisfied or unless the provider is in full compliance with the terms of the current delayed payment agreement. The waiver of penalties described in subsection (h)(4) of this Section ~~above~~ shall not apply to a provider that has not satisfied the terms and

conditions of any current delayed payment agreement.

i) Administration and Enforcement Provisions
Pursuant to Section 5A-7 of Public Act ~~P.A.~~ 86-861, to the extent practicable, the Department shall administer and enforce Public Act ~~P.A.~~ 86-861, Public Act ~~P.A.~~ 88-88, Public Act ~~P.A.~~ 89-21 and Public Act ~~P.A.~~ 89-499, and collect the assessments, interest, and penalty assessments imposed under the law, using procedures employed in its administration of this Code generally and, as it deems appropriate, in a manner similar to that in which the Department of Revenue administers and collects the retailers' occupation tax under the Retailers' Occupation Tax Act ("ROTA").

j) Exemptions
The following classes of providers are exempt from the assessment imposed under Public Act 93-0659 unless the exemption is adjudged to be unconstitutional or otherwise invalid:

1) A hospital provider that is a State agency, a State university, or a county with a population of 3,000,000 or more.

2) A hospital provider that is a county with a population of less than 3,000,000 or a township, municipality, hospital district, or any other local governmental unit.

3) A hospital provider whose hospital does not charge for its services.

4) A hospital provider whose hospital is licensed by the Department of Public Health as a psychiatric hospital.

5) A hospital provider whose hospital is licensed by the Department of Public Health as a rehabilitation hospital.

6) A hospital provider whose hospital is not a psychiatric hospital, rehabilitation hospital, or children's hospital and has an average length of inpatient stay greater than 25 days.

~~1) A rural hospital, as defined in subsection (1)(11) below, shall be exempt from the assessment imposed under subsection (b), unless the exemption is adjudged to be unconstitutional or otherwise invalid, in which case the provider shall pay the assessment imposed under subsection (b) above.~~

~~2) A hospital provider which is a county with a population of more than 3,000,000 that makes intergovernmental transfer payments as provided in Section 15-3 of P.A. 87-861, as amended by P.A. 88-85, P.A. 88-88 and P.A. 89-21, shall be exempt from the assessment imposed by subsection (b) above, unless the exemption is adjudged to be unconstitutional or otherwise invalid, in which case the hospital shall pay the assessment imposed by subsection (b) above for all assessment periods beginning on or after July 1, 1992, and the assessment so paid shall be creditable against the intergovernmental transfer payments.~~

~~3) The Department is authorized to enter into an interagency agreement with a hospital organized under the University of Illinois Hospital Act and exempt from the assessment imposed under subsection (b) of this Section, to make intergovernmental transfer payments to the Department. Effective July 1, 1994, these payments shall be deposited into the University of Illinois Fund, as mandated under P.A. 88-554.~~

~~4) The Department is also authorized to enter into agreements with publicly owned or operated hospitals not described in subsections (j)(1) through (j)(3) above to make intergovernmental transfer payments to the Department. These payments shall be deposited into the Hospital Provider Fund.~~

~~5) Facilities operated by the Department of Mental Health and Developmental Disabilities shall be exempt from the assessment imposed by subsection (b) above.~~

k) Nothing in Public Act 93-0659 ~~89-499~~ shall be construed to prevent the Department from collecting all amounts due under this Section pursuant to an assessment imposed before February 3, 2004 (the effective date of Public Act 93-0659~~P.A. 89-499~~).

l) Definitions~~.~~
As used in this Section, unless the context requires otherwise:

~~1) "Adjusted gross hospital revenue" means the hospital provider's total gross patient charges less Medicare contractual allowances, but does not include gross patient revenue from skilled or intermediate long-term care services within the meaning of Title XVIII or XIX of the Social Security Act, or home health and hospice services (and the portion of any Medicare contractual allowance related thereto). Revenue generated from swing~~

~~beds, as described in subsection (1)(12) below, is considered to be part of the provider's gross hospital revenue. Revenue not related to patient care, such as, investment income, gift shop, cafeteria, or parking lot revenue is not considered as patient revenue. Adjusted gross hospital revenue must be reported on an accrual basis for the assessment reporting period. All patient revenue accrued during the assessment reporting period must be included even though reimbursement may occur after the assessment reporting period. Patient revenue must be reported on a basis that is consistent with methods used on the hospital's last two cost reports.~~

~~2) "Cigarette Tax Contribution" is the sum of the total amount deposited in the Hospital Provider Fund in the previous State fiscal year pursuant to Section 2(a) of the Cigarette Tax Act, plus the total amount deposited in the Hospital Provider Fund in the previous State fiscal year pursuant to Section 5A-3(c) of Public Act 88-88, as amended by Public Act 89-21.~~

1~~3~~) "Department" means the Illinois Department of Public Aid.

2~~4~~) "Fund" means the Hospital Provider Fund.

3~~5~~) "Hospital" means an institution, place, building, or agency located in this State that is subject to licensure by the Illinois Department of Public Health under the Hospital Licensing Act, whether public or private and whether organized for profit or not-for-profit.

4~~6~~) "Hospital provider" means a person licensed by the Department of Public Health to conduct, operate, or maintain a hospital, regardless of whether the person is a Medicaid provider. For purposes of this definition, "person" means any political subdivision of the State, municipal corporation, individual, firm, partnership, corporation, company, limited liability company, association, joint stock association, or trust, or a receiver, executor, trustee, guardian, or other representative appointed by order of any court.

5) "Occupied bed days" means the sum of the number of days that each bed was occupied by a patient for all beds, excluding beds classified as long term care beds and assessed a licensed bed fee during calendar year 2001. Occupied bed days shall be computed separately for each hospital operated or maintained by a hospital provider.

~~7) "Intergovernmental transfer payment/Interagency Agreement" means the~~

~~payments established under Section 15-3 of P.A. 87-861, as amended by P.A. 88-85, P.A. 88-88 and P.A. 88-554, and includes without limitation payments payable under that Section for July, August and September of 1992.~~

~~8) "Maximum Section 5A-2 Contribution" is the total amount of tax imposed by Section 5A-2 of Public Act 88-88, as amended by Public Act 89-21, in the previous State fiscal year on providers subject to the assessment imposed by subsection (b) above; multiplied by a fraction the numerator of which is adjusted gross hospital revenues reported to the Department by providers subject to the assessment imposed by subsection (b) for the previous State fiscal year and the denominator of which is adjusted gross hospital revenues reported to the Department by providers subject to the assessment imposed by subsection (b) for the State fiscal year immediately preceding the previous State fiscal year.~~

~~9) "Medicare Contractual Allowance" means the difference between charges at established rates and the amount estimated to be paid by Medicare, as appropriate, pursuant to agreements between the hospital and the Health Care Financing Administration.~~

~~10) "Provider's Savings Rate" effective July 1, 1994, is 1.88 percent multiplied by a fraction, the numerator of which is the Maximum Section 5A-2 Contribution minus the Cigarette Tax Contribution, and the denominator of which is the Maximum Section 5A-2 Contribution. Effective July 1, 1995, through March 31, 1997, the Provider's Savings Rate is 1.25 percent multiplied by the same fraction as described above.~~

~~11) "Rural hospital" means a hospital that is:~~

~~A) located outside a metropolitan statistical area;~~

~~B) located 15 miles or less from a county that is outside a metropolitan statistical area and that is licensed to perform medical/surgical or obstetrical services and had a combined approved total bed capacity of 75 or fewer beds in these two service categories as of the effective date of P.A. 88-88 (July 14, 1993), as determined by the Illinois Department of Public Health; or~~

~~C) qualified as a rural hospital by meeting subsection (1)(11)(A) or~~

~~(B) above as of July 14, 1993.~~

~~12) The Illinois Department of Public Health must have been notified in writing of any changes to a facility's bed count on or before the effective date of P.A. 88-88 (July 14, 1993). Appeals of the geographic designation of hospital provider shall be in accordance with 89 Ill. Adm. Code 148.310(m).~~

~~13) "Swing-beds" means those beds for which a hospital provider has been granted an approval from the federal Health Care Financing Administration to provide post-hospital extended care services (42 CFR 409.30, October 1, 1991) and be reimbursed as a swing-bed hospital (42 CFR 413.114, October 1, 1991).~~

(Source: Amended by emergency rulemaking at 28 Ill. Reg. _____, effective June 1, 2004, for a maximum of 150 days)

Section 140.82 Developmentally Disabled Care Provider Fund
EMERGENCY

a) Purpose and Contents

1) The Developmentally Disabled Care Provider Fund was created in the State Treasury upon enactment of Public Act 87-861, Public Act 88-88 and Public Act 89-21. Interest earned by the Fund shall be credited to the Fund. The Fund shall not be used to replace any funds appropriated to the Medicaid program by the General Assembly.

2) The Fund is created for the purpose of receiving and disbursing monies in accordance with this Section, Public Act 87-861, Public Act 88-88 and Public Act 89-21.

3) The Fund shall consist of:

A) All monies collected or received by the Department under subsection (b) of this Section~~below~~;

B) All federal matching funds received by the Department as a result of expenditures made by the Department that are attributable to monies deposited in the Fund;

C) Any interest or penalty levied in conjunction with the administration of the Fund;

D) All other monies received for the Fund from any other source, including interest earned thereon; and

E) All monies transferred from the Medicaid Developmentally Disabled Provider Participation Fee Trust Fund.

b) Provider Assessments
Beginning on July 1, 1993, an assessment is imposed upon each developmentally disabled care provider in an amount equal to six percent of its adjusted gross developmentally disabled care revenue for the prior State fiscal year. The revenue for each year will be reported on the Developmentally Disabled Care Provider Tax form to be filed by a date designated by the Department. The Department reserves the right to audit the reported data.

c) Payment of Assessment Due

1) The assessment described in subsection (b) of this Section~~above~~ shall be due and payable in quarterly installments, each equaling ~~equalling~~ one-fourth of the assessment for the year, on September 30, December 31, March 31, and May 31 of the year, modified to accommodate weekends and holidays. Providers will be notified, in writing, of the due dates. Assessment payments postmarked on the due date will be considered paid on time.

2) All payments received by the Department shall be credited first to unpaid installment amounts (rather than to penalty or interest), beginning with the most delinquent installments.

d) Reporting Requirements, Penalty, and Maintenance of Records

1) After June 30 of each State fiscal year, and on or before September 30 of the succeeding State fiscal year, every developmentally disabled care provider subject to an assessment under subsection (b) of this Section~~above~~ shall file a report with the Department. The report shall be on a form prepared by the Department. The report shall include the adjusted gross developmentally disabled care revenue from the State fiscal year just ended and shall be utilized by the Department to calculate the assessment for the State fiscal year commencing on the preceding July 1.

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If a developmentally disabled care provider operates or maintains more than one developmentally disabled care facility, a separate report shall be filed for each facility. In the case of a developmentally disabled care provider existing as a corporation or legal entity other than an individual, the report filed by it shall be signed by its president, vice-president, secretary, or treasurer or by its properly authorized agent.

2) If the developmentally disabled care provider fails to file its report for a State fiscal year on or before the due date of the report, there shall, unless waived by the Department for reasonable cause, be added to the assessment imposed in subsection (b) of this Section~~above~~ a penalty assessment equal to 25 percent of the assessment imposed for the year.

3) Every developmentally disabled care provider subject to an assessment under subsection (b) of this Section~~above~~ shall keep records and books that will permit the determination ~~determiniation~~ of adjusted gross developmentally disabled care revenue on a State fiscal year basis. All such books and records shall be maintained for a minimum of three years following the filing date of the assessment report and shall, at all times during business hours of the day, be subject to inspection by the Department or its duly authorized agents and employees.

4) Amended Assessment Reports. With the exception of amended assessment reports filed in accordance with subsection ~~subsections~~ (d)(5) or (6) of this Section ~~below~~, an amended assessment report must be filed within 30 calendar days after ~~of~~ the original report due date. The amended report must be accompanied by a letter identifying the changes and the justification for the amended report. The provider will be advised of any adjustments to the original annual assessment amount through a written notification from the Department. Penalties may be applied to the amount underpaid due to a filing error.

5) Submission of Financial Audit Statements. All developmentally disabled care providers are required to submit a copy of all financial statements audited by an external, independent auditor to the Department within 30 days after ~~of~~ the close of such externally performed financial audits. If the provider's year end does not coincide with the June 30 ending date for the assessment report, the provider must submit all financial audits covering the tax report period. An amended assessment report must accompany such external financial audit statements if the data submitted on the initial tax report changes based upon the findings of such external financial

audits and as indicated in the audited external financial statements. Penalties may be applied to the amount underpaid due to a filing error.

6) Reconsideration of Adjusted Tax. If the Department, through an audit conducted by the Department or its agent within three years after the end of the fiscal year in which the assessment was due, changes the assessment liability of a developmentally disabled care provider, the developmentally disabled care provider may request a review or reconsideration of the adjusted assessment within 30 days after ~~of~~ the Department's notification of the change in assessment liability. Requests for reconsideration of the assessment adjustment shall not be considered if such requests are not postmarked on or before the end of the 30 day review period. Penalties may be applied to the amount underpaid due to a filing error.

e) Procedure for Partial Year Reporting/Operating Adjustments

1) Cessation of business during the fiscal year in which the assessment is being paid. For a developmentally disabled care provider who ceases to conduct, operate, or maintain a facility for which the person is subject to assessment under subsection (b) of this Section ~~above~~, the assessment for the State fiscal year in which the cessation occurs shall be adjusted by multiplying the assessment computed under subsection (d) of this Section ~~above~~ by a fraction, the numerator of which is the number of months ~~days~~ in the year during which the provider conducts, operates, or maintains the facility and the denominator of which is 12~~365~~. The person shall file a final, amended report with the Department not more than 30 calendar days after the cessation, reflecting the adjustment, and shall pay with the final report the assessment for the year as so adjusted, to the extent not previously paid.

2) Commencing of business during the fiscal year in which the assessment is being paid. A developmentally disabled care provider who commences conducting, operating, or maintaining a facility for which the person is subject to assessment under subsection (b) of this Section~~above~~, shall file an initial return for the State fiscal year in which the commencement occurs within 30 calendar days thereafter and shall pay the assessment under subsection (d) of this Section~~above~~ as computed by the Department in equal installments on the due date of the initial assessment determination and on the regular installment due dates for the State fiscal year occurring after the due date of the initial assessment determination. In determining the annual assessment amount for the provider the

Department shall develop hypothetical annualized revenue projections based upon geographic location, facility size and patient case mix. The assessment determination made by the Department is final.

3) Partial Fiscal Year Operation Adjustment. For a developmentally disabled care provider that did not conduct, operate, or maintain a facility throughout the entire fiscal year reporting period, the assessment for the following State fiscal year shall be annualized based on the provider's actual developmentally disabled care revenue for the portion of the reporting period the facility was operational (dividing adjusted developmentally disabled care revenue by the number of months ~~days~~ the facility was in operation and then multiplying that amount by 12~~365~~). Developmentally disabled care revenue realized by a prior provider from the same facility during the fiscal year shall be used in the annualization equation, if available.

4) Change in Ownership and/or Operators. The full quarterly assessment must be paid on the designated due dates regardless of changes in ownership or operators. Liability for the payment of the assessment amount (including past due assessments and any interest or penalties that may have accrued against the amount) rests on the developmentally disabled care provider currently operating or maintaining the developmentally disabled care facility regardless if these amounts were incurred by the current owner or were incurred by previous owners. Collection of delinquent assessment fees from previous providers will be made against the current provider. Failure of the current provider to pay any outstanding assessment liabilities incurred by previous providers shall result in the application of penalties described in subsection (f)(1) of this Section.

f) Penalties

1) Any facility that fails to pay the full amount of an installment when due shall be charged, unless waived by the Department for reasonable cause, a penalty equal to five percent of the amount of the installment not paid on or before the due date, plus five percent of the portion thereof remaining unpaid on the last day of each monthly period ~~month~~ thereafter, not to exceed 100 percent of the installment amount not paid on or before the due date. Reasonable cause may include but is not limited to:

A) a provider who has not been delinquent on payment of an assessment due within the last three calendar years from the time the delinquency occurs;

B) a provider who can demonstrate to the Department's satisfaction that a payment was made prior to the due date; or

C) that the provider is a new owner/operator and the late payment occurred in the quarter in which the new owner/operator assumed control of the facility.

2) Within 30 ~~45~~ days after ~~from~~ the due date, the Department may begin recovery actions against delinquent facilities participating in the Medicaid Program. Payments may be withheld from the facility until the entire provider assessment, including any penalties, is satisfied, or until a reasonable repayment schedule has been approved by the Department. If a reasonable agreement cannot be reached, or if the facility fails to comply with an agreement the Department reserves the right to recover any outstanding provider assessment, interest and penalty by recouping the amount or a portion thereof from the provider's future payments from the Department. The provider may appeal this recoupment in accordance with the Department's ~~Department~~ rules at ~~contained in~~ 89 Ill. Adm. Code 104. The Department has the right to continue recoupment during the appeal process. Penalties pursuant to subsection (f)(1) of this Section ~~above~~ will continue to accrue during the recoupment process. Recoupment proceedings against the same facility two times in a fiscal year may be cause for termination from the Program. Failure by the Department to initiate recoupment activities within 30 ~~45~~ days shall not reduce the provider's liabilities nor shall it preclude the Department from taking action at a later date.

3) If the facility does not participate in the Medicaid Program, or is no longer doing business with the Department, or the Department cannot recover the full amount due through the claims processing system, within three months of the assessment due date, the Department may begin legal action to recover the monies, including penalties and interest owed, plus court costs.

g) Delayed Payment – Groups of Facilities.
The Department ~~Director~~ may establish delayed payment of assessments and/or waive the payment of interest and penalties for groups of facilities when:

1) the State delays payments to facilities due to problems related to State ~~state~~ cash flow; or

2) a cash flow bond pool's or any other group financing plans' requests from providers for loans are in excess of its scheduled proceeds such that a significant number of facilities will be unable to obtain a loan to pay the assessment.

h) Delayed Payment – Individual Facilities
In addition to the provisions of subsection (g) of this Section~~above~~, the Department ~~Director~~ may delay assessments for individual facilities that are unable to make timely payments under this Section due to financial difficulties. No delayed payment arrangements shall extend beyond the last business day of the calendar quarter following the quarter in which the assessment was to have been received by the Department as described in subsection (c) of this Section~~above~~.

1) Criteria. Delayed payment provisions may be instituted only under extraordinary circumstances. Delayed payment provisions shall be made only to qualified facilities who meet all of the following requirements:

A) the facility has experienced an emergency which necessitates institution of delayed payment provisions. Emergency in this instance is defined as a circumstance under which institution of the payment and penalty provisions described in subsections (c)(1), (c)(2), (f)(1), (f)(2) and (f)(3) of this Section~~above~~ would impose severe and irreparable harm to the clients served. Circumstances which may create such emergencies include, but are not limited to, the following:

i) Department system errors (either automated system or clerical) which have precluded payments, or which have caused erroneous payments such that the facility's ability to provide further services to clients is severely impaired;

ii) cash flow problems encountered by a facility which are unrelated to Department technical system problems and which result in extensive financial problems to a facility adversely impacting on its ability to serve its clients.

B) the facility serves a significant number of clients under the Medical Assistance Program. Significant in this instance means:

i) 85 percent or more of their residents must be eligible for public assistance;

ii) a government-owned facility, which meets the cash flow criteria under subsection (h)(1)(A)(ii) of this Section~~above~~.

iii) a provider who has filed for Chapter 11 bankruptcy, which meets the cash flow criterion under subsection (h)(1)(A)(ii) of this Section~~above~~.

C) the facility must file a delay of payment request as defined in subsection (h)(3)(A) of this Section~~below~~, and the request must include a Cash Position Statement which is based upon current assets, current liabilities and other data for a date which is less than 60 days prior to the date of filing. Any liabilities payable to owners or related parties must not be reported as current liabilities on the Cash Position Statement. A deferral of assessment payments will be denied if any of the following criteria are met:

i) the ratio of current assets divided by current liabilities is greater than 2.0;

ii) cash, short term investments and long term investments equal or exceed the total of accrued wages payable and the assessment payment. Long term investments which are unavailable for expenditure for current operations due to donor restrictions or contractual requirements will not be used in this calculation;

iii) cash or other assets have ~~has~~ been distributed during the previous 90 days to owners or related parties in an amount equal to or exceeding the assessment payment for dividends, salaries in excess of those allowable under Section 140.541 or payments for purchase of goods or services in excess of cost as defined in Section 140.537.

D) the facility, with the exception of government owned facilities, must show evidence of denial of an application to borrow the

assessment funds through a cash flow bond pool or financial institutions such as a commercial bank. The denial must be 90 days old or less.

E) the facility must sign an agreement with the Department which specifies the terms and conditions of the delayed payment provisions. The agreement shall contain the following provisions:

i) specific reason(s) for institution of the delayed payment provisions;

ii) specific dates on which payments must be received and the amount of payment which must be received on each specific date described;

iii) the interest or a statement of interest waiver as described in subsection (h)(5) of this Section ~~below~~ that shall be due from the facility as a result of institution of the delayed payment provisions;

iv) a certification stating that, should the entity be sold, the new owners will be made aware of the liability and any agreement selling the entity will include provisions that the new owners will assume responsibility for repaying the debt to the Department according to the original agreement;

v) a certification stating that all information submitted to the Department in support of the delayed payment request is true and accurate to the best of the signator's knowledge; and

vi) such other terms and conditions that may be required by the Department.

2) A facility that ~~which~~ does not meet the ~~above~~ criteria listed in subsection (h)(1) may request a delayed payment schedule ~~and/or the waiver of interest and penalties~~. The Department ~~Director~~ may approve the request, notwithstanding the facility not meeting the above criteria, upon a sufficient showing of financial difficulties and good cause by the facility. If the request for a delayed payment schedule ~~and/or waiver of interest and penalties~~ is approved, all other conditions of this subsection (h) shall

apply.

3) Approval Process

A) In order to receive consideration for delayed payment provisions, facilities must submit their request in writing (telefax requests are acceptable) to the Bureau of Program and Reimbursement Analysis. The request must be received by the due date designated by the Department. Providers will be notified, in writing, of the due dates for submitting delay of payment requests. Requests must be complete and contain all required information before they are considered to have met the time requirements for filing a delayed payment request. All telefax requests must be followed up with original written requests postmarked no later than the date of the telefax. The request must include:

i) an explanation of the circumstances creating the need for the delayed payment provisions;

ii) supportive documentation to substantiate the emergency nature of the request and risk of irreparable harm to the clients; and

iii) specification of the specific arrangements requested by the facility.

B) The facility shall be notified by the Department, in writing prior to the assessment due date, of the Department's decision with regard to the request for institution of delayed payment provisions. An agreement shall be issued to the facility for all approved requests. The agreement must be signed by the administrator, owner or other authorized representative and be received by the Department prior to the first scheduled payment date listed in such agreement.

4) Waiver of Penalties. The penalties described in subsections (f)(1) and (f)(2) of this Section may be waived upon approval of the facility's request for institution of delayed payment provisions. In the event a facility's request for institution of delayed payment provisions is approved and the Department has received the signed agreement in accordance with subsection (h)(3)(B) of this Section~~above~~, such penalties shall be permanently waived for the subject quarter unless the facility fails to meet

all of the terms and conditions of the agreement. In the event the facility fails to meet all of the terms and conditions of the agreement, the agreement shall be considered null and void and such penalties ~~penalities~~ shall be fully reinstated.

5) Interest. The delayed payments shall include interest at a rate not to exceed the State of Illinois borrowing rate. The applicable interest rate shall be identified in the agreement described in subsection (h)(1)(E) of this Section~~above~~. The interest may be waived by the Department ~~Director~~ if the facility's current ratio, as described in subsection (h)(1)(C) of this Section,~~above~~ is 1.5 or less and the facility meets the criteria in subsections (h)(1)(A) and (B) of this Section~~above~~. Any such waivers granted shall be expressly identified in the agreement described in subsection (h)(1)(E) of this Section~~above~~.

6) Subsequent Delayed Payment Arrangements. Once a facility has requested and received approval for delayed payment arrangements, the facility shall not receive approval for subsequent delayed payment arrangements until such time as the terms and conditions of any current delayed payment agreement have been satisfied or unless the provider is in full compliance with the terms of the current delay of payment agreement. The waiver of penalties described in subsection (h)(4) of this Section~~above~~ shall not apply to a facility that has not satisfied the terms and conditions of any current delayed payment agreement.

i) Administration and Enforcement Provisions ~~; enforcement provisions~~
Pursuant to Section 5C-6 of Public Act ~~P.A.~~ 86-861, to the extent practicable, the Department shall administer and enforce Public Act ~~P.A.~~ 86-861, Public Act ~~P.A.~~ 88-88 and Public Act ~~P.A.~~ 89-21, and collect the assessments, interest, and penalty assessments imposed under the law, using procedures employed in its administration of this Code generally and, as it deems appropriate, in a manner similar to that in which the Department of Revenue administers and collects the retailers' occupation tax under the Retailers' Occupation Tax Act ("ROTA").

j) Nothing in Public Act ~~P.A.~~ 89-21 shall be construed to prevent the Department from collecting all amounts due under this Section pursuant to an assessment imposed before the effective date of Public Act ~~P.A.~~ 89-21.

k) Definitions

1) "Adjusted gross developmentally disabled care revenue" means the

developmentally disabled care provider's total revenue for inpatient residential services, less contractual allowances and discounts on patients' accounts, but does not include non-patient revenue from sources such as contributions, donations or bequests, investments, day training services, television and telephone service, rental of facility space, or sheltered care revenue. Adjusted gross developmentally disabled care revenue must be reported on an accrual basis for the tax reporting period. All patient revenue accrued during the tax reporting period must be included even though reimbursement may occur after the tax reporting period. Patient revenue must be reported on a basis that is consistent with methods used on the facility's last two cost reports.

2) "Contractual Allowance" means the difference between charges at established rates and the amount estimated to be paid by third party payors or patients, as appropriate, pursuant to agreements/contracts with the developmentally disabled care provider; courtesy and policy discounts provided to employees, medical staff and clergy; and charity care, but "contractual allowance" does not mean any Provider Participation fees/taxes paid to the ~~Illinois~~ Department ~~of Public Aid~~.

3) "Department" means the Illinois Department of Public Aid.

4) "Developmentally disabled care facility" means an intermediate care facility for the mentally retarded within the meaning of Title XIX of the Social Security Act, whether public or private and whether organized for profit or not-for-profit, but shall not include any facility operated by the State.

5) "Developmentally disabled care provider" means a person conducting, operating, or maintaining a developmentally disabled care facility. For this purpose, "person" means any political subdivision of the State, municipal corporation, individual, firm, partnership, corporation, company, limited liability company, association, joint stock association, or trust, or a receiver, executor, trustee, guardian or other representative appointed by order of any court.

6) "Facility" means all intermediate care facilities as defined under "Developmentally disabled care facility" (subsection (k)(4)) ~~above~~.

7) "Fund" means the Developmentally Disabled Care Provider Fund.

DEPARTMENT OF PUBLIC AID

NOTICE OF EMERGENCY AMENDMENTS

(Source: Amended by emergency rulemaking at 28 Ill. Reg. _____, effective June 1, 2004, for a maximum of 150 days)

Section 140.84 Long Term Care Provider Fund
EMERGENCY

a) Purpose and Contents

1) The Long Term Care Provider Fund was created in the State Treasury upon enactment of Public Act 87-861, Public Act 88-88 and Public Act 89-21. Interest earned by the Fund shall be credited to the Fund. The Fund ~~fund~~ shall not be used to replace any funds appropriated to the Medicaid program by the General Assembly.

2) The Fund is created for the purpose of receiving and disbursing monies in accordance with this Section and Public Act 87-861, Public Act 88-88 and Public Act 89-21.

3) The Fund shall consist of:

A) All monies collected or received by the Department under subsection (b) of this Section~~below~~;

B) All federal matching funds received by the Department as a result of expenditures made by the Department that are attributable to monies deposited in the Fund;

C) Any interest or penalty levied in conjunction with the administration of the Fund;

D) All other monies received for the Fund from any other source, including interest earned thereon;

E) All monies transferred from the Medicaid Long Term Care Provider Participation Fee Trust Fund; and

F) All monies transferred from the Tobacco Products Tax Act.

b) License Fee
Beginning on July 1, 1993, a nursing home license fee is imposed upon each nursing home provider in an amount equal to $1.50 for each licensed nursing bed

day for the calendar quarter in which the payment is due. All nursing beds subject to licensure under the Nursing Home Care Act or the Hospital Licensing Act, with the exception of swing-beds, as defined in subsection (k)(8) of this Section will be used to calculate the licensed nursing bed days for each quarter. This license fee shall not be billed or passed on to any resident of a nursing home operated by the nursing home provider. Changes in the number of licensed nursing beds will be reported to the Department quarterly, as described in subsection (d)(1) of this Section~~below~~. The Department reserves the right to audit the reported data.

c) Payment of License Fee Due

1) The license fee described in subsection (b) of this Section ~~above~~ shall be due and payable in quarterly installments, on September 10, December 10, March 10, and June 10 of the year, modified to accommodate weekends and holidays. Providers will be notified, in writing, of the quarterly due dates. License fee payments postmarked on the due date will be considered as paid on time.

2) All payments received by the Department shall be credited first to unpaid installment amounts (rather than to penalty or interest), beginning with the most delinquent installments.

3) County nursing homes directed and maintained pursuant to Section 5-1005 of the Counties Code may meet their license fee obligation by the county government certifying to the Department that county expenditures have been obligated for the operation of the county nursing home in an amount at least equal to the amount of the license fee. County governments wishing to provide such certification must:

A) Sign a certification form certifying that the funds represent expenditures eligible for federal financial participation under Title XIX of the Social Security Act (42 USC ~~U.S.C.~~ 1396~~ et seq.~~), and that these funds are not federal funds, or are federal funds authorized by federal law to be used to match other federal funds;

B) Submit the certification document to the Department once a year along with a copy of that portion of the county budget showing the funds appropriated for the operation of the county nursing home. These documents must be submitted within 30 days after ~~of~~ the final approval of the county budget;

C) Submit the monthly claim form in the amount of the rate established by the Department minus any third party liability amount. This amount will be reduced by an amount determined by the amount certified and the number of months remaining in the fiscal year, prior to payment because a certification statement was provided in lieu of an actual license fee payment; and

D) Make records available upon request to the Department and/or the United States Department of Health and Human Services pertaining to the certification of county funds.

d) Reporting Requirements, Penalty, and Maintenance of Records

1) On or before the due dates described in subsection (c)(1) of this Section, each nursing home provider subject to a license fee under subsection (b) of this Section shall file a report with the Department reflecting any changes in the number of licensed nursing beds occurring during the reporting quarter. The report shall be on a form prepared by the Department. The changes will be reported quarterly and shall be submitted with the revised quarterly license fee payment. For the purpose of calculating the license fee described in subsection (b) of this Section~~above~~, all changes in licensed nursing beds will be effective upon approval of the change by the Illinois Department of Public Health. Documentation showing the change in licensed nursing beds, and the date the change was approved by the Illinois Department of Public Health, must be submitted to the Department of Public Aid with the licensed nursing bed change form. If a nursing home provider operates or maintains more than one nursing home, a separate report shall be filed for each facility. In the case of a nursing home provider existing as a corporation or legal entity other than an individual, the report filed by it shall be signed by its president, vice-president, secretary, or treasurer or by its properly authorized agent.

2) If the nursing home provider fails to file its report for a State fiscal year on or before the due date of the report, there shall, unless waived by the Department for reasonable cause, be added to the license fee imposed in subsection (b) of this Section ~~above~~ a penalty fee equal to 25 percent of the license fee imposed for the year.

3) Every nursing home provider subject to a license fee under subsection (b) of this Section ~~above~~ shall keep records and books that will permit the determination of licensed nursing bed days on a quarterly basis. All such

books and records shall be maintained for a minimum of three years following the filing date of the license fee report and shall, at all times during business hours of the day, be subject to inspection by the Department or its duly authorized agents and employees.

4) Amended License Fee Reports. With the exception of amended license fee reports filed in accordance with subsection ~~subsections~~ (d)(5) of this Section ~~below~~, an amended license fee report must be filed within 30 calendar days after ~~of~~ the original report due date. The amended report must be accompanied by a letter identifying the changes and the justification for the amended report. The provider will be advised of any adjustments to the original annual license fee amount through a written notification from the Department. Penalties may be applied to the amount underpaid due to a filing error.

5) Reconsideration of Adjusted License Fee. If the Department, through an audit conducted by the Department or its agent within three years after the end of the fiscal year in which the assessment license fee was due, changes the license fee liability of a nursing home provider, the nursing home provider may request a review or reconsideration of the adjusted license fee within 30 days after ~~of~~ the Department's notification of the change in license fee liability. Requests for reconsideration of the license fee adjustment shall not be considered if such requests are not postmarked on or before the end of the 30 day review period. Penalties may be applied to the amount underpaid due to a filing error.

e) Procedure for Partial Year Reporting/Operating Adjustments

1) Cessation of business during the quarter in which the license fee is being paid and the closure date has been set. A nursing home provider who ceases to conduct, operate, or maintain a facility for which the person is subject to the license fee imposed under subsection (b) of this Section~~above~~, and for which the closure date for the facility has been set, shall file a final report with the Department on or before the due date for the quarter in which the closure is to occur. The report will reflect the adjusted number of days the facility is open during the reporting quarter and shall be submitted with the final quarterly payment. Example: A facility is set to close on September 24. On or before the due date for the reporting quarter of July 1 through September 30, the facility will submit a final report reflecting 86 days of operation (July 1 through September 24) and the corresponding quarterly license fee payment.

2) Cessation of business after the quarterly due date. A nursing home provider who ceases to conduct, operate, or maintain a facility for which the person is subject to the license fee imposed under subsection (b) of this Section~~above~~, and for which closure occurs after the due date for the reporting quarter, but prior to the last day of the reporting quarter, shall file an amended final report with the Department within 30 days after ~~of~~ the closure date. The amended report will reflect the number of days the facility was operational during the reporting quarter and the revised license fee amount. Upon verifying the data submitted on the amended report, the Department will issue a refund for the amount overpaid. Example: On December 10 a facility pays the license fee for 92 days covering the reporting quarter of October 1 through December 31. The facility closes on December 27. An amended report reflecting 88 days, the actual number of days the facility was operational during the quarter (October 1 through December 27) must be filed with the Department.

3) Cessation of business prior to the quarterly due date. A nursing home provider who ceases to conduct, operate, or maintain a facility for which the person is subject to the license fee imposed under subsection (b) of this Section~~above~~, and for which closure occurs prior to the due date for the reporting quarter, shall file a final report with the Department within 30 days after ~~of~~ the closure date. The final report will reflect the number of days the facility was operational during the reporting quarter and the corresponding final license fee amount. Closure dates will be verified with the Department of Public Health, and if necessary adjustments will be made to the final license fee due. Example: Facility closes on January 17. On or before February 17, the facility must file a final report for the reporting quarter of January 1 through March 31. The report would reflect 17 days of operation (January 1 through January 17) during the quarter and must be accompanied by the final license fee payment for the facility.

4) Commencing of business during the fiscal year in which the license fee is being paid. A nursing home provider who commences conducting, operating, or maintaining a facility for which the person is subject to the license fee imposed under subsection (b) of this Section~~above~~, shall file an initial report for the reporting quarter in which the commencement occurs within 30 calendar days thereafter and shall pay the license fee under subsection (d) of this Section~~above~~.

5) Change in Ownership and/or Operators. The full quarterly

assessment/license fee must be paid on the designated due dates regardless of changes in ownership or operators. Liability for the payment of the assessment/license fee amount (including past due assessment/license fees and any interest or penalties that may have accrued against the amount) rests on the nursing home provider currently operating or maintaining the nursing facility regardless if these amounts were incurred by the current owner or were incurred by previous owners. Collection of delinquent assessment/license fees from previous providers will be made against the current provider. Failure of the current provider to pay any outstanding assessment/license fee liabilities incurred by previous providers shall result in the application of penalties described in subsection (f)(1) of this Section.

f) Penalties

1) Any nursing home provider that fails to pay the full amount of an installment when due, or fails to report a change in licensed nursing beds approved by the Department of Public Health prior to the due date of the installment, shall be charged, unless waived by the Department for reasonable cause, a penalty equal to five percent of the amount of the installment not paid on or before the due date, plus five percent of the portion thereof remaining unpaid on the last day of each monthly period ~~month~~ thereafter, not to exceed 100 percent of the installment amount not paid on or before the due date. Reasonable cause may include but is not limited to:

A) a provider who has not been delinquent on payment of an assessment due, within the last three calendar years from the time the delinquency occurs;

B) a provider who can demonstrate to the Department's satisfaction that a payment was made prior to the due date; or

C) that the provider is a new owner/operator and the late payment occurred in the quarter in which the new owner/operator assumed control of the facility.

2) Within 30 ~~45~~ days after ~~from~~ the due date, the Department may begin recovery actions against delinquent nursing home providers participating in the Medicaid Program. Payments may be withheld from the provider until the entire license fee, including any penalties, is satisfied or until a

reasonable repayment schedule has been approved by the Department. If a reasonable agreement cannot be reached, or if a provider fails to comply with an agreement, the Department reserves the right to recover any outstanding license fee, interest and penalty by recouping the amount or a portion thereof from the provider's future payments from the Department. The provider may appeal this recoupment in accordance with the Department's ~~Department~~ rules at ~~contained in~~ 89 Ill. Adm. Code 104. The Department has the right to continue recoupment during the appeal process. Penalties pursuant to subsection (f)(1) of this Section ~~above~~ will continue to accrue during the recoupment process. Recoupment proceedings against the same nursing home provider two times in a fiscal year may be cause for termination from the Program. Failure by the Department to initiate recoupment activities within 30 ~~45~~ days shall not reduce the provider's liabilities nor shall it preclude the Department from taking action at a later date.

3) If the nursing home provider does not participate in the Medicaid Program, or is no longer doing business with the Department, or the Department cannot recover the full amount due through the claims processing system, within three months after ~~of~~ the license fee due date, the Department may begin legal action to recover the monies, including penalties and interest owed, plus court costs.

g) Delayed Payment – Groups of Facilities
The Department ~~Director~~ may establish delayed payment of fees and/or waive the payment of interest and penalties for groups of facilities when:

1) the State delays payments to facilities due to problems related to State ~~state~~ cash flow; or

2) a cash flow bond pool's or any other group financing plans' requests from providers for loans are in excess of its scheduled proceeds such that a significant number of facilities will be unable to obtain a loan to pay the license fee.

h) Delayed Payment – Individual Facilities
In addition to the provisions of subsection (g) of this Section~~above~~, the Department ~~Director~~ may delay license fees for individual facilities that are unable to make timely payments under this Section due to financial difficulties. No delayed payment arrangements shall extend beyond the last business day of the calendar quarter following the quarter in which the license fee was to have

been received by the Department as described in subsection (c) of this Section~~above~~.

1) Criteria. Delayed payment provisions may be instituted only under extraordinary circumstances. Delayed payment provisions shall be made only to qualified facilities who meet all of the following requirements:

A) the facility has experienced an emergency which necessitates institution of delayed payment provisions. Emergency in this instance is defined as a circumstance under which institution of the payment and penalty provisions described in subsections (c)(1), (c)(2), (f)(1), (f)(2) and (f)(3) of this Section~~above~~ would impose severe and irreparable harm to the clients served. Circumstances which may create such emergencies include, but are not limited to, the following:

i) Department system errors (either automated system or clerical) which have precluded payments, or which have caused erroneous payments such that the facility's ability to provide further services to clients is severely impaired;

ii) cash flow problems encountered by a facility which are unrelated to Department technical system problems and which result in extensive financial problems to a facility adversely impacting on its ability to serve its clients.

B) the facility serves a significant number of clients under the Medical Assistance Program. Significant in this instance means:

i) 85 percent or more of their residents must be eligible for public assistance;

ii) a government-owned facility, which meets the cash flow criterion under subsection (h)(1)(A)(ii) of this Section~~above~~.

iii) a provider who has filed for Chapter 11 bankruptcy, which meets cash flow criterion ~~criteria~~ under subsection (h)(1)(A)(ii) of this Section~~above~~.

C) the facility must file a delay of payment request as defined under

subsection (h)(3)(A) of this Section ~~below~~ and the request must include a Cash Position Statement which is based upon current assets, current liabilities and other data for a date which is less than 60 days prior to the date of filing. Any liabilities payable to owners or related parties must not be reported as current liabilities on the Cash Position Statement. A deferral of license fee payments will be denied if any of the following criteria are met:

i) the ratio of current assets divided by current liabilities is greater than 2.0;

ii) cash, short term investments and long term investments equal or exceed the total of accrued wages payable and the license fee payment. Long term investments which are unavailable for expenditure for current operations due to donor restrictions or contractual requirements will not be used in this calculation;

iii) cash or other assets has been distributed during the previous 90 days to owners or related parties in an amount equal to or exceeding the license fee payment for dividends, salaries in excess of those allowable under Section 140.541 or payments for purchase of goods or services in excess of cost as defined in Section 140.537.

D) the facility, with the exception of government owned facilities, must show evidence of denial of an application to borrow license fee funds through a cash flow bond pool or financial institutions such as a commercial bank. The denial must be 90 days old or less.

E) the facility must sign an agreement with the Department which specifies the terms and conditions of the delayed payment provisions. The agreement shall contain the following provisions:

i) specific reason(s) for institution of the delayed payment provisions;

ii) specific dates on which payments must be received and the amount of payment which must be received on each specific date described;

iii) the interest or a statement of interest waiver as described in subsection (h)(5) of this Section ~~below~~ that shall be due from the facility as a result of institution of the delayed payment provisions;

iv) a certification stating that, should the entity be sold, the new owners will be made aware of the liability and any agreement selling the entity will include provisions that the new owners will assume responsibility for repaying the debt to the Department according to the original agreement;

v) a certification stating that all information submitted to the Department in support of the delayed payment request is true and accurate to the best of the signator's knowledge; and

vi) such other terms and conditions that may be required by the Department.

2) A facility that ~~which~~ does not meet the above criteria may request a delayed payment schedule ~~and/or the waiver of interest and penalties~~. The Department ~~Director~~ may approve the request, notwithstanding the facility not meeting the above criteria, upon a sufficient showing of financial difficulties and good cause by the facility. If the request for a delayed payment schedule ~~and/or waiver of interest and penalties~~ is approved, all other conditions of this subsection (h) shall apply.

3) Approval Process

A) In order to receive consideration for delayed payment provisions, facilities must submit their request in writing (telefax requests are acceptable) to the Bureau of Program and Reimbursement Analysis. The request must be received by the due date designated by the Department. Providers will be notified, in writing, of the due dates for submitting delay of payment requests. Requests must be complete and contain all required information before they are considered to have met the time requirements for filing a delayed payment request. All telefax requests must be followed up with original written requests, postmarked no later than the date of the telefax. The request must include:

i) an explanation of the circumstances creating the need for the delayed payment provisions;

ii) supportive documentation to substantiate the emergency nature of the request including a cash position statement as defined in subsection (h)(1)(C) of this Section~~above~~; a denial of application to borrow the license fee as defined in subsection (h)(1)(D) of this Section~~above~~ and an explanation of the risk of irreparable harm to the clients; and

iii) specification of the specific arrangements requested by the facility.

B) The facility shall be notified by the Department, in writing prior to the license fee due date, of the Department's decision with regard to the request for institution of delayed payment provisions. An agreement shall be issued to the facility for all approved requests. The agreement must be signed by the administrator, owner or other authorized representative and be received by the Department prior to the first scheduled payment date listed in such agreement.

