

2009

ILLINOIS

REGISTER

RULES
OF GOVERNMENTAL
AGENCIES



Volume 33, Issue 25
June 19, 2009
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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 preemptory 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.].

ILLINOIS REGISTER PUBLICATION SCHEDULE FOR 2009

<u>Issue #</u>	<u>Rules Due Date</u>	<u>Date of Issue</u>
1	December 22, 2008	January 2, 2009
2	December 29, 2008	January 9, 2009
3	January 5, 2009	January 16, 2009
4	January 12, 2009	January 23, 2009
5	January 20, 2009	January 30, 2009
6	January 26, 2009	February 6, 2009
7	February 2, 2009	February 13, 2009
8	February 9, 2009	February 20, 2009
9	February 17, 2009	February 27, 2009
10	February 23, 2009	March 6, 2009
11	March 2, 2009	March 13, 2009
12	March 9, 2009	March 20, 2009
13	March 16, 2009	March 27, 2009
14	March 23, 2009	April 3, 2009
15	March 30, 2009	April 10, 2009
16	April 6, 2009	April 17, 2009
17	April 13, 2009	April 24, 2009
18	April 20, 2009	May 1, 2009
19	April 27, 2009	May 8, 2009
20	May 4, 2009	May 15, 2009
21	May 11, 2009	May 22, 2009
22	May 18, 2009	May 29, 2009
23	May 26, 2009	June 5, 2009

<u>Issue #</u>	<u>Rules Due Date</u>	<u>Date of Issue</u>
24	June 1, 2009	June 12, 2009
25	June 8, 2009	June 19, 2009
26	June 15, 2009	June 26, 2009
27	June 22, 2009	July 6, 2009
28	June 29, 2009	July 10, 2009
29	July 6, 2009	July 17, 2009
30	July 13, 2009	July 24, 2009
31	July 20, 2009	July 31, 2009
32	July 27, 2009	August 7, 2009
33	August 3, 2009	August 14, 2009
34	August 10, 2009	August 21, 2009
35	August 17, 2009	August 28, 2009
36	August 24, 2009	September 4, 2009
37	August 31, 2009	September 11, 2009
38	September 8, 2009	September 18, 2009
39	September 14, 2009	September 25, 2009
40	September 21, 2009	October 2, 2009
41	September 28, 2009	October 9, 2009
42	October 5, 2009	October 16, 2009
43	October 13, 2009	October 23, 2009
44	October 19, 2009	October 30, 2009
45	October 26, 2009	November 6, 2009
46	November 2, 2009	November 13, 2009
47	November 9, 2009	November 20, 2009
48	November 16, 2009	November 30, 2009
49	November 23, 2009	December 4, 2009
50	November 30, 2009	December 11, 2009
51	December 7, 2009	December 18, 2009
52	December 14, 2009	December 28, 2009

Editor's Note: The Secretary of State Index Department is providing this opportunity to remind you that the next filing period for your Regulatory Agenda will occur from May 11 to July 1, 2009.

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Procedures For Issuing Loans From the Water Pollution Control Loan Program
- 2) Code Citation: 35 Ill. Adm. Code 365
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
365.130	Amendment
365.220	Amendment
365.240	Amendment
365.340	Amendment
365.410	Amendment
365.430	Amendment
365.440	Amendment
365.620	Amendment
365.630	Amendment
365.APPENDIX A EXHIBIT A	Repeal
365.APPENDIX A EXHIBIT B	Repeal
- 4) Statutory Authority: Implementing and authorized by Sections 19.1-19.9 of the Illinois Environmental Protection Act [415 ILCS 5/19.1-19.9]
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking will amend the fixed loan rate to 0.00% to work in conjunction with the Agency's rules with respect to the American Recovery and Reinvestment Act of 2009. The amendments will also change the Minority Business Enterprise/Woman Business Enterprise (MBE/WBE) requirements to Disadvantaged Business Enterprise (DBE) requirements.
- 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? Yes
- 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

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PROPOSED AMENDMENTS

- 11) Statement of Statewide Policy Objectives: This rulemaking establishes procedures for issuing loans from the Water Pollution Control Loan Program.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on the proposed rulemaking may submit them in writing by no later than 45 days after publication of this Notice to:

Stefanie N. Diers
Assistant Counsel
Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
P.O. Box 19726
Springfield, Illinois 62794-9276

217/782-5544
stefanie.diers@illinois.gov
- 13) Initial Regulatory Flexibility Analysis:
 - A) Types of small businesses, small municipalities and not for profit corporations affected: This rulemaking is not expected to impact small businesses and not for profit corporations. These amendments will affect small municipalities to the extent that if they applied for a loan through the Water Pollution Control Loan Program, they will utilize these rules. The Illinois EPA anticipates that these amendments will generally benefit small municipalities by clarifying and streamlining the loan application process and will allow for a 0.00% interest rate while the Agency is working with stimulus money under the American Recovery and Reinvestment Act of 2009.
 - 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: This rulemaking was not included on either of the two most recent regulatory agendas because: the amendments were not needed until the enactment of the American Recovery and Reinvestment Act of 2009 signed by the President on February 17, 2009.

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PROPOSED AMENDMENTS

The full text of the Proposed Amendments is identical to that of the Emergency Amendments found in this issue of the *Illinois Register*, which begins on page 8546:

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PROPOSED RULES

- 1) Heading of the Part: Procedures For Providing Financial Assistance From the Water Pollution Control Loan Program Under the American Recovery and Reinvestment Act of 2009
- 2) Code Citation: 35 Ill. Adm. Code 369
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
369.110	New Section
369.120	New Section
369.130	New Section
369.140	New Section
369.210	New Section
369.220	New Section
369.230	New Section
369.240	New Section
369.310	New Section
369.320	New Section
369.330	New Section
369.340	New Section
369.410	New Section
369.420	New Section
369.430	New Section
369.440	New Section
369.450	New Section
369.460	New Section
369.470	New Section
369.480	New Section
369.510	New Section
369.520	New Section
369.530	New Section
369.540	New Section
369.610	New Section
369.620	New Section
369.630	New Section
369.640	New Section
369.650	New Section
369.660	New Section
369.670	New Section
369.710	New Section

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PROPOSED RULES

369.720	New Section
369.730	New Section
369.740	New Section
369.750	New Section
369.810	New Section
369.820	New Section
369.830	New Section
369.910	New Section
369.920	New Section
369.930	New Section
369.940	New Section
369.950	New Section
369.1010	New Section
369.1020	New Section
369.1030	New Section
369.1110	New Section
369.1120	New Section
369.APPENDIX A EXHIBIT A	New Section
369.APPENDIX A EXHIBIT B	New Section
369.APPENDIX B	New Section

- 4) Statutory Authority: Implementing and authorized by Sections 19.1-19.9 of the Illinois Environmental Protection Act [415 ILCS 5/19.1-19.9]
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking will address how the Agency will disburse monies received under the American Recovery and Reinvestment Act of 2009. This rulemaking will establish a fixed loan rate to 0.00% and a more streamlined approach for the loan application process to distribute the stimulus money to shovel ready projects in accordance with the requirements of the American Recovery and Reinvestment Act of 2009.
- 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? Yes
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? Yes

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PROPOSED RULES

- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: These proposed rules establish procedures for issuing loans from the Water Pollution Control Loan Program.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on the proposed rules may submit them in writing by no later than 45 days after publication of this Notice to:
- Stefanie N. Diers
Assistant Counsel
Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
P.O. Box 19726
Springfield, Illinois 62794-9276
- 217/782-5544
stefanie.diers@illinois.gov
- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: This rulemaking is not expected to impact small businesses and not for profit corporations. These amendments will affect small municipalities to the extent that if they applied for a loan through the Water Pollution Control Loan Program, they will utilize these rules. The Illinois EPA anticipates that these amendments will generally benefit small municipalities by clarifying and streamlining the loan application process and will allow for a 0.00% interest rate and principal forgiveness with funds under the American Recovery and Reinvestment Act of 2009.
- 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: This rulemaking was not included on either of the two most recent regulatory agendas because: the Rules were not

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PROPOSED RULES

needed until the enactment of the American Recovery and Reinvestment Act of 2009 signed by the President on February 17, 2009.

The full text of the Proposed Rules is identical to that of the Emergency Rules found in this issue of the *Illinois Register*, which begins on page 8589:

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PROPOSED AMENDMENTS

- 3) Heading of the Part: Procedures For Issuing Loans From the Public Water Supply Loan Program
- 2) Code Citation: 35 Ill. Adm. Code 662
- 3) Section Numbers:
- | | |
|--------------------------|-------------------------|
| 662.130 | <u>Proposed Action:</u> |
| 662.210 | Amendment |
| 662.310 | Amendment |
| 662.340 | Amendment |
| 662.410 | Amendment |
| 662.430 | Amendment |
| 662.440 | Amendment |
| 662.610 | Amendment |
| 662.620 | Amendment |
| 662.630 | Amendment |
| 662.935 | Amendment |
| 662.APPENDIX A EXHIBIT A | Repeal |
| 662.APPENDIX A EXHIBIT B | Repeal |
- 4) Statutory Authority: Implementing and authorized by Sections 19.1-19.9 of the Illinois Environmental Protection Act [415 ILCS 5/19.1-19.9]
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking will amend the fixed loan rate to 0.00% to work in conjunction with the Agency's rules with respect to the American Recovery and Reinvestment Act of 2009. The amendments will also change the Minority Business Enterprise/Woman Business Enterprise (MBE/WBE) requirements to Disadvantaged Business Enterprise (DBE) requirements.
- 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? Yes
- 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

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PROPOSED AMENDMENTS

- 11) Statement of Statewide Policy Objectives: This rulemaking establishes procedures for issuing loans from the Public Water Supply Loan Program.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on the proposed rules may submit them in writing by no later than 45 days after publication of this Notice to:

Stefanie N. Diers
Assistant Counsel
Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
P.O. Box 19726
Springfield, Illinois 62794-9276

217/782-5544
stefanie.diers@illinois.gov
- 13) Initial Regulatory Flexibility Analysis:
 - A) Types of small businesses, small municipalities and not for profit corporations affected: This rulemaking is not expected to impact small businesses and not for profit corporations. These amendments will affect small municipalities to the extent that if they applied for a loan through the Public Water Supply Loan Program, they will utilize these rules. The Illinois EPA anticipates that these amendments will generally benefit small municipalities by clarifying and streamlining the loan application process and will allow for a 0.00% interest rate while the Agency is working with stimulus money under the American Recovery and Reinvestment Act of 2009.
 - 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: This rulemaking was not on a regulatory agenda because: the amendments were not needed until the enactment of the American Recovery and Reinvestment Act of 2009 signed by the President on February 17, 2009.

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PROPOSED AMENDMENTS

The full text of the Proposed Amendments is identical to that of the Emergency Amendments found in this issue of the *Illinois Register*, which begins on page 8674:

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PROPOSED RULES

- 1) Heading of the Part: Procedures For Providing Financial Assistance From the Public Water Supply Loan Program Under the American Recovery and Reinvestment Act of 2009
- 2) Code Citation: 35 Ill. Adm. Code 664
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
664.110	New Section
664.120	New Section
664.130	New Section
664.140	New Section
664.210	New Section
664.220	New Section
664.230	New Section
664.310	New Section
664.320	New Section
664.330	New Section
664.340	New Section
664.410	New Section
664.420	New Section
664.430	New Section
664.440	New Section
664.450	New Section
664.460	New Section
664.470	New Section
664.480	New Section
664.490	New Section
664.510	New Section
664.520	New Section
664.610	New Section
664.620	New Section
664.630	New Section
664.640	New Section
664.650	New Section
664.660	New Section
664.670	New Section
664.710	New Section
664.720	New Section
664.730	New Section

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PROPOSED RULES

664.740	New Section
664.750	New Section
664.810	New Section
664.820	New Section
664.830	New Section
664.910	New Section
664.920	New Section
664.930	New Section
664.940	New Section
664.950	New Section
664.1010	New Section
664.1020	New Section
664.1030	New Section
664.1110	New Section
664.1120	New Section
664.APPENDIX A	New Section
664.APPENDIX B	New Section

- 4) Statutory Authority: Implementing and authorized by Sections 19.1-19.9 of the Illinois Environmental Protection Act [415 ILCS 5/19.1-19.9]
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking will address how the Agency will disburse monies received under the American Recovery and Reinvestment Act of 2009. This rulemaking will establish a fixed loan rate to 0.00% and a more streamlined approach for the loan application process to distribute the stimulus money to shovel ready projects in accordance with the requirements of the American Recovery and Reinvestment Act of 2009.
- 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? Yes
- 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

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PROPOSED RULES

- 11) Statement of Statewide Policy Objectives: These rules establish procedures for issuing loans from the Public Water Supply Loan Program.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on the proposed rules may submit them in writing by no later than 45 days after publication of this Notice to:

Stefanie N. Diers
Assistant Counsel
Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
P.O. Box 19726
Springfield, Illinois 62794-9276

217/782-5544
stefanie.diers@illinois.gov
- 13) Initial Regulatory Flexibility Analysis:
 - A) Types of small businesses, small municipalities and not for profit corporations affected: This rulemaking is not expected to impact small businesses and not for profit corporations. This rulemaking will affect small municipalities to the extent that, if they applied for a loan through the Public Water Supply Loan Program, they will utilize these rules. The Illinois EPA anticipates that these rules will generally benefit small municipalities by clarifying and streamlining the loan application process and will allow for a 0.00% interest rate and principal forgiveness with funds under the American Recovery and Reinvestment Act of 2009.
 - 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: This rulemaking was not included on either of the two most recent regulatory agendas because: the Rules were not needed until the enactment of the American Recovery and Reinvestment Act of 2009 signed by the President February 17, 2009.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PROPOSED RULES

The full text of the Proposed Rule is identical to that of the Emergency Rules found in this issue of the *Illinois Register*, which begins on page 8722:

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Title Insurance Act
- 2) Code Citation: 50 Ill. Adm. Code 8100
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
8100.100	Amendment
8100.105	Amendment
8100.114	Amendment
8100.121	Amendment
8100.125	Amendment
8100.145	Amendment
8100.150	Amendment
8100.155	Amendment
8100.190	Amendment
8100.200	Amendment
8100.400	Amendment
8100.401	Amendment
8100.900	Amendment
8100.905	Amendment
8100.1200	Amendment
8100.1505	Amendment
8100.1510	Amendment
8100.1515	Amendment
8100.1600	Amendment
8100.1700	Amendment
8100.1701	Amendment
8100.1705	Amendment
8100.2010	Amendment
8100.2100	Amendment
8100.2104	Amendment
8100.2106	Amendment
8100.2108	Amendment
8100.2110	Amendment
8100.2112	Amendment
8100.2114	Amendment
8100.2118	Amendment
8100.2120	Amendment
8100.2124	Amendment
8100.2126	Amendment

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED AMENDMENTS

8100.2130	Amendment
8100.2132	Amendment
8100.2134	Amendment
8100.2136	Amendment
8100.2142	Amendment
8100.2144	Amendment
8100.2146	Amendment
8100.2148	Amendment
8100.2160	Amendment
8100.2400	Amendment
8100.2406	New Section
8100.3000	Amendment

- 4) Statutory Authority: Implementing and authorized by Sections 18.1 and 20 of the Illinois Title Insurance Act [215 ILCS 155/18.1 and 20]; Section 401 of the Illinois Insurance Code [215 ILCS 5/401]; Sections 1-70, 1-90, 5-35, and 5-40 of the Illinois Administrative Procedure Act [5 ILCS 100/1-70, 1-90, 5-35 and 5-40]
- 5) A complete description of the subjects and issues involved: The proposed new Section carries out the consumer protections provided by the federal Real Estate Settlement Procedures Act ((RESPA), 12 USC 2601 *et seq.*) by affording consumers with the ability to shop for the lowest costs and best quality for services for which the consumer is obligated to pay, after consulting with counsel and without the duress imposed by providers of title business, such as lenders and brokers which often impose pecuniary penalties for cancellation of title orders placed through their affiliates. Such an objective is specifically provided for by RESPA in Section 2601 of 12 USC and which the Secretary is specifically authorized to implement in [215 ILCS 155/20].
- The Division has also made a number of housekeeping changes throughout this Part to accurately reflect the consolidation of our agency under DFPR and we have added a definition Section that identifies terms that were not previously described.
- 6) Any published studies or reports, along with the sources of underlying data, that were used when comprising 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

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED AMENDMENTS

- 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 will not require a local government to establish, expand, or modify its activities in such a way as to necessitate additional expenditures from local revenues.
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:
- Craig Cellini, Rules Coordinator
Department of Financial and Professional Regulation
320 West Washington, 4th Floor
Springfield, Illinois 62767-000
- 217/785-0813
- 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 2009

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

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED AMENDMENTS

TITLE 50: INSURANCE

CHAPTER V: DEPARTMENT OF FINANCIAL AND PROFESSIONAL
REGULATIONINSTITUTIONS

PART 8100

TITLE INSURANCE ACT

SUBPART A: RULES OF GENERAL APPLICATION

Section

8100.100	Notice of Suspension or Revocation
8100.105	Notification of Noncompliance or Material Change
8100.110	Display of Certificates or Registrations
8100.114	Certification
8100.115	Prohibition on Filing Application
8100.120	Computation of Time
8100.121	Requirements as to Proper Form
8100.125	Place of Filing
8100.130	Additional Information
8100.135	Additional Exhibits
8100.140	Information Unknown or Not Reasonably Available
8100.145	Requirements as to Paper, Printing and Language
8100.150	Number of Copies – Signatures
8100.155	Examination Fees
8100.170	Extension of Date for Filing
8100.190	Provisions for Granting of Variance from Rules

SUBPART B: DEFINITIONS

Section

8100.200	Definition of terms Used in this Part
8100.205	Definition of the term "Domestic Title Insurance Company" as Used in the Act
8100.210	Definition of the term "Application" as Used in Sections 4.(d) and 8.(b) of the Act
8100.215	Definition of the term "Audit" as Used in Section 12.(b) of the Act
8100.220	Definition of the term "Bonds of the United States" as Used in Section 4.(a) of the Act
8100.225	Definition of the term "Bonds...of Any Body Politic of This State" as Used in Section 4.(a) of the Act
8100.230	Definition of the term "Bonds...of This State" as Used in Section 4.(a) of the Act

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- 8100.235 Definition of the term "Qualified to Do Business in This State" as Used in Section 4.(a) of the Act
- 8100.240 Definition of the term "Title Plant" as Used in Section 7.(b) of the Act
- 8100.245 Definition of the term "Net Retained Liability" as Used in Sections 8.(a) and 11.(c)(2) of the Act
- 8100.250 Definition of the term "Capital" as Used in Section 9.(a) of the Act
- 8100.255 Definition of the term "Notice" as Used in Section 9.(b) of the Act
- 8100.260 Definition of the term "Alien Title Insurance Company" as Used in Section 11.(b) of the Act
- 8100.265 Definition of the term "Foreign Title Insurance Company" as Used in Section 11.(b) and 15 of the Act
- 8100.270 Definition of the term "Like Purposes" as Used in Section 15 of the Act
- 8100.275 Definition of the term "Party" as Used in Section 23 of the Act
- 8100.280 Definition of the term "Person" as Used in Section 24 of the Act

SUBPART C: TITLE INSURANCE COMPANIES

Section

- 8100.400 Bonds and Securities Acceptable for Deposit
- 8100.401 Place of Deposit
- 8100.402 Computation of Amount on Deposit
- 8100.403 Exchange of Bonds on Deposit
- 8100.900 Impairment
- 8100.905 Definition of the [Term](#) "Statutory Liabilities" as Used in This Subpart
- 8100.1000 Date of Redetermination of Required Reserves
- 8100.1005 Records of Required Reserves
- 8100.1100 Records of Statutory Premium Reserve
- 8100.1200 Consumer Complaints
- 8100.1300 Report of Condition
- 8100.1500 Due Date for Filing Report
- 8100.1505 Due Date for Deposits and Payments
- 8100.1510 Review of Reports
- 8100.1515 Due Date for Delinquency Assessment

SUBPART D: TITLE INSURANCE AGENTS

Section

- 8100.1600 Registration of Title Insurance Agents

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SUBPART E: INDEPENDENT ESCROWEES

Section

8100.1700	Bonds and Securities Acceptable for Deposit
8100.1701	Place of Deposit
8100.1702	Computation of Amount on Deposit
8100.1703	Exchange of Bonds on Deposit
8100.1704	Starker Exchange
8100.1705	Independent Accountant
8100.1706	Notice of Judgments
8100.1708	Maintenance of Books
8100.1710	Annual Report
8100.1712	Due Date for Filing of Annual Report
8100.1714	Confirmation of Escrow Fund and Liability
8100.1716	Basis of Books
8100.1718	Posting Dates
8100.1720	Escrow Books
8100.1722	General Books
8100.1724	Special Accounts
8100.1726	Records to be Preserved
8100.1728	Withdrawals From Special Accounts
8100.1730	Debit Balances Prohibited
8100.1732	Delivery of Documents or Property
8100.1734	Dated Instructions
8100.1738	Printed Instructions
8100.1740	Withdrawal of Escrow Fees
8100.1742	Notice of Interest
8100.1744	Transfers Between Escrows
8100.1746	Escrow Receipts
8100.1748	Drawing of Checks
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SUBPART G: EVIDENTIARY MATTERS AND NON-BINDING STATEMENTS

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SUBPART H: PROCEDURES FOR ADMINISTRATIVE HEARINGS

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8100.2106	Institution of a Contested Case by the Division Department
8100.2108	Requirement to File an Answer
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8100.2130	Discovery
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8100.2136	Pre-Hearing Conferences
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8100.2150	Open Hearings
8100.2152	Corrections to the Transcript
8100.2160	Disputes Between Parties Certified or Registered by the Division Department

SUBPART I: CONSUMER PROTECTION

Section

8100.2400	Preamble
8100.2402	Standards of Conduct
8100.2405	Definition of the term "Thing of Value" as Used in This Subpart
8100.2406	Borrower's Right to Cancel

SUBPART J: PUBLIC INFORMATION

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Section
8100.3000 Non-Public Distribution of Information

AUTHORITY: Implementing and authorized by Sections 18.1 and 20 of the Title Insurance Act [215 ILCS 155/18.1, 20]; Section 401 of the Illinois Insurance Code [215 ILCS 5/401]; Sections 1-70, 1-90, 5-35 and 5-40 of the Illinois Administrative Procedure Act [5 ILCS 100/1-70, 1-90, 5-35, 5-40].

SOURCE: Emergency rules adopted at 14 Ill. Reg. 305, effective January 1, 1990, for a maximum of 150 days; adopted at 14 Ill. Reg. 8600, effective May 21, 1990; amended at 26 Ill. Reg. 14265, effective October 1, 2002; amended at 33 Ill. Reg. _____, effective _____.

SUBPART A: RULES OF GENERAL APPLICATION

Section 8100.100 Notice of Suspension or Revocation

The suspension or revocation of any certificate or registration issued under ~~the~~^{this} Title Insurance Act ("Act") is effective upon completion of service pursuant to the provisions of Section 21-(b) of the Act. ~~When~~^{Where} service is made by registered or certified mail, the Department of Financial ~~and Professional Regulation-Division of Financial~~ Institutions ("~~Division~~^{Department}") will, if possible, notify by telephone or by facsimile transmission the affected person or party of the suspension or revocation.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 8100.105 Notification of Noncompliance or Material Change

All holders of or applicants for any certificate of authority or registration issued pursuant to the Act shall submit written notification to this ~~Division~~^{Department} within a maximum of ~~ten~~⁽¹⁰⁾ business days ~~after~~^{of} becoming aware of any noncompliance with the provisions of ~~the~~^{this} Act and any material change in condition ~~that~~^{which} places or tends to place any policyholder in jeopardy.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 8100.114 Certification

- a) Any applicant requesting certification as a title insurance company or as an

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independent escrowee, prior to certification, shall provide, as a minimum, the following information to the ~~Division~~Department:

- 1) A certified copy of the Certificate of Authority from the Illinois Secretary of State authorizing it to do business in the State of Illinois, if any;
- 2) A Certificate issued by the State/domicile setting forth that it is in good standing and further setting forth the date upon which the Articles of Incorporation were issued, if any;
- 3) A certified copy of the assumed name filing, if any;
- 4) A brief narrative history of the company, if any;
- 5) A listing of the officers, directors and owners of the company, if any;
- 6) A listing of the company shareholders, if any, except ~~when~~where the shares of the company are publicly traded;
- 7) A certified copy of the company's charter and by-laws and any amendments thereto, if any;
- 8) A Certificate of Compliance from the ~~state~~State of domicile, if any;
- 9) A copy of the most recent audited financial statements, including a letter of opinion, if any;
- 10) The last published Annual Report of the company, if any;
- 11) A copy of the most recent examination, if applicable, by the ~~state~~State of domicile;
- 12) A copy of the Certificate of Deposit from the ~~state~~State of domicile and other states in which the company does business, if any;
- 13) A listing of the counties in Illinois in which ~~the company proposes~~you propose to conduct ~~your~~business;
- 14) The nature and amount of the proposed deposit, as provided for in the Act;

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- 15) A listing of all ~~the company's~~ locations or proposed locations in the State of Illinois by name, address and phone number;
 - 16) The name, address and phone number of a member of the company, or person to ~~whom to~~ direct questions regarding the application; and
 - 17) The names and addresses of any proposed agents.
- b) The Director ~~of the Division of Financial Institutions (Director), with authority delegated by the Secretary of the Department of Financial and Professional Regulation (Secretary)~~ or the Director's authorized representative, after review of information submitted as required by subsection (a), shall require the filing of ~~that~~ such additional information with the ~~Division~~ Department as necessary to assure that the business repute and qualification of the applicant requesting certification, is set forth in detail, to allow a decision to be made upon the request for certification.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 8100.121 Requirements as to Proper Form

Any document filed with the ~~Division~~ Department pursuant to the Act shall be prepared in accordance with the form, if any, prescribed therefor by the Director. Any such document shall, after review by the ~~Division~~ Department, be deemed to be filed on the proper form, unless objection to the form is made in writing by the ~~Division~~ Department.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 8100.125 Place of Filing

All applications and other papers filed with the Title Insurance Section of the ~~Consumer Credit Division of the Department of Financial Institutions~~ shall be filed at Springfield, Illinois. ~~This~~ Such material may be filed by delivery to the ~~Division~~ Department, through the mails or otherwise.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 8100.145 Requirements as to Paper, Printing and Language

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- a) Application shall be filed on good quality, unglazed, white paper, 8½ by 11 inches in size, insofar as practicable. However, tables, charts, maps and financial statements may be on larger paper, if folded to that size, and the prospectus may be on smaller paper, if the registrant so desires, but not less than 7½ by 9 inches in size.
- b) The application and, insofar as practicable, all papers and documents filed as a part ~~of the application~~~~thereof~~, shall be printed, lithographed, mimeographed or typewritten. However, the application or any portion ~~thereof~~ may be prepared by any similar process ~~that, which~~ in the opinion of the ~~Division, Department~~ produces copies suitable for permanent record. Irrespective of the process used, all copies of the material shall be clear, easily readable and suitable for repeated photocopying. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable as such on photocopies.
- c) The application shall be in the English language. If any exhibit or other paper or document filed with the application is in a foreign language, it shall be accompanied by a translation into the English language.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 8100.150 Number of Copies – Signatures

- a) One copy of the completed application, manually signed by the applicant, including exhibits and all other papers and documents filed as a part of the application, shall be filed with the ~~Division~~~~Department~~.
- b) If any name is signed to the application pursuant to a power of attorney, copies of the power of attorney shall be filed with the application for registration. In addition, if the name of any officer signing on behalf of the applicant, or attesting the applicant's seal, is signed pursuant to a power of attorney, certified copies of a resolution of the applicant's board of directors authorizing the signature shall be filed with the application for registration.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 8100.155 Examination Fees

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Examination fees for services-under the Act are as follows:

- | | | | |
|--|-------------|---|---|
| | a) | Section 4 (d) | |
| | 1) | Each examiner day or part thereof | \$500 |
| | 2) | Transportation, lodging, per diem and miscellaneous expense | ACTUAL COST
computed in
accordance with 80 Ill.
Adm. Code 3000 |
| | b) | Section 12 | |
| | 1) | Each examiner day or part thereof | \$400 |
| | 2) | Transportation, lodging, per diem and miscellaneous expense | ACTUAL COST
computed in
accordance with 80 Ill.
Adm. Code 3000 |
| | 3) | Verification Examination-
The Division <u>Department</u> may conduct an examination for the purpose of verifying that the licensee has taken necessary actions to correct violation of the Act and/or related rules and regulations, when the Director determines the verification examination must be performed on site at any facility of the licensee. | |
| | <u>A1</u>) | Each examiner day or part thereof | \$550 |
| | <u>B2</u>) | Transportation, lodging, per diem and miscellaneous expense | ACTUAL COST
computed in
accordance with 80 Ill.
Adm. Code 3000 |
| | c) | Section 17 (f) | |

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- | | | |
|-----|---|--|
| 1) | Each examiner day or part thereof | \$400 |
| 2) | Transportation, lodging, per diem and miscellaneous expense | ACTUAL COST computed in accordance with 80 Ill. Adm. Code 3000 |
| 3) | <p>Verification Examination-
The Division<u>Department</u> may conduct an examination for the purpose of verifying that the licensee has taken necessary actions to correct violations to the Act and/or related rules and regulations, when the Director determines the verification examination must be performed on site at any facility of the licensee.</p> | |
| A4) | Each examiner day or part thereof | \$550 |
| B2) | Transportation, lodging, per diem and miscellaneous expense | ACTUAL COST computed in accordance with 80 Ill. Adm. Code 3000 |

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 8100.190 Provisions for Granting of Variance from Rules

The Director or the Director's authorized representative may grant variances from ~~this Part~~these Rules in individual cases ~~when~~where it is determined that:

- a) the provision from which the variance is granted is not statutorily mandated;
- b) no party will be injured by granting the variance; and
- c) the ~~rule~~Rule from which the variance is granted would, in the particular case, be unnecessarily burdensome.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

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SUBPART B: DEFINITIONS

Section 8100.200 Definitions of terms Used in this Part

- a) As used in this Part ~~prescribed by the Director, pursuant to the Title Insurance Act,~~ unless the context otherwise requires, the term:

"Act" means the Title Insurance Act ~~[217 ILCS 155](P.A. 86-239, effective January 1, 1990) and the Rules in this Part.~~

"~~Delinquency assessment~~Assessment" means any amount, as determined by the ~~Division~~Department, payable under Section 15 of the Act and not submitted with the report of each foreign title company as required under Section 8100.1500 of this Part.

"~~Surplus as regards policyholders~~" means the total of capital paid-up, gross paid-in and contributed surplus, special surplus funds, unassigned funds less treasury stock at cost, all as shown on the company's balance sheet.

"~~Consideration~~" means, but is not limited to, monies, things, salaries, fees, duplicate payments of a charge, stocks, dividends, distributions of partnership profits, credits representing monies that may be paid at a future date, special bank deposits or accounts, banking terms, special loan or loan guarantee terms, services of all types at special or free rates, and sales or rentals at special prices or rates.

"Director's authorized representative" means any person employed by or on behalf of the ~~Division~~Department of Financial Institutions to whom the Director has delegated verbally or in writing authority to act on the Director's behalf.

- b) A Section in this Part ~~that~~which defines a term without express reference to the Act or to this Part or to a portion thereof ~~or hereof~~ defines ~~that~~such term for all purposes as used both in the Act and in this Part. Terms defined in the Act and not defined in this Part have the meanings given them in the Act.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

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SUBPART C: TITLE INSURANCE COMPANIES

Section 8100.400 Bonds and Securities Acceptable for Deposit

Each Title Insurance Company ("~~company~~Company") prior to becoming certified by the Director to transact the business of insuring and guaranteeing titles to real estate in this State shall deposit with the ~~Division~~Department bonds of the United States, this State or any body politic of this State in the amount specified by Section 4.(b) of the Act ("~~bonds~~Bonds"). No other bonds or securities are acceptable for deposit.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 8100.401 Place of Deposit

Each ~~company~~Company shall:

- a) instead of physical delivery of the ~~bonds~~Bonds to the ~~Division~~Department, place the required deposit in the custody of any trust company or bank located in this State and qualified to do business under the Corporate Fiduciary Act [205 ILCS 620] ("Depository Institution");
- b) execute and deliver to the ~~Division~~Department a Pledgor/Pledgee Authorization form for filing with the Depository Institution; and
- c) file with the ~~Division~~Department a true and correct copy of an acknowledgement issued by the Depository Institution setting forth the amount of and description of the ~~bonds~~Bonds on deposit.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 8100.900 Impairment

Impairment occurs:

- a) ~~when~~When an insurer does not possess assets equal to at least its total statutory liabilities~~;~~ or
- b) ~~when~~When its surplus as regards policyholders is 75% or less of the paid-up

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capital as shown in the most recent annual statement of the company on file with the ~~Division~~Department.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 8100.905 Definition of the ~~Term~~term "Statutory Liabilities" as Used in This Subpart

The term "statutory liabilities" as used in this Subpart shall mean the total liabilities of the company as shown in its most recent annual statement on file with the ~~Division~~Department.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 8100.1200 Consumer Complaints

Each ~~company~~Company shall maintain for review by the ~~Division~~Department:

- a) A file or consumer complaint register containing each written complaint received from any person or party regarding property located in this State other than matters for which a separate claim file has been opened, together with the response to or resolution of the complaint.
- b) The files must be maintained during each audit period and will be reviewed by and released by the ~~Division's~~Department's examiner at the time of annual audit. The completion of the audit without limitation to the contrary shall constitute ~~such~~ release and permit the ~~company~~Company to dispose of complaints responded to or otherwise resolved.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 8100.1505 Due Date for Deposits and Payments

All amounts due pursuant to Section 15 of the Act shall be paid to and received by ~~the~~this ~~Division~~Department not later than May 15th of each year.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 8100.1510 Review of Reports

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Each report filed with the ~~Division~~Department will be reviewed. A report of the review, including any delinquency assessment, will be submitted to the filing company.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 8100.1515 Due Date for Delinquency Assessment

Amounts due pursuant to the delinquency assessment shall be paid to and received by ~~the Division~~this Department within ~~thirty (30)~~ days ~~after~~of the date of issuance of the delinquency assessment.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

SUBPART D: TITLE INSURANCE AGENTS

Section 8100.1600 Registration of Title Insurance Agents

- a) Each ~~company~~Company shall make the annual filing of the required registration form for title insurance agents on or before February ~~14th~~14st of each year. Included with the filing shall be the annual fee computed in accordance with Section 14-(b) of the Act.
- b) Each ~~company~~Company shall file supplemental registrations for new title insurance agents. Each new title insurance agent shall be registered with the ~~Division~~Department within ~~thirty (30)~~ days ~~after~~of the signing of the agency agreement.
- c) No title insurance agent shall conduct business before:
 - 1) having obtained errors and omissions insurance, if required by the terms of the agency agreement, in an amount acceptable to the title insurance company appointing the agent; and
 - 2) being registered with ~~the Division~~this Department.
- d) A ~~company~~Company may voluntarily withdraw the registration of a title insurance agent or limit the duties of a title insurance agent. Within ~~five (5)~~ business days ~~after~~of the withdrawal or limitation, the ~~company~~Company shall notify ~~the Division~~this Department of the action taken.

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- e) Withdrawal of the registration of a title insurance agent or limitation of the duties of a title insurance agent shall not be deemed to prevent ~~the Division~~~~this Department~~ from taking action under Section 21-(a) of the Act.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

SUBPART E: INDEPENDENT ESCROWEES

Section 8100.1700 Bonds and Securities Acceptable for Deposit

Each independent escrowee, prior to becoming certified by the Director to transact business in this State, ~~shall will~~ deposit with the ~~Division~~~~Department~~ bonds of the United States, this State or any body politic of this State in the amount specified by Section 4-(b) of the Act ("~~bonds~~~~Bonds~~"). No other bonds or securities are acceptable for deposit.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 8100.1701 Place of Deposit

Each independent escrowee shall:

- a) instead of physical delivery of the ~~bonds~~~~Bonds~~ to the ~~Division~~~~Department~~, place the required deposit in the custody of any trust company or bank located in this State and qualified to do business under the Corporate Fiduciary Act, (~~Ill. Rev. Stat. 1987, ch. 17, par. 1551-1 et seq.~~) ~~as now and hereafter amended~~ ("Depository Institution");
- b) execute and deliver to the ~~Division~~~~Department~~, a Pledgor/Pledgee Authorization form for filing with the Depository Institution; and
- c) file with the ~~Division~~~~Department~~ a true and correct copy of the safekeeping certificate issued by the Depository Institution setting forth the amount of and description of the ~~bonds~~~~Bonds~~ on deposit.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 8100.1705 Independent Accountant

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The Annual Report and all financial statements provided to the [DivisionDepartment](#) by an independent escrowee shall be prepared by an independent certified public accountant.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

SUBPART G: EVIDENTIARY MATTERS AND NON-BINDING STATEMENTS

Section 8100.2010 Request for Non-Binding Statements

a) Required information and format:

- 1) All requests for non-binding statements shall be in writing. The request shall be filed with the [DivisionDepartment](#) and shall contain the following:
 - A) a brief summary of the Sections of the Act and of the Sections of this Part to which the request pertains;
 - B) a detailed factual representation concerning every relevant aspect of the proposed transaction, event or circumstance. Requests should be limited to the particular situation, and should not attempt to include every possible type of situation [thatwhich](#) may arise in the future;
 - C) a discussion of current statutes, rules and legal principles relevant to the facts set forth;
 - D) a statement by the person requesting the non-binding statement [thatwhich](#) states the person's own opinion in the matter and the basis for [thatsueh](#) opinion; and
 - E) a representation that the transaction in question has not been commenced or, if it has commenced, the present status of the transaction.
- 2) The [DivisionDepartment](#) will not respond to requests for non-binding statements involving the anti-fraud provisions of the Act.
- 3) The [DivisionDepartment](#) will not respond to requests for non-binding statements with respect to transactions [thatwhich](#) have already taken place.

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- 4) The ~~Division~~Department will not respond to requests based upon hypothetical facts or involving unnamed parties.
- b) Review procedure under the Act:
- 1) The ~~Division's~~Department's review of requests for non-binding statements require an in-depth examination of the information presented and the applicable law. Therefore, a considerable time period may elapse before the statement is issued.
 - 2) After a review of the relevant facts presented, in light of existing judicial, legislative and administrative history, the ~~Division~~Department shall either decline to issue any findings or issue its finding as to the applicability of the Act to the situation presented in the form of a non-binding statement, stating that it will or will not recommend that enforcement action be initiated against the parties involved if all the facts are true and complete. Facts or conditions different than those presented will require different conclusions and persons other than those requesting the statement should not rely on the statement. Non-binding statements do not have precedent value.
- c) Availability of non-binding statements issued by the ~~Division~~Department:
- 1) The ~~Division~~Department will maintain an index by statutory ~~Section~~Section(s) involved and chronologically of all non-binding statements issued.
 - 2) Copies of ~~such~~ statements can be reviewed in the ~~Division's~~Department's Springfield office and copies ~~may be~~thereof obtained upon payment of the cost of duplication as set forth in 2 Ill. Adm. Code 901.80.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

SUBPART H: PROCEDURES FOR ADMINISTRATIVE HEARINGS

Section 8100.2100 Preamble

~~This~~The Sections contained in this Subpart shall govern every hearing under the Title Insurance

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Act before the ~~Division~~Department. The purpose of this Subpart is to assist all parties subject to the Act by providing a forum for the orderly determination of rights, duties and privileges of parties appearing before the Director or the Director's authorized representative under procedures assuring ~~thesuch~~ parties due process of law without unnecessary postponements or extended delays.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 8100.2104 Notice of Hearing

- a) Unless otherwise required, each respondent shall be given a Notice of Hearing at least ~~forty-five (45)~~ days prior to the first date set for any hearing under this Subpart~~hereunder~~. Once ~~such~~ notice is given, it will ~~thereafter~~ be the responsibility of the respondent to become acquainted with subsequent hearing dates.
- b) The Notice of Hearing shall include:
 - 1) a statement of the time, place and nature of the hearing;
 - 2) a statement of the legal authority, and jurisdiction under which the hearing is held;
 - 3) a short and plain statement of the matters alleged;
 - 4) a statement of financial sanction or relief sought; and
 - 5) a concise statement to each respondent that:
 - A) the respondent may be represented by legal counsel, may present evidence, may cross-examine witnesses and otherwise participate;
 - B) failure by any respondent to appear shall constitute default by ~~thesuch~~ respondent unless ~~thesuch~~ respondent has filed an answer or, upon due notice, moved for and obtained a continuance; and
 - C) delivery of notice to the designated representative of any respondent constitutes service upon ~~thesuch~~ respondent.

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- c) Nothing in this Part shall prevent the ~~Division~~~~Department~~ from scheduling a hearing within ~~ten (10)~~ days ~~after of~~ the date on which the Director temporarily suspends any registration or license under the Act or issues a temporary order.
- d) When a respondent timely requests a hearing on an ~~order~~~~Order~~ under Section 21 of the Act issued by the Director, the ~~Division~~~~Department~~ shall issue a Notice of Hearing in the form prescribed ~~in subsection (b) herein~~.
- e) Any contention that improper notice was given shall be deemed waived unless it is raised by the respondent prior to argument on any other motion, or commencement of opening statements at the hearing.
- f) Proper notice is given by depositing a Notice of Hearing with the United States Postal Service, either by certified or registered mail, return receipt requested, to the last known address of the respondent, or by personal service upon the respondent.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 8100.2106 Institution of a Contested Case by the ~~Division~~~~Department~~

A contested case is instituted by the ~~Division~~~~Department~~ when a Notice of Hearing is deposited with the United States Postal Service, either by certified or registered mail, return receipt requested, to the last known address of the respondent, or by personal service upon the respondent.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 8100.2108 Requirement to File an Answer

- a) In each contested case instituted by the ~~Division~~~~Department~~, each respondent shall file with the ~~Division~~~~Department~~ an Answer within ~~thirty (30)~~ days ~~after of~~ the service of the Notice of Hearing or within ~~ten (10)~~ days ~~after of~~ each amended Notice of Hearing ~~that which~~ materially alters the Notice of Hearing or within ~~ten (10)~~ days ~~after of~~ service of a Notice of Hearing issued pursuant to Section 8100.2104(c) of this Part. Each Answer shall be in writing, signed by each respondent or the respondent's representative, and shall contain a specific response to each allegation in the Notice of Hearing or each new allegation contained in a materially altered Notice of Hearing and set forth affirmative

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defenses, if any. The response shall either admit or deny each allegation, or shall state that the respondent has insufficient information to admit or deny the allegation.

- b) Any Answer ~~that~~ ~~which~~ states that the respondent has insufficient information to admit or deny any allegation shall be accompanied by an affidavit attesting to the truth of this assertion.
- c) If, within ~~thirty~~ (30) days after service of ~~asuch~~ Notice of Hearing, the respondent does not answer or otherwise file a responsive pleading, the respondent shall be held in default.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 8100.2110 Amendment or Withdrawal of the Notice of Hearing

- a) The Notice of Hearing may be amended at any time to correct pleading or notice deficiencies. An Amended Notice of Hearing shall be filed in the same manner as a Notice of Hearing, or be presented to the hearing officer and each respondent during the course of the hearing. A continuance shall be granted by the hearing officer whenever the amendment materially alters the Notice of Hearing, and ~~when~~ ~~where~~ a respondent demonstrates that any respondent would otherwise be unable to properly prepare an Answer to the Amended Notice of Hearing or prepare any respondent's case.
- b) A Notice of Hearing may be withdrawn without prejudice by the ~~Division~~ ~~Department~~ at any time prior to the hearing. After a hearing has begun, a Notice of Hearing may be withdrawn only upon written notice to, and concurrence by, the hearing officer.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 8100.2112 Representation

- a) Any individual may appear personally on his or her own behalf.
- b) A party may be represented by an attorney. The attorney shall be licensed in Illinois. Attorneys who appear in a representative capacity must file a written notice of appearance setting forth:

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- 1) the name, business address and telephone number of the attorney;
 - 2) the name and address of the party represented; and
 - 3) an affirmative statement indicating that the attorney is licensed in Illinois.
- c) A corporation may be represented by an officer, upon presentation to the ~~Division~~Department of a duly executed resolution of the Board of Directors, authorizing the officer to act in a representative capacity and setting forth the powers ~~which~~ the officer is authorized to exercise.
- d) A partnership may be represented by any general partner.
- e) Attorneys appearing before the ~~Division~~Department shall conform their conduct to the Illinois Code of Professional Responsibility, effective July 1, 1980 and, after July 31, 1990, by the Illinois Code of Professional Responsibility, effective August 1, 1990. Any failure to behave in a manner ~~that~~which permits the efficient functioning of the hearing process shall authorize the hearing officer to take the following actions:
- 1) substitution of written argument in place of oral argument; or
 - 2) exclusion of an attorney from the proceeding for conduct that impedes an orderly determination of the rights of the parties.
- f) If any of the ~~above~~ actions stated in subsection (e)(1) or (e)(2) are taken by the hearing officer, it shall be done as a matter of record, and the hearing officer shall state for the record the specific reasons for the action~~therefor~~.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 8100.2114 Special Appearance

Prior to filing any other pleading or motion, a special appearance may be made either in person or by attorney for the limited purpose of objecting to the jurisdiction of the ~~Division~~Department. Every appearance not expressly designated a special appearance shall be deemed to be a general appearance. If the reasons for objecting to jurisdiction are not apparent from the papers on file in the proceeding, the special appearance shall be supported by affidavit setting forth the reasons.

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In ruling upon any objection at any hearing, the hearing officer may consider all matters apparent from the papers on file, affidavits submitted by any party, and any other evidence adduced upon disputed issue of fact. No determination of any issue of fact in connection with the objection is a determination of the merits of the case or any aspect thereof. A ruling adverse to the objector does not preclude him or her from making any motion or defense ~~that~~^{which} he or she might otherwise have made. If the hearing officer sustains the objection, an appropriate order shall be entered of record after review by a designated representative of the Director. Error in ruling against the objection is not waived by the objector's taking part in further proceedings in the matter.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 8100.2118 Failure to Appear

Failure to appear at the time and place set for hearing shall be deemed a waiver of the right to present evidence or otherwise participate at the hearing. After presentation by the ~~Division~~^{Department} of proof that the respondent was given proper notice, the hearing officer shall make a recommendation to the Director. ~~If~~^{Where} the ~~Division~~^{Department} fails to appear, the Notice of Hearing will be dismissed.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 8100.2120 Motions

- a) Motions shall be made in writing, unless otherwise allowed by the hearing officer during the course of a hearing. Written motions shall be limited to the following:
- 1) to request dismissal of a Notice of Hearing for failure to state facts ~~that~~^{which}, if true, would form a sufficient basis for the issuance of an ~~order~~^{Order} or other sanctions;
 - 2) to request sanctions in accordance with Section 8100.2112 of this Part;
 - 3) to request sanctions in accordance with Section 8100.2130 of this Part;
 - 4) to request dismissal of Notice of Hearing ~~when~~^{where} the ~~Division's~~^{Department's} case has been concluded without sufficient evidence having been presented to form a basis for the issuance of an ~~order~~^{Order} or other sanction;

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- 5) to request a continuance, or extension of time, upon good cause shown in accordance with Section 8100.2122 of this Part;
 - 6) to request an ~~order~~Order granting a rehearing, or additional hearings;
 - 7) to request that a hearing officer deem a failure to file an Answer to be an admission of the truth of the allegations contained in the Notice of Hearing;
 - 8) to request that a hearing officer be disqualified from the hearing, for prejudice;
 - 9) to request that an ~~order~~Order be vacated or modified;
 - 10) to request separation of cases joined by the ~~Division~~Department;
 - 11) to request that any party be held in default;
 - 12) to request consolidation of cases or parties;
 - 13) to request an ~~order~~Order limiting a response to a demand for bill of particulars or a request for discovery; and
 - 14) to request an ~~order~~Order, consistent with the expedited nature of administrative hearings, extending the time to complete discovery ~~when~~where it cannot be completed within the time limit set forth in Section 8100.2130 of this Part.
- b) When any motion is filed, the hearing officer may allow oral argument if ~~this is~~ deemed necessary ~~for~~to a fuller understanding of the issues presented. ~~When~~Where facts are alleged as a basis for the request ~~that, which~~ are not a part of the record in the case, an affidavit shall be attached to the motion setting forth ~~the~~such facts.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 8100.2124 Rules of Evidence

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- a) The hearing officer shall have authority to conduct the hearing, to administer oaths, to examine witnesses, ~~and~~ to rule upon the admissibility of evidence, and to subpoena witnesses or documents at the request of any party.
- b) The technical rules of evidence shall not apply. Any relevant or material evidence may be admitted if it is the sort of evidence relied upon by reasonably prudent men in the conduct of their affairs, regardless of the existence of any common law or statutory rule ~~that~~which excludes the admission of ~~that~~such evidence over objection in civil cases in the Circuit Courts of Illinois. The rules of privilege shall be followed to the same extent that they are recognized in civil or criminal cases in the Circuit Courts of Illinois. Irrelevant, immaterial and unduly repetitious evidence may be excluded. Objections to evidentiary offers must be timely made and noted in the record. When a hearing will be expedited and the interests of the parties will not be prejudiced, any part of the evidence may be received in written form. Subject to the evidentiary requirements of this subsection, a party may conduct the cross-examination required for a full and fair disclosure of the facts.
- c) Official notice may be taken of matters of which the Circuit Courts of Illinois may take judicial notice. In addition, notice may be taken of the ~~Division's~~Department's specialized knowledge in the Act. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, and they shall be afforded an opportunity to contest the material so noticed.
- d) Subsections (a), (b) and (c) do not relieve any party from its respective burden of proof or requirement to go forward with the presentation of evidence.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 8100.2126 Form of Papers

All papers filed ~~with~~ or submitted to the ~~Division~~Department in a contested case shall be typewritten on 8½ by 11 inch white paper. The first page of each document shall set forth the name of each of the respondents and the file number assigned to the case by the ~~Division~~Department. All pleadings must be signed by the party filing ~~them~~the same or ~~that~~party's authorized representative or attorney, and shall contain the party's business address and telephone number. A copy of any pleading shall be filed with the hearing officer, ~~with~~and the original served upon the attorney of record of the ~~Division~~Department.

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(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 8100.2130 Discovery

- a) Discovery shall not be the subject of motions presented to the hearing officer, except as provided in Section 8100.2120 of this Part.
- b) Upon written request served on the opposing party, any party shall be entitled to:
 - 1) the name, business and home addresses and telephone number, if available, of each witness who may be called to testify;
 - 2) copies of each document ~~that~~which may be offered as evidence; and
 - 3) a description of any other evidence ~~that~~which may be offered.
- c) The ~~above~~ information in subsection (b) will be provided within ~~ten (10)~~ days after~~of~~ service of a written request.
- d) Whether or not a request is made, during discovery a respondent shall be entitled to:
 - 1) any exculpatory evidence in the ~~Division's~~Department's possession. Exculpatory evidence is any evidence ~~that~~which tends to support the respondent's position or to call into question the credibility of a ~~Division~~Department witness; and
 - 2) copies of any investigative report ~~that~~which purports to be a memorandum of interview of the respondent.
- e) Upon a written request served on the respondent at any time after a Notice of Hearing is filed, or at any stage of the hearing, the respondent will be required to produce within ~~ten (10)~~ days after~~of~~ service of a written request non-privileged documents, books, records or other evidence that relates~~which relate~~ to the issues set forth in the Notice of Hearing.
- f) No file of a ~~Division~~Department examiner, investigator or attorney shall be subject to discovery, except as stated in subsection (d) ~~above~~ relating to

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exculpatory evidence and memoranda of interviews of a respondent.

- g) In accordance with Section 8100.2136 ~~of this Part~~, in large or complex cases, at the discretion of the hearing officer, a pre-hearing conference with the parties and the hearing officer may be scheduled in appropriate cases. Consistent with the expedited nature of administrative hearings, the hearing officer may, at the pre-hearing conference, establish the extent of and schedule for the production of relevant documents and other information, including the deposition of witnesses.
- h) Subject to constitutional privileges and to grants of confidentiality under the Act and the Illinois Freedom of Information Act ~~[5 ILCS 140], (Ill. Rev. Stat., ch. 116, par. 201 et seq.)~~ a party may serve on any other party a written request for the admission by the latter of the truth of any specified relevant fact set forth in the request or for the admission of genuineness of any relevant documents described in the request. Copies of the documents shall be served with the request unless copies have already been furnished. The failure of a party to respond to a request within ~~ten (10)~~ days ~~after~~ service shall be deemed to be an admission thereof.
- i) These provisions shall be construed to impose a continuing obligation upon the parties to exchange new information as it becomes available.
- j) The hearing officer, upon application of any party to a proceeding ~~in which~~ where there has been a failure to abide by the discovery provisions ~~of this Section~~ herein, is authorized to take the following actions:
- 1) limitation of evidence;
 - 2) substitution of written argument in place of oral argument; and
 - 3) exclusion of an attorney from the proceeding for conduct that impeded an orderly determination of the rights of the parties.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 8100.2132 Examination of Witnesses

- a) A party shall conduct examinations or cross-examinations without rigid adherence to formal rules of evidence, provided the examination or cross-examination does not descend to sheer abuse or harassment of a witness and the examination or

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cross-examination can be shown to be necessary to a full and fair disclosure of facts bearing upon matters in issue.

- b) If the hearing officer determines that a witness is hostile or unresponsive, the hearing officer shall authorize the examination by the party calling him or her as if under cross-examination.
- c) The [DivisionDepartment](#) may call any adverse party as a witness without vouching for his or her credibility and proceed to examine [thesueh](#) adverse party as if under cross-examination. Any party calling a witness, upon a showing that he or she called the witness in good faith and is surprised by his or her testimony, may impeach that witness by evidence of prior inconsistent statements.
- d) Oral evidence shall be taken only on oath or affirmation.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 8100.2134 Subpoenas

- a) Subpoenas for the attendance of witnesses from any place in the State of Illinois, or for the production of books, papers, accounts or documents at a hearing in a pending proceeding, shall be issued by the [DivisionDepartment](#) upon its own motion, and shall be issued upon application in writing by a party incorporating a showing that any such subpoena is reasonably required.
- b) Applications for subpoenas to compel the production of books, papers, accounts or documents desired shall be verified, and shall specify the books, papers, accounts or documents desired and the material or relevant facts anticipated to be proved by them.
- c) The costs for the preparation and service of each subpoena and the payment of witness fees shall be borne by the requesting party.
- d) The cost to prepare each [DivisionDepartment](#) subpoena shall be \$10.00 and shall be payable to the [DivisionDepartment](#) prior to the issuance of the subpoena. The cost to serve each subpoena shall be the same as provided to Sheriffs in [55 ILCS 5/4-12001 and 4-12001.1Ill. Rev. Stat. ch., 53, par. 71](#). Notwithstanding, if the [DivisionDepartment](#) elects to mail a subpoena, the cost shall be \$5.00 plus the actual cost of certified or registered mail, return receipt requested, payable to the

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~~Division~~Department of Financial Institutions prior to the issuance of the subpoena. Witness fees shall be the same as provided for in ~~705 ILCS 35/4.3~~~~III. Rev. Stat., ch., 53, par. 65~~ relating to witnesses attending trial in the Circuit Courts of Illinois.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 8100.2136 Pre-Hearing Conferences

Upon written request to the hearing officer by the ~~Division~~Department or any respondent, the parties may be directed by the hearing officer to appear at a specified date, time and place for a pre-hearing conference, prior to the date set for hearing in the particular proceeding or, without notice, on the date and at the place set for ~~the~~~~such~~ hearing and prior to ~~the commencement thereof~~ or during the ~~course of such~~ hearing ~~and prior to the commencement thereof or during the course of such hearing~~, for the purpose of formulating issues and considering:

- a) the simplification of issues;
- b) the necessity or desirability of amending the pleadings for the purpose of clarification, amplification or limitation with respect to matters alleged in any Notice of Hearing;
- c) the possibility of making admissions or stipulations of fact to the end of avoiding the unnecessary introduction of evidence;
- d) the limitation of the number of witnesses;
- e) the propriety of prior mutual exchange between or among parties of prepared testimony or exhibits; and
- f) such other matters as may aid in the simplification of the evidence and disposition of the proceeding.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 8100.2142 Record of Proceedings

- a) At each hearing, except as otherwise provided ~~in this Section~~herein, a permanent and complete record of the proceedings shall be taken at the

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~~Division's~~Department's expense by electronic means or by a "shorthand reporter" as ~~that~~such term is defined in the Illinois Certified Shorthand Reporters Act of 1984 [225 ILCS 415](Ill. Rev. Stat., ch. 111, par. 6204).

- b) The ~~Division,~~Department upon request of a party, shall arrange for the shorthand reporter to provide for ~~such~~copies of the transcript ~~as~~any other party may require, ~~when the other party requires the copy and at such time as it may require same~~, provided that ~~the~~such other party shall pay directly to the shorthand reporter the payment for the cost of the transcript, including one copy ~~thereof~~to be furnished the ~~Division~~Department for its use in any proceeding for Administrative Review ~~as hereinafter provided~~, or otherwise.
- c) The requirement set forth in subsection (a) ~~of this Section~~ is not applicable in any case ~~in which~~where all respondents have either defaulted, or submitted documents only, and the ~~Division~~Department presents no evidence through witness testimony.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 8100.2144 Record of Hearing

- a) The record in a contested case shall include:
- 1) all pleadings (which shall include all orders or notices of hearing and responses thereto, admissions, stipulations of facts, motions and rulings thereon and, in the case of an agreed settlement, stipulation and consent and a consent order);
 - 2) all documentary evidence, if any;
 - 3) a statement of matters officially noticed, if any;
 - 4) a transcript of the proceedings, if required;
 - 5) any opinion, report or recommendation of the hearing officer to the Director;
 - 6) the findings of fact, conclusions of law and recommendations of the hearing officer;

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- 7) any objections or exceptions to the findings of fact, conclusions of law and recommendations of the hearing officer or portions of the findings of fact, conclusions of law and recommendations of the hearing officer; and
- 8) the findings of fact, conclusion of law and ~~order~~Order of the Director, shall constitute a final administrative decision within the provisions of the Administrative Review Law [\[735 ILCS 5/Art. III\]](#)~~(Ill. Rev. Stat., ch. 110, pars. 3-101 et seq.)~~.
- b) The record shall be certified by the ~~Division~~Department upon any complaint for administrative review. An index of the record, with each page of the record numbered in sequence, shall be prepared by the ~~Division~~Department.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 8100.2146 Orders

- a) The hearing officer shall prepare findings of fact, conclusions of law, and recommendations to the Director. The findings of fact and conclusions of law shall be stated separately.
- b) Any ~~order~~Order of the Director issued without a hearing pursuant to a temporary order as provided under Section 21 of the Act shall advise the respondent that any action for judicial review of the final order must be commenced within ~~thirty-five~~ (35) days from the date a copy of the ~~order~~Order is served upon the party seeking review, pursuant to the provisions of the Administrative Review Law ~~(Ill. Rev. Stat., ch. 110, pars. 3-101 et seq.)~~.
- c) The ~~order~~Order of the Director shall be the decision of the ~~Division~~Department upon issues contested or stipulated to at the hearing, or presented at a hearing in which respondent defaults, or upon issues ~~which are~~ resolved without a hearing pursuant to Section 10-25(c) of the Illinois Administrative Procedure Act [\[5 ILCS 100/10-25\(c\)\]](#)~~(Ill. Rev. Stat. 1991, ch. 127, par. 1010-25(e))~~.
- d) The Director, after reviewing the hearing record, shall, in writing:
 - 1) accept or reject in whole or in part the findings of fact, conclusions of law or ~~the~~ recommendations of the hearing officer; or

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- 2) require the submission of additional information or documentation; or
 - 3) order the hearing officer to conduct a rehearing or an additional hearing.
- e) Default orders shall be entered against the respondent, ~~when~~where the respondent fails to appear for the hearing at the scheduled time and date, and has failed to request or ~~to be~~been granted a continuance in accordance with Section 8100.2122 of this Part.
 - f) A final ~~order~~Order of the Director shall be in writing. A copy of the final order shall be delivered or mailed by registered or certified mail, return receipt requested, to each party or representative or attorney at ~~that~~such person's last known address.
 - g) The final ~~order~~Order of the Director shall constitute a final administrative decision within the provisions of the Administrative Review Law (~~Ill. Rev. Stat., ch. 110, pars. 3-101 et seq.~~).
 - h) Final ~~orders~~Orders of the Director shall be made available as follows:
 - 1) The ~~Division~~Department will maintain an index by statutory ~~Section~~section(s) involved, in chronological order, of all final ~~orders~~Orders of the Director.
 - 2) ~~The orders~~Copies of said Orders may be reviewed at the ~~Division's~~Department's Springfield office and copies thereof may be obtained upon payment of the cost of duplication, as set forth in 2 Ill. Adm. Code 901.80.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 8100.2148 Stipulations

Parties may, by stipulation, agree upon any facts involved in the proceeding. The facts stipulated shall be considered as evidence in the proceeding, provided that the hearing officer may require proof of any fact by evidence ~~when~~where matters of public interest are involved. At any stage of the hearing, or after all parties have completed the presentation of their evidence, the hearing officer may call upon any party or the ~~Division~~Department for further material or relevant

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evidence upon any issue.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 8100.2160 Disputes Between Parties Certified or Registered by the**Division~~Department~~**

- a) The Division~~Department~~ considers that the consuming public is best served by a viable, competitive and respected title insurance industry. To meet this objective it is in the best interest of the consumer and the title insurance industry that disputes between certified or registered parties be resolved in a manner that precludes undeserved damage to reputation, and limits the monetary cost to the participants.
- b) ~~When~~Where the Division~~Department~~ receives a complaint from any certified or registered party (the "complainant") alleging conduct or practice by any other certified or registered party (the "respondent") ~~that~~which could result in any denial, suspension or revocation of any certificate of authority or registration issued or issuable pursuant to the Act ("adverse action"), the Director or the Director's authorized representative may, ~~if~~where the facts are within the control of the complainant, or if a Division~~Department~~ investigation would substantially delay a resolution of the allegations, or if no party is unduly prejudiced by this expedited procedure:
- 1) direct the complainant to prepare and submit to the Division~~Department~~ specific allegations ~~that~~which would result in adverse action for incorporation by the Division~~Department~~ into a Notice of Hearing;
 - 2) direct the complainant and the respondent to appear and present evidence, if any, on the administrative complaint before a hearing officer at a time and place designated by the Division~~Department~~ as provided in Section 8100.2104 ~~of this Part~~; and
 - 3) subsequent to receipt of the findings of fact, conclusions of law and recommendation of the hearing officer, enter an order as provided in Section 8100.2146 ~~of this Part~~.
- c) The Division~~Department~~, ~~the~~ complainant and respondent may, with the consent of the hearing officer and in the interests of justice, enter into a stipulation

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establishing an expedited procedure for resolving the allegations contained in the Notice of Hearing.

- d) Anytime it appears to the Director or the Director's authorized representative that a complaint made under subsection (a) is for the purpose of harassment, embarrassment or intimidation, the Director or the Director's representative shall terminate the proceeding and may initiate action against the complainant if authorized under the Act.
- e) This Section does not ~~delegate, and should not be construed as delegating~~ authority, responsibility or control by the Director or the Director's authorized representative to any party to an administrative proceeding brought pursuant to the Act and ~~the Sections of~~ this Part.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

SUBPART I: CONSUMER PROTECTION

Section 8100.2400 Preamble

The Act provides that the Director shall rely upon federal law, regulations and opinion letters, including the Real Estate Settlement Procedures Act of 1974 (RESPA) (12 USC 2601 et seq.), the regulations promulgated ~~under that Act~~~~thereunder~~ and issued opinion letters. ~~This Part is~~~~The Sections of this Part are~~ promulgated in order to form a basis to determine if there has been a violation of Section 24 of the Act, and to illustrate acts and practices as applied to transactions in the Illinois marketplace ~~that~~~~which~~ can result in the initiation of administrative or civil action. Recognizing that changes in acts and practices occur, it is the intention of the ~~Division~~~~Department~~, by amendment or other authorized procedure (e.g., legislation), to assure that ~~the Sections of~~ this Part accurately ~~reflects~~~~reflect~~ the conduct sought to be prohibited by Section 24 of the Act.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 8100.2406 Borrower's Right to Cancel

A borrower in a transaction for the purchase or refinance of residential real property, as defined in Section 3(14) of the Act, has the right to cancel or alter the placement of an order for the mortgage title insurance commitment and policy at any time prior to the closing of the transaction without cost or penalty to the borrower. This Section shall not be construed or

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applied in such a way as to alter the rights and obligations of any party to a contract for the sale and purchase of residential property.

(Source: Added at 33 Ill. Reg. _____, effective _____)

SUBPART J: PUBLIC INFORMATION

Section 8100.3000 Non-Public Distribution of Information

Information or documents obtained by employees of the ~~Division~~Department in the course of any examination, audit, visit, registration, certification, review, licensing or investigation pursuant to the Act, shall, unless made a matter of public record, be deemed confidential. Employees are ~~hereby~~ prohibited from making disclosure of ~~such~~ confidential information or production of documents or any other non-public records of the ~~Division~~Department or other governmental agency, unless the Director or the Director's authorized representative authorizes the disclosure of ~~that~~~~such~~ information or the production of ~~the~~~~such~~ documents as not being contrary to the public interest.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

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- 1) Heading of the Part: Professional Engineering Practice Act of 1989
- 2) Code Citation: 68 Ill. Adm. Code 1380
- 3)

<u>Section Numbers</u> :	<u>Proposed Action</u> :
1380.210	Amendment
1380.220	Amendment
1380.240	Amendment
1380.250	Amendment
1380.260	Amendment
1380.270	Amendment
1380.275	Amendment
1380.280	Amendment
1380.285	Amendment
1380.290	Amendment
1380.296	Amendment
1380.300	Amendment
1380.305	Amendment
1380.310	Amendment
1380.320	Amendment
1380.325	Amendment
- 4) Statutory Authority: Professional Engineering Practice Act of 1989 [225 ILCS 325]
- 5) A Complete Description of the Subjects and Issues Involved: This proposed rulemaking is primarily clean-up. A definition of "technical submissions" is being added to Section 1380.296 for clarification. The Test of English as a Foreign Language Internet Based Test (TOEFL-iBT) has been added as an acceptable alternative for applicants educated in a foreign country. Various non-substantive changes are also being made, including changing references throughout the entire Part from "Department" to "Division" to reflect the consolidation of agencies into the Department of Financial and Professional Regulation and the creation of the Division of Professional Regulation. Obsolete language is also being removed and other technical changes are being made.
- 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

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- 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 on this Part? No
- 11) Statement of Statewide Policy Objectives: This rulemaking has no impact on local governments.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may submit written comments to:

Department of Financial and Professional Regulation
Attention: Craig Cellini
320 West Washington, 3rd Floor
Springfield IL 62786

217/785-0813
Fax #: 217/557-4451

All written comments received within 45 days after this issue of the Illinois Register will be considered.

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: Those providing professional engineering services.
- B) Reporting, bookkeeping or other procedures required for compliance: None
- C) Types of professional skills necessary for compliance: Professional engineering skills are required for licensure.
- 14) Regulatory Agenda on which this rulemaking was summarized: January 2009

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

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TITLE 68: PROFESSIONS AND OCCUPATIONS

CHAPTER VII: DEPARTMENT OF [FINANCIAL AND](#) PROFESSIONAL REGULATION
SUBCHAPTER b: PROFESSIONS AND OCCUPATIONS

PART 1380

THE PROFESSIONAL ENGINEERING PRACTICE ACT OF 1989

Section

1380.210	Approved Engineering Program
1380.220	Definition of Degree in a Non-approved Engineering Program or a Related Science Curriculum
1380.230	Approved Experience
1380.240	Application for Enrollment as an Engineer Intern by Examination
1380.250	Application for Licensure as a Professional Engineer by Examination
1380.260	Examination
1380.270	Restoration
1380.275	Fees
1380.280	Endorsement
1380.285	Inactive Status
1380.290	Professional Design Firm
1380.295	Seal Requirements
1380.296	Acts Constituting the Practice of Professional Engineering Pursuant to Section 4 of the Act
1380.300	Standards of Professional Conduct
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1380.320	Granting Variances
1380.325	Professional Development
1380.APPENDIX A	Significant Dates for the Administration of Section 19 of the Act – Endorsement

AUTHORITY: Implementing the Professional Engineering Practice Act of 1989 [225 ILCS 325] and authorized by Section 2105-15(7) of the Civil Administrative Code of Illinois [20 ILCS 2105/2105-15(7)].

SOURCE: Rules and Regulations Promulgated for the Administration of the Illinois Professional Engineering Act, effective March 10, 1976; codified at 5 Ill. Reg. 11055; codified and amended at 5 Ill. Reg. 14171, effective December 3, 1981; emergency amendment at 6 Ill. Reg. 916, effective January 6, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 7448,

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effective June 15, 1982; Part repealed at 9 Ill. Reg. 10038, effective June 18, 1985; new Part adopted at 9 Ill. Reg. 10040, effective June 18, 1985; amended at 10 Ill. Reg. 19507, effective November 5, 1986; amended at 11 Ill. Reg. 8767, effective April 20, 1987; recodified from Chapter I, 68 Ill. Adm. Code 380 (Department of Registration and Education) to Chapter VII, 68 Ill. Adm. Code 1380 (Department of Professional Regulation) pursuant to P.A. 85-225, effective January 1, 1988, at 12 Ill. Reg. 2942; amended at 14 Ill. Reg. 247, effective December 28, 1990; amended at 15 Ill. Reg. 17729, effective November 26, 1991; amended at 16 Ill. Reg. 15553, effective September 28, 1992; amended at 18 Ill. Reg. 14737, effective September 19, 1994; amended at 19 Ill. Reg. 16076, effective November 17, 1995; amended at 20 Ill. Reg. 6477, effective April 25, 1996; amended at 21 Ill. Reg. 13839, effective October 1, 1997; amended at 22 Ill. Reg. 16516, effective September 3, 1998; amended at 24 Ill. Reg. 625, effective December 31, 1999; amended at 24 Ill. Reg. 13727, effective August 28, 2000; amended at 26 Ill. Reg. 4688, effective March 11, 2002; amended at 27 Ill. Reg. 13301, effective July 16, 2003; amended at 33 Ill. Reg. _____, effective _____.

Section 1380.210 Approved Engineering Program

- a) The Department of [Financial and Professional Regulation-Division of Professional Regulation \(Division\)](#) shall, upon the recommendation of the State Board of Professional Engineers (the Board), approve an engineering program as reputable and in good standing if it meets the following minimum criteria:
- 1) The educational institution is legally recognized and authorized by the jurisdiction in which it is located to confer a baccalaureate degree in engineering.
 - 2) Faculty
 - A) The faculty shall have a sufficient number of full-time, or full-time equivalent, instructors to make certain that the educational obligations to the student are fulfilled. A program at the basic level shall have no fewer than 3 full-time faculty members whose primary commitment is to that program. If an institution relies on part-time faculty members, it shall demonstrate that, in addition to the commitment of at least 3 full-time equivalent faculty members, effective mechanisms are in place to provide adequate levels of student advising and faculty interaction, and faculty control over the curriculum.

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- B) The faculty shall have demonstrated competence in their area of teaching as evidenced by appropriate degrees from professional colleges or institutions. Other evidence of faculty capability includes non-academic engineering experience, experience in teaching, ability to communicate effectively, participation in professional, scientific and other learned societies, licensure as a professional engineer and an interest in students' curricular activities.
- C) Teaching loads shall allow time for research and professional development activities. Stimulation of students' minds requires faculty involvement in scientific and technological development and in instructional innovation.

3) Curriculum

- A) The curriculum shall include at least 4 academic years leading to the awarding of the baccalaureate degree while providing integration of the educational experience with the ability to apply the knowledge gained to the identification and solution of practical problems.
- B) The overall curriculum shall include a minimum of 120 semester hours or their equivalent (e.g., 180 quarter hours) and shall include at least the following subjects:
 - Mathematics (beyond trigonometry) – 15 hours.
 - Physics and Chemistry – 15 hours.
 - Engineering Sciences – 30 hours.
 - Engineering Design – 15 hours.
 - Humanities/Social Sciences – 15 hours.
- C) Mathematics shall be beyond trigonometry, and include differential and integral calculus, and differential equations at the baccalaureate level. Mathematics shall also include, but shall not

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be limited to, the study of probability, statistics, numerical analysis and advanced calculus. Courses in computer usage and/or programming shall not be used to satisfy the mathematics requirement.

- D) Engineering sciences have their roots in mathematics and basic sciences but carry the knowledge toward creative application. Such subjects include, but are not limited to, mechanics, thermodynamics, electric and electronic circuits, material science and other subjects depending upon the engineering discipline.
- E) Engineering design involves the conversion of resources to predetermined objectives. Course requirements shall include the establishment of objectives and criteria, synthesis, analysis, construction, testing and evaluation which develop student creativity through open-ended problems and consideration of alternative solutions. The inclusion of realistic constraints, such as economic factors, safety, aesthetics, ethics and social impact is appropriate. Examples of subjects in these areas include design of circuits, machines, power networks, process equipment and systems and water treatment.
- F) Humanities and social sciences are, respectively, the branches of knowledge that concern man and his culture, and that concern individual relationships in and to society. Examples of subjects in these areas are philosophy, history, literature, fine arts, religion, sociology, psychology, political science, economics and foreign languages (other than a student's native language). Non-traditional courses might include social responsibility and professional ethics. Subjects such as accounting and management may be acceptable engineering electives, but do not satisfy the objectives of this area.
- G) Laboratory experience is essential to an engineering education at both theoretical and practical levels.
- H) Computer-based experience shall be included in the program of each student. The program shall include technical computations, problem solving, data acquisition and usage, process control and computer-assisted design. The student shall have access to

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computational facilities in order to integrate these techniques into the program.

- I) The program shall require that the student demonstrate competency in both written and oral communication.
- J) An understanding of ethical, social, economic and safety considerations shall be included in the engineering program.
- K) For those institutions that elect to prepare a student to enter the profession at the advanced level, the curriculum shall satisfy the criteria set forth in this Section at the basic level, and shall include at least one year of additional study. That year shall include at least $\frac{2}{3}$ of a year of advanced mathematics, basic sciences, engineering sciences and engineering design. Of this component, at least $\frac{1}{3}$ of a year shall be devoted to engineering design. The program shall be designed toward a meaningful individual course of study and include thesis, research and/or special projects.

4) Facilities

- A) The laboratory facilities shall reflect the requirements of the offered educational program. The laboratory should provide for individual project work by the students and the faculty. The facilities shall be equipped with instruments and scientific equipment of a kind and quality to ensure the effective functioning of the laboratory.
- B) The libraries in support of the engineering program shall be both technical and nontechnical, to include books, journals and other reference material for collateral reading in connection with the instructional and research programs and professional work. The library collection shall reflect the existence of an active acquisition policy; this policy shall include specific acquisitions on the request and recommendation of the faculty of the engineering program. There shall be computer-accessible information centers and inter-library loan services for both books and journals. The library collections, whether centralized or decentralized, shall be readily available for use with the assistance of trained library staff, or

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through an open-stack arrangement, or both.

- C) There shall be computer facilities accessible to the engineering students and faculty.
- 5) The institution shall maintain permanent student records that summarize the credentials for admission, attendance, grades and other records of performance.
- b) In determining whether a program should be approved, the ~~Division~~Department shall take into consideration but not be bound by accreditation by the Accreditation Board for Engineering and Technology (ABET).
- c) The ~~Division~~Department, upon the recommendation of the Board, has determined that ~~all~~ engineering programs accredited ~~by or determined equivalent~~ by the Engineering Accreditation Commission of ABET meet the minimum criteria set forth in subsection (a), ~~above~~, for an approved engineering program and are, therefore, approved, subject to review.
- 1) The Division, upon the recommendation of the Board, has determined that the signed Mutual Recognition Program agreement between ABET and the Canadian Engineering Accrediting Board (CEAB) of the Canadian Council of Professional Engineers (CCPE) is considered to have met the minimum criteria as equivalent to the ABET accredited programs and are, therefore, approved, subject to review.
- 2) The Division, upon the recommendation of the Board, does not recognize ABET "substantially equivalent" programs as meeting the minimum criteria set forth in subsection (a) for an approved engineering program and are, therefore, not approved.
- d) Withdrawal of Program Approval
- 1) The following are grounds for withdrawal of approval of an engineering program or a program leading to a degree in basic engineering.
- A) Non-compliance with any provisions of the Professional Engineering Practice Act of 1989 [225 ILCS 325] (the Act);

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- B) Non-compliance with any provision of this Part;
 - C) Fraud or dishonesty in furnishing documentation for evaluation of the program; or
 - D) Failure to continue to meet the criteria of an approved program as set out in this Section.
- 2) If the Board has reason to believe there has been any fraud or dishonesty in the furnishing of any documentation for the evaluation of a program on the part of any licensee, it shall refer such matter to appropriate [Division](#)~~Department~~ personnel for any disciplinary action which might be appropriate under the Act.
- 3) A program whose approval is being reconsidered by the [Division](#)~~Department~~ shall be given 15 days written notice prior to any recommendation by the Board and may either submit written comments or request a hearing before the Board.
- e) Evaluation of Newly Submitted Programs
- 1) An educational institution with a program that has not been evaluated will cause to be forwarded to the [Division](#)~~Department~~ documentation concerning the criteria in this Section.
 - 2) Once the [Division](#)~~Department~~ has received the documentation or after 6 months have elapsed from the date of application, whichever is later, the Board will evaluate the program based on all documentation received from the school and any additional information the [Division](#)~~Department~~ has received ~~that~~^{which} will enable the Board to evaluate the program based on the criteria specified in this Section.
- f) For purposes of Section 12(c)(1) of the Act, an approved graduate engineering program shall:
- 1) Grant a Doctor of [Philosophy](#)~~Philosophy~~ or Doctor of Science degree;
 - 2) Be in a curriculum from an institution with an engineering program which has at least one curriculum for a baccalaureate degree that is approved in

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accordance with Section 1380.210(a) of this Part; and

- 3) Include the following minimum requirements:
 - A) Completion of at least 64 semester hours, or 96 quarter hours, including hours earned toward the master's degree requirements.
 - B) Passing of a preliminary examination.
 - C) Completion of at least an additional 32 semester hours, or 48 quarter hours of thesis research.
 - D) Passing of a final examination.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 1380.220 Definition of Degree in a Non-approved Engineering Program or a Related Science Curriculum

- a) The educational institution shall be legally recognized and authorized by the jurisdiction in which it is located to confer a baccalaureate degree in engineering or related science.
- b) A degree from a non-approved engineering program or a related science curriculum is a four-year program resulting in a baccalaureate degree which shall include a minimum of 120 semester hours or their equivalent (e.g., 180 quarter hours) and shall include at least the following subjects for the noted semester hours or their equivalent:
 - 1) A Baccalaureate Degree in Engineering from a Non-approved Engineering Program
 - Mathematics (beyond trigonometry, including a sequence in differential and integral calculus) – 15 hours.
 - Physics and Chemistry – 15 hours.
 - Additional Sciences – 10 hours.

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Engineering Sciences and/or Design – 30 hours.

Humanities and/or Social Sciences – 15 hours.

- 2) Related Science Curriculum (such as a Baccalaureate Degree in Chemistry, Physics, or Mathematics)

Mathematics (beyond trigonometry, including a sequence in differential and integral calculus) – 15 hours.

Physics and Chemistry – 15 hours.

Additional Sciences – 40 hours.

Humanities and/or Social Sciences – 15 hours.

- c) The educational curriculum described [in subsection \(b\) above](#) shall be evaluated as of the date of the awarding of the baccalaureate degree except as provided in subsection (d). Additional hours required to earn the baccalaureate degree shall provide the laboratory and computer-based experience, the communication skills and the understanding of ethical, social, economic and safety considerations required of an approved engineering program as provided for in Section 1380.210.
- d) In evaluating the acceptability of an applicant's baccalaureate degree from a non-approved engineering program or a related science curriculum, the Board shall consider courses taken to attain a graduate degree in engineering and/or additional course credits in mathematics, science or engineering as education, when the course work of an applicant with a baccalaureate degree fails to satisfy the requirements of subsection (a) or [\(b\) above](#). Not more than 15 hours may be made up in mathematics and basic sciences. Education considered in this manner shall not also be credited as engineering experience.
- e) The [DivisionDepartment](#), upon the recommendation of the Board, has determined that educational credit leading to a degree in engineering technology does not meet the requirements for a non-approved engineering program or a related science curriculum in accordance with this Section.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

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Section 1380.240 Application for Enrollment as an Engineer Intern by Examination

- a) An applicant for enrollment as an Engineer Intern shall file an application on forms supplied by the ~~Division~~[Department](#) by November 15 for the spring examination or by May 15 for the fall examination. The application shall include:
- 1) Either:
 - A) Completed college certification form showing receipt of a baccalaureate degree from an approved engineering program as set forth in Section 1380.210 of this Part; or
 - B) Completed college certification form showing receipt of a baccalaureate degree from a non-approved engineering program or related science curriculum evidenced by an official transcript of educational credit, and verification of at least 4 years of experience on forms, completed by the supervisors.
 - i) An applicant shall have acquired the experience required by this Section prior to review by the Board;
 - ii) Applicants who received their education in a foreign country shall have the education evaluated, at their expense. Applicants shall obtain the forms [on the internet from the Center for Professional Engineering Education Services \(CPEES\) at www.cpees.org](#). [The evaluations completed prior to October 30, 2006](#) from Engineering Credentials Evaluation International (ECEI), 211 East Lombard Street #357, Baltimore, Maryland 21202 [are also accepted. The Board has only approved CPEES and ECEI as evaluators for engineering degrees](#). The transcript review required by Section 8 of the Act is separate from the detailed institutional review conducted to determine that the curriculum meets the requirements of Section 1380.210. The review of the transcripts by the Board will be to determine equivalency with the educational requirements of non-approved engineering program set forth in Section 1380.220(b)(1);

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- iii) Applicants who received a related science degree in a foreign country shall have the education evaluated at their expense. The evaluation shall be performed by the American Association of Collegiate Registrars (AACRO), 1 Dupont Circle NW, Suite 370, Washington, DC 20036-1110, telephone (202)296-3359;
 - 2) The required fee specified in Section 1380.275;
 - 3) For an applicant claiming credit for participation in a cooperative program, as described in Section 1380.230(a)(3), certification of such participation with a brief description of the program, from the university;
 - 4) ~~A complete work history indicating all employment since receipt of a baccalaureate degree. Such work history shall also include any experience earned prior to receipt of a baccalaureate degree pursuant to Section 8(b)(2) of the Act;~~⁵⁾ Proof of passage of the [Test of English as a Foreign Language Internet Based Test \(TOEFL-iBT with a minimum score of 26 on the speaking module and a total minimum integrated score of 88 or the Test of English as a Foreign Language \(TOEFL\) with a minimum score of 550 or 213 on the computer-based test and the Test of Spoken English \(TSE\) with a minimum score of 50](#), for applicants who apply after January 1, 1996, who graduated from an engineering program outside the United States or its territories and whose first language is not English. In order to determine applicants whose first language is English, the applicant shall submit verification from the school that the engineering program from which the applicant graduated was taught in English.
- b) An applicant in an approved engineering program shall be eligible to be seated for the first available Fundamentals of Engineering examination during the 12 months prior to graduation if the applicant provides a certification stating that he/she is expected to graduate by the end of that 12 month period. The applicant shall be allowed to retake the examination during that 12 month period if he/she fails on the first attempt. However, an applicant who passes the Fundamentals of Engineering examination prior to graduation will not be enrolled as an Engineer Intern until the ~~Division~~^{Department} has received certification of graduation, as required by subsection (a)(1)(A). If certification of graduation is not received within one year after the first examination is taken, the results of the examination

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will be void and the examination will have to be retaken.

- c) Upon receipt of the application and all supporting documentation in complete order:
- 1) Persons with degrees from an approved engineering program will be notified of their eligibility to register for Part I of the examination, examination filing deadline and the required examination fee as provided for in Section 1380.275;
 - 2) The files of persons with degrees from a non-approved engineering program or related science curriculum will be presented to the Board for evaluation of the required experience and education based on the criteria specified in Sections 1380.220 and 1380.230. Once the applications have been approved, those persons will be notified of their eligibility to register for Part I of the examination, examination filing deadline and the required examination fee as provided for in Section 1380.275.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 1380.250 Application for Licensure as a Professional Engineer by Examination

- a) Applicant enrolled as an Engineer Intern
- 1) An applicant shall have acquired all experience required by Section 1380.240 prior to review by the Board.
 - 2) An applicant for licensure as a professional engineer who is enrolled as an Engineer Intern shall file an application on forms supplied by the [DivisionDepartment](#) by November 15 for the spring examination or by May 15 for the fall examination. The application shall include, in addition to the requirements of Section 8 of the Act, the following:
 - A) Experience verification forms completed by the supervisors, indicating the required 4 years of experience earned. For Engineer Interns enrolled with a degree from a non-approved engineering program or related science curriculum, experience verification forms shall be completed for the entire 8 years of required experience.

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- B) For persons who were certified or enrolled as an Engineer Intern or Engineer-in-training in another state or territory:
- i) A certification of such enrollment from the appropriate state board, including the date of the examination.
 - ii) Completed college certification form showing degree received and, if the degree was not received from an approved engineering program, an official transcript of educational credit.
 - iii) Applicants who received their education in a foreign country shall have the education evaluated at their expense. The applicant shall obtain the forms [on the internet from the Center for Professional Engineering Education Services \(CPEES\) at www.cpees.org](#). [The evaluations completed prior to October 30, 2006](#) from Engineering Credentials Evaluation International (ECEI), 211 East Lombard Street #357, Baltimore, Maryland 21202 [are also accepted](#). [The Board has only approved CPEES and ECEI as evaluators for engineering degrees](#). The transcript review required by Section 8 of the Act does not entail the detailed institutional review in order to determine that the curriculum meets the requirements set forth in Section 1380.210. The review by the Board will be to determine equivalency with the educational requirements of a non-approved engineering program set forth in Section 1380.220(b)(1).
 - iv) Proof of passage of the [Test of English as a Foreign Language Internet Based Test \(TOEFL-iBT\) with a minimum score of 26 on the speaking module and a total minimum integrated score of 88 or the](#) Test of English as a Foreign Language (TOEFL) with a minimum score of 550 or 213 on the computer based test and the Test of Spoken English (TSE) with a minimum score of 50, for applicants who apply after January 1, 1996, who graduated from an engineering program outside the United States or its territories and whose first language is not English. In order

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to determine applicants whose first language is English, the applicant shall submit verification from the school that the engineering program from which the applicant graduated was taught in English.

- v) Applicants who received a related science degree in a foreign country shall have the education evaluated at their expense. The evaluation shall be performed by the American Association of Collegiate Registrars (AACRO), 1 Dupont Circle NW, Suite 370, Washington, DC 20036-1110, telephone (202)296-3359.
 - C) The required fee specified in Section 1380.275.
 - D) For an applicant claiming credit for participation in a cooperative program, as described in Section 1380.230(a)(3), certification of such participation with a brief description of the program, from the university.
 - E) ~~A complete work history indicating all employment since receipt of a baccalaureate degree. Such work history shall also include any experience earned prior to receipt of a baccalaureate degree pursuant to Section 8(b)(2) of the Act.~~
- 3) Upon receipt of the application and all supporting documentation in complete order, the applicant's file will be presented to the Board for evaluation of the required education and experience as specified in Sections 1380.210, 1380.220 and 1380.230. Once the application has been approved, those persons will be notified of their eligibility to register for Part II of the examination, examination filing deadline and the required examination fee as provided for in Section 1380.275.
- b) Applicant not enrolled as an Engineer Intern
- 1) An applicant shall have acquired all experience as required in Section 1380.240 prior to review by the Board.
 - 2) An applicant for registration as a professional engineer who is not enrolled or certified as an Engineer Intern shall file an application on forms

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supplied by the ~~Division~~Department by November 15 for the spring examination or by May 15 for the fall examination. The application shall include, in addition to the requirements of Section 8 of the Act, the following:

- A) Education and Experience:
- i) A degree from an approved Engineering Program. Completed college certification form showing receipt of a baccalaureate degree from an approved engineering program, and completed experience verification forms completed by the supervisors, indicating the required 4 years of experience.
 - ii) A degree from a non-approved Engineering Program or Related Science Curriculum. Completed college certification form showing receipt of a baccalaureate degree from a non-approved engineering program or related science curriculum; an official transcript of educational credit; and completed experience verification forms completed by the supervisors, indicating the required 8 years of experience.
 - iii) Applicants who received their engineering education in a foreign country shall have the education evaluated at their expense. The applicant shall obtain the forms from Engineering Credentials Evaluation International (ECEI), 211 East Lombard Street #357, Baltimore, Maryland 21202. The transcript review required by Section 8 of the Act does not entail the detailed institutional review in order to determine that the curriculum meets the requirements set forth in Section 1380.210. The review by the Board will be to determine equivalency to the educational requirements of a non-approved engineering program set forth in Section 1380.220(b)(1).
 - iv) Applicants who received a related science degree in a foreign country shall have the education evaluated at their expense. The evaluation shall be performed by the

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American Association of Collegiate Registrars (AACRO),
1 Dupont Circle NW, Suite 370, Washington, DC 20036-
1110, telephone (202)296-3359.

- B) The required fee specified in Section 1380.275.
- C) For an applicant claiming credit for participation in a cooperative program, as described in Section 1380.230(a)(3), certification of such participation with a brief description of the program, from the university.
- ~~D) A complete work history indicating all employment since receipt of a baccalaureate degree. Such work history shall also include any experience earned prior to receipt of a baccalaureate degree pursuant to Section 8(b)(2) of the Act.~~
- DE) Proof of passage of the Test of English as a Foreign Language (TOEFL) with a minimum score of 550 or 213 on the computer-based test and Test of Spoken English (TSE) with a minimum score of 50, for applicants who apply after January 1, 1996, who graduated from an engineering program outside the United States or its territories and whose first language is not English. In order to determine applicants whose first language is English, the applicant shall submit verification from the school that the engineering program from which the applicant graduated was taught in English.
- 3) Upon receipt of the application and all supporting documentation in complete order, the applicant's file will be presented to the Board for evaluation of education and required experience as specified in Sections 1380.210, 1380.220 and 1380.230. Once the application has been approved, those persons will be notified of their eligibility to register for both Part I and Part II of the examination, examination filing deadline, and the required examination fee as provided for in Section 1380.275.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 1380.260 Examination

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- a) The examination for licensure as a professional engineer shall be divided into two Parts, each Part being 8 hours in duration. If an applicant wishes only to be enrolled as an Engineer Intern, and if he [or she](#) otherwise qualifies under Section 1380.240, he [or she](#) shall be required to take only Part I of the examination.
 - 1) Part I – Fundamentals of Engineering Examination shall consist of problems or other examining techniques designed to evaluate the applicant's knowledge of the basic and engineering sciences and related subjects normally considered as the fundamentals of an engineering education.
 - 2) Part II – Principles and practice of Engineering Examination shall consist of problems or other examining techniques relating to designs in or to the practice of professional engineering as described in Section 4(o) of the Act.
- b) The examination administered by the [Division](#)~~Department~~ shall be provided by the National Council of Examiners for Engineering and Surveying (NCEES). The specific examination content shall be as determined by periodic evaluations of the test specifications by NCEES.
- c) Part I of the examination will be waived for an applicant who is licensed as a structural engineer and who received such license by passing the fundamentals of engineering examination administered under the Structural Engineering Licensing Act of 1989 [225 ILCS 340].
- d) The scoring of the examinations and determination of scores shall be as approved by NCEES. Separate scores shall be given for Part I and Part II and shall be reported as pass or fail.
- e) An applicant who sits for both Parts I and II of the examination and passes only Part I shall be eligible to be enrolled as an Engineer Intern.
- f) Retake of Examination.
 - 1) Applicants shall be required to retake only the Part(s) on which a passing score was not achieved.
 - 2) *If an applicant neglects, fails without an approved excuse, or refuses to*

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take the next available examination offered for licensure under this Act within 3 years after filing the application, the fee paid by the applicant shall be forfeited and the application denied. If an applicant fails to pass an examination for licensure under this Act within 3 years after filing the application, the application shall be denied. However, such applicant may thereafter make a new application for examination, accompanied by the required fee (Section 9(b) of the Act). New applications shall include proof of meeting the qualifications for examination in effect at the time of such new application except as provided in subsection (g).

- g) Successful scores of previously passed Parts of the examination shall be accepted for the purposes of licensure provided the applicant has met all other requirements for licensure as outlined in the Act. For such purposes, the most recent score on a Part(s) shall be the score of record. In no circumstances shall the ~~Division~~Department accept a previous passing score on a Part(s) for an applicant whose score of record is a failing score.
- h) A candidate who fails an examination may not review his/her examination booklet or the associated answer sheets. Rescoring of the examination or any individual problem is not permitted; however, a retabulation of the numerical score will be permitted.
- i) If an applicant has failed an examination, the examination may not be waived for licensure.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 1380.270 Restoration

- a) A licensee seeking restoration of a license which has expired for 5 years or less shall have the license restored upon application to the ~~Division~~Department and payment of the required fee specified in Section 1380.275 and proof of 30 professional development hours in accordance with Section 1380.325 completed within 2 years prior to the restoration application.
- b) A licensee seeking restoration of a license which has been placed on inactive status for 5 years or less shall have his or her certificate restored upon application to the ~~Division~~Department and payment of the current renewal fee specified in Section 1380.275 and proof of successful completion of 30 professional

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development hours in accordance with Section 1380.325 completed within 2 years prior to the restoration application.

- c) A licensee seeking restoration of a license after it has expired or been placed on inactive status for more than 5 years shall file an application, on forms supplied by the [Division](#)~~Department~~ for review by the Board, together with proof of successful completion of 30 professional development hours in accordance with Section 1380.325 completed within 2 years prior to the restoration application and the fee required by Section 1380.275. The licensee shall also submit either:
- 1) Sworn evidence of active practice in another jurisdiction for at least the last 2 years. Such evidence shall include a statement from the appropriate board or licensing authority in the other jurisdiction that the licensee was authorized to practice during the term of said active practice;
 - 2) An affidavit attesting to military service as provided in Section 17 of the Act;
 - 3) Proof of passage of Part II of the examination provided in Section 1380.260 within the 5 years preceding restoration; or
 - 4) Other evidence of continued competence in professional engineering. Other evidence shall include, but not be limited to:
 - A) Employment in a responsible capacity by a licensed professional engineer as determined by the Board;
 - B) Lawfully practicing professional engineering as an employee of a governmental agency;
 - C) Teaching professional engineering in a college or university or educational programs; or
 - D) Attendance at educational programs in professional engineering or a related field, including, but not limited to, attendance at graduate level engineering courses, professionally oriented continuing education classes or special seminars.
- d) Any person seeking restoration of a license within 2 years after discharge from

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military service pursuant to Section 17 of the Act will be required to pay only the current renewal fee.

- e) When the accuracy of any submitted documentation, of the relevance or sufficiency of the course work or experience is questioned by the ~~Division~~~~Department~~ because of discrepancies or conflicts in information, information needing further clarification, and/or missing information, the licensee seeking restoration of his or her license will be requested to:
- 1) provide such information as may be necessary; and/or
 - 2) explain such relevance or sufficiency during an oral interview; or
 - 3) appear for an interview before the Board when the information available to the Board is insufficient to evaluate the individual's current competency to practice under the Act. Upon recommendation of the Board, and approval by the Director of the Department of Financial and Professional Regulation-Division of Professional Regulation (Director), an applicant shall have his or her license restored or will be notified of the reason for the denial of such application for restoration.
- f) If an applicant is denied restoration under subsection (c)(4), the applicant's license may be restored by taking and passing Part II of the examination as provided in Section 1380.260.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 1380.275 Fees

The following fees shall be paid to the ~~Division~~~~Department~~ and are not refundable:

- a) Application Fees.
- 1) The fee for application for a license as a professional engineer is \$100.
 - 2) The application fee for a certificate of enrollment as an engineer intern is \$20.
 - 3) The application fee for a certificate of registration as a professional design

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firm is \$75.

4) In addition, applicants for an examination shall be required to pay, either to the ~~Division~~Department or to the designated testing service, a fee covering the cost of determining an applicant's eligibility and providing the examination. Failure to appear for the examination on the scheduled date, at the time and place specified, after the applicant's application for examination has been received and acknowledged by the ~~Division~~Department or the designated testing service, shall result in the forfeiture of the examination fee.

b) Renewal Fees.

- 1) The fee for the renewal of a license shall be calculated at the rate of \$30 per year.
- 2) The fee for renewal of a certificate of registration as a professional design firm is \$75 for the renewal period (see Section 1380.310(c)).

c) General Fees.

- 1) The fee for the restoration of a license other than from inactive status is \$20 plus payment of all lapsed renewal fees.
- 2) The fee for the issuance of a duplicate license, for the issuance of a replacement license for a license that has been lost or destroyed, or for the issuance of a license with a change of name or address, other than during the renewal period, is \$20. No fee is required for name and address changes on ~~Division~~Department records when no duplicate license is issued.
- 3) The fee for a certification of a licensee's record for any purpose is \$20.
- 4) The fee to have the scoring of an examination administered by the ~~Division~~Department reviewed and verified is \$20 plus any fee charged by the testing service.
- 5) The fee for a wall certificate showing licensure shall be the actual cost of producing the certificate.

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- 6) The fee for a roster of persons licensed as professional engineers or engineer interns in this State shall be the actual cost of producing the roster.
- d) Additional Fees.
- 1) Any person who delivers a check or other payment to the DivisionDepartment that is returned to the DivisionDepartment unpaid by the financial institution upon which it is drawn shall pay to the DivisionDepartment, in addition to the amount already owed to the DivisionDepartment, a fee of \$50.
 - 2) If the check or other payment was for a renewal or issuance fee and that person practices without paying the renewal fee or issuance fee and the fee for a returned check, an additional fee of \$100 shall be imposed.
 - 3) The fees imposed by this Section are in addition to any other discipline provided under the Act for unlicensed practice or practice on a nonrenewed license. The DivisionDepartment shall notify the person that fees shall be paid to the DivisionDepartment by certified check or money order within 30 calendar days after the notification.
 - 4) If, after the expiration of 30 days from the date of the notification, the person has failed to submit the necessary remittance, the DivisionDepartment shall automatically terminate the license or certificate or deny the application without hearing.
 - 5) If, after termination or denial, the person seeks a license or certificate, he or she shall apply to the DivisionDepartment for restoration or issuance of the license or certificate and pay all fees due to the DivisionDepartment. The DivisionDepartment may establish a fee for the processing of an application for restoration of a license or certificate to pay all expenses of processing this application.
 - 6) The Director may waive the fees due under this Section in individual cases where the Director finds that the fees would be unreasonable or unnecessarily burdensome.

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(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 1380.280 Endorsement

- a) Any person who holds an unexpired certificate of registration or license to practice professional engineering, issued under the laws of another state or territory of the United States or the District of Columbia and who desires to become licensed by endorsement shall file an application, on forms provided by the ~~Division~~Department, together with:
- 1) The required fee specified in Section 1380.275.
 - 2) Proof of meeting requirements substantially equivalent to those in force in this State at the time of original or subsequent licensure by examination in the other jurisdiction, including certification of education, and verification of experience.
 - 3) A certification by the jurisdiction of original licensure and certification of current licensure from the jurisdiction of predominant active practice including the following:
 - A) The time during which the applicant was licensed in that jurisdiction, including the date of the original issuance of the license;
 - B) The basis of licensure and a description of all licensure examinations by which the applicant was licensed in that jurisdiction and the date of successful passage of ~~thesueh~~ examinations; and
 - C) Whether the records of the licensing authority contain any record of disciplinary action taken or pending against the applicant.
 - 4) ~~A complete work history, on forms provided by the Department.~~5) If the qualifications of the applicant at the time of original licensure did not meet the requirements in effect at that time for licensure in this State, the applicant may submit additional certifications from other jurisdictions to indicate meeting the qualifications in effect in this State at the time of any later licensure.

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- ~~5)6)~~ In lieu of the documentation specified in subsections (a)(2), (3) and (5) ~~above~~, an applicant may submit a current Council Record and Certification of Verification from NCEES.
- ~~6)7)~~ Applicants who received their education in a foreign country and who were originally licensed in another jurisdiction after January 1, 1996 shall have the education evaluated, at their expense. Applicants shall obtain the forms on the internet from the Center for Professional Engineering Education Services (CPEES) at www.cpees.org. The evaluations completed prior to October 30, 2006 from Engineering Credentials Evaluation International (ECEI), 211 East Lombard Street #357, Baltimore, Maryland 21202 are also accepted. The Board has only approved CPEES and ECEI as evaluators for engineering degrees~~from the National Council of Examiners for Engineers (NCEES), P.O. Box 1686, Clemson, South Carolina 29633-1686~~. The transcript review required by Section 8 of the Act is separate from the detailed institutional review conducted to determine that the curriculum meets the requirements of Section 1380.210. The review of the transcripts by the Board will be to determine equivalency to the educational requirements of Basic Engineering set forth in Section 1380.220(b)(1).
- ~~7)8)~~ Proof of passage of the Test of English as a Foreign Language Internet Based Test (TOEFL-iBT) with a minimum score of 26 on the speaking module and a total minimum integrated score of 88 or the Test of English as a Foreign Language (TOEFL) with a minimum score of 550 or 213 on the computer-based test and the Test of Spoken English (TSE) with a minimum score of 50 for applicants originally licensed after January 1, 1996, who graduated from an engineering program outside the United States or its territories and whose first language is not English. In order to determine applicants whose first language is English, the applicant shall submit verification from the school that the engineering program which the applicant graduated was taught in English.
- ~~8)9)~~ The ~~Division~~Department may, in individual cases, upon the recommendation of the Board, waive a portion of the examination requirements after consideration of the quality of an applicant's engineering education and experience, including whether he or she has graduated from an approved engineering program, has achieved special

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honors or awards, has had articles published in professional journals, has participated in the writing of textbooks relating to professional engineering, and any other attribute which the Board accepts as evidence that such applicant has outstanding and proven ability in the practice of professional engineering.

~~9)10)~~ Acceptable Experience

- A) Applicants for endorsement having obtained the following acceptable experience, in accordance with Section 1380.230, prior to taking the Principles and Practice of Engineering Examination shall be considered in compliance with the experience requirements of Section 10 of the Act:
- i) Under Section 10(a) of the Act, at least 3 years and 9 months of acceptable experience after receipt of the baccalaureate degree, or
 - ii) Under Section 10(b) of the Act, at least 7 years and 9 months of acceptable experience after receipt of the baccalaureate degree.
- B) Applicants not meeting the requirements of subsection (a)(10)(A) at the time of original or subsequent examination shall retake the Principles and Practice of Engineering Examination after meeting the necessary requirements.

~~10)11)~~ Appendix A of this Part outlines the licensure requirements in force during various periods and should be consulted by the applicant to aid in the evaluation of his/her qualifications.

- b) The ~~Division~~Department shall examine each endorsement application to determine whether the qualifications of the applicant at the time of original or subsequent licensure were substantially equivalent to the requirements then in force in this state. The ~~Division~~Department shall either issue a license by endorsement to the applicant or notify such applicant of the reasons for the denial of the application. An applicant not qualified for licensure by endorsement will automatically be reviewed under the provisions of Section 1380.250.

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- c) When the accuracy of any submitted documentation [listed in subsection \(a\)](#), or the relevance or sufficiency of the course work or experience is questioned by the [DivisionDepartment](#) or the Board, because of lack of information, discrepancies or conflicts in information given or a need for clarification, the applicant seeking a license will be requested to:
- 1) Provide such information as may be necessary;
 - 2) Appear for an oral interview before the Board; and/or
 - 3) Applicants who were licensed prior to January 1, 1996, upon review of the educational requirements may be required to have their education evaluated at their expense as set forth in subsection (a)(7).
- d) The [DivisionDepartment](#) shall either issue a license by endorsement to the applicant or notify such applicant of the reasons for the denial of the application. An applicant not qualified for licensure by endorsement will automatically be reviewed under the provisions of Section 1380.250.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 1380.285 Inactive Status

- a) Any licensed professional engineer who notifies the [DivisionDepartment](#) in writing on forms prescribed by the [DivisionDepartment](#) may elect to place his [or her](#) license on inactive status and shall be excused from the payment of renewal fees until he [or she](#) notifies the [DivisionDepartment](#) in writing of his [or her](#) desire to resume active status.
- b) Any licensee seeking restoration from inactive status shall do so in accordance with Section 1380.270 of this Part.
- c) Any licensed professional engineer whose license is on inactive status shall not practice engineering in the State of Illinois. Practicing or offering to practice on a license which is on inactive status shall be considered unlicensed activity and shall be grounds for discipline pursuant to Section 24 of the Act.

(Source: Amended at 33 Ill.Reg. _____, effective _____)

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Section 1380.290 Professional Design Firm

- a) Persons who desire to practice professional engineering in this State in the form of a corporation, professional service corporation, partnership, limited liability company, limited liability partnership, or sole proprietorship (if the sole proprietorship is conducting or transacting business under an assumed name in accordance with the Assumed Business Name Act [805 ILCS 405]) shall, in accordance with Section 23 of the Act, file an application with the [DivisionDepartment](#), on forms provided by the [DivisionDepartment](#), together with the following:
- 1) For Corporations or Professional Service Corporations. (Registration as a professional design firm shall meet the registration requirements of Section 12 of the Professional Service Corporation Act [805 ILCS 10/12].)
 - A) The name of the corporation and its registered address, the names of all members of the board of directors, and the name of the state and license number for each director who is a licensed design professional.
 - B) A copy of the Articles of Incorporation bearing the seal of the office, in the jurisdiction in which the Corporation is organized, whose duty it is to register corporations under the laws of that jurisdiction. If it is a foreign corporation, a copy of the certificate of authority to transact business in this State issued by the Secretary of State is also required. The purpose clause of the Articles of Incorporation or certificate of authority shall designate that the corporation is authorized to provide engineering services. Each corporation shall remain active and in good standing with the Secretary of State in order to maintain a professional design firm registration.
 - C) A signed and dated resolution of the board of directors of the corporation designating a regular full-time employee of the corporation who is an Illinois licensed professional engineer as the managing agent in charge of the engineering activities in Illinois. The Illinois license number of the professional engineer designated as the managing agent shall also be included in the resolution.

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- D) A copy of the authority to transact business under the Assumed Business Name Act issued by the Secretary of State for any assumed names of the corporation, if applicable.
 - E) A certificate of good standing from the Secretary of State and a copy of the latest annual report, if applicable.
- 2) For Partnerships.
- A) General
 - i) A copy of the signed and dated partnership agreement authorizing the partnership to provide professional engineering services. The agreement shall contain the name of the partnership, its business address and the names of all general partners. The name of the state in which each partner is licensed as a design professional and the license number shall be listed on the application.
 - ii) A signed and dated resolution of the general partners designating a regular full-time employee of the partnership who is an Illinois licensed professional engineer as the managing agent in charge of the engineering activities in this State. The license number of the managing agent shall be included in the resolution.
 - iii) A copy of the partnership documentation bearing the stamp of the county clerk where the partnership has been filed.
 - iv) A letter or certificate from the county clerk where an assumed name has been filed, if applicable.
 - B) Limited Partnership
 - i) A copy of the signed and dated partnership agreement indicating that it has been filed with the Secretary of State authorizing the partnership to provide professional engineering services. The partnership agreement shall contain the name of the partnership, its business address

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and the name of each partner. The name of the state in which each partner is licensed as a design professional and the license number shall be listed on the application.

- ii) A signed and dated resolution adopted by the partners designating a full-time employee of the partnership who is an Illinois licensed professional engineer in this State as the managing agent in charge of the engineering services. The Illinois license number of the professional engineer designated as the managing agent shall also be included in the resolution.
 - iii) A certificate of good standing from the Secretary of State and a copy of the latest annual report, if applicable.
 - iv) A copy of the authority to transact business under the Assumed Business Name Act issued by the Secretary of State for any assumed names of the partnership, if applicable.
- 3) For Limited Liability Companies or Limited Liability Partnerships.
- A) An application containing the name of the limited liability company or partnership, the business address and the members/partners of the company/partnership, the name of the state in which each is licensed and the license number of each design professional who is a member or partner.
 - B) A signed and dated resolution of the members or partners designating a regular full-time employee of the company who is an Illinois licensed professional engineer as the managing agent in charge of the engineering activities in this State. The license number of the managing agent shall also be included in the resolution.
 - C) A copy of the operating agreement or partnership agreement filed with the Secretary of State stating the company or partnership is authorized to offer engineering services.

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- D) A copy of the authority to transact business under the Assumed Business Name Act issued by the Secretary of State for any assumed names of the limited liability company or partnership, if applicable.
 - E) A certificate of good standing from the Secretary of State and a copy of the latest annual report, if applicable.
- 4) For Sole Proprietorships with an Assumed Name.
- A) An application containing the name of the sole proprietorship and its business address and the name and Illinois license number of the professional engineer who owns and operates the business.
 - B) A letter or certificate from the county clerk where an assumed name has been filed.
- 5) A list of all office locations at which the corporation, professional service corporation, limited liability company/partnership, partnership or sole proprietorship provides engineering services.
- 6) The fee required in Section 1380.275.
- b) A professional design firm may designate more than one managing agent in charge of professional engineering activities. However, a licensee designated as the managing agent may not serve as a managing agent for more than one corporation, professional service corporation, limited liability company/partnership or partnership doing business in Illinois.
- c) Upon receipt of the ~~above~~ documents [listed in subsection \(a\)](#) and review of the application, the ~~Division~~[Department](#) shall issue a registration authorizing the corporation, professional service corporation, limited liability company/partnership, partnership or sole proprietorship to engage in the practice of professional engineering or notify the applicant of the reason for the denial of the application.
- d) Each corporation, professional service corporation, limited liability company/partnership, partnership or sole proprietorship shall be responsible for notifying the ~~Division~~[Department](#) within 30 days after any changes in:

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- 1) The membership of the board of directors, members/partners of the limited liability company/partnership or the general partners;
 - 2) The licensure status of the general partners, members/partners of the limited liability company/partnership or any of the licensed design professional members of the board of directors; and
 - 3) An assumed name.
- e) Each corporation, professional service corporation, limited liability company/partnership or partnership shall be responsible for notifying the ~~Division~~Department, in writing, by certified mail, within 10 business days after the termination or change in status of the managing agent. Thereafter, the corporation, professional service corporation, limited liability company/partnership or partnership, if it has so informed the ~~Division~~Department, has 30 days to notify the ~~Division~~Department of the name and license number of the professional engineer licensed in Illinois who is the newly designated managing agent.
- f) Any failure to notify the ~~Division~~Department as required in subsections (d) and (e) or any failure of the corporation, professional service corporation, limited liability company/partnership or partnership to continue to comply with the requirements of Section 23 of the Act will subject the corporation, limited liability company or partnership to the loss of its registration to practice professional engineering in Illinois.
- g) Sole Proprietorships. A sole proprietorship who is conducting or transacting business under the real name of the professional engineer who has an active Illinois license will not be required to file an application and comply with the requirements set forth in this Section. However, if the sole proprietorship operates under an assumed name, the sole proprietor shall file an application in accordance with subsection (a)(4). Any sole proprietorship not owned and operated by an Illinois licensed professional engineer shall be prohibited from offering engineering services to the public.
- h) In addition to the seal requirements in Section 14 of the Act, all documents or technical submissions prepared by the design firm shall contain the design firm registration number issued by the ~~Division~~Department.

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(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 1380.296 Acts Constituting the Practice of Professional Engineering Pursuant to Section 4 of the Act

- a) The term "technical submissions" is defined by the Board as including, but not limited to, documents submitted for approval to any authority having jurisdiction, and means designs, drawings and specifications that establish the standards of quality for materials, workmanship and equipment and the construction systems, studies and other technical reports prepared in the course of a design professional's practice.
- b) Design/Build
The design/build project delivery process is a method whereby an entity signs a single contract to provide a combination of professional engineering and construction services.
- ~~c)~~b) The design/build entity will not be required to register as a professional design firm pursuant to Section 23 of the Act only if the services in the design/build project delivery process are provided by the entity in accordance with the following:
 - 1) A professional engineer licensed or a professional design firm registered in Illinois independently contracts with the entity and participates substantially in all material aspects of the offering and providing of services relating to any bid process, contract negotiations, design, consultation, development, preparation and coordination of technical submissions, and verification of adherence to technical submissions and completion.
 - 2) At the time of offering services, a written disclosure shall be given to the client by the entity identifying the licensed professional engineer who will be engaged by and is contractually responsible to the entity offering design/build project services.
 - 3) The entity agrees that the licensed professional engineer will have direct supervision of the professional engineering work and the engineering services will not be terminated on the project without immediate

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replacement by another licensed professional engineer mutually agreed to by the client and the entity.

- d)e) A design/build entity shall not offer to provide or provide professional engineering services, unless the design/build entity is an Illinois licensed professional engineer or professional design firm. Offering to provide professional engineering services shall include, but shall not necessarily be limited to, any tender of engineering services either independently or in combination with construction services by any sign, card, advertisement or other device that might indicate to the public that the entity is entitled to provide engineering services.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 1380.300 Standards of Professional Conduct

In order to safeguard life, health and property, to promote the public welfare, and to establish and maintain a high standard of integrity in the practice of professional engineering, the following Standards of Professional Conduct shall be binding on every person holding a license as a professional engineer and on all corporations authorized to practice professional engineering in this State.

- a) Professional Responsibility. Licensees shall be responsive to the needs of clients and employers, but shall hold paramount life, health, property and the welfare of the public.
- 1) Licensees shall at all times recognize that their primary obligation is to protect the life, health, property and welfare of the public. If their professional judgment is overruled under circumstances where the life, health, property or welfare of the public is endangered, they shall notify their client or employer and such authority(ies) as may be appropriate (which may include the Division~~Department~~ or other law enforcement agencies).
 - 2) Licensees shall approve and seal only those designs prepared by them or under their direct supervision and found to be safe for the public health, property and welfare. In circumstances where a licensee in responsible charge of the work is unavailable to complete the work in instances such as death, incapacity, termination of employment or relocation, a successor

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licensee may take responsible charge by performing all professional services, including design criteria, recalculations, code research and compliance, and any other necessary and appropriate changes, in order to complete the project. The successor licensee shall have control of and responsibility for the work product and the signed and sealed originals of all documents.

- 3) Licensees shall not reveal confidential facts, data or information obtained in a professional capacity without the prior consent of the client, except as authorized or required by law.
 - 4) Licensees shall not permit the use of their name or firm's name, nor shall they be associated in business ventures with persons or firms which they have reason to believe to be engaging in fraudulent or dishonest business practices.
 - 5) Licensees having knowledge of any alleged violation of any of this Part shall cooperate with the [DivisionDepartment](#), furnishing such information or assistance as may be required to conduct an investigation resulting from a complaint.
- b) Competence. Licensees shall perform services only in areas of their competence.
- 1) Licensees shall undertake assignments only when qualified by education and experience in the specific technical field of engineering involved.
 - 2) Licensees shall not affix their signature or seal to any plans or documents dealing with subject matter in which they lack competence, nor to any plan or document not prepared by them or under their direct supervisory control.
 - 3) Licensees may accept an assignment outside of their fields of competence to the extent that their services are restricted to those phases of the project in which they are qualified, and to the extent that all other phases of the project will be performed by registrants qualified in those phases.
- c) Professional Integrity. Licensees shall issue professional statements in an objective and truthful manner.

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- 1) Licensees shall be completely objective and truthful in all professional reports, statements or testimony.
 - 2) Licensees may express publicly a professional opinion on technical subjects only when it is founded upon adequate knowledge of the facts and a background of competence in the subject matter.
 - 3) A licensee, when acting as a representative of an individual or organization, shall issue no statements, criticisms, or arguments on engineering matters without first prefacing such comments by explicitly identifying on whose behalf the comments will be made. When the licensee is acting as a consultant, expressing a professional opinion, such opinion shall be prefaced by complete personal identification as a consultant, without necessarily naming the client. Such licensee shall reveal any personal interest in the matter.
- d) Conflict of Interest. Licensees shall act in professional matters for each employer or client as faithful agents or trustees and shall avoid conflicts of interest.
- 1) Licensees shall conscientiously avoid conflicts of interest with their employers or clients. Whenever conflicts of interest appear unavoidable; however, licensees shall disclose promptly to their employers or clients any business association, interest or circumstance which may influence judgment or quality of services.
 - 2) Licensees shall not accept compensation, financial or other, from more than one party for services on a project or for services pertaining to a project unless the licensee makes full disclosure and receives consent of all interested parties.
 - 3) Licensees shall not solicit or accept financial or other valuable consideration from any material supplier or equipment supplier for specifying the supplier's products except when the licensee is a known employee or agent of the supplier.
 - 4) Licensees shall not solicit or accept gratuities, directly or indirectly, from any contractor, architect, engineer or other party dealing with the licensee's employer or client in connection with work for which the licensee is responsible.

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- 5) Licensees in public service as members, advisors or employees of a governmental body or department shall not participate in decisions with respect to professional services solicited or provided by them or their organization.
 - 6) Licensees shall not solicit or accept a professional contract from a governmental body on which a principal or officer of their firm or organization serves as a member.
- e) Employment Solicitation. Licensees shall avoid improper solicitation of professional employment.
- 1) Licensees shall not offer to pay, either directly or indirectly, any commission, political contribution, gift or other consideration in order to secure professional assignments.
 - 2) Licensees shall not falsify or permit misrepresentation of their, or their associates', academic or professional qualifications. They shall not misrepresent or exaggerate their degree of responsibility in or for the subject matter of prior assignments. Brochures or other presentations incident to the solicitation of employment shall not misrepresent pertinent facts concerning employers, employees, associates, joint ventures or past accomplishments with the intent or purpose of enhancing their qualifications and/or their work.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 1380.305 Professional Engineer Complaint Committee

- a) The Professional Engineer Complaint Committee of the State Board of Professional Engineers authorized by Sections 7 and 26 of the Act shall be composed of 2 members the State Board of Professional Engineers, a Supervisor over Design Investigations and a Chief of Prosecutions over Design Prosecutions. The Director of Enforcement shall designate the Supervisor and Chief assigned to the Complaint Committee.
- b) The Complaint Committee shall meet at least once every 2 months to exercise its functions and duties set forth in subsection (c) ~~below~~. The Complaint Committee

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may meet concurrently with the Complaint Committees of the Architecture Licensing Board, Land Surveyors Examining Board and the Structural Engineering Board to discuss interrelated professional matters. The Complaint Committee shall make every effort to consider expeditiously and take prompt action on each case file.

- c) The Complaint Committee shall have the following duties and functions:
- 1) To review investigative case files after an initial inquiry into the involved parties and their licensure status have been obtained. "Case file" means the allegation made against an involved party that resulted in a preliminary inquiry and other information being obtained in order to determine whether an investigation should be initiated or prosecution pursued. A "Formal Complaint" means the notice of allegations and charges or basis for licensure denial which begins the formal proceedings.
 - 2) To refer the case file to the Supervisor over the Design Investigators for further action. The Complaint Committee shall give the Supervisor an indication as to the prosecutorial merit and relative severity of the allegations to aid in the prioritization of investigative activity.
 - 3) To recommend that a case file be closed.
 - 4) To recommend that an Administrative Warning Letter be issued and the case file closed.
 - 5) To refer the case file to Prosecutions for review and action.
 - 6) To report the actions of the Complaint Committee at each Board meeting and to present enforcement statistics such as the type of alleged violation.
- d) In determining what action to take or whether to proceed with investigation and prosecution of a case file, the Complaint Committee shall consider the following factors, but not be limited to: the effect on the public's health, safety and welfare; the sufficiency of the evidence presented; prosecutorial merit; and sufficient cooperation from complaining parties.
- e) At any time after referral to Prosecutions, the ~~Division~~Department may enter into negotiations to resolve issues informally by way of a Consent Order. Factors to

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be considered in deciding whether to enter into settlement negotiations shall include, but not be limited to: the effect on the public's health, safety and welfare caused by the respondent's alleged conduct; sufficient investigation of the case; prosecutorial merit; relative severity of the respondent's alleged conduct; and past practices of the ~~Division~~Department.

- f) No file shall be closed nor Formal Complaint dismissed except upon recommendation of the Complaint Committee and/or approval by the State Board of Professional Engineers. Those case files that previously have been before the Board and are the subject of a Consent Order or Formal Order of the Director may be closed without further recommendation or approval of the State Board of Professional Engineers or the Complaint Committee.
- g) Disqualification of a State Board of Professional Engineers member.
- 1) A Board member shall be recused from consideration of a case file or Formal Complaint when the Board member determines that a conflict of interest or prejudice would prevent that Board member from being fair and impartial.
 - 2) Participation in the initial stages of the handling of a case file, including participation on the Complaint Committee and in informal conferences, shall not bar a Board member from future participation or decision making relating to that case file.
- h) An informal conference is the procedure established by the ~~Division~~Department that may be used for compliance review, fact finding, discussion of the issues, resolving case files, licensing issues or conflicts prior to initiating any Formal Complaint or formal hearing. An informal conference may only be conducted upon agreement of both parties. Informal conferences shall be conducted by a ~~Division~~Department attorney and shall include a ~~member or members~~member(s) of the Board. Board members shall be scheduled for informal conferences on a rotating basis.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 1380.310 Renewals

- a) Every license issued to an individual under the Act shall expire on November 30

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of each odd numbered year. Beginning with the November 30, 2005 renewal and every renewal thereafter, a licensed professional engineer shall comply with the professional development hours specified in Section 1380.325 of this Part. The holder of a license may renew such license for a two-year period during the month preceding the expiration date thereof by paying the fee required by Section 1380.275.

- b) It is the responsibility of each licensee to notify the ~~Division~~Department of any change of address. Failure to receive a renewal form from the ~~Division~~Department shall not constitute an excuse for failure to pay the renewal fee and to renew one's license.
- c) Every license issued to a professional design firm under the Act shall expire on April 30 of each odd-numbered year. The holder of such license may renew that license for a 2-year period during the month preceding the expiration date thereof by paying the required fee.
- d) Practicing or offering to practice on a license which has expired shall be considered unlicensed activity and shall be grounds for discipline pursuant to Section 24 of the Act.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 1380.320 Granting Variances

- a) The Director may grant variances from ~~this Part~~these rules in individual cases ~~when~~where he ~~or she~~ finds that:
 - 1) The provision from which the variance is granted is not statutorily mandated;
 - 2) No party will be injured by the granting of the variance; and
 - 3) The rule from which the variance is granted would, in the particular case, be unreasonable or unnecessarily burdensome.
- b) The Director shall notify the Board of the granting of such variance, and the reasons ~~for granting the variance~~therefor, at the next meeting of the Board.

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(Source: Amended at 33 Ill. Reg. ____, effective _____)

Section 1380.325 Professional Development

The professional development required as a condition for license renewal under the Professional Engineering Act of 1989 is set forth in this Section. All professional engineers shall meet these requirements.

- a) Professional Development Hours Requirements
 - 1) Beginning with the November 30, 2005 renewal and every renewal thereafter, in order to renew a license as a professional engineer, a licensee shall be required to complete 30 professional development hours (PDH) relevant to the practice of professional engineering. Failure to comply with these requirements may result in non-renewal of the professional engineer's license or other disciplinary action, or both.
 - 2) A prerenewal period is the 24 months preceding November 30 of each odd-numbered year.
 - 3) One professional development hour shall equal [a minimum of 50 minutes](#) of instruction or participation. If a program is taken that awards continuing education units (CEU) rather than professional development hours, one CEU equals 10 professional development hours of class in an approved continuing education course.
 - 4) A renewal applicant shall not be required to comply with the professional development requirements for the first renewal of an Illinois license.
 - 5) Professional engineers licensed in Illinois but residing and practicing in other states shall comply with the professional development requirements set forth in this Section.
 - 6) Professional development units used to satisfy the professional development requirements of another jurisdiction may be applied to fulfill the professional development requirements of the State of Illinois if they are substantially equivalent.
- b) Professional Development Activities shall include, but not be limited to:

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- 1) Successful completion of a college or university course in the area of professional engineering, related sciences and engineering ethics. One semester hour completed shall equal 15 PDHs and one quarter hour shall equal 10 PDHs;
 - 2) Successful completion of professional engineering courses or programs in which professional development hours are earned;
 - 3) Active participation and successful completion of professional engineering programs, seminars, tutorials, workshops, short courses, on-line or in-house courses. Credit will be given for self study courses only if an examination has been completed by the licensee and graded by the sponsor;
 - 4) Attending program presentations at related technical or professional meetings;
 - 5) Teaching or instructing. Teaching credit is valid for teaching a course or seminar for the first time only. Two PDHs will be earned for every hour of teaching. This does not apply to faculty in the performance of their regularly assigned duties;
 - 6) Authoring papers or articles that appear in nationally circulated journals or trade magazines or presented to a [university](#), professional society or organization. ~~A maximum~~ 10 PDHs per paper or presentation, ~~but not both, per renewal~~ are allowed for this activity;
 - 7) Receiving a patent within the renewal period. Ten PDHs may be earned per patent;
 - 8) Active participation on a committee or holding an office in a professional or technical society. Two PDHs will be awarded per committee membership or office held. A maximum of 8 PDHs may be accepted per prerenewal period.
- c) All professional development programs, activities or courses shall:

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- 1) Contribute to the advancement, extension or enhancement of the professional skills and/or scientific knowledge of the licensee in practice of professional engineering;
 - 2) Foster the enhancement of general or specialized practice and values of professional engineering, related sciences and engineering ethics;
 - 3) Be developed and presented by persons with education and/or experience in the subject matter of the program.
- d) It shall be the responsibility of a licensee to maintain a record of PDHs for 6 years that includes, but is not limited to, the following:
- 1) The name and address of the sponsor or provider, the number of hours attended in each program, the date and place of the program and a certificate of attendance; or
 - 2) A log of activities that includes the date and number of hours claiming as PDHs, a brief statement of the subject matter, printed program schedules, registration receipts or other proof of participation; or
 - 3) Transcripts or records of professional development hours maintained by an acceptable provider as set forth in subsection (e).
- e) Acceptable providers for structured educational activities shall include, but not be limited to:
- 1) National Council of Examiners for Engineering and Surveying (NCEES);
 - 2) National Society of Professional Engineers (NSPE);
 - 3) Illinois Society of Professional Engineers (ISPE);
 - 4) [American Council of Engineering Companies of Illinois \(ACEC-IL\)](#)~~Consulting Engineers Council of Illinois (CECI)~~;
 - 5) Technical or professional societies or organizations relating to professional engineering, such as the American Society of Civil Engineers (ASCE);

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- 6) Colleges, universities or other educational institutions;
- 7) Other technical or professional societies or organizations including manufacturers.
- f) The [DivisionDepartment](#) shall not pre-approve individual courses or programs.
- g) Certification of Compliance with CE Requirements
 - 1) Each renewal applicant shall certify, on the renewal application, full compliance with the professional development requirements set forth in this Section.
 - 2) The [DivisionDepartment](#) may require additional evidence demonstrating compliance with the CE requirements as set forth in subsection (d). This additional evidence shall be required in the context of the [Division'sDepartment's](#) random audit. It is the responsibility of each renewal applicant to retain or otherwise produce evidence of compliance.
 - 3) When there appears to be a lack of compliance with CE requirements, an applicant shall be notified in writing and may request an interview with the Board. At that time the Board may recommend that steps be taken to begin formal disciplinary proceedings as required by Section 10-65 of the Illinois Administrative Procedure Act [5 ILCS 100/10-65].
- h) Restoration of Nonrenewed License. Upon satisfactory evidence of compliance with PDH requirements, the [DivisionDepartment](#) shall restore the license upon payment of the required fee as provided in Section 1380.275.
- i) Waiver of PDH Requirements
 - 1) Any renewal applicant seeking renewal of a license without having fully complied with these PDH requirements shall file with the [DivisionDepartment](#) a renewal application along with the required fee set forth in Section 1380.275, a statement setting forth the facts concerning non-compliance and request for waiver of the PDH requirements on the basis of these facts. A request for waiver shall be made prior to the renewal date. If the [DivisionDepartment](#), upon the written

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recommendation of the Board, finds from the affidavit or any other evidence submitted that extreme hardship has been shown for granting a waiver, the ~~Division~~Department shall waive enforcement of PDH requirements for the renewal period for which the applicant has applied.

- 2) Extreme hardship shall be determined on an individual basis by the Board and be defined as an inability to devote sufficient hours to fulfilling the PDH requirements during the applicable prerenewal period because of:
 - A) Full-time service in the armed forces of the United States of America during a substantial part of the prerenewal period;
 - B) An incapacitating illness documented by a statement from a currently licensed physician;
 - C) A physical inability to travel to the sites of approved programs documented by a currently licensed physician; or
 - D) Any other similar extenuating circumstances.
- 3) Any renewal applicant who, prior to the expiration date of the license, submits a request for a waiver, in whole or in part, pursuant to the provisions of this Section shall be deemed to be in good standing until the final decision on the application is made by the ~~Division~~Department.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

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- 1) Heading of the Part: Illinois Prescribed Burning Act
- 2) Code Citation: 17 Ill. Adm. Code 1565
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
1565.10	New Section
1565.20	New Section
1565.30	New Section
1565.40	New Section
1565.50	New Section
1565.60	New Section
1565.70	New Section
1565.EXHIBIT A	New Section
- 4) Statutory Authority: Implementing and authorized by the Illinois Prescribed Burning Act [525 ILCS 37]
- 5) A Complete Description of the Subjects and Issues Involved: P.A. 95-108, effective, August 13, 2007, established the Illinois Prescribed Burning Act. This rule contains regulations pertaining to the implementation of a program for Certified Prescribed Burn Managers, lays out standards for burn prescriptions and provides provisions for conducting prescribed burns.
- 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 Objectives: Local governments, such as municipalities with park departments, forest preserve districts, park districts or conservation districts that conduct prescribed burns to manage land for its natural resource values and to reduce fuel loads would voluntarily be required to follow this rule resulting in appropriately trained and experienced prescribed burn leaders and benefit from the limits of liability

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described in 525 ILCS 37/15 for those burns.

- 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:

Stanley Yonkauski, Jr.
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: Forestry, land management and agricultural businesses, local governments, such as municipalities with park departments, forest preserve districts, park districts or conservation districts, that conduct prescribed burns and desire to benefit from the limits of liability described in 525 ILCS 37/15, would be required to follow this rule. Entities would be exempt from the certification requirements when burning on their own property or that of another with permission, but would not receive the aforementioned limit of liability.
- B) Reporting, bookkeeping or other procedures required for compliance: A written prescription must be prepared, approved by a certified prescribed burn manager and followed during a prescribed burn. A burn report must be written and maintained by the certified prescribed burn manager for 5 years after the fire. Burn reports must be submitted to the Illinois Department of Natural Resources in the event of a significant escaped fire or significant injury. When applying for certification as a prescribed burn manager, an applicant must submit an application that will contain some or all of the following: course completion certificates, prescribed burn reports, performance evaluations and other documentation of training and experience.
- C) Types of professional skills necessary for compliance: Participants in this program will be required to have skills, training and experience in wild land fire suppression, prescribed burning and the incident command system.

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

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

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TITLE 17: CONSERVATION
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES
SUBCHAPTER d: FORESTRYPART 1565
ILLINOIS PRESCRIBED BURNING ACT

Section

1565.10	Definitions
1565.20	Certified Prescribed Burn Manager
1565.30	Burn Prescriptions
1565.40	Notifications and Permits
1565.50	Conducting Prescribed Burns
1565.60	Records and Reporting
1565.70	Administration of Act
1565.EXHIBIT A	Certified Prescribed Burn Manager Application

AUTHORITY: Implementing and authorized by the Illinois Prescribed Burning Act [525 ILCS 37].

SOURCE: Adopted at 33 Ill. Reg. _____, effective _____.

Section 1565.10 Definitions

"Act" means the Illinois Prescribed Burning Act [525 ILCS 37].

"Apprentice Prescribed Burn Manager" is a person at a prescribed burn that has successfully completed the training classes described under Section 1565.20(b)(1), participated in prescribed burns as described in Section 1565.20(b)(2), has been accepted by a certified prescribed burn manager as the apprentice prescribed burn manager for the prescribed burn, and is assuming the functions of a certified prescribed burn manager during the prescribed burn under the direct supervision of a certified prescribed burn manager as a training requirement pursuant to Section 1565.20(b)(3).

"Burn Personnel" means any paid person or volunteer involved in conducting prescribed burning under the Act.

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"Central Dispatching Agency" is an agency that provides dispatching services for a number of emergency agencies (fire, law enforcement or ambulance) in a defined geographic area.

"Certificate" is a written certificate and number issued by the Department identifying a person as a certified prescribed burn manager and is considered a license subject to revocation proceedings described in Subpart C of 17 Ill. Adm. Code 2530 (Revocation Procedures for Conservation Offenses).

"Certified Prescribed Burn Manager" is an individual who conducts the activities described in Section 1565.20(a), and successfully completes an approved training program and receives proper certification as described in Section 1565.20(b) through (f).

"Department" means the Illinois Department of Natural Resources.

"Director" means the Director of the Department.

"Escaped Fire" means any fire that goes beyond the area described in the burn prescription and requires outside resources to contain or that burns onto adjoining landowner's land not included in the burn prescription.

"Incident Commander", "Incident Command Authority" and "Unified Command" are terms defined by the National Inter-agency Incident Management System (NIIMS) and are used in this Part to describe the person or persons directly responsible for control and suppression of a prescribed burn or an escaped fire resulting from a prescribed burn.

"Landowner" includes the owner, owning agency or other legal entity owning a parcel of land where a prescribed burn is executed or is proposed to be executed, their designated agent or land manager.

"Prescribed Burn Manager Certification Board" is a Board of five representatives whose job responsibilities include natural areas stewardship, wildlife habitat management or forest management and who have experience with prescribed burn management or incident command. The Board shall be made up of three representatives designated by the Director, one representative designated by the Illinois Nature Preserves Commission and one representative designated by the Office of the State Fire Marshal.

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"Prescribed Burn Report" is the written report and evaluation of a prescribed burn, including the information required in Section 1565.60(c) that is prepared and signed by the certified prescribed burn manager after a prescribed burn is completed.

"Prescribed Burning" is the planned application of fire to naturally occurring vegetative fuels, under specified environmental conditions and following appropriate precautionary measures, that causes the fire to be confined to a predetermined area and accomplishes the planned land management objectives.

Section 1565.20 Certified Prescribed Burn Manager

- a) A certified prescribed burn manager performs the following activities:
 - 1) writes and/or approves burn prescriptions as described in Section 1565.30;
 - 2) serves as the direct supervisor of the burn personnel at the scene of a prescribed burn and is responsible for implementing a burn prescription as described in Section 1565.40; and
 - 3) supervises and trains an apprentice prescribed burn manager as described in Section 1565.20(c).
- b) To become a certified prescribed burn manager, a person must complete the following requirements and have a valid Illinois Certified Prescribed Burn Manager Certificate issued by the Department pursuant to Section 1565.70.
 - 1) Successfully complete:
 - A) the following National Wildfire Coordinating Group Wildland Fire Training Courses or equivalents:
 - i) Basic Incident Command System (I-100);
 - ii) Fire Fighter Training (S-130); and
 - iii) Wildland Fire Behavior (S-190); or

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- B) a specialized Illinois Prescribed Burning Manager Course that incorporates pertinent information in the courses listed in subsection (b)(1)(A), along with information on prescribed burning in Illinois that has been approved by the Prescribed Burn Manager Certification Board;
- 2) Participate in five prescribed burns that will be documented on a Certified Prescribed Burn Manager Application;
 - 3) Successfully complete two prescribed burns as an apprentice prescribed burn manager under the supervision of a certified prescribed burn manager;
 - 4) Submit the following to the Illinois Department of Natural Resources, Attention: Prescribed Burn Manager Certification, One Natural Resources Way, Springfield IL 62702-1271:
 - A) A Certified Prescribed Burn Manager Application (the Application);
 - B) A \$50 fee (State of Illinois employees are exempt from the fee); and
 - C) Copies of all course certificates and relevant prescribed burn prescriptions and prescribed burn report forms or an affidavit described in Section 1565.20(d) for the burns required in Section 1565.20(b)(3) documenting the experience and apprenticeship.
- c) To become an apprentice, a person must apply in writing and be accepted by a certified prescribed burn manager who will agree to supervise the training in conducting the burn. An apprentice prescribed burn manager shall assume the functions of a certified prescribed burn manager during a burn under the direct supervision of a certified prescribed burn manager. An apprentice shall sign the prescribed burn report as the "apprentice prescribed burn manager" and note his or her experience on the Application. The certified prescribed burn manager supervising the apprentice shall also provide an evaluation of the performance of the apprentice and certify the successful completion of the burn by the apprentice on the prescribed burn report. The signatures on the prescribed burn report shall

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serve as documentation of the number of times an apprentice serves as an apprentice prescribed burn manager.

- d) Prior to December 31, 2010, persons who have submitted an affidavit along with their Application attesting to their participation in at least seven burns, including at least five at which they have served as the Certified Prescribed Burn Manager prior to July 1, 2009, shall be considered to have completed the apprenticeship and experience requirements.
- e) Persons who hold certifications from other states whose training meets or exceeds the requirements of this Part can receive an Illinois Certified Prescribed Burn Manager Certificate by submitting an Application, proof of certification in another state and the \$50 fee to: Illinois Department of Natural Resources, Attention: Prescribed Burn Manager Certification, One Natural Resources Way, Springfield IL 62702-1271.
- f) Persons who have received the certification as a Prescribed Fire Burn Boss Type 1 (RXB1) or Type 2 (RXB2) through the NIIMS Wildland Fire Qualification System can receive an Illinois Certified Prescribed Burn Manager Certificate by submitting an Application, proof of the RXB1 or RXB2 certification and the \$50 fee to: Illinois Department of Natural Resources, Attention: Prescribed Burn Manager Certification, One Natural Resources Way, Springfield IL 62702-1271.

Section 1565.30 Burn Prescriptions

The burn prescription shall include the following information:

- a) a site name or other designation for the prescribed burn area;
- b) location of the prescribed burn, including county, civil township, township range and section, and a map showing the location of the burn, firebreaks, hazards, staging area and other features specific to the execution of the burn;
- c) the name, address and phone number of the owner or manager of the land where the burn is to take place;
- d) the time frame when the prescribed burn is to take place;
- e) the purpose and objectives for the prescribed burn;

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- f) a description of the area to be burned, including, but not necessarily limited to, size in acres, fuel type, topography, known presence of endangered or threatened species, and presence of peat or high organic soils and mitigation measures to prevent or control ignition of those soils;
- g) the range of acceptable pre-ignition weather factors, including, but not limited to, air temperature, relative humidity, wind direction and wind velocity;
- h) the minimum number of burn personnel required;
- i) an outline of smoke sensitive areas and smoke mitigation methods;
- j) the equipment required, other than standard hand tools;
- k) a communication plan and equipment for the prescribed burn;
- l) a method of fire line construction;
- m) copies of required permits;
- n) plans for making notifications as described in Section 1565.40;
- o) contingency plans for escaped fires, including water sources, rendezvous location for fire departments and paramedics, other fire fighting resources available, vulnerable infrastructure, escape routes and safety zones;
- p) emergency contact information, including, at a minimum, the closest intersection, fire, paramedic and police emergency and non-emergency dispatch contact information;
- q) name, certificate number and contact information for the certified prescribed burn manager approving the burn prescription;
- r) a signature of a certified prescribed burn manager approving the burn prescription and the date of the signature; and
- s) the signature of a landowner approving the use of prescribed burning on the property. Approvals of prescribed burning would also be considered valid if

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prescribed burning is included on another land management plan or other document approved in writing by the landowner.

Section 1565.40 Notifications and Permits

- a) The certified prescribed burn manager shall make a reasonable attempt to notify all adjoining landowners and occupants of the approximate time and date of the burn, using a method that is reasonably assured to provide notice before the planned prescribed burn. The method of notification to adjacent landowners shall be documented on the prescribed burn report. Any one of the following are considered reasonable attempts of notification and shall be considered in compliance with Section 15(5) of the Act and this Section; however, this list should not be construed to be the only acceptable ways to make this notification:
 - 1) posting the property to be burned;
 - 2) contacting or attempting to contact the adjoining landowner by phone, in person, delivery of a brochure or written notice to a residence or via mail or email; or
 - 3) publication of the intent and range of dates and approximate time in a newspaper published in the area of the burn.
- b) The certified prescribed burn manager shall notify, on the day of the burn, the local fire departments, county dispatcher, 911 dispatcher or other emergency dispatcher who has jurisdiction over the area including the prescribed burn. If a local agency is dispatched through a central dispatching agency, the prescribed burn manager will be considered in compliance with Section 15(4) of the Act and this Section if he or she has notified the central dispatching agency.
- c) The certified prescribed burn manager shall insure that all local, State and federal permits that are needed are obtained before a prescribed burn is conducted.

Section 1565.50 Conducting Prescribed Burns

- a) In order to ensure the safety of personnel and the public, a certified prescribed burn manager shall be present at the scene of all prescribed burns except where the landowner is conducting prescribed burning on his or her own lands or on the lands of another with the landowner's permission as authorized by Illinois law.

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- b) The certified prescribed burn manager shall obtain guidance from the National Weather Service (NWS) in identifying Fire Weather Watch and Red Flag Warning conditions available through the regional NWS offices of the National Oceanic and Atmospheric Agency. The determination by NWS of Fire Weather Watch and Red Flag Warning conditions for a designated area will require that the certified prescribed burn manager and other personnel exercise elevated caution during those conditions.
- c) The certified prescribed burn manager is responsible for reviewing and implementing the burn prescription, reviewing it with the burn personnel and the timely completion of the prescribed burn report. The certified prescribed burn manager shall discuss emergency procedures and plans with burn personnel and modify procedures and contingency plans if necessary.
- d) In the case of an escaped fire, the certified prescribed burn manager or his or her designee shall assess burn personnel status, contact outside agencies if necessary, and share information (e.g., aerial photos, burn prescription, resources available and access routes) with other agencies at the scene. A certified prescribed burn manager shall serve as Incident Commander and remain in command until command is transferred to another qualified person. The certified prescribed burn manager may serve in a Unified Command or relinquish Incident Command authority to other firefighting authorities at his or her discretion.
- e) When a person is conducting prescribed burning on his or her own lands or on lands of another with the landowner's permission, the person shall have a written burn prescription, make the notifications described in Section 1565.40, and conduct the burn as described in Section 1565.50(b) and (c).

Section 1565.60 Records and Reporting

- a) After each prescribed burn, a prescribed burn report shall be completed by the certified prescribed burn manager for the burn, or his or her designee, and provided to the landowner upon request and to any apprentice. The certified prescribed burn manager or his or her employer shall maintain a file of all prescribed burn prescriptions and prescribed burn reports for completed burns for a period of not less than five years after the completion of a burn. This file shall be made available to the Department upon request.

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- b) A prescribed burn report shall include:
- 1) a copy of the prescribed burn prescription;
 - 2) a map showing the area actually burned, control lines, wind direction, fire mosaic and other features specific to the execution of the burn;
 - 3) the date and time the prescribed burn took place, including ignition time, time of significant events and final mop up time;
 - 4) an evaluation of the burn, including a discussion of meeting burn objectives, changes or deviations from the prescribed burn prescription, injuries or damage to property if any, any emergency actions taken and other significant events;
 - 5) an evaluation of the performance of any apprentice prescribed burn manager that served on the burn;
 - 6) the pre-ignition weather factors and any other weather observations collected to verify conditions were within the burn prescription;
 - 7) the number of burn personnel involved;
 - 8) documentation of all notifications and permits obtained;
 - 9) information on any fire, paramedic and police emergency agencies that were requested and arrived on scene;
 - 10) name, certificate number and contact information for the certified prescribed burn manager; and
 - 11) a dated signature of the certified prescribed burn manager and any apprentice prescribed burn manager serving at the burn.
- c) If there are any injuries that require professional medical attention or damage to public or private property in excess of \$500, or if the prescribed burn becomes an escaped fire, the certified prescribed burn manager shall supply a copy of the prescribed burn report to the landowner, responding emergency agencies and, within 45 days after completion of the prescribed fire, to the Illinois Department

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of Natural Resources, Attention: Prescribed Fire Reports, One Natural Resources Way, Springfield IL 62702-1271.

Section 1565.70 Administration of Act

- a) Upon receipt of a completed Certified Prescribed Burn Manager Application, the required documentation of coursework, apprenticeship and experience described in Section 1565.20 and a fee of \$50, the Department shall issue an Illinois Certified Prescribed Burn Manager Certificate within 45 days or notify the applicant in writing of the reason the certificate was denied. Applicants who have been denied a certificate may re-apply after correcting any deficiencies in their original Application. Persons employed by the State of Illinois shall be exempt from the \$50 fee.
- b) Denial of a certificate may be appealed pursuant to 17 Ill. Adm. Code 2530.
- c) Any fees collected under this Part shall be deposited into the Forestry Development Fund.
- d) An Illinois Certified Prescribed Burn Manager Certificate may be revoked pursuant to the procedures described in 17 Ill. Adm. Code 2530 for serious and or continuing violations of the Act or this Part, falsification or misrepresentation on the Certified Prescribed Burn Manager Application or supporting documents, or a pattern of negligence in performing the duties of a certified prescribed burn manager.
- e) An organization or individual may petition the Department to approve coursework and training programs as an Illinois Prescribed Burn Manager Course by submitting to the Illinois Prescribed Burn Manager Certification Board a course syllabus, length of course and trainer qualifications demonstrating that the course meets the standards described in Section 1565.20(a)(1). The Board may require the submitter to provide additional information necessary to evaluate the program. The Board shall make a recommendation to the Director to approve or not approve the submitted program as an Illinois Prescribed Burn Manager Course.
- f) Periodically, but not less than annually, the Illinois Prescribed Burn Manager Certification Board shall meet to review prescribed burn reports submitted under this Part, review requirements of prescribed burn certification in other states and make a recommendation to the Director on whether other states' certification

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programs meet or exceed requirements in this Part to receive an Illinois Certified Prescribed Burn Manager Certificate; review this Part and make recommendations to the Director for any needed changes; and prepare reports on prescribed burning at the request of the Director.

