

# 2008

# ILLINOIS

# REGISTER

RULES  
OF GOVERNMENTAL  
AGENCIES



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## INTRODUCTION

The Illinois Register is the official state document for publishing public notice of rulemaking activity initiated by State governmental agencies. The table of contents is arranged categorically by rulemaking activity and alphabetically by agency within each category.

Rulemaking activity consists of proposed or adopted new rules; amendments to or repealers of existing rules; and rules promulgated by emergency or peremptory action. Executive Orders and Proclamations issued by the Governor; notices of public information required by State Statute; and activities (meeting agendas; Statements of Objection or Recommendation, etc.) of the Joint Committee on Administrative Rules (JCAR), a legislative oversight committee which monitors the rulemaking activities of State Agencies; is also published in the Register.

The Register is a weekly update of the Illinois Administrative Code (a compilation of the rules adopted by State agencies). The most recent edition of the Code, along with the Register, comprise the most current accounting of State agencies' rulemakings.

The Illinois Register is the property of the State of Illinois, granted by the authority of the Illinois Administrative Procedure Act [5 ILCS 100/1-1, et seq.].

### 2008 REGISTER SCHEDULE VOLUME #32

<u>Issue #</u>	<u>Rules Due Date</u>	<u>Date of Issue</u>
1	December 21, 2007*	January 4, 2008
2	December 31, 2007	January 11, 2008
3	January 7, 2008	January 18, 2008
4	January 14, 2008	January 25, 2008
5	January 22, 2008	February 1, 2008
6	January 28, 2008	February 8, 2008
7	February 4, 2008	February 15, 2008
8	February 11, 2008	February 22, 2008
9	February 19, 2008	February 29, 2008
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29	July 7, 2008	July 18, 2008
30	July 14, 2008	July 25, 2008
31	July 21, 2008	August 1, 2008
32	July 28, 2008	August 8, 2008
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34	August 11, 2008	August 22, 2008
35	August 18, 2008	August 29, 2008
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46	November 3, 2008	November 14, 2008
47	November 10, 2008	November 21, 2008
48	November 17, 2008	December 1, 2008
49	November 24, 2008	December 5, 2008
50	December 1, 2008	December 12, 2008
51	December 8, 2008	December 19, 2008
52	December 15, 2008	December 26, 2008
53	December 22, 2008	January 2, 2009

## DEPARTMENT OF HUMAN SERVICES

## NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Office of Inspector General Adults with Disabilities Abuse Project
- 2) Code Citation: 59 Ill. Adm. Code 51
- 3) 

<u>Section Numbers</u> :	<u>Proposed Action</u> :
51.20	Amend
51.59	New
51.90	Amend
- 4) Statutory Authority: Implementing and authorized by the Abuse of Adults with Disabilities Intervention Act [20 ILCS 2435]
- 5) A Complete Description of the Subjects and Issues Involved: As a result of PA 94-0852 and PA 94-0851, this rulemaking will add a new Section authorizing subpoena authority for the program and authorize the release of information to a professional who made a report of abuse, neglect or exploitation whether the report was accepted or rejected. "Unsubstantiated" and "Unfounded" definitions are being added to the Part for clarification purposes.
- 6) Any published studies or reports, along with the sources of underlying data, that were used when composing this rulemaking: No
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This rulemaking does not create or expand a State mandate.
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may present their comments concerning this rulemaking within 45 days after the date of this issue of the *Illinois Register*. All requests and comments should be submitted in writing to:

Tracie Drew, Chief

## DEPARTMENT OF HUMAN SERVICES

## NOTICE OF PROPOSED AMENDMENTS

Bureau of Administrative Rules and Procedures  
Department of Human Services  
100 South Grand Avenue East  
Harris Building, 3<sup>rd</sup> Floor  
Springfield, Illinois 62762

217/785-9772

- 13) 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
- 14) Regulatory agenda on which this rulemaking was summarized: July 2006

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

## DEPARTMENT OF HUMAN SERVICES

## NOTICE OF PROPOSED AMENDMENTS

## TITLE 59: MENTAL HEALTH

## CHAPTER I: DEPARTMENT OF HUMAN SERVICES

## PART 51

## OFFICE OF INSPECTOR GENERAL

## ADULTS WITH DISABILITIES ABUSE PROJECT

## Section

51.10	Purpose of Project
51.20	Definitions
51.30	Reporting Abuse, Neglect or Exploitation of an Adult with Disabilities
51.40	Receipt of Reports
51.50	Assessment of Reports
<a href="#">51.59</a>	<a href="#">Subpoena Authority</a>
51.60	Service Plan
51.65	Service Priority
51.70	Consent
51.80	Access of an Adult with Disabilities
51.90	Confidentiality

AUTHORITY: Implementing and authorized by the Abuse of Adults with Disabilities Intervention Act [20 ILCS 2435].

SOURCE: Adopted by emergency rule at 24 Ill. Reg. 10362, effective July 1, 2000, for a maximum of 150 days; adopted at 24 Ill. Reg. 17136, effective November 6, 2000; amended at 30 Ill. Reg. 11543, effective June 20, 2006; amended at 32 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

**Section 51.20 Definitions**

*"Abuse" means causing any physical, sexual or mental injury to an adult with disabilities, including exploitation of the adult's financial resources. Nothing in this Part shall be construed to mean an adult with disabilities is a victim of abuse or neglect for the sole reason that he or she is being furnished with or relies upon treatment by spiritual means through prayer alone, in accordance with the tenets and practices of a recognized church or religious denomination. Nothing in this Part shall be construed to mean an adult with disabilities is a victim of abuse because of health care services provided or not provided by a licensed health care professional.*

## DEPARTMENT OF HUMAN SERVICES

## NOTICE OF PROPOSED AMENDMENTS

"Act" means the Abuse of Adults with Disabilities Intervention Act [20 ILCS 2435].

*"Adult with disabilities" means a person age 18 through 59 who resides in a domestic living situation and whose physical or mental disability impairs his or her ability to seek or obtain protection from abuse, neglect or exploitation.*

*"Adults with Disabilities Abuse Project" or "Project" means the program within the Office of Inspector General designated by the Department of Human Services to receive and assess reports of alleged or suspected abuse, neglect or exploitation of adults with disabilities.*

*"Domestic living situation" means a residence where the adult with disabilities lives alone or with his or her family or household members, a care giver, or others or at a board and care home or other community-based unlicensed facility, but it is not:*

*A licensed facility as defined in Section 1-113 of the Nursing Home Care Act [210 ILCS 45/1 113].*

*A life care facility as defined in the Life Care Facilities Act [210 ILCS 40].*

*A home, institution or other place operated by the federal government, a federal agency, or the State.*

*A hospital, sanitarium, or other institution, the principal activity or business of which is the diagnosis, care, and treatment of human illness through the maintenance and operation of organized facilities and that is required to be licensed under the Hospital Licensing Act [210 ILCS 85].*

*A community living facility as defined in the Community Living Facilities Licensing Act [210 ILCS 35].*

*A community-integrated living arrangement as defined in the Community-Integrated Living Arrangement Act [210 ILCS 135] or community residential alternative as licensed under that Act.*

## DEPARTMENT OF HUMAN SERVICES

## NOTICE OF PROPOSED AMENDMENTS

*"Emergency" means a situation in which an adult with disabilities is in danger of death or great bodily harm.*

*"Exploitation" means the illegal, including tortious, use of the assets or resources of an adult with disabilities. Exploitation includes, but is not limited to, the misappropriation of assets or resources of an adult with disabilities by undue influence, by breach of a fiduciary relationship, by fraud, deception or extortion, or by the use of assets or resources in a manner contrary to law.*

*"Family or household members" means a person who as a family member, volunteer or paid care provider has assumed responsibility for all or a portion of the care of an adult with disabilities who needs assistance with the activities of daily living.*

*"Neglect" means the failure of another individual to provide an adult with disabilities with, or the willful withholding from an adult with disabilities of, the necessities of life, including, but not limited to, food, clothing, shelter, or medical care. Nothing in the definition of "neglect" shall be construed to impose a requirement that assistance be provided to an adult with disabilities over his or her objection in the absence of a court order, nor to create any new affirmative duty to provide support, assistance or intervention to an adult with disabilities. Nothing in this Part shall be construed to mean that an adult with disabilities is a victim of neglect because of health care services provided or not provided by licensed health care professionals.*

*"Physical abuse" includes sexual abuse and means any of the following:*

*knowing and reckless use of physical force, confinement or restraint;*

*knowing, repeated and unnecessary sleep deprivation; or*

*knowing and reckless conduct which creates an immediate risk of physical harm.*

*"Secretary" means the Secretary of the Department of Human Services.*

*"Sexual abuse" means touching, fondling, sexual threats, sexually inappropriate remarks or other sexual activity with an adult with disabilities when the adult with disabilities is unable to understand, unwilling to consent, threatened or*

## DEPARTMENT OF HUMAN SERVICES

## NOTICE OF PROPOSED AMENDMENTS

*physically forced to engage in sexual behavior.*

*"Substantiated case" means a reported case of alleged or suspected abuse, neglect or exploitation in which the Adults with Disabilities Abuse Project staff, after assessment, determines that there is reason to believe abuse, neglect or exploitation has occurred. [20 ILCS 2435/15]*

"Unfounded case" means a reported case of alleged or suspected abuse, neglect or exploitation in which the Adults with Disabilities Abuse Project staff, after assessment, determines that there is no evidence that abuse, neglect or exploitation occurred.

"Unsubstantiated case" means a reported case of alleged or suspected abuse, neglect or exploitation in which the Adults with Disabilities Abuse Project staff, after assessment, determines that there is some evidence that supports the allegation of abuse, neglect or exploitation, but there is insufficient reason to believe that it occurred.

(Source: Amended at 32 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 51.59 Subpoena Authority**

The Office of the Inspector General has the power to subpoena witnesses and compel the production of books, papers, and documents, including financial records and medical records, pertinent to an assessment authorized by the Act. Mental health records of victims shall be confidential as provided under the Mental Health and Developmental Disabilities Confidentiality Act [740 ILCS 110]. Financial records obtained during the course of an assessment are confidential and may be released only with the consent of the victim or victim's guardian or in response to a court order, a grand jury subpoena, or a subpoena from a law enforcement authority. [20 ILCS 2435/59]

(Source: Added at 32 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 51.90 Confidentiality**

*All records concerning reports of abuse, neglect or exploitation of an adult with disabilities and all records generated as a result of the reports shall be confidential and shall not be disclosed except as specifically authorized by the Act or other applicable law. A person making a report of alleged abuse, neglect, or exploitation functioning in his or her capacity as a licensed*

## DEPARTMENT OF HUMAN SERVICES

## NOTICE OF PROPOSED AMENDMENTS

professional may be entitled to the finding of the investigative assessment and subsequent referrals as authorized by the Inspector General. Office of Inspector General (OIG) investigators shall inform the alleged victim or guardian that information regarding the finding and referrals may be released to the person who made the report if that person is a professional, and the alleged victim or guardian shall be afforded the opportunity to refuse to consent to the release of that information. Access to records, but not access to the identity of the person or persons making a report of alleged abuse, neglect or exploitation that may be contained in the record, shall be allowed to the following persons and for the following reasons:

- a) *Project staff in the furtherance of their responsibilities;*
- b) *A law enforcement agency investigating alleged or suspected abuse, neglect or exploitation of an adult with disabilities;*
- c) *An adult with disabilities reported to be abused, neglected or exploited, or his or her guardian unless the guardian is the alleged perpetrator of the abuse, neglect or exploitation;*
- d) *A court, upon its finding that access to records may be necessary for the determination of an issue before the court. However, the access shall be limited to an in camera inspection of the records, unless the court determines that disclosure of the information contained therein is necessary for the resolution of the issue then pending before it;*
- e) *A grand jury, upon its determination that access to the records is necessary to the conduct of its official business;*
- f) *Any person authorized by the Secretary, in writing, for audit or bona fide research purposes;*
- g) *A coroner or medical examiner who has reason to believe that abuse or neglect contributed to or resulted in the death of an adult with disabilities; or*
- h) *The agency designated pursuant to the Protection and Advocacy for Developmentally Disabled Persons Act [405 ILCS 40] and the Protection and Advocacy for Mentally Ill Persons Act [405 ILCS 45]. [20 ILCS 2435/55]*

(Source: Amended at 32 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## DEPARTMENT OF HUMAN SERVICES

## NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Family Assistance and Home-Based Support Programs for Persons with Mental Disabilities
- 2) Code Citation: 59 Ill. Adm. Code 117
- 3) Section Number: 117.300      Proposed Action: Amend
- 4) Statutory Authority: Implementing the Home-Based Support Services Law for Mentally Disabled Adults [405 ILCS 80/2-1] and the Family Assistance Law for Mentally Disabled Children [405 ILCS 80/3-1] and authorized by Section 2-16 of the Home-Based Support Services Law for Mentally Disabled Adults [405 ILCS 80/2-16], Section 5-104 of the Mental Health and Developmental Disabilities Code [405 ILCS 5/5-104] and Section 5 of the Mental Health and Developmental Disabilities Act [20 ILCS 1705/5]
- 5) A Complete Description of the Subjects and Issues involved: This rulemaking changes the eligibility criteria of the maximum household federal taxable income for the Family Assistance Program from less than \$50,000 to less than \$65,000.
- 6) Any published studies or reports, along with the sources of underlying data, that were used when composing this rulemaking: No
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a State mandate.
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may present their comments concerning this rulemaking within 45 days after the date of this issue of the *Illinois Register*. All requests and comments should be submitted in writing to:

Tracie Drew, Chief

## DEPARTMENT OF HUMAN SERVICES

## NOTICE OF PROPOSED AMENDMENT

Bureau of Administrative Rules and Procedures  
Department of Human Services  
100 South Grand Avenue East  
Harris Building, 3<sup>rd</sup> Floor  
Springfield, Illinois 62762

217/785-9772

- 13) 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
- 14) Regulatory agenda on which this rulemaking was summarized: January 2008

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

## DEPARTMENT OF HUMAN SERVICES

## NOTICE OF PROPOSED AMENDMENT

TITLE 59: MENTAL HEALTH  
CHAPTER I: DEPARTMENT OF HUMAN SERVICESPART 117  
FAMILY ASSISTANCE AND HOME-BASED  
SUPPORT PROGRAMS FOR PERSONS WITH MENTAL DISABILITIES

## SUBPART A: GENERAL PROVISIONS

## Section

117.100	Purpose
117.110	Incorporation by reference
117.115	Principles
117.120	Definitions
117.125	Individuals' records and informed consent
117.130	Outreach plan
117.135	Preliminary application process
117.140	Application and eligibility determination process
117.145	Hearings and appeals

## SUBPART B: HOME-BASED SUPPORT SERVICES PROGRAM

## Section

117.200	Eligibility criteria
117.205	Notice of eligibility and service authorization
117.210	Notice of ineligibility and right to appeal
117.215	Services and funding provisions
117.220	Service facilitation services
117.225	Service/treatment plan
117.230	Selection of services
117.235	Service monitoring
117.240	Service termination

## SUBPART C: FAMILY ASSISTANCE PROGRAM

## Section

117.300	Eligibility criteria
117.305	Eligibility determination process
117.310	Notice of eligibility or ineligibility

## DEPARTMENT OF HUMAN SERVICES

## NOTICE OF PROPOSED AMENDMENT

- 117.315 Right to appeal
- 117.320 Services and funding provisions
- 117.325 Service facilitation services
- 117.330 Stipend termination
- 117.335 Right to investigate suspected fraud
- 117.340 Denial of other services
- 117.345 Maximizing the use of other agency services
- 117.350 Out-of-home placement

## 117.APPENDIX A Preliminary Application forms

117.ILLUSTRATION A DMHDD-1235, Home-Based Support Services Program Application

117.ILLUSTRATION B DMHDD-1236, Family Assistance Program Application

## 117.APPENDIX B Eligibility determination forms

117.ILLUSTRATION A DMHDD-1237.1, Eligibility Determination – Primary Examiners – Adults with a Severe mental Illness

117.ILLUSTRATION B DMHDD-1237.2, Eligibility Determination – Primary Examiners – Children with Severe Emotional Disturbance

117.ILLUSTRATION C DMHDD-1237.3, Eligibility Determination – Primary Examiners – Children and Adults with Severe Autism

117.ILLUSTRATION D DMHDD-1237.4, Eligibility Determination – Primary Examiners – Children and Adults with Severe or Profound Mental Retardation

117.ILLUSTRATION E DMHDD-1237.5, Eligibility Determination – Primary Examiners

**AUTHORITY:** Implementing the Home-Based Support Services Law for Mentally Disabled Adults [405 ILCS 80/2-1] and the Family Assistance Law for Mentally Disabled Children [405 ILCS 80/3-1] and authorized by Section 2-16 of the Home-Based Support Services Law for Mentally Disabled Adults [405 ILCS 80/2-16], Section 5-104 of the Mental Health and Developmental Disabilities Code [405 ILCS 5/5-104] and Section 5 of the Mental Health and Developmental Disabilities Act [20 ILCS 1705/5].

**SOURCE:** Emergency rules adopted at 14 Ill. Reg. 14987, effective September 4, 1990, for a maximum of 150 days; adopted at 15 Ill. Reg. 1511, effective January 22, 1991; recodified from the Department of Mental Health and Developmental Disabilities to the Department of Human Services at 21 Ill. Reg. 9321; amended at 32 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART C: FAMILY ASSISTANCE PROGRAM

## DEPARTMENT OF HUMAN SERVICES

## NOTICE OF PROPOSED AMENDMENT

**Section 117.300 Eligibility criteria**

- a) The number of eligible families chosen to participate in the Family Assistance Program shall be contingent upon the availability of funds appropriated by the General Assembly for these purposes.
- b) To be eligible, a family must meet all of the following criteria:
  - 1) Have a child 17 years old or younger who has a diagnosis of one of the conditions described in Section 117.200(b)(6) and who lives in the home. The eligible child may be living in an out-of-home placement at the time of application but must live with the parent within 60 days after the date of being notified of acceptance.
  - 2) Reside in Illinois.
  - 3) Have a maximum household federal taxable income of less than ~~\$65,000~~\$50,000 annually (natural or adoptive family) as verified by the family's federal income tax return. Income eligibility shall be based on the year immediately preceding the date of application, unless the family can verify that its federal taxable income shall be less in the year the application is made. Families who can verify that they did not file an income tax return because of limited income shall be considered eligible. Such families shall be required to verify household income by listing all of their income from all sources from the previous year. The family income limit shall not apply to children in foster care. In such cases, the foster child's income shall be the determinant.
  - 4) Apply annually.

(Source: Amended at 32 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## DEPARTMENT OF HUMAN SERVICES

## NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Food Stamps
- 2) Code Citation: 89 Ill. Adm. Code 121
- 3) Section Number: 121.63                      Proposed Action: Amendment
- 4) Statutory Authority: Implementing Sections 12-4.4 through 12-4.6 and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-4.4 through 12-4.6 and 12-13]
- 5) A Complete Description of the Subjects and Issues Involved: In accordance with 7 CFR 273.9(d)(6)(iii) and Food and Nutrition Service policy, this rulemaking revises the deductions from monthly income. This rulemaking increases the Limited Utility Standard to \$183, the Single Utility Standard to \$38, the Telephone Standard to \$29 and reduces the Air Conditioning /Heating Standard to \$295. These changes are the result of the annual review of the Food Stamp Program standards required by Food and Nutrition Service regulations. The Food and Nutrition Service has approved these amounts.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? Yes

<u>Section Numbers:</u>	<u>Proposed Action:</u>	<u>Illinois Register Citation:</u>
121.23	Amendment	July 20, 2007; 31 Ill. Reg. 10446
121.24	Amendment	July 20, 2007; 31 Ill. Reg. 10446
121.26	Amendment	July 20, 2007; 31 Ill. Reg. 10446
121.10	Amendment	September 7, 2007; 31 Ill. Reg. 12652
121.120	Amendment	September 7, 2007; 31 Ill. Reg. 12652
121.125	Amendment	September 7, 2007; 31 Ill. Reg. 12652
121.71	Amendment	September 14, 2007; 31 Ill. Reg. 13076
121.94	Amendment	November 9, 2007; 31 Ill. Reg. 15005

## DEPARTMENT OF HUMAN SERVICES

## NOTICE OF PROPOSED AMENDMENT

121.98                      Amendment                      November 9, 2007; 31 Ill. Reg. 15005

- 11) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a State mandate.
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may present their comments concerning this rulemaking within 45 days after the date of this issue of the *Illinois Register*. All requests and comments should be submitted in writing to:

Tracie Drew, Chief  
Bureau of Administrative Rules and Procedures  
Department of Human Services  
100 South Grand Avenue East  
Harris Building, 3<sup>rd</sup> Floor  
Springfield, Illinois 62762

217/785-9772

- 13) 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
- 14) Regulatory agenda on which this rulemaking was summarized: January 2008

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

## DEPARTMENT OF HUMAN SERVICES

## NOTICE OF PROPOSED AMENDMENT

TITLE 89: SOCIAL SERVICES  
CHAPTER IV: DEPARTMENT OF HUMAN SERVICES  
SUBCHAPTER b: ASSISTANCE PROGRAMSPART 121  
FOOD STAMPS

## SUBPART A: APPLICATION PROCEDURES

## Section

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

## SUBPART B: NON-FINANCIAL FACTORS OF ELIGIBILITY

## Section

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

## SUBPART C: FINANCIAL FACTORS OF ELIGIBILITY

## Section

## DEPARTMENT OF HUMAN SERVICES

## NOTICE OF PROPOSED AMENDMENT

121.30	Unearned Income
121.31	Exempt Unearned Income
121.32	Education Benefits (Repealed)
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121.160	Persons Required to Participate
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121.165	Community Work
121.166	Assessment and Employability Plan (Repealed)
121.167	Counseling/Prevention Services
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121.172	Basic Education Activity
121.174	Job Readiness Activity
121.176	Work Experience Activity
121.177	Illinois Works Component (Repealed)
121.178	Job Training Component (Repealed)
121.179	JTPA Employability Services Component (Repealed)
121.180	Grant Diversion Component (Repealed)
121.182	Earnfare Activity
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121.201	Establishing a Claim for Intentional Violation of the Program (Recodified)
121.202	Establishing a Claim for Unintentional Household Errors and Administrative Errors (Recodified)
121.203	Collecting Claim Against Households (Recodified)
121.204	Failure to Respond to Initial Demand Letter (Recodified)
121.205	Methods of Repayment of Food Stamp Claims (Recodified)
121.206	Determination of Monthly Allotment Reductions (Recodified)
121.207	Failure to Make Payment in Accordance with Repayment Schedule (Recodified)
121.208	Suspension and Termination of Claims (Recodified)

## SUBPART I: WORK REQUIREMENT FOR FOOD STAMPS

## Section

121.220	Work Requirement Components (Repealed)
121.221	Meeting the Work Requirement with the Earnfare Component (Repealed)
121.222	Volunteer Community Work Component (Repealed)

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- 121.223 Work Experience Component (Repealed)
- 121.224 Supportive Service Payments to Meet the Work Requirement (Repealed)
- 121.225 Meeting the Work Requirement with the Illinois Works Component (Repealed)
- 121.226 Meeting the Work Requirement with the JTPA Employability Services Component (Repealed)

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

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

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effective October 1, 1984; preemptory amendment at 8 Ill. Reg. 22145, effective November 1, 1984; amended at 9 Ill. Reg. 302, effective January 1, 1985; amended at 9 Ill. Reg. 6804, effective May 1, 1985; amended at 9 Ill. Reg. 8665, effective May 29, 1985; preemptory amendment at 9 Ill. Reg. 8898, effective July 1, 1985; amended at 9 Ill. Reg. 11334, effective July 8, 1985; amended at 9 Ill. Reg. 14334, effective September 6, 1985; preemptory amendment at 9 Ill. Reg. 15582, effective October 1, 1985; amended at 9 Ill. Reg. 16889, effective October 16, 1985; amended at 9 Ill. Reg. 19726, effective December 9, 1985; amended at 10 Ill. Reg. 229, effective December 20, 1985; preemptory amendment at 10 Ill. Reg. 7387, effective April 21, 1986; preemptory amendment at 10 Ill. Reg. 7941, effective May 1, 1986; amended at 10 Ill. Reg. 14692, effective August 29, 1986; preemptory amendment at 10 Ill. Reg. 15714, effective October 1, 1986; Sections 121.200 thru 121.208 recodified to 89 Ill. Adm. Code 165 at 10 Ill. Reg. 21094; preemptory amendment at 11 Ill. Reg. 3761, effective February 11, 1987; emergency amendment at 11 Ill. Reg. 3754, effective February 13, 1987, for a maximum of 150 days; emergency amendment at 11 Ill. Reg. 9968, effective May 15, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 10269, effective May 22, 1987; amended at 11 Ill. Reg. 10621, effective May 25, 1987; preemptory amendment at 11 Ill. Reg. 11391, effective July 1, 1987; preemptory amendment at 11 Ill. Reg. 11855, effective June 30, 1987; emergency amendment at 11 Ill. Reg. 12043, effective July 6, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 13635, effective August 1, 1987; amended at 11 Ill. Reg. 14022, effective August 10, 1987; emergency amendment at 11 Ill. Reg. 15261, effective September 1, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 15480, effective September 4, 1987; amended at 11 Ill. Reg. 15634, effective September 11, 1987; amended at 11 Ill. Reg. 18218, effective October 30, 1987; preemptory amendment at 11 Ill. Reg. 18374, effective October 30, 1987; amended at 12 Ill. Reg. 877, effective December 30, 1987; emergency amendment at 12 Ill. Reg. 1941, effective December 31, 1987, for a maximum of 150 days; amended at 12 Ill. Reg. 4204, effective February 5, 1988; amended at 12 Ill. Reg. 9678, effective May 23, 1988; amended at 12 Ill. Reg. 9922, effective June 1, 1988; amended at 12 Ill. Reg. 11463, effective June 30, 1988; amended at 12 Ill. Reg. 12824, effective July 22, 1988; emergency amendment at 12 Ill. Reg. 14045, effective August 19, 1988, for a maximum of 150 days; preemptory amendment at 12 Ill. Reg. 15704, effective October 1, 1988; preemptory amendment at 12 Ill. Reg. 16271, effective October 1, 1988; amended at 12 Ill. Reg. 20161, effective November 30, 1988; amended at 13 Ill. Reg. 3890, effective March 10, 1989; amended at 13 Ill. Reg. 13619, effective August 14, 1989; preemptory amendment at 13 Ill. Reg. 15859, effective October 1, 1989; amended at 14 Ill. Reg. 729, effective January 1, 1990; amended at 14 Ill. Reg. 6349, effective April 13, 1990; amended at 14 Ill. Reg. 13202, effective August 6, 1990; preemptory amendment at 14 Ill. Reg. 15158, effective October 1, 1990; amended at 14 Ill. Reg. 16983, effective September 30, 1990; amended at 15 Ill. Reg. 11150, effective July 22, 1991; amended at 15 Ill. Reg. 11957, effective August 12, 1991; preemptory amendment at 15 Ill. Reg. 14134, effective October 1, 1991; emergency amendment at 16 Ill. Reg. 757, effective January 1, 1992, for a maximum of 150

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days; amended at 16 Ill. Reg. 10011, effective June 15, 1992; amended at 16 Ill. Reg. 13900, effective August 31, 1992; emergency amendment at 16 Ill. Reg. 16221, effective October 1, 1992, for a maximum of 150 days; preemptory amendment at 16 Ill. Reg. 16345, effective October 1, 1992; amended at 16 Ill. Reg. 16624, effective October 23, 1992; amended at 17 Ill. Reg. 644, effective December 31, 1992; amended at 17 Ill. Reg. 4333, effective March 19, 1993; amended at 17 Ill. Reg. 14625, effective August 26, 1993; emergency amendment at 17 Ill. Reg. 15149, effective September 7, 1993, for a maximum of 150 days; preemptory amendment at 17 Ill. Reg. 17477, effective October 1, 1993; expedited correction at 17 Ill. Reg. 21216, effective October 1, 1993; amended at 18 Ill. Reg. 2033, effective January 21, 1994; emergency amendment at 18 Ill. Reg. 2509, effective January 27, 1994, for a maximum of 150 days; amended at 18 Ill. Reg. 3427, effective February 28, 1994; amended at 18 Ill. Reg. 8921, effective June 3, 1994; amended at 18 Ill. Reg. 12829, effective August 5, 1994; amended at 18 Ill. Reg. 14103, effective August 26, 1994; amended at 19 Ill. Reg. 5626, effective March 31, 1995; amended at 19 Ill. Reg. 6648, effective May 5, 1995; emergency amendment at 19 Ill. Reg. 12705, effective September 1, 1995, for a maximum of 150 days; preemptory amendment at 19 Ill. Reg. 13595, effective October 1, 1995; amended at 20 Ill. Reg. 1593, effective January 11, 1996; preemptory amendment at 20 Ill. Reg. 2229, effective January 17, 1996; amended at 20 Ill. Reg. 7902, effective June 1, 1996; amended at 20 Ill. Reg. 11935, effective August 14, 1996; emergency amendment at 20 Ill. Reg. 13381, effective October 1, 1996, for a maximum of 150 days; emergency amendment at 20 Ill. Reg. 13668, effective October 8, 1996, for a maximum of 150 days; amended at 21 Ill. Reg. 3156, effective February 28, 1997; amended at 21 Ill. Reg. 7733, effective June 4, 1997; recodified from the Department of Public Aid to the Department of Human Services at 21 Ill. Reg. 9322; emergency amendment at 22 Ill. Reg. 1954, effective January 1, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 5502, effective March 4, 1998; amended at 22 Ill. Reg. 7969, effective May 15, 1998; emergency amendment at 22 Ill. Reg. 10660, effective June 1, 1998, for a maximum of 150 days; emergency amendment at 22 Ill. Reg. 12167, effective July 1, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 16230, effective September 1, 1998; amended at 22 Ill. Reg. 19787, effective October 28, 1998; emergency amendment at 22 Ill. Reg. 19934, effective November 1, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 20099, effective November 1, 1998; emergency amendment at 23 Ill. Reg. 2601, effective February 1, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 3374, effective March 1, 1999; amended at 23 Ill. Reg. 7285, effective June 18, 1999; emergency amendment at 23 Ill. Reg. 13253, effective October 13, 1999, for a maximum of 150 days; emergency amendment at 24 Ill. Reg. 3871, effective February 24, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 4180, effective March 2, 2000; amended at 24 Ill. Reg. 10198, effective June 27, 2000; amended at 24 Ill. Reg. 15428, effective October 10, 2000; emergency amendment at 24 Ill. Reg. 15468, effective October 1, 2000, for a maximum of 150 days; amended at 25 Ill. Reg. 845, effective January 5, 2001; amended at 25 Ill. Reg. 2423, effective January 25, 2001; emergency amendment at 25 Ill. Reg. 2439, effective January 29, 2001, for a

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maximum of 150 days; emergency amendment at 25 Ill. Reg. 3707, effective March 1, 2001, for a maximum of 150 days; emergency expired July 28, 2001; amended at 25 Ill. Reg. 7720, effective June 7, 2001; amended at 25 Ill. Reg. 10823, effective August 12, 2001; amended at 25 Ill. Reg. 11856, effective August 31, 2001; emergency amendment at 25 Ill. Reg. 13309, effective October 1, 2001, for a maximum of 150 days; amended at 26 Ill. Reg. 151, effective January 1, 2002; amended at 26 Ill. Reg. 2025, effective February 1, 2002; amended at 26 Ill. Reg. 13530, effective September 3, 2002; preemptory amendment at 26 Ill. Reg. 15099, effective October 1, 2002; amended at 26 Ill. Reg. 16484, effective October 25, 2002; amended at 27 Ill. Reg. 2889, effective February 7, 2003; expedited correction at 27 Ill. Reg. 14262, effective February 7, 2003; amended at 27 Ill. Reg. 4583, effective February 28, 2003; amended at 27 Ill. Reg. 7273, effective April 7, 2003; amended at 27 Ill. Reg. 12569, effective July 21, 2003; preemptory amendment at 27 Ill. Reg. 15604, effective October 1, 2003; amended at 27 Ill. Reg. 16108, effective October 6, 2003; amended at 27 Ill. Reg. 18445, effective November 20, 2003; amended at 28 Ill. Reg. 1104, effective December 31, 2003; amended at 28 Ill. Reg. 3857, effective February 13, 2004; amended at 28 Ill. Reg. 10393, effective July 6, 2004; preemptory amendment at 28 Ill. Reg. 13834, effective October 1, 2004; emergency amendment at 28 Ill. Reg. 15323, effective November 10, 2004, for a maximum of 150 days; emergency expired April 8, 2005; amended at 29 Ill. Reg. 2701, effective February 4, 2005; amended at 29 Ill. Reg. 5499, effective April 1, 2005; preemptory amendment at 29 Ill. Reg. 12132, effective July 14, 2005; emergency amendment at 29 Ill. Reg. 16042, effective October 4, 2005, for a maximum of 150 days; emergency expired March 2, 2006; preemptory amendment at 29 Ill. Reg. 16538, effective October 4, 2005; emergency amendment at 30 Ill. Reg. 7804, effective April 6, 2006, for a maximum of 150 days; emergency expired September 2, 2006; amended at 30 Ill. Reg. 11236, effective June 12, 2006; amended at 30 Ill. Reg. 13863, effective August 1, 2006; amended at 30 Ill. Reg. 15681, effective September 12, 2006; preemptory amendment at 30 Ill. Reg. 16470, effective October 1, 2006; amended at 31 Ill. Reg. 6991, effective April 30, 2007; amended at 31 Ill. Reg. 10482, effective July 9, 2007; amended at 31 Ill. Reg. 11318, effective July 23, 2007; preemptory amendment at 31 Ill. Reg. 14372, effective October 1, 2007; amended at 32 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART D: ELIGIBILITY STANDARDS

**Section 121.63 Deductions from Monthly Income**

- a) The deductions described in this Section shall be allowed in the determination of the adjusted net monthly food stamp income.
- b) **Earned Income Deduction.** Eighty percent of total gross earned income is considered. See Sections 121.40 through 121.54 for a description of earned

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income.