4) Waiver of Penalties. The penalties described in subsections (f)(1) and (f)(2) of this Section~~above~~ may be waived upon approval of the facility's request for institution of delayed payment provisions. In the event a facility's request for institution of delayed payment provisions is approved and the Department has received the signed agreement in accordance with subsection (h)(3)(B) of this Section~~above~~, such penalties shall be permanently waived for the subject quarter unless the facility fails to meet all of the terms and conditions of the agreement. In the event the facility fails to meet all of the terms and conditions of the agreement, the agreement shall be considered null and void and such penalties shall be fully reinstated.

5) Interest. The delayed payments shall include interest at a rate not to exceed the State of Illinois borrowing rate. The applicable interest rate shall be identified in the agreement described in subsection (h)(1)(E) of this Section~~above~~. The interest may be waived by the Department ~~Director~~ if the facility's current ratio, as described in subsection (h)(1)(C) of this Section~~above~~, is 1.5 or less and the facility meets the criteria in

subsections (h)(1)(A) and (B) of this Section. Any such waivers granted shall be expressly identified in the agreement described in subsection (h)(1)(E) of this Section~~above~~.

6) Subsequent Delayed Payment Arrangements. Once a facility has requested and received approval for delayed payment arrangements, the facility shall not receive approval for subsequent delayed payment arrangements until such time as the terms and conditions of any current delayed payment agreement have been satisfied or unless the provider is in full compliance with the terms of the current delay of payment agreement. The waiver of penalties described in subsection (h)(4) of this Section~~above~~ shall not apply to a facility that has not satisfied the terms and conditions of any current delayed payment agreement.

i) Administration and Enforcement Provisions ~~– enforcement provisions~~
Pursuant to Section 5B-7 of Public Act ~~P.A.~~ 87-861, to the extent practicable, the Department shall administer and enforce Public Act ~~P.A.~~ 86-861, Public Act ~~P.A.~~ 88-88 and Public Act ~~P.A.~~ 89-21, and collect the license fees, interest, and penalty fees imposed under the law, using procedures employed in its administration of this Code generally and, as it deems appropriate, in a manner similar to that in which the Department of Revenue administers and collects the retailers' occupation tax under the Retailers' Occupation Tax Act ("ROTA").

j) Nothing in Public Act ~~P.A.~~ 89-21 shall be construed to prevent the Department from collecting all amounts due under this Section pursuant to an assessment imposed before the effective date of Public Act ~~P.A.~~ 89-21.

k) Definitions
As used in this Section, unless the context requires otherwise:

1) "Department" means the Illinois Department of Public Aid.

2) "Fund" means the Long-Term Care Provider Fund.

3) "Hospital provider" means a person licensed by the Department of Public Health to conduct, operate, or maintain a hospital, regardless of whether the person is a Medicaid provider. For purposes of this definition, "person" means any political subdivision of the State, municipal corporation, individual, firm, partnership, corporation, company, limited liability company, association, joint stock association, or trust, or a receiver, executor, trustee, guardian, or other representative appointed by

order of any court.

4) "Licensed nursing bed days" means, with respect to a nursing home provider, the sum for all nursing beds, with the exception of swing-beds, as described in subsection (k)(8) of this Section, of the number of days during a calendar quarter on which each bed is covered by a license issued to that provider under the Nursing Home Care Act or the Hospital Licensing Act.

5) "Nursing home" means a skilled nursing or intermediate long-term care facility, whether public or private and whether organized for profit or not-for-profit, that is subject to licensure by the Illinois Department of Public Health under the Nursing Home Care Act, including a county nursing home directed and maintained under Section 5-1005 of the Counties Code; and a part of a hospital in which skilled or intermediate long-term care services within the meaning of Title XVIII or XIX of the Social Security Act are provided. However, the term "nursing home" does not include a facility operated solely as an intermediate care facility for the mentally retarded within the meaning on Title XIX of the Social Security Act.

6) "Nursing home provider" means a person licensed by the Department of Public Health to operate and maintain a skilled nursing or intermediate long-term care facility which charges its residents, a third party payor, Medicaid, of Medicare for skilled nursing or intermediate long-term care services; or a hospital provider that provides skilled or intermediate long-term care services within the meaning of Title XVIII or XIX of the Social Security Act.

7) "Person" means, in addition to natural persons, any political subdivision of the State, municipal corporation, individual, firm, partnership, corporation, company, limited liability company, association, joint stock association, or trust, or a receiver, executor, trustee, guardian, or other representative appointed by order of any court.

8) "Swing-beds" means those beds for which a hospital provider has been granted an approval from the federal Health Care Financing Administration to provide post-hospital extended care services (42 CFR 409.30, October 1, 1991) and be reimbursed as a swing-bed hospital (42 CFR 413.114, October 1, 1991).

DEPARTMENT OF PUBLIC AID

NOTICE OF EMERGENCY AMENDMENTS

(Source: Amended by emergency rulemaking at 28 Ill. Reg. _____, effective June 1, 2004, for a maximum of 150 days)

DEPARTMENT OF PUBLIC AID

NOTICE OF EMERGENCY AMENDMENTS

1) Heading of the Part: Hospital Services

2) Code Citation: 89 Ill. Adm. Code 148

3)

Section Numbers:	Emergency Action:
148.85	New Section
148.90	New Section
148.95	New Section
148.100	New Section
148.103	New Section
148.110	New Section
148.112	New Section
148.310	Amendment

4) Statutory Authority: Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-13] and Public Act 93-0659

5) Effective Date: June 1, 2004

6) If this emergency amendment is to expire before the end of the 150-day period, please specify the date on which it is to expire: No

7) Date Filed with the Index Department: May 28, 2004

8) A copy of the emergency amendment, including any materials incorporated by reference, is on file in the agency's principal office and is available for public inspection.

9) Reason for Emergency: These emergency amendments are being filed pursuant to requirements under Public Act 93-0659 which are designed to improve access to hospital services. To ensure the availability of necessary hospital services, payments will be provided under seven new quarterly rate adjustment programs. Immediate implementation of these amendments is necessary to ensure access to essential medical services for public assistance clients. Emergency rulemaking is specifically authorized for the implementation of these changes for fiscal year 2004 by Section 5A-13 of Public Act 93-0659.

10) Complete Description of the Subjects and Issues Involved: These emergency amendments concerning hospital services are being filed pursuant to Public Act 93-0659 under which a number of new quarterly rate adjustment programs are being established to improve access to hospital services. The emergency rulemaking describes eligibility

requirements and rate methodology for each rate adjustment. These new programs include:

Supplemental Tertiary Care Adjustment Payments,
Medicaid Inpatient Utilization Rate (MIUR) Adjustment Payments,
Medicaid Outpatient Utilization Rate (MOUR) Adjustment Payments,
Outpatient Rural Hospital Adjustment Payments,
Outpatient Service Adjustment Payments,
Psychiatric Base Rate Adjustment Payments, and
High Volume Adjustment Payments.

Emergency amendments to Section 148.310 add rate review provisions for each new rate adjustment program.

These rate adjustments are expected to increase expenditures for hospital services by $854.2 million during the remainder of fiscal year 2004 and fiscal year 2005.

11) Are there any other amendments pending on this Part? Yes

Section Numbers:	Proposed Action	Illinois Register Citation
148.30	Amendment	February 6, 2004 (28 Ill. Reg. 1998)
148.85	New Section	April 9, 2004 (28 Ill. Reg. 5808)
148.90	New Section	April 9, 2004 (28 Ill. Reg. 5808)
148.95	New Section	April 9, 2004 (28 Ill. Reg. 5808)
148.100	New Section	April 9, 2004 (28 Ill. Reg. 5808)
148.103	New Section	April 9, 2004 (28 Ill. Reg. 5808)
148.110	New Section	April 9, 2004 (28 Ill. Reg. 5808)
148.112	New Section	April 9, 2004 (28 Ill. Reg. 5808)
148.150	Amendment	March 19, 2004 (28 Ill. Reg. 4848)
148.210	Amendment	February 6, 2004 (28 Ill. Reg. 1998)
148.295	Amendment	February 27, 2004 (28 Ill. Reg. 3719)
148.310	Amendment	April 9, 2004 (28 Ill. Reg. 5808)

12) Statement of Statewide Policy Objectives: These emergency amendments neither create nor expand any state mandates affecting units of local government.

13) Information and questions regarding this amendment shall be directed to:

Joanne Scattoloni
Office of the General Counsel, Rules Section

DEPARTMENT OF PUBLIC AID

NOTICE OF EMERGENCY AMENDMENTS

Illinois Department of Public Aid
201 South Grand Avenue East, Third Floor
Springfield, Illinois 62763-0002
(217) 524-0081

The full text of the Emergency Amendments begins on the next page:

DEPARTMENT OF PUBLIC AID

NOTICE OF EMERGENCY AMENDMENTS

TITLE 89: SOCIAL SERVICES
CHAPTER I: DEPARTMENT OF PUBLIC AID
SUBCHAPTER d: MEDICAL PROGRAMS

PART 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
148.85 Supplemental Tertiary Care Adjustment Payments
EMERGENCY
148.90 Medicaid Inpatient Utilization Rate (MIUR) Adjustment Payments~~Heart Transplants (Repealed)~~
EMERGENCY
148.95 Medicaid Outpatient Utilization Rate (MOUR) Adjustment Payments
EMERGENCY
148.100 Outpatient Rural Hospital Adjustment Payments~~Liver Transplants (Repealed)~~
EMERGENCY
148.103 Outpatient Service Adjustment Payments
EMERGENCY
148.105 Psychiatric Adjustment Payments
148.110 Psychiatric Base Rate Adjustment Payments~~Bone Marrow Transplants (Repealed)~~
EMERGENCY
148.112 High Volume Adjustment Payments
EMERGENCY

DEPARTMENT OF PUBLIC AID

NOTICE OF EMERGENCY AMENDMENTS

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 Organized Under the Town Hospital Act
148.180 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
EMERGENCY
148.320 Alternatives
148.330 Exemptions

DEPARTMENT OF PUBLIC AID

NOTICE OF EMERGENCY AMENDMENTS

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

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 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. 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 amendment 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; emergency amendment at 28 Ill. Reg. 5902, effective April 1, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 7101, effective May 3, 2004; amended at 28 Ill. Reg. _____, effective June 1, 2004; emergency amendment at 28 Ill. Reg. _____, effective June 1, 2004, for a maximum of 150 days.

DEPARTMENT OF PUBLIC AID

NOTICE OF EMERGENCY AMENDMENTS

SUBPART B: REIMBURSEMENT AND RELATED PROVISIONS

Section 148.85 Supplemental Tertiary Care Adjustment Payments EMERGENCY

a) Qualifying Criteria. Supplemental Tertiary Care Adjustment Payments, as described in subsection (b) of this Section, shall be made to all qualifying Illinois hospitals. An Illinois hospital shall qualify for payment if it was deemed eligible for payments under the Tertiary Care Adjustment Payments for State fiscal year 2003, as described in Section 148.296, excluding:

1) County-owned hospitals as described in Section 148.25(b)(1)(A).

2) Hospitals organized under the University of Illinois Hospital Act [110 ILCS 330], as described in Section 148.25(b)(1)(B).

3) A hospital owned or operated by a State agency, as described in Section 148.25(b)(6).

b) Supplemental Tertiary Care Adjustment Payments

1) For the supplemental tertiary care adjustment period occurring in State fiscal year 2004, total payments will equal the State fiscal year 2003 tertiary care adjustment payment, as defined in Section 148.296, and shall be paid to the hospital on or before June 15, 2004.

2) For the supplemental tertiary care adjustment period occurring in State fiscal year 2005, total payments will equal the State fiscal year 2003 tertiary care adjustment payment, as defined in Section 148.296 and shall be paid to the hospital in four equal installments on or before July 15, 2004, October 15, 2004, January 14, 2005 and April 15, 2005.

c) "Supplemental Tertiary Care Adjustment Period" means, beginning June 1, 2004, the one month period beginning on June 1, 2004 and ending June 30, 2004, and beginning July 1, 2004, the 12-month period beginning July 1 of the year and ending June 30 of the following year.

d) Payment Limitations: Payments under this Section are not due and payable until:

1) the methodologies described in this Section receive federal approval from the Centers for Medicare and Medicaid Services in an appropriate State Plan Amendment;

2) the assessment imposed under 89 Ill. Adm. Code 140.80 is determined to be a permissible tax under Title XIX of the Social Security Act; and

3) the assessment described in 89 Ill. Adm. Code 140.80 is in effect.

(Source: Added by emergency rulemaking at 28 Ill. Reg. _____, effective June 1, 2004, for a maximum of 150 days)

Section 148.90 Medicaid Inpatient Utilization Rate (MIUR) Adjustment Payments ~~Heart Transplants (Repealed)~~
EMERGENCY

a) Qualifying Criteria. Medicaid Inpatient Utilization Rate (MIUR) Adjustment Payments as described in subsection (b) of this Section shall be made to an Illinois hospital, excluding hospitals described in 89 Ill. Adm. Code 140.80(j).

b) MIUR Adjustment Payments

1) Each qualifying hospital will receive a payment equal to the product of:

A) The quotient of:

i) $57.25

ii) divided by the greater of the hospital's MIUR or 1.6 percent, and

B) The hospital's Medicaid inpatient days in the MIUR base period.

2) For a hospital that files a combined Medicaid cost report with another hospital after January 1, 2001, and then subsequently closes, the payment described in subsection (b)(1) of this Section shall be multiplied by a fraction, the numerator of which is the number of occupied bed days attributable to the open hospital and the denominator of which is the sum of the occupied bed days of each open hospital and each closed hospital.

3) Payments will be the lesser of the calculation described in subsection (b)(1) or (b)(2) of this Section or $10,500,000.

c) Payment to a Qualifying Hospital

1) For the MIUR adjustment period occurring in State fiscal year 2004, total payments will equal the methodologies described in subsection (b) of this Section and shall be paid to the hospital on or before June 15, 2004.

2) For the MIUR adjustment period occurring in State fiscal year 2005, total payments will equal the methodologies described in subsection (b) of this Section and shall be paid to the hospital in four equal installments on or before July 15, 2004, October 15, 2004, January 14, 2005 and April 15, 2005.

d) Definitions

1) "MIUR base period" means the 12-month period beginning on July 1, 2000, and ending on June 30, 2001.

2) "MIUR adjustment period" means, beginning June 1, 2004, the one month period beginning on June 1, 2004 and ending June 30, 2004, and beginning July 1, 2004, the 12 month period beginning July 1 of the year and ending June 30 of the following year.

3) "Medicaid inpatient days" means, for a given hospital, the sum of days of inpatient hospital service provided to recipients of medical assistance under Title XIX of the federal Social Security Act, excluding days for individuals eligible for Medicare under Title XVIII of that Act (Medicaid/Medicare crossover days), as tabulated from the Department's paid claims data for admissions occurring in the MIUR base period that were adjudicated by the Department through June 30, 2002.

4) "MIUR", for a given hospital, has the meaning as defined in Section 148.120(k)(4) and shall be determined in accordance with Section 148.120(c) and (f). For purposes of this Section, the MIUR determination that was used to determine a hospital's eligibility for Disproportionate Share Hospital Adjustment payments in rate year 2003 shall be the MIUR used in the MIUR adjustment.

5) "Occupied bed days" means the sum of the number of days that each bed was occupied by a patient for all beds during calendar year 2001, as reported by each hospital on the Annual Survey of Hospitals conducted by the Department of Public Health. If the sum of a hospital's occupied bed days is not reported on the Annual Survey of Hospitals, then the Department may obtain the sum of occupied bed days from any source available, including, but not limited to, records maintained by the hospital provider, which may be inspected at all times during business hours of the day by the Department or its duly authorized agents and employees.

e) Payment Limitations: Payments under this Section are not due and payable until:

1) the methodologies described in this Section are approved by the federal government in an appropriate State Plan Amendment;

2) the assessment imposed under 89 Ill. Adm. Code 140.80 is determined to be a permissible tax under Title XIX of the Social Security Act; and

3) the assessment described in 89 Ill. Adm. Code 140.80 is in effect.

(Source: Old Section repealed at 16 Ill. Reg. 6255, effective March 27, 1992; new Section added by emergency rulemaking at 28 Ill. Reg. _____, effective June 1, 2004, for a maximum of 150 days)

Section 148.95 Medicaid Outpatient Utilization Rate (MOUR) Adjustment Payments EMERGENCY

a) Qualifying Criteria. Medicaid Outpatient Utilization Rate (MOUR) Adjustment Payments, as described in subsection (b) of this Section, shall be made to an Illinois hospital, excluding hospitals described in 89 Ill. Adm. Code 140.80(j).

b) MOUR Adjustment Payments

1) Each qualifying hospital will receive a payment equal to the product of:

A) The quotient of:

i) the hospital's Medicaid outpatient charges in the MOUR base period

ii) divided by the greater of the hospital's MOUR or 1.6 percent, and

B) 2.45 percent.

2) For a hospital that files a combined Medicaid cost report with another hospital after January 1, 2001, and then subsequently closes, the payment described in subsection (b)(1) of this Section shall be multiplied by a fraction, the numerator of which is the number of occupied bed days attributable to the open hospital and the denominator of which is the sum of the occupied bed days of each open hospital and each closed hospital.

3) Payments will be the lesser of the calculation described in subsection (b)(1) or (b)(2) of this Section or $6,750,000.

c) Payment to a Qualifying Hospital

1) For the MOUR adjustment period occurring in State fiscal year 2004, total payments will equal the methodologies described in subsection (b) of this Section and shall be paid to the hospital on or before June 15, 2004.

2) For the MOUR adjustment period occurring in State fiscal year 2005, total payments will equal the methodologies described in subsection (b) of this Section and shall be paid to the hospital in four equal installments on or before July 15, 2004, October 15, 2004, January 14, 2005 and April 15, 2005.

d) Definitions

1) "Total outpatient charges" means, for a given hospital, the gross outpatient revenue as reported on form CMS 2552-96, Worksheet G-2, Part I, row 25, column 2, for hospital fiscal years ending in calendar year 2001 as filed in the March 2003 release of the Healthcare Cost Reporting Information System (HCRIS). If information was not available for hospitals on the HCRIS, the Department may obtain the gross outpatient charges from any source available, including, but not limited to, records maintained by the hospital provider, which may be inspected at all times during business hours of the day by the Department or its duly authorized agents and employees.

2) "MOUR base period" means the 12-month period beginning on July 1, 2000, and ending on June 30, 2001.

3) "MOUR adjustment period" means, beginning June 1, 2004, the one month period beginning on June 1, 2004, and ending June 30, 2004, and beginning July 1, 2004, the 12 month period beginning July 1 of the year and ending June 30 of the following year.

4) "MOUR", for a given hospital, means the ratio of Medicaid outpatient charges to total outpatient charges.

5) "Medicaid outpatient charges" means, for a given hospital, the sum of charges for ambulatory procedure listing services as described in Section 148.140(b), excluding charges for individuals eligible for Medicare under Title XVIII of the Social Security Act (Medicaid/Medicare crossover charges), as tabulated from the Department's paid claims data for services occurring in the MOUR base year that were adjudicated by the Department through September 12, 2003.

6) "Occupied bed days" means the sum of the number of days that each bed was occupied by a patient for all beds during calendar year 2001, as reported by each hospital on the Annual Survey of Hospitals conducted by the Department of Public Health. If the sum of a hospital's occupied bed days is not reported on the Annual Survey of Hospitals, then the Department of Public Aid may obtain the sum of occupied bed days from any source available, including, but not limited to, records maintained by the hospital provider, which may be inspected at all times during business hours of the day by the Department or its duly authorized agents and employees.

e) Payment Limitations: Payments under this Section are not due and payable until:

1) the methodologies described in this Section are approved by the federal government in an appropriate State Plan Amendment;

2) the assessment imposed under 89 Ill. Adm. Code 140.80 is determined to be a permissible tax under Title XIX of the Social Security Act; and

3) the assessment described in 89 Ill. Adm. Code 140.80 is in effect.

DEPARTMENT OF PUBLIC AID

NOTICE OF EMERGENCY AMENDMENTS

(Source: Added by emergency rulemaking at 28 Ill. Reg. _____, effective June 1, 2004, for a maximum of 150 days)

Section 148.100 Outpatient Rural Hospital Adjustment Payments ~~Liver Transplants (Repealed)~~
EMERGENCY

a) Qualifying Criteria. Outpatient Rural Hospital Adjustment Payments, as described in subsection (b) of this Section, shall be made to qualifying Illinois rural hospitals, as described in Section 148.25(g)(3), excluding:

1) County-owned hospitals as described in Section 148.25(b)(1)(A).

2) Hospitals organized under the University of Illinois Hospital Act [110 ILCS 330], as described in Section 148.25(b)(1)(B).

3) A hospital owned or operated by a State agency, as described in Section 148.25(b)(6).

b) Outpatient Rural Hospital Adjustment Payments

1) Each qualifying hospital's outpatient services for the outpatient rural base period will be divided by the sum of all qualifying hospitals' outpatient services for the outpatient rural base period.

2) This ratio will be multiplied by $14,500,000 to determine the hospital's Outpatient Rural Hospital Adjustment Payment.

3) For a hospital that files a combined Medicaid cost report with another hospital after January 1, 2001, and then subsequently closes, the payment described in subsection (b)(2) of this Section shall be multiplied by a fraction, the numerator of which is the number of occupied bed days attributable to the open hospital and the denominator of which is the sum of the occupied bed days of each open hospital and each closed hospital.

c) Payment to a Qualifying Hospital

1) For the outpatient rural hospital adjustment period occurring in State fiscal year 2004, total payments will equal the methodologies described in

subsection (b) of this Section and shall be paid to the hospital on or before June 15, 2004.

2) For the outpatient rural hospital adjustment period occurring in State fiscal year 2005, total payments will equal the methodologies described in subsection (b) of this Section and shall be paid to the hospital in four equal installments on or before July 15, 2004, October 15, 2004, January 14, 2005 and April 15, 2005.

d) Definitions

1) "Occupied bed days" means the sum of the number of days that each bed was occupied by a patient for all beds during calendar year 2001, as reported by each hospital on the Annual Survey of Hospitals conducted by the Department of Public Health. If the sum of a hospital's occupied bed days is not reported on the Annual Survey of Hospitals, then the Department may obtain the sum of occupied bed days from any source available, including, but not limited to, records maintained by the hospital provider, which may be inspected at all times during business hours of the day by the Department or its duly authorized agents and employees.

2) "Outpatient rural base period" means the 12-month period beginning on July 1, 2000, and ending on June 30, 2001.

3) "Outpatient rural adjustment period" means, beginning June 1, 2004, the one month period beginning on June 1, 2004 and ending June 30, 2004, and beginning July 1, 2004, the 12-month period beginning July 1 of the year and ending June 30 of the following year.

4) "Outpatient services" means, for a given hospital, the sum of ambulatory procedure listing services as described in Section 148.140(b), excluding services for individuals eligible for Medicare under Title XVIII of the Social Security Act (Medicaid/Medicare crossover services), as tabulated from the Department's paid claims data for services occurring in the outpatient rural base period that were adjudicated by the Department through September 12, 2003.

e) Payment Limitations: Payments under this Section are not due and payable until:

1) the methodologies described in this Section are approved by the federal government in an appropriate State Plan Amendment;

2) the assessment imposed under 89 Ill. Adm. Code 140.80 is determined to be a permissible tax under Title XIX of the Social Security Act; and

3) the assessment described in 89 Ill. Adm. Code 140.80 is in effect.

(Source: Old Section repealed at 16 Ill. Reg. 6255, effective March 27, 1992; new Section added by emergency rulemaking at 28 Ill. Reg. _____, effective June 1, 2004, for a maximum of 150 days)

Section 148.103 Outpatient Service Adjustment Payments EMERGENCY

a) Qualifying Criteria. Outpatient Service Adjustment Payments, as described in subsection (b) of this Section, shall be made to all Illinois hospitals excluding:

1) County-owned hospitals as described in Section 148.25(b)(1)(A).

2) Hospitals organized under the University of Illinois Hospital Act [110 ILCS 330], as described in Section 148.25(b)(1)(B).

3) A hospital owned or operated by a State agency, as described in Section 148.25(b)(6).

b) Outpatient Service Adjustment Payments

1) An average hospital specific outpatient service rate for the outpatient service base period will be calculated by taking the total payments for outpatient services divided by total outpatient services.

2) The average hospital specific outpatient service rate will be multiplied by 75.5 percent and then multiplied by the outpatient services.

3) For a hospital that files a combined Medicaid cost report with another hospital after January 1, 2001, and then subsequently closes, the payment described in subsection (b)(2) of this Section shall be multiplied by a fraction, the numerator of which is the number of occupied bed days

attributable to the open hospital and the denominator of which is the sum of the occupied bed days of each open hospital and each closed hospital.

4) Outpatient Service Adjustment Payments will be the lesser of the amount determined in subsection (b)(2) or (b)(3) of this Section or $3,000,000.

c) Payment to a Qualifying Hospital

1) For the outpatient service adjustment period occurring in State fiscal year 2004, total payments will equal the methodologies described in subsection (b) of this Section and shall be paid to the hospital on or before June 15, 2004.

2) For the outpatient service adjustment period occurring in State fiscal year 2005, total annual payments will equal the methodologies described in subsection (b) of this Section and shall be paid to the hospital in four equal installments on or before July 15, 2004, October 15, 2004, January 14, 2005 and April 15, 2005.

d) Definitions

1) "Occupied bed days" means the sum of the number of days that each bed was occupied by a patient for all beds during calendar year 2001, as reported by each hospital on the Annual Survey of Hospitals conducted by the Department of Public Health. If the sum of a hospital's occupied bed days is not reported on the Annual Survey of Hospitals, then the Department may obtain the sum of occupied bed days from any source available, including, but not limited to, records maintained by the hospital provider, which may be inspected at all times during business hours of the day by the Department or its duly authorized agents and employees.

2) "Outpatient service base period" means the 12-month period beginning on July 1, 2000, and ending on June 30, 2001.

3) "Outpatient service adjustment period" means, beginning June 1, 2004, the one month period beginning on June 1, 2004 and ending June 30, 2004, and beginning July 1, 2004, the 12-month period beginning July 1 of the year and ending June 30 of the following year.

4) "Outpatient services" means, for a given hospital, the sum of ambulatory procedure listing services as described in Section 148.140(b), excluding services for individuals eligible for Medicare under Title XVIII of the Social Security Act (Medicaid/Medicare crossover services), as tabulated from the Department's paid claims data for services occurring in the outpatient service base period that were adjudicated by the Department through September 12, 2003.

e) Payment Limitations: Payments under this Section are not due and payable until:

1) the methodologies described in this Section are approved by the federal government in an appropriate State Plan Amendment;

2) the assessment imposed under 89 Ill. Adm. Code 140.80 is determined to be a permissible tax under Title XIX of the Social Security Act; and

3) the assessment described in 89 Ill. Adm. Code 140.80 is in effect.

(Source: Added by emergency rulemaking at 28 Ill. Reg. _____, effective June 1, 2004, for a maximum of 150 days)

Section 148.110 Psychiatric Base Rate Adjustment Payments~~Bone Marrow Transplants (Repealed)~~
EMERGENCY

a) Qualifying Criteria

1) Psychiatric Base Rate Adjustment Payments, as described in subsection (b)(1) of this Section, shall be made to an Illinois general acute care hospital that has a distinct part psychiatric unit, excluding:

A) County-owned hospitals as described in Section 148.25(b)(1)(A).

B) Hospitals organized under the University of Illinois Hospital Act [110 ILCS 330], as described in Section 148.25(b)(1)(B).

C) A hospital owned or operated by a State agency, as described in Section 148.25(b)(6).

2) Psychiatric Base Rate Adjustment Payments described in subsection (b)(2) of this Section shall be made to an Illinois general acute care hospital that has a distinct part psychiatric unit, excluding hospitals described in 89 Ill. Adm. Code 140.80(j).

b) Psychiatric Base Rate Adjustment Payments

1) For a hospital qualifying under subsection (a)(1) of this Section, the Department shall pay an amount equal to $400.00 less the hospital's per diem rate for Medicaid inpatient psychiatric services in effect on October 1, 2003, multiplied by the number of Medicaid inpatient psychiatric days provided in the psychiatric base rate period. In no event, however, shall that amount be less than zero.

2) For a hospital qualifying under subsection (a)(2) of this Section, whose inpatient psychiatric per diem rate in effect on October 1, 2003 is greater than $400.00, the Department shall pay an amount equal to $25.00 multiplied by the number of Medicaid inpatient psychiatric days provided in the psychiatric base rate period.

3) For a hospital that files a combined Medicaid cost report with another hospital after January 1, 2001, and then subsequently closes, the payment described in subsection (b)(1) or (b)(2) shall be multiplied by a fraction, the numerator of which is the number of occupied bed days attributable to the open hospital and the denominator of which is the sum of the occupied bed days of each open hospital and each closed hospital.

c) Payment to a Qualifying Hospital

1) For the pychiatric base rate adjustment period occurring in State fiscal year 2004, total payments will equal the methodologies described in subsection (b) of this Section and shall be paid to the hospital on or before June 15, 2004.

2) For the psychiatric base rate adjustment period occurring in State fiscal year 2005, total payments will equal the methodologies described in subsection (b) of this Section and shall be paid to the hospital in four equal installments on or before July 15, 2004, October 15, 2004, January 14, 2005 and April 15, 2005.

d) Limitations: Hospitals that qualify for Psychiatric Base Rate Adjustment Payments shall not be eligible for the total Psychiatric Base Rate Adjustment Payment if, during the psychiatric base rate adjustment period, the hospital no longer operates the psychiatric distinct part unit.

e) Definitions

1) "Psychiatric base rate period" means the 12-month period beginning on July 1, 2000, and ending on June 30, 2001.

2) "Psychiatric base rate adjustment period" means, beginning June 1, 2004, the one month period beginning on June 1, 2004, and ending June 30, 2004, and beginning July 1, 2004, the 12-month period beginning July 1 of the year and ending June 30 of the following year.

3) "Medicaid inpatient psychiatric days" means, for a given hospital, the sum of days of inpatient psychiatric hospital service provided to recipients of medical assistance under Title XIX of the federal Social Security Act, excluding days for individuals eligible for Medicare under Title XVIII of that Act (Medicaid/Medicare crossover days), as tabulated from the Department's paid claims data for admissions occurring in the psychiatric base period that were adjudicated by the Department through June 30, 2002.

4) "Occupied bed days" means the sum of the number of days that each bed was occupied by a patient for all beds during calendar year 2001, as reported by each hospital on the Annual Survey of Hospitals conducted by the Department of Public Health. If the sum of a hospital's occupied bed days is not reported on the Annual Survey of Hospitals, then the Department may obtain the sum of occupied bed days from any source available, including, but not limited to, records maintained by the hospital provider, which may be inspected at all times during business hours of the day by the Department or its duly authorized agents and employees.

f) Payment Limitations: Payments under this Section are not due and payable until:

1) the methodologies described in this Section are approved by the federal government in an appropriate State Plan Amendment;

2) the assessment imposed under 89 Ill. Adm. Code 140.80 is determined to be a permissible tax under Title XIX of the Social Security Act; and

3) the assessment described in 89 Ill. Adm. Code 140.80 is in effect.

(Source: Old Section repealed at 16 Ill. Reg. 6255, effective March 27, 1992; new Section added by emergency rulemaking at 28 Ill. Reg. _____, effective June 1, 2004, for a maximum of 150 days)

Section 148.112 High Volume Adjustment Payments
EMERGENCY

a) Qualifying criteria. High Volume Adjustment Payments shall be made to a qualifying Illinois hospital as defined in this subsection (a). A hospital not otherwise excluded under subsection (b) of this Section shall qualify for payment if it did not qualify for disproportionate share adjustments as described in Section 148.120 for the rate year 2003 determination and provided more than 20,000 Medicaid inpatient days in the high volume base period.

b) The following classes of hospitals are ineligible for High Volume Adjustment Payments associated with the qualifying criteria listed in subsection (a) of this Section:

1) County-owned hospitals as described in Section 148.25(b)(1)(A).

2) Hospitals organized under the University of Illinois Hospital Act [110 ILCS 330], as described in Section 148.25(b)(1)(B).

3) A hospital owned or operated by a State agency, as described in Section 148.25(b)(6).

c) High Volume Adjustment Payments

1) For a hospital qualifying under subsection (a) of this Section, the Department shall pay the product of $190.00 multiplied by the qualifying hospital's Medicaid inpatient days.

2) For a hospital that files a combined Medicaid cost report with another hospital after January 1, 2001, and then subsequently closes, the payment described in subsection (c)(1) of this Section shall be multiplied by a

fraction, the numerator of which is the number of occupied bed days attributable to the open hospital and the denominator of which is the sum of the occupied bed days of each open hospital and each closed hospital.

3) For hospitals qualifying under subsection (a) of this Section that provided fewer than 30,000 Medicaid inpatient days in the high volume base period, payments will be the lesser of the calculation described in subsection (c)(1) or (c)(2) of this Section or $3,500,000.

d) Payment to a Qualifying Hospital

1) For the high volume adjustment period occurring in State fiscal year 2004, total payments will equal the methodologies described in subsection (c) of this Section and shall be paid to the hospital on or before June 15, 2004.

2) For the high volume adjustment period occurring in State fiscal year 2005, total payments will equal the methodologies described in subsection (c) of this Section and shall be paid to the hospital in four equal installments on or before July 15, 2004, October 15, 2004, January 14, 2005 and April 15, 2005.

e) Definitions

1) "High volume base period" means the 12-month period beginning on July 1, 2000, and ending on June 30, 2001.

2) "High volume adjustment period" means, beginning June 1, 2004, the one month period beginning on June 1, 2004, and ending June 30, 2004, and beginning July 1, 2004, the 12-month period beginning July 1 of the year and ending June 30 of the following year.

3) "Medicaid inpatient days" means, for a given hospital, the sum of days of inpatient hospital service provided to recipients of medical assistance under Title XIX of the federal Social Security Act, excluding days for individuals eligible for Medicare under Title XVIII of that Act (Medicaid/Medicare crossover days), as tabulated from the Department's paid claims data for admissions occurring in the high volume base period that were adjudicated by the Department through June 30, 2002.

4) "Occupied bed days" means the sum of the number of days that each bed was occupied by a patient for all beds during calendar year 2001, as reported by each hospital on the Annual Survey of Hospitals conducted by the Department of Public Health. If the sum of a hospital's occupied bed days is not reported on the Annual Survey of Hospitals, then the Department may obtain the sum of occupied bed days from any source available, including, but not limited to, records maintained by the hospital provider, which may be inspected at all times during business hours of the day by the Department or its duly authorized agents and employees.

f) Payment Limitations: Payments under this Section are not due and payable until:

1) the methodologies described in this Section are approved by the federal government in an appropriate State Plan Amendment;

2) the assessment imposed under 89 Ill. Adm. Code 140.80 is determined to be a permissible tax under Title XIX of the Social Security Act; and

3) the assessment described in 89 Ill. Adm. Code 140.80 is in effect.

(Source: Added by emergency rulemaking at 28 Ill. Reg. _____, effective June 1, 2004, for a maximum of 150 days)

Section 148.310 Review Procedure
EMERGENCY

a) Inpatient Rate Reviews

1) Hospitals shall be notified of their inpatient rate for the rate year and shall have an opportunity to request a review of any rate for errors in calculation made by the Department. Such a request must be submitted in writing to the Department and must be received or post marked within 30 days after the date of the Department's notice to the hospital of its rates. The Department shall notify the hospital of the results of the review within 30 days after receipt of the hospital's request for review.

2) Hospitals reimbursed in accordance with Sections 148.250 through 148.300 and 89 Ill. Adm. Code 149 with respect to per diem add-ons for capital may request that an adjustment be made to their base year costs to reflect significant changes in costs that have been mandated in order to

meet State, federal or local health and safety standards, and that have occurred since the hospital's filing of the base year cost report. The allowable Medicare/Medicaid costs must be identified from the most recent audited cost report available. These costs must be significant, i.e., on a per unit basis, they must constitute one percent or more of the total allowable Medicaid/Medicare unit costs for the same time period. Appeals for base year cost adjustments must be submitted, in writing, to the Department and must be received or post marked within 30 days after the date of the Department's notice to the hospital of its rates. Such request shall include a clear explanation of the cost change and documentation of the desired correction. The Department shall notify the hospital of the results of the review within 30 days after receipt of the hospital's request for review.

b) Disproportionate Share (DSH) and Medicaid Percentage Adjustment (MPA) Determination Reviews

1) Hospitals shall be notified of their qualification for DSH and/or MPA payment adjustments and shall have an opportunity to request a review of the DSH and/or MPA add-on for errors in calculation made by the Department. Such a request must be submitted in writing to the Department and must be received or post marked within 30 days after the date of the Department's notice to the hospital of its disproportionate share and/or Medicaid Percentage Adjustment qualification and add-on calculations. Such request shall include a clear explanation of the error and documentation of the desired correction. The Department shall notify the hospital of the results of the review within 30 days after receipt of the hospital's request for review.

2) DSH and/or MPA determination reviews shall be limited to the following:

A) DSH and/or MPA Determination Criteria. The criteria for DSH determination shall be in accordance with Section 148.120. The criteria for MPA determination shall be in accordance with Section 148.122. Review shall be limited to verification that the Department utilized criteria in accordance with State regulations.

B) Medicaid Inpatient Utilization Rates.

i) Medicaid inpatient utilization rates shall be calculated pursuant to Section 1923 of the Social Security Act and as defined in Section 148.120(k)(4). Review shall be limited to verification that Medicaid inpatient utilization rates were calculated in accordance with federal and State regulations.

ii) Hospitals' Medicaid inpatient utilization rates, as defined in Section 148.120(k)(4), which have been derived from unaudited cost reports or HDSC forms, are not subject to the Review Procedure with the exception of errors in calculation by the Department. Pursuant to Section 148.120(c)(1)(B) and (c)(1)(C)(i) and (ii), hospitals shall have the opportunity to submit corrected information prior to the Department's final DSH and/or MPA determination.

C) Low Income Utilization Rates. Low Income utilization rates shall be calculated in accordance with Section 1923 of the Social Security Act, Section 148.120(a)(2) and (d), and Section 148.122(a)(2) and (c). Review shall be limited to verification that low income utilization rates were calculated in accordance with federal and State regulations.

D) Federally Designated Health Manpower Shortage Areas (HMSAs). Illinois hospitals located in federally designated HMSAs shall be identified in accordance with 42 CFR 5 (1989) and Section 148.122(a)(3) based upon the methodologies utilized by, and the most current information available to, the Department from the federal Department of Health and Human Services as of June 30, 1992. Review shall be limited to hospitals in locations that have failed to obtain designation as federally designated HMSAs only when such a request for review is accompanied by documentation from the Department of Health and Human Services substantiating that the hospital was located in a federally designated HMSA as of June 30, 1992.

E) Excess Beds. Excess bed information shall be determined in accordance with Public Act 86-268 (Section 148.122(a)(3) and 77 Ill. Adm. Code 1100) based upon the methodologies utilized by, and the most current information available to, the Illinois Health Facilities Planning Board as of July 1, 1991. Reviews shall be

limited to requests accompanied by documentation from the Illinois Health Facilities Planning Board substantiating that the information supplied to and utilized by the Department was incorrect.

F) Medicaid Obstetrical Inpatient Utilization Rates. Medicaid obstetrical inpatient utilization rates shall be calculated in accordance with Section 148.122(a)(4), (h)(2), (h)(3) and (h)(4). Review shall be limited to verification that Medicaid obstetrical inpatient utilization rates were calculated in accordance with State regulations.

c) Outlier Adjustment Reviews
The Department shall make outlier adjustments to payment amounts in accordance with 89 Ill. Adm. Code 149.105 or Section 148.130, whichever is applicable. Hospitals shall be notified of the specific information that shall be utilized in the determination of those services qualified for an outlier adjustment and shall have an opportunity to request a review of such specific information for errors in calculation made by the Department. Such a request must be submitted in writing to the Department and must be received or post marked within 30 days after the date of the Department's notice to the hospital of the specific information that shall be utilized in the determination of those services qualified for an outlier adjustment. Such request shall include a clear explanation of the error and documentation of the desired correction. The Department shall notify the hospital of the results of the review within 30 days after receipt of the hospital's request for review.

d) Cost Report Reviews

1) Cost reports are required from:

A) All enrolled hospitals within the State of Illinois;

B) All out-of-state hospitals providing 100 inpatient days of service per hospital fiscal year, to persons covered by the Illinois Medical Assistance Program; and

C) All hospitals not located in Illinois that elect to be reimbursed under the methodology described in 89 Ill. Adm. Code 149 (the DRG PPS).

2) The completed cost statement with a copy of the hospital's Medicare cost report and audited financial statement must be submitted annually within 90 days after the close of the hospital's fiscal year. A one-time 30-day extension may be requested. Such a request for an extension shall be in writing and shall be received by the Department's Office of Health Finance prior to the end of the 90-day filing period. The Office of Health Finance shall audit the information shown on the Hospital Statement of Reimbursable Cost and Support Schedules. The audit shall be made in accordance with generally accepted auditing standards and shall include tests of the accounting and statistical records and applicable auditing procedures. Hospitals shall be notified of the results of the final audited cost report, which may contain adjustments and revisions that may have resulted from the audited Medicare Cost Report. Hospitals shall have the opportunity to request a review of the final audited cost report. Such a request must be received in writing by the Department within 45 days after the date of the Department's notice to the hospital of the results of the finalized audit. Such request shall include all items of documentation and analysis that support the request for review. No additional data shall be accepted after the 45 day period. The Department shall notify the hospital of the results of the review within 30 days after receipt of the hospital's request for review.

e) Trauma Center Adjustment Reviews

1) The Department shall make trauma care adjustments in accordance with Section 148.290(c). Hospitals shall have the right to appeal the trauma center adjustment calculations if it is believed that a technical error has been made in the calculation by the Department.

2) Trauma level designation is obtained from the Illinois Department of Public Health as of the first day of July preceding the trauma center adjustment rate period. Review shall be limited to requests accompanied by documentation from the Illinois Department of Public Health, or the licensing agency in the state in which the hospital is located, substantiating that the information supplied to and utilized by the Department was incorrect.

3) Appeals under this subsection (e) must be submitted in writing to the Department and must be received or post marked within 30 days after the

date of the Department's notice to the hospital of its qualification for trauma center adjustments and payment amounts. Such a request shall include a clear explanation of the reason for the appeal and documentation of the desired correction. The Department shall notify the hospital of the results of the review within 30 days after receipt of the hospital's request for review.

f) Medicaid High Volume Adjustment Reviews
The Department shall make Medicaid high volume adjustments in accordance with Section 148.290(d). Review shall be limited to verification that the Medicaid inpatient days were calculated in accordance with Section 148.120. The appeal must be submitted in writing to the Department and must be received or post marked within 30 days after the date of the Department's notice to the hospital of its qualification for Medicaid high volume adjustments and payment amounts. Such a request shall include a clear explanation of the reason for the appeal and documentation of the desired correction. The Department shall notify the hospital of the results of the review within 30 days after receipt of the hospital's request for review.

g) Sole Community Hospital Designation Reviews
The Department shall make sole community hospital designations in accordance with 89 Ill. Adm. Code 149.125(b). Hospitals shall have the right to appeal the designation if the hospital believes that a technical error has been made in the determination. The appeal must be submitted in writing to the Department and must be received or post marked within 30 days after the date of the Department's notification of the designation. Such a request shall include a clear explanation of the reason for the appeal and documentation of the desired correction. The Department shall notify the hospital of the results of the review no later than 30 days after receipt of the hospital's request for review.

h) Geographic Designation Reviews

1) The Department shall make rural hospital designations in accordance with Section 148.25(g)(3). Hospitals shall have the right to appeal the designation if the hospital believes that a technical error has been made in the determination. The appeal must be submitted in writing to the Department and must be received or post marked within 30 days after the date of the Department’s notification of the designation. Such a request shall include a clear explanation of the reason for the appeal and documentation of the desired correction. The Department shall notify the

hospital of the results of the review no later than 30 days after receipt of the hospital's request for review.