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Section 1565.EXHIBIT A Certified Prescribed Burn Manager Application

Directions: All applicants must complete PART A and attach the required documentation and submit any required fee to the Illinois Department of Natural Resources, Attention Prescribed Burn Manager Certification, One Natural Resources Way, Springfield IL, 62702-1271. Each applicant must complete either Part B, C or D and the documentation listed in that Part.

PART A:

SECTION A1: IDENTIFICATION*

Applicant Name: _____

Employer's Name (if applicable): _____

Applicant Address (Street Address, City, State, Zip Code):

Applicant Phone Number: _____

Applicant Date of Birth: _____

*Please provide a copy of your driver's license or other government issued identification card.

SECTION A2: CLASSROOM TRAINING**

Course Name: _____ Date: _____

Course Name: _____ Date: _____

Course Name: _____ Date: _____

**Attach copies of all listed course completion certificates. If additional space is needed to list courses, then attach a separate sheet listing course work.

SECTION A3: FEE

CHECK THIS BOX IF YOU ARE A STATE OF ILLINOIS EMPLOYEE AND EXEMPT FROM THE CERTIFICATION FEE: OTHERWISE, INCLUDE CHECK OR MONEY ORDER FOR \$50 MADE PAYABLE TO THE ILLINOIS DEPARTMENT OF NATURAL RESOURCES.

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SECTION A4: SIGNATURE

I certify that the information provided in this application is correct.

Applicant: _____ Date: _____

PART B:

SECTION B1: PRESCRIBED BURN PARTICIPATION

1) Location: _____ Date: _____

2) Location: _____ Date: _____

3) Location: _____ Date: _____

4) Location: _____ Date: _____

5) Location: _____ Date: _____

SECTION B2: PRESCRIBED BURNS WHERE APPLICANT SERVED AS AN APPRENTICE PRESCRIBED BURN MANAGER*

I have reviewed Section A and B1 and accept the above named person as an Apprentice Prescribed Burn Manager.

Certified Prescribed Burn Manager: _____
(Signature) (Date)

Name: _____ Certificate Number: _____
(Type or Print)

1) Location: _____ Date: _____

Certified Prescribed Burn Manager Supervising the Apprentice Prescribed Burn Manager

Name: _____ Certificate Number: _____
(Type or Print)

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2) Location: _____ Date: _____

Certified Prescribed Burn Manager Supervising the Apprentice Prescribed Burn Manager

Name: _____ Certificate Number: _____

(Type or Print)

*Attach copies of relevant Prescribed Burning Plans, Prescribed Burn Reports and performance evaluations signed by a Certified Prescribed Burn Manager supervising the Apprentice Prescribed Burn Manager.

PART C:

PREVIOUS PRESCRIBED BURN MANAGEMENT EXPERIENCE: Complete and notarize this part ONLY if you are claiming exemption from the apprentice requirements due to previous experience as a prescribed burn manager. Part C cannot be completed after December 31, 2010.

Pursuant to 17 Ill. Adm. Code 1565.20(d), prior to July 1, 2009, I have participated in at least seven prescribed burns, including at least five at which I have served as the Certified Prescribed Burn Manager.

By: _____

(Applicant's Signature)

STATE OF ILLINOIS

COUNTY OF _____

Signed and sworn (or affirmed) to before me this _____ day of _____

by _____

(applicant's name)

(Signature of Notary Public)

(SEAL)

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PART D:

Complete this part ONLY if you hold certification from another state that meets or exceeds the requirements of an Illinois Prescribed Burn Manager Certificate or hold a valid prescribed burn certification for a Prescribed Fire Boss under the NIIMS Wildfire Qualification System and you are claiming you qualify for an Illinois Certificate pursuant to 17 Ill. Adm. Code 1565.20(e) or (f).

Check the following box or boxes that apply:

- I hold a valid Prescribed Burn Manager Certificate or its equivalent from _____ (list state) and have attached to this application a copy of that certificate and a copy of my application used to obtain the certificate, or an official document from that state listing the general qualifications for certification.
- I hold certification as a Prescribed Fire Burn Boss Type 1 (RXB1) or Type 2 (RXB2) through the NIIMS Wildfire Qualification System and have attached a copy of that certification to this application.

I certify that the above information is correct.

Applicant's Signature: _____ Date: _____

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Home Health, Home Services, and Home Nursing Agency Code
- 2) Code Citation: 77 Ill. Adm. Code 245
- 3)

<u>Section Numbers</u> :	<u>Proposed Action</u> :
245.20	Amend
245.30	Amend
245.40	Amend
245.55	Amend
245.70	Amend
245.71	Amend
245.200	Amend
245.205	Amend
245.210	Amend
245.214	Amend
245.225	Amend
- 4) Statutory Authority: Home Health, Home Services, and Home Nursing Agency Licensing Act [210 ILCS 55]
- 5) A Complete Description of the Subjects and Issues Involved: The Home Health, Home Services, and Home Nursing Agency Code (77 Ill. Adm. Code 245) regulates agencies that provide home health, home services, and home nursing services, including administration, staffing responsibilities, training, and the services they provide.

These proposed amendments to Part 245 are being undertaken to implement Public Act 95-951, enacted by the General Assembly in 2008. PA 95-951 added home health aide services to the list of services that home nursing agencies may provide, in the definition for "home nursing agency" in Section 2.11 of the Act, and added a requirement that these services be provided only "under the direction of a registered professional nurse or advanced practice nurse." PA 95-951 also provided that a home nursing agency does not require licensure as a home health agency – previously, the language had said a home nursing agency does not "qualify" for licensure.

In Section 245.20 (Definitions), the definition for Home Nursing Agency is being updated to incorporate the language of PA 95-951. Other Sections throughout the Part are being amended to make the language consistent with the requirements of PA 95-951 and to correct errors.

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In Section 245.30(e) (Organization and Administration) the Department is eliminating a physician as one of the persons who may be a supervisor of a home health agency. The supervisor is a position distinct from that of Home Health Agency Administrator, which still may be filled by a physician.

The existing rules in Part 245 required three administrative positions for a home health agency: administrator, agency supervisor, and supervising nurse. The Home Health Advisory Board, per input from the industry, recommended that the Department decrease the required administrative staff to two positions, administrator and agency supervisor.

This decrease added the responsibilities of the Supervising Nurse to the Agency Supervisor role. The primary staff for a home health agency is nurses, who must work under the supervision of a nurse. The administrator may be a nurse or a physician. Because the position of agency supervisor includes the supervising nurse duties, this person would have to be a nurse. Therefore the Department deleted the physician option.

The economic effect of this proposed rulemaking is unknown. Therefore, the Department requests any information that would assist in calculating this effect.

The Department anticipates adoption of this rulemaking approximately six to nine months after publication of the Notice in the *Illinois Register*.

- 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 create 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 this issue of the *Illinois Register* to:

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Susan Meister
Division of Legal Services
Illinois Department of Public Health
535 West Jefferson St., 5th Floor
Springfield, Illinois 62761

217/782-2043
e-mail: dph.rules@illinois.gov

- 13) Initial Regulatory Flexibility Analysis:
- A) Type of small businesses, small municipalities and not-for-profit corporations affected: Home health, home services and home nursing agencies
 - B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of professional skills necessary for compliance: Nursing
- 14) Regulatory Agenda on which this rulemaking was summarized: January 2009

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

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

TITLE 77: PUBLIC HEALTH
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH
SUBCHAPTER b: HOSPITALS AND AMBULATORY CARE FACILITIESPART 245
HOME HEALTH, HOME SERVICES,
AND HOME NURSING AGENCY CODE

SUBPART A: GENERAL PROVISIONS

Section	Purpose
245.10	Purpose
245.20	Definitions
245.25	Incorporated and Referenced Materials

SUBPART B: OPERATIONAL REQUIREMENTS

Section	Purpose
245.30	Organization and Administration
245.40	Staffing and Staff Responsibilities
245.50	Services (Repealed)
245.55	Vaccinations
245.60	Annual Financial Statement
245.70	Home Health Aide Training
245.71	Qualifications and Requirements for Home Services Workers
245.72	Health Care Worker Background Check
245.75	Infection Control

SUBPART C: LICENSURE PROCEDURES

Section	Purpose
245.80	Licensure Required
245.90	License Application
245.95	License Application Fee
245.100	Provisional License
245.110	Inspections and Investigations
245.115	Complaints
245.120	Violations
245.130	Adverse Licensure Actions

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- 245.140 Penalties and Fines
- 245.150 Hearings

SUBPART D: CLIENT/PATIENT SERVICES

- 245.200 Services – Home Health
- 245.205 Services – Home Nursing Agencies
- 245.210 Services – Home Services Agencies
- 245.212 Services – Home Nursing Placement Agency
- 245.214 Services – Home Services Placement Agency
- 245.220 Client Service Contracts – Home Nursing and Home Services Agencies
- 245.225 Client Service Contracts – Home Nursing Placement Agency and Home Services Placement Agency
- 245.240 Quality Improvement Program
- 245.250 Abuse, Neglect, and Financial Exploitation Prevention and Reporting

AUTHORITY: Implementing and authorized by the Home Health, Home Services, and Home Nursing Agency Licensing Act [210 ILCS 55].

SOURCE: Adopted at 2 Ill. Reg. 31, p. 77, effective August 2, 1978; emergency amendment at 3 Ill. Reg. 38, p. 314, effective September 7, 1979, for a maximum of 150 days; amended at 3 Ill. Reg. 40, p. 153, effective October 6, 1979; emergency amendment at 4 Ill. Reg. 18, p. 129, effective April 21, 1980, for a maximum of 150 days; amended at 4 Ill. Reg. 40, p. 56, effective September 23, 1980; emergency amendment at 6 Ill. Reg. 5855, effective April 28, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 11006, effective August 30, 1982; amended at 7 Ill. Reg. 13665, effective October 4, 1983; codified at 8 Ill. Reg. 16829; amended at 9 Ill. Reg. 4836, effective April 1, 1985; amended at 14 Ill. Reg. 2382, effective February 15, 1990; amended at 15 Ill. Reg. 5376, effective May 1, 1991; amended at 18 Ill. Reg. 2414, effective January 22, 1994; emergency amendments at 20 Ill. Reg. 488, effective January 1, 1996, for a maximum of 150 days; emergency expired May 29, 1996; amended at 20 Ill. Reg. 3273, effective February 15, 1996; amended at 20 Ill. Reg. 10033, effective July 15, 1996; amended at 22 Ill. Reg. 3948, effective February 13, 1998; amended at 22 Ill. Reg. 22050, effective December 10, 1998; amended at 23 Ill. Reg. 1028, effective January 15, 1999; amended at 24 Ill. Reg. 17213, effective November 1, 2000; amended at 25 Ill. Reg. 6379, effective May 1, 2001; amended at 26 Ill. Reg. 11241, effective July 15, 2002; amended at 28 Ill. Reg. 3487, effective February 9, 2004; amended at 28 Ill. Reg. 8094, effective May 26, 2004; amended at 29 Ill. Reg. 20003, effective November 28, 2005; amended at 31 Ill. Reg. 9453, effective June 25, 2007; amended at 32 Ill. Reg. 8949, effective June 5, 2008; amended at 33 Ill. Reg. _____, effective _____.

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SUBPART A: GENERAL PROVISIONS

Section 245.20 Definitions

Act – the Home Health, Home Services and Home Nursing Agency Licensing Act [210 ILCS 55].

Activities of Daily Living – include, but are not limited to, eating, dressing, bathing, toileting, transferring, or personal hygiene.

Advocate – a person who represents the rights and interests of an individual as though they were the person's own, in order to realize the rights to which the individual is entitled, obtain needed services, and remove barriers to meeting the individual's needs.

Agency – a home health agency, home nursing agency, or home services agency, unless specifically stated otherwise. (Section 2.03a of the Act)

Agency Manager – the individual designated by the governing body or the entity legally responsible for the agency, who has overall responsibility for the organization and day-to-day operation of the home services or home nursing agency.

Audiologist – a person who has received a license to practice audiology pursuant to the Illinois Speech-Language Pathology and Audiology Practice Act [225 ILCS 110].

Branch Office – a location or site from which ~~ana home health~~ agency provides services within a portion of the total geographic area served by the parent agency. The branch office is part of the ~~home health~~ agency and is located sufficiently close to share administration, supervision and services in a manner that renders it unnecessary for the branch ~~to be~~ independently ~~licensed to meet the conditions of participation as a home health agency.~~

Bylaws or Equivalent – a set of rules adopted by an agency for governing the agency's operation.

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Client – an individual receiving services from ~~a home nursing agency~~, a home services agency; or a placement agency. This term includes the service recipient's advocate or designee.

Client Record – a written record that includes, but is not limited to, personal information, emergency notification information, plans of service agreed to between the client and the home services agency, a copy of the home services contract or agreement, and documentation of the services provided at each visit.

Clinical Note – a dated, written notation by a member of the health team of a contact with a patient, containing a description of signs and symptoms, treatment and/or drug given, the patient's reaction, and any changes in physical or emotional condition.

Clinical Record – an accurate account of services and care provided for each patient and maintained by a home health or home nursing agency in accordance with accepted professional standards.

Companionship – services that provide fellowship, care and protection for a client who, because of advanced age or physical or mental infirmity, cannot care for his or her own needs. Services requested may include, but are not limited to, household work related to the care of the client, such as meal preparation, bed making, or laundry; shopping or errands; or other similar services.

Department or IDPH – the Department of Public Health of the State of Illinois.
(Section 2.01 of the Act)

Director – the Director of Public Health of the State of Illinois, or his or her designee. (Section 2.02 of the Act)

Discharge Summary – the written report of services rendered, goals achieved, and final disposition at the time of discharge from service of a home health or home nursing agency.

Employee Prospect – a person or persons to whom an agency expects to extend an offer of employment.

Geographic Service Area – the area from which home health agency patients are drawn. This area is to be clearly defined by readily recognizable boundaries.

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Health Care Professional – a physician licensed to practice medicine in all of its branches, a podiatrist, an advanced practice nurse who has a written collaborative agreement with a collaborating physician that authorizes services under the Act, or a physician assistant who has been delegated the authority to perform services under the Act by his or her supervising physician.

Home Health Agency – a public agency or private organization that provides skilled nursing services and at least one other home health service as defined in this Part. (Section 2.04 of the Act)

Home Health Agency Administrator – any one of the following:

a physician;

a registered nurse;

an individual with at least one year of supervisory or administrative experience in home health care or in related health provider programs; or

an individual who meets the requirements for Public Health Administrator as contained in Section 600.300 of the Certified Local Health Department Code.

Home Health Aide – a person who provides personal care and emotional comfort to assist the patient toward independent living in a safe environment. A person may not be employed as a home health aide unless he/she meets the requirements of Section 245.70 of this Part.

Home Health Services – services provided to a person at his [or her](#) residence according to a plan of treatment for illness or infirmity prescribed by a physician or podiatrist. Such services include part-time and intermittent nursing services and other therapeutic services such as physical therapy, occupational therapy, speech therapy, medical social services or services provided by a home health aide. (Section 2.05 of the Act)

Home Nursing Agency – an agency that provides services directly, or acts as a placement agency, in order to deliver skilled nursing [and home health aide](#) services to persons in their personal residences. A home nursing agency provides

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services that would require an individual licensed under the Nurse Practice Act to perform. Home health aide services are provided under the direction of a registered professional nurse or advanced practice nurse. A home nursing agency does not ~~require~~qualify for licensure as a home health agency under the Act. "Home nursing agency" does not include an individually licensed nurse acting as a private contractor or a person that provides or procures temporary employment in health care facilities, as defined in the Nurse Agency Licensing Act. (Section 2.11 of the Act)

Home Nursing Services – services that would be required to be performed by an individual licensed under the Nurse Practice Act on a shift schedule, one-time, full-time or part-time, and/or intermittent basis.

Home Services Agency – an agency that provides services directly, or acts as a placement agency, for the purpose of placing individuals as workers providing home services for consumers primarily in their personal residences. Home services agency does not include agencies licensed under the Nurse Agency Licensing Act, the Hospital Licensing Act, the Nursing Home Care Act, or the Assisted Living and Shared Housing Act and does not include an agency that limits its business exclusively to providing housecleaning services. Programs providing services exclusively through the Community Care Program of the Illinois Department on Aging or the Department of Human Services Office of Rehabilitation Services are not considered to be a home services agency under the Act. (Section 2.08 of the Act)

Home Services or In-Home Services or In-Home Support Services – assistance with activities of daily living, housekeeping, personal laundry, and companionship provided to an individual in his or her personal residence, which are intended to enable that individual to remain safely and comfortably in his or her own personal residence. "Home services" does not include services that would be required to be performed by an individual licensed under the Nurse Practice Act. (Section 2.09 of the Act) Home care services are focused on providing assistance that is not medical in nature, but is based upon assisting the client in meeting the demands of living independently and maintaining a personal residence, such as companionship, cleaning, laundry, shopping, meal preparation, dressing, and bathing.

Home Services Worker or In-Home Services Worker – an individual who provides home care services to a consumer in the consumer's personal residence. (Section

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2.10 of the Act) The terms homemaker and companion are commonly used to refer to this type of worker.

Licensed Practical Nurse – a person currently licensed as a licensed practical nurse under the ~~Nurse~~[Nursing and Advanced Practice Nursing](#) Act.

Medical Social Worker – a person who is a licensed social worker or a licensed clinical social worker under the Clinical Social Work and Social Work Practice Act.

Occupational Therapist – a person who is licensed as an occupational therapist under the Illinois Occupational Therapy Practice Act and meets either or both of the following requirements:

is a graduate of an occupational therapy curriculum accredited jointly by the Council on Medical Education of the American Medical Association and the American Occupational Therapy Association, or

is eligible for the National Registration Examination of the American Occupational Therapy Association.

Occupational Therapy Assistant – a person who is licensed as an occupational therapy assistant under the Illinois Occupational Therapy Practice Act and meets the requirements for certification as an occupational therapy assistant established by the American Occupational Therapy Association.

Part Time or Intermittent Care – home health services given to a patient at least once every 60 days or as frequently as a few hours a day, several times per week.

Patient – a person who is under treatment or care for illness, disease, injury or conditions appropriately responsive to home health or home nursing services to maintain health or prevent illness.

Patient Care Plan – a coordinated and combined care plan prepared by and in collaboration with each discipline providing service to the patient, to the patient's family, or, for home health agencies, to both.

Person – any individual, firm, partnership, corporation, company, association or any other legal entity. (Section 2.03 of the Act)

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Personal Care Services – services that are furnished to a client in the client's personal residence to meet the client's physical, maintenance, and supportive needs, when those services are not considered skilled personal care, as described in this Section and Part, and do not require a physician's orders or the supervision of a nurse.

Physical Therapist – a person who is licensed as a physical therapist under the Illinois Physical Therapy Act and who meets the qualifications for a physical therapist under the Federal Conditions of Participation for Home Health Agencies established by the Centers for Medicare and Medicaid Services (42 CFR 484.1 through 484.40).

Physical Therapist Assistant – a person who is licensed as a physical therapist assistant under the Illinois Physical Therapy Act and who meets the qualifications for a physical therapist assistant under the Federal Conditions of Participation for Home Health Agencies established by the Centers for Medicare and Medicaid Services (42 CFR 484.1 through 484.40).

Physician – Any person licensed to practice medicine in all of its branches under the Medical Practice Act of 1987. For a patient who has received medical care in another state, or has moved from another state, and who has not secured the services of a physician licensed in Illinois, an individual who holds an active license to practice medicine in another state will be considered the physician for the patient during this emergency (as determined by the physician) as provided in Section 3 of the Medical Practice Act of 1987. Such an emergency may not extend more than six months in any case.

Placement Agency – any person engaged for gain or profit, regardless of the agency tax status, in the business of securing or attempting to secure work for hire for persons seeking work or workers for employers. The term includes a private employment agency and any other entity that places a worker for private hire by a consumer in that consumer's residence for purposes of providing home services. The term does not include a person that provides or procures temporary employment in health care facilities, as defined in the Nurse Agency Licensing Act. (Section 2.12 of the Act) For the purposes of this Part, there are two types of placement agencies: Home [NursingHealth](#) Placement Agencies (see Section 245.212) and Home Services Placement Agencies (see Section 245.214).

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Plan of Treatment – a plan based on the patient's diagnosis and the assessment of the patient's immediate and long-range needs and resources. The plan of treatment is established in consultation with, in the case of a home health agency, the home health services team, which includes the attending physician or podiatrist, pertinent members of the agency staff, the patient, and members of the family.

Podiatrist – a person who is licensed to practice under the Podiatric Medical Practice Act of 1987.

Professional Advisory Group – a group composed of at least one practicing physician, one registered nurse (preferably a public health nurse), and with appropriate representation from other professional disciplines that are participating in the provision of home health services. It is highly recommended that a consumer be a member of the group. At least one member of the group is neither an owner nor an employee of the home health agency.

Progress Notes – a dated, written notation by a member of the health team, summarizing facts about care and the patient's response during a given period of time.

Purchase of Services/Contractual – the provision of services through a written agreement with other providers of services.

Registered Nurse – a person who is currently licensed as a registered nurse under the Nurse Practice Act.

Skilled Nursing Services – those services that, due to their nature and scope, would require the performing individual to be licensed under the Nurse Practice Act. These services are acts requiring the basic nursing knowledge, judgment and skills acquired by means of completion of an approved nursing education program and include, but are not limited to: assessment of healthcare needs; nursing diagnosis; planning, implementation and nursing evaluation; counseling and/or patient education; health education; the administration of medications and treatments; and the coordination and/or management of a nursing or medical plan of care.

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Skilled Personal Care – personal care that may be provided only by a home health aide, as defined in this Section, or an individual who is a certified or licensed health care professional under the laws of the State of Illinois.

Social Work Assistant – a person who has a baccalaureate degree in social work, psychology, sociology, or other field related to social work and has had at least one year of social work experience in a health care setting.

Speech-Language Pathologist – a person who is licensed as a speech-language pathologist under the Illinois Speech-Language Pathology and Audiology Practice Act.

Student – an individual who is enrolled in an educational institution and who is receiving training in a health-related profession.

Subdivision – a component of a multi-function health agency, such as the home care department of a hospital or the nursing division of a health department, which independently meets the federal conditions of participation for home health agencies. A subdivision that has branches is regarded as a parent agency.

Substantial Compliance or Substantially Meets – meeting requirements except for variance from the strict and literal performance, which results in unimportant omissions or defects given the particular circumstances involved.

Subunit – a semi-autonomous organization that serves patients in a geographic area different from that of the parent agency. The subunit, by virtue of the distance between it and the agency, is judged incapable of sharing administration, supervision and services.

Summary Report – a compilation of the pertinent factors from the clinical notes and progress notes regarding a patient, which is submitted to the patient's physician or podiatrist.

Supervision – authoritative procedural guidance by a qualified person of the appropriate discipline.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

SUBPART B: OPERATIONAL REQUIREMENTS

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Section 245.30 Organization and Administration

- a) **Governing Body – All Agencies**
The agency shall have a governing body or a clearly defined body having legal authority and responsibility for the conduct of the agency. Where the governing body of a large organization is functionally remote from the operation of the agency, the Department may approve the designation of an intermediate level "governing body". For the purposes of this Section, the governing body shall:
- 1) Have bylaws or the equivalent, which shall be reviewed annually and be revised as needed. They shall be made available to all members of the governing body and, for ~~the~~ home health agencies, to the professional advisory group. The bylaws or the equivalent shall specify the objectives of the agency.
 - 2) Employ a qualified administrator for home health agencies.
 - 3) Adopt and revise, as needed, policies and procedures for the operation and administration of the agency.
 - 4) Meet to review the operation of the agency.
 - 5) Keep minutes of all meetings.
 - 6) Provide and maintain an office facility adequately equipped for efficient work, and confidentiality of patient and/or client records, and that provides a safe working environment in compliance with local ordinances and fire regulations.
- b) **Administration – All Agencies**
- 1) The agency shall have written administrative policies and procedures to ensure the provision of safe and adequate care of the patient or client.
 - 2) The agency shall show evidence of liability insurance in accordance with Section 245.90(a).
 - 3) The agency shall develop and implement written policies for complaint

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resolution between the agency and its patients/clients and/or patient/client advocates in regard to services being provided to the patient/client.

- c) Personnel Policies – All Agencies (Placement agencies ~~shall~~must meet the requirements of subsections (c)(1)(B), (2), (3) and (4).)
- 1) Personnel policies applicable and available to all full- and part-time employees shall include, but not be limited to, the following:
 - A) Wage scales, fringe benefits, hours of work and leave time;
 - B) Requirements for an initial health evaluation of each new employee who has contact with clients/patients, as specified by the governing body;
 - C) Orientation to the agency and appropriate continuing education;
 - D) Job descriptions for all positions utilized by the agency;
 - E) Annual performance evaluation for all employees;
 - F) Compliance with all applicable requirements of the Civil Rights Act of 1964;
 - G) Provision for confidentiality of personnel records;
 - H) Employee health policies that require employees to report health symptoms and exposure to any communicable or infectious disease, and that specify conditions under which employees are to be removed from patient or client contact and conditions under which employees may resume patient/client contact; and
 - I) Agency procedures related to identifying potential dangers to the health and safety of agency personnel providing services in the home and procedures for protecting agency personnel from identified dangers.
 - 2) Prior to employing or placing any individual in a position that requires a State professional license, the agency shall contact the Illinois Department

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of Financial and Professional Regulation to verify that the individual's license is active. A copy of the verification of the individual's license shall be placed in the individual's personnel file.

- 3) The agency shall check the status of employee or placement prospects who have direct patient/client care responsibilities with the Health Care Worker Registry prior to hiring.
- 4) Personnel records for all employees/placement agency registry files for placement workers shall include the name and address of the employee or placement worker, Social Security number, date of birth, name and address of next of kin, evidence of qualifications (including any current licensure, registration, or certification that is required by State or federal law for the functions performed), and dates of employment or placement and separation from the agency and the reason for separation.
- 5) Home health agencies that provide other home health services under arrangement through a contractual purchase of services shall ensure that these services are provided by qualified personnel, who hold any current licensure, registration, or certification that is required by State or federal law for the functions performed, under the supervision of the agency.
- 6) Home services and home nursing agencies that use some contractual services shall ensure that these services are provided by qualified personnel who hold any current licensure, registration or certification that is required by State or federal law for the functions performed under the supervision of the agency.

d) Professional Advisory Group – Home Health Agencies

- 1) The professional advisory group shall be appointed by the governing body and shall assist in developing and recommending policies and procedures for administration and home health services provided by the agency. These policies and procedures shall be in accordance with the scope of services offered by the agency and based on the home health needs of the patient and the area being served. Policies and procedures shall be reviewed annually or more frequently as needed to determine their adequacy and suitability. Recommendations for any improvements are

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made to the governing body. These policies and procedures shall include, but are not limited to:

- A) Administration and supervision of the home health agency and the home health services it provides;
 - B) Criteria for the acceptance, non-acceptance, and discharge of patients;
 - C) Home health services;
 - D) Medical supervision and plans of treatment;
 - E) Patient care plans;
 - F) Clinical records;
 - G) Personnel data;
 - H) Evaluation; and
 - I) Coordination of services.
- 2) The group shall keep minutes of its meetings and meet as often as necessary to carry out its purposes.
- e) Agency Supervision – Home Health Agencies
- 1) The governing body shall appoint a Home Health Administrator with the duties prescribed in Section ~~245.40345.40~~ of this Part.
 - 2) The home health agency shall designate an agency supervisor ~~a person~~ with one of the following sets of qualifications to supervise the provision of home health services:
 - ~~A) A physician;~~
 - A)B) A registered nurse who:

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- i) Has completed a baccalaureate degree program approved by the National League for Nursing; and
 - ii) Has at least one year of nursing experience;
- B)C) A registered nurse who does not have a baccalaureate degree, but who has at least three years of nursing experience that meets the following requirements:
- i) At least two years of the nursing experience must have been in: a home health agency; a community health program that included care of the sick; or a generalized family-centered nursing program in a community health agency.
 - ii) At least two years of the three years nursing experience must have been obtained within five years prior to current employment with the home health agency.
- 3) The agency supervisor shall be a full-time registered nurse who is available at all times during operating hours of the agency and who participatesparticipate in all activities relevant to the provision of home health services.
- 4) Any person employed as an agency supervisor prior to July 1, 1983, who does not meet the qualifications for agency supervisor that were in effect prior to October 1, 1983, may continue to serve in that capacity only at that agency.
- 5) One person may not hold the positions of both home health agency administrator and agency supervisor, ~~if that person meets the requirements of both positions.~~
- f) Agency Supervisor Responsibilities – Home Health AgencySupervising Nurse– Home Health Agencies
- 1) The entire clinical program shall be under the supervision of the agency supervisor. The agency shall organize the personnel and clinical activities

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of the home health agency in such a way that the organization will facilitate the provision of safe and adequate care to the patient.

2)4) The skilled nursing service of a home health agency shall be under the direction of the agency supervisors~~supervision of a full-time registered nurse.~~

3)2) The agency supervisors~~supervising nurse~~ shall be responsible for:

- A) The overall supervision of all registered nurses, licensed practical nurses, ~~and~~ home health aides, therapists, social workers and other clinical personnel employed by the agency or with whom the agency contracts for services;
- B) Assuring that the professional standards of community nursing practice are maintained by all staff nurses providing patient care;
- C) Maintaining and adhering to agency procedure and patient care policy manuals;
- D) Participation in the establishment of service policies and procedures;
- E) Participation in the selection and evaluation of nursing personnel and of other staff providing patient care;~~of nursing personnel and the evaluation of nursing personnel;~~
- F) Coordination of patient care services;
- G) Keeping and maintaining records of case assignments and case management;
- H) Preparation and maintenance of the schedules~~scheduling~~ of cases to be brought to the clinical record review committee; and
- I) The conduct of selective program evaluations to improve deficient services and the development and implementation of plans of correction.

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- g) Agency Manager – Home Services and Home Nursing Agencies
- 1) A home services agency shall designate a person to supervise the provision of services or to oversee the placement of workers through the licensed home services agency.
 - 2) If the home nursing agency administration has appointed an agency manager who is not a registered nurse or an advanced practice nurse, the home nursing agency shall identify a registered nurse or advanced practice nurse who is responsible to supervise the provision of skilled nursing services as required by Section 2.11 of the Act. A home nursing agency shall designate a person who is qualified under the laws of the State of Illinois to supervise the provision of skilled nursing care to clients or to oversee the placement of workers qualified to provide skilled nursing services to consumers through the licensed home nursing agency.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 245.40 Staffing and Staff Responsibilities

- a) Home Health Administrator/Agency Manager. The administrator and/or agency manager shall have the following responsibilities:
- 1) Ensure that the agency is in compliance with all applicable federal, State and local laws.
 - 2) Be familiar with the applicable rules of the Department and maintain them within the agency.
 - 3) Familiarize all employees as well as providers through contractual purchase of services with the law and the rules of the Department and make copies available for their use.
 - 4) Ensure the completion, maintenance and submission of such reports and records as required by the Department.
 - 5) Maintain ongoing liaison with the governing body, professional advisory group, staff members and the community.

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- 6) Maintain a current organizational chart to show lines of authority down to the patient or client level.
 - 7) Have the authority for the management of the business affairs and the overall operation of the agency.
 - 8) Maintain appropriate personnel records, administrative records and all policies and procedures of the agency.
 - 9) Employ qualified personnel in accordance with job descriptions.
 - 10) Provide orientation of new staff, regularly scheduled in-service education programs and opportunities for continuing education for the staff.
 - 11) Designate in writing the qualified staff member to act in the absence of the administrator.
- b) Home Health Aide
- 1) When home health aide services are offered, the services shall be under the supervision of a registered nurse in accordance with the plan of treatment. The home health aide is assigned to a particular patient by a registered nurse. Written instructions for patient care are prepared by a registered nurse or the appropriate therapist.
 - 2) Duties of the home health aide may include:
 - A) The performance of simple procedures as an extension of therapeutic services.
 - B) Personal care, as defined in this Part.
 - C) Ambulation and exercise of the patient.
 - D) Household services essential to health care at home.
 - E) Assistance with medications that are ordinarily self-administered.
 - F) Reporting changes in the patient's/client's condition and needs to

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the registered nurse or the appropriate therapist.

G) Completion of appropriate records.

3) [For home health agencies, the](#) registered nurse or appropriate therapist shall make a supervisory visit to the patient's residence at least every two weeks either when the home health aide is present to observe and assist, or when the home health aide is absent to assess relationships and determine whether goals are being met.

4) [For home nursing agencies, the registered nurse shall make a supervisory visit to the patient's/client's residence at least every 60 days when the home health aide is present to observe and assist, or when the home health aide is absent to assess relationships and determine whether the goals of the treatment plan are being met.](#)

c) Home Services or In-Home Services Worker

1) As defined in this Part and under the Act, *Home Services or in-home services means assistance with activities of daily living , housekeeping, personal laundry, and companionship provided to an individual in his or her personal residence, which are intended to enable that individual to remain safely and comfortably in his or her own personal residence. Home Services or in home services does not include services that would be required to be performed by an individual licensed under the Nurse Practice Act.* (Section 2.09 of the Act) Home services are focused on providing assistance that is not medical in nature, but is based upon assisting the client in meeting the demands of living independently and maintaining a personal residence, such as companionship, cleaning, laundry, shopping, meal preparation, dressing, and bathing.

2) Home [services or in-home services workers](#)~~Services or In-Home Services Workers~~ will provide services in accordance with the policies and requirements of the placement or employing agency, as well as the service arrangements spelled out in the contract.

3) Duties of home services or in-home services workers may include the following:

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- A) Observation of client functioning and reporting changes to his/her supervisor or employer;
 - B) Assistance with household chores, including cooking and meal preparation, cleaning and laundry;
 - C) Assistance in completing activities such as shopping and appointments outside of the home;
 - D) Companionship;
 - E) Completion of appropriate records documenting service provision; and
 - F) Assistance with activities of daily living and personal care.
- 4) To delineate the types of services that can be provided by a home services worker, the following are examples of acceptable tasks and also limitations when a more medical model of assistance would be needed to meet the higher needs of the client.
- A) **Skin Care.** A home services worker may perform general skin care assistance. Skin care may be performed by a home services worker only when skin is unbroken, and when any chronic skin problems are not active. The skin care provided by a home services worker must be preventative rather than therapeutic in nature, and may include the application of non-medicated lotions and solutions, or of lotions and solutions not requiring a physician's prescription. Skilled skin care must be provided by an agency licensed as a home health or home nursing services agency. Skilled skin care includes wound care, dressing changes, application of prescription medications, skilled observation and reporting.
 - B) **Ambulation.** A home services worker may assist clients with ambulation. Clients in the process of being trained to use adaptive equipment for ambulation, such as walkers, canes or wheelchairs, require supervision by an agency licensed to provide home health or home nursing services during the period of their training. Once

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the prescribing individual or the health care provider responsible for the training of the client is comfortable with releasing the client to work on his or her own with the adaptive equipment, a home services worker may assist with ambulation.

- C) Bathing. A home services worker may assist clients with bathing. When a client has skilled skin care needs or skilled dressings that will need attention before, during, or after bathing, the client shall be in the care of an agency licensed as a home health agency or a home nursing agency to meet those specific needs.
- D) Dressing. A home services worker may assist a client with dressing. This may include assistance with ordinary clothing and application of support stockings of the type that can be purchased without a physician's prescription. A home services worker may not assist with application of an Ace bandage that can be purchased only with a physician's prescription (the application of which involves wrapping a part of the client's body) or with application of a sequential compression device that can be purchased only with a physician's prescription.
- E) Exercise. A home services worker may assist a client with exercise. Passive assistance with exercise that can be performed by a home services worker is limited to the encouragement of normal bodily movement, as tolerated, on the part of the client, and to encouragement with a prescribed exercise program. Passive Range of Motion may not be performed by a home services worker.
- F) Feeding. A home services worker may provide assistance with feeding. Home services workers can assist clients with feeding when the client can independently swallow and be positioned upright. Assistance by a home services worker does not include syringe, tube feedings, and intravenous nutrition. Whenever there is a high risk that the client may choke as a result of the feeding, the client shall be in the care of an agency licensed as a home health or home nursing agency to fulfill this function.

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- G) Hair Care. As a part of the broader set of services provided to clients who are receiving home services, home services workers may assist clients with the maintenance and appearance of their hair. Hair care within these limitations may include shampooing with non-medicated shampoo or shampoo that does not require a physician's prescription, drying, combing and styling hair.
- H) Mouth Care. A home services worker may assist in and perform mouth care. This may include denture care and basic oral hygiene, including oral suctioning for mouth care. Mouth care for clients who are unconscious shall be performed by an agency licensed as a home health agency or home nursing agency.
- I) Nail Care. A home services worker may assist with nail care. This assistance may include soaking of nails, pushing back cuticles without utensils, and filing of nails. Assistance by a home services worker may not include nail trimming. Clients with a medical condition that might involve peripheral circulatory problems or loss of sensation shall be under the care of an agency licensed as a home health agency or home nursing agency to meet this need.
- J) Positioning. A home services worker may assist a client with positioning when the client is able to identify to the personal care staff, either verbally, non-verbally or through others, when the position needs to be changed, only when skilled skin care, as previously described, is not required in conjunction with the positioning. Positioning may include simple alignment in a bed, wheelchair, or other furniture.
- K) Shaving. A home services worker may assist a client with shaving only with an electric or a safety razor.
- L) Toileting. A home services worker may assist a client to and from the bathroom; provide assistance with bed pans, urinals, and commodes; provide pericare; or change clothing and pads of any kind used for the care of incontinence.
 - i) A home services worker may empty or change external urine collection devices, such as catheter bags or

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suprapubic catheter bags. In all cases, the insertion and removal of catheters and care of external catheters is considered skilled care and shall not be performed by a home services worker.

- ii) A home services worker may empty ostomy bags and provide assistance with other client-directed ostomy care only when there is no need for skilled skin care or for observation or reporting to a nurse. A home services worker shall not perform digital stimulation, insert suppositories, or give an enema.
- M) Transfers. A home services worker may assist with transfers only when the client has sufficient balance and strength to reliably stand and pivot and assist with the transfer to some extent. Adaptive and safety equipment may be used in transfers, provided that the client is fully trained in the use of the equipment and can direct the transfer step by step. Adaptive equipment may include, but is not limited to, wheel chairs, tub seats, and grab bars. Gait belts may be used as a safety device for the home services worker as long as the worker has been properly trained in their use. In general, a home services worker may not assist with transfers when the client is unable to assist with the transfer. Home services workers may assist clients in the use of a mechanical or electrical transfer device only when the following conditions are met:
- i) The home services worker must have been trained in the use of the mechanical or electrical transfer device by the licensed agency;
 - ii) The client or client representative must be able to direct the transfer step by step; and
 - iii) The agency must have conducted a competency evaluation of the worker using the type of device that is available in the home.
- N) Medication Reminding. A home services worker may assist a client with medication reminding only when medications have

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been pre-selected by the client, a family member, a nurse, or a pharmacist and are stored in containers other than the prescription bottles, such as medication minders. Medication minder containers shall be clearly marked as to day and time of dosage. Medication reminding includes: inquiries as to whether medications were taken; verbal prompting to take medications; handing the appropriately marked medication minder container to the client; and opening the appropriately marked medication minder container for the client if the client is physically unable to open the container. These limitations apply to all prescription and all over-the-counter medications. The home services worker shall immediately report to the supervisor, or, in the case of a placement worker, to the client or the client's advocate or designee, any irregularities noted in the pre-selected medications, such as medications taken too often or not often enough, or not at the correct time as identified in the written instructions.

- O) A home services worker shall not provide respiratory care. Respiratory care is skilled and includes postural drainage; cupping; adjusting oxygen flow within established parameters; nasal, endotracheal, and tracheal suctioning; and turning off or changing tanks. However, home services workers may temporarily remove and replace a cannula or mask from the client's face for the purposes of shaving or washing a client's face and may provide oral suctioning.
- 5) In addition to the exclusions prescribed in subsection (c)(4), home services workers shall not act in the following capacities:
- A) Provide skilled personal care services as defined in Section 245.20;
 - B) Become or act as a Power of Attorney;
 - C) Be involved in any financial transactions of the client outside of contracted services. In such cases, the home services worker shall follow agency policies in regard to securing receipts for items purchased and ensuring both client and worker signatures documenting those expenditures;

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- D) Perform or provide medication setup for a client; and
 - E) Other actions specifically prohibited by agency policy or other State laws.
- 6) Supervision of a home services worker shall include the following (these provisions do not apply to placement agencies):
- A) An individual who is in a supervisory capacity shall be designated and available to the worker for [responses to](#) questions at all times.
 - B) On-site supervision shall take place at a minimum [of](#) every 90 days or more often if the plan of service requires it. [The supervisory visits may be made when the home services worker is present so that the supervisor may observe, or when the home services worker is absent so that the supervisor may assess relationships and determine whether the service plan is being met.](#)
 - C) Supervision does not constitute time or an activity that can be billed as a service to the client/consumer.
- d) Licensed Practical Nurse
- 1) The licensed practical nurse may perform selected acts in accordance with the Nurse Practice Act, including the administration of treatments and medications in the care of the ill, injured, or infirm, the maintenance of health, and prevention of illness, under the direction of a registered nurse.
 - 2) The licensed practical nurse shall report changes in the patient's condition to the registered nurse, and these reports shall be documented in the clinical notes.
 - 3) The licensed practical nurse shall prepare clinical notes for the clinical record.
- e) Medical Social Worker. When provided, medical social services shall be given by a social worker or by a social work assistant under the supervision of a social worker in accordance with the plan of treatment. These services shall include the following:

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- 1) Assist the physician or podiatrist and other members of the health team in understanding significant social and emotional factors related to the patient's health problems.
- 2) Assess the social and emotional factors in order to estimate the patient's capacity and potential to cope with the problems of daily living.
- 3) Help the patient and family to understand, accept, and follow medical recommendations and provide services planned to restore the patient to the optimum social and health adjustment within the patient's capacity.
- 4) Assist the patient and family with personal and environmental difficulties that predispose toward illness or interfere with obtaining maximum benefits from medical care.
- 5) Utilize all available resources, such as family and community agencies, to assist the patient to resume life in the community or to live within the disability.
- 6) Observe, record and report social and emotional changes.
- 7) Prepare clinical and progress notes for the clinical record.
- 8) Supervision of the social work assistant shall include the following:
 - A) A licensed social worker must be accessible by telephone to the social work assistant at all times while the social work assistant is treating patients.
 - B) On-site supervision shall take place every four to six visits. The supervisory visits may be made either when the social work assistant is present so that the supervisor may observe and assist, or when the social work assistant is absent so that the supervisor may assess relationships and determine whether goals are being met.
 - C) Supervision does not constitute treatment.
 - D) The supervisory visit shall include a complete on-site assessment,

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an on-site review of activities with appropriate revision of treatment plan, and an assessment of the utilization of outside resources.

- f) Occupational Therapist and Occupational Therapy Assistant. When required, occupational therapy services shall be provided by an occupational therapist or by an occupational therapy assistant under the supervision of an occupational therapist in accordance with the plan of treatment. These services shall include the following:
- 1) Assist the physician or podiatrist in evaluating the patient's level of function by applying diagnostic and prognostic procedures.
 - 2) Guide the patient in the use of therapeutic creative and self-care activities for the purpose of improving function.
 - 3) Observe, record and report to the physician or podiatrist the patient's reaction to treatment and any changes in the patient's condition.
 - 4) Instruct other health team personnel, including, when appropriate, home health aides and family members in certain phases of occupational therapy in which they may work with the patient.
 - 5) Prepare clinical and progress notes for the clinical record.
 - 6) Supervision of the occupational therapy assistant shall include the following:
 - A) A licensed occupational therapist shall be accessible by telephone to the occupational therapy assistant at all times while the occupational therapy assistant is treating patients.
 - B) On-site supervision shall take place every four to six visits. The supervisory visits may be made either when the occupational therapy assistant is present so that the supervisor may observe and assist, or when the occupational therapy assistant is absent so that the supervisor may assess relationships and determine whether goals are being met.

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- C) Supervision does not constitute treatment.
 - D) The supervisory visit shall include a complete on-site functional assessment, an on-site review of activities with appropriate revision of treatment plan, and an assessment of the utilization of outside resources.
- g) Physical Therapist and Physical Therapist Assistant
- 1) When provided, physical therapy services shall be given by a physical therapist or by a physical therapist assistant under the supervision of a physical therapist in accordance with the plan of treatment. These services shall include the following:
 - A) Review and evaluate physician's or podiatrist's referral and patient's medical record to determine physical therapy required.
 - B) Plan and prepare a written treatment program based on the evaluation of available patient data.
 - C) Perform patient tests, measurements, and evaluations, such as range-of-motion and manual muscle tests, gait and functional analyses, and body parts measurements, and record and evaluate findings to aid in establishing or revising specifics of treatment programs.
 - D) Plan and administer prescribed physical therapy treatment programs for patients to restore function, relieve pain, and prevent disability following disease, injury or loss of body part.
 - E) Administer manual therapeutic exercises to improve or maintain muscle function, applying precise amounts of manual force and guiding patient's body parts through selective patterns and degrees of movement. Instruct, motivate and assist patient in non-manual exercises, such as active regimens, isometric and progressive resistive, and in functional activities using available equipment and assistive and supportive devices, such as crutches, walkers, canes, orthoses and prostheses. Administer treatment involving application of physical agents, such as heat, light, cold, water and

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electricity. Administer traction and massage. Evaluate, fit and adjust prosthetic and orthotic devices and recommend modifications to the orthotist/prosthetist.

- F) Observe, record, and report to the physician or podiatrist the patient's treatment, response and progress.
 - G) Instruct other health team personnel, including, when appropriate, home health aides and family members, in certain phases of physical therapy with which they may work with the patient.
 - H) Instruct patient and family in total physical therapy program.
 - I) Prepare clinical and progress notes for the clinical record.
- 2) Supervision of the physical therapist assistant shall include the following:
- A) A licensed physical therapist shall be accessible by telephone to the physical therapist assistant at all times while the physical therapist assistant is treating patients.
 - B) On-site supervision shall take place every four to six visits. The supervisory visits may be made either when the physical therapist assistant is present so that the supervisor may observe and assist, or when the physical therapist assistant is absent so that the supervisor may assess relationships and determine whether goals are being met.
 - C) Supervision does not constitute treatment.
 - D) The supervisory visit shall include a complete on-site functional assessment, an on-site review of activities with appropriate revision of treatment plan, and an assessment of the utilization of outside resources.
- 3) The physical therapist assistant shall:
- A) Be directed by and under the supervision of a licensed physical therapist.

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- B) Administer the physical therapy program as established by the physical therapist.
 - C) Administer non-complex active and passive manual therapeutic exercises, therapeutic massage, traction, heat, light, cold, water and electrical modalities to patients with relatively stable conditions.
 - D) Instruct, motivate and assist patients in learning and improving functional activities such as perambulation, transfers, ambulation and activities of daily living.
 - E) Observe patient's progress and response to treatment, and report to the physical therapist.
 - F) Confer with members of the health care team for planning, modifying and coordinating treatment programs.
- h) Registered Nurse (RN). Skilled nursing services shall be provided by a registered nurse in accordance with the plan of treatment. These services shall include the following:
- 1) Be responsible for the observation, assessment, nursing diagnosis, counsel, care and health teaching of the ill, injured or infirm, and the maintenance of health and prevention of illness of others.
 - 2) Maintain a clinical record for each patient receiving care.
 - 3) Provide progress notes to the patient's physician or podiatrist about patients under care when the patient's conditions change or there are deviations from the plan of care, or at least every 60 days [for a home health agency and every 90 days for a home nursing agency](#).
 - 4) In the case of an RN working as a part of a home health or home nursing agency, make home health aide assignments, prepare written instructions for the aide, and supervise the aide in the home.
 - 5) Direct the activities of the licensed practical nurse.

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- 6) Administer medications and treatments as prescribed by the patient's physician or podiatrist.
- 7) Act as the coordinator of the health care team in order to maintain the proper linkages within a continuum of care.
- i) Speech-Language Pathologist. When required, speech therapy services shall be provided by a speech-language pathologist in accordance with the plan of treatment. These services shall include the following:
 - 1) Assist the physician in determining and recommending appropriate speech and hearing services.
 - 2) Evaluate the patient's speech and language abilities and establish a plan of treatment.
 - 3) Provide rehabilitation services for speech and language disorders.
 - 4) Record and report to the patient's physician the patient's progress in treatment and any changes in the patient's condition and plan of care.
 - 5) Instruct other health team personnel and family members in methods of assisting the patient in improving communication skills.
 - 6) Prepare clinical and progress notes for the clinical record.
- j) Audiologist. When required, audiology services shall be provided by an audiologist in accordance with the plan of treatment. These services shall include the following:
 - 1) Administer diagnostic hearing tests to evaluate the patient's audiological abilities.
 - 2) Assess the patient's need for amplification.
 - 3) Provide rehabilitative services for hearing disorders.
 - 4) Instruct other health team personnel and family members in methods of assisting the patient in improving communication skills.

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- 5) Record and report to the patient's physician the patient's response to rehabilitative intervention.
- k) Student Training Program. When an agency elects to participate with an educational institution to provide clinical experience for students as part of their health-related professional training, a written agreement between the agency and each educational institution shall specify the responsibilities of the agency and the educational institution. The agreement shall include, at a minimum, the following provisions:
- 1) The agency retains the responsibility for client care;
 - 2) The educational institution retains the responsibility for student education;
 - 3) Student and faculty performance expectations;
 - 4) Faculty supervision of undergraduate students in the clinic and the field;
 - 5) Ratio of faculty to students;
 - 6) Confidentiality regarding patient information;
 - 7) Required insurance coverage; and
 - 8) Provisions for the agency and faculty to jointly evaluate the students' performance and the training program.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 245.55 Vaccinations

a) Influenza

- 1) *A home health agency [and home nursing agency](#) shall annually administer or arrange for administration of a vaccination against influenza to each client/patient, in accordance with the recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention titled Morbidity and Mortality Weekly Report, General*

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Recommendations on Immunization (see Section 245.25), *unless the vaccination is medically contraindicated or the client/patient has refused the vaccine.* (Section 6.5 of the Act)

- 2) The following activities by home health [or home nursing](#) agencies shall be considered to be "arranging for" a [home health](#) client/patient to receive an influenza vaccination:
 - A) Referring a client/patient to the physician who is supervising the client's/patient's home care, or to his/her primary care physician; or
 - B) Referring a client/patient to the hospital affiliated with the home health agency; or
 - C) Referring a client/patient to the local health department or other community location (e.g., local pharmacy, influenza vaccine clinic, hospital) where influenza vaccinations are available; or
 - D) Arranging for the local health department or other private or community health organization to provide the vaccination in the client's/patient's home.
- 3) When a referral or arrangement is made, home health [or home nursing](#) agency staff shall assist the client/patient in developing a plan for implementing the referral or arrangement and shall assess implementation of the plan and document the outcome.
- 4) *Influenza vaccination for all clients/patients age 65 or over shall be completed by November 30 of each year or as soon as practicable if vaccine supplies are not available before November 1. Home health [or home nursing](#) clients/patients whose services start after November 30, during the flu season, and until February 1, shall, as medically appropriate, receive an influenza vaccination prior to or upon service initiation or as soon as practicable if vaccine supplies are not available at the time of the service initiation, unless the vaccine is medically contraindicated or the client/patient has refused the vaccine.* (Section 6.5(a) of the Act)

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- 5) For all clients/patients who are provided services between November 1 and February 28, the *home health [or home nursing](#) agency shall document in the client's/patient's medical record that an annual vaccination against influenza was administered, arranged, refused, or medically contraindicated* or that the client/patient is not a member of a vaccination priority population. (Section 6.5(a) of the Act)
 - 6) The following shall be considered to be documentation approaches that meet the requirements of Section 6.5 of the Act:
 - A) Individual client/patient record entries identifying the assessment for the need of vaccination; date of offer or referral; client/patient response; administration, contraindication, or refusal; and any follow-up activities.
 - B) Standardized check-off form recording client/patient specific information, including the assessment for the need of vaccination; date of offer or referral; client/patient response; administration, contraindication, or refusal; and any follow-up activities.
- b) Pneumococcal pneumonia
- 1) *A home health [or home nursing](#) agency shall administer or arrange for administration of a pneumococcal vaccination, in accordance with the recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention titled Morbidity and Mortality Weekly Report, General Recommendations on Immunization (see Section 245.25), to each client/patient who is age 65 or over and who has not received this immunization prior to or upon service initiation, unless the client/patient refuses the offer for vaccination or the vaccination is medically contraindicated.* (Section 6.5(b) of the Act)
 - 2) The following activities by home health [or home nursing](#) agencies shall be considered to be "arranging for" a home health client/patient to receive a pneumonia vaccination:
 - A) Referring a client/patient to the physician who is supervising his/her home care, or to his/her primary care physician; or

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- B) Referring a client/patient to the hospital affiliated with the home health agency; or
 - C) Referring a client/patient to the local health department or other community location (e.g., local pharmacy, clinic, hospital) where pneumonia vaccinations are available; or
 - D) Arranging for the local health department or other private or community health organization to provide the vaccination in the client's/patient's home.
- 3) When a referral or arrangement is made, home health [or home nursing](#) agency staff shall assist the client/patient in developing a plan for implementing the referral or arrangement and shall assess implementation of the plan and document the outcome.
- 4) *A home health [or home nursing](#) agency shall document in each client's/patient's medical record that a vaccination against pneumococcal pneumonia was offered and was administered, arranged, refused, or medically contraindicated or that the client/patient is not a member of a vaccination priority population. (Section 6.5(b) of the Act)*
- 5) The following shall be considered to be documentation approaches that meet the requirements of Section 6.5 of the Act:
- A) Individual client/patient record entries identifying the assessment for the need of vaccination; date of offer or referral; client/patient response; administration, contraindication, or refusal; and any follow-up activities.
 - B) Standardized check-off form recording client/patient specific information, including the assessment for the need of vaccination; date of offer or referral; client/patient response; administration, contraindication, or refusal; and any follow-up activities.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 245.70 Home Health Aide Training

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- a) Each home health agency [and home nursing agency](#) shall ensure that all persons employed as home health aides or under any other title, whose duties are to assist with the personal, nursing or medical care of the patients, and who are not otherwise licensed, certified or registered in accordance with Illinois law to render such care, comply with one of the following conditions:
- 1) Is approved on the Department's Health Care Worker Registry. "Approved" means that the home health aide has met the training or equivalency requirements of this Section and does not have a disqualifying background check without a waiver (see Section 245.72);
 - 2) Meets training requirements by completion of a training program approved under the Long-Term Care Assistants and Aides Training Programs Code (see 77 Ill. Adm. Code 395); or
 - 3) Meets equivalencies established in subsection (b) of this Section.
- b) Equivalency may be established by any one of the following:
- 1) Documentation of current registration from another state.
 - 2) Documentation of successful completion of a nursing arts course, which included at least 40 hours of supervised clinical experience, in an accredited nurse training program as evidenced by diploma, certificate or other written verification from the school, and successful completion of the written portion of the Department-established nursing assistant competency test.
 - 3) Documentation of successful completion of a United States military training program that includes the content of the Basic Nursing Assistant Training Program (see 77 Ill. Adm. Code 395), as evidenced by a diploma, certification DD-214, or other written verification, and successful completion of the written portion of the Department-established nursing assistant competency evaluation.
 - 4) Documentation of completion of a nursing program in a foreign country, including the following, and successful completion of the written portion of the Department-established competency test:

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- A) A copy of the license, diploma, registration or other proof of completion of the program;
 - B) A copy of the Social Security card; and
 - C) Visa or proof of citizenship.
- c) Requests to establish equivalency shall be submitted to the Department with accompanying documentation.
- d) The home health [or home nursing](#) agency is responsible for assuring that the individuals who furnish home health aide services on its behalf are competent to carry out assigned tasks in the patient's place of residence. The competency evaluation conducted by a registered nurse in the home health [or home nursing](#) agency shall address each of the following subjects:
- 1) Communication skills;
 - 2) Observation, reporting, and documentation of patient status and the care or service furnished;
 - 3) Reading and recording temperature, pulse and respiration;
 - 4) Basic infection control procedures;
 - 5) Basic elements of body functioning and changes in body function that must be reported to an aide's supervisor;
 - 6) Maintenance of a clean, safe and healthy environment;
 - 7) Recognizing emergencies and knowledge of emergency procedures;
 - 8) The physical, emotional and developmental needs of and ways to work with the populations served by the home health agency, including the need for respect for the patient, his or her privacy, and his or her property;
 - 9) Appropriate and safe techniques in personal hygiene and grooming that include:

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- A) Bed bath;
 - B) Sponge, tub or shower bath;
 - C) Shampoo – sink, tub or bed;
 - D) Nail and skin care;
 - E) Oral hygiene; and
 - F) Toileting and elimination;
- 10) Safe transfer techniques and ambulation;
 - 11) Normal range of motion and positioning;
 - 12) Adequate nutrition and fluid intake; and
 - 13) Any other task that the agency may choose to have the home health aide perform.

- e) A home health [or home nursing](#) agency shall not employ an individual as a home health aide unless the Agency has inquired of the Department as to information in the Health Care Worker Registry concerning findings of abuse, neglect or misappropriation of property.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 245.71 Qualifications and Requirements for Home Services Workers

- a) Each agency shall ensure and maintain documentation in the employee file that all persons employed or providing services as an in-home services worker, and who are not otherwise licensed, certified or registered in accordance with Illinois law to render such care, comply with the following conditions:
 - 1) Does not have a disqualifying background check under the requirements of the Health Care Worker Background Check Act without a waiver;
 - 2) Has a copy of the Social Security card; and

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- 3) Has visa or proof of citizenship in compliance with federal requirements for employment.
- b) Each placement agency shall require proof that the home service worker has completed~~provide~~ a minimum of eight hours of training ~~for each home services worker~~ prior to his or her first assignment. The training shall include all of the items noted in subsection (d) of this Section.
- c) Each home services agency shall provide a minimum of eight hours of training for each home services worker. Four hours of training shall be provided prior to the home services worker's first assignment, and the remaining four hours shall be provided within the worker's first 30 days after employment. The training shall include the components of subsections (d)(1)-(12) of this Section.
- d) The agency shall provide proof of a competency evaluation conducted by the agency or proof that the worker has successfully completed a training program at another licensed home services agency within the prior year (previous 365 days). The competency evaluation or proof of prior training at a licensed home services agency within the prior year shall address each of the following subjects:
 - 1) The employee's job responsibilities and limitations;
 - 2) Communication skills in areas such as with persons who are hard of hearing, have dementia, or have other special needs;
 - 3) Observation, reporting and documentation of client status and the service furnished, including changes in functional ability and mental status demonstrated by the client;
 - 4) Performance of personal care tasks for clients, including: bathing; skin care; hair care; nail care; mouth care; shaving; dressing; feeding; assistance with ambulation; exercise and transfers; positioning; toileting; and medication reminding;
 - 5) Performance of ability to assist in the use of specific adaptive equipment, such as a mechanical lifting device, if the worker will be working with clients who use the device;

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- 6) Basic hygiene and basic infection control practices;
 - 7) Maintenance of a clean, safe and healthy environment;
 - 8) Basic personal and environmental safety precautions;
 - 9) Recognizing emergencies and knowledge of emergency procedures, including basic first aid and implementation of a client's emergency preparedness plan;
 - 10) Confidentiality of client personal, financial and health information;
 - 11) Behaviors that would constitute abuse or neglect and the legal prohibitions against such behaviors, as well as knowledge and understanding of abuse and neglect prevention and reporting requirements; and
 - 12) Any other task that the agency may choose to have the worker perform.
- e) All home services workers shall complete a minimum of eight hours of training during each year of employment based on either a calendar year or an anniversary date basis, whichever is selected by the agency. The initial eight hours of training required in subsection (c) of this Section shall satisfy the annual training requirement for the home services worker's first year of employment. The annual training can include self-study courses with demonstration of learned concepts that are applicable to the employee's responsibilities. Training shall include:
- 1) Promoting client dignity, independence, self-determination, privacy, choice and rights;
 - 2) Disaster procedures;
 - 3) Hygiene and infection control; and
 - 4) Abuse and neglect prevention and reporting requirements.
- f) All training shall be documented with the date of the training; starting and ending times; instructors and their qualifications; short description of content; and staff member's signature.

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(Source: Amended at 33 Ill. Reg. _____, effective _____)

SUBPART D: CLIENT/PATIENT SERVICES

Section 245.200 Services – Home Health

- a) Each home health agency shall provide skilled nursing service and at least one other home health service on a part-time or intermittent basis. The agency staff shall directly provide basic skilled nursing service. The agency staff may provide other home health services directly or through a contractual purchase of services. Additional skilled specialty nursing services and use of additional nursing staff to meet changes in caseload may be provided by contract. All services shall be provided in accordance with the orders of the patient's physician or podiatrist, under a plan of treatment established by such physician or podiatrist, and under the supervision of agency staff.
- b) The agency shall state in writing what services will be provided directly and what services will be provided under contractual arrangements.
- c) Services provided under contractual arrangements shall be through a written agreement that includes, but is not limited to, the following:
 - 1) Services to be provided;
 - 2) Provision for adherence to all applicable agency policies and personnel requirements, including requirements for initial health evaluations and employee health policies;
 - 3) Designation of full responsibility for agency control over contracted services;
 - 4) Procedures for submitting clinical and progress notes;
 - 5) Charges for contracted services;
 - 6) Statement of responsibility of liability and insurance coverage;
 - 7) Period of time in effect;

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- 8) Date and signatures of appropriate authorities; and
 - 9) Provision for termination of services.
- d) Acceptance of Patients. Patient acceptance and discharge policies shall include, but not be limited to, the following:
- 1) Persons shall be accepted for health services on a part-time or intermittent basis in accordance with a plan of treatment established by the patient's physician or podiatrist. This plan shall be promulgated in writing within 14 days after acceptance and signed by the physician within 30 days after the start of the care date.
 - 2) Prior to acceptance of a patient, the agency shall inform the person of the agency's charges for the various services that it offers.
 - 3) No person shall be refused service because of age, race, color, sex, marital status, national origin or source of payment. An agency is not required to accept a patient whose source of payment is less than the cost of services.
 - 4) Patients are accepted for treatment on the basis of a reasonable expectation that the patient's medical, nursing and social needs can be met adequately by the agency in the patient's place of residence.
 - 5) When services are to be terminated by the home health agency, the patient is to be notified ~~threeseven~~ working days in advance of the date of termination, stating the reason for termination. This information shall be documented in the clinical record. When indicated, a plan shall be developed or a referral made for any continuing care.
 - 6) Services shall not be terminated until such time as the registered nurse, or the appropriate therapist, or both, in consultation with the patient's physician or podiatrist, deem it appropriate or arrangements are made for continuing care.
- e) Plan of Treatment
Skilled nursing and other home health services shall be in accordance with a plan based on the patient's diagnosis and an assessment of the patient's immediate and long-range needs and resources. The plan of treatment is established in

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consultation with the home health services team, which includes the patient's physician or podiatrist, pertinent members of the agency staff, the patient, and members of the patient's family. The plan of treatment shall include:

- 1) Diagnoses;
 - 2) Functional limitations and rehabilitation potential;
 - 3) Expected outcomes for the patient;
 - 4) The patient's physician's or podiatrist's regimen of:
 - A) Medications;
 - B) Treatments;
 - C) Activity;
 - D) Diet;
 - E) Specific procedures deemed essential for the health and safety of the patient;
 - F) Mental status;
 - G) Frequency of visits;
 - H) Equipment required;
 - I) Instructions for timely discharge or referral; and
 - J) Assessed need for influenza and pneumococcal vaccination;
 - 5) The patient's physician's or podiatrist's signature and date.
- f) Consultation with the patient's physician or podiatrist on any modifications in the plan of treatment deemed necessary shall be documented, and the patient's physician's or podiatrist's signature shall be obtained within 30 days after any modification of the medical plan of treatment.

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- 1) The home health services team shall review the plan every 62 days, or more often if the patient's condition warrants.
 - 2) An updated plan of treatment shall be given to the patient's physician or podiatrist for review, for any necessary revisions, and for signature every 62 days, or more often as indicated.
- g) Patient Care Plan
- 1) Home health services from members of the agency staff, as well as those under contractual arrangements, shall be provided in accordance with the plan of treatment and the patient care plan. The patient care plan shall be written by appropriate members of the home health services team based upon the plan of treatment and an assessment of the patient's needs, resources, family and environment. The initial assessment is to be made by a registered nurse. Assessment by other members of the health services team shall be made on orders of the patient's physician or podiatrist or by request of a registered nurse. In those circumstances in which the patient's physician has ordered only therapy services, the appropriate therapist (physical therapist, speech-language pathologist or occupational therapist) may perform the initial assessment.
 - 2) The patient care plan shall be updated as often as the patient's condition indicates. The plan shall be maintained as a permanent part of the patient's record. The patient care plan shall indicate:
 - A) Patient problems;
 - B) Patient's goals, family's goals, and service goals;
 - C) Service approaches to modify or eliminate problems;
 - D) The staff responsible for each element of service;
 - E) Anticipated outcome of service approach with an estimated time frame for completion; and
 - F) Potential for discharge from service.

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- h) Clinical Records
 - 1) Each patient shall have a clinical record, identifiable for home health services and maintained by the agency in accordance with accepted professional standards. Clinical records shall contain:
 - A) Appropriate identifying information for the patient, household members and caretakers, medical history, and current findings.
 - B) A plan of treatment signed by the patient's physician or podiatrist.
 - C) A patient care plan developed by the home health services team in accordance with the patient's physician's or podiatrist's plan of treatment.
 - D) A noted medication list with dates reviewed and revised and date sent to the patient's physician or podiatrist.
 - E) Initial and periodic patient assessments by the registered nurse that include documentation of the patient's functional status and eligibility for service.
 - F) Assessments made by other members of the home health services team.
 - G) Signed and dated clinical notes for each contact that are written the day of service and incorporated into the patient's clinical record at least weekly.
 - H) Reports on all patient home health care conferences.
 - I) Reports of contacts with the patient's physician or podiatrist by patient and staff.
 - J) Indication of supervision of home health services by the supervising nurse, a registered nurse, or other members of the home health services team.

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- K) Written summary reports sent to the patient's physician or podiatrist every 62 days, containing home health services provided, the patient's status, recommendations for revision of the plan of treatment, and the need for continuation or termination of services.
 - L) Written and signed confirmation of the patient's physician's or podiatrist's interim verbal orders.
 - M) A discharge summary giving a brief review of service, patient status, reason for discharge, and plans for post-discharge needs of the patient. A discharge summary may suffice as documentation to close the patient record for one-time visits and short-term or event-focused or diagnoses-focused interventions. The discharge summary need not be a separate piece of paper and may be incorporated into the routine summary of reports already furnished to the physician.
 - N) A copy of appropriate patient transfer information, when requested, if the patient is transferred to another health facility or health agency.
- 2) Each agency shall have a written policy on records procedures and shall retain records for a minimum of five years beyond the last date of service provided. These procedures may include that the agency will use and maintain faxed copies of records from licensed professionals, rather than original records, provided that the faxed copies shall be maintained on non-thermal paper and that the original records shall be maintained for a period of five years by the professional who originated the records. If the professional is providing services through a contract with the agency, then the contract shall include that the professional shall maintain the original records for a period of five years.
- 3) Those agencies that are subject to the Local Records Act should note that, *except as otherwise provided by law, no public record shall be disposed of by any officer or agency unless the written approval of the appropriate Local Records Commission is first obtained.* (Section 7 of the Local Records Act)

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- 4) Each agency shall have a written policy and procedure for the protection of confidentiality of patient records that explains the use of records, removal of records and release of information.
- i) Drugs and Biologicals. The agency shall have written policies governing the supervision and administration of drugs and biologicals that shall include, but not be limited to, the following:
 - 1) All orders for medications to be given shall be dated and signed by the patient's physician or podiatrist.
 - 2) Drugs and treatments are administered by agency staff only as ordered by the physician, with the exception of influenza and pneumococcal polysaccharide vaccines, which may be administered per agency policy developed in consultation with a physician, and after an assessment of the patient.
 - 3) All orders for medications shall contain the name of the drug, dosage, frequency, method or site of injection, and permission from the patient's physician or podiatrist if the patient, the patient's family, or both are to be taught to give medications.
 - 4) The agency's physician or podiatrist or registered nurse shall check all medicines a patient may be taking to identify possible ineffective drug therapy or adverse reactions, significant side effects, drug allergies, and contraindicated medications, and shall promptly report any problem to the patient's physician or podiatrist.
 - 5) All verbal orders for medication or change in medication orders shall be taken by the registered nurse, written, and signed by the patient's physician or podiatrist within 30 days after the verbal order.
 - 6) When any experimental drug, sera, allergenic desensitizing agent, penicillin or other potentially hazardous drug is administered, the registered nurse administering the drugs shall have an emergency plan and any drugs and devices that may be necessary in the event of a drug reaction.

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- j) Evaluation. The home health agency shall have written policies and shall make an overall evaluation of the agency's total program at least once a year. This evaluation shall be made by the Professional Advisory Group (or a committee of this group), home health agency staff, consumers, or representation from professional disciplines that are participating in the provision of home health services. The evaluation shall consist of an overall policy and administrative review and a clinical record review. The evaluation shall assess the extent to which the agency's program is appropriate, adequate, effective and efficient. Results of the evaluation shall be reported and acted upon by those responsible for the operation of the agency and maintained separately as administrative records.
- k) Policy and Administrative Review. As a part of the evaluation process, the policies and administrative practices of the agency shall be reviewed to determine the extent to which they promote patient care that is appropriate, adequate, effective and efficient. Mechanisms shall be established in writing for the collection of pertinent data to assist in evaluation. The data to be considered may include, but are not limited to: number of patients receiving each service offered; number of patient visits; reasons for discharge; breakdown by diagnosis; sources of referral; number of patients not accepted, with reasons; and total staff days for each service offered.
- l) Clinical Record Review
- 1) At least quarterly, members of professional disciplines representing at least the scope of the agency's programs shall review a sample of both active and closed clinical records to assure that established policies are followed in providing services (direct, as well as those under contractual arrangement). This review shall include, but not be limited to, whether the:
- A) Patient care plan was directly related to the stated diagnosis and plan of treatment;
- B) Frequency of visits was consistent with the plan of treatment; and
- C) Services could have been provided in a shorter span of time.

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- 2) Clinical records shall be reviewed continually for each 62-day period that a patient received home health services to determine the adequacy of the plan of treatment and the appropriateness of continuing home health care.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 245.205 Services – Home Nursing Agencies

- a) Each home nursing agency shall provide skilled nursing services and may provide home health aide services under the supervision of the registered nurse. Home nursing services may be provided directly by agency staff or through a contractual purchase of services. All services shall be provided:
 - 1) in accordance with the client's physician or podiatrist, or under a plan of treatment established by the physician, podiatrist or prescribing professional; and
 - 2) under the supervision of agency staff, by a health care professional.
- b) The agency shall state in writing to the client what services will be provided directly by agency staff, and what services will be provided under contractual arrangements.
- c) Acceptance and Discharge of Patients
 - 1) Patient acceptance and discharge policies shall include, but not be limited to, the following:
 - A) Persons shall be accepted for services with a plan of treatment established by the patient's health care professional. This plan shall be promulgated in writing within 30 days after acceptance and shall be signed by the prescribing professional within 45 days after acceptance.
 - B) Prior to acceptance, the person shall be ~~promulgate~~-informed of the agency's charges for the various services that it offers.
 - C) No person shall be refused service because of age, race, color, sex, marital status, national origin or sexual orientation. Patients are

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accepted for treatment on the basis of a reasonable expectation that the patient's nursing needs can be met adequately in the patient's place of residence.

- D) When services are to be terminated by the agency, the patient is to be notified seven working days in advance of the date of termination. The notice shall state the reason for termination. This information shall be documented in the clinical record. When indicated, a plan shall be developed or a referral made for any continuing care.
- E) Services shall not be terminated until such time as the registered nurse has provided a minimum of seven days notice to the patient's health care professional. The seven-day notice requirement is not applicable in cases in which the worker's safety is at risk. In such cases, the agency shall notify the client of the timing of the termination of services and the reason for the termination. Documentation of the risk to the worker shall be maintained in the client record.

d) Plan of Treatment

~~1~~Skilled nursing services shall be in accordance with a plan based on the client's diagnosis, an assessment of the client's immediate and long-range needs and resources, and client participation. The plan is to be established in consultation with the nursing personnel; the client's health care professional; other pertinent members of the agency staff; the client; and client's advocate. The plan shall include:

- ~~1~~A) Diagnoses;
- ~~2~~B) Client limitations and prognosis;
- ~~3~~C) Expected outcomes for the client;
- ~~4~~D) The prescribing professional's regimen of care designed to address identified client needs, including medications; treatments; activity; diet; specific procedures deemed essential for the health and safety of the client; mental status; and potential for discharge; ~~and~~

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- ~~5E)~~ The types and frequency of services to be provided; and-
- ~~6)~~ Assessment of need for influenza and pneumococcal vaccination.
- e) Consultation with the client's health care professional on any modifications in the plan of treatment deemed necessary shall be documented, and the prescribing professional's signature shall be obtained within 45 days after any modification of the plan.
- 1) The home nursing services team shall review the plan every 90 days, or more often should the patient's condition warrant.
 - 2) An updated plan of treatment shall be given to the client's health care professional for review, for any necessary revisions, and for signature every 90 days, or more often as indicated.
- f) Clinical Records
- 1) Each client shall have a clinical record maintained by the agency in accordance with accepted professional standards. Clinical records shall contain:
 - A) Appropriate identifying information for the client, household members and caretakers;
 - B) A plan of treatment developed by the home nursing agency in accord with the health care professional's order;
 - C) A list of medications the client is taking, updated as needed. The list shall specify the dose, method, route of administration, and frequency of administration of each medication. All potential contraindications, drug interactions, and adverse reactions shall be reported to the health care professional within 24 hours, or sooner as warranted, and documented in the clinical record;
 - D) Initial and periodic client assessments by the registered nurse;

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- E) Signed and dated clinical notes for each contact that are written the day of service and incorporated into the client's clinical record at least weekly;
 - F) Reports on all client conferences;
 - G) Report of contracts with the client's health care professional by client and staff;
 - H) Indication of supervision of services by the supervising nurse, a registered nurse, or other members of the home nursing supervisory/management team;
 - I) Written and signed confirmation of the client's health care professional's interim verbal orders;
 - J) A discharge summary giving a brief review of service, client status, reason for discharge, and plans for post-discharge needs of the client. A discharge summary may suffice as documentation to close the client record for one-time visits or short-term services. The discharge summary need not be a separate piece of paper and may be incorporated into the routine summary of reports already furnished to the physician;
 - K) A copy of appropriate client transfer information, when requested, if the client is transferred to another health facility or health agency.
- 2) Each agency shall have a written policy on records procedures and shall retain records for a minimum of five years beyond the last date of service provided. The procedures may include that the agency will use and maintain faxed copies of records from licensed professionals, rather than original records, provided that the faxed copies will be maintained on non-thermal paper and that the original records will be maintained for a period of five years by the professional who originated the records. If that professional is providing services through a contract with the agency, then the contract shall provide that the professional maintain the original records for a period of five years.

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- 3) Agencies that maintain client records by computer rather than hard copy may use electronic signatures. The agency shall have policies and procedures in place in regard to such entries and the appropriate authentication and dating of those records. Authentication may include signatures, written initials, or computer secure entry by a unique identifier of a primary author who has received and approved the entry. The agency shall have safeguards in place to prevent unauthorized access to the records and a process for reconstruction of the records in the event of a system failure or breakdown.
 - 4) Those agencies that are subject to the Local Records Act should note that, *except as otherwise provided by law, no public record shall be disposed of by any officer or agency unless the written approval of the appropriate Local Records Commission is first obtained.* (Section 7 of the Local Records Act)
 - 5) Each agency shall have a written policy and procedure for the protection of confidentiality of client records that explains the use of records, removal of records and release of information.
- g) **Drugs and Biologicals**
The agency shall have written policies governing the supervision and administration of drugs and biologicals, which shall include, but not be limited to, the following:
- 1) All orders for medications to be given shall be dated and signed by the client's health care professional.
 - 2) All orders for medications shall contain the name of the drug, dosage, frequency, method, and route of administration, and permission from the prescribing professional if the client, the client's family, or both are to be taught to give medications.
 - 3) All verbal orders for medication or change in medication orders shall be taken by the registered nurse, written, and signed by the patient's healthcare professional within 45 days.
 - 4) When any experimental drug, sera, allergenic desensitizing agent, penicillin or other potentially hazardous drug is administered, the

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registered nurse administering the drugs shall have an emergency plan and any drugs and devices that may be necessary in the event of a drug reaction.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 245.210 Services – Home Services Agencies

- a) Agencies licensed as home services agencies shall provide non-medical services, which may be provided directly by agency staff or through a contractual purchase of services, that are intended to assist clients with activities of daily living. Services may, which would include, but are not be-limited to, activity of daily living support, personal care, medication reminding, housekeeping services, personal laundry, cooking, shopping, assistance in getting to and from appointments, maintenance of household records, and companionship. Each agency shall maintain a listing of the types of services offered by the agency, and the scope of the work to be provided under each area, which the agency shall distribute to clients before contracting with the client, with the signed contract, and when changes occur.
- b) When services are provided to clients by a home services agency, there shall be a written contractual agreement between the client and the agency that includes, but is not limited to:
- 1) Indication and assurance of compliance by the agency with the requirements of the licensing Act, including the Health Care Worker Background Check Act;
 - 2) Identification of parties responsible for payment of employment taxes, Social Security taxes, and workers' compensation;
 - 3) Information on the parties responsible for supervising workers, as well as hiring, firing and discipline of in-home services workers;
 - 4) Identification of the charges to be paid, payment schedule, and to whom the client, or person acting on behalf of the client, is to make payments for services under the contract;

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- 5) Time period for contractual arrangement and conditions for termination of contract; and
 - 6) Contact information for the client to use in case of concerns, complaints, or questions on care to be provided.
- c) Acceptance of Clients. Home Services Agencies shall develop and follow policies on acceptance and discharge of clients, which shall include, but not be limited to, the following:
- 1) Persons shall be accepted for service on the basis of their desire or need for household or personal support and/or companionship services. A home services agency shall not provide medical services that would be performed by an agency licensed as a home health agency or home nursing agency.
 - 2) No person shall be refused services based on age, race, color, sex, marital status or national origin.
 - 3) When services are terminated by the agency, the client is to be notified at least seven working days in advance of the date of termination, with a stated reason for the termination. This information shall be maintained in the client record. The seven-day notice requirement is not applicable in cases in which the worker's safety is at risk. In such cases, the agency may notify the client of termination of services and the reason for termination. Documentation of the risk to the provider shall be maintained in the client record.
- d) Service Plan. The agency shall establish a plan for each client, in consultation with the client and his or her appropriate family members or representative, that outlines the services to be provided to the client. The plan shall address and include, but not be limited to:
- 1) The level, type and/or scope of services the client is receiving;
 - 2) Identification of any functional limitations of the client and the relevance of the limitation to the services to be provided;

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- 3) Information received from the client, in consultation with the client and his or her appropriate family members or representative, on circumstances that may have an impact on activity or involvement by the client, such as basic information on medications being taken, treatments received, client's physician, activity, diet and mental status.
- e) Physician signature is not required for the plan of service developed under this Section.
- f) The service plan shall be reviewed and revised as necessary, but not less than once annually.
- g) Client Records. A client record shall be maintained for each client receiving in-home services. The record shall contain:
 - 1) Appropriate identifying information for the client, including the client's name, address and telephone numbers;
 - 2) The name, telephone numbers and address of the client's representative, if applicable;
 - 3) The name, telephone numbers and address of an individual or relative to be contacted in an emergency;
 - 4) The plan of services agreed to by the client and agency;
 - 5) A copy of the Client Home Care Services Agreement or Contract; and
 - 6) Documentation of each of the services provided at each visit.
- h) Each agency shall have a written policy on records procedures and shall retain records for a minimum of two years beyond the last date of service provided.
- i) Each agency shall have a written policy for protecting the confidentiality of patient records that explains the use of records, removal of records, and release of information.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

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Section 245.214 Services – Home Services Placement Agency

- a) Agencies licensed as home services placement agencies are in the business of securing or attempting to secure work for hire for persons seeking work or workers for employers.
- b) A placement agency, by definition, cannot be the employer of the worker.
- c) A placement agency ~~shall~~must identify itself as a placement agency in all advertisement and marketing materials.
- d) The placement agency shall require and document that:
 - 1) ~~A new~~An individual ~~wishing to remain~~ eligible for placement by the agency shall submit to a ~~health care worker~~criminal background check;
 - 2) Anyone wishing to remain eligible for placement by the agency shall ~~provide proof of~~undergo eight hours of training pursuant to Section 245.71(d) of this Part prior to his or her first placement; and
 - 3) ~~Anyone wishing to remain eligible for placement by the agency shall undergo a competency evaluation prior to placement to ensure that the individual is competent to provide the services that the consumer is seeking; and~~
 - 3)4) Anyone wishing to remain eligible for placement by the agency, even after an initial placement, shall ~~provide proof of~~participate in a minimum of eight hours of in-service training per year, ~~provided and arranged for by the placement agency.~~
- e) The placement agency shall notify the worker both verbally and in writing of the implications of his or her relationship to the client as his or her employer. The document must be printed in no less than 12 point type and shall include at least the following elements in the body or through supporting documents or attachments, indicating the responsible parties for the following:
 - 1) Employer of the in-home services worker;
 - 2) Liability for the in-home services worker;

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- 3) Payment of wages to the in-home services worker;
- 4) Payment of employment taxes, unemployment insurance, and worker's compensation for the in-home services worker;
- 5) Payment of Social Security taxes for the in-home services worker;
- 6) Day-to-day supervision of the in-home services worker;
- 7) Assignment of duties to the in-home services worker;
- 8) Responsibility for hiring, firing, and discipline of the in-home services worker;
- 9) Provision of equipment or materials for the in-home services worker's use in providing services to the consumer; and
- 10) All placement fees and procedures for refunds of such fees and a complaint resolution process for disputes concerning placement fees, as currently provided under the Private Employment Agency Act.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 245.225 Client Service Contracts – Home Nursing Placement Agency and Home Services Placement Agency

A contract between a home nursing placement agency or home services placement agency and a client shall be in force, a copy of which is provided to the client and a copy of which is maintained in the client file at the agency. The document shall be printed in no less than 12 point type, and shall include at least the following elements in the body or through supporting documents or attachments:

- a) Client consent to receive services;
- b) The name, street address, mailing address and telephone number of the agency;
- c) The name, mailing address and telephone number of the persons designated as the placement agency manager and/or other individual representing the placement

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agency whom the consumer may contact in the event that the contract terms are not performed;

- d) A statement describing the agency license status;
- e) The duration of the contract;
- f) The rate and fees to be paid by the client and a detailed description of services to be provided as a part of the rate;
- g) A description of the process through which the contract may be modified, amended or terminated;
- h) A description of the agency complaint resolution process;
- i) The billing and payment procedures and requirements;
- j) A statement regarding the agency's policy on notification of a relative or other individual in case of an emergency;
- k) A statement on how the client can report abuse, neglect or financial exploitation;
- l) A notice, as developed and provided by the agency, indicating the responsible party for the following:
 - 1) Employer of the in-home/licensed worker;
 - 2) Liability for the in-home/licensed worker;
 - 3) Payment of wages to the in-home/licensed worker;
 - 4) Payment of employment taxes, unemployment insurance, and worker's compensation for the in-home/licensed worker;
 - 5) Payment of Social Security taxes for the in-home/licensed worker;
 - 6) Day-to-day supervision of the in-home/licensed worker;
 - 7) Assignment of duties to the in-home/licensed worker;

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- 8) Responsibility for hiring, firing and discipline of the in-home/licensed worker; ~~and~~
- 9) Provision of equipment or materials for the in-home/licensed worker's use in providing services to the consumer; ~~and-~~
- 10) [All placement fees, procedures for refunds of those fees, and a complaint resolution process for disputes concerning placement fees, as currently provided under the Private Employment Agency Act.](#)

(Source: Amended at 33 Ill. Reg. _____, effective _____)

ILLINOIS RACING BOARD

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Medication
- 2) Code Citation: 11 Ill. Adm. Code 603
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
603.70	Amend
603.100	Amend
603.120	Amend
603.160	Amend
603.180	Amend
- 4) Statutory Authority: Section 9(b) of the Illinois Horse Racing Act of 1975 [230 ILCS 5/9(b)]
- 5) A Complete Description of the Subjects and Issues Involved: Section 603.70 has been amended to reflect the ARCI model rules. A provision has been added to Section 603.100 prohibiting children in the detention barn area. There are safety concerns with having children in the detention barn area because racehorses are being brought in and out on a regular basis. This proposed rulemaking prohibits persons under the age of 16 from entering the detention barn. A provision has been added to Section 603.120 stating that the person requesting the additional testing shall bear the cost of preparing the samples for testing. Language has been added to Section 603.160 requiring suspended trainers to submit to the stewards a current stable roster. In Section 603.180, the threshold level for horses racing on lasix, 39, has been removed. The 37 regulatory threshold level, adopted by the ARCI and contained in the model rules, shall apply to all racehorses. In addition, the penalties contained in Section 603.180(d) have been amended to conform with the model rules.
- 6) Published studies or reports and sources of underlying data used to compose this rulemaking: Association of Racing Commissioners International model rules (ARCI-011-020 and 023).
- 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 in this Part? No

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- 11) Statement of Statewide Policy Objectives: No local governmental units will be required to increase expenditures.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Written comments should be submitted, within 45 days after this Notice, to:

Mickey Ezzo
Illinois Racing Board
100 West Randolph
Suite 7-701
Chicago, Illinois 60601

312/814-5017
- 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 which this rulemaking was summarized: January 2009

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

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TITLE 11: ALCOHOL, HORSE RACING, AND LOTTERY
SUBTITLE B: HORSE RACING
CHAPTER I: ILLINOIS RACING BOARD
SUBCHAPTER c: RULES APPLICABLE TO ALL OCCUPATION LICENSEES

PART 603
MEDICATION

Section	
603.10	Pre-Race Saliva Tests
603.20	Racing Soundness Exam
603.30	Foreign Substances and Pharmaceutical Aids Banned
603.40	Twenty-four Hour Ban
603.50	Trainer Responsibility
603.55	Prima Facie Evidence
603.60	Permitted Use of Foreign Substances and Threshold Levels
603.70	Furosemide
603.75	Environmental Contaminants
603.80	Needles, Syringes and Injectables
603.90	Drugs, Chemicals and Prescription Items
603.100	Detention Barn
603.110	Test Samples
603.120	Referee Samples
603.130	Laboratory Findings and Reports
603.140	Distribution of Purses
603.150	Post Mortems
603.160	Penalties
603.170	Veterinarian's Records
603.180	Carbon Dioxide Tests
603.190	Erythropoietin and Darbepoietin Antibody Testing Program
603.200	Out of Competition Testing
603.210	Anabolic Steroids

AUTHORITY: Implementing and authorized by Section 9(b) of the Illinois Horse Racing Act of 1975 [230 ILCS 5/9(b)].

SOURCE: Adopted at 21 Ill. Reg. 3232, effective March 4, 1997; amended at 22 Ill. Reg. 2217, effective January 1, 1998; amended at 22 Ill. Reg. 3594, effective February 1, 1998; amended at 25 Ill. Reg. 15611, effective December 1, 2001; amended at 26 Ill. Reg. 12360, effective August

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1, 2002; amended at 27 Ill. Reg. 5027, effective March 7, 2003; amended at 27 Ill. Reg. 7331, effective April 15, 2003; amended at 28 Ill. Reg. 1374, effective January 19, 2004; amended at 28 Ill. Reg. 4751, effective March 1, 2004; emergency amendment at 28 Ill. Reg. 7565, effective May 11, 2004, for a maximum of 150 days; emergency expired October 7, 2004; amended at 28 Ill. Reg. 11250, effective August 1, 2004; amended at 28 Ill. Reg. 15790, effective December 1, 2004; emergency amendment at 29 Ill. Reg. 2779, effective February 22, 2005, for a maximum of 150 days; emergency amendment at 29 Ill. Reg. 4116, effective February 25, 2005, for a maximum of 150 days; amended at 29 Ill. Reg. 5726, effective April 8, 2005; amended at 29 Ill. Reg. 12265, effective July 24, 2005; amended at 29 Ill. Reg. 14038, effective September 1, 2005; emergency amendment at 30 Ill. Reg. 14371, effective August 21, 2006, for a maximum of 150 days; amended at 30 Ill. Reg. 18729, effective November 20, 2006; amended at 31 Ill. Reg. 1478, effective January 1, 2007; emergency amendment at 31 Ill. Reg. 6680, effective April 23, 2007, for a maximum of 150 days; amended at 31 Ill. Reg. 12982, effective September 1, 2007; amended at 32 Ill. Reg. 7397, effective May 1, 2008; amended at 33 Ill. Reg. _____, effective _____.

Section 603.70 Furosemide

- a) The Board recognizes that Exercise Induced Pulmonary Hemorrhage (EIPH) is almost universal in performance horses. The Board also recognizes that the diuretic furosemide is helpful in the management of the EIPH syndrome, this includes horses that already had a bleeding episode as well as horses that have not yet exhibited the epistaxis. In regulating the race day use of furosemide, the Board has placed strict controls on the dose, route and time the medication is administered. Additionally, Board security personnel monitors these horses during and after the administration. Advances in drug testing techniques permit the Board laboratory to quantitate post-race serum samples for furosemide, providing a thorough regulation of the drug. All of these measures are designed to prevent the misuse of furosemide.
- b) ~~Veterinarian's List~~
 - 1) ~~When a horse is added to the furosemide list, it shall be placed on the veterinarian's list and shall be ineligible to race for 14 days. The 14 day ineligibility period begins on the certification date defined in subsections (c)(1)(A), (B), (C), and (D). During this 14 day period, the horse shall not be permitted to race with or without furosemide. Before the horse shall be permitted to enter a race, it must qualify on furosemide by participating in a qualifying race or by performing an official workout without bleeding, to~~

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~~the satisfaction of the State Veterinarian. Horses must wait 7 days following the certification date before participating in a qualifying race.~~

- ~~2) A horse bleeding while racing with furosemide shall be barred from racing for a minimum of 30 days.~~
- ~~3) A horse bleeding a second time in any 12 month period while racing with furosemide shall be barred from racing for a minimum of 60 days.~~
- ~~4) A horse bleeding a third time in any 12 month period while racing with furosemide shall be barred from racing for a minimum of 180 days or the remainder of the 12 month period, whichever is greater.~~
- ~~5) After the expiration of the barred periods in subsections (b)(2), (3) and (4), a horse must qualify on furosemide by participating in a qualifying race or performing an official workout without bleeding to the satisfaction of the State Veterinarian. Prior to the workout, a blood sample may be collected by the State Veterinarian and sent to the Board laboratory for testing. After the workout, the State Veterinarian may witness an endoscopic examination of the horse to confirm that it has not bled.~~

be) Eligibility for Furosemide Treatment

~~1) A horse is eligible to race with furosemide if at least one of the following occurs:~~

- ~~1A) The horse is on the Illinois Furosemide List and has complied with subsection (d)It bleeds internally or externally in the presence of an official veterinarian, or if a veterinarian licensed by the State of Illinois attests in writing that he/she witnessed a bleeding episode. The State Veterinarian will then issue a bleeder certificate and place the horse on the furosemide list. The certification date shall be the day the bleeding episode was witnessed by or reported to the State Veterinarian;~~
- ~~2B) The horse is on the Illinois Bleeder List and has complied with subsection (e)A veterinarian licensed by the Board concludes that it will be in the best interest of a horse's health to race with furosemide. The trainer shall submit to the State Veterinarian a certificate signed by the licensed veterinarian requesting approval to place the horse on the furosemide list. The certification date shall be the day the State Veterinarian grants~~

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~~approval. This subsection (c)(1)(B) applies to thoroughbred horses only;~~

- ~~3C)~~ The trainer provides the ~~State Veterinarian Board~~ or ~~his or her~~s designee with evidence that the horse ~~is on the Furosemide List or Bleeder List~~bled in another racing jurisdiction. Acceptable evidence shall be a ~~furosemide or valid~~ bleeder certificate approved by an official veterinarian. The certification date shall be the date shown on the ~~furosemide or~~ bleeder certificate;
- ~~4D)~~ The trainer provides the ~~State Veterinarian Board~~ or ~~his or her~~s designee with evidence that the horse has been running consistently, up to its last start, with furosemide in other racing jurisdictions as shown on the official past performance lines. Acceptable past performance lines for thoroughbreds and/or quarter horses shall be Equibase and/or Racing Form. Acceptable past performance lines for ~~standardbred~~sharness horses shall be the official past performances of the United States Trotting Association (USTA) or Canadian Trotting Association (CTA) or the eligibility papers. The certification date shall be the earliest available date the horse shows running with furosemide on the official past performance lines. If the past performance lines of a horse show that the horse has been running on and off furosemide in other racing jurisdictions, the horse shall not be permitted to run with furosemide in Illinois, unless the occasions the horse ran without furosemide were due to rule restrictions imposed on the horse by those particular racing jurisdictions.
- 2) ~~Signing a Furosemide Certification Affidavit~~
- A) ~~The stewards may permit a horse to be treated with furosemide for one race if the certification described in subsection (c)(1)(A), (B), (C) or (D) is not available at the time the horse must be treated with furosemide. The trainer or his/her representative shall sign a Furosemide Certification Affidavit.~~
- B) ~~Within 10 days after the race, the trainer of the horse shall produce for the stewards or their designee written certification from a state where the horse has bled or a statement in an official chart that the named horse bled following a race or a workout in that state. The certification date must comply with the 14 day requirement specified in subsection (b)(1).~~

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- ~~C)~~ ~~Any purse money earned by the horse in the race shall be held during the 10 day period.~~
- ~~D)~~ ~~If the trainer fails to produce the evidence required in subsection (c)(2)(B), or if the certification date does not comply with the 14 day ineligibility period specified in subsection (b)(1), the stewards shall impose a fine of not less than \$200 and not more than \$1500 and/or suspend the trainer's license and shall redistribute the amount of any purse money earned by the horse.~~

cd) ~~Removal from~~ Furosemide List

Furosemide shall be administered to a horse that is entered to race only after the State Veterinarian has placed the horse on the Furosemide List. In order for a horse to be placed on the Furosemide List, the following process shall be followed:

- 1) After the horse's licensed trainer and licensed veterinarian determine that it would be in the horse's best interests to race with furosemide, they shall notify the State Veterinarian or his or her designee, using the prescribed form provided by the Board, that they wish the horse to be placed on the Furosemide List.
- 2) The form must be received by the State Veterinarian or his or her designee no later than the time of entry to ensure public notification prior to race participation.
- 3) A horse placed on the Furosemide List must remain on that list until the licensed trainer and licensed veterinarian submit a written request to remove the horse from the list. The request must be made to the State Veterinarian or his or her designee, on the proper form, no later than the time of entry.
- 4) After a horse has been removed from the Furosemide List, the horse may not be placed back on the list for a period of 60 calendar days unless it is determined, in consultation with the State Veterinarian, to be detrimental to the welfare of the horse. If a horse is removed from the Furosemide List a second time in a 365-day period, the horse may not be placed back on the list for a period of 90 calendar days.

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- 1) ~~Once a horse is placed on the furosemide list, it must continue to race with furosemide unless the removal from the list is approved by the stewards. The stewards may remove a horse from the furosemide list upon the written request of the trainer if the horse's performance is negatively affected by the use of furosemide, or upon the recommendation of the State Veterinarian if a horse has an adverse physiological reaction to furosemide.~~
- 2) ~~Once removed from the furosemide list, a thoroughbred horse shall be ineligible to participate in a race for a minimum of 30 days. A harness horse shall be ineligible for a minimum of 14 days. The ineligibility period shall be counted from the day the stewards approve the removal of the horse from the furosemide list. Prior to starting in a race, a horse must participate without furosemide in a qualifying race or perform an official workout without bleeding. Prior to the qualifying race or workout, a blood sample may be collected by the State Veterinarian and sent to the Board laboratory for testing. After the qualifying race or workout, the State Veterinarian may witness an endoscopic examination of the horse to confirm that it has not bled.~~

d) Bleeder List

- 1) The State Veterinarian shall maintain a Bleeder List of all horses that have demonstrated:
 - A) External evidences of exercise induced pulmonary hemorrhage from one or both nostrils during or after a race or workout, as observed by an official veterinarian.
 - B) Internal evidences of exercise induced pulmonary hemorrhage via endoscopy reported by a licensed practicing veterinarian on a Board approved form.
- 2) Every confirmed bleeder, regardless of age, shall be placed on the Bleeder List and be ineligible to race for the following time periods:
 - A) First incident – 14 days;

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- B) Second incident within a 365 day period – 30 days;
 - C) Third incident within a 365 day period – 180 days;
 - D) Fourth incident within a 365 day period – Barred from racing for its lifetime.
- 3) For the purposes of counting the number of days a horse is ineligible to run, the day the horse bled is the first day of the recovery period.
 - 4) After the expiration of the barred periods in subsections (d)(2)(A), (B) and (C), a horse must perform a workout, without bleeding, to the satisfaction of the State Veterinarian. Prior to the workout, a blood sample may be collected by the State Veterinarian and sent to the Board laboratory for testing. After the workout, the State Veterinarian may witness an endoscopic examination of the horse to confirm that it has not bled.
 - 5) All horses on the Bleeder List that are eligible to race shall be administered furosemide pursuant to subsection (f).
- e) ~~Administration of~~ Furosemide Administration
- 1) All horses on the ~~Furosemide List~~furosemide list must be treated with furosemide in order to be permitted to participate in a race.
 - 2) Furosemide shall be administered between 4 hours and 15 minutes and 3 hours and 45 minutes ~~prior to the scheduled~~before post time of the race in which a horse is entered.
 - 3) A Board licensed veterinarian shall administer not less than 150 mg and not more than 500 mg of furosemide by single intravenous injection intravenously and shall verify the administration on Board prescribed affidavits ~~no later than one hour prior to~~before the post time ~~for the race for which the horse is entered~~of the first race.
 - 4) The trainer or ~~his or her~~his/her licensed employee shall witness the furosemide administration.
 - 5) The administration of furosemide ~~administration~~ may take place in the

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horse's own stall or in a centralized location.

- 6) Failure to administer furosemide in accordance with~~For violations of this subsection (e)(2e); may result in the horse being scratched from the race by the Stewards~~stewards shall scratch a horse from the race and the trainer may be fined not less than \$200 and not more than \$500.

f) Removal from Bleeder List

- 1) Once a horse is placed on the Bleeder List, it must continue to race with furosemide unless the removal from the list is approved by the State Veterinarian. The State Veterinarian may remove a horse from the Bleeder List upon written request of the trainer, if the horse's performance is negatively affected by the use of furosemide or if the horse has an adverse physiological reaction to furosemide.
- 2) Once removed from the Bleeder List, a thoroughbred horse shall be ineligible to participate in a race for a minimum of 30 days. A standardbred horse shall be ineligible for a minimum of 14 days. The ineligibility period shall be counted from the day the State Veterinarian approves the removal of the horse from the Bleeder List. Prior to starting in a race, a horse must participate without furosemide in a qualifying race or perform an official workout without bleeding. Prior to the qualifying race or workout, a blood sample may be collected by the State Veterinarian and sent to the Board laboratory for testing. After the qualifying race or workout, the State Veterinarian may witness an endoscopic examination of the horse to confirm that it has not bled.

gf) Absence of Furosemide

In the event a horse listed on the furosemide list races without furosemide, the horse shall be disqualified and any purse money earned by the horse redistributed. In addition, the stewards may suspend or fine the trainer and/or veterinarian not less than \$200 and not more than \$1500.

hg) Excessive Use of Furosemide

- 1) The test level for furosemide shall not be in excess of 100 nanograms (ng) per milliliter (ml) of serum or plasma.

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- 2) The first time the laboratory reports an amount of furosemide in excess of 100 nanograms, the trainer shall be fined \$250.
- 3) The second time the laboratory reports an amount of furosemide in excess of 100 nanograms within 365 days after the first offense, the trainer shall be fined \$500.
- 4) For a third or subsequent laboratory report of an amount of furosemide in excess of 100 nanograms within 365 days after the first offense, the trainer shall be fined \$1,000 and/or suspended for 15 days and the purse shall be redistributed.
- 5) When imposing penalties, the stewards shall consider the criteria in Section 603.160(b)(3), (4), (5) and (6) of this Part.

| [ih](#)) Trainer's Responsibilities for Horses on the Furosemide List

- 1) The trainer shall be responsible for:
 - A) providing the racing office at the time of entry with accurate information regarding the use of furosemide on horses he/she enters to race;
 - B) providing the information required for furosemide approval of his/her horses to Board staff coordinating the administration of furosemide;
 - C) notifying his/her veterinarian of furosemide horses and the date and times for race day treatment;
 - D) having horses on the furosemide list stabled at the barn and in the stall assigned by the Racing Secretary or his/her designee;
 - E) posting a "Security Stall" sign on the stalls of his/her horses entered to race (see 11 Ill. Adm. Code 436);
 - F) ensuring horses are treated with furosemide on race day at the prescribed time, witnessing the administration of furosemide and guarding the horse until the horse is taken to the paddock (see 11

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Ill. Adm. Code 436).

- 2) The stewards may suspend the trainer or assess a fine of no less than \$200 and no more than \$500 for violation of this subsection (ih).

ji) Veterinarian's Responsibilities

- 1) The practicing veterinarian shall be responsible for:
- A) administering the proper furosemide medication and dose at the proper time to the proper horse.
 - B) providing Board staff, upon request, with any documentation related to horses that are stabled on approved facilities and medication samples and/or paraphernalia used to administer any medication to a horse. Samples and/or paraphernalia may be sent to the Board laboratory for testing.
- 2) The stewards may suspend the veterinarian or assess a fine of no less than \$200 and no more than \$500 for violations of this subsection (ji).

kj) Security

- 1) Each horse racing with furosemide shall be detained in a stall assigned by the Racing Secretary at least 4 hours and 15 minutes before the post time of the race in which it is entered, and shall remain in the stall until taken to the paddock to be saddled or harnessed for the race, except that the stewards may permit horses to leave the "security stall" to engage in exercise blow-outs or warm-up heats.
- 2) The barn area is a secure area and shall be under the supervision of the Board.
- 3) No unauthorized person shall approach the security area. If any unauthorized person does approach the security area, a report of the incident is to be made immediately to one of the State Veterinarians, the stewards or a Board investigator.
- 4) Board staff may direct a veterinarian to take a blood sample immediately

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prior to the administration of furosemide to be submitted to the Board's laboratory for analysis.

- 5) Board staff may collect from a veterinarian the syringe containing any medication about to be administered to a horse for testing at the Board laboratory.

lk) This Section shall apply to all horses entering in and competing in race meetings as defined in Section 3.07 of the Act [230 ILCS 5/3.07], as well as all horses shipping in from other racing jurisdictions, domestic or foreign.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 603.100 Detention Barn

Every organization licensee shall provide a detention barn where test samples shall be taken under the supervision of the State ~~Veterinarian~~~~veterinarian~~. ~~The~~~~Such~~ detention barn shall satisfy standards prescribed by the State ~~Veterinarian~~~~veterinarian~~ and shall be approved by the Board. In addition, every organization licensee shall furnish, during racing hours, a guard whose duty shall be to assist Board employees in the detention barn. ~~The~~~~Such~~ guard shall remain on duty until the last specimens have been taken for that racing day. All persons who wish to enter the detention barn area must be a minimum of 16 years old, be currently licensed by the Board and have a legitimate reason for being in the detention barn area.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 603.120 Referee Samples

- a) For each horse tested, one portion of the test sample (hereinafter referred to as the "referee sample") shall be preserved by the laboratory. The referee sample shall be available for testing at the request of the owner, trainer or other person charged with a violation of these rules. The referee sample may also be tested by the Board laboratory.
- b) If the owner, trainer or other person charged with a violation of ~~this Section~~~~these rules~~ desires to send the referee sample to another laboratory for testing, ~~the Board shall bear the cost of preparing the samples for shipment, but~~ the cost of ~~such~~ shipment and of ~~such~~ testing at another laboratory shall be borne by the person requesting the additional tests.

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- c) If the owner, trainer or other person charged with a violation of this Section desires additional testing to be performed by the Board laboratory, the cost of the testing shall be borne by the person requesting the additional tests.
- de) Whenever a referee sample is opened, a portion of that test sample shall be preserved by the Board laboratory in case further testing is requested.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 603.160 Penalties

- a) Any person who administers or conspires to administer any foreign substance to any horse in violation of this Part shall be subject to a fine and/or license suspension or revocation and the purse money won may be re-distributed.
- b) Penalties for violations of this Part shall be based on the following criteria:
- 1) the nature of the foreign substance; e.g., cough medicine, steroid, narcotic, stimulant, depressant, etc.;
 - 2) the accessibility of the drug; e.g., can be purchased over the counter, only with a prescription, only with a license for controlled substances, cannot be purchased in this country;
 - 3) the age and experience of the violator;
 - 4) whether the violator has ever been the subject of a medication ruling in this or any other racing jurisdiction;
 - 5) what action, if any, was taken by the violator to avoid ~~thesueh~~ violation;
 - 6) the purse of the race.
- c) Any person who violates any provision of this Part for which no specific penalty is provided may be penalized by the stewards or the Board in accordance with the provisions for penalties contained elsewhere in this Chapter or in the Illinois Horse Racing Act of 1975. When imposing penalties, the stewards or the Board shall consider all relevant factors including, but not limited to those specified in

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this Part.

- d) In harness racing, any trainer suspended for a violation of this Part shall, upon notice of the violation, submit to the Stewards a current stable list on a form provided by the Board.
- 1) The horses on the stable list shall be placed on the Stewards List unless:
 - A) The owner of each horse on the stable list secures the services of a trainer approved by the Stewards; and
 - B) The approved trainer stables the horses on the stable list on the grounds of an organization licensee for the full term of the penalized trainer's suspension;
 - 2) Horses on the stable list shall be permitted to leave to race in other racing jurisdictions or for medical reasons.
- ed) Penalties for Class 4 and 5 drug violations:
- 1) Class 4 as defined in the Association of Racing Commissioners International Uniform Classification Guidelines for Foreign Substances (ARCI, 2343 Alexandria Drive, Suite 200, Lexington KY 40504; April 2005; this incorporation includes no later amendments or editions). Except as provided in Sections 603.60 and 603.70 of this Part, upon finding of a Class 4 substance, the trainer shall be subject to a fine and/or license suspension or revocation and the purse money won may be re-distributed according to the criteria set forth in subsection (d)(3).
 - 2) Class 5 as defined in the Association of Racing Commissioners International Uniform Classification Guidelines for Foreign Substances. Except as provided in Sections 603.75 and 603.60(c) of this Part, upon finding of a Class 5 substance, the trainer shall be subject to a fine and/or license suspension or revocation and the purse money won may be re-distributed according to the criteria set forth in subsection (d)(3).
 - 3) In determining a disqualification and purse redistribution under this subsection (ed), the Stewards shall use the following criteria:

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- A) A recommendation by the Board veterinarian and/or Board chemist regarding the significance of the concentration of the drug or metabolite present and the estimated withdrawal time.
 - B) A recommendation by industry experts, including equine pharmacologists and equine physiologists, regarding the effect of the drug on the horse in the concentration found and/or estimated withdrawal times.
 - C) Repeat violations of these medication and prohibited substance rules by the same trainer or with respect to the same horse.
 - D) Prior violations of similar rules in other racing jurisdictions by the same trainer or with respect to the same horse.
 - E) The criteria set forth in subsection (b).
- 4) The provisions of this subsection (~~ed~~) shall be applied retroactively when substantively applicable, including all actions pending before the Board, without regard to when the cause of action accrued; provided, however, that this subsection (~~e~~)(4) shall not operate to affect rights of individuals that have fully vested prior to April 23, 2007.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 603.180 Carbon Dioxide Tests

- a) The Board recognizes that an excess level of total carbon dioxide (TCO₂) in the race horse is considered adverse to the best interests of racing and adverse to the best interest of the horse in that such condition alters its normal physiological state. ~~Accordingly, the State Veterinarian may draw blood samples from a horse for the purpose of obtaining a TCO₂ concentration.~~
- b) Blood samples for TCO₂ ~~levels may~~ shall be drawn pre-race ~~and~~/or post-race.
- c) The TCO₂ level in the blood shall be less than: ~~1)39.0 millimoles per liter if the horse is competing on furosemide in accordance with Section 603.70 (Furosemide).2)37.0 millimoles per liter, plus the measurement uncertainty of the laboratory analyzing the sample if the horse is not competing on furosemide.~~

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- d) In the event a blood sample from a horse contains an amount of TCO₂ that is equal to or exceeds the levels described in subsection (c), the following penalties shall apply:
- 1) The first time the laboratory reports an excessive TCO₂ level, the trainer shall be fined ~~not less than \$500 and not more than \$1,000~~not less than \$2,000, the purse shall be redistributed and the trainer shall be ordered suspended for at least ~~1560~~ days but not to exceed ~~6090~~ days. In addition, the horse shall be ~~placed on the stewards list or be~~ subject to "early detention" for a period identical to the length of the trainer's suspension. "Early detention" in Illinois shall be defined as pre-race guarded quarantine, on the grounds of the Illinois organization licensee, beginning no less than 6½ hours prior to the scheduled post time for the horse's race. ~~The licensed owner or trainer of the horse shall assign a caretaker to attend and provide surveillance until the horse is brought to the paddock or receiving barn.~~
 - 2) The second time the laboratory reports an excessive TCO₂ level in a 365 day period in any jurisdiction, the trainer shall be ordered suspended for at least 30 days but not to exceed 180 days and fined not less than \$1,000 and not more than \$2,500~~\$5,000~~ and the purse shall be redistributed. In addition, the horse shall be ~~placed on the stewards list or be~~ subject to "early detention" in Illinois for a period identical to the length of the trainer's suspension~~of 180 days~~.
 - 3) For a third or subsequent report of an excessive TCO₂ level in a 365 day period in any jurisdiction, the trainer shall be ordered suspended for at least 60 days but not to exceed 360 days~~two years~~ and fined not less than \$2,500 and not more than \$5,000 or 5% of the purse (greater of the two) and the purse shall be redistributed. ~~The~~In addition, the horse shall be ~~placed on the stewards list or be~~ subject to "early detention" in Illinois for a period identical to the length of the trainer's suspension~~of 180 days~~. In addition, absent mitigating circumstances, the owner shall be fined \$5,000.
 - 4) ~~The penalties set forth in subsections (d)(2) and (3) must occur within 5 years after the penalties set forth in subsection (d)(1) are levied.~~
- e) If the levels of TCO₂ are determined to equal or exceed those set forth in subsection (c), and the licensed owner or trainer of that horse contends in writing

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to the stewards within 24 hours after notification of the results that such levels are physiologically normal for that particular horse, the licensee may, by such writing, request that the horse be held in quarantine. In the event quarantine is requested, the organization licensee shall make guarded quarantine available, for a period of time to be determined by the stewards but in no event more than 72 hours, at the sole expense of the licensee. During any quarantine, the horse shall be re-tested periodically and, although the horse may not race during the quarantine period, it shall be exercised and trained at times prescribed by the organization licensee, consistent with the ability to monitor the horse. The horse will only be fed hay, oats and water during the quarantine period. If the stewards are satisfied, on the basis of the evident facts, the quarantine, and the testing of the horse's blood during the quarantine period, that the level of TCO₂ set forth in subsection (c) is physiologically normal for that particular horse, the stewards shall not order the penalty set forth in subsection (d) ~~and the horse shall be permitted to compete. In such case, the stewards, in their discretion, may require that the horse re-establish that the TCO₂ level is physiologically normal to it pursuant to the quarantine procedure set forth in this subsection.~~

- f) The provisions of Section 603.120 (Referee Samples) shall not apply to blood samples drawn for purposes of carbon dioxide testing. Split sample analyses of TCO₂ must be run in parallel with the official sample at the official laboratory in order to avoid delays in testing that result in lower TCO₂ values as a result of sample degradation.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

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- 1) Heading of the Part: Jockeys, Apprentices, Jockey Agents, and Valets
- 2) Code Citation: 11 Ill. Adm. Code 1411
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
1411.100	Amend
1411.110	Repeal
- 4) Statutory Authority: Section 9(b) of the Illinois Horse Racing Act of 1975 [230 ILCS 5/9(b)]
- 5) A Complete Description of the Subjects and Issues Involved: This proposed rulemaking amends Section 1411.100 by replacing the current language and adopting the Association of Racing Commissioners model rule regarding riding crops. Section 1411.110 is being repealed because the model rule includes the current language found in Section 1411.110.
- 6) Published studies or reports and sources of underlying data used to compose this rulemaking: Association of Racing Commissioners International model rules (ARCI-010-035 Running of the Race).
- 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 in this Part? No
- 11) Statement of Statewide Policy Objectives: No local governmental units will be required to increase expenditures.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Written comments should be submitted, within 45 days after this Notice, to:

Mickey Ezzo
Illinois Racing Board
100 West Randolph
Suite 7-701
Chicago, Illinois 60601

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312/814-5017

- 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 which this rulemaking was summarized: This rulemaking was not included on either of the two most recent Regulatory Agendas because: the Board did not anticipate the need for this rulemaking at the time the agendas were published.

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

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NOTICE OF PROPOSED AMENDMENTS

TITLE 11: ALCOHOL, HORSE RACING, AND LOTTERY
SUBTITLE B: HORSE RACING
CHAPTER I: ILLINOIS RACING BOARD
SUBCHAPTER g: RULES AND REGULATIONS OF HORSE RACING
(THOROUGHBRED)

PART 1411

JOCKEYS, APPRENTICES, JOCKEY AGENTS, AND VALETS

Section

1411.5	Colors Worn by Riders
1411.10	Jockey Fees (Repealed)
1411.20	Paying Fines
1411.30	Jockey Ownership of Horse
1411.40	Under Suspension
1411.50	Betting By Jockey
1411.60	Record of Jockey Betting
1411.65	Interrogation by Stewards
1411.70	Racing Against Employer's Starter
1411.72	Spouses Riding Against Each Other (Repealed)
1411.75	Owner or Trainer As Spouse
1411.78	Racing Against Agent's Horse
1411.80	Priority of Retainers
1411.90	Conflicting Claims on Jockeys
1411.100	<u>Riding Crops and Other Equipment</u> Whips, Length and Kind
1411.110	Illegal Whipping (Repealed)
1411.120	Leaving Operating Track
1411.130	Jockey Rules Apply to Apprentices
1411.140	Apprentice Rule
1411.150	Change of Agent
1411.160	Rough or Careless Riding
1411.170	Yearly Examination
1411.180	Examination Because of Illness
1411.190	Jockey's Valet
1411.195	Valet's Fees (Repealed)
1411.200	Record of Jockey Engagements by Agent
1411.210	Falsifying Engagement Records
1411.220	Agent Barred from Paddock and Track
1411.230	Engagements Made Through Agent

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1411.240 Safety Equipment
1411.250 Designated Races

AUTHORITY: Authorized by Section 9(b) of the Illinois Horse Racing Act of 1975 [230 ILCS 5/9(b)].

SOURCE: Published in Rules and Regulations of Horse Racing (original date not cited in publication); codified at 5 Ill. Reg. 10977; amended at 7 Ill. Reg. 1423, effective January 24, 1983; amended at 17 Ill. Reg. 12426, effective July 15, 1993; amended at 17 Ill. Reg. 21852, effective December 3, 1993; amended at 18 Ill. Reg. 2092, effective January 21, 1994; amended at 19 Ill. Reg. 12687, effective September 1, 1995; amended at 21 Ill. Reg. 3226, effective March 4, 1997; amended at 22 Ill. Reg. 5076, effective March 1, 1998; amended at 33 Ill. Reg. _____, effective _____.

Section 1411.100 Riding Crops and Other Equipment~~Whips, Length and Kind~~

- a) Riding Crops
All riding crops are subject to inspection and approval by the Stewards and the Clerk of Scales.
- 1) Riding crops shall have a shaft and a flap and will be allowed in flat racing, including training, only as follows:
- A) Maximum weight of eight ounces;
 - B) Maximum length, including flap, of 30 inches;
 - C) Minimum diameter of the shaft of one-half inch; and
 - D) Smooth shaft contact area, with no protrusions or raised surface, covered by shock absorbing material that gives a compression factor of at least one millimeter throughout its circumference.
- 2) The flap is the only allowable attachment to the shaft and must meet the following specifications:
- A) Length beyond the end of the shaft – maximum of one inch;
 - B) Width – a minimum of 0.8 inch and a maximum of 1.6 inches;

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- C) No reinforcements or additions beyond the end of the shaft;
 - D) No binding within seven inches of the end of the shaft; and
 - E) Shock absorbing characteristics similar to those required by subsection (a)(1)(D).
- 3) Although the use of a riding crop is not required, any jockey who uses a riding crop during a race shall do so only in a manner consistent with exerting his or her best efforts to win.
- 4) In all races in which a jockey will ride without a riding crop, an announcement of that fact shall be made over the public address system.
- 5) Riding crops shall not be used on two year old horses before April 1 of each year.
- 6) The riding crop shall only be used for safety, correction and encouragement.
- 7) All riders shall comply with the following when using a riding crop:
- A) Showing the horse the riding crop and giving it time to respond before striking the horse;
 - B) After using the riding crop, giving the horse a chance to respond before using it again; and
 - C) Using the riding crop in rhythm with the horse's stride.
- 8) Prohibited use of the riding crop includes, but is not limited to, striking a horse:
- A) on the head, flanks or any other part of its body other than the shoulders or hindquarters, except when necessary to control a horse;

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- B) during the post parade or after the finish of the race, except when necessary to control the horse;
 - C) excessively or brutally causing welts or breaks in the skin;
 - D) when the horse is clearly out of the race or has obtained its maximum placing;
 - E) persistently, even though the horse is showing no response under the riding crop; or
 - F) striking another rider or horse.
- 9) After the race, horses will be subject to inspection by a racing official or veterinarian looking for cuts, welts or bruises in the skin. Any adverse findings shall be reported to the Stewards.
- b) Other Equipment
- 1) No bridle shall exceed two pounds.
 - 2) A horse's tongue may be tied down with clean bandages, gauze or a tongue strap.
 - 3) No licensee may add blinkers to a horse's equipment or discontinue their use without the prior approval of the Starter.
 - 4) No electrical or mechanical device or other expedient designed to increase or retard the speed of a horse, other than the riding crop approved by the Stewards, shall be possessed by anyone, or applied by anyone, to the horse at any time on the grounds of the association during the meeting, whether in a race or otherwise.
- c) The giving of instructions by any licensee that, if obeyed, would lead to a violation of this Section may result in disciplinary action being taken against the licensee who gave the instructions, as well as the person who took, or failed to take, the action.

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~~Jockey whips shall be no longer than 28 inches with one popper. No stingers (projections extending through a hole of the popper) are permitted.~~

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 1411.110 Illegal Whipping (Repealed)

~~No jockey shall hit or clip a horse across or between the ears.~~

(Source: Repealed at 33 Ill. Reg. _____, effective _____)

TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: The Administration and Operation of the Teachers' Retirement System
- 2) Code Citation: 80 Ill. Adm. Code 1650
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
1650.417	New
1650.450	Amendment
1650.470	Amendment
- 4) Statutory Authority: Implementing and authorized by Article 16 of the Illinois Pension Code [40 ILCS 5/Art. 16]
- 5) A Complete Description of the Subjects and Issues Involved: The System is amending its "Compensation Recognized as Salary" rule (Section 1650.450) to require members participating in non-qualified deferred compensation arrangements under IRC §457(f) requirements to establish the contributions to such non-qualified arrangements are exempt from regular TRS member contribution.

The System is amending its "Rollover Distributions" rule (Section 1650.470) to comply with changes in IRS regulations governing member rollover options.

The System is promulgating a new rule, Mandatory Distributions Pursuant to Section 401(a)(a) of the Internal Revenue Code (Section 1650.417), to deal with the situation occurring when a member fails to make a mandatory distribution election at age 70½ as required by federal law.
- 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 rulemakings pending on this Part? No

TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS

NOTICE OF PROPOSED AMENDMENTS

- 11) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a State mandate under the State Mandates Act [30 ILCS 805].
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Comments on the proposed amendments may be submitted in writing for a period of 45 days following publication of this Notice to:

Thomas S. Gray
General Counsel
Teachers' Retirement System
2815 West Washington,
P. O. Box 19253
Springfield, Illinois 62794-9253

217/753-0375
- 13) Initial Regulatory Flexibility Analysis: These rules will not affect small businesses.
 - 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: The salary rule was indicated in the January 2008 Regulatory Agenda, and the other two rules being amended and added are required by federal law.

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

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NOTICE OF PROPOSED AMENDMENTS

TITLE 80: PUBLIC OFFICIALS AND EMPLOYEES

SUBTITLE D: RETIREMENT SYSTEMS

CHAPTER III: TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS

PART 1650

THE ADMINISTRATION AND OPERATION OF THE
TEACHERS' RETIREMENT SYSTEM

SUBPART A: REPORTS BY BOARD OF TRUSTEES

Section

1650.10 Annual Financial Report (Repealed)

SUBPART B: BASIC RECORDS AND ACCOUNTS

Section

1650.110 Membership Records
1650.120 Claims Records (Repealed)
1650.130 Individual Accounts (Repealed)
1650.140 Ledger and Accounts Books (Repealed)
1650.150 Statistics (Repealed)
1650.160 Confidentiality of Records
1650.180 Filing and Payment Requirements
1650.181 Early Retirement Incentive Payment Requirements (Repealed)
1650.182 Waiver of Additional Amounts Due
1650.183 Definition of Employer's Normal Cost

SUBPART C: FILING OF CLAIMS

Section

1650.201 Disability Benefits – Application Procedure; Effective Date
1650.202 Disability Benefits – Definitions
1650.203 Disability Retirement Annuity – Definitions
1650.204 Gainful Employment – Consequences
1650.205 Medical Examinations and Investigation of Disability Claims
1650.206 Physician Certificates
1650.207 Disability Due to Pregnancy
1650.208 Disability Payments
1650.209 Computation of Annual Salary When Member Has Different Semester Salary

TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS

NOTICE OF PROPOSED AMENDMENTS

	Rates (Repealed)
1650.210	Claim Applications
1650.211	Disability Recipient Eligible to Receive an Age or Disability Retirement Annuity
1650.220	Reclassification of Disability Claim (Repealed)
1650.221	When Member Becomes Annuitant
1650.222	Death Out of Service
1650.230	Medical Examinations and Investigations of Claims (Repealed)
1650.240	Refunds; Canceled Service; Repayment
1650.250	Death Benefits
1650.260	Evidence of Age
1650.270	Reversionary Annuity – Evidence of Dependency
1650.271	Evidence of Parentage
1650.272	Eligible Child Dependent By Reason of a Physical or Mental Disability
1650.280	Evidence of Marriage
1650.290	Offsets

SUBPART D: MEMBERSHIP AND SERVICE CREDITS

Section	
1650.301	Early Retirement Without Discount – Return to Teaching from a Break in Service
1650.310	Effective Date of Membership
1650.315	Verifying Service Credit
1650.320	Method of Calculating Service Credits
1650.325	Method of Calculating Service Credit for Recipients of a Disability Benefit or Occupational Disability Benefit
1650.330	Duplicate Service Credit
1650.335	Unreported Regular Service Credit and Earnings
1650.340	Service Credit for Leaves of Absence
1650.341	Service Credit for Involuntary Layoffs
1650.345	Service Credit for Periods Away From Teaching Due to Pregnancy
1650.346	Service Credit for Periods Away From Teaching Due to Adoption
1650.350	Service Credit for Unused Accumulated Sick Leave Upon Retirement
1650.351	Employer Contribution for Excess Sick Leave
1650.355	Purchase of Optional Service – Required Minimum Payment
1650.356	Payroll Deduction Program (Repealed)
1650.357	Employer Payment of Member's Optional Service and/or Upgrade Contribution Balance (Repealed)
1650.360	Settlement Agreements and Judgments
1650.370	Calculation of Average Salary (Renumbered)

TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS

NOTICE OF PROPOSED AMENDMENTS

- 1650.380 Definition of Actuarial Equivalent (Repealed)
- 1650.390 Independent Contractors
- 1650.391 Optional 2.2 Upgrade of Earned and Credited Service
- 1650.392 2.2 Upgrade of Optional Service Not Credited at Initial Upgrade

SUBPART E: CONTRIBUTION CREDITS AND PAYMENTS

Section

- 1650.410 Return of Contributions for Duplicate or Excess Service
- 1650.415 Return of Optional Increase in Retirement Annuity Contributions
- 1650.416 Optional Increase in Retirement Annuity – 1% Contribution Reduction
- [1650.417 Mandatory Distributions Pursuant to Section 401\(a\)\(9\) of the Internal Revenue Code](#)
- 1650.420 Interest on Deficiencies (Repealed)
- 1650.430 Installment Payments (Repealed)
- 1650.440 Small Deficiencies, Credits or Death Benefit Payments (Repealed)
- 1650.450 Compensation Recognized As "Salary"
- 1650.451 Reporting of Conditional Payments
- 1650.460 Calculation of Average Salary
- 1650.470 Rollover Distributions
- 1650.480 Rollovers to the System
- 1650.481 Employer Contribution Required for Salary Increases in Excess of 6%
- 1650.482 Contracts and Collective Bargaining Agreements – Loss of Exemption from Employer Contributions
- 1650.483 Employer Contributions for Salary Increases in Excess of 6% and Excess Sick Leave Exemption from Contributions
- 1650.484 Members Not Covered by Collective Bargaining Agreements or Employment Contracts
- 1650.485 Employer Contributions for Salary Increases in Excess of 6% – Receipt of Bill

SUBPART F: ANNUITANTS AND BENEFICIARIES

Section

- 1650.505 Beneficiary (Repealed)
- 1650.510 Re-entry Into Service (Repealed)
- 1650.520 Suspension of Benefits
- 1650.530 Power of Attorney
- 1650.540 Conservators/Guardians
- 1650.550 Presumption of Death

TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS

NOTICE OF PROPOSED AMENDMENTS

- 1650.560 Benefits Payable on Death
- 1650.561 Valid Beneficiary Designations
- 1650.570 Survivors' Benefits
- 1650.571 Payment of Monthly Survivor Benefits to a Trust
- 1650.575 Full-time Student – Receipt of Survivors Benefits Until Age 22
- 1650.580 Evidence of Eligibility
- 1650.590 Comptroller Offset
- 1650.595 Overpayments

SUBPART G: ATTORNEY GENERALS' OPINION

- Section
- 1650.605 Policy of the Board Concerning Attorney Generals' Opinion (Repealed)

SUBPART H: ADMINISTRATIVE REVIEW

- Section
- 1650.610 Staff Responsibility
- 1650.620 Right of Appeal
- 1650.630 Form of Written Request
- 1650.635 Presiding Hearing Officer – Duties and Responsibilities
- 1650.640 Prehearing Procedure
- 1650.641 Claims Hearing Committee Hearing Packet
- 1650.650 Hearing Procedure
- 1650.660 Rules of Evidence (Repealed)

SUBPART I: AMENDMENTS TO BYLAWS AND RULES

- Section
- 1650.710 Amendments

SUBPART J: RULES OF ORDER

- Section
- 1650.810 Parliamentary Procedure

SUBPART K: FREEDOM OF INFORMATION ACT REQUESTS

Section

TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS

NOTICE OF PROPOSED AMENDMENTS

1650.910	Summary and Purpose
1650.920	Definitions
1650.930	Submission of Requests
1650.940	Form and Content of FOIA Requests
1650.950	Appeal of a Denial
1650.960	Executive Director's Response to Appeal
1650.970	Response to FOIA Requests
1650.980	Inspection of Records at System Office
1650.990	Copies of Public Records
1650.995	Materials Available Under Section 4 of FOIA

SUBPART L: BOARD ELECTION PROCEDURES

Section	
1650.1000	Nomination of Candidates
1650.1001	Elections Date/Election Day – Defined
1650.1010	Petitions
1650.1020	Eligible Voters
1650.1030	Election Materials
1650.1040	Marking of Ballots
1650.1050	Return of Ballots
1650.1060	Observation of Ballot Counting
1650.1070	Certification of Ballot Counting
1650.1080	Challenges to Ballot Counting
1650.1090	Special Election to Fill Un-Expired Term of Elected Trustee

SUBPART M: QUALIFIED ILLINOIS DOMESTIC RELATIONS ORDERS

Section	
1650.1110	Definitions
1650.1111	Requirements for a Valid Qualified Illinois Domestic Relations Order
1650.1112	Requirements for a Valid QILDRO Calculation Order
1650.1113	Required Forms
1650.1114	Filing a QILDRO or a Calculation Order with the System
1650.1115	Benefits Affected by a QILDRO
1650.1116	Effect of a Valid QILDRO
1650.1117	QILDROs Against Persons Who Became Members Prior to July 1, 1999
1650.1118	Alternate Payee's Address
1650.1119	Electing Form of Payment

TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS

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- 1650.1120 Automatic Annual Increases
- 1650.1121 Reciprocal Systems QILDRO Policy Statement (Repealed)
- 1650.1122 Providing Benefit Information for Divorce Purposes
- 1650.1123 Suspension and Expiration of a QILDRO
- 1650.1124 Income Tax Reporting
- 1650.1125 Lump-Sum Death Benefit Allocation to Alternate Payee

SUBPART N: PAYROLL DEDUCTION PROGRAM

Section

- 1650.1200 Payroll Deduction Program Guidelines
- 1650.1201 Employer Responsibility Under the Payroll Deduction Program
- 1650.1202 Payroll Deduction Agreements – Suspensions and Terminations
- 1650.1203 Payroll Deduction Program – Full Time Employment Defined
- 1650.1204 Payroll Deduction Program – Disability Defined
- 1650.1205 Employer Payment of Member's Optional Service, Refund and/or Upgrade Contribution Balance

SUBPART O: RETIREMENT BENEFITS

Section

- 1650.2900 Excess Benefit Arrangement

AUTHORITY: Implementing and authorized by Articles 1 and 16 of the Illinois Pension Code [40 ILCS 5/Arts. 1 and 16]; Freedom of Information Act [5 ILCS 140]; Internal Revenue Code (26 USC 1 et seq.); Section 5-15 of the Illinois Administrative Procedure Act [5 ILCS 100/5-15].

SOURCE: Filed June 20, 1958; emergency rules adopted at 2 Ill. Reg. 49, p. 249, effective November 29, 1978, for a maximum of 150 days; adopted at 3 Ill. Reg. 9, p. 1, effective March 3, 1979; codified at 8 Ill. Reg. 16350; amended at 9 Ill. Reg. 20885, effective December 17, 1985; amended at 12 Ill. Reg. 16896, effective October 3, 1988; amended at 14 Ill. Reg. 18305, effective October 29, 1990; amended at 15 Ill. Reg. 16731, effective November 5, 1991; amended at 17 Ill. Reg. 1631, effective January 22, 1993; amended at 18 Ill. Reg. 6349, effective April 15, 1994; emergency amendment at 18 Ill. Reg. 8949, effective May 24, 1994, for a maximum of 150 days; emergency modified at 18 Ill. Reg. 12880; amended at 18 Ill. Reg. 15154, effective September 27, 1994; amended at 20 Ill. Reg. 3118, effective February 5, 1996; emergency amendment at 21 Ill. Reg. 483, effective January 1, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 2422, effective January 31, 1997; amended at 21 Ill. Reg. 4844, effective March 27, 1997; emergency amendment at 21 Ill. Reg. 17159, effective December 9,

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1997, for a maximum of 150 days; amended at 22 Ill. Reg. 7243, effective April 9, 1998; emergency amendment at 22 Ill. Reg. 7314, effective April 9, 1998, for a maximum of 150 days; emergency amendment at 22 Ill. Reg. 9374, effective May 14, 1998, for a maximum of 150 days; emergency rule modified in response to JCAR Objection at 22 Ill. Reg. 11640; emergency amendment at 22 Ill. Reg. 13151, effective June 29, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 15620, effective August 17, 1998; amended at 22 Ill. Reg. 19079, effective October 1, 1998; amended at 22 Ill. Reg. 22090, effective December 1, 1998; amended at 23 Ill. Reg. 3079, effective February 23, 1999; amended at 24 Ill. Reg. 2440, effective January 27, 2000; amended at 24 Ill. Reg. 10300, effective June 26, 2000; amended at 25 Ill. Reg. 203, effective December 22, 2000; amended at 26 Ill. Reg. 2758, effective February 11, 2002; amended at 26 Ill. Reg. 11476, effective July 11, 2002; amended at 27 Ill. Reg. 1668, effective January 17, 2003; amended at 27 Ill. Reg. 9209, effective May 28, 2003; amended at 28 Ill. Reg. 10055, effective June 29, 2004; amended at 29 Ill. Reg. 1546, effective January 14, 2005; amended at 29 Ill. Reg. 13244, effective August 9, 2005; amended at 30 Ill. Reg. 194, effective December 23, 2005; amended at 30 Ill. Reg. 472, effective December 21, 2005; amended at 30 Ill. Reg. 11728, effective June 23, 2006; amended at 30 Ill. Reg. 17525, effective October 18, 2006; amended at 31 Ill. Reg. 10688, effective July 13, 2007; amended at 32 Ill. Reg. 4073, effective February 28, 2008; amended at 32 Ill. Reg. 7979, effective May 6, 2008; amended at 32 Ill. Reg. 13534, effective August 6, 2008; amended at 33 Ill. Reg. 4401, effective March 3, 2009; amended at 33 Ill. Reg. _____, effective _____.

SUBPART E: CONTRIBUTION CREDITS AND PAYMENTS

[Section 1650.417 Mandatory Distributions Pursuant to Section 401\(a\)\(9\) of the Internal Revenue Code](#)

[When the System is required to make a mandatory distribution pursuant to section 401\(a\)\(9\) of the Internal Revenue Code and the member is eligible to receive either a single-sum benefit under 40 ILCS 5/16-136.4 or a refund under 40 ILCS 5/16-151, but fails to make the required election, the member shall be deemed to have elected a refund under 40 ILCS 5/16-151.](#)

(Source: Added at 33 Ill. Reg. _____, effective _____)

Section 1650.450 Compensation Recognized As "Salary"

- a) "Salary" means any form of creditable compensation received by a member in consideration of services rendered as a teacher, subject to all applicable limits and restrictions imposed on qualified plans under the Internal Revenue Code. "Salary" directly related to specific work performed during a school year is

TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS

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recognized on an accrual basis. Other creditable compensation is recognized on a cash basis. The System reserves the right to determine the year of salary recognition. The following common examples are for illustration only and do not limit the System's right to evaluate and determine other forms of creditable and non-creditable compensation.

- b) Examples of creditable compensation recognized as "salary":
- 1) The gross amount of compensation earned or accruing to the member during the school year in a function requiring certification as a teacher.
 - 2) Additional compensation earned during the school year for the performance of extra duties, not requiring teacher certification, but which involve the supervision of students or are related to the academic program, provided the member is employed as a full-time or part-time contractual teacher and establishes active service credit in that position during the school year.
 - 3) The amount of back salary awarded to a member as a result of a settlement or judgment obtained due to a disputed dismissal, suspension or demotion. Court costs, attorney's fees, other compensatory damages and punitive damages shall not be reportable as salary. The back salary amount reported to the System under this Section shall be equal to the amount the member would have earned had the dispute not occurred, regardless of the actual amount paid.
 - 4) Lump-sum payments (e.g., retirement incentives, bonuses, payments for unused vacation and sick days) received by the member or becoming due and payable to the member prior to or concurrent with receipt of final paycheck for regular earnings.
 - 5) Contributions made by or on behalf of the member to qualified deferred compensation plans (sections 401(a) and 457(b) of the Internal Revenue Code), salary reduction plans or tax sheltered annuities under section 403(b) of the Internal Revenue Code.
 - 6) Amounts that would otherwise qualify as salary under subsections (b)(1) through (b)(5) but are not received directly by the member because they are used to finance benefit options in a flexible benefit plan; provided,

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however, that to be reportable, a flexible benefit plan cannot include non-qualifying deferred compensation. For the System's purposes, a flexible benefit plan is an option offered by an employer to its employees covered under the System to receive an alternative form of creditable compensation in lieu of employer-provided insurance.

- c) Examples of non-creditable compensation not recognized as "salary":
- 1) Lump-sum payments (e.g., retirement incentives, bonuses, payments for unused vacation and sick days) becoming due and payable to the member subsequent to receipt of final paycheck for regular earnings.
 - 2) Any lump sum payment made after the death of the member.
 - 3) Expense reimbursements, expense allowances, or fringe benefits unless included in a reportable flexible benefit plan.
 - 4) Any monies received by the member under the Workers' Compensation Act or the Workers' Occupational Diseases Act.
 - 5) Compensation for extra duties not requiring teacher certification performed by substitute and part-time non-contractual teachers.
 - 6) Any amount paid in lieu of discontinued or decreased non-reportable benefits, or reported in lieu of previously non-reported compensation, where the conversion occurs in the member's final seven years of service. If any form of non-creditable or non-reported compensation in any of the member's last seven creditable school years of employment exceeds that of any other subsequent year, the System will presume the difference to have been converted into salary in the subsequent year. To overcome the presumption, the member must submit documentary evidence to the System that clearly and convincingly proves that the change in compensation structure was due to a change in a collectively bargained agreement applicable to all individuals covered by the agreement, a change in employer policies affecting a group of similarly situated members some of whom are not within seven years of retirement eligibility, or a change in family status, and not to increase final average salary.

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- 7) Any amount paid by an employer as the employer's one time contribution (or on behalf of the employee as the employee's one-time contribution) required by the System as part of the statutory early retirement option in Section 16-133.2 of the Act.
- 8) Options to take salary in lieu of employment-related expense allowances or reimbursements.
- 9) Employer payment of the member's Teachers Health Insurance Security Fund contribution.
- 10) Commissions (i.e., payments to a member based upon a percentage formula).
- 11) Contributions to and distributions from nonqualified deferred compensation arrangements, provided the employer furnishes the System an Internal Revenue Service determination letter confirming that the nonqualified deferred compensation arrangement qualifies for treatment under IRC 457(f).
- 12) Employer contributions to and distributions from medical spending accounts.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 1650.470 Rollover Distributions

- a) An eligible recipient entitled to receive a refund of contributions, lump-sum benefit, or other nonperiodic distribution from the System may elect, subject to the provisions of this Section, to have all or a portion of the distribution~~the taxable portion thereof~~ paid in a direct rollover from the System to an eligible retirement plan designated in writing by the eligible recipient; provided, however, that any portion thereof which is a required distribution pursuant to any applicable provision of the Internal Revenue Code is not payable in a direct rollover. A distribution made to correct a failed nondiscrimination test or because legal limits on certain contributions were exceeded cannot be rolled over.
- b) If the ~~taxable portion of the~~ distribution from the System is less than \$200, it is not payable in a direct rollover.

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- c) If the ~~taxable portion of the~~ distribution from the System is at least \$200 but less than \$500, the entire sum must either be paid in a single direct rollover or to the eligible recipient.
- d) If the ~~taxable portion of the~~ distribution is greater than \$500, the eligible recipient may have a portion thereof paid to him or her and the balance paid in a direct rollover; provided, however, that the direct rollover must be at least \$500.
- e) Multiple direct rollovers from the System to more than one eligible retirement plan are not allowed.
- f) An "eligible retirement plan" for purposes of this Section means:
 - 1) A plan described ~~is~~ in 26 USC 402(c)(~~82~~)(B), which includes:
 - A) An individual retirement account described in 26 USC 408(a);
 - B) An individual retirement annuity described in 26 USC 408(b) (other than an endowment contract);
 - C) A qualified trust under 26 USC 401(a);
 - D) An annuity plan described in 26 USC 403(a);
 - E) An eligible deferred compensation plan described in 26 USC 457(b) that is maintained by an eligible employer described in 26 USC 457(e)(1)(A);
 - F) An annuity contract described in 26 USC 403(b); and
 - G) Pursuant to 26 USC 408A(c)(6) and (e)(1), a Roth IRA as defined in 26 USC 408A(b).
 - 2) Any other type of plan that is designated as an eligible retirement plan by federal law.
- g) A "direct rollover" for purposes of this Section is a payment by the System to an eligible retirement plan specified by the eligible recipient as provided in

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subsection (a) of this Section.

- h) An "eligible recipient" for purposes of this Section is:
- 1) A member of the System as defined in Section 16-107 of the Illinois Pension Code [40 ILCS 5/16-107];
 - 2) An alternate payee under a valid Qualified Illinois Domestic Relations Order (QILDRO) on file with the System in accordance with Section 1-119 of the Illinois Pension Code [40 ILCS 5/1-119], as allowed by 26 USC 402(e)(1)(B);
 - 3) A member's surviving spouse, as allowed by 26 USC 402(c)(9); or
 - 4) A non-spouse beneficiary, as defined in 26 USC 401(a)(9)(E), of a deceased member, provided the distribution is rolled to an individual retirement plan that is treated as an inherited individual retirement account or individual retirement annuity pursuant to 26 USC 402(c)(11); or
 - 3) As allowed by 26 USC 402.
- i) If the eligible recipient elects a direct rollover from the System as provided in this Section, the eligible recipient shall certify in writing the following:
- 1) That he or she has read the "Special Tax Notice Regarding Payments from TRS"; and
 - 2) That the direct rollover is being made into an eligible retirement plan as defined in subsection (f) of this Section ~~by 26 USC 402(f)(2)(B)~~.
- j) If the eligible recipient elects a direct rollover from the System as provided in this Section, the eligible recipient shall identify the type of eligible retirement plan to which the direct rollover is being made and shall obtain the certification in writing of the entity that is to receive the direct rollover as to the following:
- 1) That the entity receiving the direct rollover is legally eligible to receive such direct rollover;
 - 2) That the entity receiving the direct rollover has agreed to accept such

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- direct rollover; and
- 3) That the direct rollover is being made to an eligible retirement plan as defined in subsection (f) of this Section; ~~and~~
 - 4) ~~Identifying the type of eligible retirement plan to which the direct rollover is being made.~~
- k) In order to receive payment from the System in a direct rollover pursuant to this Section, the System must receive from the eligible recipient all of the following together, in the form or forms prescribed by the System:
- 1) An application for lump-sum distribution;
 - 2) A rollover election;
 - 3) A certification from the eligible recipient as provided above in subsection (i) of this Section; and
 - 4) A certification from the entity receiving the direct rollover as provided ~~above~~ in subsection (j) of this Section.
- l) Payments from the System that are part of a series of equal or substantially equal periodic payments made at least once a year cannot be paid in a direct rollover, if ~~thesuch~~ payments will last for:
- 1) The life or life expectancy of the person entitled to receive ~~thesuch~~ payments;
 - 2) The lives or joint life expectancies of the person entitled to receive ~~thesuch~~ payments and that person's beneficiary; or
 - 3) A period of ten years or more; ~~or~~
 - 4) ~~A period that represents any type of disability payment.~~

(Source: Amended at 33 Ill. Reg. _____, effective _____)

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- 1) Heading of the Part: All Hazards Campus Emergency Plan and Violence Prevention Plan
- 2) Code Citation: 29 Ill. Adm. Code 305
- 3)

<u>Section Numbers:</u>	<u>Adopted Action:</u>
305.10	New Section
305.20	New Section
305.30	New Section
305.40	New Section
305.50	New Section
305.60	New Section
305.70	New Section
305.80	New Section
305.90	New Section
305.100	New Section
305.110	New Section
- 4) Statutory Authority: Implementing the Campus Security Enhancement Act of 2008 [PA 95-881]
- 5) Effective Date of Rulemaking: June 5, 2009
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) A copy of the adopted rulemaking, including any material incorporated by reference, is on file at the Agency's office located at 1035 Outer Park Drive, Springfield, Illinois and is available for public inspection
- 9) Notice of Proposal Published in the Illinois Register: 33 Ill. Reg. 1905; February 6, 2009
- 10) Has JCAR issued a Statement of Objections to this rulemaking? No
- 11) Differences between proposal and final version: All provisions of this rulemaking that were mandatory in the proposed version but were not required by statute have been made advisory in the final version. The word "Requirements" has been changed to "Guidelines" in the headings of Subparts B, C, D, and E, and in numerous instances throughout the rulemaking, "shall", which signifies a mandatory action, has been changed

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to "should," which indicates a recommended action. A definition of "campus" has also been added. Grammatical and stylistic changes recommended by JCAR have also been made.

- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes
- 13) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Rulemaking: This Part implements the Campus Security Enhancement Act of 2008 (P.A. 95-881), which requires all higher education institutions in Illinois to develop comprehensive emergency response and violence prevention plans. The Part provides guidelines for creation and review of these plans, for training and exercises conducted under such plans, and for the organization of campus violence prevention committees and campus threat assessment teams.
- 16) Information and questions regarding this adopted rulemaking 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 Rulemaking begins on the next page:

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TITLE 29: EMERGENCY SERVICES, DISASTERS, AND CIVIL DEFENSE
CHAPTER I: ILLINOIS EMERGENCY MANAGEMENT AGENCY
SUBCHAPTER c: ADMINISTRATION AND ORGANIZATION OF LOCAL POLITICAL
SUBDIVISION EMERGENCY SERVICES AND DISASTER AGENCIES

PART 305
ALL HAZARDS CAMPUS EMERGENCY PLAN
AND VIOLENCE PREVENTION PLAN

SUBPART A: GENERAL

Section	
305.10	Purpose
305.20	Definitions

SUBPART B: GUIDELINES FOR THE CAMPUS EMERGENCY OPERATIONS PLAN

Section	
305.30	Initial Analysis and Assessment
305.40	Basic Plan Guidelines
305.50	Campus Functional Annex Guidelines

SUBPART C: GUIDELINES FOR THE CAMPUS VIOLENCE PREVENTION PLAN

Section	
305.60	Campus Violence Prevention Plan
305.70	Campus Violence Prevention Committee
305.80	Campus Threat Assessment Team

SUBPART D: COORDINATION, SUBMISSION AND REVIEW
GUIDELINES FOR CAMPUS EMERGENCY OPERATIONS
PLAN AND CAMPUS VIOLENCE PREVENTION PLAN

Section	
305.90	Coordination, Submission and Review

SUBPART E: TRAINING AND EXERCISE GUIDELINES

Section	
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- 305.100 Training
305.110 Exercise Guidelines for the Campus Emergency Operations Plan and Campus Violence Prevention Plan

AUTHORITY: Implementing the Campus Security Enhancement Act of 2008 [110 ILCS 12].