- c) **Standard Deduction.** The standard deduction for a household size of one through three persons is \$134. The standard deduction for a household size of four persons is \$143. The standard deduction for a household size of five persons is \$167. For households of six or more persons, the standard deduction is \$191.
- d) **Dependent Care Deduction**
  - 1) The dependent care deduction consists of payments for the care of a child or other dependent when necessary for a household member to accept or continue employment or to seek employment in compliance with the job search criteria or to attend training or pursue education which is preparatory for employment (see 89 Ill. Adm. Code 112.70 through 112.83).
  - 2) The amount of the deduction is to be determined by the actual costs for care and is not to exceed \$200 per month for each child under age 2 and \$175 per month for each other dependent household member.
- e) **Child Support Deduction.** The child support deduction is the amount of legally obligated child support paid by a household member to or for a nonhousehold member.
- f) **Shelter Costs Deduction**
  - 1) The shelter deduction is the amount of shelter costs that exceeds 50% of the household's total income after the allowable deductions in subsections (b), (c), (d), and (e) of this Section have been made. The shelter deduction shall not exceed \$431.
  - 2) If the household contains a member who is elderly or disabled, as defined at 7 CFR 271.2 (2007) and Section 121.61, there is no limit on the amount of the excess shelter deduction.
  - 3) Shelter costs include only the following:
    - A) continuing charges for the shelter occupied by the household (rent, mortgage and other charges leading to the ownership of the shelter,

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including interest on such charges);

- B) property taxes, State and local assessments and insurance on the structure itself; and
  - C) utility costs, as described in subsection (g) of this Section.
- 4) Shelter costs for a home temporarily unoccupied by the household because of employment or training away from home, illness or abandonment caused by a natural disaster or casualty loss, if:
- A) the household intends to return to the home;
  - B) the current occupants of the home, if any, are not claiming the shelter costs for food stamp purposes; and
  - C) the home is not leased or rented during the absence of the household.
- 5) Charges for repair of a home which was damaged or destroyed due to a natural disaster. Shelter costs shall not include repair charges which have been or will be reimbursed by private or public relief agencies, insurance companies or any other source.
- g) Utility Costs
- 1) Utility costs include:
    - A) the cost of heating and cooking fuel, air conditioning, electricity, water, sewerage, garbage and trash collection;
    - B) basic service fee for one telephone (including tax on the basic fee) of ~~\$29~~<sup>28</sup>; and
    - C) fees charged by the utility provider for initial installation.
  - 2) Utility deposits are not considered to be utility costs.
  - 3) A standard must be used if the household is billed for utilities. See

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Section 121.63(g)(7) for households that claim utility expenses for an unoccupied home. Households that are billed for heating or air conditioning, or both, or heating, air conditioning and electricity, must use the air conditioning/heating standard allowance of ~~\$295~~~~299~~. Those households that are not billed for air conditioning or heating but are billed for at least two other utilities must use the limited utility standard allowance of ~~\$183~~~~177~~. Those households that are not billed for air conditioning or heating but are billed for a single utility, other than telephone, must use the single utility standard allowance of ~~\$38~~~~37~~. If only a separately-billed telephone expense is claimed, the basic telephone allowance of ~~\$29~~~~28~~ per month will be allowed. Households living in rental housing who are billed on a regular basis by a landlord for costs for utilities must use the appropriate standard.

- 4) A household that is billed less often than monthly for its costs for utilities must continue to use the appropriate standard between billing months.
- 5) Households in public housing or privately-owned rental units that receive a bill for over-usage are entitled to use the air conditioning/heating standard allowance. When households (as defined at 7 CFR 273.1(a) ~~(2007)~~) live together, the air conditioning/heating standard allowance, the limited utility standard allowance, or the single utility standard allowance, whichever is appropriate, shall be allowed for each household that contributes toward the utility costs whether or not each household participates in the program.
- 6) Households whose expense for heat or electricity, or both, is covered by indirect energy assistance payments under the Low Income Home Energy Program (89 Ill. Adm. Code 109) shall be entitled to the air conditioning/heating standard allowance (7 CFR 273.9 and 273.10(d)(6) ~~(2007)~~). Households who receive, apply for, or anticipate applying for a Low Income Energy Assistance Program (LIHEAP) (89 Ill. Adm. Code 109) payment during the 12-month period, beginning with the date of the food stamp application, shall be allowed the air conditioning/heating standard (7 CFR 273.9) ~~(2007)~~. The provisions of subsection (f)(3) of this Section are applicable to households whose expenses for heating or electricity, or both, are covered by indirect energy assistance payments.
- 7) A household that has both an occupied home and an unoccupied home is

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entitled to only one standard. The appropriate utility standard may be used for the home the household chooses.

- h) Excess Medical Deduction. A deduction for excess medical expenses shall be allowed for households which contain an elderly or disabled member as defined at 7 CFR 271.2 (2007) and Section 121.61. The medical expenses incurred by the qualifying household member which are over \$35 will be deducted, if the expenses will not be reimbursed by insurance or a third party.

(Source: Amended at 32 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## DEPARTMENT OF NATURAL RESOURCES

## NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Regulations for the Letting of Concessions, Farm Leases, Sale of Buildings and Facilities, and Demolitions
- 2) Code Citation: 17 Ill. Adm. Code 150
- 3) 

<u>Section Numbers:</u>	<u>Proposed Action:</u>
150.10	Amendment
150.20	Amendment
150.50	Amendment
- 4) Statutory Authority: Implementing and authorized by Sections 805-235, 805-300 and 805-330 of the Civil Administrative Code of Illinois [20 ILCS 805/805-235, 805-300 and 805-330]
- 5) A Complete Description of the Subjects and Issues Involved: These amendments are being made to: add language indicating that concession leases to be let by competitive bidding must be placed on the procurement bulletin; update the name of the division managing the program; reflect change in acreage for agricultural management leases from 10 acres to 50 acres; and add "prior history with the State" to the list of criteria for selection.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This rulemaking does not affect units of local government.
- 12) 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:

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## NOTICE OF PROPOSED AMENDMENTS

Jack Price, Legal Counsel  
Department of Natural Resources  
One Natural Resources Way  
Springfield IL 62702-1271

217/782-1809

- 13) 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
- 14) Regulatory Agenda on which this rulemaking was summarized: January 2008

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

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## NOTICE OF PROPOSED AMENDMENTS

TITLE 17: CONSERVATION  
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES  
SUBCHAPTER a: LANDSPART 150  
REGULATIONS FOR THE LETTING OF CONCESSIONS, FARM LEASES, SALE OF  
BUILDINGS AND FACILITIES, AND DEMOLITIONS

Section	
150.10	Concessions
150.20	Agricultural Management Leases
150.30	Sale of Buildings and Facilities
150.40	Demolition
150.50	Criteria for Selection

AUTHORITY: Implementing and authorized by Sections 805-235, 805-300 and 805-330 of the Civil Administrative Code of Illinois [20 ILCS 805/805-235, 805-300 and 805-330].

SOURCE: Adopted at 5 Ill. Reg. 7512, effective July 6, 1981; codified at 5 Ill. Reg. 10625; amended at 6 Ill. Reg. 13326, effective October 20, 1982; amended at 16 Ill. Reg. 4839, effective March 17, 1992; recodified by changing the agency name from Department of Conservation to Department of Natural Resources at 20 Ill. Reg. 9389; amended at 32 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

**Section 150.10 Concessions**

- a) Except as cited in subsection (b) ~~below~~, concession leases may be made for a period of not more than ~~25~~ **twenty five** years.
- b) Concession leases on land where expansion of existing facilities or development will take place may be made for a period up to 99 years.
- c) All concession leases shall be let by sealed competitive bids or, when in the Department's judgment it is in the best interest of the State of Illinois, by negotiated agreement.
- d) Notices of an available concession lease to be let by competitive bidding shall be placed **on the Illinois Procurement Bulletin** ~~in a local newspaper and the official state newspaper~~ prior to the bid letting.

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- e) All bids shall be opened at a public bid opening.
- f) Concessions shall be let to the best qualified highest bidder or by negotiation with a qualified operator. Factors taken into consideration in determining a qualified bidder shall include, but are not limited to, criteria contained in Section 150.50.
- g) At the end of a concession lease period the concession lease may be renegotiated with the present concessionaire if the concessionaire has not violated lease ~~covenants~~~~convenants~~, or has quickly corrected ~~the~~~~such~~ violations after notification by the ~~Division of Concession and Lease Management~~~~Property Management Division~~, and if the concessionaire has continued to meet the criteria found in Section 150.50 during the lease period. In such a case, no competitive bidding on the concession will be offered.

(Source: Amended at 32 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 150.20 Agricultural Management Leases**

- a) Agricultural management leases are for a period of not more than four years.
- b) Agricultural management leases shall be let by sealed competitive bids, except these leases may be negotiated under any of the following conditions:
  - 1) when land has been recently purchased with an agreement that the previous owner will farm the property for the next one to two years (as part of the land transaction);
  - 2) when the tract is less than ~~50~~~~10~~ acres or completely surrounded by other private land;
  - 3) when property acquired by lease or purchase is acquired late in the season;
  - 4) when crops are already planted by a previous owner or tenant; or
  - 5) when the Department of Natural Resources purchases less than fee simple interest in a property for development purposes.

## DEPARTMENT OF NATURAL RESOURCES

## NOTICE OF PROPOSED AMENDMENTS

- c) Notices of the available agricultural management leases shall be placed in a local newspaper prior to a sealed competitive bid letting.
- d) A public informational meeting shall be held at the site of the available agricultural management lease prior to the bid letting.
- e) The bids shall be opened at a public bid opening.
- f) The best qualified highest bidder shall be given the right to enter into an agricultural management lease. Factors taken into consideration in determining a qualified bidder shall include, but not be limited to, criteria contained in Section 150.50.
- g) If no bids are placed or if no qualified bidders place bids, a negotiated lease with a qualified lessee may be sought.
- h) At the end of an agricultural management lease period, the lease may be renegotiated with the present leaseholder if the leaseholder has not violated lease ~~covenants~~covenants or has quickly corrected such violations after notification by the Farm Lease Program Administrator. In such a case, no competitive bidding on the agricultural management lease will be offered.

(Source: Amended at 32 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 150.50 Criteria for Selection**

When the Department of Natural Resources is involved in granting concession and farm leases, sale of buildings and facilities or demolition, the criteria for making the decisions are weighted according to each situation and include the following: economic benefit to the State; prior history with the State; financial and personal records; business and personal references; quality and quantity of equipment; staff and administrative personnel; similar business experience; and ability to finance.

(Source: Amended at 32 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED RULES

- 1) Heading of the Part: Procedures for Transportation Workplace Drug and Alcohol Testing Programs
- 2) Code Citation: 92 Ill. Adm. Code 340
- 3) 

<u>Section Numbers:</u>	<u>Proposed Action:</u>
340.1000	New Section
340.1010	New Section
- 4) Statutory Authority: Implementing, and authorized by, Sections 18b-102 and 18b-105 of the Illinois Motor Carrier Safety Law [625 ILCS 5/Ch. 18B]
- 5) A Complete Description of the Subjects and Issues Involved: By this Notice, the Department is proposing to incorporate by reference 49 CFR 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs, as of October 1, 2006, the most recent edition of 49 CFR.

The Department is incorporating by reference the federal drug and alcohol testing procedures pursuant to Section 18b-105 of the Illinois Motor Carrier Safety Law [625 ILCS 5/18b-105]. The Department is proposing to adopt 49 CFR 40 in its entirety as it currently applies at the federal level to operators of applicable (see response to question #11 of this Notice) interstate as well as intrastate commercial motor vehicles. This rulemaking will not further expand the applicability of the drug and alcohol testing procedures beyond the scope of US DOT's applicability. 49 CFR 40 prescribes the drug and alcohol testing procedures used by all agencies under the jurisdiction of US DOT (e.g., Departments of Aviation, Railroads, Highways, and Maritime) and prescribes requirements with respect to how specimens are to be taken, who can collect the specimens, and the qualifications of the medical review officers and substance abuse professionals.

- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? Yes

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED RULES

- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This rulemaking affects units of local government that own or operate the following vehicles that require the driver to obtain a commercial driver's license.

Any combination of vehicles with a gross combination weight rating of 26,001 pounds or more, provided the gross vehicle weight rating (GVWR) of the vehicles being towed is in excess of 10,000 pounds;

Any single vehicle with a GVWR of 26,001 pounds or more, or any such vehicle towing a vehicle not in excess of 10,000 pounds GVWR; or

Any single vehicle, or combination of vehicles that does not meet the definitions above but is designed to transport 16 or more passengers including the driver, or is used in the transportation of placarded hazardous materials.

- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Any interested party may submit written comments or arguments concerning these proposed rules. Written submissions shall be filed with:

By U.S. Mail:

Ms. Catherine Allen  
Illinois Department of Transportation  
Division of Traffic Safety  
P.O. Box 19212  
Springfield, Illinois 62794-9212

217/785-3031

By Messenger or Inter-Agency Mail:

DOT Annex Building  
3215 Executive Park Drive  
Commercial Vehicle Safety; 3<sup>rd</sup> Floor  
Springfield, Illinois

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED RULES

JCAR requests, comments and concerns regarding this rulemaking should be addressed to:

Ms. Christine Caronna-Beard, Rules Manager  
Illinois Department of Transportation  
Office of Chief Counsel  
2300 South Dirksen Parkway, Room 317  
Springfield, Illinois 62764

217/524-3838

Comments received within 45 days after the date of publication of this *Illinois Register* will be considered. Comments received after that time will be considered, time permitting.

13) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses affected: This rulemaking affects small businesses that own or operate those commercial motor vehicles that require the driver to obtain a commercial driver's license (see response to question #11).
- B) Reporting, bookkeeping or other procedures required for compliance: No new or additional procedures are required as a result of this rulemaking.
- C) Types of professional skills necessary for compliance: No new or additional skills are required as a result of this rulemaking.

14) Regulatory Agenda on which this rulemaking was summarized: January 2008

The full text of these Proposed Rules begins on the next page:

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED RULES

## TITLE 92: TRANSPORTATION

## CHAPTER I: DEPARTMENT OF TRANSPORTATION

## SUBCHAPTER d: MOTOR CARRIER SAFETY REGULATIONS

## PART 340

## PROCEDURES FOR TRANSPORTATION WORKPLACE

## DRUG AND ALCOHOL TESTING PROGRAMS

## Section

340.1000	Purpose
340.1010	Incorporation by Reference of 49 CFR 40

**AUTHORITY:** Implementing, and authorized by Sections 18b-102 and 18b-105 of, the Illinois Motor Carrier Safety Law [625 ILCS 5/Ch. 18B].

**SOURCE:** Adopted at 32 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

**Section 340.1000 Purpose**

This Part prescribes the requirements that all parties who conduct drug and alcohol tests required by the United States Department of Transportation's regulations must follow concerning how to conduct those tests and what procedures to use.

**Section 340.1010 Incorporation by Reference of 49 CFR 40**

- a) The Department incorporates by reference 49 CFR 40 as that part was in effect on October 1, 2006. No later amendments to or editions of 49 CFR 40 are incorporated. Copies of the appropriate material are available from the Division of Traffic Safety, 3215 Executive Park Drive, 3<sup>rd</sup> Floor, Springfield, Illinois 62703 or by calling (217)785-1181. The Federal Motor Carrier Safety Regulations are available on the National Archives and Records Administration's website at <http://ecfr.gpoaccess.gov>. The Division of Traffic Safety's rules are available on the Department's website at <http://www.dot.il.gov/regulations.html>.
- b) References to subchapters, parts, subparts, sections or paragraphs shall be read to refer to the appropriate citation in 49 CFR.

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Special Training Requirements
- 2) Code Citation: 92 Ill. Adm. Code 380
- 3) 

<u>Section Numbers:</u>	<u>Proposed Action:</u>
380.1010	Amend
380.1020	Amend
- 4) Statutory Authority: Implementing, and authorized by, Sections 18b-102 and 18b-105 of the Illinois Motor Carrier Safety Law [625 ILCS 5/Ch. 18B]
- 5) A complete description of the subjects and issues involved: By this Notice, the Department is proposing to update the incorporation by reference of 49 CFR 380 to the October 1, 2006 edition, the most recent edition of 49 CFR. The Department is also proposing to add parts 382, 383, and appendix B of 386 to the list of Federal Motor Carrier Safety Regulations referenced in Section 380.1020(a) since they are applicable to the Illinois Motor Carrier Safety Regulations.  
  
At Section 380.1010, the Department is proposing to: update CFR citations to maintain consistency with the federal regulations; add a CFR citation to the definition of "Disqualification" that was inadvertently omitted in a previous rulemaking; and add a new definition of "LCV triple" since employers are required to provide training regarding the handling of triples in the event that a driver operates a triple-trailer combination in another state where triples are legal to operate (triple-trailers are illegal in Illinois).  
  
At Section 380.1020, the Department is proposing to delete a subsection that currently excludes the federal provisions on triple-trailers from this Part. Those provisions will now be included in the incorporation by reference of the latest edition of 49 CFR 380 for the above-stated reason.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? Yes

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED AMENDMENTS

- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This rulemaking does not affect units of local government.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Any interested party may submit written comments or arguments concerning these proposed amendments. Written submissions shall be filed with:

By U.S. Mail:

Ms. Catherine Allen  
Illinois Department of Transportation  
Division of Traffic Safety  
P.O. Box 19212  
Springfield, Illinois 62794-9212

217/785-3031

By Messenger or Inter-Agency Mail:

DOT Annex Building  
3215 Executive Park Drive  
Commercial Vehicle Safety; 3<sup>rd</sup> Floor  
Springfield, Illinois

JCAR requests, comments and concerns regarding this rulemaking should be addressed to:

Ms. Christine Caronna-Beard, Rules Manager  
Illinois Department of Transportation  
Office of Chief Counsel  
2300 South Dirksen Parkway, Room 317  
Springfield, Illinois 62764

217/524-3838

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED AMENDMENTS

Comments received within 45 days after the date of publication of this *Illinois Register* will be considered. Comments received after that time will be considered, time permitting.

- 13) Initial Regulatory Flexibility Analysis:
  - A) Types of small businesses affected: This rulemaking affects small businesses that own or operate commercial motor vehicles.
  - B) Reporting, bookkeeping or other procedures required for compliance: No additional procedures are required as a result of this rulemaking.
  - C) Types of professional skills necessary for compliance: No new or additional skills are required as a result of this rulemaking.
- 14) Regulatory Agenda on which this rulemaking was summarized: January 2008

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

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED AMENDMENTS

TITLE 92: TRANSPORTATION  
CHAPTER I: DEPARTMENT OF TRANSPORTATION  
SUBCHAPTER d: MOTOR CARRIER SAFETY REGULATIONSPART 380  
SPECIAL TRAINING REQUIREMENTS

## Section

380.1000	Purpose
380.1010	Definitions
380.1020	Incorporation by Reference of 49 CFR 380

**AUTHORITY:** Implementing, and authorized by Sections 18b-102 and 18b-105 of, the Illinois Motor Carrier Safety Law [625 ILCS 5/Ch. 18B].

**SOURCE:** Adopted at 29 Ill. Reg. 19208, effective November 10, 2005; amended at 32 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

**Section 380.1010 Definitions**

As used in this Part:

"Alcohol or alcoholic beverage" means:

Beer as defined in 26 USC 5052(a) (Internal Revenue Code of 1954);

Wine of not less than one-half of one per centum of alcohol by volume; or

Distilled spirits as defined in section 5002(a)(8) of the Internal Revenue Code. (49 CFR 383.5, October 1, ~~2006~~2004)

"Classroom instructor" means a qualified longer combination vehicle (LCV) driver-instructor who provides knowledge and instruction that does not involve the actual operation of an LCV or its components. Instruction may take place in a parking lot, garage, or any other facility suitable for instruction. (49 CFR 380.105, October 1, ~~2006~~2004)

"Commercial driver's license" or "CDL" means a license issued by a state or other jurisdiction, in accordance with the standards contained in 49 CFR 383, to an

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED AMENDMENTS

individual that authorizes the individual to operate a class of a commercial motor vehicle. (49 CFR 383.5, October 1, ~~2006~~2004)

"Commercial motor vehicle" or "CMV" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle –

Has a gross combination weight rating of 11,794 kilograms or more (26,001 pounds or more) inclusive of a towed unit(s) with a gross vehicle weight rating of more than 4,536 kilograms (10,000 pounds); or

Has a gross vehicle weight rating of 11,794 or more kilograms (26,001 pounds or more); or

Is designed to transport 16 or more passengers, including the driver; or

Is of any size and is used in the transportation of hazardous materials as defined in this Section. (49 CFR 383.5, October 1, ~~2006~~2004)

"Conviction" means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated. (49 CFR 383.5, October 1, ~~2006~~2004)

"Disqualification" means any of the following three actions:

The suspension, revocation, or cancellation of a CDL by the state or jurisdiction of issuance.

Any withdrawal of a person's privileges to drive a CMV by a state or other jurisdiction as a result of a violation of state or local law relating to motor vehicle traffic control (other than parking, vehicle weight or vehicle defect violations).

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED AMENDMENTS

A determination by the FMCSA that a person is not qualified to operate a CMV under 49 CFR 391. ([49 CFR 383.5, October 1, 2006](#))

"Driver's license" means a license issued by a state or other jurisdiction to an individual that authorizes the individual to operate a motor vehicle on the highways. (49 FR 383.5, October 1, [20062004](#))

"Employee" means any operator of a CMV, including full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent, owner-operator contractors (while in the course of operating a CMV) who are either directly employed by or under lease to an employer. (49 CFR 383.5, October 1, [20062004](#))

"Employer" means any person (including the United States, a state, District of Columbia or a political subdivision of a state) that owns or leases a CMV or assigns employees to operate such a vehicle. (49 CFR 383.5, October 1, [20062004](#))

"Endorsement" means an authorization to an individual's CDL required to permit the individual to operate certain types of CMVs. (49 CFR 383.5, October 1, [20062004](#))

"Entry-level driver" means a driver with less than one year of experience operating a CMV with a CDL in interstate or intrastate commerce.

"Entry-level driver training" means training the CDL driver receives in driver qualification requirements, hours of service of drivers, driver wellness, and whistle blower protection as appropriate to the entry-level driver's current position in addition to passing the CDL test. (49 CFR 380.502, October 1, [20062004](#))

"Hazardous materials" means any material that has been designated as hazardous under 49 USC 5103 and is required to be placarded under subpart F of 49 CFR 172 or any quantity of a material listed as a select agent or toxin in 42 CFR 73. (49 CFR 383.5, October 1, [20062004](#))

"Longer combination vehicle" or "LCV" means any combination of a truck-tractor and two trailers or semi-trailers that operates on the highways of Illinois with a gross vehicle weight (GVW) greater than 36,288 kilograms (80,000 pounds).

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED AMENDMENTS

"LCV double" means an LCV consisting of a truck-tractor in combination with two trailers and/or semi-trailers. (49 CFR 380.105, October 1, ~~2006~~2004)

"LCV triple" means an LCV consisting of a truck-tractor in combination with three trailers and/or semi-trailers. (49 CFR 380.105, October 1, 2006)

"Motor vehicle" means a vehicle, machine, tractor, trailer, or semi-trailer propelled or drawn by mechanical power used on highways, except that this term does not include a vehicle, machine, tractor, trailer, or semi-trailer operated exclusively on a rail. (49 CFR 383.5, October 1, ~~2006~~2004)

"Qualified LCV driver-instructor" means an instructor meeting the requirements contained in 49 CFR 380, subpart C. There are two types of qualified LCV driver-instructors: classroom instructor and skills instructor. (49 CFR 380.105, October 1, ~~2006~~2004)

"Skills instructor" means a qualified LCV driver-instructor that provides behind-the-wheel instruction involving the actual operation of an LCV or its components outside a classroom. (49 CFR 380.105, October 1, ~~2006~~2004)

"State" means a state of the United States and the District of Columbia. (49 CFR 383.5, October 1, ~~2006~~2004)

"Tank vehicle" means any CMV that is designed to transport any liquid or gaseous materials within a tank that is either permanently or temporarily attached to the vehicle or the chassis. Such vehicles include, but are not limited to, cargo tanks and portable tanks, as defined in 49 CFR 171. However, this definition does not include portable tanks having a rated capacity under 1,000 gallons. (49 CFR 383.5, October 1, ~~2006~~2004)

"Training institution" means any technical or vocational school accredited by an accrediting institution recognized by the U.S. Department of Education. A motor carrier's training program for its drivers or an entity that exclusively offers services to a single motor carrier is not a training institution. (49 CFR 380.105, October 1, ~~2006~~2004)

"Vehicle" means a motor vehicle unless otherwise specified. (49 CFR 383.5, October 1, ~~2006~~2004)

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED AMENDMENTS

(Source: Amended at 32 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 380.1020 Incorporation by Reference of 49 CFR 380**

- a) The Department incorporates by reference 49 CFR 380 as that part of the Federal Motor Carrier Safety Regulations (FMCSR) (49 CFR 380, [382, 383](#), 385, [appendix B of 386](#), 387, 390, 391, 392, 393, 395, 396 and 397) was in effect on October 1, ~~2006~~[2004](#), subject only to the exceptions in subsection (c) of this Section. No later amendments to or editions of 49 CFR 380 are incorporated. Copies of the appropriate material are available from the Division of Traffic Safety, 3215 Executive Park Drive, 3<sup>rd</sup> Floor, Springfield, Illinois 62703 or by calling (217)785-1181. The FMCSR are available on the National Archives and Records Administration's website at <http://ecfr.gpoaccess.gov>. The Division of Traffic Safety's rules are available on the Department's website at <http://www.dot.il.gov/regulations.html>.
- b) References to subchapters, parts, subparts, sections or paragraphs shall be read to refer to the appropriate citation in 49 CFR.
- c) The following interpretations of, additions to and deletions from 49 CFR 380 shall apply for purposes of this Part.
- 1) 49 CFR 380.103 is not incorporated and the following is substituted therefor:  
  
This Part applies to all operators of LCVs in interstate or intrastate commerce, employers of LCV operators, and LCV driver-instructors.
  - 2) 49 CFR 380.105 is deleted and not incorporated.
  - 3) ~~49 CFR 380.205 is deleted and not incorporated.~~
  - 34) 49 CFR 380.501 is not incorporated and the following is substituted therefor:

All entry-level drivers who drive in interstate or intrastate commerce and are subject to the CDL requirements of 49 CFR 383 must comply with subpart E of 49 CFR 380, except drivers who are subject to the jurisdiction

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED AMENDMENTS

of the Federal Transit Administration or who are otherwise exempt under 49 CFR 390.3(f).

45) 49 CFR 380.502 is deleted and not incorporated. |

56) 49 CFR 380.509(a) is not incorporated and the following is substituted therefor: |

Each employer must ensure that each entry-level driver that began operating a CMV requiring a CDL in interstate or intrastate commerce after July 20, 2003 receives the training required by 49 CFR 380.503.

(Source: Amended at 32 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED RULES

- 1) Heading of the Part: Controlled Substance and Alcohol Use and Testing
- 2) Code Citation: 92 Ill. Adm. Code 382
- 3) 

<u>Section Numbers:</u>	<u>Proposed Action:</u>
382.1000	New Section
382.1010	New Section
- 4) Statutory Authority: Implementing, and authorized by, Sections 18b-102 and 18b-105 of the Illinois Motor Carrier Safety Law [625 ILCS 5/Ch. 18B]
- 5) A Complete Description of the Subjects and Issues Involved: By this Notice, the Department is proposing to incorporate by reference 49 CFR 382, Controlled Substance and Alcohol Use and Testing, as of October 1, 2006, the most recent edition of 49 CFR.

The Department is incorporating by reference the federal controlled substance and alcohol use and testing requirements pursuant to Section 18b-105 of the Illinois Motor Carrier Safety Law [625 ILCS 5/18b-105]. The Department is proposing to adopt 49 CFR 382 in its entirety as it currently applies at the federal level to those interstate as well as intrastate operators required to obtain a commercial driver's license (see response to question #11 of this notice). This rulemaking will not further expand the applicability of the drug and alcohol testing requirements beyond the scope of US DOT's applicability. 49 CFR 382 and this new Part are not new to the motor carrier industry in Illinois. US DOT initiated the controlled substance testing program in 1989 and the alcohol testing requirements in 1994. 49 CFR 382 provides specific guidelines for the motor carrier industry regarding when a driver has to be tested, what occurs when a driver's test is positive and what records must be kept by the carriers.

- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? Yes
- 10) Are there any other proposed rulemakings pending on this Part? No

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED RULES

- 11) Statement of Statewide Policy Objectives: This rulemaking affects units of local government that own or operate the following vehicles that require the driver to obtain a commercial driver's license.

Any combination of vehicles with a gross combination weight rating of 26,001 pounds or more, provided the gross vehicle weight rating (GVWR) of the vehicles being towed is in excess of 10,000 pounds;

Any single vehicle with a GVWR of 26,001 pounds or more, or any such vehicle towing a vehicle not in excess of 10,000 pounds GVWR; or

Any single vehicle, or combination of vehicles that does not meet the definitions above but is designed to transport 16 or more passengers including the driver, or is used in the transportation of placarded hazardous materials.

- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Any interested party may submit written comments or arguments concerning these proposed rules. Written submissions shall be filed with:

By U.S. Mail:

Ms. Catherine Allen  
Illinois Department of Transportation  
Division of Traffic Safety  
P.O. Box 19212  
Springfield, Illinois 62794-9212

217/785-3031

By Messenger or Inter-Agency Mail:

DOT Annex Building  
215 Executive Park Drive  
Commercial Vehicle Safety; 3<sup>rd</sup> Floor  
Springfield, Illinois

JCAR requests, comments and concerns regarding this rulemaking should be addressed to:

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED RULES

Ms. Christine Caronna-Beard, Rules Manager  
Illinois Department of Transportation  
Office of Chief Counsel  
2300 South Dirksen Parkway, Room 317  
Springfield, Illinois 62764

217/524-3838

Comments received within 45 days after the date of publication of this *Illinois Register* will be considered. Comments received after that time will be considered, time permitting.

13) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses affected: This rulemaking affects small businesses that own or operate commercial motor vehicles that require the driver to obtain a commercial driver's license (see response to question #11).
- B) Reporting, bookkeeping or other procedures required for compliance: No new or additional procedures are required as a result of this rulemaking.
- C) Types of professional skills necessary for compliance: No new or additional skills are required as a result of this rulemaking.