2) The Department shall make urban hospital designations in accordance with Section 148.25(g)(4). Hospitals shall have the right to appeal the designation if the hospital believes that a technical error has been made in the determination. The appeal must be submitted in writing to the Department and must be received or post marked within 30 days after the date of the Department's notification of the designation. Such a request shall include a clear explanation of the reason for the appeal and documentation of the desired correction. The Department shall notify the hospital of the results of the review no later than 30 days after receipt of the hospital's request for review.

i) Critical Hospital Adjustment Payment (CHAP) Reviews

1) The Department shall make CHAP in accordance with Section 148.295. Hospitals shall be notified in writing of the results of the CHAP determination and calculation, and shall have the right to appeal the CHAP calculation or their ineligibility for the CHAP if the hospital believes that a technical error has been made in the calculation by the Department. The appeal must be submitted in writing to the Department and must be received or post marked within 30 days after the date of the Department's notice to the hospital of its qualification for CHAP and payment adjustment amounts, or a letter of notification that the hospital does not qualify for the CHAP. Such a request shall include a clear explanation of the reason for the appeal and documentation of the desired correction. The Department shall notify the hospital of the results of the review within 30 days after receipt of the hospital's request for review.

2) CHAP determination reviews shall be limited to the following:

A) Federally Designated Health Professional Shortage Areas (HPSAs). Illinois hospitals located in federally designated HPSAs shall be identified in accordance with 42 CFR 5, and Section 148.295(a)(3)(B) and (b)(3) based upon the methodologies utilized by, and the most current information available to, the Department from the federal Department of Health and Human Services as of the last day of June preceding the CHAP rate period. Review shall be limited to hospitals in locations that have failed to obtain

designation as federally designated HPSAs only when such a request for review is accompanied by documentation from the Department of Health and Human Services substantiating that the hospital was located in a federally designated HPSA as of the last day of June preceding the CHAP rate period.

B) Trauma level designation. Trauma level designation is obtained from the Illinois Department of Public Health as of the last day of June preceding the CHAP rate period. Review shall be limited to requests accompanied by documentation from the Illinois Department of Public Health, substantiating that the information supplied to and utilized by the Department was incorrect.

C) Accreditation of Rehabilitation Facilities. Accreditation of rehabilitation facilities shall be obtained from the Commission on Accreditation of Rehabilitation Facilities as of the last day of June preceding the CHAP rate period. Review shall be limited to requests accompanied by documentation from the Commission, substantiating that the information supplied to and utilized by the Department was incorrect.

D) Medicaid Inpatient Utilization Rates. Medicaid inpatient utilization rates shall be calculated pursuant to Section 1923 of the Social Security Act and as defined in Section 148.120(k)(5). Review shall be limited to verification that Medicaid inpatient utilization rates were calculated in accordance with federal and State regulations.

E) Graduate Medical Education Programs. Graduate Medical Education program information shall be obtained from the most recently published report of the American Accreditation Council for Graduate Medical Education, the American Osteopathic Association Division of Post-doctoral Training, or the American Dental Association Joint Commission on Dental Accreditation as of the last day of June preceding the CHAP rate period. Review shall be limited to requests accompanied by documentation from the above, substantiating that the information supplied to and utilized by the Department was incorrect.

j) Tertiary Care Adjustment Payment Reviews. The Department shall make Tertiary Care Adjustment Payments in accordance with Section 148.296. Hospitals shall be notified in writing of the results of the Tertiary Care Adjustment Payments determination and calculation, and shall have the right to appeal the Tertiary Care Adjustment Payments calculation or their ineligibility for Tertiary Care Adjustment Payments if the hospital believes that a technical error has been made in the calculation by the Department. The appeal must be submitted in writing to the Department and must be received or post marked within 30 days after the date of the Department's notice to the hospital of its qualification for Tertiary Care Adjustment Payments and payment adjustment amounts, or a letter of notification that the hospital does not qualify for Tertiary Care Adjustment Payments. Such a request must include a clear explanation of the reason for the appeal and documentation that supports the desired correction. The Department shall notify the hospital of the results of the review within 30 days after receipt of the hospital's request for review.

k) Pediatric Outpatient Adjustment Payment Reviews~~Payments~~. The Department shall make Pediatric Outpatient Adjustment payments in accordance with Section 148.297. Hospitals shall be notified in writing of the results of the determination and calculation, and shall have the right to appeal the calculation or their ineligibility for payments under Section 148.297 if the hospital believes that a technical error has been made in the calculation by the Department. The appeal must be submitted in writing to the Department and must be received or post marked within 30 days after the date of the Department's notice to the hospital of its qualification under Section 148.297 and payment adjustment amounts, or a letter of notification that the hospital does not qualify for such payments. Such a request must include a clear explanation of the reason for the appeal and documentation that supports the desired correction. The Department shall notify the hospital of the results of the review within 30 days after receipt of the hospital's request for review.

l) Pediatric Inpatient Adjustment Payment Reviews~~Payments~~. The Department shall make Pediatric Inpatient Adjustment payments in accordance with Section 148.298. Hospitals shall be notified in writing of the results of the determination and calculation, and shall have the right to appeal the calculation or their ineligibility for payments under Section 148.298 if the hospital believes that a technical error has been made in the calculation by the Department. The appeal must be submitted in writing to the Department and must be received or post marked within 30 days after the date of the Department's notice to the hospital of its qualification under Section 148.298 and payment adjustment amounts, or a

letter of notification that the hospital does not qualify for such payments. Such a request must include a clear explanation of the reason for the appeal and documentation that supports the desired correction. The Department shall notify the hospital of the results of the review within 30 days after receipt of the hospital's request for review.

m) Safety Net Adjustment Payment Reviews. The Department shall make Safety Net Adjustment Payments in accordance with Section 148.126. Hospitals shall be notified in writing of the results of the Safety Net Adjustment Payment determination and calculation, and shall have the right to appeal the Safety Net Adjustment Payment calculation or their ineligibility for Safety Net Adjustment Payments if the hospital believes that a technical error has been made in the calculation by the Department. The appeal must be submitted in writing to the Department and must be received or post marked within 30 days after the date of the Department's notice to the hospital of its qualification for Safety Net Adjustment Payments and payment adjustment amounts, or a letter of notification that the hospital does not qualify for Safety Net Adjustment Payments. Such a request must include a clear explanation of the reason for the appeal and documentation that supports the desired correction. The Department shall notify the hospital of the results of the review within 30 days after receipt of the hospital's request for review.

n) Psychiatric Adjustment Payment Reviews. The Department shall make Psychiatric Adjustment Payments in accordance with Section 148.105. Hospitals shall be notified in writing of the results of the Psychiatric Adjustment Payments determination and calculation, and shall have a right to appeal the Psychiatric Adjustment Payments calculation or their ineligibility for Psychiatric Adjustment Payments if the hospital believes that a technical error has been made in the calculation by the Department. The appeal must be submitted in writing to the Department and must be received or post marked within 30 days after the date of the Department's notice to the hospital of its qualification for Psychiatric Adjustment Payments and payment adjustment amounts, or a letter of notification that the hospital does not qualify for Psychiatric Adjustment Payments. Such a request must include a clear explanation of the reason for the appeal and documentation that supports the desired correction. The Department shall notify the hospital of the results of the review within 30 days after receipt of the hospital's request for review.

o) Rural Adjustment Payment Reviews. The Department shall make Rural Adjustment Payments in accordance with Section 148.115.

1) Hospitals shall be notified in writing of the results of the Rural Adjustment Payments determination and calculation, and shall have a right to appeal the Rural Adjustment Payments calculation or their ineligibility for Rural Adjustment Payments if the hospital believes that a technical error has been made in the calculation by the Department.

2) The designation of Critical Access Provider or Necessary Provider, which are qualifying criteria for Rural Adjustment Payments (see Section 148.115(a)), is obtained from the Illinois Department of Public Health (IDPH) as of the first day of July preceding the Rural Adjustment Payment rate period. Review shall be limited to requests accompanied by documentation from IDPH, substantiating that the information supplied to and utilized by the Department was incorrect.

3) The appeal must be submitted in writing to the Department and must be received or post marked within 30 days after the date of the Department's notice to the hospital of its qualification for Rural Adjustment Payments and payment adjustment amounts, or a letter of notification that the hospital does not qualify for Rural Adjustment Payments. Such a request must include a clear explanation of the reason for the appeal and documentation that supports the desired correction. The Department shall notify the hospital of the results of the review within 30 days after receipt of the hospital's request for review.

p) Supplemental Tertiary Care Adjustment Payment Reviews. The Department shall make Supplemental Tertiary Care Adjustment Payments in accordance with Section 148.85. Hospitals shall be notified in writing of the results of the Supplemental Tertiary Care Adjustment Payments determination and calculation. Hospitals shall have a right to appeal the Supplemental Tertiary Care Adjustment Payments calculation or their ineligibility for Supplemental Tertiary Care Adjustment Payments if the hospital believes that a technical error has been made in the calculation by the Department. The appeal must be submitted in writing to the Department and must be received or post marked within 30 days after the date of the Department's notice to the hospital of its qualification for Supplemental Tertiary Care Adjustment Payments and payment adjustment amounts, or a letter of notification that the hospital does not qualify for Supplemental Tertiary Care Adjustment Payments. Such a request must include a clear explanation of the reason for the appeal and documentation that supports the desired correction. The

Department shall notify the hospital of the results of the review within 30 days after receipt of the hospital's request for review.

q) Medicaid Inpatient Utilization Rate Adjustment Payment Reviews. The Department shall make Medicaid Inpatient Utilization Rate Adjustment Payments in accordance with Section 148.90. Hospitals shall be notified in writing of the results of the Medicaid Inpatient Utilization Rate Adjustment Payments determination and calculation. Hospitals shall have a right to appeal the Medicaid Inpatient Utilization Rate Adjustment Payments calculation or their ineligibility for Medicaid Inpatient Utilization Rate Adjustment Payments if the hospital believes that a technical error has been made in the calculation by the Department. The appeal must be submitted in writing to the Department and must be received or post marked within 30 days after the date of the Department's notice to the hospital of its qualification for Medicaid Inpatient Utilization Rate Adjustment Payments and payment adjustment amounts, or a letter of notification that the hospital does not qualify for Medicaid Inpatient Utilization Rate Adjustment Payments. Such a request must include a clear explanation of the reason for the appeal and documentation that supports the desired correction. The Department shall notify the hospital of the results of the review within 30 days after receipt of the hospital's request for review.

r) Medicaid Outpatient Utilization Rate Adjustment Payment Reviews. The Department shall make Medicaid Outpatient Utilization Rate Adjustment Payments in accordance with Section 148.95. Hospitals shall be notified in writing of the results of the Medicaid Outpatient Utilization Rate Adjustment Payments determination and calculation. Hospitals shall have a right to appeal the Medicaid Outpatient Utilization Rate Adjustment Payments calculation or their ineligibility for Medicaid Outpatient Utilization Rate Adjustment Payments if the hospital believes that a technical error has been made in the calculation by the Department. The appeal must be submitted in writing to the Department and must be received or post marked within 30 days after the date of the Department's notice to the hospital of its qualification for Medicaid Outpatient Utilization Rate Adjustment Payments and payment adjustment amounts, or a letter of notification that the hospital does not qualify for Medicaid Outpatient Utilization Rate Adjustment Payments. Such a request must include a clear explanation of the reason for the appeal and documentation that supports the desired correction. The Department shall notify the hospital of the results of the review within 30 days after receipt of the hospital's request for review.

s) Outpatient Rural Hospital Adjustment Payment Reviews. The Department shall make Outpatient Rural Adjustment Payments in accordance with Section 148.100. Hospitals shall be notified in writing of the results of the Outpatient Rural Adjustment Payments determination and calculation. Hospitals shall have a right to appeal the Outpatient Rural Adjustment Payments calculation or their ineligibility for Outpatient Rural Adjustment Payments if the hospital believes that a technical error has been made in the calculation by the Department. The appeal must be submitted in writing to the Department and must be received or post marked within 30 days after the date of the Department's notice to the hospital of its qualification for Outpatient Rural Adjustment Payments and payment adjustment amounts, or a letter of notification that the hospital does not qualify for Outpatient Rural Adjustment Payments. Such a request must include a clear explanation of the reason for the appeal and documentation that supports the desired correction. The Department shall notify the hospital of the results of the review within 30 days after receipt of the hospital's request for review.

t) Outpatient Service Adjustment Payment Reviews. The Department shall make Outpatient Service Adjustment Payments in accordance with Section 148.103. Hospitals shall be notified in writing of the results of the Outpatient Service Adjustment Payments determination and calculation. Hospitals shall have a right to appeal the Outpatient Service Adjustment Payments calculation or their ineligibility for Outpatient Service Adjustment Payments if the hospital believes that a technical error has been made in the calculation by the Department. The appeal must be submitted in writing to the Department and must be received or post marked within 30 days after the date of the Department's notice to the hospital of its qualification for Outpatient Service Adjustment Payments and payment adjustment amounts, or a letter of notification that the hospital does not qualify for Outpatient Service Adjustment Payments. Such a request must include a clear explanation of the reason for the appeal and documentation that supports the desired correction. The Department shall notify the hospital of the results of the review within 30 days after receipt of the hospital's request for review.

u) Psychiatric Base Rate Adjustment Payment Reviews. The Department shall make Psychiatric Base Rate Adjustment Payments in accordance with Section 148.110. Hospitals shall be notified in writing of the results of the Psychiatric Base Rate Adjustment Payments determination and calculation. Hospitals shall have a right to appeal the Psychiatric Base Rate Adjustment Payments calculation or their ineligibility for Psychiatric Base Rate Adjustment Payments if the hospital believes that a technical error has been made in the calculation by the Department. The appeal must be submitted in writing to the Department and must be received

or post marked within 30 days after the date of the Department's notice to the hospital of its qualification for Psychiatric Base Rate Adjustment Payments and payment adjustment amounts, or a letter of notification that the hospital does not qualify for Psychiatric Base Rate Adjustment Payments. Such a request must include a clear explanation of the reason for the appeal and documentation that supports the desired correction. The Department shall notify the hospital of the results of the review within 30 days after receipt of the hospital's request for review.

v) High Volume Adjustment Payment Reviews. The Department shall make High Volume Adjustment Payments in accordance with Section 148.112. Hospitals shall be notified in writing of the results of the High Volume Adjustment Payments determination and calculation. Hospitals shall have a right to appeal the High Volume Adjustment Payments calculation or their ineligibility for High Volume Adjustment Payments if the hospital believes that a technical error has been made in the calculation by the Department. The appeal must be submitted in writing to the Department and must be received or post marked within 30 days after the date of the Department's notice to the hospital of its qualification for High Volume Adjustment Payments and payment adjustment amounts, or a letter of notification that the hospital does not qualify for High Volume Adjustment Payments. Such a request must include a clear explanation of the reason for the appeal and documentation that supports the desired correction. The Department shall notify the hospital of the results of the review within 30 days after receipt of the hospital's request for review.

w)~~p)~~ For purposes of this Section, the term "post marked" means the date of processing by the United States Post Office or any independent carrier service.

x)~~q)~~ The review procedures provided for in this Section may not be used to submit any new or corrected information that was required to be submitted by a specific date in order to qualify for a payment or payment adjustment. In addition, only information that was submitted expressly for the purpose of qualifying for the payment or payment adjustment under review shall be considered by the Department. Information that has been submitted to the Department for other purposes will not be considered during the review process.

(Source: Amended by emergency rulemaking at 28 Ill. Reg. _____, effective June 1, 2004, for a maximum of 150 days)

SEX OFFENDER MANAGEMENT BOARD

NOTICE OF EMERGENCY REPEALER

1) Heading of the Part: Sex Offender Management Board Standards and Guidelines for the Evaluation, Treatment and Monitoring of Adult Sex Offenders

2) Code Citation: 20 Ill. Admin. Code 1900

3)

Section Numbers:	Emergency Action:
1900.10	Repeal
1900.20	Repeal
1900.30	Repeal
1900.40	Repeal
1900.50	Repeal
1900.60	Repeal
1900.70	Repeal
1900.80	Repeal
1900.90	Repeal
1900.100	Repeal
1900.110	Repeal
1900.120	Repeal
1900.130	Repeal
1900.140	Repeal
1900.150	Repeal
1900.160	Repeal
1900.170	Repeal
1900.180	Repeal
1900.190	Repeal

4) Statutory Authority: Sex Offender Management Board Act [20 ILCS 4026], amended by P.A 93-616, effective January 1, 2004

5) Effective Date of Amendments: May 27, 2004

6) If this emergency amendment is to expire before the end of the 150 day period, please specify the date on which it is to expire: No early expiration.

7) Date filed with the Index Department: May 27, 2004

8) A copy of the emergency repealer is on file in the office of the chair of the Sex Offender Management Board (Board) in the Office of the Attorney General in the James R. Thompson Center, 100 W. Randolph, Chicago, Illinois, and is available for public inspection.

SEX OFFENDER MANAGEMENT BOARD

NOTICE OF EMERGENCY REPEALER

9) Reason for emergency: As explained in greater detail in the Sex Offender Management Board's Notice of Emergency Rules for 20 Ill. Adm. Code Part 1905 published elsewhere in this issue of the *Illinois Register*, the enactment of Public Act 93-616, effective January 1, 2004, has led the Board to adopt new, mandatory qualifications and standards for the provision of evaluations and treatment of sex offenders to replace the recommended qualifications and standards that had been adopted in 20 Ill. Adm. Code Part 1900. Due to the circumstances described in that Notice as well as the additional confusion that would be caused if the existing rules were left in place along with the new rules being adopted in Part 1905, the Board has found that the situation constitutes a threat to the public interest, safety, and welfare that requires the adoption of rules in less time that is required for general rulemaking.

10) A Complete Description of the Subjects and Issues Involved: This Part is being repealed to avoid confusion within the criminal justice system, among the public, and among sex offender evaluators and treatment providers with respect to the nature of the requirements that apply to evaluations and treatment that satisfy the requirements of Public Act 93-616. For more detail see the Notice of Emergency Rules for 20 Ill. Adm. Code Part 1905 in this issue of the *Illinois Register*.

11) Are there any proposed amendments to this Part pending? No

12) Statement of Statewide Policy Objectives: Neither creates nor enlarges a State mandate within the meaning of 30 ILCS 805/3b of the State Mandates Act.

13) Information and questions regarding this repealer shall be directed to:

Cara Smith, Chair
Sex Offender Management Board
James R. Thompson Center, 12th Floor
100 W. Randolph Street
Chicago, IL 60601
(312) 814-2970

The full text of the Emergency Repealer begins on the next page:

SEX OFFENDER MANAGEMENT BOARD

NOTICE OF EMERGENCY REPEALER

TITLE 20: CORRECTIONS, CRIMINAL JUSTICE, AND LAW ENFORCEMENT
CHAPTER VII: SEX OFFENDER MANAGEMENT BOARD

PART 1900
SEX OFFENDER MANAGEMENT BOARD STANDARDS AND GUIDELINES FOR THE EVALUATION, TREATMENT AND MONITORING OF ADULT SEX OFFENDERS
(REPEALED)

Section
1900.10 Purpose
EMERGENCY
1900.20 Definitions
EMERGENCY
1900.30 Guidelines for Presentence Investigations
EMERGENCY
1900.40 Presentence Investigation Report Format
EMERGENCY
1900.50 Sources of Information
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EMERGENCY
1900.100 Standards of Practice for Treatment Providers for Adult Sex Offenders – Client Written Treatment Agreement
EMERGENCY
1900.110 Standards of Practice for Treatment Providers for Adult Sex Offenders – Completion of Treatment
EMERGENCY
1900.120 Standards of Practice for Treatment Providers for Adult Sex Offenders – DOC
EMERGENCY
1900.130 Community Placement and Treatment of Sex Offenders Who Are in Denial
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1900.140 Treatment Providers' Use of the Polygraph, Plethysmograph and ASI

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1900.150 Qualifications of Treatment Providers/Evaluators
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1900.160 Standards for Use of Polygraph
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1900.170 Qualifications of Polygraph Examiners
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1900.180 Standards and Guidelines for Management of Sex Offenders on Probation/Parole
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1900.190 The Role of Victims/Survivors in Sex Offender Evaluation and Treatment
EMERGENCY

AUTHORITY: Implementing and authorized by Section 15 of the Sex Offender Management Board Act [20 ILCS 4026/15].

SOURCE: Adopted at 27 Ill. Reg. 10692, effective August 1, 2003; repealed by emergency rulemaking at 28 Ill. Reg. 8204, effective May 27, 2004, for a maximum of 150 days.

Section 1900.10 Purpose
EMERGENCY

In enacting the Illinois Sex Offender Management Board Act [20 ILCS 4026], the General Assembly declared that the comprehensive evaluation, identification, counseling and continued monitoring of sex offenders who are subject to the supervision of the criminal justice systems or mental health system is necessary in order to work toward the elimination of recidivism by such sex offenders. Therefore, the General Assembly created the Illinois Sex Offender Management Board to create standards and guidelines which standardize the evaluation, identification, counseling and continued monitoring of sex offenders at each stage of the criminal or juvenile justice systems or mental health system.

Section 1900.20 Definitions
EMERGENCY

"Accountability": Accurate attributions of responsibility, without distortion, minimization, or denial.

"Behavioral Monitoring": A variety of methods for checking, regulating and supervising the behavior of sex offenders.

"Board": Illinois Sex Offender Management Board (SOMB).

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"Case Management": The coordination and implementation of the cluster of activities directed toward supervising, treating and managing the behavior of individual sex offenders. (See Containment Approach)

"Clinical Experience": Any activity directly related to providing evaluation and/or treatment to individual sex offenders, e.g., face-to-face therapy, report writing, administration, scoring and interpretation of tests; participation on containment teams of the type described in these standards and guidelines; and clinical supervision of therapists treating sex offenders.

"Clinical Polygraph": The employment of instrumentation, as defined by the Illinois Detection of Deception Examiners Act [225 ILCS 430], used for the purpose of detecting deception or verifying truth of statements of a person under criminal justice supervision and/or treatment for the commission of sex offenses. A clinical polygraph examination is specifically intended to assist in the treatment and supervision of convicted sex offenders. Clinical polygraphs include specific-issue, disclosure and periodic or maintenance examinations. Clinical polygraphs may also be referred to as post-conviction polygraphs. (See also Sex Offender Polygraph)

"Containment Approach": A method of case management and treatment that seeks to hold offenders accountable through the combined use of both offenders' internal controls and external control measures (such as the use of polygraph and relapse prevention plans). A containment approach requires the integration of a collection of attitudes, expectations, laws, policies, procedures and practices that have clearly been designed to work together. This approach is implemented through interagency and interdisciplinary teamwork.

"Containment Team": The containment team, at a minimum, consists of the supervising officer, polygrapher and treatment provider. The containment team utilizes the containment approach. Team members may change over time as issues develop regarding treatment and supervision.

"Defense Mechanisms": Normal, adaptive, self-protective functions which keep human beings from feeling overwhelmed and/or becoming psychotic, but which become dysfunctional when overused or overgeneralized.

"Denial": A defense mechanism used to protect the ego from anxiety-producing information.

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"Evaluation": Systematic collection and analysis of psychological, behavioral and social information; the process by which information is gathered, analyzed and documented.

"Evaluator": An individual who conducts comprehensive sex offense-specific evaluations of sex offenders according to the guidelines and standards contained in this Part, and according to professional standards.

"Guideline": A principle by which to make a judgment or determine a policy or course of action.

"Informed Assent": Compliance; a declaration of willingness to do something in compliance with a request; acquiescence; agreement. The use of the term "assent" rather than "consent" in this document recognizes that sex offenders are not voluntary clients, and that their choices are therefore more limited. Informed means that a person's assent is based on a full disclosure of the facts needed to make the decision intelligently, e.g., knowledge of risks involved, alternatives.

"Informed Consent": Consent means voluntary agreement, or approval to do something in compliance with a request. "Informed" means that a person's consent is based on a full disclosure of the facts needed to make the decision intelligently, e.g., knowledge of risks involved, alternatives.

"Non-Deceptive Polygraph Examination Result": A non-deceptive polygraph examination result must include a deceptive response to control questions. Any inconclusive or deceptive response to any relevant question disallows a non-deceptive examination result.

"Parole": Refers to parole or mandatory supervised release.

"Plethysmography": In the field of sex offender treatment, plethysmography means the use of an electronic device for determining and registering variations in penile tumescence associated with sexual arousal. Physiological changes associated with sexual arousal in women are also measured through the use of plethysmography. Plethysmography includes the interpretation of the data collected in this manner.

"Polygraphy": The use of an instrument that is capable of recording, but not limited to recording, indicators of a person's respiratory pattern and changes

therein and galvanic skin response and cardiovascular pattern and changes therein. Such instruments must be capable of recording visually, permanently and simultaneously. Polygraphy includes the interpretation of the data collected in this manner, for the purpose of measuring physiological changes associated with deception.

"Provider List": The list, published by the Board, identifies the treatment providers, evaluators, plethysmograph examiners and polygraph examiners who meet the criteria set forth in this Part. The determination that the providers meet the criteria is made by the Board based on an application submitted by the provider, outlining his or her experience, training and credentials, a criminal history check and background investigation, written references and reference checks and a review of relevant program materials and products. Placement on the list must be renewed every three years.

"Secondary Victim": A relative or other person closely involved with the primary victim, who is severely impacted emotionally or physically by the trauma suffered by the primary victim.

"Sex Offender": For purposes of this Part a sex offender is defined pursuant to 20 ILCS 4026/10(b).

"Sex Offense": For purposes of this Part, a sex offense is pursuant to 20 ILCS 4026/10(c).

"Sex Offender Polygraph": A polygraph examination of a suspected or convicted sex offender.

"Sex Offense-Specific Treatment": Consistent with current professional practices, sex offense-specific treatment means a long term comprehensive set of planned therapeutic experiences and interventions to change sexually abusive thoughts and behaviors. Such treatment specifically addresses the occurrence and dynamics of sexually deviant behavior and utilizes specific strategies to promote change. Sex offense-specific programming focuses on the concrete details of the actual sexual behavior, the fantasies, the arousal, the planning, the denial and the rationalizations. Due to the difficulties inherent in treating sex offenders and the potential threat to community safety, sex offense-specific treatment should continue for several years, followed by a lengthy period of aftercare and monitoring. Much more importance is given to the meeting of all treatment goals than the passage of a specific amount of time, since offenders make progress in

treatment at different rates. The primary treatment modality for sex offense-specific treatment is group therapy for the offenders. Adjunct modalities may include partner or couples therapy, psycho-education, and/or individual therapy. However, such adjunct therapies by themselves do not constitute sex offense-specific treatment.

"Sexually Dangerous Person": Determined by the court to be civilly committed under the Sexually Dangerous Person Act [725 ILCS 205].

"Sexually Violent Person": Determined by the court to be civilly committed under the Sexually Violent Person Commitment Act [725 ILCS 207].

"Standard": Criteria set for usage or practices; a rule or basis of comparison in measuring or judging.

"Standards and Guidelines": The criteria set for the identification, evaluation, treatment and behavioral monitoring of adult sex offenders.

"Supervising Officer": The probation or parole officers are responsible for the behavioral monitoring of sex offenders. In addition, any person employed by the Department of Human Services or by an entity that contracted with the Department of Human Services to supervise sexually violent persons on conditional release.

"Treatment": Therapy, monitoring and supervision of any sex offender which conforms to the standards created by the Board. (See also Sex Offense-Specific Treatment)

"Treatment Provider": A treatment provider means a person who provides sex offense-specific treatment to sex offenders according to the standards and guidelines contained in this Part.

"Victim Clarification Process": A process designed for the primary benefit of the victim, by which the sex offender clarifies that the responsibility for the assault/abuse resides with the sex offender. The process will clarify that the victim has no responsibility for the sex offender's behavior. It also addresses the damage done to the victim and the family. This is a lengthy process that occurs over time, including both verbal and written work on the part of the sex offender. Although victim participation is never required and is sometimes contraindicated, should the process proceed to an actual clarification meeting with the victim, all

contact is victim centered and based on victim need.

Section 1900.30 Guidelines for Presentence Investigations
EMERGENCY

a) Before sex offenders are sentenced for felony sex offenses as outlined in the Illinois Compiled Statutes and all felony offenders whose criminal conduct includes some form of sexually motivated or deviant behavior (battery charges which were sexual, burglary with the theft of undergarments, criminal trespass which was peeping, etc.) shall be required to comply with a presentence investigation, including a comprehensive sex offense-specific evaluation, prior to sentencing, even when by statute it is otherwise acceptable to waive the presentence investigation. With respect to all misdemeanor offenders, including those in sex cases reduced to non-sex offense categories, it is recommended that they undergo a presentence investigation, including a sex offense-specific evaluation prior to sentencing.

b) The presentence investigation report, including the results of the comprehensive sex offense-specific evaluation (including a polygraph) should follow the sex offender throughout the time the sex offender is under criminal justice system jurisdiction, whether on probation, parole, or in prison.

c) In cases of conviction, including plea agreements, supervision and sentences for non-sexual crimes, if the current offense has a factual basis of unlawful sexual behavior, or any substantial step toward committing sexual behavior, the sex offender's case shall be assigned to a presentence investigator specially trained to assess sex offenders.

d) Presentence investigations on sex offender and sex offense related cases should be completed by probation officers specially trained to evaluate all data collected from comprehensive sex offense-specific evaluations, clinical interviews, objective and psychometric measures, as well as criminal and social history information. Probation officers assigned to sex offender presentence cases shall be required to have a minimum of 2 years active case supervision including sex offenders and shall complete a minimum of 40 hours training on the assessment of sex offenders.

Section 1900.40 Presentence Investigation Report Format
EMERGENCY

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The Presentence Investigation Report shall contain the following information:

a) Summarize the circumstances of the offense(s), including when appropriate:

1) Date, time and place of offense(s).

2) Age, gender, and relationship of victim(s).

3) Details of offense, including any use of violence.

4) Date and circumstances of taking into custody.

b) Sex Offender's Statement and Attitude Regarding Offense:

1) Summarize sex offender's version of offense. (Does he/she deny or minimize the offense, or take responsibility for his/her actions? What is the sex offender's opinion (or feelings) towards the victim(s) and his/her family?)

2) General attitude regarding self and his/her present situation.

3) Attitude toward legal process, detention and corrections personnel.

4) Cooperation/truthfulness.

5) Justification given by the sex offender for the offense.

c) History of Delinquency and Adult Prior Convictions:

1) Chronological listing of all prior adjudications and convictions.

2) History of prior periods of probation or supervision, as juvenile or adult.

3) History of prior periods of incarceration, as juvenile or adult.

4) Specific identification of any sex-related criminal behavior.

d) Family Composition:

1) List names, ages, and addresses regarding spouse and children.

2) List names, ages, addresses of parents (if living).

3) Summarizes information relating to siblings.

4) List any non-relatives presently residing with sex offender.

5) Note socio-economic status of family, including family income. (Indicate the type and amount of income; i.e., employment income, social security, welfare benefits, pension, etc.) Note possibility of usage of assets for restitution or treatment.

6) Note any criminal history, mental illness, and other serious problems of family members, especially if there is a family criminal history of sexual offending.

e) Family Interaction:

1) Describe intra-family relationships and/or family attitude toward the sex offender. (Is there resentment directed at the sex offender due to his/her offense(s), especially if the victim resides in the same house, or is the family supportive of the sex offender and willing to help him/her deal with sex offending issues despite the victim's presence in the family unit? Is the family in denial about the subject's offending behavior?)

2) Describe sex offender's feelings toward family members, other members of the household and victim(s) (if applicable).

f) Sex Offender Information:

1) Sex offender's place of birth; geographic movement of subject and family.

2) Living situation. (Give a description of the residence and neighborhood. Expound on the safety plan at the residence if the sex offender is released after a court disposition, and the victim(s) resides in the same home. What steps are going to be implemented by the family to insure that the sex offender has no unsupervised contact with his/her victim(s) (if applicable)? Is it possible to have the sex offender live elsewhere instead of his/her home if the victim(s) also resides there? Explore the option of the court ordering a home-study.)

3) Close associations or gang affiliations. (Inquire about the sex offender's keeping company with other known sex offenders (juvenile or adult).)

g) Education:

1) Years of education completed/present educational status.

2) Last school attended.

3) IQ and other relevant test results.

4) School grades and attendance record.

5) Deportment.

6) Special problems.

7) Any specialized training the sex offender has received, including any placements.

8) School safety plan. (Expound on what steps are going to be taken by the sex offender and/or school officials to insure that he or she does not have victim access at the school. This is particularly important if the subject is in a school setting with minors who are younger and/or smaller than he/she is.) This plan must not be in conflict with 720 ILCS 5/11-9.3.

h) Employment:

1) List current employment status.

A) Name and address of employer.

B) Wages.

C) Duties.

D) Hours.

E) Work safety plan. (It is important, at the start, to determine where

the subject is employed. If it is a place where he/she has victim access (particularly where small children associate), the subject should be discouraged from continuing to work there. Is the place of employment close to a public area where small children congregate? Should the investigation include a recommendation to the court that the subject not hold a particular job where there is victim access?)

2) List prior employment.

3) Indicate any special job skills possessed by the sex offender.

i) Health:

1) Physical description.

A) Race.

B) Complexion.

C) Build.

2) Present health status.

3) Prescribed medication taken at present time.

4) History of any serious illnesses or injuries.

5) Physical handicaps.

j) Mental and Emotional:

1) Comment on the sex offender's mental and emotional appearance.

2) Indicate any past treatment or institutionalization for mental illness (Look for a history of organic brain disease, brain injury, depression or suicide attempts. Specifically, focus on past sex offender treatment or counseling (if applicable). Was the sex offender treatment administered by a qualified sex offender therapist, or just someone who is a "general counselor" (private counselor, family counselor, religious-affiliated counselor, etc.)?)

3) A comprehensive sex offense-specific evaluation report (including a polygraph examination) is imperative, and should coincide with the social investigation.

4) Any prior evaluations (sex offense, psychological, psychiatric, drug/alcohol, etc.) should be attached to the report, and findings summarized.

k) Alcohol and Drug Use: Indicate available information of the sex offender's past and present use of alcohol and/or illegal drugs:

1) Source of information.

2) Degree of use.

3) Type and extent of drug involvement.

4) History of treatment received, including dates and details of any placements.

l) Religion: Indicate the sex offender's religious preference and church membership, if any (name and address of church). Indicate degree of participation. (Also, as in the school safety plan, expound on what steps are going to be taken by the family, pastor and/or certain members of the congregation to insure that the sex offender does not have victim access.)

m) Interests:

1) Hobbies.

2) Special interests.

3) Recreational preference.

4) Use of leisure time. (Determine what the sex offender most enjoys doing during his/her free time. Investigate various forms of media, especially videos, Internet, or magazines as the sex offender could very well be indulging in pornographic material with regard to these forms of media.)

n) Future: The subject's plans for his/her life in the future.

o) Community Attitude:

1) Statement of arresting sex officer.

2) Statement of school personnel (principal, teachers, counselors, etc.).

3) If the sex offender is employed, or has an employment history, an employer reference may be included here.

4) Any other reference letters submitted on behalf of the defendant may be inserted here.

p) Victim Impact: The probation officer, or whoever prepares the victim impact statement, should make contact with the victim/victims (if over 18) or the parents to verify if he/she was referred for victim services after the offense occurred. (Was the victim physically injured requiring medical attention or hospitalization? What mental and/or emotional trauma does the victim (or parents of the victim) report? Is the victim in counseling or does he/she plan to seek help? Has the victim had to move, change jobs or make other significant changes in his/her daily life or routine? Did the victim (or parents) have to pay medical expenses related to the investigation? If employed, how much time or pay was lost due to trauma and the legal process? What does the victim (or parents of the victim) believe is the appropriate sentence for the sex offender? If the victim does not reside in the same home as the subject, has the subject made contact, or attempted to make contact with him/her?)

q) Summary and Sentencing Alternatives

1) Briefly summarize the most pertinent elements of subsections (a) through (p) relative to the disposition of the case. Strengths and weaknesses may be discussed.

2) Present an analysis of the sex offender's problems and the factors related to the pattern of delinquent and/or sex offending behavior.

3) Consider alternatives for sentencing, treatment and placement. If, in local judicial practice, the trial judge, in an exercise of discretion, requests formal recommendations, the presentence report should make

recommendations about a sex offender's suitability for community supervision. This analysis, based on the gathered data, should include all the aggravating and mitigating information. It is an opportunity for the investigator to give, at the specific request of the court, opinions about the sex offender's amenability to treatment and his/her risk to the community.

4) If the sex offender is eligible to be placed on probation, the report should include all special conditions needed for effective supervision and treatment of the sex offender, and the safety of the victim and the community. The report should include recommendations restricting access to children as appropriate (specifically based upon recommendations in the comprehensive sex offense-specific evaluation).

Section 1900.50 Sources of Information
EMERGENCY

a) Attached to the presentence investigation should be all the supportive documentation including the comprehensive sex offense-specific evaluation, polygraph results, previous presentence investigations, drug and alcohol evaluations, and treatment reports, victim impact statements, and any other pertinent documentation backing up the factual content of the report.

b) When referring a sex offender for a comprehensive sex offense-specific evaluation or treatment, presentence investigators should send to the evaluator, treatment provider and polygrapher the following as part of the referral packet:

1) The instant offense reports (police reports).

2) The victim impact statement.

3) DCFS reports or investigation results and case records.

4) A criminal history.

5) Any completed risk assessment tools.

6) Prior evaluations and treatment reports.

7) Prior polygraph examinations.

8) Any presentence investigation reports.

9) Pertinent prior probation or supervision records.

10) DOC records, both adult and juvenile.

11) Other available information as required by the evaluator or polygrapher.

c) At the time of the intake interview, the purpose of the presentence investigation should be explained to the sex offender by the presentence investigator/writer. All required release of information forms, including a copy of the required disclosure/advisement form, should be signed and dated.

Section 1900.60 Standards for Comprehensive Sex Offense-Specific Evaluations
EMERGENCY

a) In accordance with Section 1900.30 of this Part, each sex offender shall receive a comprehensive sex offense-specific evaluation at the time of the presentence investigation.

b) The comprehensive sex offense-specific evaluation has the following purposes:

1) To document the offense-specific and/or mental health treatment needs identified by the evaluation (even if resources are not available to address adequately the treatment needs of the sexually abusive offender);

2) To provide a written clinical evaluation of a sex offender's risk for re-offending and current amenability to treatment;

3) To guide and direct specific recommendations for the conditions of treatment and supervision of a sex offender;

4) To provide information that will help to identify the optimal setting, intensity of intervention, and level of supervision; and

5) To provide information that will help to identify sex offenders who should not be referred for community-based treatment.

c) The evaluator must be approved by the Board. In addition, evaluators shall adhere to established ethical standards, practices and guidelines of their respective

professions with regard to the administration of psychological tests.

d) The evaluator must obtain a waiver of confidentiality and the informed assent of the sex offender for the evaluation, and shall inform a sex offender regarding the evaluation methods (including use of polygraph), how the information will be used, and to whom it will be given. The evaluator shall respect a sex offender's right to be fully informed about the evaluation procedures. Results of the evaluation should be shared with the sex offender and any questions clarified.

e) The evaluator shall be sensitive to any cultural, ethnic, developmental, sexual orientation, gender, medical and/or educational issues that may arise during the evaluation.

f) Because of the uncertainty of risk prediction for sex offenders, the Board recommends the following approaches to evaluation:

1) Use of instruments that have specific relevance to evaluating sex offenders.

2) Use of instruments with demonstrated reliability and validity.

3) Integration of collateral information.

4) Use of multiple assessment instruments and techniques.

5) Use of structured interviews.

6) Use of interviewers who have been trained to collect data in a non-pejorative manner.

g) Unless otherwise indicated in Section 1900.70 of this Part, the following evaluation modalities are all required in performing a comprehensive sex offense-specific evaluation:

1) Examination of criminal justice information, including prior juvenile adjudications, the details of the current offense and documents that describe victim trauma, when available.

2) Examination of collateral information, including information from other sources on the sex offender's sexual behavior.

3) Structured clinical and sexual history and interview.

4) Offense-specific psychological testing.

5) Standardized psychological testing if clinically indicated.

6) Medical examination/referral for assessment of pharmacological needs if clinically indicated.

7) Testing of deviant arousal or interest through the use of the penile plethysmograph or standardized visual-reaction-time measurements.

8) Physiological testing of deception and denial through the use of polygraph examinations.

9) Review of child welfare investigations and case records, where applicable.

h) A comprehensive sex offense-specific evaluation of a sex offender shall consider the following:

1) Sexual evaluation, including sexual developmental history and evaluation of a sexual arousal/interest, deviance and paraphilias.

2) Degree of psychopathology (including assessment for psychopathy).

3) Level of deception and/or denial.

4) Mental and/or organic disorders.

5) Drug/alcohol use.

6) Stability of functioning.

7) Self-image/self-esteem.

8) Medical/neurological/pharmacological needs.

9) Level of violence and coercion.

10) Motivation and amenability to treatment.

11) Escalation of high-risk behaviors.

12) Risk of re-offense.

13) Treatment and supervision needs.

14) Impact on the victim, when possible.

15) Intellectual functioning.

16) Developmental history.

17) Level and quality of social-support systems.