SOURCE: Adopted at 33 Ill. Reg. 8175, effective June 5, 2009.

SUBPART A: GENERAL

Section 305.10 Purpose

Pursuant to the Campus Security Enhancement Act of 2008, each higher education institution is required to develop a National Incident Management System-compliant all hazards emergency response plan and an inter-disciplinary and multi-jurisdictional campus violence prevention plan. This Part provides guidelines for the creation, review, training and exercise of each higher education institution's Campus All-Hazards Emergency Response and Violence Prevention Plan.

Section 305.20 Definitions

"Act" means the Campus Security Enhancement Act of 2008 [110 ILCS 12].

"Campus" means any higher education facility that offers post-secondary education, including an annex or satellite campus away from the main campus, that includes, but is not limited to, rented classrooms in a commercial building or at a secondary school.

"Campus Emergency Operations Center" or "CEOC" means a location where policy and strategic management decisions are made during a disaster or disaster exercise.

"Campus Emergency Operations Plan" or "CEOP" means the written plan of a higher education institution describing the organization, mission and functions of the higher education institution and supporting services for responding to and recovering from disasters/emergencies and for violence prevention.

"Campus Incident Command" means a system that combines facilities, equipment, personnel, procedures and communications to operate within a common organizational structure and that designates responsibility for the

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management of assigned resources to effectively accomplish stated campus goals and objectives.

"Campus Incident Commander" means the individual responsible for the management of all campus incident command operations as provided for by law.

"Campus Incident Command Post" means the location at which the primary command functions for the CEOP are executed.

"Campus Violence Prevention Plan" or "CVPP" means the written plan of a higher education institution describing the creation of multi-disciplinary and multi-jurisdictional violence prevention strategies, including formation of a Campus Violence Prevention Committee and implementation of a Campus Threat Assessment Team to address aberrant, dangerous or threatening behavior on campus.

"Concept of Operations" means the overall approach of the higher education institution to the preparation and management of a disaster/emergency, including response efforts and how the higher education institution will implement the concepts and procedures of an incident command system.

"Disaster" means *an occurrence or threat of widespread or severe damage, injury or loss of life or property resulting from any natural or technological cause, including but not limited to fire, flood, earthquake, wind, storm, hazardous materials spill or other water contamination requiring emergency action to avert danger or damage, epidemic, air contamination, blight, extended periods of severe and inclement weather, drought, infestation, critical shortages of essential fuels and energy, explosion, riot, hostile military or paramilitary action, or acts of domestic terrorism.* [20 ILCS 3305/4]

"Emergency Management" means the efforts of the higher education institutions to develop, plan, analyze, conduct, provide, implement and maintain programs for disaster/emergency mitigation, preparedness, response and recovery.

"Emergency Services and Disaster Agency" or "ESDA" means the *agency by this name, by the name emergency management agency or by any other name that is established by ordinance within a political subdivision to coordinate the emergency management program within that political subdivision and with*

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private organizations, other political subdivisions, the State and federal governments. [20 ILCS 3305/4]

"Exercise" means a planned event realistically simulating a disaster/emergency, conducted for the purpose of evaluating the higher education institution's coordinated emergency management capabilities, including, but not limited to, testing emergency operations plans.

"Full-Scale Exercise" means a time-pressured exercise of a minimum of six functions of the emergency operations plan, involving strategic and tactical decision making, including the direction and control function, activating the emergency operations center and incident command post and deploying responders, equipment and resources to the field.

"Functional Exercise" means a time-pressured exercise of a minimum of four functions of the emergency operations plan, involving strategic and tactical decision making, including the direction and control function, activating the emergency operations center or the incident command post, or both.

"Higher Education Institution" means *a public university, a public community college, or an independent, not-for-profit or for-profit higher education institution located in this State.* [110 ILCS 12/20(a)]

"IBHE" means the Illinois Board of Higher Education.

"ICCB" means the Illinois Community College Board.

"IEMA" means the Illinois Emergency Management Agency.

"National Incident Management System" or "NIMS" means the comprehensive, national approach to incident management that is applicable at all jurisdictional levels and across functional disciplines. It provides a consistent nationwide template to enable all government, private-sector, and nongovernmental organizations to work together during domestic incidents. (See Homeland Security Presidential Directive-5.)

"Preparedness" means actions taken and programs and systems developed prior to a disaster/emergency to support and enhance response to and recovery from a disaster.

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"Recovery" means restoration actions and programs associated with recovering from a disaster/emergency, including, but not limited to, academic recovery, physical/structural recovery, business/fiscal recovery and psychological/emotional recovery for students and campus personnel.

"Response" means the actions taken to address the immediate and short-term effects of a disaster/emergency.

"Table Top Exercise" means a low stress, non-time-pressured, discussion based exercise of a minimum of four functions of the emergency operations plan, including the direction and control function.

"Threat Assessment" means a process of evaluating the actions and conduct of individuals, and the circumstances surrounding those actions and conduct, to uncover any facts or evidence that indicate that violence is likely to be carried out. A threat assessment should occur when a person (or persons) threatens or induces others to commit a violent act or engages in behavior that appears to threaten "targeted violence".

"Targeted Violence" means an incident of physical violence in which both the perpetrator and targets are identified or identifiable prior to the incident.

SUBPART B: GUIDELINES FOR THE CAMPUS EMERGENCY OPERATIONS PLAN

Section 305.30 Initial Analysis and Assessment

To begin the planning process and in conjunction with the annual review and updates, as provided in Subpart D, the higher education institution should perform all of the following tasks:

- a) Conduct an all hazard analysis for the higher education institution.
 - 1) Identify all hazards, including natural, man-made and technological. The following should be included:
 - A) Severe weather
 - B) Fire

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- C) Bomb threats or the discovery of suspicious items
 - D) Structural failure or loss of utility service
 - E) Mass casualty event
 - F) Release of hazardous materials (indoor/outdoor)
 - G) Use of weapons/hostage situations/active shooter
 - H) Public health emergency
 - I) Earthquakes
 - J) Nuclear power plant accidents, where applicable
 - K) Cyberthreat;
- 2) Profile hazards, considering frequency, magnitude, intensity, location, spatial extent, duration, seasonal patter, speed of onset and availability of warning, using historical data, scientific methods or other sources; and
 - 3) Compare and prioritize risks of the hazards identified.
- b) Assess vulnerabilities within the higher education institution.
 - 1) Collect demographic data (such as daily population patterns, traffic patterns, seasonal population changes, special needs populations) to determine potential consequences of identified hazards on people and community functions.
 - 2) Collect structural inventory data (including data on critical facilities, residential, commercial and industrial structures, lifelines, and transportation) to determine potential consequences of identified hazards on community functions, property and sites of potential secondary hazards.
 - c) Assess response capabilities of the higher education institution, identify shortfalls in response capabilities and develop strategies to alleviate shortfalls, such as

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memorandums of understanding, mutual aid agreements or Good Samaritan agreements.

- d) In analyzing and assessing the CEOP, higher education institutions may include, but not be limited to, the designated campus public safety officer, the campus emergency planning team, the campus emergency management director, local mental health community providers, local first responder agencies and ESDAs, county or major municipal emergency managers, or other persons deemed appropriate.

Section 305.40 Basic Plan Guidelines

- a) The CEOP should have a foreword that includes:
- 1) A document signed and dated by the president or most senior level administrator of the higher education institution approving the plan.
 - 2) A register for recording changes and entering change dates.
 - 3) A distribution list of the plan recipients, indicating whether complete plans or specific portions were distributed. Specifically this item should address the method of providing the CEOP to the campus community.
 - 4) A table of contents listing all Sections of the plan.
- b) The CEOP should have a Basic Plan Overview detailing the higher education institution's approach to emergency operations, including:
- 1) A general purpose statement of the CEOP.
 - 2) A list of assumptions used in developing the plan.
 - 3) A concept of operations Section, including, but not limited to, how the higher education institution will implement the concepts and procedures of a recognized incident command system (e.g., NIMS).
 - 4) Identification of the line of succession, by title and position (with up to two alternates), of who will implement the plan, direct emergency

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response and recovery, and provide leadership, authority and responsibility.

- 5) A description of the functions and responsibilities assigned to each organization, including private and volunteer organizations or groups, in support of emergency response and recovery operations in the higher education institution. This information may also be exhibited in a chart or matrix designating who has primary and support responsibilities.
- 6) Maps, or references to maps pertinent to emergency operations planning for the higher education institution and including, but not limited to, locating fixed hazards.
- 7) An attachment, if applicable, containing written mutual aid agreements, memorandums of understanding (MOUs), and other written agreements affecting the emergency response and recovery functions of the higher education institution.
- 8) Procedures detailing how the higher education institution will request outside assistance in a disaster, such as assistance from the ESDA or IEMA, or both.
- 9) Citations to the legal authorities for emergency operations, including, but not limited to, ordinances.
- 10) Assignment of responsibility for plan maintenance, review, evaluation and updating.

Section 305.50 Campus Functional Annex Guidelines

- a) The CEOP should include an annex addressing how the higher education institution will perform each of the following functions:
 - 1) Direction and Control – What means the higher education institution will use to direct and control activities during and following disaster/emergency situations.

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- 2) Communications – How information will be exchanged among responders, administrative officials, teachers and students and other interested persons during and after a disaster/emergency situation.
- 3) Warning/Disaster/Emergency Information – How the public and campus community will be warned and instructed regarding actual or threatened hazards through the public media or other means.
- 4) Public Information – The means, organization and process by which a higher education institution will provide timely, accurate and useful information and instructions to the community throughout a disaster/emergency. It includes information disseminated to the public through the media and other information sources on what is happening, what the response organization is doing, and what the public should do for its safety. The higher education institution should address the circumstances of special needs populations, including limited English proficiency populations.
- 5) Disaster Intelligence/Damage Assessment/Recovery Planning – The means the higher education institution will use to identify, collect, analyze and disseminate information on the extent and impact of the disaster and those plans for recovery and restoration of operations.
- 6) Evacuation/Shelter-in-Place/Lockdown – The movement of people to a safe area from an area believed to be at risk, when disaster/emergency situations necessitate that action.
- 7) Mass Care – Actions taken to ensure appropriate services are provided at a mass care facility, including, but not limited to, providing temporary shelter, food, medical care, clothing and other essential life support needs to people displaced from their homes because of a disaster situation.
- 8) Health and Medical – The activities associated with providing health and medical services in emergencies and disasters, including emergency medical, hospital, public health, environmental health and mental health services.
- 9) Mortuary Services – Activities including the collection, identification and care of human remains; determining the cause of death; inventorying and

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protecting deceased's personal effects; and locating and notifying the next of kin.

- 10) Resource Management – The process of managing people, equipment, facilities, supplies and other resources to satisfy the needs generated by a disaster. This includes the management of volunteer response teams and spontaneously responding volunteers.
- b) Each campus functional annex identified by subsection (a) should individually address:
- 1) The purpose of the function.
 - 2) A description of situations that trigger implementation of the function.
 - 3) A description of assumptions that apply to the function.
 - 4) The concept of operations for the function.
 - 5) Assignment of responsibility for annex maintenance, review and updating.
- c) In addition to subsection (b), the Campus Direction and Control annex should also:
- 1) Describe the direction and control relationship of tasked organizations, including:
 - A) The command structure – specifically who will be in charge during disaster/emergency response operations.
 - B) The authorities of, and limitations on, key response personnel such as the on-scene Campus Incident Commander.
 - C) How disaster/emergency response organizations will be notified when it is necessary to respond.
 - D) The means that will be used to obtain, analyze and disseminate information (for decision making, requesting assistance, reporting, etc.).

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- E) The relationship between the CEOC and the Campus Incident Command Post.
- 2) List the organizations that are tasked with specific direction and control responsibilities and describe those responsibilities. Include the assignment of responsibility for:
- A) Reporting to the CEOC when activated.
 - B) Coordinating press releases among response organizations.
 - C) Managing the primary and alternate CEOCs.
 - D) Maintaining a significant events log.
 - E) Removing debris.
- d) In addition to subsection (b), the Campus Communications annex should also:
- 1) Describe the total emergency communications system used for communication among all groups and individuals involved in the higher education institution's response to a disaster/emergency.
 - 2) Describe the primary and backup communication methods and personnel.
 - 3) Identify the organization assigned to coordinate all communication activities.
 - 4) List the organizations that are tasked with specific communications responsibilities and describe those responsibilities.
 - 5) Identify the representative from each tasked organization who will report to the CEOC when activated.
 - 6) Describe plans for notification of next-of-kin and the establishment, on or in the vicinity of campus, of a Family Assistance Center to address the needs of next-of-kin of deceased or seriously injured students, faculty or staff.

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- e) In addition to subsection (b), the Campus Warning/Disaster/Emergency Information annex should also:
- 1) Identify the methods used to provide warning/disaster/emergency information for the public and special populations, including limited English proficiency populations.
 - 2) Identify the locations of outdoor warning/disaster/emergency information devices and define the geographical areas covered.
 - 3) Describe the specific warning/disaster/emergency information responsibilities assigned to the tasked organizations.
 - 4) Identify the department or agency responsible for activating public warning/disaster/emergency information systems.
- f) In addition to subsection (b), the Campus Public Information annex should also:
- 1) Assign a person to be the Campus Public Information Officer (CPIO) responsible for coordinating information gathering and production, rumor control, public inquiries, and media relations.
 - 2) Designate a facility or site as the public information center.
 - 3) List the organizations that are tasked with specific public information responsibilities and describe those responsibilities.
 - 4) Assign a public information representative to report to the CEOC when activated.
 - 5) Identify a facility or site for the Joint Information Center during major incidents on campus.
- g) In addition to subsection (b), the Campus Disaster Intelligence/Damage Assessment/Recovery Planning annex should also:

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- 1) List the organizations that are tasked with specific disaster intelligence/damage assessment/recovery planning responsibilities and describe those responsibilities.
 - 2) Assign a disaster intelligence/damage assessment/recovery planning representative to report to the CEOC when activated.
- h) In addition to subsection (b), the Campus Evacuation/Shelter-in-Place/Lockdown annex should also:
- 1) List the organizations that are tasked with specific evacuation/shelter-in-place/lockdown responsibilities and describe those responsibilities.
 - 2) Identify the department, agency or organization responsible for coordinating all transportation resources planned for use in an evacuation.
- i) In addition to subsection (b), the Campus Mass Care annex should also:
- 1) List the organizations that are tasked with specific mass care responsibilities and describe those responsibilities, including:
 - A) Identification of the department, agency or organization responsible for determining the need to open shelter.
 - B) Identification of the department, agency or organization responsible for disaster/emergency mass feeding operations.
 - C) Identification of the department, agency or organization responsible for providing health and/or medical care, including mental health services, at shelter and/or congregate care facilities.
 - 2) Assign a mass care representative to report to the CEOC when activated.
 - 3) Identify the mass care representative who will coordinate press releases with the CPIO.
- j) In addition to subsection (b), the Campus Health and Medical Services annex should also:

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- 1) List the organizations and individuals that are tasked with responsibilities for providing disaster/emergency health and medical services and describe those responsibilities, including:
 - A) Identification of the department, agency or organization responsible for arranging crisis counseling for emergency workers.
 - B) Identification of the department, agency or organization responsible for sanitation services.
 - 2) Assign a health and medical services representative to report to the CEOC when activated.
 - 3) Identify the department, agency or organization responsible for providing post-incident mental health care.
- k) In addition to subsection (b), the Campus Mortuary Services annex should also:
- 1) List the organizations and individuals that are tasked with mortuary services responsibilities and describe those responsibilities.
 - 2) Describe how mortuary services will be expanded during a mass casualty incident, if necessary.
- l) In addition to subsection (b), the Campus Resource Management annex should also:
- 1) List the organizations and individuals that are tasked with resource management responsibilities and describe those responsibilities. Include identification of who will organize, manage, coordinate and distribute the donations of money, goods and labor received from individual citizens and volunteer groups during a disaster/emergency.
 - 2) Inventory the resources available, such as emergency supplies and equipment maintained for the campus community to use during a disaster/emergency.
 - 3) Assign a resource management representative to report to the CEOC when activated.

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- m) The higher education institution may include additional functional annexes in the CEOP as determined by the higher education institution to be necessary for the emergency management efforts of the higher education institution in the event of a disaster, including, but not limited to, the following functions: search and rescue, law enforcement, public works, transportation, energy management, animal welfare, legislative relations, aviation operations and/or others.

SUBPART C: GUIDELINES FOR THE CAMPUS VIOLENCE PREVENTION PLAN

Section 305.60 Campus Violence Prevention Plan

- a) Pursuant to the Act, each higher education institution is required to develop an inter-disciplinary and multi-jurisdictional Campus Violence Prevention Plan (CVPP).
- b) The CVPP should have a foreword that includes:
 - 1) A document signed and dated by the president or most senior level administrator of the higher education institution approving the plan.
 - 2) A register for recording changes and entering change dates.
 - 3) A distribution list of the plan recipients, indicating whether complete plans or specific portions were distributed. Specifically, this item should address the method of providing the CVPP to the campus community.
 - 4) A table of contents listing all Sections of the plan.
- c) The body of the CVPP should include:
 - 1) Integration of existing campus programs and policies that deal with associated issues (e.g., workplace violence, suicide prevention, anti-bullying, stigma reduction, sexual assault prevention);
 - 2) Incorporation of violence prevention strategies into related policies and/or procedures;

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- 3) Encouragement of zero tolerance policy statements that reaffirm violence prevention strategies; and
- 4) Development and implementation of a Campus Violence Prevention Committee and Campus Threat Assessment Team.

Section 305.70 Campus Violence Prevention Committee

- a) Pursuant to the Act, each higher education institution is required to develop and implement a Campus Violence Prevention Committee (CVPC). The CVPC should be tasked with implementing the CVPP.
- b) The CVPC should determine the committee structure and the individuals responsible for education and prevention of violence on campus.
- c) Participants from faculty, campus administration, student affairs, law enforcement, human resources, counseling services, residence life, county or major municipal emergency managers and others deemed appropriate are recommended for the CVPC.

Section 305.80 Campus Threat Assessment Team

- a) Pursuant to the Act, each higher education institution is required to develop and implement a Campus Threat Assessment Team. The team should conduct threat assessments, address aberrant, dangerous, or threatening behavior on campus and provide guidance and best practices for preventing violence and providing supportive services.
- b) The team should consist of faculty, law enforcement, human resources, legal counsel, and mental health professionals. It may also include other persons and organizations deemed appropriate to a particular circumstance.
- c) The team should create a written threat assessment policy that provides:
 - 1) Guidance to students, faculty and staff about how to recognize, address and report aberrant and threatening behavior;
 - 2) Identify individuals that will have access to information;

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- 3) Use a fact-based assessment process to investigate threats, actions or conduct that may lead to targeted violence and determine situation specific response action plans;
 - 4) Access a range of support services for students, faculty and staff that includes mental health services, crisis management and comprehensive services for victims, whether provided on campus or by accessing community resources; and
 - 5) Requirements for protecting the privacy of persons providing information to and subject to scrutiny by the threat assessment team.
- d) All areas of the campus community should be required to cooperate with requests from the threat assessment team relative to successfully monitoring any threatening behavior.
 - e) The team should meet regularly to provide post-incident assessments and evaluate the effectiveness and response to incidents on a case or aggregate basis.

SUBPART D: COORDINATION, SUBMISSION AND REVIEW
GUILDELINES FOR CAMPUS EMERGENCY OPERATIONS
PLAN AND CAMPUS VIOLENCE PREVENTION PLAN

Section 305.90 Coordination, Submission and Review

- a) The CEOP and CVPP should be coordinated with the local ESDA. Where the CEOP and/or CVPP cannot be coordinated with ESDA capabilities, the IEMA Regional Office should provide guidance to help identify resources. Upon completion of the CEOP and CVPP by the higher education institution, a copy of each should be provided to the local ESDA, IEMA Regional Office, and either IBHE or ICCB, as appropriate.
- b) Each higher education institution should conduct an annual review and update. The review and update should include the components in Subparts B and C.
- c) The campus administrators responsible for the execution of the CEOP and CVPP should participate in the review. Participation by the director of campus public safety, campus emergency planning team, local mental health provider, local first

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responder agency, county or major municipal emergency manager, and other persons deemed appropriate by the higher education institution is recommended.

- d) If amendments are deemed appropriate by the higher education institution, those amendments should be coordinated with the local ESDA. A copy of the amendments should be provided to the local ESDA, IEMA Regional Office, and either IBHE or ICCB, as appropriate.

SUBPART E: TRAINING AND EXERCISE GUIDELINES

Section 305.100 Training

Pursuant to the Act, each higher education institution shall conduct training on its CEOP and CVPP annually. Training should include all administrators, faculty, staff, students and any other members of the campus community so they are familiar with key components of the CEOP and CVPP.

Section 305.110 Exercise Guidelines for the Campus Emergency Operations Plan and Campus Violence Prevention Plan

- a) Pursuant to the Act, each higher education institution shall conduct an annual exercise of its CEOP and CVPP. This requirement should be in coordination with the local ESDA and can be satisfied with a full scale, functional or tabletop exercise.
- b) CEOP and CVPP exercises should be conducted to examine the objectives identified in this Part.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENT

- 1) Heading of the Part: Child Care
- 2) Code Citation: 89 Ill. Adm. Code 50
- 3) Section Number: 50.320 Adopted Action:
Amendment
- 4) Statutory Authority: Implementing Articles I through IXA and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Arts. I through IXA and Section 12-13]
- 5) Effective date of Amendment: June 8, 2009
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of proposal published in the Illinois Register: July 7, 2008; 32 Ill. Reg. 9565
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between proposal and final version: No substantive changes were made to the text of the proposed rulemaking.
- 12) Have all changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Rulemaking: As the result of the increase in income eligibility thresholds for child care benefits, this rulemaking updates the child care full-time co-payment charts. The child care co-payment charts show the maximum monthly income and parent fee by family size, income level and number of children receiving full-time care.

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

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

217/785-9772

- 17) Does this amendment require the preview of the Procurement Policy Board as specified in Section 5-25 of the Illinois Procurement Code? No

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

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENT

TITLE 89: SOCIAL SERVICES
CHAPTER IV: DEPARTMENT OF HUMAN SERVICES
SUBCHAPTER a: GENERAL PROGRAM PROVISIONS

PART 50
CHILD CARE

SUBPART A: GENERAL PROVISIONS

Section	
50.101	Incorporation by Reference
50.110	Participant Rights and Responsibilities
50.120	Notification of Available Services
50.130	Child Care Overpayments and Recoveries

SUBPART B: APPLICABILITY

Section	
50.210	Child Care
50.220	Method of Providing Child Care
50.230	Child Care Eligibility
50.235	Income Eligibility Criteria
50.240	Qualified Provider
50.250	Additional Service to Secure or Maintain Child Care

SUBPART C: PAYMENT FEES

Section	
50.310	Fees for Child Care Services
50.320	Maximum Monthly Income and Parent Fee by Family Size, Income Level and Number of Children Receiving Full-time Care

SUBPART D: CHILD CARE ABUSE AND NEGLECT

Section	
50.410	Provider Eligibility
50.420	Payment for Child Care Services

SUBPART E: GREAT START PROGRAM

DEPARTMENT OF HUMAN SERVICES

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Section

50.510	Great START Program
50.520	Method of Providing the Wage Supplement
50.530	Eligibility
50.540	Employer Responsibility
50.550	Notification of Eligibility
50.560	Phase-in of Wage Supplement Scale
50.570	Wage Supplement Scale
50.580	Evaluation

AUTHORITY: Implementing Articles I through IXA and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Arts. I through IXA and 12-13].

SOURCE: Emergency rules adopted at 21 Ill. Reg. 9502, effective July 1, 1997, for a maximum of 150 days; adopted at 21 Ill. Reg. 14961, effective November 10, 1997; emergency amendment at 22 Ill. Reg. 12816, effective July 1, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 21037, effective November 27, 1998; emergency amendment at 23 Ill. Reg. 10875, effective August 20, 1999, for maximum of 150 days; amended at 24 Ill. Reg. 1058, effective January 10, 2000; emergency amendment at 24 Ill. Reg. 6604, effective April 5, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 13987, effective September 1, 2000; amended at 24 Ill. Reg. 15423, effective October 10, 2000; emergency amendment at 25 Ill. Reg. 2735, effective February 5, 2001, for a maximum of 150 days; amended at 25 Ill. Reg. 8176, effective June 23, 2001; emergency amendment at 25 Ill. Reg. 8443, effective July 1, 2001, for a maximum of 150 days; amended at 25 Ill. Reg. 14854, effective October 31, 2001; emergency amendment at 25 Ill. Reg. 16116, effective December 1, 2001, for a maximum of 150 days; amended at 26 Ill. Reg. 7113, effective April 25, 2002; amended at 27 Ill. Reg. 12090, effective July 14, 2003; amended at 27 Ill. Reg. 18411, effective November 24, 2003; amended at 28 Ill. Reg. 6895, effective April 23, 2004; emergency amendment at 28 Ill. Reg. 10121, effective July 1, 2004, for a maximum of 150 days; emergency expired November 27, 2004; amended at 29 Ill. Reg. 2687, effective February 4, 2005; emergency amendment at 29 Ill. Reg. 13253, effective August 11, 2005, for a maximum of 150 days; emergency expired January 7, 2006; amended at 30 Ill. Reg. 11190, effective June 6, 2006; amended at 31 Ill. Reg. 12584, effective August 20, 2007; emergency amendment at 31 Ill. Reg. 13350, effective September 10, 2007, for a maximum of 150 days; emergency expired February 6, 2008; amended at 32 Ill. Reg. 6048, effective March 31, 2008; emergency amendment at 32 Ill. Reg. 6652, effective April 1, 2008, for a maximum of 150 days; amended at 32 Ill. Reg. 9604, effective June 20, 2008; amended at 32 Ill. Reg. 14742, effective August 28, 2008; amended at 33 Ill. Reg. 8195, effective June 8, 2009.

DEPARTMENT OF HUMAN SERVICES

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SUBPART C: PAYMENT FEES

Section 50.320 Maximum Monthly Income and Parent Fee by Family Size, Income Level and Number of Children Receiving Full-time Care

Family Size 2

Monthly Income	1	1
	Child	Child
	Monthly Co-Pay	Weekly Co-Pay
\$ 0 - 327	\$ 4.33	\$ 1.00
328 - 491	13.00	3.00
492 - 654	21.67	5.00
655 - 818	34.66	8.00
819 - 981	47.66	11.00
982 - 1,145	65.00	15.00
1,146 - 1,308	86.66	20.00
1,309 - 1,472	108.33	25.00
1,473 - 1,636	134.32	31.00
1,637 - 1,799	160.32	37.00
1,800 - 1,962	186.32	43.00
1,963 - <u>2,125</u>		
2,051	212.32	49.00
<u>2,126 - 2,288</u>	<u>238.32</u>	<u>55.00</u>
<u>2,289 - 2,334</u>	<u>264.31</u>	<u>61.00</u>

Family Size 3

Monthly Income	1	1	2	2
	Child	Child	Children	Children
	Monthly Co-Pay	Weekly Co-Pay	Monthly Co-Pay	Weekly Co-Pay
\$ 0 - 423	\$ 4.33	\$ 1.00	\$ 8.67	\$ 2.00
424 - 606	13.00	3.00	17.33	4.00

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607 - 808	21.67	5.00	30.33	7.00
809 - 1,010	34.66	8.00	52.00	12.00
1,011 - 1,212	47.66	11.00	69.33	16.00
1,213 - 1,414	65.00	15.00	95.33	22.00
1,415 - 1,616	86.66	20.00	147.32	34.00
1,617 - 1,818	108.33	25.00	190.65	44.00
1,819 - 2,020	134.32	31.00	233.98	54.00
2,021 - 2,222	160.32	37.00	277.31	64.00
2,223 - 2,424	186.32	43.00	320.64	74.00
2,425 - <u>2,626</u>	212.32	49.00	363.97	84.00
<u>2,533</u>				
<u>2,627 - 2,828</u>	<u>238.32</u>	<u>55.00</u>	<u>407.30</u>	<u>94.00</u>
<u>2,829 - 2,934</u>	<u>264.31</u>	<u>61.00</u>	<u>450.63</u>	<u>104.00</u>

Family Size 4

	1 Child	1 Child	2 Children	2 Children	3 Children	3 Children
Monthly Income	Monthly Co-Pay	Weekly Co-Pay	Monthly Co-Pay	Weekly Co-Pay	Monthly Co-Pay	Weekly Co-Pay
\$ 0 - 481	\$ 4.33	\$ 1.00	\$ 8.67	\$ 2.00	\$ 8.67	\$ 2.00
482 - 722	13.00	3.00	17.33	4.00	17.33	4.00
723 - 962	21.67	5.00	30.33	7.00	34.66	8.00
963 - 1,203	34.66	8.00	52.00	12.00	52.00	12.00
1,204 - 1,443	47.66	11.00	69.33	16.00	73.66	17.00
1,444 - 1,684	65.00	15.00	95.33	22.00	99.66	23.00
1,685 - 1,924	86.66	20.00	147.32	34.00	151.66	35.00
1,925 - 2,165	108.33	25.00	190.65	44.00	194.99	45.00
2,166 - 2,405	134.32	31.00	233.98	54.00	238.32	55.00
2,406 - 2,646	160.32	37.00	277.31	64.00	281.65	65.00
2,647 - 2,887	186.32	43.00	320.64	74.00	324.98	75.00
2,888 - <u>3,128</u>						
<u>3,016</u>	212.32	49.00	363.97	84.00	368.31	85.00
<u>3,129 - 3,369</u>	<u>238.32</u>	<u>55.00</u>	<u>407.30</u>	<u>94.00</u>	<u>411.64</u>	<u>95.00</u>
<u>3,370 - 3,534</u>	<u>264.31</u>	<u>61.00</u>	<u>450.63</u>	<u>104.00</u>	<u>454.97</u>	<u>105.00</u>

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Family Size 5

	1 Child	1 Child	2 Children	2 Children	3 Children	3 Children	4 Children	4 Children
Monthly Income	Monthly Co-Pay	Weekly Co-Pay	Monthly Co-Pay	Weekly Co-Pay	Monthly Co-Pay	Weekly Co-Pay	Monthly Co-Pay	Weekly Co-Pay
\$ 0 - 558	\$ 4.33	\$ 1.00	\$ 8.67	\$ 2.00	\$ 8.67	\$ 2.00	\$ 8.67	\$ 2.00
559 - 837	13.00	3.00	17.33	4.00	17.33	4.00	21.67	5.00
838 - 1,116	21.67	5.00	30.33	7.00	34.66	8.00	34.66	8.00
1,117 - 1,395	34.66	8.00	52.00	12.00	52.00	12.00	56.33	13.00
1,396 - 1,674	47.66	11.00	69.33	16.00	73.66	17.00	77.99	18.00
1,675 - 1,953	65.00	15.00	95.33	22.00	99.66	23.00	103.99	24.00
1,954 - 2,232	86.66	20.00	147.32	34.00	151.66	35.00	155.99	36.00
2,233 - 2,511	108.33	25.00	190.65	44.00	194.99	45.00	199.32	46.00
2,512 - 2,790	134.32	31.00	233.98	54.00	238.32	55.00	242.65	56.00
2,791 - 3,069	160.32	37.00	277.31	64.00	281.65	65.00	285.98	66.00
3,070 - 3,348	186.32	43.00	320.64	74.00	324.98	75.00	329.31	76.00
3,349 - <u>3,627</u>								
<u>3,498</u>	212.32	49.00	363.97	84.00	368.31	85.00	372.64	86.00
<u>3,628 - 3,906</u>	<u>238.32</u>	<u>55.00</u>	<u>407.30</u>	<u>94.00</u>	<u>411.64</u>	<u>95.00</u>	<u>415.97</u>	<u>96.00</u>
<u>3,907 - 4,134</u>	<u>264.31</u>	<u>61.00</u>	<u>450.63</u>	<u>104.00</u>	<u>454.97</u>	<u>105.00</u>	<u>459.30</u>	<u>106.00</u>

Family Size 6

	1 Child	1 Child	2 Children	2 Children	3 Children	3 Children	4 Children	4 Children
Monthly Income	Monthly Co-Pay	Weekly Co-Pay	Monthly Co-Pay	Weekly Co-Pay	Monthly Co-Pay	Weekly Co-Pay	Monthly Co-Pay	Weekly Co-Pay
\$ 0 - 635	\$ 4.33	\$ 1.00	\$ 8.67	\$ 2.00	\$ 8.67	\$ 2.00	\$ 8.67	\$ 2.00
636 - 952	13.00	3.00	17.33	4.00	17.33	4.00	21.67	5.00
953 - 1,270	21.67	5.00	30.33	7.00	34.66	8.00	34.66	8.00
1,271 - 1,587	34.66	8.00	52.00	12.00	52.00	12.00	56.33	13.00
1,588 - 1,905	47.66	11.00	69.33	16.00	73.66	17.00	77.99	18.00
1,906 - 2,222	65.00	15.00	95.33	22.00	99.66	23.00	103.99	24.00
2,223 - 2,540	86.66	20.00	147.32	34.00	151.66	35.00	155.99	36.00

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2,541 - 2,857	108.33	25.00	190.65	44.00	194.99	45.00	199.32	46.00
2,858 - 3,175	134.32	31.00	233.98	54.00	238.32	55.00	242.65	56.00
3,176 - 3,492	160.32	37.00	277.31	64.00	281.65	65.00	285.98	66.00
3,493 - 3,809	186.32	43.00	320.64	74.00	324.98	75.00	329.31	76.00
3,810 - 4,126								
3,981	212.32	49.00	363.97	84.00	368.31	85.00	372.64	86.00
<u>4,127 - 4,443</u>	<u>238.32</u>	<u>55.00</u>	<u>407.30</u>	<u>94.00</u>	<u>411.64</u>	<u>95.00</u>	<u>415.97</u>	<u>96.00</u>
<u>4,444 - 4,734</u>	<u>264.31</u>	<u>61.00</u>	<u>450.63</u>	<u>104.00</u>	<u>454.97</u>	<u>105.00</u>	<u>459.30</u>	<u>106.00</u>

5 Children 5 Children

Monthly Income	Monthly Co-Pay	Weekly Co-Pay
\$ 0 - 635	\$ 8.67	\$ 2.00
636 - 952	21.67	5.00
953 - 1,270	39.00	9.00
1,271 - 1,587	60.66	14.00
1,588 - 1,905	82.33	19.00
1,906 - 2,222	108.33	25.00
2,223 - 2,540	160.32	37.00
2,541 - 2,857	203.65	47.00
2,858 - 3,175	246.98	57.00
3,176 - 3,492	290.31	67.00
3,493 - 3,809	333.64	77.00
3,810 - 4,126 , 3,981	376.97	87.00
<u>4,127 - 4,443</u>	<u>420.30</u>	<u>97.00</u>
<u>4,444 - 4,734</u>	<u>463.63</u>	<u>107.00</u>

Family Size 7

	1 Child	1 Child	2 Children	2 Children	3 Children	3 Children	4 Children	4 Children
Monthly Income	Monthly Co-Pay	Weekly Co-Pay						
\$ 0 - 649	\$ 4.33	\$ 1.00	\$ 8.67	\$ 2.00	\$ 8.67	\$ 2.00	\$ 8.67	\$ 2.00

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650 - 974	13.00	3.00	17.33	4.00	17.33	4.00	21.67	5.00
975 - 1,299	21.67	5.00	30.33	7.00	34.66	8.00	34.66	8.00
1,300 - 1,623	34.66	8.00	52.00	12.00	52.00	12.00	56.33	13.00
1,624 - 1,948	47.66	11.00	69.33	16.00	73.66	17.00	77.99	18.00
1,949 - 2,273	65.00	15.00	95.33	22.00	99.66	23.00	103.99	24.00
2,274 - 2,598	86.66	20.00	147.32	34.00	151.66	35.00	155.99	36.00
2,599 - 2,922	108.33	25.00	190.65	44.00	194.99	45.00	199.32	46.00
2,923 - 3,247	134.32	31.00	233.98	54.00	238.32	55.00	242.65	56.00
3,248 - 3,572	160.32	37.00	277.31	64.00	281.65	65.00	285.98	66.00
3,573 - 3,897	186.32	43.00	320.64	74.00	324.98	75.00	329.31	76.00
3,898 - <u>4,222</u>								
<u>4,071</u>	212.32	49.00	363.97	84.00	368.31	85.00	372.64	86.00
<u>4,223 - 4,547</u>	<u>238.32</u>	<u>55.00</u>	<u>407.30</u>	<u>94.00</u>	<u>411.64</u>	<u>95.00</u>	<u>415.97</u>	<u>96.00</u>
<u>4,548 - 4,872</u>	<u>264.31</u>	<u>61.00</u>	<u>450.63</u>	<u>104.00</u>	<u>454.97</u>	<u>105.00</u>	<u>459.30</u>	<u>106.00</u>
<u>4,873 - 5,197</u>	<u>290.31</u>	<u>67.00</u>	<u>493.96</u>	<u>114.00</u>	<u>498.30</u>	<u>115.00</u>	<u>502.63</u>	<u>116.00</u>
<u>5,198 - 5,334</u>	<u>316.31</u>	<u>73.00</u>	<u>537.29</u>	<u>124.00</u>	<u>541.63</u>	<u>125.00</u>	<u>545.96</u>	<u>126.00</u>

	5	5	6	6
	Children	Children	Children	Children
Monthly Income	Monthly Co-Pay	Weekly Co-Pay	Monthly Co-Pay	Weekly Co-Pay
\$ 0 - 649	\$ 8.67	\$ 2.00	\$ 8.67	\$ 2.00
650 - 974	21.67	5.00	21.67	5.00
975 - 1,299	39.00	9.00	39.00	9.00
1,300 - 1,623	60.66	14.00	65.00	15.00
1,624 - 1,948	82.33	19.00	86.66	20.00
1,949 - 2,273	108.33	25.00	112.66	26.00
2,274 - 2,598	160.32	37.00	164.65	38.00
2,599 - 2,922	203.65	47.00	207.98	48.00
2,923 - 3,247	246.98	57.00	251.31	58.00
3,248 - 3,572	290.31	67.00	294.64	68.00
3,573 - 3,897	333.64	77.00	337.97	78.00
3,898 - 4,222 <u>4,071</u>	376.97	87.00	381.30	88.00
<u>4,223 - 4,547</u>	<u>420.30</u>	<u>97.00</u>	<u>424.63</u>	<u>98.00</u>
<u>4,548 - 4,872</u>	<u>463.63</u>	<u>107.00</u>	<u>467.96</u>	<u>108.00</u>
<u>4,873 - 5,197</u>	<u>506.96</u>	<u>117.00</u>	<u>511.29</u>	<u>118.00</u>
<u>5,198 - 5,334</u>	<u>550.29</u>	<u>127.00</u>	<u>554.62</u>	<u>128.00</u>

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Family Size 8

	1 Child	1 Child	2 Children	2 Children	3 Children	3 Children	4 Children	4 Children
Monthly Income	Monthly Co-Pay	Weekly Co-Pay	Monthly Co-Pay	Weekly Co-Pay	Monthly Co-Pay	Weekly Co-Pay	Monthly Co-Pay	Weekly Co-Pay
\$ 0 - 664	\$ 4.33	\$ 1.00	\$ 8.67	\$ 2.00	\$ 8.67	\$ 2.00	\$ 8.67	\$ 2.00
665 - 996	13.00	3.00	17.33	4.00	17.33	4.00	21.67	5.00
997 - 1,328	21.67	5.00	30.33	7.00	34.66	8.00	34.66	8.00
1,329 - 1,660	34.66	8.00	52.00	12.00	52.00	12.00	56.33	13.00
1,661 - 1,992	47.66	11.00	69.33	16.00	73.66	17.00	77.99	18.00
1,993 - 2,323	65.00	15.00	95.33	22.00	99.66	23.00	103.99	24.00
2,324 - 2,655	86.66	20.00	147.32	34.00	151.66	35.00	155.99	36.00
2,656 - 2,987	108.33	25.00	190.65	44.00	194.99	45.00	199.32	46.00
2,988 - 3,319	134.32	31.00	233.98	54.00	238.32	55.00	242.65	56.00
3,320 - 3,651	160.32	37.00	277.31	64.00	281.65	65.00	285.98	66.00
3,652 - 3,983	186.32	43.00	320.64	74.00	324.98	75.00	329.31	76.00
3,984 -								
4,315-4,647	212.32	49.00	363.97	84.00	368.31	85.00	372.64	86.00
4,316 - 4,647	238.32	55.00	407.30	94.00	411.64	95.00	415.97	96.00
4,648 - 4,979	264.31	61.00	450.63	104.00	454.97	105.00	459.30	106.00
4,980 - 5,311	290.31	67.00	493.96	114.00	498.30	115.00	502.63	116.00
5,312 - 5,643	316.31	73.00	537.29	124.00	541.63	125.00	545.96	126.00
5,644 - 5,934	342.31	79.00	580.62	134.00	584.96	135.00	589.29	136.00

	5 Children	5 Children	6 Children	6 Children	7 Children	7 Children
Monthly Income	Monthly Co-Pay	Weekly Co-Pay	Monthly Co-Pay	Weekly Co-Pay	Monthly Co-Pay	Weekly Co-Pay
\$ 0 - 664	\$ 8.67	\$ 2.00	\$ 8.67	\$ 2.00	\$ 8.67	\$ 2.00
665 - 996	21.67	5.00	21.67	5.00	26.00	6.00
997 - 1,328	39.00	9.00	39.00	9.00	43.33	10.00
1,329 - 1,660	60.66	14.00	65.00	15.00	65.00	15.00
1,661 - 1,992	82.33	19.00	86.66	20.00	90.99	21.00
1,993 - 2,323	108.33	25.00	112.66	26.00	116.99	27.00

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2,324 - 2,655	160.32	37.00	164.65	38.00	168.99	39.00
2,656 - 2,987	203.65	47.00	207.98	48.00	212.32	49.00
2,988 - 3,319	246.98	57.00	251.31	58.00	255.65	59.00
3,320 - 3,651	290.31	67.00	294.64	68.00	298.98	69.00
3,652 - 3,983	333.64	77.00	337.97	78.00	342.31	79.00
3,984 -						
<u>4,315,162</u>	376.97	87.00	381.30	88.00	385.64	89.00
<u>4,316 - 4,647</u>	<u>420.30</u>	<u>97.00</u>	<u>424.63</u>	<u>98.00</u>	<u>428.97</u>	<u>99.00</u>
<u>4,648 - 4,979</u>	<u>463.63</u>	<u>107.00</u>	<u>467.96</u>	<u>108.00</u>	<u>472.30</u>	<u>109.00</u>
<u>4,980 - 5,311</u>	<u>506.96</u>	<u>117.00</u>	<u>511.29</u>	<u>118.00</u>	<u>515.63</u>	<u>119.00</u>
<u>5,312 - 5,643</u>	<u>550.29</u>	<u>127.00</u>	<u>554.62</u>	<u>128.00</u>	<u>558.96</u>	<u>129.00</u>
<u>5,644 - 5,934</u>	<u>593.62</u>	<u>137.00</u>	<u>597.95</u>	<u>138.00</u>	<u>602.29</u>	<u>139.00</u>

(Source: Amended at 33 Ill. Reg. 8195, effective June 8, 2009)

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- 1) Heading of the Part: Early Intervention Program
- 2) Code Citation: 89 Ill. Adm. Code 500
- 3)

<u>Section Numbers:</u>	<u>Adopted Action:</u>
500.45	Amend
500.APPENDIX C	Amend
- 4) Statutory Authority: Implementing and authorized by the Early Intervention Services System Act [325 ILCS 20] and Part C of the Individuals with Disabilities Education Act (IDEA) (20 USC 1400 et seq., as amended in 1997)
- 5) Effective Date of Amendments: June 8, 2009
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? Yes, in Appendix C in the Family Training and Support section.
- 8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notices of proposal published in the Illinois Register: October 31, 2008; 32 Ill. Reg. 17001
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between proposal and final version: There were no substantive changes to the rulemaking between the proposed and final version.
- 12) Have all changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? There were no agreements issued by JCAR.
- 13) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of rulemaking: The amendment to Section 500.45 complies with an agreement between the Department and JCAR to explain how contracted regional

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intake entities (RIEs) participate in a process to measure family outcomes. Amendments to the appendix develop proficiency testing standards and training approval standards for bilingual EI interpreters. Also included are the requirements of Public Act 95-617, which requires sign language interpreters to be licensed.

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

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

217/785-9772

- 17) Does this rulemaking require the preview of the Procurement Policy Board as specified in Section 5-25 of the Illinois Procurement Code? No

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

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TITLE 89: SOCIAL SERVICES
CHAPTER IV: DEPARTMENT OF HUMAN SERVICES
SUBCHAPTER e: EARLY CHILDHOOD SERVICESPART 500
EARLY INTERVENTION PROGRAM

SUBPART A: GENERAL PROVISIONS

Section

500.10	Purpose
500.15	Incorporation by Reference
500.20	Definitions

SUBPART B: COMPONENTS OF THE STATEWIDE SYSTEM

Section

500.25	Public Awareness and Child Find
500.30	Central Directory
500.35	Local Interagency Councils
500.40	Illinois Interagency Council on Early Intervention
500.45	Regional Intake Entities
500.50	Eligibility
500.55	Early Intervention Services/Devices
500.60	Provider Qualifications/Credentialing and Enrollment
500.65	Monitoring

SUBPART C: SERVICE DELIVERY REQUIREMENTS

Section

500.70	Intake
500.75	Eligibility Determination
500.80	Individualized Family Service Plan Development
500.85	Individualized Family Service Plan Implementation
500.90	Individualized Family Service Plan Updating
500.95	Case Transfer
500.100	Transition to Part B or Other Appropriate Services at Age Three
500.105	Case Closure
500.110	Recordkeeping
500.115	Service Provider Requirements

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SUBPART D: FINANCIAL MATTERS

Section

- 500.120 Billing Procedures
- 500.125 Payor of Last Resort
- 500.130 Family Fee/Insurance

SUBPART E: PROCEDURAL SAFEGUARDS/CLIENT RIGHTS

Section

- 500.135 Minimum Procedural Safeguards
 - 500.140 Administrative Resolution of Complaints By Parents
 - 500.145 Mediation
 - 500.150 Confidentiality/Privacy
 - 500.155 Right to Consent
 - 500.160 Surrogate Parents
 - 500.165 Written Prior Notice
 - 500.170 State Complaint Procedure
-
- 500.APPENDIX A Sliding Fee Schedule
 - 500.APPENDIX B Assessment Instruments (Repealed)
 - 500.APPENDIX C Requirements for Professional and Associate Level Early Intervention (EI) Credentialing and Enrollment to Bill
 - 500.APPENDIX D Use of Associate Level Providers
 - 500.APPENDIX E Medical Conditions Resulting in High Probability of Developmental Delay (not an exclusive list)

AUTHORITY: Implementing and authorized by the Early Intervention Services System Act [325 ILCS 20] and Part C of the Individuals with Disabilities Education Act (IDEA) (20 USC 1400 et seq., as amended in 1997).

SOURCE: Adopted at 25 Ill. Reg. 8190, effective July 1, 2001; amended at 27 Ill. Reg. 2611, effective February 7, 2003; amended at 27 Ill. Reg. 13438, effective July 24, 2003; amended at 28 Ill. Reg. 8727, effective June 1, 2004; amended at 29 Ill. Reg. 2254, effective January 31, 2005; amended at 32 Ill. Reg. 2161, effective January 23, 2008; amended at 33 Ill. Reg. 8206, effective June 8, 2009.

SUBPART B: COMPONENTS OF THE STATEWIDE SYSTEM

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Section 500.45 Regional Intake Entities

The Department will assure the designation of regional intake points as necessary to accomplish consistent System intake and service coordination throughout the State. The regional entity shall be the contracted entity responsible for implementation of the Early Intervention Services System within its designated geographic area. The regional entity shall:

- a) Participate in public awareness and child find activities by disseminating information to primary referral sources and working with local interagency councils.
- b) Provide adequate accessible and secure space/facilities to store permanent early intervention records and to house staff.
- c) Select, train, and supervise qualified staff to carry out the following tasks within the System specified time frames:
 - 1) Receive referrals.
 - 2) Develop, maintain and process the permanent early intervention case record in accordance with policies set forth by the Department.
 - 3) Provide information about the Early Intervention Services System, including rights and procedural safeguards and available advocacy services, to families and initiate intake with parental consent.
 - 4) Coordinate EI and non-EI services for enrolled families.
 - 5) Ensure that eligibility is determined according to the Department's early intervention eligibility criteria.
 - 6) Comply with family fee policies and procedures as set by the Department.
 - 7) Develop the initial IFSP with the family, within 45 days after referral, consistent with requirements in this Part and federal regulations.
 - 8) Monitor that the integrity of the IFSP process is maintained and completed through accurate, timely and complete implementation of the services as

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mutually determined and agreed to by the IFSP Team, and consented to in writing by the child's parent/guardian.

- 9) Monitor that the Part C funds are the "payor of last resort" to the extent allowed by law. This includes assistance in accessing resource supports, including but not limited to Medicaid (Title XIX), the State Child Health Insurance Program (Title XXI), the Division of Specialized Care for Children (Title V) and private insurance.
- 10) Assist the family in monitoring IFSP implementation and obtain updated documentation from service providers listed on the IFSP in accordance with this Part, communicating regularly with the family using a variety of face-to-face, telephone, written correspondence, and other methods, including team meetings, to ensure that the family is well informed and an active participant in the implementation of the IFSP.
- 11) Assure that IFSPs are reviewed at least every six months and updated annually.
- 12) Assure that transition planning, case transfer and case closure occur consistent with the requirements of this Part.
- 13) Be knowledgeable of and comply with all applicable federal and State laws, guidelines, procedures, rules, regulations, and executive orders applicable to its activities, including, but not limited to:
 - A) The Individuals with Disabilities Education Act (20 USC 1400 et seq.). The United States Department of Education regulations for the early intervention program for Infants and Toddlers with Disabilities (34 CFR 303) and the Illinois Early Intervention Services System Act.
 - B) The federal Family Education Rights and Privacy Act (FERPA) (20 USC 1232g, 1232h) and the United States Department of Education implementing regulations (34 CFR 99); the Illinois School Student Records Act [105 ILCS 10].
 - C) The Americans with Disabilities Act (42 USC 12131-12134).

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- D) The Health Insurance Portability and Accountability Act (42 USC 1320 et seq., and the regulations promulgated thereunder at 45 CFR 160, 162 and 164 regarding transactions, privacy and security).
- d) Maintain a directory of non-EI financial resources and support services for use with families.
- e) Assist families in accessing non-EI financial resources and support services by making appropriate referrals while the child is enrolled with the Early Intervention Services System and at transition. Children found ineligible should be offered referrals for non-EI community resources prior to case closure.
- f) Maintain administrative and programmatic contact with all EI service providers in the service area.
- g) Participate in routine monitoring and technical assistance activities as required by the Department, including on-site monitoring, data collection and reporting obligations, record reviews, financial audits, complaint investigations, and consumer satisfaction surveys.
- h) Enroll as an "All Kids agent" in order to complete the All Kids application as authorized under Section 22 of the Children's Health Insurance Program Act.
- i) [Distribute materials to families as part of](#) ~~Participate in~~ a process to measure family outcomes.

(Source: Amended at 33 Ill. Reg. 8206, effective June 8, 2009)

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Section 500.APPENDIX C Requirements for Professional and Associate Level Early Intervention (EI) Credentialing and Enrollment to Bill

Nothing in this Appendix C shall exempt any individual from compliance with any and all State licensing requirements and/or supervisory requirements pertinent to the individual's delivery of services.

EI SERVICE

QUALIFIED STAFF

Assistive Technology

Durable medical equipment and supplies; providers may enroll to bill. No credential required.

Audiology, Aural
Rehabilitation/Other Related
Services

Audiologists with a current license in the state where they provide services to Illinois children may enroll to bill. Audiologists are not required to obtain a credential. (Provider is automatically enrolled under assistive technology and aural rehabilitation categories.)

Speech/Language Pathologists with a current license in the state where they provide services to Illinois children may apply for an EI Specialist: Licensed Speech/Language Pathologist credential and enroll to bill for aural rehabilitation services. (Provider is automatically enrolled under aural rehabilitation and speech therapy categories.)

Individuals with a masters in speech-language pathology who are participating in a supervised professional experience and hold a temporary license in the state where they provide services to Illinois children may apply for an EI Associate: Speech/Language Pathologist in supervised professional experience credential. Associate services are billed under the enrolled supervisor's name.

Individuals with a current Special Education degree for Deaf and Hard of Hearing may apply for an EI Specialist: Developmental Therapist/Hearing credential and enroll to bill for aural rehabilitation services. May also provide Developmental Therapy Services. (Provider is automatically enrolled under aural rehabilitation category.)

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Clinical Assessment,
Counseling, and Other
Therapeutic Services

Clinical Psychologists with a current license in the state where they provide services to Illinois children may apply for an EI Specialist: Licensed Clinical Psychologist credential and enroll to bill.

Clinical Professional Counselors with a current license in the state where they provide services to Illinois children may apply for an EI Specialist: Licensed Clinical Professional Counselor credential and enroll to bill.

Marriage and Family Therapists with a current license in the state where they provide services to Illinois children may apply for an EI Specialist: Licensed Marriage and Family Therapist credential and enroll to bill.

Clinical Social Workers with a current license in the state where they provide services to Illinois children may apply for an EI Specialist: Licensed Clinical Social Worker credential and enroll to bill.

Behavior Analysts with current national certification as a Board Certified Behavior Analyst from the Behavior Analyst Certification Board may apply for an EI Specialist: Behavior Analyst credential and enroll to bill.

Unlicensed individuals employed by school districts as School Psychologists who will only be providing services through their school employment may apply for an EI Specialist: School Psychologist credential.

Graduate students in clinical psychology or clinical counseling who submit a letter from the graduate school verifying that they are providing psychological or clinical counseling services in a supervised internship setting in order to complete a comprehensive, culminating training experience prior to granting of a graduate degree in psychology may apply for an EI Associate: Psychology/Counseling Intern credential. Associate services are billed under the enrolled

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supervisor's name.

Developmental Therapy

Individuals with an EI Specialist Developmental Therapist credential on January 1, 2004 or who are applying for an EI Specialist Developmental Therapist credential prior to January 1, 2004 must have (1) a minimum of Teacher Endorsement in Early Childhood Education (ECE) or Special Education or bachelors degree in ECE, Early Childhood Special Education, Special Education, or human service field with one year of experience working hands on with children birth to 3 with developmental disabilities (Persons with a degree in a human service field must submit proof of training on the use of a formal assessment tool that would allow the provider to perform global evaluations/assessments.); or (2) a current license in art, music, recreation, or other type of therapy, rehabilitative or habilitative in nature, in the state where they provide services to Illinois children may apply for credential renewal or, prior to January 1, 2004, may apply for an EI Specialist Developmental Therapist credential and enroll to bill.

Individuals who do not hold an EI Specialist Developmental Therapist credential on January 1, 2004 must have a bachelors degree or higher in Early Childhood Education, Early Childhood Special Education, Special Education, Special Education: Deaf/Hard of Hearing or Blind/Partially Sighted, Child Development/Family Studies, Early Intervention, Elementary Education, Developmental Psychology, or Social Work; or with a bachelors degree or higher and a full specialist credential in the Early Intervention program; or a current license in art, music, recreation, or other type of therapy, rehabilitative or habilitative in nature, in the state where they provide services to Illinois children; and can document the completion of educational experiences as approved by the Department that include at least 2 semester college hours or the equivalent (30 clock hours or CEU credit hours) in each of the following EI core knowledge content areas: the Development of Young Children; Typical and Atypical; Working with Families of Young Children with

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Disabilities; Intervention Strategies for Young Children with Special Needs; and Assessment of Young Children with Special Needs; and can submit proof of training on the use of a formal assessment tool that would allow the provider to perform global evaluations/assessments may apply for an EI Specialist: Developmental Therapist credential and enroll to bill.

An emergency waiver of educational requirements for developmental therapists may be applied for and must be accompanied by the recommendation of a regional intake entity manager documenting the need for developmental therapy services in the service area. A bachelors degree or higher is required. If approved, the resulting temporary credential will be awarded for a maximum of 18 months. A training plan toward qualification for full credential status must be submitted with the emergency waiver application.

Individuals with a Special Education degree for Deaf and Hard of Hearing may apply for an EI Specialist: Developmental Therapist/Hearing credential and enroll to bill. They may also provide aural rehabilitation services based on their qualifications and experience. (Provider is automatically enrolled under aural rehabilitation category.)

Individuals with (1) a bachelors degree or higher in Orientation and Mobility or (2) a Special Education degree for Blind and Partially Seeing may apply for an EI Specialist: Developmental Therapist/Vision credential and enroll to bill. They may provide Developmental and/or Vision Therapy services related to visual functioning based on their qualifications and experience. (Provider is automatically enrolled under the vision category.)

Individuals with an associates degree in early childhood education or child development who have an EI Associate: Developmental Therapy Assistant temporary credential on July 1, 2003 may apply for full associate credential status if additional training requirements are met. No other new

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temporary or full associate credentials for Developmental Therapy Assistants will be issued. Individuals who have an associate credential will be allowed to submit an application to have their credential renewed no more than two times after July 1, 2003. Associate services are billed under the enrolled supervisor's name.

Evaluation/Assessment

Individuals with a current Early Intervention Specialist credential and who also meet all the following requirements may apply for an Evaluation/Assessment credential:

Documentation of a minimum of three years (full time equivalent) pediatric experience within the Early Intervention Specialist credentialed discipline is required with no less than 20% of that experience related to infants and toddlers between birth and three years of age or the equivalent, with a minimum of one year (full time equivalent) pediatric experience within the Early Intervention Specialist credentialed discipline with no less than 60% of that experience related to infants and toddlers;

Documentation of a minimum of six months pediatric post degree supervision;

Demonstration of competency in using and interpreting a variety of approved assessment tools related to his/her discipline by participating in evaluator specific training;

Demonstration of past work as a member of a service team and agreement to work with the service coordinator, other evaluators, and the family as an effective team member;

Agreement to participate in IFSP meetings as specified in this Part;

Agreement to perform evaluation/assessments and

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present recommendations thereon, that are consistent with DHS early intervention philosophy and best practices, and to provide adequate justification for recommendations based thereon;

Agreement to participate in routine quality assurance and/or early intervention monitoring activities conducted by the Department or its Designee, or the U.S. Department of Education, Office of Special Education Programs;

Agreement to comply with all applicable federal and/or State laws, rules, regulations, policies, provider agreement and procedure and guidelines;

Documentation of attendance at Evaluation/Assessment training as required and provided by the Department.

The expiration date of an Evaluation/Assessment credential will coincide with the Early Intervention Specialist discipline specific credential. Renewal of the Evaluation/Assessment credential is contingent on the successful renewal of the Early Intervention Specialist discipline specific credential.

Family Training and Support

Individuals with a high school diploma or equivalent who are the parent or guardian of a child with special needs and are employed by an entity such as an agency or hospital that provides early intervention services as a Parent Liaison may apply for an EI Parent Liaison credential and enroll to bill. Completion of Parent Liaison Training is required within 90 days after being issued a temporary credential for full credential status and continued enrollment.

Individuals who are bilingual or an interpreter for the deaf may enroll to bill as an interpreter. Upon application for enrollment, the bilingual applicant must identify the languages for which he/she is applying to interpret and/or translate and document completion of Early Intervention

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Systems Training as defined in Section 500.60(f) and ~~Early Intervention approved~~ training for bilingual interpreter/translators as required and provided by the Department and oral and/or written language proficiency ~~demonstrated through using approved~~ testing procedures as required and provided by the Department or through documentation of a nationally recognized certification based upon comparable proficiency testing procedures. Oral and/or written proficiency testing procedures test the language skills of a written translator and oral interpreter for comprehension of the source language and the extent that translated and/or interpreted text/speech conveys the full meaning of the source language. In addition, the proficiency testing for the written translator determines if the translated text is coherent and grammar, punctuation, spelling, syntax, usage and style are appropriate. By ~~January 1, 2009~~September 1, 2008, all enrolled bilingual interpreters must have documented completion of Early Intervention approved training for bilingual interpreters/translators and oral and/or written language proficiency ~~demonstrated through using approved~~ testing procedures as required and provided by the Department or through documentation of a nationally recognized certification based upon comparable proficiency testing procedures to maintain enrollment. Prior to January 1, 2009, interpreters~~Interpreters~~ for the deaf must meet the requirements set forth in the Interpreters for the Deaf Act [225 ILCS 442] and on or after January 1, 2009 must comply with the licensure requirements set forth in the Interpreter for the Deaf Licensure Act of 2007 [225 ILCS 443] or the licensure, certification or screening requirements in the state where services are provided to children if not in Illinois, and document completion of Early Intervention Systems Training as defined in Section 500.60(f).

Deaf adults who have been certified by Hearing and Vision Connections as a language mentor for the deaf may enroll to bill. Language mentors are not required to obtain a credential

Health Consultation

Physicians with a current license in the state where they

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	<p>provide services to Illinois children may enroll to bill. Physicians are not required to obtain a credential.</p>
Medical Services (Diagnostic/Evaluation Purposes Only)	<p>Physicians with a current license in the state where they provide services to Illinois children may enroll to bill. Physicians are not required to obtain a credential.</p> <p>Individuals on the physician's service team should refer to the service area appropriate to their discipline for credentialing requirements.</p>
Nursing	<p>Registered Nurses with a current license in the state where they provide services to Illinois children may apply for an EI Specialist: Licensed Registered Nurse credential and enroll to bill. (Provider is automatically enrolled under nutrition category.)</p>
Nutrition	<p>Licensed Dietitian Nutritionists with a current license in the state where they provide services to Illinois children may apply for an EI Specialist: Licensed Dietitian credential and enroll to bill.</p> <p>Registered Nurses with a current license in the state where they provide services to Illinois children may apply for an EI Specialist: Licensed Registered Nurse credential and enroll to bill.</p>
Occupational Therapy	<p>Occupational Therapists with a current license in the state where they provide services to Illinois children may apply for an EI Specialist: Licensed Occupational Therapist credential and enroll to bill.</p> <p>Certified Occupational Therapy Assistants with a current license in the state where they provide services to Illinois children may apply for an EI Associate: Licensed Certified Occupational Therapy Assistant credential. Associate services are billed under the enrolled supervisor's name.</p>
Physical Therapy	<p>Physical Therapists with a current license in the state where</p>

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they provide Part C EI service to Illinois children may apply for an EI Specialist: Licensed Physical Therapist credential and enroll to bill.

Physical Therapist Assistants with a current license in the state where they provide services to Illinois children may apply for an EI Associate: Licensed Physical Therapist Assistant credential. Associate services are billed under the enrolled supervisor's name.

Service Coordination

Individuals with an EI Service Coordination credential on January 1, 2003 and: (1) an EI Specialist credential of any type, (2) a bachelors degree or higher in human services, behavioral science, social science or health related field, (3) a current license as a Registered Nurse, (4) current employment as a service coordinator in a Family Case Management Agency, or (5) an associates degree in human services, education, behavioral science, social science, or health related field plus 2 years of experience working with children birth to 5 to provide intervention services or service coordination in a community agency serving children and families, may apply for renewal of their credential.

Individuals who do not hold an EI Service Coordination credential on January 1, 2003 and with a bachelors degree or higher in human services, behavioral science, social science or health related field or a current license as a Registered Nurse may apply for an EI Service Coordination Credential and enroll as an employee of a Child and Family Connections office. Additional training is required within 90 days after being issued a temporary credential for full credential status and continued enrollment.

Social Services

Social Workers with a current license in the state where they provide services to Illinois children may apply for an EI Specialist: Licensed Social Worker credential and enroll to bill.

Professional Counselors with a current license in the state

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where they provide services to Illinois children may apply for an EI Specialist: Licensed Professional Counselor credential and enroll to bill.

Unlicensed individuals employed by school districts as School Social Workers who will only be providing services through their school employment may apply for an EI Specialist: School Social Worker credential and enroll to bill.

Graduate students in social work who submit a letter from their graduate school verifying that they are providing social work services in a supervised internship setting in order to complete a comprehensive, culminating training experience prior to granting of a graduate degree in social work may apply for an EI Associate: Social Work Intern credential. Associate services are billed under the enrolled supervisor's name.

Speech Therapy

Speech/Language Pathologists with a current license in the state where they provide services to Illinois children may apply for an EI Specialist: Licensed Speech/Language Pathologist credential and enroll to bill. (Provider is automatically enrolled under aural rehabilitation and speech therapy categories.)

Individuals with a masters in speech-language pathology who are participating in a supervised professional experience and hold a temporary license in the state where they provide services to Illinois children may apply for an EI Associate: Speech/Language Pathologist in supervised professional experience credential. Associate services are billed under the enrolled supervisor's name.

Speech/Language Pathology Assistants with a current license in the state where they provide services to Illinois children may apply for an EI Associate: Speech/Language Therapy Assistant credential. Associate services are billed under the enrolled supervisor's name.

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Transportation	Individuals with an appropriate vehicle registration number, insurance and current driver's license may enroll to bill. Not required to obtain a credential.
Vision	<p>Optometrists or Ophthalmologists with a current license in the state where they provide services to Illinois children may enroll to bill. Not required to obtain a credential.</p> <p>Individuals with (1) a bachelors degree or higher in Orientation and Mobility or (2) a Special Education degree for Blind and Partially Seeing may apply for an EI Specialist: Developmental Therapist/Vision credential and enroll to bill. They may provide Developmental and/or Vision services related to visual functioning based on their qualification and experience.</p>

(Source: Amended at 33 Ill. Reg. 8206, effective June 8, 2009)

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED RULES

- 1) Heading of the Part: Standards and Limitations for Organic Material Emissions for Area Sources
- 2) Code Citation: 35 Ill. Adm. Code 223
- 3)

<u>Section Numbers:</u>	<u>Adopted Action:</u>
223.100	New Section
223.105	New Section
223.120	New Section
223.201	New Section
223.203	New Section
223.205	New Section
223.206	New Section
223.207	New Section
223.208	New Section
223.209	New Section
223.210	New Section
223.220	New Section
223.230	New Section
223.240	New Section
223.245	New Section
223.250	New Section
223.255	New Section
223.260	New Section
223.265	New Section
223.270	New Section
223.275	New Section
223.280	New Section
223.285	New Section
223.300	New Section
223.305	New Section
223.307	New Section
223.310	New Section
223.320	New Section
223.330	New Section
223.340	New Section
223.350	New Section
223.360	New Section
223.370	New Section

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- 4) Statutory Authority: 415 ILCS 5/27 and 28
- 5) Effective Date of Rules: June 8, 2009
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) A copy of the adopted rules, including any material incorporated by reference, is on file in the Board's Chicago office at the James R. Thompson Center, 100 W. Randolph, Suite 11-500 and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: November 7, 2008; 32 Ill. Reg17301
- 10) Has JCAR issued a Statement of Objection to these rules? No
- 11) Differences between proposal and final version:

Throughout the rule – Changed all references to "January 1, 2009" to July 1, 2009" and deleted "for purposes of this Subpart".

Section 223.285(d) – deleted "dated February 28, 1991".

Section 223.370(b) – changed "E119-98" to E119-05a".

Made nonsubstantive changes in style and format
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements letter issued by JCAR? Yes
- 13) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Rules: These regulations were adopted in order to attain the new USEPA ozone National Ambient Air Quality Standards (NAAQS) by 2010 and to protect the health of Illinois citizens. The regulations seek to reduce volatile organic material emissions ("VOM") from various consumer products, architectural products, and

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industrial maintenance products. These products represent significant, yet widely diffuse, sources of VOM and are comprised of the various forms of consumer products used by individual households and small businesses. Together, these items emit about 10% of the total anthropogenic VOM emissions from sources in Illinois.

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

Tim Fox
Illinois Pollution Control Board
100 W. Randolph 11-500
Chicago, IL 60601

312/814-6085

Copies of the Board's opinions and orders may be requested from the Clerk of the Board at the address listed in #8 above or by calling 312/814-3620. Please refer to the Docket number R08-17 in your request. The Board order is also available from the Board's Web site (www.ipcb.state.il.us)

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

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TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE B: AIR POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER c: EMISSION STANDARDS AND LIMITATIONS
FOR STATIONARY SOURCESPART 223
STANDARDS AND LIMITATIONS FOR ORGANIC
MATERIAL EMISSIONS FOR AREA SOURCES

SUBPART A: GENERAL PROVISIONS

Section

223.100	Severability
223.105	Abbreviations and Acronyms
223.120	Incorporations by Reference

SUBPART B: CONSUMER AND COMMERCIAL PRODUCTS

Section

223.200	Purpose
223.201	Applicability
223.203	Definitions for Subpart B
223.205	Standards
223.206	Diluted Products
223.207	Products Registered under FIFRA
223.208	Requirements for Aerosol Adhesives
223.209	Requirements for Floor Wax Strippers
223.210	Products Containing Ozone-Depleting Compounds
223.220	Requirements for Charcoal Lighter Material
223.230	Exemptions
223.240	Innovative Product Exemption
223.245	Alternative Compliance Plans
223.250	Product Dating
223.255	Additional Product Dating Requirements
223.260	Most Restrictive Limit
223.265	Additional Labeling Requirements for Aerosol Adhesives, Adhesive Removers, Electronic Cleaners, Electrical Cleaners, Energized Electrical Cleaners, and Contact Adhesives
223.270	Reporting Requirements

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- 223.275 Special Recordkeeping Requirements for Consumer Products that Contain
Perchloroethylene or Methylene Chloride
- 223.280 Calculating Illinois Sales
- 223.285 Test Methods

SUBPART C: ARCHITECTURAL AND INDUSTRIAL MAINTENANCE COATINGS

Section

- 223.300 Purpose
- 223.305 Applicability
- 223.307 Definitions for Subpart C
- 223.310 Standards
- 223.320 Container Labeling Requirements
- 223.330 Reporting Requirements
- 223.340 Compliance Provisions and Test Methods
- 223.350 Alternative Test Methods
- 223.360 Methacrylate Traffic Coating Markings
- 223.370 Test Methods

AUTHORITY: Implementing Section 10 and authorized by Sections 27 and 28 of the Environmental Protection Act [415 ILCS 5/10, 27 and 28].

SOURCE: Adopted in R08-17 at 33 Ill. Reg. 8224, effective June 8, 2009.

SUBPART A: GENERAL PROVISIONS

Section 223.100 Severability

If any Section, subsection, or clause of this Part is found invalid, such finding shall not affect the validity of this Part as a whole or any Section, subsection, or clause not found invalid.

Section 223.105 Abbreviations and Acronyms

Unless otherwise specified within this Part, the abbreviations used in this Part shall be the same as those found in 35 Ill. Adm. Code 211. The following abbreviations and acronyms are used in this Part:

ACP	Alternative Control Plan
Act	Environmental Protection Act [415 ILCS 5]

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Agency	Illinois Environmental Protection Agency
ASTM	American Society for Testing and Materials
BAAQMD	Bay Area Air Quality Management District
CARB	California Air Resources Board
°C	Degrees Celsius
CFCs	Chlorofluorocarbons
CO ₂	Carbon Dioxide
°F	Degrees Fahrenheit
FDA	United States Food and Drug Administration
FIFRA	Federal Insecticide, Fungicide, and Rodenticide Act (7 USC 136 through 136y)
FRP	Fiberglass reinforced plastic
HVOM	High Volatility Organic Material
HCFCs	Hydrochlorofluorocarbons
HFCs	Hydrofluorocarbons
LVP-VOM	Low Vapor Pressure-Volatile Organic Material
MVOM	Medium Volatility Organic Material
N ₂	Nitrogen
N ₂ O	Nitrous Oxide
OER	Original Equipment Manufacturer
PCBTF	Parachlorobenzotrifluoride
ROC	Reactive Organic Compound
ROG	Reactive Organic Gas
SCAQMD	South Coast Air Quality Management District
USEPA	United States Environmental Protection Agency
VOM	Volatile Organic Material

Section 223.120 Incorporations by Reference

The following materials are incorporated by reference. These incorporations do not include any later amendments or editions.

- a) 40 CFR 59, subpart D, appendix A, Determination of Volatile Matter Content of Methacrylate Multicomponent Coatings Used as Traffic Marking Coatings, 64 Fed. Reg. 35002 (June 30, 1999).
- b) 40 CFR 59, subpart C, National Volatile Organic Compound Emission Standards for Consumer Products, 69 Fed. Reg. 18803 (April 4, 2004).

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- c) 40 CFR 60, appendix A, Method 24, Determination of Volatile Matter Content, Water Content, Density, Volume Solids, and Weight Solids of Surface Coatings, 36 Fed. Reg. 24877 (December 23, 1971).
- d) 40 CFR 82, subpart A, appendix A, Class I Controlled Substances, 68 Fed. Reg. 42892 (July 18, 2003) and appendix B, Class II Controlled Substances, 68 Fed. Reg. 2859 (January 21, 2003).
- e) 29 CFR 1910.1200(d)(4), Hazard Communication, 61 Fed. Reg. 9245 (March 7, 1996).
- f) ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken PA 19428-2959.
 - 1) ASTM E119-05a, Standard Test Methods for Fire Tests of Building Construction and Materials, approved November 1, 2005.
 - 2) ASTM D523-89 (1999), Standard Test Method for Specular Gloss, approved May 10, 1999.
 - 3) ASTM D1640-03, Standard Test Methods for Drying, Curing, or Film Formation of Organic Coatings at Room Temperature, approved December 1, 2003.
 - 4) ASTM D3912-95 (2001), Test Method for Chemical Resistance of Coating Used in Light-Water Nuclear Power Plants, reapproved 2001.
 - 5) ASTM D4082-02, Test Method for Effects of Radiation on Coatings Used in Light-Water Nuclear Power Plants, approved 2002.
 - 6) ASTM D4214-98, Standard Test Methods for Evaluating the Degree of Chalking of Exterior Paint Films, approved August 10, 1998.
 - 7) ASTM D1613-03, Standard Test Method for Acidity in Volatile Solvents and Chemical Intermediates Used in Paint, Varnish, Lacquer, and Related Products, approved October 1, 2003.

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- 8) ASTM E84-07, Standard Test Method for Surface Burning Characteristics of Building Materials, approved 2007.
 - 9) ASTM D4359-90 (2006), Standard Test Method for Determining Whether a Material is a Liquid or a Solid, reapproved 2006.
 - 10) ASTM E260-96 (2006), Standard Practice for Packed Column Gas Chromatography, reapproved 2006.
 - 11) ASTM E2167-01, Standard Guide for Selection and Use of Stone Consolidants (see section 4, Stone Consolidant), approved 2001.
 - 12) ASTM C836-06, Specification for High Solids Content, Cold Liquid-Applied Elastomeric Waterproofing Membrane for Use with Separate Wearing Course, approved 2006.
 - 13) ASTM D86-07b, Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure, approved 2007.
- g) South Coast Air Quality Management District, 21865 Copley Dr., Diamond Bar CA 91765.
- 1) South Coast Air Quality Management District (SCAQMD) Method 304-91, Determination of Volatile Organic Compounds in Various Materials, revised February 1996.
 - 2) SCAQMD Method 303-91, Determination of Exempt Compounds, revised February 1993.
 - 3) SCAQMD Method 318-95, Determination of Weight Percent Elemental Metal in Coatings by X-Ray Diffraction, approved July 1996.
 - 4) SCAQMD Rule 1174, Ignition Method Compliance Certification Protocol (adopted October 5, 1990).
- h) Bay Area Air Quality Management District Office, 939 Ellis Street, San Francisco CA 94109.

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- 1) Bay Area Air Quality Management District (BAAQMD) Method 43, Determination of Volatile Methylsiloxanes in Solvent-Based Coatings, Inks, and Related Materials, proposed amendment February 4, 2004.
- 2) BAAQMD Method 41, Determination of Volatile Organic Compounds in Solvent-Based Coatings and Related Materials Containing Parachlorobenzotrifluoride, proposed amendment February 4, 2004.
- i) California Air Resources Board (CARB) Method 310, Determination of Volatile Organic Compounds in Consumer Products and Reactive Organic Compounds in Aerosol Coating Products, amended May 5, 2005. California Air Resources Board, 1001 I Street, PO Box 2815, Sacramento CA 95812.
- j) California Code of Regulations (CCR), title 17 § 94509(h), Standards for Consumer Products (2005).
- k) California Code, Health and Safety Code, § 41712(h)(2) (2005).
- l) 17 CCR Article 4, Alternate Control Plan §§ 94540-94555 (1996).
- m) 17 CCR § 94511, Innovative Products (1997).
- n) 17 CCR § 94503.5, Innovative Products (1996).
- o) 7 USC 136 to 136y, FIFRA, Environmental Pesticide Control, published January 19, 2004, in Supplement III of the 2000 Edition of the United States Code.
- p) Federal Specification MMM-A-181D, Adhesives, Phenol, Resorcinol, or Melamine Base (1980).

SUBPART B: CONSUMER AND COMMERCIAL PRODUCTS

Section 223.200 Purpose

The purpose of this Subpart is to limit emissions of volatile organic materials (VOMs) by requiring reductions in the VOM content of consumer and commercial products.

Section 223.201 Applicability

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Except as provided in Section 223.230, this Subpart shall apply to any person who sells, supplies, offers for sale, or manufactures consumer products on or after July 1, 2009, for use in Illinois.

Section 223.203 Definitions for Subpart B

The definitions contained in this Section apply only to the provisions of this Subpart. Unless otherwise defined in this Section, the definitions of terms used in this Subpart shall have the meanings specified for those terms in 35 Ill. Adm. Code 211.

"Adhesive" means any product that is used to bond one surface to another by attachment. This does not include products used on humans and animals, adhesive tape, contact paper, wallpaper, shelf liners, or any other product with an adhesive incorporated onto or in an inert substrate. For "Contact Adhesive", adhesive does not include units of product, less packaging, that consist of more than one gallon. For "Construction, Panel, and Floor Covering Adhesive", and "General Purpose Adhesive", "Adhesive" does not include units of product, less packaging, that weigh more than one pound and consist of more than 16 fluid ounces. This limitation does not apply to aerosol adhesives.

"Adhesive Remover" means a product designed to remove adhesive from either a specific substrate or a variety of substrates. "Adhesive Remover" does not include products that remove adhesives intended exclusively for use on humans or animals.

For the purpose of this definition and the "Adhesive Remover" subcategories listed in this definition, the term "Adhesive" shall mean a substance used to bond one or more materials. Adhesive includes, but is not limited to, caulks, sealants, glues, or similar substances used for the purpose of forming a bond.

"Floor and Wall Covering Adhesive Remover" means a product designed or labeled to remove floor or wall coverings and associated adhesive from the underlying substrate.

"Gasket or Thread Locking Adhesive Remover" means a product designed or labeled to remove gaskets or thread locking adhesives. Products labeled for dual use as a paint stripper and gasket remover and/or thread

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locking adhesive remover are considered "Gasket or Thread Locking Adhesive Remover".

"General Purpose Adhesive Remover" means a product designed or labeled to remove cyanoacrylate adhesives as well as non-reactive adhesives or residue from a variety of substrates. "General Purpose Adhesive Remover" includes, but is not limited to, the following: products that remove thermoplastic adhesives, pressure sensitive adhesives, dextrine or starchbased adhesives, casein glues, rubber or latex-based adhesives, and products that remove stickers, decals, stencils, or similar materials. "General Purpose Adhesive Remover" does not include "Floor or Wall Covering Adhesive Remover".

"Specialty Adhesive Remover" means a product designed to remove reactive adhesives from a variety of substrates. Reactive adhesives include adhesives that require a hardener or catalyst in order for the bond to occur. Examples of reactive adhesives include, but are not limited to epoxies, urethanes, and silicones. "Specialty Adhesive Remover" does not include "Gasket or Thread Locking Adhesive Remover".

"Aerosol Adhesive" means an aerosol product in which the spray mechanism is permanently housed in a nonrefillable can designed for hand-held application without the need for ancillary hoses or spray equipment. This does not include "special purpose spray adhesives", "mist spray adhesives" and "web spray adhesives".

"Aerosol Cooking Spray" means any aerosol product designed either to reduce sticking on cooking and baking surfaces or to be applied on food, or both.

"Aerosol Product" means a pressurized spray system that dispenses product ingredients by means of a propellant contained in a product or a product's container, or by means of a mechanically induced force. "Aerosol Product" does not include "Pump Spray".

"Agricultural Use" means the use of any pesticide or method or device for the control of pests in connection with the commercial production, storage, or processing of any animal or plant crop. This does not include the sale or use of pesticides in properly labeled packages or containers that are intended for home

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use, use in structural pest control, or industrial or institutional use. For the purposes of this definition only:

"Home Use" means use in a household or its immediate environment;

"Structural Pest Control" means a use requiring a license under the Structural Pest Control Act [225 ILCS 235];

"Industrial Use" means use for or in a manufacturing, mining, or chemical process or use in the operation of factories, processing plants, and similar sites;

"Institutional Use" means use within the lines of, or on property necessary for the operation of, buildings such as hospitals, schools, libraries, auditoriums, and office complexes.

"Air Freshener" means any consumer product including, but not limited to, sprays, wicks, powders, and crystals, designed for the purpose of masking odors, or freshening, cleaning, scenting, or deodorizing the air. "Air Freshener" does not include products that are used on the human body, products that function primarily as cleaning products as indicated on a product label, "Toilet/Urinal Care Products", disinfectant products claiming to deodorize by killing germs on surfaces, or institutional and industrial disinfectants when offered for sale solely through institutional and industrial channels of distribution. "Air Freshener" does include spray disinfectants and other products that are expressly represented for use as air fresheners, except institutional and industrial disinfectants when offered for sale through institutional and industrial channels of distribution. To determine whether a product is an air freshener, all verbal and visual representations regarding product use on the label or packaging and in the product's literature and advertising may be considered. The presence of, and representations about, a product's fragrance and ability to deodorize (resulting from surface application) shall not constitute a claim of air freshening.

"All Other Carbon-Containing Compounds" means all other compounds that contain at least one carbon atom and are not listed under Section 223.205(a) or are a "LVP-VOM".

"All Other Forms" means all consumer product forms for which no form-specific VOM standard is specified. Unless specified otherwise by the applicable VOM

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standard, "All Other Forms" include, but is not limited to, solids, liquids, wicks, powders, crystals, and cloth or paper wipes (towelettes).

"Alternative Control Plan" or "ACP" means any emissions averaging program approved by the Agency pursuant to the provisions of this Subpart.

"Antimicrobial Hand or Body Cleaner or Soap" means a cleaner or soap that is designed to reduce the level of microorganisms on the skin through germicidal activity. This includes, but is not limited to, antimicrobial hand or body washes/cleaners, foodhandler hand washes, healthcare personnel hand washes, pre-operative skin preparations and surgical scrubs. "Antimicrobial Hand or Body Cleaner or Soap" does not include prescription drug products, antiperspirants, "Astringent/Toner", deodorant, "Facial Cleaner or Soap", "General-use Hand or Body Cleaner or Soap", "Hand Dishwashing Detergent" (including antimicrobial), "Heavy-duty Hand Cleaner or Soap", "Medicated Astringent/Medicated Toner", or "Rubbing Alcohol".

"Antiperspirant" means any product, including, but not limited to, aerosols, roll-ons, sticks, pumps, pads, creams, and squeeze-bottles, that is intended by the manufacturer to be used to reduce perspiration in the human axilla by at least 20 percent in at least 50 percent of a target population.

"Anti-Static Product" means a product that is labeled to eliminate, prevent, or inhibit the accumulation of static electricity. "Anti-Static Product" does not include "Electronic Cleaner", "Floor Polish or Wax", "Floor Coating", and products that meet the definition of "Aerosol Coating Product" or "Architectural Coating".

"Appurtenance" means any accessory to a stationary structure coated at the site of installation, whether installed or detached, including, but not limited to, bathroom and kitchen fixtures, cabinets, concrete forms, doors, elevators, fences, hand railings, heating equipment, air conditioning equipment, and other fixed mechanical equipment or stationary tools, lampposts, partitions, pipes and piping systems, rain gutters and downspouts, stairways, fixed ladders, catwalks and fire escapes, and window screens.

"Architectural Coating" means a coating to be applied to stationary structures or the appurtenances at the site of installation, to portable buildings at the site of installation, to pavements, or to curbs. Coatings applied in shop applications or to

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non-stationary structures such as airplanes, ships, boats, railcars, and automobiles, and adhesives are not considered "Architectural Coatings" for the purposes of this Subpart.

"Astringent/Toner" means any product not regulated as a drug by the United States Food and Drug Administration (FDA) that is applied to the skin for the purpose of cleaning or tightening pores. This category also includes clarifiers and substrate-impregnated products. This category does not include any hand, face, or body cleaner or soap product, "Medicated Astringent/Medicated Toner", cold cream, lotion, or antiperspirant.

"Automotive Brake Cleaner" means a cleaning product designed to remove oil, grease, brake fluid, brake pad material or dirt from motor vehicle brake mechanisms.

"Automotive Hard Paste Wax" means an automotive wax or polish that is designed to protect and improve the appearance of automotive paint surfaces, and is a solid at room temperature, and contains 0% water by formulation.

"Automotive Instant Detailer" means a product designed for use in a pump spray that is applied to the painted surface of automobiles and wiped off prior to the product being allowed to dry.

"Automotive Rubbing or Polishing Compound" means a product designed primarily to remove oxidation, old paint, scratches or swirl marks, and other defects from the painted surfaces of motor vehicles without leaving a protective barrier.

"Automotive Wax, Polish, Sealant, or Glaze" means a product designed to seal out moisture, increase gloss, or otherwise enhance a motor vehicle's painted surfaces. This includes, but is not limited to, products designed for use in autobody repair shops and drive-through car washes, as well as products designed for the general public. The term does not include "Automotive Rubbing or Polishing Compounds", automotive wash and wax products, surfactant-containing car wash products, and products designed for use on unpainted surfaces such as bare metal, chrome, glass, or plastic.

"Automotive Windshield Washer Fluid" means any liquid designed for use in a motor vehicle windshield washer system either as an antifreeze or for the purpose

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of cleaning, washing, or wetting the windshield. This does not include fluids placed by the manufacturer in a new vehicle.

"Bathroom and Tile Cleaner" means a product designed to clean tile or surfaces in bathrooms. The term does not include products designed primarily to clean toilet bowls, toilet tanks or urinals.

"Bug and Tar Remover" means a product labeled to remove either or both of the following from painted motor vehicle surfaces without causing damage to the finish: biological-type residues such as insect carcasses, tree sap and road grime such as road tar, roadway paint markings, and asphalt.

"Carburetor or Fuel-Injection Air Intake Cleaners" means a product designed to remove fuel deposits, dirt, or other contaminants from a carburetor, choke, throttle body of a fuel-injection system, or associated linkages, excluding products designed exclusively to be introduced directly into the fuel lines or fuel storage tank prior to introduction into the carburetor or fuel injectors.

"Carpet and Upholstery Cleaner" means a cleaning product designed for the purpose of eliminating dirt and stains on rugs, carpeting, and the interior of motor vehicles and/or on household furniture or objects upholstered or covered with fabrics such as wool, cotton, nylon or other synthetic fabrics. This includes, but is not limited to, products that make fabric protectant claims. The term does not include "General Purpose Cleaners", "Spot Removers", vinyl or leather cleaners, dry cleaning fluids, or products designed exclusively for use at industrial facilities engaged in furniture or carpet manufacturing.

"Charcoal Lighter Material" means any combustible material designed to be applied on, incorporated in, added to, or used with charcoal to enhance ignition. The term does not include any of the following: electrical starters and probes, metallic cylinders using paper tinder, natural gas, propane, and fat wood.

"Colorant" means any pigment or coloring material used in a consumer product for an aesthetic effect or to dramatize an ingredient.

"Construction, Panel, and Floor Covering Adhesive" means any one-component adhesive that is designed exclusively for the installation, remodeling, maintenance, or repair of structural and building components that include, but are not limited to, beams, trusses, studs, paneling (including, but not limited to,

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drywall or drywall laminates, fiberglass reinforced plastic (FRP), plywood, particle board, insulation board, pre-decorated hardboard or tileboard), ceiling and acoustical tile, molding, fixtures, countertops or countertop laminates, cove or wall bases, flooring or subflooring, or floor or wall coverings (including, but not limited to, wood or simulated wood covering, carpet, carpet pad or cushion, vinyl-backed carpet, flexible flooring material, nonresilient flooring material, mirror tiles and other types of tiles, and artificial grass). The term does not include "Floor Seam Sealer".

"Consumer" means any person who purchases or acquires any consumer product for personal, family, household, or institutional use. Persons acquiring a consumer product for resale are not "consumers" for that product.

"Consumer Product" means a chemically formulated product used by household and institutional consumers including, but not limited to, detergents, cleaning compounds, polishes, floor finishes, cosmetics, personal care products, home lawn and garden products, disinfectants, sanitizers, aerosol paints, and automotive specialty products. "Consumer Product" does not include other paint products, furniture coatings, or architectural coatings. As used in this Subpart, "Consumer Product" shall also refer to "Aerosol Adhesive", including an "Aerosol Adhesive" used for consumer, industrial or commercial uses.

"Contact Adhesive" means an adhesive that is designed for application to both surfaces to be bonded together, and is allowed to dry before the two surfaces are placed in contact with each other, and forms an immediate bond that is impossible, or difficult, to reposition after both adhesive-coated surfaces are placed in contact with each other, and does not need sustained pressure or clamping of surfaces after the adhesive-coated surfaces have been brought together using sufficient momentary pressure to establish full contact between both surfaces. The term does not include rubber cements that are primarily intended for use on paper substrates. "Contact Adhesive" also does not include vulcanizing fluids that are designed and labeled for tire repair only.

"Contact Adhesive – General Purpose" means any contact adhesive that is not a "Contact Adhesive – Special Purpose".

"Contact Adhesive – Special Purpose" means a contact adhesive that is used to bond melamine-covered board, unprimed metal, unsupported vinyl, Teflon, ultra-high molecular weight polyethylene, rubber, or high pressure laminate or wood

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vener 1/16 inch or less in thickness to any porous or nonporous surface, and is sold in units of product, less packaging, that contain more than eight fluid ounces, or is used in automotive applications that are either automotive under the hood applications requiring heat, oil or gasoline resistance or body-side molding, automotive weatherstrip or decorative trim.

"Container/Packaging" means the part or parts of the consumer or institutional product that serve only to contain, enclose, incorporate, deliver, dispense, wrap or store the chemically formulated substance or mixture of substances that is solely responsible for accomplishing the purposes for which the product was designed or intended. This includes any article onto or into which the principal display panel and other accompanying literature or graphics are incorporated, etched, printed or attached.

"Crawling Bug Insecticide" means any insecticide product that is designed for use against ants, cockroaches, or other household crawling arthropods, including, but not limited to, mites, silverfish or spiders, excluding products designed to be used exclusively on humans or animals, or any house dust mite product. For the purposes of this definition only:

"House dust mite product" means a product whose label, packaging, or accompanying literature states that the product is suitable for use against house dust mites, but does not indicate that the product is suitable for use against ants, cockroaches, or other household crawling arthropods.

"House dust mite" means mites that feed primarily on skin cells shed in the home by humans and pets and that belong to the phylum Arthropoda, the subphylum Chelicerata, the class Arachnida, the subclass Acari, the order Astigmata, and the family Pyroglyphidae.

"Date-Code" means the day, month and year on which the consumer product was manufactured, filled, or packaged, or a code indicating that date.

"Deodorant" means:

For products manufactured before July 1, 2009: any product including, but not limited to, aerosols, roll-ons, sticks, pumps, pads, creams, and squeeze-bottles that is intended by the manufacturer to be used to

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minimize odor in the human axilla by retarding the growth of bacteria that cause the decomposition of perspiration.

For products manufactured on or after July 1, 2009: any product including, but not limited to, aerosols, roll-ons, sticks, pumps, pads, creams, and squeeze-bottles that indicates or depicts on the container or packaging, or on any sticker or label affixed to the container or packaging, that the product can be used on or applied to the human axilla to provide a scent and/or minimize odor. A "Deodorant Body Spray" product that indicates or depicts on the container or packaging, or on any sticker or label affixed to the container or packaging, that it can be used on or applied to the human axilla is a "Deodorant".

"Deodorant Body Spray" means:

For products manufactured before July 1, 2009, a "Personal Fragrance Product" with 20 percent or less fragrance.

For products manufactured on or after July 1, 2009, a "Personal Fragrance Product" with 20 percent or less fragrance, that is designed for application all over the human body to provide a scent. A "Deodorant Body Spray" product that indicates or depicts on the container or packaging, or on any sticker or label affixed to the container or packaging, that it can be used on or applied to the human axilla, is a "Deodorant".

"Device" means any instrument or contrivance (other than a firearm) designed for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than bacterium, virus, or another microorganism on or in living man or other living animals), but not including equipment used for the application of pesticides when sold separately from the device.

"Disinfectant" means any product intended to destroy or irreversibly inactivate infectious or other undesirable bacteria, pathogenic fungi, or viruses on surfaces or inanimate objects and whose label is registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 USC 136 et seq.). "Disinfectant" does not include any of the following products designed solely for use on humans or animals, products designed for agricultural use, products designed solely for use in swimming pools, therapeutic tubs, or hot tubs, products that, as indicated on the

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principal display panel or label, are designed primarily for use as bathroom and tile cleaners, glass cleaners, general purpose cleaners, toilet bowl cleaners, or metal polishes.

"Double Phase Aerosol Air Freshener" means an aerosol air freshener with the liquid contents in two or more distinct phases that require the product container to be shaken before use to mix the phases, producing an emulsion.

"Dry Cleaning Fluid" means any non-aqueous liquid product designed and labeled exclusively for use on fabrics that are labeled "dry clean only", such as clothing or drapery or "S-coded" fabrics. This includes, but is not limited to, those products used by commercial dry cleaners and commercial businesses that clean fabrics such as draperies at the customer's residence or work place. The term does not include "Spot Remover" or "Carpet and Upholstery Cleaner". For the purposes of this definition, "S-coded fabric" means an upholstery fabric designed to be cleaned only with water-free spot cleaning products as specified by the Joint Industry Fabric Standards Committee.

"Dusting Aid" means a product designed to assist in removing dust and other soils from floors and other surfaces without leaving a wax or silicone based coating. The term does not include "Pressurized Gas Duster".

"Electrical Cleaner" means a product labeled to remove heavy soils such as grease, grime, or oil from electrical equipment, including, but not limited to, electric motors, armatures, relays, electric panels, or generators. The term does not include "General Purpose Cleaner", "General Purpose Degreaser", "Dusting Aid", "Electronic Cleaner", "Energized Electrical Cleaner", "Pressurized Gas Duster", "Engine Degreaser", "Anti-Static Product", or products designed to clean the casings or housings of electrical equipment.

"Electronic Cleaner" means a product labeled for the removal of dirt, moisture, dust, flux or oxides from the internal components of electronic or precision equipment such as circuit boards, and the internal components of electronic devices, including, but not limited to, radios, compact disc (CD) players, digital video disc (DVD) players, and computers. "Electronic Cleaner" does not include "General Purpose Cleaner", "General Purpose Degreaser", "Dusting Aid", "Pressurized Gas Duster", "Engine Degreaser", "Electrical Cleaner", "Energized Electrical Cleaner", "Anti-Static Product", or products designed to clean the casings or housings of electronic equipment.

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"Energized Electrical Cleaner" means a product that meets both of the following criteria:

The product is labeled to clean and/or degrease electrical equipment, where cleaning and/or degreasing is accomplished when electrical current exists, or when there is a residual electrical potential from a component, such as a capacitor.

The product label clearly displays the statements: "Energized equipment use only. Not to be used for motorized vehicle maintenance, or their parts."

This does not include "Electronic Cleaner".

"Engine Degreaser" means a cleaning product designed to remove grease, grime, oil and other contaminants from the external surfaces of engines and other mechanical parts.

"Existing Product" means any formulation of the same product category and form sold, supplied, manufactured, or offered for sale in Illinois prior to July 1, 2009 or any subsequently introduced identical formulation.

"Fabric Protectant" means a product designed to be applied to fabric substrates to protect the surface from soiling from dirt and other impurities or to reduce absorption of liquid into the fabric's fibers. The term does not include waterproofers, products designed for use solely on leather, or products designed for use solely on fabrics labeled "dry clean only" and sold in containers of 10 fluid ounces or less.

"Fabric Refresher" means a product labeled to neutralize or eliminate odors on non-laundered fabric including, but not limited to, soft household surfaces, rugs, carpeting, draperies, bedding, automotive interiors, footwear, athletic equipment, or clothing or on household furniture or objects upholstered or covered with fabrics such as, but not limited to, wool, cotton, or nylon. "Fabric Refresher" does not include "Anti-static Product", "Carpet and Upholstery Cleaner", "Soft Household Surface Sanitizers", "Footwear or Leather Care Product", "Spot Remover", or "Disinfectant", or products labeled for application to both fabric and human skin.

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For the purposes of this definition only, "Soft Household Surface Sanitizer" means a product labeled to neutralize or eliminate odors on the listed surfaces above whose label is registered as a sanitizer under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 USC 136 et seq.).

"Facial Cleaner or Soap" means a cleaner or soap designed primarily to clean the face including, but not limited to, facial cleansing creams, semisolids, liquids, lotions, and substrate-impregnated forms. The term does not include prescription drug products, "Antimicrobial Hand or Body Cleaner or Soap", "Astringent/Toner", "General-use Hand or Body Cleaner or Soap", "Medicated Astringent/Medicated Toner", or "Rubbing Alcohol".

"Fat Wood" means pieces of wood kindling with high naturally-occurring levels of sap or resin that enhance ignition of the kindling, excluding any kindling with substances added to enhance flammability, such as wax-covered or wax-impregnated wood-based products.

"Faux Finishing Coating" means a coating labeled and formulated as a stain or a glaze to create artistic effects including, but not limited to, dirt, old age, smoke damage, and simulated marble and wood grain.

"Flea and Tick Insecticide" means any insecticide product that is designed for use against fleas, ticks, their larvae, or their eggs. The term does not include products that are designed to be used exclusively on humans or animals and their bedding.

"Flexible Flooring Material" means asphalt, cork, linoleum, no-wax, rubber, seamless vinyl and vinyl composite flooring.

"Floor Coating" means an opaque coating that is labeled and formulated for application to flooring, including, but not limited to, decks, porches, steps, and other horizontal surfaces that may be subjected to foot traffic.

"Floor Polish or Wax" means a wax, polish, or any other product designed to polish, protect, or enhance floor surfaces by leaving a protective coating that is designed to be periodically replenished. The term does not include "Spray Buff Products", products designed solely for the purpose of cleaning floors, floor finish

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strippers, products designed for unfinished wood floors, and coatings subject to architectural coatings regulations.

"Floor Seam Sealer" means any product designed and labeled exclusively for bonding, fusing, or sealing (coating) seams between adjoining rolls of installed flexible sheet flooring.

"Floor Wax Stripper" means a product designed to remove natural or synthetic floor polishes or waxes through breakdown of the polish or wax polymers, or by dissolving or emulsifying the polish or wax. This does not include aerosol floor wax strippers or products designed to remove floor wax solely through abrasion.

"Flying Bug Insecticide" means any insecticide product that is designed for use against flying insects or other flying arthropods, including but not limited to flies, mosquitoes, moths, or gnats. The term does not include "Wasp and Hornet Insecticide", products that are designed to be used exclusively on humans or animals, or any moth-proofing product.

For purposes of this definition only, "Moth-Proofing Product" means a product whose label, packaging, or accompanying literature indicates that the product is designed to protect fabrics from damage by moths, but does not indicate that the product is suitable for use against flying insects or other flying arthropods.

"Footwear or Leather Care Product" means any product designed or labeled to be applied to footwear or to other leather articles/components to maintain, enhance, clean, protect, or modify the appearance, durability, fit, or flexibility of the footwear or leather article/component. Footwear includes both leather and non-leather foot apparel. "Footwear or Leather Care Product" does not include "Fabric Protectant", "General Purpose Adhesive", "Contact Adhesive", "Vinyl/Fabric/Leather/Polycarbonate Coating", "Rubber and Vinyl Protectant", "Fabric Refresher", products solely for deodorizing, or sealant products with adhesive properties used to create external protective layers greater than two millimeters thick.

"Fragrance" means a substance or complex mixture of aroma chemicals, natural essential oils, and other functional components with a combined vapor pressure not in excess of two mm of Hg at 20°C, the sole purpose of which is to impart an odor or scent, or to counteract a malodor.

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"Furniture Maintenance Product" means a wax, polish, conditioner, or any other product designed for the purpose of polishing, protecting or enhancing finished wood surfaces other than floors. The term does not include "Dusting Aids", "Wood Cleaners", products designed solely for the purpose of cleaning, and products designed to leave a permanent finish such as stains, sanding sealers and lacquers.

"Furniture Coating" means any paint designed for application to room furnishings including, but not limited to, cabinets (kitchen, bath and vanity), tables, chairs, beds, and sofas.

"Gel" means a colloid in which the disperse phase has combined with the continuous phase to produce a semisolid material, such as jelly.

"General Purpose Adhesive" means any non-aerosol adhesive designed for use on a variety of substrates. The term does not include contact adhesives, construction, panel, and floor covering adhesives, adhesives designed exclusively for application on one specific category of substrates (i.e., substrates that are composed of similar materials, such as different types of metals, paper products, ceramics, plastics, rubbers, or vinyls), or adhesives designed exclusively for use on one specific category of articles (i.e., articles that may be composed of different materials but perform a specific function, such as gaskets, automotive trim, weather-stripping, or carpets).

"General Purpose Cleaner" means a product designed for general all-purpose cleaning, in contrast to cleaning products designed to clean specific substrates in certain situations. This includes products designed for general floor cleaning, kitchen or countertop cleaning, and cleaners designed to be used on a variety of hard surfaces, and does not include "General Purpose Degreasers" and "Electronic Cleaners".

"General Purpose Degreaser" means any product labeled to remove or dissolve grease, grime, oil and other oil-based contaminants from a variety of substrates, including automotive or miscellaneous metallic parts. This does not include "Engine Degreaser", "General Purpose Cleaner", "Adhesive Remover", "Electronic Cleaner", "Electrical Cleaner", "Energized Electrical Cleaner", "Metal Polish/Cleanser", products used exclusively in "Solvent Cleaning Tanks or

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Related Equipment", or products that are sold exclusively to establishments that manufacture or construct goods or commodities, and labeled "not for retail sale".

"Solvent Cleaning Tanks or Related Equipment" includes, but is not limited to, cold cleaners, vapor degreasers, conveyORIZED degreasers, film cleaning machines, or products designed to clean miscellaneous metallic parts by immersion in a container.

"General-Use Hand or Body Cleaner or Soap" means a cleaner or soap designed to be used routinely on the skin to clean or remove typical or common dirt and soils, including, but not limited to, hand or body washes, dual-purpose shampoo-body cleaners, shower or bath gels, and moisturizing cleaners or soaps. The term does not include prescription drug products, "Antimicrobial Hand or Body Cleaner or Soap", "Astringent/Toner", "Facial Cleaner or Soap", "Hand Dishwashing Detergent" (including antimicrobial), "Heavy-duty Hand Cleaner or Soap", "Medicated Astringent/Medicated Toner", or "Rubbing Alcohol".

"Glass Cleaner" means a cleaning product designed primarily for cleaning surfaces made of glass. The term does not include products designed solely for the purpose of cleaning optical materials used in eyeglasses, photographic equipment, scientific equipment and photocopying machines.

"Graffiti Remover" means a product labeled to remove spray paint, ink, marker, crayon, lipstick, nail polish, or shoe polish from a variety of non-cloth or nonfabric substrates. The term does not include "Paint Remover or Stripper", "Nail Polish Remover", or "Spot Remover". Products labeled for dual use as both a paint stripper and graffiti remover are considered "Graffiti Removers".

"Hair Mousse" means a hairstyling foam designed to facilitate styling of a coiffure and provide limited holding power.

"Hair Shine" means any product designed for the primary purpose of creating a shine when applied to the hair. This includes, but is not limited to, dual-use products designed primarily to impart a sheen to the hair. The term does not include "Hair Spray", "Hair Mousse", "Hair Styling Product", "Hair Styling Gel", or products whose primary purpose is to condition or hold the hair.

"Hair Spray" means:

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For products manufactured before July 1, 2009, a consumer product designed primarily for the purpose of dispensing droplets of a resin on and into a hair coiffure that will impart sufficient rigidity to the coiffure to establish or retain the style for a period of time.

For products manufactured on or after July 1, 2009, a consumer product that is applied to styled hair and is designed or labeled to provide sufficient rigidity to hold, retain and/or finish the style of the hair for a period of time. This includes aerosol hair sprays, pump hair sprays, spray waxes; color, glitter, or sparkle hairsprays that make finishing claims; and products that are both a styling and finishing product. This does not include spray products that are intended to aid in styling but do not provide finishing of a hairstyle. For the purposes of this Subpart, "finish" or "finishing" means the maintaining and/or holding of previously styled hair for a period of time. For the purposes of this Subpart, "styling" means forming, sculpting, or manipulating the hair to temporarily alter the hair's shape.

"Hair Styling Gel" means a consumer product manufactured before July 1, 2009 that is a high viscosity, often gelatinous, product that contains a resin and is designed for application to hair to aid in styling and sculpting of the hair coiffure.

"Hair Styling Product" means a consumer product manufactured on or after July 1, 2009 that is designed or labeled for application to wet, damp or dry hair to aid in defining, shaping, lifting, styling and/or sculpting of the hair. This includes, but is not limited to, hair balm, clay, cream, creme, curl straightener, gel, liquid, lotion, paste, pomade, putty, root lifter, serum, spray gel, stick, temporary hair straightener, wax, spray products that aid in styling but do not provide finishing of a hairstyle, and leave-in volumizers, detanglers and/or conditioners that make styling claims. This does not include "Hair Mousse", "Hair Shine", "Hair Spray", or shampoos and/or conditioners that are rinsed from the hair prior to styling. For the purposes of this Subpart, "finish" or "finishing" means the maintaining and/or holding of previously styled hair for a period of time. For the purposes of this Subpart, "styling" means forming, sculpting, or manipulating the hair to temporarily alter the hair's shape.

"Heavy-Duty Hand Cleaner or Soap" means a product designed to clean or remove difficult dirt and soils such as oil, grease, grime, tar, shellac, putty, printer's ink, paint, graphite, cement, carbon, asphalt, or adhesives from the hand

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with or without the use of water. The term does not include prescription drug products, "Antimicrobial Hand or Body Cleaner or Soap", "Astringent/Toner", "Facial Cleaner or Soap", "General-use Hand or Body Cleaner or Soap", "Medicated Astringent/Medicated Toner" or "Rubbing Alcohol".

"Herbicide" means a pesticide product designed to kill or retard a plant's growth, but excludes products that are for agricultural use, or restricted materials that require a permit for use and possession.

"High Volatility Organic Material" or "HVOM" or "High Volatility Organic Compound" or "HVOC" means any volatile organic material or volatile organic compound that exerts a vapor pressure greater than 80 millimeters of Mercury (mm Hg) when measured at 20°C.

"Household Product" means any consumer product that is primarily designed to be used inside or outside of living quarters or residences that are occupied or intended for occupation by individuals, including the immediate surroundings.

"Illinois Sales" means the sales (net pounds of product, less packaging and container, per year) in Illinois for either the calendar year immediately prior to the year that the registration is due or, if that data is not available, any consecutive 12 month period commencing no earlier than two years prior to the due date of the registration. If direct sales data for Illinois is not available, sales may be estimated by prorating national or regional sales data by population.

"Industrial Use" means use for or in a manufacturing, mining, or chemical process or use in the operation of factories, processing plants, and similar sites.

"Insecticide" means a pesticide product that is designed for use against insects or other arthropods, but excluding products that are for agricultural use or for a use that requires a structural pest control license under the Structural Pest Control Act [225 ILCS 235], or restricted materials that require a permit for use and possession.

"Insecticide Fogger" means any insecticide product designed to release all or most of its content, as a fog or mist, into indoor areas during a single application.

"Institutional Product" or "Industrial and Institutional (I&I) Product" means a consumer product that is designed for use in the maintenance or operation of an

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establishment that manufactures, transports, or sells goods or commodities, or provides services for profit, or is engaged in the nonprofit promotion of a particular public, educational, or charitable cause. "Establishments" include, but are not limited to, government agencies, factories, schools, hospitals, sanitariums, prisons, restaurants, hotels, stores, automobile service and parts centers, health clubs, theaters, or transportation companies. This does not include household products and products that are incorporated into or used exclusively in the manufacture or construction of the goods or commodities at the site of the establishment.

"Label" means any written, printed, or graphic matter affixed to, applied to, attached to, blown into, formed into, molded into, embossed on, or appearing upon any consumer product or consumer product package, for purposes of branding, identifying, or giving information with respect to the product or to the contents of the package.

"Lacquer" means a clear or opaque wood coating, including clear lacquer sanding sealers, formulated with cellulosic or synthetic resins to dry by evaporation without chemical reaction and to provide a solid, protective film.

"Laundry Prewash" means a product that is designed for application to a fabric prior to laundering and that supplements and contributes to the effectiveness of laundry detergents and/or provides specialized performance.

"Laundry Starch Product" means a product that is designed for application to a fabric, either during or after laundering, to impart and prolong a crisp, fresh look and may also act to help ease ironing of the fabric. This includes, but is not limited to, fabric finish, sizing, and starch.

"Lawn and Garden Insecticide" means an insecticide product labeled primarily to be used in household lawn and garden areas to protect plants from insects or other arthropods. Notwithstanding the requirements of Section 223.260, aerosol "Lawn and Garden Insecticides" may claim to kill insects or other arthropods.

"Liquid" means a substance or mixture of substances that is capable of a visually detectable flow as determined under ASTM D-4359-90, incorporated by reference in Section 223.120, or an equivalent method approved by the California Air Resources Board. This does not include powders or other materials that are composed entirely of solid particles.

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"Lubricant" means a product designed to reduce friction, heat, noise, or wear between moving parts, or to loosen rusted or immovable parts or mechanisms. This does not include automotive power steering fluids; products for use inside power generating motors, engines, and turbines, and their associated power-transfer gearboxes; two cycle oils or other products designed to be added to fuels; products for use on the human body or animals; or products that are sold exclusively to establishments that manufacture or construct goods or commodities, and labeled "not for retail sale".

"LVP Content" means the total weight, in pounds, of LVP compounds in an ACP product multiplied by 100 and divided by the product's total net weight (in pounds, excluding container and packaging), expressed to the nearest 0.1.

"LVP-VOM" or "LVP-VOC" means a chemical material or mixture or compound that contains at least one carbon atom and meets one of the following:

Has a vapor pressure less than 0.1 mm Hg at 20°C, as determined by CARB Method 310, incorporated by reference in Section 223.120; or

Is a chemical material or compound with more than 12 carbon atoms, or a chemical mixture comprised solely of material or a compound with more than 12 carbon atoms as verified by formulation data, and the vapor pressure and boiling point are unknown; or

Is a chemical material or compound with a boiling point greater than 216°C, as determined by CARB Method 310, incorporated by reference in Section 223.120; or

Is the weight percent of a chemical mixture that boils above 216°C, as determined by CARB Method 310, incorporated by reference in Section 223.120.

For the purposes of this definition, chemical material or compound means a molecule of definite chemical formula and isomeric structure, and chemical mixture means a substrate comprised of two or more chemical materials or compounds.

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"Medicated Astringent/Medicated Toner" means any product regulated as a drug by the FDA that is applied to the skin for the purpose of cleaning or tightening pores. This includes, but is not limited to, clarifiers and substrate-impregnated products. The term does not include hand, face, or body cleaner or soap products, "Astringent/Toner", cold cream, lotion, antiperspirants, or products that must be purchased with a doctor's prescription.

"Medium Volatility Organic Material" or "MVOM" or "Medium Volatility Organic Compound" or "MVOC" means any volatile organic material or volatile organic compound that exerts a vapor pressure greater than two mm Hg and less than or equal to 80 mm Hg when measured at 20°C.

"Metal Polish/Cleanser" means any product designed primarily to improve the appearance of finished metal or metallic or metallized surfaces by physical or chemical action. To "improve the appearance" means to remove or reduce stains, impurities, or oxidation from surfaces or to make surfaces smooth and shiny. This includes, but is not limited to, metal polishes used on brass, silver, chrome, copper, stainless steel and other ornamental metals. The term does not include "Automotive Wax, Polish, Sealant or Glaze", wheel cleaner, "Paint Remover or Stripper", products designed and labeled exclusively for automotive and marine detailing, or products designed for use in degreasing tanks.

"Mist Spray Adhesive" means any aerosol that is not a special purpose spray adhesive and that delivers a particle or mist spray, resulting in the formation of fine, discrete particles that yield a generally uniform and smooth application of adhesive to the substrate.

"Multi-Purpose Dry Lubricant" means any lubricant designed and labeled to provide lubricity by depositing a thin film of graphite, molybdenum disulfide (moly), or polytetrafluoroethylene or closely related fluoropolymer (Teflon) on surfaces, and designed for general purpose lubrication or for use in a wide variety of applications.

"Multi-Purpose Lubricant" means any lubricant designed for general purpose lubrication, or for use in a wide variety of applications. The term does not include "Multi-purpose Dry Lubricants", "Penetrants", or "Silicone-based Multi-purpose Lubricants".

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"Multi-Purpose Solvent" means any organic liquid designed to be used for a variety of purposes, including cleaning or degreasing of a variety of substrates, or thinning, dispersing or dissolving other organic materials. This includes solvents used in institutional facilities, except for laboratory reagents used in analytical, educational, research, scientific or other laboratories. This does not include solvents used in cold cleaners, vapor degreasers, conveyORIZED degreasers or film cleaning machines, or solvents that are incorporated into, or used exclusively in the manufacture or construction of the goods or commodities at the site of the establishment.

"Nail Polish" means any clear or colored coating designed for application to the fingernails or toenails, including but not limited to lacquers, enamels, acrylics, base coats and top coats.

"Nail Polish Remover" means a product designed to remove nail polish and coatings from fingernails or toenails.

"Non-Aerosol Product" means any consumer product that is not dispensed by a pressurized spray system.

"Non-Carbon Containing Compound" means any compound that does not contain any carbon atoms.

"Nonresilient Flooring" means flooring of a mineral content that is not flexible. This includes terrazzo, marble, slate, granite, brick, stone, ceramic tile and concrete.

"Non-Selective Terrestrial Herbicide" means a terrestrial herbicide product that is toxic to plants without regard to species.

"Oven Cleaner" means any cleaning product designed to clean and to remove dried food deposits from oven walls.

"Paint" means any pigmented liquid or liquefiable or mastic composition designed for application to a substrate in a thin layer that is converted to an opaque solid film after application and is used for protection, decoration or identification, or to serve some functional purpose such as the filling or concealing of surface irregularities or the modification of light and heat radiation characteristics.

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"Paint Remover or Stripper" means any product designed to strip or remove paints or other related coatings, by chemical action, from a substrate without markedly affecting the substrate. This does not include "Multi-purpose Solvents", paint brush cleaners, products designed and labeled exclusively as "Graffiti Removers", and hand cleaner products that claim to remove paints and other related coatings from skin.

"Penetrant" means a lubricant designed and labeled primarily to loosen metal parts that have bonded together due to rusting, oxidation, or other causes. The term does not include "Multi-purpose Lubricants" that claim to have penetrating qualities, but are not labeled primarily to loosen bonded parts.

"Personal Fragrance Product" means any product that is applied to the human body or clothing for the primary purpose of adding a scent or masking a malodor, including cologne, perfume, aftershave, and toilet water. This does not include "Deodorant"; medicated products designed primarily to alleviate fungal or bacterial growth on feet or other areas of the body; mouthwashes and breath fresheners and deodorizers; lotions, moisturizers, powders or other skin care products used primarily to alleviate skin conditions such as dryness and irritations; products designed exclusively for use on human genitalia; soaps, shampoos, and products primarily used to clean the human body; and fragrance products designed to be used exclusively on non-human animals.

"Pesticide" means and includes any substance or mixture of substances labeled, designed, or intended for use in preventing, destroying, repelling or mitigating any pest, or any substance or mixture of substances labeled, designed, or intended for use as a defoliant, desiccant, or plant regulator, provided that the term "Pesticide" will not include any substance, mixture of substances, or device the United States Environmental Protection Agency does not consider to be a pesticide.

"Photograph Coating" means a coating designed and labeled exclusively to be applied to finished photographs to allow corrective retouching, protection of the image or changes in gloss level, or to cover fingerprints.

"Pressurized Gas Duster" means a pressurized product labeled to remove dust from a surface solely by means of mass air or gas flow, including surfaces such as photographs, photographic film negatives, computer keyboards, and other types of

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surfaces that cannot be cleaned with solvents. This does not include "Dusting Aid".

"Principal Display Panel or Panels" means that part, or those parts, of a label that are so designed as to most likely be displayed, presented, shown or examined under normal and customary conditions of display or purchase. Whenever a principal display panel appears more than once, all requirements pertaining to the "Principal Display Panel" shall pertain to all such "Principal Display Panels".

"Product Brand Name" means the name of the product exactly as it appears on the principal display panel of the product.

"Product Category" means the applicable category, defined in this Section and limited in Section 223.205(a), that best describes the product.

"Product Form" for the purpose of complying with Section 223.270 only, means the applicable form that most accurately describes the product's dispensing form, as follows:

- A = Aerosol Product
- S = Solid
- P = Pump Spray
- L = Liquid
- SS = Semisolid
- O = Other

"Product Line" means a group of products of identical form and function belonging to the same product category or categories.

"Pump Spray" means a packaging system in which the product ingredients within the container are not under pressure and in which the product is expelled only while a pumping action is applied to a button, trigger or other actuator.

"Responsible ACP Party" means the company, firm or establishment listed on the ACP product's label. If the label lists two or more companies, firms, or establishments, the "Responsible ACP Party" is the party the ACP product was "manufactured for" or "distributed by", as noted on the label.

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"Restricted Materials" means pesticides established as restricted materials under applicable Illinois statutes or regulations.

"Roll-On Product" means any antiperspirant or deodorant that dispenses active ingredients by rolling a wetted ball or wetted cylinder on the affected area.

"Rubber and Vinyl Protectant" means any product designed to protect, preserve or renew vinyl, rubber, and plastic on vehicles, tires, luggage, furniture, and household products such as vinyl covers, clothing, and accessories. This does not include products primarily designed to clean the wheel rim, such as aluminum or magnesium wheel cleaners, and tire cleaners that do not leave an appearance-enhancing or protective substance on the tire.

"Rubbing Alcohol" means any product containing isopropyl alcohol (also called isopropanol) or denatured ethanol and labeled for topical use, usually to decrease germs in minor cuts and scrapes, to relieve minor muscle aches, as a rubefacient, and for massage.

"Rust Preventive Coating" means a coating formulated exclusively for nonindustrial use to prevent the corrosion of metal surfaces and labeled as specified in Section 223.320(f).

"Sanding Sealer" means a clear or semi-transparent wood coating labeled and formulated for application to bare wood to seal the wood and to provide a coat that can be abraded to create a smooth surface for subsequent applications of coatings. A "Sanding Sealer" that also meets the definition of a "Lacquer" is not included in this category, but it is included in the "Lacquer" category.

"Sealant and Caulking Compound" means any product with adhesive properties that is designed to fill, seal, waterproof, or weatherproof gaps or joints between two surfaces. This does not include roof cements and roof sealants, insulating foams, removable caulking compounds, clear/paintable/water resistant caulking compounds, floor seam sealers, products designed exclusively for automotive uses, or sealers that are applied as continuous coatings. The term also does not include units of product, less packaging, that weigh more than one pound and consist of more than 16 fluid ounces.

For the purposes of this definition only, "removable caulking compound" means a compound that temporarily seals windows or doors for three to

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six month time intervals. "Clear/paintable/water resistant caulking compound" means a compound that contains no appreciable level of opaque fillers or pigments; transmits most or all visible light through the caulk when cured; is paintable; and is immediately resistant to precipitation upon application.

"Semisolid" means a product that, at room temperature, will not pour, but will spread or deform easily, including but not limited to gels, pastes, and greases.

"Shaving Cream" means an aerosol product that dispenses a foam lather intended to be used with a blade or cartridge razor, or other wet-shaving system, in the removal of facial or other body hair. The term does not include "Shaving Gel".

"Shaving Gel" means an aerosol product that dispenses a post-foaming semisolid designed to be used with a blade, cartridge razor, or other shaving system in the removal of facial or other body hair. This does not include "Shaving Cream".

"Silicone-Based Multi-Purpose Lubricant" means any lubricant designed and labeled to provide lubricity primarily through the use of silicone compounds including, but not limited to, polydimethylsiloxane, and designed and labeled for general purpose lubrication, or for use in a wide variety of applications. The term does not include products designed and labeled exclusively to release manufactured products from molds.

"Single Phase Aerosol Air Freshener" means an aerosol air freshener with the liquid contents in a single homogeneous phase and that does not require that the product container be shaken before use.

"Solid" means a substance or mixture of substances that, either whole or subdivided (such as the particles comprising a powder), is not capable of visually detectable flow as determined under ASTM D4359-90, incorporated by reference in Section 223.120, or an equivalent method approved by the California Air Resources Board.

"Special Purpose Spray Adhesive" means an aerosol adhesive that meets any of the following definitions:

"Mounting Adhesive" means an aerosol adhesive designed to permanently mount photographs, artwork, and any other drawn or printed media to a

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backing (paper, board, cloth, etc.) without causing discoloration to the artwork.

"Flexible Vinyl Adhesive" means an aerosol adhesive designed to bond flexible vinyl to substrates. Flexible vinyl means a nonrigid polyvinyl chloride plastic with at least five percent, by weight, of plasticizer content. A plasticizer is a material, such as a high boiling point organic solvent, that is incorporated into a plastic to increase its flexibility, workability, or distensibility, and may be determined using ASTM E260-96, incorporated by reference in Section 223.120, or from product formulation data or an equivalent method approved by the CARB.

"Polystyrene Foam Adhesive" means an aerosol adhesive designed to bond polystyrene foam to substrates.

"Automobile Headliner Adhesive" means an aerosol adhesive designed to bond together layers in motor vehicle headliners.

"Polyolefin Adhesive" means an aerosol adhesive designed to bond polyolefins to substrates.

"Laminate Repair/Edgebanding Adhesive" means an aerosol adhesive designed for:

The touch-up or repair of items laminated with high pressure laminates (e.g., lifted edges, delaminates, etc.); or

The touch-up, repair, or attachment of edgebanding materials, including but not limited to other laminates, synthetic marble, veneers, wood molding, and decorative metals.

For the purposes of this definition "high pressure laminate" means sheet materials that consist of paper, fabric, or other core material that have been laminated at temperatures exceeding 265°F, and at pressures between 1,000 and 1,400 psi.

"Automotive Engine Compartment Adhesive" means an aerosol adhesive designed for use in motor vehicle under-the-hood applications that require

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oil and plasticizer resistance, as well as high shear strength, at temperatures of 200 to 275°F.

"Spot Remover" means any product labeled to clean localized areas, or remove localized spots or stains on cloth or fabric such as drapes, carpets, upholstery, and clothing, that does not require subsequent laundering to achieve stain removal. This does not include "Dry Cleaning Fluid", "Laundry Prewash", or "Multi-Purpose Solvent".

"Spray Buff Product" means a product designed to restore a worn floor finish in conjunction with a floor buffing machine and special pad.

"Stick Product" means any antiperspirant or deodorant that contains active ingredients in a solid matrix form and that dispenses the active ingredients by frictional action on the affected area.

"Structural Waterproof Adhesive" means an adhesive whose bond lines are resistant to conditions of continuous immersion in fresh or salt water and that conforms with Federal Specification MMM-A-181D (Type 1, Grade A), incorporated by reference in Section 223.120, and MIL-A-4605 (Type A, Grade A and Grade C), per the Federal Consumer Products Regulation (40 CFR 59, subpart C), incorporated by reference in Section 223.120.

"Terrestrial" means to live on or grow from land.

"Tire Sealant and Inflation" means any pressurized product that is designed to temporarily inflate and seal a leaking tire.

"Toilet/Urinal Care Product" means any product designed or labeled to clean and/or to deodorize toilet bowls, toilet tanks, or urinals. Toilet bowls, toilet tanks, or urinals include, but are not limited to, toilets or urinals connected to permanent plumbing in buildings and other structures, portable toilets or urinals placed at temporary or remote locations, and toilets or urinals in vehicles such as buses, recreational motor homes, boats, ships, and aircraft. This does not include "Bathroom and Tile Cleaner" or "General Purpose Cleaner".

"Type A Propellant" means a compressed gas, such as CO₂, N₂, N₂O, or compressed air, that is used as a propellant and is either incorporated with the product or contained in a separate chamber within the product's packaging.

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"Type B Propellant" means any halocarbon that is used as a propellant, including chlorofluorocarbons (CFCs), hydrochlorofluorocarbons (HCFCs), and hydrofluorocarbons (HFCs).

"Type C Propellant" means any propellant that is not a Type A or Type B propellant, including propane, isobutane, n-butane, and dimethyl ether (also known as dimethyl oxide).

"Undercoating" means any aerosol product designed to impart a protective, non-paint layer to the undercarriage, trunk interior, and/or firewall of motor vehicles to prevent the formation of rust or to deaden sound. This includes, but is not limited to, rubberized, mastic, or asphaltic products.

"Usage Directions" means the text or graphics on the product's principal display panel, label, or accompanying literature that describes to the end user how and in what quantity the product is to be used.

"VOM Content" means, for purposes of this Subpart, except for charcoal lighter products, the total weight of VOM in a product expressed as a percentage of the product weight (exclusive of the container or packaging), as determined pursuant to Section 223.285(a) and (b).

For charcoal lighter material products only,

$$VOC\ Content = \frac{(Certified\ Emissions\ x\ 100)}{Certified\ Use\ Rate}$$

Certified

Emissions = The emissions level for products approved by the Agency under Section 223.220, as determined pursuant to South Coast Air Quality Management District Rule 1174, Ignition Method Compliance Certification Protocol (February 27, 1991), incorporated by reference at Section 223.120, expressed to the nearest 0.001 pound CH₂ per start.

Certified

Use Rate = The usage level for products approved by the Agency under Section 223.220, as determined pursuant to South Coast Air

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Quality Management District Rule 1174, Ignition Method Compliance Certification Protocol (February 27, 1991), incorporated by reference at Section 223.120, expressed to the nearest 0.001 pound certified product used per start.

For purposes of Subpart C of this Part, "VOM Content" means the weight of VOM per volume of coating, calculated according to the procedures specified in Section 223.340(a).

"Wasp and Hornet Insecticide" means any insecticide product that is designed for use against wasps, hornets, yellow jackets or bees by allowing the user to spray from a distance a directed stream or burst at the intended insects, or their hiding place.

"Waterproofer" means a product designed and labeled exclusively to repel water from fabric or leather substrates, excluding "Fabric Protectants".

"Wax" means a material or synthetic thermoplastic substance generally of high molecular weight hydrocarbons or high molecular weight esters of fatty acids or alcohols, except glycerol and high polymers (plastics). This includes, but is not limited to, substances derived from the secretions of plants and animals such as carnuba wax and beeswax, substances of a mineral origin such as ozocerite and paraffin, and synthetic polymers such as polyethylene.

"Web Spray Adhesive" means any aerosol adhesive that is not a mist spray or special purpose spray adhesive.

"Wood Cleaner" means a product labeled to clean wooden materials, including but not limited to decking, fences, flooring, logs, cabinetry, and furniture. The term does not include "Dusting Aid", "General Purpose Cleaner", "Furniture Maintenance Product", "Floor Wax Stripper", "Floor Polish or Wax", or products designed and labeled exclusively to preserve or color wood.

"Wood Floor Wax" means wax-based products for use solely on wood floors.

Section 223.205 Standards

- a) Except as provided in Section 223.207, 223.230, 223.240, or 223.245, no person shall sell, supply, offer for sale, or manufacture for sale in Illinois any consumer

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product manufactured on or after July 1, 2009 that contains VOMs in excess of the limits specified in this subsection:

Affected Product	% VOM by Weight
1) Adhesives – Spray	
A) Mist Spray	65
B) Web Spray	55
C) Special Purpose Spray Adhesives	
i) Mounting, Automotive Engine Compartment, and Flexible Vinyl	70
ii) Polystyrene Foam and Automotive Headliner	65
iii) Polyolefin and Laminate Repair/Edgebanding	60
2) Adhesives – Construction, Panel, and Floor Contact	15
3) Adhesives – General Purpose	10
4) Adhesives – Structural Waterproof	15
5) Air Fresheners	
A) Single Phase Aerosol	30
B) Double Phase Aerosol	25
C) Liquids/Pump Sprays	18
D) Solids/Gel	3

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6)	Antiperspirants	
	A) Aerosol	40 HVOM 10 HVOM
	B) Non-Aerosol	0 MVOM 0 MVOM
7)	Automotive Brake Cleaners	45
8)	Automotive Rubbing or Polishing Compound	17
9)	Automotive Wax, Polish, Sealant, or Glaze	
	A) Hard Paste Waxes	45
	B) Instant Detailers	3
	C) All Other Forms	15
10)	Automotive Windshield Washer Fluids	35
11)	Bathroom and Tile Cleaners	
	A) Aerosol	7
	B) All Other Forms	5
12)	Bug and Tar Remover	40
13)	Carburetor or Fuel-Injection Air Intake Cleaners	45
14)	Carpet and Upholstery Cleaners	
	A) Aerosol	7
	B) Non-Aerosol (Dilutables)	0.1
	C) Non-Aerosol (Ready-to-Use)	3.0

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15)	Charcoal Lighter Material	see Section 223.220
16)	Cooking Spray – Aerosol	18
17)	Deodorants	
	A) Aerosol	0 HVOM 10 HVOM
	B) Non-Aerosol	0 MVOM 0 MVOM
18)	Dusting Aids	
	A) Aerosol	25
	B) All Other Forms	7
19)	Engine Degreasers	
	A) Aerosol	35
	B) Non-Aerosol	5
20)	Fabric Protectants	60
21)	Floor Polishes/Waxes	
	A) Products for Flexible Flooring Materials	7
	B) Products for Nonresilient Flooring	10
	C) Wood Floor Wax	90
22)	Floor Wax Strippers	see Section 223.209
23)	Furniture Maintenance Products	

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A)	Aerosol	17
B)	All Other Forms Except Solid or Paste	7
24)	General Purpose Cleaners	
A)	Aerosol	10
B)	Non-Aerosol	4
25)	General Purpose Degreasers	
A)	Aerosol	50
B)	Non-Aerosol	4
26)	Glass Cleaners	
A)	Aerosol	12
B)	Non-Aerosol	4
27)	Hair Mousses	6
28)	Hairshines	55
29)	Hairsprays	55
30)	Hair Styling Gels	6
31)	Heavy Duty Hand Cleaner or Soap	8
32)	Insecticides	
A)	Crawling Bug (Aerosol)	15
B)	Crawling Bug (All Other Forms)	20

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C)	Flea and Tick	25
D)	Flying Bug (Aerosol)	25
E)	Flying Bug (All Other Forms)	35
F)	Foggers	45
G)	Lawn and Garden (Aerosol)	20
H)	Lawn and Garden (All Other Forms)	3
I)	Wasp and Hornet	40
33)	Laundry Prewash	
	A) Aerosols/Solids	22
	B) All Other Forms	5
34)	Laundry Starch Products	5
35)	Metal Polishes/Cleansers	30
36)	Multi-Purpose Lubricant	
	(Excluding Solid or Semi-Solid Products)	50
37)	Nail Polish Removers	75
38)	Non-Selective Terrestrial Herbicide – Non-Aerosol	3
39)	Oven Cleaners	
	A) Aerosols/Pump Sprays	8
	B) Liquids	5

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40)	Paint Removers or Strippers	50
41)	Penetrants	50
42)	Rubber and Vinyl Protectants	
	A) Aerosol	10
	B) Non-Aerosol	3
43)	Sealants and Caulking Compounds	4
44)	Shaving Creams	5
45)	Silicone-Based Multi-Purpose Lubricants (Excluding Solid or Semi-Solid Products)	60
46)	Spot Removers	
	A) Aerosol	23
	B) Non-Aerosol	8
47)	Tire Sealants and Inflators	20
48)	Undercoatings – Aerosols	40
b)	No person shall sell, supply, offer for sale, or manufacture for sale in Illinois, on or after July 1, 2009, any antiperspirant or deodorant that contains any compound listed below:	
	Benzene	
	Ethylene Dibromide	
	Ethylene Dichloride	

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Hexavalent Chromium

Asbestos

Cadmium (metallic cadmium and cadmium compounds)

Carbon Tetrachloride

Trichloroethylene

Chloroform

Vinyl Chloride

Inorganic Arsenic

Nickel (metallic nickel and inorganic nickel compounds)

Perchloroethylene

Formaldehyde

1,3-Butadiene

Inorganic Lead

Dibenzo-p-dioxins and dibenzofurans chlorinated in the 2,3,7 and 8 positions and containing 4,5,6 or 7 chlorine atoms

Section 223.206 Diluted Products

- a) For consumer products for which the label, packaging, or accompanying literature specifically states that the product should be diluted with water or non-VOM solvent prior to use, the limits specified in Section 223.205(a) must apply to the product only after the minimum recommended dilution has taken place.
- b) For purposes of subsection (a) of this Section, the minimum recommended dilution shall not include recommendations for incidental use of a concentrated

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product to deal with limited special applications such as hard-to-remove soils or stains.

- c) For consumer products for which the label, packaging, or accompanying literature states that the product should be diluted with any VOM solvent prior to use, the limits specified in Section 223.205(a) shall apply to the product only after the maximum recommended dilution has taken place.

Section 223.207 Products Registered under FIFRA

For those consumer products that are registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 USC 136 through 136y), incorporated by reference in Section 223.120, the effective date of the VOM standards will be July 1, 2010.

Section 223.208 Requirements for Aerosol Adhesives

- a) As specified in California Code § 41712(h)(2), incorporated by reference in Section 223.120, the standards for aerosol adhesives apply to all uses of aerosol adhesives, including consumer, industrial, and commercial uses. Except as otherwise provided in Sections 223.207, 223.230, 223.240, and 223.245, no person shall sell, supply, offer for sale, use or manufacture for sale in Illinois any aerosol adhesive that, at the time of sale, use, or manufacture, contains VOMs in excess of the specified standard.
- b) Special Purpose Spray Adhesive.
 - 1) In order to qualify as a Special Purpose Spray Adhesive the product must meet one or more of the definitions for Special Purpose Spray Adhesive specified in Section 223.203, but if the product label indicates that the product is suitable for use on any substrate or application not listed in one of the definitions for Special Purpose Spray Adhesive, then the product shall be classified as either a Web Spray Adhesive or a Mist Spray Adhesive.
 - 2) If a product meets more than one of the definitions specified in Section 223.203 for Special Purpose Spray Adhesive and is not classified as a Web Spray Adhesive or Mist Spray Adhesive under Section 223.203, then the VOC limit for the product shall be the lowest applicable VOM limit specified in Section 223.205(a).

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- c) Effective July 1, 2009, no person shall sell, supply, offer for sale, or manufacture for use in Illinois any aerosol adhesive that contains any of the following compounds: methylene chloride, perchloroethylene, or trichloroethylene.
- d) All aerosol adhesives must comply with the labeling requirements specified in Section 223.265.

Section 223.209 Requirements for Floor Wax Strippers

On or after July 1, 2009, no person shall sell, supply, offer for sale, or manufacture for use in Illinois any floor wax stripper unless the following requirements are met:

- a) The label of each non-aerosol floor wax stripper must specify a dilution ratio for light or medium build-up of polish that results in an as-used VOM concentration of three percent by weight or less;
- b) If a non-aerosol floor wax stripper is also intended to be used for removal of heavy build-up of polish, the label of that floor wax stripper must specify a dilution ratio for heavy build-up of polish that results in an as-used VOM concentration of 12% by weight or less; and
- c) The term "light build-up", "medium build-up", or "heavy build-up" is not specifically required, as long as comparable terminology is used.

Section 223.210 Products Containing Ozone-Depleting Compounds

- a) For any consumer product for which standards are specified under Section 223.205(a), no person shall sell, supply, offer for sale, or manufacture for sale in Illinois any consumer product that contains any of the following ozone-depleting compounds:
 - 1) Trichlorofluoromethane (CFC-11);
 - 2) Dichlorodifluoromethane (CFC-12);
 - 3) 1,1,1-trichloro-2,2,2-trifluoroethane (CFC-113);
 - 4) 1-chloro-1,1-difluoro-2-chloro-2,2-difluoroethane (CFC-114);

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- 5) Chloropentafluoroethane (CFC-115);
 - 6) Bromochlorodifluoromethane (Halon 1211);
 - 7) Bromotrifluoromethane (Halon 1301);
 - 8) Dibromotetrafluoroethane (Halon 2402);
 - 9) Chlorodifluoromethane (HCFC-22);
 - 10) 2,2-dichloro-1,1,1-trifluoroethane (HCFC-123);
 - 11) 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124);
 - 12) 1,1-dichloro-1-fluoroethane (HCFC-141b);
 - 13) 1-chloro-1,1-difluoroethane (HCFC-142b);
 - 14) 1,1,1-trichloroethane; and
 - 15) Carbon tetrachloride.
- b) The requirements in subsection (a) of this Section shall not apply to any product formulation existing as of July 1, 2009 that complies with Section 223.205(a) or is reformulated to meet Section 223.205(a), provided the ozone-depleting compound content of the reformulated product does not increase.
- c) The requirements in subsection (a) of this Section shall not apply to any ozone depleting compounds that may be present as impurities in a consumer product in an amount equal to or less than 0.01% by weight of the product.

Section 223.220 Requirements for Charcoal Lighter Material

- a) No person shall sell, supply, or offer for sale on or after July 1, 2009 any charcoal lighter material product unless, at the time of the transaction, the manufacturer can demonstrate that it has been issued an effective certification by the CARB under the Consumer Products provisions under 17 California Code of Regulations § 94509(h), incorporated by reference in Section 223.120. This certification

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remains in effect for Illinois for as long as the CARB certification remains in effect.

- b) Alternatively, the person may demonstrate that, at the time of the transaction, the manufacturer had been issued a certification by an air pollution agency of another state and USEPA that was current at the time of the transaction.
- c) Upon request by the Agency, a manufacturer claiming to have a certification as specified in subsection (a) of this Section must submit to the Agency a copy of the certification decision, including all conditions applicable to the certification established by CARB or the air pollution agency of another state and USEPA.

Section 223.230 Exemptions

- a) This Subpart shall not apply to any consumer product manufactured in Illinois for shipment and use outside of Illinois, as long as the manufacturer or distributor can demonstrate both that the consumer product is intended for shipment and use outside of Illinois, and that the manufacturer or distributor has taken reasonable, prudent precautions to assure that the consumer product is not distributed to Illinois. This exemption shall not apply to consumer products that are sold, supplied, or offered for sale by any person to retail outlets in Illinois.
- b) For antiperspirants or deodorants, ethanol shall not be considered a medium volatility organic material (MVOM) for purposes of the content standards specified in Section 223.205(a).
- c) The VOM limits specified in Section 223.205(a) shall not apply to fragrances up to a combined level of two percent by weight contained in any consumer product and shall not apply to colorants up to a combined level of two percent by weight contained in any antiperspirant or deodorant.
- d) The requirements of Section 223.205(a) for antiperspirants or deodorants shall not apply to those volatile organic materials that contain more than 10 carbon atoms per molecule and for which the vapor pressure is unknown, or that have a vapor pressure of two mm Hg or less at 20°C.
- e) The VOM limits specified in Section 223.205(a) shall not apply to any LVP-VOM.

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- f) The requirements of Section 223.250 shall not apply to consumer products registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 USC 136 through 136y).
- g) The VOM limits specified in Section 223.205(a) shall not apply to air fresheners that are comprised entirely of fragrance, less compounds not defined as VOMs under Section 211.7150 or exempted under subsection (f).
- h) The VOM limits specified in Section 223.205(a) shall not apply to air fresheners and insecticides containing at least 98% para-dichlorobenzene.
- i) The VOM limits specified in Section 223.205(a) shall not apply to adhesives sold in containers of one fluid ounce or less.
- j) The VOM limits specified in Section 223.205(a) shall not apply to bait station insecticides. For the purpose of this Section, bait station insecticides are containers enclosing an insecticidal bait that is not more than 0.5 ounce by weight, when the bait is designed to be ingested by insects and is composed of solid material feeding stimulants with less than five percent active ingredients.

Section 223.240 Innovative Product Exemption

- a) Any manufacturer of consumer products that have been granted an Innovative Product exemption by the CARB under the Innovative Products provisions in 17 California Code of Regulations § 94511 or 94503.5, both incorporated by reference in Section 223.120, shall be exempt from the limits in Section 223.205(a) for the period of time that the CARB Innovative Products exemption remains in effect, provided that all consumer products within the CARB Innovative Products exemption are contained in the limits in Section 223.205(a). Any manufacturer claiming such an exemption on this basis must submit to the Agency a copy of the CARB Innovative Product exemption decision (i.e., the Executive Order), including all conditions established by the CARB applicable to the exemption.
- b) Recordkeeping and Availability of Requested Information.
 - 1) All information specified in the Innovative Product exemption approving an Innovative Product application shall be maintained by the responsible party for a minimum of three years after the expiration of the exemption.

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The records shall be clearly legible and maintained in good condition during this period.

- 2) The records specified in subsection (b)(1) shall be made available to the Agency, or its authorized representative, upon request.

Section 223.245 Alternative Compliance Plans

- a) The purpose of this Section is to provide an alternative method to comply with the limits in Section 223.205(a). This alternative is provided by allowing responsible ACP parties the option of voluntarily entering into separate ACPs for consumer products, as specified in this Subpart. Only responsible ACP parties for consumer products may enter into an ACP.
- b) Any manufacturer of consumer products that has been granted an ACP Agreement by the CARB under the provisions in 17 CCR §§ 94540-94555, incorporated by reference in Section 223.120, shall be exempt from the limits in Section 223.205(a) for the period of time that the CARB ACP Agreement remains in effect, provided that all ACP products used for emissions credits within the CARB ACP Agreement are contained in Section 223.205(a). Any manufacturer claiming such an ACP Agreement on this basis must submit to the Agency a copy of the CARB ACP decision (i.e., the Executive Order), including all conditions established by the CARB applicable to the exemption.
- c) Recordkeeping and Availability of Requested Information.
 - 1) All information specified in the ACP Agreement approving an ACP shall be maintained by the responsible ACP party for a minimum of three years after the expiration of the ACP. The records shall be clearly legible and maintained in good condition during this period.
 - 2) The records specified in subsection (c)(1) shall be made available to the Agency or its authorized representative upon request.

Section 223.250 Product Dating

- a) Each manufacturer of a consumer product subject to Section 223.205(a) shall clearly display on each consumer product container or package the day, month, and year on which the product was manufactured, or a code indicating such date.

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- b) A manufacturer who uses the following code to indicate the date of manufacture shall not be subject to the requirements of Section 223.255(a), if the code is represented separately from other codes on the product container so that it is easily recognizable:

YY DDD = year year day day day

Where:

YY = Two digits representing the year in which the product was manufactured

DDD = Three digits representing the day of the year on which the product was manufactured, with "001" representing the first day of the year, "002" representing the second day of the year, and so forth (i.e., the "Julian date")

- c) This date or code shall be displayed on each consumer product container or package no later than the effective date of the applicable standard specified in Section 223.205(a).
- d) The date or date-code information shall be located on the container or inside the cover/cap so that it is readily observable or obtainable by simply removing the cap/cover without irreversibly disassembling any part of the container or packaging. For the purposes of this subsection, information may be displayed on the bottom of a container as long as it is clearly legible without removing any product packaging.
- e) The requirements of this Section shall not apply to products containing no VOMs (as defined in Section 223.203), or containing VOMs at 0.10% by weight or less.

Section 223.255 Additional Product Dating Requirements

- a) No person shall erase, alter, deface, or otherwise remove or make illegible any date or code indicating the date of manufacture from any regulated product container without the express authorization of the manufacturer. No manufacturer shall affix a date-code that is not true for the date the item was manufactured.

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- b) Date-code explanations for codes indicating the date of manufacture are public information and may not be claimed as confidential.

Section 223.260 Most Restrictive Limit

- a) Products manufactured before July 1, 2009, and FIFRA-registered insecticides manufactured before July 1, 2010.
Notwithstanding the definition of product category in Section 223.203, if, anywhere on the principal display panel of any consumer product manufactured before July 1, 2009 or any FIFRA-registered insecticide manufactured before July 1, 2010, any representation is made that the product may be used as, or is suitable for use as, a consumer product for which a lower VOC limit is specified in Section 223.205(a), then the lowest VOC limit shall apply. This requirement does not apply to general purpose cleaners, antiperspirant/deodorant products and insecticide foggers.
- b) Products manufactured on or after July 1, 2009 and FIFRA-registered insecticides manufactured on or after July 1, 2010.
Notwithstanding the definition of product category in Section 223.203, if, anywhere on the container or packaging of any consumer product manufactured on or after July 1, 2009 or any FIFRA-registered insecticide manufactured on or after July 1, 2010 or on any sticker or label affixed to the container or packaging, any representation is made that the product may be used as, or is suitable for use as, a consumer product for which a lower VOC limit is specified in Section 223.205(a), then the lowest VOC limit shall apply. This requirement does not apply to general purpose cleaners, antiperspirant/deodorant products and insecticide foggers.

Section 223.265 Additional Labeling Requirements for Aerosol Adhesives, Adhesive Removers, Electronic Cleaners, Electrical Cleaners, Energized Electrical Cleaners, and Contact Adhesives

- a) In addition to the requirements specified in Sections 223.250, 223.260, and 223.270, both the manufacturer and responsible party for each aerosol adhesive, adhesive remover, electronic cleaner, electrical cleaner, energized electrical cleaner, and contact adhesive product subject to this Subpart shall ensure that all products clearly display the following information on each product container manufactured on or after July 1, 2009.