14) Regulatory Agenda on which this rulemaking was summarized: January 2008

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

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED RULES

## TITLE 92: TRANSPORTATION

## CHAPTER I: DEPARTMENT OF TRANSPORTATION

## SUBCHAPTER d: MOTOR CARRIER SAFETY REGULATIONS

## PART 382

## CONTROLLED SUBSTANCE AND ALCOHOL USE AND TESTING

## Section

382.1000 Purpose

382.1010 Incorporation by Reference of 49 CFR 382

AUTHORITY: Implementing, and authorized by Sections 18b-102 and 18b-105 of, the Illinois Motor Carrier Safety Law [625 ILCS 5/Ch. 18B].

SOURCE: Adopted at 32 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

**Section 382.1000 Purpose**

This Part establishes programs designed to help prevent accidents and injuries resulting from the misuse of alcohol or use of controlled substances by drivers of certain commercial motor vehicles.

**Section 382.1010 Incorporation by Reference of 49 CFR 382**

- a) 49 CFR 382 is hereby incorporated by reference as that part of the Federal Motor Carrier Safety Regulations (FMCSR) (49 CFR 380, 382, 383, 385, appendix B of 386, 387, 390, 391, 392, 393, 395, 396, and 397) was in effect on October 1, 2006. No later amendments to or editions of 49 CFR 382 are incorporated. Copies of the appropriate material are available from the Division of Traffic Safety, 3215 Executive Park Drive, 3<sup>rd</sup> Floor, Springfield, Illinois 62703 or by calling (217)785-1181. The FMCSR are available on the National Archives and Records Administration's website at <http://ecfr.gpoaccess.gov>. The Division of Traffic Safety's rules are available on the Department's website at <http://www.dot.il.gov/regulations.html>.
- b) References to subchapters, parts, subparts, sections or paragraphs shall be read to refer to the appropriate citation in 49 CFR.

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED RULES

- 1) Heading of the Part: Commercial Driver's License Standards; Requirements and Penalties
- 2) Code Citation: 92 Ill. Adm. Code 383
- 3) 

<u>Section Numbers</u> : 383.1000 383.1010	<u>Proposed Action</u> : New Section New Section
--	--
- 4) Statutory Authority: Implementing, and authorized by, Sections 18b-102 and 18b-105 of the Illinois Motor Carrier Safety Law [625 ILCS 5/Ch. 18B]
- 5) A complete description of the subjects and issues involved: By this Notice, the Department is proposing to incorporate by reference certain sections of 49 CFR 383 as of October 1, 2006, the most recent edition of 49 CFR.

This Part is being added to the Illinois Motor Carrier Safety Regulations (IMCSR) to be used in conjunction with 92 Ill. Adm. Code 340 and 382 that are applicable only to operators who drive CDL-regulated vehicles. Incorporating these three Parts into the IMCSR will make enforcement of the IMCSR easier for the Department. Currently, the Department cites to a general provision in 92 Ill. Adm. Code 392 that incorporates by reference 49 CFR 392.2 that states, in general terms, every commercial motor vehicle must be operated in accordance with the regulations of the jurisdiction in which the vehicle is being operated. The Department will now be able to cite to a more specific regulation when a carrier is in violation of the IMCSR.

The provisions of this new Part are not new to industry. Since 1992, drivers who operate the following vehicles have been required to obtain a commercial driver's license (CDL).

Any combination of vehicles with a gross combination weight rating of 26,001 pounds or more, provided the gross vehicle weight rating (GVWR) of the vehicles being towed is in excess of 10,000 pounds;

Any single vehicle with a GVWR of 26,001 pounds or more, or any such vehicle towing a vehicle not in excess of 10,000 pounds GVWR; or

Any single vehicle, or combination of vehicles that does not meet the definitions above but is designed to transport 16 or more passengers including the driver, or is used in the transportation of placarded hazardous materials.

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED RULES

The Federal Motor Carrier Safety Administration, at 49 CFR 383.3(d), and the Uniform Commercial Driver's License Act (the UCDLA) [625 ILCS 5/Ch. 6, Art. V] provide exceptions to the requirements of this Part for certain operators of the aforementioned vehicles in Illinois, e.g., farmers. See 625 ILCS 5/6-507(c) for exceptions authorized by the UCDLA. Those exceptions apply for purposes of this Part.

- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? Yes
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This rulemaking affects units of local government that own or operate those vehicles listed in the response to question #5 of this Notice.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Any interested party may submit written comments or arguments concerning these proposed rules. Written submissions shall be filed with:

By U.S. Mail:

Ms. Catherine Allen  
Illinois Department of Transportation  
Division of Traffic Safety  
P.O. Box 19212  
Springfield, Illinois 62794-9212

217/785-3031

By Messenger or Inter-Agency Mail:

DOT Annex Building

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED RULES

3215 Executive Park Drive  
Commercial Vehicle Safety; 3<sup>rd</sup> Floor  
Springfield, Illinois

JCAR requests, comments and concerns regarding this rulemaking should be addressed to:

Ms. Christine Caronna-Beard, Rules Manager  
Illinois Department of Transportation  
Office of Chief Counsel  
2300 South Dirksen Parkway, Room 317  
Springfield, Illinois 62764

217/524-3838

Comments received within 45 days after the date of publication of this *Illinois Register* will be considered. Comments received after that time will be considered, time permitting.

13) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses affected: This rulemaking affects small businesses that own or operate commercial motor vehicles that require the driver to obtain a commercial driver's license (see response to question #5).
- B) Reporting, bookkeeping or other procedures required for compliance: No new or additional procedures are required as a result of this rulemaking. The provisions of this Part are not new to the affected parties.
- C) Types of professional skills necessary for compliance: No new or additional skills are required as a result of this rulemaking. The provisions of this Part are not new to the affected parties.

14) Regulatory Agenda on which this rulemaking was summarized: January 2008

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

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED RULES

TITLE 92: TRANSPORTATION  
 CHAPTER I: DEPARTMENT OF TRANSPORTATION  
 SUBCHAPTER d: MOTOR CARRIER SAFETY REGULATIONS

PART 383  
 COMMERCIAL DRIVER'S LICENSE STANDARDS;  
 REQUIREMENTS AND PENALTIES

## Section

383.1000	Purpose
383.1010	Incorporation by Reference of 49 CFR 383

**AUTHORITY:** Implementing, and authorized by Sections 18b-102 and 18b-105 of, the Illinois Motor Carrier Safety Law [625 ILCS 5/Ch. 18B].

**SOURCE:** Adopted at 32 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

**Section 383.1000 Purpose**

The purpose of this Part is to help reduce or prevent truck and bus accidents, fatalities, and injuries by requiring drivers to have a single commercial motor vehicle driver's license and by disqualifying drivers who operate commercial motor vehicles in an unsafe manner.

**Section 383.1010 Incorporation by Reference of 49 CFR 383**

- a) The Department incorporates by reference the following sections of 49 CFR 383 as those sections of the Federal Motor Carrier Safety Regulations (FMCSR) (49 CFR 380, 382, 383, 385, appendix B of 386, 387, 390, 391, 392, 393, 395, 396, and 397) were in effect on October 1, 2006, subject only to the exceptions in subsection (c) of this Section. No later amendments to or editions of those sections of 49 CFR 383 are incorporated. Copies of the appropriate material are available from the Division of Traffic Safety, 3215 Executive Park Drive, 3<sup>rd</sup> Floor, Springfield, Illinois 62703 or by calling (217)785-1181. The FMCSR are available on the National Archives and Records Administration's website at <http://ecfr.gpoaccess.gov>. The Division of Traffic Safety's rules are available on the Department's website at <http://www.dot.il.gov/regulations.html>.

383.1	Purpose and scope
383.3	Applicability

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED RULES

383.5	Definitions
383.23	Commercial driver's license
383.35	Notification of previous employment
383.37	Employer responsibilities
383.51	Disqualification of drivers
383.53	Penalties

- b) References to subchapters, parts, subparts, sections or paragraphs shall be read to refer to the appropriate citation in 49 CFR.
- c) As provided in 49 CFR 383.3(d), the following applies for purposes of this Part:

The Uniform Commercial Driver's License Act provides exceptions under 625 ILCS 5/6-507(c) for operators of certain vehicles in Illinois (i.e., farmers). Those exceptions apply for purposes of this Part.

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Safety Fitness Procedures
- 2) Code Citation: 92 Ill. Adm. Code 385
- 3) 

<u>Section Numbers:</u>	<u>Proposed Action:</u>
385.1010	Amend
385.1020	Amend
385.2000	Amend
- 4) Statutory Authority: Implementing, and authorized by, Sections 18b-102 and 18b-105 of the Illinois Motor Carrier Safety Law [625 ILCS 5/Ch. 18B]
- 5) A complete description of the subjects and issues involved: By this Notice, the Department is proposing to update the incorporation by reference of 49 CFR 385, subpart E, to the October 1, 2006 edition, the most recent edition of 49 CFR. The Department is also proposing to add parts 382, 383, and appendix B of 386 to the list of Federal Motor Carrier Safety Regulations referenced in Section 385.2000(a) since they are applicable to the Illinois Motor Carrier Safety Regulations.

At Section 385.1010, the Department is updating CFR citations to maintain consistency with the federal regulations. The definition of "Pipeline and Hazardous Materials Safety Administration" is being updated to reflect the proper citation to the October 1, 2006 edition of 49 CFR.

Section 385.1020 is being amended to remove the service procedures for out-of-service orders. Those service procedures will be replaced with a cross reference to new out-of-service procedures that are being simultaneously proposed under 92 Ill. Adm. Code 386.1020. The new out-of-service procedures in Part 386 will be applicable to both Part 385 and Part 386.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? Yes

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED AMENDMENTS

- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This rulemaking does not affect units of local government.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Any interested party may submit written comments or arguments concerning these proposed amendments. Written submissions shall be filed with:

By U.S. Mail:

Ms. Catherine Allen  
Illinois Department of Transportation  
Division of Traffic Safety  
P.O. Box 19212  
Springfield, Illinois 62794-9212

217/785-3031

By Messenger or Inter-Agency Mail:

DOT Annex Building  
3215 Executive Park Drive  
Commercial Vehicle Safety; 3rd Floor  
Springfield, Illinois

JCAR requests, comments and concerns regarding this rulemaking should be addressed to:

Ms. Christine Caronna-Beard, Rules Manager  
Illinois Department of Transportation  
Office of Chief Counsel  
2300 South Dirksen Parkway, Room 317  
Springfield, Illinois 62764

217/524-3838

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED AMENDMENTS

Comments received within 45 days after the date of publication of this *Illinois Register* will be considered. Comments received after that time will be considered, time permitting.

- 13) Initial Regulatory Flexibility Analysis:
  - A) Types of small businesses affected: This rulemaking affects small businesses that own or operate commercial motor vehicles.
  - B) Reporting, bookkeeping or other procedures required for compliance: No additional procedures are required as a result of this rulemaking.
  - C) Types of professional skills necessary for compliance: No new or additional skills are required as a result of this rulemaking.
- 14) Regulatory Agenda on which this rulemaking was summarized: January 2008

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

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED AMENDMENTS

## TITLE 92: TRANSPORTATION

## CHAPTER I: DEPARTMENT OF TRANSPORTATION

## SUBCHAPTER d: MOTOR CARRIER SAFETY REGULATIONS

## PART 385

## SAFETY FITNESS PROCEDURES

## SUBPART A: GENERAL REQUIREMENTS

## Section

385.1000	Purpose
385.1010	Definitions
385.1020	Unsatisfactory Rated Motor Carriers

## SUBPART B: HAZARDOUS MATERIALS SAFETY PERMITS

## Section

385.2000	Incorporation by Reference of 49 CFR 385, subpart E
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**AUTHORITY:** Implementing, and authorized by Sections 18b-102 and 18b-105 of, the Illinois Motor Carrier Safety Law [625 ILCS 5/Ch. 18B].

**SOURCE:** Adopted at 25 Ill. Reg. 2131, effective January 17, 2001; amended at 26 Ill. Reg. 8966, effective June 5, 2002; amended at 29 Ill. Reg. 19216, effective November 10, 2005; amended at 32 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART A: GENERAL REQUIREMENTS

**Section 385.1010 Definitions**

As used in this Part:

"Applicable Safety Regulations or Requirements" means 49 CFR chapter III, subchapter B – Federal Motor Carrier Safety Regulations or, if the carrier is an intrastate motor carrier subject to the hazardous materials safety permit requirements in subpart E of 49 CFR 385, 92 Ill. Adm. Code Subchapter d: Motor Carrier Safety Regulations and 49 CFR chapter I, subchapter C – Hazardous Materials Regulations.

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED AMENDMENTS

"Commercial Motor Vehicle" means the same as the meaning ascribed to it in 92 Ill. Adm. Code 390.1020, except that Subpart B of this Part applies to intrastate motor carriers that transport those hazardous materials listed in 49 CFR 385.403 and incorporated by reference at Section 385.2000(a) of this Part.

"Compliance Review" means an on-site examination of a motor carrier's operations, such as the drivers' hours of service, maintenance and inspection, driver qualification, commercial drivers license requirements, financial responsibility, accidents, hazardous materials, and other safety and transportation records to determine whether a motor carrier meets the safety fitness standard. A compliance review may be conducted in response to a request to change a safety rating, to investigate potential violations of safety regulations by a motor carrier, to investigate complaints, or other evidence of safety violations. The compliance review may result in the initiation of an enforcement action. (49 CFR 385.3, October 1, ~~2006~~2004)

"Department" means the Illinois Department of Transportation.

"Federal Motor Carrier Safety Administration" or "FMCSA" means an agency within the United States Department of Transportation.

"Out-of-Service Order" means a prohibition against operating a commercial motor vehicle.

"Pipeline and Hazardous Materials Safety Administration" or "PHMSA" means the Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590. (49 CFR 171.8, October 1, 2006) within USDOT (formerly known as the Research and Special Programs Administration). (~~70 FR 8299, February 18, 2005~~)

"Safety Management Controls" means the system, policies, programs, practices, and procedures used by a motor carrier to ensure compliance with applicable safety and hazardous materials regulations, that ensure the safe movement of products and passengers through the transportation system, and that reduce the risk of highway accidents and hazardous materials incidents resulting in fatalities, injuries, and property damage. (49 CFR 385.3, October 1, ~~2006~~2004)

## DEPARTMENT OF TRANSPORTATION

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"Safety Permit" means a document issued by the FMCSA that contains a permit number and confers authority to transport in commerce the hazardous materials listed in 49 CFR 385.403. (49 CFR 385.402, October 1, ~~2006~~2004)

"Safety Ratings" means:

A satisfactory safety rating means that a motor carrier has in place and functioning adequate safety management controls to meet the safety fitness standards prescribed in 49 CFR 385.5. Safety management controls are adequate if they are appropriate for the size and type of operation of the particular motor carrier.

A conditional safety rating means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard that could result in occurrences listed in 49 CFR 385.5(a) through (k).

An unsatisfactory safety rating means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard that has resulted in occurrences listed in 49 CFR 385.5(a) through (k).

An unrated carrier means that a safety rating has not been assigned to the motor carrier by the FMCSA. (49 CFR 385.3, October 1, ~~2006~~2004)

(Source: Amended at 32 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 385.1020 Unsatisfactory Rated Motor Carriers**

- a) Upon written notification from the FMCSA to a motor carrier that it has received a final "unsatisfactory" rating by the FMCSA under 49 CFR 385, that motor carrier shall not operate a commercial motor vehicle listed in Section 385.1000 in Illinois.
- b) When a carrier subject to the prohibition in Section 385.1000 is known to operate a commercial motor vehicle in Illinois, the Department will issue an order placing those operations out-of-service in Illinois. The order will be served as prescribed under 92 Ill. Adm. Code 386.1020. ~~hand delivered to an Illinois office, if known to~~

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED AMENDMENTS

~~the Department, of the carrier and a copy served by certified mail return receipt requested on the carrier.~~

- c) Any motor carrier placed out-of-service by the Department pursuant to subsection (b) of this Section may appeal that order to the Secretary, who will investigate the matter.
- 1) Appeals shall be filed in writing with the Secretary no more than 20 days after the out-of-service order is served as prescribed under 92 Ill. Adm. Code 386.1020~~by hand delivery or certified mail return receipt requested on the carrier, whichever date is earlier.~~ The appeal shall contain the reason for the appeal and a contact person's name, address and telephone number.
  - 2) The Secretary's designee will appoint a Department employee to investigate every appeal submitted to the Department in accordance with this Part. The operations declared out-of-service shall remain out-of-service in Illinois during the duration of the investigation.
  - 3) The Department's investigation will be concluded within 30 days after the receipt of the appeal by the Department.
  - 4) Within the 30 day investigative period, the Secretary will issue written notification to the petitioner indicating the Department's determination as to the correctness or incorrectness of the out-of-service order remaining in effect.
  - 5) The Department's written notification, served by certified mail return receipt requested, will include a statement of the facts relied upon and issues decided by the Department in making its determination. The Department's determination is considered administratively final.
- d) Any motor carrier whose safety rating of "unsatisfactory" has become final under 49 CFR 385, that has been ordered out-of-service in Illinois by the Department and that has exhausted the appeal procedure or not timely filed an appeal under subsection (c) of this Section and that then willfully operates a commercial motor vehicle in Illinois described in Section 385.1000 will be referred by the Department to a State's Attorney or the Attorney General for prosecution of a Class 3 felony.

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- e) Any person who willfully permits a motor carrier to operate a commercial motor vehicle in Illinois as described in subsection (d) of this Section will be referred by the Department to a State's Attorney or Attorney General for prosecution of a Class 3 felony.
- f) The Department will rescind its out-of-service order issued under this Section within five business days after being notified that the FMCSA has rescinded the "unsatisfactory" rating or will not assign a final "unsatisfactory" rating to the motor carrier. After verification of the rescission from the FMCSA, written notification of the rescission will be sent within that time period by certified mail to the motor carrier.

(Source: Amended at 32 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART B: HAZARDOUS MATERIALS SAFETY PERMITS

**Section 385.2000 Incorporation by Reference of 49 CFR 385, subpart E**

- a) The Department incorporates by reference 49 CFR 385, subpart E, as that subpart of the Federal Motor Carrier Safety Regulations (FMCSR) (49 CFR 380, [382](#), [383](#), 385, [appendix B of 386](#), 387, 390, 391, 392, 393, 395, 396, and 397) was in effect on October 1, ~~2006~~[2004](#), subject only to the exceptions in subsection (b) of this Section. No later amendments to or additions of 49 CFR 385, subpart E, are incorporated. Copies of the appropriate material are available from the Division of Traffic Safety, 3215 Executive Park Drive, 3<sup>rd</sup> Floor, Springfield, Illinois 62703 or by calling (217)785-1181. The FMCSR are available on the National Archives and Records Administration's website at <http://ecfr.gpoaccess.gov>. The Division of Traffic Safety's rules are available on the Department's website at <http://www.dot.il.gov/regulations.html>.
- b) The following interpretations of 49 CFR 385, subpart E, shall apply for purposes of this Subpart:
  - 1) Any reference to "this part" in the incorporated material shall mean 92 Ill. Adm. Code 385.
  - 2) Any reference to "this chapter" or "this subchapter" in the incorporated material shall mean 92 Ill. Adm. Code: Chapter I, Subchapter d.

DEPARTMENT OF TRANSPORTATION

NOTICE OF PROPOSED AMENDMENTS

- 3) Any reference to a section in the incorporated material shall be read to refer to that Section in the Illinois Motor Carrier Safety Regulations.

(Source: Amended at 32 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Procedures and Enforcement
- 2) Code Citation: 92 Ill. Adm. Code 386
- 3) 

<u>Section Numbers:</u>	<u>Proposed Action:</u>
386.1010	Amend
386.1020	Amend
386.1035	New Section
386.1110	Amend
386.1300	Amend
386.1310	Amend
- 4) Statutory Authority: Implementing, and authorized by, Sections 18b-102 and 18b-105 of the Illinois Motor Carrier Safety Law [625 ILCS 5/Ch. 18B] and Section 3-704(b) of the Illinois Vehicle Code [625 ILCS 5/3-704(b)]; and authorized by Title IV – Motor Carrier Safety Reauthorization Act of 2005, Section 4132 of Subtitle A – Commercial Motor Vehicle Safety, of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (P.L. 109-59)
- 5) A complete description of the subjects and issues involved: By this Notice, and pursuant to section 18b-105(b) of the Illinois Motor Carrier Safety Law [625 ILCS 5/18b-105(b)], the Department is proposing to add a new Section to Part 386, at Section 386.1035, that incorporates by reference 49 CFR 386, appendix B, as of October 1, 2006, the most recent edition of 49 CFR.

At Section 386.1010, the Department is proposing to amend the definition of "public utility" to correspond to the definition of "utility service vehicle" that is being added at 92 Ill. Adm. Code 390.1020.

At Section 386.1020, the Department is proposing to amend the procedures the Department will follow when serving motor carriers with orders, notices, and warning letters. These procedures are nearly verbatim the new federal procedures found at 49 CFR 386.6. This proposed amendment will allow the Department, just as the Federal Motor Carrier Safety Administration does, to serve documents by: personal (hand) delivery; commercial mail delivery; U.S. mail; and, upon prior written consent of the carrier, by facsimile. When service is made by facsimile, a copy will also be served by any other method previously mentioned. If possible, a certificate of service will also accompany all documents served. When a carrier refuses to accept delivery of a document, and no certificate of service is provided, the date shown on the postmark will

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED AMENDMENTS

serve as proof of service. The mailing date shown by the other methods previously mentioned will also serve as proof of service if there is no certificate of service or postmark.

At Section 386.1110, Maximum Penalties, the Department is updating language to correspond to the incorporation by reference of 49 CFR 386, appendix B. Public Act 94-519, effective August 10, 2005, amended Section 18b-107 of the Illinois Motor Carrier Safety Law to authorize the Department to follow the federal penalty schedule under 49 CFR 386, appendix B, when assessing monetary penalties against carriers who commit any act that is in violation of the Illinois Motor Carrier Safety Regulations.

Finally, at Sections 386.1300 and 386.1310, the Department is proposing to amend Subpart C, Public Utility Exemptions, to exempt operators of utility service vehicles, as defined in 92 Ill. Adm. Code 390.1020, from the hours of service requirements in 92 Ill. Adm. Code 395. The Department is amending these Sections pursuant to the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Title IV - Motor Carrier Safety Reauthorization Act of 2005 (P.L. 109-59) (the Act) that was signed by President Bush in August 2005. The Act exempts operators of interstate public utility service vehicles from the provisions of 49 CFR 395, Hours of Service of Drivers. The Department will provide the same exemption for operators of intrastate public utility service vehicles upon adoption of this rulemaking. Finally, the Department is amending Section 386.1300 to clarify that Subpart C of this Part is only applicable to vehicles that are not CDL-regulated. However, pursuant to section 4132 of the Act, CDL-regulated vehicles that meet the definition of utility service vehicle are not subject to 92 Ill. Adm. Code 395. As stated in Section 386.1310(b), Subpart C of this Part does not include an exception to 92 Ill. Adm. Code 391.

- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? Yes
- 10) Are there any other proposed rulemakings pending on this Part? No

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED AMENDMENTS

- 11) Statement of Statewide Policy Objective: This rulemaking does not affect units of local government.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Any interested party may submit written comments or arguments concerning these proposed amendments. Written submissions shall be filed with:

By U.S. Mail:

Ms. Catherine Allen  
Illinois Department of Transportation  
Division of Traffic Safety  
P.O. Box 19212  
Springfield, Illinois 62794-9212

217/785-3031

By Messenger or Inter-Agency Mail:

DOT Annex Building  
3215 Executive Park Drive  
Commercial Vehicle Safety; 3rd Floor  
Springfield, Illinois

JCAR requests, comments and concerns regarding this rulemaking should be addressed to:

Ms. Christine Caronna-Beard, Rules Manager  
Illinois Department of Transportation  
Office of Chief Counsel  
2300 South Dirksen Parkway, Room 311  
Springfield, Illinois 62764

217/524-3838

Comments received within 45 days after the date of publication of this *Illinois Register* will be considered. Comments received after that time will be considered, time permitting.

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED AMENDMENTS

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses affected: This rulemaking affects small businesses that own or operate commercial motor vehicles in Illinois.
  - B) Reporting, bookkeeping or other procedures required for compliance: No new or additional procedures are necessary for compliance with this rulemaking.
  - C) Types of professional skills necessary for compliance: No new or additional skills are necessary for compliance with this rulemaking.
- 14) Regulatory Agenda on which this rulemaking was summarized: January 2008

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

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED AMENDMENTS

## TITLE 92: TRANSPORTATION

## CHAPTER I: DEPARTMENT OF TRANSPORTATION

## SUBCHAPTER d: MOTOR CARRIER SAFETY REGULATIONS

## PART 386

## PROCEDURES AND ENFORCEMENT

## SUBPART A: GENERAL PROVISIONS

Section	
386.1000	Scope
386.1010	Definitions
386.1020	Service
386.1030	Subpoenas
<u>386.1035</u>	<u>Incorporation by Reference</u>

## SUBPART B: ENFORCEMENT

Section	
386.1040	Responsibility for Enforcement
386.1050	Investigations
386.1060	Inspection of Records and Motor Vehicles
386.1070	Out of Service
386.1080	Record of Inspection
386.1090	Warning Letter
386.1110	Maximum Penalties
386.1120	Commencement of Civil Penalty Proceeding
386.1130	Reply
386.1140	Payment of Penalty
386.1150	Request for Hearing
386.1160	Hearing
386.1170	Presiding Officer's Decision
386.1180	Assessment Considerations
386.1190	Appeal
386.1200	Willful Violations
386.1210	Failure to Pay Civil Penalty

## SUBPART C: PUBLIC UTILITY EXEMPTIONS

## DEPARTMENT OF TRANSPORTATION

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## Section

386.1300	Purpose and Scope
386.1310	Exemptions for a Public Utility
386.1320	Initial Exemptions: Application and Review
386.1330	Renewals
386.1340	Expiration and Termination of an Exemption
386.1350	Appeal

**AUTHORITY:** Implementing, and authorized by Sections 18b-102 and 18b-105 of, the Illinois Motor Carrier Safety Law [625 ILCS 5/Ch. 18B] and Section 3-704(b) of the Illinois Vehicle Code [625 ILCS 5/3-704(b)]; and authorized by Title IV - Motor Carrier Safety Reauthorization Act of 2005, Section 4132 of the Subtitle A - Commercial Motor Vehicle Safety, of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA - LU) (P.L. 109-59).

**SOURCE:** Adopted at 14 Ill. Reg. 15542, effective September 10, 1990; amended at 18 Ill. Reg. 778, effective January 11, 1994; amended at 19 Ill. Reg. 13073, effective August 30, 1995; amended at 23 Ill. Reg. 5128, effective March 31, 1999; amended at 24 Ill. Reg. 1980, effective January 19, 2000; amended at 25 Ill. Reg. 2121, effective January 17, 2001; amended at 26 Ill. Reg. 8972, effective June 5, 2002; amended at 32 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART A: GENERAL PROVISIONS

**Section 386.1010 Definitions**

As used in this Part:

"Applicant" means a public utility that submits an application.

"Department" means the Illinois Department of Transportation.

"Director" means the Director of the Division of Traffic Safety whose office is located at:

Illinois Department of Transportation  
P.O. Box 19212  
3215 Executive Park Drive  
Springfield, Illinois 62794-9212

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## NOTICE OF PROPOSED AMENDMENTS

"Division" means the Division of Traffic Safety of the Illinois Department of Transportation.

"Exemption" means a document issued under the authority of the Division that authorizes a person to perform a function that is not otherwise authorized under the Illinois Motor Carrier Safety Regulations.

"Illinois State Police" means any individual officer of the Illinois State Police.

"Material(ly)" means anything which relates to any substantive issue that is of consequence to the determination of a proceeding.

"Officer" means an authorized employee of the Illinois Department of Transportation.

"Public Utility" means a firm lawfully licensed and engaged in any of the following: telephone, and television cable or community antenna service;~~the transmission of telegraphic or telephonic messages;~~ the production, storage, transmission, distribution, sale, delivery, or furnishing of heat, cold, light, power, electricity, gas, ~~or~~ water, or sanitary sewer; or the installation or repair of facilities for any of these activities.

"Relevant" means having any tendency to make the existence of any fact that is of consequence to the determination of the proceeding more probable or less probable than it would be without that information.

"Respondent" means a person upon whom the Department has served a Notice of Intent to Assess Civil Monetary Penalty or a Notice of Probable Violation.

"Secretary" means the Secretary of the Illinois Department of Transportation.

"Undue Delay" means delay which is unwarranted, unjustified, or improper.

(Source: Amended at 32 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 386.1020 Service**

- a) General  
All documents must be served upon the party or the party's designated agent for service of process. (See 49 CFR 386.6(a).)

## DEPARTMENT OF TRANSPORTATION

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- b) Type of Service  
The Department will serve documents by personal (hand) delivery utilizing governmental or commercial entities, U.S. mail, commercial mail delivery, and, upon prior written consent of the parties, facsimile. Written consent for facsimile service must specify the facsimile number where service will be accepted. When service is made by facsimile, a copy will also be served by any other method permitted by this Section. Facsimile service occurs when transmission is complete. (See 49 CFR 386.6(b).)
- c) Certificate of Service  
A certificate of service will accompany all documents served in a proceeding under this Part, including an out-of-service order, as prescribed in 92 Ill. Adm. Code 385. The certificate must show the date and manner of service; must be signed by the person making service; and must list the persons being served. (See 49 CFR 386.6(c).)
- d) Date of Service  
A document will be considered served on the date of personal delivery. If the document is mailed, it will be considered served on the mailing date shown on the certificate of service; or on the date shown on the postmark if there is no certificate of service; or on the mailing date shown by other evidence if there is no certificate of service or postmark. (49 CFR 386.6(d))
- e) Valid Service  
A properly addressed document, sent in accordance with this Section, that was returned, unclaimed, or refused, is deemed to have been served in accordance with this Section. The service will be considered valid as of the date and the time the document was mailed, or the date personal delivery of the document was refused. Service by delivery after 5 p.m. is deemed to have been made on the next day that is not a Saturday, Sunday, or legal holiday. (See 49 CFR 386.6(e).)
- f) Presumption of Service  
There shall be a presumption of service if the document is served where a party or a person customarily receives mail or at the address designated in the entry of appearance. (49 CFR 386.6(f))
- a) ~~Each order, notice, or warning letter required to be served under this Part shall be served personally or by certified mail.~~

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED AMENDMENTS

- b) ~~Service upon a person's authorized representative constitutes service upon that person.~~
- e) ~~Service by certified mail is complete upon mailing. An official United States Postal Service receipt from the certified mailing constitutes prima facie evidence of service.~~

(Source: Amended at 32 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 386.1035 Incorporation by Reference**

- a) The Department incorporates by reference 49 CFR 386, appendix B – Penalty Schedule; Violations and Maximum Monetary Penalties as that appendix to 49 CFR 386 was in effect on October 1, 2006, subject only to the exceptions in subsection (b) of this Section. No later amendments to or additions of 49 CFR 386, appendix B are incorporated. Copies of the appropriate material are available from the Division of Traffic Safety, 3215 Executive Park Drive, 3<sup>rd</sup> Floor, Springfield, Illinois 62703 or by calling (217)785-1181. The FMCSR are available on the National Archives and Records Administration's website at <http://ecfr.gpoaccess.gov>. The Division of Traffic Safety's rules are available on the Department's website at <http://www.dot.il.gov/regulations.html>.
- b) The following interpretations of 49 CFR 386, appendix B shall apply for purposes of this Part:
- 1) Any reference to "this part" in the incorporated material shall mean 92 Ill. Adm. Code 386.
  - 2) Any reference to "this chapter" or "this subchapter" in the incorporated material shall mean 92 Ill. Adm. Code: Chapter I, Subchapter d.
  - 3) Any reference to a section in the incorporated material shall be read to refer to that Section in the Illinois Motor Carrier Safety Regulations (IMCSR).