Section 1900.70 Comprehensive Sex Offense-Specific Evaluation – Adult
EMERGENCY

a) Evaluate Mental and/or Organic Disorders

1) IQ Functioning (Developmental Disability, Learning Disability, and Literacy)

A) Evaluation Area Required:
IQ Functioning (Developmental Disability, Learning Disability and Literacy)

B) Possible Evaluation Procedures:
History or Functioning and/or Standardized Tests (Examples: WAIS-III, WRAT-R, Revised Beta, TONI (tests of non-verbal intelligence), Shipley Institute of Living Scale Revised, Kaufman IQ Test for Adults)

2) Organic Brain Syndrome (OBS)

A) Evaluation Area Required:
Organic Brain Syndrome

B) Possible Evaluation Procedures:

History or Functioning and/or Standardized Tests (Examples: WAIS-III, Weschler Memory Scale Revised, Limbic System Checklist, Structured Mental Status, Jacobs Cognitive Screening Test, Medical Tests Necessary for Diagnosis)

3) Mental Illness

A) Evaluation Area Required:
Mental Illness

B) Possible Evaluation Procedures:

i) History of Functioning and/or Structured Interview

ii) MMPI2

iii) MCMI-III

iv) Beck Depression Scale

b) Evaluate Drug/Alcohol Use

1) Use/Abuse

A) Evaluation Area Required:
Use/Abuse

B) Possible Evaluation Procedures:

i) History of Functioning and/or Structured Interview

ii) MMPI2

iii) CAQ (Clinical Analysis Questionnaire)

iv) PHQ (Personal History Questionnaire)

v) ADS

vi) DAST-20

vii) Adult Substance Use Survey

viii) Substance Use History Matrix

ix) Collateral Information

2) Number of Relapses

A) Evaluation Area Required:
Number of Relapses

B) Possible Evaluation Procedures:

i) History of Functioning and/or Structured Interview

ii) Treatment History

iii) Collateral Information

c) Evaluate Degree of Psychopathology
Degree of Impairment

1) Evaluation Area Required:
Degree of Impairment

2) Possible Evaluation Procedures:

A) Hare Psychopathy Checklist Revised (PCLR or PCLSC)

B) Structured Interview

C) MCMI-III

D) MMPI2

E) History

F) Collateral Information

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d) Evaluate Stability of Functioning

1) Marital/Family Stability

A) Evaluation Areas Required:

i) Past

ii) Current

iii) Familial Violence

iv) Familial Sexual

v) Financial

vi) Housing

B) Possible Evaluation Procedures:

i) History of Functioning and/or Structured Interview

ii) FES (Family Environment Scale)

iii) DAS (Dyadic Adjustment Scale)

iv) MSI (Marital Satisfaction Inventory)

v) SARA (Spousal Assault Risk Assessment)

vi) Interview Attitudes

vii) Collateral Information

2) Employment/Education

A) Evaluation Area Required:
Completion of Major Life Tasks

B) Possible Evaluation Procedures:

i) History of Functioning and/or Structured Interview

ii) PHQ (Personal History Questionnaire)

3) Social Skills

A) Evaluation Areas Required:

i) Ability to Form Relationships

ii) Ability to Maintain Relationships

iii) Courtship/Dating Skills

iv) Ability to Demonstrate Assertive Behavior

B) Possible Evaluation Procedures:

i) History of Functioning and/or Structured Interview

ii) Collateral Information

iii) IBS (Interpersonal Behavior Survey)

iv) Social Avoidance and Distress Scale

v) Waring's Intimacy Scale

vi) UCLA Loneliness Scale

vii) Tesch's Intimacy Scale

viii) Miller's Social Intimacy Scale

e) Evaluate Developmental History

1) Evaluation Areas Required:

A) Disruptions in parent/child relationship

B) History of bed wetting, cruelty to animals

C) History of behavior problems in elementary school

D) History of special education services, learning disabilities, school achievement

E) Indicators of disordered attachments

2) Possible Evaluation Procedures:

A) History of Functioning and/or Structured Interview

B) Collateral Information

f) Evaluation of Self-Image and Self-Esteem

1) Evaluation Area Required:
Self-Image and Self-Esteem

2) Possible Evaluation Procedures:

A) History of Functioning and/or Structured Interview

B) MPD (Measures of Psychological Development)

C) CAQ (Clinical Analysis Questionnaire)

D) CPI (California Personality Inventory)

g) Evaluation of Medical Screening Measures

1) Evaluation Areas Required:

A) Pharmacological needs

B) Medical Condition Impacting Offending Behavior

C) History of Medication Use/Abuse

2) Possible Evaluation Procedures:

A) History of Functioning and/or Structured Interview

B) Referral to Physician if indicated

C) Medical Tests

h) Sexual Evaluation

1) Sexual History (Onset, Intensity, Duration, Pleasure Derived)

A) Evaluation Areas Required:

i) Age of Onset of Expected Normal Behaviors

ii) Quality of First Sexual Experience

iii) Age of Onset of Deviant Behavior

iv) Witnessed or Experienced Victimization (Sexual or Physical)

v) Genesis of Sexual Information

vi) Age/Degree of Use of Pornography, Phone, Cable, Video, or Internet for Sexual Purposes

vii) Current and Past Range of Sexual Behavior

B) Possible Evaluation Procedures:

i) History of Functioning and/or Structured Interview

ii) PSCI (Personal Sentence Completion Inventory – Miccio-Fonseca)

iii) Wilson Sexual Fantasy Questionnaire

iv) SONE Sexual History Background Form

v) SORI (Sex Offender Risk Instrument – in research stage)

vi) Collateral Information

2) Reinforcement Structure for Deviant Behavior

A) Evaluation Areas Required:

i) Culture

ii) Environment

iii) Cults

iv) Gangs

B) Possible Evaluation Procedures:
Structured Interview

3) Arousal Pattern

A) Evaluation Areas Required:

i) Sexual Arousal

ii) Sexual Interest

B) Possible Evaluation Procedures:

i) Plethysmography

ii) Abel Assessment for Sexual Interest

4) Specifics of Sexual Crime(s) (Onset, Intensity, Duration, Pleasure Derived)

A) Evaluation Areas Required:

i) Detailed Description of Sexual Assault

ii) Seriousness, Harm to Victim

iii) Mood During Assault (Anger, Erotic, "Love")

iv) Progression of Sexual Crimes

v) Thoughts Preceding and Following Crimes

vi) Fantasies Preceding and Following Crimes

B) Possible Evaluation Procedures:

i) Structured Interview

ii) History of Crimes

iii) Review of Criminal Records

iv) Contact with Victim Therapist

v) Polygraph

vi) Collateral Information

5) Sexual Deviance

A) Evaluation Area Required:
Sexual Deviance

B) Possible Evaluation Procedures:

i) Structured Interview

ii) MSI (Multiphasic Sex Inventory)

iii) SONE

6) Dysfunction

A) Evaluation Areas Required:

i) Impotence

ii) Priapism

iii) Injuries

iv) Medications Affecting Sexual Functioning, etc.

B) Possible Evaluation Procedures:

i) Structured Interview

ii) MSI (Multiphasic Sex Inventory)

iii) Sexual Autobiography

7) Sex Offender's Perception of Dysfunction

A) Evaluation Area Required:
Sex Offender's Perception of Dysfunction

B) Possible Evaluation Procedures:

i) Structured Interview

ii) Sexual Autobiography

iii) Bentler Heterosexual Inventory

iv) History

8) Perception of Sexual Functioning

A) Evaluation Area Required:
Perception of Sexual Functioning

B) Possible Evaluation Procedures:

i) Structured Interview

ii) Sexual Autobiography

iii) Plethysmography

iv) Bentler Sexual Behavior Inventory

9) Preferences

A) Evaluation Areas Required:

i) Male/Female

ii) Age

iii) Masturbation

iv) Use of Tools

v) Utensils

vi) Food

vii) Clothing

viii) Current Sexual Practices

ix) Deviant as well as Normal Behavior

B) Possible Evaluation Procedures:

i) Structured Interview

ii) Sexual Autobiography

iii) Plethysmography

iv) Abel Assessment for Sexual Interest

v) Collateral Information (such as from spouses or significant others)

10) Attitudes/Cognition

A) Evaluation Areas Required:

i) Motivation to Change/Continue Behavior

ii) Attitudes Toward Women, Children

iii) Sexuality in General
Victim)

iv) Attitudes about Offenses (i.e., seriousness, harm to victim)

v) Degree of Victim Empathy

vi) Presence/Degree of Minimalization

vii) Presence/Degree of Denial

viii) Ego-Syntonic vs. Ego-Dystonic Sense of Deviant Behavior

B) Possible Evaluation Procedures:

i) Structured Interview

ii) Burt Rape Myth Acceptance Scale

iii) MSI (Multiphasic Sex Inventory)

iv) Buss/Durkee Hostility Inventory

v) Abel and Becker Cognitions Scale

vi) Attitudes Towards Women Scale

vii) Socio-Sexual Knowledge and Attitudes Test (for use with

sex offenders who have developmental disabilities)

i) Evaluate Level of Denial and/or Deception

1) Evaluation Areas Required:

A) Level of Denial

B) Level of Deception

2) Possible Evaluation Procedures:

A) Structured Interview

B) Polygraph

C) Collateral Information (such as from victim, police, others)

j) Evaluate Level of Violence and Coercion

1) Evaluation Areas Required:

A) Level of Violence

B) Overall Pattern of Assaultiveness

C) Victim Selection

D) Pattern of Escalation of Violence

2) Possible Evaluation Procedures:

A) Structured Interview

B) History

C) Review of Criminal Records

D) Collateral Information

k) Evaluate Risk of Re-offense

1) Evaluation Area Required:
Risk of Re-offense

2) Possible Evaluation Procedures:

A) Criminal History

B) Violence Risk Assessment Guide (normed on a psychiatric hospital sample) (good predictor of violence recidivism but not of sexual recidivism)

C) Rapid Risk Assessment for Sex Offender Re-Arrest (sample excludes incest offenders)

D) MnSOST-R (normed on Minnesota Offenders in the Department of Corrections, excludes incest offenders)

E) Static 99

F) SONAR

G) Any other validated risk instrument that is generally accepted by sex offender evaluators

l) The evaluator shall consider the following factors when making recommendations relating to a sex offender's risk to re-offend and amenability to treatment:

1) Admission of offenses;

2) Accountability (internal and external factors which control behavior);

3) Cooperation;

4) Offense history and victim choice;

5) Escalating pattern of offenses, violence, and dangerous behaviors;

6) Sexual deviance, arousal patterns, and sexual interest;

7) Social interest;

8) Lifestyle characteristics;

9) Psychopathology;

10) Developmental markers;

11) History of childhood or adolescent delinquency;

12) Substance abuse;

13) Criminal history;

14) Social support systems;

15) Overall control and intervention;

16) Motivation for treatment and recovery;

17) Self-structure;

18) Disowning behaviors;

19) Prior treatment;

20) Impact on victims;

21) Access to potential victims;

22) Availability of treatment in the community;

23) Availability of supervision, including surveillance agents, in the community.

m) The evaluator shall recommend:

1) The level and intensity of offense-specific treatment needs;

2) Referral for assessment and/or treatment of co-existing conditions (e.g., substance abuse, mental illness, medical/pharmacological);

3) Methods to lessen victim impact (e.g., no-contact orders, paying for counseling, involvement of non-offending spouse, etc.);

4) Appropriateness of community placement with emphasis on the risks associated with the home, neighborhood, school or community;

5) The level and intensity of behavioral monitoring needed;

6) The types of external controls which should be considered specifically for that sex offender (e.g., controls of work environment, access to children, leisure time, or transportation; life stresses; or other issues that might increase risk and require increased supervision);

7) The evaluator (if different from the treatment provider) shall also provide presentence investigations, sex offense-specific evaluations, polygraph examinations, and other information to the containment team or prison treatment provider at the beginning of a sex offender's term of supervision or incarceration.

Section 1900.80 Standards of Practice for Treatment Providers for Adult Sex Offenders – Sex Offense-Specific Treatment
EMERGENCY

a) Sex offense-specific treatment must be provided by a treatment provider who meets the criteria in this Part and is approved by SOMB.

b) A provider who treats sex offenders under the jurisdiction of the civil commitment and criminal justice systems must use sex offender-specific treatment, as defined by this Part.

c) A provider shall develop a written treatment plan with measurable goals based on the needs and risks identified in current and past assessments/evaluations of the sex offender.

d) The treatment plan shall:

1) Provide for the protection of victims and potential victims and not cause

the victims to have unsafe and/or unwanted contact with the sex offender;

2) Be individualized to meet the unique needs of the sex offender;

3) Identify the issues to be addressed, including multi-generational issues if indicated, the planned intervention strategies, and the goals of treatment;

4) Define expectations of the sex offender, his/her family (when possible), and support systems;

5) Address the issue of ongoing victim input;

6) Describe the treatment provider's role in implementing the treatment plan.

e) A provider shall submit written quarterly progress reports.

f) A provider shall employ treatment methods that are supported by current professional research and practice. Group therapy (with the group comprised only of sex offenders) is the preferred method of sex offender-specific treatment. At a minimum, any method of psychological treatment used must conform to the standards for content of treatment and must contribute to behavioral monitoring of sex offenders. The sole use of individual therapy is not recommended with sex offenders and shall be avoided except when geographical (specifically rural) or disability limitations dictate its use or when it is clinically indicated. While group therapy is the preferred modality, individual therapy may be an appropriate adjunct treatment. Sex offender-specific treatment may also be supplemented with treatment for drug/alcohol abuse, marital therapy, and/or crisis intervention services.

1) The use of male and female co-therapists in group therapy is highly recommended and may be required by the supervising agency;

2) The ratio of therapists to sex offenders in a treatment group shall not exceed 1:8;

3) Treatment group size shall not exceed 12 sex offenders;

4) The provider shall employ treatment methods that give priority to the safety of the sex offender's victims and the safety of potential victims and the community;

5) The provider shall employ treatment methods that are based on recognition of the need for long-term, offense-specific treatment for sex offenders. Self-help or time-limited treatment shall be used only as adjuncts to long-term, comprehensive treatment.

g) In order to achieve the goals of sex offense-specific treatment, the following elements shall be addressed in treatment:

1) Offense Disclosure: The sex offender discloses all of his or her sexual offenses, reducing denial and defensiveness and/or assisting the sex offender in assuming full responsibility for his or her sexual offending.

Completion Indicators:

A) The sex offender makes a disclosure of all sex offenses.

B) The sex offender attends treatment sessions as ordered or required.

C) The sex offender completes all assigned tasks as required.

D) When available, the sex offender completes non-deceptive polygraphs on past and maintenance issues.

E) The sex offender consistently takes full responsibility for all of his or her actions including sex offenses, as indicated by polygraph.

F) The sex offender holds himself/herself accountable for his/her behavior in general.

2) Offense-Specific Cognitive Restructuring: Cognitive distortions refer to distortions in thinking, including thinking errors that enable sexually offending behaviors. Identifying and correcting or changing sex offenders' cognitive distortions that fuel sexual offending is the purpose of this element of treatment.

Completion Indicators:

A) The sex offender identifies and restructures offense-specific cognitive distortions.

B) The sex offender assumes responsibility for offending.

C) There is evidence that offense-specific distortions have been restructured or changed as indicated by the lack of using cognitive distortions and that the sex offender holds self fully accountable when discussing the offenses.

3) Assault Cycle and Intervention: The assault cycle is the repetitive patterns of sexual offending. This element of treatment is intended to: identify the sex offender's patterns of offending, including risk factors; teach sex offenders self-management methods, skills, and appropriate coping skills to eliminate a sexual re-offense; educate sex offenders and individuals who are identified as the sex offender's support system and the containment team about the potential for re-offending and the sex offender's specific risk factors; and require sex offenders to learn specific relapse prevention strategies, including the development of a written, specific relapse prevention plan, which should identify antecedent thoughts, feelings, situations, social behaviors, and any other behaviors associated with sexual offenses along with specific interventions.

Completion Indicators:

A) The sex offender demonstrates identification of his/her own assault cycle and how he/she applies it to his/her daily lifestyle.

B) The sex offender demonstrates knowledge of relapse intervention concepts.

C) The sex offender has consistently demonstrated the effective use of relapse prevention skills, i.e., is able to diffuse cycle behaviors, relapse processes, deviant arousal and other factors that contribute to sexual offending.

D) The sex offender has disengaged from relationships that support his or her denial, minimization, and resistance to treatment.

E) The sex offender is engaged in relationships that are supportive of treatment and seeks feedback from his/her support system.

F) The sex offender has demonstrated consistently the ability to avoid high-risk environments.

4) Victim Empathy: Empathy is the capacity to understand and identify with another's perspective and experience the same emotions. The ability to develop victim empathy may vary from sex offender to sex offender and may have varying emphasis in treatment.

Completion Indicators:

A) The sex offender verbalizes and demonstrates victim empathy, identifies feelings, recognizes victim impact, assumes ownership of offenses, understands and takes the perspective of others, demonstrates emotional regret, and expresses feelings of empathy and remorse.

B) The sex offender demonstrates behaviors that indicate reduced risk of harm to victims.

C) Cautionary Note: TREATMENT TO ASSIST IN THE DEVELOPMENT OF VICTIM EMPATHY IS CONTRAINDICATED FOR PSYCHOPATHIC OFFENDERS.

5) Arousal Control: This element of treatment is intended to assess, identify, and decrease or replace deviant sexual desires, arousal, thoughts, and fantasies, replacing this deviancy with healthier sexual attitudes and functioning.

Completion Indicators:

A) The sex offender discloses deviant and/or violent sexual fantasies.

B) The frequency and intensity of deviant arousal, violent and/or sadistic fantasies, and masturbation to deviant fantasies are decreased.

C) The sex offender develops behavioral/self management strategies to reduce deviant arousal and behavior patterns, including eliminating self-abusive sexual behaviors.

D) The sex offender develops and maintains normal, non-victimizing fantasies.

6) Clinical/Core Issue Resolution: It is commonly assumed that offending involves multiple unresolved emotional issues and not just deviant sexual urges. Motivational dynamics that may fuel sexual offending or other victimizing or assaultive behaviors may arise from the effects of trauma or past victimization, key developmental events, or other unresolved problems or needs. It is critical for resolution of these core issues to occur without the sex offender assuming a victim stance. Sex offenders must still be held accountable for their offending when these issues are resolved.

Completion Indicators:

A) The sex offender has identified and resolved or mostly resolved core issues that may facilitate sexual re-offense. Core issues may include anger, power, control, inferiorities, dependency, insecurity, rejection, jealousy, possessiveness, resentment, and inadequacies in terms of self-worth and self-esteem.

B) The sex offender has identified and changed the effects of past trauma and past victimizations to decrease their impact on the risks of re-offending.

7) Social Skills and Interpersonal Restructuring: Social skills refer to specific communication skills and social behaviors. Interpersonal restructuring refers to redefining the way sex offenders form attachments or relate to others. Interpersonal deficits are frequently associated with attachment issues. The development of basic social skills replaces deficits and inappropriate attachments or relationships, diminishing the risk of sexual re-offending. This element of treatment is intended to: identify deficits in specific interpersonal skills and decrease the sex offender's deficits in social and relationship skills, where applicable; and assist sex offenders in developing and practicing social skills, improving the quality of their relationships with others.

Completion Indicators:

A) Demonstrates appropriate social relationships.

B) Demonstrates appropriate boundaries.

C) Has the skills to manage interpersonal relationship issues.

8) Lifestyle Balancing and Restructuring: Lifestyle balancing and restructuring refers to assisting sex offenders in changing their existing lifestyles to lifestyle patterns that minimize sexual re-offending and maintaining this lifestyle. The focus of this element of treatment is to: educate sex offenders about non-abusive, adaptive, legal, and pro-social sexual functioning; identify and treat sex offenders' personality traits, lifestyle, behaviors, patterns, and deficits that are related to their potential for re-offending; and maximize opportunities for the sex offender to develop a healthy self-esteem.

Completion indicators will demonstrate a change in personality traits, lifestyle behaviors, patterns, and deficits related to the potential for re-offending including:

A) Antisocial/psychopathic behaviors.

B) Narcissistic behaviors.

C) Borderline characteristics of behavior.

D) Schizoid behaviors.

E) Obsessive-compulsive/passive-aggressive behaviors.

F) Demonstrates a healthy and balanced lifestyle.

9) The provision of treatment referrals, as indicated, links sex offenders with other resources such as medical, pharmacological, mental, substance abuse, and/or domestic violence services.

Completion Indicators:

A) Monitoring sex offenders' linkage with other referral resources.

B) Communication with others. Communication is a critical element

in treatment, aftercare and supervision. This element of treatment maintains communication with significant persons in sex offenders' support systems, when indicated, and to the extent possible to assist in meeting treatment goals.

h) Providers shall maintain sex offenders' files in accordance with the professional standards of their individual disciplines. The files shall:

1) Document the goals of treatment, the methods used, and the sex offender's observed progress, or lack thereof, toward reaching the goals in the treatment records. Specific achievements, failed assignments, rule violations, and consequences given should be recorded;

2) Accurately reflect the sex offender's treatment progress, sessions attended, and changes in treatment.

Section 1900.90 Standards of Practice for Treatment Providers for Adult Sex Offenders – Confidentiality
EMERGENCY

a) Prior to accepting sex offender into treatment and as a condition of treatment, the treatment provider shall obtain signed waivers of confidentiality/release of information based on the informed consent of the sex offender. If the sex offender has more than one therapist or treatment provider, the waiver of confidentiality/release of information shall extend to all therapists treating the sex offender. The waiver of confidentiality/release of information should also extend to the victim's therapist. The waiver of confidentiality/release of information shall extend to the supervising officer and all members of the team and, if applicable, to the Department of Human Services and other individuals or agencies responsible for the supervision of the sex offender.

b) Waivers of confidentiality/release of information will be required of the sex offender by the conditions of:

1) Probation and parole.

2) Sexually Violent Persons (SVP) containment team.

3) Illinois Department of Corrections.

4) Treatment provider-client contract.

5) Department of Human Services.

6) Conditions of conditional release for sexually violent persons.

7) Conditions of conditional release for sexually dangerous persons.

c) Notwithstanding such waivers of confidentiality/release of information, treatment providers shall safeguard the confidentiality of sex offenders' information from those for whom waivers of confidentiality/release of information have not been obtained. Waivers of confidentiality/release of information should also extend to the victim, or custodial parent or guardian of a child victim, particularly with regard to the sex offender's compliance with treatment and information about risk, threats, and possible escalation of violence.

d) A provider shall notify all clients of the limits of confidentiality imposed on therapists by the Abused and Neglected Child Reporting Act [325 ILCS 5].

e) A provider shall ensure that a sex offender understands the scope and limits of confidentiality in the context of his/her particular situation, including the collection of collateral information, which may or may not be confidential.

f) When indicated and consistent with the informed consent of a sex offender, a provider shall obtain a waiver of confidentiality/release of information in order to communicate with the victim's therapist, guardian ad litem, custodial parent, advocate, guardian, caseworker, or other professionals involved in care or treatment of the victim regarding reunification of the family or a sex offender's contact with past or potential child victims.

g) A provider shall obtain specific releases, waiving confidentiality for communications with other parties in addition to those described in this Section, unless emergency or safety considerations preclude obtaining a release.

Section 1900.100 Standards of Practice for Treatment Providers for Adult Sex Offenders – Client Written Treatment Agreement
EMERGENCY

a) Prior to treatment and as a condition of treatment, a provider shall develop and utilize a written contract with each sex offender prior to the commencement of

treatment. The contract shall describe the responsibilities of both the provider and the sex offender and may be the basis of revocation of probation, recommendation to the Prisoner Review Board to revoke the parole or other community supervision.

b) The contract shall describe the role of the treatment provider in implementing the treatment plan as well as the responsibility of the provider to:

1) Define and provide timely statements of the costs of the assessment, evaluation, and treatment, including all medical and psychological tests, physiological tests, and consultations;

2) Describe the waivers of confidentiality/release of information which will be required for a provider to treat the sex offender for his/her sexual offending behavior; describe the various parties with whom treatment information will be shared during the treatment; describe the time limits on the waivers of confidentiality; and describe the procedures necessary for the sex offender to revoke the waiver;

3) Describe the right of the sex offender to refuse treatment and/or to refuse to waive confidentiality, and describe the risks and potential risks and outcomes of that decision;

4) Describe the type, frequency, and requirements of the treatment and outline how the duration of treatment will be determined;

5) Describe the limits of confidentiality imposed on the therapist by the mandatory reporting law.

c) The contract shall describe the responsibilities of the sex offender (as applicable) to:

1) Pay for the cost of evaluation and treatment for self, and to his or her family, if applicable;

2) Pay for the cost of evaluation and treatment for the victims and their families), when ordered by the court, including all medical and psychological tests, physiological testing, and consultation;

3) Inform the treatment provider, the sex offender's immediate family, and

support system of the details of all past sexual offenses to ensure help and protection for past victims and/or as relevant to the development of the relapse prevention plan. Clinical judgment should be exercised in determining what information is provided to children;

4) Actively involve members of the sex offender's family and support system, as indicated in the relapse prevention plan;

5) Notify the treatment provider of any changes or events in the lives of the sex offeder, the members of the sex offender's family, or support system;

6) Participate in polygraph testing as required in this Part and, if indicated, plethysmographic testing as adjuncts to treatment;

7) Assent to be tested for sexually transmitted diseases and HIV, and assent for the results of such testing to be released to the victim by the appropriate person; and

8) Comply with the limitations and restrictions placed on the behavior of the sex offender, as described in the terms and conditions of probation, parole, or conditional release for sexually violent persons or sexually dangerous persons and/or in the contract between the provider and the sex offender.

d) The contract shall describe the responsibility of and restrictions on the sex offender to protect community safety by avoiding risky, aggressive, or re-offending behavior by avoiding high-risk situations, and by reporting any such behavior to the provider and supervising officer as soon as possible.

e) A provider shall develop and utilize a written contract with each sex offender prior to the commencement of treatment. The contract shall describe the responsibilities of both the provider and the client. The contract shall explain the responsibility of the provider to:

1) Define and provide timely statements of the costs of the assessment, evaluation, and treatment, including all medical and psychological tests, physiological tests, and consultations, to the sex offender as well as the parent or guardian.

2) Describe the waivers of confidentiality that will be required for a provider to treat the sex offender for his/her sexual offending behavior; describe the

various parties with whom treatment information will be shared during the treatment; describe the time limits on the waivers of confidentiality; and describe the procedures necessary for the sex offender to revoke the waiver.

3) Describe the right of the sex offender to refuse treatment and/or to refuse to waive confidentiality, and describe the consequences, risks and potential risks and outcomes of that decision, including the provider's right not to provide treatment if confidentiality is not waived.

4) Describe the type, frequency, and requirements of the treatment and outline how the duration of treatment will be determined.

5) Describe the limits of confidentiality imposed on the therapist by the mandatory reporting law.

6) Explain the terms of the contract to the sex offender in language that the sex offender understands.

Section 1900.110 Standards of Practice for Treatment Providers for Adult Sex Offenders – Completion of Treatment
EMERGENCY

a) Completion of treatment should be understood as meaning the successful completion of treatment, and not as the cessation of court-ordered, offense-specific treatment or the completion of the sentence imposed by the court or the Prisoner Review Board. Successful completion of treatment may not end the sex offender's need for ongoing rehabilitation or elimination of risk to the community. If risk increases, treatment may be re-instated upon the request of the sex offender or the recommendation of the containment team. Treatment should be viewed as ranging from intensive to aftercare.

b) The sex offender containment team shall consult about the completion of treatment. The decision shall come after the evaluation and assessment, treatment plan, course of treatment sequence, and a minimum of a non-deceptive disclosure polygraph examination and two or more non-deceptive maintenance polygraph examinations, regarding compliance with court rules, compliance with supervision conditions, compliance with treatment contract provisions, including complete abstinence from grooming (i.e., manipulation intended to reduce victims' defenses) of victims, or potential victims, and full, voluntary compliance

with all conditions required to prevent re-offending behavior. The two or more non-deceptive polygraph examinations must be those most recent prior to termination of treatment. (See definitions for non-deceptive polygraph results.) A failed polygraph examination should not be used as the sole reason to deny successful completion of treatment. The team should carefully consider termination of treatment based on maintaining community safety.

c) Those sex offenders who pose an ongoing threat to the community require supervision, even while demonstrating progress in treatment, and may require ongoing supervision and treatment to manage their risk, including revocation as authorized and approved in writing by the Prisoner Review Board when on parole. Any exception made to any of the requirements for treatment completion must be made by the consensus of the containment team. In this case, the team must document the reasons for the determination that treatment completion is appropriate without meeting all of the standard requirements and note the potential risk to the community.

d) To determine the recommendations for the termination of treatment, the provider shall:

1) Assess actual changes in a sex offender's potential to re-offend prior to recommending treatment termination;

2) Attempt to repeat, where indicated, those evaluations that might show changes in the sex offender;

3) Assess and document how the goals of the treatment plan have been met, what actual changes in a sex offender's re-offense potential have been accomplished, and what risk factors remain, particularly those affecting the emotional and physical safety of the victims;

4) Seek input from others who are aware of a sex offender's progress as part of the decision about whether to terminate treatment;

5) Report to the supervising officer regarding a sex offender's compliance with treatment and recommend any modifications in conditions of community supervision and/or termination of treatment;

6) At the end of this evaluation process, inform the sex offender regarding the recommendation to end or continue court-ordered treatment.

e) Prior to terminating offense-specific treatment, a provider shall, in cooperation with the containment team, develop an aftercare plan that includes ongoing behavioral monitoring, such as periodic polygraph examinations. Such monitoring is intended to motivate the sex offender to avoid high-risk behaviors that might be related to increased risks of re-offense.

Section 1900.120 Standards of Practice for Treament Providers for Adult Sex Offenders – DOC
EMERGENCY

a) A comprehensive sex offense-specific evaluation shall be completed as a part of the presentence investigation, which shall accompany the sex offender to prison.

b) A sex offender who has been sentenced to the Department of Corrections (DOC), and who is being paroled or being discharged from DOC and who did not receive a comprehensive sex offense-specific evaluation at the time of the presentence investigation, shall receive a comprehensive offense-specific evaluation document as outlined in this Part within 1 year after admission to DOC. The evaluation may occur prior to or during the course of sex offense-specific treatment in the prison or prior to release to the community or on parole if the sex offender has not been in treatment.

c) Treatment for sex offenders in prison shall conform to the standards for offense-specific sex offender treatment.

d) The DOC treatment provider shall employ treatment methods that are based on recognition of the need for long-term, comprehensive, offense-specific treatment of sex offenders. Self-help or time limited treatments shall be used only as an adjunct to long-term, comprehensive treatment.

e) DOC treatment providers are encouraged to utilize a team approach similar to that described in Section 1900.180. Specifically, the polygraph examiner and the treatment provider should work closely together, and other professionals should be included on the team as indicated.

f) In addition to general conditions imposed on all sex offenders, including those who have not participated in or received treatment, the following special conditions should be imposed on sex offenders who are incarcerated unless a treatment provider submits approval in advance and in writing:

SEX OFFENDER MANAGEMENT BOARD

NOTICE OF EMERGENCY REPEALER

1) Sex offenders shall have no contact with their victims, including correspondence, telephone contact, or communication through third parties;

2) Sex offenders shall have no contact with children, including their own children;

3) Sex offenders shall not access or loiter near children in the visiting room or participate in any volunteer activity that involves contact with children;

4) Sex offenders shall not possess any pornographic, sexually oriented or sexually stimulating materials, including visual, auditory, telephonic, or electronic media, and computer programs or services that are relevant to sex offenders deviant behavior/pattern. Sex offenders shall not patronize any place where such material or entertainment is available. Sex offenders shall not utilize "900" or adult telephone numbers or any other sex-related telephone numbers;

5) For sex offenders on parole or mandatory supervised release, the Prisoner Review Board shall impose other special conditions that restrict sex offenders from high-risk situations and limit access to potential victims.

g) The duration of time in treatment in DOC shall not offset the need for the sex offender's continued treatment upon his/her supervised release to the community.

h) All sex offenders on parole or mandatory supervised release require supervision upon release from DOC, and to have their participation in treatment monitored by the containment team.

i) Prior to the sex offender's release, DOC treatment providers shall prepare a detailed treatment report of the sex offender's participation in treatment, institutional behavior, modus operandi, and risk of re-offending. This report shall be provided to the Prisoner Review Board prior to a hearing. If paroled, the report shall be submitted to the parole supervisor as well as the treatment provider in the community and other members of the containment team. A parole plan shall be completed prior to a sex offender's beginning parole supervision. The purpose of the parole plan is:

1) Assess the resources that will be available to a sex offender who will live

and work in the community; and

2) Make recommendations for conditions of supervision, including the sex offender's treatment.

j) A discharge summary should also be completed for sex offenders who will be released directly into the community without a period of parole. The report should provide information on the sex offender's institutional behavior, including treatment goals and progress toward them, modus operandi, and risk of re-offending. Such discharge data shall be forwarded to the parole supervisor and to the Division of Parole for potential dissemination to law enforcement agencies.

Section 1900.130 Community Placement and Treament of Sex Offenders Who Are in Denial
EMERGENCY

a) Level of denial and defensiveness shall be assessed during the comprehensive sex offense-specific evaluation. In some cases, denial alone may be regarded as a sufficient fact to eliminate a sex offender from a recommendation for community-based treatment. Continued strong or severe denial of the offense during the course of the evaluation, as opposed to fluctuating or moderate denial, and/or continued strong defensiveness in general suggests a level of risk that may rule out a sex offender's eligibility for community-based treatment.

b) When a sex offender in strong or severe denial must be in the community (e.g., parole), the maximum level of supervision shall be provided. Sex offense-specific treatment should begin immediately with an emphasis on denial and defensiveness. Such offense-specific treatment for denial should not be provided for an indefinite period of time when sex offenders continue to deny the offense.

c) Although offense-specific treatment typically begins by addressing denial and defensiveness, treatment for strong or severe denial may occur separately from regular group therapy that is provided for sex offenders who have, at a minimum, admitted the crime of conviction. Treatment for such denial may include a variety of modalities specifically designed to reduce denial and resistance to treatment.

d) Sex offenders in strong or severe denial require maximum levels of supervision and monitoring during an initial treatment phase. Home detention, electronic monitoring, field supervision, and/or stringent restrictions on sex offenders' time are examples of additional conditions that should be recommended by the

evaluator that may be indicated during treatment for denial.

e) Sex offenders who continue to deny the facts of their sexual offenses cannot benefit from treatment and may not be suitable candidates for community placement. After a period of time specified by the therapist, consideration should be given to termination of the sex offender from treatment and referral back to court, if the sex offender is on probation. Other increased levels and types of supervision, such as home detention, electronic monitoring, polygraph, etc., should be pursued if revocation is not an option.

f) Only treatment providers who also meet the requirements to provide sex offense-specific treatment, as defined in this Part, may provide treatment for denial.

g) Progress in treatment for denial is reflected by the sex offender's decreased resistance to treatment, decreased defensiveness and denial, and increased accountability for the behavior. This progress should be documented by:

1) The sex offender's compliance with the conditions of offense-specific denial treatment;

2) The sex offender's verbal disclosures during treatment that document changes in denial;

3) Changes in the sex offender's responses on standardized tests;

4) The timely and competent completion of homework and in-session assignments;

5) The sex offender's willingness to schedule and undergo polygraph testing;

6) Non-deceptive polygraph;

7) Compliance with court conditions.

h) Treatment providers and containment teams must establish specific and measurable goals and tasks for sex offenders in denial. These measurable goals will establish whether or not sex offenders have reached the threshold for eligibility for referral to standard offense-specific treatment, continued treatment, or referral for revocation proceedings. It is especially important to document measures of sex offenders' acceptance of responsibility for their offenses.

i) Use of the polygraph is important in reducing a sex offender's denial but the timing of its use should be flexible. In cases with highly resistant sex offenders, use of the polygraph before adequate preparation might increase the resistance.

Section 1900.140 Treatment Providers' Use of the Polygraph, Plethysomgraph and ASI
EMERGENCY

a) A treatment provider may employ treatment methods that integrate the results of polygraph, plethysmography, the Abel Assessment for Sexual Interest or other physiological testing, as indicated. If plethysmography is used, the examiner must meet the standards for plethysmography as defined in the ATSA Practice Standards & Guidelines (2001 Edition), Appendix A, published by Association for the Treatment of Sexual Abuses, available from ATSA, 4900 S.W. Griffith Drive, Suite 274, Beaverton, Oregon 97005, or www.ATSA.com and described in this Part. If the Abel Assessment for Sexual Interest (ASI) is used, the treatment provider or evaluator must be trained and licensed to utilize the instrument.

b) It is recommended that a provider employ plethysmography as a means of gaining information regarding the sexual arousal patterns of sex offenders or the ASI as a means of gaining information regarding the sexual interest patterns of sex offenders.

c) In cooperation with the supervising officer, the provider shall employ treatment methods that incorporate the results of polygraph examinations, including issue specific polygraphs, disclosure polygraphs, and maintenance polygraphs. Exceptions to the requirement for use of the polygraph may be made only by the containment team or by a prison treatment provider.

d) The containment team shall determine the frequency of polygraph examinations, and the team shall review the results. The results of such polygraphs shall be used to identify treatment issues and for behavioral monitoring.

Section 1900.150 Qualifications of Treament Providers/Evaluators
EMERGENCY

a) Treatment Provider − Full Operating Level: A treatment provider at the full operating level may treat sex offenders without supervision and may supervise a treatment provider operating at the associate level. To qualify to provide sex offender treatment at the full operating level as either an adult provider or a

juvenile provider, an individual must meet all the following criteria:

1) The individual shall have attained the underlying credential of licensure or certification and be in good standing as a physician, psychologist, clinical social worker, clinical professional counselor, marriage and family therapist, or clinical psychiatric nurse specialist;

2) The individual shall have completed within the last four years a minimum of 500 hours of clinical experience specifically in the areas of evaluation and treatment of sex offenders, at least half of which shall have been face-to-face therapy with adult convicted sex offenders. Such clinical experience may have been obtained while seeking licensure or after obtaining licensure; however, if it was obtained in part or in full after licensure, it is subject to the same requirements for supervision as required for treatment providers under this Part;

3) The individual shall have at least 48 hours of documented training specifically related to evaluation and treatment methods within the last four years. The individual must demonstrate a balanced training history, having covered a wide or varied range of training topics. This training must directly relate to sex offender evaluation, treatment, and management and may include but is not limited to:

A) Statistics on offense/victimization rates;

B) Typologies;

C) Sex offender assessment;

D) Sex offender evaluation;

E) Sex offender treatment techniques including:

i) Evaluating and reducing denial;

ii) Behavioral treatment techniques;

iii) Cognitive behavioral techniques;

iv) Relapse prevention;

v) Empathy training;

F) Offender/offense characteristics;

G) Sex offender risk;

H) Physiological techniques including:

i) Polygraph;

ii) Plethysmograph;

iii) Abel Assessment;

I) Victim issues;

J) Family reunification/visitation;

K) Legal issues regarding sex offenders;

L) Special sex offender populations including:

i) Sadists;

ii) Developmentally disabled;

iii) Compulsive;

iv) Juvenile;

v) Female;

M) Pharmacotherapy with sex offenders;

N) Impact of sex offenses;

O) Assessing treatment progress;

P) Secondary and vicarious trauma;

Q) Anger management;

R) Human sexuality;

S) Supervision techniques with sex offenders;

T) Philosophy and principles of the Sex Offender Management Board;

U) Group therapy dynamics;

V) Cycle of sexual abuse;

W) Thinking errors;

X) Deviant sexual fantasies;

Y) Sexual arousal;

Z) Techniques for sexual arousal treatment;

AA) Understanding the psychiatric disorders;

BB) Safety planning;

4) Additional training on child growth and development is recommended for providers/evaluators who work with juvenile sex offenders;

5) To receive credit for training not identified in this subsection (a), it is incumbent on the trainee to write a justification demonstrating relevance to sex offender evaluation, treatment, and management as described in this Part;

6) In concert with generally accepted standards of practice of the individual's mental health profession, the individual shall adhere to the Code of Ethics (2001 Edition) published by the Association for the Treatment of Sexual Abusers (ATSA) available from ATSA, 4900 S.W. Griffith Drive, Suite 274, Beaverton, Oregon 97005, or www.ATSA.com and shall demonstrate competency according to the individual's respective professional standards and conduct all treatment in a manner that is consistent with the

reasonably accepted standard of practice in the sex offender treatment community;

7) All treatment must have measurable goals for the individual/group and will be monitored by the SOMB;

8) Providers must submit to a current background check;

9) Providers must submit satisfactory references as requested by the Sex Offender Management Board. The SOMB may also solicit such additional references as necessary to determine compliance with this Part. The references shall include other members of the containment team.

b) Continued Placement on the Provider List: Treatment providers must apply for continued placement on the list every three years. This date will be three years from the date of original placement on the provider list. Requirements are as follows:

1) The treatment provider must demonstrate continued compliance with this Part;

2) The individual shall accumulate a minimum of 600 hours of clinical experience every three years, 300 hours of which shall be face-to-face therapy with sex offenders. This must be from the population in which the placement is sought (i.e., juvenile or adult);

3) Treatment providers shall complete a minimum of 36 hours of continuing education every three years in order to maintain proficiency in the field of sex offender treatment and to remain current on any developments in the evaluation, treatment, and monitoring of sex offenders. This must be from the population in which the placement is sought (i.e., adult or juvenile);

4) Report any practice that is in conflict with this Part;

5) Comply with all other requirements outlined in the Sex Offender Management Board administrative policies.

Failure to comply with any of the conditions of this subsection (b) may result in removal from the provider list.

c) Evaluator − Full Operating Level: An evaluator at the full operating level may evaluate sex offenders without supervision and may supervise an evaluator operating at the associate level. To qualify to provide sex offender evaluations at the full operating level, an individual must meet all of the following criteria:

1) The individual shall have attained the underlying credential of licensure or certification and be in good standing as a physician, psychologist, clinical social worker, clinical professional counselor, marriage and family therapist, or clinical psychiatric nurse specialist;

2) The individual must be registered as a treatment provider at the full operating level for the population in which the placement is sought (adult or juvenile);

3) An evaluator shall have completed a minimum of 20 sex offense-specific evaluations as defined in Sections 1900.60 and 1900.70 within the last four years. These must be from the population in which the placement is sought (adult or juvenile);

4) The individual shall have had at least 48 hours of documented training specifically related to evaluation and treatment methods, and including training in the area of victimology, within the last four years. The individual must demonstrate a balanced training history, having covered a wide or varied range of training topics. Training must be in the area in which placement is sought (adult or juvenile). This training will be identified as directly related to sex offender evaluation, treatment, and management and may include but is not limited to:

A) Statistics on offense/victimization rates;

B) Typologies;

C) Sex offender assessment;

D) Sex offender evaluation;

E) Sex offender treatment techniques including:

i) Evaluating and reducing denial;

ii) Behavioral treatment techniques;

iii) Cognitive behavioral techniques;

iv) Empathy training;

F) Offender/offense characteristics;

G) Sex offender risk;

H) Physiological techniques including:

i) Polygraph;

ii) Plethysmograph;

iii) Abel Assessment;

I) Victim issues;

J) Family reunification/visitation;

K) Legal issues regarding sex offenders;

L) Special sex offender populations including:

i) Sadists;

ii) Developmentally disabled;

iii) Compulsive;

iv) Juvenile;

v) Female;

M) Pharmacotherapy with sex offenders;

N) Impact of sex offenses;

O) Assessing treatment progress;

P) Secondary and vicarious trauma;

Q) Anger management;

R) Human sexuality;

S) Supervision techniques with sex offenders;

T) Philosophy and principles of the Sex Offender Management Board;

U) Group therapy dynamics;

V) Cycle of sexual abuse;

W) Thinking errors;

X) Deviant sexual fantasies;

Y) Sexual arousal;

Z) Techniques for sexual arousal treatment;

AA) Understanding the psychiatric disorders;

BB) Safety planning;

5) Additional training on child growth and development is recommended for providers/evaluators working with juvenile sex offenders;

6) To receive credit for training not identified in this subsection (c), it is incumbent on the trainee to write a justification demonstrating relevance to sex offender assessment/treatment/management as described in this Part;

7) In concert with the generally accepted standards of practice of the individual's mental health profession, the individual shall adhere to the Code of Ethics (2001 Edition) published by the Association for the Treatment of Sexual Abusers (ATSA) available from ATSA, 4900 S.W.