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- 1) The product category as specified in Section 223.205(a) or an abbreviation of the category shall be displayed.
 - 2) The applicable VOM standard for the product that is specified in Section 223.205(a) except for energized electrical cleaner, expressed as a percentage by weight, shall be displayed unless the product is included in an alternative control plan approved by the Agency, as provided in Sections 223.240 and 223.245, and the product exceeds the applicable VOM standard.
 - 3) If the product is included in an alternative control plan approved by the Agency, and the product exceeds the applicable VOM standard specified in Section 223.205(a), the product shall be labeled with the term "ACP" or "ACP product".
 - 4) If the product is classified as a special purpose spray adhesive, the applicable substrate and/or application or an abbreviation of the substrate and/or application that qualifies the product as special purpose shall be displayed.
 - 5) If the manufacturer or responsible party uses an abbreviation as allowed by this Section, an explanation of the abbreviation must be filed with the Agency before the abbreviation is used.
- b) The information required in Section 223.250(a) shall be displayed on the product container such that it is readily observable without removing or disassembling any portion of the product container or packaging. For the purposes of this subsection, information may be displayed on the bottom of a container as long as it is clearly legible without removing any product packaging.
 - c) No person shall remove, alter, conceal, or deface the information required in subsection (a) prior to final sale of the product.

Section 223.270 Reporting Requirements

- a) Within 90 days after written request by the Agency, a responsible party must submit to the Agency any of the following information:

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- 1) The name, address, and telephone number of the responsible party and the name and telephone number of the party's designated contact person;
- 2) For each product subject to Section 223.205(a):
 - A) The product brand name;
 - B) The product label;
 - C) The product category to which the consumer product belongs;
 - D) The applicable product forms listed separately; and
 - E) An identification of the product as a household product, institutional product, or both;
- 3) Separate Illinois sales in pounds per year, to the nearest pound, and the method used to calculate Illinois sales for each product form;
- 4) For information submitted by multiple companies, an identification of each company that is submitting relevant data separate from that submitted by the responsible party. All information from each company shall be submitted by the date requested by the Agency;
- 5) For each product brand name and form, the net percent by weight of the total product, less container and packaging, comprised of the following, rounded to the nearest 0.1%:
 - A) Total Section 223.205(a) compounds;
 - B) Total LVP-VOMs that are not fragrances;
 - C) Total all other carbon-containing compounds that are not fragrances;
 - D) Total all non-carbon-containing compounds;
 - E) Total fragrance;

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- F) For products containing greater than 2% by weight fragrance:
 - i) The percent of fragrance that is LVP-VOMs; and
 - ii) The percent of fragrance that is all other carbon-containing compounds; and
- G) Total paradichlorobenzene;
- 6) For each product brand name and form, the identity, including the specific chemical name and associated Chemical Abstract Services (CAS) number, of the following:
 - A) Each Section 223.205(a) compound; and
 - B) Each LVP-VOM that is not a fragrance; and
- 7) If the product includes a propellant, the following:
 - A) The weight percent comprised of propellant for each product; and
 - B) An identification of the type of propellant, such as Type A, Type B, Type C, or a blend of the different types.
- b) In addition to the requirements of subsection (a)(6), the responsible party shall report or shall arrange to have reported to the Agency, upon request, the net percent by weight of each ozone-depleting compound that is:
 - 1) Listed in Section 223.210(a); and
 - 2) Contained in a product subject to reporting under subsection (a) in any amount greater than 0.1% by weight.
- c) In addition, all manufacturers must submit to the Agency, upon request, the information requested in subsections (a) and (b) upon commencement of the selling of each such product in Illinois.

Section 223.275 Special Recordkeeping Requirements for Consumer Products that Contain Perchloroethylene or Methylene Chloride

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- a) The requirements of this Section shall apply to all responsible parties for consumer products that are subject to Section 223.205(a) and contain perchloroethylene or methylene chloride and energized electrical cleaners as defined in Section 223.203 that contain perchloroethylene or methylene chloride. For the purposes of this Section, a product "contains perchloroethylene or methylene chloride" if the product contains 1.0% or more by weight (exclusive of the container or packaging) of either perchloroethylene or methylene chloride.
- b) For each consumer product that contains perchloroethylene or methylene chloride, within 90 days after written request by the Agency, the responsible party shall report the following information for products sold in Illinois:
 - 1) The product brand name and a copy of the product label with legible usage instructions;
 - 2) The product category to which the consumer product belongs;
 - 3) The applicable product forms (listed separately);
 - 4) For each product form listed in subsection (b)(3), the total sales in Illinois during the calendar year to the nearest pound (exclusive of the container or packaging), and the method used for calculating the Illinois sales; and
 - 5) The weight percent, to the nearest 0.1%, of perchloroethylene and methylene chloride in the consumer product.

Section 223.280 Calculating Illinois Sales

If direct sales data for Illinois are not available, sales may be estimated by prorating national or regional sales data by population.

Section 223.285 Test Methods

- a) Testing to determine compliance with the requirements of this Subpart shall be performed using CARB Method 310, Determination of Volatile Organic Materials (VOM) in Consumer Products, which is incorporated by reference in Section 223.120.

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- b) Compliance with the requirements of this Subpart may also be demonstrated through calculation of the VOM content from records of the amounts of constituents used to make the product pursuant to the following criteria:
- 1) Accurate manufacturing records shall be kept for each day of production of the amount and chemical composition of the individual product constituents;
 - 2) Records required by subsection (b)(1) shall be kept for at least three years;
 - 3) For subsection (b)(4), the following shall apply:
 - A) "A" means the total net weight of unit excluding container and packaging;
 - B) "B" means the total weight of all VOMs per unit; and
 - C) "C" means the total weight of all exempted VOMs per unit;
 - 4) For the purposes of this Section, the VOM content shall be calculated by subtracting the total weight of VOMs exempted under Section 223.230 per unit from the total weight of all VOMs per unit, divided by the total net weight of unit excluding container and packaging and the product, multiplied by 100 as in the formula below:
$$VOMContent = \frac{B - C}{A} \times 100$$
 - 5) If product records appear to demonstrate compliance with the VOM limits, but these records are contradicted by product testing performed using CARB Method 310, the results of CARB Method 310 shall take precedence over the product records and may be used to establish a violation of the requirements of this Subpart.
- c) Testing to determine whether a product is a liquid or solid shall be performed using ASTM D4359-90, which is incorporated by reference in Section 223.120, or an equivalent method approved by the CARB.

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- d) Testing to determine compliance with the certification requirements for charcoal lighter material shall be performed using the procedures specified in the SCAQMD Test Protocol Rule 1174, Ignition Method Compliance Certification Protocol, which is incorporated by reference in Section 223.120.
- e) Testing to determine distillation points of petroleum distillate-based charcoal lighter materials shall be performed using ASTM D86-07b, which is incorporated by reference in Section 223.120, or an equivalent method approved by the CARB.
- f) No person shall create, alter, falsify, or otherwise modify records in such a way that the records do not accurately reflect the constituents used to manufacture a product, the chemical composition of the individual product, and any other test, processes, or records used in connection with product manufacture.

SUBPART C: ARCHITECTURAL AND INDUSTRIAL MAINTENANCE COATINGS

Section 223.300 Purpose

The purpose of this Subpart is to limit emissions of VOMs by requiring reductions in the VOM content of architectural and industrial maintenance coatings and required work practices to minimize VOM emissions in the application of architectural and industrial maintenance coatings to surfaces.

Section 223.305 Applicability

This Subpart is applicable to any person who supplies, sells, offers for sale, or manufactures any architectural coating for use within the State of Illinois, as well as any person who applies or solicits the application of any architectural coating within Illinois. This Subpart does not apply to:

- a) Any architectural coating that is sold or manufactured for use outside of the State of Illinois or for shipment to other manufacturers for reformulation or repackaging.
- b) Any aerosol coating product.
- c) Any architectural coating that is sold in a container with a volume of one liter (1.057 quart) or less.

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Section 223.307 Definitions for Subpart C

The definitions contained in this Section apply only to the provisions of this Subpart. Unless otherwise defined in this Section, the definitions of terms used in this Subpart shall have the meanings specified for those terms in 35 Ill. Adm. Code 211.

"Adhesive" means any chemical substance that is applied for the purpose of bonding two surfaces together other than by mechanical means.

"Aerosol Coating Product" means a pressurized coating product containing pigments or resins that dispenses product ingredients by means of a propellant, and is packaged in a disposable can for hand-held application or for use in specialized equipment for ground traffic/marketing applications.

"Antenna Coating" means a coating labeled and formulated exclusively for application to equipment and associated structural appurtenances that are used to receive or transmit electromagnetic signals.

"Antifouling Coating" means a coating labeled and formulated for application to submerged stationary structures and their appurtenances to prevent or reduce the attachment of marine or freshwater biological organisms. To qualify as an "Antifouling Coating", the coating must be registered with USEPA under the Federal Insecticide, Fungicide and Rodenticide Act (7 USC 136 et seq.)

"Appurtenance" means any accessory to a stationary structure coated at the site of installation, whether installed or detached, including, but not limited to, bathroom and kitchen fixtures, cabinets, concrete forms, doors, elevators, fences, hand railings, heating equipment, air conditioning equipment, and other fixed mechanical equipment or stationary tools, lampposts, partitions, pipes and piping systems, rain gutters and downspouts, stairways, fixed ladders, catwalks and fire escapes, and window screens.

"Architectural Coating" means a coating to be applied to stationary structures or the appurtenances at the site of installation, to portable buildings at the site of installation, to pavements, or to curbs. Coatings applied in shop applications or to non-stationary structures, such as airplanes, ships, boats, railcars, and automobiles, and adhesives are not considered architectural coatings for the purposes of this Subpart.

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"Bitumens" means black or brown materials including, but not limited to, asphalt, tar, pitch, and asphaltite that are soluble in carbon disulfide, consist mainly of hydrocarbons, and are obtained from natural deposits or as residues from the distillation of crude petroleum or coal.

"Bituminous Roof Coating" means a coating that incorporates "Bitumens" that is labeled and formulated exclusively for roofing.

"Bituminous Roof Primer" means a primer that incorporates "Bitumens" that is labeled and formulated exclusively for roofing.

"Bond Breaker" means a coating labeled and formulated for application between layers of concrete to prevent a freshly poured top layer of concrete from bonding to the layer over which it is poured.

"Calcamine Recoaters" means flat solvent born coatings formulated and recommended specifically for recoating calcamine-painted ceilings and other calcamine-painted substrates.

"Clear Brushing Lacquers" means clear wood finishes, excluding clear lacquer sanding sealers, formulated with nitrocellulose or synthetic resins to dry by solvent evaporation without chemical reaction and to provide a solid, protective film, which are intended exclusively for application by brush and which are labeled as specified in Section 223.320(e).

"Clear Wood Coatings" means clear and semi-transparent coatings, including lacquers and varnishes, applied to wood substrates to provide a transparent or translucent solid film.

"Coating" means a material applied onto or impregnated into a substrate for protective, decorative, or functional purposes. Such materials include, but are not limited to, paints, varnishes, sealers, and stains.

"Colorant" means a concentrated pigment dispersion in water, solvent, and/or binder that is added to an architectural coating after packaging in sale units to produce the desired color.

"Concrete Curing Compound" means a coating labeled and formulated for application to freshly poured concrete to retard the evaporation of water.

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"Concrete Surface Retarder" means a mixture of retarding ingredients such as extender pigments, primary pigments, resin, and solvent that interact chemically with the cement to prevent hardening on the surface where the retarder is applied, allowing the retarded mix of cement and sand at the surface to be washed away to create an exposed aggregate finish.

"Conversion Varnish" means a clear acid-curing coating with an alkyd or other resin blended with amino resins and supplied as a single component or two-component product. Conversion varnishes produce a hard, durable, clear finish designed for professional application to wood flooring. Film formation is the result of an acid-catalyzed condensation reaction, affecting a transesterification at the reactive ethers of the amino resins.

"Dry Fog Coating" means a coating labeled and formulated only for spray application such that overspray droplets dry before subsequent contact with incidental surfaces in the vicinity of the surface coating activity.

"Exempt Compound" means a compound identified as exempt under the definition of Volatile Organic Material (VOM) in Part 211.7150. The exempt compound content of a coating shall be determined by USEPA Method 24 or South Coast Air Quality Management District (SCAQMD) Method 303-91 (Revised February 1993), incorporated by reference in Section 223.120.

"Faux Finishing Coating" means a coating labeled and formulated as a stain or a glaze to create artistic effects including, but not limited to, dirt, old age, smoke damage, and simulated marble and wood grain.

"Fire-Resistive Coating" means an opaque coating labeled and formulated to protect the structural integrity by increasing the fire endurance of interior or exterior steel and other structural materials that has been fire tested and rated by a testing agency and approved by building code officials for use in bringing assemblies of structural materials into compliance with federal, State, and local building code requirements. The fire-resistive coating and the testing agency must be approved by building code officials. The fire-resistive coating shall be tested in accordance with ASTM E119-98, incorporated by reference in Section 223.120.

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"Fire-Retardant Coating" means a coating labeled and formulated to retard ignition and flame spread that has been fire tested and rated by a testing agency approved by building code officials for use in bringing building and construction materials into compliance with federal, State, and local building code requirements. The fire-retardant coating and the testing agency must be approved by building code officials. The fire-retardant coating shall be tested in accordance with ASTM E84-07, incorporated by reference in Section 223.120.

"Flat Coating" means a coating that is not defined under any other definition in this Section and that registers gloss less than 15 on an 85-degree meter or less than five on a 60-degree meter according to ASTM D523-89 (1999), incorporated by reference in Section 223.120.

"Floor Coating" means an opaque coating that is labeled and formulated for application to flooring, including, but not limited to, decks, porches, steps, and other horizontal surfaces that may be subjected to foot traffic.

"Flow Coating" means a coating labeled and formulated exclusively for use by electric power companies or their subcontractors to maintain the protective coating systems present on utility transformer units.

"Form-Release Compound" means a coating labeled and formulated for application to a concrete form to prevent the freshly poured concrete from bonding to the form. The form may consist of wood, metal, or some material other than concrete.

"Graphic Arts Coating or Sign Paint" means a coating labeled and formulated for hand-application by artists using brush or roller techniques to indoor and outdoor signs (excluding structural components) and murals, including letter enamels, poster colors, copy blockers, and bulletin enamels.

"High-Temperature Coating" means a high performance coating, excluding engine paint, labeled and formulated for application to substrates exposed continuously or intermittently to temperatures above 204°C (400°F).

"Impacted Immersion Coating" means a high performance maintenance coating formulated and recommended for application to steel structures subject to immersion in turbulent, debris-laden water. These coatings are specifically resistant to high-energy impact damage by floating ice or debris.

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"Industrial Maintenance Coating" means a high performance architectural coating, including primers, sealers, undercoaters, intermediate coats, and topcoats, formulated for application to substrates exposed to one or more of the following extreme environmental conditions and labeled as specified in Section 223.320(d):

Immersion in water, wastewater, or chemical solutions (aqueous and non-aqueous solutions), or chronic exposures of interior surfaces to moisture condensation;

Acute or chronic exposure to corrosive, caustic, or acidic agents, or to chemicals, chemical fumes, or chemical mixtures or solutions;

Repeated exposure to temperatures above 121°C (250°F);

Repeated (frequent) heavy abrasion, including mechanical wear and repeated (frequent) scrubbing with industrial solvents, cleansers, or scouring agents; or

Exterior exposure of metal structures and structural components.

"Lacquer" means a clear or opaque wood coating, including clear lacquer sanding sealers, formulated with cellulosic or synthetic resins to dry by evaporation without chemical reaction and to provide a solid, protective film.

"Low-Solids Coating" means a coating containing 0.12 kilogram or less of solids per liter (1 pound or less of solids per gallon) of coating material.

"Magnesite Cement Coating" means a coating labeled and formulated for application to magnesite cement decking to protect the magnesite cement substrate from erosion by water.

"Mastic Texture Coating" means a coating labeled and formulated to cover holes and minor cracks and to conceal surface irregularities, and is applied in a single coat of at least 10 mils (0.010 inch) dry film thickness.

"Metallic Pigmented Coating" means a coating containing at least 48 grams of elemental metallic pigment per liter of coating as applied (0.4 pounds per gallon),

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when tested in accordance with SCAQMD Method 318-95, incorporated by reference in Section 223.120.

"Multi-Color Coating" means a coating that is packaged in a single container and that exhibits more than one color when applied in a single coat.

"Non-Flat Coating" means a coating that is not defined under any other definition in this Section and that registers a gloss of 15 or greater on an 85-degree meter and five or greater on a 60-degree meter according to ASTM D523-89, incorporated by reference in Section 223.120, or an equivalent method approved by the CARB.

"Non-Flat High-Gloss Coating" means a non-flat coating that registers a gloss of 70 or above on a 60-degree meter according to ASTM D523-89, incorporated by reference into Section 223.120, or an equivalent method approved by the CARB.

"Nonindustrial Use" means any use of architectural coatings except in the construction or maintenance of any of the following: facilities used in the manufacturing of goods and commodities; transportation infrastructure, including highways, bridges, airports and railroads; facilities used in mining activities, including petroleum extraction; utilities infrastructure, including power generation and distribution; and water treatment and distribution systems.

"Nuclear Coating" means a protective coating formulated and recommended to seal porous surfaces such as steel (or concrete) that otherwise would be subject to intrusions by radioactive materials. These coatings must be resistant to long-term (service life) cumulative radiation exposure (ASTM D4082-02, incorporated by reference in Section 223.120), relatively easy to decontaminate, and resistant to various chemicals to which the coatings are likely to be exposed (ASTM D3912-95, incorporated by reference in Section 223.120).

"Post-Consumer Coating" means a finished coating that would have been disposed of in a landfill, having completed its usefulness to a consumer, and does not include manufacturing wastes.

"Pre-Treatment Wash Primer" means a primer that contains a minimum of 0.5 acid, by weight, when tested in accordance with ASTM D1613-03, incorporated by reference into Section 223.120, or an equivalent method approved by the CARB that is labeled and formulated for application directly to bare metal

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surfaces to provide corrosion resistance and to promote adhesion of subsequent topcoats.

"Primer" means a coating labeled and formulated for application to a substrate to provide a firm bind between the substrate and subsequent coats.

"Quick-Dry Enamel" means a non-flat coating that is labeled as specified in Section 223.320(h) and that is formulated to have the following characteristics:

Is capable of being applied directly from the container under normal conditions with ambient temperatures between 16 and 27°C (60 and 80°F); and

When tested in accordance with ASTM D1640-03, incorporated by reference in Section 223.120, or an equivalent method approved by the CARB, sets to touch in two hours or less, is tack free in four hours or less, and dries hard in eight hours or less by the mechanical test method; and

Has a dried film gloss of 70 or above on a 60-degree meter.

"Quick-Dry Primer Sealer and Undercoater" means a "Primer", "Sealer", or "Undercoater" that is dry to the touch in 30 minutes and can be recoated in two hours when tested in accordance with ASTM D1640-03, incorporated by reference in Section 223.120, or an equivalent method approved by the CARB.

"Recycled Coating" means an architectural coating formulated such that not less than 50 percent of the total weight consists of secondary and post-consumer coating, with not less than 10 percent of the total weight consisting of post-consumer coating.

"Residence" means areas where people reside or lodge, including, but not limited to, single and multiple family dwellings, condominiums, mobile homes, apartment complexes, motels, and hotels.

"Roof Coating" means a nonbituminous coating labeled and formulated exclusively for application to roofs for the primary purpose of preventing penetration of the substrate by water or reflecting heat and ultraviolet radiation. Metallic pigmented roof coatings that qualify as metallic pigmented coatings shall not be considered in this category, but shall be considered to be in the metallic pigmented coatings category.

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"Rust Preventive Coating" means a coating formulated exclusively for nonindustrial use to prevent the corrosion of metal surfaces and labeled as specified in Section 223.320(f).

"Sanding Sealer" means a clear or semi-transparent wood coating labeled and formulated for application to bare wood to seal the wood and to provide a coat that can be abraded to create a smooth surface for subsequent applications of coatings. A "Sanding Sealer" that also meets the definition of a "Lacquer" is not included in this category, but it is included in the "Lacquer" category.

"Sealer" means a coating labeled and formulated for application to a substrate for one or more of the following purposes: to prevent subsequent coatings from being absorbed by the substrate, or to prevent harm to subsequent coatings by materials in the substrate.

"Secondary Coating (Rework)" means a fragment of a finished coating or a finished coating from a manufacturing process that has converted resources into a commodity of real economic value, but does not include excess virgin resources of the manufacturing process.

"Shellac" means a clear or opaque coating formulated solely with the resinous secretions of the lac beetle (*Lacifer lacca*), thinned with alcohol, and formulated to dry by evaporation without a chemical reaction.

"Shop Application" means the application of a coating to a product or a component of a product in or on the premises of a factory or a shop as part of a manufacturing, production or repairing process (e.g., original equipment manufacturing coatings).

"Solicit" means to require for use or to specify by written or oral contract.

"Specialty Primer, Sealer, and Undercoater" means a coating labeled as specified in Section 223.320(g) and that is formulated for application to a substrate to seal fire, smoke, or water damage; to condition excessively chalky surfaces; to seal in efflorescence; or to block stains. An excessively chalky surface is one that is defined as having a chalk rating of four or less as determined by ASTM D4214-98, incorporated by reference in Section 223.120, or an equivalent method approved by the CARB.

"Stain" means a clear, semitransparent, or opaque coating labeled and formulated to change the color of a surface, but not conceal the grain pattern or texture.

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"Stone Consolidant" means a coating that is labeled and formulated for application to stone substrates to repair historical structures that have been damaged by weathering or other decay mechanisms. "Stone Consolidants" must penetrate into stone substrates to create bonds between particles and consolidate deteriorated material. "Stone Consolidants" must be specified and used in accordance with ASTM E2167-01, incorporated by reference in Section 223.120. "Stone Consolidants" are for professional use only and must be labeled as such, in accordance with the labeling requirements in Section 223.320.

"Swimming Pool Coating" means a coating labeled and formulated to coat the interior of swimming pools and to resist swimming pool chemicals.

"Swimming Pool Repair and Maintenance Coating" means a rubber-based coating labeled and formulated to be used over existing rubber-based coatings for the repair and maintenance of swimming pools.

"Temperature-Indicator Safety Coating" means a coating labeled and formulated as a color-changing indicator coating for the purpose of monitoring the temperature and safety of the substrate, underlying piping, or underlying equipment, and for application to substrates exposed continuously or intermittently to temperatures above 204°C (400°F).

"Thermoplastic Rubber Coating and Mastics" means a coating or mastic formulated and recommended for application to roofing or other structural surfaces and that incorporates no less than 40 percent by weight of thermoplastic rubbers in the total resin solids and may also contain other ingredients, including, but not limited to, fillers, pigments and modifying resins.

"Tint Base" means an architectural coating to which colorant is added after packaging in sale units to produce a desired color.

"Traffic Marking Coating" means a coating labeled and formulated for marking and striping streets, highways, or other traffic surfaces, including, but not limited to, curbs, berets, driveways, parking lots, sidewalks, and airport runways.

"Undercoater" means a coating labeled and formulated to provide a smooth surface for subsequent coatings.

"Varnish" means a clear or semitransparent wood coating, excluding lacquers and shellacs, formulated to dry by chemical reaction on exposure to air. Varnishes may

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contain small amounts of pigment to color a surface, or to control the final sheen or gloss of the finish.

"VOC Content" shall have the same meaning as "VOM Content."

"VOM Content" means the weight of VOM per volume of coating, calculated according to the procedures specified in Section 223.340(a).

"Waterproofing Concrete/Masonry Sealers" means clear or pigmented sealers that are formulated for sealing concrete and masonry to provide resistance against water, alkalis, acids, ultraviolet light, or staining.

"Waterproofing Sealer" means a coating labeled and formulated for application to a porous substrate for the primary purpose of preventing the penetration of water.

"Wood Preservative" means a coating labeled and formulated to protect exposed wood from decay or insect attack that is registered with USEPA under the Federal Insecticide, Fungicide, and Rodenticide Act (7 USC 136 et seq.).

Section 223.310 Standards

- a) VOM Content Limits: Except as provided in subsection (c), no person shall manufacture, blend, or repackage for sale within Illinois, supply, sell, or offer for sale within Illinois, or solicit for application or apply within Illinois, any architectural coating manufactured on or after July 1, 2009 that contains a VOM content in excess of the corresponding limit specified below:

Coating Category	VOM Content Limit	
	Grams/Liter	
	(Pounds/Gallon)	
1) Flat Coatings	100	(0.8)
2) Non-Flat Coatings	150	(1.3)
3) Non-Flat High-Gloss Coatings	250	(2.1)
Specialty Coatings		
4) Antenna Coatings	530	(4.4)

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5)	Antifouling Coatings	400	(3.3)
6)	Bituminous Roof Coatings	300	(2.5)
7)	Bituminous Roof Primers	350	(2.9)
8)	Bond Breakers	350	(2.9)
9)	Calcamine Recoaters	475	(4.0)
10)	Clear Wood Coatings		
	A) Clear Brushing Lacquers	680	(5.7)
	B) Lacquers (including lacquer sanding sealers)	550	(4.6)
	C) Sanding Sealers (other than lacquer sanding sealers)	350	(2.9)
	D) Varnishes	350	(2.9)
11)	Concrete Curing Compounds	350	(2.9)
	Concrete Surface Retarder	780	(6.5)
12)	Conversion Varnish	725	(6.0)
13)	Dry Fog Coatings	400	(3.3)
14)	Faux Finishing Coatings	350	(2.9)
15)	Fire-Resistive Coatings	350	(2.9)
16)	Fire-Retardant Coatings		
	A) Clear	650	(5.4)

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B)	Opaque	350	(2.9)
17)	Floor Coatings	250	(2.1)
18)	Flow Coatings	420	(3.5)
19)	Form-Release Compounds	250	(2.1)
20)	Graphic Arts Coatings (Sign Paints)	500	(4.2)
21)	High-Temperature Coatings	420	(3.5)
22)	Impacted Immersion Coating	780	(6.5)
23)	Industrial Maintenance Coatings	340	(2.8)
24)	Low-Solids Coatings	120	(1.0)
25)	Magnesite Cement Coatings	450	(3.8)
26)	Mastic Texture Coatings	300	(2.5)
27)	Metallic Pigmented Coatings	500	(4.2)
28)	Multi-Color Coatings	250	(2.1)
29)	Nuclear Coating	450	(3.8)
30)	Pre-Treatment Wash Primers	420	(3.5)
31)	Primers, Sealers, and Undercoaters	200	(1.7)
32)	Quick-Dry Enamels	250	(2.1)
33)	Quick-Dry Primers, Sealers and Undercoaters	200	(1.7)
34)	Recycled Coatings	250	(2.1)
35)	Roof Coatings	250	(2.1)

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36)	Rust Preventive Coatings	400	(3.3)
37)	Shellacs		
	A) Clear	730	(6.1)
	B) Opaque	550	(4.6)
38)	Specialty Primers, Sealers, and Undercoaters	350	(2.9)
39)	Stains	250	(2.1)
40)	Stone Consolidants	450	(3.8)
41)	Swimming Pool Coatings	340	(2.8)
42)	Swimming Pool Repair and Maintenance Coatings	340	(2.8)
43)	Temperature-Indicator Safety Coatings	550	(4.6)
44)	Thermoplastic Rubber Coatings and Mastics	550	(4.6)
45)	Traffic Marking Coatings	150	(1.3)
46)	Waterproofing Concrete/Masonry Sealers	400	(3.3)
47)	Waterproofing Sealers	250	(2.1)
48)	Wood Preservatives	350	(2.9)

BOARD NOTE: Conversion factor: one pound VOM per gallon (U.S.) = 119.95 grams per liter.

- b) Limits are expressed in grams of VOM per liter of coating thinned to the manufacturer's maximum recommendation, excluding the volume of any water, exempt compounds, or colorant added to tint bases. "Manufacturers maximum recommendation" means the maximum recommendation for thinning that is indicated on the label or lid of the coating container.

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- c) Most Restrictive VOM Limit. If anywhere on the container of any architectural coating, or any label or sticker affixed to the container, or in any sales, advertising, or technical literature supplied by a manufacturer or anyone acting on the manufacturer's behalf, any representation is made that indicates that the coating meets the definition of or is recommended for use for more than one of the coating categories listed in subsection (a), then the most restrictive VOM content limit shall apply. This provision does not apply to the coating categories specified in subsections (c)(1) through (c)(21):
- 1) Lacquer coatings (including lacquer sanding sealers);
 - 2) Metallic pigmented coatings;
 - 3) Shellacs;
 - 4) Fire-retardant coatings;
 - 5) Pretreatment wash primers;
 - 6) Industrial maintenance coatings;
 - 7) Low-solids coatings;
 - 8) Wood preservatives;
 - 9) High-temperature coatings;
 - 10) Temperature-indicator safety coatings;
 - 11) Antenna coatings;
 - 12) Antifouling coatings;
 - 13) Flow coatings;
 - 14) Bituminous roof primers;
 - 15) Specialty primers, sealers, and undercoaters;

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- 16) Conversion varnish;
 - 17) Calcimine recoaters;
 - 18) Impacted immersion coatings;
 - 19) Nuclear coatings;
 - 20) Thermoplastic rubber coating and mastics;
 - 21) Concrete surface retarder.
- d) **Painting Practices.** All architectural coating containers used to apply their contents to a surface directly from the container by pouring, siphoning, brushing, rolling, padding, ragging, or other means shall be closed when not in use. These architectural coatings containers include, but are not limited to, drums, buckets, cans, pails, trays, or other application containers. Containers of any VOM-containing materials used for thinning and cleanup shall also be closed when not in use.
- e) **Thinning.** No person who applies or solicits the application of any architectural coating shall apply a coating that is thinned to exceed the applicable VOM limit specified in subsection (a).
- f) **Rust Preventive Coatings.** No person shall apply or solicit the application of any rust preventive coating for industrial use unless the rust preventive coating complies with the industrial maintenance coating VOM limit specified in subsection (a). If the coating is also regulated under another Part, the more restrictive limit shall apply.
- g) **Coatings Not Listed in Subsection (a).** For any coating that does not meet any of the definitions for the specialty coatings categories listed in subsection (a), the VOM content limit shall be determined by classifying the coating as a flat coating, a non-flat coating, or a non-flat high-gloss coating, based on its gloss, as defined in Section 223.307, and the corresponding flat or non-flat coating limit shall apply.

Section 223.320 Container Labeling Requirements

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Each manufacturer of any architectural coatings subject to this Subpart shall display the information listed in subsections (a) through (j) on the coating container in which the coating is sold or distributed (or on its label).

- a) **Date-Code.** The date the coating was manufactured, or a date-code representing the date, shall be indicated on the label, lid or bottom of the container. If the manufacturer uses a date-code for any coating, the manufacturer shall file an explanation of each code with the Agency upon request.
- b) **Thinning Recommendations.** A statement of the manufacturer's recommendation regarding thinning of the coating shall be indicated on the label or lid of the container. This requirement does not apply to the thinning of architectural coatings with water. If thinning of the coating prior to use is not necessary, the recommendation must specify that the coating is to be applied without thinning.
- c) **VOM or VOC Content.** Each container of any coating subject to this Subpart shall display either the maximum or the actual VOM content of the coating, as supplied, or the actual VOM content including the maximum thinning as recommended by the manufacturer. VOM content shall be displayed in grams of VOM per liter of coating. VOM content displayed shall be calculated using product formulation data, or shall be determined using the test methods in Section 223.340(b). The equations in Section 223.340(a) shall be used to calculate VOM content. In each of the above cases, the term "VOC content" shall have the same meaning as "VOM content".
- d) **Industrial Maintenance Coatings.** In addition to the information specified in subsections (a), (b), and (c), each manufacturer of any industrial maintenance coating subject to this Subpart shall display on the label or the lid of the container in which the coating is sold or distributed one or more of the following descriptions:
 - 1) "For industrial use only";
 - 2) "For professional use only";
 - 3) "Not for residential use" or "Not intended for residential use".

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- e) Clear Brushing Lacquers. The labels of all clear brushing lacquers shall prominently display the statements "For brush application only" and "This product must not be thinned or sprayed".
- f) Rust Preventive Coatings. The labels of all rust preventive coatings shall prominently display the statement "For Metal Substrates Only".
- g) Specialty Primers, Sealers, and Undercoaters. The labels of all specialty primers, sealers, and undercoaters shall prominently display one or more of the following descriptions:
 - 1) "For blocking stains";
 - 2) "For fire-damaged substrates";
 - 3) "For smoke-damaged substrates";
 - 4) "For water-damaged substrates";
 - 5) "For excessively chalky substrates".
- h) Quick-Dry Enamels. The labels of all quick dry enamels shall prominently display the words "Quick Dry" and the dry hard time.
- i) Non-Flat High-Gloss Coatings. The labels of all non-flat high-gloss coatings shall prominently display the words "High Gloss."
- j) Stone Consolidants. Effective July 1, 2010, the labels of all stone consolidants shall prominently display the statement "Stone Consolidant – For Professional Use Only".

Section 223.330 Reporting Requirements

- a) Clear Brushing Lacquers. Within 90 days after written request by the Agency, each manufacturer of clear brushing lacquers shall report the following information for products sold in Illinois:
 - 1) The number of gallons of clear brushing lacquers sold in the State during the preceding calendar year; and

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- 2) The method used by the manufacturer to calculate State sales.
- b) Rust Preventive Coatings. Within 90 days after written request by the agency, each manufacturer of rust preventive coatings shall report the following information for products sold in Illinois:
- 1) The number of gallons of rust preventive coatings sold in the State during the preceding calendar year; and
 - 2) The method used by the manufacturer to calculate State sales.
- c) Specialty Primers, Sealers, and Undercoaters. Within 90 days after written request by the Agency, each manufacturer of specialty primers, sealers, and undercoaters shall report the following information for products sold in Illinois:
- 1) The number of gallons of specialty primers, sealers, and undercoaters sold in the State during the preceding calendar year; and
 - 2) The method used by the manufacturer to calculate State sales.
- d) Toxic Exempt Compounds. For each architectural coating that contains perchloroethylene or methylene chloride, within 90 days after written request by the Agency, the manufacturer shall report the following information for products sold in Illinois:
- 1) The product brand name and a copy of the product label with legible usage instructions;
 - 2) The product category listed in Section 223.310(a) to which the coating belongs;
 - 3) The total sales in Illinois, during the calendar year, to the nearest gallon; and
 - 4) The volume percent, to the nearest 0.10 percent, of perchloroethylene and methylene chloride in the coating.
- e) Recycled Coatings.

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- 1) Within 90 days after written request by the Agency, manufacturers of recycled coatings must submit a letter to the Agency self-certifying their status as a Recycled Paint Manufacturer.
- 2) Within 90 days after written request by the Agency, each recycled coatings manufacturer shall report the following information for products sold in Illinois:
 - A) The number of gallons of recycled coatings sold in the State during the preceding calendar year; and
 - B) The method used by the manufacturer to calculate State sales.
- f) Bituminous Coatings. Within 90 days after written request by the Agency, each manufacturer of bituminous roof coatings or bituminous roof primers shall report the following information for products sold in Illinois:
 - 1) The number of gallons of bituminous roof coatings or bituminous roof primers sold in the State during the preceding calendar year; and
 - 2) The method used by the manufacturer to calculate State sales.

Section 223.340 Compliance Provisions and Test Methods

- a) Calculation of VOM Content. For the purpose of determining compliance with the VOM content limits in Section 223.310(a), the VOM content of a coating shall be determined by using the procedures described in subsection (a)(1) or (a)(2), as appropriate. The VOM content of a tint base shall be determined without colorant that is added after the tint base is manufactured.
 - 1) With the exception of low solids coatings, determine the VOM content in grams of VOM per liter of coating thinned to the manufacturer's maximum recommendation, excluding the volume of any water and exempt compounds. Determine the VOM content as follows:

$$VOM_{contents} = \frac{(W_s - W_w - W_{em})}{(V_m - V_w - V_{em})}$$

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Where:

VOM content	=	grams of VOM per liter of coating
W_s	=	weight of volatiles, in grams
W_w	=	weight of water, in grams
W_{em}	=	weight of exempt materials, in grams
V_m	=	volume of coating, in liters
V_w	=	volume of water, in liters
V_{em}	=	volume of exempt materials, in liters

- 2) For low solids coatings, determine the VOM content in units of grams of VOM per liter of coating thinned to the manufacturer's maximum recommendation, including the volume of any water and exempt compounds. Determine the VOM content as follows:

$$VOMcontent(1s) = \frac{(W_s - W_w - W_{em})}{(V_m)}$$

Where:

VOM content	=	the VOM content of a low solids coating in grams per liter of coating
W_s	=	weight of volatiles, in grams
W_w	=	weight of water, in grams
W_{em}	=	weight of exempt materials, in grams
V_m	=	volume of coating, in liters

- b) VOM Content of Coatings. To determine the physical properties of a coating in order to perform the calculations in subsection (a), the reference method for VOM content is USEPA Method 24, incorporated by reference in Section 223.120, except as provided in Sections 223.350 and 223.360. An alternative method to determine the VOM content of coatings is SCAQMD Method 304-91, incorporated by reference in Section 223.120. The exempt compounds content shall be determined by SCAQMD Method 303-91, incorporated by reference in Section 223.120. To determine the VOM content of a coating, the manufacturer may use USEPA Method 24, or an equivalent alternative method as provided in Section 223.350, formulation data, or any other reasonable means for predicting that the coating has been formulated as intended (e.g., quality assurance checks, recordkeeping). However, if there are any inconsistencies between the results of a Method 24 test and any other means for determining VOM content, the Method

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24 results will govern, except when an equivalent alternative method is approved as specified in Section 223.350. The Agency may require the manufacturer to conduct a Method 24 analysis.

Section 223.350 Alternative Test Methods

Other test methods demonstrated to provide results that are acceptable for purposes of determining compliance with Section 223.340(b), after review and approval in writing by the Agency and USEPA, may also be used.

Section 223.360 Methacrylate Traffic Coating Markings

Analysis of methacrylate multi-component coatings used as traffic marking coatings shall be conducted according to a modification of USEPA Method 24, incorporated by reference in Section 223.120, or an equivalent method approved by the CARB. This method has not been approved for methacrylate multi-component coatings used for purposes other than as traffic marking coatings or for other classes of multi-component coatings.

Section 223.370 Test Methods

The following test methods are incorporated by reference in Section 223.120 and shall be used to test coatings subject to the provisions of this Subpart:

- a) **Flame Spread Index.** The flame spread index of a fire-retardant coating shall be determined by ASTM E84-07, Standard Test Method for Surface Burning Characteristics of Building Materials (see Section 223.307, Fire-Retardant Coating), or an equivalent method approved by the CARB.
- b) **Fire-Resistance Rating.** The fire-resistance rating of a fire-resistive coating shall be determined by ASTM E119-05a, Standard Test Methods for Fire Tests of Building Construction Materials (see Section 223.307, Fire-Resistive Coating), or an equivalent method approved by the CARB.
- c) **Gloss Determination.** The gloss of a coating shall be determined by ASTM D523-89, Standard Test Method for Specular Gloss (see Section 223.307, Flat Coating, Non-Flat Coating, Non-Flat High-Gloss Coating, and Quick-Dry Enamel), or an equivalent method approved by the CARB.

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- d) Metal Content of Coatings. The metallic content of a coating shall be determined by SCAQMD Method 318-95, Determination of Weight Percent Elemental Metal in Coatings by X-Ray Diffraction, SCAQMD Laboratory Methods of Analysis for Enforcement Samples (see Section 223.307, Metallic Pigmented Coating).
- e) Acid Content of Coatings. The acid content of a coating shall be determined by ASTM D1613-03, Standard Test Method for Acidity in Volatile Solvents and Chemical Intermediates Used in Paint, Varnish, Lacquer and Related Products (see Section 223.307, Pre-Treatment Wash Primer), or an equivalent method approved by the CARB.
- f) Drying Times. The set-to-touch, dry-hard, dry-to-touch and dry-to-recoat times of a coating shall be determined by ASTM D1640-03, Standard Methods for Drying, Curing, or Film Formation of Organic Coatings at Room Temperature (see Section 223.307, Quick-Dry Enamel and Quick-Dry Primer, Sealer, and Undercoater). The tack free time of a quick-dry enamel coating shall be determined by the Mechanical Test Method of ASTM D1640-03, or an equivalent method approved by the CARB.
- g) Surface Chalkiness. The chalkiness of a surface shall be determined using ASTM D4214-98, Standard Test Methods for Evaluating the Degree of Chalking of Exterior Paint Films (see Section 223.307, Specialty Primer, Sealer, and Undercoater), or an equivalent method approved by the CARB.
- h) Exempt Compounds – Siloxanes. Exempt compounds that are cyclic, branched, or linear, completely methylated siloxanes shall be analyzed as exempt compounds for compliance with Section 223.340 by BAAQMD Method 43, Determination of Volatile Methylsiloxanes in Solvent-Based Coatings, Inks, and Related Materials, BAAQMD Manual of Procedures, Volume III (see Section 223.307, VOM Content, and Section 223.340(b)).
- i) Exempt Compounds – Parachlorobenzotrifluoride (PCBTF). The exempt compound parachlorobenzotrifluoride shall be analyzed as an exempt compound for compliance with Section 223.340 by BAAQMD Method 41, Determination of Volatile Organic Compounds in Solvent-Based Coatings and Related Materials Containing Parachlorobenzotrifluoride, BAAQMD Manual of Procedures, Volume III (see Section 223.307, VOM Content, and Section 223.340(b)).

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- j) Exempt Compounds. The content of compounds exempt under USEPA Method 24 shall be analyzed by SCAQMD Method 303-91, Determination of Exempt Compounds, SCAQMD Laboratory Methods of Analysis for Enforcement Samples (see Section 223.307, VOM Content, and Section 223.340(b)).
- k) VOM Content of Coatings. The VOM content of a coating shall be determined by USEPA Method 24 as it exists in Appendix A of 40 CFR 60, Determination of Volatile Matter Content, Water Content, Density, Volume Solids, and Weight Solids of Surface Coatings (see Section 223.340(b)), or an equivalent method approved by the CARB.
- l) Alternative VOM Content of Coatings. The VOM content of coatings may be analyzed by either USEPA Method 24 or SCAQMD Method 304-91, Determination of Volatile Organic Compounds (VOC) in Various Materials, SCAQMD Laboratory Methods of Analysis for Enforcement Samples (see Section 223.340(b)).
- m) Methacrylate Traffic Marking Coatings. The VOM content of methacrylate multicomponent coatings used as traffic marking coatings shall be analyzed by the procedures in 40 CFR 59, subpart D, appendix A, Determination of Volatile Matter Content of Methacrylate Multicomponent Coatings Used as Traffic Marking Coatings (see Section 223.360), or an equivalent method approved by the CARB.

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- 1) Heading of the Part: Hospital Licensing Requirements
- 2) Code Citation: 77 Ill. Adm. Code 250
- 3) Section Number: 250.1220 Adopted Action:
Amend
- 4) Statutory Authority: Hospital Licensing Act [210 ILCS 85]
- 5) Effective Date of Rulemaking: June 2, 2009
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the Department's principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: December 26, 2008; 32 Ill. Reg. 19883
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between proposal and final version: None
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of the Rulemaking: Part 250 regulates hospitals, including patient care, staffing, nursing, the physical plant, and the staffing of operating rooms. Public Act 94-0915, enacted in 2006, amended the Hospital Licensing Act to mandate that a licensed registered nurse function as a circulating nurse during all invasive or operative procedures conducted in hospitals.

Section 250.1220 (Surgical Staff) has been amended to implement the statutory language of the Act, including a statutory definition of "circulating nurse."

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

Susan Meister
Division of Legal Services
Department of Public Health
535 West Jefferson, Fifth Floor
Springfield, Illinois 62761

217/782-2043
e-mail: dph.rules@illinois.gov

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

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NOTICE OF ADOPTED AMENDMENT

TITLE 77: PUBLIC HEALTH

CHAPTER I: DEPARTMENT OF PUBLIC HEALTH

SUBCHAPTER b: HOSPITALS AND AMBULATORY CARE FACILITIES

PART 250

HOSPITAL LICENSING REQUIREMENTS

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Section

- 250.110 Application for and Issuance of Permit to Establish a Hospital
- 250.120 Application for and Issuance of a License to Operate a Hospital
- 250.130 Administration by the Department
- 250.140 Hearings
- 250.150 Definitions
- 250.160 Incorporated and Referenced Materials

SUBPART B: ADMINISTRATION AND PLANNING

Section

- 250.210 The Governing Board
- 250.220 Accounting
- 250.230 Planning
- 250.240 Admission and Discharge
- 250.250 Visiting Rules
- 250.260 Patients' Rights
- 250.265 Language Assistance Services
- 250.270 Manuals of Procedure
- 250.280 Agreement with Designated Organ Procurement Agencies

SUBPART C: THE MEDICAL STAFF

Section

- 250.310 Organization
- 250.315 House Staff Members
- 250.320 Admission and Supervision of Patients
- 250.330 Orders for Medications and Treatments
- 250.340 Availability for Emergencies

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SUBPART D: PERSONNEL SERVICE

Section	
250.410	Organization
250.420	Personnel Records
250.430	Duty Assignments
250.435	Health Care Worker Background Check
250.440	Education Programs
250.450	Personnel Health Requirements
250.460	Benefits

SUBPART E: LABORATORY

Section	
250.510	Laboratory Services
250.520	Blood and Blood Components
250.525	Designated Blood Donor Program
250.530	Proficiency Survey Program (Repealed)
250.540	Laboratory Personnel (Repealed)
250.550	Western Blot Assay Testing Procedures (Repealed)

SUBPART F: RADIOLOGICAL SERVICES

Section	
250.610	General Diagnostic Procedures and Treatments
250.620	Radioactive Isotopes
250.630	General Policies and Procedures Manual

SUBPART G: GENERAL HOSPITAL EMERGENCY SERVICE

Section	
250.710	Classification of Emergency Services
250.720	General Requirements
250.725	Notification of Emergency Personnel
250.730	Community or Areawide Planning
250.740	Disaster and Mass Casualty Program
250.750	Emergency Services for Sexual Assault Victims

SUBPART H: RESTORATIVE AND REHABILITATION SERVICES

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Section

250.810	Applicability of Other Parts of These Requirements
250.820	General
250.830	Classifications of Restorative and Rehabilitation Services
250.840	General Requirements for all Classifications
250.850	Specific Requirements for Comprehensive Physical Rehabilitation Services
250.860	Medical Direction
250.870	Nursing Care
250.880	Additional Allied Health Services
250.890	Animal-Assisted Therapy

SUBPART I: NURSING SERVICE AND ADMINISTRATION

Section

250.910	Nursing Services
250.920	Organizational Plan
250.930	Role in hospital planning
250.940	Job descriptions
250.950	Nursing committees
250.960	Specialized nursing services
250.970	Nursing Care Plans
250.980	Nursing Records and Reports
250.990	Unusual Incidents
250.1000	Meetings
250.1010	Education Programs
250.1020	Licensure
250.1030	Policies and Procedures
250.1035	Domestic Violence Standards
250.1040	Patient Care Units
250.1050	Equipment for Bedside Care
250.1060	Drug Services on Patient Unit
250.1070	Care of Patients
250.1075	Use of Restraints
250.1080	Admission Procedures Affecting Care
250.1090	Sterilization and Processing of Supplies
250.1100	Infection Control
250.1110	Mandatory Overtime Prohibition
250.1120	Staffing Levels

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SUBPART J: SURGICAL AND RECOVERY ROOM SERVICES

- Section
- 250.1210 Surgery
 - 250.1220 Surgery Staff
 - 250.1230 Policies & Procedures
 - 250.1240 Surgical Privileges
 - 250.1250 Surgical Emergency Care
 - 250.1260 Operating Room Register and Records
 - 250.1270 Surgical Patients
 - 250.1280 Equipment
 - 250.1290 Safety
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 - 250.1305 Visitors in Operating Room
 - 250.1310 Cleaning of Operating Room
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SUBPART K: ANESTHESIA SERVICES

- Section
- 250.1410 Anesthesia Service

SUBPART L: RECORDS AND REPORTS

- Section
- 250.1510 Medical Records
 - 250.1520 Reports

SUBPART M: FOOD SERVICE

- Section
- 250.1610 Dietary Department Administration
 - 250.1620 Facilities
 - 250.1630 Menus and Nutritional Adequacy
 - 250.1640 Diet Orders
 - 250.1650 Frequency of Meals
 - 250.1660 Therapeutic (Modified) Diets
 - 250.1670 Food Preparation and Service

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250.1680 Sanitation

SUBPART N: HOUSEKEEPING AND LAUNDRY SERVICES

Section

- 250.1710 Housekeeping
- 250.1720 Garbage, Refuse and Solid Waste Handling and Disposal
- 250.1730 Insect and Rodent Control
- 250.1740 Laundry Service
- 250.1750 Soiled Linen
- 250.1760 Clean Linen

SUBPART O: MATERNITY AND NEONATAL SERVICE

Section

- 250.1810 Applicability of other Parts of these regulations
- 250.1820 Maternity and Neonatal Service (Perinatal Service)
- 250.1830 General Requirements for All Maternity Departments
- 250.1840 Discharge of Newborn Infants from Hospital
- 250.1850 Rooming-In Care of Mother and Infant
- 250.1860 Special Programs
- 250.1870 Single Room Maternity Care

SUBPART P: ENGINEERING AND MAINTENANCE OF THE PHYSICAL PLANT, SITE, EQUIPMENT, AND SYSTEMS – HEATING, COOLING, ELECTRICAL, VENTILATION, PLUMBING, WATER, SEWER, AND SOLID WASTE DISPOSAL

Section

- 250.1910 Maintenance
- 250.1920 Emergency electric service
- 250.1930 Water Supply
- 250.1940 Ventilation, Heating, Air Conditioning, and Air Changing Systems
- 250.1950 Grounds and Buildings Shall be Maintained
- 250.1960 Sewage, Garbage, Solid Waste Handling and Disposal
- 250.1970 Plumbing
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SUBPART Q: CHRONIC DISEASE HOSPITALS

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Section

- 250.2010 Definition
- 250.2020 Requirements

SUBPART R: PHARMACY OR DRUG AND MEDICINE SERVICE

Section

- 250.2110 Service Requirements
- 250.2120 Personnel Required
- 250.2130 Facilities for Services
- 250.2140 Pharmacy and Therapeutics Committee

SUBPART S: PSYCHIATRIC SERVICES

Section

- 250.2210 Applicability of other Parts of these Regulations
- 250.2220 Establishment of a Psychiatric Service
- 250.2230 The Medical Staff
- 250.2240 Nursing Service
- 250.2250 Allied Health Personnel
- 250.2260 Staff and Personnel Development and Training
- 250.2270 Admission, Transfer and Discharge Procedures
- 250.2280 Care of Patients
- 250.2290 Special Medical Record Requirements for Psychiatric Hospitals and Psychiatric Units of General Hospitals or General Hospitals Providing Psychiatric Care
- 250.2300 Diagnostic, Treatment and Physical Facilities and Services

SUBPART T: DESIGN AND CONSTRUCTION STANDARDS

Section

- 250.2410 Applicability of these Standards
- 250.2420 Submission of Plans for New Construction, Alterations or Additions to Existing Facility
- 250.2430 Preparation of Drawings and Specifications – Submission Requirements
- 250.2440 General Hospital Standards
- 250.2442 Fees
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250.2470	Structural
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250.2490	Plumbing and Other Piping Systems
250.2500	Electrical Requirements

SUBPART U: CONSTRUCTION STANDARDS FOR EXISTING HOSPITALS

Section

250.2610	Applicability of these Standards
250.2620	Codes and Standards
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250.2640	Details
250.2650	Finishes
250.2660	Mechanical
250.2670	Plumbing and Other Piping Systems
250.2680	Electrical Requirements

SUBPART V: SPECIAL CARE AND/OR SPECIAL SERVICE UNITS

Section

250.2710	Special Care and/or Special Service Units
250.2720	Day Care for Mildly Ill Children

SUBPART W: ALCOHOLISM AND INTOXICATION TREATMENT SERVICES

Section

250.2810	Applicability of Other Parts of These Requirements
250.2820	Establishment of an Alcoholism and Intoxication Treatment Service
250.2830	Classification and Definitions of Service and Programs
250.2840	General Requirements for all Hospital Alcoholism Program Classifications
250.2850	The Medical and Professional Staff
250.2860	Medical Records
250.2870	Referral
250.2880	Client Legal and Human Rights

250.APPENDIX A Codes and Standards (Repealed)

250.EXHIBIT A	Codes (Repealed)
250.EXHIBIT B	Standards (Repealed)
250.EXHIBIT C	Addresses of Sources (Repealed)

DEPARTMENT OF PUBLIC HEALTH

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250.ILLUSTRATION A	Seismic Zone Map
250.TABLE A	Measurements Essential for Level I, II, III Hospitals
250.TABLE B	Sound Transmission Limitations in General Hospitals
250.TABLE C	Filter Efficiencies for Central Ventilation and Air Conditioning Systems in General Hospitals (Repealed)
250.TABLE D	General Pressure Relationships and Ventilation of Certain Hospital Areas (Repealed)
250.TABLE E	Piping Locations for Oxygen, Vacuum and Medical Compressed Air
250.TABLE F	General Pressure Relationships and Ventilation of Certain Hospital Areas
250.TABLE G	Insulation/Building Perimeter

AUTHORITY: Implementing and authorized by the Hospital Licensing Act [210 ILCS 85].

SOURCE: Rules repealed and new rules adopted August 27, 1978; emergency amendment at 2 Ill. Reg. 31, p. 73, effective July 24, 1978, for a maximum of 150 days; amended at 2 Ill. Reg. 21, p. 49, effective May 16, 1978; emergency amendment at 2 Ill. Reg. 31, p. 73, effective July 24, 1978, for a maximum of 150 days; amended at 2 Ill. Reg. 45, p. 85, effective November 6, 1978; amended at 3 Ill. Reg. 17, p. 88, effective April 22, 1979; amended at 4 Ill. Reg. 22, p. 233, effective May 20, 1980; amended at 4 Ill. Reg. 25, p. 138, effective June 6, 1980; amended at 5 Ill. Reg. 507, effective December 29, 1980; amended at 6 Ill. Reg. 575, effective December 30, 1981; amended at 6 Ill. Reg. 1655, effective January 27, 1982; amended at 6 Ill. Reg. 3296, effective March 15, 1982; amended at 6 Ill. Reg. 7835 and 7838, effective June 17, 1982; amended at 7 Ill. Reg. 962, effective January 6, 1983; amended at 7 Ill. Reg. 5218 and 5221, effective April 4, 1983 and April 5, 1983; amended at 7 Ill. Reg. 6964, effective May 17, 1983; amended at 7 Ill. Reg. 8546, effective July 12, 1983; amended at 7 Ill. Reg. 9610, effective August 2, 1983; codified at 8 Ill. Reg. 19752; amended at 8 Ill. Reg. 24148, effective November 29, 1984; amended at 9 Ill. Reg. 4802, effective April 1, 1985; amended at 10 Ill. Reg. 11931, effective September 1, 1986; amended at 11 Ill. Reg. 10283, effective July 1, 1987; amended at 11 Ill. Reg. 10642, effective July 1, 1987; amended at 12 Ill. Reg. 15080, effective October 1, 1988; amended at 12 Ill. Reg. 16760, effective October 1, 1988; amended at 13 Ill. Reg. 13232, effective September 1, 1989; amended at 14 Ill. Reg. 2342, effective February 15, 1990; amended at 14 Ill. Reg. 13824, effective September 1, 1990; amended at 15 Ill. Reg. 5328, effective May 1, 1991; amended at 15 Ill. Reg. 13811, effective October 1, 1991; amended at 17 Ill. Reg. 1614, effective January 25, 1993; amended at 17 Ill. Reg. 17225, effective October 1, 1993; amended at 18 Ill. Reg. 11945, effective July 22, 1994; amended at 18 Ill. Reg. 15390, effective October 10, 1994; amended at 19 Ill. Reg. 13355, effective September 15, 1995; emergency amendment at 20 Ill. Reg. 474, effective January 1, 1996, for a maximum of 150 days; emergency expired May 29, 1996; amended at 20 Ill. Reg. 3234, effective February 15, 1996; amended at 20 Ill. Reg. 10009, effective July 15, 1996; amended at 22 Ill. Reg. 3932,

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effective February 13, 1998; amended at 22 Ill. Reg. 9342, effective May 20, 1998; amended at 23 Ill. Reg. 1007, effective January 15, 1999; emergency amendment at 23 Ill. Reg. 3508, effective March 4, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 9513, effective August 1, 1999; amended at 23 Ill. Reg. 13913, effective November 15, 1999; amended at 24 Ill. Reg. 6572, effective April 11, 2000; amended at 24 Ill. Reg. 17196, effective November 1, 2000; amended at 25 Ill. Reg. 3241, effective February 15, 2001; amended at 27 Ill. Reg. 1547, effective January 15, 2003; amended at 27 Ill. Reg. 13467, effective July 25, 2003; amended at 28 Ill. Reg. 5880, effective March 29, 2004; amended at 28 Ill. Reg. 6579, effective April 15, 2004; amended at 29 Ill. Reg. 12489, effective July 27, 2005; amended at 31 Ill. Reg. 4245, effective February 20, 2007; amended at 31 Ill. Reg. 14530, effective October 3, 2007; amended at 32 Ill. Reg. 3756, effective February 27, 2008; amended at 32 Ill. Reg. 4213, effective March 10, 2008; amended at 32 Ill. Reg. 7932, effective May 12, 2008; amended at 32 Ill. Reg. 14336, effective August 12, 2008; amended at 33 Ill. Reg. 8306, effective June 2, 2009.

SUBPART J: SURGICAL AND RECOVERY ROOM SERVICES

Section 250.1220 Surgery Staff

- a) A current roster of physicians, dentists, and podiatrists shall be maintained in the surgical suite and [be](#) available to the surgical nursing and medical staff.
- b) The supervisory nurse of direct patient care shall be a registered professional nurse, knowledgeable in invasive and diagnostic as well as operating room procedures.
- c) *A registered nurse, qualified by training and experience in operating room nursing, shall be present in the operating room and function as the circulating nurse during all invasive or operative procedures. As used in this subsection, "circulating nurse" means a registered nurse who is responsible for coordinating all nursing care, patient safety needs, and the needs of the surgical team in the operating room during an invasive or operative procedure. (Section 10.7(2.5) of the Act)*

(Source: Amended at 33 Ill. Reg. 8306, effective June 2, 2009)

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1) Heading of the Part: Freestanding Emergency Center Code

2) Code Citation: 77 Ill. Adm. Code 518

<u>Section Numbers:</u>	<u>Adopted Action:</u>
518.1000	Amend
518.1050	Amend
518.1100	Amend
518.1150	Amend
518.1155	New
518.1160	New
518.1165	New
518.1250	Amend
518.1500	Amend
518.1550	Amend
518.1600	Amend
518.1610	Amend
518.1700	Amend
518.1800	Amend
518.1900	Amend
518.1950	Amend
518.2000	Amend
518.2010	Amend
518.2020	Amend
518.2030	Amend
518.2060	Amend
518.2070	Amend
518.2090	Amend
518.2100	Amend
518.2110	Amend
518.2120	Amend
518.2130	Amend
518.2140	Amend
518.2150	Amend
518.2160	Amend
518.2170	Amend
518.2180	Amend
518.2190	Amend
518.2200	Amend
518.2210	Amend

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518.2220	Amend
518.2230	Amend
518.2240	Amend
518.TABLE A	Amend
518.TABLE C	New

- 4) Statutory Authority: Emergency Medical Services (EMS) Systems Act [210 ILCS 50]
- 5) Effective Date of Rulemaking: June 4, 2009
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? Yes
- 9) A copy of the adopted amendments, including any material incorporated by reference, is on file in the Department's principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: December 1, 2008; 32 Ill. Reg. 18149
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between proposal and final version:

The following changes were made in response to comments received during the first notice or public comment period:

1. In 518.1000, in the definition for Pharmacy, "set forth by rule," was replaced with "pursuant to Pharmacy Practice Act (68 Adm. Code 1330)."
2. In subsection 518.1050(c)(3), "V Department of Financial and Professional Regulation, Pharmacy Practice Act (68 Adm. Code 1330)" was inserted.
3. In subsection 518.1100(a), "may" was changed to "shall".
4. Beginning in subsection 518.1100(b), the following:
"b)e) A freestanding emergency center shall be *located*:
 - 1) *In a municipality with a population of 75,000 ~~60,000~~ or fewer inhabitants;*

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- 2) ~~*Either in a municipality that has a hospital that has been providing emergency services but is expected to close by the end of 1997 or in a county with a population of more than 350,000 but less than 500,000 inhabitants;*~~
- 2)3) *Within ~~2015~~ miles of the hospital that owns or controls the freestanding emergency center; and*
- 3)4) *Within ~~2010~~ miles of the Resource Hospital affiliated with the freestanding emergency center as part of the EMS system. (Section 32.5(a)(1) of the Act)”*

was changed to:

- "b)e) A freestanding emergency center shall ~~be~~ meet the following requirements ~~be located:~~
- 1) *is located:*
- A) *in ~~in~~ a municipality with a population of 75,000 ~~60,000~~ or fewer inhabitants;*
- 2) ~~*Either in a municipality that has a hospital that has been providing emergency services but is expected to close by the end of 1997 or in a county with a population of more than 350,000 but less than 500,000 inhabitants;*~~
- B)3) *within ~~Within~~ 2015 miles of the hospital that owns or controls the freestanding emergency center; and*
- C)4) *within ~~Within~~ 2010 miles of the Resource Hospital affiliated with the freestanding emergency center as part of the EMS system.*
- 2) *is wholly owned or controlled by an Associate or Resource Hospital, but is not a part of the hospital's physical plant;*
- 3) *meets the standards for licensed FECs, adopted in this Part, including, but not limited to:*

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- A) facility design, specification, operation, and maintenance standards;
 - B) equipment standards; and
 - C) the number and qualifications of emergency medical personnel and other staff, which must include at least one board certified emergency physician present at the FEC 24 hours per day.
- 4) limits its participation in the EMS System strictly to receiving a limited number of BLS runs by emergency medical vehicles according to protocols developed by the Resource Hospital within the FEC's designated EMS System and approved by the Project Medical Director and the Department;
 - 5) provides comprehensive emergency treatment services, as defined in the rules adopted by the Department pursuant to the Hospital Licensing Act, 24 hours per day, on an outpatient basis;
 - 6) provides an ambulance and maintains on site ambulance services staffed with paramedics 24 hours per day;
 - 7) maintains helicopter landing capabilities approved by appropriate State and federal authorities;
 - 8) complies with all State and federal patient rights provisions, including, but not limited to, the Emergency Medical Treatment Act and the federal Emergency Medical Treatment and Active Labor Act;
 - 9) maintains a communications system that is fully integrated with its Resource Hospital within the FEC's designated EMS System;
 - 10) reports to the Department any patient transfers from the FEC to a hospital within 48 hours of the transfer plus any other data determined to be relevant by the Department;

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- 11) submits to the Department, on a quarterly basis, the FEC's morbidity and mortality rates for patients treated at the FEC and other data determined to be relevant by the Department;
 - 12) does not describe itself or hold itself out to the general public as a full service hospital or hospital emergency department in its advertising or marketing activities;
 - 13) complies with any other rules adopted by the Department under this Act that relate to FECs;
 - 14) passes the Department's site inspection for compliance with the FEC requirements of this Act;
 - 15) submits a copy of the permit issued by the Illinois Health Facilities Planning Board indicating that the facility has complied with the Illinois Health Facilities Planning Act with respect to the health services to be provided at the facility;
 - 16) submits an application for designation as an FEC in a manner and form prescribed by the Department by rule; and
 - 17) pays the annual license fee as determined by the Department. (Section 32.5(a)(1) of the Act)".
5. In subsection 518.1165(a), "fines" was deleted.
 6. In subsection 518.2030(g), lines 2 and 3, "transport" was inserted between "emergency" and "personnel".

The following changes were made in response to comments and suggestions of the JCAR:

1. In subsection 518.1100(b)(5), first line, "the" was changed to "Hospital Licensing Requirements (77 Ill. Adm. Code 250)".
2. In the second line of subsection 518.1100(b)(5), "rules adopted by the Department pursuant to the Hospital Licensing Act," was deleted.

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

- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of the Rulemaking:

The Freestanding Emergency Center Demonstration Program Code regulates freestanding emergency centers, including licensing, nursing services, physical plant, patient rights, violations, fines, and the scope of services they may provide.

The rulemaking implements Public Act 93-372 and Public Act 95-584. PA 93-372 struck language from the Emergency Medical Services (EMS) Act [210 ILCS 50] (the Act) that identified freestanding emergency centers (FECs) as a demonstration program, struck the sunset clause that terminated the demonstration program on September 1, 2003, and added new language requiring any facility that applied for a license as an FEC to have first participated in the demonstration program.

PA 95-584 requires that FECs receive a permit from the Health Facilities Planning Board prior to applying for licensure, sets June 30, 2009, as the deadline for applying for a new license, and strikes the language requiring prior participation in the demonstration program. Sections 518.1100 and 518.1150 are amended to reflect these new requirements. Also, "Demonstration Program" is struck from the name of the Part.

Section 518.1155 (Application for Annual License Renewal) is added to establish the minimum requirements for annual renewal of an FEC license.

Section 518.1160 (Surveys) is added to establish minimum standards for annual inspections of FECs.

Section 518.1165 (Complaints) is added to establish the minimum standards for investigating complaints against FECs, including requests for hearings.

The rest of the amendments update the minimum standards for fines and hearings, personnel services, nursing services, infection control and processing supplies, life safety,

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submission of architectural plans and drawings, and various physical plant requirements, and update the requirements for treating sexual assault survivors.

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

Susan Meister
Division of Legal Services
Department of Public Health
535 West Jefferson, Fifth Floor
Springfield, Illinois 62761

217/782-2043
e-mail: dph.rules@illinois.gov

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

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NOTICE OF ADOPTED AMENDMENTS

TITLE 77: PUBLIC HEALTH

CHAPTER I: DEPARTMENT OF PUBLIC HEALTH

SUBCHAPTER f: EMERGENCY SERVICES AND HIGHWAY SAFETY

PART 518

FREESTANDING EMERGENCY CENTER ~~DEMONSTRATION PROGRAM~~ CODE

Section

518.1000	Definitions
518.1050	Incorporated and Referenced Materials
518.1100	Freestanding Emergency Center Licensure Demonstration Program
518.1150	Initial Licensure Application and Renewal
518.1155	Application for Annual License Renewal
518.1160	Surveys
518.1165	Complaints
518.1200	Emergency Suspension Orders
518.1250	Violations, and Hearings and Fines
518.1300	Governing Board
518.1350	Provision of Emergency Services
518.1400	EMS System Participation
518.1450	Patients' Rights
518.1500	Language Assistance Services
518.1550	Personnel Services
518.1600	Personnel Requirements
518.1610	Health Care Worker Background Check
518.1650	Medical Staff Organization
518.1700	Nursing Services
518.1750	Accounting
518.1800	Quality Assurance and Reporting
518.1850	Orders for Medications and Treatments
518.1900	Infection Control
518.1950	Sterilization and Processing of Supplies
518.2000	Laboratory Services
518.2010	Radiological Services
518.2020	Comprehensive Emergency Treatment Services
518.2030	Notification of Emergency Personnel
518.2040	Community or Areawide Planning
518.2050	Disaster and Mass Casualty Program
518.2060	Emergency Services for Sexual Assault Survivors Victims
518.2070	Pharmacy Service

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518.2080	Housekeeping Service
518.2090	Insect and Rodent Control
518.2100	Laundry Service
518.2110	Food Service
518.2120	Maintenance
518.2130	Fire Safety
518.2140	Water Supply
518.2150	Garbage, Waste and Sewage Handling and Disposal
518.2160	Submission of Architectural Plans
518.2170	Preparation of Drawings and Specifications – Submission Requirements
518.2180	Construction Details
518.2190	Finishes
518.2200	Structural Requirements
518.2210	Mechanical Requirements
518.2220	Plumbing and Other Piping Systems
518.2230	Electrical Requirements
518.2240	Building Requirements
518.ILLUSTRATION A	Seismic Zone Map
518.TABLE A	Piping Locations for Oxygen, Vacuum and Medical Compressed Air
518.TABLE B	Insulation/Building Perimeter
518.TABLE C	Minimum Efficiency Reporting Values

AUTHORITY: Implementing and authorized by Section 32.5 of the Emergency Medical Services (EMS) Systems Act [210 ILCS 50].

SOURCE: Adopted at 22 Ill. Reg. 13756, effective July 10, 1998; amended at 24 Ill. Reg. 14026, effective August 31, 2000; amended at 27 Ill. Reg. 8456, effective May 15, 2003; amended at 33 Ill. Reg. 8317, effective June 4, 2009.

Section 518.1000 Definitions

For the purposes of this Part:

Act – the Emergency Medical Services (EMS) Systems Act [210 ILCS 50].

[Advanced Life Support Services or ALS Services – an advanced level of pre-hospital and inter-hospital emergency care and non-emergency medical care that includes basic life support care, cardiac monitoring, cardiac defibrillation, electrocardiography, intravenous therapy, administration of medications, drugs and solutions, use of adjunctive medical devices, trauma care, and other](#)

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authorized techniques and procedures as outlined in the Advanced Life Support National Curriculum of the United States Department of Transportation and any modifications to that curriculum specified in this Part and in the Emergency Medical Services and Trauma Center Code. (Section 3.10 of the Act)

Advanced Practice Nurse or APN – has the meanings ascribed in Section 50-10 of the Nurse Practice Act.

Allied Health Personnel – persons other than medical staff members, licensed or registered by the State of Illinois or recognized by an organization acceptable to the Department, including Advanced Practice Nurses and Physician's Assistants, and recognized to so function by the medical staff and the governing authority of the freestanding emergency center.

Ambulance – any publicly or privately owned on-road vehicle that is specifically designed, constructed or modified and equipped ~~for~~, and is intended to be used for, and is maintained or operated for, the emergency transportation of persons who are sick, injured, wounded or otherwise incapacitated or helpless, or the non-emergency medical transportation of persons who require the presence of medical personnel to monitor the individual's condition or medical apparatus being used on such individuals~~an individual~~. (Section 3.85 of the Act)

Ambulance Service Provider or Ambulance Provider – any individual, group of individuals, corporation, partnership, association, trust, joint venture, unit of local government or other public or private ownership entity that owns and operates a business or service using one or more ambulances or EMS vehicles for the transportation of emergency patients.

Associate Hospital – a hospital participating in an approved EMS System in accordance with the EMS System Program Plan; fulfilling the same clinical and communications requirements as the Resource Hospital; having a basic or comprehensive emergency department with 24-hour physician coverage; and having a functioning intensive care unit and/or a cardiac care unit.

Auxiliary Nursing Personnel – unlicensed direct care staff or unlicensed staff providing direct patient care or unlicensed staff providing care directly to patients.

Basic Life Support ~~(BLS)-Services~~ or BLS – a basic level of pre-hospital and inter-hospital emergency care and non-emergency medical care that includes airway management, cardiopulmonary resuscitation ~~Cardiopulmonary~~

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~~Resuscitation~~ (CPR), control of shock and bleeding and splinting of fractures, as outlined in a ~~Basic Life Support National Curriculum~~~~basic life support national curriculum~~ of the United States Department of Transportation and any modifications to that curriculum specified in the Emergency Medical Services and Trauma Center Code (~~77 Ill. Adm. Code 515~~). (Section 3.10 of the Act)

Communicable Disease – has the meaning set forth in the Control of Communicable Diseases Code.

Comprehensive Emergency Treatment Services – emergency treatment services provided in accordance with Section 518.2020 of this Part.

Contagious Disease – has the meaning set forth in the Control of Communicable Diseases Code.

Department – the Illinois Department of Public Health. (Section 3.5 of the Act)

Director – the Director of the Illinois Department of Public Health or his/her designee. (Section 3.5 of the Act)

Drugs – the term "drugs" means and includes:

articles recognized in the official United States Pharmacopoeia~~;~~
~~official~~ National Formulary, or any supplement to ~~it, either of them~~ and being intended for and having for their main use the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals;

~~articles recognized in the Illinois Formulary for the Drug Product Selection Program (77 Ill. Adm. Code 790);~~

all other articles intended for and having for their main use the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals;

articles (other than food) having for their main use to affect the structure or any function of the body of man or other animals, and intended to affect the structure or any function of the body of man or other animals; and

articles having for their main use and intended for use as a component of any articles specified above, but does not include devices or their

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components, parts or accessories.

Emergency – a medical condition of recent onset and severity that would lead a prudent lay person, possessing an average knowledge of medicine and health, to believe that urgent or unscheduled medical care is required. (Section 3.5 of the Act)

Emergency Medical Services ~~(EMS)~~ System or EMS System or System – an organization of hospitals, vehicle service providers and personnel approved by the Department in a specific geographic area, which coordinates and provides pre-hospital and inter-hospital emergency care and non-emergency medical transports at a BLS, ILS and/or ALS level pursuant to a System program plan submitted to and approved by the Department, and pursuant to the EMS Region Regional Plan adopted for the EMS Region in which the system is located. (Section 3.20 of the Act)

Emergency Medical Technician-Basic or EMT-B – a person who has successfully completed a course of instruction in basic life support as prescribed by the Department, is currently licensed by the Department in accordance with standards prescribed by the Act and the Emergency Medical Services and Trauma Center Code and practices within an EMS System. (Section 3.50 of the Act)

Emergency Medical Technician-Intermediate or EMT-I – a person who has successfully completed a course of instruction in intermediate life support as prescribed by the Act and the Emergency Medical Services and Trauma Center Code and practices within an Intermediate or Advanced Life Support EMS System. (Section 3.50 of the Act)

Emergency Medical Technician-Paramedic or EMT-P – a person who has successfully completed a course of instruction in advanced life support care as prescribed by the Department, is licensed by the Department in accordance with standards prescribed by the Act and the Emergency Medical Services and Trauma Center Code and practices within an Advanced Life Support EMS System. (Section 3.50 of the Act)

EMS System Program Plan – the document approved by the Department pursuant to 77 Ill. Adm. Code 515 that describes the EMS System program and directs the program's operation.

Freestanding Emergency Center or FEC~~(FEC)~~ or Facility – a facility that

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provides comprehensive emergency treatment services 24 hours per day, on an outpatient basis and has been issued a license by the ~~Illinois~~ Department of ~~Public Health~~ ~~as a to participate in the~~ Freestanding Emergency Center ~~Demonstration Program~~. (Section 32.5 of the Act)

Hospital – has the meaning ascribed in Section 3 of the Hospital Licensing Act [210 ILCS 85].

House Staff Member – an individual who is a graduate of a medical, dental, osteopathic or podiatric school; who is licensed as appropriate; who is appointed to the FEC's medical, osteopathic, dental, or podiatric graduate training program, which is approved or recognized in accordance with the statutory requirements applicable to the practitioner; and who is participating in patient care under the direction of licensed practitioners who have clinical privileges in the FEC and are members of the FEC's medical staff.

Infectious Disease – has the meaning established in the Control of Communicable Diseases Code.

Intermediate Life Support Services or ILS Services – an intermediate level of pre-hospital and inter-hospital emergency care and non-emergency medical care that includes basic life support care, plus intravenous cannulation and fluid therapy, invasive airway management, trauma care, and other authorized techniques and procedures as outlined in the Intermediate Life Support National Curriculum of the United States Department of Transportation and any modifications to that curriculum specified in the Emergency Medical Services and Trauma Center Code. (Section 3.10 of the Act)

Licensee – the person or entity licensed to operate the FEC pursuant to the Act.

Medical Staff – an organized body composed of the following individuals granted the privilege by the governing authority of the FEC to practice in the FEC: persons who are graduates of a college or school approved or recognized by the Illinois Department of Financial and Professional Regulation, and who are currently licensed by the Department of Financial and Professional Regulation to practice medicine in all its branches; practice dental surgery; or practice podiatric medicine in Illinois, regardless of the title of the degree awarded by the approving college or school.

Medicines – drugs or chemicals or preparations thereof in suitable form intended

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for and having for their main use the prevention, treatment, relief, or cure of diseases when used either internally or externally.

Morbidity – a negative outcome that is the result of the original trauma and/or treatment rendered or omitted.

Nurse – a registered nurse or licensed practical nurse as defined in the [Nurse Practice Act of 1987 \[225 ILCS 65\]](#).

Nursing Staff – registered nurses, licensed practical nurses, ~~nursing aides,~~ ~~orderlies,~~ and others rendering patient care under the supervision of a registered professional nurse.

[Outpatient – a person who visits an FEC for diagnosis or treatment. There are no overnight stays in an FEC.](#)

Owning or Controlling Hospital – the Associate or Resource hospital that wholly owns or controls a freestanding emergency center.

Participating Hospital – a hospital participating in an approved EMS System in accordance with the EMS System Program Plan, which is not a Resource Hospital or an Associate Hospital.

[Patient – a person who visits an FEC and requires medical care on an outpatient basis.](#)

Pharmacist – a person who holds a certificate of registration as a registered pharmacist under the Pharmacy Practice Act of 1987 ~~[225 ILCS 85]~~.

[Pharmacy – includes the following services as defined in the Pharmacy Practice Act:](#)

[the interpretation and the provision of assistance in the monitoring, evaluation, and implementation of prescription drug orders;](#)

[the dispensing of prescription drug orders;](#)

[participation in drug and device selection;](#)

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drug administration limited to the administration of oral, topical, injectable, and inhalation as follows: in the context of patient education on the proper use or delivery of medications; vaccination of patients 14 years of age and older pursuant to a valid prescription or standing order, by a physician licensed to practice medicine in all its branches, upon completion of appropriate training, including how to address contraindications and adverse reactions pursuant to Pharmacy Practice Act (68 Ill. Adm. Code 1330), with notification to the patient's physician and appropriate record retention, or pursuant to hospital pharmacy and therapeutics committee policies and procedures;

drug regimen review;

drug or drug-related research;

the provision of patient counseling;

the practice of telepharmacy;

the provision of those acts or services necessary to provide pharmacist care;

medication therapy management; and

the responsibility for compounding and labeling of drugs and devices (except labeling by a manufacturer, repackager, or distributor of non-prescription drugs and commercially packaged legend drugs and devices), proper and safe storage of drugs and devices, and maintenance of required records as defined in the Pharmacy Practice Act.

~~Pharmacy—the term "Practice of Pharmacy" includes, but is not limited to:~~

~~the soliciting of prescriptions;~~

~~the compounding of prescriptions;~~

~~the dispensing of any drug or medicine on a prescription;~~

~~the transfer of any drug or medicine from one container into another container that is to be delivered to or for the ultimate patient, on a~~

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~~prescription, or to or for the ultimate consumer, without a prescription;
and~~

~~the placing of directions for use or other required labeling information on
a container of any drug or medicine that is to be delivered to or for the
ultimate consumer, without a prescription.~~

The term "pharmacy" or "~~drugstorea drug store~~" as referred to in Section 3 of the Pharmacy Practice Act ~~of 1987~~ means and includes that area licensed by the Department of Financial and Professional Regulation in which the practice of pharmacy is conducted. Any room or designated area where drugs and medicines are dispensed (including the repackaging for distribution) shall be considered to be a pharmacy and shall be required to be licensed by the Department of Financial and Professional Regulation.

Physician – any person licensed to practice medicine in all of its branches under the Medical Practice Act of 1987 ~~[225 ILCS 90]~~.

Physician Assistant – has the meaning ascribed in Section 4 of the Physician Assistant Practice Act of 1987.

Plan of Correction or POC – the response the facility must develop to address/answer deficiencies identified during a survey.

Pre-Hospital Care – those emergency medical services rendered to emergency patients for analytic, resuscitative, stabilizing, or preventive purposes, precedent to and during transportation of such patients to hospitals. (Section 3.10 of the Act)

Pre-Hospital Care Provider – an EMS System Participant or any EMT-B, EMT-I, EMT-P, Ambulance, Ambulance Provider, EMS Vehicle, Associate Hospital, Participating Hospital, EMS System Coordinator, Associate Hospital EMS Coordinator, Associate Hospital EMS Medical Director, Emergency Communications Registered Nurse (ECRN) or physician serving on an ambulance or giving voice orders over an EMS System.

Program Narrative – a written description of the services provided at the FEC.

Registered Nurse ~~orand~~ Registered Professional Nurse or RN – a person who is licensed as a registered professional nurse under the Nurse Practice Illinois

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~~Nursing Act of 1987 [225 ILCS 65].~~

Resource Hospital – the hospital with the authority and the responsibility for an EMS System as outlined in the Department-approved EMS System Program Plan.

Social Worker – a person who is a licensed social worker or a licensed clinical social worker under the Clinical Social Work and Social Work Practice Act [225 ILCS 20].

Substantial Compliance – meeting requirements except for variance from the strict and literal performance that results in unimportant omissions or defects given the particular circumstances involved.

Survey – a detailed critical inspection or investigation by the Department.

Unit – a specific distinctly separated area within the FEC.

Working Days – Monday through Friday, except State holidays.

(Source: Amended at 33 Ill. Reg. 8317, effective June 4, 2009)

Section 518.1050 Incorporated and Referenced Materials

- a) The following regulations, ~~and~~ standards and guidelines are incorporated in this Part:
 - 1) Private and professional association standards:
 - A) ASHRAE Handbook – ~~of~~ Fundamentals (~~2001+981~~), which may be obtained from the National Association of American Society of Heating, Refrigerating, and Air Conditioning Engineers, Inc., 1791 Tullie Circle, ~~N.E.~~, Atlanta, ~~Georgia~~GA 30329.
 - B) ~~The Compressed Gas Association (CGA), Pamphlet P-2.1 (1970): Standard for Medical-Surgical Vacuum Systems in Hospitals, which may be obtained from the Compressed Gas Association, 1235 Jefferson Davis Highway, Arlington, Virginia 22202.~~
 - BE) The following NFPA standards, which may be obtained from the National Fire Protection Association, 1 Batterymarch Park,

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Quincy, Massachusetts 02269:

- i) No. 10 (~~1998~~1990): [Standard for ~~Installation of~~ Portable Fire Extinguishers](#)
- ii) No. 13 (~~1999~~1994): Sprinkler Systems
- [iii\) No. 25 \(1998\): Standards for the Inspection, Testing and Maintenance of Water-Based Fire Protection Systems](#)
- [iv](#)iii) No. 30 (~~1996~~1990): Flammable and Combustible Liquids Code
- [v](#)iv) No. 70 (~~1999~~1996): National Electrical Code
- [vi\) No. 72 \(1999\): National Fire Alarm Code](#)
- [vii](#)v) No. 80 (~~1999~~1995): Fire Doors and Windows
- [viii](#)vi) No. 82 (~~1999~~1994): Incinerators and Rubbish Handling
- [ix](#)vii) No. 90A (~~1999~~1989): Installation of Air Conditioning and Ventilating Systems
- [xviii](#)) No. 99 (~~1999~~1996): Health Care Facilities ~~Code~~
- [xix](#)) No. 101 (~~2000~~1997): Life Safety Code
- [xix](#)) No. 101-A (~~1998~~1995): Alternative Approaches to Life Safety
- [xiii\) No. 110 \(1999\): Emergency and Standby Power Systems](#)
- [xiv](#)xi) No. 255 (~~2000~~1990): Standard Method of Test of Surface Burning Characteristics of Building Material
- [xv](#)xii) No. 701 (~~1999~~1989): Fire Tests for Flame-Resistant Textiles and Films
- [xiii\) No. 13A \(1987\): Sprinkler System Maintenance](#)

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~~xvixiv~~) No. 14 (~~20001980~~): Standpipe and Hose Systems

- ~~CD~~) National Council on Radiation Protection and Measurements (NCRP), Report No. ~~14749~~: Structural Shielding Design and Evaluation for Medical Use of X-rays and Gamma Rays of Energies up to 10 MeV (~~20041976~~) and NCRP Report No. 102: Medical X-Ray, Electron Beam and Gamma-Ray Protection for Energies Up to 50 MeV (Equipment Design, Performance and Use) (1989), which may be obtained from the National Council on Radiation Protection and Measurements (~~NCRP~~), 7910 Woodmont Ave., Suite 800, Bethesda, Maryland 20814-3095.
- ~~DE~~) ~~DODDOP~~ Penetration Test Method MIL STD No. 282 (~~19951976~~): Filter Units, Protective Clothing, Gas-mask Components and Related Products: Performance Test Methods, which may be obtained from Naval Publications and Form Center, 5801 Tabor Avenue, Philadelphia, Pennsylvania 19120.
- ~~EF~~) ~~The International Code Council, International Building Code (2000) Building Officials Code Administrators (BOCA) International, Eleventh Edition, "The BOCA National Building Code (1993)"~~, which may be obtained from ~~the International Code Council~~ ~~BOCA, Inc.~~, 4051 Flossmoor Road, Country Club Hills, Illinois 60477-5795. (~~See Section 250.2420.~~)
- ~~FG~~) American National Standards Institute (ANSI) Standard No. A17.1-~~19931995~~, Safety Code for Elevators and Escalators, which may be obtained from the American Society of Mechanical Engineers, United Engineering Center, 325 East 47th Street, New York, New York 10017.
- ~~G~~) ~~American Institute of Architects Guidelines for Design and Construction of Health Care Facilities, 2006, which may be obtained from the American Institute of Architects, 1735 New York Avenue, NW, Washington DC 20006.~~

2) Federal Regulations

- A) 14 CFR 157 (January 1, ~~20081997~~) – Notice of Construction,

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Alteration, Activation and Deactivation of Airports

- B) 14 CFR 77, Subpart D (January 1, ~~2008~~1997) – Aeronautic Studies of Effect of Proposed Construction on Navigable Airspace
 - C) ~~42 CFR 493, Laboratory Requirements (October 1, 2007)57 FR 40 pp. 70024 et seq. (February 28, 1992) – Medicare, Medicaid and CLIA Programs; Regulations Implementing the Clinical Laboratory Improvement Amendments of 1988 (CLIA)~~
- 3) Federal Guidelines
Center for Infectious Diseases, Centers for Disease Control and Prevention, United States Public Health Service, Department of Health and Human Services. The guidelines may be obtained from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.
- A) Guideline for Hand Hygiene in Health-Care Settings (October 2002)
 - B) Guidelines for Infection Control in Health Care Personnel (1998)
- b) All incorporations by reference of federal regulations and guidelines and the standards of nationally recognized organizations refer to the regulations, guidelines and standards on the date specified and do not include any amendments or editions~~additions or deletions~~ subsequent to the date specified.
- c) The following statutes and State regulations are referenced in this Part:
- 1) Federal statutes:
 - A) Federal Aviation Act of 1958, Sections 307 and 308 (P.L. 85-726, 72 ~~USC~~U.S.C. 731)
 - B) Emergency Medical Treatment and Active Labor Act (42 ~~USC~~U.S.C. 1395dd)
 - C) Clinical Laboratory Improvement Amendments of 1988 (42 USC 263a)

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D) Title XVIII and Title XIX of the Social Security Act (42 USC 301 et seq., 1395 et seq., and 1396 et seq.)

2) State of Illinois statutes:

A) Emergency Medical Services (EMS) Systems Act [210 ILCS 50]

B) Hospital Emergency Services Act [210 ILCS 80]

C) Hospital Licensing Act [210 ILCS 85]

D) Medical Practice Act of 1987 [225 ILCS 60]

E) Nurse Practice~~The Illinois Nursing Act of 1987~~ [225 ILCS 65]

F) Illinois Health Facilities Planning Act [210 ILCS 3960]

G) Emergency Medical Treatment Act [210 ILCS 70]

H) X-ray Retention Act [210 ILCS 90]

I) Radiation Protection Installations Act of 1990 [420 ILCS 4030]

J) Pharmacy Practice Act ~~of 1987~~ [225 ILCS 85]

K) Illinois Clinical Laboratory and Blood Bank Act [210 ILCS 25]

~~L) Illinois Blood Bank Act [210 ILCS 10]~~

LM) Language Assistance Services Act [210 ILCS 87]

MN) Criminal Identification Act [20 ILCS 2630]

NO) Civil Administrative Code of Illinois [20 ILCS 2310]

O) Physician Assistant Practice Act of 1987 [225 ILCS 95]

P) Mental Health and Developmental Disabilities Code [405 ILCS 5]

Q) Health Care Worker Background Check Act [225 ILCS 46]

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- 3) State of Illinois regulations:
- A) Department of Public Health, Illinois Plumbing Code (77 Ill. Adm. Code 890)
 - B) Department of Public Health, Sexual Assault Survivors Emergency Treatment Code (77 Ill. Adm. Code 545)
 - C) Department of Public Health, Control of Communicable Diseases Code (77 Ill. Adm. Code 690)
 - D) Department of Public Health, Food Service Sanitation Code (77 Ill. Adm. Code 750)
 - E) Department of Public Health, [Public Area Sanitary Practice Code for Drinking Water, Sewage Disposal and Restroom Facilities](#) (77 Ill. Adm. Code 895)
 - F) Department of Public Health, [HIV/AIDS Confidentiality and Testing Code](#) (77 Ill. Adm. Code 697)
 - G) Department of Public Health, Control of Sexually ~~Transmissible~~ [Transmitted](#) Diseases Code (77 Ill. Adm. Code 693)
 - H) Department of Public Health, Emergency Medical Services and Trauma Center Code (77 Ill. Adm. Code 515)
 - I) Department of Public Health, Hospital Licensing Requirements (77 Ill. Adm. Code 250)
 - ~~J) Department of Public Health, The Illinois Formulary for the Drug Product Selection Program (77 Ill. Adm. Code 790)~~
 - ~~JK)~~ Capital Development Board, Illinois Accessibility Code (71 Ill. Adm. Code 400)
 - ~~KL)~~ Department of Transportation, Aviation Safety (92 Ill. Adm. Code 14.790, 14.792, 14.795)

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- LM) Pollution Control Board, Special Waste Hauling (35 Ill. Adm. Code 809)
- MN) Pollution Control Board, Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities (35 Ill. Adm. Code 725)
- N) [Department of Public Health, Health Care Worker Background Check Code \(77 Ill. Adm. Code 955\)](#)
- O) [Department of Public Health, Rules of Practice and Procedure in Administrative Hearings \(77 Ill. Adm. Code 100\)](#)
- P) [Department of Public Health, Control of Communicable Diseases Code \(77 Ill. Adm. Code 690\)](#)
- S) [Department of Public Health, Violent Injury Reporting Code \(77 Ill. Adm. Code 560\)](#)
- T) [Department of Public Health, Food Service Sanitation Code \(77 Ill. Adm. Code 750\)](#)
- U) [Department of Public Health, Language Assistance Services Code \(77 Ill. Adm. Code 940\)](#)
- V) [Department of Financial and Professional Regulation, Pharmacy Practice Act \(68 Ill. Adm. Code 1330\)](#)

(Source: Amended at 33 Ill. Reg. 8317, effective June 4, 2009)

Section 518.1100 Freestanding Emergency Center Licensure Demonstration Program

- a) ~~Until June 30, 2009, the~~ The Department shall license ~~shall conduct~~ a freestanding emergency centers pursuant to this Part ~~center (FEC) demonstration program for an initial period concluding on September 1, 1999 (Section 32.5(c) of the Act)~~
- b) ~~A freestanding emergency center shall be licensed pursuant to this Part to be considered a participant in the program.~~
- b)e A freestanding emergency center shall meet the following requirements~~be~~

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located:

- 1) *is located:*
 - A) *in ~~In~~ a municipality with a population of ~~75,000~~60,000 or fewer inhabitants;*
 - 2) *Either in a municipality that has a hospital that has been providing emergency services but is expected to close by the end of 1997 or in a county with a population of more than 350,000 but less than 500,000 inhabitants;*
 - B) *~~3) within~~ 2015 miles of the hospital that owns or controls the freestanding emergency center; and*
 - C) *~~4) within~~ 2010 miles of the Resource Hospital affiliated with the freestanding emergency center as part of the EMS system. (Section 32.5(a)(1) of the Act)*
- 2) *is wholly owned or controlled by an Associate or Resource Hospital, but is not a part of the hospital's physical plant;*
- 3) *meets the standards for licensed FECs, adopted in this Part, including, but not limited to:*
 - A) *facility design, specification, operation, and maintenance standards;*
 - B) *equipment standards; and*
 - C) *the number and qualifications of emergency medical personnel and other staff, which must include at least one board certified emergency physician present at the FEC 24 hours per day.*
- 4) *limits its participation in the EMS System strictly to receiving a limited number of BLS runs by emergency medical vehicles according to protocols developed by the Resource Hospital within the FEC's designated EMS System and approved by the Project Medical Director and the Department;*

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- 5) *provides comprehensive emergency treatment services, as defined in Hospital Licensing Requirements (77 Ill. Adm. Code 250), 24 hours per day, on an outpatient basis;*
- 6) *provides an ambulance and maintains on site ambulance services staffed with paramedics 24 hours per day;*
- 7) *maintains helicopter landing capabilities approved by appropriate State and federal authorities;*
- 8) *complies with all State and federal patient rights provisions, including, but not limited to, the Emergency Medical Treatment Act and the federal Emergency Medical Treatment and Active Labor Act;*
- 9) *maintains a communications system that is fully integrated with its Resource Hospital within the FEC's designated EMS System;*
- 10) *reports to the Department any patient transfers from the FEC to a hospital within 48 hours after the transfer plus any other data determined to be relevant by the Department;*
- 11) *submits to the Department, on a quarterly basis, the FEC's morbidity and mortality rates for patients treated at the FEC and other data determined to be relevant by the Department;*
- 12) *does not describe itself or hold itself out to the general public as a full service hospital or hospital emergency department in its advertising or marketing activities;*
- 13) *complies with any other rules adopted by the Department under the Act that relate to FECs;*
- 14) *passes the Department's site inspection for compliance with the FEC requirements of the Act;*
- 15) *submits a copy of the permit issued by the Illinois Health Facilities Planning Board indicating that the facility has complied with the Illinois Health Facilities Planning Act with respect to the health services to be provided at the facility;*

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16) *submits an application for designation as an FEC in a manner and form prescribed by the Department in this Part; and*

17) *pays the annual license fee as determined by the Department. (Section 32.5(a)(1) of the Act)*

cd) The freestanding emergency center shall be *wholly owned or controlled by an Associate or Resource Hospital, but shall not be a part of the hospital's physical plant.* (Section 32.5(a)(2) of the Act)

de) A freestanding emergency center shall *not describe itself or hold itself out to the general public as a full service hospital or hospital emergency department in its advertising or marketing activities.* (Section 32.5(a)(12) of the Act)

(Source: Amended at 33 Ill. Reg. 8317, effective June 4, 2009)

Section 518.1150 Initial Licensure Application and Renewal

a) *Any person acting individually, or jointly with other persons, who proposes to build, own, establish or operate a freestanding emergency center shall submit application information in writing on forms provided by the Department.*

b) *An application for a new facility shall be accompanied by a permit as required by the Illinois Health Facilities Planning Act.*

c) *Each application shall be accompanied by a non-refundable license application fee of \$2000.*

d) *The application shall contain the following information:*

1) *The name, address and telephone number of the applicant if the applicant is an individual; if the applicant is a firm, partnership or association, the name, address and telephone number of every member of the firm, partnership or association; if the applicant is a unit of local government, the name, address and telephone number of its chief executive officer.*

2) *If the applicant is a corporation, it shall submit:*

A) *A list of the title, name and address of each of its corporation officers; and*

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- B) A list of the name and address of each of its shareholders holding more than 7.5% of the shares.
- 3) The name of the person or persons under whose management or supervision the facility will be conducted.
- 4) The location of the facility, including the facility name, telephone number, exact address, and proof that the freestanding emergency center is not a part of a Resource or Associate Hospital's physical plant.
- 5) Information regarding any conviction of the applicant, or, if the applicant is a firm, partnership or association, of any of its members, or, if the applicant is a corporation, of any of its officers or directors, or of the person designated to manage or supervise the facility, of a felony or of two or more misdemeanors involving moral turpitude in the last five years.
- 6) Proof of ownership or control by an Associate or Resource Hospital.
- 7) The number of procedure rooms and observation/treatment rooms.
- 8) A statement assuring compliance with all State and federal patient rights provisions, including, but not limited to, the Emergency Medical Treatment Act and the federal Emergency Medical Treatment and Active Labor Act (Section 32.5(a)(8) of the Act).
- 9) The name, address, telephone number, education, experience, credentials and any professional licensure or certification of the following persons:
- A) Administrator;
- B) Medical Director; and
- C) Nurse Manager.
- 10) A list of the medical staff, including name and license number.
- 11) A list of all staff personnel, including name, position and any professional licensure or certification.

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- 12) A detailed description of the services to be provided by the facility.
- 13) Schematic architectural plans.
- e) Each application shall document that at least one board certified emergency physician is present at the FEC 24 hours per day.
- f) The Department will review the application form and other information required by this Section to determine whether the application meets the requirements of this Section prior to reviewing building plans and specifications and conducting a survey of the physical plant.
- g) The Department will issue a license if, after application and survey, it finds the applicant meets the requirements of the Act and this Part.
- h) The FEC license shall be prominently displayed in an area accessible to the public.
- i) Ownership Change or Discontinuation
 - 1) The license is not transferable. The license is issued to a specific licensee and for a specific location. The license and the valid current renewal certificate immediately become void and shall be returned to the Department when the facility is sold or leased; when operation is discontinued; when operation is moved to a new location; when the licensee (if an individual) dies; when the licensee (if a corporation or partnership) dissolves or terminates; or when the licensee (whatever the entity) ceases to exist.
 - 2) A license issued to a corporation shall be null, void and of no further effect upon the dissolution of the corporation. If the corporation is subsequently reinstated, a new license shall be obtained.
 - 3) Before any change of ownership, dissolution or closure, the facility shall follow the notification and process requirements of the Health Facilities Planning Board.
- j) Each FEC shall notify the Department, in writing, of any changes in:
 - 1) Facility name;

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- 2) Business telephone contact information; and
 - 3) Administrator and/or Nurse Manager.
- k) Any freestanding emergency center may voluntarily relinquish its license prior to the expiration date by notifying the Department in writing. The notification shall include the anticipated date of termination, which shall not be less than 30 days nor more than 90 days from the date of notification. The notification shall describe the procedures taken by the freestanding emergency center to advise pre-hospital providers, hospitals and the EMS Medical Director.
- a) ~~Application for a license to operate a freestanding emergency center shall be in writing on forms provided by the Department. The application shall be made under oath and shall contain the following:~~
- 1) ~~Proof of a Certificate of Need to establish and operate a freestanding emergency center issued by the Health Facilities Planning Board under the Illinois Health Facilities Planning Act [210 ILCS 3960] or proof of compliance with Section 32.5(a)(15) of the Act;~~
 - 2) ~~The name and address of the licensee;~~
 - 3) ~~The name and address of the proposed freestanding emergency center;~~
 - 4) ~~A precise description of the site of the proposed freestanding emergency center, including proof that the freestanding emergency center is not a part of the Resource or Associate Hospital's physical plant (Section 32.5(a)(2) of the Act);~~
 - 5) ~~The name and address of the registered agent or other individual authorized to receive Service of Process for the licensee;~~
 - 6) ~~The name of the person or persons under whose management or supervision the facility will be operated;~~
 - 7) ~~Proof of ownership or control by an Associate or Resource Hospital;~~
 - 8) ~~The number of major procedure rooms and observation/treatment rooms; and~~

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- 9) ~~A statement assuring compliance with all State and federal patient rights provisions, including, but not limited to, the Emergency Medical Treatment Act [210 ILCS 70] and the Federal Emergency Medical Treatment and Active Labor Act (42 U.S.C. 1395dd). (Section 32.5(a)(8) of the Act)~~
- b) ~~An application for licensure shall be accompanied by a fee of \$1500.~~
- e) ~~Upon receipt and review of the completed application for licensure, the Department shall conduct an inspection to determine compliance with Section 32.5 of the Act and this Part.~~
- d) ~~If the proposed freestanding emergency center is found to be in substantial compliance with Section 32.5 of the Act and this Part, the Department shall issue a license for a period of one year. A license issued pursuant to Section 32.5 of the Act and this Part shall expire upon termination of the demonstration program. (Section 32.5(e) of the Act) The license is not transferable. It is issued to the licensee, for the specific location and capacity identified in the application.~~
- e) ~~An application for license renewal shall be filed on forms provided by the Department 120 to 90 days prior to license expiration.~~
- 1) ~~The renewal application shall comply with the requirements of subsections (a) and (b) of this Section.~~
- 2) ~~Upon review and receipt of a complete application for license renewal, the Department will conduct an inspection. The Department shall renew the license in accordance with subsection (d) of this Section.~~
- f) ~~The freestanding emergency center license shall be prominently displayed in an area accessible to the public.~~
- g) ~~Any freestanding emergency center may voluntarily relinquish its license prior to the expiration date by notifying the Department in writing. Such notification shall include the anticipated date of termination, which shall not be less than 30 days nor more than 90 days from the date of notification. The notification shall describe the procedures taken by the freestanding emergency center to advise pre-hospital providers, hospitals, and the EMS Medical Director.~~

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(Source: Amended at 33 Ill. Reg. 8317, effective June 4, 2009)

Section 518.1155 Application for Annual License Renewal

- a) Application for annual license renewal shall be submitted at least 90 days prior to licensure expiration on forms prescribed by the Department. The application shall include, at a minimum, the following information:
- 1) The names, addresses and telephone numbers of all persons who own the facility, any name under which any of these persons does business, and the type of ownership of the facility (for example, individual, partnership, corporation, or association). In addition, a corporation shall submit:
 - A) A list of the title, name and address of each of its corporation officers; and
 - B) A list of the name and address of each of its shareholders holding more than 7.5% of the shares;
 - 2) For other than individual ownership, the name and address of the Illinois Registered Agent or persons legally authorized to receive service of process for the facility;
 - 3) The names and addresses of all persons under contract to manage or operate the facility;
 - 4) The name and exact address of the facility;
 - 5) The names and addresses of the Administrator, Medical Director and Nurse Manager. In addition, the education, experience, credentials and any professional licensure or certification of these individuals shall also be submitted if this information was not submitted with the initial application or a prior renewal application, or if this information has changed since the prior submission. The facility shall inform the Department of any change in this information at the time that the change occurs;
 - 6) A list of medical staff, including names and license numbers;
 - 7) A copy of the organizational plan and description of services if changes have occurred since the last submission; and

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- 8) Identification of any plans of correction currently in effect as a result of State and federal surveys.
- b) Each renewal application shall be accompanied by a non-refundable license renewal fee of \$2000 and proof of compliance with all reports required by the Department.

(Source: Added at 33 Ill. Reg. 8317, effective June 4, 2009)

Section 518.1160 Surveys

- a) The Department will conduct a survey of an FEC at any time to determine compliance with the Act and this Part or with a plan of correction submitted as a result of deficiencies cited by the Department.
- b) Surveys (except for initial licenses) will be unannounced.
- c) Upon completion of each survey, the Department will submit a copy of the report to the licensee within 15 working days after exit. The report will identify deficiencies in compliance with the requirements of the Act or this Part. The report will include any recommendation for action by the Department under the Act and of correction from the facility. The licensee may provide related comments or documentation to refute findings in the report, explain extenuating circumstances that the facility could not reasonably have prevented, or indicate methods and timetables for correction of deficiencies described in the report. A licensee has 15 days after receipt of the survey report to submit a plan of correction.
- d) The Department will determine whether a facility is in violation of this Section no later than 90 days after completion of each survey.
- e) The Department will maintain all survey reports for at least seven years in a manner accessible to the public.
- f) Any licensee, applicant for a license, or person operating an FEC shall be deemed to have given consent to any authorized officer, employee or agent of the Department to enter and inspect the FEC, conduct interviews and photocopy materials as necessary to determine compliance in the facility in accordance with the Act and this Part. Refusal to permit such entry or survey shall constitute

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grounds for denial, nonrenewal or revocation of a license.

(Source: Added at 33 Ill. Reg. 8317, effective June 4, 2009)

Section 518.1165 Complaints

- a) The Department shall investigate an applicant or licensee whenever the Department receives a complaint alleging a violation of the Act or this Part that, if valid, would constitute violations or other sanctions under Section 518.1200 or 518.1250 of this Part.
- b) A person who believes that the Act or this Part has been violated may submit a complaint in writing, by mail, by telephone, by fax or in person to the Department.
- c) The complaint shall include the following:
 - 1) Complainant's name, address and telephone number (unless the complainant requests anonymity);
 - 2) Facility's name and address; and
 - 3) A detailed description of the problem, including the date and the patient's name.
- d) The Department will not disclose the name of the complainant unless the complainant consents in writing to the disclosure.
- e) The Department will acknowledge receipt of the complaint to the complainant in writing within 10 working days after receiving the complaint.
- f) The Department will investigate each complaint as quickly as possible based on available personnel and resources. If the complaint involves an immediate and serious threat to patient health and safety, the Department shall investigate within two days after receipt of the complaint.
- g) Complaint investigations will be unannounced.
- h) Based on the information provided by the complainant and the results of the investigation conducted in accordance with subsection (f) of this Section, the

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Department will determine whether the Act or this Part has been or is being violated. The Department will review and consider any information submitted by the applicant or licensee in response to an investigation. Based on the results of the investigation and information provided by the complainant and/or the applicant or licensee, complaints shall be classified as "valid", "invalid", or "undetermined".

- i) The Department will inform the complainant and the licensee of the results (i.e., whether the complaint was found to be valid, invalid or undetermined) of the complaint within 45 days after the conclusion of its investigation.
- j) A complainant or licensee who is dissatisfied with the results of a complaint investigation may request a hearing in accordance with Section 518.1250 of this Part.

(Source: Added at 33 Ill. Reg. 8317, effective June 4, 2009)

Section 518.1250 Violations and, Hearings ~~and Fines~~

- a) The Department shall suspend, revoke, refuse to issue, or refuse to renew the license of any FEC, after notice and an opportunity for a hearing, when the Department finds that the FEC has failed to comply with the standards and requirements of the Act or this Part. (Section 32.5(b)(2) of the Act)
- a) ~~Except for emergency suspension orders, or actions initiated pursuant to Section 3.90(b)(10) of the Act, prior to initiating an action for suspension, revocation, denial, nonrenewal, or imposition of a fine, the Department shall:~~
 - 1) ~~Issue a notice of violation which specifies the Department's allegations of noncompliance and requests a plan of correction to be submitted within 10 days after receipt of the notice of violation;~~
 - 2) ~~Review and approve or reject the plan of correction. If the Department rejects the plan of correction, it shall send notice of the rejection and the reason for the rejection. The party shall have 10 days after receipt of the notice of rejection in which to submit a modified plan;~~
 - 3) ~~Impose a plan of correction if a modified plan is not submitted in a timely manner or if the modified plan is rejected by the Department;~~

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- 4) ~~Issue a notice of intent to fine, suspend, revoke, nonrenew or deny if the party has failed to comply with the imposed plan of correction, and provide the party with an opportunity to request an administrative hearing. The notice of intent shall be effected by certified mail or by personal service, shall set forth the particular reasons for the proposed action, and shall provide the party with 15 days in which to request a hearing. (Section 3.130 of the Act)~~
- b) *Administrative hearings shall be conducted by the Director or his/her designee. On the basis of any such hearing, or upon default of the respondent, the Director shall issue a final order specifying his findings, conclusions and decision. A copy of the final order shall be sent to the respondent by certified mail or served personally upon the respondent. (Section 3.135 of the Act)*
- c) *The procedure governing hearings authorized by the Act shall be in accordance with the Department's rules governing administrative hearings (77 Ill. Adm. Code 100). (Section 3.135 of the Act)*
- d) ~~A fine not exceeding \$10,000 shall be issued for a violation which created a condition or occurrence presenting a substantial probability that death or serious harm to an individual will or did result therefrom. (Section 3.140(b)(1) of the Act)~~
- e) ~~A fine not exceeding \$5,000 shall be issued for a violation which creates or created a condition or occurrence which threatens the health, safety or welfare of an individual. (Section 3.140(b)(2) of the Act)~~
- f) *In determining the amount of a fine, the Director shall consider the following factors:*
- 1) ~~The severity of the actual or potential harm to an individual.~~
 - 2) ~~The numbers and types of protocols, standards, rules or Sections of the Act that were violated in the course of creating the condition or occurrence at issue.~~
 - 3) ~~The reasonable diligence exercised by the FEC to avoid the violation(s) or to reduce the potential harm to individuals.~~
 - 4) ~~Efforts by the FEC to correct the violation(s).~~

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- 5) ~~Any previous violation(s) of a like or similar nature by the FEC.~~
- 6) ~~Any financial benefit to the FEC of continuing the violation(s).~~
- g) ~~A notice of intent to impose fine may be issued in conjunction with or in lieu of a notice of intent to suspend, revoke, nonrenew or deny, and shall (Section 3.140(c) of the Act) include:~~
 - 1) ~~A description of the violation(s) for which the fine is being imposed.~~
 - 2) ~~A citation to the Sections of the Act, rules, protocols or standards alleged to have been violated.~~
 - 3) ~~The amount of the fine.~~
 - 4) ~~The opportunity to request an administrative hearing prior to imposition of the fine, provided such request for a hearing is made within 15 days after receipt of the notice.~~

(Source: Amended at 33 Ill. Reg. 8317, effective June 4, 2009)

Section 518.1500 Language Assistance Services

The freestanding emergency center may provide language assistance services in accordance with the Language Assistance Services Act [and the Language Assistance Services Code \(77 Ill. Adm. Code 940\)](#)~~[210 ILCS 87]~~.

(Source: Amended at 33 Ill. Reg. 8317, effective June 4, 2009)

Section 518.1550 Personnel Services

- a) An organized personnel department or service shall be established and designed to meet the needs of the personnel.
- b) Personnel policies and practices that adequately support freestanding emergency center services and quality of patient care shall be established and maintained.
- c) Sufficient, qualified personnel shall be employed to properly operate the various departments and the adjunct services requiring technical skill, such as laboratory,

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x-ray, pharmacy, nursing, etc.

- d) Sufficient service personnel shall be employed to properly operate service departments.
- e) Qualified personnel shall mean those persons who hold necessary licenses for the activities they perform. If no license is required, qualified personnel shall mean those persons who are registered or certified by the Department, the Illinois Department of [Financial and Professional Regulation](#), the Council on Medical Education of the American Medical Association or Agencies or Committees established in collaboration with the Council, other accrediting agencies approved by the Department, or an acceptable [equivalent](#) experience ~~equivalent to the above~~.
- f) Personnel policies shall be written and available to all personnel.
- g) Personnel policies shall be reviewed and/or revised periodically, but no less [frequently](#) than once every two years. The date of review or revision shall be indicated on the personnel policies.
- h) The personnel service shall have available organizational charts that identify all departments and/or services.
- i) All positions shall be authorized by the Board, either directly or through delegation to the administrator.
- j) A job description shall be written for each position in the freestanding emergency center, including minimum qualifications.
- k) Personnel records
 - 1) Accurate, current and complete personnel records shall be maintained for each employee during his/her term of employment and for the years thereafter as may be necessary to satisfy other State or federal requirements.
 - 2) ~~An established~~ standard of content shall be established for personnel records, which shall contain at least the following:
 - A) Application form and/or resume with current and background

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information sufficient to justify the initial and continuing employment of the individual;~~-~~

B) Verification of license, if the position requires a license. A licensed person shall be employed only after verification of the license is obtained;~~-~~

C) A record regarding the employee's specialized education, training, and experience;~~-~~

D) Verification of identity;~~-~~

E) Employment health examination and subsequent health services rendered to the employees as are necessary to ensure that all employees are physically able to perform their duties;~~-~~

F) Record of orientation to the job;~~-~~

G) Continuance of education; ~~and-~~

H) Current information relative to periodic work performance evaluations.

l) Employees shall not be assigned duties that exceed their education, training, experience, and qualifications.

m) Orientation and in-service training programs shall be provided so that personnel may maintain skills and learn new developments.

n) Personnel health requirements

1) Each FEC shall establish an employee health program that includes the following:

A) An assessment of the employee's health and immunization status at the time of employment;

B) Policies regarding required immunizations; and

C) Policies and procedures for the periodic health assessment of all

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personnel. These policies ~~shall~~must specify the content of the health assessment and the interval between assessments and ~~shall~~must comply with the Control of Tuberculosis Code (77 Ill. Adm. Code 696).

- 2) Personnel absent from duty because of any communicable disease shall not return to duty until examined for freedom from any condition that might endanger the health of patients or employees.
- o) Personnel services may be provided by the owning or controlling hospital, provided that standards ~~are established in accordance with this Section that~~ are specific to the FEC and are established in accordance with this Section.
- p) Prior to employing any individual in a position that requires a State license, the facility shall contact the Illinois Department of ~~Financial and~~ Professional Regulation to verify that the individual's license is active. A copy of the ~~verification~~license shall be placed in the individual's personnel file.
- q) The facility shall check the status of all applicants with the ~~Health Care Worker Nurse Aide~~ Registry prior to hiring.

(Source: Amended at 33 Ill. Reg. 8317, effective June 4, 2009)

Section 518.1600 Personnel Requirements

- a) *At least one board certified emergency physician shall be present at the freestanding emergency center 24 hours per day.* (Section 32.5(a)(3)(C) of the Act)
- b) Additional physicians shall be present at the freestanding emergency center or available within 30 minutes to meet the needs of patients brought to the freestanding emergency center.
- c) Nursing Staff
 - 1) At least ~~two~~2 registered nurses shall be available at the freestanding emergency center from 7:00 a.m. to 11:00 p.m.
 - 2) At least ~~one~~1 registered nurse and ~~one~~1 other health care provider (e.g., licensed practical nurse or physician assistant) shall be available at the

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freestanding emergency center from 11:00 p.m. to 7:00 a.m., with additional registered nurses on call to arrive at the freestanding emergency center within 15 minutes after notification that their services are needed, ~~at any time that the freestanding emergency center is not staffed with a least 2 registered nurses.~~

- d) Medical, administrative and support personnel shall be available to meet the needs of patients brought to the freestanding emergency center and to meet the requirements of this Part.

(Source: Amended at 33 Ill. Reg. 8317, effective June 4, 2009)

Section 518.1610 Health Care Worker Background Check

The freestanding emergency center shall comply with the Health Care Worker Background Check Act and the Health Care Worker Background Check Code.

- a) ~~The facility shall not knowingly hire any individual in a position with duties involving direct care for residents if that person has been convicted of committing or attempting to commit one or more of the following offenses Section 25(a) of the Health Care Worker Background Check Act [225 ILCS 46/25]):~~
- 1) ~~Solicitation of murder, solicitation of murder for hire (Sections 8-1.1 and 8-1.2 of the Criminal Code of 1961 [720 ILCS 5/8-1.1 and 8-1.2] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 8-1.1 and 8-1.2));~~
 - 2) ~~Murder, homicide, manslaughter or concealment of a homicidal death (Sections 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2, and 9-3.3 of the Criminal Code of 1961 [720 ILCS 5/9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2 and 9-3.3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2, and 9-3.3; Ill. Rev. Stat. 1985, ch. 38, par. 9-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. 3, 236, 358, 360, 361, 362, 363, 364, 364a, 365, 370, 373, 373a, 417, and 474));~~
 - 3) ~~Kidnaping or child abduction (Sections 10-1, 10-2, 10-5 and 10-7 of the Criminal Code of 1961 [720 ILCS 5/10-1, 10-2, 10-5, and 10-7] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 10-1, 10-2, 10-5, and 10-7; Ill. Rev. Stat. 1985, ch. 38, par. 10-6; Ill. Rev. Stat. 1961, ch. 38, pars. 384 to 386));~~
 - 4) ~~Unlawful restraint or forcible detention (Sections 10-3, 10-3.1, and 10-4 of~~

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- ~~the Criminal Code of 1961 [720 ILCS 5/10-3, 10-3.1, and 10-4] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 10-3, 10-3.1, and 10-4; Ill. Rev. Stat. 1961, ch. 38, pars. 252, 252.1, and 252.4));~~
- 5) ~~Indecent solicitation of a child, sexual exploitation of a child, exploitation of a child, child pornography (Sections 11-6, 11-9.1, 11-19.2, and 11-20.1 of the Criminal Code of 1961 [720 ILCS 5/11-6, 11-9.1, 11-19.2, and 11-20.1] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 11-6, 11-19.2, and 11-20.1; Ill. Rev. Stat. 1983, ch. 38, par. 11-20a; Ill. Rev. Stat. 1961, ch. 38, pars. 103 and 104));~~
- 6) ~~Assault, battery, heinous battery, tampering with food, drugs or cosmetics, or infliction of great bodily harm (Sections 12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7 of the Criminal Code of 1961 [720 ILCS 5/12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7; Ill. Rev. Stat. 1985, ch. 38, par. 9-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. 55, 56, and 56a to 60b));~~
- 7) ~~Aggravated stalking (Section 12-7.4 of the Criminal Code of 1961 [720 ILCS 5/12-7.4] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-7.4));~~
- 8) ~~Home invasion (Section 12-11 of the Criminal Code of 1961 [720 ILCS 5/12-11] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-11));~~
- 9) ~~Sexual assault or sexual abuse (Sections 12-13, 12-14, 12-14.1, 12-15, and 12-16 of the Criminal Code of 1961 [720 ILCS 5/12-13, 12-14, 12-14.1, 12-15, and 12-16] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 11-1, 11-2, 11-3, 11-4, 11-5, 12-13, 12-14, 12-15, and 12-16; Ill. Rev. Stat. 1985, ch. 38, pars. 11-1, 11-4, and 11-4.1; Ill. Rev. Stat. 1961, ch. 38, pars. 109, 141, 142, 490, and 491));~~
- 10) ~~Abuse or gross neglect of a long-term care facility resident (Section 12-19 of the Criminal Code of 1961 [720 ILCS 5/12-19] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-19));~~
- 11) ~~Criminal neglect of an elderly or disabled person (Section 12-21 of the Criminal Code of 1961 [720 ILCS 5/12-21] (formerly Ill. Rev. Stat. 1991,~~

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~~ch. 38, par. 12-21));~~

- 12) ~~Endangering the life or health of a child (Section 12-21.6 of the Criminal Code of 1961 [720 ILCS 5/12-21.6] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2354; Ill. Rev. Stat. 1961, ch. 38, par. 95));~~
- 13) ~~Ritual mutilation, ritualized abuse of a child (Sections 12-32 and 12-33 of the Criminal Code of 1961 [720 ILCS 5/12-32 and 12-33] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 12-32 and 12-33));~~
- 14) ~~Theft, retail theft (Sections 16-1 and 16A-3 of the Criminal Code of 1961 [720 ILCS 5/16-1 and 16A-3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 16-1 and 16A-3; Ill. Rev. Stat. 1961, ch. 38, pars. 62, 207 to 218, 240 to 244, 246, 253, 254.1, 258, 262, 262a, 273, 290, 291, 301a, 354, 387 to 388b, 389, 393 to 400, 404a to 404c, 438, 492 to 496));~~
- 15) ~~Financial exploitation of an elderly or disabled person (Section 16-1.3 of the Criminal Code of 1961 [720 ILCS 5/16-1.3] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 16-1.3));~~
- 16) ~~Forgery (Section 17-3 of the Criminal Code of 1961 [720 ILCS 5/17-3] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 17-3; Ill. Rev. Stat. 1961, ch. 38, pars. 151 and 277 to 286));~~
- 17) ~~Robbery, armed robbery (Sections 18-1 and 18-2 of the Criminal Code of 1961 [720 ILCS 5/18-1 and 18-2] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 18-1 and 18-2));~~
- 18) ~~Vehicular hijacking, aggravated vehicular hijacking, aggravated robbery (Sections 18-3, 18-4, and 18-5 of the Criminal Code of 1961 [720 ILCS 5/18-3, 18-4, and 18-5]);~~
- 19) ~~Burglary, residential burglary (Sections 19-1 and 19-3 of the Criminal Code of 1961 [720 ILCS 5/19-1 and 19-3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 19-1 and 19-3; Ill. Rev. Stat. 1961, ch. 38, pars. 84 to 86, 88, and 501));~~
- 20) ~~Criminal trespass to a residence (Section 19-4 of the Criminal Code of 1961 [720 ILCS 5/19-4] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 19-4));~~

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- 21) ~~Arson (Sections 20-1 and 20-1.1 of the Criminal Code of 1961 [720 ILCS 5/20-1 and 20-1.1] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 20-1 and 20-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. 48 to 53 and 236 to 238));~~
 - 22) ~~Unlawful use of weapons, aggravated discharge of a firearm, or reckless discharge of a firearm (Sections 24-1, 24-1.2, and 24-1.5 of the Criminal Code of 1961 [720 ILCS 5/24-1, 24-1.2, and 24-1.5] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 24-1 and 24-1.2; Ill. Rev. Stat. 1961, ch. 38, pars. 152, 152a, 155, 155a to 158b, 414a to 414e, 414e, and 414g));~~
 - 23) ~~Armed violence—elements of the offense (Section 33A-2 of the Criminal Code of 1961 [720 ILCS 5/33A-2] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 33A-2));~~
 - 24) ~~Those provided in Section 4 of the Wrongs to Children Act (Section 4 of the Wrongs to Children Act [720 ILCS 150/4] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2354));~~
 - 25) ~~Cruelty to children (Section 53 of the Criminal Jurisprudence Act [720 ILCS 115/53] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2368));~~
 - 26) ~~Manufacture, delivery or trafficking of cannabis, delivery of cannabis on school grounds, or delivery to person under 18; violation by person under 18 (Sections 5, 5.1, 5.2, 7, and 9 of the Cannabis Control Act [720 ILCS 550/5, 5.1, 5.2, 7, and 9] (formerly Ill. Rev. Stat. 1991, ch. 56-1/2, pars. 705, 705.1, 705.2, 707, and 709)); or~~
 - 27) ~~Manufacture, delivery or trafficking of controlled substances (Sections 401, 401.1, 404, 405, 405.1, 407 and 407.1 of the Illinois Controlled Substance Act [720 ILCS 570/401, 401.1, 404, 405, 405.1, 407, 407.1] (formerly Ill. Rev. Stat. 1991, ch. 56-1/2, pars. 1401, 1401.1, 1404, 1405, 1405.1, 1407, and 1407.1)).~~
- b) ~~The facility shall not knowingly employ or retain any individual in a position with duties involving direct care for residents if that person has been convicted of committing or attempting to commit one or more of the offenses listed in subsections (a)(1) to (27) of this Section unless the applicant, employee or employer obtains a waiver pursuant to subsections (m) and (o) of this Section. (Section 25(a) of the Health Care Worker Background Check Act)~~

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- e) ~~A facility shall not hire, employ, or retain any individual in a position with duties involving direct care of residents if the facility becomes aware that the individual has been convicted in another state of committing or attempting to commit an offense that has the same or similar elements as an offense listed in subsections (a)(1) to (27) of this Section, as verified by court records, records from a State agency, or an FBI criminal history record check. This shall not be construed to mean that a facility has an obligation to conduct a criminal history records check in other states in which an employee has resided. (Section 25(b) of the Act)~~
- d) For the purpose of this Section:
- 1) ~~"Applicant" means an individual seeking employment with a facility who has received a bona fide conditional offer of employment.~~
 - 2) ~~"Conditional offer of employment" means a bona fide offer of employment by a facility to an applicant, which is contingent upon the receipt of a report from the Department of State Police indicating that the applicant does not have a record of conviction of any of the criminal offenses listed in subsections (a)(1) to (27) of this Section.~~
 - 3) ~~"Direct care" means the provision of nursing care or assistance with feeding, dressing, movement, bathing, or other personal needs.~~
 - 4) ~~"Initiate" means the obtaining of the authorization for a record check from a student, applicant, or employee. (Section 15 of the Health Care Worker Background Check Act)~~
- e) For purposes of the Health Care Worker Background Check Act, the facility shall establish a policy defining which employees provide direct care. In making this determination the facility shall consider the following:
- 1) ~~The employee's assigned job responsibilities as set forth in the employee's job description;~~
 - 2) ~~Whether the employee is required to or has the opportunity to be alone with residents, with the exception of infrequent or unusual occasions; and~~
 - 3) ~~Whether the employee's regular responsibilities include physical contact with residents, for example to provide therapy or to draw blood.~~

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- f) ~~When the facility makes a conditional offer of employment to an applicant who is not exempt under subsection (s) of this Section, for a position with duties that involve direct care for residents, the employer shall inquire of the Nurse Aide Registry as to the status of the applicant's Uniform Conviction Information Act (UCIA) criminal history record check. If a UCIA criminal history record check has not been conducted within the last 12 months, the facility must initiate or have initiated on its behalf a UCIA criminal history record check for that applicant. (Section 30(e) of the Health Care Worker Background Check Act)~~
- g) ~~The facility shall transmit all necessary information and fees to the Illinois State Police within 10 working days after receipt of the authorization. (Section 15 of the Health Care Worker Background Check Act)~~
- h) ~~The facility may accept an authentic UCIA criminal history record check that has been conducted within the last 12 months rather than initiating a check as required in subsection (f) of this Section.~~
- i) ~~The request for a UCIA criminal history record check shall be made as prescribed by the Department of State Police. The applicant or employee must be notified of the following whenever a non-fingerprint-based UCIA criminal history record check is made:~~
- 1) ~~That the facility shall request or have requested on its behalf a non-fingerprint-based UCIA criminal history record check pursuant to the Health Care Worker Background Check Act.~~
 - 2) ~~That the applicant or employee has a right to obtain a copy of the criminal records report from the facility, challenge the accuracy and completeness of the report, and request a waiver in accordance with subsection (m) of this Section.~~
 - 3) ~~That the applicant, if hired conditionally, may be terminated if the non-fingerprint-based criminal records report indicates that the applicant has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) of this Section unless the applicant's identity is validated and it is determined that the applicant or employee does not have a disqualifying criminal history record based on a fingerprint-based records check pursuant to subsection (k) of this Section.~~
 - 4) ~~That the applicant, if not hired conditionally, shall not be hired if the non-~~

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~~fingerprint based criminal records report indicates that the applicant has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) of this Section unless the applicant's record is cleared based on a fingerprint based records check pursuant to subsection (k) of this Section.~~

- 5) ~~That the employee may be terminated if the criminal records report indicates that the employee has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) of this Section unless the employee's record is cleared based on a fingerprint based records check pursuant to subsection (k) of this Section. (Section 30(e) and (f) of the Health Care Worker Background Check Act)~~
- j) ~~A facility may conditionally employ an applicant to provide direct care for up to three months pending the results of a UCIA criminal history record check. Section 30(g) of the Health Care Worker Background Check Act)~~
- k) ~~An applicant or employee whose non fingerprint based UCIA criminal history record check indicates a conviction for committing or attempting to commit one or more of the offenses listed in subsections (a)(1) to (27) of this Section may request that the facility or its designee commence a fingerprint based UCIA criminal records check by submitting any necessary fees and information in a form and manner prescribed by the Department of State Police. (Section 35 of the Health Care Worker Background Check Act)~~
- l) ~~A facility having actual knowledge from a source other than a non fingerprint check that an employee has been convicted of committing or attempting to commit one of the offenses enumerated in Section 25 of the Act must initiate a fingerprint based background check within 10 working days after acquiring that knowledge. The facility may continue to employ that individual in a direct care position, may reassign that individual to a non direct care position, or may suspend the individual until the results of the fingerprint based background check are received. (Section 30(d) of the Health Care Worker Background Check Act)~~
- m) ~~An applicant, employee or employer may request a waiver to subsection (a), (b) or (c) of this Section by submitting the following to the Department within five working days after the receipt of the criminal records report:~~
- 1) ~~A completed fingerprint based UCIA criminal records check form (Section 40(a) of the Health Care Worker Background Check Act) (which~~

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the Department will forward to the Department of State Police); and

- 2) ~~A certified check, money order or facility check made payable to the Department of State Police for the amount of money necessary to initiate a fingerprint-based UCIA criminal records check.~~
- n) ~~The Department may accept the results of the fingerprint-based UCIA criminal records check instead of the items required by subsections (m)(1) and (2) above. (Section 40(a-5) of the Health Care Worker Background Check Act)~~
- o) ~~The Department may grant a waiver based on mitigating circumstances, which may include:~~
 - 1) ~~The age of the individual at which the crime was committed;~~
 - 2) ~~The circumstances surrounding the crime;~~
 - 3) ~~The length of time since the conviction;~~
 - 4) ~~The applicant's or employee's criminal history since the conviction;~~
 - 5) ~~The applicant's or employee's work history;~~
 - 6) ~~The applicant's or employee's current employment references;~~
 - 7) ~~The applicant's or employee's character references;~~
 - 8) ~~Nurse Aide Registry records; and~~
 - 9) ~~Other evidence demonstrating the ability of the applicant or employee to perform the employment responsibilities competently and evidence that the applicant or employee does not pose a threat to the health or safety of residents. (Section 40(b) of the Health Care Worker Background Check Act)~~
- p) ~~An individual shall not be employed in a direct care position from the time that the employer receives the results of a non-fingerprint check containing disqualifying conditions until the time that the individual receives a waiver from the Department. If the individual challenges the results of the non-fingerprint check, the employer may continue to employ the individual in a direct care~~

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~~position if the individual presents convincing evidence to the employer that the non-fingerprint check is invalid. If the individual challenges the results of the non-fingerprint check, his or her identity shall be validated by a fingerprint-based records check in accordance with subsection (k) of this Section. (Section 40(d) of the Health Care Worker Background Check Act)~~

- q) ~~A facility is not obligated to employ or offer permanent employment to an applicant, or to retain an employee who is granted a waiver. (Section 40(f) of the Health Care Worker Background Check Act)~~
- r) ~~A facility may retain the individual in a direct care position if the individual presents clear and convincing evidence to the facility that the non-fingerprint-based criminal records report is invalid and if there is a good faith belief on the part of the employer that the individual did not commit an offense listed in subsections (a)(1) to (27) of this Section, pending positive verification through a fingerprint-based criminal records check. Such evidence may include, but not be limited to:~~
- ~~1) certified court records;~~
 - ~~2) written verification from the State's Attorney's office that prosecuted the conviction at issue;~~
 - ~~3) written verification of employment during the time period during which the crime was committed or during the incarceration period stated in the report;~~
 - ~~4) a signed affidavit from the individual concerning the validity of the report;
or~~
 - ~~5) documentation from a local law enforcement agency that the individual was not convicted of a disqualifying crime.~~
- s) ~~This Section shall not apply to:~~
- ~~1) An individual who is licensed by the Department of Professional Regulation or the Department of Public Health under another law of this State;~~
 - ~~2) An individual employed or retained by a health care employer for whom a~~

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~~criminal background check is required by another law of this State; or~~

- 3) ~~A student in a licensed health care field including, but not limited to, a student nurse, a physical therapy student, or a respiratory care student unless he or she is employed by a health care employer in a position with duties involving direct care for residents. (Section 20 of the Health Care Worker Background Check Act)~~
- t) ~~The facility must send a copy of the results of the UCIA criminal history record check to the State Nurse Aide Registry for those individuals who are on the Registry. (Section 30(b) of the Health Care Worker Background Check Act) The facility shall include the individual's Social Security number on the criminal history record check results.~~
- u) ~~The facility shall retain on file for a period of 5 years records of criminal records requests for all employees. The facility shall retain the results of the UCIA criminal history records check and waiver, if appropriate, for the duration of the individual's employment. The files shall be subject to inspection by the Department. A fine of \$500 shall be imposed for failure to maintain these records. (Section 50 of the Health Care Worker Background Check Act)~~
- v) ~~The facility shall maintain a copy of the employee's criminal history record check results and waiver, if applicable, in the personnel file or other secure location accessible to the Department.~~

(Source: Amended at 33 Ill. Reg. 8317, effective June 4, 2009)

Section 518.1700 Nursing Services

The FEC shall provide an organized nursing service and shall maintain a staff of nursing personnel organized to provide the nursing care for its patients commensurate with size, scope and nature of services.

- a) Director of Nursing Administration or Nursing Service Manager
- 1) The nursing service shall be under the direction of a registered professional nurse who has qualifications in nursing administration and/or nursing management and who has the ability to organize, coordinate, and evaluate the service.

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- 2) The nursing administrator (director of nursing) shall hold a degree in nursing or have documented experience and relevant continuing education. He/she shall be employed full-time within the FEC as director of the nursing administration or nursing service manager.
 - 3) The nursing administrator shall be accountable to the chief executive officer or designee for developing and implementing policies and procedures of the service and for the nursing practice.
 - 4) The nursing administrator shall have authority over the selection, promotion and retention of nursing personnel based on established job descriptions.
 - 5) A qualified registered nurse shall be designated and authorized to act in the absence of the nursing administrator on a 24-hour basis.
- b) Nursing Staff
- 1) A sufficient number of registered professional nurses shall be on duty at all times to assess, plan, assign, supervise, and evaluate nursing care and provide patients nursing care for which the ~~judgment~~judgement and specialized skills of a registered nurse are required.
 - 2) Licensed practical nurses and other nursing personnel shall be qualified through training, education, and experience, and shall have demonstrated abilities to give nursing care that does not require the skill and ~~judgment~~judgement of a registered professional nurse. Auxiliary nursing personnel shall be assigned and supervised by a registered professional nurse and shall be given only those duties for which they are trained.
 - 3) The number of registered professional nurses, licensed practical nurses and other nursing personnel assigned shall be consistent with the types of nursing care needed by the patients and the capabilities of the staff. Patients shall be evaluated near the end of each change of shift by criteria developed by the nursing service.
- c) Staffing Standards
- 1) Staffing schedules shall reflect actual nursing personnel required for the FEC. Staffing patterns shall reflect consideration of nursing goals,

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standards of nursing practice, and the needs of the patients.

- 2) Staffing schedules shall accomplish the following:
 - A) Identification of the nurse in charge.
 - B) Assignment of personnel in a manner that gives consideration to patient care and minimizes the risk of cross-infections.
 - C) Projection of future time schedules indicating assignment of personnel by name, status, date and duty tour.
 - D) Time schedules shall be kept in detail, indicating the assignment of nursing personnel by name, status, date, and patient care assignment. Actual time reports shall be kept verifying personnel attendance by name, date, patient care assignment, and time of actual attendance.
- d) Planning, decision making, and formulation of policies that affect the operation of the nursing service, the care of patients, or the environment of patients shall include nursing service representatives, and their recommendations shall be considered.
- e) Job descriptions shall be written for each position classification in the nursing service and shall delineate the functions, responsibilities, and qualifications for each classification. Copies of job descriptions shall be available to nursing personnel.
- f) Procedures shall be maintained to ensure that nursing personnel for whom licensure is required have valid and current licenses in the State of Illinois and to verify licensure status.
- g) The current license and credentials of private duty and agency nurses shall be verified prior to assignment. The nursing service shall maintain adequate supervision of private duty and agency nurses and shall require that they abide by the appropriate policies and procedures and maintain the standards of the FEC and the nursing service.
- h) Nursing policies and procedures shall be developed, reviewed periodically at least once a year, and revised as necessary by nursing representatives in cooperation

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with appropriate representatives from administration, the medical staff and other concerned FEC services or departments. The policies and procedures shall be dated to indicate the time of the most recent review or revision.

- i) Written policies shall include, but not be limited to, the following:
 - 1) Criteria pertaining to the performance of special procedures and the circumstances and supervision under which these may be performed by nursing personnel.
 - 2) Communication and implementation of diagnostic and therapeutic orders, including verbal orders. The responsibility and mechanism for nursing service to obtain clarification of an order when indicated.
 - 3) Administration of medication.
 - 4) Assignments for providing nursing care to patients.
 - 5) Documentation in patients' records by nursing personnel.
 - 6) Infection control.
 - 7) Patient safety.
 - 8) Nursing role in other FEC services, including, but not limited to, such services as pharmacy and housekeeping.
 - 9) Emotional and attitudinal support.
- j) A nursing procedure manual shall be developed, and copies shall be available to the nursing staff and to other services and departments, including members of the medical staff and students.
- k) The procedure manual shall provide a ready reference on nursing procedures and a basis for standardization of procedures and equipment in the FEC.

(Source: Amended at 33 Ill. Reg. 8317, effective June 4, 2009)

Section 518.1800 Quality Assurance and Reporting

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- a) The freestanding emergency center shall develop and implement a quality assessment and improvement program designed to meet at least the following:
- 1) Ongoing monitoring and evaluation of the quality and accessibility of care and services provided, including, but not limited to:
 - A) ~~Infection~~[infection](#) control,
 - B) ~~Patient~~[patient](#) satisfaction,
 - C) ~~Compliance~~[compliance](#) with EMS System protocols, and
 - D) ~~Timely~~[timely](#) patient transfers to hospitals;
 - 2) Identification and analysis of problems; and
 - 3) Identification and implementation of corrective action or changes in response to problems.
- b) The freestanding emergency center shall report the following to the Department:
- 1) *Reports of any patient transfers from the FEC to a hospital shall be faxed to the Chief, Division of Health Care Facilities and Programs at (217)782-0382 within 48 hours after the transfer. (Section 32.5(a)(10) of the Act)* Reports shall list the patient's name, diagnosis, date and time of arrival at the FEC, and date, time, destination and mechanism of transfer from the FEC.
 - 2) Reports of *morbidity and mortality rates for patients treated at the FEC* shall be submitted *on a quarterly basis*. (Section 32.5(a)(11) of the Act)
 - 3) Reports of all patients transferred to trauma centers shall be submitted on a quarterly basis.
 - 4) Reports of injuries allegedly caused by a violent act shall be reported in accordance with Section 55.80 of the Civil Administrative Code of Illinois and ~~the Violent Injury Reporting Code~~[77 Ill. Adm. Code 560 \(Violent Injury Reporting Code\)](#).
- c) Each freestanding emergency center shall submit a data report, completed by each

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vehicle service provider for every emergency pre-hospital or inter-hospital transport, to the [Department's Division of Emergency Medical Services and Highway Safety Department](#) on March 1, June 1, September 1, and December 1 of each year, covering run report data from the preceding quarter. The report shall be in one of the following formats:

- 1) Copies of the Department-issued scannable run report form, or
- 2) A data diskette containing the prescribed data elements.
 - A) The data elements shall be in a format compatible with the Department's [databasedata-base](#) input specifications, and
 - B) Department review and approval of data format compatibility is required prior to submission.
- d) ~~Each~~~~When computer technology is available, each~~ FEC shall develop and implement a mechanism for linking run reports with emergency department, trauma center and admission records from the hospitals that receive emergency patients within the System. This mechanism shall facilitate tracking of case outcomes for purposes of internal quality control, medical study and improvement of both adult and pediatric patients.
- e) The FEC shall use the single form designated or approved by the Resource Hospital.
- f) The FEC shall report *any injury resulting from the discharge of a firearm; or any injury sustained in the commission of or as a victim of a criminal offense.* (Section 3.2 of the Criminal Identification Act)

(Source: Amended at 33 Ill. Reg. 8317, effective June 4, 2009)

Section 518.1900 Infection Control

- a) The freestanding emergency center shall develop policies and procedures for the prevention and control of infections within the facility, which shall be approved by the owning or controlling hospital. The person responsible for infection control in the FEC shall be a part of the hospital's Infection Control Committee.
- b) Policies and procedures for the reporting and care of [individuals with eases-of](#)

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communicable diseases shall be in accordance with ~~77 Ill. Adm. Code 690~~, the Control of Communicable Diseases Code.

- c) When patients ~~are diagnosed with have a communicable disease~~ or present signs and symptoms ~~suggestive of a communicable disease, such diagnosis, proper~~ precautionary measures shall be taken to avoid cross-infection to personnel, other patients, or the public, in accordance with the Control of Communicable Diseases Code.
- d) Policies and procedures for the ~~care~~handling of persons diagnosed with an infectious disease shall include orders to the medical, nursing, and non-professional staffs providing for ~~proper~~ isolation technique in accordance with the Control of Communicable Diseases Code.
- e) All persons who care for patients with or suspected of having a communicable disease or whose work brings them in contact with materials that are potential conveyors of communicable disease shall take appropriate safeguards to avoid transmission of the disease agent pursuant to Centers for Disease Control and Prevention Guideline for Hand Hygiene in Health-Care Settings and Guidelines for Infection Control in Health Care Personnel.
- f) Thorough ~~hand scrubbing~~hands scrubbing shall be required after touching any contaminated or infected material.
- g) Policies and procedures shall be established related to subsections (a) through (f) the above and including, but not limited to, the following items ~~but not limited thereto~~:
 - 1) The admission and isolation of patients with specific and/or suspected infectious diseases, and protective isolation of appropriate patients.
 - 2) In-service education programs on the control of infectious diseases.
 - 3) Policies and procedures for isolation techniques appropriate to the working diagnosis of the patient, and protective routines for personnel and visitors.

(Source: Amended at 33 Ill. Reg. 8317, effective June 4, 2009)

Section 518.1950 Sterilization and Processing of Supplies

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- a) All sterilization and processing of all sterile supplies and equipment shall be under competent, qualified supervision.
- 1) The director or person responsible for [sterile supplies and equipment](#) ~~central services~~ shall be responsible to the chief executive officer. This person shall be qualified for the position by education, training, and experience.
 - 2) The number of supervisory and support personnel shall be related to the scope of the services provided. New employees shall receive initial orientation and on-the-job training, and all employees shall participate in a continuing in-service education program, which shall be documented.
 - 3) Educational efforts, though directed primarily at sterile-supply processing and handling techniques, shall also include management concepts, safety, personal hygiene, health requirements and [hand-washing](#) ~~handwashing~~, and work attire.
- b) Written policies and procedures shall be established for the decontamination and sterilization activities performed in the freestanding emergency center and shall relate, but are not limited, to the following:
- 1) Receiving, decontaminating, cleaning, preparing, disinfecting and sterilizing ~~of~~ reusable items.
 - 2) Assembly, wrapping, storage, distribution, and quality control of sterile equipment and medical supplies. Load control numbers shall be used to designate the ~~hospital~~ sterilization equipment used for each item, including the sterilization date and cycle.
 - 3) Use of sterilization process monitors, including temperature and pressure recordings, and the use and frequency of appropriate chemical indicator and bacteriological spore tests for all sterilizers.
 - 4) Designation of the shelf life for each FEC-wrapped and -sterilized medical item and, to the maximum degree possible, for each commercially prepared item.
 - A) Designation of a shelf life may be a specific expiration date, i.e.,

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30 days, six months, etc., based on manufacturer's recommendation, a nationally recognized authority, or other standard approved by the owning or controlling hospital's Infection Control Committee.

- B) Designation of shelf life may be event related if policies and procedures, approved by the owning or controlling hospital's Infection Control Committee, address at least the following:
- i) ~~Requirements~~ requirements for wrapping, storing and rotating ~~storage and rotation of~~ sterile supplies;
 - ii) ~~Definition~~ definition of an event that may cause a sterile item to be or be suspected of being compromised, such as the package being wet or torn, or the seal being broken or tampered with;
 - iii) ~~Clear~~ clear direction that final inspection of the package and the ultimate decision to use the contents of the package rest with the clinician; and
 - iv) ~~Orientation~~ orientation, in-service and other follow-up to assure that all necessary staff understand and implement the policies and procedures.
- C) A facility may choose to use both a specific expiration date and event-related shelf life designation specific for certain wrappings, areas of the FEC, etc., as long as the policies and procedures, as approved by the Infection Control Committee, and training of staff define this practice.
- 5) Acquisition of supplies after normal working hours or any time the central supply service or sterile supply unit is considered "closed" or unstaffed.
 - 6) Preventive maintenance of all central supply service equipment, including performance verification records and reports.
 - 7) The recall and disposal or reprocessing of outdated sterile supplies.
 - 8) The emergency collection and disposition of supplies when special

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warnings have been issued by the manufacturer. ~~The~~ There shall be appropriate notification of the attending physician shall be notified if where patient exposure is known.

- 9) Specific aeration requirements for each category of gas-sterilized items to eliminate the hazard of toxic residues.
 - 10) The cleaning and sanitizing of work surfaces, floors, utensils, and equipment used in central supply service functions.
- c) Space shall be provided for the efficient operation of all central supply service functions. Functional design and work-flow patterns shall ~~separate~~ provide for the separation of soiled and contaminated supplies from ~~supplies~~ those that are clean and sterile. Equipment of adequate design, size, and type shall be provided for ~~the effective~~ decontaminating, disinfecting, cleaning, packaging, sterilizing, storing, and distributing ~~of~~ medical instruments, supplies, and equipment used in patient care.
- d) Equipment and ~~Procedures~~ procedures
- 1) The facilities, equipment, and procedures for ~~clean up~~ clean-up, preparation, and sterilization shall be adequate to allow proper cleaning, processing, and sterilizing of patient care supplies and equipment.
 - 2) When ~~clean up~~ clean-up, preparation, and sterilization functions are carried out in the same room or unit (as in a central sterilizing department), the physical facilities and equipment and the policies and procedures for their use shall ~~be such as to effectively~~ separate soiled or contaminated supplies and equipment from the clean or sterilized supplies and equipment.
 - 3) Sterilization equipment shall be maintained in good repair and be under ~~the provisions of~~ a preventive maintenance program.
 - 4) All pressure steam autoclaves shall have recording thermometers, and the sterilization performance shall be otherwise ~~monitored~~ checked.
- e) Sterilization of ~~Instruments~~ instruments and ~~Utensils~~ utensils
- 1) All surgical instruments not adversely affected by high temperature shall be sterilized by pressure steam sterilization.

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- 2) Whenever possible, throughout the FEC, sterilization shall be accomplished by pressure steam sterilization. Hot air sterilization or gas sterilization may be used. When gas sterilization is used, there shall be policies and tested procedures for proper aeration to permit safe ~~use~~utilization. Pressure steam sterilization of reusable syringes and needles is required.
- 3) All instruments, whether used on infected cases or clean cases, shall be cleaned before sterilization. Instruments used on infected cases shall be disinfected before transport to central supply.
- 4) Boiling is not an approved method of sterilization.
- f) Water ~~Sterilization~~sterilization
 - 1) When non-commercial sterile water is ~~used~~utilized, water sterilization equipment shall be maintained and operated in a manner that will protect the sterilized water from contamination.
 - 2) An acceptable method for checking the sterility of the water shall be ~~used~~utilized. Water may be sterilized either in ~~approved~~-water sterilizers or autoclaved in ~~appropriate~~approved flasks.
- g) Sterilization and ~~Storage~~storage of ~~Supplies~~supplies and ~~Equipment~~equipment
 - 1) Supplies and equipment shall be properly wrapped and labeled before sterilization.
 - 2) The effectiveness of sterilization shall be checked. This ~~shall~~should include bacteriological testing of all sterilization units throughout the facility. Indicators shall be used to show that a wrapped package has been sterilized. A procedure shall be established for the recall of expired or inadequately sterilized goods for both in-house and commercially sterilized supplies and equipment.
 - 3) Supplies and equipment commercially prepared so as to retain sterility indefinitely are acceptable. The FEC ~~shall verify~~should satisfy itself of the sterility of ~~these~~such materials.