(Source: Added at 32 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART B: ENFORCEMENT

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED AMENDMENTS

**Section 386.1110 Maximum Penalties**

A person who commits an act that is a violation of any of the ~~IMCSR~~~~MCSR~~ is liable for a civil penalty as prescribed by 49 CFR 386, appendix B - Penalty Schedule; Violations and Maximum Monetary Penalties. (See Section 18b-107 of the Law.) ~~of not more than \$5,000 for each violation.~~ When the violation is a continuing one, each day of the violation constitutes a separate offense.

(Source: Amended at 32 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART C: PUBLIC UTILITY EXEMPTIONS

**Section 386.1300 Purpose and Scope**

- a) This Subpart C applies to vehicles that are not subject to 92 Ill. Adm. Code 383 (i.e., operators required to obtain a commercial driver's license cannot qualify for this public utility exemption).
- b) Pursuant to the Motor Carrier Safety Reauthorization Act of 2005, drivers that operate utility service vehicles, as defined in 92 Ill. Adm. Code 390.1020, are exempt from the provisions of 92 Ill. Adm. Code 395. (See 92 Ill. Adm. Code 395.1000(b).) Drivers of utility service vehicles seeking relief from the hours of service requirements in 92 Ill. Adm. Code 395 are not required to follow the procedures contained in this Subpart C. (See the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Title IV - Motor Carrier Safety Reauthorization Act of 2005 (P.L. 109-59).)
- c) This Subpart C prescribes procedures by which a public utility, as defined in Section 386.1010 and that is not subject to the federal Motor Carrier Safety Regulations, may obtain administrative relief from 92 Ill. Adm. Code 390, 392, 393, 396 and 397 ~~the Illinois Motor Carrier Safety Regulations (IMCSR)~~ in the form of an exemption. Exemptions provided for in this Subpart C will be granted only when they insure levels of safety consistent with the public interest, with the Illinois Motor Carrier Safety Regulations, and with the tolerance guidelines established in 49 CFR 350, ~~appendix~~Appendix C.

(Source: Amended at 32 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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## NOTICE OF PROPOSED AMENDMENTS

**Section 386.1310 Exemptions for a Public Utility**

- a) Only those intrastate public utility commercial motor vehicles and their drivers that meet the requirements of this Subpart C are eligible for an exemption.
- b) Upon application, public utility commercial motor vehicles operated solely in intrastate commerce as defined in 92 Ill. Adm. Code 390.1020 with a gross vehicle weight rating (GVWR) or gross combination weight rating (GCWR) of 26,000 pounds or less and that are not either designed to transport more than 15 passengers, including the driver, or used to transport hazardous materials in an amount requiring placarding, will be considered for an exemption from the Illinois Motor Carrier Safety Regulations with the exception of 92 Ill. Adm. Code 391 - Qualification of Drivers.
- e) ~~Upon application, drivers of solely intrastate public utility commercial motor vehicles having a GVWR or GCWR greater than 26,000 pounds will be considered for an exemption from some provisions of 92 Ill. Adm. Code 395—Hours of Service of Drivers. The following subsections establish the requirements in lieu of 92 Ill. Adm. Code 395 for those drivers:~~
  - 1) ~~Expansion of the 10 hour driving rule limit to a 12 hour driving rule limit;~~
  - 2) ~~Increase the combination of driving time and on duty but not driving time from 15 hours to 16 hours; and~~
  - 3) ~~Increase the current 60 hour rule to 70 hours in seven consecutive days and increase the 70 hour rule to 80 hours in eight consecutive days.~~

(Source: Amended at 32 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Minimum Levels of Financial Responsibility for Motor Carriers
- 2) Code Citation: 92 Ill. Adm. Code 387
- 3) 

<u>Section Numbers:</u>	<u>Proposed Action:</u>
387.1050	Amend
387.2000	Amend
- 4) Statutory Authority: Implementing, and authorized by, Sections 18b-102 and 18b-105 of the Illinois Motor Carrier Safety Law [625 ILCS 5/Ch. 18B]
- 5) A complete description of the subjects and issues involved: By this Notice, the Department is proposing to update the incorporation by reference of 49 CFR 387 to the October 1, 2006 edition, the most recent edition of 49 CFR. The Department is also proposing to add parts 382, 383, and appendix B of 386 to the list of Federal Motor Carrier Safety Regulations referenced in Section 387.2000(a) since they are applicable to the Illinois Motor Carrier Safety Regulations. The Department is also updating two CFR citations in Section 387.1050.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rule making replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? Yes
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This rulemaking does not affect units of local government.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Any interested party may submit written comments or arguments concerning these proposed amendments. Written submissions shall be filed with:

By U.S. Mail:

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED AMENDMENTS

Ms. Catherine Allen  
Illinois Department of Transportation  
Division of Traffic Safety  
P.O. Box 19212  
Springfield, Illinois 62794-9212

217/785-3031

By Messenger or Inter-Agency Mail:

DOT Annex Building  
3215 Executive Park Drive  
Commercial Vehicle Safety; 3rd Floor  
Springfield, Illinois

JCAR requests, comments and concerns regarding this rulemaking should be addressed to:

Ms. Christine Caronna-Beard, Rules Manager  
Illinois Department of Transportation  
Office of Chief Counsel  
2300 South Dirksen Parkway, Room 317  
Springfield, Illinois 62764

217/524-3838

Comments received within 45 days after the date of publication of this *Illinois Register* will be considered. Comments received after that time will be considered, time permitting.

13) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses affected: This rulemaking affects small businesses that own or operate applicable (see Section 387.1050 in the text of the proposed amendments) commercial motor vehicles in Illinois.
- B) Reporting, bookkeeping or other procedures required for compliance: No new or additional procedures are necessary for compliance with this rulemaking.

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- C) Types of professional skills necessary for compliance: No new or additional skills are necessary for compliance with this rulemaking.
  
- 14) Regulatory Agenda on which this rulemaking was summarized: January 2008

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

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED AMENDMENTS

## TITLE 92: TRANSPORTATION

## CHAPTER I: DEPARTMENT OF TRANSPORTATION

## SUBCHAPTER d: MOTOR CARRIER SAFETY REGULATIONS

## PART 387

## MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS

## Section

387.1000	Purpose
387.1050	Applicability
387.2000	Incorporation by Reference of 49 CFR 387

**AUTHORITY:** Implementing, and authorized by Sections 18b-102 and 18b-105 of, the Illinois Motor Carrier Safety Law [625 ILCS 5/Ch. 18B].

**SOURCE:** Adopted at 29 Ill. Reg. 19222, effective November 10, 2005; amended at 32 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

**Section 387.1050 Applicability**

- a) This Part applies to for-hire motor carriers operating motor vehicles transporting property in interstate commerce.
- b) This Part applies to motor carriers operating motor vehicles transporting hazardous materials, hazardous substances, or hazardous wastes in interstate or intrastate commerce.
- c) Exceptions:
  - 1) This Part does not apply to a motor vehicle that has a gross vehicle weight rating (GVWR) of less than 10,000 pounds. This exception does not apply if the vehicle is used to transport any quantity of a Division 1.1, 1.2, or 1.3 material, any quantity of a Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A, or to a highway route controlled quantity of a Class 7 material as it is defined in 49 CFR 173.403, in interstate commerce.
  - 2) This Part does not apply to the transportation of non-bulk oil or non-bulk hazardous materials, substances, or wastes in intrastate commerce, except

## DEPARTMENT OF TRANSPORTATION

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that this Part does apply to the transportation of a highway route controlled quantity of a Class 7 material as defined in 49 CFR 173.403, in intrastate commerce. (49 CFR 387.3, October 1, ~~2006~~2004)

- d) This Part applies to for-hire motor carriers transporting passengers in interstate commerce only.
- e) Exceptions. This Part does not apply to:
  - 1) An interstate motor vehicle transporting only school children and teachers to or from school;
  - 2) An interstate motor vehicle providing taxicab service and having a seating capacity of fewer than 7 passengers and not operated on a regular route or between specified points;
  - 3) An interstate motor vehicle carrying fewer than 16 individuals in a single daily round trip to commute to and from work; and
  - 4) An interstate motor vehicle operated by a motor carrier under contract providing transportation of preprimary, primary, and secondary students for extracurricular trips organized, sponsored, and paid for by a school district. (49 CFR 387.27, October 1, ~~2006~~2004)

(Source: Amended at 32 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 387.2000 Incorporation by Reference of 49 CFR 387**

- a) The Department incorporates by reference 49 CFR 387 as that part of the Federal Motor Carrier Safety Regulations (FMCSR) (49 CFR 380, ~~382, 383~~, 385, ~~appendix B of 386~~, 387, 390, 391, 392, 393, 395, 396, and 397) was in effect on October 1, ~~2006~~2004. No later amendments to or editions of 49 CFR 387 are incorporated. Copies of the appropriate material are available from the Division of Traffic Safety, 3215 Executive Park Drive, 3<sup>rd</sup> Floor, Springfield, Illinois 62703 or by calling (217)785-1181. The FMCSR are available on the National Archives and Records Administration's website at <http://ecfr.gpoaccess.gov>. The Division of Traffic Safety's rules are available on the Department's website at <http://www.dot.il.gov/regulations.html>.

DEPARTMENT OF TRANSPORTATION

NOTICE OF PROPOSED AMENDMENTS

- b) References to subchapters, parts, subparts, sections or paragraphs shall be read to refer to the appropriate citation in 49 CFR.

(Source: Amended at 32 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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## NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Motor Carrier Safety Regulations: General
- 2) Code Citation: 92 Ill. Adm. Code 390
- 3) 

<u>Section Numbers:</u>	<u>Proposed Action:</u>
390.1020	Amend
390.1030	Amend
390.2000	Amend
- 4) Statutory Authority: Implementing, and authorized by, Sections 18b-102 and 18b-105 of the Illinois Motor Carrier Safety Law [625 ILCS 5/Ch. 18B]; and authorized by Title IV – Motor Carrier Safety Reauthorization Act of 2005, Sections 4130 and 4132 of Subtitle A – Commercial Motor Vehicle Safety, of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA – LU) (P.L. 109-59)
- 5) A complete description of the subjects and issues involved: By this Notice, the Department is proposing to update the incorporation by reference of 49 CFR 390, subpart B, to the October 1, 2006 edition, the most recent edition of 49 CFR. The Department is also proposing to add parts 382, 383, and appendix B of 386 to the list of Federal Motor Carrier Safety Regulations referenced in Section 390.2000(a) since they are applicable to the Illinois Motor Carrier Safety Regulations.

At Section 390.1020, the Department is updating CFR citations to maintain consistency with the federal regulations. The definition of "Driveaway-towaway operation" is being updated pursuant to the federal final rulemaking of August 15, 2005, 70 FR 48008, that is now included in the October 1, 2006 edition of 49 CFR.

Public Act 94-739, effective May 9, 2006, expanded the hours-of-service exemption for the agricultural community in Illinois. Prior to the Public Act, the exemption (see 92 Ill. Adm. Code 395.2000(c)(5)) applied only to the transportation of fertilizers and chemicals either from the source of the fertilizer or chemical supply (i.e., the dealer) to the farm and back or from one farm to another farm. Now, the Public Act provides relief from the hours-of-service requirements for the transportation of the fertilizer or chemical from manufacturer to dealer. The Public Act also expands the agricultural hours-of-service exemption by adding the definition of agricultural commodities that includes not only agricultural products grown from the earth, but livestock as well.

The following definitions are being added at Section 390.1020 pursuant to Public Act 94-739.

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"Agricultural commodities";  
"Agricultural operations";  
"Farm supplies for agricultural purposes"; and  
"Livestock".

The definition of "agricultural movements" is being deleted pursuant to the Public Act. The new statutory definition of "agricultural operations" will replace the definition of "agricultural movements."

The definition of "distribution point" is being added to help clarify the applicability of the Public Act. Section 4130 of the Motor Carrier Safety Reauthorization Act of 2005 (P.L. 109-59) exempts farm supplies being transported within 100 air miles from the distribution point. Since the distribution point is a critical component of enforcement, it is necessary to clarify that the distribution point does not start over again every time the vehicle may stop to drop off a partial load. The Department, therefore, has defined the distribution point for for-hire carriers as the location where the bill of lading (i.e., receipt or list of farm supplies being transported) originates. The distribution point for not-for-hire carriers is the location where the farm supply is originally loaded onto the vehicle. The distribution point for not-for-hire carriers does not start over every time the driver stops the vehicle to drop off a portion of the load.

Additionally, the Public Act expands the agricultural exceptions in 92 Ill. Adm. Code 395 for hours-of-service requirements and the new and amended definitions at Section 390.1020 reflect those changes. The Public Act also expands the planting and harvesting season to any time of the year. As a result, the definition of "planting and harvesting season" is being amended to include the period January 1 through December 31.

Also, at Section 390.1020, the Department is proposing to add a definition of "utility service vehicle" (that is being incorporated by reference at 92 Ill. Adm. Code 395.2000) to clarify the exemption for drivers of utility service vehicles from the hours-of-service requirements in 92 Ill. Adm. Code 395 pursuant to Section 4132 of the Motor Carrier Safety Reauthorization Act of 2005.

- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED AMENDMENTS

- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? Yes
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This rulemaking does not affect units of local government.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Any interested party may submit written comments or arguments concerning these proposed amendments. Written submissions shall be filed with:

By U.S. Mail:

Ms. Catherine Allen  
Illinois Department of Transportation  
Division of Traffic Safety  
P.O. Box 19212  
Springfield, Illinois 62794-9212

217/785-3031

By Messenger or Inter-Agency Mail:

DOT Annex Building  
3215 Executive Park Drive  
Commercial Vehicle Safety; 3rd Floor  
Springfield, Illinois

JCAR requests, comments and concerns regarding this rulemaking should be addressed to:

Ms. Christine Caronna-Beard, Rules Manager  
Illinois Department of Transportation  
Office of Chief Counsel  
2300 South Dirksen Parkway, Room 317  
Springfield, Illinois 62764

## DEPARTMENT OF TRANSPORTATION

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217/524-3838

Comments received within 45 days after the date of publication of this *Illinois Register* will be considered. Comments received after that time will be considered, time permitting.

13) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses affected: This rulemaking affects small businesses that own or operate commercial motor vehicles.
- B) Reporting, bookkeeping or other procedures required for compliance: No additional procedures are required as a result of this rulemaking.
- C) Types of professional skills necessary for compliance: No new or additional skills are required as a result of this rulemaking.

14) Regulatory Agenda on which this rulemaking was summarized: January 2008

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

DEPARTMENT OF TRANSPORTATION

NOTICE OF PROPOSED AMENDMENTS

TITLE 92: TRANSPORTATION

CHAPTER I: DEPARTMENT OF TRANSPORTATION

SUBCHAPTER d: MOTOR CARRIER SAFETY REGULATIONS

PART 390

MOTOR CARRIER SAFETY REGULATIONS: GENERAL

SUBPART A: GENERAL APPLICABILITY AND DEFINITIONS

Section

- 390.1000 Purpose
- 390.1010 General Applicability
- 390.1020 Definitions
- 390.1030 Rules of Construction

SUBPART B: GENERAL REQUIREMENTS AND INFORMATION

Section

- 390.2000 Incorporation by Reference

**AUTHORITY:** Implementing, and authorized by Sections 18b-102 and 18b-105 of, the Illinois Motor Carrier Safety Law [625 ILCS 5/Ch. 18B]; and authorized by Title IV – Motor Carrier Safety Reauthorization Act of 2005, Sections 4130 and 4132 of Subtitle A – Commercial Motor Vehicle Safety, of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA – LU) (P.L. 109-59).

**SOURCE:** Adopted at 14 Ill. Reg. 15519, effective September 10, 1990; amended at 15 Ill. Reg. 13171, effective August 21, 1991; amended at 16 Ill. Reg. 14435, effective September 8, 1992; amended at 18 Ill. Reg. 754, effective January 11, 1994; amended at 18 Ill. Reg. 10362, effective June 15, 1994; amended at 19 Ill. Reg. 13050, effective August 30, 1995; amended at 20 Ill. Reg. 15344, effective November 18, 1996; amended at 23 Ill. Reg. 5105, effective March 31, 1999; amended at 24 Ill. Reg. 1954, effective January 19, 2000; amended at 25 Ill. Reg. 2100, effective January 17, 2001; amended at 26 Ill. Reg. 8978, effective June 5, 2002; amended at 26 Ill. Reg. 12749, effective August 12, 2002; amended at 27 Ill. Reg. 9218, effective June 2, 2003; amended at 28 Ill. Reg. 1152, effective January 4, 2004; emergency amendment at 28 Ill. Reg. 12479, effective August 18, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 15636, effective November 19, 2004; amended at 29 Ill. Reg. 19227, effective November 10, 2005; amended at 30 Ill. Reg. 5637, effective March 8, 2006; amended at 32 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

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## SUBPART A: GENERAL APPLICABILITY AND DEFINITIONS

**Section 390.1020 Definitions**

The following definitions apply to all Parts in the IMCSR unless a specific Part expressly defines a term ~~different~~differently than what is used below:

"Accident" means:

Except as provided below, an occurrence involving a commercial motor vehicle operating on a highway that results in:

A fatality;

Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

One or more motor vehicles incurring disabling damage as a result of the accident, requiring the vehicle(s) to be transported away from the scene by a tow truck or other motor vehicle.

The term accident does not include:

An occurrence involving only boarding and alighting from a stationary motor vehicle; or

An occurrence involving only the loading or unloading of cargo. (49 CFR 390.5, October 1, ~~2006~~2004)

"Agricultural commodities" means any agricultural commodity, non-processed food, feed, fiber, or livestock, including insects. (Section 18b-101 of the Law)

"Agricultural operations" means the operation of a motor vehicle or combination of vehicles transporting agricultural commodities or farm supplies for agricultural purposes. (Section 18b-101 of the Law)

"Agricultural movements" means the operation of a motor vehicle or combination

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~~of vehicles controlled and operated by a private motor carrier of property that is using the vehicle to transport nonhazardous or hazardous agricultural crop production fertilizers or agricultural chemicals from a local source of supply to farm or field, or from one farm or field to another, or from farm or field back to the local source of supply. (Section 1-101.6 of the Illinois Vehicle Code (the Code) [625 ILCS 5/1-101.6])~~

"Air mile" means a nautical mile, which is equivalent to 6,076 feet or 1,852 meters. Accordingly, 100 air miles are equivalent to 115.08 statute miles or 185.2 kilometers. (Section 18b-101 of the Law)

"Alcohol concentration" or "AC" means the concentration of alcohol in a person's blood or breath. When expressed as a percentage it means grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. (49 CFR 390.5, October 1, ~~2006~~2004)

"Bus" means any motor vehicle designed, constructed, and/or used for the transportation of passengers, including taxicabs. (49 CFR 390.5, October 1, ~~2006~~2004)

"Business district" means the territory contiguous to and including a highway when within any 600 feet along such highway there are buildings in use for business or industrial purposes, including but not limited to, hotels, banks, or office buildings, railroad stations and public buildings which occupy at least 300 feet of frontage on one side or 300 feet collectively on both sides of the highway. (Section 1-108 of the Code)

"Charter transportation of passengers" means transportation, using a bus, of a group of persons who, pursuant to a common purpose, under a single contract, at a fixed charge for the motor vehicle, have acquired the exclusive use of the motor vehicle to travel together under an itinerary either specified in advance or modified after having left the place of origin. (49 CFR 390.5, October 1, ~~2006~~2004)

"Code" means the Illinois Vehicle Code [625 ILCS 5].

"Commerce" means trade, commerce or transportation within the State. (Section 1-111.4 of the Code)

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*"Commercial motor vehicle" or "CMV" means:*

*Any self propelled or towed vehicle used on public highways in interstate and intrastate commerce to transport passengers or property when the vehicle has a gross vehicle weight, a gross vehicle weight rating, a gross combination weight, or a gross combination weight rating of 10,001 or more pounds (4,537 or more kilograms); or*

*The vehicle is used or designed to transport more than 15 passengers, including the driver; or*

*The vehicle is designed to carry 15 or fewer passengers and is operated by a contract carrier transporting employees in the course of their employment on a highway of this State; or*

*The vehicle is used or designed to transport between 9 and 15 passengers, including the driver, for direct compensation, if the vehicle is being operated beyond a radius of 75 air miles (86.3 statute miles or 138.9 kilometers) from the driver's normal work reporting location; or*

*The vehicle is used in the transportation of hazardous materials in a quantity requiring placarding under the Illinois Hazardous Materials Transportation Act.*

*This definition shall not include farm machinery, fertilizer spreaders, and other special agricultural movement equipment described in Section 3-809 of the Code nor implements of husbandry as defined in Section 1-130 of the Code. (Section 18b-101 of the Law)*

"Commercial Vehicle Inspections" means:

Level 1 - North American Standard Inspection: An inspection that includes each of the items specified under the North American Uniform Out-of-Service Criteria.

As a minimum, North American Standard inspections must include examination of: driver's license, medical examiner's certificate and waiver if applicable, alcohol and drugs, driver's record of duty status as required, hours-of-service, seat belt, vehicle inspection report, brake system,

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steering mechanism, wheels and rims, tires, coupling devices, suspension, frame, fuel system, exhaust system, windshield wipers, lighting devices, safe loading, and hazardous material requirements as applicable.

Level 2 - Walk Around Driver/Vehicle Inspection: An examination that, as a minimum, includes: driver's license, medical examiner's certificate, and waiver if applicable, driver's record of duty status as required, hours-of-service, seat belt, vehicle inspection report, fire extinguisher, warning devices for stopped vehicles, head lamps, turn signals, stop lamps, windshield wipers, wheels, tires, fuel system, exhaust system, visible brake components, coupling devices, cargo securement, low air warning device, visible suspension components, and hazardous material requirements as applicable. It is contemplated that the walk-around driver/vehicle inspection will be conducted without inspecting underneath the vehicle.

Level 3 - Driver Only Inspection: A roadside examination of the driver's license, medical certification and waiver if applicable, driver's record of duty status as required, hours-of-service, seat belt, and vehicle inspection report.

Level 4 - Special Inspections: Inspections under this heading typically include a one-time examination of a particular item. These examinations are normally made in support of a study or to verify or refute a suspected trend.

Level 5 - Vehicle-Only Inspection: An inspection that includes each of the vehicle inspection items specified under the North American Standard Inspection (Level 1), without a driver present, conducted at any location.

(Commercial Vehicle Safety Alliance (CVSA), CVSA Operations Manual, January 1996)

"Commercial Vehicle Safety Alliance" or "CVSA" means the association of state/territory (United States), provincial/territory (Canada), and federal (Mexico) officials responsible for the administration and enforcement of motor carrier safety and hazardous materials laws in the United States, Canada and Mexico working together with the federal governments and industry to improve commercial vehicle safety. (CVSA Operations Manual, January 1996)

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"Conviction" means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended or probated. (49 CFR 390.5, October 1, ~~2006~~2004)

*"Department" means the Department of Transportation of the State of Illinois, acting directly or through its duly authorized officers and agents. (Section 1-115.05 of the Code)*

"Direct assistance" means transportation and other relief services provided by a motor carrier or its ~~drivers~~driver(s) incident to the immediate restoration of essential services (such as electricity, medial care, sewer, water, telecommunications, and telecommunication transmissions) or essential supplies (such as food and fuel). It does not include transportation related to long-term rehabilitation of damaged physical infrastructure or routine commercial deliveries after the initial threat to life and property has passed. (49 CFR 390.5, October 1, ~~2006~~2004)

*"Direct compensation" means payment made to the motor carrier by the passengers or a person acting on behalf of the passengers for the transportation services provided, and not included in a total package charge or other assessment for highway transportation services. (Section 18b-101 of the Law )*

"Disabling damage" means damage ~~that~~which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

Inclusions: Damage to motor vehicles that could have been driven, but would have been further damaged if so driven.

Exclusions:

Damage ~~that~~which can be remedied temporarily at the scene of the accident without special tools or parts.

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Tire disablement without other damage even if no spare tire is available.

Headlamp or taillight damage.

Damage to turn signals, horn or windshield wipers ~~that~~<sup>which</sup> makes them inoperative. (49 CFR 390.5, October 1, ~~2006~~<sup>2004</sup>)

"Distribution point" means the point, for for-hire motor carriers, where the bill of lading originates for the farm supply being transported. For not-for-hire motor carriers, the distribution point means the original loading point for the farm supply.

"Driving a commercial motor vehicle while under the influence of alcohol" means committing any one or more of the following acts in a CMV: driving a CMV while the person's alcohol concentration is 0.04 percent or more; driving under the influence of alcohol, as prescribed by state law; or refusal to undergo such testing as is required by any state or jurisdiction in the enforcement of Table 1 to "Commercial Driver's License Standards; Requirements and Penalties" (49 CFR 383.51) or "Driving of Motor Vehicles" (49 CFR 392.5(a)(2)). (49 CFR 390.5, October 1, ~~2006~~<sup>2004</sup>)

"Driveaway-towaway operation" means any operation in which an empty or unladen motor vehicle with one or more sets of wheels on the surface of the roadway is being transported:

Between a vehicle manufacturer's facilities;

Between a vehicle manufacturer and a dealership or purchaser;

Between a dealership, or other entity selling or leasing the vehicle, and a purchaser or lessee;

To a motor carrier's terminal or repair facility for the repair of disabling damage (as defined in this Section 390.1020) following a crash; or

To a motor carrier's terminal or repair facility for repairs associated with the failure of a vehicle component or system; or

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED AMENDMENTS

~~By means of a saddle-mount or tow-bar, a motor vehicle constitutes the commodity being transported and one or more sets of wheels of the vehicle being transported are on the surface of the roadway during transportation.~~ (49 CFR 390.5, October 1, ~~2006~~2004)

"Driver" means any person who operates any commercial motor vehicle. (49 CFR 390.5, October 1, ~~2006~~2004)

"Emergency" means any hurricane, tornado, storm (e.g., thunderstorm, snowstorm, icestorm, blizzard, sandstorm, etc.), high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, mud slide, drought, forest fire, explosion, blackout or other occurrence, natural or man-made, ~~that~~which interrupts the delivery of essential services (such as electricity, medical care, sewer, water, telecommunications, and telecommunication transmissions) or essential supplies (such as food and fuel) or otherwise immediately threatens human life or public welfare, provided such hurricane, tornado, or other event results in:

A declaration of an emergency by the President of the United States, the Governor of a state, or their authorized representatives having authority to declare emergencies; by the FMCSA Field Administrator for the geographical area in which the occurrence happens; or by other ~~federal~~Federal, State or local government officials having authority to declare emergencies, including but not limited to the Illinois Department of Transportation's Director, Division of Traffic Safety, or his or her designee; or

A request by a police officer for tow trucks to move wrecked or disabled motor vehicles. (49 CFR 390.5, October 1, ~~2006~~2004)

"Emergency relief" means an operation in which a motor carrier or driver of a commercial motor vehicle is providing direct assistance to supplement State and local efforts and capabilities to save lives or property or to protect public health and safety as a result of an emergency as defined in this Section. (49 CFR 390.5, October 1, ~~2006~~2004)

"Employee" means:

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A driver of a commercial motor vehicle (including an independent contractor while in the course of operating a commercial motor vehicle);

A mechanic;

A freight handler; and

Any individual, who in the course of his or her employment directly affects commercial motor vehicle safety, but such term does not include an employee of the United States, any state, any political subdivision of a state, or any agency established under a compact between states and approved by the Congress of the United States who is acting within the course of such employment. (49 CFR 390.5, October 1, ~~2006~~2004)

"Employer" means any person engaged in a business affecting interstate or intrastate commerce who owns or leases a commercial motor vehicle in connection with that business, or assigns employees to operate it, but such term does not include the United States, any state, any political subdivision of a state, or any agency established under a compact between states approved by the Congress of the United States.

"Exempt intracity zone" means the geographic area of a municipality or the commercial zone of that municipality described by the Federal Motor Carrier Safety Administration (FMCSA) in 49 CFR 372, subpart B. The descriptions are printed in ~~appendix~~Appendix F to the Federal Motor Carrier Safety Regulations. A driver may be considered to operate a commercial motor vehicle wholly within an exempt intracity zone notwithstanding any common control, management, or arrangement for a continuous carriage or shipment to or from a point without such zone. (49 CFR 390.5, October 1, ~~2006~~2004)

"Exempt motor carrier" means a person engaged in transportation exempt from economic regulation by the Federal Motor Carrier Safety Administration (FMCSA) under 49 USC 13506. "Exempt motor carriers" are subject to the requirements set forth in the Illinois Motor Carrier Safety Regulations. (49 CFR 390.5, October 1, ~~2006~~2004)

"Farm machinery" - see definition of "Special agricultural movement equipment" in this Section.

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"Farm supplies for agricultural purposes" means products directly related to the growing or harvesting of agricultural commodities and livestock feed at any time of the year. (Section 18b-101 of the Law)

*"Farm to market agricultural transportation" means the operation of a motor vehicle controlled and operated by a farmer who is a private motor carrier of property; who is using the vehicle to transport agricultural products to or from a farm operated by the farmer, or to transport farm machinery or farm supplies to or from a farm operated by the farmer; and who is not using the commercial vehicle to transport hazardous materials of a type or quantity that requires the vehicle to be placarded in accordance with the Illinois Hazardous Materials Transportation Act [430 ILCS 30]. (Section 1-119.6 of the Code)*

~~"Farm machinery" — see definition of "Special Agricultural Movement Equipment" in this Section.~~

"Farm vehicle driver" means a person who drives only a commercial motor vehicle that is –

Controlled and operated by a farmer as a private motor carrier of property;

Being used to transport either –

Agricultural products, or

Farm machinery, farm supplies, or both, to or from a farm;

Not being used in the operation of a for-hire motor carrier;

Not carrying hazardous materials of a type or quantity that requires the commercial motor vehicle to be placarded in accordance with 49 CFR 177.823; and

Being used within 150 air-miles of the farmer's farm. (49 CFR 390.5, October 1, ~~2006~~2004)

"Farmer" means any person who operates a farm or is directly involved in the cultivation of land, crops, or livestock ~~that~~which:

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Are owned by that person; or

Are under the direct control of that person. (49 CFR 390.5, October 1, ~~2006~~2004)

"Fatality" means any injury ~~that~~~~which~~ results in the death of a person at the time of the motor vehicle accident or within 30 days ~~after~~~~of~~ the accident. (49 CFR 390.5, October 1, ~~2006~~2004)

"Federal Motor Carrier Safety Administrator" means the chief executive of the Federal Motor Carrier Safety Administration, an agency within the United States Department of Transportation. (49 CFR 390.5, October 1, ~~2006~~2004)

"FMCSA Field Administrator" means the Field Administrator, Federal Motor Carrier Safety Administration, for a given geographical area of the United States. (49 CFR 390.5, October 1, ~~2006~~2004)

*"For-hire" means the operation of a vehicle for compensation and subject to federal regulation by the Interstate Commerce Commission or to State regulation by the Illinois Commerce Commission and those vehicles governed by Chapters 8 and 9 under the Code and regulated by the Secretary of State. (Section 1-122.5 of the Code)*

"For-hire motor carrier" means a person engaged in the transportation of goods or passengers for compensation. (49 CFR 390.5, October 1, ~~2006~~2004)

"Gross Combination Weight Rating" or "GCWR" means the value specified by the manufacturer as the loaded weight of a combination (articulated) vehicle. In the absence of a value specified by the manufacturer, GCWR will be determined by adding the GVWR of the power unit and the total weight of the towed unit and any load thereon. (49 CFR 390.5, October 1, ~~2006~~2004)

"Gross Vehicle Weight Rating" or "GVWR" means the value specified by the manufacturer as the loaded weight of a single motor vehicle. (49 CFR 390.5, October 1, ~~2006~~2004)

"Hazardous material" means a substance or material ~~that~~~~which~~ has been determined by the Secretary of the United States Department of Transportation to be capable of posing an unreasonable risk to health, safety, and property when

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transported in commerce, and ~~that~~<sup>which</sup> has been so designated. (49 CFR 390.5, October 1, ~~2006~~<sup>2004</sup>)

"Hazardous substance" means a material, and its mixtures or solutions, that is identified in ~~appendix~~<sup>Appendix</sup> A to 49 CFR 172.101, List of Hazardous Substances and Reportable Quantities when offered for transportation in one package, or in one transport motor vehicle if not packaged, and when the quantity of the material therein equals or exceeds the reportable quantity (RQ). This definition does not apply to petroleum products that are lubricants or fuels, or to mixtures or solutions of hazardous substances if in a concentration less than that shown in the table in "General Information, Regulations and Definitions" (49 CFR 171.8) based on the reportable quantity (RQ) specified for the materials listed in ~~appendix~~<sup>Appendix</sup> A to 49 CFR 172.101. (49 CFR 390.5, October 1, ~~2006~~<sup>2004</sup>)

"Hazardous waste" means any material that is subject to the hazardous waste manifest requirements of the EPA specified in "Standards Applicable to Generators of Hazardous Waste" (40 CFR 262) or would be subject to these requirements absent an interim authorization to a state under "State Program Requirements" (40 CFR 123), ~~subpart~~<sup>Subpart</sup> F. (49 CFR 390.5, October 1, ~~2006~~<sup>2004</sup>)

"Highway" means any road, street, or way, whether on public or private property, open to public travel. "Open to public travel" means that the road section is available, except during scheduled periods, extreme weather or emergency conditions, passable by four-wheel standard passenger cars, and open to the general public for use without restrictive gates, prohibitive signs, or regulation other than restrictions based on size, weight, or class of registration. Toll plazas of public toll roads are not considered restrictive gates. (49 CFR 390.5, October 1, ~~2006~~<sup>2004</sup>)

"Illinois Motor Carrier Safety Regulations" or "IMCSR" means the requirements established in Parts ~~340~~, 380, ~~382, 383~~, 385, 386, 387, 390, 391, 392, 393, 395, 396 and 397 (92 Ill. Adm. Code: Chapter I, Subchapter d).