Griffith Drive, Suite 274, Beaverton, Oregon 97005, or www.ATSA.com and shall demonstrate competency according to the individual's respective professional standards and conduct all evaluations in a manner that is consistent with the reasonably accepted standard of practice in the sex offender evaluation community;

8) Provide satisfactory references as requested by the Sex Offender Management Board. The SOMB may also solicit such additional references as necessary to determine compliance with this Part. These references shall include other members of the containment team;

9) Submit to a current background check.

d) Continued Placement on the Evaluator List: Evaluators must apply for continued placement on the list every three years. This date will be three years from the date of original placement on the provider list. Requirements are as follows:

1) The evaluator must demonstrate continued compliance with this Part;

2) The individual may maintain registration as a treatment provider and evaluator at the full operating level in the area of specialty, adult or juvenile. In this case, the individual shall accumulate a minimum of 600 hours of clinical experience every three years, 300 hours of which shall be face-to-face therapy with sex offenders. The evaluator shall complete a minimum of 15 sex offense-specific evaluations in the three year period;

3) The evaluator may discontinue his or her listing as a treatment provider at the full operating level and be placed on the provider list as an evaluator only. Evaluators re-registering as evaluators only shall complete a minimum of 20 sex offense-specific evaluations in the three year period;

4) Evaluators shall complete a minimum of 36 hours of continuing education in area of specialty (adult or juvenile) every three years in order to maintain proficiency in the field of sex offender evaluation and to remain current on any developments in the evaluation, treatment, and monitoring of sex offenders. Up to 10 hours of this training may be indirectly related to sex offender evaluation/treatment/management but must be from the area in which placement is sought (adult or juvenile). In order to receive credit for training that is indirectly related, it is incumbent on the trainee to write a justification demonstrating relevance to sex offender evaluation,

treatment and management as described in this Part. The remaining 26 hours must be directly related to sex offender evaluation, treatment and management;

5) Report any practice that is in conflict with this Part;

6) Comply with all other requirements outlined in the Sex Offender Management Board administrative policies.

Failure to comply with the requirements of this subsection (d) may result in removal from the approved provider list as an evaluator.

e) Treatment Provider − Associate Level: A treatment provider at the associate level may treat sex offenders under the supervision of a treatment provider approved at the full operating level under this Part. To qualify to provide sex offender treatment at the associate level, an individual must meet all the following criteria:

1) The individual shall have a baccalaureate degree or above in behavioral science;

2) The individual shall have completed within the last four years a minimum of 400 hours of supervised clinical experience specifically in the area of specialty (adult or juvenile) of treatment of sex offenders. At least half (200) of these hours must be face-to-face therapy with sex offenders. In addition, at least 100 of these face-to-face hours must have been in co-therapy, in the same room, with a treatment provider registered at the full operating level;

3) The individual must have received at least 50 hours of face-to-face clinical supervision by a treatment provider at the full operating level in the area of specialty (adult or juvenile). The supervision must be reasonably distributed over the time in which the above clinical experience was being obtained (approximately 1 hour of supervision for each 10 hours of clinical experience);

4) The individual shall have had at least 40 hours of documented training in the area of specialty (adult or juvenile) specifically related to evaluation and treatment methods, and including training in the area of victimology, within the last four years. The individual must demonstrate a balanced training history, having covered a wide or varied range of training topics.

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This training will be identified as directly related to sex offender assessment/treatment/management and may include but is not limited to:

A) Statistics on offense/victimization rates;

B) Typologies;

C) Sex offender assessment;

D) Sex offender evaluation;

E) Sex offender treatment techniques including:

i) Evaluating and reducing denial;

ii) Behavioral treatment techniques;

iii) Cognitive behavioral techniques;

iv) Relapse prevention;

v) Empathy training;

F) Offender/offense characteristics;

G) Sex offender risk;

H) Physiological techniques including:

i) Polygraph;

ii) Plethysmograph;

iii) Abel Assessment;

I) Victim issues;

J) Family reunification/visitation;

K) Legal issues regarding sex offenders;

L) Special sex offender populations including:

i) Sadists;

ii) Developmentally disabled;

iii) Compulsive;

iv) Juvenile;

v) Female;

M) Pharmacotherapy with sex offenders;

N) Impact of sex offenses;

O) Assessing treatment progress;

P) Secondary and vicarious trauma;

Q) Anger management;

R) Sex education;

S) Supervision techniques with sex offenders;

T) Philosophy and principles of the Sex Offender Management Board;

U) Group therapy dynamics;

5) To receive credit for training not identified in this subsection (e), it is incumbent on the trainee to write a justification demonstrating relevance to sex offender evaluation/treatment/management as described in this Part;

6) In concert with the generally accepted standards of practice of the individual's mental health profession, the individual shall adhere to the Code of Ethics (2001 Edition) published by the Association for the Treatment of Sexual Abusers (ATSA) available from ATSA, 4900 S.W. Griffith Drive, Suite 274, Beaverton, Oregon 97005, or www.ATSA.com

and shall demonstrate competency according to the individual's respective professional standards and conduct all evaluations in a manner that is consistent with the reasonably accepted standard of practice in the sex offender evaluation community;

7) Provide satisfactory references as requested by the Sex Offender Management Board. The SOMB may also solicit such additional references as necessary to determine compliance with this Part. The references shall include other members of the containment team;

8) Submit to a current background check;

9) Movement to Full Operating Level: Associate level treatment providers wishing to move to full operating level status must complete and submit documentation of a total of 1000 hours of supervised clinical experience, 100 hours of clinical supervision, at least half of which must be face-to-face, and 80 hours of training, and submit a letter from their supervisors indicating their readiness to become a full operating level provider.

f) Continued Placement: Associate level treatment providers must apply for continued placement on the list every three years. This date will be three years from the date of original placement on the provider list. Requirements are as follows:

1) The associate level treatment provider must demonstrate continued compliance with this Part;

2) The individual shall accumulate a minimum of 300 hours of clinical experience every three years, 150 hours of which shall be face-to-face therapy with adult convicted sex offenders. If the provider seeks placement on the provider list as a juvenile provider, then that provider must have the experience with juveniles;

3) The individual shall obtain a minimum of one hour face-to-face supervision, from an individual registered at the full operating level under this Part, for every 30 hours of clinical contact with sex offenders. This supervision must be from a provider who is from the area of specialty (adult or juvenile). This standard pertains both to those seeking licensure who have not yet met the licensing requirements of the State and to those who intend to provide treatment at the associate level for an indefinite

amount of time;

4) Associate level treatment providers shall complete a minimum of 40 hours of continuing education every three years from their area of specialty in order to maintain proficiency in the field of sex offender treatment and to remain current on any developments in the assessment, treatment, and monitoring of sex offenders. Up to 10 hours of this training may be indirectly related to sex offender treatment/assessment/management. In order to receive credit for training that is indirectly related, it is incumbent on the trainee to write a justification demonstrating relevance to sex offender assessment/treatment/management as described in this Part. The remaining 30 hours must be directly related to sex offender evaluation/treatment/management;

5) Report any practice that is in conflict with this Part;

6) Comply with all other requirements outlined in the Sex Offender Management Board administrative policies.

Failure to comply with the conditions stated in this subsection (f) may result in the removal from the approved provider list as an associate treatment provider.

g) Evaluator – Associate Level: An evaluator at the associate level may evaluate sex offenders under the supervision of an evaluator approved at the full operating level. An evaluator at the associate level is an individual who has completed fewer than 15 sex offense-specific evaluations in the last four years. To qualify to provide sex offender evaluations at the associate level, an individual must meet the following criteria:

1) The applicant must be listed as a treatment provider at the associate level or the full operating level;

2) The individual must have received at least 50 hours of face-to-face clinical supervision by a treatment provider at the full operating level in the area of specialty (adult or juvenile). The supervision must be reasonably distributed over the time in which the clinical experience was being obtained (approximately one hour of supervision for each 10 hours of clinical experience);

3) The associate level evaluator must have a clinical supervisor at the full operating level in the area of specialty (adult or juvenile) sign off on each evaluation he or she conducts at the associate level;

4) The individual shall have had at least 40 hours of documented training specifically related to evaluation and treatment methods, in the area of specialty (adult or juvenile) and including training in the area of victimology, within the last four years. The individual must demonstrate a balanced training history, having covered a wide or varied range of training topics. This training will be identified as directly related to sex offender evaluation/treatment/management and may include but is not limited to:

A) Statistics on offense/victimization rates;

B) Typologies;

C) Sex offender assessment;

D) Sex offender evaluation;

E) Sex offender treatment techniques including:

i) Evaluating and reducing denial;

ii) Behavioral treatment techniques;

iii) Cognitive behavioral techniques;

iv) Relapse prevention;

v) Empathy training;

F) Offender/offense characteristics;

G) Sex offender risk;

H) Physiological techniques including:

i) Polygraph;

ii) Plethysmograph;

iii) Abel Assessment;

I) Victim issues;

J) Family reunification/visitation;

K) Legal issues regarding sex offenders;

L) Special sex offender populations including:

i) Sadists;

ii) Developmentally disabled;

iii) Compulsive;

iv) Juvenile;

v) Female;

M) Pharmacotherapy with sex offenders;

N) Impact of sex offenses;

O) Assessing treatment progress;

P) Secondary and vicarious trauma;

Q) Anger management;

R) Sex education;

S) Supervision techniques with sex offenders;

T) Philosophy and principles of the Sex Offender Management Board;

U) Group therapy dynamics;

5) To receive credit for training not identified in this subsection (g), it is incumbent on the trainee to write a justification demonstrating relevance to sex offender evaluation/treatment/management as described in this Part;

6) In concert with the generally accepted standards of practice of the individual's mental health profession, the individual shall adhere to the Code of Ethics (2001 Edition) published by the Association for the Treatment of Sexual Abusers (ATSA) available from ATSA, 4900 S.W. Griffith Drive, Suite 274, Beaverton, Oregon 97005, or www.ATSA.com and shall demonstrate competency according to the individual's respective professional standards and conduct all evaluations in a manner that is consistent with the reasonably accepted standard of practice in the sex offender evaluation community;

7) Provide satisfactory references as requested by the Sex Offender Management Board. The SOMB may also solicit such additional references as necessary to determine compliance with this Part. These references shall include other members of the containment team;

8) Submit to a current background check.

h) Continued Placement − Evaluator: Associate level evaluators must apply for continued placement on the list every three years. This date will be three years from the date of original placement on the provider list. Requirements are as follows:

1) The evaluator must demonstrate continued compliance with this Part;

2) The evaluator at the associate level may maintain registration as a treatment provider at the associate level or the full operating level and shall complete a minimum of 10 sex offense-specific evaluations in the three year period;

3) Evaluators shall complete a minimum of 40 hours of continuing education every three years in the area of specialty (adult or juvenile) in order to maintain proficiency in the field of sex offender treatment and to remain current on any developments in the assessment, treatment, and monitoring of sex offenders. Up to 10 hours of this training may be indirectly related to sex offender treatment/evaluation/management. In order to receive

credit for training that is indirectly related, it is incumbent on the trainee to write a justification demonstrating relevance to sex offender assessment/treatment/management as described in this Part. The remaining 30 hours must be directly related to sex offender assessment/treatment/management;

4) Report any practice that is in conflict with this Part;

5) Comply with all other requirements outlined in the Sex Offender Management Board administrative policies.

Failure to comply with the conditions stated in this subsection (h) may result in removal from the provider list as an associate evaluator.

i) Period of Compliance: Individuals listed on the provider list as treatment providers and/or evaluators or polygraphers on the effective date of this Part who do not meet one or more of the qualifications of this Part have one year from the effective date of this Part to meet the qualifications. It is incumbent upon the provider to complete an affidavit of his/her intent to comply with this Part within the specified period.

1) Any new applicants must be in compliance when they apply.

2) All providers/evaluators must provide adequate liability insurance.

j) Revocation, Denial, or Non-Renewal of Application. The SOMB shall have the right to revoke an application, refuse to accept an application, and/or refuse to renew an application upon proof that the treatment provider, associate treatment provider, evaluator, or associate evaluator has:

1) been convicted of any felony or a misdemeanor involving a sexual offense;

2) had licensure placed on inactive status, not renewed, revoked, canceled, suspended, or placed on probationary status by any professional licensing body;

3) been determined by any professional licensing body to have engaged in any unprofessional or unethical conduct;

4) been determined by the SOMB to have engaged in deceit or fraud in connection with the delivery of services, supervision, or documentation of registry requirements or registry eligibility;

5) has violated any Section of this Part.

k) Individual treatment providers or evaluators who are not approved at either level may work with sex offenders and begin working towards the requirements of the associate level if they:

1) work under the constant supervision of a full or associate level provider or evaluator.

2) are enrolled in a post graduate internship program for a degree set forth in this Section.

l) An applicant shall be allowed a one time waiver of the standards regarding the requirements of licensure or certification for placement on the approved provider list for treatment providers and evaluators until three years from August 1, 2003. All applicants who have received the waiver must go through the application process for continued placement on the approved provider list.

Section 1900.160 Standards for Use of Polygraph
EMERGENCY

a) In cooperation with the supervising officer, the provider shall employ treatment methods that incorporate the results of polygraph examinations, including specific issue polygraphs, disclosure polygraphs, and maintenance polygraphs. Exceptions to the requirement for use of the polygraph may be made only by the containment team or by a prison treatment provider.

b) The containment team shall determine the frequency of polygraph examinations, and the results shall be reviewed by the team. The results of such polygraphs shall be used to identify treatment issues and for behavioral monitoring.

c) Responsibilities of the Polygraph Examiner within the Team

1) The polygraph examiner shall participate as a member of the containment team established for each sex offender.

2) The polygraph examiner shall submit written reports to each member of the containment team for each polygraph examination. Reports shall be submitted in a timely manner, no longer than two weeks after testing.

3) Attendance by the polygraph examiner at team meetings shall be on an as-needed basis, at the discretion of the supervising officer.

d) The supervising officer shall ensure that the polygraph examiner conducting the current examination has full background information, including the Presentence Investigation Report, police reports, mental health evaluations, and reports from all prior polygraphs, including sexual history disclosure and any prior maintenance examinations.

e) Polygraph examinations shall not be conducted by anyone serving as the supervising officer or therapist.

f) Opinions of the polygraph examiner shall be based upon all information gathered during the examination process. The computer algorithm shall never be the sole determining factor in reporting the examination results. Numeric scores shall be considered raw data and not disclosed in written examination reports.

g) The maximum number of relevant test questions in any examination shall not exceed four, however three or fewer relevant questions is ideal.

h) Prior to the examination the general nature of the procedure can be discussed with the sex offender, but the specific issues to be addressed will be determined by the team. The supervising officer and treatment provider shall defer any questions or information about the mechanics and actual operation of the polygraph to the polygraph examiner. The team shall emphasize the importance of being honest and making full disclosure.

i) If the sex offender is in full or partial denial of the facts of the instant offense, a specific issue examination is the most appropriate type of initial examination. This type of examination shall be conducted as early as possible in the supervision/treatment process.

j) Sexual history disclosure polygraphs shall be completed after the sex offender has provided a written sexual history, which has been reviewed in his or her treatment program. The supervising officer or treatment provider shall provide the examiner with a copy of the sex offender's written sexual history and any disclosure

questionnaire prior to the examination.

k) Only the containment team can waive the requirement for a non-deceptive sexual history disclosure polygraph.

l) Maintenance examinations shall cover a wide variety of offending behavior as well as compliance with treatment and supervision conditions. An ongoing dialogue among team members is crucial to identify issues to be explored. For sex offenders who remain in denial, the frequency of maintenance testing shall be accelerated due to the possibility of increased risk.

m) Unresolved issues shall be re-examined as soon as possible and sanctions shall be imposed for continued deceptive responses. These re-examinations are not considered to be a substitute for scheduled maintenance examinations.

n) Post-test admissions to deceptive polygraph responses shall result in further testing to verify if the sex offender has failed to disclose additional offenses.

o) Disclosure test questions and maintenance test questions shall not be mixed in any single examination.

p) Single issue polygraph examinations provide the best opportunity for identification of sex offender deception; however, the examiner may utilize multiple issue examinations at his/her discretion and while considering the goals of the team.

q) If the sex offender is deceptive or inconclusive to one or more issues in a multiple issue examination, a re-examination over all issues shall be considered, once the results have been reviewed with the sex offender by the team.

r) Sex offenders shall not be tested on fantasy, intentions or thoughts. Questions regarding arousal shall be tied to behaviors: e.g., "Have you masturbated to deviant sexual fantasies?"

s) Test questions shall not contain emotionally laden, psychological or legal terminology.

t) Test questions shall be based upon actual behavior, and not on written statements about behavior, i.e., Sexual History Disclosure Questionnaires.

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u) Relevant test questions shall not ask for estimates of offenses/victims for those sex offenders who report large numbers of those behaviors. Questions about victims may be broken down into separate categories for which the sex offender has no disclosures, i.e., male, female, relative, stranger, etc.

v) Examiners shall communicate with the team any concerns and recommendations for further testing of a sex offender. If the examiner suspects the sex offender has used countermeasures, it is appropriate for the team to use appropriate sanctions with the sex offender. Likewise, if the supervising officer or treatment provider has any questions about the polygraph results, he or she shall communicate with the examiner.

w) If conflicting polygraph results are reported between two separate examiners using similar test questions and time frames, a meeting of both examiners with the supervising officer and treatment provider shall be convened as soon as possible. Each examiner shall bring all relevant test materials to the meeting to help explore the possible causes for the differing results. The team members shall work to develop a consensus on the results and the subsequent response to the sex offender. If consensus cannot be reached the team shall consult with a third, independent SOMB approved full operating level examiner to offer an opinion regarding the issue. If the conflict still remains unresolved, a new examination by a third party shall be conducted.

x) If a sex offender claims significant differences in the results or information disclosed in the examination from that provided in the examiner's report, the examiner shall be contacted to seek clarification and to mitigate offender splitting (i.e., offender placing responsibility or blame on therapists and/or supervising office). If the procedure was recorded, a review of the recording is appropriate.

y) In preparation for reviewing polygraph reports with the sex offender, the supervising officer and treatment provider shall be familiar with both the current and prior polygraph reports. They shall review the entire current report and identify critical issues to discuss with the sex offender. In meeting with the sex offender, efforts shall be made to have the sex offender repeat and document any relevant statements and to solicit additional information. After reviewing the report with the sex offender, the case shall be staffed by the team and appropriate sanctions shall be imposed for reported deception and any statements of problem behavior. (The use of the polygraph with convicted sex offenders is most effective when relevant sanctions to high risk behaviors or deceptive responses are imposed quickly.)

z) Treatment providers and supervising officers shall not offer the sex offender explanations or excuses for deceptive responses, other than dishonesty. Team members shall not allow splitting and shall discuss with the team any information the sex offender provides about another team member.

aa) If any team member has concerns regarding a sex offender's emotional state, or mental health related symptoms, which may affect the polygraph, the entire team shall staff the case.

bb) If the members of the team have concerns about what they consider to be excessive inconclusive results reported by the examiner, a staffing of all members is appropriate to explore how to resolve this problem.

cc) If the sex offender is not fluent in English, an interpreter must be used who is fluent in speaking and writing both English and the language used during the examination. The interpreter must not be a relative or a friend of the sex offender, and must have prior approval by the examiner. The interpreter shall serve only to interpret the communication between the subject and the examiner.

dd) There may be value in occasionally changing polygraph examiners to avoid familiarization between a particular examiner and the offender.

ee) Split Call reporting (where the subject's responses have a mix of deception, no deception and/or inconclusive reporting) is generally not recommended, but is allowed if the examiner believes that the polygraph charts have a sufficient clarity to justify such a call.

ff) Examiners shall use a computerized polygraph system or a late model (1980's to present) state-of-the-art, four or five channel polygraph instrument that will simultaneously record the physiological phenomena of abdominal and thoracic respiration, galvanic skin response, and the cardiovascular system.

gg) The examiner must employ a computerized polygraph system and a recognized scoring software (e.g., the Johns Hopkins Applied Physics Laboratory scoring algorithm). Computerized charts must also be independently hand scored by the examiner.

hh) The duration of each examination (including the pre-test, in-test, and post-test phases) shall be a minimum of 90 minutes. Time begins when the examinee

enters the examination room with the examiner and ends when the examinee departs after the conclusion of the polygraph examination.

ii) Examiners shall use a recognized Control Question Technique (CQT), plus a Peak of Tension test when necessary.

jj) Examiner shall use the following specific procedures during the administration of each examination:

1) The examinee shall agree in writing or on video tape to a standard waiver/release statement. The language of the statement should be agreed upon prior to the polygraph examination with the therapist, probation/parole officer, community corrections case manager, or prison treatment provider;

2) The examiner shall elicit relevant biographical and medical history information from the examinee prior to administering the actual polygraph examination;

3) The testing process shall be completely explained to the examinee, including an explanation of the instrumentation used and causes of general nervous tension;

4) The examiner shall conduct a thorough pre-test phase, including a detailed discussion of each relevant issue. There shall be an open dialogue with the examinee to confirm his/her version of the issues;

5) The examiner shall review and explain all test questions to the examinee. Examinee must demonstrate that he/she comprehends the meaning of each question;

6) Surprise or trick questions are forbidden during the administration of primary test charts;

7) All test questions must be formulated to allow only Yes or No answers;

8) An optional acquaintance/practice test may be run;

9) A minimum of three primary test charts shall be administered on the primary issue(s);

10) Test results shall be reviewed with the examinee;

11) The examiner must have received all pertinent and available case facts within a time frame sufficient to prepare for the examination.

kk) Examiners shall use an effective quality control process that allows for periodic independent review of all documentation, polygraph charts, and reports.

ll) Examiners shall issue a written report. The report must include factual, impartial, and objective accounts of the pertinent information developed during the examination, including statements made by the subject. The information in the report must not be biased or falsified in any way. The examiner's professional conclusion shall be based on the analysis of the polygraph chart readings and the information obtained during the examination process. All polygraph examination written reports must include the following:

1) Date of test or evaluation

2) Name of person requesting exam

3) Name of examinee

4) Location of examinee in the criminal justice system (probation, parole, etc.)

5) Reason for examination

6) Date of last clinical examination

7) Examination questions and answers

8) Any additional information deemed relevant by the polygraph examiner, e.g., examinee's demeanor

9) Reason for inability to complete exam, information from examinee outside the exam, etc.

10) Results of pre-test and post-test examination, including answers or other relevant information provided by the examinee.

mm) In order to design an effective polygraph examination and adhere to standardized and recognized procedures, there shall be no more than four relevant test questions, which shall:

1) Be simple, direct and as short as possible

2) Not include legal terminology that allows for examinee rationalization and utilization of other defense mechanisms

3) Not include mental state or motivation terminology

4) Be clear and not allow for multiple interpretations

5) Contain reference to only one issue under investigation

6) Never presuppose knowledge on the part of the examiner

7) Use language easily understood by the examinee

8) Be easily answered Yes or No

9) Avoid the use of any emotion laden terminology (such as rape, molest, murder, etc.) and use language that is behaviorally descriptive.

Section 1900.170 Qualifications of Polygraph Examiners
EMERGENCY

a) Polygraph Examiner – Full Operating Level

1) The individual shall be licensed under the Detection of Deception Examiner's Act [225 ILCS 430] and possess a baccalaureate degree from an accredited college or university.

2) The individual shall have graduated from a polygraph school accredited by the American Polygraph Association (APA). (Accreditation information is available from APA National Office, P.O. Box 8037, Chattanooga TN 37414-0037, phone 800-APA-8037, or at www.polygraph.org.)

3) The individual shall have completed 40 hours of specialized clinical sex

offender training for polygraph examiners which has been approved by APA.

4) The individual shall have conducted at least 150 criminal specific issue examinations, including a minimum of 50 clinical sex offender polygraph examinations, including specific issue, disclosure and maintenance examinations. The total clinical examinations shall include at least 10 disclosure polygraphs and 10 specific sexual issue polygraphs. Twenty of the 50 required clinical examinations shall have been conducted in the previous 12 months.

5) The individual shall provide satisfactory references as requested by the Sex Offender Management Board and shall allow the Board to solicit any additional necessary references to determine compliance with this Part.

6) The individual shall submit to a background check.

7) The individual shall adhere to the code of ethics and bylaws of APA (accreditation, bylaws and ethics information is available from APA National Office, P.O. Box 8037, Chattanooga TN 37414-0037, phone 800-APA-8037, or at www.polygraph.org) and shall conduct all examinations in a manner that is consistent with those listed ethics and bylaws.

b) Polygraph Examiner – Associate Level

1) The examiner shall be licensed under the Detection of Deception Examiner's Act and possess a baccalaureate degree from an accredited college or university.

2) The examiner shall have graduated from a polygraph school accredited by the American Polygraph Association (APA).

3) The examiner shall have completed 40 hours of specialized clinical sex offender training for polygraph examiners which has been approved by APA.

4) The examiner shall have completed at least 30 specific issue examinations (at least 15 shall be real life examinations and the other 15 may be specific issue mock examinations).

5) The associate level examiner shall obtain supervision from an SOMB approved clinical polygraph examiner, at the full operating level, to conduct the necessary clinical polygraphs to achieve the 50 examinations required at the full operating level. The supervision agreement must be in writing and the supervising examiner must review each clinical polygraph conducted to satisfy the 50 clinical polygraph examination requirement.

6) The supervisor of an associate level clinical polygraph examiner shall review samples of videotapes and/or actually observe the examiner during the examinations and provide supervision and consultation on question formulation for clinical polygraph exams, report writing, and other issues related to conducting clinical polygraph exams. Supervisors must review each clinical polygraph report used to meet the 50 clinical polygraph examination requirement and sign off that such review has been completed.

c) Continued Placement on the Approved Provider List

1) The polygraph examiner must demonstrate continued compliance with this Part.

2) Clinical polygraph examiners shall complete a minimum of 40 hours of relevant continuing education every three years to help maintain proficiency in the polygraph field and to remain current on developments in the assessment, treatment and monitoring of sex offenders.

3) The examiner shall have conducted a minimum of 75 clinical polygraph examinations in the three years immediately prior to re-application.

4) It is recommended that the examiner has engaged in periodic peer review by other registered full operating level clinical polygraph examiners, especially in cases where there are conflicting results with another registered examiner.

5) The examiner shall provide any satisfactory references as requested by the Sex Offender Management Board.

6) The examiner shall submit to a current background check.

7) There shall be no evidence that the examiner has been convicted of a felony or has committed any criminal sexual offenses.

8) The examiner shall comply with all requirements outlined in this Part and shall report any practice that is in significant conflict with this Part.

d) An applicant shall be allowed a one time waiver of the standards regarding the minimum number of criminal and sex offense-specific examinations required for a full operating level polygraph examiner until three years from the effective date of the standards. All applicants who have received the waiver must go through the application process for continued placement as a full operating level polygraph examiner.

Section 1900.180 Standards and Guidelines for Management of Sex Offenders on Probation/Parole
EMERGENCY

a) Establishment of an Interagency Containment Team

1) As soon as possible after a sex offender is placed on probation or parole, the supervising officer/agent should convene a team to manage the sex offender during his/her term of supervision.

A) The purpose of the team is to staff cases, share information, and make informed decisions related to risk assessment, treatment, behavioral monitoring, and management of each sex offender. The team should use the comprehensive sex offense-specific evaluation and presentence investigation as a starting point for such decisions.

B) Supervision and behavioral monitoring is a joint, cooperative responsibility of the supervising officer/agent, the treatment provider, and the polygraph examiner.

2) Each team, at a minimum, should consist of:

A) The supervising officer/agent;

B) The sex offender's treatment provider; and

C) The polygraph examiner.

3) Each team is formed around a particular sex offender and is flexible enough to include any individuals necessary to ensure the best approach to managing and treating the sex offender. Team membership may therefore change over time. The team may include individuals who need to be involved at a particular stage of management or treatment (e.g., the victim's therapist or victim advocate). When the sex offender is a family member of the victim, the child protection worker is also a team member if the case is still open.

4) The team is coordinated by the supervising officer/agent, who determines:

A) The members of the team, beyond the required membership, who should attend any given meeting;

B) The frequency of team meetings and the content of the meetings, with input from other team members;

C) The types of information required to be released.

5) Team members should keep in mind the priorities of community safety and risk management when making decisions about the management and/or treatment of sex offenders.

6) The team should demonstrate the following behavioral norms:

A) There is an ongoing, completely open flow of information among all members of the team;

B) Each team member participates fully in the management of each sex offender;

C) Team members settle among themselves conflicts and differences of opinion that might make them less effective in presenting a unified response. The final authority rests with the supervising officer/agent;

D) Team members are committed to the team approach and seek assistance with conflicts or alignment issues that occur.

7) Team members should communicate frequently enough to manage and treat sex offenders effectively, with community safety as the highest priority.

b) Responsibilities of the Supervising Officer/Agent for Team Management

1) Sex offenders shall only be referred for evaluation and treatment to treatment providers who meet the standards in this Part.

2) Sex offenders shall sign releases for at least the following types of information:

A) Releases of information to treatment providers, including information from any treatment program in which the sex offender participated at the Department of Corrections;

B) Releases of information to containment team members, including collateral information sources, as indicated, such as the child protection agency, the treatment provider, the polygraph examiner, the victim's therapist, and any other professionals involved in the treatment and/or supervision of the sex offender;

C) Releases of information to the victim's therapist, the guardian ad litem, custodial parent, guardian, caseworker, or other involved professional, as indicated. Such information may be used in the victim's treatment and/or in making decisions regarding reunification of the family or the sex offender's contact with the victim.

3) The supervising officer/agent or indicated DOC facility staff, in cooperation with the treatment provider and polygraph examiner, should utilize the results of periodic polygraph examinations for treatment and behavioral monitoring. Team members should provide input and information to the polygraph examiner regarding examination questions. The information provided by the team should include date and results of last polygraph examination.

4) Written Treatment Agreements: The supervising officer/agent or indicated DOC facility staff should require sex offenders to provide a copy of the written plan developed in treatment for preventing a relapse, signed by the

sex offender and therapist, as soon as it is available. The supervising officer/agent should utilize the relapse prevention plan in monitoring sex offenders' behavior.

5) The supervising officer/agent or indicated DOC facility staff should require sex offenders to obtain the officer's/agent's written permission (and if required, court approval) to change treatment programs.

6) Supervision: The supervising officer/agent or indicated DOC facility staff should ensure maximum behavioral monitoring and supervision for sex offenders in denial. The officer/agent should use supervision tools that place limitations on sex offenders' use of free time and mobility and emphasize community safety and containment of sex offenders.

7) The supervising officer/agent or indicated DOC facility staff should require treatment providers to keep monthly written updates on sex offenders' status and progress in treatment.

8) The supervising officer/agent or indicated DOC facility staff should discuss with the treatment provider, the victim's therapist, custodial parent or foster parent, and guardian ad litem specific plans for any and all contacts of a sex offender with a child victim and plans for family reunification.

9) The supervising officer/agent or indicated DOC facility staff should develop a supervision plan and contact standards based on a risk assessment of each sex offender and the sex offender's offending cycle, physiological monitoring results, and progress in treatment.

10) Recognizing that sex offenders present a high risk to community safety, supervising officers/agents should base their field work on the supervision plan, relapse prevention plan, and offense cycle of a sex offender.

11) The supervising officer/agent or indicated DOC facility staff should not request early termination of sex offenders from supervision.

12) On a regular basis, the supervising officer/agent or indicated DOC facility staff should review each sex offender's specific conditions of probation/parole, and assess the sex offender's compliance, needs, risk, and progress to determine the necessary level of supervision and the need

for additional conditions.

13) If contact is allowed, the supervising officer/agent or indicated DOC facility staff should limit and control the sex offenders' authority to make decisions for minors or to discipline them.

14) The supervising officer/agent or indicated DOC facility staff should notify sex offenders that they must register with local law enforcement, in compliance with the Sex Offender Registration Act [730 ILCS 150].

15) The supervising officer/agent or DOC facility staff should discuss s and progress with sex offenders during office visits and other contacts.

16) The supervising agency should impose or request criminal justice sanctions for sex offenders' unsatisfactory termination from sex offender treatment, including revocation of probation or parole.

17) The supervising officer/agent or indicated DOC facility staff should require sex offenders who are transferred from other states through an Interstate Compact Agreement for Adult Offender Supervision [45 ILCS 170/51] to agree in advance to participate in offense-specific treatment and specialized conditions of supervision contained in this Part.

18) The supervising officer/agent or indicated DOC facility staff should not allow a sex offender who has been unsuccessfully discharged from a treatment program to enter another program unless the new treatment program and case management arrangement will provide greater behavioral monitoring and increased treatment in the areas the sex offender "failed" in the previous program.

c) Training for Supervising Agents

1) Supervising officers/agents or indicated DOC facility staff assessing or supervising sex offenders should successfully complete training programs specific to sex offenders. Such training shall include information on:

A) Prevalence of sexual assault;

B) Offender characteristics;

C) Assessment/evaluation of sex offenders;

D) Current research;

E) Community management of sex offenders;

F) Interviewing skills;

G) Victim issues;

H) Sex offender treatment;

I) Choosing evaluators and treatment providers;

J) Relapse prevention;

K) Physiological procedures;

L) Determining progress;

M) Offender denial;

N) Special populations of sex offenders; and

O) Cultural and ethnic awareness.

2) It is also desirable for agency supervisors of officers/agents or indicated DOC facility staff managing sex offenders to complete such training, as well as appropriate management training in the development of policy and procedure for the supervision of sex offenders in the community.

3) On an annual basis, supervising officers/agents or indicated DOC facility staff should obtain continuing education/training specific to sex offenders.

d) Responsibilities of the Treatment Provider within the Team

1) A treatment provider shall establish a cooperative professional relationship with the supervising officer/agent of each sex offender and with other relevant supervising agencies. This includes but is not limited to:

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A) A provider shall immediately report to the supervising officer/agent all violations of the provider/client contract, including those related to specific conditions of probation/parole.

B) A provider shall immediately report to the supervising officer/agent evidence or likelihood of a sex offender's increased risk of re-offending so that behavioral monitoring activities may be increased.

C) A provider shall report to the supervising officer/agent any reduction in frequency or duration of contacts or any alteration in treatment modality that constitutes a change in a sex offender's treatment plan. Any permanent reduction in duration or frequency of contacts or permanent alteration in treatment modality shall be determined on an individual basis by the provider and the supervising officer/agent.

D) On a timely basis, and no less than monthly, a provider shall provide to the supervising officer/agent progress reports documenting the sex offender's attendance, participation in treatment, increase in risk factors, changes in the treatment plan, and treatment progress.

E) If a revocation of probation or parole is filed by the supervising officer/agent, a provider shall furnish, when requested by the supervising officer/agent, written information regarding the sex offender's treatment progress. The information shall include: changes in the treatment plan, dates of attendance, treatment activities, the sex offender's relative progress and compliance in treatment, and any other material relevant to the court at the hearing. The treatment provider shall be willing to testify in court if necessary.

F) A provider shall discuss with the supervising officer/agent, the victim's therapist, custodial parent, foster parent and/or guardian ad litem specific plans for any and all contact of the sex offender with the child victim and plans for family reunification.

G) A provider shall make recommendations to the supervising officer/agent about visitation supervisors for a sex offender's

contact with children, if such contact is allowed.

2) Responsibilities of the Polygraph Examiner within the Team

A) The polygraph examiner shall participate as a member of the containment team established for each sex offender, and shall routinely consult with the supervising officer/agent and the treatment provider concerning the conduct and the content of each examination.

B) The polygraph examiner shall submit written reports to each member of the containment team for each polygraph exam. Reports shall be submitted in a timely manner, no longer than two weeks after testing.

C) Attendance at team meetings shall be on an as-needed basis. At the discretion of the supervising officer/agent, the polygraph examiner may be required to attend only those meetings preceding and/or following a sex offender's polygraph examination, but the examiner is nonetheless an important member of the team.

e) Conditions of Community Supervision

1) General conditions imposed on all sex offenders on probation shall include conditions set forth in 730 ILCS 5/5-6-3.

2) General conditions imposed on all sex offenders on parole shall include conditions set forth in 730 ILCS 5/3-3-7.

3) General conditions imposed on all sexually violent persons in the community shall include conditions set forth in 725 ILCS 207/40.

4) The following special conditions should be imposed by the court or Prisoner Review Board.

A) Sex offenders shall have no contact with their victims, including correspondence, telephone contact, or communication through third parties except under circumstances approved in advance and in writing by the supervising officer/agent in consultation with the containment team. Sex offenders shall not enter onto the premises,

travel past, or loiter near the victim's residence, place of employment, or other places frequented by the victim;

B) Sex offenders shall have no contact with, nor reside with, children under the age of 18, including their own children, unless approved in advance and in writing by the supervising officer/agent or indicated DOC facility staff in consultation with the containment team. The sex offender must report all incidental contact with children to the treatment provider and the supervising officer/agent, as required by the team;

C) Sex offenders who have perpetrated against children shall not date or befriend anyone who has children under the age of 18, unless approved in advance and in writing by the supervising officer/agent or indicated DOC facility staff in consultation with the containment team;

D) Sex offenders shall not access or loiter near school yards, day care centers, pools, theaters, parks, arcades, playgrounds, amusement parks, or other places used primarily by children pursuant to 720 ILCS 5/11-9.3 and 720 ILCS 5/11-9.4;

E) Sex offenders shall not be employed in or participate in any volunteer activity that involves contact with children;

F) Sex offenders shall not possess any pornographic, sexually oriented or sexually stimulating materials, including visual, auditory, telephonic, or electronic media, computer programs or services. Sex offenders shall not patronize any place where such material or entertainment is available. Sex offenders shall not utilize any sex-related telephone numbers. The containment team may grant permission for the use of sexually oriented material for treatment purposes;

G) Sex offenders shall not consume or possess alcohol or illegally use controlled substances or marijuana;

H) The residence and living situation of the sex offender must be approved in advance by the supervising officer/agent in consultation with the containment team. In determining whether to

approve the residence, the supervising officer/agent will consider the level of communication the officer/agent has with others living in the residence, and the extent to which the sex offender has informed household members of his/her conviction and conditions of probation/parole/community corrections, and the extent to which others living in the residence are supportive of the case management plan;

I) Sex offenders will be required to undergo DNA testing as required by 730 ILCS 5/5-4-3;

J) Other special conditions that restrict sex offenders from high-risk situations and limit access to potential victims may be imposed by the supervising officer/agent in consultation with the containment team;

K) Sex offenders shall sign information releases to allow all professionals involved in assessment, treatment, and behavioral monitoring and compliance of the sex offender to communicate and share documentation with each other;

L) Sex offenders shall not hitchhike or pick up hitchhikers;

M) Sex offenders shall attend and actively participate in evaluation and treatment approved by the supervising officer/agent and shall not change treatment providers without prior approval of the supervising officer/agent;

N) Sex offenders shall not access the Internet or communicate with any individual or entity via the use of a computer, without explicit authorization from the containment team;

O) Sex offenders shall be subject to a warrantless search or unannounced visit by the containment team;

P) When in public view, sex offenders shall be attired in appropriate clothing which is not sexually provocative;

Q) At the direction of the containment team, sex offenders shall notify parties of the risks that may be occasioned by the sex offender's

criminal record or sexual offending history or characteristics, and permit the supervising officer or agent to make the notification requirement;

R) Sex offenders shall attend and fully participate in assessment, treatment, and behavior monitoring, including, but not limited to, medical, psychological or psychiatric treatment specific to sexual offending, drug addiction, or alcoholism, to the extent appropriate to the person based upon the recommendation and findings made in the containment team evaluation or based upon any subsequent recommendations by the team;

S) Sex offenders shall submit to the search of their person, residence, vehicle, or any personal or real property under their control at any time by the supervising officer;

T) Sex offenders shall financially support their dependents and provide the supervising officer access to any requested financial information;

U) Sex offenders shall serve a term of home confinement, the conditions of which shall be that the person:

i) Remain within the interior premises of the place designated for his or her confinement during the hours designated by the containment team;

ii) Admit any person or agent designated by the containment team into the sex offender's place of confinement at any time for purposes of verifying the person's compliance with the condition of his or her confinement;

iii) If deemed necessary by the containment team, be placed on an electronic monitoring device;

V) Sex offenders shall not possess or have under their control certain specified items of contraband related to the incidence of sexually offending items including video or still camera items, or children's toys;

W) Sex offenders shall provide a written daily log of activities as directed by the containment team.

f) Behavioral Monitoring of Sex Offenders in the Community

1) The monitoring of sex offenders' compliance with treatment and sentencing requirements shall recognize sex offenders' potential to re-offend, to re-victimize or to cause harm, and the limits of sex offenders' self reports;

2) Responsibility for behavioral monitoring activities shall be outlined under ents established by the supervising officer/agent. Some or all members of the team described in this Part will share monitoring responsibility. At a minimum, the provider, the supervising officer/agent, and the polygraph examiner shall take an active role in monitoring sex offenders' behaviors;

3) For purposes of compliance with this subsection (f), behavioral monitoring activities shall include, but are not limited to, the following:

A) The receipt of third-party reports and observations;

B) The use of disclosure and maintenance polygraphs and measures of arousal or interest including sexual and violent arousal or interest;

C) The use and support of targeted limitations on a sex offender's behavior, including those conditions set forth in this Part;

D) The verification (by means of observation and/or collateral sources of information in addition to the sex offender's self report) of the sex offender's:

i) Compliance with sentencing requirements, supervision conditions and treatment directives;

ii) Cessation of sexually deviant behavior;

iii) Reduction of behaviors most likely to be related to a sexual re-offense;

iv) Living, work and social environments, to ensure that these

environments provide sufficient protection against sex offenders' potential to re-offend;

v) Compliance with specific conditions of the relapse prevention plan;

E) The direct involvement of individuals significant in the sex offender's life in monitoring sex offender's compliance, when approved by the containment team;

4) Behavioral monitoring should be increased during times of a sex offender's increased risk to re-offend, including, but not limited to, such circumstances as the following:

A) The sex offender is experiencing stress or crisis;

B) The sex offender is in a high-risk environment;

C) The sex offender will be having visits with victims or potential victims, as recommended by the provider and approved by the supervising officer/agent, victim treatment provider, custodial parent, and/or guardian ad litem;

D) The sex offender demonstrates a high or increased level of denial;

E) The sex offender works with computers or is on the Internet.

Section 1900.190 The Role of Victims/Survivors in Sex Offender Evaluation and Treatment
EMERGENCY

a) Adult Victims: For purposes of compliance with this subsection (a) standard, supervising officers/agents and providers shall:

1) Respect the victim's wishes regarding contact with the sex offender.

2) With the consent of the victim, collaborate with the victim's therapist and/or advocate in making decisions regarding communication and contact between the victim and sex offender.

3) Place the safety of the victim first, if it is therapeutically indicated, and the victim wishes to have contact with the sex offender. When assessing safety, both psychological and physical well-being will be evaluated.

4) Ensure that any recommended contact with the victim or potential victim is in compliance with the following:

A) Any court orders such as orders of protection;

B) Recommendations from the sex offender's individual and group therapists.

5) Work with the sex offender's therapist, who shall consider the following prior to recommending contact between a victim and a sex offender.

A) The sex offender is able to utilize cognitive and behavioral interventions to interrupt sexually deviant fantasies;

B) The sex offender is able to cooperate with supervised visitation and is able to respect and follow a safety plan;

C) The sex offender accepts responsibility for the abuse;

D) Significant differences between the sex offender's statements, the victim's statements, and corroborating information about the abuse have been resolved;

E) The sex offender has a cognitive understanding of the impact of the abuse on the victim and the family;

F) The sex offender is able to put the victim's needs first and is willing to respect the victim's verbal and non-verbal boundaries and need for privacy;

G) Results of any polygraph examinations (if available).

6) Complete training addressing sexual offending, understand the deviant cycle and the possibility of re-offense and the dynamics of incestuous families, and learn how to facilitate a visit between a victim and sex offender with safety being paramount.

7) Closely supervise and monitor the process and content of the visit if contact is approved.

A) Assessed on a continuing basis victim's and potential victims' emotional and physical safety and visits terminate immediately if any aspect of safety is jeopardized. Any behavior indicating risk shall result in visits being terminated immediately;

B) Provide documenting, and giving both positive and negative feedback to the sex offender.