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- 4) Sterile equipment and supplies shall be stored properly in clean cabinets, cupboards or other suitable enclosed spaces. An orderly system of rotation of supplies is recommended so that supplies stored first will be used first.

(Source: Amended at 33 Ill. Reg. 8317, effective June 4, 2009)

Section 518.2000 Laboratory Services

The freestanding emergency center shall have a clinical laboratory to perform services commensurate with the FEC's needs for its patients, which is certified under the Clinical Laboratory Improvement Amendments of 1988 (CLIA 88) and [42 CFR 493.57 FR 40 \(February 28, 1992\)](#). Anatomical pathology services shall be available either in the FEC or by arrangement with other facilities.

- a) Adequacy of Laboratory Services. Clinical laboratory services adequate for the individual FEC shall be maintained in the FEC, as determined by the following:
 - 1) The extent and complexity of services are commensurate with the size, scope and nature of the FEC and the demands of the medical staff upon the laboratory.
 - 2) Basic laboratory services, necessary for routine examinations as defined in subsection (b) of this Section, are provided in the FEC.
- b) Clinical Laboratory Examinations. Basic clinical laboratory examinations, including chemistry, microbiology, hematology, serology, and clinical microscopy, shall be carried out as required by the medical staff.
 - 1) Other laboratory examinations may be provided under arrangements by the FEC with another laboratory that is certified under CLIA 88.
 - 2) In the case of work performed by an outside laboratory, the original report from this laboratory shall be contained in the medical record.
- c) Availability of Facilities and Services
 - 1) Facilities and services shall be available at all times.
 - 2) Where services are provided by an outside laboratory, the conditions,

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procedures, and availability of examinations performed are to be in writing and available in the FEC.

- d) Laboratory Report
Signed or otherwise authenticated reports shall be filed with the patient's medical record and duplicate copies maintained in the laboratory.
 - 1) The laboratory director shall be responsible for the laboratory reports.
 - 2) All tests and procedures shall be ordered by a member of the medical staff or by others in accordance with approved policies.
- e) Pathologist Services. Services of a pathologist shall be provided as indicated by the needs of the FEC.
 - 1) Services are to be under the supervision of a pathologist certified by the American Board of Pathology or who possesses training and experience acceptable to the Department and equivalent to such certification, and who is licensed to practice medicine in all of its branches in Illinois, on a full-time, regular part-time or regular consultive basis. If the latter pertains, the FEC shall provide for, at a minimum, semimonthly consultive visits by a pathologist.
 - 2) The pathologist shall participate in staff, departmental and clinicopathologic conferences.

(Source: Amended at 33 Ill. Reg. 8317, effective June 4, 2009)

Section 518.2010 Radiological Services

- a) The freestanding emergency center shall maintain and provide radiological services sufficient to perform and interpret the radiological examinations necessary for the diagnosis and treatment of patients, to the extent that the complexity of services is commensurate with the size and scope of the FEC. Additional required services shall be provided by shared services or referral of patients.
- b) The physician responsible for the direction of a radiological department or service shall be Board certified or eligible for certification by the American Board of Radiology or equivalent. The physician shall have a written agreement with the

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FEC to direct the Radiological Services on a full-time, part-time or consulting basis and be an approved member of the medical staff. The responsibilities of the physician ~~shall~~~~must~~ be identified in a policy and procedures manual or other document.

- c) Technicians employed in the radiological services shall have had sufficient training and experience to carry out the procedures safely and efficiently commensurate with the size and scope of the service. A procedure and means for evaluating qualifications shall be established and used.
- d) Radiological services shall be available at all times.
- e) Complete, signed reports of the radiological examinations shall be made part of the patient's record, and duplicate copies shall be kept in the department for a period of time established by the FEC.
- f) Written reports of each radiological interpretation, consultation and treatment shall be signed by the physician responsible for conducting the procedure and shall be a part of the patient's medical record. Maintenance and filing of records ~~shall~~~~should~~ be coordinated with direction and supervision by the Medical Record Administrator.
- g) X-ray or roentgen photographs shall be retained in accordance with the X-ray Retention Act ~~[210 ILCS 90]~~, which requires retention for five years and longer where notification of litigation is received.
- h) Radiological facilities operated by an FEC constitute a "radiation installation" within the meaning of the Radiation ~~Protection~~~~Installations~~ Act ~~of 1990~~~~[420 ILCS 30]~~ and are required to be registered with the Illinois Emergency Management Agency~~Department of Nuclear Safety~~.
- i) Each radiological department or identified distinct radiological service shall prepare and maintain a policies and procedures manual, which shall be reviewed and updated annually and shall include, but not be limited to, ~~provision for~~ the following ~~identified~~ requirements:
 - 1) The FEC shall establish and enforce safety regulations that will protect both patient and radiological worker from excessive or stray radiation.
 - 2) Where a radiation hazard exists, the FEC shall periodically obtain a survey

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and report by a qualified radiation physicist indicating that satisfactory conditions exist.

- 3) Personnel Monitoring
 - A) Procedures for personnel monitoring shall be maintained for each individual working in the area of radiation where there is a reasonable probability of receiving one-fourth of the maximum permissible dose.
 - B) Personnel monitoring records resulting from the use of film badges or dosimeters ~~shall~~must be maintained. Readings ~~shall~~must be on at least a monthly basis.
 - C) Upon termination of employment, each worker ~~shall~~should be provided with a summary of his exposure record.
 - D) Permanent records of exposure on all monitored personnel ~~shall~~must be maintained for review by ~~the Department~~surveyors for licensing.
- 4) Monthly and yearly reports shall be maintained on the number of examinations done and kinds of treatment given.
- 5) The use of all radiological apparatus shall be limited to personnel designated as qualified by the physician responsible for the direction and/or supervision of the department or service. The use of fluoroscopes shall be limited to credentialed physicians.
- 6) Participation in continuing education by all radiological personnel (including physicians responsible for the direction and supervision of radiological services) shall be documented.
- ~~7) A current interesting case file should be maintained on a regular basis for educational purposes.~~
- ~~78)~~ At all times, reasonable privacy shall be provided for the radiological patient relative to dressing, evacuation, and the study being performed.
- ~~89)~~ Safety rules shall be written for the radiological services to protect patients

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and personnel. These rules ~~shall~~**must** relate to radiation, electrical and mechanical hazards, prevention and containment of fire and explosion, and prevention and treatment of any untoward reaction to contrast media.

~~940~~) Written policies and procedures ~~shall~~**must** be enforced for the radiological services that relate to the management of critically ill patients and to the administration of diagnostic agents by nonphysicians.

~~1044~~) When nonphysicians are permitted to administer diagnostic agents intravenously for radiological evaluations, written safety guidelines ~~shall~~**must** specify which individuals have this authority and require that a physician be immediately available.

~~1142~~) An emergency drug tray ~~shall~~**must** always be present in the room or immediately available where parenteral diagnostic agents for radiologic evaluations are being administered. A system shall be established for maintaining an emergency drug tray with appropriate content and no outdated medications or missing items. Oxygen, airways, syringes and needles, intravenous administration sets, and appropriate parenteral solutions shall be available at all times.

~~1243~~) Written safety rules ~~shall~~**must** provide: for the steps to be followed in the event of a spill of radioactive material; for specific authority for any nonphysician personnel who administer isotopes intravenously; for the recording of cumulative radiation exposure of all personnel; a requirement for protective security from all radioactive areas for all unauthorized personnel; and the establishment of a radiation protection survey at least every six months.

~~1344~~) Instrument log books maintained by Radiological Services ~~shall~~**must** include calibration records of equipment and monitors, maintenance and repair records, and the findings of outside evaluators (if used), with the corrective action taken.

(Source: Amended at 33 Ill. Reg. 8317, effective June 4, 2009)

Section 518.2020 Comprehensive Emergency Treatment Services

Each freestanding emergency center shall provide Comprehensive Emergency Treatment Services, as defined in this Section and in the Hospital Licensing Requirements, 24 hours per

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day, on an outpatient basis, as follows:

- a) *At least one board certified emergency physician shall be present at the FEC 24 hours per day.* (Section 32.5(a)(~~2~~)(C) of the Act)
- b) Physician specialists representing the major specialties, and sub-specialties such as plastic surgery, dermatology, ophthalmology, etc., shall be available immediately for consultation and onsite, if necessary, within 30 minutes.
- c) Ancillary services, including laboratory and x-ray, shall be staffed at all times. Pharmacy shall be staffed or "on call" at all times.
- d) Each FEC shall provide adequate facilities for ~~the provision of~~ immediate life-saving measures.
- e) Policies and procedures governing the acceptance and care of emergency patients shall be established.
- f) ~~An appropriate~~ record shall be maintained on each patient who presents himself/herself for emergency services.
- g) ~~Supplies~~Appropriate supplies and equipment shall be available and ready for use.
- h) This Section shall not be construed to affect facility-patient arrangements regarding payment for care.

(Source: Amended at 33 Ill. Reg. 8317, effective June 4, 2009)

Section 518.2030 Notification of Emergency Personnel

- a) For purposes of this Section:
 - 1) "Emergency Services Provider Agency" means any entity that uses vehicles, personnel and equipment for the pre-hospital or inter-hospital transportation and care of patients requiring emergency care or life support services in ~~accordance~~conformance with ~~the provisions of~~ the Act.
 - 2) ~~"Paramedic" means an emergency medical technician-paramedic licensed by the Department pursuant to Section 3.50 of the Act.~~

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- ~~2)3)~~ "Ambulance Personnel" means any person employed by an emergency services provider agency who is or was involved in the pre-hospital or inter-hospital transportation and care of a patient requiring emergency care or life support services as an ambulance crew member, including the vehicle driver.
- b) Each freestanding emergency center (~~FEC~~) shall provide notification to establish procedures for notifying police officers, emergency medical technicians paramedics and ambulance personnel who have provided, or are about to provide, emergency care or life support services to a patient who has been diagnosed as having a dangerous communicable or infectious disease. (Section 6.08(a) of the Hospital Licensing Act) The notification procedures shall include at a minimum the requirements of this Section.
- c) In reporting communicable disease cases, the freestanding emergency center shall comply with the Control of Communicable Diseases Code. Notification shall be required for the following diseases:
- 1) ~~Rubella (including congenital rubella syndrome)~~
 - 2) ~~Measles~~
 - 3) ~~Tuberculosis~~
 - 4) ~~Invasive meningococcal infections (meningitis or meningococemia)~~
 - 5) ~~Mumps~~
 - 6) ~~Chickenpox~~
 - 7) ~~Herpes Simplex~~
 - 8) ~~Diphtheria~~
 - 9) ~~Rabies (human rabies)~~
 - 10) ~~Anthrax~~
 - 11) ~~Cholera~~

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- 12) ~~Plague~~
- 13) ~~Polio (Poliomyelitis)~~
- 14) ~~Hepatitis B~~
- 15) ~~Typhus (louse-borne)~~
- 16) ~~Smallpox~~
- 17) ~~Hepatitis non-A, non-B~~
- 18) ~~Acquired Immunodeficiency Syndrome (AIDS)~~
- 19) ~~AIDS-related complex (ARC)~~
- 20) ~~Human Immunodeficiency Virus (HIV) Infection~~

- d) *The freestanding emergency center (~~FEC~~) shall send ~~the a~~ letter of notification to the emergency services provider agency within 72 hours after the FEC receives actual knowledge of a confirmed diagnosis of any of the communicable diseases listed in (see subsection (c)) of this Section, other than AIDS, ARC or HIV infection, of in regard to any patient who has been transported to the FEC by police officers, emergency medical technicians paramedics or ambulance personnel. (Section 6.08(c) of the Hospital Licensing Act)*
- e) *~~If there is~~In the case of a confirmed diagnosis of AIDS, ~~ARC, or HIV infection,~~the ~~FEC~~~~FEC~~ shall send ~~the a~~ letter of notification to the emergency services provider agency within 72 hours only if one or both of the following conditions exist:*
 - 1) *The police officers, emergency medical technicians paramedics or ambulance personnel have indicated on the ambulance run sheet that a reasonable possibility exists that they have had blood or body fluid contact with the patient.*
 - 2) *The FEC has reason to know of a possible exposure of the police officers, emergency medical technicians paramedics or ambulance personnel to the blood or body fluids of the patient. (Section 6.08(c) of the Hospital Licensing Act)*

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- f) *Notification letters shall be sent to the designated contact at the emergency services provider agency listed on the ambulance run sheet and shall include at least the following information. Such notification letters shall not contain the patient's name or any patient-identifying information. (Section 6.08(d) of the Hospital Licensing Act)*
- 1) *The names of the police officers, [emergency medical technicians](#)~~paramedics~~, ambulance personnel, and other crew members listed on the ambulance run sheet,*
 - 2) *The name of the communicable disease diagnosed,*
 - 3) *The date the patient was transported,*
 - 4) *A statement that this information shall be maintained as a confidential medical record, and*
 - 5) *A statement that upon receipt of the notification letter, the provider agency shall contact all personnel involved in the pre-hospital or inter-hospital care and transport of the patient. (Section 6.08(d) of the Hospital Licensing Act)*
- g) *Upon discharge of a patient with a communicable disease ~~listed in subsection (e) of this Section or below~~ to emergency [transport](#) personnel, the ~~FEC/FEC~~ shall notify the emergency [transport](#) personnel of appropriate precautions against the communicable disease, but shall not identify the name of the patient. (Section 6.08(e) of the Hospital Licensing Act)*
- 1) ~~Typhoid fever~~
 - 2) ~~Amebiasis~~
 - 3) ~~Shigellosis~~
 - 4) ~~Salmonellosis~~
 - 5) ~~Giardiasis~~
 - 6) ~~Hepatitis A~~

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- h) *The FEC may take any measures in addition to those required in this Section ~~which it considers necessary or useful~~ to notify police officers, emergency medical techniciansparamedics or ambulance personnel of possible exposure to any communicable disease. (Section 6.08 of the Hospital Licensing Act) However, such measures shall not violate the confidentiality of the medical record of the patient, or conflict with the provisions of this Section.*

(Source: Amended at 33 Ill. Reg. 8317, effective June 4, 2009)

Section 518.2060 Emergency Services for Sexual Assault Survivors~~Victims~~

- a) All freestanding emergency centers are required to render care to ~~victims of~~ sexual assault survivors. ~~Care~~~~Such care~~ shall be in accordance with Section 545.60 of the Sexual Assault Survivors Emergency Treatment Code ~~(77 Ill. Adm. Code 545)~~. The FEC shall submit a sexual assault treatment plan in accordance with the Sexual Assault Survivors Treatment Code even if the plan is to participate in the plan submitted by the Associate or Resource Hospital.
- b) An FEC may fulfill its obligation to provide emergency service to sexual assault ~~survivors~~~~victims~~ by participating in an areawide plan for emergency service in accordance with 77 Ill. Adm. Code 545.50.

(Source: Amended at 33 Ill. Reg. 8317, effective June 4, 2009)

Section 518.2070 Pharmacy Service

- a) The freestanding emergency center shall provide a pharmacy or drug and medicine service (service) for the care and treatment of patients.
- b) A pharmacy or drug and medicine service policy and procedure manual shall identify the service and manner of operation.
- c) The service shall be under the direction of a pharmacist employed by the FEC on a full-time, part-time or consulting basis. Responsibilities of the pharmacist ~~shall~~~~must~~ be identified in the policy and procedure manual or other document.
- d) A pharmacist shall staff the pharmacy during all hours when the pharmacy is open.~~A pharmacy shall be staffed at all times by a pharmacist during open hours.~~ At all other times, the pharmacy shall be locked. A pharmacist or pharmaceutical service ~~shall~~~~must~~ be on call when the pharmacy is not open.

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- e) When a pharmacist is absent from the FEC, a registered professional nurse may have access to the pharmacy. The nurse, after contacting the on call pharmacist, may obtain a single dose, manufacturer's original package, or container of a drug or medication prepackaged under the supervision of a pharmacist, ~~which is~~ necessary to administer to a patient in carrying out treatment and medication orders of a prescriber. A signed receipt for the drugs and medicines removed shall be left for the pharmacist.
- f) Vending machines for the storage and supply of drugs used in the facility shall be stocked only under the supervision of a pharmacist. They shall be securely locked, and shall provide a record of what was supplied and to whom. The drugs contained in the vending machines therein may be released ~~from such machines~~ only by a registered professional nurse, licensed practical nurse if the FEC's policy allows, physician or pharmacist.
- g) All drugs and medicines shall be stored and dispensed in accordance with applicable State laws and rules and federal laws ~~and regulations~~.
- h) Pharmacy Personnel
- 1) A pharmacist shall be available or on call at all times.
 - 2) ~~The An adequate~~ number of registered pharmacists and other supportive personnel ~~shall be~~ provided shall be, consistent with the size and activity of the service.
 - 3) Pharmacy apprentices, if employed~~when utilized~~, shall~~must~~ be under the direct and personal supervision of a pharmacist.
- i) A pharmacy shall be in an identified area or room that complies with the requirements of the Pharmacy Practice Act ~~of 1987~~.
- j) Drugs and medicines shall be plainly labeled with the name of the manufacturer, lot and control number, and stored in specifically identified and well-illuminated medicine cabinets, closets, refrigerators, or other locations provided with proper lighting, ventilation and temperature control and fully protected from access by unauthorized persons.

(Source: Amended at 33 Ill. Reg. 8317, effective June 4, 2009)

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Section 518.2090 Insect and Rodent Control

Any condition on the freestanding emergency center site conducive to ~~harboring or breeding~~the harborage or breeding of insects, rodents, or other vermin shall be prohibited.

- a) All outside doors, windows, and other openings ~~shall be effectively screened,~~ except in air-conditioned buildings where doors and windows are normally kept closed and are opened for minimal use, automatically operated doors or infrequently used fire exits ~~shall be effectively screened during the entire fly season.~~ Screens shall be kept in good repair and shall have no fewer than 16 meshes per inch. All screen doors shall open outward where building design permits and be equipped with self-closing devices. Fire and panic laws shall be considered in screen installation and maintenance.
- b) Other methods of preventing the entrance of insects, such as blast-fans, electrocution screens, fly traps, sprays, etc., may be used ~~but~~ only as a supplement to the use of screens. Fly strips, paper, swatters, insecticide sprays and powders, fly traps, etc., shall be used only in such a manner and place that dead, injured, or affected insects, or the spray or powder itself, cannot fall on or otherwise come in contact with any food or food product, sterile/clean equipment and supplies or patient treatment areas.
- c) All rooms shall be free from insects, rodents, or other vermin.
- d) Any chemical substance of a poisonous nature used to control or eliminate various types of vermin shall be properly colored or labeled to identify it as a poison. Identification, storage and use shall be in accordance with local, State, and federal laws/regulations.
- e) If pest control services are contracted with an outside firm, that firm ~~shall~~must be a Pest Control Business that is licensed by the Department ~~as a Pest Control Business.~~ If services are provided by FEC personnel, and restricted-use pesticides are applied, the person responsible for the application ~~shall be~~must be certified by the Department as an institutional multi-housing pest control operator who is certified by the Department.
- f) The FEC shall maintain anAn up-to-date list ~~shall be maintained~~ of all pest control products used ~~in the facility,~~ areas where they are used, and areas where specific formulations ~~shall~~must not be used. This document ~~shall~~must be readily

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available, in case of accidental poisoning.

(Source: Amended at 33 Ill. Reg. 8317, effective June 4, 2009)

Section 518.2100 Laundry Service

- a) Laundry service shall be provided by an organized laundry service under competent supervision or by contract with another entity.
 - 1) If laundry services are provided by an outside entity~~firm~~, a written contract shall be available and shall specify that the laundry meets the same standards required in this Section. The linens shall~~must~~ be transported in sanitary vehicles. Clean and soiled linens shall~~must~~ not be transported in the same vehicle at the same time.
 - 2) Equipment and construction shall be as required in Section 518.2180.
- b) The freestanding emergency center laundry shall be:
 - 1) Located so that steam, odors, lint and objectionable noises do not reach patient or personnel areas;
 - 2) Well-lighted, ventilated and adequate in size for the needs of the FEC and for the protection of employees;
 - 3) Maintained in a safe, sanitary, lint-free condition and kept in good repair; and
 - 4) Not part of a storage area.
- c) A supply of clean linen shall be provided that is adequate for the capacity and use of the facility.
- d) Written procedures shall be developed and maintained pertaining to the handling, storage, transportation and processing of linens to prevent the spread of infection and assure the maintenance of clean linen.
- e) All linens shall be mechanically washed using soap or detergent and warm or hot water. Linens shall be disinfected by using one of the following procedures:

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- 1) Thermal Disinfection: Linen ~~shall~~**must** be exposed to hot water of at least 160°F for a cumulative time of at least 25 minutes.
 - 2) Chemical and Thermal Disinfection: Linen ~~shall~~**must** be exposed to wash and bleach bath water ~~of~~ at least 140°F. The bleach bath ~~shall~~**must** be at least 10 minutes long and have a starting bleach concentration of 100 ppm. This bleach concentration ~~shall~~**should** be measured by titration on a periodic basis.
 - 3) Other: A step-wise wash process that has been previously documented by microbiological study published in a scientific journal. The results ~~shall~~**must** indicate no surviving pathogenic microorganisms and a low level of other organisms. Low level is defined as nine out of ~~10~~**ten** samples with ~~fewer~~**less** than two colonies per ~~10~~**ten** square centimeters of test surface.
- f) All washed linens shall be thoroughly rinsed. A neutralizing rinse is recommended.
- g) Separate areas shall be maintained for storage of clean linen and soiled linen. Linen storage areas shall be adequate in size for the needs of the facility and shall not be used for any other purpose. Storage shall not be permitted in areas or rooms where plenums of air conditioning or ventilating systems are located.
- h) ~~Hand-washing~~**Handwashing** and toilet facilities for laundry personnel shall be provided at locations convenient to the laundry.
- i) Soiled and clean linen carts shall be so labeled and ~~shall be~~ provided with covers made of washable materials that shall be laundered or suitably cleaned daily.
- j) Soiled Linen
- 1) ~~Radioactive~~**Soiled diapers, radioactive** contaminated linen and linen from pathology shall be separately transported, stored and washed.
 - 2) Isolation and other potentially infectious linens shall be bagged at the location where they are used in durable, leak-proof bags resistant to puncture and tears and shall be labeled or identified as infectious at the site of use.

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- 3) Soiled linen shall not be sorted or pre-rinsed in patient care areas. Soiled linen may be sorted in a separate enclosed room by a person instructed in methods of infection control. These personnel shall not have responsibility for immediately handling clean linen.
 - 4) Soiled linen shall be stored and transported in a manner that does not permit contamination of clean linen, corridors and areas occupied by patients.
 - 5) All carts and other containers used to store or to transport clean or soiled linen shall be identified for soiled linen only or for clean linen only and shall be kept covered when not in use.
 - 6) If laundry chutes are used for transporting soiled linen, all soiled linen shall be bagged. The chutes shall be designed to maintain a negative air pressure within the chute and shall be kept in a clean and sanitary condition. [If chutes are used, they shall meet all of the requirements of NFPA 101, Section 9.5.](#)
- k) Clean Linen
- 1) Clean linen shall be sorted, handled and transported in such a manner as to prevent cross-contamination.
 - 2) Clean linen carts shall be used only for the purpose of transportation or storage of clean linen.
 - 3) Persons processing clean linen shall be dressed in clean garments at all times while on duty. They shall not handle soiled linen.
 - 4) Clean linen received from a commercial laundry shall be completely wrapped in convenient-size bundles or otherwise protected and [shall](#) be delivered to a designated clean area of the FEC.
 - 5) Clean linens shall be adequately protected from contamination. Clean linen in patient care areas shall be stored in clean, ventilated closets, rooms or alcoves, used [only](#) for that purpose-~~only~~. Corridors shall not be used for storage of linen.
 - 6) If clean linen is stored in the laundry area, it shall be stored in a room

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separate from the sorting room, laundry room or soiled linen room.

(Source: Amended at 33 Ill. Reg. 8317, effective June 4, 2009)

Section 518.2110 Food Service

Food service, if provided by the freestanding emergency center, shall be provided in compliance with [the Food Service Sanitation Code and](#) local ordinances.

(Source: Amended at 33 Ill. Reg. 8317, effective June 4, 2009)

Section 518.2120 Maintenance

The freestanding emergency center shall have an organized engineering and/or maintenance department under competent supervision. The requirements of NFPA ~~Standard No. 99 (1996); "Health Care Facilities Code,"~~ shall apply in addition to the following:

- a) Maintenance services shall be under the supervision of a qualified engineer or persons who have had commensurate experience in the maintenance of public or private plants, preferably health care facilities.
- b) Personnel engaged in maintenance activities shall receive orientation and follow-up training, including training in principles of asepsis, cross-infection control, and safe practices.
- c) The FEC shall have an effective, organized, detailed preventive maintenance program. Written instructions for operating and maintaining equipment and the various mechanical, electrical, and other systems contained in the FEC shall be available to maintenance personnel.
- d) Maintenance and repairs shall be carried out in accordance with applicable codes; ~~rules, regulations, standards~~ and requirements of local jurisdictions, [and applicable rules of](#) the State Fire Marshal; ~~and the Department of Public Health.~~
- e) Space and equipment shall be provided for the managerial activities of the supervisor of maintenance for repair work and for storage of maintenance materials. Paints and oils shall not be stored in patient areas.
- f) The FEC structure and its component parts shall be kept in good repair and [shall be](#) maintained with consideration for the safety and comfort of the occupants of

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the building. Mechanical and electrical equipment shall be maintained in good repair and operating condition at all times.

- g) Roads, walks, and parking areas shall be properly maintained.
- h) Grounds and buildings shall be maintained as follows:
 - 1) ~~In~~ a clean condition free of safety hazards;
 - 2) ~~In an such~~ manner ~~thata~~s will prevent standing water, flooding or leakage; and
 - 3) ~~Free~~free of excessive noise, odors, pollens, dusts, or other environmental pollutants and such nuisances as may adversely affect the health or welfare of patients.
- i) Ventilation, heating, air conditioning, and air changing systems shall:
 - 1) ~~Be~~ maintained in good repair and shall be operated in a manner that will prevent the spread of infection and provide for patient comfort;
 - 2) ~~Be~~ maintained and operated so that air shall not be circulated from laboratories, toilet rooms, janitors' closets, storage rooms, shop areas, ~~and~~ soiled linen and soiled utility to any other part of the facility; and
 - 3) ~~Be~~ provided, as needed, with acceptable air filtration equipment that is cleaned and serviced at adequate intervals; ~~and~~
 - 4) ~~assure that the relative humidity is maintained at a minimum of 50 percent in those areas where conductive floors are required.~~

(Source: Amended at 33 Ill. Reg. 8317, effective June 4, 2009)

Section 518.2130 Fire Safety

- a) Buildings and equipment shall be maintained so as to prevent fire and other hazards to personal safety.
- b) Exits, stairways, doors, and corridors shall be kept free of obstructions.

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- c) Flammable and combustible liquids shall be labeled, stored, handled and used in compliance with ~~the requirements of the National Fire Protection Association (NFPA) Standard No. 30 (1990) "Flammable and Combustible Liquids Code."~~
- d) Flammable and non-flammable gases shall be labeled, handled, and used in compliance with ~~the requirements of NFPA Standard No. 99 (1996), "Health Care Facilities Code."~~ Separate storage for flammable and oxidizing gases shall be provided.
- e) A master fire plan, developed to suit the needs of the facility, and acceptable to the Department, shall be maintained.
- f) Fire regulations listing the fire stations, procedures and staff emergency duties by title or position shall be posted conspicuously on each floor at appropriate locations, and shall be available in each unit, section and department.
- g) Employees shall be trained in procedures to be followed in the master fire plan.
- h) Fire drills shall be conducted at irregular intervals at least 12 times per year. A record shall be kept of the staff performance and results, and indicated corrective measures shall be made.
- i) Portable fire extinguishers, provided in accordance with NFPA ~~Standard No. 10 (1990), "Installation of Portable Fire Extinguishers,"~~ shall be inspected at least annually, recharged or repaired as needed and labeled with the dates of the last inspection.
- j) Sprinkler systems, fire hoses, fire detection and alarm devices, and other equipment for use in the fire safety program shall be connected and maintained in a fully functional condition at all times.
- k) Fire detection and protection systems shall be inspected no less frequently than twice a year by a recognized, competent authority. A written report of the inspection shall be kept on file at the FEC for at least three years following the date of inspection.
- l) The FEC shall maintain a procedure for reporting to a designated administrative officer, on a standard form adopted for the purpose, all accidents to patients, ~~staff~~ employees; or visitors. The report shall include all pertinent information and shall be kept on file for ~~no fewer~~not less than six years after the occurrence is reported.

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- m) The FEC shall maintain a procedure to investigate fires. The FEC shall notify the Department of all fires within 24 hours after the occurrence. A written report of the investigation containing all pertinent information shall be made and a copy forwarded to the Department. The report shall remain on file for no fewer~~not less~~ than six years.

(Source: Amended at 33 Ill. Reg. 8317, effective June 4, 2009)

Section 518.2140 Water Supply

The Department's rules ~~titled "Public Areaentitled-" Sanitary Practice Codefor Drinking Water, Sewage Disposal and Rest Room Facilities" (77 Ill. Adm. Code 895)~~ shall apply, except when~~where~~ they differ from this Part.

- a) Water supplies of ~~FEC~~medical facilities shall be operated in conformance with the following requirements:
- 1) All water used in operation of the FEC facility shall be provided from a public water supply or from an alternative source. The source of water supply shall be approved by the Department.
 - 2) The construction, maintenance, and operation of any treatment process that might change the physical, chemical, or bacterial characteristics of the water shall be approved by the Department.
 - 3) Hot water shall be available at sinks and lavatories at all times. Water shall be adequate in volume and pressure for all medical purposes.
 - 4) The water system shall be operated with a hot water system adequate for all medical purposes.
 - 5) The hot water supply shall be regulated by thermostatic or other control devices, which shall be either locked or located in places not accessible to patients or the general public so that the hot water used by patients and by the public is maintained at an even temperature that cannot cause personal injury.
- b) As part of the disaster and mass casualty program, a plan for the emergency supply of water shall~~must~~ be available. This plan shall be approved by the

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Department, and shall include at least written contracts with any outside firms, a listing of procedures to be followed, the amounts of water needed by different departments, the means of dispensing water within the [FEC facility](#), and procedures for sanitizing in the case of contamination. Plans ~~using~~[utilizing](#) existing piping are recommended.

- c) All plumbing shall be designed, installed, and maintained in accordance with the requirements of the Illinois Plumbing Code (~~77 Ill. Adm. Code 890~~), except [when where](#) that Code and this Part differ.

(Source: Amended at 33 Ill. Reg. 8317, effective June 4, 2009)

Section 518.2150 Garbage, Waste and Sewage Handling and Disposal

- a) All garbage and refuse shall be collected, stored, and disposed of in a manner that will not permit the transmission of a contagious disease, create a nuisance or fire hazard, or provide a breeding place for vermin or rodents.
- b) Solid waste shall be handled in a safe and sanitary manner within the facility. Garbage and refuse receptacles within the facility shall be made of metal or other appropriate material provided with disposable liners or shall be cleaned and disinfected after each emptying. Receptacles in areas where wet or hazardous wastes are generated shall have tight-fitting lids and shall be kept closed except during use. Carts used for transport shall be of easily cleanable construction, and shall be kept in a sanitary condition. Trash chutes shall be kept clean and sanitary. Pulping-transport systems, where installed, shall be operated and maintained in a safe and sanitary manner. All refuse ~~shall~~[must](#) be in impervious bags during transport within the facility. Potentially hazardous waste ~~shall~~[must](#) be identified and bagged in durable bags resistant to puncture and tears. Waste may be single bagged if it can be put in the bag without contaminating the outside; otherwise, double bagging is required. Wastes capable of producing injury, such as needles and scalpel blades, ~~shall~~[must](#) be stored and transported in rigid containers. Blood specimens may be carefully poured down the drain.
- c) Collected garbage and refuse shall be stored in stable, durable, watertight, vermin- and rodent-proof containers, with tight-fitting lids. Lids shall be kept closed except during use. Containers shall be emptied at frequent intervals, and shall be kept clean and sanitary. Garbage storage areas shall be kept in a clean and nuisance-free condition.

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- d) Final disposal of general solid waste shall be by incineration or grinding and flushing to the municipal sewerage system, or removal to a sanitary landfill that is approved by the Illinois Environmental Protection Agency. Incinerators shall be those approved by the Illinois Environmental Protection Agency; for the types of wastes being generated. ~~Sanitary landfills shall be approved by the Illinois Environmental Protection Agency.~~ Surgical, obstetrical, and other tissue wastes shall be disposed of by grinding and flushing, incineration, or burial. Other potentially infectious wastes shall be rendered safe by grinding and flushing, incineration or steam autoclaving.
- e) Any blood or blood components, organs, semen, or other human tissue showing exposure to HIV ~~as evidenced by two of three reactive ELISA test results (according to the package insert—product circular),~~ or to any other identified causative agent of AIDS, or originating from a patient diagnosed with AIDS, ~~or AIDS-Related Complex (ARC)~~ as defined in 77 Ill. Adm. Code 697.20693.20, shall be disposed of by the FEC in accordance with subsection (f) of this Section, or delivered in accordance with subsection (g) of this Section to a research facility to use such blood, blood components, organs, semen, or other human tissue for AIDS research.
- f) Any such blood, blood components, organs, semen, or other human tissue, and any other materials or paraphernalia exposed to, or contaminated by, such blood, blood components, organs, semen, or other human tissue shall be completely incinerated, sterilized, or sealed to render the materials innocuous before disposal or removal from the premises.
- 1) Materials shall be incinerated in accordance with the requirements of the Pollution Control Board concerning the operation of an incinerator (35 Ill. Adm. Code 724).
 - 2) Materials shall be sterilized by autoclaving in accordance with the recommendations of the manufacturer of the autoclave. The effectiveness of the autoclave shall be verified and documented at least weekly with a biological spore assay containing *B. stearothermophilus*.
 - 3) Incinerated or sterilized materials shall be disposed of through routine waste disposal methods without precautions against possible contamination.
 - 4) Materials that have not been incinerated or sterilized shall be disposed of

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by a waste hauler with a ~~proper~~ permit from the Illinois Environmental Protection Agency under rules of the Pollution Control Board (35 Ill. Adm. Code 809). These materials ~~shall~~must be sealed, transported, and stored in biohazard containers. These containers shall be marked "Biohazard," shall bear the universal biohazard symbol, and shall be orange, orange and black, or red. The containers shall be rigid and puncture resistant, such as a secondary metal or plastic can with a lid that can be opened by a step-on pedal. These containers shall be lined with one or two high-density polyethylene or polypropylene plastic bags with a total thickness of at least 2.5 mil or equivalent material. The containers that are marked "Biohazard" shall be sealed before being removed from the FEC.

- g) When an FEC delivers such blood, blood components, organs, semen or other human tissue to any research facility, the FEC shall file a report with the Department (Division of Laboratories), which shall include at least the following information:
- 1) A copy of the request from the research facility for blood or human tissue;
 - 2) The quantity of blood or human tissue delivered;
 - 3) The name and location of the research facility to which the blood or human tissue was delivered; and
 - 4) The date and time of delivery.
- h) A research facility, for the purposes of this Section, shall mean any clinical laboratory licensed under the Clinical Laboratory and Blood Bank Act [210 ILCS 25], ~~any blood bank licensed under the Illinois Blood Bank Act [210 ILCS 10]~~ or any hospital licensed under the Hospital Licensing Act ~~[210 ILCS 85]~~.
- i) All sewage and liquid wastes shall be disposed of in a municipal sewerage system where such facilities are available. When a municipal sewerage system is not available, sewage and liquid wastes shall be collected, treated, and disposed of in an independent plant, the construction, maintenance, and operation of which are approved by the Department or by the Illinois Environmental Protection Agency.

(Source: Amended at 33 Ill. Reg. 8317, effective June 4, 2009)

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Section 518.2160 Submission of Architectural Plans

- a) New Construction, Addition, or Major Alteration
- 1) When construction is contemplated, either for new buildings or additions or ~~material~~ alterations to existing buildings coming within the scope of this Part, design development drawings and outline specifications shall be submitted to the Department for review. Approval of design development drawings and specifications shall be obtained from the Department prior to starting final working drawings and specifications. The Department will provide comments~~Comments~~ or approval ~~shall be provided~~ within 30 working days after receipt of the drawings and specifications and the submission being deemed complete~~by the Department~~.
 - 2) Final Drawings
 - A) The final working drawings and specifications shall be submitted to the Department for review and approval prior to beginning of construction. For final approval to remain valid, contracts ~~shall~~must be signed within one year after the approval date. Alternate methods of design development and construction may be acceptable subject to the approval of the Department. The Department will provide comments~~Comments~~ or approval ~~shall be provided~~ within 30 working days after receipt of the final drawings and the submission being deemed complete~~by the Department~~.
 - B) The Department shall be notified upon~~of~~ the award of construction contracts.
 - 3) Any contract modifications that affect or change the function, design, or purpose of a facility shall be submitted to the Department for approval prior to authorizing the modifications. The Department will provide comments~~Comments~~ or approval ~~shall be provided~~ within 60 working days after receipt of the drawings and specifications~~by the Department~~.
 - 4) Upon 90% of completion, the pre-occupancy certification package shall be submitted to the Department.~~The Department shall be notified when construction has been completed or whenever any area is occupied.~~
 - 5) As-built drawings ~~shall~~should be maintained by the freestanding

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emergency center.

- b) Minor Alterations and Remodeling. Minor alterations or remodeling changes that do not affect the structural integrity of the building, that do not change functional operation, that do not affect fire safety, and that do not increase capacity over that for which the FEC is licensed need not be submitted for approval.
- c) Alterations of Water Supply, Plumbing and Drainage. No system of water supply, plumbing, sewage, garbage or refuse disposal shall be installed, nor any such existing system materially altered or extended, until complete plans and specifications for the installation, alteration or extension have been submitted to the Department and have been reviewed and approved.
- d) Codes and Standards
 - 1) Nothing stated in this Part shall relieve the [license sponsor](#) from compliance with building codes, ordinances, and regulations that are enforced by city, ~~or~~ county [or local](#) jurisdictions.
 - 2) The recommendations of the [InternationalBOCA National Building Code \(1993\)](#) shall apply insofar as [thosesueh](#) recommendations are not in conflict with the standards set forth in this Part or with [the National Fire Protection Association \(NFPA\) Standard No. 101 \(1997\), "Life Safety Code."](#)
 - A) The portions of the [InternationalBOCA National Building Code](#) requiring [automatic extinguishing systems in all hospitals](#), smoke detectors in all patient rooms, and automatic door closers on all patient room doors are hereby specifically excluded from these requirements.
 - B) The [InternationalBOCA National Building Code](#) is intended as a model code for municipalities with no building code of their own.
 - C) NFPA [Standard No. 101-A \(1995\), "Alternative Approaches to Life Safety,"](#) shall apply only if the Department determines that the proposed equivalent system is safe and does not constitute a hazard to the life and safety of the staff and patients.

(Source: Amended at 33 Ill. Reg. 8317, effective June 4, 2009)

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Section 518.2170 Preparation of Drawings and Specifications – Submission Requirements

Drawings and specifications shall be prepared by or under the immediate supervision of an architect registered in the State of Illinois. The requirements contained [in this Section](#) ~~herein~~ have been established for the guidance of the FEC and the architect to provide a standard method of preparation of drawings and specifications.

- a) First Stage Submission – Design Development Drawings and Outline Specifications
 - 1) The preliminary sketch plans shall indicate in detail the assignment of all spaces [and the](#), size of areas and rooms, and shall indicate in outline the fixed and movable equipment and furniture.
 - A) The plans shall be drawn at a scale sufficiently large to clearly present the proposed design [and not exceed 30 x 42 inches](#).
 - B) The drawings shall include:
 - i) A plan of each floor, including the basement or ground floor;
 - ii) Roof plan;
 - iii) Plan showing roads, parking areas, sidewalks, etc., [and](#) elevations of all facades;
 - iv) Sections through the building;
 - v) All adjacent areas clearly labeled if addition or alteration; and
 - vi) Fire and smoke separation diagrams.
 - 2) Outline specifications shall provide a general description of the construction, including finishes; acoustical material, its extent and type; extent of the conductive floor covering; heating and ventilating systems; and the type of elevators.

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- 3) The total gross floor area and bed count shall be shown on the drawings.
 - 4) A brief narrative of the proposed program shall be provided.
- b) Second Stage Submission – Working Drawings and Specifications
- All working drawings shall be well prepared so that clean and distinct prints may be obtained; drawings shall be accurately dimensioned and include all necessary explanatory notes, schedules and legends. Working drawings shall be complete and adequate for contract purposes. Separate drawings, not to exceed 30 x 42 inches, shall be prepared for each of the following branches of work: architectural, structural, mechanical, and electrical, and shall include or contain the following:
- 1) Architectural Drawings
 - A) Site plan showing all new topography, newly established levels and grades, existing structures on the site (if any), new buildings and structures, roadways, walks, and the extent of the areas to be landscaped. All structures and improvements that are to be removed under the construction contract shall be shown:-
 - B) Plan of each floor and roof:-
 - C) Elevations of each facade:-
 - D) Sections through building:-
 - E) Elevators and dumbwaiters. Drawings delineating shaft details and dimensions, sizes of cab platforms and doors, travel distances, including elevation height of landings, pit sizes, and machine rooms:-
 - F) Laundry, laboratories, and similar areas shall be detailed at a scale to show the location, type, size and connection of all fixed and movable equipment:-
 - G) Scale details as necessary; scale details to 1½ inch to the foot may be necessary to properly indicate portions of the work; and-
 - H) Schedule of finishes.

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- 2) Structural Drawings
 - A) Plans of foundations, floors, roofs and all intermediate levels shall show a complete design with sizes, sections, ~~and~~ the relative location of the various members, and a schedule of beams, girders and columns.
 - B) Floor levels, column centers, and ~~offsetsets~~ shall be dimensioned.
 - C) Special openings and pipe sleeves shall be dimensioned or otherwise noted for easy reference.
 - D) Details of all special connections, assemblies and expansion joints shall be given.
 - E) Notes on design data shall include the name of the governing building code, values of allowable unit stresses, assumed live loads, wind loads, earthquake load, and soil-bearing pressures.
 - F) For special structures, a stress sheet shall be incorporated in the drawings showing:
 - i) Outline of structure;
 - ii) All load assumptions used;
 - iii) Stresses and bending moments separately for each kind of loading;
 - iv) Maximum stress and/or bending moment for which each member is designed, when not readily apparent from subsection (b)(3); and
 - v) Horizontal and vertical reactions at column bases.
- 3) Mechanical Drawings. These drawings with specifications shall show the complete heating, cooling and ventilation systems, plumbing, drainage, stand pipe, and sprinkler systems.

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- A) Heating, Cooling and Ventilation
- i) Radiators, coils and steam-heated equipment such as sterilizers, warmers and steam tables~~;~~
 - ii) Heating and steam mains and branches with pipe sizes~~;~~
 - iii) Diagram of heating and steam risers with pipe sizes~~;~~
 - iv) Sizes, types and heating surfaces of boilers, furnaces with stokers and oil burners, if any~~;~~
 - v) Pumps, tanks, boiler breeching and piping and boiler room accessories~~;~~
 - vi) Air conditioning systems with required equipment, water and refrigerant piping~~;~~ and ducts~~;~~
 - vii) Supply and exhaust ventilating systems with connections and piping; ~~and~~.
 - viii) Air quantities for all room supply and exhaust ventilating duct openings.
- B) Plumbing, Drainage and Stand Pipe Systems
- i) Size and elevation of street sewer, house sewer, house drains, street water main and water service into the building~~;~~
 - ii) Location and size of soil, waste, and vent stacks with connections to house drains, cleanouts, fixtures and equipment~~;~~
 - iii) Size and location of hot, cold and circulating mains, branches, and risers from the service entrance, and tanks~~;~~
 - iv) Riser diagram of all plumbing stacks with vents, water risers and fixture connections~~;~~

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- v) Gas, oxygen and similar piped systems;~~;~~
 - vi) Standpipe and sprinkler systems; ~~and~~;
 - vii) All fixtures and equipment that require water and drain connections.
- 4) Electrical Drawings. Drawings shall show all electrical wiring, outlets, and equipment that require electrical connections.
- A) Electrical service entrance with switches and feeders to the public service feeders, characteristics of the light and power current, transformers and their connections if located in the building.
 - B) Location of main switchboard, power panels, light panels and equipment. Feeder and conduit sizes shall be shown with schedule of feeder breakers or switches.
 - C) Light outlets, receptacles, switches, power outlets; and circuits.
 - D) Telephone layout showing service entrance, telephone switchboard, strip boxes, telephone outlets and branch conduits as approved by the telephone company. Where public telephones are used for inter-communication, ~~aprovide~~ separate room and conduits for racks and automatic switching equipment shall be provided as required by the telephone company.
 - E) Nurse call systems with outlets for treatment rooms, duty stations, corridor signal lights, annunciators and wiring diagrams.
 - F) Doctors' call and doctors' in-and-out systems with all equipment wiring, if provided.
 - G) Fire alarm system with stations, signal devices, control board and wiring diagrams.
 - H) Emergency electrical system with outlets, transfer switch, source of supply; ~~and~~ circuits.

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- I) All other electrically operated systems and equipment.
- 5) Additions to Existing Structures
- A) Procedures and requirements for working drawings and specifications are to be followed, and the following information shall be submitted:
 - i) Type of activities within the existing building and distribution of existing treatment rooms, etc.;
 - ii) Type of construction of existing building and number of stories in height;
 - iii) Plans and details showing attachment of new construction to the existing structure; and
 - iv) Mechanical and electrical systems tying into existing system.
 - B) The Department may require submission of architectural drawings of all or any part of the existing structure if necessary for the Department's review.
- 6) Specifications. Specifications shall supplement the drawings and shall comply with the following:
- A) The specifications shall fully describe, except where fully indicated and described on the drawings, the materials, workmanship, kind, sizes, capacities, finishes, and other characteristics of all materials, products, articles and devices.
 - B) The specifications shall include:
 - i) Cover or title sheet;
 - ii) Index;
 - iii) Invitation for bids;

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- iv) General conditions;
- v) General requirements;
- vi) Sections describing material and workmanship in detail for each class of work; and
- vii) Bid form.

(Source: Amended at 33 Ill. Reg. 8317, effective June 4, 2009)

Section 518.2180 Construction Details

- a) Compartmentation, exits, automatic extinguishing systems and other details relating to fire prevention and fire protection shall comply with requirements listed in the appropriate sections of [NFPA the National Fire Protection Association Standard 101-\(1997\), "Life Safety Code."](#)
- b) Items such as drinking fountains, telephone booths, vending machines, and portable equipment shall be located so as not to restrict corridor traffic or reduce the corridor width below the required minimum.
- c) Doors
 - 1) Doors to observation/treatment rooms shall not be lockable from inside the room.
 - 2) Special Locking Arrangements: Electronic locking devices may be installed at specific locations to restrict egress or ingress for patient/staff safety or security, provided [that](#) each of the following is complied with and after receiving approval from the Department:
 - A) The facility ~~shall~~**must** submit a narrative to the Department providing a rationale for having a locked door in a required means of egress. The rationale ~~shall~~**must** relate to security issues.
 - B) The building ~~shall~~**must** be ~~fully sprinklered~~**protected by a sprinkler or fire detection system approved by the Department.**
 - C) All locking system components ~~shall~~**must** be U.L. listed.

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- D) Cross corridor, smoke or control doors that are located in a required means of egress ~~shall may only~~ be secured only with electronic locks and automatic release devices. The use of only manual keys or tools ~~only~~ to unlock the door is not permitted.
- E) Locked doors ~~shall must~~ have continuous staff supervision (direct or electronic remote).
- F) No other type of locking arrangement ~~shall may~~ be used in a required means of egress.
- G) All locked doors ~~shall must~~ release automatically with actuation of the fire alarm system.
- H) All doors ~~shall must~~ release automatically with loss of electrical power to the locking device.
- I) All locks ~~shall must~~ initiate an irreversible process that will release the lock within 15 seconds whenever a force of not more than 15 pounds is continuously applied to the release device (lever type handle or panic bar) for a period of not more than ~~three~~ 3 seconds. Relocking of such doors shall be by manual means only. Operation of the release device shall activate a sign in the vicinity of the door to assure those attempting to exit that the system is functional. Delays of up to 30 seconds may be acceptable, based on the program narrative.
- J) Permanent signs ~~shall must~~ be posted on locked doors that state: "Push until alarm sounds. Door will be opened in 15 seconds." Sign letters must be at least 1 inch high with 1/8 inch stroke. Signs may be omitted for security reasons, based on review and approval by the Department of the written rationale.
- K) Emergency lighting ~~shall must~~ be provided at all locked door locations.
- L) The FEC shall fully apprise the local fire department ~~must be fully apprised~~ of locked doors or units and all related details of the system.

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- M) Any discharge exit door may be locked against entry.
 - N) Additional electronic release of locked doors initiated from a staff duty station is to be provided.
 - O) No more than one such device may be installed in any path of travel to exit discharge.
-
- d) The minimum width of all doors to rooms needing access for beds or stretchers shall be 3'8". Doors to rooms needing access for wheelchairs shall have a minimum width of 2'10".
 - e) Doors on all openings between corridors and rooms or spaces subject to occupancy, except elevator doors, shall be swing type. Openings to patient toilets and other small wet-type areas not subject to fire hazard are exempt from this requirement. Sliding doors with a break and swing feature are acceptable.
 - f) Doors, except those to spaces such as small closets that are not subject to occupancy, shall not swing into corridors in a manner that might obstruct traffic flow or reduce the required corridor width. (Large walk-in type closets are considered as occupiable spaces.)
 - g) Windows shall be designed so that persons cannot accidentally fall out of them when they are open, or shall be provided with guards.
 - h) Glazing. Doors, sidelights, borrowed lights, and windows in which the glazing extends down to within 18 inches of the floor (thereby creating possibility of accidental breakage by pedestrian traffic) shall be glazed with safety glass or plastic glazing material that will resist breaking and will not create dangerous cutting edges when broken. Fire-rated glass shall be used where required for fire safety.
 - i) Where labeled fire doors are required, these shall be certified by an independent testing laboratory as meeting the construction requirements equal to those for fire doors in NFPA [Standard No. 80 \(1995\), "Fire Doors and Windows."](#) Reference to a labeled door includes labeled frame and hardware.
 - j) Elevator shaft openings shall be class B 1½ hour labeled fire doors.

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- k) Linen and refuse chutes shall meet or exceed the ~~following~~ requirements of NFPA 82:
- ~~1) Service openings to chutes shall not be located in corridors or passageways but shall be located in a room of construction having a fire resistance of not less than one hour. Doors to such rooms shall be not less than class C $\frac{3}{4}$ hour labeled doors.~~
 - ~~2) Service openings to chutes shall have approved self-closing class B $1\frac{1}{2}$ hour labeled fire doors.~~
 - ~~3) Minimum cross-sectional dimension of gravity chutes shall be not less than 2'0".~~
 - ~~4) Chutes shall discharge directly into collection rooms separated from incinerator, laundry, or other services. Separate collection rooms shall be provided for trash and for linen. The enclosure construction for such rooms shall have a fire resistance rating of not less than two hours, and the doors thereto shall be not less than class B $1\frac{1}{2}$ hour labeled fire doors. External discharge containers need not be enclosed.~~
 - ~~5) Gravity chutes shall extend through the roof with provisions for continuous ventilation as well as for fire and smoke ventilation. Openings for fire and smoke ventilation shall have an effective area of not less than that of the chute cross-section and shall be not less than 4'0" above the roof and not less than 6'0" clear of other vertical surfaces. Fire and smoke ventilating openings may be covered with single strength sheet glass or stronger.~~
 - ~~6) See NFPA Standard No. 82 (1994), "Incinerators and Rubbish Handling," for other requirements.~~
- l) ~~Dumbwaiters, conveyors, and material handling systems shall not open directly into a corridor or exitway but shall open into a room enclosed by construction having a fire resistance rating of not less than one hour and provided with class C $\frac{3}{4}$ hour labeled fire doors. Service entrance doors to vertical shafts containing dumbwaiters, conveyors, and material handling systems shall be not less than class B $1\frac{1}{2}$ hour labeled fire doors. Where horizontal conveyors and material handling systems penetrate fire-rated walls or smoke partitions, such openings must be provided with class B $1\frac{1}{2}$ hour labeled fire doors for two hour walls and~~

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~~class C $\frac{3}{4}$ hour labeled fire doors for one hour walls or partitions.~~

- ~~l)m)~~ Thresholds and expansion joint covers shall be made flush with the floor surface to facilitate use of wheelchairs and carts.
- ~~m)n)~~ Grab bars shall be provided at all patients' toilets. The bars shall have 1½ inch clearance to walls and shall have sufficient strength and anchorage to sustain a concentrated load of 250 pounds.
- ~~n)o)~~ An accessible shower shall be provided. Safety glass or plastic glazing materials shall be used for shower doors. A grab bar shall be provided as specified in subsection ~~(mn)-above~~. A recessed soap dish shall be provided. The shower base shall have a nonslip service.
- ~~o)p)~~ ~~Hand-washing~~~~Handwashing~~ facilities shall be located and arranged to permit their proper use and operation. Particular care shall be given to the clearances required for blade-type operating handles.
- ~~p)q)~~ Paper towel dispensers and waste receptacles (or electric hand dryers) shall be provided at all ~~hand-washing~~~~handwashing~~ facilities except scrub sinks.
- ~~q)r)~~ Lavatories and ~~hand-washing~~~~handwashing~~ facilities shall be securely anchored to withstand an applied vertical load of not less than 250 pounds on the front of the fixture.
- ~~r)s)~~ ~~X-ray~~~~Radiation protection requirements of x-ray~~ and gamma ray installations shall ~~comply~~~~conform~~ with ~~National Council on Radiation Protection and Measurements (NCRP), Report No. 14749: Structural Shielding Design and Evaluation for Medical Use of X-rays and Gamma Rays of Energies up to 10 MeV (1976) and NCRP Report No. 102: Medical X-Ray, Electron Beam and Gamma-Ray Protection for Energies Up to 50 MeV (Equipment Design, Performance and Use) (1989)~~. The completed installation shall be tested, and all defects ~~shall~~~~must~~ be corrected before use.
- ~~s)t)~~ Ceiling heights shall be as follows:
- ~~1)~~ ~~Boiler rooms shall have ceiling clearances not less than 2'6" above the main boiler header and connecting piping.~~
- ~~1)2)~~ Radiographic, major procedure rooms, and other rooms containing ceiling-

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mounted equipment or ceiling-mounted surgical light fixtures shall have height required to accommodate the equipment or fixtures.

~~2)3)~~ All other rooms shall have not less than 8'0" ceilings, except that ceiling heights in corridors, storage rooms, toilet rooms, and other minor rooms shall be not less than 7'8". Suspended tracks, rails, and pipes located in the path of normal traffic shall be not less than 6'8" above the floor.

~~t)u)~~ Rooms containing heat-producing equipment (such as boiler or heater rooms and laundries) shall be insulated and ventilated to prevent any floor surface above from exceeding a temperature of 10°F (6°C) above the ambient room temperature.

~~u)~~ The FEC shall be located on the same level as the ambulance and walk-in entrance.

~~v)~~ Elevators. All multi-story facilities shall have at least one institutional-type electric or electrohydraulic elevator.

~~1)~~ Cars and Platforms. Cars of hospital-type elevators shall have dimensions that will accommodate a patient bed and attendants and shall be at least 5'8" x 7'6". The car door shall have a clear opening of not less than 3'8".

~~2)~~ Leveling. Elevators shall be equipped with an automatic leveling device of the two-way automatic maintaining type with an accuracy of + 1/2 inch.

~~3)~~ Operation. Elevators, except freight elevators, shall be equipped with a two-way special service key-operated switch to permit cars to bypass all landing button calls and be dispatched directly to any floor.

~~4)~~ Elevator controls, alarm buttons, and telephones shall be accessible to physically handicapped persons.

~~5)~~ Elevator call buttons, controls, and door safety stops shall be of a type that will not be activated by heat or smoke.

~~6)~~ Inspections and tests shall be conducted, and written certification shall be furnished that the installation meets the requirements set forth in this Section and all applicable safety regulations and codes.

~~7)~~ All elevator installations shall meet the requirements of ANSI Standard

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~~No. A17.1.~~

v)w) Response to~~Provisions for~~ Natural Disasters

- 1) General Requirements. An emergency radio communication system is desirable in each facility. If installed, this system shall be self-sufficient in time of emergency and shall also be linked with the available community system and State emergency medical network system, including connections with police, fire, and civil defense system.
- 2) Earthquakes. In ~~areas~~regions where local experience shows that earthquakes have caused loss of life or extensive property damage, buildings and structures shall be designed to withstand the force assumptions specified in the International Building Code~~BOCA National Building Code~~. ~~Seismic zones are identified on the map in Section 518. Illustration A.~~
- 3) Tornadoes and Floods. Special provisions shall be made in the design of buildings in regions where local experience shows loss of life or damage to buildings resulting from tornadoes or floods.

(Source: Amended at 33 Ill. Reg. 8317, effective June 4, 2009)

Section 518.2190 Finishes

- a) Cubicle and window curtains and draperies shall be noncombustible or rendered flame retardant and shall pass both the large- and small-scale tests of NFPA National Fire Protection Association Standard No. 701 (1989), "Fire Tests for Flame Resistant Textiles and Films."
- b) Flame spread and smoke developed ratings of finishes shall be in accordance with NFPA Standard No. 101 (1997), "Life Safety Code."
- e) ~~Floors in areas and rooms in which flammable anesthetic agents are stored or administered to patients shall comply with NFPA Standard No. 99 (1996), "Health Care Facilities Code." Conductive flooring may be omitted from major procedure rooms provided that no flammable anesthetic agents will be used in these areas and provided that appropriate notices are permanently and conspicuously affixed to the wall in each such area and room.~~

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- c)d) Floor materials shall be easily cleanable and have wear resistance appropriate for the location involved. Floors in toilets, janitor's closets and similar areas shall be water resistant. In all areas frequently subject to wet cleaning methods, floor materials shall not be physically affected by germicidal and cleaning solutions.
- d)e) Wall bases in soiled workrooms and other areas that are frequently subject to wet cleaning methods shall be made integral and coved with the floor, tightly sealed to the wall, and constructed without surface voids that can harbor vermin.
- e)f) All wall finishes shall be washable and, in the immediate area of plumbing fixtures, shall be smooth and moisture resistant. Walls in spaces subject to frequent cleaning shall be of suitable materials.
- f)g) Floor and wall penetrations by pipes, ducts, and conduits shall be tightly sealed to minimize entry of vermin, smoke and fire. Joints of structural elements shall be similarly sealed.
- g)h) Ceilings shall be cleanable and shall have a finished surface that covers all overhead duct work and piping, and those in sensitive areas such as major procedure rooms shall be readily washable and without crevices that can retain dirt particles. These sensitive areas shall have a finished ceiling covering all overhead duct work and piping. Finished ceilings may be omitted in mechanical and equipment spaces, shops, general storage areas, and similar spaces, unless required for fire-resistive purposes.
- h)i) The following areas shall have acoustical ceilings:
- 1) Corridors in patient areas,
 - 2) Nurses' stations, and
 - 3) Waiting areas.

(Source: Amended at 33 Ill. Reg. 8317, effective June 4, 2009)

Section 518.2200 Structural Requirements

- a) In addition to compliance with this Part, all applicable local or State building codes and regulations shall~~must~~ be observed.

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- b) The buildings and all parts thereof shall be of sufficient strength to support all dead, live, and lateral loads without exceeding the working stresses permitted for the materials of their construction in generally accepted good engineering practice.
- c) Special provision shall be made for machines or apparatus loads that would cause a greater load than the specified minimum live load.
- d) Consideration shall be given to structural members and connections of structures that may be subject to earthquakes or tornadoes. Floor areas where partition locations are subject to change shall be designed to support for the partition, a uniformly distributed load of 25 p.s.f.
- e) Construction shall be in accordance with [NFPA the requirements of National Fire Protection Association Standard No. 101 \(1997\), "Life Safety Code,"](#) and the minimum requirements contained [in this Part](#) ~~therein~~.
- 1) Foundations shall rest on natural solid ground and shall be carried to a depth of not less than [one+](#) foot below the estimated frost line or shall rest on leveled rock or load-bearing piles or caissons when solid ground is not encountered. Footings, piers, and foundation walls shall be adequately protected against deterioration from the action of ground water. Test borings shall be taken to establish proper soil-bearing values for the soil at the building site.
- 2) Assumed live load shall be in accordance with the [International Building Code](#) ~~BOCA National Building Code~~.
- f) Chapter [1812](#), "New Health Care Occupancies," ~~1997 Edition~~ of [NFPA 101 the Life Safety Code](#) shall apply in its entirety.

(Source: Amended at 33 Ill. Reg. 8317, effective June 4, 2009)

Section 518.2210 Mechanical Requirements

- a) [General Requirements](#)
- 1) [Mechanical systems shall be tested, balanced and operated to demonstrate that these systems are installed and will perform according to the plans and specifications.](#)

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2) Upon completion of the mechanical systems, the owner shall obtain a complete set of manufacturers' installation, operating, maintenance and preventive maintenance instructions, and a parts list with numbers and a description for each piece of equipment. The owner shall also obtain instruction in the operational use of the systems and equipment as required.

b) Thermal and Acoustical Insulation

1) Insulation shall be provided for the following when located within the building:

A) Boilers, smoke breeching and stacks;

B) Steam supply and condensate return piping;

C) Hot water piping above 120°F and all water heaters, generators, and converters. Exposed hot water supplies to fixtures need not be insulated except where exposed to contact by physically handicapped persons;

D) Chilled water, refrigerant, other process piping and equipment operating with fluid temperatures below ambient dew point;

E) Water supply, storm and drainage piping on which condensation may occur;

F) Air ducts and casings with outside surface temperature below ambient dew point; and

G) Other piping, ducts and equipment as necessary to maintain the efficiency of the system.

2) Insulation on cold surfaces shall include an exterior vapor barrier.

3) Insulation, including finishes and adhesives on exterior surfaces of ducts and equipment, shall have a flame spread rating of 25 or less and a smoke developed rating of 50 or less as determined by an independent testing laboratory in accordance with NFPA 255.

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- 4) Pipe insulation shall have a flame spread rating of 25 or less and a smoke developed rating of 150 or less.
 - 5) No duct linings shall be permitted.
- c) Steam and Hot Water Systems
- 1) Boilers shall have the capacity to supply the normal requirements of all systems and equipment. The number and arrangement of boilers shall be such that when one boiler breaks down or is temporarily taken out of service, the capacity of the remaining boilers shall be sufficient to provide hot water service, steam for sterilization, and heating for all treatment rooms.
 - 2) Boiler feed pumps, heating circulating pumps, condensate return pumps and fuel oil pumps shall be connected and installed to provide normal and standby service.
 - 3) Supply and return mains and risers of cooling, heating and process steam systems shall be valved to isolate the various sections of each system. Each piece of equipment shall be valved at supply and return ends.
 - 4) Humidifiers used in conjunction with air handling systems shall be of the direct steam injection type.
- d) Air Conditioning, Heating and Ventilating Systems
- 1) The FEC shall employ the most economical and energy-efficient systems, in accordance with this subsection (d), to provide a comfortable, clean and controlled environment.
 - A) The requirements of this subsection (d) do not relieve the designer from providing system capacities and components as required to maintain control of air quality, odor, ventilation rates, space temperatures and space humidity as set forth in this subsection (d).
 - B) The design of air conditioning, heating and ventilation systems shall be based on no less than the recommended outdoor design conditions listed in the ASHRAE Handbook – Fundamentals for

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99% occurrence (winter) and 1% occurrence (summer).

2) Ventilation Systems

- A) Air handling systems shall conform to NFPA 90A.
- B) Fire dampers, smoke dampers and smoke control systems shall be constructed, located and installed in accordance with the requirements of NFPA 90A.
- C) Ducts that penetrate construction intended for x-ray or other ray protection shall preserve the effectiveness of the protection.
- D) Outdoor air intakes shall be located at least 15 feet from exhaust outlets of ventilation systems, combustion equipment stacks, medical/surgical vacuum systems, plumbing vents, or areas that may collect vehicular exhaust or other noxious fumes, unless other provisions are made to minimize recirculation of exhaust into outdoor air intakes. Plumbing and vacuum vents that terminate above the level of the top of the air intake may be located as close as 10 feet. The bottom of outdoor air intakes serving central systems shall be located as high as practical but at least 6 feet above ground level, or, if installed above the roof, 3 feet above the roof level.
- E) Exhaust outlets from areas that may be contaminated by dangerous or noxious dust, fumes, mists, gases, odors, infectious material or other contaminants harmful to people shall be above the roof level. The discharge to the atmosphere shall be located as far as possible but not less than 25 feet from any operable window, door and/or outdoor intake for a fan that discharges air to an occupied space.
- F) The ventilation systems shall be designed and balanced to provide the ventilation and pressure relationships specified in this Section.
- G) If the ventilation rates required in this Section do not provide sufficient make-up air for use by hoods, safety cabinets and exhaust fans, the additional make-up air shall be provided to maintain required pressure balance.

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- H) An all outdoor air system may be used where required by local codes, provided that some form of air-to-air or air-to-water heat recovery system is included to reclaim the energy otherwise discharged with the air exhausted to the outside.
- I) To provide maximum energy conservation, air supplied to patient care areas not required as make-up air for 100% exhaust systems shall be recirculated. Any air within the FEC that is circulated between patient rooms, or patient rooms and other areas of the FEC, shall pass through filters having a minimum efficiency reporting value (MERV) 14 rating (see subsection (d)(3) on filters).
- J) To provide maximum energy conservation, air supplied to housekeeping, administration and other nonsensitive areas not required as make-up air for 100% exhaust systems shall be recirculated. These areas require filters having a MERV 8 rating on the inlet side of the air handling unit.
- K) When a central system serves areas with different filtration requirements, the most stringent filtration requirement will be provided for the complete system.
- L) All outside air supplied to patient care areas shall pass through 90% filters (see subsection (d)(3) on filters).
- M) Minimum air circulation requirements indicated in this Section are applicable to occupied spaces. During unoccupied periods, minimum air circulation may be provided as required to maintain space design temperature conditions.
- N) Where fan coil or terminal room unit systems are provided in areas to be occupied by patients, through-the-wall outside air ventilation is not acceptable. A separate central ventilation system, with final filters having a MERV 14 rating, shall supply the required outdoor air ventilation.
- O) Only fully ducted systems are acceptable. Interstitial spaces shall not be used as plenums for supply/return/exhaust.

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3) Filters

- A) All central ventilation or air conditioning systems shall be equipped with filters having efficiencies no less than those specified in the area requirements (see subsection (e)).
- B) Where two filter beds are required, filter bed No. 1 shall be located upstream of the air conditioning equipment and filter bed No. 2 shall be located downstream of the supply fan and air conditioning equipment.
- C) Where only one filter bed is required, it shall be located upstream of the air conditioning equipment.
- D) All filter efficiencies shall be average atmospheric dust spot efficiencies tested in accordance with ASHRAE Handbook – Fundamentals.
- E) Filter frames shall be durable and shall provide an air-tight fit with the enclosing ductwork. All joints between filter segments and enclosing ductwork shall be gasketed or sealed to provide a positive seal against air leakage.
- F) A local indicating device shall be installed across each filter bed serving central air systems to measure the static pressure drop across the bed.

e) Area Requirements1) Administration, Public Area, Medical Records and Housekeeping OfficesA) Filters

- i) Central ventilation systems shall be provided with prefilters having a MERV 8 rating.
- ii) Units that recirculate air within a room shall be provided with filters having a MERV 4 rating.

B) Space Design Conditions

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- i) Temperature, measured via a dry bulb, shall be 75°F.
 - ii) The minimum relative humidity in winter shall be 30%.
 - iii) The maximum relative humidity in summer shall be 60%.
 - C) Air Circulation
 - i) Total air supplied to each space shall be as required to maintain space design conditions.
 - ii) Outdoor air supplied shall be not less than 20% of the total air supplied.
 - D) Space Pressurization. The ventilation system shall be designed and balanced so that space pressure, in relation to surrounding areas of the building, is neutral.
 - E) Recirculation of air within a room is permitted.
- 2) Laboratories
 - A) Filters
 - i) Central ventilation systems shall be provided with prefilters having a MERV 8 rating and final filters having a MERV 14 rating.
 - ii) Units that recirculate air within a room shall be provided with filters having a MERV 8 rating.
 - B) Space Design Conditions
 - i) Temperature, measured via a dry bulb, shall be 75°F.
 - ii) The minimum relative humidity, in winter, shall be 30%.
 - iii) The maximum relative humidity, in summer, shall be 60%.

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- C) Space Pressurization
The ventilation system shall be designed and balanced so that space pressure, in relation to surrounding areas of the building, is negative.
- D) Recirculation of air within a room is permitted, except in areas listed in subsection (e)(2)(E), where all air must be exhausted directly to the outdoors.
- E) Air from the following areas shall be exhausted directly to the outdoors:
- i) All fume hoods;
 - ii) Histology;
 - iii) Bacteriology; and
 - iv) Glass-washing areas.
- F) All air exhausted from fume hoods shall be made up with outside air.
- G) Laboratory hoods shall meet the following general requirements:
- i) Have an average face velocity of not less than 75 feet per minute;
 - ii) Be connected to an exhaust system that is separate from the building exhaust system;
 - iii) Have an exhaust duct system of noncombustible, corrosion-resistant material consistent with the usage of the hood; and
 - iv) Have an exhaust fan located at the discharge end of the duct system unless provided with a welded stainless steel duct from fan outlet to termination.
- H) Laboratory hoods shall meet the following special requirements:

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- D) Space Pressurization
The ventilation system shall be designed and balanced so that space pressure, in relation to surrounding areas of the building, is neutral.
- E) The recirculation of air within a room is permitted.
- 5) Observation/Treatment Rooms
- A) Filters
- i) Central ventilation systems shall be provided with prefilters having a MERV 8 rating and final filters having a MERV 14 rating.
- ii) Units that recirculate air within a room shall be provided with filters having a MERV 8 rating.
- B) Space Design Conditions
- i) Temperature, measured via a dry bulb, shall be 75°F.
- ii) The minimum relative humidity, in winter, shall be 30%.
- iii) The maximum relative humidity, in summer, shall be 60%.
- C) Air Circulation (Patient Rooms)
- i) The total air supplied per bed shall be 15 cubic feet per minute (cfm).
- ii) The outdoor air supplied per bed shall be 10 cfm.
- D) Air Circulation
- i) Total air supplied to each space shall be as required to maintain space design conditions.
- ii) Outdoor air supplied shall be not less than 20% of the total

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air supplied.

E) Space Pressurization

The ventilation system shall be designed and balanced so that space pressure, in relation to surrounding areas of the building, is neutral.

F) Recirculation of air within a room is permitted.

G) Isolation Rooms

These rooms may be used two ways: to protect the patient from the facility environment or to protect the facility environment from the patient. Isolation rooms shall have the same conditions as other treatment rooms, except that the air flow shall be capable of being either into the room or out of the room. When isolation procedures are in place (pursuant to the Control of Communicable Diseases Code), all air shall be exhausted directly to the outdoors.

6) Central Sterile Supply

A) Filters

Central ventilation systems shall be provided with prefilters having a MERV 8 rating and final filters having a MERV 14 rating.

B) Space Design Conditions

i) The temperature, measured via a dry bulb, shall be 75°F.

ii) The minimum relative humidity, in winter, shall be 30%.

iii) The maximum relative humidity, in summer, shall be 60%.

C) Air Circulation

i) Total air supplied to each space shall be as required to maintain space design conditions.

ii) Outdoor air supplied shall be not less than 20% of the total air supplied.

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- D) Air flow shall be from the clean area toward the soiled or decontamination area.
- E) Sterilization Room
- i) Where only steam autoclaves are installed, the air exhausted from the sterilizer area for heat control may be recirculated through a central system that is provided with filters having a MERV 14 rating.
- ii) Where ethylene oxide sterilizers are used, all air contaminated with ethylene oxide above 1 part per million (PPM) shall be exhausted directly outdoors. No air shall be recirculated that has more than 1 PPM of ethylene oxide present.
- 7) Linen Services; Laundry
- A) Filters
Central ventilation systems shall be provided with prefilters having a MERV 8 rating and final filters having a MERV 13 rating.
- B) Space Design Conditions: The temperature, measured via a dry bulb in winter, shall be 70°F.
- C) All air from the soiled storage and sorting area shall be exhausted directly to outdoors.
- D) Air flow shall be from the clean area to the soiled area. Air from the clean area may be used to make up air exhausted from the soiled area.
- E) Air from the clean area may be recirculated within the laundry complex, but shall pass through a lint screen or trap before returning to the air handling unit.
- F) The entire laundry ventilation system shall be controlled so that air flow is into the laundry from the FEC.
- G) Circulation and ventilation rates may be variable, but sufficient

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outside air shall be supplied to make up for exhaust. Minimum circulation of unconditioned air at summer design conditions shall be 2 cfm (cubic feet per minute) per square foot or 12 air changes per hour, whichever is larger.

8) Miscellaneous Supporting Areas

Space temperatures in these areas shall be maintained for occupant comfort. Ventilation systems shall be designed and balanced so that air flows into these spaces from adjacent areas.

A) Anesthesia Storage Rooms

i) All air shall be exhausted directly to the outdoors.

ii) Minimum exhaust ventilation rates shall be six air changes per hour.

iii) The ventilation system shall comply with NFPA 99, including the option to provide a gravity (non-mechanical) ventilation system.

iv) Supply air makeup for exhaust requirements may be provided from a mechanical ventilation system or by transfer from adjacent areas.

B) Soiled Holding and Work Rooms

i) All air shall be exhausted directly to the outdoors.

ii) Minimum exhaust ventilation rates shall be 10 air changes per hour.

iii) Supply air makeup for exhaust requirements may be provided from a mechanical ventilation system or by transfer from adjacent areas.

C) Toilet Rooms

i) Exhaust air may be recirculated through a central ventilation system that is provided with final filters having

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a MERV 14 rating. Otherwise, all air shall be exhausted directly to the outdoors.

ii) Minimum exhaust ventilation rate shall be 1.5 cfm per square foot of floor area, but no less than 50 cfm.

iii) Supply air makeup for exhaust requirements may be provided from a mechanical ventilation system or by transfer from adjacent areas.

D) Janitor Closets, Linen and Trash Chute Rooms

i) All air shall be exhausted directly to the outdoors.

ii) Minimum exhaust ventilation rate shall be 1.5 cfm per square foot of floor area, but not less than 50 cfm.

iii) Supply air makeup for exhaust requirements may be provided from a mechanical ventilation system or by transfer from adjacent areas.

E) Boiler rooms shall be provided with sufficient outdoor air to maintain combustion rates of equipment and limit temperatures in working stations to 97°F effective temperature (97°F and 50% relative humidity or its equivalent) as defined by ASHRAE Handbook – Fundamentals.

F) Rooms containing heat-producing equipment, such as boiler rooms, heater rooms, food preparation centers, laundries or sterilizer or mechanical equipment rooms, shall be insulated and ventilated to prevent any floor surface above from exceeding a temperature of 100°F.

a) General Requirements

1) Mechanical systems shall be tested, balanced, and operated to demonstrate that these systems are installed and will perform according to the plans and specifications.

2) Upon completion of the contract, the owner shall obtain a complete set of

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~~manufacturers' installation, operating, maintenance and preventive maintenance instructions, and a parts list with numbers and a description for each piece of equipment. The owner shall also obtain instruction in the operational use of the systems and equipment as required.~~

- b) ~~Thermal and Acoustical Insulation~~
 - 1) ~~Insulation shall be provided for the following, which are located within the building:~~
 - A) ~~Boilers, smoke breeching, and stacks.~~
 - B) ~~Steam supply and condensate return piping.~~
 - C) ~~Hot water piping above 120 F and all water heaters, generators, and converters. Exposed hot water supplies to fixtures need not be insulated except where exposed to contact by physically handicapped persons.~~
 - D) ~~Chilled water, refrigerant, other process piping and equipment operating with fluid temperatures below ambient dew point.~~
 - E) ~~Water supply, storm and drainage piping on which condensation may occur.~~
 - F) ~~Air ducts and casings with outside surface temperature below ambient dew point.~~
 - G) ~~Other piping, ducts, and equipment as necessary to maintain the efficiency of the system.~~
 - 2) ~~Insulation on cold surfaces shall include an exterior vapor barrier.~~
 - 3) ~~Insulation, including finishes and adhesives on exterior surfaces of ducts and equipment, shall have a flame spread rating of 25 or less and a smoke developed rating of 50 or less as determined by an independent testing laboratory in accordance with NFPA Standard No. 255 (1990), "Standard Method of Test of Surface Burning Characteristics of Building Material."~~
 - A) ~~Pipe insulation shall have a flame spread rating of 25 or less and a~~

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~~smoke developed rating of 150 or less.~~

~~B) All construction exposed to air flow in air distribution plenums shall have a flame spread rating of 25 or less and a smoke developed rating of 50 or less.~~

~~4) No duct linings shall be permitted downstream of the 90% filters serving areas requiring 90% filtration.~~

e) ~~Steam and Hot Water Systems~~

~~1) Boilers shall have the capacity to supply the normal requirements of all systems and equipment. The number and arrangement of boilers shall be such that when one boiler breaks down or is temporarily taken out of service, the capacity of the remaining boiler(s) shall be sufficient to provide hot water service, steam for sterilization, and heating for all treatment rooms and major procedure rooms.~~

~~2) Boiler feed pumps, heating circulating pumps, condensate return pumps and fuel oil pumps shall be connected and installed to provide normal and standby service.~~

~~3) Supply and return mains and risers of cooling, heating and process steam systems shall be valved to isolate the various sections of each system. Each piece of equipment shall be valved at supply and return ends.~~

~~4) Humidifiers used in conjunction with air handling systems shall be of the direct steam injection type.~~

d) ~~Air Conditioning, Heating and Ventilating Systems~~

~~1) This Part is intended to provide a comfortable, clean, controlled environment for the FEC by employing the most economical and energy efficient systems consistent with these minimum requirements:~~

~~A) The minimum requirements as set forth in this Part in no way relieve the designer from providing system capacities and components as required to maintain control of air quality, odor, ventilation rates, space temperatures and space humidity as set forth herein.~~

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~~B) The design of air conditioning, heating and ventilation systems shall be based on no less than the recommended outdoor design conditions listed in the ASHRAE Handbook of Fundamentals (1981) for 99% occurrence (Winter) and 1% occurrence (Summer).~~

2) ~~Ventilation Systems~~

~~A) Air handling systems shall conform to NFPA Standard No. 90A (1989), "Installation of Air Conditioning and Ventilating Systems."~~

~~B) Fire dampers, smoke dampers and smoke control systems shall be constructed, located and installed in accordance with the requirements of NFPA Standard No. 90A (1989), "Installation of Air Conditioning and Ventilating Systems."~~

~~C) Ducts that penetrate construction intended for x-ray or other ray protection shall preserve the effectiveness of the protection.~~

~~D) Outdoor air intakes shall be located at least 15 feet from exhaust outlets of ventilation systems, combustion equipment stacks, medical/surgical vacuum systems, plumbing vents or from areas that may collect vehicular exhaust or other noxious fumes unless other provisions are made to minimize recirculation of exhaust into outdoor air intakes. Plumbing and vacuum vents that terminate above the level of the top of the air intake may be located as close as 10 feet. The bottom of outdoor air intakes serving central systems shall be located as high as practical but at least 6 feet above ground level, or if installed above the roof, 3 feet above the roof level.~~

~~E) Exhaust outlets from areas that may be contaminated by dangerous or noxious dust, fumes, mists, gases, odors, infectious material or other contaminants harmful to people shall be above the roof level. The discharge to the atmosphere shall be located as far as possible but not less than 25 feet from any operable window, door, and/or outdoor intake for a fan that discharges air to an occupied space.~~

~~F) The ventilation systems shall be designed and balanced to provide the ventilation and pressure relationships hereinafter specified.~~

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- G) ~~If the ventilation rates required (as hereinafter specified) do not provide sufficient make-up air for use by hoods, safety cabinets, and exhaust fans, the additional make-up air shall be provided to maintain required pressure balance.~~
- H) ~~An all-outdoor air system may be used where required by local codes, provided that some form of air-to-air or air-to-water heat recovery system will be included to reclaim the energy otherwise discharged with the air exhausted to the outside.~~
- I) ~~To provide maximum energy conservation, air supplied to patient care areas not required as make-up air for 100% exhaust systems shall be recirculated. Any air within the FEC that is circulated between patient rooms, or patient rooms and other areas of the FEC, shall pass through filters having an efficiency of 90% (see subsection (d)(3) on filters below).~~
- J) ~~To provide maximum energy conservation, air supplied to housekeeping, administration and other nonsensitive areas not required as make-up air for 100% exhaust systems shall be recirculated. These areas require filters having a minimum efficiency of 30% on the inlet side of the Air Handling Unit.~~
- K) ~~When a central system serves areas with different filtration requirements, the most stringent filtration requirement will be provided for the complete system.~~
- L) ~~All outside air supplied to patient care areas shall pass through 90% filters (see subsection (d)(3) on filters below).~~
- M) ~~Minimum air circulation requirements indicated hereinafter are applicable to occupied spaces. During unoccupied periods, minimum air circulation may be provided as required to maintain space design temperature conditions.~~
- N) ~~Where fan coil or terminal room unit systems are provided in areas to be occupied by patients, through the wall outside air ventilation is not acceptable. A separate central ventilation system, with final filters having a minimum efficiency of 90%, shall supply the~~

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~~required outdoor air ventilation.~~

3) ~~Filters~~

- ~~A) All central ventilation or air conditioning systems shall be equipped with filters having efficiencies no less than those specified in the area requirements.~~
- ~~B) Where two filter beds are required, filter bed No. 1 shall be located upstream of the conditioning equipment and filter bed No. 2 shall be located downstream of the supply fan and conditioning equipment.~~
- ~~C) Where only one filter bed is required, it shall be located upstream of the air conditioning equipment.~~
- ~~D) All filter efficiencies shall be average atmospheric dust spot efficiencies tested in accordance with ASHRAE Handbook of Fundamentals (1981).~~
- ~~E) Filter frames shall be durable and shall provide an airtight fit with the enclosing duct work. All joints between filter segments and enclosing duct work shall be gasketed or sealed to provide a positive seal against air leakage.~~
- ~~F) A local indicating device shall be installed across each filter bed serving central air systems to measure the static pressure drop across the bed.~~

e) ~~Area Requirements: These requirements are listed in outline format.~~1) ~~Administration, Public Area, Medical Records, and Housekeeping Offices~~A) ~~Filters:~~

- ~~i) Central ventilation systems shall be provided with prefilters having a minimum efficiency of 30%~~
- ~~ii) Units that recirculate air within a room shall be provided with filters having a minimum efficiency of 10%~~

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- B) ~~Space Design Conditions:~~
 - i) ~~Temperature, dry bulb 75°F~~
 - C) ~~Air Circulation:~~
 - i)
 - D) ~~Space Pressurization:~~
- 2) ~~Laboratories~~
- A) ~~Filters:~~
 - i) ~~Central ventilation systems shall be~~
 - B) ~~Space Design Conditions:~~
 - i) ~~Temperature, dry bulb 75°F~~
 - C) ~~Air Circulation:~~
 - D) ~~Space Pressurization:~~
 - i)
 - G) ~~All air exhausted from fume hoods shall be made~~
 - i)
 - ii)
 - iii)
- 3) ~~Radiology Suite; X-Ray Diagnostic, Fluoroscopy, and Special Procedures~~
- A) ~~Filters:~~
 - i) ~~Central ventilation systems shall be~~
 - B) ~~Space Design Conditions:~~

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i) ~~Temperature, dry bulb 75°F~~

C) ~~Air Circulation:~~

i)

D) ~~Space Pressurization: Ventilation system shall be designed and balanced so that space pressure, in relation to surrounding areas of the building, is~~neutral

E) ~~Recirculation of air within room permitted~~
~~.....~~yes

F) ~~Air from the following areas shall be exhausted directly to the outdoors: Nuclear medicine and isotope storage.~~

4) Pharmacy Suite

A) ~~Filters:~~

i) ~~Central ventilation systems shall be~~

B) ~~Space Design Conditions:~~

i) ~~Temperature, dry bulb 75°F~~

C) ~~Air Circulation:~~

i)

D) ~~Space Pressurization: Ventilation system shall be designed and balanced so that space pressure, in relation to surrounding areas of the building, is~~neutral

E) ~~Recirculation of air within room permitted~~
~~.....~~yes

5) Observation/Treatment Rooms

A) ~~Filters:~~

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- ~~i) Central ventilation systems shall be~~
- B) ~~Space Design Conditions:~~
- ~~i) Temperature, dry bulb 75°F~~
- C) ~~Air Circulation (Patient Rooms):~~
- ~~i) Total air supplied, cfm per bed 15~~
- D) ~~Air Circulation:~~
- ~~i)~~
- E) ~~Space Pressurization: Ventilation system shall be designed and balanced so that space pressure, in relation to surrounding areas of the building, isneutral~~
- F) ~~Recirculation of air within room permitted
.....yes~~
- G) ~~Isolation Rooms: These rooms may be used two ways: to protect the patient from the facility environment or to protect the facility environment from the patient. Isolation rooms shall have the same conditions as other treatment rooms, except the air flow shall be capable of being either into the room or out of the room. When the facility is being protected (communicable disease), all air shall be exhausted directly to the outdoors.~~
- 6) Major Procedure Rooms
- A) Filters:
- ~~i) Central ventilation systems shall be~~
- B) Space Design Conditions:
- ~~i) Temperature, dry bulb (adj. range) 70°-76°F~~

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C) ~~Air Circulation:~~

~~i) Total air supplied, air changes~~

D) ~~Space Pressurization: Ventilation system shall be designed and balanced so that space pressure, in relation to surrounding areas of the building, is positive~~

E) ~~Recirculation of air within room permitted
..... yes~~

7) ~~Central Air Supply~~

A) ~~Filters:~~

~~i) Central ventilation systems shall be~~

B) ~~Space Design Conditions:~~

~~i) Temperature, dry bulb (adj. range) 75°F~~

C) ~~Air Circulation:~~

~~i)~~

D) ~~Air flow shall be from the clean area toward soiled or decontamination area.~~

E) ~~Sterilization Room:~~

~~i)~~

8) ~~Linen Services; Laundry~~

A) ~~Filters:~~

~~i) Central ventilation systems shall be~~

B) ~~Space Design Conditions: Temperature, dry bulb (winter) 70°F~~

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- C) ~~All air from the soiled storage and sorting area shall be exhausted directly to outdoors.~~
 - D) ~~Air flow shall be from the clean area to the soiled area. Air from the clean area may be used to make up air exhausted from the soiled area.~~
 - E) ~~Air from the clean area may be recirculated within the laundry complex, but shall pass through a lint screen or trap before returning to the air handling unit.~~
 - F) ~~The entire laundry ventilation system shall be controlled so that air flow is into the laundry from the FEC.~~
 - G) ~~Circulation and ventilation rates may be variable, but sufficient outside air must be supplied to make up for exhaust. Minimum circulation of unconditioned air at summer design conditions shall be 2 cfm (cubic feet per minute) per square foot or 12 air changes per hour, whichever is larger.~~
- 9) ~~Miscellaneous Supporting Areas~~
- A) ~~Space temperatures shall be maintained for occupant comfort.~~
 - B) ~~Ventilation system shall be designed and balanced so that air flows into these spaces from adjacent areas.~~
 - C) ~~Anesthesia Storage Rooms:~~
 - i)
 - D) ~~Soiled Holding and Work Rooms:~~
 - i)
 - E) ~~Toilet Rooms:~~
 - i)
 - F) ~~Janitor Closets, Linen and Trash Chute Rooms:~~

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i)

- G) ~~Boiler rooms shall be provided with sufficient outdoor air to maintain combustion rates of equipment and limit temperatures in working stations to 97°F effective temperature (97°F and 50% relative humidity or its equivalent) as defined by ASHRAE Handbook of Fundamentals (1981).~~
- H) ~~Rooms containing heat-producing equipment, such as boiler rooms, heater rooms, food preparation centers, laundries, sterilizer or mechanical equipment rooms, shall be insulated and ventilated to prevent any floor surface above from exceeding a temperature of 100°F.~~

(Source: Amended at 33 Ill. Reg. 8317, effective June 4, 2009)

Section 518.2220 Plumbing and Other Piping Systems

- a) General Requirements
All plumbing systems shall be designed and installed in accordance with the Illinois ~~State~~ Plumbing Code, except that the number of waterclosets, urinals, lavatories, drinking fountains and other fixtures shall be as required by this Part ~~and the FEC programs.~~
- b) Plumbing Fixtures
- 1) Plumbing fixtures shall be of nonabsorptive, acid-resistant materials.
 - 2) The water supply spout for lavatories and sinks required for filling pitchers ~~and;~~ for medical and nursing staff ~~hand washing~~ shall be mounted so that its discharge point is a minimum perpendicular distance of 5 inches above the rim of the fixture.
 - 3) ~~Hand-washing~~ lavatories used by medical and nursing staff shall be trimmed with valves that can be operated without the use of hands where specifically required in this Part.
 - A) When blade handles are used for this purpose the blade handles shall not exceed 4½ inches in length, except ~~that~~ the handles on

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clinical sinks shall not be less than 6 inches in length.

- B) The ~~hand-washing~~handwashing and/or scrub sinks for major procedure rooms shall be trimmed with valves that are aseptically operated (i.e., knee or foot controls) without the use of hands. Wrist blades are not acceptable.
- 4) Clinical rim flush sinks shall have an integral trap in which the upper portion of a visible trap seal provides a water surface.
- c) Water Supply Systems
- 1) Systems shall be designed to supply water at sufficient pressure to operate all fixtures and equipment during maximum demand periods.
- 2) Each water service main, branch main, riser and branch to a group of fixtures shall be valved. Stop valves shall be provided at each fixture.
- 3) Flush valves installed on plumbing fixtures shall be of a quiet operating type, equipped with silencers.
- 4) ~~Bedpan flushing devices shall be provided on each patient toilet unless a clinical service sink is centrally located in each nursing unit. This requirement does not apply to psychiatric units.~~
- 4)5) Water distribution systems shall be arranged to provide hot water at each hot water outlet at all times. Hot water at shower and hand-washing~~handwashing~~ facilities shall not exceed 110°F (43°C).
- d) Water Heaters and Tanks
- 1) The water-heating equipment shall have sufficient capacity to supply water at the temperatures and quantities in the following areas:

	<u>Clinical</u>	<u>Laundry</u>
gallons/hour/bed	6½	4-1/2
liters/second/bed	.007	.005
temperature °F	100	180
temperature °C	43	82

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Water temperatures are to be taken at hot water point of use or inlet to processing equipment.

- 2) Storage tanks shall be fabricated of corrosion-resistant metal or lined with non-corrosive material.
- e) Drainage Systems
- 1) Drain lines from sinks in which acid wastes may be poured shall be fabricated from acid-resistant material.
 - 2) Insofar as possible, drain piping shall not be installed over major procedure rooms and similar critical areas. Special precautions shall be taken to protect these areas from possible leakage or condensation from such overhead piping systems.
 - ~~3) Floor drains shall not be installed in major procedure rooms.~~
 - ~~3)4) Building sewers shall discharge into a public sewerage system.~~
 - ~~4)5) Where a public sewerage system is not available, plans for any private sewage disposal system shall be submitted to the [Illinois](#) Environmental Protection Agency ~~of Illinois~~ for review for approval before construction is started.~~
- f) Nonflammable medical gas systems shall be installed in accordance with NFPA ~~Standard No. 99 (1996), "Health Care Facilities Code."~~
- g) Clinical vacuum (suction) systems shall be installed in accordance with [NFPA 99 Compressed Gas Association Pamphlet P-2.1 \(1970\), "Standard for Medical-Surgical Vacuum Systems in Hospitals."](#)
- h) Medical compressed air systems shall be installed in accordance with [NFPA 99 Compressed Gas Association Pamphlet P-2.1.](#)
- i) Oxygen, vacuum and medical compressed air shall be piped to the locations indicated in [Section 518](#).TABLE A with the required station outlets.
- j) Service outlets for central housekeeping vacuum systems, if used, shall not be located within major procedure rooms.

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- k) Fire Extinguishing Systems
1) All fire extinguishing systems shall be designed, installed and maintained in accordance with NFPA ~~Standard No. 101 (1997), "Life Safety Code,"~~ NFPA ~~Standard No. 13 (1994), "Sprinkler Systems,"~~ and NFPA ~~Standard No. 25.13A (1987), "Sprinkler System Maintenance."~~ 2) Class III, Type 1 inside standpipe system shall be provided in all buildings more than four stories or 55 feet in height. Such standpipe systems shall conform to the requirements of NFPA ~~Standard No. 14 (1980), "Standpipe and Hose Systems."~~

(Source: Amended at 33 Ill. Reg. 8317, effective June 4, 2009)

Section 518.2230 Electrical Requirements

- a) General Requirements
- 1) All materials including equipment, conductors, controls, and signaling devices shall be installed in compliance with applicable sections of the NFPA ~~Standard No. 70 (1996), "National Electric Code,"~~ including Article 517, and as necessary to provide a complete electrical system.
 - 2) All electrical installations, including alarm, nurses' call and communication systems, shall be tested to demonstrate that the equipment installation and operation conforms to ~~this Part~~ these requirements.
- b) Switchboards and Power Panels
These items shall comply with NFPA ~~Standard No. 70 (1996), "National Electrical Code."~~ The main switchboard shall be located in an area separate from plumbing and mechanical equipment and be accessible only to authorized persons.
- c) Panelboards. Panelboards serving lighting and appliance circuits shall be located on the same floor as the circuits they serve. This requirement does not apply to the life safety system.
- d) Lighting
- 1) All spaces occupied by people, machinery, and equipment within buildings, approaches to and through exits from buildings, and parking lots shall have lighting.

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- 2) ~~Treatment~~Major procedure rooms shall have general lighting in addition to local lighting provided by special lighting units at the ~~treatment~~procedure tables. The general lighting shall provide a minimum of 100 footcandles at the ~~treatment~~procedure tables. Each fixed special lighting unit at the tables shall be connected to an independent circuit.
- e) Receptacles (Convenience Outlets)
- 1) Each ~~treatment~~major procedure room shall have at least two receptacles installed on each wall or eight receptacles in diversified locations per room.
 - 2) Each observation/treatment room shall have duplex grounding type receptacles as specified in Article 517-~~1883~~ and Article 517-1984 of NFPA 70the National Electrical Code. The mounting height of these receptacles shall be 22 to 42 inches above the finished floor.
 - 3) Duplex receptacles for general use shall be installed approximately 50'0" apart in all corridors and within 25'0" of the ends of corridors. These receptacles shall be circuited to the emergency system. ~~Single polarized receptacles marked for use of x-ray only shall be located in corridors of patient areas so that mobile equipment may be used in any location within a patient room without exceeding a cord length of 50'0" attached to the equipment. If the same mobile x-ray unit is used in major procedure rooms and in treatment rooms, all receptacles for x-ray use shall be of a configuration that one plug will fit the receptacles in all locations. Where capacitive discharge or battery-powered x-ray units are used, these polarized receptacles are not required.~~
- f) At least two x-ray film illuminators shall be installed in each ~~treatment~~major procedure room and in the x-ray viewing room of the radiology department. More than two units shall be installed as needed.
- g) Nurses' Calling System
- 1) Each observation/treatment room shall be served by at least one calling station. Calls shall register with nursing staff and shall activate a visible signal in the corridor at the observation/treatment room door. In multicorridor nursing units, additional visible signals shall be installed at

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corridor intersections. In rooms containing two or more calling stations, indicating lights shall be provided at each station. Nurses' calling systems that provide two-way voice communications shall be equipped with an indicating light at each calling station, which will remain lighted as long as the voice circuit is operating.

- 2) Nurse call duty stations shall be installed in the clean work room, soiled work room, medicine preparation room, nourishment station and nurses' lounge of the unit.
- 3) A nurses' call emergency station shall be provided for patients' use at each patient's toilet and at the shower. These stations are to be the pull-cord type with the cord reaching within 6 inches of the floor. The cords are to be located within reach of a patient.
- 4) In areas where patients are under constant surveillance, the nurses' calling system may be limited to a bedside station that will actuate a signal that can be readily seen by the other nurses.
- 5) A communications system that may be used by nurses to summon assistance shall be provided in each [treatmentmajor procedure](#) room.

h) Communication System

- 1) A loud speaker-type sound system shall be provided throughout the facility to allow for announcements, such as paging of personnel and other necessary audio functions.
- 2) Speakers shall be located in all [areasedepartments](#) to allow [hospital](#) personnel to adequately hear all audio outputs from the system.
- 3) The system shall be used as the communication link for emergency announcements, i.e., code blue, impending disasters and others. The audio line at the last speaker in the audio circuits shall be electrically supervised against opens and grounds. The supervision shall be indicated at a building location that is staffed 24 hours a day.

i) Emergency Electric Service

- 1) To provide electricity during an interruption of the normal electric supply,

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an emergency source of electricity shall be provided and connected to the life safety branch, the critical branch, and the equipment branch for lighting and power as established in NFPA ~~Standard No. 70-517~~.

- 2) The source of this emergency electric service shall be as follows:
 - A) An emergency generating set when the normal service is supplied by one or more central station transmission lines.
 - B) An emergency generating set or a central station transmission line when the normal electric supply is generated on the premises.
- 3) Emergency Generating Set
 - A) The required emergency generating set, including the prime mover and generator, shall be located on the premises. Where stored fuel is required for the emergency generator operations, the storage capacity shall be sufficient for not less than 24 hours continuous operation.
 - B) The emergency generator set may be used during periods of high energy demands on local utilities. In the event of an outage of the normal power source, the normal loads shall immediately be removed from the emergency generator set, and the life safety branch, the critical branch, and the equipment branch shall be connected to the generator.

(Source: Amended at 33 Ill. Reg. 8317, effective June 4, 2009)

Section 518.2240 Building Requirements

- a) Location
The freestanding emergency center shall be conveniently accessible to the population served. In selecting location, consideration shall be given to factors affecting source and quantity of patient load, including highway systems, public transportation, industrial plants, and recreational areas.
- b) Parking
One parking space for each staff member on duty at any one time and no fewer than two spaces for each major procedure room and each observation/treatment

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room shall be provided. Handicapped parking spaces shall be provided as required in the Illinois Accessibility Code (~~77 Ill. Adm. Code 400~~). Additional spaces shall be provided for emergency vehicles. Street, public, and shared lot spaces shall be exclusive for the use of the emergency facility. All required parking spaces shall be conveniently located to the emergency entrance.

c) Administration and Public Areas

- 1) The ambulance and walk-in entrance shall be located at grade level and be able to accommodate wheelchairs.
 - A) All entrances shall be covered to permit protected transfer of patients from ambulances, and a ramp for wheelchairs and stretchers shall be provided in addition to steps. Doors to emergency services shall be not less than 4 feet wide.
 - B) The emergency entrance shall have vision panels to minimize conflict between incoming and outgoing traffic and to allow for observation of the unloading area from the control station.
- 2) A lobby and waiting area shall be provided and shall provide:
 - A) Convenient access to wheelchairs and stretchers;
 - B) A control station that may be used for triage functions, is in direct communication with medical staff and has direct visual control of the emergency entrance, observation of arriving vehicles, and access to treatment and lobby areas;
 - C) Waiting areas convenient to the reception and interview areas;
 - D) Public toilet facilities for males, ~~and~~ females and/or families. Unisex toilet facilities are prohibited.
- 3) Facilities for conducting interviews with patients and others shall be provided and shall include provisions for acoustical and visual privacy.
- 4) General and individual offices shall be provided.

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- 5) Clerical spaces shall be provided.
- 6) Multipurpose rooms for staff conferences and consultation shall be provided.
- 7) Equipment and general storage areas shall be provided.

d) Clinical Facilities

- 1) At least one major procedure room shall be provided and shall meet the following requirements:
 - A) ~~A~~ minimum clear area of 360 square feet exclusive of cabinets, shelves, door swings and fixed obstructions;
 - B) ~~A~~ minimum clear dimension of 16 feet;
 - ~~C)~~ ~~if laser equipment is to be used, the square footage of this room is to be increased to a clear area of 400 square feet;~~
 - ~~C)~~~~D)~~ ~~Emergency~~~~emergency~~ communication equipment connected to the nurses' control station;
 - ~~D)~~~~E)~~ ~~X-ray~~~~x-ray~~ film illuminator (as necessary);
 - ~~E)~~~~F)~~ ~~Mechanical~~~~mechanical~~ and electrical systems and devices that meet requirements for hospital surgical rooms in the Hospital Licensing Requirements (77 Ill. Adm. Code 250).
- 2) Where additional ~~major~~ procedure rooms are set up for multi-patient use, these rooms shall meet the following requirements:
 - A) ~~A~~ minimum clear area of not less than 180 square feet per patient stretcher or bed;
 - B) ~~A~~ minimum clear dimension of 10 feet per space;
 - C) ~~Emergency~~~~emergency~~ communication equipment connected to the nurses' control station;

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- D) ~~X-ray~~x-ray film illuminator (as necessary);
- E) ~~Mechanical~~mechanical and electrical devices that meet requirements for hospital surgical rooms in ~~the Hospital Licensing Requirements~~ (77 Ill. Adm. Code 250).
- 3) A holding area for stretchers and wheelchairs within the clinical area shall be provided ~~away from traffic~~ and under staff control and located so as not to block means of egress.
- 4) A poison control service shall be provided that contains the following services:
- A) ~~Immediately~~immediately accessible antidotes;
- B) ~~A~~ file of information concerning common poisons; and
- C) ~~Communication~~communications links with regional and national poison centers and regional EMS centers.
- 5) A nurses' work and control station shall be located to permit visual control and access to clinical areas and shall contain space and equipment to allow the following services to be provided:
- A) ~~Charting~~charting;
- B) ~~Storage~~storage of files;
- C) ~~Staff~~staff consultation; and
- D) ~~Communication~~communication link with ~~examination~~exam/treatment, ~~trauma/cardiac~~lobby and waiting area~~reception~~ control, laboratory, radiology; and on-call staff.
- 6) A cardiopulmonary resuscitation (CPR) emergency cart shall be located away from traffic and available to all areas.
- 7) Scrub stations shall be provided at each trauma/cardiac room with water and soap controls operable without the use of hands.

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e) Radiology

- 1) Facilities for basic diagnostic radiological procedures shall be provided and shall include the following ~~elements~~:
 - A) ~~Space~~ size adequate to accommodate needed equipment with a minimum clearance of 3 feet on all four sides of the table;
 - B) ~~A~~ a shielded control alcove with windows providing a full view of the examination table and the patient; and
 - C) ~~A~~ a patient toilet accessible from the ~~radiology~~ radiographic room.
- 2) Film processing facilities shall be provided (if required).
- 3) Viewing and administrative areas shall be provided.
- 4) Storage facilities for exposed film shall be provided (if required).
- 5) Dressing rooms or booths with convenient toilet access shall be provided.

f) Laboratory

- 1) Laboratory ~~facilities~~ Facilities shall be provided for the performance of tests in hematology, clinical chemistry, urinalysis, microbiology, anatomic pathology, and cytology to meet the work load ~~workload described in the functional program~~.
- 2) Laboratory facilities shall provide ~~Provisions shall be made~~ for the following procedures to be performed on-site: blood counts, urinalysis, blood glucose, electrolytes, blood urea and nitrogen (BUN), coagulation, and transfusions (type capability). If transport time by an ambulance to the nearest hospital is 10 minutes or less, plasma expanders may be used. If transport time by ambulance to the nearest hospital is greater than 10 minutes, then type O negative blood ~~shall~~ must be available for transfusion. Facilities ~~Provisions~~ shall also be included for specimen collection and processing.
- 3) The following shall be provided in the laboratory suite:

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- A) Work counters with space for items such as microscopes, chemical analyzers, incubators, and centrifuges; work counters shall include sinks and provisions for fluid disposal, eye washes, vacuum, gases, electrical services, and piped-in air;
 - B) Hand-washing lavatories operable without the use of hands at strategic locations for convenience of use;
 - C) Storage facilities;
 - D) Chemical safety provisions, including emergency showers, eye-flushing devices, and blankets; floor drains at the emergency shower locations;
 - E) Flammable liquid storage in the form of vented cabinets designed for use with flammable liquids;
 - F) Specimen collection facilities including: blood collection area with work counter; space for patient seating and hand washing (~~operable without the use of hands~~); a urine and feces collection room equipped with water and lavatory;
 - G) A terminal sterilization facility for contaminated specimens (autoclave or electric oven), unless contaminated waste is disposed of through a licensed waste management service in accordance with Section 518.2150(f)(4); and
 - H) If radioactive materials are employed, facilities for long-term storage and disposal of these materials, appropriately shielded to prevent exposure.
- g) Staff locker rooms and toilets shall be provided.
- h) At least one housekeeping room per floor shall be provided. The housekeeping room shall contain a service sink and storage for housekeeping supplies and equipment and shall be located within the FEC.
- i) Utility Rooms
- 1) A clean utility room shall be provided and contain the following:

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- A) ~~Storage~~ Storage for clean and sterile supplies and equipment;
 - B) ~~Work~~ Work counters;
 - C) ~~Hand-washing~~ Hand-washing sinks operable without the use of hands;
 - D) ~~Ice~~ Ice maker;
 - E) ~~Under-counter~~ Under-counter refrigerator; and
 - F) ~~Communication~~ Communication equipment.
- 2) A soiled utility room shall be provided and contain the following:
- A) ~~Storage~~ Storage for soiled supplies and equipment;
 - B) ~~Work~~ Work counters;
 - C) ~~Hands-free~~ Hands-free hand-washing sinks ~~operable without the use of hands~~;
 - D) ~~Communication~~ Communication equipment; and
 - E) ~~Clinical~~ Clinical service sink.
- j) Sterile supply and processing rooms shall be provided and may be combined with the clean and soiled utility rooms if the program narrative is approved.
- 1) One-way flow shall be maintained between the soiled supplies, clean-up, sterilizing, and storage functions.
 - 2) Storage spaces for clean and sterile supplies and equipment shall be provided.
 - 3) Storage spaces for soiled supplies and equipment shall be provided.
 - 4) There shall be no direct access between the soiled and clean sides of sterile supply and processing.

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- 5) Work counters and hand-washing sinks operable without the use of hands shall be provided.
 - 6) A clinical service sink shall be provided on the soiled side.
 - 7) The soiled side shall have equipment for cleaning, such as ultrasound, washers, and deep three-compartment sink and tray assembly.
 - 8) A pass-through sterilizer shall be provided.
 - 9) Space shall be provided in the soiled side for processing equipment and tray assembly, such as steris machines, dryers, tube racks, wrapping and labelling counters. The steris machine shall be located in a clean utility room. Only tray loading is permitted in the soiled side.
- k) A nourishment room for the use of patients, conveniently located to the clinical area, shall contain the following:
- 1) Workwork counter;
 - 2) Refrigeratorrefrigerator;
 - 3) Iceice maker;
 - 4) Hands-free hand-washing sink ~~operable without the use of hands~~; and
 - 5) Storagestorage for supplies.
- l) Facilities shall be provided for observingholding patients until they can be transferred to an appropriate hospital. The size and type of equipment shall be what is required for anticipated patient load and lengths of stay. Each observation bed shall provide for:
- 1) Directdirect visual observation of each patient from the nurses' station;
 - 2) Patientpatient privacy;
 - 3) Accessaccess to patient toilets;
 - 4) Securesecure storage of patients' belongings;

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- 5) ~~Medication~~medication dispensing;
 - 6) ~~Bedpan~~bedpan storage and cleaning;
 - 7) ~~Hand-washing~~hand-washing facilities without the use of hands;
 - 8) ~~Communication~~communications system with nurses station; and
 - 9) ~~Monitoring~~monitoring capabilities.
- m) A consultation/communications room shall be located within access of the diagnostic and treatment facilities and shall provide sound isolated for privacy and confidentiality of consultation for the use of the staff during the tele-medicine consultation. The room shall contain the following:
- 1) ~~Computer~~computer support and telecommunications support equipment necessary for the consultation task;
 - 2) ~~View~~view screens;
 - 3) ~~Work~~work counters;
 - 4) ~~Storage~~storage areas; and
 - 5) ~~Additional~~additional refrigeration units as required by equipment.
- n) ~~Mobile Transportable Diagnostic Units~~
- 1) ~~If used, the size of mobile transportable diagnostic units shall limit occupancy and therefore minimize life safety hazards. These units shall be restricted to the following:~~
 - A) ~~minimum construction of one-hour protected wood frame;~~
 - B) ~~built-in smoke detectors and sprinkler systems;~~
 - C) ~~a two-hour fire separation from the freestanding emergency center;~~
 - D) ~~a maximum clear area of 1,000 square feet; and~~

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- E) ~~a maximum occupancy of two patients and not more than six persons at any one time.~~
- 2) ~~Site conditions shall be a consideration in placement of the units. The following elements shall be included in the siting of the unit:~~
- A) ~~turning radius of vehicles, slopes of approach (6% min.), existing conditions;~~
 - B) ~~gauss fields of MRI Units, and radio frequency interference;~~
 - C) ~~properly sized power, including emergency power, water, waste, telephone, fire alarm connections;~~
 - D) ~~level concrete pads or piers designed for the structural loads of the facility;~~
 - E) ~~adequate access for cryogen storage units in the case of MRIs;~~
 - F) ~~covered walkway or enclosure to ensure patient safety from the outside elements;~~
 - G) ~~diesel exhaust from the tractor unit and/or generator must be kept away from the fresh air intake of the facility; and~~
 - H) ~~pad anchors and wheel blocks to stabilize unit and prevent movement.~~
- 3) ~~A room for transition access between the portable unit and the center shall be provided and shall contain the following:~~
- A) ~~two-hour separation between the exterior wall of the center and the mobile unit;~~
 - B) ~~hand-washing sink;~~
 - C) ~~protection from the elements;~~
 - D) ~~equipment storage;~~

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- E) ~~communications with control station; and~~
- F) ~~patient toilet.~~

(Source: Amended at 33 Ill. Reg. 8317, effective June 4, 2009)

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Section 518. TABLE A Piping Locations for Oxygen, Vacuum and Medical Compressed Air

Location	Oxygen	Vacuum	Compressed Air
Patient Treatment Room	A	A	
Examination and Treatment Rooms	D	D	
Major Procedure Room	E	E	E

A = One outlet accessible to each bed. One outlet may serve 2 beds.

D = One outlet.

~~E = Two outlets.~~

(Source: Amended at 33 Ill. Reg. 8317, effective June 4, 2009)

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Section 518.TABLE C Minimum Efficiency Reporting Values

<u>Minimum Efficiency Reporting Values (MERV)</u> <u>ASHRAE Standard 52.2</u>						
<u>Group</u> <u>Number</u>	<u>MERV</u> <u>Rating</u>	<u>E1</u> <u>Average</u> <u>Particle Size</u> <u>Efficiency</u> <u>(PSE)</u> <u>0.3-1.0</u> <u>Microns</u>	<u>E2</u> <u>Average</u> <u>Particle Size</u> <u>Efficiency</u> <u>(PSE) 1.0-</u> <u>3.0 Microns</u>	<u>E3</u> <u>Average</u> <u>Particle Size</u> <u>Efficiency</u> <u>(PSE) 3.0-10.0</u> <u>Microns</u>	<u>Average</u> <u>Arrestance</u> <u>(ASHRAE</u> <u>52.1)</u>	<u>Minimum</u> <u>Final</u> <u>Resistance</u> <u>(in Water</u> <u>Gauge)</u>
	<u>MERV 1</u>	=	=	< 20%	<65%	<u>0.3^m</u>
<u>1</u>	<u>MERV 2</u>	=	=	< 20%	<u>65-69.9%</u>	<u>0.3^m</u>
	<u>MERV 3</u>	=	=	< 20%	<u>70-74.9%</u>	<u>0.3^m</u>
	<u>MERV 4</u>	=	=	< 20%	<u>75% or ></u>	<u>0.3^m</u>
	<u>MERV 5</u>	=	=	<u>20-34.9%</u>	=	<u>0.6^m</u>
<u>2</u>	<u>MERV 6</u>	=	=	<u>35-49.9%</u>	=	<u>0.6^m</u>
	<u>MERV 7</u>	=	=	<u>50-69.9%</u>	=	<u>0.6^m</u>
	<u>MERV 8</u>	=	=	<u>70-84.9%</u>	=	<u>0.6^m</u>
	<u>MERV 9</u>	=	<50%	<u>85% or ></u>	=	<u>1.0^m</u>
<u>3</u>	<u>MERV 10</u>	=	<u>50-64.9%</u>	<u>85% or ></u>	=	<u>1.0^m</u>
	<u>MERV 11</u>	=	<u>65-79.9%</u>	<u>85% or ></u>	=	<u>1.0^m</u>
	<u>MERV 12</u>	=	<u>80-89.9%</u>	<u>90% or ></u>	=	<u>1.0^m</u>
	<u>MERV 13</u>	< 75%	<u>90% or ></u>	<u>90% or ></u>	=	<u>1.4^m</u>
<u>4</u>	<u>MERV 14</u>	<u>75-84.9%</u>	<u>90% or ></u>	<u>90% or ></u>	=	<u>1.4^m</u>
	<u>MERV 15</u>	<u>85-94.9%</u>	<u>90% or ></u>	<u>90% or ></u>	=	<u>1.4^m</u>
	<u>MERV 16</u>	<u>95% or ></u>	<u>95% or ></u>	<u>95% or ></u>	=	<u>1.4^m</u>

Notes:

1. ASHRAE Standard 52.2 tests are to be conducted at one of seven air flow rates.

118 FPM (.60 m/s)

246 FPM (1.25 m/s)

295 FPM (1.50 m/s)

374 FPM (1.90 m/s)

492 FPM (2.50 m/s)

630 FPM (3.20 m/s)

748 FPM (3.80 m/s)

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2. The air flow rate at which the filter was tested is included in the MERV rating (MERV 10 @ 2.5m/s).
3. Filters with an E3 efficiency of less than 20% (MERV 1 through MERV 4) must also be tested for arrestance per ASHRAE Standard 52.1.
4. Final resistance must be at least twice the initial resistance at the test air flow rate, or the values shown in the table above, whichever is greater.

(Source: Added at 33 Ill. Reg. 8317, effective June 4, 2009)

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- 1) Heading of the Part: Child Health Examination Code
- 2) Code Citation: 77 Ill. Adm. Code 665
- 3)

<u>Section Numbers:</u>	<u>Adopted Action:</u>
665.100	Repealed
665.105	Amended
665.115	Amended
665.120	Amended
665.130	Amended
665.150	Amended
665.160	Amended
665.510	Amended
665.610	Amended
665.620	Repealed
665.630	Amended
665.640	Repealed
665.650	New
665.APPENDIX A	Amended
665.APPENDIX C	New
665.APPENDIX D	New
665.APPENDIX E	New
- 4) Statutory Authority: Authorized by and implementing Section 27-8.1 of the School Code [105 ILCS 5/27-8.1]
- 5) Effective Date of Rulemaking: June 8, 2009
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Do these amendments contain incorporations by reference? No
- 8) A copy of the adopted amendments, including any material incorporated by reference, are on file and available for public inspection at the Illinois Department of Public Health, 535 W. Jefferson Street, Springfield, Illinois 62761-0001.
- 9) Notice of Proposal Published in the Illinois Register: 32 Ill. Reg. 14465; September 5, 2008

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- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between proposal and final version: The following changes were made in response to comments during the First Notice or public comment period:
1. In Section 665.105, definition of "Eye examination", "at a minimum...are necessary" was changed to italic type and "(Section 27-8.1(2) of the School Code)" was added after "*necessary*".
 2. In the first line of Section 665.150(b), "gender and date of birth" was added after "include".
 3. In the second sentence of Section 665.610(a), "within one year prior to the date of entering school" was added after "*the previous year*".
 4. In the first sentence of Section 665.610(c), "October 15" was deleted and replaced with "the first day".
 5. In the first sentence of Section 665.610(c), "or the child first enters any public, private, or parochial school." was changed to "or the child enters the Illinois school system for the first time, whether in a public, private, or parochial school."
 6. In the second sentence of Section 665.610(c), "shall be completed prior to October 15 of the year of the" was changed to "shall be completed within one year prior to the first day of the school year of the".
 7. In the second sentence of Section 665.650, ", if requested by the parent or guardian," was added after "available, and".
 8. In the first line of the Eye Examination Report (Section 665.Appendix A), "(such as an ophthalmologist)" was added after "physician" and "complete" was deleted.
 9. In the second sentence of the Eye Examination Report, "an Illinois school" was changed to "the Illinois school system for the first time".
 10. The following new sentence was added after the second sentence of the Eye Examination Report: "The parent of any child who is unable to obtain an examination must submit a waiver form to the school.".
 11. In the "Examination" portion of the Report, "Unaided Visual Acuity"; "(eye and adnexa)" was changed to "(lids, lashes, cornea, etc.)"; "media" was changed to "vitreous"; "Neurological Integrity" was changed to "Pupillary Reflex"; "IOP (glaucoma)" was changed to "Glaucoma Evaluation"; "Accommodation and Vergence" was deleted; after "Other:", the following was added: "NOTE: 'Not Able to Assess' refers to the inability to complete the test, not the inability to provide the test.".
 12. In the "Recommendations" portion of the Report, "Optometrist or Physician Who Provides Eye Examinations" was deleted under both "Print Name" and "Signature:" and "MD OD DO" was added.

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13. On the Eye Examination Waiver Form (Section 665. Appendix C), "I am unable to obtain the required vision examination because:", "vision" was changed to "eye".
14. On the Eye Exam Waiver Form, " My child is enrolled in the free and reduced lunch program and is ineligible for public insurance (medical assistance/All Kids)." was deleted.
15. In the second checkbox sentence on the Eye Exam Waiver Form, "unable to see the child" was changed to "unable to examine my child".
16. On the Eye Exam Waiver Form, " My child does not have any type of medical or vision/eye care insurance coverage, and there are no low-cost vision/eye clinics in our community that will see my child." was deleted and "Other: _____" was added.

The following changes were made in response to comments and suggestions of JCAR:

1. In subsection 665.650(a)(1), the following was deleted: ("The child is enrolled in the free and reduced lunch program under the School Breakfast and Lunch Program Act and is ineligible for public assistance (medical assistance/All Kids).")
2. Section 665.650(a)(2) was re-labeled as (a)(1) and (a)(3) was re-labeled as (a)(2) and revised as follows: "The child does not have any type of medical or vision/eye insurance coverage and does not qualify for medical assistance/ ALL KIDS, there no low-cost clinics in the community that provide eye examinations as required in Section 665.610 and that will see the child, and the parent or guardian has exhausted all other means and does not have sufficient income to provide the child with an eye examination."
3. On the Eye Examination Report (Section 665. Appendix A), second sentence, "October 15 of the" was changed to "the first day of the school".
4. In the "Examination" portion of the Report, "Refraction:" was deleted; "cycloplegic agents" was changed to "dilation"; "Accommodation and Vergence" and four check boxes were added below "Binocular function (steropsis)"; in the "NOTE", "of the child" was added after the first "inability" and "of the doctor" was added after the second "inability".
5. In the "Recommendations" portion of the Report, "or contacts" was added after "glasses"; "/Recess" was added after "Education"; under the lines following "Print Name:" and "Signature", "Optometrist or Physician (such as an ophthalmologist) Who Provided the Eye Examination" was added; another line was added with "Lic. No."; in the box, "Parent" was changed to "Parent's".
6. On the Eye Examination Waiver Form (Section 665. Appendix C), the second checkbox sentence was changed to: " My child does not have any type of

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medical or vision/eye care coverage, my child does not qualify for medical assistance/ALL KIDS, there are no low-cost vision/eye clinics in our community that will see my child, and I have exhausted all other means and do not have sufficient income to provide my child with an eye examination."

7. On the Eye Examination Waiver Form, the third checkbox was changed to: " Other undue burden or a lack of access to an optometrist or a physician who provides eye examinations:".
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Amendments: These amendments implement Public Act 95-671, which amended the School Code to require eye examinations for all children enrolling in kindergarten in a public, private, or parochial school and any student enrolling for the first time in a public, private, or parochial school on or after the January 1, 2008. The amendments include definitions, referenced materials, requirements for report forms and proof of examination, requirements for the examinations, and procedures for waivers from the eye examination requirement. Eye examinations are required to be performed by optometrists or by physicians who provide eye examinations. An Eye Examination Report form and an Eye Examination Waiver form have been appended to this Part. The rulemaking also includes forms for dental examinations and dental examination waivers.
- 16) Information and questions regarding these adopted amendments shall be directed to:

Susan Meister
Division of Legal Services
Illinois Department of Public Health
535 West Jefferson, Fifth Floor
Springfield, Illinois 62761

217-782-2043
(e-mail: DPH.RULES@illinois.gov)

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

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TITLE 77: PUBLIC HEALTH
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH
SUBCHAPTER i: MATERNAL AND CHILD HEALTH

PART 665
CHILD HEALTH EXAMINATION CODE

SUBPART A: GENERAL PROVISIONS

Section

- | 665.100 Statutory Authority ([Repealed](#))
- 665.105 Definitions
- 665.110 General Considerations (Repealed)
- 665.115 Referenced Materials

SUBPART B: HEALTH EXAMINATION

Section

- | 665.120 Health Examination [Requirements](#)~~Requirement~~
- 665.130 Performance of Health Examination and Verification of Certificate of Child Health Examination
- 665.140 Timetable for Examinations
- 665.150 Report Forms
- 665.160 Proof of Examination
- 665.210 Proof of Immunizations
- 665.220 Local School Authority (Repealed)
- 665.230 School Entrance
- 665.240 Basic Immunization
- 665.250 Proof of Immunity
- 665.260 Booster Immunizations
- 665.270 Compliance with the School Code
- 665.280 Physician Statement of Immunity
- 665.290 List of Non-immunized Students

SUBPART C: VISION AND HEARING SCREENING

Section

- 665.310 Vision and Hearing Screening

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SUBPART D: DENTAL EXAMINATION

Section

665.410	Dental Examination Requirement
665.420	Dental Examination Timetable
665.430	Dental Examination
665.440	Guidelines (Repealed)
665.450	Waiver of Dental Examination Requirement

SUBPART E: EXCEPTIONS

Section

665.510	Objection of Parent or Legal Guardian
665.520	Medical Objection

SUBPART F: [EYEVISION](#) EXAMINATION

Section

665.610	EyeVision Examination Requirement Recommendation
665.620	Vision Examination (Repealed)
665.630	EyeVision Examination Report
665.640	Indigent Students (Repealed)
665.650	Waiver of Eye Examination Requirement

SUBPART G: DIABETES SCREENING

Section

665.700	Diabetes Screening Requirement
665.710	Diabetes Screening
665.720	Testing Recommendations

665.APPENDIX A [Illinois Department of Public Health EyeVision](#) Examination Report

665.APPENDIX B Vaccination Schedule for Haemophilus influenzae type b Conjugate Vaccines (Hib)

[665.APPENDIX C](#) [Illinois Department of Public Health Eye Examination Waiver Form](#)

[665.APPENDIX D](#) [Illinois Department of Public Health Dental Examination Form](#)

[665.APPENDIX E](#) [Illinois Department of Public Health Dental Examination Waiver Form](#)

AUTHORITY: Implementing and authorized by Section 27-8.1 of the School Code [105 ILCS

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5/27-8.1] and Section 6.2 of the Lead Poisoning Prevention Act [410 ILCS 45/6.2].

SOURCE: Emergency rule adopted at 4 Ill. Reg. 38, p. 275, effective September 10, 1980, for a maximum of 150 days; emergency rule adopted at 4 Ill. Reg. 41, p. 176, effective October 1, 1980, for a maximum of 150 days; adopted at 5 Ill. Reg. 1403, effective January 29, 1981; codified at 8 Ill. Reg. 8921; amended at 11 Ill. Reg. 11791, effective June 29, 1987; amended at 13 Ill. Reg. 11565, effective July 1, 1989; amended at 13 Ill. Reg. 17047, effective November 1, 1989; emergency amendment at 14 Ill. Reg. 5617, effective March 30, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 14543, effective August 27, 1990; amended at 15 Ill. Reg. 7706, effective May 1, 1991; amended at 18 Ill. Reg. 4296, effective March 5, 1994; amended at 20 Ill. Reg. 11950, effective August 15, 1996; emergency amendment at 21 Ill. Reg. 11966, effective August 15, 1997, for a maximum of 150 days; emergency expired on January 1, 1998; amended at 26 Ill. Reg. 5921, effective July 1, 2002; amended at 26 Ill. Reg. 10689, effective July 1, 2002; amended at 29 Ill. Reg. 18127, effective October 24, 2005; emergency amendment at 32 Ill. Reg. 8778, effective May 30, 2008, for a maximum of 150 days; emergency expired October 26, 2008; emergency amendment at 32 Ill. Reg. 9055, effective June 6, 2008, for a maximum of 150 days; emergency expired November 2, 2008; amended at 33 Ill. Reg. 7011, effective May 11, 2009; amended at 33 Ill. Reg. 8459, effective June 8, 2009.

SUBPART A: GENERAL PROVISIONS

Section 665.100 Statutory Authority [\(Repealed\)](#)

~~The Illinois Department of Public Health (Department) is authorized under Section 27-8.1 of the School Code [105 ILCS 5/27-8.1] to promulgate rules specifying the examinations and procedures that constitute a health examination and a dental examination and may recommend by rule that certain additional examinations be performed. (Section 27-8.1(2) of the School Code) The Department is also authorized to promulgate rules requiring immunizations against preventable communicable diseases. (Section 27-8.1(3) of the School Code)~~

(Source: Repealed at 33 Ill. Reg. 8459, effective June 8, 2009)

Section 665.105 Definitions

The following terms have the meaning ascribed to them here whenever the term is used in this Part:

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Advanced practice nurse – *a person who is licensed as an advanced practice nurse under the [NurseNursing and Advanced Practice Nursing Act](#) [225 ILCS 65]. (Section 15-5 of the [NurseNursing and Advanced Practice Nursing Act](#))*

Body mass index (BMI) – the result of a calculation of weight and height measurement used to determine whether an individual's weight is appropriate for his/her height. Body mass index is calculated by dividing weight in pounds by height in inches squared times 703 (wt (lbs)/ht (in²) X 703).

[Certified vision screener – a person who has been trained by the Illinois Department of Public Health and who holds a current and valid certification from the Department as a vision screener in accordance with Illinois Child Vision and Hearing Test Act \[410 ILCS 205\].](#)

[Dental examination – an examination, performed by a dentist, that includes, at a minimum, oral health status and treatment needs.](#)

Dentist – a person who is licensed to practice dentistry under the Illinois Dental Practice Act [225 ILCS 25].

Department [or IDPH](#) – the Illinois Department of Public Health.

[Eye examination – an examination, performed by an optometrist or a physician who provides eye examinations, that includes, at a minimum, history, visual acuity, subjective refraction to best visual acuity near and far, internal and external examination, and a glaucoma evaluation, as well as any other tests or observations that, in the professional judgment of the physician or optometrist, are necessary. \(Section 27-8.1\(2\) of the School Code\)](#)

[Glaucoma evaluation – an examination that includes the measurement by instrumentation of the intraocular pressure of the eye, and other tests focused on the optic nerve, as needed.](#)

Health care provider – a physician, advanced practice nurse, or physician assistant who is authorized to conduct health examinations under Section 27-8.1(2) of the School Code.

Local school authority – that person having ultimate control and responsibility for any public, private/independent or parochial elementary or secondary school, or

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any attendance center or nursery school operated by an elementary or secondary school or institution of higher learning.

Optometrist – a person who is licensed to practice optometry under the Illinois Optometric Practice Act of 1987 [225 ILCS 80].

Physician – a person who is licensed to practice medicine in all of its branches as provided in the Medical Practice Act of 1987 [225 ILCS 60].

Physician assistant – a person who is licensed as a physician assistant under the Physician Assistant Practice Act of 1987 [225 ILCS 95].

Registered nurse – a person who is licensed as a registered professional nurse under the ~~Nurse~~Nursing and Advanced Practice Nursing Act [225 ILCS 65].

Subjective refraction – determining the best visual status of the patient using ophthalmic lenses with directed patient response.

"Vision screening" – for purposes of this Part, refers to mandated vision screening by Department-certified vision screeners under the Child Vision and Hearing Test Act and the Department's rules titled Vision Screening (77 Ill. Adm. Code 685). Vision screening services include testing, evaluation and follow-up, which may include a recommendation for an eye examination.

"Visual acuity testing" – a measurement of the resolving power of the human eye using standardized testing conditions, usually by distinguishing standardized targets such as letters or children's symbols. It is done far at 20 feet and near at 16 inches without correction, with the present refractive correction, and with best correction by examination, and includes monocular and binocular findings.

(Source: Amended at 33 Ill. Reg. 8459, effective June 8, 2009)

Section 665.115 Referenced Materials

The following materials are referenced in this Part:

- a) Illinois Statutes:
 - 1) Child Vision and Hearing Test Act [410 ILCS 205]

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- 2) Medical Practice Act of 1987 [225 ILCS 60]
 - 3) Illinois Optometric Practice Act of 1987 [225 ILCS 80]
 - 4) School ~~Breakfast and~~Free Lunch Program Act [105 ILCS ~~125~~205]
 - 5) Illinois Dental Practice Act [225 ILCS 25]
 - 6) ~~Nurse~~~~Nursing and Advanced~~ Practice ~~Nursing~~ Act [225 ILCS 65]
 - 7) Physician Assistant Practice Act of 1987 [225 ILCS 95]
 - 8) Lead Poisoning Prevention Act [410 ILCS 45]
- b) Illinois Administrative Rules
- 1) Control of Tuberculosis Code (77 Ill. Adm. Code 696)
 - 2) Vision Screening (77 Ill. Adm. Code 685)
 - 3) Hearing Screening (77 Ill. Adm. Code 675)
 - 4) Control of Communicable Diseases Code (77 Ill. Adm. Code 690)
 - 5) Immunization Code (77 Ill. Adm. Code 695)

(Source: Amended at 33 Ill. Reg. 8459, effective June 8, 2009)

SUBPART B: HEALTH EXAMINATION

Section 665.120 Health Examination ~~Requirements~~Requirement

- a) Health ~~examinations~~Examination for all public, private/independent and parochial school students in Illinois shall require a physical examination, in accordance with the timetable in Section 665.140, and, protection from communicable disease, ~~and vision and hearing screening according to the following rules of the Department.~~ Lead screening is required as part of the health examination, as specified in Section 665.140(f).

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- b) [Eye examinations are required, as specified in Section 665.610.](#)
- c) Dental examinations are required, as specified in Section 665.410. ~~Lead screening is required as part of the health examination, as specified in Section 665.140(f).~~
- d) [Vision and hearing screenings are required as specified in 77 Ill. Adm. Code 675 \(Hearing Screening\) and 77 Ill. Adm. Code 685 \(Vision Screening\).](#)

(Source: Amended at 33 Ill. Reg. 8459, effective June 8, 2009)

Section 665.130 Performance of Health Examination and Verification of Certificate of Child Health Examination

Health examinations, other than dental examinations, [eye examinations](#), and hearing and vision screening, shall be performed by, and the Certificate of Child Health Examination shall be signed by, a *physician licensed to practice medicine in all of its branches, an advanced practice nurse who has a written collaborative agreement with a collaborating physician that authorizes him/her to perform health examinations, or a physician assistant to whom has been delegated the performance of health examinations by his/her supervising physician.* (Section 27-8.1(2) of the School Code) A physician is required to review and sign any portion of the Certificate of Child Health Examination completed by a registered nurse who is not an advanced practice nurse.

(Source: Amended at 33 Ill. Reg. 8459, effective June 8, 2009)

Section 665.150 Report Forms

Health examinations shall be reported on the ~~uniform~~ forms that the Department of Public Health and the Illinois State Board of Education prescribe for ~~statewide~~[Statewide](#) use. The required form is the Certificate of Child Health Examination provided by the Department. [For eye examinations, the required form is the Illinois Department of Public Health Eye Examination Report. For dental examinations, the required form is the Illinois Department of Public Health Dental Examination Report.](#)

- a) For transfer students from out of the State or out of the country, or from a federal Head Start program, a health form that is comparable to the Illinois requirements may be accepted only at the time of first entry into an Illinois school. (A statement by a physician or other health care provider indicating only that an

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examination was conducted is not acceptable.)

- b) The physical examination shall include gender and date of birth; an evaluation of height, weight, BMI, blood pressure, skin, eyes, ears, nose, throat, mouth/dental; cardiovascular (including blood pressure), respiratory, gastrointestinal, genitourinary, neurological, and musculoskeletal evaluations; spinal examination; evaluation of nutritional status; lead screening; and other evaluations deemed necessary by the health care provider.
- c) The strongly recommended evaluations include hemoglobin or hematocrit, urinalysis, and testing for sickle cell disease. It is also recommended that the examiner list any medications that the child takes routinely, diet restrictions/needs, special equipment needed, other needs, or known allergies.
- d) The health care provider shall summarize on the report form any condition that he/she suspects indicates a need for special services.
- e) The medical history section of the form shall be completed and signed by the parent or legal guardian of the student. The medical history shall be inclusive, as indicated on the Certificate of Child Health Examination form.
- f) The individual verifying the administration of required immunizations shall record as indicated on the Certificate of Child Health Examination form that the immunizations were administered as required by this Part and any other Department rules requiring immunizations.
- g) Vision and hearing screening are required under the Child Vision and Hearing Test Act [410 ILCS 205] and the Department's rules governing hearing screening (77 Ill. Adm. Code 675) and vision screening (77 Ill. Adm. Code 685). Completion of the vision and hearing screening data section of the Certificate of Child Health Examination is optional.
- h) If the vision and hearing screening data section is completed, it shall be completed with information provided by the vision and hearing screening personnel certified by the Department ~~or from qualified medical or other professional specialists~~.
- i) If the student is required to have a sports physical in the year that coincides with the child health examination requirement, the Certificate of Child Health Examination may be accepted as proof of examination for interscholastic sports if

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the statement regarding participation in interscholastic sports is completed by the health care provider.

- j) The health care provider shall indicate on the form the results of a tuberculosis skin test screening, if conducted.

(Source: Amended at 33 Ill. Reg. 8459, effective June 8, 2009)

Section 665.160 Proof of Examination

- a) Every student who is required by Section 27-2.8(1) of the School Code and Section 665.140 of this Part to have a health examination shall present proof to the local school authority of having had the health examination prior to the date of entrance to school.
- b) For the purpose of this Part, "proof of [health](#) examination" refers to completion of the Certificate of Child Health Examination in accordance with Section 665.150 [of this Part](#).
- c) [For the purpose of this Part, "proof of eye examination" refers to completion of the Illinois Department of Public Health Eye Examination Report in accordance with Section 665.150.](#)
- d) [For the purpose of this Part, "proof of dental examination" refers to completion of the Illinois Department of Public Health Dental Examination Report in accordance with Section 665.420.](#)

(Source: Amended at 33 Ill. Reg. 8459, effective June 8, 2009)

SUBPART E: EXCEPTIONS

Section 665.510 Objection of Parent or Legal Guardian

[Parents or legal guardians who object to health, dental or eye examinations or any part thereof, or to immunizations, or to vision and hearing screening tests, on religious grounds shall not be required to submit their children or wards to the examinations or immunizations to which they so object if such parents or legal guardians present to the appropriate local school authority a signed statement of objection, detailing the grounds for the objection. \(Section 27-8.1\(8\) of the School Code\)](#)~~Parent or legal guardian of a student may object to health examinations;~~

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~~immunizations, vision and hearing screening tests, and dental health examinations for their children on religious grounds. If a religious objection is made, a written and signed statement from the parent or legal guardian detailing such objections must be presented to the local school authority.~~ The objection must set forth the specific religious belief ~~that~~^{which} conflicts with the examination, immunization or other medical intervention. The religious objection may be personal and need not be directed by the tenets of an established religious organization. General philosophical or moral reluctance to allow physical examinations, eye examinations, immunizations, vision and hearing screening, ~~or and~~ dental examinations will not provide a sufficient basis for an exception to statutory requirements. The local school authority is responsible for determining whether the written statement constitutes a valid religious objection. The ~~parent or legal guardian must be informed by the~~ local school authority shall inform the parent or legal guardian of measles outbreak control exclusion procedures in accordance with the Department's rules, Control of Communicable Diseases Code (77 Ill. Adm. Code 690) at the time ~~the~~^{such} objection is presented.

(Source: Amended at 33 Ill. Reg. 8459, effective June 8, 2009)

SUBPART F: EYEVISION EXAMINATION**Section 665.610 EyeVision Examination RequirementRecommendation**

- a) All children enrolling in kindergarten in a public, private, or parochial school and any student enrolling for the first time in a public, private, or parochial school shall have an eye examination. Each of these children shall present proof of having been examined by a physician who performs eye examinations or an optometrist within the previous year (within one year prior to the date of entering school), in accordance with Section 27-8.1(1.10) of the School Code and this Part before October 15 of the school year. (Section 27-8.1(1.10) of the School Code)
- b) The eye examination requirement does not apply to children enrolling in preschool.
- c) The required eye examination shall be completed within one year prior to the first day of the school year in which the child enters kindergarten or the child enters the Illinois school system for the first time, whether in a public, private, or parochial school. For students attending school programs where grade levels are not assigned, eye examinations shall be completed within one year prior to the first day of the school year of the child's first entry into the Illinois school system.

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- d) *An eye examination shall at a minimum include history, visual acuity, subjective refraction to best visual acuity near and far, internal and external examination, and a glaucoma evaluation, as well as any other tests or observations that in the professional judgment of the doctor are necessary. (Section 27-8.1(2) of the School Code)*
- e) In addition to the requirements of subsection (d), optometrists shall include measurements of binocular acuity and ocular motility, and color vision screening in the required eye examination, as required by the Illinois Optometric Practice Act of 1987 [225 ILCS 80].

~~It is recommended, but not required, that a vision examination, including ophthalmoscopy and subjective refraction, be performed on public, private/independent, and parochial school students by a physician or an optometrist.~~

(Source: Amended at 33 Ill. Reg. 8459, effective June 8, 2009)

Section 665.620 Vision Examination (Repealed)

- a) ~~If a vision examination is performed, it shall not be performed in the place of, or rather than performing, vision screening, and shall be conducted within one year:~~
- ~~1) Prior to the date of entering kindergarten or first grade;~~
 - ~~2) Prior to the date of entering the fifth grade; and~~
 - ~~3) Prior to the date of entering the ninth grade;~~
- b) ~~For students attending school programs where grade levels are not assigned, examinations shall be completed prior to the date of entering and within one year prior to the ages of 5, 10 and 15.~~

(Source: Repealed at 33 Ill. Reg. 8459, effective June 8, 2009)

Section 665.630 Eye Vision Examination Report

The eye examination shall be recorded on the Department of Public Health Eye Examination Report prescribed by the Department for statewide use (see Appendix A). The report form is available on the Department's website. The completed form shall be presented to the local school

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~~authority. If performed, the vision examination shall be recorded on the Vision Examination Report prescribed by the Department for statewide use and presented to the local school authority. (See Section 665. Appendix A Vision Examination Report.)~~

(Source: Amended at 33 Ill. Reg. 8459, effective June 8, 2009)

Section 665.640 Indigent Students (Repealed)

~~School districts opting to require vision examinations as a part of the health examination shall ensure vision examinations are made available for indigent students. Indigent students are those students eligible for the "free breakfast and free lunch program" under the School Free Lunch Program Act (Ill. Rev. Stat. 1991, ch. 122, pars. 712.01 et seq.) [105 ILCS 125].~~

(Source: Repealed at 33 Ill. Reg. 8459, effective June 8, 2009)

Section 665.650 Waiver of Eye Examination Requirement

Children who show an undue burden or a lack of access to an optometrist or to a physician who provides eye examinations shall receive a waiver from the requirement for an eye examination. (Section 27-8.1(1.10) of the School Code) The school or district shall make a waiver from the eye examination requirement available and, if requested by the parent or guardian, shall provide a Department-prescribed waiver form that shall be used to demonstrate the child's eligibility for a waiver (see Appendix C).

- a) For the purpose of this Section, an undue burden or lack of access to an optometrist or to a physician who performs eye examinations includes, but is not limited to:
- 1) The child is enrolled in medical assistance/ALL KIDS, but the parent or guardian is unable to find an optometrist or physician in the community who performs eye examinations, who is able to see the child and who accepts medical assistance/ALL KIDS.
 - 2) The child does not have any type of medical or vision/eye insurance coverage and does not qualify for medical assistance/ALL KIDS, there are no low-cost clinics in the community that provide eye examinations as required in Section 665.610 and that will see the child, and the parent or guardian has exhausted all other means and does not have sufficient income to provide the child with an eye examination.

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- b) The Eye Examination Waiver Form shall be submitted to the school by October 15 of the school year. If the Eye Examination Waiver Form is not submitted by October 15, the school may hold the child's report card until the Eye Examination Waiver Form is submitted.

(Source: Added at 33 Ill. Reg. 8459, effective June 8, 2009)

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Section 665.APPENDIX A Illinois Department of Public Health Eye~~Vision~~ Examination Report

State of Illinois
Eye Examination Report

Illinois law requires that proof of an eye examination by an optometrist or physician (such as an ophthalmologist) who provides eye examinations be submitted to the school no later than October 15 of the year the child is first enrolled or as required by the school for other children. The examination must be completed within one year prior to the first day of the school year the child enters the Illinois school system for the first time. The parent of any child who is unable to obtain an examination must submit a waiver form to the school.

Student Name: _____
(Last) (First) (Middle Initial)

Birth Date: _____ Gender: _____ Grade: _____
(Mo.) (Day) (Yr.)

Parent or Guardian: _____
(Last) (First)

Phone: _____
(Area Code)

Address: _____
(Number) (Street) (City) (Zip Code)

County: _____

To Be Completed By Examining Doctor

Case History

Date of Exam: _____

Ocular History: Normal or Positive for: _____

Medical History: Normal or Positive for: _____

Drug Allergies: NKDA or Allergic to: _____

Other Information: _____

Examination

<u>Distance</u>	<u>Near</u>
-----------------	-------------

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	<u>Right</u>	<u>Left</u>	<u>Both</u>	<u>Both</u>
<u>Uncorrected Visual Acuity:</u>	<u>20/_____</u>	<u>20/_____</u>	<u>20/_____</u>	<u>20/_____</u>
<u>Best Corrected Visual Acuity:</u>	<u>20/_____</u>	<u>20/_____</u>	<u>20/_____</u>	<u>20/_____</u>

Was refraction performed with dilation? Yes No

	<u>Normal</u>	<u>Abnormal</u>	<u>Not Able to Assess</u>	<u>Comments</u>
<u>External Exam (lids, lashes, cornea, etc.)</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
<u>Internal Exam (vitreous, lens, fundus, etc.)</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
<u>Pupillary Reflex (pupils)</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
<u>Binocular Function (stereopsis)</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
<u>Accommodation and Vergence</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
<u>Color Vision</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
<u>Glaucoma Evaluation</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
<u>Oculomotor Assessment</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
<u>Other: _____</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____

NOTE: "Not Able to Assess" refers to the inability of the child to complete the test, not the inability of the doctor to provide the test.

Diagnosis

Normal Myopia Hyperopia Astigmatism
 Strabismus Amblyopia Other: _____

Recommendations

1. Corrective Lenses: No Yes, glasses or contacts should be worn for:
 Constant Wear Near Vision Far Vision
 May Be Removed for Physical Education/Recess
2. Preferential Seating Recommended: No Yes Comments: _____
3. Recommend Re-examination: 3 months 6 months 12 months
 Other _____
4. _____
5. _____

Print Name: _____ Lic. No.: _____
Optometrist or Physician (such as an ophthalmologist)
Who Provided the Eye Examination
 MD OD DO _____

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Address: _____

Phone: _____

Signature: _____
Optomtrist or Physician (such as an ophthalmologist)
Who Provided the Eye Examination
MD OD DO

Date: _____

Consent of Parent or Guardian
I agree to release the above information
on my child or ward to appropriate
school or health authorities.

(Parent's or Guardian's Signature)

Date _____

STATE OF ILLINOIS
VISION EXAMINATION REPORT

White - Doctor's Referral
Yellow - File

Date _____

Name _____ Birth Date _____ Sex _____ Grade _____
(Last) (First) (Initial) (Mo) (Day) (Yr)

Parent or Guardian _____ Phone _____
(Last) (First) (Area Code)

Address _____ County _____
(Number) (Street) (City) (Zip Code)

Testing Location _____ Testing Agency _____ Tester _____

TO BE COMPLETED FOLLOWING SCREENING

TEST GIVEN:

1. Instrument Used _____
a. Visual Acuity
b. Plus Sphere
c. Muscle Balance
d. Near and Far Binocular Vision
e. Other _____

REASON FOR REFERRAL:

1. Visual Acuity
2. Plus Sphere
3. Muscle Balance-Phoria
4. Near and Far Binocular Vision-Fusion

SYMPTOMS NOTED:

1. Academic Achievement
2. Observable Signs: _____

TO THE DOCTOR

CHILD WEARING GLASSES OR UNDER CARE



Children wearing glasses or under care are not screened as part of the routine vision screening program.
Observations by screening technicians possibly indicate the following:

- Frames broken/too small
 Lenses scratched/broken
 Two years since last examination
 Other: _____

TO BE COMPLETED BY EXAMINING DOCTOR

DISTANCE

<u>(1) Uncorrected Visual Acuity</u>		<u>(2) Best Corrected Visual Acuity</u>	
<u>Right</u>	<u>Left</u>	<u>Right</u>	<u>Left</u>

PLEASE CHECK IF APPROPRIATE

- Treatment recommended
 Medical
 Glasses
 Contact Lenses
 Other: _____
 Corrective Lens prescribed

(3) Oculomotor Assessment: _____

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(4) Diagnosis: _____

(5) Comments: _____

IMPORTANT NOTICE
This state agency is requesting disclosure of information that is necessary to accomplish the statutory purpose as outlined under Public Act 81-174. Disclosure of this information is voluntary, and there is no penalty for non-compliance. This form has been approved by the Forms Management Center.