"Illinois State Police" means any individual officer of the Illinois State Police.

*"Implement of husbandry" means every vehicle designed and adapted exclusively for agricultural, horticultural, or livestock raising operations, including farm*

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wagons, wagon trailers or like vehicles used in connection therewith, or for lifting or carrying an implement of husbandry provided that no farm wagon, wagon trailer or like vehicle having a gross weight of more than 36,000 pounds, shall be included hereunder. (Section 1-130 of the Code)

"Interstate commerce" means transportation between two or more states or transportation originating in one state and passing into or through other states for delivery in another state. (Section 1-133 of the Code)

"Intrastate commerce" means any trade, traffic, or transportation in Illinois ~~that~~<sup>which</sup> is not described in the term "interstate commerce." (49 CFR 390.5, October 1, ~~2006~~<sup>2004</sup>)

"Law" means the Illinois Motor Carrier Safety Law [625 ILCS 5/Ch. 18B].

"Livestock" means cattle, sheep, goats, swine, poultry (including egg-producing poultry), fish used for food, and other animals designated by the Secretary of the United States Department of Transportation (at his or her sole discretion) that are part of a foundation herd (including producing dairy cattle) or offspring. (Section 18b-101 of the Law)

"Medical Examiner" means a person who is licensed, certified, and/or registered, in accordance with applicable State laws and regulations, to perform physical examinations. In Illinois, the term includes doctors of medicine, doctors of osteopathy, doctors of chiropractic, physician assistants who have been delegated the performance of medical examinations by his/her supervising physician, and advanced practice nurses who have a written collaborative agreement with a collaborating physician that authorizes him/her to perform physical examinations.

"Motor carrier" means a for-hire motor carrier or a private motor carrier. The term "motor carrier" includes a motor carrier's agents, officers and representatives as well as employees responsible for hiring, supervising, training, assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of motor vehicle equipment and/or accessories. For purposes of the IMCSR, the definition of "motor carrier" includes the terms "employer" and "exempt motor carrier." (49 CFR 390.5, October 1, ~~2006~~<sup>2004</sup>)

"Motor vehicle" means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the

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transportation of passengers or property, or any combination thereof determined by the Federal Motor Carrier Safety Administration, but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails, or a trolley bus operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street-railway service. (49 CFR 390.5, October 1, ~~2006~~2004)

"Multiple-employer driver" means a driver who, in any period of 7 consecutive days, is employed or used as a driver by more than one motor carrier. (49 CFR 390.5, October 1, ~~2006~~2004)

"North American Uniform Out-Of-Service Criteria" means a set of guidelines established by the CVSA and recognized by all states, the provinces of Canada, and Mexico as acceptable standards for identifying driver violations and critical vehicle inspection items that may render a driver, a commercial motor vehicle or a hazardous material load out-of-service. The criteria is enforced, in some states, by qualified law enforcement officers of a municipality, county, state or the federal government. In Illinois, only qualified officers of the Illinois State Police and the federal government have authority to enforce the out-of-service criteria.

"Operator" – see driver.

"Other terms" – any other term used in the IMCSR is used in its commonly accepted meaning, except where such other term has been defined elsewhere in the IMCSR. In that event, the definition therein given shall apply. (49 CFR 390.5, October 1, ~~2006~~2004)

"Out-of-service order" means a declaration by the Illinois State Police or by an authorized enforcement officer of a ~~federal~~Federal, state, Canadian, Mexican or local jurisdiction that a driver, a commercial motor vehicle, or a motor carrier operation, is out-of-service pursuant to 49 CFR 386.72, 49 CFR 392.5, 49 CFR 395.13, 49 CFR 396.9, or 92 Ill. Adm. Code 392.2000(d), or compatible laws, or the North American Uniform Out-of-Service Criteria as defined in this Section.

*"Person" means any natural person or individual, governmental body, firm, association, partnership, copartnership, joint venture, company, corporation joint stock company, trust, estate or any other legal entity or their legal representative, agent or assigns. (Section 18b-101 of the Law)*

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"Planting and harvesting season" means the period of ~~January~~February 1 through ~~December 31~~November 30 each year.

"Previous employer" means any USDOT or Department regulated person who employed the driver in the preceding 3 years, including any possible current employer.

"Principal place of business" means a single location designated by the motor carrier, normally its headquarters, for purposes of identification under this Subchapter d. The motor carrier must make records required by 49 CFR 382 and 49 CFR 387, as well as Parts 390, 391, 395, 396, and 397 of this Subchapter d, available for inspection at this location within 48 hours (Saturdays, Sundays, and ~~federal~~Federal or State holidays excluded) after a request has been made by a special agent or authorized representative of the Federal Motor Carrier Safety Administration or the Illinois Department of Transportation. (49 CFR 390.5, October 1, ~~2006~~2004)

"Private motor carrier" means a person who provides transportation of property or passengers, by commercial motor vehicle, and is not a for-hire motor carrier. (49 CFR 390.5, October 1, ~~2006~~2004)

"Private motor carrier of passengers (business)" means a private motor carrier engaged in the interstate or intrastate transportation of passengers ~~that~~which is provided in the furtherance of a commercial enterprise and is not available to the public at large. (49 CFR 390.5, October 1, ~~2006~~2004)

"Private motor carrier of passengers (nonbusiness)" means a private motor carrier involved in the interstate or intrastate transportation of passengers that does not otherwise meet the definition of a private motor carrier of passengers (business). (49 CFR 390.5, October 1, ~~2006~~2004)

"Radar detector" means any device or mechanism to detect the emission of radio microwaves, laser beams or any other future speed measurement technology employed by enforcement personnel to measure the speed of commercial motor vehicles upon public roads and highways for enforcement purposes. Excluded from this definition are radar detection devices that meet both of the following requirements:

Transported outside the driver's compartment of the commercial motor

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vehicle. For this purpose, the driver's compartment of a passenger-carrying CMV shall include all space designed to accommodate both the driver and the passengers; and

Completely inaccessible to, inoperable by, and imperceptible to the driver while operating the commercial motor vehicle. (49 CFR 390.5, October 1, ~~2006~~2004)

"Residential district" means the territory adjacent to and including a highway ~~that~~ which is not a business district and for a distance of 300 feet or more along the highway is primarily improved with residences. (49 CFR 390.5, October 1, ~~2006~~2004)

"Safety ~~permit~~Permit" means a document issued by the Federal Motor Carrier Safety Administration that contains a permit number and confers authority to transport in commerce the hazardous materials listed in 49 CFR 385.403. (49 CFR 385.402, October 1, ~~2006~~2004)

"School bus" means a motor vehicle that meets all of the special requirements for school buses in Sections 12-801, 12-802, 12-803 and 12-805 of the Code and is designed or used to carry more than 10 passengers, including the driver, and is used for transporting preprimary, primary or secondary school students from home to school or from school to home or for intrastate school sanctioned functions.

"School bus operation" means the use of a school bus to transport only school children and/or school personnel from home to school and from school to home and for intrastate school sanctioned functions.

"Secretary" means the Secretary of the Illinois Department of Transportation.

"Single-employer driver" means a driver who, in any period of 7 consecutive days, is employed or used as a driver solely by a single motor carrier. This term includes a driver who operates a commercial motor vehicle on an intermittent, casual, or occasional basis. (49 CFR 390.5, October 1, ~~2006~~2004)

"Special agent" - See 49 CFR ~~appendix~~Appendix B to ~~subchapter~~Subchapter B of ~~chapter~~Chapter III.

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*"Special agricultural movement equipment" means a vehicle of the second division having a corn sheller, a welldriller, hay press, clover huller, feed mixer and unloader or other farm machinery permanently mounted thereon and used solely for transporting the same, farm wagon type trailers having a fertilizer spreader attachment permanently mounted thereon, having a gross weight of not to exceed 36,000 pounds and farm wagon type tank trailers (i.e., nurse tanks) not to exceed 3,000 gallon capacity. Also includes any single unit self-propelled agricultural fertilizer implement, designed for both on and off road use, equipped with flotation tires and otherwise especially adapted for the application of plant food materials or agricultural chemicals. (Section 3-809 of the Code)*

"State" means a state of the United States and the District of Columbia and includes a political subdivision of a state. (49 CFR 390.5, October 1, ~~2006~~2004)

"Trailer" includes:

"Full trailer" means any motor vehicle other than a pole trailer ~~that~~which is designed to be drawn by another motor vehicle and so constructed that no part of its weight, except for the towing device, rests upon the self-propelled towing motor vehicle. A semitrailer equipped with an auxiliary front axle (converter dolly) shall be considered a full trailer. (49 CFR 390.5, October 1, ~~2006~~2004)

"Pole trailer" means any motor vehicle ~~that~~which is designed to be drawn by another motor vehicle and attached to the towing motor vehicle by means of a "reach" or "pole," or by being "boomed" or otherwise secured to the towing vehicle, for transporting long or irregularly shaped loads such as poles, pipes, or structural members, which generally are capable of sustaining themselves as beams between the supporting connections. (49 CFR 390.5, October 1, ~~2006~~2004)

"Semitrailer" means any motor vehicle, other than a pole trailer, ~~that~~which is designed to be drawn by another motor vehicle and is constructed so that some part of its weight rests upon the self-propelled towing motor vehicle. (49 CFR 390.5, October 1, ~~2006~~2004)

"Truck" means any self-propelled commercial motor vehicle except a truck tractor, designed and/or used for the transportation of property. (49 CFR 390.5, October 1, ~~2006~~2004)

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"Truck tractor" means a self-propelled commercial motor vehicle designed and/or used primarily for drawing other vehicles. (49 CFR 390.5, October 1, ~~2006~~2004)

"United States" means the 50 states and the District of Columbia. (49 CFR 390.5, October 1, ~~2006~~2004)

"USDOT" means the United States Department of Transportation.

"Utility service vehicle" means any commercial motor vehicle:

Used in the furtherance of repairing, maintaining, or operating any structures or any other physical facilities necessary for the delivery of public utility services, including the furnishing of electric, gas, water, sanitary sewer, telephone, and television cable or community antenna service;

While engaged in any activity necessarily related to the ultimate delivery of such public utility services to consumers, including travel or movement to, from, upon, or between activity sites (including occasional travel or movement outside the service area necessitated by any utility emergency as determined by the utility provider); and

Except for any occasional emergency use, operated primarily within the service area of a utility's subscribers or consumers, without regard to whether the vehicle is owned, leased, or rented by the utility. (49 CFR 395.2, October 1, 2006)

(Source: Amended at 32 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 390.1030 Rules of Construction**

- a) In the IMCSR unless the context requires otherwise:
  - 1) Words imparting the singular include the plural;
  - 2) Words imparting the plural include the singular; and
  - 3) Words imparting the present tense include the future tense. (49 CFR

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390.7, October 1, ~~2006~~2004)

- b) In the IMCSR:
- 1) "Officer" includes any person authorized by law to perform the duties of the office;
  - 2) "Writing" includes printing and typewriting;
  - 3) "Shall" is used in an imperative sense;
  - 4) "Must" is used in an imperative sense;
  - 5) "Should" is used in a recommendatory sense;
  - 6) "May" is used in a permissive sense; and
  - 7) "Includes" is used as a word of inclusion, not limitation. (49 CFR 390.7, October 1, ~~2006~~2004)

(Source: Amended at 32 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART B: GENERAL REQUIREMENTS AND INFORMATION

**Section 390.2000 Incorporation by Reference**

- a) 49 CFR 390, subpart B, is hereby incorporated by reference as that subpart of the Federal Motor Carrier Safety Regulations (FMCSR) (49 CFR 380, ~~382, 383, 385, appendix B of 386, 387, 390, 391, 392, 393, 395, 396 and 397~~) was in effect on October 1, ~~2006~~2004, and as amended at ~~70 FR 49978, August 25, 2005~~, subject only to the exceptions in subsection (b). No later amendments to or editions of 49 CFR 390, subpart B are incorporated. Copies of the appropriate material are available from the Division of Traffic Safety, 3215 Executive Park Drive, 3<sup>rd</sup> Floor, Springfield, Illinois 62703 or by calling (217)785-1181. The FMCSR are available on the National Archives and Records Administration's website at <http://ecfr.gpoaccess.gov>. The Division of Traffic Safety's rules are available on the Department's website at <http://www.dot.il.gov/regulations.html>.
- b) The following interpretations of, additions to and deletions from 49 CFR 390,

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subpart B shall apply for the purposes of this Subpart:

- 1) 49 CFR 390.9 is deleted and not incorporated.
- 2) 49 CFR 390.21 applies to the following:
  - A) Commercial motor vehicles engaged in interstate commerce; and
  - B) Commercial motor vehicles engaged in intrastate commerce if the carrier requires a safety permit as required by 49 CFR 385.403.
- 3) 49 CFR 390.23(a)(2)(i)(A) is not incorporated and the following substituted therefor:

An emergency has been declared by a Federal, State, or local government official having authority to declare an emergency, including but not limited to the Illinois Department of Transportation's Director, Division of Traffic Safety, or his or her designee.

- 4) Any reference to "this part" in the incorporated material shall mean 92 Ill. Adm. Code 390.
- 5) Any reference to "this chapter" or "this subchapter" in the incorporated material shall mean 92 Ill. Adm. Code: Chapter I, Subchapter d.
- 6) Any reference to a section in the incorporated material shall be read to refer to that Section in the IMCSR.
- 7) Any reference to "part 325 of subchapter A" shall be read to refer to "Compliance with Interstate Motor Carrier Noise Emission Standards" (49 CFR 325, October 1, 2006~~2004~~).

(Source: Amended at 32 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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- 1) Heading of the Part: Qualification of Drivers
- 2) Code Citation: 92 Ill. Adm. Code 391
- 3) Section Number: 391.2000                      Proposed Action:  
Amend
- 4) Statutory Authority: Implementing, and authorized by, Sections 18b-102 and 18b-105 of the Illinois Motor Carrier Safety Law [625 ILCS 5/Ch. 18B]
- 5) A Complete Description of the Subjects and Issues Involved: By this Notice, the Department is proposing to update the incorporation by reference of 49 CFR 391 to the October 1, 2006 edition, the most recent edition of 49 CFR. The Department is also proposing to add parts 382, 383, and Appendix B of 386 to the list of Federal Motor Carrier Safety Regulations referenced in Section 391.2000(a) since they are applicable to the Illinois Motor Carrier Safety Regulations.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? Yes
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This rulemaking does not affect units of local government.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Any interested party may submit written comments or arguments concerning this proposed amendment. Written submissions shall be filed with:

By U.S. Mail:

Ms. Catherine Allen  
Illinois Department of Transportation

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Division of Traffic Safety  
P.O. Box 19212  
Springfield, Illinois 62794-9212

217/785-3031

By Messenger or Inter-Agency Mail:

DOT Annex Building  
3215 Executive Park Drive  
Commercial Vehicle Safety; 3<sup>rd</sup> Floor  
Springfield, Illinois

JCAR requests, comments and concerns regarding this rulemaking should be addressed to:

Ms. Christine Caronna-Beard, Rules Manager  
Illinois Department of Transportation  
Office of Chief Counsel  
2300 South Dirksen Parkway, Room 317  
Springfield, Illinois 62764

217/524-3838

Comments received within 45 days after the date of publication of this Illinois Register will be considered. Comments received after that time will be considered, time permitting.

13) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses affected: This rulemaking affects small businesses that own or operate commercial motor vehicles.
- B) Reporting, bookkeeping or other procedures required for compliance: No additional procedures are required as a result of this rulemaking.
- C) Types of professional skills necessary for compliance: No new or additional skills are required as a result of this rulemaking.

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- 14) Regulatory Agenda on which this rulemaking was summarized: January 2008

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

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TITLE 92: TRANSPORTATION  
CHAPTER I: DEPARTMENT OF TRANSPORTATION  
SUBCHAPTER d: MOTOR CARRIER SAFETY REGULATIONSPART 391  
QUALIFICATION OF DRIVERS

## Section

- 391.1000 General  
391.2000 Incorporation by Reference of 49 CFR 391

**AUTHORITY:** Implementing, and authorized by Sections 18b-102 and 18b-105 of, the Illinois Motor Carrier Safety Law [625 ILCS 5/Ch. 18B].

**SOURCE:** Adopted at 14 Ill. Reg. 15560, effective September 10, 1990; amended at 15 Ill. Reg. 13189, effective August 21, 1991; amended at 16 Ill. Reg. 5362, effective March 23, 1992; amended at 16 Ill. Reg. 14715, effective September 14, 1992; amended at 18 Ill. Reg. 783, effective January 11, 1994; amended at 19 Ill. Reg. 13077, effective August 30, 1995; amended at 20 Ill. Reg. 15365, effective November 18, 1996; amended at 23 Ill. Reg. 5133, effective March 31, 1999; amended at 24 Ill. Reg. 1991, effective January 19, 2000; amended at 25 Ill. Reg. 2126, effective January 17, 2001; amended at 26 Ill. Reg. 8997, effective June 5, 2002; amended at 27 Ill. Reg. 9238, effective June 2, 2003; amended at 29 Ill. Reg. 19251, effective November 10, 2005; amended at 32 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

**Section 391.2000 Incorporation by Reference of 49 CFR 391**

- a) The Department hereby incorporates 49 CFR 391 by reference as that part of the Federal Motor Carrier Safety Regulations (FMCSR) (49 CFR 380, [382](#), [383](#), 385, [appendix B of 386](#), 387, 390, 391, 392, 393, 395, 396, and 397) was in effect on October 1, ~~2006~~[2004](#), subject only to the exceptions in subsection (c). No later amendments to or editions of 49 CFR 391 are incorporated. Copies of the appropriate material are available from the Division of Traffic Safety, 3215 Executive Park Drive, 3<sup>rd</sup> Floor, Springfield, Illinois 62703 or by calling (217)785-1181. The FMCSR are available on the National Archives and Records Administration's website at <http://ecfr.gpoaccess.gov>. The Division of Traffic Safety's rules are available on the Department's website at <http://www.dot.il.gov/regulations.html>.
- b) References to subchapters, parts, subparts, sections or paragraphs shall be read to

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refer to the appropriate citation in 49 CFR 391.

- c) The following interpretations of, additions to and deletions from 49 CFR 391 shall apply for purposes of this Part.
- 1) Authorized Illinois State Police shall place drivers out-of-service for any violation of the Illinois Motor Carrier Safety Law [625 ILCS 5/Ch. 18B] or the Illinois Motor Carrier Safety Regulations that warrants placing the driver out-of-service under the "North American Uniform Out-of-Service Criteria" as defined at 92 Ill. Adm. Code 390.1020.
  - 2) 49 CFR 391.11(b)(1) does not apply to the operator of a commercial motor vehicle used in intrastate commerce.
  - 3) *Paragraphs (b)(3) (insulin dependent diabetic) and (b)(10) (minimum visual acuity) of 49 CFR 391.41 shall not apply to the driver of a commercial motor vehicle with a gross vehicle weight rating or gross combination weight of over 12,000 lbs., used in the intrastate transportation of property who immediately prior to July 29, 1986 was eligible and licensed to operate a motor vehicle subject to the Illinois Motor Carrier Safety Regulations (IMCSR) and was engaged in operating such vehicles, and who was disqualified on July 29, 1986 by the adoption of 49 CFR 391 by reason of the application of paragraphs (b)(3) and (b)(10) of 49 CFR 391.41 with respect to a physical condition existing at that time unless such driver has a record of accidents which would indicate a lack of ability to operate a motor vehicle in a safe manner. (Section 18b-105 of the Law)*
  - 4) Paragraphs (b)(3) (insulin dependent diabetic) and (b)(10) (minimum visual acuity) of 49 CFR 391.41 shall not apply to the driver of a commercial motor vehicle which either has a gross vehicle weight rating (GVWR) or gross combination weight rating (GCWR) of between 10,000 and 12,001 pounds; or which is designed to transport more than 15 passengers, including the driver; or which has a GVWR or GCWR of less than 12,001 pounds and transports hazardous materials in a quantity requiring placarding under the Illinois Hazardous Materials Transportation Act. The vehicle must be used in intrastate transportation. The driver must have been eligible and licensed to operate a motor vehicle subject to the IMCSR and engaged in operating such vehicle immediately prior to

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED AMENDMENT

January 17, 1992. The driver must have been disqualified on January 17, 1992 by the adoption of Public Act 87-829 which made the IMCSR applicable to vehicles described above. The reason for disqualification must have been the application of paragraphs (b)(3) and (b)(10) of 49 CFR 391.41 with respect to a physical condition existing at that time. This exception does not apply to any driver who has a record of accidents which would indicate a lack of ability to operate a motor vehicle in a safe manner.

- 5) 49 CFR 391.43(a) is not incorporated and the following substituted therefor:

Except as provided by 49 CFR 391.43(b), the medical examination shall be performed by a licensed medical examiner as defined in 92 Ill. Adm. Code 390.1020.

- 6) If a medical examiner determines that the driver is qualified to drive only in intrastate transportation due to the application of the provisions of Section 391.2000(c)(3) or 391.2000(c)(4) above, the following shall appear on the medical examiner's certificate: "Qualified only for intrastate transportation in Illinois."

- 7) 49 CFR 391.49(a) is not incorporated and the following substituted therefor:

A person who is not physically qualified to drive under 49 CFR 391, and who is otherwise qualified to drive a commercial motor vehicle, may drive a commercial motor vehicle in interstate or intrastate transportation if the Division Administrator, FMCSA, has granted a Skill Performance Evaluation (SPE) Certificate to that person.

(Source: Amended at 32 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Driving of Commercial Motor Vehicles
- 2) Code Citation: 92 Ill. Adm. Code 392
- 3) 

<u>Section Number:</u>	<u>Proposed Action:</u>
392.2000	Amend
- 4) Statutory Authority: Implementing, and authorized by, Sections 18b-102 and 18b-105 of the Illinois Motor Carrier Safety Law [625 ILCS 5/Ch. 18B]
- 5) A complete description of the subjects and issues involved: By this Notice, the Department is proposing to update the incorporation by reference of 49 CFR 392 to the October 1, 2006 edition, the most recent edition of 49 CFR. The Department is also proposing to add parts 382, 383, and appendix B of 386 to the list of Federal Motor Carrier Safety Regulations referenced in Section 392.2000(a) since they are applicable to the Illinois Motor Carrier Safety Regulations.

The following summary provides a description of a federal rulemaking that is applicable to this Part, that became effective since October 1, 2004, and that is included in the October 1, 2006 edition of 49 CFR. Therefore, the Department's regulations will incorporate changes made by the following Docket:

Docket FMCSA-1997-2364 (70 FR 48008, August 15, 2005) Amends the regulations to include an exception for the obstruction of trailer conspicuity treatments on front end protection devices or headerboards. The reflective material on the headerboard is sometimes obstructed by the height of the cargo being transported and carriers should not be penalized if this occurs.

- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? Yes
- 10) Are there any other proposed rulemakings pending on this Part? No

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- 11) Statement of Statewide Policy Objectives: This rulemaking does not affect units of local government.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Any interested party may submit written comments or arguments concerning this proposed amendment. Written submissions shall be filed with:

By U.S. Mail:

Ms. Catherine Allen  
Illinois Department of Transportation  
Division of Traffic Safety  
P.O. Box 19212  
Springfield, Illinois 62794-9212

217/785-3031

By Messenger or Inter-Agency Mail:

DOT Annex Building  
3215 Executive Park Drive  
Commercial Vehicle Safety; 3<sup>rd</sup> Floor  
Springfield, Illinois

JCAR requests, comments and concerns regarding this rulemaking should be addressed to:

Ms. Christine Caronna-Beard, Rules Manager  
Illinois Department of Transportation  
Office of Chief Counsel  
2300 South Dirksen Parkway, Room 311  
Springfield, Illinois 62764

217/524-3838

Comments received within 45 days after the date of publication of this *Illinois Register* will be considered. Comments received after that time will be considered, time permitting.

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED AMENDMENT

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses affected: This rulemaking affects small businesses that own or operate commercial motor vehicles.
  - B) Reporting, bookkeeping or other procedures required for compliance: No additional procedures are required as a result of this rulemaking.
  - C) Types of professional skills necessary for compliance: No new or additional skills are required as a result of this rulemaking.
- 14) Regulatory Agenda on which this rulemaking was summarized: January 2008

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

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED AMENDMENT

TITLE 92: TRANSPORTATION  
CHAPTER I: DEPARTMENT OF TRANSPORTATION  
SUBCHAPTER d: MOTOR CARRIER SAFETY REGULATIONSPART 392  
DRIVING OF COMMERCIAL MOTOR VEHICLES

## Section

392.1000 General

392.2000 Incorporation by Reference of 49 CFR 392

AUTHORITY: Implementing, and authorized by Sections 18b-102 and 18b-105 of, the Illinois Motor Carrier Safety Law [625 ILCS 5/Ch. 18B].

SOURCE: Adopted at 14 Ill. Reg. 15503, effective September 10, 1990; amended at 15 Ill. Reg. 13155, effective August 21, 1991; amended at 18 Ill. Reg. 740, effective January 11, 1994; amended at 18 Ill. Reg. 10359, effective June 15, 1994; amended at 19 Ill. Reg. 13038, effective August 30, 1995; amended at 20 Ill. Reg. 15330, effective November 18, 1996; amended at 23 Ill. Reg. 5093, effective March 31, 1999; amended at 24 Ill. Reg. 1942, effective January 19, 2000; amended at 25 Ill. Reg. 2090, effective January 17, 2001; amended at 26 Ill. Reg. 9002, effective June 5, 2002; amended at 27 Ill. Reg. 9243, effective June 2, 2003; amended at 29 Ill. Reg. 19256, effective November 10, 2005; amended at 32 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

**Section 392.2000 Incorporation by Reference of 49 CFR 392**

- a) "Driving of Commercial Motor Vehicles" (49 CFR 392) is incorporated by reference as that part of the Federal Motor Carrier Safety Regulations (FMCSR) (49 CFR 380, [382](#), [383](#), 385, [appendix B of 386](#), 387, 390, 391, 392, 393, 395, 396, and 397) was in effect on October 1, ~~2006~~[2004](#). No later amendments to or editions of 49 CFR 392 are incorporated. Copies of the appropriate material are available from the Division of Traffic Safety, 3215 Executive Park Drive, 3<sup>rd</sup> Floor, Springfield, Illinois 62703 or by calling (217)785-1181. The FMCSR are available on the National Archives and Records Administration's website at <http://ecfr.gpoaccess.gov>. The Division of Traffic Safety's rules are available on the Department's website at <http://www.dot.il.gov/regulations.html>.
- b) References to subchapters, parts, subparts, sections or paragraphs shall be read to refer to the appropriate citation in the FMCSR.

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## NOTICE OF PROPOSED AMENDMENT

- c) The following addition to 49 CFR 392 shall apply for purposes of this Part.

Authorized Illinois State Police shall place drivers out-of-service for any violation of the Illinois Motor Carrier Safety Law [625 ILCS 5/Ch. 18B] or the Illinois Motor Carrier Safety Regulations that warrants placing the driver out-of-service under the "North American Uniform Out-of-Service Criteria" as defined at 92 Ill. Adm. Code 390.1020.

- d) 49 CFR 392.9a (Operating authority) is not incorporated and the following is substituted therefor:

- 1) Registration required. A motor vehicle providing transportation requiring registration under 49 USC 13902 may not be operated without the required registration or operated beyond the scope of its registration.
- 2) Penalties. Every motor vehicle providing transportation requiring registration under 49 USC 13902 shall be ordered out-of-service if determined to be operating without registration or beyond the scope of its registration. In addition, the motor carrier may be subject to penalties in accordance with 49 USC 14901.
- 3) Driver compliance. Upon the issuance of the out-of-service order under subsection (d)(2) of this Section, the driver shall comply immediately with such order.

(Source: Amended at 32 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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## NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Parts and Accessories Necessary for Safe Operations
- 2) Code Citation: 92 Ill. Adm. Code 393
- 3) 

<u>Section Number:</u> 393.2000	<u>Proposed Action:</u> Amend
------------------------------------	----------------------------------
- 4) Statutory Authority: Implementing, and authorized by, Sections 18b-102 and 18b-105 of the Illinois Motor Carrier Safety Law [625 ILCS 5/Ch. 18B]
- 5) A complete description of the subjects and issues involved: By this Notice, the Department is proposing to update the incorporation by reference of 49 CFR 393 to the October 1, 2006 edition, the most recent edition of 49 CFR. The Department is also proposing to add parts 382, 383, and appendix B of 386 to the list of Federal Motor Carrier Safety Regulations referenced in Section 393.2000(a) since they are applicable to the Illinois Motor Carrier Safety Regulations.

The following summaries provide a description of federal rulemakings that are applicable to this Part, that became effective since October 1, 2004, and that are included in the October 1, 2006 edition of 49 CFR. Therefore, the Department's regulations will incorporate changes made by the following Dockets:

Docket FMCSA-1997-2364 (70 FR 48008, August 15, 2005) Amends the regulations to remove obsolete and redundant language; to respond to several petitions for rulemaking; to resolve inconsistencies between 49 CFR 393 and the Federal Motor Vehicle Safety Standards, 49 CFR 571. Generally, this docket makes the regulations more concise, easier to understand and more performance oriented.

Docket FMCSA-2006-21259 (71 FR 35819, June 22, 2006) Amends the final rule of September 27, 2002 (67 FR 61212) concerning protection against shifting and falling cargo for commercial motor vehicles in response to petitions for rulemaking from industry.

At Section 393.2000(c), the Department is changing the order of subsections (1) and (2) to put the 49 CFR citations in numerical order.

- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None

## DEPARTMENT OF TRANSPORTATION

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- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? Yes
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This rulemaking does not affect units of local government.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Any interested party may submit written comments or arguments concerning this proposed amendment. Written submissions shall be filed with:

By U.S. Mail:

Ms. Catherine Allen  
Illinois Department of Transportation  
Division of Traffic Safety  
P.O. Box 19212  
Springfield, Illinois 62794-9212

217/785-3031

By Messenger or Inter-Agency Mail:

DOT Annex Building  
3215 Executive Park Drive  
Commercial Vehicle Safety; 3<sup>rd</sup> Floor  
Springfield, Illinois

JCAR requests, comments and concerns regarding this rulemaking should be addressed to:

Ms. Christine Caronna-Beard, Rules Manager  
Illinois Department of Transportation  
Office of Chief Counsel

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED AMENDMENT

2300 South Dirksen Parkway, Room 317  
Springfield, Illinois 62764

217/524-3838

Comments received within 45 days after the date of publication of this *Illinois Register* will be considered. Comments received after that time will be considered, time permitting.

13) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses affected: This rulemaking affects small businesses that own or operate commercial motor vehicles.
- B) Reporting, bookkeeping or other procedures required for compliance: No additional procedures are required as a result of this rulemaking.
- C) Types of professional skills necessary for compliance: No new or additional skills are required as a result of this rulemaking.