8) Monitor or prohibit indirect contact (e.g., mail, sending gifts).

b) Vulnerable Victims (Any person 17 years old and younger, or any person who is developmentally disabled, cognitively impaired, or unable to give consent): For purposes of compliance with this subsection (b), supervising officers/agents and providers shall:

1) Ensure consultation with custodial parents or guardians of the victim, the victim's guardian ad litem, and the victim's treatment provider prior to authorizing contact and ensure the contact is in accordance with court directives.

2) Ensure that the custodial parent or guardian shall not place the victim at risk.

3) Consider the victim's wishes regarding contact with the sex offender.

4) Whenever possible, collaborate with the victim's therapist and/or advocate in making decisions regarding communication and contact between victim and the sex offender.

5) Place the safety of the victim first, if it is therapeutically indicated, and if the victim and her/his family/guardian wishes to have contact with the sex offender. Safety, both psychological and physical well being, must be evaluated and continually monitored.

6) Ensure that any recommended contact with the victim or potential victim is in compliance with the following:

A) Any court orders such as orders of protection;

B) Recommendations from the sex offender's individual and group therapists.

7) Work with the sex offender's therapist who shall verify the following progress in therapy prior to recommending contact between a victim and a sex offender:

A) The sex offender is able to utilize cognitive and behavioral interventions to interrupt sexually deviant fantasies;

B) The sex offender is able to cooperate with supervised visitation and is able to respect and follow a safety plan;

C) The sex offender accepts responsibility for the abuse;

D) Significant differences between the sex offender's statements, the victim's statements, and corroborating information about the abuse have been resolved;

E) The sex offender has a cognitive understanding of the impact of the abuse on the victim and the family;

F) The sex offender is able to put the victim's needs first and is willing to respect the victim's verbal and non-verbal boundaries and need for privacy;

G) Results of any polygraph examinations, if available.

8) Complete training addressing sexual offending, understand the deviant cycle and accept the possibility of re-offense and the dynamics of incestuous families, and learn how to facilitate a visit between the victim and the sex offender with safety being paramount.

9) Closely supervise and monitor the process and content of the visit if contact is approved.

A) Victim's and potential victims' emotional and physical safety shall

be assessed on a continuing basis, and visits will be terminated immediately if any aspect of safety is jeopardized. Any behavior indicating risk shall result in visits being terminated immediately.

B) There must be provisions for monitoring, documenting, and giving both positive and negative feedback to the sex offender.

10) Monitor or prohibit indirect contact (e.g., mail, sending gifts).

11) Consider family reunification:

A) Only after a multidisciplinary staffing has occurred with all therapists and supervising officers present;

B) Never recommend family reunification if the safety of any former or potential victims is still at risk.

12) If family reunification is indicated by all therapists and supervising agents:

A) This team will closely supervise and monitor the process with safety plans in place;

B) Continued treatment shall be mandatory through this process and over an extended period of time;

C) Periodic polygraph examinations shall be mandatory (if available) throughout this process. The examiner shall determine that the results of the sex offender's polygraphs are nondeceptive during these examinations;

D) An ongoing, comprehensive assessment shall be made of all of the different social contexts in which the sex offender participates.

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NOTICE OF EMERGENCY RULES

1) Heading of the Part: Interim Sex Offender Evaluations and Treatment

2) Code Citation: 20 Ill. Admin. Code 1905

3)

Section Numbers:	Emergency Action:
1905.10	New
1905.20	New
1905.30	New
1905.40	New
1905.50	New
1905.60	New
1905.70	New
1905.80	New
1905.100	New
1905.110	New
1905.120	New
1905.130	New
1905.140	New
1905.200	New
1905.210	New
1905.220	New
1905.230	New
1905.240	New
1905.250	New
1905.300	New
1905.310	New
1905.320	New

4) Statutory Authority: Sex Offender Management Board Act [20 ILCS 4026], amended by P.A 93-616, effective January 1, 2004

5) Effective Date of Amendments: May 27, 2004

6) If this emergency amendment is to expire before the end of the 150 day period, please specify the date on which it is to expire: No early expiration.

7) Date filed with the Index Department: May 27, 2004

8) A copy of the adopted amendments is on file in the office of the chair of the Sex Offender Management Board (Board) in the Office of the Attorney General in the James R.

Thompson Center, 100 W. Randolph, Chicago, Illinois, and is available for public inspection.

9) Reason for emergency: Effective January 1, 2004, adults convicted of felony sex offenses are required to undergo sex offender evaluations before sentencing if they are considered for probation in the community and, if incarcerated, before release into the community. They must also undergo sex offender treatment as a condition of probation, conditional release, periodic imprisonment, or parole. Such evaluations and treatment are required to be provided in conformance with standards adopted by the Board and by persons approved by the Board. Programs for evaluation and treatment must recognize the unlikelihood that a sex offender can be cured and are to be designed to protect victims and potential victims. Similar requirements also apply to juveniles and persons found to be sexually dangerous or sexually violent persons.

In the absence of a process and standards for approval of evaluators and treatment providers and standards for service provision, there are strong concerns that the sentencing of felony sex offenders could be delayed and that incarcerated offenders could be released without the requisite evaluation and treatment. The failure to have evaluations and treatment of sexually dangerous or violent persons performed by qualified individuals could further jeopardize the public safety. There is also fear that failure to have the requisite rules in place could lead to legal challenges that could result in some offenders' being released without evaluation and treatment at all. In addition, there is widespread confusion throughout the criminal justice community as to how to implement the new requirements in the absence of rules promulgated by the Board. The Board has, therefore, found that this situation constitutes a threat to the public interest, safety, and welfare that requires the adoption of rules in less time than is required for general rulemaking.

10) A Complete Description of the Subjects and Issues Involved: Prior to enactment of Public Act 93-616, the Sex Offender Management Board Act required the Board to develop separate guidelines and standards for a system of programs for the counseling of juvenile and adult sex offenders that could be utilized by offenders who were placed on probation, committed to the Department of Corrections or Department of Human Services, or placed on mandatory supervised release or parole. In addition, the Act required that the Board develop and prescribe separate standardized procedures for the evaluation and identification of sex offenders; recommend behavior management, monitoring, and treatment; and develop and implement measures of success and methods of intervention. In partial response to these commands, the Board adopted "Sex Offender Management Board Standards and Guidelines for the Evaluation, Treatment and Monitoring of Adult Sex Offenders," 20 Ill. Adm. Code Part 1900. Neither sex offenders

nor any element of the criminal justice system were, however, required to implement or comply with any particular element of the programs and procedures developed by the Board.

Effective January 1, 2004, Public Act 93-616 amended the Sex Offender Management Board Act and several other statutes to require not only that convicted adult felony sex offenders and juvenile sex offenders undergo sex offender evaluations and treatment at various stages of the criminal justice processes (e.g., evaluations before sentencing and before release into the community, and treatment as a condition of probation or conditional release), but also to require that evaluation and treatment be provided by persons approved by the Board and in conformance with standards adopted by the Board. In addition, Public Act 93-616 requires that examinations and/or treatment required by pre-existing statutes relating to sexually violent or sexually dangerous persons now be conducted by persons approved by the Board and in conformance with standards adopted by the Board.

Given that Part 1900 was adopted pursuant to a different grant of authority and with the understanding that it constituted a set of recommended best practices and not a set of mandatory requirements, Part 1900 does not comprise the Board's standards for approval of evaluators and treatment providers or for the provision of evaluation and treatment services for purposes of the requirements of Public Act 93-616. Consequently, there is an immediate need to adopt the requisite standards and procedures to implement the Act.

In adopting such standards and procedures, the Board will need to devote considerable attention to factors that were not as important with respect to the adoption of recommended best practices. For example, the Board will need to consider the availability of evaluators and providers who meet the qualifications in all parts of the State and the extent to which resources exist to procure the services of those individuals. Now that requirements are mandatory, it is likely that those who are subject to those requirements – sex offenders and government officers and employees in the criminal justice system – will have a greater incentive to comment on new standards and procedures. Thus, the Board expects that it will take substantial time to develop the rules necessary to implement the requirements of Public Act 93-616 on a long-term basis.

Balancing the need to act quickly against the need for time to develop a comprehensive program with an opportunity for those concerned to make comment, the Board has chosen to adopt interim standards and procedures for the approval of evaluators and treatment providers and for the provision of evaluations and treatment to satisfy the various statutory commands. Evaluators and treatment providers who meet the qualifications and comply with the procedures set forth in this Part will be approved by

the Board to provide the services for which they are approved until July 1, 2005 if they remain in compliance with the requirements. They will also have their names included on an interim list of approved providers, which list will be made available to the public. In addition, evaluations and treatment provided in accordance with this Part will be deemed to satisfy the statutes until the same date.

Among the qualifications set forth are requirements relating to professional licensure, education, experience, training and criminal history. Standards for the conducting of evaluations and the provision of treatment are largely taken from the 20 Ill. Adm. Code Part 1900, which is being repealed by emergency and proposed repealers elsewhere in this issue of the *Illinois Register*.

11) Are there any proposed amendments to this Part pending? No

12) Statement of Statewide Policy Objectives: Neither creates nor enlarges a State mandate within the meaning of 30 ILCS 805/3b of the State Mandates Act. Rather, this rulemaking makes it possible to comply with mandates issued by the General Assembly in P. A. 93-616.

13) Information and questions regarding this amendment shall be directed to:

Cara Smith, Chair
Sex Offender Management Board
James R. Thompson Center, 12th Floor
100 W. Randolph Street
Chicago, IL 60601
(312) 814-2970

The full text of the Emergency Rules begins on the next page:

SEX OFFENDER MANAGEMENT BOARD

NOTICE OF EMERGENCY RULES

TITLE 20: CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT
CHAPTER VII: SEX OFFENDER MANAGEMENT BOARD

PART 1905
INTERIM SEX OFFENDER EVALUATION AND TREATMENT

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1905.320 Completion of Treatment
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AUTHORITY: Authorized by Sec. 15 of the Sex Offender Management Board Act ("Act") [20 ILCS 4026/15] and implementing Sections 15-18 of the Act; Sections 5-701 and 5-715(3.10) of the Juvenile Court Act of 1987 [705 ILCS 405/5-701 and 5-715(3.10)]; Section 8 of the Sexually Dangerous Persons Act [725 ILCS 205/8]; Sections 10(c)(2), 25(e), 30(c), 40(b)(1), 55(b), 60(c), and 65(a)(2) and (b)(2) of the Sexually Violent Persons Commitment Act [725 ILCS 207/10(c)(2), 25(e), 30(c), 40(b)(1), 55(b), 60(c), and 65(a)(2) and (b)(2)]; and Sections 3-3-7(a)(7.5), 3-6-2(j) and (k), 3-9-7(b), 5-3-2(b-5), 5-6-3(a)(8.5) and 5-7-1(f-5) of the Unified Code of Corrections [730 ILCS 5/3-3-7(a)(7.5), 3-6-2(j) and (k), 3-9-7(b), 5-3-2(b-5), 5-6-3(a)(8.5) and 5-7-1(f-5)].

SOURCE: Adopted by emergency rulemaking at 28 Ill. Reg.8300, effective May 27, 2004, for a maximum of 150 days.

SUBPART A: GENERAL

Section 1905.10 Purpose and Scope
EMERGENCY

SEX OFFENDER MANAGEMENT BOARD

NOTICE OF EMERGENCY RULES

Effective January 1, 2004, the Sex Offender Management Board Act ("Act") [20 ILCS 4026] and various other statutes provide for the evaluation and/or treatment of convicted sex offenders in conformance with standards adopted by, and by persons approved by, the Sex Offender Management Board. This Part establishes requirements for evaluators and treatment providers to obtain Board approval to perform those functions through July 1, 2005. It also establishes standards for conducting evaluations of, and providing treatment to, sex offenders in all circumstances where conformance with Board standards is required through July 1, 2005.

Section 1905.20 Definitions
EMERGENCY

In this Part, the terms "Board," "sex offender," "sex offense," "management," and "sexually motivated" have the meanings ascribed to them in Sec. 10 of the Act. In addition, the following definitions apply:

"Accountability": Accurate attributions of responsibility, without distortion, minimization, or denial.

"Behavioral Monitoring" includes a variety of methods for checking, regulating, and supervising the behavior of sex offenders.

"Case Management" means the coordination and implementation of the cluster of activities directed toward supervising, treating, and managing the behavior of individual sex offenders. (See Containment Approach)

"Containment Approach" is a method of case management and treatment that seeks to hold offenders accountable through the combined use of both offenders' internal controls and external control measures (such as the use of polygraph and relapse prevention plans). A containment approach requires the integration of a collection of attitudes, expectations, laws, policies, procedures, and practices that have clearly been designed to work together. This approach is implemented through interagency and interdisciplinary teamwork.

"Containment Team" is a group comprising, at a minimum, a sex offender's supervising officer, and treatment provider and utilizing the containment approach. Team members may change over time as issues develop regarding treatment and supervision.

"Defense Mechanisms" means normal, adaptive, self-protective functions which keep human beings from feeling overwhelmed and/or becoming psychotic, but which become dysfunctional when overused or overgeneralized.

"Denial," as used in Subpart D of this Part, is a defense mechanism used to protect the ego from anxiety-producing information.

"Evaluation" means the systematic collection and analysis of psychological, behavioral, and social information; the process by which information is gathered, analyzed, and documented.

"Experience" includes any activity directly related to providing evaluation and/or treatment to individual sex offenders, e.g., face-to-face therapy, report writing, administration, scoring, and interpretation of tests; participation on containment teams of the type described in these standards and guidelines; and clinical supervision of therapists treating sex offenders.

"Informed Assent" means compliance; a declaration of willingness to do something in compliance with a request; acquiescence; agreement. The use of the term "assent" rather than "consent" in this document recognizes that sex offenders are not voluntary clients, and that their choices are therefore more limited. Informed means that a person's assent is based on a full disclosure of the facts needed to make the decision intelligently, e.g., knowledge of risks involved, alternatives.

"Informed Consent": "Consent" means voluntary agreement, or approval to do something in compliance with a request. "Informed" means that a person's consent is based on a full disclosure of the facts needed to make the decision intelligently, e.g., knowledge of risks involved, alternatives.

"Non-Deceptive Polygraph Examination Result": A non-deceptive polygraph examination result must include a deceptive response to control questions. Any inconclusive or deceptive response to any relevant question disallows a non-deceptive examination result.

"Parole" refers to parole or mandatory supervised release.

"Polygraph": The employment of instrumentation, as defined by the Illinois Detection of Deception Examiners Act [225 ILCS 430], used for the purpose of detecting deception or verifying truth of statements of a person under criminal

justice supervision and/or treatment for the commission of sex offenses. A clinical polygraph examination is specifically intended to assist in the treatment and supervision of convicted sex offenders. Clinical polygraphs include specific-issue, disclosure and periodic or maintenance examinations. Clinical polygraphs may also be referred to as post-conviction polygraphs.

"Professional license" means a license issued by a State governmental body to practice a particular health or mental health profession.

"Sex offense specific" means relating to the problem of sexual offense behavior.

"Sexually violent person" has the meaning given to it in Sec. 5 of the Sexually Violent Persons Commitment Act [725 ILCS 207/5].

"Supervising Officer": The probation or parole officers are responsible for the behavioral monitoring of sex offenders. In addition, any person employed by the Department of Human Services or by an entity that contracted with the Department of Human Services to supervise sexually violent persons on conditional release.

"SVP" means sexually violent person or persons, depending on the context.

"Treatment" means therapy, monitoring and supervision of a sex offender.

SUBPART B: PROVIDER LIST AND QUALIFICATIONS

Section 1905.30 Interim Provider List
EMERGENCY

The Board will establish an interim approved provider list upon which will be placed the names of all individuals who are approved by the Board to provide evaluations and treatment of sex offenders through July 1, 2005, along with the category of the services the providers are approved to provide (e.g., pre-sentence or pre-release evaluations). Providers will be placed on the list if they complete the application process described in Sec. 1905.100, meet the general requirements of Sec. 1905.40, and meet the specific qualifications and requirements that correspond to the designation sought.

a) Individuals who meet the qualifications of Sec. 1905.50 will be approved for conducting pre-sentencing evaluations to meet the requirements for evaluations of:

1) felony sex offenders who are to be considered for probation, pursuant to Sec. 16(b) of the Act (adult or juvenile),

2) any adult before sentencing on a felony sex offense or any felony offense that is sexually motivated, pursuant to 730 ILCS 5/5-3-2(b-5) and 5-3-1, and

3) a minor found guilty of a sex offense, pursuant to 705 ILCS 405/5-701.

b) Individuals who meet the qualifications of Sec. 1905.60 will be approved for conducting evaluations to meet the requirements for evaluations of:

1) every person convicted of a sex offense, prior to release into the community from the Department of Corrections, pursuant to 730 ILCS 5/5-4-1(e)(3.5);

2) any person as required in the Sexually Violent Persons Commitment Act [725 ILCS 207/5].

c) Individuals who meet the qualifications of Sec. 1905.70 will be approved to provide sex offender treatment to any person, adult or juvenile, who is required to undergo treatment from a provider approved by the Board.

d) An individual who is approved to conduct pre-sentencing evaluations under subsection (a) above is also approved to conduct the evaluations listed under subsection (b) above.

Section 1905.40 General Requirements for Approval of Evaluators and Providers EMERGENCY

a) Sex offender evaluators and treatment providers will not be eligible for Board approval if they have ever:

1) been convicted of any felony;

2) been convicted of any misdemeanor involving a sex offense;

3) had a professional license placed on inactive status, suspended, revoked, non-renewed, or placed on probationary status for disciplinary reasons unless the applicant has been restored to full practice rights;

4) been found by any licensing body to have engaged in unethical or unprofessional conduct unless the applicant has been restored to full practice rights; or

5) been engaged in deceit or fraud in connection with the delivery of services, supervision, or the documentation of their credentials.

b) A provider must continue to maintain eligibility under this Section in order to remain on the approved provider list and has a continuing duty to notify the Board should he or she ever become disqualified under this Section.

Section 1905.50 Interim Qualifications for Provision of Evaluations Before Sentencing EMERGENCY

In order to be approved to provide pre-sentence evaluations as described in Section 1905.30(a), an applicant must:

a) hold a bachelor's degree or higher in a behavioral science;

b) have 400 hours of supervised experience in the treatment/evaluation of sexual offenders in the last 4 years, at least 200 of which are face-to-face therapy/evaluation with sexual offenders;

c) have completed at least 10 sex offender evaluations under supervision in the past 4 years; and

d) have at least 40 hours of documented training in the specialty of sex offender evaluation/treatment/management.

Section 1905.60 Interim Qualifications for Provision of Pre-release and SVP Evaluations EMERGENCY

In order to be approved to provide pre-release and SVP evaluations as described in Section 1905.30(b), an applicant must:

a) hold a bachelor's degree or higher in a behavioral science,

b) have 400 hours experience with forensic clients within the past 4 years, and

c) have at least 20 hours of documented training in the specialty of sex offender evaluation/treatment/management or will work under the supervision of a provider who has undergone 40 hours of documented training and 400 hours experience in sexual offender evaluation/treatment/management.

Section 1905.70 Interim Qualifications for Treatment Providers
EMERGENCY

In order to be approved to provide sex offender treatment, an applicant must:

a) hold a bachelor's degree or higher in a behavioral science;

b) have 400 hours of supervised experience in the treatment of sexual offenders in the last 4 years, at least 200 of which are face-to-face therapy with sexual offenders; and

c) have at least 40 hours documented training in the specialty of sex offender assessment/treatment/management.

Section 1905.80 Supervision by Approved Providers
EMERGENCY

Wherever this Subpart conditions eligibility for placement on the interim provider list upon the applicant's having attained a specified level of supervised experience of any type (Sections 1905.50(b) and (c) and 1905.70(b) of this Part), any qualifying experience attained after January 1, 2004 must have been directly supervised (in-room supervision) by a provider on the Board's interim provider list for the activities for which approval is sought by the applicant.

a) Notwithstanding a requirement for supervised experience, qualifying experience attained prior to January 1, 2004 need not have been supervised.

b) If the qualifying experience was attained outside of Illinois after January 1, 2004, the experience must have been supervised by a provider who would have been eligible for Board approval for the appropriate purpose if practicing in Illinois.

SUBPART C: APPROVAL AND REMOVAL PROCEDURES

SEX OFFENDER MANAGEMENT BOARD

NOTICE OF EMERGENCY RULES

Section 1905.100 Application
EMERGENCY

A provider seeking placement on the interim approved provider list must complete and submit to the Board an application form provided by the Board that contains the elements prescribed in this Section and identifies the services for which the provider seeks approval. The elements of the application include:

a) provider identification, including name and business address, telephone number, fax number, and e-mail address;

b) a listing of the counties in which the applicant provides services;

c) a listing of any and all currently held licenses or certifications;

d) identification of any languages other than English in which the applicant is fluent and can provide services (optional);

e) the applicant's separate attestations that none of the bars to eligibility listed in Section 1905.40 of this Part apply;

f) separate attestations that the applicant meets each of the qualifications applicable to the type(s) of approval sought;

g) an agreement that the applicant will conduct sex offender evaluations and provide sex offender treatment in accordance with the requirements of Subpart D of this Part;

h) attestation that the applicant's placement on the interim provider list will expire no later than July 1, 2005;

i) attestation that the applicant's submission of false information will result in removal from the approved provider list; and

j) an agreement to notify the Board immediately if the provider becomes ineligible under Section 1905.40 of this Part.

Section 1905.110 Application Review and Approval
EMERGENCY

Submitted applications will be referred to an application review committee, appointed by the Board, for review and approval.

a) The committee will consist of no fewer than three members, including at least one sex offense specific treatment provider, one sex offense specific evaluator, and one victim advocate.

b) No committee member holding a personal or financial interest in an application before the committee shall participate in the deliberation or voting on approval of the application.

c) The committee shall review the application and, within 45 days after receipt of the application shall either:

1) if it appears to the committee that all requirements for the type of approval applied for are met, direct that the applicant's name be added to the interim approved provider list and notify the applicant or

2) if deficiencies are found in the application, notify the applicant of the deficiencies in writing. An application may be resubmitted after the deficiencies have been corrected.

Section 1905.120 Appeal of Application Denial
EMERGENCY

An applicant whose application for placement on the interim approved provider list is denied may appeal the decision of the application review committee by requesting review by the Board.

a) The request must be made in a writing that is received by the Board within 30 days after the denial was mailed to the business address supplied by the applicant.

b) The applicant must submit with the appeal all documentation necessary and available to support placement on the list.

c) Copies of the appeal, including supporting documentation, will be provided to each Board member, and the appeal shall be considered on the next regularly scheduled meeting of the Board held more than two weeks after receipt of the appeal.

d) The vote of the Board shall be final, and the Board will notify the applicant of the result within two weeks of the Board's action.

e) Individuals whose applications have been denied may re-apply at such time that the circumstances leading to the original denial of placement on the interim approved provider list have substantively changed.

Section 1905.130 Removal from Provider List
EMERGENCY

The Board may rescind its approval of a person on the interim approved provider list for any of the reasons listed below.

a) The provider was not, in fact, qualified for placement on the list at the time of application, but was placed on the list on the basis of false or erroneous information provided with the application.

b) Circumstances of the provider have changed such that the provider is no longer eligible for placement on the list under Section 1905.40 of this Part.

c) The provider has substantially failed to follow the agreement to conduct evaluations and provide treatment to sex offenders in accordance with the requirements of Subpart D of this Part. For purposes of this Section, a substantial failure is one that is detrimental to the patient or the community.

d) If such an action is taken, the Board will inform any regulatory body with jurisdiction over the provider's professional license, if any.

Section 1905.140 Complaints Against Providers
EMERGENCY

Should any person have reason to believe that the Board's approval of a provider should be rescinded, the person may submit the concern to the Board in writing together with any available documentation. Complaints will be reviewed in accordance with the procedure set forth in this Section.

a) The Board will refer the complaint to a committee it empowers for that purpose, and the committee will make a determination of whether the complaint alleges cause to rescind approval under Section 1905.130 of this Part. The Board will notify the provider in question of receipt of a complaint and its nature and, if the

complaint does allege cause to rescind, will request a written response from the provider within 30 days of receipt of the notice.

b) The committee shall review all information presented and determine whether the provider shall remain approved or whether approval shall be rescinded, and provide written notification of the decision, including the rationale, to the provider and the complainant within 30 days of the committee's receipt of the provider's response or, if there is no response, within 30 days of the committee's notification to the provider.

c) If the committee rescinds approval, it shall instruct the provider as to the circumstances under which the provider may be reinstated.

d) For 35 days after the committee notifies the provider, the provider may appeal to the Board the decision of the subcommittee to rescind approval. On appeal, the pertinent documentation shall be provided to the full Board for review at the next regularly scheduled meeting of the Board held more than 30 days after receipt of the appeal. The provider shall have an opportunity to appear before the Board with respect to the appeal or, if unable to attend the meeting at which the matter is to be considered, to submit a statement to the Board. The provider shall be notified in writing of the decision of the Board within 30 days after Board consideration is complete.

e) The decision of the full Board shall be final.

SUBPART D: INTERIM STANDARDS OF PRACTICE

Section 1905.200 Scope
EMERGENCY

This Subpart prescribes interim standards for the conduct of evaluations of, and the provision of treatment to, sex offenders in whatever circumstances require that the services be provided in accordance with standards adopted by the Board under the Act.

Section 1905.210 Ethical Standards
EMERGENCY

All providers of sex offender evaluations or treatment under this Part are to adhere to the Code of Ethics (2001 Edition) published by the Association for the Treatment of Sexual Abusers (ATSA) (4900 S.W. Griffith Drive, Suite 274, Beaverton, Oregon 97005; Web: www.atsa.com). A copy

of the Code is available at the office of the Chair of the Board (in the Office of the Attorney General, 100 W. Randolph St., 11th Floor, Chicago, Illinois 60601) or on the Board's Web site at http://www.illinoisattorneygeneral.gov/communities/somb. This incorporation by reference does not include any later amendments or editions.

Section 1905.220 Release of Information and Confidentiality
EMERGENCY

a) Prior to evaluating or accepting a sex offender into treatment, the provider shall obtain from, and with the informed consent of, the offender a signed release that, subject to the Mental Health and Developmental Disabilities Confidentiality Act [740 ILCS 110], allows the provider to share the offender's confidential information with:

1) all therapists treating the sex offender;

2) when indicated, the victim's therapist;

3) the supervising officer and all members of the team and, if applicable, to the Department of Human Services and other individuals or agencies responsible for the supervision of the sex offender;

4) when indicated, the victim or custodial parent or guardian of a child victim, particularly with regard to family reunification or the sex offender's compliance with treatment and information about risk, threats, and possible escalation of violence; and

5) when indicated, the victim's guardian ad litem, advocate, guardian, caseworker or other professional involved in care or treatment of the victim regarding reunification of the family or contact with past or potential child victims.

b) Information received pursuant to a release under this Section shall be kept confidential except to the extent the release allows the information to be shared.

c) A provider shall notify all clients of the limits of confidentiality imposed on therapists by the Abused and Neglected Child Reporting Act [325 ILCS 5].

d) A provider shall ensure that a sex offender understands the scope and limits of confidentiality in the context of his/her particular situation, including the collection of collateral information, which may or may not be confidential.

Section 1905.230 General Standards for Conducting Evaluations
EMERGENCY

a) Sex offender evaluations are to be comprehensive and sex offense-specific. They are to be designed to achieve the following purposes:

1) To document the offense-specific and/or mental health treatment needs identified by the evaluation (even if resources are not available to address adequately the treatment needs of the sexually abusive offender);

2) To provide a written clinical evaluation of a sex offender's risk for re-offending and current amenability to treatment;

3) To guide and direct specific recommendations for the conditions of treatment and supervision of a sex offender;

4) To provide information that will help to identify the optimal setting, intensity of intervention, and level of supervision; and

5) To provide information that will help to identify sex offenders who should not be referred for community-based treatment.

b) The evaluator must obtain the offender's informed assent to the evaluation and shall inform the offender regarding the evaluation methods, how the information will be used, and to whom it will be given. The evaluator shall respect a sex offender's right to be fully informed about the evaluation procedures. Results of the evaluation should be shared with the sex offender and any questions clarified.

c) The evaluator shall be sensitive to any cultural, ethnic, developmental, sexual orientation, gender, medical and/or educational issues that may arise during the evaluation.

d) Evaluations shall include:

1) Examination of criminal justice information, including prior juvenile adjudications, the details of the current offense and documents that describe victim trauma, when available.

2) Examination of collateral information, including information from other sources on the sex offender's sexual behavior.

3) Review of child welfare investigations and case records, where applicable.

e) In the case of a pre-sentence evaluation, the evaluator (if different from the treatment provider) shall provide complete information obtained in the course of the evaluation to the containment team or prison treatment provider at the beginning of the sex offender's term of supervision or incarceration.

Section 1905.240 Elements of Comprehensive Sex Offense Specific Evaluations EMERGENCY

Pre-sentence evaluations must include the following elements using one or more of the listed possible evaluation procedures as clinically indicated:

a) Evaluation of mental and/or organic disorders, including the areas of

1) IQ functioning (developmental disability, learning disability, and literacy), using history or functioning and/or standardized tests, examples of which include:

A) tests of non-verbal intelligence such as WAIS-III, WRAT-R, Revised Beta, TONI (tests of non-verbal intelligence)

B) Shipley Institute of Living Scale Revised, Kaufman IQ Test for Adults

2) Organic Brain Syndrome (OBS), using history or functioning and/or standardized tests (Examples: WAIS-III, Weschler Memory Scale Revised, Limbic System Checklist, Structured Mental Status, Jacobs Cognitive Screening Test, medical tests necessary for diagnosis)

3) Mental illness, using:

A) History of Functioning and/or Structured Interview

B) MMPI2

C) MCMI-III

D) Beck Depression Scale

b) Evaluation of drug/alcohol use, including the areas of:

1) Use/abuse, using:

A) History of functioning and/or structured interview

B) MMPI2

C) CAQ (clinical analysis questionnaire)

D) PHQ (personal history questionnaire)

E) ADS

F) DAST-20

G) Adult substance use survey

H) Substance use history matrix

I) Collateral information

2) Number of relapses, using:

A) History of functioning and/or structured interview

B) Treatment history

C) Collateral information

c) Evaluation of degree of psychopathology, in particular the degree of impairment, using:

1) Hare Psychopathy Checklist Revised (PCLR or PCLSC)

2) Structured interview

3) MCMI-III

4) MMPI2

5) History

6) Collateral information

d) Evaluation of stability of functioning, including the areas of:

1) Marital/family stability,

A) covering:

i) Past

ii) Current

iii) Familial violence

iv) Familial sexual

v) Financial

vi) Housing

B) using:

i) History of functioning and/or structured interview

ii) FES (Family Environment Scale)

iii) DAS (Dyadic Adjustment Scale)

iv) MSI (Marital Satisfaction Inventory)

v) SARA (Spousal Assault Risk Assessment)

vi) Interview attitudes

vii) Collateral information

2) Employment/education – Completion of Major Life Tasks, using:

A) History of functioning and/or structured interview

B) PHQ (Personal History Questionnaire)

3) Social skills,

A) covering:

i) Ability to form relationships

ii) Ability to maintain relationships

iii) Courtship/dating skills

iv) Ability to demonstrate assertive behavior

B) using:

i) History of functioning and/or structured interview

ii) Collateral information

iii) IBS (interpersonal behavior survey)

iv) Social Avoidance and Distress Scale

v) Waring's Intimacy Scale

vi) UCLA Loneliness Scale

vii) Tesch's Intimacy Scale

viii) Miller's Social Intimacy Scale

e) Evaluation of developmental history,

1) covering:

A) Disruptions in parent/child relationship

B) History of bed wetting, cruelty to animals

C) History of behavior problems in elementary school

D) History of special education services, learning disabilities, school achievement

E) Indicators of disordered attachments

2) using:

A) History of functioning and/or structured interview

B) Collateral Information

f) Evaluation of self-image and self-esteem, using:

1) History of functioning and/or structured interview

2) MPD (measures of psychological development)

3) CAQ (clinical analysis questionnaire)

4) CPI (California Personality Inventory)

g) Evaluation of medical screening measures,

1) covering:

A) Pharmacological needs

B) Medical condition impacting offending behavior

C) History of medication use/abuse

2) using:

A) History of functioning and/or structured interview

B) Referral to physician if indicated

C) Medical tests

h) Sexual Evaluation, including the areas of:

1) Sexual history (onset, intensity, duration, pleasure derived),

A) covering:

i) Age of onset of expected normal behaviors

ii) Quality of first sexual experience

iii) Age of onset of deviant behavior

iv) Witnessed or experienced victimization (sexual or physical)

v) Genesis of sexual information

vi) Age/degree of use of pornography, phone, cable, video, or internet for sexual purposes

vii) Current and past range of sexual behavior

B) using:

i) History of functioning and/or structured interview

ii) PSCI (Personal Sentence Completion Inventory – Miccio-Fonseca)

iii) Wilson Sexual Fantasy Questionnaire

iv) SONE Sexual History Background Form

v) SORI (Sex Offender Risk Instrument – in research stage)

vi) Collateral information

2) Reinforcement structure for deviant behavior,

A) covering:

i) Culture

ii) Environment

iii) Cults

iv) Gangs

B) using structured interview

3) Arousal pattern,

A) covering:

i) Sexual arousal

ii) Sexual interest

B) using:

i) Structured interview

ii) Sexual autobiography

iii) Plethysmography

iv) Abel Assessment for Sexual Interest

v) Collateral information (such as from spouses or significant others)

4) Specifics of Sexual Crime(s) (onset, intensity, duration, pleasure derived),

A) covering:

i) Detailed description of sexual assault

ii) Seriousness, harm to victim

iii) Mood during assault (anger, erotic, "love")

iv) Progression of sexual crimes

v) Thoughts preceding and following crimes

vi) Fantasies preceding and following crimes

B) using:

i) Structured interview

ii) History of crimes

iii) Review of criminal records

iv) Contact with victim therapist

v) Polygraph

vi) Collateral information

5) Sexual deviance, using:

A) Structured interview

B) MSI (Multiphasic Sex Inventory)

C) SONE

6) Dysfunction,

A) covering:

i) Impotence

ii) Priapism

iii) Injuries

iv) Medications affecting sexual functioning, etc.

B) using:

i) Structured interview

ii) MSI (Multiphasic Sex Inventory)

iii) Sexual autobiography

7) Sex offender's perception of dysfunction, using:

A) Structured interview

B) Sexual autobiography

C) Bentler Heterosexual Inventory

D) History

8) Perception of sexual functioning, using:

A) Structured interview

B) Sexual autobiography

C) Plethysmography

D) Bentler Sexual Behavior Inventory

9) Preferences,

A) covering:

i) Male/female

ii) Age

iii) Masturbation

iv) Use of tools

v) Utensils

vi) Food

vii) Clothing

viii) Current sexual practices

ix) Deviant as well as normal behavior

B) using:

i) Structured interview

ii) Sexual autobiography

iii) Plethysmography

iv) Abel Assessment for Sexual Interest

v) Collateral information (such as from spouses or significant others)

10) Attitudes/cognition,

A) covering:

i) Motivation to change/continue behavior

ii) Attitudes toward women, children

iii) Sexuality in general

iv) Attitudes about offenses (i.e., seriousness, harm to victim)

v) Degree of victim empathy

vi) Presence/degree of minimalization

vii) Presence/degree of denial

viii) Ego-syntonic vs. ego-dystonic sense of deviant behavior

B) using:

i) Structured interview

ii) Burt Rape Myth Acceptance Scale

iii) MSI (Multiphasic Sex Inventory)

iv) Buss/Durkee Hostility Inventory

v) Abel and Becker Cognitions Scale

vi) Attitudes Towards Women Scale

vii) Socio-Sexual Knowledge and Attitudes Test (for use with sex offenders who have developmental disabilities)

i) Evaluation of level of denial and level of deception, using

1) Structured interview

2) Polygraph

3) Collateral Information (such as from victim, police, others)

j) Evaluation of level of violence and coercion,

1) covering:

A) Level of violence

B) Overall pattern of assaultiveness

C) Victim selection

D) Pattern of escalation of violence

2) using:

A) Structured interview

B) History

C) Review of criminal records

D) Collateral information

k) Evaluation of risk of re-offense, using:

1) Criminal history

2) Violence Risk Assessment Guide (normed on a psychiatric hospital sample) (good predictor of violence recidivism but not of sexual recidivism)

3) Rapid Risk Assessment for Sex Offender Re-Arrest (sample excludes incest offenders)

4) MnSOST-R (normed on Minnesota Offenders in the Department of Corrections, excludes incest offenders)

5) Static 99

6) SONAR

7) Any other validated risk instrument that is generally accepted by sex offender evaluators

Section 1905.250 Evaluator Recommendations
EMERGENCY

a) The evaluator shall consider the following factors when making recommendations relating to a sex offender's risk to re-offend and amenability to treatment:

1) Admission of offenses;

2) Accountability (internal and external factors which control behavior);

3) Cooperation;

4) Offense history and victim choice;

5) Escalating pattern of offenses, violence, and dangerous behaviors;

6) Sexual deviance, arousal patterns, and sexual interest;

7) Social interest;

8) Lifestyle characteristics;

9) Psychopathology;

10) Developmental markers;

11) History of childhood or adolescent delinquency;

12) Substance abuse;

13) Criminal history;

14) Social support systems;

15) Overall control and intervention;

16) Motivation for treatment and recovery;

17) Self-structure;

18) Disowning behaviors;

19) Prior treatment;

20) Impact on victims;

21) Access to potential victims;

22) Availability of treatment in the community;

23) Availability of supervision, including surveillance agents, in the community.

b) The evaluator shall recommend:

1) The level and intensity of offense-specific treatment needs;

2) Referral for assessment and/or treatment of co-existing conditions (e.g., substance abuse, mental illness, medical/pharmacological);

3) Methods to lessen victim impact (e.g., no-contact orders, paying for counseling, involvement of non-offending spouse, etc.);

4) Appropriateness of community placement with emphasis on the risks associated with the home, neighborhood, school or community;

5) The level and intensity of behavioral monitoring needed;

6) The types of external controls which should be considered specifically for that sex offender (e.g., controls of work environment, access to children, leisure time, or transportation; life stresses; or other issues that might increase risk and require increased supervision);

Section 1905.300 General Standards for Treatment
EMERGENCY

a) Treatment of sex offenders must be sex offense specific.

b) A treatment provider shall develop a written treatment plan with measurable goals based on the needs and risks identified in current and past assessments or evaluations of the sex offender.

c) The treatment plan shall:

1) Provide for the protection of victims and potential victims and not cause the victims to have unsafe or unwanted contact with the sex offender;

2) Be individualized to meet the unique needs of the sex offender;

3) Identify

A) the issues to be addressed, including multi-generational issues if indicated,

B) the planned intervention strategies,

C) and the goals of treatment;

4) Define expectations of the sex offender, his/her family (when possible), and support systems;

5) Address the issue of ongoing victim input;

6) Describe the treatment provider's role in implementing the treatment plan.

d) A provider shall submit written quarterly progress reports to the referral source

e) A provider shall employ treatment methods that are supported by current professional research and practice. Group therapy (with the group comprised only of sex offenders) is the preferred method of treatment. At a minimum, any method of psychological treatment used must conform to the standards for content of treatment and must contribute to behavioral monitoring of sex offenders. The sole use of individual therapy is not recommended with sex offenders and shall be avoided except when geographical (specifically rural) or disability limitations dictate its use or when it is clinically indicated. While group therapy is the preferred modality, individual therapy may be an appropriate adjunct treatment.

1) The use of male and female co-therapists in group therapy is highly recommended and may be required by the supervising agency.

2) The ratio of therapists to sex offenders in a treatment group shall not exceed 1:10

3) Treatment group size shall not exceed 12 sex offenders.

4) The provider shall employ treatment methods that give priority to the safety of the sex offender's victims and the safety of potential victims and the community.

5) The provider shall employ treatment methods that are based on recognition of the need for long-term, offense-specific treatment for sex offenders. Self-help or time-limited treatment shall be used only as adjuncts to long-term, comprehensive treatment.

f) Sex offender-specific treatment may also be supplemented with treatment for drug/alcohol abuse, marital therapy, and/or crisis intervention services.

g) In order to achieve the goals of sex offense specific treatment, the following elements shall be addressed in treatment:

1) Offense Disclosure: The sex offender discloses all of his or her sexual offenses, reducing denial and defensiveness and/or assisting the sex offender in assuming full responsibility for his or her sexual offending.

Completion indicators:

A) The sex offender makes a disclosure of all sex offenses.

B) The sex offender attends treatment sessions as ordered or required.

C) The sex offender completes all assigned tasks as required.

D) When available, the sex offender completes non-deceptive polygraphs on past and maintenance issues.

E) The sex offender consistently takes full responsibility for all of his or her actions including sex offenses, as indicated by polygraph.

F) The sex offender holds himself/herself accountable for his/her behavior in general.

2) Offense-Specific Cognitive Restructuring: Cognitive distortions refer to distortions in thinking, including thinking errors that enable sexually offending behaviors. Identifying and correcting or changing sex offenders' cognitive distortions that fuel sexual offending is the purpose of this element of treatment.

Completion indicators:

A) The sex offender identifies and restructures offense-specific cognitive distortions.

B) The sex offender assumes responsibility for offending.

C) There is evidence that offense-specific distortions have been restructured or changed as indicated by the lack of using cognitive distortions and that the sex offender holds self fully accountable when discussing the offenses.

3) Assault Cycle and Intervention: The assault cycle comprises the repetitive patterns of sexual offending. This element of treatment is intended to: identify the sex offender's patterns of offending, including risk factors; teach sex offenders self-management methods, skills, and appropriate coping skills to eliminate a sexual re-offense; educate sex offenders and individuals who are identified as the sex offender's support system and the containment team about the potential for re-offending and the sex offender's specific risk factors; and require sex offenders to learn specific relapse prevention strategies, including the development of a written, specific relapse prevention plan, which should identify antecedent thoughts, feelings, situations, social behaviors, and any other behaviors associated with sexual offenses along with specific interventions.

Completion indicators:

A) The sex offender demonstrates identification of his/her own assault cycle and how he/she applies it to his/her daily lifestyle.

B) The sex offender demonstrates knowledge of relapse intervention concepts.

C) The sex offender has consistently demonstrated the effective use of relapse prevention skills, i.e., is able to diffuse cycle behaviors, relapse processes, deviant arousal and other factors that contribute to sexual offending.

D) The sex offender has disengaged from relationships that support his or her denial, minimization, and resistance to treatment.

E) The sex offender is engaged in relationships that are supportive of treatment and seeks feedback from his/her support system.

F) The sex offender has demonstrated consistently the ability to avoid high-risk environments.

4) Victim Empathy: Empathy is the capacity to understand and identify with another's perspective and experience the same emotions. The ability to develop victim empathy may vary from sex offender to sex offender and may have varying emphasis in treatment.

Completion indicators:

A) The sex offender verbalizes and demonstrates victim empathy, identifies feelings, recognizes victim impact, assumes ownership of offenses, understands and takes the perspective of others, demonstrates emotional regret, and expresses feelings of empathy and remorse.

B) The sex offender demonstrates behaviors that indicate reduced risk of harm to victims.

C) Cautionary Note: TREATMENT TO ASSIST IN THE DEVELOPMENT OF VICTIM EMPATHY IS CONTRAINDICATED FOR PSYCHOPATHIC OFFENDERS.

5) Arousal Control: This element of treatment is intended to assess, identify, and decrease or replace deviant sexual desires, arousal, thoughts, and fantasies, replacing this deviancy with healthier sexual attitudes and functioning.

Completion indicators:

A) The sex offender discloses deviant and/or violent sexual fantasies.