CONSENT OF PARENT OR GUARDIAN
I agree to release the above information on my child or ward to appropriate school or health authorities.

Parent or Guardian's Signature

IDPH V 4

4 82

- Constant Wear
- Near Vision only
- Far Vision only
- May be removed for physical education
- Visual field restriction
- Amblyopia exists
- Muscle imbalance exists
- Close work may be difficult or cause fatigue
- Preferential seating needed
- Re-examination advised
- Six months
- Twelve months
- Other _____

Please print or stamp

Doctor's Name: _____

Address: _____

City: _____

Date of Examination: _____

Doctor's Signature

(Source: Amended at 33 Ill. Reg. 8459, effective June 8, 2009)

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Section 665.APPENDIX C Illinois Department of Public Health Eye Examination Waiver Form**State of Illinois**
Department of Public Health**EYE EXAMINATION WAIVER FORM****Please print:**

<u>Student's Name:</u> Last First Middle			<u>Birth Date:</u> (Month/Day/Year)
<u>Address:</u> Street City ZIP Code			<u>Telephone:</u>
<u>Name of School:</u>		<u>Grade Level:</u>	<u>Gender:</u> <input type="checkbox"/> Male <input type="checkbox"/> Female
<u>Parent or Guardian:</u>		<u>Address (of parent/guardian):</u>	

I am unable to obtain the required eye examination because:

- My child is enrolled in medical assistance/ALL KIDS, but we are unable to find a medical doctor who performs eye examinations or an optometrist in the community who is able to examine my child and accepts medical assistance/ALL KIDS.
- My child does not have any type of medical or vision/eye care coverage, my child does not qualify for medical assistance/ALL KIDS, there are no low-cost vision/eye clinics in our community that will see my child, and I have exhausted all other means and do not have sufficient income to provide my child with an eye examination.
- Other undue burden or a lack of access to an optometrist or a physician who provides eye examinations: _____

Signature _____ Date _____

(Source: Added at 33 Ill. Reg. 8459, effective June 8, 2009)

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Section 665.APPENDIX D Illinois Department of Public Health Dental Examination Form

Illinois Department of Public Health

PROOF OF SCHOOL DENTAL EXAMINATION FORM

To be completed by the parent (please print):

<u>Student's Name:</u> Last First Middle			<u>Birth Date:</u> (Month/Day/Year) / /
<u>Address:</u> Street City ZIP Code			<u>Telephone:</u>
<u>Name of School:</u>		<u>Grade Level:</u>	<u>Gender:</u> <input type="checkbox"/> Male <input type="checkbox"/> Female
<u>Parent or Guardian:</u>		<u>Address (of parent/guardian):</u>	

To be completed by dentist:

Oral Health Status (check all that apply)

Yes No

Dental Sealants Present

Yes No

Caries Experience / Restoration History – A filling (temporary or permanent) OR a tooth that is missing because it was extracted as a result of caries OR missing permanent 1st molars. **Include both treated and untreated decay.**

Yes No

Untreated Caries – At least ½ mm of tooth structure loss at the enamel surface. Brown to dark-brown coloration of the walls of the lesion. These criteria apply to pit and fissure cavitated lesions as well as those on smooth tooth surfaces. If retained root, assume that the whole tooth was destroyed by caries. Broken or chipped teeth, plus teeth with temporary fillings, are considered sound unless a cavitated lesion is also present.

Yes No

Soft Tissue Pathology

Yes No

Malocclusion

Treatment Needs (check all that apply)

Urgent Treatment – abscess, nerve exposure, advanced disease state, signs or symptoms that include pain, infection or swelling

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- [**Restorative Care** – amalgams, composites, crowns, etc.](#)
- [**Preventive Care** – sealants, fluoride treatment, prophylaxis](#)
- [**Other** – periodontal, orthodontic](#)
- [Please note](#)

[Signature of Dentist](#) _____ [Date of Exam](#) _____

[Address:](#) _____ [Telephone](#) _____

[Street](#) _____ [City](#) _____ [Zip Code](#) _____

(Source: Added at 33 Ill. Reg. 8459, effective June 8, 2009)

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Section 665.APPENDIX E Illinois Department of Public Health Dental Examination Waiver Form**Illinois Department of Public Health****DENTAL EXAMINATION WAIVER FORM****Please print:**

<u>Student's Name:</u> Last First Middle			<u>Birth Date:</u> (Month/Day/Year) ____/____/____
<u>Address:</u> Street City ZIP Code			<u>Telephone:</u>
<u>Name of School:</u>		<u>Grade Level:</u>	<u>Gender:</u> <input type="checkbox"/> Male <input type="checkbox"/> Female
<u>Parent or Guardian:</u>		<u>Address (of parent/guardian):</u>	

I am unable to obtain the required dental examination because:

- My child is enrolled in the free or reduced lunch program and is not covered by private or public dental insurance (medical assistance/ALL KIDS).
- My child is enrolled in the free or reduced lunch program and is ineligible for public insurance (medical assistance/ALL KIDS).
- My child is enrolled in medical assistance/ALL KIDS, but we are unable to find a dentist or dental clinic in our community that is able to see my child and will accept medical assistance/ALL KIDS.
- My child does not have any type of dental insurance, and there are no low-cost dental clinics in our community that will see my child.

Signature _____ Date _____

(Source: Added at 33 Ill. Reg. 8459, effective June 8, 2009)

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- 1) Heading of the Part: Language Assistance Services Code
- 2) Code Citation: 77 Ill. Adm. Code 940
- 3)

<u>Section Numbers:</u>	<u>Adopted Action:</u>
940.110	Amend
940.120	Amend
- 4) Statutory Authority: Language Assistance Services Act [210 ILCS 87]
- 5) Effective Date of Rulemaking: June 2, 2009
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 10) A copy of the adopted amendments, including any material incorporated by reference, is on file in the Department's principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: September 12, 2008; 32 Ill. Reg. 14702
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between proposal and final version:

The following changes were made in response to comments and suggestions of JCAR:

In Section 940.120(b), "*TDD*" was stricken and "*TTY*" was added.

In addition, various typographical, grammatical and form changes were made in response to the comments from JCAR.
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 14) Are there any amendments pending on this Part? No

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- 15) Summary and Purpose of the Rulemaking: The Language Assistance Services Code provides minimum standards for services for non-English speaking patients in hospitals and for residents of long-term care facilities. Public Act 95-0667, enacted in 2007, strengthened the requirements for these services. Section 940.120 (Language Assistance Services) is being amended to incorporate the changes from P.A. 95-0667.
- 16) Information and questions regarding these adopted amendments shall be directed to:

Susan Meister
Division of Legal Services
Department of Public Health
535 West Jefferson, Fifth Floor
Springfield, Illinois 62761

217/782-2043
e-mail: dph.rules@illinois.gov

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

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED AMENDMENTS

TITLE 77: PUBLIC HEALTH
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH
SUBCHAPTER u: MISCELLANEOUS PROGRAMS AND SERVICESPART 940
LANGUAGE ASSISTANCE SERVICES CODE

Section	
940.100	Definitions
940.110	Referenced Materials
940.120	Language Assistance Services
940.130	Qualifications of Interpreters
940.140	Complaints
940.150	Notice of Violation
940.160	Plan of Correction
940.170	Penalties

AUTHORITY: Implementing and authorized by the Language Assistance Services Act [210 ILCS 87].

SOURCE: Adopted at 29 Ill. Reg. 1371, effective January 6, 2005; amended at 33 Ill. Reg. 8484, effective June 2, 2009.

Section 940.110 Referenced Materials

The following Illinois laws are referenced in this Part:

- a) Hospital Licensing Act [210 ILCS 85]
- b) Nursing Home Care Act [210 ILCS 45]
- c) Illinois Administrative Procedure Act [5 ILCS 100]
- d) [Interpreter for the Deaf Licensure Act of 2007 \[225 ILCS 443\]](#)

(Source: Amended at 33 Ill. Reg. 8484, effective June 2, 2009)

Section 940.120 Language Assistance Services

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A health facility shall ensure access to health care information and services for limited-English-speaking or non-English-speaking residents or patients or deaf residents or patients. To meet this requirement, a health facility shall, ~~as a minimum, do one or more of the following:~~

- a) ~~Review existing policies regarding interpreters for patients or residents with limited English proficiency and for patients or residents who are deaf, including the availability of staff to act as interpreters.~~
- a)b) Adopt and review annually a policy for providing language assistance services to patients or residents with language or communication barriers. The policy shall include procedures for providing, to the extent possible as determined by the facility, the use of an interpreter whenever a language or communication barrier exists, except where the patient or resident, after being informed of the availability of the interpreter service, chooses to use a family member or friend who volunteers to interpret. The procedures shall be designed to maximize efficient use of interpreters and minimize delays in providing interpreters to patients or residents. The procedures shall ensure, to the extent possible as determined by the facility, that interpreters are available, either on the premises or accessible by telephone, 24 hours a day. The facility shall annually transmit to the Department of Public Health a copy of the updated policy and shall include a description of the facility's efforts to ensure adequate and speedy communication between patients or residents with language or communication barriers and staff.
- b)e) Develop, and post in conspicuous locations, notices that advise patients or residents and their families of the availability of interpreters, the procedure for obtaining an interpreter, and the telephone numbers to call for filing complaints concerning interpreter service problems, including, but not limited to, a ~~TTY/TDD~~ number for persons who are deaf or hard of hearing~~the hearing impaired~~. In a hospital, the notices shall be posted, at a minimum, in the emergency room, the admitting area, the facility entrance, and the outpatient area. In a long-term care facility, the notices shall be posted in the facility entrance. Notices shall inform patients or residents that interpreter services are available on request, shall list the languages most commonly encountered at the facility for which interpreter services are available, and shall instruct patients to direct complaints regarding interpreter services to the Department of Public Health, including the telephone numbers to call for that purpose.

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- d) ~~Identify and record a patient's or resident's primary language and dialect on one or more of the following: a patient or resident medical chart, hospital bracelet, bedside notice, or nursing card.~~
- e) ~~Prepare and maintain, as needed, a list of interpreters who have been identified as proficient in sign language and in the languages of the population of the geographical area served by the facility who have the ability to translate the names of body parts, injuries, and symptoms.~~
- c)f) ~~Notify the facility's employees of the language services available at the facility and train them on how to make these language services available to patients or residents. In addition, a health facility may do one or more of the following: facility's commitment to provide interpreters to all patients or residents who request them.~~
- 1) ~~Identify and record a patient's or resident's primary language and dialect on one or more of the following: a patient medical chart, hospital bracelet, bedside notice, or nurse card.~~
- 2) ~~Prepare and maintain, as needed, a list of interpreters who have been identified as proficient in sign language according to the Interpreter for the Deaf Licensure Act of 2007 and a list of the languages of the population of the geographical area served by the facility.~~
- 3)g) ~~Review all standardized written forms, waivers, documents, and informational materials available to patients or residents on admission to determine which to translate into languages other than English.~~
- 4)h) ~~Consider providing its nonbilingual staff with standardized picture and phrase sheets for use in routine communications with patients or residents who have language or communication barriers.~~
- 5)i) ~~Develop community liaison groups to enable the facility and the limited-English-speaking, non-English-speaking, and deaf communities to ensure the adequacy of the interpreter services. (Section 15 of the Act)~~

(Source: Amended at 33 Ill. Reg. 8484, effective June 2, 2009)

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- 1) Heading of the Part: Issuance of Licenses
- 2) Code Citation: 92 Ill. Adm. Code 1030
- 3) Section Number: 1030.15 Adopted Action: Amendment
- 4) Statutory Authority: 625 ILCS 5/2-104; 625 ILCS 5/6-207(a)
- 5) Effective Date of Amendment: June 5, 2009
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this amendment contain incorporations by reference? Yes
- 8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposed Published in Illinois Register: 33 Ill. Reg. 3965; March 6, 2009
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between proposal and final version: Technical, non-substantive changes were made as suggested by JCAR.
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will this amendment replace any emergency rulemaking currently in effect? No
- 14) Are there any amendments pending on this Part? Yes

<u>Section Numbers:</u>	<u>Proposed Action:</u>	<u>Illinois Register Citation:</u>
1030.97	Amendment	33 Ill. Reg.4559; March 27, 2009
1030.14	New Section	33 Ill. Reg. 6243; May 1, 2009
- 15) Summary and Purpose of Amendment: Upon review of our rules relating to medical cites and examinations, it was discovered that two Sections in Part 1030 conflicted. The

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provision being amended does not reflect current procedure and, as such, is being stricken.

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

Arlene J. Pulley
Office of the Secretary of State
Driver Services Department
2701 South Dirksen Parkway
Springfield, Illinois 62723

217/557-4462

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

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TITLE 92: TRANSPORTATION
CHAPTER II: SECRETARY OF STATEPART 1030
ISSUANCE OF LICENSES

Section	
1030.1	Definitions
1030.10	What Persons Shall Not be Licensed or Granted Permits
1030.11	Procedure for Obtaining a Driver's License/Temporary Visitor's Driver's License
1030.13	Denial of License or Permit
1030.15	Cite for Re-testing
1030.16	Physical and Mental Evaluation
1030.17	Errors in Issuance of Driver's License/Cancellation
1030.18	Medical Criteria Affecting Driver Performance
1030.20	Classification of Drivers – References (Repealed)
1030.30	Classification Standards
1030.40	Fifth Wheel Equipped Trucks
1030.50	Bus Driver's Authority, Religious Organization and Senior Citizen Transportation
1030.55	Commuter Van Driver Operating a For-Profit Ridesharing Arrangement
1030.60	Third-Party Certification Program
1030.63	Religious Exemption for Social Security Numbers
1030.65	Instruction Permits
1030.70	Driver's License Testing/Vision Screening
1030.75	Driver's License Testing/Vision Screening With Vision Aid Arrangements Other Than Standard Eye Glasses or Contact Lenses
1030.80	Driver's License Testing/Written Test
1030.81	Endorsements
1030.82	Charter Bus Driver Endorsement Requirements
1030.83	Hazardous Material Endorsement
1030.84	Vehicle Inspection
1030.85	Driver's License Testing/Road Test
1030.86	Multiple Attempts – Written and/or Road Tests
1030.88	Exemption of Facility Administered Road Test
1030.89	Temporary Driver's Licenses and Temporary Instruction Permits
1030.90	Requirement for Photograph and Signature of Licensee on Driver's License
1030.91	Disabled Person Identification Card
1030.92	Restrictions
1030.93	Restricted Local Licenses

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- 1030.94 Duplicate or Corrected Driver's License or Instruction Permit
- 1030.95 Consular Licenses (Repealed)
- 1030.96 Seasonal Restricted Commercial Driver's License
- 1030.97 Invalidation of a Driver's License, Permit and/or Driving Privilege
- 1030.98 School Bus Commercial Driver's License or Instruction Permit
- 1030.100 Anatomical Gift Donor (Repealed)
- 1030.110 Emergency Medical Information Card
- 1030.115 Change-of-Address
- 1030.120 Issuance of a Probationary License
- 1030.130 Grounds for Cancellation of a Probationary License
- 1030.140 Use of Captured Images
- 1030.APPENDIX A Questions Asked of a Driver's License Applicant
- 1030.APPENDIX B Acceptable Identification Documents

AUTHORITY: Implementing Article I of the Illinois Driver Licensing Law of the Illinois Vehicle Code [625 ILCS 5/Ch. 6, Art. I] and authorized by Section 2-104(b) of the Illinois Vehicle Title and Registration Law of the Illinois Vehicle Code [625 ILCS 5/2-104(b)].

SOURCE: Filed March 30, 1971; amended at 3 Ill. Reg. 7, p. 13, effective April 2, 1979; amended at 4 Ill. Reg. 27, p. 422, effective June 23, 1980; amended at 6 Ill. Reg. 2400, effective February 10, 1982; codified at 6 Ill. Reg. 12674; amended at 9 Ill. Reg. 2716, effective February 20, 1985; amended at 10 Ill. Reg. 303, effective December 24, 1985; amended at 10 Ill. Reg. 18182, effective October 14, 1986; amended at 11 Ill. Reg. 9331, effective April 28, 1987; amended at 11 Ill. Reg. 18292, effective October 23, 1987; amended at 12 Ill. Reg. 3027, effective January 14, 1988; amended at 12 Ill. Reg. 13221, effective August 1, 1988; amended at 12 Ill. Reg. 16915, effective October 1, 1988; amended at 12 Ill. Reg. 19777, effective November 15, 1988; amended at 13 Ill. Reg. 5192, effective April 1, 1989; amended at 13 Ill. Reg. 7808, effective June 1, 1989; amended at 13 Ill. Reg. 12880, effective July 19, 1989; amended at 13 Ill. Reg. 12978, effective July 19, 1989; amended at 13 Ill. Reg. 13898, effective August 22, 1989; amended at 13 Ill. Reg. 15112, effective September 8, 1989; amended at 13 Ill. Reg. 17095, effective October 18, 1989; amended at 14 Ill. Reg. 4570, effective March 8, 1990; amended at 14 Ill. Reg. 4908, effective March 9, 1990; amended at 14 Ill. Reg. 5183, effective March 21, 1990; amended at 14 Ill. Reg. 8707, effective May 16, 1990; amended at 14 Ill. Reg. 9246, effective May 16, 1990; amended at 14 Ill. Reg. 9498, effective May 17, 1990; amended at 14 Ill. Reg. 10111, effective June 11, 1990; amended at 14 Ill. Reg. 10510, effective June 18, 1990; amended at 14 Ill. Reg. 12077, effective July 5, 1990; amended at 14 Ill. Reg. 15487, effective September 10, 1990; amended at 15 Ill. Reg. 15783, effective October 18, 1991; amended at 16 Ill. Reg. 2182, effective January 24, 1992; emergency amendment at 16 Ill. Reg. 12228, effective July 16, 1992, for a maximum of 150 days; emergency expired on December

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13, 1992; amended at 16 Ill. Reg. 18087, effective November 17, 1992; emergency amendment at 17 Ill. Reg. 1219, effective January 13, 1993, for a maximum of 150 days; amended at 17 Ill. Reg. 2025, effective February 1, 1993; amended at 17 Ill. Reg. 7065, effective May 3, 1993; amended at 17 Ill. Reg. 8275, effective May 24, 1993; amended at 17 Ill. Reg. 8522, effective May 27, 1993; amended at 17 Ill. Reg. 19315, effective October 22, 1993; amended at 18 Ill. Reg. 1591, effective January 14, 1994; amended at 18 Ill. Reg. 7478, effective May 2, 1994; amended at 18 Ill. Reg. 16457, effective October 24, 1994; amended at 19 Ill. Reg. 10159, effective June 29, 1995; amended at 20 Ill. Reg. 3891, effective February 14, 1996; emergency amendment at 20 Ill. Reg. 8358, effective June 4, 1996, for a maximum of 150 days; emergency amendment repealed in response to an objection of the Joint Committee on Administrative Rules at 20 Ill. Reg. 14279; amended at 21 Ill. Reg. 6588, effective May 19, 1997; amended at 21 Ill. Reg. 10992, effective July 29, 1997; amended at 22 Ill. Reg. 1466, effective January 1, 1998; emergency amendment at 23 Ill. Reg. 9552, effective August 1, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 13947, effective November 8, 1999; amended at 24 Ill. Reg. 1259, effective January 7, 2000; emergency amendment at 24 Ill. Reg. 1686, effective January 13, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 6955, effective April 24, 2000; emergency amendment at 24 Ill. Reg. 13044, effective August 10, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 18400, effective December 4, 2000; amended at 25 Ill. Reg. 959, effective January 5, 2001; amended at 25 Ill. Reg. 7742, effective June 5, 2001; amended at 25 Ill. Reg. 12646, effective September 24, 2001; emergency amendment at 25 Ill. Reg. 12658, effective September 24, 2001, for a maximum of 150 days; emergency expired February 20, 2002; amended at 26 Ill. Reg. 9961, effective June 24, 2002; amended at 27 Ill. Reg. 855, effective January 3, 2003; emergency amendment at 27 Ill. Reg. 7340, effective April 14, 2003, for a maximum of 150 days; emergency expired September 10, 2003; emergency amendment at 27 Ill. Reg. 16968, effective October 17, 2003, for a maximum of 150 days; emergency expired March 14, 2004; emergency amendment at 28 Ill. Reg. 384, effective January 1, 2004, for a maximum of 150 days; emergency expired May 29, 2004; amended at 28 Ill. Reg. 8895, effective June 14, 2004; amended at 28 Ill. Reg. 10776, effective July 13, 2004; amended at 29 Ill. Reg. 920, effective January 1, 2005; emergency amendment at 29 Ill. Reg. 2469, effective January 31, 2005, for a maximum of 150 days; emergency expired June 29, 2005; amended at 29 Ill. Reg. 9488, effective June 17, 2005; amended at 29 Ill. Reg. 12519, effective July 28, 2005; amended at 29 Ill. Reg. 13237, effective August 11, 2005; amended at 29 Ill. Reg. 13580, effective August 16, 2005; amended at 30 Ill. Reg. 910, effective January 6, 2006; amended at 30 Ill. Reg. 5621, effective March 7, 2006; amended at 30 Ill. Reg. 11365, effective June 15, 2006; emergency amendment at 30 Ill. Reg. 11409, effective June 19, 2006, for a maximum of 150 days; emergency expired November 15, 2006; amended at 31 Ill. Reg. 4782, effective March 12, 2007; amended at 31 Ill. Reg. 5096, effective March 15, 2007; amended at 31 Ill. Reg. 5864, effective March 29, 2007; amended at 31 Ill. Reg. 6370, effective April 12, 2007; amended at 31 Ill. Reg. 7643, effective May 16, 2007; amended at 31 Ill. Reg. 11342, effective July 18, 2007;

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amended at 31 Ill. Reg. 14547, effective October 9, 2007; amended at 31 Ill. Reg. 14849, effective October 22, 2007; amended at 31 Ill. Reg. 16543, effective November 27, 2007; amended at 31 Ill. Reg. 16843, effective January 1, 2008; emergency amendment at 32 Ill. Reg. 208, effective January 2, 2008, for a maximum of 150 days; amended at 32 Ill. Reg. 6544, effective April 4, 2008; amended at 33 Ill. Reg. 2391, effective January 21, 2009; amended at 33 Ill. Reg. 8489, effective June 5, 2009.

Section 1030.15 Cite for Re-testing

- a) Any competent medical specialist, commissioned police officer, state's attorney, member of the judiciary, authorized Secretary of State employee or member of the judiciary may submit information to the Department relative to the physical condition of a person, including suspected chronic alcoholism or habitual use of narcotics or dangerous drugs, if that condition interferes with the person's ability to operate a motor vehicle safely (see IVC Sections 6-900 through 911). Upon receipt of a written request citing good cause, the Department shall require a driver to submit to driver's license re-testing. All written requests shall be confidential and signed by the source unless sent electronically, and the Secretary of State shall not release the information without a court order.
- b) The Department shall notify the driver of the obligation to appear within five days on a choice of three given dates at a designated driver services facility nearest in location to the city or town of residence that is recorded on the driver's most recent license renewal. There will be a 10-day grace period after the third given date before the Department will cancel the driver's license or permit. If the driver notifies the Department that he/she will be unable to appear on any of the three designated dates but prior to the final day of the 10-day grace period and provides a statement on official letterhead, signed by a competent medical specialist stating that, due to an existing medical condition, the driver is or will be unable to appear on any of the three designated dates, the Department shall issue three more dates on which the driver may appear for re-testing. There will also be a 10-day grace period after the last date given for appearance prior to the Department canceling the driver's license or permit. If the driver notifies the Department that he/she will not be able to appear during any of the second set of dates, but prior to the final day of the 10-day grace period, and provides a statement on letterhead signed by a competent medical specialist that states, due to an existing medical condition, the driver is or will be unable to appear during any of the second set of dates, the Department shall notify the driver of a final set of three dates on which the driver may appear. Once the 10-day grace period

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expires, the Department will cancel the driver's driving privileges. The driver may not request additional dates to appear for re-testing.

- c) Cited drivers shall be tested on the specific sections of the driver's license test indicated in the written request for re-testing received from the Department. If no reference to a specific section of the driver's license test was made by a competent medical specialist, commissioned police officer, state's attorney, member of the judiciary, or authorized Secretary of State employee, the Department shall administer the cited driver the complete driver's license test.
- d) Drivers cited for any portion of the test shall receive only one opportunity to pass the test. Failure to pass any required portion of the test shall result in the cancellation of the person's driver's license in accordance with IVC Section 6-201. Failure of the driver cited to appear on any one of the three alternative dates indicated on the notice, or during a 10-day grace period that follows the last date, will result in the cancellation of the driver's license. A cited driver who passes all administered sections of the driver's license test shall be deemed to be in compliance with the Department's request, and shall be allowed to retain a valid driver's license.
- e) Driver's license tests shall be administered to the cited driver at no fee.
- f) In the event of application error, two requests shall be made of the licensee to return to a Driver Services Facility to obtain a corrected license. If the licensee complies, a corrected driver's license shall be issued without a fee. If the licensee fails to comply, he/she shall be cited for re-testing. Failure to appear for re-testing or failure to pass the test shall result in cancellation of the driver's license.
- ~~g) If follow-up vision reports are received indicating a driver's license restriction change, and the licensee has not complied with two written requests to return to a Driver Services Facility to obtain a corrected license, the driver shall be cited. If appearance is made, the licensee shall be issued a corrected driver's license with a fee. If the licensee fails to appear or fails the test, the driver's license shall be canceled.~~
- gh) If a facility errs in not giving a certain section of the driver's license test and the licensee has not complied with two written requests to return to a Driver Services Facility for re-testing, the driver will be cited for the section of the test previously omitted. If appearance is made and the cited driver passes the administered

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section of the driver's license test, he/she shall retain his/her driver's license. If the licensee fails to appear or fails the test, the driver's license shall be canceled.

(Source: Amended at 33 Ill. Reg. 8489, effective June 5, 2009)

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- 1) Heading of the Part: Providers of Supplemental Educational Services
- 2) Code Citation: 23 Ill. Adm. Code 675
- 3)

<u>Section Numbers:</u>	<u>Adopted Action:</u>
675.30	Amendment
675.50	Amendment
675.70	Amendment
675.90	Amendment
675.175	Amendment
675.210	Amendment
675.220	Amendment
675.230	Amendment
675.APPENDIX B	Amendment
675.APPENDIX C	Amendment
- 4) Statutory Authority: 105 ILCS 5/2-3.6
- 5) Effective Date of Amendments: June 1, 2009
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rule contain incorporations by reference? No
- 8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: February 13, 2009; 33 Ill. Reg. 3138
- 10) Has JCAR issued a Statement of Objection to these amendments? No
- 11) Differences between proposal and final version: Language was added to the introduction to Section 675.30 to indicate a general expectation for ethical behavior on the part of all personnel employed by providers, their agents, and school districts, as well as parents in certain roles. In addition, use of the term "agent" was introduced to refer to providers' subcontractors and others acting on behalf of providers, and providers were made responsible for communicating to their agents the requirement for compliance with this Section.

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The material in Section 675.30(i) was reorganized to provide three separate provisions related to the role of district personnel.

Subsection (j) of Section 675.30 was revised so that the stated restrictions on district employees' activities will apply to officers of certain organizations only (rather than to all members) but also to all local board members and members of local school councils.

Wording changes were made in two subsections of Section 675.50 for clarity regarding the subjects in which tutoring is offered by a given provider.

Section 675.70(b)(3) was revised to refer to students who receive at least 18 hours of services from a provider.

Section 675.175(d) was slightly reworded to encompass the possibility that either district personnel or someone acting on behalf of a provider will be making efforts to consult with a student's parent.

The discussion of parental satisfaction in Appendix B was changed to refer to an action that is a responsibility of the provider rather than one that is a responsibility of the district.

- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 14) Are there any other proposed rulemakings pending on this Part? No
- 15) Summary and Purpose of Amendments:

This set of amendments includes changes in various, chiefly unrelated provisions that are intended to respond to issues that have arisen recently in the implementation of supplemental educational services (SES).

- In Section 675.30 (Code of Ethics), a statement is being added to make clear the applicability of these requirements to contractors and other entities acting in conjunction with providers and a prohibition on marketing directly to students is being added. In addition, the circumstances under which school district employees may be hired by providers is being clarified, resulting in fewer limitations on

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employees of a given district with respect to working for providers serving other school districts.

- The basis for evaluating providers stated in Section 675.90 is being changed to replace district-specific status with a statewide status for each of the subjects in which a provider offers tutoring.
- Since the USDE has informed states that they must allow providers to be approved to tutor in science and that other subjects may be included in the future, specific references to reading and mathematics are being eliminated in favor of generic references to subjects. See especially Section 675.50.
- In Section 675.175, subsections (b) and (c) are being revised to account for delays that are outside districts' and providers' control and would cause them to miss relevant deadlines. A new subsection (d) also provides a means by which districts can document their compliance with a requirement of NCLB when parents do not respond.
- Based on clarification from the U.S. Department of Education, revisions in Sections 675.210 and 675.220 allow for the inclusion of costs related to transportation.
- The structure of the assessment of parental satisfaction (Appendix B) is being changed from focusing on positive responses from parents to focusing on negative responses instead. This will continue to entail meeting the same standard but will avoid penalizing providers for low response rates by parents. Also in Appendix B, the criterion related to attendance is being restated to refer to providers' "average attendance" rather than to the "attendance rates", in order to state more clearly how this component of the evaluation is being implemented.

Miscellaneous other revisions are being made to provide clarifications, remedy omissions, and state expressly practices that have been developed in response to particular circumstances.

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

Gina Hopper, Grants and Programs Division
Illinois State Board of Education
100 North First Street
Springfield, Illinois 62777-0001

217/524-4832

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

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TITLE 23: EDUCATION AND CULTURAL RESOURCES

SUBTITLE A: EDUCATION

CHAPTER I: STATE BOARD OF EDUCATION

SUBCHAPTER 6: MISCELLANEOUS

PART 675

PROVIDERS OF SUPPLEMENTAL EDUCATIONAL SERVICES

SUBPART A: GENERAL PROVISIONS

Section

675.10	Purpose and Scope
675.20	Definitions
675.30	Code of Ethics
675.40	Programmatic Requirements
675.50	Application Requirements
675.60	Application Process
675.65	Mid-Year Changes
675.70	Reporting Requirement
675.80	Retention of Records; Access to Premises
675.90	Evaluation of Providers' Performance, Providers' Status, Sanctions, and Removal
675.100	Public Information
675.110	Removal When No Services Offered
675.150	Provider's Relationship with District
675.175	Timetable for Implementation of the Program

SUBPART B: FINANCIAL REQUIREMENTS

Section

675.200	Financial Framework for SES
675.210	District Program Cost
675.220	Non-Reimbursable Expenses and Revenue Offsets
675.230	Reports of Actual Costs
675.240	Establishment of Contract Amount and Payment Provisions
675.245	Basis for Invoices and Payments
675.250	Appeals

675.APPENDIX A Calculation of Effect Size

675.APPENDIX B Evaluation Rubric

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675.APPENDIX C Decision Matrix

AUTHORITY: Implementing Section 1116(e) of Public Law 107-110, the No Child Left Behind Act of 2001 (20 USC 6316(e)) (34 CFR 200.45 through 200.48), and authorized by Section 2-3.6 of the School Code [105 ILCS 5/2-3.6].

SOURCE: Emergency rules adopted at 29 Ill. Reg. 9516, effective June 17, 2005, for a maximum of 150 days; emergency expired November 13, 2005; adopted at 29 Ill. Reg. 19942, effective November 23, 2005; amended at 30 Ill. Reg. 14325, effective August 18, 2006; amended at 32 Ill. Reg. 4046, effective February 26, 2008; amended at 33 Ill. Reg. 8497, effective June 1, 2009.

SUBPART A: GENERAL PROVISIONS

Section 675.30 Code of Ethics

The specific provisions of this Section are intended to illustrate the ethical behavior that is expected of personnel employed by providers of SES, their agents, and school districts, as well as by parents in certain situations. The provisions of this Section shall not be construed as exhaustive but rather as examples that not only apply in the specified situations, but that also guide the parties' actions under related circumstances. The requirements of this Section for providers shall apply not only to each provider but also to any subcontractor or other person or entity ("agent"), whether paid or unpaid, who acts in conjunction with or on behalf of an approved provider for the purpose of performing any function related to a program of supplemental educational services, including, but not limited to, marketing the program, tutoring students, providing snacks, conducting assessments, and completing individual learning plans. Each provider shall maintain a record of having notified each agent of the agent's responsibility for complying with the requirements of this Section. This notification shall include either the transmittal of a paper or electronic copy of this Part or provision of the web address where this Part is posted by the State Superintendent of Education.

- a) Providers must accurately and completely describe services to consumers in terms that are easy to understand. Providers' statements regarding the number of hours of service offered in their programs must match the number of hours for which districts have contracted. That is, a provider shall not charge a district for a portion of the hours of service offered and indicate that the remaining hours of service are to be provided free of charge.

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- b) Providers must create and use promotional materials and advertisements that are consistent with their approved applications and free from deception. Upon request, providers shall submit all promotional materials and advertisements related to the SES program to ISBE or the school districts in which they wish to serve.
- c) Providers must not misrepresent to anyone the location of a provider's program or the approval status of a program. If the location of services is contingent upon a minimum student enrollment or the approval of a district, the provider shall indicate the applicable contingencies in its marketing materials.
- d) Providers must not publicly criticize or disparage other providers.
- e) Providers must not distribute a district enrollment form that has the selected provider's name pre-printed as part of the form. Providers must not distribute enrollment forms with directions for how to complete the forms.
- f) Providers must not market their programs directly to students in the absence of those students' parents or guardians, except in the course of district-sponsored provider fairs, school assemblies, or other events permitted pursuant to this Part.
- g) Providers must maintain a system of addressing consumer grievances and concerns and must immediately report any grievances to both the district and ISBE.
- h)g) Providers must not compensate district employees in exchange for access to facilities, to obtain student lists, or for any illegal purpose. Providers must not solicit or accept an exclusive arrangement with any district or school (including, but not limited to, an exclusive right to conduct in-school assemblies or other marketing activities).
- i)h) Role of District Personnel
- 1) Except as otherwise provided in this subsection (h), Employees of a particular district personnel may be hired by a provider serving that district for instructional purposes or to perform other functions related to the delivery of the provider's program of SES only. District personnel hired for these instructional purposes shall not recruit students to a provider's program, engage in marketing activities on behalf of a provider,

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distribute or collect enrollment forms, or otherwise promote or encourage students to enroll in a provider's program.

21) District personnel without responsibility for or involvement in the district's administration of SES may be employed to perform solely clerical functions having no relationship to the marketing of a provider's program or the recruitment of students.

32) Where a school district or a school is also a provider of SES, an individual may be employed as coordinator or site manager for the SES program it provides if the individual will have no other responsibilities apart from oversight and management of that SES program, which may include marketing and recruitment, subject to the following additional requirements.

A) The individual employed by the district for this purpose shall not present marketing or recruitment information on any occasion unless all other providers approved for the schools served are offered the same opportunity to present information or recruit students.

B) The district shall ensure that the individual has no greater access to parents and students at provider fairs, school assemblies, and other, similar occasions than is afforded to all other providers. "Access" means the amount of speaking time available, the space used, and any other resources allocated to providers.

C) The individual's duties related to the SES program for which the district is the provider shall be entirely distinct from those of any other district employee who performs oversight with respect to the provision of SES generally, such as serving as the district's liaison to all SES providers within a school or schools.

1) Each restriction applicable to a school district employee under this Section shall apply equally to ~~each officera member~~ of any governmental or nonprofit organization formed to support or advise a particular school in which the provider seeks to offer services, to each member of a local school board, governing body, or board of control, and to each member of a local school council in a school district organized pursuant to Article 34 of the School Code [105 ILCS 5/Art. 34].

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- k)j) Each parent of an eligible student who is hired by a provider must have a written job description and must be compensated on the same basis as all other employees of the provider who perform similar work. No parent may receive any commission or other benefit related to the enrollment of his or her child in a provider's program, nor may a parent be subject to any employment action by the provider on account of the parent's selection of an SES program for his or her child.
- l)k) Providers must not make payments or in-kind contributions to a district, exclusive of customary fees for facility utilization.
- m)l) Providers must not offer or advertise economic incentives or gratuities of any kind to parents or students to solicit them to select the provider for SES. Providers may not offer any incentives to potential students in the course of informational sessions, but may offer promotional materials of negligible value, such as pencils, balloons, or magnets.
- n)m) During the provision of SES, providers may offer only nominal rewards to students for achievement of program milestones or objectives that cannot be attained through attendance alone, or for above-average attendance when given after the mid-point of the provider's program. Providers shall not spend more than \$50 per pupil on rewards, exclusive of rewards that consist of materials and equipment used directly in the provision of services.
- o)n) Providers must not encourage or induce students or parents to switch providers once enrolled.
- p)o) Providers must not attempt to influence or bias parents when performing an evaluation of the provider's services and achievement of the objectives in the student's Individual Learning Plan.
- q)p) A provider shall not use information provided by parents of students served under this Part for any commercial purpose without securing the parent's prior written consent for the intended use of the specified information, except that a provider may use parental contact information to communicate about SES with the parents of students served by that specific provider in any prior year.

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- (r) School district personnel shall treat all providers of SES impartially. Whether or not the employing district or school is a provider, school personnel shall not:
- 1) promote or disparage specific SES providers;
 - 2) distribute SES enrollment forms that include a pre-printed provider's name;
 - 3) obstruct parents in exercising their right to select an SES provider;
 - 4) seek to influence parents' choices among SES providers;
 - 5) alter or destroy registration forms submitted by parents without specific authorization from the parents; or
 - 6) encourage students to drop out of an SES program or switch providers once enrolled.

(Source: Amended at 33 Ill. Reg. 8497, effective June 1, 2009)

Section 675.50 Application Requirements

Each application for approval to provide SES in Illinois shall consist of the components described in this Section [and shall be submitted as specified by the State Superintendent](#).

- a) A summary of services that indicates:
 - 1) the subject areas available (~~i.e., reading and/or mathematics~~);
 - 2) the grade levels served;
 - 3) the total program hours per student, provided that, for any program proposing fewer than 30 instructional hours per subject, the applicant must supply specific evidence that the program has resulted in increased student achievement in that subject, including verification from school district administrators in which the program has been previously provided;
 - 4) the proposed locations of service delivery;

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- 5) the minimum number of students required by the eligible applicant in order to offer SES to a district and an indication of any districts in which that minimum will apply to each site served rather than to the district in the aggregate;
 - 6) whether the eligible applicant can provide services to students of limited English proficiency and, if so, the languages in which the eligible applicant provides instruction and the maximum number of LEP students the eligible applicant can serve in each district;
 - 7) whether the eligible applicant can provide services to students with disabilities and, if so, the accommodations or modifications the eligible applicant can offer and the maximum number of students with disabilities the eligible applicant can serve in each district;
 - 8) the time of day and months during which SES will be offered;
 - 9) the ratio of instructors to children, as determined by the provider; and
 - 10) the districts the eligible applicant seeks to serve.
- b) A rationale for the eligible applicant's SES program, including:
- 1) Evidence that the program complies with Section 675.40 of this Part; and
 - 2) Evidence of effectiveness that complies with either subsection (b)(2)(A) or subsection (b)(2)(B) of this Section.
 - A) General Method
 - i) Evidence that the curriculum and pedagogy program proposed for each subject encompassed in the application have has a positive impact on students' achievement in that subject reading and/or math, particularly for low-income, underachieving students, as demonstrated by scores on the State assessment or on a nationally recognized assessment; and

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- ii) At least five but no more than ten letters of reference from previous clients (families, districts, or teachers) offering testimonial information on the positive impact of the program proposed in the application and including contact information, starting and ending dates of service provided, and school and district names for each reference.
- B) Alternate Method
- i) Evidence that the eligible applicant has a minimum of three years' experience serving youth in the community where the eligible applicant intends to offer SES, through activities such as tutoring, mentoring or other extracurricular programs;
 - ii) Evidence that the curriculum and pedagogy to be used by the eligible applicant in a given subject have~~has~~ been demonstrated to have a positive impact on students' achievement in that subject reading and/or math, particularly for low-income, underachieving students, as demonstrated by scores on the State assessment or on a nationally recognized assessment;
 - iii) At least five but no more than ten letters of reference from previous clients (families, districts, or teachers) offering testimonial information on the positive impact of the youth services provided by the eligible applicant and including contact information, starting and ending dates of service provided, and school and district names for each reference; and
 - iv) An agreement to limit services to no more than 200 children during the first two years of SES.
- c) The specific procedures to be used and frequency of reports of student progress to teachers, district staff, and parents/families (including a description of how information will be provided to parents and families in a format and language they can understand).

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- d) A description of the qualifications of instructional staff, including such resumes and other information on qualifications as ISBE may require. If the applicant intends to assign tutors who reside outside the United States, the application shall identify their countries of residence and, for each of those countries, the national and either regional or local law enforcement authorities from which fingerprint-based checks of criminal history records will be obtained that will be comparable to those required under Section 10-21.9 of the School Code [105 ILCS 5/10-21.9]. Individuals residing in countries where checks of these types are not available shall not be assigned as tutors.
- e) Proof of liability insurance in amounts deemed sufficient by ISBE to protect the district and ISBE in light of the number of students to be served by the provider.
- f) Evidence that the eligible applicant possesses a sound management structure.
- g) Evidence that the provider has adequate financial, organizational and technical resources to administer the proposed program. This evidence shall include, but need not be limited to, completed federal tax returns (or the equivalent for non-profit entities) for the two most recent years and either an audit report or audited financial statements completed within two years prior to submission of the application.
- h) Proof of legal authority to conduct business in Illinois.
- i) Information on the eligible applicant's estimated per-pupil program cost, calculated as set forth in Section 675.210 of this Part for a sample or hypothetical district for which the provider assumes cost factors to be representative. If the provider's costs will vary based on the number of students enrolled, costs must be provided for various enrollment ranges. Providers must specify the assumptions upon which occupancy costs are shown for services in district facilities.
- j) Such certifications, assurances, and/or additional information as ISBE may require in order to verify any information reported by the eligible applicant or otherwise to fulfill its duties with respect to the administration of SES.

(Source: Amended at 33 Ill. Reg. 8497, effective June 1, 2009)

Section 675.70 Reporting Requirement

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- a) Each provider shall be required to use a tracking system for student enrollment and progress developed by ISBE. This tracking system shall also be used to determine the amount billable to the district for the provider's services.
- b) Within 60 days after a provider's conclusion of SES for the SES reporting period, the provider shall submit a report to the State Superintendent~~ISBE~~ including the information identified in this subsection (b), which shall be submitted as specified by the State Superintendent:
- 1) information on the students served who received at least 18 hours of services;
 - 2) details of any complaints received from teachers or parents and the resolution of those complaints; and
 - 3) the percentage of the provider's Illinois students who received at least 18 hours of services and met~~meeting~~ the academic goals set out in their Individual Learning Plans.;
- c) On or before May 1 of each year, each approved provider shall submit the information identified in this subsection (c) as specified by the State Superintendent:
- ~~1)~~4) updates and revisions to any information set forth in the provider's approved application (including the submission of all information required by Section 675.50 of this Part not previously reported by the provider); and
 - ~~2)~~5) an assurance that all other information set forth on the provider's approved application, as may be updated from time to time, remains true and correct.
- ~~d)~~e) Upon the request of any district served by a provider, the provider shall, within 10 days after receipt of the district's request or after the provider's submission of the report ~~to ISBE~~, whichever is later, furnish to the district the information specified in subsections (b)(2) and (3) of this Section as applicable to that district. However, a provider shall not be obligated to supply this information for any SES reporting period more than one year after the end of that period.

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- e) ~~d)~~ [The State Superintendent](#) ~~ISBE~~ may request additional information from a provider that may be necessary for [the State Superintendent](#) ~~ISBE~~ to verify any information reported by the provider or otherwise to fulfill ~~theirs~~ duties [of the State Board](#) with respect to the administration of SES.
- f) ~~e)~~ Providers failing to submit timely and complete reports shall not be included on the list of eligible providers for the following SES reporting period.

(Source: Amended at 33 Ill. Reg. 8497, effective June 1, 2009)

Section 675.90 Evaluation of Providers' Performance, Providers' Status, Sanctions, and Removal

- a) For each SES reporting period, ISBE shall evaluate each provider's performance in each district the provider serves based upon students' achievement, students' attendance, and parents' satisfaction. Separate evaluations shall be performed for each subject tutored by a provider ~~(i.e., reading and mathematics)~~. Achievement shall be measured by calculating an "effect size" in accordance with the provisions of Appendix A to this Part based upon the assessment results attained by students who have received at least 18 hours of instruction in the same provider's program. Attendance shall be measured by the information submitted to ISBE through its tracking system for students' enrollment and progress and by means of a survey administered by ISBE to all providers. Parental satisfaction shall be measured by a survey administered by ISBE to parents of students receiving services. Providers and school districts shall cooperate with ISBE to facilitate the administration of all surveys.
- b) For each of the criteria outlined in subsection (a) of this Section, ISBE will determine, based upon the evaluation rubric set forth in Appendix B to this Part, whether the provider's performance in each subject tutored falls into the category of "insufficient information", "below standards", "meets standards", or "above standards". Based on these determinations, ISBE will assign each provider the status of "good standing", "probationary status 1", or "probationary status 2", in accordance with the decision tree displayed in Appendix C to this Part. Each provider's status shall be [determined on a statewide basis for each subject tutored](#) ~~assigned separately with respect to each district served~~.
- c) If a provider's compliance with State or federal requirements or interactions with districts or parents indicate areas for improvement that are not serious enough to

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warrant corrective action under subsection (h) of this Section, the provider's status may also be assigned "with reservations". A provider assigned any status with reservations that fails to address the identified areas for improvement during the next SES reporting period shall be placed into corrective action in accordance with subsection (h) of this Section.

- d) A provider assigned the status of good standing shall not be required to take any action in response, other than addressing any reservations during the next SES reporting period.
- e) A provider assigned to probationary status 1 shall submit a remedial action plan describing the policies and practices the provider will immediately implement to return its status to good standing, including:
 - 1) specific, measurable steps to be taken;
 - 2) a timeline for these activities; and
 - 3) a budget for these activities.
- f) A provider assigned to probationary status 2 shall submit a reconstitution plan setting forth substantial changes the provider will immediately implement to return its status to good standing, including:
 - 1) a fundamental revision to the program described in the provider's approved application;
 - 2) professional development activities for all the provider's instructional staff serving the district;
 - 3) a plan of outreach to promote effective parental involvement in the provider's program;
 - 4) for each aspect described pursuant to subsections (f)(1) through (3) of this Section:
 - A) the specific, measurable steps to be taken;
 - B) a timeline for these activities; and

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- C) a budget for these activities; and
- 5) a process for monitoring progress and revising the plan as needed.
- g) A provider that receives three consecutive determinations of probationary status 1 or lower with respect to any particular district shall be removed from the State-approved list ~~for that district~~, except that a provider that receives two consecutive determinations of probationary status 2 shall be removed.
- h) The State Superintendent of Education may require corrective action of a provider if compliance issues are raised through ISBE's monitoring of the provider's program. Providers placed in corrective action under this subsection (h) shall, within 30 days after receiving notice to this effect, submit to the State Superintendent of Education for approval a corrective action plan detailing how the provider intends to improve the deficiencies in its program. A provider shall be removed from the State-approved list if it fails to meet the requirements of its corrective action plan by the end of the SES reporting period following the provider's placement into corrective action.
- i) The State Superintendent of Education may immediately suspend a provider's services if ISBE determines that a threat exists to the health or safety of students or if necessary to investigate or remedy concerns regarding compliance issues or illegal practices allegedly engaged in by the provider.
- j) The State Superintendent of Education may remove a provider from the State-approved list upon 30 days' written notice if the provider has engaged in illegal or deceptive practices, violated any assurance or aspect of its application to ISBE, violated any assurance or aspect of a plan submitted to ISBE in accordance with this Section, falsified any information on its application or other reports to ISBE, or otherwise violated State or federal law.
- k) Any corrective action or termination rights ISBE has pursuant to this Part may be exercised solely with respect to the provider's program in one or more schools or districts, if the performance issues are localized.

(Source: Amended at 33 Ill. Reg. 8497, effective June 1, 2009)

Section 675.175 Timetable for Implementation of the Program

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The requirements of this Section shall pertain to a district's initial enrollment period for SES in each school year. Districts are strongly encouraged to undertake parental notification and student enrollment in advance of the timelines set forth in this Section. No provision of this Section shall be construed to limit a district's ability to offer multiple enrollment periods during the course of a school year. The deadline for each district's initial enrollment period shall be no later than 60 days after the first day of school or 60 days after the district's receipt of notification from ISBE as to its status, whichever occurs later.

- a) In any school year when the performance of a district's schools obligates the district to offer supplemental educational services, the district shall distribute to parents of eligible students a notification to this effect, accompanied by a selection form for use by the parents. Each district's notification and selection form must be approved by the State Superintendent of Education annually to ensure that it includes the material required by Section 1116(e)(2)(A) of NCLB, [is free of unrelated information](#), and, to the extent practicable, is written in language that will be understandable to parents.
 - 1) No later than three weeks prior to the date on which the district plans to distribute its notification to parents, each district shall submit to the State Superintendent either:
 - A) the intended notification and the intended enrollment form, if separate; or
 - B) an assurance that its approved notification and enrollment form from the previous year will not be changed other than with respect to dates or available providers.
 - 2) Within ~~four~~[two](#) weeks after receipt of a district's intended notification materials or assurance, the State Superintendent shall either approve the communication or specify areas of insufficiency that must be corrected before the notification can be released.
 - 3) This notification shall be distributed in such a way as to reach parents no later than two weeks prior to the close of the district's initial enrollment period, and shall inform parents regarding all the approved providers that will be serving the schools attended by their respective students.

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- 4) Concurrently with distribution of the notification to parents required under this subsection (a), each district shall post on its website:
- A) the number of students eligible for SES in each school year beginning with 2007-08;
 - B) the number of students who participated in SES in each school year beginning with 2007-08, provided that a student is considered to have participated if the district paid a provider for any services performed in connection with that student;
 - C) a list of the providers that are approved and have agreed to serve the district in the current school year; and
 - D) a list of the locations where each provider will offer services during the current school year.
- b) Prior to negotiating contracts with districts, each provider shall submit to ISBE, in the form specified by the State Superintendent, good-faith estimates of its per-pupil district program costs, as specified in Section 675.240 of this Part and based in each case on the approximate number of students expected to enroll in the provider's program. The State Superintendent shall make these estimates available to districts without delay. As soon as reasonably practicable, but in no event later than 45 days after the deadline for a district's initial enrollment period, the district shall submit to each provider a district-approved list of students whose parents have selected that provider, a fully executed contract, and any other information or approvals the provider may need from the district in order to comply with the requirements of this Part. The district may receive an extension of no more than 10 days' time by establishing to the satisfaction of the State Superintendent that the delay is due to circumstances beyond the district's control. ~~The district shall also use its best efforts to deliver a fully executed contract to each provider, based on the provider's estimated per-pupil district program cost, within this timeframe.~~
- c) No later than 30 days after the district's delivery to the provider of a student list and fully executed contract and any other materials needed pursuant to subsection (b) of this Section, each school district shall verify that each provider with which the district has executed a contract has begun the provision of tutoring to the students whose families chose that provider. If any provider has not begun to

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provide services, the provider may receive an extension of no more than 10 days' time by establishing to the satisfaction of the State Superintendent that the delay is due to circumstances that are beyond the provider's control and will be alleviated within 10 days. Otherwise, at the end of the 30-day period, the district shall notify the parents of the affected students to this effect and offer the parents a one-week opportunity to choose another approved provider. In any such instance, the district shall conclude any needed contractual revisions within one further week and ensure that the new provider begins serving each affected student no later than two weeks after receiving the applicable contract and the list of students. The other provisions of this subsection (c) notwithstanding, a district that has collected indications of parents' second choices may assign students to the programs selected and notify parents that this has occurred.

- d) Section 1116(e)(3)(A) of NCLB requires consultation by a district with a student's parents and the student's provider to develop a statement of specific achievement goals for the student, a statement regarding how the student's progress will be measured, and a timetable for improving the student's academic achievement in the subjects tutored. For any student with respect to whom this consultation has not occurred by the time the provision of tutoring is to begin pursuant to subsection (c) of this Section, the plans for the student shall stand as developed by the district and the provider, and the district shall maintain records demonstrating that reasonable efforts were made to consult with a parent, such as, but not limited to, telephone contact, e-mail, home visits, or contact at school events.

(Source: Amended at 33 Ill. Reg. 8497, effective June 1, 2009)

SUBPART B: FINANCIAL REQUIREMENTS

Section 675.210 District Program Cost

- a) A provider's district program cost shall consist of amounts reported for each of the cost categories described in this subsection (a) that the provider seeks to charge to the district in accordance with its contract.
- 1) Direct program expenses caused directly by and related directly to the provision of SES within a district and costs attributable to fulfilling certain State mandates imposed by this Part (collectively, "direct program expenses"). Subcategories of direct program expenses include:

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- A) Program staff salaries or wages, payroll taxes, and fringe benefits (limited to staff having direct contact with students who receive services);
- B) Program consultants having direct contact with students who receive services;
- C) Program-related materials, supplies ([e.g., replacement copies of consumable curricular materials, such as workbooks](#)), and equipment (items costing more than \$500 and having a useful life of more than one year must be capitalized and depreciated on a straight-line basis);
- D) Costs related to the administration of student assessments;
- E) Instructional Staff Training Services – Workshops and demonstrations designed to contribute to the professional competence of the instructional staff;
- F) Snacks for program participants, provided that such snacks do not consist of confections, candy, potato chips, carbonated beverages, fruit drinks containing less than 50 percent pure fruit juice, tea, coffee, or other foods or beverages designated as "competitive foods" by the State Board of Education pursuant to 23 Ill. Adm. Code 305 (School Food Service);
- G) Program Insurance – All liability, malpractice, personal injury, and other types of insurance not reported as property insurance or as employee benefits;
- H) Rewards for student achievement provided in accordance with Section 675.30(m) of this Part;
- I) Student retention activities;
- J) Data entry related to State or local requirements for reporting on enrollment and attendance;
- K) [Transportation of students to and from SES activities](#);

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- | L) State cost reporting and auditing requirements; and
 - | M) Other (must be specified).
- 2) Occupancy expenses for facilities housing SES program activities.
Subcategories of occupancy expenses include:
- A) Lease, rental, or property taxes (less any revenues received from portions of a building not used for SES programs);
 - B) Operations and maintenance of buildings and equipment (including janitorial, building and grounds, and other maintenance supplies, equipment maintenance, utilities, telecommunications, and property/building insurance);
 - C) Housekeeping, maintenance, and security (including staff salaries, payroll taxes, and fringe benefits);
 - D) Mortgage and installment interest;
 - E) Operating interest; and
 - F) Other (must be specified).
- 3) Curriculum development expenses – Activities designed to aid providers in purchasing or preparing new curricular materials, refining or updating ~~developing~~ the existing curriculum, preparing and utilizing special curriculum materials, and understanding and appreciating the various techniques that stimulate and motivate pupils, including:
- A) Salaries or wages, payroll taxes, and fringe benefits for staff engaged in curriculum development; and
 - B) Other (must be specified).
- 4) Administrative and general expenses not directly attributable to the provision of SES within a district (other than costs reported for curriculum and training), including expenses for all staff, facilities, supplies, and

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equipment not used in direct connection with SES program activities (i.e., staff not having regular contact with SES students, and supplies and equipment not used during the delivery of SES at a particular site). Subcategories of administrative and general expenses include:

- A) Salaries or wages, payroll taxes, and fringe benefits for all executive, administrative, managerial, office, and clerical employees not having direct contact with students who receive services;
 - B) Legal and accounting services and other administrative consultants;
 - C) Operations and maintenance of buildings and equipment – not assigned to program;
 - D) Materials, supplies, and equipment – not assigned to program;
 - E) Lease, rental, or property taxes for facilities not serving as a primary location for the delivery of SES (less any revenues from the rental of portions of the facility);
 - F) Corporate royalty fees;
 - G) Advertising and marketing expenses;
 - H) Meals and entertainment expenses;
 - I) Distributions to shareholders or retained earnings ; and
 - J) Other (must be specified).
- b) **Multiple Districts Served**
If a provider serves multiple districts (either within or outside of Illinois), the provider's expenses in the categories outlined in subsections (a)(3) and (4) of this Section must be prorated, first in accordance with the percentage of time applicable to SES in general, and second in accordance with the percentage of students served within each district. (Example: a provider's program manager earns an annual salary of \$100,000 and spends 50 percent of her time managing

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the provider's SES programs throughout the nation and the remainder of her time performing educational consulting services for districts. The provider serves 5,000 students in its SES programs nationwide, 1,000 of whom are within an Illinois district. \$10,000 of her salary may be reported as an actual cost of providing SES within that district. ($\$100,000 \times .5 \times .2 = \$10,000$.) All of the foregoing allocations must be in accordance with the following cost principles, as applicable:

- 1) OMB Circulars (5 CFR 1310 (2005)) available at www.whitehouse.gov/omb/circulars/index.html:
 - A) OMB Circular A-87 (Cost Principles for State, Local and Indian Tribal Governments);
 - B) OMB Circular A-21 (Cost Principles for Educational Institutions);
 - C) OMB Circular A-122 (Cost Principles for Non-Profit Organizations).
- 2) Federal Acquisition Regulation (applicable to for-profit providers) (48 CFR 9904 (2005) available at www.access.gpo.gov/nara/cfr/waisidx_01/48cfr9904_01.html).

(Source: Amended at 33 Ill. Reg. 8497, effective June 1, 2009)

Section 675.220 Non-Reimbursable Expenses and Revenue Offsets

- a) The expenditures discussed in this subsection (a) shall be non-reimbursable costs and shall not be calculated or reported as part of a provider's district program cost.
 - 1) Expenses resulting from transactions with related organizations that are greater than the expense to the related organization. Providers may be required to submit evidence to substantiate or refute any claim of relatedness in determining allowable costs.
 - 2) Non-straight-line depreciation.
 - 3) Bad debt.

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- 4) Special benefits to owners, including owner and keyman life insurance, except insofar as required by lending institutions.
- 5) Charity grants.
- 6) Interest payments related to a provider's assets that are unrelated to an SES program.
- 7) Costs incurred by owners for non-SES activities, including that portion of overhead that should be allocated to these activities.
- 8) Printing expenses unrelated to the program.
- 9) Lobbying activities.
- 10) ~~Transportation of students to and from SES activities.~~ 11) Meals provided to students enrolled in SES programs.
- 11)12) Confections, candy, potato chips, carbonated beverages, fruit drinks containing less than 50 percent pure fruit juice, tea, coffee, or other foods or beverages designated as "competitive foods" by the State Board of Education pursuant to 23 Ill. Adm. Code 305.
- 12)13) Fines and penalties.
- 13)14) Payments of principal on mortgages or loans.
- 14)15) Asset acquisition costs for items whose costs exceed \$500 and have a useful life of one year or more.
- 15)16) Legal expenses incurred for non-program activities or for litigation against governmental entities.
- 16)17) Severance pay.
- 17)18) Sales tax (in the case of not-for-profit organizations).
- 18)19) Income tax.

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~~19)20)~~ Costs of any kind prohibited by the Code of Ethics set forth in Section 675.30 of this Part.

~~20)21)~~ Economic incentives or gratuities of any kind to parents.

- b) Any revenue received by the provider for the provision of SES from any source other than the district shall be offset against the provider's district program costs.

(Source: Amended at 33 Ill. Reg. 8497, effective June 1, 2009)

Section 675.230 Reports of Actual Costs

- a) Each provider shall report to the State Board of Education, no later than September 30 following the end of the SES reporting period or 45 days after the end of the provider's fiscal year, whichever is later, and using a form provided by ISBE, the provider's district program cost for each district the provider served. The cost report shall also indicate the payments received or invoiced to the district for the SES reporting period, as well as the difference between these payments and the district program cost.
- 1) Each provider shall identify all transactions with related organizations and the actual cost of each transaction.
- 2) For purposes of this subsection (a)(2), a student "served" is one with respect to whom a provider performed any service that was billed to a district. Each non-governmental provider serving more than 50 students within a district must engage an independent Licensed Certified Public Accountant (CPA) who is a member of the American Institute of Certified Public Accountants to perform agreed-upon procedures on its reported information. An agreed-upon procedures report must be submitted with the district program cost report required by this subsection (a). The agreed-upon procedures must include the following.
- A) Obtain the general ledger trial balance as of the reporting date and agree or reconcile the balances in the trial balance to the cost report;
- B) Inquire of members of management who have responsibility for financial and accounting matters concerning:

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- i) whether the cost report has been prepared using the accrual basis;
 - ii) the procedures for recording, classifying, and summarizing transactions and accumulating information;
 - iii) the method used to allocate curriculum development and administrative and general expenses to the district;
 - iv) known transactions with related organizations and whether the actual cost of such transactions was accurately reported; and
 - v) the provider's procedures for identifying non-reimbursable expenses;
- C) Identify and report on results from the following procedures:
- i) compare the actual average cost per pupil as shown on the cost report to the average cost per pupil shown in the contract with the district, and report on management's explanation for any differences greater than 10 percent; and
 - ii) compare current-year and prior-year cost results by report line item, and report on management's explanations for any differences in line item amounts that exceed 10 percent of the prior year's amounts, or if the total cost for the reporting period exceeds the total cost for the prior year by more than 5 percent;
- D) For providers serving more than 200 students in a district, select a sample of program and curriculum and training expenses for source document testing. The sample must be representative of the population and represent no less than 25 percent of the expenses for each category. As a part of testing procedures, perform the following:

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- i) verify that the provider properly classified costs according to the categories and subcategories set forth in Section 675.210 of this Part, and report on sampled items that were not classified in accordance with that Section;
 - ii) verify that sampled items are not non-reimbursable as defined in Section 675.220 of this Part, and report on sampled items that are non-reimbursable as defined in that Section; and
 - iii) verify that curriculum development and administrative and general expenses have been allocated to the district in an accurate and consistent manner and in accordance with Section 675.210(b) of this Part, and report on allocations for any sampled items that are not in accordance with that Section; and
 - E) Report on whether, as determined by the procedures performed under subsection (a)(2)(D) of this Section, the sampled items contain errors, omissions, inconsistencies, or non-compliance with the cost reporting requirements set forth in this Section, and specify each material error, omission, or inconsistency.
- 3) An agreed-upon procedures report submitted pursuant to subsection (a)(2) of this Section shall indicate whether all elements of the provider's cost report comply with the requirements of this Subpart B. In addition to the specific items to be reported under subsection (a)(2) of this Section, the CPA shall also report on:
- A) any unreconciled differences between the general ledger trial balance and the cost report;
 - B) any cost report that was not prepared on the accrual basis;
 - C) any entries that are not supported by or do not agree with documentation provided by management;
 - D) any cost allocation methods that are not in accordance with the requirements set forth in Section 675.210(b) of this Part; and

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- E) any other material error, omission, inconsistency, or area of non-compliance that comes to the CPA's attention during the course of conducting the agreed-upon procedures required by subsection (a)(2) of this Section.
- b) Each provider shall report the number of students enrolled in the provider's program during each SES reporting period. If a student's services are terminated during the SES reporting period, the student shall be reported in accordance with the percentage of the program completed prior to termination of services. For example, a student who completed 60 percent of the provider's program prior to termination of services should be reported as .6 of a student on the provider's cost report.
- c) All reporting shall be provided on an accrual basis.

(Source: Amended at 33 Ill. Reg. 8497, effective June 1, 2009)

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Section 675.APPENDIX B Evaluation Rubric

Criterion	Insufficient Information	Below Standards	Meets Standards	Above Standards
Student Achievement (See Note 1)	There is insufficient information available to determine student achievement outcomes.	The effect size for students in the provider's program can be identified and does not demonstrate any gains that can be attributed to tutoring received from the provider.	The effect size for students in the provider's program can be identified and does demonstrate gains that can be attributed to tutoring received from the provider.	The effect size for students in the provider's program can be identified and is in the top one-third of those providers demonstrating gains that can be attributed to tutoring received from the provider.
Attendance (See Notes 2 and 3)	Not applicable. Providers that do not submit attendance data will not be included on the list of eligible providers for the following SES reporting period.	(1) The provider's average attendance rate is one full standard deviation below the overall averagemean attendance rate ; and (2) The provider cannot demonstrate satisfactorily, based on a survey and ISBE's verification of reported information ; that it has made dedicated efforts to encourage student attendance.	The provider's average attendance rate is between one full standard deviation below and one full standard deviation above the overall averagemean attendance rate .	The provider's average attendance rate is one standard deviation or more above the overall averagemean attendance rate .
Parent Satisfaction	There is insufficient information available to determine parent satisfaction outcomes.	More than 25% Fewer than 75% of respondents indicate: (1) overall dissatisfaction satisfaction with the provider; or (2) the provider did not consult with the parent regarding results of the student's diagnostic test and plans for the program of the student's study they were consulted in the development of the student's individual learning plan .	More than 10% but no more than 25% 75-89% of respondents indicate: (1) overall dissatisfaction satisfaction with the provider; and (2) they were not consulted in the development of the student's individual learning plan.	No more than 10% 90-100% of respondents indicate: (1) overall dissatisfaction satisfaction with the provider; and (2) they were not consulted in the development of the student's individual learning plan.

Note 1: The evaluation shall be limited to students who have received at least 18 hours of instruction from a given provider.

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Note 2: Calculated based on attendance rate for sessions scheduled by the provider.

Note 3: A "provider's average attendance" is calculated by dividing the total number of hours the provider served by the total number of students the provider served. The "overall average attendance" is calculated by dividing the sum of all the "provider's average attendances" by the total number of providers.~~"Mean attendance rate" means, for programs serving the Chicago Public Schools, the mean attendance rate for all programs serving that district. For programs in districts other than the Chicago Public Schools, "mean attendance rate" means the mean attendance rate for all programs in districts outside the Chicago Public Schools.~~

(Source: Amended at 33 Ill. Reg. 8497, effective June 1, 2009)

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Section 675.APPENDIX C Decision Matrix

Determination Based on Evaluation	Status*
<ul style="list-style-type: none"> • Student achievement: insufficient information, meets standards or above standards. • Attendance: insufficient information, meets standards or above standards. • Parent satisfaction: insufficient information, meets standards or above standards. 	Maintain or return to good standing.
<ul style="list-style-type: none"> • Student achievement: insufficient information, meets standards or above standards. • Either attendance or parent satisfaction below standards. 	Probationary status 1.
<ul style="list-style-type: none"> • Student achievement: below standards (regardless of attendance or parental satisfaction). 	Probationary status 2.

* Any status level may be assigned "with reservations" in accordance with Section 675.90(c) of this Part.

(Source: Amended at 33 Ill. Reg. 8497, effective June 1, 2009)

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- 1) Heading of the Part: Testing of Breath, Blood and Urine for Alcohol, Other Drugs, and Intoxicating Compounds
- 2) Code Citation: 20 Ill. Adm. Code 1286
- 3)

<u>Section Numbers</u> :	<u>Adopted Action</u> :
1286.10	Amendment
1286.75	Amendment
1286.100	Amendment
1286.110	Amendment
1286.170	Amendment
1286.180	Amendment
1286.200	Amendment
1286.210	Amendment
1286.220	Amendment
1286.230	Amendment
1286.240	Amendment
1286.250	Amendment
- 4) Statutory Authority: Authorized by Section 2605-15 of the Civil Administrative Code of Illinois [20 ILCS 2605/2605-15]. Implementing and authorized by Section 6-106.1a of the Illinois Vehicle Code [625 ILCS 5/6-106.1a]. Implementing and authorized by Section 11-501.2 of the Illinois Vehicle Code [625 ILCS 5/11-501.2]. Implementing Section 11-501.5 of the Illinois Vehicle Code [625 ILCS 5/11-501.5]. Implementing Section 11-501.6 of the Illinois Vehicle Code [625 ILCS 5/11-501.6]. Implementing and authorized by Section 11-501.8 of the Illinois Vehicle Code [625 ILCS 5/11-501.8]. Implementing Section 5-7.5 of the Snowmobile Registration and Safety Act [625 ILCS 40/5-7.5]. Implementing Section 5-16b of the Boat Registration and Safety Act [625 ILCS 45/5-16b]. Implementing and authorized by Section 6-1 of the Boat Registration and Safety Act [625 ILCS 45/6-1]
- 5) Effective Date of Amendments: June 4, 2009
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Do these amendments contain incorporations by reference? No
- 8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

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- 9) Notice of Proposal Published in Illinois Register: 33 Ill. Reg. 3240; February 20, 2009
- 10) Has JCAR issued a Statement of Objection to these amendments? No
- 11) Differences between proposal and final version:

In Sections 1286.220(a)(3), 1286.220(b), 1286.220(c), 1286.230(c), and 1286.250, after "10 percent of the reference sample's value", added "as adjusted for environmental factors".
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? The wording changes stated in number 11 above have been made.
- 13) Will these amendments replace any emergency amendment currently in effect? No
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Amendments: The Part is amended to revise and update procedures and policies relating to the testing of breath, blood and urine for alcohol, drugs, and intoxicating compounds. Updates have been made with respect to logbook entries, training requirements, license renewal, and duration of laboratory technician certification. One instrument has been added to the listing of evidential instruments approved for obtaining breath analysis readings. In addition, changes are made to the requirements for quantitating a reference sample.
- 16) Information and questions regarding these adopted amendments shall be directed to:

Mr. John Hosteny, Interim Chief Legal Counsel
Illinois State Police
801 South 7th Street, Suite 1000-S
Springfield, Illinois 62794-9461

217/782-7658

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

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TITLE 20: CORRECTIONS, CRIMINAL JUSTICE, AND LAW ENFORCEMENT
CHAPTER II: DEPARTMENT OF STATE POLICE

PART 1286
TESTING OF BREATH, BLOOD AND URINE
FOR ALCOHOL, OTHER DRUGS, AND INTOXICATING COMPOUNDS

SUBPART A: GENERAL PROVISIONS

Section	
1286.10	Definitions
1286.20	Grievances
1286.30	Additional Testing
1286.40	Conversion of a Blood Serum or Blood Plasma Alcohol Concentration to a Whole Blood Equivalent
1286.50	Passive Sensors
1286.60	Department Notification
1286.70	Maintenance of Records for Approved Evidentiary Instruments
1286.75	Subpoena Procedure for Evidentiary Instruments
1286.80	Approved Evidentiary Instrument and Logbook Availability
1286.90	Reporting Laboratory Results

SUBPART B: APPROVAL PROCEDURES FOR PERSONS AND
LABORATORIES TO PERFORM SPECIFIC FUNCTIONS

Section	
1286.100	Licensing BAOs
1286.110	Renewal of BAO License
1286.120	Revocation and Denial of BAO License
1286.130	Authorization of BATs
1286.140	Revocation and Denial of BAT Authorization
1286.150	Accrediting BAIs
1286.160	Revocation and Denial of BAI Accreditation
1286.170	Certification of Laboratories and Laboratory Technicians
1286.180	Revocation and Denial of Laboratory Certification

SUBPART C: EQUIPMENT

Section

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1286.200	Equipment Approval and Accuracy
1286.210	Evidentiary Instrument Approval
1286.220	Checking Approved Evidentiary Instruments for Accuracy
1286.230	Checking Approved Evidentiary Instruments for Continued Accuracy
1286.240	PBT Approval
1286.250	Checking Approved PBTs for Accuracy
1286.260	Operation of PBTs

SUBPART D: SAMPLING PROCEDURES

Section

1286.300	General Sampling Protocol
1286.310	Approved Evidentiary Instrument Operation
1286.320	Blood Collection for Determining the Presence of Alcohol, Other Drugs or Intoxicating Compounds
1286.330	Urine Collection for Determining the Presence of Alcohol, Other Drugs or Intoxicating Compounds
1286.340	Urine Collection for Determining the Concentration of Urine Alcohol (Repealed)
1286.350	Operation of PBTs (Repealed)

AUTHORITY: Authorized by Section 2605-15 of the Civil Administrative Code of Illinois [20 ILCS 2605/2605-15]. Implementing and authorized by Section 6-106.1a of the Illinois Vehicle Code [625 ILCS 5/6-106.1a]. Implementing and authorized by Section 11-501.2 of the Illinois Vehicle Code [625 ILCS 5/11-501.2]. Implementing Section 11-501.5 of the Illinois Vehicle Code [625 ILCS 5/11-501.5]. Implementing Section 11-501.6 of the Illinois Vehicle Code [625 ILCS 5/11-501.6]. Implementing and authorized by Section 11-501.8 of the Illinois Vehicle Code [625 ILCS 5/11-501.8]. Implementing Section 5-7.5 of the Snowmobile Registration and Safety Act [625 ILCS 40/5-7.5]. Implementing Section 5-16b of the Boat Registration and Safety Act [625 ILCS 45/5-16b]. Implementing and authorized by Section 6-1 of the Boat Registration and Safety Act [625 ILCS 45/6-1].

SOURCE: Adopted by emergency rulemaking at 25 Ill. Reg. 239, effective January 1, 2001, for a maximum of 150 days; adopted at 25 Ill. Reg. 3023, effective February 1, 2001; amended at 28 Ill. Reg. 10017, effective June 30, 2004; amended at 31 Ill. Reg. 7305, effective May 1, 2007; emergency amendment at 31 Ill. Reg. 10188, effective July 9, 2007, for a maximum of 150 days; amended at 31 Ill. Reg. 15107, effective October 29, 2007; amended at 33 Ill. Reg. 8529, effective June 4, 2009.

SUBPART A: GENERAL PROVISIONS

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Section 1286.10 Definitions

"Accredited Law Enforcement Training Academy" means a police training organization that is recognized by the Illinois Law Enforcement Training Standards Board and is accredited by Commission on Accreditation for Law Enforcement Agencies (CALEA), 10302 Eaton Place, Suite 100, Fairfax VA 22030-2215.

"Accuracy Check Record" means the data recorded in a logbook or stored in memory when an accuracy check is performed on an approved evidentiary instrument. Accuracy test records will include at least the type of instrument, instrument serial number, test date, reference sample value, and the readings of the two accuracy check tests. Certification check and standard check are synonyms for accuracy check.

"Agency" means a Municipal, Park District, County, State, Federal law enforcement agency or Circuit Court Probation Department involved in the use of approved evidentiary instruments or PBTs.

"Alcohol" means ethanol (commonly referred to as grain alcohol), ethyl alcohol, alcoholic beverage, alcoholic liquor, isopropanol or methanol.

"Alcohol Concentration" means weight in grams of alcohol in a specified volume of blood, breath, or urine.

"Approved Evidentiary Instrument" means an instrument approved for use by the Department to obtain a BrAC pursuant to a breath test as described under Section 6-106.1a of the Illinois Vehicle Code [625 ILCS 5/6-106.1a], Section 11-501 of the Illinois Vehicle Code [625 ILCS 5/11-501], Section 11-501.1 of the Illinois Vehicle Code [625 ILCS 5/11-501.1], Section 11-501.2 of the Illinois Vehicle Code [625 ILCS 5/11-501.2], Section 11-501.6 of the Illinois Vehicle Code [625 ILCS 5/11-501.6], Section 11-501.8 of the Illinois Vehicle Code [625 ILCS 5/11-501.8], and Sections that cross-reference Section 11-501.2 of the Illinois Vehicle Code [625 ILCS 5/11-501.2].

"Approved PBT" means an instrument approved for use by the Department either to obtain a BrAC pursuant to a preliminary breath screening test as described under Section 11-501.5 of the Illinois Vehicle Code [625 ILCS 5/11-501.5],

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Section 5-7.5 of the Snowmobile Registration and Safety Act [625 ILCS 40/5-16b], Section 5-16b of the Boat Registration and Safety Act [625 ILCS 45/5-16b], and Sections that cross-reference Section 11-501.5 of the Illinois Vehicle Code [625 ILCS 5/11-501.5] or to obtain a BrAC pursuant to a breath test as described under Section 11-501.6 of the Illinois Vehicle Code [625 ILCS 5/11-501.6], and Section 11-501.8 of the Illinois Vehicle Code [625 ILCS 5/11-501.8].

"Blood Alcohol Concentration" or "BAC" means grams of alcohol per 100 milliliters of whole blood (Section 11-501.2(a)(5) of the Illinois Vehicle Code [625 ILCS 5/11-501.2(a)(5)]).

"Breath Alcohol Concentration" or "BrAC" means *grams of alcohol per 210 liters of breath* (Section 11-501.2(a)(5) of the Illinois Vehicle Code [625 ILCS 5/11-501.2(a)(5)]).

"Breakdown" means a malfunction that affects the analytical performance of the instrument or its ability to quantitate a BrAC.

"Breath Analysis Instructor" or "BAI" means an individual who is accredited by the Department to instruct breath analysis instrument operations and to train and administer licensing examinations to BAOs.

"Breath Analysis Operator" or "BAO" means an individual licensed by the Department to operate approved evidentiary instruments and to create subject test records. BAOs can print local reports, perform basic maintenance (i.e., replace a fuse), and make minor adjustments (i.e., correct the date/time).

"Breath Analysis Reading" means the numeric value of the first two digits to the right of the decimal point of a BrAC analysis as displayed, printed, or recorded by an instrument.

"Breath Analysis Technician" or "BAT" means an individual who is authorized by the Department to conduct re-certification classes for BAOs and to administer that examination, to install, examine, certify, repair, maintain, check the accuracy of approved evidentiary instruments, and create accuracy check records and service records.

"Central Repository" means the collection and maintenance by the Department of business records, maintained by an agency in the normal course of business, of

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subject test records, quick tests, accuracy check records, calibrations, and service records.

"Certified Paramedic" means an individual licensed by the Illinois Department of Public Health as an Emergency Medical Technician (Intermediate) or Emergency Medical Technician (Paramedic) acting under the direction of a licensed physician as a phlebotomist.

"Department" means the Illinois Department of State Police.

"Director" means the Director of State Police.

"Foreign Substance" means any substance not in the subject's body when a 20-minute observation period is commenced, excluding a substance introduced due to normal breathing.

"Ingested" means eaten, chewed, swallowed or consumed by mouth in any other manner; inhaled, sniffed, snorted, sprayed, or introduced into the breathing passages in any other manner; injected or introduced into the body in any manner.

"Instrument" means any item or combination of items of equipment used to quantitate a breath analysis reading.

"Internal Memory" means the digital storage medium that is part of an approved evidentiary instrument that registers subject test records, accuracy check records, [quick tests, and calibrations](#)~~and service records~~.

"License" means a permit issued as evidence by the Department to an individual as proof of his or her authority and competence as a BAO, BAT, BAI, or PBT-E.

"Logbook" means a business record, maintained by the agency in the normal course of business, of subject test records and accuracy check records. [The logbook does not contain automatic accuracy checks or accuracy checks performed remotely.](#)

"Malfunction" means failure of an instrument to function properly.

"NHTSA's List" means the Conforming Products List of Evidential Breath Measuring Instruments produced by the National Highway Traffic Safety

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Administration, United States Department of Transportation.

"Passive Sensor" means a unit that monitors ambient air for the presence of alcohol for an investigative purpose.

"Phlebotomist" means a person trained to collect blood from another individual through venipuncture.

"Preliminary Breath Test Device" or "PBT" means a portable device used to quantitate a breath analysis reading.

"Preliminary Breath Test Examiner" or "PBT-E" means a BAO who is authorized by the Department to perform accuracy checks on preliminary breath test devices.

"Reference Sample" means either a solution for use in a breath simulator, commonly referred to as a wet bath simulator, or a dry gas mixture, commonly referred to as a dry gas evidential standard (DGES), for the purpose of instrument certification, accuracy checks, and/or calibration.

"Service Record" means information concerning an instrument breakdown. Service records will include at least the type of instrument, instrument serial number, date of service, service issue reported, service issue found, probable cause of service issue, corrective action taken, and BAT. Service records do not include information such as a bill for repairs of an approved evidentiary instrument or documentation included with an instrument returned from the manufacturer.

"Subject Test Record" means the data recorded by a BAO in the logbook or printed out ~~and~~ stored by the instrument in memory when a subject is tested with an approved evidentiary instrument. Subject test records will include at least the type of instrument, instrument serial number, name of individual tested, test date, breath analysis reading, and BAO. Subject Test Records do not include information other than that which can be recorded in instrument memory or the central repository.

"Urine Alcohol Concentration" or "UAC" means *the number of grams of alcohol per 67 milliliters of urine* (Section 6-500(2)(C) of the Illinois Vehicle Code [625 ILCS 5/6-500(2)(C)]).

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"Whole Blood Equivalent" means the conversion of a blood serum or blood plasma alcohol concentration to an approximate BAC.

(Source: Amended at 33 Ill. Reg. 8529, effective June 4, 2009)

Section 1286.75 Subpoena Procedure for Evidentiary Instruments

- a) Subpoena requests for accuracy checks, subject tests, quick tests, calibrations, and maintenance/repair records will be responded to as quickly as possible. If the response cannot be provided within the timeframe requested, the requesting party shall be notified by telephone. If further information is needed to determine the material requested, the requesting party shall be contacted by telephone to obtain this information and the subpoena response completed.
- b) The timeframe for the information provided in response to a subpoena request for accuracy checks, subject tests, quick tests, calibrations, and maintenance/repair records shall be from ~~6260~~ days prior to the subject's arrest date through ~~6260~~ days following the arrest date.

(Source: Amended at 33 Ill. Reg. 8529, effective June 4, 2009)

SUBPART B: APPROVAL PROCEDURES FOR PERSONS AND LABORATORIES TO PERFORM SPECIFIC FUNCTIONS**Section 1286.100 Licensing BAOs**

The Director or his/her designee is authorized to license persons to be BAOs subject to the requirements of this Section. BAOs are licensed to perform all appropriate BAO functions described in this Part. Only licensed BAOs may operate evidential breath testing instruments.

- a) To be eligible to be a BAO, the individual must be employed by an agency or an accredited law enforcement training academy. BAO candidates, including those who have previously been licensed as a BAO in another state, must successfully attend the course and pass the written and proficiency examination or successfully complete a computer-based training (CBT) course.
- b) Under the direction and control of a BAI, BAO candidates must:
 - 1) Complete a training curriculum approved by the Department that includes

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a minimum of 2428 hours of instruction, which includes the following:

- A) Presentation and discussion of the psychological, physiological, and pharmacological effects of alcohol in the human body;
 - B) Demonstration and discussion of instruments and the analytical processes used to measure BrAC;
 - C) Practical application and demonstration in the use of an approved evidentiary instrument; and
 - D) Discussion of current DUI issues, the administrative rules, and case law.
- 2) Pass the following:
- A) The standardized written examination for Breath Analysis Operator provided by the Department with a minimum score of 70 percent.
 - B) A proficiency examination where the candidate operates approved evidentiary instruments.
- c) A license shall be valid for a period of three years after the printed date of issuance. If the license is not renewed as provided for in Section 1286.110, it shall expire three years after the printed date of issuance.
- d) Licensing classes will be held in locations approved by the Department based upon appropriate lighting, space, heating, and air conditioning conditions.

(Source: Amended at 33 Ill. Reg. 8529, effective June 4, 2009)

Section 1286.110 Renewal of BAO License

The Director or his/her designee is authorized to renew BAO licenses subject to the requirements of this Section. An individual with a renewed BAO license is a BAO. A renewed BAO license shall be subject to the same terms and conditions as an original BAO license.

- a) BAO license renewal candidates must either successfully attend the renewal

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course and pass the written renewal examination or successfully complete the computer-based training course.

- 1) Under the direction and control of a BAT, BAO renewal candidates attending the renewal course must:
 - A) Complete a training curriculum approved by the Department that includes the following:
 - i) Review of theory and practice with an approved evidentiary instrument;
 - ii) Review of administrative rules as contained in this Part; and
 - iii) Review of current and related problems in the field.
 - B) Pass the following:
 - i) The standardized written examination for Breath Analysis Operator provided by the Department with a minimum score of 70 percent; and
 - ii) A proficiency examination where the candidate operates an approved evidentiary instrument.
- 2) The computer-based BAO license renewal course will:
 - A) Review subject matter similar to the BAO classroom instruction; and
 - ~~B) Provide a practical examination that the BAO license renewal candidate must pass; and~~
 - BC) Provide an objective examination that the BAO license renewal candidate must pass with a minimum score of 70 percent.
- b) A BAO license that has either been revoked or been expired for more than one year cannot be renewed. To become licensed again, the individual must complete

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the initial licensure course. Appeals from this decision may be pursued in accordance with Section 1286.20.

- c) The Department will designate sites and dates for renewal courses.
- d) Renewal courses will be held in locations approved by the Department based upon appropriate lighting, space, heating, and air conditioning conditions.

(Source: Amended at 33 Ill. Reg. 8529, effective June 4, 2009)

Section 1286.170 Certification of Laboratories and Laboratory Technicians

The Director or his/her designee is authorized to certify laboratories and laboratory technicians subject to the requirements of this Section.

- a) Only laboratories that employ technicians who work under the supervision of a pathologist, toxicologist, or other person who has at least five years experience in the specialty of analytical chemistry may be deemed qualified to detect and/or quantitate alcohol and/or other drugs in human biological fluids will be certified by the Department. The Laboratory Director shall be responsible for the accuracy of all laboratory testing performed in the laboratory. The following conditions must be met by laboratories:
 - 1) Prior to initial laboratory certification, and at least biannually thereafter, the Department shall request the demonstration of proficiency in the performance of the tests by the laboratory through the satisfactory examination of specimens by participation in a program of proficiency testing conducted by an agency or agencies approved by the Department.
 - A) The Laboratory Director will advise the Department of the proficiency testing program in which it is participating.
 - B) The laboratory will direct the proficiency testing agency to forward a copy of the laboratory's testing results and evaluations to the Department after each testing cycle.
 - 2) A candidate for certification under this Part shall furnish evidence of competent supervision by a person who meets the qualifications set forth in this Section.

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- b) Upon evidence that a laboratory has complied with this Section, a letter of certification listing those technicians certified to perform appropriate tests shall be issued, and such certification shall be valid for ~~three~~^{two} calendar years. It may be renewed upon submission by the holder of the certification of evidence that the laboratory continues to perform analyses for alcohol concentration and/or other drug content on human biological fluids under the supervision of a person meeting the qualifications set forth in this Section and upon the Department's determination that the laboratory is complying with subsection (a)(1) of this Section.

(Source: Amended at 33 Ill. Reg. 8529, effective June 4, 2009)

Section 1286.180 Revocation and Denial of Laboratory Certification

The Director or his/her designee may revoke or deny certification of a laboratory or a laboratory technician. Grounds for revocation or denial of ~~laboratory~~ certification can be, but are not limited to:

- a) Change in laboratory accreditation status.
- b) Failure to comply with Section 1286.170.
- c) Anything deemed by the Director or his/her designee not in the best interest of the program.

(Source: Amended at 33 Ill. Reg. 8529, effective June 4, 2009)

SUBPART C: EQUIPMENT

Section 1286.200 Equipment Approval and Accuracy

The procedures contained in this Subpart are the only procedures for establishing the accuracy of breath testing instruments. A rebuttable presumption exists that an instrument was accurate at the particular time a subject test was performed when the following four conditions are met.

- a) The instrument was approved under this Subpart at the time of the subject test.
- b) The performance of the instrument was within the accuracy tolerance described in

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this Subpart according to the last accuracy check ~~or verification (whichever is later)~~ prior to the subject test.

- c) No accuracy check has been performed subsequent to the subject test or the ~~performance of the instrument on the~~ next accuracy check after the subject test was within the accuracy tolerance described in this Subpart.
- d) Accuracy checks have been done in a timely manner, meaning not more than 62 days have passed since the last accuracy check prior to the subject test.

(Source: Amended at 33 Ill. Reg. 8529, effective June 4, 2009)

Section 1286.210 Evidentiary Instrument Approval

Approved evidentiary instruments shall print and display a breath analysis reading. Approved evidentiary instruments can print and display two or three digits to the right of the decimal point. Whether the approved evidentiary instrument prints and displays two or three digits to the right of the decimal point, the breath analysis reading consists of the first two digits to the right of the decimal point.

- a) The Department shall only approve evidentiary instruments enumerated in NHTSA's list. The Department approves the following instruments for obtaining breath analysis readings:
 - 1) Intoximeters EC-IR, manufactured by Intoximeters, Inc.
 - 2) RBT IV, in conjunction with a printer, manufactured by Intoximeters, Inc.
 - 3) Intoximeters EC-IR II, manufactured by Intoximeters, Inc.
 - 4) Intoxilyzer 8000, manufactured by CMI, Inc.
 - 5) [Intoxilyzer EC-IR II, with serial numbers 10001 and above, manufactured by Intoximeters, Inc.](#)
- b) Should an instrument in subsection (a) be removed from NHTSA's list, the instrument will remain an approved evidentiary instrument under this Part for a period of 18 months subsequent to removal or until this Section is amended.

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- c) The Department may temporarily approve additional evidential instrumentation from NHTSA's list after conducting a program suitability evaluation. The Department shall maintain a list of evidentiary instruments temporarily approved for breath testing in addition to those provided in subsection (a). Evidentiary instruments may be temporarily approved for a maximum period of 18 months. The list of temporarily approved evidentiary instruments, if any, shall be available to the public [upon request to the Alcohol and Substance Testing Section](#).

(Source: Amended at 33 Ill. Reg. 8529, effective June 4, 2009)

Section 1286.220 Checking Approved Evidentiary Instruments for Accuracy

The accuracy of all approved evidentiary instruments used to obtain a breath analysis reading from a subject shall be checked by a BAT.

- a) Accuracy checks are required:
- 1) Prior to being placed in operation;
 - 2) After a breakdown has been repaired; and/or
 - 3) When an approved evidentiary instrument fails to quantitate the two required accuracy check tests within [10 percent of the reference sample's value, as adjusted for environmental factors](#)~~plus or minus 0.01 BrAC~~.
- b) Approved evidentiary instruments must quantitate the reference sample within [10 percent of the reference sample's value, as adjusted for environmental factors](#)~~plus or minus 0.01 BrAC~~ to be certified accurate. Accuracy beyond the second digit to the right of the decimal point is not required.
- c) Approved evidentiary instruments shall be adjusted by a BAT when necessary to cause the instruments to quantitate the reference sample within [10 percent of the reference sample's value, as adjusted for environmental factors](#)~~plus or minus 0.01 BrAC~~.
- d) The accuracy check results shall be recorded in the instrument's logbook or internal memory, or in the central repository. [The automatic accuracy checks or accuracy checks performed remotely will not be entered in the instrument logbook. If the accuracy check was performed by a BAT at the instrument](#)

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[location, the accuracy check results shall be recorded in the instrument's logbook.](#)

(Source: Amended at 33 Ill. Reg. 8529, effective June 4, 2009)

Section 1286.230 Checking Approved Evidentiary Instruments for Continued Accuracy

To ensure the continued accuracy of approved evidentiary instruments, a BAT or automated system shall perform accuracy checks.

- a) Checks shall be performed at least once every 62 days.
- b) Checks shall consist of at least two tests of the instrument in which the instrument quantitates a reference sample.
- c) Approved evidentiary instruments must quantitate a reference sample within [10 percent plus or minus 0.01 BrAC](#) of the reference sample's value, [as adjusted for environmental factors](#). Accuracy beyond the second digit to the right of the decimal point is not required.
- d) The accuracy check results shall be recorded in the instrument's logbook or internal memory, or in the central repository. [The automatic accuracy checks or accuracy checks performed remotely will not be entered in the logbook. If the accuracy check was performed by a BAT at the instrument location, the accuracy check results shall be recorded in the instrument's logbook.](#)

(Source: Amended at 33 Ill. Reg. 8529, effective June 4, 2009)

Section 1286.240 PBT Approval

PBTs shall display a breath analysis reading. PBTs can display two or three digits to the right of the decimal point. Whether the PBT displays two or three digits to the right of the decimal point, the breath analysis reading consists of the first two digits to the right of the decimal point.

- a) The Department shall only approve PBTs enumerated in NHTSA's list. The Department approves the following PBTs for obtaining breath analysis readings:
 - 1) S-D2, manufactured by CMI, Inc.
 - 2) Alcosensor III, manufactured by Intoximeters, Inc.

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- 3) Alcosensor III (Enhanced with serial numbers above 1,200,000), manufactured by Intoximeters, Inc.
 - 4) Alcosensor IV, manufactured by Intoximeters, Inc.
 - 5) S-D5, manufactured by CMI, Inc.
 - 6) Alcosensor FST, manufactured by Intoximeters, Inc.
- b) The Department may temporarily approve additional PBTs from NHTSA's list after conducting a program suitability evaluation. The Department shall maintain a list of PBTs temporarily approved for screening instrument testing in addition to those provided in subsection (a). PBTs may be temporarily approved for a maximum period of 18 months. The list of temporarily approved PBTs, if any, shall be available to the public [upon request to the Alcohol and Substance Testing Section](#).

(Source: Amended at 33 Ill. Reg. 8529, effective June 4, 2009)

Section 1286.250 Checking Approved PBTs for Accuracy

PBTs shall be checked for accuracy by a BAT or an individual specially trained to perform PBT accuracy checks at least once every 93 days. To be accurate, the PBT must quantitate a reference sample within ~~10 percent plus or minus 0.01 BrAC~~ of the reference sample's value, [as adjusted for environmental factors](#). Accuracy beyond the second digit to the right of the decimal point is not required.

(Source: Amended at 33 Ill. Reg. 8529, effective June 4, 2009)

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- 1) Heading of the Part: Procedures For Issuing Loans From the Water Pollution Control Loan Program
- 2) Code Citation: 35 Ill. Adm. Code 365
- 3)

<u>Section Numbers</u> :	<u>Emergency Action</u> :
365.130	Amendment
365.220	Amendment
365.240	Amendment
365.340	Amendment
365.410	Amendment
365.430	Amendment
365.440	Amendment
365.620	Amendment
365.630	Amendment
365.APPENDIX A EXHIBIT A	Repeal
365.APPENDIX A EXHIBIT B	Repeal
- 4) Statutory Authority: Implementing and authorized by Section 19.1-19.9 of the Environmental Protection Act [415 ILCS 5/19.1-19.9]
- 5) Effective Date of Amendments: June 2, 2009
- 6) If this emergency rule is to expire before the end of the 150-day period, please specify the date on which it is to expire: This emergency rule is not set to expire before the end of the 150-day period.
- 7) Date Filed with the Index Department: June 2, 2009
- 8) A copy of the emergency rulemaking, including any material incorporated by reference, is on file in the Agency's principal office and is available for public inspection.
- 9) Reason for Emergency: The Agency needs to file these emergency rules to allow the Agency to administer the Water Pollution Control Loan Program (WPCLP) in conjunction with the additional funding from the American Recovery and Reinvestment Act of 2009 (ARRA), which will be incorporated into the WPCLP. Also, pursuant to 415 ILCS 5/19.4(d), the Agency is required to adopt emergency rules as necessary to allow for the timely administration of funds provided under ARRA of 2009. Identical proposed amendments will also be submitted for publication in the Illinois Register by the Agency.

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- 10) A Complete Description of the Subjects and Issues Involved: This rulemaking establishes changes to procedures the Agency will use to administer the WPCLP in conjunction with the additional funding from ARRA. The emergency rulemaking will allow the Agency to lower the existing WPCLP interest rate and provide additional financing and more streamlined application process for wastewater treatment works.
- 11) Are there any proposed rulemakings to this Part pending? Yes
- 12) Statement of Statewide Policy Objectives: This rulemaking will not create a State mandate for units of local government.
- 13) Information and questions regarding these emergency amendments shall be directed to:

Stefanie N. Diers
Assistant Counsel
Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
P.O. Box 19726
Springfield, Illinois 62794-9276

217/782-5544

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

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TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE C: WATER POLLUTION
CHAPTER II: ENVIRONMENTAL PROTECTION AGENCY

PART 365
PROCEDURES FOR ISSUING LOANS FROM THE WATER
POLLUTION CONTROL LOAN PROGRAM

SUBPART A: INTRODUCTION

Section	Purpose
365.110	Purpose
365.120	Administration
365.130	Definitions
EMERGENCY	
365.140	Incorporations by Reference

SUBPART B: FEDERAL REQUIREMENTS FOR THE
WATER POLLUTION CONTROL LOAN PROGRAM

Section	Purpose
365.210	Involvement of USEPA in the Operation of the Fund (Repealed)
365.220	Uses of the Water Pollution Control Loan Program
EMERGENCY	
365.230	Agency Responsibilities under Title VI of the CWA
365.240	Requirements for Loan Recipients under Title VI of the CWA
EMERGENCY	

SUBPART C: LIABILITIES AND REMEDIES FOR FAILURE
TO COMPLY WITH LOAN PROCEDURES

Section	Purpose
365.310	Noncompliance with Loan Procedures
365.320	Stop-Work Order
365.330	Termination
365.340	Waiver of Procedures
EMERGENCY	

SUBPART D: PROCEDURES FOR ISSUANCE OF LOANS

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Section

365.410 Project Priority Determination

[EMERGENCY](#)

365.420 Pre-Applications for Financial Assistance and Identification of Projects to be Funded

365.430 Financial Assistance Application and Approval

[EMERGENCY](#)

365.440 Fixed Loan Rate

[EMERGENCY](#)

365.450 Refinancing

365.460 Limitation on Design Cost

SUBPART E: PLANNING REQUIREMENTS FOR LOAN PROJECTS

Section

365.510 Sewer System Evaluation and Rehabilitation (Repealed)

365.520 Loan Applicant's Responsibilities During Facilities Planning

365.530 State Environmental Review

365.540 Limitations on Awards for Individual Systems

365.550 Value Engineering Requirements (Repealed)

365.560 Areawide Waste Treatment Management Planning

SUBPART F: REQUIREMENTS APPLICABLE TO SUBAGREEMENTS

Section

365.610 Requirements for Subagreements

365.620 Construction Contracts

[EMERGENCY](#)

365.630 Contracts for Personal and Professional Services

[EMERGENCY](#)

365.640 Compliance with Procurement Requirements for Construction Contracts

365.650 Disputes

365.660 Indemnity

365.670 Covenant Against Contingent Fees

SUBPART G: REQUIREMENTS APPLICABLE TO CONSTRUCTION INITIATION,
CHANGES, COMPLETION AND OPERATION OF PROJECT

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Section

- 365.710 Construction Initiation
- 365.720 Project Changes
- 365.730 Construction Engineering
- 365.740 Operation and Maintenance of the Project
- 365.750 Final Inspection
- 365.760 Project Performance Certification (Repealed)
- 365.770 Project Performance Certification (Renumbered)

SUBPART H: REQUIREMENTS APPLICABLE TO ACCESS, AUDITING, AND RECORDS

Section

- 365.810 Access
- 365.820 Audit and Records
- 365.830 Single Audit Act

SUBPART I: FINANCIAL AND MANAGERIAL CAPABILITY

Section

- 365.910 Sewer Use Ordinance
- 365.920 User Charges
- 365.930 Financial Capability
- 365.940 Dedicated Source of Revenue
- 365.950 Floodplain Insurance

SUBPART J: REQUIREMENTS APPLICABLE TO LOAN DISBURSEMENTS

Section

- 365.1010 Determination of Allowable Costs
- 365.1020 Use of Loan Funds and Payment of Unallowable Costs
- 365.1030 Disbursement of Loan Funds

SUBPART K: PROCEDURES FOR LOAN REPAYMENT
AND DELINQUENT REPAYMENT

Section

- 365.1110 Loan Repayment to the Agency
- 365.1120 Delinquent Loan Repayments

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365.APPENDIX A Executive Orders

365.EXHIBIT A Executive Order 11625 ([Repealed](#))

[EMERGENCY](#)

365.EXHIBIT B Executive Order 12138 ([Repealed](#))

[EMERGENCY](#)

365.EXHIBIT C Executive Order 12549

365.EXHIBIT D Executive Order 11246

AUTHORITY: Implementing and authorized by Sections 19.1 through 19.9 of the Environmental Protection Act [415 ILCS 5/19.1 through 19.9].

SOURCE: Adopted at 13 Ill. Reg. 7351, effective May 1, 1989; amended at 16 Ill. Reg. 15073, effective September 21, 1992; recodified at 19 Ill. Reg. 11450, effective August 11, 1995; amended at 20 Ill. Reg. 788, effective January 1, 1996; amended at 30 Ill. Reg. 15590, effective September 18, 2006; emergency amendment at 33 Ill. Reg. 8546, effective June 2, 2009, for a maximum of 150 days.

SUBPART A: INTRODUCTION

Section 365.130 Definitions**EMERGENCY**

a) Unless specified otherwise, all terms shall have the meanings set forth in the Environmental Protection Act (Act) [415 ILCS 5] and the regulations adopted under that Act (35 Ill. Adm. Code: Subtitle C) and the Clean Water Act (CWA), as amended (33 USC 1251 et seq.).

b) For the purposes of this Part 365, the following definitions apply:

Addenda – Documents issued by the loan applicant after advertisement for bids, which modify or interpret the contract documents, drawings, and specifications, by additions, deletions, clarifications or corrections.

Agency – Illinois Environmental Protection Agency.

[ARRA – The American Recovery and Reinvestment Act of 2009 \(Public Law 111-5\).](#)

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Binding Commitment – A legal obligation between the Agency and a local government unit to provide financial assistance from the WPCLP to that local government unit, specifying the terms and schedules under which assistance is provided. The loan agreement will be considered a binding commitment.

Building Cost – The cost of erection of construction contract line items. Building costs do not include preliminary planning, engineering, architectural, legal, fiscal, administrative or contingency costs.

Capitalization Grant – The actual federal funds received by the Agency for deposit into the WPCLP as a result of the capitalization grant agreement with the USEPA.

Capitalization Grant Agreement – The agreement entered into each federal fiscal year between the Agency and the USEPA for the purpose of providing a grant to capitalize the WPCLP and enable the Agency to provide assistance for construction of wastewater treatment works.

Change Order – A written order by the loan recipient to the contractor authorizing an addition, deletion or revision in the work within the general scope of the contract documents, or authorizing an adjustment in the contract price or contract time.

Compliance Project – A project which consists of construction, expansion, or upgrading of a wastewater treatment works necessary to meet State and federal requirements as specified in 35 Ill. Adm. Code: Subtitle C, and the CWA respectively.

Construction – Any one or more of the following which is undertaken for a public purpose: preliminary planning to determine the feasibility of the wastewater treatment works, engineering, architectural, legal, fiscal or economic investigations, or studies, surveys, designs, plans, working drawings, specifications, procedures or other necessary actions, erection, building, acquisition, alteration, remodeling, improvement or extension of wastewater treatment works, or the inspection or supervision of any of the foregoing items.

Contract Documents – The contract, including but not limited to

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advertisement for bids, information for bidders, bid, bid bond, agreement, payment bond, performance bond, notice of award, notice to proceed, change order, drawings, specifications, and addenda.

Cost-Effectiveness Analysis – An analysis of the feasible wastewater treatment works, processes and techniques capable of meeting the applicable effluent, water quality and public health requirements over the design life of the facility while recognizing environmental and other non-monetary considerations.

CWA – The Clean Water Act, as amended (33 USC 1251 et seq.).

Dedicated Source of Revenue – The type of security and the basis of legal authorization which are dedicated by legislative enactment or other appropriate authority along with the applicable revenue source pledged for repayment and recorded in an account for the purpose of loan repayment to the WPCLP, which is sufficient to repay the principal and interest on the loan.

Design – All administrative, legal, and engineering tasks, subsequent to facilities plan approval but prior to advertisement for bid proposal, associated with receiving approval of a loan application. This shall include the following: surveys, designs, plans, working drawings, specifications, soil investigations and any other tests or process determinations required to establish design criteria, and development of user charge systems and sewer use ordinances.

Director – Director of the Illinois Environmental Protection Agency.

Fixed Loan Rate – One-half the market interest rate but not less than 2.50%.

Fund – The Water Revolving Fund as authorized by [415 ILCS 5/19.3], consisting of the Water Pollution Control Loan Program, the Public Water Supply Loan Program, and the Loan Support Program.

Infiltration – Water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connection, or

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manholes.

Inflow – Water other than wastewater that enters a sewer system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash water, or drainage.

Initiation of Loan Repayment Period – The date in a loan agreement or amendment that establishes the beginning point of the loan repayment period.

Initiation of Operation – The date specified by the loan agreement on which use of the project began operation for the purposes that it was planned, designed, and constructed.

Intended Use Plan – A plan which includes a description of the short and long term goals and objectives of the Fund, project categories, discharge requirements, terms of financial assistance and the communities to be served.

Interest Rate – Not less than one-fourth of the market interest rounded to the nearest .01%.

Loan Agreement – The contractual agreement between the Agency and the local government unit that contains the terms and conditions governing the loan issued from the WPCLP.

Loan Applicant – The local government unit that has applied for a loan from the WPCLP for construction of wastewater treatment works.

Loan Commitment Letter – The letter that is sent by the Agency to the loan applicant which reserves loan funds and identifies the requirements that must be satisfied prior to the execution of the loan agreement.

Loan Procedures – The procedures for issuing loans from the WPCLP as set out in this Part 365.

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Loan Recipient – A local government unit that has been provided a loan for construction of a wastewater treatment works from the WPCLP and that will own and be responsible for the operation and maintenance of the wastewater facilities.

Loan Support Rate – Not more than one-fourth of the market interest rate rounded to the nearest .01%.

Local Government Unit – A county, municipality, township, municipal or county sewerage or utility authority, sanitary district, public water district, improvement authority or any other political subdivision whose primary purpose is to construct, operate and maintain wastewater treatment facilities or public water supply facilities or both [415 ILCS 5/19.2(g)].

Market Interest Rate – The mean interest rate of the 20 General Obligation Bond Buyer Index, from July 1 to June 30 of the preceding State fiscal year rounded to the nearest .01%.

Operating Agreement – The agreement between the Agency and the USEPA that establishes the policies, procedures and activities for the application and receipt of federal capitalization grant funds for capitalization of the WPCLP.

Principal – All disbursements, including interest and loan support accrued on the disbursements, that will be financed at the time the repayment schedule period begins.

Project – The activities or tasks the Agency identifies in the loan agreement for which the loan recipient may expend loan funds.

Project Priority List – An ordered listing of projects developed in accordance with the priority system described in 35 Ill. Adm. Code 366 (Procedures and Requirements for Determining Loan Priorities for Municipal Wastewater Treatment Works) that the Agency has determined are eligible to receive financial assistance from the WPCLP.

Responsible Bid – A bid that demonstrates the apparent ability of the bidder to successfully meet all the requirements specified in the contract

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documents. Information required to demonstrate responsibility may be corrected or submitted after bid opening.

Responsive Bid – A bid that complies with all meaningful or material aspects of the contract documents. The bid must constitute a definite and unqualified offer to meet the material requirements of the contract documents including any terms that affect price, quality, quantity or time of delivery, or are clearly identified in the contract documents to be complied with at the risk of bid rejection for non-responsiveness. Bid defects resulting in a non-responsive bid may not be corrected after the bid opening.

[Source of Revenue – The revenues of the system, including accounts receivable and the proceeds that are sufficient to repay the principal and interest on the loan.](#)

Subagreement – A written agreement between the loan recipient and another party and any tier of agreement thereunder to furnish services, supplies, or equipment necessary to complete the project for which a loan is provided, including construction contracts, contracts for personal and professional services and purchase orders.

Title VI – Title VI of the federal Clean Water Act (33 USC 1251 et seq.).

Treatment Works – Any devices and systems owned by a local government unit and used in the storage, treatment, recycling, and reclamation of sewerage or industrial wastes of a liquid nature, including intercepting sewers, outfall sewers, sewage collection systems, pumping power and other equipment, and appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply, such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process for wastewater facilities. [415 ILCS 5/19.2(f)].

Useful Life – The estimated period during which a wastewater treatment works is intended to be operable.

USEPA – The United States Environmental Protection Agency.

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User Charge – A charge levied on the users of a treatment works to produce adequate revenues for the operation, maintenance and replacement of the treatment works.

WPCLP – The Water Pollution Control Loan Program as authorized by Section 19.2 of the Environmental Protection Act [415 ILCS 5/19.2].

(Source: Amended by emergency rulemaking at 33 Ill. Reg. 8546, effective June 2, 2009, for a maximum of 150 days)

SUBPART B: FEDERAL REQUIREMENTS FOR THE
WATER POLLUTION CONTROL LOAN PROGRAM**Section 365.220 Uses of the Water Pollution Control Loan Program****EMERGENCY**

The Water Pollution Control Loan Program shall be used and administered by the Agency to provide assistance for the following purposes:

- a) *To accept and retain funds from grant awards, appropriations, transfers and payments of interest and principal;*
- b) *To make direct loans at or below market interest rates to any eligible local government unit to finance the construction of wastewater treatment works;*
- c) *With respect to funds provided under the American Recovery and Reinvestment Act of 2009, to make direct loans at or below market interest rates to any eligible local government unit and to provide additional subsidization, including, but not limited to, forgiveness of principal, negative interest rates, and grants;*
- d) *With respect to funds under the American Recovery and Reinvestment Act of 2009, to make direct loans at or below market interest rates to any eligible local government unit to buy or refinance debt obligations for treatment works incurred on or after October 1, 2008;*
- e) *With respect to funds under the American Recovery and Reinvestment Act of 2009, to provide additional subsidization, including, but not limited to,*

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forgiveness of principal, negative interest rates, and grants for treatment works incurred on or after October 1, 2008;

- f)e* *To make direct loans at or below market interest rates to any eligible local government unit to buy or refinance debt obligations for treatment works incurred after March 7, 1985;*
- g)d* *To make direct loans at or below market interest rates for the implementation of a management program established under Section 319 of the Federal Water Pollution Control Act, as amended;*
- h)e* *To guarantee or purchase insurance for local obligations where such action would improve credit market access or reduce interest rates;*
- i)f* *As a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the State or any political subdivision or instrumentality thereof, if the proceeds of such bonds will be deposited in the Fund;*
- j)g* *To finance the reasonable costs incurred by the Agency in the administration of the Fund; and*
- k)h* *To transfer funds to the Public Water Supply Loan Program. [415 ILCS 5/19.3(b)]*

(Source: Amended by emergency rulemaking at 33 Ill. Reg. 8546, effective June 2, 2009, for a maximum of 150 days)

Section 365.240 Requirements for Loan Recipients under Title VI of the CWA**EMERGENCY**

- a) Only local government units will be eligible for loans for wastewater treatment works projects.
- b) Loan projects must be on the Project Priority List.
- c) Loan projects must be consistent with any plans developed under Sections 205(j), 208, 303(e), and 319 of the CWA.

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- d) A dedicated source of revenue, sufficient to pay principal and interest when due, must be enacted and pledged by the loan recipient for repayment of the loan.
- e) Loan projects must meet [disadvantaged business enterprise requirements in accordance with 40 CFR 33.federal minority and women owned business requirements in accordance with Executive Orders 11625 and 12138 \(Appendix A, Exhibits A and B of this Part\).](#)
- f) Loan projects must meet the applicable requirements of any other federal laws and authorities.
- g) Loans will be made at or below market interest rates.
- h) Loan accounts related to the project construction and the dedicated source of revenue will be maintained by the loan recipient consistent with generally accepted accounting standards in accordance with the American Institute of Certified Public Accountants Professional Standards.
- i) Loans will be fully amortized not later than 20 years after the earlier of the initiation of operation date or the initiation of the loan repayment period.

(Source: Amended by emergency rulemaking at 33 Ill. Reg. 8546, effective June 2, 2009, for a maximum of 150 days)

SUBPART C: LIABILITIES AND REMEDIES FOR FAILURE TO
COMPLY WITH LOAN PROCEDURES**Section 365.340 Waiver of Procedures****EMERGENCY**

- a) Except as provided in subsection (b) or otherwise required by law, the Director may waive any of the loan procedures, either in whole or in part, by a written statement to the loan recipient, either as a special condition of the loan or otherwise, provided the Director finds that the procedure or requirement to be waived is not necessary to insure the integrity of the project, will not reduce a recipient's ability to repay the loan to the Agency or will not, in general, weaken the financial position of the WPCLP. The waiver may be subject to such additional conditions the Director deems necessary.

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- b) The following procedures will not be waived:
- 1) Section 365.410 (Project Priority Determination) of this Part
 - 2) Section 365.440 (Fixed Loan Rate) of this Part
 - 3) Section 365.520 (Loan Applicant's Responsibilities During Facilities Planning) of this Part
 - 4) Section 365.530 (State Environmental Review) of this Part
 - 5) Section 365.540 (Limitations on Awards for Individual Systems) of this Part
 - 6) Section 365.560 (Areawide Waste Treatment Management Planning) of this Part
 - 7) Section 365.620(d)(3) (Wage Provisions) of this Part
 - 8) Section 365.620(d)(4) ([Disadvantaged Business Enterprise](#)~~MBE/WBE~~ Requirements) of this Part
 - 9) Section 365.620(d)(5) (Debarment ~~and/or~~ Suspension Certification) of this Part
 - 10) Section 365.630(a)(1) ([Disadvantaged Business Enterprise](#)~~MBE/WBE~~ Requirements) of this Part
 - 11) Section 365.630(a)(4) (Debarment ~~and/or~~ Suspension Certification) of this Part
 - 12) Section 365.750 (Operation and Maintenance of the Project) of this Part
 - 13) Section 365.910 (Sewer Use Ordinance) of this Part
 - 14) Section 365.920 (User Charges) of this Part
 - 15) Section 365.940 (Dedicated Source of Revenue) of this Part

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- c) Notwithstanding subsection (b)(14), Section 365.920(b)(1) of this Part can be waived for loans issued between October 1, 1994 and October 1, 2006.

(Source: Amended by emergency rulemaking at 33 Ill. Reg. 8546, effective June 2, 2009, for a maximum of 150 days)

SUBPART D: PROCEDURES FOR ISSUANCE OF LOANS

Section 365.410 Project Priority Determination**EMERGENCY**

- a) Financial assistance from the WPCLP will be provided only to local government units for projects on the Project Priority List developed by the Agency pursuant to 35 Ill. Adm. Code 366.
- b) The Project Priority List sets out the priority for receipt of loans for each loan applicant. Priorities will be established in accordance with 35 Ill. Adm. Code 366 after the receipt by the Agency of both loan pre-applications pursuant to Section 365.420 (Pre-Applications for Financial Assistance and Identification of Projects to be Funded) of this Part and approved Facilities Planning pursuant to Section 365.520 (Loan Applicant's Responsibilities During Facilities Planning) and Section 365.530 (State Environmental Review) of this Part. For projects represented by loan pre-applications only, the Agency will provide limited priority scoring for inclusion of the project on the Project Priority List.~~Subpart.~~
- c) Projects included on the Intended Use Plan will be selected from projects on the Project Priority List in priority order, provided the project has an approved facilities plan and is scheduled to initiate construction by March 31 of the subsequent federal fiscal year.
- d) Cash Flow Demand Funding
- 1) The available funds for a project may be decreased by the Agency to reflect the amount of funds needed to meet cash flow demands for that project during the current funding cycle provided:
- A) The project has been classified as service continuation or service expansion in accordance with 35 Ill. Adm. Code 366;

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- B) The primary purpose of the project is for wastewater treatment facilities;
 - C) The construction schedule exceeds one year; and
 - D) The project is on the current fiscal year's Intended Use Plan for at least 50% of the project cost.
- 2) Any project that receives an adjustment to meet cash flow demands will have first opportunity for full funding in the subsequent fiscal year or years at the same interest rate.

(Source: Amended by emergency rulemaking at 33 Ill. Reg. 8546, effective June 2, 2009, for a maximum of 150 days)

Section 365.430 Financial Assistance Application and Approval**EMERGENCY**

- a) In order to issue a loan commitment letter that reserves loan funds to a loan applicant for a maximum period of 90 days, the Agency must have received the following documents:
 - 1) A completed loan application form for financial assistance providing, at a minimum, the following items:
 - A) Legal name of applicant;
 - B) Address;
 - C) Authorized representative – name and title;
 - D) Cost estimate;
 - E) Amount requested for loan; and
 - F) Verification and signature;
 - 2) An approved facilities plan in accordance with Section 365.520 (Loan Applicant's Responsibilities During Facilities Planning) of this Part;

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- 3) A Loan Program Certifications form that includes, at a minimum, the following:
 - A) The loan applicant must agree to pay all project costs not covered by the loan;
 - B) The loan applicant must certify that it has analyzed the costs and the financial impacts of the proposed project and that it has the legal, institutional, managerial and financial capability to insure adequate building, operation, maintenance and replacement of the treatment works project;
 - C) The loan applicant must certify that no unlawful or corrupt practice has taken place in the planning or design of the proposed project;
 - D) The loan applicant must certify that it has complied with all applicable State and federal statutory and regulatory requirements in regard to the proposed project;
 - E) The loan applicant must certify that it is not barred from being awarded a contract or subcontract under the Illinois Procurement Code [30 ILCS 500]; and
 - F) The loan applicant must provide its correct Federal Employer Identification Number and certify that it is doing business as a governmental entity;
- 4) An executed inter-governmental agreement necessary for project implementation, where necessary;
- 5) A "Certification Regarding Debarment, Suspension and Other Responsibility Matters" (EPA Form 5700-49) showing compliance with federal Executive Order 12549 (Appendix A, Exhibit C);
- 6) A resolution, ordinance or legal document authorizing a representative of the loan applicant to sign loan application documents;
- 7) A certification that the necessary project site, rights-of-way, easements

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and permits for construction of the project have been obtained and certification of compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 USC 4601);

- 8) A resolution of intent to comply with the National Flood Insurance Act of 1968 (42 USC 4001-4127) in accordance with Section 365.950 (Floodplain Insurance) of this Part;
- 9) An approved sewer use ordinance and user charge system in accordance with Sections 365.910 (Sewer Use Ordinance) and 365.920 (User Charges) of this Part;
- 10) Documentation to support the loan applicant's ability to repay the loan in accordance with Sections 365.930 (Financial Capability) and 365.940 (Dedicated Source of Revenue) of this Part;
- 11) The construction drawings and specifications, suitable for bidding purposes;
- 12) A construction permit application and permit or "authorization to construct" from the Agency, pursuant to the provisions of 35 Ill. Adm. Code 309.154 and 309.202, whichever is applicable;
- 13) A project completion schedule;
- 14) An executed contract for design and construction related work in accordance with Section 365.630 (Contracts for Personal and Professional Services) of this Part;
- 15) An EPA Form 4700-4, Compliance Report;
- 16) An enacted ordinance authorizing the bonds, notes or other evidence of indebtedness to be delivered to the Agency;
- 17) Proof of publication of the ordinance and any notice required by State statute, where applicable;

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- 18) A legal opinion from the loan applicant's legal counsel with respect to the validity and enforceability of the loan applicant's obligations and the absence of conflicts with other agreements, bonds or ordinances;
 - 19) Tax Exemption Certificate and Agreement; and
 - 20) Any other executed legal agreements necessary for project implementation.
- b) In addition to the items identified in subsection (a), the Agency must have received the following items before it will issue the actual Loan Agreement:
- 1) A certified copy of the published bid advertisement or advertisements;
 - 2) Any addenda issued by the loan applicant, if applicable;
 - 3) The bidder's bid bond or cashier's check for not less than 5% of the total bid;
 - 4) The low bidder's certificate of nonsegregated facilities showing compliance with 18 USC 1001;
 - 5) A summary of the evidence that the contractor and engineer have met [the disadvantaged business enterprise requirements pursuant to 40 CFR 33MBE/WBE requirements of federal Executive Orders 11625 and 12138 \(Appendix A, Exhibits A and B\)](#);
 - 6) The submittal of bid tabulations;
 - 7) An analysis of the bids and recommendations for the award of the bids;
 - 8) A copy of the successful bid proposals;
 - 9) The notice of the applicant's intent to award;
 - 10) A "Certification Regarding Debarment, Suspension and Other Responsibility Matters" (EPA Form 5700-49) showing compliance with federal Executive Order 12549 (Appendix A, Exhibit C) is required from the prime contractor and the engineer; and

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- 11) A Certification showing compliance with Section 33E-11 of the Illinois Criminal Code of 1961 [720 ILCS 5/33E-11].

(Source: Amended by emergency rulemaking at 33 Ill. Reg. 8546, effective June 2, 2009, for a maximum of 150 days)

Section 365.440 Fixed Loan Rate**EMERGENCY**

- a) The fixed loan rate is comprised of an interest rate and a loan support rate. The fixed loan rate charged for a wastewater treatment works loan shall be a simple annual rate at one-half the market interest rate, but not less than 2.50%.
- b) Notwithstanding subsection (a), for the period of time that funds from the ARRA are available for loan commitment, the fixed loan rate charged for all loans from the WPCLP shall be a simple annual rate of 0.00%.

(Source: Amended by emergency rulemaking at 33 Ill. Reg. 8546, effective June 2, 2009, for a maximum of 150 days)

SUBPART F: REQUIREMENTS APPLICABLE TO SUBAGREEMENTS

Section 365.620 Construction Contracts**EMERGENCY**

The following procedures shall apply to construction contracts (subagreements) awarded by loan recipients for the construction phase only. They shall not apply to personal and professional service contracts.

- a) The contract documents to be submitted to the Agency shall require a bid bond or cashier's check for not less than 5% of the bid amount, executed contract, performance and payment bonds for the bid amount, certificate of insurance with loan recipient added as additional insured, and the notice to proceed.
- b) Each contract shall be awarded after formal advertising, unless negotiation is permitted in accordance with Section 365.610(i) (Negotiation of Subagreements) of this Subpart. Formal advertising shall be in accordance with the following:

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- 1) Evidence of advertising
The loan recipient shall submit to the Agency a certified copy of the bid advertisement that notifies the bidders that the procurement will be subject to regulations contained in the procedures for issuing loans from the WPCLP as set out in this Part 365, the Prevailing Wage Act [820 ILCS 130], the Employment of Illinois Workers on Public Works Act [30 ILCS 570], and Executive Order 11246, as amended (Appendix A, Exhibit D).
- 2) Adequate bidding documents
Bidding documents (invitations for bid) shall be made available by the loan recipient and shall be furnished upon request in a timely manner. A complete set of bidding documents shall be maintained by the loan recipient and shall be available for inspection and copying by any party. The bidding documents shall include:
 - A) A complete statement of the work to be performed, including necessary drawings and specifications, and the required completion schedule (Drawings and specifications may be made available for inspection instead of being furnished.);
 - B) The terms and conditions of the contract to be awarded;
 - C) A clear explanation of the method of bidding, the method of evaluation of bid prices, and the basis and method for award of the contract;
 - D) The statement that any contract awarded in response to the bid is expected to be funded in part by a loan from the WPCLP, and that neither the State of Illinois nor any of its departments, agencies or employees is or will be a party to this bidding or any resulting contract;
 - E) Responsibility requirements or criteria that will be used in evaluating bidders, provided that an experience requirement or performance bond may not be used unless adequately justified by the loan recipient;
 - F) A copy of subsections (b)(2)(G) and (H) shall be included in the proposal form to be used by bidders and shall constitute a

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representation and certification to be considered as a part of their bid;

- G) By submission of the bid, each bidder and, in the case of a joint bid, each party to the joint bid certifies as to his or her own organization, that in connection with the bid:
- i) The prices in the bid have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to the prices with any other bidder or with any competitor;
 - ii) Unless otherwise required by law, the prices quoted in the bid have not knowingly been directly or indirectly disclosed to any other bidder or to any competitor prior to opening; and
 - iii) No attempt has been made or will be made by the bidder to induce any other person or firm to submit or withhold a bid for the purpose of restricting competition. Also, each bidder shall submit a certification regarding compliance with Article 33 E-11 of the Illinois Criminal Code of 1961 [720 ILCS 5/33E-11]; and
- H) Each person signing the bid shall certify that:
- i) He or she is the person in the bidder's organization responsible for the decision as to the prices being bid and that he or she has not participated, and will not participate, in any action contrary to subsection (b)(2)(G); or
 - ii) He or she is not the person in the bidder's organization responsible for the decision as to the prices being bid, but that he or she has been authorized to act as agent certifying that the persons determining the prices have not participated, and will not participate, in any action contrary to subsection (b)(2)(G), and as their agent shall so certify. He or she shall also certify that he or she has not participated, and will not participate, in any action contrary

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to subsection (b)(2)(G).

- 3) Addenda to bidding documents
If the loan applicant wishes to amend any part of the bidding documents (including drawings and specifications) during the period when bids are being prepared, the loan applicant shall send written addenda to all firms who have obtained bidding documents in time to be considered prior to the bid opening. When appropriate, the time period for submission of bids shall be extended. All addenda to the bidding documents shall be submitted to the Agency for approval prior to the bid opening.
- 4) Award to the low, responsive, responsible bidder
 - A) After bids are opened, they shall be evaluated by the loan applicant in accordance with the methods and criteria set out in the bidding documents. Items that shall be submitted to the Agency include a bid tabulation, the loan applicant's or its agent's analysis of bids and recommendation for the award, and the loan applicant's letter of intent to award or the official minutes of board approval.
 - B) The loan applicant may reserve the right to reject all bids if it has documented sound business reasons. Unless all bids are rejected, award shall be made to the low, responsive, responsible bidder after the bid evaluation has been submitted to the Agency and written notice of Agency approval has been received by the loan applicant.
 - C) If the award is intended to be made to a firm that did not submit the lowest bid, prior to any award the loan applicant shall submit to the Agency a written statement explaining why each lower bidder was deemed not responsive or not responsible.
- c) Negotiations of Contract Amendments (Change Orders)
 - 1) Loan recipient responsibility
The loan recipient shall be responsible for negotiation of construction contract change orders. This function may be performed by the loan recipient directly or, if authorized, by its consulting engineer. During negotiations the loan recipient shall:

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- A) Make sure that the contractor has a clear understanding of the scope and extent of work and other essential requirements;
 - B) Assure that the contractor demonstrates that he or she will make available or will obtain the necessary personnel, equipment and materials to accomplish the work within the required time; and
 - C) Maintain a summary of all negotiations and the engineer's independent cost estimate.
- 2) Changes in contract price or time
The contract price or time may be changed only by a change order. When negotiations are required, they shall be conducted in accordance with subsection (c).
- 3) For each change order the contractor shall submit to the loan recipient for review sufficient cost and pricing data to enable the loan recipient to ascertain the necessity and reasonableness of costs and amounts proposed, and the allowability and eligibility of costs proposed.
- 4) Agency review
For each change order, the loan recipient shall submit to the Agency for approval the following documentation:
- A) A description of the changed work;
 - B) The contractor's proposal itemizing the cost and time to complete the changed work;
 - C) The loan recipient's or engineer's estimate of the cost and time to complete the changes;
 - D) Two copies of the executed change order with justification including, but not limited to, the need for the proposed work and the technical solution; and
 - E) The summary of negotiations and resolution between the engineer's independent cost estimate and the contractor's proposal.

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- d) Each construction contract shall include the following provisions:
- 1) Audit; access to records:
 - A) The contractor shall maintain books, records, documents and other evidence directly pertinent to performance on loan work consistent with generally accepted accounting standards in accordance with the American Institute of Certified Public Accountants Professional Standards. The contractor shall also maintain the financial information and data used by the contractor in the preparation or support of any cost submissions required under subsection (c) (Negotiation of Contract Amendments (Change Orders)) and a copy of the cost summary submitted to the owner. The Illinois Auditor General, the owner, the Agency, or any of their authorized representatives shall have access to the books, records, documents, and other evidence for purposes of inspection, audit, and copying. The contractor shall provide facilities for access and inspection.
 - B) For a formally advertised, competitively awarded, fixed price contract, the contractor shall include access to records as specified in subsection (d)(1)(A) for all negotiated change orders and contract amendments in excess of \$25,000 that affect the contract price. In the case of all other prime contracts, the contractor shall agree to include access to records as specified above in all his or her contracts and all tier subcontracts or change orders in excess of \$25,000 that are directly related to project performance.
 - C) Audits shall be consistent with generally accepted auditing standards in accordance with the American Institute of Certified Public Accountants Professional Standards.
 - D) The contractor shall agree to the disclosure of all information and reports resulting from access to records pursuant to subsection (d)(1)(A). Where the audit concerns the contractor, the auditing agency shall afford the contractor an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report shall

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include the written comments, if any, of the audited parties.

- E) The records required by subsection (d)(1)(A) shall be maintained and made available during performance of the work under the loan agreement and for 3 years after the date of final loan audit. In addition, records that relate to any dispute or litigation or the settlement of claims arising out of any performance, costs or items to which an audit exception has been taken, shall be maintained and made available for 3 years after resolution of the dispute, appeal, litigation, claim, or exception.
 - F) The right of access will generally be exercised with respect to financial records under:
 - i) Negotiated prime contracts;
 - ii) Negotiated change orders or contract amendments in excess of \$25,000 affecting the price of any formally advertised, competitively awarded, fixed price contract; and
 - iii) Subcontracts or purchase orders under any contract other than a formally advertised, competitively awarded, fixed price contract.
 - G) The right of access will generally not be exercised with respect to a prime contract, subcontract, or purchase order awarded after effective price competition. In any event, the right of access shall be exercised under any type of contract or subcontract:
 - i) With respect to records pertaining directly to contract performance, excluding any financial records of the contractor; and
 - ii) If there is any indication that fraud, gross abuse, or corrupt practices may be involved in the award or performance of the contract or subcontract.
- 2) Covenant against contingent fees.
The contractor shall warrant that no person or selling agency has been

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employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. For breach or violation of this warranty, the owner shall have the right to annul the contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

3) Wage provisions

The contractor shall pay prevailing wages in accordance with the Illinois Prevailing Wage Act [820 ILCS 130].

4) Disadvantaged business enterprise~~MBE/WBE~~ requirements

The contractor shall provide evidence, including, but not limited to, a copy of the advertisement or advertisements and the record of negotiation, that the contractor has taken affirmative steps in accordance with 40 CFR 33 to assure that disadvantaged business enterprises~~federal Executive Orders 11625 and 12138 (Appendix A, Exhibits A and B), to assure that small, minority and women's businesses~~ are used when possible as sources of supplies, equipment, construction and services consistent with the provisions of the Agency's Operating Agreement with USEPA.

5) Debarment ~~and/or~~ suspension provisions

The contract shall require the successful bidder or bidders to submit a "Certification Regarding Debarment, Suspension and Other Responsibility Matters" (EPA Form 5700-49) showing compliance with federal Executive Order 12549 (Appendix A, Exhibit C).

6) Nonsegregated facilities provisions

The successful bidder shall be required to submit a certification of nonsegregated facilities as prescribed in 18 USC 1001.

e) Subcontracts under construction contracts

The award or execution of all subcontracts by a prime contractor and the procurement and negotiation procedures used by the prime contractor shall comply with:

1) All applicable provisions of federal, State and local law;

2) All provisions of this Part 365 regarding fraud and other unlawful or

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corrupt practices;

- 3) All provisions of this Part 365 with respect to access to facilities, records and audit of records; and
 - 4) All provisions of subsection (d)(5) that require a "Certification Regarding Debarment, Suspension, and Other Responsibility Matters" (EPA Form 5700-49) showing compliance with federal Executive Order 12549 (Appendix A, Exhibit C).
- f) **Contractor Bankruptcy**
In the event of a contractor bankruptcy, the loan recipient shall notify the Agency and shall keep the Agency advised of any negotiations with the bonding company, including any proposed settlement. The Agency may participate in those negotiations and will advise the loan recipient of the impact of any proposed settlement to the loan agreement. The loan recipient shall be responsible for assuring that every appropriate procedure and incidental legal requirement is observed in advertising for bids and re-awarding a construction contract.

(Source: Amended by emergency rulemaking at 33 Ill. Reg. 8546, effective June 2, 2009, for a maximum of 150 days)

Section 365.630 Contracts for Personal and Professional Services**EMERGENCY**

All subagreements for personal and professional services for design or construction expected to exceed \$25,000 in the aggregate shall include the following subagreement provisions:

- a) Subagreements for personal and professional construction services shall include:
 - 1) Evidence, such as, but not limited to, a copy of the advertisement or advertisements and the record of negotiation in accordance with [40 CFR 33 federal Executive Orders 11625 and 12138 \(Appendix A, Exhibits A and B\)](#), that affirmative steps have been taken to assure that [disadvantaged business enterprises, small, minority and women's businesses](#) are used when possible as sources of supplies, equipment, construction, and services consistent with the provisions of the Agency's Operating Agreement with USEPA.

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- 2) An audit and access to records clause that provides as follows:
 - A) Subsections (a)(2)(B) through (E) shall be included in all contracts and all subcontracts directly related to project services that are in excess of \$25,000.
 - B) Books, records, documents and other evidence directly pertinent to performance of WPCLP loan work under this agreement shall be maintained consistent with generally accepted accounting standards in accordance with the American Institute of Certified Public Accountants Professional Standards. The Agency or any of its authorized representatives shall have access to the books, records, documents and other evidence for the purpose of inspection, audit and copying. Facilities shall be provided for access and inspection.
 - C) Audits conducted pursuant to this provision shall be in accordance with generally accepted auditing standards.
 - D) All information and reports resulting from access to records pursuant to subsection (a)(2)(B) shall be disclosed to the Agency. The auditing agency shall afford the engineer an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report shall include the written comments, if any, of the audited parties.
 - E) Records under subsection (a)(2)(B) shall be maintained and made available during performance of project services under this agreement and for 3 years after the final loan closing. In addition, those records that relate to any dispute pursuant to Section 365.650 (Disputes) of this Subpart, litigation, the settlement of claims arising out of project performance, costs or items to which an audit exception has been taken shall be maintained and made available for 3 years after the resolution of the appeal, litigation, claim or exception.
- 3) A covenant against contingent fees clause as follows:

"The professional services contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract

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upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bonafide employees. For breach or violation of this warranty, the loan recipient shall have the right to annul this agreement without liability or in its discretion to deduct from the contract price or consideration or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee."

- 4) A "Certification Regarding Debarment, Suspension, and Other Responsibility Matters" (EPA Form 5700-49) showing compliance with federal Executive Order 12549 (Appendix A, Exhibit C).
 - 5) A description of the scope and extent of the project work.
 - 6) The schedule for performance and completion of the contract work including, where appropriate, dates for completion of significant project tasks.
 - 7) A method of compensation.
- b) Subagreements for personal and professional design services shall include the subagreement provisions contained in subsections (a)(2) through (a)(4). In addition, the subagreements shall be accompanied by a statement regarding the use of disadvantaged business enterprises~~small, minority and women's business~~ during the design service phase.
- c) If, at the time of contract execution, any of the elements required in this Section 365.630 cannot be defined adequately for later tasks, those tasks shall not be included in the contract at that time.

(Source: Amended by emergency rulemaking at 33 Ill. Reg. 8546, effective June 2, 2009, for a maximum of 150 days)

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Section 365.APPENDIX A Executive Orders**Section 365.EXHIBIT A Executive Order 11625 (Repealed)
EMERGENCY**

~~October 14, 1971, 36 F.R. 19967~~

~~PRESCRIBING ADDITIONAL ARRANGEMENTS FOR DEVELOPING
AND COORDINATING A NATIONAL PROGRAM FOR
MINORITY BUSINESS ENTERPRISE~~

~~The opportunity for full participation in our free enterprise system by socially and economically disadvantaged persons is essential if we are to obtain social and economic justice for such persons and improve the functioning of our national economy.~~

~~The Office of Minority Business Enterprise, established in 1969, greatly facilitated the strengthening and expansion of our minority enterprise program. In order to take full advantage of resources and opportunities in the minority enterprise field, we now must build on this foundation. One important way of improving our efforts is by clarifying the authority of the Secretary of Commerce (a) to implement Federal policy in support of the minority business enterprise program; (b) provide additional technical and management assistance to disadvantaged businesses; (c) to assist in demonstration projects; and (d) to coordinate the participation of all Federal departments and agencies in an increased minority enterprise effort.~~

~~NOW, THEREFORE, by virtue of the authority vested in me as President of the United States, it is ordered as follows:~~

~~Section 1. Functions of the Secretary of Commerce.~~

- ~~a) The Secretary of Commerce (hereinafter referred to as "the Secretary") shall=~~
 - ~~1) Coordinate as consistent with law the plans, programs, and operations of the Federal Government which affect or may contribute to the establishment, preservation, and strengthening of minority business enterprise.~~
 - ~~2) Promote the mobilization of activities and resources of State and local governments, businesses and trade associations, universities, foundations, professional organizations, and volunteer and other groups towards the~~

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~~growth of minority business enterprises, and facilitate the coordination of the efforts of these groups with those of Federal departments and agencies.~~

- ~~3) Establish a center for the development, collection, summarization, and dissemination of information that will be helpful to persons and organizations throughout the Nation in undertaking or promoting the establishment and successful operation of minority business enterprise.~~
 - ~~4) Within constraints of law and appropriations therefor, and according to his discretion, provide financial assistance to public and private organizations so that they may render technical and management assistance to minority business enterprises, and defray all or part of the costs of pilot or demonstration projects conducted by public or private agencies or organizations which are designed to overcome the special problems of minority business enterprises or otherwise to further the purposes of this order.~~
- b) ~~The Secretary, as he deems necessary or appropriate to enable him to better fulfill the responsibilities vested in him by subsection (a), may—~~
- ~~1) With the participation of other Federal departments and agencies as appropriate, develop comprehensive plans and specific program goals for the minority enterprise program; establish regular performance monitoring and reporting systems to assure that goals are being achieved; and evaluate the impact of Federal support in achieving the objectives established by this order.~~
 - ~~2) Require a coordinated review of all proposed Federal training and technical assistance activities in direct support of the minority enterprise program to assure consistency with program goals and to avoid duplication.~~
 - ~~3) Convene, for purposes of coordination, meetings of the heads of such departments and agencies, or their designees, whose programs and activities may affect or contribute to the purposes of this order.~~
 - ~~4) Convene business leaders, educators, and other representatives of the private sector who are engaged in assisting the development of minority business enterprise or who could contribute to its development, for the~~

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~~purpose of proposing, evaluating and coordinating governmental and private activities in furtherance of the objectives of this order.~~

- ~~5) Confer with and advise officials of State and local governments.~~
- ~~6) Provide the managerial and organizational framework through which joint or collaborative undertakings with Federal departments or agencies or private organizations can be planned and implemented.~~
- ~~7) Recommend appropriate legislative or executive action.~~

~~Section 2. Advisory Council for Minority Enterprise.~~

- ~~a) The Advisory Council for Minority Enterprise (hereinafter referred to as "the Council"), established by Executive Order No. 11458 of March 5, 1969,^{††} shall continue in existence under the terms of this order.~~
- ~~b) The Council shall be composed of members appointed by the President from among persons, including members of minority groups and representatives from minority business enterprises, who are knowledgeable in this field and who are dedicated to the purposes of this order. The members shall serve for a term of two years and may be reappointed.~~
- ~~c) The President shall designate one of the members of the Council as the Chairman of the Council.~~
- ~~d) The Council shall meet at the call of the Secretary.~~
- ~~e) The Council shall be advisory to the Secretary in which capacity it shall =~~
 - ~~1) Serve as a source of knowledge and information on developments in different fields and segments of our economic and social life which affect minority business enterprise.~~
 - ~~2) Keep abreast of plans, programs, and activities in the public and private sectors which relate to minority business enterprise, and advise the Secretary on any measures to better achieve the objectives of this order.~~
 - ~~3) Consider, and advise the Secretary, and such officials as he may designate,~~

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~~on problems and matters referred to the Council.~~

- ~~f) For the purposes of Executive Order No. 11007 of February 26, 1962,¹² the Council shall be deemed to have been formed by the Secretary.~~
- ~~g) Members of the Council shall be entitled to receive travel and expenses, including per diem in lieu of subsistence, as authorized by law (5 USC 5701-5708) for persons in the Government service employed intermittently.~~
- ~~h) The Secretary shall arrange for administrative support of the Council to the extent necessary, including use of any gifts or bequests accepted by the Department of Commerce pursuant to law.~~

~~Section 3. Responsibilities of Other Federal Departments and Agencies.~~

- ~~a) The head of each Federal department and agency, or a representative designated by him, when and in the manner so requested by the Secretary, shall furnish information, assistance, and reports to, and shall otherwise cooperate with, the Secretary in the performance of his functions hereunder.~~
- ~~b) The head of each Federal department or agency shall, when so requested by the Secretary, designate his Under Secretary or such other similar official to have primary and continuing responsibility for the participation and cooperation of that department or agency in matters concerning minority business enterprise.~~
- ~~c) The officials designated under the preceding paragraph, when so requested, shall review and report to the Secretary upon the policies and programs of the minority business enterprise program, and shall keep the Secretary informed of all proposed budgets, plans and programs of his department or agency affecting minority business enterprise.~~
- ~~d) The head of each Federal department or agency, or a representative designated by him, shall, to the extent provided under regulations issued by the Secretary after consultation with the official designated in paragraph (b) above, report to the Secretary on any activity that falls within the scope of the minority business enterprise program as defined herein and in those regulations.~~
- ~~e) Each Federal department or agency shall, within constraints of law and appropriations therefor, continue all current efforts to foster and promote minority~~

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~~business enterprises and to support the program herein set forth, and shall cooperate with the Secretary of Commerce in increasing the total Federal effort.~~

~~Section 4. Reports.~~

~~The Secretary shall, no later than 120 days after the close of each fiscal year, submit to the President a full report of his activities hereunder during the previous fiscal year. Further, the Secretary shall, from time to time, submit to the President his recommendations for legislation or other action as he deems desirable to promote the purposes of this order. Each Federal department or agency shall report to the Secretary as hereinabove provided on a timely basis so that the Secretary may consider such reports for his report and recommendations to the President. Each Federal department or agency shall develop and implement systematic data collection processes which will provide to the Office of Minority Business Enterprise Information Center current data helpful in evaluating and promoting the efforts herein described.~~

~~Section 5. Policies and Standards.~~

~~The Secretary may establish such policies, standards, definitions, criteria, and procedures to govern the implementation, interpretation, and application of this order, and generally perform such functions and take such steps as he may deem to be necessary or appropriate to achieve the purposes and carry out the provisions hereof.~~

~~Section 6. Definitions. For purposes of this order, the following definitions shall apply:~~

- ~~a) "Minority business enterprise" means a business enterprise that is owned or controlled by one or more socially or economically disadvantaged persons. Such disadvantage may arise from cultural, racial, chronic economic circumstances or background or other similar cause. Such persons include, but are not limited to, Negroes, Puerto Ricans, Spanish speaking Americans, American Indians, Eskimos, and Aleuts.~~
- ~~b) "State" means the State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, and the Trust Territory of the Pacific Islands.~~

~~Section 7. Construction.~~

~~Nothing in this order shall be construed as subjecting any function vested in, or assigned pursuant to law to, any Federal department or agency or head thereof to the authority of any~~

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~~other agency or office exclusively, or as abrogating or restricting any such function in any manner.~~

~~Section 8. Prior Executive Order.~~

~~Executive Order No. 11458 of March 5, 1969,¹³ is hereby superseded.~~

~~THE WHITE HOUSE
October 13, 1971~~

~~RICHARD NIXON~~

~~¹⁴ 15 U.S.C.A. Section 631 note.~~

~~¹² 5 U.S.C.A. Section 901 note.~~

~~¹³ 15 U.S.C.A. Section 631 note.~~

(Source: Repealed by emergency rulemaking at 33 Ill. Reg. 8546, effective June 2, 2009, for a maximum of 150 days)

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Section 365.APPENDIX A Executive Orders**Section 365.EXHIBIT B Executive Order 12138 (Repealed)**
EMERGENCY

May 18, 1979, 44 F.R. 29637

~~CREATING A NATIONAL WOMEN'S BUSINESS ENTERPRISE POLICY
AND PRESCRIBING ARRANGEMENTS FOR DEVELOPING, CO-
ORDINATING AND IMPLEMENTING A NATIONAL PROGRAM FOR
WOMEN'S BUSINESS ENTERPRISE~~

~~In response to the findings of the Interagency Task Force on Women Business Owners and congressional findings that recognize:~~

- ~~1. the significant role which small business and women entrepreneurs can play in promoting full employment and balanced growth in our economy;~~
- ~~2. the many obstacles facing women entrepreneurs; and~~
- ~~3. the need to aid and stimulate women's business enterprise;~~

~~By the authority vested in me as President of the United States of America, in order to create a National Women's Business Enterprise Policy and to prescribe arrangements for developing, coordinating and implementing a national program for women's business enterprise, it is ordered as follows:~~

~~1-1. Responsibilities of the Federal Departments and Agencies.~~

~~1-101. Within the constraints of statutory authority and as otherwise permitted by law:~~

- ~~a) Each department and agency of the Executive Branch shall take appropriate action to facilitate, preserve and strengthen women's business enterprise and to ensure full participation by women in the free enterprise system.~~
- ~~b) Each department and agency shall take affirmative action in support of women's business enterprise in appropriate programs and activities including but not limited to:~~
 - ~~1) management, technical, financial and procurement assistance;~~

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- ~~2) business-related education, training, counseling and information dissemination, and~~
- ~~3) procurement.~~
- ~~e) Each department or agency empowered to extend Federal financial assistance to any program or activity shall issue regulations requiring support of women's business enterprise and to prohibit actions or policies which discriminate against women's business enterprise on the ground of sex. For purposes of this subsection, Federal financial assistance means assistance extended by way of grant, cooperative agreement, loan or contract other than a contract of insurance or guaranty. These regulations shall prescribe sanctions for noncompliance. Unless otherwise specified by law, no agency sanctions shall be applied until the agency or department concerned has advised the appropriate person or persons of the failure to comply with its regulations and has determined that compliance cannot be secured by voluntary means.~~

~~1-102. For purposes of the Order, affirmative action may include, but is not limited to, creating or supporting new programs responsive to the special needs for women's business enterprise, establishing incentives to promote business or business-related opportunities for women's business enterprise, collecting and disseminating information in support of women's business enterprise, and insuring to women's business enterprise knowledge of and ready access to business-related services and resources. If, in implementing this Order, an agency undertakes to use or to require compliance with numerical set-asides, or similar measures, it shall state the purpose of such measure, and the measure shall be designed on the basis of pertinent factual findings of discrimination against women's business enterprise and the need for such measure.~~

~~1-103. In carrying out their responsibilities under Section 1-1, the departments and agencies shall consult the Department of Justice, and the Department of Justice shall provide legal guidance concerning these responsibilities.~~

~~1-2. Establishment of the Interagency Committee on Women's Business Enterprise.~~

~~1-201. To help insure that the actions ordered above are carried out in an effective manner, I hereby establish the Interagency Committee on Women's Business Enterprise (hereinafter called the Committee).~~

~~1-202. The Chairperson of the Committee (hereinafter called the Chairperson) shall be~~

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~~appointed by the President. The Chairperson shall be the presiding officer of the Committee and shall have such duties as prescribed in this Order or by the committee in its rules of procedure. The Chairperson may also represent his or her department, agency or office on the Committee.~~

~~1-203. The Committee shall be composed of the Chairperson and other members appointed by the heads of departments and agencies from among high level policy-making officials. In making these appointments, the recommendations of the Chairperson shall be taken into consideration. The following departments and agencies and such other departments and agencies as the Chairperson shall select shall be members of the Committee: the Departments of Agriculture; Commerce; Defense; Energy; Health, Education, and Welfare; Housing and Urban Development; Interior; Justice; Labor; Transportation; Treasury; the Federal Trade Commission; General Services Administration; National Science Foundation; Office of Federal Procurement Policy; and the Small Business Administration. These members shall have a vote. Nonvoting members shall include the Executive Director of the Committee and at least one but no more than three representatives from the Executive Office of the President appointed by the President.~~

~~1-204. The Committee shall meet at least quarterly at the call of the Chairperson, and at such other times as may be determined to be useful according to the rule of procedure adopted by the Committee.~~

~~1-205. The Administrator of the Small Business Administration shall provide an Executive Director and adequate staff and administrative support for the Committee. The staff shall be located in the Office of the Chief Counsel for Advocacy of the Small Business Administration, or in such other office as may be established specifically to further the policies expressed herein. Nothing in this Section prohibits the use of other properly available funds and resources in support of the Committee.~~

~~1-3. Functions of the Committee.~~

~~The Committee shall in a manner consistent with law:~~

~~1-301. Promote, coordinate and monitor the plans, programs and operations of the departments and agencies of the Executive Branch which may contribute to the establishment, preservation and strengthening of women's business enterprise. It may, as appropriate, develop comprehensive interagency plans and specific program goals for women's business enterprise with the cooperation of the departments and agencies.~~

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~~1-302. Establish such policies, definitions, procedures and guidelines to govern the implementation, interpretation and application of this order, and generally perform such functions and take such steps as the Committee may deem to be necessary or appropriate to achieve the purposes and carry out the provisions hereof.~~

~~1-303. Promote the mobilization of activities and resources of State and local governments, business and trade associations, private industry, colleges and universities, foundations, professional organizations, and volunteer and other groups toward the growth of women's business enterprise, and facilitate the coordination of the efforts of these groups with those of the departments and agencies.~~

~~1-304. Make an annual assessment of the progress made in the Federal Government toward assisting women's business enterprise to enter the mainstream of business ownership and to provide recommendations for future actions to the President.~~

~~1-305. Convene and consult as necessary with persons inside and outside government to develop and promote new ideas concerning the development of women's business enterprise.~~

~~1-306. Consider the findings and recommendations of government and private sector investigations and studies of the problems of women entrepreneurs, and promote further research into such problems.~~

~~1-307. Design a comprehensive and innovative plan for a joint Federal and private sector effort to develop increased numbers of new women-owned businesses and larger and more successful women-owned businesses. The plan should set specific reasonable targets which can be achieved at reasonable and identifiable costs and should provide for the measurement of progress towards these targets at the end of two and five years. Related outcomes such as income and tax revenues generated, jobs created, new products and services introduced or new domestic or foreign markets created should also be projected and measured in relation to costs wherever possible. The Committee should submit the plan to the President for approval within six months of the effective date of this Order.~~

~~1-4. Other Responsibilities of the Federal Departments and Agencies.~~

~~1-401. The head of each department and agency shall designate a high level official to have that responsibility for the participation and cooperation of that department or~~

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~~agency in carrying out this Executive order. This person may be the same person who is the department or agency's representative to the Committee.~~

~~1-402. To the extent permitted by law, each department and agency upon request by the Chairperson shall furnish information, assistance and reports and otherwise cooperate with the Chairperson and the committee in the performance of their functions hereunder. Each department or agency shall ensure that systematic data collection processes are capable of providing the Committee current data helpful in evaluating and promoting the efforts herein described.~~

~~1-403. The officials designated under Section 1-401, when so requested, shall review the policies and programs of the women's business enterprise program, and shall keep the Chairperson informed of proposed budget, plans and programs of their departments or agencies affecting women's business enterprise.~~

~~1-404. Each Federal department or agency, within constraints of law, shall continue current efforts to foster and promote women's business enterprise and to support the program herein set forth, and shall cooperate with the Chairperson and the Committee in increasing the total Federal effort.~~

~~1-5. Reports.~~

~~1-501. The Chairperson shall, promptly after the close of the fiscal year, submit to the President a full report of the activities of the Committee hereunder during the previous fiscal year. Further, the Chairperson shall, from time to time, submit to the President the Committee's recommendations for legislation or other action to promote the purposes of this Order.~~

~~1-502. Each Federal department and agency shall report to the chairperson as hereinabove provided on a timely basis so that the Chairperson and the Committee can consider such reports for the Committee report to the President.~~

~~1-6 Definitions.~~

~~For the purposes of this Order, the following definitions shall apply:~~

~~1-601. "Women-owned business" means a business that is at least 51 percent owned by a woman or women who also control and operate it. "control" in this context means exercising the power to make policy decisions. "Operate" in this context means being~~

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~~actively involved in the day-to-day management.~~

~~1-602. "Women's business enterprise" means a woman-owned business or businesses or the efforts of a woman or women to establish, maintain or develop such a business or businesses.~~

~~r1-603. Nothing in subsections 1-601 or 1-602 of this Section (1-6) should be construed to prohibit the use of other definitions of a woman-owned business or women's business enterprise by departments and agencies of the Executive Branch where other definitions are deemed reasonable and useful for any purpose not inconsistent with the purposes of this Order. Wherever feasible, departments and agencies should use the definition of a woman-owned business in subsection 1-601 above for monitoring performance with respect to women's business enterprise in order to assure comparability of data throughout the Federal Government.~~

~~1-7. Construction~~

~~Nothing in this Order shall be construed as limiting the meaning or effect of any existing Executive order.~~

~~THE WHITE HOUSE
May 18, 1979~~

~~JIMMY CARTER~~

(Source: Repealed by emergency rulemaking at 33 Ill. Reg. 8546, effective June 2, 2009, for a maximum of 150 days)

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- 1) Heading of the Part: Procedures For Providing Financial Assistance From The Water Pollution Control Loan Program Under The American Recovery And Reinvestment Act of 2009
- 2) Code Citation: 35 Ill. Adm. Code 369
- 3)

<u>Section Numbers:</u>	<u>Emergency Action:</u>
369.110	New Section
369.120	New Section
369.130	New Section
369.140	New Section
369.210	New Section
369.220	New Section
369.230	New Section
369.240	New Section
369.310	New Section
369.320	New Section
369.330	New Section
369.340	New Section
369.410	New Section
369.420	New Section
369.430	New Section
369.440	New Section
369.450	New Section
369.460	New Section
369.470	New Section
369.480	New Section
369.510	New Section
369.520	New Section
369.530	New Section
369.540	New Section
369.610	New Section
369.620	New Section
369.630	New Section
369.640	New Section
369.650	New Section
369.660	New Section
369.670	New Section
369.710	New Section

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369.720	New Section
369.730	New Section
369.740	New Section
369.750	New Section
369.810	New Section
369.820	New Section
369.830	New Section
369.910	New Section
369.920	New Section
369.930	New Section
369.940	New Section
369.950	New Section
369.1010	New Section
369.1020	New Section
369.1030	New Section
369.1110	New Section
369.1120	New Section
369.APPENDIX A	New Section
369.APPENDIX B	New Section

- 4) Statutory Authority: Implementing and authorized by Section 19.1-19.9 of the Environmental Protection Act [415 ILCS 5/19.1-19.9]
- 5) Effective Date of Rules: June 2, 2009
- 6) If this emergency rule is to expire before the end of the 150-day period, please specify the date on which it is to expire: This emergency rulemaking is not set to expire before the end of the 150-day period.
- 7) Date Filed with the Index Department: June 2, 2009
- 8) A copy of the emergency rulemaking, including any material incorporated by reference, is on file in the Agency's principal office and is available for public inspection.
- 9) Reason for Emergency: Emergency rules are necessary so the Agency can quickly meet its obligations under the American Recovery and Reinvestment Act of 2009 (ARRA), which was signed into law by the president on February 17, 2009 to get economic stimulus money out to shovel ready projects. Also, pursuant to 415 ILCS 5/19.4(d), the Agency is required to adopt emergency rules as necessary to allow for the timely

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administration of funds provided under ARRA. Identical rules will also be submitted for publication in the Illinois Register through the general rulemaking process by the Agency.