14) Regulatory Agenda on which this rulemaking was summarized: January 2008

The full text of this Proposed Amendment begins on the next page:

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED AMENDMENT

## TITLE 92: TRANSPORTATION

## CHAPTER I: DEPARTMENT OF TRANSPORTATION

## SUBCHAPTER d: MOTOR CARRIER SAFETY REGULATIONS

## PART 393

## PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

## Section

393.1000 General

393.2000 Incorporation by Reference of 49 CFR 393

AUTHORITY: Implementing, and authorized by Sections 18b-102 and 18b-105 of, the Illinois Motor Carrier Safety Law [625 ILCS 5/Ch. 18B].

SOURCE: Adopted at 14 Ill. Reg. 15537, effective September 10, 1990; amended at 15 Ill. Reg. 13185, effective August 21, 1991; amended at 18 Ill. Reg. 774, effective January 11, 1994; amended at 19 Ill. Reg. 13070, effective August 30, 1995; amended at 20 Ill. Reg. 15362, effective November 18, 1996; amended at 23 Ill. Reg. 5124, effective March 31, 1999; amended at 24 Ill. Reg. 1974, effective January 19, 2000; amended at 25 Ill. Reg. 2117, effective January 17, 2001; amended at 26 Ill. Reg. 9005, effective June 5, 2002; amended at 27 Ill. Reg. 9247, effective June 2, 2003; amended at 28 Ill. Reg. 1157, effective January 4, 2004; amended at 29 Ill. Reg. 19260, effective November 10, 2005; amended at 32 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

**Section 393.2000 Incorporation by Reference of 49 CFR 393**

- a) "Parts and Accessories Necessary for Safe Operation" (49 CFR 393) is incorporated by reference as that part of the Federal Motor Carrier Safety Regulations (FMCSR) (49 CFR 380, [382](#), [383](#), 385, [appendix B of 386](#), 387, 390, 391, 392, 393, 395, 396, and 397) was in effect on October 1, ~~2006~~[2004](#), subject only to the exceptions in subsection (c). No later amendments to or editions of 49 CFR 393 are incorporated. Copies of the appropriate material are available from the Division of Traffic Safety, 3215 Executive Park Drive, 3<sup>rd</sup> Floor, Springfield, Illinois 62703 or by calling (217)785-1181. The FMCSR are available on the National Archives and Records Administration's website at <http://ecfr.gpoaccess.gov>. The Division of Traffic Safety's rules are available on the Department's website at <http://www.dot.il.gov/regulations.html>.
- b) References to subchapters, parts, subparts, sections or paragraphs shall be read to

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refer to the appropriate citation in 49 CFR.

- c) The following interpretations of, additions to, and deletions from 49 CFR 393 shall apply for purposes of this Part.
- 1) ~~49 CFR 393.86 shall not apply for those vehicles registered as farm trucks under Section 3-815(c) of the Illinois Vehicle Code [625 ILCS 5/3-815(c)] and utilized in intrastate commerce (Section 18b-105(c)(2) of the Law).~~ ~~49 CFR 393.93 shall not apply to those commercial motor vehicles engaged in intrastate commerce which were manufactured before June 30, 1972 (Section 18b-105(c)(1) of the Illinois Motor Carrier Safety Law (the Law) [625 ILCS 5/18b-105(c)(1)]).~~
  - 2) ~~49 CFR 393.93 shall not apply to those commercial motor vehicles engaged in intrastate commerce that were manufactured before June 30, 1972 (Section 18b-105(c)(1) of the Illinois Motor Carrier Safety Law (the Law) [625 ILCS 5/18b-105(c)(1)]).~~ ~~49 CFR 393.86 shall not apply for those vehicles registered as farm trucks under Section 3-815(c) of the Illinois Vehicle Code [625 ILCS 5/3-815(c)] and utilized in intrastate commerce (Section 18b-105(c)(2) of the Law).~~
  - 3) Authorized Illinois State Police shall place vehicles out-of-service for any violation of the Illinois Motor Carrier Safety Law [625 ILCS 5/Ch. 18B] or the Illinois Motor Carrier Safety Regulations that warrants placing the vehicle out-of-service under the "North American Uniform Out-of-Service Criteria" as defined at 92 Ill. Adm. Code 390.1020.

(Source: Amended at 32 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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- 1) Heading of the Part: Hours-of-Service of Drivers
- 2) Code Citation: 92 Ill. Adm. Code 395
- 3) 

<u>Section Numbers:</u>	<u>Proposed Action:</u>
395.1000	Amend
395.2000	Amend
- 4) Statutory Authority: Implementing, and authorized by, Sections 18b-102 and 18b-105 of the Illinois Motor Carrier Safety Law [625 ILCS 5/Ch. 18B]; and authorized by Title IV – Motor Carrier Safety Reauthorization Act of 2005, Sections 4130, 4132 and 4133 of Subtitle A – Commercial Motor Vehicle Safety, of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA – LU) (P.L. 109-59)
- 5) A complete description of the subjects and issues involved: By this Notice, the Department is proposing to update the incorporation by reference of 49 CFR 395 to the October 1, 2006 edition, the most recent edition of 49 CFR. The Department is also proposing to add parts 382, 383, and appendix B of 386 to the list of Federal Motor Carrier Safety Regulations referenced in Section 395.2000(a) since they are applicable to the Illinois Motor Carrier Safety Regulations.

At Section 395.1000(b), the Department is proposing to add a new requirement that exempts drivers of utility service vehicles (as defined in 92 Ill. Adm. Code 390.1020) from this Part. This requirement is being added pursuant to the Motor Carrier Safety Reauthorization Act of 2005 (P.L. 109-59) (the Act) that was signed into law by President Bush in August of 2005. The Department is also amending the Agency Note at the end of the Part to clarify the public utility exemption found under 92 Ill. Adm. Code 386, Subpart C.

Additionally, the Department is proposing, in accordance with the Act, to add a new provision at Section 395.2000(c)(3) that requires operators of commercial motor vehicles providing transportation of property or passengers to or from a theatrical or television motion picture production site located within 100 air miles of the operator's work reporting location to comply with the hours-of-service requirements that were in effect on April 27, 2003. The requirements that were in effect on April 27, 2003 are identical to the requirements currently found in 49 CFR 395.5 that is being added at Section 395.2000(c)(3).

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Finally, at Section 395.2000(c)(5), the Department is proposing to amend the agricultural exceptions for hours-of-service requirements pursuant to P.A. 94-739, effective May 9, 2006. Part 395 does not apply to agricultural operations as defined in 92 Ill. Adm. Code 390.1020 that are engaged in intrastate commerce at any time of the year within a 100 air mile radius from the source of the agricultural commodity (as defined in 92 Ill. Adm. Code 390.1020) or the distribution point (as defined in 92 Ill. Adm. Code 390.1020) for farm supplies used for agricultural purposes (also defined in 92 Ill. Adm. Code 390.1020). (See Section 18b-105(c)(6) of the Law, as amended by P.A. 94-739, effective May 9, 2006, and Section 4130 of the Motor Carrier Safety Reauthorization Act of 2005.)

- 6) Published Studies or Reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? Yes
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This rulemaking does not affect units of local government.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Any interested party may submit written comments or arguments concerning these proposed amendments. Written submissions shall be filed with:

By U.S. Mail:

Ms. Catherine Allen  
Illinois Department of Transportation  
Division of Traffic Safety  
P.O. Box 19212  
Springfield, Illinois 62794-9212

217/785-3031

By Messenger or Inter-Agency Mail:

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED AMENDMENTS

DOT Annex Building  
3215 Executive Park Drive  
Commercial Vehicle Safety; 3rd Floor  
Springfield, Illinois

JCAR requests, comments and concerns regarding this rulemaking should be addressed to:

Ms. Christine Caronna-Beard, Rules Manager  
Illinois Department of Transportation  
Office of Chief Counsel  
2300 South Dirksen Parkway, Room 317  
Springfield, Illinois 62764

217/524-3838

Comments received within 45 days after the date of publication of this *Illinois Register* will be considered. Comments received after that time will be considered, time permitting.

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses affected: This rulemaking affects small businesses that own or operate commercial motor vehicles.
  - B) Reporting, bookkeeping or other procedures required for compliance: No additional procedures are required as a result of this rulemaking.
  - C) Types of professional skills necessary for compliance: No new or additional skills are required as a result of this rulemaking.
- 14) Regulatory Agenda on which this rulemaking was summarized: January 2008

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

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED AMENDMENTS

## TITLE 92: TRANSPORTATION

## CHAPTER I: DEPARTMENT OF TRANSPORTATION

## SUBCHAPTER d: MOTOR CARRIER SAFETY REGULATIONS

## PART 395

## HOURS-OF-SERVICE OF DRIVERS

## Section

395.1000 General

395.2000 Incorporation by Reference of 49 CFR 395

AUTHORITY: Implementing, and authorized by Sections 18b-102 and 18b-105 of, the Illinois Motor Carrier Safety Law [625 ILCS 5/Ch. 18B]; and authorized by Title IV - Motor Carrier Safety Reauthorization Act of 2005, Sections 4130, 4132 and 4133 of Subtitle A - Commercial Motor Vehicle Safety, of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA - LU) (P.L. 109-59).

SOURCE: Adopted at 14 Ill. Reg. 15507, effective September 10, 1990; amended at 15 Ill. Reg. 13161, effective August 21, 1991; amended at 16 Ill. Reg. 14425, effective September 8, 1992; amended at 18 Ill. Reg. 743, effective January 11, 1994; amended at 19 Ill. Reg. 13041, effective August 30, 1995; amended at 20 Ill. Reg. 15335, effective November 18, 1996; amended at 23 Ill. Reg. 5096, effective March 31, 1999; amended at 24 Ill. Reg. 1944, effective January 19, 2000; amended at 25 Ill. Reg. 2092, effective January 17, 2001; amended at 26 Ill. Reg. 9009, effective June 5, 2002; amended at 26 Ill. Reg. 12766, effective August 12, 2002; amended at 27 Ill. Reg. 9251, effective June 2, 2003; amended at 28 Ill. Reg. 1161, effective January 4, 2004; emergency amendment at 28 Ill. Reg. 6654, effective April 14, 2004, for a maximum of 150 days; emergency expired September 10, 2004; amended at 29 Ill. Reg. 19264, effective November 10, 2005; amended at 30 Ill. Reg. 5642, effective March 8, 2006; amended at 32 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

**Section 395.1000 General**

- a) This Part prescribes the hours-of-service requirements for drivers of commercial motor vehicles in Illinois.
- b) This Part does not apply to drivers of utility service vehicles as defined in 92 Ill. Adm. Code 390.1020. (See Section 4132 of the Motor Carrier Safety Reauthorization Act of 2005 (P.L. 109-59).)

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED AMENDMENTS

(Source: Amended at 32 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 395.2000 Incorporation by Reference of 49 CFR 395**

- a) "Hours of Service of Drivers" (49 CFR 395) is incorporated by reference as that part of the Federal Motor Carrier Safety Regulations (FMCSR) (49 CFR 380, 382, 383, 385, Appendix B of 386, 387, 390, 391, 392, 393, 395, 396, and 397) was in effect on October 1, ~~2006~~2004, ~~and as amended at 70 FR 49978, August 25, 2005~~ subject only to the exceptions in subsection (c). No later amendments to or editions of 49 CFR 395 are incorporated. Copies of the appropriate material are available from the Division of Traffic Safety, 3215 Executive Park Drive, 3<sup>rd</sup> Floor, Springfield, Illinois 62703 or by calling (217)785-1181. The FMCSR are available on the National Archives and Records Administration's website at <http://ecfr.gpoaccess.gov>. The Division of Traffic Safety's rules are available on the Department's website at <http://www.dot.il.gov/regulations.html>.
- b) References to subchapters, parts, subparts, sections or paragraphs shall be read to refer to the appropriate citation in 49 CFR.
- c) The following interpretations of, additions to and deletions from 49 CFR 395 shall apply for purposes of this Part.
- 1) 49 CFR 395.1(h) and 395.1(i) are deleted and not incorporated.
  - 2) 49 CFR 395.1(e)(1) as it applies to intrastate carriers is amended to establish that *drivers shall operate within a 150 air-mile radius of the normal work reporting location to qualify for exempt status.* (Section 18b-105(d) of the Illinois Motor Carrier Safety Law (the Law) [625 ILCS 5/18b-105(d)])
  - 3) 49 CFR 395.5 shall apply to any operator of a commercial motor vehicle providing transportation of property or passengers to or from a theatrical or television motion picture production site located within a 100 air mile radius of the work reporting location of the operator. (See Section 4133 of the Motor Carrier Safety Reauthorization Act of 2005.)
  - 43) 49 CFR 395.13 is not incorporated and the following substituted therefor:
    - A) Authority to declare drivers out-of-service due to any violation of

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED AMENDMENTS

the Illinois Motor Carrier Safety Law [625 ILCS 5/Ch. 18B] or the Illinois Motor Carrier Safety Regulations that warrants placing the driver out-of-service under the "North American Uniform Out-of-Service Criteria" as defined in 92 Ill. Adm. Code 390.1020. Every Illinois State Police officer certified to conduct Commercial Vehicle Inspections, Levels 1, 2, 3, 4 or 5 (as defined in 92 Ill. Adm. Code 390) is authorized to declare a driver out-of-service as set forth in subsection (c)(43)(B) and to notify the motor carrier of that declaration upon finding at the time and place of examination that declaring the driver out-of-service is warranted. Notification to the motor carrier is accomplished when the Illinois State Police officer presents the Illinois Commercial Driver/Vehicle Inspection Report (Form ISP 5-238) to the driver.

## B) Out-of-Service Criteria

- i) No driver shall drive after being on duty in excess of the maximum periods permitted by 49 CFR 395.
- ii) No driver required to maintain a record of duty status under 49 CFR 395.8 or 395.15 shall fail to have a record of duty status current on the day of examination and for the prior seven consecutive days.
- iii) Exception. A driver failing only to have possession of a record of duty status current on the day of examination and the prior day, but who has completed records of duty status up to that time (previous 6 days), will be given the opportunity to make the duty status record current.

## C) Responsibilities of motor carriers

- i) No motor carrier shall:

Require or permit a driver who has been declared out-of-service to operate a commercial motor vehicle until that driver may lawfully do so under the requirements in 49 CFR 395.

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED AMENDMENTS

Require a driver who has been declared out-of-service for failure to prepare a record of duty status to operate a commercial motor vehicle until that driver has been off duty for the appropriate number of consecutive hours required by 49 CFR 395 and is in compliance with this Section. The appropriate consecutive hours off duty period may include sleeper berth time.

- ii) A motor carrier shall, if required (refer to 92 Ill. Adm. Code 396.2010 for requirement), complete the "Notice to Motor Carrier" portion of the Form ISP 5-238 (Illinois Commercial Driver/Vehicle Inspection Report) and deliver the copy of the form either personally or by mail to the Illinois State Police Motor Carrier Safety Section at the address specified upon the form within 15 days following the date of examination. If the motor carrier mails the form, delivery is made on the date it is postmarked.

## D) Responsibilities of the Driver:

- i) No driver who has been declared out-of-service shall operate a commercial motor vehicle until that driver may lawfully do so under the requirements of 49 CFR 395.
- ii) No driver who has been declared out-of-service, for failing to prepare a record of duty status, shall operate a commercial motor vehicle until the driver has been off duty for the appropriate number of consecutive hours required by 49 CFR 395 and is in compliance with this Section.
- iii) A driver to whom a form has been tendered declaring the driver out-of-service shall within 24 hours thereafter deliver or mail the copy to a person or place designated by motor carrier to receive it.
- iv) This Section does not alter the hazardous materials requirements prescribed in 92 Ill. Adm. Code 397 pertaining to attendance and surveillance of commercial motor vehicles.

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED AMENDMENTS

- 54) Part 395 shall not apply to agricultural operations as defined in 92 Ill. Adm. Code 390.1020 ~~movements~~ that are engaged in intrastate commerce at any time of the year within a 100 air mile radius from the source of the agricultural commodity or the distribution point (see definitions in 92 Ill. Adm. Code 390.1020) for farm supplies used for agricultural purposes (also defined in 92 Ill. Adm. Code 390.1020) ~~during planting and harvesting season as defined in 92 Ill. Adm. Code 390.1020~~. (See Section 18b-105(c)(6) of the Law and Section 4130 of the Motor Carrier Safety Reauthorization Act of 2005.)
- 65) Part 395 shall not apply to all farm to market agricultural transportation as defined in 92 Ill. Adm. Code 390.1020 that is engaged in intrastate commerce. (Section 18b-105(c)(6) of the Law)
- 76) Part 395 shall not apply to any grain hauling operations that are engaged in intrastate commerce *within a radius of 200 air miles of the normal work reporting location*. (Section 18b-105(c)(6) of the Law)
- d) *A contract carrier shall limit the hours-of-service by a driver transporting employees in the course of their employment on a road or highway of this State in a vehicle designed to carry 15 or fewer passengers to 12 hours of vehicle operation per day, 15 hours of on-duty service per day, and 70 hours of on-duty service in 7 consecutive days. The contract carrier shall require a driver who has 12 hours of vehicle operation per day or 15 hours of on-duty service per day to have at least 8 consecutive hours off duty before operating a vehicle again.* (Section 18b-106.1 of the Law)

Agency Note: See 92 Ill. Adm. Code 386, Subpart C: Public Utility Exemptions, for provisions relating to possible exemptions from 92 Ill. Adm. Code 390, 392, 393, 396 and 397 ~~the IMCSR~~ for applicable intrastate public utility commercial motor vehicles.

(Source: Amended at 32 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Inspection, Repair and Maintenance
- 2) Code Citation: 92 Ill. Adm. Code 396
- 3) Section Number: 396.2000                      Proposed Action:  
Amend
- 4) Statutory Authority: Implementing, and authorized by, Sections 18b-102 and 18b-105 of the Illinois Motor Carrier Safety Law [625 ILCS 5/Ch. 18B]
- 5) A Complete Description of the Subjects and Issues Involved: By this Notice, the Department is proposing to update the incorporation by reference of 49 CFR 396 to the October 1, 2006 edition, the most recent edition of 49 CFR. The Department is also proposing to add parts 382, 383, and Appendix B of 386 to the list of Federal Motor Carrier Safety Regulations referenced in Section 396.2000(a) since they are applicable to the Illinois Motor Carrier Safety Regulations.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? Yes
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This rulemaking does not affect units of local government.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Any interested party may submit written comments or arguments concerning this proposed amendment. Written submissions shall be filed with:

By U.S. Mail:

Ms. Catherine Allen  
Illinois Department of Transportation

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED AMENDMENT

Division of Traffic Safety  
P.O. Box 19212  
Springfield, Illinois 62794-9212

217/785-3031

By Messenger or Inter-Agency Mail:

DOT Annex Building  
3215 Executive Park Drive  
Commercial Vehicle Safety; 3<sup>rd</sup> Floor  
Springfield, Illinois

JCAR requests, comments and concerns regarding this rulemaking should be addressed to:

Ms. Christine Caronna-Beard, Rules Manager  
Illinois Department of Transportation  
Office of Chief Counsel  
2300 South Dirksen Parkway, Room 317  
Springfield, Illinois 62764

217/524-3838

Comments received within 45 days after the date of publication of this *Illinois Register* will be considered. Comments received after that time will be considered, time permitting.

13) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses affected: This rulemaking affects small businesses that own or operate commercial motor vehicles.
- B) Reporting, bookkeeping or other procedures required for compliance: No additional procedures are required as a result of this rulemaking.
- C) Types of professional skills necessary for compliance: No new or additional skills are required as a result of this rulemaking.

DEPARTMENT OF TRANSPORTATION

NOTICE OF PROPOSED AMENDMENT

- 14) Regulatory Agenda on which this rulemaking was summarized: January 2008

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

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED AMENDMENT

## TITLE 92: TRANSPORTATION

## CHAPTER I: DEPARTMENT OF TRANSPORTATION

## SUBCHAPTER d: MOTOR CARRIER SAFETY REGULATIONS

## PART 396

## INSPECTION, REPAIR AND MAINTENANCE

## Section

396.1000	General
396.2000	Incorporation by Reference of 49 CFR 396
396.2010	Inspection of Vehicles in Operation

**AUTHORITY:** Implementing, and authorized by Sections 18b-102 and 18b-105 of, the Illinois Motor Carrier Safety Law [625 ILCS 5/Ch. 18B].

**SOURCE:** Adopted at 14 Ill. Reg. 15512, effective September 10, 1990; amended at 15 Ill. Reg. 13167, effective August 21, 1991; amended at 16 Ill. Reg. 14431, effective September 8, 1992; amended at 18 Ill. Reg. 749, effective January 11, 1994; amended at 19 Ill. Reg. 13046, effective August 30, 1995; amended at 20 Ill. Reg. 15340, effective November 18, 1996; amended at 23 Ill. Reg. 5101, effective March 31, 1999; amended at 24 Ill. Reg. 1949, effective January 19, 2000; amended at 25 Ill. Reg. 2097, effective January 17, 2001; amended at 26 Ill. Reg. 9014, effective June 5, 2002; amended at 27 Ill. Reg. 9257, effective June 2, 2003; amended at 29 Ill. Reg. 19271, effective November 10, 2005; amended at 32 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

**Section 396.2000 Incorporation by Reference of 49 CFR 396**

- a) The Department incorporates "Inspection, Repair and Maintenance" (49 CFR 396) by reference, as that part of the Federal Motor Carrier Safety Regulations (FMCSR) (49 CFR 380, [382](#), [383](#), 385, [appendix B of 386](#), 387, 390, 391, 392, 393, 395, 396, and 397) was in effect on October 1, ~~2006~~[2004](#), subject only to the exceptions in subsection (c). No later amendments to or editions of 49 CFR 396 are incorporated. Copies of the appropriate material are available from the Division of Traffic Safety, 3215 Executive Park Drive, 3<sup>rd</sup> Floor, Springfield, Illinois 62703 or by calling (217)785-1181. The FMCSR are available on the National Archives and Records Administration's website at <http://ecfr.gpoaccess.gov>. The Division of Traffic Safety's rules are available on the Department's website at <http://www.dot.il.gov/regulations.html>.

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED AMENDMENT

- b) References to subchapters, parts, subparts, sections or paragraphs shall be read to refer to the appropriate citation in 49 CFR.
- c) The following interpretations of, additions to and deletions from 49 CFR 396 shall apply for purposes of this Part.
  - 1) 49 CFR 396.9 is deleted and not incorporated.
  - 2) Any commercial motor vehicle used in intrastate commerce that is inspected semi-annually pursuant to Section 13-109 of the Illinois Vehicle Code (the Code) [625 ILCS 5/13-109] has complied with the periodic inspection procedures required by 49 CFR 396.17.

(Source: Amended at 32 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Transportation of Hazardous Materials; Driving and Parking
- 2) Code Citation: 92 Ill. Adm. Code 397
- 3) Section Number: 397.1020                      Proposed Action:  
Amend
- 4) Statutory Authority: Implementing, and authorized by, Sections 18b-102 and 18b-105 of the Illinois Motor Carrier Safety Law [625 ILCS 5/Ch. 18B]
- 5) A complete description of the subjects and issues involved: By this Notice, the Department is proposing to update the incorporation by reference of 49 CFR 397 to the October 1, 2006 edition, the most recent edition of 49 CFR. The Department is also proposing to add parts 382, 383, and appendix B of 386 to the list of Federal Motor Carrier Safety Regulations referenced in Section 397.1020(a) since they are applicable to the Illinois Motor Carrier Safety Regulations.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking:
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? Yes
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This rulemaking does not affect units of local government.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Any interested party may submit written comments or arguments concerning this proposed amendment. Written submissions shall be filed with:

By U.S. Mail:

Ms. Catherine Allen  
Illinois Department of Transportation

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED AMENDMENT

Division of Traffic Safety  
P.O. Box 19212  
Springfield, Illinois 62794-9212

217/785-3031

By Messenger or Inter-Agency Mail:

DOT Annex Building  
3215 Executive Park Drive  
Commercial Vehicle Safety; 3rd Floor  
Springfield, Illinois

JCAR requests, comments and concerns regarding this rulemaking should be addressed to:

Ms. Christine Caronna-Beard, Rules Manager  
Illinois Department of Transportation  
Office of Chief Counsel  
2300 South Dirksen Parkway, Room 317  
Springfield, Illinois 62764

217/524-3838

Comments received within 45 days after the date of publication of this *Illinois Register* will be considered. Comments received after that time will be considered, time permitting.

13) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses affected: This rulemaking affects small businesses that own or operate commercial motor vehicles.
- B) Reporting, bookkeeping or other procedures required for compliance: No additional procedures are required as a result of this rulemaking.
- C) Types of professional skills necessary for compliance: No new or additional skills are required as a result of this rulemaking.

DEPARTMENT OF TRANSPORTATION

NOTICE OF PROPOSED AMENDMENT

- 14) Regulatory Agenda on which this rulemaking was summarized: January 2008

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

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED AMENDMENT

## TITLE 92: TRANSPORTATION

## CHAPTER I: DEPARTMENT OF TRANSPORTATION

## SUBCHAPTER d: MOTOR CARRIER SAFETY REGULATIONS

## PART 397

## TRANSPORTATION OF HAZARDOUS MATERIALS; DRIVING AND PARKING

## Section

397.1000	General
397.1010	Application
397.1020	Incorporation By Reference of 49 CFR 397

**AUTHORITY:** Implementing, and authorized by Sections 18b-102 and 18b-105 of, the Illinois Motor Carrier Safety Law [625 ILCS 5/Ch. 18B].

**SOURCE:** Adopted at 3 Ill. Reg. 5, p. A1, effective February 1, 1979; codified at 8 Ill. Reg. 17986; recodified from 92 Ill. Adm. Code 397.Subchapter c at 14 Ill. Reg. 3281; Part repealed, new Part adopted at 14 Ill. Reg. 15496, effective September 10, 1990; amended at 15 Ill. Reg. 13158, effective August 21, 1991; amended at 18 Ill. Reg. 736, effective January 11, 1994; amended at 19 Ill. Reg. 13035, effective August 30, 1995; amended at 20 Ill. Reg. 15327, effective November 18, 1996; amended at 23 Ill. Reg. 5090, effective March 31, 1999; amended at 24 Ill. Reg. 1938, effective January 19, 2000; amended at 25 Ill. Reg. 2137, effective January 17, 2001; amended at 26 Ill. Reg. 9017, effective June 5, 2002; amended at 27 Ill. Reg. 9261, effective June 2, 2003; amended at 29 Ill. Reg. 19275, effective November 10, 2005; amended at 32 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

**Section 397.1020 Incorporation By Reference of 49 CFR 397**

- a) The Department incorporates "Transportation of Hazardous Materials; Driving and Parking" (49 CFR 397) by reference as that part of the Federal Motor Carrier Safety Regulations (FMCSR) (49 CFR 380, [382](#), [383](#), 385, [appendix B of 386](#), 387, 390, 391, 392, 393, 395, 396, and 397) was in effect on October 1, ~~2006~~[2004](#), subject only to the exceptions in subsections (b) and (c). No later amendments to or editions of 49 CFR 397 are incorporated. Copies of the appropriate material are available from the Division of Traffic Safety, 3215 Executive Park Drive, 3<sup>rd</sup> Floor, Springfield, Illinois 62703 or by calling (217)785-1181. The FMCSR are available on the National Archives and Records Administration's website at <http://ecfr.gpoaccess.gov>. The Division of Traffic Safety's rules are available on the Department's website at

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED AMENDMENT

<http://www.dot.il.gov/regulations.html>.

- b) 49 CFR 397.1 is deleted and not incorporated.
- c) 49 CFR 397.2 is deleted and not incorporated.
- d) References to subchapters, parts, subparts, sections or paragraphs shall be read to refer to the appropriate citation in 49 CFR.
- e) The following addition to 49 CFR 397 shall apply for purposes of this Part.

Authorized Illinois State Police shall place drivers out-of-service for any violation of the Illinois Motor Carrier Safety Law [625 ILCS 5/Ch. 18B] or the Illinois Motor Carrier Safety Regulations that warrants placing the driver out-of-service under the "North American Uniform Out-of-Service Criteria" as defined at 92 Ill. Adm. Code 390.1020.

(Source: Amended at 32 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## DEPARTMENT OF AGRICULTURE

## NOTICE OF ADOPTED AMENDMENT

- 1) Heading of the Part: Organizational Chart, Description, Rulemaking Procedure, and Programs
- 2) Code Citation: 2 Ill. Adm. Code 700
- 3) Section Number:      Adopted Action:  
700.APPENDIX B      Amendment
- 4) Statutory Authority: Implementing and authorized by Section 5-15 of the Illinois Administrative Procedure Act [5 ILCS 100/5-15]; Appendix B implementing and authorized by the Illinois Corn Marketing Act [505 ILCS 40]
- 5) Effective Date of Amendment: February 1, 2008
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) A copy of the adopted amendment is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: Pursuant to Section 5-15 of the Illinois Administrative Code [5 ILCS 100/5-15] and Section 100.810 of the Secretary of State's regulations addressing rulemaking (1 Ill. Adm. Code 100.810), no proposal of rules is required.
- 10) Has JCAR issued a Statement of Objection to this rulemaking? JCAR review at 2<sup>nd</sup> Notice is not required.
- 11) Difference between proposal and final version: No proposal of rules is required, pursuant to Section 5-15 of the Illinois Administrative Code [5 ILCS 100/5-15] and Section 100.810 of the Secretary of State's regulations addressing rulemaking (1 Ill. Adm. Code 100.810).
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? No changes were required.
- 13) Will this rulemaking replace any emergency rulemaking currently in effect? No

## DEPARTMENT OF AGRICULTURE

## NOTICE OF ADOPTED AMENDMENT

- 14) Are there any proposed rulemakings pending on this Part? No
- 15) Summary and Purpose of Amendment: Changes are mandated as a result of a referendum held on March 29, 2007 that increased the assessment for corn from 1/4 cent to 3/8 cent per bushel.
- 16) Information and questions regarding this Adopted Amendment shall be directed to:

Linda Rhodes  
Illinois Department of Agriculture  
P. O. Box 19281, State Fairgrounds  
Springfield, Illinois 62794-9281

Telephone: 217/785-5713  
Facsimile: 217/785-4505

The full text of Adopted Amendment begins on the next page:

## DEPARTMENT OF AGRICULTURE

## NOTICE OF ADOPTED AMENDMENT

TITLE 2: GOVERNMENTAL ORGANIZATION  
SUBTITLE D: CODE DEPARTMENTS  
CHAPTER I: DEPARTMENT OF AGRICULTUREPART 700  
ORGANIZATIONAL CHART, DESCRIPTION,  
RULEMAKING PROCEDURE, AND PROGRAMS

## SUBPART A: DESCRIPTION OF THE DEPARTMENT OF AGRICULTURE

Section	
700.10	Scope of the Department of Agriculture
700.20	Office of the Assistant Director
700.30	Division of Animal Industries
700.35	Division of Consumer Services
700.40	Division of Marketing and Promotion
700.50	Division of Agricultural Industry Regulation
700.60	Division of Fairs and Horse Racing
700.70	Division of Natural Resources
700.80	Statutorily Established Advisory Boards and Committees

## SUBPART B: ORGANIZATIONAL CHART

Section	
700.100	Illinois Department of Agriculture Organization Chart

## SUBPART C: REQUEST FOR INFORMATION

Section	
700.110	Information About Programs, Activities, Laws and Rules
700.120	Information On Employment

SUBPART D: PROGRAMS (LAWS) ADMINISTERED BY THE  
DEPARTMENT OF AGRICULTURE

Section	
700.130	Code Indicating Administrative Enforcement
700.140	Statutes Administered by the Department of Agriculture

## DEPARTMENT OF AGRICULTURE

## NOTICE OF ADOPTED AMENDMENT

SUBPART E: RULES AND REGULATIONS  
DEPARTMENT OF AGRICULTURE

Section  
700.150 Rules and Regulations Promulgated by the Department of Agriculture

SUBPART F: PROVISIONS AND PROCEDURES GOVERNING THE  
PROMULGATION OF RULES AND REGULATIONS

Section  
700.160 General, Emergency, and Peremptory Rules; Internal Rules (Agency's  
Organization, Description and Rule-making Procedures)  
700.170 Public Participation and Comments  
700.180 Consideration of Rules by Advisory Boards  
700.190 Public Comment Period; Submission of Written Comments; Extending the Public  
Comment Period  
700.200 Public Hearing Procedure  
700.210 Director's Decision  
700.220 Second Review Period; Final Disposition of Rulemaking Proposal  
700.230 Computing Time  
700.240 Interested Person May Request Rulemaking

## SUBPART G: RULEMAKING FLOW CHARTS

Section  
700.300 General Rulemaking Initiated by Department  
700.310 Rulemaking Requested by Advisory Board or Committee  
700.320 Emergency or Peremptory Rulemaking by Department

700.APPENDIX A Marketing Program for Illinois Apples and Peaches (Repealed)  
700.APPENDIX B Marketing Program for Illinois Corn and Corn Products  
700.APPENDIX C Marketing Program for Illinois Eggs (Repealed)  
700.APPENDIX D Marketing Program for Illinois Soybeans and Soybean Products  
700.APPENDIX E Fertilizer Research and Education Program  
700.APPENDIX F Procedures for Conducting Corn Marketing Program Referendums

AUTHORITY: Implementing and authorized by Section 5-15 of the Illinois Administrative Procedure Act [5 ILCS 100/5-15]; Appendix A implementing and authorized by the Apple and Peach Marketing Act [505 ILCS 20]; Appendix B implementing and authorized by the Illinois Corn Marketing Act [505 ILCS 40]; Appendix C implementing and authorized by the Egg

## DEPARTMENT OF AGRICULTURE

## NOTICE OF ADOPTED AMENDMENT

Market Development Act [505 ILCS 55]; Appendix D implementing and authorized by the Soybean Marketing Act [505 ILCS 130]; Appendix E implementing and authorized by the Illinois Fertilizer Act of 1961 [505 ILCS 80/6A].