B) The frequency and intensity of deviant arousal, violent and/or sadistic fantasies, and masturbation to deviant fantasies are decreased.

C) The sex offender develops behavioral/self management strategies to reduce deviant arousal and behavior patterns, including eliminating self-abusive sexual behaviors.

D) The sex offender develops and maintains normal, non-victimizing fantasies.

6) Clinical/Core Issue Resolution: It is commonly assumed that offending involves multiple unresolved emotional issues and not just deviant sexual urges. Motivational dynamics that may fuel sexual offending or other victimizing or assaultive behaviors may arise from the effects of trauma or past victimization, key developmental events, or other unresolved problems or needs. It is critical for resolution of these core issues to occur without the sex offender assuming a victim stance. Sex offenders must still be held accountable for their offending when these issues are resolved.

Completion indicators:

A) The sex offender has identified and resolved or mostly resolved core issues that may facilitate sexual re-offense. Core issues may include anger, power, control, inferiorities, dependency, insecurity, rejection, jealousy, possessiveness, resentment, and inadequacies in terms of self-worth and self-esteem.

B) The sex offender has identified and changed the effects of past trauma and past victimizations to decrease their impact on the risks of re-offending.

7) Social Skills and Interpersonal Restructuring: Social skills refer to specific communication skills and social behaviors. Interpersonal restructuring refers to redefining the way sex offenders form attachments or relate to others. Interpersonal deficits are frequently associated with attachment issues. The development of basic social skills replaces deficits and inappropriate attachments or relationships, diminishing the risk of sexual re-offending. This element of treatment is intended to: identify deficits in specific interpersonal skills and decrease the sex offender's deficits in social and relationship skills, where applicable; and assist sex offenders in developing and practicing social skills, improving the quality of their relationships with others.

Completion indicators:

A) Demonstrates appropriate social relationships.

B) Demonstrates appropriate boundaries.

C) Has the skills to manage interpersonal relationship issues.

8) Lifestyle Balancing and Restructuring: Lifestyle balancing and restructuring refers to assisting sex offenders in changing their existing lifestyles to lifestyle patterns that minimize sexual re-offending and maintaining this lifestyle. The focus of this element of treatment is to: educate sex offenders about non-abusive, adaptive, legal, and pro-social sexual functioning; identify and treat sex offenders' personality traits, lifestyle, behaviors, patterns, and deficits that are related to their potential for re-offending; and maximize opportunities for the sex offender to develop a healthy self-esteem.

Completion indicators will demonstrate a change in personality traits, lifestyle behaviors, patterns, and deficits related to the potential for re-offending including:

A) Antisocial/psychopathic behaviors.

B) Narcissistic behaviors.

C) Borderline characteristics of behavior.

D) Schizoid behaviors.

E) Obsessive-compulsive/passive-aggressive behaviors.

F) Demonstrates a healthy and balanced lifestyle.

9) The provision of treatment referrals, as indicated, links sex offenders with other resources such as medical, pharmacological, mental, substance abuse, and/or domestic violence services.

Completion indicators:

A) Monitoring sex offenders' linkage with other referral resources.

B) Communication with others. Communication is a critical element in treatment, aftercare and supervision. This element of treatment maintains communication with significant persons in sex offenders' support systems, when indicated, and to the extent possible to assist in meeting treatment goals.

h) Providers shall maintain sex offenders' files in accordance with the professional standards of their individual disciplines. The files shall:

1) Document the goals of treatment, the methods used, and the sex offender's observed progress, or lack thereof, toward reaching the goals in the treatment records. Specific achievements, failed assignments, rule violations, and consequences given should be recorded.

2) Accurately reflect the sex offender's treatment progress, sessions attended, and changes in treatment.

Section 1905.310 Treatment Provider Client Written Treatment Agreement EMERGENCY

a) Prior to treatment and as a condition of treatment, a provider shall enter into a written contract with the sex offender prior to the commencement of treatment.

The contract shall describe the responsibilities of both the provider and the sex offender. Breech of the contract by the offender may serve as the basis for revocation of probation or, a recommendation to the Prisoner Review Board to revoke parole or other community supervision.

b) The contract shall describe the role of the treatment provider in implementing the treatment plan as well as the responsibility of the provider to:

1) Define and provide timely statements of the costs of the assessment, evaluation, and treatment, including all medical and psychological tests, physiological tests, and consultations;

2) Describe the releases of information that will be required for a provider to treat the sex offender for his/her sexual offending behavior, describe the various parties with whom treatment information will be shared during the treatment, describe the time limits on the releases, and describe the procedures necessary for the sex offender to revoke the releases;

3) Describe the right of the sex offender to refuse treatment and/or to refuse to sign a release, and describe the risks and potential risks and outcomes of that decision;

4) Describe the type, frequency, and requirements of the treatment and outline how the duration of treatment will be determined;

5) Describe the limits of confidentiality imposed on the therapist by the mandatory reporting law.

c) The contract shall describe the responsibilities of the sex offender (as applicable) to:

1) Pay for the cost of evaluation and treatment for self, and to his or her family, if applicable;

2) Pay for the cost of evaluation and treatment for the victims and their families, when ordered by the court, including all medical and psychological tests, physiological testing, and consultation;

3) Inform the treatment provider, the sex offender's immediate family, and support system of the details of all past sexual offenses to ensure help and

protection for past victims and/or as relevant to the development of the relapse prevention plan. Clinical judgment should be exercised in determining what information is provided to children;

4) Actively involve members of the sex offender's family and support system, as indicated in the relapse prevention plan;

5) Notify the treatment provider of any changes or events in the lives of the sex offender, the members of the sex offender's family, or support system;

6) Comply with the limitations and restrictions placed on the behavior of the sex offender, as described in the terms and conditions of probation, parole, or conditional release for sexually violent persons or sexually dangerous persons and/or in the contract between the provider and the sex offender.

d) The contract shall describe the responsibility of and restrictions on the sex offender to protect community safety by avoiding risky, aggressive, or re-offending behavior by avoiding high-risk situations, and by reporting any such behavior to the provider and supervising officer as soon as possible.

e) The contract shall describe the responsibility of the provider to:

1) Identify, and provide timely statements of, the costs of assessment, evaluation, and treatment, including all medical and psychological tests, physiological tests, and consultations, to the sex offender as well as the parent or guardian.

2) Describe the information releases that will be required for a provider to treat the sex offender for his/her sexual offending behavior; describe the various parties with whom treatment information will be shared during the treatment; describe the time limits on the waivers of confidentiality; and describe the procedures necessary for the sex offender to revoke the waiver.

3) Describe the right of the sex offender to refuse treatment and/or to refuse to consent to disclosure, and describe the consequences, risks and potential risks and outcomes of that decision, including the provider's right not to provide treatment if the necessary releases are not given.

4) Describe the type, frequency, and requirements of the treatment and outline how the duration of treatment will be determined.

5) Describe the limits of confidentiality imposed on the therapist by the mandatory reporting law.

f) The provider shall explain the terms of the contract to the sex offender in language that the sex offender understands.

Section 1905.320 Completion of Treatment
EMERGENCY

a) Completion of treatment should be understood as meaning the successful completion of treatment, and not as the cessation of court-ordered, offense-specific treatment or the completion of the sentence imposed by the court or the Prisoner Review Board. Successful completion of treatment may not end the sex offender's need for ongoing rehabilitation or elimination of risk to the community. If risk increases, treatment may be re-instated upon the request of the sex offender or the recommendation of the containment team. Treatment should be viewed as ranging from intensive to aftercare.

b) The sex offender containment team shall consult about the completion of treatment. The decision shall come after the evaluation and assessment, treatment plan, course of treatment sequence, and a minimum of a non-deceptive disclosure polygraph examination and two or more non-deceptive maintenance polygraph examinations, regarding compliance with court rules, compliance with supervision conditions, compliance with treatment contract provisions, including complete abstinence from grooming (i.e., manipulation intended to reduce victims' defenses) of victims, or potential victims, and full, voluntary compliance with all conditions required to prevent re-offending behavior. The two or more non-deceptive polygraph examinations must be those most recent prior to termination of treatment. (See definitions for non-deceptive polygraph results.) A failed polygraph examination should not be used as the sole reason to deny successful completion of treatment. The team should carefully consider termination of treatment based on maintaining community safety.

c) Those sex offenders who pose an ongoing threat to the community require supervision, even while demonstrating progress in treatment, and may require ongoing supervision and treatment to manage their risk, including revocation as authorized and approved in writing by the Prisoner Review Board when on

parole. Any exception made to any of the requirements for treatment completion must be made by the consensus of the containment team. In this case, the team must document the reasons for the determination that treatment completion is appropriate without meeting all of the standard requirements and note the potential risk to the community.

d) To determine the recommendations for the termination of treatment, the provider shall:

1) Assess actual changes in a sex offender's potential to re-offend prior to recommending treatment termination;

2) Attempt to repeat, where indicated, those evaluations that might show changes in the sex offender;

3) Assess and document how the goals of the treatment plan have been met, what actual changes in a sex offender's re-offense potential have been accomplished, and what risk factors remain, particularly those affecting the emotional and physical safety of the victims;

4) Seek input from others who are aware of a sex offender's progress as part of the decision about whether to terminate treatment;

5) Report to the supervising officer regarding a sex offender's compliance with treatment and recommend any modifications in conditions of community supervision and/or termination of treatment; and

6) At the end of this evaluation process, inform the sex offender regarding the recommendation to end or continue court-ordered treatment.

e) Prior to terminating offense-specific treatment, a provider shall, in cooperation with the containment team, develop an aftercare plan that includes ongoing behavioral monitoring, such as periodic polygraph examinations. Such monitoring is intended to motivate the sex offender to avoid high-risk behaviors that might be related to increased risks of re-offense.

JOINT COMMITTEE ON ADMINISTRATIVE RULES

SCHEDULED MEETING:

JAMES R. THOMPSON CENTER
ROOM 16-503
CHICAGO, ILLINOIS
10:30 A.M.
JUNE 15, 2004

NOTICES: The scheduled date and time for the JCAR meeting are subject to change. Due to *Register* submittal deadlines, the Agenda below may be incomplete. Other items not contained in this published Agenda are likely to be considered by the Committee at the meeting and items from the list can be postponed to future meetings.

If members of the public wish to express their views with respect to a rulemaking, they should submit written comments to the Office of the Joint Committee on Administrative Rules at the following address:

Joint Committee on Administrative Rules
700 Stratton Office Building
Springfield, Illinois 62706
Email: jcar@legis.state.il.us
Phone: 217/785-2254

RULEMAKINGS CURRENTLY BEFORE JCAR

PROPOSED RULEMAKINGS

Banks and Real Estate

1. Residential Mortgage License Act of 1987 (38 Ill. Adm. Code 1050)
   -First Notice Published: 28 Ill. Reg. 5052 – 3/26/04
   -Expiration of Second Notice: 7/7/04

Central Management Services

2. Senior Citizens and Disabled Persons Prescription Drug Discount Program (80 Ill. Adm. Code 2151)
   -First Notice Published: 28 Ill. Reg. 3939 – 3/5/04
   -Expiration of Second Notice: 6/25/04

Children and Family Services

JOINT COMMITTEE ON ADMINISTRATIVE RULES

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3. Licensing Standards for Child Welfare Agencies (89 Ill. Adm. Code 401)
   -First Notice Published: 27 Ill. Reg. 14699 – 9/19/03
   -Expiration of Second Notice: 7/2/04

Commerce Commission

4. Certification Requirements and Standards of Service for Meter Service Providers (83 Ill. Adm. Code 460)
   -First Notice Published: 27 Ill. Reg. 17159 – 11/14/03
   -Expiration of Second Notice: 6/16/04

5. Standards of Service for Electric Utilities and Alternative Retail Electric Suppliers (83 Ill. Adm. Code 410)
   -First Notice Published: 27 Ill. Reg. 17153 – 11/14/03
   -Expiration of Second Notice: 6/16/04

6. Wholesale Service Quality for Telecommunications Carriers (83 Ill. Adm. Code 731)
   -First Notice Published: 28 Ill. Reg. 1294 – 1/23/04
   -Expiration of Second Notice: 7/11/04

7. Household Goods Carriers (92 Ill. Adm. Code 1457)
   -First Notice Published: 28 Ill. Reg. 4411 – 3/12/04
   -Expiration of Second Notice: 7/11/04

Human Services

8. Children's Mental Health Screening, Assessment and Support Services (59 Ill. Adm. Code 131)
   -First Notice Published: 28 Ill. Reg. 4826 – 3/19/04
   -Expiration of Second Notice: 7/4/04

9. Medicaid Community Mental Health Services Program (59 Ill. Adm. Code 132)
   -First Notice Published: 28 Ill. Reg. 3954 – 3/5/04
   -Expiration of Second Notice: 7/4/04

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10. Aid to the Aged, Blind or Disabled (89 Ill. Adm. Code 113)
    -First Notice Published: 28 Ill. Reg. 2560 – 2/13/04
    -Expiration of Second Notice: 6/17/04

11. Renal Diseases Program for Care and Treatment Code (Repeal) (77 Ill. Adm. Code 700)
    -First Notice Published: 28 Ill. Reg. 4419 – 3/12/04
    -Expiration of Second Notice: 7/7/04

Insurance

12. Improper Claims Practice (50 Ill. Adm. Code (919)
    -First Notice Published: 28 Ill. Reg. 4440 – 3/12/04
    -Expiration of Second Notice: 6/18/04

13. Valuation of Life Insurance Policies Including the Use of Select Mortality Factors (50 Ill. Adm. Code 1409)
    -First Notice Published: 28 Ill. Reg. 2587 – 2/13/04
    -Expiration of Second Notice: 7/3/04

14. Recognition of the 2001 CSO Mortality Table for Use in Determining Minimum Reserve Liabilities and Nonforfeiture Benefits (50 Ill. Adm. Code 1412)
    -First Notice Published: 28 Ill. Reg. 2606 – 2/13/04
    -Expiration of Second Notice: 7/3/04

Natural Resources

15. White-Tailed Deer Hunting by Use of Bow and Arrow (17 Ill. Adm. Code 670)
    -First Notice Published: 28 Ill. Reg. 1973 – 2/6/04
    -Expiration of Second Notice: 6/25/04

16. Regulation of Public Use of Illinois Dedicated Nature Preserves (Repealer) (17 Ill. Adm. Code 1510)
    -First Notice published: 28 Ill. Reg. 4449 – 3/12/04

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-Expiration of Second Notice: 6/17/04

17. Department Revocation Procedures (17 Ill. Adm. Code 2530)
-First Notice Published: 28 Ill. Reg. 4455 – 3/12/04
-Expiration of Second Notice: 6/17/04

18. Illinois Snowmobile Grant Program (17 Ill. Adm. Code 3010)
-First Notice Published: 28 Ill. Reg. 5135 – 3/26/04
-Expiration of Second Notice: 6/26/04

19. Snowmobile Trail Establishment Fund Grant Program (17 Ill. Adm. Code 3020)
-First Notice Published: 28 Ill. Reg. 5139 – 3/26/04
-Expiration of Second Notice: 6/26/04

20. Open Space Lands Acquisition and Development Grant Program (17 Ill. Adm. Code 3025)
-First Notice Published: 28 Ill. Reg. 5142 – 3/26/04
-Expiration of Second Notice: 6/26/04

21. Boat Access Area Development Program (17 Ill. Adm. Code 3035)
-First Notice Published: 28 Ill. Reg. 5149 – 3/26/04
-Expiration of Second Notice: 6/26/04

22. Illinois Bicycle Path Grant Program (17 Ill. Adm. Code 3040)
-First Notice Published: 28 Ill. Reg. 5152 – 3/26/04
-Expiration of Second Notice: 6/26/04

23. Off-Highway Vehicle Recreational Trails Grant Program (17 Ill. Adm. Code 3045)
-First Notice Published: 28 Ill. Reg. 5157 – 3/26/04
-Expiration of Second Notice: 6/26/04

24. Open Land Trust Grant Program (17 Ill. Adm. Code 3050)
-First Notice Published: 28 Ill. Reg. 5160 – 3/26/04
-Expiration of Second Notice: 6/26/04

JOINT COMMITTEE ON ADMINISTRATIVE RULES

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25. Public Use of Dedicated Nature Preserves (17 Ill. Adm. Code 4015)
-First Notice Published: 28 Ill. Reg.4476 – 3/12/04
-Expiration of Second Notice: 6/17/04

Professional Regulation

26. Illinois Controlled Substances Act (77 Ill. Adm. Code 3100)
-First Notice Published: 28 Ill. Reg. 4846 – 3/19/04
-Expiration of Second Notice: 6/18/04

27. Veterinary Medicine and Surgery Practice Act of 1994 (68 Ill. Adm. Code 1500)
-First Notice Published: 27 Ill. Reg. 18949 – 12/19/03
-Expiration of Second Notice: 7/11/04

Public Aid

28. Medical Payment (89 Ill. Adm. Code 140)
-First Notice Published: 28 Ill. Reg. 5167 – 3/26/04
-Expiration of Second Notice: 6/30/04

29. Hospital Services (89 Ill. Adm. Code 148)
-First Notice Published: 28 Ill. Reg. 4848 – 3/19/04
-Expiration of Second Notice: 6/30/04

Public Health

30. Assisted Living and Shared Housing Establishment Code (77 Ill. Adm. Code 295)
-First Notice Published: 28 Ill. Reg. 2937 – 2/20/04
-Expiration of Second Notice: 7/9/04

Racing Board

31. Hearings and Enforcement Proceedings (11 Ill. Adm. Code 204)

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-First Notice Published: 28 Ill. Reg. 2649 – 2/13/04
-Expiration of Second Notice: 6/29/04

32. General Licensee Rules (11 Ill. Adm. Code 1313)
-First Notice Published: 28 Ill. Reg. 5627 – 4/24/04
-Expiration of Second Notice: 7/11/04

Secretary of State

33. Issuance of Licenses (92 Ill. Adm. Code 1030)
-First Notice Published: 28 Ill. Reg. 307 – 1/2/04
-Expiration of Second Notice: 7/11/04

34. Commercial Driver Training Schools (92 Ill. Adm. Code 1060)
-First Notice Published: 28 Ill. Reg. 309 – 1/2/04
-Expiration of Second Notice: 7/11/04

State Fire Marshal

35. Fire Sprinkler Contractor Licensing Rules (41 Ill. Adm. Code 109)
-First Notice Published: 28 Ill. Reg. 3941 – 3/5/04
-Expiration of Second Notice: 6/23/04

Student Assistance Commission

36. Monetary Award Program (MAP) (23 Ill. Adm. Code 2735)
-First Notice Published: 28 Ill. Reg. 2021 – 2/6/04
-Expiration of Second Notice: 7/5/04

Teachers' Retirement System

37. The Administration and Operation of the Teachers' Retirement System (80 Ill. Adm. Code 1650)
-First Notice Published: 28 Ill. Reg. 5629 – 4/2/04

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-Expiration of Second Notice: 7/2/04

Transportation

38. Procedures (92 Ill. Adm. Code 107)
-First Notice Published: 28 Ill. Reg. 5200 – 3/26/04
-Expiration of Second Notice: 7/9/04

39. Hazardous Materials Transportation: General Information, Regulations and Definitions (92 Ill. Adm. Code 171)
-First Notice Published: 28 Ill. Reg. 5211 – 3/26/04
-Expiration of Second Notice: 7/9/04

40. Hazardous Materials Table and Hazardous Materials Communications (92 Ill. Adm. Code 172)
-First Notice Published: 28 Ill. Reg. 5218 – 3/26/04
-Expiration of Second Notice: 7/9/04

41. Shippers General Requirements for Shipments and Packagings (92 Ill. Adm. Code 173)
-First Notice Published: 28 Ill. Reg. 5224 – 3/26/04
-Expiration of Second Notice: 7/9/04

42. Carriage by Public Highway (92 Ill. Adm. Code 177)
-First Notice Published: 28 Ill. Reg. 5231 – 3/26/04
-Expiration of Second Notice: 7/9/04

43. Specifications for Packagings (92 Ill. Adm. Code 178)
-First Notice Published: 28 Ill. Reg. 5237 – 3/26/04
-Expiration of Second Notice: 7/9/04

44. Specifications for Tank Cars (92 Ill. Adm. Code 179)
-First Notice Published: 28 Ill. Reg. 5251 – 3/26/04
-Expiration of Second Notice: 7/9/04

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10:30 A.M.
JUNE 15, 2004

45. Continuing Qualification and Maintenance of Packaging (92 Ill. Adm. Code 180)
-First Notice Published: 28 Ill. Reg. 5256 – 3/26/04
-Expiration of Second Notice: 7/9/04

EMERGENCY RULEMAKINGS

Banks and Real Estate

46. Resident Mortgage License Act of 1987 (38 Ill. Adm. Code 1050)
-Notice Published: 28 Ill. Reg. 7137 – 5/14/04

Labor Relations Board

47. General Procedures (80 Ill. Adm. Code 1200)
-Notice Published: 28 Ill. Reg. 7540 – 5/28/04

48. Police Officer Decertification Proceedings (80 Ill. Adm. Code 1240)
-Notice Published: 28 Ill. Reg. 7544 – 5/28/04

Public Aid

49. Medical Assistance Programs (89 Ill. Adm. Code 120)
-Notice Published: 28 Ill. Reg. 7152 – 5/14/04

50. Children's Health Insurance Program (89 Ill. Adm. Code 125)
-Notice Published: 28 Ill. Reg. 7163 – 5/14/04

Racing Board

51. Medication (11 Ill. Adm. Code 603)
-Notice Published: 28 Ill. Reg. 7565 – 5/28/04

PEREMPTORY RULEMAKING

JOINT COMMITTEE ON ADMINISTRATIVE RULES

SCHEDULED MEETING:

JAMES R. THOMPSON CENTER
ROOM 16-503
CHICAGO, ILLINOIS
10:30 A.M.
JUNE 15, 2004

Central Management Services

52. Pay Plan (80 Ill. Adm. Code 310)
-Notice Published: 28 Ill. Reg. 7323 – 5/21/04

AGENCY RESPONSES

Central Management Services

53. Senior Citizens and disabled Persons Prescription Drug Discount Program (80 Ill. Adm. Code 2151; 28 Ill. Reg. 4379)

Children and Family Services

54. Licensing Standards for Child Care Institutions and Maternity Center (89 Ill. Adm. Code 404; 27 Ill. Reg. 5592)

Drycleaner Environmental Response Trust Fund Council of Illinois

55. General Program (35 Ill. Adm. Code 1500; 28 Ill. Reg. 2522)

Labor

56. Victim's Economic Security and Safety Act (56 Ill. Adm. Code 280; 28 Ill. Reg. 478)

Public Health

57. Skilled Nursing and Intermediate Care Facilities Code (77 Ill. Adm. Code 300; 27 Ill. Reg. 14162)

58. Sheltered Care Facilities Code (77 Ill. Adm. Code 330; 27 Ill. Reg. 14164)

59. Illinois Veterans' Homes Code (77 Ill. Adm. Code 340; 27 Ill. Reg. 14166)

JOINT COMMITTEE ON ADMINISTRATIVE RULES

SCHEDULED MEETING:

JAMES R. THOMPSON CENTER
ROOM 16-503
CHICAGO, ILLINOIS
10:30 A.M.
JUNE 15, 2004

60. Intermediate Care for the Developmentally Disabled Facilities Code (77 Ill. Adm. Code 350; 27 Ill. Reg. 14168)

61. Long-Term Care for Under Age 22 Facilities Code (77 Ill. Adm. Code 390; 27 Ill. Reg. 14170)

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 May 25, 2004 through May 31, 2004 and have been scheduled for review by the Committee at its June 15, 2004 meeting in Chicago. 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.

Second Notice Expires	Agency and Rule	Start Of First Notice	JCAR Meeting
7/7/04	Department of Human Services, Renal Diseases Program for Care and Treatment Code (Repeal) (77 Ill. Adm. Code 700)	3/12/04 28 Ill. Reg. 4419	6/15/04
7/9/04	Department of Public Health, Assisted Living and Shared Housing Establishment Code (77 Ill. Adm. Code 295)	2/20/04 28 Ill. Reg. 2937	6/15/04
7/9/04	Department of Transportation, Procedures (92 Ill. Adm. Code 107)	3/26/04 28 Ill. Reg. 5200	6/15/04
7/9/04	Department of Transportation, Hazardous Materials Transportation: General Information, Regulations and Definitions (92 Ill. Adm. Code 171)	3/26/04 28 Ill. Reg. 5211	6/15/04
7/9/04	Department of Transportation, Hazardous Materials Table and Hazardous Materials Communications (92 Ill. Adm. Code 172)	3/26/04 28 Ill. Reg. 5218	6/15/04
7/9/04	Department of Transportation, Shippers General Requirements for Shipments and Packagings (92 Ill. Adm. Code 173)	3/26/04 28 Ill. Reg. 5224	6/15/04
7/9/04	Department of Transportation, Carriage by Public Highway (92 Ill. Adm. Code 177)	3/26/04 28 Ill. Reg. 5231	6/15/04

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

SECOND NOTICES RECEIVED

7/9/04	Department of Transportation, Specifications for Packagings (92 Ill. Adm. Code 178)	3/26/04 28 Ill. Reg. 5237	6/15/04
7/9/04	Department of Transportation, Specifications for Tank Cars (92 Ill. Adm. Code 179)	3/26/04 28 Ill. Reg. 5251	6/15/04
7/9/04	Department of Transportation, Continuing Qualification and Maintenance of Packaging (92 Ill. Adm. Code 180)	3/26/04 28 Ill. Reg. 5256	6/15/04
7/11/04	Secretary of State, Issuance of Licenses (92 Ill. Adm. Code 1030)	1/2/04 28 Ill. Reg. 307	6/15/04
7/11/04	Secretary of State, Commercial Driver Training Schools (92 Ill. Adm. Code 1060)	1/2/04 28 Ill. Reg. 309	6/15/04
7/11/04	Illinois Commerce Commission, Household Goods Carriers (92 Ill. Adm. Code 1457)	3/12/04 28 Ill. Reg. 4411	6/15/04
7/11/04	Illinois Commerce Commission, Wholesale Service Quality for Telecommunications Carriers (83 Ill. Adm. Code 731)	1/23/04 28 Ill. Reg. 1294	6/15/04
7/11/04	Illinois Racing Board, General Licensee Rules (11 Ill. Adm. Code 1313)	4/2/04 28 Ill. Reg. 5627	6/15/04
7/11/04	Department of Professional Regulation, Veterinary Medicine and Surgery Practice Act of 1994 (68 Ill. Adm. Code 1500)	12/19/03 27 Ill. Reg. 18949	6/15/04

DEPARTMENT OF LABOR

NOTICE OF MODIFICATION TO MEET THE OBJECTION
OF THE JOINT COMMITTEE ON ADMINISTRATIVE RULES

1) Heading of the Part: Victims' Economic Security and Safety Act

2) Code Citation: 56 Illinois Administrative Code 280

3) Section Number: 56 Ill. Adm. Code 280.120(d) Action: Withdrawal of subsection 280.120(d) only

4) Date Notice of Proposed Rules Published in the Register:

January 9, 2004, 28 Ill. Reg. 478

5) Date JCAR Statement of Objection Published in the Register:

June 4, 2004, 28 Ill. Reg. 7718

6) Summary of Action Taken By Agency: The Department modified the rule by withdrawing subsection 56 Ill. Adm. Code 280.120(d) only.

DEPARTMENT OF AGRICULTURE

NOTICE OF WITHDRAWAL OF PROPOSED AMENDMENTS

1) Heading of Part: Illinois Dead Animal Disposal Act

2) Code Citation: 8 Ill. Adm. Code 90

3)

Section Numbers:	Proposed Action:
90.5	Amend
90.110	Amend
90.120	Amend

4) Date Notice of Proposed Amendments Published in the Illinois Register: May 28, 2004, 28 Ill. Reg. 7390

5) Reason for the Withdrawal: The Department omitted text that it intended to include in the rulemaking, and the Department would like to withdraw the amendments and publish a correct version.

DEPARTMENT OF AGRICULTURE

NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

1) Heading of Part: Bovine Brucellosis

2) Code Citation: 8 Ill. Adm. Code 75

3) Register Citation to Notice of Proposed Rules: 28 Ill. Reg. 7375; May 28, 2004

4) Date, Time and Location of Public Hearing:

Thursday, July 8, 2004 at 10:00 a.m.
Illinois Department of Agriculture
Agriculture Building, Auditorium
State Fairgrounds, 8th & Sangamon
Springfield, IL 62794-9281

5) Other Pertinent Information:

Each person presenting oral testimony shall provide a written copy of such testimony at the time the oral testimony is presented.

Individuals who are unable to attend the public hearing but wish to comment on the Proposed Rules should submit written comments to:

Department of Agriculture
Attention: Linda Rhodes
P.O. Box 19281
Springfield, IL 62794-9281
217/785-5713; FAX #: 217/785-4505

In order for mailed comments to be available for consideration at the public hearing, please mail no later than July 2, 2004. All comments received will be fully considered by the agency and the Advisory Board of Livestock Commissioners. The public hearing on the proposed rulemaking will run concurrently with a public meeting of the Advisory Board of Livestock Commissioners.

DEPARTMENT OF AGRICULTURE

NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

1) Heading of Part: Animal Welfare Act

2) Code Citation: 8 Ill. Adm. Code 25

3) Register Citation to Notice of Proposed Rules: 28 Ill. Reg. 7351; May 28, 2004

4) Date, Time and Location of Public Hearing:

Thursday, July 8, 2004 at 10:00 a.m.
Illinois Department of Agriculture
Agriculture Building, Auditorium
State Fairgrounds, 8th & Sangamon
Springfield, IL 62794-9281

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DEPARTMENT OF AGRICULTURE

NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

1) Heading of Part: Humane Care For Animals Act

2) Code Citation: 8 Ill. Adm. Code 35

3) Register Citation to Notice of Proposed Rules: 28 Ill. Reg. 7366; May 28, 2004

4) Date, Time and Location of Public Hearing:

Thursday, July 8, 2004 at 10:00 a.m.
Illinois Department of Agriculture
Agriculture Building, Auditorium
State Fairgrounds, 8th & Sangamon
Springfield, IL 62794-9281

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DEPARTMENT OF AGRICULTURE

NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

1) Heading of Part: Livestock Auction Markets

2) Code Citation: 8 Ill. Adm. Code 40

3) Register Citation to Notice of Proposed Rules: 28 Ill. Reg. 7371; May 28, 2004

4) Date, Time and Location of Public Hearing:

Thursday, July 8, 2004 at 10:00 a.m.
Illinois Department of Agriculture
Agriculture Building, Auditorium
State Fairgrounds, 8th & Sangamon
Springfield, IL 62794-9281

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DEPARTMENT OF AGRICULTURE

NOTICE OF CORRECTION TO NOTICE ONLY

1) Heading of Part: Bovine Brucellosis

2) Code Citation: 8 Ill. Adm. Code 75

3) The Notice of Proposed Amendments being corrected appeared at 28 Ill. Reg. 7375, dated May 28, 2004.

4) The information being corrected is as follows: Section 75.80 was included in the Notice Page as being amended when no amendments were being proposed to that Section.

DEPARTMENT OF AGRICULTURE

NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

1) Heading of Part: Diseased Animals

2) Code Citation: 8 Ill. Adm. Code 85

3) Register Citation to Notice of Proposed Rules: 28 Ill. Reg. 7380; May 28, 2004

4) Date, Time and Location of Public Hearing:

Thursday, July 8, 2004 at 10:00 a.m.
Illinois Department of Agriculture
Agriculture Building, Auditorium
State Fairgrounds, 8th & Sangamon
Springfield, IL 62794-9281

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Department of Agriculture
Attention: Linda Rhodes
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In order for mailed comments to be available for consideration at the public hearing, please mail no later than July 2, 2004. All comments received will be fully considered by the agency and the Advisory Board of Livestock Commissioners. The public hearing on the proposed rulemaking will run concurrently with a public meeting of the Advisory Board of Livestock Commissioners.

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PUBLIC INFORMATION

LISTING OF DERIVED WATER QUALITY CRITERIA

Pursuant to 35 Ill. Adm. Code 302.595 and 302.669, the following water quality criteria have been derived as listed. This listing updates revisions to existing criteria for the period February 1, 2004 through April 30, 2004. The Illinois Environmental Protection Agency now maintains a list of derived water quality criteria on its website at http://www.epa.state.il.us/water/water-quality-standards/water-quality-criteria.html.

A cumulative listing of criteria as of July 31, 1993 was published in 17 Ill. Reg. 18904, October 29, 1993. Listings of waterbodies for which water quality criteria were used during subsequent three month periods were published in 18 Ill. Reg. 318, January 7, 1994; 18 Ill. Reg. 4457, March 18, 1994; 18 Ill. Reg. 8734, June 10, 1994; 18 Ill. Reg. 14166, September 9, 1994; 18 Ill. Reg. 17770, December 9, 1994; 19 Ill. Reg. 3563, March 17, 1995; 19 Ill. Reg. 7270, May 26, 1995: 19 Ill. Reg. 12527, September 1, 1995; 20 Ill. Reg. 649, January 5, 1996; 20 Ill. Reg. 4829, March 22, 1996; 20 Ill. Reg. 7549, May 30, 1996; 20 Ill. Reg. 12278, September 6, 1996; 20 Ill. Reg. 15619, December 6, 1996; 21 Ill. Reg. 3761, March 21, 1997; 21 Ill. Reg. 7554, June 13, 1997; 21 Ill. Reg. 12695, September 12, 1997; 21 Ill. Reg. 16193, December 12, 1997; 22 Ill. Reg. 5131, March 13, 1998; 22 Ill. Reg. 10689, June 12, 1998; 22 Ill. Reg. 16376, September 11, 1998; 22 Ill. Reg. 22423, December 28, 1998; 23 Ill. Reg. 3102, March 12, 1999; 23 Ill. Reg. 6979, June 11, 1999; 23 Ill. Reg. 11774, September 24, 1999; 23 Ill. Reg. 14772, December 27, 1999; 24 Ill. Reg. 4251, March 17, 2000; 24 Ill. Reg. 8146, June 9, 2000; 24 Ill. Reg. 14428, September 29, 2000; 25 Ill. Reg. 270, January 5, 2001; 25 Ill. Reg. 4049, March 16, 2001; 25 Ill. Reg. 7367, June 8, 2001; 25 Ill. Reg. 12186, September 21, 2001; 25 Ill. Reg. 16175, December 14, 2001; 26 Ill. Reg. 4,974, March 29, 2002; 26 Ill. Reg. 13370, September 6, 2002; 27 Ill. Reg. 1736, January 31, 2003; 27 Ill. Reg. 7350, April 18, 2003; 27 Ill. Reg. 17128, November 7, 2003, and 28 Ill. Reg. 5038, March 19, 2004.

Chemical: Acenaphthene CAS #83-32-9
Acute criterion: 120 ug/l Chronic criterion: 62 ug/l
Date criteria derived: November 14, 1991; revised February 1999
Applicable waterbodies: Not used during this period.

Chemical: Acenaphthylene CAS # 208-96-8
Acute criterion: 190 ug/L Chronic criterion: 15 ug/L
Date criteria derived: March 1, 1998
Applicable waterbodies Not used during this period.

Chemical: Acetone CAS #67-64-1
Acute criterion: 1,500 mg/l Chronic criterion: 120 mg/l
Date criteria derived: May 25, 1993
Applicable waterbodies: Not used during this period.

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PUBLIC INFORMATION

LISTING OF DERIVED WATER QUALITY CRITERIA

Chemical: Acetonitrile CAS #75-05-8
Acute criterion: 380 mg/l Chronic criterion: 30 mg/l
Date criteria derived: December 7, 1993
Applicable waterbodies: Not used during this period.

Chemical: Acrylonitrile CAS #107-13-4
Acute criterion: 910 ug/l Chronic criterion: 73 ug/l
Human health criterion (HNC): 0.21 ug/l
Date criteria derived: November 13, 1991
Applicable waterbodies: Not used during this period.

Chemical: Anthracene CAS #120-12-7
Human health criterion (HTC): 35 mg/l
Date criteria derived: August 18, 1993
Applicable waterbodies: Not used during this period.

Chemical: Benzo(a)anthracene CAS #56-55-3
Human health criterion (HNC): 0.16 ug/l
Date criteria derived: August 10, 1993; revised February 1999
Applicable waterbodies: Not used during this period.

Chemical: Benzo(a)pyrene CAS #50-32-8
Human health criterion (HNC): 0.016 ug/l
Date criteria derived: August 10, 1993; revised February 1999
Applicable waterbodies: Not used during this period.

Chemical: Benzo(b)fluoranthene CAS # 205-99-2
Human health criterion (HNC): 0.16 ug/l
Date criteria derived: August 10, 1993; revised February 1999
Applicable waterbodies: Not used during this period.

Chemical: Benzo(k)fluoranthene CAS #207-08-9
Human health criterion (HNC): 1.6 ug/l
Date criteria derived: August 10, 1993; revised February 1999
Applicable waterbodies: Not used during this period.

Chemical: Carbon tetrachloride CAS #56-23-5
Acute criterion: 3,500 ug/l Chronic criterion: 280 ug/l
Human health criterion (HNC): 1.4 ug/l
Date criteria derived: June 18, 1993
Applicable waterbodies: Not used during this period.

Chemical: Chlorobenzene CAS #108-90-7

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PUBLIC INFORMATION

LISTING OF DERIVED WATER QUALITY CRITERIA

Acute criterion: 990 ug/l Chronic criterion: 79 ug/l
Date criteria derived: December 11, 1991
Applicable waterbodies: Not used during this period.

Chemical: Chloroform CAS #67-66-3
Acute criterion: 1,900 ug/l Chronic criterion: 150 ug/l
Human health criterion (HNC): 130 ug/l
Date criteria derived: October 26, 1992
Applicable waterbodies: Not used during this period.

Chemical: Chrysene CAS #218-01-9
Human health criterion (HNC): 16 ug/l
Date criteria derived: August 10, 1993; revised February 1999
Applicable waterbodies: Not used during this period.

Chemical: 1,2-dichlorobenzene CAS #95-50-1
Acute criterion: 210 ug/l Chronic criterion: 17 ug/l
Date criteria derived: December 1, 1993
Applicable waterbodies: Not used during this period.

Chemical: 1,3-dichlorobenzene CAS #541-73-1
Acute criterion: 500 ug/l Chronic criterion: 200 ug/l
Date criteria derived: July 31, 1991
Applicable waterbodies: Not used during this period.

Chemical: 1,2-dichloroethane CAS #107-06-2
Acute criterion: 25 mg/l Chronic criterion: 4.5 mg/l
Human health criterion (HNC): 23 ug/l
Date criteria derived: March 19, 1992
Applicable waterbodies: Not used during this period.

Chemical: 1,1-dichloroethylene CAS #75-35-4
Acute criterion: 3,000 ug/l Chronic criterion: 240 ug/l
Human health criterion (HNC): 0.95 ug/l
Date criteria derived: March 20, 1992
Applicable waterbodies: Not used during this period.

Chemical: 2,4-dichlorophenol CAS #120-83-2
Acute criterion: 630 ug/l Chronic criterion: 83 ug/l
Date criteria derived: November 14, 1991
Applicable waterbodies: Not used during this period.

Chemical: 1,2-dichloropropane CAS #78-87-5
Acute criterion: 4,800 ug/l Chronic criterion: 380 ug/l

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PUBLIC INFORMATION

LISTING OF DERIVED WATER QUALITY CRITERIA

Date criteria derived: December 7, 1993 Applicable waterbodies: Not used during this period.
Chemical: 1,3-dichloropropylene CAS #542-75-6 Acute criterion: 99 ug/l Chronic criterion: 7.9 ug/l Date criteria derived: November 13, 1991 Applicable waterbodies: Not used during this period.
Chemical: 2,4-dimethyl phenol CAS #105-67-9 Acute criterion: 740 ug/l Chronic criterion: 220 ug/l Date criteria derived: October 26, 1992 Applicable waterbodies: Not used during this period.
Chemical: 4,6-dinitro-o-cresol = 2-methyl-4,6-dinitrophenol CAS #534-52-1 Acute criterion: 29 ug/l Chronic criterion: 2.3 ug/l Date criteria derived: November 14, 1991 Applicable waterbodies: Not used during this period.
Chemical: 2,4-dinitrophenol CAS #51-28-5 Acute criterion: 85 ug/l Chronic criterion: 4.1 ug/l Date criteria derived: December 1, 1993 Applicable waterbodies: Not used during this period.
Chemical: 2,6-dinitrotoluene CAS #606-20-2 Acute criterion: 1,900 ug/l Chronic criterion: 150 ug/l Date criteria derived: February 14, 1992 Applicable waterbodies: Not used during this period.
Chemical: Diquat CAS #85-00-7 Acute criterion: 990 ug/l Chronic criterion: 80 ug/l Date criteria derived: January 30, 1996 Applicable waterbodies: Not used during this period.
Chemical: Ethyl mercaptan (ethanethiol) CAS #75-08-1 Acute criterion: 17 ug/l Chronic criterion: 2 ug/l Date criteria derived: April 8, 2002 Applicable waterbodies: Not used during this period.
Chemical: Fluoranthene CAS #206-44-0 Human health criterion (HTC): 120 ug/l Date criteria derived: August 10, 1993 Applicable waterbodies: Not used during this period.
Chemical: Formaldehyde CAS #50-00-0 Acute criterion: 4.9 mg/l Chronic criterion: 0.39 mg/l

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PUBLIC INFORMATION

LISTING OF DERIVED WATER QUALITY CRITERIA

Date criteria derived: January 19, 1993
Applicable waterbodies: Not used during this period.

Chemical: Hexachlorobenzene CAS #118-74-1
Human health criterion (HNC): 0.00025 ug/l
Date criteria derived: November 15, 1991
Applicable waterbodies: Not used during this period.

Chemical: Hexachlorobutadiene CAS #87-68-3
Acute criterion: 35 ug/l Chronic criterion: 2.8 ug/l
Date criteria derived: March 23, 1992
Applicable waterbodies: Not used during this period.

Chemical: Hexachloroethane CAS #67-72-1
Acute criterion: 380 ug/l Chronic criterion: 31 ug/l
Human health criterion (HNC): 2.9 ug/l
Date criteria derived: November 15, 1991
Applicable waterbodies: Not used during this period.

Chemical: n-Hexane CAS #110-54-3
Acute criterion: 250 ug/l Chronic criterion: 20 ug/l
Date criteria derived: April 8, 2002
Applicable waterbodies: Not used during this period.

Chemical: Isobutyl alcohol = 2-methyl-1-propanol CAS #78-83-1
Acute criterion: 430 mg/l Chronic criterion: 35 mg/l
Date criteria derived: December 1, 1993
Applicable waterbodies: Not used during this period.

Chemical: Methylene chloride CAS #75-09-2
Acute criterion: 17 mg/l Chronic criterion: 1.4 mg/l
Human health criterion (HNC): 340 ug/l
Date criteria derived: January 21, 1992
Applicable waterbodies: Not used during this period.

Chemical: Methylethylketone CAS #78-93-3
Acute criterion: 320 mg/l Chronic criterion: 26 mg/l
Date criteria derived: July 1, 1992
Applicable waterbodies: Not used during this period.

Chemical: 4-methyl-2-pentanone CAS #108-10-1
Acute criterion: 46 mg/l Chronic criterion: 1.4 mg/l
Date criteria derived: January 13, 1992

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PUBLIC INFORMATION

LISTING OF DERIVED WATER QUALITY CRITERIA

Applicable waterbodies: Not used during this period.