- 10) A Complete Description of the Subjects and Issues Involved: This rulemaking will address how the Agency will disburse monies received under ARRA. This rulemaking will establish a fixed loan rate at 0.00% and will also provide a more streamlined approach for the loan application process so money can quickly be distributed to shovel ready projects in accordance with ARRA.
- 11) Are there any proposed rulemakings to this Part pending? Yes
- 12) Statement of Statewide Policy Objectives: This rulemaking will not create a State mandate for units of local government.
- 13) Information and questions regarding this emergency rulemaking shall be directed to:

Stefanie N. Diers
Assistant Counsel
Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
P.O. Box 19726
Springfield, Illinois 62794-9276

217/782-5544

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

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TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE C: WATER POLLUTION
CHAPTER II: ENVIRONMENTAL PROTECTION AGENCY

PART 369

PROCEDURES FOR PROVIDING FINANCIAL ASSISTANCE FROM THE WATER
POLLUTION CONTROL LOAN PROGRAM UNDER THE
AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

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Section

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369.120 Administration

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369.130 Definitions

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369.140 Incorporations by Reference

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SUBPART B: FEDERAL REQUIREMENTS FOR THE
WATER POLLUTION CONTROL LOAN PROGRAM

Section

369.210 Uses of the Water Pollution Control Loan Program

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369.220 Agency Responsibilities under Title VI of CWA and the American Recovery and
Reinvestment Act of 2009

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369.230 Requirements for Loan Recipients under Title VI of CWA

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369.240 Green Project Reserve

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SUBPART C: LIABILITIES AND REMEDIES FOR FAILURE
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369.310 Noncompliance with Loan Procedures

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SUBPART D: PROCEDURES FOR ISSUANCE OF LOANS

Section

369.410 Project Priority Determination

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369.420 Pre-Application for Financial Assistance and Identification of Projects to be Funded

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369.430 Financial Assistance Application and Approval

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369.440 Fixed Loan Rate

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369.460 Limitation on Design Cost

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369.470 Limitation of Financial Assistance

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369.510 Loan Applicant's Responsibilities During Facilities Planning

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369.520 State Environmental Review

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369.530 Limitations on Awards for Individual Systems

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369.540 Areawide Waste Treatment Management Planning
EMERGENCY

SUBPART F: REQUIREMENTS APPLICABLE TO SUBAGREEMENTS

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369.620 Construction Contracts
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369.630 Contracts for Personal and Professional Services
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369.640 Compliance with Procurement Requirements for Construction Contracts
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369.650 Disputes
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369.670 Covenant Against Contingent Fees
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SUBPART G: REQUIREMENTS APPLICABLE TO CONSTRUCTION INITIATION,
CHANGES, COMPLETION AND OPERATION OF PROJECT

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369.740 Operation and Maintenance of the Project
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369.830 Single Audit Act

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369.930 Financial Capability

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369.940 Dedicated Source of Revenue

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Section

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369.1020 Use of Loan Funds and Payment of Unallowable Costs

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369.1030 Disbursement of Loan Funds

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369.1120 Delinquent Loan Repayments

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369.APPENDIX A Executive Orders

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369.EXHIBIT A Executive Order 12549

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369.EXHIBIT B Executive Order 11246

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369.APPENDIX B Loan Application Form

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AUTHORITY: Implementing and authorized by Sections 19.1 through 19.9 of the Environmental Protection Act [415 ILCS 5/19.1 through 19.9].

SOURCE: Adopted by emergency rulemaking at 33 Ill. Reg. 8589, effective June 2, 2009, for a maximum of 150 days.

SUBPART A: INTRODUCTION

Section 369.110 Purpose**EMERGENCY**

- a) The Water Quality Act of 1987 (the 1987 Amendments) which amended the federal Water Pollution Control Act (33 USC 1251 et seq.) sets forth a schedule and mechanism for the transition from the federal level to the state and local level for responsibility of funding wastewater treatment facilities. Title VI of the 1987 Amendments creates a new authority that authorizes the United States Environmental Protection Agency (USEPA) to make grants to states to capitalize state water pollution control revolving funds. Title VI also establishes specific requirements for states for the development and operation of the state loan programs, some of which must be assumed by the local government unit as the recipient of a loan.
- b) Part 365 sets forth procedures to be used by the Illinois Environmental Protection Agency to operate the Water Pollution Control Loan Program (WPCLP), including the issuance of loans for the construction of wastewater treatment works as authorized by P.A. 85-1135, effective September 1, 1988 and amended by P.A. 90-121, effective July 17, 1997.
- c) The American Recovery and Reinvestment Act of 2009 (ARRA) provides a

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source of capitalization grants to the states to provide loans, as well as additional subsidization including forgiveness of principal, negative interest loans, and grants to eligible applicants for the construction of wastewater facilities. This Part 369 sets out procedures the Agency shall use to provide financial assistance from ARRA, which shall be administered through WPCLP.

**Section 369.120 Administration
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- a) The WPCLP, an interest-bearing special fund, will be administered by the Agency as an instrumentality of the State of Illinois in accordance with the Operating and Capitalization Grant Agreements between the Agency and USEPA in accordance with State and federal laws. All funds from ARRA for the construction of wastewater facilities will be administered through WPCLP.
- b) Copies of forms that are required and sample language that can be used to satisfy the requirements of an ARRA financial application administered through the authority of WPCLP can be obtained from the Illinois Environmental Protection Agency, Infrastructure Financial Assistance Section, 1021 North Grand Avenue East, Post Office Box 19276, Springfield, Illinois 62794-9276, or found on the Agency's website at www.epa.state.il.us.
- c) The program requirements of ARRA shall take precedent on projects receiving financial assistance from both ARRA and WPCLP.

**Section 369.130 Definitions
EMERGENCY**

- a) Unless specified otherwise, all terms shall have the meanings set forth in the Environmental Protection Act (Act) [415 ILCS 5] and the regulations adopted under that Act (35 Ill. Adm. Code: Subtitle C) and the Clean Water Act (CWA), as amended (33 USC 1251 et seq.).
- b) For the purposes of this Part, the following definitions apply:

Addenda – Documents, issued by the loan applicant after advertisement for bids, that modify or interpret the contract documents, drawings, and specifications, by additions, deletions, clarifications or corrections.

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Agency – Illinois Environmental Protection Agency.

ARRA – The American Recovery and Reinvestment Act of 2009 (Public Law 111-5).

Binding Commitment – A legal obligation between the Agency and a local government unit to provide financial assistance from the WPCLP to that local government unit, specifying the terms and schedules under which assistance is provided. The loan agreement will be considered a binding commitment.

Building Cost – The cost of erection of construction contract line items. Building costs do not include preliminary planning, engineering, architectural, legal, fiscal, administrative or contingency costs.

Capitalization Grant – The actual federal funds received by the Agency for deposit into WPCLP as a result of the capitalization grant agreement with USEPA.

Capitalization Grant Agreement – The agreement entered into each federal fiscal year between the Agency and USEPA for the purpose of providing a grant to capitalize WPCLP and enable the Agency to provide assistance for construction of wastewater treatment works.

Change Order – A written order by the loan recipient to the contractor authorizing an addition, deletion or revision in the work within the general scope of the contract documents, or authorizing an adjustment in the contract price or contract time.

Compliance Project – A project that consists of construction, expansion or upgrading of a wastewater treatment works necessary to meet State and federal requirements, as specified in 35 Ill. Adm. Code: Subtitle C and CWA, respectively.

Construction – *Any one or more of the following which is undertaken for a public purpose: preliminary planning to determine the feasibility of the wastewater treatment works, engineering, architectural, legal, fiscal or economic investigations, or studies, surveys, designs, plans, working drawings, specifications, procedures or other necessary actions, erection,*

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building, acquisition, alteration, remodeling, improvement or extension of wastewater treatment works, or the inspection or supervision of any of the foregoing items. [415 ILCS 5/19.2(d)]

Contract Documents – The contract, including but not limited to advertisement for bids, information for bidders, bid, bid bond, agreement, payment bond, performance bond, notice of award, notice to proceed, change order, drawings, specifications and addenda.

Cost-Effectiveness Analysis – An analysis of the feasible wastewater treatment works, processes and techniques capable of meeting the applicable effluent, water quality and public health requirements over the design life of the facility while recognizing environmental and other non-monetary considerations.

CWA – The Clean Water Act, as amended (33 USC 1251 et seq.).

Dedicated Source of Revenue – The type of security and the basis of legal authorization that are dedicated by legislative enactment or other appropriate authority along with the applicable revenue source pledged for repayment and recorded in an account for the purpose of loan repayment to WPCLP, which is sufficient to repay the principal and interest on the loan.

Design – All administrative, legal and engineering tasks, subsequent to facilities plan approval but prior to advertisement for bid proposal, associated with receiving approval of a loan application. This shall include the following: surveys, designs, plans, working drawings, specifications, soil investigations and any other tests or process determinations required to establish design criteria, and development of user charge systems and sewer use ordinances.

Director – Director of the Illinois Environmental Protection Agency.

Energy Efficiency – The use of improved technologies and practices to reduce the energy consumption of water quality projects, including projects to reduce energy consumption or produce clean energy used by a treatment works.

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Environmentally Innovative Projects – Projects that demonstrate new and/or innovative approaches to managing water resources in a more sustainable way, including projects that achieve pollution prevention or pollutant removal with reduced cost and projects that foster adaptation of water protection programs and practices to climate change.

Fixed Loan Rate – The fixed loan rate shall be 0.00% for loans issued from the funds provided by ARRA.

Fund – The Water Revolving Fund as authorized by [415 ILCS 5/19.3], consisting of the Water Pollution Control Loan Program, the Public Water Supply Loan Program, and the Loan Support Program.

Green Infrastructure – Includes a wide array of practices at multiple scales that manage and treat stormwater and that maintain and restore natural hydrology by infiltrating, evapotranspiring and capturing and using stormwater. On a regional scale, green infrastructure is the preservation and restoration of natural landscape features, such as forests, floodplains and wetlands, coupled with policies such as infill and redevelopment that reduce overall imperviousness in a watershed. On the local scale, green infrastructure consist of site- and neighborhood-specific practices, such as bioretention, trees, green roofs, porous pavements and cisterns.

Infiltration – Water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connection or manholes.

Inflow – Water other than wastewater that enters a sewer system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash water, or drainage.

Initiation of Loan Repayment Period – The date in a loan agreement or amendment that establishes the beginning point of the loan repayment period.

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Initiation of Operation – The date specified by the loan agreement on which use of the project began operation for the purposes that it was planned, designed and constructed.

Intended Use Plan – *A plan which includes a description of the short and long term goals and objectives of the Fund, project categories, discharge requirements, terms of financial assistance and the communities to be served.* [415 ILCS 5/19.2(e)]

Loan Agreement – The contractual agreement between the Agency and the local government unit that contains the terms and conditions governing the loan issued from WPCLP.

Loan Applicant – The local government unit that has applied for a loan from WPCLP for construction of wastewater treatment works.

Loan Commitment Letter – The letter that is sent by the Agency to the loan applicant which reserves loan funds and identifies the requirements that must be satisfied prior to the execution of the loan agreement.

Loan Procedures – The Procedures for Providing Financial Assistance from the Water Pollution Control Loan Program under the American Recovery and Reinvestment Act of 2009.

Loan Recipient – A local government unit that has been provided a loan for construction of a wastewater treatment works from WPCLP and that will own and be responsible for the operation and maintenance of the wastewater facilities.

Local Government Unit – *A county, municipality, township, municipal or county sewerage or utility authority, sanitary district, public water district, improvement authority or any other political subdivision whose primary purpose is to construct, operate and maintain wastewater treatment facilities or public water supply facilities or both.* [415 ILCS 5/19.2(g)]

Operating Agreement – The agreement between the Agency and USEPA that establishes the policies, procedures and activities for the application and receipt of federal capitalization grant funds for capitalization of

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WPCLP.

Principal – All disbursements that will be financed at the time the repayment schedule period begins.

Principal Forgiveness – A portion of the loan amount that does not have to be repaid (is forgiven) upon execution of the loan.

Project – The activities or tasks the Agency identifies in the loan agreement for which the loan recipient may expend loan funds.

Project Priority List – An ordered listing of projects developed in accordance with the priority system described in 35 Ill. Adm. Code 366 (Procedures and Requirements for Determining Loan Priorities for Municipal Wastewater Treatment Works) that the Agency has determined are eligible to receive financial assistance from WPCLP.

Responsible Bid – A bid that demonstrates the apparent ability of the bidder to successfully meet all the requirements specified in the contract documents. Information required to demonstrate responsibility may be corrected or submitted after bid opening.

Responsive Bid – A bid that complies with all meaningful or material aspects of the contract documents. The bid must constitute a definite and unqualified offer to meet the material requirements of the contract documents, including any terms that affect price, quality, quantity or time of delivery, or are clearly identified in the contract documents to be complied with at the risk of bid rejection for non-responsiveness. Bid defects resulting in a non-responsive bid may not be corrected after the bid opening.

Source of Revenue – The revenues of the system, including accounts receivable and the proceeds that are sufficient to repay the principal on the loan.

Subagreement – A written agreement between the loan recipient and another party and any tier of agreement thereunder to furnish services, supplies or equipment necessary to complete the project for which a loan is provided, including construction contracts, contracts for personal and

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professional services and purchase orders.

Title VI – Title VI of the federal Clean Water Act (33 USC 1251 et seq.).

Treatment Works – *Any devices and systems owned by a local government unit and used in the storage, treatment, recycling, and reclamation of sewerage or industrial wastes of a liquid nature, including intercepting sewers, outfall sewers, sewage collection systems, pumping power and other equipment, and appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply, such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process for wastewater facilities.* [415 ILCS 5/19.2(f)]

Useful Life – The estimated period during which a wastewater treatment works is intended to be operable.

USEPA – The United States Environmental Protection Agency.

User Charge – A charge levied on the users of a treatment works to produce adequate revenues for the operation, maintenance and replacement of the treatment works.

Water Efficiency – The use of improved technologies and practices to deliver equal or better services with less water.

WPCLP – The Water Pollution Control Loan Program as authorized by Section 19.2 of the Environmental Protection Act [415 ILCS 5/19.2].

**Section 369.140 Incorporations by Reference
EMERGENCY**

- a) The following publications are incorporated by reference:
 - 1) American Institute of Certified Public Accountants Professional Standards (1996), 666 Fifth Avenue, New York, New York 10019.
 - 2) Operation of Wastewater Treatment Plants (1980), 2nd edition (three

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volumes) (California State University, Sacramento).

- 3) Operation and Maintenance of Wastewater Collection Systems (1983), 1st edition (California State University, Sacramento).
- b) This Part 369 incorporates no later amendments or editions.

SUBPART B: FEDERAL REQUIREMENTS FOR THE
WATER POLLUTION CONTROL LOAN PROGRAM**Section 369.210 Uses of the Water Pollution Control Loan Program
EMERGENCY**

The Water Pollution Control Loan Program shall be used and administered by the Agency to provide assistance for the following purposes:

- a) *To accept and retain funds from grant awards, appropriations, transfers and payments of interest and principal;*
- b) *To make direct loans at or below market interest rates to any eligible local government unit to finance the construction of wastewater treatment works;*
- c) *With respect to funds provided under the American Recovery and Reinvestment Act of 2009, to make direct loans at or below interest rates to any eligible local government unit and to provide additional subsidization to any eligible local government unit, including, but not limited to, forgiveness of principal, negative interest rates, and grants;*
- d) *With respect to funds provided under the American Recovery and Reinvestment Act of 2009, to make direct loans at or below market interest rates to any eligible local government unit to buy or refinance debt obligations for treatment works incurred on or after October 1, 2008;*
- e) *With respect to funds provided under the American Recovery and Reinvestment Act of 2009, to provide additional subsidization, including, but not limited to, forgiveness of principal, negative interest rates, and grants for treatment works incurred on or after October 1, 2008;*

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- f) *To make direct loans at or below market interest rates to any eligible local government unit to buy or refinance debt obligations for treatment works incurred after March 7, 1985;*
- g) *To make direct loans at or below market interest rates for the implementation of a management program established under Section 319 of the Federal Water Pollution Control Act, as amended;*
- h) *To guarantee or purchase insurance for local obligations where such action would improve credit market access or reduce interest rates;*
- i) *As a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the State or any political subdivision or instrumentality thereof, if the proceeds of such bonds will be deposited in the Fund;*
- j) *To finance the reasonable costs incurred by the Agency in the administration of the Fund; and*
- k) *To transfer funds to the Public Water Supply Loan Program. [415 ILCS 5/19.3(b)]*

Section 369.220 Agency Responsibilities under Title VI of ~~the~~ CWA and the American Recovery and Reinvestment Act of 2009
EMERGENCY

- a) The WPCLP shall be established in accordance with the requirements of Title VI prior to the receipt of the capitalization grant for deposit into the WPCLP.
- b) The Agency will prepare an Intended Use Plan (IUP) and negotiate an Operating Agreement with USEPA that will be the basis for the Capitalization Grant Agreement. These documents establish the procedures, activities and assurances for operation of WPCLP, including, but not limited to, the following:
 - 1) Grant payments will be accepted in accordance with a payment schedule established jointly by the Agency and USEPA;
 - 2) A listing and description of projects on the Project Priority List to be provided financial assistance and the terms of the financial assistance;

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- 3) Binding commitments for 100 percent of each quarterly federal grant payment must be made by the Agency within one year after the receipt of each payment;
- 4) Funds as a result of the capitalization grants must first be used to assure maintenance of progress toward compliance with the enforceable deadlines, goals and requirements of CWA;
- 5) Loan award and disbursement procedures to document the loan recipient's compliance with Title VI requirements;
- 6) The loan repayment period cannot exceed 20 years beyond the earlier of the initiation of operation date or the initiation of the loan repayment period;
- 7) All repayments of loan principal shall be deposited into WPCLP;
- 8) Annual reporting to USEPA on the Agency's progress toward meeting its goals and objectives;
- 9) An annual audit of WPCLP in accordance with the auditing procedures of the General Accounting Office (75 USC 31); and
- 10) The Agency shall act in accordance with the requirements established under ARRA.

Section 369.230 Requirements for Loan Recipients under Title VI of ~~the~~ CWA
EMERGENCY

- a) Only local government units will be eligible for loans for wastewater treatment works projects and green infrastructure projects.
- b) Loan projects must be on the Project Priority List.
- c) Loan projects must be consistent with any plans developed under sections 205(j), 208, 303(e) and 319 of CWA.
- d) A dedicated source of revenue, sufficient to pay principal and interest when due,

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must be enacted and pledged by the loan recipient for repayment of the loan.

- e) Loan projects must meet federal disadvantaged business enterprise requirements in accordance with 40 CFR 33.
- f) Loan projects must meet the applicable requirements of any other federal laws and authorities.
- g) Loans will be made at or below market interest rates.
- h) Loan accounts related to the project construction and the dedicated source of revenue will be maintained by the loan recipient consistent with generally accepted accounting standards in accordance with the American Institute of Certified Public Accountants Professional Standards.
- i) Loans will be fully amortized not later than 20 years after the earlier of the initiation of operation date or the initiation of the loan repayment period.

**Section 369.240 Green Project Reserve
EMERGENCY**

To the extent there are sufficient eligible project applications, not less than 20 percent of the funds provided from ARRA shall be for projects to address green infrastructure, water or energy efficiency, improvements or environmentally innovative activities.

**SUBPART C: LIABILITIES AND REMEDIES FOR FAILURE TO
COMPLY WITH LOAN PROCEDURES****Section 369.310 Noncompliance with Loan Procedures
EMERGENCY**

- a) In the event of noncompliance with any condition or obligation arising out of the loan, the Director may take any necessary action as provided by law or by the loan agreement against the loan recipient including, but not limited to, one or more of the following actions:
 - 1) Commence legal action in a court of competent jurisdiction;
 - 2) Declare all amounts under the loan immediately due and payable, enforce

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any security, and recover all loan funds;

- 3) Terminate the loan pursuant to Section 369.330 (Termination) of this Subpart;
 - 4) Suspend all or part of the project work pursuant to Section 369.320 (Stop-Work Order) of this Subpart;
 - 5) Reduce the amount of the loan by the amount of misused funds; or
 - 6) Unilaterally adjust the fixed loan rate of the loan agreement to the current market interest rate.
- b) No action shall be taken under this Section without notice to the loan recipient.
- c) In determining whether to take action, the Agency shall, at a minimum, consider mitigating or aggravating factors, including, but not limited to, the severity and number of the violations; whether the violation is a continuing one; whether the loan recipient can remedy the violation; and whether the loan recipient remains capable of complying with the approved project work.

**Section 369.320 Stop-Work Order
EMERGENCY**

- a) In the event of any violation of this Part or non-compliance with the terms of the loan agreement, the Agency may, by written order, require the loan recipient to stop all or any part of the project work for a period of not more than 30 days after the date of the order, and for any further period to which the parties may agree. Any such order shall include a list of the project activities to which it applies. Upon receipt of a stop-work order, the loan recipient shall immediately comply with its terms and shall minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within 30 days after the date of the stop-work order, or within the period of any extension to which the parties have agreed, the Agency shall:
- 1) Cancel the stop-work order upon resolution of the violation or cause leading to that stop-work order; or
 - 2) Terminate the work covered by the stop-work order, as provided in

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Section 369.330(a) of this Subpart.

- b) If a stop-work order is canceled or the period of the order or any extension of that period expires, the loan recipient shall resume work. An adjustment may be made in the loan period, the project period, the loan amount, or any combination of these, and the loan amended accordingly, if the loan recipient asserts a written claim for the adjustment within 30 days after the end of the work stoppage.
- c) All costs that are incurred by the loan recipient after the receipt of a stop-work order, or during any extension of the stop-work order period to which the Agency and the loan recipient have agreed, shall be deemed unallowable costs unless otherwise authorized by the Agency in writing or authorized under the loan procedures.

**Section 369.330 Termination
EMERGENCY**

- a) **Loan Termination by the Agency**
The Agency, by written notice to the loan recipient, may terminate the loan in whole or in part. Cause for termination shall include, but not be limited to, failure by the loan recipient to comply with the terms and conditions of the loan. Upon loan termination, the loan recipient shall refund any unexpended loan funds to the State of Illinois to be deposited in WPCLP, except for such portion as may be required to pay the allowable costs of materials and equipment furnished or services rendered under an enforceable contract prior to the effective date of the termination.
- b) **Project Termination by the Loan Recipient**
A loan recipient who wishes to terminate a project for which the loan has been provided must submit a written request to the Agency that documents good cause for the proposed termination. If the Agency agrees that there is good cause for termination of all or any portion of the project, it shall enter into a termination agreement with the loan recipient or unilaterally terminate the loan. If the Agency finds that the loan recipient has terminated the project without good cause, it shall declare the loan in default, and all loan funds previously paid to the loan recipient, together with interest on the loan, shall be returned to the State of Illinois in accordance with a schedule established by the Agency for deposit into WPCLP. Good cause to terminate a loan project includes, but is not limited to:

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- 1) Changes in economic circumstances within the loan recipient's service area; and
- 2) Information that the approved treatment technology will not perform as originally anticipated.

**Section 369.340 Waiver of Procedures
EMERGENCY**

- a) Except as provided in subsection (b) or otherwise required by law, the Director may waive any of the loan procedures, either in whole or in part, by a written statement to the loan recipient, either as a special condition of the loan or otherwise, provided the Director finds that the procedure or requirement to be waived is not necessary to insure the integrity of the project, will not reduce a recipient's ability to repay the loan to the Agency or will not, in general, weaken the financial position of WPCLP. The waiver may be subject to such additional conditions the Director deems necessary.
- b) The following procedures will not be waived:
 - 1) Section 369.410 (Project Priority Determination) of this Part
 - 2) Section 369.440 (Fixed Loan Rate) of this Part
 - 3) Section 369.510 (Loan Applicant's Responsibilities During Facilities Planning) of this Part
 - 4) Section 369.520 (State Environmental Review) of this Part
 - 5) Section 369.530 (Limitations on Awards for Individual Systems) of this Part
 - 6) Section 369.540 (Areawide Waste Treatment Management Planning) of this Part
 - 7) Section 369.620(d)(3) (Wage Provisions) of this Part
 - 8) Section 369.620(d)(4) (Disadvantaged Business Enterprise Requirements) of this Part

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- 9) Section 369.620(d)(6) (Debarment and Suspension Provisions) of this Part
- 10) Section 369.630(a)(1) (disadvantaged business enterprise requirements) of this Part
- 11) Section 369.630(a)(4) (debarment and suspension certification) of this Part
- 12) Section 369.740 (Operation and Maintenance of the Project) of this Part
- 13) Section 369.910 (Sewer Use Ordinance) of this Part
- 14) Section 369.920 (User Charges) of this Part
- 15) Section 369.940 (Dedicated Source of Revenue) of this Part

SUBPART D: PROCEDURES FOR ISSUANCE OF LOANS

**Section 369.410 Project Priority Determination
EMERGENCY**

- a) Financial assistance from WPCLP/ARRA will be provided only to local government units for projects on the Project Priority List developed by the Agency pursuant to 35 Ill. Adm. Code 366.
- b) The Project Priority List sets out the priority for receipt of loans for each loan applicant. Priorities will be established in accordance with 35 Ill. Adm. Code 366 after the receipt by the Agency of both loan pre-applications pursuant to Section 369.420 (Pre-Applications for Financial Assistance and Identification of Projects to be Funded) of this Part and approved facilities planning pursuant to Section 369.510 (Loan Applicant's Responsibilities During Facilities Planning) and Section 369.520 (State Environmental Review) of this Part. For projects represented by loan pre-applications only, the Agency will provide limited priority scoring for inclusion of the project on the Project Priority List.
- c) Projects included in the Intended Use Plan will be selected from projects on the Project Priority List in priority order, provided the project is scheduled to initiate construction by December 31, 2009.

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- d) The available funds awarded for a project may be limited by the Agency to reflect the amount of funds needed to meet cash flow demands for that project during the current funding cycle or to meet WPCLP/ARRA funding availability. Any project that receives an adjustment to meet cash flow demands or WPCLP/ARRA funding availability may have an opportunity for additional funding in future funding cycles as money becomes available.

**Section 369.420 Pre-Application for Financial Assistance and Identification of Projects to be Funded
EMERGENCY**

- a) Every loan applicant shall submit to the Agency a signed and dated pre-application form that includes at a minimum the following items:
- 1) Legal name of applicant;
 - 2) Address;
 - 3) Authorized representative – name and title;
 - 4) Project classification (35 Ill. Adm. Code 366);
 - 5) Project description;
 - 6) Discharge location point;
 - 7) Cost estimate; and
 - 8) Project schedule.
- b) Loan applicants seeking financial assistance must file a new pre-application annually.
- c) A project with approved facility planning may be added to the Project Priority List at any time by the submission of a pre-application.
- d) The Agency shall publish a list of the projects that are proposed for funding. These projects will be included in the Intended Use Plan.

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- e) After March 31 of each year, the Agency may bypass projects on the Intended Use Plan that cannot meet the schedule to initiate construction by March 31 of that year. The Agency will evaluate projects in priority order and may offer loan commitments to other projects on the Project Priority List in accordance with Section 369.430 (Financial Assistance Application and Approval) of this Subpart.

**Section 369.430 Financial Assistance Application and Approval
EMERGENCY**

- a) In order to receive a loan commitment letter for financial assistance under ARRA, the following documentation shall be submitted by the loan applicant and approved by the Agency:
- 1) Facilities plan that meets the requirements of Section 369.510 (Loan Applicant's Responsibilities During Facilities Planning) and 369.520 (State Environmental Review);
 - 2) Design documents, including plans and specifications, with a construction permit, if applicable;
 - 3) An enacted ordinance or other legally binding instrument authorizing the bonds, notes, security agreements or other evidence of indebtedness and an approved user charge system in accordance with Section 369.920 (User Charges) and documentation to support the loan applicant's ability to repay the loan in accordance with Section 369.930 (Financial Capability) and Section 369.940 (Dedicated Source of Revenue) of this Part;
 - 4) A loan application form (Appendix B);
 - 5) An EPA Form 4700-4, Compliance Report; and
 - 6) An executed contract for design and construction related work in accordance with Section 369.630 (Contracts for Personal and Professional Services) of this Part if financing is being requested for these specific costs.
- b) In addition to the items identified in subsection (a), the Agency must have received the following bid documentation prior to the issuance of the Loan Agreement:

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- 1) A certified copy of the published bid advertisements;
- 2) Any addenda by the loan applicant, if applicable;
- 3) A summary of the evidence that the contractor and engineer have met the disadvantaged business enterprise requirements pursuant to 40 CFR 33;
- 4) A copy of the bid tabulations;
- 5) An analysis of the bids and recommendations for the award of the bids;
- 6) A copy of the successful bid proposals;
- 7) The notice of the applicant's intent to award; and
- 8) A certification from the loan applicant that all other bid requirements have been satisfied, including bid bond requirements and other certifications as required by State and federal law.

**Section 369.440 Fixed Loan Rate
EMERGENCY**

The fixed loan rate shall be a simple annual rate of 0.00% for all wastewater facilities loans under ARRA, administered through WPCLP.

**Section 369.450 Refinancing
EMERGENCY**

- a) Design costs, set forth in Section 369.460 (Limitation on Design Cost) of this Subpart, and bidding costs related to eligible construction contracts incurred prior to the award of the loan agreement are eligible for refinancing.
- b) Total eligible costs for projects that received a WPCLP Loan Agreement between October 1, 2008 and February 17, 2009 are eligible for refinancing to ARRA program financial terms.

**Section 369.460 Limitation on Design Cost
EMERGENCY**

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Allowable costs for design of the loan project will be limited to the actual cost incurred for design, up to a maximum percentage of the allowable as bid construction cost.

- a) For allowable as bid construction costs of \$500,000 or less, the design will be funded up to 15%;
- b) For allowable as bid construction costs of \$500,001 to \$2,000,000, the design will be funded up to 12%;
- c) For allowable as bid construction costs of \$2,000,001 to \$5,000,000, the design will be funded up to 10%;
- d) For allowable as bid construction costs of \$5,000,001 to \$10,000,000, the design will be funded up to 8%; and
- e) For allowable as bid construction costs of more than \$10,000,000, the design will be funded up to 7%.

**Section 369.470 Limitation on Financial Assistance
EMERGENCY**

The amount of financial assistance from ARRA available to a loan applicant cannot exceed 50% of the total eligible project cost or \$10,000,000, whichever is less. Loan applicants with multiple projects will be limited by the aggregate amount of their projects in relation to these limitations.

**Section 369.480 Principal Forgiveness
EMERGENCY**

All financial assistance from ARRA shall be in the form of a 0.00% interest loan with principal forgiveness of 50% of the total ARRA funded amount. Loan applicants with multiple projects will be limited by the aggregate amount of their projects in relation to these limitations.

SUBPART E: PLANNING REQUIREMENTS FOR LOAN PROJECTS

**Section 369.510 Loan Applicant's Responsibilities During Facilities Planning
EMERGENCY**

- a) The loan applicant shall provide facilities planning, which shall consist of plans

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and studies that are directly related to the construction of wastewater treatment works, to maintain compliance with applicable State and federal requirements, as specified in 35 Ill. Adm. Code: Subtitle C and CWA, while recognizing environmental and social conditions. The planning shall provide documentation on the need for the facilities for which loan assistance is being requested.

- b) If any information required to be furnished as part of a facilities plan has been developed separately, it shall be furnished and incorporated by reference in the facilities plan. Planning previously or collaterally accomplished under local, State or federal programs may be utilized to the extent applicable.
- c) The facilities plan shall be submitted to the Agency for approval. Where applicable, the applicant shall also submit drafts of any inter-governmental agreements or demonstrations of legal authority necessary to plan implementation.
- d) The facilities plan may include more than one construction project and may provide the basis for several subsequent construction projects. The Agency shall review any facilities plan that has previously served as the basis for a loan to determine if changes have occurred that require amendment of the plan for the subsequent project. If substantial changes have occurred that warrant revision or amendment of the plan as specified in Section 369.520 (State Environmental Review) of this Subpart, the loan applicant shall revise or amend and resubmit the plan for Agency review and approval in accordance with Section 369.520 (State Environmental Review) of this Subpart.
- e) Facilities planning shall include the following elements in sufficient detail to, at a minimum, comply with all applicable construction permit supporting data requirements of 35 Ill. Adm. Code 370.210:
 - 1) A complete description of the selected complete waste treatment system or systems of which the proposed wastewater treatment works is a part, identification of any existing violations of federal or State wastewater regulations and identification of the needs to be addressed by the proposed project.
 - 2) A discussion of the technical, financial, managerial and environmental considerations that form the basis for the applicant's selection of the recommended project, including an evaluation regarding the elimination

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of infiltration and inflow where applicable. When appropriate to the project scope, the following issues shall be addressed:

- A) The relationship of the nature, size and capacity of the selected alternative to the needs to be served, including reserve capacity;
 - B) Identification of current and proposed effluent discharge limitations and water quality standards for the proposed wastewater treatment works, as required by Title IV of CWA and 35 Ill. Adm. Code: Subtitle C;
 - C) A discussion of the operational requirements of the selected alternative and provisions for the ultimate disposal of sludge materials from the wastewater treatment process;
 - D) An inventory of the relative environmental impacts of the selected alternative and a discussion of the measures that would be required during design and construction to mitigate or minimize negative environmental impacts; and
 - E) Adequate basis of design information for the selected alternative to confirm the reasonability of cost estimates.
- 3) A detailed description of the alternative selected for loan assistance, including preliminary engineering data, complete cost estimates for design and construction, one or more 8.5 by 11 inch site maps locating areas of construction and/or indirect impacts, and a projected schedule for completion. The engineering data shall include, to the extent appropriate, flow diagrams, unit process descriptions, detention times, flow rates, unit capacities, etc., sufficient to demonstrate that the proposed project will be designed in accordance with 35 Ill. Adm. Code 370.
 - 4) Evidence of consultation with relevant federal, State, regional or local agencies, with documentation of project approval where required.
 - 5) An implementation plan for the proposed recommendations, including necessary financial arrangements for the operation and maintenance of the wastewater treatment system and repayment of the proposed loan amount, as well as the impact of these costs on the system users.

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**Section 369.520 State Environmental Review
EMERGENCY**

- a) Prior to making a final determination on the acceptability of any facilities plan, the Agency shall undertake an environmental review. The Agency may categorically exclude certain classes of projects from a detailed environmental review and public hearing requirement when, by virtue of their limited scope, the projects have no potential for negative environmental impacts.
- b) The Agency shall not begin its environmental review until it has determined that the facilities plan conforms to the requirements of Section 369.510 (Loan Applicant's Responsibilities During Facilities Planning) of this Subpart, and that, based on the information available, all reasonable measures have been taken in the planning to avoid and mitigate negative environmental impacts.
- c) The scope of the Agency's environmental review shall include, but not be limited to, an assessment of the impacts of both the loan funded project and the overall planning on rare and endangered species, historic and cultural resources, prime agricultural land, air and water quality, recreational areas, wetlands, floodplains and other sensitive environmental areas. The review shall also assess the direct and indirect impacts of construction.
- d) For all projects requiring an environmental review, the Agency will assess the environmental impacts of the proposed project and prepare a written Preliminary Environmental Impacts Determination (PEID). The public will be given an opportunity to comment on the facilities plan and the Agency's environmental impacts assessment.
- e) The PEID shall be mailed to the loan applicant and other interested parties, inviting public comment. The loan applicant shall hold a public hearing on the plan and the Agency's PEID for the purpose of obtaining public comment. The public hearing will be held within 30 days after receipt of the Agency's PEID or within an alternative time period that is justified by the loan applicant and approved by the Agency. The loan applicant shall allow an additional 10 days from the date of the public hearing for the submission of written comments from the public.
- f) The time and place of the public hearing shall be conspicuously and adequately

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announced at least 10 days before the hearing. In addition, the Agency's PEID document shall be displayed at a convenient local site sufficiently prior to the hearing to obtain a level of public participation appropriate to the scope and impacts of the proposed project.

- g) The loan applicant shall provide the Agency with an accurate summary of all public comments received, together with any proposed amendments to the plan made in response to these comments.
- h) Upon receipt of this public hearing summary and after the expiration of the 10 day written comment period, the Agency shall issue:
 - 1) An unconditional approval of the plan (original or as amended); or
 - 2) A conditional approval of the plan with special conditions; or
 - 3) A disapproval of the plan based on evidence of significant negative environmental impacts for which appropriate mitigative measures have not been identified; or
 - 4) A determination of the need for an Environmental Impact Statement (EIS) under the National Environmental Policy Act (42 USC 4332). The Agency may change its disapproval to approval or conditional approval based on the recommendations of the EIS.
- i) For projects categorically excluded from the environmental review process, the Agency shall provide to the applicant a Notice of Intent to Issue a Categorical Exclusion. The applicant shall conspicuously and adequately announce the Notice of Intent to Issue a Categorical Exclusion, provide public access to the planning documents and Agency Notice of Intent, and allow 10 days for public comment. If no valid objection is raised to the Categorical Exclusion, the Agency shall issue an unconditional approval of the facilities plan. Should valid concerns be raised over potential environmental impacts, the Agency shall proceed with an environmental review under this Section or issue a conditional approval when the applicant incorporates mitigative measures that would clearly resolve the environmental concerns.
- j) Additions to the project scope or changes to the location of proposed construction activity shall require an amendment to an approved facilities plan. Where the

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Agency determines that the proposed changes will not alter the previous environmental impacts findings, it will approve planning amendments by letter. In other cases, additional environmental review and public comment may be required.

- k) Agency facilities planning determinations made in accordance with subsection (h) shall be subject to the provisions of the Illinois Administrative Procedure Act [5 ILCS 100].

**Section 369.530 Limitations on Awards for Individual Systems
EMERGENCY**

- a) Construction involving privately owned residential wastewater treatment works must be part of the cost-effective solution in the approved facilities plan.
- b) Loan applicants must have legal authority to access all such privately owned systems at all reasonable times for such purposes as inspections, monitoring, building, operation, maintenance, rehabilitation and replacement.

**Section 369.540 Areawide Waste Treatment Management Planning
EMERGENCY**

The project shall be consistent with the provisions of sections 208 and 303(e) of CWA.

SUBPART F: REQUIREMENTS APPLICABLE TO SUBAGREEMENTS

**Section 369.610 Requirements for Subagreements
EMERGENCY**

The intent of this Subpart is to provide for maximum open and free competition in the procurement of materials, goods and services for the construction projects funded from WPCLP/ARRA. Any procurement method, except as allowed under this Part that significantly minimizes open and free competition will be prohibited. The following procedures shall apply to subagreements:

- a) **Local Preference**
Local laws, ordinances, regulations or procedures that are designed to or operate to give local or in-state bidders or proposers preference over other bidders or proposers shall not be used in evaluating bids or proposals for subagreements

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under WPCLP/ARRA loans.

- b) **Profits**
Only fair and reasonable profits may be earned by contractors in subagreements under WPCLP/ARRA loans. Profit included in a formally advertised, competitively bid, fixed price construction contract awarded pursuant to Section 369.620 (Construction Contracts) of this Subpart is presumed to be reasonable. If a subagreement is not competitively bid, the loan recipient shall submit to the Agency its basis for determination of reasonable profit.
- c) **Loan Recipient Responsibility**
The loan recipient shall be responsible for the administration and successful accomplishment of the project for which WPCLP/ARRA loan assistance is provided. The loan recipient shall be responsible for the settlement and satisfaction of all contractual and administrative issues arising out of subagreements, including, but not limited to, issuance of invitations for bids or requests for proposals, selection of contractors, award of contracts, protests of award, claims, disputes, and other procurement matters. With the prior written consent of the Agency, these functions may be performed for the loan recipient by an individual or firm retained for that purpose. Such an individual or firm shall be deemed the loan recipient's agent and shall be subject to all the provisions of the loan agreement, including this Part, that apply to the loan recipient.
- d) **Privity of Contract**
Neither the Agency nor the State of Illinois shall be a party to any subagreement (including contracts or subcontracts) or to any solicitation or request for proposals under those subagreements.
- e) **Subagreements shall:**
 - 1) Be directly related to the accomplishment of the loan recipient's approved work program;
 - 2) Be in the form of an executed written agreement (except for small purchases of \$25,000 or less);
 - 3) Be for monetary or in-kind consideration; and
 - 4) Not be in the nature of a grant or gift.

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- f) Documentation
- 1) Procurement records and files for purchases in excess of \$25,000 shall include the following:
 - A) The basis for contractor selection;
 - B) The justification for lack of competition, if competition appropriate to the type of project work to be performed is required but not obtained; and
 - C) The basis for award cost or price.
 - 2) Procurement documentation as described in subsection (f)(1) shall be retained by the loan recipient or contractors for the period required by Section 369.820 (Audit and Records) of this Part.
- g) Subagreements shall only be awarded to persons or organizations that:
- 1) Have adequate financial resources for performance;
 - 2) Have the necessary experience, organization, technical qualifications and facilities, or a firm commitment, arrangement or ability to obtain these requirements;
 - 3) Have the staffing sufficient to comply with the proposed or required completion schedule for the project;
 - 4) Have a satisfactory record of integrity, judgment and performance;
 - 5) Have an adequate financial management system and audit procedure that is consistent with generally accepted accounting standards in accordance with the American Institute of Certified Public Accountants Professional Standards;
 - 6) Maintain a standard of procurement in accordance with this Part;
 - 7) Maintain a property management system that provides adequate

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procedures for the acquisition, maintenance, safeguarding and disposition of all property; and

- 8) Conform to the civil rights, equal employment opportunity (Appendix A, Exhibit B) and labor law requirements of this Part.
- h) Fraud and Other Unlawful or Corrupt Practices
- 1) The obtaining and administration of loans from WPCLP/ARRA, and of subagreements awarded by loan recipients, shall be free from bribery, graft, kickbacks and other corrupt practices. The loan recipient shall bear the primary responsibility for prevention and detection of such conduct and for cooperation with appropriate authorities in the prosecution of any such conduct.
 - 2) The loan recipient shall effectively pursue available State or local legal and administrative remedies, and take appropriate remedial action with respect to any allegations or evidence of illegality or corrupt practices brought to its attention. The loan recipient shall advise the Agency immediately when any allegation or evidence comes to its attention, and shall periodically advise the Agency of the status and ultimate disposition of any matter.
- i) Negotiation of Subagreements
- All subagreements shall be awarded by formal advertising unless the loan recipient determines, and the Agency concurs, that it is impracticable and infeasible to use formal advertising. Negotiated contracts must be competitively awarded to the maximum practicable extent. Procurements may be negotiated by the loan recipient, if approved by the Agency, for the following reasons:
- 1) Public exigency, as evidenced by governmental declaration, will not permit the delay incident to advertising (e.g., an emergency procurement);
 - 2) The aggregate amount of the contract to be competitively negotiated is allowed by State law;
 - 3) The materials or services to be procured are available from only one person or firm;

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- 4) The procurement is for personal or professional services, or for any services to be rendered by an educational institution;
- 5) No responsive, responsible bids at acceptable price levels have been received after formal advertising; or
- 6) The procurement is for materials or services for which the prices are established by law; for technical items or equipment requiring standardization and interchangeability of parts with existing equipment; for experimental, developmental or research work; for highly perishable materials; for resale; or for technical or specialized supplies requiring substantial initial investment for manufacture.

**Section 369.620 Construction Contracts
EMERGENCY**

The following procedures shall apply to construction contracts (subagreements) awarded by loan recipients for the construction phase only. They shall not apply to personal and professional service contracts.

- a) The contract documents to be submitted to the Agency shall require a bid bond or cashier's check for not less than 5% of the bid amount, executed contract, performance and payment bonds for the bid amount, certificate of insurance with loan recipient added as additional insured, and the notice to proceed.
- b) Each contract shall be awarded after formal advertising, unless negotiation is permitted in accordance with Section 369.610(i) (Negotiation of Subagreements) of this Subpart. Formal advertising shall be in accordance with the following:
 - 1) Evidence of Advertising
The loan recipient shall submit to the Agency a certified copy of the bid advertisement that notifies the bidders that the procurement will be subject to regulations contained in the procedures for providing financial assistance from WPCLP under ARRA as set out in this Part, the Davis-Bacon Act (40 USC 276a through 276a-5) as defined by the U.S. Department of Labor, the Employment of Illinois Workers on Public Works Act [30 ILCS 570], and Executive Order 11246, as amended (Appendix A, Exhibit B). Bidders shall be notified that the procurement will be subject to the loan recipient's policy regarding the increased use of

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disadvantaged business enterprises, and that the bidders will be required to comply with Section 1605 of ARRA, which specifies that all iron, steel and manufactured goods used in the project shall be produced in the United States.

- 2) Adequate Bidding Documents
Bidding documents (invitations for bid) shall be made available by the loan recipient and shall be furnished upon request in a timely manner. A complete set of bidding documents shall be maintained by the loan recipient and shall be available for inspection and copying by any party. The bidding documents shall include:
- A) A complete statement of the work to be performed, including necessary drawings and specifications, and the required completion schedule (Drawings and specifications may be made available for inspection instead of being furnished.);
 - B) The terms and conditions of the contract to be awarded;
 - C) A clear explanation of the method of bidding, the method of evaluation of bid prices, and the basis and method for award of the contract;
 - D) The statement that any contract awarded in response to the bid is expected to be funded in part by a loan from WPCLP, and that neither the State of Illinois nor any of its departments, agencies or employees is or will be a party to this bidding or any resulting contract;
 - E) Responsibility requirements or criteria that will be used in evaluating bidders, provided that an experience requirement or performance bond may not be used unless adequately justified by the loan recipient;
 - F) A copy of subsections (b)(2)(G) and (H) shall be included in the proposal form to be used by bidders and shall constitute a representation and certification to be considered as a part of their bid;

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- G) By submission of the bid, each bidder and, in the case of a joint bid, each party to the joint bid, certifies as to his or her own organization, that, in connection with the bid:
- i) The prices in the bid have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to the prices with any other bidder or with any competitor;
 - ii) Unless otherwise required by law, the prices quoted in the bid have not knowingly been directly or indirectly disclosed to any other bidder or to any competitor prior to opening; and
 - iii) No attempt has been made or will be made by the bidder to induce any other person or firm to submit or withhold a bid for the purpose of restricting competition. Also, each bidder shall submit a certification regarding compliance with Article 33 E-11 of the Illinois Criminal Code of 1961 [720 ILCS 5/33E-11]; and
- H) Each person signing the bid shall certify that:
- i) He or she is the person in the bidder's organization responsible for the decision as to the prices being bid and that he or she has not participated, and will not participate, in any action contrary to subsection (b)(2)(G); or
 - ii) He or she is not the person in the bidder's organization responsible for the decision as to the prices being bid, but that he or she has been authorized to act as agent certifying that the persons determining the prices have not participated, and will not participate, in any action contrary to subsection (b)(2)(G), and as their agent shall so certify. He or she shall also certify that he or she has not participated, and will not participate, in any action contrary to subsection (b)(2)(G).
- 3) Addenda to Bidding Documents

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If the loan applicant wishes to amend any part of the bidding documents (including drawings and specifications) during the period when bids are being prepared, the loan applicant shall send written addenda to all firms who have obtained bidding documents in time to be considered prior to the bid opening. When appropriate, the time period for submission of bids shall be extended. All addenda to the bidding documents shall be submitted to the Agency for approval prior to the bid opening.

- 4) Award to the Low, Responsive, Responsible Bidder
 - A) After bids are opened, they shall be evaluated by the loan applicant in accordance with the methods and criteria set out in the bidding documents. Items that shall be submitted to the Agency include a bid tabulation, the loan applicant's or its agent's analysis of bids and recommendation for the award and the loan applicant's letter of intent to award or the official minutes of board approval.
 - B) The loan applicant may reserve the right to reject all bids if it has documented sound business reasons. Unless all bids are rejected, award shall be made to the low, responsive, responsible bidder after the bid evaluation has been submitted to the Agency and written notice of Agency approval has been received by the loan applicant.
 - C) If the award is intended to be made to a firm that did not submit the lowest bid, prior to any award, the loan applicant shall submit to the Agency a written statement explaining why each lower bidder was deemed not responsive or not responsible.
- c) Negotiations of Contract Amendments (Change Orders)
 - 1) Loan Recipient Responsibility

The loan recipient shall be responsible for negotiation of construction contract change orders. This function may be performed by the loan recipient directly or, if authorized, by its consulting engineer. During negotiations the loan recipient shall:

 - A) Make sure that the contractor has a clear understanding of the scope and extent of work and other essential requirements;

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- B) Assure that the contractor demonstrates that he or she will make available or will obtain the necessary personnel, equipment and materials to accomplish the work within the required time; and
 - C) Maintain a summary of all negotiations and the engineer's independent cost estimate.
- 2) Changes in Contract Price or Time
The contract price or time may be changed only by a change order. When negotiations are required, they shall be conducted in accordance with subsection (c).
- 3) For each change order the contractor shall submit to the loan recipient for review sufficient cost and pricing data to enable the loan recipient to ascertain the necessity and reasonableness of costs and amounts proposed, and the allowability and eligibility of costs proposed.
- 4) Agency Review
For each change order, the loan recipient shall submit to the Agency for approval the following documentation:
- A) A description of the changed work;
 - B) The contractor's proposal, itemizing the cost and time to complete the changed work;
 - C) The loan recipient's or engineer's estimate of the cost and time to complete the changes;
 - D) Two copies of the executed change order with justification including, but not limited to, the need for the proposed work and the technical solution; and
 - E) The summary of negotiations and resolution between the engineer's independent cost estimate and the contractor's proposal.
- d) Required Construction Contract Provisions
Each construction contract shall include the following provisions:

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- 1) Audit; Access to Records:
 - A) The contractor shall maintain books, records, documents and other evidence directly pertinent to performance on loan work consistent with generally accepted accounting standards in accordance with the American Institute of Certified Public Accountants Professional Standards. The contractor shall also maintain the financial information and data used by the contractor in the preparation or support of any cost submissions required under subsection (c) (Negotiation of Contract Amendments (Change Orders)) and a copy of the cost summary submitted to the owner. The Illinois Auditor General, the owner, the Agency or any of their authorized representatives shall have access to the books, records, documents and other evidence for purposes of inspection, audit and copying. The contractor shall provide facilities for access and inspection.
 - B) For a formally advertised, competitively awarded, fixed price contract, the contractor shall include access to records as specified in subsection (d)(1)(A) for all negotiated change orders and contract amendments in excess of \$25,000 that affect the contract price. In the case of all other prime contracts, the contractor shall agree to include access to records as specified above in all his or her contracts and all tier subcontracts or change orders in excess of \$25,000 that are directly related to project performance.
 - C) Audits shall be consistent with generally accepted auditing standards in accordance with the American Institute of Certified Public Accountants Professional Standards.
 - D) The contractor shall agree to the disclosure of all information and reports resulting from access to records pursuant to subsection (d)(1)(A). Where the audit concerns the contractor, the auditing agency shall afford the contractor an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report shall include the written comments, if any, of the audited parties.

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- E) The records required by subsection (d)(1)(A) shall be maintained and made available during performance of the work under the loan agreement and for 3 years after the date of final loan audit. In addition, records that relate to any dispute or litigation or the settlement of claims arising out of any performance, costs or items to which an audit exception has been taken, shall be maintained and made available for 3 years after resolution of the dispute, appeal, litigation, claim or exception.
- F) The right of access will generally be exercised with respect to financial records under:
- i) Negotiated prime contracts;
 - ii) Negotiated change orders or contract amendments in excess of \$25,000 affecting the price of any formally advertised, competitively awarded, fixed price contract; and
 - iii) Subcontracts or purchase orders under any contract other than a formally advertised, competitively awarded, fixed price contract.
- G) The right of access will generally not be exercised with respect to a prime contract, subcontract or purchase order awarded after effective price competition. In any event, the right of access shall be exercised under any type of contract or subcontract:
- i) With respect to records pertaining directly to contract performance, excluding any financial records of the contractor; and
 - ii) If there is any indication that fraud, gross abuse or corrupt practices may be involved in the award or performance of the contract or subcontract.
- 2) **Covenant Against Contingent Fees**
The contractor shall warrant that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee.

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For breach or violation of this warranty, the owner shall have the right to annul the contract without liability or, in its discretion, to deduct from the contract price or consideration, otherwise recover, the full amount of the commission, percentage, brokerage or contingent fee.

- 3) **Wage Provisions**
The contractor shall pay prevailing wages in accordance with the Davis-Bacon Act (40 USC 276a through 276a-5) as defined by the U.S. Department of Labor.
 - 4) **Disadvantaged Business Enterprise Requirements**
The contractor shall provide evidence, including, but not limited to, a copy of the advertisements and the record of negotiation, that the contractor has taken affirmative steps in accordance with 40 CFR 33 to assure disadvantaged business enterprises are used when possible as sources of supplies, equipment, construction and services, consistent with the provisions of the Agency's Operating Agreement with USEPA.
 - 5) **American Iron, Steel and Manufactured Goods Provisions**
The contract shall require the successful bidders to certify compliance with Section 1605 of ARRA, specifying that all iron, steel and manufactured goods used in the project shall be produced in the United States.
 - 6) **Debarment and Suspension Provisions**
The contract shall require the successful bidders to submit a "Certification Regarding Debarment, Suspension and Other Responsibility Matters" (EPA Form 5700-49) showing compliance with federal Executive Order 12549 (Appendix A, Exhibit A).
 - 7) **Nonsegregated Facilities Provisions**
The successful bidder shall be required to submit a certification of nonsegregated facilities as prescribed in 18 USC 1001.
- e) **Subcontracts Under Construction Contracts**
The award or execution of all subcontracts by a prime contractor and the procurement and negotiation procedures used by the prime contractor shall comply with the following:

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- 1) All applicable provisions of federal, State and local law;
 - 2) All provisions of this Part regarding fraud and other unlawful or corrupt practices;
 - 3) All provisions of this Part with respect to access to facilities, records and audit of records; and
 - 4) All provisions of subsection (d)(6) that require a "Certification Regarding Debarment, Suspension and Other Responsibility Matters" (EPA Form 5700-49) showing compliance with federal Executive Order 12549 (Appendix A, Exhibit A).
- f) Contractor Bankruptcy
In the event of a contractor bankruptcy, the loan recipient shall notify the Agency and shall keep the Agency advised of any negotiations with the bonding company, including any proposed settlement. The Agency may participate in those negotiations and will advise the loan recipient of the impact of any proposed settlement to the loan agreement. The loan recipient shall be responsible for assuring that every appropriate procedure and incidental legal requirement is observed in advertising for bids and re-awarding a construction contract.

**Section 369.630 Contracts for Personal and Professional Services
EMERGENCY**

All subagreements for personal and professional services for design or construction expected to exceed \$25,000 in the aggregate shall include the following subagreement provisions:

- a) Subagreements for personal and professional construction services shall include:
 - 1) Evidence, such as, but not limited to, a copy of the advertisement and the record of negotiation in accordance with 40 CFR 33 that affirmative steps have been taken to assure that disadvantaged business enterprises are used when possible as sources of supplies, equipment, construction and services consistent with the provisions of the Agency's Operating Agreement with USEPA.
 - 2) An audit and access to records clause that specifies as follows:

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- A) Subsections (a)(2)(B) through (E) shall be included in all contracts and all subcontracts directly related to project services that are in excess of \$25,000.
 - B) Books, records, documents and other evidence directly pertinent to performance of WPCLP loan work under this agreement shall be maintained consistent with generally accepted accounting standards in accordance with the American Institute of Certified Public Accountants Professional Standards. The Agency or any of its authorized representatives shall have access to the books, records, documents and other evidence for the purpose of inspection, audit and copying. Facilities shall be provided for access and inspection.
 - C) Audits conducted pursuant to this subsection (a)(2) shall be in accordance with generally accepted auditing standards.
 - D) All information and reports resulting from access to records pursuant to subsection (a)(2)(B) shall be disclosed to the Agency. The auditing agency shall afford the engineer an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report shall include the written comments, if any, of the audited parties.
 - E) Records under subsection (a)(2)(B) shall be maintained and made available during performance of project services under this agreement and for 3 years after the final loan closing. In addition, those records that relate to any dispute pursuant to Section 369.650 (Disputes) of this Subpart, litigation, the settlement of claims arising out of project performance, costs or items to which an audit exception has been taken shall be maintained and made available for 3 years after the resolution of the appeal, litigation, claim or exception.
- 3) A covenant against contingent fees clause as follows:
"The professional services contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bonafide employees. For breach or

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violation of this warranty, the loan recipient shall have the right to annul this agreement without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the commission, percentage, brokerage or contingent fee."

- 4) A Certification Regarding Debarment, Suspension, and Other Responsibility Matters (EPA Form 5700-49) showing compliance with federal Executive Order 12549 (Appendix A, Exhibit A).
 - 5) A description of the scope and extent of the project work.
 - 6) The schedule for performance and completion of the contract work, including, where appropriate, dates for completion of significant project tasks.
 - 7) A method of compensation.
- b) Subagreements for personal and professional design services shall include the subagreement provisions contained in subsections (a)(2) through (a)(4). In addition, the subagreements shall be accompanied by a statement regarding the use of disadvantaged business enterprises during the design service phase.
 - c) If, at the time of contract execution, any of the elements required in this Section cannot be defined adequately for later tasks, those tasks shall not be included in the contract at that time.

**Section 369.640 Compliance with Procurement Requirements for Construction Contracts
EMERGENCY**

- a) **Loan Applicant Responsibility**
The loan applicant shall be responsible for selecting the low, responsive and responsible bidder or other contractor in accordance with applicable requirements of State, federal and local laws and ordinances, as well as for the specific requirements of the loan agreement directly affecting procurement. The loan applicant shall also be responsible for the initial resolution of complaints based upon alleged violations. Any complaints made to the Agency concerning any alleged violation of law in the procurement of construction services or materials for a project involving construction work will be referred to the loan applicant for resolution. The loan applicant shall promptly determine each complaint on its

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merits, and shall allow the complainant and any other party who may be adversely affected to state in writing or at a conference the basis for its views concerning the proposed procurement. The loan applicant shall promptly furnish to the complainant and to other affected parties, by certified mail, a written summary of its determination, substantiated by an engineering or legal opinion providing a justification for its determination.

- b) **Time Limitations**

Complaints should be made as early as possible during the procurement process, preferably prior to the bid opening, to avoid disruption of the procurement process. The complaint shall be mailed (certified mail, return receipt requested), or otherwise delivered, no later than 5 working days after the complainant becomes aware of an alleged violation. If there is no agreement between the parties within 7 days following the loan applicant's response, unless all bids are rejected, the matter shall be resolved in accordance with subsection (c).
- c) **Remedies**

All claims, counter-claims, disputes and other matters in question between the applicant and the contractor arising out of, or relating to, a subagreement or its breach shall be decided by arbitration if the parties agree, or in a court of competent jurisdiction within the State.
- d) **Deferral of Procurement Action**

If the determination of a complaint by the loan applicant is adverse to the complainant, the loan applicant shall defer issuance of its solicitation or award or notice to proceed under the contract, as appropriate, for 7 days after mailing or delivery of the determination. If the determination (whether made by the loan applicant, the arbitrator or the court) is favorable to the complainant, the terms of the solicitation shall be revised or the contract shall be awarded, as appropriate, in accordance with the determination.

**Section 369.650 Disputes
EMERGENCY**

- a) Only the loan recipient may appeal to the Agency in its own name and for its own benefit, under this provision, with respect to its subagreements. Neither a contractor nor a subcontractor may prosecute an appeal under the disputes provision of a loan in its own name or interest.

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- b) Any dispute arising under this loan that is not disposed of by agreement shall be decided by the Director, or his or her authorized representative, who shall render a decision in writing and mail or otherwise furnish it to the loan recipient. The decision of the Director shall be in accordance with this Part and shall be final and conclusive.
- c) The disputes clause shall not preclude the Director from considering questions of law in any decision.

**Section 369.660 Indemnity
EMERGENCY**

The loan recipient shall assume the entire risk, responsibility and liability for all loss or damage to property owned by the loan recipient, by the Agency or by third persons, and for any injury to, or death of, any persons (including employees of the loan recipient) caused by, arising out of, or occurring in connection with the execution of any work, contract or subcontract arising out of WPCLP/ARRA loan. The loan recipient shall indemnify, save harmless and defend the State of Illinois and the Agency from all claims for loss, damage, injury or death, whether caused by the negligence of the State of Illinois or the Agency, or their agents or employees or otherwise, consistent with the provisions of Section 1 of the Construction Contract Indemnification for Negligence Act [740 ILCS 35/1]. The loan recipient shall require that all its contractors and subcontractors agree in writing that they will look solely to the loan recipient for performance of the contract or satisfaction of all claims arising under the contract.

**Section 369.670 Covenant Against Contingent Fees
EMERGENCY**

The loan recipient shall warrant that no person or agency has been employed or retained to solicit or secure a WPCLP/ARRA loan upon an agreement or understanding for a commission, percentage, brokerage or contingent fee. For breach or violation of this warranty, the Agency shall have the right to annul the loan in accordance with Section 369.310 (Noncompliance with Loan Procedures) of this Part or to deduct from the loan, or otherwise recover, the full amount of the commission, percentage, brokerage or contingent fee.

**SUBPART G: REQUIREMENTS APPLICABLE TO CONSTRUCTION INITIATION,
CHANGES, COMPLETION AND OPERATION OF PROJECT****Section 369.710 Construction Initiation
EMERGENCY**

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Upon approval by the Agency of the loan applicant's financial assistance application in accordance with Section 369.430 (Financial Assistance Application and Approval) of this Part, and subject to the availability of funds, the Agency will issue the loan agreement and authorize the initiation of construction.

**Section 369.720 Project Changes
EMERGENCY**

- a) Prior approval of the Agency is required for any project change that may:
 - 1) Increase the amount of loan funds needed to complete the project;
 - 2) Alter the design or scope of the project;
 - 3) Extend any contract or loan completion date for the project;
 - 4) Alter the location, size, capacity or quality of any major item of equipment; or
 - 5) Alter the scope of the project by changing the methodologies or personnel to be used as agreed to at the time the loan was issued.
- b) The Agency will approve project changes that it determines are cost-effective and within the overall scope of the loan project, based on approved facilities planning.
- c) The loan recipient shall promptly notify the Agency, in writing, of all project changes. Failure to give timely notice of proposed project changes, or action by the loan recipient that is not consistent with the Agency's determination on those changes, may result in:
 - 1) Disallowance of loan participation for costs incurred that are attributable to the change; and
 - 2) Termination of the loan.

**Section 369.730 Construction Engineering
EMERGENCY**

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The loan recipient shall provide construction engineering and project monitoring to assure that the construction substantially conforms with the approved plans and specifications.

**Section 369.740 Operation and Maintenance of the Project
EMERGENCY**

In order for the Agency to approve the final inspection for the project, the loan recipient must certify that it has provided the following training and operation and maintenance documents:

- a) Training pertaining to the proper operation and maintenance of the equipment and process units included in the project.
- b) An operation and maintenance reference library that includes, but is not limited to, the following:
 - 1) Manufacturer's literature, shop drawings and warranties;
 - 2) The plans of record with valve indices for the equipment and process units included in the project. For mechanical wastewater treatment plants, the valve index shall include a listing of valve positions for each possible alternate flow configuration including by-passing of individual treatment processes and units and recommended configurations for emergency conditions that could reasonably be expected to occur; and
 - 3) A maintenance schedule for the equipment and process units included in the project.
- c) Training pertaining to the general operation of treatment plants or collection systems consisting of an operator self-study course such as "Operation of Wastewater Treatment Plant", 1980, 2nd edition (three volumes) or "Operation and Maintenance of Wastewater Collection System", 1983, 1st edition, California State University, Sacramento.

**Section 369.750 Final Inspection
EMERGENCY**

The loan recipient shall notify the Agency in writing within 30 days after completion of project construction and shall submit the final change order, along with the contractor's final costs, to the Agency. The plans of record shall be forwarded to the appropriate Agency regional office. The

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Agency shall schedule the final inspection within 60 days after receipt of the notice of completion, provided that all necessary change orders have been submitted and approved.

SUBPART H: REQUIREMENTS APPLICABLE TO
ACCESS, AUDITING AND RECORDS**Section 369.810 Access
EMERGENCY**

- a) The Agency and its designated representatives shall have access, during normal business hours and at any other time during which work is being performed, to the premises where any portion of the work for which the WPCLP/ARRA loan was provided is being performed. After final loan closing, Agency personnel or any authorized Agency representative shall have access to the project records as defined in Section 369.820 (Audit and Records) of this Subpart and to the project site during normal business hours, to the full extent of the loan recipient's right to access.
- b) Every contract entered into by the loan recipient for construction work, and every subagreement, shall provide Agency representatives with access to the work. The contractor or subcontractor shall provide facilities for such access and inspection. The contract or subagreement shall also provide that the Agency or any authorized representative shall have access to any books, documents, papers and records that are pertinent to the project for the purpose of making audit, examination, excerpts and transcriptions.
- c) Failure by the loan recipient or any of its contractors or subcontractors to provide access, after 10 days written notice from the Agency, shall be cause for termination of the loan pursuant to Section 369.330 (Termination) of this Part, and refund to the State of Illinois for deposit into WPCLP any unexpended loan funds. In addition, any loan recipient, contractor or subcontractor found in noncompliance with this Section shall repay any loan funds previously spent.

**Section 369.820 Audit and Records
EMERGENCY**

- a) The loan recipient shall maintain books, records, documents, reports and other evidentiary material, and accounting procedures and practices consistent with generally accepted government accounting standards in accordance with the

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American Institute of Certified Public Accountants Professional Standards.

- b) For purposes of this Section, "records" shall include, but not be limited to:
 - 1) Documentation of the receipt and disposition by the loan recipient of all financial assistance received for the project, including both State financial assistance and any matching share or cost sharing; and
 - 2) Documentation of the costs charged to the project, including all direct and indirect costs of whatever nature incurred for the performance of the project for which the loan has been provided.
- c) The loan recipient's facilities, or any facilities engaged in the performance of the WPCLP/ARRA loan project, and the loan recipient's records shall be subject to inspection and audit by the Agency or its authorized representative, at the times specified in Section 369.810 (Access) of this Subpart.
- d) The loan recipient shall preserve and make its records available to the Agency or its authorized representative for the following periods:
 - 1) For all costs associated with design and construction, for 3 years after final loan closing;
 - 2) For all other accounting records concerning the loan, for 3 years from the date of the transaction; and
 - 3) For any longer period required by law or by subsections (e) and (f).
- e) If the loan is completely or partially terminated, the records relating to the terminated work shall be preserved and made available for 3 years after any resulting final termination settlement.
- f) Records that relate to appeals under the "Disputes" clause in Section 369.650 (Disputes) of this Part, litigation or the settlement of claims arising out of the performance of the WPCLP loan project, or to project costs and expenses to which exception has been taken by the Agency or its authorized representatives, shall be retained until the appeals, litigation, claims or exceptions have been completed.

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- g) Failure of the loan recipient or its contractors or subcontractors to make records available to the Agency as required by Section 369.810 (Access) of this Subpart after 10 days written notice shall be cause for termination of the loan, pursuant to Section 369.330 (Termination) of this Part, and for refund to the State of Illinois for deposit into WPCLP of any unexpended loan funds. In addition, any loan recipient, contractor or subcontractor found in noncompliance with this Section shall repay any loan funds previously spent.

**Section 369.830 Single Audit Act
EMERGENCY**

The loan recipient shall comply with the provisions of the Single Audit Act of 1996 (31 USC 7501 et seq.).

SUBPART I: FINANCIAL AND MANAGERIAL CAPABILITY

**Section 369.910 Sewer Use Ordinance
EMERGENCY**

- a) In order for the loan agreement to be issued, the Agency must have approved the loan applicant's sewer use ordinance with enactment of the ordinance required prior to the first loan disbursement. The loan applicant shall demonstrate to the satisfaction of the Agency that a sewer use ordinance or other legally binding requirement will be enacted and enforced prior to the first loan disbursement in each jurisdiction served by the treatment works project. The ordinance shall prohibit any connections from inflow sources into the sanitary sewer portions of the sewer system and shall ensure that new sewers and connections to the sewer system are properly designed and constructed.
- b) The sewer use ordinance shall require:
- 1) Pretreatment of any industrial wastes that would otherwise be detrimental to the wastewater treatment works or its proper and efficient operation and maintenance or will otherwise prevent entry of industrial wastes into the wastewater treatment works; and
 - 2) Compliance with 35 Ill. Adm. Code 310 (Pretreatment Programs).
- c) The sewer use ordinance shall prohibit the introduction of industrial waste into the

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sewer system until the requirements of Section 369.920 (User Charges) of this Subpart are met.

Section 369.920 User Charges
EMERGENCY

- a) In order for the loan agreement to be issued, the Agency must have approved the loan applicant's system of user charges. The user charge system must be enacted and enforceable before the first loan disbursement can be made.
- b) The Agency shall approve the user charge system in accordance with the following criteria:
 - 1) For the first year of operation of new facilities, operation, maintenance and replacement costs shall be based upon past experience for existing wastewater treatment works or some other rational method that can be demonstrated to be applicable.
 - 2) The loan recipient shall review user charges annually and revise the rates periodically to reflect actual wastewater treatment works operation, maintenance and replacement costs. The Agency may request a report on the status of the user charge system, including projected costs, actual costs, revenue generated and fund balances at any time.
 - 3) The user charge system shall generate sufficient revenue to offset the cost of all wastewater treatment works operation, maintenance and replacement required to be provided by the loan recipient.
 - 4) The user charge system must be incorporated in one or more municipal legislative enactments or other appropriate authorizations. If the project is for a regional treatment works accepting wastewaters from treatment works owned by others, then the subscribers receiving wastewater treatment services from the loan recipient shall have adopted user charge systems. The user charge systems shall also be incorporated in the appropriate municipal legislative enactments, intergovernmental or service agreements or other appropriate authorizations.
- c) Upon approval of a loan recipient's system of user charges, the implementation and maintenance of the approved system shall become a condition of the loan

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subject to Section 369.310 (Noncompliance with Loan Procedures) of this Part.

- d) The Agency or its authorized representative shall have access to all books, documents, papers and records of the loan recipient for the purpose of making audit, examination, excerpts and transcriptions in order to ensure compliance with subsection (b).

**Section 369.930 Financial Capability
EMERGENCY**

- a) The loan applicant shall demonstrate to the Agency that it has the necessary legal, financial, managerial and institutional capability to:
 - 1) Construct, operate and maintain the project for the life of the wastewater treatment works;
 - 2) Retire the loan in accordance with the schedule to be contained in the loan agreement, including the execution of any necessary intergovernmental agreements, enactment of a system of user charges and any legislative enactments necessary to recover adequate capital costs to repay the loan; and
 - 3) Meet any covenants and requirements in the loan agreement.
- b) To demonstrate financial, managerial and institutional capability, the loan applicant shall, at a minimum, show that:
 - 1) It is empowered under law to own, operate and maintain a public wastewater treatment facility, including the facilities to be constructed under the loan;
 - 2) It has the necessary easements, titles, permits and intergovernmental agreements for loan project implementation, as identified in the facilities plan; and
 - 3) It has or will have the necessary qualified personnel to operate and maintain the facility.
- c) The financial capability demonstration shall be submitted to the Agency for

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approval and shall contain detailed project costs, existing and proposed operation, maintenance and replacement costs, existing and proposed local capital costs, and historical information over the past 3 years consisting of audited annual financial statements, bond ratings, number of users and tax rate levies.

- d) The Agency may suggest mitigative measures to improve the loan applicant's financial capability to undertake the project, including, but not limited to, acquisition of grant funding, reduction of project costs, additional or different sources of dedicated revenues, efforts to reduce the number of delinquent users, and changes to existing financial practices that may threaten generation of adequate revenues.
- e) The Agency may require a loan term of less than the 20 year maximum. In evaluating the appropriateness of alternative loan terms, the Agency shall consider such factors as the scope of the proposed project, the impacts of alternative loan terms on user fees, and the overall cost of the project.

**Section 369.940 Dedicated Source of Revenue
EMERGENCY**

- a) A source of revenue shall be dedicated and pledged to make the loan repayments. Prior to loan approval, the Agency shall review the proposed dedicated and pledged revenue source to assure that it will generate revenues adequate to make the loan repayments and will provide a continuing source of revenue adequate to make loan repayments for the term of the loan. If the source of revenue is pledged in a subordinate position to a revenue bond ordinance, the covenants regarding coverage and reserve for the revenue source shall be equivalent to those in the revenue bond ordinance. At a minimum, the reserve account shall be equal to the annual loan repayment amount funded within 2 years after the loan award.
- b) The necessary legislative enactments to dedicate and pledge the source of revenue must be in place before the Agency can make the first loan disbursement.
- c) The loan recipient shall maintain a separate account in its books to record the dedicated revenues for loan repayment.
- d) The loan recipient shall, for the term of the loan, review and adjust the dedicated source of revenue as necessary to provide adequate funds for the repayment of the loan. The loan recipient shall timely notify the Agency and submit to the Agency

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for approval all proposed changes to the dedicated source of revenue.

- e) Upon request, the loan recipient shall submit to the Agency a statement on the status of the account required by subsection (c) that contains the status of the dedicated revenue account, including the projected revenues, actual revenues fund balance, debt service obligations and other requirements of the loan agreement. The Agency's review will be based on, but not limited to, ensuring that the dedicated source of revenue is legally authorized, generates sufficient revenue and is otherwise in accordance with this Part.
- f) In the event that the actual revenues fall short of the amount required to retire the loan, the Agency shall require the loan recipient to re-examine the dedicated revenue source and restructure it as necessary.

**Section 369.950 Floodplain Insurance
EMERGENCY**

- a) If the loan project includes insurable structures that will be located within a designated floodplain area as defined in the National Flood Insurance Act of 1968 (42 USC 4001-4127), the loan recipient shall furnish written evidence that it is participating in the National Flood Insurance Program or that the construction areas have received official exclusion from the flood insurance requirements by the Federal Emergency Management Agency.
- b) The loan recipient (or the construction contractor, as appropriate) shall acquire any flood insurance made available to it under the National Flood Insurance Act of 1968, as amended, and maintain the insurance for the entire useful life of the insurable structures.
- c) The amount of insurance required shall be the lesser of the total project cost, excluding facilities that are uninsurable under the National Flood Insurance Program, or the maximum limit of coverage made available to the loan recipient under the National Flood Insurance Act of 1968.
- d) The required insurance premium for the period of construction shall be an allowable project cost under Section 369.1010 (Determination of Allowable Costs) of this Part.

SUBPART J: REQUIREMENTS APPLICABLE TO LOAN DISBURSEMENTS

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**Section 369.1010 Determination of Allowable Costs
EMERGENCY**

The loan recipient shall be paid, upon request, in accordance with Section 369.1030 (Disbursement of Loan Funds) of this Subpart, for all costs that are within the scope of the approved project, not to exceed the total amount of the loan, and that are determined to be allowable in accordance with the following criteria:

- a) **Allowable Project Costs**
All reasonable and necessary costs directly attributable to the design and construction of an eligible, loan assisted wastewater treatment works project that are not excluded from loan funding by statute or non-waivable regulations. Categories of necessary costs include, but are not limited to, the following:
 - 1) The direct purchase of materials, equipment and personal services specifically necessary for the completion of a loan funded project;
 - 2) Professional and consultant services contracts necessary for design, bidding and construction of a loan funded project, except as elsewhere limited by this Part;
 - 3) Costs under approved construction contracts; and
 - 4) Costs for premiums for required flood insurance during the project construction period.

- b) **Ineligible Costs**
Categories of costs that are ineligible for loan assistance, and are not subject to the "reasonable and necessary" test of allowability include, but are not limited to, the following:
 - 1) Costs for preparing a facilities planning document;
 - 2) Costs for basin or areawide planning;
 - 3) Costs outside the scope of the approved facilities plan;
 - 4) Site acquisition, including easement compensation, except in those

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instances where the land itself shall serve as the medium for treatment (e.g., land for spray irrigation of wastewater); and

- 5) Construction of any facilities that do not comply with the definition of a "treatment works" as contained in Section 212 of the Clean Water Act.
- c) Disputes Concerning Allowable Costs
The loan recipient shall seek to resolve any questions relating to cost allowability or allocation at the earliest opportunity. Final determinations by the Director concerning the allowability of costs shall be conclusive.

**Section 369.1020 Use of Loan Funds and Payment of Unallowable Costs
EMERGENCY**

- a) Loan funds shall be expended solely for approved allowable costs incurred in the design and construction of the project.
- b) The loan recipient shall agree to pay the unallowable costs associated with the project, as well as all allowable costs that exceed the amount of the loan, and shall construct the project or cause it to be constructed to final completion in accordance with the plans and specifications and on the schedule approved by the Agency.
- c) The loan recipient shall commit itself to complete the construction of the operable wastewater treatment works.

**Section 369.1030 Disbursement of Loan Funds
EMERGENCY**

- a) Disbursements are subject to the appropriation of funds by the General Assembly and the availability of cash deposited into WPCLP from drawdowns from the USEPA Automated Clearing House, State matching funds, repayments of existing loans, interest earnings on money in WPCLP, and money deposited into WPCLP from other sources.
- b) Disbursements shall be made as follows:
 - 1) After the receipt of a fully executed loan agreement, disbursement requests must be sent directly to the Agency. Actual disbursements shall

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be processed in accordance with the loan agreement.

- 2) Disbursements will be processed based on costs incurred that are due and payable, as evidenced by invoices. The Agency may withhold any disbursement for a violation of the loan agreement conditions.
- c) The loan recipient shall make prompt payment to the contractor.
- d) The State share of any refunds, rebates, credits or other amounts (including any interest) accruing to or received by the loan recipient with respect to the project that are properly allocable to costs for which loan funds have been disbursed must be paid, minus any reasonable expenses incurred in securing these funds, to the State of Illinois for deposit in WPCLP.
- e) Before the final principal amount of the loan can be established:
 - 1) The Agency shall conduct a final inspection and a project review to insure that all applicable loan conditions have been satisfied; and
 - 2) The loan recipient must submit to the Agency a final waiver from the contractor and a Certification of Payment that all bills have been paid.
- f) The loan recipient must also submit a release discharging the State of Illinois, and its officers, agents and employees, from all liabilities, obligations and claims arising out of the project work or under the loan, subject only to such exceptions specified in the release.
- g) Any use of loan funds at variance with this Part shall result in repayment of those loan funds to the State of Illinois for deposit into WPCLP.

SUBPART K: PROCEDURES FOR LOAN REPAYMENT
AND DELINQUENT REPAYMENT

**Section 369.1110 Loan Repayment to the Agency
EMERGENCY**

Loan repayment to the Agency shall be in accordance with the loan repayment provisions contained in the loan agreement.

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- a) Principal forgiveness of 50% will be applied to the total amount of loan disbursements from ARRA funds. The loan repayment amount shall be calculated based upon 50% of the total amount of loan disbursements from ARRA funds.
- b) Loan repayments shall commence not later than 6 months after the initiation of the loan repayment period and shall be due semiannually unless the Agency determines that the dedicated source of revenue justifies an alternative repayment plan.
- c) After the initiation of the loan repayment period date in the loan agreement, the Agency shall set a principal amount and give the loan recipient an interim repayment schedule.
- d) After a final cost review of the project, the Agency shall establish the final principal amount and give the loan recipient a final repayment schedule.

**Section 369.1120 Delinquent Loan Repayments
EMERGENCY**

- a) *In the event that a timely payment is not made by a loan recipient according to the loan schedule of repayment, the loan recipient shall notify the Agency in writing within 15 days after the payment due date. The notification shall include a statement of the reasons the payment was not timely tendered, the circumstances under which the late payments will be satisfied, and binding commitments to assure future payments. After receipt of this notification, the Agency shall confirm in writing the acceptability of the plan or take action in accordance with subsection (b).*
- b) *In the event that a loan recipient fails to comply with subsection (a), the Agency shall promptly issue a notice of delinquency to the loan recipient which shall require a written response within 15 days. The notice of delinquency shall require that the loan recipient revise its rates, fees and charges to meet its obligations or take other specified actions as may be appropriate to remedy the delinquency and to assure future payments.*
- c) *In the event that the loan recipient fails to timely or adequately respond to a notice of delinquency, or fails to meet its obligations made pursuant to subsections (a) and (b), the Agency shall pursue the collection of the amounts past*

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due, the outstanding loan balance and the costs thereby incurred, either pursuant to the Illinois State Collection Act of 1986 [30 ILCS 210] or by any other reasonable means as may be provided by law, including the taking of title by foreclosure or otherwise to any project or other property pledged, mortgaged, encumbered or otherwise available as security or collateral. [415 ILCS 5/19.6]

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Section 369.APPENDIX A Executive Orders**Section 369.EXHIBIT A Executive Order 12549
EMERGENCY**

February 18, 1986, 51 F.R. 6370

DEBARMENT AND SUSPENSION

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to curb fraud, waste, and abuse in Federal programs, increase agency accountability, and ensure consistency among agency regulations concerning debarment and suspension of participants in Federal programs, it is hereby ordered that:

Section 1.

- a) To the extent permitted by law and subject to the limitations in Section 1(c), Executive departments and agencies shall participate in a system for debarment and suspension from programs and activities involving Federal financial and nonfinancial assistance and benefits. Debarment or suspension of a participant in a program by one agency shall have government-wide effect.
- b) Activities covered by this Order include but are not limited to: grants, cooperative agreements, contracts of assistance, loans, and loan guarantees.
- c) This Order does not cover procurement programs and activities, direct Federal statutory entitlements or mandatory awards, direct awards to foreign governments or public international organizations, benefits to an individual as a personal entitlement, or Federal employment.

Section 2. To the extent permitted by law, Executive departments and agencies shall:

- a) Follow government-wide criteria and government-wide minimum due process procedures when they act to debar or suspend participants in affected programs.
- b) Send to the agency designated pursuant to Section 5 identifying information concerning debarred and suspended participants in affected programs, participants who have agreed to exclusion from participation, and participants declared

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ineligible under applicable law, including Executive Orders. This information shall be included in the list to be maintained pursuant to Section 5.

- c) Not allow a party to participate in any affected program if any Executive department or agency has debarred, suspended or otherwise excluded (to the extent specified in the exclusion agreement) that party from participation in an affected program. An agency may grant an exception permitting a debarred, suspended, or excluded party to participate in a particular transaction upon a written determination by the agency head or authorized designee stating the reason(s) for deviating from this Presidential policy. However, I intend that exceptions to this policy should be granted only infrequently.

Section 3. Executive departments and agencies shall issue regulations governing their implementation of this Order that shall be consistent with the guidelines issued under Section 6. Proposed regulations shall be submitted to the Office of Management and Budget for review within four months of the date of the guidelines issued under Section 6. The Director of the Office of Management and Budget may return for reconsideration proposed regulations that the Director believes are inconsistent with the guidelines. Final regulations shall be published within twelve months of the date of the guidelines.

Section 4. There is hereby constituted the Interagency Committee on Debarment and Suspension, which shall monitor implementation of this Order. The Committee shall consist of representatives of agencies designated by the Director of the Office of Management and Budget.

Section 5. The Director of the Office of Management and Budget shall designate a Federal agency to perform the following functions: maintain a current list of all individuals and organizations excluded from program participation under this Order, periodically distribute the list to Federal agencies, and study the feasibility of automating the list; coordinate with the lead agency responsible for government-wide debarment and suspension of contractors; chair the Interagency Committee established by Section 4; and report periodically to the Director on implementation of this Order, with the first report due within two years of the date of the Order.

Section 6. The Director of the Office of Management and Budget is authorized to issue guidelines to Executive departments and agencies that govern which programs and activities are covered by this Order, prescribe government-wide criteria and government-wide minimum due process procedures, and set forth other related details for the effective administration of the guidelines.

Section 7. The Director of the Office of Management and Budget shall report to the President

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within three years of the date of this Order on Federal agency compliance with the Order, including the number of exceptions made under Section 2(c), and shall make such recommendations as are appropriate further to curb fraud, waste, and abuse.

THE WHITE HOUSE
February 18, 1986

RONALD REAGAN

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Section 369.APPENDIX A Executive Orders**Section 369.EXHIBIT B Executive Order 11246
EMERGENCY**EQUAL EMPLOYMENT OPPORTUNITY
EXECUTIVE ORDER 11246, AS AMENDED

Executive Order 11246 – Equal Employment Opportunity

Under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

Part I – Nondiscrimination in Government Employment

Part II – Nondiscrimination in Employment by Government Contractors and Subcontractors

Subpart A – Duties of the Secretary of Labor

SEC. 201. The Secretary of Labor shall be responsible for the administration and enforcement of Parts II and III of this Order. The Secretary shall adopt such rules and regulations and issue such orders as are deemed necessary and appropriate to achieve the purposes of Parts II and III of this Order.

Subpart B – Contractors' Agreements

SEC. 202. Except in contracts exempted in accordance with Section 204 of this Order, all Government contracting agencies shall include in every Government contract hereafter entered into the following provisions:

During the performance of this contract, the contractor agrees as follows:

- 1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including

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apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

- 2) The contractor will, in all solicitations or advancements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- 3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 4) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such

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provisions including sanctions for noncompliance: *Provided, however,* that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

SEC. 203. Each contractor having a contract containing the provisions prescribed in Section 202 shall file, and shall cause each of his subcontractors to file, Compliance Reports with the contracting agency or the Secretary of Labor as may be directed. Compliance Reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment policies, programs, and employment statistics of the contractor and each subcontractor, and shall be in such form, as the Secretary of Labor may prescribe.

- a) Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of this Order, or any preceding similar Executive order, and in that event to submit, on behalf of themselves and their proposed subcontractors, Compliance Reports prior to or as an initial part of their bid or negotiation of a contract.
- b) Whenever the contractor or subcontractor has a collective bargaining agreement or other contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the Compliance Report shall include such information as to such labor union's or agency's practices and policies affecting compliance as the Secretary of Labor may prescribe: *Provided,* That to the extent such information is within the exclusive possession of a labor union or an agency referring workers or providing or supervising apprenticeship or training and such labor union or agency shall refuse to furnish such information to the contractor, the contractor shall so certify to the Secretary of Labor as part of its Compliance Report and shall set forth what efforts he has made to obtain such information.
- c) The Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this Order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and

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provisions of the order. In the event that the union, or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the Secretary of Labor may require.

SEC. 204. The Secretary of Labor may, when he/she deems that special circumstances in the national interest so require, exempt a contracting agency from the requirement of including any or all of the provisions of Section 202 of this Order in any specific contract, subcontract, or purchase order. The Secretary of Labor may, by rule or regulation, also exempt certain classes of contracts, subcontracts, or purchase orders (1) whenever work is to be or has been performed outside the United States and no recruitment of workers within the limits of the United States is involved; (2) for standard commercial supplies or raw materials; (3) involving less than specified amounts of money or specified numbers of workers; or (4) to the extent that they involve subcontracts below a specified tier. The Secretary of Labor may also provide, by rule, regulation, or order, for the exemption of facilities of a contractor which are in all respects separate and distinct from activities of the contractor related to the performance of the contract: *Provided*, That such an exemption will not interfere with or impede the effectuation of the purposes of this Order: *And provided further*, That in the absence of such an exemption, all facilities shall be covered by the provisions of this Order.

Subpart C – Powers and Duties of the Secretary of Labor and the Contracting Agencies

SEC. 205. The Secretary of Labor shall be responsible for securing compliance by all Government contractors and subcontractors with this Order and any implementing rules or regulations. All contracting agencies shall comply with the terms of this Order and any implementing rules, regulations, or orders of the Secretary of Labor. Contracting agencies shall cooperate with the Secretary of Labor and shall furnish such information and assistance as the Secretary may require.

SEC. 206. The Secretary of Labor may investigate the employment practices of any Government contractor or subcontractor to determine whether or not the contractual provisions specified in Section 202 of this Order have been violated. Such investigation shall be conducted in accordance with the procedures established by the Secretary of Labor.

- a) The Secretary of Labor may receive and investigate complaints by employees or prospective employees of a Government contractor or subcontractor which allege discrimination contrary to the contractual provisions specified in Section 202 of this Order.

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SEC. 207. The Secretary of Labor shall use his/her best efforts, directly and through interested Federal, State, and local agencies, contractors, and all other available instrumentalities to cause any labor union engaged in work under Government contracts or any agency referring workers or providing or supervising apprenticeship or training for or in the course of such work to cooperate in the implementation of the purposes of this Order. The Secretary of Labor shall, in appropriate cases, notify the Equal Employment Opportunity Commission, the Department of Justice, or other appropriate Federal agencies whenever it has reason to believe that the practices of any such labor organization or agency violate Title VI or Title VII of the Civil Rights Act of 1964 or other provision of Federal law.

SEC. 208. The Secretary of Labor, or any agency, officer, or employee in the executive branch of the Government designated by rule, regulation, or order of the Secretary, may hold such hearings, public or private, as the Secretary may deem advisable for compliance, enforcement, or educational purposes.

- a) The Secretary of Labor may hold, or cause to be held, hearings in accordance with Subsection of this Section prior to imposing, ordering, or recommending the imposition of penalties and sanctions under this Order. No order for debarment of any contractor from further Government contracts under Section 209(6) shall be made without affording the contractor an opportunity for a hearing.

Subpart D – Sanctions and Penalties

SEC. 209. In accordance with such rules, regulations, or orders as the Secretary of Labor may issue or adopt, the Secretary may:

- 1) Publish, or cause to be published, the names of contractors or unions which it has concluded have complied or have failed to comply with the provisions of this Order or of the rules, regulations, and orders of the Secretary of Labor.
- 2) Recommend to the Department of Justice that, in cases in which there is substantial or material violation or the threat of substantial or material violation of the contractual provisions set forth in Section 202 of this Order, appropriate proceedings be brought to enforce those provisions, including the enjoining, within the limitations of applicable law, of organizations, individuals, or groups who prevent directly or indirectly, or seek to prevent directly or indirectly, compliance with the provisions of this Order.

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- 3) Recommend to the Equal Employment Opportunity Commission or the Department of Justice that appropriate proceedings be instituted under Title VII of the Civil Rights Act of 1964.
- 4) Recommend to the Department of Justice that criminal proceedings be brought for the furnishing of false information to any contracting agency or to the Secretary of Labor as the case may be.
- 5) After consulting with the contracting agency, direct the contracting agency to cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with equal employment opportunity provisions of the contract. Contracts may be cancelled, terminated, or suspended absolutely or continuance of contracts may be conditioned upon a program for future compliance approved by the Secretary of Labor.
- 6) Provide that any contracting agency shall refrain from entering into further contracts, or extensions or other modifications of existing contracts, with any noncomplying contractor, until such contractor has satisfied the Secretary of Labor that such contractor has established and will carry out personnel and employment policies in compliance with the provisions of this Order.
- 7) Pursuant to rules and regulations prescribed by the Secretary of Labor, the Secretary shall make reasonable efforts, within a reasonable time limitation, to secure compliance with the contract provisions of this Order by methods of conference, conciliation, mediation, and persuasion before proceedings shall be instituted under subsection (a)(2) of this Section, or before a contract shall be cancelled or terminated in whole or in part under subsection (a)(5) of this Section.

SEC. 210. Whenever the Secretary of Labor makes a determination under Section 209, the Secretary shall promptly notify the appropriate agency. The agency shall take the action directed by the Secretary and shall report the results of the action it has taken to the Secretary of Labor within such time as the Secretary shall specify. If the contracting agency fails to take the action directed within thirty days, the Secretary may take the action directly.

SEC. 211. If the Secretary shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this Order or submits a program for compliance acceptable to the Secretary of Labor.

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SEC. 212. When a contract has been cancelled or terminated under Section 209(a)(5) or a contractor has been debarred from further Government contracts under Section 209(a)(6) of this Order, because of noncompliance with the contract provisions specified in Section 202 of this Order, the Secretary of Labor shall promptly notify the Comptroller General of the United States.

Subpart E – Certificates of Merit

SEC. 213. The Secretary of Labor may provide for issuance of a United States Government Certificate of Merit to employers or labor unions, or other agencies which are or may hereafter be engaged in work under Government contracts, if the Secretary is satisfied that the personnel and employment practices of the employer, or that the personnel, training, apprenticeship, membership, grievance and representation, upgrading, and other practices and policies of the labor union or other agency conform to the purposes and provisions of this Order.

SEC. 214. Any Certificate of Merit may at any time be suspended or revoked by the Secretary of Labor if the holder thereof, in the judgment of the Secretary, has failed to comply with the provisions of this Order.

SEC. 215. The Secretary of Labor may provide for the exemption of any employer, labor union, or other agency from any reporting requirements imposed under or pursuant to this Order if such employer, labor union, or other agency has been awarded a Certificate of Merit which has not been suspended or revoked.

Part III – Nondiscrimination Provisions in Federally Assisted Construction Contracts

SEC. 301. Each executive department and agency, which administers a program involving Federal financial assistance shall require as a condition for the approval of any grant, contract, loan, insurance, or guarantee thereunder, which may involve a construction contract, that the applicant for Federal assistance undertake and agree to incorporate, or cause to be incorporated, into all construction contracts paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to such grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the provisions prescribed for Government contracts by Section 202 of this Order or such modification thereof, preserving in substance the contractor's obligations thereunder, as may be approved by the Secretary of Labor, together with such additional provisions as the Secretary deems appropriate to establish and protect the interest of the United States in the enforcement of those obligations. Each such applicant shall also undertake and agree (1) to assist and cooperate actively with the Secretary of Labor in obtaining the compliance of contractors and subcontractors with those contract provisions and with the

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rules, regulations and relevant orders of the Secretary, (2) to obtain and to furnish to the Secretary of Labor such information as the Secretary may require for the supervision of such compliance, (3) to carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Secretary of Labor pursuant to Part II, Subpart D, of this Order, and (4) to refrain from entering into any contract subject to this Order, or extension or other modification of such a contract with a contractor debarred from Government contracts under Part II, Subpart D, of this Order.

SEC. 302. "Construction contract" as used in this Order means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.

- a) The provisions of Part II of this Order shall apply to such construction contracts, and for purposes of such application the administering department or agency shall be considered the contracting agency referred to therein.
- b) The term "applicant" as used in this Order means an applicant for Federal assistance or, as determined by agency regulation, other program participant, with respect to whom an application for any grant, contract, loan, insurance, or guarantee is not finally acted upon prior to the effective date of this Part, and it includes such an applicant after he/she becomes a recipient of such Federal assistance.

SEC. 303. The Secretary of Labor shall be responsible for obtaining the compliance of such applicants with their undertakings under this Order. Each administering department and agency is directed to cooperate with the Secretary of Labor and to furnish the Secretary such information and assistance as the Secretary may require in the performance of the Secretary's functions under this Order.

- a) In the event an applicant fails and refuses to comply with the applicant's undertakings pursuant to this Order, the Secretary of Labor may, after consulting with the administering department or agency, take any or all of the following actions: (1) direct any administering department or agency to cancel, terminate, or suspend in whole or in part the agreement, contract or other arrangement with such applicant with respect to which the failure or refusal occurred; (2) direct any administering department or agency to refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received by the Secretary of Labor from such applicant; and (3) refer the case to the Department of Justice or the Equal Employment Opportunity Commission for appropriate law enforcement or other proceedings.

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- b) In no case shall action be taken with respect to an applicant pursuant to clause (1) or (2) of subsection (b) without notice and opportunity for hearing.

SEC. 304. Any executive department or agency which imposes by rule, regulation, or order requirements of nondiscrimination in employment, other than requirements imposed pursuant to this Order, may delegate to the Secretary of Labor by agreement such responsibilities with respect to compliance standards, reports, and procedures as would tend to bring the administration of such requirements into conformity with the administration of requirements imposed under this Order: *Provided*, That actions to effect compliance by recipients of Federal financial assistance with requirements imposed pursuant to Title VI of the Civil Rights Act of 1964 shall be taken in conformity with the procedures and limitations prescribed in Section 602 thereof and the regulations of the administering department or agency issued thereunder.

Part IV – Miscellaneous

SEC. 401. The Secretary of Labor may delegate to any officer, agency, or employee in the Executive branch of the Government, any function or duty of the Secretary under Parts II and III of this Order.

[Sec. 401 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 402. The Secretary of Labor shall provide administrative support for the execution of the program known as the "Plans for Progress."

SEC. 403. Executive Orders Nos. 10590 (January 19, 1955), 10722 (August 5, 1957), 10925 (March 6, 1961), 11114 (June 22, 1963), and 11162 (July 28, 1964), are hereby superseded and the President's Committee on Equal Employment Opportunity established by Executive Order No. 10925 is hereby abolished. All records and property in the custody of the Committee shall be transferred to the Office of Personnel Management and the Secretary of Labor, as appropriate.

- a) Nothing in this Order shall be deemed to relieve any person of any obligation assumed or imposed under or pursuant to any Executive Order superseded by this Order. All rules, regulations, orders, instructions, designations, and other directives issued by the President's Committee on Equal Employment Opportunity and those issued by the heads of various departments or agencies under or pursuant to any of the Executive orders superseded by this Order, shall, to the extent that they are not inconsistent with this Order, remain in full force and effect unless and until revoked or superseded by

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appropriate authority. References in such directives to provisions of the superseded orders shall be deemed to be references to the comparable provisions of this Order.

[Sec. 403 amended by EO 12107 of Dec. 28, 1978, 44 FR 1055, 3 CFR, 1978 Comp., p. 264]

SEC. 404. The General Services Administration shall take appropriate action to revise the standard Government contract forms to accord with the provisions of this Order and of the rules and regulations of the Secretary of Labor.

SEC. 405. This Order shall become effective thirty days after the date of this Order.

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**Section 369.APPENDIX B Loan Application Form
EMERGENCY**

Applicant Information

L17# _____

1. Legal Name of Applicant: _____

2. Applicant Address: _____

Project Description: _____

Federal Taxpayer Identification Number: _____

Home Rule Non-Home Rule

3. Authorized Representative:

Name: _____ Title: _____

Phone: _____ Email: _____

4. Engineer:

Name: _____ Firm: _____

Address: _____ Phone: _____

_____ Email: _____

5. Attorney:

Name: _____ Firm: _____

Address: _____ Phone: _____

_____ Email: _____

6. Include detailed construction cost estimate in bid format as part of this application and summarize below:

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Construction	\$
	\$
	\$
Legal/Financial	\$
Design Engineering	\$
Construction Engineering	\$
Other	\$
Contingency	\$
	<hr/>
Total	\$

7. Amount requested for loan \$ _____

8. Loan repayment period requested (maximum term is 20 years): _____

20 Years

Other (____ number of years)

9. List any other proposed sources of funding in addition to loan request:

Source: _____ Amount: _____

Date Available: _____

10. Project Schedule (Indicate "complete" or anticipated date of completion as appropriate)

a) Approved Facilities Planning:

b) Plans and Specifications completed and submitted to Illinois EPA: _____

c) Illinois EPA Permit issued: _____

d) Approved Operation, Maintenance and Replacement Revenue System and Dedicated Source of Revenue: _____

e) Advertise for Bids: _____

f) Initiation of Construction: _____

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g) Completion of Construction: _____

CERTIFICATION REGARDING PROJECT SITE, RIGHTS-OF-WAY, EASEMENTS, AND PERMITS

1. The applicant has investigated and ascertained the location of the site or sites, rights-of-way, and easements being provided for the facilities in its application for loan assistance. In my opinion, the applicant has a sufficient legal interest in the said site or sites, rights-of-way, and easements to permit the building of such facilities thereon and to permit the operation and maintenance of such facilities thereon during the estimated life of the facility by the applicant after the completion of construction.
2. The loan applicant has compiled with the provisions of 49 CFR 24 as required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (42 USC 4601 et seq.).
3. The loan applicant has obtained all the necessary permits as indicated below:

<u>Type of Permit</u>	<u>Permit Number</u>	<u>Date Issued</u>
Army Corps of Eng. 404	_____	_____
IL Dept. of Trans.	_____	_____
County Highway	_____	_____
Other	_____	_____

Loan Program Certifications

- Whereas, the application provisions for loans from the Water Pollution Control Loan Program require that the loan applicant provide the following certifications and assurances:

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The loan applicant hereby agrees to pay all project costs not covered by the loan. If the project costs provided by the applicant exceed \$10,000, please provide the following information:

Amount to be provided by applicant \$ _____

Source of funds _____

- The loan applicant hereby certifies that it has analyzed the costs and the financial impacts of the proposed project and that it has the legal, institutional, managerial and financial capability to insure adequate building, operation, maintenance and replacement of the treatment works project.
- The loan applicant hereby certifies that no unlawful or corrupt practice has taken place in the planning or design of the proposed project.
- The loan applicant hereby certifies that it has complied with all applicable State and federal statutory and regulatory requirements in regard to the proposed project.
- The loan applicant hereby certifies that it is not barred from being awarded a contract or subcontract under Section 10.1 of the Illinois Purchasing Act.

Certification Regarding Debarment, Suspension and Other Responsibility Matters

The prospective participant to the best of its knowledge and belief that it and its principals:

- a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- b) Have not within a three year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
- c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and

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- d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in fine of up to \$10,000 or imprisonment for up to 5 years, or both.

INTENT REGARDING NATIONAL FLOOD INSURANCE

Whereas application provisions for loans from the Water Pollution Control Loan Program require compliance with the National Flood Insurance Act 1968, as amended, and

Whereas the costs of securing and maintaining flood insurance are eligible for loan participation during the approved construction period, and

Whereas failure to secure flood insurance for eligible construction located in designated flood hazard areas will cause this construction to become ineligible for loan funds:

Now therefore, be it resolved that the _____ of _____ will cooperate and coordinate with the National Flood Insurance Program to acquire and maintain any flood insurance made available for Project L17# _____ for the entire useful life of the insurable construction pursuant to the Flood Insurance Act of 1968, as amended, and that it will secure said flood insurance for each insurable structure, as soon as said insurance is available and will notify the Illinois Environmental Protection Agency in writing that the National Flood Insurance requirement has been satisfied.

AUTHORIZATION OF A REPRESENTATIVE TO SIGN LOAN DOCUMENTS

Whereas, application provisions for loans from the Water Pollution Control Loan Program for construction of sewage treatment works require that the _____ of _____ authorize a representative to sign the loan application forms and supporting documents; therefore, be it resolved by the _____ of _____ that _____ is hereby authorized to sign all loan application forms and documents.

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I, _____ hereby verify that the above information is, to the best of my knowledge, true and correct.

Date: _____ Signed by: _____

(Authorized Representative)

Title: _____

Attested by: _____

Financial Information Requirements

Prior to issuance of a loan agreement, the applicant must demonstrate to the Agency that it possesses the necessary legal, financial, managerial and institutional capability to construct, operate and maintain the project for the life of the treatment works and to retire the loan in accordance with the schedule to be contained in the loan agreement. The applicant must provide sufficient information for the Agency to determine that the applicant is financially capable and has pledged a dedicated revenue source that is adequate to retire the debt and meet any covenants and requirements in the loan agreement. This can be accomplished by development and the enactment of a new User Charge System or the demonstration that a system previously approved by the Agency has been adequately maintained, is being enforced and will continue to produce adequate revenues.

In order to provide guidance to potential loan recipients, this brief summary of the loan rules, our review procedures, and the information that must be submitted for the Agency's review is being provided along with the attached checklist.

Financial Capability

The Agency requires that the applicant demonstrate that it has the legal, financial, managerial and institutional capability to construct, operate and maintain the project for the life of the wastewater treatment works and to retire the loan. The applicant must also demonstrate the ability to meet any covenants contained in the loan agreement.

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The Agency's review will be conducted using items submitted as part of the loan application including our review of the Dedicated Source of Revenue and the User Charge System. In addition, applicants must furnish the last fiscal year's audited financial statements. If we are unable to determine that the applicant is financially capable, the Agency may require additional financial data be submitted.

Dedicated Source of Revenue

The Agency requires that specific sources of revenue must be dedicated and pledged to make the loan repayments. Prior to the Agency's approval of the dedicated source of revenue, the applicant must demonstrate that the revenue source will generate adequate revenues to make loan repayments for the term of the loan. The term of the loan will be specified in the loan agreement but shall not exceed 20 years from the initiation of operation date contained in the loan agreement. Additional points that must be considered during the development of the dedicated source of revenue are:

- The dedicated source of revenue is usually pledged by the loan applicant in the form of an adopted ordinance that pledges a specific and dedicated source of revenue for repayment of the loan. The adopted ordinance will in most cases pledge a very stable source of revenue, such as revenues of the system, in the form of a revenue bond. General obligation and alternate bond ordinances are also acceptable.
- In the case of revenue bonds, the Agency requires that debt service coverage requirements for the IEPA loan be equal to any outstanding senior debt that is payable from revenues of the system. If a sewer service charge is used, the sewer rate and rate ordinance must be adopted prior to the first disbursement. State law requires a 1.25 x coverage test for alternate bonds, and parity revenue bonds must also meet the covenants made to outstanding investors.
- The Agency requires that the applicant furnish a legal opinion concerning the acceptability of the ordinance and other elements of the debt instrument selected for repayment of the loan. This opinion must address the validity and enforceability of the loan recipient's obligations and the absence of conflicts with other agreements, bonds or ordinances. Retention of bond counsel is optional.

User Charge System

The applicant's User Charge System must generate adequate revenues to accommodate costs for operation, maintenance and replacement of the treatment works.

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If the applicant has a previously approved User Charge System, the Agency will review the system to ascertain that the system was enacted and has been maintained in accordance with the previous approval and will produce adequate revenues for the proposed project.

Applicant: _____

L17#: _____

FINANCIAL INFORMATION CHECKLIST

Please answer or submit information indicated, as appropriate.

A. Dedicated source of revenue

1. Home Rule Non-Home Rule
2. Type of loan instrument
 - a. General Obligation Debt
 - b. Alternate (double barreled) bonds with property tax levy that pledges an alternate revenue source of _____
 - c. Water Sewer Combined System Revenues – Senior Lien
 - d. Water Sewer Combined System Revenues – Subordinate Lien
3. Authority of applicant to issue debt
 - a. Home rule powers
 - b. Specific authorizing statute: _____ ILCS _____
 - c. Other (specify)
4. Copy of certified ordinance authorizing debt must be submitted along with existing ordinances if a subordinate lien is proposed. If this is a subordinate lien, the certified ordinance authorizing debt must have provisions for equivalent accounts and coverage.
5. Signed legal opinion with respect to the validity and enforceability of the applicant's obligations (bond ordinance) and the absence of conflicts with other agreements, bonds or ordinances.

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6. A detailed demonstration that the dedicated source of revenue will provide adequate revenues to repay the loan in accordance with the terms of the loan agreement, including meeting any covenants and requirements in the loan agreement.
7. Last fiscal year's audited annual statement.
8. Are other entities substantially benefiting (greater than 5%) from the project?
 Yes No
9. Submit copies of any service agreement with any substantial beneficiary.
 Attached N/A

EITHER

- B. User Charge System (assuming that an Agency approved user charge system is not in existence)
1. Submission of a detailed Operation, Maintenance and Replacement (OM&R) budget.
 2. Calculations to demonstrate how the rates and surcharges are calculated. The rates should be expressed in cost per unit of usage i.e., 1,000 gallons, 100 cubic feet, pounds of BOD and suspended solids or milligrams per liter of BOD and suspended solids as appropriate.
 3. Certified sewer use and rate ordinances.

OR

- C. Supplemental Review (assuming that an Agency approved User Charge System is in existence)
1. Submit a copy of the Sewer Use Ordinance and User Charge Ordinance originally approved.
 2. Submit any amendments made to the ordinances since their approval.

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- 3. Is the User Charge System generating sufficient revenue to recover the Operation, Maintenance and Replacement Costs? Yes No
If answered No, what corrective action is being taken?
- 4. Is the Sewer Use Ordinance being enforced? Yes No
If answered No, please explain.
- 5. Is an annual review of the Wastewater Service Charge being performed?
 Yes No

If answered No, please explain.
- 6. Will the project result in substantial changes to the costs for Operation, Maintenance and Replacement? Yes No
Will the project substantially alter the treatment process? Yes No
- 7. If either question in #6 is answered yes, please submit a proposed budget for the first year OM&R costs and a review of the wastewater service charges, along with appropriate revisions to the rate ordinance.

I hereby certify that the above information is, to the best of my knowledge, true and accurate.

(Authorized Representative)	(Date)
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(Clerk)	(Date)
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- 1) Heading of the Part: Procedures For Issuing Loans From the Public Water Supply Loan Program
- 2) Code Citation: 35 Ill. Adm. Code 662
- 3)

<u>Section Numbers</u> :	<u>Emergency Action</u> :
662.130	Amendment
662.210	Amendment
662.310	Amendment
662.340	Amendment
662.410	Amendment
662.430	Amendment
662.440	Amendment
662.610	Amendment
662.620	Amendment
662.630	Amendment
662.935	Amendment
662.APPENDIX A EXHIBIT A	Repeal
662.APPENDIX A EXHIBIT B	Repeal
- 4) Statutory Authority: Implementing and authorized by Section 19.1-19.9 of the Environmental Protection Act [415 ILCS 5/19.1-19.9]
- 5) Effective Date of Amendments: June 2, 2009
- 6) If this emergency amendments is to expire before the end of the 150-day period, please specify the date on which it is to expire: This emergency amendment is not set to expire before the end of the 150-day period.
- 7) Date Filed with the Index Department: June 2, 2009
- 8) A copy of the emergency amendments, including any material incorporated by reference, are on file in the agency's principal office and are available for public inspection.
- 9) Reason for Emergency: The Agency needs to file these emergency amendments to allow the Agency to administer the Public Water Supply Loan Program (PWSLP) in conjunction with additional funding from the American Recovery and Reinvestment Act of 2009 (ARRA) which will be incorporated into the PWSLP. Also, pursuant to 415 ILCS 5/19.4(d), the Agency is required to adopt emergency rules as necessary to allow

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for the timely administration of funds provided under the ARRA. Identical proposed amendments will be submitted for publication in the Illinois Register by the Agency.

- 10) A Complete Description of the Subjects and Issues Involved: These amendments establish changes to procedures the Agency will use to administer the PWSLP in conjunction with the additional funding from the American Recovery and Reinvestment Act of 2009. The emergency amendments will allow the Agency to lower the existing PWSLP interest rate and provide additional loan applicants the benefits of no interest financing and a more streamlined application process for public water supplies.
- 11) Are there any proposed rulemakings to this Part pending? Yes
- 12) Statement of Statewide Policy Objectives: This rulemaking will not create a State mandate for units of local government.
- 13) Information and questions regarding these emergency amendments shall be directed to:

Stefanie N. Diers
Assistant Counsel
Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
P.O. Box 19726
Springfield, Illinois 62794-9276

217/782-5544

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

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TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE F: PUBLIC WATER SUPPLIES
CHAPTER II: ENVIRONMENTAL PROTECTION AGENCY

PART 662
PROCEDURES FOR ISSUING LOANS FROM THE
PUBLIC WATER SUPPLY LOAN PROGRAM

SUBPART A: INTRODUCTION

Section	Purpose
662.110	Purpose
662.120	Administration
662.130	Definitions
EMERGENCY	
662.140	Incorporations by Reference

SUBPART B: FEDERAL REQUIREMENTS FOR
THE PUBLIC WATER SUPPLY LOAN PROGRAM

Section	Purpose
662.210	Uses of the Public Water Supply Loan Program
EMERGENCY	
662.220	Agency Responsibilities Under the Federal Safe Drinking Water Act

SUBPART C: LIABILITIES AND REMEDIES FOR
FAILURE TO COMPLY WITH LOAN PROCEDURES

Section	Purpose
662.310	Noncompliance with Loan Procedures
EMERGENCY	
662.320	Stop-Work Order
662.330	Termination
662.340	Waiver of Procedures

[EMERGENCY](#)

SUBPART D: PROCEDURES FOR ISSUANCE OF LOANS

Section

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662.410 Project Priority Determination

| [EMERGENCY](#)

662.420 Pre-Applications for Financial Assistance and Identification of Projects to be Funded

662.430 Financial Assistance Application and Approval

| [EMERGENCY](#)

662.440 Fixed Loan Rate

| [EMERGENCY](#)

662.450 Refinancing

662.460 Limitation on Design Cost

662.470 Limitation on Loan Amount

662.480 Loans to Privately Owned Community Water Supplies

SUBPART E: PROJECT PLANNING REQUIREMENTS FOR LOAN PROJECTS

Section

662.510 Loan Applicant's Responsibilities During Project Planning

662.520 State Environmental Review

SUBPART F: REQUIREMENTS APPLICABLE TO SUBAGREEMENTS

Section

662.610 Requirements for Subagreements

| [EMERGENCY](#)

662.620 Construction Contracts

| [EMERGENCY](#)

662.630 Contracts for Personal and Professional Services

| [EMERGENCY](#)

662.640 Compliance with Procurement Requirements for Construction Contracts

662.650 Disputes

662.660 Indemnity

662.670 Covenant Against Contingent Fees

SUBPART G: REQUIREMENTS APPLICABLE TO CONSTRUCTION INITIATION,
CHANGES, COMPLETION AND OPERATION OF PROJECT

Section

662.710 Construction Initiation

662.720 Project Changes

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- 662.730 Construction Engineering
- 662.740 Operation and Maintenance of the Project
- 662.750 Final Inspection

SUBPART H: REQUIREMENTS APPLICABLE TO
ACCESS, AUDITING, AND RECORDS

Section

- 662.810 Access
- 662.820 Audit and Records
- 662.830 Single Audit Act

SUBPART I: FINANCIAL AND MANAGERIAL CAPACITY

Section

- 662.910 Operation, Maintenance and Replacement Revenue System
- 662.920 Financial Capability
- 662.930 Dedicated Source of Revenue for Local Government Units
- 662.935 Source of Revenue and Security for Privately Owned Community Water Supplies

EMERGENCY

- 662.940 Floodplain Insurance

SUBPART J: REQUIREMENTS APPLICABLE TO LOAN DISBURSEMENTS

Section

- 662.1010 Determination of Allowable Costs
- 662.1020 Use of Loan Funds and Payment of Unallowable Costs
- 662.1030 Disbursement of Loan Funds

SUBPART K: PROCEDURES FOR LOAN REPAYMENT
AND DELINQUENT REPAYMENT

Section

- 662.1110 Loan Repayment to the Agency
- 662.1120 Delinquent Loan Repayments

662.APPENDIX A Executive Orders

- 662.EXHIBIT A Executive Order 11625 (Repealed)

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662.EXHIBIT B	Executive Order 12138 (Repealed)
EMERGENCY	
662.EXHIBIT C	Executive Order 12549
662.EXHIBIT D	Executive Order 11246

AUTHORITY: Implementing and authorized by Sections 19.1 through 19.9 of the Illinois Environmental Protection Act [415 ILCS 5/19.1 through 19.9].

SOURCE: Emergency rule adopted at 21 Ill. Reg. 10091, effective July 17, 1997, for a maximum of 150 days; emergency expired on December 13, 1997; adopted at 22 Ill. Reg. 3782, effective February 10, 1998; amended at 24 Ill. Reg. 16245, effective November 1, 2000; emergency amendment at 33 Ill. Reg. 8674, effective June 2, 2009, for a maximum of 150 days.

SUBPART A: INTRODUCTION

Section 662.130 Definitions**[EMERGENCY](#)**

- a) Unless specified otherwise, all terms shall have the meanings set forth in the Environmental Protection Act (Act) [415 ILCS 5] and the regulations adopted thereunder.
- b) For the purposes of this Part, the following definitions apply:

Addenda – Documents issued by the loan applicant after advertisement for bids, which modify or interpret the contract documents, drawings, and specifications, by additions, deletions, clarifications or corrections.

Agency – Illinois Environmental Protection Agency.

[ARRA – The American Recovery and Reinvestment Act of 2009 \(Public Law 111-5\).](#)

Billed Customers – The ~~number of~~ customers receiving a bill who are responsible for paying for ~~water services~~ ~~the proposed improvements~~.

Binding Commitment – A legal obligation between the Agency and a local government unit or privately owned community water supply to provide financial assistance from the Public Water Supply Loan Program to that local government

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unit or privately owned community water supply, specifying the terms and schedules under which assistance is provided. The loan agreement will be considered a binding commitment.

Building Cost – The cost of erection of construction contract line items. Building costs do not include preliminary planning, engineering, architectural, legal, fiscal, administrative or contingency costs.

Capitalization Grant – The actual federal funds received by the Agency for deposit into the PWSLP as a result of the capitalization grant agreement with the USEPA.

Capitalization Grant Agreement – The agreement entered into each federal fiscal year between the Agency and the USEPA for the purpose of providing a grant to capitalize the PWSLP and enable the Agency to provide assistance for construction of public water supply facilities.

Change Order – A written order by the loan recipient to the contractor authorizing an addition, deletion or revision in the work within the general scope of the contract documents, or authorizing an adjustment in the contract price or contract time.

Construction – Any one or more of the following which is undertaken for a public purpose: preliminary planning to determine the feasibility of the public water supply facilities; engineering, architectural, legal, fiscal, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures or other necessary actions, erection, building, acquisition, alteration, remodeling, improvement or extension of public water supply facilities, or the inspection or supervision of any of the foregoing items.
[415 ILCS 5/19.2(d)]

Contract Documents – The contract, including but not limited to advertisement for bids, information for bidders, bid, bid bond agreement, payment bond, performance bond, notice of award, notice to proceed, change order, drawings, specifications, and addenda.

Dedicated Source of Revenue – The type of security and the basis of legal authorization which are dedicated by legislative enactment or other appropriate authority along with the applicable revenue source pledged for repayment and

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recorded in an account for the purpose of loan repayment to the PWSLP, which is sufficient to repay the principal and interest on the loan.

Design – All administrative, legal, and engineering tasks, subsequent to project plan approval but prior to advertisement for bid proposal, associated with receiving approval of a loan application. This shall include the following: surveys, designs, plans, working drawings, specifications, soil investigations and any other tests or process determinations required to establish design criteria, and development of user charge systems.

Director – Director of the Illinois Environmental Protection Agency.

Fixed Loan Rate – One-half the market interest rate but not less than 2.50%.

Fund – The Water Revolving Fund authorized by 415 ILCS 5/19.3, consisting of the Water Pollution Control Loan Program, the Public Water Supply Loan Program, and the Loan Support Program.

Health Hazard Determination – A health hazard determination exists when concentrations of regulated contaminants, in a water supply, or concentrations of contaminants not otherwise regulated, exceed health effects standards published in U.S. Environmental Protection Agency (USEPA) Health Advisories, or by the Illinois Department of Public Health or by the Centers for Disease Control and Prevention or which otherwise pose an immediate threat to public health.

Initiation of Loan Repayment Period – The date in a loan agreement or amendment that establishes the beginning point of the loan repayment period.

Initiation of Operation – The date specified by the loan agreement on which use of the project began operation for the purposes that it was planned, designed and constructed.

Intended Use Plan – A plan which includes a description of the short and long term goals and objectives of the PWSLP, project categories, terms of financial assistance, communities and population benefitted. [415 ILCS 5/19.2(e)]

Interest Rate – Not less than one-fourth of the market interest rate rounded to the nearest .01%.

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Loan Agreement – The contractual agreement between the Agency and the local government unit or privately owned community water supply which contains the terms and conditions governing the loan issued from the PWSLP.

Loan Applicant – A local government unit or privately owned community water supply that has applied for a loan from the PWSLP for construction of public water supply facilities.

Loan Commitment Letter – The letter that is sent by the Agency to the loan applicant which reserves loan funds and identifies the requirements that must be satisfied prior to the execution of the loan agreement.

Loan Procedures – The procedures for issuing loans from the Public Water Supply Loan Program as set out in this Part 662.

Loan Recipient – A local government unit or privately owned community water supply which has been provided a loan for construction of public water supply facilities from the PWSLP and which will own and be responsible for the operation and maintenance of the community water supply facility.

Loan Support Rate – Not more than one-fourth of the market interest rate rounded to the nearest .01%.

Local Government Unit – A county, municipality, township, municipal or county sewerage or utility authority, sanitary district, public water district, improvement authority or any other political subdivision whose primary purpose is to construct, operate and maintain wastewater treatment facilities or public water supply facilities or both. [415 ILCS 5/19.2(g)]

Market Interest Rate – The mean interest rate of the 20 General Obligation Bond Buyer Index, from July 1 to June 30 of the preceding State fiscal year rounded to the nearest .01%.

Maximum Contaminant Level (MCL) – The maximum permissible level of a contaminant in water that is delivered to any user of a public water system.

Operating Agreement – The agreement between the Agency and USEPA that establishes the policies, procedures and activities for the application and receipt of federal capitalization grant funds for capitalization of the PWSLP.

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Principal – All disbursements, including interest and loan support accrued on the disbursements, that will be financed at the time the repayment schedule period begins.

Privately Owned Community Water Supply – An investor-owned water utility, if under Illinois Commerce Commission regulation and operating as a separate and distinct water utility; a not-for-profit water corporation, if operating specifically as a water utility; and a mutually owned or cooperatively owned community water system, if operating as a separate water utility. [415 ILCS 5/19.2]

Project – The activities or tasks the Agency identifies in the loan agreement for which the loan recipient may expend loan funds.

Project Priority List – An ordered listing of projects developed in accordance with the priority system described in 35 Ill. Adm. Code 663: Subpart B (Procedures for Calculating the Loan Priority Index) which the Agency has determined are eligible to receive financial assistance from the PWSLP.

PWSLP – The Public Water Supply Loan Program as authorized by Section 19.2 of the Environmental Protection Act [415 ILCS 5/19.2].

Responsible Bid – A bid that demonstrates the apparent ability of the bidder to successfully meet all the requirements specified in the contract documents. Information required to demonstrate responsibility may be corrected or submitted after bid opening.

Responsive Bid – A bid that complies with all meaningful or material aspects of the contract documents. The bid must constitute a definite and unqualified offer to meet the material requirements of the contract documents including any terms that affect price, quality, quantity or time of delivery, or are clearly identified in the contract documents to be complied with at the risk of bid rejection for non-responsiveness. Bid defects resulting in a non-responsive bid may not be corrected after the bid opening.

SDWA – The federal Safe Drinking Water Act, as amended (42 USC 300f).

Source of Revenue – The revenues of the system, including accounts receivable and the proceeds that are sufficient to repay the principal and interest on the loan.

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Subagreement – A written agreement between the loan recipient and another party and any tier of agreement thereunder to furnish services, supplies, or equipment necessary to complete the project for which a loan was provided, including contracts for personal and professional services and purchase orders.

Treatment Technique Requirement – An enforceable procedure developed by USEPA when it is not economically or technologically feasible to ascertain the level of contaminant. Public water supplies must follow this procedure and treat their drinking water supplies according to USEPA specifications to ensure the contaminant is controlled.

Useful Life – The estimated period during which a public water supply facility is intended to be operable.

USEPA – The United States Environmental Protection Agency.

(Source: Amended by emergency rulemaking at 33 Ill. Reg. 8674, effective June 2, 2009, for a maximum of 150 days)

SUBPART B: FEDERAL REQUIREMENTS FOR
THE PUBLIC WATER SUPPLY LOAN PROGRAM

**Section 662.210 Uses of the Public Water Supply Loan Program
EMERGENCY**

- a) *To accept and retain funds from grant awards, appropriations, transfers and payments of interest and principal;*
- b) *To make direct loans at or below market interest rates to any eligible local government unit or to any eligible privately owned community water supply to finance the construction of public water supplies;*
- c) *With respect to funds provided under the American Recovery and Reinvestment Act of 2009, to make direct loans at or below interest rates to any eligible local government unit or to any eligible privately owned community water supply, and to provide additional subsidization to any eligible local government unit or to any eligible privately owned community water supply, including, but not limited to, forgiveness of principal, negative interest rates, and grants;*

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- d) *With respect to funds provided under the American Recovery and Reinvestment Act of 2009, to buy or refinance the debt obligation of a local government unit for costs incurred on or after October 1, 2008;*
- e) *With respect to the funds provided under the American Recovery and Reinvestment Act of 2009, to provide additional subsidization, including, but not limited to, forgiveness of principal, negative interest rates, and grants for a local government unit for costs incurred on or after October 1, 2008;*
- fe) *To buy or refinance debt obligations of a local government unit incurred on or after July 17, 1997;*
- gd) *To guarantee local obligations where such action would improve credit market access or reduce interest rates;*
- he) *As a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the State, if the proceeds of such bonds will be deposited in the PWSLP.*
- i) *To transfer funds to the Water Pollution Control Loan Program [415 ILCS 5/19.3(d)].*

(Source: Amended by emergency rulemaking at 33 Ill. Reg. 8674, effective June 2, 2009, for a maximum of 150 days)

SUBPART C: LIABILITIES AND REMEDIES FOR FAILURE
TO COMPLY WITH LOAN PROCEDURES

Section 662.310 Noncompliance with Loan Procedures

EMERGENCY

- a) In the event of noncompliance with any condition or obligation arising out of the loan, including any action that would jeopardize or compromise the source of revenue for repayment of the loan or security interest, the Director may take any necessary action as provided by law or by the loan agreement against the loan recipient including, but not limited to, one or more of the following actions:
 - 1) Commence legal action in a court of competent jurisdiction;

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- 2) Declare all amounts under the loan immediately due and payable, enforce any security, and recover all loan funds;
 - 3) Terminate the loan pursuant to Section 662.330 (Termination) of this Subpart;
 - 4) Suspend all or part of the project work pursuant to Section 662.320 (Stop-Work Order) of this Subpart;~~or~~
 - 5) Reduce the amount of the loan by the amount of misused funds; or;
 - 6) Unilaterally adjust the fixed loan rate of the loan agreement to the current market interest rate.
- b) No action shall be taken under this Section without notice to the loan recipient.
 - c) In determining whether to take action the Agency shall, at a minimum, consider mitigating or aggravating factors, including but not limited to the severity and number of the violations; whether the violation is a continuing one; whether the loan recipient can remedy the violation; and whether the loan recipient remains capable of complying with the approved project work.

(Source: Amended by emergency rulemaking at 33 Ill. Reg. 8674, effective June 2, 2009, for a maximum of 150 days)

Section 662.340 Waiver of Procedures**EMERGENCY**

- a) Except as provided in subsection (b) of this Section or otherwise required by law, the Director may waive any of the loan procedures, either in whole or in part, by a written statement to the loan applicant, either as a special condition of the loan or otherwise, provided the Director finds that the procedure or requirement to be waived is not necessary to insure the integrity of the project, will not reduce an applicant's ability to repay the loan to the Agency or will not, in general, weaken the financial position of the PWSLP. The waiver may be subject to such additional conditions the Director deems necessary.
- b) The following procedures will not be waived:

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- 1) Section 662.410 (Project Priority Determination) of this Part
- 2) Section 662.440 (Fixed Loan Rate) of this Part
- 3) Section 662.510 (Loan Applicant's Responsibilities During Project Planning) of this Part
- 4) Section 662.520 (State Environmental Review) of this Part
- 5) Section 662.620(d)(3) (Wage Provisions) of this Part
- 6) Section 662.620(d)(4) ([Disadvantaged Business Enterprise](#)~~MBE/WBE~~ Requirements) of this Part
- 7) Section 662.620(d)(5) (Debarment ~~and/or~~ Suspension Certification) of this Part
- 8) Section 662.630(a)(1) ([Disadvantaged Business Enterprise](#)~~MBE/WBE~~ Requirements) of this Part
- 9) Section 662.630(a)(4) (Debarment ~~and/or~~ Suspension Certification) of this Part
- 10) Section 662.740 (Operation and Maintenance of the Project) of this Part
- 11) Section 662.910 (Operation, Maintenance and Replacement Revenue System) of this Part
- 12) Section 662.930 (Dedicated Source of Revenue for Units of Local Government) of this Part
- 13) Section 662.935 (Source of Revenue and Security for Privately Owned Community Water Supplies) of this Part.

(Source: Amended by emergency rulemaking at 33 Ill. Reg. 8674, effective June 2, 2009, for a maximum of 150 days)

SUBPART D: PROCEDURES FOR ISSUANCE OF LOANS

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Section 662.410 Project Priority Determination**EMERGENCY**

- a) Financial assistance from the PWSLP will be provided only to local government units ~~and eligible~~ privately owned community water supplies for projects on the Project Priority List developed by the Agency pursuant to 35 Ill. Adm. Code 663.
- b) The Project Priority List sets out the priority for receipt of loans for each loan applicant. Priorities will be established in accordance with 35 Ill. Adm. Code 663 after the receipt by the Agency of both loan pre-applications pursuant to Section 662.420 (Pre-Applications for Financial Assistance and Identification of Projects to be Funded) of this Part and approved Project Planning pursuant to Section 662.510 (Loan Applicant's Responsibilities During Project Planning) and Section 662.520 (State Environmental Review) of this Part. For a project represented by loan pre-applications only, the Agency will provide limited priority scoring for inclusion of the project on the Project Priority List.~~Subpart.~~
- c) Projects included on the Intended Use Plan will be selected from projects on the Project Priority List in priority order, provided the project has an approved Project Plan and is scheduled to initiate construction by March 31 of the subsequent federal fiscal year.

(Source: Amended by emergency rulemaking at 33 Ill. Reg. 8674, effective June 2, 2009, for a maximum of 150 days)

Section 662.430 Financial Assistance Application and Approval**EMERGENCY**

- a) In order to issue a loan commitment letter, the Agency must have received the following documents:
 - 1) A completed loan application form for financial assistance providing at a minimum the following items:
 - A) Legal name of applicant;
 - B) Address;

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- C) Authorized representative-name and title;
 - D) Cost estimate;
 - E) Amount requested for loan; and
 - F) Verification and signature;
- 2) An approved project plan in accordance with Section 662.510 (Loan Applicant's Responsibilities During Project Planning) of this Part;
- 3) A Loan Program Certifications form that includes at a minimum the following:
- A) The loan applicant must agree to pay all project costs not covered by the loan;
 - B) The loan applicant must certify that it has analyzed the costs and the financial impacts of the proposed project and that it has the financial capability to repay the loan as well as the technical and managerial capacity to maintain compliance with the Safe Drinking Water Act;
 - C) The loan applicant must certify that it is not aware of any unlawful or corrupt practices having taken place in the planning or design of the proposed project;
 - D) The loan applicant must certify that it has complied with all applicable State and federal statutory and regulatory requirements in regard to the proposed project;
 - E) The loan applicant must certify that it is not barred from being awarded a contract or subcontract under the Illinois Procurement Code [30 ILCS 500]; and
 - F) The loan applicant must provide its correct Federal Taxpayer Identification Number and certify that it is authorized to do business in the State of Illinois;

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- 4) A "Certification Regarding Debarment, Suspension, and Other Responsibility Matters" (EPA Form 5700-49) showing compliance with federal Executive Order 12549 (Appendix A, Exhibit C);
- 5) An executed inter-governmental agreement necessary for project implementation, where necessary;
- 6) A resolution, ordinance, or legal document authorizing a representative of the loan applicant to sign loan application documents;
- 7) A certification of compliance with the Relocation and Real Property Acquisition Policies Act of 1970 (42 USC 4601) must be submitted by loan applicants that are local government units;
- 8) A certification that the necessary project site, rights-of-way, easements and permits have been obtained;
- 9) A resolution of intent to comply with the National Flood Insurance Act of 1968 (42 USC 4001-4127) in accordance with Section 662.940 (Floodplain Insurance) of this Part;
- 10) An approved operation, maintenance and replacement revenue system in accordance with Section 662.910 (Operation, Maintenance and Replacement Revenue System) of this Part;
- 11) Documentation to support the loan applicant's ability to repay the loan in accordance with Section 662.930 (Dedicated Source of Revenue For Local Government Units) of this Part or Section 662.935 (Source of Revenue and Security for Privately Owned Community Water Supplies) of this Part;
- 12) The construction drawings and specifications, suitable for bidding purposes;
- 13) A construction permit application and permit or "authorization to construct" from the Agency, pursuant to the provisions of Sections 14 through 17 or Sections 39 and 40 of the Environmental Protection Act [415 ILCS 5/14 through 17, 39 and 40], whichever is applicable;

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- 14) A project completion schedule;
 - 15) An executed contract for design and construction related work in accordance with Section 662.630 (Contracts for Personal and Professional Services) of this Part;
 - 16) An EPA Form 4700-4 – Compliance Report;
 - 17) An enacted ordinance or other legally binding instrument authorizing the bonds, notes, security agreements or other evidence of indebtedness to be delivered to the Agency;
 - 18) Proof of publication of the ordinance and any notice required by State statute, where applicable;
 - 19) A legal opinion from the loan applicant's legal counsel with respect to the validity and enforceability of the loan applicant's obligations and the absence of conflicts with other agreements, notes, bonds or ordinances; and
 - 20) Any other executed legal agreements necessary for project implementation.
- b) In addition to the items identified in subsection (a) of this Section, the Agency must have received the following items before it will issue the actual Loan Agreement:
- 1) A certified copy of the published bid advertisement(s);
 - 2) Any addenda issued by the loan applicant, if applicable;
 - 3) The bidder's bid bond or cashier's check for not less than 5% of the total bid;
 - 4) The low bidder's certificate of nonsegregated facilities showing compliance with 18 USC 1001;
 - 5) A summary of the evidence that the contractor and engineer have met [the disadvantaged business enterprise requirements pursuant to 40 CFR](#)

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~~[33MBE/WBE requirements of federal Executive Orders 11625 and 12138 \(Appendix A, Exhibits A and B\);](#)~~

- 6) The submittal of bid tabulations;
- 7) An analysis of the bids and recommendations for the award of the bids;
- 8) A copy of the successful bid proposal(s);
- 9) The notice of the applicant's intent to award;
- 10) A "Certification Regarding Debarment, Suspension, and Other Responsibility Matters" (EPA Form 5700-49) showing compliance with federal Executive Order 12549 (Appendix A, Exhibit C) is required from the prime contractor and the engineer; and
- 11) A certification regarding compliance with Section 33E of the Illinois Criminal Code of 1961 [720 ILCS 5/33E].

(Source: Amended by emergency rulemaking at 33 Ill. Reg. 8674, effective June 2, 2009, for a maximum of 150 days)

Section 662.440 Fixed Loan Rate**EMERGENCY**

- a) The fixed loan rate is comprised of an interest rate and a loan support rate. The fixed loan rate charged for a public water supply facilities loan shall be a simple annual rate at one-half the market interest rate, but not less than 2.50%.
- b) Notwithstanding subsection (a), for the period of time that funds from the ARRA are available for loan commitment, the fixed loan rate charged for all loans from the PWSLP shall be a simple annual rate of 0.00%.

(Source: Amended by emergency rulemaking at 33 Ill. Reg. 8674, effective June 2, 2009, for a maximum of 150 days)

SUBPART F: REQUIREMENTS APPLICABLE TO SUBAGREEMENTS

Section 662.610 Requirements for Subagreements

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The intent of this Subpart is to provide for maximum open and free competition in the procurement of materials, goods and services for the construction of projects funded from the PWSLP. Any procurement method, except as allowed under this Part, that significantly minimizes open and free competition will be prohibited. The following procedures shall apply to subagreements:

- a) **Local Preference**
Local laws, ordinances, regulations or procedures that are designed to or operate to give local or in-state bidders or proposers preference over other bidders or proposers shall not be used in evaluating bids or proposals for subagreements under PWSLP loans.
- b) **Profits**
Only fair and reasonable profits may be earned by contractors in subagreements under PWSLP loans. Profit included in a formally advertised, competitively bid, fixed price construction contract awarded pursuant to Section 662.620 (Construction Contracts) of this Subpart is presumed to be reasonable. If a subagreement is not competitively bid, the loan recipient shall submit to the Agency its basis for determination of reasonable profit.
- c) **Loan Recipient Responsibility**
The loan recipient shall be responsible for the administration and successful accomplishment of the project for which PWSLP loan assistance is provided. The loan recipient shall be responsible for the settlement and satisfaction of all contractual and administrative issues arising out of subagreements, including, but not limited to, issuance of invitations for bids or requests for proposals, selection of contractors, award of contracts, protests of award, claims, disputes, and other procurement matters. With the prior written consent of the Agency, these functions may be performed for the loan recipient by an individual or firm retained for that purpose. Such an individual or firm shall be deemed the loan recipient's agent, and shall be subject to all the provisions of the loan agreement, including this Part 662, that apply to the loan recipient.
- d) **Privity of Contract**
Neither the Agency nor the State of Illinois shall be a party to any subagreement (including contracts or subcontracts), or to any solicitation or request for proposals thereunder.