SOURCE: Rules and Regulations Relating to the Illinois Administrative Procedure Act, filed December 30, 1977, effective January 15, 1978; amended at 5 Ill. Reg. 10257, effective September 29, 1981; codified at 2 Ill. Adm. Code 450 at 5 Ill. Reg. 10255; amended at 5 Ill. Reg. 13418, effective November 24, 1981; amended at 6 Ill. Reg. 11826, effective September 21, 1982; amended at 7 Ill. Reg. 9147, effective July 26, 1983; amended at 8 Ill. Reg. 13124, effective July 12, 1984; amended at 10 Ill. Reg. 13168, effective July 25, 1986. Rules and Regulations Relating to the Procedures for the Establishment of an Apple and Peach Marketing Program, filed and effective March 10, 1972; amended at 4 Ill. Reg. 19, p.181, effective April 28, 1980; codified as 8 Ill. Adm. Code 300 at 5 Ill. Reg. 10547; Part repealed at 6 Ill. Reg. 10908, effective August 26, 1982; new Part adopted at 7 Ill. Reg. 11154, effective August 31, 1983. Corn Marketing Program adopted at 3 Ill. Reg. 47, p. 72, effective November 9, 1979; codified as 8 Ill. Adm. Code 310 at 5 Ill. Reg. 10549; Part repealed at 6 Ill. Reg. 10909, effective August 26, 1982; new Part adopted at 7 Ill. Reg. 3407, effective March 21, 1983. Rules and Regulations Relating to the Procedures for the Establishment of an Egg Marketing Program, filed January 3, 1973, effective January 13, 1973; codified as 8 Ill. Adm. Code 320 at 5 Ill. Reg. 10551; Part repealed at 6 Ill. Reg. 10915, effective August 26, 1982; new Part adopted at 7 Ill. Reg. 11171, effective August 31, 1983. Rules and Regulations Relating to Procedures for the Establishment of a Soybean Marketing Program, filed March 20, 1974, effective April 1, 1974; amended May 2, 1974, effective May 12, 1974; codified as 8 Ill. Adm. Code 330 at 5 Ill. Reg. 10553; Part repealed at 6 Ill. Reg. 10916, effective August 26, 1982; new Part adopted at 7 Ill. Reg. 11189, effective August 31, 1983. 2 Ill. Adm. Code 450 recodified to 2 Ill. Adm. Code 700, 8 Ill. Adm. Code 300 recodified to 2 Ill. Adm. Code 700. Appendix A, 8 Ill. Adm. Code 310 recodified to 2 Ill. Adm. Code 700. Appendix B, 8 Ill. Adm. Code 320 recodified to 2 Ill. Adm. Code 700. Appendix C, and 8 Ill. Adm. Code 330 recodified to 2 Ill. Adm. Code 700. Appendix D at 11 Ill. Reg. 15602, effective September 10, 1987; amended at 11 Ill. Reg. 18605, effective October 28, 1987; amended at 12 Ill. Reg. 6648, effective March 25, 1988; amended at 12 Ill. Reg. 22135, effective December 8, 1988; amended at 13 Ill. Reg. 5066, effective March 31, 1989; amended at 14 Ill. Reg. 584, effective December 27, 1989; amended at 14 Ill. Reg. 4093, effective March 2, 1990; amended at 14 Ill. Reg. 9009, effective May 29, 1990; amended at 14 Ill. Reg. 20586, effective December 14, 1990; amended at 15 Ill. Reg. 6105, effective April 16, 1991; amended at 16 Ill. Reg. 3893, effective February 28, 1992; amended at 17 Ill. Reg. 19895, effective November 8, 1993; amended at 20 Ill. Reg. 12773, effective September 5, 1996; amended at 24 Ill. Reg. 1564, effective January 12, 2000; amended at 29 Ill. Reg. 18407, effective January 1, 2006; amended at 32 Ill. Reg. 2558, effective February 1, 2008.

## DEPARTMENT OF AGRICULTURE

## NOTICE OF ADOPTED AMENDMENT

**Section 700.APPENDIX B Marketing Program For Illinois Corn and Corn Products**

Agency Note: Section 7 of the "Illinois Corn Marketing Act" [505 ILCS 40/7] requires any corn marketing program that is approved by Illinois corn producers through referendum to be filed by the Department of Agriculture as provided in Section 5-65 of the "Illinois Administrative Procedure Act" [5 ILCS 100/5-65]. The filing of the adopted program is exempt from the rulemaking requirements of Sections 5-35 and 5-40 of the Illinois Administrative Procedure Act and the program is exempt from review under Sections 5-100, 5-105, 5-110, 5-120, 5-125 and 5-130 of the Illinois Administrative Procedure Act. On December 29, 1982, a Marketing Program for Illinois Corn and Corn Products was approved through referendum.

## ARTICLE I

## PURPOSE:

This program is developed not to increase production but to enable Illinois corn producers to coordinate more effectively the maintenance and development of markets for corn and corn products; to provide for the needed utilization research; to develop new uses for corn and corn products; and to provide for more efficient and economical markets.

To accomplish this objective, it is essential to provide procedures for the development of new and larger markets for corn; to provide procedures to engage in research directed toward more efficient utilization of corn; to provide procedures to support worldwide market development programs and cooperate with other states, organizations, agencies and persons in market development, market information, and research programs; and to provide procedures to elect an initial producer board and its successors to operate this program.

## ARTICLE II

## AUTHORITY:

This marketing program for Illinois corn and its procedures is established pursuant to the Illinois Corn Marketing Act [505 ILCS 40].

## ARTICLE III

## PROGRAM EXTENT:

## DEPARTMENT OF AGRICULTURE

## NOTICE OF ADOPTED AMENDMENT

All producers of corn in Illinois are qualified to participate and all corn sold to a first purchaser is subject to the program.

## ARTICLE IV

## DEFINITIONS:

Terms used in this marketing program shall be defined in the Act and as follows unless context clearly requires otherwise:

- (a) "Act" means the Illinois Corn Marketing Act [505 ILCS 40].
- (b) "*Corn*" means and includes all kinds of varieties of corn (excluding popcorn and sweet corn) grown in this State and marketed and sold as corn by the producer.<sup>1</sup>
- (c) "*Person*" means any natural person, partnership, corporation, society, association, representative or other fiduciary.<sup>1</sup>
- (d) "Producer" means any person engaged in this State in the business of producing and marketing corn and who is affected by this program by virtue of having the first rights of ownership in any corn for which payment is received at the first point of sale.
- (e) "*First Purchaser*" means any person who resells corn purchased from a producer or offers for sale any product produced from such corn for any purpose.<sup>1</sup>
- (f) "*Market Development*" means to engage in research and educational programs directed toward better and more efficient utilization of corn; to provide methods and means for the maintenance of present markets; for the development of new and larger domestic and foreign markets.<sup>1</sup>
- (g) "Corn Marketing Program" means the program established under the authority of the Corn Marketing Act and approved by the corn producers.
- (h) "Corn Marketing Board" means the board established by any corn marketing program to administer a corn marketing program.
- (i) "*Director*" means the Director of the Department of Agriculture of the State of Illinois.<sup>1</sup>

## DEPARTMENT OF AGRICULTURE

## NOTICE OF ADOPTED AMENDMENT

- (j) *"Department" means the Department of Agriculture of the State of Illinois.*<sup>1</sup>
- (k) *"Bushel" means 56 pounds of corn by weight.*<sup>1</sup>
- (l) "District" means the geographical divisions of the State established pursuant to this marketing program.
- (m) "Sale" or "Sold" means a transaction wherein the property in or to corn is transferred from the producer to a first purchaser for consideration.
- (n) "Eligible Voter" means one who is defined both as a person and as a producer in this program during the previous 365 days prior to the referendum date.
- (o) "Affected Producer" means any person defined as a producer in this program who is subject to the assessment.
- (p) "Corn Checkoff Program" means a program defined as a corn marketing program.

<sup>1</sup>Quoted from Section 3 of the Illinois Corn Marketing Act [505 ILCS 40/3].

## ARTICLE V

## CORN MARKETING BOARD:

## Section 1. Establishment and Membership.

A corn marketing board is hereby established with powers and duties as authorized pursuant to the Act and this program. The Board shall be comprised of 15 members elected from districts as provided in Section 2 of this Article. The 15 members shall be elected, one from each district.

## Section 2. Representative Districts.

For the purpose of nomination and election of members to the Board, the territory of the State of Illinois shall be divided into 15 representative districts as follows:

- District I: Boone, McHenry, Lake, DeKalb, Kane, Cook, DuPage, Kendall and Will Counties.

## DEPARTMENT OF AGRICULTURE

## NOTICE OF ADOPTED AMENDMENT

- District II: JoDaviess, Stephenson, Winnebago, Carroll and Ogle Counties.
- District III: Knox, Henry, Warren, Henderson, Mercer and Rock Island Counties.
- District IV: Whiteside, Lee, Bureau, Stark, Marshall and Putnam Counties.
- District V: LaSalle, Grundy, Livingston and Kankakee Counties.
- District VI: Ford, Iroquois, Champaign and Vermilion Counties.
- District VII: Woodford, McLean, DeWitt, Macon, Piatt and Moultrie Counties.
- District VIII: Peoria, Tazewell, Fulton, Mason, Cass, Menard and Logan Counties.
- District IX: Hancock, McDonough, Adams, Schuyler, Brown and Pike Counties.
- District X: Scott, Morgan, Sangamon, Greene, Jersey, Calhoun and Macoupin Counties.
- District XI: Christian, Montgomery, Shelby, Fayette and Effingham Counties.
- District XII: Douglas, Edgar, Coles, Clark, Cumberland, Jasper and Crawford Counties.
- District XIII: Marion, Clay, Richland, Lawrence, Jefferson, Wayne, Edwards, Wabash and White Counties.
- District XIV: Madison, Bond, St. Clair, Clinton, Monroe and Washington Counties.
- District XV: Randolph, Perry, Jackson, Franklin, Williamson, Hamilton, Saline, Gallatin, Union, Johnson, Pope, Hardin, Alexander, Pulaski and Massac Counties.

### Section 3. Board Membership Qualifications.

Board members shall be residents of the State of Illinois, of legal voting age, and be subject to the program. Board members shall be affected producers of corn in this State subject to the assessment and residing in the district in and for which they are nominated and elected. The qualification of members as set forth herein must continue during their term of office or their office shall be declared vacant.

## DEPARTMENT OF AGRICULTURE

## NOTICE OF ADOPTED AMENDMENT

## Section 4. Term of Office.

The term of office of a board member shall be three years or until his successor is elected and qualified except for the initial board which shall be provided in Section 5 of this Article.

A term of office shall terminate on July 31<sup>st</sup> of the year in which the board member's office expires.

A board member can only serve three full consecutive three year terms.

## Section 5. Initial Board.

If this program is adopted by corn producers, the Director shall initiate the procedures to elect the initial 15-member board as outlined in this corn marketing program and the Act. The Director shall specify the day on which the election of the initial board will be held. The day on which this election is held, shall be no more than 210 days from the date of close of the referendum on adoption of this corn marketing program.

Board members shall serve three year terms; provided, however, that the initial term of the board members from Districts I, IV, VII, X, and XIII shall expire July 31, 1984; the initial terms of board members from Districts II, V, VIII, XI, and XIV shall expire July 31, 1985; and the initial terms of board members from Districts III, VI, IX, XII, and XV shall expire July 31, 1986.

When the initial term of office expires in a district, an election shall be held as provided in this program and the Act to fill the vacancy.

## Section 6. Nominations.

- (a) Procedure for nominating candidates for election to the initial board: Any affected producer may become a candidate from his district and have his name placed on the ballot if he files a petition with the Director containing the signatures of 200 or 5 percent, whichever is less, of those eligible voters in his district qualified to vote on the referendum. The petitions to become a candidate for board members must be filed with the Director by a time and date specified by the Director. Petitions for becoming a candidate shall be available at the principal office of the Cooperative Extension Service serving each county and upon request from the Director. Position of candidates' names on the ballot to become a board member shall be determined by lot by drawing by the Director. Candidates shall

## DEPARTMENT OF AGRICULTURE

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be notified of the time and place where such drawing shall occur. Voting shall be held at geographically located polling places throughout the district.

- (b) Subsequent Years. Procedure for Nominating Candidates to the Board in Subsequent Years: Each district having a vacancy on the board by an expiring term shall hold an election to fill such vacancy. The election shall be held during July of the year in which the vacancy exists. Any affected producer meeting the requirements of Section 3 may become a candidate from his district and have his name placed on the ballot for which a vacancy exists if he files a petition with the Director containing the signatures of 200 or 5 percent, whichever is less, of affected producers from his district.

Petitions to become a candidate for board member must be filed with the Director by May 15th of the year in which the election is to be held in that District. Notification to all affected producers in the district where a vacancy exists shall be published once in the official state newspaper and made available to newspapers of general circulation in that district and to all other news media in that district. Notification shall be given no earlier than March 1 nor later than March 15 in the district where vacancy on the board will occur. Petition for becoming a candidate shall be available at each principal county office of the Cooperative Extension Service in the district where a vacancy exists and upon request from the Director. Position of the candidates' names on the ballot shall be determined by lot by a drawing by the Director. Candidates shall be notified of the time and place where such drawing shall occur. Voting shall be held at geographically located polling places throughout the district.

## Section 7.

- (a) Election of Initial Board.  
Each eligible voter shall be entitled to one vote and shall be entitled to vote for one candidate to be such producer's district representative on the corn marketing board.

The candidate from each district receiving the greatest number of votes in the election shall be the district's representative on the board. In case of a tie, the winner will be determined by drawing. The elected board member will take office immediately after certification of election results. Each eligible voter shall vote at the local Cooperative Extension Service office serving the county in which such eligible voter resides.

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- (b) Election of Board in Subsequent Years.  
The election of board members in districts where a vacancy occurs due to an expiring term shall be conducted by the corn marketing board. Nominations shall be as set forth in Section 6(b) of the program. The elected board member shall take office on August 1 of the year in which such board member is elected.

## Section 8. Election Ballot.

The election ballot used in each district will contain only the name(s) of the candidate(s) for its district, with space provided for a write-in candidate. Write-in votes shall be counted only for persons who have filed notarized declarations of intent to be write-in candidates with the Director not later than 5:00 p.m. on the Tuesday immediately preceding the election.

Forms for the declaration of intent to be a write-in candidate shall be supplied by the Director. Such declaration shall specify the office for which the person seeks election as a write-in candidate.

## Section 9. Absentee Ballot.

Eligible voters who reside outside the State of Illinois or eligible voters within the State who cannot be physically present at the polls on the day of any board members' election held under this Article may request an absentee ballot. The Director shall provide to any eligible voter an absentee ballot upon request beginning thirty (30) days prior to the initial election of directors and subsequent election of directors where a vacancy exists. Any eligible voter requesting an absentee ballot shall be required to file with the Director an affidavit swearing that such eligible voter is eligible to vote in the election of board members. Such affidavit shall be available upon request from the Director. All absentee ballots and affidavits must be received by the Director at least two (2) working days prior to any election of board members.

## Section 10. Elections.

The Director shall appoint election judges for the election of board members.

## Section 11. Powers and Duties of the Board.

The board shall have the following powers and duties:

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- (a) to administer, enforce, direct, and control provisions of this program as its administrative board pursuant to the authority contained in the Act;
- (b) to annually establish priorities and to prepare and approve a budget consistent with estimated resources and scope of the marketing program;
- (c) to formulate and execute assessment procedures, and methods of collection;
- (d) to procure and evaluate data and information necessary for the proper administration and operation of marketing program;
- (e) to employ personnel and contract for services which are necessary for the proper operation of the marketing program;
- (f) to authorize the expenditure of funds and the contracting of expenditures to conduct proper activities of the program;
- (g) to provide for an independent audit to be made and be available to all program participants;
- (h) to publish annually, upon completion of and at the same time of the audit, an Activities and Financial Report and make available to all affected producers;
- (i) to elect a chairman, vice chairman, secretary and treasurer and other such officers as it deems necessary;
- (j) to take steps to insure that adequate bonds are maintained and to insure adequate protection of funds;
- (k) to confer and cooperate with legally constituted authorities of other states and the United States;
- (l) to accept donations, gifts, and other properties to be used for program purposes;
- (m) to receive and investigate or cause to be investigated complaints and violations of this program and the Act and to take such action as is necessary within its authority;

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- (n) to establish accounts in adequately protected financial institutions to receive, hold and disperse program monies;
- (o) to approve and recommend desirable amendments to the program;
- (p) to establish procedure to refund to a producer any assessment paid by such a producer if he requests such a refund; and
- (q) to perform such other duties which may be necessary to proper operation of the board.

## Section 12. Limitation of Liability of Board Members and Employees.

Obligations incurred by the board and any other liabilities or claims against the board shall be enforced only against the assets of the board in the same manner as if it were a corporation and no liabilities for the debts or actions of the board shall exist against either the State of Illinois or any subdivision thereof or against any board established pursuant to the Act or the assets thereof or against any member, officer, employee, or agent of the board in his individual capacity. The members of the board, including employees thereof, shall not be held responsible individually in any way whatsoever to any person for errors in judgment, mistakes, or other acts either of commission or omission, as principal, agent, person, or employee except for their own individual acts which result in a violation of any law. No such person or employee shall be held responsible individually for the act or omission of any member of the board. The liability of the members of the board shall be several and not joint and no members shall be liable for the default of any other member.

## Section 13. Board Vacancies.

Procedures for filing: Vacancies occurring on the board during an unexpired term of office shall be filled by the board with an appointee who is a qualified producer from the district affected by the vacancy. The appointee shall serve as the district's representation on the board for the unexpired term.

## Section 14. Board Compensation.

*All voting members of the corn marketing board are entitled to actual and necessary travel and incidental expenses while attending meetings of the board or while engaged in the performance of official responsibilities as determined by the board.<sup>2</sup> Board members are not entitled to any salary or per diem.*

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<sup>2</sup>Quoted from Section 11 of the Illinois Corn Marketing Act [505 ILCS 40/11].

## ARTICLE VI

## REFERENDUMS AND ELECTIONS:

## Section 1.

The initial program referendum shall provide for the question of adoption of the program with a place to vote "yes" or "no". The initial program referendum shall be conducted by ballot mailed to producers. A period of 21 days from the date of mailing of the ballot shall be allowed for the return of such ballots. Ballots shall be returned to the Director by mail or by personal delivery by the voting producer at such address as may be designated by the Director. When requested in writing, the Director shall provide a ballot to any producer whose name does not appear on the list of producers maintained by the Agricultural Stabilization and Conservation Service or who for any reason did not receive a ballot. *Reasonable publicity and notification of the referendum date and voting locations shall be provided in trade publications, the public press and the official state newspaper, at least two weeks prior to such referendum date.*<sup>3</sup>

The Agricultural Stabilization and Conservation Service list of producers shall be the official mailing list used for the program referendum.

A corn marketing program or an amendment to a corn marketing program is approved when a majority of the statewide total of those voting in the referendum vote in favor of such program or amendment to a program.

<sup>3</sup>Quoted from Section 9 of the Illinois Corn Marketing Act [505 ILCS 40/9].

## Section 2. Qualification to Vote.

Any person who is defined as a producer in this program shall be entitled to one vote. Such eligible voter shall be required to sign a statement or affidavit declaring that such person is an eligible voter in the program.

An eligible voter who meets the definition of a "producer" in more than one county or on more than one tract of land may only vote once in their own name. If more than one vote is cast, only one vote, cast in the county of residence, will be counted.

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A person or business organization which meets the "producer" definition may designate some individual to vote on its behalf. In such cases, the following guidelines apply:

In cases of ASSOCIATIONS, BUSINESSES, COOPERATIVES, UNIVERSITIES, COLLEGES, FOUNDATIONS, or any other business entity, only an officer may cast one vote for this business organization.

**PARTNERSHIP, JOINT TENANCY:** If ownership of the commodity is held in the partnership name or in joint ownership, only one partner/owner may cast one vote. It is the responsibility of the partnership/joint ownership to decide who will vote.

**FIDUCIARY:** Only the court-appointed legal representative of a trust, estate, conservatorship, guardianship or other fiduciary relationship may cast one vote for the business held in trust.

**LANDLORD AND TENANT:** Each may cast one vote if each meets the "producer" definition.

**HUSBAND AND WIFE:** If the corn is held in joint ownership by both husband and wife, only one spouse may cast one vote. If each meets the "producer" definition as a separate entity, then each may cast one vote.

Section 3. Teller Committee.

The Director shall appoint a teller committee composed of members of the agricultural community to count absentee ballots, canvass and certify results of referendums and elections of district candidates.

## ARTICLE VII

## PROGRAM:

Section 1. Market Development, Promotion, and Public Relations Programs.

The board, subject to the provisions of this program and the Act, is authorized to contract with or make grants to any qualified organizations, agencies, or persons for any market development and promotion activities, education and public relations programs or market information services which will result in the opening of new markets for corn and corn products, or which will result in the expansion of existing markets. These activities may include, but not be necessarily limited to the following:

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- (a) Preparation and dissemination of marketing information to include supply information, demand information, quality characteristics, and other facts concerning corn and corn products.
- (b) Provide information to foreign feed manufacturers and corn refiners for the purpose of expanding their use of corn and corn products.
- (c) Work with U.S. agricultural attaches or any other agency or organization in removing restrictive foreign and domestic regulations or barriers which hinder the free flow of corn or corn products to their ultimate markets.
- (d) Participate in trade fairs, exhibitions, food shows, and other such activities for the purpose of developing markets.
- (e) The board, subject to the provisions of this program and the Act, is authorized to contract with or make grants to any qualified organizations, agencies, or persons for any needed research or survey studies related to corn and their products which will result in improved efficiency and aid corn producers in maintaining present and any new and larger markets.

## Section 2. Educational Program.

The board is authorized to conduct, contract with, or make grants to any qualified organizations, agencies, or individuals for any educational materials and educational programs pertaining to corn and corn products.

The educational program established pursuant to this authority shall emphasize the results of research, market development, and other programs sponsored, supported, or otherwise implemented by or for the board.

## ARTICLE VIII

## ASSESSMENTS:

## Section 1. Assessment Levied.

- (a) All assessments made and levied pursuant to the provisions of the Act and the program shall be paid by the respective affected producers who shall be liable therefore as provided by Sections 16 and 17 of the Act.

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- (b) Such assessments shall be ~~1/44~~ 1/44 cent per bushel on corn produced and sold by such affected producer. After the first five years of operation of the program, the corn marketing board may request the Director to hold a referendum to increase the assessment rate.
- (c) Such assessment shall be collected from the affected producers by the first purchaser of corn and such first purchaser shall deduct the full amount of assessment from total monies due the producer and shall account for, report on, and remit to the board all monies collected, except as otherwise provided in this section. Such monies collected shall be remitted quarterly and shall be made by the 15<sup>th</sup> of the month following the end of each quarter. Such quarters shall end March 31, June 30, September 30, and December 31 of the year in which assessment is due. If remittance of assessment by first purchaser is made by the 15<sup>th</sup> of the month following the end of the quarter, such first purchaser making remittance shall be entitled to retain two percent (2%) of such remittance due.
- (d) Any producer who shall sell, ship, or otherwise dispose of corn to a first purchaser or other person outside the jurisdiction of this marketing program shall forthwith remit to the board the full amount of the assessment due.
- (e) The board shall establish regulations and procedures to insure the collection of such assessments as shall be due and payable under this marketing program.
- (f) The board shall give reasonable notice to all producers, processors and handlers of all changes in regulations and procedures and any amendments thereto for the collection of the assessment.

## ARTICLE IX

## RIGHT OF REFUND:

## Section 1.

- (a) Any affected producer may request that each assessment paid by him be refunded.
- (b) A refund shall be payable upon request. Such request shall be made to the board not more than sixty (60) days after the deduction has been made or not more than sixty (60) days after the remittance has been made by the first purchaser.

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Applications for refund shall be given by the board to each first purchaser when requested and the first purchaser shall make the applications available to any producers.

- (c) The board shall establish procedures to insure the refunds of such assessment as are requested.

## ARTICLE X

## FUNDS:

## Section 1.

The board shall deposit all monies collected pursuant to this program in an account as established in Article V of this program. Expenses and disbursements incurred and made pursuant to the Act and this program shall be made by voucher, draft or check bearing the signature of a person or persons designated by majority vote of the board.

## Section 2.

Monies collected by the board pursuant to the Act and this program as assessments shall be used by the board for the purpose of paying for the costs or expenses arising in connection with carrying out the purpose and provisions of the Act and this program.

## ARTICLE XI

## INFORMATION REPORTS:

All persons subject to this program and the Act shall make and render such reports and furnish such information to the Director and board as may be necessary or required to effectuate the purposes thereof. Information obtained by any person pursuant to this Article shall be confidential and shall not be disclosed to any other person, save a person with the right to obtain the same or any attorney employed by the board to give legal advice thereon or by court order.

## ARTICLE XII

## PROCEDURES:

## Section 1.

## DEPARTMENT OF AGRICULTURE

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Following approval of the corn marketing program, the Director shall file the program with the Secretary of State as provided in Section 6 of the Illinois Corn Marketing Act.

## Section 2.

All procedures promulgated pursuant to the Act shall be available upon request to those persons affected by this program and the Act.

## ARTICLE XIII

## APPEALS:

## Section 1.

Any person subject to this program may appeal to the board to review any administrative decision. The board shall establish by regulation the contested case procedure in accordance with the Administrative Procedure Act [5 ILCS 100].

## Section 2.

Pending the disposition of any appeal set forth in Section 1 of this Article, the party shall abide by the decision unless the board shall rule otherwise. The board shall, if the facts stated show reasonable grounds, revise any order or decision upon which an appeal is taken.

## ARTICLE XIV

## DEROGATION:

Nothing contained herein is or shall be construed to be in derogation or in modification of the rights of the Director or of the State to exercise any powers granted by the Act or otherwise, and in accordance with such powers to act in the premises whenever such action is deemed advisable.

## ARTICLE XV

## COOPERATION WITH OTHER AGENCIES:

The board, with the assistance of the Director and subject to the provisions of the Act, is authorized to cooperate with agencies of the United States Government, the State of Illinois, and

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other states as deemed by the board and the Director to be desirable and useful in effectuating the purposes of this program and Act.

- (a) Coordination and cooperation in promotion, advertising, educational programs, informational programs, marketing and transportation research, and any of the several areas of authority authorized by the program and the Act.
- (b) Coordination of purposes with other boards, commissions, or any other marketing group in the State or other states, areas, or foreign countries so long as such cooperation is in the best interest of the corn producers in Illinois.

## ARTICLE XVI

## EFFECTIVE TIME:

This marketing program shall become effective upon its adoption. The assessment will not be levied until April 1 or 60 days after the date of the election of the initial board, whichever is later, and shall continue in effect for five (5) years and shall automatically be extended from year to year unless a referendum for continued approval is requested by written petition of no less than ten percent of corn producers affected by the program in each respective district as published in the latest Census of Agriculture as published by the U.S. Department of Commerce, Bureau of Census. Such referendum is to be held in accordance with Section 9 of the Act and shall have as set forth in Section 7 of the Act.

## ARTICLE XVII

## SEVERABILITY:

If any provision of the marketing program or the Act shall be declared invalid, or the applicability thereof to any person, circumstance or thing is held invalid, the validity of the remainder of this marketing program or the Act or the applicability thereof to any person, circumstance or thing shall not be affected.

## ARTICLE XVIII

## ENFORCEMENT:

Section 1.

## DEPARTMENT OF AGRICULTURE

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*Persons who collect corn marketing program assessment funds pursuant to Section 15 of this Act shall remit such funds to the corn marketing board which shall deposit such in an account to be used as authorized by the corn marketing program.*

*Any due and payable assessment required under the provisions of any corn marketing program created under this Act constitutes a personal debt of every person so assessed or who otherwise owes such assessment. Such assessment is due and payable to the corn marketing board not more frequently than quarterly or when stipulated in the corn marketing program and called for by the corn marketing board. In the event any person fails to remit the full amount of such due assessment or such other sum within 30 days after the due date, the person owing such assessment shall be given an opportunity to present his case as provided for in Section 20 of this Act. When established that the assessment is correct, the corn marketing board may add to such unpaid assessment or sum a penalty amount not exceeding 10% of the amount due plus all the cost of enforcing the collection of the assessment or sum due. In the event of failure of such person to remit any properly due assessment or sum, the corn marketing board may bring a civil action against such person in the circuit court of any county for the collection thereof, together with the above additional specified 10% penalty assessment, cost of enforcing the collection of the assessment and court costs. Such action shall be tried and judgment rendered as in any other cause of action for debts due and payable. All assessments are due and payable to the corn marketing board.<sup>4</sup>*

## Section 2.

*No person shall knowingly fail or refuse to comply with any requirement of this Act where obligated to comply by a duly approved corn marketing program. The corn marketing board may institute any action which is necessary to enforce compliance with any provision of this Act, and rule or regulation thereunder or any corn marketing program adopted pursuant to this Act. In addition to any other remedy provided by law, the corn marketing board may petition for injunctive relief without being required to allege or prove the absence of any adequate remedy at law.<sup>5</sup> Such action shall be brought in the Circuit Court of any county.*

*Before the corn marketing board may institute any proceedings under this Act, the alleged violator shall first be given an opportunity to present his views to the corn marketing board as to why such proceedings should not be instituted.<sup>5</sup>*

<sup>4</sup>Quoted from Section 17 of the Illinois Corn Marketing Act [505 ILCS 40/17].

<sup>5</sup>Quoted from Section 20 of the Illinois Corn Marketing Act [505 ILCS 40/20].