Chemical: 2-methyl phenol CAS #95-48-7
Acute criterion: 4.7 mg/l Chronic criterion: 0.37 mg/l
Date criteria derived: November 8, 1993
Applicable waterbodies: Not used during this period.

Chemical: 4-methyl phenol CAS #106-44-5
Acute criterion: 670 ug/l Chronic criterion: 120 ug/l
Date criteria derived: January 13, 1992
Applicable waterbodies: Not used during this period.

Chemical: methyl tert-butyl ether (MTBE) CAS #134-04-4
Acute criterion: 67 mg/l Chronic criterion: 6.7 mg/l
Date criteria derived: September 18, 1997
Applicable waterbodies: Not used during this period.

Chemical: Naphthalene CAS #91-20-3
Acute criterion: 510 ug/l Chronic criterion: 68 ug/l
Date criteria derived: November 7, 1991; revised February 1999
Applicable waterbodies: Not used during this period.

Chemical: 4-nitroaniline CAS #100-01-6
Acute criterion: 1.5 mg/l Chronic criterion: 0.12 mg/l
Date criteria derived: May 5, 1996
Applicable waterbodies: Not used during this period.

Chemical: Nitrobenzene CAS #98-95-3
Acute criterion: 15 mg/l Chronic criterion: 8.0 mg/l
Human health criterion (HTC): 0.52 mg/l
Date criteria derived: February 14, 1992; revised February 1999
Applicable waterbodies: Not used during this period.

Chemical: Pentachlorophenol
Acute criterion: 20 ug/l Chronic criterion: 13 ug/l
Date criteria derived: national criterion at pH of 7.8, September 1986
Applicable waterbodies: Not used during this period.

Chemical: Phenanthrene CAS #85-01-8
Acute criterion: 46 ug/l Chronic criterion: 3.7 ug/l
Date criteria derived: October 26, 1992
Applicable waterbodies: Not used during this period.

Chemical: Propylene CAS #115-07-1

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PUBLIC INFORMATION

LISTING OF DERIVED WATER QUALITY CRITERIA

Acute criterion: 4.0 mg/l Chronic criterion 0.40 mg/l Date criteria derived: April 8, 2002 Applicable waterbodies: Not used during this period.
Chemical: Pyrene CAS #120-00-0 Human health criterion (HTC): 3.5 mg/l Date criteria derived: December 22, 1992 Applicable waterbodies: Not used during this period.
Chemical: Tetrachloroethylene CAS #127-18-4 Acute criterion: 1,200 ug/l Chronic criterion: 150 ug/l Date criteria derived: March 23, 1992 Applicable waterbodies: Not used during this period.
Chemical: Tetrahydrofuran CAS #109-99-9 Acute criterion: 220 mg/l Chronic criterion: 17 mg/l Date criteria derived: March 16, 1992 Applicable waterbodies: Not used during this period.
Chemical: 1,2,4-trichlorobenzene CAS #120-82-1 Acute criterion: 370 ug/l Chronic criterion: 72 ug/l Date criteria derived: December 14, 1993; revised February 1999 Applicable waterbodies: Not used during this period.
Chemical: 1,1,1-trichloroethane CAS #71-55-6 Acute criterion: 4,900 ug/l Chronic criterion: 390 ug/l Date criteria derived: October 26, 1992 Applicable waterbodies: Not used during this period.
Chemical: 1,1,2-trichloroethane CAS #79-00-5 Acute criterion: 19 mg/l Chronic criterion: 4.4 mg/l Human health criterion (HNC): 12 ug/l Date criteria derived: December 13, 1993; revised February 1999 Applicable waterbodies: Not used during this period.
Chemical: Trichloroethylene CAS #79-01-6 Acute criterion: 12,000 ug/l Chronic criterion: 940 ug/l Human health criterion (HNC): 25 ug/l Date criteria derived: October 23, 1992 Applicable waterbodies: Not used during this period.

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PUBLIC INFORMATION

LISTING OF DERIVED WATER QUALITY CRITERIA

For additional information concerning these criteria or the derivation process used in generating them, please contact:

Bob Mosher
Illinois Environmental Protection Agency
Division of Water Pollution Control
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276
217/782-3362

DEPARTMENT OF REVENUE

NOTICE OF PUBLIC INFORMATION

1. Statute requiring agency to publish information concerning Private Letter Rulings in the Illinois Register:

Name of Act: Illinois Department of Revenue Sunshine Act
Citation: 20 ILCS 2515/1

2. Summary of information:

Index of Department of Revenue sales tax Private Letter Rulings and General Information Letters issued for the First Quarter of 2004. Private letter rulings are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. Private letter rulings are binding on the Department only as to the taxpayer who is the subject of the request for ruling. (See 2 Ill. Adm. Code 1200.110) General information letters are issued by the Department in response to written inquiries from taxpayers, taxpayer representatives, business, trade, industrial associations or similar groups. General information letters contain general discussions of tax principles or applications. General information letters are designed to provide general background information on topics of interest to taxpayers. General information letters do not constitute statements of agency policy that apply, interpret, or prescribe tax laws administered by the Department. *General information letters may not be relied upon by taxpayers in taking positions with reference to tax issues and create no rights for taxpayers under the Taxpayers' Bill of Rights Act.* (See 2 Ill. Adm. Code 1200.120)

The letters are listed numerically, are identified as either a General Information Letter or a Private Letter Ruling and are summarized with a brief synopsis under the following subjects:

CDF Exemption
Certificate of Registration
Computer Software
Construction Contractors
Delivery Charges
Exempt Organizations
Farm Machinery & Equipment
Food, Drugs & Medical Appliances
Gas Use Tax
Gross Receipts
Hotel Operators' Tax

DEPARTMENT OF REVENUE

NOTICE OF PUBLIC INFORMATION

Leasing
Local Taxes
Manufacturing Machinery & Equipment
Medical Appliances
Miscellaneous
Motor Fuel Tax
Newsprint & Ink
Nexus
Occasional Sale
Pollution Control Facilities
Public Utility Taxes
Rolling Stock Exemption
Sale at Retail
Sale for Resale
Service Occupation Tax
Telecommunications Excise Tax
Use Tax

Copies of the ruling letters themselves are available for inspection and may be purchased for a minimum of $1.00 per opinion plus 50¢ per page for each page over one. Copies of the ruling letters may be downloaded free of charge from the Department's World Wide Web site at www.revenue.state.il.us/.

The annual index of Sales and Excise Tax letter rulings (all four quarters) is available for $3.00.

3. Name and address of person to contact concerning this information:

Marie Keeney
Legal Services Office
101 West Jefferson Street
Springfield, Illinois 62794
Telephone: (217) 782-2844

CDF EXEMPTION

ST 04-0064-GIL 03/12/2004 This letter provides a reference to the Department's proposed rules regarding the Commercial Distribution Fee Sales Tax Exemption. See 86 Ill. Adm. Code 130.341. (This is a GIL.)

DEPARTMENT OF REVENUE

NOTICE OF PUBLIC INFORMATION

CERTIFICATE OF REGISTRATION

ST 04-0007-GIL 01/14/2004 See 35 ILCS 120/2a, 35 ILCS 735/3-7 and 86 Ill. Adm. Code 700.340. (This is a GIL.)

COMPUTER SOFTWARE

ST 04-0005-GIL 01/14/2004 See 86 Ill. Adm. Code 130.1935. (This is a GIL.)

ST 04-0010-GIL 01/14/2004 See 86 Ill. Adm. Code 130.1935. (This is a GIL.)

ST 04-0055-GIL 02/26/2004 This letter references the Department's administrative rules on computer software. See 86 Ill. Adm. Code 130.1935. (This is a GIL.)

ST 04-0066-GIL 03/15/2004 Canned or prewritten computer software or software upgrades transferred to a customer, either on a tangible personal property medium or electronically, will be subject to Retailers' Occupation Tax liability. See 86 Ill. Adm. Code 130.1935. (This is a GIL.)

CONSTRUCTION CONTRACTORS

ST 04-0061-GIL 03/03/2004 This letter discusses the different tax treatment of sales of mobile homes. See 130.1940. (This is a GIL.)

DELIVERY CHARGES

ST 04-0018-GIL 01/26/2004 This letter provides a reference to the Department's administrative rules regarding the treatment of transportation and delivery charges. See 86 Ill. Adm. Code 130.415. (This is a GIL.)

ST 04-0022-GIL 01/26/2004 This letter provides a reference to the Department's regulation on treatment of transportation and delivery charges. See 86 Ill. Adm. Code 130.415. (This is a GIL.)

EXEMPT ORGANIZATIONS

DEPARTMENT OF REVENUE

NOTICE OF PUBLIC INFORMATION

ST 04-0009-GIL 01/14/2004 See 86 Ill. Adm. Code 130.2005. (This is a GIL.)

ST 04-0039-GIL 01/30/2004 Organizations that make application to the Department and are determined to be exclusively religious, educational, or charitable, receive an exemption identification "E" number. See 86 Ill. Adm. Code 130.2007. (This is a GIL.)

ST 04-0053-GIL 02/25/2004 This letter provides a reference to the Department regulations regarding the issuance of Exemption Identification Numbers. See 86 Ill. Adm. Code 130.2007. This is a GIL.)

FARM MACHINERY & EQUIPMENT

ST 04-0034-GIL 01/29/2004 In general, a generator or stand-by generator used in the production of electricity to operate machinery or equipment that qualified for an exemption would also qualify for the exemption. See 86 Ill. Adm. Code 130.305. (This is a GIL.)

ST 04-0047-GIL 02/24/2004 This letter refers to the Department's rules regarding the Farm Machinery & Equipment Exemption. See 86 Ill. Adm. Code 130.305. (This is a GIL.)

FOOD, DRUGS & MEDICAL APPLIANCES

ST 04-0068-GIL 03/22/2004 This letter provides a reference to the Department's rules regarding food, drugs, and medical appliances. See 86 Ill. Adm. Code 130.310. (This is a GIL.)

GAS USE TAX

ST 04-0025-GIL 01/27/2004 This letter discusses to an exemption under the Gas Use Tax Law for business enterprises located in enterprise zones certified by the Department of Commerce and Economic Opportunity. See 35 ILCS 173/5-50. (This is a GIL.)

ST 04-0043-GIL 02/06/2004 This letter lists the uses of gas that are exempt from Gas Use Tax liability. See 35 ILCS 173/5-50. (This is a GIL).

DEPARTMENT OF REVENUE

NOTICE OF PUBLIC INFORMATION

ST 04-0062-GIL 03/04/2004 This letter provides a reference to the Department's proposed rulemaking regarding the Gas Use Tax Law. See 86 Ill. Adm. Code 471.101 et seq. (This is a GIL.)

GROSS RECEIPTS

ST 04-0017-GIL 01/26/2004 This letter provides a reference to other General Information Letters describing the tax treatment of what are commonly referred to as "reward" credits or "hostess" credits. See ST 02-0239-GIL; ST 02-0132-GIL. (This is a GIL.)

ST 04-0036-GIL 01/29/2004 The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling at retail tangible personal property. 35 ILCS 120/2. (This is a GIL.)

ST 04-0040-GIL 01/30/2004 When the legal incidence of a tax is on the consumer, it is not considered to be part of the "selling price" of the tangible personal property for the purpose of calculating Retailers' Occupation Tax. See 86 Ill. Adm. Code 130.445. (This is a GIL.)

HOTEL OPERATORS' TAX

ST 04-0050-GIL 02/24/2004 Hotel Operators' Occupation Tax applies to gross receipts received from a person who occupies a room or becomes irrevocably liable to pay rent for the right to occupy a specific room or rooms. See 86 Ill. Adm. Code 480.101. (This is a GIL.)

LEASING

ST 04-0019-GIL 01/26/2004 The State of Illinois taxes leases differently for Retailers' Occupation Tax and Use Tax purposes than the majority of other states. See 86 Ill. Adm. Code 130.220. (This is a GIL.)

ST 04-0048-GIL 02/24/2004 This letter provides references to other GILs regarding leasing and maintenance agreements. See 86 Ill. Adm. Code 130.220. (This is a GIL.)

LOCAL TAXES

DEPARTMENT OF REVENUE

NOTICE OF PUBLIC INFORMATION

ST 04-0016-GIL 01/26/2004 The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order. Consequently, if a purchase order is accepted in a jurisdiction that imposes a local tax, that jurisdiction's tax will be incurred. See 86 Ill. Adm. Code 270.115. (This is a GIL.)

ST 04-0067-GIL 03/16/2004 The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order. Consequently, if a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred. County use taxes are not imposed on purchasers for the purchase of tangible personal property other than titled and registered property. See 86 Ill. Adm. Code 220.115. (This is a GIL.)

MANUFACTURING MACHINERY & EQUIPMENT

ST 04-0001-PLR 01/23/2004 This letter discusses specific equipment used to mine coal and whether that equipment qualifies for the exemption under 86 Ill. Adm. Code 130.330 and *Nokomis Quarry Co. v. Department of Revenue,* 295 Ill. App. 3d 264, 692 N.E. 2d 855 (1998). (This is a PLR.)

ST 04-0002-PLR 01/23/2004 This letter discusses specific equipment used to mine coal and whether that equipment qualifies for the exemption under 86 Ill. Adm. Code 130.330 and *Nokomis Quarry Co. v. Department of Revenue,* 295 Ill. App. 3d 264, 692 N.E. 2d 855 (1998). (This is a PLR.)

ST 04-0003-PLR 01/23/2004 This letter discusses specific equipment used to mine coal and whether that equipment qualifies for the exemption under 86 Ill. Adm. Code 130.330 and *Nokomis Quarry Co. v. Department of Revenue,* 295 Ill. App. 3d 264, 692 N.E. 2d 855 (1998). (This is a PLR.)

ST 04-0004-PLR 01/23/2004 This letter discusses specific equipment used to mine coal and whether that equipment qualifies for the exemption under 86 Ill. Adm. Code 130.330 and *Nokomis Quarry Co. v. Department of Revenue,* 295 Ill. App. 3d 264, 692 N.E. 2d 855 (1998). (This is a PLR.)

DEPARTMENT OF REVENUE

NOTICE OF PUBLIC INFORMATION

ST 04-0005-PLR 01/23/2004 This letter discusses specific equipment used to mine coal and whether that equipment qualifies for the exemption under 86 Ill. Adm. Code 130.330 and *Nokomis Quarry Co. v. Department of Revenue,* 295 Ill. App. 3d 264, 692 N.E. 2d 855 (1998). (This is a PLR.)

ST 04-0006-PLR 01/23/2004 This letter discusses specific equipment used to mine coal and whether that equipment qualifies for the exemption under 86 Ill. Adm. Code 130.330 and *Nokomis Quarry Co. v. Department of Revenue,* 295 Ill. App. 3d 264, 692 N.E. 2d 855 (1998). (This is a PLR.)

ST 04-0007-PLR 01/23/2004 This letter discusses specific equipment used to mine coal and whether that equipment qualifies for the exemption under 86 Ill. Adm. Code 130.330 and *Nokomis Quarry Co. v. Department of Revenue,* 295 Ill. App. 3d 264, 692 N.E. 2d 855 (1998). (This is a PLR.)

ST 04-0008-PLR 01/23/2004 This letter discusses specific equipment used to mine coal and whether that equipment qualifies for the exemption under 86 Ill. Adm. Code 130.330 and *Nokomis Quarry Co. v. Department of Revenue,* 295 Ill. App. 3d 264, 692 N.E. 2d 855 (1998). (This is a PLR.)

ST 04-0009-PLR 01/23/2004 This letter discusses specific equipment used to mine coal and whether that equipment qualifies for the exemption under 86 Ill. Adm. Code 130.330 and *Nokomis Quarry Co. v. Department of Revenue,* 295 Ill. App. 3d 264, 692 N.E. 2d 855 (1998). (This is a PLR.)

ST 04-0021-GIL 01/26/2004 Under the Retailers' Occupation Tax Act, the manufacturing machinery and equipment exemption is available for machinery and equipment used primarily (over 50% of the time) in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease. See 86 Ill. Adm. Code 130.330. (This is a GIL.)

ST 04-0035-GIL 01/29/2004 The manufacturing machinery and equipment exemption does not extend to cameras and equipment to take pictures, expose film, or otherwise create the images for photoprocessing. See 86 Ill. Adm. Code 130.330. (This is a GIL.)

DEPARTMENT OF REVENUE

NOTICE OF PUBLIC INFORMATION

ST 04-0042-GIL 02/03/2004 Coal mining operations are still generally exempt from tax under the manufacturing machinery and equipment exemption per the decision of the Illinois Court of Appeals, Fifth District, in *Nokomis Quarry Co. v. Department of Revenue,* 295 Ill. App. 3d 264, 692 N.E. 2d 855 (1998). (This is a GIL).

ST 04-0058-GIL 02/26/2004 This letter provides references regarding the manufacturing machinery and equipment exemption and the recently repealed graphic arts machinery and equipment exemption. See 86 Ill. Adm. Code 130.330 and 130.325. (This is a GIL.)

ST 04-0069-GIL 03/22/2004 This letter provides a reference to the Department's rules regarding the manufacturing machinery & equipment exemption. See 86 Ill. Adm. Code 130.330. (This is a GIL.)

MEDICAL APPLIANCES

ST 04-0044-GIL 02/30/2004 Medical tools, devices and equipment such as x-ray machines, laboratory equipment, and surgical instruments which may be used in the treatment of patients but, which do not directly substitute for a malfunctioning part of the body do not qualify as exempt medical appliances subject to the reduced rate. See 86 Ill. Adm. Code 130.310(c)(2). (This is a GIL.)

ST 04-0060-GIL 02/26/2004 This letter provides a reference to the Department's rules regarding food, drugs, medicines and medical appliances. See 86 Ill. Adm. Code 130.310. (This is a GIL.)

ST 04-0063-GIL 03/11/2004 Pharmaceutical glass, with the exception of syringes used in treating diabetes in human beings, is not a medical appliance eligible for the 1% sales tax rate. See 86 Ill. Adm. Code 130.310. Pharmaceutical glass may, however, be sold tax free as a sale of containers for resale. See, 86 Ill. Adm. Code 130.2070. (This is a GIL.)

MISCELLANEOUS

ST 04-0006-GIL 01/14/2004 This letter discusses the taxability of artwork. See 86 Ill. Adm. Code 130.1910. (This is a GIL.)

DEPARTMENT OF REVENUE

NOTICE OF PUBLIC INFORMATION

ST 04-0011-GIL 01/13/2004 This letter discusses agency agreements for filing sales tax returns (See 86 Ill. Adm. Code 130.550). It also discusses tax rates. (This is a GIL.)

ST 04-0030-GIL 01/29/2004 This letter discusses questions regarding the CDF Sales Tax Exemption created by Public Act 93-0023. See Public Act 93-0023. (This is a GIL.)

ST 04-0031-GIL 01/29/2004 This letter provides a reference to Public Act 93-0031 which created the Gas Use Tax Law. See Public Act 93-0031. (This is a GIL.)

ST 04-0038-GIL 01/29/2004 This letter discusses the application of Service Occupation Tax to sales of advertising in a magazine. See 86 Ill. Adm. Code Part 140. (This is a GIL.)

ST 04-0052-GIL 02/25/2004 This letter provides references regarding sales of service, construction contracts, maintenance contracts, data and security systems, and armored car services. See 86 Ill. Adm. Code 130.1940. (This is a GIL.)

MOTOR FUEL TAX

ST 04-0012-GIL 01/14/2004 The Department's Motor Fuel Use Tax regulations at 86 Ill. Adm. Code 500.305 set forth the information that an applicant must provide in order to be registered for the Motor Fuel Use Tax. (This is a GIL.)

NEWSPRINT & INK

ST 04-0013-GIL 01/14/2004 This letter informs the taxpayer that the publications described qualify for the newsprint and ink exemption under the Retailers' Occupation Tax Act. See 86 Ill. Adm. Code 130.2105. (This is a GIL.)

NEXUS

ST 04-0003-GIL 01/13/2004 See 86 Ill. Adm. Code 150.201. (This is a GIL.)

ST 04-0008-GIL 01/14/2004 See 86 Ill. Adm. Code 150.201. (This is a GIL.)

DEPARTMENT OF REVENUE

NOTICE OF PUBLIC INFORMATION

ST 04-0020-GIL 01/26/2004 A "retailer maintaining a place of business in Illinois" as described in 86 Ill. Adm. Code 150.201(i) is required to register with the State as an Illinois Use Tax collector. See 86 Ill. Adm. Code 150.801. (This is a GIL.)

ST 04-0023-GIL 01/26/2004 This letter concerns nexus for collection of Illinois Use Tax. See 86 Ill. Adm. Code 150.201(i) and 150.801. (This is a GIL.)

ST 04-0024-GIL 01/26/2004 This letter concerns nexus for collection of Illinois Use Tax. See 86 Ill. Adm. Code 150.201(i) and 150.801. (This is a GIL.)

OCCASIONAL SALE

ST 04-0065-GIL 03/15/2004 This letter provides a reference to the Department's rules regarding isolated or occasional sales. See 86 Ill. Adm. Code 130.110. (This is a GIL.)

POLLUTION CONTROL FACILITIES

ST 04-0014-GIL 01/22/2004 The pollution control exemption was repealed effective July 1, 2003, by P.A. 93-24. (See P.A. 93-24.) (This is a GIL.)

ST 04-0015-GIL 01/23/2004 See 86 Ill. Adm. Code 130.335. (This is a GIL.)

PUBLIC UTILITY TAXES

ST 04-0032-GIL 01/29/2004 This letter concerns the definition of a "delivering supplier" for purposes of collection of Gas Use Tax. See P.A. 93-0031. (This is a GIL.)

ROLLING STOCK EXEMPTION

ST 04-0027-GIL 01/29/2004 This letter answers questions regarding the Rolling Stock Exemption. See 86 Ill. Adm. Code 130.340. (This is a GIL.)

ST 04-0028-GIL 01/29/2004 This letter discusses the rolling stock exemption. See 86 Ill. Adm. Code 130.340. (This is a GIL.)

DEPARTMENT OF REVENUE

NOTICE OF PUBLIC INFORMATION

ST 04-0029-GIL 01/29/2004 In general, parts added to a motor vehicle after it has been purchased do not qualify for the CDF Sales Tax Exemption. However, such parts may qualify for the Rolling Stock Exemption. See emergency rules for 86 Ill. Adm. Code 130.340 & 130.341. (This is a GIL.)

ST 04-0056-GIL 02/26/2004 This letter provides a reference to the Department's rules regarding the Rolling Stock Exemption. See 86 Ill. Adm. Code 130.340. (This is a GIL.)

ST 04-0057-GIL 02/26/2004 This letter provides a reference to the Department's rules regarding the Rolling Stock Exemption. See 86 Ill. Adm. Code 130.340. (This is a GIL.)

SALE AT RETAIL

ST 04-0002-GIL 01/13/2004 The Retailers' Occupation Tax applies to retail sales of tangible personal property. See 86 Ill. Adm. Code 130.101. (This is a GIL.)

ST 04-0046-GIL 02/24/2004 This letter discusses taxation of vending machines sales and equipment. Please see 86 Ill. Adm. Code 130.2135. (This is a GIL).

ST 04-0059-GIL 02/26/2004 This letter provides a reference to the Department's rules regarding vendors of curtains, slip covers and other similar items made to order. See 86 Ill. Adm. Code 130.2140. (This is a GIL.)

SALE FOR RESALE

ST 04-0026-GIL 01/27/2004 This letter provides a reference to the Department's rules regarding drop shipments. See 86 Ill. Adm. Code 130.225. (This is a GIL.)

ST 04-0054-GIL 02/25/2004 This letter discusses sales for resale. Please see 86 Ill. Adm. Code 130.210. (This is a GIL.)

SERVICE OCCUPATION TAX

ST 04-0004-GIL 01/13/2004 See 86 Ill. Adm. Code Part 140. (This is a GIL.)

DEPARTMENT OF REVENUE

NOTICE OF PUBLIC INFORMATION

ST 04-0051-GIL 02/25/2004 This letter provides a reference to the Department's Service Occupation Tax rules. See 86 Ill. Adm. Code Part 140. (This is a GIL.)

TELECOMMUNICATIONS EXCISE TAX

ST 04-0001-GIL 01/08/2004 If Limited Exchange Carriers and Inter-Exchange Carriers are retailers of telecommunications originated or received intrastate or interstate in Illinois, then they are subject to the Telecommunications Excise Tax. See 35 ILCS 630/1 et seq. (This is a GIL.)

ST 04-0033-GIL 01/29/2004 Generally, persons or entities that charge customers for telecommunications services are considered telecommunications retailers and are subject to Telecommunications Excise Tax. See 86 Ill. Adm. Code 495. (This is a GIL.)

ST 04-0037-GIL 01/29/2004 Regards DSL service. See 86 Ill. Adm. Code Part 495. (This is a GIL.)

ST 04-0045-GIL 02/24/2004 This letter discusses dark fiber optics and taxation. See 35 ILCS 636/5-45. (This is a GIL.)

USE TAX

ST 04-0041-GIL 01/30/2004 This letter references tax on promotional items. See 86 Ill. Adm. Code 130.2125 (This is a GIL.)

ST 04-0049-GIL 02/24/2004 A sale is subject to use tax in this State if the purchaser or his representative receives the physical possession of the property in this State. See 86 Ill. Adm. Code 130.605. (This is a GIL.)

PROCLAMATIONS

2004-154
National Maritime Day

WHEREAS, first observed in 1933, National Maritime Day commemorates the first voyage of a steamship across the Atlantic Ocean; and

WHEREAS, the S. S. Savannah departed, on what eventually became a 29-day journey, on May 22, 1819, sailing from Savannah, Georgia to Liverpool, England; and

WHEREAS, this historic voyage marked the beginning of the steamship age in maritime history; and

WHEREAS, according to information provided by the U.S. Department of Transportation's Maritime Administration, in March 2004, more than 80 percent of the military cargo shipped to the Middle East in support of the United States Armed Forces during the Iraqi conflict arrived via U.S. flag commercial or government vessels; and

WHEREAS, we pay homage to the men and women of the United States Merchant Marines, serving the country with valor and strength, who have contributed significantly to the strength and economic growth of our nation; and

WHEREAS, we salute the countless number of seamen who have lost their lives in World Wars I and II and other conflicts that have taken place throughout the history of our country:

THEREFORE, I, Rod Blagojevich, Governor of the State of Illinois, do hereby proclaim May 22, 2004 as NATIONAL MARITIME DAY in Illinois, and encourage all citizens to recognize the important roles the Merchant Marines play in ensuring the safety and economic prosperity of our great nation.

Issued by the Governor May 4, 2004.

Filed by the Secretary of State May 25, 2004.

2004-155
World War II Veterans Recognition Day

WHEREAS, more than 16 million people served in the United States armed forces during World War II. Known as one of the deadliest wars in the history of our world, more than 400,000 Americans died while fighting for our country; and

WHEREAS, on all accounts, World War II was a multifaceted event with supplemental events like Adolf Hitler's rise as dictator of Germany and the Japanese attack on Pearl Harbor, only helping to complicate the issue and raise the stakes of the war; and

WHEREAS, it has been nearly 59 years since World War II ended in September 1945. In honor of the men and women who perished during their fight, the families at home who were praying for the safe return of the soldiers and for the restoration of peace, and to the nation as a whole, a memorial has been erected in Washington, DC and will be dedicated during Memorial Day Weekend; and

WHEREAS, those of you who were around during this time will never be able to forget the spirit, sacrifice, and commitment of the American people during these years. Those of us

who did not witness these events offer our gratitude, as we are recipients of the freedom that was won because of our ancestors' fight:

THEREFORE, I, Rod Blagojevich, Governor of the State of Illinois, do hereby proclaim May 29, 2004 as WORLD WAR II VETERANS RECOGNITION DAY in Illinois and encourage all citizens to take a few moments to reflect upon the sacrifices that have been made over the years to ensure that our country remain a free land.

Issued by the Governor May 24, 2004.

Filed by the Secretary of State May 25, 2004.

2004-156
American Red Cross Heroes Day

WHEREAS, the American Red Cross is the largest humanitarian organization in the United States, and depends on volunteers to accomplish its mission: to provide relief to victims of disasters while helping people prevent, prepare for, and respond to emergencies. For more than 122 years, the people of the Red Cross have honored this mission; and

WHEREAS, during fiscal year 2002, over 1.2 million people volunteered at the Red Cross – serving on local and national advisory committees, performing direct services such as disaster response, CPR training, or HIV/AIDS education, and providing support services to our armed forces; and

WHEREAS, in the State of Illinois, American Red Cross chapters collected and distributed over 200,000 units of blood, provided health and safety training, including First Aid and CPR, to over 438,000 residents, communicated 22,946 emergency messages to and from members of our armed forces and their families, provided disaster education training to over 78,000 citizens, and provided financial assistance to more than 2,500 Illinois families who were victims of disaster, which ranged from residential fires to larger scale events including floods and tornadoes; and

WHEREAS, all of these services and many others are provided through 38 locally governed and supported Red Cross chapters and five Blood Services regions. Community involvement is critical for programs that prepare individuals, families, and neighborhoods for emergencies and through its presence across the country, the Red Cross is the leader in empowering people in every neighborhood to be ready and prepare for the unexpected. With five simple steps – make a plan, build a kit, get trained, volunteer, and give blood – the Red Cross and Americans from coast to coast will help make their communities safer; and

WHEREAS, those who need blood, those who are victims of disaster, or those who are the recipients from the broad spectrum of community services rely on the American Red Cross every day. Compassionate and caring people who wanted to make a difference in their community and across the nation, at home and abroad, channeled their support through the American Red Cross; and

WHEREAS, the State of Illinois and the American Red Cross continue to work together to make our communities safer. The American Red Cross was an original member of the Illinois

Terrorism Task Force and makes important contributions to our State efforts for homeland security. The State of Illinois is proud of its relationship with the American Red Cross; and

WHEREAS, on this day, we recognize the caring, selfless acts of the volunteer servants who man the Red Cross. It is people like these men and women who renew our faith in the human spirit:

THEREFORE, I, Rod Blagojevich, Governor of the State of Illinois, applaud the selfless dedication of countless Red Cross volunteers and staff, and do hereby proclaim May 27, 2004 as AMERICAN RED CROSS HEROES DAY in Illinois. As we commemorate this day, I call upon all of our citizens to get involved with their local Red Cross chapters and to become active participants in advancing the noble mission of the Red Cross.

Issued by the Governor May 25, 2004.

Filed by the Secretary of State May 26, 2004.

2004-157
Groundwater Protection Month

WHEREAS, half of all Illinois citizens, three-fourths of the community water supply systems, more than nine-tenths of rural residents, and a significant number of industries in Illinois rely on groundwater; and

WHEREAS, in the United States, more than 50 percent of the population uses groundwater as a source of drinking water, however, the largest use of groundwater is for irrigating crops; and

WHEREAS, since the use of groundwater is in such high demand, conserving our groundwater resources is extremely important and can be accomplished by simply reducing the amount of water we use. The top 10 ways to conserve groundwater are by:

disposing of chemicals properly
running full loads of dishes and laundry
recycling used motor oil
fixing leaky faucets
limiting the amount of fertilizer used on plants
watering plants only when necessary
taking short showers
keeping a pitcher of drinking water in the refrigerator
shutting off water while brushing teeth
getting involved in water education; and

WHEREAS, in Illinois, more than 400,000 wells are vulnerable to contamination from many potential threats, but barriers can be developed to reduce these contamination risks. Thousands of the wells in Illinois have fallen into disrepair and represent safety hazards, especially to children, but are also a water-quality threat by potentially routing contaminants directly to groundwater; and

WHEREAS, since a number of these abandoned wells are large in size and are constructed with brick or stone, they can pose an extreme health and safety risk when improperly sealed or not sealed at all; and

WHEREAS, the Illinois Water Well Sealing Coalition is working to reduce the risks of abandoned wells and has assisted the Illinois Departments of Agriculture and Public Health in developing and implementing a well sealing cost share program through local soil and water conservation districts and health departments; and

WHEREAS, the Illinois Groundwater Protection Act, enacted on September 24, 1987, established Illinois groundwater policy and developed a comprehensive, coordinated program of groundwater research, monitoring, education, technical assistance and regulatory authorities, designed to prevent the contamination of this public resource:

THEREFORE, I, Rod Blagojevich, Governor of the State of Illinois, do hereby proclaim May 2004 as GROUNDWATER PROTECTION MONTH in Illinois, and encourage all well owners to work with the Illinois Water Well Sealing Coalition to care for our invisible and invaluable resource, groundwater.

Issued by the Governor May 26, 2004.

Filed by the Secretary of State May 26, 2004.

2004-158
We Remember, We Care For Indigent Persons Day

WHEREAS, the world of an indigent person is accompanied by many mental, emotional, psychological and physical stresses that can affect these people for the rest of their lives. Depression runs rampant, living conditions are meager at best, and social isolation is common; and

WHEREAS, the plight of the needy, homeless, and less fortunate has become everyone's problem, not just their own. For many years, this devastating existence has been overlooked; and

WHEREAS, the State of Illinois, along with private organizations, are making attempts to remedy these situations, creating programs that deal with the immediate and long term problems associated with the indigent population. These social service programs have been created as a way to help them help themselves by providing multidimensional assistance; and

WHEREAS, the Departments of Public Aid and Human Services lead the way in providing valuable assistance to qualified persons in the state of Illinois. My administration continues to support the social service organizations that improve the quality of life of this special population:

THEREFORE, I, Rod Blagojevich, Governor of the State of Illinois, do hereby proclaim May 28, 2004 as WE REMEMBER, WE CARE FOR INDIGENT PERSONS DAY in Illinois, and encourage all citizens to be mindful of the silent struggles many members of our state have to endure, including poverty, disability, and abandonment.

Issued by the Governor May 26, 2004.

Filed by the Secretary of State May 26, 2004.

2004-159
Clinical/Biomedical Engineering Week

WHEREAS, the term "clinical equipment" refers to medical devices such as monitors, life-support systems, ventilators, lasers, defibrillators, and infusion pumps; and

WHEREAS, clinical equipment plays a vital role in today's healthcare system, helping to keep patients healthy and safe while being treated for their individual afflictions; and

WHEREAS, it takes a great deal of knowledge and hard work to maintain clinical equipment, and ensure that it is always in proper working order. That critical task is the responsibility of clinical and biomedical engineers; and

WHEREAS, clinical and biomedical engineers advance patient care by applying electrical, mechanical, chemical, optical, and other engineering principles to perform service, repair, and overhaul of all medical equipment and medical systems; and

WHEREAS, these dedicated health care professionals also work closely with hospitals to ensure that their equipment is constantly safe and up to date, and help to educate them on new equipment and procedures; and

WHEREAS, clinical and biomedical engineers are an invaluable component to our state-of-the-art healthcare system in this country. They truly provide a vital service to people in Illinois, and throughout the United States.

THEREFORE, I, Rod Blagojevich, Governor of the State of Illinois, do hereby proclaim June 6 – 12, 2004 as CLINICAL/BIOMEDICAL ENGINEERING WEEK in Illinois, and encourage all citizens to recognize clinical and biomedical engineers for the noble work that they perform each day.

Issued by the Governor May 26, 2004.

Filed by the Secretary of State May 26, 2004.

2004-160
Different Religions Week

WHEREAS, the World Christian Encyclopedia estimates that there are approximately 10,000 active religions in the world; and

WHEREAS, here in the United States, one of our basic rights, as Americans, is the freedom to practice any religion that we may choose. With that in mind, it is important that people in this country, and across the globe, respect and tolerate others for their religious beliefs; and

WHEREAS, throughout history, religious violence has been the cause of innumerable suffering for countless people; and

WHEREAS, religious violence continues to pervade our society today. In all continents, including North America, people are senselessly harmed or killed every day because of their preferences of religion; and

WHEREAS, Different Religions Week was first observed on July 11-18, 2003. The purpose of the week is to encourage individuals to attend a religious service of a faith other than their own, so that they may be exposed to a broader spectrum of spiritual belief; and

WHEREAS, Different Religions Week serves as a multi-purpose commemoration. Not only does it give us the opportunity to celebrate the great religious diversity in this country and throughout the world, but it also helps to create a level of understanding and tolerance that will hopefully lead to reduced incidents of religious violence:

THEREFORE, I, Rod Blagojevich, Governor of the State of Illinois, do hereby proclaim July 9-16, 2004 as DIFFERENT RELIGIONS WEEK in Illinois, and encourage all citizens to embrace the thousands of faiths that make up our world's population, and join in the efforts to eradicate religious violence from this planet.

Issued by the Governor May 26, 2004.

Filed by the Secretary of State May 26, 2004.

2004-161
Ethnic Heritage Museum Day

WHEREAS, the State of Illinois prides itself on its vast cultural diversity. In communities all throughout the State, many different races, religions and nationalities are represented; and

WHEREAS, the City of Rockford is one of the largest municipalities in Illinois, and boasts residents from all different walks of life; and

WHEREAS, as Rockford continues to expand and develop, new individuals and families are moving into the area, adding to the city's diverse citizenry; and

WHEREAS, the Ethnic Heritage Museum in Rockford is dedicated to promoting the city's diversity by celebrating the contributions of different ethnic groups to its growth and development; and

WHEREAS, on Sunday, June 6, 2004, the Ethnic Heritage Museum will hold their 14th Annual International Festival. This event will bring together people from across Rockford and throughout Illinois to commemorate the diversity that we enjoy as Illinoisans:

THEREFORE, I, Rod Blagojevich, Governor of the State of Illinois, do hereby proclaim June 6, 2004 as ETHNIC HERITAGE MUSEUM DAY in Illinois, and encourage all citizens to join in celebrating the museum's efforts to enrich people's lives through an understanding of Rockford's historical and cultural roots.

Issued by the Governor May 26, 2004.

Filed by the Secretary of State May 26, 2004.

2004-162
Gubernatorial Proclamation

As a result of continual heavy rains in northeastern Illinois and southern Wisconsin, river levels on the Des Plaines and Fox rivers are expected to be near or surpass record levels in

several cities along these rivers in Lake County and parts of Cook County. The floodwaters have already displaced many people from their homes and forced businesses and schools to close.

In the interest of aiding citizens of Illinois and the local governments responsible for ensuring public health and safety, I hereby declare that a disaster exists in the State of Illinois and specifically declare Lake County and the townships of Leyden, Lyons, Maine, Northfield, Proviso and Wheeling in Cook County as State Disaster Areas pursuant to the provisions of Section 3305/7 of the Illinois Emergency Management Agency Act, 20 ILCS 3305/7.

This gubernatorial proclamation of disaster will assist the Illinois Emergency Management Agency in coordinating State resources to support local governments in disaster response and recovery operations. This proclamation will also make possible the request for federal assistance to supplement the State's efforts if it is deemed necessary to protect the public health and safety and to assist in recovery.

Issued by the Governor: May 26, 2004

Filed by the Secretary of State: May 27, 2004

2004-163
Gubernatorial Proclamation

Severe storms and tornadoes struck communities in central and southern Illinois between May 24 and May 26, 2004, leaving behind a large path of destruction. These storms did considerable damage to many homes and businesses, toppled trees and power lines and resulted in one fatality.

In the interest of aiding citizens of Illinois and the local governments responsible for ensuring public health and safety, I hereby declare that a disaster exists in the State of Illinois and specifically declare Hardin, Morgan, Pike and Scott counties as State Disaster Areas pursuant to the provisions of Section 3305/7 of the Illinois Emergency Management Agency Act, 20 ILCS 3305/7.

This gubernatorial proclamation of disaster will assist the Illinois Emergency Management Agency in coordinating State resources to support local governments in disaster response and recovery operations. This proclamation will also make possible the request for federal assistance to supplement the State's efforts if it is deemed necessary to protect the pubic health and safety and to assist in recovery.

Issued by the Governor: May 27, 2004

Filed by the Secretary of State: May 27, 2004

2004-164
Myasthenia Gravis Awareness Month

WHEREAS, Myasthenia Gravis (MG) is a chronic disorder characterized by weakness and rapid muscle fatigue; and

WHEREAS, MG is the result of nerve impairments in which antibodies block or destroy the nerve-muscle junctions in certain parts of the body, causing weakness in muscles that aren't receiving the proper nerve signals; and

WHEREAS, those afflicted by MG may experience difficulties with speech, chewing, swallowing and breathing, as well as drooping eyelids and double vision; and

WHEREAS, although there is currently no known cause or cure for MG, it may be controlled with early diagnosis and proper medical treatment; and

WHEREAS, the Myasthenia Gravis Foundation of Illinois, Incorporated, is a voluntary health agency that has been aiding patients and their families for 32 years through counseling and education about MG; and

WHEREAS, in their quest to help those with MG achieve productive and rewarding lives, the Myasthenia Gravis Foundation of Illinois, Incorporated, stresses the importance of public awareness on this disorder, in order to increase the likelihood of early detection:

THEREFORE, I, Rod Blagojevich, Governor of the State of Illinois, do hereby proclaim June 2004 as MYASTHENIA GRAVIS AWARENESS MONTH in Illinois, and encourage all citizens to become cognizant of this debilitating ailment, and support groups such as the Myasthenia Gravis Foundation of Illinois, Incorporated, who work hard to improve the lives of people living with the disorder.

Issued by the Governor May 28, 2004.

Filed by the Secretary of State May 28, 2004.

2004-165

Vernon Jarrett Memorial Day

WHEREAS, Vernon Jarrett was born in 1921, and came to Chicago in 1946 during the heyday of the Great Migration. He once reflected: "I was one of the thousands of dreamers who had left the South and journeyed to the big cities of the North;" and

WHEREAS, upon his arrival in Chicago, Mr. Jarrett began his career as a journalist with the Chicago Defender newspaper; and

WHEREAS, Mr. Jarrett broke into broadcasting in 1948 with Negro Newsfront, radio's first daily newscast produced by African-Americans. He would go on to host a Sunday morning talk show on WLS-TV for many years; and

WHEREAS, in 1970, Mr. Jarrett was hired by the Chicago Tribune and became the newspaper's first African-American syndicated columnist. He would soon become renowned in the Chicago area for his commentary on the social and economic trends affecting African-Americans, and the global concerns of pan-African politics; and

WHEREAS, Mr. Jarrett left the Tribune in 1983 and began writing for the Chicago Sun Times, where he continued his tradition of political and social commentary relating to the African-American experience; and

WHEREAS, Mr. Jarrett's commitment to excellence in journalism throughout his career has earned him numerous honors and awards, including the first NAACP James Weldon Johnson Achievement Award, and his induction into the National Literary Hall of Fame at the University of Chicago's Gwendolyn Brooks Center; and

WHEREAS, along with his numerous journalistic accomplishments, Mr. Jarrett was also active in the community. In 1977, he created an NAACP-sponsored program called the Afro-Academic, Cultural, Technological and Scientific Olympics (ACT-SO). This program, which has since become an annual event, was designed as an award ceremony for exceptional African-American students throughout the nation; and

WHEREAS, on May 23, 2004, Vernon Jarrett passed away, and is survived by his wife, Fernetta, his son, Thomas, and his three grandchildren; and

WHEREAS, here in Illinois, it is important that we take the time to honor this great man for his innumerable contributions to the profession of journalism, to the prosperity of African-Americans, and to the overall well-being of the city of Chicago and the State of Illinois:

THEREFORE, I, Rod Blagojevich, Governor of the State of Illinois, do hereby proclaim Saturday, May 29, 2004 as VERNON JARRETT MEMORIAL DAY in Illinois, and encourage all citizens to recognize this tragic loss of one of Illinois' most treasured figures.

Issued by the Governor May 28, 2004.

Filed by the Secretary of State May 28, 2004.

ILLINOIS ADMINISTRATIVE CODE
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