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- e) Subagreements shall:
 - 1) Be directly related to the accomplishment of the loan recipient's approved work program;
 - 2) Be in the form of an executed written agreement (except for small purchases of \$25,000 or less);
 - 3) Be for monetary or in-kind consideration; and
 - 4) Not be in the nature of a grant or gift.
- f) Documentation
 - 1) Procurement records and files for purchases in excess of \$25,000 shall include the following:
 - A) The basis for contractor selection;
 - B) The justification for lack of competition if competition appropriate to the type of project work to be performed is required but not obtained; and
 - C) The basis for award cost or price.
 - 2) Procurement documentation as described in subsection (f)(1) shall be retained by the loan recipient or contractor(s) for the period required by Section 662.820 (Audit and Records) of this Part.
- g) Subagreements shall only be awarded to persons or organizations that:
 - 1) Have adequate financial resources for performance;
 - 2) Have the necessary experience, organization, technical qualifications, and facilities, or a firm commitment, arrangement, or ability to obtain these requirements;
 - 3) Have the staffing sufficient to comply with the proposed or required

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completion schedule for the project;

- 4) Have a satisfactory record of integrity, judgment and performance;
 - 5) Have an adequate financial management system and audit procedure which is consistent with generally accepted accounting standards in accordance with the American Institute of Certified Public Accountants Professional Standards;
 - 6) Maintain a standard of procurement in accordance with this Part 662;
 - 7) Maintain a property management system which provides adequate procedures for the acquisition, maintenance, safeguarding and disposition of all property; and
 - 8) Conform to the civil rights, equal employment opportunity (Appendix A, Exhibit D) and labor law requirements of this Part 662.
- h) Fraud and Other Unlawful or Corrupt Practices
- 1) The obtaining and administration of loans from the PWSLP, and of subagreements awarded by loan recipients, shall be free from bribery, graft, kickbacks, and other corrupt practices. The loan recipient shall bear the primary responsibility for prevention and detection of such conduct and for cooperation with appropriate authorities in the prosecution of any such conduct.
 - 2) The loan recipient shall effectively pursue available State or local legal and administrative remedies, and take appropriate remedial action with respect to any allegations or evidence of illegality or corrupt practices that are brought to its attention. The loan recipient shall advise the Agency immediately when any such allegation or evidence comes to its attention, and shall periodically advise the Agency of the status and ultimate disposition of any matter.
- i) Negotiation of Subagreements
- All subagreements greater than \$25,000 shall be awarded by formal advertising unless the loan recipient determines, and the Agency concurs, that it is impracticable and infeasible to use formal advertising. Negotiated contracts must

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be competitively awarded to the maximum practicable extent and not be in conflict with other State statutes. Procurements may be negotiated by the loan recipient, if approved by the Agency, for the following reasons:

- 1) Public exigency, as evidenced by governmental declaration, will not permit the delay incident to advertising (e.g., an emergency procurement); or
- 2) The materials or services to be procured are available from only one person or firm; or
- 3) The procurement is for personal or professional services, or for any services to be rendered by an educational institution; or
- 4) No responsive, responsible bids at acceptable price levels have been received after formal advertising; or
- 5) The procurement is for material or services where the prices are established by law; for technical items or equipment requiring standardization and interchangeability of parts with existing equipment; for experimental, developmental or research work; for highly perishable materials; for resale; or for technical or specialized supplies requiring substantial initial investment for manufacture.

(Source: Amended by emergency rulemaking at 33 Ill. Reg. 8674, effective June 2, 2009, for a maximum of 150 days)

Section 662.620 Construction Contracts**EMERGENCY**

The following procedures shall apply to construction contracts (subagreements) awarded by loan recipients for the construction phase only. They shall not apply to personal and professional service contracts.

- a) The contract documents to be submitted to the Agency shall require a bid bond or cashier's check for not less than 5% of the bid amount, executed contract, performance and payment bonds for the bid amount, certificate of insurance with loan recipient added as additional insured and the notice to proceed.

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- b) Each contract shall be awarded after formal advertising, unless negotiation is permitted under Section 662.610(i) (Negotiation of Subagreements) of this Subpart. Formal advertising shall be in accordance with the following:
- 1) Evidence of advertising
The loan recipient shall submit to the Agency a certified copy of the bid advertisement which notifies the bidders that the procurement will be subject to regulations contained in the procedures for issuing loans from the PWSLP as set out in this Part 662, the Prevailing Wage Act [820 ILCS 130], the Employment of Illinois Workers on Public Works Act [30 ILCS 570], and Executive Order No. 11246, as amended (Appendix A, Exhibit D).
 - 2) Adequate bidding documents
Bidding documents (invitations for bid) shall be made available by the loan recipient and shall be furnished upon request in a timely manner. A complete set of bidding documents shall be maintained by the loan recipient and shall be available for inspection and copying by any party. The bidding documents shall include:
 - A) A complete statement of the work to be performed, including necessary drawings and specifications, and the required completion schedule. (Drawings and specifications may be made available for inspection instead of being furnished.);
 - B) The terms and conditions of the contract to be awarded;
 - C) A clear explanation of the method of bidding, the method of evaluation of bid prices, and the basis and method for award of the contract;
 - D) The statement that any contract awarded in response to the bid is expected to be funded in part by a loan from the PWSLP, and that neither the State of Illinois nor any of its departments, agencies or employees is or will be a party to this bidding or any resulting contract;
 - E) Responsibility requirements or criteria that will be used in evaluating bidders, provided that an experience requirement or

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performance bond may not be used unless adequately justified by the loan applicant;

- F) A copy of subsections (b)(~~24~~)(G) and (H) shall be included in the proposal form to be used by bidders and shall constitute a representation and certification to be considered as a part of their bid;
- G) By submission of the bid each bidder certifies, and in the case of a joint bid each party thereto certifies as to his or her own organization, that in connection with the bid:
- i) The prices in the bid have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to the prices with any other bidder or with any competitor;
 - ii) Unless otherwise required by law, the prices quoted in the bid have not knowingly been directly or indirectly disclosed to any other bidder or to any competitor prior to opening; and
 - iii) No attempt has been made or will be made by the bidder to induce any other person or firm to submit or withhold a bid for the purpose of restricting competition. Also, each bidder shall submit a certification regarding compliance with Article 33E of the Illinois Criminal Code of 1961 [720 ILCS 5/33E].
- H) Each person signing the bid shall certify that:
- i) He or she is the person in the bidder's organization responsible for the decision as to the prices being bid and that he or she has not participated, and will not participate, in any action contrary to subsection (b)(~~24~~)(G); or
 - ii) He or she is not the person in the bidder's organization responsible for the decision as to the prices being bid, but that he or she has been authorized to act as agent certifying

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that such persons have not participated, and will not participate, in any action contrary to subsection (b)(2+)(G), and as their agent shall so certify. He or she shall also certify that he or she has not participated, and will not participate, in any action contrary to subsection (b)(2+)(G).

- 3) Addenda to bidding documents
If the loan applicant wishes to amend any part of the bidding documents (including drawings and specifications) during the period when bids are being prepared, it shall send written addenda to all firms who have obtained bidding documents, in time to be considered prior to the bid opening time. When appropriate, the period for submission of bids shall be extended. All addenda to the bidding documents should be submitted to the Agency for approval prior to the bid opening.
- 4) Award to the low, responsive, responsible bidder
 - A) After bids are opened, they shall be evaluated by the loan applicant in accordance with the methods and criteria set out in the bidding documents. Items that shall be submitted to the Agency include a bid tabulation, the loan applicant's or its agent's analysis of bids and recommendation for the award and the loan applicant's letter of intent to award or the official minutes of board approval.
 - B) The loan applicant may reserve the right to reject all bids if it has documented sound business reasons. Unless all bids are rejected, award shall be made to the low, responsive, responsible bidder after the bid evaluation has been submitted to the Agency and written notice of Agency approval has been received by the loan applicant.
 - C) If the award is intended to be made to a firm which did not submit the lowest bid, prior to any award, the loan applicant shall submit to the Agency a written statement, explaining why each lower bidder was deemed not responsive or not responsible.
- c) Negotiations of Contract Amendments (Change Orders)
 - 1) Loan recipient responsibility

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The loan recipient shall be responsible for negotiation of construction contract change orders. This function may be performed by the loan recipient directly or, if authorized, by its consulting engineer. During negotiations the loan recipient shall:

- A) Make sure that the contractor has a clear understanding of the scope and extent of work and other essential requirements;
 - B) Assure that the contractor demonstrates that he or she will make available or will obtain the necessary personnel, equipment and materials to accomplish the work within the required time; and
 - C) Maintain a summary of all negotiations and the engineer's independent cost estimate.
- 2) Changes in contract price or time
The contract price or time may be changed only by a change order. When negotiations are required, they shall be conducted in accordance with subsection (c).
- 3) For each change order the contractor shall submit to the loan recipient for review sufficient cost and pricing data to enable the loan recipient to ascertain the necessity and reasonableness of costs and amounts proposed, and the allowability and eligibility of costs proposed.
- 4) Agency review
For each change order, the loan recipient shall submit to the Agency for approval the following documentation:
- A) A description of the changed work;
 - B) The contractor's proposal itemizing the cost and time to complete the changed work;
 - C) The recipient's or engineer's estimate of the cost and time to complete the changes;
 - D) Two copies of the executed change order with justification including, but not limited to, the need for the proposed work and

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the technical solution; and

- E) The summary of negotiations and resolution between the engineer's independent cost estimate and the contractor's proposal.
- d) Required Construction Contract Provisions
Each construction contract shall include the following provisions:
- 1) Audit; access to records
 - A) The contractor shall maintain books, records, documents and other evidence directly pertinent to performance on loan work consistent with generally accepted accounting standards in accordance with the American Institute of Certified Public Accountants Professional Standards. The contractor shall also maintain the financial information and data used by the contractor in the preparation or support of any cost submissions required under subsection (c), (Negotiation of Contract Amendments (Change Orders)) and a copy of the cost summary submitted to the owner. The Illinois Auditor General, the owner, the Agency, or any of their authorized representatives shall have access to the books, records, documents, and other evidence for purposes of inspection, audit, and copying. The contractor shall provide facilities for access and inspection.
 - B) For a formally advertised, competitively awarded, fixed price contract, the contractor shall include access to records as specified in subsection (d)(1)(A) for all negotiated change orders and contract amendments in excess of \$25,000 that affect the contract price. In the case of all other prime contracts, the contractor shall agree to include access to records as specified above in all his or her contracts and all tier subcontracts or change orders in excess of \$25,000 that are directly related to project performance.
 - C) Audits shall be consistent with generally accepted auditing standards in accordance with the American Institute of Certified Public Accountants Professional Standards.
 - D) The contractor shall agree to the disclosure of all information and

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reports resulting from access to records pursuant to subsection (d)(1)(A). Where the audit concerns the contractor, the auditing agency shall afford the contractor an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report shall include the written comments, if any, of the audited parties.

- E) The records required by subsection (d)(1)(A) shall be maintained and made available during performance of the work under the loan agreement and for 3 years after the date of final loan audit. In addition, records that relate to any dispute or litigation or the settlement of claims arising out of any performance, costs or items to which an audit exception has been taken, shall be maintained and made available for 3 years after resolution of such dispute, appeal, litigation, claim, or exception.
- F) The right of access will generally be exercised with respect to financial records under:
 - i) Negotiated prime contracts;
 - ii) Negotiated change orders or contract amendments in excess of \$25,000 affecting the price of any formally advertised, competitively awarded, fixed price contract; and
 - iii) Subcontracts or purchase orders under any contract other than a formally advertised, competitively awarded, fixed price contract.
- G) The right of access will generally not be exercised with respect to a prime contract, subcontract, or purchase order awarded after effective price competition. In any event, the right of access shall be exercised under any type of contract or subcontract:
 - i) With respect to records pertaining directly to contract performance, excluding any financial records of the contractor; and
 - ii) If there is any indication that fraud, gross abuse, or corrupt

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practices may be involved in the award or performance of the contract or subcontract.

- 2) **Covenant against contingent fees**
The contractor shall warrant that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. For breach or violation of this warranty, the owner shall have the right to annul the contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
 - 3) **Wage provisions**
The contractor shall pay prevailing wages in accordance with the Illinois Prevailing Wage Act [820 ILCS 130].
 - 4) **Disadvantaged business enterprise ~~MBE/WBE~~ requirements**
The contractor shall provide evidence, including but not limited to a copy of the advertisement(s) and the record of negotiation that it has taken affirmative steps in accordance with 40 CFR 33 federal Executive Orders 11625 and 12138 (Appendix A, Exhibits A and B), to assure that disadvantaged business enterprises ~~small, minority and women's businesses~~ are used when possible as sources of supplies, equipment, construction and services consistent with the provisions of the Agency's Operating Agreement with USEPA.
 - 5) **Debarment ~~and/or~~ suspension provisions**
The contract shall require the successful bidder(s) to submit a "Certification Regarding Debarment, Suspension and Other Responsibility Matters" (EPA Form 5700-49) showing compliance with federal Executive Order 12549 (Appendix A, Exhibit C).
 - 6) **Nonsegregated facilities provisions**
The successful bidder shall be required to submit a certification of nonsegregated facilities as prescribed in 18 USC 1001.
- e) **Subcontracts under Construction Contracts**
The award or execution of all subcontracts by a prime contractor and the procurement and negotiation procedures used by the prime contractor shall

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comply with the following:

- 1) All applicable provisions of federal, State and local law;
 - 2) All provisions of this Part 662 regarding fraud and other unlawful or corrupt practices;
 - 3) All provisions of this Part 662 with respect to access to facilities, records and audit of records.
 - 4) All provisions of subsection (d)(5) that require a "Certification Regarding Debarment, Suspension and Other Responsibility Matters" (EPA Form 5700-49) showing compliance with federal Executive Order 12549 (Appendix A, Exhibit C).
- f) Contractor Bankruptcy
In the event of a contractor bankruptcy, the loan recipient shall notify the Agency and shall keep the Agency advised of any negotiations with the bonding company, including any proposed settlement. The Agency may participate in those negotiations and will advise the loan recipient of the impact of any proposed settlement to the loan agreement. The loan recipient shall be responsible for assuring that every appropriate procedure and incidental legal requirement is observed in advertising for bids and re-awarding a construction contract.

(Source: Amended by emergency rulemaking at 33 Ill. Reg. 8674, effective June 2, 2009, for a maximum of 150 days)

Section 662.630 Contracts for Personal and Professional Services**EMERGENCY**

All subagreements for personal and professional services for design or construction expected to exceed \$25,000 in the aggregate shall include the following subagreement provisions:

- a) Subagreements for personal and professional construction services shall include:
 - 1) Evidence, such as, but not limited to, a copy of the advertisement(s) and the record of negotiation in accordance with [40 CFR 33 federal Executive Orders 11625 and 12138 \(Appendix A, Exhibits A and B\)](#), that affirmative steps have been taken to assure that [disadvantaged business](#)

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~~enterprises, small, minority and women's businesses~~ are used when possible as sources of supplies, equipment, construction, and services consistent with the provisions of the Agency's Operating Agreement with USEPA;

- 2) An audit and access to records clause that provides as follows:
 - A) Subsections (a)(2)(B) through (E) shall be included in all contracts and all subcontracts directly related to project services that are in excess of \$25,000.
 - B) Books, records, documents and other evidence directly pertinent to performance of PWSLP loan work under this agreement shall be maintained consistent with generally accepted accounting standards in accordance with the American Institute of Certified Public Accountants Professional Standards. The Agency or any of its authorized representatives shall have access to the books, records, documents and other evidence for the purpose of inspection, audit and copying. Facilities shall be provided for access and inspection.
 - C) Audits conducted pursuant to this provision shall be in accordance with generally accepted auditing standards.
 - D) All information and reports resulting from access to records pursuant to subsection (a)(2)(B) shall be disclosed to the Agency. The auditing agency shall afford the engineer an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report shall include the written comments, if any, of the audited parties.
 - E) Records under subsection (a)(2)(B) shall be maintained and made available during performance of project services under this agreement and for three years after the final loan closing. In addition, those records that relate to any dispute pursuant to Section 662.650 (Disputes) of this Subpart or litigation or the settlement of claims arising out of project performance or costs or items to which an audit exception has been taken, shall be maintained and made available for three years after the resolution of the appeal, litigation, claim or exception;

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- 3) A "covenant against contingent fees" clause as follows:
"The professional services contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bonafide employees. For breach or violation of this warranty, the loan recipient shall have the right to annul this agreement without liability or in its discretion to deduct from the contract price or consideration or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee";
 - 4) A "Certification Regarding Debarment, Suspension, and Other Responsibility Matters" (EPA Form 5700-49) showing compliance with federal Executive Order 12549 (Appendix A, Exhibit C);
 - 5) A description of the scope and extent of the project work;
 - 6) The schedule for performance and completion of the contract work including, where appropriate, dates for completion of significant project tasks; and
 - 7) A method of compensation.
- b) Subagreements for personal and professional design services shall include the subagreement provisions contained in subsections (a)(2) through (a)(4). In addition, the subagreements shall be accompanied by a statement regarding the use of [disadvantaged business enterprises](#)~~small, minority and women's business~~ during the design service phase.
 - c) If, at the time of contract execution, any of the elements required in this Section 662.630 cannot be defined adequately for later tasks, those tasks shall not be included in the contract at that time.

(Source: Amended by emergency rulemaking at 33 Ill. Reg. 8674, effective June 2, 2009, for a maximum of 150 days)

SUBPART I: FINANCIAL AND MANAGERIAL CAPACITY

Section 662.935 Source of Revenue and Security for Privately Owned Community Water

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Supplies**EMERGENCY**

- a) The loan applicant must provide a detailed demonstration that there is an adequate source of revenue to repay the principal and interest due on the loan. The loan applicant must also demonstrate that there is adequate security for the full amount of the loan. This shall include, but is not limited to, the following:
 - 1) The audited financial statements and tax returns required under Section 662.920 of this Subpart and the calculation of the ratios set forth in the [Risk Management Association Robert Morris Associates \(RMA\) Annual Statement Studies for the North American Industry Classification System \(NAICS\) #221310 Standard Industrial Classification \(SIC\) #4941](#). The statements must show a positive cash flow for all 3 years. 50% of the ratios must fall in the upper 2 quartiles when compared to the RMA Annual Statement Studies for [NAICS #221310 SIC #4941](#).
 - 2) Any rate increase required to assure that adequate revenues will be generated to make the loan repayments must be adopted in a legally binding manner prior to the first loan disbursement. When applicable, approval of the rate increase by the Illinois Commerce Commission will be required.
 - 3) Appropriate legal documents will be provided to enable the Agency to perfect its security interest in the revenues of the system and other personal properties offered as security by filing the necessary information under the Uniform Commercial Code.
 - 4) The loan applicant must submit a legal description and current appraisal by a licensed appraiser of real property to be used for collateral. The mortgage must be executed prior to the issuance of the loan.
 - 5) Approval from the Illinois Commerce Commission to incur debt, if applicable.
- b) The loan recipient must maintain a separate accounting in its books to record the funds available for loan repayment.
- c) The loan recipient must, for the term of the loan, review and adjust the source of

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revenue as necessary to provide adequate funds for the repayment of the loan. The loan recipient must timely notify the Agency of, and submit to the Agency for approval, all proposed changes to the source of revenue.

- d) Upon request, the loan recipient shall submit to the Agency the status of the funds available for repayment of the loan, including the projected revenues, actual revenues fund balance, debt service obligations and other requirements of the loan agreement. The Agency's review will be based on, but not limited to, ensuring that the source of revenue generates sufficient revenue and is otherwise in accordance with this Part 662.
- e) In the event that the actual revenues fall short of the amount required to retire the loan, the Agency shall require the loan recipient to re-examine the revenue source and restructure it as necessary.

(Source: Amended by emergency rulemaking at 33 Ill. Reg. 8674, effective June 2, 2009, for a maximum of 150 days)

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Section 662.APPENDIX A Executive Orders**Section 662.EXHIBIT A Executive Order 11625 (Repealed)
EMERGENCY**

~~October 14, 1971, 36 F.R. 19967~~

~~PRESCRIBING ADDITIONAL ARRANGEMENTS FOR DEVELOPING
AND COORDINATING A NATIONAL PROGRAM FOR
MINORITY BUSINESS ENTERPRISE~~

~~The opportunity for full participation in our free enterprise system by socially and economically disadvantaged persons is essential if we are to obtain social and economic justice for such persons and improve the functioning of our national economy.~~

~~The Office of Minority Business Enterprise, established in 1969, greatly facilitated the strengthening and expansion of our minority enterprise program. In order to take full advantage of resources and opportunities in the minority enterprise field, we now must build on this foundation. One important way of improving our efforts is by clarifying the authority of the Secretary of Commerce (a) to implement Federal policy in support of the minority business enterprise program; (b) to provide additional technical and management assistance to disadvantaged businesses; (c) to assist in demonstration projects; and (d) to coordinate the participation of all Federal departments and agencies in an increased minority enterprise effort.~~

~~NOW, THEREFORE, by virtue of the authority vested in me as President of the United States, it is ordered as follows:~~

~~Section 1. Functions of the Secretary of Commerce.~~

- ~~a) The Secretary of Commerce (hereinafter referred to as "the Secretary") shall—~~
 - ~~1) Coordinate as consistent with law the plans, programs, and operations of the Federal Government which affect or may contribute to the establishment, preservation, and strengthening of minority business enterprise.~~
 - ~~2) Promote the mobilization of activities and resources of State and local governments, businesses and trade associations, universities, foundations, professional organizations, and volunteer and other groups towards the~~

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~~growth of minority business enterprises, and facilitate the coordination of the efforts of these groups with those of Federal departments and agencies.~~

- ~~3) Establish a center for the development, collection, summarization, and dissemination of information that will be helpful to persons and organizations throughout the nation in undertaking or promoting the establishment and successful operation of minority business enterprise.~~
 - ~~4) Within constraints of law and appropriations therefor, and according to his discretion, provide financial assistance to public and private organizations so that they may render technical and management assistance to minority business enterprises, and defray all or part of the costs of pilot or demonstration projects conducted by public or private agencies or organizations which are designed to overcome the special problems of minority business enterprises or otherwise to further the purposes of this Order.~~
- b) ~~The Secretary, as he deems necessary or appropriate to enable him to better fulfill the responsibilities vested in him by subsection (a), may—~~
- ~~1) With the participation of other Federal departments and agencies as appropriate, develop comprehensive plans and specific program goals for the minority enterprise program; establish regular performance monitoring and reporting systems to assure that goals are being achieved; and evaluate the impact of Federal support in achieving the objectives established by this Order.~~
 - ~~2) Require a coordinated review of all proposed Federal training and technical assistance activities in direct support of the minority enterprise program to assure consistency with program goals and to avoid duplication.~~
 - ~~3) Convene, for purposes of coordination, meetings of the heads of such departments and agencies, or their designees, whose programs and activities may affect or contribute to the purposes of this Order.~~
 - ~~4) Convene business leaders, educators, and other representatives of the private sector who are engaged in assisting the development of minority business enterprise or who could contribute to its development, for the~~

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~~purpose of proposing, evaluating and coordinating governmental and private activities in furtherance of the objectives of this Order.~~

- ~~5) Confer with and advise officials of State and local governments.~~
- ~~6) Provide the managerial and organizational framework through which joint or collaborative undertakings with Federal departments or agencies or private organizations can be planned and implemented.~~
- ~~7) Recommend appropriate legislative or executive action.~~

~~Section 2. Advisory Council for Minority Enterprise.~~

- ~~a) The Advisory Council for Minority Enterprise (hereinafter referred to as "the Council"), established by Executive Order no. 11458 of March 5, 1969, (11) shall continue in existence under the terms of this Order.~~
- ~~b) The Council shall be composed of members appointed by the President from among persons, including members of minority groups and representatives from minority business enterprises, who are knowledgeable in this field and who are dedicated to the purpose of this Order. Three members shall serve for a term of two years and may be reappointed.~~
- ~~c) The President shall designate one of the members of the Council as the Chairman of the Council.~~
- ~~d) The Council shall meet at the call of the Secretary.~~
- ~~e) The Council shall be advisory to the Secretary in which capacity it shall—~~
 - ~~1) Serve as a source of knowledge and information on developments in different fields and segments of our economic and social life which affect minority business enterprise.~~
 - ~~2) Keep abreast of plans, programs, and activities in the public and private sectors which relate to minority business enterprise, and advise the Secretary on any measures to better achieve the objectives of this Order.~~

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- 3) ~~Consider, and advise the Secretary, and such officials as he may designate, on problems and matters referred to the Council.~~
- f) ~~For the purposes of Executive Order No. 11007 of February 26, 1962, (12) the Council shall be deemed to have been formed by the Secretary.~~
- g) ~~Members of the Council shall be entitled to receive travel and expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 5701-5708) for persons in the Government service employed intermittently.~~
- h) ~~The Secretary shall arrange for administrative support of the Council to the extent necessary, including use of any gifts or bequests accepted by the Department of Commerce pursuant to law.~~

~~Section 3. Responsibilities of Other Federal Departments and Agencies.~~

- a) ~~The head of each Federal department and agency, or a representative designated by him, when and in the manner so requested by the Secretary, shall furnish information, assistance, and reports to, and shall otherwise cooperate with the Secretary in the performance of his functions hereunder.~~
- b) ~~The head of each Federal department or agency shall, when so requested by the Secretary, designate his Under Secretary or such other similar official to have primary and continuing responsibility for the participation and cooperation of that department or agency in matters concerning minority business enterprise.~~
- e) ~~The officials designated under the preceding paragraph, when so requested shall review and report to the Secretary upon the policies and programs of the minority business enterprise program, and shall keep the Secretary informed of all proposed budgets, plans and programs of his department or agency affecting minority business enterprise.~~
- e) ~~Each Federal department or agency shall, within constraints of law and appropriations therefor, continue all current efforts to foster and promote minority business enterprises and to support the program herein set forth, and shall cooperate with the Secretary of Commerce in increasing the total Federal effort.~~

~~Section 4. Reports.~~

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~~The Secretary shall, no later than 120 days after the close of each fiscal year, submit to the President a full report of his activities hereunder during the previous fiscal year. Further, the Secretary shall, from time to time, submit to the President his recommendations for legislation or other action as he deems desirable to promote the purposes of this Order. Each Federal department or agency shall report to the Secretary as hereinabove provided on a timely basis so that the Secretary may consider such reports for his report and recommendations to the President. Each Federal department or agency shall develop and implement systematic data collection processes which will provide to the Office of Minority Business Enterprise Information Center current data helpful in evaluating and promoting the efforts herein described.~~

~~Section 5. Policies and Standards.~~

~~The Secretary may establish such policies, standards, definitions, criteria, and procedures to govern the implementation, interpretation, and application of this Order, and generally perform such functions and take such steps as he may deem to be necessary or appropriate to achieve the purposes and carry out the provisions hereof.~~

~~Section 6. Definitions.~~

~~For purposes of this Order, the following definitions shall apply:~~

- ~~a) "Minority business enterprise" means a business enterprise that is owned or controlled by one or more socially or economically disadvantaged persons. Such disadvantage may arise from cultural, racial, chronic economic circumstances or background or other similar cause. Such persons include, but are not limited to, Negroes, Puerto Ricans, Spanish speaking Americans, American Indians, Eskimos, and Aleuts.~~
- ~~b) "State" means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, and the Trust Territory of the Pacific Islands.~~

~~Section 7. Construction.~~

~~Nothing in this Order shall be construed as subjecting any function vested in, or assigned pursuant to law to, any Federal department or agency or head thereof to the authority of any other agency or office exclusively, or as abrogating or restricting any such function in any manner.~~

~~Section 8. Prior Executive Order.~~

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~~Executive Order No. 11458 of March 5, 1969, (13) is hereby superseded.~~

~~THE WHITE HOUSE~~

~~RICHARD NIXON~~

~~October 13, 1971.~~

~~(11) 15 U.S.C.A. Section 631 note.~~

~~(12) 5 U.S.C.A. Section 901 note.~~

~~(13) 15 U.S.C.A. Section 631 note.~~

(Source: Repealed by emergency rulemaking at 33 Ill. Reg. 8674, effective June 2, 2009, for a maximum of 150 days)

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Section 662.APPENDIX A Executive Orders**Section 662.EXHIBIT B Executive Order 12138 (Repealed)
EMERGENCY**

~~May 18, 1979, 44 F.R. 29637~~

~~CREATING A NATIONAL WOMEN'S BUSINESS ENTERPRISE POLICY AND
PRESCRIBING ARRANGEMENTS FOR DEVELOPING, COORDINATING AND
IMPLEMENTATING A NATIONAL PROGRAM FOR WOMEN'S BUSINESS ENTERPRISE~~

~~In response to the findings of the Interagency Task Force on Women Business Owners and congressional findings that recognize:~~

- ~~1) the significant role which small business and women entrepreneurs can play in promoting full employment and balanced growth in our economy;~~
- ~~2) the many obstacles facing women entrepreneurs; and~~
- ~~3) the need to aid and stimulate women's business enterprise;~~

~~By the authority vested in me as President of the United States of America, in order to create a National Women's Business Enterprise Policy and to prescribe arrangements for developing, coordinating and implementing a national program for women's business enterprise, it is ordered as follows:~~

~~1-1. Responsibilities of the Federal Departments and Agencies:~~

- ~~1-101. Within the constraints of statutory authority and as otherwise permitted by law:~~
 - ~~a) Each department and agency of the Executive Branch shall take appropriate action to facilitate, preserve and strengthen women's business enterprise and to ensure full participation by women in the free enterprise system.~~
 - ~~b) Each department and agency shall take affirmative action in support of women's business enterprise in appropriate programs and activities including but not limited to:~~

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- 1) ~~management, technical, financial and procurement assistance,~~
 - 2) ~~business-related education, training, counseling and information dissemination, and~~
 - 3) ~~procurement.~~
- e) ~~Each department or agency empowered to extend Federal financial assistance to any program or activity shall issue regulations requiring the recipient of such assistance to take appropriate affirmative action in support of women's business enterprise and to prohibit actions or policies which discriminate against women's business enterprise on the ground of sex. For purposes of this subsection, Federal financial assistance means assistance extended by way of grant, cooperative agreement, loan or contract other than a contract of insurance or guaranty. These regulations shall prescribe sanctions for noncompliance. Unless otherwise specified by law, no agency sanctions shall be applied until the agency or department concerned has advised the appropriate person or persons of the failure to comply with its regulations and has determined that compliance cannot be secured by voluntary means.~~
- 1-102. ~~For purposes of the Order, affirmative action may include, but is not limited to, creating or supporting new programs responsive to the special need for women's business enterprise, establishing incentives to promote business or business-related opportunities for women's business enterprise, collecting and disseminating information in support of women's business enterprise, and insuring to women's business enterprise knowledge of and ready access to business-related services and resources. If, in implementing this Order, an agency undertakes to use or to require compliance with numerical set-asides, or similar measures, it shall state the purpose of such measure, and the measure shall be designed on the basis of pertinent factual findings of discrimination against women's business enterprise and the need for such measure.~~
- 1-103. ~~In carrying out their responsibilities under Section 1-1, the departments and agencies shall consult the Department of Justice, and the Department of Justice shall provide legal guidance concerning these responsibilities.~~

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- ~~1-2. Establishment of the Interagency Committee on Women's Business Enterprise.~~
- ~~1-201. To help insure that the actions ordered above are carried out in an effective manner, I hereby establish the Interagency Committee on Women's Business Enterprise (hereinafter called the Committee).~~
- ~~1-202. The Chairperson of the Committee (hereinafter called the Chairperson) shall be appointed by the President. The Chairperson shall be the presiding officer of the Committee and shall have such duties as prescribed in this Order or by the Committee in its rules of procedure. The Chairperson may also represent his or her department, agency or office on the Committee.~~
- ~~1-203. The Committee shall be composed of the Chairperson and other members appointed by the heads of departments and agencies from among high level policy making officials. In making these appointments, the recommendations of the Chairperson shall be taken into consideration. The following departments and agencies and such other departments and agencies as the Chairperson shall select shall be members of the Committee: the Departments of Agriculture; Commerce; Defense; Energy; Health, Education, and Welfare; Housing and Urban Development; Interior; Justice; Labor; Transportation; Treasury; the Federal Trade Commission; General Services Administration; National Science Foundation; Office of Federal Procurement Policy; and the Small Business Administration. These members shall have a vote. Nonvoting members shall include the Executive Director of the Committee and at least one but no more than three representatives from the Executive Office of the President appointed by the President.~~
- ~~1-204. The Committee shall meet at least quarterly at the call of the Chairperson, and at such other times as may be determined to be useful according to the rules of procedure adopted by the Committee.~~
- ~~1-205. The Administrator of the Small Business Administration shall provide an Executive Director and adequate staff and administrative support for the Committee. The staff shall be located in the Office of the Chief Counsel for Advocacy of the Small Business Administration, or in such other office as may be established specifically to further the policies expressed herein. Nothing in this Section prohibits the use of other properly available funds and resources in support of the Committee.~~

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~~1-3. Functions of the Committee.~~

~~The Committee shall in a manner consistent with law:~~

- ~~1-301. Promote, coordinate and monitor the plans, programs and operations of the departments and agencies of the Executive Branch which may contribute to the establishment, preservation and strengthening of women's business enterprise. It may, as appropriate, develop comprehensive interagency plans and specific program goals for women's business enterprise with the cooperation of the departments and agencies.~~
- ~~1-302. Establish such policies, definitions, procedures and guidelines to govern the implementation, interpretation and application of this order, and generally perform such functions and take such steps as the Committee may deem to be necessary or appropriate to achieve the purposes and carry out the provisions hereof.~~
- ~~1-303. Promote the mobilization of activities and resources of State and local governments, business and trade associations, private industry, colleges and universities, foundations, professional organizations, and volunteer and other groups toward the growth of women's business enterprise, and facilitate the coordination of the efforts of these groups with those of the departments and agencies.~~
- ~~1-304. Make an annual assessment of the progress made in the Federal Government toward assisting women's business enterprise to enter the mainstream of business ownership and to provide recommendations for future actions to the President.~~
- ~~1-305. Convene and consult as necessary with persons inside and outside government to develop and promote new ideas concerning the development of women's business enterprise. 1-306. Consider the findings and recommendations of government and private sector investigations and studies of the problems of women entrepreneurs, and promote further research into such problems.~~
- ~~1-307. Design a comprehensive and innovative plan for a joint Federal and private sector effort to develop increased numbers of new women-owned businesses~~

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~~and larger and more successful women-owned businesses. The plan should set specific reasonable targets which can be achieved at reasonable and identifiable costs and should provide for the measurement of progress towards these targets at the end of two and five years. Related outcomes such as income and tax revenues generated, jobs created, new products and services introduced or new domestic or foreign markets created should also be projected and measured in relation to costs wherever possible. The Committee should submit the plan to the President for approval within six months of the effective date of this Order.~~

~~1-4. Other Responsibilities of the Federal Departments and Agencies.~~

- ~~1-401. The head of each department and agency shall designate a high level official to have the responsibility for the participation and cooperation of that department or agency in carrying out this Executive Order. This person may be the same person who is the department or agency's representative to the Committee.~~ 1-402. ~~To the extent permitted by law, each department and agency upon request by the Chairperson shall furnish information, assistance and reports and otherwise cooperate with the Chairperson and the Committee in the performance of their functions hereunder. Each department or agency shall ensure that systematic data collection processes are capable of providing the Committee current data helpful in evaluating and promoting the efforts herein described.~~
- ~~1-403. The officials designated under Section 1-401, when so requested, shall review the policies and programs of the women's business enterprise program, and shall keep the Chairperson informed of proposed budget, plans and programs of their departments or agencies affecting women's business enterprise.~~
- ~~1-404. Each Federal department or agency, within constraints of law, shall continue current efforts to foster and promote women's business enterprise and to support the program herein set forth, and shall cooperate with the Chairperson and the Committee in increasing the total Federal effort.~~

~~1-5. Reports.~~

- ~~1-501. The Chairperson shall, promptly after the close of the fiscal year, submit to the President a full report of the activities of the Committee hereunder during the previous fiscal year. Further, the Chairperson shall, from time to time,~~

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~~submit to the President the Committee's recommendations for legislation or other action to promote the purposes of this Order.~~

- ~~1-502. Each Federal department and agency shall report to the chairperson as hereinabove provided on a timely basis so that the Chairperson and the Committee can consider such reports for the Committee report to the President.~~

~~1-6. Definitions.~~

~~For the purposes of this Order, the following definitions shall apply:~~

- ~~1-601. "Women-owned business" means a business that is at least 51 percent owned by a woman or women who also control and operate it. "Control" in this context means exercising the power to make policy decisions. "Operate" in this context means being actively involved in the day to day management.~~
- ~~1-602. "Women's business enterprise" means a woman-owned business or businesses or the efforts of a woman or women to establish, maintain or develop such a business or businesses.~~
- ~~1-603. Nothing in subsections 1-601 or 1-602 of this Section 1-6 should be construed to prohibit the use of other definitions of a woman-owned business or women's business enterprise by departments and agencies of the Executive Branch where other definitions are deemed reasonable and useful for any purpose not inconsistent with the purposes of this Order. Wherever feasible, departments and agencies should use the definition of a woman-owned business in subsection 1-601 above for monitoring performance with respect to women's business enterprise in order to assure comparability of data throughout the Federal Government.~~

~~1-7. Construction.~~

~~Nothing in this Order shall be construed as limiting the meaning or effect of any existing Executive Order.~~

THE WHITE HOUSE

JIMMY CARTER

May 18, 1979.

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(Source: Repealed by emergency rulemaking at 33 Ill. Reg. 8674, effective June 2, 2009, for a maximum of 150 days)

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

- 1) Heading of the Part: Procedures For Providing Financial Assistance From the Public Water Supply Loan Program Under the American Recovery and Reinvestment Act of 2009
- 2) Code Citation: 35 Ill. Adm. Code 664
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
664.110	New Section
664.120	New Section
664.130	New Section
664.140	New Section
664.210	New Section
664.220	New Section
664.230	New Section
664.310	New Section
664.320	New Section
664.330	New Section
664.340	New Section
664.410	New Section
664.420	New Section
664.430	New Section
664.440	New Section
664.450	New Section
664.460	New Section
664.470	New Section
664.480	New Section
664.490	New Section
664.510	New Section
664.520	New Section
664.610	New Section
664.620	New Section
664.630	New Section
664.640	New Section
664.650	New Section
664.660	New Section
664.670	New Section
664.710	New Section
664.720	New Section
664.730	New Section

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664.740	New Section
664.750	New Section
664.810	New Section
664.820	New Section
664.830	New Section
664.910	New Section
664.920	New Section
664.930	New Section
664.940	New Section
664.950	New Section
664.1010	New Section
664.1020	New Section
664.1030	New Section
664.1110	New Section
664.1120	New Section
664.APPENDIX A	New Section
664.APPENDIX A EXHIBIT A	New Section
664.APPENDIX A EXHIBIT B	New Section
664.APPENDIX B	New Section

- 4) Statutory Authority: Implementing and authorized by Sections 19.1-19.9 of the Illinois Environmental Protection Act [415 ILCS 5/19.1-19.9]
- 5) Effective Date of Rulemaking: June 2, 2009
- 6) If this emergency rule is to expire before the end of the 150-day period, please specify the date on which it is to expire: This emergency rule is not set to expire before the end of the 150-day period.
- 7) Date Filed with the Index Department: June 2, 2009
- 8) A copy of the emergency rule, including any material incorporated by reference, is on file in the Agency's principal office and is available for public inspection.
- 9) Reason for Emergency: Emergency rules are necessary so the Agency can quickly meet its obligations under the American Recovery and Reinvestment Act of 2009 (ARRA), which was signed into law by the president on February 17, 2009 to get economic stimulus money out to shovel ready projects. Also, pursuant to 415 ILCS 5/19.4(d), the Agency is required to adopt emergency rules as necessary to allow for the timely

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administration of funds provided under ARRA. Identical proposed amendments will also be submitted for publication in the *Illinois Register* by the Agency.

- 10) A Complete Description of the Subjects and Issues Involved: This rulemaking will address how the Agency will disburse monies received under ARRA. This rulemaking will establish a fixed loan rate at 0.00% and will also provide a more streamlined approach for the loan application process so money can quickly be distributed to shovel ready projects in accordance with ARRA.
- 11) Are there any rulemakings pending to this Part? Yes
- 12) Statement of Statewide Policy Objectives: This rulemaking will not create a State mandate for units of local government.
- 13) Information and questions regarding this rulemaking shall be directed to:

Stefanie N. Diers
Assistant Counsel
Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
P.O. Box 19726
Springfield, Illinois 62794-9276

217/782-5544

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

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TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE F: PUBLIC WATER SUPPLIES
CHAPTER II: ENVIRONMENTAL PROTECTION AGENCY

PART 664

PROCEDURES FOR PROVIDING FINANCIAL ASSISTANCE FROM THE
PUBLIC WATER SUPPLY LOAN PROGRAM UNDER THE
AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

SUBPART A: INTRODUCTION

Section

664.110 Purpose

EMERGENCY

664.120 Administration

EMERGENCY

664.130 Definitions

EMERGENCY

664.140 Incorporations by Reference

EMERGENCY

SUBPART B: FEDERAL REQUIREMENTS FOR THE
PUBLIC WATER SUPPLY LOAN PROGRAM

Section

664.210 Uses of the Public Water Supply Loan Program

EMERGENCY

664.220 Agency Responsibilities Under the Federal Safe Drinking Water Act and the
American Recovery and Reinvestment Act of 2009

EMERGENCY

664.230 Green Project Reserve

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SUBPART C: LIABILITIES AND REMEDIES FOR FAILURE
TO COMPLY WITH LOAN PROCEDURES

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664.310 Noncompliance with Loan Procedures

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- 664.320 Stop-Work Order
EMERGENCY
- 664.330 Termination
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- 664.340 Waiver of Procedures
EMERGENCY

SUBPART D: PROCEDURES FOR ISSUANCE OF LOANS

Section

- 664.410 Project Priority Determination
EMERGENCY
- 664.420 Pre-Application for Financial Assistance and Identification of Project to be Funded
EMERGENCY
- 664.430 Financial Assistance Application and Approval
EMERGENCY
- 664.440 Fixed Loan Rate
EMERGENCY
- 664.450 Refinancing
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- 664.460 Limitation on Design Cost
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- 664.470 Limitation on Financial Assistance
EMERGENCY
- 664.480 Principal Forgiveness
EMERGENCY
- 664.490 Loans to Privately Owned Community Water Supplies
EMERGENCY

SUBPART E: PROJECT PLANNING REQUIREMENTS FOR LOAN PROJECTS

Section

- 664.510 Loan Applicant's Responsibilities During Project Planning
EMERGENCY
- 664.520 State Environmental Review
EMERGENCY

SUBPART F: REQUIREMENTS APPLICABLE TO SUBAGREEMENTS

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Section

664.610 Requirements for Subagreements

EMERGENCY

664.620 Construction Contracts

EMERGENCY

664.630 Contracts for Personal and Professional Services

EMERGENCY

664.640 Compliance with Procurement Requirements for Construction Contracts

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664.650 Disputes

EMERGENCY

664.660 Indemnity

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664.670 Covenant Against Contingent Fees

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SUBPART G: REQUIREMENTS APPLICABLE TO CONSTRUCTION INITIATION,
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664.720 Project Changes

EMERGENCY

664.730 Construction Engineering

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664.920 Financial Capability

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664.930 Dedicated Source of Revenue for Local Government Units

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664.940 Source of Revenue and Security for Privately Owned Community Water Supplies

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664.1020 Use of Loan Funds and Payment of Unallowable Costs

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Section

664.1110 Loan Repayment to the Agency

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664.1120 Delinquent Loan Repayments

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664.APPENDIX A Executive Orders

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EXHIBIT A Executive Order 12549

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EXHIBIT B Executive Order 11246

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664.APPENDIX B Loan Application Form

EMERGENCY

AUTHORITY: Implementing and authorized by Sections 19.1 through 19.9 of the Environmental Protection Act [415 ILCS 5/19.1 through 19.9].

SOURCE: Adopted by emergency rulemaking at 33 Ill. Reg. 8722, effective June 2, 2009, for a maximum of 150 days.

SUBPART A: INTRODUCTION

Section 664.110 Purpose**EMERGENCY**

The federal Safe Drinking Water Act Amendments of 1996 include a mechanism to provide capitalization grants to the states for the purpose of establishing drinking water revolving loan funds. 42 USC 300j-12 authorizes the Administrator of the United States Environmental Protection Agency to enter into agreements with the states to establish these loan funds, and establishes specific requirements for the development and operation of the state loan programs. The Illinois General Assembly has created the Public Water Supply Loan Program (PWSLP), to be administered by the Illinois Environmental Protection Agency [415 ILCS 5/19.1 through 19.9]. The American Recovery and Reinvestment Act of 2009 (ARRA) provides a source of capitalization grants to the states to provide loans, as well as additional subsidization including forgiveness of principal, negative interest loans, and grants to eligible applicants for the construction of public water supply facilities. This Part 664 sets out procedures the Agency shall use to provide financial assistance from ARRA, which shall be administered through PWSLP.

Section 664.120 Administration**EMERGENCY**

- a) The Public Water Supply Loan Program, an interest-bearing special fund, will be administered by the Agency as an instrumentality of the State of Illinois in accordance with the Operating and Capitalization Grant Agreements between the Agency and USEPA in accordance with State and federal laws. All funds from

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ARRA for the construction of public water supply facilities will be administered through PWSLP.

- b) Copies of forms that are required and sample language that can be used to satisfy the requirements of an ARRA financial application administered under the authority of PWSLP can be obtained from the Illinois Environmental Protection Agency, Infrastructure Financial Assistance Section, 1021 North Grand Avenue East, Post Office Box 19276, Springfield, Illinois 62794-9276, or found on the Agency's website at www.epa.state.il.us.
- c) The program requirements of ARRA shall take precedent on projects receiving financial assistance from both ARRA and PWSLP.

Section 664.130 Definitions
EMERGENCY

- a) Unless specified otherwise, all terms shall have the meanings set forth in the Environmental Protection Act (Act) [415 ILCS 5] and the regulations adopted under that Act.
- b) For the purposes of this Part, the following definitions apply:

Addenda – Documents, issued by the loan applicant after advertisement for bids, that modify or interpret the contract documents, drawings and specifications, by additions, deletions, clarifications or corrections.

Agency – Illinois Environmental Protection Agency.

ARRA – The American Recovery and Reinvestment Act of 2009 (Public Law 111-5).

Billed Customers – The customers receiving a bill who are responsible for paying for water services.

Binding Commitment – A legal obligation between the Agency and a local government unit or privately owned community water supply to provide financial assistance from the Public Water Supply Loan Program to that local government unit or privately owned community water supply, specifying the terms and

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schedules under which assistance is provided. The loan agreement will be considered a binding commitment.

Building Cost – The cost of erection of construction contract line items. Building costs do not include preliminary planning, engineering, architectural, legal, fiscal, administrative or contingency costs.

Capitalization Grant – The actual federal funds received by the Agency for deposit into PWSLP as a result of the capitalization grant agreement with the USEPA.

Capitalization Grant Agreement – The agreement entered into each federal fiscal year between the Agency and USEPA for the purpose of providing a grant to capitalize PWSLP and enable the Agency to provide assistance for construction of public water supply facilities.

Change Order – A written order by the loan recipient to the contractor authorizing an addition, deletion or revision in the work within the general scope of the contract documents, or authorizing an adjustment in the contract price or contract time.

Construction – *Any one or more of the following which is undertaken for a public purpose: preliminary planning to determine the feasibility of the public water supply facilities; engineering, architectural, legal, fiscal, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures or other necessary actions, erection, building, acquisition, alteration, remodeling, improvement or extension of public water supply facilities, or the inspection or supervision of any of the foregoing items.*
[415 ILCS 5/19.2(d)]

Contract Documents – The contract, including but not limited to advertisement for bids, information for bidders, bid, bid bond agreement, payment bond, performance bond, notice of award, notice to proceed, change order, drawings, specifications and addenda.

Dedicated Source of Revenue – The type of security and the basis of legal authorization that are dedicated by legislative enactment or other appropriate authority, along with the applicable revenue source pledged for repayment, and

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recorded in an account for the purpose of loan repayment to PWSLP, which is sufficient to repay the principal and interest on the loan.

Design – All administrative, legal and engineering tasks, subsequent to project plan approval but prior to advertisement for bid proposal, associated with receiving approval of a loan application. This shall include the following: surveys, designs, plans, working drawings, specifications, soil investigations and any other tests or process determinations required to establish design criteria, and development of user charge systems.

Director – Director of the Illinois Environmental Protection Agency.

Energy Efficiency – The use of improved technologies and practices to reduce the energy consumption of water quality projects, including projects to reduce energy consumption or produce clean energy used by a treatment works.

Environmentally Innovative Projects – Projects that demonstrate new and/or innovative approaches to managing water resources in a more sustainable way, including projects that achieve pollution prevention or pollutant removal with reduced cost and projects that foster adaptation of water protection programs and practices to climate change.

Fixed Loan Rate – The fixed loan rate shall be 0.00% for loans issued from the funds provided by ARRA.

Fund – The Water Revolving Fund authorized by 415 ILCS 5/19.3, consisting of the Water Pollution Control Loan Program, the Public Water Supply Loan Program, and the Loan Support Program.

Green Infrastructure – Includes a wide array of practices that manage wet weather to maintain and restore natural hydrology by infiltrating, evapotranspiring and capturing and using stormwater. In the context of PWSLP, green infrastructure consists of site-specific practices, such as green roofs and porous pavement at drinking water utility facilities. In addition to managing rainfall, these green infrastructure technologies can simultaneously provide other benefits such as reducing energy demands.

Health Hazard Determination – A health hazard determination exists when concentrations of regulated contaminants, in a water supply, or concentrations of

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contaminants not otherwise regulated, exceed health effects standards published in USEPA Health Advisories, or by the Illinois Department of Public Health or Centers for Disease Control and Prevention, or that otherwise pose an immediate threat to public health.

Initiation of Loan Repayment Period – The date in a loan agreement or amendment that establishes the beginning point of the loan repayment period.

Initiation of Operation – The date specified by the loan agreement on which use of the project began operation for the purposes that it was planned, designed and constructed.

Intended Use Plan – *A plan which includes a description of the short and long term goals and objectives of PWSLP, project categories, terms of financial assistance, communities and population benefited.* [415 ILCS 5/19.2(e)]

Loan Agreement – The contractual agreement between the Agency and the local government unit or privately owned community water supply that contains the terms and conditions governing the loan issued from PWSLP.

Loan Applicant – A local government unit or privately owned community water supply that has applied for a loan from PWSLP for construction of public water supply facilities.

Loan Commitment Letter – The letter that is sent by the Agency to the loan applicant that reserves loan funds and identifies the requirements that must be satisfied prior to the execution of the loan agreement.

Loan Procedures – The Procedures for Providing Financial Assistance from the Public Water Supply Loan Program under the American Recovery and Reinvestment Act of 2009.

Loan Recipient – A local government unit or privately owned community water supply that has been provided a loan for construction of public water supply facilities from PWSLP and that will own and be responsible for the operation and maintenance of the community water supply facility.

Local Government Unit – *A county, municipality, township, municipal or county sewerage or utility authority, sanitary district, public water district, improvement*

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authority or any other political subdivision whose primary purpose is to construct, operate and maintain wastewater treatment facilities or public water supply facilities or both. [415 ILCS 5/19.2(g)]

Maximum Contaminant Level or MCL – The maximum permissible level of a contaminant in water that is delivered to any user of a public water system.

Operating Agreement – The agreement between the Agency and USEPA that establishes the policies, procedures and activities for the application and receipt of federal capitalization grant funds for capitalization of PWSLP.

Principal – All disbursements that will be financed at the time the repayment schedule period begins.

Principal Forgiveness – A portion of the loan amount that does not have to be repaid (is forgiven) upon execution of the loan.

Privately Owned Community Water Supply – *An investor-owned water utility, if under Illinois Commerce Commission regulation and operating as a separate and distinct water utility; a not-for-profit water corporation, if operating specifically as a water utility; and a mutually owned or cooperatively owned community water system, if operating as a separate water utility. [415 ILCS 5/19.2]*

Project – The activities or tasks the Agency identifies in the loan agreement for which the loan recipient may expend loan funds.

Project Priority List – An ordered listing of projects developed in accordance with the priority system described in 35 Ill. Adm. Code 663 (Procedures and Requirements for Determining Loan Priorities of Projects in the Public Water Supply Loan Program) that the Agency has determined are eligible to receive financial assistance from PWSLP.

PWSLP – The Public Water Supply Loan Program as authorized by Section 19.2 of the Environmental Protection Act [415 ILCS 5/19.2].

Responsible Bid – A bid that demonstrates the apparent ability of the bidder to successfully meet all the requirements specified in the contract documents. Information required to demonstrate responsibility may be corrected or submitted after bid opening.

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Responsive Bid – A bid that complies with all meaningful or material aspects of the contract documents. The bid must constitute a definite and unqualified offer to meet the material requirements of the contract documents, including any terms that affect price, quality, quantity or time of delivery, or are clearly identified in the contract documents to be complied with at the risk of bid rejection for non-responsiveness. Bid defects resulting in a non-responsive bid may not be corrected after the bid opening.

SDWA – The federal Safe Drinking Water Act, as amended (42 USC 300f).

Source of Revenue – The revenues of the system, including accounts receivable and the proceeds that are sufficient to repay the principal on the loan.

Subagreement – A written agreement between the loan recipient and another party and any tier of agreement thereunder to furnish services, supplies or equipment necessary to complete the project for which a loan was provided, including contracts for personal and professional services and purchase orders.

Treatment Technique Requirement – An enforceable procedure developed by USEPA when it is not economically or technologically feasible to ascertain the level of a contaminant. Public water supplies must follow this procedure and treat their drinking water supplies according to USEPA specifications to ensure the contaminant is controlled.

Useful Life – The estimated period during which a public water supply facility is intended to be operable.

USEPA – The United States Environmental Protection Agency.

Water Efficiency – The use of improved technologies and practices to deliver equal or better services with less water.

**Section 664.140 Incorporations by Reference
EMERGENCY**

- a) The following publications are incorporated by reference:

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- 1) American Institute of Certified Public Accountants Professional Standards (1996), 666 Fifth Avenue, New York, New York 10019.
- 2) California State University, Sacramento, School of Engineering:
 - A) Small Water System Operation and Maintenance, Third Edition, 1995;
 - B) Water Distribution System Operation and Maintenance, Third Edition, 1996;
 - C) Water Treatment Plant Operation, Volume I, Third Edition, 1996 and Volume II, Second Edition, 1995.
- b) This Part 664 incorporates no later editions or amendments.

SUBPART B: FEDERAL REQUIREMENTS FOR THE
PUBLIC WATER SUPPLY LOAN PROGRAM**Section 664.210 Uses of the Public Water Supply Loan Program
EMERGENCY**

The Public Water Supply Loan Program shall be used and administered by the Agency to provide assistance to local government units and privately owned community water supplies for public water supplies for the following public purposes:

- a) *To accept and retain funds from grant awards, appropriations, transfers and payments of interest and principal;*
- b) *To make direct loans at or below market interest rates to any eligible local government unit or to any eligible privately owned community water supply to finance the construction of public water supplies;*
- c) *With respect to funds provided under the American Recovery and Reinvestment Act of 2009, to make direct loans at or below market interest rates to any eligible local government unit or to any eligible privately owned community water supply, and to provide additional subsidization to any eligible local government unit or to any eligible privately owned community water supply, including, but not limited to, forgiveness of principal, negative interest rates, and grants;*

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- d) *With respect to funds provided under the American Recovery and Reinvestment Act of 2009, to buy or refinance the debt obligation of a local government unit for costs incurred on or after October 1, 2008;*
- e) *With respect to funds provided under the American Recovery and Reinvestment Act of 2009, to provide additional subsidization, including, but not limited to, forgiveness of principal, negative interest rates, and grants for a local government unit for costs incurred on or after October 1, 2008;*
- f) *To buy or refinance debt obligations of a local government unit incurred on or after July 17, 1997;*
- g) *To guarantee local obligations where such action would improve credit market access or reduce interest rates;*
- h) *As a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the State, if the proceeds of such bonds will be deposited in PWSLP*
- i) *To transfer funds to the Water Pollution Control Loan Program. [415 ILCS 5/19.3(d)]*

Section 664.220 Agency Responsibilities Under the Federal Safe Drinking Water Act and the American Recovery and Reinvestment Act of 2009
EMERGENCY

The Agency will prepare an Intended Use Plan (IUP) and negotiate an Operating Agreement with USEPA that will be the basis for the Capitalization Grant Agreement. These documents establish the procedures, activities and assurances for operation of PWSLP, including, but not limited to, the following:

- a) Grant payments will be accepted in accordance with a payment schedule established jointly by the Agency and USEPA;
- b) A listing and description of projects on the Project Priority List to be provided financial assistance;

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- c) The loan repayment period cannot exceed 20 years beyond the earlier of the initiation of operation date or the initiation of the loan repayment period;
- d) All repayments of loan principal shall be deposited into PWSLP;
- e) Biennial reporting to USEPA on the Agency's activities under the federal Safe Drinking Water Act;
- f) A description of the criteria and methods used for distribution of funds;
- g) A description of the financial status of PWSLP; and
- h) The Agency shall act in accordance with the requirements established under ARRA.

**Section 664.230 Green Project Reserve
EMERGENCY**

To the extent there are sufficient eligible project applications, not less than 20 percent of the funds provided from ARRA shall be for projects to address green infrastructure, water or energy efficiency improvements, or environmentally innovative activities.

**SUBPART C: LIABILITIES AND REMEDIES FOR FAILURE
TO COMPLY WITH LOAN PROCEDURES****Section 664.310 Noncompliance with Loan Procedures
EMERGENCY**

- a) In the event of noncompliance with any condition or obligation arising out of the loan, including any action that would jeopardize or compromise the source of revenue for repayment of the loan or security interest, the Director may take any necessary action as provided by law or by the loan agreement against the loan recipient, including, but not limited to, one or more of the following actions:
 - 1) Commence legal action in a court of competent jurisdiction;
 - 2) Declare all amounts under the loan immediately due and payable, enforce any security, and recover all loan funds;

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- 3) Terminate the loan pursuant to Section 664.330 (Termination) of this Subpart;
 - 4) Suspend all or part of the project work pursuant to Section 664.320 (Stop-Work Order) of this Subpart;
 - 5) Reduce the amount of the loan by the amount of misused funds; or
 - 6) Unilaterally adjust the fixed loan rate of the loan agreement to the current market interest rate.
- b) No action shall be taken under this Section without notice to the loan recipient.
- c) In determining whether to take action, the Agency shall, at a minimum, consider mitigating or aggravating factors, including, but not limited to, the severity and number of the violations; whether the violation is a continuing one; whether the loan recipient can remedy the violation; and whether the loan recipient remains capable of complying with the approved project work.

**Section 664.320 Stop-Work Order
EMERGENCY**

- a) In the event of any violation of this Part or non-compliance with the terms of the loan agreement, the Agency may, by written order, require the loan recipient to stop all or any part of the project work for a period of not more than 30 days after the date of the order, and for any further period to which the parties may agree. Any such order shall include a list of the project activities to which it applies. Upon receipt of a stop-work order, the loan recipient shall immediately comply with its terms and shall minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within 30 days after the date of the stop-work order, or within the period of any extension to which the parties have agreed, the Agency shall:
- 1) Cancel the stop-work order upon resolution of the violation or cause leading to that stop-work order; or
 - 2) Terminate the work covered by the stop-work order as provided in Section 664.330(a) of this Subpart.

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- b) If a stop-work order is canceled or the period of the order or any extension of that period expires, the loan recipient shall resume work. An adjustment may be made in the loan period, the project period, the loan amount, or any combination of these, and the loan amended accordingly, if the loan recipient asserts a written claim for the adjustment within 30 days after the end of the work stoppage.
- c) All costs that are incurred by the loan recipient after the receipt of a stop-work order, or during any agreed to extension of the stop-work order period to which the Agency and the loan recipient have agreed, shall be deemed unallowable costs unless otherwise authorized by the Agency in writing or authorized under the loan procedures.

**Section 664.330 Termination
EMERGENCY**

- a) **Loan Termination by the Agency**
The Agency, by written notice to the loan recipient, may terminate the loan in whole or in part. Cause for termination shall include, but not be limited to, failure by the loan recipient to comply with the terms and conditions of the loan. Upon loan termination, the loan recipient shall refund any unexpended loan funds to the State of Illinois to be deposited in PWSLP, except for such portion as may be required to pay the allowable costs of materials and equipment furnished or services rendered under an enforceable contract prior to the effective date of the termination.
- b) **Project Termination by the Loan Recipient**
A loan recipient who wishes to terminate a project for which the loan has been provided must submit a written request to the Agency that documents good cause for the proposed termination. If the Agency agrees that there is good cause for termination of all or any portion of the project, it shall enter into a termination agreement with the loan recipient or unilaterally terminate the loan. If the Agency finds that the loan recipient has terminated the project without good cause, it shall declare the loan in default, and all loan funds previously paid to the loan recipient, together with interest on the loan, shall be returned to the State of Illinois in accordance with a schedule established by the Agency for deposit into PWSLP. Good cause to terminate a loan project includes, but is not limited to:
 - 1) Changes in economic circumstances within the loan recipient's service area; and

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- 2) Information that the approved treatment technology will not perform as originally anticipated.

Section 664.340 Waiver of Procedures**EMERGENCY**

- a) Except as provided in subsection (b) or otherwise required by law, the Director may waive any of the loan procedures, either in whole or in part, by a written statement to the loan applicant, either as a special condition of the loan or otherwise, provided the Director finds that the procedure or requirement to be waived is not necessary to insure the integrity of the project, will not reduce an applicant's ability to repay the loan to the Agency or will not, in general, weaken the financial position of PWSLP. The waiver may be subject to such additional conditions the Director deems necessary.
- b) The following procedures will not be waived:
 - 1) Section 664.410 (Project Priority Determination) of this Part
 - 2) Section 664.440 (Fixed Loan Rate) of this Part
 - 3) Section 664.510 (Loan Applicant's Responsibilities During Project Planning) of this Part
 - 4) Section 664.520 (State Environmental Review) of this Part
 - 5) Section 664.620(d)(3) (Wage Provisions) of this Part
 - 6) Section 664.620(d)(4) (Disadvantaged Business Enterprise Requirements) of this Part
 - 7) Section 664.620(d)(6) (Debarment and Suspension Provisions) of this Part
 - 8) Section 664.630(a)(1) (disadvantaged business enterprise requirements) of this Part
 - 9) Section 664.630(a)(4) (debarment and suspension certification) of this Part

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- 10) Section 664.740 (Operation and Maintenance of the Project) of this Part
- 11) Section 664.910 (Operation, Maintenance and Replacement Revenue System) of this Part
- 12) Section 664.930 (Dedicated Source of Revenue for Local Government Units) of this Part
- 13) Section 664.940 (Source of Revenue and Security for Privately Owned Community Water Supplies) of this Part.

SUBPART D: PROCEDURES FOR ISSUANCE OF LOANS

**Section 664.410 Project Priority Determination
EMERGENCY**

- a) Financial assistance from the PWSLP/ARRA will be provided only to local government units and eligible privately owned community water supplies for projects on the Project Priority List developed by the Agency pursuant to 35 Ill. Adm. Code 663.
- b) The Project Priority List sets out the priority for receipt of loans for each loan applicant. Priorities will be established in accordance with 35 Ill. Adm. Code 663 after the receipt by the Agency of both loan pre-applications pursuant to 664.420 (Pre-Applications for Financial Assistance and Identification of Projects to be Funded) of this Part and approved project planning pursuant to Section 664.510 (Loan Applicant's Responsibilities During Project Planning) and Section 664.520 (State Environmental Review) of this Part. For projects represented by loan pre-applications only, the Agency will provide limited priority scoring for inclusion of the project on the Project Priority List.
- c) Projects included in the Intended Use Plan will be selected from projects in the Project Priority List in priority order, provided the project is scheduled to initiate construction by December 31, 2009.
- d) The available funds awarded for a project may be limited by the Agency to reflect the amount of funds needed to meet cash flow demands for that project during the current funding cycle or to meet PWSLP/ARRA funding availability. Any project that receives an adjustment to meet cash flow demands or PWSLP/ARRA funding

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availability may have an opportunity for additional funding in future funding cycles as money becomes available.

Section 664.420 Pre-Application for Financial Assistance and Identification of Projects to be Funded**EMERGENCY**

- a) Every loan applicant shall submit to the Agency a signed and dated pre-application form that includes at a minimum the following items:
 - 1) Legal name of applicant and eligibility status;
 - 2) Address;
 - 3) Authorized representative – name and title;
 - 4) Reason for project;
 - 5) Number of billed customers;
 - 6) Project description;
 - 7) Cost estimate; and
 - 8) Project schedule.
- b) Loan applicants seeking financial assistance must file a new pre-application annually.
- c) A project with approved project planning may be added to the project priority list at any time by the submission of a pre-application.
- d) The Agency shall publish a list of the projects that are proposed for funding. These projects will be included in the Intended Use Plan.
- e) After March 31 of each year, the Agency may bypass projects on the Intended Use Plan that cannot meet the schedule to initiate construction by March 31 of that year. The Agency will evaluate projects in priority order and may offer loan

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commitments to other projects on the Project Priority List in accordance with Section 664.430 (Financial Assistance Application and Approval) of this Subpart.

**Section 664.430 Financial Assistance Application and Approval
EMERGENCY**

- a) In order to receive a loan commitment letter for financial assistance under ARRA, the following documentation shall be submitted by the loan applicant and approved by the Agency:
 - 1) Planning Report that meets the requirements of Section 664.510 (Loan Applicant's Responsibilities During Project Planning) and 664.520 (State Environmental Review);
 - 2) Design documents, including plans and specifications, with a construction permit, if applicable;
 - 3) An enacted ordinance or other legally binding instrument authorizing the bonds, notes, security agreements or other evidence of indebtedness and an approved operation, maintenance and replacement revenue system in accordance with 664.910 (Operation, Maintenance and Replacement Revenue System) and documentation to support the loan applicant's ability to repay the loan in accordance with Section 664.920 (Financial Capability) and Section 664.930 (Dedicated Source of Revenue for Local Government Units) or Section 664.940 (Source of Revenue and Security for Privately Owned Community Water Supplies) of this Part;
 - 4) A loan application form (Appendix B);
 - 5) An EPA Form 4700-4, Compliance Report; and
 - 6) An executed contract for design and construction related work in accordance with Section 664.630 (Contracts for Personal and Professional Services) of this Part if financing is being requested for these specific costs.
- b) In addition to the items identified in subsection (a), the Agency must have received the following bid documentation prior to the issuance of the Loan Agreement:

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- 1) A certified copy of the published bid advertisements;
- 2) Any addenda by the loan applicant, if applicable;
- 3) A summary of the evidence that the contractor and engineer have met the disadvantaged business enterprise requirements pursuant to 40 CFR 33;
- 4) A copy of the bid tabulations;
- 5) An analysis of the bids and recommendations for the award of the bids;
- 6) A copy of the successful bid proposals;
- 7) The notice of the applicant's intent to award; and
- 8) A certification from the loan applicant that all other bid requirements have been satisfied, including bid bond requirements and other certifications as required by State and federal law.

**Section 664.440 Fixed Loan Rate
EMERGENCY**

The fixed loan rate shall be a simple annual rate of 0.00% for all public water supply facilities loans under ARRA, administered through PWSLP.

**Section 664.450 Refinancing
EMERGENCY**

- a) Design costs set forth in Section 664.460 (Limitation on Design Cost) of this Subpart, and bidding costs related to eligible construction contracts incurred prior to the award of the loan agreement, are eligible for refinancing.
- b) Total eligible costs for projects that received a PWSLP Loan Agreement between October 1, 2008 and February 17, 2009 are eligible for refinancing to ARRA program financial terms.

**Section 664.460 Limitation on Design Cost
EMERGENCY**

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Allowable costs for design of the loan project will be limited to the actual cost incurred for design, up to a maximum percentage of the allowable as bid construction cost.

- a) For allowable as bid construction costs of \$500,000 or less, the design will be funded up to 15%;
- b) For allowable as bid construction costs of \$500,001 to \$2,000,000, the design will be funded up to 12%;
- c) For allowable as bid construction costs of \$2,000,001 to \$5,000,000, the design will be funded up to 10%;
- d) For allowable as bid construction costs of \$5,000,001 to \$10,000,000, the design will be funded up to 8%; and
- e) For allowable as bid construction costs of more than \$10,000,000, the design will be funded up to 7%.

**Section 664.470 Limitation on Financial Assistance
EMERGENCY**

The amount of financial assistance from ARRA available to a loan applicant cannot exceed 50% of the total eligible project cost or \$5,000,000, whichever is less. Loan applicants with multiple projects will be limited by the aggregate amount of their projects in relation to these limitations.

**Section 664.480 Principal Forgiveness
EMERGENCY**

All financial assistance from ARRA shall be in the form of a 0.00% interest loan with principal forgiveness of 50% of the total ARRA funded amount. Loan applicants with multiple projects will be limited by the aggregate amount of their projects in relation to these limitations.

**Section 664.490 Loans to Privately Owned Community Water Supplies
EMERGENCY**

Loans to privately owned community water supplies, as defined in Section 664.130 of this Part, shall be limited to eligible privately owned community water supplies with 100 or more billed

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customers. Privately owned community water supplies with fewer than 100 billed customers are not eligible to receive financial assistance from PWSLP/ARRA.

SUBPART E: PROJECT PLANNING REQUIREMENTS FOR LOAN PROJECTS

**Section 664.510 Loan Applicant's Responsibilities During Project Planning
EMERGENCY**

- a) The loan applicant shall provide project planning, which shall consist of plans and studies that are directly related to the construction of public water supply facilities, to maintain compliance with applicable State and federal requirements as specified in 35 Ill. Adm. Code, Subtitle F and the federal Safe Drinking Water Act while recognizing environmental and social conditions. The planning shall provide documentation on the existing need for the facilities for which loan assistance is being requested.
- b) If any information required to be furnished as part of a project plan has been developed separately, it shall be furnished and incorporated by reference in the project plan. Planning previously or collaterally accomplished under local, State or federal programs may be utilized to the extent applicable.
- c) The project plan shall be submitted to the Agency for approval. Where applicable, the applicant shall also submit drafts of any legally enforceable agreements or demonstrations of legal authority necessary to plan implementation.
- d) The project plan may include more than one construction project and may provide the basis for several subsequent projects. The Agency shall review any project plan that has previously served as the basis for a loan to determine if changes have occurred that require amendment of the plan for the subsequent project. If substantial changes have occurred that warrant revision or amendment of the plan as specified in Section 664.520 (State Environmental Review) of this Subpart, the loan applicant shall revise or amend and resubmit the plan for Agency approval in accordance with Section 664.520 (State Environmental Review) of this Subpart.
- e) A project plan shall include the following elements in sufficient detail to, at a minimum, comply with all applicable construction permit supporting data requirements of 35 Ill. Adm. Code 652.104:

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- 1) A complete description of the public water supply system of which the proposed project is a part, identification of any existing violations of federal or State public water supply regulations and identification of the needs to be addressed by the proposed project.
- 2) A discussion of the technical, financial and managerial considerations that form the basis for the applicant's selection of the proposed project. The relationship of the nature, size and capacity of the selected alternative to the needs to be served, including reserve capacity, shall be addressed. Also included shall be a discussion of the operational requirements of the selected alternative and provisions for disposal of waste by-products in accordance with State requirements.
- 3) A detailed description of the alternative selected for loan assistance, including preliminary engineering data, complete cost estimates for design and construction, one or more 8.5 by 11 inch site maps locating areas of construction and/or indirect impacts, and a projected schedule for completion. The engineering data shall include, to the extent appropriate, flow diagrams, unit process descriptions, detention times, flow rates, unit capacities, etc., sufficient to demonstrate that the proposed project will be designed in accordance with 35 Ill. Adm. Code 651 through 654.
- 4) Evidence of consultation with relevant federal and State agencies with documentation of project approval where required.
- 5) An implementation plan for the proposed recommendations, including necessary financial arrangements for operating the facility and repayment of the proposed loan amount, as well as the impact of these costs on the system users.

Section 664.520 State Environmental Review**EMERGENCY**

- a) Prior to making a final determination on the acceptability of any project plan, the Agency shall undertake an environmental review. The Agency may categorically exclude certain classes of projects from environmental review when, by virtue of their limited scope, the projects have no potential for negative environmental impacts.

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- b) The Agency shall not begin its environmental review until it has determined that the project plan conforms to the requirements of Section 664.510 (Loan Applicant's Responsibilities During Project Planning) of this Subpart, and that, based on the information available, all reasonable measures have been taken in the planning to avoid and mitigate negative environmental impacts.
- c) The scope of the Agency's environmental review shall include, but not be limited to, an assessment of the impacts of both the loan funded project and the overall planning on rare and endangered species, historic and cultural resources, prime agricultural land, air and water quality, recreational areas, wetlands, floodplains and other sensitive environmental areas. The review shall also assess the direct and indirect impacts of construction.
- d) For all projects requiring an environmental review, the Agency will assess the environmental impacts of the proposed project and prepare a written Preliminary Environmental Impacts Determination (PEID). The public will be given an opportunity to comment on the project plan and the Agency's environmental impacts assessment.
- e) The PEID shall be mailed to the loan applicant and other interested parties, inviting public comment. The loan applicant shall hold a public hearing on the plan and the Agency's PEID for the purpose of obtaining public comment. The public hearing will be held within 30 days after receipt of the Agency's PEID or within an alternative time period that is justified by the loan applicant and approved by the Agency. The loan applicant shall allow an additional 10 days from the date of the public hearing for the submission of written comments from the public.
- f) The time and place of the public hearing shall be conspicuously and adequately announced at least 10 days before the hearing. In addition, the Agency's PEID document shall be displayed at a convenient local site sufficiently prior to the hearing to obtain a level of public participation appropriate to the scope and impacts of the proposed project.
- g) The loan applicant shall provide the Agency with an accurate summary of all public comments received, together with any proposed amendments to the plan made in response to these comments.

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- h) Upon receipt of this public hearing summary and after the expiration of the 10 day written comment period, the Agency shall issue:
- 1) An unconditional approval of the plan (original or as amended); or
 - 2) A conditional approval of the plan with special conditions; or
 - 3) A disapproval of the plan based on evidence of significant negative environmental impacts for which appropriate mitigative measures have not been identified; or
 - 4) A determination of the need for an Environmental Impact Statement (EIS) under the National Environmental Policy Act (42 USC 4332). The Agency may change its disapproval to approval or conditional approval based on the recommendations of the EIS.
- i) For projects categorically excluded from the environmental review process, the Agency shall provide to the applicant a Notice of Intent to Issue a Categorical Exclusion. The applicant shall publish the Notice in a newspaper of local record and allow 10 days for public comment. If no valid objection is raised to the Categorical Exclusion, the Agency shall issue an unconditional approval of the project plan. Should valid concerns be raised over potential environmental impacts, the Agency shall proceed with an environmental review under this Section 664.520 or issue a conditional approval when the applicant incorporates mitigative measures that would clearly resolve the environmental concerns.
- j) Additions to the project scope or changes to the location of proposed construction activity shall require an amendment to an approved project plan. Where the Agency determines that the proposed changes will not alter the previous environmental impacts findings, it will approve planning amendments by letter. In other cases, additional environmental review and public comment may be required.
- k) Agency project planning determinations made in accordance with subsection (h) shall be subject to the provisions of the Illinois Administrative Procedure Act [5 ILCS 100].

SUBPART F: REQUIREMENTS APPLICABLE TO SUBAGREEMENTS

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**Section 664.610 Requirements for Subagreements
EMERGENCY**

The intent of this Subpart is to provide for maximum open and free competition in the procurement of materials, goods and services for the construction projects funded from PWSLP/ARRA. Any procurement method, except as allowed under this Part that significantly minimizes open and free competition will be prohibited. The following procedures shall apply to subagreements:

- a) **Local Preference**
Local laws, ordinances, regulations or procedures that are designed to or operate to give local or in-state bidders or proposers preference over other bidders or proposers shall not be used in evaluating bids or proposals for subagreements under PWSLP/ARRA loans.
- b) **Profits**
Only fair and reasonable profits may be earned by contractors in subagreements under PWSLP/ARRA loans. Profit included in a formally advertised, competitively bid, fixed price construction contract awarded pursuant to Section 664.620 (Construction Contracts) of this Subpart is presumed to be reasonable. If a subagreement is not competitively bid, the loan recipient shall submit to the Agency its basis for determination of reasonable profit.
- c) **Loan Recipient Responsibility**
The loan recipient shall be responsible for the administration and successful accomplishment of the project for which PWSLP/ARRA loan assistance is provided. The loan recipient shall be responsible for the settlement and satisfaction of all contractual and administrative issues arising out of subagreements, including, but not limited to, issuance of invitations for bids or requests for proposals, selection of contractors, award of contracts, protests of award, claims, disputes, and other procurement matters. With the prior written consent of the Agency, these functions may be performed for the loan recipient by an individual or firm retained for that purpose. Such an individual or firm shall be deemed the loan recipient's agent and shall be subject to all the provisions of the loan agreement, including this Part, that apply to the loan recipient.
- d) **Privity of Contract**

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Neither the Agency nor the State of Illinois shall be a party to any subagreement (including contracts or subcontracts) or to any solicitation or request for proposals under those subagreements.

- e) Subagreements shall:
 - 1) Be directly related to the accomplishment of the loan recipient's approved work program;
 - 2) Be in the form of an executed written agreement (except for small purchases of \$25,000 or less);
 - 3) Be for monetary or in-kind consideration; and
 - 4) Not be in the nature of a grant or gift.
- f) Documentation
 - 1) Procurement records and files for purchases in excess of \$25,000 shall include the following:
 - A) The basis for contractor selection;
 - B) The justification for lack of competition, if competition appropriate to the type of project work to be performed is required but not obtained; and
 - C) The basis for award cost or price.
 - 2) Procurement documentation as described in subsection (f)(1) shall be retained by the loan recipient or contractors for the period required by Section 664.820 (Audit and Records) of this Part.
- g) Subagreements shall only be awarded to persons or organizations that:
 - 1) Have adequate financial resources for performance;

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- 2) Have the necessary experience, organization, technical qualifications and facilities, or a firm commitment, arrangement or ability to obtain these requirements;
 - 3) Have the staffing sufficient to comply with the proposed or required completion schedule for the project;
 - 4) Have a satisfactory record of integrity, judgment and performance;
 - 5) Have an adequate financial management system and audit procedure that is consistent with generally accepted accounting standards in accordance with the American Institute of Certified Public Accountants Professional Standards;
 - 6) Maintain a standard of procurement in accordance with this Part;
 - 7) Maintain a property management system that provides adequate procedures for the acquisition, maintenance, safeguarding and disposition of all property; and
 - 8) Conform to the civil rights, equal employment opportunity (Appendix A, Exhibit B) and labor law requirements of this Part.
- h) Fraud and Other Unlawful or Corrupt Practices
- 1) The obtaining and administration of loans from PWSLP/ARRA, and of subagreements awarded by loan recipients, shall be free from bribery, graft, kickbacks and other corrupt practices. The loan recipient shall bear the primary responsibility for prevention and detection of such conduct and for cooperation with appropriate authorities in the prosecution of any such conduct.
 - 2) The loan recipient shall effectively pursue available State or local legal and administrative remedies, and take appropriate remedial action with respect to any allegations or evidence of illegality or corrupt practices brought to its attention. The loan recipient shall advise the Agency immediately when any allegation or evidence comes to its attention, and shall periodically advise the Agency of the status and ultimate disposition of any matter.

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- i) Negotiation of Subagreements
All subagreements greater than \$25,000 shall be awarded by formal advertising unless the loan recipient determines, and the Agency concurs, that it is impracticable and infeasible to use formal advertising. Negotiated contracts must be competitively awarded to the maximum practicable extent and not be in conflict with other State statutes. Procurements may be negotiated by the loan recipient, if approved by the Agency, for the following reasons:
- 1) Public exigency, as evidenced by governmental declaration, will not permit the delay incident to advertising (e.g., an emergency procurement);
 - 2) The materials or services to be procured are available from only one person or firm;
 - 3) The procurement is for personal or professional services, or for any services to be rendered by an educational institution;
 - 4) No responsive, responsible bids at acceptable price levels have been received after formal advertising; or
 - 5) The procurement is for materials or services for which the prices are established by law; for technical items or equipment requiring standardization and interchangeability of parts with existing equipment; for experimental, developmental or research work; for highly perishable materials; for resale; or for technical or specialized supplies requiring substantial initial investment for manufacture.

**Section 664.620 Construction Contracts
EMERGENCY**

The following procedures shall apply to construction contracts (subagreements) awarded by loan recipients for the construction phase only. They shall not apply to personal and professional service contracts.

- a) The contract documents to be submitted to the Agency shall require a bid bond or cashier's check for not less than 5% of the bid amount, executed contract, performance and payment bonds for the bid amount, certificate of insurance with loan recipient added as additional insured, and the notice to proceed.

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- b) Each contract shall be awarded after formal advertising, unless negotiation is permitted in accordance with Section 664.610(i) (Negotiation of Subagreements) of this Subpart. Formal advertising shall be in accordance with the following:
- 1) **Evidence of Advertising**

The loan recipient shall submit to the Agency a certified copy of the bid advertisement that notifies the bidders that the procurement will be subject to regulations contained in the procedures for providing financial assistance from PWSLP under ARRA as set out in this Part, the Davis-Bacon Act (40 USC 276a through 276a-5) as defined by the U.S. Department of Labor, the Employment of Illinois Workers on Public Works Act [30 ILCS 570], and Executive Order 11246, as amended (Appendix A, Exhibit B). Bidders shall be notified that the procurement will be subject to the loan recipient's policy regarding the increased use of disadvantaged business enterprises, and that the bidders will be required to comply with Section 1605 of ARRA, which specifies that all iron, steel and manufactured goods used in the project shall be produced in the United States.
 - 2) **Adequate Bidding Documents**

Bidding documents (invitations for bid) shall be made available by the loan recipient and shall be furnished upon request in a timely manner. A complete set of bidding documents shall be maintained by the loan recipient and shall be available for inspection and copying by any party. The bidding documents shall include:

 - A) A complete statement of the work to be performed, including necessary drawings and specifications, and the required completion schedule (Drawings and specifications may be made available for inspection instead of being furnished.);
 - B) The terms and conditions of the contract to be awarded;
 - C) A clear explanation of the method of bidding, the method of evaluation of bid prices, and the basis and method for award of the contract;

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- D) The statement that any contract awarded in response to the bid is expected to be funded in part by a loan from PWSLP, and that neither the State of Illinois nor any of its departments, agencies or employees is or will be a party to this bidding or any resulting contract;
- E) Responsibility requirements or criteria that will be used in evaluating bidders, provided that an experience requirement or performance bond may not be used unless adequately justified by the loan applicant;
- F) A copy of subsections (b)(2)(G) and (H) shall be included in the proposal form to be used by bidders and shall constitute a representation and certification to be considered as a part of their bid;
- G) By submission of the bid, each bidder and, in the case of a joint bid, each party to the joint bid, certifies as to his or her own organization, that, in connection with the bid:
- i) The prices in the bid have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to the prices with any other bidder or with any competitor;
 - ii) Unless otherwise required by law, the prices quoted in the bid have not knowingly been directly or indirectly disclosed to any other bidder or to any competitor prior to opening; and
 - iii) No attempt has been made or will be made by the bidder to induce any other person or firm to submit or withhold a bid for the purpose of restricting competition. Also, each bidder shall submit a certification regarding compliance with Article 33E of the Illinois Criminal Code of 1961 [720 ILCS 5/33E]; and
- H) Each person signing the bid shall certify that:

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- i) He or she is the person in the bidder's organization responsible for the decision as to the prices being bid and that he or she has not participated, and will not participate, in any action contrary to subsection (b)(2)(G); or
 - ii) He or she is not the person in the bidder's organization responsible for the decision as to the prices being bid, but that he or she has been authorized to act as agent certifying that the persons have not participated, and will not participate, in any action contrary to subsection (b)(2)(G), and as their agent shall so certify. He or she shall also certify that he or she has not participated, and will not participate, in any action contrary to subsection (b)(2)(G).
- 3) Addenda to Bidding Documents
If the loan applicant wishes to amend any part of the bidding documents (including drawings and specifications) during the period when bids are being prepared, the loan applicant shall send written addenda to all firms who have obtained bidding documents in time to be considered prior to the bid opening. When appropriate, the time period for submission of bids shall be extended. All addenda to the bidding documents shall be submitted to the Agency for approval prior to the bid opening.
 - 4) Award to the Low, Responsive, Responsible Bidder
 - A) After bids are opened, they shall be evaluated by the loan applicant in accordance with the methods and criteria set out in the bidding documents. Items that shall be submitted to the Agency include a bid tabulation, the loan applicant's or its agent's analysis of bids and recommendation for the award and the loan applicant's letter of intent to award or the official minutes of board approval.
 - B) The loan applicant may reserve the right to reject all bids if it has documented sound business reasons. Unless all bids are rejected, award shall be made to the low, responsive, responsible bidder after the bid evaluation has been submitted to the Agency and written notice of Agency approval has been received by the loan applicant.

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- C) If the award is intended to be made to a firm that did not submit the lowest bid, prior to any award, the loan applicant shall submit to the Agency a written statement explaining why each lower bidder was deemed not responsive or not responsible.
- c) Negotiations of Contract Amendments (Change Orders)
- 1) **Loan Recipient Responsibility**
The loan recipient shall be responsible for negotiation of construction contract change orders. This function may be performed by the loan recipient directly or, if authorized, by its consulting engineer. During negotiations the loan recipient shall:
 - A) Make sure that the contractor has a clear understanding of the scope and extent of work and other essential requirements;
 - B) Assure that the contractor demonstrates that he or she will make available or will obtain the necessary personnel, equipment and materials to accomplish the work within the required time; and
 - C) Maintain a summary of all negotiations and the engineer's independent cost estimate.
 - 2) **Changes in Contract Price or Time**
The contract price or time may be changed only by a change order. When negotiations are required, they shall be conducted in accordance with subsection (c).
 - 3) For each change order the contractor shall submit to the loan recipient for review sufficient cost and pricing data to enable the loan recipient to ascertain the necessity and reasonableness of costs and amounts proposed, and the allowability and eligibility of costs proposed.
 - 4) **Agency Review**
For each change order, the loan recipient shall submit to the Agency for approval the following documentation:
 - A) A description of the changed work;

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- B) The contractor's proposal, itemizing the cost and time to complete the changed work;
 - C) The loan recipient's or engineer's estimate of the cost and time to complete the changes;
 - D) Two copies of the executed change order with justification including, but not limited to, the need for the proposed work and the technical solution; and
 - E) The summary of negotiations and resolution between the engineer's independent cost estimate and the contractor's proposal.
- d) Required Construction Contract Provisions
Each construction contract shall include the following provisions:
- 1) Audit; Access to Records
 - A) The contractor shall maintain books, records, documents and other evidence directly pertinent to performance on loan work consistent with generally accepted accounting standards in accordance with the American Institute of Certified Public Accountants Professional Standards. The contractor shall also maintain the financial information and data used by the contractor in the preparation or support of any cost submissions required under subsection (c) (Negotiation of Contract Amendments (Change Orders)) and a copy of the cost summary submitted to the owner. The Illinois Auditor General, the owner, the Agency or any of their authorized representatives shall have access to the books, records, document, and other evidence for purposes of inspection, audit and copying. The contractor shall provide facilities for access and inspection.
 - B) For a formally advertised, competitively awarded, fixed price contract, the contractor shall include access to records as specified in subsection (d)(1)(A) for all negotiated change orders and contract amendments in excess of \$25,000 that affect the contract price. In the case of all other prime contracts, the contractor shall agree to include access to records as specified above in all his or

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her contracts and all tier subcontracts or change orders in excess of \$25,000 that are directly related to project performance.

- C) Audits shall be consistent with generally accepted auditing standards in accordance with the American Institute of Certified Public Accountants Professional Standards.
- D) The contractor shall agree to the disclosure of all information and reports resulting from access to records pursuant to subsection (d)(1)(A). Where the audit concerns the contractor, the auditing agency shall afford the contractor an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report shall include the written comments, if any, of the audited parties.
- E) The records required by subsection (d)(1)(A) shall be maintained and made available during performance of the work under the loan agreement and for 3 years after the date of final loan audit. In addition, records that relate to any dispute or litigation or the settlement of claims arising out of any performance, costs or items to which an audit exception has been taken, shall be maintained and made available for 3 years after resolution of the dispute, appeal, litigation, claim or exception.
- F) The right of access will generally be exercised with respect to financial records under:
 - i) Negotiated prime contracts;
 - ii) Negotiated change orders or contract amendments in excess of \$25,000 affecting the price of any formally advertised, competitively awarded, fixed price contract; and
 - iii) Subcontracts or purchase orders under any contract other than a formally advertised, competitively awarded, fixed price contract.
- G) The right of access will generally not be exercised with respect to a prime contract, subcontract or purchase order awarded after

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effective price competition. In any event, the right of access shall be exercised under any type of contract or subcontract:

- i) With respect to records pertaining directly to contract performance, excluding any financial records of the contractor; and
 - ii) If there is any indication that fraud, gross abuse or corrupt practices may be involved in the award or performance of the contract or subcontract.
- 2) **Covenant Against Contingent Fees**

The contractor shall warrant that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee. For breach or violation of this warranty, the owner shall have the right to annul the contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the commission, percentage, brokerage or contingent fee.
 - 3) **Wage Provisions**

The contractor shall pay prevailing wages in accordance with the Davis-Bacon Act (40 USC 276a through 276a-5) as defined by the U.S. Department of Labor.
 - 4) **Disadvantaged Business Enterprise Requirements**

The contractor shall provide evidence, including but not limited to, a copy of the advertisements and the record of negotiation, that the contractor has taken affirmative steps in accordance with 40 CFR 33 to assure disadvantaged business enterprises are used when possible as sources of supplies, equipment, construction and services, consistent with the provisions of the Agency's Operating Agreement with USEPA.
 - 5) **American Iron, Steel and Manufactured Goods Provisions**

The contract shall require the successful bidders to certify compliance with Section 1605 of ARRA, which specifies that all iron, steel and manufactured goods used in the project shall be produced in the United States.

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- 6) **Debarment and Suspension Provisions**
The contract shall require the successful bidders to submit a "Certification Regarding Debarment, Suspension and Other Responsibility Matters" (EPA Form 5700-49) showing compliance with federal Executive Order 12549 (Appendix A, Exhibit A).
- 7) **Nonsegregated Facilities Provisions**
The successful bidder shall be required to submit a certification of nonsegregated facilities as prescribed in 18 USC 1001.
- e) **Subcontracts under Construction Contracts**
The award or execution of all subcontracts by a prime contractor and the procurement and negotiation procedures used by the prime contractor shall comply with the following:
 - 1) All applicable provisions of federal, State and local law;
 - 2) All provisions of this Part regarding fraud and other unlawful or corrupt practices;
 - 3) All provisions of this Part with respect to access to facilities, records and audit of records; and
 - 4) All provisions of subsection (d)(6) that require a "Certification Regarding Debarment, Suspension and Other Responsibility Matters" (EPA Form 5700-49) showing compliance with federal Executive Order 12549 (Appendix A, Exhibit A).
- f) **Contractor Bankruptcy**
In the event of a contractor bankruptcy, the loan recipient shall notify the Agency and shall keep the Agency advised of any negotiations with the bonding company, including any proposed settlement. The Agency may participate in those negotiations and will advise the loan recipient of the impact of any proposed settlement to the loan agreement. The loan recipient shall be responsible for assuring that every appropriate procedure and incidental legal requirement is observed in advertising for bids and re-awarding a construction contract.

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All subagreements for personal and professional services for design or construction expected to exceed \$25,000 in the aggregate shall include the following subagreement provisions:

- a) Subagreements for personal and professional construction services shall include:
 - 1) Evidence, such as, but not limited to, a copy of the advertisements and the record of negotiation in accordance with 40 CFR 33 that affirmative steps have been taken to assure that disadvantaged business enterprises are used when possible as sources of supplies, equipment, construction and services, consistent with the provisions of the Agency's Operating Agreement with USEPA.
 - 2) An audit and access to records clause that provides as follows:
 - A) Subsections (a)(2)(B) through (E) shall be included in all contracts and all subcontracts directly related to project services that are in excess of \$25,000.
 - B) Books, records, documents and other evidence directly pertinent to performance of PWSLP loan work under this agreement shall be maintained consistent with generally accepted accounting standards in accordance with the American Institute of Certified Public Accountants Professional Standards. The Agency or any of its authorized representatives shall have access to the books, records, documents and other evidence for the purpose of inspection, audit and copying. Facilities shall be provided for access and inspection.
 - C) Audits conducted pursuant to this subsection (a)(2) shall be in accordance with generally accepted auditing standards.
 - D) All information and reports resulting from access to records pursuant to subsection (a)(2)(B) shall be disclosed to the Agency. The auditing agency shall afford the engineer an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report shall include the written comments, if any, of the audited parties.

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- E) Records under subsection (a)(2)(B) shall be maintained and made available during performance of project services under this agreement and for 3 years after the final loan closing. In addition, those records that relate to any dispute pursuant to Section 664.650 (Disputes) of this Subpart, litigation, the settlement of claims arising out of project performance costs or items to which an audit exception has been taken shall be maintained and made available for 3 years after the resolution of the appeal, litigation, claim or exception.
 - 3) A covenant against contingent fees clause as follows:
"The professional services contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bonafide employees. For breach or violation of this warranty, the loan recipient shall have the right to annul this agreement without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the commission, percentage, brokerage or contingent fee".
 - 4) A Certification Regarding Debarment, Suspension, and Other Responsibility Matters (EPA Form 5700-49) showing compliance with federal Executive Order 12549 (Appendix A, Exhibit A).
 - 5) A description of the scope and extent of the project work.
 - 6) The schedule for performance and completion of the contract work, including, where appropriate, dates for completion of significant project tasks.
 - 7) A method of compensation.
- b) Subagreements for personal and professional design services shall include the subagreement provisions contained in subsections (a)(2) through (a)(4). In addition, the subagreements shall be accompanied by a statement regarding the use of disadvantaged business enterprises during the design service phase.

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- c) If, at the time of contract execution, any of the elements required in this Section cannot be defined adequately for later tasks, those tasks shall not be included in the contract at that time.

**Section 664.640 Compliance with Procurement Requirements for Construction Contracts
EMERGENCY**

- a) **Loan Recipient Responsibility**
The loan recipient shall be responsible for selecting the low, responsive and responsible bidder or other contractor in accordance with applicable requirements of State, federal and local laws and ordinances, as well as for the specific requirements of the loan agreement directly affecting procurement. The loan recipient shall also be responsible for the initial resolution of complaints based upon alleged violations. Any complaints made to the Agency concerning any alleged violation of law in the procurement of construction services or materials for a project involving construction work will be referred to the loan recipient for resolution. The loan recipient shall promptly determine each complaint on its merits, and shall allow the complainant and any other party who may be adversely affected to state in writing or at a conference the basis for its views concerning the proposed procurement. The loan recipient shall promptly furnish to the complainant and to other affected parties, by certified mail, a written summary of its determination, substantiated by an engineering or legal opinion providing a justification for its determination.
- b) **Time Limitations**
Complaints should be made as early as possible during the procurement process, preferably prior to the bid opening, to avoid disruption of the procurement process. The complaint shall be mailed (certified mail, return receipt requested), or otherwise delivered, no later than 5 working days after the complainant becomes aware of an alleged violation. If there is no agreement between the parties within 7 days following the loan applicant's response, unless all bids are rejected, the matter shall be resolved in accordance with subsection (c).
- c) **Remedies**
All claims, counter-claims, disputes and other matters in question between the recipient and the contractor arising out of, or relating to, a subagreement or its breach shall be decided by arbitration if the parties agree, or in a court of competent jurisdiction within the State.

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- d) **Deferral of Procurement Action**
If the determination of a complaint by the loan recipient is adverse to the complainant, the loan recipient shall defer issuance of its solicitation or award or notice to proceed under the contract, as appropriate, for 7 days after mailing or delivery of the determination. If the determination (whether made by the loan recipient, the arbitrator or the court) is favorable to the complainant, the terms of the solicitation shall be revised or the contract shall be awarded, as appropriate, in accordance with the determination.

**Section 664.650 Disputes
EMERGENCY**

- a) Only the loan recipient may appeal to the Agency in its own name and for its own benefit, under this provision, with respect to its subagreements. Neither a contractor nor a subcontractor may prosecute an appeal under the disputes provision of a loan in its own name or interest.
- b) Any dispute arising under this loan that is not disposed of by agreement shall be decided by the Director, or his or her authorized representative, who shall render a decision in writing and mail or otherwise furnish it to the loan recipient. The decision of the Director shall be in accordance with this Part and shall be final and conclusive.
- c) The disputes clause shall not preclude the Director from considering questions of law in any decision.

**Section 664.660 Indemnity
EMERGENCY**

The loan recipient shall assume the entire by risk, responsibility and liability for all loss or damage to property owned by the loan recipient, the Agency or third persons, and for any injury to, or death of, any person (including employees of the loan recipient) caused by, arising out of, or occurring in connection with the execution of any work, contract or subcontract arising out of the PWSLP/ARRA loan. The loan recipient shall indemnify, save harmless and defend the State of Illinois and the Agency from all claims for loss, damage, injury or death, whether caused by the negligence of the State of Illinois or the Agency or their agents or employees or otherwise, consistent with the provisions of Section 1 of the Construction Contract Indemnification for Negligence Act [740 ILCS 35/1]. The loan recipient shall require that all its contractors and

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subcontractors agree in writing that they will look solely to the loan recipient for performance of the contract or satisfaction of all claims arising under the contract.

**Section 664.670 Covenant Against Contingent Fees
EMERGENCY**

The loan recipient shall warrant that no person or agency has been employed or retained to solicit or secure a PWSLP/ARRA loan upon an agreement or understanding for a commission, percentage, brokerage or contingent fee. For breach or violation of this warranty, the Agency shall have the right to annul the loan in accordance with Section 664.310 (Noncompliance with Loan Procedures) of this Part or to deduct from the loan, or otherwise recover, the full amount of the commission, percentage, brokerage or contingent fee.

SUBPART G: REQUIREMENTS APPLICABLE TO CONSTRUCTION INITIATION,
CHANGES, COMPLETION AND OPERATION OF PROJECT

**Section 664.710 Construction Initiation
EMERGENCY**

Upon approval by the Agency of the loan applicant's financial assistance application in accordance with Section 664.430 (Financial Assistance Application and Approval) of this Part, and subject to the availability of funds, the Agency will issue the loan agreement and authorize the initiation of construction.

**Section 664.720 Project Changes
EMERGENCY**

- a) Prior approval of the Agency is required for any project change that may:
 - 1) Increase the amount of loan funds needed to complete the project;
 - 2) Alter the design or scope of the project;
 - 3) Extend any contract or loan completion date for the project;
 - 4) Alter the location, size, capacity or quality of any major item of equipment; or

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- 5) Alter the scope of the project by changing the methodologies or personnel to be used as agreed to at the time the loan was issued.
- b) The Agency will approve project changes that it determines are cost-effective and within the overall scope of the loan project, based on approved project planning.
- c) The loan recipient shall promptly notify the Agency, in writing, of all project changes. Failure to give timely notice of proposed project changes, or action by the loan recipient that is not consistent with the Agency's determination on those changes, may result in:
 - 1) Disallowance of loan participation for costs incurred that are attributable to the change; and
 - 2) Termination of the loan.

**Section 664.730 Construction Engineering
EMERGENCY**

The loan recipient shall provide construction engineering and project monitoring to assure that the construction substantially conforms with the approved plans and specifications.

**Section 664.740 Operation and Maintenance of the Project
EMERGENCY**

In order for the Agency to approve the final inspection for the project, the loan recipient must certify that it has a certified operator and that it has provided the following training and operation and maintenance documents:

- a) Training pertaining to the proper operation and maintenance of the equipment and process units included in the project.
- b) An operation and maintenance reference library that includes, but is not limited to, the following:
 - 1) Manufacturer's literature, shop drawings and warranties;
 - 2) The plans of record with valve indices for the equipment and process units included in the project; and

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- 3) A maintenance schedule for the equipment and process units included in the project.
- c) Training pertaining to the general operation of public water supply facilities or distribution systems, consisting of an operator self-study course such as, but not limited to, "Water Treatment Plant Operation", Volumes I and II, or "Small Water System Operation and Maintenance", or "Water Distribution System Operation and Maintenance", California State University, Sacramento.

**Section 664.750 Final Inspection
EMERGENCY**

The loan recipient shall notify the Agency in writing within 30 days after completion of project construction and shall submit the final change order, along with the contractor's final costs, to the Agency. The plans of record shall be forwarded to the appropriate Agency regional office. The Agency shall schedule the final inspection within 60 days after the receipt of notice of completion, provided that all necessary change orders have been submitted and approved.

**SUBPART H: REQUIREMENTS APPLICABLE TO
ACCESS, AUDITING AND RECORDS****Section 664.810 Access
EMERGENCY**

- a) The Agency and its designated representatives shall have access, during normal business hours and at any other time during which work is being performed, to the premises where any portion of the work for which the PWSLP/ARRA loan was provided is being performed. After final loan closing, Agency personnel or any authorized Agency representative shall have access to the project records as defined in Section 664.820 (Audit and Records) of this Subpart and to the project site during normal business hours, to the full extent of the loan recipient's right to access.
- b) Every contract entered into by the loan recipient for construction work, and every subagreement, shall provide Agency representatives with such access to the work. The contractor or subcontractor shall provide facilities for access and inspection. The contract or subagreement shall also provide that the Agency or any authorized representative shall have access to any books, documents, papers and

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records that are pertinent to the project for the purpose of making audit, examination, excerpts and transcriptions.

- c) Failure by the loan recipient or any of its contractors or subcontractors to provide access, after 10 days written notice from the Agency, shall be cause for termination of the loan pursuant to Section 664.330 (Termination) of this Part, and refund to the State of Illinois for deposit into PWSLP any unexpended loan funds. In addition, any loan recipient, contractor or subcontractor found in noncompliance with this Section shall repay any loan funds previously spent.

**Section 664.820 Audit and Records
EMERGENCY**

- a) The loan recipient shall maintain books, records, documents, reports and other evidentiary material, and accounting procedures and practices consistent with generally accepted government accounting standards in accordance with the American Institute of Certified Public Accountants Professional Standards.
- b) For purposes of this Section, "records" shall include, but not be limited to:
 - 1) Documentation of the receipt and disposition by the loan recipient of all financial assistance received for the project, including both State financial assistance and any matching share or cost sharing; and
 - 2) Documentation of the costs charged to the project, including all direct and indirect costs of whatever nature incurred for the performance of the project for which the loan has been provided.
- c) The loan recipient's facilities, or any facilities engaged in the performance of the PWSLP/ARRA loan project, and the loan recipient's records shall be subject to inspection and audit by the Agency or its authorized representative, at the times specified in Section 664.810 (Access) of this Subpart.
- d) The loan recipient shall preserve and make its records available to the Agency or its authorized representative for the following periods:
 - 1) For all costs associated with design and construction, for 3 years after final loan closing;

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- 2) For all other accounting records concerning the loan, for 3 years from the date of the transaction; and
- 3) For any longer period required by law or by subsections (e) and (f).
- e) If the loan is completely or partially terminated, the records relating to the terminated work shall be preserved and made available for 3 years after any resulting final termination settlement.
- f) Records that relate to appeals under the "Disputes" clause in Section 664.650 (Disputes) of this Part, litigation or the settlement of claims arising out of the performance of the PWSLP loan project, or to project costs and expenses to which exception has been taken by the Agency or its authorized representatives, shall be retained until the appeals, litigation, claims or exceptions have been completed.
- g) Failure of the loan recipient or its contractors or subcontractors to make records available to the Agency as required by Section 664.810 (Access) of this Subpart after 10 days written notice shall be cause for termination of the loan, pursuant to Section 664.330 (Termination) of this Part and for refund to the State of Illinois for deposit into PWSLP of any unexpended loan funds. In addition, any loan recipient, contractor or subcontractor found in noncompliance with this Section shall repay any loan funds previously spent.

**Section 664.830 Single Audit Act
EMERGENCY**

A local government unit or a privately owned community water supply having not-for-profit status that receives loan assistance shall comply with the provisions of the Single Audit Act of 1996 (31 USC 7501 et seq.).

SUBPART I: FINANCIAL AND MANAGERIAL CAPABILITY

**Section 664.910 Operation, Maintenance and Replacement Revenue System
EMERGENCY**

- a) In order for the loan agreement to be issued, the Agency must have approved the loan applicant's source of revenue for operation, maintenance and replacement (O, M & R) costs. The source of revenue must be enacted and enforceable, if appropriate, before the first loan disbursement can be made.

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- b) The Agency shall approve the O, M & R revenue system in accordance with the following criteria:
- 1) For the first year of operation of new facilities, operation, maintenance and replacement costs shall be based upon past experience or some other rational method that can be demonstrated to be applicable.
 - 2) The loan recipient shall review annually and revise periodically the revenue source to reflect actual water works operation, maintenance and replacement costs. The Agency may request a report on the status of the projected costs, actual costs, revenue generated and fund balances at any time.
 - 3) The revenue source shall generate sufficient revenue to offset the cost of all water works operation, maintenance and replacement required to be provided by the loan recipient.
 - 4) If the project is for a regional community water supply facility that distributes water to other public water supplies, appropriate municipal ordinances, intergovernmental or service agreements or other appropriate authorizations must be submitted.
- c) Upon approval of a loan recipient's O, M & R revenue source, the implementation and maintenance of the source shall become a condition of the loan subject to Section 664.310 (Noncompliance with Loan Procedures) of this Part.
- d) The Agency or its authorized representative shall have access to all books, documents, papers and records of the loan recipient for the purpose of making audit, examination, excerpts and transcriptions in order to ensure compliance with subsection (b).

**Section 664.920 Financial Capability
EMERGENCY**

- a) The loan applicant shall demonstrate to the Agency that it has the necessary legal, financial, managerial and technical capability to:

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- 1) Construct, operate and maintain the project for the life of the public water supply facilities;
 - 2) Retire the loan, including the execution of any necessary legally enforceable agreements and any enactments necessary to recover adequate capital costs to repay the loan; and
 - 3) Meet any covenants and requirements in the loan agreement.
- b) To demonstrate financial, managerial and technical capability, the loan applicant shall, at a minimum, show that:
- 1) It is empowered under law to own, operate and maintain a public water supply facility, including the facilities to be constructed under the loan;
 - 2) It has the necessary easements, titles, permits and legally enforceable agreements for loan project implementation, as identified in the project plan; and
 - 3) It has or will have the necessary qualified personnel to operate and maintain the facility.
- c) The financial capability demonstration shall be submitted to the Agency for approval and shall contain detailed project costs, existing and proposed operation, maintenance and replacement costs, existing and proposed local capital costs, and historical information over the past 3 years consisting of audited annual financial statements, tax returns, Illinois Commerce Commission annual reports, bond ratings, number of billed customers and tax rate levies.
- d) The Agency may suggest mitigative measures to improve the loan applicant's financial capability to undertake the project, including but not limited to, acquisition of grant funding, reduction of project costs, additional or different sources of revenues, efforts to reduce the number of delinquent billed customers and changes to existing financial practices that may threaten generation of adequate revenues.
- e) The Agency may require a loan term of less than the 20 year maximum. In evaluating the appropriateness of alternative loan terms, the Agency shall

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consider such factors as the scope of the proposed project, the impacts of alternative loan terms on user fees, and the overall cost of the project.

- f) The Agency may also utilize available credit reporting services.

**Section 664.930 Dedicated Source of Revenue for Local Government Units
EMERGENCY**

- a) A source of revenue shall be dedicated and pledged to make the loan repayments. Prior to loan approval, the Agency shall review the proposed dedicated and pledged revenue source to assure that it will generate revenues adequate to make the loan repayments and will provide a continuing source of revenue adequate to make loan repayments for the term of the loan. If the source of revenue is pledged in a subordinate position to a revenue bond ordinance, the covenants regarding coverage and reserve for the revenue source shall be equivalent to those in the revenue bond ordinance. At a minimum, the reserve account shall be equal to the annual loan repayment amount funded within 2 years after the loan award.
- b) The necessary legislative enactments to dedicate and pledge the source of revenue must be in place before the Agency can make the first loan disbursement.
- c) The loan recipient shall maintain a separate account in its books to record the dedicated revenues for loan repayment.
- d) The loan recipient shall, for the term of the loan, review and adjust the dedicated source of revenue as necessary to provide adequate funds for the repayment of the loan. The loan recipient shall timely notify the Agency and submit to the Agency for approval all proposed changes to the dedicated source of revenue.
- e) Upon request, the loan recipient shall submit to the Agency a statement on the status of the account required by subsection (c) that contains the status of the dedicated revenue account, including the projected revenues, actual revenues fund balance, debt service obligations and other requirements of the loan agreement. The Agency's review will be based on, but not limited to, ensuring that the dedicated source of revenue is legally authorized, generates sufficient revenue and is otherwise in accordance with this Part.

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- f) In the event that the actual revenues fall short of the amount required to retire the loan, the Agency shall require the loan recipient to re-examine the dedicated revenue source and restructure it as necessary.

**Section 664.940 Source of Revenue and Security for Privately Owned Community Water Supplies
EMERGENCY**

- a) The loan applicant must provide a detailed demonstration that there is an adequate source of revenue to repay the principal due on the loan. The loan applicant must also demonstrate that there is adequate security for the full amount of the loan. This shall include, but is not limited to, the following:
- 1) The audited financial statements and tax returns required under Section 664.920 of this Subpart and the calculation of the ratios set forth in the Risk Management Association (RMA) Annual Statement Studies for the North American Industry Classification System (NAICS) #221310. The statements must show a positive cash flow for all 3 years. 50% of the ratios must fall in the upper 2 quartiles when compared to the RMA Annual Statement Studies for NAICS #221310.
 - 2) Any rate increase required to assure that adequate revenues will be generated to make the loan repayments must be adopted in a legally binding manner prior to the first loan disbursement. When applicable, approval of the rate increase by the Illinois Commerce Commission will be required.
 - 3) Appropriate legal documents will be provided to enable the Agency to perfect its security interest in the revenues of the system and other personal properties offered as security by filing the necessary information under the Uniform Commercial Code.
 - 4) The loan applicant must submit a legal description and current appraisal by a licensed appraiser of real property to be used for collateral. The mortgage must be executed prior to the issuance of the loan.
 - 5) Approval from the Illinois Commerce Commission to incur debt, if applicable.

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- b) The loan recipient must maintain a separate accounting in its books to record the funds available for loan repayment.
- c) The loan recipient must, for the term of the loan, review and adjust the source of revenue as necessary to provide adequate funds for the repayment of the loan. The loan recipient must timely notify the Agency of, and submit to the Agency for approval, all proposed changes to the source of revenue.
- d) Upon request, the loan recipient shall submit to the Agency the status of the funds available for repayment of the loan, including the projected revenues, actual revenues fund balance, debt service obligations and other requirements of the loan agreement. The Agency's review will be based on, but not limited to, ensuring that the source of revenue generates sufficient revenue and is otherwise in accordance with this Part.
- e) In the event that the actual revenues fall short of the amount required to retire the loan, the Agency shall require the loan recipient to re-examine the revenue source and restructure it as necessary.

**Section 664.950 Floodplain Insurance
EMERGENCY**

- a) If the loan project includes insurable structures that will be located within a designated floodplain area as defined in the National Flood Insurance Act of 1968 (42 USC 4001-4127), the loan recipient shall furnish written evidence that it is participating in the National Flood Insurance Program or that the construction areas have received official exclusion from the flood insurance requirements by the Federal Emergency Management Agency.
- b) The loan recipient (or the construction contractor, as appropriate) shall acquire any flood insurance made available to it under the National Flood Insurance Act of 1968, as amended, and maintain the insurance for the entire useful life of the insurable structures.
- c) The amount of insurance required shall be the lesser of the total project cost, excluding facilities that are uninsurable under the National Flood Insurance Program, or the maximum limit of coverage made available to the loan recipient under the National Flood Insurance Act of 1968.

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- d) The required insurance premium for the period of construction shall be an allowable project cost under Section 664.1010 (Determination of Allowable Costs) of this Part.

SUBPART J: REQUIREMENTS APPLICABLE TO LOAN DISBURSEMENTS

**Section 664.1010 Determination of Allowable Costs
EMERGENCY**

The loan recipient shall be paid, upon request, in accordance with Section 664.1030 (Disbursement of Loan Funds) of this Subpart, for all costs that are within the scope of the approved project, not to exceed the total amount of the loan, and that are determined to be allowable in accordance with the following criteria:

- a) **Allowable Project Costs**
All reasonable and necessary costs directly attributable to the design and construction of an eligible, loan assisted public water supply project that are not excluded from loan funding by statute or non-waivable regulations. Categories of necessary costs include, but are not limited to, the following:
- 1) The direct purchase of materials, equipment and personal services specifically necessary for the completion of a loan funded project;
 - 2) Professional and consultant services contracts necessary for design, bidding and construction of a loan funded project, except as elsewhere limited by this Part;
 - 3) Costs under approved construction contracts; and
 - 4) Costs for premiums for required flood insurance during the project construction period.
- b) **Ineligible Costs**
Categories of costs that are ineligible for loan assistance, and are not subject to the "reasonable and necessary" test of allowability include, but are not limited to, the following:
- 1) Costs for preparing a project planning document;

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- 2) Costs outside the scope of the approved project plan;
 - 3) Site acquisition, including easement compensation;
 - 4) Construction of any facilities that do not clearly fall within the definition of a community water supply facility as contained in the federal Safe Drinking Water Act; and
 - 5) Costs of projects whose main purpose is fire protection or servicing future growth.
- c) Disputes Concerning Allowable Costs
The loan recipient shall seek to resolve any questions relating to cost allowability or allocation at the earliest opportunity. Final determinations by the Director concerning the allowability of costs shall be conclusive.

**Section 664.1020 Use of Loan Funds and Payment of Unallowable Costs
EMERGENCY**

- a) Loan funds shall be expended solely for approved allowable costs incurred in the design and construction of the project.
- b) The loan recipient shall agree to pay the unallowable costs associated with the project, as well as all allowable costs that exceed the amount of the loan, and shall construct the project or cause it to be constructed to final completion in accordance with the plans and specifications and on the schedule approved by the Agency.
- c) The loan recipient shall commit itself to complete the construction of the operable public water supply facilities.

**Section 664.1030 Disbursement of Loan Funds
EMERGENCY**

- a) Disbursements are subject to the appropriation of funds by the General Assembly and the availability of cash deposited into PWSLP from drawdowns from the USEPA Automated Clearing House, repayments of existing loans, interest earnings on money in PWSLP, and money deposited into PWSLP from other sources.

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- b) Disbursements shall be made as follows:
 - 1) After the receipt of a fully executed loan agreement, disbursement requests must be sent directly to the Agency. Actual disbursements shall be processed in accordance with the loan agreement.
 - 2) Disbursements will be processed based on costs incurred that are due and payable, as evidenced by invoices. The Agency may withhold any disbursement for a violation of the loan agreement conditions.
- c) The loan recipient shall make prompt payment to the contractor.
- d) The State share of any refunds, rebates, credits or other amounts (including any interest) accruing to or received by the loan recipient with respect to the project that are properly allocable to costs for which loan funds have been disbursed must be paid, minus any reasonable expenses incurred in securing these funds, to the State of Illinois for deposit in PWSLP.
- e) Before the final principal amount of the loan can be established:
 - 1) The Agency shall conduct a final inspection and a project review to insure that all applicable loan conditions have been satisfied; and
 - 2) The loan recipient must submit to the Agency a final waiver from the contractor and a Certification of Payment that all bills have been paid.
- f) The loan recipient must also submit a release, discharging the State of Illinois and its officers, agents and employees from all liabilities, obligations and claims arising out of the project work or under the loan, subject only to such exceptions that may be specified in the release.
- g) Any use of loan funds at variance with this Part shall result in repayment of those loan funds to the State of Illinois for deposit into PWSLP.

SUBPART K: PROCEDURES FOR LOAN REPAYMENT
AND DELINQUENT REPAYMENT**Section 664.1110 Loan Repayment to the Agency**

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Loan repayment to the Agency shall be in accordance with the loan repayment provisions contained in the loan agreement.

- a) Principal forgiveness of 50% will be applied to the total amount of loan disbursements from ARRA funds. The loan repayment amount shall be calculated based upon 50% of the total amount of loan disbursements from ARRA funds.
- b) Loan repayments shall commence not later than 6 months after the initiation of the loan repayment period and shall be due semiannually for local government units and quarterly for privately owned community water supplies unless the Agency determines that the source of revenue justifies an alternative repayment plan.
- c) After the initiation of the loan repayment period date in the loan agreement, the Agency shall set a principal amount and give the loan recipient an interim repayment schedule.
- d) After a final cost review of the project, the Agency shall establish the final principal amount and give the loan recipient a final repayment schedule.

Section 664.1120 Delinquent Loan Repayments**EMERGENCY**

- a) *If a repayment is not made according to the repayment schedule, the loan recipient shall notify the Agency in writing within 15 days after the repayment due date. The notification shall state the reasons the repayment was not timely tendered and the circumstances under which the late repayment will be satisfied, and shall contain binding commitments to assure future repayments. After receipt of this notification, the Agency shall accept the plan or take action in accordance with subsection (b).*
- b) *If a loan recipient fails to comply with subsection (a), the Agency shall promptly issue a notice of delinquency to the loan recipient which shall require a written response within 15 days. The notice of delinquency shall require that the loan recipient revise its rates, fees and charges to meet its obligations or take other*

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specified actions as may be appropriate to remedy the delinquency and to assure future repayments.

- c) *In the event that the loan recipient fails to timely or adequately respond to a notice of delinquency, or fails to meet any obligations made pursuant to subsections (a) and (b), the Agency shall pursue the collection of the amounts past due, the outstanding loan balance and the costs incurred thereby, either pursuant to the Illinois State Collection Act of 1986 [30 ILCS 210] or by any other lawful means, including the taking of title by foreclosure or otherwise to any project or other property pledged, mortgaged, encumbered or otherwise available as security or collateral. [415 ILCS 5/19.6]*

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**Section 664.APPENDIX A Executive Orders
EMERGENCY****Section 664.EXHIBIT A Executive Order 12549
EMERGENCY**

February 18, 1986, 51 F.R. 6370

DEBARMENT AND SUSPENSION

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to curb fraud, waste, and abuse in Federal programs, increase agency accountability, and ensure consistency among agency regulations concerning debarment and suspension of participants in Federal programs, it is hereby ordered that:

Section 1.

- a) To the extent permitted by law and subject to the limitations in Section 1(c), Executive departments and agencies shall participate in a system for debarment and suspension from programs and activities involving Federal financial and nonfinancial assistance and benefits. Debarment or suspension of a participant in a program by one agency shall have government-wide effect.
- b) Activities covered by this Order include but are not limited to: grants, cooperative agreements, contracts of assistance, loans, and loan guarantees.
- c) This Order does not cover procurement programs and activities, direct Federal statutory entitlements or mandatory awards, direct awards to foreign governments or public international organizations, benefits to an individual as a personal entitlement, or Federal employment.

Section 2. To the extent permitted by law, Executive departments and agencies shall:

- a) Follow government-wide criteria and government-wide minimum due process procedures when they act to debar or suspend participants in affected programs.
- b) Send to the agency designated pursuant to Section 5 identifying information concerning debarred and suspended participants in affected programs, participants who have agreed to exclusion from participation, and participants declared

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ineligible under applicable law, including Executive Orders. This information shall be included in the list to be maintained pursuant to Section 5.

- c) Not allow a party to participate in any affected program if any Executive department or agency has debarred, suspended or otherwise excluded (to the extent specified in the exclusion agreement) that party from participation in an affected program. An agency may grant an exception permitting a debarred, suspended, or excluded party to participate in a particular transaction upon a written determination by the agency head or authorized designee stating the reason(s) for deviating from this Presidential policy. However, I intend that exceptions to this policy should be granted only infrequently.

- Section 3. Executive departments and agencies shall issue regulations governing their implementation of this Order that shall be consistent with the guidelines issued under Section 6. Proposed regulations shall be submitted to the Office of Management and Budget for review within four months of the date of the guidelines issued under Section 6. The Director of the Office of Management and Budget may return for reconsideration proposed regulations that the Director believes are inconsistent with the guidelines. Final regulations shall be published within twelve months of the date of the guidelines.
- Section 4. There is hereby constituted the Interagency Committee on Debarment and Suspension, which shall monitor implementation of this Order. The Committee shall consist of representatives of agencies designated by the Director of the Office of Management and Budget.
- Section 5. The Director of the Office of Management and Budget shall designate a Federal agency to perform the following functions: maintain a current list of all individuals and organizations excluded from program participation under this Order, periodically distribute the list to Federal agencies, and study the feasibility of automating the list; coordinate with the lead agency responsible for government-wide debarment and suspension of contractors; chair the Interagency Committee established by Section 4; and report periodically to the Director on implementation of this Order, with the first report due within two years of the date of the Order.
- Section 6. The Director of the Office of Management and Budget is authorized to issue guidelines to Executive departments and agencies that govern which programs and activities are covered by this Order, prescribe government-wide criteria and

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government-wide minimum due process procedures, and set forth other related details for the effective administration of the guidelines.

- Section 7. The Director of the Office of Management and Budget shall report to the President within three years of the date of this Order on Federal agency compliance with the Order, including the number of exceptions made under Section 2(c), and shall make such recommendations as are appropriate further to curb fraud, waste, and abuse.

THE WHITE HOUSE
February 18, 1986

RONALD REAGAN

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**Section 664.APPENDIX A Executive Orders
EMERGENCY****Section 664.EXHIBIT B Executive Order 11246
EMERGENCY**EQUAL EMPLOYMENT OPPORTUNITY
EXECUTIVE ORDER 11246, AS AMENDED

Executive Order 11246 – Equal Employment Opportunity

Under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

Part I – Nondiscrimination in Government Employment

Part II – Nondiscrimination in Employment by Government Contractors and Subcontractors

Subpart A – Duties of the Secretary of Labor

SEC. 201. The Secretary of Labor shall be responsible for the administration and enforcement of Parts II and III of this Order. The Secretary shall adopt such rules and regulations and issue such orders as are deemed necessary and appropriate to achieve the purposes of Parts II and III of this Order.

Subpart B – Contractors' Agreements

SEC. 202. Except in contracts exempted in accordance with Section 204 of this Order, all Government contracting agencies shall include in every Government contract hereafter entered into the following provisions:

During the performance of this contract, the contractor agrees as follows:

- 1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or

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recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

- 2) The contractor will, in all solicitations or advancements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- 3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 4) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

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- 7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
- SEC. 203. Each contractor having a contract containing the provisions prescribed in Section 202 shall file, and shall cause each of his subcontractors to file, Compliance Reports with the contracting agency or the Secretary of Labor as may be directed. Compliance Reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment policies, programs, and employment statistics of the contractor and each subcontractor, and shall be in such form, as the Secretary of Labor may prescribe.
- a) Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of this Order, or any preceding similar Executive order, and in that event to submit, on behalf of themselves and their proposed subcontractors, Compliance Reports prior to or as an initial part of their bid or negotiation of a contract.
- b) Whenever the contractor or subcontractor has a collective bargaining agreement or other contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the Compliance Report shall include such information as to such labor union's or agency's practices and policies affecting compliance as the Secretary of Labor may prescribe: Provided, That to the extent such information is within the exclusive possession of a labor union or an agency referring workers or providing or supervising apprenticeship or training and such labor union or agency shall refuse to furnish such information to the contractor, the contractor shall so certify to the Secretary of Labor as part of its Compliance Report and shall set forth what efforts he has made to obtain such information.

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- c) The Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this Order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the order. In the event that the union, or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the Secretary of Labor may require.

SEC. 204. The Secretary of Labor may, when he/she deems that special circumstances in the national interest so require, exempt a contracting agency from the requirement of including any or all of the provisions of Section 202 of this Order in any specific contract, subcontract, or purchase order. The Secretary of Labor may, by rule or regulation, also exempt certain classes of contracts, subcontracts, or purchase orders (1) whenever work is to be or has been performed outside the United States and no recruitment of workers within the limits of the United States is involved; (2) for standard commercial supplies or raw materials; (3) involving less than specified amounts of money or specified numbers of workers; or (4) to the extent that they involve subcontracts below a specified tier. The Secretary of Labor may also provide, by rule, regulation, or order, for the exemption of facilities of a contractor which are in all respects separate and distinct from activities of the contractor related to the performance of the contract: Provided, That such an exemption will not interfere with or impede the effectuation of the purposes of this Order: And provided further, That in the absence of such an exemption, all facilities shall be covered by the provisions of this Order.

Subpart C – Powers and Duties of the Secretary of Labor and the Contracting Agencies

SEC. 205. The Secretary of Labor shall be responsible for securing compliance by all Government contractors and subcontractors with this Order and any implementing rules or regulations. All contracting agencies shall comply with the terms of this Order and any implementing rules, regulations, or orders of the Secretary of

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Labor. Contracting agencies shall cooperate with the Secretary of Labor and shall furnish such information and assistance as the Secretary may require.

- SEC. 206. The Secretary of Labor may investigate the employment practices of any Government contractor or subcontractor to determine whether or not the contractual provisions specified in Section 202 of this Order have been violated. Such investigation shall be conducted in accordance with the procedures established by the Secretary of Labor.
- a) The Secretary of Labor may receive and investigate complaints by employees or prospective employees of a Government contractor or subcontractor which allege discrimination contrary to the contractual provisions specified in Section 202 of this Order.
- SEC. 207. The Secretary of Labor shall use his/her best efforts, directly and through interested Federal, State, and local agencies, contractors, and all other available instrumentalities to cause any labor union engaged in work under Government contracts or any agency referring workers or providing or supervising apprenticeship or training for or in the course of such work to cooperate in the implementation of the purposes of this Order. The Secretary of Labor shall, in appropriate cases, notify the Equal Employment Opportunity Commission, the Department of Justice, or other appropriate Federal agencies whenever it has reason to believe that the practices of any such labor organization or agency violate Title VI or Title VII of the Civil Rights Act of 1964 or other provision of Federal law.
- SEC. 208. The Secretary of Labor, or any agency, officer, or employee in the executive branch of the Government designated by rule, regulation, or order of the Secretary, may hold such hearings, public or private, as the Secretary may deem advisable for compliance, enforcement, or educational purposes.
- a) The Secretary of Labor may hold, or cause to be held, hearings in accordance with Subsection of this Section prior to imposing, ordering, or recommending the imposition of penalties and sanctions under this Order. No order for debarment of any contractor from further Government contracts under Section 209(6) shall be made without affording the contractor an opportunity for a hearing.

Subpart D – Sanctions and Penalties

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SEC. 209. In accordance with such rules, regulations, or orders as the Secretary of Labor may issue or adopt, the Secretary may:

- 1) Publish, or cause to be published, the names of contractors or unions which it has concluded have complied or have failed to comply with the provisions of this Order or of the rules, regulations, and orders of the Secretary of Labor.
- 2) Recommend to the Department of Justice that, in cases in which there is substantial or material violation or the threat of substantial or material violation of the contractual provisions set forth in Section 202 of this Order, appropriate proceedings be brought to enforce those provisions, including the enjoining, within the limitations of applicable law, of organizations, individuals, or groups who prevent directly or indirectly, or seek to prevent directly or indirectly, compliance with the provisions of this Order.
- 3) Recommend to the Equal Employment Opportunity Commission or the Department of Justice that appropriate proceedings be instituted under Title VII of the Civil Rights Act of 1964.
- 4) Recommend to the Department of Justice that criminal proceedings be brought for the furnishing of false information to any contracting agency or to the Secretary of Labor as the case may be.
- 5) After consulting with the contracting agency, direct the contracting agency to cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with equal employment opportunity provisions of the contract. Contracts may be cancelled, terminated, or suspended absolutely or continuance of contracts may be conditioned upon a program for future compliance approved by the Secretary of Labor.
- 6) Provide that any contracting agency shall refrain from entering into further contracts, or extensions or other modifications of existing contracts, with any noncomplying contractor, until such contractor has satisfied the Secretary of Labor that such contractor has established and will carry out personnel and employment policies in compliance with the provisions of this Order.
- 7) Pursuant to rules and regulations prescribed by the Secretary of Labor, the Secretary shall make reasonable efforts, within a reasonable time limitation, to

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secure compliance with the contract provisions of this Order by methods of conference, conciliation, mediation, and persuasion before proceedings shall be instituted under subsection (a)(2) of this Section, or before a contract shall be cancelled or terminated in whole or in part under subsection (a)(5) of this Section.

- SEC. 210. Whenever the Secretary of Labor makes a determination under Section 209, the Secretary shall promptly notify the appropriate agency. The agency shall take the action directed by the Secretary and shall report the results of the action it has taken to the Secretary of Labor within such time as the Secretary shall specify. If the contracting agency fails to take the action directed within thirty days, the Secretary may take the action directly.
- SEC. 211. If the Secretary shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this Order or submits a program for compliance acceptable to the Secretary of Labor.
- SEC. 212. When a contract has been cancelled or terminated under Section 209(a)(5) or a contractor has been debarred from further Government contracts under Section 209(a)(6) of this Order, because of noncompliance with the contract provisions specified in Section 202 of this Order, the Secretary of Labor shall promptly notify the Comptroller General of the United States.

Subpart E – Certificates of Merit

- SEC. 213. The Secretary of Labor may provide for issuance of a United States Government Certificate of Merit to employers or labor unions, or other agencies which are or may hereafter be engaged in work under Government contracts, if the Secretary is satisfied that the personnel and employment practices of the employer, or that the personnel, training, apprenticeship, membership, grievance and representation, upgrading, and other practices and policies of the labor union or other agency conform to the purposes and provisions of this Order.
- SEC. 214. Any Certificate of Merit may at any time be suspended or revoked by the Secretary of Labor if the holder thereof, in the judgment of the Secretary, has failed to comply with the provisions of this Order.
- SEC. 215. The Secretary of Labor may provide for the exemption of any employer, labor union, or other agency from any reporting requirements imposed under or

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pursuant to this Order if such employer, labor union, or other agency has been awarded a Certificate of Merit which has not been suspended or revoked.

Part III – Nondiscrimination Provisions in Federally Assisted Construction Contracts

- SEC. 301. Each executive department and agency, which administers a program involving Federal financial assistance shall require as a condition for the approval of any grant, contract, loan, insurance, or guarantee thereunder, which may involve a construction contract, that the applicant for Federal assistance undertake and agree to incorporate, or cause to be incorporated, into all construction contracts paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to such grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the provisions prescribed for Government contracts by Section 202 of this Order or such modification thereof, preserving in substance the contractor's obligations thereunder, as may be approved by the Secretary of Labor, together with such additional provisions as the Secretary deems appropriate to establish and protect the interest of the United States in the enforcement of those obligations. Each such applicant shall also undertake and agree (1) to assist and cooperate actively with the Secretary of Labor in obtaining the compliance of contractors and subcontractors with those contract provisions and with the rules, regulations and relevant orders of the Secretary, (2) to obtain and to furnish to the Secretary of Labor such information as the Secretary may require for the supervision of such compliance, (3) to carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Secretary of Labor pursuant to Part II, Subpart D, of this Order, and (4) to refrain from entering into any contract subject to this Order, or extension or other modification of such a contract with a contractor debarred from Government contracts under Part II, Subpart D, of this Order.
- SEC. 302. "Construction contract" as used in this Order means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.
- a) The provisions of Part II of this Order shall apply to such construction contracts, and for purposes of such application the administering department or agency shall be considered the contracting agency referred to therein.

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- b) The term "applicant" as used in this Order means an applicant for Federal assistance or, as determined by agency regulation, other program participant, with respect to whom an application for any grant, contract, loan, insurance, or guarantee is not finally acted upon prior to the effective date of this Part, and it includes such an applicant after he/she becomes a recipient of such Federal assistance.
- SEC. 303. The Secretary of Labor shall be responsible for obtaining the compliance of such applicants with their undertakings under this Order. Each administering department and agency is directed to cooperate with the Secretary of Labor and to furnish the Secretary such information and assistance as the Secretary may require in the performance of the Secretary's functions under this Order.
- a) In the event an applicant fails and refuses to comply with the applicant's undertakings pursuant to this Order, the Secretary of Labor may, after consulting with the administering department or agency, take any or all of the following actions: (1) direct any administering department or agency to cancel, terminate, or suspend in whole or in part the agreement, contract or other arrangement with such applicant with respect to which the failure or refusal occurred; (2) direct any administering department or agency to refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received by the Secretary of Labor from such applicant; and (3) refer the case to the Department of Justice or the Equal Employment Opportunity Commission for appropriate law enforcement or other proceedings.
- b) In no case shall action be taken with respect to an applicant pursuant to clause (1) or (2) of subsection (b) without notice and opportunity for hearing.
- SEC. 304. Any executive department or agency which imposes by rule, regulation, or order requirements of nondiscrimination in employment, other than requirements imposed pursuant to this Order, may delegate to the Secretary of Labor by agreement such responsibilities with respect to compliance standards, reports, and procedures as would tend to bring the administration of such requirements into conformity with the administration of requirements imposed under this Order: Provided, That actions to effect compliance by recipients of Federal financial assistance with requirements imposed pursuant to Title VI of the Civil Rights Act of 1964 shall be taken in conformity with the procedures and limitations

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prescribed in Section 602 thereof and the regulations of the administering department or agency issued thereunder.

Part IV – Miscellaneous

SEC. 401. The Secretary of Labor may delegate to any officer, agency, or employee in the Executive branch of the Government, any function or duty of the Secretary under Parts II and III of this Order.

[Sec. 401 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 402. The Secretary of Labor shall provide administrative support for the execution of the program known as the "Plans for Progress."

SEC. 403. Executive Orders Nos. 10590 (January 19, 1955), 10722 (August 5, 1957), 10925 (March 6, 1961), 11114 (June 22, 1963), and 11162 (July 28, 1964), are hereby superseded and the President's Committee on Equal Employment Opportunity established by Executive Order No. 10925 is hereby abolished. All records and property in the custody of the Committee shall be transferred to the Office of Personnel Management and the Secretary of Labor, as appropriate.

- a) Nothing in this Order shall be deemed to relieve any person of any obligation assumed or imposed under or pursuant to any Executive Order superseded by this Order. All rules, regulations, orders, instructions, designations, and other directives issued by the President's Committee on Equal Employment Opportunity and those issued by the heads of various departments or agencies under or pursuant to any of the Executive orders superseded by this Order, shall, to the extent that they are not inconsistent with this Order, remain in full force and effect unless and until revoked or superseded by appropriate authority. References in such directives to provisions of the superseded orders shall be deemed to be references to the comparable provisions of this Order.

[Sec. 403 amended by EO 12107 of Dec. 28, 1978, 44 FR 1055, 3 CFR, 1978 Comp., p. 264]

SEC. 404. The General Services Administration shall take appropriate action to revise the standard Government contract forms to accord with the provisions of this Order and of the rules and regulations of the Secretary of Labor.

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SEC. 405. This Order shall become effective thirty days after the date of this Order.

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**Section 664.APPENDIX B Loan Application Form
EMERGENCY**

Applicant Information

L17# _____

1. Legal Name of Applicant: _____

2. Applicant Address: _____

Project Description: _____

Federal Taxpayer Identification Number: _____

Home Rule Non-Home Rule

3. Authorized Representative:

Name: _____ Title: _____

Phone: _____ Email: _____

4. Engineer:

Name: _____ Firm: _____

Address: _____ Phone: _____

_____ Email: _____

5. Attorney:

Name: _____ Firm: _____

Address: _____ Phone: _____

_____ Email: _____

6. Include detailed construction cost estimate in bid format as part of this application and summarize below:

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Construction	\$
	\$
	\$
Legal/Financial	\$
Design Engineering	\$
Construction Engineering	\$
Other	\$
Contingency	\$
	<hr/>
Total	\$

7. Amount requested for loan \$ _____

8. Loan repayment period requested (maximum term is 20 years): _____

20 Years

Other (____ number of years)

9. List any other proposed sources of funding in addition to loan request:

Source: _____ Amount: _____

Date Available: _____

10. Project Schedule (Indicate "complete" or anticipated date of completion as appropriate)

a) Approved Facilities Planning:

b) Plans and Specifications completed and submitted to Illinois EPA: _____

c) Illinois EPA Permit issued: _____

d) Approved Operation, Maintenance and Replacement Revenue System and Dedicated Source of Revenue: _____

e) Advertise for Bids: _____

f) Initiation of Construction: _____

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g) Completion of Construction: _____

**CERTIFICATION REGARDING PROJECT SITE,
RIGHTS-OF-WAY, EASEMENTS, AND PERMITS**

1. The applicant has investigated and ascertained the location of the site or sites, rights-of-way, and easements being provided for the facilities in its application for loan assistance. In my opinion, the applicant has a sufficient legal interest in the said site or sites, rights-of-way, and easements to permit the building of such facilities thereon and to permit the operation and maintenance of such facilities thereon during the estimated life of the facility by the applicant after the completion of construction.
2. The loan applicant has compiled with the provisions of 49 CFR 24 as required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (42 USC 4601 et seq.).
3. The loan applicant has obtained all the necessary permits as indicated below:

<u>Type of Permit</u>	<u>Permit Number</u>	<u>Date Issued</u>
Army Corps of Eng. 404	_____	_____
IL Dept. of Trans.	_____	_____
County Highway	_____	_____
Other	_____	_____

Loan Program Certifications

- Whereas, the application provisions for loans from the Public Water Supply Loan Program require that the loan applicant provide the following certifications and assurances:

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The loan applicant hereby agrees to pay all project costs not covered by the loan. If the project costs provided by the applicant exceed \$10,000, please provide the following information:

Amount to be provided by applicant \$ _____

Source of funds _____

- The loan applicant hereby certifies that is has analyzed the costs and the financial impacts of the proposed project and that it has the legal, institutional, managerial and financial capability to insure adequate building, operation, maintenance and replacement of the treatment works project.
- The loan applicant hereby certifies that no unlawful or corrupt practice has taken place in the planning or design of the proposed project.
- The loan applicant hereby certifies that it has complied with all applicable State and federal statutory and regulatory requirements in regard to the proposed project.
- The loan applicant hereby certifies that it is not barred from being awarded a contract or subcontract under Section 10.1 of the Illinois Purchasing Act.

Certification Regarding Debarment, Suspension and Other Responsibility Matters

The prospective participant to the best of its knowledge and belief that it and its principals:

- a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- b) Have not within a three year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.

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- c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in fine of up to \$10,000 or imprisonment for up to 5 years, or both.

INTENT REGARDING NATIONAL FLOOD INSURANCE

Whereas application provisions for loans from the Public Water Supply Loan Program require compliance with the National Flood Insurance Act 1968, as amended, and

Whereas the costs of securing and maintaining flood insurance are eligible for loan participation during the approved construction period, and

Whereas failure to secure flood insurance for eligible construction located in designated flood hazard areas will cause this construction to become ineligible for loan funds:

Now therefore, be it resolved that the _____ of _____ will cooperate and coordinate with the National Flood Insurance Program to acquire and maintain any flood insurance made available for Project L17# _____ for the entire useful life of the insurable construction pursuant to the Flood Insurance Act of 1968, as amended, and that it will secure said flood insurance for each insurable structure, as soon as said insurance is available and will notify the Illinois Environmental Protection Agency in writing that the National Flood Insurance requirement has been satisfied.

AUTHORIZATION OF A REPRESENTATIVE TO SIGN LOAN DOCUMENTS

Whereas, application provisions for loans from the Public Water Supply Loan Program for construction of public water supply facilities require that the _____ of _____ authorize a representative to sign the loan application forms and supporting documents; therefore, be it resolved by the _____ of _____ that _____ is hereby authorized to sign all loan

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application forms and documents.

I, _____ hereby verify that the above information is, to the best of my knowledge, true and correct.

Date: _____ Signed by: _____

(Authorized Representative)

Title: _____

Attested by: _____

Financial Information Requirements

Prior to issuance of a loan agreement, the applicant must demonstrate to the Agency that it possesses the necessary technical, legal, financial, managerial and institutional capability to construct, operate and maintain the project for the life of the facility and to retire the loan in accordance with the schedule to be contained in the loan agreement. The applicant must provide sufficient information for the Agency to determine that the applicant is financially capable and has pledged a dedicated revenue source that is adequate to retire the debt and meet any covenants and requirements in the loan agreement. The applicant also must demonstrate that an Operation, Maintenance and Replacement (OM&R) Revenue System has been developed that generates adequate revenues to cover OM&R costs. This can be accomplished by the development and the enactment of a new OM&R Revenue System or the demonstration that a system previously approved by the Agency has been adequately maintained, is being enforced, and will continue to produce adequate revenues.

In order to provide guidance to potential loan recipients, this brief summary of the loan rules, review procedures, and the information that must be submitted for the Agency's review is being provided along with the attached checklist.

Financial Capability

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The Agency requires that the applicant demonstrate that it has the legal, financial, managerial and institutional capability to construct, operate and maintain the project for the life of the public water supply facilities and to retire the loan. The applicant must also demonstrate the ability to meet any covenants contained in the loan agreement.

The Agency's review will be conducted using items submitted as part of the loan application including our review of the Dedicated Source of Revenue and the OM&R Revenue System. In addition, applicants must furnish the last fiscal year's audited financial statements. If we are unable to determine that the applicant is financially capable, the Agency may require additional financial data be submitted.

Dedicated Source of Revenue

The Agency requires that specific sources of revenue must be dedicated and pledged to make the loan repayments. Prior to the Agency's approval of the dedicated source of revenue, the applicant must demonstrate that the revenue source will generate adequate revenues to make loan repayments for the term of the loan. The term of the loan will be specified in the loan agreement but shall not exceed 20 years from the initiation of operation date contained in the loan agreement. Additional points that must be considered during the development of the dedicated source of revenue are:

- The dedicated source of revenue is usually pledged by the loan applicant in the form of an adopted ordinance that pledges a specific and dedicated source of revenue for repayment of the loan. The adopted ordinance will in most cases pledge a very stable source of revenue, such as revenues of the system, in the form of a revenue bond. General obligation and alternate bond ordinances are also acceptable.
- In the case of revenue bonds, the Agency requires that debt service coverage requirements for the IEPA loan be equal to any outstanding senior debt that is payable from revenues of the system. If a water service charge is used, the water rate and rate ordinance must be adopted prior to the first disbursement. State law requires a 1.25 x coverage test for alternate bonds, and parity revenue bonds must also meet the covenants made to outstanding investors.
- The Agency requires that the applicant furnish a legal opinion concerning the acceptability of the ordinance and other elements of the debt instrument selected for repayment of the loan. This opinion must address the validity and enforceability of the loan recipient's obligations and the absence of conflicts with other agreements, bonds or ordinances. Retention of bond counsel is optional.

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OM&R Revenue System

The applicant's OM&R Revenue System must generate adequate revenues to cover OM&R costs.

If the applicant has a previously approved OM&R Revenue System, the Agency will review the system to ascertain that the system was enacted and has been maintained in accordance with the previous approval and will produce adequate revenues.

Applicant: _____

L17#: _____

FINANCIAL INFORMATION CHECKLIST

Please answer or submit information indicated, as appropriate.

A. Dedicated source of revenue

1. Home Rule Non-Home Rule
2. Type of loan instrument
 - a. General Obligation Debt
 - b. Alternate (double barreled) bonds with property tax levy that pledges an alternate revenue source of _____
 - c. Water Sewer Combined System Revenues – Senior Lien
 - d. Water Sewer Combined System Revenues – Subordinate Lien
3. Authority of applicant to issue debt
 - a. Home rule powers
 - b. Specific authorizing statute: _____ ILCS _____
 - c. Other (specify)

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4. Copy of certified ordinance authorizing debt must be submitted along with existing ordinances if a subordinate lien is proposed. If this is a subordinate lien, the certified ordinance authorizing debt must have provisions for equivalent accounts and coverage.
5. Signed legal opinion with respect to the validity and enforceability of the applicant's obligations (bond ordinance) and the absence of conflicts with other agreements, bonds or ordinances.
6. A detailed demonstration that the dedicated source of revenue will provide adequate revenues to repay the loan in accordance with the terms of the loan agreement, including meeting any covenants and requirements in the loan agreement.
7. Last fiscal year's audited annual statement.
8. Are other entities substantially benefiting (greater than 5%) from the project?
 Yes No
9. Submit copies of any service agreement with any substantial beneficiary.
 Attached N/A

EITHER

- B. OM&R Revenue (assuming that an Agency approved revenue system is not in existence)
1. Submission of a detailed Operation, Maintenance and Replacement (OM&R) budget.
 2. Calculations to demonstrate how the rates, if applicable, are calculated. The rates should be expressed in cost per unit of usage (i.e., 1,000 gallons, 100 cubic feet, as appropriate).
 3. Proposed rate ordinances, if applicable.

OR

- C. Supplemental Review (assuming that an Agency approved revenue system is in existence)

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1. Submit a copy of the ordinances originally approved.
2. Submit any amendments made to the ordinances since their approval.
3. Is the OM&R Revenue System generating sufficient revenue to recover the Operation, Maintenance and Replacement Costs? Yes No
If answered No, what corrective action is being taken?
4. Is the water rate ordinance, if applicable, being enforced? Yes No
If answered No, please explain.
5. Is an annual review of the revenue source being performed?
 Yes No
If answered No, please explain.
6. Will the project result in substantial changes to the costs for Operation, Maintenance and Replacement? Yes No
7. If #6 is answered yes, please submit a proposed budget for the first year OM&R costs and a review of the revenue source, along with appropriate revisions to the rate ordinance, if applicable.

I hereby certify that the above information is, to the best of my knowledge, true and accurate.

(Authorized Representative)	(Date)
(Clerk)	(Date)

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 June 2, 2009 through June 8, 2009 and have been scheduled for review by the Committee at its June 16, 2009 or July 14, 2009 meetings. 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>
7/15/09	<u>State Board of Education</u> , Calculation of Excess Cost Under Section 18-3 of the School Code (23 Ill. Adm. Code 140)	3/6/09 33 Ill. Reg. 3973	6/16/09
7/15/09	<u>State Board of Education</u> , Alternative Learning Opportunities Program (23 Ill. Adm. Code 240)	3/6/09 33 Ill. Reg. 3982	6/16/09
7/17/09	<u>Department of Financial and Professional Regulation</u> , Illinois Architecture Practice Act of 1989 (68 Ill. Adm. Code 1150)	4/10/09 33 Ill. Reg. 5081	7/14/09
7/18/09	<u>State Universities Civil Service System</u> , State Universities Civil Service System (80 Ill. Adm. Code 250)	2/20/09 33 Ill. Reg. 3258	7/14/09

JOINT COMMITTEE ON ADMINISTRATIVE RULES

NOTICE OF PUBLICATION ERROR

- 1) Heading of the Part: Aid to the Aged, Blind or Disabled
- 2) Code Citation: 89 Ill. Adm. Code 113
- 3) Register citation of emergency rulemaking and other pertinent action: June 5, 2009; 33 Ill. Reg. 7337
- 4) Explanation: The effective date of the emergency amendments was incorrectly stated as March 21, 2009. It should have read May 21, 2009. JCAR regrets this error.

ILLINOIS ADMINISTRATIVE CODE
Issue Index - With Effective Dates

Rules acted upon in Volume 33, Issue 25 are listed in the Issues Index by Title number, Part number, Volume and Issue. Inquiries about the Issue Index may be directed to the Administrative Code Division at (217) 782-7017/18.

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