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NOTICE OF ADOPTED AMENDMENT

(Source: Amended at 32 Ill. Reg. 2558, effective February 1, 2008)

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF ADOPTED AMENDMENT

- 1) Heading of the Part: Public Information, Rulemaking and Organization
- 2) Code Citation: 2 Ill. Adm. Code 1700
- 3) Section Number: 1700.20                      Adopted Action:  
New Section
- 4) Statutory Authority: Implementing Section 5-15 of the Illinois Administrative Procedure Act [5 ILCS 100/5-15], Section 2.05 of the Open Meetings Act [5 ILCS 120/2.05], and Section 2-107 of the Public Utilities Act [220 ILCS 5/2-107] and authorized by Section 10-101 of the Public Utilities Act [220 ILCS 5/10-101]
- 5) Effective Date of Amendment: February 1, 2008
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) A copy of the adopted amendment is on file in the Commission's Springfield office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: This amendment is adopted pursuant to Section 5-15 of the Illinois Administrative Procedure Act and was not published as a proposed amendment in the *Illinois Register*.
- 10) Has JCAR issued a Statement of Objection to this amendment? This amendment is adopted pursuant to Section 5-15 of the Illinois Administrative Procedure Act and was not submitted to JCAR for prior review.
- 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 agreement letter issued by JCAR? No changes were made.
- 13) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 14) Are there any proposed rulemakings pending on this Part? No

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF ADOPTED AMENDMENT

- 15) Summary and Purpose of amendment? On August 13, 2007, P.A. 95-0127 became effective. This legislation added the following language to Section 2-107 of the Public Utilities Act:

The Commission shall provide a web site and toll-free telephone number to accept comments from Illinois residents regarding any matter under the auspices of the Commission or before the Commission. The Commission Staff shall report, in a manner established by the Commission that is consistent with the Commission's rules regarding ex parte communications, to the full Commission comments and suggestions received through both venues before all relevant votes of the Commission.

\* \* \* \*

Notwithstanding any other provision of this Section, the Commission's established procedures for accepting testimony from Illinois residents before the Commission shall be consistent with the Commission's rules regarding ex parte communications and due process.

The amendment prescribes the process for members of the public to follow in order to exercise the rights created by the amendment to Section 2-107 of the Public Utilities Act.

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

Conrad S. Rubinkowski  
Office of General Counsel  
Illinois Commerce Commission  
527 East Capitol Avenue  
Springfield, IL 62701

217/785-3922

The full text of the Adopted Amendment begins on the next page:

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF ADOPTED AMENDMENT

TITLE 2: GOVERNMENTAL ORGANIZATION  
SUBTITLE E: MISCELLANEOUS STATE AGENCIES  
CHAPTER IX: ILLINOIS COMMERCE COMMISSIONPART 1700  
PUBLIC INFORMATION, RULEMAKING AND ORGANIZATION

## SUBPART A: PUBLIC ACCESS

## Section

1700.10 Accessibility of Commission Meetings  
1700.20 Public Comment through the Commission's Web Site and by Telephone

## SUBPART D: NOTICE OF INQUIRY PROCEDURES

## Section

1700.310 Initiation of Notice of Inquiry  
1700.320 Notice  
1700.330 Content of Notice  
1700.340 Comments and Replies  
1700.350 Form of Comments and Replies; Number of Copies  
1700.360 NOI Proceedings

AUTHORITY: Implementing Section 5-15 of the Illinois Administrative Procedure Act [5 ILCS 100/5-15], Section 2.05 of the Open Meetings Act [5 ILCS 120/2.05], and Section 2-107 of the Public Utilities Act [220 ILCS 5/2-107] and authorized by Section 10-101 of the Public Utilities Act [220 ILCS 5/10-101].

SOURCE: Adopted at 8 Ill. Reg. 6664, effective May 1, 1984; amended at 31 Ill. Reg. 16734, effective December 10, 2007; amended at 32 Ill. Reg. 2581, effective February 1, 2008.

## SUBPART A: PUBLIC ACCESS

Section 1700.20 Public Comment through the Commission's Web Site and by Telephone

- a) Any Illinois resident may comment regarding any matter under the auspices of the Commission or before the Commission through the Commission's web site ([www.icc.illinois.gov](http://www.icc.illinois.gov)) or through a toll-free telephone number. All persons making comments must provide their name and the city, village, or other locality

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF ADOPTED AMENDMENT

in Illinois in which they reside. In addition, persons commenting through the Commission's web site must provide their e-mail address for verification purposes, although the e-mail address will not be posted publicly. Comments made on the Commission's web site, or transcribed comments made by phone, may not be longer than 5,000 characters.

- b) Comments received through the Commission web site will be reviewed to ensure that their content is not obscene, profane, defamatory, or otherwise inappropriate for public posting. All comments regarding formal proceedings before the Commission will be publicly posted in the section of e-Docket designed to display public comments, along with the name and locality of residence of the person making the comment.
- c) Comments received through the Commission's toll-free telephone number will be transcribed, and will not be publicly posted if their content is obscene, profane, defamatory, or otherwise inappropriate for public posting. Comments regarding formal proceedings before the Commission will be publicly posted in the section of e-Docket designed to display public comments, along with the name and locality of residence of the person making the comment.
- d) In formal proceedings before the Commission in which public comments have been posted on e-Docket, the Administrative Law Judge in the case or another Commission employee designated by the Executive Director will report the comments that have been posted to the full Commission, before the Commission votes on the matter. Parties to a formal proceeding before the Commission may respond to public comments by filing their own comments in the same section of e-Docket.
- e) Public comments received through the Commission's web site or toll-free number that pertain to a matter that is before the Commission other than as a formal docketed proceeding will be forwarded to the Commission Staff member or members responsible for presenting the matter to the Commission, who will report the comments to the full Commission before the Commission votes on the matter.

(Source: Added at 32 Ill. Reg. 2581, effective February 1, 2008)

## ILLINOIS EMERGENCY MANAGEMENT AGENCY

## NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Fees for Analytical Testing of Community Drinking Water Supply Samples for Radionuclides
- 2) Code Citation: 32 Ill. Adm. Code 336
- 3) 

<u>Section Numbers:</u>	<u>Adopted Action:</u>
336.10	Amendment
336.30	Amendment
336.40	Amendment
336.50	Amendment
336.70	Amendment
- 4) Statutory Authority: Implementing and authorized by the Radiation Protection Act of 1990 [420 ILCS 40]
- 5) Effective Date of Amendments: February 4, 2008
- 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 material incorporated by reference, is on file at the Agency's headquarters located at 1035 Outer Park Drive, Springfield, Illinois and is available for public inspection.
- 9) Notice of Proposal Published in the Illinois Register: 31 Ill. Reg. 14568; October 26, 2007
- 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 agreement letter issued by JCAR? No agreements were necessary.
- 13) Will these amendments replace any emergency rulemaking currently in effect? No
- 14) Are there any amendments pending on this Part? No

## ILLINOIS EMERGENCY MANAGEMENT AGENCY

## NOTICE OF ADOPTED AMENDMENTS

- 15) Summary and Purpose of amendments: IEMA is authorized to analyze community drinking water samples for radionuclides and is authorized to assess reasonable fees for such services. This Part sets forth the procedure for requesting analytical services and the fees that the Agency charges for providing analytical services.
- 16) Information and questions regarding these adopted amendments shall be directed to:

Louise Michels  
Staff Attorney  
Illinois Emergency Management Agency  
1035 Outer Park Drive  
Springfield, Illinois 62704

217/785-9876

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

## ILLINOIS EMERGENCY MANAGEMENT AGENCY

## NOTICE OF ADOPTED AMENDMENTS

## TITLE 32: ENERGY

CHAPTER II: ILLINOIS EMERGENCY MANAGEMENT AGENCY  
SUBCHAPTER b: RADIATION PROTECTION

## PART 336

FEES FOR ANALYTICAL TESTING OF COMMUNITY  
DRINKING WATER SUPPLY SAMPLES FOR RADIONUCLIDES

## Section

336.10	Purpose and Scope
336.20	Incorporation by Reference
336.30	Definitions
336.40	Procedures for Requesting Testing Services and Payment of Fee
336.50	Community Water Supply Testing Categories
336.55	Changes to Community Water Supply Testing Categories
336.60	New Sampling Points for Existing Community Water Supplies
336.70	Testing Fees
336.80	Conditions

**AUTHORITY:** Implementing and authorized by Section 2005-40 of the Civil Administrative Code of Illinois [20 ILCS 2005/2005-40].

**SOURCE:** Adopted by emergency rule at 25 Ill. Reg. 10233, effective August 1, 2001, for a maximum of 150 days; adopted at 25 Ill. Reg. 14877, effective October 30, 2001; recodified from the Department of Nuclear Safety to the Illinois Emergency Management Agency at 27 Ill. Reg. 13641; amended at 28 Ill. Reg. 6436, effective April 14, 2004; amended at 32 Ill. Reg. 2585, effective February 4, 2008.

**Section 336.10 Purpose and Scope**

- a) Under the provisions of 20 ILCS 2005/2005-40, the Illinois Emergency Management Agency (Agency) is authorized to analyze community drinking water samples for radionuclides and is authorized to assess a reasonable fee for such services. The Agency's laboratory is certified by the U.S. Environmental Protection Agency (USEPA) to conduct such analyses for compliance with the Safe Drinking Water Act (42 USC 300f, et seq.). This Part sets forth the procedure for requesting analytical services and the fees that the Agency charges for providing analytical services.

## ILLINOIS EMERGENCY MANAGEMENT AGENCY

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- b) Participation in the Agency's testing program is open to Illinois community water supplies for those samples required for compliance with Illinois Pollution Control Board drinking water regulations (35 Ill. Adm. Code Subtitle F). The fee schedule found in Section 336.70 of this Part is effective January 1, 2008, ~~from April 14, 2004 to December 31, 2007. In January 2008, new USEPA testing requirements will go into effect, thus requiring a new fee schedule.~~

(Source: Amended at 32 Ill. Reg. 2585, effective February 4, 2008)

**Section 336.30 Definitions**

- a) *"Community water supply" means a public water supply which serves or is intended to serve at least 15 service connections used by residents or regularly serves at least 25 residents. [415 ILCS 5/3.145]*
- ~~b) "Grandfather monitoring" means radium 228 results generated between June 2000 and December 8, 2003 and used to satisfy the initial monitoring requirements in accordance with 35 Ill. Adm. Code 611.731(b)(2).~~
- ~~b)e) "New community water supply" means a community water supply that begins operation on or after January 1, 2008~~April 14, 2004~~.~~
- ~~c)d) "New sampling point" means a sampling point that was not in existence or in use at the time a community water supply committed to participate in the Agency's testing program.~~
- ~~d)e) "Properly certified operator" means an operator certified in accordance with the Public Water Supply Operations Act [415 ILCS 45].~~
- ~~e)f) "Sampling point" refers to either a point in the distribution system or a finished water entry point where drinking water samples are collected.~~

(Source: Amended at 32 Ill. Reg. 2585, effective February 4, 2008)

**Section 336.40 Procedures for Requesting Testing Services and Payment of Fee**

- a) The Agency shall send to all participating community water supplies a notice indicating the testing category to which their sampling points~~they~~ have been assigned by Illinois Environmental Protection Agency (IEPA) and the fee that

## ILLINOIS EMERGENCY MANAGEMENT AGENCY

## NOTICE OF ADOPTED AMENDMENTS

would apply beginning January 1, 2008 ~~for the period from April 14, 2004 to December 31, 2007 (testing fee period).~~

- b) New community water supplies that commit to participate in the Agency's testing program will automatically be assigned to Category RDS ~~BC or BQ~~ and shall pay the fee specified in Section 336.70 of this Part.
- c) A community water supply that chooses to participate in the Agency's testing program must commit in writing to participate in the program for the next sampling quarter. ~~entire testing fee period. A new community water supply that chooses to participate in the Agency's testing program must commit in writing to participate in the program for whatever portion of the testing fee period that remains when the commitment is made.~~
- d) A community water supply that commits to participate must sign the prescribed commitment form provided and return it to the Agency at least 30 days prior to the date that a test needs to be conducted.
- e) A community water supply that commits to participate in the Agency's testing program and returns the signed form to the Agency shall be billed the appropriate fee by the Agency. The Agency reserves the right to ~~will~~ not perform any tests on samples submitted until the fee is paid.
- f) All fees are to be paid on a quarterly basis.

(Source: Amended at 32 Ill. Reg. 2585, effective February 4, 2008)

**Section 336.50 Community Water Supply Testing Categories**

For the purposes of this Part, the following testing categories shall initially be assigned to community water supplies based on drinking water testing results on file at IEPA as of November 16, 2007.

<u>Category</u>	<u>Service</u>
<u>4109</u>	<u>Gross alpha analysis</u>
<u>4006</u>	<u>Total uranium analysis</u>
<u>4010</u>	<u>Radium-226 and radium-228 analysis</u>
<u>RDS</u>	<u>Gross alpha, radium-226 and radium-228 analysis</u>

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RDU            Gross alpha, radium-226, radium-228 and total uranium analysis

AGENCY NOTE: If gross alpha result is greater than 15 pCi/L, IEPA requires an additional total uranium analysis (4006).

~~For the purposes of this Part, the following testing categories shall initially be assigned to community water supplies based on drinking water testing results on file at IEPA as of December 31, 2003.~~

Category	Assignment Criteria	Services
AC	<del>Community water supplies that did not participate in the grandfather monitoring for radium 228 requesting radium analysis by composite.</del>	<del>Four consecutive quarters of sampling and analysis for gross alpha. One radium 226 and radium 228 composite analysis.</del>
AQ	<del>Community water supplies that did not participate in the grandfather monitoring for radium 228 requesting radium analysis by quarter.</del>	<del>Four consecutive quarters of sampling and analysis for gross alpha, radium 226 and radium 228.</del>
BC	<del>New community water supplies or existing supplies that add one or more new sampling points to be analyzed for radium by composite.</del>	<del>Four consecutive quarters of sampling and analysis for gross alpha. One radium 226 and radium 228 composite analysis.</del>
BQ	<del>New community water supplies or existing supplies that add one or more new sampling points to be analyzed for radium quarterly.</del>	<del>Four consecutive quarters of sampling and analysis for gross alpha, radium 226 and radium 228.</del>
C3	<del>Community water supplies on a 3 year cycle.</del>	<del>One quarter of sampling and analysis for gross alpha, radium 226 and radium 228.</del>

## ILLINOIS EMERGENCY MANAGEMENT AGENCY

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<del>C6</del>	<del>Community water supplies on a 6 year cycle.</del>	<del>One quarter of sampling and analysis for gross alpha, radium 226 and radium 228.</del>
<del>C9</del>	<del>Community water supplies on a 9 year cycle.</del>	<del>One quarter of sampling and analysis for gross alpha, radium 226 and radium 228.</del>
<del>CC</del>	<del>Community water supplies out of compliance for radium to be analyzed for radium by composite.</del>	<del>Quarterly sampling and analysis for gross alpha. One radium 226 and radium 228 composite analysis every 4 quarters.</del>
<del>CQ</del>	<del>Community water supplies out of compliance for radium to be analyzed for radium quarterly.</del>	<del>Quarterly sampling and analysis for gross alpha, radium 226 and radium 228.</del>
<del>DC</del>	<del>Community water supplies out of compliance for radium and uranium, or gross alpha greater than 15 pCi/L, to be analyzed for radium by composite.</del>	<del>Quarterly sampling and analysis for gross alpha. One radium 226 and radium 228 and uranium composite analysis every 4 quarters.</del>
<del>DQ</del>	<del>Community water supplies out of compliance for radium and uranium, or gross alpha greater than 15 pCi/L, to be analyzed for radium quarterly.</del>	<del>Quarterly sampling and analysis for gross alpha, radium 226 and radium 228 and uranium.</del>

(Source: Amended at 32 Ill. Reg. 2585, effective February 4, 2008)

**Section 336.70 Testing Fees**

- a) Community water supplies that choose to participate in the Agency's testing program shall pay a single fee per sampling point to cover testing costs. ~~for the period from April 14, 2004 through December 31, 2007.~~
- b) Fees shall be assessed as follows:

Category	Quarterly Fee per Sampling Point
----------	----------------------------------

## ILLINOIS EMERGENCY MANAGEMENT AGENCY

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<u>4109</u> AC	<u>\$65</u> <del>\$140</del>
<u>4006</u> AQ	<u>\$110</u> <del>\$380</del>
<u>4010</u> BC	<u>\$345</u> <del>\$140</del>
<u>RDS</u> BQ	<u>\$400</u> <del>\$380</del>
<u>RDU</u> C3	<u>\$500</u> <del>\$380</del>
E6	\$380
E9	\$380
EE	\$140
EQ	\$380
DC	\$180
DQ	\$570

- c) The Agency will provide all required sample containers and analyze all samples required for compliance with federal radiological drinking water testing requirements over the fee period.

(Source: Amended at 32 Ill. Reg. 2585, effective February 4, 2008)

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 January 29, 2008 through February 4, 2008 and have been scheduled for review by the Committee at its March 11, 2008 meeting. Other items not contained in this published list may also be considered. Members of the public wishing to express their views with respect to a rulemaking should submit written comments to the Committee at the following address: Joint Committee on Administrative Rules, 700 Stratton Bldg., Springfield IL 62706.

<u>Second Notice Expires</u>	<u>Agency and Rule</u>	<u>Start Of First Notice</u>	<u>JCAR Meeting</u>
3/15/08	<u>Illinois Commerce Commission</u> , Reports of Accidents or Incidents by Persons Engaged in the Transportation of Gas, or Who Own or Operate Gas Pipeline Facilities (83 Ill. Adm. Code 595)	9/21/07 31 Ill. Reg. 13266	3/11/08
3/15/08	<u>Department of Human Services</u> , Child Care (89 Ill. Adm. Code 50)	8/3/07 31 Ill. Reg. 11018	3/11/08
3/15/08	<u>Department of Human Services</u> , Collections and Recoveries (89 Ill. Adm. Code 165)	10/26/07 31 Ill. Reg. 14576	3/11/08

## JOINT COMMITTEE ON ADMINISTRATIVE RULES

## NOTICE OF PUBLICATION ERROR

## DEPARTMENT OF REVENUE

- 1) Heading of the Part: Income Tax
- 2) Code Citation: 86 Ill. Adm. Code 100
- 3) Register citation of adopted rulemaking and other pertinent action: 32 Ill. Reg. 1407; February 1, 2008
- 4) Explanation: An incorrect effective date of January 18, 2008 was published in the *Illinois Register* for this rulemaking. The correct effective date is January 16, 2008. JCAR regrets this inadvertent error.

## PROCLAMATIONS

**2008-19 (Revised)**  
**Women's Healthy Heart Month**

- WHEREAS, heart disease is the #1 killer of women and one in four American women dies of heart disease; and,
- WHEREAS, in Illinois alone, there were 14,383 deaths in women in 2005 due to diseases of the heart; and
- WHEREAS, the majority of women are not aware of their risk factors for heart disease, nor are they aware of the signs and symptoms of a heart attack; and
- WHEREAS, risk factors for heart disease are smoking, high blood pressure, high cholesterol, overweight/obesity, physical inactivity, diabetes, a family history of early heart disease, and age; and
- WHEREAS, symptoms of heart attack are: uncomfortable pressure, squeezing, fullness or pain in the center of the chest that lasts more than a few minutes, or goes away and comes back; pain or discomfort in one or both arms, the back, neck, jaw, stomach; shortness of breath along with, or before, chest discomfort; and cold sweat, nausea or lightheadedness; and
- WHEREAS, it is critical that we, as a country and state, work to empower women and increase their awareness of the many things they can do to reduce their risk of heart disease; and
- WHEREAS, this includes exercising regularly, eating healthy meals and snacks, loving their body and taking time for themselves; and
- WHEREAS, February of each year is nationally recognized as American Heart Month, Go Red for Women, and this year in Illinois, we want to give special emphasis to women's heart health by declaring that February 2008 be Women's Healthy Heart Month; and
- WHEREAS, in addition, on February 1, 2008, we are proud to be joining various heart health organizations across the country in encouraging people to wear red in support of the continued efforts to raise awareness of heart disease among women in Illinois:
- THEREFORE, I, Rod Blagojevich, Governor of the State of Illinois, do hereby proclaim the month of February 2008 as **WOMEN'S HEALTHY HEART MONTH** in Illinois, and urge all

## PROCLAMATIONS

citizens, especially women, to familiarize themselves with the signs, symptoms and treatments for heart disease, as well as the steps they can take to ensure themselves good heart health.

Issued by the Governor January 24, 2008

Filed by the Secretary of State February 1, 2008

**2008-22****Kidney Cancer Awareness Month**

WHEREAS, as of January 1, 2003 there were approximately 230,148 men and women living in the United States who had a history of renal cell carcinoma (RCC), also known as kidney cancer; and

WHEREAS, the exact cause of kidney cancer is still unknown, but the incidence rate is increasing by approximately 3 percent every year; and

WHEREAS, kidney cancer occurs nearly twice as often in men as in women, and it mostly occurs in men over 40 years old; and

WHEREAS, the American Cancer Society estimated that in 2007 that 51,190 men and women would be diagnosed with kidney cancer, and 12,890 people would die from the disease; and

WHEREAS, there are currently no early detection tests that can detect the presence of kidney cancer; and

WHEREAS, signs and symptoms of kidney cancer may include: blood in the urine; lower back pain on one side (not from an injury); a mass or lump in the belly; tiredness; weight loss (if you are not trying to lose weight); fever that does not go away after a few weeks and that is not from a cold, the flu, or other infection; and swelling of ankles and legs. A doctor should be consulted if any of these problems are occurring; and

WHEREAS, other than surgery, the most commonly used treatments for kidney cancer are immunotherapy, radiation, and chemotherapy; and

WHEREAS, breakthroughs in research over the last year have given renewed hope to patients who previously had few treatment options:

## PROCLAMATIONS

THEREFORE, I, Rod R. Blagojevich, Governor of the State of Illinois, do hereby proclaim March 2008 as **KIDNEY CANCER AWARENESS MONTH** in Illinois in support of this important public information campaign.

Issued by the Governor January 29, 2008

Filed by the Secretary of State February 1, 2008

**2008-23****Staff Sergeant Robert J. Miller**

WHEREAS, on Friday, January 25, Army Staff Sergeant Robert J. Miller from Wheaton, Illinois was killed at age 24 during a firefight near Barikowt, Afghanistan; and

WHEREAS, Staff Sgt. Miller graduated from Wheaton North High School in 2002 and enlisted as a Special Forces trainee on August 14, 2003. He was assigned to the 3<sup>rd</sup> Battalion of the 3<sup>rd</sup> Special Forces Group (Airborne) at Fort Bragg in North Carolina; and

WHEREAS, in high school, Staff Sgt. Miller was an all-conference gymnast who, as co-captain, led the squad to a fifth-place finish his senior year at the state tournament, which was a turning point for the now-popular gymnastics program at Wheaton North High School; and

WHEREAS, Staff Sgt. Miller was on his second tour of duty in Afghanistan when he was killed. During his first tour from August 2006 to March 2007, he received two Army Commendation Medals for Valor for his courage under fire; and

WHEREAS, a funeral will be held on Saturday, February 2 for Staff Sgt. Miller, who is survived by his mother and father, Maureen and Philip Miller:

THEREFORE, I, Rod R. Blagojevich, Governor of the State of Illinois, do hereby order all State facilities to fly their flags at half-staff from sunrise on January 31, 2008 until sunset on February 2, 2008 in honor and remembrance of Staff Sgt. Miller, whose selfless service and sacrifice is an inspiration.

Issued by the Governor January 29, 2008

Filed by the Secretary of State February 1, 2008

**2008-24****Jewish Community Hour Week**

## PROCLAMATIONS

WHEREAS, The Jewish Community Hour is a variety show of music, commentary, humor, special features, Torah thoughts, interviews, weather reports, and news from Israel and the Metropolitan Chicago area Jewish community, nearby areas of Indiana, Michigan, and Wisconsin; and

WHEREAS, Bernard Finkel, took over the show from its founder, the late Cantor Jerry Rabin, at the start of 1976, and has been providing countless Jewish Americans with a program dedicated to their language, music, culture, and heritage, and been serving as an exceptional source of news and current events; and

WHEREAS, today, The Jewish Community Hour has an estimated audience of 50,000 and is heard "live" every Sunday from 11:00 a.m. to 12 noon on radio station WONX, 1590 AM in Evanston, Illinois and has been broadcasting worldwide simultaneously on the internet since 2006; and

WHEREAS, since Bernie Finkel took over the show, The Jewish Community Hour has been recognized for distinguished community and public service by former President Ronald Reagan, the United States Congress, the Illinois State Senate, and three previous Governors of Illinois; and

WHEREAS, The Jewish Community Hour has also been honored by the Chicago Rabbinical Council, the Chicago Board of Rabbis, the Hebrew Theological College, and the Holocaust Memorial Foundation of Illinois, to name a few; and

WHEREAS, The Jewish Community Hour is being considered for induction into the Radio Hall of Fame by the Museum of Broadcast Communications, because it is the oldest continuously running Jewish radio program in Chicago and overall broadcasting history:

THEREFORE, I, Rod R. Blagojevich, Governor of the State of Illinois, do hereby proclaim February 17-24, 2008 as **JEWISH COMMUNITY HOUR WEEK** in Illinois in recognition of the show's 45<sup>th</sup> anniversary and Bernie Finkel's 33<sup>rd</sup> year as owner, producer, and host of the show.

Issued by the Governor January 29, 2008

Filed by the Secretary of State February 1, 2008

**2008-25**

**National Teen Dating Violence Awareness and Prevention Week**

## PROCLAMATIONS

WHEREAS, a form of domestic violence, teen dating violence is generally an unspoken problem that is only now beginning to receive attention. One in three female high school students report physical or sexual abuse by a dating partner, and more than 40 percent of male and female high school students have been victims of dating violence at least once; and

WHEREAS, those abused during adolescence are at a higher risk for substance abuse, eating disorders, risky sexual behavior, and suicide, and many will continue to be abused during their adult relationships; and

WHEREAS, unfortunately, 81 percent of parents either believe teen dating violence is not an issue or admit they do not know if it is an issue. Consequently, the American Bar Association has embarked on a national campaign to raise awareness about teen dating violence; and

WHEREAS, thanks to funding from the United States Department of Health and Human Services, the American Bar Association hosted a Teen Dating Violence Prevention National Summit in November of 2004. During the summit, state teams from across the country developed awareness and prevention toolkits for use by high schools during the 1<sup>st</sup> Annual National Teen Dating Violence Awareness and Prevention Week, which was held from February 6-10, 2006; and

WHEREAS, children are extremely impressionable, and studies show that raising children today requires the help of an entire community. Remaining silent about teen dating violence sends a message that it is acceptable, but by working together we can prevent this deplorable behavior:

THEREFORE, I Rod R. Blagojevich, Governor of the State of Illinois, do hereby proclaim February 4-8, 2008 as **NATIONAL TEEN DATING VIOLENCE AWARENESS AND PREVENTION WEEK** in support of the American Bar Association's wonderful campaign to bring attention to teen dating violence, which has been ignored for far too long, and to encourage all citizens to learn what they can do to prevent it.

Issued by the Governor January 29, 2008

Filed by the Secretary of State February 1, 2008

**2008-26****Universal Newborn Hearing Screening Day**

WHEREAS, each day in the United States, it is estimated that sixty babies are born with moderate to severe hearing loss; and

## PROCLAMATIONS

- WHEREAS, early detection is the single most important factor in successful treatment of hearing loss. In Illinois, there are approximately 180,000 newborn babies who have their hearing screened every year. Recent studies suggest that intervention within the first six months of a hard of hearing infant's life is crucial to them reaching their speech, language, and learning potential; and
- WHEREAS, in Illinois, nearly five-hundred children are born with congenital hearing loss each year; and
- WHEREAS, to better deal with congenital hearing loss, the Illinois Hearing Screening for Newborns Act, passed in July of 1999, requires all birthing hospitals in the state to implement universal newborn hearing screening and reporting. The Universal Newborn Hearing Screening program was established to implement and administer the provisions of the act; and
- WHEREAS, the Universal Newborn Hearing Screening program is a joint effort of two state agencies: the Department of Human Services and the Department of Public Health. These agencies, along with the University of Illinois at Chicago's Division of Specialized Care for Children, the Bureau of Early Intervention, hospital personnel, healthcare professionals, and community-based organizations, strive to ensure that parents of babies who have a hearing loss receive follow-up diagnostic testing and information regarding communication options and other services for their children; and
- WHEREAS, the State of Illinois realizes the importance of universal newborn hearing screening and its impact on not only the lives of our children but their families and communities as well:

THEREFORE, I, Rod R. Blagojevich, Governor of the State of Illinois, do hereby proclaim April 11, 2008 as **UNIVERSAL NEWBORN HEARING SCREENING DAY** in Illinois in order to increase awareness of the role that early detection plays in the successful treatment of hearing loss.

Issued by the Governor January 29, 2008

Filed by the Secretary of State February 1, 2008

**2008-27**

**AMBUCS Appreciation Month**

## PROCLAMATIONS

WHEREAS, AMBUCS is a national service organization composed of a diverse group of men and women who are dedicated to fostering mobility and independence for those with disabilities; and

WHEREAS, AMBUCS was founded in Birmingham, Alabama in 1922. Their founder and honorary first National President is William L. White; and

WHEREAS, AMBUCS headquarters are at the AMBUCS Resource Center in High Point, North Carolina. Prior to that location, the headquarters was in Danville, Illinois, which chartered in 1925; and

WHEREAS, today, there are more than 6,000 AMBUCS members throughout the country who administer wonderful programs such as AMBUCS Scholars. Since its inception, the AMBUCS Scholars program has provided over \$6 million to educate physical and occupational therapists; and

WHEREAS, another AMBUCS program, AmBility, supports a variety of projects, including the distribution of therapeutic bicycles to children with disabilities, and ramp construction to make homes and businesses more accessible for the disabled; and

WHEREAS, in addition to those programs, there are 14 AMBUCS chapters in Illinois, with 682 members, that also partner with Easter Seals, Special Olympics, and other terrific organizations to broaden their services. Every year Illinois AMBUCS members freely contribute thousand of hours of community service and hundreds of thousands of dollars in financial support; and

WHEREAS, during the month of February, the national organization will recognize all AMBUCS chapters and members for their commitment and dedication to helping those with disabilities:

THEREFORE, I, Rod R. Blagojevich, Governor of the State of Illinois, do hereby proclaim February 2008 as **AMBUCS APPRECIATION MONTH** in Illinois in recognition of AMBUCS chapters and members for their noble and worthy service to the community.

Issued by the Governor January 31, 2008

Filed by the Secretary of State February 1, 2008

**2008-28**  
**National TRIO Day**

## PROCLAMATIONS

WHEREAS, TRIO programs are an integral part of the education of many disadvantaged students in Illinois and throughout the United States; and

WHEREAS, TRIO programs, which were established by the federal government in 1965, are educational opportunity programs that help students overcome social, cultural and class barriers to higher education by providing information, counseling, academic instruction, tutoring, support and encouragement; and

WHEREAS, TRIO programs provide outreach services targeted to assist low-income, first-generation college students, and students with disabilities to progress from middle school to post-baccalaureate programs and enhance their prospects of achieving academic excellence; and

WHEREAS, the TRIO program has a consistent record of successfully increasing college retention and graduation rates for eligible students, by preparing these students with the skills, hope and motivation they need to succeed in college; and

WHEREAS, Illinois' many TRIO Projects offer services every year to over 31,000 residents located throughout the state on college campuses and in community agencies:

THEREFORE, I, Rod R. Blagojevich, Governor of the State of Illinois, do hereby proclaim February 23, 2008 as **NATIONAL TRIO DAY** in Illinois in recognition of the opportunities created by these programs and the positive impact they have on our educational system.

Issued by the Governor January 31, 2008

Filed by the Secretary of State February 1, 2008

**2008-29****Desert Storm Remembrance Day**

WHEREAS, since the birth of this great nation, millions of brave American men and women have courageously answered the call to defend their country's ideals of freedom and democracy; and

WHEREAS, seventeen years ago, over 600,000 members of the United States Armed Forces risked their lives in the Persian Gulf to liberate Kuwait during Operation Desert Storm, some making the ultimate sacrifice for their country; and

WHEREAS, the men and women who served in the United States Armed Forces during Operation Desert Storm have earned the gratitude and respect of their nation; and

## PROCLAMATIONS

WHEREAS, the observance of the 17th anniversary of Operation Desert Storm allows citizens throughout Illinois, and across the country, the opportunity to honor those who served during this conflict for their valor and selflessness:

THEREFORE, I, Rod R. Blagojevich, Governor of the State of Illinois, do hereby proclaim February 28, 2008 as **DESERT STORM REMEMBRANCE DAY** in Illinois, and urge all citizens to honor those who courageously served their country during Operation Desert Storm.

Issued by the Governor February 1, 2008

Filed by the Secretary of State February 1, 2008

# ILLINOIS ADMINISTRATIVE CODE

## Issue Index - With Effective Dates

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